STATE OF NEW YORK

1977

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

Introduced by M. of A. SEPULVEDA, GUNTHER, CRESPO, BRINDISI, MAYER, GALEF, SKARTADOS, MOSLEY, COLTON, LUPINACCI, WALTER, MONTESANO, RAIA, DiPIETRO, SALADINO, M. G. MILLER, STECK, WALKER, THIELE, COOK, GRAF, HOOPER, PALMESANO -- Multi-Sponsored by -- M. of A. CROUCH, GARBARINO, MAGEE, McDONALD, McDONOUGH, McKEVITT, MOYA, PALUMBO, PERRY, RIVERA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the offenses of aggravated assault upon a person less than ten years old and criminal use of a firearm in the first degree

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as "Luisito's law".

§ 2. Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

(a) 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, sex trafficking as defined in paragraphs (a) and (b) of

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

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subdivision five of section 230.34, 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, 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, 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, **aggravated assault upon a person less than ten years old as defined in section 120.12-a,** 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.

§ 3. The penal law is amended by adding a new section 120.12-a to read as follows:

§ 120.12-a Aggravated assault upon a person less than ten years old.

A person is guilty of aggravated assault upon a person less than ten years old when, being eighteen years old or older, with intent to cause physical injury to another person, he or she causes such injury to a child less than ten years old by means of a deadly weapon or dangerous instrument.

Aggravated assault upon a person less than ten years old is a class B felony.

§ 4. Section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996, subdivision 2 as amended by chapter 1 of the laws of 2013, is amended to read as follows:

§ 265.09 Criminal use of a firearm in the first degree.

(1) A person is guilty of criminal use of a firearm in the first degree when he **or she** commits any class B violent felony offense as defined in paragraph (a) of subdivision one of section 70.02 **of this chapter, or he or she commits a specified offense while knowing he or she is on school grounds, as defined in subdivision fourteen of section 220.00 of this part, or within two hundred fifty feet of any playground operated by the city of New York or any department or public authority thereof,** and he **or she** either:

(a) possesses a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged; or

(b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

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

(2) **For the purposes of this section, a "specified offense" is an offense defined by any of the following provisions of this chapter: section 115.05 (criminal facilitation in the second degree), 265.16 (criminal sale of a firearm to a minor), 100.13 (criminal solicitation in the first degree), 155.40 (grand larceny in the second degree), 120.05 (assault in the second degree), 265.11 (criminal sale of a firearm in the third degree), 130.90 (facilitating a sex offense with a controlled substance), 215.16 (intimidating a victim or witness in the second degree), 120.18 (menacing a police officer or peace officer), 120.02 (reckless assault of a child), 120.60 (stalking in the first degree), 121.12 (strangulation in the second degree), 130.30 (rape in the second degree), 130.45 (criminal sexual act in the second degree), 130.65 (sexual abuse in the first degree), 130.80 (course of sexual conduct against a child in the second degree), 130.66 (aggravated sexual**

abuse in the third degree), 135.65 (coercion in the first degree), 265.17 (criminal purchase or disposal of a weapon), 120.25 (reckless endangerment in the first degree), 165.05 (robbery in the third degree), or 215.12 (tampering with a witness in the second degree).

(3) Sentencing. Notwithstanding any other provision of law to the contrary, when a person is convicted of criminal use of a firearm in the first degree as defined in subdivision one of this section, the court shall impose an additional consecutive sentence of five years to the sentence imposed on the underlying class B violent felony offense where the person convicted of such crime displays a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of such crime, provided, however, that such additional sentence shall not be imposed if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime. Notwithstanding any other provision of law to the contrary, the aggregate of the five year consecutive term imposed pursuant to this subdivision and the minimum term of the indeterminate sentence imposed on the underlying class B violent felony shall constitute the new aggregate minimum term of imprisonment, and a person subject to such term shall be required to serve the entire aggregate minimum term and shall not be eligible for release on parole or conditional release during such term. This subdivision shall not apply where the defendant's criminal liability for displaying a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of this chapter.

Criminal use of a firearm in the first degree is a class B felony.

§ 5. This act shall take effect on the first of November next succeeding the date upon which it shall have become a law.