STATE OF NEW YORK

3764

2017-2018 Regular Sessions

IN SENATE

January 26, 2017

Introduced by Sen. FUNKE -- 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 a sentence of imprisonment for sex offenses where the victim of the offense lacked the ability to consent due to incapacity

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 60.05 of the penal law, as amended by chapter 410 of the laws of 1979, the section heading, subdivisions 2, 3 and 4 as amended by chapter 738 of the laws of 2004, subdivision 1 as amended by chapter 7 of the laws of 2007, and subdivision 5 as amended by chapter 405 of the laws of 2010, is amended to read as follows:

§ 60.05 Authorized dispositions; other class A, B, certain C and D felonies**, sex offenses** and multiple felony offenders.

1. Applicability. Except as provided in section 60.04 of this article governing the authorized dispositions applicable to felony offenses defined in article two hundred twenty or two hundred twenty-one of this chapter or in section 60.13 of this article governing the authorized dispositions applicable to felony sex offenses defined in paragraph (a) of subdivision one of section 70.80 of this title, this section shall govern the dispositions authorized when a person is to be sentenced upon a conviction of a class A felony, a class B felony or a class C, class D**,** or class E felony**, or sex offense** specified herein, or when a person is to be sentenced upon a conviction of a felony as a multiple felony offender.

2. Class A felony. Except as provided in subdivisions three and four of section 70.06 of this chapter, every person convicted of a class A felony must be sentenced to imprisonment in accordance with section 70.00 of this title, unless such person is convicted of murder in the first degree and is sentenced in accordance with section 60.06 of this article.

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

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3. Class B felony. Except as provided in subdivision six of this section, every person convicted of a class B violent felony offense as defined in subdivision one of section 70.02 of this title, must be sentenced to imprisonment in accordance with such section 70.02; and, except as provided in subdivision six of this section, every person convicted of any other class B felony must be sentenced to imprisonment in accordance with section 70.00 of this title.

4. Certain class C felonies. Except as provided in subdivision six, every person convicted of a class C violent felony offense as defined in subdivision one of section 70.02 of this title, must be sentenced to imprisonment in accordance with section 70.02 of this title; and, except as provided in subdivision six of this section, every person convicted of the class C felonies of: attempt to commit any of the class B felonies of bribery in the first degree as defined in section 200.04, bribe receiving in the first degree as defined in section 200.12, conspiracy in the second degree as defined in section 105.15 and criminal mischief in the first degree as defined in section 145.12; criminal usury in the first degree as defined in section 190.42, rewarding official misconduct in the first degree as defined in section 200.22, receiving reward for official misconduct in the first degree as defined in section 200.27, attempt to promote prostitution in the first degree as defined in section 230.32, promoting prostitution in the second degree as defined in section 230.30, arson in the third degree as defined in section 150.10 of this chapter, must be sentenced to imprisonment in accordance with section 70.00 of this title.

5. Certain class D felonies. Except as provided in subdivision six of this section, every person convicted of the class D felonies of assault in the second degree as defined in section 120.05, strangulation in the second degree as defined in section 121.12 or attempt to commit a class C felony as defined in section 230.30 of this chapter, must be sentenced in accordance with section 70.00 or 85.00 of this title.

6. Multiple felony offender. When the court imposes sentence upon a second violent felony offender, as defined in section 70.04, or a second felony offender, as defined in section 70.06, the court must impose a sentence of imprisonment in accordance with section 70.04 or 70.06, as the case may be, unless it imposes a sentence of imprisonment in accordance with section 70.08 or 70.10.

7. **Certain sex offenses. Any person convicted of a sex offense under article one hundred thirty of this chapter, where the victim of the offense lacked the ability to consent due to incapacity pursuant to section 130.05 of this chapter, shall be sentenced to imprisonment in accordance with article seventy of this title.**

8. Fines. Where the court imposes a sentence of imprisonment in accordance with this section, the court also may impose a fine authorized by article eighty and in such case the sentence shall be both imprisonment and a fine.

§ 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.