

STATE OF NEW YORK

S. 4981

A. 6983

2019-2020 Regular Sessions

SENATE - ASSEMBLY

April 3, 2019

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

IN ASSEMBLY -- Introduced by M. of A. GOTTFRIED, PAULIN, NIOU, FAHY, HEVESI, SAYEGH, L. ROSENTHAL, SIMOTAS -- Multi-Sponsored by -- M. of A. DenDEKKER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to vacating convictions for offenses resulting from sex trafficking, labor trafficking and compelling prostitution

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

1 Section 1. Legislative intent. The purpose of this legislation is to
2 strengthen protection for the victims of sex trafficking, labor traf-
3 ficking, compelling prostitution and trafficking in persons, who are
4 convicted of a range of offenses as a result of that trafficking or
5 compelling. New York's landmark law offering the vacating of convictions
6 for prostitution-related offenses that were a result of this trafficking
7 has been the model for laws in more than half of the states. However,
8 several states wisely offer this relief to victims who may be compelled
9 to participate in other offenses as well. This legislation would follow
10 that example.

11 § 2. Paragraph (i) of subdivision 1 of section 440.10 of the criminal
12 procedure law, as amended by chapter 368 of the laws of 2015, the open-
13 ing paragraph as amended by chapter 189 of the laws of 2018, is amended
14 to read as follows:

15 (i) The judgment is a conviction where [~~the arresting charge was under~~
16 ~~section 240.37 (loitering for the purpose of engaging in a prostitution~~
17 ~~offense, provided that the defendant was not alleged to be loitering for~~
18 ~~the purpose of patronizing a person for prostitution or promoting pros-~~
19 ~~titution) or 230.00 (prostitution) or 230.03 (prostitution in a school~~
20 ~~zone) of the penal law, and]~~ the defendant's participation in the

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

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1 offense was a result of having been a victim of sex trafficking under
2 section 230.34 of the penal law, sex trafficking of a child under
3 section 230.34-a of the penal law, labor trafficking under section
4 135.35 of the penal law, aggravated labor trafficking under section
5 135.37 of the penal law, compelling prostitution under section 230.33 of
6 the penal law, or trafficking in persons under the Trafficking Victims
7 Protection Act (United States Code, title 22, chapter 78); provided that

8 (i) a motion under this paragraph shall be made with due diligence,
9 ~~[after the defendant has ceased to be a victim of such trafficking or~~
10 ~~compelling prostitution crime or has sought services for victims of such~~
11 ~~trafficking or compelling prostitution crime,~~] subject to reasonable
12 concerns for the safety or circumstances of the defendant, family
13 members of the defendant, or other victims of such trafficking or
14 compelling prostitution crime that may be jeopardized by the bringing of
15 such motion, or for other reasons consistent with the purpose of this
16 paragraph; ~~[and]~~

17 (ii) official documentation of the defendant's status as a victim of
18 sex trafficking, labor trafficking, aggravated labor trafficking,
19 compelling prostitution, or trafficking in persons at the time of the
20 offense from a federal, state or local government agency shall create a
21 presumption that the defendant's participation in the offense was a
22 result of having been a victim of sex trafficking, labor trafficking,
23 aggravated labor trafficking, compelling prostitution or trafficking in
24 persons, but shall not be required for granting a motion under this
25 paragraph;

26 (iii) a motion under this paragraph, and all pertinent papers and
27 documents, shall be confidential and may not be made available to any
28 person or public or private agency except where specifically authorized
29 by the court; and

30 (iv) when a motion is filed under this paragraph, the court may, upon
31 the consent of the petitioner and all of the involved state or local
32 prosecutorial agencies, consolidate into one proceeding a motion to
33 vacate judgments imposed by distinct or multiple criminal courts.

34 § 3. Subdivision 6 of section 440.10 of the criminal procedure law, as
35 added by chapter 332 of the laws of 2010, is amended to read as follows:

36 6. If the court grants a motion under paragraph (i) of subdivision one
37 of this section, it must vacate the judgment on the merits because the
38 defendant's participation in the offense was a result of having been a
39 victim of trafficking, and dismiss the accusatory instrument, and may
40 take such additional action as is appropriate in the circumstances.

41 § 4. This act shall take effect immediately; provided that subpara-
42 graph (iii) of paragraph (i) of subdivision 1 of section 440.10 of the
43 criminal procedure law, as added by section two of this act, shall take
44 effect on the sixtieth day after it shall have become a law.