STATE OF NEW YORK

6038--A

2017-2018 Regular Sessions

IN SENATE

May 10, 2017

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law and the penal law, in relation to sentencing of repeat felons

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

Section 1. Section 800 of the correction law, as amended by chapter 653 of the laws of 1974, is amended to read as follows:

§ 800. Applicability. [~~The~~] **1. Except as provided in subdivision two of this section, the** provisions of this article shall apply, to the exclusion of all other provisions of this chapter relating to good behavior allowances, where sentence has been imposed pursuant to the provisions of the penal law as enacted by chapter ten hundred thirty of the laws of nineteen hundred sixty-five, as amended, or where the sentence is a reformatory sentence of imprisonment. Matters not expressly covered herein or covered in such penal law shall be governed by such other provisions of law as may be applicable.

2. This article shall not apply to the following:

(a) second violent felony offenders as defined by section 70.04 of the penal law;

(b) second felony offenders as defined by section 70.06 of the penal law;

(c) persons eligible for sentencing under section 70.07 of the penal law governing second child sexual assault felonies;

(d) persistent violent felony offenders as defined by section 70.08 of the penal law; and

(e) persistent felony offenders as defined by section 70.10 of the penal law.

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

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§ 2. Subdivision 3 of section 70.04 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

3. Term of sentence. The term of a determinate 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 [~~ten~~] **fourteen** years and must not exceed twenty-five years;

(b) For a class C felony, the term must be at least [~~seven~~] **nine** years and must not exceed fifteen years; and

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

(d) For a class E felony, the term must be at least three **and one-half** years and must not exceed four years.

§ 3. Subdivisions 2, 3 and 6 of section 70.06 of the penal law, subdivisions 2 and 3 as amended by chapter 7 of the laws of 2007 and subdivision 6 as added by chapter 3 of the laws of 1995, are amended to read as follows:

2. Authorized sentence. Except as provided in subdivision [~~five or~~] six of this section, or as provided in subdivision five of section 70.80 of this article, when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose [~~an indeterminate~~] **a determinate** sentence of imprisonment. 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~~] **Term** of sentence. Except as provided in subdivision [~~five or~~] six of this section, or as provided in subdivision five of section 70.80 of this article, the [~~maximum~~] term of [~~an indeterminate~~] **a determinate** sentence for a second felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be [~~life imprisonment~~] **at least fifteen years and must not exceed twenty-five years**;

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

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

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

(e) For a class E felony, the term must be at least three **and one-half** 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 **and one-half** years and must not exceed five years.

6. Determinate sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender and the sentence to be imposed on such person is for a violent felony offense, as defined in subdivision one of section 70.02 **of this article**, the court must impose a determinate sentence of imprisonment the term of which must be fixed by the court as follows:

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

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

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

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

§ 4. Paragraphs (a) and (b) of subdivision 4 of section 70.07 of the penal law, as amended by chapter 107 of the laws of 2006, are amended to read as follows:

(a) where the defendant stands convicted of such sexual assault against a child and such conviction is for a class A-II or class B felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose [~~an indeterminate~~] a determinate sentence of imprisonment, the [~~maximum~~] term [~~of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years~~] must be at least twenty-five years and must not exceed sixty years;

(b) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years; provided however, that if the court determines that a longer sentence is warranted, the court shall set forth on the record the reasons for such determination and, in lieu of imposing such sentence of imprisonment, may impose [~~an indeterminate~~] a determinate sentence of imprisonment, the [~~maximum~~] term [~~of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years~~] must be at least twenty-five years and must not exceed fifty years;

§ 5. Section 70.45 of the penal law is amended by adding a new subdivision 3-a to read as follows:

3-a. Conditions of post-release supervision; specific cases. For persons who have been sentenced pursuant to section 70.02, 70.04, 70.06, 70.07, 70.08 or 70.10 of this article, the board of parole shall impose as a condition of post-release supervision that the repeat felony offender or violent felony offender be required to wear a tracking device for a period of at least six months after release such that at any time the board of parole can access where he or she is located.

§ 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law, provided that the amendments to subdivision 3 of section 70.04 and subdivisions 2 and 3 of section 70.06 of the penal law made by sections two and three of this act shall not affect the expiration of such subdivisions and shall expire and be deemed repealed therewith; and provided, further, that the amendments to subdivision 6 of section 70.06 of the penal law made by section three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.