STATE OF NEW YORK

8929--A

2025-2026 Regular Sessions

IN ASSEMBLY

July 16, 2025

Introduced by M. of A. R. CARROLL, FORREST, SIMON, LEVENBERG -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to convictions under felony murder provisions; and to repeal certain provisions of the penal law relating thereto

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

Section 1. Legislative findings and intent. The legislature hereby finds and declares the following:

a. The current provisions of New York's penal law pertaining to felony murder eliminate the distinction between intentional and unintentional homicide and are therefore not consistent with the principle of proportionality in charging and sentencing. Felony murder doctrine allows a defendant to be charged and sentenced for murder in circumstances where they were committing or attempting to commit a felony but did not actually commit a homicidal act, intend that a homicidal act be committed, or even know that another person had committed such an act. Under current state law, an accomplice to a crime, for example someone driving a getaway car, may be charged with murder as if they had actually shot someone in the course of a crime such as robbery even in a circumstance where they were unarmed and physically removed from the site of the murder. Evidence from other states indicates that as many as one in five individuals serving prison sentences for murder have been convicted based on the felony murder doctrine. Studies have also found that prosecutors use the threat of felony murder charges to obtain plea deals for lengthy sentences, demonstrating felony murder doctrine's role in extreme sentencing and mass incarceration.

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

LBD00306-04-6

b. Felony murder doctrine originated in England but was banned there in 1957 and subsequently in other Commonwealth countries including Canada, which banned it in 1990. The United States is an outlier globally in its application of felony murder doctrine, although some states, have in the last five years introduced significant reforms with California and Minnesota reintroducing the intention to kill as a requirement for the application of felony murder charges. New York, however, remains one of just thirteen states including Texas and Florida, where the felony murder doctrine is applied by prosecutors to pursue murder charges when the individual committing a homicidal act is a third party such as a victim holding their ground, a law enforcement officer, or a bystander.

c. Evidence from across the country, reveals that felony murder laws have disproportionately negative consequences for non-white people, young people, and victims of domestic violence: in Pennsylvania eighty percent of those imprisoned with a felony murder conviction were people of color; in California sixty-eight percent of those serving time for felony murder are black or Latinx; according to the California Coalition for Women Prisoners, the majority of their members convicted of felony murder were victims of domestic violence; and a recent study by professors from the University of Buffalo found that Black people were almost twenty times and Latinx people almost six times as likely as white people to be arrested for and charged with felony murder.

d. Repealing felony murder liability and providing for vacatur and resentencing eligibility for those who have previously been convicted and/or charged with felony murder is the most effective way to reform New York's Penal Law to align with international norms regarding proportional sentencing and reforms being undertaken in other jurisdictions in the United States.

§ 2. Subdivision 3 of section 125.25 of the penal law is REPEALED.

§ 3. The criminal procedure law is amended by adding a new section 440.48 to read as follows.

§ 440.48 Motion to vacate judgment and resentence; felony murder convictions.

1. Vacatur. Eligible persons as defined by subdivision two of this section shall be entitled to automatic vacatur of the conviction of former subdivision three of 125.25 of the penal law.

2. Eligibility for vacatur. Persons eligible for vacatur include all persons convicted under former subdivision three of section 125.25 of the penal law.

3. The vacatur process. Automatic vacatur shall be provided for all persons eligible pursuant to this section and shall take place no later than thirty days after the effective date of this section.

(a) The office of court administration shall notify all persons eligible for automatic vacatur via last known address and as well as notify last known counsel via first class mail at last known address.

(b) The office of court administration shall, concurrent with notice, communicate directly to the department of corrections and community supervision the names of all persons who are eligible for automatic vacatur. The department of corrections and community supervision shall then timely compare the list of eligible people with the names of people under their custody and control. When an eligible person is under the custody and control of the department of corrections and community supervision, such department shall immediately notify the eligible person that they are eligible for vacatur.

(c) The office of court administration shall, concurrent with notice, but no later than thirty days from after the effective date of this

section, direct the original sentencing court to vacate the conviction of each person convicted under former subdivision three of section 125.25 of the penal law and dismiss such charge. Where the person is under the custody and control of the department of corrections and community supervision, the sentencing court shall immediately inform such department. The department of corrections and community supervision shall, immediately upon notice of vacatur, release any person who was in custody solely as a result of a conviction under former subdivision three of section 125.25 of the penal law and/or terminate any remaining post release or parole supervision for such person.

(d) Any other convictions under the penal law shall remain in place; provided, however, that those remaining convictions may be subject to resentencing pursuant to subdivision four of this section.

(e) In accordance with subdivision one of this section, eligible persons whose conviction under former subdivision three of 125.25 of the penal law was not automatically vacated may submit to the original sentencing court a petition to ensure that a conviction to former subdivision three of section 125.25 of the penal law has been duly vacated. If, at the time of such person's petition:

(i) the original sentencing judge or justice is a judge or justice of the original sentencing court, the request shall be assigned to such judge or justice in such court.

(ii) the original sentencing judge or justice is not a judge or justice of the original sentencing court, then the request shall be randomly assigned to another judge or justice of such court.

(f) Upon confirmation from the court file that the petitioner has been convicted under former subdivision three of 125.25 of the penal law and that the conviction was not automatically vacated, the court shall vacate the conviction under such former subdivision and send notice of vacatur to the petitioner.

(g) Eligible persons may also directly petition the original sentencing court for vacatur in the absence of notice from the office of court administration. Eligible persons may request the court vacate the conviction under former subdivision three of 125.25 of the penal law and any related sentence shall be immediately discharged pursuant to paragraph (c) of this subdivision. A person who is eligible for vacatur may request that the court timely assign such person an attorney. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law and the related provisions of article eighteen-A of such law for the application and any proceedings under this section, including any appeal and successive application. The court shall notify the applicant of the appointment of counsel.

4. Resentencing. Eligible persons as defined by paragraph (a) or (b) of subdivision five of this section may file a petition to be resentenced with the judge or justice who imposed the original sentence upon such person. If, at the time of such person's petition:

(a) the original sentencing judge or justice is a judge or justice of the original sentencing court, the request shall be assigned to such judge or justice in such court.

(b) the original sentencing judge or justice is not a judge or justice of the original sentencing court, then the request shall be randomly assigned to another judge or justice of such court.

5. Eligibility to petition for resentencing. Persons eligible to petition for resentencing shall include, but not be limited to:

(a) all persons convicted at trial or by plea under former subdivision three of section 125.25 of the penal law and serving a concurrent or consecutive sentence for another conviction arising from the same indictment.

(b) all persons convicted at trial or by plea and currently serving a sentence where former subdivision three of section 125.25 of the penal law was a count on the accusatory instrument or any accusatory instrument that was superseded by that instrument and upon which the person pled guilty or was tried.

6. Notice of eligibility to petition for resentencing. The office of court administration shall notify all persons eligible to petition for resentencing pursuant to subdivision five of this section, of such eligibility no later than thirty days after the effective date of this section.

(a) Such notice shall include the date of such conviction, the penal law section for which they were convicted, and a copy of the accusatory instrument under which they were convicted, including a statement of the penal law sections charged in the accusatory instrument.

(b) Such notice shall be sent by first class mail to the last known address of the eligible person as well as sent by first class mail to last known counsel.

(c) The office of court administration shall, concurrent with notice to the eligible person and counsel, communicate directly to the department of corrections and community supervision the names of all persons who are eligible to petition for resentencing. The department of corrections and community supervision shall then timely compare the list of eligible people with the names of people under their custody and control. When an eligible person is under the custody and control of the department of corrections and community supervision, such department shall immediately notify the eligible person that they are eligible to petition for resentencing.

7. The resentencing petition. A resentencing petition submitted under this section shall include:

(a) (i) a statement by the petitioner that they are eligible for relief, based on the requirements of paragraph (a) or (b) of subdivision five of this section; or (ii) in the event the petitioner is represented by counsel at the time of the petition, a sworn statement by such counsel affirming the eligibility of the petitioner in lieu of a statement by the petitioner; or

(b) a copy of the notice from the office of court administration, pursuant to paragraph (a) of subdivision six of this section, notifying the petitioner of their potential eligibility.

8. Initial review and actions by the court. (a) The court shall conduct a timely review of the petition for relief and determine if the petitioner has made a prima facie showing that the petitioner may be eligible for relief under paragraph (a) or (b) of subdivision five of this section. The court shall determine that the petitioner has made a prima facie showing where the petitioner included a copy of the proper notice from the office of court administration or where the accusatory instrument confirms the petitioner or petitioner's counsel's statement of eligibility. If the petition fails to demonstrate that the petitioner is eligible for relief, the court shall notify such person and dismiss such petition without prejudice.

(b) Upon a finding that a petitioner has made a prima facie case, the court shall notify the petitioner and order a hearing and permit the

filing and serving of pre-hearing submissions in support of resentencing as defined by subdivision ten of this section.

(c) Where no notice was included from the office of court administration in the petition, the court shall request and receive a copy of the accusatory instrument under which the petitioner was convicted or any accusatory instrument that was superseded by that instrument and upon which the person pled guilty or was tried from the clerk of the court for inspection to confirm eligibility for resentencing prior to conducting a review under this subdivision.

(d) In the event the petitioner is unrepresented by counsel and serving a sentence for crimes other than former subdivision three of section 125.25 of the penal law or arising from an accusatory instrument that included former subdivision three of section 125.25 of the penal law or any accusatory instrument that was superseded by that instrument and upon which the person pled guilty or was tried, and seeks resentencing, the petitioner may also petition the court for the assignment of counsel as provided in subdivision nine of this section.

9. Assignment of counsel. A person who is eligible for resentencing pursuant to paragraph (a) or (b) of subdivision five of this section may request that the court timely assign such person an attorney for the proceedings on the petition for resentencing, either at the time of the petition for resentencing or after notice from the court of a hearing on resentencing. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven hundred twenty-two of the county law and the related provisions of article eighteen-A of such law for the application and any proceedings under this section, including any appeal and successive application. The court shall notify the applicant of the appointment of counsel.

10. Pre-hearing submissions. (a) Upon the court granting a hearing on resentencing, the applicant shall, within sixty days, file with the court and serve on the prosecution any supporting materials. These materials may include, but are not limited to, submissions that either:

(i) the sentence is illegal or unauthorized pursuant to article seventy of the penal law after vacatur of the conviction under former subdivision three of section 125.25 of the penal law;

(ii) in a case where a conviction under former subdivision three of section 125.25 was vacated but where sentences for other convictions remain, the remaining sentences were materially impacted by the conviction under former subdivision three of section 125.25 of the penal law;

(iii) in a case where there was no conviction under former subdivision three of section 125.25 of the penal law, the sentence was materially impacted by evidence relating to the death of the decedent; or

(iv) that the petitioner's decision to accept a plea of guilty was materially impacted by the inclusion of former subdivision three of section 125.25 of the penal law in the accusatory instrument or any accusatory instrument that was superseded by that instrument and upon which the person pled guilty or was tried.

(b) Upon receipt of such pre-hearing submissions in support of resentencing, the court shall forthwith deliver a copy of the petition to the prosecution. Upon receipt of pre-hearing submissions from an applicant, the prosecution shall, within thirty days, serve and file any relevant documents of an evidentiary nature that rebut the presumption of resentencing as described in subdivision eleven of this section. These deadlines shall be extended for good cause or in the interest of justice.

11. The resentencing hearing. (a) There shall be a presumption in favor of resentencing.

(b) At the hearing, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the petitioner shall be resentenced pursuant to section 70.00 of the penal law.

(c) Both parties shall be provided the opportunity to rely on the record of conviction or present new or additional materials or evidence. Prior to the hearing, the petitioner shall be entitled to any discovery related to the original sentencing, including but not limited to any prosecution plea negotiations or offers, any cooperation agreement entered into by co-defendants or prosecution witnesses, summation of prosecutors including any reference to former subdivision three of section 125.25 of the penal law, any mitigation report, presentence report, victim impact statements and any other related materials considered by the original sentencing court or newly discovered. Any relevant evidence shall be admissible at such hearings.

(d) The court, after affording the parties an opportunity to be heard and present evidence, shall determine any controverted issue of fact relevant to the issue of sentencing. The court shall consider the effect of former subdivision three of section 125.25 of the penal law on the original plea, conviction and sentence and balance the interests of justice to render a decision to deny or grant the petitioner's motion for resentencing. Any order issued by a court pursuant to this section shall include written findings of fact and the reasons for such order. Where the court has denied the petition for resentencing, such order shall be entered and the petitioner shall retain their right to appeal as outlined in subdivision thirteen of this section and pursuant to section 440.20 of this article.

12. Resentencing. Where the court has granted the petition for resentencing the person who is resentenced pursuant to this section shall be given credit for time served on the original sentence. If the new sentence is an indeterminate sentence, it shall not be greater than the initial sentence, and if the new sentence is a determinate sentence, the term of imprisonment shall not be greater than the minimum term of the initial sentence.

13. Appeal as right. An appeal may be taken as of right in accordance with applicable provisions of this chapter:

(a) from an order denying resentencing; or

(b) from a new sentence imposed under this provision and may be based on the grounds that: (i) the term of the new sentence is harsh or excessive; or (ii) that the term of the new sentence is unauthorized as a matter of law. An appeal in accordance with the applicable provisions of this chapter may also be taken as of right by the applicant from an order specifying and informing such applicant of the term of the determinate sentence the court would impose upon resentencing on the ground that the term of the proposed sentence is harsh or excessive; upon remand to the sentencing court following such appeal the applicant shall be given an opportunity to withdraw an application for resentencing before any resentence is imposed. The applicant may request that the court assign such applicant an attorney for the preparation of and proceedings on any appeals regarding such applicant's application for resentencing pursuant to this section. The attorney shall be assigned in accordance with the provisions of subdivision one of section seven hundred seventeen and subdivision four of section seven

hundred twenty-two of the county law and the related provisions of article eighteen-a of such law.

§ 4. No later than thirty days after the effective date of this section, the division of criminal justice services shall issue a report to the chairs of the senate and assembly judiciary committees and to the chief administrative judge for the office of court administration which shall include, but need not be limited to: (a) The total number of people as well as the individual names and current locations of people currently incarcerated for a conviction under former subdivision 3 of section 125.25 of the penal law in New York state; and (b) the age, race, and gender breakdowns of such convictions.

§ 5. The office of court administration shall, within sixty days of the effective date of this section, identify all individuals currently under the custody or supervision of the department of corrections and community supervision who are serving a sentence pursuant to former subdivision three of section 125.25 of the penal law. The office of court administration shall notify all such individuals about this chapter and their potential eligibility to apply for vacatur and resentencing as required by subdivision six of section 440.48 of the criminal procedure law, as added by section three of this act. This notice shall include instructions for submitting an application and requesting counsel as provided in paragraph (g) of subdivision three and subdivision nine of section 440.48 of the criminal procedure law.

§ 6. (a) The clerk of the court, upon determination of an application filed pursuant to section 440.48 of the criminal procedure law, as added by section three of this act, shall report the following information to the office of court administration which shall be made available to the public:

(i) the name, department identification number, and race of each incarcerated individual who has been denied or granted resentencing;

(ii) how many years of imprisonment each incarcerated individual served at the time of the application;

(iii) any new sentence, if applicable;

(iv) the county and the name of the judge deciding the application; and

(v) whether the prosecutor consented, opposed or took no position on the application.

(b) The office of court administration shall provide an annual collective report containing the information received from the clerks of the court pursuant to paragraph (a) of this subdivision to the governor and legislature. The office of court administration shall not be required to provide such report where there are no applications pending for vacatur or resentences for a given year.

§ 7. This act shall take effect immediately; provided, however, section three of this act shall take effect on the sixtieth day after it shall have become a law.