

4520--B

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2015-2016 Regular Sessions

I N S E N A T E

March 26, 2015

Introduced by Sens. CROCI, BOYLE, DeFRANCISCO, FUNKE, GALLIVAN, GOLDEN, LAVALLE, MARCHIONE, NOZZOLIO, RANZENHOFER, RITCHIE, SERINO, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to murder in the first degree

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

- 1 Section 1. Section 10.00 of the penal law is amended by adding a new  
2 subdivision 22 to read as follows:  
3 22. "MEMBER OF THE MILITARY OR RESERVES" MEANS (A) A MEMBER OF THE  
4 UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST GUARD, ARMY NATIONAL  
5 GUARD, AIR NATIONAL GUARD AND/OR RESERVES THEREOF OR (B) A MEMBER OF THE  
6 NEW YORK GUARD OR THE NEW YORK NAVAL MILITIA.  
7 S 2. Section 125.27 of the penal law, as added by chapter 367 of the  
8 laws of 1974, subdivision 1 as amended by chapter 1 of the laws of 1995,  
9 subparagraph (ii-a) of paragraph (a) of subdivision 1 as added by chap-  
10 ter 1 of the laws of 2013, subparagraph (vii) of paragraph (a) of subdi-  
11 vision 1 as amended by chapter 264 of the laws of 2003, subparagraph  
12 (xii) of paragraph (a) of subdivision 1 as amended and subparagraph  
13 (xiii) of paragraph (a) of subdivision 1 as added by chapter 300 of the  
14 laws of 2001, is amended to read as follows:  
15 S 125.27 Murder in the first degree.  
16 A person is guilty of murder in the first degree when:  
17 1. With intent to cause the death of another person, he OR SHE causes  
18 the death of such person or of a third person; and  
19 (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] THIRTY-FOUR of section 1.20 of the criminal procedure law who was  
3 at the time of the killing engaged in the course of performing his OR  
4 HER official duties, and the defendant knew or reasonably should have  
5 known that the 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 (ii-a) the intended victim was a firefighter, emergency medical tech-  
15 nician, ambulance driver, paramedic, physician or registered nurse  
16 involved in a first response team, or any other individual who, in the  
17 course of official duties, performs emergency response activities and  
18 was engaged in such activities at the time of killing and the defendant  
19 knew or reasonably should have known that the intended victim was such  
20 firefighter, emergency medical technician, ambulance driver, paramedic,  
21 physician or registered nurse; or
- 22 (iii) the intended victim was an employee of a state correctional  
23 institution or was an employee of a local correctional facility as  
24 defined in subdivision two of section forty of the correction law, who  
25 was at the time of the killing engaged in the course of performing his  
26 OR HER official duties, and the defendant knew or reasonably should have  
27 known that the intended victim was an employee of a state correctional  
28 institution or a local correctional facility; or
- 29 (iv) at the time of the commission of the killing, the defendant was  
30 confined in a state correctional institution or was otherwise in custody  
31 upon a sentence for the term of his OR HER natural life, or upon a  
32 sentence commuted to one of natural life, or upon a sentence for an  
33 indeterminate term the minimum of which was at least fifteen years and  
34 the maximum of which was natural life, or at the time of the commission  
35 of the killing, the defendant had escaped from such confinement or  
36 custody while serving such a sentence and had not yet been returned to  
37 such confinement or custody; or
- 38 (v) the intended victim was a witness to a crime committed on a prior  
39 occasion and the death was caused for the purpose of preventing the  
40 intended victim's testimony in any criminal action or proceeding whether  
41 or not such action or proceeding had been commenced, or the intended  
42 victim had previously testified in a criminal action or proceeding and  
43 the killing was committed for the purpose of exacting retribution for  
44 such prior testimony, or the intended victim was an immediate family  
45 member of a witness to a crime committed on a prior occasion and the  
46 killing was committed for the purpose of preventing or influencing the  
47 testimony of such witness, or the intended victim was an immediate fami-  
48 ly member of a witness who had previously testified in a criminal action  
49 or proceeding and the killing was committed for the purpose of exacting  
50 retribution upon such witness for such prior testimony. As used in this  
51 subparagraph "immediate family member" means a husband, wife, father,  
52 mother, daughter, son, brother, sister, stepparent, grandparent, step-  
53 child or grandchild; or
- 54 (vi) the defendant committed the killing or procured commission of the  
55 killing pursuant to an agreement with a person other than the intended  
56 victim to commit the same for the receipt, or in expectation of the

1 receipt, of anything of pecuniary value from a party to the agreement or  
2 from a person other than the intended victim acting at the direction of  
3 a party to such agreement; or

4 (vii) the victim was killed while the defendant was in the course of  
5 committing or attempting to commit and in furtherance of robbery,  
6 burglary in the first degree or second degree, kidnapping in the first  
7 degree, arson in the first degree or second degree, rape in the first  
8 degree, criminal sexual act in the first degree, sexual abuse in the  
9 first degree, aggravated sexual abuse in the first degree or escape in  
10 the first degree, or in the course of and furtherance of immediate  
11 flight after committing or attempting to commit any such crime or in the  
12 course of and furtherance of immediate flight after attempting to commit  
13 the crime of murder in the second degree; provided however, the victim  
14 is not a participant in one of the aforementioned crimes and, provided  
15 further that, unless the defendant's criminal liability under this  
16 subparagraph is based upon the defendant having commanded another person  
17 to cause the death of the victim or intended victim pursuant to section  
18 20.00 of this chapter, this subparagraph shall not apply where the  
19 defendant's criminal liability is based upon the conduct of another  
20 pursuant to section 20.00 of this chapter; or

21 (viii) as part of the same criminal transaction, the defendant, with  
22 intent to cause serious physical injury to or the death of an additional  
23 person or persons, causes the death of an additional person or persons;  
24 provided, however, the victim is not a participant in the criminal tran-  
25 saction; or

26 (ix) prior to committing the killing, the defendant had been convicted  
27 of murder as defined in this section or section 125.25 of this article,  
28 or had been convicted in another jurisdiction of an offense which, if  
29 committed in this state, would constitute a violation of either of such  
30 sections; or

31 (x) the defendant acted in an especially cruel and wanton manner  
32 pursuant to a course of conduct intended to inflict and inflicting  
33 torture upon the victim prior to the victim's death. As used in this  
34 subparagraph, "torture" means the intentional and depraved infliction of  
35 extreme physical pain; "depraved" means the defendant relished the  
36 infliction of extreme physical pain upon the victim evidencing debase-  
37 ment or perversion or that the defendant evidenced a sense of pleasure  
38 in the infliction of extreme physical pain; or

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

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

47 (xiii) the victim was killed in furtherance of an act of terrorism, as  
48 defined in paragraph (b) of subdivision one of section 490.05 of this  
49 chapter; [and] OR

50 (XIV) THE INTENDED VICTIM WAS A MEMBER OF THE MILITARY OR RESERVES WHO  
51 WAS AT THE TIME OF THE KILLING ENGAGED IN THE COURSE OF PERFORMING HIS  
52 OR HER OFFICIAL DUTIES, AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE  
53 KNOWN THAT THE INTENDED VICTIM WAS A MEMBER OF THE MILITARY OR RESERVES;  
54 AND

55 (b) The defendant was more than eighteen years old at the time of the  
56 commission of the crime.

1 2. In any prosecution under subdivision one, it is an affirmative  
2 defense that:

3 (a) The defendant acted under the influence of extreme emotional  
4 disturbance for which there was a reasonable explanation or excuse, the  
5 reasonableness of which is to be determined from the viewpoint of a  
6 person in the defendant's situation under the circumstances as the  
7 defendant believed them to be. Nothing contained in this paragraph shall  
8 constitute a defense to a prosecution for, or preclude a conviction of,  
9 manslaughter in the first degree or any other crime except murder in the  
10 second degree; or

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

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

17 S 3. This act shall take effect immediately.