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

4675

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. YOUNG -- 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 eligibility for youthful offender status

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

Section 1. Subdivisions 2 and 3 of section 720.10 of the criminal procedure law, subdivision 2 as amended by chapter 416 of the laws of 1986, paragraph (a) of subdivision 2 as amended by chapter 316 of the laws of 2006 and subdivision 3 as amended by chapter 264 of the laws of 2003, are amended to read as follows:

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

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) [rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse] A CLASS B VIOLENT FELONY OFFENSE AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW, except as provided in subdivision three, or

(b) such youth has previously been convicted and sentenced for a felony, or

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

3. Notwithstanding the provisions of subdivision two, a youth who has been convicted of an armed felony offense or [of rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse] A CLASS B VIOLENT FELONY OFFENSE is an eligible youth if the

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

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court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided, however, that the provisions of this act shall apply only to offenses committed on or after such effective date.