

STATE OF NEW YORK

527

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. GALLIVAN -- 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. The opening paragraph and subdivision 1 of section 125.27
2 of the penal law, the opening paragraph as added by chapter 367 of the
3 laws of 1974, subdivision 1 as amended by chapter 1 of the laws of 1995,
4 subparagraph (ii-a) of paragraph (a) of subdivision 1 as added by chap-
5 ter 1 of the laws of 2013, subparagraph (vii) of paragraph (a) of subdivi-
6 sion 1 as amended by chapter 264 of the laws of 2003 and subparagraph
7 (xii) of paragraph (a) of subdivision 1 as amended and subparagraph
8 (xiii) of paragraph (a) of subdivision 1 as added by chapter 300 of the
9 laws of 2001, is amended and a new subdivision 1-a is added to read as
10 follows:

11 1. A person is guilty of murder in the first degree when[+
12 ~~1. With~~, with intent to cause the death of another person, he causes
13 the death of such person or of a third person; and

14 (a) Either:

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

20 (ii) the intended victim was a peace officer as defined in paragraph a
21 of subdivision twenty-one, subdivision twenty-three, twenty-four or
22 sixty-two (employees of the division for youth) of section 2.10 of the
23 criminal procedure law who was at the time of the killing engaged in the
24 course of performing his official duties, and the defendant knew or
25 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 official duties, and the defendant knew or reasonably should have known
16 that the intended victim was an employee of a state correctional insti-
17 tution 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 natural life, or upon a sentence
21 commuted to one of natural life, or upon a sentence for an indeterminate
22 term the minimum of which was at least fifteen years and the maximum of
23 which was natural life, or at the time of the commission of the killing,
24 the defendant had escaped from such confinement or custody while serving
25 such a sentence and had not yet been returned to such confinement or
26 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

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

41 1-a. A person is guilty of murder in the first degree when, acting
42 either alone or with one or more other persons, he or she commits or
43 attempts to commit rape in the first degree as defined under section
44 130.35 of this title, criminal sexual act in the first degree as defined
45 under section 130.50 of this title, sexual abuse in the first degree as
46 defined under section 130.65 of this title, or in the course of and
47 furtherance of immediate flight after committing or attempting to commit
48 any such crimes, he or she, or another participant if there be any,
49 causes the death of a person other than one of the participants, and the
50 deceased person is found to have been administered any unlawfully
51 controlled substance or any preparation, compound, mixture or substance
52 that requires a prescription to obtain as defined under section 130.90
53 of this title.

54 § 2. This act shall take effect immediately.