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:

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

§ 15. Power of governor to grant reprieves, commutations and pardons. The governor has power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason, murder, crimes where the defendant is sentenced to life imprisonment without parole or where the defendant acting either alone or with one or more other persons, 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

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

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

§ 2. 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 **commutation, pardon,** 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.

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 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.