

# STATE OF NEW YORK

357

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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 section 40-a of part WWW of chapter 59 of the laws of 2017, is  
3 amended to read as follows:

4 5. Life imprisonment without parole. Notwithstanding any other  
5 provision of law, a defendant sentenced to life imprisonment without  
6 parole shall not be or become eligible for parole or conditional  
7 release. For purposes of commitment and custody, other than parole and  
8 conditional release, such sentence shall be deemed to be an indetermi-  
9 nate sentence. A defendant may be sentenced to life imprisonment with-  
10 out parole, in accordance with the procedures provided by law for impos-  
11 ing such a sentence, either: (a) upon conviction for the crime of murder  
12 in the first degree as defined in section 125.27 of this chapter [and in  
13 accordance with the procedures provided by law for imposing a sentence  
14 for such crime]; or (b) upon conviction of a violent felony offense as  
15 defined in subdivision one of section 70.02 of this article when such  
16 defendant has previously been subjected to two or more predicate violent  
17 felony convictions as defined in paragraph (b) of subdivision one of  
18 section 70.04 of this article. A defendant who was eighteen years of  
19 age or older at the time of the commission of the crime must be  
20 sentenced to life imprisonment without parole upon conviction for the  
21 crime of terrorism as defined in section 490.25 of this chapter, where  
22 the specified offense the defendant committed is a class A-I felony; the

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

LBD03951-01-9

1 crime of criminal possession of a chemical weapon or biological weapon  
2 in the first degree as defined in section 490.45 of this chapter; or the  
3 crime of criminal use of a chemical weapon or biological weapon in the  
4 first degree as defined in section 490.55 of this chapter; provided,  
5 however, that nothing in this subdivision shall preclude or prevent a  
6 sentence of death when the defendant is also convicted of the crime of  
7 murder in the first degree as defined in section 125.27 of this chapter,  
8 or is also convicted of a violent felony offense as defined in subdivi-  
9 sion one of section 70.02 of this article when such defendant has previ-  
10 ously been subjected to two or more predicate violent felony convictions  
11 as defined in paragraph (b) of subdivision one of section 70.04 of this

12 article. A defendant who was seventeen years of age or younger at the  
13 time of the commission of the crime may be sentenced, in accordance with  
14 law, to the applicable indeterminate sentence with a maximum term of  
15 life imprisonment. A defendant must be sentenced to life imprisonment  
16 without parole upon conviction for the crime of murder in the second  
17 degree as defined in subdivision five of section 125.25 of this chapter  
18 or for the crime of aggravated murder as defined in subdivision one of  
19 section 125.26 of this chapter. A defendant may be sentenced to life  
20 imprisonment without parole upon conviction for the crime of aggravated  
21 murder as defined in subdivision two of section 125.26 of this chapter.

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

24 2. Authorized sentence. When the court has found, pursuant to the  
25 provisions of the criminal procedure law, that a person is a persistent  
26 violent felony offender the court must impose [~~an indeterminate sentence~~  
27 ~~of imprisonment, the maximum term of which shall be life imprisonment.~~  
28 ~~The minimum period of imprisonment under such sentence must be in~~  
29 ~~accordance with subdivision three of this section]~~ a sentence of life  
30 imprisonment without parole pursuant to section 70.00 of this article.

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

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