

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

2172--A

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 amended by chapter 148 of the laws
4 of 2011, paragraph (c) as amended by chapter 405 of the laws of 2010 and
5 paragraph (d) as amended by chapter 7 of the laws of 2007, are amended
6 to read as follows:
7 (a) Class B violent felony offenses: an attempt to commit the class
8 A-I felonies of murder in the second degree as defined in section
9 125.25, kidnapping in the first degree as defined in section 135.25, and
10 arson in the first degree as defined in section 150.20; manslaughter in
11 the first degree as defined in section 125.20, aggravated manslaughter
12 in the first degree as defined in section 125.22, rape in the first
13 degree as defined in section 130.35, criminal sexual act in the first
14 degree as defined in section 130.50, aggravated sexual abuse in the
15 first degree as defined in section 130.70, course of sexual conduct
16 against a child in the first degree as defined in section 130.75[;],
17 PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.32,
18 assault in the first degree as defined in section 120.10, kidnapping in
19 the second degree as defined in section 135.20, burglary in the first
20 degree as defined in section 140.30, arson in the second degree as

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

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1 defined in section 150.15, robbery in the first degree as defined in
2 section 160.15, incest in the first degree as defined in section 255.27,
3 criminal possession of a weapon in the first degree as defined in
4 section 265.04, criminal use of a firearm in the first degree as defined
5 in section 265.09, criminal sale of a firearm in the first degree as
6 defined in section 265.13, aggravated assault upon a police officer or a
7 peace officer as defined in section 120.11, gang assault in the first
8 degree as defined in section 120.07, intimidating a victim or witness in
9 the first degree as defined in section 215.17, hindering prosecution of
10 terrorism in the first degree as defined in section 490.35, criminal
11 possession of a chemical weapon or biological weapon in the second
12 degree as defined in section 490.40, and criminal use of a chemical
13 weapon or biological weapon in the third degree as defined in section
14 490.47.

15 (b) Class C violent felony offenses: an attempt to commit any of the
16 class B felonies set forth in paragraph (a) of this subdivision; aggra-
17 vated criminally negligent homicide as defined in section 125.11, aggra-
18 vated manslaughter in the second degree as defined in section 125.21,
19 aggravated sexual abuse in the second degree as defined in section
20 130.67, PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED IN
21 SECTION 230.06, PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED
22 IN SUBDIVISION TWO OF SECTION 230.30, assault on a peace officer, police
23 officer, fireman or emergency medical services professional as defined
24 in section 120.08, assault on a judge as defined in section 120.09, gang
25 assault in the second degree as defined in section 120.06, strangulation
26 in the first degree as defined in section 121.13, burglary in the second
27 degree as defined in section 140.25, robbery in the second degree as
28 defined in section 160.10, criminal possession of a weapon in the second
29 degree as defined in section 265.03, criminal use of a firearm in the
30 second degree as defined in section 265.08, criminal sale of a firearm
31 in the second degree as defined in section 265.12, criminal sale of a
32 firearm with the aid of a minor as defined in section 265.14, soliciting
33 or providing support for an act of terrorism in the first degree as
34 defined in section 490.15, hindering prosecution of terrorism in the
35 second degree as defined in section 490.30, and criminal possession of a
36 chemical weapon or biological weapon in the third degree as defined in
37 section 490.37.

38 (c) Class D violent felony offenses: an attempt to commit any of the
39 class C felonies set forth in paragraph (b); reckless assault of a child
40 as defined in section 120.02, assault in the second degree as defined in
41 section 120.05, menacing a police officer or peace officer as defined in
42 section 120.18, stalking in the first degree, as defined in subdivision
43 one of section 120.60, strangulation in the second degree as defined in
44 section 121.12, rape in the second degree as defined in section 130.30,
45 criminal sexual act in the second degree as defined in section 130.45,
46 sexual abuse in the first degree as defined in section 130.65, course of
47 sexual conduct against a child in the second degree as defined in
48 section 130.80, aggravated sexual abuse in the third degree as defined
49 in section 130.66, facilitating a sex offense with a controlled
50 substance as defined in section 130.90, PATRONIZING A PROSTITUTE IN THE
51 SECOND DEGREE AS DEFINED IN SECTION 230.05, PROMOTING PROSTITUTION IN
52 THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 230.25, crimi-
53 nal possession of a weapon in the third degree as defined in subdivision
54 five, six, seven or eight of section 265.02, criminal sale of a firearm
55 in the third degree as defined in section 265.11, intimidating a victim
56 or witness in the second degree as defined in section 215.16, soliciting

1 or providing support for an act of terrorism in the second degree as
2 defined in section 490.10, and making a terroristic threat as defined in
3 section 490.20, falsely reporting an incident in the first degree as
4 defined in section 240.60, placing a false bomb or hazardous substance
5 in the first degree as defined in section 240.62, placing a false bomb
6 or hazardous substance in a sports stadium or arena, mass transportation
7 facility or enclosed shopping mall as defined in section 240.63, and
8 aggravated unpermitted use of indoor pyrotechnics in the first degree as
9 defined in section 405.18.

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

20 S 2. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the
21 penal law, as amended by chapter 1 of the laws of 2013, are amended to
22 read as follows:

23 (b) Class C violent felony offenses: an attempt to commit any of the
24 class B felonies set forth in paragraph (a) of this subdivision; aggra-
25 vated criminally negligent homicide as defined in section 125.11, aggra-
26 vated manslaughter in the second degree as defined in section 125.21,
27 aggravated sexual abuse in the second degree as defined in section
28 130.67, PATRONIZING A PROSTITUTE IN THE FIRST DEGREE AS DEFINED IN
29 SECTION 230.06, PROMOTING PROSTITUTION IN THE SECOND DEGREE AS DEFINED
30 IN SUBDIVISION TWO OF SECTION 230.30, assault on a peace officer, police
31 officer, fireman or emergency medical services professional as defined
32 in section 120.08, assault on a judge as defined in section 120.09, gang
33 assault in the second degree as defined in section 120.06, strangulation
34 in the first degree as defined in section 121.13, burglary in the second
35 degree as defined in section 140.25, robbery in the second degree as
36 defined in section 160.10, criminal possession of a weapon in the second
37 degree as defined in section 265.03, criminal use of a firearm in the
38 second degree as defined in section 265.08, criminal sale of a firearm
39 in the second degree as defined in section 265.12, criminal sale of a
40 firearm with the aid of a minor as defined in section 265.14, aggravated
41 criminal possession of a weapon as defined in section 265.19, soliciting
42 or providing support for an act of terrorism in the first degree as
43 defined in section 490.15, hindering prosecution of terrorism in the
44 second degree as defined in section 490.30, and criminal possession of a
45 chemical weapon or biological weapon in the third degree as defined in
46 section 490.37.

47 (c) Class D violent felony offenses: an attempt to commit any of the
48 class C felonies set forth in paragraph (b); reckless assault of a child
49 as defined in section 120.02, assault in the second degree as defined in
50 section 120.05, menacing a police officer or peace officer as defined in
51 section 120.18, stalking in the first degree, as defined in subdivision
52 one of section 120.60, strangulation in the second degree as defined in
53 section 121.12, rape in the second degree as defined in section 130.30,
54 criminal sexual act in the second degree as defined in section 130.45,
55 sexual abuse in the first degree as defined in section 130.65, course of
56 sexual conduct against a child in the second degree as defined in

1 section 130.80, aggravated sexual abuse in the third degree as defined
2 in section 130.66, facilitating a sex offense with a controlled
3 substance as defined in section 130.90, PATRONIZING A PROSTITUTE IN THE
4 SECOND DEGREE AS DEFINED IN SECTION 230.05, PROMOTING PROSTITUTION IN
5 THE THIRD DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 230.25, crimi-
6 nal possession of a weapon in the third degree as defined in subdivision
7 five, six, seven, eight, nine or ten of section 265.02, criminal sale of
8 a firearm in the third degree as defined in section 265.11, intimidating
9 a victim or witness in the second degree as defined in section 215.16,
10 soliciting or providing support for an act of terrorism in the second
11 degree as defined in section 490.10, and making a terroristic threat as
12 defined in section 490.20, falsely reporting an incident in the first
13 degree as defined in section 240.60, placing a false bomb or hazardous
14 substance in the first degree as defined in section 240.62, placing a
15 false bomb or hazardous substance in a sports stadium or arena, mass
16 transportation facility or enclosed shopping mall as defined in section
17 240.63, and aggravated unpermitted use of indoor pyrotechnics in the
18 first degree as defined in section 405.18.

19 S 3. Subdivision 5 of section 60.05 of the penal law, as amended by
20 chapter 405 of the laws of 2010, is amended to read as follows:

21 5. Certain class D felonies. Except as provided in subdivision six of
22 this section, every person convicted of the class D felonies of assault
23 in the second degree as defined in section 120.05, strangulation in the
24 second degree as defined in section 121.12 [or attempt to commit a class
25 C felony as defined in section 230.30 of this chapter,] must be
26 sentenced in accordance with section 70.00 or 85.00 of this title.

27 S 4. The closing paragraph of section 230.04 of the penal law, as
28 amended by chapter 74 of the laws of 2007, is amended to read as
29 follows:

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

32 S 5. The closing paragraph of section 230.05 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 second degree is a class [E] D felony.

35 S 6. The closing paragraph of section 230.06 of the penal law, as
36 added by chapter 627 of the laws of 1978, is amended to read as follows:

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

38 S 7. Section 230.40 of the penal law is amended to read as follows:

39 S 230.40 Permitting prostitution IN THE SECOND DEGREE.

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

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

46 S 8. The penal law is amended by adding a new section 230.45 to read
47 as follows:

48 S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

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

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

1 S 9. Subparagraph (i) of paragraph (a) of subdivision 2 of section
2 168-a of the correction law, as amended by chapter 405 of the laws of
3 2008, is amended to read as follows:

4 (i) a conviction of or a conviction for an attempt to commit any [of
5 the provisions] PROVISION of [sections] SECTION 120.70, 130.20, 130.25,
6 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 [and] OR
7 255.27 or article two hundred sixty-three of the penal law, or section
8 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping
9 offenses, provided the victim of such kidnapping or related offense is
10 less than seventeen years old and the offender is not the parent of the
11 victim, or section 230.04, where the person patronized is in fact less
12 than seventeen years of age, 230.05 or 230.06, or subdivision two of
13 section 230.30 [or] section 230.32 [or], 230.33 OR 230.45 of the penal
14 law, or

15 S 10. This act shall take effect on the first of November next
16 succeeding the date on which it shall have become a law; provided that
17 if the amendments to paragraphs (b) and (c) of subdivision 1 of section
18 70.02 of the penal law made by section 27 of chapter 1 of the laws of
19 2013 shall not have taken effect by such date then the provisions of
20 section two of this act shall take effect on the same date and in the
21 same manner as such section takes effect.