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

4582--B

2013-2014 Regular Sessions

I N A S S E M B L Y

February 6, 2013

Introduced by M. of A. O'DONNELL, AUBRY -- read once and referred to the Committee on Correction -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to establishing terms of probation sentences and revocations thereof under certain circumstances

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

Section 1. Subparagraph (i) of paragraph (a) of subdivision 3 of section 65.00 of the penal law, as amended by section 20 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

(i) For a felony, other than a class A-II felony defined in article two hundred twenty of this chapter or the class B felony defined in section 220.48 of this chapter, or any other class B felony defined in article two hundred twenty of this chapter committed by a second felony drug offender, or a sexual assault, the period of probation shall be A TERM OF THREE, FOUR OR five years;

S 2. Subparagraph (i) of paragraph (b) of subdivision 3 of section 65.00 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(i) For a class A misdemeanor, other than a sexual assault, the period of probation shall be A TERM OF TWO OR three years;

S 3. Paragraph (d) of subdivision 3 of section 65.00 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

(d) For an unclassified misdemeanor, the period of probation shall be A TERM OF TWO OR three years if the authorized sentence of imprisonment

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

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is in excess of three months, otherwise the period of probation shall be one year.

S 4. Subdivision 4 of section 65.00 of the penal law is renumbered subdivision 5 and a new subdivision 4 is added to read as follows:

4. IF DURING THE PERIODS OF PROBATION REFERENCED IN SUBPARAGRAPH (I) OF PARAGRAPH (A), SUBPARAGRAPH (I) OF PARAGRAPH (B) AND PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION AN ALLEGED VIOLATION IS SUSTAINED AND THE COURT CONTINUES OR MODIFIES THE SENTENCE, THE COURT MAY EXTEND THE REMAINING PERIOD OF PROBATION UP TO THE MAXIMUM TERM AUTHORIZED BY THIS SECTION.

S 5. Subdivision 5 of section 410.70 of the criminal procedure law, as amended by chapter 112 of the laws of 1985, is amended to read as follows:

5. Revocation; modification; continuation. At the conclusion of the hearing the court may revoke, continue or modify the sentence of probation or conditional discharge. Where the court revokes the sentence, it must impose sentence as specified in subdivisions three and four of section 60.01 of the penal law. Where the court continues or modifies the sentence, it must vacate the declaration of delinquency and direct that the defendant be released. If the alleged violation is sustained and the court continues or modifies the sentence, it may extend the sentence up to the period of interruption specified in subdivision two of section 65.15 of the penal law, but any time spent in custody in any correctional institution pursuant to section 410.60 of this article shall be credited against the term of the sentence. PROVIDED FURTHER, WHERE THE ALLEGED VIOLATION IS SUSTAINED AND THE COURT CONTINUES OR MODIFIES THE SENTENCE, THE COURT MAY ALSO EXTEND THE REMAINING PERIOD OF PROBATION UP TO THE MAXIMUM TERM AUTHORIZED BY SECTION 65.00 OF THE PENAL LAW.

S 6. Section 390.20 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. NEGOTIATED SENTENCE OF IMPRISONMENT. IN ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE AND NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OR TWO OF THIS SECTION, A PRE-SENTENCE INVESTIGATION AND WRITTEN REPORT THEREON SHALL NOT BE REQUIRED WHERE A NEGOTIATED SENTENCE OF IMPRISONMENT FOR A TERM OF THREE HUNDRED SIXTY-FIVE DAYS OR LESS HAS BEEN MUTUALLY AGREED UPON BY THE PARTIES WITH CONSENT OF THE JUDGE, AS A RESULT OF A CONVICTION OR REVOCATION OF A SENTENCE OF PROBATION.

S 7. This act shall take effect immediately; provided, however, that sections one through five of this act shall apply to offenses committed on or after the date this act shall have become a law, and shall also apply to offenses committed before such date, where the sentence upon conviction for such offense has not yet been imposed; and provided, further, that section six of this act shall take effect on the ninetieth day after it shall have become a law.