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

5106

2013-2014 Regular Sessions

I N S E N A T E

May 10, 2013

Introduced by Sen. NOZZOLIO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to criteria for determining prior felony offender status

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

Section 1. Subparagraph (ii) of paragraph (b) of subdivision 1 of section 70.06 of the penal law, as added by chapter 277 of the laws of 1973, is amended to read as follows:

(ii) Sentence upon such prior conviction must have been imposed before commission of the present felony. FOR PURPOSES OF THIS SUBPARAGRAPH, WHERE A DEFENDANT HAS BEEN RESENTENCED FOLLOWING EITHER A MOTION TO SET ASIDE A SENTENCE OR AN APPEAL OF THE SENTENCE, ON THE GROUND THAT THE SENTENCE WAS NOT LEGALLY AUTHORIZED FOR THE OFFENSE OF WHICH DEFENDANT WAS CONVICTED, AND WHERE THE UNDERLYING CONVICTION HAS NOT BEEN DISTURBED, THE SENTENCE DATE SHALL BE CONSIDERED THE INITIAL SENTENCE FOLLOWING THE CONVICTION;

S 2. Subparagraph (ii) of paragraph (b) of subdivision 1 of section 70.04 of the penal law, as added by chapter 481 of the laws of 1978, is amended to read as follows:

(ii) Sentence upon such prior conviction must have been imposed before commission of the present felony. FOR PURPOSES OF THIS SUBPARAGRAPH, WHERE A DEFENDANT HAS BEEN RESENTENCED FOLLOWING EITHER A MOTION TO SET ASIDE A SENTENCE OR AN APPEAL OF THE SENTENCE, ON THE GROUND THAT THE SENTENCE WAS NOT LEGALLY AUTHORIZED FOR THE OFFENSE OF WHICH DEFENDANT WAS CONVICTED, AND WHERE THE UNDERLYING CONVICTION HAS NOT BEEN DISTURBED, THE SENTENCE DATE SHALL BE CONSIDERED THE INITIAL SENTENCE FOLLOWING THE CONVICTION;

S 3. Subparagraph (ii) of paragraph (b) of subdivision 1 of section 70.10 of the penal law is amended to read as follows:

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

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(ii) that the defendant was imprisoned under sentence for such conviction prior to the commission of the present felony. FOR PURPOSES OF THIS SUBPARAGRAPH, WHERE A DEFENDANT HAS BEEN RESENTENCED FOLLOWING EITHER A MOTION TO SET ASIDE A SENTENCE OR AN APPEAL OF THE SENTENCE, ON THE GROUND THAT THE SENTENCE WAS NOT LEGALLY AUTHORIZED FOR THE OFFENSE OF WHICH DEFENDANT WAS CONVICTED, AND WHERE THE UNDERLYING CONVICTION HAS NOT BEEN DISTURBED, THE SENTENCE DATE SHALL BE CONSIDERED THE INITIAL SENTENCE FOLLOWING THE CONVICTION; and

S 4. This act shall take effect immediately, and shall apply to all criminal actions commenced on or after such effective date.