S T A T E O F N E W Y O R K

2774

2009-2010 Regular Sessions

I N S E N A T E

March 2, 2009

Introduced by Sens. VOLKER, DeFRANCISCO, O. JOHNSON, LANZA, LIBOUS, MORAHAN, PADAVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the correction law, the criminal procedure law, the civil rights law, the executive law, the family court act, the mental hygiene law, the multiple dwelling law, the public health law, the real property actions and proceedings law, the real property law and the vehicle and traffic law, in relation to prostitution offenses and creating the crime of sexual exploitation of a child

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 230.00 of the penal law, as amended by chapter 169 of the laws of 1969, is amended to read as follows:

S 230.00 [Prostitution] CRIMINAL PROSTITUTION.

A person is guilty of CRIMINAL prostitution when, BEING SEVENTEEN YEARS OLD OR MORE, such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

[Prostitution] CRIMINAL PROSTITUTION is a class B Misdemeanor.

S 2. The penal law is amended by adding a new section 230.01 to read as follows:

S 230.01 UNLAWFUL PROSTITUTION.

A PERSON IS GUILTY OF UNLAWFUL PROSTITUTION WHEN, BEING LESS THAN SEVENTEEN YEARS OLD, SUCH PERSON ENGAGES OR AGREES OR OFFERS TO ENGAGE IN SEXUAL CONDUCT WITH ANOTHER PERSON IN RETURN FOR A FEE.

UNLAWFUL PROSTITUTION IS A VIOLATION, PROVIDED, HOWEVER, THAT ANY PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A CRIME DEFINED IN THIS ARTICLE OR SECTION 240.37 OF THIS PART SHALL BE GUILTY OF A CLASS B MISDEMEANOR.

S 3. Sections 230.05 and 230.06 of the penal law, as added by chapter 627 of the laws of 1978, are amended to read as follows:

S 230.05 Patronizing a prostitute in the second degree.

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

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A person is guilty of patronizing a prostitute in the second degree when, being [over eighteen] TWENTY-ONE years of age OR MORE, he patronizes a prostitute and the person patronized is less than [fourteen] SEVENTEEN years of age.

Patronizing a prostitute in the second degree is a class E felony.

S 230.06 Patronizing a prostitute in the first degree.

A person is guilty of patronizing a prostitute in the first degree when, BEING EIGHTEEN YEARS OF AGE OR MORE, he patronizes a prostitute and the person patronized is less than [eleven] FIFTEEN years of age.

Patronizing a prostitute in the first degree is a class D felony.

S 4. The penal law is amended by adding a new section 230.06-a to read as follows:

S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

A PERSON IS GUILTY OF SEXUAL EXPLOITATION OF A CHILD WHEN:

1. BEING EIGHTEEN YEARS OF AGE OR MORE HE PATRONIZES A PROSTITUTE AND THE PERSON PATRONIZED IS LESS THAN THIRTEEN YEARS OF AGE; OR

2. HE PATRONIZES A PROSTITUTE AND THE PERSON PATRONIZED IS LESS THAN ELEVEN YEARS OF AGE.

SEXUAL EXPLOITATION OF A CHILD IS A CLASS B FELONY.

S 5. Section 230.07 of the penal law, as amended by chapter 74 of the laws of 2007, is amended to read as follows:

S 230.07 Patronizing a prostitute; defense.

In any prosecution for patronizing a prostitute in the first or second degrees OR SEXUAL EXPLOITATION OF A CHILD, it is [a] AN AFFIRMATIVE defense that the defendant did not have reasonable grounds to believe that the person was less than the age specified.

S 6. The opening paragraph of section 230.10 of the penal law is amended to read as follows:

In any prosecution for SEXUAL EXPLOITATION OF A CHILD, prostitution or patronizing a prostitute, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it is no defense that:

S 7. The penal law is amended by adding a new section 230.11 to read as follows:

S 230.11 PROSTITUTION; DEFENSE.

IN ANY PROSECUTION FOR UNLAWFUL PROSTITUTION OR CRIMINAL PROSTITUTION, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS A VICTIM OF SEX TRAFFICKING.

S 8. Subdivision 2 of section 230.30 of the penal law, as amended by chapter 627 of the laws of 1978, is amended to read as follows:

2. Advances or profits from prostitution of a person less than [sixteen] SEVENTEEN years old.

S 9. Section 230.33 of the penal law, as added by chapter 450 of the laws of 2005, is amended to read as follows:

S 230.33 Compelling prostitution.

A person is guilty of compelling prostitution when, being twenty-one years of age or older, he or she knowingly advances prostitution by compelling a person less than [sixteen] SEVENTEEN years old, by force or intimidation, to engage in prostitution.

Compelling prostitution is a class B felony.

S 10. Subdivision 2 of section 240.37 of the penal law, as added by chapter 344 of the laws of 1976, is amended to read as follows:

2. Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly

interferes with the free passage of other persons, for the purpose of prostitution, or of patronizing a prostitute as those terms are defined in article two hundred thirty of [the penal law] THIS CHAPTER, shall be guilty of a violation and is guilty of a class B misdemeanor if such person has previously been convicted of a violation of this section or of [sections] SECTION 230.00, 230.01 or 230.05 of [the penal law] THIS CHAPTER.

S 11. Section 60.13 of the penal law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

S 60.13 Authorized dispositions; felony sex offenses.

When a person is to be sentenced upon a conviction for any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a prostitute in the first degree as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of these crimes, the court must sentence the defendant in accordance with the provisions of section 70.80 of this title.

S 12. Paragraph (a) of subdivision 1 of section 70.80 of the penal law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(a) For the purposes of this section, a "felony sex offense" means a conviction of any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a prostitute in the first degree as defined in section 230.06 of this chapter, incest in the second degree as defined in section 255.26 of this chapter, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of the above.

S 13. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or

S 14. Subdivision 2 of section 60.42 of the criminal procedure law, as added by chapter 230 of the laws of 1975, is amended to read as follows:

2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 OR 230.01 of the penal law within three years prior to the sex offense which is the subject of the prosecution; or

S 15. Paragraph (e) of subdivision 1 of section 160.10 of the criminal procedure law, as added by chapter 344 of the laws of 1976, is amended and a new paragraph (f) is added to read as follows:

(e) Loitering for the purpose of engaging in a prostitution offense as defined in subdivision two of section 240.37 of the penal law[.]; OR

(F) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.01 OF THE PENAL LAW.

S 16. Subdivision 6 of section 380.50 of the criminal procedure law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

6. Regardless of whether the victim requests to make a statement with regard to the defendant's sentence, where the defendant is sentenced for a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or 230.32, the prosecutor shall, within sixty days of the imposition of sentence, provide the victim with a form on which the victim may indicate a demand to be informed of any petition to change the name of such defendant. Such forms shall be maintained by such prosecutor. Upon receipt of a notice of a petition to change the name of any such defendant, pursuant to subdivision two of section sixty-two of the civil rights law, the prosecutor shall promptly notify the victim at the most current address or telephone number provided by such victim in the most reasonable and expedient possible manner of the time and place such petition will be presented to the court.

S 17. Subdivision 2 of section 61 of the civil rights law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

2. If the petitioner stands convicted of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or 230.32, and is currently confined as an inmate in any correctional facility or currently under the supervision of the state division of parole or a county probation department as a result of such conviction, the petition shall for each such conviction specify such felony conviction, the date of such conviction or convictions, and the court in which such conviction or convictions were entered.

S 18. Subdivision 2 of section 62 of the civil rights law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

2. If the petition be to change the name of a person currently confined as an inmate in any correctional facility or currently under the supervision of the state division of parole or a county probation department as a result of a conviction for a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or 230.32, notice of the time and place when and where the petition will be presented shall be served, in like manner as a notice of a motion upon an attorney in an action, upon the district attorney of every county in which such person has been convicted of such felony and upon the court or courts in which the sentence for such felony was entered. Unless a shorter period of time is ordered by the court, said notice shall be served upon each such district attorney and court or courts not less than sixty days prior to the date on which such petition is noticed to be heard.

S 19. The closing paragraph of section 64 of the civil rights law, as separately amended by chapters 258, 320 and 481 of the laws of 2006, is amended to read as follows:

Upon compliance with the order and the filing of the affidavit of the publication, as provided in this section, the clerk of the court in which the order has been entered shall certify that the order has been complied with; and, if the petition states that the petitioner stands convicted of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or 230.32, such clerk (1) shall deliver, by first class mail, a copy of such certified order to the division of criminal justice services at its office in the county of Albany and (2) upon the clerk of the court reviewing the petitioner's application for name change and subsequent in-court inquiry, may, in the clerk's discretion, deliver, by first class mail, the petitioner's new name with such certified order to the court of competent jurisdiction which imposed the orders of support. Such certification shall appear on the original order and on any certified copy thereof and shall be entered in the clerk's minutes of the proceeding.

S 20. Paragraph (d) of subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, is amended to read as follows:

(d) any of the following felonies, or an attempt thereof where such attempt is a felony offense:

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the

penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; SEXUAL EXPLOITATION OF A CHILD, AS DEFINED IN SECTION 230.06-A OF THE PENAL LAW; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent [materials] MATERIAL to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent [materials] MATERIAL to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or

S 21. Subdivision 2 of section 344.4 of the family court act, as added by chapter 761 of the laws of 1987, is amended to read as follows:

2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 OR 230.01 of the penal law within three years prior to the sex offense which is the subject of the juvenile delinquency proceeding; or

S 22. Subdivision (p) of section 10.03 of the mental hygiene law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(p) "Sex offense" means an act or acts constituting: (1) any felony defined in article one hundred thirty of the penal law, including a sexually motivated felony; (2) patronizing a prostitute in the first degree as defined in section 230.06 of the penal law, incest in the second degree as defined in section 255.26 of the penal law, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THE PENAL LAW, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing

offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

S 23. Subdivision 2 of section 353 of the multiple dwelling law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

2. If there be two or more convictions in such dwelling within a period of six months, under sections 230.00, 230.01, 230.25, or 230.40 of the penal law.

S 24. Subdivision 1 of section 2302 of the public health law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

1. Every person arrested charged with a violation of section 230.00, 230.01 or 230.40 of the penal law, or arrested for failure to comply with the order of a judge or justice issued pursuant to the provisions of section two thousand three hundred one of this chapter, or any person arrested for frequenting disorderly houses or houses of prostitution, shall be reported within twenty-four hours by the court or magistrate before whom such person is arraigned to the health officer of the health district in which the alleged offense occurred, and shall be examined in accordance with the provisions of section two thousand three hundred of this chapter.

S 25. Section 2324-a of the public health law, as amended by chapter 260 of the laws of 1978, is amended to read as follows:

S 2324-a. Presumptive evidence. For the purposes of this title, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25 or 230.30 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 26. Subdivision 2 of section 715 of the real property actions and proceedings law, as added by chapter 494 of the laws of 1976, is amended to read as follows:

2. For purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 27. Subdivision 3 of section 231 of the real property law, as amended by chapter 203 of the laws of 1980, is amended to read as follows:

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30, or 230.40 of the penal law arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owners knowledge of the same.

S 28. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 345 of the laws of 2007, is amended to read as follows:

(c) The offenses referred to in subparagraph (i) of paragraph (b) of subdivision one and subparagraph (i) of paragraph (c) of subdivision two of this section that result in disqualification for a period of five years shall include a conviction under sections 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00, 230.01, 230.05, 230.06, 230.06-A, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

S 29. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.