

# STATE OF NEW YORK

3113

2019-2020 Regular Sessions

## IN SENATE

February 4, 2019

Introduced by Sen. AKSHAR -- 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 the penalties for criminal use of a firearm in the second degree 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. Section 265.08 of the penal law, as added by chapter 233 of  
2 the laws of 1980, is amended to read as follows:  
3 § 265.08 Criminal use of a firearm in the second degree.  
4 A person is guilty of criminal use of a firearm in the second degree  
5 when he commits any class [E] B violent felony offense as defined in  
6 paragraph [~~B~~] (a) of subdivision one of section 70.02 and he either:  
7 (1) possesses a deadly weapon, if the weapon is a loaded weapon from  
8 which a shot, readily capable of producing death or other serious injury  
9 may be discharged; or  
10 (2) displays what appears to be a pistol, revolver, rifle, shotgun,  
11 machine gun or other firearm.  
12 Criminal use of a firearm in the second degree is a class [E] B felo-  
13 ny.  
14 § 2. Section 265.09 of the penal law, as amended by chapter 650 of the  
15 laws of 1996, subdivision 2 as amended by chapter 1 of the laws of 2013,  
16 is amended to read as follows:  
17 § 265.09 Criminal use of a firearm in the first degree.  
18 (1) A person is guilty of criminal use of a firearm in the first  
19 degree when he commits [~~any class B violent felony offense as defined in~~  
20 ~~paragraph (a) of subdivision one of section 70.02]~~ any second violent  
21 felony offense as defined in section 70.04 and he either:  
22 (a) possesses a deadly weapon, if the weapon is a loaded weapon from  
23 which a shot, readily capable of producing death or other serious injury  
24 may be discharged; or

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

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

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

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

30 § 3. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the  
31 penal law, paragraph (a) as amended by chapter 189 of the laws of 2018  
32 and paragraph (b) as amended by chapter 476 of the laws of 2018, are  
33 amended to read as follows:

34 (a) Class B violent felony offenses: an attempt to commit the class  
35 A-I felonies of murder in the second degree as defined in section  
36 125.25, kidnapping in the first degree as defined in section 135.25, and  
37 arson in the first degree as defined in section 150.20; manslaughter in  
38 the first degree as defined in section 125.20, aggravated manslaughter  
39 in the first degree as defined in section 125.22, rape in the first  
40 degree as defined in section 130.35, criminal sexual act in the first  
41 degree as defined in section 130.50, aggravated sexual abuse in the  
42 first degree as defined in section 130.70, course of sexual conduct  
43 against a child in the first degree as defined in section 130.75;  
44 assault in the first degree as defined in section 120.10, kidnapping in  
45 the second degree as defined in section 135.20, burglary in the first  
46 degree as defined in section 140.30, arson in the second degree as  
47 defined in section 150.15, robbery in the first degree as defined in  
48 section 160.15, sex trafficking as defined in paragraphs (a) and (b) of  
49 subdivision five of section 230.34, sex trafficking of a child as  
50 defined in section 230.34-a, incest in the first degree as defined in  
51 section 255.27, criminal possession of a weapon in the first degree as  
52 defined in section 265.04, criminal use of a firearm in the [~~first~~  
53 second] degree as defined in section [~~265.09~~] 265.08, criminal sale of a  
54 firearm in the first degree as defined in section 265.13, aggravated  
55 assault upon a police officer or a peace officer as defined in section  
56 120.11, gang assault in the first degree as defined in section 120.07,

1 intimidating a victim or witness in the first degree as defined in  
2 section 215.17, hindering prosecution of terrorism in the first degree  
3 as defined in section 490.35, criminal possession of a chemical weapon  
4 or biological weapon in the second degree as defined in section 490.40,  
5 and criminal use of a chemical weapon or biological weapon in the third  
6 degree as defined in section 490.47.

7 (b) Class C violent felony offenses: an attempt to commit any of the  
8 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
9 vated criminally negligent homicide as defined in section 125.11, aggra-  
10 vated manslaughter in the second degree as defined in section 125.21,  
11 aggravated sexual abuse in the second degree as defined in section  
12 130.67, assault on a peace officer, police officer, firefighter or emer-  
13 gency medical services professional as defined in section 120.08,  
14 assault on a judge as defined in section 120.09, gang assault in the  
15 second degree as defined in section 120.06, strangulation in the first  
16 degree as defined in section 121.13, burglary in the second degree as  
17 defined in section 140.25, robbery in the second degree as defined in  
18 section 160.10, criminal possession of a weapon in the second degree as  
19 defined in section 265.03, [~~criminal use of a firearm in the second~~  
20 ~~degree as defined in section 265.08,~~] criminal sale of a firearm in the  
21 second degree as defined in section 265.12, criminal sale of a firearm  
22 with the aid of a minor as defined in section 265.14, aggravated crimi-  
23 nal possession of a weapon as defined in section 265.19, soliciting or  
24 providing support for an act of terrorism in the first degree as defined  
25 in section 490.15, hindering prosecution of terrorism in the second  
26 degree as defined in section 490.30, and criminal possession of a chemi-  
27 cal weapon or biological weapon in the third degree as defined in  
28 section 490.37.

29 § 4. This act shall take effect on the ninetieth day after it shall  
30 have become a law.