

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

1902

2011-2012 Regular Sessions

I N S E N A T E

January 14, 2011

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, the criminal procedure law and the judiciary law, in relation to increasing the minimum sentence for a second violent felony offense; and to repeal section 70.08 of the penal law relating thereto

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

- 1 Section 1. Subdivision 6 of section 60.05 of the penal law, as amended
2 by chapter 410 of the laws of 1979, is amended to read as follows:
3 6. Multiple felony offender. When the court imposes sentence upon a
4 [second] PERSISTENT violent felony offender, as defined in section
5 70.04, or a second felony offender, as defined in section 70.06, the
6 court must impose a sentence of imprisonment in accordance with section
7 70.04 or 70.06, as the case may be, unless it imposes a sentence of
8 imprisonment in accordance with section [70.08 or] 70.10.
9 S 2. Subdivision 2 of section 60.10 of the penal law, as amended by
10 chapter 411 of the laws of 1979, is amended to read as follows:
11 2. Subdivision one of this section shall apply when sentencing a juvenile offender notwithstanding the provisions of any other law that deals with the authorized sentence for persons who are not juvenile offenders. Provided, however, that the limitation prescribed by this section shall not be deemed or construed to bar use of a conviction of a juvenile offender, other than a juvenile offender who has been adjudicated a youthful offender pursuant to section 720.20 of the criminal procedure law, as a previous or predicate felony offender under section 70.04, 70.06[, 70.08] or 70.10, when sentencing a person who commits a felony after he has reached the age of sixteen.
21 S 3. Section 70.04 of the penal law, as added by chapter 481 of the laws of 1978, subparagraph (iii) of paragraph (b) of subdivision 1 as

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

LBD06689-01-1

1 amended by chapter 471 of the laws of 1980 and subdivisions 2 and 3 as
2 amended by chapter 3 of the laws of 1995, is amended to read as follows:
3 S 70.04 Sentence of imprisonment for [second] PERSISTENT violent felony
4 offender.

5 1. Definition of second violent felony offender.

6 (a) A [second] PERSISTENT violent felony offender is a person who
7 stands convicted of a violent felony offense as defined in subdivision
8 one of section 70.02 after having previously been subjected to a predi-
9 cate violent felony conviction as defined in paragraph (b) of this
10 subdivision.

11 (b) For the purpose of determining whether a prior conviction is a
12 predicate violent felony conviction the following criteria shall apply:

13 (i) The conviction must have been in this state of a class A felony
14 (other than one defined in article two hundred twenty) or of a violent
15 felony offense as defined in subdivision one of section 70.02, or of an
16 offense defined by the penal law in effect prior to September first,
17 nineteen hundred sixty-seven, which includes all of the essential
18 elements of any such felony, or in any other jurisdiction of an offense
19 which includes all of the essential elements of any such felony for
20 which a sentence to a term of imprisonment in excess of one year or a
21 sentence of death was authorized and is authorized in this state irre-
22 spective of whether such sentence was imposed;

23 (ii) Sentence upon such prior conviction must have been imposed before
24 commission of the present felony;

25 (iii) Suspended sentence, suspended execution of sentence, a sentence
26 of probation, a sentence of conditional discharge or of unconditional
27 discharge, and a sentence of certification to the care and custody of
28 the division of substance abuse services, shall be deemed to be a
29 sentence;

30 (iv) Except as provided in subparagraph (v) of this paragraph,
31 sentence must have been imposed not more than ten years before commis-
32 sion of the felony of which the defendant presently stands convicted;

33 (v) In calculating the ten year period under subparagraph (iv), any
34 period of time during which the person was incarcerated for any reason
35 between the time of commission of the previous felony and the time of
36 commission of the present felony shall be excluded and such ten year
37 period shall be extended by a period or periods equal to the time served
38 under such incarceration;

39 (vi) An offense for which the defendant has been pardoned on the
40 ground of innocence shall not be deemed a predicate violent felony
41 conviction.

42 2. Authorized sentence. When the court has found, pursuant to the
43 provisions of the criminal procedure law, that a person is a [second]
44 PERSISTENT violent felony offender, the court must impose a determinate
45 sentence of imprisonment which shall be [in whole or half years. Except
46 where sentence is imposed in accordance with the provisions of section
47 70.10, the term of such sentence must be in accordance with the
48 provisions of subdivision three of this section.

49 3. Term of sentence. The term of a determinate sentence for a second
50 violent felony offender must be fixed by the court as follows:

51 (a) For a class B felony, the term must be at least ten years and must
52 not exceed twenty-five years;

53 (b) For a class C felony, the term must be at least seven years and
54 must not exceed fifteen years; and

55 (c) For a class D felony, the term must be at least five years and
56 must not exceed seven years.

(d) For a class E felony, the term must be at least three years and must not exceed four years] AT LEAST TWENTY-FIVE YEARS.

S 4. Subdivisions 2 and 3 of section 70.04 of the penal law, as added by chapter 481 of the laws of 1978, paragraph (d) of subdivision 3 as added by chapter 233 of the laws of 1980, are amended to read as follows:

2. Authorized sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a [second] PERSISTENT violent felony offender, the court must impose an indeterminate sentence of imprisonment, THE MAXIMUM TERM OF WHICH SHALL BE LIFE IMPRISONMENT, AND THE MINIMUM TERM OF WHICH SHALL BE TWENTY-FIVE YEARS. [Except where sentence is imposed in accordance with the provisions of section 70.10, the maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

3. Maximum term of sentence. The maximum term of an indeterminate sentence for a second violent felony offender must be fixed by the court as follows:

(a) For a class B felony, the term must be at least twelve years and must not exceed twenty-five years;

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

(c) For a class D felony, the term must be at least five years and must not exceed seven years.

(d) For a class E felony, the term must be at least four years.]

S 5. Section 70.08 of the penal law is REPEALED.

S 6. Paragraph (a) of subdivision 1 of section 70.10 of the penal law, as amended by chapter 481 of the laws of 1978, is amended to read as follows:

(a) A persistent felony offender is a person[, other than a persistent violent felony offender as defined in section 70.08,] who stands convicted of a felony after having previously been convicted of [two] ONE or more felonies, as provided in paragraphs (b) and (c) of this subdivision.

S 7. Subdivision 2-a of section 70.25 of the penal law, as amended by chapter 495 of the laws of 2009, is amended to read as follows:

2-a. When an indeterminate or determinate sentence of imprisonment is imposed pursuant to section 70.04, 70.06, 70.07, [70.08,] 70.10, subdivision three or four of section 70.70, subdivision three or four of section 70.71 or subdivision five of section 70.80 of this article, or is imposed for a class A-I felony pursuant to section 70.00 of this article, and such person is subject to an undischarged indeterminate or determinate sentence of imprisonment imposed prior to the date on which the present crime was committed, the court must impose a sentence to run consecutively with respect to such undischarged sentence.

S 8. Subdivision 2-a of section 70.25 of the penal law, as amended by chapter 495 of the laws of 2009, is amended to read as follows:

2-a. When an indeterminate or determinate sentence of imprisonment is imposed pursuant to section 70.04, 70.06, 70.07, [70.08,] 70.10, subdivision three or four of section 70.70, subdivision three or four of section 70.71 or subdivision five of section 70.80 of this article, or is imposed for a class A-I felony pursuant to section 70.00 of this article, and such person is subject to an undischarged indeterminate sentence of imprisonment imposed prior to the date on which the present

1 crime was committed, the court must impose a sentence to run consec-
2 utively with respect to such undischarged sentence.

3 S 9. Section 215.10 of the criminal procedure law, as added by chapter
4 837 of the laws of 1986, is amended to read as follows:

5 S 215.10 Referral of selected felonies to dispute resolution.

6 Upon or after arraignment in a local criminal court upon a felony
7 complaint, or upon or after arraignment in a superior court upon an
8 indictment or superior court information, and before final disposition
9 thereof, the court, with the consent of the people and of the defendant,
10 and with reasonable notice to the victim and an opportunity for the
11 victim to be heard, may order that the action be adjourned in contem-
12 plation of dismissal, for the purpose of referring the action to a
13 community dispute center established pursuant to article twenty-one-A of
14 the judiciary law. Provided, however, that the court may not order any
15 action adjourned in contemplation of dismissal if the defendant is
16 charged therein with: (i) a class A felony, or (ii) a violent felony
17 offense as defined in section 70.02 of the penal law, or (iii) any drug
18 offense as defined in article two hundred twenty of the penal law, or
19 (iv) a felony upon the conviction of which defendant must be sentenced
20 as a second felony offender[, a second violent felony offender,] or a
21 persistent violent felony offender pursuant to [sections] SECTION
22 70.06[,] OR 70.04 [and 70.08] of the penal law, or a felony upon the
23 conviction of which defendant may be sentenced as a persistent felony
24 offender pursuant to section 70.10 of such law.

25 S 10. Subdivision 1 of section 400.16 of the criminal procedure law,
26 as added by chapter 481 of the laws of 1978, is amended to read as
27 follows:

28 1. Applicability. The provisions of this section govern the proce-
29 dure that must be followed in any case where it appears that a defendant
30 who stands convicted of a violent felony offense as defined in subdivi-
31 sion one of section 70.02 of the penal law has previously been subjected
32 to two or more predicate violent felony convictions as defined in para-
33 graph (b) of subdivision one of section 70.04[, and may be a persistent
34 violent felony offender as defined in section 70.08] of the penal law.

35 S 11. Paragraph (f) of subdivision 4 of section 849-b of the judiciary
36 law, as amended by chapter 837 of the laws of 1986, is amended to read
37 as follows:

38 (f) it does not accept for dispute resolution any defendant who is
39 named in a filed felony complaint, superior court information, or
40 indictment, charging: (i) a class A felony, or (ii) a violent felony
41 offense as defined in section 70.02 of the penal law, or (iii) any drug
42 offense as defined in article two hundred twenty of the penal law, or
43 (iv) a felony upon the conviction of which defendant must be sentenced
44 as a second felony offender[, a second violent felony offender,] or a
45 persistent violent felony offender pursuant to [sections] SECTION
46 70.06[,] OR 70.04 [and 70.08] of the penal law, or a felony upon the
47 conviction of which defendant may be sentenced as a persistent felony
48 offender pursuant to section 70.10 of such law.

49 S 12. This act shall take effect on the first of November next
50 succeeding the date on which it shall have become a law and shall apply
51 to offenses committed on or after such effective date; provided that the
52 amendments to subdivisions 2 and 3 of section 70.04 of the penal law
53 made by section three of this act shall be subject to the expiration and
54 reversion of such subdivisions pursuant to subdivision d of section 74
55 of chapter 3 of the laws of 1995, as amended, when upon such date the
56 provisions of section four of this act shall take effect; and provided

1 further that the amendments to subdivision 2-a of section 70.25 of the
2 penal law made by section seven of this act shall be subject to the
3 expiration and reversion of such subdivision pursuant to subdivision d
4 of section 74 of chapter 3 of the laws of 1995, as amended, when upon
5 such date the provisions of section eight of this act shall take effect.