

3535

2013-2014 Regular Sessions

I N S E N A T E

February 5, 2013

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 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 2013".
3 S 2. Section 10.00 of the penal law is amended by adding two new
4 subdivisions 22 and 23 to read as follows:
5 22. "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 23. "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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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

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, and paragraphs (b) and (c) as amended by chapter 1 of the laws of
4 2013, 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, assault on a
39 judge as defined in section 120.09, gang assault in the second degree as
40 defined in section 120.06, AGGRAVATED ABUSE OF A CHILD IN THE FIRST
41 DEGREE AS DEFINED IN SECTION 120.09-B, strangulation in the first degree
42 as defined in section 121.13, burglary in the second degree as defined
43 in section 140.25, robbery in the second degree as defined in section
44 160.10, criminal possession of a weapon in the second degree as defined
45 in section 265.03, criminal use of a firearm in the second degree as
46 defined in section 265.08, criminal sale of a firearm in the second
47 degree as defined in section 265.12, criminal sale of a firearm with the
48 aid of a minor as defined in section 265.14, aggravated criminal
49 possession of a weapon as defined in section 265.19, soliciting or
50 providing support for an act of terrorism in the first degree as defined
51 in section 490.15, hindering prosecution of terrorism in the second
52 degree as defined in section 490.30, and criminal possession of a chemi-
53 cal weapon or biological weapon in the third degree as defined in
54 section 490.37.

55 (c) Class D violent felony offenses: an attempt to commit any of the
56 class C felonies set forth in paragraph (b); reckless assault of a child

1 as defined in section 120.02, assault in the second degree as defined in
2 section 120.05, AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE AS
3 DEFINED IN SECTION 120.09-A, menacing a police officer or peace officer
4 as defined in section 120.18, stalking in the first degree, as defined
5 in subdivision one of section 120.60, strangulation in the second degree
6 as defined in section 121.12, rape in the second degree as defined in
7 section 130.30, criminal sexual act in the second degree as defined in
8 section 130.45, sexual abuse in the first degree as defined in section
9 130.65, course of sexual conduct against a child in the second degree as
10 defined in section 130.80, aggravated sexual abuse in the third degree
11 as defined in section 130.66, facilitating a sex offense with a
12 controlled substance as defined in section 130.90, criminal possession
13 of a weapon in the third degree as defined in subdivision five, six,
14 seven, eight, nine or ten of section 265.02, criminal sale of a firearm
15 in the third degree as defined in section 265.11, intimidating a victim
16 or witness in the second degree as defined in section 215.16, soliciting
17 or providing support for an act of terrorism in the second degree as
18 defined in section 490.10, and making a terroristic threat as defined in
19 section 490.20, falsely reporting an incident in the first degree as
20 defined in section 240.60, placing a false bomb or hazardous substance
21 in the first degree as defined in section 240.62, placing a false bomb
22 or hazardous substance in a sports stadium or arena, mass transportation
23 facility or enclosed shopping mall as defined in section 240.63, and
24 aggravated unpermitted use of indoor pyrotechnics in the first degree as
25 defined in section 405.18.

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

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

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

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

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

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

50 S 9. The penal law is amended by adding two new sections 120.09-a and
51 120.09-b to read as follows:

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

53 A PERSON IS GUILTY OF AGGRAVATED ABUSE OF A CHILD IN THE SECOND DEGREE
54 WHEN BEING EIGHTEEN YEARS OLD OR MORE, AND BEING A PARENT, GUARDIAN OR
55 OTHER PERSON LEGALLY CHARGED WITH THE CUSTODY OF, OR LEGALLY RESPONSIBLE
56 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-B 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

1 OF TRUST OF A CHILD LESS THAN FOURTEEN YEARS OLD, HE OR SHE CAUSES THE
2 DEATH OF SUCH CHILD; OR

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

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

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

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

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

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

26 S 13. Subparagraph (ix) of paragraph (a) of subdivision 1 of section
27 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is
28 amended to read as follows:

29 (ix) prior to committing the killing, the defendant had been convicted
30 of murder as defined in this section or section 125.25 of this article
31 OR CONVICTED OF AGGRAVATED MURDER OF A CHILD AS DEFINED IN SECTION
32 125.28 OF THIS ARTICLE, or had been convicted in another jurisdiction of
33 an offense which, if committed in this state, would constitute a
34 violation of [either of such] THE AFOREMENTIONED sections; or

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

37 S 260.09 AGGRAVATED ENDANGERING THE WELFARE OF A CHILD.

38 A PERSON IS GUILTY OF AGGRAVATED ENDANGERING THE WELFARE OF A CHILD
39 WHEN, BEING 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 KNOWINGLY ACTS IN A MANNER LIKELY TO BE INJURIOUS TO THE PHYSICAL,
44 MENTAL OR MORAL WELFARE OF SUCH CHILD, AND:

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

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

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

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

54 (a) Subdivisions one and two do not apply to a criminal action wherein
55 the defendant is accused of an offense defined in sections 125.10,

1 125.15, 125.20, 125.25, 125.26 [and], 125.27 AND 125.28 of the penal
2 law.

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

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

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

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

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

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

1 as defined in section 130.40 of the penal law, criminal sexual act in
2 the second degree as defined in section 130.45 of the penal law, crimi-
3 nal sexual act in the first degree as defined in section 130.50 of the
4 penal law, sexual abuse in the first degree as defined in section 130.65
5 of the penal law, unlawful imprisonment in the first degree as defined
6 in section 135.10 of the penal law, kidnapping in the second degree as
7 defined in section 135.20 of the penal law, kidnapping in the first
8 degree as defined in section 135.25 of the penal law, labor trafficking
9 as defined in section 135.35 of the penal law, custodial interference in
10 the first degree as defined in section 135.50 of the penal law, coercion
11 in the first degree as defined in section 135.65 of the penal law, crim-
12 inal trespass in the first degree as defined in section 140.17 of the
13 penal law, burglary in the third degree as defined in section 140.20 of
14 the penal law, burglary in the second degree as defined in section
15 140.25 of the penal law, burglary in the first degree as defined in
16 section 140.30 of the penal law, criminal mischief in the third degree
17 as defined in section 145.05 of the penal law, criminal mischief in the
18 second degree as defined in section 145.10 of the penal law, criminal
19 mischief in the first degree as defined in section 145.12 of the penal
20 law, criminal tampering in the first degree as defined in section 145.20
21 of the penal law, arson in the fourth degree as defined in section
22 150.05 of the penal law, arson in the third degree as defined in section
23 150.10 of the penal law, arson in the second degree as defined in
24 section 150.15 of the penal law, arson in the first degree as defined in
25 section 150.20 of the penal law, grand larceny in the fourth degree as
26 defined in section 155.30 of the penal law, grand larceny in the third
27 degree as defined in section 155.35 of the penal law, grand larceny in
28 the second degree as defined in section 155.40 of the penal law, grand
29 larceny in the first degree as defined in section 155.42 of the penal
30 law, health care fraud in the fourth degree as defined in section 177.10
31 of the penal law, health care fraud in the third degree as defined in
32 section 177.15 of the penal law, health care fraud in the second degree
33 as defined in section 177.20 of the penal law, health care fraud in the
34 first degree as defined in section 177.25 of the penal law, robbery in
35 the third degree as defined in section 160.05 of the penal law, robbery
36 in the second degree as defined in section 160.10 of the penal law,
37 robbery in the first degree as defined in section 160.15 of the penal
38 law, unlawful use of secret scientific material as defined in section
39 165.07 of the penal law, criminal possession of stolen property in the
40 fourth degree as defined in section 165.45 of the penal law, criminal
41 possession of stolen property in the third degree as defined in section
42 165.50 of the penal law, criminal possession of stolen property in the
43 second degree as defined by section 165.52 of the penal law, criminal
44 possession of stolen property in the first degree as defined by section
45 165.54 of the penal law, trademark counterfeiting in the second degree
46 as defined in section 165.72 of the penal law, trademark counterfeiting
47 in the first degree as defined in section 165.73 of the penal law,
48 forgery in the second degree as defined in section 170.10 of the penal
49 law, forgery in the first degree as defined in section 170.15 of the
50 penal law, criminal possession of a forged instrument in the second
51 degree as defined in section 170.25 of the penal law, criminal
52 possession of a forged instrument in the first degree as defined in
53 section 170.30 of the penal law, criminal possession of forgery devices
54 as defined in section 170.40 of the penal law, falsifying business
55 records in the first degree as defined in section 175.10 of the penal
56 law, tampering with public records in the first degree as defined in

1 section 175.25 of the penal law, offering a false instrument for filing
2 in the first degree as defined in section 175.35 of the penal law, issu-
3 ing a false certificate as defined in section 175.40 of the penal law,
4 criminal diversion of prescription medications and prescriptions in the
5 second degree as defined in section 178.20 of the penal law, criminal
6 diversion of prescription medications and prescriptions in the first
7 degree as defined in section 178.25 of the penal law, residential mort-
8 gage fraud in the fourth degree as defined in section 187.10 of the
9 penal law, residential mortgage fraud in the third degree as defined in
10 section 187.15 of the penal law, residential mortgage fraud in the
11 second degree as defined in section 187.20 of the penal law, residential
12 mortgage fraud in the first degree as defined in section 187.25 of the
13 penal law, escape in the second degree as defined in section 205.10 of
14 the penal law, escape in the first degree as defined in section 205.15
15 of the penal law, absconding from temporary release in the first degree
16 as defined in section 205.17 of the penal law, promoting prison contra-
17 band in the first degree as defined in section 205.25 of the penal law,
18 hindering prosecution in the second degree as defined in section 205.60
19 of the penal law, hindering prosecution in the first degree as defined
20 in section 205.65 of the penal law, sex trafficking as defined in
21 section 230.34 of the penal law, criminal possession of a weapon in the
22 third degree as defined in subdivisions two, three and five of section
23 265.02 of the penal law, criminal possession of a weapon in the second
24 degree as defined in section 265.03 of the penal law, criminal
25 possession of a weapon in the first degree as defined in section 265.04
26 of the penal law, manufacture, transport, disposition and defacement of
27 weapons and dangerous instruments and appliances defined as felonies in
28 subdivisions one, two, and three of section 265.10 of the penal law,
29 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use
30 of weapons as defined in subdivision two of section 265.35 of the penal
31 law, relating to firearms and other dangerous weapons, or failure to
32 disclose the origin of a recording in the first degree as defined in
33 section 275.40 of the penal law;

34 S 19. Paragraph (a) of subdivision 4 of section 509-cc of the vehicle
35 and traffic law, as amended by chapter 400 of the laws of 2011, is
36 amended to read as follows:

37 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
38 subdivision one and paragraph (a) of subdivision two of this section
39 that result in permanent disqualification shall include a conviction
40 under sections 125.12, 125.13, 125.14, 125.15, 125.20, 125.21, 125.22,
41 125.25, 125.26, 125.27, 130.30, 130.35, 130.45, 130.50, 130.65, 130.66,
42 130.67, 130.70, 130.75, 130.80, 130.90, 130.95, 130.96, 135.25, 150.20,
43 230.30, 230.32, 230.34, 235.22, 263.05, 263.10, 263.11, 263.15, 263.16
44 of the penal law or an attempt to commit any of the aforesaid offenses
45 under section 110.00 of the penal law, OR A CHILD ABUSE OFFENSE AS
46 DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION 10.00 OF THE PENAL LAW,
47 or any offenses committed under a former section of the penal law which
48 would constitute violations of the aforesaid sections of the penal law,
49 or any offenses committed outside this state which would constitute
50 violations of the aforesaid sections of the penal law.

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

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

54 Notwithstanding any other provision of law to the contrary, a joint
55 tenant convicted of murder in the second degree as defined in section
56 125.25 of the penal law or murder in the first degree as defined in

1 section 125.27 of the penal law OR AGGRAVATED MURDER OF A CHILD AS
2 DEFINED IN SECTION 125.28 OF THE PENAL LAW of another joint tenant shall
3 not be entitled to the distribution of any monies in a joint bank
4 account created or contributed to by the deceased joint tenant, except
5 for those monies contributed by the convicted joint tenant.

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

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

27 S 21. Subparagraph 2 of paragraph (b) of subdivision 3 of section
28 358-a of the social services law, as added by chapter 7 of the laws of
29 1999, is amended to read as follows:

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

40 S 22. Clause (A) of subparagraph (iii) of paragraph (a) of subdivision
41 8 of section 384-b of the social services law, as amended by chapter 460
42 of the laws of 2006, is amended to read as follows:

43 (A) the parent of such child has been convicted of AGGRAVATED
44 MANSLAUGHTER OF A CHILD AS DEFINED IN SECTION 125.23, AGGRAVATED MURDER
45 OF A CHILD AS DEFINED IN SECTION 125.28, murder in the first degree as
46 defined in section 125.27, murder in the second degree as defined in
47 section 125.25, manslaughter in the first degree as defined in section
48 125.20, or manslaughter in the second degree as defined in section
49 125.15, and the victim of any such crime was another child of the parent
50 or another child for whose care such parent is or has been legally
51 responsible as defined in subdivision (g) of section one thousand twelve
52 of the family court act, or another parent of the child, unless the
53 convicted parent was a victim of physical, sexual or psychological abuse
54 by the decedent parent and such abuse was a factor in causing the homi-
55 cide; or has been convicted of an attempt to commit any of the foregoing
56 crimes, and the victim or intended victim was the child or another child

1 of the parent or another child for whose care such parent is or has been
2 legally responsible as defined in subdivision (g) of section one thou-
3 sand twelve of the family court act, or another parent of the child,
4 unless the convicted parent was a victim of physical, sexual or psycho-
5 logical abuse by the decedent parent and such abuse was a factor in
6 causing the attempted homicide;
7 S 23. This act shall take effect immediately; provided, however that
8 the amendments to paragraphs (b) and (c) of subdivision 1 of section
9 70.02 of the penal law made by section six of this act shall take effect
10 on the same date and in the same manner as section 27 of chapter 1 of
11 the laws of 2013, as amended, takes effect.