

6165

2011-2012 Regular Sessions

I N A S S E M B L Y

March 8, 2011

Introduced by M. of A. MALLIOTAKIS -- read once and referred 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 ASSEM-
BLY, 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) and (c) as amended by chapter 405 of
4 the laws of 2010 and paragraph (d) as amended by chapter 7 of the laws
5 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
21 section 160.15, incest in the first degree as defined in section 255.27,
22 criminal possession of a weapon 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 265.04, criminal use of a firearm in the first degree as defined
2 in section 265.09, criminal sale of a firearm in the first degree as
3 defined in section 265.13, aggravated assault upon a police officer or a
4 peace officer as defined in section 120.11, gang assault in the first
5 degree as defined in section 120.07, intimidating a victim or witness in
6 the first degree as defined in section 215.17, hindering prosecution of
7 terrorism in the first degree as defined in section 490.35, criminal
8 possession of a chemical weapon or biological weapon in the second
9 degree as defined in section 490.40, and criminal use of a chemical
10 weapon or biological weapon in the third degree as defined in section
11 490.47.

12 (b) Class C violent felony offenses: an attempt to commit any of the
13 class B felonies set forth in paragraph (a) of this subdivision; aggra-
14 vated criminally negligent homicide as defined in section 125.11, aggra-
15 vated manslaughter in the second degree as defined in section 125.21,
16 aggravated sexual abuse in the second degree as defined in section
17 130.67, PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED IN
18 SECTION 230.06, PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED
19 IN SUBDIVISION TWO OF SECTION 230.30, assault on a peace officer, police
20 officer, fireman or emergency medical services professional as defined
21 in section 120.08, gang assault in the second degree as defined in
22 section 120.06, strangulation in the first degree as defined in section
23 121.13, burglary in the second degree as defined in section 140.25,
24 robbery in the second degree as defined in section 160.10, criminal
25 possession of a weapon in the second degree as defined in section
26 265.03, criminal use of a firearm in the second degree as defined in
27 section 265.08, criminal sale of a firearm in the second degree as
28 defined in section 265.12, criminal sale of a firearm with the aid of a
29 minor as defined in section 265.14, soliciting or providing support for
30 an act of terrorism in the first degree as defined in section 490.15,
31 hindering prosecution of terrorism in the second degree as defined in
32 section 490.30, and criminal possession of a chemical weapon or biolog-
33 ical weapon in the third degree as defined in section 490.37.

34 (c) Class D violent felony offenses: an attempt to commit any of the
35 class C felonies set forth in paragraph (b); reckless assault of a child
36 as defined in section 120.02, assault in the second degree as defined in
37 section 120.05, menacing a police officer or peace officer as defined in
38 section 120.18, stalking in the first degree, as defined in subdivision
39 one of section 120.60, strangulation in the second degree as defined in
40 section 121.12, rape in the second degree as defined in section 130.30,
41 criminal sexual act in the second degree as defined in section 130.45,
42 sexual abuse in the first degree as defined in section 130.65, course of
43 sexual conduct against a child in the second degree as defined in
44 section 130.80, aggravated sexual abuse in the third degree as defined
45 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 405 of the laws of 2010, 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, strangulation in the
21 second degree as defined in section 121.12 [or attempt to commit a class
22 C felony as defined in section 230.30 of this chapter,] must be
23 sentenced in accordance with section 70.00 or 85.00 of this title.

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

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

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

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

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

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

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

36 S 230.40 Permitting prostitution IN THE SECOND DEGREE.

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

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

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

45 S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

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

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

52 S 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section
53 168-a of the correction law, as amended by chapter 405 of the laws of
54 2008, is amended to read as follows:

55 (i) a conviction of or a conviction for an attempt to commit any [of
56 the provisions] PROVISION of [sections] SECTION 120.70, 130.20, 130.25,

1 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 [and] OR
2 255.27 or article two hundred sixty-three of the penal law, or section
3 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping
4 offenses, provided the victim of such kidnapping or related offense is
5 less than seventeen years old and the offender is not the parent of the
6 victim, or section 230.04, where the person patronized is in fact less
7 than seventeen years of age, 230.05 or 230.06, or subdivision two of
8 section 230.30, section 230.32 [or], 230.33 OR 230.45 of the penal law,
9 or
10 S 9. This act shall take effect on the first of November next succeed-
11 ing the date on which it shall have become a law.