

3285

2011-2012 Regular Sessions

I N   S E N A T E

February 15, 2011

---

Introduced by Sen. HASSELL-THOMPSON -- 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 offenses of aggravated murder of a child, 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, aggravated manslaughter of a child, aggravated endangering the welfare of a child, and aggravated manslaughter of a child; and 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

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     the "child protection act of 2011".  
3     S 2. Section 10.00 of the penal law is amended by adding two new  
4     subdivisions 21 and 22 to read as follows:  
5     21. "PERSON IN A POSITION OF TRUST" MEANS ANY PERSON WHO IS CHARGED  
6     WITH ANY DUTY OR RESPONSIBILITY FOR THE HEALTH, EDUCATION, WELFARE,  
7     SUPERVISION OR CARE OF ANOTHER PERSON, EITHER INDEPENDENTLY OR THROUGH  
8     ANOTHER PERSON, NO MATTER HOW BRIEF.  
9     22. "CHILD ABUSE OFFENSE" MEANS:  
10    (A) PATRONIZING A PROSTITUTE IN THE SECOND DEGREE AS DEFINED IN  
11    SECTION 230.05; PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED  
12    IN SECTION 230.06; PROMOTING PROSTITUTION IN THE SECOND DEGREE AS  
13    DEFINED IN SUBDIVISION TWO OF SECTION 230.30; PROMOTING PROSTITUTION IN  
14    THE FIRST DEGREE AS DEFINED IN SECTION 230.32; DISSEMINATING INDECENT  
15    MATERIALS TO MINORS IN THE SECOND DEGREE AS DEFINED IN SECTION 235.21;  
16    DISSEMINATING INDECENT MATERIALS TO MINORS IN THE FIRST DEGREE AS  
17    DEFINED IN SECTION 235.22; ABANDONMENT OF A CHILD AS DEFINED IN SECTION

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

LBD07044-01-1

260.00; NON-SUPPORT OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 260.05; NON-SUPPORT OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 260.06; ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SECTION 260.10; AGGRAVATED ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SECTION 260.09; UNLAWFULLY DEALING WITH A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 260.20; UNLAWFULLY DEALING WITH A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 260.21; OR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED SIXTY-THREE OF THIS CHAPTER; OR

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

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

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

S 3. Section 60.06 of the penal law, as amended by chapter 482 of the laws of 2009, is amended to read as follows:

S 60.06 Authorized disposition; murder in the first degree offenders; aggravated murder offenders; AGGRAVATED MURDER OF A CHILD OFFENDERS; certain murder in the second degree offenders; certain terrorism offenders; criminal possession of a chemical weapon or biological weapon offenders; criminal use of a chemical weapon or biological weapon offenders.

When a defendant is convicted of murder in the first degree as defined in section 125.27 of this chapter, the court shall, in accordance with the provisions of section 400.27 of the criminal procedure law, sentence the defendant to death, to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title, or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, in accordance with subdivisions one through three of section 70.00 of this title. When a person is convicted [of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or] of the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter OR OF THE CRIME OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title. When a defendant is convicted of the crime of terrorism as defined in section 490.25 of this chapter, and the specified offense the defendant committed is a class A-I felony offense, or when a defendant is convicted of the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter, or when a defendant is convicted of the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title; provided, however, that nothing in this section shall preclude or prevent a sentence of death when the defendant is also convicted of murder in the first degree as defined in section 125.27 of this chapter. When a defendant is convicted of aggravated murder as defined in subdivision two of section 125.26 of this chapter, the court shall sentence the defendant to life imprisonment without parole or to a term of imprisonment for a class A-I felony

1 other than a sentence of life imprisonment without parole, in accordance  
2 with subdivisions one through three of section 70.00 of this title.

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

6 (i) For a class A-I felony, such minimum period shall not be less than  
7 fifteen years nor more than twenty-five years; provided, however, that  
8 (A) where a sentence, other than a sentence of death or life imprison-  
9 ment without parole, is imposed upon a defendant convicted of murder in  
10 the first degree as defined in section 125.27 of this chapter such mini-  
11 mum period shall be not less than twenty years nor more than twenty-five  
12 years, and, (B) where a sentence is imposed upon a defendant [convicted  
13 of murder in the second degree as defined in subdivision five of section  
14 125.25 of this chapter or] convicted of aggravated murder as defined in  
15 section 125.26 of this chapter OR CONVICTED OF AGGRAVATED MURDER OF A  
16 CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER, the sentence shall  
17 be life imprisonment without parole, and, (C) where a sentence is  
18 imposed upon a defendant convicted of attempted murder in the first  
19 degree as defined in article one hundred ten of this chapter and subpar-  
20 agraph (i), (ii) or (iii) of paragraph (a) of subdivision one and para-  
21 graph (b) of subdivision one of section 125.27 of this chapter or  
22 attempted aggravated murder as defined in article one hundred ten of  
23 this chapter and section 125.26 of this chapter OR ATTEMPTED AGGRAVATED  
24 MURDER OF A CHILD AS DEFINED IN ARTICLE ONE HUNDRED TEN OF THIS CHAPTER  
25 AND SECTION 125.28 OF THIS CHAPTER such minimum period shall be not less  
26 than twenty years nor more than forty years.

27 S 5. Subdivision 5 of section 70.00 of the penal law, as amended by  
28 chapter 482 of the laws of 2009, is amended to read as follows:

29 5. Life imprisonment without parole. Notwithstanding any other  
30 provision of law, a defendant sentenced to life imprisonment without  
31 parole shall not be or become eligible for parole or conditional  
32 release. For purposes of commitment and custody, other than parole and  
33 conditional release, such sentence shall be deemed to be an indetermi-  
34 nate sentence. A defendant may be sentenced to life imprisonment with-  
35 out parole upon conviction for the crime of murder in the first degree  
36 as defined in section 125.27 of this chapter and in accordance with the  
37 procedures provided by law for imposing a sentence for such crime. A  
38 defendant must be sentenced to life imprisonment without parole upon  
39 conviction for the crime of terrorism as defined in section 490.25 of  
40 this chapter, where the specified offense the defendant committed is a  
41 class A-I felony; the crime of criminal possession of a chemical weapon  
42 or biological weapon in the first degree as defined in section 490.45 of  
43 this chapter; or the crime of criminal use of a chemical weapon or  
44 biological weapon in the first degree as defined in section 490.55 of  
45 this chapter; provided, however, that nothing in this subdivision shall  
46 preclude or prevent a sentence of death when the defendant is also  
47 convicted of the crime of murder in the first degree as defined in  
48 section 125.27 of this chapter. A defendant must be sentenced to life  
49 imprisonment without parole upon conviction [for the crime of murder in  
50 the second degree as defined in subdivision five of section 125.25 of  
51 this chapter or] for the crime of aggravated murder as defined in subdi-  
52 vision one of section 125.26 of this chapter OR FOR THE CRIME OF AGGRA-  
53 VATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER. A  
54 defendant may be sentenced to life imprisonment without parole upon  
55 conviction for the crime of aggravated murder as defined in subdivision  
56 two of section 125.26 of this chapter.

1 S 6. Paragraphs (a), (b) and (c) of subdivision 1 of section 70.02 of  
2 the penal law, paragraph (a) as amended by chapter 320 of the laws of  
3 2006, paragraphs (b) and (c) as amended by chapter 405 of the laws of  
4 2010, are amended to read as follows:

5 (a) Class B violent felony offenses: an attempt to commit the class  
6 A-I felonies of murder in the second degree as defined in section  
7 125.25, kidnapping in the first degree as defined in section 135.25, and  
8 arson in the first degree as defined in section 150.20; manslaughter in  
9 the first degree as defined in section 125.20, aggravated manslaughter  
10 in the first degree as defined in section 125.22, AGGRAVATED MANSLAUGHTER  
11 OF A CHILD AS DEFINED IN SECTION 125.23, rape in the first degree as  
12 defined in section 130.35, criminal sexual act in the first degree as  
13 defined in section 130.50, aggravated sexual abuse in the first degree  
14 as defined in section 130.70, course of sexual conduct against a child  
15 in the first degree as defined in section 130.75; assault in the first  
16 degree as defined in section 120.10, kidnapping in the second degree as  
17 defined in section 135.20, burglary in the first degree as defined in  
18 section 140.30, arson in the second degree as defined in section 150.15,  
19 robbery in the first degree as defined in section 160.15, incest in the  
20 first degree as defined in section 255.27, criminal possession of a  
21 weapon in the first degree as defined in section 265.04, criminal use of  
22 a firearm in the first degree as defined in section 265.09, criminal  
23 sale of a firearm in the first degree as defined in section 265.13,  
24 aggravated assault upon a police officer or a peace officer as defined  
25 in section 120.11, gang assault in the first degree as defined in  
26 section 120.07, intimidating a victim or witness in the first degree as  
27 defined in section 215.17, hindering prosecution of terrorism in the  
28 first degree as defined in section 490.35, criminal possession of a  
29 chemical weapon or biological weapon in the second degree as defined in  
30 section 490.40, and criminal use of a chemical weapon or biological  
31 weapon in the third degree as defined in section 490.47.

32 (b) Class C violent felony offenses: an attempt to commit any of the  
33 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
34 vated criminally negligent homicide as defined in section 125.11, aggra-  
35 vated manslaughter in the second degree as defined in section 125.21,  
36 aggravated sexual abuse in the second degree as defined in section  
37 130.67, assault on a peace officer, police officer, fireman or emergency  
38 medical services professional as defined in section 120.08, gang assault  
39 in the second degree as defined in section 120.06, AGGRAVATED ABUSE OF A  
40 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 120.09-A, strangulation  
41 in the first degree as defined in section 121.13, burglary in the second  
42 degree as defined in section 140.25, robbery in the second degree as  
43 defined in section 160.10, criminal possession of a weapon in the second  
44 degree as defined in section 265.03, criminal use of a firearm in the  
45 second degree as defined in section 265.08, criminal sale of a firearm  
46 in the second degree as defined in section 265.12, criminal sale of a  
47 firearm with the aid of a minor as defined in section 265.14, soliciting  
48 or providing support for an act of terrorism in the first degree as  
49 defined in section 490.15, hindering prosecution of terrorism in the  
50 second degree as defined in section 490.30, and criminal possession of a  
51 chemical weapon or biological weapon in the third degree as defined in  
52 section 490.37.

53 (c) Class D violent felony offenses: an attempt to commit any of the  
54 class C felonies set forth in paragraph (b); reckless assault of a child  
55 as defined in section 120.02, assault in the second degree as defined in  
56 section 120.05, AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS

1 DEFINED IN SECTION 120.09, menacing a police officer or peace officer as  
2 defined in section 120.18, stalking in the first degree, as defined in  
3 subdivision one of section 120.60, strangulation in the second degree as  
4 defined in section 121.12, rape in the second degree as defined in  
5 section 130.30, criminal sexual act in the second degree as defined in  
6 section 130.45, sexual abuse in the first degree as defined in section  
7 130.65, course of sexual conduct against a child in the second degree as  
8 defined in section 130.80, aggravated sexual abuse in the third degree  
9 as defined in section 130.66, facilitating a sex offense with a  
10 controlled substance as defined in section 130.90, criminal possession  
11 of a weapon in the third degree as defined in subdivision five, six,  
12 seven or eight of section 265.02, criminal sale of a firearm in the  
13 third degree as defined in section 265.11, intimidating a victim or  
14 witness in the second degree as defined in section 215.16, soliciting or  
15 providing support for an act of terrorism in the second degree as  
16 defined in section 490.10, and making a terroristic threat as defined in  
17 section 490.20, falsely reporting an incident in the first degree as  
18 defined in section 240.60, placing a false bomb or hazardous substance  
19 in the first degree as defined in section 240.62, placing a false bomb  
20 or hazardous substance in a sports stadium or arena, mass transportation  
21 facility or enclosed shopping mall as defined in section 240.63, and  
22 aggravated unpermitted use of indoor pyrotechnics in the first degree as  
23 defined in section 405.18.

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

26 1. Class A-I felony when the crime attempted is the A-I felony of  
27 murder in the first degree, aggravated murder as defined in subdivision  
28 one of section 125.26 of this chapter, AGGRAVATED MURDER OF A CHILD,  
29 criminal possession of a controlled substance in the first degree, crim-  
30 inal sale of a controlled substance in the first degree, criminal  
31 possession of a chemical or biological weapon in the first degree or  
32 criminal use of a chemical or biological weapon in the first degree;

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

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

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

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

48 S 9. The penal law is amended by adding two new sections 120.09 and  
49 120.09-a to read as follows:

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

51 A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE  
52 WHEN BEING EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR  
53 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE  
54 FOR THE CARE OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON  
55 IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR  
56 SHE:

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

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

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

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

11 A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE  
12 WHEN BEING EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR  
13 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE  
14 FOR THE CARE OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON  
15 IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR  
16 SHE:

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

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

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

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

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

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

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

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

37 S 10. The penal law is amended by adding two new sections 125.23 and  
38 125.28 to read as follows:

39 S 125.23 AGGRAVATED MANSLAUGHTER OF A CHILD.

40 A PERSON IS GUILTY OF AGGRAVATED MANSLAUGHTER OF A CHILD WHEN, BEING  
41 EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR OTHER PERSON  
42 LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE FOR THE CARE  
43 OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON IN A POSI-  
44 TION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE RECK-  
45 LESSLY ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS PHYSICAL  
46 INJURY OR DEATH TO SUCH CHILD AND THEREBY CAUSES THE DEATH OF SUCH  
47 CHILD.

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

49 S 125.28 AGGRAVATED MURDER OF A CHILD.

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

51 1. WITH INTENT TO CAUSE THE DEATH OF A CHILD LESS THAN FOURTEEN YEARS  
52 OLD, AND BEING EIGHTEEN YEARS OLD OR MORE, AND BEING THE PARENT, GUARDI-  
53 AN OR OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY  
54 RESPONSIBLE FOR THE CARE OF, SUCH CHILD, OR BEING A PERSON IN A POSITION  
55 OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE CAUSES THE  
56 DEATH OF SUCH CHILD; OR

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

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

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

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

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

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

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

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

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

S 260.09 AGGRAVATED ENDANGERING THE WELFARE OF A CHILD.

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

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

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

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

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

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

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

4 1. After arraignment of a defendant upon a felony complaint, other  
5 than a felony complaint charging an offense defined in section 125.10,  
6 125.15, 125.20, 125.23, 125.25, 125.26 [or], 125.27 OR 125.28 of the  
7 penal law, either party or the local criminal court or superior court  
8 before which the action is pending, on its own motion, may move in  
9 accordance with the provisions of this section for an order terminating  
10 prosecution of the charges contained in such felony complaint on consent  
11 of the parties.

12 S 17. Paragraph (h) of subdivision 3 of section 190.25 of the criminal  
13 procedure law, as amended by chapter 405 of the laws of 2010, is amended  
14 to read as follows:

15 (h) A social worker, rape crisis counselor, psychologist or other  
16 professional providing emotional support to a child witness twelve years  
17 old or younger who is called to give evidence in a grand jury proceeding  
18 concerning a crime defined in article one hundred twenty-one, article  
19 one hundred thirty, article two hundred sixty, section 120.01, 120.09,  
20 120.09-A, 120.10, 125.10, 125.15, 125.20, 125.23, 125.25, 125.26,  
21 125.27, 125.28, 255.25, 255.26 [or], 255.27 OR 260.09 of the penal law  
22 provided that the district attorney consents. Such support person shall  
23 not provide the witness with an answer to any question or otherwise  
24 participate in such proceeding and shall first take an oath before the  
25 grand jury that he or she will keep secret all matters before such grand  
26 jury within his or her knowledge.

27 S 18. Paragraph (b) of subdivision 8 of section 700.05 of the criminal  
28 procedure law, as amended by chapter 405 of the laws of 2010, is amended  
29 to read as follows:

30 (b) Any of the following felonies: assault in the second degree as  
31 defined in section 120.05 of the penal law, AGGRAVATED ABUSE OF A CHILD  
32 IN THE THIRD DEGREE AS DEFINED IN SECTION 120.01 OF THE PENAL LAW,  
33 AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION  
34 120.09 OF THE PENAL LAW, AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE  
35 AS DEFINED IN SECTION 120.09-A OF THE PENAL LAW, assault in the first  
36 degree as defined in section 120.10 of the penal law, reckless endanger-  
37 ment in the first degree as defined in section 120.25 of the penal law,  
38 promoting a suicide attempt as defined in section 120.30 of the penal  
39 law, strangulation in the second degree as defined in section 121.12 of  
40 the penal law, strangulation in the first degree as defined in section  
41 121.13 of the penal law, criminally negligent homicide as defined in  
42 section 125.10 of the penal law, manslaughter in the second degree as  
43 defined in section 125.15 of the penal law, manslaughter in the first  
44 degree as defined in section 125.20 of the penal law, AGGRAVATED  
45 MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23 OF THE PENAL LAW,  
46 murder in the second degree as defined in section 125.25 of the penal  
47 law, murder in the first degree as defined in section 125.27 of the  
48 penal law, AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF  
49 THE PENAL LAW, abortion in the second degree as defined in section  
50 125.40 of the penal law, abortion in the first degree as defined in  
51 section 125.45 of the penal law, rape in the third degree as defined in  
52 section 130.25 of the penal law, rape in the second degree as defined in  
53 section 130.30 of the penal law, rape in the first degree as defined in  
54 section 130.35 of the penal law, criminal sexual act in the third degree  
55 as defined in section 130.40 of the penal law, criminal sexual act in  
56 the second degree as defined in section 130.45 of the penal law, crimi-



1 nal sexual act in the first degree as defined in section 130.50 of the  
2 penal law, sexual abuse in the first degree as defined in section 130.65  
3 of the penal law, unlawful imprisonment in the first degree as defined  
4 in section 135.10 of the penal law, kidnapping in the second degree as  
5 defined in section 135.20 of the penal law, kidnapping in the first  
6 degree as defined in section 135.25 of the penal law, labor trafficking  
7 as defined in section 135.35 of the penal law, custodial interference in  
8 the first degree as defined in section 135.50 of the penal law, coercion  
9 in the first degree as defined in section 135.65 of the penal law, crim-  
10 inal trespass in the first degree as defined in section 140.17 of the  
11 penal law, burglary in the third degree as defined in section 140.20 of  
12 the penal law, burglary in the second degree as defined in section  
13 140.25 of the penal law, burglary in the first degree as defined in  
14 section 140.30 of the penal law, criminal mischief in the third degree  
15 as defined in section 145.05 of the penal law, criminal mischief in the  
16 second degree as defined in section 145.10 of the penal law, criminal  
17 mischief in the first degree as defined in section 145.12 of the penal  
18 law, criminal tampering in the first degree as defined in section 145.20  
19 of the penal law, arson in the fourth degree as defined in section  
20 150.05 of the penal law, arson in the third degree as defined in section  
21 150.10 of the penal law, arson in the second degree as defined in  
22 section 150.15 of the penal law, arson in the first degree as defined in  
23 section 150.20 of the penal law, grand larceny in the fourth degree as  
24 defined in section 155.30 of the penal law, grand larceny in the third  
25 degree as defined in section 155.35 of the penal law, grand larceny in  
26 the second degree as defined in section 155.40 of the penal law, grand  
27 larceny in the first degree as defined in section 155.42 of the penal  
28 law, health care fraud in the fourth degree as defined in section 177.10  
29 of the penal law, health care fraud in the third degree as defined in  
30 section 177.15 of the penal law, health care fraud in the second degree  
31 as defined in section 177.20 of the penal law, health care fraud in the  
32 first degree as defined in section 177.25 of the penal law, robbery in  
33 the third degree as defined in section 160.05 of the penal law, robbery  
34 in the second degree as defined in section 160.10 of the penal law,  
35 robbery in the first degree as defined in section 160.15 of the penal  
36 law, unlawful use of secret scientific material as defined in section  
37 165.07 of the penal law, criminal possession of stolen property in the  
38 fourth degree as defined in section 165.45 of the penal law, criminal  
39 possession of stolen property in the third degree as defined in section  
40 165.50 of the penal law, criminal possession of stolen property in the  
41 second degree as defined by section 165.52 of the penal law, criminal  
42 possession of stolen property in the first degree as defined by section  
43 165.54 of the penal law, trademark counterfeiting in the second degree  
44 as defined in section 165.72 of the penal law, trademark counterfeiting  
45 in the first degree as defined in section 165.73 of the penal law,  
46 forgery in the second degree as defined in section 170.10 of the penal  
47 law, forgery in the first degree as defined in section 170.15 of the  
48 penal law, criminal possession of a forged instrument in the second  
49 degree as defined in section 170.25 of the penal law, criminal  
50 possession of a forged instrument in the first degree as defined in  
51 section 170.30 of the penal law, criminal possession of forgery devices  
52 as defined in section 170.40 of the penal law, falsifying business  
53 records in the first degree as defined in section 175.10 of the penal  
54 law, tampering with public records in the first degree as defined in  
55 section 175.25 of the penal law, offering a false instrument for filing  
56 in the first degree as defined in section 175.35 of the penal law, issu-

ing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

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

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

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

S 4-1.6 Disqualification of joint tenant in certain instances

Notwithstanding any other provision of law to the contrary, a joint tenant convicted of murder in the second degree as defined in section 125.25 of the penal law or murder in the first degree as defined in section 125.27 of the penal law OR AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW of another joint tenant shall not be entitled to the distribution of any monies in a joint bank

1 account created or contributed to by the deceased joint tenant, except  
2 for those monies contributed by the convicted joint tenant.

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

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

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

28 (a) sections 120.05, 120.10, and 120.11, relating to assault; sections  
29 125.15 through [125.27] 125.28 relating to homicide; sections 130.25,  
30 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70,  
31 relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19,  
32 relating to escape and other offenses, where the offender has been  
33 convicted within the previous five years of one of the other felonies  
34 specified in this subdivision; or sections 255.25, 255.26 and 255.27,  
35 relating to incest, a violent felony offense as defined in subdivision  
36 one of section 70.02 of the penal law, attempted murder in the first  
37 degree, as defined in section 110.00 and section 125.27 of the penal  
38 law, kidnapping in the first degree, as defined in section 135.25 of the  
39 penal law, arson in the first degree, as defined in section 150.20 of  
40 the penal law, burglary in the third degree, as defined in section  
41 140.20 of the penal law, attempted burglary in the third degree, as  
42 defined in section 110.00 and section 140.20 of the penal law, a felony  
43 defined in article four hundred ninety of the penal law relating to  
44 terrorism or any attempt to commit an offense defined in such article  
45 relating to terrorism which is a felony; or

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

48 AGGRAVATED ABUSE OF A CHILD IN THE THIRD DEGREE, AS DEFINED IN SECTION  
49 120.01 OF THE PENAL LAW; AGGRAVATED ABUSE OF A CHILD IN THE SECOND  
50 DEGREE, AS DEFINED IN SECTION 120.09 OF THE PENAL LAW; AGGRAVATED ABUSE  
51 OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.09-A OF THE  
52 PENAL LAW; aggravated assault upon a person less than eleven years old,  
53 as defined in section 120.12 of the penal law; menacing in the first  
54 degree, as defined in section 120.13 of the penal law; reckless endan-  
55 germent in the first degree, as defined in section 120.25 of the penal  
56 law; stalking in the second degree, as defined in section 120.55 of the

1 penal law; criminally negligent homicide, as defined in section 125.10  
2 of the penal law; vehicular manslaughter in the second degree, as  
3 defined in section 125.12 of the penal law; vehicular manslaughter in  
4 the first degree, as defined in section 125.13 of the penal law;  
5 persistent sexual abuse, as defined in section 130.53 of the penal law;  
6 aggravated sexual abuse in the fourth degree, as defined in section  
7 130.65-a of the penal law; female genital mutilation, as defined in  
8 section 130.85 of the penal law; facilitating a sex offense with a  
9 controlled substance, as defined in section 130.90 of the penal law;  
10 unlawful imprisonment in the first degree, as defined in section 135.10  
11 of the penal law; custodial interference in the first degree, as defined  
12 in section 135.50 of the penal law; criminal trespass in the first  
13 degree, as defined in section 140.17 of the penal law; criminal tamper-  
14 ing in the first degree, as defined in section 145.20 of the penal law;  
15 tampering with a consumer product in the first degree, as defined in  
16 section 145.45 of the penal law; robbery in the third degree as defined  
17 in section 160.05 of the penal law; identity theft in the second degree,  
18 as defined in section 190.79 of the penal law; identity theft in the  
19 first degree, as defined in section 190.80 of the penal law; promoting  
20 prison contraband in the first degree, as defined in section 205.25 of  
21 the penal law; tampering with a witness in the third degree, as defined  
22 in section 215.11 of the penal law; tampering with a witness in the  
23 second degree, as defined in section 215.12 of the penal law; tampering  
24 with a witness in the first degree, as defined in section 215.13 of the  
25 penal law; criminal contempt in the first degree, as defined in subdivi-  
26 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated  
27 criminal contempt, as defined in section 215.52 of the penal law; bail  
28 jumping in the second degree, as defined in section 215.56 of the penal  
29 law; bail jumping in the first degree, as defined in section 215.57 of  
30 the penal law; patronizing a prostitute in the second degree, as defined  
31 in section 230.05 of the penal law; patronizing a prostitute in the  
32 first degree, as defined in section 230.06 of the penal law; promoting  
33 prostitution in the second degree, as defined in section 230.30 of the  
34 penal law; promoting prostitution in the first degree, as defined in  
35 section 230.32 of the penal law; compelling prostitution, as defined in  
36 section 230.33 of the penal law; disseminating indecent materials to  
37 minors in the second degree, as defined in section 235.21 of the penal  
38 law; disseminating indecent materials to minors in the first degree, as  
39 defined in section 235.22 of the penal law; riot in the first degree, as  
40 defined in section 240.06 of the penal law; criminal anarchy, as defined  
41 in section 240.15 of the penal law; aggravated harassment of an employee  
42 by an inmate, as defined in section 240.32 of the penal law; unlawful  
43 surveillance in the second degree, as defined in section 250.45 of the  
44 penal law; unlawful surveillance in the first degree, as defined in  
45 section 250.50 of the penal law; AGGRAVATED ENDANGERING THE WELFARE OF A  
46 CHILD, AS DEFINED IN SECTION 260.09 OF THE PENAL LAW; endangering the  
47 welfare of a vulnerable elderly person in the second degree, as defined  
48 in section 260.32 of the penal law; endangering the welfare of a vulner-  
49 able elderly person in the first degree, as defined in section 260.34 of  
50 the penal law; use of a child in a sexual performance, as defined in  
51 section 263.05 of the penal law; promoting an obscene sexual performance  
52 by a child, as defined in section 263.10 of the penal law; possessing an  
53 obscene sexual performance by a child, as defined in section 263.11 of  
54 the penal law; promoting a sexual performance by a child, as defined in  
55 section 263.15 of the penal law; possessing a sexual performance by a  
56 child, as defined in section 263.16 of the penal law; criminal

possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or

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

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

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

(A) the parent of such child has been convicted of AGGRAVATED MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23, AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28, murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25, manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the attempted homicide;

S 24. This act shall take effect immediately.