

1480

2009-2010 Regular Sessions

I N S E N A T E

February 2, 2009

Introduced by Sens. SKELOS, ALESI, BONACIC, FARLEY, GOLDEN, LANZA, LEIBELL, LITTLE, MAZIARZ, MORAHAN, VOLKER, WINNER -- 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 765 of the laws of 2005, 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 A SENTENCE, EITHER: (A) upon conviction for the crime of
11 murder in the first degree as defined in section 125.27 of this chapter
12 [and in accordance with the procedures provided by law for imposing a
13 sentence for such crime]; (B) UPON CONVICTION OF A VIOLENT FELONY
14 OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS ARTICLE
15 WHEN SUCH DEFENDANT HAS PREVIOUSLY BEEN SUBJECTED TO TWO OR MORE PREDI-
16 CATE VIOLENT FELONY CONVICTIONS AS DEFINED IN PARAGRAPH (B) OF SUBDIVI-
17 SION ONE OF SECTION 70.04 OF THIS ARTICLE. A defendant must be sentenced
18 to life imprisonment without parole upon conviction for the crime of
19 terrorism as defined in section 490.25 of this chapter, where the speci-
20 fied 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

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

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1 first degree as defined in section 490.45 of this chapter; or the crime
2 of criminal use of a chemical weapon or biological weapon in the first
3 degree as defined in section 490.55 of this chapter; OR IS ALSO
4 CONVICTED OF A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF
5 SECTION 70.02 OF THIS ARTICLE WHEN SUCH DEFENDANT HAS PREVIOUSLY BEEN
6 SUBJECTED TO TWO OR MORE PREDICATE VIOLENT FELONY CONVICTIONS AS DEFINED
7 IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.04 OF THIS ARTICLE;
8 provided, however, that nothing in this subdivision shall preclude or
9 prevent a sentence of death when the defendant is also convicted of the
10 crime of murder in the first degree as defined in section 125.27 of this
11 chapter. A defendant must be sentenced to life imprisonment without
12 parole upon conviction for the crime of murder in the second degree as
13 defined in subdivision five of section 125.25 of this chapter or for the
14 crime of aggravated murder as defined in section 125.26 of this chapter.
15 S 2. Subdivision 2 of section 70.08 of the penal law, as added by
16 chapter 481 of the laws of 1978, is amended to read as follows:
17 2. Authorized sentence. When the court has found, pursuant to the
18 provisions of the criminal procedure law, that a person is a persistent
19 violent felony offender the court must impose [an indeterminate sentence
20 of imprisonment, the maximum term of which shall be life imprisonment.
21 The minimum period of imprisonment under such sentence must be in
22 accordance with subdivision three of this section] A SENTENCE OF LIFE
23 IMPRISONMENT WITHOUT PAROLE PURSUANT TO SECTION 70.00 OF THIS ARTICLE.
24 S 3. Subdivision 3 of section 70.08 of the penal law is REPEALED.
25 S 4. This act shall take effect on the first of November next succeed-
26 ing the date on which it shall have become a law.