

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

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

AN ACT to amend the penal law, in relation to enacting Nixzmary's law

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

1 Section 1. This act shall be known and may be cited as "Nixzmary's
2 Law".
3 S 2. Legislative findings. In January, 2006, an angelic seven year
4 old girl was brutally beaten; a beating that ultimately led to her
5 untimely passing. The legislature finds that the law currently does not
6 provide a fitting punishment for these kinds of horrific acts. The
7 legislature therefore determines that it is necessary to ensure that any
8 person who inflicts such pain and agony upon a child as to ultimately
9 cause the death of the child be punished severely for his or her
10 actions. Therefore, the legislature intends to include such death of a
11 child within the parameters of murder in the first degree.
12 S 3. Section 125.27 of the penal law, as added by chapter 367 of the
13 laws of 1974, subdivision 1 as amended by chapter 1 of the laws of 1995,
14 subparagraph (vii) of paragraph (a) of subdivision 1 as amended by chap-
15 ter 264 of the laws of 2003, subparagraph (xii) of paragraph (a) of
16 subdivision 1 as amended and subparagraph (xiii) of paragraph (a) of
17 subdivision 1 as added by chapter 300 of the laws of 2001, is amended to
18 read as follows:
19 S 125.27 Murder in the first degree.
20 A person is guilty of murder in the first degree when HE OR SHE
21 EITHER:
22 1. With intent to cause the death of another person, [he] causes the
23 death of such person or of a third person; and
24 (a) Either:
25 (i) the intended victim was a police officer as defined in subdivision
26 34 of section 1.20 of the criminal procedure law who was at the time of

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

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1 the killing engaged in the course of performing his OR HER official
2 duties, and the defendant knew or reasonably should have known that the
3 intended victim was a police officer; or

4 (ii) the intended victim was a peace officer as defined in paragraph a
5 of subdivision twenty-one, subdivision twenty-three, twenty-four or
6 sixty-two (employees of the division for youth) of section 2.10 of the
7 criminal procedure law who was at the time of the killing engaged in the
8 course of performing his OR HER official duties, and the defendant knew
9 or reasonably should have known that the intended victim was such a
10 uniformed court officer, parole officer, probation officer, or employee
11 of the division for youth; or

12 (iii) the intended victim was an employee of a state correctional
13 institution or was an employee of a local correctional facility as
14 defined in subdivision two of section forty of the correction law, who
15 was at the time of the killing engaged in the course of performing his
16 OR HER official duties, and the defendant knew or reasonably should have
17 known that the intended victim was an employee of a state correctional
18 institution or a local correctional facility; or

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

28 (v) the intended victim was a witness to a crime committed on a prior
29 occasion and the death was caused for the purpose of preventing the
30 intended victim's testimony in any criminal action or proceeding whether
31 or not such action or proceeding had been commenced, or the intended
32 victim had previously testified in a criminal action or proceeding and
33 the killing was committed for the purpose of exacting retribution for
34 such prior testimony, or the intended victim was an immediate family
35 member of a witness to a crime committed on a prior occasion and the
36 killing was committed for the purpose of preventing or influencing the
37 testimony of such witness, or the intended victim was an immediate fami-
38 ly member of a witness who had previously testified in a criminal action
39 or proceeding and the killing was committed for the purpose of exacting
40 retribution upon such witness for such prior testimony. As used in this
41 subparagraph "immediate family member" means a husband, wife, father,
42 mother, daughter, son, brother, sister, stepparent, grandparent, step-
43 child or grandchild; or

44 (vi) the defendant committed the killing or procured commission of the
45 killing pursuant to an agreement with a person other than the intended
46 victim to commit the same for the receipt, or in expectation of the
47 receipt, of anything of pecuniary value from a party to the agreement or
48 from a person other than the intended victim acting at the direction of
49 a party to such agreement; or

50 (vii) the victim was killed while the defendant was in the course of
51 committing or attempting to commit and in furtherance of robbery,
52 burglary in the first degree or second degree, kidnapping in the first
53 degree, arson in the first degree or second degree, rape in the first
54 degree, criminal sexual act in the first degree, sexual abuse in the
55 first degree, aggravated sexual abuse in the first degree or escape in
56 the first degree, or in the course of and furtherance of immediate

1 flight after committing or attempting to commit any such crime or in the
2 course of and furtherance of immediate flight after attempting to commit
3 the crime of murder in the second degree; provided however, the victim
4 is not a participant in one of the aforementioned crimes and, provided
5 further that, unless the defendant's criminal liability under this
6 subparagraph is based upon the defendant having commanded another person
7 to cause the death of the victim or intended victim pursuant to section
8 20.00 of this chapter, this subparagraph shall not apply where the
9 defendant's criminal liability is based upon the conduct of another
10 pursuant to section 20.00 of this chapter; or

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

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

21 (x) the defendant acted in an especially cruel and wanton manner
22 pursuant to a course of conduct intended to inflict and inflicting
23 torture upon the victim prior to the victim's death. As used in this
24 subparagraph, "torture" means the intentional [and depraved] infliction
25 of extreme physical pain; ["depraved" means the defendant relished the
26 infliction of extreme physical pain upon the victim evidencing debase-
27 ment or perversion or that the defendant evidenced a sense of pleasure
28 in the infliction of extreme physical pain;] or

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

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

37 (xiii) the victim was killed in furtherance of an act of terrorism, as
38 defined in paragraph (b) of subdivision one of section 490.05 of this
39 chapter; and

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

42 1-A. WITH INTENT TO CAUSE PHYSICAL HARM TO A CHILD ELEVEN YEARS OLD OR
43 LESS, THE PERSON:

44 A. ACTS IN AN ESPECIALLY CRUEL AND WANTON MANNER PURSUANT TO A COURSE
45 OF CONDUCT INTENDED TO INFLICT ENDURING HARM ON THE CHILD,

46 B. DOES INFLICT SUCH HARM UPON THE CHILD, AND

47 C. SUCH HARM CAUSES OR LEADS TO THE DEATH OF THE CHILD.

48 2. In any prosecution under subdivision one OR ONE-A OF THIS SECTION,
49 it is an affirmative defense that:

50 (a) The defendant acted under the influence of extreme emotional
51 disturbance for which there was a reasonable explanation or excuse, the
52 reasonableness of which is to be determined from the viewpoint of a
53 person in the defendant's situation under the circumstances as the
54 defendant believed them to be. Nothing contained in this paragraph shall
55 constitute a defense to a prosecution for, or preclude a conviction of,

1 manslaughter in the first degree or any other crime except murder in the
2 second degree; or

3 (b) The defendant's conduct consisted of causing or aiding, without
4 the use of duress or deception, another person to commit suicide. Noth-
5 ing contained in this paragraph shall constitute a defense to a prose-
6 cution for, or preclude a conviction of, manslaughter in the second
7 degree or any other crime except murder in the second degree.

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

9 S 4. Subdivision 5 of section 70.00 of the penal law, as amended by
10 chapter 765 of the laws of 2005, is amended to read as follows:

11 5. Life imprisonment without parole. Notwithstanding any other
12 provision of law, a defendant sentenced to life imprisonment without
13 parole shall not be or become eligible for parole or conditional
14 release. For purposes of commitment and custody, other than parole and
15 conditional release, such sentence shall be deemed to be an indetermi-
16 nate sentence. A defendant may be sentenced to life imprisonment with-
17 out parole upon conviction for the crime of murder in the first degree
18 as defined in section 125.27 of this chapter and in accordance with the
19 procedures provided by law for imposing a sentence for such crime. A
20 defendant must be sentenced to life imprisonment without parole upon
21 conviction for the crime of terrorism as defined in section 490.25 of
22 this chapter, where the specified offense the defendant committed is a
23 class A-I felony; the crime of criminal possession of a chemical weapon
24 or biological weapon in the first degree as defined in section 490.45 of
25 this chapter; or the crime of criminal use of a chemical weapon or
26 biological weapon in the first degree as defined in section 490.55 of
27 this chapter; provided, however, that nothing in this subdivision shall
28 preclude or prevent a sentence of death when the defendant is also
29 convicted of the crime of murder in the first degree as defined in
30 section 125.27 of this chapter. A defendant must be sentenced to life
31 imprisonment without parole upon conviction for the crime of murder in
32 the second degree as defined in subdivision five of section 125.25 of
33 this chapter [or], for the crime of aggravated murder as defined in
34 section 125.26 of this chapter, OR FOR THE CRIME OF MURDER IN THE FIRST
35 DEGREE PURSUANT TO SUBDIVISION ONE-A OF SECTION 125.27 OF THIS CHAPTER.

36 S 5. This act shall take effect immediately.