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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. KOON, HOOPER, ORTIZ -- Multi-Sponsored by -- M. of A. ABBATE, COLTON, DINOWITZ, GALEF, P. RIVERA, ROBINSON, SCHIMMINGER, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the presence of a victim's photograph at trial

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

Section 1. The criminal procedure law is amended by adding two new sections 260.40 and 320.30 to read as follows:

S 260.40 JURY TRIAL; DISPLAY OF PHOTOGRAPH OF DECEASED VICTIM IN CERTAIN HOMICIDE TRIALS.

IN ANY JURY TRIAL OF A DEFENDANT CHARGED WITH MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF THE PENAL LAW, AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, MURDER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.25 OF THE PENAL LAW, AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.22 OF THE PENAL LAW, AGGRAVATED MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.21 OF THE PENAL LAW, MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20 OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15 OF THE PENAL LAW, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE PENAL LAW, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION 125.11 OF THE PENAL LAW, OR CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION 125.10 OF THE PENAL LAW, THE PEOPLE MAY SHOW OR DISPLAY A PHOTOGRAPH OF THE DECEASED VICTIM TO THE JURY DURING THE PEOPLE'S OPENING ADDRESS AND DURING SUMMATION; PROVIDED, HOWEVER, THAT THE PHOTOGRAPH IS A FAIR AND ACCURATE REPRESENTATION OF THE VICTIM, IS NOT INTRINSICALLY INFLAMMATORY IN NATURE, AND IS NOT IN EXCESS OF EIGHT BY TEN INCHES IN SIZE.

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

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S 320.30 NON-JURY TRIAL; DISPLAY OF A PHOTOGRAPH OF DECEASED VICTIM IN CERTAIN HOMICIDE TRIALS.

IN ANY NON-JURY TRIAL OF A DEFENDANT CHARGED WITH MURDER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.27 OF THE PENAL LAW, AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, MURDER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.25 OF THE PENAL LAW, AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.22 OF THE PENAL LAW, AGGRAVATED MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.21 OF THE PENAL LAW, MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20 OF THE PENAL LAW, MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15 OF THE PENAL LAW, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE PENAL LAW, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION 125.11 OF THE PENAL LAW, OR CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION 125.10 OF THE PENAL LAW, THE PEOPLE MAY SHOW OR DISPLAY A PHOTOGRAPH OF THE DECEASED VICTIM TO THE COURT DURING THE PEOPLE'S OPENING ADDRESS AND DURING SUMMATION; PROVIDED, HOWEVER, THAT THE PHOTOGRAPH IS A FAIR AND ACCURATE REPRESENTATION OF THE VICTIM, IS NOT INTRINSICALLY INFLAMMATORY IN NATURE, AND IS NOT IN EXCESS OF EIGHT BY TEN INCHES IN SIZE.

S 2. This act shall take effect immediately.