

615

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. CYMBROWITZ -- read once and referred to the  
Committee on Codes

AN ACT to amend the penal law, in relation to criminal possession of a  
weapon; to amend the penal law and the executive law, in relation to  
the possession of a firearm while under the influence of alcohol or  
drugs; to amend the penal law, in relation to increasing penalties for  
the criminal sale of firearms; to amend the civil practice law and  
rules, in relation to forfeiture money; and to repeal certain  
provisions of the penal law relating thereto

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

1     Section 1. Subdivisions 7 and 8 of section 265.01 of the penal law are  
2     REPEALED.  
3     S 2. Subdivision 10 of section 265.02 of the penal law, as added by  
4     section 41-b of chapter 1 of the laws of 2013, is amended and two new  
5     subdivisions 11 and 12 are added to read as follows:  
6     (10) Such person possesses an unloaded firearm and also commits any  
7     violent felony offense as defined in subdivision one of section 70.02 of  
8     this chapter as part of the same criminal transaction[.]; OR  
9     (11) SUCH PERSON KNOWINGLY POSSESSES A BULLET CONTAINING AN EXPLOSIVE  
10    SUBSTANCE DESIGNED TO DETONATE UPON IMPACT; OR  
11    (12) SUCH PERSON POSSESSES ANY ARMOR PIERCING AMMUNITION WITH INTENT  
12    TO USE THE SAME UNLAWFULLY AGAINST ANOTHER.  
13    S 3. Subdivision 1 of section 400.00 of the penal law, as amended by  
14    chapter 1 of the laws of 2013, is amended to read as follows:  
15    1. Eligibility. No license shall be issued or renewed pursuant to this  
16    section except by the licensing officer, and then only after investi-  
17    gation and finding that all statements in a proper application for a  
18    license are true. No license shall be issued or renewed except for an  
19    applicant (a) twenty-one years of age or older, provided, however, that

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

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1 where such applicant has been honorably discharged from the United  
2 States army, navy, marine corps, air force or coast guard, or the  
3 national guard of the state of New York, no such age restriction shall  
4 apply; (b) of good moral character; (c) who has not been convicted  
5 anywhere of a felony or a serious offense; (d) who is not a fugitive  
6 from justice; (e) who is not an unlawful user of or addicted to any  
7 controlled substance as defined in section 21 U.S.C. 802; (f) who being  
8 an alien (i) is not illegally or unlawfully in the United States or (ii)  
9 has not been admitted to the United States under a nonimmigrant visa  
10 subject to the exception in 18 U.S.C. 922(y)(2); (g) who has not been  
11 discharged from the Armed Forces under dishonorable conditions; (h) who,  
12 having been a citizen of the United States, has not renounced his or her  
13 citizenship; (i) who has stated whether he or she has ever suffered any  
14 mental illness; (j) who has not been involuntarily committed to a facil-  
15 ity under the jurisdiction of an office of the department of mental  
16 hygiene pursuant to article nine or fifteen of the mental hygiene law,  
17 article seven hundred thirty or section 330.20 of the criminal procedure  
18 law, section four hundred two or five hundred eight of the correction  
19 law, section 322.2 or 353.4 of the family court act, or has not been  
20 civilly confined in a secure treatment facility pursuant to article ten  
21 of the mental hygiene law; (k) who has not had a license revoked or who  
22 is not under a suspension or ineligibility order issued pursuant to the  
23 provisions of SUBDIVISION ELEVEN-A OF THIS SECTION, section 530.14 of  
24 the criminal procedure law or section eight hundred forty-two-a of the  
25 family court act; (l) in the county of Westchester, who has successfully  
26 completed a firearms safety course and test as evidenced by a certifi-  
27 cate of completion issued in his or her name and endorsed and affirmed  
28 under the penalties of perjury by a duly authorized instructor, except  
29 that: (i) persons who are honorably discharged from the United States  
30 army, navy, marine corps or coast guard, or of the national guard of the  
31 state of New York, and produce evidence of official qualification in  
32 firearms during the term of service are not required to have completed  
33 those hours of a firearms safety course pertaining to the safe use,  
34 carrying, possession, maintenance and storage of a firearm; and (ii)  
35 persons who were licensed to possess a pistol or revolver prior to the  
36 effective date of this paragraph are not required to have completed a  
37 firearms safety course and test; (m) who has not had a guardian  
38 appointed for him or her pursuant to any provision of state law, based  
39 on a determination that as a result of marked subnormal intelligence,  
40 mental illness, incapacity, condition or disease, he or she lacks the  
41 mental capacity to contract or manage his or her own affairs; and (n)  
42 concerning whom no good cause exists for the denial of the license. No  
43 person shall engage in the business of gunsmith or dealer in firearms  
44 unless licensed pursuant to this section. An applicant to engage in such  
45 business shall also be a citizen of the United States, more than twen-  
46 ty-one years of age and maintain a place of business in the city or  
47 county where the license is issued. For such business, if the applicant  
48 is a firm or partnership, each member thereof shall comply with all of  
49 the requirements set forth in this subdivision and if the applicant is a  
50 corporation, each officer thereof shall so comply.

51 S 4. Subdivision 11 of section 400.00 of the penal law, as amended by  
52 chapter 1 of the laws of 2013, is amended to read as follows:

53 11. License: revocation and suspension. (a) The conviction of a licen-  
54 see anywhere of a felony or serious offense or a licensee at any time  
55 becoming ineligible to obtain a license under this section shall operate  
56 as a revocation of the license. A license may be revoked or suspended as

1 provided for in section 530.14 of the criminal procedure law or section  
2 eight hundred forty-two-a of the family court act. Except for a license  
3 issued pursuant to section 400.01 of this article, a license may be  
4 revoked and cancelled at any time in the city of New York, and in the  
5 counties of Nassau and Suffolk, by the licensing officer, and elsewhere  
6 than in the city of New York by any judge or justice of a court of  
7 record; a license issued pursuant to section 400.01 of this article may  
8 be revoked and cancelled at any time by the licensing officer or any  
9 judge or justice of a court of record. The official revoking a license  
10 shall give written notice thereof without unnecessary delay to the execu-  
11 tive department, division of state police, Albany, and shall also noti-  
12 fy immediately the duly constituted police authorities of the locality.  
13 FOR PURPOSES OF THIS SUBDIVISION, THE TERM "SERIOUS OFFENSE" SHALL  
14 INCLUDE, BUT NOT BE LIMITED TO, A SECOND VIOLATION OF SUBDIVISION  
15 ELEVEN-A OF THIS SECTION WITHIN TEN YEARS OF A PRIOR VIOLATION OF SUCH  
16 SUBDIVISION.

17 (b) Whenever the director of community services or his or her designee  
18 makes a report pursuant to section 9.46 of the mental hygiene law, the  
19 division of criminal justice services shall convey such information,  
20 whenever it determines that the person named in the report possesses a  
21 license issued pursuant to this section, to the appropriate licensing  
22 official, who shall issue an order suspending or revoking such license.

23 (c) In any instance in which a person's license is suspended or  
24 revoked under paragraph (a) or (b) of this subdivision, such person  
25 shall surrender such license to the appropriate licensing official and  
26 any and all firearms, rifles, or shotguns owned or possessed by such  
27 person shall be surrendered to an appropriate law enforcement agency as  
28 provided in subparagraph (f) of paragraph one of subdivision a of  
29 section 265.20 of this chapter. In the event such license, firearm,  
30 shotgun, or rifle is not surrendered, such items shall be removed and  
31 declared a nuisance and any police officer or peace officer acting  
32 pursuant to his or her special duties is authorized to remove any and  
33 all such weapons.

34 S 5. Section 400.00 of the penal law is amended by adding a new subdi-  
35 vision 11-a to read as follows:

36 11-A. LICENSE; SUSPENSION FOR POSSESSION WHILE UNDER THE INFLUENCE OF  
37 ALCOHOL OR A CONTROLLED SUBSTANCE. (A) NO LICENSEE SHALL POSSESS ANY  
38 LOADED FIREARM, AS DEFINED IN SUBDIVISION FIFTEEN OF SECTION 265.00 OF  
39 THIS CHAPTER, ON HIS OR HER PERSON IN A PUBLIC PLACE WHILE SUCH LICENSEE  
40 IS EITHER UNDER THE INFLUENCE OF ALCOHOL OR UNDER THE INFLUENCE OF A  
41 CONTROLLED SUBSTANCE, AS DEFINED IN SECTIONS THIRTY-THREE HUNDRED TWO  
42 AND THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW. FOR PURPOSES OF  
43 THIS SUBDIVISION, A PERSON IS CONSIDERED TO BE UNDER THE INFLUENCE OF  
44 ALCOHOL OR UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE WHERE SUCH  
45 PERSON HAS VOLUNTARILY CONSUMED ALCOHOL OR VOLUNTARILY USED ONE OR MORE  
46 CONTROLLED SUBSTANCES, OR BOTH, TO THE EXTENT THAT HIS OR HER ABILITY TO  
47 SAFELY HANDLE OR USE A LOADED FIREARM HAS BEEN SIGNIFICANTLY DIMINISHED.  
48 FOR PURPOSES OF THIS SUBDIVISION, "PUBLIC PLACE" SHALL HAVE THE SAME  
49 MEANING AS IN SUBDIVISION ONE OF SECTION 240.00 OF THIS CHAPTER,  
50 PROVIDED HOWEVER, THAT FOR PURPOSES OF THIS SUBDIVISION, "PUBLIC PLACE"  
51 SHALL ALSO INCLUDE THE INTERIOR OF A MOTOR VEHICLE. AS USED IN THIS  
52 SUBDIVISION, "ON HIS OR HER PERSON" SHALL HAVE ITS ORDINARY MEANING,  
53 PROVIDED, HOWEVER, THAT FOR PURPOSES OF THIS SUBDIVISION, A PERSON SHALL  
54 ALSO BE DEEMED TO POSSESS A FIREARM "ON HIS OR HER PERSON" WHERE A  
55 FIREARM LICENSED TO SUCH PERSON IS FOUND IN A MOTOR VEHICLE AT THE SAME  
56 TIME SUCH PERSON IS AN OCCUPANT OF SUCH VEHICLE.

1 (B) THE LICENSE TO CARRY OR POSSESS A FIREARM OF ANY PERSON WHO IS  
2 CHARGED WITH A VIOLATION OF ANY OF THE PROVISIONS OF PARAGRAPH (A) OF  
3 THIS SUBDIVISION OR WHO REFUSES TO SUBMIT TO A CHEMICAL TEST OF HIS OR  
4 HER BREATH, BLOOD, URINE OR SALIVA FOR THE PURPOSE OF DETERMINING THE  
5 ALCOHOLIC AND/OR DRUG CONTENT OF HIS OR HER BLOOD SHALL BE DEEMED  
6 SUSPENDED, WITH RESPECT TO THE FIREARM OR FIREARMS FORMING THE BASIS OF  
7 SUCH CHARGE OR REFUSAL, PENDING A HEARING HELD PURSUANT TO THIS SUBDIVI-  
8 SION AND SUCH FIREARM OR FIREARMS, TOGETHER WITH ANY AMMUNITION  
9 POSSESSED THEREWITH, SHALL BE CONFISCATED AND HELD BY THE POLICE PENDING  
10 SUCH HEARING.

11 (C) (I) ANY PERSON WHO HOLDS A LICENSE TO CARRY OR POSSESS A FIREARM  
12 IN THIS STATE SHALL BE DEEMED TO HAVE GIVEN HIS OR HER CONSENT TO A  
13 CHEMICAL TEST OF HIS OR HER BREATH, BLOOD, URINE OR SALIVA FOR THE  
14 PURPOSE OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT OF HIS OR HER  
15 BLOOD; PROVIDED, THAT SUCH TEST IS ADMINISTERED BY OR AT THE DIRECTION  
16 OF A POLICE OFFICER WITH RESPECT TO A CHEMICAL TEST OF BREATH, URINE OR  
17 SALIVA OR, WITH RESPECT TO A CHEMICAL TEST OF BLOOD, AT THE DIRECTION OF  
18 A POLICE OFFICER HAVING REASONABLE GROUNDS TO BELIEVE SUCH PERSON  
19 POSSESSES A FIREARM IN VIOLATION OF THIS SUBDIVISION.

20 (II) IF SUCH LICENSEE, HAVING BEEN REQUESTED TO SUBMIT TO SUCH CHEMI-  
21 CAL TEST AND HAVING BEEN INFORMED THAT HIS OR HER LICENSE TO CARRY OR  
22 POSSESS A FIREARM SHALL BE SUSPENDED FOR A REFUSAL TO SUBMIT TO SUCH  
23 CHEMICAL TEST, REFUSES TO SUBMIT TO SUCH TEST OR IS ADMINISTERED SUCH  
24 TEST, A WRITTEN REPORT OF SUCH REFUSAL OR TEST RESULT SHALL BE IMME-  
25 DIATELY MADE BY THE POLICE OFFICER BEFORE WHOM SUCH REFUSAL OR TEST WAS  
26 MADE. SUCH REPORT MAY BE VERIFIED BY HAVING THE REPORT SWORN TO, OR  
27 AFFIXING TO SUCH REPORT A FORM NOTICE THAT FALSE STATEMENTS MADE THEREIN  
28 ARE PUNISHABLE AS A CLASS A MISDEMEANOR, PURSUANT TO SECTION 210.45 OF  
29 THIS CHAPTER, AND SUCH FORM NOTICE TOGETHER WITH THE SUBSCRIPTION OF THE  
30 DEPONENT SHALL CONSTITUTE A VERIFICATION OF THE REPORT. THE REPORT OF  
31 THE POLICE OFFICER SHALL STATE THAT HE OR SHE HAD REASONABLE GROUNDS TO  
32 BELIEVE SUCH LICENSEE TO HAVE BEEN IN VIOLATION OF THIS SUBDIVISION AND,  
33 IF APPROPRIATE, THAT SAID PERSON HAD REFUSED TO SUBMIT TO SUCH CHEMICAL  
34 TEST. COPIES OF SUCH REPORT SHALL BE FORWARDED BY THE POLICE OFFICER TO  
35 THE LICENSING OFFICER WITHIN FORTY-EIGHT HOURS.

36 (D) (I) ANY LICENSEE WHOSE LICENSE TO CARRY OR POSSESS A FIREARM HAS  
37 BEEN DEEMED SUSPENDED PURSUANT TO THE TERMS OF THIS SUBDIVISION, IS  
38 ENTITLED TO A HEARING BY THE LICENSING OFFICER, NO LATER THAN SEVEN DAYS  
39 AFTER THE DATE ON WHICH HE OR SHE ALLEGEDLY VIOLATED THIS SUBDIVISION.  
40 SUCH HEARING SHALL BE CONDUCTED BY THE LICENSING OFFICER, OR IF SUCH  
41 POSSESSION ALLEGEDLY OCCURRED IN THE CITY OF NEW YORK, BY THE POLICE  
42 COMMISSIONER OF SUCH CITY. IF THE LICENSING OFFICER FAILS TO PROVIDE FOR  
43 SUCH HEARING WITHIN THE TIME PRESCRIBED HEREIN, THE LICENSE OF SUCH  
44 PERSON SHALL BE REINSTATED PENDING A HEARING PURSUANT TO THIS SUBDIVI-  
45 SION AND ANY LAWFULLY POSSESSED FIREARM AND AMMUNITION CONFISCATED  
46 PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE IMMEDIATELY  
47 RETURNED TO THE LICENSEE. THE BURDEN OF PROOF AT A HEARING CONDUCTED  
48 PURSUANT TO THIS SUBDIVISION SHALL BE ON THE POLICE OFFICER TO PROVE THE  
49 ISSUES BY A PREPONDERANCE OF THE EVIDENCE. THE HEARING SHALL BE LIMITED  
50 TO THE FOLLOWING ISSUES: (1) DID THE PERSON POSSESS A LOADED FIREARM ON  
51 HIS OR HER PERSON IN A PUBLIC PLACE WHILE UNDER THE INFLUENCE OF ALCOHOL  
52 OR DRUGS IN VIOLATION OF THIS SUBDIVISION AND DID THE POLICE OFFICER  
53 HAVE REASONABLE GROUNDS FOR BELIEVING SUCH VIOLATION HAD OCCURRED; AND  
54 (2) IF SUSPENSION IS BASED UPON A REFUSAL TO SUBMIT TO A CHEMICAL TEST,  
55 DID THE POLICE OFFICER HAVE REASONABLE GROUNDS FOR BELIEVING THE LICEN-  
56 SEE POSSESSED A FIREARM IN VIOLATION OF THIS SUBDIVISION, WAS SUCH

1 PERSON GIVEN SUFFICIENT WARNING, IN CLEAR AND UNEQUIVOCAL LANGUAGE,  
2 PRIOR TO SUCH REFUSAL THAT SUCH REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST  
3 WOULD RESULT IN THE SUSPENSION OF HIS OR HER LICENSE WHETHER OR NOT HE  
4 OR SHE IS FOUND GUILTY OF THE CHARGE AND DID SUCH PERSON REFUSE TO  
5 SUBMIT TO SUCH CHEMICAL TEST. IF, AFTER SUCH HEARING, THE LICENSING  
6 OFFICER FINDS ON BOTH OF SAID ISSUES IN THE NEGATIVE, HE OR SHE SHALL  
7 IMMEDIATELY REINSTATE SUCH LICENSE SUBJECT TO ANY EXISTING RESTRICTION,  
8 REVOCATION, OR SUSPENSION OF SUCH LICENSE AND ANY LAWFULLY POSSESSED  
9 FIREARM AND AMMUNITION CONFISCATED PURSUANT TO PARAGRAPH (B) OF THIS  
10 SUBDIVISION SHALL BE IMMEDIATELY RETURNED TO THE LICENSEE. IF, AFTER  
11 SUCH HEARING, THE LICENSING OFFICER FINDS EITHER OF THE ISSUES IN THE  
12 AFFIRMATIVE, HE OR SHE SHALL IMMEDIATELY SUSPEND THE LICENSE. THE  
13 FIREARM LICENSE SHALL BE SUSPENDED FOR A PERIOD OF ONE YEAR. THE LICENS-  
14 ING OFFICER, UPON SUSPENDING A LICENSE, SHALL INSTRUCT THE PERSON THAT  
15 ALL OUTSTANDING FIREARMS HELD PURSUANT TO SUCH LICENSE, AND ANY AMEND-  
16 MENTS THERETO, SHALL BE SURRENDERED TO THE DULY ENTITLED POLICE AUTHORI-  
17 TIES WITHIN TWENTY-FOUR HOURS OF THE CONCLUSION OF SUCH HEARING. THE  
18 LICENSING OFFICER SHALL INSTRUCT SUCH PERSON THAT ALL WEAPONS SURREN-  
19 DERED PURSUANT TO THIS PARAGRAPH AND PARAGRAPH (B) OF THIS SUBDIVISION  
20 SHALL BE RETURNED TO SUCH PERSON UPON THE REINSTATEMENT OF SUCH LICENSE.  
21 ANY PERSON MAY WAIVE HIS OR HER RIGHT TO A HEARING UNDER THIS PARAGRAPH.  
22 FAILURE BY SUCH PERSON TO APPEAR FOR HIS OR HER SCHEDULED HEARING SHALL  
23 CONSTITUTE A WAIVER OF SUCH HEARING, PROVIDED, HOWEVER, THAT SUCH PERSON  
24 MAY PETITION THE LICENSING OFFICER FOR A NEW HEARING WHICH, IF GRANTED,  
25 SHALL BE HELD AS SOON AS PRACTICABLE.

26 (II) EVIDENCE OF A REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST SHALL BE  
27 ADMISSIBLE IN ANY HEARING HELD PURSUANT TO THE PROVISIONS OF THIS SUBDI-  
28 VISION BUT ONLY UPON SHOWING THAT THE PERSON WAS GIVEN SUFFICIENT WARN-  
29 ING, IN CLEAR AND UNEQUIVOCAL LANGUAGE, OF THE EFFECT OF SUCH REFUSAL.

30 (III) UPON THE REQUEST OF THE PERSON WHO WAS TESTED, THE RESULTS OF  
31 SUCH TEST SHALL BE MADE AVAILABLE TO HIM OR HER.

32 (IV) THE CHEMICAL TEST PROVIDED FOR IN SUBPARAGRAPH (I) OF PARAGRAPH  
33 (C) OF THIS SUBDIVISION SHALL BE CONDUCTED IN THE SAME MANNER AS  
34 PROVIDED IN SUBDIVISION FOUR OF SECTION ELEVEN HUNDRED NINETY-FOUR OF  
35 THE VEHICLE AND TRAFFIC LAW.

36 (V) ANY PERSON WHOSE LICENSE IS SUSPENDED FOR A VIOLATION OF THIS  
37 SUBDIVISION SHALL, AS A CONDITION FOR REINSTATEMENT OF SUCH LICENSE,  
38 SUCCESSFULLY COMPLETE THE ALCOHOL AND DRUG REHABILITATION PROGRAM  
39 PROVIDED FOR IN SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECUTIVE  
40 LAW. THE LICENSING OFFICER SHALL NOT REINSTATE SUCH LICENSE UNTIL THE  
41 COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES CERTIFIES SUCH  
42 PERSON HAS SUCCESSFULLY COMPLETED THE ALCOHOL AND DRUG REHABILITATION  
43 PROGRAM.

44 (VI) DURING THE PERIOD OF SUSPENSION PROVIDED FOR IN THIS PARAGRAPH  
45 SUCH PERSON SHALL NOT BE PERMITTED TO APPLY FOR ANY LICENSE, OR AN  
46 AMENDMENT TO AN EXISTING LICENSE, PROVIDED FOR IN THIS SECTION.

47 (E) THE LICENSING OFFICER SUSPENDING A LICENSE SHALL GIVE WRITTEN  
48 NOTICE THEREOF, WITHOUT UNNECESSARY DELAY, TO THE EXECUTIVE DEPARTMENT,  
49 DIVISION OF STATE POLICE, ALBANY, AND SHALL ALSO NOTIFY IMMEDIATELY THE  
50 DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY.

51 (F) IN ANY HEARING PURSUANT TO THIS SUBDIVISION, THE LICENSING OFFICER  
52 SHALL ADMIT EVIDENCE OF THE AMOUNT OF ALCOHOL OR DRUGS IN THE PERSON'S  
53 BLOOD AS SHOWN BY A TEST ADMINISTERED PURSUANT TO THE PROVISIONS OF THIS  
54 SUBDIVISION.

1 THE FOLLOWING EFFECT SHALL BE GIVEN TO EVIDENCE OF BLOOD-ALCOHOL  
2 CONTENT, AS DETERMINED BY SUCH TESTS, OF A PERSON CHARGED WITH A  
3 VIOLATION OF THIS SUBDIVISION:

4 (I) EVIDENCE THAT THERE WAS LESS THAN .10 OF ONE PER CENTUM BY WEIGHT  
5 OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL BE PRIMA FACIE EVIDENCE THAT  
6 SUCH PERSON WAS NOT UNDER THE INFLUENCE OF ALCOHOL;

7 (II) EVIDENCE THAT THERE WAS .10 OF ONE PER CENTUM OR MORE BY WEIGHT  
8 OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL BE PRIMA FACIE EVIDENCE THAT  
9 SUCH PERSON WAS UNDER THE INFLUENCE OF ALCOHOL.

10 (G) EXCEPT AS HEREIN SPECIFICALLY PROVIDED, THE HEARING CONDUCTED  
11 PURSUANT TO THIS SUBDIVISION SHALL BE DEEMED TO BE AN ADJUDICATORY  
12 PROCEEDING SUBJECT TO THE PROVISIONS OF ARTICLE THREE OF THE STATE  
13 ADMINISTRATIVE PROCEDURE ACT.

14 (H) ANY PERSON AGGRIEVED BY A DECISION AFTER THE HEARING PROVIDED FOR  
15 IN THIS SUBDIVISION MAY APPEAL SUCH DECISION PURSUANT TO THE PROVISIONS  
16 OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

17 (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO  
18 PERSON SHALL BE ARRESTED SOLELY FOR AN ALLEGED VIOLATION OF THIS SUBDI-  
19 VISION. HOWEVER, A PERSON FOR WHOM A CHEMICAL TEST IS AUTHORIZED PURSU-  
20 ANT TO THIS SUBDIVISION MAY BE TEMPORARILY DETAINED BY THE POLICE SOLELY  
21 FOR THE PURPOSE OF REQUESTING OR ADMINISTERING SUCH CHEMICAL TEST WHEN-  
22 EVER ARREST WITHOUT WARRANT FOR A PETTY OFFENSE WOULD BE AUTHORIZED IN  
23 ACCORDANCE WITH THE PROVISIONS OF SECTION 140.10 OF THE CRIMINAL PROCE-  
24 DURE LAW.

25 (J) NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO IN ANY  
26 WAY REDUCE OR LIMIT THE EXISTING AUTHORITY OF A LICENSING OFFICER TO  
27 REVOKE OR SUSPEND A LICENSE ISSUED PURSUANT TO THIS SECTION. NOTHING  
28 CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO LIMIT, REDUCE OR IN ANY  
29 WAY EFFECT THE CRIMINAL LIABILITY OF A LICENSEE FOR ANY FIREARM OR OTHER  
30 OFFENSE DEFINED IN THIS CHAPTER OR ANY OTHER PROVISION OF LAW.

31 S 6. Subdivision 15 of section 400.00 of the penal law, as amended by  
32 chapter 1 of the laws of 2013, is amended to read as follows:

33 15. Any violation by any person of any provision of this section,  
34 OTHER THAN A VIOLATION OF PARAGRAPH (A) OF SUBDIVISION ELEVEN-A OF THIS  
35 SECTION, is a class A misdemeanor.

36 S 7. The executive law is amended by adding a new section 837-s to  
37 read as follows:

38 S 837-S. ALCOHOL AND DRUG REHABILITATION PROGRAM. 1. PROGRAM ESTAB-  
39 LISHMENT. THERE IS HEREBY ESTABLISHED AN ALCOHOL AND DRUG REHABILITATION  
40 PROGRAM WITHIN THE DIVISION. THE COMMISSIONER SHALL ESTABLISH, BY REGU-  
41 LATION, THE INSTRUCTIONAL AND REHABILITATIVE ASPECTS OF THE PROGRAM.  
42 SUCH PROGRAM SHALL CONSIST OF AT LEAST FIFTEEN AND NOT MORE THAN THIRTY  
43 HOURS AND INCLUDE, BUT NEED NOT BE LIMITED TO, CLASSROOM INSTRUCTION IN  
44 AREAS DEEMED SUITABLE BY THE COMMISSIONER.

45 2. CURRICULUM. THE FORM, CONTENT AND METHOD OF PRESENTATION OF THE  
46 VARIOUS ASPECTS OF SUCH PROGRAM SHALL BE ESTABLISHED BY THE COMMISSION-  
47 ER. IN THE DEVELOPMENT OF THE FORM, CURRICULUM AND CONTENT OF SUCH  
48 PROGRAM, THE COMMISSIONER MAY CONSULT WITH THE COMMISSIONER OF MENTAL  
49 HEALTH, THE COMMISSIONER OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE  
50 SERVICES AND ANY OTHER STATE DEPARTMENT OR AGENCY AND REQUEST AND  
51 RECEIVE ASSISTANCE FROM THEM. THE COMMISSIONER IS ALSO AUTHORIZED TO  
52 DEVELOP MORE THAN ONE CURRICULUM AND COURSE CONTENT FOR SUCH PROGRAM IN  
53 ORDER TO MEET THE VARYING REHABILITATIVE NEEDS OF THE PARTICIPANTS.

54 3. WHERE AVAILABLE. A COURSE IN SUCH PROGRAM SHALL BE AVAILABLE IN AT  
55 LEAST EVERY COUNTY IN THE STATE, EXCEPT WHERE THE COMMISSIONER DETER-  
56 MINES THAT THERE IS NOT A SUFFICIENT NUMBER OF ALCOHOL OR DRUG-RELATED

1 OFFENSES IN A COUNTY TO MANDATE THE ESTABLISHMENT OF SAID COURSE, AND  
2 THAT PROVISIONS BE MADE FOR THE RESIDENTS OF SAID COUNTY TO ATTEND A  
3 COURSE IN ANOTHER COUNTY WHERE A COURSE EXISTS.

4 4. ELIGIBILITY. PARTICIPATION IN THE PROGRAM SHALL BE LIMITED TO THOSE  
5 PERSONS HAVING VIOLATED THE PROVISIONS OF SUBDIVISION ELEVEN-A OF  
6 SECTION 400.00 OF THE PENAL LAW.

7 5. EFFECT OF COMPLETION. UPON SUCCESSFUL COMPLETION OF A COURSE IN  
8 SUCH PROGRAM AS CERTIFIED BY ITS ADMINISTRATOR, THE COMMISSIONER SHALL,  
9 ON A FORM PROVIDED FOR SUCH PURPOSE, NOTIFY THE APPROPRIATE LICENSING  
10 OFFICER HAVING ISSUED THE ORDER OF SUSPENSION OF SUCH LICENSEE'S  
11 SUCCESSFUL COMPLETION OF THE COURSE PROVIDED FOR IN THIS SECTION.

12 6. FEES. THE COMMISSIONER SHALL ESTABLISH A SCHEDULE OF FEES TO BE  
13 PAID BY OR ON BEHALF OF EACH PARTICIPANT IN THE PROGRAM, AND MAY, FROM  
14 TIME TO TIME, MODIFY SAME. SUCH FEES SHALL DEFRAY THE ONGOING EXPENSES  
15 OF THE PROGRAM, PROVIDED, HOWEVER, THAT PURSUANT TO AN AGREEMENT WITH  
16 THE DIVISION A MUNICIPALITY, DEPARTMENT THEREOF, OR OTHER AGENCY MAY  
17 CONDUCT A COURSE IN SUCH PROGRAM WITH ALL OR PART OF THE EXPENSE OF SUCH  
18 COURSE AND PROGRAM BEING BORNE BY SUCH MUNICIPALITY, DEPARTMENT OR AGEN-  
19 CY. IN NO EVENT SHALL SUCH FEE BE REFUNDABLE, EITHER FOR REASONS OF THE  
20 PARTICIPANT'S WITHDRAWAL OR EXPULSION FROM SUCH PROGRAM OR OTHERWISE.

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

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

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

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

31 S 10. Paragraph (a) of subdivision 1 of section 70.02 of the penal  
32 law, as amended by chapter 320 of the laws of 2006, is amended to read  
33 as follows:

34 (a) Class B violent felony offenses: an attempt to commit the class  
35 A-I felonies of murder in the second degree as defined in section  
36 125.25, kidnapping in the first degree as defined in section 135.25, and  
37 arson in the first degree as defined in section 150.20; manslaughter in  
38 the first degree as defined in section 125.20, aggravated manslaughter  
39 in the first degree as defined in section 125.22, rape in the first  
40 degree as defined in section 130.35, criminal sexual act in the first  
41 degree as defined in section 130.50, aggravated sexual abuse in the  
42 first degree as defined in section 130.70, course of sexual conduct  
43 against a child in the first degree as defined in section 130.75;  
44 assault in the first degree as defined in section 120.10, kidnapping in  
45 the second degree as defined in section 135.20, burglary in the first  
46 degree as defined in section 140.30, arson in the second degree as  
47 defined in section 150.15, robbery in the first degree as defined in  
48 section 160.15, incest in the first degree as defined in section 255.27,  
49 criminal possession of a weapon in the first degree as defined in  
50 section 265.04, criminal use of a firearm in the first degree as defined  
51 in section 265.09, criminal sale of a firearm in the [first] SECOND  
52 degree as defined in section [265.13] 265.12, CRIMINAL SALE OF A FIREARM  
53 WITH THE AID OF A MINOR AS DEFINED IN SECTION 265.14, aggravated assault  
54 upon a police officer or a peace officer as defined in section 120.11,  
55 gang assault in the first degree as defined in section 120.07, intim-  
56 idating 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.

S 11. The closing paragraph of section 265.11 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal sale of a firearm in the third degree is a class [D] C felony.

S 12. 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] THIRD degree as defined in section [265.12] 265.11, criminal sale of a firearm [with the aid of a minor as defined in section 265.14] TO A MINOR AS DEFINED IN SECTION 265.16, 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 13. The closing paragraph of section 265.16 of the penal law, as amended by chapter 654 of the laws of 1998, is amended to read as follows:

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

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

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

S 15. Subparagraph (i) of paragraph (h) of subdivision 2 of section 1349 of the civil practice law and rules, as added by chapter 655 of the laws of 1990, is amended to read as follows:

(i) [seventy-five] SIXTY-FIVE percent of such moneys shall be deposited to a law enforcement purposes subaccount of the general fund of the state where the claiming agent is an agency of the state or the political subdivision or public authority of which the claiming agent is a part, to be used for law enforcement use in the investigation of penal law offenses; AND TEN PERCENT OF SUCH MONIES SHALL BE ALLOCATED TO THE POLICE ATHLETIC LEAGUE OF THE POLITICAL SUBDIVISION OR PUBLIC AUTHORITY OF WHICH THE CLAIMING AGENT IS A PART;

1 S 16. Paragraph (b) of subdivision 3 of section 70.02 of the penal  
2 law, as amended by chapter 1 of the laws of 2013, is amended to read as  
3 follows:  
4 (b) For a class C felony, the term must be at least three and one-half  
5 years and must not exceed fifteen years, provided, however, that the  
6 term must be: (i) at least seven years and must not exceed twenty years  
7 where the sentence is for the crime of aggravated manslaughter in the  
8 second degree as defined in section 125.21 of this chapter; (ii) at  
9 least seven years and must not exceed twenty years where the sentence is  
10 for the crime of attempted aggravated assault upon a police officer or  
11 peace officer as defined in section 120.11 of this chapter; (iii) at  
12 least three and one-half years and must not exceed twenty years where  
13 the sentence is for the crime of aggravated criminally negligent homi-  
14 cide as defined in section 125.11 of this chapter; [and] (iv) at least  
15 five years and must not exceed fifteen years where the sentence is  
16 imposed for the crime of aggravated criminal possession of a weapon as  
17 defined in section 265.19 of this chapter; AND (V) AT LEAST TEN YEARS  
18 AND MUST NOT EXCEED TWENTY YEARS WHERE THE SENTENCE IS FOR A CRIME OF  
19 CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE AS DEFINED IN  
20 SECTION 265.03 OF THIS CHAPTER;  
21 S 17. This act shall take effect on the first of November next  
22 succeeding the date on which it shall have become a law.