§ 70.45 Determinate sentence; post-release supervision.

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. 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.

1-a. When, following a final hearing, a time assessment has been imposed upon a person convicted of a felony sex offense who owes three years or more on a period of post-release supervision, imposed pursuant to subdivision two-a of this section, such defendant, after serving three years of the time assessment, shall be reviewed by the board of parole and may be re-released to post-release supervision only upon a determination by the board of parole made in accordance with subdivision two of section two hundred fifty-nine-i of the executive law. If re-release is not granted, the board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If a time assessment of less than three years is imposed upon such a defendant, the defendant shall be released upon the expiration of such time assessment, unless he or she is subject to further imprisonment or confinement under any provision of law.

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 five years except that:

(a) such period shall be 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 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 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 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 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 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;

(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.

4. Revocation of post-release supervision. An alleged violation of any condition of post-release supervision shall be initiated, heard and determined in accordance with the provisions of subdivisions three and four of section two hundred fifty-nine-i of the executive law.

5. Calculation of service of period of post-release supervision. A period or periods of post-release supervision shall be calculated and served as follows:

(a) A period of post-release supervision shall commence upon the person's release from imprisonment to supervision by the department of corrections and community supervision and shall interrupt the running of the determinate sentence or sentences of imprisonment and the

indeterminate sentence or sentences of imprisonment, if any. The remaining portion of any maximum or aggregate maximum term shall then be held in abeyance until the successful completion of the period of post-release supervision or the person's return to the custody of the department of corrections and community supervision, whichever occurs first.

(b) Upon the completion of the period of post-release supervision, the running of such sentence or sentences of imprisonment shall resume and only then shall the remaining portion of any maximum or aggregate maximum term previously held in abeyance be credited with and diminished by such period of post-release supervision. The person shall then be under the jurisdiction of the department of corrections and community supervision for the remaining portion of such maximum or aggregate maximum term.

(c) When a person is subject to two or more periods of post-release supervision, such periods shall merge with and be satisfied by discharge of the period of post-release supervision having the longest unexpired time to run; provided, however, any time served upon one period of post-release supervision shall not be credited to any other period of post-release supervision except as provided in subdivision five of section 70.30 of this article.

(d) When a person is alleged to have violated a condition of post-release supervision by absconding and the department of corrections and community supervision has declared such person to be delinquent: (i) the declaration of delinquency shall interrupt the period of post-release supervision; (ii) such interruption shall continue until the person is restored to post-release supervision; (iii) if the person is restored to post-release supervision without being returned to the department of corrections and community supervision, any time spent in custody from the date of delinquency until restoration to post-release supervision shall first be credited to the maximum or aggregate maximum term of the sentence or sentences of imprisonment, but only to the extent authorized by subdivision three of section 70.40 of this article. Any time spent in custody solely pursuant to such delinquency after completion of the maximum or aggregate maximum term of the sentence or sentences of imprisonment shall be credited to the period of post-release supervision, if any; and (iv) if the person is ordered

returned to the department of corrections and community supervision, the person shall be required to serve the time assessment before being re-released to post-release supervision. If the person is detained pursuant to paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law pending a preliminary or final revocation hearing, the time assessment imposed following such hearing shall commence upon the execution of the warrant. If a warrant was executed pursuant to paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law but a court released the person pending a preliminary or final revocation hearing, the time assessment shall commence upon the issuance of a determination after a final hearing that the person has violated one or more conditions of community supervision in an important respect, and shall include the time period between execution of the warrant and release of the person pending a preliminary or final revocation hearing. If a releasee is committed to the custody of the sheriff pursuant to article five hundred thirty of the criminal procedure law, the time assessment, if any, shall include any time the releasee spent in such custody. If a notice of violation was issued pursuant to subdivision three of section two hundred fifty-nine-i of the executive law, the time assessment shall commence upon the issuance of a determination after a final hearing that the person has violated one or more conditions of supervision. While serving such assessment, the person shall not receive any good behavior allowance pursuant to section eight hundred three of the correction law. Any time spent in custody from the date of delinquency until return to the department of corrections and community supervision shall first be credited to the maximum or aggregate maximum term of the sentence or sentences of imprisonment, but only to the extent authorized by subdivision three of section 70.40 of this article. The maximum or aggregate maximum term of the sentence or sentences of imprisonment shall run while the person is serving such time assessment in the custody of the department of corrections and community supervision. Any time spent in custody solely pursuant to such delinquency after completion of the maximum or aggregate maximum term of the sentence or sentences of imprisonment shall be credited to the period of post-release supervision, if any.

(e) Notwithstanding paragraph (d) of this subdivision, in the event a

person is sentenced to one or more additional indeterminate or determinate term or terms of imprisonment prior to the completion of the period of post-release supervision, such period of post-release supervision shall be held in abeyance and the person shall be committed to the custody of the department of corrections and community supervision in accordance with the requirements of the prior and additional terms of imprisonment.

(f) When a person serving a period of post-release supervision is returned to the department of corrections and community supervision pursuant to an additional consecutive sentence of imprisonment and without a declaration of delinquency, such period of post-release supervision shall be held in abeyance while the person is in the custody of the department of corrections and community supervision. Such period of post-release supervision shall resume running upon the person's re-release.