

2237--A

2013-2014 Regular Sessions

I N S E N A T E

January 15, 2013

Introduced by Sens. GOLDEN, AVELLA -- read twice and ordered printed, and when printed to be committed 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, the vehicle and traffic law and the general business law, in relation to criminal use of a firearm in the first degree and to repeal certain provisions of the penal law relating thereto

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

1 Section 1. Section 265.09 of the penal law, as amended by chapter 650  
2 of the laws of 1996, is amended to read as follows:  
3 S 265.09 Criminal use of a firearm in the first degree.  
4 (1) A person is guilty of criminal use of a firearm in the first  
5 degree when he OR SHE commits any [class B violent] felony offense [as  
6 defined in paragraph (a) of subdivision one of section 70.02] and he  
7 [either:  
8 (a) possesses a deadly weapon, if the weapon is a loaded weapon from  
9 which a shot, readily capable of producing death or other serious injury  
10 may be discharged; or  
11 (b)] OR SHE displays what appears to be a pistol, revolver, rifle,  
12 shotgun, machine gun or other firearm.  
13 Criminal use of a firearm in the first degree is a class B felony.  
14 (2) Sentencing. Notwithstanding any other provision of law to the  
15 contrary, when a person is convicted of criminal use of a firearm in the  
16 first degree as defined in subdivision one of this section, the court  
17 shall impose [an additional] A consecutive sentence of five years to the  
18 minimum term of [an indeterminate] THE sentence imposed on the underly-  
19 ing [class B violent] felony offense where the person convicted of such  
20 crime displays [a loaded weapon from which a shot, readily capable of  
21 producing death or other serious injury may be discharged,] WHAT APPEARS

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

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1 TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM  
2 in furtherance of the commission of such crime, provided, however, that  
3 such additional sentence shall not be imposed if the court, having  
4 regard to the nature and circumstances of the crime and to the history  
5 and character of the defendant, finds on the record that such additional  
6 consecutive sentence would be unduly harsh and that not imposing such  
7 sentence would be consistent with the public safety and would not depre-  
8 cate the seriousness of the crime. Notwithstanding any other provision  
9 of law to the contrary, the aggregate of the five year consecutive term  
10 imposed pursuant to this subdivision and the minimum term of the [inde-  
11 terminate] sentence imposed on the underlying [class B violent] felony  
12 shall constitute the new aggregate minimum term of imprisonment, and a  
13 person subject to such term shall be required to serve the entire aggre-  
14 gate minimum term and shall not be eligible for release on parole or  
15 conditional release during such term. This subdivision shall not apply  
16 where the defendant's criminal liability for displaying [a loaded weapon  
17 from which a shot, readily capable of producing death or other serious  
18 injury may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE,  
19 SHOTGUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission  
20 of crime is based on the conduct of another pursuant to section 20.00 of  
21 [the penal law] THIS CHAPTER.

22 S 1-a. Subdivision 2 of section 265.09 of the penal law, as amended by  
23 chapter 1 of the laws of 2013, is amended to read as follows:

24 (2) Sentencing. Notwithstanding any other provision of law to the  
25 contrary, when a person is convicted of criminal use of a firearm in the  
26 first degree as defined in subdivision one of this section, the court  
27 shall impose [an additional] A consecutive sentence of five years to the  
28 sentence imposed on the underlying [class B violent] felony offense  
29 where the person convicted of such crime displays [a loaded weapon from  
30 which a shot, readily capable of producing death or other serious injury  
31 may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOT-  
32 GUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission of  
33 such crime, provided, however, that such additional sentence shall not  
34 be imposed if the court, having regard to the nature and circumstances  
35 of the crime and to the history and character of the defendant, finds on  
36 the record that such additional consecutive sentence would be unduly  
37 harsh and that not imposing such sentence would be consistent with the  
38 public safety and would not deprecate the seriousness of the crime.  
39 Notwithstanding any other provision of law to the contrary, the aggre-  
40 gate of the five year consecutive term imposed pursuant to this subdivi-  
41 sion and the minimum term of the [indeterminate] sentence imposed on the  
42 underlying [class B violent] felony shall constitute the new aggregate  
43 minimum term of imprisonment, and a person subject to such term shall be  
44 required to serve the entire aggregate minimum term and shall not be  
45 eligible for release on parole or conditional release during such term.  
46 This subdivision shall not apply where the defendant's criminal liabil-  
47 ity for displaying [a loaded weapon from which a shot, readily capable  
48 of producing death or other serious injury may be discharged,] WHAT  
49 APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER  
50 FIREARM in furtherance of the commission of crime is based on the  
51 conduct of another pursuant to section 20.00 of this chapter.

52 S 2. Section 265.08 of the penal law is REPEALED.

53 S 3. Paragraph (b) of subdivision 1 of section 70.02 of the penal law,  
54 as amended by chapter 148 of the laws of 2011, is amended to read as  
55 follows:

1 (b) Class C violent felony offenses: an attempt to commit any of the  
2 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
3 vated criminally negligent homicide as defined in section 125.11, aggra-  
4 vated manslaughter in the second degree as defined in section 125.21,  
5 aggravated sexual abuse in the second degree as defined in section  
6 130.67, assault on a peace officer, police officer, fireman or emergency  
7 medical services professional as defined in section 120.08, assault on a  
8 judge as defined in section 120.09, gang assault in the second degree as  
9 defined in section 120.06, strangulation in the first degree as defined  
10 in section 121.13, burglary in the second degree as defined in section  
11 140.25, robbery in the second degree as defined in section 160.10, crim-  
12 inal possession of a weapon in the second degree as defined in section  
13 265.03, [criminal use of a firearm in the second degree as defined in  
14 section 265.08,] criminal sale of a firearm in the second degree as  
15 defined in section 265.12, criminal sale of a firearm with the aid of a  
16 minor as defined in section 265.14, soliciting or providing support for  
17 an act of terrorism in the first degree as defined in section 490.15,  
18 hindering prosecution of terrorism in the second degree as defined in  
19 section 490.30, and criminal possession of a chemical weapon or biolog-  
20 ical weapon in the third degree as defined in section 490.37.

21 S 3-a. Paragraph (b) of subdivision 1 of section 70.02 of the penal  
22 law, as amended by chapter 1 of the laws of 2013, is amended to read as  
23 follows:

24 (b) Class C violent felony offenses: an attempt to commit any of the  
25 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
26 vated criminally negligent homicide as defined in section 125.11, aggra-  
27 vated manslaughter in the second degree as defined in section 125.21,  
28 aggravated sexual abuse in the second degree as defined in section  
29 130.67, assault on a peace officer, police officer, fireman or emergency  
30 medical services professional as defined in section 120.08, assault on a  
31 judge as defined in section 120.09, gang assault in the second degree as  
32 defined in section 120.06, strangulation in the first degree as defined  
33 in section 121.13, burglary in the second degree as defined in section  
34 140.25, robbery in the second degree as defined in section 160.10, crim-  
35 inal possession of a weapon in the second degree as defined in section  
36 265.03, [criminal use of a firearm in the second degree as defined in  
37 section 265.08,] criminal sale of a firearm in the second degree as  
38 defined in section 265.12, criminal sale of a firearm with the aid of a  
39 minor as defined in section 265.14, aggravated criminal possession of a  
40 weapon as defined in section 265.19, soliciting or providing support for  
41 an act of terrorism in the first degree as defined in section 490.15,  
42 hindering prosecution of terrorism in the second degree as defined in  
43 section 490.30, and criminal possession of a chemical weapon or biolog-  
44 ical weapon in the third degree as defined in section 490.37.

45 S 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle  
46 and traffic law, as amended by chapter 400 of the laws of 2011, is  
47 amended to read as follows:

48 (c) The offenses referred to in subparagraph (i) of paragraph (b) of  
49 subdivision one and subparagraph (i) of paragraph (c) of subdivision two  
50 of this section that result in disqualification for a period of five  
51 years shall include a conviction under sections 100.10, 105.13, 115.05,  
52 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,  
53 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,  
54 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,  
55 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,  
56 230.05, 230.06, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00,

1 260.10, subdivision two of section 260.20 and sections 260.25, 265.02,  
2 265.03, [265.08,] 265.09, 265.10, 265.12, 265.35 of the penal law or an  
3 attempt to commit any of the aforesaid offenses under section 110.00 of  
4 the penal law, or any similar offenses committed under a former section  
5 of the penal law, or any offenses committed under a former section of  
6 the penal law which would constitute violations of the aforesaid  
7 sections of the penal law, or any offenses committed outside this state  
8 which would constitute violations of the aforesaid sections of the penal  
9 law.

10 S 5. The opening paragraph of paragraph (f) of subdivision 1 of  
11 section 410 of the general business law, as added by chapter 509 of the  
12 laws of 1992, is amended to read as follows:

13 Conviction of any of the following crimes subsequent to the issuance  
14 of a license pursuant to this article: fraud pursuant to sections  
15 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying  
16 business records pursuant to section 175.10; grand larceny pursuant to  
17 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,  
18 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;  
19 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to  
20 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article  
21 160; homicide pursuant to sections 125.25 and 125.27; manslaughter  
22 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-  
23 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons  
24 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use  
25 of a weapon pursuant to [sections 265.08 and] SECTION 265.09; criminal  
26 sale of a [weapon] FIREARM pursuant to sections 265.11 and 265.12; and  
27 sex offenses pursuant to article 130 of the penal law. Provided, howev-  
28 er, that for the purposes of this article, none of the following shall  
29 be considered criminal convictions or reported as such: (i) a conviction  
30 for which an executive pardon has been issued pursuant to the executive  
31 law; (ii) a conviction which has been vacated and replaced by a youthful  
32 offender finding pursuant to article seven hundred twenty of the crimi-  
33 nal procedure law, or the applicable provisions of law of any other  
34 jurisdiction; or (iii) a conviction the records of which have been  
35 expunged or sealed pursuant to the applicable provisions of the laws of  
36 this state or of any other jurisdiction; and (iv) a conviction for which  
37 other evidence of successful rehabilitation to remove the disability has  
38 been issued.

39 S 6. This act shall take effect on the first of November next succeed-  
40 ing the date on which it shall have become a law; provided, however,  
41 that:

42 (a) if subdivision 2 of section 265.09 of the penal law shall not have  
43 taken effect on or before such date, section one-a of this act shall  
44 take effect on the same date as such subdivision of the penal law pursu-  
45 ant to section 42 of chapter 1 of the laws of 2013, takes effect; and

46 (b) if paragraph (b) of subdivision 1 of section 70.02 of the penal  
47 law shall not have taken effect on or before such date, section three-a  
48 of this act shall take effect on the same date as such paragraph of the  
49 penal law pursuant to section 27 of chapter 1 of the laws of 2013, takes  
50 effect.