

STATE OF NEW YORK

3536

2021-2022 Regular Sessions

IN ASSEMBLY

January 27, 2021

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the penal law, in relation to granting certain individuals youthful offender status; to add a new category of individuals eligible for young adult offender status and first offender status; and to repeal certain provisions of the criminal procedure law relating thereto

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

Section 1. Section 720.10 of the criminal procedure law, as added by chapter 981 of the laws of 1971, subdivision 1 as amended by chapter 411 of the laws of 1979, subdivision 2 as amended by chapter 416 of the laws of 1986, paragraph (a) of subdivision 2 as amended by chapter 316 of the laws of 2006, subdivision 3 as amended by chapter 264 of the laws of 2003, and subdivisions 4, 5 and 6 as renumbered by chapter 481 of the laws of 1978, is amended to read as follows:

§ 720.10 Youthful offender procedure; definition of terms.

As used in this article, the following terms have the following meanings:

1. [~~Youth~~] "Eligible youth" means a person charged with a crime alleged to have been committed when he or she was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

2. [~~"Eligible youth" means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless:~~

~~(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, criminal sexual~~

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

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~~act in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or~~

~~(b) such youth has previously been convicted and sentenced for a felony, or~~

~~(c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy eight a juvenile delinquent who committed a designated felony act as defined in the family court act.~~

~~3. Notwithstanding the provisions of subdivision two of this section, a youth who has been convicted of an armed felony offense or of rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse is an eligible youth if the court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven a of the executive law.~~

~~4.]~~ "Youthful offender finding" means a finding, substituted for the conviction of an eligible youth, pursuant to a determination that the eligible youth is a youthful offender.

~~[5.]~~ 3. "Youthful offender sentence" means the sentence imposed upon a youthful offender finding.

~~[6.]~~ 4. "Youthful offender adjudication". A youthful offender adjudication is comprised of a youthful offender finding and the youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.

§ 2. Subdivisions 3 and 4 of section 720.15 of the criminal procedure law are REPEALED.

§ 3. Subdivision 1 of section 720.20 of the criminal procedure law, as amended by chapter 652 of the laws of 1974, is amended to read as follows:

1. Upon conviction of an eligible youth, the court must order a pre-sentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence the court must determine whether or not the eligible youth is a youthful offender. Such determination shall be in accordance with the following criteria:

(a) If the eligible youth is charged with a violation or a misdemeanor offense, a class D or E felony offense, a class C felony as described in subdivision one of section 160.10 of the penal law or any offense contained in article two hundred twenty of the penal law, the court shall find that he or she is a youthful offender.

(b) In all other cases, if in the opinion of the court the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and the attendant collateral consequences of that permanent criminal record and by not imposing an indeterminate term of imprisonment of more than four years, the court may, in its discretion, find the eligible youth is a youthful offender[; and

~~(b) Where the conviction is had in a local criminal court and the eligible youth had not prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, the court must find he is a youthful offender.]~~

(c) There shall be a presumption to grant youthful offender status to an eligible youth. The district attorney may challenge this presumption by filing a motion with the court, with at least seven days' notice to the eligible youth and his or her attorney, showing by clear and convincing evidence that the interests of justice require the court not to grant youthful offender status.

§ 4. Subparagraph (i) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as amended by chapter 410 of the laws of 1979, is amended to read as follows:

(i) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a class A felony, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class A-I felony as defined in article two hundred twenty of the penal law or the attempt to commit any such class A-I felony, except that an eligible youth, as defined in subdivision ~~two~~ one of section 720.10, may plea to a class B felony, upon consent of the district attorney, for purposes of adjudication as a youthful offender.

§ 5. The criminal procedure law is amended by adding a new article 721 to read as follows:

ARTICLE 721 YOUNG ADULT STATUS

Section 721.10 Young adult status procedure; definition of terms.

721.15 Young adult status procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury.

721.20 Young adult status determination; when and how made; procedure thereupon.

721.30 Young adult adjudication; post-judgment motions and appeal.

721.35 Young adult adjudication; effect thereof; records.

§ 721.10 Young adult status procedure; definition of terms.

As used in this article, the following terms have the following meanings:

1. "Eligible young adult" means a person charged with a crime or offense alleged to have been committed when he or she was at least nineteen years old and less than twenty-five years old.

2. "Young adult finding" means a finding, substituted for the conviction of an eligible young adult, pursuant to a determination that the eligible young adult shall be granted young adult status.

3. "Young adult sentence" means the sentence imposed upon a young adult finding.

4. "Young adult adjudication" means an adjudication comprised of a young adult finding and the young adult sentence imposed thereon and is completed by imposition and entry of the young adult sentence.

§ 721.15 Young adult status procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury.

1. When an accusatory instrument against an apparently eligible young adult is filed with a court, it shall be filed as a sealed instrument, though only with respect to the public.

1 2. When a young adult is initially arraigned upon an accusatory
2 instrument, such arraignment and all proceedings in the action thereaft-
3 er may, in the discretion of the court and with the consent of the
4 accused, be conducted in private.

5 § 721.20 Young adult status determination; when and how made; procedure
6 thereupon.

7 Upon conviction of an eligible young adult, the court must order a
8 pre-sentence investigation of the defendant. After receipt of a written
9 report of the investigation and at the time of pronouncing sentence the
10 court must determine whether or not the eligible youth shall receive
11 young adult status. Such determination shall be in accordance with the
12 following criteria:

13 1. If the eligible young adult is charged with a violation or a misde-
14 meanor offense, the court shall find that he or she is a young adult
15 offender;

16 2. In all other cases, if in the opinion of the court the interest of
17 justice would be served by relieving the eligible young adult from the
18 onus of a criminal record and the attendant collateral consequences of
19 that permanent criminal record and by not imposing an indeterminate term
20 of imprisonment of more than ten years, the court may, in its
21 discretion, find the eligible young adult is a young adult offender; and

22 3. There shall be a presumption to grant young adult status to an
23 eligible young adult, unless the district attorney upon motion with not
24 less than seven days' notice to such person or his or her attorney
25 demonstrates to the satisfaction of the court that the interest of
26 justice require otherwise.

27 § 721.30 Young adult adjudication; post-judgment motions and appeal.

28 The provisions of this chapter, governing the making and determination
29 of post-judgment motions and the taking and determination of appeals in
30 criminal cases, apply to post judgment motions and appeals with respect
31 to young adult adjudications wherever such provisions can reasonably be
32 so applied.

33 § 721.35 Young adult adjudication; effect thereof; records.

34 1. A young adult adjudication is not a judgment of conviction for a
35 crime or any other offense, and does not operate as a disqualification
36 of any person so adjudged to hold public office or public employment or
37 to receive any license granted by public authority but shall be deemed a
38 conviction only for the purposes of transfer of supervision and custody
39 pursuant to section two hundred fifty-nine-m of the executive law.

40 2. Except where specifically required or permitted by statute or upon
41 specific authorization of the court, upon receipt of notification of a
42 young adult adjudication:

43 (a) every photograph of such young adult and photographic plate or
44 proof, and all palprints and fingerprints taken or made of such young
45 adult pursuant to the provisions of this article in regard to the action
46 or proceeding terminated, and all duplicates and copies thereof, except
47 a digital fingerprint image where authorized pursuant to paragraph (d)
48 of this subdivision, shall forthwith be, at the discretion of the recip-
49 ient agency, either destroyed or returned to such young adult, or to the
50 attorney who represented the young adult at the time of the termination
51 of the action or proceeding, at the address given by such person or
52 attorney during the action or proceeding, by the division of criminal
53 justice services and by any police;

54 (b) any police department or law enforcement agency, including the
55 division of criminal justice services, which transmitted or otherwise
56 forwarded to any agency of the United States or of any other state or of

1 any other jurisdiction outside the state of New York copies of any such
2 photographs, photographic plates or proofs, palmprints and fingerprints,
3 shall formally request in writing that all such copies be destroyed or
4 returned to the police department or law enforcement agency which trans-
5 mitted or forwarded them, and upon such return such department or agency
6 shall, at its discretion, either destroy or return them as provided
7 under this subdivision;

8 (c) all official records and papers relating to the arrest or prose-
9 cution, including all duplicates and copies thereof, on file with the
10 division of criminal justice services, police agency, or prosecutor's
11 office shall be sealed and not made available to any person or public or
12 private agency;

13 (d) the records referred to in paragraph (b) of this subdivision shall
14 be made available to the young adult accused or to such young adult's
15 designated agent, and shall be made available to (i) a prosecutor in any
16 proceeding in which the accused has moved for an order pursuant to
17 section 170.56 or 210.46 of this chapter, or (ii) a law enforcement
18 agency upon ex parte motion in any superior court, or in any district
19 court, city court or the criminal court of the city of New York provided
20 that such court sealed the record, if such agency demonstrates to the
21 satisfaction of the court that justice requires that such records be
22 made available to it, or (iii) any state or local officer or agency with
23 responsibility for the issuance of licenses to possess guns, when the
24 accused has made application for such a license, or (iv) the New York
25 state department of corrections and community supervision when the
26 accused is under parole supervision as a result of conditional release
27 or parole release granted by the New York state board of parole and the
28 arrest which is the subject of the inquiry is one which occurred while
29 the accused was under such supervision, or (v) the probation department
30 responsible for supervision of the accused when the arrest which is the
31 subject of the inquiry is one which occurred while the accused was under
32 such supervision;

33 (e) at no time shall such notification be used for any purpose other
34 than those specified in this subdivision, provided, however, that infor-
35 mation regarding an order of protection or temporary order of protection
36 issued pursuant to section 530.12 of this part or a warrant issued in
37 connection therewith may be maintained on the statewide automated order
38 of protection and warrant registry established pursuant to section two
39 hundred twenty-one-a of the executive law during the period that such
40 order of protection or temporary order of protection is in full force
41 and effect or during which such warrant may be executed. Such confiden-
42 tial information may be made available pursuant to law only for purposes
43 of adjudicating or enforcing such order of protection or temporary order
44 of protection; and

45 (f) where fingerprints subject to the provisions of this section have
46 been received by the division of criminal justice services and have been
47 filed by the division as digital images, such images may be retained,
48 provided that a fingerprint card of the individual is on file with the
49 division which was not sealed pursuant to this section or section 160.50
50 of this chapter.

51 § 6. The criminal procedure law is amended by adding a new section
52 440.48 to read as follows:

53 § 440.48 Resentencing; youthful offender.

54 1. Any person under the age of twenty-five at the time the crime was
55 committed who was convicted of a misdemeanor or violation offense who
56 would have been considered an "eligible youth" pursuant to subdivision

1 one of section 720.10 of this chapter and an "eligible young adult"
2 pursuant to subdivision one of section 721.10 of this chapter after the
3 effective date of this section shall have their conviction automatically
4 replaced with a youthful offender adjudication or young adult offender
5 adjudication within six months of such date. The division of criminal
6 justice services shall establish standards to ensure that such process
7 occurs automatically for all persons prior to such six month deadline.

8 2. Any person under the age of twenty-five at the time the crime was
9 committed who would have been considered an "eligible youth" pursuant to
10 subdivision one of section 720.10 of this chapter and an "eligible young
11 adult" pursuant to subdivision one of section 721.10 of this chapter
12 after the effective date of this section, upon notice to the appropriate
13 district attorney, may petition to be resentenced to a youthful offender
14 adjudication or young adult offender adjudication in accordance with
15 articles seven hundred twenty and seven hundred twenty-one of this chap-
16 ter in the court which imposed such sentence. Even if a person is eligi-
17 ble for automatic youthful offender adjudication or young adult offender
18 adjudication sealing pursuant to subdivision one of this section, such
19 person may still petition the court for resentencing prior to the six
20 month period described in subdivision one of this section.

21 3. The court shall consider the factors outlined in subdivision one of
22 section 720.20 and subdivision one of section 721.20 of this chapter in
23 determining whether or not a person who would have been an eligible
24 youth may or shall be granted youthful offender status or young adult
25 offender status for the prior conviction.

26 (a) In cases where granting youthful offender status or young adult
27 offender status is discretionary and not required by paragraph (a) of
28 subdivision one of section 720.20 or paragraph (a) of subdivision one of
29 section 721.20 of this chapter, the court shall also consider any addi-
30 tional evidence presented by the person seeking resentencing, including:

31 (i) the amount of time that has elapsed since the petitioner's last
32 conviction;

33 (ii) the character of the petitioner, including any measures that he
34 or she has taken towards rehabilitation, such as participating in treat-
35 ment programs, work, or schooling, and participating in community
36 service or other volunteer programs;

37 (iii) the circumstances and seriousness of the offense for which the
38 petitioner is seeking relief;

39 (iv) the impact of sealing the petitioner's record upon his or her
40 rehabilitation and upon his or her successful and productive reentry and
41 reintegration into society; and

42 (v) the impact of collateral consequences of the conviction on the
43 defendant and his or her family.

44 (b) The district attorney may challenge the presumption to grant
45 youthful offender status pursuant to paragraph (c) of subdivision one of
46 section 720.20 and paragraph (c) of subdivision one of section 721.20 of
47 this chapter.

48 § 7. The criminal procedure law is amended by adding a new article 726
49 to read as follows:

ARTICLE 726

FIRST OFFENDER STATUS

52 Section 726.10 First offender status procedure; definition of terms.

53 726.20 First offender status determination; when and how made;
54 procedure thereupon.

55 726.30 First offender adjudication; post-judgment motions and
56 appeal.

1 726.35 First offender adjudication; effect thereof; records.

2 § 726.10 First offender status procedure; definition of terms.

3 As used in this article, the following terms shall have the following
4 meanings:

5 1. "Eligible first offender" means any person who stands charged with
6 a felony or misdemeanor offense alleged to have been committed when he
7 or she was aged twenty-five years or older unless:

8 (a) Such offender has been previously convicted and sentenced for a
9 felony, or

10 (b) Such offender has been previously adjudicated a youthful offender
11 following conviction for a felony or has been adjudicated a young adult
12 offender following a conviction for a felony.

13 2. "First offender finding" means a finding, substituted for the
14 conviction of an eligible first offender, pursuant to a determination
15 that the eligible first offender shall be granted first offender status.

16 3. "First offender sentence" means the sentence imposed upon a first
17 offender finding.

18 4. "First offender adjudication" means an adjudication comprised of a
19 first offender finding and the first offender sentence imposed thereon
20 and is completed by imposition and entry of the first offender sentence.

21 § 726.20 First offender status determination; when and how made; proce-
22 dure thereupon.

23 1. Upon conviction of an eligible first offender, the court must order
24 a pre-sentence investigation of the defendant. After receipt of a writ-
25 ten report of the investigation and at the time of pronouncing sentence
26 the court must determine whether or not the eligible defendant shall
27 receive first offender status. Such determination shall be in accordance
28 with the following criteria:

29 (a) If the eligible first offender is charged with a violation or a
30 misdemeanor offense, the court shall find that he or she is a first
31 offender;

32 (b) In all other cases, if in the opinion of the court the interest of
33 justice would be served by relieving the eligible offender from the onus
34 of a criminal record and the attendant collateral consequences of that
35 permanent criminal record, the court may, in its discretion, find the
36 eligible offender is a first offender; and

37 (c) There shall be a presumption to grant first offender status to an
38 eligible first offender, unless the district attorney upon motion with
39 not less than seven days' notice to such person or his or her attorney
40 demonstrates to the satisfaction of the court that the interest of
41 justice require otherwise.

42 2. When an authorized court determines, pursuant to subdivision one of
43 this section, that the defendant is an eligible first offender, the
44 following sentences may be imposed:

45 (a) An authorized prison sentence pursuant to article seventy of the
46 penal law;

47 (b) An authorized sentence of probation, conditional discharge, or
48 unconditional discharge pursuant to article sixty-five of the penal law;
49 or

50 (c) Any other authorized disposition pursuant to article sixty of the
51 penal law.

52 § 726.30 First offender adjudication; post-judgment motions and appeal.

53 The provisions of this chapter, governing the making and determination
54 of post-judgment motions and the taking and determination of appeals in
55 criminal cases, apply to post judgment motions and appeals with respect

1 to first offender adjudications wherever such provisions can reasonably
2 be so applied.

3 § 726.35 First offender adjudication; effect thereof; records.

4 1. A first offender adjudication is not a judgment of conviction for a
5 crime or any other offense, and does not operate as a disqualification
6 of any person so adjudged to hold public office or public employment or
7 to receive any license granted by public authority but shall be deemed a
8 conviction only for the purposes of transfer of supervision and custody
9 pursuant to section two hundred fifty-nine-m of the executive law.

10 2. Except where specifically required or permitted by statute or upon
11 specific authorization of the court, upon receipt of notification of a
12 first offender adjudication:

13 (a) every photograph of such offender and photographic plate or proof,
14 and all palmprints and fingerprints taken or made of such first offender
15 pursuant to the provisions of this article in regard to the action or
16 proceeding terminated, and all duplicates and copies thereof, except a
17 digital fingerprint image where authorized pursuant to paragraph (e) of
18 this subdivision, shall forthwith be, at the discretion of the recipient
19 agency, either destroyed or returned to such first offender, or to the
20 attorney who represented the first offender at the time of the termi-
21 nation of the action or proceeding, at the address given by such person
22 or attorney during the action or proceeding, by the division of criminal
23 justice services and by any police department or law enforcement agency
24 having any such photograph, photographic plate or proof, palmprints or
25 fingerprints in its possession or under its control;

26 (b) any police department or law enforcement agency, including the
27 division of criminal justice services, which transmitted or otherwise
28 forwarded to any agency of the United States or of any other state or of
29 any other jurisdiction outside the state of New York copies of any such
30 photographs, photographic plates or proofs, palmprints and fingerprints,
31 shall formally request in writing that all such copies be destroyed or
32 returned to the police department or law enforcement agency which trans-
33 mitted or forwarded them, and upon such return such department or agency
34 shall, at its discretion, either destroy or return them as provided
35 under this subdivision;

36 (c) all official records and papers relating to the arrest or prose-
37 cution, including all duplicates and copies thereof, on file with the
38 division of criminal justice services, police agency, or prosecutor's
39 office shall be sealed and not made available to any person or public or
40 private agency;

41 (d) the records referred to in paragraph (c) of this subdivision shall
42 be made available to the accused first offender or to such first
43 offender's designated agent, and shall be made available to (i) a prose-
44 cutor in any proceeding in which the accused has moved for an order
45 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law
46 enforcement agency upon ex parte motion in any superior court, or in any
47 district court, city court or the criminal court of the city of New York
48 provided that such court sealed the record, if such agency demonstrates
49 to the satisfaction of the court that justice requires that such records
50 be made available to it, or (iii) any state or local officer or agency
51 with responsibility for the issuance of licenses to possess guns, when
52 the accused has made application for such a license, or (iv) the New
53 York state department of corrections and community supervision when the
54 accused is under parole supervision as a result of conditional release
55 or parole release granted by the New York state board of parole and the
56 arrest which is the subject of the inquiry is one which occurred while

1 the accused was under such supervision, or (v) the probation department
2 responsible for supervision of the accused when the arrest which is the
3 subject of the inquiry is one which occurred while the accused was under
4 such supervision;

5 (e) at no time shall such notification be used for any purpose other
6 than those specified in this subdivision, provided, however, that infor-
7 mation regarding an order of protection or temporary order of protection
8 issued pursuant to section 530.12 of this part or a warrant issued in
9 connection therewith may be maintained on the statewide automated order
10 of protection and warrant registry established pursuant to section two
11 hundred twenty-one-a of the executive law during the period that such
12 order of protection or temporary order of protection is in full force
13 and effect or during which such warrant may be executed. Such confiden-
14 tial information may be made available pursuant to law only for purposes
15 of adjudicating or enforcing such order of protection or temporary order
16 of protection; and

17 (f) where fingerprints subject to the provisions of this section have
18 been received by the division of criminal justice services and have been
19 filed by the division as digital images, such images may be retained,
20 provided that a fingerprint card of the individual is on file with the
21 division which was not sealed pursuant to this section or section 160.50
22 of this chapter.

23 § 8. Subdivision 2 of section 60.00 of the penal law, as added by
24 chapter 481 of the laws of 1978, is amended to read as follows:

25 2. The sole provision of this article that shall apply in the case of
26 an offense committed by a juvenile offender ~~[is]~~ or a defendant adjudi-
27 cated a youthful offender or young adult in section 60.10 of this arti-
28 cle and no other provisions of this article shall be deemed or construed
29 to apply in any such case.

30 § 9. Subdivision 1 of section 60.02 of the penal law, as amended by
31 chapter 471 of the laws of 1980, is amended to read as follows:

32 (1) If the sentence is to be imposed upon a youthful offender finding
33 which has been substituted for a conviction of an offense other than a
34 felony, the court must impose a sentence authorized for the offense for
35 which the youthful offender finding was substituted~~[, except that if the~~
36 ~~youthful offender finding was entered pursuant to paragraph (b) of~~
37 ~~subdivision one of section 720.20 of the criminal procedure law, the~~
38 ~~court must not impose a definite or intermittent sentence of imprison-~~
39 ~~ment with a term of more than six months]; or~~

40 § 10. Subdivision 4 of section 80.00 of the penal law, as amended by
41 chapter 338 of the laws of 1989, is amended to read as follows:

42 4. Exception. The provisions of this section shall not apply to a
43 corporation, or eligible youth as defined in section 720.10 of the crim-
44 inal procedure law.

45 § 11. Subdivision 6 of section 80.05 of the penal law is amended to
46 read as follows:

47 6. Exception. The provisions of this section shall not apply to a
48 corporation, or eligible youth as defined in section 720.10 of the crim-
49 inal procedure law.

50 § 12. This act shall take effect on the first of November next
51 succeeding the date on which it shall have become a law and shall apply
52 to any criminal case pending on such effective date.