

2186

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sens. GOLDEN, BONACIC, DeFRANCISCO, FUSCHILLO, JOHNSON, RANZENHOFER -- 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 Brown's Law".
3 S 2. Section 60.06 of the penal law, as amended by chapter 482 of the
4 laws of 2009, is amended to read as follows:
5 S 60.06 Authorized disposition; murder in the first degree offenders;
6 aggravated murder offenders; AGGRAVATED MURDER OF CHILD OFFEN-
7 DERS; certain murder in the second degree offenders; certain
8 terrorism offenders; criminal possession of a chemical weapon
9 or biological weapon offenders; criminal use of a chemical
10 weapon or biological weapon offenders.
11 When a defendant is convicted of murder in the first degree as defined
12 in section 125.27 of this chapter, the court shall, in accordance with
13 the provisions of section 400.27 of the criminal procedure law, sentence
14 the defendant to death, to life imprisonment without parole in accord-
15 ance with subdivision five of section 70.00 of this title, or to a term
16 of imprisonment for a class A-I felony other than a sentence of life
17 imprisonment without parole, in accordance with subdivisions one through

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

LBD04616-01-1

1 three of section 70.00 of this title. When a person is convicted of
2 [murder in the second degree as defined in subdivision five of section
3 125.25 of this chapter or of] the crime of aggravated murder as defined
4 in subdivision one of section 125.26 of this chapter OR OF THE CRIME OF
5 AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAP-
6 TER, the court shall sentence the defendant to life imprisonment without
7 parole in accordance with subdivision five of section 70.00 of this
8 title. When a defendant is convicted of the crime of terrorism as
9 defined in section 490.25 of this chapter, and the specified offense the
10 defendant committed is a class A-I felony offense, or when a defendant
11 is convicted of the crime of criminal possession of a chemical weapon or
12 biological weapon in the first degree as defined in section 490.45 of
13 this chapter, or when a defendant is convicted of the crime of criminal
14 use of a chemical weapon or biological weapon in the first degree as
15 defined in section 490.55 of this chapter, the court shall sentence the
16 defendant to life imprisonment without parole in accordance with subdi-
17 vision five of section 70.00 of this title; provided, however, that
18 nothing in this section shall preclude or prevent a sentence of death
19 when the defendant is also convicted of murder in the first degree as
20 defined in section 125.27 of this chapter. When a defendant is convicted
21 of aggravated murder as defined in subdivision two of section 125.26 of
22 this chapter, the court shall sentence the defendant to life imprison-
23 ment without parole or to a term of imprisonment for a class A-I felony
24 other than a sentence of life imprisonment without parole, in accordance
25 with subdivisions one through three of section 70.00 of this title.

26 S 3. Subparagraph (i) of paragraph (a) of subdivision 3 of section
27 70.00 of the penal law, as amended by chapter 107 of the laws of 2006,
28 is amended to read as follows:

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

50 S 4. Subdivision 5 of section 70.00 of the penal law, as amended by
51 chapter 482 of the laws of 2009, is amended to read as follows:

52 5. Life imprisonment without parole. Notwithstanding any other
53 provision of law, a defendant sentenced to life imprisonment without
54 parole shall not be or become eligible for parole or conditional
55 release. For purposes of commitment and custody, other than parole and
56 conditional release, such sentence shall be deemed to be an indetermi-

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

24 S 5. 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 6. Section 125.05 of the penal law is amended by adding a new subdi-
34 vision 4 to read as follows:

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

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

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

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

47 S 9. Subparagraph (ix) of paragraph (a) of subdivision 1 of section
48 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is
49 amended to read as follows:

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

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

3 S 125.28 AGGRAVATED MURDER OF A CHILD.

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

5 1. BEING EIGHTEEN YEARS OLD OR MORE, WHILE IN THE COURSE OF COMMITTING
6 RAPE IN THE FIRST, SECOND OR THIRD DEGREE, CRIMINAL SEXUAL ACT IN THE
7 FIRST, SECOND OR THIRD DEGREE, AGGRAVATED SEXUAL ABUSE IN THE FIRST,
8 SECOND, THIRD OR FOURTH DEGREE, OR INCEST, AGAINST A PERSON LESS THAN
9 FOURTEEN YEARS OLD, HE OR SHE INTENTIONALLY CAUSES THE DEATH OF SUCH
10 PERSON; OR

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

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

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

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

28 (a) Subdivisions one and two do not apply to a criminal action wherein
29 the defendant is accused of an offense defined in sections 125.10,
30 125.15, 125.20, 125.25, 125.26 [and], 125.27 AND 125.28 of the penal
31 law.

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

35 1. After arraignment of a defendant upon a felony complaint, other
36 than a felony complaint charging an offense defined in section 125.10,
37 125.15, 125.20, 125.25, 125.26 [or], 125.27 OR 125.28 of the penal law,
38 either party or the local criminal court or superior court before which
39 the action is pending, on its own motion, may move in accordance with
40 the provisions of this section for an order terminating prosecution of
41 the charges contained in such felony complaint on consent of the
42 parties.

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

46 (h) A social worker, rape crisis counselor, psychologist or other
47 professional providing emotional support to a child witness twelve years
48 old or younger who is called to give evidence in a grand jury proceeding
49 concerning a crime defined in article one hundred twenty-one, article
50 one hundred thirty, article two hundred sixty, section 120.10, 125.10,
51 125.15, 125.20, 125.25, 125.26, 125.27, 125.28, 255.25, 255.26 or 255.27
52 of the penal law provided that the district attorney consents. Such
53 support person shall not provide the witness with an answer to any ques-
54 tion or otherwise participate in such proceeding and shall first take an
55 oath before the grand jury that he or she will keep secret all matters
56 before such grand jury within his or her knowledge.

1 S 14. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
2 procedure law, as amended by chapter 405 of the laws of 2010, is amended
3 to read as follows:

4 (b) Any of the following felonies: assault in the second degree as
5 defined in section 120.05 of the penal law, assault in the first degree
6 as defined in section 120.10 of the penal law, reckless endangerment in
7 the first degree as defined in section 120.25 of the penal law, promot-
8 ing a suicide attempt as defined in section 120.30 of the penal law,
9 strangulation in the second degree as defined in section 121.12 of the
10 penal law, strangulation in the first degree as defined in section
11 121.13 of the penal law, criminally negligent homicide as defined in
12 section 125.10 of the penal law, manslaughter in the second degree as
13 defined in section 125.15 of the penal law, manslaughter in the first
14 degree as defined in section 125.20 of the penal law, murder in the
15 second degree as defined in section 125.25 of the penal law, murder in
16 the first degree as defined in section 125.27 of the penal law, AGGRA-
17 VATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW,
18 abortion in the second degree as defined in section 125.40 of the penal
19 law, abortion in the first degree as defined in section 125.45 of the
20 penal law, rape in the third degree as defined in section 130.25 of the
21 penal law, rape in the second degree as defined in section 130.30 of the
22 penal law, rape in the first degree as defined in section 130.35 of the
23 penal law, criminal sexual act in the third degree as defined in section
24 130.40 of the penal law, criminal sexual act in the second degree as
25 defined in section 130.45 of the penal law, criminal sexual act in the
26 first degree as defined in section 130.50 of the penal law, sexual abuse
27 in the first degree as defined in section 130.65 of the penal law,
28 unlawful imprisonment in the first degree as defined in section 135.10
29 of the penal law, kidnapping in the second degree as defined in section
30 135.20 of the penal law, kidnapping in the first degree as defined in
31 section 135.25 of the penal law, labor trafficking as defined in section
32 135.35 of the penal law, custodial interference in the first degree as
33 defined in section 135.50 of the penal law, coercion in the first degree
34 as defined in section 135.65 of the penal law, criminal trespass in the
35 first degree as defined in section 140.17 of the penal law, burglary in
36 the third degree as defined in section 140.20 of the penal law, burglary
37 in the second degree as defined in section 140.25 of the penal law,
38 burglary in the first degree as defined in section 140.30 of the penal
39 law, criminal mischief in the third degree as defined in section 145.05
40 of the penal law, criminal mischief in the second degree as defined in
41 section 145.10 of the penal law, criminal mischief in the first degree
42 as defined in section 145.12 of the penal law, criminal tampering in the
43 first degree as defined in section 145.20 of the penal law, arson in the
44 fourth degree as defined in section 150.05 of the penal law, arson in
45 the third degree as defined in section 150.10 of the penal law, arson in
46 the second degree as defined in section 150.15 of the penal law, arson
47 in the first degree as defined in section 150.20 of the penal law, grand
48 larceny in the fourth degree as defined in section 155.30 of the penal
49 law, grand larceny in the third degree as defined in section 155.35 of
50 the penal law, grand larceny in the second degree as defined in section
51 155.40 of the penal law, grand larceny in the first degree as defined in
52 section 155.42 of the penal law, health care fraud in the fourth degree
53 as defined in section 177.10 of the penal law, health care fraud in the
54 third degree as defined in section 177.15 of the penal law, health care
55 fraud in the second degree as defined in section 177.20 of the penal
56 law, health care fraud in the first degree as defined in section 177.25

1 of the penal law, robbery in the third degree as defined in section
2 160.05 of the penal law, robbery in the second degree as defined in
3 section 160.10 of the penal law, robbery in the first degree as defined
4 in section 160.15 of the penal law, unlawful use of secret scientific
5 material as defined in section 165.07 of the penal law, criminal
6 possession of stolen property in the fourth degree as defined in section
7 165.45 of the penal law, criminal possession of stolen property in the
8 third degree as defined in section 165.50 of the penal law, criminal
9 possession of stolen property in the second degree as defined by section
10 165.52 of the penal law, criminal possession of stolen property in the
11 first degree as defined by section 165.54 of the penal law, trademark
12 counterfeiting in the second degree as defined in section 165.72 of the
13 penal law, trademark counterfeiting in the first degree as defined in
14 section 165.73 of the penal law, forgery in the second degree as defined
15 in section 170.10 of the penal law, forgery in the first degree as
16 defined in section 170.15 of the penal law, criminal possession of a
17 forged instrument in the second degree as defined in section 170.25 of
18 the penal law, criminal possession of a forged instrument in the first
19 degree as defined in section 170.30 of the penal law, criminal
20 possession of forgery devices as defined in section 170.40 of the penal
21 law, falsifying business records in the first degree as defined in
22 section 175.10 of the penal law, tampering with public records in the
23 first degree as defined in section 175.25 of the penal law, offering a
24 false instrument for filing in the first degree as defined in section
25 175.35 of the penal law, issuing a false certificate as defined in
26 section 175.40 of the penal law, criminal diversion of prescription
27 medications and prescriptions in the second degree as defined in section
28 178.20 of the penal law, criminal diversion of prescription medications
29 and prescriptions in the first degree as defined in section 178.25 of
30 the penal law, residential mortgage fraud in the fourth degree as
31 defined in section 187.10 of the penal law, residential mortgage fraud
32 in the third degree as defined in section 187.15 of the penal law, resi-
33 dential mortgage fraud in the second degree as defined in section 187.20
34 of the penal law, residential mortgage fraud in the first degree as
35 defined in section 187.25 of the penal law, escape in the second degree
36 as defined in section 205.10 of the penal law, escape in the first
37 degree as defined in section 205.15 of the penal law, absconding from
38 temporary release in the first degree as defined in section 205.17 of
39 the penal law, promoting prison contraband in the first degree as
40 defined in section 205.25 of the penal law, hindering prosecution in the
41 second degree as defined in section 205.60 of the penal law, hindering
42 prosecution in the first degree as defined in section 205.65 of the
43 penal law, sex trafficking as defined in section 230.34 of the penal
44 law, criminal possession of a weapon in the third degree as defined in
45 subdivisions two, three and five of section 265.02 of the penal law,
46 criminal possession of a weapon in the second degree as defined in
47 section 265.03 of the penal law, criminal possession of a weapon in the
48 first degree as defined in section 265.04 of the penal law, manufacture,
49 transport, disposition and defacement of weapons and dangerous instru-
50 ments and appliances defined as felonies in subdivisions one, two, and
51 three of section 265.10 of the penal law, sections 265.11, 265.12 and
52 265.13 of the penal law, or prohibited use of weapons as defined in
53 subdivision two of section 265.35 of the penal law, relating to firearms
54 and other dangerous weapons, or failure to disclose the origin of a
55 recording in the first degree as defined in section 275.40 of the penal
56 law;

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

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

34 6. (a) When a defendant has been charged in an accusatory instrument
35 WITH AGGRAVATED MURDER AS DEFINED IN SECTION 125.26 OF THE PENAL LAW,
36 with murder in the first degree as defined in section 125.27 of the
37 penal law, WITH AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION
38 125.28 OF THE PENAL LAW or with murder in the second degree as defined
39 in section 125.25 of the penal law, the district attorney shall notify
40 the capital defender office.

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

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

1 7. Whenever a defendant is charged WITH AGGRAVATED MURDER AS DEFINED
2 IN SECTION 125.26 OF THE PENAL LAW, with murder in the first degree AS
3 DEFINED IN SECTION 125.27 OF THE PENAL LAW OR WITH AGGRAVATED MURDER OF
4 A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW, or a defendant
5 has been charged with murder in the second degree as defined in section
6 125.25 of the penal law and the court determines after confirmation by
7 the district attorney pursuant to subdivision one of this section that
8 there is a reasonable likelihood the defendant will be charged with
9 murder in the first degree and the defendant is financially unable to
10 obtain counsel as determined by the court and an attorney has not yet
11 been appointed to represent such defendant pursuant to the provisions of
12 this section, the capital defender office may provide or arrange to
13 provide temporary legal representation to the defendant. No arraignment
14 shall be delayed on account of any representation to be provided or
15 arranged pursuant to this subdivision. Any temporary representation
16 provided pursuant to this subdivision shall cease upon the court's
17 appointment of an attorney pursuant to this section.

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

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

43 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
44 subdivision one and paragraph (a) of subdivision two of this section
45 that result in permanent disqualification shall include a conviction
46 under sections 125.12, 125.20, 125.25, 125.26, 125.27, 125.28, 130.30,
47 130.35, 130.45, 130.50, 130.70, 135.25, 150.20 of the penal law or an
48 attempt to commit any of the aforesaid offenses under section 110.00 of
49 the penal law, or any offenses committed under a former section of the
50 penal law which would constitute violations of the aforesaid sections of
51 the penal law, or any offenses committed outside this state which would
52 constitute violations of the aforesaid sections of the penal law.

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

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

1 Notwithstanding any other provision of law to the contrary, a joint
2 tenant convicted of murder in the second degree as defined in section
3 125.25 of the penal law or murder in the first degree as defined in
4 section 125.27 of the penal law OR AGGRAVATED MURDER OF A CHILD AS
5 DEFINED IN SECTION 125.28 OF THE PENAL LAW of another joint tenant shall
6 not be entitled to the distribution of any monies in a joint bank
7 account created or contributed to by the deceased joint tenant, except
8 for those monies contributed by the convicted joint tenant.

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

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

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

33 (a) sections 120.05, 120.10, and 120.11, relating to assault; sections
34 125.15 through [125.27] 125.28 relating to homicide; sections 130.25,
35 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70,
36 relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19,
37 relating to escape and other offenses, where the offender has been
38 convicted within the previous five years of one of the other felonies
39 specified in this subdivision; or sections 255.25, 255.26 and 255.27,
40 relating to incest, a violent felony offense as defined in subdivision
41 one of section 70.02 of the penal law, attempted murder in the first
42 degree, as defined in section 110.00 and section 125.27 of the penal
43 law, kidnapping in the first degree, as defined in section 135.25 of the
44 penal law, arson in the first degree, as defined in section 150.20 of
45 the penal law, burglary in the third degree, as defined in section
46 140.20 of the penal law, attempted burglary in the third degree, as
47 defined in section 110.00 and section 140.20 of the penal law, a felony
48 defined in article four hundred ninety of the penal law relating to
49 terrorism or any attempt to commit an offense defined in such article
50 relating to terrorism which is a felony; or

51 S 19. Subparagraph 2 of paragraph (b) of subdivision 3 of section
52 358-a of the social services law, as added by chapter 7 of the laws of
53 1999, is amended to read as follows:

54 (2) the parent of such child has been convicted of (i) AGGRAVATED
55 MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OR murder in the first
56 degree as defined in section 125.27 or murder in the second degree as

1 defined in section 125.25 of the penal law and the victim was another
2 child of the parent; or (ii) manslaughter in the first degree as defined
3 in section 125.20 or manslaughter in the second degree as defined in
4 section 125.15 of the penal law and the victim was another child of the
5 parent, provided, however, that the parent must have acted voluntarily
6 in committing such crime;

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

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

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