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

10427

I N A S S E M B L Y

May 29, 2012

Introduced by M. of A. CUSICK -- read once and referred 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:

Section 1. Subdivision 4 of section 60.01 of the penal law, as amended by chapter 548 of the laws of 1984, is amended to read as follows:

4. In any case where a person has been sentenced to a period of probation imposed pursuant to section 65.00 of this chapter, if the part of the sentence that provides for probation is revoked, the court must sentence such person to imprisonment or to the sentence of imprisonment and probation as provided for in paragraph (d) of subdivision two of this section. PROVIDED, HOWEVER, THAT WHERE A PERSON WHO HAS BEEN SENTENCED TO A PERIOD OF PROBATION UPON CONVICTION OF A FELONY IS SUBSEQUENTLY CONVICTED OF A FELONY OR IS CONVICTED OF AN OFFENSE IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY, WHICH SUBSEQUENT FELONY IS COMMITTED WHILE UNDER HIS OR HER PRESENT PROBATION SUPERVISION, AND A NEW INDETERMINATE OR DETERMINATE SENTENCE IS IMPOSED FOR SUCH SUBSEQUENT FELONY, THE PART OF THE SENTENCE THAT PROVIDED FOR PROBATION SHALL BE REVOKED AND SUCH PERSON SHALL BE SENTENCED TO A TERM OF IMPRISONMENT OF OVER ONE YEAR. SUCH TERM SHALL RUN CONSECUTIVELY TO THE TERM OF IMPRISONMENT IMPOSED FOR THE SUBSEQUENT FELONY, UNLESS THE COURT DETERMINES THAT MITIGATING CIRCUMSTANCES EXIST, IN WHICH CASE THE COURT MUST PLACE SUCH CIRCUMSTANCES ON THE RECORD AND A CONCURRENT SENTENCE MAY BE IMPOSED.

S 2. Section 70.25 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. WHERE A PERSON WHO HAS BEEN SENTENCED TO A PERIOD OF PROBATION IMPOSED PURSUANT TO SECTION 65.00 OF THIS CHAPTER UPON CONVICTION OF A FELONY IS SUBSEQUENTLY CONVICTED OF A FELONY OR IS CONVICTED OF AN OFFENSE IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY, WHICH SUBSEQUENT FELONY IS COMMITTED WHILE UNDER

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

LBD02803-01-1

HIS OR HER PRESENT PROBATION SUPERVISION, AND A NEW INDETERMINATE OR DETERMINATE SENTENCE IS IMPOSED FOR SUCH SUBSEQUENT FELONY, THE PART OF THE SENTENCE THAT PROVIDED FOR PROBATION SHALL BE REVOKED, AND SUCH PERSON SHALL BE SENTENCED TO A TERM OF IMPRISONMENT OF OVER ONE YEAR. SUCH TERM SHALL RUN CONSECUTIVELY TO THE TERM OF IMPRISONMENT IMPOSED FOR THE SUBSEQUENT FELONY, UNLESS THE COURT DETERMINES THAT MITIGATING CIRCUMSTANCES EXIST, IN WHICH CASE THE COURT MUST PLACE SUCH CIRCUMSTANCES ON THE RECORD AND A CONCURRENT SENTENCE MAY BE IMPOSED.

S 3. Subdivision 2 of section 410.10 of the criminal procedure law is amended to read as follows:

2. Commission of an additional offense, other than a traffic infraction, after imposition of a sentence of probation or of conditional discharge, and prior to expiration or termination of the period of the sentence, constitutes a ground for revocation of such sentence irrespective of whether such fact is specified as a condition of the sentence. CONVICTION OF A SUBSEQUENT FELONY OR OF AN OFFENSE IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY, WHILE THE DEFENDANT IS UNDER PROBATION SUPERVISION FOR A FELONY OFFENSE, SHALL RESULT IN REVOCATION OF PROBATION UPON IMPOSITION OF AN INDETERMINATE OR DETERMINATE SENTENCE FOR THE SUBSEQUENT OFFENSE.

S 4. Subdivision 1 of section 410.70 of the criminal procedure law is amended to read as follows:

1. In general. The court may not revoke a sentence of probation or a sentence of conditional discharge unless (a) the court has found that the defendant has violated a condition of the sentence OR (B) THE DEFENDANT WHILE UNDER PROBATION SUPERVISION IMPOSED UPON CONVICTION OF A FELONY HAS BEEN CONVICTED OF A SUBSEQUENT FELONY, OR IS CONVICTED OF AN OFFENSE IN ANOTHER JURISDICTION WHICH IF COMMITTED IN THIS STATE WOULD CONSTITUTE A FELONY, and [(b)] (C) the defendant has had an opportunity to be heard. The defendant is entitled to a hearing in accordance with this section promptly after the court has filed a declaration of delinquency or has committed him OR HER or has fixed bail pursuant to this article.

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

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

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