

1577

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 10, 2011

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Introduced by M. of A. TEDISCO, DUPREY -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CROUCH, FINCH, HAWLEY, KOLB, J. MILLER, MOLINARO, OAKS, RAIA, REILICH, SAYWARD, THIELE -- read once and referred 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 A 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]; OR (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

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

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

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

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 Subdivision 3 of section 70.08 of the penal law is REPEALED.

28 S 4. This act shall take effect on the ninetieth day after it shall  
29 have become a law.