

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sens. MAZIARZ, ALESI, FLANAGAN, JOHNSON, SEWARD -- 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 plea bargains in felony sex offenses

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

1     Section 1. Subdivision 5 of section 220.10 of the criminal procedure  
2     law is amended by adding a new paragraph (i) to read as follows:  
3     (I) WHERE THE INDICTMENT CHARGES A FELONY DEFINED IN ARTICLE ONE  
4     HUNDRED THIRTY OF THE PENAL LAW, THEN ANY PLEA OF GUILTY ENTERED PURSU-  
5     ANT TO SUBDIVISION THREE OR FOUR OF THIS SECTION MUST BE OR MUST INCLUDE  
6     AT LEAST A PLEA OF GUILTY TO A FELONY DEFINED IN ARTICLE ONE HUNDRED  
7     THIRTY OF THE PENAL LAW; PROVIDED, HOWEVER, THAT WHERE THE INDICTMENT  
8     CHARGES A CLASS B OR A CLASS C FELONY AS DEFINED IN ARTICLE ONE HUNDRED  
9     THIRTY OF THE PENAL LAW, THEN A PLEA OF GUILTY MUST INCLUDE AT LEAST A  
10    PLEA OF GUILTY TO A CLASS D FELONY AS DEFINED IN ARTICLE ONE HUNDRED  
11    THIRTY OF THE PENAL LAW.  
12    S 2. Subparagraph (iii) of paragraph (g) of subdivision 5 of section  
13    220.10 of the criminal procedure law, as amended by chapter 264 of the  
14    laws of 2003, is amended to read as follows:  
15    (iii) Where the indictment does not charge a crime specified in  
16    subparagraph (i) of this paragraph, the district attorney may recommend  
17    removal of the action to the family court. Upon making such recommenda-  
18    tion the district attorney shall submit a subscribed memorandum setting  
19    forth: (1) a recommendation that the interests of justice would best be  
20    served by removal of the action to the family court; and (2) if the  
21    indictment charges a thirteen year old with the crime of murder in the  
22    second degree[, or a fourteen or fifteen year old with the crimes of  
23    rape in the first degree as defined in subdivision one of section 130.35

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

LBD01586-01-1

1 of the penal law, or criminal sexual act in the first degree as defined  
2 in subdivision one of section 130.50 of the penal law], or an armed  
3 felony as defined in paragraph (a) of subdivision forty-one of section  
4 1.20 of this chapter specific factors, one or more of which reasonably  
5 supports the recommendation, showing, (i) mitigating circumstances that  
6 bear directly upon the manner in which the crime was committed, or (ii)  
7 where the defendant was not the sole participant in the crime, that the  
8 defendant's participation was relatively minor although not so minor as  
9 to constitute a defense to the prosecution, or (iii) possible deficiencies  
10 in proof of the crime, or (iv) where the juvenile offender has no  
11 previous adjudications of having committed a designated felony act, as  
12 defined in subdivision eight of section 301.2 of the family court act,  
13 regardless of the age of the offender at the time of commission of the  
14 act, that the criminal act was not part of a pattern of criminal behavior  
15 and, in view of the history of the offender, is not likely to be  
16 repeated.

17 S 3. Paragraph (b) of subdivision 3 of section 220.30 of the criminal  
18 procedure law is amended by adding two new subparagraphs (x) and (xi) to  
19 read as follows:

20 (X) A PLEA OF GUILTY, WHETHER TO THE ENTIRE INDICTMENT OR TO PART OF  
21 THE INDICTMENT FOR ANY CRIME OTHER THAN A FELONY DEFINED IN ARTICLE ONE  
22 HUNDRED THIRTY OF THE PENAL LAW MAY NOT BE ACCEPTED ON CONDITION THAT IT  
23 CONSTITUTES A COMPLETE DISPOSITION OF ONE OR MORE OTHER INDICTMENTS  
24 AGAINST THE DEFENDANT WHEREIN IS CHARGED A FELONY DEFINED IN ARTICLE ONE  
25 HUNDRED THIRTY OF THE PENAL LAW.

26 (XI) A PLEA OF GUILTY, WHETHER TO THE ENTIRE INDICTMENT OR TO PART OF  
27 THE INDICTMENT FOR ANY CRIME OTHER THAN A CLASS B, A CLASS C OR A CLASS  
28 D FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, MAY NOT  
29 BE ACCEPTED ON CONDITION THAT IT CONSTITUTES A COMPLETE DISPOSITION OF  
30 ONE OR MORE OTHER INDICTMENTS AGAINST THE DEFENDANT WHEREIN IS CHARGED A  
31 CLASS B OR A CLASS C FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE  
32 PENAL LAW.

33 S 4. This act shall take effect on the first of November next succeeding  
34 the date on which it shall have become a law.