S T A T E O F N E W Y O R K

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I N A S S E M B L Y

May 6, 2014

Introduced by M. of A. PAULIN, ZEBROWSKI, MOSLEY, GOTTFRIED, JACOBS, MAGNARELLI, MILLMAN, OTIS, QUART, ROBINSON, SCARBOROUGH -- Multi-Sponsored by -- M. of A. GALEF, RIVERA, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to orders to surrender subject weapons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 60.12-a to read as follows:

S 60.12-A ORDER TO SURRENDER.

1. FOR PURPOSES OF THIS SECTION, "SUBJECT WEAPON" MEANS A "BLACK POWDER RIFLE," "BLACK POWDER SHOTGUN," OR ANY "MUZZLE-LOADING FIREARM," OR AN "ANTIQUE FIREARM."

2. WHENEVER A PERSON IS CONVICTED OF ASSAULT OR ATTEMPTED ASSAULT IN THE THIRD DEGREE, AS DEFINED IN SECTIONS 120.00 AND 110.00 OF THIS CHAPTER, MENACING OR ATTEMPTED MENACING IN THE SECOND DEGREE, AS DEFINED IN SECTION 120.14 AND 110.00 OF THIS CHAPTER, CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION OR ATTEMPTED CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION, AS DEFINED IN SECTIONS 121.11 AND 110.00 OF THIS CHAPTER, FORCIBLE TOUCHING OR ATTEMPTED FORCIBLE TOUCHING, AS DEFINED IN SECTIONS 130.52 AND 110.00 OF THIS CHAPTER, AND THE DEFENDANT HAS BEEN DETERMINED, PURSUANT TO SECTION 370.15 OF THE CRIMINAL PROCEDURE LAW, TO BE RELATED OR SITUATED TO THE VICTIM OF THE OFFENSE IN THE MANNER SPECIFIED IN 18 U.S.C. 921(A)(33)(A)(II), THE COURT SHALL ORDER THE IMMEDIATE SURRENDER PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS CHAPTER AND SUBDIVISION SIX OF SECTION 400.05 OF THIS CHAPTER, OF ANY OR ALL SUBJECT WEAPONS OWNED OR POSSESSED.

3. (A) WHENEVER A PERSON IS CONVICTED AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL REQUIRE THE RESPONDENT TO INFORM THE COURT OF ALL SUBJECT WEAPONS HE OR SHE OWNS OR POSSESSES. ANY ORDER TO SURRENDER ONE OR MORE SUBJECT WEAPONS SHALL SPECIFY A DATE AND TIME BY WHICH THE SURRENDER SHALL BE COMPLETED AND, TO THE EXTENT POSSIBLE,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SHALL DESCRIBE SUCH SUBJECT WEAPONS TO BE SURRENDERED AND SHALL DIRECT THE AUTHORITY RECEIVING SUCH SURRENDERED SUBJECT WEAPONS TO IMMEDIATELY NOTIFY THE COURT OF SUCH SURRENDER.

(B) THE PROMPT SURRENDER OF ONE OR MORE SUBJECT WEAPONS PURSUANT TO A COURT ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE CONSIDERED A VOLUNTARY SURRENDER FOR PURPOSES OF SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS CHAPTER. THE DISPOSITION OF ANY SUCH SUBJECT WEAPONS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SIX OF SECTION 400.05 OF THIS CHAPTER.

(C) THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO LIMIT, RESTRICT OR OTHERWISE IMPAIR THE AUTHORITY OF THE COURT TO ORDER AND DIRECT THE SURRENDER OF ANY OR ALL PISTOLS, REVOLVERS, RIFLES, SHOTGUNS, OTHER FIREARMS, OR SUBJECT WEAPONS OWNED OR POSSESSED BY A RESPONDENT PURSUANT TO THIS CHAPTER.

4. (A) THE COURT ORDERING THE SURRENDER OF ANY SUBJECT WEAPON AS PROVIDED IN THIS SECTION SHALL IMMEDIATELY NOTIFY THE DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY OF SUCH ACTION AND THE DIVISION OF STATE POLICE AT ITS OFFICE IN THE CITY OF ALBANY.

(B) WHERE AN ORDER OF SURRENDER IS MODIFIED OR VACATED, THE COURT SHALL IMMEDIATELY NOTIFY THE DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY CONCERNING SUCH ACTION AND SHALL GIVE WRITTEN NOTICE THEREOF WITHOUT UNNECESSARY DELAY TO THE DIVISION OF STATE POLICE AT ITS OFFICE IN THE CITY OF ALBANY.

5. THE RESPONDENT SHALL HAVE THE RIGHT TO A HEARING BEFORE THE COURT REGARDING ANY SURRENDER ORDER ISSUED PURSUANT TO THIS SECTION, PROVIDED THAT NOTHING IN THIS SUBDIVISION SHALL PRECLUDE THE COURT FROM ISSUING ANY SUCH ORDER PRIOR TO A HEARING. WHERE THE COURT HAS ISSUED SUCH AN ORDER PRIOR TO A HEARING, IT SHALL COMMENCE SUCH HEARING WITHIN FOURTEEN DAYS OF THE DATE SUCH ORDER WAS ISSUED.

S 2. Subdivision 4 of section 265.01 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

(4) He possesses a FIREARM, rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense OR AN OFFENSE SET FORTH IN SECTION 370.15 OF THE CRIMINAL PROCEDURE LAW IN WHICH THE COURT MAKES A SPECIFIC WRITTEN DETERMINATION THAT THE DEFENDANT IS RELATED OR SITUATED TO THE VICTIM OF THE CRIME IN THE MANNER SPECIFIED IN 18 U.S.C. 921(A)(33)(A)(II) AS PROVIDED IN SECTION 370.15 OF THE CRIMINAL PROCEDURE LAW; or

S 3. This act shall take effect immediately and shall apply to convictions on or after such effective date as well as to charges for such offenses pending on such effective date for which sentence had not yet been imposed.