

1569

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sens. GOLDEN, ALESI, BONACIC, DeFRANCISCO, FARLEY, FUSCHILLO, GRIFFO, O. JOHNSON, LAVALLE, MAZIARZ, MORAHAN, SALAND, SEWARD, SKELOS, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to promoting prostitution, patronizing a prostitute and permitting prostitution; and to amend the correction law, in relation to designating permitting prostitution in the first degree as a sex offense for the purposes of the sex offender registration act

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

1 Section 1. Paragraphs (a), (b), (c) and (d) of subdivision 1 of
2 section 70.02 of the penal law, paragraph (a) as amended by chapter 320
3 of the laws of 2006, paragraph (b) as separately amended by chapters 764
4 and 765 of the laws of 2005 and paragraphs (c) and (d) as amended by
5 chapter 7 of the laws of 2007, are amended to read as follows:
6 (a) Class B violent felony offenses: an attempt to commit the class
7 A-I felonies of murder in the second degree as defined in section
8 125.25, kidnapping in the first degree as defined in section 135.25, and
9 arson in the first degree as defined in section 150.20; manslaughter in
10 the first degree as defined in section 125.20, aggravated manslaughter
11 in the first degree as defined in section 125.22, rape in the first
12 degree as defined in section 130.35, criminal sexual act in the first
13 degree as defined in section 130.50, aggravated sexual abuse in the
14 first degree as defined in section 130.70, course of sexual conduct
15 against a child in the first degree as defined in section 130.75[;],
16 PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.32,
17 assault in the first degree as defined in section 120.10, kidnapping in
18 the second degree as defined in section 135.20, burglary in the first
19 degree as defined in section 140.30, arson in the second degree as
20 defined in section 150.15, robbery in the first degree as defined in

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

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1 section 160.15, incest in the first degree as defined in section 255.27,
2 criminal possession of a weapon in the first degree as defined in
3 section 265.04, criminal use of a firearm in the first degree as defined
4 in section 265.09, criminal sale of a firearm in the first degree as
5 defined in section 265.13, aggravated assault upon a police officer or a
6 peace officer as defined in section 120.11, gang assault in the first
7 degree as defined in section 120.07, intimidating a victim or witness in
8 the first degree as defined in section 215.17, hindering prosecution of
9 terrorism in the first degree as defined in section 490.35, criminal
10 possession of a chemical weapon or biological weapon in the second
11 degree as defined in section 490.40, and criminal use of a chemical
12 weapon or biological weapon in the third degree as defined in section
13 490.47.

14 (b) Class C violent felony offenses: an attempt to commit any of the
15 class B felonies set forth in paragraph (a); aggravated criminally
16 negligent homicide as defined in section 125.11, aggravated manslaughter
17 in the second degree as defined in section 125.21, aggravated sexual
18 abuse in the second degree as defined in section 130.67, PATRONIZING A
19 PROSTITUTE IN THE FIRST DEGREE AS DEFINED IN SECTION 230.06, PROMOTING
20 PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF
21 SECTION 230.30, assault on a peace officer, police officer, fireman or
22 emergency medical services professional as defined in section 120.08,
23 gang assault in the second degree as defined in section 120.06, burglary
24 in the second degree as defined in section 140.25, robbery in the second
25 degree as defined in section 160.10, criminal possession of a weapon in
26 the second degree as defined in section 265.03, criminal use of a
27 firearm in the second degree as defined in section 265.08, criminal sale
28 of a firearm in the second degree as defined in section 265.12, criminal
29 sale of a firearm with the aid of a minor as defined in section 265.14,
30 soliciting or providing support for an act of terrorism in the first
31 degree as defined in section 490.15, hindering prosecution of terrorism
32 in the second degree as defined in section 490.30, and criminal
33 possession of a chemical weapon or biological weapon in the third degree
34 as defined in section 490.37.

35 (c) Class D violent felony offenses: an attempt to commit any of the
36 class C felonies set forth in paragraph (b); reckless assault of a child
37 as defined in section 120.02, assault in the second degree as defined in
38 section 120.05, menacing a police officer or peace officer as defined in
39 section 120.18, stalking in the first degree, as defined in subdivision
40 one of section 120.60, rape in the second degree as defined in section
41 130.30, criminal sexual act in the second degree as defined in section
42 130.45, sexual abuse in the first degree as defined in section 130.65,
43 course of sexual conduct against a child in the second degree as defined
44 in section 130.80, aggravated sexual abuse in the third degree as
45 defined in section 130.66, facilitating a sex offense with a controlled
46 substance as defined in section 130.90, PATRONIZING A PROSTITUTE IN THE
47 SECOND DEGREE AS DEFINED IN SECTION 230.05, PROMOTING PROSTITUTION IN
48 THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 230.25, crimi-
49 nal possession of a weapon in the third degree as defined in subdivision
50 five, six, seven or eight of section 265.02, criminal sale of a firearm
51 in the third degree as defined in section 265.11, intimidating a victim
52 or witness in the second degree as defined in section 215.16, soliciting
53 or providing support for an act of terrorism in the second degree as
54 defined in section 490.10, and making a terroristic threat as defined in
55 section 490.20, falsely reporting an incident in the first degree as
56 defined in section 240.60, placing a false bomb or hazardous substance

1 in the first degree as defined in section 240.62, placing a false bomb
2 or hazardous substance in a sports stadium or arena, mass transportation
3 facility or enclosed shopping mall as defined in section 240.63, and
4 aggravated unpermitted use of indoor pyrotechnics in the first degree as
5 defined in section 405.18.

6 (d) Class E violent felony offenses: an attempt to commit any of the
7 felonies of criminal possession of a weapon in the third degree as
8 defined in subdivision five, six, seven or eight of section 265.02 as a
9 lesser included offense of that section as defined in section 220.20 of
10 the criminal procedure law, persistent sexual abuse as defined in
11 section 130.53, aggravated sexual abuse in the fourth degree as defined
12 in section 130.65-a, PATRONIZING A PROSTITUTE IN THE THIRD DEGREE AS
13 DEFINED IN SECTION 230.04, falsely reporting an incident in the second
14 degree as defined in section 240.55 and placing a false bomb or hazard-
15 ous substance in the second degree as defined in section 240.61.

16 S 2. Subdivision 5 of section 60.05 of the penal law, as amended by
17 chapter 738 of the laws of 2004, is amended to read as follows:

18 5. Certain class D felonies. Except as provided in subdivision six of
19 this section, every person convicted of the class D felonies of assault
20 in the second degree as defined in section 120.05 [or attempt to commit
21 a class C felony as defined in section 230.30] of this chapter, must be
22 sentenced in accordance with section 70.00 or 85.00 of this title.

23 S 3. The closing paragraph of section 230.04 of the penal law, as
24 amended by chapter 74 of the laws of 2007, is amended to read as
25 follows:

26 Patronizing a prostitute in the third degree is a class [A misdemea-
27 nor] E FELONY.

28 S 4. The closing paragraph of section 230.05 of the penal law, as
29 added by chapter 627 of the laws of 1978, is amended to read as follows:

30 Patronizing a prostitute in the second degree is a class [E] D felony.

31 S 5. The closing paragraph of section 230.06 of the penal law, as
32 added by chapter 627 of the laws of 1978, is amended to read as follows:

33 Patronizing a prostitute in the first degree is a class [D] C felony.

34 S 6. Section 230.40 of the penal law is amended to read as follows:

35 S 230.40 Permitting prostitution IN THE SECOND DEGREE.

36 A person is guilty of permitting prostitution IN THE SECOND DEGREE
37 when, having possession or control of premises which he OR SHE knows are
38 being used for prostitution purposes, he OR SHE fails to make reasonable
39 effort to halt or abate such use.

40 Permitting prostitution IN THE SECOND DEGREE is a class [B] A misde-
41 meanor.

42 S 7. The penal law is amended by adding a new section 230.45 to read
43 as follows:

44 S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

45 A PERSON IS GUILTY OF PERMITTING PROSTITUTION IN THE FIRST DEGREE WHEN
46 HAVING POSSESSION OR CONTROL OF PREMISES WHICH HE OR SHE KNOWS ARE BEING
47 USED FOR PROSTITUTION PURPOSES INCLUDING THE PROSTITUTION OF A CHILD
48 LESS THAN SEVENTEEN YEARS OF AGE, HE OR SHE FAILS TO MAKE REASONABLE
49 EFFORT TO HALT OR ABATE SUCH USE.

50 PERMITTING PROSTITUTION IN THE FIRST DEGREE IS A CLASS E FELONY.

51 S 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section
52 168-a of the correction law, as amended by chapter 405 of the laws of
53 2008, is amended to read as follows:

54 (i) a conviction of or a conviction for an attempt to commit any [of
55 the provisions] PROVISION of [sections] SECTION 120.70, 130.20, 130.25,
56 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 [and] OR

1 255.27 or article two hundred sixty-three of the penal law, or section
2 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping
3 offenses, provided the victim of such kidnapping or related offense is
4 less than seventeen years old and the offender is not the parent of the
5 victim, or section 230.04, where the person patronized is in fact less
6 than seventeen years of age, 230.05 or 230.06, or subdivision two of
7 section 230.30, section 230.32 [or], 230.33 OR 230.45 of the penal law,
8 or
9 S 9. This act shall take effect on the first of November next succeed-
10 ing the date on which it shall have become a law.