S T A T E O F N E W Y O R K

1008

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sen. KRUGER -- 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 persistent 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:

Section 1. Subdivision 5 of section 70.00 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter, UPON CONVICTION AS A PERSISTENT FELONY OFFENDER PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION 70.10 OF THIS ARTICLE, OR UPON CONVICTION AS A PERSISTENT VIOLENT FELONY OFFENDER PURSUANT TO SECTION 70.08 OF THIS ARTICLE, and in accordance with the procedures provided by law for imposing a sentence for such crime. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death

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

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when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in section 125.26 of this chapter.

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

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

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

S 4. Subdivision 2 of section 70.10 of the penal law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

2. Authorized sentence. (A) When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a persistent felony offender, and when it is of the opinion that the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 70.00, 70.02, 70.04, 70.06 or subdivision five of section 70.80 OF THIS ARTICLE for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class A-I felony. In such event the reasons for the court's opinion shall be set forth in the record.

(B) WHEN THE COURT HAS FOUND, PURSUANT TO THE PROVISIONS OF THE CRIMINAL PROCEDURE LAW, THAT A PERSON IS A PERSISTENT FELONY OFFENDER, THE COURT MUST IMPOSE A SENTENCE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION 70.00 OF THIS ARTICLE IF ONE OR MORE OF THE PREVIOUS FELONY CONVICTIONS UPON THE COURT ADJUDICATED THE DEFENDANT AS A PERSISTENT FELONY OFFENDER WAS ANY VIOLENT FELONY OFFENSE DEFINED IN SECTION 70.02 OF THIS ARTICLE.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.