

3582

2011-2012 Regular Sessions

I N S E N A T E

February 25, 2011

Introduced by Sens. DeFRANCISCO, BONACIC, JOHNSON, LARKIN, MAZIARZ, O'MARA -- 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 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; to amend the family court act, in relation to the definition of the term "neglected 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:

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

LBD09420-01-1

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

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
18 260.00; NON-SUPPORT OF A CHILD IN THE SECOND DEGREE AS DEFINED IN
19 SECTION 260.05; NON-SUPPORT OF A CHILD IN THE FIRST DEGREE AS DEFINED IN
20 SECTION 260.06; ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SECTION
21 260.10; AGGRAVATED ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN
22 SECTION 260.09; UNLAWFULLY DEALING WITH A CHILD IN THE FIRST DEGREE AS
23 DEFINED IN SECTION 260.20; UNLAWFULLY DEALING WITH A CHILD IN THE SECOND
24 DEGREE AS DEFINED IN SECTION 260.21; OR AN OFFENSE DEFINED IN ARTICLE
25 TWO HUNDRED SIXTY-THREE OF THIS CHAPTER; OR

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

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

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

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

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

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

1 title. When a defendant is convicted of the crime of terrorism as
2 defined in section 490.25 of this chapter, and the specified offense the
3 defendant committed is a class A-I felony offense, or when a defendant
4 is convicted of the crime of criminal possession of a chemical weapon or
5 biological weapon in the first degree as defined in section 490.45 of
6 this chapter, or when a defendant is convicted of the crime of criminal
7 use of a chemical weapon or biological weapon in the first degree as
8 defined in section 490.55 of this chapter, the court shall sentence the
9 defendant to life imprisonment without parole in accordance with subdi-
10 vision five of section 70.00 of this title; provided, however, that
11 nothing in this section shall preclude or prevent a sentence of death
12 when the defendant is also convicted of murder in the first degree as
13 defined in section 125.27 of this chapter. When a defendant is convicted
14 of aggravated murder as defined in subdivision two of section 125.26 of
15 this chapter, the court shall sentence the defendant to life imprison-
16 ment without parole or to a term of imprisonment for a class A-I felony
17 other than a sentence of life imprisonment without parole, in accordance
18 with subdivisions one through three of section 70.00 of this title.

19 S 4. Subparagraph (i) of paragraph (a) of subdivision 3 of section
20 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,
21 is amended to read as follows:

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

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

45 5. Life imprisonment without parole. Notwithstanding any other
46 provision of law, a defendant sentenced to life imprisonment without
47 parole shall not be or become eligible for parole or conditional
48 release. For purposes of commitment and custody, other than parole and
49 conditional release, such sentence shall be deemed to be an indetermi-
50 nate sentence. A defendant may be sentenced to life imprisonment with-
51 out parole upon conviction for the crime of murder in the first degree
52 as defined in section 125.27 of this chapter and in accordance with the
53 procedures provided by law for imposing a sentence for such crime. A
54 defendant must be sentenced to life imprisonment without parole upon
55 conviction for the crime of terrorism as defined in section 490.25 of
56 this chapter, where the specified offense the defendant committed is a

1 class A-I felony; the crime of criminal possession of a chemical weapon
2 or biological weapon in the first degree as defined in section 490.45 of
3 this chapter; or the crime of criminal use of a chemical weapon or
4 biological weapon in the first degree as defined in section 490.55 of
5 this chapter; provided, however, that nothing in this subdivision shall
6 preclude or prevent a sentence of death when the defendant is also
7 convicted of the crime of murder in the first degree as defined in
8 section 125.27 of this chapter. A defendant must be sentenced to life
9 imprisonment without parole upon conviction [for the crime of murder in
10 the second degree as defined in subdivision five of section 125.25 of
11 this chapter or] for the crime of aggravated murder as defined in subdi-
12 vision one of section 125.26 of this chapter OR FOR THE CRIME OF AGGRA-
13 VATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER. A
14 defendant may be sentenced to life imprisonment without parole upon
15 conviction for the crime of aggravated murder as defined in subdivision
16 two of section 125.26 of this chapter.

17 S 6. Paragraphs (a), (b) and (c) of subdivision 1 of section 70.02 of
18 the penal law, paragraph (a) as amended by chapter 320 of the laws of
19 2006, and paragraphs (b) and (c) as amended by chapter 405 of the laws
20 of 2010, are amended to read as follows:

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

48 (b) Class C violent felony offenses: an attempt to commit any of the
49 class B felonies set forth in paragraph (a) of this subdivision; aggra-
50 vated criminally negligent homicide as defined in section 125.11, aggra-
51 vated manslaughter in the second degree as defined in section 125.21,
52 aggravated sexual abuse in the second degree as defined in section
53 130.67, assault on a peace officer, police officer, fireman or emergency
54 medical services professional as defined in section 120.08, gang assault
55 in the second degree as defined in section 120.06, AGGRAVATED ABUSE OF A
56 CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 120.09-A, strangulation

1 in the first degree as defined in section 121.13, burglary in the second
2 degree as defined in section 140.25, robbery in the second degree as
3 defined in section 160.10, criminal possession of a weapon in the second
4 degree as defined in section 265.03, criminal use of a firearm in the
5 second degree as defined in section 265.08, criminal sale of a firearm
6 in the second degree as defined in section 265.12, criminal sale of a
7 firearm with the aid of a minor as defined in section 265.14, soliciting
8 or providing support for an act of terrorism in the first degree as
9 defined in section 490.15, hindering prosecution of terrorism in the
10 second degree as defined in section 490.30, and criminal possession of a
11 chemical weapon or biological weapon in the third degree as defined in
12 section 490.37.

13 (c) Class D violent felony offenses: an attempt to commit any of the
14 class C felonies set forth in paragraph (b); reckless assault of a child
15 as defined in section 120.02, assault in the second degree as defined in
16 section 120.05, AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS
17 DEFINED IN SECTION 120.09 menacing a police officer or peace officer as
18 defined in section 120.18, stalking in the first degree, as defined in
19 subdivision one of section 120.60, strangulation in the second degree as
20 defined in section 121.12, rape in the second degree as defined in
21 section 130.30, criminal sexual act in the second degree as defined in
22 section 130.45, sexual abuse in the first degree as defined in section
23 130.65, course of sexual conduct against a child in the second degree as
24 defined in section 130.80, aggravated sexual abuse in the third degree
25 as defined in section 130.66, facilitating a sex offense with a
26 controlled substance as defined in section 130.90, criminal possession
27 of a weapon in the third degree as defined in subdivision five, six,
28 seven or eight of section 265.02, criminal sale of a firearm in the
29 third degree as defined in section 265.11, intimidating a victim or
30 witness in the second degree as defined in section 215.16, soliciting or
31 providing support for an act of terrorism in the second degree as
32 defined in section 490.10, and making a terroristic threat as defined in
33 section 490.20, falsely reporting an incident in the first degree as
34 defined in section 240.60, placing a false bomb or hazardous substance
35 in the first degree as defined in section 240.62, placing a false bomb
36 or hazardous substance in a sports stadium or arena, mass transportation
37 facility or enclosed shopping mall as defined in section 240.63, and
38 aggravated unpermitted use of indoor pyrotechnics in the first degree as
39 defined in section 405.18.

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

42 1. Class A-I felony when the crime attempted is the A-I felony of
43 murder in the first degree, aggravated murder as defined in subdivision
44 one of section 125.26 of this chapter, AGGRAVATED MURDER OF A CHILD,
45 criminal possession of a controlled substance in the first degree, crim-
46 inal sale of a controlled substance in the first degree, criminal
47 possession of a chemical or biological weapon in the first degree or
48 criminal use of a chemical or biological weapon in the first degree;

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

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

53 A person is guilty of [reckless assault] AGGRAVATED ABUSE of a child
54 IN THE THIRD DEGREE when, being [a child day care provider or an employ-
55 ee thereof] EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR
56 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 causes [serious] physical injury to [a] SUCH child [under the care of such provider or employee who is less than eleven years of age].

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

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

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

A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE 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:

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

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

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

AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 120.09-A AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE 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:

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

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

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

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

(B) AS PART OF THE SAME TRANSACTION, RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS PHYSICAL INJURY OR DEATH TO ANOTHER CHILD LESS THAN FOURTEEN YEARS OLD AND THEREBY CAUSES SERIOUS PHYSICAL INJURY TO SUCH OTHER CHILD; OR

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

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

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

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

S 125.23 AGGRAVATED MANSLAUGHTER OF A CHILD.

1 A PERSON IS GUILTY OF AGGRAVATED MANSLAUGHTER OF A CHILD WHEN, BEING
2 EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR OTHER PERSON
3 LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE FOR THE CARE
4 OF, A CHILD LESS THAN FOURTEEN YEARS OLD, OR IS A PERSON IN A POSITION
5 OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE RECKLESSLY
6 ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS PHYSICAL INJURY
7 OR DEATH TO SUCH CHILD AND THEREBY CAUSES THE DEATH OF SUCH CHILD.

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

9 S 125.28 AGGRAVATED MURDER OF A CHILD.

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

11 1. WITH INTENT TO CAUSE THE DEATH OF A CHILD LESS THAN FOURTEEN YEARS
12 OLD, AND BEING EIGHTEEN YEARS OLD OR MORE, AND BEING THE PARENT, GUARDI-
13 AN OR OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY
14 RESPONSIBLE FOR THE CARE OF, SUCH CHILD, OR BEING A PERSON IN A POSITION
15 OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE CAUSES THE
16 DEATH OF SUCH CHILD; OR

17 2. UNDER CIRCUMSTANCES EVINCING A DEPRAVED INDIFFERENCE TO HUMAN LIFE,
18 AND BEING EIGHTEEN YEARS OLD OR MORE, AND BEING THE 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 RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS
23 PHYSICAL INJURY OR DEATH TO SUCH CHILD AND THEREBY CAUSES THE DEATH OF
24 SUCH CHILD; OR

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

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

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

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

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

40 S 13. Subparagraph (ix) of paragraph (a) of subdivision 1 of section
41 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is
42 amended to read as follows:

43 (ix) prior to committing the killing, the defendant had been convicted
44 of murder as defined in this section or section 125.25 of this article
45 OR CONVICTED OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION
46 125.28 OF THIS ARTICLE, or had been convicted in another jurisdiction of
47 an offense which, if committed in this state, would constitute a
48 violation of [either of such] THE AFOREMENTIONED sections; or

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

51 S 260.09 AGGRAVATED ENDANGERING THE WELFARE OF A CHILD.

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

1 SHE KNOWINGLY ACTS IN A MANNER LIKELY TO BE INJURIOUS TO THE PHYSICAL,
2 MENTAL OR MORAL WELFARE OF SUCH CHILD, AND:

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

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

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

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

12 (a) Subdivisions one and two do not apply to a criminal action wherein
13 the defendant is accused of an offense defined in sections 125.10,
14 125.15, 125.20, 125.25, 125.26 [and], 125.27 AND 125.28 of the penal
15 law.

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

19 1. After arraignment of a defendant upon a felony complaint, other
20 than a felony complaint charging an offense defined in section 125.10,
21 125.15, 125.20, 125.23, 125.25, 125.26 [or], 125.27 OR 125.28 of the
22 penal law, either party or the local criminal court or superior court
23 before which the action is pending, on its own motion, may move in
24 accordance with the provisions of this section for an order terminating
25 prosecution of the charges contained in such felony complaint on consent
26 of the parties.

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

30 (h) A social worker, rape crisis counselor, psychologist or other
31 professional providing emotional support to a child witness twelve years
32 old or younger who is called to give evidence in a grand jury proceeding
33 concerning a crime defined in article one hundred twenty-one, article
34 one hundred thirty, article two hundred sixty, section 120.01, 120.09,
35 120.09-A, 120.10, 125.10, 125.15, 125.20, 125.25, 125.26, 125.27,
36 125.28, 255.25, 255.26 [or], 255.27 OR 260.09 of the penal law provided
37 that the district attorney consents. Such support person shall not
38 provide the witness with an answer to any question or otherwise partic-
39 ipate in such proceeding and shall first take an oath before the grand
40 jury that he or she will keep secret all matters before such grand jury
41 within his or her knowledge.

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

45 (b) Any of the following felonies: assault in the second degree as
46 defined in section 120.05 of the penal law, AGGRAVATED ABUSE OF A CHILD
47 IN THE THIRD DEGREE AS DEFINED IN SECTION 120.01 OF THE PENAL LAW,
48 AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION
49 120.09 OF THE PENAL LAW, AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE
50 AS DEFINED IN SECTION 120.09-A OF THE PENAL LAW, assault in the first
51 degree as defined in section 120.10 of the penal law, reckless endanger-
52 ment in the first degree as defined in section 120.25 of the penal law,
53 promoting a suicide attempt as defined in section 120.30 of the penal
54 law, strangulation in the second degree as defined in section 121.12 of
55 the penal law, strangulation in the first degree as defined in section
56 121.13 of the penal law, criminally negligent homicide as defined in

1 section 125.10 of the penal law, manslaughter in the second degree as
2 defined in section 125.15 of the penal law, manslaughter in the first
3 degree as defined in section 125.20 of the penal law, AGGRAVATED
4 MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23 OF THE PENAL LAW,
5 murder in the second degree as defined in section 125.25 of the penal
6 law, murder in the first degree as defined in section 125.27 of the
7 penal law, AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF
8 THE PENAL LAW, abortion in the second degree as defined in section
9 125.40 of the penal law, abortion in the first degree as defined in
10 section 125.45 of the penal law, rape in the third degree as defined in
11 section 130.25 of the penal law, rape in the second degree as defined in
12 section 130.30 of the penal law, rape in the first degree as defined in
13 section 130.35 of the penal law, criminal sexual act in the third degree
14 as defined in section 130.40 of the penal law, criminal sexual act in
15 the second degree as defined in section 130.45 of the penal law, crimi-
16 nal sexual act in the first degree as defined in section 130.50 of the
17 penal law, sexual abuse in the first degree as defined in section 130.65
18 of the penal law, unlawful imprisonment in the first degree as defined
19 in section 135.10 of the penal law, kidnapping in the second degree as
20 defined in section 135.20 of the penal law, kidnapping in the first
21 degree as defined in section 135.25 of the penal law, labor trafficking
22 as defined in section 135.35 of the penal law, custodial interference in
23 the first degree as defined in section 135.50 of the penal law, coercion
24 in the first degree as defined in section 135.65 of the penal law, crim-
25 inal trespass in the first degree as defined in section 140.17 of the
26 penal law, burglary in the third degree as defined in section 140.20 of
27 the penal law, burglary in the second degree as defined in section
28 140.25 of the penal law, burglary in the first degree as defined in
29 section 140.30 of the penal law, criminal mischief in the third degree
30 as defined in section 145.05 of the penal law, criminal mischief in the
31 second degree as defined in section 145.10 of the penal law, criminal
32 mischief in the first degree as defined in section 145.12 of the penal
33 law, criminal tampering in the first degree as defined in section 145.20
34 of the penal law, arson in the fourth degree as defined in section
35 150.05 of the penal law, arson in the third degree as defined in section
36 150.10 of the penal law, arson in the second degree as defined in
37 section 150.15 of the penal law, arson in the first degree as defined in
38 section 150.20 of the penal law, grand larceny in the fourth degree as
39 defined in section 155.30 of the penal law, grand larceny in the third
40 degree as defined in section 155.35 of the penal law, grand larceny in
41 the second degree as defined in section 155.40 of the penal law, grand
42 larceny in the first degree as defined in section 155.42 of the penal
43 law, health care fraud in the fourth degree as defined in section 177.10
44 of the penal law, health care fraud in the third degree as defined in
45 section 177.15 of the penal law, health care fraud in the second degree
46 as defined in section 177.20 of the penal law, health care fraud in the
47 first degree as defined in section 177.25 of the penal law, robbery in
48 the third degree as defined in section 160.05 of the penal law, robbery
49 in the second degree as defined in section 160.10 of the penal law,
50 robbery in the first degree as defined in section 160.15 of the penal
51 law, unlawful use of secret scientific material as defined in section
52 165.07 of the penal law, criminal possession of stolen property in the
53 fourth degree as defined in section 165.45 of the penal law, criminal
54 possession of stolen property in the third degree as defined in section
55 165.50 of the penal law, criminal possession of stolen property in the
56 second degree as defined by section 165.52 of the penal law, criminal

1 possession of stolen property in the first degree as defined by section
2 165.54 of the penal law, trademark counterfeiting in the second degree
3 as defined in section 165.72 of the penal law, trademark counterfeiting
4 in the first degree as defined in section 165.73 of the penal law,
5 forgery in the second degree as defined in section 170.10 of the penal
6 law, forgery in the first degree as defined in section 170.15 of the
7 penal law, criminal possession of a forged instrument in the second
8 degree as defined in section 170.25 of the penal law, criminal
9 possession of a forged instrument in the first degree as defined in
10 section 170.30 of the penal law, criminal possession of forgery devices
11 as defined in section 170.40 of the penal law, falsifying business
12 records in the first degree as defined in section 175.10 of the penal
13 law, tampering with public records in the first degree as defined in
14 section 175.25 of the penal law, offering a false instrument for filing
15 in the first degree as defined in section 175.35 of the penal law, issu-
16 ing a false certificate as defined in section 175.40 of the penal law,
17 criminal diversion of prescription medications and prescriptions in the
18 second degree as defined in section 178.20 of the penal law, criminal
19 diversion of prescription medications and prescriptions in the first
20 degree as defined in section 178.25 of the penal law, residential mort-
21 gage fraud in the fourth degree as defined in section 187.10 of the
22 penal law, residential mortgage fraud in the third degree as defined in
23 section 187.15 of the penal law, residential mortgage fraud in the
24 second degree as defined in section 187.20 of the penal law, residential
25 mortgage fraud in the first degree as defined in section 187.25 of the
26 penal law, escape in the second degree as defined in section 205.10 of
27 the penal law, escape in the first degree as defined in section 205.15
28 of the penal law, absconding from temporary release in the first degree
29 as defined in section 205.17 of the penal law, promoting prison contra-
30 band in the first degree as defined in section 205.25 of the penal law,
31 hindering prosecution in the second degree as defined in section 205.60
32 of the penal law, hindering prosecution in the first degree as defined
33 in section 205.65 of the penal law, sex trafficking as defined in
34 section 230.34 of the penal law, AGGRAVATED ENDANGERING THE WELFARE OF A
35 CHILD AS DEFINED IN SECTION 260.09 OF THE PENAL LAW, criminal possession
36 of a weapon in the third degree as defined in subdivisions two, three
37 and five of section 265.02 of the penal law, criminal possession of a
38 weapon in the second degree as defined in section 265.03 of the penal
39 law, criminal possession of a weapon in the first degree as defined in
40 section 265.04 of the penal law, manufacture, transport, disposition and
41 defacement of weapons and dangerous instruments and appliances defined
42 as felonies in subdivisions one, two, and three of section 265.10 of the
43 penal law, sections 265.11, 265.12 and 265.13 of the penal law, or
44 prohibited use of weapons as defined in subdivision two of section
45 265.35 of the penal law, relating to firearms and other dangerous weap-
46 ons, or failure to disclose the origin of a recording in the first
47 degree as defined in section 275.40 of the penal law;

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

51 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
52 subdivision one and paragraph (a) of subdivision two of this section
53 that result in permanent disqualification shall include a conviction
54 under sections 125.12, 125.20, 125.25, 125.26, 125.27, 130.30, 130.35,
55 130.45, 130.50, 130.70, 135.25, 150.20 of the penal law or an attempt to
56 commit any of the aforesaid offenses under section 110.00 of the penal

1 law, OR A CHILD ABUSE OFFENSE AS DEFINED IN SUBDIVISION TWENTY-TWO OF
2 SECTION 10.00 OF THE PENAL LAW, or any offenses committed under a former
3 section of the penal law which would constitute violations of the afore-
4 said sections of the penal law, or any offenses committed outside this
5 state which would constitute violations of the aforesaid sections of the
6 penal law.

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

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

10 Notwithstanding any other provision of law to the contrary, a joint
11 tenant convicted of murder in the second degree as defined in section
12 125.25 of the penal law or murder in the first degree as defined in
13 section 125.27 of the penal law OR AGGRAVATED MURDER OF A CHILD AS
14 DEFINED IN SECTION 125.28 OF THE PENAL LAW of another joint tenant shall
15 not be entitled to the distribution of any monies in a joint bank
16 account created or contributed to by the deceased joint tenant, except
17 for those monies contributed by the convicted joint tenant.

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

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

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

43 (a) sections 120.05, 120.10, and 120.11, relating to assault; sections
44 125.15 through [125.27] 125.28 relating to homicide; sections 130.25,
45 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70,
46 relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19,
47 relating to escape and other offenses, where the offender has been
48 convicted within the previous five years of one of the other felonies
49 specified in this subdivision; or sections 255.25, 255.26 and 255.27,
50 relating to incest, a violent felony offense as defined in subdivision
51 one of section 70.02 of the penal law, attempted murder in the first
52 degree, as defined in section 110.00 and section 125.27 of the penal
53 law, kidnapping in the first degree, as defined in section 135.25 of the
54 penal law, arson in the first degree, as defined in section 150.20 of
55 the penal law, burglary in the third degree, as defined in section
56 140.20 of the penal law, attempted burglary in the third degree, as

1 defined in section 110.00 and section 140.20 of the penal law, a felony
2 defined in article four hundred ninety of the penal law relating to
3 terrorism or any attempt to commit an offense defined in such article
4 relating to terrorism which is a felony; or

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

7 AGGRAVATED ABUSE OF A CHILD IN THE THIRD DEGREE, AS DEFINED IN SECTION
8 120.01 OF THE PENAL LAW; AGGRAVATED ABUSE OF A CHILD IN THE SECOND
9 DEGREE, AS DEFINED IN SECTION 120.09 OF THE PENAL LAW; AGGRAVATED ABUSE
10 OF A CHILD IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.09-A OF THE
11 PENAL LAW; aggravated assault upon a person less than eleven years old,
12 as defined in section 120.12 of the penal law; menacing in the first
13 degree, as defined in section 120.13 of the penal law; reckless endan-
14 germent in the first degree, as defined in section 120.25 of the penal
15 law; stalking in the second degree, as defined in section 120.55 of the
16 penal law; criminally negligent homicide, as defined in section 125.10
17 of the penal law; vehicular manslaughter in the second degree, as
18 defined in section 125.12 of the penal law; vehicular manslaughter in
19 the first degree, as defined in section 125.13 of the penal law;
20 persistent sexual abuse, as defined in section 130.53 of the penal law;
21 aggravated sexual abuse in the fourth degree, as defined in section
22 130.65-a of the penal law; female genital mutilation, as defined in
23 section 130.85 of the penal law; facilitating a sex offense with a
24 controlled substance, as defined in section 130.90 of the penal law;
25 unlawful imprisonment in the first degree, as defined in section 135.10
26 of the penal law; custodial interference in the first degree, as defined
27 in section 135.50 of the penal law; criminal trespass in the first
28 degree, as defined in section 140.17 of the penal law; criminal tamper-
29 ing in the first degree, as defined in section 145.20 of the penal law;
30 tampering with a consumer product in the first degree, as defined in
31 section 145.45 of the penal law; robbery in the third degree as defined
32 in section 160.05 of the penal law; identity theft in the second degree,
33 as defined in section 190.79 of the penal law; identity theft in the
34 first degree, as defined in section 190.80 of the penal law; promoting
35 prison contraband in the first degree, as defined in section 205.25 of
36 the penal law; tampering with a witness in the third degree, as defined
37 in section 215.11 of the penal law; tampering with a witness in the
38 second degree, as defined in section 215.12 of the penal law; tampering
39 with a witness in the first degree, as defined in section 215.13 of the
40 penal law; criminal contempt in the first degree, as defined in subdivi-
41 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
42 criminal contempt, as defined in section 215.52 of the penal law; bail
43 jumping in the second degree, as defined in section 215.56 of the penal
44 law; bail jumping in the first degree, as defined in section 215.57 of
45 the penal law; patronizing a prostitute in the second degree, as defined
46 in section 230.05 of the penal law; patronizing a prostitute in the
47 first degree, as defined in section 230.06 of the penal law; promoting
48 prostitution in the second degree, as defined in section 230.30 of the
49 penal law; promoting prostitution in the first degree, as defined in
50 section 230.32 of the penal law; compelling prostitution, as defined in
51 section 230.33 of the penal law; disseminating indecent materials to
52 minors in the second degree, as defined in section 235.21 of the penal
53 law; disseminating indecent materials to minors in the first degree, as
54 defined in section 235.22 of the penal law; riot in the first degree, as
55 defined in section 240.06 of the penal law; criminal anarchy, as defined
56 in section 240.15 of the penal law; aggravated harassment of an employee

1 by an inmate, as defined in section 240.32 of the penal law; unlawful
2 surveillance in the second degree, as defined in section 250.45 of the
3 penal law; unlawful surveillance in the first degree, as defined in
4 section 250.50 of the penal law; AGGRAVATED ENDANGERING THE WELFARE OF A
5 CHILD, AS DEFINED IN SECTION 260.09 OF THE PENAL LAW; endangering the
6 welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY
7 DISABLED PERSON in the second degree, as defined in section 260.32 of
8 the penal law; endangering the welfare of a vulnerable elderly person,
9 OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the first degree, as
10 defined in section 260.34 of the penal law; use of a child in a sexual
11 performance, as defined in section 263.05 of the penal law; promoting an
12 obscene sexual performance by a child, as defined in section 263.10 of
13 the penal law; possessing an obscene sexual performance by a child, as
14 defined in section 263.11 of the penal law; promoting a sexual perform-
15 ance by a child, as defined in section 263.15 of the penal law; possess-
16 ing a sexual performance by a child, as defined in section 263.16 of the
17 penal law; criminal possession of a weapon in the third degree, as
18 defined in section 265.02 of the penal law; criminal sale of a firearm
19 in the third degree, as defined in section 265.11 of the penal law;
20 criminal sale of a firearm to a minor, as defined in section 265.16 of
21 the penal law; unlawful wearing of a body vest, as defined in section
22 270.20 of the penal law; hate crimes as defined in section 485.05 of the
23 penal law; and crime of terrorism, as defined in section 490.25 of the
24 penal law; or

25 S 22. Subparagraph 2 of paragraph (b) of subdivision 3 of section
26 358-a of the social services law, as added by chapter 7 of the laws of
27 1999, is amended to read as follows:

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

38 S 23. Clause (A) of subparagraph (iii) of paragraph (a) of subdivision
39 8 of section 384-b of the social services law, as amended by chapter 460
40 of the laws of 2006, is amended to read as follows:

41 (A) the parent of such child has been convicted of AGGRAVATED
42 MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23, AGGRAVATED MURDER
43 OF A CHILD AS DEFINED IN SECTION 125.28, murder in the first degree as
44 defined in section 125.27, murder in the second degree as defined in
45 section 125.25, manslaughter in the first degree as defined in section
46 125.20, or manslaughter in the second degree as defined in section
47 125.15, and the victim of any such crime was another child of the parent
48 or another child for whose care such parent is or has been legally
49 responsible as defined in subdivision (g) of section one thousand twelve
50 of the family court act, or another parent of the child, unless the
51 convicted parent was a victim of physical, sexual or psychological abuse
52 by the decedent parent and such abuse was a factor in causing the homi-
53 cide; or has been convicted of an attempt to commit any of the foregoing
54 crimes, and the victim or intended victim was the child or another child
55 of the parent or another child for whose care such parent is or has been
56 legally responsible as defined in subdivision (g) of section one thou-

1 sand twelve of the family court act, or another parent of the child,
2 unless the convicted parent was a victim of physical, sexual or psycho-
3 logical abuse by the decedent parent and such abuse was a factor in
4 causing the attempted homicide;

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

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

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

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

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

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

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

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

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

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

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

1 S 29. Subdivision (f) of section 1012 of the family court act, as
2 added by chapter 962 of the laws of 1970, subparagraph (A) of paragraph
3 (i) as amended by chapter 469 of the laws of 1971, subparagraph (B) of
4 paragraph (i) as amended by chapter 984 of the laws of 1981 and para-
5 graph (ii) as amended by chapter 666 of the laws of 1976, is amended to
6 read as follows:

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

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

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

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

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

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

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

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