

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

5377--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. KLEIN, C. JOHNSON, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend 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:

- 1 Section 1. The penal law is amended by adding a new section 240.72 to
2 read as follows:
3 S 240.72 AGGRAVATED CRIMINAL CONDUCT.
4 1. A PERSON IS GUILTY OF AGGRAVATED CRIMINAL CONDUCT WHEN SUCH PERSON
5 COMMITS A MISDEMEANOR DEFINED IN THIS CHAPTER AFTER HAVING BEEN PREVI-
6 OUSLY CONVICTED OF SIX OR MORE QUALIFYING MISDEMEANOR OR FELONY CRIMES
7 WITHIN THE PRECEDING ONE YEAR.
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 PREVIOUSLY BEEN CONVICTED OF SIX OR MORE QUALIFYING MISDEMEANOR OR
12 FELONY CRIMES WITHIN THE PRECEDING ONE YEAR, THE FOLLOWING CRITERIA
13 SHALL APPLY:
14 (A) ONLY CONVICTIONS FOR OFFENSES DEFINED IN THE FOLLOWING SECTIONS OF
15 THIS CHAPTER SHALL BE DEEMED QUALIFYING MISDEMEANORS: SECTIONS 115.00,
16 120.00, 120.14, 120.15, 120.20, 120.45, 120.50, 130.20, 130.52, 130.55,
17 130.60, 140.10, 140.15, 140.35, 145.00, 145.14, 145.15, 145.60, 145.65,
18 150.01, 155.25, 165.09, 165.15, 165.25, 165.40, 165.71, 170.05, 170.20,
19 190.78, 190.81, 205.30, 215.50, 220.03, 220.45, 220.50, 220.70, 221.10,
20 221.15, 221.35, 221.40, 230.00, 230.04, 230.40, 240.25, 240.30, 245.00,
21 265.01, AND 265.17.
22 (B) EACH CONVICTION OF A MISDEMEANOR OR OF A FELONY MUST HAVE BEEN BY
23 A COURT IN THIS STATE.

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

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1 (C) SENTENCE UPON EACH PRIOR CONVICTION MUST HAVE BEEN IMPOSED BEFORE
2 COMMISSION OF THE PRESENT MISDEMEANOR.

3 (D) SUSPENDED SENTENCE, SUSPENDED EXECUTION OF SENTENCE, SENTENCE OF
4 PROBATION, SENTENCE OF PAROLE SUPERVISION, AND SENTENCE OF CONDITIONAL
5 DISCHARGE OR OF UNCONDITIONAL DISCHARGE SHALL BE DEEMED TO BE A
6 SENTENCE.

7 (E) EXCEPT AS PROVIDED IN PARAGRAPH (F) OF THIS SUBDIVISION, EACH
8 SENTENCE MUST HAVE BEEN IMPOSED NOT MORE THAN ONE YEAR BEFORE COMMISSION
9 OF THE PRESENT MISDEMEANOR.

10 (F) IN CALCULATING THE ONE YEAR PERIOD UNDER PARAGRAPH (E) OF THIS
11 SUBDIVISION, ANY PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCER-
12 ATED FOR ANY REASON BETWEEN THE TIME OF IMPOSITION OF SENTENCE FOR ANY
13 OF THE PREVIOUS CONVICTIONS AND THE TIME OF COMMISSION OF THE PRESENT
14 MISDEMEANOR SHALL BE EXCLUDED AND SUCH ONE YEAR PERIOD SHALL BE EXTENDED
15 BY A PERIOD OR PERIODS EQUAL TO THE TIME SERVED.

16 (G) A CONVICTION THAT HAS BEEN REVERSED OR VACATED, OR CONVICTION FOR
17 WHICH THE DEFENDANT HAS BEEN PARDONED PURSUANT TO ARTICLE TWO-A OF THE
18 EXECUTIVE LAW, SHALL NOT BE DEEMED A PREVIOUS MISDEMEANOR OR FELONY
19 CONVICTION.

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

23 (I) WHEN A DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF AGGRAVATED CRIM-
24 INAL CONDUCT PURSUANT TO THIS SECTION, ANY PRIOR MISDEMEANOR OR FELONY
25 CONVICTION USED TO ESTABLISH GUILT FOR THAT AGGRAVATED CRIMINAL CONDUCT
26 CONVICTION SHALL NOT BE USED TO ESTABLISH GUILT IN A SUBSEQUENT PROSE-
27 CUTION FOR THIS OFFENSE.

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

31 AGGRAVATED CRIMINAL CONDUCT IS A CLASS E FELONY.

32 S 2. This act shall take effect immediately.