

# STATE OF NEW YORK

810

2017-2018 Regular Sessions

## IN SENATE

January 5, 2017

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

AN ACT to amend the penal law, the vehicle and traffic law and the general business law, in relation to criminal use of a firearm in the first degree and to repeal certain provisions of the penal law relating thereto

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

1 Section 1. Section 265.09 of the penal law, as amended by chapter 650  
2 of the laws of 1996, subdivision 2 as amended by chapter 1 of the laws  
3 of 2013, is amended to read as follows:  
4 § 265.09 Criminal use of a firearm [~~in the first degree~~].  
5 (1) A person is guilty of criminal use of a firearm [~~in the first~~  
6 ~~degree~~] when he or she commits any [~~class B violent~~] felony offense [~~as~~  
7 ~~defined in paragraph (a) of subdivision one of section 70.02~~] and he or  
8 she either:  
9 (a) possesses a deadly weapon, if the weapon is a loaded weapon from  
10 which a shot, readily capable of producing death or other serious injury  
11 may be discharged; or  
12 (b) displays what appears to be a pistol, revolver, rifle, shotgun,  
13 machine gun or other firearm.  
14 Criminal use of a firearm [~~in the first degree~~] is a class B felony.  
15 (2) Sentencing. Notwithstanding any other provision of law to the  
16 contrary, when a person is convicted of criminal use of a firearm [~~in~~  
17 ~~the first degree~~] as defined in subdivision one of this section, the  
18 court shall impose an additional consecutive sentence of five years to  
19 the sentence imposed on the underlying [~~class B violent~~] felony offense  
20 where the person convicted of such crime displays a loaded weapon from  
21 which a shot, readily capable of producing death or other serious injury  
22 may be discharged[~~7~~] or what appears to be a pistol, revolver, rifle,  
23 shotgun, machine gun or other firearm in furtherance of the commission

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

LBD05051-01-7

1 of such crime, provided, however, that such additional sentence shall  
2 not be imposed if the court, having regard to the nature and circum-  
3 stances of the crime and to the history and character of the defendant,  
4 finds on the record that such additional consecutive sentence would be  
5 unduly harsh and that not imposing such sentence would be consistent  
6 with the public safety and would not deprecate the seriousness of the  
7 crime. Notwithstanding any other provision of law to the contrary, the  
8 aggregate of the five year consecutive term imposed pursuant to this  
9 subdivision and the minimum term of the [~~indeterminate~~] sentence imposed  
10 on the underlying [~~class B violent~~] felony shall constitute the new  
11 aggregate minimum term of imprisonment, and a person subject to such  
12 term shall be required to serve the entire aggregate minimum term and  
13 shall not be eligible for release on parole or conditional release  
14 during such term. This subdivision shall not apply where the defendant's  
15 criminal liability for displaying a loaded weapon from which a shot,  
16 readily capable of producing death or other serious injury may be  
17 discharged[~~r~~] or what appears to be a pistol, revolver, rifle, shotgun,  
18 machine gun or other firearm in furtherance of the commission of crime  
19 is based on the conduct of another pursuant to section 20.00 of this  
20 chapter.

21 § 2. Section 265.08 of the penal law is REPEALED.

22 § 3. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the  
23 penal law, paragraph (a) as amended by chapter 368 of the laws of 2015,  
24 and paragraph (b) as amended by chapter 1 of the laws of 2013, are  
25 amended to read as follows:

26 (a) Class B violent felony offenses: an attempt to commit the class  
27 A-I felonies of murder in the second degree as defined in section  
28 125.25, kidnapping in the first degree as defined in section 135.25, and  
29 arson in the first degree as defined in section 150.20; manslaughter in  
30 the first degree as defined in section 125.20, aggravated manslaughter  
31 in the first degree as defined in section 125.22, rape in the first  
32 degree as defined in section 130.35, criminal sexual act in the first  
33 degree as defined in section 130.50, aggravated sexual abuse in the  
34 first degree as defined in section 130.70, course of sexual conduct  
35 against a child in the first degree as defined in section 130.75;  
36 assault in the first degree as defined in section 120.10, kidnapping in  
37 the second degree as defined in section 135.20, burglary in the first  
38 degree as defined in section 140.30, arson in the second degree as  
39 defined in section 150.15, robbery in the first degree as defined in  
40 section 160.15, sex trafficking as defined in paragraphs (a) and (b) of  
41 subdivision five of section 230.34, incest in the first degree as  
42 defined in section 255.27, criminal possession of a weapon in the first  
43 degree as defined in section 265.04, criminal use of a firearm [~~in the~~  
44 ~~first degree~~] as defined in section 265.09, criminal sale of a firearm  
45 in the first degree as defined in section 265.13, aggravated assault  
46 upon a police officer or a peace officer as defined in section 120.11,  
47 gang assault in the first degree as defined in section 120.07, intim-  
48 idating a victim or witness in the first degree as defined in section  
49 215.17, hindering prosecution of terrorism in the first degree as  
50 defined in section 490.35, criminal possession of a chemical weapon or  
51 biological weapon in the second degree as defined in section 490.40, and  
52 criminal use of a chemical weapon or biological weapon in the third  
53 degree as defined in section 490.47.

54 (b) Class C violent felony offenses: an attempt to commit any of the  
55 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
56 vated criminally negligent homicide as defined in section 125.11, aggra-

1 vated manslaughter in the second degree as defined in section 125.21,  
2 aggravated sexual abuse in the second degree as defined in section  
3 130.67, assault on a peace officer, police officer, fireman or emergency  
4 medical services professional as defined in section 120.08, assault on a  
5 judge as defined in section 120.09, gang assault in the second degree as  
6 defined in section 120.06, strangulation in the first degree as defined  
7 in section 121.13, burglary in the second degree as defined in section  
8 140.25, robbery in the second degree as defined in section 160.10, crim-  
9 inal possession of a weapon in the second degree as defined in section  
10 265.03, [~~criminal use of a firearm in the second degree as defined in~~  
11 ~~section 265.08,~~] criminal sale of a firearm in the second degree as  
12 defined in section 265.12, criminal sale of a firearm with the aid of a  
13 minor as defined in section 265.14, aggravated criminal possession of a  
14 weapon as defined in section 265.19, soliciting or providing support for  
15 an act of terrorism in the first degree as defined in section 490.15,  
16 hindering prosecution of terrorism in the second degree as defined in  
17 section 490.30, and criminal possession of a chemical weapon or biolog-  
18 ical weapon in the third degree as defined in section 490.37.

19 § 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle  
20 and traffic law, as amended by chapter 368 of the laws of 2015, is  
21 amended to read as follows:

22 (c) The offenses referred to in subparagraph (i) of paragraph (b) of  
23 subdivision one and subparagraph (i) of paragraph (c) of subdivision two  
24 of this section that result in disqualification for a period of five  
25 years shall include a conviction under sections 100.10, 105.13, 115.05,  
26 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,  
27 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,  
28 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,  
29 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,  
30 230.05, 230.06, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05, 235.06,  
31 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of section  
32 260.20 and sections 260.25, 265.02, 265.03, [~~265.08,~~] 265.09, 265.10,  
33 265.12, 265.35 of the penal law or an attempt to commit any of the afor-  
34 esaid offenses under section 110.00 of the penal law, or any similar  
35 offenses committed under a former section of the penal law, or any  
36 offenses committed under a former section of the penal law which would  
37 constitute violations of the aforesaid sections of the penal law, or any  
38 offenses committed outside this state which would constitute violations  
39 of the aforesaid sections of the penal law.

40 § 5. The opening paragraph of paragraph f of subdivision 1 of section  
41 410 of the general business law, as amended by chapter 80 of the laws of  
42 2015, is amended to read as follows:

43 Conviction of any of the following crimes subsequent to the issuance  
44 of a license or registration pursuant to this article: fraud pursuant to  
45 sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65;  
46 falsifying business records pursuant to section 175.10; grand larceny  
47 pursuant to article 155; bribery pursuant to sections 180.03, 180.08,  
48 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45,  
49 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault  
50 pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to  
51 article 160; homicide pursuant to sections 125.25 and 125.27;  
52 manslaughter pursuant to sections 125.15 and 125.20; kidnapping and  
53 unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25;  
54 unlawful weapons possession pursuant to sections 265.02, 265.03 and  
55 265.04; criminal use of a [~~weapon~~] firearm pursuant to [~~sections 265.08~~  
56 ~~and~~] section 265.09; criminal sale of a [~~weapon~~] firearm pursuant to

1 sections 265.11 and 265.12; compelling prostitution pursuant to section  
2 230.33; sex trafficking pursuant to section 230.34; and sex offenses  
3 pursuant to article 130 of the penal law. Provided, however, that for  
4 the purposes of this article, none of the following shall be considered  
5 criminal convictions or reported as such: (i) a conviction for which an  
6 executive pardon has been issued pursuant to the executive law; (ii) a  
7 conviction which has been vacated and replaced by a youthful offender  
8 finding pursuant to article seven hundred twenty of the criminal proce-  
9 dure law, or the applicable provisions of law of any other jurisdiction;  
10 or (iii) a conviction the records of which have been expunged or sealed  
11 pursuant to the applicable provisions of the laws of this state or of  
12 any other jurisdiction; and (iv) a conviction for which other evidence  
13 of successful rehabilitation to remove the disability has been issued.

14 § 6. This act shall take effect on the first of November next succeed-  
15 ing the date on which it shall have become a law.