STATE OF NEW YORK

5821

2023-2024 Regular Sessions

IN SENATE

March 17, 2023

Introduced by Sen. GALLIVAN -- 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 establishing the crime of criminal use of weapons; firing into a crowded space

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

Section 1. Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 189 of the laws of 2018, is 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; **criminal use of weapons; firing into a crowded space as defined in section 265.34;** 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 first degree as defined in section 265.13, aggravated assault upon a

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

LBD04858-01-3

police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

§ 2. Paragraph (a) of subdivision 3 of section 70.02 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

(a) For a class B felony, the term must be at least five years and must not exceed twenty-five years, provided, however, that the term must be: (i) at least ten years and must not exceed thirty years where the sentence is for the crime of aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; [~~and~~] (ii) at least ten years and must not exceed thirty years where the sentence is for the crime of aggravated manslaughter in the first degree as defined in section 125.22 of this chapter; **and (iii) at least twenty years where the sentence is for the crime of criminal use of weapons; firing into a crowded space as defined in section 265.34 of this chapter;**

§ 3. The penal law is amended by adding a new section 265.34 to read as follows:

§ 265.34 Criminal use of weapons; firing into a crowded space.

A person is guilty of criminal use of weapons; firing into a crowded space when, being eighteen years old or older, with intent to cause physical injury to another person, he or she fires a firearm into a crowded space with the intent to harm or absent the intent to harm when such an act creates a great risk of death to one or more people within the crowded space.

(i) For the purposes of this paragraph, "crowded space" shall mean a space consisting of three or more people within one general or specific area.

(ii) For the purposes of this paragraph, "great risk" shall mean consisting of wanton or reckless behavior that evinces depraved indifference to human life within such crowded space.

Criminal use of weapons; firing into a crowded space is a class B felony.

§ 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.