S T A T E O F N E W Y O R K

4520--A

Cal. No. 141

2015-2016 Regular Sessions

I N S E N A T E

March 26, 2015

Introduced by Sens. CROCI, BOYLE, DeFRANCISCO, FUNKE, GALLIVAN, GOLDEN, LAVALLE, MARCHIONE, NOZZOLIO, RANZENHOFER, RITCHIE, SERINO, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to murder in the first degree

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 10.00 of the penal law is amended by adding a new subdivision 22 to read as follows:

22. "MEMBER OF THE MILITARY OR RESERVES" MEANS (A) A MEMBER OF THE UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST GUARD, ARMY NATIONAL GUARD, AIR NATIONAL GUARD AND/OR RESERVES THEREOF OR (B) A MEMBER OF THE NEW YORK GUARD OR THE NEW YORK NAVAL MILITIA.

S 2. Section 125.27 of the penal law, as added by chapter 367 of the laws of 1974, subdivision 1 as amended by chapter 1 of the laws of 1995, subparagraph (ii-a) of paragraph (a) of subdivision 1 as added by chapter 1 of the laws of 2013, subparagraph (vii) of paragraph (a) of subdivision 1 as amended by chapter 264 of the laws of 2003, subparagraph (xii) of paragraph (a) of subdivision 1 as amended and subparagraph (xiii) of paragraph (a) of subdivision 1 as added by chapter 300 of the laws of 2001, is amended to read as follows:

S 125.27 Murder in the first degree.

A person is guilty of murder in the first degree when:

1. With intent to cause the death of another person, he OR SHE causes the death of such person or of a third person; and

(a) Either:

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

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(i) the intended victim was a police officer as defined in subdivision [34] THIRTY-FOUR of section 1.20 of the criminal procedure law who was at the time of the killing engaged in the course of performing his OR HER official duties, and the defendant knew or reasonably should have known that the intended victim was a police officer; or

(ii) the intended victim was 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 who was at the time of the killing engaged in the course of performing his OR HER official duties, and the defendant knew or reasonably should have known that the intended victim was such a uniformed court officer, parole officer, probation officer, or employee of the division for youth; or

(ii-a) the intended victim was 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 activities and was engaged in such activities at the time of killing and the defendant knew or reasonably should have known that the intended victim was such firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse; or

(iii) the intended victim was 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 correction law, who was at the time of the killing engaged in the course of performing his OR HER official duties, and the defendant knew or reasonably should have known that the intended victim was an employee of a state correctional institution or a local correctional facility; or

(iv) at the time of the commission of the killing, the defendant was confined in a state correctional institution or was otherwise in custody upon a sentence for the term of his OR HER natural life, or upon a sentence commuted to one of natural life, or upon a sentence for an indeterminate term the minimum of which was at least fifteen years and the maximum of which was natural life, or at the time of the commission of the killing, the defendant had escaped from such confinement or custody while serving such a sentence and had not yet been returned to such confinement or custody; or

(v) the intended victim was a witness to a crime committed on a prior occasion and the death was caused for the purpose of preventing the intended victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced, or the intended victim had previously testified in a criminal action or proceeding and the killing was committed for the purpose of exacting retribution for such prior testimony, or the intended victim was an immediate family member of a witness to a crime committed on a prior occasion and the killing was committed for the purpose of preventing or influencing the testimony of such witness, or the intended victim was an immediate family member of a witness who had previously testified in a criminal action or proceeding and the killing was committed for the purpose of exacting retribution upon such witness for such prior testimony. As used in this subparagraph "immediate family member" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild or grandchild; or

(vi) the defendant committed the killing or procured commission of the killing pursuant to an agreement with a person other than the intended victim to commit the same for the receipt, or in expectation of the

receipt, of anything of pecuniary value from a party to the agreement or from a person other than the intended victim acting at the direction of a party to such agreement; or

(vii) the victim was killed while the defendant was in the course of committing or attempting to commit and in furtherance of robbery, burglary in the first degree or second degree, kidnapping in the first degree, arson in the first degree or second degree, rape in the first degree, criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse in the first degree or escape in the first degree, or in the course of and furtherance of immediate flight after committing or attempting to commit any such crime or in the course of and furtherance of immediate flight after attempting to commit the crime of murder in the second degree; provided however, the victim is not a participant in one of the aforementioned crimes and, provided further that, unless the defendant's criminal liability under this subparagraph is based upon the defendant having commanded another person to cause the death of the victim or intended victim pursuant to section 20.00 of this chapter, this subparagraph shall not apply where the defendant's criminal liability is based upon the conduct of another pursuant to section 20.00 of this chapter; or

(viii) as part of the same criminal transaction, the defendant, with intent to cause serious physical injury to or the death of an additional person or persons, causes the death of an additional person or persons; provided, however, the victim is not a participant in the criminal transaction; or

(ix) prior to committing the killing, the defendant had been convicted of murder as defined in this section or section 125.25 of this article, or had been convicted in another jurisdiction of an offense which, if committed in this state, would constitute a violation of either of such sections; or

(x) the defendant acted in an especially cruel and wanton manner pursuant to a course of conduct intended to inflict and inflicting torture upon the victim prior to the victim's death. As used in this subparagraph, "torture" means the intentional and depraved infliction of extreme physical pain; "depraved" means the defendant relished the infliction of extreme physical pain upon the victim evidencing debasement or perversion or that the defendant evidenced a sense of pleasure in the infliction of extreme physical pain; or

(xi) the defendant intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twenty-four months when committed in a similar fashion or pursuant to a common scheme or plan; or

(xii) the intended victim was a judge as defined in subdivision twenty-three of section 1.20 of the criminal procedure law and the defendant killed such victim because such victim was, at the time of the killing, a judge; or

(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 INTENDED VICTIM WAS A MEMBER OF THE MILITARY OR RESERVES WHO WAS AT THE TIME OF THE KILLING ENGAGED IN THE COURSE OF PERFORMING HIS OR HER OFFICIAL DUTIES, AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE INTENDED VICTIM WAS A MEMBER OF THE NEW YORK GUARD OR THE NEW YORK NAVAL MILITIA; AND

(b) The defendant was more than eighteen years old at the time of the commission of the crime.

2. In any prosecution under subdivision one, it is an affirmative defense that:

(a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime except murder in the second degree; or

(b) The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or any other crime except murder in the second degree.

Murder in the first degree is a class A-I felony.

S 3. This act shall take effect immediately.