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

934

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

Introduced by Sen. KRUGER -- 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 requiring that indeterminate sentences run consecutively with all other terms unless the court orders concurrent sentences and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 1 of section 70.25 of the penal law, as amended by chapter 372 of the laws of 1981 and paragraph (a) as amended by chapter 3 of the laws of 1995, is amended to read as follows:

1. [Except as provided in subdivisions two, two-a and five of this section, when] WHEN multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

(a) An indeterminate or determinate sentence shall run [concurrently] CONSECUTIVELY with all other terms; [and] PROVIDED, HOWEVER, THAT THE COURT MAY, IN THE INTEREST OF JUSTICE, ORDER A SENTENCE TO RUN CONCURRENTLY IF IT FINDS MITIGATING CIRCUMSTANCES THAT BEAR DIRECTLY UPON THE MANNER IN WHICH THE CRIME WAS COMMITTED. THE DEFENDANT AND THE DISTRICT ATTORNEY SHALL HAVE AN OPPORTUNITY TO PRESENT RELEVANT INFORMATION TO ASSIST THE COURT IN MAKING ITS DETERMINATION AND THE COURT MAY, IN ITS DISCRETION, CONDUCT A HEARING WITH RESPECT TO ANY ISSUE BEARING UPON SUCH DETERMINATION. IF THE COURT DETERMINES THAT CONSECUTIVE SENTENCES

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

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SHOULD NOT BE ORDERED, IT SHALL MAKE A STATEMENT ON THE RECORD OF THE FACTS AND CIRCUMSTANCES UPON WHICH SUCH DETERMINATION IS BASED;

(b) A definite sentence shall run concurrently with any sentence imposed at the same time and shall be consecutive to any other term.

S 2. Paragraph (a) of subdivision 1 of section 70.25 of the penal law, as amended by chapter 372 of the laws of 1981, is amended to read as follows:

(a) An indeterminate sentence shall run [concurrently] CONSECUTIVELY with all other terms; [and] PROVIDED, HOWEVER, THAT THE COURT MAY, IN THE INTEREST OF JUSTICE, ORDER A SENTENCE TO RUN CONCURRENTLY IF IT FINDS MITIGATING CIRCUMSTANCES THAT BEAR DIRECTLY UPON THE MANNER IN WHICH THE CRIME WAS COMMITTED. THE DEFENDANT AND THE DISTRICT ATTORNEY SHALL HAVE AN OPPORTUNITY TO PRESENT RELEVANT INFORMATION TO ASSIST THE COURT IN MAKING ITS DETERMINATION AND THE COURT MAY, IN ITS DISCRETION, CONDUCT A HEARING WITH RESPECT TO ANY ISSUE BEARING UPON SUCH DETERMINATION. IF THE COURT DETERMINES THAT CONSECUTIVE SENTENCES SHOULD NOT BE ORDERED, IT SHALL MAKE A STATEMENT ON THE RECORD OF THE FACTS AND CIRCUMSTANCES UPON WHICH SUCH DETERMINATION IS BASED;

S 3. Subdivisions 2-a, 2-b, 2-c, 2-d and 5 of section 70.25 of the penal law are REPEALED.

S 4. Section 70.35 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

S 70.35 Merger of certain definite and indeterminate or determinate sentences.

The service of an indeterminate or determinate sentence of imprisonment shall satisfy any definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate or determinate sentence was imposed[, except as provided in paragraph (b) of subdivision five of section 70.25 of this article]. A person who is serving a definite sentence at the time an indeterminate or determinate sentence is imposed shall be delivered to the custody of the state department of correctional services to commence service of the indeterminate or determinate sentence immediately [unless the person is serving a definite sentence pursuant to paragraph (b) of subdivision five of section 70.25 of this article]. In any case where the indeterminate or determinate sentence is revoked or vacated, the person shall receive credit against the definite sentence for each day spent in the custody of the state department of correctional services.

S 5. Section 70.35 of the penal law, as amended by chapter 527 of the laws of 1989, is amended to read as follows:

S 70.35 Merger of certain definite and indeterminate sentences.

The service of an indeterminate sentence of imprisonment shall satisfy any definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate sentence was imposed[, except as provided in paragraph (b) of subdivision five of section 70.25 of this article]. A person who is serving a definite sentence at the time an indeterminate sentence is imposed shall be delivered to the custody of the state department of correctional services to commence service of the indeterminate sentence immediately [unless the person is serving a definite sentence pursuant to paragraph (b) of subdivision five of section 70.25 of this article]. In any case where the indeterminate sentence is revoked or vacated, the person shall receive credit against the definite sentence for each day spent in the custody of the state department of correctional services.

S 6. 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 only to

sentences imposed on or after such date provided, however, that the amendments to paragraph (a) of subdivision 1 of section 70.25 of the penal law made by section one of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect and provided further that the amendments to section 70.35 of the penal law made by section four of this act shall be subject to the expiration and reversion of such section pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section five of this act shall take effect.