

# STATE OF NEW YORK

3741

2021-2022 Regular Sessions

## IN ASSEMBLY

January 28, 2021

Introduced by M. of A. DeSTEFANO, BRABENEC, NORRIS, MORINELLO, SALKA, REILLY -- 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 § 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  
20 murder in the first degree as defined in subparagraph (i), (ii), (ii-a)  
21 or (iii) of paragraph (a) of subdivision one of section 125.27 of this  
22 chapter and the sentence of death is not imposed the court shall  
23 sentence the defendant to life imprisonment without parole in accordance  
24 with subdivision five of section 70.00 of this title. When a defendant

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

LBD08114-01-1

1 is convicted of the crime of terrorism as defined in section 490.25 of  
2 this chapter, and the specified offense the defendant committed is a  
3 class A-I felony offense, or when a defendant is convicted of the crime  
4 of criminal possession of a chemical weapon or biological weapon in the  
5 first degree as defined in section 490.45 of this chapter, or when a  
6 defendant is convicted of the crime of criminal use of a chemical weapon  
7 or biological weapon in the first degree as defined in section 490.55 of  
8 this chapter, the court shall sentence the defendant to life imprison-  
9 ment without parole in accordance with subdivision five of section 70.00  
10 of this title; provided, however, that nothing in this section shall  
11 preclude or prevent a sentence of death when the defendant is also  
12 convicted of murder in the first degree as defined in section 125.27 of  
13 this chapter. When a defendant is convicted of aggravated murder as  
14 defined in subdivision two of section 125.26 of this chapter, the court  
15 shall sentence the defendant to life imprisonment without parole or to a  
16 term of imprisonment for a class A-I felony other than a sentence of  
17 life imprisonment without parole, in accordance with subdivisions one  
18 through three of section 70.00 of this title.

19 § 2. Subparagraph (i) of paragraph (a) of subdivision 3 of section  
20 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,  
21 is amended to read as follows:

22 (i) For a class A-I felony, such minimum period shall not be less than  
23 fifteen years nor more than twenty-five years; provided, however, that  
24 (A) where a sentence, other than a sentence of death or life imprison-  
25 ment without parole, is imposed upon a defendant convicted of murder in  
26 the first degree as defined in subparagraph (iv), (v), (vi), (vii),  
27 (viii), (ix), (x), (xi), (xii) or (xiii) of paragraph (a) of subdivision  
28 one of section 125.27 of this chapter such minimum period shall be not  
29 less than twenty years nor more than twenty-five years, and, (B) where a  
30 sentence is imposed upon a defendant convicted of murder in the second  
31 degree as defined in subdivision five of section 125.25 of this chapter  
32 or convicted of aggravated murder as defined in section 125.26 of this  
33 chapter, or where a sentence, other than a sentence of death, is imposed  
34 upon a defendant convicted of murder in the first degree as defined in  
35 subparagraph (i), (ii), (ii-a) or (iii) of paragraph (a) of subdivision  
36 one of section 125.27 of this chapter, the sentence shall be life impri-  
37 sonment without parole, and, (C) where a sentence is imposed upon a  
38 defendant convicted of attempted murder in the first degree as defined  
39 in article one hundred ten of this chapter and subparagraph (i), (ii),  
40 (ii-a) or (iii) of paragraph (a) of subdivision one and paragraph (b) of  
41 subdivision one of section 125.27 of this chapter or attempted aggra-  
42 vated murder as defined in article one hundred ten of this chapter and  
43 section 125.26 of this chapter such minimum period shall be not less  
44 than twenty years nor more than forty years.

45 § 3. Subdivision 5 of section 70.00 of the penal law, as amended by  
46 section 40-a of part WWW of chapter 59 of the laws of 2017, is amended  
47 to read as follows:

48 5. Life imprisonment without parole. Notwithstanding any other  
49 provision of law, a defendant sentenced to life imprisonment without  
50 parole shall not be or become eligible for parole or conditional  
51 release. For purposes of commitment and custody, other than parole and  
52 conditional release, such sentence shall be deemed to be an indetermi-  
53 nate sentence. A defendant may be sentenced to life imprisonment without  
54 parole upon conviction for the crime of murder in the first degree as  
55 defined in section 125.27 of this chapter and in accordance with the  
56 procedures provided by law for imposing a sentence for such crime. A

1 defendant who was eighteen years of age or older at the time of the  
2 commission of the crime must be sentenced to life imprisonment without  
3 parole upon conviction for the crime of terrorism as defined in section  
4 490.25 of this chapter, where the specified offense the defendant  
5 committed is a class A-I felony; the crime of criminal possession of a  
6 chemical weapon or biological weapon in the first degree as defined in  
7 section 490.45 of this chapter; or the crime of criminal use of a chemi-  
8 cal weapon or biological weapon in the first degree as defined in  
9 section 490.55 of this chapter; provided, however, that nothing in this  
10 subdivision shall preclude or prevent a sentence of death when the  
11 defendant is also convicted of the crime of murder in the first degree  
12 as defined in section 125.27 of this chapter. A defendant who was seven-  
13 teen years of age or younger at the time of the commission of the crime  
14 may be sentenced, in accordance with law, to the applicable indetermi-  
15 nate sentence with a maximum term of life imprisonment. A defendant must  
16 be sentenced to life imprisonment without parole upon conviction for the  
17 crime of murder in the second degree as defined in subdivision five of  
18 section 125.25 of this chapter or for the crime of aggravated murder as  
19 defined in subdivision one of section 125.26 of this chapter. A defend-  
20 ant may be sentenced to life imprisonment without parole upon conviction  
21 for the crime of aggravated murder as defined in subdivision two of  
22 section 125.26 of this chapter or for the crime of murder in the first  
23 degree as defined in subparagraph (i), (ii), (ii-a) or (iii) of para-  
24 graph (a) of subdivision one of section 125.27 of this chapter and the  
25 sentence of death is not imposed.

26 § 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), (ii-a) or (iii)  
31 of paragraph (a) of subdivision one of section 125.27 of the penal law,  
32 the court shall promptly conduct a separate sentencing proceeding to  
33 determine whether the defendant shall be sentenced to death or to life  
34 imprisonment without parole pursuant to subdivision five of section  
35 70.00 of the penal law. Nothing in this section shall be deemed to  
36 preclude the people at any time from determining that the death penalty  
37 shall not be sought in a particular case, in which case the separate  
38 sentencing proceeding shall not be conducted and the court may sentence  
39 such 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), (ii-a) or (iii) of paragraph (a) of subdivision  
50 one of section 125.27 of the penal law, the jury should consider whether  
51 or not a sentence of death should be imposed and whether or not a  
52 sentence of life imprisonment without parole should be imposed~~, and~~  
53 ~~that the jury must be unanimous with respect to either sentence. The~~  
54 ~~court must also instruct the jury that in the event the jury fails to~~  
55 ~~reach unanimous agreement with respect to the sentence, the court will~~  
56 ~~sentence the defendant to a term of imprisonment with a minimum term of~~

1 ~~between twenty and twenty-five years and a maximum term of life. Follow-~~  
2 ~~ing the court's charge, the jury shall retire to consider the sentence~~  
3 ~~to be imposed. Unless inconsistent with the provisions of this section,~~  
4 ~~the provisions of sections 310.10, 310.20 and 310.30 shall govern the~~  
5 ~~deliberations 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 part shall govern the deliberations of the jury.

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