

7623

I N S E N A T E

May 11, 2016

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed 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 three
2 new subdivisions 3-a, 26 and 27 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 AS DETECTABLE AS THE SECURITY EXEMPLAR BY
7 AN X-RAY MACHINE, PORTABLE PULSED X-RAY GENERATOR, METAL DETECTOR OR
8 MAGNETOMETER, OR BY ANY OTHER DETECTION DEVICE, WHEN SET AT STANDARD
9 CALIBRATION, COMMONLY USED AT AIRPORTS TO SCREEN OR INSPECT A PERSON AND
10 AN OBJECT FOR A FIREARM, RIFLE, OR SHOTGUN.

11 27. "SECURITY EXEMPLAR" MEANS AN OBJECT CONSTRUCTED IN ACCORDANCE WITH
12 FEDERAL LAW THAT IS 3.7 OUNCES OF MATERIAL TYPE 17-4 PRECIPITATION HARD-
13 ENING STAINLESS STEEL IN A SHAPE RESEMBLING A FIREARM, AND SUITABLE FOR
14 TESTING AND CALIBRATING METAL DETECTORS.

15 S 2. The penal law is amended by adding two new sections 265.50 and
16 265.55 to read as follows:

17 S 265.50 CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE
18 FIREARM.

19 A PERSON IS GUILTY OF CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN
20 UNDETECTABLE FIREARM WHEN HE OR SHE KNOWINGLY MANUFACTURES, CAUSES TO BE
21 MANUFACTURED, SELLS, EXCHANGES, GIVES, DISPOSES OF, TRANSPORTS, SHIPS,
22 OR POSSESSES WITH THE INTENT TO SELL:

23 1. ANY FIREARM, RIFLE, OR SHOTGUN THAT, AFTER REMOVAL OF GRIPS, STOCKS
24 AND MAGAZINES, IS UNDETECTABLE; OR

25 2. ANY MAJOR COMPONENT OF A FIREARM, RIFLE, OR SHOTGUN WHICH IS UNDE-
26 TECTABLE.

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

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1 CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM IS
2 A CLASS D FELONY.

3 S 265.55 CRIMINAL POSSESSION OF AN UNDETECTABLE FIREARM.

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

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

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

15 Paragraph (h) of subdivision twenty-two of section 265.00 and sections
16 265.01, 265.01-a, [subdivision one of section] 265.01-b, 265.02, 265.03,
17 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, 265.36, 265.37,
18 265.50, 265.55 and 270.05 shall not apply to:

19 Possession of any of the weapons, instruments, appliances or
20 substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05,
21 265.50, 265.55 and 270.05 by the following:

22 S 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,
23 as amended by chapter 368 of the laws of 2015, is amended to read as
24 follows:

25 (c) Class D violent felony offenses: an attempt to commit any of the
26 class C felonies set forth in paragraph (b); reckless assault of a child
27 as defined in section 120.02, assault in the second degree as defined in
28 section 120.05, menacing a police officer or peace officer as defined in
29 section 120.18, stalking in the first degree, as defined in subdivision
30 one of section 120.60, strangulation in the second degree as defined in
31 section 121.12, rape in the second degree as defined in section 130.30,
32 criminal sexual act in the second degree as defined in section 130.45,
33 sexual abuse in the first degree as defined in section 130.65, course of
34 sexual conduct against a child in the second degree as defined in
35 section 130.80, aggravated sexual abuse in the third degree as defined
36 in section 130.66, facilitating a sex offense with a controlled
37 substance as defined in section 130.90, labor trafficking as defined in
38 paragraphs (a) and (b) of subdivision three of section 135.35, criminal
39 possession of a weapon in the third degree as defined in subdivision
40 five, six, seven, eight, nine or ten of section 265.02, criminal sale of
41 a firearm in the third degree as defined in section 265.11, intimidating
42 a victim or witness in the second degree as defined in section 215.16,
43 soliciting or providing support for an act of terrorism in the second
44 degree as defined in section 490.10, and making a terroristic threat as
45 defined in section 490.20, falsely reporting an incident in the first
46 degree as defined in section 240.60, placing a false bomb or hazardous
47 substance in the first degree as defined in section 240.62, placing a
48 false bomb or hazardous substance in a sports stadium or arena, mass
49 transportation facility or enclosed shopping mall as defined in section
50 240.63, [and] aggravated unpermitted use of indoor pyrotechnics in the
51 first degree as defined in section 405.18, AND CRIMINAL MANUFACTURE,
52 SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION
53 265.50.

54 S 5. The opening paragraph of paragraph (c) of subdivision 2 of
55 section 70.02 of the penal law, as amended by chapter 1 of the laws of
56 2013, is amended to read as follows:

1 Except as provided in subdivision six of section 60.05, the sentence
2 imposed upon a person who stands convicted of the class D violent felony
3 offenses of criminal possession of a weapon in the third degree as
4 defined in subdivision five, seven, eight or nine of section 265.02,
5 criminal sale of a firearm in the third degree as defined in section
6 265.11 [or], the class E violent felonies of attempted criminal
7 possession of a weapon in the third degree as defined in subdivision
8 five, seven, eight or nine of section 265.02, OR CRIMINAL MANUFACTURE,
9 SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION
10 265.50 must be a sentence to a determinate period of imprisonment, or,
11 in the alternative, a definite sentence of imprisonment for a period of
12 no less than one year, except that:

13 S 6. Paragraph (a) of subdivision 1 of section 460.10 of the penal
14 law, as amended by chapter 368 of the laws of 2015, is amended to read
15 as follows:

16 (a) Any of the felonies set forth in this chapter: sections 120.05,
17 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-
18 ing to strangulation; sections 125.10 to 125.27 relating to homicide;
19 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and
20 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to
21 labor trafficking; section 135.65 relating to coercion; sections 140.20,
22 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and
23 145.12 relating to criminal mischief; article one hundred fifty relating
24 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
25 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
26 care fraud; article one hundred sixty relating to robbery; sections
27 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
28 stolen property; sections 165.72 and 165.73 relating to trademark coun-
29 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
30 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
31 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
32 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating
33 to criminal diversion of prescription medications and prescriptions;
34 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,
35 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,
36 215.00, 215.05 and 215.19; sections 187.10, 187.15, 187.20 and 187.25
37 relating to residential mortgage fraud, sections 190.40 and 190.42
38 relating to criminal usury; section 190.65 relating to schemes to
39 defraud; any felony defined in article four hundred ninety-six; sections
40 205.60 and 205.65 relating to hindering prosecution; sections 210.10,
41 210.15, and 215.51 relating to perjury and contempt; section 215.40
42 relating to tampering with physical evidence; sections 220.06, 220.09,
43 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46,
44 220.55, 220.60, 220.65 and 220.77 relating to controlled substances;
45 sections 225.10 and 225.20 relating to gambling; sections 230.25,
46 230.30, and 230.32 relating to promoting prostitution; section 230.34
47 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22
48 relating to obscenity; sections 263.10 and 263.15 relating to promoting
49 a sexual performance by a child; sections 265.02, 265.03, 265.04,
50 265.11, 265.12, 265.13 and the provisions of section 265.10 which
51 constitute a felony relating to firearms and other dangerous weapons;
52 sections 265.14 and 265.16 relating to criminal sale of a firearm;
53 section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized
54 recordings; [and] sections 470.05, 470.10, 470.15 and 470.20 relating to
55 money laundering; AND SECTION 265.50 RELATING TO THE CRIMINAL MANUFAC-
56 TURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM; or

1 S 7. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
2 procedure law, as amended by chapter 368 of the laws of 2015, is amended
3 to read as follows:

4 (b) Any of the following felonies: assault in the second degree as
5 defined in section 120.05 of the penal law, assault in the first degree
6 as defined in section 120.10 of the penal law, reckless endangerment in
7 the first degree as defined in section 120.25 of the penal law, promot-
8 ing a suicide attempt as defined in section 120.30 of the penal law,
9 strangulation in the second degree as defined in section 121.12 of the
10 penal law, strangulation in the first degree as defined in section
11 121.13 of the penal law, criminally negligent homicide as defined in
12 section 125.10 of the penal law, manslaughter in the second degree as
13 defined in section 125.15 of the penal law, manslaughter in the first
14 degree as defined in section 125.20 of the penal law, murder in the
15 second degree as defined in section 125.25 of the penal law, murder in
16 the first degree as defined in section 125.27 of the penal law, abortion
17 in the second degree as defined in section 125.40 of the penal law,
18 abortion in the first degree as defined in section 125.45 of the penal
19 law, rape in the third degree as defined in section 130.25 of the penal
20 law, rape in the second degree as defined in section 130.30 of the penal
21 law, rape in the first degree as defined in section 130.35 of the penal
22 law, criminal sexual act in the third degree as defined in section
23 130.40 of the penal law, criminal sexual act in the second degree as
24 defined in section 130.45 of the penal law, criminal sexual act in the
25 first degree as defined in section 130.50 of the penal law, sexual abuse
26 in the first degree as defined in section 130.65 of the penal law,
27 unlawful imprisonment in the first degree as defined in section 135.10
28 of the penal law, kidnapping in the second degree as defined in section
29 135.20 of the penal law, kidnapping in the first degree as defined in
30 section 135.25 of the penal law, labor trafficking as defined in section
31 135.35 of the penal law, aggravated labor trafficking as defined in
32 section 135.37 of the penal law, custodial interference in the first
33 degree as defined in section 135.50 of the penal law, coercion in the
34 first degree as defined in section 135.65 of the penal law, criminal
35 trespass in the first degree as defined in section 140.17 of the penal
36 law, burglary in the third degree as defined in section 140.20 of the
37 penal law, burglary in the second degree as defined in section 140.25 of
38 the penal law, burglary in the first degree as defined in section 140.30
39 of the penal law, criminal mischief in the third degree as defined in
40 section 145.05 of the penal law, criminal mischief in the second degree
41 as defined in section 145.10 of the penal law, criminal mischief in the
42 first degree as defined in section 145.12 of the penal law, criminal
43 tampering in the first degree as defined in section 145.20 of the penal
44 law, arson in the fourth degree as defined in section 150.05 of the
45 penal law, arson in the third degree as defined in section 150.10 of the
46 penal law, arson in the second degree as defined in section 150.15 of
47 the penal law, arson in the first degree as defined in section 150.20 of
48 the penal law, grand larceny in the fourth degree as defined in section
49 155.30 of the penal law, grand larceny in the third degree as defined in
50 section 155.35 of the penal law, grand larceny in the second degree as
51 defined in section 155.40 of the penal law, grand larceny in the first
52 degree as defined in section 155.42 of the penal law, health care fraud
53 in the fourth degree as defined in section 177.10 of the penal law,
54 health care fraud in the third degree as defined in section 177.15 of
55 the penal law, health care fraud in the second degree as defined in
56 section 177.20 of the penal law, health care fraud in the first degree

1 as defined in section 177.25 of the penal law, robbery in the third
2 degree as defined in section 160.05 of the penal law, robbery in the
3 second degree as defined in section 160.10 of the penal law, robbery in
4 the first degree as defined in section 160.15 of the penal law, unlawful
5 use of secret scientific material as defined in section 165.07 of the
6 penal law, criminal possession of stolen property in the fourth degree
7 as defined in section 165.45 of the penal law, criminal possession of
8 stolen property in the third degree as defined in section 165.50 of the
9 penal law, criminal possession of stolen property in the second degree
10 as defined by section 165.52 of the penal law, criminal possession of
11 stolen property in the first degree as defined by section 165.54 of the
12 penal law, trademark counterfeiting in the second degree as defined in
13 section 165.72 of the penal law, trademark counterfeiting in the first
14 degree as defined in section 165.73 of the penal law, forgery in the
15 second degree as defined in section 170.10 of the penal law, forgery in
16 the first degree as defined in section 170.15 of the penal law, criminal
17 possession of a forged instrument in the second degree as defined in
18 section 170.25 of the penal law, criminal possession of a forged instru-
19 ment in the first degree as defined in section 170.30 of the penal law,
20 criminal possession of forgery devices as defined in section 170.40 of
21 the penal law, falsifying business records in the first degree as
22 defined in section 175.10 of the penal law, tampering with public
23 records in the first degree as defined in section 175.25 of the penal
24 law, offering a false instrument for filing in the first degree as
25 defined in section 175.35 of the penal law, issuing a false certificate
26 as defined in section 175.40 of the penal law, criminal diversion of
27 prescription medications and prescriptions in the second degree as
28 defined in section 178.20 of the penal law, criminal diversion of
29 prescription medications and prescriptions in the first degree as
30 defined in section 178.25 of the penal law, residential mortgage fraud
31 in the fourth degree as defined in section 187.10 of the penal law,
32 residential mortgage fraud in the third degree as defined in section
33 187.15 of the penal law, residential mortgage fraud in the second degree
34 as defined in section 187.20 of the penal law, residential mortgage
35 fraud in the first degree as defined in section 187.25 of the penal law,
36 escape in the second degree as defined in section 205.10 of the penal
37 law, escape in the first degree as defined in section 205.15 of the
38 penal law, absconding from temporary release in the first degree as
39 defined in section 205.17 of the penal law, promoting prison contraband
40 in the first degree as defined in section 205.25 of the penal law,
41 hindering prosecution in the second degree as defined in section 205.60
42 of the penal law, hindering prosecution in the first degree as defined
43 in section 205.65 of the penal law, sex trafficking as defined in
44 section 230.34 of the penal law, criminal possession of a weapon in the
45 third degree as defined in subdivisions two, three and five of section
46 265.02 of the penal law, criminal possession of a weapon in the second
47 degree as defined in section 265.03 of the penal law, criminal
48 possession of a weapon in the first degree as defined in section 265.04
49 of the penal law, manufacture, transport, disposition and defacement of
50 weapons and dangerous instruments and appliances defined as felonies in
51 subdivisions one, two, and three of section 265.10 of the penal law,
52 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use
53 of weapons as defined in subdivision two of section 265.35 of the penal
54 law, relating to firearms and other dangerous weapons, [or] failure to
55 disclose the origin of a recording in the first degree as defined in
56 section 275.40 of the penal law, OR CRIMINAL MANUFACTURE, SALE, OR

1 TRANSPORT OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION 265.50 OF THE
2 PENAL LAW;
3 S 8. This act shall take effect on the one hundred eightieth day after
4 it shall have become a law.