

3255

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. CLARK, SIMOTAS, JAFFEE -- Multi-Sponsored by --  
M. of A. ENGLEBRIGHT, GOTTFRIED -- read once and referred to the  
Committee on Codes

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 115.00 of the penal law, as amended by chapter 422  
2 of the laws of 1978, is amended to read as follows:  
3 S 115.00 Criminal facilitation in the fourth degree.  
4 A person is guilty of criminal facilitation in the fourth degree  
5 when[, ]:  
6 1. believing it probable that he OR SHE is rendering aid:  
7 [1.] A. to a person who intends to commit a crime, he OR SHE engages  
8 in conduct which provides such person with means or opportunity for the  
9 commission thereof and which in fact aids such person to commit a felo-  
10 ny; or  
11 [2.] B. to a person under sixteen years of age who intends to engage  
12 in conduct which would constitute a crime, he OR SHE, being over eigh-  
13 teen years of age, engages in conduct which provides such person with  
14 means or opportunity for the commission thereof and which in fact aids  
15 such person to commit a crime; OR  
16 2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO  
17 POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR  
18 DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY,  
19 AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A FELONY, INCLUD-  
20 ING, BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED  
21 SIXTY-FIVE OF THIS PART; OR  
22 3. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED  
23 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES  
24 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR

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

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1 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT  
2 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CRIME, INCLUDING,  
3 BUT NOT LIMITED TO, A CRIME SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE  
4 OF THIS PART.

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

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

8 S 115.01 Criminal facilitation in the third degree.

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

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

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

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

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

26 S 115.05 Criminal facilitation in the second degree.

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

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

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

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

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

41 S 115.08 Criminal facilitation in the first degree.

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

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

50 2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED  
51 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES  
52 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR  
53 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT  
54 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CLASS A FELONY.

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

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

1 S 115.15 Criminal facilitation; corroboration.

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

9 S 6. The penal law is amended by adding a new section 115.20 to read  
10 as follows:

11 S 115.20 CRIMINAL FACILITATION; DEFINITIONS AND CONSTRUCTION.

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

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

18 2. "DISPOSE OF" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION  
19 265.00 OF THIS PART.

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

23 S 7. Section 265.00 of the penal law is amended by adding a new subdi-  
24 vision 25 to read as follows:

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

28 S 8. Section 265.11 of the penal law, as amended by chapter 764 of the  
29 laws of 2005, is amended to read as follows:

30 S 265.11 Criminal sale of a firearm in the third degree.

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

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

36 (2) possesses a firearm with the intent to sell it; OR

37 (3) SHARE OR MAKES AVAILABLE A COMMUNITY GUN.

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

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

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

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

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

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

49 (3) BEING NOT AUTHORIZED BY NEW YORK STATE LAW TO POSSESS A FIREARM  
50 UNLAWFULLY SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES, OR DISPOSES  
51 OF A FIREARM TO ANOTHER PERSON, AND, WITHIN THREE YEARS THEREAFTER, THE  
52 FIREARM IS DISCHARGED AND CAUSES THE DEATH OF ANOTHER PERSON. THE  
53 PROVISIONS OF THIS SUBDIVISION SHALL ONLY APPLY WHEN SUCH FIREARM WAS  
54 DISCHARGED INTENTIONALLY, RECKLESSLY OR WITH CRIMINAL NEGLIGENCE,  
55 PROVIDED THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY WHEN  
56 SUCH FIREARM WAS DISCHARGED INTENTIONALLY FOR PURPOSES OF COMMITTING

1 SUICIDE. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "FIREARM" SHALL  
2 INCLUDE BUT NOT BE LIMITED TO A COMMUNITY GUN.  
3 Criminal sale of a firearm in the first degree is a class B felony.  
4 S 10. This act shall take effect on the one hundred eightieth day  
5 after it shall have become a law.