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

3767--A

2013-2014 Regular Sessions

I N S E N A T E

February 14, 2013

Introduced by Sen. KLEIN -- 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 aggravated enterprise corruption, gang assault, coercion, tampering with a witness, intimidating a victim or witness, obstructing governmental administration, criminal use of a firearm, sexually motivated felonies and hate crimes; to amend the criminal procedure law, in relation to compulsion of evidence by offer of immunity, prior contradictory statements, warrants for eavesdropping and video surveillance and motions to suppress evidence; and to repeal section 265.08 of the penal law relating to criminal use of a firearm in the second degree

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

Section 1. Short title. This shall be known and may be cited as the "witness protection and gang violence reduction act of 2014".

S 2. The penal law is amended by adding a new section 460.23 to read as follows:

S 460.23 AGGRAVATED ENTERPRISE CORRUPTION.

A PERSON IS GUILTY OF AGGRAVATED ENTERPRISE CORRUPTION WHEN HE OR SHE COMMITS THE CRIME OF ENTERPRISE CORRUPTION, AS DEFINED IN SECTION 460.20 OF THIS ARTICLE, AND TWO OR MORE OF THE ACTS THAT CONSTITUTE HIS OR HER PATTERN OF CRIMINAL ACTIVITY ARE EITHER A CLASS A OR CLASS B FELONY, AND AT LEAST ONE SUCH ACT IS A VIOLENT FELONY OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS CHAPTER OR A CLASS A-I FELONY.

AGGRAVATED ENTERPRISE CORRUPTION IS A CLASS A-I FELONY.

S 3. The penal law is amended by adding a new section 120.05-a to read as follows:

S 120.05-A GANG ASSAULT IN THE THIRD DEGREE.

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

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A PERSON IS GUILTY OF GANG ASSAULT IN THE THIRD DEGREE WHEN, WITH THE INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON AND WHEN AIDED BY TWO OR MORE PERSONS ACTUALLY PRESENT, HE OR SHE CAUSES PHYSICAL INJURY TO SUCH PERSON OR TO A THIRD PERSON.

GANG ASSAULT IN THE THIRD DEGREE IS A CLASS D FELONY.

S 4. The section heading, opening paragraph and closing paragraph of section 135.60 of the penal law, as amended by chapter 426 of the laws of 2008, are amended to read as follows:

Coercion in the [second] THIRD degree.

A person is guilty of coercion in the [second] THIRD degree when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage, or compels or induces a person to join a group, organization or criminal enterprise which such latter person has a right to abstain from joining, by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

Coercion in the [second] THIRD degree is a class A misdemeanor.

S 5. The section heading, opening paragraph and closing paragraph of section 135.65 of the penal law, as amended by chapter 426 of the laws of 2008, are amended to read as follows:

Coercion in the [first] SECOND degree.

A person is guilty of coercion in the [first] SECOND degree when he or she commits the crime of coercion in the [second] THIRD degree, and when:

Coercion in the [first] SECOND degree is a class D felony.

S 6. The penal law is amended by adding a new section 135.67 to read as follows:

S 135.67 COERCION IN THE FIRST DEGREE.

A PERSON IS GUILTY OF COERCION IN THE FIRST DEGREE WHEN HE OR SHE, BEING EIGHTEEN YEARS OLD OR OLDER, COMMITS THE CRIME OF COERCION IN THE SECOND DEGREE, AS DEFINED IN SECTION 135.65 OF THIS ARTICLE, AND:

1. THE VICTIM OF SUCH CRIME IS LESS THAN SIXTEEN YEARS OLD; OR

2. THE CRIME IS COMMITTED IN OR UPON A BUILDING OR GROUNDS USED FOR EDUCATIONAL PURPOSES, OR ANY SCHOOL, COLLEGE OR UNIVERSITY OR UPON A SCHOOL BUS, AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW, OR ON ANY PUBLIC SIDEWALK, STREET, PARKING LOT, PARK, PLAYGROUND OR PRIVATE LAND LOCATED IMMEDIATELY ADJACENT TO THE BOUNDARY LINE OF SUCH SCHOOL OR SCHOOL BUS.

COERCION IN THE FIRST DEGREE IS A CLASS C FELONY.

S 7. The penal law is amended by adding a new section 215.09 to read as follows:

S 215.09 TAMPERING WITH A WITNESS IN THE FIFTH DEGREE.

A PERSON IS GUILTY OF TAMPERING WITH A WITNESS IN THE FIFTH DEGREE WHEN, KNOWING OR BELIEVING THAT ANOTHER PERSON POSSESSES INFORMATION RELATING TO A CRIMINAL TRANSACTION AND OTHER THAN IN THE COURSE OF THAT CRIMINAL TRANSACTION OR IMMEDIATE FLIGHT THEREFROM, HE OR SHE:

1. WRONGFULLY INDUCES OR ATTEMPTS TO INDUCE SUCH OTHER PERSON TO REFRAIN FROM COMMUNICATING SUCH INFORMATION TO ANY COURT, GRAND JURY, PROSECUTOR, POLICE OFFICER OR PEACE OFFICER; OR

2. KNOWINGLY MAKES ANY FALSE STATEMENT OR PRACTICES ANY FRAUD WITH INTENT TO HINDER, DELAY OR PREVENT COMMUNICATION OF INFORMATION RELATED TO A CRIMINAL TRANSACTION TO ANY COURT, GRAND JURY, PROSECUTOR, POLICE OFFICER OR PEACE OFFICER FROM SUCH PERSON.

TAMPERING WITH A WITNESS IN THE FIFTH DEGREE IS A CLASS A MISDEMEANOR.

S 8. Section 215.10 of the penal law, the section heading and closing paragraph as amended by chapter 664 of the laws of 1982, is amended to read as follows:

S 215.10 Tampering with a witness in the fourth degree.

A person is guilty of tampering with a witness IN THE FOURTH DEGREE when, knowing that a person is or is about to be called as a witness in an action or proceeding, [(a)] he OR SHE:

1. wrongfully induces or attempts to induce such person to absent himself OR HERSELF from, or otherwise to avoid or seek to avoid appearing or testifying at, such action or proceeding[,]; or

[(b) he] 2. knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of such person.

Tampering with a witness in the fourth degree is a class [A misdemeanor] E FELONY.

S 9. The closing paragraph of section 215.11 of the penal law, as added by chapter 664 of the laws of 1982, is amended to read as follows:

Tampering with a witness in the third degree is a class [E] D felony.

S 10. The closing paragraph of section 215.12 of the penal law, as added by chapter 664 of the laws of 1982, is amended to read as follows:

Tampering with a witness in the second degree is a class [D] C felony.

S 11. The closing paragraph of section 215.15 of the penal law, as added by chapter 667 of the laws of 1985, is amended to read as follows:

Intimidating a victim or witness in the third degree is a class [E] D felony.

S 12. The closing paragraph of section 215.16 of the penal law, as added by chapter 667 of the laws of 1985, is amended to read as follows:

Intimidating a victim or witness in the second degree is a class [D] C felony.

S 13. The penal law is amended by adding a new section 195.03 to read as follows:

S 195.03 OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE THIRD DEGREE.

A PERSON IS GUILTY OF OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE THIRD DEGREE WHEN HE OR SHE INTENTIONALLY OBSTRUCTS, IMPAIRS OR PERVERTS THE ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION, OR PREVENTS OR ATTEMPTS TO PREVENT A PUBLIC SERVANT FROM PERFORMING AN OFFICIAL FUNCTION.

OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

S 14. Section 195.05 of the penal law, as amended by chapter 269 of the laws of 1998, is amended to read as follows:

S 195.05 Obstructing governmental administration in the second degree.

A person is guilty of obstructing governmental administration IN THE SECOND DEGREE when he OR SHE intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

Obstructing governmental administration IN THE SECOND DEGREE is a class [A misdemeanor] E FELONY.

S 15. Section 195.07 of the penal law, as added by chapter 956 of the laws of 1984, is amended to read as follows:

S 195.07 Obstructing governmental administration in the first degree.

A person is guilty of obstructing governmental administration in the first degree when he OR SHE commits the crime of obstructing governmental administration in the second degree [by means of interfering with a telecommunications system], AS DEFINED IN SECTION 195.05 OF THIS ARTICLE, thereby causing serious physical injury to another person.

Obstructing governmental administration in the first degree is a class [E] D felony.

S 16. Subdivision 1 of section 50.10 of the criminal procedure law is amended to read as follows:

1. ["Immunity." A person who has been a witness in a legal proceeding, and who cannot, except as otherwise provided in this subdivision, be convicted of any offense or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he gave evidence therein, possesses "immunity" from any such conviction,] "IMMUNITY", WHEN CONFERRED ON A WITNESS IN A LEGAL PROCEEDING, MEANS THAT NEITHER THE EVIDENCE GIVEN BY THAT WITNESS NOR ANY EVIDENCE DERIVED DIRECTLY OR INDIRECTLY FROM IT MAY BE USED AGAINST HIM OR HER IN THE SAME OR ANY OTHER CRIMINAL PROCEEDING OR IN THE IMPOSITION OF ANY penalty or forfeiture. A person who possesses such immunity may nevertheless be convicted of perjury as a result of having given false testimony in such legal proceeding, and may be convicted of or adjudged in contempt as a result of having contumaciously refused to give evidence therein.

S 17. Section 190.40 of the criminal procedure law is amended by adding a new subdivision 3 to read as follows:

3. A WITNESS WHO GIVES EVIDENCE IN A GRAND JURY PROCEEDING, AND WHO THEREBY RECEIVES IMMUNITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION, SHALL NOT THEREAFTER BE INDICTED BY THAT SAME GRAND JURY FOR ANY OFFENSE, EXCEPT (A) WHERE SUCH OFFENSE IS PERJURY OR CONTEMPT, AS TO WHICH PROSECUTION IS AUTHORIZED BY SECTION 50.10 OF THIS CHAPTER; OR (B) WHERE THE EVIDENCE GIVEN BY THE WITNESS CONSISTS ONLY OF BOOKS, PAPERS, RECORDS OR OTHER PHYSICAL EVIDENCE OF AN ENTERPRISE, AS DEFINED IN SUBDIVISION ONE OF SECTION 175.00 OF THE PENAL LAW, AND ANY IMMUNITY THE WITNESS RECEIVES RESULTS SOLELY FROM HIS OR HER POSSESSION OF A PRIVILEGE AGAINST SELF-INCRIMINATION WITH RESPECT TO THE ACT OF PRODUCING SUCH EVIDENCE. NOTHING IN THIS SUBDIVISION SHALL PRECLUDE ANOTHER GRAND JURY IN THE SAME OR ANY OTHER COUNTY FROM CHARGING THE WITNESS WITH ANY OFFENSE BASED UPON OTHER EVIDENCE WHOSE USE AGAINST THE WITNESS IS NOT BARRED BY THE IMMUNITY HE OR SHE HAS RECEIVED BY GIVING EVIDENCE BEFORE THE FIRST GRAND JURY.

S 18. Section 265.08 of the penal law is REPEALED.

S 19. Section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996, subdivision 2 as amended by chapter 1 of the laws of 2013, 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 OF THIS CHAPTER, OR A DRUG TRAFFICKING FELONY OFFENSE and, WHILE IN THE COURSE OF OR FURTHERANCE OF SUCH VIOLENT FELONY OFFENSE OR DRUG TRAFFICKING FELONY OFFENSE, he OR SHE either:

(a) possesses a [deadly] LOADED 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.] FOR THE PURPOSES OF THIS SECTION, "DRUG TRAFFICKING FELONY OFFENSE" MEANS CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX OR SEVEN OF SECTION 220.16, USE OF A CHILD TO COMMIT A CONTROLLED SUBSTANCE OFFENSE AS DEFINED IN SECTION 220.28, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE AS DEFINED IN SECTION 220.31, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE AS DEFINED IN SECTION 220.34, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE AS DEFINED IN SECTION 220.39, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.41, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION 220.43, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN OR NEAR SCHOOL GROUNDS AS DEFINED IN SECTION 220.44, CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48, UNLAWFUL MANUFACTURE OF METHAMPHETAMINE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.74, UNLAWFUL MANUFACTURE OF METHAMPHETAMINE IN THE FIRST DEGREE AS DEFINED IN SECTION 220.75, OR OPERATING AS A MAJOR TRAFFICKER AS DEFINED IN SECTION 220.77 OF THIS CHAPTER.

(3) 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 DETERMINATE sentence OF IMPRISONMENT of five years to the sentence imposed on the underlying [class B 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 OF IMPRISONMENT 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 OF IMPRISONMENT imposed pursuant to this subdivision and [the] (A) ANY minimum term of [the] AN indeterminate sentence, OR (B) THE TERM OF A DETERMINATE SENTENCE, imposed on the underlying [class B violent] felony OFFENSE shall constitute the new aggregate minimum term OR TERMS of imprisonment, and a person subject to such term shall be required to serve the entire aggregate minimum term OR TERMS 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] COMMISSION OF THE OFFENSE DEFINED IN SUBDIVISION ONE OF THIS SECTION is based on the conduct of another pursuant to section 20.00 of this chapter.

S 20. Subdivision 2 of section 60.35 of the criminal procedure law is amended to read as follows:

2. Evidence concerning a prior contradictory statement introduced pursuant to subdivision one [may be received only for the purpose of impeaching the credibility of the witness with respect to his testimony upon the subject, and does not constitute evidence in chief. Upon receiving such evidence at a jury trial, the court must so instruct the jury] OF THIS SECTION CONSTITUTES EVIDENCE IN CHIEF.

S 21. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, GANG ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION 120.05-A OF THE PENAL LAW, GANG ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.06 OF THE PENAL LAW, GANG ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION 120.07 OF THE PENAL LAW, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law, strangulation in the first degree as defined in section 121.13 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the [first] SECOND degree as defined in section 135.65 of the penal law, COERCION IN THE FIRST DEGREE AS DEFINED IN SECTION 135.67 OF THE PENAL LAW, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as

defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, TAMPERING WITH A WITNESS IN THE FOURTH DEGREE AS DEFINED IN SECTION 215.10 OF THE PENAL LAW, TAMPERING WITH A WITNESS IN THE THIRD DEGREE AS DEFINED IN SECTION 215.11 OF THE PENAL LAW, TAMPERING WITH A WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION 215.12 OF THE PENAL LAW, TAMPERING WITH A WITNESS IN THE FIRST

DEGREE AS DEFINED IN SECTION 215.13 OF THE PENAL LAW, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

S 22. Subdivision 1 of section 70.02 of the penal law, as separately amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as amended by chapter 320 of the laws of 2006, paragraphs (b) and (c) as amended by chapter 1 of the laws of 2013 and paragraph (d) as amended by chapter 7 of the laws of 2007, is amended to read as follows:

1. Definition of a violent felony offense. A violent felony offense is a class B violent felony offense, a class C violent felony offense, a class D violent felony offense, or a class E violent felony offense, defined as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I [felonies] FELONY of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25[, and] OR arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, TAMPERING WITH A WITNESS IN THE FIRST DEGREE AS DEFINED IN SECTION 215.13, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, [and] OR criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21,

aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, COERCION IN THE FIRST DEGREE AS DEFINED IN SECTION 135.67, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, TAMPERING WITH A WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION 215.12, INTIMIDATING A VICTIM OR WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION 215.16, criminal possession of a weapon in the second degree as defined in section 265.03, [criminal use of a firearm in the second degree as defined in section 265.08,] criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, [and] OR criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b) of this subdivision; reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, GANG ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION 120.05-A, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, TAMPERING WITH A WITNESS IN THE THIRD DEGREE AS DEFINED IN SECTION 215.11, intimidating a victim or witness in the [second] THIRD degree as defined in section [215.16] 215.15, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, [and] OR aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law[,]; persistent sexual abuse as defined in

section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, falsely reporting an incident in the second degree as defined in section 240.55 [and] OR placing a false bomb or hazardous substance in the second degree as defined in section 240.61; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

S 23. Subdivision 2 of section 130.91 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

2. A "specified offense" is a felony offense defined by any of the following provisions of this chapter: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, GANG ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION 120.05-A, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

S 24. Section 70.25 of the penal law is amended by adding two new subdivisions 2-h and 2-i to read as follows:

2-H. WHENEVER A PERSON IS CONVICTED OF TAMPERING WITH A WITNESS IN THE FOURTH DEGREE AS DEFINED IN SECTION 215.10, TAMPERING WITH A WITNESS IN THE THIRD DEGREE AS DEFINED IN SECTION 215.11, TAMPERING WITH A WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION 215.12, TAMPERING WITH A WITNESS IN THE FIRST DEGREE AS DEFINED IN SECTION 215.13 OF THIS CHAPTER, OR ANY ATTEMPT TO COMMIT ANY OF SUCH OFFENSE, RELATING TO A CRIMINAL PROCEEDING, AND SUCH PERSON IS ALSO CONVICTED OF AN OFFENSE CHARGED IN SUCH CRIMINAL PROCEEDING, THE SENTENCES SHALL RUN CONSECUTIVELY.

2-I. WHENEVER A PERSON IS CONVICTED OF TAMPERING WITH A WITNESS IN THE FIFTH DEGREE AS DEFINED IN SECTION 215.09 OF THIS CHAPTER, OR ANY ATTEMPT TO COMMIT SUCH OFFENSE RELATING TO A CRIMINAL PROCEEDING, AND SUCH PERSON IS ALSO CONVICTED OF AN OFFENSE THAT IS CHARGED IN SUCH CRIMINAL PROCEEDING, THE SENTENCES SHALL RUN CONSECUTIVELY.

S 25. The opening paragraph and subdivisions 6 and 7 of section 710.20 of the criminal procedure law, the opening paragraph and subdivision 6 as amended by chapter 8 of the laws of 1976, subdivision 6 as renumbered by chapter 481 of the laws of 1983 and subdivision 7 as added by chapter

744 of the laws of 1988, are amended and a new subdivision 8 is added to read as follows:

Upon motion of a defendant who (a) is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such may be offered against him in a criminal action, or (b) claims that improper identification testimony may be offered against him in a criminal action, OR (C) CLAIMS THAT EVIDENCE AS TO THE USE OF WHICH HE OR SHE POSSESSES IMMUNITY MAY BE OFFERED AGAINST HIM OR HER IN A CRIMINAL PROCEEDING, a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it:

6. Consists of potential testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant by the prospective witness[.]; OR

7. Consists of information obtained by means of a pen register or trap and trace device installed or used in violation of the provisions of article seven hundred five of this [chapter.] TITLE; OR

8. CONSISTS OF POTENTIAL EVIDENCE AS TO THE USE OF WHICH THE DEFENDANT POSSESSES IMMUNITY. WHERE THE DEFENDANT ESTABLISHES THAT IMMUNITY HAD BEEN CONFERRED UPON HIM OR HER THE PEOPLE MUST THEN ESTABLISH, BEYOND A REASONABLE DOUBT, THAT ANY EVIDENCE WHICH THEY PROPOSE TO USE IN THE INSTANT ACTION DOES NOT CONSIST OF AND WAS NOT DERIVED, DIRECTLY OR INDIRECTLY, FROM THE EVIDENCE AS TO WHICH SUCH IMMUNITY HAD BEEN CONFERRED.

S 26. Subdivision 3 of section 485.05 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

3. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); SECTION 120.05-A (GANG ASSAULT IN THE THIRD DEGREE); SECTION 120.06 (GANG ASSAULT IN THE SECOND DEGREE); SECTION 120.07 (GANG ASSAULT IN THE FIRST DEGREE); section 120.10 (assault in the first degree); section 120.12 (aggravated assault upon a person less than eleven years old); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 121.12 (strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); subdivision one of section 130.35 (rape in the first degree); subdivision one of section 130.50 (criminal sexual act in the first degree); subdivision one of section 130.65 (sexual abuse in the first degree); paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the second degree); paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the first degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in the first degree); section 135.60 (coercion in the

[second] THIRD degree); section 135.65 (coercion in the [first] SECOND degree); SECTION 135.67 (COERCION IN THE FIRST DEGREE); section 140.10 (criminal trespass in the third degree); section 140.15 (criminal trespass in the second degree); section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 150.05 (arson in the fourth degree); section 150.10 (arson in the third degree); section 150.15 (arson in the second degree); section 150.20 (arson in the first degree); section 155.25 (petit larceny); section 155.30 (grand larceny in the fourth degree); section 155.35 (grand larceny in the third degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree); section 160.05 (robbery in the third degree); section 160.10 (robbery in the second degree); section 160.15 (robbery in the first degree); section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); or any attempt or conspiracy to commit any of the foregoing offenses.

S 27. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.