

# STATE OF NEW YORK

11354

## IN ASSEMBLY

September 19, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Woerner) --  
read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to imposing a mandatory sentence of life imprisonment without parole upon conviction of murder in the first degree; and to repeal sections 270.55 and 400.27 of the criminal procedure law relating to the procedure for determining the sentence for conviction 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:

§ 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, 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

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

LBD14129-01-8

1 the crime of criminal possession of a chemical weapon or biological  
2 weapon in the first degree as defined in section 490.45 of this chapter,  
3 or when a defendant is convicted of the crime of criminal use of a chem-  
4 ical weapon or biological weapon in the first degree as defined in  
5 section 490.55 of this chapter, the court shall sentence the defendant  
6 to life imprisonment without parole in accordance with subdivision five  
7 of section 70.00 of this title[~~, provided, however, that nothing in this~~  
8 ~~section shall preclude or prevent a sentence of death when the defendant~~  
9 ~~is also convicted of murder in the first degree as defined in section~~  
10 ~~125.27 of this chapter~~]. When a defendant is convicted of aggravated  
11 murder as defined in subdivision two of section 125.26 of this chapter,  
12 the court shall sentence the defendant to life imprisonment without  
13 parole or to a term of imprisonment for a class A-I felony other than a  
14 sentence of life imprisonment without parole, in accordance with subdivi-  
15 sions one through three of section 70.00 of this title.

16 § 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 section 125.27 of this chapter [~~such~~  
24 ~~minimum period shall be not less than twenty years nor more than twen-~~  
25 ~~ty-five years~~], the sentence shall be life without parole, and, (B)  
26 where a sentence is imposed upon a defendant convicted of murder in the  
27 second degree as defined in subdivision five of section 125.25 of this  
28 chapter or convicted of aggravated murder as defined in section 125.26  
29 of this chapter, the sentence shall be life imprisonment without parole,  
30 and, (C) where a sentence is imposed upon a defendant convicted of  
31 attempted murder in the first degree as defined in article one hundred  
32 ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a)  
33 of subdivision one and paragraph (b) of subdivision one of section  
34 125.27 of this chapter or attempted aggravated murder as defined in  
35 article one hundred ten of this chapter and section 125.26 of this chap-  
36 ter such minimum period shall be not less than twenty years nor more  
37 than forty years.

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

40 5. Life imprisonment without parole. Notwithstanding any other  
41 provision of law, a defendant sentenced to life imprisonment without  
42 parole shall not be or become eligible for parole or conditional  
43 release. For purposes of commitment and custody, other than parole and  
44 conditional release, such sentence shall be deemed to be an indetermi-  
45 nate sentence. A defendant [~~may~~] shall be sentenced to life imprisonment  
46 without parole upon conviction for the crime of murder in the first  
47 degree as defined in section 125.27 of this chapter and in accordance  
48 with the procedures provided by law for imposing a sentence for such  
49 crime. A defendant must be sentenced to life imprisonment without parole  
50 upon conviction for the crime of terrorism as defined in section 490.25  
51 of this chapter, where the specified offense the defendant committed is  
52 a class A-I felony; the crime of criminal possession of a chemical weap-  
53 on or biological weapon in the first degree as defined in section 490.45  
54 of this chapter; or the crime of criminal use of a chemical weapon or  
55 biological weapon in the first degree as defined in section 490.55 of  
56 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.

§ 4. Subdivision 5 of section 70.00 of the penal law, as amended by section 40-a of part WWW of chapter 59 of the laws of 2017, 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 indeterminate sentence. A defendant ~~[may]~~ shall 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 who was eighteen years of age or older at the time of the commission of the crime 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 who was seventeen years of age or younger at the time of the commission of the crime may be sentenced, in accordance with law, to the applicable indeterminate sentence with a maximum term of life imprisonment. 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.

§ 5. Paragraph (d) of subdivision 2 of section 490.25 of the penal law, as added by chapter 300 of the laws of 2001, is amended to read as follows:

(d) Notwithstanding any other provision of law, when a person is convicted of a crime of terrorism pursuant to this section, and the specified offense is a class A-I felony offense, the sentence upon conviction of such offense shall be life imprisonment without parole~~[, provided, however, that nothing herein shall preclude or prevent a sentence of death when the specified offense is murder in the first degree as defined in section 125.27 of this chapter]~~.

1 § 6. Paragraph (e) of subdivision 5 of section 220.10 of the criminal  
2 procedure law, as amended by chapter 1 of the laws of 1995, is amended  
3 to read as follows:

4 (e) A defendant may not enter a plea of guilty to the crime of murder  
5 in the first degree as defined in section 125.27 of the penal law;  
6 provided, however, that a defendant may enter such a plea with both the  
7 permission of the court and the consent of the people when the agreed  
8 upon sentence is [~~either~~] life imprisonment without parole [~~or a term of~~  
9 ~~imprisonment for the class A-I felony of murder in the first degree~~  
10 ~~other than a sentence of life imprisonment without parole~~].

11 § 7. Subparagraph (vii) of paragraph (b) of subdivision 3 of section  
12 220.30 of the criminal procedure law, as amended by chapter 1 of the  
13 laws of 1995, is amended to read as follows:

14 (vii) A defendant may not enter a plea of guilty to the crime of  
15 murder in the first degree as defined in section 125.27 of the penal  
16 law; provided, however, that a defendant may enter such a plea with both  
17 the permission of the court and the consent of the people when the  
18 agreed upon sentence is [~~either~~] life imprisonment without parole [~~or a~~  
19 ~~term of imprisonment for the class A-I felony of murder in the first~~  
20 ~~degree other than a sentence of life imprisonment without parole~~].

21 § 8. Section 270.55 of the criminal procedure law is REPEALED.

22 § 9. Section 400.27 of the criminal procedure law is REPEALED.

23 § 10. This act shall take effect immediately and shall apply to  
24 offenses committed on or after such effective date; provided, that  
25 section four of this act shall take effect on the same date and in the  
26 same manner as section 40-a of part WWW of chapter 59 of the laws of  
27 2017, takes effect.