

# STATE OF NEW YORK

1701

2023-2024 Regular Sessions

## IN SENATE

January 13, 2023

Introduced by Sens. GIANARIS, BRESLIN, KRUEGER, LIU, RIVERA, SANDERS, SERRANO, STAVISKY -- 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 requiring persons possessing a firearm to hold a firearms safety certificate; and to provide technical corrections to such law

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

1 Section 1. Section 265.01 of the penal law, as amended by chapter 1 of  
2 the laws of 2013, subdivision 1 as amended by chapter 34 of the laws of  
3 2019, subdivision 2 as amended by chapter 146 of the laws of 2019,  
4 subdivision 8 as amended by chapter 520 of the laws of 2021, subdivision  
5 9 as added by chapter 519 of the laws of 2021, subdivision 9 as amended  
6 by chapter 149 of the laws of 2022 and subdivision 10 as amended by  
7 chapter 94 of the laws of 2022, is amended to read as follows:

8 § 265.01 Criminal possession of a weapon in the fourth degree.

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

11 (1) [~~He or she~~] Such person possesses any firearm, electronic dart  
12 gun, electronic stun gun, switchblade knife, pilum ballistic knife,  
13 metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic  
14 knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace  
15 type slingshot or slungshot, [~~shirken~~] shuriken, or "Kung Fu star"[+].

16 (2) [~~He or she~~] Such person possesses any dagger, dangerous knife,  
17 dirk, machete, razor, stiletto, imitation pistol, undetectable knife or  
18 any other dangerous or deadly instrument or weapon with intent to use  
19 the same unlawfully against another~~[+]~~.

20 (3)~~[+]~~ Such person possesses a firearm, not being the holder of a  
21 valid firearms safety certificate issued pursuant to section 400.15 of  
22 this chapter.

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

LBD05264-01-3

1 (4) [~~He~~] Such person possesses a rifle, shotgun, antique firearm,  
2 black powder rifle, black powder shotgun, or any muzzle-loading firearm,  
3 and has been convicted of a felony or serious offense[~~+-or~~].

4 (5) [~~He~~] Such person possesses any dangerous or deadly weapon and is  
5 not a citizen of the United States[~~+-or~~].

6 (6) [~~He is a person who~~] Such person has been certified not suitable  
7 to possess a rifle or shotgun, as defined in subdivision sixteen of  
8 section 265.00 of this article, and refuses to yield possession of such  
9 rifle or shotgun upon the demand of a police officer. Whenever a person  
10 is certified not suitable to possess a rifle or shotgun, a member of the  
11 police department to which such certification is made, or of the state  
12 police, shall forthwith seize any rifle or shotgun possessed by such  
13 person. A rifle or shotgun seized as [~~herein~~] provided in this subdivi-  
14 sion shall not be destroyed, but shall be delivered to the headquarters  
15 of such police department, or state police, and there retained until the  
16 aforesaid certificate has been rescinded by the director or physician in  
17 charge, or other disposition of such rifle or shotgun has been ordered  
18 or authorized by a court of competent jurisdiction.

19 (7) [~~He~~] Such person knowingly possesses a bullet containing an  
20 explosive substance designed to detonate upon impact.

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

23 (9) Such person possesses a major component of a firearm, rifle, or  
24 shotgun and such person is prohibited from possessing a shotgun or rifle  
25 pursuant to:

26 (i) this article;

27 (ii) subsection (g) of section 922 of title 18 of the United States  
28 Code; or

29 (iii) a temporary or final extreme risk protection order issued under  
30 article sixty-three-A of the civil practice law and rules[~~+-or~~].

31 [~~9~~] (9-a) Such person is not licensed as a gunsmith or a dealer in  
32 firearms pursuant to section 400.00 of this chapter and, knowing it is a  
33 ghost gun, such person possesses a ghost gun, provided that a person  
34 shall not be guilty under this subdivision when he or she (a) voluntar-  
35 ily surrenders such ghost gun to any law enforcement official designated  
36 pursuant to subparagraph (f) of paragraph one of subdivision [~~a~~] a of  
37 section 265.20 of this article; or (b) for a period of six months after  
38 the effective date of this section possesses a ghost gun prior to  
39 serialization and registration of such ghost gun pursuant to section  
40 265.07 of this article.

41 (10) Such person is not licensed as a gunsmith or dealer in firearms  
42 pursuant to section 400.00 of this chapter and, knowing it is an unserial-  
43 ized frame or receiver or unfinished frame or receiver, such person  
44 possesses an unserialized frame or receiver or unfinished frame or  
45 receiver, provided that for a period of six months after the effective  
46 date of this subdivision, a person shall not be guilty under this subdivi-  
47 sion when such person: (a) voluntarily surrenders such unserialized  
48 frame or receiver or unfinished frame or receiver to any law enforcement  
49 official designated pursuant to subparagraph (f) of paragraph one of  
50 subdivision [~~a~~] a of section 265.20 of this article; or (b) possesses  
51 such unserialized frame or receiver or unfinished frame or receiver  
52 prior to serialization of such unserialized frame or receiver or unfin-  
53 ished frame or receiver in accordance with the requirements imposed on  
54 licensed importers and licensed manufacturers pursuant to subsection (i)  
55 of Section 923 of Title 18 of the United States Code and regulations  
56 issued pursuant thereto, except for antique firearms as defined in

1 subdivision fourteen of section 265.00 of this article, as added by  
2 chapter nine hundred eighty-six of the laws of nineteen hundred seven-  
3 ty-four, or any firearm, rifle or shotgun manufactured prior to nineteen  
4 hundred sixty-eight.

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

7 § 2. The penal law is amended by adding a new section 400.15 to read  
8 as follows:

9 § 400.15 Firearms safety certificate.

10 1. For the purposes of this section:

11 (a) "Commissioner" means the commissioner of the police department of  
12 a city having a population of one million or more.

13 (b) "Sheriff" means the sheriff of the county in which an applicant  
14 resides, except in a city having a population of one million or more.

15 2. No person shall possess a firearm unless such person holds a  
16 firearms safety certificate issued pursuant to this section.

17 3. Every person applying for a firearms safety certificate shall  
18 submit an application to the sheriff or the commissioner if such person  
19 resides in a city with a population of one million or more. Such appli-  
20 cation shall be in such form and content as shall be established by the  
21 sheriff or the commissioner, and shall include:

22 (a) the applicant's name, address, residence telephone number, gender,  
23 race, height, weight, date of birth, citizenship, thumbprint and driv-  
24 er's license or non-driver identification card number;

25 (b) the applicant's signature; and

26 (c) an oath that all information in the application is true, subject  
27 to the penalties of perjury.

28 4. The course of instruction for the issuance of a firearms safety  
29 certificate shall include the successful completion by the applicant of:

30 (a) not less than five hours of classroom instruction on:

31 (i) the safe use and handling of firearms;

32 (ii) the methods for safely storing and securing firearms, and keeping  
33 children safe when such weapons are present; and

34 (iii) the applicable federal, state and local laws relating to the  
35 purchase, sale, possession, transportation and storage of firearms;

36 (b) not less than two hours of live firing instruction at a shooting  
37 range using the type of firearm the applicant anticipates purchasing,  
38 possessing or acquiring. Notwithstanding any other provision of law, a  
39 person attending a course of instruction for the issuance of a firearm  
40 safety certificate may possess a firearm for the limited purpose of  
41 fulfilling the requirements of this paragraph while under the super-  
42 vision of his or her instructor; and

43 (c) a safe-handling of a firearm demonstration as attested to by a  
44 duly authorized instructor.

45 5. Every firearms safety course, for the completion of which an appli-  
46 cant is granted a firearms safety certificate, shall be approved by the  
47 sheriff or the commissioner and shall be conducted by a duly authorized  
48 instructor. The sheriff or the commissioner may, for the purposes of  
49 firearms safety courses required by this section, provide for the  
50 approval of firearm safety courses required or provided for pursuant to  
51 any federal or state law.

52 6. Upon the successful completion of a firearms safety course by an  
53 applicant, the duly authorized instructor of such course shall provide  
54 the applicant with a signed affidavit attesting to the applicant's  
55 successful completion of the course. Such affidavit shall include the  
56 name, address and telephone number of the duly authorized instructor;

1 the name of the applicant; and the dates and places that the course was  
2 conducted.

3 7. Upon receipt of the affidavit required by subdivision six of this  
4 section, the applicant shall submit a copy of such affidavit to the  
5 sheriff or the commissioner and he or she shall administer a written  
6 examination, established by him or her, demonstrating knowledge of  
7 firearms safety and laws applicable to firearms.

8 (a) A firearms safety certificate shall be issued to an applicant who  
9 scores seventy-five percent or higher on such examination.

10 (b) If an applicant fails such written examination, he or she may  
11 retake such examination at least twenty-four hours after a prior  
12 attempt. The same version of such written examination shall not be given  
13 to an applicant upon any two consecutive takings thereof. No applicant  
14 shall be offered the written examination more than three times. After  
15 the third failure by an applicant, he or she shall be required to again  
16 successfully complete the requirements of subdivisions four and six of  
17 this section.

18 (c) Applicants may be charged a fee to cover the costs of administer-  
19 ing the written examination.

20 8. Upon successful completion of the requirements of subdivision seven  
21 of this section by an applicant, the sheriff or the commissioner shall  
22 issue such applicant a firearms safety certificate. Firearms safety  
23 certificates shall not be transferable. The holder thereof shall store  
24 such certificate in the place where his or her firearms are stored,  
25 except that such certificate shall be carried on the person of the hold-  
26 er if a firearm is possessed outside of the holder's residence or place  
27 of business. Upon request of a police officer, a firearms safety certifi-  
28 cate shall be displayed by the holder to such officer.

29 9. Every firearms safety certificate issued pursuant to this section  
30 shall be valid for a period of two years, and may be renewed upon  
31 completion of the requirements of this section.

32 10. No person shall sell or transfer possession of a firearm to any  
33 person who does not hold a firearms safety certificate.

34 11. A firearms safety certificate shall be revoked:

35 (a) for the violation of any provision of law relating to firearms;

36 (b) for fraud, misrepresentation or bribery in the application for and  
37 issuance of the firearms safety certificate;

38 (c) if the holder is disqualified from possessing a firearm; or

39 (d) the occurrence of any circumstance which would have disqualified  
40 the holder from being issued a firearms safety certificate.

41 12. This section shall not apply to:

42 (a) police officers as defined in subdivision thirty-four of section  
43 1.20 of the criminal procedure law, or retired police officer, who upon  
44 separation from a law enforcement agency was immediately entitled to  
45 receive retirement benefits pursuant to the retirement and social secu-  
46 rity law or the administrative code of the city of New York;

47 (b) peace officers as defined in section 2.10 of the criminal proce-  
48 dure law;

49 (c) licensed manufacturers, transporters and sellers of firearms who  
50 possess such weapons for purposes of wholesale or retail sales, while  
51 engaged in the scope of their licensed activities;

52 (d) nonresidents of the state participating in any lawful recreational  
53 firearms related activity, and while in the course of traveling to and  
54 from such recreation activity; or

55 (e) any person who temporarily possesses a firearm in the residence or  
56 place of business of the holder of a firearms safety certificate, and

1 such possession occurs in the course of using deadly physical force  
2 authorized by article thirty-five of this chapter.  
3 § 3. This act shall take effect on the first of January next succeed-  
4 ing the date on which it shall have become a law; provided, however,  
5 that the provisions of subdivision (3) of section 265.01 of the penal  
6 law, as added by section one of this act, and subdivision 2 of section  
7 400.15 of the penal law, as added by section two of this act, shall not  
8 apply to any person who possesses a firearm on the effective date of  
9 this act, until such person recertifies their license pursuant to subdi-  
10 vision 10 of section 400.00 of the penal law.