

1510

2009-2010 Regular Sessions

I N S E N A T E

February 2, 2009

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, the vehicle and traffic law, the estates, powers and trusts law, the executive law and the social services law, in relation to establishing the offense of aggravated murder of a child; to amend the penal law, the criminal procedure law, the vehicle and traffic law and the executive law, in relation to establishing the offenses of aggravated abuse of a child in the third degree, aggravated abuse of a child in the second degree, aggravated abuse of a child in the first degree and aggravated manslaughter of a child; to amend the penal law, the criminal procedure law, the vehicle and traffic law and the executive law, in relation to establishing the offense of aggravated endangering the welfare of a child; to amend the social services law, in relation to aggravated manslaughter of a child; to repeal subdivision 5 of section 125.25 of the penal law relating to the murder of a person under 14 years of age while in the course of committing certain sex offenses; and to amend the social services law, in relation to requiring the recording of calls to the statewide central register of child abuse and maltreatment made by persons required by law to report child abuse, requiring the office of children and family services to investigate the prior history of the subject of a report of child abuse or maltreatment and requiring such office to inform a caller if a report cannot be taken; requiring increased scrutiny and the presence of law enforcement during the investigation of a child abuse or maltreatment report with prior history of such reports; and to amend the family court act, in relation to the definition of the term "neglected child"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 "Erin's law".

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

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1 S 2. Section 10.00 of the penal law is amended by adding two new
2 subdivisions 21 and 22 to read as follows:

3 21. "PERSON IN A POSITION OF TRUST" MEANS ANY PERSON WHO IS CHARGED
4 WITH ANY DUTY OR RESPONSIBILITY FOR THE HEALTH, EDUCATION, WELFARE,
5 SUPERVISION OR CARE OF ANOTHER PERSON, EITHER INDEPENDENTLY OR THROUGH
6 ANOTHER PERSON, NO MATTER HOW BRIEF.

7 22. "CHILD ABUSE OFFENSE" MEANS:

8 (A) PATRONIZING A PROSTITUTE IN THE SECOND DEGREE AS DEFINED IN
9 SECTION 230.05; PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED
10 IN SECTION 230.06; PROMOTING PROSTITUTION IN THE SECOND DEGREE AS
11 DEFINED IN SUBDIVISION TWO OF SECTION 230.30; PROMOTING PROSTITUTION IN
12 THE FIRST DEGREE AS DEFINED IN SECTION 230.32; DISSEMINATING INDECENT
13 MATERIALS TO MINORS IN THE SECOND DEGREE AS DEFINED IN SECTION 235.21;
14 DISSEMINATING INDECENT MATERIALS TO MINORS IN THE FIRST DEGREE AS
15 DEFINED IN SECTION 235.22; ABANDONMENT OF A CHILD AS DEFINED IN SECTION
16 260.00; NON-SUPPORT OF A CHILD IN THE SECOND DEGREE AS DEFINED IN
17 SECTION 260.05; NON-SUPPORT OF A CHILD IN THE FIRST DEGREE AS DEFINED IN
18 SECTION 260.06; ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SECTION
19 260.10; AGGRAVATED ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN
20 SECTION 260.09; UNLAWFULLY DEALING WITH A CHILD IN THE FIRST DEGREE AS
21 DEFINED IN SECTION 260.20; UNLAWFULLY DEALING WITH A CHILD IN THE SECOND
22 DEGREE AS DEFINED IN SECTION 260.21; OR AN OFFENSE DEFINED IN ARTICLE
23 TWO HUNDRED SIXTY-THREE OF THIS CHAPTER; OR

24 (B) AN OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED
25 TWENTY-FIVE, ONE HUNDRED THIRTY OR ONE HUNDRED THIRTY-FIVE OF THIS CHAP-
26 TER PROVIDED THE VICTIM OF SUCH OFFENSE IS LESS THAN FOURTEEN YEARS OF
27 AGE; OR

28 (C) AN ATTEMPT TO COMMIT AN OFFENSE LISTED IN PARAGRAPH (A) OR (B) OF
29 THIS SUBDIVISION; OR

30 (D) AN OFFENSE IN ANY OTHER JURISDICTION WHICH INCLUDES ALL OF THE
31 ESSENTIAL ELEMENTS OF ANY SUCH CRIME LISTED IN PARAGRAPH (A), (B) OR (C)
32 OF THIS SUBDIVISION.

33 S 3. Section 60.06 of the penal law, as amended by chapter 765 of the
34 laws of 2005, the section heading as amended by chapter 93 of the laws
35 of 2006, is amended to read as follows:

36 S 60.06 Authorized disposition; murder in the first degree offenders;
37 aggravated murder offenders; AGGRAVATED MURDER OF A CHILD
38 OFFENDERS; certain murder in the second degree offenders;
39 certain terrorism offenders; criminal possession of a chemical
40 weapon or biological weapon offenders; criminal use of a chem-
41 ical weapon or biological weapon offenders.

42 When a defendant is convicted of murder in the first degree as defined
43 in section 125.27 of this chapter, the court shall, in accordance with
44 the provisions of section 400.27 of the criminal procedure law, sentence
45 the defendant to death, to life imprisonment without parole in accord-
46 ance with subdivision five of section 70.00 of this title, or to a term
47 of imprisonment for a class A-I felony other than a sentence of life
48 imprisonment without parole, in accordance with subdivisions one through
49 three of section 70.00 of this title. When a person is convicted [of
50 murder in the second degree as defined in subdivision five of section
51 125.25 of this chapter or] of the crime of aggravated murder as defined
52 in section 125.26 of this chapter OR OF THE CRIME OF AGGRAVATED MURDER
53 OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER, the court shall
54 sentence the defendant to life imprisonment without parole in accordance
55 with subdivision five of section 70.00 of this title. When a defendant
56 is convicted of the crime of terrorism as defined in section 490.25 of

1 this chapter, and the specified offense the defendant committed is a
2 class A-I felony offense, or when a defendant is convicted of the crime
3 of criminal possession of a chemical weapon or biological weapon in the
4 first degree as defined in section 490.45 of this chapter, or when a
5 defendant is convicted of the crime of criminal use of a chemical weapon
6 or biological weapon in the first degree as defined in section 490.55 of
7 this chapter, the court shall sentence the defendant to life imprison-
8 ment without parole in accordance with subdivision five of section 70.00
9 of this title; provided, however, that nothing in this section shall
10 preclude or prevent a sentence of death when the defendant is also
11 convicted of murder in the first degree as defined in section 125.27 of
12 this chapter.

13 S 4. Subparagraph (i) of paragraph (a) of subdivision 3 of section
14 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,
15 is amended to read as follows:

16 (i) For a class A-I felony, such minimum period shall not be less than
17 fifteen years nor more than twenty-five years; provided, however, that
18 (A) where a sentence, other than a sentence of death or life imprison-
19 ment without parole, is imposed upon a defendant convicted of murder in
20 the first degree as defined in section 125.27 of this chapter such mini-
21 mum period shall be not less than twenty years nor more than twenty-five
22 years, and, (B) where a sentence is imposed upon a defendant [convicted
23 of murder in the second degree as defined in subdivision five of section
24 125.25 of this chapter or] convicted of aggravated murder as defined in
25 section 125.26 of this chapter OR CONVICTED OF AGGRAVATED MURDER OF A
26 CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER, the sentence shall
27 be life imprisonment without parole, and, (C) where a sentence is
28 imposed upon a defendant convicted of attempted murder in the first
29 degree as defined in article one hundred ten of this chapter and subpar-
30 agraph (i), (ii) or (iii) of paragraph (a) of subdivision one and para-
31 graph (b) of subdivision one of section 125.27 of this chapter or
32 attempted aggravated murder as defined in article one hundred ten of
33 this chapter and section 125.26 of this chapter OR ATTEMPTED AGGRAVATED
34 MURDER OF A CHILD AS DEFINED IN ARTICLE ONE HUNDRED TEN OF THIS CHAPTER
35 AND SECTION 125.28 OF THIS CHAPTER such minimum period shall be not less
36 than twenty years nor more than forty years.

37 S 5. Subdivision 5 of section 70.00 of the penal law, as amended by
38 chapter 765 of the laws of 2005, is amended to read as follows:

39 5. Life imprisonment without parole. Notwithstanding any other
40 provision of law, a defendant sentenced to life imprisonment without
41 parole shall not be or become eligible for parole or conditional
42 release. For purposes of commitment and custody, other than parole and
43 conditional release, such sentence shall be deemed to be an indetermi-
44 nate sentence. A defendant may be sentenced to life imprisonment with-
45 out parole upon conviction for the crime of murder in the first degree
46 as defined in section 125.27 of this chapter and in accordance with the
47 procedures provided by law for imposing a sentence for such crime. A
48 defendant must be sentenced to life imprisonment without parole upon
49 conviction for the crime of terrorism as defined in section 490.25 of
50 this chapter, where the specified offense the defendant committed is a
51 class A-I felony; the crime of criminal possession of a chemical weapon
52 or biological weapon in the first degree as defined in section 490.45 of
53 this chapter; or the crime of criminal use of a chemical weapon or
54 biological weapon in the first degree as defined in section 490.55 of
55 this chapter; provided, however, that nothing in this subdivision shall
56 preclude or prevent a sentence of death when the defendant is also

1 convicted of the crime of murder in the first degree as defined in
2 section 125.27 of this chapter. A defendant must be sentenced to life
3 imprisonment without parole upon conviction [for the crime of murder in
4 the second degree as defined in subdivision five of section 125.25 of
5 this chapter or] for the crime of aggravated murder as defined in
6 section 125.26 of this chapter OR FOR THE CRIME OF AGGRAVATED MURDER OF
7 A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER.

8 S 6. Paragraphs (a), (b) and (c) of subdivision 1 of section 70.02 of
9 the penal law, paragraph (a) as amended by chapter 320 of the laws of
10 2006, paragraph (b) as separately amended by chapters 764 and 765 of the
11 laws of 2005 and paragraph (c) as amended by chapter 7 of the laws of
12 2007, are amended to read as follows:

13 (a) Class B violent felony offenses: an attempt to commit the class
14 A-I felonies of murder in the second degree as defined in section
15 125.25, kidnapping in the first degree as defined in section 135.25, and
16 arson in the first degree as defined in section 150.20; manslaughter in
17 the first degree as defined in section 125.20, aggravated manslaughter
18 in the first degree as defined in section 125.22, AGGRAVATED MANSLAUGHT-
19 ER OF A CHILD AS DEFINED IN SECTION 125.23, rape in the first degree as
20 defined in section 130.35, criminal sexual act in the first degree as
21 defined in section 130.50, aggravated sexual abuse in the first degree
22 as defined in section 130.70, course of sexual conduct against a child
23 in the first degree as defined in section 130.75; assault in the first
24 degree as defined in section 120.10, kidnapping in the second degree as
25 defined in section 135.20, burglary in the first degree as defined in
26 section 140.30, arson in the second degree as defined in section 150.15,
27 robbery in the first degree as defined in section 160.15, incest in the
28 first degree as defined in section 255.27, criminal possession of a
29 weapon in the first degree as defined in section 265.04, criminal use of
30 a firearm in the first degree as defined in section 265.09, criminal
31 sale of a firearm in the first degree as defined in section 265.13,
32 aggravated assault upon a police officer or a peace officer as defined
33 in section 120.11, gang assault in the first degree as defined in
34 section 120.07, intimidating a victim or witness in the first degree as
35 defined in section 215.17, hindering prosecution of terrorism in the
36 first degree as defined in section 490.35, criminal possession of a
37 chemical weapon or biological weapon in the second degree as defined in
38 section 490.40, and criminal use of a chemical weapon or biological
39 weapon in the third degree as defined in section 490.47.

40 (b) Class C violent felony offenses: an attempt to commit any of the
41 class B felonies set forth in paragraph (a); aggravated criminally
42 negligent homicide as defined in section 125.11, aggravated manslaughter
43 in the second degree as defined in section 125.21, aggravated sexual
44 abuse in the second degree as defined in section 130.67, assault on a
45 peace officer, police officer, fireman or emergency medical services
46 professional as defined in section 120.08, gang assault in the second
47 degree as defined in section 120.06, AGGRAVATED ABUSE OF A CHILD IN THE
48 FIRST DEGREE AS DEFINED IN SECTION 120.09-A, burglary in the second
49 degree as defined in section 140.25, robbery in the second degree as
50 defined in section 160.10, criminal possession of a weapon in the second
51 degree as defined in section 265.03, criminal use of a firearm in the
52 second degree as defined in section 265.08, criminal sale of a firearm
53 in the second degree as defined in section 265.12, criminal sale of a
54 firearm with the aid of a minor as defined in section 265.14, soliciting
55 or providing support for an act of terrorism in the first degree as
56 defined in section 490.15, hindering prosecution of terrorism in the

1 second degree as defined in section 490.30, and criminal possession of a
2 chemical weapon or biological weapon in the third degree as defined in
3 section 490.37.

4 (c) Class D violent felony offenses: an attempt to commit any of the
5 class C felonies set forth in paragraph (b); reckless assault of a child
6 as defined in section 120.02, assault in the second degree as defined in
7 section 120.05, AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS
8 DEFINED IN SECTION 120.09, menacing a police officer or peace officer as
9 defined in section 120.18, stalking in the first degree, as defined in
10 subdivision one of section 120.60, rape in the second degree as defined
11 in section 130.30, criminal sexual act in the second degree as defined
12 in section 130.45, sexual abuse in the first degree as defined in
13 section 130.65, course of sexual conduct against a child in the second
14 degree as defined in section 130.80, aggravated sexual abuse in the
15 third degree as defined in section 130.66, facilitating a sex offense
16 with a controlled substance as defined in section 130.90, criminal
17 possession of a weapon in the third degree as defined in subdivision
18 five, six, seven or eight of section 265.02, criminal sale of a firearm
19 in the third degree as defined in section 265.11, intimidating a victim
20 or witness in the second degree as defined in section 215.16, soliciting
21 or providing support for an act of terrorism in the second degree as
22 defined in section 490.10, and making a terroristic threat as defined in
23 section 490.20, falsely reporting an incident in the first degree as
24 defined in section 240.60, placing a false bomb or hazardous substance
25 in the first degree as defined in section 240.62, placing a false bomb
26 or hazardous substance in a sports stadium or arena, mass transportation
27 facility or enclosed shopping mall as defined in section 240.63, and
28 aggravated unpermitted use of indoor pyrotechnics in the first degree as
29 defined in section 405.18.

30 S 7. Subdivision 1 of section 110.05 of the penal law, as amended by
31 chapter 93 of the laws of 2006, is amended to read as follows:

32 1. Class A-I felony when the crime attempted is the A-I felony of
33 murder in the first degree, aggravated murder as defined in subdivision
34 one of section 125.26 of this chapter, AGGRAVATED MURDER OF A CHILD,
35 criminal possession of a controlled substance in the first degree, crim-
36 inal sale of a controlled substance in the first degree, criminal
37 possession of a chemical or biological weapon in the first degree or
38 criminal use of a chemical or biological weapon in the first degree;

39 S 8. Section 120.01 of the penal law, as added by chapter 600 of the
40 laws of 1998, is amended to read as follows:

41 S 120.01 [Reckless assault] AGGRAVATED ABUSE of a child [by a child day
42 care provider] IN THE THIRD DEGREE.

43 A person is guilty of [reckless assault] AGGRAVATED ABUSE of a child
44 IN THE THIRD DEGREE when, being [a child day care provider or an employ-
45 ee thereof] EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR
46 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE
47 FOR THE CARE OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON
48 IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, he or
49 she recklessly causes [serious] physical injury to [a] SUCH child [under
50 the care of such provider or employee who is less than eleven years of
51 age].

52 [Reckless assault] AGGRAVATED ABUSE of a child [by a child day care
53 provider] IN THE THIRD DEGREE is a class E felony.

54 S 9. The penal law is amended by adding two new sections 120.09 and
55 120.09-a to read as follows:

56 S 120.09 AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE.

1 A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE
2 WHEN BEING EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR
3 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE
4 FOR THE CARE OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON
5 IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR
6 SHE:

7 1. WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON, CAUSES
8 PHYSICAL INJURY TO SUCH CHILD; OR

9 2. RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS
10 PHYSICAL INJURY OR DEATH TO SUCH CHILD AND THEREBY CAUSES SERIOUS PHYS-
11 ICAL INJURY TO SUCH CHILD; OR

12 3. COMMITS THE CRIME OF AGGRAVATED ABUSE OF A CHILD IN THE THIRD
13 DEGREE AS DEFINED IN SECTION 120.01 OF THIS ARTICLE AND PREVIOUSLY HAS
14 BEEN CONVICTED OF A CHILD ABUSE OFFENSE.

15 AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.
16 S 120.09-A AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE.

17 A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE
18 WHEN BEING EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR
19 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE
20 FOR THE CARE OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON
21 IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR
22 SHE:

23 1. WITH INTENT TO CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON,
24 CAUSES SERIOUS PHYSICAL INJURY TO SUCH CHILD; OR

25 2. RECKLESSLY ENGAGES IN VIOLENT SHAKING OF SUCH CHILD AND THEREBY
26 CAUSES SERIOUS PHYSICAL INJURY TO SUCH CHILD AND SUCH CHILD IS LESS THAN
27 FIVE YEARS OLD; OR

28 3. RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS
29 PHYSICAL INJURY OR DEATH TO SUCH CHILD AND THEREBY CAUSES SERIOUS PHYS-
30 ICAL INJURY TO SUCH CHILD, AND:

31 (A) HAS PREVIOUSLY BEEN CONVICTED OF A CHILD ABUSE OFFENSE; OR

32 (B) AS PART OF THE SAME TRANSACTION, RECKLESSLY ENGAGES IN CONDUCT
33 WHICH CREATES A GRAVE RISK OF SERIOUS PHYSICAL INJURY OR DEATH TO ANOTH-
34 ER CHILD LESS THAN FOURTEEN YEARS OLD AND THEREBY CAUSES SERIOUS PHYS-
35 ICAL INJURY TO SUCH OTHER CHILD; OR

36 (C) CAUSES SUCH INJURY BY MEANS OF A DEADLY WEAPON OR DANGEROUS
37 INSTRUMENT; OR

38 (D) ON AT LEAST ONE OTHER OCCASION, RECKLESSLY ENGAGED IN CONDUCT
39 WHICH CREATED A GRAVE RISK OF SERIOUS PHYSICAL INJURY OR DEATH TO A
40 CHILD LESS THAN FOURTEEN YEARS OLD AND THEREBY CAUSED SERIOUS PHYSICAL
41 INJURY TO SUCH CHILD.

42 AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE IS A CLASS C FELONY.

43 S 10. The penal law is amended by adding two new sections 125.23 and
44 125.28 to read as follows:

45 S 125.23 AGGRAVATED MANSLAUGHTER OF A CHILD.

46 A PERSON IS GUILTY OF AGGRAVATED MANSLAUGHTER OF A CHILD WHEN, BEING
47 EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR OTHER PERSON
48 LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE FOR THE CARE
49 OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR IS A PERSON IN A POSITION
50 OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE RECKLESSLY
51 ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS PHYSICAL INJURY
52 OR DEATH TO SUCH CHILD AND THEREBY CAUSES THE DEATH OF SUCH CHILD.

53 AGGRAVATED MANSLAUGHTER OF A CHILD IS A CLASS B FELONY.

54 S 125.28 AGGRAVATED MURDER OF A CHILD.

55 A PERSON IS GUILTY OF AGGRAVATED MURDER OF A CHILD WHEN:

1 1. WITH INTENT TO CAUSE THE DEATH OF A CHILD LESS THAN FOURTEEN YEARS
2 OLD, AND BEING EIGHTEEN YEARS OLD OR MORE, AND BEING THE PARENT, GUARDI-
3 AN OR OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY
4 RESPONSIBLE FOR THE CARE OF, SUCH CHILD, OR BEING A PERSON IN A POSITION
5 OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE CAUSES THE
6 DEATH OF SUCH CHILD; OR

7 2. UNDER CIRCUMSTANCES EVINCING A DEPRAVED INDIFFERENCE TO HUMAN LIFE,
8 AND BEING EIGHTEEN YEARS OLD OR MORE, AND BEING THE PARENT, GUARDIAN OR
9 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE
10 FOR THE CARE OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON
11 IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR
12 SHE RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS
13 PHYSICAL INJURY OR DEATH TO SUCH CHILD AND THEREBY CAUSES THE DEATH OF
14 SUCH CHILD; OR

15 3. BEING EIGHTEEN YEARS OLD OR MORE, WHILE IN THE COURSE OF COMMITTING
16 RAPE IN THE FIRST, SECOND OR THIRD DEGREE, CRIMINAL SEXUAL ACT IN THE
17 FIRST, SECOND OR THIRD DEGREE, AGGRAVATED SEXUAL ABUSE IN THE FIRST,
18 SECOND, THIRD OR FOURTH DEGREE, OR INCEST AGAINST A CHILD LESS THAN
19 FOURTEEN YEARS OLD, HE OR SHE INTENTIONALLY CAUSES THE DEATH OF SUCH
20 CHILD.

21 AGGRAVATED MURDER OF A CHILD IS A CLASS A-I FELONY.

22 S 11. Subdivision 4 of section 125.25 of the penal law, as amended by
23 chapter 459 of the laws of 2004, is amended to read as follows:

24 4. Under circumstances evincing a depraved indifference to human life,
25 and being eighteen years old or more the defendant recklessly engages in
26 conduct which creates a grave risk of serious physical injury or death
27 to another person less than eleven years old and thereby causes the
28 death of such person[; or].

29 S 12. Subdivision 5 of section 125.25 of the penal law is REPEALED.

30 S 13. Subparagraph (ix) of paragraph (a) of subdivision 1 of section
31 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is
32 amended to read as follows:

33 (ix) prior to committing the killing, the defendant had been convicted
34 of murder as defined in this section or section 125.25 of this article
35 OR CONVICTED OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION
36 125.28 OF THIS ARTICLE, or had been convicted in another jurisdiction of
37 an offense which, if committed in this state, would constitute a
38 violation of [either of such] THE AFOREMENTIONED sections; or

39 S 14. The penal law is amended by adding a new section 260.09 to read
40 as follows:

41 S 260.09 AGGRAVATED ENDANGERING THE WELFARE OF A CHILD.

42 A PERSON IS GUILTY OF AGGRAVATED ENDANGERING THE WELFARE OF A CHILD
43 WHEN, BEING EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR
44 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE
45 FOR THE CARE OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON
46 IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR
47 SHE KNOWINGLY ACTS IN A MANNER LIKELY TO BE INJURIOUS TO THE PHYSICAL,
48 MENTAL OR MORAL WELFARE OF SUCH CHILD, AND:

49 1. PREVIOUSLY HAS BEEN CONVICTED OF A CHILD ABUSE OFFENSE; OR

50 2. SUCH CONDUCT CONSISTS OF TWO OR MORE ACTS OF CRUELTY AGAINST SUCH
51 CHILD. FOR PURPOSES OF THIS SUBDIVISION, "CRUELTY" MEANS CONDUCT WHICH
52 (A) CAUSES EXTREME PHYSICAL PAIN, OR (B) WHICH IS CARRIED OUT IN AN
53 ESPECIALLY VICIOUS OR SADISTIC MANNER.

54 AGGRAVATED ENDANGERING THE WELFARE OF A CHILD IS A CLASS E FELONY.

1 S 15. Paragraph (a) of subdivision 3 of section 30.30 of the criminal
2 procedure law, as amended by chapter 93 of the laws of 2006, is amended
3 to read as follows:

4 (a) Subdivisions one and two do not apply to a criminal action wherein
5 the defendant is accused of an offense defined in sections 125.10,
6 125.15, 125.20, 125.25, 125.26 [and], 125.27 AND 125.28 of the penal
7 law.

8 S 16. Subdivision 1 of section 180.85 of the criminal procedure law,
9 as amended by chapter 93 of the laws of 2006, is amended to read as
10 follows:

11 1. After arraignment of a defendant upon a felony complaint, other
12 than a felony complaint charging an offense defined in section 125.10,
13 125.15, 125.20, 125.23, 125.25, 125.26 [or], 125.27 OR 125.28 of the
14 penal law, either party or the local criminal court or superior court
15 before which the action is pending, on its own motion, may move in
16 accordance with the provisions of this section for an order terminating
17 prosecution of the charges contained in such felony complaint on consent
18 of the parties.

19 S 17. Paragraph (h) of subdivision 3 of section 190.25 of the criminal
20 procedure law, as separately amended by chapters 93 and 320 of the laws
21 of 2006, is amended to read as follows:

22 (h) A social worker, rape crisis counselor, psychologist or other
23 professional providing emotional support to a child witness twelve years
24 old or younger who is called to give evidence in a grand jury proceeding
25 concerning a crime defined in article one hundred thirty, article two
26 hundred sixty, section 120.01, 120.09, 120.09-A, 120.10, 125.10, 125.15,
27 125.20, 125.23, 125.25, 125.26, 125.27, 125.28, 255.25, 255.26 [or],
28 255.27 OR 260.09 of the penal law provided that the district attorney
29 consents. Such support person shall not provide the witness with an
30 answer to any question or otherwise participate in such proceeding and
31 shall first take an oath before the grand jury that he or she will keep
32 secret all matters before such grand jury within his or her knowledge.

33 S 18. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
34 procedure law, as amended by chapter 472 of the laws of 2008, is amended
35 to read as follows:

36 (b) Any of the following felonies: assault in the second degree as
37 defined in section 120.05 of the penal law, AGGRAVATED ABUSE OF A CHILD
38 IN THE THIRD DEGREE AS DEFINED IN SECTION 120.01 OF THE PENAL LAW,
39 AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION
40 120.09 OF THE PENAL LAW, AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE
41 AS DEFINED IN SECTION 120.09-A OF THE PENAL LAW, assault in the first
42 degree as defined in section 120.10 of the penal law, reckless endanger-
43 ment in the first degree as defined in section 120.25 of the penal law,
44 promoting a suicide attempt as defined in section 120.30 of the penal
45 law, criminally negligent homicide as defined in section 125.10 of the
46 penal law, manslaughter in the second degree as defined in section
47 125.15 of the penal law, manslaughter in the first degree as defined in
48 section 125.20 of the penal law, AGGRAVATED MANSLAUGHTER OF A CHILD AS
49 DEFINED IN SECTION 125.23 OF THE PENAL LAW, murder in the second degree
50 as defined in section 125.25 of the penal law, murder in the first
51 degree as defined in section 125.27 of the penal law, AGGRAVATED MURDER
52 OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW, abortion in
53 the second degree as defined in section 125.40 of the penal law,
54 abortion in the first degree as defined in section 125.45 of the penal
55 law, rape in the third degree as defined in section 130.25 of the penal
56 law, rape in the second degree as defined in section 130.30 of the penal

1 law, rape in the first degree as defined in section 130.35 of the penal
2 law, criminal sexual act in the third degree as defined in section
3 130.40 of the penal law, criminal sexual act in the second degree as
4 defined in section 130.45 of the penal law, criminal sexual act in the
5 first degree as defined in section 130.50 of the penal law, sexual abuse
6 in the first degree as defined in section 130.65 of the penal law,
7 unlawful imprisonment in the first degree as defined in section 135.10
8 of the penal law, kidnapping in the second degree as defined in section
9 135.20 of the penal law, kidnapping in the first degree as defined in
10 section 135.25 of the penal law, labor trafficking as defined in section
11 135.35 of the penal law, custodial interference in the first degree as
12 defined in section 135.50 of the penal law, coercion in the first degree
13 as defined in section 135.65 of the penal law, criminal trespass in the
14 first degree as defined in section 140.17 of the penal law, burglary in
15 the third degree as defined in section 140.20 of the penal law, burglary
16 in the second degree as defined in section 140.25 of the penal law,
17 burglary in the first degree as defined in section 140.30 of the penal
18 law, criminal mischief in the third degree as defined in section 145.05
19 of the penal law, criminal mischief in the second degree as defined in
20 section 145.10 of the penal law, criminal mischief in the first degree
21 as defined in section 145.12 of the penal law, criminal tampering in the
22 first degree as defined in section 145.20 of the penal law, arson in the
23 fourth degree as defined in section 150.05 of the penal law, arson in
24 the third degree as defined in section 150.10 of the penal law, arson in
25 the second degree as defined in section 150.15 of the penal law, arson
26 in the first degree as defined in section 150.20 of the penal law, grand
27 larceny in the fourth degree as defined in section 155.30 of the penal
28 law, grand larceny in the third degree as defined in section 155.35 of
29 the penal law, grand larceny in the second degree as defined in section
30 155.40 of the penal law, grand larceny in the first degree as defined in
31 section 155.42 of the penal law, health care fraud in the fourth degree
32 as defined in section 177.10 of the penal law, health care fraud in the
33 third degree as defined in section 177.15 of the penal law, health care
34 fraud in the second degree as defined in section 177.20 of the penal
35 law, health care fraud in the first degree as defined in section 177.25
36 of the penal law, robbery in the third degree as defined in section
37 160.05 of the penal law, robbery in the second degree as defined in
38 section 160.10 of the penal law, robbery in the first degree as defined
39 in section 160.15 of the penal law, unlawful use of secret scientific
40 material as defined in section 165.07 of the penal law, criminal
41 possession of stolen property in the fourth degree as defined in section
42 165.45 of the penal law, criminal possession of stolen property in the
43 third degree as defined in section 165.50 of the penal law, criminal
44 possession of stolen property in the second degree as defined by section
45 165.52 of the penal law, criminal possession of stolen property in the
46 first degree as defined by section 165.54 of the penal law, trademark
47 counterfeiting in the second degree as defined in section 165.72 of the
48 penal law, trademark counterfeiting in the first degree as defined in
49 section 165.73 of the penal law, forgery in the second degree as defined
50 in section 170.10 of the penal law, forgery in the first degree as
51 defined in section 170.15 of the penal law, criminal possession of a
52 forged instrument in the second degree as defined in section 170.25 of
53 the penal law, criminal possession of a forged instrument in the first
54 degree as defined in section 170.30 of the penal law, criminal
55 possession of forgery devices as defined in section 170.40 of the penal
56 law, falsifying business records in the first degree as defined in

1 section 175.10 of the penal law, tampering with public records in the
2 first degree as defined in section 175.25 of the penal law, offering a
3 false instrument for filing in the first degree as defined in section
4 175.35 of the penal law, issuing a false certificate as defined in
5 section 175.40 of the penal law, criminal diversion of prescription
6 medications and prescriptions in the second degree as defined in section
7 178.20 of the penal law, criminal diversion of prescription medications
8 and prescriptions in the first degree as defined in section 178.25 of
9 the penal law, residential mortgage fraud in the fourth degree as
10 defined in section 187.10 of the penal law, residential mortgage fraud
11 in the third degree as defined in section 187.15 of the penal law, resi-
12 dential mortgage fraud in the second degree as defined in section 187.20
13 of the penal law, residential mortgage fraud in the first degree as
14 defined in section 187.25 of the penal law, escape in the second degree
15 as defined in section 205.10 of the penal law, escape in the first
16 degree as defined in section 205.15 of the penal law, absconding from
17 temporary release in the first degree as defined in section 205.17 of
18 the penal law, promoting prison contraband in the first degree as
19 defined in section 205.25 of the penal law, hindering prosecution in the
20 second degree as defined in section 205.60 of the penal law, hindering
21 prosecution in the first degree as defined in section 205.65 of the
22 penal law, sex trafficking as defined in section 230.34 of the penal
23 law, AGGRAVATED ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SECTION
24 260.09 OF THE PENAL LAW, criminal possession of a weapon in the third
25 degree as defined in subdivisions two, three and five of section 265.02
26 of the penal law, criminal possession of a weapon in the second degree
27 as defined in section 265.03 of the penal law, criminal possession of a
28 weapon in the first degree as defined in section 265.04 of the penal
29 law, manufacture, transport, disposition and defacement of weapons and
30 dangerous instruments and appliances defined as felonies in subdivisions
31 one, two, and three of section 265.10 of the penal law, sections 265.11,
32 265.12 and 265.13 of the penal law, or prohibited use of weapons as
33 defined in subdivision two of section 265.35 of the penal law, relating
34 to firearms and other dangerous weapons, or failure to disclose the
35 origin of a recording in the first degree as defined in section 275.40
36 of the penal law;

37 S 19. Paragraph (a) of subdivision 4 of section 509-cc of the vehicle
38 and traffic law, as amended by chapter 93 of the laws of 2006, is
39 amended to read as follows:

40 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
41 subdivision one and paragraph (a) of subdivision two of this section
42 that result in permanent disqualification shall include a conviction
43 under sections 125.12, 125.20, 125.25, 125.26, 125.27, 130.30, 130.35,
44 130.45, 130.50, 130.70, 135.25, 150.20 of the penal law or an attempt to
45 commit any of the aforesaid offenses under section 110.00 of the penal
46 law, OR A CHILD ABUSE OFFENSE AS DEFINED IN SUBDIVISION TWENTY-TWO OF
47 SECTION 10.00 OF THE PENAL LAW, or any offenses committed under a former
48 section of the penal law which would constitute violations of the afore-
49 said sections of the penal law, or any offenses committed outside this
50 state which would constitute violations of the aforesaid sections of the
51 penal law.

52 S 20. Section 4-1.6 of the estates, powers and trusts law, as added by
53 chapter 481 of the laws of 1994, is amended to read as follows:

54 S 4-1.6 Disqualification of joint tenant in certain instances

55 Notwithstanding any other provision of law to the contrary, a joint
56 tenant convicted of murder in the second degree as defined in section

1 125.25 of the penal law or murder in the first degree as defined in
2 section 125.27 of the penal law OR AGGRAVATED MURDER OF A CHILD AS
3 DEFINED IN SECTION 125.28 OF THE PENAL LAW of another joint tenant shall
4 not be entitled to the distribution of any monies in a joint bank
5 account created or contributed to by the deceased joint tenant, except
6 for those monies contributed by the convicted joint tenant.

7 Upon the conviction of such joint tenant of first or second degree
8 murder and upon application by the prosecuting attorney, the court, as
9 part of its sentence, shall issue an order directing the amount of any
10 joint bank account to be distributed pursuant to the provisions of this
11 section from the convicted joint tenant and to the deceased joint
12 tenant's estate. The court and the prosecuting attorney shall each have
13 the power to subpoena records of a banking institution to determine the
14 amount of money in such bank account and by whom deposits were made. The
15 court shall also have the power to freeze such account upon application
16 by the prosecuting attorney during the pendency of a trial for first or
17 second degree murder. If, upon receipt of such court orders described in
18 this section, the banking institution holding monies in such joint
19 account complies with the terms of the order, such banking institution
20 shall be held free from all liability for the distribution of such funds
21 as were in such joint account. In the absence of actual or constructive
22 notice of such order, the banking institution holding monies in such
23 account shall be held harmless for distributing the money according to
24 its ordinary course of business.

25 For purposes of this section, the term banking institution shall have
26 the same meaning as provided for in paragraph (b) of subdivision three
27 of section nine-f of the banking law.

28 S 21. Paragraphs (a) and (d) of subdivision 7 of section 995 of the
29 executive law, paragraph (a) as separately amended by chapters 2 and 320
30 of the laws of 2006 and paragraph (d) as amended by chapter 2 of the
31 laws of 2006, are amended to read as follows:

32 (a) sections 120.05, 120.10, and 120.11, relating to assault; sections
33 125.15 through [125.27] 125.28 relating to homicide; sections 130.25,
34 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70,
35 relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19,
36 relating to escape and other offenses, where the offender has been
37 convicted within the previous five years of one of the other felonies
38 specified in this subdivision; or sections 255.25, 255.26 and 255.27,
39 relating to incest, a violent felony offense as defined in subdivision
40 one of section 70.02 of the penal law, attempted murder in the first
41 degree, as defined in section 110.00 and section 125.27 of the penal
42 law, kidnapping in the first degree, as defined in section 135.25 of the
43 penal law, arson in the first degree, as defined in section 150.20 of
44 the penal law, burglary in the third degree, as defined in section
45 140.20 of the penal law, attempted burglary in the third degree, as
46 defined in section 110.00 and section 140.20 of the penal law, a felony
47 defined in article four hundred ninety of the penal law relating to
48 terrorism or any attempt to commit an offense defined in such article
49 relating to terrorism which is a felony; or

50 (d) any of the following felonies, or an attempt thereof where such
51 attempt is a felony offense:

52 AGGRAVATED ABUSE OF A CHILD IN THE THIRD DEGREE, AS DEFINED IN SECTION
53 120.01 OF THE PENAL LAW; AGGRAVATED ABUSE OF A CHILD IN THE SECOND
54 DEGREE, AS DEFINED IN SECTION 120.09 OF THE PENAL LAW; AGGRAVATED ABUSE
55 OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.09-A OF THE
56 PENAL LAW; aggravated assault upon a person less than eleven years old,

1 as defined in section 120.12 of the penal law; menacing in the first
2 degree, as defined in section 120.13 of the penal law; reckless endan-
3 germent in the first degree, as defined in section 120.25 of the penal
4 law; stalking in the second degree, as defined in section 120.55 of the
5 penal law; criminally negligent homicide, as defined in section 125.10
6 of the penal law; vehicular manslaughter in the second degree, as
7 defined in section 125.12 of the penal law; vehicular manslaughter in
8 the first degree, as defined in section 125.13 of the penal law;
9 persistent sexual abuse, as defined in section 130.53 of the penal law;
10 aggravated sexual abuse in the fourth degree, as defined in section
11 130.65-a of the penal law; female genital mutilation, as defined in
12 section 130.85 of the penal law; facilitating a sex offense with a
13 controlled substance, as defined in section 130.90 of the penal law;
14 unlawful imprisonment in the first degree, as defined in section 135.10
15 of the penal law; custodial interference in the first degree, as defined
16 in section 135.50 of the penal law; criminal trespass in the first
17 degree, as defined in section 140.17 of the penal law; criminal tamper-
18 ing in the first degree, as defined in section 145.20 of the penal law;
19 tampering with a consumer product in the first degree, as defined in
20 section 145.45 of the penal law; robbery in the third degree as defined
21 in section 160.05 of the penal law; identity theft in the second degree,
22 as defined in section 190.79 of the penal law; identity theft in the
23 first degree, as defined in section 190.80 of the penal law; promoting
24 prison contraband in the first degree, as defined in section 205.25 of
25 the penal law; tampering with a witness in the third degree, as defined
26 in section 215.11 of the penal law; tampering with a witness in the
27 second degree, as defined in section 215.12 of the penal law; tampering
28 with a witness in the first degree, as defined in section 215.13 of the
29 penal law; criminal contempt in the first degree, as defined in subdivi-
30 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
31 criminal contempt, as defined in section 215.52 of the penal law; bail
32 jumping in the second degree, as defined in section 215.56 of the penal
33 law; bail jumping in the first degree, as defined in section 215.57 of
34 the penal law; patronizing a prostitute in the second degree, as defined
35 in section 230.05 of the penal law; patronizing a prostitute in the
36 first degree, as defined in section 230.06 of the penal law; promoting
37 prostitution in the second degree, as defined in section 230.30 of the
38 penal law; promoting prostitution in the first degree, as defined in
39 section 230.32 of the penal law; compelling prostitution, as defined in
40 section 230.33 of the penal law; disseminating indecent materials to
41 minors in the second degree, as defined in section 235.21 of the penal
42 law; disseminating indecent materials to minors in the first degree, as
43 defined in section 235.22 of the penal law; riot in the first degree, as
44 defined in section 240.06 of the penal law; criminal anarchy, as defined
45 in section 240.15 of the penal law; aggravated harassment of an employee
46 by an inmate, as defined in section 240.32 of the penal law; unlawful
47 surveillance in the second degree, as defined in section 250.45 of the
48 penal law; unlawful surveillance in the first degree, as defined in
49 section 250.50 of the penal law; AGGRAVATED ENDANGERING THE WELFARE OF A
50 CHILD, AS DEFINED IN SECTION 260.09 OF THE PENAL LAW; endangering the
51 welfare of a vulnerable elderly person in the second degree, as defined
52 in section 260.32 of the penal law; endangering the welfare of a vulner-
53 able elderly person in the first degree, as defined in section 260.34 of
54 the penal law; use of a child in a sexual performance, as defined in
55 section 263.05 of the penal law; promoting an obscene sexual performance
56 by a child, as defined in section 263.10 of the penal law; possessing an

1 obscene sexual performance by a child, as defined in section 263.11 of
2 the penal law; promoting a sexual performance by a child, as defined in
3 section 263.15 of the penal law; possessing a sexual performance by a
4 child, as defined in section 263.16 of the penal law; criminal
5 possession of a weapon in the third degree, as defined in section 265.02
6 of the penal law; criminal sale of a firearm in the third degree, as
7 defined in section 265.11 of the penal law; criminal sale of a firearm
8 to a minor, as defined in section 265.16 of the penal law; unlawful
9 wearing of a body vest, as defined in section 270.20 of the penal law;
10 hate crimes as defined in section 485.05 of the penal law; and crime of
11 terrorism, as defined in section 490.25 of the penal law; or

12 S 22. Subparagraph 2 of paragraph (b) of subdivision 3 of section
13 358-a of the social services law, as added by chapter 7 of the laws of
14 1999, is amended to read as follows:

15 (2) the parent of such child has been convicted of (i) AGGRAVATED
16 MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23 OR AGGRAVATED
17 MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OR murder in the first
18 degree as defined in section 125.27 or murder in the second degree as
19 defined in section 125.25 of the penal law and the victim was another
20 child of the parent; or (ii) manslaughter in the first degree as defined
21 in section 125.20 or manslaughter in the second degree as defined in
22 section 125.15 of the penal law and the victim was another child of the
23 parent, provided, however, that the parent must have acted voluntarily
24 in committing such crime;

25 S 23. Clause (A) of subparagraph (iii) of paragraph (a) of subdivision
26 8 of section 384-b of the social services law, as amended by chapter 460
27 of the laws of 2006, is amended to read as follows:

28 (A) the parent of such child has been convicted of AGGRAVATED
29 MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23, AGGRAVATED MURDER
30 OF A CHILD AS DEFINED IN SECTION 125.28, murder in the first degree as
31 defined in section 125.27, murder in the second degree as defined in
32 section 125.25, manslaughter in the first degree as defined in section
33 125.20, or manslaughter in the second degree as defined in section
34 125.15, and the victim of any such crime was another child of the parent
35 or another child for whose care such parent is or has been legally
36 responsible as defined in subdivision (g) of section one thousand twelve
37 of the family court act, or another parent of the child, unless the
38 convicted parent was a victim of physical, sexual or psychological abuse
39 by the decedent parent and such abuse was a factor in causing the homi-
40 cide; or has been convicted of an attempt to commit any of the foregoing
41 crimes, and the victim or intended victim was the child or another child
42 of the parent or another child for whose care such parent is or has been
43 legally responsible as defined in subdivision (g) of section one thou-
44 sand twelve of the family court act, or another parent of the child,
45 unless the convicted parent was a victim of physical, sexual or psycho-
46 logical abuse by the decedent parent and such abuse was a factor in
47 causing the attempted homicide;

48 S 24. Paragraph (a) of subdivision 2 of section 422 of the social
49 services law, as amended by chapter 494 of the laws of 2006, is amended
50 to read as follows:

51 (a) The central register shall be capable of receiving telephone calls
52 alleging child abuse or maltreatment and of immediately identifying
53 prior reports of child abuse or maltreatment and capable of monitoring
54 the provision of child protective service twenty-four hours a day, seven
55 days a week. To effectuate this purpose, but subject to the provisions
56 of the appropriate local plan for the provision of child protective

1 services, there shall be a single statewide telephone number that all
2 persons, whether mandated by the law or not, may use to make telephone
3 calls alleging child abuse or maltreatment and that all persons so
4 authorized by this title may use for determining the existence of prior
5 reports in order to evaluate the condition or circumstances of a child.
6 In addition to the single statewide telephone number, there shall be a
7 special unlisted express telephone number and a telephone facsimile
8 number for use only by persons mandated by law to make telephone calls,
9 WHICH SHALL BE RECORDED, or to transmit telephone facsimile information
10 on a form provided by the commissioner OF CHILDREN AND FAMILY SERVICES,
11 alleging child abuse or maltreatment, and for use by all persons so
12 authorized by this title for determining the existence of prior reports
13 in order to evaluate the condition or circumstances of a child. FOR ANY
14 TELEPHONE CALL THAT CONSTITUTES A REPORT, SUCH RECORDING SHALL BE MAIN-
15 TAINED FOR THE LENGTH OF TIME OTHERWISE REQUIRED BY THIS SECTION FOR
16 MAINTENANCE OF ALL RECORDS THAT RELATE TO SUCH REPORT. FOR ANY TELEPHONE
17 CALL THAT DOES NOT CONSTITUTE A REPORT, SUCH RECORDING SHALL BE MAIN-
18 TAINED FOR TWO YEARS. SUCH RECORDINGS SHALL BE CONFIDENTIAL AND SHALL
19 ONLY BE AVAILABLE TO THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND
20 MALTREATMENT FOR THE PURPOSES OF QUALITY ASSURANCE AND ENHANCED CHILD
21 SAFETY. PROVIDED, HOWEVER, THAT A WRITTEN TRANSCRIPT OF SUCH RECORDING
22 MAY ONLY BE OBTAINED VIA JUDICIAL SUBPOENA BASED UPON THE JUDICIAL
23 DETERMINATION THAT SUCH TRANSCRIPT IS NECESSARY EVIDENCE IN A CRIMINAL
24 OR FAMILY COURT PROCEEDING PROVIDED FURTHER, THAT ANY INFORMATION RELAT-
25 ING TO THE IDENTITY OF THE CALLER OR WHICH REASONABLY COULD LEAD TO THE
26 IDENTIFICATION OF THE CALLER SHALL BE EXCLUDED FROM SUCH TRANSCRIPT.
27 When any allegations contained in such telephone calls could reasonably
28 constitute a report of child abuse or maltreatment, such allegations
29 shall be immediately transmitted orally or electronically by the
30 [department] OFFICE OF CHILDREN AND FAMILY SERVICES to the appropriate
31 local child protective service for investigation. The inability of the
32 person calling the register to identify the alleged perpetrator shall,
33 in no circumstance, constitute the sole cause for the register to reject
34 such allegation or fail to transmit such allegation for investigation.
35 WHEN DETERMINING IF THE ALLEGATIONS CONTAINED IN A TELEPHONE CALL COULD
36 REASONABLY CONSTITUTE A REPORT OF CHILD ABUSE OR MALTREATMENT, SUCH
37 OFFICE SHALL EXAMINE THE PRIOR HISTORY OF THE SUBJECT AND ANY OTHER
38 PERSON NAMED IN THE ALLEGATION, SPECIFICALLY INCLUDING ALL PREVIOUS
39 CALLS PLACED TO THE CENTRAL REGISTER RELATING TO THE SUBJECT OR ANY
40 OTHER PERSON NAMED IN THE ALLEGATION REGARDLESS OF WHETHER SUCH CALLS
41 RESULTED IN A REPORT. If the records indicate a previous report concern-
42 ing a subject of the report, the child alleged to be abused or maltreat-
43 ed, a sibling, other children in the household, other persons named in
44 the report or other pertinent information, the appropriate local child
45 protective service shall be immediately notified of the fact, except as
46 provided in subdivision eleven of this section. If the report involves
47 either (i) suspected physical injury as described in paragraph (i) of
48 subdivision (e) of section ten hundred twelve of the family court act or
49 sexual abuse of a child or the death of a child or (ii) suspected
50 maltreatment which alleges any physical harm when the report is made by
51 a person required to report pursuant to section four hundred thirteen of
52 this title within six months of any other two reports that were indi-
53 cated, or may still be pending, involving the same child, sibling, or
54 other children in the household or the subject of the report, the
55 [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall identify the

1 report as such and note any prior reports when transmitting the report
2 to the local child protective services for investigation.

3 S 24-a. Paragraph (a) of subdivision 2 of section 422 of the social
4 services law, as amended by chapter 574 of the laws of 2008, is amended
5 to read as follows:

6 (a) The central register shall be capable of receiving telephone calls
7 alleging child abuse or maltreatment and of immediately identifying
8 prior reports of child abuse or maltreatment and capable of monitoring
9 the provision of child protective service twenty-four hours a day, seven
10 days a week. To effectuate this purpose, but subject to the provisions
11 of the appropriate local plan for the provision of child protective
12 services, there shall be a single statewide telephone number that all
13 persons, whether mandated by the law or not, may use to make telephone
14 calls alleging child abuse or maltreatment and that all persons so
15 authorized by this title may use for determining the existence of prior
16 reports in order to evaluate the condition or circumstances of a child.
17 In addition to the single statewide telephone number, there shall be a
18 special unlisted express telephone number and a telephone facsimile
19 number for use only by persons mandated by law to make telephone calls,
20 WHICH SHALL BE RECORDED, or to transmit telephone facsimile information
21 on a form provided by the commissioner OF CHILDREN AND FAMILY SERVICES,
22 alleging child abuse or maltreatment, and for use by all persons so
23 authorized by this title for determining the existence of prior reports
24 in order to evaluate the condition or circumstances of a child. FOR ANY
25 TELEPHONE CALL THAT CONSTITUTES A REPORT, SUCH RECORDING SHALL BE MAIN-
26 TAINED FOR THE LENGTH OF TIME OTHERWISE REQUIRED BY THIS SECTION FOR
27 MAINTENANCE OF ALL RECORDS THAT RELATE TO SUCH REPORT. FOR ANY TELEPHONE
28 CALL THAT DOES NOT CONSTITUTE A REPORT, SUCH RECORDING SHALL BE MAIN-
29 TAINED FOR TWO YEARS. SUCH RECORDINGS SHALL BE CONFIDENTIAL AND SHALL
30 ONLY BE AVAILABLE TO THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND
31 MALTREATMENT FOR THE PURPOSES OF QUALITY ASSURANCE AND ENHANCED CHILD
32 SAFETY. PROVIDED, HOWEVER, THAT A WRITTEN TRANSCRIPT OF SUCH RECORDING
33 MAY ONLY BE OBTAINED VIA JUDICIAL SUBPOENA BASED UPON THE JUDICIAL
34 DETERMINATION THAT SUCH TRANSCRIPT IS NECESSARY EVIDENCE IN A CRIMINAL
35 OR FAMILY COURT PROCEEDING PROVIDED FURTHER, THAT ANY INFORMATION RELAT-
36 ING TO THE IDENTITY OF THE CALLER OR WHICH REASONABLY COULD LEAD TO THE
37 IDENTIFICATION OF THE CALLER SHALL BE EXCLUDED FROM SUCH TRANSCRIPT.
38 When any allegations contained in such telephone calls could reasonably
39 constitute a report of child abuse or maltreatment, such allegations
40 shall be immediately transmitted orally or electronically by the office
41 of children and family services to the appropriate local child protec-
42 tive service for investigation. The inability of the person calling the
43 register to identify the alleged perpetrator shall, in no circumstance,
44 constitute the sole cause for the register to reject such allegation or
45 fail to transmit such allegation for investigation. WHEN DETERMINING IF
46 THE ALLEGATIONS CONTAINED IN A TELEPHONE CALL COULD REASONABLY CONSTI-
47 TUTE A REPORT OF CHILD ABUSE OR MALTREATMENT, SUCH OFFICE SHALL EXAMINE
48 THE PRIOR HISTORY OF THE SUBJECT AND ANY OTHER PERSON NAMED IN THE ALLE-
49 GATION, SPECIFICALLY INCLUDING ALL PREVIOUS CALLS PLACED TO THE CENTRAL
50 REGISTER RELATING TO THE SUBJECT OR ANY OTHER PERSON NAMED IN THE ALLE-
51 GATION REGARDLESS OF WHETHER SUCH CALLS RESULTED IN A REPORT. If the
52 records indicate a previous report concerning a subject of the report,
53 the child alleged to be abused or maltreated, a sibling, other children
54 in the household, other persons named in the report or other pertinent
55 information, the appropriate local child protective service shall be
56 immediately notified of the fact, except as provided in subdivision

1 eleven of this section. If the report involves either (i) an allegation
2 of an abused child described in paragraph (i), (ii) or (iii) of subdivi-
3 sion (e) of section one thousand twelve of the family court act or sexu-
4 al abuse of a child or the death of a child or (ii) suspected maltreat-
5 ment which alleges any physical harm when the report is made by a person
6 required to report pursuant to section four hundred thirteen of this
7 title within six months of any other two reports that were indicated, or
8 may still be pending, involving the same child, sibling, or other chil-
9 dren in the household or the subject of the report, the office of chil-
10 dren and family services shall identify the report as such and note any
11 prior reports when transmitting the report to the local child protective
12 services for investigation.

13 S 25. Subdivision 2 of section 422 of the social services law is
14 amended by adding a new paragraph (e) to read as follows:

15 (E) WHENEVER A TELEPHONE CALL TO THE STATEWIDE CENTRAL REGISTER
16 DESCRIBED IN THIS SECTION IS RECEIVED BY THE OFFICE OF CHILDREN AND
17 FAMILY SERVICES AND NOT REGISTERED AS A REPORT, THE OFFICE OF CHILDREN
18 AND FAMILY SERVICES SHALL CONVEY TO THE CALLER THAT HE OR SHE HAS THE
19 ABILITY TO DISCUSS WITH A SUPERVISOR THE REASONS FOR THE DECISION NOT TO
20 REGISTER THE REPORT.

21 S 26. Paragraph (a) of subdivision 6 of section 424 of the social
22 services law, as amended by chapter 602 of the laws of 2008, is amended
23 to read as follows:

24 (a) upon receipt of such report, commence or cause the appropriate
25 society for the prevention of cruelty to children to commence, within
26 twenty-four hours, an appropriate investigation which shall include an
27 evaluation of the environment of the child named in the report and any
28 other children in the same home and a determination of the risk to such
29 children if they continue to remain in the existing home environment, as
30 well as a determination of the nature, extent and cause of any condition
31 enumerated in such report and the name, age and condition of other chil-
32 dren in the home, and, after seeing to the safety of the child or chil-
33 dren, forthwith notify the subjects of the report and other persons
34 named in the report in writing of the existence of the report and their
35 respective rights pursuant to this title in regard to amendment. SUCH
36 INVESTIGATION SHALL ALSO INCLUDE INCREASED SCRUTINY GIVEN TO THE EVALU-
37 ATION OF ANY REPORT RECEIVED WITHIN SIX MONTHS OF ANY OTHER TWO REPORTS
38 THAT WERE INDICATED OR MAY STILL BE PENDING INVOLVING THE SAME CHILD,
39 SIBLING, OR OTHER CHILDREN IN THE HOUSEHOLD.

40 S 27. Section 424 of the social services law is amended by adding a
41 new subdivision 6-c to read as follows:

42 6-C. UPON RECEIPT OF A REPORT WHICH IS RECEIVED WITHIN SIX MONTHS OF
43 ANY OTHER TWO REPORTS THAT WERE INDICATED OR MAY STILL BE PENDING
44 INVOLVING THE SAME CHILD, SIBLING, OR OTHER CHILD IN THE HOUSEHOLD, A
45 CHILD PROTECTIVE INVESTIGATOR SHALL CONTACT LAW ENFORCEMENT TO ACCOMPANY
46 SUCH INVESTIGATOR TO THE CHILD, CHILDREN AND/OR HOME AND LAW ENFORCEMENT
47 SHALL REMAIN WHERE THE CHILD OR CHILDREN ARE OR ARE BELIEVED TO BE PRES-
48 ENT DURING THE COURSE OF THE INVESTIGATION.

49 S 28. Section 420 of the social services law is amended by adding a
50 new subdivision 3 to read as follows:

51 3. A PERSON WHO IS CONVICTED OF A SECOND OR SUBSEQUENT OFFENSE UNDER
52 THIS SECTION WITHIN TWO YEARS OF THE PRIOR CONVICTION SHALL BE GUILTY OF
53 A CLASS E FELONY.

54 S 29. Subdivision (f) of section 1012 of the family court act, as
55 added by chapter 962 of the laws of 1970, subparagraph (A) of paragraph
56 (i) as amended by chapter 469 of the laws of 1971, subparagraph (B) of

paragraph (i) as amended by chapter 984 of the laws of 1981 and paragraph (ii) as amended by chapter 666 of the laws of 1976, is amended to read as follows:

(f) "Neglected child" means a child less than eighteen years of age (i) whose physical, mental or emotional condition has been impaired or is in [imminent] danger of becoming impaired as a result of the failure of his OR HER parent or other person legally responsible for his OR HER care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter [or], A SANITARY LIVING ENVIRONMENT, PROPER SUPERVISION, WARMTH, SUSTENANCE AND education in accordance with the provisions of part one of article sixty-five of the education law OR ANY OTHER BASIC NECESSITY OF LIFE, or medical, dental, optometrical or surgical care, INCLUDING, BUT NOT LIMITED TO, PREVENTIVE CARE SUCH AS IMMUNIZATIONS, REMEDIAL CARE, AND PSYCHOLOGICAL AND/OR PSYCHIATRIC CARE, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision [or], guardianship, MORAL SUPERVISION, EMOTIONAL SUPPORT, AND INSTRUCTION by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; OR BY ALLOWING SUCH CHILD MULTIPLE UNEXCUSED ABSENCES FROM SCHOOL; OR BY SUFFERING FROM AGGRESSIVENESS, POOR IMPULSE CONTROL, OR PARANOIA; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in [imminent] danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(C) TO KEEP SUCH CHILD FREE FROM DISEASE AND NOT IN A STATE OF SUBSTANTIALLY DIMINISHED PHYSICAL GROWTH; OR

(ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

S 30. This act shall take effect immediately; provided that:

(a) sections twenty-four and twenty-five of this act shall take effect on the one hundred eightieth day after it shall have become a law;

(b) the amendments to paragraph (a) of subdivision 2 of section 422 of the social services law made by section twenty-four of this act shall expire and be deemed repealed on the same date and in the same manner as section 1 of chapter 574 of the laws of 2008, as amended, takes effect when upon the provisions of section twenty-four-a of this act shall take effect; and

(c) effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.