STATE OF NEW YORK

5334

2021-2022 Regular Sessions

IN ASSEMBLY

February 12, 2021

Introduced by M. of A. BRABENEC -- 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:

Section 1. Subdivision 5 of section 70.00 of the penal law, as amended by section 40-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole**, in accordance with the procedures provided by law for imposing such a sentence, either: (a)** upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter [~~and in accordance with the procedures provided by law for imposing a sentence for such crime~~]**; or (b) upon conviction of a violent felony offense as defined in subdivision one of section 70.02 of this article when such defendant has previously been subjected to two or more predicate violent felony convictions as defined in paragraph (b) of subdivision one of section 70.04 of this article**. A defendant who was eighteen years of age or older at the time of the commission of the crime must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon

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

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in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter, **or is also convicted of a violent felony offense as defined in subdivision one of section 70.02 of this article when such defendant has previously been subjected to two or more predicate violent felony convictions as defined in paragraph (b) of subdivision one of section 70.04 of this article**. A defendant who was seventeen years of age or younger at the time of the commission of the crime may be sentenced, in accordance with law, to the applicable indeterminate sentence with a maximum term of life imprisonment. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter.

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

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

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

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