

# STATE OF NEW YORK

1922

2023-2024 Regular Sessions

## IN SENATE

January 17, 2023

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the correction law and the criminal procedure law, in relation to parole eligibility for felony offenders; and to repeal subdivision 2-a of section 70.20 of the penal law relating thereto

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

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

§ 60.06 Authorized disposition; murder in the first degree offenders; aggravated murder offenders; certain murder in the second degree offenders; certain terrorism offenders; criminal possession of a chemical weapon or biological weapon offenders; criminal use of a chemical weapon or biological weapon offenders.

When a defendant is convicted of murder in the first degree as defined in section 125.27 of this chapter, the court shall, in accordance with the provisions of section 400.27 of the criminal procedure law, sentence the defendant to death, to life imprisonment [~~without parole in accordance with subdivision five of section 70.00 of this title,~~ with eligibility for parole after twenty-five years or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment [~~without parole~~ with eligibility for parole after twenty-five years, in accordance with subdivisions one through three of section 70.00 of this title. When a person is convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or of the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter, the court shall sentence the defendant to life imprisonment [~~without parole in accordance with subdivision five of section 70.00 of this title~~ with eligibility for parole after twenty-

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

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

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

27 (i) For a class A-I felony, such minimum period shall not be less than  
28 fifteen years nor more than twenty-five years; provided, however, that  
29 (A) where a sentence, other than a sentence of death or life imprison-  
30 ment ~~[without parole]~~ with eligibility for parole after twenty-five  
31 years, is imposed upon a defendant convicted of murder in the first  
32 degree as defined in section 125.27 of this chapter such minimum period  
33 shall be not less than twenty years nor more than twenty-five years,  
34 and, (B) where a sentence is imposed upon a defendant convicted of  
35 murder in the second degree as defined in subdivision five of section  
36 125.25 of this chapter or convicted of aggravated murder as defined in  
37 section 125.26 of this chapter, the sentence shall be life imprisonment  
38 ~~[without parole]~~ with eligibility for parole after twenty-five years,  
39 and, (C) where a sentence is imposed upon a defendant convicted of  
40 attempted murder in the first degree as defined in article one hundred  
41 ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a)  
42 of subdivision one and paragraph (b) of subdivision one of section  
43 125.27 of this chapter or attempted aggravated murder as defined in  
44 article one hundred ten of this chapter and section 125.26 of this chap-  
45 ter such minimum period shall be not less than twenty years nor more  
46 than forty years.

47 ~~[5. Life imprisonment without parole. Notwithstanding any other~~  
48 ~~provision of law, a defendant sentenced to life imprisonment without~~  
49 ~~parole shall not be or become eligible for parole or conditional~~  
50 ~~release. For purposes of commitment and custody, other than parole and~~  
51 ~~conditional release, such sentence shall be deemed to be an indetermi-~~  
52 ~~nate sentence. A defendant may be sentenced to life imprisonment without~~  
53 ~~parole upon conviction for the crime of murder in the first degree as~~  
54 ~~defined in section 125.27 of this chapter and in accordance with the~~  
55 ~~procedures provided by law for imposing a sentence for such crime. A~~  
56 ~~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 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. 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.]~~

§ 3. Subdivision 3 of section 70.00 of the penal law is amended by adding a new paragraph (c) to read as follows:

(c) Notwithstanding any other provision of the law to the contrary, for any felony, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 4. Subdivision 3 of section 70.02 of the penal law is amended by adding a new paragraph (e) to read as follows:

(e) Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 5. Section 70.04 of the penal law is amended by adding a new subdivision 4 to read as follows:

4. Parole eligibility and consecutive terms of imprisonment. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 6. Section 70.06 of the penal law is amended by adding a new subdivision 8 to read as follows:

8. Parole eligibility and consecutive terms of imprisonment. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be

1 sentenced to consecutive terms of imprisonment which exceed a twenty-  
2 five year sentence.

3 § 7. Section 70.07 of the penal law is amended by adding a new subdi-  
4 vision 6 to read as follows:

5 6. Notwithstanding any other provision of the law to the contrary,  
6 for any felony defined in this section, regardless of sentence, all  
7 defendants sentenced shall become eligible for parole after serving no  
8 more than twenty-five years of their sentence; and further, notwith-  
9 standing any other provision of the law to the contrary, no defendant  
10 shall be sentenced to consecutive terms of imprisonment which exceed a  
11 twenty-five year sentence.

12 § 8. Section 70.08 of the penal law is amended by adding a new subdi-  
13 vision 4 to read as follows:

14 4. Parole eligibility and consecutive terms of imprisonment. Notwith-  
15 standing any other provision of the law to the contrary, for any felony  
16 defined in this section, regardless of sentence, all defendants  
17 sentenced shall become eligible for parole after serving no more than  
18 twenty-five years of their sentence; and further, notwithstanding any  
19 other provision of the law to the contrary, no defendant shall be  
20 sentenced to consecutive terms of imprisonment which exceed a twenty-  
21 five year sentence.

22 § 9. Section 70.10 of the penal law is amended by adding a new subdi-  
23 vision 3 to read as follows:

24 3. Parole eligibility and consecutive terms of imprisonment. Notwith-  
25 standing any other provision of the law to the contrary, for any felony  
26 defined in this section, regardless of sentence, all defendants  
27 sentenced shall become eligible for parole after serving no more than  
28 twenty-five years of their sentence; and further, notwithstanding any  
29 other provision of the law to the contrary, no defendant shall be  
30 sentenced to consecutive terms of imprisonment which exceed a twenty-  
31 five year sentence.

32 § 10. Subdivision 2-a of section 70.20 of the penal law is REPEALED.

33 § 11. Section 70.71 of the penal law is amended by adding a new  
34 subdivision 6 to read as follows:

35 6. Parole eligibility and consecutive terms of imprisonment. Notwith-  
36 standing any other provision of the law to the contrary, for any felony  
37 defined in this section, regardless of sentence, all defendants  
38 sentenced shall become eligible for parole after serving no more than  
39 twenty-five years of their sentence; and further, notwithstanding any  
40 other provision of the law to the contrary, no defendant shall be  
41 sentenced to consecutive terms of imprisonment which exceed a twenty-  
42 five year sentence.

43 § 12. Subdivision 3 of section 70.80 of the penal law, as added by  
44 chapter 7 of the laws of 2007, is amended and a new subdivision 10 is  
45 added to read as follows:

46 3. Except as provided by subdivision four, five, six, seven or eight  
47 of this section, or when a defendant is being sentenced for a conviction  
48 of the class A-II felonies of predatory sexual assault and predatory  
49 sexual assault against a child as defined in sections 130.95 and 130.96  
50 of this chapter, or for any class A-I sexually motivated felony for  
51 which a life sentence [~~or a life without parole sentence~~] with eligibil-  
52 ity for parole after twenty-five years must be imposed, a sentence  
53 imposed upon a defendant convicted of a felony sex offense shall be a  
54 determinate sentence. The determinate sentence shall be imposed by the  
55 court in whole or half years, and shall include as a part thereof a  
56 period of post-release supervision in accordance with subdivision two-a

1 of section 70.45 of this article. Persons eligible for sentencing under  
2 section 70.07 of this article governing second child sexual assault  
3 felonies shall be sentenced under such section and paragraph (j) of  
4 subdivision two-a of section 70.45 of this article.

5 10. Notwithstanding any other provision of the law to the contrary,  
6 for any felony defined in this section, regardless of sentence, all  
7 defendants sentenced shall become eligible for parole after serving no  
8 more than twenty-five years of their sentence; and further, notwith-  
9 standing any other provision of the law to the contrary, no defendant  
10 shall be sentenced to consecutive terms of imprisonment which exceed a  
11 twenty-five year sentence.

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

15 (d) Notwithstanding any other provision of law, when a person is  
16 convicted of a crime of terrorism pursuant to this section, and the  
17 specified offense is a class A-I felony offense, the sentence upon  
18 conviction of such offense shall be life imprisonment ~~[without parole]~~  
19 with eligibility for parole after twenty-five years; provided, however,  
20 that nothing herein shall preclude or prevent a sentence of death when  
21 the specified offense is murder in the first degree as defined in  
22 section 125.27 of this chapter.

23 § 14. Subdivision 2 of section 136 of the correction law, as amended  
24 by chapter 322 of the laws of 2021, is amended to read as follows:

25 2. All incarcerated individuals admitted to the department serving a  
26 determinate term of imprisonment, or an indeterminate sentence of impri-  
27 sonment other than a sentence of life imprisonment ~~[without parole,~~  
28 with eligibility for parole after twenty-five years who have been evalu-  
29 ated upon admission pursuant to subdivision one of section one hundred  
30 thirty-seven of this article and are determined to be capable of  
31 successfully completing the academic course work required for the test  
32 assessing secondary completion, shall be provided with the opportunity  
33 to complete such course work at least two months prior to the date on  
34 which such incarcerated individual may be paroled, conditionally  
35 released, released to post-release supervision pursuant to section 70.40  
36 of the penal law, or presumptively released, pursuant to section eight  
37 hundred three of this chapter. Upon admission to the department, such  
38 incarcerated individuals will be provided with written notice that the  
39 test assessing secondary completion programs are available for all  
40 incarcerated individuals who so apply.

41 § 15. Paragraph (e) of subdivision 5 of section 220.10 of the criminal  
42 procedure law, as amended by chapter 1 of the laws of 1995, is amended  
43 to read as follows:

44 (e) A defendant may not enter a plea of guilty to the crime of murder  
45 in the first degree as defined in section 125.27 of the penal law;  
46 provided, however, that a defendant may enter such a plea with both the  
47 permission of the court and the consent of the people when the agreed  
48 upon sentence is either life imprisonment ~~[without parole]~~ with eligi-  
49 bility for parole after twenty-five years or a term of imprisonment for  
50 the class A-I felony of murder in the first degree other than a sentence  
51 of life imprisonment ~~[without parole]~~ with eligibility for parole after  
52 twenty-five years.

53 § 16. Subparagraph (vii) of paragraph (b) of subdivision 3 of section  
54 220.30 of the criminal procedure law, as amended by chapter 1 of the  
55 laws of 1995, is amended to read as follows:

(vii) A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years or a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years.

§ 17. Subdivision 1, paragraphs (b) and (e) of subdivision 11 and paragraphs (b), (c) and (e) of subdivision 12 of section 400.27 of the criminal procedure law, as added by chapter 1 of the laws of 1995, are amended to read as follows:

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

(b) If the jury directs imposition of either a sentence of death or life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years, it shall specify on the record those mitigating and aggravating factors considered and those mitigating factors established by the defendant, if any.

(e) If the jury unanimously determines that a sentence of life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years should be imposed the court must thereupon impose a sentence of life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years.

(b) In the event the defendant is sentenced pursuant to this section to life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years or to a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years, the court shall not render a finding with respect to whether the defendant is mentally retarded.

(c) In the event the defendant is sentenced pursuant to this section to death, the court shall thereupon render a finding with respect to whether the defendant is mentally retarded. If the court finds the defendant is mentally retarded, the court shall set aside the sentence of death and sentence the defendant either to life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years or to a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years. If the court finds the defendant is not mentally retarded, then such sentence of death shall not be set aside pursuant to this subdivision.

(e) The foregoing provisions of this subdivision notwithstanding, at a reasonable time prior to the commencement of trial the defendant may, upon a written motion alleging reasonable cause to believe the defendant is mentally retarded, apply for an order directing that a mental retardation hearing be conducted prior to trial. If, upon review of the defendant's motion and any response thereto, the court finds reasonable cause to believe the defendant is mentally retarded, it shall promptly conduct a hearing without a jury to determine whether the defendant is mentally retarded. In the event the court finds after the hearing that the defendant is not mentally retarded, the court must, prior to commencement of trial, enter an order so stating, but nothing in this paragraph shall preclude a defendant from presenting mitigating evidence of mental retardation at a separate sentencing proceeding. In the event the court finds after the hearing that the defendant, based upon a preponderance of the evidence, is mentally retarded, the court must, prior to commencement of trial, enter an order so stating. Unless the order is reversed on an appeal by the people or unless the provisions of paragraph (d) of this subdivision apply, a separate sentencing proceeding under this section shall not be conducted if the defendant is thereafter convicted of murder in the first degree. In the event a separate sentencing proceeding is not conducted, the court, upon conviction of a defendant for the crime of murder in the first degree, shall sentence the defendant to life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years or to a sentence of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years. Whenever a mental retardation hearing is held and a finding is rendered pursuant to this paragraph, the court may not conduct a hearing pursuant to paragraph (a) of this subdivision. For purposes of this subdivision and paragraph (b) of subdivision nine of this section, "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which were manifested before the age of eighteen.

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

1. At any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law. Where the judgment includes a sentence of death, the court may also set aside the sentence upon any of the grounds set forth in paragraph (b), (c), (f), (g) or (h) of subdivision one of section 440.10 as applied to a separate sentencing proceeding under section 400.27, provided, however, that to the extent the ground or grounds asserted include one or more of the aforesaid paragraphs of subdivision one of section 440.10, the court must also apply subdivisions two and three of section 440.10, other than paragraph (d) of subdivision two of such section, in determining the motion. In the event the court enters an order granting a motion to set aside a sentence of death under this section, the court must either direct a new sentencing proceeding in accordance with section 400.27 or, to the extent that the defendant cannot be resentenced to death consistent with the laws of this state or the constitution of this state or of the United States, resentence the defendant to life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years or to a sentence of imprisonment for the class A-I felony of murder in the first

1 degree other than a sentence of life imprisonment [~~without parole~~] with  
2 eligibility for parole after twenty-five years. Upon granting the  
3 motion upon any of the grounds set forth in the aforesaid paragraphs of  
4 subdivision one of section 440.10 and setting aside the sentence, the  
5 court must afford the people a reasonable period of time, which shall  
6 not be less than ten days, to determine whether to take an appeal from  
7 the order setting aside the sentence of death. The taking of an appeal  
8 by the people stays the effectiveness of that portion of the court's  
9 order that directs a new sentencing proceeding.

10 § 19. Paragraphs (b) and (c) of subdivision 5 of section 470.30 of the  
11 criminal procedure law, as added by chapter 1 of the laws of 1995, are  
12 amended to read as follows:

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

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

26 § 20. The opening paragraph of subdivision 1 of section 70.25 of the  
27 penal law, as amended by chapter 372 of the laws of 1981, is amended to  
28 read as follows:

29 Except as provided in subdivisions two, two-a and five of this  
30 section, when multiple sentences of imprisonment are imposed on a person  
31 at the same time, or when a person who is subject to any undischarged  
32 term of imprisonment imposed at a previous time by a court of this state  
33 is sentenced to an additional term of imprisonment, the sentence or  
34 sentences imposed by the court shall run either concurrently or consec-  
35 utively with respect to each other and the undischarged term or terms in  
36 such manner as the court directs at the time of sentence. Notwithstand-  
37 ing any other provision of the law to the contrary, no defendant shall  
38 be sentenced to serve consecutive terms of imprisonment which exceed a  
39 twenty-five year sentence. If the court does not specify the manner in  
40 which a sentence imposed by it is to run, the sentence shall run as  
41 follows:

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