

1400

2009-2010 Regular Sessions

I N S E N A T E

January 29, 2009

Introduced by Sens. MAZIARZ, ALESI, FLANAGAN, O. JOHNSON, MORAHAN,
SEWARD, WINNER -- read twice and ordered printed, and when printed to
be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to plea bargains
in felony sex offenses

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

1 Section 1. Subdivision 5 of section 220.10 of the criminal procedure
2 law is amended by adding a new paragraph (i) to read as follows:
3 (I) WHERE THE INDICTMENT CHARGES A FELONY DEFINED IN ARTICLE ONE
4 HUNDRED THIRTY OF THE PENAL LAW, THEN ANY PLEA OF GUILTY ENTERED PURSU-
5 ANT TO SUBDIVISION THREE OR FOUR OF THIS SECTION MUST BE OR MUST INCLUDE
6 AT LEAST A PLEA OF GUILTY TO A FELONY DEFINED IN ARTICLE ONE HUNDRED
7 THIRTY OF THE PENAL LAW; PROVIDED, HOWEVER, THAT WHERE THE INDICTMENT
8 CHARGES A CLASS B OR A CLASS C FELONY AS DEFINED IN ARTICLE ONE HUNDRED
9 THIRTY OF THE PENAL LAW, THEN A PLEA OF GUILTY MUST INCLUDE AT LEAST A
10 PLEA OF GUILTY TO A CLASS D FELONY AS DEFINED IN ARTICLE ONE HUNDRED
11 THIRTY OF THE PENAL LAW.
12 S 2. Subparagraph (iii) of paragraph (g) of subdivision 5 of section
13 220.10 of the criminal procedure law, as amended by chapter 264 of the
14 laws of 2003, is amended to read as follows:
15 (iii) Where the indictment does not charge a crime specified in
16 subparagraph (i) of this paragraph, the district attorney may recommend
17 removal of the action to the family court. Upon making such recommenda-
18 tion the district attorney shall submit a subscribed memorandum setting
19 forth: (1) a recommendation that the interests of justice would best be
20 served by removal of the action to the family court; and (2) if the
21 indictment charges a thirteen year old with the crime of murder in the
22 second degree[, or a fourteen or fifteen year old with the crimes of
23 rape in the first degree as defined in subdivision one of section 130.35
24 of the penal law, or criminal sexual act in the first degree as defined

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

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1 in subdivision one of section 130.50 of the penal law], or an armed
2 felony as defined in paragraph (a) of subdivision forty-one of section
3 1.20 of this chapter specific factors, one or more of which reasonably
4 supports the recommendation, showing, (i) mitigating circumstances that
5 bear directly upon the manner in which the crime was committed, or (ii)
6 where the defendant was not the sole participant in the crime, that the
7 defendant's participation was relatively minor although not so minor as
8 to constitute a defense to the prosecution, or (iii) possible deficiencies
9 in proof of the crime, or (iv) where the juvenile offender has no
10 previous adjudications of having committed a designated felony act, as
11 defined in subdivision eight of section 301.2 of the family court act,
12 regardless of the age of the offender at the time of commission of the
13 act, that the criminal act was not part of a pattern of criminal behavior
14 and, in view of the history of the offender, is not likely to be
15 repeated.

16 S 3. Paragraph (b) of subdivision 3 of section 220.30 of the criminal
17 procedure law is amended by adding two new subparagraphs (x) and (xi) to
18 read as follows:

19 (X) A PLEA OF GUILTY, WHETHER TO THE ENTIRE INDICTMENT OR TO PART OF
20 THE INDICTMENT FOR ANY CRIME OTHER THAN A FELONY DEFINED IN ARTICLE ONE
21 HUNDRED THIRTY OF THE PENAL LAW MAY NOT BE ACCEPTED ON CONDITION THAT IT
22 CONSTITUTES A COMPLETE DISPOSITION OF ONE OR MORE OTHER INDICTMENTS
23 AGAINST THE DEFENDANT WHEREIN IS CHARGED A FELONY DEFINED IN ARTICLE ONE
24 HUNDRED THIRTY OF THE PENAL LAW.

25 (XI) A PLEA OF GUILTY, WHETHER TO THE ENTIRE INDICTMENT OR TO PART OF
26 THE INDICTMENT FOR ANY CRIME OTHER THAN A CLASS B, A CLASS C OR A CLASS
27 D FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, MAY NOT
28 BE ACCEPTED ON CONDITION THAT IT CONSTITUTES A COMPLETE DISPOSITION OF
29 ONE OR MORE OTHER INDICTMENTS AGAINST THE DEFENDANT WHEREIN IS CHARGED A
30 CLASS B OR A CLASS C FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE
31 PENAL LAW.

32 S 4. This act shall take effect on the first of November next succeeding
33 the date on which it shall have become a law.