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

4282

2009-2010 Regular Sessions

I N S E N A T E

April 21, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to expanding the number of a victim's family members who may speak at the sentencing of a defendant and permitting the showing of a photograph of a deceased victim during certain portions of certain homicide trials

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

Section 1. Subparagraph 2 of paragraph (a) of subdivision 2 of section 380.50 of the criminal procedure law, as separately amended by chapters 173 and 198 of the laws of 1996, is amended to read as follows:

(2) if such victim is unable or unwilling to express himself or herself before the court or a person so mentally or physically disabled as to make it impracticable to appear in court in person or the victim is deceased, [a member] THEN MEMBERS of the family of such victim INCLUDING THE SPOUSE, PARENTS, GRANDPARENTS, CHILDREN, GRANDCHILDREN, SIBLINGS, AUNTS AND UNCLES, or the legal guardian or representative of the legal guardian of the victim where such guardian or representative has personal knowledge of and a relationship with the victim, unless the court finds that it would be inappropriate for such person to make a statement on behalf of the victim. FOR THE PURPOSES OF THIS SUBPARAGRAPH, THE TERM SPOUSE SHALL ALSO INCLUDE A DOMESTIC PARTNER. THE TERM "DOMESTIC PARTNER" MEANS A PERSON WHO RESIDED WITH THE VICTIM AND WHO CAN PROVE EMOTIONAL AND FINANCIAL COMMITMENT, AND INTERDEPENDENCE BETWEEN SUCH PERSON AND THE VICTIM.

S 2. 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, MURDER IN THE SECOND DEGREE AS

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

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DEFINED IN SECTION 125.25, AGGRAVATED MURDER AS DEFINED IN SECTION 125.26, MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20, MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15, AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.22, AGGRAVATED MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.21, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12, AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION 125.11, 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 INCHES BY TEN INCHES IN SIZE.

S 320.30 NON-JURY TRIAL; DISPLAY OF 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, MURDER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.25, AGGRAVATED MURDER AS DEFINED IN SECTION 125.26, MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20, MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15, AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.22, AGGRAVATED MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.21, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12, AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION 125.11, 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 INCHES BY TEN INCHES IN SIZE.

S 3. This act shall take effect immediately.