

STATUS:

S5862 GRISANTI No Same as

ON FILE: 07/21/11 Penal Law

TITLE....Enacts the "protect our children act"; repealer

07/20/11 REFERRED TO RULES

SUMMARY:

GRISANTI, SALAND, LANZA, BALL, FUSCHILLO, GOLDEN, SKELOS, LITTLE, YOUNG, O'MARA, MAZIARZ, DEFRANCISCO, LIBOUS, ALESI, FLANAGAN, ZELDIN, MARTINS, MARCELLINO, JOHNSON, ROBACH, FARLEY, BONACIC, LARKIN, GALLIVAN, MCDONALD, GRIFFO, NOZZOLIO, HANNON, SEWARD, LAVALLE, RITCHIE, RANZENHOFER, CARLUCCI, SAVINO, KLEIN, VALESKY

Amd Pen L, generally; amd SS30.30, 180.85, 190.25 & 700.05, CP L; amd S509-cc, V & T L; amd S4-1.6, EPT L; amd S995, Exec L; amd SS358-a & 384-b, Soc Serv L

Enacts the "protect our children act"; establishes certain offenses relating to murder of and violence against a child, obstructing the location of a missing child and concealment of a death.

CRIMINAL SANCTION IMPACT.

BILL TEXT:

STATE OF NEW YORK

5862

2011-2012 Regular Sessions

IN SENATE

July 20, 2011

Introduced by Sens. GRISANTI, SALAND, LANZA, BALL, FUSCHILLO, GOLDEN, SKELOS, LITTLE, YOUNG, O'MARA, MAZIARZ, DeFRANCISCO, LIBOUS, ALESI, FLANAGAN, ZELDIN, MARTINS, MARCELLINO, JOHNSON, ROBACH, FARLEY, BONACIC, LARKIN, GALLIVAN, MCDONALD, GRIFFO, NOZZOLIO, HANNON, SEWARD, LAVALLE, RITCHIE, RANZENHOFER, CARLUCCI, SAVINO, KLEIN, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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, aggravated murder of a child, obstruction the location of a missing child, and concealment of a death; 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 "protect our children act".
3 § 2. Section 10.00 of the penal law is amended by adding two new
4 subdivisions 21 and 22 to read as follows:
5 21. "Person in a position of trust" means any person who is charged
6 with any duty or responsibility for the health, education, welfare,
7 supervision or care of another person, either independently or through
8 another person, no matter how brief.
9 22. "Child abuse offense" means:
10 (a) patronizing a prostitute in the second degree as defined in
11 section 230.05; patronizing a prostitute in the first degree as defined

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

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1 in section 230.06; promoting prostitution in the second degree as
2 defined in subdivision two of section 230.30; promoting prostitution in
3 the first degree as defined in section 230.32; disseminating indecent
4 materials to minors in the second degree as defined in section 235.21;
5 disseminating indecent materials to minors in the first degree as
6 defined in section 235.22; abandonment of a child as defined in section
7 260.00; non-support of a child in the second degree as defined in
8 section 260.05; non-support of a child in the first degree as defined in
9 section 260.06; aggravated endangering the welfare of a child as defined
10 in section 260.09; endangering the welfare of a child as defined in
11 section 260.10; unlawfully dealing with a child in the first degree as
12 defined in section 260.20; unlawfully dealing with a child in the second
13 degree as defined in section 260.21; or an offense defined in article
14 two hundred sixty-three of this chapter; or
15 (b) an offense defined in article one hundred twenty, one hundred
16 twenty-five, one hundred thirty or one hundred thirty-five of this chap-
17 ter provided the victim of such offense is less than fourteen years of
18 age; or
19 (c) an attempt to commit an offense listed in paragraph (a) or (b) of
20 this subdivision; or
21 (d) an offense in any other jurisdiction which includes all of the
22 essential elements of any such crime listed in paragraph (a), (b) or (c)
23 of this subdivision.
24 § 3. Section 60.06 of the penal law, as amended by chapter 482 of the
25 laws of 2009, is amended to read as follows:
26 § 60.06 Authorized disposition; murder in the first degree offenders;
27 aggravated murder offenders; aggravated murder of a child
28 offenders; certain murder in the second degree offenders;
29 certain terrorism offenders; criminal possession of a chemical

29 murder of a child as defined in article one hundred ten of this chapter
30 and section 125.28 of this chapter such minimum period shall be not less
31 than twenty years nor more than forty years.

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

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

6 § 6. Paragraphs (a), (b) and (c) of subdivision 1 of section 70.02 of
7 the penal law, paragraph (a) as amended by chapter 320 of the laws of
8 2006, paragraphs (b) and (c) as amended by chapter 405 of the laws of
9 2010, are amended to read as follows:

10 (a) Class B violent felony offenses: an attempt to commit the class
11 A-I felonies of murder in the second degree as defined in section
12 125.25, kidnapping in the first degree as defined in section 135.25, and
13 arson in the first degree as defined in section 150.20; manslaughter in
14 the first degree as defined in section 125.20, aggravated manslaughter
15 in the first degree as defined in section 125.22, aggravated manslaught-
16 er of a child as defined in section 125.23, rape in the first degree as
17 defined in section 130.35, criminal sexual act in the first degree as
18 defined in section 130.50, aggravated sexual abuse in the first degree
19 as defined in section 130.70, course of sexual conduct against a child
20 in the first degree as defined in section 130.75; assault in the first
21 degree as defined in section 120.10, kidnapping in the second degree as
22 defined in section 135.20, burglary in the first degree as defined in
23 section 140.30, arson in the second degree as defined in section 150.15,
24 robbery in the first degree as defined in section 160.15, incest in the
25 first degree as defined in section 255.27, criminal possession of a
26 weapon in the first degree as defined in section 265.04, criminal use of
27 a firearm in the first degree as defined in section 265.09, criminal

28 sale of a firearm in the first degree as defined in section 265.13,
29 aggravated assault upon a police officer or a peace officer as defined
30 in section 120.11, gang assault in the first degree as defined in
31 section 120.07, intimidating a victim or witness in the first degree as
32 defined in section 215.17, hindering prosecution of terrorism in the
33 first degree as defined in section 490.35, criminal possession of a
34 chemical weapon or biological weapon in the second degree as defined in
35 section 490.40, and criminal use of a chemical weapon or biological
36 weapon in the third degree as defined in section 490.47.

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

3 (c) Class D violent felony offenses: an attempt to commit any of the
4 class C felonies set forth in paragraph (b); reckless assault of a child
5 as defined in section 120.02, assault in the second degree as defined in
6 section 120.05, aggravated abuse of a child in the second degree as
7 defined in section 120.09, menacing a police officer or peace officer as
8 defined in section 120.18, stalking in the first degree, as defined in
9 subdivision one of section 120.60, strangulation in the second degree as
10 defined in section 121.12, rape in the second degree as defined in
11 section 130.30, criminal sexual act in the second degree as defined in
12 section 130.45, sexual abuse in the first degree as defined in section
13 130.65, course of sexual conduct against a child in the second degree as
14 defined in section 130.80, aggravated sexual abuse in the third degree
15 as defined in section 130.66, facilitating a sex offense with a
16 controlled substance as defined in section 130.90, criminal possession
17 of a weapon in the third degree as defined in subdivision five, six,
18 seven or eight of section 265.02, criminal sale of a firearm in the
19 third degree as defined in section 265.11, intimidating a victim or
20 witness in the second degree as defined in section 215.16, soliciting or
21 providing support for an act of terrorism in the second degree as
22 defined in section 490.10, and making a terroristic threat as defined in
23 section 490.20, falsely reporting an incident in the first degree as
24 defined in section 240.60, placing a false bomb or hazardous substance
25 in the first degree as defined in section 240.62, placing a false bomb
26 or hazardous substance in a sports stadium or arena, mass transportation
27 facility or enclosed shopping mall as defined in section 240.63, and

28 aggravated unpermitted use of indoor pyrotechnics in the first degree as
29 defined in section 405.18.

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

32 1. Class A-I felony when the crime attempted is the A-I felony of
33 murder in the first degree, aggravated murder as defined in subdivision
34 one of section 125.26 of this chapter, aggravated murder of a child,
35 criminal possession of a controlled substance in the first degree, crim-
36 inal sale of a controlled substance in the first degree, criminal
37 possession of a chemical or biological weapon in the first degree or
38 criminal use of a chemical or biological weapon in the first degree;

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

41 § 120.01 [~~Reckless—assault~~] Aggravated abuse of a child [~~by a child day~~
42 ~~care provider~~] in the third degree.

43 A person is guilty of [~~reckless—assault~~] aggravated abuse of a child
44 in the third degree when, being [~~a child day care provider or an employ-~~
45 ~~ee—thereof~~] eighteen years old or more, and being a parent, guardian or
46 other person legally charged with the custody of, or legally responsible
47 for the care of, a child less than fourteen years old, or being a person
48 in a position of trust of a child less than fourteen years old, he or
49 she recklessly causes [~~serious~~] physical injury to [~~a~~] such child [~~under~~
50 ~~the care of such provider or employee who is less than eleven years of~~
51 ~~age~~].

52 [~~Reckless—assault~~] Aggravated abuse of a child [~~by a child day care~~
53 ~~provider~~] in the third degree is a class E felony.

54 § 9. The penal law is amended by adding two new sections 120.09 and
55 120.09-a to read as follows:

56 § 120.09 Aggravated abuse of a child in the second degree.

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1 A person is guilty of aggravated abuse of a child in the second degree
2 when being eighteen years old or more, and being a parent, guardian or
3 other person legally charged with the custody of, or legally responsible
4 for the care of, a child less than fourteen years old, or being a person
5 in a position of trust of a child less than fourteen years old, he or
6 she:

7 1. with intent to cause physical injury to another person, causes
8 physical injury to such child; or

9 2. recklessly engages in conduct which creates a grave risk of serious
10 physical injury or death to such child and thereby causes serious phys-
11 ical injury to such child; or

12 3. commits the crime of aggravated abuse of a child in the third
13 degree as defined in section 120.01 of this article and previously has
14 been convicted of a child abuse offense.

15 Aggravated abuse of a child in the second degree is a class D felony.

16 § 120.09-a Aggravated abuse of a child in the first degree.

17 A person is guilty of aggravated abuse of a child in the first degree
18 when being eighteen years old or more, and being a parent, guardian or
19 other person legally charged with the custody of, or legally responsible
20 for the care of, a child less than fourteen years old, or being a person
21 in a position of trust of a child less than fourteen years old, he or
22 she:

23 1. with intent to cause serious physical injury to another person,
24 causes serious physical injury to such child; or

25 2. recklessly engages in violent shaking of such child and thereby
26 causes serious physical injury to such child and such child is less than

27 five years old; or
28 3. recklessly engages in conduct which creates a grave risk of serious
29 physical injury or death to such child and thereby causes serious phys-
30 ical injury to such child, and:
31 (a) has previously been convicted of a child abuse offense; or
32 (b) as part of the same transaction, recklessly engages in conduct
33 which creates a grave risk of serious physical injury or death to anothe-
34 er child less than fourteen years old and thereby causes serious phys-
35 ical injury to such other child; or
36 (c) causes such injury by means of a deadly weapon or dangerous
37 instrument; or
38 (d) on at least one other occasion, recklessly engaged in conduct
39 which created a grave risk of serious physical injury or death to a
40 child less than fourteen years old and thereby caused serious physical
41 injury to such child.

42 Aggravated abuse of a child in the first degree is a class C felony.
43 § 10. The penal law is amended by adding two new sections 125.23 and
44 125.28 to read as follows:

45 § 125.23 Aggravated manslaughter of a child.
46 A person is guilty of aggravated manslaughter of a child when, being
47 eighteen years old or more, and being a parent, guardian or other person
48 legally charged with the custody of, or legally responsible for the care
49 of, a child less than fourteen years old, or being a person in a posi-
50 tion of trust of a child less than fourteen years old, he or she reck-
51 lessly engages in conduct which creates a grave risk of serious physical
52 injury or death to such child and thereby causes the death of such
53 child.

54 Aggravated manslaughter of a child is a class B felony.
55 § 125.28 Aggravated murder of a child.

56 A person is guilty of aggravated murder of a child when:
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1 1. with intent to cause the death of a child less than fourteen years
2 old, and being eighteen years old or more, and being the parent, guardi-
3 an or other person legally charged with the custody of, or legally
4 responsible for the care of, such child, or being a person in a position
5 of trust of a child less than fourteen years old, he or she causes the
6 death of such child; or

7 2. under circumstances evincing a depraved indifference to human life,
8 and being eighteen years old or more, and being the parent, guardian or
9 other person legally charged with the custody of, or legally responsible
10 for the care of, a child less than fourteen years old, or being a person
11 in a position of trust of a child less than fourteen years old, he or
12 she recklessly engages in conduct which creates a grave risk of serious
13 physical injury or death to such child and thereby causes the death of
14 such child; or

15 3. being eighteen years old or more, while in the course of committing
16 rape in the first, second or third degree, criminal sexual act in the
17 first, second or third degree, aggravated sexual abuse in the first,
18 second, third or fourth degree, or incest against a child less than
19 fourteen years old, he or she intentionally causes the death of such
20 child.

21 Aggravated murder of a child is a class A-I felony.
22 § 11. Subdivision 4 of section 125.25 of the penal law, as amended by
23 chapter 459 of the laws of 2004, is amended to read as follows:

24 4. Under circumstances evincing a depraved indifference to human life,
25 and being eighteen years old or more the defendant recklessly engages in

26 conduct which creates a grave risk of serious physical injury or death
27 to another person less than eleven years old and thereby causes the
28 death of such person[~~or~~].

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

30 § 13. Subparagraph (ix) of paragraph (a) of subdivision 1 of section
31 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is
32 amended to read as follows:

33 (ix) prior to committing the killing, the defendant had been convicted
34 of murder as defined in this section or section 125.25 of this article
35 or convicted of aggravated murder of a child as defined in section
36 125.28 of this article, or had been convicted in another jurisdiction of
37 an offense which, if committed in this state, would constitute a
38 violation of [~~either of such~~] the aforementioned sections; or

39 § 14. The penal law is amended by adding a new section 190.17 to read
40 as follows:

41 § 190.17 Obstructing the location of a missing child.

42 A person is guilty of obstructing the location of a missing child
43 when he or she knowingly provides false information to law enforcement
44 officials as to the whereabouts of a child less than fourteen years old
45 who has been reported missing, or whose whereabouts has been unknown for
46 more than twenty-four hours.

47 Obstructing the location of a missing child is a class E felony.

48 § 15. The penal law is amended by adding a new section 190.18 to read
49 as follows:

50 § 190.18 Concealment of a death.

51 A person is guilty of concealment of a death when he or she knowingly
52 moves or otherwise conceals a human corpse so that discovery of the
53 death of such person will be hindered.

54 Concealment of a death is a class D felony.

55 § 16. The penal law is amended by adding a new section 260.09 to read
56 as follows:

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1 § 260.09 Aggravated endangering the welfare of a child.

2 A person is guilty of aggravated endangering the welfare of a child
3 when, being eighteen years old or more, and being a parent, guardian or
4 other person legally charged with the custody of, or legally responsible
5 for the care of, a child less than fourteen years old, or being a person
6 in a position of trust of a child less than fourteen years old, he or
7 she knowingly acts in a manner likely to be injurious to the physical,
8 mental or moral welfare of such child, and:

9 1. previously has been convicted of a child abuse offense; or

10 2. such conduct consists of two or more acts of cruelty against such
11 child. For purposes of this subdivision, "cruelty" means conduct which
12 (a) causes extreme physical pain, or (b) which is carried out in an
13 especially vicious or sadistic manner; or

14 3. such conduct consists of failing to report to law enforcement when
15 the whereabouts of such child has been unknown by such person for more
16 than twenty-four hours. For the purposes of this section, a parent,
17 guardian or other person legally charged with the custody of, or legally
18 responsible for the care of a child under the age of eleven is deemed to
19 be acting in a manner likely to be injurious to the physical, mental or
20 moral welfare of such child if such child's whereabouts is unknown by
21 such person for more than twenty-four hours.

22 Aggravated endangering the welfare of a child is a class E felony.

23 § 17. Paragraph (a) of subdivision 3 of section 30.30 of the criminal
24 procedure law, as amended by chapter 93 of the laws of 2006, is amended

25 to read as follows:

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

30 § 18. Subdivision 1 of section 180.85 of the criminal procedure law,
31 as amended by chapter 93 of the laws of 2006, is amended to read as
32 follows:

33 1. After arraignment of a defendant upon a felony complaint, other
34 than a felony complaint charging an offense defined in section 125.10,
35 125.15, 125.20, 125.23, 125.25, 125.26 [~~or~~], 125.27 or 125.28 of the
36 penal law, either party or the local criminal court or superior court
37 before which the action is pending, on its own motion, may move in
38 accordance with the provisions of this section for an order terminating
39 prosecution of the charges contained in such felony complaint on consent
40 of the parties.

41 § 19. Paragraph (h) of subdivision 3 of section 190.25 of the criminal
42 procedure law, as amended by chapter 405 of the laws of 2010, is amended
43 to read as follows:

44 (h) A social worker, rape crisis counselor, psychologist or other
45 professional providing emotional support to a child witness twelve years
46 old or younger who is called to give evidence in a grand jury proceeding
47 concerning a crime defined in article one hundred twenty-one, article
48 one hundred thirty, article two hundred sixty, section 120.01, 120.09,
49 120.09-a, 120.10, 125.10, 125.15, 125.20, 125.23, 125.25, 125.26,
50 125.27, 125.28, 255.25, 255.26 [~~or~~], 255.27 or 260.09 of the penal law
51 provided that the district attorney consents. Such support person shall
52 not provide the witness with an answer to any question or otherwise
53 participate in such proceeding and shall first take an oath before the
54 grand jury that he or she will keep secret all matters before such grand
55 jury within his or her knowledge.

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1 § 20. 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, aggravated abuse of a child
6 in the third degree as defined in section 120.01 of the penal law,
7 aggravated abuse of a child in the second degree as defined in section
8 120.09 of the penal law, aggregated abuse of a child in the first degree
9 as defined in section 120.09-a of the penal law, assault in the first
10 degree as defined in section 120.10 of the penal law, reckless endanger-
11 ment in the first degree as defined in section 120.25 of the penal law,
12 promoting a suicide attempt as defined in section 120.30 of the penal
13 law, strangulation in the second degree as defined in section 121.12 of
14 the penal law, strangulation in the first degree as defined in section
15 121.13 of the penal law, criminally negligent homicide as defined in
16 section 125.10 of the penal law, manslaughter in the second degree as
17 defined in section 125.15 of the penal law, manslaughter in the first
18 degree as defined in section 125.20 of the penal law, aggravated
19 manslaughter of a child as defined in section 125.23 of the penal law,
20 murder in the second degree as defined in section 125.25 of the penal
21 law, murder in the first degree as defined in section 125.27 of the
22 penal law, aggravated murder of a child as defined in section 125.28 of
23 the penal law, abortion in the second degree as defined in section
24 125.40 of the penal law, abortion in the first degree as defined in

25 section 125.45 of the penal law, rape in the third degree as defined in
26 section 130.25 of the penal law, rape in the second degree as defined in
27 section 130.30 of the penal law, rape in the first degree as defined in
28 section 130.35 of the penal law, criminal sexual act in the third degree
29 as defined in section 130.40 of the penal law, criminal sexual act in
30 the second degree as defined in section 130.45 of the penal law, crimi-
31 nal sexual act in the first degree as defined in section 130.50 of the
32 penal law, sexual abuse in the first degree as defined in section 130.65
33 of the penal law, unlawful imprisonment in the first degree as defined
34 in section 135.10 of the penal law, kidnapping in the second degree as
35 defined in section 135.20 of the penal law, kidnapping in the first
36 degree as defined in section 135.25 of the penal law, labor trafficking
37 as defined in section 135.35 of the penal law, custodial interference in
38 the first degree as defined in section 135.50 of the penal law, coercion
39 in the first degree as defined in section 135.65 of the penal law, crim-
40 inal trespass in the first degree as defined in section 140.17 of the
41 penal law, burglary in the third degree as defined in section 140.20 of
42 the penal law, burglary in the second degree as defined in section
43 140.25 of the penal law, burglary in the first degree as defined in
44 section 140.30 of the penal law, criminal mischief in the third degree
45 as defined in section 145.05 of the penal law, criminal mischief in the
46 second degree as defined in section 145.10 of the penal law, criminal
47 mischief in the first degree as defined in section 145.12 of the penal
48 law, criminal tampering in the first degree as defined in section 145.20
49 of the penal law, arson in the fourth degree as defined in section
50 150.05 of the penal law, arson in the third degree as defined in section
51 150.10 of the penal law, arson in the second degree as defined in
52 section 150.15 of the penal law, arson in the first degree as defined in
53 section 150.20 of the penal law, grand larceny in the fourth degree as
54 defined in section 155.30 of the penal law, grand larceny in the third
55 degree as defined in section 155.35 of the penal law, grand larceny in
56 the second degree as defined in section 155.40 of the penal law, grand
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1 larceny in the first degree as defined in section 155.42 of the penal
2 law, health care fraud in the fourth degree as defined in section 177.10
3 of the penal law, health care fraud in the third degree as defined in
4 section 177.15 of the penal law, health care fraud in the second degree
5 as defined in section 177.20 of the penal law, health care fraud in the
6 first degree as defined in section 177.25 of the penal law, robbery in
7 the third degree as defined in section 160.05 of the penal law, robbery
8 in the second degree as defined in section 160.10 of the penal law,
9 robbery in the first degree as defined in section 160.15 of the penal
10 law, unlawful use of secret scientific material as defined in section
11 165.07 of the penal law, criminal possession of stolen property in the
12 fourth degree as defined in section 165.45 of the penal law, criminal
13 possession of stolen property in the third degree as defined in section
14 165.50 of the penal law, criminal possession of stolen property in the
15 second degree as defined by section 165.52 of the penal law, criminal
16 possession of stolen property in the first degree as defined by section
17 165.54 of the penal law, trademark counterfeiting in the second degree
18 as defined in section 165.72 of the penal law, trademark counterfeiting
19 in the first degree as defined in section 165.73 of the penal law,
20 forgery in the second degree as defined in section 170.10 of the penal
21 law, forgery in the first degree as defined in section 170.15 of the
22 penal law, criminal possession of a forged instrument in the second
23 degree as defined in section 170.25 of the penal law, criminal

24 possession of a forged instrument in the first degree as defined in
25 section 170.30 of the penal law, criminal possession of forgery devices
26 as defined in section 170.40 of the penal law, falsifying business
27 records in the first degree as defined in section 175.10 of the penal
28 law, tampering with public records in the first degree as defined in
29 section 175.25 of the penal law, offering a false instrument for filing
30 in the first degree as defined in section 175.35 of the penal law, issu-
31 ing a false certificate as defined in section 175.40 of the penal law,
32 criminal diversion of prescription medications and prescriptions in the
33 second degree as defined in section 178.20 of the penal law, criminal
34 diversion of prescription medications and prescriptions in the first
35 degree as defined in section 178.25 of the penal law, residential mort-
36 gage fraud in the fourth degree as defined in section 187.10 of the
37 penal law, residential mortgage fraud in the third degree as defined in
38 section 187.15 of the penal law, residential mortgage fraud in the
39 second degree as defined in section 187.20 of the penal law, residential
40 mortgage fraud in the first degree as defined in section 187.25 of the
41 penal law, escape in the second degree as defined in section 205.10 of
42 the penal law, escape in the first degree as defined in section 205.15
43 of the penal law, absconding from temporary release in the first degree
44 as defined in section 205.17 of the penal law, promoting prison contra-
45 band in the first degree as defined in section 205.25 of the penal law,
46 hindering prosecution in the second degree as defined in section 205.60
47 of the penal law, hindering prosecution in the first degree as defined
48 in section 205.65 of the penal law, sex trafficking as defined in
49 section 230.34 of the penal law, criminal possession of a weapon in the
50 third degree as defined in subdivisions two, three and five of section
51 265.02 of the penal law, criminal possession of a weapon in the second
52 degree as defined in section 265.03 of the penal law, criminal
53 possession of a weapon in the first degree as defined in section 265.04
54 of the penal law, manufacture, transport, disposition and defacement of
55 weapons and dangerous instruments and appliances defined as felonies in
56 subdivisions one, two, and three of section 265.10 of the penal law,
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11

1 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use
2 of weapons as defined in subdivision two of section 265.35 of the penal
3 law, relating to firearms and other dangerous weapons, or failure to
4 disclose the origin of a recording in the first degree as defined in
5 section 275.40 of the penal law;

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

9 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
10 subdivision one and paragraph (a) of subdivision two of this section
11 that result in permanent disqualification shall include a conviction
12 under sections 125.12, 125.20, 125.25, 125.26, 125.27, 130.30, 130.35,
13 130.45, 130.50, 130.70, 135.25, 150.20 of the penal law or an attempt to
14 commit any of the aforesaid offenses under section 110.00 of the penal
15 law, or a child abuse offense as defined in subdivision twenty-two of
16 section 10.00 of the penal law, or any offenses committed under a former
17 section of the penal law which would constitute violations of the afore-
18 said sections of the penal law, or any offenses committed outside this
19 state which would constitute violations of the aforesaid sections of the
20 penal law.

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

23 § 4-1.6 Disqualification of joint tenant in certain instances

24 Notwithstanding any other provision of law to the contrary, a joint
25 tenant convicted of murder in the second degree as defined in section
26 125.25 of the penal law or murder in the first degree as defined in
27 section 125.27 of the penal law or aggravated murder of a child as
28 defined in section 125.28 of the penal law of another joint tenant shall
29 not be entitled to the distribution of any monies in a joint bank
30 account created or contributed to by the deceased joint tenant, except
31 for those monies contributed by the convicted joint tenant.

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

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

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

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1 (a) sections 120.05, 120.10, and 120.11, relating to assault; sections
2 125.15 through [~~125.27~~] 125.28 relating to homicide; sections 130.25,
3 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70,
4 relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19,
5 relating to escape and other offenses, where the offender has been
6 convicted within the previous five years of one of the other felonies
7 specified in this subdivision; or sections 255.25, 255.26 and 255.27,
8 relating to incest, a violent felony offense as defined in subdivision
9 one of section 70.02 of the penal law, attempted murder in the first
10 degree, as defined in section 110.00 and section 125.27 of the penal
11 law, kidnapping in the first degree, as defined in section 135.25 of the
12 penal law, arson in the first degree, as defined in section 150.20 of
13 the penal law, burglary in the third degree, as defined in section
14 140.20 of the penal law, attempted burglary in the third degree, as
15 defined in section 110.00 and section 140.20 of the penal law, a felony
16 defined in article four hundred ninety of the penal law relating to
17 terrorism or any attempt to commit an offense defined in such article
18 relating to terrorism which is a felony; or

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

21 aggravated abuse of a child in the third degree, as defined in section

22 120.01 of the penal law; aggravated abuse of a child in the second
23 degree, as defined in section 120.09 of the penal law; aggravated abuse
24 of a child in the first degree, as defined in section 120.09-a of the
25 penal law; aggravated assault upon a person less than eleven years old,
26 as defined in section 120.12 of the penal law; menacing in the first
27 degree, as defined in section 120.13 of the penal law; reckless endan-
28 germent in the first degree, as defined in section 120.25 of the penal
29 law; stalking in the second degree, as defined in section 120.55 of the
30 penal law; criminally negligent homicide, as defined in section 125.10
31 of the penal law; vehicular manslaughter in the second degree, as
32 defined in section 125.12 of the penal law; vehicular manslaughter in
33 the first degree, as defined in section 125.13 of the penal law;
34 persistent sexual abuse, as defined in section 130.53 of the penal law;
35 aggravated sexual abuse in the fourth degree, as defined in section
36 130.65-a of the penal law; female genital mutilation, as defined in
37 section 130.85 of the penal law; facilitating a sex offense with a
38 controlled substance, as defined in section 130.90 of the penal law;
39 unlawful imprisonment in the first degree, as defined in section 135.10
40 of the penal law; custodial interference in the first degree, as defined
41 in section 135.50 of the penal law; criminal trespass in the first
42 degree, as defined in section 140.17 of the penal law; criminal tamper-
43 ing in the first degree, as defined in section 145.20 of the penal law;
44 tampering with a consumer product in the first degree, as defined in
45 section 145.45 of the penal law; robbery in the third degree as defined
46 in section 160.05 of the penal law; identity theft in the second degree,
47 as defined in section 190.79 of the penal law; identity theft in the
48 first degree, as defined in section 190.80 of the penal law; promoting
49 prison contraband in the first degree, as defined in section 205.25 of
50 the penal law; tampering with a witness in the third degree, as defined
51 in section 215.11 of the penal law; tampering with a witness in the
52 second degree, as defined in section 215.12 of the penal law; tampering
53 with a witness in the first degree, as defined in section 215.13 of the
54 penal law; criminal contempt in the first degree, as defined in subdivi-
55 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
56 criminal contempt, as defined in section 215.52 of the penal law; bail
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1 jumping in the second degree, as defined in section 215.56 of the penal
2 law; bail jumping in the first degree, as defined in section 215.57 of
3 the penal law; patronizing a prostitute in the second degree, as defined
4 in section 230.05 of the penal law; patronizing a prostitute in the
5 first degree, as defined in section 230.06 of the penal law; promoting
6 prostitution in the second degree, as defined in section 230.30 of the
7 penal law; promoting prostitution in the first degree, as defined in
8 section 230.32 of the penal law; compelling prostitution, as defined in
9 section 230.33 of the penal law; disseminating indecent materials to
10 minors in the second degree, as defined in section 235.21 of the penal
11 law; disseminating indecent materials to minors in the first degree, as
12 defined in section 235.22 of the penal law; riot in the first degree, as
13 defined in section 240.06 of the penal law; criminal anarchy, as defined
14 in section 240.15 of the penal law; aggravated harassment of an employee
15 by an inmate, as defined in section 240.32 of the penal law; unlawful
16 surveillance in the second degree, as defined in section 250.45 of the
17 penal law; unlawful surveillance in the first degree, as defined in
18 section 250.50 of the penal law; aggravated endangering the welfare of a
19 child, as defined in section 260.09 of the penal law; endangering the
20 welfare of a vulnerable elderly person in the second degree, as defined

21 in section 260.32 of the penal law; endangering the welfare of a vulner-
22 able elderly person in the first degree, as defined in section 260.34 of
23 the penal law; use of a child in a sexual performance, as defined in
24 section 263.05 of the penal law; promoting an obscene sexual performance
25 by a child, as defined in section 263.10 of the penal law; possessing an
26 obscene sexual performance by a child, as defined in section 263.11 of
27 the penal law; promoting a sexual performance by a child, as defined in
28 section 263.15 of the penal law; possessing a sexual performance by a
29 child, as defined in section 263.16 of the penal law; criminal
30 possession of a weapon in the third degree, as defined in section 265.02
31 of the penal law; criminal sale of a firearm in the third degree, as
32 defined in section 265.11 of the penal law; criminal sale of a firearm
33 to a minor, as defined in section 265.16 of the penal law; unlawful
34 wearing of a body vest, as defined in section 270.20 of the penal law;
35 hate crimes as defined in section 485.05 of the penal law; and crime of
36 terrorism, as defined in section 490.25 of the penal law;

37 § 24. Subparagraph 2 of paragraph (b) of subdivision 3 of section
38 358-a of the social services law, as added by chapter 7 of the laws of
39 1999, is amended to read as follows:

40 (2) the parent of such child has been convicted of (i) aggravated
41 manslaughter of a child as defined in section 125.23 or aggravated
42 murder of a child as defined in section 125.28 or murder in the first
43 degree as defined in section 125.27 or murder in the second degree as
44 defined in section 125.25 of the penal law and the victim was another
45 child of the parent; or (ii) manslaughter in the first degree as defined
46 in section 125.20 or manslaughter in the second degree as defined in
47 section 125.15 of the penal law and the victim was another child of the
48 parent, provided, however, that the parent must have acted voluntarily
49 in committing such crime;

50 § 25. Clause (A) of subparagraph (iii) of paragraph (a) of subdivision
51 8 of section 384-b of the social services law, as amended by chapter 460
52 of the laws of 2006, is amended to read as follows:

53 (A) the parent of such child has been convicted of aggravated
54 manslaughter of a child as defined in section 125.23, aggravated murder
55 of a child as defined in section 125.28, murder in the first degree as
56 defined in section 125.27, murder in the second degree as defined in
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1 section 125.25, manslaughter in the first degree as defined in section
2 125.20, or manslaughter in the second degree as defined in section
3 125.15, and the victim of any such crime was another child of the parent
4 or another child for whose care such parent is or has been legally
5 responsible as defined in subdivision (g) of section one thousand twelve
6 of the family court act, or another parent of the child, unless the
7 convicted parent was a victim of physical, sexual or psychological abuse
8 by the decedent parent and such abuse was a factor in causing the homi-
9 cide; or has been convicted of an attempt to commit any of the foregoing
10 crimes, and the victim or intended victim was the child or another child
11 of the parent or another child for whose care such parent is or has been
12 legally responsible as defined in subdivision (g) of section one thou-
13 sand twelve of the family court act, or another parent of the child,
14 unless the convicted parent was a victim of physical, sexual or psycho-
15 logical abuse by the decedent parent and such abuse was a factor in
16 causing the attempted homicide;

17 § 26. This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S5862

SPONSOR: GRISANTI

TITLE OF BILL:

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, aggravated murder of a child, obstruction the location of a missing child, and concealment of a death; 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

SUMMARY OF PROVISIONS:

Section 1 - enacts "The Protect Our Children Act."

Section 2 - defines terms "person in a position of trust" and "child abuse offense."

Sections 3, 4 and 5 amend provisions of current law to require a sentence of life without parole for persons convicted of the new crime of aggravated murder of a child.

Section 6 provides that the new crime of aggravated manslaughter of a child is a class B violent felony offense; the new crime of aggravated abuse of a child 1st degree is a class C violent felony offense; and the new crime of aggravated abuse of a child 2nd degree is a class D violent felony offense.

Section 7 provides that an attempt to commit the new class A-I felony of aggravated murder of a child is also a class A-I felony.

Section 8 renames the crime reckless assault of a child by a child day care provider to aggravated abuse of a child in the third degree. This E felony, which formerly only applied to day care providers, now would apply to a parent, guardian or person in a position of trust who recklessly causes physical injury to a child under age 14.

Section 9 defines a new class D violent felony of aggravated abuse of a child in the second degree and a new class C violent felony of aggravated abuse of a child in the first degree.

Section 10 defines a new class B violent felony offense of aggravated

manslaughter of a child, and a new class A-I felony offense of aggravated murder of a child.

Sections 11, 12 and 13 make changes to existing provisions of law to conform these existing laws to reflect the changes made by this bill.

Section 14 defines the new class E felony offense of obstructing the location of a missing child.

Section 15 defines the new class D felony offense of concealment of a death.

Section 16 defines the new class E felony offense of aggravated endangering the welfare of a child including failure to notify law enforcement when the whereabouts of a young child is unknown.

Section 17 provides that speedy trial requirements set forth in the current law do not apply to a prosecution for aggravated murder of a child.

Section 18 amends provisions of current law to provide that a prosecution for aggravated murder of a child or aggravated manslaughter of a child cannot be terminated upon the consent of the parties.

Section 19 provides that a child witness called to testify before the grand jury may be accompanied by a social worker, psychologist, or other professional to provide emotional support when giving testimony regarding a charge of aggravated murder of a child, aggravated manslaughter of a child, aggravated abuse of a child in the first, second or third degree or aggravated endangering the welfare of a child.

Section 20 amends provisions of law authorizing eavesdropping warrant to be issued to allow eavesdropping warranting investigations involving the crimes of aggravated abuse of a child in the 1st, 2nd or 3rd degrees, aggravated murder of a child, aggravated manslaughter of a child or aggravated endangering the welfare of a child.

Section 21 of the bill amends the provisions of the vehicle and traffic law to include persons convicted of a child abuse offense in provisions of current law disqualifying a person upon conviction of certain crimes from receiving a license to operate a bus.

Section 22 of the bill amends provisions of current law to prohibit a person convicted of aggravated murder of a child from inheriting property from the murdered child victim of his or her estate.

Section 23 of the bill provides that a person convicted of the new crimes of aggravated murder of a child, aggravated manslaughter of a child, aggravated abuse of a child in the first, second or third degree or aggravated endangering the welfare of a child must give a DNA sample for inclusion in the DNA database.

Sections 24 and 25 of the bill provide that a parent convicted of the new crime of aggravated murder of a child or aggravated manslaughter of a child shall be disqualified in certain parental rights proceedings.

Section 26 is the effective date.

JUSTIFICATION:

Serious forms of child abuse are not adequately covered by existing laws. What is more, many existing statutes are so overly complicated as to be practically useless, or carry such disproportionately low punishments as to permit serious child abuse to have essentially no meaningful consequences. Current misdemeanors and nonviolent felonies with probationary sentences do not do enough to save and protect children from cruel and repeated maltreatment.

This bill fixes these problems in a measured, concise way that respects the existing statutory scheme. The Act would:

Create a felony child endangering statute to protect children from especially cruel and sadistic conduct. Under current law, unless physical injury results, the infliction on children of sadistic, painful, dangerous punishments can typically be charged only as misdemeanors; Create statutes to protect children from serious reckless abuse. To the extent existing laws address reckless conduct, they minimize the seriousness by treating it as low level offenses or often include the requirement that the conduct be "depraved" an element that New York courts have in recent years interpreted in a way that is virtually impossible to prove; Recognize that caregivers and those in positions of trust to care for children have a heightened duty of care to children and violating this special relationship is an aggravating factor in any child abuse crime. There is a special, dependent relationship between children and their guardians, and children are particularly vulnerable to abuse by those who should be their first-line protectors; Increase penalties for repeat child abusers. Where a person abuses a child and has previously committed crimes against children, increased penalties are called for; Create a felony statute for obstructing the efforts of law enforcement to find a missing child. Quickly finding a missing child is essential to protect that vulnerable child from harm, and selfish efforts to hinder those efforts must be punished; Create a felony statute for concealing a death. A death of a child is profoundly tragic, and the concealment of such not only could interfere with the prosecution of the one responsible for the death by loss of evidence, but could also prolong the agony of the family as they search for their loved one with misplaced hope; Include failure to report a missing child in the new felony child endangering statute to require parents to actively seek assistance if a young child's whereabouts is unknown.

Each time a high-profile press case emerges involving the tragic abusive death of yet another child, a spotlight is shined on the problem for a brief time. We are reminded of the deficiencies in our laws that prevent us from taking adequate action as soon as abuse of a child begins. We owe it to our children to strengthen the laws and to offer them better protection before the abuse turns fatal, and provide better tools to help law enforcement obtain justice should such a tragedy occur.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

While some additional prosecutions and some increased sentences may result, this would be offset by medical, social welfare and other cost savings from earlier intervention in the lives of abused children.

EFFECTIVE DATE:

Immediately.
