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

6811

2009-2010 Regular Sessions

I N A S S E M B L Y

March 12, 2009

Introduced by M. of A. JORDAN, TOBACCO, KOLB, CORWIN, CALHOUN, MOLINARO -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CASTRO, CROUCH, DUPREY, ERRIGO, GIGLIO, HAWLEY, HAYES, McDONOUGH, McKEVITT, OAKS, SCOZZAFAVA, TOWNSEND, WALKER, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the victim's statement at the sentencing of a criminal defendant

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

Section 1. Paragraphs (b), (c), (e) and (f) of subdivision 2 of section 380.50 of the criminal procedure law, as added by chapter 307 of the laws of 1992, are amended to read as follows:

(b) If the defendant is being sentenced for a felony the court, if requested at least ten days prior to the sentencing date, shall accord the victim the right to make a statement with regard to any matter relevant to the question of sentence AND A REBUTTAL OF ANY STATEMENT MADE BY THE DEFENDANT OR HIS OR HER COUNSEL. The court shall notify the defendant no less than seven days prior to sentencing of the victim's intent to make a statement AND A REBUTTAL at sentencing. If the defendant does not receive timely notice pursuant to this subdivision, the defendant may request a reasonable adjournment.

(c) [Any] THE FIRST statement by the victim must precede any statement by counsel to the defendant or the defendant made pursuant to subdivision one of this section. The defendant shall have the right to rebut [any] THE FIRST statement made by the victim. HOWEVER, THE VICTIM SHALL HAVE THE RIGHT TO REBUT ANY STATEMENT BY COUNSEL TO THE DEFENDANT OR THE DEFENDANT, AND SUCH REBUTTAL SHALL BE THE FINAL STATEMENT MADE PRIOR TO IMPOSITION OF THE SENTENCE.

(e) Where (1) the defendant has been found guilty after trial or there is no agreement between the people and the defendant as to a proposed sentence or the court, after the statement AND REBUTTAL by the victim,

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

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chooses not to impose the proposed sentence agreed to by the parties; (2) the statement AND REBUTTAL by the victim includes allegations about the crime that were not fully explored during the proceedings or that materially vary from or contradict the evidence at trial; and (3) the court determines that the allegations are relevant to the issue of sentencing, then the court shall afford the defendant the following rights:

(A) a reasonable adjournment of the sentencing to allow the defendant to present information to rebut the allegations by the victim; and

(B) allow the defendant to present written questions to the court that the defendant desires the court to put to the victim. The court may, in its discretion, decline to put any or all of the questions to the victim. Where the court declines to put any or all of the questions to the victim it shall state its reasons therefor on the record.

(f) If the victim does not appear to make a statement AND REBUTTAL at the time of sentencing, the right to make a statement AND REBUTTAL is waived. The failure of the victim to make a statement AND REBUTTAL shall not be cause for delaying the proceedings against the defendant nor shall it affect the validity of a conviction, judgment or order.

S 2. This act shall take effect immediately.