§ 70.70 Sentence of imprisonment for felony drug offender other than a class A felony.

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

(a) "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 sentence of imprisonment for a felony drug offender shall be a determinate sentence as provided in paragraph (a) of this subdivision.

(a) Term of determinate sentence. Except as provided in paragraph (b) or (c) of this subdivision, the court shall impose 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.

3. Sentence of imprisonment for second felony drug offender.

(a) Applicability. This subdivision shall apply to a second felony drug offender whose prior felony conviction was not a violent felony.

(b) Except as provided in paragraphs (c), (d) and (e) of this subdivision, 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 B, class C, class D or class E felony offense defined in article two hundred twenty or two hundred twenty-two 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. The terms of such

determinate sentence shall be imposed by the court in whole or half years as follows:

(i) for a class B felony, the term shall be at least two years and shall not exceed twelve years;

(ii) for a class C felony, the term shall be at least one and one-half years and shall not exceed eight years;

(iii) for a class D felony, the term shall be at least one and one-half years and shall not exceed four years; and

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

(c) Probation. Notwithstanding any other provision of law, the court may sentence a second felony drug offender convicted of a class B felony to lifetime probation in accordance with the provisions of section 65.00 of this chapter and may sentence a second felony drug offender convicted of a class C, class D or class E felony to probation in accordance with the provisions of section 65.00 of this chapter.

(d) Sentence of parole supervision. 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 a determinate sentence imposed pursuant to this subdivision shall 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.

(e) Alternate definite sentence for 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, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

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

(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 B, class C, class D or class E felony offense defined in article two hundred twenty or two hundred twenty-two 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. The terms of such determinate sentence shall be imposed by the court in whole or half years as follows:

(i) for a class B felony, the term shall be at least six years and shall not exceed fifteen years;

(ii) for a class C felony, the term shall be at least three and one-half years and shall not exceed nine years;

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

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