

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:

1 Section 1. Short title. This act shall be known and may be cited as
2 "Nixzmary's Law".
3 S 2. Section 60.06 of the penal law, as amended by chapter 765 of the
4 laws of 2005 and the section heading as amended by chapter 93 of the
5 laws of 2006, is amended to read as follows:
6 S 60.06 Authorized disposition; murder in the first degree offenders;
7 aggravated murder offenders; *AGGRAVATED MURDER OF A CHILD*
8 *OFFENDERS*; certain murder in the second degree offenders;
9 certain terrorism offenders; criminal possession of a chemical
10 weapon or biological weapon offenders; criminal use of a chem-
11 ical weapon or biological weapon offenders.
12 When a defendant is convicted of murder in the first degree as defined
13 in section 125.27 of this chapter, the court shall, in accordance with
14 the provisions of section 400.27 of the criminal procedure law, sentence
15 the defendant to death, to life imprisonment without parole in accord-
16 ance 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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1 of imprisonment for a class A-I felony other than a sentence of life
2 imprisonment without parole, in accordance with subdivisions one through
3 three of section 70.00 of this title. When a person is convicted [of
4 murder in the second degree as defined in subdivision five of section
5 125.25 of this chapter or] of the crime of aggravated murder as defined
6 in section 125.26 of this chapter OR OF THE CRIME OF AGGRAVATED MURDER
7 OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER, the court shall
8 sentence the defendant to life imprisonment without parole in accordance
9 with subdivision five of section 70.00 of this title. When a defendant
10 is convicted of the crime of terrorism as defined in section 490.25 of
11 this chapter, and the specified offense the defendant committed is a
12 class A-I felony offense, or when a defendant is convicted of the crime
13 of criminal possession of a chemical weapon or biological weapon in the
14 first degree as defined in section 490.45 of this chapter, or when a
15 defendant is convicted of the crime of criminal use of a chemical weapon
16 or biological weapon in the first degree as defined in section 490.55 of
17 this chapter, the court shall sentence the defendant to life imprison-
18 ment without parole in accordance with subdivision five of section 70.00
19 of this title; provided, however, that nothing in this section shall
20 preclude or prevent a sentence of death when the defendant is also
21 convicted of murder in the first degree as defined in section 125.27 of
22 this chapter.

23 S 3. Subparagraph (i) of paragraph (a) of subdivision 3 of section
24 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,
25 is amended to read as follows:

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

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

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

1 procedures provided by law for imposing a sentence for such crime. A
2 defendant must be sentenced to life imprisonment without parole upon
3 conviction for the crime of terrorism as defined in section 490.25 of
4 this chapter, where the specified offense the defendant committed is a
5 class A-I felony; the crime of criminal possession of a chemical weapon
6 or biological weapon in the first degree as defined in section 490.45 of
7 this chapter; or the crime of criminal use of a chemical weapon or
8 biological weapon in the first degree as defined in section 490.55 of
9 this chapter; provided, however, that nothing in this subdivision shall
10 preclude or prevent a sentence of death when the defendant is also
11 convicted of the crime of murder in the first degree as defined in
12 section 125.27 of this chapter. A defendant must be sentenced to life
13 imprisonment without parole upon conviction [for the crime of murder in
14 the second degree as defined in subdivision five of section 125.25 of
15 this chapter or] for the crime of aggravated murder as defined in
16 section 125.26 of this chapter OR FOR THE CRIME OF AGGRAVATED MURDER OF
17 A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER.

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

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

27 S 6. Section 125.05 of the penal law is amended by adding a new subdi-
28 vision 4 to read as follows:

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

33 S 7. Subdivision 4 of section 125.25 of the penal law, as amended by
34 chapter 459 of the laws of 2004, is amended to read as follows:

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

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

41 S 9. Subparagraph (ix) of paragraph (a) of subdivision 1 of section
42 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is
43 amended to read as follows:

44 (ix) prior to committing the killing, the defendant had been convicted
45 of murder as defined in this section or section 125.25 of this article
46 OR CONVICTED OF AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THIS
47 ARTICLE OR CONVICTED OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN
48 SECTION 125.28 OF THIS ARTICLE, or had been convicted in another juris-
49 diction of an offense which, if committed in this state, would consti-
50 tute a violation of [either of such] THE AFOREMENTIONED sections; or

51 S 10. The penal law is amended by adding a new section 125.28 to read
52 as follows:

53 S 125.28 AGGRAVATED MURDER OF A CHILD.

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

55 1. BEING EIGHTEEN YEARS OLD OR MORE, WHILE IN THE COURSE OF COMMITTING
56 RAPE IN THE FIRST, SECOND OR THIRD DEGREE, CRIMINAL SEXUAL ACT IN THE

1 FIRST, SECOND OR THIRD DEGREE, AGGRAVATED SEXUAL ABUSE IN THE FIRST,
2 SECOND, THIRD OR FOURTH DEGREE, OR INCEST, AGAINST A PERSON LESS THAN
3 FOURTEEN YEARS OLD, HE OR SHE INTENTIONALLY CAUSES THE DEATH OF SUCH
4 PERSON; OR

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

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

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

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

22 (a) Subdivisions one and two do not apply to a criminal action wherein
23 the defendant is accused of an offense defined in sections 125.10,
24 125.15, 125.20, 125.25, 125.26 [and], 125.27 AND 125.28 of the penal
25 law.

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

29 1. After arraignment of a defendant upon a felony complaint, other
30 than a felony complaint charging an offense defined in section 125.10,
31 125.15, 125.20, 125.25, 125.26 [or], 125.27 OR 125.28 of the penal law,
32 either party or the local criminal court or superior court before which
33 the action is pending, on its own motion, may move in accordance with
34 the provisions of this section for an order terminating prosecution of
35 the charges contained in such felony complaint on consent of the
36 parties.

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

40 (h) A social worker, rape crisis counselor, psychologist or other
41 professional providing emotional support to a child witness twelve years
42 old or younger who is called to give evidence in a grand jury proceeding
43 concerning a crime defined in article one hundred thirty, article two
44 hundred sixty, section 120.10, 125.10, 125.15, 125.20, 125.25, 125.26,
45 125.27, 125.28, 255.25, 255.26 or 255.27 of the penal law provided that
46 the district attorney consents. Such support person shall not provide
47 the witness with an answer to any question or otherwise participate in
48 such proceeding and shall first take an oath before the grand jury that
49 he or she will keep secret all matters before such grand jury within his
50 or her knowledge.

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

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

1 the first degree as defined in section 120.25 of the penal law, promot-
2 ing a suicide attempt as defined in section 120.30 of the penal law,
3 criminally negligent homicide as defined in section 125.10 of the penal
4 law, manslaughter in the second degree as defined in section 125.15 of
5 the penal law, manslaughter in the first degree as defined in section
6 125.20 of the penal law, murder in the second degree as defined in
7 section 125.25 of the penal law, murder in the first degree as defined
8 in section 125.27 of the penal law, AGGRAVATED MURDER OF A CHILD AS
9 DEFINED IN SECTION 125.28 OF THE PENAL LAW, abortion in the second
10 degree as defined in section 125.40 of the penal law, abortion in the
11 first degree as defined in section 125.45 of the penal law, rape in the
12 third degree as defined in section 130.25 of the penal law, rape in the
13 second degree as defined in section 130.30 of the penal law, rape in the
14 first degree as defined in section 130.35 of the penal law, criminal
15 sexual act in the third degree as defined in section 130.40 of the penal
16 law, criminal sexual act in the second degree as defined in section
17 130.45 of the penal law, criminal sexual act in the first degree as
18 defined in section 130.50 of the penal law, sexual abuse in the first
19 degree as defined in section 130.65 of the penal law, unlawful imprison-
20 ment in the first degree as defined in section 135.10 of the penal law,
21 kidnapping in the second degree as defined in section 135.20 of the
22 penal law, kidnapping in the first degree as defined in section 135.25
23 of the penal law, labor trafficking as defined in section 135.35 of the
24 penal law, custodial interference in the first degree as defined in
25 section 135.50 of the penal law, coercion in the first degree as defined
26 in section 135.65 of the penal law, criminal trespass in the first
27 degree as defined in section 140.17 of the penal law, burglary in the
28 third degree as defined in section 140.20 of the penal law, burglary in
29 the second degree as defined in section 140.25 of the penal law,
30 burglary in the first degree as defined in section 140.30 of the penal
31 law, criminal mischief in the third degree as defined in section 145.05
32 of the penal law, criminal mischief in the second degree as defined in
33 section 145.10 of the penal law, criminal mischief in the first degree
34 as defined in section 145.12 of the penal law, criminal tampering in the
35 first degree as defined in section 145.20 of the penal law, arson in the
36 fourth degree as defined in section 150.05 of the penal law, arson in
37 the third degree as defined in section 150.10 of the penal law, arson in
38 the second degree as defined in section 150.15 of the penal law, arson
39 in the first degree as defined in section 150.20 of the penal law, grand
40 larceny in the fourth degree as defined in section 155.30 of the penal
41 law, grand larceny in the third degree as defined in section 155.35 of
42 the penal law, grand larceny in the second degree as defined in section
43 155.40 of the penal law, grand larceny in the first degree as defined in
44 section 155.42 of the penal law, health care fraud in the fourth degree
45 as defined in section 177.10 of the penal law, health care fraud in the
46 third degree as defined in section 177.15 of the penal law, health care
47 fraud in the second degree as defined in section 177.20 of the penal
48 law, health care fraud in the first degree as defined in section 177.25
49 of the penal law, robbery in the third degree as defined in section
50 160.05 of the penal law, robbery in the second degree as defined in
51 section 160.10 of the penal law, robbery in the first degree as defined
52 in section 160.15 of the penal law, unlawful use of secret scientific
53 material as defined in section 165.07 of the penal law, criminal
54 possession of stolen property in the fourth degree as defined in section
55 165.45 of the penal law, criminal possession of stolen property in the
56 third degree as defined in section 165.50 of the penal law, criminal

1 possession of stolen property in the second degree as defined by section
2 165.52 of the penal law, criminal possession of stolen property in the
3 first degree as defined by section 165.54 of the penal law, trademark
4 counterfeiting in the second degree as defined in section 165.72 of the
5 penal law, trademark counterfeiting in the first degree as defined in
6 section 165.73 of the penal law, forgery in the second degree as defined
7 in section 170.10 of the penal law, forgery in the first degree as
8 defined in section 170.15 of the penal law, criminal possession of a
9 forged instrument in the second degree as defined in section 170.25 of
10 the penal law, criminal possession of a forged instrument in the first
11 degree as defined in section 170.30 of the penal law, criminal
12 possession of forgery devices as defined in section 170.40 of the penal
13 law, falsifying business records in the first degree as defined in
14 section 175.10 of the penal law, tampering with public records in the
15 first degree as defined in section 175.25 of the penal law, offering a
16 false instrument for filing in the first degree as defined in section
17 175.35 of the penal law, issuing a false certificate as defined in
18 section 175.40 of the penal law, criminal diversion of prescription
19 medications and prescriptions in the second degree as defined in section
20 178.20 of the penal law, criminal diversion of prescription medications
21 and prescriptions in the first degree as defined in section 178.25 of
22 the penal law, residential mortgage fraud in the fourth degree as
23 defined in section 187.10 of the penal law, residential mortgage fraud
24 in the third degree as defined in section 187.15 of the penal law, resi-
25 dential mortgage fraud in the second degree as defined in section 187.20
26 of the penal law, residential mortgage fraud in the first degree as
27 defined in section 187.25 of the penal law, escape in the second degree
28 as defined in section 205.10 of the penal law, escape in the first
29 degree as defined in section 205.15 of the penal law, absconding from
30 temporary release in the first degree as defined in section 205.17 of
31 the penal law, promoting prison contraband in the first degree as
32 defined in section 205.25 of the penal law, hindering prosecution in the
33 second degree as defined in section 205.60 of the penal law, hindering
34 prosecution in the first degree as defined in section 205.65 of the
35 penal law, sex trafficking as defined in section 230.34 of the penal
36 law, criminal possession of a weapon in the third degree as defined in
37 subdivisions two, three and five of section 265.02 of the penal law,
38 criminal possession of a weapon in the second degree as defined in
39 section 265.03 of the penal law, criminal possession of a weapon in the
40 first degree as defined in section 265.04 of the penal law, manufacture,
41 transport, disposition and defacement of weapons and dangerous instru-
42 ments and appliances defined as felonies in subdivisions one, two, and
43 three of section 265.10 of the penal law, sections 265.11, 265.12 and
44 265.13 of the penal law, or prohibited use of weapons as defined in
45 subdivision two of section 265.35 of the penal law, relating to firearms
46 and other dangerous weapons, or failure to disclose the origin of a
47 recording in the first degree as defined in section 275.40 of the penal
48 law;

49 S 15. Subdivisions 1, 6, 7 and 8 of section 35-b of the judiciary law,
50 as added by chapter 1 of the laws of 1995, are amended to read as
51 follows:

52 1. Notwithstanding any other provision of law to the contrary, in
53 every criminal action in which a defendant is charged with AGGRAVATED
54 MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW, murder in the
55 first degree as defined in section 125.27 of the penal law OR AGGRAVATED
56 MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW, or in

1 any criminal action in which a defendant is charged with murder in the
2 second degree as defined in section 125.25 of the penal law and the
3 district attorney confirms upon inquiry by the court that the district
4 attorney is undertaking an investigation to determine whether the
5 defendant can or should be charged with AGGRAVATED MURDER AS DEFINED IN
6 SECTION 125.26 OF THE PENAL LAW, murder in the first degree as defined
7 in section 125.27 of the penal law OR AGGRAVATED MURDER OF A CHILD AS
8 DEFINED IN SECTION 125.28 OF THE PENAL LAW and the court determines that
9 there is a reasonable likelihood the defendant will be so charged, if
10 the defendant is or becomes financially unable to obtain adequate repre-
11 sentation or investigative, expert or other reasonably necessary
12 services at any time either (a) prior to judgment, or (b) after the
13 entry of a judgment imposing a sentence of death but before final resol-
14 ution of a direct appeal pursuant to subdivision one of section 450.70
15 of the criminal procedure law and of an appeal pursuant to subdivision
16 two or three of section 450.70 of the criminal procedure law from an
17 order denying an initial post judgment motion pursuant to section 440.10
18 or 440.20 of the criminal procedure law, the defendant shall be entitled
19 to the appointment of counsel and investigative, expert and such other
20 reasonably necessary services in accordance with the provisions of this
21 section. Prior to the appointment of counsel pursuant to this section,
22 the court shall determine whether the defendant is or has become finan-
23 cially unable to obtain adequate representation. In the event such
24 defendant seeks to file any subsequent motion, he or she shall not be
25 eligible for the appointment of counsel pursuant to this section.

26 6. (a) When a defendant has been charged in an accusatory instrument
27 WITH AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW,
28 with murder in the first degree as defined in section 125.27 of the
29 penal law, WITH AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION
30 125.28 OF THE PENAL LAW or with murder in the second degree as defined
31 in section 125.25 of the penal law, the district attorney shall notify
32 the capital defender office.

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

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

48 7. Whenever a defendant is charged WITH AGGRAVATED MURDER AS DEFINED
49 IN SECTION 125.26 OF THE PENAL LAW, with murder in the first degree AS
50 DEFINED IN SECTION 125.27 OF THE PENAL LAW OR WITH AGGRAVATED MURDER OF
51 A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW, or a defendant
52 has been charged with murder in the second degree as defined in section
53 125.25 of the penal law and the court determines after confirmation by
54 the district attorney pursuant to subdivision one of this section that
55 there is a reasonable likelihood the defendant will be charged with
56 murder in the first degree and the defendant is financially unable to

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

9 8. Whenever prior to entry of judgment a defendant is charged with
10 AGGRAVATED MURDER, murder in the first degree OR AGGRAVATED MURDER OF A
11 CHILD, or a defendant has been charged with murder in the second degree
12 as defined in section 125.25 of the penal law and the court determines
13 after confirmation by the district attorney pursuant to subdivision one
14 of this section that there is a reasonable likelihood the defendant will
15 be charged with murder in the first degree, and the defendant is or
16 becomes financially unable, as determined by the court, to obtain
17 adequate investigative, expert or other reasonably necessary services
18 and the court has not appointed the capital defender office to represent
19 the defendant, the trial court shall authorize the defendant's attorney
20 to obtain such services on behalf of the defendant and shall order the
21 payment of reasonable fees and expenses therefor; provided, however,
22 that the court shall first find in an ex parte proceeding that such
23 investigative, expert or other services are reasonably necessary for the
24 representation of the defendant whether in connection with issues relat-
25 ing to guilt or sentencing. Upon a finding that timely procurement of
26 such services could not practicably await prior authorization, the court
27 may authorize the provision and payment for such services nunc pro tunc.
28 Whenever a court disapproves, in whole or in part, a request for author-
29 ization or voucher, the defendant may apply to a justice of an interme-
30 diate appellate court for an order approving the request or voucher.

31 S 16. Paragraph (a) of subdivision 4 of section 509-cc of the vehicle
32 and traffic law, as amended by chapter 93 of the laws of 2006, is
33 amended to read as follows:

34 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
35 subdivision one and paragraph (a) of subdivision two of this section
36 that result in permanent disqualification shall include a conviction
37 under sections 125.12, 125.20, 125.25, 125.26, 125.27, 125.28, 130.30,
38 130.35, 130.45, 130.50, 130.70, 135.25, 150.20 of the penal law or an
39 attempt to commit any of the aforesaid offenses under section 110.00 of
40 the penal law, or any offenses committed under a former section of the
41 penal law which would constitute violations of the aforesaid sections of
42 the penal law, or any offenses committed outside this state which would
43 constitute violations of the aforesaid sections of the penal law.

44 S 17. Section 4-1.6 of the estates, powers and trusts law, as added by
45 chapter 481 of the laws of 1994, is amended to read as follows:

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

47 Notwithstanding any other provision of law to the contrary, a joint
48 tenant convicted of murder in the second degree as defined in section
49 125.25 of the penal law or murder in the first degree as defined in
50 section 125.27 of the penal law OR AGGRAVATED MURDER OF A CHILD AS
51 DEFINED IN SECTION 125.28 OF THE PENAL LAW of another joint tenant shall
52 not be entitled to the distribution of any monies in a joint bank
53 account created or contributed to by the deceased joint tenant, except
54 for those monies contributed by the convicted joint tenant.

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

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

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

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

23 (a) sections 120.05, 120.10, and 120.11, relating to assault; sections
24 125.15 through [125.27] 125.28 relating to homicide; sections 130.25,
25 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70,
26 relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19,
27 relating to escape and other offenses, where the offender has been
28 convicted within the previous five years of one of the other felonies
29 specified in this subdivision; or sections 255.25, 255.26 and 255.27,
30 relating to incest, a violent felony offense as defined in subdivision
31 one of section 70.02 of the penal law, attempted murder in the first
32 degree, as defined in section 110.00 and section 125.27 of the penal
33 law, kidnapping in the first degree, as defined in section 135.25 of the
34 penal law, arson in the first degree, as defined in section 150.20 of
35 the penal law, burglary in the third degree, as defined in section
36 140.20 of the penal law, attempted burglary in the third degree, as
37 defined in section 110.00 and section 140.20 of the penal law, a felony
38 defined in article four hundred ninety of the penal law relating to
39 terrorism or any attempt to commit an offense defined in such article
40 relating to terrorism which is a felony; or

41 S 19. Subparagraph 2 of paragraph (b) of subdivision 3 of section
42 358-a of the social services law, as added by chapter 7 of the laws of
43 1999, is amended to read as follows:

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

53 S 20. Clause (A) of subparagraph (iii) of paragraph (a) of subdivi-
54 sion 8 of section 384-b of the social services law, as amended by chap-
55 ter 460 of the laws of 2006, is amended to read as follows:

1 (A) the parent of such child has been convicted of AGGRAVATED MURDER
2 OF A CHILD AS DEFINED IN SECTION 125.28, murder in the first degree as
3 defined in section 125.27, murder in the second degree as defined in
4 section 125.25, manslaughter in the first degree as defined in section
5 125.20, or manslaughter in the second degree as defined in section
6 125.15 OF THE PENAL LAW, and the victim of any such crime was another
7 child of the parent or another child for whose care such parent is or
8 has been legally responsible as defined in subdivision (g) of section
9 one thousand twelve of the family court act, or another parent of the
10 child, unless the convicted parent was a victim of physical, sexual or
11 psychological abuse by the decedent parent and such abuse was a factor
12 in causing the homicide; or has been convicted of an attempt to commit
13 any of the foregoing crimes, and the victim or intended victim was the
14 child or another child of the parent or another child for whose care
15 such parent is or has been legally responsible as defined in subdivision
16 (g) of section one thousand twelve of the family court act, or another
17 parent of the child, unless the convicted parent was a victim of phys-
18 ical, sexual or psychological abuse by the decedent parent and such
19 abuse was a factor in causing the attempted homicide;

20 S 21. This act shall take effect on the first of November next
21 succeeding the date on which it shall have become a law.