

2944

2011-2012 Regular Sessions

I N   S E N A T E

February 3, 2011

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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 FELONY OR IS CONVICTED OF AN OFFENSE IN ANOTHER  
11    JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY,  
12    WHICH SUBSEQUENT FELONY IS COMMITTED WHILE UNDER HIS OR HER PRESENT  
13    PROBATION SUPERVISION, AND A NEW INDETERMINATE OR DETERMINATE SENTENCE  
14    IS IMPOSED FOR SUCH SUBSEQUENT FELONY, THE PART OF THE SENTENCE THAT  
15    PROVIDED FOR PROBATION SHALL BE REVOKED AND SUCH PERSON SHALL BE  
16    SENTENCED TO A TERM OF IMPRISONMENT OF OVER ONE YEAR. SUCH TERM SHALL  
17    RUN CONSECUTIVELY TO THE TERM OF IMPRISONMENT IMPOSED FOR THE SUBSEQUENT  
18    FELONY, UNLESS THE COURT DETERMINES THAT MITIGATING CIRCUMSTANCES EXIST,  
19    IN WHICH CASE THE COURT MUST PLACE SUCH CIRCUMSTANCES ON THE RECORD AND  
20    A CONCURRENT 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.

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1 FELONY IS SUBSEQUENTLY CONVICTED OF A FELONY OR IS CONVICTED OF AN  
2 OFFENSE IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD  
3 CONSTITUTE A FELONY, WHICH SUBSEQUENT FELONY IS COMMITTED WHILE UNDER  
4 HIS OR HER PRESENT PROBATION SUPERVISION, AND A NEW INDETERMINATE OR  
5 DETERMINATE SENTENCE IS IMPOSED FOR SUCH SUBSEQUENT FELONY, THE PART OF  
6 THE SENTENCE THAT PROVIDED FOR PROBATION SHALL BE REVOKED, AND SUCH  
7 PERSON SHALL BE SENTENCED TO A TERM OF IMPRISONMENT OF OVER ONE YEAR.  
8 SUCH TERM SHALL RUN CONSECUTIVELY TO THE TERM OF IMPRISONMENT IMPOSED  
9 FOR THE SUBSEQUENT FELONY, UNLESS THE COURT DETERMINES THAT MITIGATING  
10 CIRCUMSTANCES EXIST, IN WHICH CASE THE COURT MUST PLACE SUCH CIRCUM-  
11 STANCES ON THE RECORD AND A 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 SUBSEQUENT FELONY OR OF AN OFFENSE IN ANOTHER JURISDIC-  
20 TION WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY, WHILE  
21 THE 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 SUBSEQUENT 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 SUBSEQUENT FELONY, OR IS CONVICTED OF AN  
31 OFFENSE IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD  
32 CONSTITUTE A FELONY, and [(b)] (C) the defendant has had an opportunity  
33 to be heard. The defendant is entitled to a hearing in accordance with  
34 this section promptly after the court has filed a declaration of delin-  
35 quency or has committed him OR HER or has fixed bail pursuant to this  
36 article.

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

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

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