

7254

2009-2010 Regular Sessions

I N   A S S E M B L Y

March 26, 2009

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Introduced by M. of A. JOHN, KOON -- Multi-Sponsored by -- M. of A.  
McDONOUGH -- read once and referred 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:

1     Section 1. Subparagraph 2 of paragraph (a) of subdivision 2 of section  
2     380.50 of the criminal procedure law, as separately amended by chapters  
3     173 and 198 of the laws of 1996, is amended to read as follows:  
4     (2) if such victim is unable or unwilling to express himself or  
5     herself before the court or a person so mentally or physically disabled  
6     as to make it impracticable to appear in court in person or the victim  
7     is deceased, [a member] THEN MEMBERS of the family of such victim  
8     INCLUDING THE SPOUSE, PARENTS, GRANDPARENTS, CHILDREN, GRANDCHILDREN,  
9     SIBLINGS, AUNTS AND UNCLES, or the legal guardian or representative of  
10    the legal guardian of the victim where such guardian or representative  
11    has personal knowledge of and a relationship with the victim, unless the  
12    court finds that it would be inappropriate for such person to make a  
13    statement on behalf of the victim. FOR THE PURPOSES OF THIS SUBPARA-  
14    GRAPH, THE TERM SPOUSE SHALL ALSO INCLUDE A DOMESTIC PARTNER. THE TERM  
15    "DOMESTIC PARTNER" MEANS A PERSON WHO RESIDED WITH THE VICTIM AND WHO  
16    CAN PROVE EMOTIONAL AND FINANCIAL COMMITMENT, AND INTERDEPENDENCE  
17    BETWEEN SUCH PERSON AND THE VICTIM.  
18    S 2. The criminal procedure law is amended by adding two new sections  
19    260.40 and 320.30 to read as follows:  
20    S 260.40 JURY TRIAL; DISPLAY OF PHOTOGRAPH OF DECEASED VICTIM IN CERTAIN  
21        HOMICIDE TRIALS.  
22    IN ANY JURY TRIAL OF A DEFENDANT CHARGED WITH MURDER IN THE FIRST  
23    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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1 DEFINED IN SECTION 125.25, AGGRAVATED MURDER AS DEFINED IN SECTION  
2 125.26, MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20,  
3 MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15, AGGRA-  
4 VATED MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.22,  
5 AGGRAVATED MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION  
6 125.21, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION  
7 125.13, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN  
8 SECTION 125.12, AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN  
9 SECTION 125.11, OR CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION  
10 125.10 OF THE PENAL LAW, THE PEOPLE MAY SHOW OR DISPLAY A PHOTOGRAPH OF  
11 THE DECEASED VICTIM TO THE JURY DURING THE PEOPLE'S OPENING ADDRESS AND  
12 DURING SUMMATION; PROVIDED HOWEVER, THAT THE PHOTOGRAPH IS A FAIR AND  
13 ACCURATE REPRESENTATION OF THE VICTIM, IS NOT INTRINSICALLY INFLAMMATORY  
14 IN NATURE, AND IS NOT IN EXCESS OF EIGHT INCHES BY TEN INCHES IN SIZE.  
15 S 320.30 NON-JURY TRIAL; DISPLAY OF PHOTOGRAPH OF DECEASED VICTIM IN  
16 CERTAIN HOMICIDE TRIALS.

17 IN ANY NON-JURY TRIAL OF A DEFENDANT CHARGED WITH MURDER IN THE FIRST  
18 DEGREE AS DEFINED IN SECTION 125.27, MURDER IN THE SECOND DEGREE AS  
19 DEFINED IN SECTION 125.25, AGGRAVATED MURDER AS DEFINED IN SECTION  
20 125.26, MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.20,  
21 MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.15, AGGRA-  
22 VATED MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.22,  
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24 125.21, VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION  
25 125.13, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN  
26 SECTION 125.12, AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN  
27 SECTION 125.11, OR CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN SECTION  
28 125.10 OF THE PENAL LAW, THE PEOPLE MAY SHOW OR DISPLAY A PHOTOGRAPH OF  
29 THE DECEASED VICTIM TO THE COURT DURING THE PEOPLE'S OPENING ADDRESS AND  
30 DURING SUMMATION; PROVIDED HOWEVER, THAT THE PHOTOGRAPH IS A FAIR AND  
31 ACCURATE REPRESENTATION OF THE VICTIM, IS NOT INTRINSICALLY INFLAMMATORY  
32 IN NATURE, AND IS NOT IN EXCESS OF EIGHT INCHES BY TEN INCHES IN SIZE.

33 S 3. This act shall take effect immediately.