

381

2015-2016 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2015

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

AN ACT to amend the penal law and the criminal procedure law, in relation to establishing crimes relating to the criminal possession or manufacture of undetectable firearms, rifles or shotguns

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

1     Section 1. Section 265.00 of the penal law is amended by adding two  
2     new subdivisions 3-a and 26 to read as follows:  
3     3-A. "MAJOR COMPONENT OF A FIREARM, RIFLE, OR SHOTGUN" MEANS THE  
4     BARREL, THE SLIDE OR CYLINDER, THE FRAME, OR RECEIVER OF THE FIREARM,  
5     RIFLE, OR SHOTGUN.  
6     26. "UNDETECTABLE" MEANS NOT DETECTABLE BY AN X-RAY MACHINE, PORTABLE  
7     PULSED X-RAY GENERATOR, METAL DETECTOR OR MAGNETOMETER WHEN SET AT A  
8     STANDARD CALIBRATION, OR ANY OTHER MACHINE USED TO SCREEN OR INSPECT A  
9     PERSON AND AN OBJECT FOR A FIREARM, RIFLE, OR SHOTGUN.  
10    S 2. The penal law is amended by adding two new sections 265.50 and  
11    265.55 to read as follows:  
12    S 265.50 CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE  
13    FIREARM.  
14    A PERSON IS GUILTY OF CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN  
15    UNDETECTABLE FIREARM WHEN HE OR SHE KNOWINGLY MANUFACTURES, CAUSES TO BE  
16    MANUFACTURED, SELLS, EXCHANGES, GIVES, DISPOSES OF, TRANSPORTS, SHIPS,  
17    OR POSSESSES WITH THE INTENT TO SELL:  
18    1. ANY FIREARM, RIFLE, OR SHOTGUN THAT, AFTER REMOVAL OF GRIPS, STOCKS  
19    AND MAGAZINES, IS UNDETECTABLE; OR  
20    2. ANY MAJOR COMPONENT OF A FIREARM, RIFLE, OR SHOTGUN WHICH IS UNDE-  
21    TECTABLE.  
22    CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM IS  
23    A CLASS D FELONY.

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

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1 S 265.55 CRIMINAL POSSESSION OF AN UNDETECTABLE FIREARM.

2 A PERSON IS GUILTY OF CRIMINAL POSSESSION OF AN UNDETECTABLE FIREARM  
3 WHEN HE OR SHE KNOWINGLY POSSESSES AN UNDETECTABLE FIREARM, RIFLE OR  
4 SHOTGUN OR ANY UNDETECTABLE MAJOR COMPONENT OF A FIREARM, RIFLE, OR  
5 SHOTGUN.

6 CRIMINAL POSSESSION OF AN UNDETECTABLE FIREARM IS A CLASS E FELONY.

7 S 3. The opening paragraph and the opening paragraph of paragraph 1 of  
8 subdivision a of section 265.20 of the penal law, the opening paragraph  
9 as amended by section 1 of part FF of chapter 57 of the laws of 2013 and  
10 the opening paragraph of paragraph 1 as amended by chapter 1041 of the  
11 laws of 1974, are amended to read as follows:

12 Paragraph (h) of subdivision twenty-two of section 265.00 and sections  
13 265.01, 265.01-a, [subdivision one of section] 265.01-b, 265.02, 265.03,  
14 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, 265.36, 265.37,  
15 265.50, 265.55 and 270.05 shall not apply to:

16 Possession of any of the weapons, instruments, appliances or  
17 substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05,  
18 265.50, 265.55 and 270.05 by the following:

19 S 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,  
20 as amended by chapter 1 of the laws of 2013, is amended to read as  
21 follows:

22 (c) Class D violent felony offenses: an attempt to commit any of the  
23 class C felonies set forth in paragraph (b); reckless assault of a child  
24 as defined in section 120.02, assault in the second degree as defined in  
25 section 120.05, menacing a police officer or peace officer as defined in  
26 section 120.18, stalking in the first degree[,] as defined in subdivi-  
27 sion one of section 120.60, strangulation in the second degree as  
28 defined in section 121.12, rape in the second degree as defined in  
29 section 130.30, criminal sexual act in the second degree as defined in  
30 section 130.45, sexual abuse in the first degree as defined in section  
31 130.65, course of sexual conduct against a child in the second degree as  
32 defined in section 130.80, aggravated sexual abuse in the third degree  
33 as defined in section 130.66, facilitating a sex offense with a  
34 controlled substance as defined in section 130.90, criminal possession  
35 of a weapon in the third degree as defined in subdivision five, six,  
36 seven, eight, nine or ten of section 265.02, criminal sale of a firearm  
37 in the third degree as defined in section 265.11, intimidating a victim  
38 or witness in the second degree as defined in section 215.16, soliciting  
39 or providing support for an act of terrorism in the second degree as  
40 defined in section 490.10, and making a terroristic threat as defined in  
41 section 490.20, falsely reporting an incident in the first degree as  
42 defined in section 240.60, placing a false bomb or hazardous substance  
43 in the first degree as defined in section 240.62, placing a false bomb  
44 or hazardous substance in a sports stadium or arena, mass transportation  
45 facility or enclosed shopping mall as defined in section 240.63, [and]  
46 aggravated unpermitted use of indoor pyrotechnics in the first degree as  
47 defined in section 405.18, AND CRIMINAL MANUFACTURE, SALE, OR TRANSPORT  
48 OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION 265.50.

49 S 5. The opening paragraph of paragraph (c) of subdivision 2 of  
50 section 70.02 of the penal law, as amended by chapter 1 of the laws of  
51 2013, is amended to read as follows:

52 Except as provided in subdivision six of section 60.05, the sentence  
53 imposed upon a person who stands convicted of the class D violent felony  
54 offenses of criminal possession of a weapon in the third degree as  
55 defined in subdivision five, seven, eight or nine of section 265.02,  
56 criminal sale of a firearm in the third degree as defined in section

265.11 [or], the class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in subdivision five, seven, eight or nine of section 265.02, OR CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION 265.50 must be a sentence to a determinate period of imprisonment, or, in the alternative, a definite sentence of imprisonment for a period of no less than one year, except that:

S 6. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 37 of the laws of 2014, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56, 215.00, 215.05 and 215.19; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud[,]; sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; any felony defined in article four hundred ninety-six; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60, 220.65 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; sections 265.14 and 265.16 relating to criminal sale of a firearm; section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; [and] sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; AND SECTION 265.50 RELATING TO THE CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM; or

S 7. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree

1 as defined in section 120.10 of the penal law, reckless endangerment in  
2 the first degree as defined in section 120.25 of the penal law, promot-  
3 ing a suicide attempt as defined in section 120.30 of the penal law,  
4 strangulation in the second degree as defined in section 121.12 of the  
5 penal law, strangulation in the first degree as defined in section  
6 121.13 of the penal law, criminally negligent homicide as defined in  
7 section 125.10 of the penal law, manslaughter in the second degree as  
8 defined in section 125.15 of the penal law, manslaughter in the first  
9 degree as defined in section 125.20 of the penal law, murder in the  
10 second degree as defined in section 125.25 of the penal law, murder in  
11 the first degree as defined in section 125.27 of the penal law, abortion  
12 in the second degree as defined in section 125.40 of the penal law,  
13 abortion in the first degree as defined in section 125.45 of the penal  
14 law, rape in the third degree as defined in section 130.25 of the penal  
15 law, rape in the second degree as defined in section 130.30 of the penal  
16 law, rape in the first degree as defined in section 130.35 of the penal  
17 law, criminal sexual act in the third degree as defined in section  
18 130.40 of the penal law, criminal sexual act in the second degree as  
19 defined in section 130.45 of the penal law, criminal sexual act in the  
20 first degree as defined in section 130.50 of the penal law, sexual abuse  
21 in the first degree as defined in section 130.65 of the penal law,  
22 unlawful imprisonment in the first degree as defined in section 135.10  
23 of the penal law, kidnapping in the second degree as defined in section  
24 135.20 of the penal law, kidnapping in the first degree as defined in  
25 section 135.25 of the penal law, labor trafficking as defined in section  
26 135.35 of the penal law, custodial interference in the first degree as  
27 defined in section 135.50 of the penal law, coercion in the first degree  
28 as defined in section 135.65 of the penal law, criminal trespass in the  
29 first degree as defined in section 140.17 of the penal law, burglary in  
30 the third degree as defined in section 140.20 of the penal law, burglary  
31 in the second degree as defined in section 140.25 of the penal law,  
32 burglary in the first degree as defined in section 140.30 of the penal  
33 law, criminal mischief in the third degree as defined in section 145.05  
34 of the penal law, criminal mischief in the second degree as defined in  
35 section 145.10 of the penal law, criminal mischief in the first degree  
36 as defined in section 145.12 of the penal law, criminal tampering in the  
37 first degree as defined in section 145.20 of the penal law, arson in the  
38 fourth degree as defined in section 150.05 of the penal law, arson in  
39 the third degree as defined in section 150.10 of the penal law, arson in  
40 the second degree as defined in section 150.15 of the penal law, arson  
41 in the first degree as defined in section 150.20 of the penal law, grand  
42 larceny in the fourth degree as defined in section 155.30 of the penal  
43 law, grand larceny in the third degree as defined in section 155.35 of  
44 the penal law, grand larceny in the second degree as defined in section  
45 155.40 of the penal law, grand larceny in the first degree as defined in  
46 section 155.42 of the penal law, health care fraud in the fourth degree  
47 as defined in section 177.10 of the penal law, health care fraud in the  
48 third degree as defined in section 177.15 of the penal law, health care  
49 fraud in the second degree as defined in section 177.20 of the penal  
50 law, health care fraud in the first degree as defined in section 177.25  
51 of the penal law, robbery in the third degree as defined in section  
52 160.05 of the penal law, robbery in the second degree as defined in  
53 section 160.10 of the penal law, robbery in the first degree as defined  
54 in section 160.15 of the penal law, unlawful use of secret scientific  
55 material as defined in section 165.07 of the penal law, criminal  
56 possession of stolen property in the fourth degree as defined in section

1 165.45 of the penal law, criminal possession of stolen property in the  
2 third degree as defined in section 165.50 of the penal law, criminal  
3 possession of stolen property in the second degree as defined by section  
4 165.52 of the penal law, criminal possession of stolen property in the  
5 first degree as defined by section 165.54 of the penal law, trademark  
6 counterfeiting in the second degree as defined in section 165.72 of the  
7 penal law, trademark counterfeiting in the first degree as defined in  
8 section 165.73 of the penal law, forgery in the second degree as defined  
9 in section 170.10 of the penal law, forgery in the first degree as  
10 defined in section 170.15 of the penal law, criminal possession of a  
11 forged instrument in the second degree as defined in section 170.25 of  
12 the penal law, criminal possession of a forged instrument in the first  
13 degree as defined in section 170.30 of the penal law, criminal  
14 possession of forgery devices as defined in section 170.40 of the penal  
15 law, falsifying business records in the first degree as defined in  
16 section 175.10 of the penal law, tampering with public records in the  
17 first degree as defined in section 175.25 of the penal law, offering a  
18 false instrument for filing in the first degree as defined in section  
19 175.35 of the penal law, issuing a false certificate as defined in  
20 section 175.40 of the penal law, criminal diversion of prescription  
21 medications and prescriptions in the second degree as defined in section  
22 178.20 of the penal law, criminal diversion of prescription medications  
23 and prescriptions in the first degree as defined in section 178.25 of  
24 the penal law, residential mortgage fraud in the fourth degree as  
25 defined in section 187.10 of the penal law, residential mortgage fraud  
26 in the third degree as defined in section 187.15 of the penal law, resi-  
27 dential mortgage fraud in the second degree as defined in section 187.20  
28 of the penal law, residential mortgage fraud in the first degree as  
29 defined in section 187.25 of the penal law, escape in the second degree  
30 as defined in section 205.10 of the penal law, escape in the first  
31 degree as defined in section 205.15 of the penal law, absconding from  
32 temporary release in the first degree as defined in section 205.17 of  
33 the penal law, promoting prison contraband in the first degree as  
34 defined in section 205.25 of the penal law, hindering prosecution in the  
35 second degree as defined in section 205.60 of the penal law, hindering  
36 prosecution in the first degree as defined in section 205.65 of the  
37 penal law, sex trafficking as defined in section 230.34 of the penal  
38 law, criminal possession of a weapon in the third degree as defined in  
39 subdivisions two, three and five of section 265.02 of the penal law,  
40 criminal possession of a weapon in the second degree as defined in  
41 section 265.03 of the penal law, criminal possession of a weapon in the  
42 first degree as defined in section 265.04 of the penal law, manufacture,  
43 transport, disposition and defacement of weapons and dangerous instru-  
44 ments and appliances defined as felonies in subdivisions one, two, and  
45 three of section 265.10 of the penal law, sections 265.11, 265.12 and  
46 265.13 of the penal law, [or] prohibited use of weapons as defined in  
47 subdivision two of section 265.35 of the penal law, relating to firearms  
48 and other dangerous weapons, [or] failure to disclose the origin of a  
49 recording in the first degree as defined in section 275.40 of the penal  
50 law, OR CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE  
51 FIREARM AS DEFINED IN SECTION 265.50 OF THE PENAL LAW;  
52 S 8. This act shall take effect on the one hundred eightieth day after  
53 it shall have become a law.