

# STATE OF NEW YORK

4036

2017-2018 Regular Sessions

## IN SENATE

February 2, 2017

Introduced by Sen. TEDISCO -- 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 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  
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; provided, however,  
2 that nothing in this subdivision shall preclude or prevent a sentence of  
3 death when the defendant is also convicted of the crime of murder in the  
4 first degree as defined in section 125.27 of this chapter, or is also  
5 convicted of a violent felony offense as defined in subdivision one of  
6 section 70.02 of this article when such defendant has previously been  
7 subjected to two or more predicate violent felony convictions as defined  
8 in paragraph (b) of subdivision one of section 70.04 of this article. A  
9 defendant must be sentenced to life imprisonment without parole upon  
10 conviction for the crime of murder in the second degree as defined in  
11 subdivision five of section 125.25 of this chapter or for the crime of  
12 aggravated murder as defined in subdivision one of section 125.26 of  
13 this chapter. A defendant may be sentenced to life imprisonment without  
14 parole upon conviction for the crime of aggravated murder as defined in  
15 subdivision two of section 125.26 of this chapter.

16 § 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 § 3. Subdivision 3 of section 70.08 of the penal law is REPEALED.

26 § 4. This act shall take effect on the ninetieth day after it shall  
27 have become a law.