

2659

2011-2012 Regular Sessions

I N S E N A T E

January 27, 2011

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 Brown'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  
2 Brown's 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:

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

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- 1 (i) the intended victim was a police officer as defined in subdivision  
2 34 of section 1.20 of the criminal procedure law who was at the time of  
3 the killing engaged in the course of performing his OR HER official  
4 duties, and the defendant knew or reasonably should have known that the  
5 intended victim was a police officer; or
- 6 (ii) the intended victim was a peace officer as defined in paragraph a  
7 of subdivision twenty-one, subdivision twenty-three, twenty-four or  
8 sixty-two (employees of the division for youth) of section 2.10 of the  
9 criminal procedure law who was at the time of the killing engaged in the  
10 course of performing his OR HER official duties, and the defendant knew  
11 or reasonably should have known that the intended victim was such a  
12 uniformed court officer, parole officer, probation officer, or employee  
13 of the division for youth; or
- 14 (iii) the intended victim was an employee of a state correctional  
15 institution or was an employee of a local correctional facility as  
16 defined in subdivision two of section forty of the correction law, who  
17 was at the time of the killing engaged in the course of performing his  
18 OR HER official duties, and the defendant knew or reasonably should have  
19 known that the intended victim was an employee of a state correctional  
20 institution or a local correctional facility; or
- 21 (iv) at the time of the commission of the killing, the defendant was  
22 confined in a state correctional institution or was otherwise in custody  
23 upon a sentence for the term of his OR HER natural life, or upon a  
24 sentence commuted to one of natural life, or upon a sentence for an  
25 indeterminate term the minimum of which was at least fifteen years and  
26 the maximum of which was natural life, or at the time of the commission  
27 of the killing, the defendant had escaped from such confinement or  
28 custody while serving such a sentence and had not yet been returned to  
29 such confinement or custody; or
- 30 (v) the intended victim was a witness to a crime committed on a prior  
31 occasion and the death was caused for the purpose of preventing the  
32 intended victim's testimony in any criminal action or proceeding whether  
33 or not such action or proceeding had been commenced, or the intended  
34 victim had previously testified in a criminal action or proceeding and  
35 the killing was committed for the purpose of exacting retribution for  
36 such prior testimony, or the intended victim was an immediate family  
37 member of a witness to a crime committed on a prior occasion and the  
38 killing was committed for the purpose of preventing or influencing the  
39 testimony of such witness, or the intended victim was an immediate fami-  
40 ly member of a witness who had previously testified in a criminal action  
41 or proceeding and the killing was committed for the purpose of exacting  
42 retribution upon such witness for such prior testimony. As used in this  
43 subparagraph "immediate family member" means a husband, wife, father,  
44 mother, daughter, son, brother, sister, stepparent, grandparent, step-  
45 child or grandchild; or
- 46 (vi) the defendant committed the killing or procured commission of the  
47 killing pursuant to an agreement with a person other than the intended  
48 victim to commit the same for the receipt, or in expectation of the  
49 receipt, of anything of pecuniary value from a party to the agreement or  
50 from a person other than the intended victim acting at the direction of  
51 a party to such agreement; or
- 52 (vii) the victim was killed while the defendant was in the course of  
53 committing or attempting to commit and in furtherance of robbery,  
54 burglary in the first degree or second degree, kidnapping in the first  
55 degree, arson in the first degree or second degree, rape in the first  
56 degree, criminal sexual act in the first degree, sexual abuse in the

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

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

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

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

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

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

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

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

44 1-A. WITH INTENT TO CAUSE PHYSICAL HARM TO A CHILD ELEVEN YEARS OLD OR  
45 LESS, THE PERSON:

46 (A) ACTS IN AN ESPECIALLY CRUEL AND WANTON MANNER PURSUANT TO A COURSE  
47 OF CONDUCT INTENDED TO INFLICT ENDURING HARM ON THE CHILD,

48 (B) DOES INFLICT SUCH HARM UPON THE CHILD, AND

49 (C) SUCH HARM CAUSES OR LEADS TO THE DEATH OF THE CHILD.

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

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

1 constitute a defense to a prosecution for, or preclude a conviction of,  
2 manslaughter in the first degree or any other crime except murder in the  
3 second degree; or

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

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

10 S 4. Subdivision 5 of section 70.00 of the penal law, as amended by  
11 chapter 482 of the laws of 2009, is amended to read as follows:

12 5. Life imprisonment without parole. Notwithstanding any other  
13 provision of law, a defendant sentenced to life imprisonment without  
14 parole shall not be or become eligible for parole or conditional  
15 release. For purposes of commitment and custody, other than parole and  
16 conditional release, such sentence shall be deemed to be an indetermi-  
17 nate sentence. A defendant may be sentenced to life imprisonment with-  
18 out parole upon conviction for the crime of murder in the first degree  
19 as defined in section 125.27 of this chapter and in accordance with the  
20 procedures provided by law for imposing a sentence for such crime. A  
21 defendant must be sentenced to life imprisonment without parole upon  
22 conviction for the crime of terrorism as defined in section 490.25 of  
23 this chapter, where the specified offense the defendant committed is a  
24 class A-I felony; the crime of criminal possession of a chemical weapon  
25 or biological weapon in the first degree as defined in section 490.45 of  
26 this chapter; or the crime of criminal use of a chemical weapon or  
27 biological weapon in the first degree as defined in section 490.55 of  
28 this chapter; provided, however, that nothing in this subdivision shall  
29 preclude or prevent a sentence of death when the defendant is also  
30 convicted of the crime of murder in the first degree as defined in  
31 section 125.27 of this chapter. A defendant must be sentenced to life  
32 imprisonment without parole upon conviction for the crime of murder in  
33 the second degree as defined in subdivision five of section 125.25 of  
34 this chapter [or], for the crime of aggravated murder as defined in  
35 subdivision one of section 125.26 of this chapter, OR FOR THE CRIME OF  
36 MURDER IN THE FIRST DEGREE PURSUANT TO SUBDIVISION ONE-A OF SECTION  
37 125.27 OF THIS CHAPTER. A defendant may be sentenced to life imprison-  
38 ment without parole upon conviction for the crime of aggravated murder  
39 as defined in subdivision two of section 125.26 of this chapter.

40 S 5. This act shall take effect immediately.