§ 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, 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 be imposed, a sentence imposed upon a defendant convicted of a felony sex offense shall be 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, seven, or eight of this section, the term of the determinate sentence must be fixed by the court as follows:

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

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

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

(iv) 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. Sentence of imprisonment for a violent felony sex offense. Except as provided in subdivisions 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. 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 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. 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.

9. 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.