

7061

2009-2010 Regular Sessions

I N A S S E M B L Y

March 19, 2009

Introduced by M. of A. CARROZZA, LATIMER -- Multi-Sponsored by -- M. of
A. ALFANO, BARRA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in
relation to providing for mandatory terms of imprisonment for grand
larceny of a motor vehicle

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

1 Section 1. The penal law is amended by adding a new section 70.17 to
2 read as follows:
3 S 70.17 ADDITIONAL MANDATORY SENTENCE OF IMPRISONMENT.
4 1. ANY DEFENDANT WHO IS FOUND GUILTY OF OR PLEADS GUILTY TO A
5 VIOLATION OF ANY OF THE PROVISIONS OF SECTION 155.30, 155.35 OR 155.40
6 OF THIS CHAPTER INVOLVING THEFT OF A MOTOR VEHICLE SHALL IN ADDITION TO
7 THE PENALTY PRESCRIBED BY ANY OTHER PROVISION OF LAW, BE SENTENCED TO A
8 MANDATORY TERM OF IMPRISONMENT OF NOT LESS THAN FIVE YEARS, SUCH TERM TO
9 RUN CONSECUTIVELY WITH RESPECT TO ANY OTHER TERM THAT MAY BE IMPOSED BY
10 THE COURT.
11 2. ANY PERSON SERVING A MINIMUM SENTENCE INCREASED BY THIS SECTION
12 SHALL NOT BE RELEASED PURSUANT TO SECTION 70.40 OF THIS ARTICLE UNTIL
13 SUCH MINIMUM SENTENCE SHALL HAVE BEEN SERVED.
14 S 2. Subdivision 4 of section 180.75 of the criminal procedure law, as
15 amended by chapter 264 of the laws of 2003, is amended to read as
16 follows:
17 4. Notwithstanding the provisions of subdivisions two and three of
18 this section, a local criminal court shall, at the request of the
19 district attorney, order removal of an action against a juvenile offen-
20 der to the family court pursuant to the provisions of article seven
21 hundred twenty-five of this chapter if, upon consideration of the crite-
22 ria specified in subdivision two of section 210.43 of this [chapter]
23 PART, it is determined that to do so would be in the interests of
24 justice. Where, however, the felony complaint charges the juvenile

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

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1 offender with THEFT OF A MOTOR VEHICLE AS DEFINED IN SECTION 155.30,
2 155.35 OR 155.40 OF THE PENAL LAW, OR murder in the second degree as
3 defined in section 125.25 of the penal law, rape in the first degree as
4 defined in subdivision one of section 130.35 of the penal law, criminal
5 sexual act in the first degree as defined in subdivision one of section
6 130.50 of the penal law, or an armed felony as defined in paragraph (a)
7 of subdivision forty-one of section 1.20 of this chapter, a determi-
8 nation that such action be removed to the family court shall, in addi-
9 tion, be based upon a finding of one or more of the following factors:
10 (i) mitigating circumstances that bear directly upon the manner in which
11 the crime was committed; or (ii) where the defendant was not the sole
12 participant in the crime, the defendant's participation was relatively
13 minor although not so minor as to constitute a defense to the prose-
14 cution; or (iii) possible deficiencies in proof of the crime.

15 S 3. Paragraph (c) of subdivision 5 of section 220.10 of the criminal
16 procedure law, as amended by chapter 410 of the laws of 1979, is amended
17 to read as follows:

18 (c) Where the indictment charges a felony, other than a class A felo-
19 ny or class B felony defined in article two hundred twenty of the penal
20 law or class B or class C violent felony offense as defined in subdivi-
21 sion one of section 70.02 of the penal law, OR THEFT OF A MOTOR VEHICLE
22 AS DEFINED IN SECTION 155.30, 155.35 OR 155.40 OF THE PENAL LAW, and it
23 appears that the defendant has previously been subjected to a predicate
24 felony conviction as defined in [penal law] section 70.06 OF THE PENAL
25 LAW then any plea of guilty entered pursuant to subdivision three or
26 four must be or must include at least a plea of guilty of a felony.

27 S 4. Subparagraph (vi) of paragraph (b) of subdivision 3 of section
28 220.30 of the criminal procedure law, as amended by chapter 481 of the
29 laws of 1978 and renumbered by chapter 233 of the laws of 1980, is
30 amended to read as follows:

31 (vi) A plea of guilty, whether to the entire indictment or to part of
32 the indictment for any crime other than a felony, may not be accepted on
33 the condition that it constitutes a complete disposition of one or more
34 other indictments against the defendant wherein is charged a class B
35 felony other than a class B violent felony offense as defined in subdivi-
36 sion one of section 70.02 of the penal law, OR THEFT OF A MOTOR VEHI-
37 CLE AS DEFINED IN SECTION 155.30, 155.35 OR 155.40 OF THE PENAL LAW.

38 S 5. Subdivision 2 of section 720.10 of the criminal procedure law, as
39 amended by chapter 416 of the laws of 1986 and paragraph (a) as amended
40 by chapter 316 of the laws of 2006, is amended to read as follows:

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

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

49 (b) such youth has previously been convicted and sentenced for a felo-
50 ny, or

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

1 (D) SUCH YOUTH HAS BEEN CONVICTED OF THEFT OF A MOTOR VEHICLE AS
2 DEFINED IN SECTION 155.30, 155.35 OR 155.40 OF THE PENAL LAW.
3 S 6. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law.