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I N   A S S E M B L Y

January 9, 2014

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Introduced by M. of A. TEDISCO, ROSA, SKARTADOS, BORELLI, PALMESANO, BARCLAY, McLAUGHLIN, McDONOUGH, DIPIETRO, CROUCH, LALOR, RAIA -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to assault or aiding or encouraging assault

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

1     Section 1. Subdivision 4 of section 120.10 of the penal law, as  
2     amended by chapter 791 of the laws of 1967, is amended and a new subdi-  
3     vision 5 is added to read as follows:

4     4. In the course of and in furtherance of the commission or attempted  
5     commission of a felony or of immediate flight therefrom, he OR SHE, or  
6     another participant if there be any, causes serious physical injury to a  
7     person other than one of the participants[.]; OR

8     5. BEING FOURTEEN YEARS OF AGE OR MORE AND WITH THE INTENT TO CAUSE AN  
9     UNSUSPECTING PERSON TO BE RENDERED UNCONSCIOUS, HE OR SHE STRIKES SUCH  
10    PERSON ON THE HEAD, OR HE OR SHE AIDS OR ENCOURAGES ANOTHER PARTICIPANT  
11    TO STRIKE SUCH PERSON ON THE HEAD, CAUSING PHYSICAL INJURY OR SERIOUS  
12    PHYSICAL INJURY TO SUCH PERSON.

13    S 2. Section 120.07 of the penal law, as added by chapter 647 of the  
14    laws of 1996, is amended to read as follows:

15    S 120.07 Gang assault in the first degree.

16    A person is guilty of gang assault in the first degree when[,]:

17    1. with intent to cause serious physical injury to another person and  
18    when aided by two or more other persons actually present, he causes  
19    serious physical injury to such person or to a third person[.]; OR

20    2. BEING FOURTEEN YEARS OLD OR MORE AND WITH THE INTENT TO CAUSE AN  
21    UNSUSPECTING PERSON TO BE RENDERED UNCONSCIOUS, AND WHEN AIDED BY OR  
22    ENCOURAGED BY TWO OR MORE OTHER PERSONS ACTUALLY PRESENT, HE OR SHE  
23    STRIKES SUCH PERSON ON THE HEAD, OR HE OR SHE AIDS OR ENCOURAGES ANOTHER  
24    PARTICIPANT TO STRIKE SUCH PERSON ON THE HEAD, CAUSING PHYSICAL INJURY  
25    OR SERIOUS PHYSICAL INJURY TO SUCH PERSON.

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

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1 Gang assault in the first degree is a class B felony.

2 S 3. Subdivision 4 of section 125.20 of the penal law, as added by  
3 chapter 477 of the laws of 1990, is amended and a new subdivision 5 is  
4 added to read as follows:

5 4. Being eighteen years old or more and with intent to cause physical  
6 injury to a person less than eleven years old, the defendant recklessly  
7 engages in conduct which creates a grave risk of serious physical injury  
8 to such person and thereby causes the death of such person[.]; OR

9 5. BEING FOURTEEN YEARS OF AGE OR MORE AND WITH THE INTENT TO CAUSE AN  
10 UNSUSPECTING PERSON TO BE RENDERED UNCONSCIOUS, HE OR SHE STRIKES SUCH  
11 PERSON ON THE HEAD, OR HE OR SHE AIDS OR ENCOURAGES ANOTHER PARTICIPANT  
12 TO STRIKE SUCH PERSON ON THE HEAD, CAUSING THE DEATH OF SUCH PERSON.

13 S 4. Paragraph (a) of subdivision 2 of section 720.10 of the criminal  
14 procedure law, as amended by chapter 316 of the laws of 2006, is amended  
15 to read as follows:

16 (a) the conviction to be replaced by a youthful offender finding is  
17 for (i) a class A-I or class A-II felony, or (ii) an armed felony as  
18 defined in subdivision forty-one of section 1.20, except as provided in  
19 subdivision three OF THIS SECTION, or (iii) rape in the first degree,  
20 criminal sexual act in the first degree, or aggravated sexual abuse,  
21 except as provided in subdivision three OF THIS SECTION, OR (IV) ASSAULT  
22 IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION FIVE OF SECTION 120.10 OF  
23 THE PENAL LAW, OR (V) GANG ASSAULT IN THE FIRST DEGREE AS DEFINED IN  
24 SUBDIVISION TWO OF SECTION 120.07 OF THE PENAL LAW, OR (VI) MANSLAUGHTER  
25 IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION FIVE OF SECTION 125.20 OF  
26 THE PENAL LAW, or

27 S 5. Subdivision 18 of section 10.00 of the penal law, as amended by  
28 chapter 7 of the laws of 2007, is amended to read as follows:

29 18. "Juvenile offender" means (1) a person thirteen years old who is  
30 criminally responsible for acts constituting murder in the second degree  
31 as defined in subdivisions one and two of section 125.25 of this chapter  
32 or such conduct as a sexually motivated felony, where authorized pursu-  
33 ant to section 130.91 of [the penal law] THIS CHAPTER; and

34 (2) a person fourteen or fifteen years old who is criminally responsi-  
35 ble for acts constituting the crimes defined in subdivisions one and two  
36 of section 125.25 (murder in the second degree) and in subdivision three  
37 of such section provided that the underlying crime for the murder charge  
38 is one for which such person is criminally responsible; section 135.25  
39 (kidnapping in the first degree); 150.20 (arson in the first degree);  
40 subdivisions one [and], two AND FIVE of section 120.10 (assault in the  
41 first degree); SUBDIVISION TWO OF SECTION 120.07 (GANG ASSAULT IN THE  
42 FIRST DEGREE); 125.20 (manslaughter in the first degree); subdivisions  
43 one and two of section 130.35 (rape in the first degree); subdivisions  
44 one and two of section 130.50 (criminal sexual act in the first degree);  
45 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary  
46 in the first degree); subdivision one of section 140.25 (burglary in the  
47 second degree); 150.15 (arson in the second degree); 160.15 (robbery in  
48 the first degree); subdivision two of section 160.10 (robbery in the  
49 second degree) of this chapter; or section 265.03 of this chapter, where  
50 such machine gun or such firearm is possessed on school grounds, as that  
51 phrase is defined in subdivision fourteen of section 220.00 of this  
52 chapter; or defined in this chapter as an attempt to commit murder in  
53 the second degree or kidnapping in the first degree, or such conduct as  
54 a sexually motivated felony, where authorized pursuant to section 130.91  
55 of [the penal law] THIS CHAPTER.

1 S 6. Section 70.05 of the penal law is amended by adding a new subdi-  
2 vision 4 to read as follows:

3 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHERE A  
4 JUVENILE OFFENDER IS CONVICTED OF ASSAULT IN THE FIRST DEGREE AS DEFINED  
5 IN SUBDIVISION FIVE OF SECTION 120.10; GANG ASSAULT IN THE FIRST DEGREE  
6 AS DEFINED IN SUBDIVISION TWO OF SECTION 120.07; OR MANSLAUGHTER IN THE  
7 FIRST DEGREE AS DEFINED IN SUBDIVISION FIVE OF SECTION 125.20 OF THIS  
8 CHAPTER, SUCH OFFENDER SHALL BE SENTENCED PURSUANT TO SECTION 70.02 OF  
9 THIS ARTICLE; PROVIDED, THAT THE PROVISIONS OF THIS SUBDIVISION SHALL  
10 ONLY APPLY TO JUVENILE OFFENDERS OVER THIRTEEN YEARS OLD.

11 S 7. Paragraph (f) of subdivision 1 of section 70.30 of the penal law,  
12 as added by chapter 481 of the laws of 1978 and relettered by chapter 3  
13 of the laws of 1995, is amended to read as follows:

14 (f) The aggregate maximum term of consecutive sentences imposed upon a  
15 juvenile offender for two or more crimes, not including a class A felo-  
16 ny, OR ASSAULT IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION FIVE OF  
17 SECTION 120.10, GANG ASSAULT IN THE FIRST DEGREE AS DEFINED IN SUBDIVI-  
18 SION TWO OF SECTION 120.07, OR MANSLAUGHTER IN THE FIRST DEGREE AS  
19 DEFINED IN SUBDIVISION FIVE OF SECTION 125.20 OF THIS CHAPTER, committed  
20 before he has reached the age of sixteen, shall, if it exceeds ten  
21 years, be deemed to be ten years. If consecutive indeterminate sentences  
22 imposed upon a juvenile offender include a sentence for the class A  
23 felony of arson in the first degree [or for the class A felony of],  
24 kidnapping in the first degree, ASSAULT IN THE FIRST DEGREE AS DEFINED  
25 IN SUBDIVISION FIVE OF SECTION 120.10, GANG ASSAULT IN THE FIRST DEGREE  
26 AS DEFINED IN SUBDIVISION TWO OF SECTION 120.07, OR MANSLAUGHTER IN THE  
27 FIRST DEGREE AS DEFINED IN SUBDIVISION FIVE OF SECTION 125.20 OF THIS  
28 CHAPTER, then the aggregate maximum term of such sentences shall, if it  
29 exceeds [fifteen] TWENTY-FIVE years, be deemed to be [fifteen]  
30 TWENTY-FIVE years. Where the aggregate maximum term of two or more  
31 consecutive sentences is reduced by a calculation made pursuant to this  
32 paragraph, the aggregate minimum period of imprisonment, if it exceeds  
33 one-half of the aggregate maximum term as so reduced, shall be deemed to  
34 be one-half of the aggregate maximum term as so reduced.

35 S 8. Paragraph (d) of subdivision 1 of section 70.30 of the penal law,  
36 as added by chapter 481 of the laws of 1978, is amended to read as  
37 follows:

38 (d) The aggregate maximum term of consecutive sentences imposed upon a  
39 juvenile offender for two or more crimes, not including a class A  
40 felony, ASSAULT IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION FIVE OF  
41 SECTION 120.10; GANG ASSAULT IN THE FIRST DEGREE AS DEFINED IN SUBDIVI-  
42 SION TWO OF SECTION 120.07; OR MANSLAUGHTER IN THE FIRST DEGREE AS  
43 DEFINED IN SUBDIVISION FIVE OF SECTION 125.20 OF THIS CHAPTER, committed  
44 before he has reached the age of sixteen, shall, if it exceeds ten  
45 years, be deemed to be ten years. If consecutive indeterminate sentences  
46 imposed upon a juvenile offender include a sentence for the class A  
47 felony of arson in the first degree [or for the class A felony of],  
48 kidnapping in the first degree, ASSAULT IN THE FIRST DEGREE AS DEFINED  
49 IN SUBDIVISION FIVE OF SECTION 120.10, GANG ASSAULT IN THE FIRST DEGREE  
50 AS DEFINED IN SUBDIVISION TWO OF SECTION 120.07, OR MANSLAUGHTER IN THE  
51 FIRST DEGREE AS DEFINED IN SUBDIVISION FIVE OF SECTION 125.20 OF THIS  
52 CHAPTER, then the aggregate maximum term of such sentences shall, if it  
53 exceeds [fifteen] TWENTY-FIVE years, be deemed to be [fifteen]  
54 TWENTY-FIVE years. Where the aggregate maximum term of two or more  
55 consecutive sentences is reduced by a calculation made pursuant to this  
56 paragraph, the aggregate minimum period of imprisonment, if it exceeds

1 one-half of the aggregate maximum term as so reduced, shall be deemed to  
2 be one-half of the aggregate maximum term as so reduced.

3 S 9. Subdivision 4 of section 180.75 of the criminal procedure law, as  
4 amended by chapter 264 of the laws of 2003, is amended to read as  
5 follows:

6 4. Notwithstanding the provisions of subdivisions two and three of  
7 this section, a local criminal court shall, at the request of the  
8 district attorney, order removal of an action against a juvenile offen-  
9 der to the family court pursuant to the provisions of article seven  
10 hundred twenty-five of this chapter if, upon consideration of the crite-  
11 ria specified in subdivision two of section 210.43 of this chapter, it  
12 is determined that to do so would be in the interests of justice.  
13 Where, however, the felony complaint charges the juvenile offender with  
14 murder in the second degree as defined in section 125.25 of the penal  
15 law, rape in the first degree as defined in subdivision one of section  
16 130.35 of the penal law, criminal sexual act in the first degree as  
17 defined in subdivision one of section 130.50 of the penal law, [or] an  
18 armed felony as defined in paragraph (a) of subdivision forty-one of  
19 section 1.20 of this chapter, ASSAULT IN THE FIRST DEGREE AS DEFINED IN  
20 SUBDIVISION FIVE OF SECTION 120.10 OF THE PENAL LAW, GANG ASSAULT IN THE  
21 FIRST DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 120.07 OF THE  
22 PENAL LAW, OR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION  
23 FIVE OF SECTION 125.20 OF THE PENAL LAW, a determination that such  
24 action be removed to the family court shall, in addition, be based upon  
25 a finding of one or more of the following factors: (i) mitigating  
26 circumstances that bear directly upon the manner in which the crime was  
27 committed; or (ii) where the defendant was not the sole participant in  
28 the crime, the defendant's participation was relatively minor although  
29 not so minor as to constitute a defense to the prosecution; or (iii)  
30 possible deficiencies in proof of the crime.

31 S 10. This act shall take effect immediately; provided that the amend-  
32 ments to paragraph (f) of subdivision 1 of section 70.30 of the penal  
33 law, made by section seven of this act shall be subject to the expira-  
34 tion and reversion of such paragraph pursuant to subdivision (d) of  
35 section 74 of chapter 3 of the laws of 1995, as amended, when upon such  
36 date the provisions of section eight of this act shall take effect.