

1070

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, MAYERSOHN, ABBATE, KOON, GABRYSZAK, CUSICK, FIELDS, SEMINERIO, PHEFFER, CYMBROWITZ, BROOK-KRASNY, TOWNSEND, KOLB, CALHOUN, FINCH, GIGLIO -- Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, BUTLER, CONTE, CROUCH, DUPREY, McDONOUGH, McKEVITT, MOLINARO, RABBITT, SALADINO, SPANO, TOBACCO, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to sentencing for the commission of certain provisions of murder in the first degree

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 765
2 of the laws of 2005, the section heading as amended by chapter 93 of the
3 laws of 2006, is amended to read as follows:
4 S 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, sentence
13 the defendant to death, to life imprisonment without parole in accord-
14 ance with subdivision five of section 70.00 of this title, or to a term
15 of imprisonment for a class A-I felony other than a sentence of life
16 imprisonment without parole, in accordance with subdivisions one through
17 three of section 70.00 of this title. When a person is convicted of
18 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

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

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1 in section 125.26 of this chapter, OR OF THE CRIME OF MURDER IN THE
2 FIRST DEGREE AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH
3 (A) OF SUBDIVISION ONE OF SECTION 125.27 OF THIS CHAPTER AND THE
4 SENTENCE OF DEATH IS NOT IMPOSED, the court shall sentence the defendant
5 to life imprisonment without parole in accordance with subdivision five
6 of section 70.00 of this title. When a defendant is convicted of the
7 crime of terrorism as defined in section 490.25 of this chapter, and the
8 specified offense the defendant committed is a class A-I felony offense,
9 or when a defendant is convicted of the crime of criminal possession of
10 a chemical weapon or biological weapon in the first degree as defined in
11 section 490.45 of this chapter, or when a defendant is convicted of the
12 crime of criminal use of a chemical weapon or biological weapon in the
13 first degree as defined in section 490.55 of this chapter, the court
14 shall sentence the defendant to life imprisonment without parole in
15 accordance with subdivision five of section 70.00 of this title;
16 provided, however, that nothing in this section shall preclude or
17 prevent a sentence of death when the defendant is also convicted of
18 murder in the first degree as defined in section 125.27 of this chapter.

19 S 2. 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 SUBPARAGRAPH (IV), (V), (VI), (VII),
27 (VIII), (IX), (X), (XI), (XII) OR (XIII) OF PARAGRAPH (A) OF SUBDIVISION
28 ONE OF section 125.27 of this chapter such minimum period shall be not
29 less than twenty years nor more than twenty-five years, and, (B) where a
30 sentence is imposed upon a defendant convicted of murder in the second
31 degree as defined in subdivision five of section 125.25 of this chapter
32 or convicted of aggravated murder as defined in section 125.26 of this
33 chapter, OR WHERE A SENTENCE, OTHER THAN A SENTENCE OF DEATH, IS IMPOSED
34 UPON A DEFENDANT CONVICTED OF MURDER IN THE FIRST DEGREE AS DEFINED IN
35 SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (A) OF SUBDIVISION ONE OF
36 SECTION 125.27 OF THIS CHAPTER, the sentence shall be life imprisonment
37 without parole, and, (C) where a sentence is imposed upon a defendant
38 convicted of attempted murder in the first degree as defined in article
39 one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of
40 paragraph (a) of subdivision one and paragraph (b) of subdivision one of
41 section 125.27 of this chapter or attempted aggravated murder as defined
42 in article one hundred ten of this chapter and section 125.26 of this
43 chapter such minimum period shall be not less than twenty years nor more
44 than forty years.

45 S 3. Subdivision 5 of section 70.00 of the penal law, as amended by
46 chapter 765 of the laws of 2005, is amended to read as follows:

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 with-
53 out parole upon conviction for the crime of murder in the first degree
54 as 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 must be sentenced to life imprisonment without parole upon

1 conviction for the crime of terrorism as defined in section 490.25 of
2 this chapter, where the specified offense the defendant committed is a
3 class A-I felony; the crime of criminal possession of a chemical weapon
4 or biological weapon in the first degree as defined in section 490.45 of
5 this chapter; or the crime of criminal use of a chemical weapon or
6 biological weapon in the first degree as defined in section 490.55 of
7 this chapter; provided, however, that nothing in this subdivision shall
8 preclude or prevent a sentence of death when the defendant is also
9 convicted of the crime of murder in the first degree as defined in
10 section 125.27 of this chapter. A defendant must be sentenced to life
11 imprisonment without parole upon conviction for the crime of murder in
12 the second degree as defined in subdivision five of section 125.25 of
13 this chapter or for the crime of aggravated murder as defined in section
14 125.26 of this chapter, OR FOR THE CRIME OF MURDER IN THE FIRST DEGREE
15 AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (A) OF SUBDI-
16 VISION ONE OF SECTION 125.27 OF THIS CHAPTER AND THE SENTENCE OF DEATH
17 IS NOT IMPOSED.

18 S 4. Subdivisions 1 and 10 of section 400.27 of the criminal procedure
19 law, as added by chapter 1 of the laws of 1995, are amended to read as
20 follows:

21 1. Upon [the] conviction of a defendant for the offense of murder in
22 the first degree as defined by SUBPARAGRAPH (I), (II) OR (III) OF PARA-
23 GRAPH (A) OF SUBDIVISION ONE OF section 125.27 of the penal law, the
24 court shall promptly conduct a separate sentencing proceeding to deter-
25 mine whether the defendant shall be sentenced to death or to life impri-
26 sonment without parole pursuant to subdivision five of section 70.00 of
27 the penal law. Nothing in this section shall be deemed to preclude the
28 people at any time from determining that the death penalty shall not be
29 sought in a particular case, in which case the separate sentencing
30 proceeding shall not be conducted and the court may sentence such
31 defendant to life imprisonment without parole [or to a sentence of
32 imprisonment for the class A-I felony of murder in the first degree
33 other than a sentence of life imprisonment without parole].

34 10. (A) At the conclusion of all the evidence, the people and the
35 defendant may present argument in summation for or against the sentence
36 sought by the people. The people may deliver the first summation and the
37 defendant may then deliver the last summation. Thereafter, the court
38 shall deliver a charge to the jury on any matters appropriate in the
39 circumstances. In its charge, the court must instruct the jury that with
40 respect to each count of murder in the first degree, AS DEFINED IN
41 SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (A) OF SUBDIVISION ONE OF
42 SECTION 125.27 OF THE PENAL LAW, the jury should consider whether or not
43 a sentence of death should be imposed and whether or not a sentence of
44 life imprisonment without parole should be imposed[, and that the jury
45 must be unanimous with respect to either sentence. The court must also
46 instruct the jury that in the event the jury fails to reach unanimous
47 agreement with respect to the sentence, the court will sentence the
48 defendant to a term of imprisonment with a minimum term of between twen-
49 ty and twenty-five years and a maximum term of life. Following the
50 court's charge, the jury shall retire to consider the sentence to be
51 imposed. Unless inconsistent with the provisions of this section, the
52 provisions of sections 310.10, 310.20 and 310.30 shall govern the delib-
53 erations of the jury].

54 (B) THE COURT MUST INSTRUCT THE JURY THAT THE JURY MUST BE UNANIMOUS
55 WITH RESPECT TO THE SENTENCE TO BE IMPOSED. THE COURT MUST ALSO INSTRUCT
56 THE JURY THAT IN THE EVENT THE JURY FAILS TO REACH UNANIMOUS AGREEMENT

1 WITH RESPECT TO THE SENTENCE, THE COURT WILL SENTENCE THE DEFENDANT TO A
2 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE.

3 (C) FOLLOWING THE COURT'S CHARGE, THE JURY SHALL RETIRE TO CONSIDER
4 THE SENTENCE TO BE IMPOSED. UNLESS INCONSISTENT WITH THE PROVISIONS OF
5 THIS SECTION, THE PROVISIONS OF SECTIONS 310.10, 310.20 AND 310.30 OF
6 THIS CHAPTER SHALL GOVERN THE DELIBERATIONS OF THE JURY.

7 S 5. This act shall take effect immediately and shall apply to
8 offenses committed on or after such effective date.