# STATE OF NEW YORK

7426

2021-2022 Regular Sessions

# IN SENATE

October 8, 2021

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

AN ACT to amend the penal law, the correction law, the criminal procedure law, and the administrative code of the city of New York, in relation to ending the imposition of a sentence of life without parole or death; and to repeal certain provisions of the penal law, the correction law, the criminal procedure law, the county law, the executive law, and the judiciary law, relating thereto

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

Section 1. Subdivision 2 of section 60.05 of the penal law, as amended by chapter 738 of the laws of 2004, is amended to read as follows:

2. Class A felony. Except as provided in subdivisions three and four of section 70.06 of this chapter, every person convicted of a class A felony must be sentenced to imprisonment in accordance with section 70.00 of this title[~~, unless such person is convicted of murder in the first degree and is sentenced in accordance with section 60.06 of this article~~].

§ 2. Section 60.06 of the penal law is REPEALED.

§ 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

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

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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. Subdivision 5 of section 70.00 of the penal law is REPEALED.

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 Subdivision 2-a of section 70.20 of the penal law is REPEALED.

§ 6. Subdivision 3 and paragraph (a) of subdivision 7 of section 70.80 of the penal law, as added by chapter 7 of the laws of 2007, are amended 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~~] 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.

(a) [~~section 60.06 of this chapter and~~] section 70.00 of this article[~~, as applicable,~~] if such offense is a class A-I felony; and

§ 7. Paragraph (d) of subdivision 2 of section 490.25 of the penal law is REPEALED.

§ 8. The closing paragraph of section 490.28 of the penal law is REPEALED.

§ 9. Section 113 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 113. Absence of incarcerated individual for funeral and deathbed visits authorized. The commissioner may permit any incarcerated individual 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 incarcerated individual, and guarding against escape. Any expense incurred under the provisions of this section, with respect to any incarcerated individual 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 incarcerated individual or anyone in his or her behalf to reimburse the state for such expense.

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

§ 11. Subdivision 2 of section 136 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

2. All incarcerated individuals 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~~], 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 incarcerated individual 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 incarcerated individuals will be provided with written notice that the test assessing secondary completion programs are available for all incarcerated individuals who so apply.

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

§ 13. Paragraph (b) of subdivision 1 of section 195.10 of the criminal procedure law, as amended by chapter 401 of the laws of 2008, is amended to read as follows:

(b) the defendant is not charged with a class A felony punishable by [~~death or~~] life imprisonment; and

§ 14. 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 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~~].

§ 15. 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 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~~].

§ 16. Section 250.40 of the criminal procedure law is REPEALED.

§ 17. Section 270.16 of the criminal procedure law is REPEALED.

§ 18. Paragraphs (e) and (f) of subdivision 1 of section 270.20 of the criminal procedure law, paragraph (e) as amended by chapter 68 of the laws of 1989 and paragraph (f) as amended by chapter 1 of the laws of 1995, are amended to read as follows:

(e) He served on the grand jury which found the indictment in issue or served on a trial jury in a prior civil or criminal action involving the same incident charged in such indictment[~~; or~~

~~(f) The crime charged may be punishable by death and the prospective juror entertains such conscientious opinions either against or in favor of such punishment as to preclude such juror from rendering an impartial verdict or from properly exercising the discretion conferred upon such~~

~~juror by law in the determination of a sentence pursuant to section 400.27~~].

§ 19. Subdivision 2 of section 270.30 of the criminal procedure law is REPEALED.

§ 20. Section 270.55 of the criminal procedure law is REPEALED.

§ 21. 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~~].

§ 22. Section 380.60 of the criminal procedure law, as amended by chapter 177 of the laws of 2011, is amended to read as follows:

§ 380.60 Authority for the execution of sentence.

[~~Except where a sentence of death is pronounced, a~~] **A** sentence and commitment or certificate of conviction showing the sentence pronounced by the court, or a certified copy thereof, constitutes the authority for execution of the sentence and serves as the order of commitment, and no other warrant, order of commitment or authority is necessary to justify or to require execution of the sentence.

§ 23. Section 400.27 of the criminal procedure law is REPEALED.

§ 24. 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.~~]

§ 25. Section 450.10 of the criminal procedure law, as amended by chapter 671 of the laws of 1971, subdivisions 1 and 2 as amended by chapter 671 of the laws of 1984, subdivision 3 as added and subdivision 4 as renumbered by chapter 516 of the laws of 1986 and subdivision 5 as added by chapter 560 of the laws of 1999, is amended to read as follows:

§ 450.10 Appeal by defendant to intermediate appellate court; in what cases authorized as of right.

An appeal to an intermediate appellate court may be taken as of right by the defendant from the following judgment, sentence and order of a criminal court:

1. A judgment [~~other than one including a sentence of death~~], unless the appeal is based solely upon the ground that a sentence was harsh or excessive when such sentence was predicated upon entry of a plea of guilty and the sentence imposed did not exceed that which was agreed to by the defendant as a condition of the plea and set forth on the record or filed with the court as required by subdivision five of section 220.50 or subdivision four of section 340.20;

2. A sentence [~~other than one of death~~], as prescribed in subdivision one of section 450.30, unless the appeal is based solely upon the ground that a sentence was harsh or excessive when such sentence was predicated upon entry of a plea of guilty and the sentence imposed did not exceed that which was agreed to by the defendant as a condition of the plea and set forth in the record or filed with the court as required by subdivision five of section 220.50 or subdivision four of section 340.20;

3. A sentence including an order of criminal forfeiture entered pursuant to section 460.30 of the penal law with respect to such forfeiture order.

4. An order, entered pursuant to section 440.40, setting aside a sentence [~~other than one of death~~], upon motion of the People.

5. An order denying a motion, made pursuant to subdivision one-a of section 440.30, for forensic DNA testing of evidence.

§ 26. Section 450.15 of the criminal procedure law, as amended by chapter 671 of the laws of 1984, is amended to read as follows:

§ 450.15 Appeal by defendant to intermediate appellate court; in what cases authorized by permission.

If an appeal by defendant is not authorized as of right pursuant to section 450.10, the defendant may appeal from the following orders of a criminal court, provided that a certificate granting leave to appeal is issued pursuant to section 460.15:

1. An order denying a motion, made pursuant to section 440.10, to vacate a judgment [~~other than one including a sentence of death~~];

2. An order denying a motion by the defendant made pursuant to section 440.20, to set aside a sentence [~~other than one of death~~];

3. A sentence which is not otherwise appealable as of right pursuant to subdivision one or two of section 450.10.

§ 27. Subdivisions 4, 5, 6 and 7 of section 450.20 of the criminal procedure law are amended to read as follows:

4. A sentence [~~other than one of death,~~] as prescribed in subdivisions two and three of section 450.30;

5. An order, entered pursuant to section 440.10, vacating a judgment [~~other than one including a sentence of death~~];

6. An order, entered pursuant to section 440.20, setting aside a sentence [~~other than one of death~~];

7. An order denying a motion by the people, made pursuant to section 440.40, to set aside a sentence [~~other than one of death~~];

§ 28. Subdivision 10 of section 450.20 of the criminal procedure law is REPEALED and subdivision 11 is renumbered subdivision 10.

§ 29. Section 450.70 of the criminal procedure law is REPEALED.

§ 30. Section 450.80 of the criminal procedure law is REPEALED.

§ 31. Section 460.40 of the criminal procedure law, as amended by chapter 209 of the laws of 1990, subdivision 2 as amended and subdivision 3 as added by chapter 1 of the laws of 1995, is amended to read as follows:

§ 460.40 Effect of taking of appeal upon judgment or order of courts below; when stayed.

[~~1. The taking of an appeal by the defendant directly to the court of appeals, pursuant to subdivision one of section 450.70, from a superior court judgment including a sentence of death stays the execution of such sentence. Except as provided in subdivision two of this section, in no other case does the taking of an appeal, by either party, in and of itself stay the execution of any judgment, sentence or order of either a criminal court or an intermediate appellate court.~~

~~2.~~] The taking of an appeal by the people to an intermediate appellate court pursuant to subdivision one-a of section 450.20, from an order reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information, stays the effect of such order. In addition, the taking of an appeal by the people to an intermediate appellate court pursuant to subdivision one of section 450.20, from an order dismissing a count or counts of an indictment charging murder in the first degree, stays the effect of such order.

[~~3. Within six months of the effective date of this subdivision, the court of appeals shall adopt rules to ensure that a defendant is granted a stay of the execution of any death warrant issued pursuant to article twenty-two-B of the correction law to allow the defendant an opportunity to prepare and timely file an initial motion pursuant to section 440.10 or 440.20 seeking to set aside a sentence of death or vacate a judgment including a sentence of death and to allow the motion and any appeal from the denial thereof to be timely determined. The rules shall provide that in the event a defendant seeks to file any subsequent motion with respect to the judgment or sentence following a final determination of the defendant's initial motion pursuant to section 440.10 or 440.20, a motion for a stay of the execution of the death warrant may only be granted for good cause shown. The people and the defendant shall have a right to appeal to the court of appeals from orders granting or denying such stay motions and any rules adopted pursuant to this subdivision shall provide that the court of appeals may affirm such orders, reverse them or modify them upon such terms as the court deems appropriate and shall provide for the expeditious perfection and determination of such appeals. Prior to adoption of the rules, the court of appeals shall issue proposed rules and receive written comments thereon from interested parties.~~]

§ 32. 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.~~]

§ 33. Subdivision 4 of section 630.20 of the criminal procedure law is REPEALED.

§ 34. 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.

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

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

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

§ 38. Section 35-b of the judiciary law is REPEALED.

§ 39. Section 211-a of the judiciary law is REPEALED.

§ 40. Subdivision c of section 24-355 of the administrative code of the city of New York is amended to read as follows:

c. It shall be the special duty of the persons so appointed to prevent breaches of the peace and unlawful depredations and to arrest and bring before the proper magistrates persons employed on such works or found in the vicinity thereof, who are guilty of offenses against the law punishable by [~~**death,**~~] imprisonment or fines, or persons whom they may have reasonable cause to believe to be guilty of such offenses.

§ 41. This act shall take effect on the one hundred twentieth day after it shall have become a law.