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I N A S S E M B L Y

February 4, 2016

Introduced by M. of A. HAWLEY, CROUCH, DUPREY, McDONOUGH, MURRAY, PALUMBO, RAIA -- read once and referred to the Committee on Codes

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. Subdivision 1 of section 125.27 of the penal law, as added
2 by chapter 1 of the laws of 1995, subparagraph (ii-a) of paragraph (a)
3 as added by chapter 1 of the laws of 2013, subparagraph (vii) of para-
4 graph (a) as amended by chapter 264 of the laws of 2003 and subparagraph
5 (xii) of paragraph (a) as amended and subparagraph (xiii) of paragraph
6 (a) as added by chapter 300 of the laws of 2001, is amended and a new
7 subdivision 1-a is added to read as follows:

8 1. A person is guilty of murder in the first degree when[:

9 1. With], WITH intent to cause the death of another person, he causes
10 the death of such person or of a third person; and

11 (a) Either:

12 (i) the intended victim was a police officer as defined in subdivision
13 34 of section 1.20 of the criminal procedure law who was at the time of
14 the killing engaged in the course of performing his official duties, and
15 the defendant knew or reasonably should have known that the intended
16 victim was a police officer; or

17 (ii) the intended victim was a peace officer as defined in paragraph a
18 of subdivision twenty-one, subdivision twenty-three, twenty-four or
19 sixty-two (employees of the division for youth) of section 2.10 of the
20 criminal procedure law who was at the time of the killing engaged in the
21 course of performing his official duties, and the defendant knew or
22 reasonably should have known that the intended victim was such a
23 uniformed court officer, parole officer, probation officer, or employee
24 of the division for youth; or

25 (ii-a) the intended victim was a firefighter, emergency medical tech-
26 nician, ambulance driver, paramedic, physician or registered nurse
27 involved in a first response team, or any other individual who, in the
28 course of official duties, performs emergency response activities and
29 was engaged in such activities at the time of killing and the defendant

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

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1 knew or reasonably should have known that the intended victim was such
2 firefighter, emergency medical technician, ambulance driver, paramedic,
3 physician or registered nurse; or
4 (iii) the intended victim was an employee of a state correctional
5 institution or was an employee of a local correctional facility as
6 defined in subdivision two of section forty of the correction law, who
7 was at the time of the killing engaged in the course of performing his
8 official duties, and the defendant knew or reasonably should have known
9 that the intended victim was an employee of a state correctional insti-
10 tution or a local correctional facility; or
11 (iv) at the time of the commission of the killing, the defendant was
12 confined in a state correctional institution or was otherwise in custody
13 upon a sentence for the term of his natural life, or upon a sentence
14 commuted to one of natural life, or upon a sentence for an indeterminate
15 term the minimum of which was at least fifteen years and the maximum of
16 which was natural life, or at the time of the commission of the killing,
17 the defendant had escaped from such confinement or custody while serving
18 such a sentence and had not yet been returned to such confinement or
19 custody; or
20 (v) the intended victim was a witness to a crime committed on a prior
21 occasion and the death was caused for the purpose of preventing the
22 intended victim's testimony in any criminal action or proceeding whether
23 or not such action or proceeding had been commenced, or the intended
24 victim had previously testified in a criminal action or proceeding and
25 the killing was committed for the purpose of exacting retribution for
26 such prior testimony, or the intended victim was an immediate family
27 member of a witness to a crime committed on a prior occasion and the
28 killing was committed for the purpose of preventing or influencing the
29 testimony of such witness, or the intended victim was an immediate fami-
30 ly member of a witness who had previously testified in a criminal action
31 or proceeding and the killing was committed for the purpose of exacting
32 retribution upon such witness for such prior testimony. As used in this
33 subparagraph "immediate family member" means a husband, wife, father,
34 mother, daughter, son, brother, sister, stepparent, grandparent, step-
35 child or grandchild; or
36 (vi) the defendant committed the killing or procured commission of the
37 killing pursuant to an agreement with a person other than the intended
38 victim to commit the same for the receipt, or in expectation of the
39 receipt, of anything of pecuniary value from a party to the agreement or
40 from a person other than the intended victim acting at the direction of
41 a party to such agreement; or
42 (vii) the victim was killed while the defendant was in the course of
43 committing or attempting to commit and in furtherance of robbery,
44 burglary in the first degree or second degree, kidnapping in the first
45 degree, arson in the first degree or second degree, rape in the first
46 degree, criminal sexual act in the first degree, sexual abuse in the
47 first degree, aggravated sexual abuse in the first degree or escape in
48 the first degree, or in the course of and furtherance of immediate
49 flight after committing or attempting to commit any such crime or in the
50 course of and furtherance of immediate flight after attempting to commit
51 the crime of murder in the second degree; provided however, the victim
52 is not a participant in one of the aforementioned crimes and, provided
53 further that, unless the defendant's criminal liability under this
54 subparagraph is based upon the defendant having commanded another person
55 to cause the death of the victim or intended victim pursuant to section
56 20.00 of this chapter, this subparagraph shall not apply where the

1 defendant's criminal liability is based upon the conduct of another
2 pursuant to section 20.00 of this chapter; or

3 (viii) as part of the same criminal transaction, the defendant, with
4 intent to cause serious physical injury to or the death of an additional
5 person or persons, causes the death of an additional person or persons;
6 provided, however, the victim is not a participant in the criminal tran-
7 saction; or

8 (ix) prior to committing the killing, the defendant had been convicted
9 of murder as defined in this section or section 125.25 of this article,
10 or had been convicted in another jurisdiction of an offense which, if
11 committed in this state, would constitute a violation of either of such
12 sections; or

13 (x) the defendant acted in an especially cruel and wanton manner
14 pursuant to a course of conduct intended to inflict and inflicting
15 torture upon the victim prior to the victim's death. As used in this
16 subparagraph, "torture" means the intentional and depraved infliction of
17 extreme physical pain; "depraved" means the defendant relished the
18 infliction of extreme physical pain upon the victim evidencing debase-
19 ment or perversion or that the defendant evidenced a sense of pleasure
20 in the infliction of extreme physical pain; or

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

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

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

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

34 1-A. A PERSON IS GUILTY OF MURDER IN THE FIRST DEGREE WHEN, ACTING
35 EITHER ALONE OR WITH ONE OR MORE OTHER PERSONS, HE OR SHE COMMITS OR
36 ATTEMPTS TO COMMIT RAPE IN THE FIRST DEGREE AS DEFINED UNDER SECTION
37 130.35 OF THIS TITLE, CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED
38 UNDER SECTION 130.50 OF THIS TITLE, SEXUAL ABUSE IN THE FIRST DEGREE AS
39 DEFINED UNDER SECTION 130.65 OF THIS TITLE, OR IN THE COURSE OF AND
40 FURTHERANCE OF IMMEDIATE FLIGHT AFTER COMMITTING OR ATTEMPTING TO COMMIT
41 ANY SUCH CRIMES, HE OR SHE, OR ANOTHER PARTICIPANT IF THERE BE ANY,
42 CAUSES THE DEATH OF A PERSON OTHER THAN ONE OF THE PARTICIPANTS, AND THE
43 DECEASED PERSON IS FOUND TO HAVE BEEN ADMINISTERED ANY UNLAWFULLY
44 CONTROLLED SUBSTANCE OR ANY PREPARATION, COMPOUND, MIXTURE OR SUBSTANCE
45 THAT REQUIRES A PRESCRIPTION TO OBTAIN AS DEFINED UNDER SECTION 130.90
46 OF THIS TITLE.

47 S 2. This act shall take effect immediately.