

# STATE OF NEW YORK

3906

2023-2024 Regular Sessions

## IN ASSEMBLY

February 8, 2023

Introduced by M. of A. BARCLAY, PALMESANO, ANGELINO, BYRNES,  
J. M. GIGLIO, HAWLEY, SIMPSON, GALLAHAN, BRABENEC, DURSO -- 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 commission of and sentencing for certain provisions of  
murder in the first degree

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

Section 1. Subparagraph (xiii) of paragraph (a) of subdivision 1 of  
section 125.27 of the penal law, as added by chapter 300 of the laws of  
2001, is amended and a new paragraph (xiv) is added to read as follows:

(xiii) the victim was killed in furtherance of an act of terrorism, as  
defined in paragraph (b) of subdivision one of section 490.05 of this  
chapter; ~~[and] or~~

(xiv) the defendant intentionally selected the victim in whole or in  
substantial part because of a belief or perception regarding the actual  
or perceived race, color, national origin, ancestry, gender, gender  
identity or expression, religion, religious practice, age, disability,  
or sexual orientation of such victim, regardless of whether such belief  
or perception is correct; and

§ 2. 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 offen-  
ders; 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

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

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1 the defendant to death, to life imprisonment without parole in accord-  
2 ance with subdivision five of section 70.00 of this title, or to a term  
3 of imprisonment for a class A-I felony other than a sentence of life  
4 imprisonment without parole, in accordance with subdivisions one through  
5 three of section 70.00 of this title. When a person is convicted of  
6 murder in the second degree as defined in subdivision five of section  
7 125.25 of this chapter or of the crime of aggravated murder as defined  
8 in subdivision one of section 125.26 of this chapter, or of the crime of  
9 murder in the first degree as defined in subparagraph (i), (ii), (ii-a),  
10 (iii), (viii), (xi), (xiii), or (xiv) of paragraph (a) of subdivision  
11 one of section 125.27 of this chapter and the sentence of death is not  
12 imposed the court shall sentence the defendant to life imprisonment  
13 without parole in accordance with subdivision five of section 70.00 of  
14 this title. When a defendant is convicted of the crime of terrorism as  
15 defined in section 490.25 of this chapter, and the specified offense the  
16 defendant committed is a class A-I felony offense, or when a defendant  
17 is convicted of the crime of criminal possession of a chemical weapon or  
18 biological weapon in the first degree as defined in section 490.45 of  
19 this chapter, or when a defendant is convicted of the crime of criminal  
20 use of a chemical weapon or biological weapon in the first degree as  
21 defined in section 490.55 of this chapter, the court shall sentence the  
22 defendant to life imprisonment without parole in accordance with subdi-  
23 vision five of section 70.00 of this title; provided, however, that  
24 nothing in this section shall preclude or prevent a sentence of death  
25 when the defendant is also convicted of murder in the first degree as  
26 defined in section 125.27 of this chapter. When a defendant is convicted  
27 of aggravated murder as defined in subdivision two of section 125.26 of  
28 this chapter, the court shall sentence the defendant to life imprison-  
29 ment without parole or to a term of imprisonment for a class A-I felony  
30 other than a sentence of life imprisonment without parole, in accordance  
31 with subdivisions one through three of section 70.00 of this title.

32 § 3. Subparagraph (i) of paragraph (a) of subdivision 3 of section  
33 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,  
34 is amended to read as follows:

35 (i) For a class A-I felony, such minimum period shall not be less than  
36 fifteen years nor more than twenty-five years; provided, however, that  
37 (A) where a sentence, other than a sentence of death or life imprison-  
38 ment without parole, is imposed upon a defendant convicted of murder in  
39 the first degree as defined in subparagraph (iv), (v), (vi), (vii),  
40 (ix), (x), or (xii) of paragraph (a) of subdivision one of section  
41 125.27 of this chapter such minimum period shall be not less than twenty  
42 years nor more than twenty-five years, and, (B) where a sentence is  
43 imposed upon a defendant convicted of murder in the second degree as  
44 defined in subdivision five of section 125.25 of this chapter or  
45 convicted of aggravated murder as defined in section 125.26 of this  
46 chapter, or where a sentence, other than a sentence of death, is imposed  
47 upon a defendant convicted of murder in the first degree as defined in  
48 subparagraph (i), (ii), (ii-a), (iii), (viii), (xi), (xiii), or (xiv) of  
49 paragraph (a) of subdivision one of section 125.27 of this chapter, the  
50 sentence shall be life imprisonment without parole, and, (C) where a  
51 sentence is imposed upon a defendant convicted of attempted murder in  
52 the first degree as defined in article one hundred ten of this chapter  
53 and subparagraph (i), (ii), (ii-a) or (iii) of paragraph (a) of subdivi-  
54 sion one and paragraph (b) of subdivision one of section 125.27 of this  
55 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, as amended by section 40-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

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 or for the crime of murder in the first degree as defined in subparagraph (i), (ii), (ii-a), (iii), (viii), (xi), (xiii), or (xiv) of paragraph (a) of subdivision one of section 125.27 of this chapter and the sentence of death is not imposed.

§ 5. Subdivisions 1 and 10 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 subparagraph (i), (ii), (ii-a), (iii), (viii), (xi), (xiii), or (xiv) of paragraph (a) of subdivision one of 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 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]~~.

10. (a) At the conclusion of all the evidence, the people and the defendant may present argument in summation for or against the sentence sought by the people. The people may deliver the first summation and the defendant may then deliver the last summation. Thereafter, the court shall deliver a charge to the jury on any matters appropriate in the circumstances. In its charge, the court must instruct the jury that with respect to each count of murder in the first degree, as defined in subparagraph (i), (ii), (ii-a), (iii), (viii), (xi), (xiii), or (xiv) of paragraph (a) of subdivision one of section 125.27 of the penal law, the jury should consider whether or not a sentence of death should be imposed and whether or not a sentence of life imprisonment without parole should be imposed~~[, and that the jury must be unanimous with respect to either sentence. The court must also instruct the jury that in the event the jury fails to reach unanimous agreement with respect to the sentence, the court will sentence the defendant to a term of imprisonment with a minimum term of between twenty and twenty-five years and a maximum term of life. Following the court's charge, the jury shall retire to consider the sentence to be imposed. Unless inconsistent with the provisions of this section, the provisions of sections 310.10, 310.20 and 310.30 shall govern the deliberations of the jury]~~.

(b) The court must instruct the jury that the jury must be unanimous with respect to the sentence to be imposed. The court must also instruct the jury that in the event the jury fails to reach unanimous agreement with respect to the sentence, the court will sentence the defendant to a term of life imprisonment without parole.

(c) Following the court's charge, the jury shall retire to consider the sentence to be imposed. Unless inconsistent with the provisions of this section, the provisions of sections 310.10, 310.20 and 310.30 of this part shall govern the deliberations of the jury.

§ 6. This act shall take effect immediately and shall apply to offenses committed on or after such effective date.