

1577

2011-2012 Regular Sessions

I N A S S E M B L Y

January 10, 2011

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.