STATE OF NEW YORK

2779

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

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-

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

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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 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~~] with eligibility for parole after twenty-five years; 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~~] 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, in accordance with subdivisions one through three of section 70.00 of this title~~] with eligibility for parole after twenty-five years.

§ 2. Subparagraph (i) of paragraph (a) of subdivision 3 and subdivision 5 of section 70.00 of the penal law, subparagraph (i) of paragraph (a) of subdivision 3 as amended by chapter 107 of the laws of 2006 and subdivision 5 as amended by section 40-a of part WWW of chapter 59 of the laws of 2017, are 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~~] with eligibility for parole after twenty-five years, 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~~] with eligibility for parole after twenty-five years, 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.

[~~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 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.~~]

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

10. 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.

§ 13. 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~~] **with eligibility for parole after twenty-five years**; 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.

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

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

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

(e) A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment [~~without parole~~] **with eligibility for parole after twenty-five years** or 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~~] **with eligibility for parole after twenty-five years**.

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

(vii) A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal

law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment [~~without parole~~] with eligibility for parole after twenty-five years or 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~~] with eligibility for parole after twenty-five years.

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

1. Upon the conviction of a defendant for the offense of murder in the first degree as defined by section 125.27 of the penal law, the court shall promptly conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or to life imprisonment [~~without parole pursuant to subdivision five of section 70.00 of the penal law~~] with eligibility for parole after twenty-five years. Nothing in this section shall be deemed to preclude the people at any time from determining that the death penalty shall not be sought in a particular case, in which case the separate sentencing proceeding shall not be conducted and the court may sentence such defendant to life imprisonment [~~without parole~~] with eligibility for parole after twenty-five years 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~~] with eligibility for parole after twenty-five years.

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

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

(b) In the event the defendant is sentenced pursuant to this section to life imprisonment [~~without parole~~] with eligibility for parole after twenty-five years 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~~] with eligibility for parole after twenty-five years, the court shall not render a finding with respect to whether the defendant is mentally retarded.

(c) In the event the defendant is sentenced pursuant to this section to death, the court shall thereupon render a finding with respect to whether the defendant is mentally retarded. If the court finds the defendant is mentally retarded, the court shall set aside the sentence of death and sentence the defendant either to life imprisonment [~~without parole~~] with eligibility for parole after twenty-five years 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~~] with eligibility for parole after twenty-five years. If the court finds the defendant is not mentally retarded, then such sentence of death shall not be set aside pursuant to this subdivision.

(e) The foregoing provisions of this subdivision notwithstanding, at a reasonable time prior to the commencement of trial the defendant may, upon a written motion alleging reasonable cause to believe the defendant

is mentally retarded, apply for an order directing that a mental retardation hearing be conducted prior to trial. If, upon review of the defendant's motion and any response thereto, the court finds reasonable cause to believe the defendant is mentally retarded, it shall promptly conduct a hearing without a jury to determine whether the defendant is mentally retarded. In the event the court finds after the hearing that the defendant is not mentally retarded, the court must, prior to commencement of trial, enter an order so stating, but nothing in this paragraph shall preclude a defendant from presenting mitigating evidence of mental retardation at a separate sentencing proceeding. In the event the court finds after the hearing that the defendant, based upon a preponderance of the evidence, is mentally retarded, the court must, prior to commencement of trial, enter an order so stating. Unless the order is reversed on an appeal by the people or unless the provisions of paragraph (d) of this subdivision apply, a separate sentencing proceeding under this section shall not be conducted if the defendant is thereafter convicted of murder in the first degree. In the event a separate sentencing proceeding is not conducted, the court, upon conviction of a defendant for the crime of murder in the first degree, shall sentence the defendant to life imprisonment [~~without parole~~] **with eligibility for parole after twenty-five years** 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~~] **with eligibility for parole after twenty-five years**. Whenever a mental retardation hearing is held and a finding is rendered pursuant to this paragraph, the court may not conduct a hearing pursuant to paragraph (a) of this subdivision. For purposes of this subdivision and paragraph (b) of subdivision nine of this section, "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which were manifested before the age of eighteen.

§ 18. 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~~] **with eligibility for parole after twenty-five years** 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~~] **with eligibility for parole after twenty-five years**. 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.

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

(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~~] **with eligibility for parole after twenty-five years** 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~~] **with eligibility for parole after twenty-five years**; 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~~] **with eligibility for parole after twenty-five years** 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~~] **with eligibility for parole after twenty-five years**.

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

Except as provided in subdivisions two, two-a and five of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. **Notwithstanding any other provision of the law to the contrary, no defendant shall be sentenced to serve consecutive terms of imprisonment which exceed a twenty-five year sentence.** If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

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