

# STATE OF NEW YORK

1783

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

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

AN ACT to amend the penal law, the general business law and the vehicle and traffic law, in relation to criminal use of a firearm; and to repeal sections 265.08 and 265.09 of the penal law relating thereto

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

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

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, sex trafficking as defined in paragraphs (a) and (b) of subdivision five of section 230.34, sex trafficking of a child as defined in section 230.34-a, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, [~~criminal use of a firearm in the first degree as defined in section 265.09,~~] criminal sale of a firearm in the

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

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1 first degree as defined in section 265.13, aggravated assault upon a  
2 police officer or a peace officer as defined in section 120.11, gang  
3 assault in the first degree as defined in section 120.07, intimidating a  
4 victim or witness in the first degree as defined in section 215.17,  
5 hindering prosecution of terrorism in the first degree as defined in  
6 section 490.35, criminal possession of a chemical weapon or biological  
7 weapon in the second degree as defined in section 490.40, and criminal  
8 use of a chemical weapon or biological weapon in the third degree as  
9 defined in section 490.47.

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

32 § 2. Sections 265.08 and 265.09 of the penal law are REPEALED and a  
33 new section 265.50 is added to read as follows:

34 § 265.50 Criminal use of a firearm.

35 A person is guilty of criminal use of a firearm when he or she commits  
36 a class A felony or a violent felony offense, as defined in subdivision  
37 one of section 70.02 of this chapter and he or she either:

38 1. possesses a deadly weapon, if such weapon is a loaded weapon from  
39 which a shot, readily capable of producing death or serious physical  
40 injury may be discharged; or

41 2. displays what appears to be or is a pistol, revolver, rifle, shot-  
42 gun, machine gun or other firearm.

43 Criminal use of a firearm is a class A-I felony.

44 § 3. Paragraph f of subdivision 1 of section 410 of the general busi-  
45 ness law, as amended by chapter 189 of the laws of 2018, is amended to  
46 read as follows:

47 f. Conviction of any of the following crimes subsequent to the issu-  
48 ance of a license or registration pursuant to this article: fraud pursu-  
49 ant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and  
50 190.65; falsifying business records pursuant to section 175.10; grand  
51 larceny pursuant to article 155; bribery pursuant to sections 180.03,  
52 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12,  
53 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40;  
54 assault pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery  
55 pursuant to article 160; homicide pursuant to sections 125.25 and  
56 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping

1 and unlawful imprisonment pursuant to sections 135.10, 135.20 and  
2 135.25; unlawful weapons possession pursuant to sections 265.02, 265.03  
3 and 265.04; criminal use of a weapon pursuant to former sections 265.08  
4 and 265.09, and section 265.50; criminal sale of a weapon pursuant to  
5 sections 265.11 and 265.12; compelling prostitution pursuant to section  
6 230.33; sex trafficking pursuant to section 230.34; sex trafficking of a  
7 child pursuant to section 230.34-a; and sex offenses pursuant to article  
8 130 of the penal law. Provided, however, that for the purposes of this  
9 article, none of the following shall be considered criminal convictions  
10 or reported as such: (i) a conviction for which an executive pardon has  
11 been issued pursuant to the executive law; (ii) a conviction which has  
12 been vacated and replaced by a youthful offender finding pursuant to  
13 article seven hundred twenty of the criminal procedure law, or the  
14 applicable provisions of law of any other jurisdiction; or (iii) a  
15 conviction the records of which have been expunged or sealed pursuant to  
16 the applicable provisions of the laws of this state or of any other  
17 jurisdiction; and (iv) a conviction for which other evidence of success-  
18 ful rehabilitation to remove the disability has been issued.

19 § 4. Paragraph (a) of subdivision 4 of section 509-cc of the vehicle  
20 and traffic law, as amended by chapter 189 of the laws of 2018, is  
21 amended to read as follows:

22 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of  
23 subdivision one and paragraph (a) of subdivision two of this section  
24 that result in permanent disqualification shall include a conviction  
25 under sections 125.12, 125.13, 125.14, 125.15, 125.20, 125.21, 125.22,  
26 125.25, 125.26, 125.27, 130.30, 130.35, 130.45, 130.50, 130.65, 130.66,  
27 130.67, 130.70, 130.75, 130.80, 130.90, 130.95, 130.96, 135.25, 150.20,  
28 230.30, 230.32, 230.34, 230.34-a, 235.22, 263.05, 263.10, 263.11,  
29 263.15, 263.16 and 265.50 of the penal law or an attempt to commit any  
30 of the aforesaid offenses under section 110.00 of the penal law, or any  
31 offenses committed under a former section of the penal law which would  
32 constitute violations of the aforesaid sections of the penal law, or any  
33 offenses committed outside this state which would constitute violations  
34 of the aforesaid sections of the penal law.

35 § 5. This act shall take effect on the first of November next succeed-  
36 ing the date on which it shall have become a law; provided that the  
37 provisions of sections one and two of this act shall only apply to  
38 offenses committed on or after such effective date.