

959

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sens. C. JOHNSON, DIAZ, KLEIN, ONORATO, SAMPSON -- 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 consecutive sentences and the calculation of sentences

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

1 Section 1. Subdivision 2 of section 70.25 of the penal law, as amended
2 by chapter 56 of the laws of 1984, is amended to read as follows:
3 2. When more than one sentence of imprisonment is imposed on a person
4 for two or more offenses committed through a single act or omission, or
5 through an act or omission which in itself constituted one of the
6 offenses and also was a material element of the other, the sentences,
7 except if one or more of such sentences is for a violation of section
8 270.20 of this chapter, must run concurrently. PROVIDED HOWEVER, THAT
9 IF ONE OR MORE OF SUCH SENTENCES IS FOR A VIOLATION OF ARTICLE ONE
10 HUNDRED TWENTY OR ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER, THE SENTENCES
11 MUST RUN CONSECUTIVELY.
12 S 2. Paragraph (e) of subdivision 1 of section 70.30 of the penal law,
13 as amended by chapter 3 of the laws of 1995, is amended to read as
14 follows:
15 (e) (i) Except as provided in subparagraph (ii), (iii)[,] OR (iv)[,
16 (v), (vi) or (vii)] of this paragraph, the aggregate maximum term of
17 consecutive sentences, all of which are indeterminate sentences or all
18 of which are determinate sentences, imposed for two or more crimes,
19 other than two or more crimes that include a class A felony OR A VIOLENT
20 FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS ARTICLE, committed
21 prior to the time the person was imprisoned under any of such sentences
22 shall, if it exceeds twenty years, be deemed to be twenty years, unless
23 one of the sentences was imposed for a class B felony, in which case the
24 aggregate maximum term shall, if it exceeds thirty years, be deemed to

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

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1 be thirty years. Where the aggregate maximum term of two or more inde-
2 terminate consecutive sentences is reduced by calculation made pursuant
3 to this paragraph, the aggregate minimum period of imprisonment, if it
4 exceeds one-half of the aggregate maximum term as so reduced, shall be
5 deemed to be one-half of the aggregate maximum term as so reduced;

6 (ii) Where the aggregate maximum term of two or more consecutive
7 sentences, one or more of which is a determinate sentence and one or
8 more of which is an indeterminate sentence, imposed for two or more
9 crimes, other than two or more crimes that include a class A felony OR A
10 VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS ARTICLE,
11 committed prior to the time the person was imprisoned under any of such
12 sentences, exceeds twenty years, and none of the sentences was imposed
13 for a class B felony, the following rules shall apply:

14 (A) if the aggregate maximum term of the determinate sentence or
15 sentences exceeds twenty years, the defendant shall be deemed to be
16 serving [to] a determinate sentence of twenty years.

17 (B) if the aggregate maximum term of the determinate sentence or
18 sentences is less than twenty years, the defendant shall be deemed to be
19 serving an indeterminate sentence the maximum term of which shall be
20 deemed to be twenty years. In such instances, the minimum sentence shall
21 be deemed to be ten years or six-sevenths of the term or aggregate maxi-
22 mum term of the determinate sentence or sentences, whichever is greater.

23 (iii) Where the aggregate maximum term of two or more consecutive
24 sentences, one or more of which is a determinate sentence and one or
25 more of which is an indeterminate sentence, imposed for two or more
26 crimes, other than two or more crimes that include a class A felony OR A
27 VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS ARTICLE,
28 [committed] COMMITTED prior to the time the person was imprisoned under
29 any of such sentences, exceeds thirty years, and one of the sentences
30 was imposed for a class B felony, the following rules shall apply:

31 (A) if the aggregate maximum term of the determinate sentence or
32 sentences exceeds thirty years, the defendant shall be deemed to be
33 serving a determinate sentence of thirty years;

34 (B) if the aggregate maximum term of the determinate sentence or
35 sentences is less than thirty years, the defendant shall be deemed to be
36 serving an indeterminate sentence the maximum term of which shall be
37 deemed to be thirty years. In such instances, the minimum sentence shall
38 be deemed to be fifteen years or six-sevenths of the term or aggregate
39 maximum term of the determinate sentence or sentences, whichever is
40 greater.

41 (iv) [Notwithstanding subparagraph (i) of this paragraph, the aggre-
42 gate maximum term of consecutive sentences, all of which are indetermi-
43 nate sentences or all of which are determinate sentences, imposed for
44 the conviction of two violent felony offenses committed prior to the
45 time the person was imprisoned under any of such sentences and one of
46 which is a class B violent felony offense, shall, if it exceeds forty
47 years, be deemed to be forty years;

48 (v) Notwithstanding subparagraphs (ii) and (iii) of this paragraph,
49 where the aggregate maximum term of two or more consecutive sentences,
50 one or more of which is a determinate sentence and one or more of which
51 is an indeterminate sentence, and where such sentences are imposed for
52 the conviction of two violent felony offenses committed prior to the
53 time the person was imprisoned under any such sentences and where one of
54 which is a class B violent felony offense, the following rules shall
55 apply:

1 (A) if the aggregate maximum term of the determinate sentence or
2 sentences exceeds forty years, the defendant shall be deemed to be serv-
3 ing a determinate sentence of forty years;

4 (B) if the aggregate maximum term of the determinate sentence or
5 sentences is less than forty years, the defendant shall be deemed to be
6 serving an indeterminate sentence the maximum term of which shall be
7 deemed to be forty years. In such instances, the minimum sentence shall
8 be deemed to be twenty years or six-sevenths of the term or aggregate
9 maximum term of the determinate sentence or sentences, whichever is
10 greater.

11 (vi) Notwithstanding subparagraphs (i) and (iv) of this paragraph, the
12 aggregate maximum term of consecutive sentences, all of which are inde-
13 terminate or all of which are determinate sentences, imposed for the
14 conviction of three or more violent felony offenses committed prior to
15 the time the person was imprisoned under any of such sentences and one
16 of which is a class B violent felony offense, shall, if it exceeds fifty
17 years, be deemed to be fifty years;

18 (vii) Notwithstanding subparagraphs (ii), (iii) and (v) of this para-
19 graph, where the aggregate maximum term of two or more consecutive
20 sentences, one or more of which is a determinate sentence and one or
21 more of which is an indeterminate sentence, and where such sentences are
22 imposed for the conviction of three or more violent felony offenses
23 committed prior to the time the person was imprisoned under any such
24 sentences and one of which is a class B violent felony offense, the
25 following rules shall apply:

26 (A) if the aggregate maximum term of the determinate sentence or
27 sentences exceeds fifty years, the defendant shall be deemed to be serv-
28 ing a determinate sentence of fifty years.

29 (B) if the aggregate maximum term of the determinate sentence or
30 sentences is less than fifty years, the defendant shall be deemed to be
31 serving an indeterminate sentence the maximum term of which shall be
32 deemed to be fifty years. In such instances, the minimum sentence shall
33 be deemed to be twenty-five years or six-sevenths of the term or aggre-
34 gate maximum term of the determinate sentence or sentences, whichever is
35 greater.

36 (viii)] Notwithstanding any provision of this subdivision to the
37 contrary where a person is serving two or more consecutive sentences,
38 SUCH SENTENCES HAVING BEEN IMPOSED FOR TWO OR MORE CRIMES, OTHER THAN
39 TWO OR MORE CRIMES THAT INCLUDE A CLASS A FELONY OR A VIOLENT FELONY
40 OFFENSE AS DEFINED IN SECTION 70.02 OF THIS ARTICLE, one or more of
41 which is an indeterminate sentence and one or more of which is a deter-
42 minate sentence, and if he would be eligible for a reduction provision
43 pursuant to this subdivision if the maximum term or aggregate maximum
44 term of the indeterminate sentence or sentences were added to the term
45 or aggregate maximum term of the determinate sentence or sentences, the
46 person shall be deemed to be eligible for the applicable reduction
47 provision and the rules set forth in this subdivision shall apply.

48 S 3. This act shall take effect on the first of November next succeed-
49 ing the date on which it shall have become a law, provided that the
50 amendments to paragraph (e) of subdivision 1 of section 70.30 of the
51 penal law made by section two of this act shall be subject to the expi-
52 ration and reversion of such paragraph pursuant to chapter 3 of the laws
53 of 1995, as amended.