

STATE OF NEW YORK

407

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

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

AN ACT to amend the executive law and the penal law, in relation to clemency

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

1 Section 1. Section 15 of the executive law, as added by chapter 545 of
2 the laws of 1971, is amended to read as follows:

3 § 15. Power of governor to grant reprieves, commutations and pardons.
4 The governor has power to grant reprieves, commutations and pardons,
5 after conviction, for all offenses, except treason, murder, crimes where
6 the defendant is sentenced to life imprisonment without parole or where
7 the defendant acting either alone or with one or more other persons,
8 commits or attempts to commit robbery, burglary, kidnapping, arson, rape
9 in the first degree, criminal sexual act in the first degree, sexual
10 abuse in the first degree, aggravated sexual abuse, escape in the first
11 degree, or escape in the second degree, and, in the course of and in
12 furtherance of such crime or of immediate flight therefrom, he or she,
13 or another participant, if there be any, intentionally causes the death
14 of: a police officer as defined in subdivision thirty-four of section
15 1.20 of the criminal procedure law; a peace officer as defined in para-
16 graph a of subdivision twenty-one, subdivision twenty-three, twenty-four
17 or sixty-two (employees of the division for youth) of section 2.10 of
18 the criminal procedure law; a firefighter; emergency medical technician,
19 ambulance driver, paramedic, physician or registered nurse involved in a
20 first response team, or any other individual who, in the course of offi-
21 cial duties, performs emergency response; or an employee of a state
22 correctional institution or was an employee of a local correctional
23 facility as defined in subdivision two of section forty of the

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

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1 correction law, when such person was engaged in the course of performing
2 their official duties, and cases of impeachment, upon such conditions,
3 and with such restrictions and limitations, as he or she may think prop-
4 er, subject to the regulations provided in this article.

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

8 5. Life imprisonment without parole. Notwithstanding any other
9 provision of law, a defendant sentenced to life imprisonment without
10 parole shall not be or become eligible for commutation, pardon, parole
11 or conditional release. For purposes of commitment and custody, other
12 than parole and conditional release, such sentence shall be deemed to be
13 an indeterminate sentence. A defendant may be sentenced to life impri-
14 sonment without parole upon conviction for the crime of murder in the
15 first degree as defined in section 125.27 of this chapter and in accord-
16 ance with the procedures provided by law for imposing a sentence for
17 such crime. A defendant who was eighteen years of age or older at the
18 time of the commission of the crime must be sentenced to life imprison-
19 ment without parole upon conviction for the crime of terrorism as
20 defined in section 490.25 of this chapter, where the specified offense
21 the defendant committed is a class A-I felony; the crime of criminal
22 possession of a chemical weapon or biological weapon in the first degree
23 as defined in section 490.45 of this chapter; or the crime of criminal
24 use of a chemical weapon or biological weapon in the first degree as
25 defined in section 490.55 of this chapter; provided, however, that noth-
26 ing in this subdivision shall preclude or prevent a sentence of death
27 when the defendant is also convicted of the crime of murder in the first
28 degree as defined in section 125.27 of this chapter. A defendant who was
29 seventeen years of age or younger at the time of the commission of the
30 crime may be sentenced, in accordance with law, to the applicable inde-
31 terminate sentence with a maximum term of life imprisonment. A defendant
32 must be sentenced to life imprisonment without parole upon conviction
33 for the crime of murder in the second degree as defined in subdivision
34 five of section 125.25 of this chapter or for the crime of aggravated
35 murder as defined in subdivision one of section 125.26 of this chapter.
36 A defendant may be sentenced to life imprisonment without parole upon
37 conviction for the crime of aggravated murder as defined in subdivision
38 two of section 125.26 of this chapter.

39 § 3. This act shall take effect on the same date and in the same
40 manner as a chapter of the laws of 2023 proposing an amendment to
41 section 4 of article IV of the constitution, relating to prohibiting
42 persons convicted of murder or sentenced to life without parole from
43 being eligible for commutation of sentence, takes effect.