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

2632

2009-2010 Regular Sessions

I N S E N A T E

February 25, 2009

Introduced by Sens. PADAVAN, ALESI, DeFRANCISCO, GRIFFO, LARKIN, MAZIARZ, MORAHAN, SALAND, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the penal law, in relation to aggravated criminal conduct

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

Section 1. Subdivision 8 of section 180.60 of the criminal procedure law, as amended by chapter 307 of the laws of 1975, is amended to read as follows:

8. Upon such a hearing, only non-hearsay evidence is admissible to demonstrate reasonable cause to believe that the defendant committed a felony; except that reports of experts and technicians in professional and scientific fields and sworn statements, FORMS OR RECORDS of the kinds specified in subdivisions two [and], three AND THREE-A of section 190.30 are admissible to the same extent as in a grand jury proceeding, unless the court determines, upon application of the defendant, that such hearsay evidence is, under the particular circumstances of the case, not sufficiently reliable, in which case the court shall require that the witness testify in person and be subject to cross-examination.

S 2. Subdivision 2-a of section 190.30 of the criminal procedure law, as amended by chapter 453 of the laws of 1999, is amended to read as follows:

2-a. When the electronic transmission of a certified report, FORM OR RECORD, or certified copy thereof, of the kind described in subdivision two or three-a of this section or a sworn statement or copy thereof, of the kind described in subdivision three of this section results in a written document, such written document may be received in such grand jury proceeding provided that: (a) a transmittal memorandum completed by the person sending the report, FORM OR RECORD contains a certification that the report, FORM OR RECORD has not been altered and a description

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

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of the report, FORM OR RECORD specifying the number of pages; and (b) the person who receives the electronically transmitted document certifies that such document and transmittal memorandum were so received; and (c) a certified report, FORM OR RECORD or a certified copy or sworn statement or sworn copy thereof is filed with the court within twenty days following arraignment upon the indictment; and (d) where such written document is a sworn statement or sworn copy thereof of the kind described in subdivision three of this section, such sworn statement or sworn copy thereof is also provided to the defendant or his counsel within twenty days following arraignment upon the indictment.

S 3. Subdivision 3-a of section 190.30 of the criminal procedure law, as added by chapter 453 of the laws of 1999, is amended to read as follows:

3-a. A sex offender registration form, sex offender registration continuation/supplemental form, sex offender registry address verification form, sex offender change of address form, CRIMINAL HISTORY RECORD, or a copy of such form OR RECORD, maintained by the division of criminal justice services concerning an individual who is the subject of a grand jury proceeding, may, when certified by a person designated by the commissioner of the division of criminal justice services as the person to certify such FORMS OR records, as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

S 4. 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 DEFINED IN THIS CHAPTER AFTER HAVING BEEN PREVIOUSLY SUBJECTED TO THREE OR MORE QUALIFYING MISDEMEANOR OR FELONY CONVICTIONS WITHIN THE PRECEDING TEN 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 SUBJECTED TO THREE OR MORE QUALIFYING MISDEMEANOR OR FELONY CONVICTIONS WITHIN THE PRECEDING TEN YEARS, THE FOLLOWING CRITERIA SHALL APPLY:

(A) EACH CONVICTION MUST HAVE BEEN IN THIS STATE OF A CLASS A MISDEMEANOR DEFINED IN THIS CHAPTER OR OF A FELONY, OR OF A CRIME IN ANY OTHER JURISDICTION FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT OF AT LEAST ONE YEAR OR A SENTENCE OF DEATH WAS AUTHORIZED AND IS AUTHORIZED IN THIS STATE IRRESPECTIVE OF WHETHER SUCH SENTENCE WAS IMPOSED;

(B) SENTENCE UPON EACH SUCH PRIOR CONVICTION MUST 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;

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

(E) IN CALCULATING THE TEN YEAR PERIOD UNDER PARAGRAPH (D) OF THIS SUBDIVISION, 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 COMMISSION OF THE PRESENT MISDEMEANOR SHALL BE EXCLUDED AND SUCH TEN YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME SERVED;

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

(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.

4. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE A PROSECUTION OR CONVICTION FOR ANY OTHER OFFENSE, A NECESSARY ELEMENT OF WHICH IS A PREVIOUS CONVICTION FOR AN OFFENSE.

AGGRAVATED CRIMINAL CONDUCT IS A CLASS E FELONY.

S 5. This act shall take effect immediately.