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

S. 6198 A. 9160

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

September 30, 2009

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

IN ASSEMBLY -- Introduced by M. of A. CRESPO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the crime of aggravated murder involving certain business owners and their employees

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

Section 1. Paragraph (b) of subdivision 1 and the opening paragraph of subdivision 2 of section 125.26 of the penal law, as added by chapter 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:

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

2. WITH INTENT TO CAUSE THE DEATH OF THE OWNER OF A GROCERY STORE, BODEGA, TAXI CAB OR LIVERY CAB, OR HIS OR HER EMPLOYEES, INCLUDING DRIVERS, WHILE SUCH PERSON IS ACTING IN THE NORMAL COURSE OF HIS OR HER EMPLOYMENT, HE OR SHE CAUSES THE DEATH OF SUCH PERSON.

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

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

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the

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

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procedures provided by law for imposing a sentence for such crime. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in SUBDIVISION ONE OF section 125.26 of this chapter. A DEFENDANT MAY BE SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE UPON CONVICTION FOR THE CRIME OF AGGRAVATED MURDER AS DEFINED IN SUBDIVISION TWO OF SECTION 125.26 OF THIS CHAPTER.

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

S 60.06 Authorized disposition; murder in the first degree offenders; aggravated murder offenders; certain murder in the second degree offenders; certain terrorism offenders; criminal possession of a chemical weapon or biological weapon offenders; criminal use of a chemical weapon or biological weapon offenders.

When a defendant is convicted of murder in the first degree as defined in section 125.27 of this chapter, the court shall, in accordance with the provisions of section 400.27 of the criminal procedure law, sentence the defendant to death, to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title, or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, in accordance with subdivisions one through three of section 70.00 of this title. When a person is convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or of the crime of aggravated murder as defined in SUBDIVISION ONE OF section 125.26 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title. When a defendant is convicted of the crime of terrorism as defined in section 490.25 of this chapter, and the specified offense the defendant committed is a class A-I felony offense, or when a defendant is convicted of the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter, or when a defendant is convicted of the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title; provided, however, that nothing in this section shall preclude or prevent a sentence of death when the defendant is also convicted of murder in the first degree as defined in section 125.27 of this chapter. WHEN A DEFENDANT IS CONVICTED OF AGGRAVATED MURDER AS DEFINED IN SUBDIVISION TWO OF SECTION 125.26 OF THIS CHAPTER, THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT WITHOUT PAROLE OR TO A

TERM OF IMPRISONMENT FOR A CLASS A-I FELONY OTHER THAN A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE, IN ACCORDANCE WITH SUBDIVISIONS ONE THROUGH THREE OF SECTION 70.00 OF THIS TITLE.

S 4. This act shall take effect immediately.