

# STATE OF NEW YORK

8433

## IN SENATE

January 29, 2024

Introduced by Sen. SCARCELLA-SPANTON -- read twice and ordered printed,  
and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the correction law, in relation to  
establishing the crime of harassment of an employee by an incarcerated  
individual

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

1 Section 1. The penal law is amended by adding a new section 240.33 to  
2 read as follows:

3 § 240.33 Harassment of an employee by an incarcerated individual.

4 An incarcerated individual or respondent is guilty of harassment of an  
5 employee by an incarcerated individual when, with intent to harass,  
6 annoy, threaten or alarm a person in a facility whom such incarcerated  
7 individual knows or reasonably should know to be an employee of such  
8 facility or the board of parole or the office of mental health, or a  
9 probation department, bureau or unit or a police officer, such incarcer-  
10 ated individual, for the purpose of degrading or abusing an employee, or  
11 for the purpose of gratifying such incarcerated individual's sexual  
12 desire:

13 1. Displays or touches their intimate parts while in clear view of an  
14 employee; or

15 2. Intentionally engages in conduct that such incarcerated individual  
16 knows would cause an employee to be in clear view of such incarcerated  
17 individual while such incarcerated individual displays or touches their  
18 intimate parts; or

19 3. Communicates to an employee such incarcerated person will, at some  
20 time in the future, cause such employee to come in contact with such  
21 incarcerated person's blood, urine, seminal fluid, or feces.

22 For purposes of this section, "incarcerated individual" means an  
23 incarcerated individual or detainee in a correctional facility, local  
24 correctional facility or a hospital, as such term is defined in subdivi-  
25 sion two of section four hundred of the correction law. For purposes of  
26 this section, "respondent" means a juvenile in a secure facility oper-  
27 ated and maintained by the office of children and family services who is

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

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1 placed with or committed to the office of children and family services.  
2 For purposes of this section, "facility" means a correctional facility  
3 or local correctional facility, hospital, as such term is defined in  
4 subdivision two of section four hundred of the correction law, or a  
5 secure facility operated and maintained by the office of children and  
6 family services.

7 Harassment of an employee by an incarcerated individual is a class B  
8 misdemeanor.

9 § 2. Subdivision 2 of section 851 of the correction law, as amended by  
10 section 228 of chapter 322 of the laws of 2021, is amended to read as  
11 follows:

12 2. "Eligible incarcerated individual" means: a person confined in an  
13 institution who is eligible for release on parole or who will become  
14 eligible for release on parole or conditional release within two years.  
15 Provided, however, that a person under sentence for an offense defined  
16 in paragraphs (a) and (b) of subdivision one of section 70.02 of the  
17 penal law, where such offense involved the use or threatened use of a  
18 deadly weapon or dangerous instrument shall not be eligible to partic-  
19 ipate in a work release program until he or she is eligible for release  
20 on parole or who will be eligible for release on parole or conditional  
21 release within eighteen months. Provided, further, however, that a  
22 person under a determinate sentence as a second felony drug offender for  
23 a class B felony offense defined in article two hundred twenty of the  
24 penal law, who was sentenced pursuant to section 70.70 of such law,  
25 shall not be eligible to participate in a temporary release program  
26 until the time served under imprisonment for his or her determinate  
27 sentence, including any jail time credited pursuant to the provisions of  
28 article seventy of the penal law, shall be at least eighteen months. In  
29 the case of a person serving an indeterminate sentence of imprisonment  
30 imposed pursuant to the penal law in effect after September one, nine-  
31 teen hundred sixty-seven, for the purposes of this article parole eligi-  
32 bility shall be upon the expiration of the minimum period of imprison-  
33 ment fixed by the court or where the court has not fixed any period,  
34 after service of the minimum period fixed by the state board of parole.  
35 If an incarcerated individual is denied release on parole, such incar-  
36 cerated individual shall not be deemed an eligible incarcerated individ-  
37 ual until he or she is within two years of his or her next scheduled  
38 appearance before the state parole board. In any case where an incarcer-  
39 ated individual is denied release on parole while participating in a  
40 temporary release program, the department shall review the status of the  
41 incarcerated individual to determine if continued placement in the  
42 program is appropriate. No person convicted of any escape or absconding  
43 offense defined in article two hundred five of the penal law shall be  
44 eligible for temporary release. Further, no person under sentence for  
45 aggravated harassment of an employee by an incarcerated individual as  
46 defined in section 240.32 of the penal law for, no person under sentence  
47 for harassment of an employee by an incarcerated individual as defined  
48 in section 240.33 of the penal law for, any homicide offense defined in  
49 article one hundred twenty-five of the penal law, for any sex offense  
50 defined in article one hundred thirty of the penal law, or for an  
51 offense defined in section 255.25, 255.26 or 255.27 of the penal law  
52 shall be eligible to participate in a work release program as defined in  
53 subdivision three of this section. Nor shall any person under sentence  
54 for any sex offense defined in article one hundred thirty of the penal  
55 law be eligible to participate in a community services program as  
56 defined in subdivision five of this section. Notwithstanding the forego-

1 ing, no person who is an otherwise eligible incarcerated individual who  
2 is under sentence for a crime involving: (a) infliction of serious phys-  
3 ical injury upon another as defined in the penal law or (b) any other  
4 offense involving the use or threatened use of a deadly weapon may  
5 participate in a temporary release program without the written approval  
6 of the commissioner. The commissioner shall promulgate regulations  
7 giving direction to the temporary release committee at each institution  
8 in order to aid such committees in carrying out this mandate.

9 The governor, by executive order, may exclude or limit the partic-  
10 ipation of any class of otherwise eligible incarcerated individuals from  
11 participation in a temporary release program. Nothing in this paragraph  
12 shall be construed to affect either the validity of any executive order  
13 previously issued limiting the participation of otherwise eligible  
14 incarcerated individuals in such program or the authority of the commis-  
15 sioner to impose appropriate regulations limiting such participation.

16 § 3. This act shall take effect on the thirtieth day after it shall  
17 have become a law; the amendments to subdivision 2 of section 851 of the  
18 correction law made by section two of this act shall not affect  
19 the expiration of such subdivision or section and shall expire and be  
20 deemed repealed therewith.