STATE OF NEW YORK

1456

2021-2022 Regular Sessions

IN SENATE

January 12, 2021

Introduced by Sen. BRESLIN -- 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 criminal possession of a weapon

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

Section 1. Section 265.01 of the penal law, as amended by chapter 1 of the laws of 2013, subdivision 1 as amended by chapter 34 and subdivision 2 as amended by chapter 146 of the laws of 2019, is amended to read as follows:

§ 265.01 Criminal possession of a weapon in the fourth degree.

A person is guilty of criminal possession of a weapon in the fourth degree when:

(1) He or she possesses any firearm, electronic dart gun, electronic stun gun, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken, or "Kung Fu star";

(2) He or she possesses any dagger, dangerous knife, dirk, machete, razor, stiletto, imitation pistol, undetectable knife or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or

(3)[~~; or~~

~~(4) He possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense; or~~

~~(5) He possesses any dangerous or deadly weapon and is not a citizen of the United States; or~~

~~(6) He is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand~~

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

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~~of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.~~

~~(7) He knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.~~

~~(8) He possesses any armor piercing ammunition with intent to use the same unlawfully against another~~].

Criminal possession of a weapon in the fourth degree is a class A misdemeanor.

§ 2. Section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, subdivision 8 as amended and subdivisions 9 and 10 as added by chapter 1 of the laws of 2013, is amended to read as follows:

§ 265.02 Criminal possession of a weapon in the third degree.

A person is guilty of criminal possession of a weapon in the third degree when:

(1) Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two[~~,~~] **or** three [~~or five~~] of section 265.01, and has been previously convicted of any crime; or

(2) Such person possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or

(3) Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or

(5) (i) Such person possesses three or more firearms; or (ii) such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter [~~within the five years immediately preceding the commission of the offense~~] and such possession did not take place in the person's home or place of business; or

(6) Such person knowingly possesses any disguised gun; or

(7) Such person possesses an assault weapon; or

(8) Such person possesses a large capacity ammunition feeding device. For purposes of this subdivision, a large capacity ammunition feeding device shall not include an ammunition feeding device lawfully possessed by such person before the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision, that has a capacity of, or that can be readily restored or converted to accept more than seven but less than eleven rounds of ammunition, or that was manufactured before September thirteenth, nineteen hundred ninety-four, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; or

(9) Such person possesses an unloaded firearm and also commits a drug trafficking felony as defined in subdivision twenty-one of section 10.00 of this chapter as part of the same criminal transaction; or

(10) Such person possesses an unloaded firearm and also commits any violent felony offense as defined in subdivision one of section 70.02 of this chapter as part of the same criminal transaction[~~,~~]**; or**

(11) Such person possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense; or

(12) Such person is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction; or

(13) Such person knowingly possesses a bullet containing an explosive substance designed to detonate upon impact; or

(14) Such person possesses any armor piercing ammunition with intent to use the same unlawfully against another.

Criminal possession of a weapon in the third degree is a class D felony.

§ 3. Paragraph 5 of subdivision a of section 265.20 of the penal law, as amended by chapter 235 of the laws of 2007, is amended to read as follows:

5. Possession of a rifle or shotgun by a person other than a person who has been convicted of a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of this chapter, who has been convicted as specified in subdivision [~~four~~] nine of section [~~265.01~~] 265.02 to whom a certificate of good conduct has been issued pursuant to section seven hundred three-b of the correction law.

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