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

8395

I N A S S E M B L Y

January 13, 2014

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to terms of probation sentences and revocations thereof; and to amend a chapter of the laws of 2013, relating to establishing terms of probation sentences and revocations thereof under certain circumstances, as proposed in legislative bills numbers S. 4664-A and A. 4582-B, in relation to the effectiveness thereof

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

Section 1. Subdivision 4 of section 65.00 of the penal law, as added by a chapter of the laws of 2013 relating to establishing terms of probation sentences and revocations thereof under certain circumstances, as proposed in legislative bills numbers S. 4664-A and A. 4582-B, is amended 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 FOLLOWING A HEARING PURSUANT TO SECTION 410.70 OF THE CRIMINAL PROCEDURE LAW 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. PROVIDED, HOWEVER, A DEFENDANT SHALL RECEIVE CREDIT FOR THE TIME DURING WHICH HE OR SHE WAS SUPERVISED UNDER THE ORIGINAL PROBATION SENTENCE PRIOR TO ANY DECLARATION OF DELINQUENCY AND FOR ANY TIME SPENT IN CUSTODY PURSUANT TO THIS ARTICLE FOR AN ALLEGED VIOLATION OF PROBATION.

S 2. 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, OR EXTEND A PERIOD OF PROBATION, unless (a) the court has found that the defendant has violated a condition of the sentence and (b) the defendant has had an opportunity to be heard PURSUANT TO THIS SECTION. The defendant is entitled to a hearing in accordance with this section promptly after the court has filed a

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

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declaration of delinquency or has committed him or has fixed bail pursuant to this article.

S 3. Subdivision 5 of section 410.70 of the criminal procedure law, as amended by a chapter of the laws of 2013 relating to establishing terms of probation sentences and revocations thereof under certain circumstances, as proposed in legislative bills numbers S. 4664-A and A. 4582-B, 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. PROVIDED, HOWEVER, A DEFENDANT SHALL RECEIVE CREDIT FOR THE TIME DURING WHICH HE OR SHE WAS SUPERVISED UNDER THE ORIGINAL PROBATION SENTENCE PRIOR TO ANY DECLARATION OF DELINQUENCY AND FOR ANY TIME SPENT IN CUSTODY PURSUANT TO THIS ARTICLE FOR AN ALLEGED VIOLATION OF PROBATION.

S 4. Section 7 of a chapter of the laws of 2013 relating to establishing terms of probation sentences and revocations thereof under certain circumstances, as proposed in legislative bills numbers S. 4664-A and A. 4582-B, is amended to read as follows:

S 7. This act shall take effect [immediately] ON THE THIRTIETH DAY AFTER IT SHALL HAVE BECOME A LAW; 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.

S 5. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2013, relating to establishing terms of probation sentences and revocations thereof under certain circumstances, as proposed in legislative bills numbers S. 4664-A and A. 4582-B, as amended, takes effect.