

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

5165--A

Cal. No. 1071

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report, and to be reprinted as amended, retaining its place in the order of second report

AN ACT to amend the penal law and the correction law, in relation to sexually motivated misdemeanors

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

1 Section 1. The penal law is amended by adding two new sections 130.93
2 and 130.94 to read as follows:
3 S 130.93 SEXUALLY MOTIVATED MISDEMEANOR.
4 1. A PERSON COMMITS A SEXUALLY MOTIVATED MISDEMEANOR WHEN HE OR SHE
5 COMMITS A SPECIFIED OFFENSE FOR THE PURPOSE, IN WHOLE OR SUBSTANTIAL
6 PART, OF HIS OR HER OWN DIRECT SEXUAL GRATIFICATION.
7 2. A "SPECIFIED OFFENSE" IS A MISDEMEANOR OFFENSE DEFINED BY ANY OF
8 THE FOLLOWING PROVISIONS OF THIS CHAPTER: ASSAULT IN THE THIRD DEGREE AS
9 DEFINED IN SECTION 120.00, AGGRAVATED ASSAULT UPON A PERSON LESS THAN
10 ELEVEN YEARS OLD AS DEFINED IN SECTION 120.12, MENACING IN THE SECOND
11 DEGREE AS DEFINED IN SECTION 120.14, MENACING IN THE THIRD DEGREE AS
12 DEFINED IN SECTION 120.15, STALKING IN THE FOURTH DEGREE AS DEFINED IN
13 SECTION 120.45, STALKING IN THE THIRD DEGREE AS DEFINED IN SECTION
14 120.50, CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION AS
15 DEFINED IN SECTION 121.11, TRESPASS AS DEFINED IN SECTION 140.05, CRIMI-
16 NAL TRESPASS IN THE THIRD DEGREE AS DEFINED IN SECTION 140.10, CRIMINAL
17 TRESPASS IN THE SECOND DEGREE AS DEFINED IN SECTION 140.15, PETIT LARCE-
18 NY AS DEFINED IN SECTION 155.25, UNAUTHORIZED USE OF A COMPUTER AS
19 DEFINED IN SECTION 156.05, COMPUTER TAMPERING IN THE FOURTH DEGREE AS
20 DEFINED IN SECTION 156.20, UNLAWFUL DUPLICATION OF COMPUTER RELATED
21 MATERIAL IN THE SECOND DEGREE AS DEFINED IN SECTION 156.29, PROMOTING
22 PROSTITUTION IN THE FOURTH DEGREE AS DEFINED IN SECTION 230.20, AGGRA-

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

LBD11213-02-1

1 VATED HARASSMENT IN THE SECOND DEGREE AS DEFINED IN SECTION 240.30,
2 ENDANGERING THE WELFARE OF A CHILD AS DEFINED IN SECTION 260.10, UNLAW-
3 FULLY DEALING WITH A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION
4 260.20, UNLAWFULLY DEALING WITH A CHILD IN THE SECOND DEGREE AS DEFINED
5 IN SECTION 260.21, OR ANY MISDEMEANOR ATTEMPT OR CONSPIRACY TO COMMIT
6 ANY OF THE FOREGOING OFFENSES.

7 S 130.94 SENTENCING.

8 1. WHEN A PERSON IS CONVICTED OF A SEXUALLY MOTIVATED MISDEMEANOR
9 PURSUANT TO THIS ARTICLE, THE SEXUALLY MOTIVATED MISDEMEANOR SHALL BE
10 DEEMED TO BE THE SAME OFFENSE LEVEL AS THE SPECIFIED OFFENSE THE DEFEND-
11 ANT COMMITTED.

12 2. PERSONS CONVICTED OF A SEXUALLY MOTIVATED MISDEMEANOR AS DEFINED IN
13 SECTION 130.93 OF THIS ARTICLE, MUST BE SENTENCED IN ACCORDANCE WITH THE
14 PROVISIONS OF SECTION 70.25 OF THIS CHAPTER.

15 S 2. Subdivision 2 of section 70.25 of the penal law, as amended by
16 chapter 56 of the laws of 1984, is amended to read as follows:

17 2. When more than one sentence of imprisonment is imposed on a person
18 for two or more offenses committed through a single act or omission, or
19 through an act or omission which in itself constituted one of the
20 offenses and also was a material element of the other, the sentences,
21 except if one or more of such sentences is for a violation of section
22 270.20 OR 130.94 of this chapter, must run concurrently.

23 S 3. Paragraph (a) of subdivision 2 of section 168-a of the
24 correction law, as amended by chapter 405 of the laws of 2008, is
25 amended to read as follows:

26 (a) (i) a conviction of or a conviction for an attempt to commit any
27 of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,
28 130.45, 130.60, 130.93, 230.34, 250.50, 255.25, 255.26 and 255.27 or
29 article two hundred sixty-three of the penal law, or section 135.05,
30 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses,
31 provided the victim of such kidnapping or related offense is less than
32 seventeen years old and the offender is not the parent of the victim, or
33 section 230.04, where the person patronized is in fact less than seven-
34 teen years of age, 230.05 or 230.06, or subdivision two of section
35 230.30, or section 230.32 or 230.33 of the penal law, or (ii) a
36 conviction of or a conviction for an attempt to commit any of the
37 provisions of section 235.22 of the penal law, or (iii) a conviction of
38 or a conviction for an attempt to commit any provisions of the foregoing
39 sections committed or attempted as a hate crime defined in section
40 485.05 of the penal law or as a crime of terrorism defined in section
41 490.25 of such law or as a sexually motivated felony defined in section
42 130.91 of such law; or

43 S 4. This act shall take effect on the first of November next succeed-
44 ing the date on which it shall have become a law.