Legislation Details (With Text)

File #:	Res 0554-2010	**Version:**	*	**Name:**	Allow prosecutors to charge both intentional murder and depraved indifference murder for the same crime.
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Title: Resolution calling on 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.

Sponsors:

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Date	Ver.	Action By	Action	Result
11/17/2010	*	City Council	Introduced by Council	
11/17/2010	*	City Council	Referred to Comm by Council	
12/31/2013	*	City Council	Filed (End of Session)	

Res. No. 554

Resolution calling on 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.

By Council Members Vallone, Fidler and Gentile

Whereas, In *People v. Payne*, decided in 2004, the Court of Appeals of New York overturned a conviction for depraved indifference murder; the court's holding in the case had the effect of making the charges of "depraved indifference" and "intentional" murder mutually exclusive; and

Whereas, The *Payne* case arose after a neighbor complained about Kenneth Payne's dog, at which point Mr. Payne retrieved a 12-gauge shotgun from his closet and then walked to the neighbor's home where he shot the neighbor point-blank in the chest; and

Whereas, The Suffolk County district attorney charged Mr. Payne with two counts of murder: intentional murder and depraved indifference murder; at the conclusion of the trial, 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, 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, The court overturned Kenneth Payne's conviction because the conduct he engaged in did not fit that definition, although it did fit the definition of intentional murder; and

Whereas, Due to double jeopardy protections, Mr. Payne could not be tried again; and

Whereas, As a result of the *Payne* ruling, prosecutors are now forced to pick between the two alternative theories of "depraved indifference" and intentional murder in certain cases, 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 as defined by the *Payne* court 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 the *Payne* court adopted; 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, If cases like Mr. Payne's-those currently pending at the appellate level- result in murderers being set free, then this could potentially wreak havoc in our communities; and

Whereas, If an individual causes the death of another person, whether as a result of homicidal intent or of depraved wantonness, such individual should be charged with murder under both theories, regardless of the purpose of such individual's 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.

SA
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