§ 70.06 Sentence of imprisonment for second felony offender.

1. Definition of second felony offender.

(a) A second felony offender is a person, other than a second violent felony offender as defined in section 70.04, who stands convicted of a felony defined in this chapter, other than a class A-I felony, after having previously been subjected to one or more predicate felony convictions as defined in paragraph (b) of this subdivision.

(b) For the purpose of determining whether a prior conviction is a predicate felony conviction the following criteria shall apply:

(i) The conviction must have been in this state of a felony, or in any other jurisdiction of an offense for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed;

(ii) Sentence upon such prior conviction must have been imposed before commission of the present felony;

(iii) Suspended sentence, suspended execution of sentence, a sentence of probation, a sentence of conditional discharge or of unconditional discharge, and a sentence of certification to the care and custody of the division of substance abuse services, shall be deemed to be a sentence;

(iv) Except as provided in subparagraph (v) of this paragraph, sentence must have been imposed not more than ten years before commission of the felony of which the defendant presently stands convicted;

(v) In calculating the ten year period under subparagraph (iv), any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration;

(vi) An offense for which the defendant has been pardoned on the ground of innocence shall not be deemed a predicate felony conviction.

* 2. Authorized sentence. Except as provided in subdivision five or six of this section, or as provided in subdivision five of section 70.80 of this article, when the court has found, pursuant to the provisions of

the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

* NB Effective until September 1, 2027

* 2. Authorized sentence. Except as provided in subdivision five of this section, or as provided in subdivision five of section 70.80 of this article, when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

* NB Effective September 1, 2027

* 3. Maximum term of sentence. Except as provided in subdivision five or six of this section, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be life imprisonment;

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

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

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

(e) For a class E felony, the term must be at least three years and must not exceed four years; provided, however, that where the sentence is for the class E felony offense specified in section 240.32 of this chapter, the maximum term must be at least three years and must not exceed five years.

* NB Effective until September 1, 2027

* 3. Maximum term of sentence. Except as provided in subdivision five of this section, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second

felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be life imprisonment;

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

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

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

(e) For a class E felony, the term must be at least three years and must not exceed four years.

* NB Effective September 1, 2027

4. Minimum period of imprisonment. (a) The minimum period of imprisonment for a second felony offender convicted of a class A-II felony must be fixed by the court at no less than six years and not to exceed twelve and one-half years and must be specified in the sentence, 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) Except as provided in paragraph (a), the minimum period of imprisonment under an indeterminate sentence for a second felony offender must be fixed by the court at one-half of the maximum term imposed and must be specified in the sentence.

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

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

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

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

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

* NB Repealed September 1, 2027

* 7. Notwithstanding any other provision of law, in the case of a person sentenced for a specified offense or offenses as defined in subdivision five of section 410.91 of the criminal procedure law, who stands convicted of no other felony offense, who has not previously been convicted of either a violent felony offense as defined in section 70.02 of this article, a class A felony offense or a class B felony offense, and is not under the jurisdiction of or awaiting delivery to the department of corrections and community supervision, the court may direct that such sentence be executed as a parole supervision sentence as defined in and pursuant to the procedures prescribed in section 410.91 of the criminal procedure law.

* NB Repealed September 1, 2027