

5602

2013-2014 Regular Sessions

I N S E N A T E

May 24, 2013

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed 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 ASSEMBLY, 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
25 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT

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

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1 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CRIME, INCLUDING,
2 BUT NOT LIMITED TO, A CRIME SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE
3 OF THIS PART.

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

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

7 S 115.01 Criminal facilitation in the third degree.

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

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

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

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

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

25 S 115.05 Criminal facilitation in the second degree.

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

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

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

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

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

40 S 115.08 Criminal facilitation in the first degree.

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

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

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

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

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

56 S 115.15 Criminal facilitation; corroboration.

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

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

10 S 115.20 CRIMINAL FACILITATION; DEFINITIONS AND CONSTRUCTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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