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

5495

2009-2010 Regular Sessions

I N S E N A T E

May 12, 2009

Introduced by Sen. FOLEY -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the filing of a special information alleging previous convictions involving certain traffic offenses

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

Section 1. Subdivision 4 of section 200.60 of the criminal procedure law is renumbered subdivision 5 and a new subdivision 4 is added to read as follows:

4. WHERE THE COURT INFORMS THE PARTIES THAT IT WILL SUBMIT A LESSER INCLUDED OFFENSE THAT, SOLELY BECAUSE OF THE DEFENDANT'S PRIOR CONVICTIONS, WOULD RAISE THE LESSER OFFENSE FROM A TRAFFIC INFRACTION TO A MISDEMEANOR, THE PEOPLE MAY THEREAFTER FILE A SPECIAL INFORMATION PURSUANT TO THIS SECTION. IF THE DEFENDANT ADMITS THE PREVIOUS CONVICTION, THAT ELEMENT OF THE OFFENSE SHALL BE DEEMED ESTABLISHED, NO EVIDENCE IN SUPPORT THEREOF MAY BE ADDUCED BY THE PEOPLE, AND THE COURT MUST SUBMIT THE CASE TO THE JURY WITHOUT REFERENCE THERETO AND AS IF THE FACT OF THE PREVIOUS CONVICTION WERE NOT AN ELEMENT OF THE OFFENSE. THE COURT MAY NOT SUBMIT TO THE JURY ANY LESSER-INCLUDED OFFENSE WHICH IS DISTINGUISHED FROM THE OFFENSE CHARGED SOLELY BY THE FACT THAT A PREVIOUS CONVICTION IS NOT AN ELEMENT THEREOF. IF THE DEFENDANT DOES NOT ADMIT THE PREVIOUS CONVICTION, THE COURT MUST ALLOW THE PEOPLE AN OPPORTUNITY TO PROVE THE PREVIOUS CONVICTION BEFORE THE JURY AS A PART OF THEIR CASE.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law, and shall apply to all criminal actions commenced on or after such effective date.

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

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