

# STATE OF NEW YORK

408

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. GALLIVAN, BORRELLO, HELMING, LANZA, ORTT, STEC, TEDISCO, WEIK -- 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:

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, to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title, or, except as provided in subdivision five of section 70.00 of this title, 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

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

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1 with subdivision five of section 70.00 of this title. When a defendant  
2 is convicted of the crime of terrorism as defined in section 490.25 of  
3 this chapter, and the specified offense the defendant committed is a  
4 class A-I felony offense, or when a defendant is convicted of the crime  
5 of criminal possession of a chemical weapon or biological weapon in the  
6 first degree as defined in section 490.45 of this chapter, or when a  
7 defendant is convicted of the crime of criminal use of a chemical weapon  
8 or biological weapon in the first degree as defined in section 490.55 of  
9 this chapter, the court shall sentence the defendant to life imprison-  
10 ment without parole in accordance with subdivision five of section 70.00  
11 of this title; provided, however, that nothing in this section shall  
12 preclude or prevent a sentence of death when the defendant is also  
13 convicted of murder in the first degree as defined in section 125.27 of  
14 this chapter. When a defendant is convicted of aggravated murder as  
15 defined in subdivision two of section 125.26 of this chapter, the court  
16 shall sentence the defendant to life imprisonment without parole or to a  
17 term of imprisonment for a class A-I felony other than a sentence of  
18 life imprisonment without parole, in accordance with subdivisions one  
19 through three of section 70.00 of this title.

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

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

1 murder as defined in subdivision one of section 125.26 of this chapter.  
2 A defendant may be sentenced to life imprisonment without parole upon  
3 conviction for the crime of aggravated murder as defined in subdivision  
4 two of section 125.26 of this chapter.

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

8 5. Being eighteen years old or more, while in the course of committing  
9 rape in the first, second or third degree, criminal sexual act in the  
10 first, second or third degree, sexual abuse in the first degree, aggra-  
11 vated sexual abuse in the first, second, third or fourth degree, or  
12 incest in the first, second or third degree, against a person less than  
13 fourteen years old, he or she intentionally causes the death of such  
14 person[-]; or

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

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