

# STATE OF NEW YORK

5829

2017-2018 Regular Sessions

## IN SENATE

May 2, 2017

Introduced by Sen. PARKER -- 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 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 § 2. The penal law is amended by adding two new sections 265.50 and  
11 265.55 to read as follows:

12 § 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.

24 § 265.55 Criminal possession of an undetectable firearm.

25 A person is guilty of criminal possession of an undetectable firearm  
26 when he or she knowingly possesses an undetectable firearm, rifle or

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

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1 shotgun or any undetectable major component of a firearm, rifle, or  
2 shotgun.

3 Criminal possession of an undetectable firearm is a class E felony.

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

9 Paragraph (h) of subdivision twenty-two of section 265.00 and sections  
10 265.01, 265.01-a, [~~subdivision one of section~~] 265.01-b, 265.02, 265.03,  
11 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, 265.36, 265.37,  
12 265.50, 265.55 and 270.05 shall not apply to:

13 Possession of any of the weapons, instruments, appliances or  
14 substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05,  
15 265.50, 265.55 and 270.05 by the following:

16 § 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law,  
17 as amended by chapter 368 of the laws of 2015, is amended to read as  
18 follows:

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

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

51 Except as provided in subdivision six of section 60.05, the sentence  
52 imposed upon a person who stands convicted of the class D violent felony  
53 offenses of criminal possession of a weapon in the third degree as  
54 defined in subdivision five, seven, eight or nine of section 265.02,  
55 criminal sale of a firearm in the third degree as defined in section  
56 265.11 [~~or~~], the class E violent felonies of attempted criminal

1 possession of a weapon in the third degree as defined in subdivision  
2 five, seven, eight or nine of section 265.02, or criminal manufacture,  
3 sale, or transport of an undetectable firearm as defined in section  
4 265.50 must be a sentence to a determinate period of imprisonment, or,  
5 in the alternative, a definite sentence of imprisonment for a period of  
6 no less than one year, except that:

7 § 6. Paragraph (a) of subdivision 1 of section 460.10 of the penal  
8 law, as amended by chapter 368 of the laws of 2015, is amended to read  
9 as follows:

10 (a) Any of the felonies set forth in this chapter: sections 120.05,  
11 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-  
12 ing to strangulation; sections 125.10 to 125.27 relating to homicide;  
13 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and  
14 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to  
15 labor trafficking; section 135.65 relating to coercion; sections 140.20,  
16 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and  
17 145.12 relating to criminal mischief; article one hundred fifty relating  
18 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand  
19 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health  
20 care fraud; article one hundred sixty relating to robbery; sections  
21 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of  
22 stolen property; sections 165.72 and 165.73 relating to trademark coun-  
23 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and  
24 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and  
25 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and  
26 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating  
27 to criminal diversion of prescription medications and prescriptions;  
28 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,  
29 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,  
30 215.00, 215.05 and 215.19; sections 187.10, 187.15, 187.20 and 187.25  
31 relating to residential mortgage fraud, sections 190.40 and 190.42  
32 relating to criminal usury; section 190.65 relating to schemes to  
33 defraud; any felony defined in article four hundred ninety-six; sections  
34 205.60 and 205.65 relating to hindering prosecution; sections 210.10,  
35 210.15, and 215.51 relating to perjury and contempt; section 215.40  
36 relating to tampering with physical evidence; sections 220.06, 220.09,  
37 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46,  
38 220.55, 220.60, 220.65 and 220.77 relating to controlled substances;  
39 sections 225.10 and 225.20 relating to gambling; sections 230.25,  
40 230.30, and 230.32 relating to promoting prostitution; section 230.34  
41 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22  
42 relating to obscenity; sections 263.10 and 263.15 relating to promoting  
43 a sexual performance by a child; sections 265.02, 265.03, 265.04,  
44 265.11, 265.12, 265.13 and the provisions of section 265.10 which  
45 constitute a felony relating to firearms and other dangerous weapons;  
46 sections 265.14 and 265.16 relating to criminal sale of a firearm;  
47 section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized  
48 recordings; ~~and~~ sections 470.05, 470.10, 470.15 and 470.20 relating to  
49 money laundering; and section 265.50 relating to the criminal manufac-  
50 ture, sale, or transport of an undetectable firearm; or

51 § 7. Paragraph (b) of subdivision 8 of section 700.05 of the criminal  
52 procedure law, as amended by chapter 368 of the laws of 2015, is amended  
53 to read as follows:

54 (b) Any of the following felonies: assault in the second degree as  
55 defined in section 120.05 of the penal law, assault in the first degree  
56 as defined in section 120.10 of the penal law, reckless endangerment in

1 the first degree as defined in section 120.25 of the penal law, promot-  
2 ing a suicide attempt as defined in section 120.30 of the penal law,  
3 strangulation in the second degree as defined in section 121.12 of the  
4 penal law, strangulation in the first degree as defined in section  
5 121.13 of the penal law, criminally negligent homicide as defined in  
6 section 125.10 of the penal law, manslaughter in the second degree as  
7 defined in section 125.15 of the penal law, manslaughter in the first  
8 degree as defined in section 125.20 of the penal law, murder in the  
9 second degree as defined in section 125.25 of the penal law, murder in  
10 the first degree as defined in section 125.27 of the penal law, abortion  
11 in the second degree as defined in section 125.40 of the penal law,  
12 abortion in the first degree as defined in section 125.45 of the penal  
13 law, rape in the third degree as defined in section 130.25 of the penal  
14 law, rape in the second degree as defined in section 130.30 of the penal  
15 law, rape in the first degree as defined in section 130.35 of the penal  
16 law, criminal sexual act in the third degree as defined in section  
17 130.40 of the penal law, criminal sexual act in the second degree as  
18 defined in section 130.45 of the penal law, criminal sexual act in the  
19 first degree as defined in section 130.50 of the penal law, sexual abuse  
20 in the first degree as defined in section 130.65 of the penal law,  
21 unlawful imprisonment in the first degree as defined in section 135.10  
22 of the penal law, kidnapping in the second degree as defined in section  
23 135.20 of the penal law, kidnapping in the first degree as defined in  
24 section 135.25 of the penal law, labor trafficking as defined in section  
25 135.35 of the penal law, aggravated labor trafficking as defined in  
26 section 135.37 of the penal law, custodial interference in the first  
27 degree as defined in section 135.50 of the penal law, coercion in the  
28 first degree as defined in section 135.65 of the penal law, criminal  
29 trespass in the first degree as defined in section 140.17 of the penal  
30 law, burglary in the third degree as defined in section 140.20 of the  
31 penal law, burglary in the second degree as defined in section 140.25 of  
32 the penal law, burglary in the first degree as defined in section 140.30  
33 of the penal law, criminal mischief in the third degree as defined in  
34 section 145.05 of the penal law, criminal mischief in the second degree  
35 as defined in section 145.10 of the penal law, criminal mischief in the  
36 first degree as defined in section 145.12 of the penal law, criminal  
37 tampering in the first degree as defined in section 145.20 of the penal  
38 law, arson in the fourth degree as defined in section 150.05 of the  
39 penal law, arson in the third degree as defined in section 150.10 of the  
40 penal law, arson in the second degree as defined in section 150.15 of  
41 the penal law, arson in the first degree as defined in section 150.20 of  
42 the penal law, grand larceny in the fourth degree as defined in section  
43 155.30 of the penal law, grand larceny in the third degree as defined in  
44 section 155.35 of the penal law, grand larceny in the second degree as  
45 defined in section 155.40 of the penal law, grand larceny in the first  
46 degree as defined in section 155.42 of the penal law, health care fraud  
47 in the fourth degree as defined in section 177.10 of the penal law,  
48 health care fraud in the third degree as defined in section 177.15 of  
49 the penal law, health care fraud in the second degree as defined in  
50 section 177.20 of the penal law, health care fraud in the first degree  
51 as defined in section 177.25 of the penal law, robbery in the third  
52 degree as defined in section 160.05 of the penal law, robbery in the  
53 second degree as defined in section 160.10 of the penal law, robbery in  
54 the first degree as defined in section 160.15 of the penal law, unlawful  
55 use of secret scientific material as defined in section 165.07 of the  
56 penal law, criminal possession of stolen property in the fourth degree

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

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