



Legislation Text

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Res. No. 1032

Resolution calling on the State Legislature to amend the penal law and criminal procedure law to allow prosecutors to charge both intentional murder and depraved indifference murder for the same crime.

By Council Member Vallone Jr.

Whereas, *People v. Payne* (2004) returned “depraved indifference” to its specific legal definition, and ultimately made the charges of “depraved indifference” and “intentional murder” mutually exclusive; and

Whereas, According to Judge Rosenblatt’s opinion in *Payne*, depraved indifference murder entails “extremely dangerous and fatal conduct performed without specific homicidal intent but with a depraved kind of wantonness;” and

Whereas, As a result, prosecutors have been forced to pick between the two alternative theories of “depraved indifference” and intentional murder, and risk imperiling a homicide case if they choose wrongly; and

Whereas, Since prosecutors are forced to choose only one theory of murder, they deny jurors the important responsibility of assessing and determining the intent of the defendant; and

Whereas, Often, prosecutors must charge a defendant before gathering all of the evidence, and sometimes before being able to determine the presence or absence of homicidal intent; and

Whereas, The mutual exclusiveness of these two murder charges established in *Payne* could result in the release of dozens of convicted and confessed murderers who were not properly charged according to the strict definition of “depraved indifference” murder; and

Whereas, The release of admitted and guilty murderers due to a technicality would not only force the victims and their families to suffer severe injustices, it would also threaten the safety and well-being of the

general public; and

Whereas, In *Payne*, defendant Kenneth Payne took a 12-gauge shotgun out of his closet, walked to the home of a neighbor who had complained about his dog and shot the neighbor point blank in the chest; the Suffolk County district attorney charged Mr. Payne with both intentional murder and depraved indifference murder, and a jury acquitted Mr. Payne of the intentional murder charge, but convicted him of depraved indifference murder and he was sentenced to the maximum prison term, 25 years to life; and

Whereas, However, as a result of the Court of Appeals decision, Mr. Payne's conviction was overturned and he went home; and

Whereas, As a result of the Payne decision, there are currently dozens of appeals of homicide convictions, and these appeals could result in murderers being set free; and

Whereas, If a defendant acts in a way as to cause the death of another person, whether by way of homicidal intent or depraved wantonness, he should be charged with murder under both theories, regardless of the purpose of that conduct; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to amend the penal law and the criminal procedure law to allow prosecutors to charge both intentional murder and depraved indifference murder for the same crime.