

10948

I N A S S E M B L Y

May 5, 2010

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

AN ACT to amend the penal law, in relation to designating vehicular assaults and vehicular manslaughters and homicides as violent felonies and requiring the imposition of a determinate sentence of imprisonment

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

1 Section 1. Paragraphs (a), (b), (c) and (d) of subdivision 1 of  
2 section 70.02 of the penal law, paragraph (a) as amended by chapter 320  
3 of the laws of 2006, paragraph (b) as separately amended by chapters 764  
4 and 765 of the laws of 2005, and paragraphs (c) and (d) as amended by  
5 chapter 7 of the laws of 2007, 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; AGGRAVATED  
10 VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14, manslaughter in the  
11 first degree as defined in section 125.20, aggravated manslaughter in  
12 the first degree as defined in section 125.22, rape in the first degree  
13 as defined in section 130.35, criminal sexual act in the first degree as  
14 defined in section 130.50, aggravated sexual abuse in the first degree  
15 as defined in section 130.70, course of sexual conduct against a child  
16 in the first degree as defined in section 130.75; assault in the first  
17 degree as defined in section 120.10, kidnapping in the second degree as  
18 defined in section 135.20, burglary in the first degree as defined in  
19 section 140.30, arson in the second degree as defined in section 150.15,  
20 robbery in the first degree as defined in section 160.15, incest in the  
21 first degree as defined in section 255.27, criminal possession of a  
22 weapon in the first degree as defined in section 265.04, criminal use of  
23 a firearm in the first degree as defined in section 265.09, criminal  
24 sale of a firearm in the first degree as defined in section 265.13,  
25 aggravated assault upon a police officer or a peace officer as defined  
26 in section 120.11, gang assault in the first degree as defined in  
27 section 120.07, intimidating a victim or witness in the first degree as

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

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1 defined in section 215.17, hindering prosecution of terrorism in the  
2 first degree as defined in section 490.35, criminal possession of a  
3 chemical weapon or biological weapon in the second degree as defined in  
4 section 490.40, and criminal use of a chemical weapon or biological  
5 weapon in the third degree as defined in section 490.47.

6 (b) Class C violent felony offenses: an attempt to commit any of the  
7 class B felonies set forth in paragraph (a); VEHICULAR MANSLAUGHTER IN  
8 THE FIRST DEGREE AS DEFINED IN SECTION 125.13, aggravated criminally  
9 negligent homicide as defined in section 125.11, aggravated manslaughter  
10 in the second degree as defined in section 125.21, aggravated sexual  
11 abuse in the second degree as defined in section 130.67, AGGRAVATED  
12 VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A, assault on a peace  
13 officer, police officer, fireman or emergency medical services profes-  
14 sional as defined in section 120.08, gang assault in the second degree  
15 as defined in section 120.06, burglary in the second degree as defined  
16 in section 140.25, robbery in the second degree as defined in section  
17 160.10, criminal possession of a weapon in the second degree as defined  
18 in section 265.03, criminal use of a firearm in the second degree as  
19 defined in section 265.08, criminal sale of a firearm in the second  
20 degree as defined in section 265.12, criminal sale of a firearm with the  
21 aid of a minor as defined in section 265.14, soliciting or providing  
22 support for an act of terrorism in the first degree as defined in  
23 section 490.15, hindering prosecution of terrorism in the second degree  
24 as defined in section 490.30, and criminal possession of a chemical  
25 weapon or biological weapon in the third degree as defined in section  
26 490.37.

27 (c) Class D violent felony offenses: an attempt to commit any of the  
28 class C felonies set forth in paragraph (b); reckless assault of a child  
29 as defined in section 120.02, VEHICULAR ASSAULT IN THE FIRST DEGREE AS  
30 DEFINED IN SECTION 120.04, assault in the second degree as defined in  
31 section 120.05, menacing a police officer or peace officer as defined in  
32 section 120.18, stalking in the first degree, as defined in subdivision  
33 one of section 120.60, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS  
34 DEFINED IN SECTION 125.12, rape in the second degree as defined in  
35 section 130.30, criminal sexual act in the second degree as defined in  
36 section 130.45, sexual abuse in the first degree as defined in section  
37 130.65, course of sexual conduct against a child in the second degree as  
38 defined in section 130.80, aggravated sexual abuse in the third degree  
39 as defined in section 130.66, facilitating a sex offense with a  
40 controlled substance as defined in section 130.90, criminal possession  
41 of a weapon in the third degree as defined in subdivision five, six,  
42 seven or eight of section 265.02, criminal sale of a firearm in the  
43 third degree as defined in section 265.11, intimidating a victim or  
44 witness in the second degree as defined in section 215.16, soliciting or  
45 providing support for an act of terrorism in the second degree as  
46 defined in section 490.10, and making a terroristic threat as defined in  
47 section 490.20, falsely reporting an incident in the first degree as  
48 defined in section 240.60, placing a false bomb or hazardous substance  
49 in the first degree as defined in section 240.62, placing a false bomb  
50 or hazardous substance in a sports stadium or arena, mass transportation  
51 facility or enclosed shopping mall as defined in section 240.63, and  
52 aggravated unpermitted use of indoor pyrotechnics in the first degree as  
53 defined in section 405.18.

54 (d) Class E violent felony offenses: an attempt to commit any of the  
55 felonies of criminal possession of a weapon in the third degree as  
56 defined in subdivision five, six, seven or eight of section 265.02 as a

1 lesser included offense of that section as defined in section 220.20 of  
2 the criminal procedure law, persistent sexual abuse as defined in  
3 section 130.53, aggravated sexual abuse in the fourth degree as defined  
4 in section 130.65-a, falsely reporting an incident in the second degree  
5 as defined in section 240.55 and placing a false bomb or hazardous  
6 substance in the second degree as defined in section 240.61; VEHICULAR  
7 ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.03.

8 S 2. Paragraph (b) of subdivision 2 of section 70.02 of the penal law,  
9 as separately amended by chapters 764 and 765 of the laws of 2005, is  
10 amended and two new paragraphs (b-2) and (d) are added to read as  
11 follows:

12 (b) Except as provided in [paragraph] PARAGRAPHS (b-1) AND (B-2) of  
13 this subdivision, subdivision six of section 60.05 and subdivision four  
14 of this section, the sentence imposed upon a person who stands convicted  
15 of a class D violent felony offense, other than the offense of criminal  
16 possession of a weapon in the third degree as defined in subdivision  
17 four, five, seven or eight of section 265.02 or criminal sale of a  
18 firearm in the third degree as defined in section 265.11, must be in  
19 accordance with the applicable provisions of this chapter relating to  
20 sentencing for class D felonies provided, however, that where a sentence  
21 of imprisonment is imposed which requires a commitment to the state  
22 department of correctional services, such sentence shall be a determi-  
23 nate sentence in accordance with paragraph (c) of subdivision three of  
24 this section.

25 (B-2) EXCEPT AS PROVIDED IN SUBDIVISION SIX OF SECTION 60.05, THE  
26 SENTENCE IMPOSED UPON A PERSON WHO STANDS CONVICTED OF THE CLASS D  
27 VIOLENT FELONY OFFENSE OF VEHICULAR ASSAULT IN THE FIRST DEGREE AS  
28 DEFINED IN SECTION 120.04 OR VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE  
29 AS DEFINED IN SECTION 125.12 MUST BE A DETERMINATE SENTENCE OF IMPRISON-  
30 MENT.

31 (D) EXCEPT AS PROVIDED IN SUBDIVISION SIX OF SECTION 60.05, THE  
32 SENTENCE IMPOSED UPON A PERSON CONVICTED OF THE CLASS E VIOLENT FELONY  
33 OFFENSE OF VEHICULAR ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION  
34 120.03 MUST BE A DETERMINATE SENTENCE OF IMPRISONMENT.

35 S 3. This act shall take effect on the first of November next succeed-  
36 ing the date on which it shall have become a law.