STATE OF NEW YORK

2782

2017-2018 Regular Sessions

IN ASSEMBLY

January 23, 2017

Introduced by M. of A. WOERNER, MONTESANO, BLAKE, HOOPER, COOK, RAIA, CROUCH -- Multi-Sponsored by -- M. of A. GALEF, MAGEE, McKEVITT, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to enabling the victim of a misdemeanor to make a statement at the sentencing of the defendant; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as "Emma's Law".

§ 2. Paragraphs (a) and (b) of subdivision 2 of section 380.50 of the criminal procedure law, paragraph (a) as amended by chapter 499 of the laws of 1993, subparagraph 2 of paragraph (a) as separately amended by chapters 173 and 198 of the laws of 1996, and paragraph (b) as added by chapter 307 of the laws of 1992, are amended to read as follows:

(a) For purposes of this section "victim" shall mean:

(1) the victim as indicated in the accusatory instrument **or as indicated in the pre-sentence investigation conducted pursuant to section 390.20 of this title**; or

(2) if such victim is unable or unwilling to express himself or herself before the court or a person so mentally or physically disabled as to make it impracticable to appear in court in person or the victim is deceased, a member of the family of such victim, or the legal guardian or representative of the legal guardian of the victim where such guardian or representative has personal knowledge of and a relationship with the victim, unless the court finds that it would be inappropriate for such person to make a statement on behalf of the victim.

(b) If the defendant is being sentenced for a felony **or a misdemeanor,** the court, if requested at least ten days prior to the sentencing date, shall accord the victim the right to make a statement with regard to any matter relevant to the question of sentence. The court shall notify the

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

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defendant no less than seven days prior to sentencing of the victim's intent to make a statement at sentencing. If the defendant does not receive timely notice pursuant to this subdivision, the defendant may request a reasonable adjournment.

§ 3. The opening paragraph of subdivision 2 of section 390.20 of the criminal procedure law, as amended by chapter 413 of the laws of 1991, is amended to read as follows:

Requirement for misdemeanors. Where a person is convicted of a misdemeanor a pre-sentence report is not required, but the court may not pronounce any of the following sentences unless it has ordered a pre-sentence investigation of the defendant and has received a written report thereof **or a pre-sentence investigation of the defendant has been requested by either the prosecutor or the defendant and the court has received a written report thereof**:

§ 4. This act shall take effect immediately and shall expire and be deemed repealed 2 years after such effective date.