

S. 2235

A. 5465

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 13, 2009

IN SENATE -- Introduced by Sens. VOLKER, ALESİ, FUSCHILLO, GRIFFO, O. JOHNSON, LANZA, LARKIN, LAVALLE, MAZIARZ, SALAND, SEWARD, SKELOS, STACHOWSKI, WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. KOLB, TEDISCO, BURLING, CALHOUN, ERRIGO -- Multi-Sponsored by -- M. of A. BARCLAY, MOLINARO -- 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 ASSEMBLY, 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 section 125.27 of the penal law, the
6 court shall promptly conduct a separate sentencing proceeding to deter-
7 mine whether the defendant shall be sentenced to death [or], to life
8 imprisonment without parole pursuant to subdivision five of section
9 70.00 of the penal law, OR TO A SENTENCE OF IMPRISONMENT FOR THE CLASS
10 A-I FELONY OF MURDER IN THE FIRST DEGREE OTHER THAN A SENTENCE OF LIFE
11 IMPRISONMENT WITHOUT PAROLE. Nothing in this section shall be deemed to
12 preclude the people at any time from determining that the death penalty
13 shall not be sought in a particular case, in which case the separate
14 sentencing proceeding shall not be conducted and the court may sentence
15 such defendant to life imprisonment without parole or to a sentence of
16 imprisonment for the class A-I felony of murder in the first degree
17 other than a sentence of life imprisonment without parole.

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

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1 S 2. Subdivision 10 of section 400.27 of the criminal procedure law,
2 as added by chapter 1 of the laws of 1995, is amended to read as
3 follows:

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

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

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

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

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

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

52 (c) With respect to a count or concurrent counts of murder in the
53 first degree, the court may direct the jury to cease deliberation with
54 respect to the sentence or sentences to be imposed if the jury has
55 deliberated for an extensive period of time without reaching unanimous
56 agreement on the sentence or sentences to be imposed and the court is

1 satisfied that any such agreement is unlikely within a reasonable time.
2 The provisions of this paragraph shall apply with respect to consecutive
3 counts of murder in the first degree. In the event the jury is unable to
4 reach unanimous agreement, the court must sentence the defendant in
5 accordance with [subdivisions one through three] SUBDIVISION FIVE of
6 section 70.00 of the penal law with respect to any count or counts of
7 murder in the first degree upon which the jury failed to reach unanimous
8 agreement as to the sentence to be imposed.

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

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

28 (E-1) IF THE JURY UNANIMOUSLY DETERMINES THAT A SENTENCE TO A TERM OF
29 IMPRISONMENT WITH A MINIMUM TERM OF BETWEEN TWENTY AND TWENTY-FIVE
30 YEARS, TO BE DETERMINED BY THE COURT, AND A MAXIMUM TERM OF LIFE IMPRI-
31 SONMENT SHOULD BE IMPOSED, THE COURT MUST THEREUPON IMPOSE SUCH
32 SENTENCE.

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

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

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