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 Assembly, do enact as follows:

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

§ 240.33 Harassment of an employee by an incarcerated individual.

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

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

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

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

For purposes of this section, "incarcerated individual" means an incarcerated individual or detainee in a correctional facility, local correctional facility or a hospital, as such term is defined in subdivision two of section four hundred of the correction law. For purposes of this section, "respondent" means a juvenile in a secure facility operated 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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placed with or committed to the office of children and family services. For purposes of this section, "facility" means a correctional facility or local correctional facility, hospital, as such term is defined in subdivision two of section four hundred of the correction law, or a secure facility operated and maintained by the office of children and family services.

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

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

2. "Eligible incarcerated individual" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, however, that a person under sentence for an offense defined in paragraphs (a) and (b) of subdivision one of section 70.02 of the penal law, where such offense involved the use or threatened use of a deadly weapon or dangerous instrument shall not be eligible to participate in a work release program until he or she is eligible for release on parole or who will be eligible for release on parole or conditional release within eighteen months. Provided, further, however, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of parole. If an incarcerated individual is denied release on parole, such incarcerated individual shall not be deemed an eligible incarcerated individual until he or she is within two years of his or her next scheduled appearance before the state parole board. In any case where an incarcerated individual is denied release on parole while participating in a temporary release program, the department shall review the status of the incarcerated individual to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Further, no person under sentence for aggravated harassment of an employee by an incarcerated individual as defined in section 240.32 of the penal law for, **no person under sentence for harassment of an employee by an incarcerated individual as defined in section 240.33 of the penal law for,** any homicide offense defined in article one hundred twenty-five of the penal law, for any sex offense defined in article one hundred thirty of the penal law, or for an offense defined in section 255.25, 255.26 or 255.27 of the penal law shall be eligible to participate in a work release program as defined in subdivision three of this section. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law be eligible to participate in a community services program as defined in subdivision five of this section. Notwithstanding the forego-

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

The governor, by executive order, may exclude or limit the participation of any class of otherwise eligible incarcerated individuals from participation in a temporary release program. Nothing in this paragraph shall be construed to affect either the validity of any executive order previously issued limiting the participation of otherwise eligible incarcerated individuals in such program or the authority of the commissioner to impose appropriate regulations limiting such participation.

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