

STATE OF NEW YORK

9166

IN ASSEMBLY

January 31, 2022

Introduced by M. of A. MEEKS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the correction law, in relation to eliminating mandatory minimums; to amend the sentencing reform act of 1995, in relation to the effectiveness thereof; to amend chapter 339 of the laws of 1972, amending the correction law and the penal law relating to inmate work release, furlough and leave, in relation to the effectiveness thereof; to amend chapter 435 of the laws of 1997, amending the military law and other laws relating to various provisions, in relation to the effectiveness thereof; to amend part E of chapter 62 of the laws of 2003, amending the correction law and other laws relating to various provisions, in relation to the effectiveness thereof; to amend chapter 3 of the laws of 1995, amending the correction law and other laws relating to the incarceration fee, in relation to the effectiveness thereof; and to repeal certain provisions of the penal law, the criminal procedure law and the correction law relating thereto

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

1 Section 1. Subdivision 6 of section 1.05 of the penal law, as amended
2 by chapter 98 of the laws of 2006, is amended to read as follows:

3 6. To [~~insure the public~~] promote community safety by [~~preventing the~~
4 ~~commission of offenses through the deterrent influence of the sentences~~
5 ~~authorized,~~] supporting the rehabilitation of [~~these~~] individuals who
6 have been convicted, [~~the promotion of~~] their successful and productive
7 reentry and reintegration into society, and [~~their~~] confinement only
8 when required [~~in the interests of public protection~~] in accordance with
9 subdivision three of section 60.03 of this chapter.

10 § 2. The penal law is amended by adding a new section 60.03 to read as
11 follows:

12 § 60.03 Presumption against sentences of imprisonment.

13 1. There shall be a presumption against sentences of imprisonment in
14 all cases which may be overcome only in extraordinary circumstances. The
15 term "sentence of imprisonment" means any sentence of incarceration.

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

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1 2. For any felony, an authorized sentence includes a sentence other
2 than incarceration or a definite sentence of imprisonment. The court may
3 fix such authorized sentence for one year or less.

4 3. (a) Before imposing a sentence of imprisonment, the court shall
5 conduct a hearing to determine whether the presumption against incarcer-
6 ation has been overcome.

7 (i) In order to overcome the presumption against incarceration, the
8 prosecutor must show, by clear and convincing evidence, that there are
9 no means to address the unlawful behavior and promote community safety
10 other than imprisonment.

11 (ii) At the hearing the court shall consider oral and written argu-
12 ments, take testimony from witnesses offered by either party, and
13 consider relevant evidence to assist in making its determination,
14 including testimony and evidence admitted in prior proceedings in the
15 same case. Reliable hearsay shall be admissible at such hearing. Testi-
16 mony of witnesses relating to prior bad acts or convictions of the
17 defendant shall not be considered relevant to the court's determination.

18 (iii) The court shall detail its findings in writing, including an
19 individualized finding as to why the presumption has been overcome.

20 (iv) If the court finds that the presumption has been overcome, it
21 shall proceed to impose the minimum term of imprisonment necessary to
22 achieve the goals of sentencing.

23 (v) If a hearing is not held or the presumption has not been overcome
24 the court shall impose a non-incarceratory sentence unless the hearing
25 has been waived pursuant to subdivision five of this section.

26 (vi) A defendant shall not be required to pay for any part of the cost
27 of their sentence.

28 (vii) Upon request of the defendant, the court shall conduct the hear-
29 ing promptly after the rendering of a guilty verdict or the entry of a
30 guilty plea.

31 (b) In considering whether the presumption against incarceration has
32 been overcome and, where relevant, what the appropriate incarceratory
33 sentence should be, the court shall consider the following:

34 (i) the unique harms of imprisonment, including interruption of
35 defendant's connections to family, employment, needed public benefits,
36 healthcare, and housing;

37 (ii) the financial cost of incarceration to the state and/or locali-
38 ties;

39 (iii) any mitigating circumstances that bear on the manner in which
40 the crime was committed; and

41 (iv) the history, character and condition of the defendant, including,
42 but not limited to:

43 (1) presence of physical or emotional trauma either direct or
44 witnessed;

45 (2) need for community-based treatment to address substance use,
46 mental health, and/or physical health issues;

47 (3) history of learning disabilities, below average IQ, academic
48 difficulty, or physical disability;

49 (4) history of familial disruption such as divorce, domestic violence,
50 sexual abuse, assault, drug or alcohol abuse, or involvement in the
51 criminal legal system;

52 (5) age;

53 (6) potential immigration consequences of sentence;

54 (7) lack of prior criminal record;

55 (8) history of employment;

56 (9) lack of stable housing, education, or financial instability;

1 (10) vulnerability to abuse in prison, including evidence of past
2 victimization; and

3 (11) the factors set forth in subdivision one of section 60.12 of this
4 title.

5 (c) The court shall not consider or draw any negative inference from a
6 defendant's silence or failure to express remorse.

7 4. If a defendant testifies at the hearing, such testimony shall not
8 be admissible in any subsequent proceeding.

9 5. A defendant may knowingly and voluntarily waive their rights under
10 this section.

11 § 3. Subdivision 1 of section 380.50 of the criminal procedure law, as
12 amended by chapter 307 of the laws of 1992, is amended to read as
13 follows:

14 1. The court shall impose sentence in accordance with the procedures
15 set forth in section 60.03 of the penal law. At the time of pronouncing
16 sentence, the court must accord the prosecutor an opportunity to make a
17 statement with respect to any matter relevant to the question of
18 sentence. The court must then accord counsel for the defendant an oppor-
19 tunity to speak on behalf of the defendant. The defendant also has the
20 right to make a statement personally in his or her own behalf, and
21 before pronouncing sentence the court must ask the defendant whether he
22 or she wishes to make such a statement.

23 § 4. Paragraph (a) of subdivision 3 of section 390.30 of the criminal
24 procedure law, as added by chapter 14 of the laws of 1985, is amended to
25 read as follows:

26 (a) The report of the pre-sentence investigation must contain an anal-
27 ysis of as much of the information gathered in the investigation as the
28 agency that conducted the investigation deems relevant to the question
29 of sentence. The report must also include any other ~~information~~ infor-
30 mation that the court directs to be included and the material required
31 by paragraph (b) of this subdivision which shall be considered part of
32 the report. The report shall include an analysis of the actual finan-
33 cial cost of incarceration to the state and/or localities of the poten-
34 tial sentences that may be imposed.

35 § 5. Paragraph (a) of subdivision 2 of section 390.50 of the criminal
36 procedure law, as amended by chapter 31 of the laws of 2019, is amended
37 to read as follows:

38 (a) Not less than one court day prior to sentencing, unless such time
39 requirement is waived by the parties, the pre-sentence report or memo-
40 randum shall be made available by the court for examination and for
41 copying and retention by the defendant's attorney, the defendant
42 himself, ~~[if he has no attorney,~~ and the prosecutor. The defendant
43 shall be given an opportunity to challenge or correct any fact or
44 conclusion in the pre-sentence report or memorandum prior to the court's
45 pronouncement of sentence and no later than at the hearing conducted in
46 accordance with subdivision three of section 60.03 of the penal law. In
47 its discretion, the court may except from disclosure a part or parts of
48 the report or memoranda which are not relevant to a proper sentence, or
49 a diagnostic opinion which might seriously disrupt a program of rehabil-
50 itation, or sources of information which have been obtained on a promise
51 of confidentiality, or any other portion thereof, disclosure of which
52 would not be in the interest of justice. In all cases where a part or
53 parts of the report or memoranda are not disclosed, the court shall
54 state for the record that a part or parts of the report or memoranda
55 have been excepted and the reasons for its action. The action of the
56 court excepting information from disclosure shall be subject to appel-

1 late review. The pre-sentence report shall be made available by the
2 court for examination and copying in connection with any appeal in the
3 case, including an appeal under this subdivision. Upon written request,
4 the court shall make a copy of the presentence report, other than a part
5 or parts of the report redacted by the court pursuant to this paragraph,
6 available to the defendant for use before the parole board for release
7 consideration or an appeal of a parole board determination or an appli-
8 cation for resentencing pursuant to section 440.46 or 440.47 of this
9 chapter. [~~In his or her written request to the court the defendant shall
10 affirm that he or she anticipates an appearance before the parole board
11 or intends to file an administrative appeal of a parole board determi-
12 nation or meets the eligibility criteria for and intends to file a
13 motion for resentencing pursuant to 440.46 of this chapter or has
14 received notification from the court which received his or her request
15 to apply for resentencing pursuant to section 440.47 of this chapter
16 confirming that he or she is eligible to submit an application for
17 resentencing pursuant to section 440.47 of this chapter.~~] The court
18 shall respond to the defendant's written request within twenty days from
19 receipt of the defendant's written request.

20 § 6. Section 70.00 of the penal law, the section heading as amended by
21 chapter 277 of the laws of 1973, subdivision 1 as amended by chapter 7
22 of the laws of 2007, subdivisions 2, 3 and 4 as amended by chapter 738
23 of the laws of 2004, paragraph (a) of subdivision 3 as amended by chap-
24 ter 107 and paragraph (b) of subdivision 3 as amended by chapter 746 of
25 the laws of 2006, subdivision 5 as amended by section 40-a of part WWW
26 of chapter 59 of the laws of 2017, and subdivision 6 as amended by chap-
27 ter 1 of the laws of 1998, is amended to read as follows:

28 § 70.00 Sentence of imprisonment for felony.

29 1. Indeterminate sentence. Except as provided in subdivisions three
30 and four [~~, five and six~~] of this section or section 70.80 of this arti-
31 cle, [~~a~~] the term of sentence [~~of imprisonment~~] for a felony, other than
32 a felony defined in article two hundred twenty or two hundred twenty-one
33 of this chapter, shall be fixed by the court in accordance with section
34 60.03 of this title. If a court finds that sentence of imprisonment of
35 more than one year is the minimum term of imprisonment necessary to
36 achieve the goals of sentencing, the court shall impose an indeterminate
37 sentence. When such a sentence is imposed, the court shall impose a
38 maximum term in accordance with the provisions of subdivision two of
39 this section [~~and the minimum period of imprisonment shall be as~~
40 ~~provided in subdivision three of this section~~]. The minimum period
41 shall be fixed by the court and specified in the sentence and shall be
42 not less than one year nor more than one-third of the maximum term
43 imposed, or the court may impose a definite sentence of imprisonment and
44 fix a term of one year or less.

45 2. Maximum term of sentence. The maximum term of an indeterminate
46 sentence shall be at least three years and the term shall be fixed as
47 follows:

- 48 (a) For a class A felony, the term shall be life imprisonment;
49 (b) For a class B felony, the term shall be fixed by the court, and
50 shall not exceed twenty-five years;
51 (c) For a class C felony, the term shall be fixed by the court, and
52 shall not exceed fifteen years;
53 (d) For a class D felony, the term shall be fixed by the court, and
54 shall not exceed seven years; and
55 (e) For a class E felony, the term shall be fixed by the court, and
56 shall not exceed four years.

1 3. ~~[Minimum period of imprisonment. The minimum period of imprisonment~~
2 ~~under an indeterminate sentence shall be at least one year and shall be~~
3 ~~fixed as follows:~~

4 ~~(a) In the case of a class A felony, the minimum period shall be fixed~~
5 ~~by the court and specified in the sentence.~~

6 ~~(i) For a class A-I felony, such minimum period shall not be less than~~
7 ~~fifteen years nor more than twenty five years, provided, however, that~~
8 ~~(A) where a sentence, other than a sentence of death or life imprison-~~
9 ~~ment without parole, is imposed upon a defendant convicted of murder in~~
10 ~~the first degree as defined in section 125.27 of this chapter such mini-~~
11 ~~imum period shall be not less than twenty years nor more than twenty five~~
12 ~~years, and, (B) where a sentence is imposed upon a defendant convicted~~
13 ~~of murder in the second degree as defined in subdivision five of section~~
14 ~~125.25 of this chapter or convicted of aggravated murder as defined in~~
15 ~~section 125.26 of this chapter, the sentence shall be life imprisonment~~
16 ~~without parole, and, (C) where a sentence is imposed upon a defendant~~
17 ~~convicted of attempted murder in the first degree as defined in article~~
18 ~~one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of~~
19 ~~paragraph (a) of subdivision one and paragraph (b) of subdivision one of~~
20 ~~section 125.27 of this chapter or attempted aggravated murder as defined~~
21 ~~in article one hundred ten of this chapter and section 125.26 of this~~
22 ~~chapter such minimum period shall be not less than twenty years nor more~~
23 ~~than forty years.~~

24 ~~(ii) For a class A-II felony, such minimum period shall not be less~~
25 ~~than three years nor more than eight years four months, except that for~~
26 ~~the class A II felony of predatory sexual assault as defined in section~~
27 ~~130.95 of this chapter or the class A II felony of predatory sexual~~
28 ~~assault against a child as defined in section 130.96 of this chapter,~~
29 ~~such minimum period shall be not less than ten years nor more than twen-~~
30 ~~ty five years.~~

31 ~~(b) For any other felony, the minimum period shall be fixed by the~~
32 ~~court and specified in the sentence and shall be not less than one year~~
33 ~~nor more than one third of the maximum term imposed.~~

34 ~~4. Alternative definite sentence for class D and E felonies. When a~~
35 ~~person, other than a second or persistent felony offender, is sentenced~~
36 ~~for a class D or class E felony, and the court, having regard to the~~
37 ~~nature and circumstances of the crime and to the history and character~~
38 ~~of the defendant, is of the opinion that a sentence of imprisonment is~~
39 ~~necessary but that it would be unduly harsh to impose an indeterminate~~
40 ~~or determinate sentence, the court may impose a definite sentence of~~
41 ~~imprisonment and fix a term of one year or less.~~

42 ~~5.]~~ Life imprisonment without parole. Notwithstanding any other
43 provision of law, a defendant sentenced to life imprisonment without
44 parole shall not be or become eligible for parole or conditional
45 release. For purposes of commitment and custody, other than parole and
46 conditional release, such sentence shall be deemed to be an indetermi-
47 nate sentence. A defendant may be sentenced to life imprisonment without
48 parole upon conviction for the crime of murder in the first degree as
49 defined in section 125.27 of this chapter and in accordance with the
50 procedures provided by law for imposing a sentence for such crime. A
51 defendant who was eighteen years of age or older at the time of the
52 commission of the crime must be sentenced to life imprisonment without
53 parole upon conviction for the crime of terrorism as defined in section
54 490.25 of this chapter, where the specified offense the defendant
55 committed is a class A-I felony; the crime of criminal possession of a
56 chemical weapon or biological weapon in the first degree as defined in

1 section 490.45 of this chapter; or the crime of criminal use of a chemi-
2 cal weapon or biological weapon in the first degree as defined in
3 section 490.55 of this chapter; provided, however, that nothing in this
4 subdivision shall preclude or prevent a sentence of death when the
5 defendant is also convicted of the crime of murder in the first degree
6 as defined in section 125.27 of this chapter. A defendant who was seven-
7 teen years of age or younger at the time of the commission of the crime
8 may be sentenced, in accordance with law, to the applicable indetermi-
9 nate sentence with a maximum term of life imprisonment. A defendant must
10 be sentenced to life imprisonment without parole upon conviction for the
11 crime of murder in the second degree as defined in subdivision five of
12 section 125.25 of this chapter or for the crime of aggravated murder as
13 defined in subdivision one of section 125.26 of this chapter. A defend-
14 ant may be sentenced to life imprisonment without parole upon conviction
15 for the crime of aggravated murder as defined in subdivision two of
16 section 125.26 of this chapter.

17 ~~[6.]~~ 4. Determinate sentence. ~~[Except as provided in subdivision four~~
18 ~~of this section and subdivisions two and four of section 70.02, when]~~
19 When a person is sentenced as a violent felony offender pursuant to
20 section 70.02 ~~[or as a second violent felony offender pursuant to~~
21 ~~section 70.04 or as a second felony offender on a conviction for a~~
22 ~~violent felony offense pursuant to section 70.06]~~ of this article, the
23 sentence shall be fixed by the court in accordance with section 60.03 of
24 this title. If a court finds that a sentence of imprisonment of more
25 than one year is the minimum term of imprisonment necessary to achieve
26 the goals of sentencing, the court must impose a determinate sentence of
27 imprisonment in accordance with the provisions of such ~~[sections and~~
28 ~~such sentence shall include, as a part thereof, a period of post-release~~
29 ~~supervision in accordance with section 70.45]~~ section.

30 § 7. Subdivision d of section 74 of chapter 3 of the laws of 1995,
31 enacting the sentencing reform act of 1995, as amended by section 19 of
32 part A of chapter 55 of the laws of 2021, is amended to read as follows:
33 d. Sections one-a ~~[through], one-b, two, four through eight, eleven,~~
34 twelve, twenty, twenty-four through twenty-eight, thirty through thirty-
35 nine, forty-two and forty-four of this act shall be deemed repealed
36 on September 1, 2023;

37 § 8. Subdivisions 2 and 4 of section 70.02 of the penal law are
38 REPEALED and subdivision 3, as amended by chapter 765 of the laws of
39 2005, paragraphs (b) and (c) as amended by chapter 1 of the laws of
40 2013, is amended to read as follows:

41 ~~[3.]~~ 2 Term of sentence. The term ~~[of a determinate sentence]~~ for a
42 violent felony offense must be fixed by the court in accordance with
43 section 60.03 of this title. If a court finds that a sentence of impri-
44 sonment of more than one year is the minimum term of imprisonment neces-
45 sary to achieve the goals of sentencing, the court shall impose a deter-
46 minate sentence as follows:

47 (a) For a class B felony, the term must be at least ~~[five years]~~ one
48 year and must not exceed twenty-five years, provided, however, that the
49 term ~~[must be]~~: (i) ~~[at least ten years and]~~ must not exceed thirty
50 years where the sentence is for the crime of aggravated assault upon a
51 police officer or peace officer as defined in section 120.11 of this
52 chapter; and (ii) ~~[at least ten years and]~~ must not exceed thirty years
53 where the sentence is for the crime of aggravated manslaughter in the
54 first degree as defined in section 125.22 of this chapter;

55 (b) For a class C felony, the term must be at least ~~[three and one-~~
56 ~~half years]~~ one year and must not exceed fifteen years, provided, howev-

er, that the term ~~[must be]~~: (i) ~~[at least seven years and]~~ must not exceed twenty years where the sentence is for the crime of aggravated manslaughter in the second degree as defined in section 125.21 of this chapter; (ii) ~~[at least seven years and]~~ must not exceed twenty years where the sentence is for the crime of attempted aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; (iii) ~~[at least three and one-half years and]~~ must not exceed twenty years where the sentence is for the crime of aggravated criminal-negligent homicide as defined in section 125.11 of this chapter; and (iv) ~~[at least five years and]~~ must not exceed fifteen years where the sentence is imposed for the crime of aggravated criminal possession of a weapon as defined in section 265.19 of this chapter;

(c) For a class D felony, the term must be at least ~~[two years]~~ one year 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; and

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

§ 9. Sections 60.06, 60.07, 60.11-a, 70.04, 70.06, 70.07, 70.08 and 70.10 of the penal law are REPEALED.

§ 10. Subdivisions 1 and 3 of section 70.05 of the penal law, subdivision 1 as amended by chapter 615 of the laws of 1984, subdivision 3 as added by chapter 481 of the laws of 1978, paragraph (a) of subdivision 3 as amended by chapter 174 of the laws of 2003 and paragraph (c) of subdivision 3 as amended by chapter 435 of the laws of 1998, are amended to read as follows:

1. Indeterminate sentence. A sentence of imprisonment for a felony committed by a juvenile offender shall be fixed by the court in accordance with section 60.03 of this title. If a court finds that a sentence of imprisonment of more than one year is the minimum term of imprisonment necessary to achieve the goals of sentencing, the court shall impose an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section. The court shall further provide that where a juvenile offender is under placement pursuant to article three of the family court act, any sentence imposed pursuant to this section which is to be served consecutively with such placement shall be served in a facility designated pursuant to subdivision four of section 70.20 of this article prior to service of the placement in any previously designated facility.

3. Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate sentence for a juvenile offender shall be not less than one year nor more than one-third of the maximum term imposed and specified in the sentence as follows:

(a) For the class A felony of murder in the second degree, the minimum period of imprisonment shall be fixed by the court and shall ~~[be not less than five years but shall]~~ not exceed nine years provided, however, that where the sentence is for an offense specified in subdivision one or two of section 125.25 of this chapter and the defendant was fourteen or fifteen years old at the time of such offense, the minimum period of

1 imprisonment shall [~~be not less than seven and one half years but shall~~]
2 not exceed fifteen years;

3 (b) For the class A felony of arson in the first degree, or for the
4 class A felony of kidnapping in the first degree, the minimum period of
5 imprisonment shall be fixed by the court and shall [~~be not less than~~
6 ~~four years but shall~~] not exceed six years; and

7 (c) For a class B, C or D felony, the minimum period of imprisonment
8 shall be fixed by the court at one-third of the maximum term imposed.

9 § 11. Subdivision 1 of section 70.15 of the penal law, as amended by
10 section 1 of part 00 of chapter 55 of the laws of 2019, is amended to
11 read as follows:

12 1. Class A misdemeanor. A sentence of imprisonment for a class A
13 misdemeanor shall be a definite sentence. When such a sentence is
14 imposed the term shall be fixed by the court, in accordance with section
15 60.03 of this title, and shall not exceed three hundred sixty-four days.

16 § 12. Paragraph (a) of subdivision 1 of section 70.20 of the penal
17 law, as amended by section 124 of subpart B of part C of chapter 62 of
18 the laws of 2011, is amended to read as follows:

19 (a) Indeterminate or determinate sentence. Except as provided in
20 subdivision four of this section, when an indeterminate or determinate
21 sentence of imprisonment is imposed, the court shall commit the defend-
22 ant to the custody of the state department of corrections and community
23 supervision for the term of his or her sentence and until released in
24 accordance with the law[~~, provided, however, that a defendant sentenced~~
25 ~~pursuant to subdivision seven of section 70.06 shall be committed to the~~
26 ~~custody of the state department of corrections and community supervision~~
27 ~~for immediate delivery to a reception center operated by the depart-~~
28 ~~ment~~].

29 § 13. Section 70.25 of the penal law, subdivision 1 as amended and
30 subdivision 5 as added by chapter 372 of the laws of 1981, paragraph (a)
31 of subdivision 1, subdivision 2-b, and paragraphs (a) and (b) of subdivi-
32 sion 5 as amended by chapter 3 of the laws of 1995, subdivision 2 as
33 amended by chapter 56 of the laws of 1984, subdivision 2-a as amended by
34 chapter 495 of the laws of 2009, subdivisions 2-c and 2-d as added by
35 chapter 795 of the laws of 1986, subdivision 2-e as added by chapter 122
36 of the laws of 1996, subdivision 2-f as added by chapter 1 of the laws
37 of 2000, subdivision 2-g as added by chapter 394 of the laws of 2005 and
38 subdivision 4 as added by chapter 782 of the laws of 1975, is amended to
39 read as follows:

40 § 70.25 Concurrent and consecutive terms of imprisonment.

41 1. Except as provided in [~~subdivisions~~] subdivision two[~~, two-a and~~
42 ~~five~~] of this section, when multiple sentences of imprisonment are
43 imposed on a person at the same time, or when a person who is subject to
44 any undischarged term of imprisonment imposed at a previous time by a
45 court of this state is sentenced to an additional term of imprisonment,
46 the sentence or sentences imposed by the court shall run either concur-
47 rently or consecutively with respect to each other and the undischarged
48 term or terms in such manner as the court directs at the time of
49 sentence. If the court does not specify the manner in which a sentence
50 imposed by it is to run, the sentence shall run as follows:

51 (a) An indeterminate or determinate sentence shall run concurrently
52 with all other terms; and

53 (b) A definite sentence shall run concurrently with [~~any sentence~~
54 ~~imposed at the same time and shall be consecutive to any other term~~] all
55 other terms.

1 2. When more than one sentence of imprisonment is imposed on a person
2 for two or more offenses committed through a single act or omission, or
3 through an act or omission which in itself constituted one of the
4 offenses and also was a material element of the other, the sentences,
5 except if one or more of such sentences is for a violation of section
6 270.20 of this chapter, must run concurrently.

7 ~~[2-a. When an indeterminate or determinate sentence of imprisonment is
8 imposed pursuant to section 70.04, 70.06, 70.07, 70.08, 70.10, subdivi-
9 sion three or four of section 70.70, subdivision three or four of
10 section 70.71 or subdivision five of section 70.80 of this article, or
11 is imposed for a class A I felony pursuant to section 70.00 of this
12 article, and such person is subject to an undischarged indeterminate or
13 determinate sentence of imprisonment imposed prior to the date on which
14 the present crime was committed, the court must impose a sentence to run
15 consecutively with respect to such undischarged sentence.~~

16 ~~2-b. When a person is convicted of a violent felony offense committed
17 after arraignment and while released on recognizance or bail, but
18 committed prior to the imposition of sentence on a pending felony
19 charge, and if an indeterminate or determinate sentence of imprisonment
20 is imposed in each case, such sentences shall run consecutively.
21 Provided, however, that the court may, in the interest of justice, order
22 a sentence to run concurrently in a situation where consecutive
23 sentences are required by this subdivision if it finds either mitigating
24 circumstances that bear directly upon the manner in which the crime was
25 committed or, where the defendant was not the sole participant in the
26 crime, the defendant's participation was relatively minor although not
27 so minor as to constitute a defense to the prosecution. The defendant
28 and the district attorney shall have an opportunity to present relevant
29 information to assist the court in making this determination and the
30 court may, in its discretion, conduct a hearing with respect to any
31 issue bearing upon such determination. If the court determines that
32 consecutive sentences should not be ordered, it shall make a statement
33 on the record of the facts and circumstances upon which such determi-
34 nation is based.~~

35 ~~2-c. When a person is convicted of bail jumping in the second degree
36 as defined in section 215.56 or bail jumping in the first degree as
37 defined in section 215.57 committed after arraignment and while released
38 on recognizance or bail in connection with a pending indictment or
39 information charging one or more felonies, at least one of which he is
40 subsequently convicted, and if an indeterminate sentence of imprisonment
41 is imposed in each case, such sentences shall run consecutively.
42 Provided, however, that the court may, in the interest of justice, order
43 a sentence to run concurrently in a situation where consecutive
44 sentences are required by this subdivision if it finds mitigating
45 circumstances that bear directly upon the manner in which the crime was
46 committed. The defendant and the district attorney shall have an oppor-
47 tunity to present relevant information to assist the court in making
48 this determination and the court may, in its discretion, conduct a hear-
49 ing with respect to any issue bearing upon such determination. If the
50 court determines that consecutive sentences should not be ordered, it
51 shall make a statement on the record of the facts and circumstances upon
52 which such determination is based.~~

53 ~~2-d. When a person is convicted of escape in the second degree as
54 defined in section 205.10 or escape in the first degree as defined in
55 section 205.15 committed after issuance of a securing order, as defined
56 in subdivision five of section 500.10 of the criminal procedure law, in~~

~~connection with a pending indictment or information charging one or more felonies, at least one of which he is subsequently convicted, and if an indeterminate sentence of imprisonment is imposed in each case, such sentences shall run consecutively. Provided, however, that the court may, in the interest of justice, order a sentence to run concurrently in a situation where consecutive sentences are required by this subdivision if it finds mitigating circumstances that bear directly upon the manner in which the crime was committed. The defendant and the district attorney shall have an opportunity to present relevant information to assist the court in making this determination and the court may, in its discretion, conduct a hearing with respect to any issue bearing upon such determination. If the court determines that consecutive sentences should not be ordered, it shall make a statement on the record of the facts and circumstances upon which such determination is based.~~

~~2-e.]~~ 2-a. Whenever a person is convicted of course of sexual conduct against a child in the first degree as defined in section 130.75 or course of sexual conduct against a child in the second degree as defined in section 130.80 and any other crime under article one hundred thirty committed against the same child and within the period charged under section 130.75 or 130.80, the sentences must run concurrently.

~~[2-f.]~~ 2-b. Whenever a person is convicted of facilitating a sex offense with a controlled substance as defined in section 130.90 of this chapter, the sentence imposed by the court for such offense may be ordered to run consecutively to any sentence imposed upon conviction of an offense defined in article one hundred thirty of this chapter arising from the same criminal transaction.

~~[2-g.]~~ 2-c. Whenever a person is convicted of unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this chapter, unlawful manufacture of methamphetamine in the second degree as defined in section 220.74 of this chapter, or unlawful manufacture of methamphetamine in the first degree as defined in section 220.75 of this chapter, or any attempt to commit any of such offenses, and such person is also convicted, with respect to such unlawful methamphetamine laboratory, of unlawful disposal of methamphetamine laboratory material as defined in section 220.76 of this chapter, the sentences must run concurrently.

3. Where consecutive definite sentences of imprisonment are not prohibited by subdivision two of this section and are imposed on a person for offenses which were committed as parts of a single incident or transaction, the aggregate of the terms of such sentences shall not exceed one year.

4. When a person, who is subject to any undischarged term of imprisonment imposed at a previous time by a court of another jurisdiction, is sentenced to an additional term or terms of imprisonment by a court of this state, the sentence or sentences imposed by the court of this state, subject to the provisions of subdivisions one, two and three of this section, shall run either concurrently or consecutively with respect to such undischarged term in such manner as the court directs at the time of sentence. If the court of this state does not specify the manner in which a sentence imposed by it is to run, the sentence or sentences shall run ~~[consecutively]~~ concurrently.

~~[5. (a) Except as provided in paragraph (c) of this subdivision, when a person is convicted of assault in the second degree, as defined in subdivision seven of section 120.05 of this chapter, any definite, indeterminate or determinate term of imprisonment which may be imposed as a sentence upon such conviction shall run consecutively to any undisc-~~

1 ~~harged term of imprisonment to which the defendant was subject and for~~
2 ~~which he was confined at the time of the assault.~~

3 ~~(b) Except as provided in paragraph (c) of this subdivision, when a~~
4 ~~person is convicted of assault in the second degree, as defined in~~
5 ~~subdivision seven of section 120.05 of this chapter, any definite, inde-~~
6 ~~terminate or determinate term of imprisonment which may be imposed as a~~
7 ~~sentence upon such conviction shall run consecutively to any term of~~
8 ~~imprisonment which was previously imposed or which may be prospectively~~
9 ~~imposed where the person was confined within a detention facility at the~~
10 ~~time of the assault upon a charge which culminated in such sentence of~~
11 ~~imprisonment.~~

12 ~~(c) Notwithstanding the provisions of paragraphs (a) and (b) of this~~
13 ~~subdivision, a term of imprisonment imposed upon a conviction to assault~~
14 ~~in the second degree as defined in subdivision seven of section 120.05~~
15 ~~of this chapter may run concurrently to any other term of imprisonment,~~
16 ~~in the interest of justice, provided the court sets forth in the record~~
17 ~~its reasons for imposing a concurrent sentence. Nothing in this section~~
18 ~~shall require the imposition of a sentence of imprisonment where it is~~
19 ~~not otherwise required by law.]~~

20 § 14. Paragraphs (a) and (f) of subdivision 1 of section 70.30 of the
21 penal law, paragraph (a) as amended by chapter 3 of the laws of 1995 and
22 paragraph (f) as added by chapter 481 of the laws of 1978 and as relet-
23 tered by chapter 3 of the laws of 1995, are amended to read as follows:

24 (a) If the sentences run concurrently, the time served under imprison-
25 ment on any of the sentences shall be credited against the minimum and
26 maximum periods of all the concurrent indeterminate sentences and
27 against the terms of all the concurrent determinate sentences. The maxi-
28 mum term or terms of the indeterminate sentences and the term or terms
29 of the determinate sentences shall merge in and be satisfied by
30 discharge of the term which has the longest unexpired time to run;

31 (f) The aggregate maximum term of consecutive sentences imposed upon a
32 juvenile offender for two or more crimes, not including a class A felo-
33 ny, committed before he has reached the age of sixteen, shall, if it
34 exceeds ten years, be deemed to be ten years. If consecutive indetermi-
35 nate sentences imposed upon a juvenile offender include a sentence for
36 the class A felony of arson in the first degree or for the class A felo-
37 ny of kidnapping in the first degree, then the aggregate maximum term of
38 such sentences shall, if it exceeds fifteen years, be deemed to be
39 fifteen years. Where the aggregate maximum term of two or more consec-
40 utive sentences is reduced by a calculation made pursuant to this para-
41 graph, the aggregate minimum period of imprisonment, if it exceeds
42 [~~one-half~~] one-third of the aggregate maximum term as so reduced, shall
43 be deemed to be [~~one-half~~] one-third of the aggregate maximum term as so
44 reduced.

45 § 15. Section 10 of chapter 339 of the laws of 1972, amending the
46 correction law and the penal law relating to inmate work release,
47 furlough and leave, as amended by section 6 of part A of chapter 55 of
48 the laws of 2021, is amended to read as follows:

49 § 10. This act shall take effect 30 days after it shall have become a
50 law and sections one through eight shall remain in effect until Septem-
51 ber 1, 2023, and provided further that the commissioner of correctional
52 services shall report each January first, and July first, to the chair-
53 man of the senate crime victims, crime and correction committee, the
54 senate codes committee, the assembly correction committee, and the
55 assembly codes committee, the number of eligible inmates in each facili-
56 ty under the custody and control of the commissioner who have applied

1 for participation in any program offered under the provisions of work
2 release, furlough, or leave, and the number of such inmates who have
3 been approved for participation.

4 § 16. Section 70.35 of the penal law, as amended by section 127-a of
5 subpart B of part C of chapter 62 of the laws of 2011, is amended to
6 read as follows:

7 § 70.35 Merger of certain definite and indeterminate or determinate
8 sentences.

9 The service of an indeterminate or determinate sentence of imprison-
10 ment shall satisfy any definite sentence of imprisonment imposed on a
11 person for an offense committed prior to the time the indeterminate or
12 determinate sentence was imposed, [~~except as provided in paragraph (b)
13 of subdivision five of section 70.25 of this article~~]. A person who is
14 serving a definite sentence at the time an indeterminate or determinate
15 sentence is imposed shall be delivered to the custody of the state
16 department of corrections and community supervision to commence service
17 of the indeterminate or determinate sentence immediately [~~unless the
18 person is serving a definite sentence pursuant to paragraph (b) of
19 subdivision five of section 70.25 of this article~~]. In any case where
20 the indeterminate or determinate sentence is revoked or vacated, the
21 person shall receive credit against the definite sentence for each day
22 spent in the custody of the state department of corrections and communi-
23 ty supervision.

24 § 17. Paragraph a of subdivision 6 of section 76 of chapter 435 of the
25 laws of 1997, amending the military law and other laws relating to vari-
26 ous provisions, as amended by section 15 of part A of chapter 55 of the
27 laws of 2021, is amended to read as follows:

28 a. sections forty-three through [~~forty-five~~] forty-four of this act
29 shall expire and be deemed repealed on September 1, 2023;

30 § 18. Subdivisions (f), (g) and (h) of section 15 of part E of chapter
31 62 of the laws of 2003, amending the correction law and other laws
32 relating to various provisions, are amended to read as follows:

33 (f) the amendments made to subdivision 2 of section 259-c of the exec-
34 utive law made by section seven of this act shall not affect the expira-
35 tion of such subdivision and shall be deemed to expire therewith; and

36 (g) the amendments to paragraph (a) of subdivision 2 and subparagraph
37 (i) of paragraph (a) and paragraph (d) of subdivision 3 of section 259-i
38 of the executive law made by section eleven of this act shall not affect
39 the expiration of such paragraph (a) of subdivision 2, such subparagraph
40 (i) of paragraph (a) and such paragraph (d) of subdivision 3 and shall
41 be deemed to expire therewith[~~, and~~

42 [~~(h) paragraph (c) of subdivision 1 of section 70.40 of the penal law
43 as added by section thirteen of this act shall expire and be deemed
44 repealed on the same date as subdivision 6 of section 76 of chapter 435
45 of the laws of 1997, as amended~~].

46 § 19. Subdivisions 1, 2, 2-a and 3 of section 70.45 of the penal law,
47 subdivision 1 as amended by chapter 141 of the laws of 2008, subdivision
48 2 as amended and subdivision 2-a as added by chapter 7 of the laws of
49 2007, paragraphs (a), (b), (c), (d), (e) and (f) of subdivision 2 as
50 amended by chapter 31 of the laws of 2019, and subdivision 3 as added by
51 chapter 1 of the laws of 1998, are amended to read as follows:

52 1. In general. When a court imposes a determinate sentence it shall in
53 each case state not only the term of imprisonment, but also an addi-
54 tional period of post-release supervision as determined pursuant to this
55 article. Such period shall commence as provided in subdivision five of
56 this section and a violation of any condition of supervision occurring

1 at any time during such period of post-release supervision shall subject
2 the defendant to a further period of imprisonment up to the balance of
3 the remaining period of post-release supervision, not to exceed five
4 years; provided, however, that a defendant serving a term of post-re-
5 lease supervision for a conviction of a felony sex offense, as defined
6 in section 70.80 of this article, may be subject to a further period of
7 imprisonment up to the balance of the remaining period of post-release
8 supervision. Notwithstanding any other provision of law to the contra-
9 ry, no person serving a period of post-release supervision shall be
10 confined in a correctional facility, including a residential treatment
11 facility as defined in subdivision six of section two of the correction
12 law, except following a revocation hearing as set forth in section two
13 hundred fifty-nine-i of the executive law. Such maximum limits shall not
14 preclude a longer period of further imprisonment for a violation where
15 the defendant is subject to indeterminate and determinate sentences.

16 2. Period of post-release supervision for other than felony sex
17 offenses. The period of post-release supervision for a determinate
18 sentence, other than a determinate sentence imposed for a felony sex
19 offense as defined in paragraph (a) of subdivision one of section 70.80
20 of this article, shall ~~[be]~~ not exceed five years except that:

21 (a) such period shall ~~[be]~~ not exceed one year whenever a determinate
22 sentence of imprisonment is imposed pursuant to subdivision two of
23 section 70.70 of this article or subdivision nine of section 60.12 of
24 this title upon a conviction of a class D or class E felony offense;

25 (b) such period shall be not ~~[less than one year nor]~~ more than two
26 years whenever a determinate sentence of imprisonment is imposed pursu-
27 ant to subdivision two of section 70.70 of this article or subdivision
28 nine of section 60.12 of this title upon a conviction of a class B or
29 class C felony offense;

30 (c) such period shall be not ~~[less than one year nor]~~ more than two
31 years whenever a determinate sentence of imprisonment is imposed pursu-
32 ant to ~~[subdivision three or four of section 70.70 of this article upon~~
33 ~~conviction of a class D or class E felony offense or]~~ subdivision ten of
34 section 60.12 of this title;

35 (d) such period shall be not ~~[less than one and one-half years nor]~~
36 more than three years whenever a determinate sentence of imprisonment is
37 imposed pursuant to ~~[subdivision three or four of section 70.70 of this~~
38 ~~article upon conviction of a class D felony or class C felony offense~~
39 ~~or]~~ subdivision eleven of section 60.12 of this title;

40 (e) such period shall be not ~~[less than one and one-half years nor]~~
41 more than three years whenever a determinate sentence of imprisonment is
42 imposed pursuant to subdivision ~~[three]~~ two of section 70.02 of this
43 article or subdivision two or eight of section 60.12 of this title upon
44 a conviction of a class D or class E violent felony offense or subdivi-
45 sion four, five, six, or seven of section 60.12 of this title;

46 (f) such period shall be not ~~[less than two and one-half years nor]~~
47 more than five years whenever a determinate sentence of imprisonment is
48 imposed pursuant to subdivision ~~[three]~~ two of section 70.02 of this
49 article or subdivision two or eight of section 60.12 of this title upon
50 a conviction of a class B or class C violent felony offense.

51 2-a. Periods of post-release supervision for felony sex offenses. The
52 period of post-release supervision for a determinate sentence imposed
53 for a felony sex offense as defined in paragraph (a) of subdivision one
54 of section 70.80 of this article shall be as follows:

55 (a) not ~~[less than three years nor]~~ more than ten years whenever a
56 determinate sentence of imprisonment is imposed pursuant to subdivision

1 four of section 70.80 of this article upon a conviction of a class D or
2 class E felony sex offense;

3 (b) not [~~less than five years nor~~] more than fifteen years whenever a
4 determinate sentence of imprisonment is imposed pursuant to subdivision
5 four of section 70.80 of this article upon a conviction of a class C
6 felony sex offense;

7 (c) not [~~less than five years nor~~] more than twenty years whenever a
8 determinate sentence of imprisonment is imposed pursuant to subdivision
9 four of section 70.80 of this article upon a conviction of a class B
10 felony sex offense;

11 (d) not [~~less than three years nor~~] more than ten years whenever a
12 determinate sentence is imposed pursuant to subdivision [~~three~~] two of
13 section 70.02 of this article upon a conviction of a class D or class E
14 violent felony sex offense as defined in paragraph (b) of subdivision
15 one of section 70.80 of this article;

16 (e) not [~~less than five years nor~~] more than fifteen years whenever a
17 determinate sentence is imposed pursuant to subdivision [~~three~~] two of
18 section 70.02 of this article upon a conviction of a class C violent
19 felony sex offense as defined in section 70.80 of this article;

20 (f) not [~~less than five years nor~~] more than twenty years whenever a
21 determinate sentence is imposed pursuant to subdivision [~~three~~] two of
22 section 70.02 of this article upon a conviction of a class B violent
23 felony sex offense as defined in section 70.80 of this article;

24 (g) not [~~less than five years nor~~] more than fifteen years whenever a
25 determinate sentence of imprisonment is imposed pursuant to [~~either~~
26 ~~section 70.04, section 70.06, or subdivision five of~~] section 70.80 of
27 this article upon a conviction of a class D or class E violent or non-
28 violent felony sex offense as defined in section 70.80 of this article;

29 (h) not [~~less than seven years nor~~] more than twenty years whenever a
30 determinate sentence of imprisonment is imposed pursuant to [~~either~~
31 ~~section 70.04, section 70.06, or subdivision five of~~] section 70.80 of
32 this article upon a conviction of a class C violent or non-violent felo-
33 ny sex offense as defined in section 70.80 of this article; and

34 (i) such period shall be not [~~less than ten years nor~~] more than twenty-
35 five years whenever a determinate sentence of imprisonment is imposed
36 pursuant to [~~either section 70.04, section 70.06, or subdivision five~~
37 ~~of~~] section 70.80 of this article upon a conviction of a class B violent
38 or non-violent felony sex offense as defined in section 70.80 of this
39 article[~~, and~~

40 [~~(j) such period shall be not less than ten years nor more than twenty~~
41 ~~years whenever any determinate sentence of imprisonment is imposed~~
42 ~~pursuant to subdivision four of section 70.07 of this article].~~

43 3. Conditions of post-release supervision. The board of parole shall
44 establish and impose conditions of post-release supervision in the same
45 manner and to the same extent as it may establish and impose conditions
46 in accordance with the executive law upon persons who are granted parole
47 or conditional release[~~, provided that, notwithstanding any other~~
48 ~~provision of law, the board of parole may impose as a condition of post-~~
49 ~~release supervision that for a period not exceeding six months imme-~~
50 ~~diately following release from the underlying term of imprisonment the~~
51 ~~person be transferred to and participate in the programs of a residen-~~
52 ~~tial treatment facility as that term is defined in subdivision six of~~
53 ~~section two of the correction law]. Upon release from the underlying
54 term of imprisonment, the person shall be furnished with a written
55 statement setting forth the conditions of post-release supervision in
56 sufficient detail to provide for the person's conduct and supervision.~~

1 § 20. Subdivisions 1 and 2 of section 70.70 of the penal law, as added
2 by chapter 738 of the laws of 2004, paragraphs (a) and (b) of subdivi-
3 sion 1 and paragraphs (b) and (c) of subdivision 2 as amended by chapter
4 92 of the laws of 2021, subparagraph (i) of paragraph (a) of subdivision
5 2 as amended by section 21 and paragraph (d) of subdivision 2 as added
6 by section 23 of part AAA of chapter 56 of the laws of 2009, are amended
7 to read as follows:

8 1. For the purposes of this section, [~~the following terms shall mean:~~
9 ~~(a) "Felony]~~ "felony drug offender" means a defendant who stands
10 convicted of any felony, defined in article two hundred twenty or two
11 hundred twenty-two of this chapter other than a class A felony.

12 [~~(b) "Second felony drug offender" means a second felony offender as~~
13 ~~that term is defined in subdivision one of section 70.06 of this arti-~~
14 ~~cle, who stands convicted of any felony, defined in article two hundred~~
15 ~~twenty or two hundred twenty-two of this chapter other than a class A~~
16 ~~felony.~~

17 [~~(c) "Violent felony" shall have the same meaning as that term is~~
18 ~~defined in subdivision one of section 70.02 of this article.]~~

19 2. [~~Except as provided in subdivision three or four of this section,~~
20 ~~a]~~ (a) Term of sentence. The term of sentence [of imprisonment] for a
21 felony drug offender shall be fixed by the court in accordance with
22 section 60.03 of this title. If a court finds that a sentence of impri-
23 sonment of more than one year is the minimum term of imprisonment neces-
24 sary to achieve the goals of sentencing, the court shall impose a deter-
25minate sentence as provided in paragraph [~~(a)] (b)~~ of this subdivision.

26 [~~(a)] (b)~~ Term of determinate sentence. [~~Except as provided in para-~~
27 ~~graph (b) or (c) of this subdivision, the court shall impose a]~~ A deter-
28minate term of imprisonment [~~upon a felony drug offender which]~~ shall be
29 imposed by the court in whole or half years, which shall include as a
30 part thereof a period of post-release supervision in accordance with
31 section 70.45 of this article. The terms of imprisonment authorized for
32 such determinate sentences are as follows:

33 (i) for a class B felony, the term shall [~~be at least one year and~~
34 ~~shall]~~ not exceed nine years[~~, except that for the class B felony of~~
35 ~~criminal sale of a controlled substance in or near school grounds as~~
36 ~~defined in subdivision two of section 220.44 of this chapter or on a~~
37 ~~school bus as defined in subdivision seventeen of section 220.00 of this~~
38 ~~chapter or criminal sale of a controlled substance to a child as defined~~
39 ~~in section 220.48 of this chapter, the term shall be at least two years~~
40 ~~and shall not exceed nine years];~~

41 (ii) for a class C felony, the term shall [~~be at least one year and~~
42 ~~shall]~~ not exceed five and one-half years;

43 (iii) for a class D felony, the term shall [~~be at least one year and~~
44 ~~shall]~~ not exceed two and one-half years; and

45 (iv) for a class E felony, the term shall [~~be at least one year and~~
46 ~~shall]~~ not exceed one and one-half years.

47 [~~(b) Probation. Notwithstanding any other provision of law, the court~~
48 ~~may sentence a defendant convicted of a class B, class C, class D or~~
49 ~~class E felony offense defined in article two hundred twenty or two~~
50 ~~hundred twenty-two of this chapter to probation in accordance with the~~
51 ~~provisions of sections 60.04 and 65.00 of this chapter.~~

52 [~~(c) Alternative definite sentence for class B, class C, class D, and~~
53 ~~class E felonies. If the court, having regard to the nature and circum-~~
54 ~~stances of the crime and to the history and character of the defendant,~~
55 ~~is of the opinion that a sentence of imprisonment is necessary but that~~
56 ~~it would be unduly harsh to impose a determinate sentence upon a person~~

~~convicted of a class C, class D or class E felony offense defined in article two hundred twenty or two hundred twenty two of this chapter, or a class B felony defined in article two hundred twenty of this chapter, other than the class B felony defined in section 220.48 of this chapter, as added by a chapter of the laws of two thousand nine the court may impose a definite sentence of imprisonment and fix a term of one year or less.~~

~~(d) The court may direct that a determinate sentence imposed 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.]~~

§ 21. Subdivisions 3 and 4 of section 70.70 of the penal law are REPEALED.

§ 22. Section 70.71 of the penal law, as added by chapter 738 of the laws of 2004, paragraph (a) of subdivision 2 as amended and subdivision 5 as added by section 26 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

§ 70.71 Sentence of imprisonment for a class A felony drug offender.

1. For the purposes of this section, the following terms shall mean:

(a) "Felony drug offender" means a defendant who stands convicted of any class A felony as defined in article two hundred twenty of this chapter.

~~(b) ["Second felony drug offender" means a second felony offender as that term is defined in subdivision one of section 70.06 of this article, who stands convicted of and is to be sentenced for any class A felony as defined in article two hundred twenty of this chapter.~~

~~(c)]~~ "Violent felony offense" shall have the same meaning as that term is defined in subdivision one of section 70.02 of this article.

2. Sentence of imprisonment for a first felony drug offender.

(a) Applicability. Except as provided in subdivision three~~], four or five~~ of this section, this subdivision shall apply to a person convicted of a class A felony as defined in article two hundred twenty of this chapter.

(b) Authorized sentence. The term of sentence shall be fixed by the court in accordance with section 60.03 of this title. If a court finds that a sentence of imprisonment is the minimum term of imprisonment necessary to achieve the goals of sentencing, the court shall impose a determinate term of imprisonment which shall be imposed by the court in whole or half years and which shall include as a part thereof a period of post-release supervision in accordance with section 70.45 of this article. The terms authorized for such determinate sentences are as follows:

(i) for a class A-I felony, the term shall ~~[be at least eight years and shall]~~ not exceed twenty years;

(ii) for a class A-II felony, the term shall ~~[be at least three years and shall]~~ not exceed ten years.

~~[(c) Lifetime probation. Notwithstanding any other provision of law, the court may sentence a defendant convicted of a class A-II felony defined in article two hundred twenty of this chapter to lifetime probation in accordance with the provisions of section 65.00 of this chapter.]~~

3. ~~[Sentence of imprisonment for a second felony drug offender.~~

~~(a) Applicability. This subdivision shall apply to a second felony drug offender whose prior felony conviction or convictions did not include one or more violent felony offenses.~~

~~(b) Authorized sentence. When the court has found pursuant to the provisions of section 400.21 of the criminal procedure law that a defendant is a second felony drug offender who stands convicted of a class A felony as defined in article two hundred twenty or two hundred twenty-one of this chapter, the court shall impose a determinate sentence of imprisonment. Such determinate sentence shall include as a part thereof a period of post-release supervision in accordance with section 70.45 of this article. Such determinate sentence shall be imposed by the court in whole or half years as follows:~~

~~(i) for a class A-I felony, the term shall be at least twelve years and shall not exceed twenty four years;~~

~~(ii) for a class A-II felony, the term shall be at least six years and shall not exceed fourteen years.~~

~~(c) Lifetime probation. Notwithstanding any other provision of law, the court may sentence a defendant convicted of a class A-II felony defined in article two hundred twenty of this chapter to lifetime probation in accordance with the provisions of section 65.00 of this chapter.~~

~~4. Sentence of imprisonment for a second felony drug offender previously convicted of a violent felony offense.~~

~~(a) Applicability. This subdivision shall apply to a second felony drug offender whose prior felony conviction was a violent felony.~~

~~(b) Authorized sentence. When the court has found pursuant to the provisions of section 400.21 of the criminal procedure law that a defendant is a second felony drug offender whose prior felony conviction was a violent felony, who stands convicted of a class A felony as defined in article two hundred twenty or two hundred twenty-one of this chapter, the court shall impose a determinate sentence of imprisonment. Such determinate sentence shall include as a part thereof a period of post-release supervision in accordance with section 70.45 of this article. Such determinate sentence shall be imposed by the court in whole or half years as follows:~~

~~(i) for a class A-I felony, the term shall be at least fifteen years and shall not exceed thirty years;~~

~~(ii) for a class A-II felony, the term shall be at least eight years and shall not exceed seventeen years.~~

~~5.] Sentence of imprisonment for operating as a major trafficker.~~

~~(a) Applicability. This subdivision shall apply to a person convicted of the class A-I felony of operating as a major trafficker as defined in section 220.77 of this chapter.~~

~~(b) Authorized sentence. [Except as provided in paragraph (c) of this subdivision, the] The term of sentence shall be fixed in the court in accordance with section 60.03 of this title. If a court finds that a sentence of imprisonment is the minimum term of imprisonment necessary to achieve the goals of sentencing, the court shall impose an indeterminate term of imprisonment for an A-I felony, in accordance with the provisions of section 70.00 of this article.~~

~~[(c) Alternative determinate sentence. If a defendant stands convicted of violating section 220.77 of this chapter, and if the court, having regard to the nature and circumstances of the crime and 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 the indeterminate sentence for a class A-I felony specified under section 70.00 of this article, the court may instead impose the determinate sentence of imprisonment authorized by clause (i) of subparagraph (b) of subdivision two of this section for a class A-I drug felony, in such~~

~~1 case, the reasons for the court's opinion shall be set forth on the
2 record.]~~

3 § 23. Section 70.80 of the penal law, as added by chapter 7 of the
4 laws of 2007, paragraph (a) of subdivision 1 as amended by chapter 368
5 of the laws of 2015, is amended to read as follows:

6 § 70.80 Sentences of imprisonment for conviction of a felony sex
7 offense.

8 1. Definitions. (a) For the purposes of this section, a "felony sex
9 offense" means a conviction of any felony defined in article one hundred
10 thirty of this chapter, including a sexually motivated felony, or
11 patronizing a person for prostitution in the first degree as defined in
12 section 230.06 of this chapter, patronizing a person for prostitution in
13 the second degree as defined in section 230.05 of this chapter, aggra-
14 vated patronizing a minor for prostitution in the third degree as
15 defined in section 230.11 of this chapter, aggravated patronizing a
16 minor for prostitution in the second degree as defined in section 230.12
17 of this chapter, aggravated patronizing a minor for prostitution in the
18 first degree as defined in section 230.13 of this chapter, incest in the
19 second degree as defined in section 255.26 of this chapter, or incest in
20 the first degree as defined in section 255.27 of this chapter, or a
21 felony attempt or conspiracy to commit any of the above.

22 (b) A felony sex offense shall be deemed a "violent felony sex
23 offense" if it is for an offense defined as a violent felony offense in
24 section 70.02 of this article, or for a sexually motivated felony as
25 defined in section 130.91 of this chapter where the specified offense is
26 a violent felony offense as defined in section 70.02 of this article.

27 (c) ~~[For the purposes of this section, a "predicate felony sex offen-
28 der" means a person who stands convicted of any felony sex offense as
29 defined in paragraph (a) of this subdivision, other than a class A-I
30 felony, after having previously been subjected to one or more predicate
31 felony convictions as defined in subdivision one of section 70.06 or
32 subdivision one of section 70.04 of this article.]~~

33 (d) For purposes of this section, a "violent felony offense" is any
34 felony defined in subdivision one of section 70.02 of this article, and
35 a "non-violent felony offense" is any felony not defined therein.

36 2. In imposing a sentence within the authorized statutory range for
37 any felony sex offense, the court may consider all relevant factors set
38 forth in section 1.05 of this chapter, and in particular, may consider
39 the defendant's criminal history, if any, including any history of sex
40 offenses; any mental illness or mental abnormality from which the
41 defendant may suffer; the defendant's ability or inability to control
42 his sexual behavior; and, if the defendant has difficulty controlling
43 such behavior, the extent to which that difficulty may pose a threat to
44 society.

45 3. Except as provided by subdivision four, five, six[~~7~~] or seven [~~or~~
46 ~~eight~~] of this section, or when a defendant is being sentenced for a
47 conviction of the class A-II felonies of predatory sexual assault and
48 predatory sexual assault against a child as defined in sections 130.95
49 and 130.96 of this chapter, or for any class A-I sexually motivated
50 felony for which a life sentence or a life without parole sentence
51 [~~must~~] may be imposed, a sentence imposed upon a defendant convicted of
52 a felony sex offense shall be fixed by the court in accordance with
53 section 60.03 of this title. If a court finds that a sentence of impri-
54 sonment is the minimum term of imprisonment necessary to achieve the
55 goals of sentencing, the court shall impose a determinate sentence. The
56 determinate sentence shall be imposed by the court in whole or half

1 years, and shall include as a part thereof a period of post-release
2 supervision in accordance with subdivision two-a of section 70.45 of
3 this article. [~~Persons eligible for sentencing under section 70.07 of
4 this article governing second child sexual assault felonies shall be
5 sentenced under such section and paragraph (j) of subdivision two-a of
6 section 70.45 of this article.~~]

7 4. [~~(a)~~] Sentences of imprisonment for felony sex offenses. Except as
8 provided in subdivision five, six[~~7~~] or seven[~~7~~, ~~or eight~~] of this
9 section, the term of the determinate sentence must be fixed by the court
10 as follows:

11 [~~(i)~~] (a) for a class B felony, the term must [~~be at least five years
12 and must~~] not exceed twenty-five years;

13 [~~(ii)~~] (b) for a class C felony, the term must [~~be at least three and
14 one-half years and must~~] not exceed fifteen years;

15 [~~(iii)~~] (c) for a class D felony, the term must [~~be at least two years
16 and must~~] not exceed seven years; and

17 [~~(iv)~~] (d) for a class E felony, the term must [~~be at least one and
18 one-half years and must~~] not exceed four years.

19 [~~(b) Probation. The court may sentence a defendant convicted of a
20 class D or class E felony sex offense to probation in accordance with
21 the provisions of section 65.00 of this title.~~]

22 [~~(c) Alternative definite sentences for class D and class E felony sex
23 offenses. If the court, having regard to the nature and circumstances of
24 the crime and to the history and character of the defendant, is of the
25 opinion that a sentence of imprisonment is necessary but that it would
26 be unduly harsh to impose a determinate sentence upon a person convicted
27 of a class D or class E felony sex offense, the court may impose a defi-
28 nite sentence of imprisonment and fix a term of one year or less.~~]

29 5. ~~Sentence of imprisonment for a predicate felony sex offender. (a)
30 Applicability. This subdivision shall apply to a predicate felony sex
31 offender who stands convicted of a non-violent felony sex offense and
32 who was previously convicted of one or more felonies.~~

33 [~~(b) Non-violent predicate felony offense. When the court has found,
34 pursuant to the provisions of the criminal procedure law, that a person
35 is a predicate felony sex offender, and the person's predicate
36 conviction was for a non-violent felony offense, the court must impose a
37 determinate sentence of imprisonment, the term of which must be fixed by
38 the court as follows:~~]

39 [~~(i) for a class B felony, the term must be at least eight years and
40 must not exceed twenty-five years;~~]

41 [~~(ii) for a class C felony, the term must be at least five years and
42 must not exceed fifteen years;~~]

43 [~~(iii) for a class D felony, the term must be at least three years and
44 must not exceed seven years; and~~]

45 [~~(iv) for a class E felony, the term must be at least two years and
46 must not exceed four years.~~]

47 [~~(c) Violent predicate felony offense. When the court has found, pursu-
48 ant to the provisions of the criminal procedure law, that a person is a
49 predicate felony sex offender, and the person's predicate conviction was
50 for a violent felony offense, the court must impose a determinate
51 sentence of imprisonment, the term of which must be fixed by the court
52 as follows:~~]

53 [~~(i) for a class B felony, the term must be at least nine years and
54 must not exceed twenty-five years;~~]

55 [~~(ii) for a class C felony, the term must be at least six years and
56 must not exceed fifteen years;~~]

~~(iii) for a class D felony, the term must be at least four years and must not exceed seven years, and~~

~~(iv) for a class E felony, the term must be at least two and one half years and must not exceed four years.~~

~~(d) A defendant who stands convicted of a non-violent felony sex offense, other than a class A-I or class A-II felony, who is adjudicated a persistent felony offender under section 70.10 of this article, shall be sentenced pursuant to the provisions of section 70.10 or pursuant to this subdivision.~~

~~6.] 5. Sentence of imprisonment for a violent felony sex offense. Except as provided in subdivisions six and seven [~~and eight~~] of this section, a defendant who stands convicted of a violent felony sex offense must be sentenced pursuant to the provisions of section 70.02[~~7 section 70.04, subdivision six of section 70.06, section 70.08, or section 70.10~~] of this article, as applicable.~~

~~[7.] 6. Sentence for a class A felony sex offense. When a person stands convicted of a sexually motivated felony pursuant to section 130.91 of this chapter and the specified offense is a class A felony, the court must sentence the defendant in accordance with the provisions of:~~

~~(a) section 60.06 of this [~~chapter~~] title and section 70.00 of this article, as applicable, if such offense is a class A-I felony; and~~

~~(b) section 70.00, [~~70.06 or 70.08 of this article, as applicable,~~] if such offense is a class A-II felony.~~

~~[8.] 7. Whenever a juvenile offender stands convicted of a felony sex offense, he or she must be sentenced pursuant to the provisions of sections 60.10 and 70.05 of this [~~chapter~~] title.~~

~~[9.] 8. Every determinate sentence for a felony sex offense, as defined in paragraph (a) of subdivision one of this section, imposed pursuant to any section of this article, shall include as a part thereof a period of post-release supervision in accordance with subdivision two-a of section 70.45 of this article.~~

§ 24. Paragraph (b) of subdivision 3 of section 60.01 of the penal law, as amended by chapter 548 of the laws of 1984, is amended to read as follows:

~~(b) A fine authorized by article eighty[~~, provided, however, that when the conviction is of a class B felony or of any felony defined in article two hundred twenty, the sentence shall not consist solely of a fine~~] of this title; or~~

§ 25. 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~~].

§ 26. Section 60.04 of the penal law, as added by chapter 738 of the laws of 2004, subdivisions 3 and 5 as amended by section 17 of part AAA of chapter 56 of the laws of 2009, subdivision 6 as amended by section 120 of subpart B of part C of chapter 62 of the laws of 2011 and subdivision 7 as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 60.04 Authorized disposition; controlled substances [~~and marijuana felony~~] offenses.

1 1. Applicability. Notwithstanding the provisions of any law, this
2 section shall govern the dispositions authorized when a person is to be
3 sentenced upon a conviction of a felony offense defined in article two
4 hundred twenty [~~or two hundred twenty-one~~] of this chapter [~~or when a~~
5 ~~person is to be sentenced upon a conviction of such a felony as a multi-~~
6 ~~ple felony offender as defined in subdivision five of this section~~].

7 2. Class A felony. Every person convicted of a class A felony must be
8 sentenced [~~to imprisonment~~] in accordance with section 70.71 of this
9 title[~~, unless such person is convicted of a class A-II felony and is~~
10 ~~sentenced to probation for life in accordance with section 65.00 of this~~
11 ~~title~~].

12 3. Class B felonies. Every person convicted of a class B felony must
13 be sentenced [~~to imprisonment~~] in accordance with the applicable
14 provisions of section 70.70 of this [~~chapter, a definite sentence of~~
15 ~~imprisonment with a term of one year or less or probation in accordance~~
16 ~~with section 65.00 of this chapter provided, however, a person convicted~~
17 ~~of criminal sale of a controlled substance to a child as defined in~~
18 ~~section 220.48 of this chapter must be sentenced to a determinate~~
19 ~~sentence of imprisonment in accordance with the applicable provisions of~~
20 ~~section 70.70 of this chapter or to a sentence of probation in accord-~~
21 ~~ance with the opening paragraph of paragraph (b) of subdivision one of~~
22 ~~section 65.00 of this chapter~~] **title.**

23 4. Alternative sentence. [~~Where a sentence of imprisonment or a~~
24 ~~sentence of probation as an alternative to imprisonment is not required~~
25 ~~to be imposed pursuant to subdivision two, three or five of this~~
26 ~~section, the court may impose any other sentence authorized by section~~
27 ~~60.01 of this article, provided that when the court imposes a sentence~~
28 ~~of imprisonment, such sentence must be in accordance with section 70.70~~
29 ~~of this title.~~] Where the court imposes a sentence of imprisonment in
30 accordance with this section, the court may also impose a fine author-
31 ized by article eighty of this title and in such case the sentence shall
32 be both imprisonment and a fine.

33 5. [~~Multiple felony offender. Where the court imposes a sentence~~
34 ~~pursuant to subdivision three of section 70.70 of this chapter upon a~~
35 ~~second felony drug offender, as defined in paragraph (b) of subdivision~~
36 ~~one of section 70.70 of this chapter, it must sentence such offender to~~
37 ~~imprisonment in accordance with the applicable provisions of section~~
38 ~~70.70 of this chapter, a definite sentence of imprisonment with a term~~
39 ~~of one year or less, or probation in accordance with section 65.00 of~~
40 ~~this chapter, provided, however, that where the court imposes a sentence~~
41 ~~upon a class B second felony drug offender, it must sentence such offen-~~
42 ~~der to a determinate sentence of imprisonment in accordance with the~~
43 ~~applicable provisions of section 70.70 of this chapter or to a sentence~~
44 ~~of probation in accordance with the opening paragraph of paragraph (b)~~
45 ~~of subdivision one of section 65.00 of this chapter. When the court~~
46 ~~imposes sentence on a second felony drug offender pursuant to subdivi-~~
47 ~~sion four of section 70.70 of this chapter, it must impose a determinate~~
48 ~~sentence of imprisonment in accordance with such subdivision.~~

49 ~~6.~~] Substance abuse treatment. When the court imposes a sentence of
50 imprisonment which requires a commitment to the state department of
51 corrections and community supervision [~~upon a person who stands~~
52 ~~convicted of a controlled substance or marijuana offense~~], the court
53 may, upon motion of the defendant in its discretion, issue an order
54 directing that the department of corrections and community supervision
55 enroll the defendant in the comprehensive alcohol and substance abuse
56 treatment program in an alcohol and substance abuse correctional annex

1 as defined in subdivision eighteen of section two of the correction law,
2 provided that the defendant will satisfy the statutory eligibility
3 criteria for participation in such program. Notwithstanding the forego-
4 ing provisions of this subdivision, any defendant to be enrolled in such
5 program pursuant to this subdivision shall be governed by the same rules
6 and regulations promulgated by the department of corrections and commu-
7 nity supervision, including without limitation those rules and regu-
8 lations establishing requirements for completion and those rules and
9 regulations governing discipline and removal from the program. No such
10 period of court ordered corrections based drug abuse treatment pursuant
11 to this subdivision shall be required to extend beyond the defendant's
12 conditional release date.

13 ~~[7-]~~ 6. a. Shock incarceration participation. When the court imposes a
14 sentence of imprisonment which requires a commitment to the department
15 of corrections and community supervision upon a person [~~who stands~~
16 ~~convicted of a controlled substance or marihuana offense~~], upon motion
17 of the defendant, the court may issue an order directing that the
18 department of corrections and community supervision enroll the defendant
19 in the shock incarceration program as defined in article twenty-six-A of
20 the correction law, provided that the defendant is an eligible incarcer-
21 ated individual, as described in subdivision one of section eight
22 hundred sixty-five of the correction law. Notwithstanding the foregoing
23 provisions of this subdivision, any defendant to be enrolled in such
24 program pursuant to this subdivision shall be governed by the same rules
25 and regulations promulgated by the department of corrections and commu-
26 nity supervision, including without limitation those rules and regu-
27 lations establishing requirements for completion and such rules and
28 regulations governing discipline and removal from the program.

29 b. (i) In the event that an incarcerated individual designated by
30 court order for enrollment in the shock incarceration program requires a
31 degree of medical care or mental health care that cannot be provided at
32 a shock incarceration facility, the department, in writing, shall notify
33 the incarcerated individual, provide a proposal describing a proposed
34 alternative-to-shock-incarceration program, and notify him or her that
35 he or she may object in writing to placement in such alternative-to-
36 shock-incarceration program. If the incarcerated individual objects in
37 writing to placement in such alternative-to-shock-incarceration program,
38 the department of corrections and community supervision shall notify the
39 sentencing court, provide such proposal to the court, and arrange for
40 the incarcerated individual's prompt appearance before the court. The
41 court shall provide the proposal and notice of a court appearance to the
42 people, the incarcerated individual and the appropriate defense attor-
43 ney. After considering the proposal and any submissions by the parties,
44 and after a reasonable opportunity for the people, the incarcerated
45 individual and counsel to be heard, the court may modify its sentencing
46 order accordingly, notwithstanding the provisions of section 430.10 of
47 the criminal procedure law.

48 (ii) An incarcerated individual who successfully completes an alterna-
49 tive-to-shock-incarceration program within the department of corrections
50 and community supervision shall be treated in the same manner as a
51 person who has successfully completed the shock incarceration program,
52 as set forth in subdivision four of section eight hundred sixty-seven of
53 the correction law.

54 § 27. Section 60.05 of the penal law, as amended by chapter 410 of the
55 laws of 1979, the section heading and subdivisions 2, 3 and 4 as amended
56 by chapter 738 of the laws of 2004, subdivision 1 as amended by chapter

1 7 of the laws of 2007, subdivision 5 as amended by chapter 405 of the
2 laws of 2010 and subdivision 8 as added by section 1 of part KK of chap-
3 ter 55 of the laws of 2019, is amended to read as follows:

4 § 60.05 Authorized dispositions; other class A, B, certain C and D felo-
5 nies [~~and multiple felony offenders~~].

6 1. Applicability. Except as provided in section 60.04 of this article
7 governing the authorized dispositions applicable to felony offenses
8 defined in article two hundred twenty [~~or two hundred twenty one~~] of
9 this chapter or in section 60.13 of this article governing the author-
10 ized dispositions applicable to felony sex offenses defined in paragraph
11 (a) of subdivision one of section 70.80 of this title, this section
12 shall govern the dispositions authorized when a person is to be
13 sentenced upon a conviction of a class A felony, a class B felony or a
14 class C, class D or class E felony specified [~~herein, or when a person
15 is to be sentenced upon a conviction of a felony as a multiple felony
16 offender~~] in this section.

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

23 3. Class B felony. [~~Except as provided in subdivision six of this
24 section, every~~] Every person convicted of a class B violent felony
25 offense as defined in subdivision one of section 70.02 of this title,
26 must be sentenced [~~to imprisonment~~] in accordance with such section
27 [~~70.02~~]; and[~~, except as provided in subdivision six of this section,~~]
28 every person convicted of any other class B felony must be sentenced [~~to
29 imprisonment~~] in accordance with section 70.00 of this title.

30 4. Certain class C felonies. [~~Except as provided in subdivision six,
31 every~~] Every person convicted of a class C violent felony offense as
32 defined in subdivision one of section 70.02 of this title, must be
33 sentenced [~~to imprisonment~~] in accordance with section 70.02 of this
34 title[~~, and, except as provided in subdivision six of this section,
35 every person convicted of the class C felonies of: attempt to commit any
36 of the class B felonies of bribery in the first degree as defined in
37 section 200.04, bribe receiving in the first degree as defined in
38 section 200.12, conspiracy in the second degree as defined in section
39 105.15 and criminal mischief in the first degree as defined in section
40 145.12, criminal usury in the first degree as defined in section 190.42,
41 rewarding official misconduct in the first degree as defined in section
42 200.22, receiving reward for official misconduct in the first degree as
43 defined in section 200.27, attempt to promote prostitution in the first
44 degree as defined in section 230.32, promoting prostitution in the
45 second degree as defined in section 230.30, arson in the third degree as
46 defined in section 150.10 of this chapter, must be sentenced to impri-
47 sonment in accordance with section 70.00 of this title~~].

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

54 6. [~~Multiple felony offender. When the court imposes sentence upon a
55 second violent felony offender, as defined in section 70.04, or a second
56 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.]~~ 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 of this title and in such case the sentence shall be both imprisonment and a fine.

~~[8.]~~ 7. Shock incarceration participation. (a) When the court imposes a determinate sentence of imprisonment pursuant to subdivision [~~three~~] two of section 70.02 of this [~~chapter~~] title or subdivision six of section 70.06 of this [~~chapter upon a person who stands convicted either of burglary in the second degree as defined in subdivision two of section 140.25 of this chapter or robbery in the second degree as defined in subdivision one of section 160.10 of this chapter, or an attempt thereof~~] title, upon motion of the defendant, the court may issue an order directing that the department of corrections and community supervision enroll the defendant in the shock incarceration program as defined in article twenty-six-A of the correction law, provided that the defendant is an eligible inmate, as described in subdivision one of section eight hundred sixty-five of the correction law. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of corrections and community supervision, including without limitation those rules and regulations establishing requirements for completion and such rules and regulations governing discipline and removal from the program.

(b) Paragraph (b) of subdivision seven of section 60.04 of this article shall apply in the event an inmate designated by court order for enrollment in the shock incarceration program requires a degree of medical care or mental health care that cannot be provided at a shock incarceration facility.

§ 28. Paragraph (ii) of subdivision b of section 60.09 of the penal law, as added by chapter 410 of the laws of 1979, is amended to read as follows:

(ii) if the conviction was for a class A-II offense the court may impose a new minimum term which shall be [~~no less than three years imprisonment and~~] no more than eight and one-third years;

§ 29. Section 60.10 of the penal law, as amended by chapter 411 of the laws of 1979, is amended to read as follows:

§ 60.10 Authorized disposition; juvenile offender.

1. When a juvenile offender is convicted of a crime, the court shall sentence the defendant [~~to imprisonment~~] in accordance with section 70.05 of this title or sentence him upon a youthful offender finding in accordance with section 60.02 of this [~~chapter~~] article.

2. Subdivision one of this section shall apply when sentencing a juvenile offender notwithstanding the provisions of any other law that deals with the authorized sentence for persons who are not juvenile offenders. [~~Provided, however, that the limitation prescribed by this section shall not be deemed or construed to bar use of a conviction of a juvenile offender, other than a juvenile offender who has been adjudicated a youthful offender pursuant to section 720.20 of the criminal procedure law, as a previous or predicate felony offender under section 70.04, 70.06, 70.08 or 70.10, when sentencing a person who commits a felony after he has reached the age of sixteen.]~~

1 § 30. Section 60.12 of the penal law, as amended by chapter 31 of the
2 laws of 2019, subdivision 1 as amended by section 1 of part WW of chap-
3 ter 55 of the laws of 2019, is amended to read as follows:

4 § 60.12 Authorized disposition; alternative sentence; domestic violence
5 cases.

6 1. Notwithstanding any other provision of law, where a court is impos-
7 ing sentence upon a person pursuant to section 70.00, 70.02[~~, 70.06~~] or
8 subdivision two or three of section 70.71 of this title, [~~other than for
9 an offense defined in section 125.26, 125.27, subdivision five of
10 section 125.25, or article 490 of this chapter, or for an offense which
11 would require such person to register as a sex offender pursuant to
12 article six C of the correction law, an attempt or conspiracy to commit
13 any such offense,~~] and is authorized [~~or required~~] pursuant to sections
14 70.00, 70.02[~~, 70.06~~] or subdivision two or three of section 70.71 of
15 this title to impose a sentence of imprisonment, the court, upon a
16 determination following a hearing that (a) at the time of the instant
17 offense, the defendant was a victim of domestic violence subjected to
18 substantial physical, sexual or psychological abuse inflicted by a
19 member of the same family or household as the defendant as such term is
20 defined in subdivision one of section 530.11 of the criminal procedure
21 law; (b) such abuse was a significant contributing factor to the defend-
22 ant's criminal behavior; (c) having regard for the nature and circum-
23 stances of the crime and the history, character and condition of the
24 defendant, that a sentence of imprisonment pursuant to section 70.00,
25 70.02[~~, 70.06~~] or subdivision two or three of section 70.71 of this
26 title would be unduly harsh may instead impose a sentence in accordance
27 with this section, except that nothing in this section shall relieve the
28 prosecution of its burden under the provisions of section 60.03 of this
29 article, or abrogate the process afforded the defendant in such section.

30 A court may determine that such abuse constitutes a significant
31 contributing factor pursuant to paragraph (b) of this subdivision
32 regardless of whether the defendant raised a defense pursuant to article
33 thirty-five, article forty, or subdivision one of section 125.25 of this
34 chapter.

35 At the hearing to determine whether the defendant should be sentenced
36 pursuant to this section, the court shall consider oral and written
37 arguments, take testimony from witnesses offered by either party, and
38 consider relevant evidence to assist in making its determination. Reli-
39 able hearsay shall be admissible at such hearings.

40 2. Where a court would otherwise be required to impose a sentence
41 pursuant to section 70.02 of this title, the court may impose a definite
42 sentence of imprisonment of one year or less, or probation in accordance
43 with the provisions of section 65.00 of this title, or may fix a deter-
44 minate term of imprisonment as follows:

45 (a) For a class B felony, the term must be at least one year and must
46 not exceed five years;

47 (b) For a class C felony, the term must be at least one year and must
48 not exceed three and one-half years;

49 (c) For a class D felony, the term must be at least one year and must
50 not exceed two years; and

51 (d) For a class E felony, the term must be one year and must not
52 exceed one and one-half years.

53 3. Where a court would otherwise be required to impose a sentence for
54 a class A felony offense pursuant to section 70.00 of this title, the
55 court may fix a determinate term of imprisonment of at least [~~five
56 years~~] one year and not to exceed fifteen years, or impose a definite

1 sentence of imprisonment of one year or less, or probation in accordance
2 with the provisions of section 65.00 of this title.

3 4. Where a court would otherwise be required to impose a sentence for
4 a class A felony offense pursuant to subparagraph (i) of paragraph (b)
5 of subdivision two of section 70.71 of this title, the court may fix a
6 determinate term of imprisonment of at least [~~five years~~] one year and
7 not to exceed eight years, or impose a definite sentence of imprisonment
8 of one year or less, or probation in accordance with the provisions of
9 section 65.00 of this title.

10 5. Where a court would otherwise be required to impose a sentence for
11 a class A felony offense pursuant to subparagraph (i) of paragraph (b)
12 of subdivision three of section 70.71 of this title, the court may fix a
13 determinate term of imprisonment of at least [~~five years~~] one year and
14 not to exceed twelve years, or impose a definite sentence of imprison-
15 ment of one year or less, or probation in accordance with the provisions
16 of section 65.00 of this title.

17 6. Where a court would otherwise be required to impose a sentence for
18 a class A felony offense pursuant to subparagraph (ii) of paragraph (b)
19 of subdivision two of section 70.71 of this title, the court may fix a
20 determinate term of imprisonment of at least one year and not to exceed
21 three years, or impose a definite sentence of imprisonment of one year
22 or less, or probation in accordance with the provisions of section 65.00
23 of this title.

24 7. Where a court would otherwise be required to impose a sentence for
25 a class A felony offense pursuant to subparagraph (ii) of paragraph (b)
26 of subdivision three of section 70.71 of this title, the court may fix a
27 determinate term of imprisonment of at least [~~three years~~] one year and
28 not to exceed six years, or impose a definite sentence of imprisonment
29 of one year or less, or probation in accordance with the provisions of
30 section 65.00 of this title.

31 [~~8. Where a court would otherwise be required to impose a sentence~~
32 ~~pursuant to subdivision six of section 70.06 of this title, the court~~
33 ~~may fix a term of imprisonment as follows:~~

34 ~~(a) For a class B felony, the term must be at least three years and~~
35 ~~must not exceed eight years;~~

36 ~~(b) For a class C felony, the term must be at least two and one-half~~
37 ~~years and must not exceed five years;~~

38 ~~(c) For a class D felony, the term must be at least two years and must~~
39 ~~not exceed three years;~~

40 ~~(d) For a class E felony, the term must be at least one and one-half~~
41 ~~years and must not exceed two years.~~

42 ~~9. Where a court would otherwise be required to impose a sentence for~~
43 ~~a class B, C, D or E felony offense pursuant to section 70.00 of this~~
44 ~~title, the court may impose a sentence in accordance with the provisions~~
45 ~~of subdivision two of section 70.70 of this title.~~

46 ~~10. Except as provided in subdivision seven of this section, where a~~
47 ~~court would otherwise be required to impose a sentence pursuant to~~
48 ~~subdivision three of section 70.06 of this title, the court may impose a~~
49 ~~sentence in accordance with the provisions of subdivision three of~~
50 ~~section 70.70 of this title.~~

51 ~~11. Where a court would otherwise be required to impose a sentence~~
52 ~~pursuant to subdivision three of section 70.06 of this title, where the~~
53 ~~prior felony conviction was for a felony offense defined in section~~
54 ~~70.02 of this title, the court may impose a sentence in accordance with~~
55 ~~the provisions of subdivision four of section 70.70 of this title.]~~

1 § 31. Subdivision h of section 74 of chapter 3 of the laws of 1995,
2 amending the correction law and other laws relating to the incarceration
3 fee, as amended by section 8 of part A of chapter 55 of the laws of
4 2021, is amended to read as follows:

5 h. Section fifty-two of this act shall be deemed to have been in full
6 force and effect on and after April 1, 1995; provided, however, that the
7 provisions of section 189 of the correction law, as amended by section
8 fifty-five of this act [~~subdivision 5 of section 60.35 of the penal
9 law, as amended by section fifty-six of this act,~~] and section fifty-
10 seven of this act shall expire September 1, 2023, when upon such date
11 the amendments to the correction law [~~and penal law~~] made by [~~sections~~
12 section fifty-five [~~and fifty-six~~] of this act shall revert to and be
13 read as if the provisions of this act had not been enacted; provided,
14 however, that sections sixty-two, sixty-three and sixty-four of this act
15 shall be deemed to have been in full force and effect on and after March
16 1, 1995 and shall be deemed repealed April 1, 1996 and upon such date
17 the provisions of subsection (e) of section 9110 of the insurance law
18 and subdivision 2 of section 89-d of the state finance law shall revert
19 to and be read as set out in law on the date immediately preceding the
20 effective date of sections sixty-two and sixty-three of this act;

21 § 32. Section 65.00 of the penal law, subdivisions 1 and 2 as amended
22 by chapter 835 of the laws of 1974, the opening paragraph of paragraph
23 (a) of subdivision 1 as amended by chapter 738 of the laws of 2004, the
24 opening paragraph of paragraph (b) of subdivision 1 as amended by
25 section 19 and subparagraph (ii) of paragraph (a) of subdivision 3 as
26 amended by section 20 of part AAA of chapter 56 of the laws of 2009, the
27 closing paragraph of subdivision 1 as amended by chapter 3 of the laws
28 of 1995, subdivision 3 as amended by chapter 264 of the laws of 2003,
29 subparagraph (i) of paragraph (a), subparagraph (i) of paragraph (b) and
30 paragraph (d) of subdivision 3 as amended by chapter 556 of the laws of
31 2013, paragraph (c) of subdivision 3 as amended by chapter 568 of the
32 laws of 2004, the closing paragraph of subdivision 3 as amended by chap-
33 ter 320 of the laws of 2006, subdivision 4 as amended by chapter 17 of
34 the laws of 2014, and subdivision 5 as amended by chapter 264 of the
35 laws of 2003 and as renumbered by chapter 556 of the laws of 2013, is
36 amended to read as follows:

37 § 65.00 Sentence of probation.

38 1. [~~Criteria. (a) Except as otherwise required by section 60.04 or
39 60.05 of this title, and except as provided by paragraph (b) hereof, the
40 court may sentence a person to a period of probation upon conviction of
41 any crime if the court, having regard to the nature and circumstances of
42 the crime and to the history, character and condition of the defendant,
43 is of the opinion that:~~

44 [~~(i) Institutional confinement for the term authorized by law of the
45 defendant is or may not be necessary for the protection of the public;~~

46 [~~(ii) the defendant is in need of guidance, training or other assist-
47 ance which, in his case, can be effectively administered through
48 probation supervision; and~~

49 [~~(iii) such disposition is not inconsistent with the ends of justice.~~

50 (b) The court, with the concurrence of either the administrative judge
51 of the court or of the judicial district within which the court is situ-
52 ated or such administrative judge as the presiding justice of the appro-
53 priate appellate division shall designate, may sentence a person to a
54 period of probation upon conviction of a class A-II felony defined in
55 article two hundred twenty, the class B felony defined in section 220.48
56 of this chapter or any other class B felony defined in article two

~~hundred twenty of this chapter where the person is a second felony drug offender as defined in paragraph (b) of subdivision one of section 70.70 of this chapter, if the prosecutor either orally on the record or in a writing filed with the indictment recommends that the court sentence such person to a period of probation upon the ground that such person has or is providing material assistance in the investigation, apprehension or prosecution of any person for a felony defined in article two hundred twenty or the attempt or the conspiracy to commit any such felony, and if the court, having regard to the nature and circumstances of the crime and to the history, character and condition of the defendant is of the opinion that:~~

~~(i) Institutional confinement of the defendant is not necessary for the protection of the public;~~

~~(ii) The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision;~~

~~(iii) The defendant has or is providing material assistance in the investigation, apprehension or prosecution of a person for a felony defined in article two hundred twenty or the attempt or conspiracy to commit any such felony; and~~

~~(iv) Such disposition is not inconsistent with the ends of justice.~~

~~Provided, however, that the court shall not, except to the extent authorized by paragraph (d) of subdivision two of section 60.01 of this chapter, impose a sentence of probation in any case where it sentences a defendant for more than one crime and imposes a sentence of imprisonment for any one of the crimes, or where the defendant is subject to an undischarged indeterminate or determinate sentence of imprisonment which was imposed at a previous time by a court of this state and has more than one year to run.~~

~~2-] Sentence. When a person is sentenced to a period of probation the court shall, except to the extent authorized by paragraph (d) of subdivision two of section 60.01 of this chapter, impose the period authorized by subdivision [three] two of this section and shall specify, in accordance with section 65.10, the conditions to be complied with. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.~~

~~[3-] 2. Periods of probation. Unless terminated sooner in accordance with the criminal procedure law, the period of probation shall be as follows:~~

~~(a) (i) For a felony, other than a class A-II felony defined in article two hundred twenty of this chapter or the class B felony defined in section 220.48 of this chapter, [or any other class B felony defined in article two hundred twenty of this chapter committed by a second felony drug offender,] or a sexual assault, the period of probation shall [be a term of three, four or] not exceed five years;~~

~~(ii) For a class A-II felony drug offender as defined in paragraph (a) of subdivision one of section 70.71 of this chapter [as described in paragraph (b) of subdivision one of this section, or a class B felony committed by a second felony drug offender described in paragraph (b) of subdivision one of this section, the], any period of probation [shall be life] may be imposed and for a class B felony defined in section 220.48 of this chapter, the period of probation shall [be] not exceed twenty-five years;~~

1 (iii) For a felony sexual assault, the period of probation shall [~~be~~
2 not exceed] ten years.

3 (b) (i) For a class A misdemeanor, other than a sexual assault, the
4 period of probation shall [~~be~~] not exceed a term of [~~two or~~] three
5 years;

6 (ii) For a class A misdemeanor sexual assault, the period of probation
7 shall [~~be~~] not exceed six years.

8 (c) For a class B misdemeanor, the period of probation shall [~~be~~] not
9 exceed one year, except the period of probation shall [~~be no less than~~
10 ~~one year and no more than~~] not exceed three years for the class B misde-

11 meanor of public lewdness as defined in section 245.00 of this chapter;
12 (d) For an unclassified misdemeanor, the period of probation shall
13 [~~be~~] not exceed a term of [~~two or~~] three years if the authorized
14 sentence of imprisonment is in excess of three months, otherwise the
15 period of probation shall [~~be~~] not exceed one year.

16 For the purposes of this section, the term "sexual assault" means an
17 offense defined in article one hundred thirty or two hundred sixty-
18 three, or in section 255.25, 255.26 or 255.27 of this chapter, or an
19 attempt to commit any of the foregoing offenses.

20 [~~4.~~] 3. If during the periods of probation referenced in subparagraph
21 (i) of paragraph (a), subparagraph (i) of paragraph (b) and paragraph
22 (d) of subdivision [~~three~~] two of this section an alleged violation is
23 sustained following a hearing pursuant to section 410.70 of the criminal
24 procedure law and the court continues or modifies the sentence, the
25 court may extend the remaining period of probation up to the maximum
26 term authorized by this section. Provided, however, a defendant shall
27 receive credit for the time during which he or she was supervised under
28 the original probation sentence prior to any declaration of delinquency
29 and for any time spent in custody pursuant to this article for an
30 alleged violation of probation.

31 [~~5.~~] 4. In any case where a court pursuant to its authority under
32 subdivision four of section 60.01 of this chapter revokes probation and
33 sentences such person to imprisonment and probation, as provided in
34 paragraph (d) of subdivision two of section 60.01 of this chapter, the
35 period of probation shall be the remaining period of the original
36 probation sentence or one year whichever is greater.

37 § 33. Section 65.05 of the penal law, subdivision 1 as added by chap-
38 ter 277 of the laws of 1973, paragraph (a) of subdivision 1 and subdivi-
39 sion 2 as amended by chapter 742 of the laws of 1981 and subdivision 3
40 as amended by chapter 618 of the laws of 1992, is amended to read as
41 follows:

42 § 65.05 Sentence of conditional discharge.

43 1. [~~Criteria. (a) Except as otherwise required by section 60.05, the~~
44 ~~court may impose a sentence of conditional discharge for an offense if~~
45 ~~the court, having regard to the nature and circumstances of the offense~~
46 ~~and to the history, character and condition of the defendant, is of the~~
47 ~~opinion that neither the public interest nor the ends of justice would~~
48 ~~be served by a sentence of imprisonment and that probation supervision~~
49 ~~is not appropriate.~~

50 [~~(b) When a sentence of conditional discharge is imposed for a felony,~~
51 ~~the court shall set forth in the record the reasons for its action.~~

52 2.] Sentence. Except to the extent authorized by paragraph (d) of
53 subdivision two of section 60.01 of this [~~chapter~~] title, when the court
54 imposes a sentence of conditional discharge the defendant shall be
55 released with respect to the conviction for which the sentence is
56 imposed without imprisonment or probation supervision but subject,

1 during the period of conditional discharge, to such conditions as the
 2 court may determine. The court shall impose the period of conditional
 3 discharge authorized by subdivision three of this section and shall
 4 specify, in accordance with section 65.10 of this article, the condi-
 5 tions to be complied with. If a defendant is sentenced pursuant to
 6 paragraph (e) of subdivision two of section 65.10 of this [~~chapter~~]
 7 article, the court shall require the administrator of the program to
 8 provide written notice to the court of any violation of program partic-
 9 ipation by the defendant. The court may modify or enlarge the conditions
 10 or, if the defendant commits an additional offense or violates a condi-
 11 tion, revoke the sentence at any time prior to the expiration or termi-
 12 nation of the period of conditional discharge.

13 [~~3-~~] 2. Periods of conditional discharge. Unless terminated sooner in
 14 accordance with the criminal procedure law, the period of conditional
 15 discharge shall be as follows:

16 (a) [~~Three~~] Up to three years in the case of a felony; and

17 (b) [~~One~~] Up to one year in the case of a misdemeanor or a violation.

18 Where the court has required, as a condition of the sentence, that the
 19 defendant make restitution of the fruits of his or her offense or make
 20 reparation for the loss caused thereby and such condition has not been
 21 satisfied, the court, at any time prior to the expiration or termination
 22 of the period of conditional discharge, may impose an additional period.
 23 The length of the additional period shall be fixed by the court at the
 24 time it is imposed and shall not be more than two years. All of the
 25 incidents of the original sentence, including the authority of the court
 26 to modify or enlarge the conditions, shall continue to apply during such
 27 additional period.

28 § 34. Section 65.20 of the penal law is amended to read as follows:

29 § 65.20 Sentence of unconditional discharge.

30 [~~1. Criteria. The court may impose a sentence of unconditional~~
 31 ~~discharge in any case where it is authorized to impose a sentence of~~
 32 ~~conditional discharge under section 65.05 if the court is of the opinion~~
 33 ~~that no proper purpose would be served by imposing any condition upon~~
 34 ~~the defendant's release.~~

35 [~~When a sentence of unconditional discharge is imposed for a felony,~~
 36 ~~the court shall set forth in the record the reasons for its action.~~

37 2. Sentence.] When the court imposes a sentence of unconditional
 38 discharge, the defendant shall be released with respect to the
 39 conviction for which the sentence is imposed without imprisonment, fine
 40 or probation supervision. A sentence of unconditional discharge is for
 41 all purposes a final judgment of conviction.

42 § 35. Subdivision 2 of section 85.00 of the penal law, as added by
 43 chapter 477 of the laws of 1970, paragraph (a) as amended by chapter 277
 44 of the laws of 1973, is amended to read as follows:

45 2. Authorization for use of sentence. The court may impose a sentence
 46 of intermittent imprisonment in any case where:

47 (a) [~~the court is imposing sentence, upon a person other than a second~~
 48 ~~or persistent felony offender, for a class D or class E felony or for~~
 49 ~~any offense that is not a felony; and~~

50 (b) the court is not imposing any other sentence of imprisonment upon
 51 the defendant at the same time; and

52 [~~(e)~~] (b) the defendant is not under any other sentence of imprison-
 53 ment with a term in excess of fifteen days imposed by any other court[~~+~~
 54 ~~and~~].

55 § 36. Subdivisions 3, 4 and 5 of section 485.10 of the penal law,
 56 subdivisions 3 and 4 as added by chapter 107 of the laws of 2000 and

1 subdivision 5 as added by chapter 158 of the laws of 2010, are amended
2 to read as follows:

3 3. ~~[Notwithstanding any other provision of law, when a person is
4 convicted of a hate crime pursuant to this article and the specified
5 offense is a class B felony,~~

6 ~~(a) the maximum term of the indeterminate sentence must be at least
7 six years if the defendant is sentenced pursuant to section 70.00 of
8 this chapter,~~

9 ~~(b) the term of the determinate sentence must be at least eight years
10 if the defendant is sentenced pursuant to section 70.02 of this chapter,~~

11 ~~(c) the term of the determinate sentence must be at least twelve years
12 if the defendant is sentenced pursuant to section 70.04 of this chapter,~~

13 ~~(d) the maximum term of the indeterminate sentence must be at least
14 four years if the defendant is sentenced pursuant to section 70.05 of
15 this chapter, and~~

16 ~~(e) the maximum term of the indeterminate sentence or the term of the
17 determinate sentence must be at least ten years if the defendant is
18 sentenced pursuant to section 70.06 of this chapter.~~

19 4. ~~Notwithstanding any other provision of law, when a person is
20 convicted of a hate crime pursuant to this article and the specified
21 offense is a class A-1 felony, the minimum period of the indeterminate
22 sentence shall be not less than twenty years.~~

23 5.] In addition to any of the dispositions authorized by this chapter,
24 the court may require as part of the sentence imposed upon a person
25 convicted of a hate crime pursuant to this article, that the defendant
26 complete a program, training session or counseling session directed at
27 hate crime prevention and education, where the court determines such
28 program, training session or counseling session is appropriate, avail-
29 able and was developed or authorized by the court or local agencies in
30 cooperation with organizations serving the affected community.

31 § 37. Paragraph (d) of subdivision 2 of section 490.25 of the penal
32 law is REPEALED.

33 § 38. Sections 220.35, 400.15, 400.16, 400.19, 400.20 and 400.21 of
34 the criminal procedure law are REPEALED.

35 § 39. Subdivision 6 of section 2 of the correction law, as amended by
36 chapter 476 of the laws of 1970, is amended to read as follows:

37 6. "Residential treatment facility". A correctional facility consist-
38 ing of a community based residence in or near a community where employ-
39 ment, educational and training opportunities are readily available for
40 persons who ~~[are on parole or conditional release and for persons who]~~
41 are or who will soon be eligible for release on parole who intend to
42 reside in or near that community when released.

43 § 40. Subdivision 10 of section 73 of the correction law is REPEALED.

44 § 41. Subdivision 1 of section 865 of the correction law, as amended
45 by chapter 322 of the laws of 2021, is amended to read as follows:

46 1. "Eligible incarcerated individual" means a person sentenced to an
47 indeterminate term of imprisonment who will become eligible for release
48 on parole within three years or sentenced to a determinate term of
49 imprisonment who will become eligible for conditional release within
50 three years~~[, who has not reached the age of fifty years, who has not
51 previously been convicted of a violent felony as defined in article
52 seventy of the penal law, or a felony in any other jurisdiction which
53 includes all of the essential elements of any such violent felony, upon
54 which an indeterminate or determinate term of imprisonment was imposed
55 and who was between the ages of sixteen and fifty years at the time of
56 commission of the crime upon which his or her present sentence was~~

~~based. Notwithstanding the foregoing, no person who is convicted of any of the following crimes shall be deemed eligible to participate in this program: (a) a violent felony offense as defined in article seventy of the penal law; provided, however, that a person who is convicted of burglary in the second degree as defined in subdivision two of section 140.25 of the penal law, or robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, or an attempt thereof, is eligible to participate, (b) an A-I felony offense, (c) any homicide offense as defined in article one hundred twenty-five of the penal law, (d) any felony sex offense as defined in article one hundred thirty of the penal law and (e) any escape or absconding offense as defined in article two hundred five of the penal law].~~

§ 42. Section 220.10 of the criminal procedure law, as amended by chapter 480 of the laws of 1976, subdivision 5 as amended by chapter 410 of the laws of 1979, subparagraph (i) of paragraph (a) of subdivision 5 as amended by chapter 738 of the laws of 2004, paragraph (d) of subdivision 5 as added by chapter 233 of the laws of 1980, subparagraph (iv) of paragraph (d) of subdivision 5 as amended by chapter 189 of the laws of 2000, paragraph (e) of subdivision 5 as amended by chapter 1 of the laws of 1995, subparagraph (iii) of paragraph (g) of subdivision 5 as amended by chapter 264 of the laws of 2003, the second undesignated paragraph of paragraph (g) of subdivision 5 as amended by chapter 920 of the laws of 1982, the closing paragraph of paragraph (g) of subdivision 5 as amended by chapter 411 of the laws of 1979, paragraph (g-1) of subdivision 5 as added by chapter 809 of the laws of 2021, paragraph (h) of subdivision 5 as amended by chapter 322 of the laws of 2021 and subdivision 6 as added by chapter 548 of the laws of 1980, is amended to read as follows:

§ 220.10 Plea; kinds of pleas.

The only kinds of pleas which may be entered to an indictment are those specified in this section:

1. The defendant may as a matter of right enter a plea of "not guilty" to the indictment.

2. ~~[Except as provided in subdivision five, the]~~ The defendant may as a matter of right enter a plea of "guilty" to the entire indictment.

3. ~~[Except as provided in subdivision five, where]~~ Where the indictment charges but one crime, the defendant may, with ~~[both]~~ either the permission of the court ~~[and]~~ in furtherance of justice in accordance with the factors outlined in subdivision one of section 210.40 of this part, or the consent of the people with the permission of the court, enter a plea of guilty of a lesser included offense.

4. ~~[Except as provided in subdivision five, where]~~ Where the indictment charges two or more offenses in separate counts, the defendant may, with ~~[both]~~ either the permission of the court ~~[and]~~ in furtherance of justice in accordance with the factors outlined in subdivision one of section 210.40 of this part, or the consent of the people with the permission of the court, enter a plea of:

(a) Guilty of one or more but not all of the offenses charged; or

(b) Guilty of a lesser included offense with respect to any or all of the offenses charged; or

(c) Guilty of any combination of offenses charged and lesser offenses included within other offenses charged.

5. ~~[(a) (i) Where the indictment charges one of the class A felonies defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony, then any plea of guilty entered pursuant to subdivision three or four of this section must be or must include at least a plea of guilty of a class B felony.]~~

1 ~~(iii) Where the indictment charges one of the class B felonies defined~~
2 ~~in article two hundred twenty of the penal law then any plea of guilty~~
3 ~~entered pursuant to subdivision three or four must be or must include at~~
4 ~~least a plea of guilty of a class D felony.~~

5 ~~(b) Where the indictment charges any class B felony, other than a~~
6 ~~class B felony defined in article two hundred twenty of the penal law or~~
7 ~~a class B violent felony offense as defined in subdivision one of~~
8 ~~section 70.02 of the penal law, then any plea of guilty entered pursuant~~
9 ~~to subdivision three or four must be or must include at least a plea of~~
10 ~~guilty of a felony.~~

11 ~~(c) Where the indictment charges a felony, other than a class A felony~~
12 ~~or class B felony defined in article two hundred twenty of the penal law~~
13 ~~or class B or class C violent felony offense as defined in subdivision~~
14 ~~one of section 70.02 of the penal law, and it appears that the defendant~~
15 ~~has previously been subjected to a predicate felony conviction as~~
16 ~~defined in penal law section 70.06 then any plea of guilty entered~~
17 ~~pursuant to subdivision three or four must be or must include at least a~~
18 ~~plea of guilty of a felony.~~

19 ~~(d) Where the indictment charges a class A felony, other than those~~
20 ~~defined in article two hundred twenty of the penal law, or charges a~~
21 ~~class B or class C violent felony offense as defined in subdivision one~~
22 ~~of section 70.02 of the penal law, then a plea of guilty entered pursu-~~
23 ~~ant to subdivision three or four must be as follows:~~

24 ~~(i) Where the indictment charges a class A felony offense or a class B~~
25 ~~violent felony offense which is also an armed felony offense then a plea~~
26 ~~of guilty must include at least a plea of guilty to a class C violent~~
27 ~~felony offense;~~

28 ~~(ii) Except as provided in subparagraph (i) of this paragraph, where~~
29 ~~the indictment charges a class B violent felony offense or a class C~~
30 ~~violent felony offense, then a plea of guilty must include at least a~~
31 ~~plea of guilty to a class D violent felony offense;~~

32 ~~(iii) Where the indictment charges the class D violent felony offense~~
33 ~~of criminal possession of a weapon in the third degree as defined in~~
34 ~~subdivision four of section 265.02 of the penal law, and the defendant~~
35 ~~has not been previously convicted of a class A misdemeanor defined in~~
36 ~~the penal law in the five years preceding the commission of the offense,~~
37 ~~then a plea of guilty must be either to the class E violent felony~~
38 ~~offense of attempted criminal possession of a weapon in the third degree~~
39 ~~or to the class A misdemeanor of criminal possession of a weapon in the~~
40 ~~fourth degree as defined in subdivision one of section 265.01 of the~~
41 ~~penal law;~~

42 ~~(iv) Where the indictment charges the class D violent felony offenses~~
43 ~~of criminal possession of a weapon in the third degree as defined in~~
44 ~~subdivision four of section 265.02 of the penal law and the provisions~~
45 ~~of subparagraph (iii) of this paragraph do not apply, or subdivision~~
46 ~~five, seven or eight of section 265.02 of the penal law, then a plea of~~
47 ~~guilty must include at least a plea of guilty to a class E violent felo-~~
48 ~~ny offense.~~

49 ~~(e) A defendant may not enter a plea of guilty to the crime of murder~~
50 ~~in the first degree as defined in section 125.27 of the penal law,~~
51 ~~provided, however, that a defendant may enter such a plea with both the~~
52 ~~permission of the court and the consent of the people when the agreed~~
53 ~~upon sentence is either life imprisonment without parole or a term of~~
54 ~~imprisonment for the class A-I felony of murder in the first degree~~
55 ~~other than a sentence of life imprisonment without parole.~~

~~(f) The provisions of this subdivision shall apply irrespective of whether the defendant is thereby precluded from entering a plea of guilty of any lesser included offense.~~

~~(g)~~ Where the defendant is a juvenile offender, [~~the provisions of paragraphs (a), (b), (c) and (d) of this subdivision shall not apply and~~] any plea entered pursuant to subdivision three or four of this section, must be as follows:

~~(i)~~ (a) If the indictment charges a person fourteen or fifteen years old with the crime of murder in the second degree any plea of guilty entered pursuant to subdivision three or four must be a plea of guilty of a crime for which the defendant is criminally responsible;

~~(ii)~~ (b) If the indictment does not charge a crime specified in [~~subparagraph (i)~~] paragraph (a) of this [~~paragraph~~] subdivision, then any plea of guilty entered pursuant to subdivision three or four of this section must be a plea of guilty of a crime for which the defendant is criminally responsible unless a plea of guilty is accepted pursuant to [~~subparagraph (iii)~~] paragraph (c) of this [~~paragraph~~] subdivision;

~~(iii)~~ (c) Where the indictment does not charge a crime specified in [~~subparagraph (i)~~] paragraph (a) of this [~~paragraph~~] subdivision, the district attorney may recommend removal of the action to the family court. Upon making such recommendation the district attorney shall submit a subscribed memorandum setting forth: [~~(1)~~] (i) a recommendation that the interests of justice would best be served by removal of the action to the family court; and [~~(2)~~] (ii) if the indictment charges a thirteen year old with the crime of murder in the second degree, or a fourteen or fifteen year old with the crimes of rape in the first degree as defined in subdivision one of section 130.35 of the penal law, or criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter specific factors, one or more of which reasonably supports the recommendation, showing, [~~(1)~~] (1) mitigating circumstances that bear directly upon the manner in which the crime was committed, or [~~(iii)~~] (2) where the defendant was not the sole participant in the crime, that the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution, or [~~(iii)~~] (3) possible deficiencies in proof of the crime, or [~~(iv)~~] (4) where the juvenile offender has no previous adjudications of having committed a designated felony act, as defined in subdivision eight of section 301.2 of the family court act, regardless of the age of the offender at the time of commission of the act, that the criminal act was not part of a pattern of criminal behavior and, in view of the history of the offender, is not likely to be repeated.

If the court is of the opinion based on specific factors set forth in the district attorney's memorandum that the interests of justice would best be served by removal of the action to the family court, a plea of guilty of a crime or act for which the defendant is not criminally responsible may be entered pursuant to subdivision three or four of this section, except that a thirteen year old charged with the crime of murder in the second degree may only plead to a designated felony act, as defined in subdivision eight of section 301.2 of the family court act.

Upon accepting any such plea, the court must specify upon the record the portion or portions of the district attorney's statement the court is relying upon as the basis of its opinion and that it believes the interests of justice would best be served by removal of the proceeding

1 to the family court. Such plea shall then be deemed to be a juvenile
2 delinquency fact determination and the court upon entry thereof must
3 direct that the action be removed to the family court in accordance with
4 the provisions of article seven hundred twenty-five of this chapter.

5 [~~(g-1)~~] 5-a. Where a defendant is an adolescent offender, the
6 provisions of paragraphs (a), (b), (c) and (d) of this subdivision shall
7 not apply. Where the plea is to an offense constituting a misdemeanor,
8 the plea shall be deemed replaced by an order of fact-finding in a juve-
9 nile delinquency proceeding, pursuant to section 346.1 of the family
10 court act, and the action shall be removed to the family court in
11 accordance with article seven hundred twenty-five of this chapter. Where
12 the plea is to an offense constituting a felony, the court may remove
13 the action to the family court in accordance with section 722.23 and
14 article seven hundred twenty-five of this chapter.

15 [~~(h) Where the indictment charges the class E felony offense of aggra-
16 vated harassment of an employee by an incarcerated individual as defined
17 in section 240.32 of the penal law, then a plea of guilty must include
18 at least a plea of guilty to a class E felony.~~]

19 6. The defendant may, with both the permission of the court and the
20 consent of the people, enter a plea of not responsible by reason of
21 mental disease or defect to the indictment in the manner prescribed in
22 section 220.15 of this chapter.

23 § 43. Subdivision 3 of section 220.30 of the criminal procedure law is
24 REPEALED.

25 § 44. This act shall take effect immediately.