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

6369

2011-2012 Regular Sessions

I N A S S E M B L Y

March 15, 2011

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

AN ACT to amend the penal law, in relation to increasing penalties for offenses committed against elderly persons

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

Section 1. The penal law is amended by adding a new section 70.12 to read as follows:

S 70.12 SENTENCE OF IMPRISONMENT FOR AN OFFENSE COMMITTED AGAINST AN ELDERLY PERSON.

1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ELDERLY PERSON" MEANS A HUMAN BEING SIXTY YEARS OLD OR MORE.

(B) "OFFENSE COMMITTED" IS AN OFFENSE DEFINED BY ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER: SECTION 120.00 (ASSAULT IN THE THIRD DEGREE), SECTION 120.05 (ASSAULT IN THE SECOND DEGREE), SECTION 120.10 (ASSAULT IN THE FIRST DEGREE), 120.06 (GANG ASSAULT IN THE SECOND DEGREE), 120.07 (GANG ASSAULT IN THE FIRST DEGREE), 120.08 (ASSAULT ON A PEACE OFFICER, POLICE OFFICER, FIREMAN OR EMERGENCY MEDICAL SERVICES PROFESSIONAL), SECTION 120.13 (MENACING IN THE FIRST DEGREE), SECTION 120.14 (MENACING IN THE SECOND DEGREE), SECTION 120.15 (MENACING IN THE THIRD DEGREE), SECTION 120.20 (RECKLESS ENDANGERMENT IN THE SECOND DEGREE), SECTION 120.25 (RECKLESS ENDANGERMENT IN THE FIRST DEGREE), SECTION 120.45 (STALKING IN THE FOURTH DEGREE), SECTION 120.50 (STALKING IN THE THIRD DEGREE), SECTION 120.55 (STALKING IN THE SECOND DEGREE), SECTION 120.60 (STALKING IN THE FIRST DEGREE), SUBDIVISION ONE OF SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE), SUBDIVISION ONE, TWO OR FOUR OF SECTION 125.20 (MANSLAUGHTER IN THE FIRST DEGREE), SECTION 125.25 (MURDER IN THE SECOND DEGREE), SUBDIVISION ONE OF SECTION 130.35 (RAPE IN THE FIRST DEGREE), SECTION 130.40 (CRIMINAL SEXUAL ACT IN THE THIRD DEGREE), SECTION 130.45 (CRIMINAL SEXUAL ACT IN THE SECOND

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

LBD10137-01-1

DEGREE), SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE), SECTION 130.53 (PERSISTENT SEXUAL ABUSE), SECTION 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE), SECTION 130.65-A (AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE), SECTION 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE), SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE), SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE), SECTION 135.05 (UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE), SECTION 135.10 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE), SECTION 135.20 (KIDNAPPING IN THE SECOND DEGREE), SECTION 135.25 (KIDNAPPING IN THE FIRST DEGREE), SECTION 135.60 (COERCION IN THE SECOND DEGREE), SECTION 135.65 (COERCION IN THE FIRST DEGREE), SECTION 140.10 (CRIMINAL TRESPASS IN THE THIRD DEGREE), SECTION 140.15 (CRIMINAL TRESPASS IN THE SECOND DEGREE), SECTION 140.17 (CRIMINAL TRESPASS IN THE FIRST DEGREE), SECTION 140.20 (BURGLARY IN THE THIRD DEGREE), SECTION 140.25 (BURGLARY IN THE SECOND DEGREE), SECTION 140.30 (BURGLARY IN THE FIRST DEGREE), SECTION 145.00 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE), SECTION 145.05 (CRIMINAL MISCHIEF IN THE THIRD DEGREE), SECTION 145.10 (CRIMINAL MISCHIEF IN THE SECOND DEGREE), SECTION 145.12 (CRIMINAL MISCHIEF IN THE FIRST DEGREE), SECTION 150.05 (ARSON IN THE FOURTH DEGREE), SECTION 150.10 (ARSON IN THE THIRD DEGREE), SECTION 150.15 (ARSON IN THE SECOND DEGREE), SECTION 150.20 (ARSON IN THE FIRST DEGREE), SECTION 155.25 (PETIT LARCENY), SECTION 155.30 (GRAND LARCENY IN THE FOURTH DEGREE), SECTION 155.35 (GRAND LARCENY IN THE THIRD DEGREE), SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE), SECTION 155.42 (GRAND LARCENY IN THE FIRST DEGREE), SECTION 160.05 (ROBBERY IN THE THIRD DEGREE), SECTION 160.10 (ROBBERY IN THE SECOND DEGREE), SECTION 160.15 (ROBBERY IN THE FIRST DEGREE), SECTION 240.25 (HARASSMENT IN THE FIRST DEGREE), SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30 (AGGRAVATED HARASSMENT IN THE SECOND DEGREE), OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

2. AUTHORIZED SENTENCE. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS CONVICTED OF AN OFFENSE COMMITTED AGAINST AN ELDERLY PERSON WHICH IS A CLASS C, D OR E FELONY OR CLASS A, B OR UNCLASSIFIED MISDEMEANOR, THE OFFENSE SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE OFFENSE THE PERSON COMMITTED, OR ATTEMPTED OR CONSPIRED TO COMMIT.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS CONVICTED OF AN OFFENSE COMMITTED AGAINST AN ELDERLY PERSON WHICH IS A CLASS B FELONY:

(I) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST SIX YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF THIS ARTICLE;

(II) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS ARTICLE;

(III) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS ARTICLE;

(IV) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF THIS ARTICLE; AND

(V) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TEN YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.06 OF THIS ARTICLE.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.