

6346

I N S E N A T E

January 17, 2014

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

1 Section 1. Subdivision 4 of section 65.00 of the penal law, as added
2 by a chapter of the laws of 2013 relating to establishing terms of
3 probation sentences and revocations thereof under certain circumstances,
4 as proposed in legislative bills numbers S. 4664-A and A. 4582-B, is
5 amended to read as follows:

6 4. If during the periods of probation referenced in subparagraph (i)
7 of paragraph (a), subparagraph (i) of paragraph (b) and paragraph (d) of
8 subdivision three of this section an alleged violation is sustained
9 FOLLOWING A HEARING PURSUANT TO SECTION 410.70 OF THE CRIMINAL PROCEDURE
10 LAW and the court continues or modifies the sentence, the court may
11 extend the remaining period of probation up to the maximum term author-
12 ized by this section. PROVIDED, HOWEVER, A DEFENDANT SHALL RECEIVE
13 CREDIT FOR THE TIME DURING WHICH HE OR SHE WAS SUPERVISED UNDER THE
14 ORIGINAL PROBATION SENTENCE PRIOR TO ANY DECLARATION OF DELINQUENCY AND
15 FOR ANY TIME SPENT IN CUSTODY PURSUANT TO THIS ARTICLE FOR AN ALLEGED
16 VIOLATION OF PROBATION.

17 S 2. Subdivision 1 of section 410.70 of the criminal procedure law is
18 amended to read as follows:

19 1. In general. The court may not revoke a sentence of probation or a
20 sentence of conditional discharge, OR EXTEND A PERIOD OF PROBATION,
21 unless (a) the court has found that the defendant has violated a condi-
22 tion of the sentence and (b) the defendant has had an opportunity to be
23 heard PURSUANT TO THIS SECTION. The defendant is entitled to a hearing
24 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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1 declaration of delinquency or has committed him or has fixed bail pursu-
2 ant to this article.

3 S 3. Subdivision 5 of section 410.70 of the criminal procedure law, as
4 amended by a chapter of the laws of 2013 relating to establishing terms
5 of probation sentences and revocations thereof under certain circum-
6 stances, as proposed in legislative bills numbers S. 4664-A and A.
7 4582-B, is amended to read as follows:

8 5. Revocation; modification; continuation. At the conclusion of the
9 hearing the court may revoke, continue or modify the sentence of
10 probation or conditional discharge. Where the court revokes the
11 sentence, it must impose sentence as specified in subdivisions three and
12 four of section 60.01 of the penal law. Where the court continues or
13 modifies the sentence, it must vacate the declaration of delinquency and
14 direct that the defendant be released. If the alleged violation is
15 sustained and the court continues or modifies the sentence, it may
16 extend the sentence up to the period of interruption specified in subdi-
17 vision two of section 65.15 of the penal law, but any time spent in
18 custody in any correctional institution pursuant to section 410.60 of
19 this article shall be credited against the term of the sentence.
20 Provided further, where the alleged violation is sustained and the court
21 continues or modifies the sentence, the court may also extend the
22 remaining period of probation up to the maximum term authorized by
23 section 65.00 of the penal law. PROVIDED, HOWEVER, A DEFENDANT SHALL
24 RECEIVE CREDIT FOR THE TIME DURING WHICH HE OR SHE WAS SUPERVISED UNDER
25 THE ORIGINAL PROBATION SENTENCE PRIOR TO ANY DECLARATION OF DELINQUENCY
26 AND FOR ANY TIME SPENT IN CUSTODY PURSUANT TO THIS ARTICLE FOR AN
27 ALLEGED VIOLATION OF PROBATION.

28 S 4. Section 7 of a chapter of the laws of 2013 relating to establish-
29 ing terms of probation sentences and revocations thereof under certain
30 circumstances, as proposed in legislative bills numbers S. 4664-A and A.
31 4582-B, is amended to read as follows:

32 S 7. This act shall take effect [immediately] ON THE THIRTIETH DAY
33 AFTER IT SHALL HAVE BECOME A LAW; provided, however, that sections one
34 through five of this act shall apply to offenses committed on or after
35 the date this act shall have become a law, and shall also apply to
36 offenses committed before such date, where the sentence upon conviction
37 for such offense has not yet been imposed; and provided, further, that
38 section six of this act shall take effect on the ninetieth day after it
39 shall have become a law.

40 S 5. This act shall take effect on the same date and in the same
41 manner as a chapter of the laws of 2013, relating to establishing terms
42 of probation sentences and revocations thereof under certain circum-
43 stances, as proposed in legislative bills numbers S. 4664-A and A.
44 4582-B, as amended, takes effect.