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Introduced by M. of A. McENENY, CANESTRARI, SCHIMMINGER, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. ABBATE, PHEFFER, SWEENEY, TOWNS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to sentencing of persistent child predators

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

Section 1. The penal law is amended by adding a new section 60.14 to read as follows:

S 60.14 AUTHORIZED DISPOSITION; PERSISTENT CHILD PREDATOR.

1. CHILD PREDATOR OFFENSE. FOR THE PURPOSES OF THIS SECTION "CHILD PREDATOR OFFENSE" SHALL UNLESS OTHERWISE INDICATED, MEAN ANY OF THE FOLLOWING OFFENSES WHERE THE VICTIM OF SUCH OFFENSE IS A PERSON UNDER THE AGE OF SEVENTEEN:

(A) HARASSMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 240.25; AGGRAVATED HARASSMENT IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30; ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SUBDIVISION ONE OF SECTION 260.10; SEXUAL MISCONDUCT AS DEFINED IN SUBDIVISION ONE OR TWO OF SECTION 130.20; SEXUAL ABUSE IN THE THIRD DEGREE AS DEFINED IN SECTION 130.55; SEXUAL ABUSE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.60; UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE AS DEFINED IN SECTION 135.05; OR MENACING IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 120.14; AND

(B) DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE AS DEFINED IN SECTION 235.21; DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE AS DEFINED IN SECTION 235.22; USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05; PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.10; POSSESSING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.11; PROMOTING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.15; POSSESSING A SEXUAL PERFORMANCE BY A CHILD AS DEFINED IN SECTION 263.16;

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

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RAPE IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 130.25; RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.30; RAPE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.35; CRIMINAL SEXUAL ACT IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 130.40; CRIMINAL SEXUAL ACT IN THE SECOND DEGREE AS DEFINED IN SECTION 130.45; CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.50; SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION THREE OF SECTION 130.65; AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.66; AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.67; AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 130.70; COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75; COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.80; UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 135.10; KIDNAPPING IN THE SECOND DEGREE AS DEFINED IN SECTION 135.20; KIDNAPPING IN THE FIRST DEGREE AS DEFINED IN SECTION 135.25 OR ANY ATTEMPT TO COMMIT AN OFFENSE ENUMERATED IN THIS PARAGRAPH.

2. DEFINITION OF A PERSISTENT CHILD PREDATOR. (A) A PERSISTENT CHILD PREDATOR IS A PERSON WHO STANDS CONVICTED OF A CHILD PREDATOR OFFENSE AS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION AFTER HAVING PREVIOUSLY BEEN SUBJECTED TO TWO OR MORE PREDICATE CHILD PREDATOR CONVICTIONS AS DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION.

(B) FOR THE PURPOSE OF DETERMINING WHETHER A PRIOR CONVICTION IS A PREDICATE CHILD PREDATOR CONVICTION THE FOLLOWING CRITERIA SHALL APPLY:

(I) THE CONVICTION MUST HAVE BEEN IN THIS STATE OF A CHILD PREDATOR OFFENSE AS DEFINED IN PARAGRAPH (A) OR (B) OF SUBDIVISION ONE OF THIS SECTION, OR IN ANY OTHER JURISDICTION OF AN OFFENSE WHICH INCLUDES ALL OF THE ESSENTIAL ELEMENTS OF ANY SUCH CHILD PREDATOR OFFENSE;

(II) SENTENCE UPON SUCH PRIOR CONVICTION MUST HAVE BEEN IMPOSED BEFORE COMMISSION OF THE PRESENT CHILD PREDATOR OFFENSE;

(III) SUSPENDED SENTENCE, SUSPENDED EXECUTION OF SENTENCE, A SENTENCE OF PROBATION, A SENTENCE OF CONDITIONAL DISCHARGE OR OF UNCONDITIONAL DISCHARGE, AND A SENTENCE OF CERTIFICATION TO THE CARE AND CUSTODY OF THE DIVISION OF SUBSTANCE ABUSE SERVICES, SHALL BE DEEMED TO BE A SENTENCE;

(IV) EXCEPT AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH, SENTENCE MUST HAVE BEEN IMPOSED NOT MORE THAN SEVEN YEARS BEFORE COMMISSION OF THE CHILD PREDATOR OFFENSE OF WHICH THE DEFENDANT PRESENTLY STANDS CONVICTED;

(V) IN CALCULATING THE SEVEN YEAR PERIOD UNDER SUBPARAGRAPH (IV) OF THIS PARAGRAPH, ANY PERIOD OF TIME DURING WHICH THE PERSON WAS INCARCERATED FOR ANY REASON BETWEEN THE TIME OF COMMISSION OF THE PREVIOUS CHILD PREDATOR OFFENSE AND THE TIME OF COMMISSION OF THE PRESENT CHILD PREDATOR OFFENSE SHALL BE EXCLUDED AND SUCH SEVEN YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME SERVED UNDER SUCH INCARCERATION;

(VI) AN OFFENSE FOR WHICH THE DEFENDANT HAS BEEN PARDONED ON THE GROUND OF INNOCENCE SHALL NOT BE DEEMED A PREDICATE CHILD PREDATOR CONVICTION; AND

(VII) COMMISSION OF THE SECOND PRIOR CHILD PREDATOR OFFENSE SHALL HAVE OCCURRED AFTER THE IMPOSITION OF SENTENCE ON THE FIRST PRIOR CHILD PREDATOR CONVICTION.

3. AUTHORIZED SENTENCE. WHEN THE COURT HAS FOUND, PURSUANT TO THE PROVISIONS OF SECTION 400.13 OF THE CRIMINAL PROCEDURE LAW THAT (A) A

PERSON IS A PERSISTENT CHILD PREDATOR AS DEFINED IN SUBDIVISION TWO OF THIS SECTION, AND (B) IMPOSITION OF A SENTENCE AUTHORIZED FOR A CLASS E FELONY IS NECESSARY TO PROTECT THE SAFETY AND SECURITY OF SOCIETY, THE COURT, IN LIEU OF IMPOSING A SENTENCE OTHERWISE AUTHORIZED FOR THE CRIME ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION OF WHICH SUCH PERSON PRESENTLY STANDS CONVICTED, SHALL IMPOSE A SENTENCE AUTHORIZED FOR A CLASS E FELONY.

S 2. The criminal procedure law is amended by adding a new section 400.13 to read as follows:

S 400.13 PROCEDURE FOR DETERMINING WHETHER DEFENDANT SHOULD BE SENTENCED AS A PERSISTENT CHILD PREDATOR.

1. APPLICABILITY. THE PROVISIONS OF THIS SECTION GOVERN THE PROCEDURE THAT MUST BE FOLLOWED IN ORDER TO IMPOSE THE PERSISTENT CHILD PREDATOR SENTENCE AUTHORIZED BY SUBDIVISION THREE OF SECTION 60.14 OF THE PENAL LAW. SUCH SENTENCE MAY NOT BE IMPOSED UNLESS, BASED UPON EVIDENCE IN THE RECORD OF A HEARING HELD PURSUANT TO THIS SECTION, THE COURT HAS FOUND THAT THE DEFENDANT IS A PERSISTENT CHILD PREDATOR AS DEFINED IN SUBDIVISION TWO OF SECTION 60.14 OF THE PENAL LAW AND THAT THE IMPOSITION OF SUCH SENTENCE IS NECESSARY TO PROTECT THE SAFETY AND SECURITY OF SOCIETY.

2. AUTHORIZATION FOR HEARING. WHEN INFORMATION AVAILABLE TO THE COURT OR TO THE PEOPLE PRIOR TO SENTENCING FOR A CHILD PREDATOR OFFENSE AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 60.14 OF THE PENAL LAW INDICATES THAT THE DEFENDANT MAY BE A PERSISTENT CHILD PREDATOR AS DEFINED IN SUBDIVISION TWO OF SUCH SECTION 60.14 THE COURT SHALL ORDER A HEARING TO DETERMINE WHETHER THE DEFENDANT IS IN FACT A PERSISTENT CHILD PREDATOR AND SHOULD BE SENTENCED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF SECTION 60.14 OF THE PENAL LAW.

3. ORDER DIRECTING A HEARING. AN ORDER DIRECTING A HEARING TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED AS A PERSISTENT CHILD PREDATOR MUST SPECIFY A DATE FOR THE HEARING NOT LESS THAN FOURTEEN DAYS FROM THE DATE THE ORDER IS FILED. THE COURT MUST ANNEX TO AND FILE WITH THE ORDER A STATEMENT, TO BE PREPARED BY THE PEOPLE, SETTING FORTH THE FOLLOWING:

(A) THE DATES AND PLACES OF THE PREVIOUS CONVICTIONS WHICH RENDER THE DEFENDANT A PERSISTENT CHILD PREDATOR AS DEFINED IN SUBDIVISION TWO OF SECTION 60.14 OF THE PENAL LAW; AND

(B) THE FACTOR OR FACTORS INVOLVED IN THE COMMISSION OF THE INSTANT OFFENSE AND IN THE DEFENDANT'S BACKGROUND AND PRIOR CRIMINAL HISTORY WHICH THE PEOPLE DEEM RELEVANT FOR THE PURPOSE OF SENTENCING THE DEFENDANT AS A PERSISTENT CHILD PREDATOR PURSUANT TO SUBDIVISION THREE OF SECTION 60.14 OF THE PENAL LAW.

4. NOTICE OF HEARING. UPON RECEIPT OF THE ORDER THE CLERK OF THE COURT MUST IMMEDIATELY PROVIDE A NOTICE OF HEARING TO THE DEFENDANT, HIS COUNSEL AND THE DISTRICT ATTORNEY. SUCH NOTICE MUST SPECIFY THE TIME AND PLACE OF THE HEARING AND THAT THE PURPOSE OF THE HEARING IS TO DETERMINE WHETHER OR NOT THE DEFENDANT SHOULD BE SENTENCED AS A PERSISTENT CHILD PREDATOR. EACH NOTICE REQUIRED TO BE SENT HEREUNDER MUST BE ACCOMPANIED BY A COPY OF THE STATEMENT FILED BY THE PEOPLE PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

5. BURDEN AND STANDARD OF PROOF; EVIDENCE. UPON ANY HEARING HELD PURSUANT TO THIS SECTION THE BURDEN OF PROOF IS UPON THE PEOPLE TO SHOW, BY A PREPONDERANCE OF THE EVIDENCE, THAT SENTENCING THE DEFENDANT AS A PERSISTENT CHILD PREDATOR IS NECESSARY TO PROTECT THE SAFETY AND SECURITY OF SOCIETY, PROVIDED, HOWEVER THAT A FINDING THAT THE DEFENDANT IS A PERSISTENT CHILD PREDATOR, AS DEFINED IN SUBDIVISION TWO OF SECTION

60.14 OF THE PENAL LAW, MUST BE BASED UPON PROOF BEYOND A REASONABLE DOUBT BY EVIDENCE ADMISSIBLE UNDER THE RULES APPLICABLE TO A TRIAL OF THE ISSUE OF GUILT.

6. CONSTITUTIONALITY OF PRIOR CONVICTIONS. A PREVIOUS CONVICTION IN THIS OR ANY OTHER JURISDICTION WHICH WAS OBTAINED IN VIOLATION OF THE RIGHTS OF THE DEFENDANT UNDER THE APPLICABLE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES MUST NOT BE COUNTED IN DETERMINING WHETHER THE DEFENDANT IS A PERSISTENT CHILD PREDATOR. THE DEFENDANT MAY, AT ANY TIME DURING THE COURSE OF THE HEARING HEREUNDER CONTROVERT AN ALLEGATION WITH RESPECT TO SUCH CONVICTION IN THE STATEMENT OF THE PEOPLE ON THE GROUNDS THAT THE CONVICTION WAS UNCONSTITUTIONALLY OBTAINED. FAILURE TO CHALLENGE THE PREVIOUS CONVICTION IN THE MANNER PROVIDED HEREIN CONSTITUTES A WAIVER ON THE PART OF THE DEFENDANT OF ANY ALLEGATION OF UNCONSTITUTIONALITY UNLESS GOOD CAUSE BE SHOWN FOR SUCH FAILURE TO MAKE TIMELY CHALLENGE.

7. PRELIMINARY EXAMINATION. AT THE COMMENCEMENT OF THE HEARING THE COURT MUST ASK THE DEFENDANT WHETHER HE WISHES TO CONTROVERT ANY ALLEGATION MADE IN THE STATEMENT PREPARED BY THE PEOPLE. UNCONTROVERTED ALLEGATIONS IN THE STATEMENT OF THE PEOPLE SHALL BE DEEMED TO HAVE BEEN ADMITTED BY THE DEFENDANT.

8. MANNER OF CONDUCTING HEARING. A HEARING PURSUANT TO THIS SECTION SHALL BE A BIFURCATED HEARING AND SHALL BE BEFORE THE COURT WITHOUT A JURY. AT THE CONCLUSION OF THE FIRST PART OF THE HEARING, THE COURT MUST MAKE A FINDING AS TO WHETHER OR NOT THE DEFENDANT IS A PERSISTENT CHILD PREDATOR AS DEFINED IN SUBDIVISION TWO OF SECTION 60.14 OF THE PENAL LAW. IF THE COURT FINDS THAT THE DEFENDANT IS A PERSISTENT CHILD PREDATOR AS SO DEFINED, THE COURT SHALL PROCEED TO DETERMINE, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND SECTION 60.14 OF THE PENAL LAW, WHETHER THE DEFENDANT SHALL BE SENTENCED AS A PERSISTENT CHILD PREDATOR.

9. TERMINATION OF HEARING. AT ANY TIME DURING THE PENDENCY OF A HEARING PURSUANT TO THIS SECTION, THE COURT MAY, IN ITS DISCRETION, TERMINATE THE HEARING WITHOUT MAKING ANY FINDING. IN SUCH CASE, UNLESS THE COURT RECOMMENCES THE PROCEEDINGS AND MAKES THE NECESSARY FINDINGS, THE DEFENDANT MAY NOT BE SENTENCED AS A PERSISTENT CHILD PREDATOR.

S 3. Section 70.06 of the penal law is amended by adding a new subdivision 8 to read as follows:

8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A PREVIOUS CONVICTION AND SENTENCE AS A PERSISTENT CHILD PREDATOR PURSUANT TO SECTION 60.14 OF THIS CHAPTER SHALL CONSTITUTE A PRIOR FELONY CONVICTION FOR PURPOSES OF SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION.

S 4. Subdivision 1 of section 70.10 of the penal law is amended by adding a new paragraph (d) to read as follows:

(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A PREVIOUS CONVICTION AND SENTENCE AS A PERSISTENT CHILD PREDATOR PURSUANT TO SECTION 60.14 OF THIS CHAPTER SHALL, SUBJECT TO THE CRITERIA SET FORTH IN PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION, CONSTITUTE A PREVIOUS FELONY CONVICTION FOR PURPOSES OF PARAGRAPH (A) OF THIS SUBDIVISION.

S 5. Section 65.10 of the penal law is amended by adding a new subdivision 3-a to read as follows:

3-A. CONDITIONS FOR CERTAIN OFFENDERS. WHEN IMPOSING A SENTENCE OF PROBATION FOR A PERSON CONVICTED OF A CHILD PREDATOR OFFENSE THE COURT SHALL REQUIRE, IN ADDITION TO ANY OTHER CONDITIONS IMPOSED PURSUANT TO SUBDIVISION TWO, THREE OR FOUR OF THIS SECTION, THAT SUCH PERSON REPORT TO A PROBATION OFFICER A MINIMUM OF THREE DAYS PER WEEK AND HAVE AT LEAST FOUR ADDITIONAL CONTACTS PER WEEK. FOR THE PURPOSES OF THIS SUBDI-

VISION A CHILD PREDATOR OFFENSE SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION ONE OF SECTION 60.14 OF THIS CHAPTER.

S 6. Subdivision 4 of section 60.01 of the penal law, as amended by chapter 548 of the laws of 1984, is amended to read as follows:

4. In any case where a person has been sentenced to a period of probation imposed pursuant to section 65.00 of this chapter, if the part of the sentence that provides for probation is revoked, the court must sentence such person to imprisonment or to the sentence of imprisonment and probation as provided for in paragraph (d) of subdivision two of this section, PROVIDED, HOWEVER, THAT WHERE A SENTENCE OF PROBATION ON A CONVICTION FOR A CHILD PREDATOR OFFENSE IS REVOKED, THE COURT MAY NOT IMPOSE A DEFINITE SENTENCE OF IMPRISONMENT UNLESS IT IMPOSES SUCH DEFINITE SENTENCE AS PART OF A SENTENCE OF IMPRISONMENT AND PROBATION IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION 65.00 OF THIS CHAPTER.

S 7. Subdivisions 3 and 4 of section 65.00 of the penal law, as amended by chapter 264 of the laws of 2003, subparagraphs (i) and (ii) of paragraph (a) of subdivision 3 as amended by section 20 of part AAA of chapter 56 of the laws of 2009, paragraph (c) of subdivision 3 as amended by chapter 568 of the laws of 2004 and the closing paragraph of subdivision 3 as amended by chapter 320 of the laws of 2006, are amended and a new subdivision 5 is added to read as follows:

3. Periods of probation. Unless terminated sooner in accordance with the criminal procedure law, the period of probation shall be as follows:

(a) (i) For a felony, other than a class A-II felony defined in article two hundred twenty of this chapter or the class B felony defined in section 220.48 of this chapter, or any other class B felony defined in article two hundred twenty of this chapter committed by a second felony drug offender, or a sexual assault, the period of probation shall be five years;

(ii) For a class A-II felony drug offender as defined in paragraph (a) of subdivision one of section 70.71 of this chapter as described in paragraph (b) of subdivision one of this section, or a class B felony committed by a second felony drug offender described in paragraph (b) of subdivision one of this section, the period of probation shall be life and for a class B felony defined in section 220.48 of this chapter, the period of probation shall be twenty-five years;

(iii) For a felony sexual assault, the period of probation shall be ten years.

(b) (i) For a class A misdemeanor, other than a sexual assault, AND EXCEPT AS OTHERWISE AUTHORIZED BY SUBDIVISION THREE OF SECTION 60.14 OF THIS CHAPTER, the period of probation shall be three years;

(ii) For a class A misdemeanor sexual assault, the period of probation shall be six years.

(c) For a class B misdemeanor, the period of probation shall, AND EXCEPT AS OTHERWISE AUTHORIZED BY SUBDIVISION THREE OF SECTION 60.14 OF THIS CHAPTER, be one year, except the period of probation shall be no less than one year and no more than three years for the class B misdemeanor of public lewdness as defined in section 245.00 of this chapter;

(d) For an unclassified misdemeanor, the period of probation shall be three years if the authorized sentence of imprisonment is in excess of three months, otherwise the period of probation shall be one year.

For the purposes of this section, the term "sexual assault" means an offense defined in article one hundred thirty or two hundred sixty-three, or in section 255.25, 255.26 or 255.27 of this chapter, or an attempt to commit any of the foregoing offenses.

4. [In] EXCEPT AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, IN any case where a court pursuant to its authority under subdivision four of section 60.01 of this chapter revokes probation and sentences such person to imprisonment and probation, as provided in paragraph (d) of subdivision two of section 60.01 of this chapter, the period of probation shall be the remaining period of the original probation sentence or one year whichever is greater.

5. IN ANY CASE WHERE A SENTENCE OF PROBATION IS IMPOSED ON A CONVICTION FOR A CHILD PREDATOR OFFENSE AS DEFINED IN SECTION 60.14 OF THIS CHAPTER AND A COURT, PURSUANT TO ITS AUTHORITY UNDER SUBDIVISION FOUR OF SECTION 60.01 OF THIS CHAPTER REVOKES SUCH PROBATION AND SENTENCES SUCH PERSON TO IMPRISONMENT AND PROBATION, THE PERIOD OF IMPRISONMENT SHALL BE SIX MONTHS FOR A CLASS A MISDEMEANOR AND ONE YEAR FOR A FELONY, WHICH SHALL INCLUDE ANY CLASS E FELONY CHILD PREDATOR SENTENCE IMPOSED PURSUANT TO SUBDIVISION THREE OF SECTION 60.14 OF THIS CHAPTER, AND THE PERIOD OF PROBATION SHALL BE THE REMAINING PERIOD OF THE ORIGINAL PROBATION SENTENCE OR ONE YEAR WHICHEVER IS GREATER.

S 8. Subdivisions 1 and 2 of section 70.15 of the penal law, subdivision 1 as amended by chapter 291 of the laws of 1993, are amended to read as follows:

1. Class A misdemeanor. [A] EXCEPT AS OTHERWISE AUTHORIZED BY SUBDIVISION THREE OF SECTION 60.14 OF THIS CHAPTER, A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.

2. Class B misdemeanor. [A] EXCEPT AS OTHERWISE AUTHORIZED BY SUBDIVISION THREE OF SECTION 60.14 OF THIS CHAPTER, A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

S 9. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.