

STATE OF NEW YORK

9930

IN SENATE

October 11, 2024

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

AN ACT to amend the penal law, in relation to penalties for certain crimes involving criminal possession of a weapon or firearm; to amend the criminal procedure law and the family court act, in relation to the release of information pertaining to youthful and adolescent offenders; to amend the penal law, in relation to establishing the crime of criminal solicitation of a minor in a violent felony; and to repeal certain provisions of the public officers law relating to disclosure of law enforcement arrest or booking photographs of an individual

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

1 Section 1. The closing paragraph of section 265.01 of the penal law,
2 as amended by chapter 1 of the laws of 2013, is amended to read as
3 follows:
4 Criminal possession of a weapon in the fourth degree is a class [~~A~~
5 ~~misdemeanor~~] E felony.
6 § 2. The second undesignated paragraph of section 265.01-a of the
7 penal law, as separately amended by chapters 138 and 354 of the laws of
8 2019, is amended to read as follows:
9 Criminal possession of a weapon on school grounds is a class [~~E~~] D
10 felony.
11 § 3. The closing paragraph of section 265.01-b of the penal law, as
12 added by chapter 1 of the laws of 2013, is amended to read as follows:
13 Criminal possession of a firearm is a class [~~E~~] D felony.
14 § 4. The closing paragraph of section 265.02 of the penal law, as
15 amended by chapter 764 of the laws of 2005, is amended to read as
16 follows:
17 Criminal possession of a weapon in the third degree is a class [~~D~~] C
18 felony.
19 § 5. The closing paragraph of section 265.03 of the penal law, as
20 amended by chapter 742 of the laws of 2006, is amended to read as
21 follows:

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

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1 Criminal possession of a weapon in the second degree is a class [E] B
2 felony.

3 § 6. The closing paragraph of section 265.04 of the penal law, as
4 amended by chapter 764 of the laws of 2005, is amended to read as
5 follows:

6 Criminal possession of a weapon in the first degree is a class [B] A-I
7 felony.

8 § 7. The closing paragraph of section 265.08 of the penal law, as
9 added by chapter 233 of the laws of 1980, is amended to read as follows:

10 Criminal use of a firearm in the second degree is a class [E] B felo-
11 ny.

12 § 8. Section 265.09 of the penal law, as amended by chapter 650 of the
13 laws of 1996, and subdivision 2 as amended by chapter 1 of the laws of
14 2013, is amended to read as follows:

15 § 265.09 Criminal use of a firearm in the first degree.

16 (1) A person is guilty of criminal use of a firearm in the first
17 degree when [he] such person commits any class B violent felony offense
18 as defined in paragraph (a) of subdivision one of section 70.02 of this
19 chapter and [he] such person either:

20 (a) possesses a deadly weapon, if the weapon is a loaded weapon from
21 which a shot, readily capable of producing death or other serious injury
22 may be discharged; or

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

25 Criminal use of a firearm in the first degree is a class [B] A-I felo-
26 ny.

27 (2) Sentencing. Notwithstanding any other provision of law to the
28 contrary, when a person is convicted of criminal use of a firearm in the
29 first degree as defined in subdivision one of this section, the court
30 shall impose an additional consecutive sentence of five years to the
31 sentence imposed on the underlying class B violent felony offense where
32 the person convicted of such crime displays a loaded weapon from which a
33 shot, readily capable of producing death or other serious injury may be
34 discharged, in furtherance of the commission of such crime, provided,
35 however, that such additional sentence shall not be imposed if the
36 court, having regard to the nature and circumstances of the crime and to
37 the history and character of the defendant, finds on the record that
38 such additional consecutive sentence would be unduly harsh and that not
39 imposing such sentence would be consistent with the public safety and
40 would not deprecate the seriousness of the crime. Notwithstanding any
41 other provision of law to the contrary, the aggregate of the five year
42 consecutive term imposed pursuant to this subdivision and the minimum
43 term of the indeterminate sentence imposed on the underlying class B
44 violent felony shall constitute the new aggregate minimum term of impri-
45 sonment, and a person subject to such term shall be required to serve
46 the entire aggregate minimum term and shall not be eligible for release
47 on parole or conditional release during such term. This subdivision
48 shall not apply where the defendant's criminal liability for displaying
49 a loaded weapon from which a shot, readily capable of producing death or
50 other serious injury may be discharged, in furtherance of the commission
51 of crime is based on the conduct of another pursuant to section 20.00 of
52 this chapter.

53 § 9. The second undesignated paragraph of section 265.19 of the penal
54 law, as added by chapter 1 of the laws of 2013, is amended to read as
55 follows:

56 Aggravated criminal possession of a weapon is a class [E] B felony.

1 § 10. Paragraphs (a), (b), (c), and (d) of subdivision 1 of section
2 70.02 of the penal law, paragraphs (a) and (c) as amended by chapter 23
3 of the laws of 2024, paragraph (b) as amended by chapter 94 of the laws
4 of 2020, and paragraph (d) as amended by chapter 7 of the laws of 2007,
5 are amended to read as follows:

6 (a) Class B violent felony offenses: an attempt to commit the class
7 A-I felonies of murder in the second degree as defined in section
8 125.25, kidnapping in the first degree as defined in section 135.25, and
9 arson in the first degree as defined in section 150.20[+], manslaughter
10 in the first degree as defined in section 125.20, aggravated manslaught-
11 er in the first degree as defined in section 125.22, rape in the first
12 degree as defined in section 130.35, a crime formerly defined in section
13 130.50, aggravated sexual abuse in the first degree as defined in
14 section 130.70, course of sexual conduct against a child in the first
15 degree as defined in section 130.75, assault in the first degree as
16 defined in section 120.10, kidnapping in the second degree as defined in
17 section 135.20, burglary in the first degree as defined in section
18 140.30, arson in the second degree as defined in section 150.15, robbery
19 in the first degree as defined in section 160.15, sex trafficking as
20 defined in paragraphs (a) and (b) of subdivision five of section 230.34,
21 sex trafficking of a child as defined in section 230.34-a, incest in the
22 first degree as defined in section 255.27, [~~criminal possession of a
23 weapon in the first degree as defined in section 265.04, criminal use of
24 a firearm in the first degree as defined in section 265.09~~] criminal
25 possession of a weapon in the second degree as defined in section
26 265.03, criminal use of a firearm in the second degree as defined in
27 section 265.08, aggravated criminal possession of a weapon as defined in
28 section 265.19, criminal sale of a firearm in the first degree as
29 defined in section 265.13, aggravated assault upon a police officer or a
30 peace officer as defined in section 120.11, gang assault in the first
31 degree as defined in section 120.07, intimidating a victim or witness in
32 the first degree as defined in section 215.17, hindering prosecution of
33 terrorism in the first degree as defined in section 490.35, criminal
34 possession of a chemical weapon or biological weapon in the second
35 degree as defined in section 490.40, [~~and~~] criminal use of a chemical
36 weapon or biological weapon in the third degree as defined in section
37 490.47, and criminal solicitation of a minor in a violent felony as
38 defined in section 100.14.

39 (b) Class C violent felony offenses: an attempt to commit any of the
40 class B felonies set forth in paragraph (a) of this subdivision; aggra-
41 vated criminally negligent homicide as defined in section 125.11, aggra-
42 vated manslaughter in the second degree as defined in section 125.21,
43 aggravated sexual abuse in the second degree as defined in section
44 130.67, assault on a peace officer, police officer, firefighter or emer-
45 gency medical services professional as defined in section 120.08,
46 assault on a judge as defined in section 120.09, gang assault in the
47 second degree as defined in section 120.06, strangulation in the first
48 degree as defined in section 121.13, aggravated strangulation as defined
49 in section 121.13-a, burglary in the second degree as defined in section
50 140.25, robbery in the second degree as defined in section 160.10,
51 [~~criminal possession of a weapon in the second degree as defined in
52 section 265.03, criminal use of a firearm in the second degree as
53 defined in section 265.08~~] criminal possession of a weapon in the third
54 degree as defined in section 265.02, criminal sale of a firearm in the
55 second degree as defined in section 265.12, criminal sale of a firearm
56 with the aid of a minor as defined in section 265.14, [~~aggravated crimi-~~

1 ~~nal possession of a weapon as defined in section 265.19,~~] soliciting or
2 providing support for an act of terrorism in the first degree as defined
3 in section 490.15, hindering prosecution of terrorism in the second
4 degree as defined in section 490.30, and criminal possession of a chemi-
5 cal weapon or biological weapon in the third degree as defined in
6 section 490.37.

7 (c) Class D violent felony offenses: an attempt to commit any of the
8 class C felonies set forth in paragraph (b); reckless assault of a child
9 as defined in section 120.02, assault in the second degree as defined in
10 section 120.05, menacing a police officer or peace officer as defined in
11 section 120.18, stalking in the first degree, as defined in subdivision
12 one of section 120.60, strangulation in the second degree as defined in
13 section 121.12, rape in the second degree as defined in section 130.30,
14 a crime formerly defined in section 130.45, sexual abuse in the first
15 degree as defined in section 130.65, course of sexual conduct against a
16 child in the second degree as defined in section 130.80, aggravated
17 sexual abuse in the third degree as defined in section 130.66, facili-
18 tating a sex offense with a controlled substance as defined in section
19 130.90, labor trafficking as defined in paragraphs (a) and (b) of subdi-
20 vision three of section 135.35, [~~criminal possession of a weapon in the
21 third degree as defined in subdivision five, six, seven, eight, nine or
22 ten of section 265.02,~~] criminal sale of a firearm in the third degree
23 as defined in section 265.11, intimidating a victim or witness in the
24 second degree as defined in section 215.16, soliciting or providing
25 support for an act of terrorism in the second degree as defined in
26 section 490.10, and making a terroristic threat as defined in section
27 490.20, falsely reporting an incident in the first degree as defined in
28 section 240.60, placing a false bomb or hazardous substance in the first
29 degree as defined in section 240.62, placing a false bomb or hazardous
30 substance in a sports stadium or arena, mass transportation facility or
31 enclosed shopping mall as defined in section 240.63, aggravated unper-
32 mitted use of indoor pyrotechnics in the first degree as defined in
33 section 405.18, and criminal manufacture, sale, or transport of an unde-
34 tectable firearm, rifle or shotgun as defined in section 265.50.

35 (d) Class E violent felony offenses: an attempt to commit any of the
36 felonies of [~~criminal possession of a weapon in the third degree as
37 defined in subdivision five, six, seven or eight of section 265.02 as a
38 lesser included offense of that section as defined in section 220.20 of
39 the criminal procedure law,~~] persistent sexual abuse as defined in
40 section 130.53, aggravated sexual abuse in the fourth degree as defined
41 in section 130.65-a, falsely reporting an incident in the second degree
42 as defined in section 240.55 and placing a false bomb or hazardous
43 substance in the second degree as defined in section 240.61.

44 § 11. Paragraph (b) of subdivision 2 of section 70.02 of the penal
45 law, as amended by section 122 of subpart B of part C of chapter 62 of
46 the laws of 2011, is amended to read as follows:

47 (b) Except as provided in paragraph (b-1) of this subdivision, subdivi-
48 sion six of section 60.05 and subdivision four of this section, the
49 sentence imposed upon a person who stands convicted of a class D violent
50 felony offense, other than the offense of [~~criminal possession of a
51 weapon in the third degree as defined in subdivision five, seven or
52 eight of section 265.02 or~~] criminal sale of a firearm in the third
53 degree as defined in section 265.11, must be in accordance with the
54 applicable provisions of this chapter relating to sentencing for class D
55 felonies provided, however, that where a sentence of imprisonment is
56 imposed which requires a commitment to the state department of

1 corrections and community supervision, such sentence shall be a determi-
2 nate sentence in accordance with paragraph (c) of subdivision three of
3 this section.

4 § 12. The opening paragraph of paragraph (c) of subdivision 2 of
5 section 70.02 of the penal law, as amended by chapter 134 of the laws of
6 2019, is amended to read as follows:

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

19 § 13. Paragraphs (b) and (c) of subdivision 3 of section 70.02 of the
20 penal law, as amended by chapter 1 of the laws of 2013, are amended to
21 read as follows:

22 (b) For a class C felony, the term must be at least three and one-half
23 years and must not exceed fifteen years, provided, however, that the
24 term must be: (i) at least seven years and must not exceed twenty years
25 where the sentence is for the crime of aggravated manslaughter in the
26 second degree as defined in section 125.21 of this chapter; (ii) at
27 least seven years and must not exceed twenty years where the sentence is
28 for the crime of attempted aggravated assault upon a police officer or
29 peace officer as defined in section 120.11 of this chapter; and (iii) at
30 least three and one-half years and must not exceed twenty years where
31 the sentence is for the crime of aggravated criminally negligent homi-
32 cide as defined in section 125.11 of this chapter[~~, and (iv) at least~~
33 ~~five years and must not exceed fifteen years where the sentence is~~
34 ~~imposed for the crime of aggravated criminal possession of a weapon as~~
35 ~~defined in section 265.19 of this chapter];~~

36 (c) For a class D felony, the term must be at least two years and must
37 not exceed seven years, provided, however, that the term must be[~~+~~~~(i)~~]
38 at least two years and must not exceed eight years where the sentence is
39 for the crime of menacing a police officer or peace officer as defined
40 in section 120.18 of this chapter[~~, and (ii) at least three and one-half~~
41 ~~years and must not exceed seven years where the sentence is imposed for~~
42 ~~the crime of criminal possession of a weapon in the third degree as~~
43 ~~defined in subdivision ten of section 265.02 of this chapter];~~

44 § 14. Subparagraph (viii) of paragraph (b) of subdivision 2 of section
45 89 of the public officers law is REPEALED.

46 § 15. Section 720.15 of the criminal procedure law is amended by
47 adding two new subdivisions 5 and 6 to read as follows:

48 5. Notwithstanding any other provision of law, where an eligible youth
49 is charged with a violent felony offense as defined in section 70.02 of
50 the penal law, the arresting agency shall be authorized to release to
51 the public identifying information including the name and booking photo-
52 graph of the youth.

53 6. Notwithstanding any other provision of law, where an eligible youth
54 is charged with an offense defined in article 265 of the penal law where
55 allegations involve the use, possession or sale of a firearm, the

1 arresting agency shall be authorized to release to the public identify-
2 ing information including the name and booking photograph of the youth.

3 § 16. Section 722.21 of the criminal procedure law is amended by
4 adding a new subdivision 1-a to read as follows:

5 1-a. Notwithstanding any other provision of law, when an adolescent
6 offender is arraigned on a felony complaint alleging a felony offense
7 involving the illegal use or possession of a firearm, rifle or shotgun,
8 the adolescent offender shall be detained pursuant to the provisions of
9 this article where the court finds that release of the adolescent offen-
10 der would pose a threat to the safety of the community or another
11 person. In making such determination, the court shall consider:

12 (a) the adolescent offender's history of involvement in the criminal
13 justice system or as a juvenile delinquent;

14 (b) whether the adolescent offender has any history of violent behav-
15 ior;

16 (c) whether the adolescent offender has any known affiliations with
17 street gangs or other organized crime groups; and

18 (d) the nature of the conduct alleged in the felony complaint.

19 § 17. Subparagraphs (i) and (ii) of paragraph (c) of subdivision 2 of
20 section 722.23 of the criminal procedure law, as added by section 1-a of
21 part WWW of chapter 59 of the laws of 2017, are amended to read as
22 follows:

23 (i) the defendant caused [~~significant~~] or attempted to cause physical
24 injury to a person other than a participant in the offense; or

25 (ii) the defendant illegally used, possessed, sold or displayed a
26 firearm, shotgun, rifle or deadly weapon as defined in the penal law [~~in~~
27 ~~furtherance of such offense~~]; or

28 § 18. Subdivision 3 of section 380.1 of the family court act, as
29 amended by chapter 181 of the laws of 2000, is amended to read as
30 follows:

31 3. Except where specifically required by statute, no person shall be
32 required to divulge information pertaining to the arrest of the respond-
33 ent or any subsequent proceeding under this article; provided, however,
34 whenever a person adjudicated a juvenile delinquent [~~has been placed~~
35 ~~with the office of children and family services pursuant to section~~
36 ~~353.3 of this article, and~~] is [~~thereafter~~] enrolled as a student in a
37 public or private elementary or secondary school, the court that has
38 adjudicated such person shall provide notification of such adjudication
39 and provide records related to such adjudication necessary to ascertain
40 the nature of the conduct leading to the adjudication, including but not
41 limited to delinquency petitions, orders of the family court pursuant to
42 sections 352.1 and 351.2 of this article, and probation reports, to the
43 designated educational official of the school in which such person is
44 enrolled as a student. Such notification shall be used by the designated
45 educational official only for purposes related to the execution of the
46 student's educational plan, where applicable, successful school adjust-
47 ment, developing a safety plan to ensure such student does not create a
48 risk for the community, and reentry into the community. Such notifica-
49 tion shall be kept separate and apart from such student's school records
50 and shall be accessible only by the designated educational official.
51 Such notification shall not be part of such student's permanent school
52 record and shall not be appended to or included in any documentation
53 regarding such student and shall be destroyed at such time as such
54 student is no longer enrolled in the school district. At no time shall
55 such notification be used for any purpose other than those specified in
56 this subdivision. An order by the family court to seal records pursuant

1 to section 375.2 of this article or to expunge records pursuant to
2 section 375.3 of this article shall not impact the obligation of the
3 family court to provide such notification and records.

4 § 19. Subdivisions 2 and 3 of section 720.35 of the criminal procedure
5 law, subdivision 2 as amended by section 87 of subpart B of part C of
6 chapter 62 of the laws of 2011 and subdivision 3 as added by chapter 181
7 of the laws of 2000, are amended to read as follows:

8 2. Except where specifically required or permitted by statute or upon
9 specific authorization of the court, all official records and papers,
10 whether on file with the court, a police agency or the division of crim-
11 inal justice services, relating to a case involving a youth who has been
12 adjudicated a youthful offender, are confidential and may not be made
13 available to any person or public or private agency, other than the
14 designated educational official of the public or private elementary or
15 secondary school in which the youth is enrolled as a student [~~provided~~
16 ~~that such local educational official shall only have made available a~~
17 ~~notice of such adjudication and shall not have access to any other offi-~~
18 ~~cial records and papers~~], such youth or such youth's designated agent
19 (but only where the official records and papers sought are on file with
20 a court and request therefor is made to that court or to a clerk there-
21 of), law enforcement for the purpose of investigating and prosecuting
22 crimes subsequently committed by the youthful offender, an institution
23 to which such youth has been committed, the department of corrections
24 and community supervision and a probation department of this state that
25 requires such official records and papers for the purpose of carrying
26 out duties specifically authorized by law; provided, however, that
27 information regarding an order of protection or temporary order of
28 protection issued pursuant to section 530.12 of this chapter or a
29 warrant issued in connection therewith may be maintained on the state-
30 wide automated order of protection and warrant registry established
31 pursuant to section two hundred twenty-one-a of the executive law during
32 the period that such order of protection or temporary order of
33 protection is in full force and effect or during which such warrant may
34 be executed. Such confidential information may be made available pursu-
35 ant to law only for purposes of adjudicating or enforcing such order of
36 protection or temporary order of protection and, where provided to a
37 designated educational official, as defined in section 380.90 of this
38 chapter, for purposes related to the execution of the student's educa-
39 tional plan, where applicable, successful school adjustment, developing
40 a safety plan to ensure such student does not create a safety risk for
41 the community, and reentry into the community. Such notification shall
42 be kept separate and apart from such student's school records and shall
43 be accessible only by the designated educational official. Such notifi-
44 cation shall not be part of such student's permanent school record and
45 shall not be appended to or included in any documentation regarding such
46 student and shall be destroyed at such time as such student is no longer
47 enrolled in the school district. At no time shall such notification be
48 used for any purpose other than those specified in this subdivision.

49 3. If a youth who has been adjudicated a youthful offender is enrolled
50 as a student in a public or private elementary or secondary school the
51 court that has adjudicated the youth as a youthful offender shall
52 provide notification of such adjudication and provide records related to
53 such adjudication necessary to ascertain the nature of the conduct lead-
54 ing to the conviction and adjudication of the youth, including but not
55 limited to accusatory instruments, certificates of disposition, and
56 probation reports, to the designated educational official of the school

1 in which such youth is enrolled as a student. Such notification shall
2 be used by the designated educational official only for purposes related
3 to the execution of the student's educational plan, where applicable,
4 successful school adjustment, developing a safety plan to ensure such
5 student does not create a risk for the community, and reentry into the
6 community. Such notification shall be kept separate and apart from such
7 student's school records and shall be accessible only by the designated
8 educational official. Such notification shall not be part of such
9 student's permanent school record and shall not be appended to or
10 included in any documentation regarding such student and shall be
11 destroyed at such time as such student is no longer enrolled in the
12 school district. At no time shall such notification be used for any
13 purpose other than those specified in this subdivision.

14 § 20. The penal law is amended by adding a new section 100.14 to read
15 as follows:

16 § 100.14 Criminal solicitation of a minor in a violent felony.

17 A person is guilty of criminal solicitation of a minor in a violent
18 felony when, being over eighteen years of age, with intent that another
19 person under eighteen years of age engage in conduct that would consti-
20 tute a violent felony, as defined in section 70.02 of this chapter, such
21 person solicits, requests, commands, importunes or otherwise attempts to
22 cause such other person to engage in such conduct.

23 Criminal solicitation of a minor in a violent felony is a class B
24 felony.

25 § 21. This act shall take effect immediately.