

approximately one dozen aggravating factors are present, including killing a police, probation, parole, court or corrections officer, killing a judge, a witness or a member of a witness's family, or killing while serving a life sentence or while escaping from prison, or while committing other felonies; New York's death penalty law permits capital punishment for murder for contract, serial murder, torture murder, murder by someone who has previously been convicted of murder, murder in the course of a terrorist act, and murders by people with prior serious felonies; and

Whereas, In *People v. LaValle*, decided in June of last year, the New York State Court of Appeals held that portions of the death penalty law are unconstitutional; and

Whereas, Under the death penalty law, during the penalty phase following a death-eligible conviction, the jury was instructed that if deadlocked, the judge would impose a sentence of 20-25 years to life, thereby giving the possibility of parole; and

Whereas, In the 4-3 decision, the Court of Appeals ruled that this instruction provision could unconstitutionally coerce jurors into voting for a death sentence rather than risk a deadlock resulting in possible parole; and

Whereas, The Court did not declare the death penalty unconstitutional, but rather it ruled that the single provision was unconstitutional and must be re-written; and

Whereas, The Court advised the Legislature to correct the defect in the deadlock instruction; and

Whereas, This decision effectively limited the ability of local prosecutors to seek the death penalty; and

Whereas, The State Senate and Governor Pataki have expressed strong support for correcting the constitutional defect as soon as practicable so as to return the ability to seek capital punishment to local prosecutors; and

Whereas, On March 9, 2005, the State Senate passed S.2727, which restores the death penalty and addresses the Court of Appeals' concern regarding coercion, by mandating a sentence of life without parole if a sentencing jury deadlocks, thereby eliminating the possibility that a defendant in such a case could ever be

released; the bill also amends the jury instruction accordingly; and

Whereas, According to the *New York Times* (February 11, 2005), “A solid majority of Democrats in the State Assembly now oppose resurrecting the death penalty, including key leaders who voted for the law in 1995, making it more likely that it will not be revived;” and

Whereas, The Council of the City of New York urges the Assembly to take immediate action reinstating the death penalty so that cop killers and other of society’s worst killers and thugs are aware that they could potentially face society’s ultimate punishment if they choose to kill; and

Whereas, In some cases justice demands that society’s ultimate punishment be an available option so as to express society’s outrage; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Assembly to adopt legislation reinstating the death penalty in New York.

RBU
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