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

5602--A

2013-2014 Regular Sessions

I N  S E N A T E

May 24, 2013

Introduced by Sen. ROBACH -- 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 community guns and the criminal sale of a firearm in the first and third degrees

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

Section 1. Section 115.00 of the penal law, as amended by chapter 422 of the laws of 1978, is amended to read as follows:

S 115.00 Criminal facilitation in the fourth degree.

A person is guilty of criminal facilitation in the fourth degree when[,]:

1. believing it probable that he OR SHE is rendering aid:

[1.] A. to a person who intends to commit a crime, he OR SHE engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony; or

[2.] B. to a person under sixteen years of age who intends to engage in conduct which would constitute a crime, he OR SHE, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a crime; OR

2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A FELONY, INCLUDING, BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE OF THIS PART; OR

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

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3. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CRIME, INCLUDING, BUT NOT LIMITED TO, A CRIME SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE OF THIS PART.

Criminal facilitation in the fourth degree is a class A misdemeanor.

S 2. Section 115.01 of the penal law, as added by chapter 422 of the laws of 1978, is amended to read as follows:

S 115.01 Criminal facilitation in the third degree.

A person IS guilty of criminal facilitation in the third degree, when:

1. believing it probable that he OR SHE is rendering aid to a person under sixteen years of age who intends to engage in conduct that would constitute a felony, he OR SHE, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony; OR

2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A FELONY, INCLUDING, BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE OF THIS PART.

Criminal facilitation in the third degree is a class E felony.

S 3. Section 115.05 of the penal law, as amended by chapter 422 of the laws of 1978, is amended to read as follows:

S 115.05 Criminal facilitation in the second degree.

A person is guilty of criminal facilitation in the second degree when[,]:

1. believing it probable that he OR SHE is rendering aid to a person who intends to commit a class A felony, he OR SHE engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such class A felony; OR

2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A CLASS A FELONY.

Criminal facilitation in the second degree is a class C felony.

S 4. Section 115.08 of the penal law, as added by chapter 422 of the laws of 1978, is amended to read as follows:

S 115.08 Criminal facilitation in the first degree.

A person is guilty of criminal facilitation in the first degree when[,]:

1. believing it probable that he OR SHE is rendering aid to a person under sixteen years of age who intends to engage in conduct that would constitute a class A felony, he OR SHE, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such a class A felony; OR

2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR

ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CLASS A FELONY.

Criminal facilitation in the first degree is a class B felony.

S 5. Section 115.15 of the penal law is amended to read as follows:

S 115.15 Criminal facilitation; corroboration.

A person shall not be convicted of criminal facilitation upon the testimony of a person who has committed the felony charged to have been facilitated unless such testimony be corroborated by such other evidence as tends to connect the defendant with such facilitation; PROVIDED THAT THIS SECTION SHALL NOT APPLY TO A CONVICTION OF CRIMINAL FACILITATION FOR SHARING, MAKING AVAILABLE, SELLING, EXCHANGING, GIVING OR DISPOSING OF A COMMUNITY GUN, OR ASSISTING ANY PERSON IN SUCH ACTIVITY.

S 6. Section 115.20 of the penal law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

S 115.20 Criminal facilitation; definitions and construction.

[For purposes of this article, such conduct shall include, but not be limited to, making available, selling, exchanging, giving or disposing of a community gun, which in fact, aids a person to commit a crime. "Community gun" shall mean a firearm that is actually shared, made available, sold, exchanged, given or disposed of among or between two or more persons, at least one of whom is not authorized pursuant to law to possess such firearm. "Dispose of" shall have the same meaning as that term is defined in section 265.00 of this chapter. "Share" and "make available" shall, in the case of a firearm, be construed to include knowingly placing such firearm at a location accessible and known to one or more other persons.]

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "COMMUNITY GUN" SHALL MEAN A FIREARM THAT IS SHARED, MADE AVAILABLE, SOLD, EXCHANGED, GIVEN OR DISPOSED OF AMONG OR BETWEEN TWO OR MORE PERSONS, AT LEAST ONE OF WHOM IS NOT AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM.

2. "DISPOSE OF" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 265.00 OF THIS PART.

3. "SHARE" AND "MAKE AVAILABLE" SHALL, IN THE CASE OF A FIREARM, BE CONSTRUED TO INCLUDE, BUT SHALL NOT BE LIMITED TO, PLACING SUCH FIREARM AT A LOCATION ACCESSIBLE AND KNOWN TO ONE OR MORE OTHER PERSONS.

S 7. Section 265.00 of the penal law is amended by adding a new subdivision 26 to read as follows:

26. "COMMUNITY GUN" SHALL HAVE THE DEFINITION SET FORTH IN SECTION 115.20 OF THIS PART, AND THE TERMS "SHARE" AND "MAKE AVAILABLE" SHALL BE CONSTRUED AS SET FORTH IN SUCH SECTION.

S 8. 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 degree.

A person is guilty of criminal sale of a firearm in the third 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; OR

(3) SHARE OR MAKES AVAILABLE A COMMUNITY GUN.

Criminal sale of a firearm in the third degree is a class D felony.

S 9. Section 265.13 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.13 Criminal sale of a firearm in the first degree.

A person is guilty of criminal sale of a firearm in the first degree when such person:

(1) unlawfully sells, exchanges, gives or disposes of to another ten or more firearms; [or]

(2) unlawfully sells, exchanges, gives or disposes of to another person or persons a total of ten or more firearms in a period of not more than one year; OR

(3) BEING NOT AUTHORIZED BY NEW YORK STATE LAW TO POSSESS A FIREARM UNLAWFULLY SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES, OR DISPOSES OF A FIREARM TO ANOTHER PERSON, AND, WITHIN THREE YEARS THEREAFTER, THE FIREARM IS DISCHARGED AND CAUSES THE DEATH OF ANOTHER PERSON. THE PROVISIONS OF THIS SUBDIVISION SHALL ONLY APPLY WHEN SUCH FIREARM WAS DISCHARGED INTENTIONALLY, RECKLESSLY OR WITH CRIMINAL NEGLIGENCE, PROVIDED THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY WHEN SUCH FIREARM WAS DISCHARGED INTENTIONALLY FOR PURPOSES OF COMMITTING SUICIDE. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "FIREARM" SHALL INCLUDE BUT NOT BE LIMITED TO A COMMUNITY GUN.

Criminal sale of a firearm in the first degree is a class B felony.

S 10. This act shall take effect on the one hundred eightieth day after it shall have become a law.