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

2023

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing penalties for certain crimes relating to firearms, and to repeal section 265.04 of such law, relating to criminal possession of a weapon in the first degree, section 265.08 of such law, relating to criminal use of a firearm in the second degree and 265.13 of such law, relating to criminal sale of a firearm in the first degree

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

Section 1. Section 265.01 of the penal law, as added by chapter 1041 of the laws of 1974, subdivision 1 as amended by chapter 257 of the laws of 2008, subdivision 2 as amended by chapter 220 of the laws of 1988, subdivision 3 as amended by chapter 199 of the laws of 2006, subdivision 4 as amended by chapter 357 of the laws of 2011, subdivision 7 as added by chapter 807 of the laws of 1981 and subdivision 8 as added by chapter 646 of the laws of 1986, is amended to read as follows:

S 265.01 Criminal possession of a weapon in the [fourth] THIRD degree.

A person is guilty of criminal possession of a weapon in the [fourth] THIRD degree when:

(1) He or she possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or "Kung Fu star"; or

(2) He OR SHE possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or

(3) He or she knowingly has in his or her possession a rifle, shotgun or firearm in or upon a building or grounds, used for educational

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

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purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, or upon a school bus as defined in section one hundred forty-two of the vehicle and traffic law, without the written authorization of such educational institution; or

(4) He OR SHE possesses a 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

(5) He OR SHE possesses any dangerous or deadly weapon and is not a citizen of the United States; or

(6) He OR SHE is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction[.]; OR

(7) He OR SHE knowingly possesses a bullet containing an explosive substance designed to detonate upon impact[.]; OR

(8) He OR SHE possesses any armor piercing ammunition with intent to use the same unlawfully against another.

Criminal possession of a weapon in the [fourth] THIRD degree is a class [A misdemeanor] E FELONY.

S 2. Section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.02 Criminal possession of a weapon in the [third] SECOND degree.

A person is guilty of criminal possession of a weapon in the [third] SECOND degree when:

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

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

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

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

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

(7) Such person possesses an assault weapon; or

(8) Such person possesses a large capacity ammunition feeding device.

Criminal possession of a weapon in the [third] SECOND degree is a class [D] C felony.

S 3. Section 265.03 of the penal law, as amended by chapter 742 of the laws of 2006, subdivisions 1 and 3 as amended by chapter 745 of the laws of 2006, is amended to read as follows:

S 265.03 Criminal possession of a weapon in the [second] FIRST degree.

A person is guilty of criminal possession of a weapon in the [second] FIRST degree when:

(1) with intent to use the same unlawfully against another, such person:

(a) possesses a machine-gun; or

(b) possesses a loaded firearm; or

(c) possesses a disguised gun; or

(D) POSSESSES ANY EXPLOSIVE SUBSTANCE WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST THE PERSON OR PROPERTY OF ANOTHER; OR

(2) such person possesses five or more firearms; or

(3) such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business.

Criminal possession of a weapon in the [second] FIRST degree is a class [C] B felony.

S 4. Section 265.04 of the penal law is REPEALED.

S 5. Section 265.08 of the penal law is REPEALED.

S 6. Section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996, is amended to read as follows:

S 265.09 Criminal use of a firearm [in the first degree].

(1) A person is guilty of criminal use of a firearm [in the first degree] when he OR SHE commits any class B violent felony offense as defined in paragraph (a) of subdivision one of section 70.02 OR ANY CLASS C VIOLENT FELONY OFFENSE AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.02 and he OR SHE either:

(a) possesses a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged; or

(b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

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

(2) Sentencing. Notwithstanding any other provision of law to the contrary, when a person is convicted of criminal use of a firearm [in the first degree] as defined in subdivision one of this section, the court shall impose an additional consecutive sentence of five years to the minimum term of an indeterminate sentence imposed on the underlying class B OR CLASS C violent felony offense where the person convicted of such crime displays a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of such crime, provided, however, that such additional sentence shall not be imposed if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime. Notwithstanding any other provision of law to the contrary, the aggregate of the five year consecutive term imposed pursuant to this subdivision and the minimum term of the indeterminate sentence imposed on the underlying class B OR CLASS C violent felony shall constitute the new aggregate minimum term of imprisonment, and a person subject to such term shall be required to serve the entire aggre-

gate minimum term and shall not be eligible for release on parole or conditional release during such term. This subdivision shall not apply where the defendant's criminal liability for displaying a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of the penal law.

S 7. Section 265.11 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.11 Criminal sale of a firearm in the [third] SECOND degree.

A person is guilty of criminal sale of a firearm in the [third] SECOND degree when such person is not authorized pursuant to law to possess a firearm and such person unlawfully either:

(1) sells, exchanges, gives or disposes of a firearm or large capacity ammunition feeding device to another person; or

(2) possesses a firearm with the intent to sell it.

Criminal sale of a firearm in the [third] SECOND degree is a class [D] C felony.

S 8. Section 265.13 of the penal law is REPEALED.

S 9. Section 265.16 of the penal law, as added by chapter 600 of the laws of 1992, the closing paragraph as amended by chapter 654 of the laws of 1998, is amended to read as follows:

S 265.16 Criminal sale of a firearm to a minor.

A person is guilty of criminal sale of a firearm to a minor when he OR SHE is not authorized pursuant to law to possess a firearm and he OR SHE unlawfully sells, exchanges, gives or disposes of a firearm to another person who is or reasonably appears to be less than nineteen years of age who is not licensed pursuant to law to possess a firearm.

Criminal sale of a firearm to a minor is a class [C] B felony.

S 10. Section 265.17 of the penal law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

S 265.17 Criminal purchase of a weapon.

A person is guilty of criminal purchase of a weapon when:

1. Knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, such person attempts to purchase a firearm, rifle or shotgun from another person; or

2. Knowing that it would be unlawful for another person to possess a firearm, rifle or shotgun, he or she purchases a firearm, rifle or shotgun for, on behalf of, or for the use of such other person.

Criminal purchase of a weapon is a class [A misdemeanor] E FELONY.

S 11. This act shall take effect immediately and shall apply to offenses committed on or after such date.