

# STATE OF NEW YORK

6814

2019-2020 Regular Sessions

## IN ASSEMBLY

March 20, 2019

Introduced by M. of A. REYES -- 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:

1 Section 1. Short title. This act shall be known and may be cited as  
2 "Luisito's law".  
3 § 2. Paragraph (a) of subdivision 1 of section 70.02 of the penal  
4 law, as amended by chapter 189 of the laws of 2018, is amended to read  
5 as follows:  
6 (a) Class B violent felony offenses: an attempt to commit the class  
7 A-I felonies of murder in the second degree as defined in section  
8 125.25, kidnapping in the first degree as defined in section 135.25, and  
9 arson in the first degree as defined in section 150.20; manslaughter in  
10 the first degree as defined in section 125.20, aggravated manslaughter  
11 in the first degree as defined in section 125.22, rape in the first  
12 degree as defined in section 130.35, criminal sexual act in the first  
13 degree as defined in section 130.50, aggravated sexual abuse in the  
14 first degree as defined in section 130.70, course of sexual conduct  
15 against a child in the first degree as defined in section 130.75;  
16 assault in the first degree as defined in section 120.10, kidnapping in  
17 the second degree as defined in section 135.20, burglary in the first  
18 degree as defined in section 140.30, arson in the second degree as  
19 defined in section 150.15, robbery in the first degree as defined in  
20 section 160.15, sex trafficking as defined in paragraphs (a) and (b) of  
21 subdivision five of section 230.34, sex trafficking of a child as  
22 defined in section 230.34-a, incest in the first degree as defined in  
23 section 255.27, criminal possession of a weapon in the first degree as  
24 defined in section 265.04, criminal use of a firearm in the first degree

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

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1 as defined in section 265.09, criminal sale of a firearm in the first  
2 degree as defined in section 265.13, aggravated assault upon a police  
3 officer or a peace officer as defined in section 120.11, gang assault in  
4 the first degree as defined in section 120.07, aggravated assault upon a  
5 person less than ten years old as defined in section 120.12-a, intim-  
6 idating a victim or witness in the first degree as defined in section  
7 215.17, hindering prosecution of terrorism in the first degree as  
8 defined in section 490.35, criminal possession of a chemical weapon or  
9 biological weapon in the second degree as defined in section 490.40, and  
10 criminal use of a chemical weapon or biological weapon in the third  
11 degree as defined in section 490.47.

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

14 § 120.12-a Aggravated assault upon a person less than ten years old.

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

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

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

25 § 265.09 Criminal use of a firearm in the first degree.

26 (1) A person is guilty of criminal use of a firearm in the first  
27 degree when he or she commits any class B violent felony offense as  
28 defined in paragraph (a) of subdivision one of section 70.02 of this  
29 chapter, or he or she commits a specified offense while knowing he or  
30 she is on school grounds, as defined in subdivision fourteen of section  
31 220.00 of this part, or within two hundred fifty feet of any playground  
32 operated by the city of New York or any department or public authority  
33 thereof, and he or she either:

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

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

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

40 (2) For the purposes of this section, a "specified offense" is an  
41 offense defined by any of the following provisions of this chapter:  
42 section 115.05 (criminal facilitation in the second degree), 265.16  
43 (criminal sale of a firearm to a minor), 100.13 (criminal solicitation  
44 in the first degree), 155.40 (grand larceny in the second degree),  
45 120.05 (assault in the second degree), 265.11 (criminal sale of a  
46 firearm in the third degree), 130.90 (facilitating a sex offense with a  
47 controlled substance), 215.16 (intimidating a victim or witness in the  
48 second degree), 120.18 (menacing a police officer or peace officer),  
49 120.02 (reckless assault of a child), 120.60 (stalking in the first  
50 degree), 121.12 (strangulation in the second degree), 130.30 (rape in  
51 the second degree), 130.45 (criminal sexual act in the second degree),  
52 130.65 (sexual abuse in the first degree), 130.80 (course of sexual  
53 conduct against a child in the second degree), 130.66 (aggravated sexual  
54 abuse in the third degree), 135.65 (coercion in the first degree),  
55 265.17 (criminal purchase or disposal of a weapon), 120.25 (reckless

1 endangerment in the first degree), 165.05 (robbery in the third degree),  
2 or 215.12 (tampering with a witness in the second degree).

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

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

30 § 5. This act shall take effect on the first of November next succeed-  
31 ing the date upon which it shall have become a law.