

2270

2011-2012 Regular Sessions

I N S E N A T E

January 18, 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, in relation to requiring that indeterminate sentences run consecutively with all other terms unless the court orders concurrent sentences and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subdivision 1 of section 70.25 of the penal law, as amended  
2 by chapter 372 of the laws of 1981 and paragraph (a) as amended by chap-  
3 ter 3 of the laws of 1995, is amended to read as follows:  
4 1. [Except as provided in subdivisions two, two-a and five of this  
5 section, when] WHEN multiple sentences of imprisonment are imposed on a  
6 person at the same time, or when a person who is subject to any undisc-  
7 charged term of imprisonment imposed at a previous time by a court of  
8 this state is sentenced to an additional term of imprisonment, the  
9 sentence or sentences imposed by the court shall run either concurrently  
10 or consecutively with respect to each other and the undischarged term or  
11 terms in such manner as the court directs at the time of sentence. If  
12 the court does not specify the manner in which a sentence imposed by it  
13 is to run, the sentence shall run as follows:  
14 (a) An indeterminate or determinate sentence shall run [concurrently]  
15 CONSECUTIVELY with all other terms; [and] PROVIDED, HOWEVER, THAT THE  
16 COURT MAY, IN THE INTEREST OF JUSTICE, ORDER A SENTENCE TO RUN CONCUR-  
17 RENTLY IF IT FINDS MITIGATING CIRCUMSTANCES THAT BEAR DIRECTLY UPON THE  
18 MANNER IN WHICH THE CRIME WAS COMMITTED. THE DEFENDANT AND THE DISTRICT  
19 ATTORNEY SHALL HAVE AN OPPORTUNITY TO PRESENT RELEVANT INFORMATION TO  
20 ASSIST THE COURT IN MAKING ITS DETERMINATION AND THE COURT MAY, IN ITS  
21 DISCRETION, CONDUCT A HEARING WITH RESPECT TO ANY ISSUE BEARING UPON  
22 SUCH DETERMINATION. IF THE COURT DETERMINES THAT CONSECUTIVE SENTENCES

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

LBD07053-01-1

1 SHOULD NOT BE ORDERED, IT SHALL MAKE A STATEMENT ON THE RECORD OF THE  
2 FACTS AND CIRCUMSTANCES UPON WHICH SUCH DETERMINATION IS BASED;

3 (b) A definite sentence shall run concurrently with any sentence  
4 imposed at the same time and shall be consecutive to any other term.

5 S 2. Paragraph (a) of subdivision 1 of section 70.25 of the penal law,  
6 as amended by chapter 372 of the laws of 1981, is amended to read as  
7 follows:

8 (a) An indeterminate sentence shall run [concurrently] CONSECUTIVELY  
9 with all other terms; [and] PROVIDED, HOWEVER, THAT THE COURT MAY, IN  
10 THE INTEREST OF JUSTICE, ORDER A SENTENCE TO RUN CONCURRENTLY IF IT  
11 FINDS MITIGATING CIRCUMSTANCES THAT BEAR DIRECTLY UPON THE MANNER IN  
12 WHICH THE CRIME WAS COMMITTED. THE DEFENDANT AND THE DISTRICT ATTORNEY  
13 SHALL HAVE AN OPPORTUNITY TO PRESENT RELEVANT INFORMATION TO ASSIST THE  
14 COURT IN MAKING ITS DETERMINATION AND THE COURT MAY, IN ITS DISCRETION,  
15 CONDUCT A HEARING WITH RESPECT TO ANY ISSUE BEARING UPON SUCH DETERMI-  
16 NATION. IF THE COURT DETERMINES THAT CONSECUTIVE SENTENCES SHOULD NOT BE  
17 ORDERED, IT SHALL MAKE A STATEMENT ON THE RECORD OF THE FACTS AND  
18 CIRCUMSTANCES UPON WHICH SUCH DETERMINATION IS BASED;

19 S 3. Subdivisions 2-a, 2-b, 2-c, 2-d and 5 of section 70.25 of the  
20 penal law are REPEALED.

21 S 4. Section 70.35 of the penal law, as amended by chapter 3 of the  
22 laws of 1995, is amended to read as follows:

23 S 70.35 Merger of certain definite and indeterminate or determinate  
24 sentences.

25 The service of an indeterminate or determinate sentence of imprison-  
26 ment shall satisfy any definite sentence of imprisonment imposed on a  
27 person for an offense committed prior to the time the indeterminate or  
28 determinate sentence was imposed[, except as provided in paragraph (b)  
29 of subdivision five of section 70.25 of this article]. A person who is  
30 serving a definite sentence at the time an indeterminate or determinate  
31 sentence is imposed shall be delivered to the custody of the state  
32 department of correctional services to commence service of the indeter-  
33 minate or determinate sentence immediately [unless the person is serving  
34 a definite sentence pursuant to paragraph (b) of subdivision five of  
35 section 70.25 of this article]. In any case where the indeterminate or  
36 determinate sentence is revoked or vacated, the person shall receive  
37 credit against the definite sentence for each day spent in the custody  
38 of the state department of correctional services.

39 S 5. Section 70.35 of the penal law, as amended by chapter 527 of the  
40 laws of 1989, is amended to read as follows:

41 S 70.35 Merger of certain definite and indeterminate sentences.

42 The service of an indeterminate sentence of imprisonment shall satisfy  
43 any definite sentence of imprisonment imposed on a person for an offense  
44 committed prior to the time the indeterminate sentence was imposed[,  
45 except as provided in paragraph (b) of subdivision five of section 70.25  
46 of this article]. A person who is serving a definite sentence at the  
47 time an indeterminate sentence is imposed shall be delivered to the  
48 custody of the state department of correctional services to commence  
49 service of the indeterminate sentence immediately [unless the person is  
50 serving a definite sentence pursuant to paragraph (b) of subdivision  
51 five of section 70.25 of this article]. In any case where the indeter-  
52 minate sentence is revoked or vacated, the person shall receive credit  
53 against the definite sentence for each day spent in the custody of the  
54 state department of correctional services.

55 S 6. This act shall take effect on the first of November next succeed-  
56 ing the date on which it shall have become a law and shall apply only to

1 sentences imposed on or after such date provided, however, that the  
2 amendments to paragraph (a) of subdivision 1 of section 70.25 of the  
3 penal law made by section one of this act shall be subject to the expi-  
4 ration and reversion of such paragraph pursuant to section 74 of chapter  
5 3 of the laws of 1995, as amended, when upon such date the provisions of  
6 section two of this act shall take effect and provided further that the  
7 amendments to section 70.35 of the penal law made by section four of  
8 this act shall be subject to the expiration and reversion of such  
9 section pursuant to section 74 of chapter 3 of the laws of 1995, as  
10 amended, when upon such date the provisions of section five of this act  
11 shall take effect.