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2015-2016 Regular Sessions

I N   S E N A T E

March 26, 2015

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Introduced by Sens. CROCI, BOYLE, LAVALLE, MARCHIONE, RITCHIE, SERINO,  
SEWARD -- 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 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 125.27 of the penal law, as added by chapter 367 of  
2     the laws of 1974, subdivision 1 as amended by chapter 1 of the laws of  
3     1995, subparagraph (ii-a) of paragraph (a) of subdivision 1 as added by  
4     chapter 1 of the laws of 2013, subparagraph (vii) of paragraph (a) of  
5     subdivision 1 as amended by chapter 264 of the laws of 2003, subpara-  
6     graph (xii) of paragraph (a) of subdivision 1 as amended and subpara-  
7     graph (xiii) of paragraph (a) of subdivision 1 as added by chapter 300  
8     of the laws of 2001, is amended to read as follows:  
9     S 125.27 Murder in the first degree.  
10     A person is guilty of murder in the first degree when:  
11     1. With intent to cause the death of another person, he OR SHE causes  
12     the death of such person or of a third person; and  
13     (a) Either:  
14     (i) the intended victim was a police officer as defined in subdivision  
15     [34] THIRTY-FOUR of section 1.20 of the criminal procedure law who was  
16     at the time of the killing engaged in the course of performing his OR  
17     HER official duties, and the defendant knew or reasonably should have  
18     known that the intended victim was a police officer; or  
19     (ii) the intended victim was a peace officer as defined in paragraph a  
20     of subdivision twenty-one, subdivision twenty-three, twenty-four or  
21     sixty-two (employees of the division for youth) of section 2.10 of the  
22     criminal procedure law who was at the time of the killing engaged in the  
23     course of performing his OR HER official duties, and the defendant knew  
24     or reasonably should have known that the intended victim was such a

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

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1 uniformed court officer, parole officer, probation officer, or employee  
2 of the division for youth; or

3 (ii-a) the intended victim was a firefighter, emergency medical tech-  
4 nician, ambulance driver, paramedic, physician or registered nurse  
5 involved in a first response team, or any other individual who, in the  
6 course of official duties, performs emergency response activities and  
7 was engaged in such activities at the time of killing and the defendant  
8 knew or reasonably should have known that the intended victim was such  
9 firefighter, emergency medical technician, ambulance driver, paramedic,  
10 physician or registered nurse; or

11 (iii) the intended victim was an employee of a state correctional  
12 institution or was an employee of a local correctional facility as  
13 defined in subdivision two of section forty of the correction law, who  
14 was at the time of the killing engaged in the course of performing his  
15 OR HER official duties, and the defendant knew or reasonably should have  
16 known that the intended victim was an employee of a state correctional  
17 institution or a local correctional facility; or

18 (iv) at the time of the commission of the killing, the defendant was  
19 confined in a state correctional institution or was otherwise in custody  
20 upon a sentence for the term of his OR HER natural life, or upon a  
21 sentence commuted to one of natural life, or upon a sentence for an  
22 indeterminate term the minimum of which was at least fifteen years and  
23 the maximum of which was natural life, or at the time of the commission  
24 of the killing, the defendant had escaped from such confinement or  
25 custody while serving such a sentence and had not yet been returned to  
26 such confinement or custody; or

27 (v) the intended victim was a witness to a crime committed on a prior  
28 occasion and the death was caused for the purpose of preventing the  
29 intended victim's testimony in any criminal action or proceeding whether  
30 or not such action or proceeding had been commenced, or the intended  
31 victim had previously testified in a criminal action or proceeding and  
32 the killing was committed for the purpose of exacting retribution for  
33 such prior testimony, or the intended victim was an immediate family  
34 member of a witness to a crime committed on a prior occasion and the  
35 killing was committed for the purpose of preventing or influencing the  
36 testimony of such witness, or the intended victim was an immediate fami-  
37 ly member of a witness who had previously testified in a criminal action  
38 or proceeding and the killing was committed for the purpose of exacting  
39 retribution upon such witness for such prior testimony. As used in this  
40 subparagraph "immediate family member" means a husband, wife, father,  
41 mother, daughter, son, brother, sister, stepparent, grandparent, step-  
42 child or grandchild; or

43 (vi) the defendant committed the killing or procured commission of the  
44 killing pursuant to an agreement with a person other than the intended  
45 victim to commit the same for the receipt, or in expectation of the  
46 receipt, of anything of pecuniary value from a party to the agreement or  
47 from a person other than the intended victim acting at the direction of  
48 a party to such agreement; or

49 (vii) the victim was killed while the defendant was in the course of  
50 committing or attempting to commit and in furtherance of robbery,  
51 burglary in the first degree or second degree, kidnapping in the first  
52 degree, arson in the first degree or second degree, rape in the first  
53 degree, criminal sexual act in the first degree, sexual abuse in the  
54 first degree, aggravated sexual abuse in the first degree or escape in  
55 the first degree, or in the course of and furtherance of immediate  
56 flight after committing or attempting to commit any such crime or in the

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

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

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

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

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

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

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

39 (XIV) THE INTENDED VICTIM WAS A MEMBER OF THE NEW YORK GUARD OR THE  
40 NEW YORK NAVAL MILITIA WHO WAS AT THE TIME OF THE KILLING ENGAGED IN THE  
41 COURSE OF PERFORMING HIS OR HER OFFICIAL DUTIES, AND THE DEFENDANT KNEW  
42 OR REASONABLY SHOULD HAVE KNOWN THAT THE INTENDED VICTIM WAS A MEMBER OF  
43 THE NEW YORK GUARD OR THE NEW YORK NAVAL MILITIA; AND

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

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

48 (a) The defendant acted under the influence of extreme emotional  
49 disturbance for which there was a reasonable explanation or excuse, the  
50 reasonableness of which is to be determined from the viewpoint of a  
51 person in the defendant's situation under the circumstances as the  
52 defendant believed them to be. Nothing contained in this paragraph shall  
53 constitute a defense to a prosecution for, or preclude a conviction of,  
54 manslaughter in the first degree or any other crime except murder in the  
55 second degree; or

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

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

7 S 2. This act shall take effect immediately.