

STATE OF NEW YORK

9159

IN ASSEMBLY

January 31, 2022

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the former crime of loitering for the purpose of engaging in a prostitution offense and expunging criminal records for persons previously convicted of such crime

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

1 Section 1. Section 160.50 of the criminal procedure law is amended by
2 adding a new subdivision 6 to read as follows:

3 6. (a) A conviction for an offense described in subparagraph (iv) of
4 paragraph (k) of subdivision three of this section shall, on and after
5 the effective date of this subdivision, in accordance with the
6 provisions of this paragraph, be vacated and dismissed, and all records
7 of such conviction or convictions and related to such conviction or
8 convictions shall be expunged, as described in subdivision forty-five of
9 section 1.20 of this chapter, and the matter shall be considered termi-
10 nated in favor of the accused and deemed a nullity, having been rendered
11 by this paragraph legally invalid. All such records for an offense
12 described in this paragraph where the conviction was entered on or
13 before the effective date of the chapter of the laws of two thousand
14 twenty-two that added this subdivision shall be expunged promptly and,
15 in any event, no later than one year after such effective date.

16 (b) Commencing upon the effective date of this subdivision:

17 (i) the chief administrator of the courts shall promptly notify the
18 commissioner of the division of criminal justice services and the heads
19 of all appropriate police departments, district attorney's offices and
20 other law enforcement agencies of all convictions that have been vacated
21 and dismissed pursuant to paragraph (a) of this subdivision and that all
22 records related to such convictions shall be expunged and the matter
23 shall be considered terminated in favor of the accused and deemed a
24 nullity, having been rendered legally invalid. Upon receipt of notifi-
25 cation of such vacatur, dismissal and expungement, all records relating
26 to such conviction or convictions, or the criminal action or proceeding,

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

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1 as the case may be, shall be marked as expunged by conspicuously indi-
2 cating on the face of the record and on each page or at the beginning of
3 the digitized file of the record that the record has been designated as
4 expunged. Upon the written request of the individual whose case has been
5 expunged or their designated agent, such records shall be destroyed.
6 Such records and papers shall not be made available to any person,
7 except the individual whose case has been expunged or such person's
8 designated agent; and

9 (ii) where automatic vacatur, dismissal, and expungement, including
10 record destruction if requested, is required by this subdivision but any
11 record of the court system in this state has not yet been updated to
12 reflect same:

13 (A) notwithstanding any other provision of law except as provided in
14 paragraph (d) of subdivision one of this section and paragraph (e) of
15 subdivision four of section eight hundred thirty-seven of the executive
16 law:

17 (1) when the division of criminal justice services conducts a search
18 of its criminal history records, maintained pursuant to subdivision six
19 of section eight hundred thirty-seven of the executive law, and returns
20 a report thereon, all references to a conviction for an offense
21 described in paragraph (k) of subdivision three of this section shall be
22 excluded from such report; and

23 (2) the chief administrator of the courts shall develop and promulgate
24 rules as may be necessary to ensure that no written or electronic report
25 of a criminal history record search conducted by the office of court
26 administration contains information relating to a conviction for an
27 offense described in paragraph (k) of subdivision three of this section;
28 and

29 (B) where court records relevant to such matter cannot be located or
30 have been destroyed, and a person or the person's attorney presents to
31 an appropriate court employee a fingerprint record of the New York state
32 division of criminal justice services, or a copy of a court disposition
33 record or other relevant court record, which indicates that a criminal
34 action or proceeding against such person was terminated by conviction of
35 an offense described in paragraph (k) of subdivision three of this
36 section, then promptly, and in any event within thirty days after such
37 notice to such court employee, the chief administrator of the courts or
38 his or her designee shall assure that such vacatur, dismissal, and
39 expungement, including record destruction if requested, have been
40 completed in accordance with subparagraph (i) of this paragraph.

41 (c) Vacatur, dismissal and expungement as set forth in this subdivi-
42 sion shall be without prejudice to any person or such person's attorney
43 seeking further relief pursuant to article four hundred forty of this
44 chapter or any other law. Nothing in this section is intended or shall
45 be interpreted to diminish or abrogate any right or remedy otherwise
46 available to any person.

47 (d) The office of court administration, in conjunction with the divi-
48 sion of criminal justice services, shall develop an affirmative informa-
49 tion campaign and widely disseminate to the public, through its website,
50 public service announcements and other means, in multiple languages and
51 through multiple outlets, information concerning the expungement and
52 vacatur of loitering for the purposes of prostitution convictions estab-
53 lished by the chapter of the laws of two thousand twenty-two that added
54 this subdivision, including, but not limited to, the automatic expunge-
55 ment of certain past convictions, the means by which an individual may
56 file a motion for vacatur, dismissal and expungement of certain past

convictions, and the impact of such changes on such person's criminal history records.

§ 2. The opening paragraph of subdivision 1, subdivision 2 and paragraph (a) of subdivision 3 of section 170.80 of the criminal procedure law, the opening paragraph of subdivision 1 as amended by chapter 23 of the laws of 2021, and subdivision 2 as amended and paragraph (a) of subdivision 3 as added by chapter 402 of the laws of 2014, are amended to read as follows:

Notwithstanding any other provision of law, at any time at or after arraignment on a charge of prostitution pursuant to section 230.00 of the penal law, except where, after consultation with counsel, a knowing and voluntary plea of guilty has been entered to such charge, any judge or justice hearing any stage of such case may, upon consent of the defendant after consultation with counsel:

2. In the event of a conviction by plea or verdict to such charge or charges of prostitution [~~or loitering for the purposes of prostitution~~] as described in subdivision one of this section, the court must find that the person is a youthful offender for the purpose of such charge and proceed in accordance with article seven hundred twenty of this chapter, provided, however, that the available sentence shall be the sentence that may be imposed for a violation as defined in subdivision three of section 10.00 of the penal law. In such case, the records of the investigation and proceedings relating to such charge shall be sealed in accordance with section 720.35 of this chapter.

(a) When a charge of prostitution [~~or loitering for the purposes of prostitution~~] has been conditionally converted to a person in need of supervision proceeding pursuant to subdivision one of this section, the defendant shall be deemed a "sexually exploited child" as defined in subdivision one of section four hundred forty-seven-a of the social services law and therefore shall not be considered an adult for purposes related to the charges in the person in need of supervision proceeding. Sections seven hundred eighty-one, seven hundred eighty-two, seven hundred eighty-two-a, seven hundred eighty-three and seven hundred eighty-four of the family court act shall apply to any proceeding conditionally converted under this section.

§ 3. Subparagraph (iv) of paragraph (k) of subdivision 3 of section 160.50 of the criminal procedure law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

(iv) the conviction was for an offense defined in former section 240.37 of the penal law; or

§ 4. This act shall take effect immediately.