

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to creating the crime of aggravated criminal conduct

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

- 1     Section 1. The penal law is amended by adding a new section 240.75 to  
2 read as follows:  
3     S 240.75 AGGRAVATED CRIMINAL CONDUCT.  
4     1. A PERSON IS GUILTY OF AGGRAVATED CRIMINAL CONDUCT WHEN SUCH PERSON  
5 COMMITS A CLASS A MISDEMEANOR AND HAS BEEN CONVICTED OF FIVE OR MORE  
6 QUALIFYING MISDEMEANOR OR FELONY CONVICTIONS WITHIN THE IMMEDIATELY  
7 PRECEDING FIVE YEARS.  
8     2. THE PROVISIONS OF SECTION 200.60 OF THE CRIMINAL PROCEDURE LAW  
9 SHALL APPLY TO ANY PROSECUTION UNDER THIS SECTION.  
10    3. FOR THE PURPOSES OF THIS SECTION, IN DETERMINING WHETHER A PERSON  
11 HAS BEEN PREVIOUSLY CONVICTED OF FIVE OR MORE QUALIFYING MISDEMEANOR OR  
12 FELONY CONVICTIONS WITHIN THE IMMEDIATE PRECEDING FIVE YEARS, THE  
13 FOLLOWING CRITERIA SHALL APPLY:  
14    (A) EACH CONVICTION SHALL HAVE BEEN FOR A CLASS A MISDEMEANOR; A FELO-  
15 NY; OR OF A CRIME IN ANOTHER JURISDICTION FOR WHICH A SENTENCE TO A TERM  
16 OF IMPRISONMENT OF AT LEAST ONE YEAR IS AUTHORIZED IN THIS STATE IRRE-  
17 SPECTIVE OF WHETHER SUCH SENTENCE WAS IMPOSED;  
18    (B) SENTENCE UPON EACH SUCH PRIOR CONVICTION SHALL HAVE BEEN IMPOSED  
19 BEFORE COMMISSION OF THE PRESENT MISDEMEANOR.  
20    (C) SUSPENDED SENTENCE, SUSPENDED EXECUTION OF SENTENCE, SENTENCE OF  
21 PROBATION, SENTENCE OF PAROLE SUPERVISION, AND SENTENCE OF CONDITIONAL  
22 DISCHARGE OR OF UNCONDITIONAL DISCHARGE SHALL BE DEEMED TO BE A  
23 SENTENCE;

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

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1 (D) EXCEPT AS PROVIDED IN PARAGRAPH (E) OF THIS SUBDIVISION, EACH  
2 SENTENCE SHALL HAVE BEEN IMPOSED NOT MORE THAN FIVE YEARS BEFORE COMMIS-  
3 SION OF THE PRESENT MISDEMEANOR;

4 (E) AN OFFENSE FOR WHICH THE DEFENDANT HAS BEEN PARDONED ON THE GROUND  
5 OF INNOCENCE SHALL NOT BE DEEMED A PREVIOUS MISDEMEANOR OR FELONY  
6 CONVICTION;

7 (F) IN CALCULATING THE FIVE YEAR PERIOD UNDER SUBDIVISION ONE OF THIS  
8 SECTION, ANY PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCERATED  
9 FOR ANY REASON BETWEEN THE TIME OF COMMISSION OF ANY OF THE PREVIOUS  
10 CONVICTIONS AND THE TIME OF THE COMMISSION OF THE PRESENT MISDEMEANOR  
11 SHALL BE EXCLUDED AND SUCH FIVE YEAR PERIOD SHALL BE EXTENDED BY A PERI-  
12 OD OR PERIODS EQUAL TO THE TIME SERVED;

13 (G) WHEN MULTIPLE SENTENCES FOR TWO OR MORE CONVICTIONS WERE IMPOSED  
14 AT THE SAME TIME, ALL CONVICTIONS SHALL BE DEEMED TO CONSTITUTE ONLY ONE  
15 CONVICTION.

16 AGGRAVATED CRIMINAL CONDUCT IS A CLASS E FELONY.

17 S 2. This act shall take effect on the first of November next succeed-  
18 ing the date on which it shall have become a law.