

447

2015-2016 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2015

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Introduced by Sen. MARCELLINO -- 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 creating the crime of  
aggravated criminal conduct where an individual commits a misdemeanor  
and has been previously subjected to four or more qualifying misdemea-  
nor convictions within the preceding five years

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

1     Section 1. The penal law is amended by adding a new section 240.78 to  
2     read as follows:  
3     S 240.78 AGGRAVATED CRIMINAL CONDUCT.  
4     1. A PERSON IS GUILTY OF AGGRAVATED CRIMINAL CONDUCT WHEN SUCH PERSON  
5     COMMITS A CLASS A MISDEMEANOR DEFINED IN THIS CHAPTER AFTER HAVING BEEN  
6     PREVIOUSLY SUBJECTED TO FOUR OR MORE QUALIFYING MISDEMEANOR CONVICTIONS  
7     WITHIN THE PRECEDING FIVE YEARS.  
8     2. THE PROVISIONS OF SECTION 200.60 OF THE CRIMINAL PROCEDURE LAW  
9     SHALL APPLY TO ANY PROSECUTION UNDER THIS SECTION.  
10    3. FOR THE PURPOSES OF THIS SECTION, IN DETERMINING WHETHER A PERSON  
11    HAS BEEN PREVIOUSLY SUBJECTED TO FOUR OR MORE QUALIFYING MISDEMEANOR  
12    CONVICTIONS WITHIN THE PRECEDING FIVE YEARS, THE FOLLOWING CRITERIA  
13    SHALL APPLY:  
14    (A) EACH CONVICTION MUST HAVE BEEN IN THIS STATE AND BE A CLASS A  
15    MISDEMEANOR AS DEFINED IN THIS CHAPTER, OR OF A CRIME IN ANY OTHER  
16    JURISDICTION FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT OF AT LEAST  
17    ONE YEAR WAS AUTHORIZED AND IS A CRIME IN THIS STATE IRRESPECTIVE OF  
18    WHETHER SUCH SENTENCE WAS IMPOSED;  
19    (B) SENTENCE UPON EACH SUCH PRIOR CONVICTION MUST HAVE BEEN IMPOSED  
20    BEFORE COMMISSION OF THE PRESENT MISDEMEANOR;  
21    (C) SUSPENDED SENTENCE, SUSPENDED EXECUTION OF SENTENCE, SENTENCE OF  
22    PROBATION, SENTENCE OF PAROLE SUPERVISION, AND SENTENCE OF CONDITIONAL

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

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1 DISCHARGE OR OF UNCONDITIONAL DISCHARGE SHALL BE DEEMED TO BE A  
2 SENTENCE;

3 (D) EXCEPT AS PROVIDED IN PARAGRAPH (E) OF THIS SUBDIVISION, EACH  
4 SENTENCE MUST HAVE BEEN IMPOSED NOT MORE THAN FIVE YEARS BEFORE COMMIS-  
5 SION OF THE PRESENT MISDEMEANOR;

6 (E) IN CALCULATING THE FIVE YEAR PERIOD UNDER PARAGRAPH (D) OF THIS  
7 SUBDIVISION, ANY PERIOD OF TIME DURING WHICH THE DEFENDANT WAS INCARCER-  
8 ATED FOR ANY REASON BETWEEN THE TIME OF COMMISSION OF ANY OF THE PREVI-  
9 OUS CONVICTIONS AND THE TIME OF COMMISSION OF THE PRESENT MISDEMEANOR  
10 SHALL BE EXCLUDED AND SUCH FIVE YEAR PERIOD SHALL BE EXTENDED BY A PERI-  
11 OD OR PERIODS EQUAL TO THE TIME SERVED;

12 (F) AN OFFENSE FOR WHICH THE DEFENDANT HAS BEEN PARDONED ON THE GROUND  
13 OF INNOCENCE SHALL NOT BE DEEMED A PREVIOUS MISDEMEANOR CONVICTION;

14 (G) WHEN MULTIPLE SENTENCES FOR TWO OR MORE CONVICTIONS WERE IMPOSED  
15 AT THE SAME TIME, ALL CONVICTIONS SHALL BE DEEMED TO CONSTITUTE ONLY ONE  
16 CONVICTION.

17 4. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE A  
18 PROSECUTION OR CONVICTION FOR ANY OTHER OFFENSE, A NECESSARY ELEMENT OF  
19 WHICH IS A PREVIOUS CONVICTION FOR AN OFFENSE.

20 AGGRAVATED CRIMINAL CONDUCT IS A CLASS E FELONY.

21 S 2. This act shall take effect on the one hundred eightieth day after  
22 it shall have become a law.