STATE OF NEW YORK

6358

2025-2026 Regular Sessions

IN SENATE

March 11, 2025

Introduced by Sen. CLEARE -- 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 criminal procedure law, in relation to enacting the "child sex crime victims protection act"

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

Section 1. This act shall be known and may be cited as the "child sex crime victims protection act" or "Sara's law."

§ 2. Legislative intent. This act shall be construed as prioritizing the successful treatment and rehabilitation of child sex crime victims who commit acts of violence against their abusers, or who committed a crime as the direct result of being a victim of trafficking. It is the legislature's preference that such persons be viewed as child victims and provided with treatment and services rather than transferred into the adult system.

§ 3. The penal law is amended by adding a new section 60.38 to read as follows:

§ 60.38 Authorized dispositions; child sex crime victims.

Notwithstanding any other provision of law to the contrary, when a person is convicted as an adult of an offense that such person committed when such person was under the age of twenty, and the court finds that either:

(a) the individual against whom such person committed such offense trafficked such person as defined by section 230.34 or 230.34-a of this chapter, compelled such person to engage in prostitution as defined by section 230.33 of this chapter, promoted the prostitution of such person in the first degree as defined by section 230.32 of this chapter, promoted the prostitution of such person in the second degree as defined by section 230.30 of this chapter, or committed a sex offense against such person as defined by article one hundred thirty of this chapter prior to or during the commission of such offense; or

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

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(b) the individual who committed such offense did so as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34-a, or 230.34 of this chapter;

the court may:

1. depart from any mandatory minimum sentence, maximum sentence, or sentencing enhancement;

2. suspend any portion of an otherwise applicable sentence; or

3. if the individual was under the age of eighteen at the time of the commission of the offense, transfer such person back to the jurisdiction of the family court for disposition pursuant to article seven hundred twenty-five of the criminal procedure law.

§ 4. Section 722.22 of the criminal procedure law is amended by adding a new subdivision 1-a to read as follows:

1-a. After a motion by a juvenile offender, pursuant to subdivision five of section 722.20 of this article, or after arraignment of a juvenile offender upon an indictment:

(a) the juvenile offender may request a hearing to determine:

(i) if the individual against whom such juvenile offender committed such offense committed a child sex crime against such juvenile offender prior to or during the commission of such offense; or

(ii) if the juvenile offender committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34, or 230.34-a of the penal law; and

(b) the court shall, on motion of any party or on its own motion, order removal of the action to the family court pursuant to the provisions of article seven hundred twenty-five of this title, if, after such hearing, it is proven by a preponderance of the evidence that:

(i) the individual against whom such juvenile offender committed such offense trafficked such juvenile offender as defined by section 230.34 or 230.34-a of the penal law, compelled such juvenile offender to engage in prostitution as defined by section 230.33 of the penal law, promoted the prostitution of such juvenile offender in the first degree as defined by section 230.32 of the penal law, promoted the prostitution of such juvenile offender in the second degree as defined by section 230.30 of the penal law, or committed a sex offense against such juvenile offender as defined by article one hundred thirty of the penal law prior to or during the commission of such offense; or

(ii) the juvenile offender committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34-a, or 230.34 of the penal law.

§ 5. Section 722.23 of the criminal procedure law is amended by adding a new subdivision 2-a to read as follows:

2-a. Following the arraignment of a defendant charged with an offense committed when such defendant was under eighteen years of age:

(a) the defendant may request a hearing to determine if, prior to or during the commission of such offense:

(i) the individual against whom the defendant committed such offense committed a child sex crime against the defendant; or

(ii) the defendant committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34, or 230.34-a of the penal law; and

(b) the court shall order removal of the action to the family court pursuant to the provisions of article seven hundred twenty-five of this title, if, after such hearing, it is proven by a preponderance of the evidence that, prior to the commission of such offense by such defendant:

(i) the individual against whom the defendant committed such offense trafficked such defendant as defined by section 230.34 or 230.34-a of the penal law, compelled such defendant to engage in prostitution as defined by section 230.33 of the penal law, promoted the prostitution of such defendant in the first degree as defined by section 230.32 of the penal law, promoted the prostitution of such defendant in the second degree as defined by section 230.30 of the penal law, or committed a sex offense against such defendant as defined by article one hundred thirty of the penal law; or

(ii) that the defendant committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34, or 230.34-a of the penal law.

§ 6. The criminal procedure law is amended by adding a new section 440.48 to read as follows:

§ 440.48 Motion for resentence; child sex crime victims.

1. (a) Notwithstanding any other provision of law to the contrary, any person who is confined in an institution operated by the department of correction and community supervision and serving a sentence for an offense committed prior to the effective date of this section may submit to the judge or justice who originally sentenced such person for such offense an application to be resentenced to a determinate sentence pursuant to section 60.38 of the penal law if such person is eligible for an alternative sentence as a person convicted as an adult of an offense committed when such person was under twenty years of age pursuant to section 60.38 of the penal law; and

(i) the individual against whom such person committed such crime trafficked such person as defined by section 230.34 or 230.34-a of the penal law, compelled such person to engage in prostitution as defined by section 230.33 of the penal law, promoted the prostitution of such person in the first degree as defined by section 230.32 of the penal law, promoted the prostitution of such person in the second degree as defined by section 230.30 of the penal law, or committed a sex offense against such person as defined by article one hundred thirty of the penal law; or

(ii) the defendant committed such offense as a direct result of being a victim of trafficking as defined by section 135.35, 230.30, 230.32, 230.33, 230.34, or 230.34-a of the penal law.

(b) An application to be resentenced to a determinate sentence submitted pursuant to paragraph (a) of this subdivision shall include documentation proving that such person is:

(i) confined in an institution operated by the department of corrections and community supervision and is serving a sentence for an offense committed prior to the effective date of this section; and

(ii) eligible for an alternative sentence as a person convicted as an adult of an offense committed when such person was under eighteen years of age pursuant to section 60.38 of the penal law.

(c) If, at the time of such person's request to apply for resentencing pursuant to this section, the judge or justice who originally sentenced such person is a judge or justice of a court of competent jurisdiction, but such court is not the court in which such person was originally sentenced, then the request shall be randomly assigned to another judge or justice of the court in which such person was originally sentenced. If the judge or justice who originally sentenced such person is no longer a judge or justice of a court of competent jurisdiction, then the request shall be randomly assigned to another judge or justice of the court in which such person was originally sentenced.

(d) If the court finds that such person is eligible to apply for resentencing pursuant to this section, the court shall notify such person that such person may submit an application for resentencing. Upon such notification, the person may request that the court assign an attorney to such person for the preparation of and proceedings on the application for resentencing submitted pursuant to this section. The attorney shall be assigned pursuant to the applicable provisions of section seven hundred twenty-two and article eighteen-A of the county law.

(e) If the court finds that such person is not eligible to apply for resentencing pursuant to this section, the court shall notify such person of such ineligibility and dismiss such person's request to apply for resentencing without prejudice.

2. (a) Upon receipt of an application for resentencing, the court shall promptly notify the appropriate district attorney and provide such district attorney with a copy of such application.

(b) If the judge or justice who receives such person's application for resentencing is not the judge or justice who originally sentenced such person, such application may be referred to the judge or justice who originally sentenced such person; provided, however, that the judge or justice who originally sentenced such person is a judge or justice of a court of competent jurisdiction; and provided, further, that the person applying for resentencing and the district attorney agree that such application should be referred.

3. (a) If the court finds that such person has met the requirements of this section, the court shall conduct a hearing to determine whether to approve or deny such person's application for resentencing. At such hearing, the court shall determine any controverted issue of fact relevant to the issue of sentencing. Reliable hearsay shall be admissible at such hearings.

(b) If the court denies such person's application for resentencing, the court shall notify such person of such denial and shall enter an order to that effect.

(c) If the court approves such person's application for resentencing, the court shall notify such person that, unless such person withdraws the application or appeals from such approval, the court shall enter an order vacating the sentence originally imposed and impose the new sentence pursuant to section 60.38 of the penal law. Such approval may be based on the grounds that any order issued by a court pursuant to this subdivision must include written findings of fact and the reasons for such order.

4. (a) An appeal may be taken as of right pursuant to this chapter:

(i) from an order denying such person's application for resentencing;

(ii) from a new sentence imposed pursuant to paragraph (c) of subdivision three of this section on the grounds that the term of the new sentence is harsh or excessive or is unauthorized as a matter of law; or

(iii) from an order specifying and informing such person of the term of the determinate sentence the court would impose upon resentencing on the ground that the term of the proposed sentence is harsh or excessive.

(b) Upon remand to the sentencing court following such appeal, the person applying for resentencing shall be given an opportunity to withdraw such application before any resentence is imposed. Such person may request that the court assign an attorney to such person for the preparation of and proceedings on any appeals regarding such person's application for resentencing pursuant to this section. The attorney shall be

assigned pursuant to the applicable provisions of section seven hundred twenty-two and article eighteen-A of the county law.

5. In calculating the new term to be served by such person applying for resentencing pursuant to section 60.38 of the penal law, such person shall be credited for any period of incarceration credited toward:

(a) the subject conviction; and

(b) the sentence originally imposed.

§ 7. This act shall take effect immediately.