S T A T E O F N E W Y O R K

871

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. DESTITO, MAYERSOHN, ABBATE, GABRYSZAK, CUSICK, PHEFFER, CYMBROWITZ, BROOK-KRASNY, KOLB, CALHOUN, FINCH, GIGLIO -- Multi-Sponsored by -- M. of A. 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:

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:

S 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, or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, 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, OR OF THE CRIME OF

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

LBD01828-01-1

MURDER IN THE FIRST DEGREE AS DEFINED IN SUBPARAGRAPH (I), (II), OR (III) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 125.27 OF THIS CHAPTER AND THE SENTENCE OF DEATH IS NOT IMPOSED the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title. When a defendant is convicted of the crime of terrorism as defined in section 490.25 of this chapter, and the specified offense the defendant committed is a class A-I felony offense, or when a defendant is convicted of 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 when a defendant is convicted of 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, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title; provided, however, that nothing in this section shall preclude or prevent a sentence of death when the defendant is also convicted of murder in the first degree as defined in section 125.27 of this chapter. When a defendant is convicted of aggravated murder as defined in subdivision two of section 125.26 of this chapter, the court shall sentence the defendant to life imprisonment without parole or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, in accordance with subdivisions one through three of section 70.00 of this title.

S 2. Subparagraph (i) of paragraph (a) of subdivision 3 of section 70.00 of the penal law, as amended by chapter 107 of the laws of 2006, is amended to read as follows:

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

S 3. Subdivision 5 of section 70.00 of the penal law, as amended by chapter 482 of the laws of 2009, is amended to read as follows:

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indetermi-

nate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures provided by law for imposing a sentence for such crime. A defendant 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 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 OR FOR THE CRIME OF MURDER IN THE FIRST DEGREE AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 125.27 OF THIS CHAPTER AND THE SENTENCE OF DEATH IS NOT IMPOSED.

S 4. Subdivisions 1 and 10 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 SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (A) OF SUBDIVISION ONE OF 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. 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 [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].

10. (A) At the conclusion of all the evidence, the people and the defendant may present argument in summation for or against the sentence sought by the people. The people may deliver the first summation and the defendant may then deliver the last summation. Thereafter, the court shall deliver a charge to the jury on any matters appropriate in the circumstances. In its charge, the court must instruct the jury that with respect to each count of murder in the first degree, AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 125.27 OF THE PENAL LAW, the jury should consider whether or not a sentence of death should be imposed and whether or not a sentence of life imprisonment without parole should be imposed[, and that the jury must be unanimous with respect to either sentence. The court must also instruct the jury that in the event the jury fails to reach unanimous agreement with respect to the sentence, the court will sentence the defendant to a term of imprisonment with a minimum term of between twen-

ty and twenty-five years and a maximum term of life. Following the court's charge, the jury shall retire to consider the sentence to be imposed. Unless inconsistent with the provisions of this section, the provisions of sections 310.10, 310.20 and 310.30 shall govern the deliberations of the jury].

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

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

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