

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 Assem-
bly, 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 subdi-
3 vision 5 is added to read as follows:

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

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

13 § 2. Section 120.07 of the penal law, as added by chapter 647 of the
14 laws of 1996, is amended to read as follows:
15 § 120.07 Gang assault in the first degree.

16 A person is guilty of gang assault in the first degree when~~[-]~~ 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (f) The aggregate maximum term of consecutive sentences imposed upon a
17 juvenile offender for two or more crimes, not including a class A felo-
18 ny, or assault in the first degree as defined in subdivision five of
19 section 120.10, gang assault in the first degree as defined in subdivi-
20 sion two of section 120.07, or manslaughter in the first degree as
21 defined in subdivision five of section 125.20 of this chapter, committed
22 before he has reached the age of sixteen, shall, if it exceeds ten
23 years, be deemed to be ten years. If consecutive indeterminate sentences
24 imposed upon a juvenile offender include a sentence for the class A
25 felony of arson in the first degree ~~[or for the class A felony of]~~,
26 kidnapping in the first degree, assault in the first degree as defined
27 in subdivision five of section 120.10, gang assault in the first degree
28 as defined in subdivision two of section 120.07, or manslaughter in the
29 first degree as defined in subdivision five of section 125.20 of this
30 chapter, then the aggregate maximum term of such sentences shall, if it
31 exceeds ~~[fifteen]~~ twenty-five years, be deemed to be ~~[fifteen]~~ twenty-
32 five years. Where the aggregate maximum term of two or more consecutive
33 sentences is reduced by a calculation made pursuant to this paragraph,
34 the aggregate minimum period of imprisonment, if it exceeds one-half of
35 the aggregate maximum term as so reduced, shall be deemed to be one-half
36 of the aggregate maximum term as so reduced.

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

40 (d) The aggregate maximum term of consecutive sentences imposed upon a
41 juvenile offender for two or more crimes, not including a class A felo-
42 ny, assault in the first degree as defined in subdivision five of
43 section 120.10; gang assault in the first degree as defined in subdivi-
44 sion two of section 120.07; or manslaughter in the first degree as
45 defined in subdivision five of section 125.20 of this chapter, committed
46 before he has reached the age of sixteen, shall, if it exceeds ten
47 years, be deemed to be ten years. If consecutive indeterminate sentences
48 imposed upon a juvenile offender include a sentence for the class A
49 felony of arson in the first degree ~~[or for the class A felony of]~~,
50 kidnapping in the first degree, assault in the first degree as defined
51 in subdivision five of section 120.10, gang assault in the first degree
52 as defined in subdivision two of section 120.07, or manslaughter in the
53 first degree as defined in subdivision five of section 125.20 of this
54 chapter, then the aggregate maximum term of such sentences shall, if it
55 exceeds ~~[fifteen]~~ twenty-five years, be deemed to be ~~[fifteen]~~ twenty-
56 five years. Where the aggregate maximum term of two or more consecutive

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

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

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

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

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

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