

Legislative Bill Drafting Commission
08754-03-5

S. -----
 Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

PENALA *Office of Court Adminis-
tration 9 R-2*
(Relates to determinate sentences)

Pen L. determinate sentences

AN ACT

to amend the penal law, in relation
to determinate sentences and to
amend chapter 3 of the laws of 1995,
enacting the sentencing reform act
of 1995, in relation to making
permanent certain provisions of such
chapter

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s49 Farley	s63 Kennedy	s40 Murphy	s10 Sanders
s46 Amedore	s17 Felder	s34 Klein	s54 Nozzolio	s23 Savino
s11 Avella	s02 Flanagan	s28 Krueger	s58 O'Mara	s41 Serino
s42 Bonacic	s55 Funke	s24 Lanza	s62 Ortt	s29 Serrano
s04 Boyle	s59 Gallivan	s39 Larkin	s60 Panepinto	s51 Seward
s44 Breslin	s12 Gianaris	s37 Latimer	s21 Parker	s09 Skelos
s38 Carlucci	s22 Golden	s01 LaValle	s13 Peralta	s26 Squadron
s14 Comrie	s47 Griffo	s52 Libous	s30 Perkins	s16 Stavisky
s03 Croci	s20 Hamilton	s45 Little	s61 Ranzenhofner	s35 Stewart-
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s48 Ritchie	Cousins
s32 Diaz	s36 Hassell-	s43 Marchione	s33 Rivera	s53 Valesky
s18 Dilan	Thompson	s07 Martins	s56 Robach	s08 Venditto
s31 Espaillat	s27 Hoylman	s25 Montgomery	s19 Sampson	s57 Young

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a053 Davila	a077 Joyner	a133 Nojay	a140 Schimminger
a092 Abinanti	a034 DenDekker	a020 Kaminsky	a037 Nolan	a076 Seawright
a084 Arroyo	a054 Dilan	a094 Katz	a130 Oaks	a087 Sepulveda
a035 Aubry	a081 Dinowitz	a074 Kavanagh	a069 O'Donnell	a065 Silver
a120 Barclay	a147 DiPietro	a142 Kearns	a051 Ortiz	a027 Simanowitz
a106 Barrett	a115 Duprey	a040 Kim	a091 Otis	a052 Simon
a060 Barron	a004 Englebright	a131 Kolb	a132 Palmesano	a036 Simotas
a082 Benedetto	a109 Fahy	a105 Lalor	a002 Palumbo	a104 Skartados
a042 Bichotte	a071 Farrell	a013 Lavine	a088 Paulin	a099 Skoufis
a079 Blake	a126 Finch	a134 Lawrence	a141 Peoples-	a022 Solages
a117 Blankenbush	a008 Fitzpatrick	a050 Lentol	Stokes	a114 Stec
a062 Borelli	a124 Friend	a125 Lifton	a058 Perry	a110 Steck
a098 Brabenec	a095 Galef	a072 Linares	a059 Persaud	a127 Stirpe
a026 Braunstein	a137 Gantt	a102 Lopez	a086 Pichardo	a112 Tedisco
a044 Brennan	a007 Garbarino	a123 Lupardo	a089 Pretlow	a101 Tenney
a119 Brindisi	a148 Giglio	a010 Lupinacci	a073 Quart	a001 Thiele
a138 Bronson	a080 Gjonaj	a121 Magee	a019 Ra	a061 Titone
a046 Brook-Krasny	a066 Glick	a129 Magnarelli	a012 Raia	a031 Titus
a093 Buchwald	a023 Goldfeder	a064 Malliotakis	a006 Ramos	a055 Walker
a118 Butler	a150 Goodell	a030 Markey	a078 Rivera	a146 Walter
a103 Cahill	a075 Gottfried	a090 Mayer	a128 Roberts	a041 Weinstein
a145 Ceretto	a005 Graf	a108 McDonald	a056 Robinson	a024 Weprin
a033 Clark	a100 Gunther	a014 McDonough	a068 Rodriguez	a113 Woerner
a047 Colton	a139 Hawley	a017 McKevitt	a067 Rosenthal	a143 Wozniak
a032 Cook	a083 Heastie	a107 McLaughlin	a025 Rozic	a070 Wright
a144 Corwin	a028 Hevesi	a038 Miller	a116 Russell	a096 Zebrowski
a085 Crespo	a048 Hikind	a015 Montesano	a149 Ryan	a043
a122 Crouch	a018 Hooper	a136 Morelle	a009 Saladino	
a021 Curran	a097 Jaffee	a057 Mosley	a111 Santabarbara	
a063 Cusick	a011 Jean-Pierre	a039 Moya	a029 Scarborough	
a045 Cymbrowitz	a135 Johns	a003 Murray	a016 Schimel	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

1 Section 1. Subdivision 2 of section 60.02 of the penal law, as amended
2 by chapter 471 of the laws of 1980, is amended to read as follows:

3 (2) If the sentence is to be imposed upon a youthful offender finding
4 which has been substituted for a conviction for any felony, the court
5 must impose a sentence authorized to be imposed upon a person convicted
6 of a class E felony [provided, however, that the court must not impose a
7 sentence of conditional discharge or unconditional discharge if the
8 youthful offender finding was substituted for a conviction of a felony
9 defined in article two hundred twenty of this chapter], as hereinafter
10 provided:

11 (a) if the youthful offender finding was substituted for a felony
12 defined in article two hundred twenty or two hundred twenty-one of this
13 chapter, then the sentence shall be as authorized by section 60.04 of
14 this article for a class E felony, and if a determinate sentence of
15 imprisonment is imposed, the corresponding period of post-release super-
16 vision provided for that class E felony by section 70.45 of this title
17 shall also be imposed. In addition to such authorized sentences, if the
18 defendant meets the requirements of subdivision two of section 410.91 of
19 the criminal procedure law, a court may impose the parole supervision
20 sentence authorized by that section.

21 (b) if the youthful offender finding was substituted for any other
22 felony, then the sentence shall be as authorized by section 60.01 of
23 this article for a sentence upon a conviction of a class E felony;
24 provided, however, that if the youthful offender finding was substituted
25 for a violent felony offense as defined in section 70.02 of this title
26 or for a felony sex offense as defined in paragraph (a) of subdivision
27 one of section 70.80 of this title and, in either case, a sentence of
28 imprisonment in excess of one year is imposed to be served in a facility

1 of the state department of corrections and community supervision, the
2 sentence shall be the determinate sentence of imprisonment authorized
3 for a class E violent felony offense or felony sex offense, as the case
4 may be, and the corresponding period of post-release supervision
5 provided for that class E felony by section 70.45 of this title.

6 § 2. Section 70.00 of the penal law, the section heading as amended by
7 chapter 277 of the laws of 1973, subdivision 1 as amended by section 36
8 of chapter 7 of the laws of 2007, subdivisions 2, 3 and 4 as amended by
9 chapter 738 of the laws of 2004, paragraph (a) of subdivision 3 as
10 amended by chapter 107 of the laws of 2006, paragraph (b) of subdivision
11 3 as amended by chapter 746 of the laws of 2006, subdivision 5 as
12 amended by chapter 482 of the laws of 2009 and subdivision 6 as amended
13 by chapter 1 of the laws of 1998, is amended to read as follows:

14 § 70.00 Sentence of imprisonment for felony.

15 1. [Indeterminate] Unless otherwise authorized by a provision of arti-
16 cle sixty or seventy of this chapter, the sentence of imprisonment for a
17 felony is as follows:

18 (a) Class A felony sentence. Except as provided in subdivisions four,
19 five and six of this section or section 70.80 of this article, a
20 sentence of imprisonment for a class A felony, other than a felony
21 defined in article two hundred twenty or two hundred twenty-one of this
22 chapter, shall be an indeterminate sentence. When such a sentence is
23 imposed, the court shall impose a maximum term in accordance with the
24 provisions of subdivision two of this section and the minimum period of
25 imprisonment shall be as provided in subdivision three of this section.

26 (b) Class B, C, D or E felony sentence. Except as provided in subdivi-
27 sions four, five and six of this section or section 70.80 of this arti-
28 cle, a sentence of imprisonment for a class B, C, D or E felony, other

1 than a felony defined in article two hundred twenty or two hundred twen-
2 ty-one of this chapter, shall be a determinate sentence of imprisonment
3 in accordance with the provisions of subdivision three-a of this
4 section, which shall include, as part thereof, a period of post release
5 supervision in accordance with the provisions of section 70.45 of this
6 article.

7 2. Maximum indeterminate term of [sentence] imprisonment for a class A
8 felony. The maximum term of an indeterminate sentence of imprisonment
9 for a class A felony shall be [at least three years and the term shall
10 be fixed as follows:

11 (a) For a class A felony,] fixed by the court, and the term shall be
12 life imprisonment[;

13 (b) For a class B felony, the term shall be fixed by the court, and
14 shall not exceed twenty-five years;

15 (c) For a class C felony, the term shall be fixed by the court, and
16 shall not exceed fifteen years;

17 (d) For a class D felony, the term shall be fixed by the court, and
18 shall not exceed seven years; and

19 (e) For a class E felony, the term shall be fixed by the court, and
20 shall not exceed four years].

21 3. Minimum indeterminate period of imprisonment for a class A felony.
22 [The minimum period of imprisonment under an indeterminate sentence
23 shall be at least one year and shall be fixed as follows:]

24 (a) In the case of a class A felony, except as specified in paragraph
25 (b) of this subdivision, the minimum period of imprisonment shall be
26 fixed by the court and specified in the sentence[.] as follows:

27 (i) For a class A-I felony, such minimum period shall not be less than
28 fifteen years nor more than twenty-five years; provided, however, that:

1 (A) where a sentence, other than a sentence of death or life imprison-
2 ment without parole, is imposed upon a defendant convicted of murder in
3 the first degree as defined in section 125.27 of this chapter such mini-
4 mum period shall be not less than twenty years nor more than twenty-five
5 years, and[,]

6 (B) where a sentence is imposed upon a defendant convicted of murder
7 in the second degree as defined in subdivision five of section 125.25 of
8 this chapter or convicted of aggravated murder as defined in section
9 125.26 of this chapter, the sentence shall be life imprisonment without
10 parole, and[,]

11 (C) where a sentence is imposed upon a defendant convicted of
12 attempted murder in the first degree as defined in article one hundred
13 ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a)
14 of subdivision one and paragraph (b) of subdivision one of section
15 125.27 of this chapter or attempted aggravated murder as defined in
16 article one hundred ten of this chapter and section 125.26 of this chap-
17 ter such minimum period shall be not less than twenty years nor more
18 than forty years.

19 (ii) For a class A-II felony, such minimum period shall not be less
20 than three years nor more than eight years four months, except that for
21 the class A-II felony of predatory sexual assault as defined in section
22 130.95 of this chapter or the class A-II felony of predatory sexual
23 assault against a child as defined in section 130.96 of this chapter,
24 such minimum period shall be not less than ten years nor more than twen-
25 ty-five years.

26 (b) [For any other felony, the minimum period shall be fixed by the
27 court and specified in the sentence and shall be not less than one year
28 nor more than one-third of the maximum term imposed] A minimum period of

1 imprisonment shall not be fixed by the court for a class A felony when a
2 sentence of life imprisonment without parole is authorized by section
3 60.06 of this title, or subdivision five of this section, or any other
4 provision of this chapter and is imposed.

5 3-a. Determinate term of imprisonment for a class B, C, D or E felony.

6 (a) The term of a determinate sentence of imprisonment for a class B, C,
7 D or E felony defined in article one hundred twenty-five of this chapter
8 shall be fixed by the court in whole or half years as follows:

9 (i) For a class B felony, the term shall be at least one year and
10 shall not exceed sixteen years;

11 (ii) For a class C felony, the term shall be at least one year and
12 shall not exceed twelve and one-half years;

13 (iii) For a class D felony, the term shall be at least one year and
14 shall not exceed eight years; and

15 (iv) For a class E felony, the term shall be at least one year and
16 shall not exceed four years.

17 (b) The term of a determinate sentence of imprisonment for any other
18 class B, C, D or E felony shall be fixed by the court in whole or half
19 years as follows:

20 (i) For a class B felony, the term shall be at least one year and
21 shall not exceed twelve years;

22 (ii) For a class C felony, the term shall be at least one year and
23 shall not exceed six years;

24 (iii) For a class D felony, the term shall be at least one year and
25 shall not exceed four years; and

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

1 4. Alternative definite sentence for class C, D and E felonies. When a
2 person, other than a second or persistent felony offender, is sentenced
3 for a class C, D or [class] E felony, and the court, having regard to
4 the nature and circumstances of the crime and to the history and charac-
5 ter of the defendant, is of the opinion that a sentence of imprisonment
6 is necessary but that it would be unduly harsh to impose [an indetermi-
7 nate or] a determinate sentence, the court may impose a definite
8 sentence of imprisonment and fix a term of one year or less.

9 5. Life imprisonment without parole. (a) Notwithstanding any other
10 provision of law, a defendant sentenced to life imprisonment without
11 parole shall not be or become eligible for parole or conditional
12 release. For purposes of commitment and custody, other than parole and
13 conditional release, such sentence shall be deemed to be an indetermi-
14 nate sentence.

15 (b) A defendant may be sentenced to life imprisonment without parole
16 upon conviction for the crime of murder in the first degree as defined
17 in section 125.27 of this chapter and in accordance with the procedures
18 provided by law for imposing a sentence for such crime.

19 (c) A defendant must be sentenced to life imprisonment without parole
20 upon conviction for the crime of terrorism as defined in section 490.25
21 of this chapter, where the specified offense the defendant committed is
22 a class A-I felony; the crime of criminal possession of a chemical weap-
23 on or biological weapon in the first degree as defined in section 490.45
24 of this chapter; or the crime of criminal use of a chemical weapon or
25 biological weapon in the first degree as defined in section 490.55 of
26 this chapter; provided, however, that nothing in this subdivision shall
27 preclude or prevent a sentence of death when the defendant is also

1 convicted of the crime of murder in the first degree as defined in
2 section 125.27 of this chapter.

3 (d) A defendant must be sentenced to life imprisonment without parole
4 upon conviction for the crime of murder in the second degree as defined
5 in subdivision five of section 125.25 of this chapter or for the crime
6 of aggravated murder as defined in subdivision one of section 125.26 of
7 this chapter.

8 (e) A defendant may be sentenced to life imprisonment without parole
9 upon conviction for the crime of aggravated murder as defined in subdivi-
10 vision two of section 125.26 of this chapter.

11 6. Determinate sentence for conviction of a violent felony. Except as
12 provided in subdivision four of this section and subdivisions two and
13 four of section 70.02 of this article, when a person is sentenced as a
14 violent felony offender pursuant to section 70.02 of this article or as
15 a second violent felony offender pursuant to section 70.04 of this arti-
16 cle or as a second felony offender on a conviction for a violent felony
17 offense pursuant to section 70.06 of this article, the court must impose
18 a determinate sentence of imprisonment in accordance with the provisions
19 of such sections and such sentence shall include, as a part thereof, a
20 period of post-release supervision in accordance with section 70.45 of
21 this article.

22 § 3. Section 70.06 of the penal law, as added by chapter 277 of the
23 laws of 1973, paragraph (a) of subdivision 1 and subdivision 4 as
24 amended by chapter 410 of the laws of 1979, subparagraph (i) of para-
25 graph (b) of subdivision 1 as amended by chapter 784 of the laws of
26 1975, subparagraph (iii) of paragraph (b) of subdivision 1 as amended by
27 chapter 471 of the laws of 1980, subdivisions 2 and 3 as amended by
28 section 38 of chapter 7 of the laws of 2007, paragraph (a) of subdivi-

1 sion 4 as amended by chapter 107 of the laws of 2006, subdivision 6 as
2 added by chapter 3 of the laws of 1995 and subdivision 7 as amended by
3 section 123 of subpart B of part C of chapter 62 of the laws of 2011, is
4 amended to read as follows:

5 § 70.06 Sentence of imprisonment for second felony offender.

6 1. Definition of second felony offender.

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

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

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

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

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

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

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

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

9 2. Unless otherwise authorized by a provision of article sixty or
10 seventy of this chapter, the sentence of imprisonment for a second felo-
11 ny offender shall be as follows:

12 (a) Authorized sentence for a class A-II felony. Except as provided in
13 subdivision [five or] six of this section, or as provided in subdivision
14 five of section 70.80 of this article, when the court has found, pursu-
15 ant to the provisions of the criminal procedure law, that a person is a
16 second felony offender the court must impose an indeterminate sentence
17 of imprisonment. The maximum term of such sentence must be in accordance
18 with the provisions of subdivision three of this section and the minimum
19 period of imprisonment under such sentence must be in accordance with
20 subdivision four of this section.

21 (b) Authorized sentence for a class B, C, D or E felony. Except as
22 provided in section 70.70 or section 70.80 of this article, when the
23 court has found, pursuant to the provisions of the criminal procedure
24 law, that a person is a second felony offender the court must impose a
25 determinate sentence of imprisonment in accordance with subdivision five
26 or six of this section and a period of post release supervision as
27 authorized by section 70.45 of this article. The court may direct such
28 sentence be executed as a parole supervision sentence to the extent

1 authorized and provided for by subdivision seven of this section. For a
2 class D or E felony specified in subdivision eight of this section, the
3 court may, in lieu of a determinate sentence of imprisonment, impose a
4 sentence authorized by such subdivision.

5 3. Maximum indeterminate term of [sentence] imprisonment for a class
6 A-II felony. Except as provided in subdivision [five or] six of this
7 section, or as provided in subdivision five of section 70.80 of this
8 article, the maximum term of an indeterminate sentence of imprisonment
9 for a class A-II felony for a second felony offender must be fixed by
10 the court [as follows:

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

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

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

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

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

23 4. Minimum indeterminate period of imprisonment for a class A-II felo-
24 ny. [(a)] The minimum period of imprisonment for a second felony offen-
25 der convicted of a class A-II felony must be fixed by the court at no
26 less than six years and not to exceed twelve and one-half years and must
27 be specified in the sentence, except that for the class A-II felony of
28 predatory sexual assault as defined in section 130.95 of this chapter or

1 the class A-II felony of predatory sexual assault against a child as
2 defined in section 130.96 of this chapter, such minimum period shall be
3 not less than ten years nor more than twenty-five years.

4 [(b) Except as provided in paragraph (a), the minimum period of impri-
5 sonment under an indeterminate sentence for a second felony offender
6 must be fixed by the court at one-half of the maximum term imposed and
7 must be specified in the sentence.]

8 5. Determinate term of imprisonment for a second felony offender
9 convicted of a class B, C, D or E felony not defined as a violent felony
10 offense. (a) When the court has found, pursuant to the provisions of the
11 criminal procedure law, that a person is a second felony offender and
12 the sentence to be imposed on such person is for a felony offense
13 defined in article one hundred twenty-five of this chapter, which is not
14 designated a violent felony offense by subdivision one of section 70.02
15 of this article, the court must impose a determinate sentence of impri-
16 sonment, the term of which must be fixed by the court as follows:

17 (i) For a class B felony offense, the term must be at least four and
18 one-half years and must not exceed eighteen years;

19 (ii) For a class C felony offense, the term must be at least three
20 years and must not exceed fourteen years;

21 (iii) For a class D felony offense, the term must be at least two
22 years and must not exceed ten years; and

23 (iv) For a class E felony offense, the term must be at least one and
24 one-half years and must not exceed five years.

25 (b) When the court has found, pursuant to the provisions of the crimi-
26 nal procedure law, that a person is a second felony offender and the
27 sentence to be imposed on such person is for a felony offense which is
28 not defined in article one hundred twenty-five of this chapter and which

1 is not designated a violent felony offense by subdivision one of section
2 70.02 of this article, the court must impose a determinate sentence of
3 imprisonment, the term of which must be fixed by the court as follows:

4 (i) For a class B felony offense, the term must be at least four and
5 one-half years and must not exceed fourteen years;

6 (ii) For a class C felony offense, the term must be at least three
7 years and must not exceed eight years;

8 (iii) For a class D felony offense, the term must be at least two
9 years and must not exceed five years; and

10 (iv) For a class E felony offense, the term must be at least one and
11 one-half years and must not exceed three years.

12 6. Determinate [sentence] term of imprisonment for second felony
13 offender convicted of a class B, C, D or E felony designated a violent
14 felony offense. When the court has found, pursuant to the provisions of
15 the criminal procedure law, that a person is a second felony offender
16 and the sentence to be imposed on such person is for a violent felony
17 offense, as defined in subdivision one of section 70.02 of this article,
18 the court must impose a determinate sentence of imprisonment the term of
19 which must be fixed by the court as follows:

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

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

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

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

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

12 8. Alternative sentence for certain class D or E felony. When a second
13 felony offender is sentenced for a class D or class E felony, other than
14 a homicide offense as defined in article one hundred twenty-five of this
15 chapter or an offense requiring registration as a sex offender pursuant
16 to article six-C of the correction law, and the court, having regard to
17 the nature and circumstances of the crime and to the history and charac-
18 ter of the defendant, is of the opinion that it would be unduly harsh to
19 impose a determinate sentence of imprisonment, the court may impose a
20 definite sentence of imprisonment and fix a term of one year or less, or
21 it may sentence the defendant to probation pursuant to the provisions of
22 section 65.00 of this title, or it may impose both a definite sentence
23 of imprisonment and a sentence of probation as provided for in paragraph
24 (d) of subdivision two of section 60.01 of this title.

25 § 4. Paragraph (f) of subdivision 2 of section 70.45 of the penal law,
26 as amended by chapter 7 of the laws of 2007, is amended and such subdi-
27 vision is amended by adding five new paragraphs (g), (h), (i), (j) and
28 (k) to read as follows:

1 (f) such period shall be not less than two and one-half years nor more
2 than five years whenever a determinate sentence of imprisonment is
3 imposed pursuant to subdivision three of section 70.02 of this article
4 upon a conviction of a class B or class C violent felony offense[.];

5 (g) such period shall be not less than one year nor more than five
6 years whenever a determinate sentence of imprisonment is imposed pursu-
7 ant to paragraph (a) of subdivision three-a of section 70.00 of this
8 article or paragraph (a) of subdivision five of section 70.06 of this
9 article upon a conviction of a class B, C or D felony offense;

10 (h) such period shall be not less than one year nor more than three
11 years whenever a determinate sentence of imprisonment is imposed pursu-
12 ant to paragraph (a) of subdivision three-a of section 70.00 of this
13 article or paragraph (a) of subdivision five of section 70.06 of this
14 article upon a conviction of a class E felony offense;

15 (i) such period shall be not less than one year nor more than three
16 years whenever a determinate sentence of imprisonment is imposed pursu-
17 ant to paragraph (b) of subdivision three-a of section 70.00 of this
18 article or paragraph (b) of subdivision five of section 70.06 of this
19 article upon a conviction of a class B or class C felony offense;

20 (j) such period shall be not less than one year nor more than two
21 years whenever a determinate sentence of imprisonment is imposed pursu-
22 ant to paragraph (b) of subdivision three-a of section 70.00 of this
23 article or paragraph (b) of subdivision five of section 70.06 of this
24 article upon a conviction of a class D felony offense;

25 (k) such period shall be not less than one year whenever a determinate
26 sentence of imprisonment is imposed pursuant to paragraph (b) of subdi-
27 vision three-a of section 70.00 of this article or paragraph (b) of

1 subdivision five of section 70.06 of this article upon a conviction of a
2 class E felony offense.

3 § 5. Section 105.15 of the penal law, as amended by chapter 422 of the
4 laws of 1978, is amended to read as follows:

5 § 105.15 Conspiracy in the second degree.

6 A person is guilty of conspiracy in the second degree when, with
7 intent that conduct constituting:

8 (1) a class A felony defined in article two hundred twenty of this
9 chapter be performed, he or she agrees with one or more persons to
10 engage in or cause the performance of such conduct; or

11 (2) a class A felony not defined in article two hundred twenty of this
12 chapter be performed, he or she agrees with one or more persons to
13 engage in or cause the performance of such conduct.

14 Conspiracy in the second degree, as defined in subdivision one of this
15 section, is a class B felony.

16 Conspiracy in the second degree, as defined in subdivision two of this
17 section, is a class C violent felony offense.

18 § 6. The closing paragraph of section 230.32 of the penal law, as
19 added by chapter 627 of the laws of 1978, is amended to read as follows:

20 Promoting prostitution in the first degree is a class [B felony] C
21 violent felony offense.

22 § 7. The closing paragraph of section 215.13 of the penal law, as
23 added by chapter 664 of the laws of 1982, is amended to read as follows:

24 Tampering with a witness in the first degree is a class [B felony] C
25 violent felony offense.

26 § 8. The closing paragraph of section 215.12 of the penal law, as
27 added by chapter 664 of the laws of 1982, is amended to read as follows:

28 Tampering with a witness in the second degree is a class [D] C felony.

1 § 9. The closing paragraph of section 215.16 of the penal law, as
2 added by chapter 667 of the laws of 1985, is amended to read as follows:

3 Intimidating a victim or witness in the second degree is a class [D] C
4 felony.

5 § 10. The closing paragraph of section 215.52 of the penal law, as
6 amended by chapter 350 of the laws of 2006, is amended to read as
7 follows:

8 Aggravated criminal contempt is a class [D] C felony.

9 § 11. The closing paragraph of section 215.51 of the penal law, as
10 amended by chapter 222 of the laws of 1994, is amended to read as
11 follows:

12 Criminal contempt in the first degree is a class [E] D felony.

13 § 12. Subdivision 4 of section 60.05 of the penal law, as amended by
14 chapter 738 of the laws of 2004, is amended to read as follows:

15 4. Certain class C felonies. Except as provided in subdivision six,
16 every person convicted of a class C violent felony offense as defined in
17 subdivision one of section 70.02 of this title, must be sentenced to
18 imprisonment in accordance with section 70.02 of this title; and, except
19 as provided in subdivision six of this section, every person convicted
20 of the class C felonies of: attempt to commit any of the class B felo-
21 nies of bribery in the first degree as defined in section 200.04, bribe
22 receiving in the first degree as defined in section 200.12, conspiracy
23 in the second degree as defined in section 105.15 and criminal mischief
24 in the first degree as defined in section 145.12; criminal usury in the
25 first degree as defined in section 190.42, rewarding official misconduct
26 in the first degree as defined in section 200.22, receiving reward for
27 official misconduct in the first degree as defined in section 200.27,
28 [attempt to promote prostitution in the first degree as defined in

1 section 230.32,] promoting prostitution in the second degree as defined
2 in section 230.30, arson in the third degree as defined in section
3 150.10 of this chapter, must be sentenced to imprisonment in accordance
4 with section 70.00 of this title.

5 § 13. Paragraph (b) of subdivision 1 of section 70.02 of the penal
6 law, as amended by chapter 1 of the laws of 2013, is amended to read as
7 follows:

8 (b) Class C violent felony offenses: an attempt to commit any of the
9 class B felonies set forth in paragraph (a) of this subdivision; aggra-
10 vated criminally negligent homicide as defined in section 125.11, aggra-
11 vated manslaughter in the second degree as defined in section 125.21,
12 aggravated sexual abuse in the second degree as defined in section
13 130.67, assault on a peace officer, police officer, fireman or emergency
14 medical services professional as defined in section 120.08, assault on a
15 judge as defined in section 120.09, gang assault in the second degree as
16 defined in section 120.06, strangulation in the first degree as defined
17 in section 121.13, burglary in the second degree as defined in section
18 140.25, robbery in the second degree as defined in section 160.10, crim-
19 inal possession of a weapon in the second degree as defined in section
20 265.03, criminal use of a firearm in the second degree as defined in
21 section 265.08, criminal sale of a firearm in the second degree as
22 defined in section 265.12, criminal sale of a firearm with the aid of a
23 minor as defined in section 265.14, aggravated criminal possession of a
24 weapon as defined in section 265.19, soliciting or providing support for
25 an act of terrorism in the first degree as defined in section 490.15,
26 hindering prosecution of terrorism in the second degree as defined in
27 section 490.30, [and] criminal possession of a chemical weapon or
28 biological weapon in the third degree as defined in section 490.37,

1 conspiracy in the second degree as defined in subdivision two of section
2 105.15, promoting prostitution in the first degree as defined in section
3 230.32, and tampering with a witness in the first degree as defined in
4 section 215.13.

5 § 14. Subdivision d of section 74 of chapter 3 of the laws of 1995,
6 enacting the sentencing reform act of 1995, as amended by section 19 of
7 part E of chapter 55 of the laws of 2013, is amended to read as follows:
8 [d. Sections one-a through twenty, twenty-four through twenty-eight,
9 thirty through thirty-nine, forty-two and forty-four of this act shall
10 be deemed repealed on September 1, 2015;]

11 § 15. This act shall take effect on the one hundred twentieth day
12 after it shall have become a law and shall apply to offenses committed
13 on or after such date.



OCA 2015-9

IN SUPPORT OF

S.

A.

AN ACT to amend the penal law, in relation to determinate sentences and to amend chapter 3 of the laws of 1995, enacting the sentencing reform act of 1995, in relation to making permanent certain provisions of such chapter

This measure is being introduced at the request of the Chief Judge of the State upon the recommendation of the New York State Permanent Commission on Sentencing.¹

This measure would amend the Penal Law in order to conform the remaining non-violent state prison sentences for Class B to E felonies to the determinate sentences presently authorized for all other felonies.

Summary of Provisions:

Section one amends Penal Law § 60.02 (2) to clarify the applicable class E felony sentencing options for a Youthful Offender. When originally enacted, there was only one set of options for a class E felony. Since then various other sets of options have been added depending on whether the offender is a drug offender, sex offender, or violent felony offender. As a result, for example, a youthful offender of a drug felony may face a longer state prison sentence than would be authorized for an adult. This provision continues the full panoply of sentencing options for the youthful offender while making sure that any authorized state prison sentence be that which an adult would be subject to. Also, for the youthful offender of a drug

¹The New York State Sentencing Commission was established by the Chief Judge of the State in 2010. It is co-chaired by the Hon. Derek Champagne, Franklin County Family Court Judge and former Franklin County District Attorney and Hon. Cyrus Vance, Jr., New York County District Attorney. Its members include a broad spectrum of representatives from the criminal justice community, including criminal defense attorneys, judges, policymakers, academics and victim advocates. The Commission serves in an advisory capacity to the Chief Judge and is charged with comprehensively evaluating sentencing laws and practices and recommending reforms that will improve the quality and effectiveness of statewide sentencing policy.

felony, the “parole supervision” (drug treatment) sentence is authorized; and, the restriction on the imposition of a conditional or unconditional discharge is repealed as it was some years ago for adults.

Section two amends Penal Law § 70.00, which specifies the authorized sentence of imprisonment for a “first” felony offender.

Subdivision one sets forth applicability. It is divided into two paragraphs: one for the class A felony for which there are no changes, and subdivision two for the other felonies for which a determinate sentence is authorized.

Subdivision two: There is no substantive change made to subdivision two which contains the maximum sentence for the class A felony.

Subdivision three: There is no substantive change made to subdivision three which contains the minimum sentence for the class A felony.

However, to maintain the paragraph and subparagraph formulations, a new paragraph (b) is added for the repealed paragraph (b). The new paragraph (b) is not a substantive addition; it amounts to a conforming amendment to the provisions which authorize life without parole.

Subdivision three-a authorizes and sets forth ranges for determinate sentences of imprisonment for class B, C, D and E “first” felony offenders.

Subdivision four amends Penal Law § 70.00 (4) to authorize a definite sentence of imprisonment for non-violent class C felonies, except those specified in Penal Law § 60.05 (4).

Subdivision five: There is no substantive change. It adds paragraph designations to assist in understanding the subdivision.

Subdivision six: No changes were made, albeit the subdivision is no longer necessary given the addition to subdivision one (“1. Unless otherwise authorized by a provision of article 60 or 70 of this chapter, the sentence of imprisonment for a felony is as follows:”) and the change to determinate sentences for the “first” felony offender.

Section three amends Penal Law § 70.06, the sentence of imprisonment for a second [non violent] felony offender.

Subdivision one, defining a second felony offender, is not amended.

Subdivision two, the sentence applicability provisions, is divided into two paragraphs, one for the A-II felony indeterminate sentence, and one authorizing determinate

sentences for the B, C, D, E, felonies. Also the reference to subdivision five is deleted, because that subdivision was repealed as part of the revision of the drug sentences in 2004, and subdivision five will now contain the applicable determinate sentences.

Subdivisions three and four are amended to continue the authorization of the indeterminate sentence of imprisonment for a class A-II felony.

Subdivision five authorizes and sets forth ranges for determinate sentences of imprisonment for class B, C, D and E second non-violent felony offenders.

Subdivision six, which applies to the second felony offender who stands convicted of a violent felony offense, is not amended except for an expanded heading to explain what the subdivision applies to.

Subdivision seven, providing for a "parole supervision" sentence is not amended.

Section four sets forth the post release supervision terms for "first" and "second" non-violent homicides and other felonies.

Sections five through thirteen set forth the provisions for upgrading the classification of certain felonies, as follows:

Sections 5, 6, and 7 reclassify from a class B non-violent felony offense to a class C violent felony offense: Conspiracy in the Second Degree as defined in subdivision two of section 105.15; Promoting Prostitution in the First Degree as defined in section 230.32; and Tampering with a Witness in the First Degree as defined in section 215.13.

Sections 8, 9, and 10 reclassify Tampering with a Witness in the Second Degree [Penal Law § 215.12], Intimidating a Victim or Witness in the Second Degree [Penal Law § 215.16], and Aggravated Criminal Contempt [Penal Law § 215.52] from a class D non-violent felony to a class C non-violent felony.

Section 11 reclassifies Criminal Contempt in the First Degree [Penal Law § 215.51] from a class E non-violent felony to a class D non-violent felony.

Section 12 amends Penal Law § 60.05 to delete the class C felony of "Attempt to Promote Prostitution in the First Degree as defined in section 230.32" because section 6 reclassifies Promoting Prostitution in the First Degree as a class C violent felony, the attempt is thereby reclassified a class D violent felony [Penal Law § 70.02(1)(c)].

Section 13 amends Penal Law § 70.02 (1) to add as defined violent felony offenses each of the felonies reclassified in bill sections 5, 6, and 7, namely: Conspiracy in the Second Degree as defined in subdivision two of section 105.15; Promoting Prostitution in the

First Degree as defined in section 230.32; and Tampering with a Witness in the First Degree as defined in section 215.13.

Section 14 eliminates the present 9/1/2015 sunset on provisions of the Sentencing Reform Act of 1995.

Section 15 sets forth the effective date as 120 days after it becomes law and applies the amendments to crimes committed on or after the effective date.

Justification:

New York sentencing law is the product of a series of “ad hoc and piecemeal” amendments that have resulted in a “convoluted” sentencing structure in which sentences for violent crimes and drug offenses are determinate and sentences for non-violent offenses are indeterminate. The current system is overly complex and incoherent. The Commission is unanimous in the view that if New York sentencing law is to be coherent, providing for one uniform state prison sentence for Class B to E felonies is necessary. Presently, the determinate sentence is the predominant authorized sentence for violent felonies, drug felonies, and sex felonies. It should be authorized for the remaining felonies, which do not fall within those classifications.

Determinate sentencing is transparent and explicit. A determinate model promotes “truth-in sentencing,” because the sentences contain a predictable outcome, easily understood by victims, offenders and the public. In addition, in a determinate structure, incarcerated offenders can rely on the fact that complying with institutional rules and participating in beneficial programming will have a direct effect on the length of confinement. Determinate sentencing eliminates the Parole Board from making release determinations. By providing a maximum good time allowance of only one-seventh of the full term rather than one-third (as in the indeterminate model), and by eliminating the subjective assessments and release decisions of an intervening parole board, the determinate model necessarily reduces the possibility that like offenders will be treated differently with regard to time actually served, thereby promoting greater fairness and uniformity.

In addition, for D and E second non-violent felony offenders, this measure eliminates mandatory minimum sentences, which are known to contribute to racial disparities in sentencing and incarceration rates. The measure permits the judge, taking into consideration various factors, including the nature of the crime and the history and character of the defendant, to impose an alternative sentence in the interest of justice. Lastly, to ensure consistency and permanency in New York sentencing rules, this measure does not continue the provisions requiring repeated extension of determinate sentencing provisions.

Determinate sentencing has been the unmistakable trend in New York, with the Legislature recently adding all felony drug and sex offenses to the list of crimes carrying a determinate, rather than indeterminate, sentence. The Commission sees no indication that the

Legislature is going to reverse those decisions. Moreover, although this trend has resulted in fewer “hybrid” sentencing situations where a single offender might serve a complicated mix of concurrent and consecutive determinate and indeterminate sentences, significant incoherency and confusion around sentencing still persists. This proposal will simplify and make consistent what is currently an overly complex and convoluted structure. In sum, the Commission believes that as a matter of fairness, greater simplicity and sound criminal justice policy, we must continue the positive trend of moving closer to a fully determinate felony sentencing structure in New York.

This measure, which would have no fiscal impact on the State, would take effect 120 days after becoming law and apply to all offenses committed on or after such effective date.

Legislative History: None. New proposal.