

1422--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. DIAZ, AVELLA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to increasing the penalty for the possession, use, or sale of certain firearms and ammunition, the definition of assault weapon, and to repeal subdivision 22 of section 265.00 of the penal law relating to the definition of an assault weapon

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

1 Section 1. Subdivision 22 of section 265.00 of the penal law is
2 REPEALED and a new subdivision 22 is added to read as follows:
3 22. "ASSAULT WEAPON" MEANS ANY:
4 (A) SEMI-AUTOMATIC OR PUMP-ACTION RIFLE THAT HAS THE CAPACITY TO
5 ACCEPT A DETACHABLE MAGAZINE AND HAS ONE OR MORE OF THE FOLLOWING:
6 (I) A PISTOL GRIP;
7 (II) A SECOND HANDGRIP OR A PROTRUDING GRIP THAT CAN BE HELD BY THE
8 NON-TRIGGER HAND;
9 (III) A FOLDING OR TELESCOPING STOCK;
10 (IV) A SHROUD ATTACHED TO THE BARREL, OR THAT PARTIALLY OR COMPLETELY
11 ENCIRCLES THE BARREL, ALLOWING THE BEARER TO HOLD THE FIREARM WITH THE
12 NON-TRIGGER HAND WITHOUT BEING BURNED, BUT EXCLUDING A SLIDE THAT
13 ENCLOSURES THE BARREL; OR
14 (V) A MUZZLE BRAKE OR MUZZLE COMPENSATOR;
15 (B) SEMI-AUTOMATIC PISTOL, OR ANY SEMI-AUTOMATIC, CENTERFIRE RIFLE
16 WITH A FIXED MAGAZINE, THAT HAS THE CAPACITY TO ACCEPT MORE THAN TEN
17 ROUNDS OF AMMUNITION;

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

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1 (C) SEMI-AUTOMATIC PISTOL THAT HAS THE CAPACITY TO ACCEPT A DETACHABLE
2 MAGAZINE AND HAS ONE OR MORE OF THE FOLLOWING:

3 (I) A SECOND HANDGRIP OR A PROTRUDING GRIP THAT CAN BE HELD BY THE
4 NON-TRIGGER HAND;

5 (II) A FOLDING OR TELESCOPING STOCK;

6 (III) A SHROUD ATTACHED TO THE BARREL, OR THAT PARTIALLY OR COMPLETELY
7 ENCIRCLES THE BARREL, ALLOWING THE BEARER TO HOLD THE FIREARM WITH THE
8 NON-TRIGGER HAND WITHOUT BEING BURNED, BUT EXCLUDING A SLIDE THAT
9 ENCLOSURES THE BARREL;

10 (IV) A MUZZLE BRAKE OR MUZZLE COMPENSATOR; OR

11 (V) THE CAPACITY TO ACCEPT A DETACHABLE MAGAZINE AT ANY LOCATION
12 OUTSIDE OF THE PISTOL GRIP;

13 (D) SEMI-AUTOMATIC SHOTGUN THAT HAS ONE OR MORE OF THE FOLLOWING:

14 (I) A PISTOL GRIP OR A VERTICAL HANDGRIP;

15 (II) A FOLDING OR TELESCOPING STOCK;

16 (III) A FIXED MAGAZINE CAPACITY IN EXCESS OF FIVE ROUNDS; OR

17 (IV) AN ABILITY TO ACCEPT A DETACHABLE MAGAZINE;

18 (E) SHOTGUN WITH A REVOLVING CYLINDER;

19 (F) GRENADE LAUNCHER;

20 (G) CONVERSION KIT, PART, OR COMBINATION OR PARTS, FROM WHICH AN
21 ASSAULT WEAPON CAN BE ASSEMBLED IF THOSE PARTS ARE IN THE POSSESSION OR
22 UNDER THE CONTROL OF THE SAME PERSON; OR

23 (H) MODIFICATIONS OF SUCH FEATURES, OR OTHER FEATURES, DETERMINED BY
24 RULES AND REGULATIONS OF THE SUPERINTENDENT OF STATE POLICE TO BE
25 PARTICULARLY SUITABLE FOR MILITARY AND NOT SPORTING PURPOSES. IN ADDI-
26 TION, THE SUPERINTENDENT OF STATE POLICE SHALL, BY RULES AND REGU-
27 LATIONS, DESIGNATE SPECIFIC SEMIAUTOMATIC CENTERFIRE OR RIMFIRE RIFLES
28 OR SEMIAUTOMATIC SHOTGUNS, IDENTIFIED BY MAKE, MODEL AND MANUFACTURER'S
29 NAME, TO BE WITHIN THE DEFINITION OF ASSAULT WEAPON, IF THE SUPERINTEN-
30 DENT OF STATE POLICE DETERMINES THAT SUCH WEAPONS ARE PARTICULARLY SUIT-
31 ABLE FOR MILITARY AND NOT SPORTING PURPOSES. A LIST OF ASSAULT WEAPONS,
32 AS DETERMINED BY THE SUPERINTENDENT OF STATE POLICE, SHALL BE MADE
33 AVAILABLE ON A REGULAR BASIS TO THE GENERAL PUBLIC.

34 PROVIDED, HOWEVER, THAT SUCH TERM DOES NOT INCLUDE ANY WEAPON THAT HAS
35 BEEN RENDERED PERMANENTLY INOPERABLE.

36 S 2. Section 265.00 of the penal law is amended by adding three new
37 subdivisions 26, 27 and 28 to read as follows:

38 26. "DETACHABLE MAGAZINE" MEANS ANY AMMUNITION FEEDING DEVICE, THE
39 FUNCTION OF WHICH IS TO DELIVER ONE OR MORE AMMUNITION CARTRIDGES INTO
40 THE FIRING CHAMBER, WHICH CAN BE REMOVED FROM THE FIREARM WITHOUT THE
41 USE OF ANY TOOL, INCLUDING A BULLET OR AMMUNITION CARTRIDGE.

42 27. "MUZZLE BRAKE" MEANS A DEVICE ATTACHED TO THE MUZZLE OF A WEAPON
43 THAT UTILIZES ESCAPING GAS TO REDUCE RECOIL.

44 28. "MUZZLE COMPENSATOR" MEANS A DEVICE ATTACHED TO THE MUZZLE OF A
45 WEAPON THAT UTILIZES ESCAPING GAS TO CONTROL MUZZLE MOVEMENT.

46 S 3. Section 265.20 of the penal law is amended by adding a new subdi-
47 vision f to read as follows:

48 F. POSSESSION OF AN ASSAULT WEAPON ON PROPERTY OWNED OR IMMEDIATELY
49 CONTROLLED BY THE PERSON, OR WHILE ON THE PREMISES OF A LICENSED
50 GUNSMITH FOR THE PURPOSE OF LAWFUL REPAIR, OR WHILE ENGAGED IN THE LEGAL
51 USE OF THE ASSAULT WEAPON AT A DULY LICENSED FIRING RANGE, OR WHILE
52 TRAVELING TO OR FROM THESE LOCATIONS, BY A PERSON WHO LAWFULLY POSSESSED
53 SUCH WEAPON PRIOR TO JANUARY FIRST, TWO THOUSAND FIFTEEN AND WHO, PRIOR
54 TO APRIL FIRST, TWO THOUSAND FIFTEEN:

55 1. RENDERS THE ASSAULT WEAPON PERMANENTLY INOPERABLE; OR

1 2. SURRENDERS THE ASSAULT WEAPON TO THE APPROPRIATE LAW ENFORCEMENT
2 AGENCY AS PROVIDED FOR IN SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVI-
3 SION A OF THIS SECTION.

4 S 4. Section 265.02 of the penal law, as amended by chapter 764 of the
5 laws of 2005, subdivision 8 as amended and subdivisions 9 and 10 as
6 added by chapter 1 of the laws of 2013, is amended to read as follows:

7 S 265.02 Criminal possession of a weapon in the third degree.

8 A person is guilty of criminal possession of a weapon in the third
9 degree when:

10 (1) Such person commits the crime of criminal possession of a weapon
11 in the fourth degree as defined in subdivision one, two[, three] or five
12 of section 265.01, and has been previously convicted of any crime; or

13 (2) Such person possesses any explosive or incendiary bomb, bombshell,
14 firearm silencer, machine-gun or any other firearm or weapon simulating
15 a machine-gun and which is adaptable for such use; or

16 (3) Such person knowingly possesses a machine-gun, firearm, rifle or
17 shotgun which has been defaced for the purpose of concealment or
18 prevention of the detection of a crime or misrepresenting the identity
19 of such machine-gun, firearm, rifle or shotgun; or

20 (5) (i) Such person possesses three or more firearms; or (ii) such
21 person possesses a firearm and has been previously convicted of a felony
22 or a class A misdemeanor defined in this chapter within the five years
23 immediately preceding the commission of the offense and such possession
24 did not take place in the person's home or place of business; or

25 (6) Such person knowingly possesses any disguised gun; or

26 (7) Such person possesses an assault weapon; or

27 (8) Such person possesses a large capacity ammunition feeding device.
28 For purposes of this subdivision, a large capacity ammunition feeding
29 device shall not include an ammunition feeding device lawfully possessed
30 by such person before the effective date of the chapter of the laws of
31 two thousand thirteen which amended this subdivision, that has a capaci-
32 ty of, or that can be readily restored or converted to accept more than
33 seven but less than eleven rounds of ammunition, or that was manufac-
34 tured before September thirteenth, nineteen hundred ninety-four, that
35 has a capacity of, or that can be readily restored or converted to
36 accept, more than ten rounds of ammunition; or

37 (9) Such person possesses an unloaded firearm and also commits a drug
38 trafficking felony as defined in subdivision twenty-one of section 10.00
39 of this chapter as part of the same criminal transaction; or

40 (10) Such person possesses an unloaded firearm and also commits any
41 violent felony offense as defined in subdivision one of section 70.02 of
42 this chapter as part of the same criminal transaction].

43 Criminal possession of a weapon in the third degree is a class D felo-
44 ny.

45 S 5. Section 265.04 of the penal law, as amended by chapter 764 of the
46 laws of 2005, is amended to read as follows:

47 S 265.04 Criminal possession of a weapon in the first degree.

48 A person is guilty of criminal possession of a weapon in the first
49 degree when such person:

50 (1) possesses any explosive substance with intent to use the same
51 unlawfully against the person or property of another; or

52 (2) possesses ten or more firearms; OR

53 (3) POSSESSES AN ASSAULT WEAPON; OR

54 (4) POSSESSES A LARGE CAPACITY AMMUNITION FEEDING DEVICE.

55 Criminal possession of a weapon in the first degree is a class B felo-
56 ny.

1 S 6. The penal law is amended by adding two new sections 265.46 and
2 265.47 to read as follows:

3 S 265.46 UNLAWFUL POSSESSION OF A FIREARM UPON SCHOOL GROUNDS IN THE
4 SECOND DEGREE.

5 IT SHALL BE UNLAWFUL FOR ANY PERSON TO KNOWINGLY POSSESS ANY FIREARM
6 IN OR UPON A BUILDING OR GROUNDS, USED FOR EDUCATIONAL PURPOSES, OF ANY
7 SCHOOL, COLLEGE OR UNIVERSITY, WITHOUT THE WRITTEN AUTHORIZATION OF SUCH
8 EDUCATIONAL INSTITUTION.

9 UNLAWFUL POSSESSION OF A WEAPON UPON SCHOOL GROUNDS IN THE SECOND
10 DEGREE IS A CLASS C FELONY.

11 S 265.47 UNLAWFUL POSSESSION OF A FIREARM UPON SCHOOL GROUNDS IN THE
12 FIRST DEGREE.

13 IT SHALL BE UNLAWFUL FOR ANY PERSON TO KNOWINGLY POSSESS AN ASSAULT
14 WEAPON, LARGE CAPACITY AMMUNITION FEEDING DEVICE OR DETACHABLE MAGAZINE
15 IN OR UPON A BUILDING OR GROUNDS, USED FOR EDUCATIONAL PURPOSES, OF ANY
16 SCHOOL, COLLEGE OR UNIVERSITY, WITHOUT THE WRITTEN AUTHORIZATION OF SUCH
17 EDUCATIONAL INSTITUTION.

18 UNLAWFUL POSSESSION OF A WEAPON UPON SCHOOL GROUNDS IN THE FIRST
19 DEGREE IS A CLASS B FELONY.

20 S 7. The closing paragraph of section 265.08 of the penal law, as
21 added by chapter 233 of the laws of 1980, is amended to read as follows:

22 Criminal use of a firearm in the second degree is a class [C] B felo-
23 ny.

24 S 8. The closing paragraph of subdivision 1 and subdivision 2 of
25 section 265.09 of the penal law, the closing paragraph of subdivision 1
26 as amended by chapter 650 of the laws of 1996, and subdivision 2 as
27 amended by chapter 1 of the laws of 2013, are amended to read as
28 follows:

29 Criminal use of a firearm in the first degree is a class [B] A felony.

30 (2) Sentencing. Notwithstanding any other provision of law to the
31 contrary, when a person is convicted of criminal use of a firearm in the
32 first degree as defined in subdivision one of this section, the court
33 shall impose an additional consecutive sentence [of five years] to the
34 sentence imposed on the underlying class B violent felony offense where
35 the person convicted of such crime displays a loaded weapon from which a
36 shot, readily capable of producing death or other serious injury may be
37 discharged, in furtherance of the commission of such crime, provided,
38 however, that such additional sentence shall not be imposed if the
39 court, having regard to the nature and circumstances of the crime and to
40 the history and character of the defendant, finds on the record that
41 such additional consecutive sentence would be unduly harsh and that not
42 imposing such sentence would be consistent with the public safety and
43 would not deprecate the seriousness of the crime. Notwithstanding any
44 other provision of law to the contrary, the aggregate of the [five year]
45 consecutive term imposed pursuant to this subdivision and the minimum
46 term of the indeterminate sentence imposed on the underlying class B
47 violent felony shall constitute the new aggregate minimum term of impri-
48 sonment, and a person subject to such term shall be required to serve
49 the entire aggregate minimum term and shall not be eligible for release
50 on parole or conditional release during such term. This subdivision
51 shall not apply where the defendant's criminal liability for displaying
52 a loaded weapon from which a shot, readily capable of producing death or
53 other serious injury may be discharged, in furtherance of the commission
54 of crime is based on the conduct of another pursuant to section 20.00 of
55 this chapter.

1 S 9. The closing paragraph of section 265.11 of the penal law, as
2 amended by chapter 764 of the laws of 2005, is amended to read as
3 follows:

4 Criminal sale of a firearm in the third degree is a class [D] C felo-
5 ny.

6 S 10. The closing paragraph of section 265.12 of the penal law, as
7 amended by chapter 764 of the laws of 2005, is amended to read as
8 follows:

9 Criminal sale of a firearm in the second degree is a class [C] B felo-
10 ny.

11 S 11. The closing paragraph of section 265.13 of the penal law, as
12 amended by chapter 764 of the laws of 2005, is amended to read as
13 follows:

14 Criminal sale of a firearm in the first degree is a class [B] A felo-
15 ny.

16 S 12. Severability. If any provision or term of this act is for any
17 reason declared unconstitutional or invalid or ineffective by any court
18 of competent jurisdiction, such decision shall not affect the validity
19 or the effectiveness of the remaining portions of this act or any part
20 thereof.

21 S 13. This act shall take effect immediately.