

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:

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
23 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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1 in the first degree as defined in section 490.45 of this chapter; or the
2 crime of criminal use of a chemical weapon or biological weapon in the
3 first degree as defined in section 490.55 of this chapter; provided,
4 however, that nothing in this subdivision shall preclude or prevent a
5 sentence of death when the defendant is also convicted of the crime of
6 murder in the first degree as defined in section 125.27 of this chapter,
7 or is also convicted of a violent felony offense as defined in subdivi-
8 sion one of section 70.02 of this article when such defendant has previ-
9 ously been subjected to two or more predicate violent felony convictions
10 as defined in paragraph (b) of subdivision one of section 70.04 of this
11 article.

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

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

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

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 Subdivision 3 of section 70.08 of the penal law is REPEALED.

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