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I N   A S S E M B L Y

January 9, 2014

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Introduced by M. of A. SEPULVEDA, ROSA, GUNTHER, CRESPO, BRINDISI, MAYER, SKARTADOS, MOSLEY, COLTON, LUPINACCI, WALTER, MONTESANO, RAIA, DiPIETRO, GALEF, SALADINO -- Multi-Sponsored by -- M. of A. CAMARA, COOK, CROUCH, DUPREY, GARBARINO, GRAF, JACOBS, MAGEE, McDONALD, MOYA, PERRY, RIVERA, SCARBOROUGH, SCHIMEL -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing the offenses of aggravated assault upon a person less than ten years old and criminal use of a firearm on a playground

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     "Luisito's law".  
3     S 2. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the  
4     penal law, paragraph (a) as amended by chapter 320 of the laws of 2006  
5     and paragraph (b) as amended by chapter 1 of the laws of 2013, are  
6     amended to read as follows:  
7     (a) Class B violent felony offenses: an attempt to commit the class  
8     A-I felonies of murder in the second degree as defined in section  
9     125.25, kidnapping in the first degree as defined in section 135.25, and  
10    arson in the first degree as defined in section 150.20; manslaughter in  
11    the first degree as defined in section 125.20, aggravated manslaughter  
12    in the first degree as defined in section 125.22, rape in the first  
13    degree as defined in section 130.35, criminal sexual act in the first  
14    degree as defined in section 130.50, aggravated sexual abuse in the  
15    first degree as defined in section 130.70, course of sexual conduct  
16    against a child in the first degree as defined in section 130.75;  
17    assault in the first degree as defined in section 120.10, kidnapping in  
18    the second degree as defined in section 135.20, burglary in the first  
19    degree as defined in section 140.30, arson in the second degree as  
20    defined in section 150.15, robbery in the first degree as defined in  
21    section 160.15, incest in the first degree as defined in section 255.27,  
22    criminal possession of a weapon in the first degree as defined in

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

LBD13284-04-4

1 section 265.04, criminal use of a firearm in the first degree as defined  
2 in section 265.09, criminal sale of a firearm in the first degree as  
3 defined in section 265.13, AGGRAVATED ASSAULT UPON A PERSON LESS THAN  
4 TEN YEARS OLD AS DEFINED IN SECTION 120.12-A, aggravated assault upon a  
5 police officer or a peace officer as defined in section 120.11, gang  
6 assault in the first degree as defined in section 120.07, intimidating a  
7 victim or witness in the first degree as defined in section 215.17,  
8 hindering prosecution of terrorism in the first degree as defined in  
9 section 490.35, criminal possession of a chemical weapon or biological  
10 weapon in the second degree as defined in section 490.40, and criminal  
11 use of a chemical weapon or biological weapon in the third degree as  
12 defined in section 490.47.

13 (b) Class C violent felony offenses: an attempt to commit any of the  
14 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
15 vated criminally negligent homicide as defined in section 125.11, aggra-  
16 vated manslaughter in the second degree as defined in section 125.21,  
17 aggravated sexual abuse in the second degree as defined in section  
18 130.67, assault on a peace officer, police officer, fireman or emergency  
19 medical services professional as defined in section 120.08, assault on a  
20 judge as defined in section 120.09, gang assault in the second degree as  
21 defined in section 120.06, strangulation in the first degree as defined  
22 in section 121.13, burglary in the second degree as defined in section  
23 140.25, robbery in the second degree as defined in section 160.10, crim-  
24 inal possession of a weapon in the second degree as defined in section  
25 265.03, criminal use of a firearm in the second degree as defined in  
26 section 265.08, CRIMINAL USE OF A FIREARM ON A PLAYGROUND AS DEFINED IN  
27 SECTION 265.09-A, criminal sale of a firearm in the second degree as  
28 defined in section 265.12, criminal sale of a firearm with the aid of a  
29 minor as defined in section 265.14, aggravated criminal possession of a  
30 weapon as defined in section 265.19, soliciting or providing support for  
31 an act of terrorism in the first degree as defined in section 490.15,  
32 hindering prosecution of terrorism in the second degree as defined in  
33 section 490.30, and criminal possession of a chemical weapon or biolog-  
34 ical weapon in the third degree as defined in section 490.37.

35 S 3. The penal law is amended by adding a new section 120.12-a to read  
36 as follows:

37 S 120.12-A AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN YEARS OLD.

38 A PERSON IS GUILTY OF AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN  
39 YEARS OLD WHEN, BEING EIGHTEEN YEARS OLD OR OLDER, WITH INTENT TO CAUSE  
40 PHYSICAL INJURY TO ANOTHER PERSON, HE OR SHE CAUSES SUCH INJURY TO A  
41 CHILD LESS THAN TEN YEARS OLD BY MEANS OF A DEADLY WEAPON OR DANGEROUS  
42 INSTRUMENT.

43 AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN YEARS OLD IS A CLASS B  
44 FELONY.

45 S 4. The penal law is amended by adding a new section 265.09-a to read  
46 as follows

47 S 265.09-A CRIMINAL USE OF A FIREARM ON A PLAYGROUND.

48 A PERSON IS GUILTY OF CRIMINAL USE OF A FIREARM ON A PLAYGROUND WHEN  
49 HE OR SHE DISCHARGES A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR  
50 OTHER FIREARM UPON OR WITHIN FIVE HUNDRED FEET OF ANY AREA OR PREMISES  
51 DEDICATED TO RECREATIONAL USE BY CHILDREN.

52 CRIMINAL USE OF A FIREARM ON A PLAYGROUND IS A CLASS C FELONY.

53 S 5. This act shall take effect on the first of November next succeed-  
54 ing the date upon which it shall have become a law.