

2951

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. O'MARA, TOWNSEND, CALHOUN, KOLB, BURLING, OAKS,
TEDISCO, BARCLAY -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES,
BALL, BUTLER, CONTE, CROUCH, DUPREY, ERRIGO, FINCH, HAWLEY, McKEVITT,
MILLER, MOLINARO, RAIA, REILICH, THIELE, WALKER -- read once and
referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to capital
punishment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 400.27 of the criminal procedure
2 law, as added by chapter 1 of the laws of 1995, is amended to read as
3 follows:
4 1. Upon [the] conviction of a defendant for the offense of murder in
5 the first degree as defined by SUBPARAGRAPHS (I), (III) OR (XIII) OF
6 PARAGRAPH (A) OF SUBDIVISION ONE OF section 125.27 of the penal law, the
7 court shall promptly conduct a separate sentencing proceeding to deter-
8 mine whether the defendant shall be sentenced to death [or], to life
9 imprisonment without parole pursuant to subdivision five of section
10 70.00 of the penal law, OR TO A SENTENCE OF IMPRISONMENT FOR THE CLASS
11 A-I FELONY OF MURDER IN THE FIRST DEGREE OTHER THAN A SENTENCE OF LIFE
12 IMPRISONMENT WITHOUT PAROLE. Nothing in this section shall be deemed to
13 preclude the people at any time from determining that the death penalty
14 shall not be sought in a particular case, in which case the separate
15 sentencing proceeding shall not be conducted and the court may sentence
16 such defendant to life imprisonment without parole or to a sentence of
17 imprisonment for the class A-I felony of murder in the first degree
18 other than a sentence of life imprisonment without parole.
19 S 2. Subdivision 10 of section 400.27 of the criminal procedure law,
20 as added by chapter 1 of the laws of 1995, is amended to read as
21 follows:

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

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1 10. (A) At the conclusion of all the evidence, the people and the
2 defendant may present argument in summation for or against the sentence
3 sought by the people. The people may deliver the first summation and the
4 defendant may then deliver the last summation. Thereafter, the court
5 shall deliver a charge to the jury on any matters appropriate in the
6 circumstances. In its charge, the court must instruct the jury that with
7 respect to each count of murder in the first degree the jury should
8 consider whether or not a sentence of death should be imposed and wheth-
9 er or not a sentence of life imprisonment without parole should be
10 imposed[,] and [that the jury must be unanimous with respect to either
11 sentence. The court must also instruct the jury that in the event the
12 jury fails to reach unanimous agreement with respect to the sentence,
13 the court will sentence the defendant to a term of imprisonment with a
14 minimum term of between twenty and twenty-five years and a maximum term
15 of life. Following the court's charge, the jury shall retire to consider
16 the sentence to be imposed. Unless inconsistent with the provisions of
17 this section, the provisions of sections 310.10, 310.20 and 310.30 shall
18 govern the deliberations of the jury] WHETHER OR NOT A SENTENCE TO A
19 TERM OF IMPRISONMENT WITH A MINIMUM TERM OF TWENTY TO TWENTY-FIVE YEARS,
20 TO BE DETERMINED BY THE COURT, AND A MAXIMUM TERM OF LIFE IMPRISONMENT
21 SHOULD BE IMPOSED.

22 (B) THE COURT MUST INSTRUCT THE JURY THAT THE JURY MUST BE UNANIMOUS
23 WITH RESPECT TO THE SENTENCE TO BE IMPOSED. THE COURT MUST ALSO INSTRUCT
24 THE JURY THAT IN THE EVENT THE JURY FAILS TO REACH UNANIMOUS AGREEMENT
25 WITH RESPECT TO THE SENTENCE, THE COURT WILL SENTENCE THE DEFENDANT TO A
26 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE.

27 (C) FOLLOWING THE COURT'S CHARGE, THE JURY SHALL RETIRE TO DETERMINE
28 THE SENTENCE TO BE IMPOSED. UNLESS INCONSISTENT WITH THE PROVISIONS OF
29 THIS SECTION, THE PROVISIONS OF SECTIONS 310.10, 310.20 AND 310.30 OF
30 THIS CHAPTER SHALL GOVERN THE DELIBERATIONS OF THE JURY.

31 S 3. Subdivision 11 of section 400.27 of the criminal procedure law,
32 as added by chapter 1 of the laws of 1995, is amended to read as
33 follows:

34 11. (a) The jury may not direct imposition of a sentence of death
35 unless it unanimously finds beyond a reasonable doubt that the aggravat-
36 ing factor or factors substantially outweigh the mitigating factor or
37 factors established, if any, and unanimously determines that the penalty
38 of death should be imposed. Any member or members of the jury who find a
39 mitigating factor to have been proven by the defendant by a preponder-
40 ance of the evidence may consider such factor established regardless of
41 the number of jurors who concur that the factor has been established.

42 (b) If the jury directs imposition of [either] a sentence of death
43 [or], A SENTENCE OF life imprisonment without parole, OR A SENTENCE TO A
44 TERM OF IMPRISONMENT WITH A MINIMUM TERM OF TWENTY TO TWENTY-FIVE YEARS,
45 TO BE DETERMINED BY THE COURT, AND A MAXIMUM TERM OF LIFE IMPRISONMENT,
46 it shall specify on the record those mitigating and aggravating factors
47 considered and those mitigating factors established by the defendant, if
48 any.

49 (c) With respect to a count or concurrent counts of murder in the
50 first degree, the court may direct the jury to cease deliberation with
51 respect to the sentence or sentences to be imposed if the jury has
52 deliberated for an extensive period of time without reaching unanimous
53 agreement on the sentence or sentences to be imposed and the court is
54 satisfied that any such agreement is unlikely within a reasonable time.
55 The provisions of this paragraph shall apply with respect to consecutive
56 counts of murder in the first degree. In the event the jury is unable to

1 reach unanimous agreement, the court must sentence the defendant in
2 accordance with [subdivisions one through three] SUBDIVISION FIVE of
3 section 70.00 of the penal law with respect to any count or counts of
4 murder in the first degree upon which the jury failed to reach unanimous
5 agreement as to the sentence to be imposed.

6 (d) If the jury unanimously determines that a sentence of death should
7 be imposed, the court must thereupon impose a sentence of death. There-
8 after, however, the court may, upon written motion of the defendant, set
9 aside the sentence of death upon any of the grounds set forth in section
10 330.30 OF THIS CHAPTER. The procedures set forth in sections 330.40 and
11 330.50 OF THIS CHAPTER, as applied to separate sentencing proceedings
12 under this section, shall govern the motion and the court upon granting
13 the motion shall, except as may otherwise be required by subdivision one
14 of section 330.50 OF THIS CHAPTER, direct a new sentencing proceeding
15 pursuant to this section. Upon granting the motion upon any of the
16 grounds set forth in section 330.30 OF THIS CHAPTER and setting aside
17 the sentence, the court must afford the people a reasonable period of
18 time, which shall not be less than ten days, to determine whether to
19 take an appeal from the order setting aside the sentence of death. The
20 taking of an appeal by the people stays the effectiveness of that
21 portion of the court's order that directs a new sentencing proceeding.

22 (e) If the jury unanimously determines that a sentence of life impri-
23 sonment without parole should be imposed, the court must thereupon
24 impose a sentence of life imprisonment without parole.

25 (E-1) IF THE JURY UNANIMOUSLY DETERMINES THAT A SENTENCE TO A TERM OF
26 IMPRISONMENT WITH A MINIMUM TERM OF TWENTY TO TWENTY-FIVE YEARS, TO BE
27 DETERMINED BY THE COURT, AND A MAXIMUM TERM OF LIFE IMPRISONMENT SHOULD
28 BE IMPOSED, THE COURT MUST THEREUPON IMPOSE SUCH SENTENCE.

29 (f) Where a sentence has been unanimously determined by the jury it
30 must be recorded on the minutes and read to the jury, and the jurors
31 must be collectively asked whether such is their sentence. Even though
32 no juror makes any declaration in the negative, the jury must, if either
33 party makes such an application, be polled and each juror separately
34 asked whether the sentence announced by the foreman is in all respects
35 his or her sentence. If, upon either the collective or the separate
36 inquiry, any juror answers in the negative, the court must refuse to
37 accept the sentence and must direct the jury to resume its deliberation.
38 If no disagreement is expressed, the jury must be discharged from the
39 case.

40 S 4. Severability. If any clause, sentence, paragraph, subdivision,
41 section or part of this act shall be adjudged by any court of competent
42 jurisdiction to be invalid, such judgment shall not affect, impair, or
43 invalidate the remainder thereof, but shall be confined in its operation
44 to the clause, sentence, paragraph, subdivision, section or part thereof
45 directly involved in the controversy in which such judgment shall have
46 been rendered. It is hereby declared to be the intent of the legislature
47 that this act would have been enacted even if such invalid provisions
48 had not been included therewith.

49 S 5. This act shall take effect immediately, and shall apply to crimes
50 committed prior to, on or after the effective date of this act.