STATE OF NEW YORK

3536--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 27, 2021

Introduced by M. of A. O'DONNELL, FORREST, BURGOS, MAMDANI, QUART, SIMON, JACKSON, GONZALEZ-ROJAS -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the penal law, in relation to granting certain individuals youthful offender status; to add a new category of individuals eligible for young adult offender status; and to repeal certain provisions of the criminal procedure law relating thereto

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

Section 1. Section 720.10 of the criminal procedure law, as added by chapter 981 of the laws of 1971, subdivision 1 as amended by chapter 411 of the laws of 1979, subdivision 2 as amended by chapter 416 of the laws of 1986, paragraph (a) of subdivision 2 as amended by chapter 316 of the laws of 2006, subdivision 3 as amended by chapter 264 of the laws of 2003, and subdivisions 4, 5 and 6 as renumbered by chapter 481 of the laws of 1978, is amended to read as follows:

§ 720.10 Youthful offender procedure; definition of terms.

As used in this article, the following terms have the following meanings:

1. "Youth" means a person charged with a crime alleged to have been committed when he **or she** was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

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

(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, except as provided in subdivision three, or (iii)~~] rape in the first degree, criminal sexual

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

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act in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or

(b) such youth has previously been convicted and sentenced for a felony[~~, or~~

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

3. Notwithstanding the provisions of subdivision two of this section, a youth who has been convicted of [~~an armed felony offense or of~~] rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse is an eligible youth if the court determines that [~~one or more of the following factors exist:~~] **the interest of justice would be served by relieving the youth from the onus of a criminal record and by not imposing an indeterminate sentence of more than four years. In making such determination, the court shall weigh the following factors:** (i) **the circumstances and seriousness of the offense with due regard to the extent of the harm caused by it; (ii) any** mitigating circumstances that bear [~~directly upon~~] **on** the manner in which the crime was committed; [~~or (ii)~~] **(iii)** where the [~~defendant~~] **youth** 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~~] **level and extent of his or her direct involvement in the criminal activity; (iv) the history and background of the youth; and (v) prospects for rehabilitation of the youth or opportunities for interventions that would assist the youth in leading a law-abiding life**. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

4. "Youthful offender finding" means a finding, substituted for the conviction of an eligible youth, pursuant to a determination that the eligible youth is a youthful offender.

5. "Youthful offender sentence" means the sentence imposed upon a youthful offender finding.

6. "Youthful offender adjudication". A youthful offender adjudication is comprised of a youthful offender finding and the youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.

§ 2. Subdivision 3 of section 720.15 of the criminal procedure law is REPEALED.

§ 3. Subdivision 1 of section 720.20 of the criminal procedure law, as amended by chapter 652 of the laws of 1974, is amended to read as follows:

1. Upon conviction of an eligible youth, the court must order a presentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence the court must determine whether or not the eligible youth is a youthful offender. Such determination shall be in accordance with the following criteria:

(a) If [~~in the opinion of the court the interest of justice would be served by relieving the eligible~~] **the eligible youth is charged with a misdemeanor offense, a class D or E felony offense, a class C felony as**

described in subdivision one of section 160.10 of the penal law or any offense contained in article two hundred twenty of the penal law other than a class A-I or A-II felony offense, the court shall find that he or she is a youthful offender.

(b) In all other cases, except when the youth is charged with rape in the first degree, and aggravated sexual abuse, there shall be a presumption to grant youthful offender status to an eligible youth in order to relieve such youth from the onus of a criminal record [~~and by not imposing~~], other consequences of a criminal conviction, and the imposition of an indeterminate term of imprisonment of more than four years[~~, the court may, in its discretion, find the eligible youth is a youthful offender; and~~

~~(b) Where the conviction is had in a local criminal court and the eligible youth had not prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, the court must find he is a youthful offender~~]. Upon motion of not less than seven days' notice, the prosecutor may challenge the presumption to grant youthful offender status. The court shall grant youthful offender status unless the prosecutor rebuts the presumption and establishes by clear and convincing evidence that the criteria set forth in subdivision two of section 720.10 of this article require that youthful offender status be denied.

§ 4. Section 720.35 of the criminal procedure law, as added by chapter 981 of the laws of 1971, subdivision 1 as amended by chapter 23 of the laws of 2021, subdivisions 2 and 4 as amended by section 87 of subpart B of part C of chapter 62 of the laws of 2011 and subdivision 3 as amended by chapter 181 of the laws of 2000, is amended to read as follows:

§ 720.35 Youthful offender adjudication; effect thereof; records.

1. A youthful offender or young adult adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction only for the purposes of transfer of supervision and custody pursuant to section two hundred fifty-nine-m of the executive law. A defendant for whom a youthful offender adjudication was substituted, who was originally charged with prostitution as defined in section 230.00 of the penal law, shall be deemed a "sexually exploited child" as defined in subdivision one of section four hundred forty-seven-a of the social services law and therefore shall not be considered an adult for purposes related to the charges in the youthful offender proceeding or a proceeding under section 170.80 of this chapter.

2. Except where specifically required or permitted by statute or upon specific authorization of the court, all official records and papers, whether on file with the court, a police agency or the division of criminal justice services, relating to a case involving a youth or young adult who has been adjudicated a youthful offender or granted a young adult status finding, are confidential and may not be made available to any person or public or private agency, other than the designated educational official of the public or private elementary or secondary school in which the youth or young adult is enrolled as a student provided that such local educational official shall only have made available a notice of such adjudication and shall not have access to any other official records and papers, such youth or young adult or such youth's or young adult's designated agent (but only where the official records and papers sought are on file with a court and request therefor is made to that

court or to a clerk thereof), an institution to which such youth **or young adult** has been committed, the department of corrections and community supervision and a probation department of this state that requires such official records and papers for the purpose of carrying out duties specifically authorized by law; provided, however, that information regarding an order of protection or temporary order of protection issued pursuant to section 530.12 of this chapter or a warrant issued in connection therewith may be maintained on the statewide automated order of protection and warrant registry established pursuant to section two hundred twenty-one-a of the executive law during the period that such order of protection or temporary order of protection is in full force and effect or during which such warrant may be executed. Such confidential information may be made available pursuant to law only for purposes of adjudicating or enforcing such order of protection or temporary order of protection and, where provided to a designated educational official, as defined in section 380.90 of this chapter, for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

3. If a youth **or young adult** who has been adjudicated a youthful offender **or granted a young adult status finding** is enrolled as a student in a public or private elementary or secondary school the court that has [~~adjudicated the youth as a~~] **made the** youthful offender **or young adult adjudication** shall provide notification of such adjudication to the designated educational official of the school in which such youth **or young adult** is enrolled as a student. Such notification shall be used by the designated educational official only for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

4. Notwithstanding subdivision two of this section, whenever a person is adjudicated a youthful offender **or granted young adult status** and the conviction that was vacated and replaced by the youthful offender **or young adult status** finding was for a sex offense as that term is defined in article ten of the mental hygiene law, all records pertaining to the youthful offender **or young adult** adjudication shall be included in those records and reports that may be obtained by the commissioner of mental health or the commissioner of developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

§ 5. Subparagraph (i) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as amended by chapter 410 of the laws of 1979, is amended to read as follows:

(i) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a class A felony, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class A-I felony as defined in article two hundred twenty of the penal law or the attempt to commit any such class A-I felony, except that [~~an eligible youth, as defined in subdivision two of section 720.10, may plea to a class B felony, upon consent of the district attorney, for purposes of adjudication as a youthful offender~~] **this restriction shall not apply to an eligible youth, as defined in subdivision two of section 720.10 of this chapter, or an eligible young adult, as defined in subdivision two of section 721.10 of this chapter**.

§ 6. Subdivision 3 of section 420.30 of the criminal procedure law, as amended by chapter 144 of the laws of 2020, is amended to read as follows:

3. Restrictions. Except as provided for in subdivision two-a of section 420.35 of this article, in no event shall a mandatory surcharge, sex offender registration fee, DNA databank fee or crime victim assistance fee be remitted. **In no event shall such fees be imposed for a juvenile offender, a youthful offender or a young adult status finding.**

§ 7. Subdivision 2 of section 420.35 of the criminal procedure law, as amended by chapter 23 of the laws of 2021, is amended as follows:

2. Except as provided in this subdivision or subdivision two-a of this section, under no circumstances shall the mandatory surcharge, sex offender registration fee, DNA databank fee or the crime victim assistance fee be waived. A court shall waive any mandatory surcharge, DNA databank fee and crime victim assistance fee when: (i) the defendant is convicted of prostitution under section 230.00 of the penal law; (ii) the defendant is convicted of a violation in the event such conviction is in lieu of a plea to or conviction for prostitution under section 230.00 of the penal law; (iii) the court finds that a defendant is a victim of sex trafficking under section 230.34 of the penal law or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78); [~~or~~] (iv) the court finds that the defendant is a victim of sex trafficking of a child under section 230.34-a of the penal law**; or (v) the court determines that the defendant is a youthful offender pursuant to section 720.00 of this chapter or the court grants the defendant young adult status pursuant to section 721.00 of this chapter**.

§ 8. The criminal procedure law is amended by adding a new article 721 to read as follows:

ARTICLE 721

YOUNG ADULT STATUS

Section 721.10 Young adult status procedure; definition of terms.
721.15 Young adult status procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury.
721.20 Young adult status determination; when and how made; procedure thereupon.
721.30 Young adult adjudication; post-judgment motions and appeal.
721.35 Young adult adjudication; effect thereof; records.

§ 721.10 Young adult status procedure; definition of terms.

As used in this article, the following terms have the following meanings:

1. "Young adult" means a person charged with a crime alleged to have been committed when he or she was at least nineteen years old and less than twenty-six years old.

2. "Eligible young adult" means a person who is at least nineteen years old and less than twenty-six years old who is eligible for young adult status. Every young adult is so eligible unless: (a) the conviction to be replaced by young adult adjudication is for (i) a class A-I or class A-II felony, or (ii) 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 (b) such young adult has previously been convicted and sentenced for a felony.

3. Notwithstanding the provisions of subdivision two of this section, a young adult who has been convicted of rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse is an eligible youth if the court determines, without applying the presumption defined in paragraph (b) of subdivision one of section 721.20 of this article, that the interest of justice would be served by relieving the young adult from the onus of a criminal record and by not imposing an indeterminate sentence of more than four years. In making such determination, the court shall weigh the following factors:

(a) The circumstances and seriousness of the offense with due regard to the extent of the harm caused by it.

(b) Any mitigating circumstances that bear on the manner in which the crime was committed.

(c) Where the young adult was not the sole participant in the crime, the level and extent of his or her direct involvement in the criminal activity.

(d) The history and background of the young adult.

(e) Prospects for rehabilitation of the young adult or opportunities for interventions that would assist the young adult in leading a law-abiding life.

Where the court makes a young adult status finding, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

4. "Young adult finding" means a finding, substituted for the conviction of an eligible young adult, pursuant to a determination that the eligible young adult shall be granted young adult status.

5. "Young adult sentence" means the sentence imposed upon a young adult finding.

6. "Young adult adjudication" means an adjudication comprised of a young adult finding and the young adult sentence imposed thereon and is completed by imposition and entry of the young adult sentence.

§ 721.15 Young adult status procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury.

1. When an accusatory instrument against an apparently eligible young adult is filed with a court, it shall be filed as a sealed instrument, though only with respect to the public.

2. When an eligible young adult is initially arraigned upon an accusatory instrument, such arraignment and all proceedings in the action thereafter may, in the discretion of the court and with the consent of the accused, be conducted in private.

§ 721.20 Young adult status determination; when and how made; procedure thereupon.

1. Upon conviction of an eligible young adult, the court shall order a pre-sentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence the court shall determine whether or not the eligible youth will receive young adult status. Such determination shall be in accordance with the following criteria:

(a) If the eligible young adult is charged with a misdemeanor offense, the court shall grant him or her young adult status;

(b) In all other cases, except rape in the first degree, criminal sexual act in the first degree, and aggravated sexual abuse, there shall be a presumption to grant eligible young adult status to an eligible young adult in order to relieve such young adult from the onus of a criminal record, other consequences of a criminal conviction, and the imposition of an indeterminate term of imprisonment of more than four years. Upon motion on not less than seven days' notice, the prosecutor may challenge the presumption to grant young adult status. The court shall grant young adult status unless the prosecutor rebuts the presumption and establishes by clear and convincing evidence that the criteria set forth in subdivision two of section 721.10 of this article require that young adult status be denied.

2. Where an eligible young adult is convicted of two or more crimes or offenses set forth in separate counts of an accusatory instrument or set forth in two or more accusatory instruments consolidated for trial purposes, the court shall not grant him or her young adult status with respect to any such conviction pursuant to subdivision one of this section unless it grants young adult status with respect to all such convictions.

3. Upon determining to grant young adult status, the court shall direct that the conviction be deemed vacated and replaced by a young adult status finding; and the court shall sentence the young adult pursuant to section 60.02 of the penal law.

4. Upon determining that an eligible young adult shall not be granted young adult status, the court shall order the accusatory instrument unsealed and continue the action to judgment pursuant to the ordinary rules governing criminal prosecutions.

§ 721.30 Young adult adjudication; post-judgment motions and appeal.

The provisions of this chapter, governing the making and determination of post-judgment motions and the taking and determination of appeals in criminal cases, apply to post judgment motions and appeals with respect to young adult adjudications wherever such provisions can reasonably be so applied.

§ 721.35 Young adult adjudication; effect thereof; records.

1. A young adult adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction only for the purposes of transfer of supervision and custody pursuant to section two hundred fifty-nine-m of the executive law.

2. Upon receipt of notification of a young adult adjudication, such adjudication and all records thereof shall be sealed in the same manner as defined in section 720.35 of this title; and such records shall not be available except where specifically required by statute or upon specific authorization by the court.

§ 9. The criminal procedure law is amended by adding a new section 440.49 to read as follows:

§ 440.49 Resentencing; youthful offender.

1. Any person under the age of twenty-six at the time the crime was committed who was convicted of a misdemeanor or violation offense who would have been considered an "eligible youth" pursuant to subdivision two of section 720.10 of this chapter and an "eligible young adult" pursuant to subdivision two of section 721.10 of this chapter after the effective date of this section shall have their conviction automatically replaced with a youthful offender adjudication or young adult offender adjudication within six months of the statute's effective date. The division of criminal justice services shall establish standards to ensure that such process occurs automatically for all persons prior to such six month deadline.

2. Any person under the age of twenty-six at the time the crime was committed who would have been considered an "eligible youth" pursuant to subdivision two of section 720.10 of this chapter and an "eligible young adult" pursuant to subdivision two of section 721.10 of this chapter after the effective date of this section, upon notice to the appropriate district attorney, may petition to be resentenced to a youthful offender adjudication or young adult offender adjudication in accordance with articles seven hundred twenty and seven hundred twenty-one of this chapter in the court which imposed such sentence. Even if a person is eligible for automatic youthful offender adjudication or young adult offender adjudication sealing pursuant to subdivision one of this section, such person may still petition the court for resentencing prior to the six month period described in subdivision one of this section.

3. The court shall consider the factors outlined in subdivision two of section 720.20 and subdivision two of section 721.20 of this chapter in determining whether or not a person who would have been an eligible youth may or shall be granted youthful offender status or young adult offender status for the prior conviction.

(a) In cases where granting youthful offender status or young adult offender status is discretionary and not required by paragraph (a) of subdivision one of section 720.20 or paragraph (a) of subdivision one of section 721.20 of this chapter, the court shall also consider any additional evidence presented by the person seeking resentencing, including:

(i) the amount of time that has elapsed since the petitioner's last conviction;

(ii) the character of the petitioner, including any measures that he or she has taken towards rehabilitation, such as participating in treatment programs, work, or schooling, and participating in community service or other volunteer programs;

(iii) the circumstances and seriousness of the offense for which the petitioner is seeking relief;

(iv) the impact of sealing the petitioner's record upon his or her rehabilitation and upon his or her successful and productive reentry and reintegration into society; and

(v) the impact of collateral consequences of the conviction on the defendant and his or her family.

(b) The district attorney may challenge the presumption to grant youthful offender status pursuant to paragraph (b) of subdivision one of section 720.20 and paragraph (b) of subdivision one of section 721.20 of this chapter.

4. Subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law, and the

related provisions of article eighteen-A of such law shall apply to the preparation and proceedings on motions pursuant to this section, including any appeals.

§ 10. Section 450.10 of the criminal procedure law is amended by adding a new subdivision 6 to read as follows:

6. An order denying a motion, made pursuant to section 440.49 of this title, for granting youthful offender or young adult status.

§ 11. Subdivision 2 of section 60.00 of the penal law, as added by chapter 481 of the laws of 1978, is amended and a new subdivision 3 is added to read as follows:

2. The sole provision of this article that shall apply in the case of an offense committed by a juvenile offender [~~is~~] or a defendant adjudicated a youthful offender or young adult in section 60.10 of this article and no other provisions of this article shall be deemed or construed to apply in any such case.

3. The sole provisions of this article that may apply in the case of an offense committed by a defendant adjudicated a youthful offender or young adult status are sections 60.02 and 60.10-a of this article and no other provisions of this article shall be deemed or construed to apply in any such case.

§ 12. Subdivisions 1 and 2 of section 60.02 of the penal law, as amended by chapter 471 of the laws of 1980, are amended and a new subdivision 3 is added to read as follows:

(1) If the sentence is to be imposed upon a youthful offender or young adult status finding which has been substituted for a conviction of an offense other than a felony, the court must impose a sentence authorized for the offense for which the youthful offender or young adult finding was substituted[~~, except that if the youthful offender finding was entered pursuant to paragraph (b) of subdivision one of section 720.20 of the criminal procedure law,~~] where the conviction is for a misdemeanor the court must not impose a definite or intermittent sentence of imprisonment with a term of more than six months; or

(2) If the sentence is to be imposed upon a youthful offender finding which has been substituted for a conviction for any felony, the court must impose a sentence authorized to be imposed upon a person convicted of a class E felony [~~provided, however, that the court must not impose a sentence of conditional discharge or unconditional discharge if the youthful offender finding was substituted for a conviction of a felony defined in article two hundred twenty of this chapter~~].

3. If the sentence is to be imposed upon a young adult status finding which has been substituted for a conviction for any felony, the court shall impose a sentence authorized to be imposed upon a person convicted of a class E felony.

§ 13. Subdivision 4 of section 80.00 of the penal law, as amended by chapter 338 of the laws of 1989, is amended to read as follows:

4. Exception. The provisions of this section shall not apply to a corporation, or to a youthful offender finding as defined in section 720.10 of the criminal procedure law or young adult status finding as defined in section 721.10 of the criminal procedure law.

§ 14. Subdivision 6 of section 80.05 of the penal law is amended to read as follows:

6. Exception. The provisions of this section shall not apply to a corporation, or to a youthful offender finding as defined in section 720.10 of the criminal procedure law or young adult status finding as defined in section 721.10 of the criminal procedure law.

§ 15. Subdivision 7 of section 340.40 of the criminal procedure law, as added by chapter 981 of the laws of 1971, is amended to read as follows:

7. Notwithstanding any other provision of law, [~~in any local criminal court~~] the trial of a person who is an eligible youth within the meaning of the youthful offender procedure set forth in article seven hundred twenty [~~and who has not prior to commencement of the trial been convicted of a crime or adjudicated a youthful offender must be~~] **of this chapter shall be a jury trial or, where the eligible youth has waived a jury trial pursuant to section 320.10 of this part,** a single judge trial.

§ 16. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to any criminal case pending on such effective date.