

2747

2009-2010 Regular Sessions

I N S E N A T E

March 2, 2009

Introduced by Sens. GOLDEN, ALESI, DeFRANCISCO, LANZA, LARKIN, LAVALLE, LITTLE, MAZIARZ, MORAHAN, NOZZOLIO, PADAVAN, SALAND, SEWARD, SKELOS -- read twice and ordered printed, and when printed to be committed 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
20 in section 125.26 of this chapter, OR OF THE CRIME OF MURDER IN THE
21 FIRST DEGREE AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH
22 (A) OF SUBDIVISION ONE OF SECTION 125.27 OF THIS CHAPTER AND THE

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

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1 SENTENCE OF DEATH IS NOT IMPOSED, the court shall sentence the defendant
2 to life imprisonment without parole in accordance with subdivision five
3 of section 70.00 of this title. When a defendant is convicted of the
4 crime of terrorism as defined in section 490.25 of this chapter, and the
5 specified offense the defendant committed is a class A-I felony offense,
6 or when a defendant is convicted of the crime of criminal possession of
7 a chemical weapon or biological weapon in the first degree as defined in
8 section 490.45 of this chapter, or when a defendant is convicted of the
9 crime of criminal use of a chemical weapon or biological weapon in the
10 first degree as defined in section 490.55 of this chapter, the court
11 shall sentence the defendant to life imprisonment without parole in
12 accordance with subdivision five of section 70.00 of this title;
13 provided, however, that nothing in this section shall preclude or
14 prevent a sentence of death when the defendant is also convicted of
15 murder in the first degree as defined in section 125.27 of this chapter.
16 S 2. Subparagraph (i) of paragraph (a) of subdivision 3 of section
17 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,
18 is amended to read as follows:

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

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

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

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

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

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

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

51 (B) THE COURT MUST INSTRUCT THE JURY THAT THE JURY MUST BE UNANIMOUS
52 WITH RESPECT TO THE SENTENCE TO BE IMPOSED. THE COURT MUST ALSO INSTRUCT
53 THE JURY THAT IN THE EVENT THE JURY FAILS TO REACH UNANIMOUS AGREEMENT
54 WITH RESPECT TO THE SENTENCE, THE COURT WILL SENTENCE THE DEFENDANT TO A
55 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE.

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

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