STATE OF NEW YORK

6885

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. SMITH -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to the sentence of imprisonment for murder in the first and second degrees

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[~~,~~] **or** to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title[~~, 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~~]. 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. 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

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

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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; 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 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.

§ 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, 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, 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~~] **sentence shall be life imprisonment without parole**, 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, 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**, and, (D) where a sentence is imposed upon a defendant convicted of murder in the second degree as defined in section 125.25 of this chapter, except as otherwise provided in this subparagraph, such minimum period shall be 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~~] **shall** 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 1 of section 400.27 of the criminal procedure law, as added by chapter 1 of the laws of 1995, is 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. 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~~] **shall** sentence such 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~~].

§ 4. 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:

(b) In the event the defendant is sentenced pursuant to this section 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~~], the court shall not render a finding with respect to whether the defendant is [~~mentally retarded~~] **intellectually disabled**.

(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~~] **intellectually disabled**. If the court finds the defendant is [~~mentally retarded~~] **intellectually disabled**, the court shall set aside the sentence of death and sentence the defendant [~~either~~] 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~~]. If the court finds the defendant is not [~~mentally retarded~~] **intellectually disabled**, 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] **intellectually disabled**, apply for an order directing that a [~~mental retardation~~] **intellectual disability** 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~~] **intellectually disabled**, it shall promptly conduct a hearing without a jury to determine whether the defendant is [~~mentally retarded~~] **intellectually disabled**. In the event the court finds after the hearing that the defendant is not [~~mentally retarded~~] **intellectually disabled**, 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~~] **intellectual disability** 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~~] **intellectually disabled**, 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 [~~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~~]. Whenever a [~~mental retardation~~] **intellectual disability** 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"~~] **"intellectual disability"** means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which were manifested before the age of eighteen.

§ 5. This act shall take effect immediately.