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

5108

2013-2014 Regular Sessions

I N S E N A T E

May 10, 2013

Introduced by Sen. NOZZOLIO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to sentencing; and to repeal certain provisions of the criminal procedure law relating thereto

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

Section 1. Subdivision 2 of section 60.02 of the penal law, as amended by chapter 471 of the laws of 1980, is amended to read as follows:

(2) If the sentence is to be imposed upon a youthful offender finding which has been substituted for a conviction for any felony, the court must impose a sentence authorized to be imposed upon a person convicted of a class E felony [provided, however, that the court must not impose a sentence of conditional discharge or unconditional discharge if the youthful offender finding was substituted for a conviction of a felony defined in article two hundred twenty of this chapter], AS HEREINAFTER PROVIDED:

(A) IF THE YOUTHFUL OFFENDER FINDING WAS SUBSTITUTED FOR A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER, THEN THE SENTENCE SHALL BE AS AUTHORIZED BY SECTION 60.04 FOR A CLASS E FELONY, AND IF A DETERMINATE SENTENCE OF IMPRISONMENT IS IMPOSED, THE CORRESPONDING PERIOD OF POST-RELEASE SUPERVISION PROVIDED FOR THAT CLASS E FELONY BY SECTION 70.45 OF THIS TITLE SHALL ALSO BE IMPOSED. IN ADDITION TO SUCH AUTHORIZED SENTENCES, IF THE DEFENDANT MEETS THE REQUIREMENTS OF SUBDIVISION TWO OF SECTION 60.14 OF THIS ARTICLE, A COURT MAY IMPOSE THE PAROLE SUPERVISION SENTENCE AUTHORIZED BY THAT SECTION.

(B) IF THE YOUTHFUL OFFENDER FINDING WAS SUBSTITUTED FOR ANY OTHER FELONY, THEN THE SENTENCE SHALL BE AS AUTHORIZED BY SECTION 60.01 OF THIS ARTICLE FOR A SENTENCE UPON A CONVICTION OF A CLASS E FELONY

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

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OFFENSE; PROVIDED, HOWEVER, THAT IF THE YOUTHFUL OFFENDER FINDING WAS SUBSTITUTED FOR A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS TITLE OR A FELONY SEX OFFENSE AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.80 OF THIS TITLE AND A SENTENCE OF IMPRISONMENT IN EXCESS OF ONE YEAR IS IMPOSED TO BE SERVED IN A FACILITY OF THE STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION IS IMPOSED, THE SENTENCE SHALL BE THE DETERMINATE SENTENCE OF IMPRISONMENT AUTHORIZED FOR A CLASS E VIOLENT FELONY OFFENSE OR FELONY SEX OFFENSE, AS THE CASE MAY BE, AND THE CORRESPONDING PERIOD OF POST-RELEASE SUPERVISION PROVIDED FOR THAT CLASS E FELONY BY SECTION 70.45 OF THIS TITLE.

S 2. Section 410.91 of the criminal procedure law is REPEALED.

S 3. The penal law is amended by adding a new section 60.14 to read as follows:

S 60.14 SENTENCE OF PAROLE SUPERVISION.

1. DEFINITIONS.

(A) AN "ELIGIBLE DEFENDANT" IS A PERSON WHO:

(I) STANDS CONVICTED OF EITHER (1) A CLASS B FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER OTHER THAN THE FELONY DEFINED IN SECTION 220.48 OF THIS CHAPTER AND IS SENTENCED TO A DETERMINATE SENTENCE OF IMPRISONMENT PURSUANT TO SUBDIVISION TWO OF SECTION 70.70 OF THIS TITLE; OR (2) A CLASS C, D, OR E FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER AND IS SENTENCED TO A DETERMINATE SENTENCE OF IMPRISONMENT PURSUANT TO SUBDIVISION THREE OF SECTION 70.70 OF THIS TITLE; OR (3) A NON-DRUG SPECIFIED FELONY OR FELONIES AND IS SENTENCED TO AN INDETERMINATE SENTENCE OF IMPRISONMENT PURSUANT TO SECTION 70.06 OF THIS TITLE; AND

(II) STANDS CONVICTED OF NO OTHER FELONY OFFENSE; AND

(III) HAS NOT PREVIOUSLY BEEN CONVICTED OF A CLASS A FELONY, A CLASS B FELONY OTHER THAN A CLASS B FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER, OR A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THIS TITLE; AND

(IV) IS NOT UNDER THE JURISDICTION OF OR AWAITING DELIVERY TO THE STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

(B) A "NON-DRUG SPECIFIED FELONY" IS A CLASS D OR E FELONY DEFINED BY ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER: BURGLARY IN THE THIRD DEGREE AS DEFINED IN SECTION 140.20, CRIMINAL MISCHIEF IN THE THIRD DEGREE AS DEFINED IN SECTION 145.05, CRIMINAL MISCHIEF IN THE SECOND DEGREE AS DEFINED IN SECTION 145.10, GRAND LARCENY IN THE FOURTH DEGREE AS DEFINED IN SUBDIVISION ONE, TWO, THREE, FOUR, FIVE, SIX, EIGHT, NINE OR TEN OF SECTION 155.30, GRAND LARCENY IN THE THIRD DEGREE AS DEFINED IN SECTION 155.35 (EXCEPT WHERE THE PROPERTY CONSISTS OF ONE OR MORE FIREARMS, RIFLES OR SHOTGUNS), UNAUTHORIZED USE OF A VEHICLE IN THE SECOND DEGREE AS DEFINED IN SECTION 165.06, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH DEGREE AS DEFINED IN SUBDIVISION ONE, TWO, THREE, FIVE OR SIX OF SECTION 165.45, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE AS DEFINED IN SECTION 165.50 (EXCEPT WHERE THE PROPERTY CONSISTS OF ONE OR MORE FIREARMS, RIFLES OR SHOTGUNS), FORGERY IN THE SECOND DEGREE AS DEFINED IN SECTION 170.10, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE AS DEFINED IN SECTION 170.25, UNLAWFULLY USING SLUGS IN THE FIRST DEGREE AS DEFINED IN SECTION 170.60, OR AN ATTEMPT TO COMMIT ANY OF THE AFOREMENTIONED OFFENSES IF SUCH ATTEMPT CONSTITUTES A FELONY OFFENSE.

(C) FOR THE PURPOSES OF THIS SECTION, THE TERM "PAROLE" SHALL INCLUDE POST-RELEASE SUPERVISION AND THE TERM "PAROLEE" SHALL INCLUDE A PERSON ON POST-RELEASE SUPERVISION.

2. A COURT MAY DIRECT THAT A DETERMINATE OR INDETERMINATE SENTENCE OF IMPRISONMENT BE EXECUTED AS A SENTENCE OF PAROLE SUPERVISION IF THE COURT FINDS (A) THAT THE DEFENDANT IS AN ELIGIBLE DEFENDANT; (B) THAT THE DEFENDANT HAS A HISTORY OF CONTROLLED SUBSTANCE DEPENDENCE THAT IS A SIGNIFICANT CONTRIBUTING FACTOR TO SUCH DEFENDANT'S CRIMINAL CONDUCT; (C) THAT SUCH DEFENDANT'S CONTROLLED SUBSTANCE DEPENDENCE COULD BE APPROPRIATELY ADDRESSED BY A SENTENCE OF PAROLE SUPERVISION; AND (D) THAT IMPOSITION OF SUCH A SENTENCE WOULD NOT HAVE AN ADVERSE EFFECT ON PUBLIC SAFETY OR PUBLIC CONFIDENCE IN THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM. IF THE COURT DIRECTS THAT A SENTENCE OF IMPRISONMENT BE EXECUTED AS A SENTENCE OF PAROLE SUPERVISION, IT SHALL REMAND THE DEFENDANT FOR IMMEDIATE DELIVERY TO A RECEPTION CENTER OPERATED BY THE STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, IN ACCORDANCE WITH SECTION 430.20 OF THE CRIMINAL PROCEDURE LAW AND SECTION SIX HUNDRED ONE OF THE CORRECTION LAW, FOR A PERIOD NOT TO EXCEED TEN DAYS. AN INDIVIDUAL WHO RECEIVES SUCH A SENTENCE SHALL BE PLACED UNDER THE IMMEDIATE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION AND MUST COMPLY WITH THE CONDITIONS OF PAROLE, WHICH SHALL INCLUDE AN INITIAL PLACEMENT IN A DRUG TREATMENT CAMPUS FOR A PERIOD OF NINETY DAYS AT WHICH TIME THE DEFENDANT SHALL BE RELEASED THEREFROM.

3. UPON DELIVERY OF THE DEFENDANT TO THE RECEPTION CENTER, HE OR SHE SHALL BE GIVEN A COPY OF THE CONDITIONS OF PAROLE BY A REPRESENTATIVE OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION AND SHALL ACKNOWLEDGE RECEIPT OF A COPY OF THE CONDITIONS IN WRITING. THE CONDITIONS SHALL BE ESTABLISHED IN ACCORDANCE WITH ARTICLE TWELVE-B OF THE EXECUTIVE LAW AND THE RULES AND REGULATIONS OF THE BOARD OF PAROLE. THEREAFTER, AND WHILE THE PAROLEE IS PARTICIPATING IN THE INTENSIVE DRUG TREATMENT PROGRAM PROVIDED AT THE DRUG TREATMENT CAMPUS, THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION SHALL ASSESS THE PAROLEE'S SPECIAL NEEDS AND SHALL DEVELOP AN INTENSIVE PROGRAM OF PAROLE SUPERVISION THAT WILL ADDRESS THE PAROLEE'S SUBSTANCE ABUSE HISTORY AND WHICH SHALL INCLUDE PERIODIC URINALYSIS TESTING. UNLESS INAPPROPRIATE, SUCH PROGRAM SHALL INCLUDE THE PROVISION OF TREATMENT SERVICES BY A COMMUNITY-BASED SUBSTANCE ABUSE SERVICE PROVIDER WHICH HAS A CONTRACT WITH THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

4. UPON COMPLETION OF THE DRUG TREATMENT PROGRAM AT THE DRUG TREATMENT CAMPUS, A PAROLEE WILL BE FURNISHED WITH MONEY, CLOTHING AND TRANSPORTATION IN A MANNER CONSISTENT WITH SECTION ONE HUNDRED TWENTY-FIVE OF THE CORRECTION LAW TO PERMIT THE PAROLEE'S TRAVEL FROM THE DRUG TREATMENT CAMPUS TO THE COUNTY IN WHICH THE PAROLEE'S SUPERVISION WILL CONTINUE.

5. IF THE PAROLE OFFICER HAVING CHARGE OF A PERSON SENTENCED TO PAROLE SUPERVISION PURSUANT TO THIS SECTION HAS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON HAS VIOLATED THE CONDITIONS OF HIS OR HER PAROLE, THE PROCEDURES OF SUBDIVISION THREE OF SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW SHALL APPLY TO THE ISSUANCE OF A WARRANT AND THE CONDUCT OF FURTHER PROCEEDINGS; PROVIDED, HOWEVER, THAT A PAROLE VIOLATION WARRANT ISSUED FOR A VIOLATION COMMITTED WHILE THE PAROLEE IS BEING SUPERVISED AT A DRUG TREATMENT CAMPUS SHALL CONSTITUTE AUTHORITY FOR THE IMMEDIATE PLACEMENT OF THE PAROLEE INTO A CORRECTIONAL FACILITY OPERATED BY THE STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, WHICH TO THE EXTENT PRACTICABLE SHALL BE REASONABLY PROXIMATE TO THE PLACE AT WHICH THE VIOLATION OCCURRED, TO HOLD IN TEMPORARY DETENTION PENDING COMPLETION OF THE PROCEDURES REQUIRED BY SUBDIVISION THREE OF SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW.

S 4. Subdivision 7 of section 70.06 of the penal law, as amended by section 123 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

7. [Notwithstanding any other provision of law, in the case of a person sentenced for a specified offense or offenses as defined in subdivision five of section 410.91 of the criminal procedure law, who stands convicted of no other felony offense, who has not previously been convicted of either a violent felony offense as defined in section 70.02 of this article, a class A felony offense or a class B felony offense, and is not under the jurisdiction of or awaiting delivery to the department of corrections and community supervision, the] AS AUTHORIZED BY AND IN ACCORDANCE WITH SECTION 60.14 OF THIS TITLE, A court may direct that [such] AN INDETERMINATE sentence OF IMPRISONMENT IMPOSED PURSUANT TO THIS SECTION UPON A PERSON CONVICTED OF A CLASS D OR CLASS E FELONY be executed as a parole supervision sentence [as defined in and pursuant to the procedures prescribed in section 410.91 of the criminal procedure law].

S 5. Paragraph (d) of subdivision 2 of section 70.70 of the penal law, as added by section 23 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

(d) [The] SENTENCE OF PAROLE SUPERVISION. AS AUTHORIZED BY AND IN ACCORDANCE WITH SECTION 60.14 OF THIS TITLE, A court may direct that a determinate sentence imposed PURSUANT TO THIS SECTION on a defendant convicted of a class B felony, other than the class B felony defined in section 220.48 of this chapter[, pursuant to this subdivision], be executed as a sentence of parole supervision [in accordance with section 410.91 of the criminal procedure law].

S 6. Paragraph (d) of subdivision 3 of section 70.70 of the penal law, as amended by section 127-k of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(d) Sentence of parole supervision. [In the case of a person sentenced for a specified offense or offenses as defined in subdivision five of section 410.91 of the criminal procedure law, who stands convicted of no other felony offense, who has not previously been convicted of either a violent felony offense as defined in section 70.02 of this article, a class A felony offense or a class B felony offense, and is not under the jurisdiction of or awaiting delivery to the department of corrections and community supervision, the] AS AUTHORIZED BY AND IN ACCORDANCE WITH SECTION 60.14 OF THIS TITLE, A court may direct that a determinate sentence imposed pursuant to this subdivision [shall] UPON A PERSON CONVICTED OF A CLASS C, CLASS D, OR CLASS E FELONY be executed as a parole supervision sentence [as defined in and pursuant to the procedures prescribed in section 410.91 of the criminal procedure law].

S 7. Subdivision 4 of section 70.00 of the penal law, as amended by chapter 738 of the laws of 2004, is amended to read as follows:

4. Alternative definite sentence for CERTAIN CLASS C FELONIES AND FOR class D and E felonies. When a person, other than a second or persistent felony offender, is sentenced for a CLASS C FELONY OTHER THAN A CLASS C VIOLENT FELONY OFFENSE DEFINED BY PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE OR A CLASS C FELONY LISTED IN SUBDIVISION FOUR OF SECTION 60.05 OF THIS TITLE, A class D FELONY or A class E felony, and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate or determinate sentence, the

court may impose a definite sentence of imprisonment and fix a term of one year or less.

S 8. Paragraph (c) of subdivision 3 of section 70.02 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

(c) For a class D felony, the term must be at least [two] ONE AND ONE-HALF years and must not exceed seven years, provided, however, that the term must be: (i) at least two years and must not exceed eight years where the sentence is for the crime of menacing a police officer or peace officer as defined in section 120.18 of this chapter; and (ii) at least three and one-half years and must not exceed seven years where the sentence is imposed for the crime of criminal possession of a weapon in the third degree as defined in subdivision ten of section 265.02 of this chapter;

S 9. Subdivision 3 of section 70.08 of the penal law, as amended by section 7 of chapter 107 of the laws of 2006, is amended by adding a new paragraph (d) to read as follows:

(D) FOR A CLASS E FELONY THE MINIMUM PERIOD MUST BE AT LEAST THREE YEARS AND MUST NOT EXCEED TWENTY-FIVE YEARS.

S 10. Subdivision 3 of section 70.08 of the penal law, as amended by section 8 of chapter 107 of the laws of 2006, is amended by adding a new paragraph (d) to read as follows:

(D) FOR A CLASS E FELONY THE MINIMUM PERIOD MUST BE AT LEAST THREE YEARS AND MUST NOT EXCEED TWENTY-FIVE YEARS.

S 11. Subdivision 2 of section 70.10 of the penal law, as amended by chapter 7 of the laws of 2007, is 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 persistent felony offender, and when it is of the opinion that the history and character of the defendant and the nature and circumstances of his OR HER criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 70.00, 70.02, 70.04, 70.06 or subdivision five of section 70.80 OF THIS ARTICLE for the crime of which such person presently stands convicted, may impose [the sentence of imprisonment authorized by that section for a class A-I felony] AN INDETERMINATE SENTENCE OF IMPRISONMENT. THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OF IMPRISONMENT SHALL BE LIFE IMPRISONMENT, AND THE MINIMUM PERIOD OF IMPRISONMENT OF THE INDETERMINATE SENTENCE SHALL BE FIXED BY THE COURT AT NOT LESS THAN FIFTEEN YEARS NOR MORE THAN TWENTY-FIVE YEARS. In such event the reasons for the court's opinion shall be set forth in the record.

S 12. Subdivision 4 of section 485.10 of the penal law, as added by chapter 107 of the laws of 2000, is amended to read as follows:

4. Notwithstanding any other provision of law, when a person is convicted of a hate crime [pursuant to this article] and the specified offense is a class A-1 felony, THE SENTENCE SHALL BE AS AUTHORIZED FOR THAT CLASS A-1 FELONY; PROVIDED, HOWEVER, IF THE AUTHORIZED SENTENCE IS OR INCLUDES AN INDETERMINATE SENTENCE OF IMPRISONMENT, OTHER THAN A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE, the minimum period of the indeterminate sentence shall be not less than twenty years.

S 13. Subparagraph (ii) of paragraph (d) of subdivision 5 of section 220.10 of the criminal procedure law, as added by chapter 233 of the laws of 1980, is amended to read as follows:

(ii) Except as provided in subparagraph (i) of this paragraph, where the indictment charges a class B violent felony offense or a class C

violent felony offense, then a plea of guilty must include at least a plea of guilty to a class D violent felony offense; EXCEPT, IF THE CLASS B VIOLENT FELONY OFFENSE WAS MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20 OF THE PENAL LAW, THEN THE PLEA OF GUILTY MAY BE TO THE CLASS C FELONY OF MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15 OF THE PENAL LAW IN LIEU OF A PLEA OF GUILTY TO A CLASS D VIOLENT FELONY OFFENSE;

S 14. Subparagraph (iv) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as added by chapter 233 of the laws of 1980, is amended to read as follows:

(iv) Except as provided in subparagraph (iii) of this paragraph, a plea of guilty, whether to the entire indictment or part of the indictment, for any crime other than a class A felony or a class B, C, or D violent felony offense as defined in subdivision one of section 70.02 of the penal law, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class B or class C violent felony offense as defined in subdivision one of section 70.02 of the penal law; EXCEPT, IF THE CLASS B VIOLENT FELONY OFFENSE WAS MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20 OF THE PENAL LAW, THEN THE PLEA OF GUILTY MAY BE TO THE CLASS C FELONY OF MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15 OF THE PENAL LAW IN LIEU OF A PLEA OF GUILTY TO A CLASS C OR D VIOLENT FELONY OFFENSE,

S 15. Paragraph (a) of subdivision 4 of section 70.20 of the penal law, as amended by section 124 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(a) Notwithstanding any other provision of law to the contrary, a juvenile offender, or a juvenile offender who is adjudicated a youthful offender and given an indeterminate, DETERMINATE or a definite sentence, shall be committed to the custody of the commissioner of the office of children and family services who shall arrange for the confinement of such offender in secure facilities of the office. The release or transfer of such offenders from the office of children and family services shall be governed by section five hundred eight of the executive law.

S 16. This act shall take effect immediately; provided, however, that this act shall apply to offenses committed on or after such effective date; and provided further, that the amendments to subdivision 7 of section 70.06 of the penal law made by section four of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; and provided further, that the amendments to subdivision 3 of section 70.08 of the penal law made by section nine of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section ten of this act shall take effect.