

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:

1 Section 1. Section 60.06 of the penal law, as amended by chapter 482
2 of the laws of 2009, is amended to read as follows:
3 S 60.06 Authorized disposition; murder in the first degree offenders;
4 aggravated murder offenders; certain murder in the second
5 degree offenders; certain terrorism offenders; criminal
6 possession of a chemical weapon or biological weapon offen-
7 ders; criminal use of a chemical weapon or biological weapon
8 offenders.
9 When a defendant is convicted of murder in the first degree as defined
10 in section 125.27 of this chapter, the court shall, in accordance with
11 the provisions of section 400.27 of the criminal procedure law, sentence
12 the defendant to death, to life imprisonment without parole in accord-
13 ance with subdivision five of section 70.00 of this title, or to a term
14 of imprisonment for a class A-I felony other than a sentence of life
15 imprisonment without parole, in accordance with subdivisions one through
16 three of section 70.00 of this title. When a person is convicted of
17 murder in the second degree as defined in subdivision five of section
18 125.25 of this chapter or of the crime of aggravated murder as defined
19 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.

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

24 S 2. Subparagraph (i) of paragraph (a) of subdivision 3 of section
25 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,
26 is amended to read as follows:

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

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

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

1 nate sentence. A defendant may be sentenced to life imprisonment with-
2 out parole upon conviction for the crime of murder in the first degree
3 as defined in section 125.27 of this chapter and in accordance with the
4 procedures provided by law for imposing a sentence for such crime. A
5 defendant must be sentenced to life imprisonment without parole upon
6 conviction for the crime of terrorism as defined in section 490.25 of
7 this chapter, where the specified offense the defendant committed is a
8 class A-I felony; the crime of criminal possession of a chemical weapon
9 or biological weapon in the first degree as defined in section 490.45 of
10 this chapter; or the crime of criminal use of a chemical weapon or
11 biological weapon in the first degree as defined in section 490.55 of
12 this chapter; provided, however, that nothing in this subdivision shall
13 preclude or prevent a sentence of death when the defendant is also
14 convicted of the crime of murder in the first degree as defined in
15 section 125.27 of this chapter. A defendant must be sentenced to life
16 imprisonment without parole upon conviction for the crime of murder in
17 the second degree as defined in subdivision five of section 125.25 of
18 this chapter or for the crime of aggravated murder as defined in subdi-
19 vision one of section 125.26 of this chapter. A defendant may be
20 sentenced to life imprisonment without parole upon conviction for the
21 crime of aggravated murder as defined in subdivision two of section
22 125.26 of this chapter OR FOR THE CRIME OF MURDER IN THE FIRST DEGREE AS
23 DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (A) OF SUBDIVI-
24 SION ONE OF SECTION 125.27 OF THIS CHAPTER AND THE SENTENCE OF DEATH IS
25 NOT IMPOSED.

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

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

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

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

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

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

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