STATE OF NEW YORK

370

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. TEDISCO, BOYLE -- 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 Assembly, do enact as follows:

Section 1. Subdivision 4 of section 120.10 of the penal law, as amended by chapter 791 of the laws of 1967, is amended and a new subdivision 5 is added to read as follows:

4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he **or she**, or another participant if there be any, causes serious physical injury to a person other than one of the participants[~~.~~]**; or**

5. Being fourteen years of age or more and with the intent to cause an unsuspecting person to be rendered unconscious, he or she strikes such person on the head, or he or she aids or encourages another participant to strike such person on the head, causing physical injury or serious physical injury to such person.

§ 2. Section 120.07 of the penal law, as added by chapter 647 of the laws of 1996, is amended to read as follows:

§ 120.07 Gang assault in the first degree.

A person is guilty of gang assault in the first degree when[~~,~~]**:**

1. with intent to cause serious physical injury to another person and when aided by two or more other persons actually present, he causes serious physical injury to such person or to a third person[~~.~~]**; or**

2. being fourteen years old or more and with the intent to cause an unsuspecting person to be rendered unconscious, and when aided by or encouraged by two or more other persons actually present, he or she strikes such person on the head, or he or she aids or encourages another

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

LBD03849-01-9

participant to strike such person on the head, causing physical injury or serious physical injury to such person.

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

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

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

5. Being fourteen years of age or more and with the intent to cause an unsuspecting person to be rendered unconscious, he or she strikes such person on the head, or he or she aids or encourages another participant to strike such person on the head, causing the death of such person.

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

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20 of this chapter, except as provided in subdivision three of this section, or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse, except as provided in subdivision three of this section, or (iv) assault in the first degree as defined in subdivision five of section 120.10 of the penal law, or (v) gang assault in the first degree as defined in subdivision two of section 120.07 of the penal law, or (vi) manslaughter in the first degree as defined in subdivision five of section 125.20 of the penal law, or

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

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

(2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one [~~and~~], two and five of section 120.10 (assault in the first degree); subdivision two of section 120.07 (gang assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as

a sexually motivated felony, where authorized pursuant to section 130.91 of [~~the penal law~~] this chapter.

§ 6. Section 70.05 of the penal law is amended by adding a new subdivision 4 to read as follows:

4. Notwithstanding any other provision of law to the contrary, where a juvenile offender is convicted of assault in the first degree as defined in subdivision five of section 120.10; gang assault in the first degree as defined in subdivision two of section 120.07; or manslaughter in the first degree as defined in subdivision five of section 125.20 of this chapter, such offender shall be sentenced pursuant to section 70.02 of this article; provided, that the provisions of this subdivision shall only apply to juvenile offenders over thirteen years old.

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

(f) The aggregate maximum term of consecutive sentences imposed upon a juvenile offender for two or more crimes, not including a class A felony, or assault in the first degree as defined in subdivision five of section 120.10, gang assault in the first degree as defined in subdivision two of section 120.07, or manslaughter in the first degree as defined in subdivision five of section 125.20 of this chapter, committed before he has reached the age of sixteen, shall, if it exceeds ten years, be deemed to be ten years. If consecutive indeterminate sentences imposed upon a juvenile offender include a sentence for the class A felony of arson in the first degree [~~or for the class A felony of~~], kidnapping in the first degree, assault in the first degree as defined in subdivision five of section 120.10, gang assault in the first degree as defined in subdivision two of section 120.07, or manslaughter in the first degree as defined in subdivision five of section 125.20 of this chapter, then the aggregate maximum term of such sentences shall, if it exceeds [~~fifteen~~] twenty-five years, be deemed to be [~~fifteen~~] twenty-five years. Where the aggregate maximum term of two or more consecutive sentences is reduced by a calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced.

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

(d) The aggregate maximum term of consecutive sentences imposed upon a juvenile offender for two or more crimes, not including a class A felony, assault in the first degree as defined in subdivision five of section 120.10; gang assault in the first degree as defined in subdivision two of section 120.07; or manslaughter in the first degree as defined in subdivision five of section 125.20 of this chapter, committed before he has reached the age of sixteen, shall, if it exceeds ten years, be deemed to be ten years. If consecutive indeterminate sentences imposed upon a juvenile offender include a sentence for the class A felony of arson in the first degree [~~or for the class A felony of~~], kidnapping in the first degree, assault in the first degree as defined in subdivision five of section 120.10, gang assault in the first degree as defined in subdivision two of section 120.07, or manslaughter in the first degree as defined in subdivision five of section 125.20 of this chapter, then the aggregate maximum term of such sentences shall, if it exceeds [~~fifteen~~] twenty-five years, be deemed to be [~~fifteen~~] twenty-five years. Where the aggregate maximum term of two or more consecutive

sentences is reduced by a calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced.

§ 9. 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 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**, assault in the first degree as defined in subdivision five of section 120.10 of the penal law, gang assault in the first degree as defined in subdivision two of section 120.07 of the penal law, or manslaughter in the first degree as defined in subdivision five of section 125.20 of the penal law**, 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.

§ 10. This act shall take effect immediately; provided that:

(a) the amendments to paragraph (f) of subdivision 1 of section 70.30 of the penal law, made by section seven of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section eight of this act shall take effect; and

(b) the amendments to subdivision 4 of section 180.75 of the criminal procedure law made by section nine of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.