STATE OF NEW YORK

4320--A

2019-2020 Regular Sessions

IN SENATE

March 7, 2019

Introduced by Sens. HOYLMAN, KAVANAGH, JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the criminal procedure law and the correction law, in relation to eliminating the imposition of the death penalty; and to repeal certain provisions of the criminal procedure law, the judiciary law, the county law, the correction law and the executive law relating to the imposition of the death penalty

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Sections 35-b and 211-a of the judiciary law are REPEALED.

§ 2. 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

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

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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.

§ 3. 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 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, 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.

§ 4. Subparagraph (i) of paragraph b of subdivision 1 of section 70.04 of the penal law, as added by chapter 481 of the laws of 1978, is amended to read as follows:

(i) The conviction must have been in this state of a class A felony (other than one defined in article two hundred twenty) or of a violent felony offense as defined in subdivision one of section 70.02, or of an offense defined by the penal law in effect prior to September first, nineteen hundred sixty-seven, which includes all of the essential elements of any such felony, or in any other jurisdiction of an offense which includes all of the essential elements of any such felony for which a sentence to a term of imprisonment in excess of one year [~~or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed~~];

§ 5. Subparagraph (i) of paragraph (b) of subdivision 1 of section 70.06 of the penal law, as amended by chapter 784 of the laws of 1975, is amended to read as follows:

(i) The conviction must have been in this state of a felony, or in any other jurisdiction of an offense for which a sentence to a term of imprisonment in excess of one year [~~or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed~~];

§ 6. Subparagraph (i) of paragraph (b) of subdivision 1 of section 70.10 of the penal law is amended to read as follows:

(i) that a sentence to a term of imprisonment in excess of one year[~~, or a sentence to death, was imposed therefor~~]; and

§ 7. Paragraph e of subdivision 5 of section 120.40 of the penal law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

e. an offense in any other jurisdiction which includes all of the essential elements of any such crime for which a sentence to a term of imprisonment in excess of one year [~~or a sentence of death~~] was authorized and is authorized in this state irrespective of whether such sentence was imposed.

§ 8. Section 490.00 of the penal law, as added by chapter 300 of the laws of 2001, is amended to read as follows:

§ 490.00 Legislative findings.

The devastating consequences of the recent barbaric attack on the World Trade Center and the Pentagon underscore the compelling need for legislation that is specifically designed to combat the evils of terrorism. Indeed, the bombings of American embassies in Kenya and Tanzania in 1998, the federal building in Oklahoma City in 1995, Pan Am Flight number 103 in Lockerbie in 1988, the 1997 shooting atop the Empire State Building, the 1994 murder of Ari Halberstam on the Brooklyn Bridge and the 1993 bombing of the World Trade Center, will forever serve to remind us that terrorism is a serious and deadly problem that disrupts public order and threatens individual safety both at home and around the world. Terrorism is inconsistent with civilized society and cannot be tolerated.

Although certain federal laws seek to curb the incidence of terrorism, there are no corresponding state laws that facilitate the prosecution and punishment of terrorists in state courts. Inexplicably, there is also no criminal penalty in this state for a person who solicits or raises funds for, or provides other material support or resources to, those who commit or encourage the commission of horrific and cowardly acts of terrorism. Nor do our criminal laws proscribe the making of terrorist threats or punish with appropriate severity those who hinder the prosecution of terrorists. [~~Finally, our death penalty statute must be strengthened so that the cold-blooded execution of an individual for terrorist purposes is a capital offense.~~]

A comprehensive state law is urgently needed to complement federal laws in the fight against terrorism and to better protect all citizens against terrorist acts. Accordingly, the legislature finds that our laws must be strengthened to ensure that terrorists, as well as those who solicit or provide financial and other support to terrorists, are prosecuted and punished in state courts with appropriate severity.

§ 9. 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~~].

§ 10. Paragraph (e) of subdivision 5 of section 220.10 of the criminal procedure law is REPEALED.

§ 11. Subparagraph (vii) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law is REPEALED.

§ 12. Sections 250.40, 270.16, 270.55, 400.27, 450.70 and 450.80 of the criminal procedure law are REPEALED.

§ 13. Paragraph (f) of subdivision 1 of section 270.20 of the criminal procedure law is REPEALED.

§ 14. Section 270.30 of the criminal procedure law, as amended by chapter 1 of the laws of 1995, is amended to read as follows:

§ 270.30 Trial jury; alternate jurors.

[~~1.~~] Immediately after the last trial juror is sworn, the court may in its discretion direct the selection of one or more, but not more than six additional jurors to be known as "alternate jurors"[~~, except that, in a prosecution under section 125.27 of the penal law, the court may, in its discretion, direct the selection of as many alternate jurors as the court determines to be appropriate~~]. Alternate jurors must be drawn in the same manner, must have the same qualifications, must be subject to the same examination and challenges for cause and must take the same oath as the regular jurors. After the jury has retired to deliberate, the court must either (1) with the consent of the defendant and the people, discharge the alternate jurors or (2) direct the alternate jurors not to discuss the case and must further direct that they be kept separate and apart from the regular jurors.

[~~2. In any prosecution in which the people seek a sentence of death, the court shall not discharge the alternate jurors when the jury retires to deliberate upon its verdict and the alternate jurors, in the discretion of the court, may be continuously kept together under the supervision of an appropriate public servant or servants until such time as the jury returns its verdict. If the jury returns a verdict of guilty to a charge for which the death penalty may be imposed, the alternate jurors shall not be discharged and shall remain available for service during any separate sentencing proceeding which may be conducted pursuant to section 400.27.~~]

§ 15. Section 310.80 of the criminal procedure law, as amended by chapter 1 of the laws of 1995, is amended to read as follows:

§ 310.80 Recording and checking of verdict and polling of jury.

After a verdict has been rendered, it must be recorded on the minutes and read to the jury, and the jurors must be collectively asked whether such is their verdict. Even though no juror makes any declaration in the negative, the jury must, if either party makes such an application, be polled and each juror separately asked whether the verdict announced by the foreman is in all respects his verdict. If upon either the collective or the separate inquiry any juror answers in the negative, the court must refuse to accept the verdict and must direct the jury to resume its deliberation. If no disagreement is expressed, the jury must be discharged from the case[~~, except as otherwise provided in section 400.27~~].

§ 16. Subdivision 1 of section 440.20 of the criminal procedure law, as amended by chapter 1 of the laws of 1995, is amended to read as follows:

1. At any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law. [~~Where the judgment includes a sentence of death, the court may also set aside the sentence upon any of the grounds set forth in paragraph (b), (c), (f), (g) or (h) of subdivision one of section 440.10 as applied to a separate sentencing proceeding under section 400.27, provided, however, that to the extent the ground or grounds asserted include one or more of the aforesaid paragraphs of subdivision one of section 440.10, the court must also apply subdivisions two and three of section 440.10, other than paragraph (d) of subdivision two of such section, in determining the motion. In the event the court enters an order granting a motion to set aside a sentence of death under this section, the court must either direct a new sentencing proceeding in accordance with section 400.27 or, to the extent that the defendant cannot be resentenced to death consistent with the laws of this state or the constitution of this state or of the United States, resentence the 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. Upon granting the motion upon any of the grounds set forth in the aforesaid paragraphs of subdivision one of section 440.10 and setting aside the sentence, the court must afford the people a reasonable period of time, which shall not be less than ten days, to determine whether to take an appeal from the order setting aside the sentence of death. The taking of an appeal by the people stays the effectiveness of that portion of the court's order that directs a new sentencing proceeding.~~]

§ 17. Subdivision 10 of section 450.20 of the criminal procedure law is REPEALED.

§ 18. Subdivision 3 of section 460.40 of the criminal procedure law is REPEALED.

§ 19. Section 470.30 of the criminal procedure law, as amended by chapter 1 of the laws of 1995, is amended to read as follows:

§ 470.30 Determination by court of appeals of appeals taken directly thereto from judgments and orders of criminal courts.

[~~1.~~] Wherever appropriate, the rules set forth in sections 470.15 and 470.20, governing the consideration and determination by intermediate appellate courts of appeals thereto from judgments and orders of criminal courts, and prescribing their scope of review and the corrective action to be taken by them upon reversal or modification, apply equally to the consideration and determination by the court of appeals of appeals taken directly thereto, [~~pursuant to sections 450.70 and 450.80,~~] from judgments and orders of superior criminal courts.

[~~2. Whenever a sentence of death is imposed, the judgment and sentence shall be reviewed on the record by the court of appeals. Review by the court of appeals pursuant to subdivision one of section 450.70 may not be waived.~~

~~3. With regard to the sentence, the court shall, in addition to exercising the powers and scope of review granted under subdivision one of this section, determine:~~

~~(a) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary or legally impermissible~~

~~factor including whether the imposition of the verdict or sentence was based upon the race of the defendant or a victim of the crime for which the defendant was convicted;~~

~~(b) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases considering both the crime and the defendant. In conducting such review the court, upon request of the defendant, in addition to any other determination, shall review whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases by virtue of the race of the defendant or a victim of the crime for which the defendant was convicted; and~~

~~(c) whether the decision to impose the sentence of death was against the weight of the evidence.~~

~~4. The court shall include in its decision: (a) the aggravating and mitigating factors established in the record on appeal; and~~

~~(b) those similar cases it took into consideration.~~

~~5. In addition to exercising any other corrective action pursuant to subdivision one of this section, the court, with regard to review of a sentence of death, shall be authorized to:~~

~~(a) affirm the sentence of death; or~~

~~(b) set the sentence aside and remand the case for resentencing pursuant to the procedures set forth in section 400.27 for a determination as to whether the defendant shall be sentenced to death, life imprisonment without parole or to a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole; or~~

~~(c) set the sentence aside and remand the case for resentencing by the court for a determination as to whether the defendant shall be sentenced to life imprisonment without parole or to a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole.~~]

§ 20. Section 630.20 of the criminal procedure law is amended to read as follows:

§ 630.20 Securing attendance of witnesses confined in institutions within the state; when and by what courts order may be issued.

The following courts and judges may, under the indicated circumstances, order production as witnesses of persons confined by court order in institutions within the state.

1. If the criminal action or proceeding is one pending in a superior court or with a superior court judge sitting as a local criminal court, such court may[~~, except as provided in subdivision four,~~] order the production as a witness therein of a person confined in any institution in the state.

2. If the criminal action or proceeding is one pending in a district court or the New York City criminal court, such court may order the production as a witness therein of a person confined in any institution within the state other than a state prison. Production therein of a prospective witness confined in a state prison may[~~, except as provided in subdivision four,~~] be ordered, upon application of the party desiring to call him, by a judge of a superior court holding a term thereof in the county in which the action or proceeding is pending.

3. If the criminal action or proceeding is one pending in a city court or a town court or a village court, such court may order the production as a witness therein of a person confined in a county jail of such county. Production therein of a prospective witness confined in any other institution within the state may[~~, except as provided in~~

~~subdivision four,~~] be ordered, upon application of the party desiring to call him, by a judge of a superior court holding a term thereof in the county in which the action or proceeding is pending.

[~~4. Regardless of the court in which the criminal action or proceeding is pending, production as a witness therein of a prisoner who has been sentenced to death may be ordered, upon application of the party desiring to call him, only by a justice of the appellate division of the department in which the action or proceeding is pending. The application for such order, if made by the defendant, must be upon notice to the district attorney of the county in which the action or proceeding is pending, and an application made by either party must be based upon a showing that the prisoner's attendance is clearly necessary in the interests of justice. Upon issuing such an order, the appellate division justice may fix and include therein any terms or conditions which he deems appropriate for execution thereof.~~]

§ 21. Subdivision 1 of section 650.20 of the criminal procedure law is amended to read as follows:

1. When (a) a criminal action is pending in a court of record of this state, or a grand jury proceeding has been commenced, and (b) there is reasonable cause to believe that a person confined in a correctional institution or prison of another state, other than a person [~~awaiting execution of a sentence of death or one~~] confined as mentally ill or as a defective delinquent, possesses information material to such criminal action or proceeding, and (c) the attendance of such person as a witness in such action or proceeding is desired by a party thereto, and (d) the state in which such person is confined possesses a statute equivalent to section 650.10, the court in which such action or proceeding is pending may issue a certificate under the seal of such court, certifying all such facts and that the attendance of such person as a witness in such court is required for a specified number of days.

§ 22. Section 707 of the county law is REPEALED.

§ 23. Article 22-B of the correction law is REPEALED.

§ 24. Section 113 of the correction law, as amended by section 20 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 113. Absence of inmate for funeral and deathbed visits authorized. The commissioner may permit any inmate confined by the department [~~except one awaiting the sentence of death~~] to attend the funeral of his or her father, mother, guardian or former guardian, child, brother, sister, husband, wife, grandparent, grandchild, ancestral uncle or ancestral aunt within the state, or to visit such individual during his or her illness if death be imminent; but the exercise of such power shall be subject to such rules and regulations as the commissioner shall prescribe, respecting the granting of such permission, duration of absence from the institution, custody, transportation and care of the inmate, and guarding against escape. Any expense incurred under the provisions of this section, with respect to any inmate permitted to attend a funeral or visit a relative during last illness, shall be deemed an expense of maintenance of the institution and be paid from moneys available therefor; but the superintendent, if the rules and regulations of the commissioner shall so provide, may allow the inmate or anyone in his behalf to reimburse the state for such expense.

§ 25. Subdivision 1 of section 146 of the correction law, as amended by chapter 234 of the laws of 2013, is amended to read as follows:

1. The following persons shall be authorized to visit at pleasure all correctional facilities: The governor and lieutenant-governor, commis-

sioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction, members of the legislature and any employee of the department as requested by the member of the legislature if the member requests to be so accompanied, provided that such request does not impact upon the department's ability to supervise, manage and control its facilities as determined by the commissioner, judges of the court of appeals, supreme court and county judges, district attorneys and every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county wherein any such facility is situated. No other person not otherwise authorized by law shall be permitted to enter a correctional facility except by authority of the commissioner of correction under such regulations as the commissioner shall prescribe. [~~The provisions of this section shall not apply to such portion of a correctional facility in which inmates under sentence of death are confined.~~]

§ 26. Section 130 of the correction law is REPEALED.

§ 27. Section 63-d of the executive law is REPEALED.

§ 28. Subdivision 7 of section 837-a of the executive law is REPEALED.

§ 29. Section 837-l of the executive law is REPEALED.

§ 30. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after September 1, 1995.