

STATE OF NEW YORK

6885

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. SMITH -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to the sentence of imprisonment for murder in the first and second degrees

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

1 Section 1. Section 60.06 of the penal law, as amended by chapter 482
2 of the laws of 2009, is amended to read as follows:

3 § 60.06 Authorized disposition; murder in the first degree offenders;
4 aggravated murder offenders; certain murder in the second
5 degree offenders; certain terrorism offenders; criminal
6 possession of a chemical weapon or biological weapon offen-
7 ders; criminal use of a chemical weapon or biological weapon
8 offenders.

9 When a defendant is convicted of murder in the first degree as defined
10 in section 125.27 of this chapter, the court shall, in accordance with
11 the provisions of section 400.27 of the criminal procedure law, sentence
12 the defendant to death[~~7~~] or to life imprisonment without parole in
13 accordance with subdivision five of section 70.00 of this title[~~, or to~~
14 ~~a term of imprisonment for a class A-I felony other than a sentence of~~
15 ~~life imprisonment without parole, in accordance with subdivisions one~~
16 ~~through three of section 70.00 of this title~~]. When a person is
17 convicted of murder in the second degree as defined in subdivision five
18 of section 125.25 of this chapter or of the crime of aggravated murder
19 as defined in subdivision one of section 125.26 of this chapter, the
20 court shall sentence the defendant to life imprisonment without parole
21 in accordance with subdivision five of section 70.00 of this title. When
22 a defendant is convicted of the crime of terrorism as defined in section
23 490.25 of this chapter, and the specified offense the defendant commit-
24 ted is a class A-I felony offense, or when a defendant is convicted of

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

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

16 § 2. Subparagraph (i) of paragraph (a) of subdivision 3 and subdivi-
17 sion 5 of section 70.00 of the penal law, subparagraph (i) of paragraph
18 (a) of subdivision 3 as amended by chapter 107 of the laws of 2006,
19 subdivision 5 as amended by section 40-a of part WWW of chapter 59 of
20 the laws of 2017, are amended to read as follows:

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

43 5. Life imprisonment without parole. Notwithstanding any other
44 provision of law, a defendant sentenced to life imprisonment without
45 parole shall not be or become eligible for parole or conditional
46 release. For purposes of commitment and custody, other than parole and
47 conditional release, such sentence shall be deemed to be an indetermi-
48 nate sentence. A defendant [~~may~~] shall be sentenced to life imprisonment
49 without parole upon conviction for the crime of murder in the first
50 degree as defined in section 125.27 of this chapter and in accordance
51 with the procedures provided by law for imposing a sentence for such
52 crime. A defendant who was eighteen years of age or older at the time of
53 the commission of the crime must be sentenced to life imprisonment with-
54 out parole upon conviction for the crime of terrorism as defined in
55 section 490.25 of this chapter, where the specified offense the defend-
56 ant committed is a class A-I felony; the crime of criminal possession of

1 a chemical weapon or biological weapon in the first degree as defined in
2 section 490.45 of this chapter; or the crime of criminal use of a chemi-
3 cal weapon or biological weapon in the first degree as defined in
4 section 490.55 of this chapter; provided, however, that nothing in this
5 subdivision shall preclude or prevent a sentence of death when the
6 defendant is also convicted of the crime of murder in the first degree
7 as defined in section 125.27 of this chapter. A defendant who was seven-
8 teen years of age or younger at the time of the commission of the crime
9 may be sentenced, in accordance with law, to the applicable indetermi-
10 nate sentence with a maximum term of life imprisonment. A defendant must
11 be sentenced to life imprisonment without parole upon conviction for the
12 crime of murder in the second degree as defined in subdivision five of
13 section 125.25 of this chapter or for the crime of aggravated murder as
14 defined in subdivision one of section 125.26 of this chapter. A defend-
15 ant may be sentenced to life imprisonment without parole upon conviction
16 for the crime of aggravated murder as defined in subdivision two of
17 section 125.26 of this chapter.

18 § 3. Subdivision 1 of section 400.27 of the criminal procedure law, as
19 added by chapter 1 of the laws of 1995, is amended to read as follows:

20 1. Upon the conviction of a defendant for the offense of murder in the
21 first degree as defined by section 125.27 of the penal law, the court
22 shall promptly conduct a separate sentencing proceeding to determine
23 whether the defendant shall be sentenced to death or to life imprison-
24 ment without parole pursuant to subdivision five of section 70.00 of the
25 penal law. Nothing in this section shall be deemed to preclude the
26 people at any time from determining that the death penalty shall not be
27 sought in a particular case, in which case the separate sentencing
28 proceeding shall not be conducted and the court [~~may~~] shall sentence
29 such defendant to life imprisonment without parole [~~or to a sentence of~~
30 ~~imprisonment for the class A-I felony of murder in the first degree~~
31 ~~other than a sentence of life imprisonment without parole~~].

32 § 4. Paragraphs (b), (c) and (e) of subdivision 12 of section 400.27
33 of the criminal procedure law, as added by chapter 1 of the laws of
34 1995, are amended to read as follows:

35 (b) In the event the defendant is sentenced pursuant to this section
36 to life imprisonment without parole [~~or to a term of imprisonment for~~
37 ~~the class A-I felony of murder in the first degree other than a sentence~~
38 ~~of life imprisonment without parole~~], the court shall not render a find-
39 ing with respect to whether the defendant is [~~mentally retarded~~] intel-
40 lectually disabled.

41 (c) In the event the defendant is sentenced pursuant to this section
42 to death, the court shall thereupon render a finding with respect to
43 whether the defendant is [~~mentally retarded~~] intellectually disabled. If
44 the court finds the defendant is [~~mentally retarded~~] intellectually
45 disabled, the court shall set aside the sentence of death and sentence
46 the defendant [~~either~~] to life imprisonment without parole [~~or to a term~~
47 ~~of imprisonment for the class A-I felony of murder in the first degree~~
48 ~~other than a sentence of life imprisonment without parole~~]. If the court
49 finds the defendant is not [~~mentally retarded~~] intellectually disabled,
50 then such sentence of death shall not be set aside pursuant to this
51 subdivision.

52 (e) The foregoing provisions of this subdivision notwithstanding, at a
53 reasonable time prior to the commencement of trial the defendant may,
54 upon a written motion alleging reasonable cause to believe the defendant
55 is mentally retarded] intellectually disabled, apply for an order
56 directing that a [~~mental retardation~~] intellectual disability hearing be

1 conducted prior to trial. If, upon review of the defendant's motion and
2 any response thereto, the court finds reasonable cause to believe the
3 defendant is [~~mentally retarded~~] intellectually disabled, it shall
4 promptly conduct a hearing without a jury to determine whether the
5 defendant is [~~mentally retarded~~] intellectually disabled. In the event
6 the court finds after the hearing that the defendant is not [~~mentally~~
7 ~~retarded~~] intellectually disabled, the court must, prior to commencement
8 of trial, enter an order so stating, but nothing in this paragraph shall
9 preclude a defendant from presenting mitigating evidence of [~~mental~~
10 ~~retardation~~] intellectual disability at a separate sentencing proceed-
11 ing. In the event the court finds after the hearing that the defendant,
12 based upon a preponderance of the evidence, is [~~mentally retarded~~]
13 intellectually disabled, the court must, prior to commencement of trial,
14 enter an order so stating. Unless the order is reversed on an appeal by
15 the people or unless the provisions of paragraph (d) of this subdivision
16 apply, a separate sentencing proceeding under this section shall not be
17 conducted if the defendant is thereafter convicted of murder in the
18 first degree. In the event a separate sentencing proceeding is not
19 conducted, the court, upon conviction of a defendant for the crime of
20 murder in the first degree, shall sentence the defendant to life impris-
21 sonment without parole [~~or to a sentence of imprisonment for the class~~
22 ~~A-I felony of murder in the first degree other than a sentence of life~~
23 ~~imprisonment without parole~~]. Whenever a [~~mental retardation~~] intellec-
24 tual disability hearing is held and a finding is rendered pursuant to
25 this paragraph, the court may not conduct a hearing pursuant to para-
26 graph (a) of this subdivision. For purposes of this subdivision and
27 paragraph (b) of subdivision nine of this section, [~~"mental retardation"~~]
28 "intellectual disability" means significantly subaverage general intel-
29 lectual functioning existing concurrently with deficits in adaptive
30 behavior which were manifested before the age of eighteen.
31 § 5. This act shall take effect immediately.