

STATE OF NEW YORK

8221

IN SENATE

April 24, 2020

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the correction law and the criminal procedure law, in relation to parole eligibility for felony offenders; and to repeal subdivision 2-a of section 70.20 of the penal law relating thereto

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,]~~ with eligibility for parole after twenty-five years or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment ~~[without parole]~~ with eligibility for parole after twenty-five years, 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]~~ with eligibility for parole after twenty-five years. 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

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

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

19 § 2. Subparagraph (i) of paragraph (a) of subdivision 3 and subdivi-
20 sion 5 of section 70.00 of the penal law, subparagraph (i) of paragraph
21 (a) of subdivision 3 as amended by chapter 107 of the laws of 2006 and
22 subdivision 5 as amended by section 40-a of part WWW of chapter 59 of
23 the laws of 2017, are amended to read as follows:

24 (i) For a class A-I felony, such minimum period shall not be less than
25 fifteen years nor more than twenty-five years; provided, however, that
26 (A) where a sentence, other than a sentence of death or life imprison-
27 ment ~~[without parole]~~ with eligibility for parole after twenty-five
28 years, is imposed upon a defendant convicted of murder in the first
29 degree as defined in section 125.27 of this chapter such minimum period
30 shall be not less than twenty years nor more than twenty-five years,
31 and, (B) where a sentence is imposed upon a defendant convicted of
32 murder in the second degree as defined in subdivision five of section
33 125.25 of this chapter or convicted of aggravated murder as defined in
34 section 125.26 of this chapter, the sentence shall be life imprisonment
35 ~~[without parole]~~ with eligibility for parole after twenty-five years,
36 and, (C) where a sentence is imposed upon a defendant convicted of
37 attempted murder in the first degree as defined in article one hundred
38 ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a)
39 of subdivision one and paragraph (b) of subdivision one of section
40 125.27 of this chapter or attempted aggravated murder as defined in
41 article one hundred ten of this chapter and section 125.26 of this chap-
42 ter such minimum period shall be not less than twenty years nor more
43 than forty years.

44 ~~[5. Life imprisonment without parole. Notwithstanding any other~~
45 ~~provision of law, a defendant sentenced to life imprisonment without~~
46 ~~parole shall not be or become eligible for parole or conditional~~
47 ~~release. For purposes of commitment and custody, other than parole and~~
48 ~~conditional release, such sentence shall be deemed to be an indetermi-~~
49 ~~nate sentence. A defendant may be sentenced to life imprisonment without~~
50 ~~parole upon conviction for the crime of murder in the first degree as~~
51 ~~defined in section 125.27 of this chapter and in accordance with the~~
52 ~~procedures provided by law for imposing a sentence for such crime. A~~
53 ~~defendant who was eighteen years of age or older at the time of the~~
54 ~~commission of the crime must be sentenced to life imprisonment without~~
55 ~~parole upon conviction for the crime of terrorism as defined in section~~
56 ~~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.]~~

§ 3. Subdivision 3 of section 70.00 of the penal law is amended by adding a new paragraph (c) to read as follows:

(c) Notwithstanding any other provision of the law to the contrary, for any felony, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 4. Subdivision 3 of section 70.02 of the penal law is amended by adding a new paragraph (e) to read as follows:

(e) Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 5. Section 70.04 of the penal law is amended by adding a new subdivision 5 to read as follows:

5. Parole eligibility and consecutive terms of imprisonment. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 6. Section 70.06 of the penal law is amended by adding a new subdivision 8 to read as follows:

8. Parole eligibility and consecutive terms of imprisonment. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 7. Section 70.07 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 8. Section 70.08 of the penal law is amended by adding a new subdivision 4 to read as follows:

4. Parole eligibility and consecutive terms of imprisonment. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 9. Section 70.10 of the penal law is amended by adding a new subdivision 3 to read as follows:

3. Parole eligibility and consecutive terms of imprisonment. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 10. Subdivision 2-a of section 70.20 of the penal law is REPEALED.

§ 11. Section 70.71 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. Parole eligibility and consecutive terms of imprisonment. Notwithstanding any other provision of the law to the contrary, for any felony defined in this section, regardless of sentence, all defendants sentenced shall become eligible for parole after serving no more than twenty-five years of their sentence; and further, notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to consecutive terms of imprisonment which exceed a twenty-five year sentence.

§ 12. Subdivision 3 of section 70.80 of the penal law, as added by chapter 7 of the laws of 2007, is amended and a new subdivision 10 is added to read as follows:

3. Except as provided by subdivision four, five, six, seven or eight of this section, or when a defendant is being sentenced for a conviction of the class A-II felonies of predatory sexual assault and predatory sexual assault against a child as defined in sections 130.95 and 130.96 of this chapter, or for any class A-I sexually motivated felony for which a life sentence [~~or a life without parole sentence~~] with eligibility for parole after twenty-five years must be imposed, a sentence imposed upon a defendant convicted of a felony sex offense shall be a determinate sentence. The determinate sentence shall be imposed by the court in whole or half years, and shall include as a part thereof a period of post-release supervision in accordance with subdivision two-a of section 70.45 of this article. Persons eligible for sentencing under section 70.07 of this article governing second child sexual assault

1 felonies shall be sentenced under such section and paragraph (j) of
2 subdivision two-a of section 70.45 of this article.

3 10. Notwithstanding any other provision of the law to the contrary,
4 for any felony defined in this section, regardless of sentence, all
5 defendants sentenced shall become eligible for parole after serving no
6 more than twenty-five years of their sentence; and further, notwith-
7 standing any other provision of the law to the contrary, no defendant
8 shall be sentenced to consecutive terms of imprisonment which exceed a
9 twenty-five year sentence.

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

13 (d) Notwithstanding any other provision of law, when a person is
14 convicted of a crime of terrorism pursuant to this section, and the
15 specified offense is a class A-I felony offense, the sentence upon
16 conviction of such offense shall be life imprisonment [~~without parole~~]
17 with eligibility for parole after twenty-five years; provided, however,
18 that nothing herein shall preclude or prevent a sentence of death when
19 the specified offense is murder in the first degree as defined in
20 section 125.27 of this chapter.

21 § 14. Subdivision 2 of section 136 of the correction law, as added by
22 chapter 431 of the laws of 2015, is amended to read as follows:

23 2. All inmates admitted to the department serving a determinate term
24 of imprisonment, or an indeterminate sentence of imprisonment other than
25 a sentence of life imprisonment [~~without parole,~~ with eligibility for
26 parole after twenty-five years who have been evaluated upon admission
27 pursuant to subdivision one of section one hundred thirty-seven of this
28 article and are determined to be capable of successfully completing the
29 academic course work required for the test assessing secondary
30 completion, shall be provided with the opportunity to complete such
31 course work at least two months prior to the date on which such inmate
32 may be paroled, conditionally released, released to post-release super-
33 vision pursuant to section 70.40 of the penal law, or presumptively
34 released, pursuant to section eight hundred three of this chapter. Upon
35 admission to the department, such inmates will be provided with written
36 notice that the test assessing secondary completion programs are avail-
37 able for all inmates who so apply.

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

41 (e) A defendant may not enter a plea of guilty to the crime of murder
42 in the first degree as defined in section 125.27 of the penal law;
43 provided, however, that a defendant may enter such a plea with both the
44 permission of the court and the consent of the people when the agreed
45 upon sentence is either life imprisonment [~~without parole~~] with eligi-
46 bility for parole after twenty-five years or a term of imprisonment for
47 the class A-I felony of murder in the first degree other than a sentence
48 of life imprisonment [~~without parole~~] with eligibility for parole after
49 twenty-five years.

50 § 16. Subparagraph (vii) of paragraph (b) of subdivision 3 of section
51 220.30 of the criminal procedure law, as amended by chapter 1 of the
52 laws of 1995, is amended to read as follows:

53 (vii) A defendant may not enter a plea of guilty to the crime of
54 murder in the first degree as defined in section 125.27 of the penal
55 law; provided, however, that a defendant may enter such a plea with both
56 the permission of the court and the consent of the people when the

1 agreed upon sentence is either life imprisonment [~~without parole~~] with
2 eligibility for parole after twenty-five years or a term of imprisonment
3 for the class A-I felony of murder in the first degree other than a
4 sentence of life imprisonment [~~without parole~~] with eligibility for
5 parole after twenty-five years.

6 § 17. Subdivision 1, paragraphs (b) and (e) of subdivision 11 and
7 paragraphs (b), (c) and (e) of subdivision 12 of section 400.27 of the
8 criminal procedure law, as added by chapter 1 of the laws of 1995, are
9 amended to read as follows:

10 1. Upon the conviction of a defendant for the offense of murder in the
11 first degree as defined by section 125.27 of the penal law, the court
12 shall promptly conduct a separate sentencing proceeding to determine
13 whether the defendant shall be sentenced to death or to life imprison-
14 ment [~~without parole pursuant to subdivision five of section 70.00 of~~
15 ~~the penal law~~] with eligibility for parole after twenty-five years.
16 Nothing in this section shall be deemed to preclude the people at any
17 time from determining that the death penalty shall not be sought in a
18 particular case, in which case the separate sentencing proceeding shall
19 not be conducted and the court may sentence such defendant to life
20 imprisonment [~~without parole~~] with eligibility for parole after twenty-
21 five years or to a sentence of imprisonment for the class A-I felony of
22 murder in the first degree other than a sentence of life imprisonment
23 [~~without parole~~] with eligibility for parole after twenty-five years.

24 (b) If the jury directs imposition of either a sentence of death or
25 life imprisonment [~~without parole~~] with eligibility for parole after
26 twenty-five years, it shall specify on the record those mitigating and
27 aggravating factors considered and those mitigating factors established
28 by the defendant, if any.

29 (e) If the jury unanimously determines that a sentence of life impri-
30 sonment [~~without parole~~] with eligibility for parole after twenty-five
31 years should be imposed the court must thereupon impose a sentence of
32 life imprisonment [~~without parole~~] with eligibility for parole after
33 twenty-five years.

34 (b) In the event the defendant is sentenced pursuant to this section
35 to life imprisonment [~~without parole~~] with eligibility for parole after
36 twenty-five years or to a term of imprisonment for the class A-I felony
37 of murder in the first degree other than a sentence of life imprisonment
38 [~~without parole~~] with eligibility for parole after twenty-five years,
39 the court shall not render a finding with respect to whether the defend-
40 ant is mentally retarded.

41 (c) In the event the defendant is sentenced pursuant to this section
42 to death, the court shall thereupon render a finding with respect to
43 whether the defendant is mentally retarded. If the court finds the
44 defendant is mentally retarded, the court shall set aside the sentence
45 of death and sentence the defendant either to life imprisonment [~~without~~
46 ~~parole~~] with eligibility for parole after twenty-five years or to a term
47 of imprisonment for the class A-I felony of murder in the first degree
48 other than a sentence of life imprisonment [~~without parole~~] with eligi-
49 bility for parole after twenty-five years. If the court finds the
50 defendant is not mentally retarded, then such sentence of death shall
51 not be set aside pursuant to this subdivision.

52 (e) The foregoing provisions of this subdivision notwithstanding, at a
53 reasonable time prior to the commencement of trial the defendant may,
54 upon a written motion alleging reasonable cause to believe the defendant
55 is mentally retarded, apply for an order directing that a mental retar-
56 dation hearing be conducted prior to trial. If, upon review of the

1 defendant's motion and any response thereto, the court finds reasonable
2 cause to believe the defendant is mentally retarded, it shall promptly
3 conduct a hearing without a jury to determine whether the defendant is
4 mentally retarded. In the event the court finds after the hearing that
5 the defendant is not mentally retarded, the court must, prior to
6 commencement of trial, enter an order so stating, but nothing in this
7 paragraph shall preclude a defendant from presenting mitigating evidence
8 of mental retardation at a separate sentencing proceeding. In the event
9 the court finds after the hearing that the defendant, based upon a
10 preponderance of the evidence, is mentally retarded, the court must,
11 prior to commencement of trial, enter an order so stating. Unless the
12 order is reversed on an appeal by the people or unless the provisions of
13 paragraph (d) of this subdivision apply, a separate sentencing proceed-
14 ing under this section shall not be conducted if the defendant is there-
15 after convicted of murder in the first degree. In the event a separate
16 sentencing proceeding is not conducted, the court, upon conviction of a
17 defendant for the crime of murder in the first degree, shall sentence
18 the defendant to life imprisonment ~~[without parole]~~ with eligibility for
19 parole after twenty-five years or to a sentence of imprisonment for the
20 class A-I felony of murder in the first degree other than a sentence of
21 life imprisonment ~~[without parole]~~ with eligibility for parole after
22 twenty-five years. Whenever a mental retardation hearing is held and a
23 finding is rendered pursuant to this paragraph, the court may not
24 conduct a hearing pursuant to paragraph (a) of this subdivision. For
25 purposes of this subdivision and paragraph (b) of subdivision nine of
26 this section, "mental retardation" means significantly subaverage gener-
27 al intellectual functioning existing concurrently with deficits in adap-
28 tive behavior which were manifested before the age of eighteen.

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

32 1. At any time after the entry of a judgment, the court in which the
33 judgment was entered may, upon motion of the defendant, set aside the
34 sentence upon the ground that it was unauthorized, illegally imposed or
35 otherwise invalid as a matter of law. Where the judgment includes a
36 sentence of death, the court may also set aside the sentence upon any of
37 the grounds set forth in paragraph (b), (c), (f), (g) or (h) of subdivi-
38 sion one of section 440.10 as applied to a separate sentencing proceed-
39 ing under section 400.27, provided, however, that to the extent the
40 ground or grounds asserted include one or more of the aforesaid para-
41 graphs of subdivision one of section 440.10, the court must also apply
42 subdivisions two and three of section 440.10, other than paragraph (d)
43 of subdivision two of such section, in determining the motion. In the
44 event the court enters an order granting a motion to set aside a
45 sentence of death under this section, the court must either direct a new
46 sentencing proceeding in accordance with section 400.27 or, to the
47 extent that the defendant cannot be resentenced to death consistent with
48 the laws of this state or the constitution of this state or of the
49 United States, resentence the defendant to life imprisonment ~~[without~~
50 ~~parole]~~ with eligibility for parole after twenty-five years or to a
51 sentence of imprisonment for the class A-I felony of murder in the first
52 degree other than a sentence of life imprisonment ~~[without parole]~~ with
53 eligibility for parole after twenty-five years. Upon granting the
54 motion upon any of the grounds set forth in the aforesaid paragraphs of
55 subdivision one of section 440.10 and setting aside the sentence, the
56 court must afford the people a reasonable period of time, which shall

1 not be less than ten days, to determine whether to take an appeal from
2 the order setting aside the sentence of death. The taking of an appeal
3 by the people stays the effectiveness of that portion of the court's
4 order that directs a new sentencing proceeding.

5 § 19. Paragraphs (b) and (c) of subdivision 5 of section 470.30 of the
6 criminal procedure law, as added by chapter 1 of the laws of 1995, are
7 amended to read as follows:

8 (b) set the sentence aside and remand the case for resentencing pursu-
9 ant to the procedures set forth in section 400.27 for a determination as
10 to whether the defendant shall be sentenced to death, life imprisonment
11 ~~[without parole]~~ with eligibility for parole after twenty-five years or
12 to a term of imprisonment for the class A-I felony of murder in the
13 first degree other than a sentence of life imprisonment ~~[without parole]~~
14 with eligibility for parole after twenty-five years; or

15 (c) set the sentence aside and remand the case for resentencing by the
16 court for a determination as to whether the defendant shall be sentenced
17 to life imprisonment ~~[without parole]~~ with eligibility for parole after
18 twenty-five years or to a term of imprisonment for the class A-I felony
19 of murder in the first degree other than a sentence of life imprisonment
20 ~~[without parole]~~ with eligibility for parole after twenty-five years.

21 § 20. The opening paragraph of subdivision 1 of section 70.25 of the
22 penal law, as amended by chapter 372 of the laws of 1981, is amended to
23 read as follows:

24 Except as provided in subdivisions two, two-a and five of this
25 section, when multiple sentences of imprisonment are imposed on a person
26 at the same time, or when a person who is subject to any undischarged
27 term of imprisonment imposed at a previous time by a court of this state
28 is sentenced to an additional term of imprisonment, the sentence or
29 sentences imposed by the court shall run either concurrently or consec-
30 utively with respect to each other and the undischarged term or terms in
31 such manner as the court directs at the time of sentence. Notwithstand-
32 ing any other provision of the law to the contrary, no defendant shall
33 be sentenced to serve consecutive terms of imprisonment which exceed a
34 twenty-five year sentence. If the court does not specify the manner in
35 which a sentence imposed by it is to run, the sentence shall run as
36 follows:

37 § 21. This act shall take effect on the ninetieth day after it shall
38 have become a law.