

STATE OF NEW YORK

4320

2019-2020 Regular Sessions

IN SENATE

March 7, 2019

Introduced by Sens. HOYLMAN, KAVANAGH -- read twice and ordered printed,
and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the
correction law, in relation to eliminating the imposition of the death
penalty; and to repeal certain provisions of the criminal procedure
law, the judiciary law, the county law, the correction law and the
executive law relating to the imposition of the death penalty

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Sections 35-b and 211-a of the judiciary law are REPEALED.
2 § 2. Section 60.06 of the penal law, as amended by chapter 482 of the
3 laws of 2009, is amended to read as follows:
4 § 60.06 Authorized disposition; murder in the first degree offenders;
5 aggravated murder offenders; certain murder in the second
6 degree offenders; certain terrorism offenders; criminal
7 possession of a chemical weapon or biological weapon offen-
8 ders; criminal use of a chemical weapon or biological weapon
9 offenders.
10 When a defendant is convicted of murder in the first degree as defined
11 in section 125.27 of this chapter, the court shall[~~, in accordance with~~
12 ~~the provisions of section 400.27 of the criminal procedure law,~~
13 sentence the defendant [~~to death,~~] to life imprisonment without parole
14 in accordance with subdivision five of section 70.00 of this title, or
15 to a term of imprisonment for a class A-I felony other than a sentence
16 of life imprisonment without parole, in accordance with subdivisions one
17 through three of section 70.00 of this title. When a person is convicted
18 of murder in the second degree as defined in subdivision five of section
19 125.25 of this chapter or of the crime of aggravated murder as defined
20 in subdivision one of section 125.26 of this chapter, the court shall
21 sentence the defendant to life imprisonment without parole in accordance
22 with subdivision five of section 70.00 of this title. When a defendant

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

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1 is convicted of the crime of terrorism as defined in section 490.25 of
2 this chapter, and the specified offense the defendant committed is a
3 class A-I felony offense, or when a defendant is convicted of the crime
4 of criminal possession of a chemical weapon or biological weapon in the
5 first degree as defined in section 490.45 of this chapter, or when a
6 defendant is convicted of the crime of criminal use of a chemical weapon
7 or biological weapon in the first degree as defined in section 490.55 of
8 this chapter, the court shall sentence the defendant to life imprison-
9 ment without parole in accordance with subdivision five of section 70.00
10 of this title~~[, provided, however, that nothing in this section shall~~
11 ~~preclude or prevent a sentence of death when the defendant is also~~
12 ~~convicted of murder in the first degree as defined in section 125.27 of~~
13 ~~this chapter]~~. When a defendant is convicted of aggravated murder as
14 defined in subdivision two of section 125.26 of this chapter, the court
15 shall sentence the defendant to life imprisonment without parole or to a
16 term of imprisonment for a class A-I felony other than a sentence of
17 life imprisonment without parole, in accordance with subdivisions one
18 through three of section 70.00 of this title.

19 § 3. Subparagraph (i) of paragraph (a) of subdivision 3 of section
20 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,
21 is amended to read as follows:

22 (i) For a class A-I felony, such minimum period shall not be less than
23 fifteen years nor more than twenty-five years; provided, however, that
24 (A) where a sentence, other than a sentence of ~~[death or]~~ life imprison-
25 ment without parole, is imposed upon a defendant convicted of murder in
26 the first degree as defined in section 125.27 of this chapter such mini-
27 mum period shall be not less than twenty years nor more than twenty-five
28 years, and, (B) where a sentence is imposed upon a defendant convicted
29 of murder in the second degree as defined in subdivision five of section
30 125.25 of this chapter or convicted of aggravated murder as defined in
31 section 125.26 of this chapter, the sentence shall be life imprisonment
32 without parole, and, (C) where a sentence is imposed upon a defendant
33 convicted of attempted murder in the first degree as defined in article
34 one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of
35 paragraph (a) of subdivision one and paragraph (b) of subdivision one of
36 section 125.27 of this chapter or attempted aggravated murder as defined
37 in article one hundred ten of this chapter and section 125.26 of this
38 chapter such minimum period shall be not less than twenty years nor more
39 than forty years.

40 § 4. Subparagraph (i) of paragraph b of subdivision 1 of section 70.04
41 of the penal law, as added by chapter 481 of the laws of 1978, is
42 amended to read as follows:

43 (i) The conviction must have been in this state of a class A felony
44 (other than one defined in article two hundred twenty) or of a violent
45 felony offense as defined in subdivision one of section 70.02, or of an
46 offense defined by the penal law in effect prior to September first,
47 nineteen hundred sixty-seven, which includes all of the essential
48 elements of any such felony, or in any other jurisdiction of an offense
49 which includes all of the essential elements of any such felony for
50 which a sentence to a term of imprisonment in excess of one year ~~[or a~~
51 ~~sentence of death was authorized and is authorized in this state irre-~~
52 ~~spective of whether such sentence was imposed];~~

53 § 5. Subparagraph (i) of paragraph (b) of subdivision 1 of section
54 70.06 of the penal law, as amended by chapter 784 of the laws of 1975,
55 is amended to read as follows:

1 (i) The conviction must have been in this state of a felony, or in any
2 other jurisdiction of an offense for which a sentence to a term of
3 imprisonment in excess of one year [~~or a sentence of death was author-~~
4 ~~ized and is authorized in this state irrespective of whether such~~
5 ~~sentence was imposed~~];

6 § 6. Subparagraph (i) of paragraph (b) of subdivision 1 of section
7 70.10 of the penal law is amended to read as follows:

8 (i) that a sentence to a term of imprisonment in excess of one year[~~r~~
9 ~~or a sentence to death, was imposed therefor~~]; and

10 § 7. Paragraph e of subdivision 5 of section 120.40 of the penal law,
11 as added by chapter 635 of the laws of 1999, is amended to read as
12 follows:

13 e. an offense in any other jurisdiction which includes all of the
14 essential elements of any such crime for which a sentence to a term of
15 imprisonment in excess of one year [~~or a sentence of death~~] was author-
16 ized and is authorized in this state irrespective of whether such
17 sentence was imposed.

18 § 8. Section 490.00 of the penal law, as added by chapter 300 of the
19 laws of 2001, is amended to read as follows:

20 § 490.00 Legislative findings.

21 The devastating consequences of the recent barbaric attack on the
22 World Trade Center and the Pentagon underscore the compelling need for
23 legislation that is specifically designed to combat the evils of terror-
24 ism. Indeed, the bombings of American embassies in Kenya and Tanzania in
25 1998, the federal building in Oklahoma City in 1995, Pan Am Flight
26 number 103 in Lockerbie in 1988, the 1997 shooting atop the Empire State
27 Building, the 1994 murder of Ari Halberstam on the Brooklyn Bridge and
28 the 1993 bombing of the World Trade Center, will forever serve to remind
29 us that terrorism is a serious and deadly problem that disrupts public
30 order and threatens individual safety both at home and around the world.
31 Terrorism is inconsistent with civilized society and cannot be toler-
32 ated.

33 Although certain federal laws seek to curb the incidence of terrorism,
34 there are no corresponding state laws that facilitate the prosecution
35 and punishment of terrorists in state courts. Inexplicably, there is
36 also no criminal penalty in this state for a person who solicits or
37 raises funds for, or provides other material support or resources to,
38 those who commit or encourage the commission of horrific and cowardly
39 acts of terrorism. Nor do our criminal laws proscribe the making of
40 terrorist threats or punish with appropriate severity those who hinder
41 the prosecution of terrorists. [~~Finally, our death penalty statute must~~
42 ~~be strengthened so that the cold-blooded execution of an individual for~~
43 ~~terrorist purposes is a capital offense.~~]

44 A comprehensive state law is urgently needed to complement federal
45 laws in the fight against terrorism and to better protect all citizens
46 against terrorist acts. Accordingly, the legislature finds that our laws
47 must be strengthened to ensure that terrorists, as well as those who
48 solicit or provide financial and other support to terrorists, are prose-
49 cuted and punished in state courts with appropriate severity.

50 § 9. Paragraph (d) of subdivision 2 of section 490.25 of the penal
51 law, as added by chapter 300 of the laws of 2001, is amended to read as
52 follows:

53 (d) Notwithstanding any other provision of law, when a person is
54 convicted of a crime of terrorism pursuant to this section, and the
55 specified offense is a class A-I felony offense, the sentence upon
56 conviction of such offense shall be life imprisonment without parole[~~r~~

~~1 provided, however, that nothing herein shall preclude or prevent a
2 sentence of death when the specified offense is murder in the first
3 degree as defined in section 125.27 of this chapter].~~

4 § 10. Paragraph (e) of subdivision 5 of section 220.10 of the criminal
5 procedure law is REPEALED.

6 § 11. Subparagraph (vii) of paragraph (b) of subdivision 3 of section
7 220.30 of the criminal procedure law is REPEALED.

8 § 12. Sections 250.40, 270.16, 270.55, 400.27, 450.70 and 450.80 of
9 the criminal procedure law are REPEALED.

10 § 13. Paragraph (f) of subdivision 1 of section 270.20 of the criminal
11 procedure law is REPEALED.

12 § 14. Section 270.30 of the criminal procedure law, as amended by
13 chapter 1 of the laws of 1995, is amended to read as follows:

14 § 270.30 Trial jury; alternate jurors.

15 [~~1.~~] Immediately after the last trial juror is sworn, the court may in
16 its discretion direct the selection of one or more, but not more than
17 six additional jurors to be known as "alternate jurors" [~~except that,
18 in a prosecution under section 125.27 of the penal law, the court may,
19 in its discretion, direct the selection of as many alternate jurors as
20 the court determines to be appropriate~~]. Alternate jurors must be drawn
21 in the same manner, must have the same qualifications, must be subject
22 to the same examination and challenges for cause and must take the same
23 oath as the regular jurors. After the jury has retired to deliberate,
24 the court must either (1) with the consent of the defendant and the
25 people, discharge the alternate jurors or (2) direct the alternate
26 jurors not to discuss the case and must further direct that they be kept
27 separate and apart from the regular jurors.

28 [~~2. In any prosecution in which the people seek a sentence of death,
29 the court shall not discharge the alternate jurors when the jury retires
30 to deliberate upon its verdict and the alternate jurors, in the
31 discretion of the court, may be continuously kept together under the
32 supervision of an appropriate public servant or servants until such time
33 as the jury returns its verdict. If the jury returns a verdict of guilty
34 to a charge for which the death penalty may be imposed, the alternate
35 jurors shall not be discharged and shall remain available for service
36 during any separate sentencing proceeding which may be conducted pursu-
37 ant to section 400.27.~~]

38 § 15. Section 310.80 of the criminal procedure law, as amended by
39 chapter 1 of the laws of 1995, is amended to read as follows:

40 § 310.80 Recording and checking of verdict and polling of jury.

41 After a verdict has been rendered, it must be recorded on the minutes
42 and read to the jury, and the jurors must be collectively asked whether
43 such is their verdict. Even though no juror makes any declaration in the
44 negative, the jury must, if either party makes such an application, be
45 polled and each juror separately asked whether the verdict announced by
46 the foreman is in all respects his verdict. If upon either the collec-
47 tive or the separate inquiry any juror answers in the negative, the
48 court must refuse to accept the verdict and must direct the jury to
49 resume its deliberation. If no disagreement is expressed, the jury must
50 be discharged from the case [~~except as otherwise provided in section
51 400.27~~].

52 § 16. Subdivision 1 of section 440.20 of the criminal procedure law,
53 as amended by chapter 1 of the laws of 1995, is amended to read as
54 follows:

55 1. At any time after the entry of a judgment, the court in which the
56 judgment was entered may, upon motion of the defendant, set aside the

1 sentence upon the ground that it was unauthorized, illegally imposed or
2 otherwise invalid as a matter of law. [~~Where the judgment includes a~~
3 ~~sentence of death, the court may also set aside the sentence upon any of~~
4 ~~the grounds set forth in paragraph (b), (c), (f), (g) or (h) of subdivi-~~
5 ~~sion one of section 440.10 as applied to a separate sentencing proceed-~~
6 ~~ing under section 400.27, provided, however, that to the extent the~~
7 ~~ground or grounds asserted include one or more of the aforesaid para-~~
8 ~~graphs of subdivision one of section 440.10, the court must also apply~~
9 ~~subdivisions two and three of section 440.10, other than paragraph (d)~~
10 ~~of subdivision two of such section, in determining the motion. In the~~
11 ~~event the court enters an order granting a motion to set aside a~~
12 ~~sentence of death under this section, the court must either direct a new~~
13 ~~sentencing proceeding in accordance with section 400.27 or, to the~~
14 ~~extent that the defendant cannot be resentenced to death consistent with~~
15 ~~the laws of this state or the constitution of this state or of the~~
16 ~~United States, resentence the defendant to life imprisonment without~~
17 ~~parole or to a sentence of imprisonment for the class A-I felony of~~
18 ~~murder in the first degree other than a sentence of life imprisonment~~
19 ~~without parole. Upon granting the motion upon any of the grounds set~~
20 ~~forth in the aforesaid paragraphs of subdivision one of section 440.10~~
21 ~~and setting aside the sentence, the court must afford the people a~~
22 ~~reasonable period of time, which shall not be less than ten days, to~~
23 ~~determine whether to take an appeal from the order setting aside the~~
24 ~~sentence of death. The taking of an appeal by the people stays the~~
25 ~~effectiveness of that portion of the court's order that directs a new~~
26 ~~sentencing proceeding.]~~

27 § 17. Subdivision 10 of section 450.20 of the criminal procedure law
28 is REPEALED.

29 § 18. Subdivision 3 of section 460.40 of the criminal procedure law is
30 REPEALED.

31 § 19. Section 470.30 of the criminal procedure law, as amended by
32 chapter 1 of the laws of 1995, is amended to read as follows:

33 § 470.30 Determination by court of appeals of appeals taken directly
34 thereto from judgments and orders of criminal courts.

35 [~~1.~~] Wherever appropriate, the rules set forth in sections 470.15 and
36 470.20, governing the consideration and determination by intermediate
37 appellate courts of appeals thereto from judgments and orders of crimi-
38 nal courts, and prescribing their scope of review and the corrective
39 action to be taken by them upon reversal or modification, apply equally
40 to the consideration and determination by the court of appeals of
41 appeals taken directly thereto, [~~pursuant to sections 450.70 and~~
42 ~~450.80,~~] from judgments and orders of superior criminal courts.

43 [~~2. Whenever a sentence of death is imposed, the judgment and sentence~~
44 ~~shall be reviewed on the record by the court of appeals. Review by the~~
45 ~~court of appeals pursuant to subdivision one of section 450.70 may not~~
46 ~~be waived.~~

47 ~~3. With regard to the sentence, the court shall, in addition to exer-~~
48 ~~cising the powers and scope of review granted under subdivision one of~~
49 ~~this section, determine:~~

50 ~~(a) whether the sentence of death was imposed under the influence of~~
51 ~~passion, prejudice, or any other arbitrary or legally impermissible~~
52 ~~factor including whether the imposition of the verdict or sentence was~~
53 ~~based upon the race of the defendant or a victim of the crime for which~~
54 ~~the defendant was convicted;~~

55 ~~(b) whether the sentence of death is excessive or disproportionate to~~
56 ~~the penalty imposed in similar cases considering both the crime and the~~

~~1 defendant. In conducting such review the court, upon request of the
2 defendant, in addition to any other determination, shall review whether
3 the sentence of death is excessive or disproportionate to the penalty
4 imposed in similar cases by virtue of the race of the defendant or a
5 victim of the crime for which the defendant was convicted; and~~

~~6 (c) whether the decision to impose the sentence of death was against
7 the weight of the evidence.~~

~~8 4. The court shall include in its decision: (a) the aggravating and
9 mitigating factors established in the record on appeal; and~~

~~10 (b) those similar cases it took into consideration.~~

~~11 5. In addition to exercising any other corrective action pursuant to
12 subdivision one of this section, the court, with regard to review of a
13 sentence of death, shall be authorized to:~~

~~14 (a) affirm the sentence of death; or~~

~~15 (b) set the sentence aside and remand the case for resentencing pursu-
16 ant to the procedures set forth in section 400.27 for a determination as
17 to whether the defendant shall be sentenced to death, life imprisonment
18 without parole or to a term of imprisonment for the class A-I felony of
19 murder in the first degree other than a sentence of life imprisonment
20 without parole; or~~

~~21 (c) set the sentence aside and remand the case for resentencing by the
22 court for a determination as to whether the defendant shall be sentenced
23 to life imprisonment without parole or to a term of imprisonment for the
24 class A-I felony of murder in the first degree other than a sentence of
25 life imprisonment without parole.]~~

26 § 20. Section 630.20 of the criminal procedure law is amended to read
27 as follows:

28 § 630.20 Securing attendance of witnesses confined in institutions
29 within the state; when and by what courts order may be
30 issued.

31 The following courts and judges may, under the indicated circum-
32 stances, order production as witnesses of persons confined by court
33 order in institutions within the state.

34 1. If the criminal action or proceeding is one pending in a superior
35 court or with a superior court judge sitting as a local criminal court,
36 such court may [~~7, except as provided in subdivision four,~~] order the
37 production as a witness therein of a person confined in any institution
38 in the state.

39 2. If the criminal action or proceeding is one pending in a district
40 court or the New York City criminal court, such court may order the
41 production as a witness therein of a person confined in any institution
42 within the state other than a state prison. Production therein of a
43 prospective witness confined in a state prison may [~~7, except as provided
44 in subdivision four,~~] be ordered, upon application of the party desiring
45 to call him, by a judge of a superior court holding a term thereof in
46 the county in which the action or proceeding is pending.

47 3. If the criminal action or proceeding is one pending in a city
48 court or a town court or a village court, such court may order the
49 production as a witness therein of a person confined in a county jail of
50 such county. Production therein of a prospective witness confined in
51 any other institution within the state may [~~7, except as provided in
52 subdivision four,~~] be ordered, upon application of the party desiring to
53 call him, by a judge of a superior court holding a term thereof in the
54 county in which the action or proceeding is pending.

55 [~~4. Regardless of the court in which the criminal action or proceed-
56 ing is pending, production as a witness therein of a prisoner who has~~

~~1 been sentenced to death may be ordered, upon application of the party
2 desiring to call him, only by a justice of the appellate division of the
3 department in which the action or proceeding is pending. The applica-
4 tion for such order, if made by the defendant, must be upon notice to
5 the district attorney of the county in which the action or proceeding is
6 pending, and an application made by either party must be based upon a
7 showing that the prisoner's attendance is clearly necessary in the
8 interests of justice. Upon issuing such an order, the appellate divi-
9 sion justice may fix and include therein any terms or conditions which
10 he deems appropriate for execution thereof.]~~

11 § 21. Subdivision 1 of section 650.20 of the criminal procedure law is
12 amended to read as follows:

13 1. When (a) a criminal action is pending in a court of record of this
14 state, or a grand jury proceeding has been commenced, and (b) there is
15 reasonable cause to believe that a person confined in a correctional
16 institution or prison of another state, other than a person [~~awaiting
17 execution of a sentence of death or one~~] confined as mentally ill or as
18 a defective delinquent, possesses information material to such criminal
19 action or proceeding, and (c) the attendance of such person as a witness
20 in such action or proceeding is desired by a party thereto, and (d) the
21 state in which such person is confined possesses a statute equivalent to
22 section 650.10, the court in which such action or proceeding is pending
23 may issue a certificate under the seal of such court, certifying all
24 such facts and that the attendance of such person as a witness in such
25 court is required for a specified number of days.

26 § 22. Section 707 of the county law is REPEALED.

27 § 23. Article 22-A of the correction law is REPEALED.

28 § 24. Section 113 of the correction law, as amended by section 20 of
29 subpart A of Part C of chapter 62 of the laws of 2011, is amended to
30 read as follows:

31 § 113. Absence of inmate for funeral and deathbed visits authorized.
32 The commissioner may permit any inmate confined by the department
33 [~~except one awaiting the sentence of death~~] to attend the funeral of his
34 or her father, mother, guardian or former guardian, child, brother,
35 sister, husband, wife, grandparent, grandchild, ancestral uncle or
36 ancestral aunt within the state, or to visit such individual during his
37 or her illness if death be imminent; but the exercise of such power
38 shall be subject to such rules and regulations as the commissioner shall
39 prescribe, respecting the granting of such permission, duration of
40 absence from the institution, custody, transportation and care of the
41 inmate, and guarding against escape. Any expense incurred under the
42 provisions of this section, with respect to any inmate permitted to
43 attend a funeral or visit a relative during last illness, shall be
44 deemed an expense of maintenance of the institution and be paid from
45 moneys available therefor; but the superintendent, if the rules and
46 regulations of the commissioner shall so provide, may allow the inmate
47 or anyone in his behalf to reimburse the state for such expense.

48 § 25. Subdivision 1 of section 146 of the correction law, as amended
49 by chapter 234 of the laws of 2013, is amended to read as follows:

50 1. The following persons shall be authorized to visit at pleasure all
51 correctional facilities: The governor and lieutenant-governor, commis-
52 sioner of general services, secretary of state, comptroller and attor-
53 ney-general, members of the commission of correction, members of the
54 legislature and any employee of the department as requested by the
55 member of the legislature if the member requests to be so accompanied,
56 provided that such request does not impact upon the department's ability

1 to supervise, manage and control its facilities as determined by the
2 commissioner, judges of the court of appeals, supreme court and county
3 judges, district attorneys and every clergyman or minister, as such
4 terms are defined in section two of the religious corporations law,
5 having charge of a congregation in the county wherein any such facility
6 is situated. No other person not otherwise authorized by law shall be
7 permitted to enter a correctional facility except by authority of the
8 commissioner of correction under such regulations as the commissioner
9 shall prescribe. [~~The provisions of this section shall not apply to such~~
10 ~~portion of a correctional facility in which inmates under sentence of~~
11 ~~death are confined.~~]

12 § 26. Section 130 of the correction law is REPEALED.

13 § 27. Section 63-d of the executive law is REPEALED.

14 § 28. Subdivision 7 of section 837-a of the executive law is REPEALED.

15 § 29. Section 837-1 of the executive law is REPEALED.

16 § 30. This act shall take effect immediately and shall be deemed to
17 have been in full force and effect on and after September 1, 1995.