S T A T E O F N E W Y O R K

2588

2009-2010 Regular Sessions

I N S E N A T E

February 24, 2009

Introduced by Sens. GOLDEN, ALESI, DeFRANCISCO, O. JOHNSON, LANZA, LARKIN, LIBOUS, MAZIARZ, MORAHAN, PADAVAN, SEWARD, SKELOS, VOLKER -- 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 judiciary law and the vehicle and traffic law, in relation to establishing the offense of aggravated murder of a child and making technical corrections relating to aggravated murder; to amend the estates, powers and trusts law, the executive law and the social services law, in relation to aggravated murder 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:

Section 1. Short title. This act shall be known and may be cited as "Nixzmary's Law".

S 2. Section 60.06 of the penal law, as amended by chapter 765 of the laws of 2005 and the section heading as amended by chapter 93 of the laws of 2006, 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

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

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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 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.

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

(i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years; provided, however, that (A) where a sentence, other than a sentence of death or life imprisonment without parole, is imposed upon a defendant convicted of murder in the first degree as defined in section 125.27 of this chapter such minimum period shall be not less than twenty years nor more than twenty-five years, and, (B) where a sentence is imposed upon a defendant [convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or] convicted of aggravated murder as defined in section 125.26 of this chapter OR CONVICTED OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER, the sentence shall be life imprisonment without parole, and, (C) where a sentence is imposed upon a defendant convicted of attempted murder in the first degree as defined in article one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a) of subdivision one and paragraph (b) of subdivision one of section 125.27 of this chapter or attempted aggravated murder as defined in article one hundred ten of this chapter and section 125.26 of this chapter OR ATTEMPTED AGGRAVATED MURDER OF A CHILD AS DEFINED IN ARTICLE ONE HUNDRED TEN OF THIS CHAPTER AND SECTION 125.28 OF THIS CHAPTER such minimum period shall be not less than twenty years nor more than forty years.

S 4. Subdivision 5 of section 70.00 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the

procedures provided by law for imposing a sentence for such crime. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; 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 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; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant must be sentenced to life imprisonment without parole upon conviction [for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or] for the crime of aggravated murder as defined in section 125.26 of this chapter OR FOR THE CRIME OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER.

S 5. Subdivision 1 of section 110.05 of the penal law, as amended by chapter 93 of the laws of 2006, is amended to read as follows:

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

S 6. Section 125.05 of the penal law is amended by adding a new subdivision 4 to read as follows:

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

S 7. 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 8. Subdivision 5 of section 125.25 of the penal law is REPEALED.

S 9. 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 AS DEFINED IN SECTION 125.26 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 10. The penal law is amended by adding a new section 125.28 to read as follows:

S 125.28 AGGRAVATED MURDER OF A CHILD.

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

1. 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 PERSON LESS THAN FOURTEEN YEARS OLD, HE OR SHE INTENTIONALLY CAUSES THE DEATH OF SUCH PERSON; 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, ANOTHER PERSON LESS THAN FOURTEEN YEARS OLD, OR BEING A PERSON IN A POSITION OF TRUST OF ANOTHER PERSON 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 PERSON AND THEREBY CAUSES THE DEATH OF SUCH PERSON; OR

3. WITH INTENT TO CAUSE THE DEATH OF A PERSON LESS THAN FOURTEEN YEARS OLD, AND BEING THE PARENT, GUARDIAN OR OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE FOR THE CARE OF, SUCH PERSON, OR BEING A PERSON IN A POSITION OF TRUST OF SUCH PERSON HE OR SHE INTENTIONALLY CAUSES THE DEATH OF SUCH PERSON.

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

S 11. 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.

S 12. Subdivision 1 of section 180.85 of the criminal procedure law, as amended by chapter 93 of the laws of 2006, is amended to read as follows:

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

S 13. Paragraph (h) of subdivision 3 of section 190.25 of the criminal procedure law, as separately amended by chapters 93 and 320 of the laws of 2006, is amended to read as follows:

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

S 14. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in

the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW, abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal

possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing 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 15. Subdivisions 1, 6, 7 and 8 of section 35-b of the judiciary law, as added by chapter 1 of the laws of 1995, are amended to read as follows:

1. Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, 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, or in

any criminal action in which a defendant is charged with murder in the second degree as defined in section 125.25 of the penal law and the district attorney confirms upon inquiry by the court that the district attorney is undertaking an investigation to determine whether the defendant can or should be charged with AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, 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 and the court determines that there is a reasonable likelihood the defendant will be so charged, if the defendant is or becomes financially unable to obtain adequate representation or investigative, expert or other reasonably necessary services at any time either (a) prior to judgment, or (b) after the entry of a judgment imposing a sentence of death but before final resolution of a direct appeal pursuant to subdivision one of section 450.70 of the criminal procedure law and of an appeal pursuant to subdivision two or three of section 450.70 of the criminal procedure law from an order denying an initial post judgment motion pursuant to section 440.10 or 440.20 of the criminal procedure law, the defendant shall be entitled to the appointment of counsel and investigative, expert and such other reasonably necessary services in accordance with the provisions of this section. Prior to the appointment of counsel pursuant to this section, the court shall determine whether the defendant is or has become financially unable to obtain adequate representation. In the event such defendant seeks to file any subsequent motion, he or she shall not be eligible for the appointment of counsel pursuant to this section.

6. (a) When a defendant has been charged in an accusatory instrument WITH AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, with murder in the first degree as defined in section 125.27 of the penal law, WITH AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW or with murder in the second degree as defined in section 125.25 of the penal law, the district attorney shall notify the capital defender office.

(b) The clerk of the superior court wherein a judgment that includes a sentence of death has been entered and the clerk of the court of appeals upon an order affirming a judgment that includes a sentence of death shall notify the capital defender office of the judgment or order. Notice need not be given when the defendant has retained counsel of his or her own choosing or when appellate or post-conviction counsel has already been appointed pursuant to this section and when counsel advises that he or she will continue to act on the defendant's behalf.

(c) Notice to the capital defender office required pursuant to paragraph (a) or (b) of this subdivision shall consist of telephone, facsimile, E-mail or other prompt electronic means of notification forthwith, which shall be followed by first class mail notification within two business days of the charge, sentence or affirmance. The failure to give notice shall not affect the validity of any indictment, conviction, judgment or order.

7. Whenever a defendant is charged WITH AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, with murder in the first degree AS DEFINED IN SECTION 125.27 OF THE PENAL LAW OR WITH AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW, or a defendant has been charged with murder in the second degree as defined in section 125.25 of the penal law and the court determines after confirmation by the district attorney pursuant to subdivision one of this section that there is a reasonable likelihood the defendant will be charged with murder in the first degree and the defendant is financially unable to

obtain counsel as determined by the court and an attorney has not yet been appointed to represent such defendant pursuant to the provisions of this section, the capital defender office may provide or arrange to provide temporary legal representation to the defendant. No arraignment shall be delayed on account of any representation to be provided or arranged pursuant to this subdivision. Any temporary representation provided pursuant to this subdivision shall cease upon the court's appointment of an attorney pursuant to this section.

8. Whenever prior to entry of judgment a defendant is charged with AGGRAVATED MURDER, murder in the first degree OR AGGRAVATED MURDER OF A CHILD, or a defendant has been charged with murder in the second degree as defined in section 125.25 of the penal law and the court determines after confirmation by the district attorney pursuant to subdivision one of this section that there is a reasonable likelihood the defendant will be charged with murder in the first degree, and the defendant is or becomes financially unable, as determined by the court, to obtain adequate investigative, expert or other reasonably necessary services and the court has not appointed the capital defender office to represent the defendant, the trial court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment of reasonable fees and expenses therefor; provided, however, that the court shall first find in an ex parte proceeding that such investigative, expert or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentencing. Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision and payment for such services nunc pro tunc. Whenever a court disapproves, in whole or in part, a request for authorization or voucher, the defendant may apply to a justice of an intermediate appellate court for an order approving the request or voucher.

S 16. 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, 125.28, 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 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 17. 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 account created or contributed to by the deceased joint tenant, except for those monies contributed by the convicted joint tenant.

Upon the conviction of such joint tenant of first or second degree murder and upon application by the prosecuting attorney, the court, as

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

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

S 18. Paragraph (a) of subdivision 7 of section 995 of the executive law, as separately amended by chapters 2 and 320 of the laws of 2006, is amended to read as follows:

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

S 19. 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 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 20. 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 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 OF THE PENAL LAW, 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 21. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.