

784--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. GOLDEN, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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, subdivision 2 as amended by chapter 1 of the laws
3 of 2013, is amended to read as follows:
4 S 265.09 Criminal use of a firearm in the first degree.
5 (1) A person is guilty of criminal use of a firearm in the first
6 degree when he OR SHE commits any [class B violent] felony offense [as
7 defined in paragraph (a) of subdivision one of section 70.02] and he OR
8 SHE either:
9 (a) possesses a deadly weapon, if the weapon is a loaded weapon from
10 which a shot, readily capable of producing death or other serious injury
11 may be discharged; or
12 (b) displays what appears to be a pistol, revolver, rifle, shotgun,
13 machine gun or other firearm.
14 Criminal use of a firearm in the first degree is a class B felony.
15 (2) Sentencing. Notwithstanding any other provision of law to the
16 contrary, when a person is convicted of criminal use of a firearm in the
17 first degree as defined in subdivision one of this section, the court
18 shall impose an additional consecutive sentence of five years to the
19 sentence imposed on the underlying [class B violent] felony offense

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

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

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

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

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

50 S 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
51 and traffic law, as amended by chapter 368 of the laws of 2015, is
52 amended to read as follows:

53 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
54 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
55 of this section that result in disqualification for a period of five
56 years shall include a conviction under sections 100.10, 105.13, 115.05,

1 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
2 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,
3 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,
4 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,
5 230.05, 230.06, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05, 235.06,
6 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of section
7 260.20 and sections 260.25, 265.02, 265.03, [265.08,] 265.09, 265.10,
8 265.12, 265.35 of the penal law or an attempt to commit any of the afore-
9 esaid offenses under section 110.00 of the penal law, or any similar
10 offenses committed under a former section of the penal law, or any
11 offenses committed under a former section of the penal law which would
12 constitute violations of the aforesaid sections of the penal law, or any
13 offenses committed outside this state which would constitute violations
14 of the aforesaid sections of the penal law.

15 S 5. The opening paragraph of paragraph f of subdivision 1 of section
16 410 of the general business law, as amended by chapter 80 of the laws of
17 2015, is amended to read as follows:

18 Conviction of any of the following crimes subsequent to the issuance
19 of a license or registration pursuant to this article: fraud pursuant to
20 sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65;
21 falsifying business records pursuant to section 175.10; grand larceny
22 pursuant to article 155; bribery pursuant to sections 180.03, 180.08,
23 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45,
24 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault
25 pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to
26 article 160; homicide pursuant to sections 125.25 and 125.27;
27 manslaughter pursuant to sections 125.15 and 125.20; kidnapping and
28 unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25;
29 unlawful weapons possession pursuant to sections 265.02, 265.03 and
30 265.04; criminal use of a [weapon] FIREARM pursuant to [sections 265.08
31 and] SECTION 265.09; criminal sale of a [weapon] FIREARM pursuant to
32 sections 265.11 and 265.12; compelling prostitution pursuant to section
33 230.33; sex trafficking pursuant to section 230.34; and sex offenses
34 pursuant to article 130 of the penal law. Provided, however, that for
35 the purposes of this article, none of the following shall be considered
36 criminal convictions or reported as such: (i) a conviction for which an
37 executive pardon has been issued pursuant to the executive law; (ii) a
38 conviction which has been vacated and replaced by a youthful offender
39 finding pursuant to article seven hundred twenty of the criminal proce-
40 dure law, or the applicable provisions of law of any other jurisdiction;
41 or (iii) a conviction the records of which have been expunged or sealed
42 pursuant to the applicable provisions of the laws of this state or of
43 any other jurisdiction; and (iv) a conviction for which other evidence
44 of successful rehabilitation to remove the disability has been issued.

45 S 6. This act shall take effect on the first of November next succeed-
46 ing the date on which it shall have become a law.