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

72

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

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:

Section 1. The penal law is amended by adding a new section 240.75 to read as follows:

S 240.75 AGGRAVATED CRIMINAL CONDUCT.

1. A PERSON IS GUILTY OF AGGRAVATED CRIMINAL CONDUCT WHEN SUCH PERSON COMMITS A CLASS A MISDEMEANOR AND HAS BEEN CONVICTED OF FIVE OR MORE QUALIFYING MISDEMEANOR OR FELONY CONVICTIONS WITHIN THE IMMEDIATELY PRECEDING FIVE YEARS.

2. THE PROVISIONS OF SECTION 200.60 OF THE CRIMINAL PROCEDURE LAW SHALL APPLY TO ANY PROSECUTION UNDER THIS SECTION.

3. FOR THE PURPOSES OF THIS SECTION, IN DETERMINING WHETHER A PERSON HAS BEEN PREVIOUSLY CONVICTED OF FIVE OR MORE QUALIFYING MISDEMEANOR OR FELONY CONVICTIONS WITHIN THE IMMEDIATE PRECEDING FIVE YEARS, THE FOLLOWING CRITERIA SHALL APPLY:

(A) EACH CONVICTION SHALL HAVE BEEN FOR A CLASS A MISDEMEANOR; A FELONY; OR OF A CRIME IN ANOTHER JURISDICTION FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT OF AT LEAST ONE YEAR IS AUTHORIZED IN THIS STATE IRRESPECTIVE OF WHETHER SUCH SENTENCE WAS IMPOSED;

(B) SENTENCE UPON EACH SUCH PRIOR CONVICTION SHALL HAVE BEEN IMPOSED BEFORE COMMISSION OF THE PRESENT MISDEMEANOR.

(C) SUSPENDED SENTENCE, SUSPENDED EXECUTION OF SENTENCE, SENTENCE OF PROBATION, SENTENCE OF PAROLE SUPERVISION, AND SENTENCE OF CONDITIONAL DISCHARGE OR OF UNCONDITIONAL DISCHARGE SHALL BE DEEMED TO BE A SENTENCE;

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

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

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

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

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

AGGRAVATED CRIMINAL CONDUCT IS A CLASS E FELONY.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.