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

4826

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. P. RIVERA -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to prohibiting plea bargaining where a defendant is indicted for the crime of rape in the first degree

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

Section 1. Subdivision 5 of section 220.10 of the criminal procedure law is amended by adding a new paragraph (i) to read as follows:

(I) WHERE THE INDICTMENT CHARGES THE CLASS B FELONY OF RAPE IN THE FIRST DEGREE DEFINED IN SECTION 130.35 OF THE PENAL LAW, THEN ANY PLEA OF GUILTY ENTERED PURSUANT TO SUBDIVISION THREE OR FOUR OF THIS SECTION MUST BE OR MUST INCLUDE A PLEA OF GUILTY TO THE CLASS B FELONY OF RAPE IN THE FIRST DEGREE DEFINED IN SECTION 130.35 OF THE PENAL LAW.

S 2. Paragraph (g) of subdivision 5 of section 220.10 of the criminal procedure law, as amended by chapter 410 of the laws of 1979, subparagraph (iii) as amended by chapter 264 of the laws of 2003, the second undesignated paragraph as amended by chapter 920 of the laws of 1982 and the closing paragraph as amended by chapter 411 of the laws of 1979, is amended to read as follows:

(g) Where the defendant is a juvenile offender, the provisions of paragraphs (a), (b), (c) and (d) of this subdivision shall not apply and any plea entered pursuant to subdivision three or four of this section, must be as follows:

(i) If the indictment charges a person fourteen or fifteen years old with the crime of murder in the second degree any plea of guilty entered pursuant to subdivision three or four OF THIS SECTION must be a plea of guilty of a crime for which the defendant is criminally responsible;

(ii) If the indictment does not charge a crime specified in subparagraph (i) of this paragraph, then any plea of guilty entered pursuant to subdivision three or four of this section must be a plea of guilty of a

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

LBD00440-01-1

crime for which the defendant is criminally responsible unless a plea of guilty is accepted pursuant to subparagraph (iii) of this paragraph;

(iii) Where the indictment does not charge a crime specified in subparagraph (i) of this paragraph, the district attorney may recommend removal of the action to the family court. Upon making such recommendation the district attorney shall submit a subscribed memorandum setting forth: (1) a recommendation that the interests of justice would best be served by removal of the action to the family court; and (2) if the indictment charges a thirteen year old with the crime of murder in the second degree, or a fourteen or fifteen year old with the crimes of rape in the first degree as defined in subdivision one of section 130.35 of the penal law, or criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter specific factors, one or more of which reasonably supports the recommendation, showing, (i) mitigating circumstances that bear directly upon the manner in which the crime was committed, or (ii) where the defendant was not the sole participant in the crime, that the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution, or (iii) possible deficiencies in proof of the crime, or (iv) where the juvenile offender has no previous adjudications of having committed a designated felony act, as defined in subdivision eight of section 301.2 of the family court act, regardless of the age of the offender at the time of commission of the act, that the criminal act was not part of a pattern of criminal behavior and, in view of the history of the offender, is not likely to be repeated.

If the court is of the opinion based on specific factors set forth in the district attorney's memorandum that the interests of justice would best be served by removal of the action to the family court, a plea of guilty of a crime or act for which the defendant is not criminally responsible may be entered pursuant to subdivision three or four of this section, except that a thirteen year old charged with the crime of murder in the second degree may only plead to a designated felony act, as defined in subdivision eight of section 301.2 of the family court act.

Upon accepting any such plea, the court must specify upon the record the portion or portions of the district attorney's statement the court is relying upon as the basis of its opinion and that it believes the interests of justice would best be served by removal of the proceeding to the family court. Such plea shall then be deemed to be a juvenile delinquency fact determination and the court upon entry thereof must direct that the action be removed to the family court in accordance with the provisions of article seven hundred twenty-five of this chapter.

S 3. Paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law is amended by adding a new subparagraph (x) to read as follows:

(X) A PLEA OF GUILTY, WHETHER TO THE ENTIRE INDICTMENT OR TO PART OF THE INDICTMENT FOR ANY CRIME OTHER THAN THE CLASS B FELONY OF RAPE IN THE FIRST DEGREE DEFINED IN SECTION 130.35 OF THE PENAL LAW, MAY NOT BE ACCEPTED ON CONDITION THAT IT CONSTITUTES A COMPLETE DISPOSITION OF ONE OR MORE OTHER INDICTMENTS AGAINST THE DEFENDANT WHEREIN IS CHARGED THE CLASS B FELONY OF RAPE IN THE FIRST DEGREE DEFINED IN SECTION 130.35 OF THE PENAL LAW.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.