

## PL ARTICLE 70: PRISON.

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Non-P.L. 220 (substance abuse) felony prison sentence shall be INDETERMINATE = minimum & maximum times:

Class AI min = 15-25 (murder 1 = 20-25); max = life.

Class AII min = 3 - 8 years & 4 months/Predator Sex Assault = 20-25/ Attempted Murder 1/Aggravated Murder of police/peace/corrections officer, by defendant over 18 years old = 20-40; Class AII max = life.

Any other felony min = 1 year - 1/3rd of sentence, max = Class B: 3-25; Class C: 3-15; Class D: 3-7; Class E: 3-4.

Non-persistent sentence for Class D/E felony MAY be less than one year definite if otherwise unduly harsh.

Life without parole means defendant shall be ineligible for parole or conditional release. Aside where death sentence applicable, Life without parole MAY be sentence for Murder 1 of police/peace officer; **MUST** for Class AI felony terrorism, or possession/use of chemical/biological weapon.

Violent felony MUST be prison sentence, DETERMINATE, in whole or half years, and also include a period of post-release supervision; terms:

Class B violent felony = 5 - 25 (Aggravated Assault/Manslaughter 1 of police/peace officer = 10-30); Class C violent = 3 & 1/2 - 15 (Criminally Negligent Homicide of police/peace officer = 3 & 1/2 - 20, Aggravated Manslaughter 2/Attempted Assault police/peace officer = 7 - 20).

Class D violent felonies are sentenced as Class D general, but **if** defendant is sentenced to prison, shall be 2-7 determinate (Menace police/peace officer = 2 - 8).

Class E violent felony may be determinate prison sentence = 1 & 1/2 - 4

Class D violent offense of Criminal Sale of a Firearm 3, or Criminal Possession of a Weapon 3 (also Attempt thereof as C violent): shall be determinate sentence **or** may be definite sentence less than 1 year as appropriate. Class E violent if so pled to satisfy an Armed Felony charge MUST be determinate sentence. However Court MAY sentence Class D/E as above to other allowable option if no prior Class A misdemeanor conviction within last 5 years (else only if mitigating circumstances), and where consistent with public safety. Both defendant and District Attorney can present information to judge in assistance of determination, Court may hold hearing. If Court exercises alternative sentencing option, must state reasons on record; also send transcript of Court statement

and D.A.'s recommendation to DCJS with accusatory instrument.

Juvenile Offender shall be sentenced to INDETERMINATE term; if already placed pursuant to Family Court Article 3 (Delinquency) and now sentenced to consecutive period: first serve term @ DFY secure, then to placement facility for placement period. J.O. Indeterminate sentences:

Class A Murder 2: min = 5 - 9 (unless intentional or depraved, AND defendant then 14-15 years old = 7 & 1/2 - 15); max = life.

Arson/Kidnap 1: min = 4 - 6; max = 12 - 15.

B/C/D min = 1/3rd authorized sentence; max = B: 3 - 10; C: 3 - 7; E: 3 - 4.

Predicate felonies for the following sections are any NYS felony; also out-State felonies which carry an authorized sentence of prison > 1 year or death (regardless of whether such actually imposed). Imposition of prior sentence (including Suspended Sentence/Probation/Discharge/Commitment to Substance Abuse Program) must have been within 10 years of new commission, exclusive of time spent incarcerated. No conviction for which defendant pardoned as innocent shall be considered a predicate herein.

2nd Violent Felony Offender is a defendant newly convicted of a violent felony, who has also previously been convicted of a violent felony, or any non-P.L. 220 Class A felony. Out-state felonies are considered violent if they satisfy all NYS criteria. Non-persistent 2nd violent felony offenders shall be sentenced to determinate prison term:

Class B Violent = 10 - 25; C = 7 - 15; D = 5 - 7; E = 3 - 4.

2nd Felony Offender (NOT Class A1 !):

AII min = 6 - 12 & 1/2 (Predator Sex Assault = 10 - 25); max = life.

B/C/D/E min = 1/2 allowable sentence; max = B: 9 - 25; C: 6 - 15; D: 4 - 7; E: 3 - 4 (Except Class E Aggravated Harassment by inmate of facility against employee or police/peace officer, by subjecting such to blood/urine/feces/semen = max: 3 - 5 ).

If 2nd felony would be eligible for Parole Supervision sentence, such still an option as long as predicate was not Class A/B or Violent; and provided defendant not presently subject to prison.

2nd Felony Offender with prior felony conviction and new violent commission = determinate sentence: B = 8 - 25; C = 5 - 15; D = 3 - 7; E = 2 - 4.

2nd Child Sex Assault: NOT include Persistent Sex Abuse! Victim must have been under 15. Sentence must have been at least **15** years ago (exclusive of incarceration periods). Terms:

Class AII/B, + predicate = AII/B/C: indeterminate sentence, min = 15 - 20; max = life.

Class C, + predicate = AII/B/C: determinate sentence = 12 - 30 (unless Court shall state on record why longer time be warranted, then may sentence to indeterminate term: min = 15 - 25; max = life).

Class B, + predicate = D/E: determinate sentence = 12 - 30.

Class C, + D/E predicate = 10 - 25.

Class D + any predicate felony = 5 - 15; Class E + predicate = 4 - 12.

If defendant was not over 18 at time of committing predicate felony, Court may sentence to any prison time allowed as if new crime was an instant felony; must state reasons therefor on record.

Persistent Violent Felony Offender: 2 or more prior violent predicates; and new violent felony committed, OR Predatory Sex Assault. MUST sentence to indeterminate prison; max always life, min = AII Predatory Sex Assault: 25; Class B: 20 -25; Class C: 16 - 25; Class D: 12 - 25.

Persistent Felony Offender: 2 or more prior predicates, and newly committed felony. Out-State felonies only valid if sentence actually *imposed* was prison > 1 year, or death. If defendant's history/character - plus crime circumstances - warrant extended prison and lifetime supervision, Court MAY sentence as Class AI felony (must state reasons on record).

Allowable prison sentences for misdemeanors/violations:

Class A Misdemeanor = definite sentence less than 1 year (except if pled down from Criminal Possess Weapon 4, then must sentence to no less than 1 year; unless: if no felony or Class A misdemeanor convictions within past 5 years).

Class B Misdemeanor = up to 3 months. Unclassified Misdemeanor sentence as specified by underlying statute. Violations (except those defined outside of Penal Law which allow only for a fine) may be sentenced to less than 15 days jail time.

For indeterminate/determinate prison sentences, Juvenile or Youthful offenders are lodged at State Division for Youth secure facilities; all other defendants are committed to State Correctional Facility (Parole Supervision sentenced defendants are transported to a Reception Center). Life sentences shall be served with State Corrections.

If a defendant is under 18, Court shall inquire of parent/legal guardian whether they will allow the youth to consent to own medical/dental/mental health treatment. If they do not allow for such consent, commitment order is deemed to grant decision-making power to the correctional facility to which defendant be committed (DFY for Y.O./J.O.). Parent/guardian consent shall not be required, however parent/guardian may still object to any procedure by motion noticed to facility.

Definite sentenced shall specify a county/regional facility.

If defendant already subject to out-State prison sentence, Court shall direct whether new sentence be served concurrently or consecutively. If Court not specify, shall be consecutively; new commitment starts when defendant returned here. Else if designated concurrently: shall be returned to original facility for period not to exceed original sentence, subsequently committed here only for any remaining time on New York term.

If a Court shall sentence a defendant to either multiple indeterminate or determinate sentences without specifying how they should be served: deemed concurrent.

Multiple definite sentences shall be served consecutively; unless all imposed at same time, then shall be concurrent for convictions arising out of the same action - or where share material elements - except for illegally wearing a Body Armor Vest. When consecutive definite sentences are allowed for a single transaction - and are so imposed - aggregate shall not exceed 1 year.

When Court sentences a defendant as a 2nd or persistent felony/violent felony offender to indeterminate/determinate sentence: if defendant already so sentenced, terms MUST run consecutively!

Should defendant be commit a violent felony - or Bail Jumping/Escape 1,2 - while on bail and awaiting sentencing for a previous felony conviction: MUST consecutively sentence to indeterminate/determinate prison terms; however may sentence concurrently ONLY if mitigating circumstances, and where consistent with public safety. Both defendant and District Attorney can present information to judge in assistance of determination, Court may hold hearing. If Court exercises alternative sentencing option, must state reasons on record; also send transcript of Court statement and D.A.'s recommendation to DCJS with accusatory instrument.

A "course" of Child Sex Conduct MUST be consecutive sentences!

If a Sex Offense is facilitated by use of a Controlled Substance: Court MAY consecutively sentence for both crimes.

Production of Methamphetamines 1-3 (or Attempt thereof), must be concurrent term with any sentence for crime of operating a Meth Lab.

IF commit defendant on new Assault 2 conviction committed in a correctional facility (prison sentence NOT required however): shall be consecutive; MAY be concurrent only in the interests of justice, and with reasons therefor stated on record.

Indeterminate/Determinate sentences commence when defendant is received at facility. Where sentenced concurrently, time is credited against all determinate sentences, and against all indeterminate minimums. Maximum of indeterminate sentences - as well as all determinate periods - are satisfied upon expiration of the longest unexpired term.

If multiple *consecutive* indeterminate sentences: aggregate minimum and maximum terms. Also aggregate consecutive determinate sentences. Where sentenced consecutively to both determinate and indeterminate sentences: aggregate minimum indeterminate period(s) together with determinate sentence(s), and total = maximum term (ONLY if such period be not less than maximum indeterminate or actual determinate sentence).

Where consecutive sentences of determinate or indeterminate periods (only if not already sentenced for Class A felony prior to imposition of new prison term): if maximum indeterminate or actual determinate sentence (or aggregate of both) would exceed 20 years, then max/term capped at 20; minimum indeterminate capped at greater of 1/2 maximum OR 6/7ths of determinate term.

If however one conviction includes a Class B felony, cap max/term at 30 years. If Class B and two prior violent felonies, cap max/term @ 40; 3 prior violent = cap @ 50.

For Juvenile Offender sentenced consecutively for crimes each committed before such defendant was 16 years old [EXCEPT: Class A] = 10 year cap on max/term (15 for Arson/Kidnap 1); minimum = 1/2 of max.

Definite sentences commence when defendant is received at facility. Concurrent sentences are satisfied upon termination of longest unexpired period if served at same prison; else time at first facility shall be credited against any further necessary commitments. Consecutive definite sentences shall be aggregated if served at same jail; or if such would be less: 2 years + any term for new commitment resultant of conviction while already incarcerated.

Prison sentences shall receive credit of time served while committed on underlying charges. Jail time also credited against minimum indeterminate period where such was set by Court/Parole Board. Credit jail time against each concurrent term, or aggregate of consecutive periods. However jail time is not applied if it was already credited against the maximum term of a prior sentence or post-release supervision,

Any time defendant was committed on a charge which was later dismissed/acquitted, and ALSO in custody for a charge later convicted and sentenced upon, shall have entire period credited against sentence.

Any sentence vacated shall have time served credited against any new incarceration. If defendant had already been on post-release supervision, such time credited against new post-release period (if any); else against prison sentence.

Definite sentences can have "good behavior" time credited against incarceration period, up to 1/3rd of term.

Escape - or failure to return from work release/temporary release/furlough - interrupts sentence until return. However any time defendant be under arrest for such

escape, jail time shall be credited against sentence. If arrested for new crime, credit time IF charges be subsequently dismissed/acquitted; else ONLY apply where such jail time exceeds new sentence.

Previously sentenced but unexpired definite term is satisfied by new indeterminate/determinate incarceration [EXCEPT: Assault 2 committed in jail]; however is new sentence be revoked/vacated, credit time against definite period.

CANNOT parole on determinate sentence!

Parole otherwise discretionary for indeterminate sentence; after defendant has served [aggregate] minimum (including "merit time" credit). Where both an indeterminate and determinate sentence was imposed: concurrent = parole eligible upon latter of indeterminate minimum OR 6/7ths determinate sentence; consecutive = parole eligible upon SUM TOTAL of [aggregate] indeterminate minimum and 6/7ths determinate sentence.

Medical Parole - or where defendant under "shock" incarceration - can be at any time.

Defendant eligible for Conditional Discharge no earlier than when otherwise eligible for parole. Defendant shall be Conditionally Discharged upon request when "good behavior" time is equivalent to unserved portion of prison sentence. IF concurrent determinate and indeterminate sentences, must first have served 6/7ths of the longest unexpired determinate sentence.

Defendant on definite sentence greater than 90 days MAY be conditionally discharged in Parole Board's discretion after having served at least 60. "Good Behavior" time and jail time following escape are NOT counted; however jail time for underlying commitment IS credited. On definite sentence: unserved time is held in abeyance upon conditional discharge, supervision continues for 1 year.

While defendant is parole/conditionally released upon determinate/indeterminate sentence: still under supervision of Parole Board for period of unserved term AND of post-release supervision period (if any).

If defendant on parole/conditional release be declared Delinquent, sentence is interrupted until such defendant be returned to prison; jail time while arrested on delinquency shall be credited against sentence in like manner as for an escape.

Every determinate sentence has post-release supervision period, generally five years. However Class D/E drug felony = 1 year; B/C = 1 - 2. 2nd D/E drug felony = 1 - 2; B/C = 1 & 1/2 - 3. Class D/E violent = 1 & 1/2 - 3; B/C violent = 2 & 1/2 - 5.

Defendant in violation of post-release supervision is sent back to prison for at least 6 months, maximum is the unexpired post-release period (however if defendant was

also subject to unexpired indeterminate prison sentence upon parole, may be incarcerated for longer time).

Parole board set the terms and conditions of post-release supervision, and provide defendant with a written copy. MAY provide for up to 6 month stay in Residential Treatment Facility immediately upon release from prison. Violations and revocations are governed by Executive Law.

Post-release supervision interrupts sentence and holds it in abeyance. After post-release period expires: sentence resumes, and post-release time is credited thereto. Defendant shall thereafter be under parole until termination of sentence. Multiple periods of post-release supervision are merged, and each satisfied upon termination the longest period. No period of post-release supervision shall be credited against another, save upon vacatur of sentence as provided for above.

Declaration of delinquency interrupts post-release supervision. If defendant then be continued on post-release status instead of returning to prison, jail time occurring during delinquency period shall be credited against maximum sentence; anything extra shall then be applied for post-release time.

If returned to prison, shall be incarcerated for at least 6 months; no more however if would exceed remaining post-release period. Time commences from final determination of violation after hearing; jail time credited against maximum sentence. If subsequently incarcerated in prison for more than maximum sentence (due to required minimum upon violation of post-release supervision) credit extra time against post-release term.

If defendant on post-release supervision be newly sentenced to determinate/indeterminate sentence: post-release time held in abeyance. If no violation of post-release is entered, and new sentence is consecutive: post-release resumes upon re-release.

#### FELONY DRUG OFFENDER [P.L. 220/221] SENTENCE:

Class AI = 8 - 20; AII = 3 - 10. Court MAY instead grant lifetime probation for Class AII.

Class B = determinate sentence: 1 - 9 years (except Criminal Sale of Controlled Substance on school grounds/bus = 2 - 9).

Class C = 1 - 5 $\frac{1}{2}$ ; D = 1 - 2 $\frac{1}{2}$ ; E = 1 - 1 $\frac{1}{2}$ .

Court MUST provide for post-release supervision if sentences determinately; however MAY sentence to definite < 1 year for Class C/D/E if defendant's history & character - + nature & circumstances of crime - warrant. Court may also sentence to probation as otherwise allowed.

2nd Drug Felony if prior NOT violent, SHALL be determinate sentence as follows:

Class AI = 12 -24; AII = 6 -14; B = 3&1/2 - 12; C = 2 - 8; D = 1&1/2 - 4; E = 1&1/2 - 2.

However Court can sentence above to Parole Supervision as long as prior conviction was not Class A/B or Violent, and where defendant not otherwise already subject to prison sentence. Court may also sentence 2nd Class AII/B Drug Felony Offender to LIFETIME probation.

2nd Drug Felony WITH prior Violent:

Class AI = 15 - 30; AII = 8 - 17; B = 6 - 15; C = 3&1/2 - 9; D = 2&1/2 - 4&1/2; E = 2 - 2&1/2.