

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

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2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

January 15, 2015

IN SENATE -- Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. TEDISCO, SKARTADOS, BORELLI, PALMESANO, BARCLAY, McLAUGHLIN, McDONOUGH, DiPIETRO, CROUCH, LALOR, RAIA -- read once and referred 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 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 subdivision 5 is added to read as follows:
3 4. In the course of and in furtherance of the commission or attempted
4 commission of a felony or of immediate flight therefrom, he OR SHE, or
5 another participant if there be any, causes serious physical injury to a
6 person other than one of the participants[.]; OR
7 5. BEING FOURTEEN YEARS OF AGE OR MORE AND WITH THE INTENT TO CAUSE AN
8 UNSUSPECTING PERSON TO BE RENDERED UNCONSCIOUS, HE OR SHE STRIKES SUCH
9 PERSON ON THE HEAD, OR HE OR SHE AIDS OR ENCOURAGES ANOTHER PARTICIPANT
10 TO STRIKE SUCH PERSON ON THE HEAD, CAUSING PHYSICAL INJURY OR SERIOUS
11 PHYSICAL INJURY TO SUCH PERSON.
12 S 2. Section 120.07 of the penal law, as added by chapter 647 of the
13 laws of 1996, is amended to read as follows:
14 S 120.07 Gang assault in the first degree.
15 A person is guilty of gang assault in the first degree when[,]:
16 1. with intent to cause serious physical injury to another person and
17 when aided by two or more other persons actually present, he causes
18 serious physical injury to such person or to a third person[.]; OR
19 2. BEING FOURTEEN YEARS OLD OR MORE AND WITH THE INTENT TO CAUSE AN
20 UNSUSPECTING PERSON TO BE RENDERED UNCONSCIOUS, AND WHEN AIDED BY OR
21

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

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1 ENCOURAGED BY TWO OR MORE OTHER PERSONS ACTUALLY PRESENT, HE OR SHE
2 STRIKES SUCH PERSON ON THE HEAD, OR HE OR SHE AIDS OR ENCOURAGES ANOTHER
3 PARTICIPANT TO STRIKE SUCH PERSON ON THE HEAD, CAUSING PHYSICAL INJURY
4 OR SERIOUS PHYSICAL INJURY TO SUCH PERSON.

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

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

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

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

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

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

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

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

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

1 the second degree or kidnapping in the first degree, or such conduct as
2 a sexually motivated felony, where authorized pursuant to section 130.91
3 of [the penal law] THIS CHAPTER.

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

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

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

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

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

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

1 TWENTY-FIVE years. Where the aggregate maximum term of two or more
2 consecutive sentences is reduced by a calculation made pursuant to this
3 paragraph, the aggregate minimum period of imprisonment, if it exceeds
4 one-half of the aggregate maximum term as so reduced, shall be deemed to
5 be one-half of the aggregate maximum term as so reduced.

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

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

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