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

5490

2011-2012 Regular Sessions

I N S E N A T E

May 25, 2011

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the requirement of preparing pre-sentence reports and the waiver of such reports under certain circumstances, and to repeal the closing paragraph of paragraph (a) of subdivision 4 of section 390.20 of such law relating to waiver of pre-sentence reports where indeterminate sentences are to be imposed

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

Section 1. Subdivision 1 of section 390.20 of the criminal procedure law is amended to read as follows:

1. Requirement for felonies. In any case where a person is convicted of a felony, the court must order a pre-sentence investigation of the defendant and it may not pronounce sentence until it has received a written report of such investigation. THIS REQUIREMENT SHALL NOT APPLY WHEN A NEGOTIATED SENTENCE OF IMPRISONMENT HAS BEEN AGREED UPON BY THE PARTIES AS A RESULT OF A CONVICTION OR REVOCATION OF A SENTENCE OF PROBATION, AND NO SENTENCE OF PROBATION WILL BE IMPOSED.

S 2. Subdivision 2 of section 390.20 of the criminal procedure law, as amended by chapter 413 of the laws of 1991, paragraph (b) as amended by section 179 of the laws of 2010, is amended to read as follows:

2. Requirement for misdemeanors. Where a person is convicted of a misdemeanor a pre-sentence report is not required[, but the court may not pronounce any of the following sentences unless it has ordered a pre-sentence investigation of the defendant and has received a written report thereof:

(a) A sentence of probation except where the provisions of subparagraph (ii) of paragraph (a) of subdivision four of this section apply;

(b) A sentence of imprisonment for a term in excess of one hundred eighty days;

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

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(c) Consecutive sentences of imprisonment with terms aggregating more than ninety days].

S 3. Subdivision 4 of section 390.20 of the criminal procedure law, as added by chapter 413 of the laws of 1991, the closing paragraph of paragraph (a) as amended by chapter 3 of the laws of 1995, is amended to read as follows:

4. Waiver. (a) [Notwithstanding the provisions of subdivision one or two of this section, a] A pre-sentence investigation of the defendant and a written report thereon, WHEN REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, may be waived by the mutual consent of the parties and with consent of the judge, stated on the record or in writing, whenever:

(i) [A sentence of imprisonment has been agreed upon by the parties and will be satisfied by the time served, or

(ii)] A sentence of probation has been agreed upon by the parties and will be imposed, or

[(iii)] (II) A report has been prepared in the preceding twelve months[, or

(iv) A sentence of probation is revoked.

Provided, however, a pre-sentence investigation of the defendant and a written report thereon shall not be waived if an indeterminate or determinate sentence of imprisonment is to be imposed].

(b) Whenever a pre-sentence investigation and report has been waived pursuant to subparagraph (i)[,] OR (ii) [or (iii)] of paragraph (a) of this subdivision and the court determines that such information would be relevant to the court disposition, a victim impact statement shall be provided in accordance with this section.

S 4. The closing paragraph of paragraph (a) of subdivision 4 of section 390.20 of the criminal procedure law, as added by chapter 413 of the laws of 1991, is REPEALED.

S 5. This act shall take effect on the ninetieth day after it shall have become a law, provided, however, that the amendments to the closing paragraph of paragraph (a) of subdivision 4 of section 390.20 of the criminal procedure law made by section three of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section four of this act shall take effect.