

6776

2011-2012 Regular Sessions

I N A S S E M B L Y

March 31, 2011

Introduced by M. of A. LENTOL -- read once and referred to the Committee
on Codes

AN ACT to amend the penal law, the criminal procedure law, the vehicle and traffic law, the estates, powers and trusts law, the executive law and the social services law, in relation to establishing the offenses of aggravated murder of a child, aggravated abuse of a child in the third degree, aggravated abuse of a child in the second degree, aggravated abuse of a child in the first degree, aggravated manslaughter of a child, aggravated endangering the welfare of a child, and aggravated manslaughter of a child; and to repeal subdivision 5 of section 125.25 of the penal law relating to the murder of a person under 14 years of age while in the course of committing certain sex offenses

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "child protection act of 2011".
3 S 2. Section 10.00 of the penal law is amended by adding two new
4 subdivisions 21 and 22 to read as follows:
5 21. "PERSON IN A POSITION OF TRUST" MEANS ANY PERSON WHO IS CHARGED
6 WITH ANY DUTY OR RESPONSIBILITY FOR THE HEALTH, EDUCATION, WELFARE,
7 SUPERVISION OR CARE OF ANOTHER PERSON, EITHER INDEPENDENTLY OR THROUGH
8 ANOTHER PERSON, NO MATTER HOW BRIEF.
9 22. "CHILD ABUSE OFFENSE" MEANS:
10 (A) PATRONIZING A PROSTITUTE IN THE SECOND DEGREE AS DEFINED IN
11 SECTION 230.05; PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED
12 IN SECTION 230.06; PROMOTING PROSTITUTION IN THE SECOND DEGREE AS
13 DEFINED IN SUBDIVISION TWO OF SECTION 230.30; PROMOTING PROSTITUTION IN
14 THE FIRST DEGREE AS DEFINED IN SECTION 230.32; DISSEMINATING INDECENT
15 MATERIALS TO MINORS IN THE SECOND DEGREE AS DEFINED IN SECTION 235.21;
16 DISSEMINATING INDECENT MATERIALS TO MINORS IN THE FIRST DEGREE AS
17 DEFINED IN SECTION 235.22; ABANDONMENT OF A CHILD AS DEFINED IN SECTION

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

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1 260.00; NON-SUPPORT OF A CHILD IN THE SECOND DEGREE AS DEFINED IN
2 SECTION 260.05; NON-SUPPORT OF A CHILD IN THE FIRST DEGREE AS DEFINED IN
3 SECTION 260.06; ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SECTION
4 260.10; AGGRAVATED ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN
5 SECTION 260.09; UNLAWFULLY DEALING WITH A CHILD IN THE FIRST DEGREE AS
6 DEFINED IN SECTION 260.20; UNLAWFULLY DEALING WITH A CHILD IN THE SECOND
7 DEGREE AS DEFINED IN SECTION 260.21; OR AN OFFENSE DEFINED IN ARTICLE
8 TWO HUNDRED SIXTY-THREE OF THIS CHAPTER; OR

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

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

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

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

20 S 60.06 Authorized disposition; murder in the first degree offenders;
21 aggravated murder offenders; AGGRAVATED MURDER OF A CHILD
22 OFFENDERS; certain murder in the second degree offenders;
23 certain terrorism offenders; criminal possession of a chemical
24 weapon or biological weapon offenders; criminal use of a chem-
25 ical weapon or biological weapon offenders.

26 When a defendant is convicted of murder in the first degree as defined
27 in section 125.27 of this chapter, the court shall, in accordance with
28 the provisions of section 400.27 of the criminal procedure law, sentence
29 the defendant to death, to life imprisonment without parole in accord-
30 ance with subdivision five of section 70.00 of this title, or to a term
31 of imprisonment for a class A-I felony other than a sentence of life
32 imprisonment without parole, in accordance with subdivisions one through
33 three of section 70.00 of this title. When a person is convicted [of
34 murder in the second degree as defined in subdivision five of section
35 125.25 of this chapter or] of the crime of aggravated murder as defined
36 in subdivision one of section 125.26 of this chapter OR OF THE CRIME OF
37 AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAP-
38 TER, the court shall sentence the defendant to life imprisonment without
39 parole in accordance with subdivision five of section 70.00 of this
40 title. When a defendant is convicted of the crime of terrorism as
41 defined in section 490.25 of this chapter, and the specified offense the
42 defendant committed is a class A-I felony offense, or when a defendant
43 is convicted of the crime of criminal possession of a chemical weapon or
44 biological weapon in the first degree as defined in section 490.45 of
45 this chapter, or when a defendant is convicted of the crime of criminal
46 use of a chemical weapon or biological weapon in the first degree as
47 defined in section 490.55 of this chapter, the court shall sentence the
48 defendant to life imprisonment without parole in accordance with subdivi-
49 sion five of section 70.00 of this title; provided, however, that
50 nothing in this section shall preclude or prevent a sentence of death
51 when the defendant is also convicted of murder in the first degree as
52 defined in section 125.27 of this chapter. When a defendant is convicted
53 of aggravated murder as defined in subdivision two of section 125.26 of
54 this chapter, the court shall sentence the defendant to life imprison-
55 ment without parole or to a term of imprisonment for a class A-I felony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 S 125.23 AGGRAVATED MANSLAUGHTER OF A CHILD.

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

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

49 S 125.28 AGGRAVATED MURDER OF A CHILD.

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

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

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

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

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

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

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

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

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

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

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

S 260.09 AGGRAVATED ENDANGERING THE WELFARE OF A CHILD.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ing a false certificate as defined in section 175.40 of the penal law,
2 criminal diversion of prescription medications and prescriptions in the
3 second degree as defined in section 178.20 of the penal law, criminal
4 diversion of prescription medications and prescriptions in the first
5 degree as defined in section 178.25 of the penal law, residential mort-
6 gage fraud in the fourth degree as defined in section 187.10 of the
7 penal law, residential mortgage fraud in the third degree as defined in
8 section 187.15 of the penal law, residential mortgage fraud in the
9 second degree as defined in section 187.20 of the penal law, residential
10 mortgage fraud in the first degree as defined in section 187.25 of the
11 penal law, escape in the second degree as defined in section 205.10 of
12 the penal law, escape in the first degree as defined in section 205.15
13 of the penal law, absconding from temporary release in the first degree
14 as defined in section 205.17 of the penal law, promoting prison contra-
15 band in the first degree as defined in section 205.25 of the penal law,
16 hindering prosecution in the second degree as defined in section 205.60
17 of the penal law, hindering prosecution in the first degree as defined
18 in section 205.65 of the penal law, sex trafficking as defined in
19 section 230.34 of the penal law, criminal possession of a weapon in the
20 third degree as defined in subdivisions two, three and five of section
21 265.02 of the penal law, criminal possession of a weapon in the second
22 degree as defined in section 265.03 of the penal law, criminal
23 possession of a weapon in the first degree as defined in section 265.04
24 of the penal law, manufacture, transport, disposition and defacement of
25 weapons and dangerous instruments and appliances defined as felonies in
26 subdivisions one, two, and three of section 265.10 of the penal law,
27 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use
28 of weapons as defined in subdivision two of section 265.35 of the penal
29 law, relating to firearms and other dangerous weapons, or failure to
30 disclose the origin of a recording in the first degree as defined in
31 section 275.40 of the penal law;

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

35 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
36 subdivision one and paragraph (a) of subdivision two of this section
37 that result in permanent disqualification shall include a conviction
38 under sections 125.12, 125.20, 125.25, 125.26, 125.27, 130.30, 130.35,
39 130.45, 130.50, 130.70, 135.25, 150.20 of the penal law or an attempt to
40 commit any of the aforesaid offenses under section 110.00 of the penal
41 law, OR A CHILD ABUSE OFFENSE AS DEFINED IN SUBDIVISION TWENTY-TWO OF
42 SECTION 10.00 OF THE PENAL LAW, or any offenses committed under a former
43 section of the penal law which would constitute violations of the afore-
44 said sections of the penal law, or any offenses committed outside this
45 state which would constitute violations of the aforesaid sections of the
46 penal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 24. This act shall take effect immediately.