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

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 10, 2011

Introduced by M. of A. McKEVITT -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to consecutive sentences and the calculation of sentences in certain instances involving arson

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

Section 1. Subdivision 2 of section 70.25 of the penal law, as amended by chapter 56 of the laws of 1984, is amended to read as follows:

2. When more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the sentences, except if one or more of such sentences is for a violation of section 270.20 of this chapter, must run concurrently. PROVIDED HOWEVER, THAT IF ONE OR MORE OF SUCH SENTENCES IS FOR A VIOLATION OF ARTICLE ONE HUNDRED FIFTY OF THIS CHAPTER, THE SENTENCES MUST RUN CONSECUTIVELY.

S 2. Paragraph (e) of subdivision 1 of section 70.30 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(e) (i) Except as provided in subparagraph (ii), (iii)[,] OR (iv)[, (v), (vi) or (vii)] of this paragraph, the aggregate maximum term of consecutive sentences, all of which are indeterminate sentences or all of which are determinate sentences, imposed for two or more crimes, other than two or more crimes that include a class A felony OR A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS ARTICLE, committed prior to the time the person was imprisoned under any of such sentences shall, if it exceeds twenty years, be deemed to be twenty years, unless one of the sentences was imposed for a class B felony, in which case the aggregate maximum term shall, if it exceeds thirty years, be deemed to be thirty years. Where the aggregate maximum term of two or more indeterminate consecutive sentences is reduced by calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced;

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

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

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

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

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

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

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

(iv) [Notwithstanding subparagraph (i) of this paragraph, the aggregate maximum term of consecutive sentences, all of which are indeterminate sentences or all of which are determinate sentences, imposed for the conviction of two violent felony offenses committed prior to the time the person was imprisoned under any of such sentences and one of which is a class B violent felony offense, shall, if it exceeds forty years, be deemed to be forty years

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

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

(B) if the aggregate maximum term of the determinate sentence or sentences is less than forty years, the defendant shall be deemed to be serving an indeterminate sentence the maximum term of which shall be

deemed to be forty years. In such instances, the minimum sentence shall be deemed to be twenty years or six-sevenths of the term or aggregate maximum term of the determinate sentence or sentences, whichever is greater.

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

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

(A) if the aggregate maximum term of the determinate sentence or sentences exceeds fifty years, the defendant shall be deemed to be serving a determinate sentence of fifty years.

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

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

S 3. Section 150.15 of the penal law, as amended by chapter 225 of the laws of 1979, is amended to read as follows:

S 150.15 Arson in the second degree.

A person is guilty of arson in the second degree when he intentionally damages a building or motor vehicle by starting AN EXPLOSION OR a fire, and when (a) another person who is not a participant in the crime is present in such building or motor vehicle at the time, and (b) the defendant knows that fact or the circumstances are such as to render the presence of such a person therein a reasonable possibility.

Arson in the second degree is a class B felony.

S 4. This act shall take effect on the sixtieth day after it shall have become a law, provided that the amendments to paragraph (e) of subdivision 1 of section 70.30 of the penal law made by section two of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.