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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 -- again reported from said committee with amendments, 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 in the second degree

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. Paragraph (a) of subdivision 1 of section 70.02 of the penal  
4     law, as amended by chapter 320 of the laws of 2006, is amended to read  
5     as follows:  
6     (a) Class B violent felony offenses: an attempt to commit the class  
7     A-I felonies of murder in the second degree as defined in section  
8     125.25, kidnapping in the first degree as defined in section 135.25, and  
9     arson in the first degree as defined in section 150.20; manslaughter in  
10    the first degree as defined in section 125.20, aggravated manslaughter  
11    in the first degree as defined in section 125.22, rape in the first  
12    degree as defined in section 130.35, criminal sexual act in the first  
13    degree as defined in section 130.50, aggravated sexual abuse in the  
14    first degree as defined in section 130.70, course of sexual conduct  
15    against a child in the first degree as defined in section 130.75;  
16    assault in the first degree as defined in section 120.10, kidnapping in  
17    the second degree as defined in section 135.20, burglary in the first  
18    degree as defined in section 140.30, arson in the second degree as  
19    defined in section 150.15, robbery in the first degree as defined in  
20    section 160.15, incest in the first degree as defined in section 255.27,

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

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

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

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

17 A PERSON IS GUILTY OF AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN  
18 YEARS OLD WHEN, BEING EIGHTEEN YEARS OLD OR OLDER, WITH INTENT TO CAUSE  
19 PHYSICAL INJURY TO ANOTHER PERSON, HE OR SHE CAUSES SUCH INJURY TO A  
20 CHILD LESS THAN TEN YEARS OLD BY MEANS OF A DEADLY WEAPON OR DANGEROUS  
21 INSTRUMENT.

22 AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN YEARS OLD IS A CLASS B  
23 FELONY.

24 S 4. Section 265.08 of the penal law, as added by chapter 233 of the  
25 laws of 1980, is amended to read as follows:

26 S 265.08 Criminal use of a firearm in the second degree.

27 A person is guilty of criminal use of a firearm in the second degree  
28 when he OR SHE commits any class C violent felony offense as defined in  
29 paragraph (b) of subdivision one of section 70.02 OF THIS CHAPTER, OR HE  
30 OR SHE COMMITS ANY CLASS D VIOLENT FELONY AS DEFINED IN PARAGRAPH (C) OF  
31 SUBDIVISION ONE OF SECTION 70.02 OF THIS CHAPTER WHILE KNOWING HE OR SHE  
32 IS ON SCHOOL GROUNDS, AS DEFINED IN SUBDIVISION FOURTEEN OF SECTION  
33 220.00 OF THIS TITLE, OR WITHIN TWO HUNDRED FIFTY FEET OF ANY SCHOOLYARD  
34 OR PLAYGROUND OPERATED BY THE CITY OF NEW YORK OR ANY DEPARTMENT OR  
35 PUBLIC AUTHORITY THEREOF, and he OR SHE either:

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

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

41 Criminal use of a firearm in the second degree is a class C felony.

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