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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 70.17 to read as follows:

S 70.17 ADDITIONAL MANDATORY SENTENCE OF IMPRISONMENT.

1. ANY DEFENDANT WHO IS FOUND GUILTY OF OR PLEADS GUILTY TO A VIOLATION OF ANY OF THE PROVISIONS OF SECTION 155.30, 155.35 OR 155.40 OF THIS CHAPTER INVOLVING THEFT OF A MOTOR VEHICLE SHALL IN ADDITION TO THE PENALTY PRESCRIBED BY ANY OTHER PROVISION OF LAW, BE SENTENCED TO A MANDATORY TERM OF IMPRISONMENT OF NOT LESS THAN FIVE YEARS, SUCH TERM TO RUN CONSECUTIVELY WITH RESPECT TO ANY OTHER TERM THAT MAY BE IMPOSED BY THE COURT.

2. ANY PERSON SERVING A MINIMUM SENTENCE INCREASED BY THIS SECTION SHALL NOT BE RELEASED PURSUANT TO SECTION 70.40 OF THIS ARTICLE UNTIL SUCH MINIMUM SENTENCE SHALL HAVE BEEN SERVED.

S 2. Subdivision 4 of section 180.75 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

4. Notwithstanding the provisions of subdivisions two and three of this section, a local criminal court shall, at the request of the district attorney, order removal of an action against a juvenile offender to the family court pursuant to the provisions of article seven hundred twenty-five of this chapter if, upon consideration of the criteria specified in subdivision two of section 210.43 of this [chapter] PART, it is determined that to do so would be in the interests of 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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offender with THEFT OF A MOTOR VEHICLE AS DEFINED IN SECTION 155.30, 155.35 OR 155.40 OF THE PENAL LAW, OR murder in the second degree as defined in section 125.25 of the penal law, rape in the first degree as defined in subdivision one of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, a determination that such action be removed to the family court shall, in addition, be based upon a finding of one or more of the following factors: (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; or (iii) possible deficiencies in proof of the crime.

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

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

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

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

S 5. Subdivision 2 of section 720.10 of the criminal procedure law, as amended by chapter 416 of the laws of 1986 and paragraph (a) as amended by chapter 316 of the laws of 2006, is 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, 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, OR

(D) SUCH YOUTH HAS BEEN CONVICTED OF THEFT OF A MOTOR VEHICLE AS DEFINED IN SECTION 155.30, 155.35 OR 155.40 OF THE PENAL LAW.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.