

# STATE OF NEW YORK

S. 1605

A. 940

2017-2018 Regular Sessions

## SENATE - ASSEMBLY

January 10, 2017

IN SENATE -- Introduced by Sens. GOLDEN, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- 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 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  
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

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, sex trafficking as defined in paragraphs (a) and (b) of  
3 subdivision five of section 230.34, incest in the first degree as  
4 defined in section 255.27, criminal possession of a weapon in the first  
5 degree as defined in section 265.04, criminal use of a firearm in the  
6 first degree as defined in section 265.09, criminal sale of a firearm in  
7 the first degree as defined in section 265.13, aggravated assault upon a  
8 police officer or a peace officer as defined in section 120.11, gang  
9 assault in the first degree as defined in section 120.07, intimidating a  
10 victim or witness in the first degree as defined in section 215.17,  
11 hindering prosecution of terrorism in the first degree as defined in  
12 section 490.35, criminal possession of a chemical weapon or biological  
13 weapon in the second degree as defined in section 490.40, and criminal  
14 use of a chemical weapon or biological weapon in the third degree as  
15 defined in section 490.47.

16 (b) Class C violent felony offenses: an attempt to commit any of the  
17 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
18 vated criminally negligent homicide as defined in section 125.11, aggra-  
19 vated manslaughter in the second degree as defined in section 125.21,  
20 aggravated sexual abuse in the second degree as defined in section  
21 130.67, patronizing a person for prostitution in the first degree as  
22 defined in section 230.06, promoting prostitution in the second degree  
23 as defined in subdivision two of section 230.30, assault on a peace  
24 officer, police officer, fireman or emergency medical services profes-  
25 sional as defined in section 120.08, assault on a judge as defined in  
26 section 120.09, gang assault in the second degree as defined in section  
27 120.06, strangulation in the first degree as defined in section 121.13,  
28 burglary in the second degree as defined in section 140.25, robbery in  
29 the second degree as defined in section 160.10, criminal possession of a  
30 weapon in the second degree as defined in section 265.03, criminal use  
31 of a firearm in the second degree as defined in section 265.08, criminal  
32 sale of a firearm in the second degree as defined in section 265.12,  
33 criminal sale of a firearm with the aid of a minor as defined in section  
34 265.14, aggravated criminal possession of a weapon as defined in section  
35 265.19, soliciting or providing support for an act of terrorism in the  
36 first degree as defined in section 490.15, hindering prosecution of  
37 terrorism in the second degree as defined in section 490.30, and crimi-  
38 nal possession of a chemical weapon or biological weapon in the third  
39 degree as defined in section 490.37.

40 (c) Class D violent felony offenses: an attempt to commit any of the  
41 class C felonies set forth in paragraph (b); reckless assault of a child  
42 as defined in section 120.02, assault in the second degree as defined in  
43 section 120.05, menacing a police officer or peace officer as defined in  
44 section 120.18, stalking in the first degree, as defined in subdivision  
45 one of section 120.60, strangulation in the second degree as defined in  
46 section 121.12, rape in the second degree as defined in section 130.30,  
47 criminal sexual act in the second degree as defined in section 130.45,  
48 sexual abuse in the first degree as defined in section 130.65, course of  
49 sexual conduct against a child in the second degree as defined in  
50 section 130.80, aggravated sexual abuse in the third degree as defined  
51 in section 130.66, facilitating a sex offense with a controlled  
52 substance as defined in section 130.90, labor trafficking as defined in  
53 paragraphs (a) and (b) of subdivision three of section 135.35, patroniz-  
54 ing a person for prostitution in the second degree as defined in section  
55 230.05, promoting prostitution in the third degree as defined in subdi-  
56 vision two of section 230.25, criminal possession of a weapon in the

1 third degree as defined in subdivision five, six, seven, eight, nine or  
2 ten of section 265.02, criminal sale of a firearm in the third degree as  
3 defined in section 265.11, intimidating a victim or witness in the  
4 second degree as defined in section 215.16, soliciting or providing  
5 support for an act of terrorism in the second degree as defined in  
6 section 490.10, and making a terroristic threat as defined in section  
7 490.20, falsely reporting an incident in the first degree as defined in  
8 section 240.60, placing a false bomb or hazardous substance in the first  
9 degree as defined in section 240.62, placing a false bomb or hazardous  
10 substance in a sports stadium or arena, mass transportation facility or  
11 enclosed shopping mall as defined in section 240.63, and aggravated  
12 unpermitted use of indoor pyrotechnics in the first degree as defined in  
13 section 405.18.

14 (d) Class E violent felony offenses: an attempt to commit any of the  
15 felonies of criminal possession of a weapon in the third degree as  
16 defined in subdivision five, six, seven or eight of section 265.02 as a  
17 lesser included offense of that section as defined in section 220.20 of  
18 the criminal procedure law, persistent sexual abuse as defined in  
19 section 130.53, aggravated sexual abuse in the fourth degree as defined  
20 in section 130.65-a, patronizing a person for prostitution in the third  
21 degree as defined in section 230.04, falsely reporting an incident in  
22 the second degree as defined in section 240.55 and placing a false bomb  
23 or hazardous substance in the second degree as defined in section  
24 240.61.

25 § 2. Subdivision 5 of section 60.05 of the penal law, as amended by  
26 chapter 405 of the laws of 2010, is amended to read as follows:

27 5. Certain class D felonies. Except as provided in subdivision six of  
28 this section, every person convicted of the class D felonies of assault  
29 in the second degree as defined in section 120.05, strangulation in the  
30 second degree as defined in section 121.12 [~~or attempt to commit a class~~  
31 ~~C felony as defined in section 230.30 of this chapter,~~] must be  
32 sentenced in accordance with section 70.00 or 85.00 of this title.

33 § 3. The closing paragraph of section 230.04 of the penal law, as  
34 amended by chapter 368 of the laws of 2015, is amended to read as  
35 follows:

36 Patronizing a person for prostitution in the third degree is a class  
37 [~~A misdemeanor~~] E felony.

38 § 4. The closing paragraph of section 230.05 of the penal law, as  
39 amended by chapter 368 of the laws of 2015, is amended to read as  
40 follows:

41 Patronizing a person for prostitution in the second degree is a class  
42 [~~E~~] D felony.

43 § 5. The closing paragraph of section 230.06 of the penal law, as  
44 amended by chapter 368 of the laws of 2015, is amended to read as  
45 follows:

46 Patronizing a person for prostitution in the first degree is a class  
47 [~~D~~] C felony.

48 § 6. Section 230.40 of the penal law, the opening paragraph as amended  
49 by chapter 368 of the laws of 2015, is amended to read as follows:

50 § 230.40 Permitting prostitution in the second degree.

51 A person is guilty of permitting prostitution in the second degree  
52 when, having possession or control of premises or vehicle which he or  
53 she knows are being used for prostitution purposes or for the purpose of  
54 advancing prostitution, he or she fails to make reasonable effort to  
55 halt or abate such use.

1     Permitting prostitution in the second degree is a class [B] A misde-  
2     meanor.

3     § 7. The penal law is amended by adding a new section 230.45 to read  
4     as follows:

5     § 230.45 Permitting prostitution in the first degree.

6     A person is guilty of permitting prostitution in the first degree when  
7     having possession or control of premises or vehicle which he or she  
8     knows are being used for prostitution purposes including the prostitu-  
9     tion of a child less than seventeen years of age, he or she fails to  
10    make reasonable effort to halt or abate such use.

11    Permitting prostitution in the first degree is a class E felony.

12    § 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
13    168-a of the correction law, as amended by chapter 368 of the laws of  
14    2015, is amended to read as follows:

15    (i) a conviction of or a conviction for an attempt to commit any of  
16    the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,  
17    130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two  
18    hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20  
19    or 135.25 of such law relating to kidnapping offenses, provided the  
20    victim of such kidnapping or related offense is less than seventeen  
21    years old and the offender is not the parent of the victim, or section  
22    230.04, where the person patronized is in fact less than seventeen years  
23    of age, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision two of  
24    section 230.30, section 230.32, 230.33, [ex] 230.34, or 230.45 of the  
25    penal law, or section 230.25 of the penal law where the person prosti-  
26    tuted is in fact less than seventeen years old, or

27    § 9. This act shall take effect on the first of November next succeed-  
28    ing the date on which it shall have become a law.