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

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:

Section 1. Section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996, is amended to read as follows:

S 265.09 Criminal use of a firearm in the first degree.

(1) A person is guilty of criminal use of a firearm in the first degree when he OR SHE commits any [class B violent] felony offense [as defined in paragraph (a) of subdivision one of section 70.02] and he [either:

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

(b)] OR SHE displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

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

(2) Sentencing. Notwithstanding any other provision of law to the contrary, when a person is convicted of criminal use of a firearm in the first degree as defined in subdivision one of this section, the court shall impose [an additional] A consecutive sentence of five years to the minimum term of [an indeterminate] THE sentence imposed on the underlying [class B violent] felony offense where the person convicted of such crime displays [a loaded weapon from which a shot, readily capable of 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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TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission of such crime, provided, however, that such additional sentence shall not be imposed if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime. Notwithstanding any other provision of law to the contrary, the aggregate of the five year consecutive term imposed pursuant to this subdivision and the minimum term of the [indeterminate] sentence imposed on the underlying [class B violent] felony shall constitute the new aggregate minimum term of imprisonment, and a person subject to such term shall be required to serve the entire aggregate minimum term and shall not be eligible for release on parole or conditional release during such term. This subdivision shall not apply where the defendant's criminal liability for displaying [a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of [the penal law] THIS CHAPTER.

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

(2) Sentencing. Notwithstanding any other provision of law to the contrary, when a person is convicted of criminal use of a firearm in the first degree as defined in subdivision one of this section, the court shall impose [an additional] A consecutive sentence of five years to the sentence imposed on the underlying [class B violent] felony offense where the person convicted of such crime displays [a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission of such crime, provided, however, that such additional sentence shall not be imposed if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime. Notwithstanding any other provision of law to the contrary, the aggregate of the five year consecutive term imposed pursuant to this subdivision and the minimum term of the [indeterminate] sentence imposed on the underlying [class B violent] felony shall constitute the new aggregate minimum term of imprisonment, and a person subject to such term shall be required to serve the entire aggregate minimum term and shall not be eligible for release on parole or conditional release during such term. This subdivision shall not apply where the defendant's criminal liability for displaying [a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of this chapter.

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

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

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, [criminal use of a firearm in the second degree as defined in section 265.08,] criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

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

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, [criminal use of a firearm in the second degree as defined in section 265.08,] criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

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

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

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

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

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

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided, however, that:

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

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