

S. 1464

A. 1417

2011-2012 Regular Sessions

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

January 7, 2011

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

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraph (b) of subdivision 2 and the opening paragraph of  
2     subdivision 3 of section 125.26 of the penal law, paragraph (b) of  
3     subdivision 2 as added and the opening paragraph of subdivision 3 as  
4     amended by chapter 482 of the laws of 2009, are amended, subdivision 3  
5     is renumbered subdivision 4 and a new subdivision 3 is added to read as  
6     follows:  
7     (b) The defendant was more than eighteen years old at the time of the  
8     commission of the crime[.]; OR  
9     3. WITH INTENT TO CAUSE THE DEATH OF THE OWNER OF A GROCERY STORE,  
10    BODEGA, TAXI CAB OR LIVERY CAB, OR HIS OR HER EMPLOYEES, INCLUDING DRIV-  
11    ERS, WHILE SUCH PERSON IS ACTING IN THE NORMAL COURSE OF HIS OR HER  
12    EMPLOYMENT, HE OR SHE CAUSES THE DEATH OF SUCH PERSON.  
13    In any prosecution under subdivision one [or], two OR THREE of this  
14    section, it is an affirmative defense that:  
15    S 2. Subdivision 5 of section 70.00 of the penal law, as amended by  
16    chapter 482 of the laws of 2009, is amended to read as follows:  
17    5. Life imprisonment without parole. Notwithstanding any other  
18    provision of law, a defendant sentenced to life imprisonment without  
19    parole shall not be or become eligible for parole or conditional  
20    release. For purposes of commitment and custody, other than parole and  
21    conditional release, such sentence shall be deemed to be an indetermi-  
22    nate sentence. A defendant may be sentenced to life imprisonment with-

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

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1 out parole upon conviction for the crime of murder in the first degree  
2 as defined in section 125.27 of this chapter and in accordance with the  
3 procedures provided by law for imposing a sentence for such crime. A  
4 defendant must be sentenced to life imprisonment without parole upon  
5 conviction for the crime of terrorism as defined in section 490.25 of  
6 this chapter, where the specified offense the defendant committed is a  
7 class A-I felony; the crime of criminal possession of a chemical weapon  
8 or biological weapon in the first degree as defined in section 490.45 of  
9 this chapter; or the crime of criminal use of a chemical weapon or  
10 biological weapon in the first degree as defined in section 490.55 of  
11 this chapter; provided, however, that nothing in this subdivision shall  
12 preclude or prevent a sentence of death when the defendant is also  
13 convicted of the crime of murder in the first degree as defined in  
14 section 125.27 of this chapter. A defendant must be sentenced to life  
15 imprisonment without parole upon conviction for the crime of murder in  
16 the second degree as defined in subdivision five of section 125.25 of  
17 this chapter or for the crime of aggravated murder as defined in subdi-  
18 vision one of section 125.26 of this chapter. A defendant may be  
19 sentenced to life imprisonment without parole upon conviction for the  
20 crime of aggravated murder as defined in subdivision two OR THREE of  
21 section 125.26 of this chapter.

22 S 3. Section 60.06 of the penal law, as amended by chapter 482 of the  
23 laws of 2009, is amended to read as follows:

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

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

1 the court shall sentence the defendant to life imprisonment without  
2 parole or to a term of imprisonment for a class A-I felony other than a  
3 sentence of life imprisonment without parole, in accordance with subdi-  
4 visions one through three of section 70.00 of this title.

5 S 4. This act shall take effect on the first of November next succeed-  
6 ing the date on which it shall have become a law.