

1576

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sens. GOLDEN, ALESI, BONACIC, HANNON, MAZIARZ, MORAHAN, SALAND, SEWARD, SKELOS, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the civil practice law and rules, in relation to operating as a major drug trafficker and criminal use of a weapon in a controlled substance or marijuana offense; to amend the correction law, in relation to operating as a major drug trafficker; to amend the penal law, in relation to sentencing of class D and certain class E violent felonies, and defining certain felonies relating to the criminal sale of controlled substances in a public park, through use of minors or through use of a computer service; and to repeal paragraphs (b) and (c) of subdivision 2 of section 70.02 of the penal law relating to sentencing of class D and certain class E violent felonies

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

1 Section 1. Subdivision 1 of section 60.04 of the penal law, as added
2 by chapter 738 of the laws of 2004, is amended and a new subdivision 7
3 is added to read as follows:
4 1. Applicability. Notwithstanding the provisions of any law, EXCEPT AS
5 PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, this section shall govern
6 the dispositions authorized when a person is to be sentenced upon a
7 conviction of a felony offense defined in article two hundred twenty or
8 two hundred twenty-one of this chapter or when a person is to be
9 sentenced upon a conviction of such a felony as a multiple felony offender
10 as defined in subdivision five of this section.
11 7. CERTAIN CLASS D AND CLASS E FELONIES. EVERY PERSON CONVICTED OF A
12 CLASS D FELONY OR A CLASS E FELONY WHICH IS ALSO A VIOLENT FELONY
13 OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS CHAPTER MUST
14 BE SENTENCED TO IMPRISONMENT IN ACCORDANCE WITH SECTION 70.02 OF THIS
15 CHAPTER, UNLESS SUCH PERSON IS SENTENCED TO IMPRISONMENT AS A MULTIPLE

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

LBD06204-01-9

1 FELONY OFFENDER IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF SUBDIVI-
2 SION SIX OF SECTION 60.05 OF THIS ARTICLE.

3 S 2. Subdivision 1 of section 70.00 of the penal law, as amended by
4 section 36 of chapter 7 of the laws of 2007, is amended to read as
5 follows:

6 1. Indeterminate sentence. Except as provided in subdivisions four,
7 five and six of this section or section 70.80 of this article, a
8 sentence of imprisonment for a felony, other than a felony defined in
9 article two hundred twenty or two hundred twenty-one of this chapter
10 (WITH THE EXCEPTION OF THE CLASS A-I FELONY OR ATTEMPTED FELONY OF OPER-
11 ATING AS A MAJOR DRUG TRAFFICKER AS DEFINED IN SECTION 220.80 OF THIS
12 CHAPTER), shall be an indeterminate sentence. When such a sentence is
13 imposed, the court shall impose a maximum term in accordance with the
14 provisions of subdivision two of this section and the minimum period of
15 imprisonment shall be as provided in subdivision three of this section.

16 S 3. Subdivision 1 of section 70.00 of the penal law, as amended by
17 section 37 of chapter 7 of the laws of 2007, is amended to read as
18 follows:

19 1. Indeterminate sentence. Except as provided in subdivisions four and
20 five of this section or section 70.80 of this article, a sentence of
21 imprisonment for a felony, other than a felony defined in article two
22 hundred twenty or two hundred twenty-one of this chapter (WITH THE
23 EXCEPTION OF THE CLASS A-I FELONY OR ATTEMPTED FELONY OF OPERATING AS A
24 MAJOR DRUG TRAFFICKER AS DEFINED IN SECTION 220.80 OF THIS CHAPTER),
25 shall be an indeterminate sentence. When such a sentence is imposed, the
26 court shall impose a maximum term in accordance with the provisions of
27 subdivision two of this section and the minimum period of imprisonment
28 shall be as provided in subdivision three of this section.

29 S 4. Paragraphs (c) and (d) of subdivision 1 of section 70.02 of the
30 penal law, as amended by chapter 7 of the laws of 2007, are amended to
31 read as follows:

32 (c) Class D violent felony offenses: an attempt to commit any of the
33 class C felonies set forth in paragraph (b); reckless assault of a child
34 as defined in section 120.02, assault in the second degree as defined in
35 section 120.05, menacing a police officer or peace officer as defined in
36 section 120.18, stalking in the first degree, as defined in subdivision
37 one of section 120.60, rape in the second degree as defined in section
38 130.30, criminal sexual act in the second degree as defined in section
39 130.45, sexual abuse in the first degree as defined in section 130.65,
40 course of sexual conduct against a child in the second degree as defined
41 in section 130.80, aggravated sexual abuse in the third degree as
42 defined in section 130.66, facilitating a sex offense with a controlled
43 substance as defined in section 130.90, CRIMINAL USE OF A WEAPON IN A
44 CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SECTION 220.95,
45 criminal possession of a weapon in the third degree as defined in subdivi-
46 sion five, six, seven or eight of section 265.02, criminal sale of a
47 firearm in the third degree as defined in section 265.11, intimidating a
48 victim or witness in the second degree as defined in section 215.16,
49 soliciting or providing support for an act of terrorism in the second
50 degree as defined in section 490.10, and making a terroristic threat as
51 defined in section 490.20, falsely reporting an incident in the first
52 degree as defined in section 240.60, placing a false bomb or hazardous
53 substance in the first degree as defined in section 240.62, placing a
54 false bomb or hazardous substance in a sports stadium or arena, mass
55 transportation facility or enclosed shopping mall as defined in section

1 240.63, and aggravated unpermitted use of indoor pyrotechnics in the
2 first degree as defined in section 405.18.

3 (d) Class E violent felony offenses: an attempt to commit any of the
4 felonies of criminal possession of a weapon in the third degree as
5 defined in subdivision five, six, seven or eight of section 265.02 as a
6 lesser included offense of that section as defined in section 220.20 of
7 the criminal procedure law, AN ATTEMPT TO COMMIT CRIMINAL USE OF A WEAP-
8 ON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SECTION
9 220.95 OF THIS CHAPTER AS A LESSER INCLUDED OFFENSE OF THAT SECTION AS
10 DEFINED IN SECTION 220.20 OF THE CRIMINAL PROCEDURE LAW, persistent
11 sexual abuse as defined in section 130.53, aggravated sexual abuse in
12 the fourth degree as defined in section 130.65-a, falsely reporting an
13 incident in the second degree as defined in section 240.55 and placing a
14 false bomb or hazardous substance in the second degree as defined in
15 section 240.61.

16 S 5. Paragraphs (b) and (c) of subdivision 2 of section 70.02 of the
17 penal law are REPEALED and four new paragraphs (b), (c), (d) and (e) are
18 added to read as follows:

19 (B) EXCEPT AS PROVIDED IN SUBDIVISION SIX OF SECTION 60.05 OF THIS
20 TITLE AND SUBDIVISION FOUR OF THIS SECTION, THE SENTENCE IMPOSED UPON A
21 PERSON WHO STANDS CONVICTED OF A CLASS D VIOLENT FELONY OFFENSE, OTHER
22 THAN THE OFFENSES OF CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE
23 AS DEFINED IN SUBDIVISION FIVE, SEVEN OR EIGHT OF SECTION 265.02 OF THIS
24 CHAPTER OR CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARI-
25 HUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS
26 CHAPTER, MUST BE IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THIS
27 CHAPTER RELATING TO SENTENCING FOR CLASS D FELONIES PROVIDED, HOWEVER,
28 THAT WHERE A SENTENCE OF IMPRISONMENT IS IMPOSED WHICH REQUIRES A
29 COMMITMENT TO THE STATE DEPARTMENT OF CORRECTIONAL SERVICES, SUCH
30 SENTENCE MUST BE A DETERMINATE SENTENCE IN ACCORDANCE WITH PARAGRAPH (C)
31 OF SUBDIVISION THREE OF THIS SECTION.

32 (C) EXCEPT AS PROVIDED IN SUBDIVISION SIX OF SECTION 60.05 OF THIS
33 TITLE, THE SENTENCE IMPOSED UPON A PERSON WHO STANDS CONVICTED OF THE
34 CLASS D VIOLENT FELONY OFFENSE OF CRIMINAL POSSESSION OF A WEAPON IN THE
35 THIRD DEGREE AS DEFINED IN SUBDIVISION FIVE, SEVEN OR EIGHT OF SECTION
36 265.02 OF THIS CHAPTER OR THE CLASS E VIOLENT FELONY OF ATTEMPTED CRIMI-
37 NAL POSSESSION OF A WEAPON IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION
38 FIVE, SEVEN OR EIGHT OF SECTION 265.02 OF THIS CHAPTER MUST BE A DETER-
39 MINATE SENTENCE OF IMPRISONMENT, OR, IN THE ALTERNATIVE, A DEFINITE
40 SENTENCE OF IMPRISONMENT FOR A PERIOD OF NO LESS THAN ONE YEAR, EXCEPT
41 THAT:

42 (I) THE COURT MAY IMPOSE ANY OTHER SENTENCE AUTHORIZED BY LAW UPON A
43 PERSON WHO HAS NOT BEEN PREVIOUSLY CONVICTED IN THE FIVE YEARS IMME-
44 DIATELY PRECEDING THE COMMISSION OF THE OFFENSE FOR A CLASS A MISDEMEA-
45 NOR DEFINED IN THIS CHAPTER, IF THE COURT HAVING REGARD TO THE NATURE
46 AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARACTER OF THE
47 DEFENDANT, FINDS ON THE RECORD THAT SUCH SENTENCE WOULD BE UNDULY HARSH
48 AND THAT THE ALTERNATIVE SENTENCE WOULD BE CONSISTENT WITH PUBLIC SAFETY
49 AND DOES NOT DEPRECATE THE SERIOUSNESS OF THE CRIME; AND

50 (II) THE COURT MAY APPLY THE PROVISIONS OF PARAGRAPHS (B) AND (C) OF
51 SUBDIVISION FOUR OF THIS SECTION WHEN IMPOSING A SENTENCE UPON A PERSON
52 WHO HAS PREVIOUSLY BEEN CONVICTED OF A CLASS A MISDEMEANOR DEFINED IN
53 THIS CHAPTER IN THE FIVE YEARS IMMEDIATELY PRECEDING THE COMMISSION OF
54 THE OFFENSE.

55 (D) EXCEPT AS PROVIDED IN SUBDIVISION SIX OF SECTION 60.05 OF THIS
56 TITLE, THE SENTENCE IMPOSED UPON A PERSON WHO STANDS CONVICTED OF THE

1 CLASS D VIOLENT FELONY OFFENSE OF CRIMINAL USE OF A WEAPON IN A
2 CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION TWO
3 OF SECTION 220.95 OF THIS CHAPTER MUST BE A DETERMINATE SENTENCE OF
4 IMPRISONMENT IN ACCORDANCE WITH PARAGRAPH (C) OF SUBDIVISION THREE OF
5 THIS SECTION.

6 (E) EXCEPT AS PROVIDED IN SUBDIVISION SIX OF SECTION 60.05 OF THIS
7 TITLE, THE SENTENCE IMPOSED UPON A PERSON WHO STANDS CONVICTED OF THE
8 CLASS E VIOLENT FELONY OFFENSE OF ATTEMPTED CRIMINAL USE OF A WEAPON IN
9 A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION
10 TWO OF SECTION 220.95 OF THIS CHAPTER MUST BE A DETERMINATE SENTENCE OF
11 IMPRISONMENT IN ACCORDANCE WITH PARAGRAPH (D) OF SUBDIVISION THREE OF
12 THIS SECTION.

13 S 6. Paragraphs (c) and (d) of subdivision 3 of section 70.02 of the
14 penal law, as amended by chapter 765 of the laws of 2005, are amended to
15 read as follows:

16 (c) For a class D felony, the term must be at least two years and must
17 not exceed seven years, provided, however, that the term must be at
18 least two years and must not exceed eight years where the sentence is
19 for the crime of menacing a police officer or peace officer as defined
20 in section 120.18 of this chapter; PROVIDED THAT FOR THE CLASS D FELONY
21 OF CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA
22 OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER,
23 THE TERM MUST BE AT LEAST THREE YEARS AND MUST NOT EXCEED SEVEN YEARS;
24 and

25 (d) For a class E felony, the term must be at least one and one-half
26 years and must not exceed four years; PROVIDED THAT FOR THE CLASS E
27 FELONY OF ATTEMPTED CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE
28 OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF
29 THIS CHAPTER, THE TERM MUST BE AT LEAST TWO YEARS AND MUST NOT EXCEED
30 FOUR YEARS.

31 S 7. Paragraphs (b), (c) and (d) of subdivision 3 of section 70.04 of
32 the penal law, as amended by chapter 3 of the laws of 1995, are amended
33 to read as follows:

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

36 (c) For a class D felony, the term must be at least five years and
37 must not exceed seven years[.]; PROVIDED THAT FOR THE CLASS D FELONY OF
38 CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE
39 AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER, THE
40 TERM MUST BE SEVEN YEARS; AND

41 (d) For a class E felony, the term must be at least three years and
42 must not exceed four years; PROVIDED THAT FOR THE CLASS E VIOLENT FELONY
43 OF ATTEMPTED CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARI-
44 HUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS
45 CHAPTER, THE TERM MUST BE FOUR YEARS.

46 S 8. Paragraphs (b), (c) and (d) of subdivision 3 of section 70.04 of
47 the penal law, paragraphs (b) and (c) as added by chapter 481 of the
48 laws of 1978, and paragraph (d) as added by chapter 233 of the laws of
49 1980, are amended to read as follows:

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

52 (c) For a class D felony, the term must be at least five years and
53 must not exceed seven years[.]; PROVIDED THAT FOR THE CLASS D FELONY OF
54 CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE
55 AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER, THE
56 TERM MUST BE SEVEN YEARS; AND

(d) For a class E felony, the term must be at least four years; PROVIDED THAT FOR THE CLASS E VIOLENT FELONY OF ATTEMPTED CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER, THE TERM MUST BE FOUR YEARS.

S 9. Paragraphs (c) and (d) of subdivision 6 of section 70.06 of the penal law, as added by chapter 3 of the laws of 1995, are amended to read as follows:

(c) For a class D violent felony offense, the term must be at least three years and must not exceed seven years; PROVIDED THAT FOR THE CLASS D FELONY OF CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER, THE TERM MUST BE AT LEAST FIVE YEARS AND MUST NOT EXCEED SEVEN YEARS; and

(d) For a class E violent felony offense, the term must be at least two years and must not exceed four years; PROVIDED THAT FOR THE CLASS E VIOLENT FELONY OF ATTEMPTED CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER, THE TERM MUST BE THREE YEARS.

S 10. Section 70.25 of the penal law is amended by adding two new subdivisions 2-h and 2-i to read as follows:

2-H. WHENEVER A PERSON IS CONVICTED OF CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER, THE SENTENCE IMPOSED BY THE COURT FOR SUCH OFFENSE MUST BE ORDERED TO RUN CONSECUTIVELY TO ANY INDETERMINATE OR DETERMINATE SENTENCE OF IMPRISONMENT IMPOSED UPON CONVICTION OF ANY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER ARISING FROM THE SAME CRIMINAL TRANSACTION.

2-I. WHENEVER A PERSON IS CONVICTED OF ATTEMPTED CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS DEFINED IN SUBDIVISION TWO OF SECTION 220.95 OF THIS CHAPTER, THE SENTENCE IMPOSED BY THE COURT FOR SUCH OFFENSE MUST BE ORDERED TO RUN CONSECUTIVELY TO ANY INDETERMINATE OR DETERMINATE SENTENCE OF IMPRISONMENT IMPOSED UPON CONVICTION OF ANY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER ARISING FROM THE SAME CRIMINAL TRANSACTION.

S 11. Paragraph (a) of subdivision 2, paragraph (a) of subdivision 3 and paragraph (a) of subdivision 4 of section 70.71 of the penal law, as added by chapter 738 of the laws of 2004, are amended and a new subdivision 5 is added to read as follows:

(a) Applicability. Except as provided in subdivision three [or], four OR FIVE of this section, this subdivision shall apply to a person convicted of a class A felony as defined in article two hundred twenty of this chapter.

(a) Applicability. [This] EXCEPT AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, THIS subdivision shall apply to a second felony drug offender whose prior felony conviction or convictions did not include one or more violent felony offenses.

(a) Applicability. [This] EXCEPT AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, THIS subdivision shall apply to a second felony drug offender whose prior felony conviction was a violent felony.

5. SENTENCE OF IMPRISONMENT FOR OPERATING AS A MAJOR DRUG TRAFFICKER.

(A) APPLICABILITY. THIS SUBDIVISION SHALL APPLY TO A PERSON CONVICTED OF THE CLASS A-I FELONY OF OPERATING AS A MAJOR DRUG TRAFFICKER AS DEFINED IN SECTION 220.80 OF THIS CHAPTER.

(B) AUTHORIZED SENTENCE. EXCEPT AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, THE COURT SHALL IMPOSE AN INDETERMINATE TERM OF IMPRISONMENT FOR AN A-I FELONY, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 70.00 OF THIS ARTICLE.

(C) ALTERNATIVE DETERMINATE SENTENCE. IF A DEFENDANT STANDS CONVICTED OF VIOLATING SUBDIVISION TWO OF SECTION 220.80 OF THIS CHAPTER, AND IF THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT A SENTENCE OF IMPRISONMENT IS NECESSARY BUT THAT IT WOULD BE UNDULY HARSH TO IMPOSE THE INDETERMINATE SENTENCE FOR A CLASS A-I FELONY SPECIFIED UNDER SECTION 70.00 OF THIS ARTICLE, THE COURT MAY IMPOSE THE DETERMINATE SENTENCE OF IMPRISONMENT AUTHORIZED BY THIS SECTION FOR A CLASS A DRUG FELONY; IN ANY SUCH EVENT, THE REASONS FOR THE COURT'S OPINION SHALL BE SET FORTH ON THE RECORD.

S 12. Subdivision 1 of section 110.05 of the penal law, as amended by chapter 93 of the laws of 2006, is amended to read as follows:

1. Class A-I felony when the crime attempted is the A-I felony of murder in the first degree, aggravated murder as defined in subdivision one of section 125.26 of this chapter, criminal possession of a controlled substance in the first degree, criminal sale of a controlled substance in the first degree, criminal possession of a chemical or biological weapon in the first degree [or], criminal use of a chemical or biological weapon in the first degree OR OPERATING AS A MAJOR DRUG TRAFFICKER;

S 13. Subdivision 14 of section 220.00 of the penal law, as amended by chapter 292 of the laws of 1994, is amended and seven new subdivisions 18, 19, 20, 21, 22, 23 and 24 are added to read as follows:

14. "School grounds" means (a) in or on or within any building, structure, SCHOOL BUS AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

18. "SUPERVISORY POSITION" MEANS AND INCLUDES THE PRINCIPAL ADMINISTRATOR, ORGANIZER OR LEADER OF A CONTROLLED SUBSTANCE ORGANIZATION OR ONE OF SEVERAL PRINCIPAL ADMINISTRATORS, ORGANIZERS OR LEADERS OF A CONTROLLED SUBSTANCE ORGANIZATION.

19. "CONTROLLED SUBSTANCE ORGANIZATION" MEANS FOUR OR MORE PERSONS SHARING A COMMON PURPOSE TO ENGAGE IN CONDUCT THAT CONSTITUTES OR ADVANCES THE COMMISSION OF AN OFFENSE UNDER THIS ARTICLE.

20. "PUBLIC PARK" MEANS (A) IN OR ON OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF ANY LAND OWNED, LEASED OR MAINTAINED BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND WHICH IS MANAGED AND DEDICATED FOR PARK OR RECREATIONAL PURPOSES, OR (B) ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN TWO HUNDRED FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH PARK OR ANY PARKED AUTOMOBILE OR OTHER PARKED VEHICLE LOCATED WITHIN TWO HUNDRED FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING SUCH PARK. FOR THE PURPOSES OF THIS SUBDIVI-

SION, AN "AREA ACCESSIBLE TO THE PUBLIC" SHALL MEAN SIDEWALKS, STREETS, PARKING LOTS, PLAYGROUNDS, STORES AND RESTAURANTS.

21. "MACHINE-GUN" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 265.00 OF THIS CHAPTER.

22. "FIREARM" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION THREE OF SECTION 265.00 OF THIS CHAPTER.

23. "RIFLE" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION ELEVEN OF SECTION 265.00 OF THIS CHAPTER.

24. "SHOTGUN" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION TWELVE OF SECTION 265.00 OF THIS CHAPTER.

S 14. Subdivisions 7 and 9 of section 220.34 of the penal law, subdivision 7 as amended by chapter 436 of the laws of 2006 and subdivision 9 as added by chapter 264 of the laws of 2003, are amended and two new subdivisions 10 and 11 are added to read as follows:

7. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon school grounds, A PUBLIC PARK or on a school bus; or

9. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more[.]; OR

10. A CONTROLLED SUBSTANCE, BEING EIGHTEEN YEARS OLD OR MORE, AND, IN THE COURSE OR COMMISSION OF SUCH SALE, IS AIDED BY ANOTHER PERSON LESS THAN EIGHTEEN YEARS OF AGE; OR

11. A CONTROLLED SUBSTANCE THROUGH A COMPUTER SERVICE AS SUCH TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION 156.00 OF THIS CHAPTER.

S 15. Subdivision 9 of section 220.39 of the penal law, as added by chapter 410 of the laws of 1979, is amended and two new subdivisions 10 and 11 are added to read as follows:

9. a narcotic preparation to a person less than twenty-one years old[.]; OR

10. A CONTROLLED SUBSTANCE IN VIOLATION OF SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX OR SIX-A OF SECTION 220.34 OF THIS ARTICLE, BEING EIGHTEEN YEARS OLD OR MORE, AND, IN THE COURSE OR COMMISSION OF SUCH SALE, IS AIDED BY ANOTHER PERSON LESS THAN EIGHTEEN YEARS OF AGE; OR

11. A CONTROLLED SUBSTANCE IN VIOLATION OF SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX OR SIX-A OF SECTION 220.34 OF THIS ARTICLE THROUGH A COMPUTER SERVICE AS SUCH TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION 156.00 OF THIS CHAPTER.

S 16. Subdivision 7 of section 220.41 of the penal law, as amended by chapter 75 of the laws of 1995, is amended and two new subdivisions 8 and 9 are added to read as follows:

7. methadone and the methadone weighs three hundred sixty milligrams or more[.]; OR

8. A CONTROLLED SUBSTANCE IN VIOLATION OF SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT OR NINE OF SECTION 220.39 OF THIS ARTICLE, BEING EIGHTEEN YEARS OLD OR MORE, AND, IN THE COURSE OR COMMISSION OF SUCH SALE, IS AIDED BY ANOTHER PERSON LESS THAN EIGHTEEN YEARS OF AGE; OR

9. A CONTROLLED SUBSTANCE IN VIOLATION OF SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT OR NINE OF SECTION 220.39 OF THIS ARTICLE THROUGH A COMPUTER SERVICE AS SUCH TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION 156.00 OF THIS CHAPTER.

1 S 17. Subdivision 2 of section 220.43 of the penal law, as amended by
2 chapter 75 of the laws of 1995, is amended and two new subdivisions 3
3 and 4 are added to read as follows:

4 2. methadone and the methadone weighs two thousand eight hundred
5 eighty milligrams or more[.]; OR

6 3. A CONTROLLED SUBSTANCE IN VIOLATION OF SUBDIVISION ONE, TWO, THREE,
7 FOUR, FIVE, SIX OR SEVEN OF SECTION 220.41 OF THIS ARTICLE, BEING EIGH-
8 TEEN YEARS OLD OR MORE, AND, IN THE COURSE OR COMMISSION OF SUCH SALE,
9 IS AIDED BY ANOTHER PERSON LESS THAN EIGHTEEN YEARS OF AGE; OR

10 4. A CONTROLLED SUBSTANCE IN VIOLATION OF SUBDIVISION ONE, TWO, THREE,
11 FOUR, FIVE, SIX OR SEVEN OF SECTION 220.41 OF THIS ARTICLE THROUGH A
12 COMPUTER SERVICE AS SUCH TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION
13 156.00 OF THIS CHAPTER.

14 S 18. The section heading, the opening paragraph, subdivisions 1 and 2
15 and the closing paragraph of section 220.44 of the penal law, the
16 section heading, the opening paragraph and the closing paragraph as
17 amended by chapter 289 of the laws of 1998 and subdivisions 1 and 2 as
18 amended by chapter 436 of the laws of 2006, are amended to read as
19 follows:

20 Criminal sale of a controlled substance in or near school grounds OR A
21 PUBLIC PARK.

22 A person is guilty of criminal sale of a controlled substance in or
23 near school grounds OR A PUBLIC PARK when [he] SUCH PERSON knowingly and
24 unlawfully sells:

25 1. a controlled substance in violation of any one of subdivisions one
26 through six-a of section 220.34 of this article, when such sale takes
27 place upon school grounds, A PUBLIC PARK or on a school bus; or

28 2. a controlled substance in violation of any one of subdivisions one
29 through [eight] NINE of section 220.39 of this article, when such sale
30 takes place upon school grounds, A PUBLIC PARK or on a school bus; or

31 Criminal sale of a controlled substance in or near school grounds OR A
32 PUBLIC PARK is a class B felony.

33 S 19. The penal law is amended by adding four new sections 220.80,
34 220.85, 220.90 and 220.95 to read as follows:

35 S 220.80 OPERATING AS A MAJOR DRUG TRAFFICKER.

36 A PERSON IS GUILTY OF OPERATING AS A MAJOR DRUG TRAFFICKER WHEN:

37 1. AS A MEMBER OF A CONTROLLED SUBSTANCE ORGANIZATION, SUCH PERSON
38 OCCUPIES A SUPERVISORY POSITION WITHIN SUCH ORGANIZATION AND, WITHIN ANY
39 PERIOD OF TWELVE MONTHS OR LESS:

40 (A) SUCH CONTROLLED SUBSTANCE ORGANIZATION SELLS OR POSSESSES WITH
41 INTENT TO SELL, ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR
42 SUBSTANCES CONTAINING A NARCOTIC DRUG, AND SUCH PREPARATIONS, COMPOUNDS,
43 MIXTURES OR SUBSTANCES HAVE A TOTAL AGGREGATE WEIGHT OF ONE KILOGRAM OR
44 MORE; OR

45 (B) SUCH CONTROLLED SUBSTANCE ORGANIZATION SELLS ONE OR MORE
46 CONTROLLED SUBSTANCES, AND THE PROCEEDS COLLECTED OR DUE FROM SUCH SALE
47 OR SALES HAVE A TOTAL AGGREGATE VALUE OF FIFTY THOUSAND DOLLARS OR MORE;
48 OR

49 2. SUCH PERSON KNOWINGLY AND UNLAWFULLY:

50 (A) SELLS ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES, OR SUBSTANCES
51 CONTAINING A NARCOTIC DRUG, AND THE PREPARATIONS, COMPOUNDS, MIXTURES OR
52 SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF EIGHT OUNCES OR MORE; OR

53 (B) POSSESSES ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR
54 SUBSTANCES CONTAINING A NARCOTIC DRUG, AND THE PREPARATIONS, COMPOUNDS,
55 MIXTURES OR SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF HALF A KILOGRAM OR
56 MORE.

1 OPERATING AS A MAJOR DRUG TRAFFICKER IS A CLASS A-I FELONY.

2 S 220.85 OPERATING AS A MAJOR DRUG TRAFFICKER; JURISDICTION AND VENUE.

3 1. A PERSON MAY BE PROSECUTED FOR OPERATING AS A MAJOR DRUG TRAFFICKER
4 IN THE COUNTY IN WHICH HE OR SHE ENTERED INTO THE AGREEMENT TO ENGAGE IN
5 OR CAUSE THE PERFORMANCE OF CONDUCT DEFINED IN SECTION 220.80 OF THIS
6 ARTICLE OR IN ANY COUNTY IN WHICH AN OVERT ACT IN FURTHERANCE THEREOF
7 WAS COMMITTED.

8 2. SUCH AN AGREEMENT MADE IN ANOTHER JURISDICTION TO ENGAGE IN OR
9 CAUSE THE PERFORMANCE OF CONDUCT WITHIN THIS STATE, WHICH WOULD CONSTI-
10 TUTE THE CRIME OF OPERATING AS A MAJOR DRUG TRAFFICKER AS DEFINED IN
11 SECTION 220.80 OF THIS ARTICLE, IS PUNISHABLE PURSUANT TO SUCH SECTION
12 ONLY WHEN AN OVERT ACT IN FURTHERANCE OF SUCH AGREEMENT IS COMMITTED
13 WITHIN THIS STATE. UNDER SUCH CIRCUMSTANCES, IT IS NO DEFENSE TO A
14 PROSECUTION FOR OPERATING AS A MAJOR DRUG TRAFFICKER THAT THE CONDUCT
15 WHICH IS THE OBJECTIVE OF SUCH AGREEMENT WOULD NOT CONSTITUTE A CRIME
16 UNDER THE LAWS OF THE OTHER JURISDICTION IF PERFORMED THEREIN.

17 S 220.90 OPERATING AS A MAJOR DRUG TRAFFICKER; NO DEFENSE.

18 1. IT IS NO DEFENSE TO A PROSECUTION FOR OPERATING AS A MAJOR DRUG
19 TRAFFICKER THAT MORE THAN ONE PERSON FUNCTIONED IN A SUPERVISORY POSI-
20 TION WITHIN OR WITH RESPECT TO THE CONTROLLED SUBSTANCE ORGANIZATION.

21 2. IT IS NO DEFENSE TO A PROSECUTION FOR OPERATING AS A MAJOR DRUG
22 TRAFFICKER THAT, OWING TO CRIMINAL IRRESPONSIBILITY OR OTHER LEGAL INCA-
23 PACITY OR EXEMPTION, OR TO UNAWARENESS OF THE CRIMINAL NATURE OF THE
24 AGREEMENT OR TO UNAWARENESS OF THE CRIMINAL NATURE OF THE OBJECT CONDUCT
25 OR OF THE DEFENDANT'S CRIMINAL PURPOSE OR TO OTHER FACTORS PRECLUDING
26 THE MENTAL STATE REQUIRED FOR THE COMMISSION OF OPERATING AS A MAJOR
27 DRUG TRAFFICKER, ONE OR MORE OF THE OTHER PERSONS COULD NOT BE GUILTY OF
28 OPERATING AS A MAJOR DRUG TRAFFICKER.

29 S 220.95 CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA
30 OFFENSE.

31 A PERSON IS GUILTY OF CRIMINAL USE OF A WEAPON IN A CONTROLLED
32 SUBSTANCE OR MARIHUANA OFFENSE WHEN HE OR SHE:

33 1. COMMITS THE CRIME OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
34 IN THE SEVENTH DEGREE AS DEFINED IN SECTION 220.03 OF THIS ARTICLE,
35 CRIMINALLY USING DRUG PARAPHERNALIA IN THE SECOND DEGREE AS DEFINED IN
36 SECTION 220.50 OF THIS ARTICLE, CRIMINAL POSSESSION OF MARIHUANA IN THE
37 FIFTH DEGREE AS DEFINED IN SECTION 221.10 OF THIS CHAPTER AND/OR CRIMI-
38 NAL POSSESSION OF MARIHUANA IN THE FOURTH DEGREE AS DEFINED IN SECTION
39 221.15 OF THIS CHAPTER AND, IN THE COURSE OF THE COMMISSION OF SUCH
40 CRIME OR IMMEDIATE FLIGHT THEREFROM, SUCH PERSON POSSESSES A
41 MACHINE-GUN, FIREARM, RIFLE OR SHOTGUN IN VIOLATION OF ARTICLE TWO
42 HUNDRED SIXTY-FIVE OF THIS CHAPTER; OR

43 2. COMMITS ANY FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO
44 HUNDRED TWENTY-ONE OF THIS CHAPTER, CRIMINAL SALE OF MARIHUANA IN THE
45 FIFTH DEGREE AS DEFINED IN SECTION 221.35 OF THIS CHAPTER OR CRIMINAL
46 SALE OF MARIHUANA IN THE FOURTH DEGREE AS DEFINED IN SECTION 221.40 OF
47 THIS CHAPTER AND, IN THE COURSE OF THE COMMISSION OF SUCH CRIME OR IMME-
48 DIATE FLIGHT THEREFROM, SUCH PERSON OR ANOTHER PARTICIPANT IN THE CRIME
49 USES, POSSESSES OR DISPLAYS WHAT APPEARS TO BE A MACHINE-GUN, FIREARM,
50 RIFLE OR SHOTGUN.

51 CRIMINAL USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA
52 OFFENSE IS A CLASS D FELONY.

53 S 20. Paragraph (a) of subdivision 1 of section 460.10 of the penal
54 law, as separately amended by chapters 312 and 472 of the laws of 2008,
55 is amended to read as follows:

1 (a) Any of the felonies set forth in this chapter: sections 120.05,
2 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
3 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
4 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-
5 ing to labor trafficking; section 135.65 relating to coercion; sections
6 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10
7 and 145.12 relating to criminal mischief; article one hundred fifty
8 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating
9 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to
10 health care fraud; article one hundred sixty relating to robbery;
11 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
12 possession of stolen property; sections 165.72 and 165.73 relating to
13 trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,
14 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
15 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
16 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20
17 and 178.25 relating to criminal diversion of prescription medications
18 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,
19 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,
20 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections
21 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage
22 fraud, sections 190.40 and 190.42 relating to criminal usury; section
23 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relat-
24 ing to hindering prosecution; sections 210.10, 210.15, and 215.51 relat-
25 ing to perjury and contempt; section 215.40 relating to tampering with
26 physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21,
27 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 [and], 220.60,
28 220.80 AND 220.95 relating to controlled substances; sections 225.10 and
29 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relat-
30 ing to promoting prostitution; section 230.34 relating to sex traffick-
31 ing; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity;
32 sections 263.10 and 263.15 relating to promoting a sexual performance by
33 a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the
34 provisions of section 265.10 which constitute a felony relating to
35 firearms and other dangerous weapons; and sections 265.14 and 265.16
36 relating to criminal sale of a firearm; and section 275.10, 275.20,
37 275.30, or 275.40 relating to unauthorized recordings; and sections
38 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

39 S 21. Paragraph (a) of subdivision 7 of section 480.00 of the penal
40 law, as added by chapter 655 of the laws of 1990, is amended to read as
41 follows:

42 (a) a conviction of a person for a violation of section 220.18,
43 220.21, 220.41, [or] 220.43, 220.80 OR 220.95 of this chapter, or where
44 the accusatory instrument charges one or more of such offenses,
45 conviction upon a plea of guilty to any of the felonies for which such
46 plea is otherwise authorized by law or a conviction of a person for
47 conspiracy to commit a violation of section 220.18, 220.21, 220.41, [or]
48 220.43, 220.80 OR 220.95 of [the penal law] THIS CHAPTER, where the
49 controlled substances which are the object of the conspiracy are located
50 in the real property which is the subject of the forfeiture action; or

51 S 22. Paragraph (c) of subdivision 8 of section 700.05 of the criminal
52 procedure law, as amended by chapter 394 of the laws of 2005, is amended
53 to read as follows:

54 (c) Criminal possession of a controlled substance in the seventh
55 degree as defined in section 220.03 of the penal law, criminal
56 possession of a controlled substance in the fifth degree as defined in

1 section 220.06 of the penal law, criminal possession of a controlled
2 substance in the fourth degree as defined in section 220.09 of the penal
3 law, criminal possession of a controlled substance in the third degree
4 as defined in section 220.16 of the penal law, criminal possession of a
5 controlled substance in the second degree as defined in section 220.18
6 of the penal law, criminal possession of a controlled substance in the
7 first degree as defined in section 220.21 of the penal law, criminal
8 sale of a controlled substance in the fifth degree as defined in section
9 220.31 of the penal law, criminal sale of a controlled substance in the
10 fourth degree as defined in section 220.34 of the penal law, criminal
11 sale of a controlled substance in the third degree as defined in section
12 220.39 of the penal law, criminal sale of a controlled substance in the
13 second degree as defined in section 220.41 of the penal law, criminal
14 sale of a controlled substance in the first degree as defined in section
15 220.43 of the penal law, criminally possessing a hypodermic instrument
16 as defined in section 220.45 of the penal law, criminal possession of
17 methamphetamine manufacturing material in the second degree as defined
18 in section 220.70 of the penal law, criminal possession of methampheta-
19 mine manufacturing material in the first degree as defined in section
20 220.71 of the penal law, criminal possession of precursors of methamphe-
21 tamine as defined in section 220.72 of the penal law, unlawful manufac-
22 ture of methamphetamine in the third degree as defined in section 220.73
23 of the penal law, unlawful manufacture of methamphetamine in the second
24 degree as defined in section 220.74 of the penal law, unlawful manufac-
25 ture of methamphetamine in the first degree as defined in section 220.75
26 of the penal law, unlawful disposal of methamphetamine laboratory mate-
27 rial as defined in section 220.76 of the penal law, OPERATING AS A MAJOR
28 DRUG TRAFFICKER AS DEFINED IN SECTION 220.80 OF THE PENAL LAW, CRIMINAL
29 USE OF A WEAPON IN A CONTROLLED SUBSTANCE OR MARIHUANA OFFENSE AS
30 DEFINED IN SECTION 220.95 OF THE PENAL LAW, criminal possession of mari-
31 huana in the first degree as defined in section 221.30 of the penal law,
32 criminal sale of marihuana in the first degree as defined in section
33 221.55 of the penal law, promoting gambling in the second degree as
34 defined in section 225.05 of the penal law, promoting gambling in the
35 first degree as defined in section 225.10 of the penal law, possession
36 of gambling records in the second degree as defined in section 225.15 of
37 the penal law, possession of gambling records in the first degree as
38 defined in section 225.20 of the penal law, and possession of a gambling
39 device as defined in section 225.30 of the penal law;

40 S 23. Paragraph (i) of subdivision 1 of section 806 of the correction
41 law, as added by section 5 of part E of chapter 62 of the laws of 2003,
42 is amended to read as follows:

43 (i) the inmate has not been convicted previously of, nor is presently
44 serving a sentence imposed for a class A-I felony, a violent felony
45 offense as defined in section 70.02 of the penal law, manslaughter in
46 the second degree, vehicular manslaughter in the second degree, vehicu-
47 lar manslaughter in the first degree, criminally negligent homicide, an
48 offense defined in article one hundred thirty of the penal law, incest,
49 [or] an offense defined in article two hundred sixty-three of the penal
50 law, OR OPERATING AS A MAJOR DRUG TRAFFICKER,

51 S 24. Paragraph (a) of subdivision 4-b of section 1310 of the civil
52 practice law and rules, as added by chapter 655 of the laws of 1990, is
53 amended to read as follows:

54 (a) a conviction of a person for a violation of section 220.18,
55 220.21, 220.41, [or] 220.43, 220.80 OR 220.95 of the penal law, or where
56 the accusatory instrument charges one or more of such offenses,

1 conviction upon a plea of guilty to any of the felonies for which such
2 plea is otherwise authorized by law or a conviction of a person for
3 conspiracy to commit a violation of section 220.18, 220.21, 220.41, [or]
4 220.43, 220.80 OR 220.95 of the penal law, where the controlled
5 substances which are the object of the conspiracy are located in the
6 real property which is the subject of the forfeiture action; or

7 S 25. Severability. If any clause, sentence, paragraph, section or
8 part of this act shall be adjudged by any court of competent jurisdic-
9 tion to be invalid and after exhaustion of all further judicial review,
10 the judgment shall not affect, impair or invalidate the remainder there-
11 of, but shall be confined in its operation to the clause, sentence,
12 paragraph, section or part of this act directly involved in the contro-
13 versy in which the judgment shall have been rendered.

14 S 26. This act shall take effect on the first of November next
15 succeeding the date on which it shall have become a law and shall apply
16 to offenses committed on or after such date, provided that:

17 (a) the amendments to subdivision 1 of section 70.00 of the penal law
18 made by section two of this act shall be subject to the expiration and
19 reversion of such subdivision pursuant to subdivision d of section 74 of
20 chapter 3 of the laws of 1995, as amended, when upon such date the
21 provisions of section three of this act shall take effect;

22 (b) the amendments to paragraphs (b), (c) and (d) of subdivision 3 of
23 section 70.04 of the penal law made by section seven of this act shall
24 be subject to the expiration and reversion of such subdivision pursuant
25 to subdivision d of section 74 of chapter 3 of the laws of 1995, as
26 amended, when upon such date the provisions of section eight of this act
27 shall take effect;

28 (c) the amendments to paragraphs (c) and (d) of subdivision 6 of
29 section 70.06 of the penal law, made by section nine of this act shall
30 not affect the repeal of such subdivision pursuant to subdivision d of
31 section 74 of chapter 3 of the laws of 1995, as amended, and shall
32 expire and be deemed repealed therewith;

33 (d) the amendments to paragraph (i) of subdivision 1 of section 806 of
34 the correction law made by section twenty-three of this act shall not
35 affect the repeal of such section pursuant to subdivision 6 of section
36 76 of chapter 435 of the laws of 1997, as amended, and shall be deemed
37 repealed therewith.