

4480

2015-2016 Regular Sessions

I N   A S S E M B L Y

February 2, 2015

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Introduced by M. of A. RAIA, HAWLEY, KOLB, JOHNS, MALLIOTAKIS, OAKS, LUPINACCI, WALTER, LAVINE, BORELLI, MONTESANO, GRAF, McDONOUGH, CURRAN, TENNEY, FINCH -- Multi-Sponsored by -- M. of A. ARROYO, BARCLAY, BLANKENBUSH, CERETTO, CROUCH, DiPIETRO, DUPREY, FITZPATRICK, GARBARINO, McKEVITT, McLAUGHLIN, PALMESANO, RA, SALADINO, STEC, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to mandatory imprisonment and plea restrictions for offenses victimizing the elderly and physically disabled

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

1     Section 1. It is hereby found and declared that elderly and physically  
2     disabled people continue to be singled out as victims of crime. It is  
3     also found that the physical harm and emotional trauma suffered by  
4     elderly and physically disabled crime victims has a devastating effect  
5     on the lives of those victims.  
6     The elderly or physically disabled victim has a decreased physical  
7     capability to resist an attacker and thus becomes an inviting target of  
8     crime. Moreover, the aftereffects of crime on the elderly and the phys-  
9     ically handicapped affect them more deeply than any statistics would  
10    indicate. The emotional trauma and possible serious physical damage  
11    resulting from a face to face crime may cause a permanent downgrading in  
12    the elderly or physically disabled victim's lifestyle. Such victims  
13    often impose "house-arrest" on themselves, afraid to shop, to visit  
14    friends, to go to the doctor, to live, unless behind locked doors. Even  
15    those elderly or physically disabled who are not direct victims of crime  
16    suffer indirectly, because they, having learned of the terrible tragedy  
17    suffered by other elderly and physically disabled and fearful for their  
18    own individual safety, barricade themselves within their homes. The  
19    older or physically disabled crime victim is thus twice victimized--by  
20    the crime and by its aftermath.

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

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1 Criminologists, sociologists, psychologists, and the police all recog-  
2 nize and acknowledge these facts, but the law does not. It has been  
3 ineffective in deterring crimes against the elderly and the physically  
4 disabled, particularly those involving violence or the threat of  
5 violence. Similarly, special projects on crime prevention and improved  
6 techniques of communications for the elderly to the police do not halt  
7 or reduce such crime. For these reasons, offenses committed against the  
8 elderly or the physically disabled must be treated as unique, and legis-  
9 lation must be enacted to provide a meaningful deterrent for those  
10 offenders who now victimize the elderly and the physically disabled.

11 S 2. Subdivision 18 of section 10.00 of the penal law, as amended by  
12 chapter 7 of the laws of 2007, is amended to read as follows:

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

18 (2) a person fourteen or fifteen years old who is criminally responsi-  
19 ble for acts constituting the crimes defined in subdivisions one and two  
20 of section 125.25 (murder in the second degree) and in subdivision three  
21 of such section provided that the underlying crime for the murder charge  
22 is one for which such person is criminally responsible; section 135.25  
23 (kidnapping in the first degree); 150.20 (arson in the first degree);  
24 subdivisions one and two of section 120.10 (assault in the first  
25 degree); 125.20 (manslaughter in the first degree); subdivisions one and  
26 two of section 130.35 (rape in the first degree); subdivisions one and  
27 two of section 130.50 (criminal sexual act in the first degree); 130.70  
28 (aggravated sexual abuse in the first degree); 140.30 (burglary in the  
29 first degree); subdivision one of section 140.25 (burglary in the second  
30 degree); 150.15 (arson in the second degree); 160.15 (robbery in the  
31 first degree); subdivision two of section 160.10 (robbery in the second  
32 degree) of this chapter; or section 265.03 of this chapter, where such  
33 machine gun or such firearm is possessed on school grounds, as that  
34 phrase is defined in subdivision fourteen of section 220.00 of this  
35 chapter; or defined in this chapter as an attempt to commit murder in  
36 the second degree or kidnapping in the first degree; SECTION 280.00  
37 (VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD  
38 DEGREE); SECTION 280.05 (VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISA-  
39 BLED IN THE SECOND DEGREE); OR SECTION 280.10 (VICTIMIZING THE ELDERLY  
40 OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE), or such conduct as a  
41 sexually motivated felony, where authorized pursuant to section 130.91  
42 of [the penal law] THIS CHAPTER.

43 S 3. Section 10.00 of the penal law is amended by adding three new  
44 subdivisions 22, 23 and 24 to read as follows:

45 22. "ELDERLY PERSON" MEANS A HUMAN BEING SIXTY-TWO YEARS OLD OR MORE.

46 23. "VICTIM", AS THAT TERM IS USED IN ARTICLE TWO HUNDRED EIGHTY OF  
47 THIS CHAPTER, MEANS, IN A CASE OF:

48 (A) ASSAULT, THE PERSON INJURED OR INTENDED TO BE INJURED;

49 (B) MANSLAUGHTER OR MURDER, THE PERSON KILLED OR INTENDED TO BE  
50 KILLED OR INJURED;

51 (C) RAPE OR CRIMINAL SEXUAL ACT, THE PERSON WITH WHOM THE DEFENDANT  
52 HAS THE SEXUAL INTERCOURSE OR DEVIATE SEXUAL INTERCOURSE;

53 (D) KIDNAPPING, THE PERSON ABDUCTED;

54 (E) BURGLARY OR ROBBERY, THE PERSON INJURED, OR AGAINST WHOM A  
55 DANGEROUS INSTRUMENT IS OR IS THREATENED TO BE USED, OR TO WHOM THE  
56 WEAPON IS DISPLAYED;

(F) ARSON, THE PERSON PRESENT IN THE BUILDING AT THE TIME; OR

(G) LARCENY, THE PERSON IN WHOM FEAR IS INSTILLED.

24. "PHYSICALLY DISABLED PERSON" MEANS A HUMAN BEING:

(A) HAVING AN IMPAIRMENT REQUIRING THE USE OF LEG BRACES, CRUTCHES OR ARTIFICIAL SUPPORT, OR

(B) HAVING AN IMPAIRMENT REQUIRING CONFINEMENT TO A WHEELCHAIR, OR

(C) HAVING AN IMPAIRMENT CAUSED BY AMPUTATION OF A LIMB, OR

(D) HAVING TOTAL OR PARTIAL IMPAIRMENT OF SIGHT NECESSITATING THE USE OF A GUIDE DOG OR OTHER GUIDING DEVICE.

S 4. The penal law is amended by adding a new article 280 to read as follows:

#### ARTICLE 280

##### OFFENSES AGAINST THE ELDERLY OR PHYSICALLY DISABLED

SECTION 280.00 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD DEGREE.

280.05 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE.

280.10 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE.

S 280.00 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD DEGREE.

A PERSON IS GUILTY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD DEGREE WHEN HE OR SHE:

1. COMMITS ANY OF THE FOLLOWING FELONIES:

ATTEMPT TO COMMIT VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE AS DEFINED IN SECTION 280.05, OR ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.05; AND

2. THE VICTIM OF SUCH CRIME IS AN ELDERLY PERSON OR A PHYSICALLY DISABLED PERSON.

VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD DEGREE IS A CLASS D FELONY.

S 280.05 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE.

A PERSON IS GUILTY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE WHEN HE OR SHE:

1. COMMITS ANY OF THE FOLLOWING FELONIES:

ATTEMPT TO COMMIT VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE AS DEFINED IN SECTION 280.10, ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION 120.10, BURGLARY IN THE SECOND DEGREE AS DEFINED IN PARAGRAPH (B), (C), OR (D) OF SUBDIVISION ONE OF SECTION 140.25, GRAND LARCENY IN THE SECOND DEGREE AS DEFINED IN CLAUSE (A) OF SUBDIVISION TWO OF SECTION 155.40, OR ROBBERY IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 160.10; AND

2. THE VICTIM OF SUCH CRIME IS AN ELDERLY PERSON OR A PHYSICALLY DISABLED PERSON.

VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE IS A CLASS C FELONY.

S 280.10 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE.

A PERSON IS GUILTY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE WHEN HE OR SHE:

1. COMMITS ANY OF THE FOLLOWING FELONIES:

ATTEMPT TO COMMIT A CLASS A-I FELONY OTHER THAN AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY, MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20, RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.35, CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED IN SECTION

1 130.50, KIDNAPPING IN THE SECOND DEGREE AS DEFINED IN SECTION 135.20,  
2 BURGLARY IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION TWO, THREE OR  
3 FOUR OF SECTION 140.30, OR ROBBERY IN THE FIRST DEGREE AS DEFINED IN  
4 SUBDIVISION ONE, THREE OR FOUR OF SECTION 160.15; AND

5 2. THE VICTIM OF SUCH CRIME IS AN ELDERLY PERSON OR A PHYSICALLY DISA-  
6 BLED PERSON.

7 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE  
8 IS A CLASS B FELONY.

9 S 5. Section 60.05 of the penal law, as amended by chapter 410 of the  
10 laws of 1979, the section heading and subdivisions 2, 3 and 4 as amended  
11 by chapter 738 of the laws of 2004, subdivision 1 as amended by chapter  
12 7 of the laws of 2007 and subdivision 5 as amended by chapter 405 of the  
13 laws of 2010, is amended to read as follows:

14 S 60.05 Authorized dispositions; other class A, B, certain C and D felo-  
15 nies and multiple felony offenders.

16 1. Applicability. Except as provided in section 60.04 of this article  
17 governing the authorized dispositions applicable to felony offenses  
18 defined in article two hundred twenty or two hundred twenty-one of this  
19 chapter or in section 60.13 of this article governing the authorized  
20 dispositions applicable to felony sex offenses defined in paragraph (a)  
21 of subdivision one of section 70.80 of this title, this section shall  
22 govern the dispositions authorized when a person is to be sentenced upon  
23 a conviction of a class A felony, a class B felony or a class C, class D  
24 or class E felony specified herein, or when a person is to be sentenced  
25 upon a conviction of a felony as a multiple felony offender.

26 2. Class A felony. Except as provided in SUBDIVISION SEVEN OF THIS  
27 SECTION AND subdivisions three and four of section 70.06 of this chap-  
28 ter, every person convicted of a class A felony must be sentenced to  
29 imprisonment in accordance with section 70.00 of this title, unless such  
30 person is convicted of murder in the first degree and is sentenced in  
31 accordance with section 60.06 of this article.

32 3. Class B felony. Except as provided in [subdivision] SUBDIVISIONS  
33 six AND SEVEN of this section, every person convicted of a class B  
34 violent felony offense as defined in subdivision one of section 70.02 of  
35 this title, must be sentenced to imprisonment in accordance with such  
36 section 70.02; and, except as provided in subdivision six of this  
37 section, every person convicted of any other class B felony must be  
38 sentenced to imprisonment in accordance with section 70.00 of this  
39 title.

40 4. Certain class C felonies. Except as provided in [subdivision]  
41 SUBDIVISIONS six AND SEVEN, every person convicted of a class C violent  
42 felony offense as defined in subdivision one of section 70.02 of this  
43 title, must be sentenced to imprisonment in accordance with section  
44 70.02 of this title; and, except as provided in subdivision six of this  
45 section, every person convicted of the class C felonies of: attempt to  
46 commit any of the class B felonies of bribery in the first degree as  
47 defined in section 200.04, bribe receiving in the first degree as  
48 defined in section 200.12, conspiracy in the second degree as defined in  
49 section 105.15 and criminal mischief in the first degree as defined in  
50 section 145.12; criminal usury in the first degree as defined in section  
51 190.42, rewarding official misconduct in the first degree as defined in  
52 section 200.22, receiving reward for official misconduct in the first  
53 degree as defined in section 200.27, attempt to promote prostitution in  
54 the first degree as defined in section 230.32, promoting prostitution in  
55 the second degree as defined in section 230.30, arson in the third

degree as defined in section 150.10 of this chapter, must be sentenced to imprisonment in accordance with section 70.00 of this title.

5. Certain class D felonies. Except as provided in subdivision six of this section, every person convicted of the class D felonies of assault in the second degree as defined in section 120.05, strangulation in the second degree as defined in section 121.12 or attempt to commit a class C felony as defined in section 230.30 of this chapter, must be sentenced in accordance with section 70.00 or 85.00 of this title.

6. Multiple felony offender. When the court imposes sentence upon a second violent felony offender, as defined in section 70.04, or a second felony offender, as defined in section 70.06, the court must impose a sentence of imprisonment in accordance with section 70.04 or 70.06, as the case may be, unless it imposes a sentence of imprisonment in accordance with section 70.08 or 70.10.

7. ARTICLE TWO HUNDRED EIGHTY OFFENSES. WHEN THE COURT IMPOSES SENTENCE UPON A PERSON CONVICTED OF AN OFFENSE ENUMERATED IN ARTICLE TWO HUNDRED EIGHTY, IT MUST IMPOSE A SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH SECTION 70.09, UNLESS IT IMPOSES A SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH SECTION 70.06 OR 70.10.

8. Fines. Where the court imposes a sentence of imprisonment in accordance with this section, the court also may impose a fine authorized by article eighty and in such case the sentence shall be both imprisonment and a fine.

S 6. The penal law is amended by adding a new section 70.09 to read as follows:

S 70.09 SENTENCE OF IMPRISONMENT FOR CERTAIN OFFENSES AGAINST THE ELDERLY OR THE PHYSICALLY DISABLED.

1. EXCEPT AS PROVIDED IN SUBDIVISION FOUR EVERY PERSON, OTHER THAN A PERSON SENTENCED AS A SECOND OR PERSISTENT FELONY OFFENDER, WHO IS CONVICTED OF AN OFFENSE AGAINST THE ELDERLY OR THE PHYSICALLY DISABLED DEFINED IN ARTICLE TWO HUNDRED EIGHTY OF THIS CHAPTER, MUST BE SENTENCED TO AN INDETERMINATE SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION.

2. THE MAXIMUM TERM OF SUCH INDETERMINATE SENTENCE MUST BE FIXED AS FOLLOWS:

(A) FOR THE CLASS B FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE, THE TERM MUST BE AT LEAST NINE YEARS AND MUST NOT EXCEED TWENTY-FIVE YEARS;

(B) FOR THE CLASS C FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE, THE TERM MUST BE AT LEAST SIX YEARS AND MUST NOT EXCEED FIFTEEN YEARS;

(C) FOR THE CLASS D FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD DEGREE, THE TERM MUST BE AT LEAST FOUR YEARS AND MUST NOT EXCEED SEVEN YEARS.

3. THE MINIMUM PERIOD OF IMPRISONMENT FOR SUCH INDETERMINATE SENTENCE MUST BE FIXED BY THE COURT AND MUST BE SPECIFIED IN THE SENTENCE AS FOLLOWS:

(A) FOR THE CLASS B FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE, THE MINIMUM PERIOD OF IMPRISONMENT SHALL NOT BE LESS THAN THREE YEARS NOR MORE THAN ONE-THIRD THE MAXIMUM TERM IMPOSED BY THE COURT;

(B) FOR THE CLASS C FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE, THE MINIMUM PERIOD OF IMPRISONMENT SHALL BE NOT LESS THAN TWO YEARS NOR MORE THAN ONE-THIRD THE MAXIMUM TERM IMPOSED BY THE COURT;

(C) FOR THE CLASS D FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD DEGREE, THE MINIMUM PERIOD OF IMPRISONMENT SHALL BE ONE-THIRD THE MAXIMUM TERM IMPOSED BY THE COURT.

4. ALTERNATIVE DEFINITE SENTENCE FOR CLASS D FELONY OFFENSE AGAINST THE ELDERLY OR THE PHYSICALLY DISABLED. WHEN A PERSON, OTHER THAN A MULTIPLE FELONY OFFENDER, IS SENTENCED FOR THE CLASS D FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE THIRD DEGREE, AND THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT IT WOULD BE UNDULY HARSH TO IMPOSE AN INDETERMINATE SENTENCE, THE COURT MAY IMPOSE A DEFINITE SENTENCE OF IMPRISONMENT AND FIX A TERM OF ONE YEAR.

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

4. Notwithstanding the provisions of subdivisions two and three of this section, a local criminal court shall, at the request of the district attorney, order removal of an action against a juvenile offender to the family court pursuant to the provisions of article seven hundred twenty-five of this chapter if, upon consideration of the criteria specified in subdivision two of section 210.43 of this chapter, it is determined that to do so would be in the interests of justice. Where, however, the felony complaint charges the juvenile offender with AN OFFENSE AGAINST THE ELDERLY OR PHYSICALLY DISABLED, OR murder in the second degree as defined in section 125.25 of the penal law, rape in the first degree as defined in subdivision one of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, a determination that such action be removed to the family court shall, in addition, be based upon a finding of one or more of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in proof of the crime.

S 8. Paragraph (c) of subdivision 5 of section 220.10 of the criminal procedure law, as amended by chapter 410 of the laws of 1979, is amended to read as follows:

(c) Where the indictment charges a felony, other than a class A felony or class B felony defined in article two hundred twenty of the penal law or class B or class C violent felony offense as defined in subdivision one of section 70.02 of the penal law, OR THE CLASS C FELONY OF VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE AS DEFINED IN SECTION 280.05 OF THE PENAL LAW, and it appears that the defendant has previously been subjected to a predicate felony conviction as defined in [penal law] section 70.06 OF THE PENAL LAW then any plea of guilty entered pursuant to subdivision three or four must be or must include at least a plea of guilty of a felony.

S 9. Subparagraph (vi) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as amended by chapter 481 of the laws of 1978 and as renumbered by chapter 233 of the laws of 1980, is amended to read as follows:

(vi) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a felony, may not be accepted on the condition that it constitutes a complete disposition of one or more

1 other indictments against the defendant wherein is charged a class B  
2 felony other than a class B violent felony offense as defined in subdi-  
3 vision one of section 70.02 of the penal law, OR THE CLASS C FELONY OF  
4 VICTIMIZING THE ELDERLY OR THE PHYSICALLY DISABLED IN THE SECOND DEGREE  
5 AS DEFINED IN SECTION 280.05 OF THE PENAL LAW.

6 S 10. Subdivision 2 of section 720.10 of the criminal procedure law,  
7 as amended by chapter 416 of the laws of 1986, paragraph (a) as amended  
8 by chapter 316 of the laws of 2006, is amended to read as follows:

9 2. "Eligible youth" means a youth who is eligible to be found a  
10 youthful offender. Every youth is so eligible unless:

11 (a) the conviction to be replaced by a youthful offender finding is  
12 for (i) a class A-I or class A-II felony, or (ii) an armed felony as  
13 defined in subdivision forty-one of section 1.20, except as provided in  
14 subdivision three OF THIS SECTION, or (iii) rape in the first degree,  
15 criminal sexual act in the first degree, or aggravated sexual abuse,  
16 except as provided in subdivision three, or

17 (b) such youth has previously been convicted and sentenced for a felo-  
18 ny, or

19 (c) such youth has previously been adjudicated a youthful offender  
20 following conviction of a felony or has been adjudicated on or after  
21 September first, nineteen hundred seventy-eight a juvenile delinquent  
22 who committed a designated felony act as defined in the family court  
23 act, OR

24 (D) SUCH YOUTH HAS BEEN CONVICTED OF THE CLASS B FELONY OF VICTIMIZING  
25 THE ELDERLY OR THE PHYSICALLY DISABLED IN THE FIRST DEGREE AS DEFINED IN  
26 SECTION 280.10 OF THE PENAL LAW.

27 S 11. This act shall take effect on the first of January next succeed-  
28 ing the date on which it shall have become a law.