

2172--A

2013-2014 Regular Sessions

I N   S E N A T E

January 14, 2013

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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.