§ 70.07 Sentence of imprisonment for second child sexual assault felony offender.

1. A person who stands convicted of a felony offense for a sexual assault against a child, having been subjected to a predicate felony conviction for a sexual assault against a child, must be sentenced in accordance with the provisions of subdivision four or five of this section.

2. A "sexual assault against a child" means a felony offense, other than persistent sexual abuse as defined in section 130.53 of this chapter, (a) the essential elements of which include the commission or attempted commission of sexual conduct, as defined in subdivision ten of section 130.00 of this chapter, (b) committed or attempted to be committed against a child less than fifteen years old.

3. For purposes of determining whether a person has been subjected to a predicate felony conviction under this section, the criteria set forth in paragraph (b) of subdivision one of section 70.06 shall apply provided however that for purposes of this subdivision, the terms "ten year" or "ten years", as provided in subparagraphs (iv) and (v) of paragraph (b) of subdivision one of such section 70.06, shall be "fifteen year" or "fifteen years". The provisions of section 400.19 of the criminal procedure law shall govern the procedures that must be followed to determine whether a person who stands convicted of a sexual assault against a child has been previously subjected to a predicate felony conviction for such a sexual assault and whether such offender was eighteen years of age or older at the time of the commission of the predicate felony.

4. Where the court has found pursuant to subdivision three of this section that a person who stands convicted of a felony offense defined in article one hundred thirty of this chapter for the commission or attempted commission of a sexual assault against a child has been subjected to a predicate felony conviction for a sexual assault against a child, the court shall sentence the defendant as follows:

(a) where the defendant stands convicted of such sexual assault

against a child and such conviction is for a class A-II or class B felony offense, and the predicate conviction for such sexual assault against a child is for a class A-II, class B or class C felony offense, the court shall impose an indeterminate sentence of imprisonment, the maximum term of which shall be life and the minimum period of which shall be at least fifteen years and no more than twenty-five years;

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

(c) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class B felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least twelve years and must not exceed thirty years;

(d) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class C felony offense, and the predicate conviction for such sexual assault against a child is for a class D or class E felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least ten years and must not exceed twenty-five years;

(e) where the defendant stands convicted of such sexual assault against a child and the conviction is for a class D felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least five years and must not exceed fifteen years; and

(f) where the defendant stands convicted of such sexual assault

against a child and the conviction is for a class E felony offense, and the predicate conviction for such sexual assault against a child is for a felony offense, the court shall impose a determinate sentence of imprisonment, the term of which must be at least four years and must not exceed twelve years.

5. Notwithstanding subdivision four of this section, where the court has found pursuant to subdivision three of this section that a person: (a) stands convicted of a felony offense defined in article one hundred thirty of this chapter for the commission or attempted commission of a sexual assault against a child; and (b) has been subjected to a predicate felony conviction for sexual assault against a child as defined in subdivision two of this section; and (c) who was under the age of eighteen years at the time of the commission of such predicate felony offense, then the court may, in lieu of the sentence authorized by subdivision four of this section, sentence the defendant to a term of imprisonment in accordance with the sentence authorized for the instant felony offense pursuant to subdivision three of section 70.04 of this article. The court shall set forth on the record the reasons for such determination.