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:

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

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

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

§ 60.03 Presumption against sentences of imprisonment.

1. There shall be a presumption against sentences of imprisonment in all cases which may be overcome only in extraordinary circumstances. The 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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2. For any felony, an authorized sentence includes a sentence other than incarceration or a definite sentence of imprisonment. The court may fix such authorized sentence for one year or less.

3. (a) Before imposing a sentence of imprisonment, the court shall conduct a hearing to determine whether the presumption against incarceration has been overcome.

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

(ii) At the hearing the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination, including testimony and evidence admitted in prior proceedings in the same case. Reliable hearsay shall be admissible at such hearing. Testimony of witnesses relating to prior bad acts or convictions of the defendant shall not be considered relevant to the court's determination.

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

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

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

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

(vii) Upon request of the defendant, the court shall conduct the hearing promptly after the rendering of a guilty verdict or the entry of a guilty plea.

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

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

(ii) the financial cost of incarceration to the state and/or localities;

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

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

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

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

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

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

(5) age;

(6) potential immigration consequences of sentence;

(7) lack of prior criminal record;

(8) history of employment;

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

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

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

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

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

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

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

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

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

(a) The report of the pre-sentence investigation must contain an analysis of as much of the information gathered in the investigation as the agency that conducted the investigation deems relevant to the question of sentence. The report must also include any other [~~imformation~~] information that the court directs to be included and the material required by paragraph (b) of this subdivision which shall be considered part of the report. The report shall include an analysis of the actual financial cost of incarceration to the state and/or localities of the potential sentences that may be imposed.

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

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

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

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

§ 70.00 Sentence of imprisonment for felony.

1. Indeterminate sentence. Except as provided in subdivisions **three and** four[~~, five and six~~] of this section or section 70.80 of this article, [~~a~~] **the term of** sentence [~~of imprisonment~~] for a felony, other than a felony defined in article two hundred twenty or two hundred twenty-one of this chapter, shall be **fixed by the court in accordance with section 60.03 of this title. If a court finds that 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 minimum period shall be fixed by the court and specified in the sentence and shall be not less than one year nor more than one-third of the maximum term imposed, or the court may impose a definite sentence of imprisonment and fix a term of one year or less.**

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

(a) For a class A felony, the term shall be life imprisonment;

(b) For a class B felony, the term shall be fixed by the court, and shall not exceed twenty-five years;

(c) For a class C felony, the term shall be fixed by the court, and shall not exceed fifteen years;

(d) For a class D felony, the term shall be fixed by the court, and shall not exceed seven years; and

(e) For a class E felony, the term shall be fixed by the court, and shall not exceed four years.

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

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

~~(i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years; provided, however, that (A) where a sentence, other than a sentence of death or life imprisonment without parole, is imposed upon a defendant convicted of murder in the first degree as defined in section 125.27 of this chapter such minimum period shall be not less than twenty years nor more than twenty-five years, and, (B) where a sentence is imposed upon a defendant convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or convicted of aggravated murder as defined in section 125.26 of this chapter, the sentence shall be life imprisonment without parole, and, (C) where a sentence is imposed upon a defendant convicted of attempted murder in the first degree as defined in article one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a) of subdivision one and paragraph (b) of subdivision one of section 125.27 of this chapter or attempted aggravated murder as defined in article one hundred ten of this chapter and section 125.26 of this chapter such minimum period shall be not less than twenty years nor more than forty years.~~

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

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

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

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

section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant who was seventeen years of age or younger at the time of the commission of the crime may be sentenced, in accordance with law, to the applicable indeterminate sentence with a maximum term of life imprisonment. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter.

[~~6.~~] 4. Determinate sentence. [~~Except as provided in subdivision four of this section and subdivisions two and four of section 70.02, when~~] When a person is sentenced as a violent felony offender pursuant to section 70.02 [~~or as a second violent felony offender pursuant to section 70.04 or as a second felony offender on a conviction for a violent felony offense pursuant to section 70.06~~] of this article, the 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 of more than one year is the minimum term of imprisonment necessary to achieve the goals of sentencing, the court must impose a determinate sentence of imprisonment in accordance with the provisions of such [~~sections and such sentence shall include, as a part thereof, a period of post-release supervision in accordance with section 70.45~~] section.

§ 7. Subdivision d of section 74 of chapter 3 of the laws of 1995, enacting the sentencing reform act of 1995, as amended by section 19 of part A of chapter 55 of the laws of 2021, is amended to read as follows:

d. Sections one-a [~~through~~], one-b, two, four through eight, eleven, twelve, twenty, twenty-four through twenty-eight, thirty through thirty-nine, forty-two and forty-four of this act shall be deemed repealed on September 1, 2023;

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

[~~3.~~] 2 Term of sentence. The term [~~of a determinate sentence~~] for a violent felony offense must 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 a determinate sentence as follows:

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

(b) For a class C felony, the term must be at least [~~three and one-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 criminally 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

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

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

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

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

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

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

(a) Indeterminate or determinate sentence. Except as provided in subdivision four of this section, when an indeterminate or determinate sentence of imprisonment is imposed, the court shall commit the defendant to the custody of the state department of corrections and community supervision for the term of his or her sentence and until released in accordance with the law[~~; provided, however, that a defendant sentenced pursuant to subdivision seven of section 70.06 shall be committed to the custody of the state department of corrections and community supervision for immediate delivery to a reception center operated by the department~~].

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

§ 70.25 Concurrent and consecutive terms of imprisonment.

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

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

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

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

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

~~2-b. When a person is convicted of a violent felony offense committed after arraignment and while released on recognizance or bail, but committed prior to the imposition of sentence on a pending felony charge, and if an indeterminate or determinate 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 either mitigating circumstances that bear directly upon the manner in which the crime was committed or, where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. 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-c. When a person is convicted of bail jumping in the second degree as defined in section 215.56 or bail jumping in the first degree as defined in section 215.57 committed after arraignment and while released on recognizance or bail 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-d. When a person is convicted of escape in the second degree as defined in section 205.10 or escape in the first degree as defined in section 205.15 committed after issuance of a securing order, as defined 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-~~

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

~~(b) 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 term of imprisonment which was previously imposed or which may be prospectively imposed where the person was confined within a detention facility at the time of the assault upon a charge which culminated in such sentence of imprisonment.~~

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

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

(a) If the sentences run concurrently, the time served under imprisonment on any of the sentences shall be credited against the minimum **and maximum** periods of all the concurrent indeterminate sentences and against the terms of all the concurrent determinate sentences. The maximum term or terms of the indeterminate sentences and the term or terms of the determinate sentences shall merge in and be satisfied by discharge of the term which has the longest unexpired time to run;

(f) The aggregate maximum term of consecutive sentences imposed upon a juvenile offender for two or more crimes, not including a class A felony, committed before he has reached the age of sixteen, shall, if it exceeds ten years, be deemed to be ten years. If consecutive indeterminate sentences imposed upon a juvenile offender include a sentence for the class A felony of arson in the first degree or for the class A felony of kidnapping in the first degree, then the aggregate maximum term of such sentences shall, if it exceeds fifteen years, be deemed to be fifteen years. Where the aggregate maximum term of two or more consecutive sentences is reduced by a calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds [~~one-half~~] **one-third** of the aggregate maximum term as so reduced, shall be deemed to be [~~one-half~~] **one-third** of the aggregate maximum term as so reduced.

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

§ 10. This act shall take effect 30 days after it shall have become a law and **sections one through eight** shall remain in effect until September 1, 2023, and provided further that the commissioner of correctional services shall report each January first, and July first, to the chairman of the senate crime victims, crime and correction committee, the senate codes committee, the assembly correction committee, and the assembly codes committee, the number of eligible inmates in each facility under the custody and control of the commissioner who have applied

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

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

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

The service of an indeterminate or determinate sentence of imprisonment shall satisfy any definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate or determinate sentence was imposed, [~~except as provided in paragraph (b) of subdivision five of section 70.25 of this article~~]. A person who is serving a definite sentence at the time an indeterminate or determinate sentence is imposed shall be delivered to the custody of the state department of corrections and community supervision to commence service of the indeterminate or determinate sentence immediately [~~unless the person is serving a definite sentence pursuant to paragraph (b) of subdivision five of section 70.25 of this article~~]. In any case where the indeterminate or determinate sentence is revoked or vacated, the person shall receive credit against the definite sentence for each day spent in the custody of the state department of corrections and community supervision.

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

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

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

(f) the amendments made to subdivision 2 of section 259-c of the executive law made by section seven of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) "Felony~~] "felony drug offender" means a defendant who stands convicted of any felony, defined in article two hundred twenty or two hundred twenty-two of this chapter other than a class A felony.

[~~(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 any felony, defined in article two hundred twenty or two hundred twenty-two of this chapter other than a class A felony.~~

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

2. [~~Except as provided in subdivision three or four of this section, a~~] (a) Term of sentence. The term of sentence [~~of imprisonment~~] for a felony drug 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 a determinate sentence as provided in paragraph [~~(a)~~] (b) of this subdivision.

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

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

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

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

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

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

~~(c) Alternative definite sentence for class B, class C, class D, and class E felonies. If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose 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~~

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

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

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

1. Definitions. (a) For the purposes of this section, a "felony sex offense" means a conviction of any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a person for prostitution in the first degree as defined in section 230.06 of this chapter, patronizing a person for prostitution in the second degree as defined in section 230.05 of this chapter, aggravated patronizing a minor for prostitution in the third degree as defined in section 230.11 of this chapter, aggravated patronizing a minor for prostitution in the second degree as defined in section 230.12 of this chapter, aggravated patronizing a minor for prostitution in the first degree as defined in section 230.13 of this chapter, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of the above.

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

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

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

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

3. Except as provided by subdivision four, five, six[~~,~~] or seven [~~or eight~~] of this section, or when a defendant is being sentenced for a conviction of the class A-II felonies of predatory sexual assault and predatory sexual assault against a child as defined in sections 130.95 and 130.96 of this chapter, or for any class A-I sexually motivated felony for which a life sentence or a life without parole sentence [~~must~~] may be imposed, a sentence imposed upon a defendant convicted of a felony sex offense 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 sentence. The determinate sentence shall be imposed by the court in whole or half

years, and 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. [~~Persons eligible for sentencing under section 70.07 of this article governing second child sexual assault felonies shall be sentenced under such section and paragraph (j) of subdivision two-a of section 70.45 of this article.~~]

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(c) Violent predicate felony offense. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a predicate felony sex offender, and the person's predicate conviction was for a violent felony offense, the court must impose a determinate sentence of imprisonment, the term of which must be fixed by the court as follows:~~

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

~~(ii) for a class C felony, the term must be at least six years and 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[~~, 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 marihuana felony~~] offenses.

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

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

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

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

5. [~~Multiple felony offender. Where the court imposes a sentence pursuant to subdivision three of section 70.70 of this chapter upon a second felony drug offender, as defined in paragraph (b) of subdivision one of section 70.70 of this chapter, it must sentence such offender to imprisonment in accordance with the applicable provisions of section 70.70 of this chapter, a definite sentence of imprisonment with a term of one year or less, or probation in accordance with section 65.00 of this chapter, provided, however, that where the court imposes a sentence upon a class B second felony drug offender, it must sentence such offender to a determinate sentence of imprisonment in accordance with the applicable provisions of section 70.70 of this chapter or to a sentence of probation in accordance with the opening paragraph of paragraph (b) of subdivision one of section 65.00 of this chapter. When the court imposes sentence on a second felony drug offender pursuant to subdivision four of section 70.70 of this chapter, it must impose a determinate sentence of imprisonment in accordance with such subdivision.~~

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

as defined in subdivision eighteen of section two of the correction law, provided that the defendant will satisfy the statutory eligibility criteria for participation in such program. 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 those rules and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date.

[~~7.~~] **6.** a. Shock incarceration participation. When the court imposes a sentence of imprisonment which requires a commitment to the department of corrections and community supervision upon a person [~~who stands convicted of a controlled substance or marihuana offense~~], 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 incarcerated individual, 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. (i) In the event that an incarcerated individual 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, the department, in writing, shall notify the incarcerated individual, provide a proposal describing a proposed alternative-to-shock-incarceration program, and notify him or her that he or she may object in writing to placement in such alternative-to-shock-incarceration program. If the incarcerated individual objects in writing to placement in such alternative-to-shock-incarceration program, the department of corrections and community supervision shall notify the sentencing court, provide such proposal to the court, and arrange for the incarcerated individual's prompt appearance before the court. The court shall provide the proposal and notice of a court appearance to the people, the incarcerated individual and the appropriate defense attorney. After considering the proposal and any submissions by the parties, and after a reasonable opportunity for the people, the incarcerated individual and counsel to be heard, the court may modify its sentencing order accordingly, notwithstanding the provisions of section 430.10 of the criminal procedure law.

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

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

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

§ 60.05 Authorized dispositions; other class A, B, certain C and D felonies [~~and multiple felony offenders~~].

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

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

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

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

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

6. [~~Multiple felony offender. When the court imposes sentence upon a second violent felony offender, as defined in section 70.04, or a second felony offender, as defined in section 70.06, the court must impose a~~

~~sentence of imprisonment in accordance with section 70.04 or 70.06, as the case may be, unless it imposes a sentence of imprisonment in accordance with section 70.08 or 70.10.~~

~~7.~~] 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.~~]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 32. Section 65.00 of the penal law, subdivisions 1 and 2 as amended by chapter 835 of the laws of 1974, the opening paragraph of paragraph (a) of subdivision 1 as amended by chapter 738 of the laws of 2004, the opening paragraph of paragraph (b) of subdivision 1 as amended by section 19 and subparagraph (ii) of paragraph (a) of subdivision 3 as amended by section 20 of part AAA of chapter 56 of the laws of 2009, the closing paragraph of subdivision 1 as amended by chapter 3 of the laws of 1995, subdivision 3 as amended by chapter 264 of the laws of 2003, subparagraph (i) of paragraph (a), subparagraph (i) of paragraph (b) and paragraph (d) of subdivision 3 as amended by chapter 556 of the laws of 2013, paragraph (c) of subdivision 3 as amended by chapter 568 of the laws of 2004, the closing paragraph of subdivision 3 as amended by chapter 320 of the laws of 2006, subdivision 4 as amended by chapter 17 of the laws of 2014, and subdivision 5 as amended by chapter 264 of the laws of 2003 and as renumbered by chapter 556 of the laws of 2013, is amended to read as follows:

§ 65.00 Sentence of probation.

1. [~~Criteria. (a) Except as otherwise required by section 60.04 or 60.05 of this title, and except as provided by paragraph (b) hereof, the court may sentence a person to a period of probation upon conviction of any crime 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 for the term authorized by law of the defendant is or may not be 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; and~~

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

~~(b) The court, with the concurrence of either the administrative judge of the court or of the judicial district within which the court is situated or such administrative judge as the presiding justice of the appropriate appellate division shall designate, may sentence a person to a period of probation upon conviction of a class A-II felony defined in article two hundred twenty, 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 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;

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

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

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

(c) For a class B misdemeanor, the period of probation shall [~~be~~] not exceed one year, except the period of probation shall [~~be no less than one year and no more than~~] not exceed three years for the class B misdemeanor of public lewdness as defined in section 245.00 of this chapter;

(d) For an unclassified misdemeanor, the period of probation shall [~~be~~] not exceed a term of [~~two or~~] three years if the authorized sentence of imprisonment is in excess of three months, otherwise the period of probation shall [~~be~~] not exceed one year.

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

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

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

§ 33. Section 65.05 of the penal law, subdivision 1 as added by chapter 277 of the laws of 1973, paragraph (a) of subdivision 1 and subdivision 2 as amended by chapter 742 of the laws of 1981 and subdivision 3 as amended by chapter 618 of the laws of 1992, is amended to read as follows:

§ 65.05 Sentence of conditional discharge.

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

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

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

during the period of conditional discharge, to such conditions as the court may determine. The court shall impose the period of conditional discharge authorized by subdivision three of this section and shall specify, in accordance with section 65.10 **of this article**, the conditions to be complied with. If a defendant is sentenced pursuant to paragraph (e) of subdivision two of section 65.10 of this [~~chapter~~] **article**, the court shall require the administrator of the program to provide written notice to the court of any violation of program participation by the defendant. 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 conditional discharge.

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

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

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

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

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

§ 65.20 Sentence of unconditional discharge.

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

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

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

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

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

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

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

[~~(c)~~] **(b)** the defendant is not under any other sentence of imprisonment with a term in excess of fifteen days imposed by any other court[~~; and~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

6. "Residential treatment facility". A correctional facility consisting of a community based residence in or near a community where employment, educational and training opportunities are readily available for persons who [~~are on parole or conditional release and for persons who~~] are or who will soon be eligible for release on parole who intend to reside in or near that community when released.

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

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

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

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

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

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

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

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

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

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

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

~~(e) A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment without parole or a term of imprisonment for the class A-I felony of murder in the first degree 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, [~~(i)~~] (1) mitigating circumstances that bear directly upon the manner in which the crime was committed, or [~~(ii)~~] (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

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

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

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

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

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

§ 44. This act shall take effect immediately.