

6091

2009-2010 Regular Sessions

I N S E N A T E

July 15, 2009

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

AN ACT to amend the penal law, in relation to the crime of aggravated murder involving a child

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

1 Section 1. Paragraph (b) of subdivision 1 and the opening paragraph of
2 subdivision 3 of section 125.26 of the penal law, as added by chapter
3 765 of the laws of 2005, are amended, subdivision 2 is renumbered subdivision 3 and a new subdivision 2 is added to read as follows:

4 (b) The defendant was more than eighteen years old at the time of the
5 commission of the crime[.]; OR

6 2. (A) WITH INTENT TO CAUSE THE DEATH OF A PERSON LESS THAN FOURTEEN
7 YEARS OLD, HE OR SHE CAUSES THE DEATH OF SUCH PERSON, AND THE DEFENDANT
8 ACTED IN AN ESPECIALLY CRUEL AND WANTON MANNER PURSUANT TO A COURSE OF
9 CONDUCT INTENDED TO INFLICT AND INFLECTING TORTURE UPON THE VICTIM PRIOR
10 TO THE VICTIM'S DEATH. AS USED IN THIS SUBDIVISION, "TORTURE" MEANS THE
11 INTENTIONAL AND DEPRAVED INFLICTION OF EXTREME PHYSICAL PAIN THAT IS
12 SEPARATE AND APART FROM THE PAIN WHICH OTHERWISE WOULD HAVE BEEN ASSOCIATED WITH SUCH CAUSE OF DEATH; AND

13 (B) THE DEFENDANT WAS MORE THAN EIGHTEEN YEARS OLD AT THE TIME OF THE
14 COMMISSION OF THE CRIME.

15 In any prosecution under subdivision one OR TWO of this section, it is
16 an affirmative defense that:

17 S 2. Subdivision 5 of section 70.00 of the penal law, as amended by
18 chapter 765 of the laws of 2005, is amended to read as follows:

19 5. Life imprisonment without parole. Notwithstanding any other
20 provision of law, a defendant sentenced to life imprisonment without
21 parole shall not be or become eligible for parole or conditional
22 release. For purposes of commitment and custody, other than parole and
23 conditional release, such sentence shall be deemed to be an indetermi-
24 conditional release, such sentence shall be deemed to be an indetermi-
25 conditional release, such sentence shall be deemed to be an indetermi-

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

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1 nate sentence. A defendant may be sentenced to life imprisonment with-
2 out parole upon conviction for the crime of murder in the first degree
3 as defined in section 125.27 of this chapter and in accordance with the
4 procedures provided by law for imposing a sentence for such crime. A
5 defendant must be sentenced to life imprisonment without parole upon
6 conviction for the crime of terrorism as defined in section 490.25 of
7 this chapter, where the specified offense the defendant committed is a
8 class A-I felony; the crime of criminal possession of a chemical weapon
9 or biological weapon in the first degree as defined in section 490.45 of
10 this chapter; or the crime of criminal use of a chemical weapon or
11 biological weapon in the first degree as defined in section 490.55 of
12 this chapter; provided, however, that nothing in this subdivision shall
13 preclude or prevent a sentence of death when the defendant is also
14 convicted of the crime of murder in the first degree as defined in
15 section 125.27 of this chapter. A defendant must be sentenced to life
16 imprisonment without parole upon conviction for the crime of murder in
17 the second degree as defined in subdivision five of section 125.25 of
18 this chapter or for the crime of aggravated murder as defined in SUBDI-
19 VISION ONE OF section 125.26 of this chapter. A DEFENDANT MAY BE
20 SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE UPON CONVICTION FOR THE
21 CRIME OF AGGRAVATED MURDER AS DEFINED IN SUBDIVISION TWO OF SECTION
22 125.26 OF THIS CHAPTER.

23 S 3. Section 60.06 of the penal law, as amended by chapter 765 of the
24 laws of 2005, the section heading as amended by chapter 93 of the laws
25 of 2006, is amended to read as follows:

26 S 60.06 Authorized disposition; murder in the first degree offenders;
27 aggravated murder offenders; certain murder in the second
28 degree offenders; certain terrorism offenders; criminal
29 possession of a chemical weapon or biological weapon offen-
30 ders; criminal use of a chemical weapon or biological weapon
31 offenders.

32 When a defendant is convicted of murder in the first degree as defined
33 in section 125.27 of this chapter, the court shall, in accordance with
34 the provisions of section 400.27 of the criminal procedure law, sentence
35 the defendant to death, to life imprisonment without parole in accord-
36 ance with subdivision five of section 70.00 of this title, or to a term
37 of imprisonment for a class A-I felony other than a sentence of life
38 imprisonment without parole, in accordance with subdivisions one through
39 three of section 70.00 of this title. When a person is convicted of
40 murder in the second degree as defined in subdivision five of section
41 125.25 of this chapter or of the crime of aggravated murder as defined
42 in SUBDIVISION ONE OF section 125.26 of this chapter, the court shall
43 sentence the defendant to life imprisonment without parole in accordance
44 with subdivision five of section 70.00 of this title. When a defendant
45 is convicted of the crime of terrorism as defined in section 490.25 of
46 this chapter, and the specified offense the defendant committed is a
47 class A-I felony offense, or when a defendant is convicted of the crime
48 of criminal possession of a chemical weapon or biological weapon in the
49 first degree as defined in section 490.45 of this chapter, or when a
50 defendant is convicted of the crime of criminal use of a chemical weapon
51 or biological weapon in the first degree as defined in section 490.55 of
52 this chapter, the court shall sentence the defendant to life imprison-
53 ment without parole in accordance with subdivision five of section 70.00
54 of this title; provided, however, that nothing in this section shall
55 preclude or prevent a sentence of death when the defendant is also
56 convicted of murder in the first degree as defined in section 125.27 of

1 this chapter. WHEN A DEFENDANT IS CONVICTED OF AGGRAVATED MURDER AS
2 DEFINED IN SUBDIVISION TWO OF SECTION 125.26 OF THIS CHAPTER, THE COURT
3 SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT WITHOUT PAROLE OR TO A
4 TERM OF IMPRISONMENT FOR A CLASS A-I FELONY OTHER THAN A SENTENCE OF
5 LIFE IMPRISONMENT WITHOUT PAROLE, IN ACCORDANCE WITH SUBDIVISIONS ONE
6 THROUGH THREE OF SECTION 70.00 OF THIS TITLE.

7 S 4. This act shall take effect immediately.