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I N S E N A T E

January 9, 2014

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HANNON, LARKIN, MARCHIONE, MARTINS, MAZIARZ, NOZZOLIO, SEWARD, SMITH
-- read twice and ordered printed, and when printed to be committed to
the Committee on Codes

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 ASSEM-
BLY, 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.

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

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

LBD13180-04-4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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