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I N   S E N A T E

March 14, 2016
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Introduced by Sens. MARCHIONE, AKSHAR, CROCI, DeFRANCISCO, GALLIVAN,
  RANZENHOFER, SEWARD -- read twice and ordered printed, and when print-
  ed to be committed to the Committee on Codes -- committee discharged,
  bill amended, ordered reprinted as amended and recommitted to said
  committee

AN ACT to amend the penal law and the criminal procedure law, in
  relation to sentences of imprisonment for the offense of murder of a
  pregnant woman

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

 1   Section 1. Subparagraph (xiii) of paragraph (a) of subdivision 1 of
 2 section 125.27 of the penal law, as added by chapter 300 of the laws of
 3 2001, is amended to read as follows:
 4   (xiii) the victim was killed in furtherance of an act of terrorism, as
 5 defined in paragraph (b) of subdivision one of section 490.05 of this
 6 chapter; [and] OR
 7   (XIV) WHEN THE DEFENDANT COMMITS MURDER IN THE SECOND DEGREE AS
 8 DEFINED IN SECTION 125.25 OF THIS ARTICLE AND THE VICTIM WAS PREGNANT
 9 AND THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE VICTIM WAS PREG-
10 NANT; AND
11   S 2. Section 300.10 of the criminal procedure law is amended by adding
12 a new subdivision 3-a to read as follows:
13   3-A. WHERE A DEFENDANT HAS BEEN CHARGED WITH MURDER IN THE FIRST
14 DEGREE PURSUANT TO SUBPARAGRAPH (XIV) OF PARAGRAPH (A) OF SUBDIVISION
15 ONE OF SECTION 125.27 OF THE PENAL LAW, THE COURT MUST, WITHOUT ELABO-
16 RATION, INSTRUCT THE JURY AS FOLLOWS:
17   "UNDER OUR LAW, A DEFENDANT IS GUILTY OF MURDER IN THE FIRST DEGREE
18 WHEN, WITH INTENT TO CAUSE THE DEATH OF ANOTHER PERSON, THE DEFENDANT
19 CAUSES THE DEATH OF SUCH PERSON (OR OF A THIRD PERSON) AND THE VICTIM
20 WAS PREGNANT AT THE TIME OF THE KILLING AND THE DEFENDANT KNEW OR
21 REASONABLY SHOULD HAVE KNOWN THAT THE VICTIM WAS PREGNANT, AND THE
22 DEFENDANT WAS MORE THAN EIGHTEEN YEARS OLD AT THE TIME OF THE COMMISSION
23 OF THE CRIME.

     EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
                     [ ] is old law to be omitted.
                                                        LBD14678-03-6

1 SOME OF THE TERMS USED IN THIS DEFINITION HAVE THEIR OWN SPECIAL MEAN-
2 ING IN OUR LAW. I WILL NOW GIVE YOU THE MEANING OF THE FOLLOWING TERMS:
3 'INTENT,' 'KNEW' AND 'REASONABLY SHOULD HAVE KNOWN'.
4   'INTENT' MEANS CONSCIOUS OBJECTIVE OR PURPOSE. THUS, A PERSON ACTS
5 WITH INTENT TO CAUSE THE DEATH OF ANOTHER PERSON WHEN HIS OR HER
6 CONSCIOUS OBJECTIVE OR PURPOSE IS TO CAUSE THE DEATH OF THAT PERSON.
7   A   PERSON 'KNOWS' THAT HIS OR HER INTENDED VICTIM IS PREGNANT WHEN HE
8 OR SHE IS AWARE THAT SUCH VICTIM IS PREGNANT.
9   A PERSON 'REASONABLY SHOULD KNOW' THAT HIS OR HER INTENDED VICTIM IS
10 PREGNANT IF, IN THE SAME CIRCUMSTANCES, A REASONABLE PERSON IN THE SAME
11 POSITION AND POSSESSING THE SAME KNOWLEDGE, WOULD KNOW THAT SUCH VICTIM
12 IS PREGNANT.
13   IN   ORDER FOR YOU TO FIND THE DEFENDANT GUILTY OF THIS CRIME, THE
14 PEOPLE ARE REQUIRED TO PROVE, FROM ALL THE EVIDENCE IN THE CASE, BEYOND
15 A REASONABLE DOUBT, EACH OF THE FOLLOWING FIVE ELEMENTS:
16   1. THAT ON OR ABOUT (DATE) , IN THE COUNTY OF (COUNTY) , THE DEFEND-
17 ANT, (DEFENDANT'S NAME) , CAUSED THE DEATH OF (ACTUAL VICTIM) ;
18   2. THAT THE DEFENDANT DID SO WITH THE INTENT TO CAUSE THE DEATH OF
19 (INTENDED VICTIM) ;
20   3. THAT, AT THE TIME OF THE KILLING, (ACTUAL VICTIM) WAS PREGNANT;
21   4. THAT, AT THE TIME OF THE KILLING, THE DEFENDANT KNEW OR REASONABLY
22 SHOULD HAVE KNOWN THAT (ACTUAL VICTIM) WAS PREGNANT; AND
23   5. THAT THE DEFENDANT WAS MORE THAN EIGHTEEN YEARS OLD AT THE TIME OF
24 THE COMMISSION OF THE CRIME.
25   THEREFORE, IF YOU FIND THAT THE PEOPLE HAVE PROVEN BEYOND A REASONABLE
26 DOUBT EACH OF THOSE ELEMENTS, YOU MUST FIND THE DEFENDANT GUILTY OF THE
27 CRIME OF MURDER IN THE FIRST DEGREE AS CHARGED IN THE COUNT.
28   ON THE OTHER HAND, IF YOU FIND THAT THE PEOPLE HAVE NOT PROVEN BEYOND
29 A REASONABLE DOUBT ANY ONE OR MORE OF THOSE ELEMENTS, YOU MUST FIND THE
30 DEFENDANT NOT GUILTY OF THE CRIME OF MURDER IN THE FIRST DEGREE AS
31 CHARGED IN THE COUNT."
32   S 3. This act shall take effect immediately.