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

3285

2011-2012 Regular Sessions

I N S E N A T E

February 15, 2011

Introduced by Sen. HASSELL-THOMPSON -- 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 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:

Section 1. Short title. This act shall be known and may be cited as the "child protection act of 2011".

S 2. Section 10.00 of the penal law is amended by adding two new subdivisions 21 and 22 to read as follows:

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

22. "CHILD ABUSE OFFENSE" MEANS:

(A) PATRONIZING A PROSTITUTE IN THE SECOND DEGREE AS DEFINED IN SECTION 230.05; PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED IN SECTION 230.06; PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 230.30; PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.32; DISSEMINATING INDECENT MATERIALS TO MINORS IN THE SECOND DEGREE AS DEFINED IN SECTION 235.21; DISSEMINATING INDECENT MATERIALS TO MINORS IN THE FIRST DEGREE AS 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.

LBD07044-01-1

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

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

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

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

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

S 60.06 Authorized disposition; murder in the first degree offenders; aggravated murder offenders; AGGRAVATED MURDER OF A CHILD OFFENDERS; certain murder in the second degree offenders; certain terrorism offenders; criminal possession of a chemical weapon or biological weapon offenders; criminal use of a chemical weapon or biological weapon offenders.

When a defendant is convicted of murder in the first degree as defined in section 125.27 of this chapter, the court shall, in accordance with the provisions of section 400.27 of the criminal procedure law, sentence the defendant to death, to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title, or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, in accordance with subdivisions one through three of section 70.00 of this title. When a person is convicted [of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or] of the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter OR OF THE CRIME OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title. When a defendant is convicted of the crime of terrorism as defined in section 490.25 of this chapter, and the specified offense the defendant committed is a class A-I felony offense, or when a defendant is convicted of the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter, or when a defendant is convicted of the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title; provided, however, that nothing in this section shall preclude or prevent a sentence of death when the defendant is also convicted of murder in the first degree as defined in section 125.27 of this chapter. When a defendant is convicted of aggravated murder as defined in subdivision two of section 125.26 of this chapter, the court shall sentence the defendant to life imprisonment without parole or to a term of imprisonment for a class A-I felony

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

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

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

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

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures provided by law for imposing a sentence for such crime. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant must be sentenced to life imprisonment without parole upon conviction [for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or] for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter OR FOR THE CRIME OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THIS CHAPTER. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter.

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

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, AGGRAVATED MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

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

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

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

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

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

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

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

A person is guilty of [reckless assault] AGGRAVATED ABUSE of a child IN THE THIRD DEGREE when, being [a child day care provider or an employee thereof] 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 recklessly causes [serious] physical injury to [a] SUCH child [under the care of such provider or employee who is less than eleven years of age].

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

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

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

A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE 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:

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

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

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

AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE IS A CLASS D FELONY.

S 120.09-A AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE 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:

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

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

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

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

(B) AS PART OF THE SAME TRANSACTION, RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A GRAVE RISK OF SERIOUS PHYSICAL INJURY OR DEATH TO ANOTHER CHILD LESS THAN FOURTEEN YEARS OLD AND THEREBY CAUSES SERIOUS PHYSICAL INJURY TO SUCH OTHER CHILD; OR

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

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

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

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

S 125.23 AGGRAVATED MANSLAUGHTER OF A CHILD.

A PERSON IS GUILTY OF AGGRAVATED MANSLAUGHTER 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 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.

AGGRAVATED MANSLAUGHTER OF A CHILD IS A CLASS B FELONY.

S 125.28 AGGRAVATED MURDER OF A CHILD.

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

1. WITH INTENT TO CAUSE THE DEATH OF A CHILD LESS THAN FOURTEEN YEARS OLD, 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, SUCH CHILD, OR BEING A PERSON IN A POSITION OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE CAUSES THE 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.

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

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

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

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

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

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, AGGRAVATED ABUSE OF A CHILD IN THE THIRD DEGREE AS DEFINED IN SECTION 120.01 OF THE PENAL LAW, AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 120.09 OF THE PENAL LAW, AGGRAVATED ABUSE OF A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 120.09-A OF THE PENAL LAW, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law, strangulation in the first degree as defined in section 121.13 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, AGGRAVATED MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23 OF THE PENAL LAW, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION 125.28 OF THE PENAL LAW, abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, crimi-

nal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the second degree as defined in section 165.72 of the penal law, trademark counterfeiting in the first degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issu-

ing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, residential mortgage fraud in the fourth degree as defined in section 187.10 of the penal law, residential mortgage fraud in the third degree as defined in section 187.15 of the penal law, residential mortgage fraud in the second degree as defined in section 187.20 of the penal law, residential mortgage fraud in the first degree as defined in section 187.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, sex trafficking as defined in section 230.34 of the penal law, criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons, or failure to disclose the origin of a recording in the first degree as defined in section 275.40 of the penal law;

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

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

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

S 4-1.6 Disqualification of joint tenant in certain instances

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

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

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

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

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

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

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

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

penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent materials to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent materials to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; AGGRAVATED ENDANGERING THE WELFARE OF A CHILD, AS DEFINED IN SECTION 260.09 OF THE PENAL LAW; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a 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.