

S. 2808--A

A. 4034--A

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

January 29, 2015

---

IN SENATE -- Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. MALLIOTAKIS -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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, paragraphs (a) and (c) as amended by  
3     chapter 368 of the laws of 2015, paragraph (b) as amended by chapter 1  
4     of the laws of 2013, and paragraph (d) as amended by chapter 7 of the  
5     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

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

LBD08386-02-6

1 first degree as defined in section 130.70, course of sexual conduct  
2 against a child in the first degree as defined in section 130.75[;],  
3 PROMOTING PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.32,  
4 assault in the first degree as defined in section 120.10, kidnapping in  
5 the second degree as defined in section 135.20, burglary in the first  
6 degree as defined in section 140.30, arson in the second degree as  
7 defined in section 150.15, robbery in the first degree as defined in  
8 section 160.15, sex trafficking as defined in paragraphs (a) and (b) of  
9 subdivision five of section 230.34, incest in the first degree as  
10 defined in section 255.27, criminal possession of a weapon in the first  
11 degree as defined in section 265.04, criminal use of a firearm in the  
12 first degree as defined in section 265.09, criminal sale of a firearm in  
13 the first degree as defined in section 265.13, aggravated assault upon a  
14 police officer or a peace officer as defined in section 120.11, gang  
15 assault in the first degree as defined in section 120.07, intimidating a  
16 victim or witness in the first degree as defined in section 215.17,  
17 hindering prosecution of terrorism in the first degree as defined in  
18 section 490.35, criminal possession of a chemical weapon or biological  
19 weapon in the second degree as defined in section 490.40, and criminal  
20 use of a chemical weapon or biological weapon in the third degree as  
21 defined in section 490.47.

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

46 (c) Class D violent felony offenses: an attempt to commit any of the  
47 class C felonies set forth in paragraph (b); reckless assault of a child  
48 as defined in section 120.02, assault in the second degree as defined in  
49 section 120.05, menacing a police officer or peace officer as defined in  
50 section 120.18, stalking in the first degree, as defined in subdivision  
51 one of section 120.60, strangulation in the second degree as defined in  
52 section 121.12, rape in the second degree as defined in section 130.30,  
53 criminal sexual act in the second degree as defined in section 130.45,  
54 sexual abuse in the first degree as defined in section 130.65, course of  
55 sexual conduct against a child in the second degree as defined in  
56 section 130.80, aggravated sexual abuse in the third degree as defined

1 in section 130.66, facilitating a sex offense with a controlled  
2 substance as defined in section 130.90, labor trafficking as defined in  
3 paragraphs (a) and (b) of subdivision three of section 135.35, PATRONIZ-  
4 ING A PERSON FOR PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION  
5 230.05, PROMOTING PROSTITUTION IN THE THIRD DEGREE AS DEFINED IN SUBDI-  
6 VISION TWO OF SECTION 230.25, criminal possession of a weapon in the  
7 third degree as defined in subdivision five, six, seven, eight, nine or  
8 ten of section 265.02, criminal sale of a firearm in the third degree as  
9 defined in section 265.11, intimidating a victim or witness in the  
10 second degree as defined in section 215.16, soliciting or providing  
11 support for an act of terrorism in the second degree as defined in  
12 section 490.10, and making a terroristic threat as defined in section  
13 490.20, falsely reporting an incident in the first degree as defined in  
14 section 240.60, placing a false bomb or hazardous substance in the first  
15 degree as defined in section 240.62, placing a false bomb or hazardous  
16 substance in a sports stadium or arena, mass transportation facility or  
17 enclosed shopping mall as defined in section 240.63, and aggravated  
18 unpermitted use of indoor pyrotechnics in the first degree as defined in  
19 section 405.18.

20 (d) Class E violent felony offenses: an attempt to commit any of the  
21 felonies of criminal possession of a weapon in the third degree as  
22 defined in subdivision five, six, seven or eight of section 265.02 as a  
23 lesser included offense of that section as defined in section 220.20 of  
24 the criminal procedure law, persistent sexual abuse as defined in  
25 section 130.53, aggravated sexual abuse in the fourth degree as defined  
26 in section 130.65-a, PATRONIZING A PERSON FOR PROSTITUTION IN THE THIRD  
27 DEGREE AS DEFINED IN SECTION 230.04, falsely reporting an incident in  
28 the second degree as defined in section 240.55 and placing a false bomb  
29 or hazardous substance in the second degree as defined in section  
30 240.61.

31 S 2. Subdivision 5 of section 60.05 of the penal law, as amended by  
32 chapter 405 of the laws of 2010, is amended to read as follows:

33 5. Certain class D felonies. Except as provided in subdivision six of  
34 this section, every person convicted of the class D felonies of assault  
35 in the second degree as defined in section 120.05, strangulation in the  
36 second degree as defined in section 121.12 [or attempt to commit a class  
37 C felony as defined in section 230.30 of this chapter,] must be  
38 sentenced in accordance with section 70.00 or 85.00 of this title.

39 S 3. The closing paragraph of section 230.04 of the penal law, as  
40 amended by chapter 368 of the laws of 2015, is amended to read as  
41 follows:

42 Patronizing a person for prostitution in the third degree is a class  
43 [A misdemeanor] E FELONY.

44 S 4. The closing paragraph of section 230.05 of the penal law, as  
45 added by chapter 368 of the laws of 2015, is amended to read as follows:

46 Patronizing a person for prostitution in the second degree is a class  
47 [E] D felony.

48 S 5. The closing paragraph of section 230.06 of the penal law, as  
49 amended by chapter 368 of the laws of 2015, is amended to read as  
50 follows:

51 Patronizing a person for prostitution in the first degree is a class  
52 [D] C felony.

53 S 6. Section 230.40 of the penal law, the opening paragraph as amended  
54 by chapter 368 of the laws of 2015, is amended to read as follows:

55 S 230.40 Permitting prostitution IN THE SECOND DEGREE.

1 A person is guilty of permitting prostitution IN THE SECOND DEGREE  
2 when, having possession or control of premises or vehicle which he or  
3 she knows are being used for prostitution purposes or for the purpose of  
4 advancing prostitution, he or she fails to make reasonable effort to  
5 halt or abate such use.

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

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

10 S 230.45 PERMITTING PROSTITUTION IN THE FIRST DEGREE.

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

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

17 S 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
18 168-a of the correction law, as amended by chapter 368 of the laws of  
19 2015, is amended to read as follows:

20 (i) a conviction of or a conviction for an attempt to commit any [of  
21 the provisions] PROVISION of [sections] SECTION 120.70, 130.20, 130.25,  
22 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and  
23 255.27 or article two hundred sixty-three of the penal law, or section  
24 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping  
25 offenses, provided the victim of such kidnapping or related offense is  
26 less than seventeen years old and the offender is not the parent of the  
27 victim, or section 230.04, where the person patronized is in fact less  
28 than seventeen years of age, 230.05, 230.06, 230.11, 230.12, 230.13,  
29 subdivision two of section 230.30, section 230.32, 230.33, [or] 230.34,  
30 OR 230.45 of the penal law, or section 230.25 of the penal law where the  
31 person prostituted is in fact less than seventeen years old, or

32 S 9. This act shall take effect on the first of November next succeed-  
33 ing the date on which it shall have become a law.