

2944

2011-2012 Regular Sessions

I N S E N A T E

February 3, 2011

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.