

1512

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sens. KLEIN, ADAMS, DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to aggravated criminal conduct

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

1 Section 1. The penal law is amended by adding a new section 240.75 to  
2 read as follows:

3 S 240.75 AGGRAVATED CRIMINAL CONDUCT.

4 1. A PERSON IS GUILTY OF AGGRAVATED CRIMINAL CONDUCT WHEN SUCH PERSON  
5 COMMITS A MISDEMEANOR DEFINED IN THIS CHAPTER AFTER HAVING BEEN PREVI-  
6 OUSLY CONVICTED OF SIX OR MORE QUALIFYING MISDEMEANOR OR FELONY CRIMES  
7 WITHIN THE PRECEDING ONE YEAR.

8 2. THE PROVISIONS OF SECTION 200.60 OF THE CRIMINAL PROCEDURE LAW  
9 SHALL APPLY TO ANY PROSECUTION UNDER THIS SECTION.

10 3. FOR THE PURPOSES OF THIS SECTION, IN DETERMINING WHETHER A PERSON  
11 HAS PREVIOUSLY BEEN CONVICTED OF SIX OR MORE QUALIFYING MISDEMEANOR OR  
12 FELONY CRIMES WITHIN THE PRECEDING ONE YEAR, THE FOLLOWING CRITERIA  
13 SHALL APPLY:

14 (A) ONLY CONVICTIONS FOR OFFENSES DEFINED IN THE FOLLOWING SECTIONS OF  
15 THIS CHAPTER SHALL BE DEEMED QUALIFYING MISDEMEANORS: SECTIONS 115.00,  
16 120.00, 120.14, 120.15, 120.20, 120.45, 120.50, 130.20, 130.52, 130.55,  
17 130.60, 140.10, 140.15, 140.35, 145.00, 145.14, 145.15, 145.60, 145.65,  
18 150.01, 155.25, 165.09, 165.15, 165.25, 165.40, 165.71, 170.05, 170.20,  
19 190.78, 190.81, 205.30, 215.50, 220.03, 220.45, 220.50, 220.70, 221.10,  
20 221.15, 221.35, 221.40, 230.00, 230.04, 230.40, 240.25, 240.30, 245.00,  
21 265.01, AND 265.17.

22 (B) EACH CONVICTION OF A MISDEMEANOR OR OF A FELONY MUST HAVE BEEN BY  
23 A COURT IN THIS STATE.

24 (C) SENTENCE UPON EACH PRIOR CONVICTION MUST HAVE BEEN IMPOSED BEFORE  
25 COMMISSION OF THE PRESENT MISDEMEANOR.

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

LBD04841-01-1

1 (D) SUSPENDED SENTENCE, SUSPENDED EXECUTION OF SENTENCE, SENTENCE OF  
2 PROBATION, SENTENCE OF PAROLE SUPERVISION, AND SENTENCE OF CONDITIONAL  
3 DISCHARGE OR OF UNCONDITIONAL DISCHARGE SHALL BE DEEMED TO BE A  
4 SENTENCE.

5 (E) EXCEPT AS PROVIDED IN PARAGRAPH (F) OF THIS SUBDIVISION, EACH  
6 SENTENCE MUST HAVE BEEN IMPOSED NOT MORE THAN ONE YEAR BEFORE COMMISSION  
7 OF THE PRESENT MISDEMEANOR.

8 (F) IN CALCULATING THE ONE YEAR PERIOD UNDER PARAGRAPH (E) OF THIS  
9 SUBDIVISION, ANY PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCER-  
10 ATED FOR ANY REASON BETWEEN THE TIME OF IMPOSITION OF SENTENCE FOR ANY  
11 OF THE PREVIOUS CONVICTIONS AND THE TIME OF COMMISSION OF THE PRESENT  
12 MISDEMEANOR SHALL BE EXCLUDED AND SUCH ONE YEAR PERIOD SHALL BE EXTENDED  
13 BY A PERIOD OR PERIODS EQUAL TO THE TIME SERVED.

14 (G) A CONVICTION THAT HAS BEEN REVERSED OR VACATED, OR CONVICTION FOR  
15 WHICH THE DEFENDANT HAS BEEN PARDONED PURSUANT TO ARTICLE TWO-A OF THE  
16 EXECUTIVE LAW, SHALL NOT BE DEEMED A PREVIOUS MISDEMEANOR OR FELONY  
17 CONVICTION.

18 (H) WHEN MULTIPLE SENTENCES FOR TWO OR MORE CONVICTIONS WERE IMPOSED  
19 AT THE SAME TIME, ALL CONVICTIONS SHALL BE DEEMED TO CONSTITUTE ONLY ONE  
20 CONVICTION.

21 (I) WHEN A DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF AGGRAVATED CRIM-  
22 INAL CONDUCT PURSUANT TO THIS SECTION, ANY PRIOR MISDEMEANOR OR FELONY  
23 CONVICTION USED TO ESTABLISH GUILT FOR THAT AGGRAVATED CRIMINAL CONDUCT  
24 CONVICTION SHALL NOT BE USED TO ESTABLISH GUILT IN A SUBSEQUENT PROSE-  
25 CUTION FOR THIS OFFENSE.

26 4. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE A  
27 PROSECUTION OR CONVICTION FOR ANY OTHER OFFENSE, A NECESSARY ELEMENT OF  
28 WHICH IS A PREVIOUS CONVICTION FOR AN OFFENSE.

29 AGGRAVATED CRIMINAL CONDUCT IS A CLASS E FELONY.

30 S 2. This act shall take effect immediately.