

1539

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to sentencing of persistent violent felony offenders; and to repeal subdivision 3 of section 70.08 of such law relating to minimum periods of imprisonment for persistent violent felony offenders

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 5 of section 70.00 of the penal law, as amended
2 by chapter 482 of the laws of 2009, is amended to read as follows:
3 5. Life imprisonment without parole. Notwithstanding any other
4 provision of law, a defendant sentenced to life imprisonment without
5 parole shall not be or become eligible for parole or conditional
6 release. For purposes of commitment and custody, other than parole and
7 conditional release, such sentence shall be deemed to be an indetermi-
8 nate sentence. A defendant may be sentenced to life imprisonment with-
9 out parole, IN ACCORDANCE WITH THE PROCEDURES PROVIDED BY LAW FOR IMPOS-
10 ING SUCH SENTENCE, EITHER: (A) upon conviction for the crime of murder
11 in the first degree as defined in section 125.27 of this chapter [and in
12 accordance with the procedures provided by law for imposing a sentence
13 for such crime]; (B) UPON CONVICTION OF A VIOLENT FELONY OFFENSE AS
14 DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE WHEN SUCH
15 DEFENDANT HAS PREVIOUSLY BEEN SUBJECTED TO TWO OR MORE PREDICATE VIOLENT
16 FELONY CONVICTIONS AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF
17 SECTION 70.04 OF THIS ARTICLE. A defendant must be sentenced to life
18 imprisonment without parole upon conviction for the crime of terrorism
19 as defined in section 490.25 of this chapter, where the specified
20 offense the defendant committed is a class A-I felony; the crime of
21 criminal possession of a chemical weapon or biological weapon in the
22 first degree as defined in section 490.45 of this chapter; or the crime
23 of criminal use of a chemical weapon or biological weapon in the first

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 degree as defined in section 490.55 of this chapter; OR IS ALSO
2 CONVICTED OF A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF
3 SECTION 70.02 OF THIS ARTICLE WHEN SUCH DEFENDANT HAS PREVIOUSLY BEEN
4 SUBJECTED TO TWO OR MORE PREDICATE VIOLENT FELONY CONVICTIONS AS DEFINED
5 IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.04 OF THIS ARTICLE;
6 provided, however, that nothing in this subdivision shall preclude or
7 prevent a sentence of death when the defendant is also convicted of the
8 crime of murder in the first degree as defined in section 125.27 of this
9 chapter. A defendant must be sentenced to life imprisonment without
10 parole upon conviction for the crime of murder in the second degree as
11 defined in subdivision five of section 125.25 of this chapter or for the
12 crime of aggravated murder as defined in subdivision one of section
13 125.26 of this chapter. A defendant may be sentenced to life imprison-
14 ment without parole upon conviction for the crime of aggravated murder
15 as defined in subdivision two of section 125.26 of this chapter.

16 S 2. Subdivision 2 of section 70.08 of the penal law, as added by
17 chapter 481 of the laws of 1978, is amended to read as follows:

18 2. Authorized sentence. When the court has found, pursuant to the
19 provisions of the criminal procedure law, that a person is a persistent
20 violent felony offender the court must impose [an indeterminate sentence
21 of imprisonment, the maximum term of which shall be life imprisonment.
22 The minimum period of imprisonment under such sentence must be in
23 accordance with subdivision three of this section] A SENTENCE OF LIFE
24 IMPRISONMENT WITHOUT PAROLE PURSUANT TO SECTION 70.00 OF THIS ARTICLE.

25 S 3. Subdivision 3 of section 70.08 of the penal law is REPEALED.

26 S 4. This act shall take effect on the first of November next succeed-
27 ing the date on which it shall have become a law.