

613

2009-2010 Regular Sessions

I N S E N A T E

January 9, 2009

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to revocation of probation and re-sentencing upon conviction of a felony while under probation supervision for a felony conviction

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

1 Section 1. Subdivision 4 of section 60.01 of the penal law, as amended
2 by chapter 548 of the laws of 1984, is amended to read as follows:
3 4. In any case where a person has been sentenced to a period of
4 probation imposed pursuant to section 65.00 of this chapter, if the part
5 of the sentence that provides for probation is revoked, the court must
6 sentence such person to imprisonment or to the sentence of imprisonment
7 and probation as provided for in paragraph (d) of subdivision two of
8 this section. PROVIDED, HOWEVER, THAT WHERE A PERSON WHO HAS BEEN
9 SENTENCED TO A PERIOD OF PROBATION UPON CONVICTION OF A FELONY IS SUBSE-
10 QUENTLY CONVICTED OF A NEW FELONY OR IS CONVICTED OF AN OFFENSE IN
11 ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A
12 FELONY, WHICH NEW FELONY IS COMMITTED WHILE UNDER HIS OR HER PRESENT
13 PROBATION SUPERVISION, AND A NEW INDETERMINATE OR DETERMINATE SENTENCE
14 IS IMPOSED FOR SUCH NEW FELONY, THE PART OF THE SENTENCE THAT PROVIDED
15 FOR PROBATION SHALL BE REVOKED, AND SUCH PERSON SHALL BE SENTENCED TO A
16 TERM OF IMPRISONMENT OF OVER ONE YEAR. SUCH TERM SHALL RUN CONSECUTIVELY
17 TO THE TERM OF IMPRISONMENT IMPOSED FOR SUCH NEW FELONY, UNLESS THE
18 COURT DETERMINES THAT MITIGATING CIRCUMSTANCES EXIST, IN WHICH CASE THE
19 COURT MUST PLACE SUCH CIRCUMSTANCES ON THE RECORD AND A CONCURRENT
20 SENTENCE MAY BE IMPOSED.
21 S 2. Section 70.25 of the penal law is amended by adding a new subdi-
22 vision 6 to read as follows:
23 6. WHERE A PERSON WHO HAS BEEN SENTENCED TO A PERIOD OF PROBATION
24 IMPOSED PURSUANT TO SECTION 65.00 OF THIS CHAPTER UPON CONVICTION OF A

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

LBD04028-01-9

1 FELONY IS SUBSEQUENTLY CONVICTED OF A NEW FELONY OR IS CONVICTED OF AN
2 OFFENSE IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD
3 CONSTITUTE A FELONY, WHICH NEW FELONY IS COMMITTED WHILE UNDER HIS OR
4 HER PRESENT PROBATION SUPERVISION, AND A NEW INDETERMINATE OR DETERMI-
5 NATE SENTENCE IS IMPOSED FOR SUCH NEW FELONY, THE PART OF THE SENTENCE
6 THAT PROVIDED FOR PROBATION SHALL BE REVOKED, AND SUCH PERSON SHALL BE
7 SENTENCED TO A TERM OF IMPRISONMENT OF OVER ONE YEAR. SUCH TERM SHALL
8 RUN CONSECUTIVELY TO THE TERM OF IMPRISONMENT IMPOSED FOR SUCH NEW FELO-
9 NY, UNLESS THE COURT DETERMINES THAT MITIGATING CIRCUMSTANCES EXIST, IN
10 WHICH CASE THE COURT MUST PLACE SUCH CIRCUMSTANCES ON THE RECORD AND A
11 CONCURRENT SENTENCE MAY BE IMPOSED.

12 S 3. Subdivision 2 of section 410.10 of the criminal procedure law is
13 amended to read as follows:

14 2. Commission of an additional offense, other than a traffic infrac-
15 tion, after imposition of a sentence of probation or of conditional
16 discharge, and prior to expiration or termination of the period of the
17 sentence, constitutes a ground for revocation of such sentence irrespec-
18 tive of whether such fact is specified as a condition of the sentence.
19 CONVICTION OF A NEW FELONY OR OF AN OFFENSE IN ANOTHER JURISDICTION
20 WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY, WHILE THE
21 DEFENDANT IS UNDER PROBATION SUPERVISION FOR A FELONY OFFENSE, SHALL
22 RESULT IN REVOCATION OF PROBATION UPON IMPOSITION OF AN INDETERMINATE OR
23 DETERMINATE SENTENCE FOR THE NEW OFFENSE.

24 S 4. Subdivision 1 of section 410.70 of the criminal procedure law is
25 amended to read as follows:

26 1. In general. The court may not revoke a sentence of probation or a
27 sentence of conditional discharge unless (a) the court has found that
28 the defendant has violated a condition of the sentence OR (B) THE
29 DEFENDANT WHILE UNDER PROBATION SUPERVISION IMPOSED UPON CONVICTION OF A
30 FELONY HAS BEEN CONVICTED OF A NEW FELONY, OR IS CONVICTED OF AN OFFENSE
31 IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD CONSTI-
32 TUTE A FELONY, and [(b)] (C) the defendant has had an opportunity to be
33 heard. The defendant is entitled to a hearing in accordance with this
34 section promptly after the court has filed a declaration of delinquency
35 or has committed him OR HER or has fixed bail pursuant to this article.

36 S 5. Subdivision 1 of section 410.90 of the criminal procedure law, as
37 amended by chapter 238 of the laws of 1980, is amended to read as
38 follows:

39 1. The court may at any time terminate either a period of probation,
40 other than a period of lifetime probation, for conviction to a crime or
41 a period of conditional discharge for an offense, EXCEPT THAT CONVICTION
42 OF A NEW FELONY OR CONVICTION OF AN OFFENSE IN ANOTHER JURISDICTION
43 WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY, WHICH NEW
44 FELONY IS COMMITTED WHILE UNDER HIS OR HER PRESENT PROBATION SUPERVISION
45 FOR A FELONY OFFENSE, SHALL RESULT IN REVOCATION OF PROBATION UPON IMPO-
46 SITION OF AN INDETERMINATE OR DETERMINATE SENTENCE FOR THE NEW OFFENSE
47 PURSUANT TO SUBDIVISION FOUR OF SECTION 60.01 OF THE PENAL LAW, AND
48 SHALL NOT RESULT IN THE TERMINATION OF PROBATION.

49 S 6. This act shall take effect on the ninetieth day after it shall
50 have become a law.