S T A T E O F N E W Y O R K

11253

I N A S S E M B L Y

May 25, 2010

Introduced by M. of A. SALADINO, McKEVITT, MONTESANO, RAIA, ALFANO, McDONOUGH -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the offense of endangering the welfare of a child in a sexual manner; to amend the penal law and the correction law, in relation to sentencing for certain sexual offenses; and to repeal certain provisions of the penal law relating thereto

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

Section 1. Subparagraph (ii) of paragraph (a) of subdivision 3 and subdivision 5 of section 70.00 of the penal law, subparagraph (ii) of paragraph (a) of subdivision 3 as amended by chapter 107 of the laws of 2006 and subdivision 5 as amended by chapter 482 of the laws of 2009, are amended to read as follows:

(ii) For a class A-II felony, such minimum period shall not be less than three years nor more than eight years four months, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter [or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter,] such minimum period shall be not less than ten years nor more than twenty-five years AND FOR THE CLASS A-II FELONY OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS CHAPTER SUCH MINIMUM PERIOD SHALL BE NOT LESS THAN TWENTY-FIVE YEARS AND THE MAXIMUM TERM SHALL BE LIFE IMPRISONMENT.

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole, IN ACCORDANCE WITH THE PROCEDURES PROVIDED BY LAW FOR IMPOSING SUCH A SENTENCE, EITHER: (A) upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter [and in accordance with the procedures provided by law for imposing a sentence

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

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for such crime]; OR (B) UPON CONVICTION OF A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE WHEN SUCH DEFENDANT HAS PREVIOUSLY BEEN SUBJECTED TO TWO OR MORE PREDICATE VIOLENT FELONY CONVICTIONS AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.04 OF THIS ARTICLE. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter, OR IS ALSO CONVICTED OF A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE WHEN SUCH DEFENDANT HAS PREVIOUSLY BEEN SUBJECTED TO TWO OR MORE PREDICATE VIOLENT FELONY CONVICTIONS AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.04 OF THIS ARTICLE. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter.

S 2. Paragraph (a) of subdivision 4 of section 70.06 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

(a) The minimum period of imprisonment for a second felony offender convicted of a class A-II felony must be fixed by the court at no less than six years and not to exceed twelve and one-half years and must be specified in the sentence, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter [or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter,] such minimum period shall be not less than ten years nor more than twenty-five years AND FOR THE CLASS A-II FELONY OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS CHAPTER SUCH MINIMUM PERIOD SHALL BE NOT LESS THAN TWENTY-FIVE YEARS AND THE MAXIMUM TERM SHALL BE LIFE IMPRISONMENT.

S 3. Subdivision 2 of section 70.08 of the penal law, as added by chapter 481 of the laws of 1978, is amended to read as follows:

2. Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a persistent violent felony offender the court must impose [an indeterminate sentence of imprisonment, the maximum term of which shall be life imprisonment. The minimum period of imprisonment under such sentence must be in accordance with subdivision three of this section] A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE PURSUANT TO SECTION 70.00 OF THIS ARTICLE.

S 4. Subdivision 3 of section 70.08 of the penal law is REPEALED.

S 5. Subdivision 1 of section 70.40 of the penal law is amended by adding a new paragraph (d) to read as follows:

(D) A PERSON WHO HAS BEEN PAROLED AFTER SERVING A SENTENCE OF IMPRISONMENT FOR THE CRIME OF PREDATORY SEXUAL ASSAULT AGAINST A CHILD AS DEFINED IN SECTION 130.96 OF THIS CHAPTER SHALL BE UNDER THE SUPERVISION OF THE STATE BOARD OF PAROLE FOR THE DURATION OF THEIR LIFETIME.

S 6. Paragraphs (d), (f), (g) and (i) of subdivision 2-a of section 70.45 of the penal law, as added by chapter 7 of the laws of 2007, are amended to read as follows:

(d) not less than three years nor more than ten years whenever a determinate sentence is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class D or class E violent felony sex offense as defined in paragraph (b) of subdivision one of section 70.80 of this article; PROVIDED, HOWEVER, THAT WHEN THE CONVICTION WAS FOR THE COMMISSION OF SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.65 WHEN THE VICTIM WAS LESS THAN ELEVEN YEARS OF AGE OR COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.80 OF THIS CHAPTER, THE PERIOD OF POST-RELEASE SUPERVISION SHALL BE FOR LIFE;

(f) not less than five years nor more than twenty years whenever a determinate sentence is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class B violent felony sex offense as defined in section 70.80 of this article; PROVIDED, HOWEVER, THAT WHEN THE CONVICTION WAS FOR THE COMMISSION OF RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.35, CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED IN SECTION 130.50, AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.70 OR COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75 OF THIS CHAPTER, THE PERIOD OF POST-RELEASE SUPERVISION SHALL BE FOR LIFE;

(g) not less than five years nor more than fifteen years whenever a determinate sentence of imprisonment is imposed pursuant to either section 70.04, section 70.06, or subdivision five of section 70.80 of this article upon a conviction of a class D or class E violent or non-violent felony sex offense as defined in section 70.80 of this article; PROVIDED, HOWEVER, THAT WHEN THE CONVICTION WAS FOR THE COMMISSION OF SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.65 WHEN THE VICTIM WAS LESS THAN ELEVEN YEARS OF AGE OR COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.80 OF THIS CHAPTER, THE PERIOD OF POST-RELEASE SUPERVISION SHALL BE FOR LIFE;

(i) such period shall be not less than ten years nor more than twenty-five years whenever a determinate sentence of imprisonment is imposed pursuant to either section 70.04, section 70.06, or subdivision five of section 70.80 of this article upon a conviction of a class B violent or non-violent felony sex offense as defined in section 70.80 of this article; PROVIDED, HOWEVER, THAT WHEN THE CONVICTION WAS FOR THE COMMISSION OF RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.35, CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED IN SECTION 130.50, AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.70 OR COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75 OF THIS CHAPTER, THE PERIOD OF POST-RELEASE SUPERVISION SHALL BE FOR LIFE; and

S 7. The penal law is amended by adding a new section 260.09 to read as follows:

S 260.09 ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER.

A PERSON IS GUILTY OF ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER WHEN HE OR SHE COMMITS THE OFFENSE OF ENDANGERING THE WELFARE OF A CHILD AND THE INJURIOUS MANNER IN WHICH HE OR SHE ACTED, OR THE OCCUPATION THE CHILD WAS DIRECTED OR AUTHORIZED TO ENGAGE IN, OR THE REASON FOR THE CHILD BEING DEEMED AN "ABUSED CHILD", A "NEGLECTED CHILD", A "JUVENILE DELINQUENT" AND/OR A "PERSON IN NEED OF SUPERVISION" IS OF A SEXUAL NATURE.

ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER IS A CLASS E FELONY.

S 8. Section 260.11 of the penal law, as amended by chapter 89 of the laws of 1984, is amended to read as follows:

S 260.11 Endangering the welfare of a child; corroboration.

A person shall not be convicted of endangering the welfare of a child OR ENDANGERING THE WELFARE OF A CHILD IN A SEXUAL MANNER, or of an attempt to commit the same, upon the testimony of a victim who is incapable of consent because of mental defect or mental incapacity as to conduct that constitutes an offense or an attempt to commit an offense referred to in section 130.16 OF THIS PART, without additional evidence sufficient pursuant to section 130.16 OF THIS PART to sustain a conviction of an offense referred to in section 130.16 OF THIS PART, or of an attempt to commit the same.

S 9. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 [and], 255.27 AND 260.09 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law or as a sexually motivated felony defined in section 130.91 of such law; or

S 10. Section 803 of the correction law is amended by adding a new subdivision 1-a to read as follows:

1-A. A PERSON SERVING A DETERMINATE SENTENCE WHO IS SUBJECT TO THE PERIOD OF POST-RELEASE SUPERVISION ESTABLISHED IN PARAGRAPH (D), (F), (G) OR (I) OF SUBDIVISION TWO-A OF SECTION 70.45 OF THE PENAL LAW SHALL NOT BE ENTITLED TO ANY GOOD BEHAVIOR ALLOWANCE ESTABLISHED IN THIS SECTION.

S 11. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the amendments to section 803 of the correction law made by section ten of this act shall survive the expiration and reversion of such section as provided in subdivision d of section 74 of chapter 3 of the laws of 1995, as amended.