

1212

2009-2010 Regular Sessions

I N S E N A T E

January 27, 2009

Introduced by Sens. THOMPSON, AUBERTINE, FOLEY, KRUEGER, ONORATO, SMITH
-- read twice and ordered printed, and when printed to be committed to
the Committee on Codes

AN ACT to amend the penal law, in relation to imposing longer terms of
imprisonment upon second sex offenders and persistent sex offenders

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

1 Section 1. Subdivision 3 of section 70.04 of the penal law, as amended
2 by chapter 3 of the laws of 1995, is amended to read as follows:
3 3. Term of sentence. [The] (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF
4 THIS SUBDIVISION, THE term of a determinate sentence for a second
5 violent felony offender must be fixed by the court as follows:
6 [(a)] (I) For a class B felony, the term must be at least ten years
7 and must not exceed twenty-five years;
8 [(b)] (II) For a class C felony, the term must be at least seven years
9 and must not exceed fifteen years; [and
10 (c)] (III) For a class D felony, the term must be at least five years
11 and must not exceed seven years[.]; AND
12 [(d)] (IV) For a class E felony, the term must be at least three years
13 and must not exceed four years.
14 (B) THE TERM OF A DETERMINATE SENTENCE FOR A SECOND VIOLENT FELONY
15 OFFENDER, WHO STANDS CONVICTED OF A VIOLENT FELONY OFFENSE DEFINED IN
16 ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER AND HAS A PREDICATE VIOLENT
17 FELONY CONVICTION OF AN OFFENSE DEFINED IN SUCH ARTICLE COMMITTED
18 AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE FIXED BY THE
19 COURT AS FOLLOWS:
20 (I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST THIRTY YEARS AND
21 MUST NOT EXCEED SEVENTY-FIVE YEARS;
22 (II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST TWENTY-ONE YEARS
23 AND MUST NOT EXCEED FORTY-FIVE YEARS;

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

LBD04706-01-9

(III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST FIFTEEN YEARS AND MUST NOT EXCEED TWENTY-ONE YEARS; AND

(IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST NINE YEARS AND MUST NOT EXCEED TWELVE YEARS.

S 2. Subdivision 3 of section 70.04 of the penal law, as added by chapter 481 of the laws of 1978, paragraph (d) as added by chapter 233 of the laws of 1980, is amended to read as follows:

3. Maximum term of sentence. [The] (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE maximum term of an indeterminate sentence for a second violent felony offender must be fixed by the court as follows:

[(a)] (I) For a class B felony, the term must be at least twelve years and must not exceed twenty-five years;

[(b)] (II) For a class C felony, the term must be at least eight years and must not exceed fifteen years; [and

(c)] (III) For a class D felony, the term must be at least five years and must not exceed seven years[.]; AND

[(d)] (IV) For a class E felony, the term must be at least four years.

(B) THE TERM OF AN INDETERMINATE SENTENCE FOR A SECOND VIOLENT FELONY OFFENDER, WHO STANDS CONVICTED OF A VIOLENT FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER AND HAS A PREDICATE VIOLENT FELONY CONVICTION OF AN OFFENSE DEFINED IN SUCH ARTICLE COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE FIXED BY THE COURT AS FOLLOWS:

(I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST THIRTY-SIX YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

(II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST TWENTY-FOUR YEARS AND MUST NOT EXCEED FORTY-FIVE YEARS;

(III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST FIFTEEN YEARS AND MUST NOT EXCEED TWENTY-ONE YEARS; AND

(IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST TWELVE YEARS.

S 3. Subdivision 3 of section 70.06 of the penal law, as amended by section 38 of chapter 7 of the laws of 2007, is amended to read as follows:

3. Maximum term of sentence. (A) Except as provided in subdivision [five or] six of this section OR PARAGRAPH (B) OF THIS SUBDIVISION, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

[(a)] (I) For a class A-II felony, the term must be life imprisonment;

[(b)] (II) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;

[(c)] (III) For a class C felony, the term must be at least six years and must not exceed fifteen years;

[(d)] (IV) For a class D felony, the term must be at least four years and must not exceed seven years; and

[(e)] (V) For a class E felony, the term must be at least three years and must not exceed four years; provided, however, that where the sentence is for the class E felony offense specified in section 240.32 of this chapter, the maximum term must be at least three years and must not exceed five years.

(B) THE MAXIMUM TERM OF AN INDETERMINATE SENTENCE FOR A SECOND FELONY OFFENDER, WHO STANDS CONVICTED OF ANY FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE, OR SECTION 255.25 OF THIS CHAPTER AND HAS A PREDICATE FELONY CONVICTION OF ANY SUCH OFFENSE

1 COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE
2 FIXED BY THE COURT AS FOLLOWS:

3 (I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST TWENTY-SEVEN YEARS
4 AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

5 (II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST EIGHTEEN YEARS
6 AND MUST NOT EXCEED FORTY-FIVE YEARS;

7 (III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST TWELVE YEARS AND
8 MUST NOT EXCEED TWENTY-ONE YEARS; AND

9 (IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST NINE YEARS AND
10 MUST NOT EXCEED TWELVE YEARS.

11 S 4. Subdivision 3 of section 70.06 of the penal law, as amended by
12 section 39 chapter 7 of the laws of 2007, is amended to read as follows:

13 3. Maximum term of sentence. (A) Except as provided in PARAGRAPH (B)
14 OF THIS subdivision [five of this section], or as provided in subdivi-
15 sion five of section 70.80 of this article, the maximum term of an inde-
16 terminate sentence for a second felony offender must be fixed by the
17 court as follows:

18 [(a)] (I) For a class A-II felony, the term must be life imprisonment;

19 [(b)] (II) For a class B felony, the term must be at least nine years
20 and must not exceed twenty-five years;

21 [(c)] (III) For a class C felony, the term must be at least six years
22 and must not exceed fifteen years;

23 [(d)] (IV) For a class D felony, the term must be at least four years
24 and must not exceed seven years; and

25 [(e)] (V) For a class E felony, the term must be at least three years
26 and must not exceed four years.

27 (B) THE MAXIMUM TERM OF AN INDETERMINATE SENTENCE FOR A SECOND FELONY
28 OFFENDER, WHO STANDS CONVICTED OF ANY FELONY DEFINED IN ARTICLE ONE
29 HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OR SECTION 255.25 OF THIS
30 CHAPTER AND HAS A PREDICATE FELONY CONVICTION OF SUCH OFFENSE COMMITTED
31 AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE FIXED BY THE
32 COURT AS FOLLOWS:

33 (I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST TWENTY-SEVEN YEARS
34 AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

35 (II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST EIGHTEEN YEARS
36 AND MUST NOT EXCEED FORTY-FIVE YEARS;

37 (III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST TWELVE YEARS AND
38 MUST NOT EXCEED TWENTY-ONE YEARS; AND

39 (IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST NINE YEARS AND
40 MUST NOT EXCEED TWELVE YEARS.

41 S 5. Subdivision 6 of section 70.06 of the penal law, as added by
42 chapter 3 of the laws of 1995, is amended to read as follows:

43 6. Determinate sentence. [When] (A) EXCEPT AS PROVIDED IN PARAGRAPH
44 (B) OF THIS SUBDIVISION, WHEN the court has found, pursuant to the
45 provisions of the criminal procedure law, that a person is a second
46 felony offender and the sentence to be imposed on such person is for a
47 violent felony offense, as defined in subdivision one of section 70.02,
48 the court must impose a determinate sentence of imprisonment the term of
49 which must be fixed by the court as follows:

50 [(a)] (I) For a class B violent felony offense, the term must be at
51 least eight years and must not exceed twenty-five years;

52 [(b)] (II) For a class C violent felony offense, the term must be at
53 least five years and must not exceed fifteen years;

54 [(c)] (III) For a class D violent felony offense, the term must be at
55 least three years and must not exceed seven years; and

1 [(d)] (IV) For a class E violent felony offense, the term must be at
2 least two years and must not exceed four years.

3 (B) WHEN THE COURT HAS FOUND, PURSUANT TO THE PROVISIONS OF THE CRIMI-
4 NAL PROCEDURE LAW, THAT A PERSON IS A SECOND FELONY OFFENDER WITH A
5 PREDICATE FELONY CONVICTION OF A FELONY DEFINED IN ARTICLE ONE HUNDRED
6 THIRTY OR TWO HUNDRED SIXTY-THREE, OR SECTION 255.25 OF THIS CHAPTER
7 COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, AND THE
8 SENTENCE TO BE IMPOSED ON SUCH PERSON IS FOR A VIOLENT FELONY OFFENSE
9 DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER, THE COURT MUST
10 IMPOSE A DETERMINATE SENTENCE OF IMPRISONMENT THE TERM OF WHICH MUST BE
11 FIXED BY THE COURT AS FOLLOWS:

12 (I) FOR A CLASS B VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST
13 TWENTY-FOUR YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

14 (II) FOR A CLASS C VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST
15 FIFTEEN YEARS AND MUST NOT EXCEED FORTY-FIVE YEARS;

16 (III) FOR A CLASS D VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST
17 NINE YEARS AND MUST NOT EXCEED TWENTY-ONE YEARS; AND

18 (IV) FOR A CLASS E VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST
19 SIX YEARS AND MUST NOT EXCEED TWELVE YEARS.

20 S 6. Subdivision 3 of section 70.08 of the penal law, as amended by
21 section 7 of chapter 107 of the laws of 2006, is amended to read as
22 follows:

23 3. Minimum period of imprisonment. [The] (A) EXCEPT AS PROVIDED IN
24 PARAGRAPH (B) OF THIS SUBDIVISION, THE minimum period of imprisonment
25 under an indeterminate life sentence for a persistent violent felony
26 offender must be fixed by the court as follows:

27 [(a)] (I) For the class A-II felony of predatory sexual assault as
28 defined in section 130.95 of this chapter or the class A-II felony of
29 predatory sexual assault against a child as defined in section 130.96 of
30 this chapter, the minimum period must be twenty-five years;

31 [(a-1)] (II) For a class B felony, the minimum period must be at least
32 twenty years and must not exceed twenty-five years;

33 [(b)] (III) For a class C felony, the minimum period must be at least
34 sixteen years and must not exceed twenty-five years; AND

35 [(c)] (IV) For a class D felony, the minimum period must be at least
36 twelve years and must not exceed twenty-five years.

37 (B) THE MINIMUM PERIOD OF IMPRISONMENT UNDER AN INDETERMINATE LIFE
38 SENTENCE FOR A PERSISTENT VIOLENT FELONY OFFENDER, WHO STANDS CONVICTED
39 OF A VIOLENT FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF
40 THIS CHAPTER AND HAS A PRIOR CONVICTION OF ANY VIOLENT FELONY OFFENSE
41 DEFINED IN SUCH ARTICLE COMMITTED AGAINST A PERSON UNDER THE AGE OF
42 EIGHTEEN YEARS, MUST BE FIXED BY THE COURT AS FOLLOWS:

43 (I) FOR A CLASS B FELONY, THE MINIMUM PERIOD MUST BE AT LEAST SIXTY
44 YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

45 (II) FOR A CLASS C FELONY, THE MINIMUM PERIOD MUST BE AT LEAST FORTY-
46 EIGHT YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS; AND

47 (III) FOR A CLASS D FELONY, THE MINIMUM PERIOD MUST BE AT LEAST THIR-
48 TY-SIX YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS.

49 S 7. Subdivision 3 of section 70.08 of the penal law, as amended by
50 section 8 of chapter 107 of the laws of 2006, is amended to read as
51 follows:

52 3. Minimum period of imprisonment. [The] (A) EXCEPT AS PROVIDED IN
53 PARAGRAPH (B) OF THIS SUBDIVISION, THE minimum period of imprisonment
54 under an indeterminate life sentence for a persistent violent felony
55 offender must be fixed by the court as follows:

1 [(a)] (I) For the class A-II felony of predatory sexual assault as
2 defined in section 130.95 of this chapter or the class A-II felony of
3 predatory sexual assault against a child as defined in section 130.96 of
4 this chapter, the minimum period must be twenty-five years;
5 [(a-1)] (II) For a class B felony, the minimum period must be at least
6 ten years and must not exceed twenty-five years;
7 [(b)] (III) For a class C felony, the minimum period must be at least
8 eight years and must not exceed twenty-five years; AND
9 [(c)] (IV) For a class D felony, the minimum period must be at least
10 six years and must not exceed twenty-five years.

11 (B) THE MINIMUM PERIOD OF IMPRISONMENT UNDER AN INDETERMINATE LIFE
12 SENTENCE FOR A PERSISTENT VIOLENT FELONY OFFENDER, WHO STANDS CONVICTED
13 OF A VIOLENT FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF
14 THIS CHAPTER AND HAS A PRIOR CONVICTION OF ANY VIOLENT FELONY OFFENSE
15 DEFINED IN SUCH ARTICLE COMMITTED AGAINST A PERSON UNDER THE AGE OF
16 EIGHTEEN YEARS, MUST BE FIXED BY THE COURT AS FOLLOWS:

17 (I) FOR A CLASS B FELONY, THE MINIMUM PERIOD MUST BE AT LEAST THIRTY
18 YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

19 (II) FOR A CLASS C FELONY, THE MINIMUM PERIOD MUST BE AT LEAST TWEN-
20 TY-FOUR YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS; AND

21 (III) FOR A CLASS D FELONY, THE MINIMUM PERIOD MUST BE AT LEAST EIGH-
22 TEEN YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS.

23 S 8. Subdivision 2 of section 70.10 of the penal law, as amended by
24 chapter 7 of the laws of 2007, is amended to read as follows:

25 2. Authorized sentence. When the court has found, pursuant to the
26 provisions of the criminal procedure law, that a person is a persistent
27 felony offender, and when it is of the opinion that the history and
28 character of the defendant and the nature and circumstances of his crim-
29 inal conduct indicate that extended incarceration and life-time super-
30 vision will best serve the public interest, the court, in lieu of impos-
31 ing the sentence of imprisonment authorized by section 70.00, 70.02,
32 70.04, 70.06 or subdivision five of section 70.80 for the crime of which
33 such person presently stands convicted, may impose the sentence of
34 imprisonment authorized by that section for a class A-I felony;
35 PROVIDED, HOWEVER IF SUCH PERSON STANDS CONVICTED OF ANY FELONY DEFINED
36 IN ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OR SECTION
37 255.25 OF THIS CHAPTER AND HAS A PRIOR CONVICTION OF SUCH AN OFFENSE
38 COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, THE COURT
39 MUST IMPOSE THE SENTENCE OF IMPRISONMENT AUTHORIZED BY PARAGRAPH (B) OF
40 SUBDIVISION THREE OF SECTION 70.08 OF THIS ARTICLE FOR PERSISTENT
41 VIOLENT FELONY OFFENDERS. In such event the reasons for the court's
42 opinion shall be set forth in the record.

43 S 9. This act shall take effect on the first of November next succeed-
44 ing the date on which it shall have become a law, provided that the
45 amendments to subdivision 3 of section 70.04 of the penal law, made by
46 section one of this act, to subdivision 3 of section 70.06 of the penal
47 law, made by section three of this act, to subdivision 6 of section
48 70.06 of the penal law, made by section five of this act, and to subdivi-
49 sion 3 of section 70.08 of the penal law, made by section six of this
50 act, shall not affect the expiration and repeal of such subdivisions
51 pursuant to chapter 3 of the laws of 1995, as amended, and shall expire
52 and be deemed repealed therewith, when upon such dates sections two,
53 four and seven of this act shall take effect.