

STATE OF NEW YORK

1414--A

Cal. No. 87

2019-2020 Regular Sessions

IN SENATE

January 14, 2019

Introduced by Sens. PARKER, CARLUCCI, COMRIE, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Section 265.00 of the penal law is amended by adding a new subdivision 3-a to read as follows:

3-a. "Major component of a firearm, rifle or shotgun" means the barrel, the slide or cylinder, the frame, or receiver of the firearm, rifle, or shotgun.

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

§ 265.50 Criminal manufacture, sale, or transport of an undetectable firearm, rifle or shotgun.

A person is guilty of criminal manufacture, sale, or transport of an undetectable firearm, rifle or shotgun when he or she knowingly manufactures, causes to be manufactured, sells, exchanges, gives, disposes of, transports, ships, or possesses with the intent to sell:

1. any firearm, rifle or shotgun that, after the removal of grips, stocks and magazines, is not detectable by a metal detector calibrated to detect the Security Exemplar, as defined pursuant to 18 U.S.C. § 922(p); or

2. any major component of a firearm, rifle or shotgun that, if subject to the types of detection devices commonly used at airports for security screening, does not generate an image that adequately displays the shape of the component.

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

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Criminal manufacture, sale, or transport of an undetectable firearm, rifle or shotgun is a class D felony.

§ 265.55 Criminal possession of an undetectable firearm, rifle or shotgun.

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

1. any firearm, rifle or shotgun that, after the removal of grips, stocks and magazines, is not detectable by a metal detector calibrated to detect the Security Exemplar, as defined pursuant to 18 U.S.C. § 922(p); or

2. any major component of a firearm, rifle or shotgun that, if subject to the types of detection devices commonly used at airports for security screening, does not generate an image that adequately displays the shape of the component.

Criminal possession of an undetectable firearm, rifle or shotgun is a class E felony.

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

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

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

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

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, labor trafficking as defined in paragraphs (a) and (b) of subdivision three of section 135.35, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section

1 240.63, [~~and~~] aggravated unpermitted use of indoor pyrotechnics in the
2 first degree as defined in section 405.18, and criminal manufacture,
3 sale, or transport of an undetectable firearm, rifle or shotgun as
4 defined in section 265.50.

5 § 5. The opening paragraph of paragraph (c) of subdivision 2 of
6 section 70.02 of the penal law, as amended by chapter 1 of the laws of
7 2013, is amended to read as follows:

8 Except as provided in subdivision six of section 60.05, the sentence
9 imposed upon a person who stands convicted of the class D violent felony
10 offenses of criminal possession of a weapon in the third degree as
11 defined in subdivision five, seven, eight or nine of section 265.02,
12 criminal sale of a firearm in the third degree as defined in section
13 265.11 [~~or~~], the class E violent felonies of attempted criminal
14 possession of a weapon in the third degree as defined in subdivision
15 five, seven, eight or nine of section 265.02, or criminal manufacture,
16 sale, or transport of an undetectable firearm, rifle or shotgun as
17 defined in section 265.50 must be a sentence to a determinate period of
18 imprisonment, or, in the alternative, a definite sentence of imprison-
19 ment for a period of no less than one year, except that:

20 § 6. Paragraph (a) of subdivision 1 of section 460.10 of the penal
21 law, as amended by chapter 189 of the laws of 2018, is amended to read
22 as follows:

23 (a) Any of the felonies set forth in this chapter: sections 120.05,
24 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-
25 ing to strangulation; sections 125.10 to 125.27 relating to homicide;
26 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and
27 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to
28 labor trafficking; section 135.65 relating to coercion; sections 140.20,
29 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and
30 145.12 relating to criminal mischief; article one hundred fifty relating
31 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
32 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
33 care fraud; article one hundred sixty relating to robbery; sections
34 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
35 stolen property; sections 165.72 and 165.73 relating to trademark coun-
36 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
37 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
38 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
39 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating
40 to criminal diversion of prescription medications and prescriptions;
41 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,
42 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,
43 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15,
44 187.20 and 187.25 relating to residential mortgage fraud, sections
45 190.40 and 190.42 relating to criminal usury; section 190.65 relating to
46 schemes to defraud; any felony defined in article four hundred ninety-
47 six; sections 205.60 and 205.65 relating to hindering prosecution;
48 sections 210.10, 210.15, and 215.51 relating to perjury and contempt;
49 section 215.40 relating to tampering with physical evidence; sections
50 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,
51 220.43, 220.46, 220.55, 220.60, 220.65 and 220.77 relating to controlled
52 substances; sections 225.10 and 225.20 relating to gambling; sections
53 230.25, 230.30, and 230.32 relating to promoting prostitution; section
54 230.34 relating to sex trafficking; section 230.34-a relating to sex
55 trafficking of a child; sections 235.06, 235.07, 235.21 and 235.22
56 relating to obscenity; sections 263.10 and 263.15 relating to promoting

1 a sexual performance by a child; sections 265.02, 265.03, 265.04,
2 265.11, 265.12, 265.13 and the provisions of section 265.10 which
3 constitute a felony relating to firearms and other dangerous weapons;
4 sections 265.14 and 265.16 relating to criminal sale of a firearm;
5 section 265.50 relating to the criminal manufacture, sale or transport
6 of an undetectable firearm, rifle or shotgun; section 275.10, 275.20,
7 275.30, or 275.40 relating to unauthorized recordings; and sections
8 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

9 § 7. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
10 procedure law, as amended by chapter 1 of the laws of 2019, is amended
11 to read as follows:

12 (b) Any of the following felonies: assault in the second degree as
13 defined in section 120.05 of the penal law, assault in the first degree
14 as defined in section 120.10 of the penal law, reckless endangerment in
15 the first degree as defined in section 120.25 of the penal law, promot-
16 ing a suicide attempt as defined in section 120.30 of the penal law,
17 strangulation in the second degree as defined in section 121.12 of the
18 penal law, strangulation in the first degree as defined in section
19 121.13 of the penal law, criminally negligent homicide as defined in
20 section 125.10 of the penal law, manslaughter in the second degree as
21 defined in section 125.15 of the penal law, manslaughter in the first
22 degree as defined in section 125.20 of the penal law, murder in the
23 second degree as defined in section 125.25 of the penal law, murder in
24 the first degree as defined in section 125.27 of the penal law, rape in
25 the third degree as defined in section 130.25 of the penal law, rape in
26 the second degree as defined in section 130.30 of the penal law, rape in
27 the first degree as defined in section 130.35 of the penal law, criminal
28 sexual act in the third degree as defined in section 130.40 of the penal
29 law, criminal sexual act in the second degree as defined in section
30 130.45 of the penal law, criminal sexual act in the first degree as
31 defined in section 130.50 of the penal law, sexual abuse in the first
32 degree as defined in section 130.65 of the penal law, unlawful imprison-
33 ment in the first degree as defined in section 135.10 of the penal law,
34 kidnapping in the second degree as defined in section 135.20 of the
35 penal law, kidnapping in the first degree as defined in section 135.25
36 of the penal law, labor trafficking as defined in section 135.35 of the
37 penal law, aggravated labor trafficking as defined in section 135.37 of
38 the penal law, custodial interference in the first degree as defined in
39 section 135.50 of the penal law, coercion in the first degree as defined
40 in section 135.65 of the penal law, criminal trespass in the first
41 degree as defined in section 140.17 of the penal law, burglary in the
42 third degree as defined in section 140.20 of the penal law, burglary in
43 the second degree as defined in section 140.25 of the penal law,
44 burglary in the first degree as defined in section 140.30 of the penal
45 law, criminal mischief in the third degree as defined in section 145.05
46 of the penal law, criminal mischief in the second degree as defined in
47 section 145.10 of the penal law, criminal mischief in the first degree
48 as defined in section 145.12 of the penal law, criminal tampering in the
49 first degree as defined in section 145.20 of the penal law, arson in the
50 fourth degree as defined in section 150.05 of the penal law, arson in
51 the third degree as defined in section 150.10 of the penal law, arson in
52 the second degree as defined in section 150.15 of the penal law, arson
53 in the first degree as defined in section 150.20 of the penal law, grand
54 larceny in the fourth degree as defined in section 155.30 of the penal
55 law, grand larceny in the third degree as defined in section 155.35 of
56 the penal law, grand larceny in the second degree as defined in section

1 155.40 of the penal law, grand larceny in the first degree as defined in
2 section 155.42 of the penal law, health care fraud in the fourth degree
3 as defined in section 177.10 of the penal law, health care fraud in the
4 third degree as defined in section 177.15 of the penal law, health care
5 fraud in the second degree as defined in section 177.20 of the penal
6 law, health care fraud in the first degree as defined in section 177.25
7 of the penal law, robbery in the third degree as defined in section
8 160.05 of the penal law, robbery in the second degree as defined in
9 section 160.10 of the penal law, robbery in the first degree as defined
10 in section 160.15 of the penal law, unlawful use of secret scientific
11 material as defined in section 165.07 of the penal law, criminal
12 possession of stolen property in the fourth degree as defined in section
13 165.45 of the penal law, criminal possession of stolen property in the
14 third degree as defined in section 165.50 of the penal law, criminal
15 possession of stolen property in the second degree as defined by section
16 165.52 of the penal law, criminal possession of stolen property in the
17 first degree as defined by section 165.54 of the penal law, trademark
18 counterfeiting in the second degree as defined in section 165.72 of the
19 penal law, trademark counterfeiting in the first degree as defined in
20 section 165.73 of the penal law, forgery in the second degree as defined
21 in section 170.10 of the penal law, forgery in the first degree as
22 defined in section 170.15 of the penal law, criminal possession of a
23 forged instrument in the second degree as defined in section 170.25 of
24 the penal law, criminal possession of a forged instrument in the first
25 degree as defined in section 170.30 of the penal law, criminal
26 possession of forgery devices as defined in section 170.40 of the penal
27 law, falsifying business records in the first degree as defined in
28 section 175.10 of the penal law, tampering with public records in the
29 first degree as defined in section 175.25 of the penal law, offering a
30 false instrument for filing in the first degree as defined in section
31 175.35 of the penal law, issuing a false certificate as defined in
32 section 175.40 of the penal law, criminal diversion of prescription
33 medications and prescriptions in the second degree as defined in section
34 178.20 of the penal law, criminal diversion of prescription medications
35 and prescriptions in the first degree as defined in section 178.25 of
36 the penal law, residential mortgage fraud in the fourth degree as
37 defined in section 187.10 of the penal law, residential mortgage fraud
38 in the third degree as defined in section 187.15 of the penal law, resi-
39 dential mortgage fraud in the second degree as defined in section 187.20
40 of the penal law, residential mortgage fraud in the first degree as
41 defined in section 187.25 of the penal law, escape in the second degree
42 as defined in section 205.10 of the penal law, escape in the first
43 degree as defined in section 205.15 of the penal law, absconding from
44 temporary release in the first degree as defined in section 205.17 of
45 the penal law, promoting prison contraband in the first degree as
46 defined in section 205.25 of the penal law, hindering prosecution in the
47 second degree as defined in section 205.60 of the penal law, hindering
48 prosecution in the first degree as defined in section 205.65 of the
49 penal law, sex trafficking as defined in section 230.34 of the penal
50 law, sex trafficking of a child as defined in section 230.34-a of the
51 penal law, criminal possession of a weapon in the third degree as
52 defined in subdivisions two, three and five of section 265.02 of the
53 penal law, criminal possession of a weapon in the second degree as
54 defined in section 265.03 of the penal law, criminal possession of a
55 weapon in the first degree as defined in section 265.04 of the penal
56 law, manufacture, transport, disposition and defacement of weapons and

1 dangerous instruments and appliances defined as felonies in subdivisions
2 one, two, and three of section 265.10 of the penal law, sections 265.11,
3 265.12 and 265.13 of the penal law, or prohibited use of weapons as
4 defined in subdivision two of section 265.35 of the penal law, relating
5 to firearms and other dangerous weapons, criminal manufacture, sale or
6 transport of an undetectable firearm, rifle or shotgun as defined in
7 section 265.50 of the penal law, or failure to disclose the origin of a
8 recording in the first degree as defined in section 275.40 of the penal
9 law;

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