

# STATE OF NEW YORK

8176

## IN SENATE

January 31, 2022

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

AN ACT to amend the penal law, in relation to making life imprisonment without parole mandatory for defendants convicted of murder in the first degree or second degree and the victim is a police officer, peace officer, first responder or correctional officer

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, except as  
14 provided in subdivision five of section 70.00 of this title, to a term  
15 of imprisonment for a class A-I felony other than a sentence of life  
16 imprisonment without parole, in accordance with subdivisions one through  
17 three of section 70.00 of this title. When a person is convicted of  
18 murder in the second degree as defined in subdivision five of section  
19 125.25 of this chapter or of the crime of aggravated murder as defined  
20 in subdivision one of section 125.26 of this chapter, the court shall  
21 sentence the defendant to life imprisonment without parole in accordance  
22 with subdivision five of section 70.00 of this title. When a defendant  
23 is convicted of the crime of terrorism as defined in section 490.25 of  
24 this chapter, and the specified offense the defendant committed is a  
25 class A-I felony offense, or when a defendant is convicted of the crime  
26 of criminal possession of a chemical weapon or biological weapon in the

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

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

15 § 2. Subdivision 5 of section 70.00 of the penal law, as amended by  
16 section 40-a of part WWW of chapter 59 of the laws of 2017, is amended  
17 to read as follows:

18 5. Life imprisonment without parole. Notwithstanding any other  
19 provision of law, a defendant sentenced to life imprisonment without  
20 parole shall not be or become eligible for parole ~~[or]~~, conditional  
21 release, commutation or pardon. For purposes of commitment and custody,  
22 other than parole and conditional release, such sentence shall be deemed  
23 to be an indeterminate sentence. A defendant may be sentenced to life  
24 imprisonment without parole upon conviction for the crime of murder in  
25 the first degree as defined in section 125.27 of this chapter and in  
26 accordance with the procedures provided by law for imposing a sentence  
27 for such crime, except that a defendant must be sentenced to life impri-  
28 sonment without parole upon conviction for the crime of murder in the  
29 first degree as defined in subparagraph (i), (ii), (ii-a), (iii) or (iv)  
30 of paragraph (a) of subdivision one of section 125.27 of this chapter.  
31 A defendant must be sentenced to life imprisonment without parole upon  
32 conviction for the crime of murder in the second degree as defined in  
33 subdivision six of section 125.25 of this chapter. A defendant who was  
34 eighteen years of age or older at the time of the commission of the  
35 crime must be sentenced to life imprisonment without parole upon  
36 conviction for the crime of terrorism as defined in section 490.25 of  
37 this chapter, where the specified offense the defendant committed is a  
38 class A-I felony; the crime of criminal possession of a chemical weapon  
39 or biological weapon in the first degree as defined in section 490.45 of  
40 this chapter; or the crime of criminal use of a chemical weapon or  
41 biological weapon in the first degree as defined in section 490.55 of  
42 this chapter; provided, however, that nothing in this subdivision shall  
43 preclude or prevent a sentence of death when the defendant is also  
44 convicted of the crime of murder in the first degree as defined in  
45 section 125.27 of this chapter. A defendant who was seventeen years of  
46 age or younger at the time of the commission of the crime may be  
47 sentenced, in accordance with law, to the applicable indeterminate  
48 sentence with a maximum term of life imprisonment. A defendant must be  
49 sentenced to life imprisonment without parole upon conviction for the  
50 crime of murder in the second degree as defined in subdivision five or  
51 six of section 125.25 of this chapter or for the crime of aggravated  
52 murder as defined in subdivision one of section 125.26 of this chapter.  
53 A defendant may be sentenced to life imprisonment without parole upon  
54 conviction for the crime of aggravated murder as defined in subdivision  
55 two of section 125.26 of this chapter.

§ 3. Subdivision 5 of section 125.25 of the penal law, as amended by chapter 320 of the laws of 2006, is amended and a new subdivision 6 is added to read as follows:

5. Being eighteen years old or more, while in the course of committing rape in the first, second or third degree, criminal sexual act in the first, second or third degree, sexual abuse in the first degree, aggravated sexual abuse in the first, second, third or fourth degree, or incest in the first, second or third degree, against a person less than fourteen years old, he or she intentionally causes the death of such person[~~+~~]; or

6. Acting either alone or with one or more other persons, he or she commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he or she, or another participant, if there be any, intentionally causes the death of: a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law; a peace officer as defined in paragraph a of subdivision twenty-one, subdivision twenty-three, twenty-four or sixty-two (employees of the division for youth) of section 2.10 of the criminal procedure law; a firefighter; emergency medical technician, ambulance driver, paramedic, physician or registered nurse involved in a first response team, or any other individual who, in the course of official duties, performs emergency response; or an employee of a state correctional institution or was an employee of a local correctional facility as defined in subdivision two of section forty of the correction law, when such person was engaged in the course of performing their official duties.

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 proposing an amendment to section 4 of article IV of the constitution, relating to prohibiting persons convicted of murder or sentenced to life without parole from being eligible for commutation of sentence, takes effect.