STATE OF NEW YORK

3033

2017-2018 Regular Sessions

IN SENATE

January 19, 2017

Introduced by Sen. RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing penalties for criminal use of a firearm in the first degree when committing a drug related felony offense

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

Section 1. Section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996 and 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 **or commits any drug related felony offense as defined in sections 220.31, 220.34, 220.39, 220.41, 220.43, 220.44 and 220.48 of this chapter** and he **or she** either:

(a) possesses a deadly weapon, if the weapon is a loaded **or unloaded** 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) Sentencing. **(a)** 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~~] **ten** years to the sentence imposed on the underlying class B violent felony offense **or drug related felony offense** where the person convicted of such crime displays a loaded **or unloaded** weapon from which a shot, readily capable of producing death or other serious injury may be discharged **or displays**

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

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what appears to be a pistol, revolver, shotgun, machine gun or other firearm, 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~~]. The additional sentence shall be imposed by the court regardless of the nature and circumstances of the crime and to the history and character of the defendant. The district attorney of any jurisdiction shall be prohibited from dismissing this offense in the course of a plea bargain.

(b) Notwithstanding any other provision of law to the contrary, the aggregate of the [~~five~~] ten year consecutive term imposed pursuant to this subdivision and the minimum term of the indeterminate sentence imposed on the underlying class B violent felony or drug related felony offense 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 or unloaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, or displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm, in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of this chapter.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.