

3724

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

Introduced by M. of A. SCARBOROUGH -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, in relation to criminal sale, possession
and use of firearms

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

1 Section 1. The closing paragraph of section 265.01 of the penal law,
2 as amended by chapter 1 of the laws of 2013, is amended to read as
3 follows:
4 Criminal possession of a weapon in the fourth degree is a class A
5 misdemeanor; EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE
6 SHALL BE A CLASS D FELONY.
7 S 2. The closing paragraph of section 265.02 of the penal law, as
8 amended by chapter 764 of the laws of 2005, is amended to read as
9 follows:
10 Criminal possession of a weapon in the third degree is a class D felony;
11 EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE SHALL BE A
12 CLASS C FELONY.
13 S 3. The closing paragraph of section 265.03 of the penal law, as
14 amended by chapter 742 of the laws of 2006, is amended to read as
15 follows:
16 Criminal possession of a weapon in the second degree is a class [C] B
17 felony.
18 S 4. The closing paragraph of section 265.04 of the penal law, as
19 amended by chapter 764 of the laws of 2005, is amended to read as
20 follows:
21 Criminal possession of a weapon in the first degree is a class B felony;
22 EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE SHALL BE A
23 CLASS A FELONY.
24 S 5. The closing paragraph of section 265.08 of the penal law, as
25 added by chapter 233 of the laws of 1980, is amended to read as follows:

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

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1 Criminal use of a firearm in the second degree is a class [C] B felo-
2 ny.

3 S 6. The closing paragraph of subdivision 1 of section 265.09 of the
4 penal law, as amended by chapter 650 of the laws of 1996, is amended to
5 read as follows:

6 Criminal use of a firearm in the first degree is a class [B] A felony.

7 S 7. Section 265.10 of the penal law, as amended by chapter 189 of the
8 laws of 2000, subdivisions 1 and 2 as amended by chapter 257 of the laws
9 of 2008, is amended to read as follows:

10 S 265.10 Manufacture, transport, disposition and defacement of weapons
11 and dangerous instruments and appliances.

12 1. Any person who manufactures or causes to be manufactured any
13 machine-gun, assault weapon, large capacity ammunition feeding device or
14 disguised gun is guilty of a class [D] C felony. Any person who manufac-
15 tures or causes to be manufactured any switchblade knife, gravity knife,
16 pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon,
17 plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag,
18 sandclub or slungshot is guilty of a class A misdemeanor.

19 2. Any person who transports or ships any machine-gun, firearm silenc-
20 er, assault weapon or large capacity ammunition feeding device or
21 disguised gun, or who transports or ships as merchandise five or more
22 firearms, is guilty of a class [D] C felony. Any person who transports
23 or ships as merchandise any firearm, other than an assault weapon, IS
24 GUILTY OF A CLASS D FELONY. ANY PERSON WHO TRANSPORTS OR SHIPS AS
25 MERCHANDISE ANY switchblade knife, gravity knife, pilum ballistic knife,
26 billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu
27 star, chuka stick, sandbag or slungshot is guilty of a class A misdemea-
28 nor.

29 3. Any person who disposes of any machine-gun, assault weapon, large
30 capacity ammunition feeding device or firearm silencer is guilty of a
31 class [D] C felony. Any person who knowingly buys, receives, disposes
32 of, or conceals a machine-gun, firearm, large capacity ammunition feed-
33 ing device, rifle or shotgun which has been defaced for the purpose of
34 concealment or prevention of the detection of a crime or misrepresenting
35 the identity of such machine-gun, firearm, large capacity ammunition
36 feeding device, rifle or shotgun is guilty of a class [D] C felony.

37 4. Any person who disposes of any of the weapons, instruments or
38 appliances specified in subdivision one of section 265.01, except a
39 firearm, is guilty of a class A misdemeanor, and he is guilty of a class
40 D felony if he has previously been convicted of any crime.

41 5. Any person who disposes of any of the weapons, instruments, appli-
42 ances or substances specified in section 265.05 to any other person
43 under the age of sixteen years is guilty of a class A misdemeanor.

44 6. Any person who wilfully defaces any machine-gun, large capacity
45 ammunition feeding device or firearm is guilty of a class [D] C felony.

46 7. Any person, other than a wholesale dealer, or gunsmith or dealer in
47 firearms duly licensed pursuant to section 400.00, lawfully in
48 possession of a firearm, who disposes of the same without first notify-
49 ing in writing the licensing officer in the city of New York and coun-
50 ties of Nassau and Suffolk and elsewhere in the state the executive
51 department, division of state police, Albany, is guilty of a class [A
52 misdemeanor] D FELONY.

53 S 8. The closing paragraph of section 265.11 of the penal law, as
54 amended by chapter 764 of the laws of 2005, is amended to read as
55 follows:

1 Criminal sale of a firearm in the third degree is a class [D] C felo-
2 ny.

3 S 9. The closing paragraph of section 265.12 of the penal law, as
4 amended by chapter 764 of the laws of 2005, is amended to read as
5 follows:

6 Criminal sale of a firearm in the second degree is a class [C] B felo-
7 ny.

8 S 10. The closing paragraph of section 265.13 of the penal law, as
9 amended by chapter 764 of the laws of 2005, is amended to read as
10 follows:

11 Criminal sale of a firearm in the first degree is a class [B] A felo-
12 ny.

13 S 11. The closing paragraph of section 265.14 of the penal law, as
14 amended by chapter 654 of the laws of 1998, is amended to read as
15 follows:

16 Criminal sale of a firearm with the aid of a minor is a class [C] B
17 felony.

18 S 12. The closing paragraph of section 265.16 of the penal law, as
19 amended by chapter 654 of the laws of 1998, is amended to read as
20 follows:

21 Criminal sale of a firearm to a minor is a class [C] B felony.

22 S 13. Section 265.35 of the penal law, subdivisions 1, 2 and 3 as
23 renumbered by chapter 1041 of the laws of 1974, is amended to read as
24 follows:

25 S 265.35 Prohibited use of weapons.

26 1. Any person hunting with a dangerous weapon in any county wholly
27 embraced within the territorial limits of a city is guilty of a class A
28 misdemeanor. WHERE SUCH DANGEROUS WEAPON IS A FIREARM SUCH PERSON IS
29 GUILTY OF A CLASS D FELONY.

30 2. Any person who wilfully discharges a loaded firearm or any other
31 gun, the propelling force of which is gunpowder, at an aircraft while
32 such aircraft is in motion in the air or in motion or stationary upon
33 the ground, or at any railway or street railroad train as defined by the
34 public service law, or at a locomotive, car, bus or vehicle standing or
35 moving upon such railway, railroad or public highway, is guilty of a
36 class [D] C felony if thereby the safety of any person is endangered,
37 and in every other case, of a class [E] D felony.

38 3. Any person who, otherwise than in self defense or in the discharge
39 of official duty, (a) wilfully discharges any species of firearms, air-
40 gun or other weapon, or throws any other deadly missile, either in a
41 public place, or in any place where there is any person to be endangered
42 thereby, or, in Putnam county, within one-quarter mile of any occupied
43 school building other than under supervised instruction by properly
44 authorized instructors although no injury to any person ensues; (b)
45 intentionally, without malice, points or aims any firearm or any other
46 gun, the propelling force of which is gunpowder, at or toward any other
47 person; (c) discharges, without injury to any other person, firearms or
48 any other guns, the propelling force of which is gunpowder, while inten-
49 tionally without malice, aimed at or toward any person; or (d) maims or
50 injures any other person by the discharge of any firearm or any other
51 gun, the propelling force of which is gunpowder, pointed or aimed inten-
52 tionally, but without malice, at any such person, is guilty of a class
53 [A misdemeanor] D FELONY.

54 S 14. Subdivision 1 of section 70.02 of the penal law, as separately
55 amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as
56 amended by chapter 320 of the laws of 2006, paragraphs (b) and (c) as

amended by chapter 1 of the laws of 2013 and paragraph (d) as amended by chapter 7 of the laws of 2007, is amended to read as follows:

1. Definition of a violent felony offense. A violent felony offense is A CLASS A VIOLENT FELONY OFFENSE, a class B violent felony offense, a class C violent felony offense, a class D violent felony offense, or a class E violent felony offense, defined as follows:

(a) CLASS A VIOLENT FELONY OFFENSES: CRIMINAL POSSESSION OF A WEAPON IN THE FIRST DEGREE AS DEFINED IN SECTION 265.04 WHERE THE WEAPON IS A FIREARM, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE AS DEFINED IN SECTION 265.09, AND CRIMINAL SALE OF A FIREARM IN THE FIRST DEGREE AS DEFINED IN SECTION 265.13.

(B) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04 WHERE THE WEAPON IS NOT A FIREARM, [criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13,] 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 assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

[(b)] (C) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph [(a)] (B) 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

1 degree as defined in section 265.08, criminal sale of a firearm in the
2 second degree as defined in section 265.12, criminal sale of a firearm
3 with the aid of a minor as defined in section 265.14,] CRIMINAL
4 POSSESSION OF A WEAPON IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION
5 FIVE, SIX, SEVEN OR EIGHT OF SECTION 265.02 WHERE THE WEAPON IS A
6 FIREARM, CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE AS DEFINED IN
7 SECTION 265.11, aggravated criminal possession of a weapon as defined in
8 section 265.19, soliciting or providing support for an act of terrorism
9 in the first degree as defined in section 490.15, hindering prosecution
10 of terrorism in the second degree as defined in section 490.30, and
11 criminal possession of a chemical weapon or biological weapon in the
12 third degree as defined in section 490.37.

13 [(c)] (D) Class D violent felony offenses: an attempt to commit any of
14 the class C felonies set forth in paragraph [(b)] (C); reckless assault
15 of a child as defined in section 120.02, assault in the second degree as
16 defined in section 120.05, menacing a police officer or peace officer as
17 defined in section 120.18, stalking in the first degree, as defined in
18 subdivision one of section 120.60, strangulation in the second degree as
19 defined in section 121.12, rape in the second degree as defined in
20 section 130.30, criminal sexual act in the second degree as defined in
21 section 130.45, sexual abuse in the first degree as defined in section
22 130.65, course of sexual conduct against a child in the second degree as
23 defined in section 130.80, aggravated sexual abuse in the third degree
24 as defined in section 130.66, facilitating a sex offense with a
25 controlled substance as defined in section 130.90, criminal possession
26 of a weapon in the [third] FOURTH degree as defined in [subdivision
27 five, six, seven, eight, nine or ten of] section [265.02] 265.01 WHERE
28 THE WEAPON IS A FIREARM, [criminal sale of a firearm in the third degree
29 as defined in section 265.11,] AN ATTEMPT TO COMMIT ANY OF THE FELONIES
30 OF CRIMINAL POSSESSION IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION
31 FIVE, SIX, SEVEN OR EIGHT OF SECTION 265.02 AS A LESSER INCLUDED OFFENSE
32 OF THAT SECTION AS DEFINED IN SECTION 220.20 OF THE CRIMINAL PROCEDURE
33 LAW, intimidating a victim or witness in the second degree as defined in
34 section 215.16, soliciting or providing support for an act of terrorism
35 in the second degree as defined in section 490.10, and making a terror-
36 istic threat as defined in section 490.20, falsely reporting an incident
37 in the first degree as defined in section 240.60, placing a false bomb
38 or hazardous substance in the first degree as defined in section 240.62,
39 placing a false bomb or hazardous substance in a sports stadium or
40 arena, mass transportation facility or enclosed shopping mall as defined
41 in section 240.63, and aggravated unpermitted use of indoor pyrotechnics
42 in the first degree as defined in section 405.18.

43 [(d)] (E) Class E violent felony offenses: an attempt to commit any of
44 the felonies of criminal possession of a weapon in the [third] FOURTH
45 degree as defined in [subdivision five, six, seven or eight of] section
46 [265.02] 265.01 WHERE THE WEAPON IS A FIREARM as a lesser included
47 offense of that section as defined in section 220.20 of the criminal
48 procedure law, persistent sexual abuse as defined in section 130.53,
49 aggravated sexual abuse in the fourth degree as defined in section
50 130.65-a, falsely reporting an incident in the second degree as defined
51 in section 240.55 and placing a false bomb or hazardous substance in the
52 second degree as defined in section 240.61.

53 S 15. Subdivision 3 of section 70.02 of the penal law, as amended by
54 chapter 765 of the laws of 2005, paragraphs (b) and (c) as amended by
55 chapter 1 of the laws of 2013, is amended to read as follows:

1 3. Term of sentence. The term of a determinate sentence for a violent
2 felony offense must be fixed by the court as follows:

3 (a) FOR A CLASS A FELONY, THE TERM MUST BE AT LEAST TEN YEARS AND MUST
4 NOT EXCEED TWENTY-FIVE YEARS;

5 (B) For a class B felony, the term must be at least five years and
6 must not exceed twenty-five years, provided, however, that the term must
7 be: (i) at least ten years and must not exceed thirty years where the
8 sentence is for the crime of aggravated assault upon a police officer or
9 peace officer as defined in section 120.11 of this chapter; and (ii) at
10 least ten years and must not exceed thirty years where the sentence is
11 for the crime of aggravated manslaughter in the first degree as defined
12 in section 125.22 of this chapter;

13 [(b)] (C) For a class C felony, the term must be at least three and
14 one-half years and must not exceed fifteen years, provided, however,
15 that the term must be: (i) at least seven years and must not exceed
16 twenty years where the sentence is for the crime of aggravated
17 manslaughter in the second degree as defined in section 125.21 of this
18 chapter; (ii) at least seven years and must not exceed twenty years
19 where the sentence is for the crime of attempted aggravated assault upon
20 a police officer or peace officer as defined in section 120.11 of this
21 chapter; (iii) at least three and one-half years and must not exceed
22 twenty years where the sentence is for the crime of aggravated criminal-
23 ly negligent homicide as defined in section 125.11 of this chapter; and
24 (iv) at least five years and must not exceed fifteen years where the
25 sentence is imposed for the crime of aggravated criminal possession of a
26 weapon as defined in section 265.19 of this chapter;

27 [(c)] (D) For a class D felony, the term must be at least two years
28 and must not exceed seven years, provided, however, that the term must
29 be: (i) at least two years and must not exceed eight years where the
30 sentence is for the crime of menacing a police officer or peace officer
31 as defined in section 120.18 of this chapter; and (ii) at least [three
32 and one-half] FIVE years and must not exceed [seven] EIGHT years where
33 the sentence is imposed for the crime of criminal possession of a weapon
34 in the [third] FOURTH degree as defined in [subdivision ten of] section
35 [265.02] 265.01 of this chapter IF SUCH WEAPON IS A FIREARM;

36 [(d)] (E) For a class E felony, the term must be at least one and
37 one-half years and must not exceed four years.

38 S 16. Paragraph (c) of subdivision 2 of section 70.02 of the penal
39 law, as amended by chapter 764 of the laws of 2005, the opening para-
40 graph as amended by chapter 1 of the laws of 2013, is amended to read as
41 follows:

42 (c) Except as provided in subdivision six of section 60.05, the
43 sentence imposed upon a person who stands convicted of the class [D] C
44 violent felony offenses of criminal possession of a weapon in the third
45 degree as defined in subdivision five, seven, eight or nine of section
46 265.02, criminal sale of a firearm in the third degree as defined in
47 section 265.11 or the class E violent felonies of attempted criminal
48 possession of a weapon in the third degree as defined in subdivision
49 five, seven, eight or nine of section 265.02 must be a sentence to a
50 determinate period of imprisonment, or, in the alternative, a definite
51 sentence of imprisonment for a period of no less than one year, except
52 that:

53 (i) the court may impose any other sentence authorized by law upon a
54 person who has not been previously convicted in the five years imme-
55 diately preceding the commission of the offense for a class A misdemea-
56 nor defined in this chapter, if the court having regard to the nature

1 and circumstances of the crime and to the history and character of the
2 defendant, finds on the record that such sentence would be unduly harsh
3 and that the alternative sentence would be consistent with public safety
4 and does not deprecate the seriousness of the crime; and

5 (ii) the court may apply the provisions of paragraphs (b) and (c) of
6 subdivision four of this section when imposing a sentence upon a person
7 who has previously been convicted of a class A misdemeanor defined in
8 this chapter in the five years immediately preceding the commission of
9 the offense.

10 S 17. Paragraph (a) of subdivision 2 of section 70.02 of the penal
11 law, as amended by chapter 764 of the laws of 2005, is amended to read
12 as follows:

13 (a) Except as provided in subdivision six of section 60.05, the
14 sentence imposed upon a person who stands convicted of a class A, B or
15 class C violent felony offense must be a determinate sentence of impri-
16 sonment which shall be in whole or half years. The term of such sentence
17 must be in accordance with the provisions of subdivision three of this
18 section.

19 S 18. Paragraph (a) of subdivision 2 of section 70.02 of the penal
20 law, as amended by chapter 233 of the laws of 1980, is amended to read
21 as follows:

22 (a) The sentence imposed upon a person who stands convicted of a class
23 A, B or class C violent felony offense must be an indeterminate sentence
24 of imprisonment. Except as provided in subdivision five of section
25 60.05, the maximum term of such sentence must be in accordance with the
26 provisions of subdivision three of this section and the minimum period
27 of imprisonment under such sentence must be in accordance with subdivi-
28 sion four of this section.

29 S 19. This act shall take effect immediately and shall apply to
30 offenses committed on and after such date; provided that the amendments
31 to paragraph (a) of subdivision 2 of section 70.02 of the penal law made
32 by section seventeen of this act shall be subject to the expiration and
33 reversion of such paragraph when upon such date the provisions of
34 section eighteen of this act shall take effect.