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Cal. No. 270

I N S E N A T E

March 3, 2010

Introduced by Sens. SCHNEIDERMAN, ADDABBO, AUBERTINE, BONACIC, DILAN, ESPADA, FOLEY, HASSELL-THOMPSON, KRUEGER, LANZA, PERKINS, SAMPSON, SAVINO, SQUADRON, STACHOWSKI, STAVISKY, VALESKY, VOLKER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, the criminal procedure law, the domestic relations law, the executive law, the family court act, the social services law, the mental hygiene law and the vehicle and traffic law, in relation to criminal obstruction of breathing or blood circulation and strangulation

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

1 Section 1. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of  
2 the penal law, paragraph (b) as separately amended by chapters 764 and  
3 765 of the laws of 2005 and paragraph (c) as amended by chapter 7 of the  
4 laws of 2007, are amended to read as follows:  
5 (b) Class C violent felony offenses: an attempt to commit any of the  
6 class B felonies set forth in paragraph (a) OF THIS SUBDIVISION; aggra-  
7 vated criminally negligent homicide as defined in section 125.11, aggra-  
8 vated manslaughter in the second degree as defined in section 125.21,  
9 aggravated sexual abuse in the second degree as defined in section  
10 130.67, assault on a peace officer, police officer, fireman or emergency  
11 medical services professional as defined in section 120.08, gang assault  
12 in the second degree as defined in section 120.06, STRANGULATION IN THE  
13 FIRST DEGREE AS DEFINED IN SECTION 121.13, burglary in the second degree  
14 as defined in section 140.25, robbery in the second degree as defined in  
15 section 160.10, criminal possession of a weapon in the second degree as  
16 defined in section 265.03, criminal use of a firearm in the second  
17 degree as defined in section 265.08, criminal sale of a firearm in the  
18 second degree as defined in section 265.12, criminal sale of a firearm  
19 with the aid of a minor as defined in section 265.14, soliciting or  
20 providing support for an act of terrorism in the first degree as defined

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

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1 in section 490.15, hindering prosecution of terrorism in the second  
 2 degree as defined in section 490.30, and criminal possession of a chemi-  
 3 cal weapon or biological weapon in the third degree as defined in  
 4 section 490.37.

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

31 S 2. The penal law is amended by adding a new article 121 to read as  
 32 follows:

#### 33 ARTICLE 121

##### 34 STRANGULATION AND RELATED OFFENSES

35 SECTION 121.11 CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION.

36 121.12 STRANGULATION IN THE SECOND DEGREE.

37 121.13 STRANGULATION IN THE FIRST DEGREE.

38 121.14 MEDICAL OR DENTAL PURPOSE.

39 S 121.11 CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION.

40 A PERSON IS GUILTY OF CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD  
 41 CIRCULATION WHEN, WITH INTENT TO IMPEDE THE NORMAL BREATHING OR CIRCU-  
 42 LATION OF THE BLOOD OF ANOTHER PERSON, HE OR SHE:

43 A. APPLIES PRESSURE ON THE THROAT OR NECK OF SUCH PERSON; OR

44 B. BLOCKS THE NOSE OR MOUTH OF SUCH PERSON.

45 CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION IS A CLASS A  
 46 MISDEMEANOR.

47 S 121.12 STRANGULATION IN THE SECOND DEGREE.

48 A PERSON IS GUILTY OF STRANGULATION IN THE SECOND DEGREE WHEN HE OR  
 49 SHE COMMITS THE CRIME OF CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD  
 50 CIRCULATION, AS DEFINED IN SECTION 121.11 OF THIS ARTICLE, AND THEREBY  
 51 CAUSES STUPOR, LOSS OF CONSCIOUSNESS FOR ANY PERIOD OF TIME, OR ANY  
 52 OTHER PHYSICAL INJURY OR IMPAIRMENT.

53 STRANGULATION IN THE SECOND DEGREE IS A CLASS D FELONY.

54 S 121.13 STRANGULATION IN THE FIRST DEGREE.

55 A PERSON IS GUILTY OF STRANGULATION IN THE FIRST DEGREE WHEN HE OR SHE  
 56 COMMITS THE CRIME OF CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCU-

1 LATION, AS DEFINED IN SECTION 121.11 OF THIS ARTICLE, AND THEREBY CAUSES  
2 SERIOUS PHYSICAL INJURY TO SUCH OTHER PERSON.

3 STRANGULATION IN THE FIRST DEGREE IS A CLASS C FELONY.  
4 S 121.14 MEDICAL OR DENTAL PURPOSE.

5 FOR PURPOSES OF SECTIONS 121.11, 121.12 AND 121.13 OF THIS ARTICLE, IT  
6 SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT PERFORMED SUCH  
7 CONDUCT FOR A VALID MEDICAL OR DENTAL PURPOSE.

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

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

22 S 4. Paragraph (b) of subdivision 8 of section 700.05 of the criminal  
23 procedure law, as amended by chapter 472 of the laws of 2008, is amended  
24 to read as follows:

25 (b) Any of the following felonies: assault in the second degree as  
26 defined in section 120.05 of the penal law, assault in the first degree  
27 as defined in section 120.10 of the penal law, reckless endangerment in  
28 the first degree as defined in section 120.25 of the penal law, promot-  
29 ing a suicide attempt as defined in section 120.30 of the penal law,  
30 STRANGULATION IN THE SECOND DEGREE AS DEFINED IN SECTION 121.12 OF THE  
31 PENAL LAW, STRANGULATION IN THE FIRST DEGREE AS DEFINED IN SECTION  
32 121.13 OF THE PENAL LAW, criminally negligent homicide as defined in  
33 section 125.10 of the penal law, manslaughter in the second degree as  
34 defined in section 125.15 of the penal law, manslaughter in the first  
35 degree as defined in section 125.20 of the penal law, murder in the  
36 second degree as defined in section 125.25 of the penal law, murder in  
37 the first degree as defined in section 125.27 of the penal law, abortion  
38 in the second degree as defined in section 125.40 of the penal law,  
39 abortion in the first degree as defined in section 125.45 of the penal  
40 law, rape in the third degree as defined in section 130.25 of the penal  
41 law, rape in the second degree as defined in section 130.30 of the penal  
42 law, rape in the first degree as defined in section 130.35 of the penal  
43 law, criminal sexual act in the third degree as defined in section  
44 130.40 of the penal law, criminal sexual act in the second degree as  
45 defined in section 130.45 of the penal law, criminal sexual act in the  
46 first degree as defined in section 130.50 of the penal law, sexual abuse  
47 in the first degree as defined in section 130.65 of the penal law,  
48 unlawful imprisonment in the first degree as defined in section 135.10  
49 of the penal law, kidnapping in the second degree as defined in section  
50 135.20 of the penal law, kidnapping in the first degree as defined in  
51 section 135.25 of the penal law, labor trafficking as defined in section  
52 135.35 of the penal law, custodial interference in the first degree as  
53 defined in section 135.50 of the penal law, coercion in the first degree  
54 as defined in section 135.65 of the penal law, criminal trespass in the  
55 first degree as defined in section 140.17 of the penal law, burglary in  
56 the third degree as defined in section 140.20 of the penal law, burglary

1 in the second degree as defined in section 140.25 of the penal law,  
2 burglary in the first degree as defined in section 140.30 of the penal  
3 law, criminal mischief in the third degree as defined in section 145.05  
4 of the penal law, criminal mischief in the second degree as defined in  
5 section 145.10 of the penal law, criminal mischief in the first degree  
6 as defined in section 145.12 of the penal law, criminal tampering in the  
7 first degree as defined in section 145.20 of the penal law, arson in the  
8 fourth degree as defined in section 150.05 of the penal law, arson in  
9 the third degree as defined in section 150.10 of the penal law, arson in  
10 the second degree as defined in section 150.15 of the penal law, arson  
11 in the first degree as defined in section 150.20 of the penal law, grand  
12 larceny in the fourth degree as defined in section 155.30 of the penal  
13 law, grand larceny in the third degree as defined in section 155.35 of  
14 the penal law, grand larceny in the second degree as defined in section  
15 155.40 of the penal law, grand larceny in the first degree as defined in  
16 section 155.42 of the penal law, health care fraud in the fourth degree  
17 as defined in section 177.10 of the penal law, health care fraud in the  
18 third degree as defined in section 177.15 of the penal law, health care  
19 fraud in the second degree as defined in section 177.20 of the penal  
20 law, health care fraud in the first degree as defined in section 177.25  
21 of the penal law, robbery in the third degree as defined in section  
22 160.05 of the penal law, robbery in the second degree as defined in  
23 section 160.10 of the penal law, robbery in the first degree as defined  
24 in section 160.15 of the penal law, unlawful use of secret scientific  
25 material as defined in section 165.07 of the penal law, criminal  
26 possession of stolen property in the fourth degree as defined in section  
27 165.45 of the penal law, criminal possession of stolen property in the  
28 third degree as defined in section 165.50 of the penal law, criminal  
29 possession of stolen property in the second degree as defined by section  
30 165.52 of the penal law, criminal possession of stolen property in the  
31 first degree as defined by section 165.54 of the penal law, trademark  
32 counterfeiting in the second degree as defined in section 165.72 of the  
33 penal law, trademark counterfeiting in the first degree as defined in  
34 section 165.73 of the penal law, forgery in the second degree as defined  
35 in section 170.10 of the penal law, forgery in the first degree as  
36 defined in section 170.15 of the penal law, criminal possession of a  
37 forged instrument in the second degree as defined in section 170.25 of  
38 the penal law, criminal possession of a forged instrument in the first  
39 degree as defined in section 170.30 of the penal law, criminal  
40 possession of forgery devices as defined in section 170.40 of the penal  
41 law, falsifying business records in the first degree as defined in  
42 section 175.10 of the penal law, tampering with public records in the  
43 first degree as defined in section 175.25 of the penal law, offering a  
44 false instrument for filing in the first degree as defined in section  
45 175.35 of the penal law, issuing a false certificate as defined in  
46 section 175.40 of the penal law, criminal diversion of prescription  
47 medications and prescriptions in the second degree as defined in section  
48 178.20 of the penal law, criminal diversion of prescription medications  
49 and prescriptions in the first degree as defined in section 178.25 of  
50 the penal law, residential mortgage fraud in the fourth degree as  
51 defined in section 187.10 of the penal law, residential mortgage fraud  
52 in the third degree as defined in section 187.15 of the penal law, resi-  
53 dential mortgage fraud in the second degree as defined in section 187.20  
54 of the penal law, residential mortgage fraud in the first degree as  
55 defined in section 187.25 of the penal law, escape in the second degree  
56 as defined in section 205.10 of the penal law, escape in the first

1 degree as defined in section 205.15 of the penal law, absconding from  
2 temporary release in the first degree as defined in section 205.17 of  
3 the penal law, promoting prison contraband in the first degree as  
4 defined in section 205.25 of the penal law, hindering prosecution in the  
5 second degree as defined in section 205.60 of the penal law, hindering  
6 prosecution in the first degree as defined in section 205.65 of the  
7 penal law, sex trafficking as defined in section 230.34 of the penal  
8 law, criminal possession of a weapon in the third degree as defined in  
9 subdivisions two, three and five of section 265.02 of the penal law,  
10 criminal possession of a weapon in the second degree as defined in  
11 section 265.03 of the penal law, criminal possession of a weapon in the  
12 first degree as defined in section 265.04 of the penal law, manufacture,  
13 transport, disposition and defacement of weapons and dangerous instru-  
14 ments and appliances defined as felonies in subdivisions one, two, and  
15 three of section 265.10 of the penal law, sections 265.11, 265.12 and  
16 265.13 of the penal law, or prohibited use of weapons as defined in  
17 subdivision two of section 265.35 of the penal law, relating to firearms  
18 and other dangerous weapons, or failure to disclose the origin of a  
19 recording in the first degree as defined in section 275.40 of the penal  
20 law;

21 S 5. Paragraph (c) of subdivision 3-a of section 115-d of the domestic  
22 relations law, as added by chapter 7 of the laws of 1999, is amended to  
23 read as follows:

24 (c) For the purposes of this subdivision, "spousal abuse" is an  
25 offense defined in section 120.05 [or], 120.10, 121.12, OR 121.13 of the  
26 penal law where the victim of such offense was the defendant's spouse;  
27 provided, however, spousal abuse shall not include a crime in which the  
28 applicant was the defendant, and the court finds in accordance with this  
29 subdivision that he or she was the victim of physical, sexual or psycho-  
30 logical abuse by the victim of such offense and such abuse was a factor  
31 in causing the applicant to commit such offense.

32 S 6. Paragraph (f) of subdivision 7 of section 995 of the executive  
33 law, as amended by chapter 2 of the laws of 2006, is amended to read as  
34 follows:

35 (f) any of the following misdemeanors: assault in the third degree as  
36 defined in section 120.00 of the penal law; attempted aggravated assault  
37 upon a person less than eleven years old, as defined in section 110.00  
38 and section 120.12 of the penal law; attempted menacing in the first  
39 degree, as defined in section 110.00 and section 120.13 of the penal  
40 law; menacing in the second degree as defined in section 120.14 of the  
41 penal law; menacing in the third degree as defined in section 120.15 of  
42 the penal law; reckless endangerment in the second degree as defined in  
43 section 120.20 of the penal law; stalking in the fourth degree as  
44 defined in section 120.45 of the penal law; stalking in the third degree  
45 as defined in section 120.50 of the penal law; attempted stalking in the  
46 second degree, as defined in section 110.00 and section 120.55 of the  
47 penal law; CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION AS  
48 DEFINED IN SECTION 121.11 OF THE PENAL LAW; forcible touching as defined  
49 in section 130.52 of the penal law regardless of the age of the victim;  
50 sexual abuse in the third degree as defined in section 130.55 of the  
51 penal law regardless of the age of the victim; unlawful imprisonment in  
52 the second degree as defined in section 135.05 of the penal law regard-  
53 less of the age of the victim; attempted unlawful imprisonment in the  
54 first degree, as defined in section 110.00 and section 135.10 of the  
55 penal law regardless of the age of the victim; criminal trespass in the  
56 second degree as defined in section 140.15 of the penal law; possession

1 of burglar's tools as defined in section 140.35 of the penal law; petit  
2 larceny as defined in section 155.25 of the penal law; endangering the  
3 welfare of a child as defined in section 260.10 of the penal law; endan-  
4 gering the welfare of an incompetent or physically disabled person as  
5 defined in section 260.25 OF THE PENAL LAW.

6 S 7. Paragraph (a) of subdivision 1 of section 460.10 of the penal  
7 law, as amended by section 30 of part AAA of chapter 56 of the laws of  
8 2009, is amended to read as follows:

9 (a) Any of the felonies set forth in this chapter: sections 120.05,  
10 120.10 and 120.11 relating to assault; SECTIONS 121.12 AND 121.13 RELAT-  
11 ING TO STRANGULATION; sections 125.10 to 125.27 relating to homicide;  
12 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and  
13 135.25 relating to kidnapping; section 135.35 relating to labor traf-  
14 ficking; section 135.65 relating to coercion; sections 140.20, 140.25  
15 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12  
16 relating to criminal mischief; article one hundred fifty relating to  
17 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand  
18 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health  
19 care fraud; article one hundred sixty relating to robbery; sections  
20 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of  
21 stolen property; sections 165.72 and 165.73 relating to trademark coun-  
22 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and  
23 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and  
24 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and  
25 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating  
26 to criminal diversion of prescription medications and prescriptions;  
27 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,  
28 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00,  
29 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20  
30 and 187.25 relating to residential mortgage fraud, sections 190.40 and  
31 190.42 relating to criminal usury; section 190.65 relating to schemes to  
32 defraud; sections 205.60 and 205.65 relating to hindering prosecution;  
33 sections 210.10, 210.15, and 215.51 relating to perjury and contempt;  
34 section 215.40 relating to tampering with physical evidence; sections  
35 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,  
36 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled  
37 substances; sections 225.10 and 225.20 relating to gambling; sections  
38 230.25, 230.30, and 230.32 relating to promoting prostitution; section  
39 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and  
40 235.22 relating to obscenity; sections 263.10 and 263.15 relating to  
41 promoting a sexual performance by a child; sections 265.02, 265.03,  
42 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10  
43 which constitute a felony relating to firearms and other dangerous weap-  
44 ons; and sections 265.14 and 265.16 relating to criminal sale of a  
45 firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unau-  
46 thorized recordings; and sections 470.05, 470.10, 470.15 and 470.20  
47 relating to money laundering; or

48 S 8. Paragraph (j) of subdivision 2 of section 378-a of the social  
49 services law, as added by chapter 7 of the laws of 1999, is amended to  
50 read as follows:

51 (j) For the purposes of this subdivision "spousal abuse" is an offense  
52 defined in section 120.05 [or], 120.10, 121.12 OR 121.13 of the penal  
53 law where the victim of such offense was the defendant's spouse;  
54 provided, however, spousal abuse shall not include a crime in which the  
55 prospective foster parent or prospective adoptive parent, who was the  
56 defendant, has received notice pursuant to paragraph (g) of this subdi-

1 vision and the office of children and family services finds after a fair  
2 hearing held pursuant to section twenty-two of this chapter, that he or  
3 she was the victim of physical, sexual or psychological abuse by the  
4 victim of such offense and such abuse was a factor in causing the  
5 prospective foster parent or prospective adoptive parent to commit such  
6 offense.

7 S 9. The opening paragraph of subdivision 1 of section 812 of the  
8 family court act, as amended by chapter 476 of the laws of 2009, is  
9 amended to read as follows:

10 The family court and the criminal courts shall have concurrent juris-  
11 diction over any proceeding concerning acts which would constitute  
12 disorderly conduct, harassment in the first degree, harassment in the  
13 second degree, aggravated harassment in the second degree, sexual  
14 misconduct, forcible touching, sexual abuse in the third degree, sexual  
15 abuse in the second degree as set forth in subdivision one of section  
16 130.60 of the penal law, stalking in the first degree, stalking in the  
17 second degree, stalking in the third degree, stalking in the fourth  
18 degree, criminal mischief, menacing in the second degree, menacing in  
19 the third degree, reckless endangerment, CRIMINAL OBSTRUCTION OF BREATH-  
20 ING OR BLOOD CIRCULATION, STRANGULATION IN THE SECOND DEGREE, STRANGULA-  
21 TION IN THE FIRST DEGREE, assault in the second degree, assault in the  
22 third degree or an attempted assault, CRIMINAL OBSTRUCTION OF BREATHING  
23 OR BLOOD CIRCULATION OR STRANGULATION between spouses or former spouses,  
24 or between parent and child or between members of the same family or  
25 household except that if the respondent would not be criminally respon-  
26 sible by reason of age pursuant to section 30.00 of the penal law, then  
27 the family court shall have exclusive jurisdiction over such proceeding.  
28 Notwithstanding a complainant's election to proceed in family court, the  
29 criminal court shall not be divested of jurisdiction to hear a family  
30 offense proceeding pursuant to this section. For purposes of this arti-  
31 cle, "disorderly conduct" includes disorderly conduct not in a public  
32 place. For purposes of this article, "members of the same family or  
33 household" shall mean the following:

34 S 10. Subdivision (f) of section 10.03 of the mental hygiene law, as  
35 added by chapter 7 of the laws of 2007, is amended to read as follows:

36 (f) "Designated felony" means any felony offense defined by any of the  
37 following provisions of the penal law: assault in the second degree as  
38 defined in section 120.05, assault in the first degree as defined in  
39 section 120.10, gang assault in the second degree as defined in section  
40 120.06, gang assault in the first degree as defined in section 120.07,  
41 stalking in the first degree as defined in section 120.60, STRANGULATION  
42 IN THE SECOND DEGREE AS DEFINED IN SECTION 121.12, STRANGULATION IN THE  
43 FIRST DEGREE AS DEFINED IN SECTION 121.13, manslaughter in the second  
44 degree as defined in subdivision one of section 125.15, manslaughter in  
45 the first degree as defined in section 125.20, murder in the second  
46 degree as defined in section 125.25, aggravated murder as defined in  
47 section 125.26, murder in the first degree as defined in section 125.27,  
48 kidnapping in the second degree as defined in section 135.20, kidnapping  
49 in the first degree as defined in section 135.25, burglary in the third  
50 degree as defined in section 140.20, burglary in the second degree as  
51 defined in section 140.25, burglary in the first degree as defined in  
52 section 140.30, arson in the second degree as defined in section 150.15,  
53 arson in the first degree as defined in section 150.20, robbery in the  
54 third degree as defined in section 160.05, robbery in the second degree  
55 as defined in section 160.10, robbery in the first degree as defined in  
56 section 160.15, promoting prostitution in the second degree as defined

1 in section 230.30, promoting prostitution in the first degree as defined  
2 in section 230.32, compelling prostitution as defined in section 230.33,  
3 disseminating indecent material to minors in the first degree as defined  
4 in section 235.22, use of a child in a sexual performance as defined in  
5 section 263.05, promoting an obscene sexual performance by a child as  
6 defined in section 263.10, promoting a sexual performance by a child as  
7 defined in section 263.15, or any felony attempt or conspiracy to commit  
8 any of the foregoing offenses.

9 S 11. The opening paragraph of subdivision 1 of section 530.11 of the  
10 criminal procedure law, as amended by chapter 476 of the laws of 2009,  
11 is amended to read as follows:

12 The family court and the criminal courts shall have concurrent juris-  
13 diction over any proceeding concerning acts which would constitute  
14 disorderly conduct, harassment in the first degree, harassment in the  
15 second degree, aggravated harassment in the second degree, sexual  
16 misconduct, forcible touching, sexual abuse in the third degree, sexual  
17 abuse in the second degree as set forth in subdivision one of section  
18 130.60 of the penal law, stalking in the first degree, stalking in the  
19 second degree, stalking in the third degree, stalking in the fourth  
20 degree, criminal mischief, menacing in the second degree, menacing in  
21 the third degree, reckless endangerment, STRANGULATION IN THE FIRST  
22 DEGREE, STRANGULATION IN THE SECOND DEGREE, CRIMINAL OBSTRUCTION OF  
23 BREATHING OR BLOOD CIRCULATION, assault in the second degree, assault in  
24 the third degree or an attempted assault between spouses or former  
25 spouses, or between parent and child or between members of the same  
26 family or household except that if the respondent would not be criminal-  
27 ly responsible by reason of age pursuant to section 30.00 of the penal  
28 law, then the family court shall have exclusive jurisdiction over such  
29 proceeding. Notwithstanding a complainant's election to proceed in fami-  
30 ly court, the criminal court shall not be divested of jurisdiction to  
31 hear a family offense proceeding pursuant to this section. For purposes  
32 of this section, "disorderly conduct" includes disorderly conduct not in  
33 a public place. For purposes of this section, "members of the same  
34 family or household" with respect to a proceeding in the criminal courts  
35 shall mean the following:

36 S 12. Subdivision 5 of section 60.05 of the penal law, as amended by  
37 chapter 738 of the laws of 2004, is amended to read as follows:

38 5. Certain class D felonies. Except as provided in subdivision six of  
39 this section, every person convicted of the class D felonies of assault  
40 in the second degree as defined in section 120.05, STRANGULATION IN THE  
41 SECOND DEGREE AS DEFINED IN SECTION 121.12 or attempt to commit a class  
42 C felony as defined in section 230.30 of this chapter, must be sentenced  
43 in accordance with section 70.00 or 85.00 of this title.

44 S 13. Subdivision 3 of section 485.05 of the penal law, as amended by  
45 chapter 264 of the laws of 2003, is amended to read as follows:

46 3. A "specified offense" is an offense defined by any of the following  
47 provisions of this chapter: section 120.00 (assault in the third  
48 degree); section 120.05 (assault in the second degree); section 120.10  
49 (assault in the first degree); section 120.12 (aggravated assault upon a  
50 person less than eleven years old); section 120.13 (menacing in the  
51 first degree); section 120.14 (menacing in the second degree); section  
52 120.15 (menacing in the third degree); section 120.20 (reckless endan-  
53 germent in the second degree); section 120.25 (reckless endangerment in  
54 the first degree); SECTION 121.12 (STRANGULATION IN THE SECOND DEGREE);  
55 SECTION 121.13 (STRANGULATION IN THE FIRST DEGREE); subdivision one of  
56 section 125.15 (manslaughter in the second degree); subdivision one, two



1 or four of section 125.20 (manslaughter in the first degree); section  
2 125.25 (murder in the second degree); section 120.45 (stalking in the  
3 fourth degree); section 120.50 (stalking in the third degree); section  
4 120.55 (stalking in the second degree); section 120.60 (stalking in the  
5 first degree); subdivision one of section 130.35 (rape in the first  
6 degree); subdivision one of section 130.50 (criminal sexual act in the  
7 first degree); subdivision one of section 130.65 (sexual abuse in the  
8 first degree); paragraph (a) of subdivision one of section 130.67  
9 (aggravated sexual abuse in the second degree); paragraph (a) of subdivi-  
10 sion one of section 130.70 (aggravated sexual abuse in the first  
11 degree); section 135.05 (unlawful imprisonment in the second degree);  
12 section 135.10 (unlawful imprisonment in the first degree); section  
13 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in  
14 the first degree); section 135.60 (coercion in the second degree);  
15 section 135.65 (coercion in the first degree); section 140.10 (criminal  
16 trespass in the third degree); section 140.15 (criminal trespass in the  
17 second degree); section 140.17 (criminal trespass in the first degree);  
18 section 140.20 (burglary in the third degree); section 140.25 (burglary  
19 in the second degree); section 140.30 (burglary in the first degree);  
20 section 145.00 (criminal mischief in the fourth degree); section 145.05  
21 (criminal mischief in the third degree); section 145.10 (criminal  
22 mischief in the second degree); section 145.12 (criminal mischief in the  
23 first degree); section 150.05 (arson in the fourth degree); section  
24 150.10 (arson in the third degree); section 150.15 (arson in the second  
25 degree); section 150.20 (arson in the first degree); section 155.25  
26 (petit larceny); section 155.30 (grand larceny in the fourth degree);  
27 section 155.35 (grand larceny in the third degree); section 155.40  
28 (grand larceny in the second degree); section 155.42 (grand larceny in  
29 the first degree); section 160.05 (robbery in the third degree); section  
30 160.10 (robbery in the second degree); section 160.15 (robbery in the  
31 first degree); section 240.25 (harassment in the first degree); subdivi-  
32 sion one, two or four of section 240.30 (aggravated harassment in the  
33 second degree); or any attempt or conspiracy to commit any of the fore-  
34 going offenses.

35 S 14. Subdivision 2 of section 130.91 of the penal law, as added by  
36 chapter 7 of the laws of 2007, is amended to read as follows:

37 2. A "specified offense" is a felony offense defined by any of the  
38 following provisions of this chapter: assault in the second degree as  
39 defined in section 120.05, assault in the first degree as defined in  
40 section 120.10, gang assault in the second degree as defined in section  
41 120.06, gang assault in the first degree as defined in section 120.07,  
42 stalking in the first degree as defined in section 120.60, STRANGULATION  
43 IN THE SECOND DEGREE AS DEFINED IN SECTION 121.12, STRANGULATION IN THE  
44 FIRST DEGREE AS DEFINED IN SECTION 121.13, manslaughter in the second  
45 degree as defined in subdivision one of section 125.15, manslaughter in  
46 the first degree as defined in section 125.20, murder in the second  
47 degree as defined in section 125.25, aggravated murder as defined in  
48 section 125.26, murder in the first degree as defined in section 125.27,  
49 kidnapping in the second degree as defined in section 135.20, kidnapping  
50 in the first degree as defined in section 135.25, burglary in the third  
51 degree as defined in section 140.20, burglary in the second degree as  
52 defined in section 140.25, burglary in the first degree as defined in  
53 section 140.30, arson in the second degree as defined in section 150.15,  
54 arson in the first degree as defined in section 150.20, robbery in the  
55 third degree as defined in section 160.05, robbery in the second degree  
56 as defined in section 160.10, robbery in the first degree as defined in

1 section 160.15, promoting prostitution in the second degree as defined  
2 in section 230.30, promoting prostitution in the first degree as defined  
3 in section 230.32, compelling prostitution as defined in section 230.33,  
4 disseminating indecent material to minors in the first degree as defined  
5 in section 235.22, use of a child in a sexual performance as defined in  
6 section 263.05, promoting an obscene sexual performance by a child as  
7 defined in section 263.10, promoting a sexual performance by a child as  
8 defined in section 263.15, or any felony attempt or conspiracy to commit  
9 any of the foregoing offenses.

10 S 15. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle  
11 and traffic law, as amended by chapter 345 of the laws of 2007, is  
12 amended to read as follows:

13 (c) The offenses referred to in subparagraph (i) of paragraph (b) of  
14 subdivision one and subparagraph (i) of paragraph (c) of subdivision two  
15 of this section that result in disqualification for a period of five  
16 years shall include a conviction under sections 100.10, 105.13, 115.05,  
17 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,  
18 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55,  
19 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06,  
20 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00,  
21 230.05, 230.06, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06, 235.07,  
22 235.21, 240.06, 245.00, 260.10, subdivision two of section 260.20 and  
23 sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35  
24 of the penal law or an attempt to commit any of the aforesaid offenses  
25 under section 110.00 of the penal law, or any similar offenses committed  
26 under a former section of the penal law, or any offenses committed under  
27 a former section of the penal law which would constitute violations of  
28 the aforesaid sections of the penal law, or any offenses committed  
29 outside this state which would constitute violations of the aforesaid  
30 sections of the penal law.

31 S 16. This act shall take effect on the ninetieth day after it shall  
32 have become a law.