

5070

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 20, 2013

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Introduced by M. of A. CAMARA, GABRYSZAK, BARRON, ROBINSON -- Multi-Sponsored by -- M. of A. CLARK, HOOPER, McDONOUGH, McKEVITT, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to imposing longer terms of imprisonment upon second sex offenders and persistent sex offenders

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

1     Section 1. Subdivision 3 of section 70.04 of the penal law, as amended  
2     by chapter 3 of the laws of 1995, is amended to read as follows:  
3     3. Term of sentence. [The] (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF  
4     THIS SUBDIVISION, THE term of a determinate sentence for a second  
5     violent felony offender must be fixed by the court as follows:  
6     [(a)] (I) For a class B felony, the term must be at least ten years  
7     and must not exceed twenty-five years;  
8     [(b)] (II) For a class C felony, the term must be at least seven years  
9     and must not exceed fifteen years; [and  
10    (c)] (III) For a class D felony, the term must be at least five years  
11    and must not exceed seven years[.]; AND  
12    [(d)] (IV) For a class E felony, the term must be at least three years  
13    and must not exceed four years.  
14    (B) THE TERM OF A DETERMINATE SENTENCE FOR A SECOND VIOLENT FELONY  
15    OFFENDER, WHO STANDS CONVICTED OF A VIOLENT FELONY OFFENSE DEFINED IN  
16    ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER AND HAS A PREDICATE VIOLENT  
17    FELONY CONVICTION OF AN OFFENSE DEFINED IN SUCH ARTICLE COMMITTED  
18    AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE FIXED BY THE  
19    COURT AS FOLLOWS:  
20    (I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST THIRTY YEARS AND  
21    MUST NOT EXCEED SEVENTY-FIVE YEARS;  
22    (II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST TWENTY-ONE YEARS  
23    AND MUST NOT EXCEED FORTY-FIVE YEARS;

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

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(III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST FIFTEEN YEARS AND MUST NOT EXCEED TWENTY-ONE YEARS; AND

(IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST NINE YEARS AND MUST NOT EXCEED TWELVE YEARS.

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

3. Maximum term of sentence. [The] (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE maximum term of an indeterminate sentence for a second violent felony offender must be fixed by the court as follows:

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

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

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

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

(B) THE TERM OF AN INDETERMINATE SENTENCE FOR A SECOND VIOLENT FELONY OFFENDER, WHO STANDS CONVICTED OF A VIOLENT FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER AND HAS A PREDICATE VIOLENT FELONY CONVICTION OF AN OFFENSE DEFINED IN SUCH ARTICLE COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE FIXED BY THE COURT AS FOLLOWS:

(I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST THIRTY-SIX YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

(II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST TWENTY-FOUR YEARS AND MUST NOT EXCEED FORTY-FIVE YEARS;

(III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST FIFTEEN YEARS AND MUST NOT EXCEED TWENTY-ONE YEARS; AND

(IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST TWELVE YEARS.

S 3. Subdivision 3 of section 70.06 of the penal law, as amended by section 38 of chapter 7 of the laws of 2007, is amended to read as follows:

3. Maximum term of sentence. (A) Except as provided in subdivision [five or] six of this section OR PARAGRAPH (B) OF THIS SUBDIVISION, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

[(a)] (I) For a class A-II felony, the term must be life imprisonment;

[(b)] (II) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;

[(c)] (III) For a class C felony, the term must be at least six years and must not exceed fifteen years;

[(d)] (IV) For a class D felony, the term must be at least four years and must not exceed seven years; and

[(e)] (V) For a class E felony, the term must be at least three years and must not exceed four years; provided, however, that where the sentence is for the class E felony offense specified in section 240.32 of this chapter, the maximum term must be at least three years and must not exceed five years.

(B) THE MAXIMUM TERM OF AN INDETERMINATE SENTENCE FOR A SECOND FELONY OFFENDER, WHO STANDS CONVICTED OF ANY FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE, OR SECTION 255.25 OF THIS CHAPTER AND HAS A PREDICATE FELONY CONVICTION OF ANY SUCH OFFENSE

1 COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE  
2 FIXED BY THE COURT AS FOLLOWS:

3 (I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST TWENTY-SEVEN YEARS  
4 AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

5 (II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST EIGHTEEN YEARS  
6 AND MUST NOT EXCEED FORTY-FIVE YEARS;

7 (III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST TWELVE YEARS AND  
8 MUST NOT EXCEED TWENTY-ONE YEARS; AND

9 (IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST NINE YEARS AND  
10 MUST NOT EXCEED TWELVE YEARS.

11 S 4. Subdivision 3 of section 70.06 of the penal law, as amended by  
12 section 39 chapter 7 of the laws of 2007, is amended to read as follows:

13 3. Maximum term of sentence. (A) Except as provided in PARAGRAPH (B)  
14 OF THIS subdivision [five of this section], or as provided in subdivi-  
15 sion five of section 70.80 of this article, the maximum term of an inde-  
16 terminate sentence for a second felony offender must be fixed by the  
17 court as follows:

18 [(a)] (I) For a class A-II felony, the term must be life imprisonment;

19 [(b)] (II) For a class B felony, the term must be at least nine years  
20 and must not exceed twenty-five years;

21 [(c)] (III) For a class C felony, the term must be at least six years  
22 and must not exceed fifteen years;

23 [(d)] (IV) For a class D felony, the term must be at least four years  
24 and must not exceed seven years; and

25 [(e)] (V) For a class E felony, the term must be at least three years  
26 and must not exceed four years.

27 (B) THE MAXIMUM TERM OF AN INDETERMINATE SENTENCE FOR A SECOND FELONY  
28 OFFENDER, WHO STANDS CONVICTED OF ANY FELONY DEFINED IN ARTICLE ONE  
29 HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OR SECTION 255.25 OF THIS  
30 CHAPTER AND HAS A PREDICATE FELONY CONVICTION OF SUCH OFFENSE COMMITTED  
31 AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, MUST BE FIXED BY THE  
32 COURT AS FOLLOWS:

33 (I) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST TWENTY-SEVEN YEARS  
34 AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

35 (II) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST EIGHTEEN YEARS  
36 AND MUST NOT EXCEED FORTY-FIVE YEARS;

37 (III) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST TWELVE YEARS AND  
38 MUST NOT EXCEED TWENTY-ONE YEARS; AND

39 (IV) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST NINE YEARS AND  
40 MUST NOT EXCEED TWELVE YEARS.

41 S 5. Subdivision 6 of section 70.06 of the penal law, as added by  
42 chapter 3 of the laws of 1995, is amended to read as follows:

43 6. Determinate sentence. [When] (A) EXCEPT AS PROVIDED IN PARAGRAPH  
44 (B) OF THIS SUBDIVISION, WHEN the court has found, pursuant to the  
45 provisions of the criminal procedure law, that a person is a second  
46 felony offender and the sentence to be imposed on such person is for a  
47 violent felony offense, as defined in subdivision one of section 70.02,  
48 the court must impose a determinate sentence of imprisonment the term of  
49 which must be fixed by the court as follows:

50 [(a)] (I) For a class B violent felony offense, the term must be at  
51 least eight years and must not exceed twenty-five years;

52 [(b)] (II) For a class C violent felony offense, the term must be at  
53 least five years and must not exceed fifteen years;

54 [(c)] (III) For a class D violent felony offense, the term must be at  
55 least three years and must not exceed seven years; and

1 [(d)] (IV) For a class E violent felony offense, the term must be at  
2 least two years and must not exceed four years.

3 (B) WHEN THE COURT HAS FOUND, PURSUANT TO THE PROVISIONS OF THE CRIMI-  
4 NAL PROCEDURE LAW, THAT A PERSON IS A SECOND FELONY OFFENDER WITH A  
5 PREDICATE FELONY CONVICTION OF A FELONY DEFINED IN ARTICLE ONE HUNDRED  
6 THIRTY OR TWO HUNDRED SIXTY-THREE, OR SECTION 255.25 OF THIS CHAPTER  
7 COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, AND THE  
8 SENTENCE TO BE IMPOSED ON SUCH PERSON IS FOR A VIOLENT FELONY OFFENSE  
9 DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER, THE COURT MUST  
10 IMPOSE A DETERMINATE SENTENCE OF IMPRISONMENT THE TERM OF WHICH MUST BE  
11 FIXED BY THE COURT AS FOLLOWS:

12 (I) FOR A CLASS B VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST  
13 TWENTY-FOUR YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

14 (II) FOR A CLASS C VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST  
15 FIFTEEN YEARS AND MUST NOT EXCEED FORTY-FIVE YEARS;

16 (III) FOR A CLASS D VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST  
17 NINE YEARS AND MUST NOT EXCEED TWENTY-ONE YEARS; AND

18 (IV) FOR A CLASS E VIOLENT FELONY OFFENSE, THE TERM MUST BE AT LEAST  
19 SIX YEARS AND MUST NOT EXCEED TWELVE YEARS.

20 S 6. Subdivision 3 of section 70.08 of the penal law, as amended by  
21 section 7 of chapter 107 of the laws of 2006, is amended to read as  
22 follows:

23 3. Minimum period of imprisonment. [The] (A) EXCEPT AS PROVIDED IN  
24 PARAGRAPH (B) OF THIS SUBDIVISION, THE minimum period of imprisonment  
25 under an indeterminate life sentence for a persistent violent felony  
26 offender must be fixed by the court as follows:

27 [(a)] (I) For the class A-II felony of predatory sexual assault as  
28 defined in section 130.95 of this chapter or the class A-II felony of  
29 predatory sexual assault against a child as defined in section 130.96 of  
30 this chapter, the minimum period must be twenty-five years;

31 [(a-1)] (II) For a class B felony, the minimum period must be at least  
32 twenty years and must not exceed twenty-five years;

33 [(b)] (III) For a class C felony, the minimum period must be at least  
34 sixteen years and must not exceed twenty-five years; AND

35 [(c)] (IV) For a class D felony, the minimum period must be at least  
36 twelve years and must not exceed twenty-five years.

37 (B) THE MINIMUM PERIOD OF IMPRISONMENT UNDER AN INDETERMINATE LIFE  
38 SENTENCE FOR A PERSISTENT VIOLENT FELONY OFFENDER, WHO STANDS CONVICTED  
39 OF A VIOLENT FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF  
40 THIS CHAPTER AND HAS A PRIOR CONVICTION OF ANY VIOLENT FELONY OFFENSE  
41 DEFINED IN SUCH ARTICLE COMMITTED AGAINST A PERSON UNDER THE AGE OF  
42 EIGHTEEN YEARS, MUST BE FIXED BY THE COURT AS FOLLOWS:

43 (I) FOR A CLASS B FELONY, THE MINIMUM PERIOD MUST BE AT LEAST SIXTY  
44 YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

45 (II) FOR A CLASS C FELONY, THE MINIMUM PERIOD MUST BE AT LEAST FORTY-  
46 EIGHT YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS; AND

47 (III) FOR A CLASS D FELONY, THE MINIMUM PERIOD MUST BE AT LEAST THIR-  
48 TY-SIX YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS.

49 S 7. Subdivision 3 of section 70.08 of the penal law, as amended by  
50 section 8 of chapter 107 of the laws of 2006, is amended to read as  
51 follows:

52 3. Minimum period of imprisonment. [The] (A) EXCEPT AS PROVIDED IN  
53 PARAGRAPH (B) OF THIS SUBDIVISION, THE minimum period of imprisonment  
54 under an indeterminate life sentence for a persistent violent felony  
55 offender must be fixed by the court as follows:

1    [(a)] (I) For the class A-II felony of predatory sexual assault as  
2 defined in section 130.95 of this chapter or the class A-II felony of  
3 predatory sexual assault against a child as defined in section 130.96 of  
4 this chapter, the minimum period must be twenty-five years;  
5    [(a-1)] (II) For a class B felony, the minimum period must be at least  
6 ten years and must not exceed twenty-five years;  
7    [(b)] (III) For a class C felony, the minimum period must be at least  
8 eight years and must not exceed twenty-five years; AND  
9    [(c)] (IV) For a class D felony, the minimum period must be at least  
10 six years and must not exceed twenty-five years.

11    (B) THE MINIMUM PERIOD OF IMPRISONMENT UNDER AN INDETERMINATE LIFE  
12 SENTENCE FOR A PERSISTENT VIOLENT FELONY OFFENDER, WHO STANDS CONVICTED  
13 OF A VIOLENT FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF  
14 THIS CHAPTER AND HAS A PRIOR CONVICTION OF ANY VIOLENT FELONY OFFENSE  
15 DEFINED IN SUCH ARTICLE COMMITTED AGAINST A PERSON UNDER THE AGE OF  
16 EIGHTEEN YEARS, MUST BE FIXED BY THE COURT AS FOLLOWS:

17    (I) FOR A CLASS B FELONY, THE MINIMUM PERIOD MUST BE AT LEAST THIRTY  
18 YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS;

19    (II) FOR A CLASS C FELONY, THE MINIMUM PERIOD MUST BE AT LEAST TWEN-  
20 TY-FOUR YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS; AND

21    (III) FOR A CLASS D FELONY, THE MINIMUM PERIOD MUST BE AT LEAST EIGH-  
22 TEEN YEARS AND MUST NOT EXCEED SEVENTY-FIVE YEARS.

23    S 8. Subdivision 2 of section 70.10 of the penal law, as amended by  
24 chapter 7 of the laws of 2007, is amended to read as follows:

25    2. Authorized sentence. When the court has found, pursuant to the  
26 provisions of the criminal procedure law, that a person is a persistent  
27 felony offender, and when it is of the opinion that the history and  
28 character of the defendant and the nature and circumstances of his crim-  
29 inal conduct indicate that extended incarceration and life-time super-  
30 vision will best serve the public interest, the court, in lieu of impos-  
31 ing the sentence of imprisonment authorized by section 70.00, 70.02,  
32 70.04, 70.06 or subdivision five of section 70.80 for the crime of which  
33 such person presently stands convicted, may impose the sentence of  
34 imprisonment authorized by that section for a class A-I felony;  
35 PROVIDED, HOWEVER IF SUCH PERSON STANDS CONVICTED OF ANY FELONY DEFINED  
36 IN ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE OR SECTION  
37 255.25 OF THIS CHAPTER AND HAS A PRIOR CONVICTION OF SUCH AN OFFENSE  
38 COMMITTED AGAINST A PERSON UNDER THE AGE OF EIGHTEEN YEARS, THE COURT  
39 MUST IMPOSE THE SENTENCE OF IMPRISONMENT AUTHORIZED BY PARAGRAPH (B) OF  
40 SUBDIVISION THREE OF SECTION 70.08 OF THIS ARTICLE FOR PERSISTENT  
41 VIOLENT FELONY OFFENDERS. In such event the reasons for the court's  
42 opinion shall be set forth in the record.

43    S 9. This act shall take effect on the first of November next succeed-  
44 ing the date on which it shall have become a law, provided that the  
45 amendments to subdivision 3 of section 70.04 of the penal law, made by  
46 section one of this act, to subdivision 3 of section 70.06 of the penal  
47 law, made by section three of this act, to subdivision 6 of section  
48 70.06 of the penal law, made by section five of this act, and to subdivi-  
49 sion 3 of section 70.08 of the penal law, made by section six of this  
50 act, shall not affect the expiration and repeal of such subdivisions  
51 pursuant to chapter 3 of the laws of 1995, as amended, and shall expire  
52 and be deemed repealed therewith, when upon such dates sections two,  
53 four and seven of this act shall take effect.