

# STATE OF NEW YORK

4890

2025-2026 Regular Sessions

## IN SENATE

February 14, 2025

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 240.34 to  
2 read as follows:

3 § 240.34 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 individual will, at  
20 some time in the future, cause such employee to come in contact with  
21 such incarcerated individual'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-

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

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

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

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

15 2. "Eligible incarcerated individual" means: a person confined in an  
16 institution who is eligible for release on parole or who will become  
17 eligible for release on parole or conditional release within two years.  
18 Provided, however, that a person under sentence for an offense defined  
19 in paragraphs (a) and (b) of subdivision one of section 70.02 of the  
20 penal law, where such offense involved the use or threatened use of a  
21 deadly weapon or dangerous instrument shall not be eligible to partic-  
22 ipate in a work release program until [~~he or she~~] such person is eligi-  
23 ble for release on parole or who will be eligible for release on parole  
24 or conditional release within eighteen months. Provided, further, howev-  
25 er, that a person under a determinate sentence as a second felony drug  
26 offender for a class B felony offense defined in article two hundred  
27 twenty of the penal law, who was sentenced pursuant to section 70.70 of  
28 such law, shall not be eligible to participate in a temporary release  
29 program until the time served under imprisonment for [~~his or her~~] such  
30 person's determinate sentence, including any jail time credited pursuant  
31 to the provisions of article seventy of the penal law, shall be at least  
32 eighteen months. In the case of a person serving an indeterminate  
33 sentence of imprisonment imposed pursuant to the penal law in effect  
34 after September one, nineteen hundred sixty-seven, for the purposes of  
35 this article parole eligibility shall be upon the expiration of the  
36 minimum period of imprisonment fixed by the court or where the court has  
37 not fixed any period, after service of the minimum period fixed by the  
38 state board of parole. If an incarcerated individual is denied release  
39 on parole, such incarcerated individual shall not be deemed an eligible  
40 incarcerated individual until [~~he or she~~] such incarcerated individual  
41 is within two years of [~~his or her~~] such incarcerated individual's next  
42 scheduled appearance before the state parole board. In any case where an  
43 incarcerated individual is denied release on parole while participating  
44 in a temporary release program, the department shall review the status  
45 of the incarcerated individual to determine if continued placement in  
46 the program is appropriate. No person convicted of any escape or  
47 absconding offense defined in article two hundred five of the penal law  
48 shall be eligible for temporary release. Further, no person under  
49 sentence for aggravated harassment of an employee by an incarcerated  
50 individual as defined in section 240.32 of the penal law for, no person  
51 under sentence for harassment of an employee by an incarcerated individ-  
52 ual as defined in section 240.34 of the penal law for, any homicide  
53 offense defined in article one hundred twenty-five of the penal law, for  
54 any sex offense defined in article one hundred thirty of the penal law,  
55 or for an offense defined in section 255.25, 255.26 or 255.27 of the  
56 penal law shall be eligible to participate in a work release program as

1 defined in subdivision three of this section. Nor shall any person under  
2 sentence for any sex offense defined in article one hundred thirty of  
3 the penal law be eligible to participate in a community services program  
4 as defined in subdivision five of this section. Notwithstanding the  
5 foregoing, no person who is an otherwise eligible incarcerated individ-  
6 ual who is under sentence for a crime involving: (a) infliction of seri-  
7 ous physical injury upon another as defined in the penal law or (b) any  
8 other offense involving the use or threatened use of a deadly weapon may  
9 participate in a temporary release program without the written approval  
10 of the commissioner. The commissioner shall promulgate regulations  
11 giving direction to the temporary release committee at each institution  
12 in order to aid such committees in carrying out this mandate.

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

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