

3174--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 23, 2013

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Introduced by M. of A. SEPULVEDA -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the correction law, the criminal procedure law, the civil rights 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:

1     Section 1. Section 230.00 of the penal law, as amended by chapter 169  
2     of the laws of 1969, is amended to read as follows:  
3     S 230.00 [Prostitution] CRIMINAL PROSTITUTION.  
4     A person is guilty of CRIMINAL prostitution when, BEING SEVENTEEN  
5     YEARS OLD OR MORE, such person engages or agrees or offers to engage in  
6     sexual conduct with another person in return for a fee.  
7     [Prostitution] CRIMINAL PROSTITUTION is a class B [Misdemeanor] MISDE-  
8     MEANOR.  
9     S 2. The penal law is amended by adding a new section 230.01 to read  
10    as follows:  
11    S 230.01 UNLAWFUL PROSTITUTION.  
12    A PERSON IS GUILTY OF UNLAWFUL PROSTITUTION WHEN, BEING LESS THAN  
13    SEVENTEEN YEARS OLD, SUCH PERSON ENGAGES OR AGREES OR OFFERS TO ENGAGE  
14    IN SEXUAL CONDUCT WITH ANOTHER PERSON IN RETURN FOR A FEE.  
15    UNLAWFUL PROSTITUTION IS A VIOLATION, PROVIDED, HOWEVER, THAT ANY  
16    PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A CRIME DEFINED IN THIS  
17    ARTICLE OR SECTION 240.37 OF THIS PART SHALL BE GUILTY OF A CLASS B  
18    MISDEMEANOR.

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

LBD00400-03-4

1 S 3. Sections 230.05 and 230.06 of the penal law, as added by chapter  
2 627 of the laws of 1978, are amended to read as follows:

3 S 230.05 Patronizing a prostitute in the second degree.

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

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

9 S 230.06 Patronizing a prostitute in the first degree.

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

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

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

17 S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

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

19 1. BEING EIGHTEEN YEARS OF AGE OR MORE HE OR SHE PATRONIZES A PROSTI-  
20 TUTE AND THE PERSON PATRONIZED IS LESS THAN THIRTEEN YEARS OF AGE; OR

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

23 SEXUAL EXPLOITATION OF A CHILD IS A CLASS B FELONY.

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

26 S 230.07 Patronizing a prostitute; defense.

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

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

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

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

39 S 230.11 PROSTITUTION; DEFENSE.

40 IN ANY PROSECUTION FOR UNLAWFUL PROSTITUTION OR CRIMINAL PROSTITUTION,  
41 IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT IS A VICTIM OF SEX TRAF-  
42 FICKING.

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

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

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

49 S 230.33 Compelling prostitution.

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

54 Compelling prostitution is a class B felony.

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

1 2. Any person who remains or wanders about in a public place and  
2 repeatedly beckons to, or repeatedly stops, or repeatedly attempts to  
3 stop, or repeatedly attempts to engage passers-by in conversation, or  
4 repeatedly stops or attempts to stop motor vehicles, or repeatedly  
5 interferes with the free passage of other persons, for the purpose of  
6 prostitution, or of patronizing a prostitute as those terms are defined  
7 in article two hundred thirty of [the penal law] THIS CHAPTER, shall be  
8 guilty of a violation and is guilty of a class B misdemeanor if such  
9 person has previously been convicted of a violation of this section or  
10 of [sections] SECTION 230.00, 230.01 or 230.05 of [the penal law] THIS  
11 PART.

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

14 S 60.13 Authorized dispositions; felony sex offenses.

15 When a person is to be sentenced upon a conviction for any felony  
16 defined in article one hundred thirty of this chapter, including a sexu-  
17 ally motivated felony, or patronizing a prostitute in the first degree  
18 as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A  
19 CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, incest in the  
20 second degree as defined in section 255.26 of this chapter, or incest in  
21 the first degree as defined in section 255.27 of this chapter, or a  
22 felony attempt or conspiracy to commit any of these crimes, the court  
23 must sentence the defendant in accordance with the provisions of section  
24 70.80 of this title.

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

28 (a) For the purposes of this section, a "felony sex offense" means a  
29 conviction of any felony defined in article one hundred thirty of this  
30 chapter, including a sexually motivated felony, or patronizing a prosti-  
31 tute in the first degree as defined in section 230.06 of this chapter,  
32 incest in the second degree as defined in section 255.26 of this chap-  
33 ter, SEXUAL EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF  
34 THIS CHAPTER, or incest in the first degree as defined in section 255.27  
35 of this chapter, or a felony attempt or conspiracy to commit any of the  
36 above.

37 S 13. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
38 168-a of the correction law, as amended by chapter 405 of the laws of  
39 2008, is amended to read as follows:

40 (i) a conviction of or a conviction for an attempt to commit any of  
41 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,  
42 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two  
43 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20  
44 or 135.25 of such law relating to kidnapping offenses, provided the  
45 victim of such kidnapping or related offense is less than seventeen  
46 years old and the offender is not the parent of the victim, or section  
47 230.04, where the person patronized is in fact less than seventeen years  
48 of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section  
49 230.30, or section 230.32 or 230.33 of the penal law, or

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

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

1 S 15. Paragraph (d) of subdivision 1 of section 160.10 of the criminal  
2 procedure law, as amended by chapter 232 of the laws of 2010, is amended  
3 and a new paragraph (e) is added to read as follows:

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

6 (E) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.01 OF THE PENAL  
7 LAW.

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

11 6. Regardless of whether the victim requests to make a statement with  
12 regard to the defendant's sentence, where the defendant is sentenced for  
13 a violent felony offense as defined in section 70.02 of the penal law or  
14 a felony defined in article one hundred twenty-five of such law or any  
15 of the following provisions of such law sections 130.25, 130.30, 130.40,  
16 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,  
17 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or  
18 230.32, the prosecutor shall, within sixty days of the imposition of  
19 sentence, provide the victim with a form on which the victim may indi-  
20 cate a demand to be informed of any petition to change the name of such  
21 defendant. Such forms shall be maintained by such prosecutor. Upon  
22 receipt of a notice of a petition to change the name of any such defend-  
23 ant, pursuant to subdivision two of section sixty-two of the civil  
24 rights law, the prosecutor shall promptly notify the victim at the most  
25 current address or telephone number provided by such victim in the most  
26 reasonable and expedient possible manner of the time and place such  
27 petition will be presented to the court.

28 S 17. Subdivision 2 of section 61 of the civil rights law, as amended  
29 by section 54 of subpart B of part C of chapter 62 of the laws of 2011,  
30 is amended to read as follows:

31 2. If the petitioner stands convicted of a violent felony offense as  
32 defined in section 70.02 of the penal law or a felony defined in article  
33 one hundred twenty-five of such law or any of the following provisions  
34 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,  
35 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,  
36 230.06-A, subdivision two of section 230.30 or 230.32, and is currently  
37 confined as an inmate in any correctional facility or currently under  
38 the supervision of the department of corrections and community super-  
39 vision or a county probation department as a result of such conviction,  
40 the petition shall for each such conviction specify such felony  
41 conviction, the date of such conviction or convictions, and the court in  
42 which such conviction or convictions were entered.

43 S 18. Subdivision 2 of section 62 of the civil rights law, as amended  
44 by section 55 of subpart B of part C of chapter 62 of the laws of 2011,  
45 is amended to read as follows:

46 2. If the petition be to change the name of a person currently  
47 confined as an inmate in any correctional facility or currently under  
48 the supervision of the department of corrections and community super-  
49 vision or a county probation department as a result of a conviction for  
50 a violent felony offense as defined in section 70.02 of the penal law or  
51 a felony defined in article one hundred twenty-five of such law or any  
52 of the following provisions of such law sections 130.25, 130.30, 130.40,  
53 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,  
54 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or  
55 230.32, notice of the time and place when and where the petition will be  
56 presented shall be served, in like manner as a notice of a motion upon

1 an attorney in an action, upon the district attorney of every county in  
2 which such person has been convicted of such felony and upon the court  
3 or courts in which the sentence for such felony was entered. Unless a  
4 shorter period of time is ordered by the court, said notice shall be  
5 served upon each such district attorney and court or courts not less  
6 than sixty days prior to the date on which such petition is noticed to  
7 be heard.

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

11 Upon compliance with the order and the filing of the affidavit of the  
12 publication, as provided in this section, the clerk of the court in  
13 which the order has been entered shall certify that the order has been  
14 complied with; and, if the petition states that the petitioner stands  
15 convicted of a violent felony offense as defined in section 70.02 of the  
16 penal law or a felony defined in article one hundred twenty-five of such  
17 law or any of the following provisions of such law sections 130.25,  
18 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred  
19 sixty-three, 135.10, 135.25, 230.05, 230.06, 230.06-A, subdivision two  
20 of section 230.30 or 230.32, such clerk (1) shall deliver, by first  
21 class mail, a copy of such certified order to the division of criminal  
22 justice services at its office in the county of Albany and (2) upon the  
23 clerk of the court reviewing the petitioner's application for name  
24 change and subsequent in-court inquiry, may, in the clerk's discretion,  
25 deliver, by first class mail, the petitioner's new name with such certi-  
26 fied order to the court of competent jurisdiction which imposed the  
27 orders of support. Such certification shall appear on the original  
28 order and on any certified copy thereof and shall be entered in the  
29 clerk's minutes of the proceeding.

30 S 20. Subdivision 2 of section 344.4 of the family court act, as added  
31 by chapter 761 of the laws of 1987, is amended to read as follows:

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

36 S 21. Subdivision (p) of section 10.03 of the mental hygiene law, as  
37 added by chapter 7 of the laws of 2007, is amended to read as follows:

38 (p) "Sex offense" means an act or acts constituting: (1) any felony  
39 defined in article one hundred thirty of the penal law, including a  
40 sexually motivated felony; (2) patronizing a prostitute in the first  
41 degree as defined in section 230.06 of the penal law, incest in the  
42 second degree as defined in section 255.26 of the penal law, SEXUAL  
43 EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THE PENAL LAW,  
44 or incest in the first degree as defined in section 255.27 of the penal  
45 law; (3) a felony attempt or conspiracy to commit any of the foregoing  
46 offenses set forth in this subdivision; or (4) a designated felony, as  
47 defined in subdivision (f) of this section, if sexually motivated and  
48 committed prior to the effective date of this article.

49 S 22. Subdivision 2 of section 353 of the multiple dwelling law, as  
50 amended by chapter 680 of the laws of 1967, is amended to read as  
51 follows:

52 2. If there be two or more convictions in such dwelling within a peri-  
53 od of six months, under [sections] SECTION 230.00, 230.01, 230.25, or  
54 230.40 of the penal law.

55 S 23. Section 2324-a of the public health law, as amended by chapter  
56 260 of the laws of 1978, is amended to read as follows:

1 S 2324-a. Presumptive evidence. For the purposes of this title, two or  
2 more convictions of any person or persons had, within a period of one  
3 year, for any of the offenses described in section 230.00, 230.01,  
4 230.05, 230.20, 230.25 or 230.30 of the penal law arising out of conduct  
5 engaged in at the same real property consisting of a dwelling as that  
6 term is defined in subdivision four of section four of the multiple  
7 dwelling law shall be presumptive evidence of conduct constituting use  
8 of the premises for purposes of prostitution.

9 S 24. Subdivision 2 of section 715 of the real property actions and  
10 proceedings law, as added by chapter 494 of the laws of 1976, is amended  
11 to read as follows:

12 2. For purposes of this section, two or more convictions of any person  
13 or persons had, within a period of one year, for any of the offenses  
14 described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30 or  
15 230.40 of the penal law arising out of conduct engaged in at the same  
16 real property consisting of a dwelling as that term is defined in subdi-  
17 vision four of section four of the multiple dwelling law shall be  
18 presumptive evidence of conduct constituting use of the premises for  
19 purposes of prostitution.

20 S 25. Subdivision 3 of section 231 of the real property law, as  
21 amended by chapter 203 of the laws of 1980, is amended to read as  
22 follows:

23 3. For the purposes of this section, two or more convictions of any  
24 person or persons had, within a period of one year, for any of the  
25 offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25,  
26 230.30, or 230.40 of the penal law arising out of conduct engaged in at  
27 the same premises consisting of a dwelling as that term is defined in  
28 subdivision four of section four of the multiple dwelling law shall be  
29 presumptive evidence of unlawful use of such premises and of the owners  
30 knowledge of the same.

31 S 26. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle  
32 and traffic law, as amended by chapter 400 of the laws of 2011, is  
33 amended to read as follows:

34 (c) The offenses referred to in subparagraph (i) of paragraph (b) of  
35 subdivision one and subparagraph (i) of paragraph (c) of subdivision two  
36 of this section that result in disqualification for a period of five  
37 years shall include a conviction under sections 100.10, 105.13, 115.05,  
38 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,  
39 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,  
40 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,  
41 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,  
42 230.01, 230.05, 230.06, 230.06-A, 230.20, 235.05, 235.06, 235.07,  
43 235.21, 240.06, 245.00, 260.10, subdivision two of section 260.20 and  
44 sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35  
45 of the penal law or an attempt to commit any of the aforesaid offenses  
46 under section 110.00 of the penal law, or any similar offenses committed  
47 under a former section of the penal law, or any offenses committed under  
48 a former section of the penal law which would constitute violations of  
49 the aforesaid sections of the penal law, or any offenses committed  
50 outside this state which would constitute violations of the aforesaid  
51 sections of the penal law.

52 S 27. This act shall take effect on the ninetieth day after it shall  
53 have become a law.