

4582--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 6, 2013

Introduced by M. of A. O'DONNELL, AUBRY -- read once and referred to the Committee on Correction -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to establishing terms of probation sentences and revocations thereof under certain circumstances

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraph (i) of paragraph (a) of subdivision 3 of
2 section 65.00 of the penal law, as amended by section 20 of part AAA of
3 chapter 56 of the laws of 2009, is amended to read as follows:
4 (i) For a felony, other than a class A-II felony defined in article
5 two hundred twenty of this chapter or the class B felony defined in
6 section 220.48 of this chapter, or any other class B felony defined in
7 article two hundred twenty of this chapter committed by a second felony
8 drug offender, or a sexual assault, the period of probation shall be A
9 TERM OF THREE, FOUR OR five years;
10 S 2. Subparagraph (i) of paragraph (b) of subdivision 3 of section
11 65.00 of the penal law, as amended by chapter 264 of the laws of 2003,
12 is amended to read as follows:
13 (i) For a class A misdemeanor, other than a sexual assault, the period
14 of probation shall be A TERM OF TWO OR three years;
15 S 3. Paragraph (d) of subdivision 3 of section 65.00 of the penal law,
16 as amended by chapter 264 of the laws of 2003, is amended to read as
17 follows:
18 (d) For an unclassified misdemeanor, the period of probation shall be
19 A TERM OF TWO OR three years if the authorized sentence of imprisonment
20 is in excess of three months, otherwise the period of probation shall be
21 one year.

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

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1 S 4. Subdivision 4 of section 65.00 of the penal law is renumbered
2 subdivision 5 and a new subdivision 4 is added to read as follows:

3 4. IF DURING THE PERIODS OF PROBATION REFERENCED IN SUBPARAGRAPH (I)
4 OF PARAGRAPH (A), SUBPARAGRAPH (I) OF PARAGRAPH (B) AND PARAGRAPH (D) OF
5 SUBDIVISION THREE OF THIS SECTION AN ALLEGED VIOLATION IS SUSTAINED AND
6 THE COURT CONTINUES OR MODIFIES THE SENTENCE, THE COURT MAY EXTEND THE
7 REMAINING PERIOD OF PROBATION UP TO THE MAXIMUM TERM AUTHORIZED BY THIS
8 SECTION.

9 S 5. Subdivision 5 of section 410.70 of the criminal procedure law, as
10 amended by chapter 112 of the laws of 1985, is amended to read as
11 follows:

12 5. Revocation; modification; continuation. At the conclusion of the
13 hearing the court may revoke, continue or modify the sentence of
14 probation or conditional discharge. Where the court revokes the
15 sentence, it must impose sentence as specified in subdivisions three and
16 four of section 60.01 of the penal law. Where the court continues or
17 modifies the sentence, it must vacate the declaration of delinquency and
18 direct that the defendant be released. If the alleged violation is
19 sustained and the court continues or modifies the sentence, it may
20 extend the sentence up to the period of interruption specified in subdi-
21 vision two of section 65.15 of the penal law, but any time spent in
22 custody in any correctional institution pursuant to section 410.60 of
23 this article shall be credited against the term of the sentence.
24 PROVIDED FURTHER, WHERE THE ALLEGED VIOLATION IS SUSTAINED AND THE COURT
25 CONTINUES OR MODIFIES THE SENTENCE, THE COURT MAY ALSO EXTEND THE
26 REMAINING PERIOD OF PROBATION UP TO THE MAXIMUM TERM AUTHORIZED BY
27 SECTION 65.00 OF THE PENAL LAW.

28 S 6. Section 390.20 of the criminal procedure law is amended by adding
29 a new subdivision 5 to read as follows:

30 5. NEGOTIATED SENTENCE OF IMPRISONMENT. IN ANY CITY HAVING A POPU-
31 LATION OF ONE MILLION OR MORE AND NOTWITHSTANDING THE PROVISIONS OF
32 SUBPARAGRAPHS (I) OF PARAGRAPHS (A) AND (B) OF SUBDIVISION THREE OF
33 SECTION 65.00 OF THE PENAL LAW, A PRE-SENTENCE INVESTIGATION AND WRITTEN
34 REPORT THEREON SHALL NOT BE REQUIRED WHERE A NEGOTIATED SENTENCE OF
35 IMPRISONMENT FOR A TERM OF THREE HUNDRED SIXTY-FIVE DAYS OR LESS HAS
36 BEEN MUTUALLY AGREED UPON BY THE PARTIES WITH CONSENT OF THE JUDGE, AS A
37 RESULT OF A CONVICTION OR REVOCATION OF A SENTENCE OF PROBATION.

38 S 7. This act shall take effect immediately; provided, however, that
39 sections one through five of this act shall apply to offenses committed
40 on or after the date this act shall have become a law, and shall also
41 apply to offenses committed before such date, where the sentence upon
42 conviction for such offense has not yet been imposed; and provided,
43 further, that section six of this act shall take effect on the ninetieth
44 day after it shall have become a law.