S T A T E O F N E W Y O R K

4493

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. MAYERSOHN, ESPAILLAT, SCHIMMINGER, HOOPER -- Multi-Sponsored by -- M. of A. BRADLEY, COLTON, GALEF, PHEFFER, SWEENEY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to fair treatment for crime victims and in relation to interim probation supervision of offenders who are subject to mandatory indeterminate sentence of imprisonment

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

Section 1. The executive law is amended by adding a new section 642-b to read as follows:

S 642-B. FAIR TREATMENT OF VICTIMS IN CASES WHERE THE DISTRICT ATTORNEY IS CONSIDERING WAIVER OF MANDATORY SENTENCE. 1. IN THE CASE OF A VICTIM OF A FELONY, IF THE INDICTMENT BASED UPON THAT CRIMINAL TRANSACTION CHARGES AN OFFENSE FOR WHICH AN INDETERMINATE SENTENCE OF IMPRISONMENT MUST BE IMPOSED OR IF THE DEFENDANT IS A PERSON WHO BY REASON OF A PRIOR FELONY CONVICTION WOULD BE SUBJECT TO AN INDETERMINATE SENTENCE OF IMPRISONMENT UPON CONVICTION OF THE OFFENSE CHARGED IN THE INDICTMENT, THE RULES PROMULGATED BY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROVIDE THAT THE DISTRICT ATTORNEY MUST GIVE THE VICTIM NOTICE AND A STATEMENT OF REASONS IN WRITING NOT LESS THAN TEN DAYS PRIOR TO TAKING ANY OF THE FOLLOWING ACTIONS:

(A) CONSENTING TO A PLEA OF GUILTY THAT DOES NOT INCLUDE AT LEAST A PLEA OF GUILTY TO AN OFFENSE THAT REQUIRES AN INDETERMINATE SENTENCE OF IMPRISONMENT;

(B) MOVING FOR OR CONSENTING TO DISMISSAL OF THE INDICTMENT OR OF ANY COUNT THEREIN THAT CHARGES A CRIME FOR WHICH AN INDETERMINATE SENTENCE OF IMPRISONMENT MUST BE IMPOSED; OR

(C) MOVING FOR OR CONSENTING TO AN ADJOURNMENT OF SENTENCING TO A DATE LATER THAN NINETY DAYS FROM THE DATE THE PLEA OR VERDICT WAS ENTERED.

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

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2. ANY SUCH NOTICE SHALL ADVISE THE VICTIM OF THE TIME AND PLACE WHEN THE MOTION IS TO BE MADE OR THE CONSENT IS TO BE GIVEN AND OF THE VICTIM'S RIGHT TO BE PRESENT AND TO SUBMIT A WRITTEN STATEMENT TO THE COURT IN OPPOSITION TO THE COURT'S APPROVAL OF THE DISMISSAL, PLEA OR ADJOURNMENT.

3. THE RULES PROMULGATED BY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL REQUIRE THAT A COPY OF THE NOTICE AND STATEMENT OF REASONS BE FILED WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES ALONG WITH A SUMMARY OF THE FINAL DISPOSITION OF EACH COUNT CHARGED IN AN INDICTMENT AGAINST THE DEFENDANT AS A RESULT OF THE CRIMINAL TRANSACTION INVOLVING THAT VICTIM. AN ANALYSIS OF THIS MATERIAL SHALL BE SET FORTH BY THE DIVISION IN ITS ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE AND THE DOCUMENTS AS FILED WITH THE DIVISION SHALL BE MAINTAINED FOR A PERIOD OF THREE YEARS IN A SPECIAL FILE WHICH SHALL BE AVAILABLE FOR PUBLIC INSPECTION.

4. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOT ALLOCATE ANY FUNDS TO OR FOR THE USE OF A DISTRICT ATTORNEY UNLESS THE COMMISSIONER IS SATISFIED, AFTER SPECIFIC INQUIRY, THAT SUCH DISTRICT ATTORNEY IS IN SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

S 2. Section 243 of the executive law is amended by adding a new subdivision 5 to read as follows:

5. THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO THIS SECTION SHALL PROVIDE THAT PROBATION OFFICERS AND CORRECTIONAL ALTERNATIVE PROGRAMS SHALL NOT ENGAGE IN SUPERVISION OF OR ADMINISTER COMMUNITY BASED ALTERNATIVE OR INTERIM PROGRAMS FOR OFFENDERS WHO HAVE PLEADED GUILTY TO OR BEEN FOUND GUILTY OF A FELONY FOR WHICH AN INDETERMINATE SENTENCE OF IMPRISONMENT IS REQUIRED UNDER THE PENAL LAW AND WHO ARE AWAITING IMPOSITION OF SENTENCE.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing sections of this act on their effective date are authorized and directed to be made and completed on or before such effective date.