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

3050

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. CAHILL, COOK, FARRELL, GALEF, GOTTFRIED, HOOPER, HOYT, JAFFEE, MILLMAN, ORTIZ, PHEFFER, ROBINSON, TOWNS, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to sentencing of felons with a prior youthful offender adjudication on conviction of a felony where a weapon was used with intent to commit a violent crime

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

Section 1. The criminal procedure law is amended by adding a new section 400.50 to read as follows:

S 400.50 PROCEDURE FOR DETERMINING PRIOR JUVENILE OFFENDER ADJUDICATION FOR THE PURPOSE OF SENTENCE IN CERTAIN CASES.

1. APPLICABILITY. WHERE A CONVICTION IS ENTERED FOR A FELONY WHERE A WEAPON WAS USED WITH INTENT TO COMMIT A VIOLENT CRIME, THE COURT MAY INQUIRE WHETHER THE DEFENDANT HAS ANY PRIOR YOUTHFUL OFFENDER ADJUDICATION AND MAY, WHERE IT DETERMINES THAT, IN FACT, SUCH DEFENDANT HAS BEEN SO PREVIOUSLY SENTENCED, UNSEAL ANY RECORDS RELATING TO SUCH ADJUDICATION AND CONSIDER THE CONTENTS THEREOF PRIOR TO IMPOSITION OF A SENTENCE.

2. STATEMENT TO BE FILED. IF IT APPEARS THAT THE DEFENDANT HAS SUCH A PREVIOUS ADJUDICATION AND THE COURT IN ITS DISCRETION DESIRES TO IMPOSE A SENTENCE AFTER CONSIDERING SUCH ADJUDICATION, A STATEMENT MUST BE FILED AFTER CONVICTION AND BEFORE SENTENCE SETTING FORTH THE DATE AND PLACE OF THE PREVIOUS ADJUDICATIONS AND THE COURT MUST CONDUCT A HEARING TO DETERMINE WHETHER THE DEFENDANT IS THE SAME PERSON MENTIONED IN THE RECORD.

3. PRELIMINARY EXAMINATION. THE DEFENDANT MUST BE GIVEN A COPY OF SUCH STATEMENT AND THE COURT MUST ASK HIM OR HER WHETHER HE OR SHE ADMITS OR DENIES SUCH PRIOR ADJUDICATION. IF THE DEFENDANT DENIES THE SAME OR REMAINS MUTE, THE COURT MAY PROCEED WITH THE HEARING.

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

LBD02614-01-1

4. TIME FOR HEARING. IN ANY CASE WHERE A COPY OF THE STATEMENT WAS NOT RECEIVED BY THE DEFENDANT AT LEAST TWO DAYS PRIOR TO THE PRELIMINARY EXAMINATION, THE COURT MUST UPON REQUEST OF THE DEFENDANT GRANT AN ADJOURNMENT OF AT LEAST TWO DAYS BEFORE PROCEEDING WITH THE HEARING.

5. MANNER OF CONDUCTING HEARING. A HEARING PURSUANT TO THIS SECTION MUST BE BEFORE THE COURT WITHOUT A JURY. THE BURDEN OF PROOF IS UPON THE PEOPLE AND A FINDING THAT THE DEFENDANT HAS BEEN ADJUDICATED A YOUTHFUL OFFENDER AS ALLEGED IN THE STATEMENT MUST BE BASED UPON PROOF BEYOND A REASONABLE DOUBT BY EVIDENCE ADMISSIBLE UNDER THE RULES APPLICABLE TO TRIAL OF THE ISSUE OF GUILT.

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 proceedings or hearings commenced on or after such effective date.