STATE OF NEW YORK

1316

2019-2020 Regular Sessions

IN SENATE

January 14, 2019

Introduced by Sens. SERINO, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to public lewdness; to amend the vehicle and traffic law, in relation to designating public lewdness in the first degree as an offense which results in permanent disqualification as a bus driver; and to amend the correction law, in relation to designating public lewdness in the first degree as a sex offense for purposes of the sex offender registration

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (c) of subdivision 3 of section 65.00 of the penal law, as amended by chapter 568 of the laws of 2004, is amended to read as follows:

(c) For a class B misdemeanor, the period of probation shall be one year, except the period of probation shall be no less than one year and no more than three years for the class B misdemeanor of public lewdness **in the fourth degree** as defined in section 245.00 of this chapter;

§ 2. Section 245.00 of the penal law, as amended by chapter 748 of the laws of 1968 and the opening paragraph as amended by chapter 373 of the laws of 2015, is amended to read as follows:

§ 245.00 Public lewdness **in the fourth degree**.

A person is guilty of public lewdness **in the fourth degree** when he or she intentionally exposes the private or intimate parts of his or her body in a lewd manner or commits any other lewd act[~~:~~] (a) in a public place, or (b) [~~(i)~~] in private premises under circumstances in which he or she may readily be observed from either a public place or from other private premises, and with intent that he or she be so observed[~~, or (ii) while trespassing, as defined in section 140.05 of this part, in a dwelling as defined in subdivision three of section 140.00 of this part, under circumstances in which he or she is observed by a lawful occupant~~].

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

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Public lewdness **in the fourth degree** is a class B misdemeanor.

§ 3. The penal law is amended by adding a new section 245.04 to read as follows:

§ 245.04 Public lewdness in the third degree.

A person is guilty of public lewdness in the third degree when he or she intentionally exposes the private or intimate parts of his or her body in a lewd manner or commits any other lewd act (a) in a public place, or (b) in a private premises under circumstances in which he or she may readily be observed from either a public place or from other private premises, and with the intent that he or she be observed when the offense is committed for the purpose, in whole or substantial part, of his or her own sexual gratification.

Public lewdness in the third degree is a class A misdemeanor.

§ 4. The penal law is amended by adding two new sections 245.06 and 245.09 to read as follows:

§ 245.06 Public lewdness in the second degree.

A person is guilty of public lewdness in the second degree when he or she commits the crime of public lewdness in the third degree, as defined in section 245.04 of this article, and has previously been convicted of such crime within the preceding ten years.

Public lewdness in the second degree is a class E felony.

§ 245.09 Public lewdness in the first degree.

A person is guilty of public lewdness in the first degree when he or she commits the crime of public lewdness in the third degree, as defined in section 245.04 of this article, and such crime is committed at a time or place where a child under the age of fourteen is present.

Public lewdness in the first degree is a class D felony.

§ 5. Paragraph (b) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 400 of the laws of 2011, is amended to read as follows:

(b) The offenses referred to in subparagraph (ii) of paragraph (a) of subdivision one and paragraph (b) of subdivision two of this section that result in permanent disqualification shall include a conviction under sections 100.13, 105.15, 105.17, 115.08, 120.12, 120.70, 125.10, 125.11, 130.40, 130.53, 130.60, 130.65-a, 135.20, 160.15, 220.18, 220.21, 220.39, 220.41, 220.43, 220.44, 230.25, **245.04, 245.06, 245.09,** 260.00, 265.04 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

§ 6. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 189 of the laws of 2018, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 230.34-a, **245.09,** 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05[~~,~~] **or** 230.06[~~, 230.11, 230.12, 230.13,~~] **or** subdivision two of section 230.30, **or** section 230.32[~~,~~] **or** 230.33[~~, or 230.34~~] of the penal law[~~, or section 230.25 of the penal~~

~~law where the person prostituted is in fact less than seventeen years old~~], or

§ 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.