

8749

I N A S S E M B L Y

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

AN ACT to amend the criminal procedure law, the penal law and chapter
555 of the laws of 2013, amending the criminal procedure law relating
to the treatment of certain juveniles for certain prostitution
offenses, in relation to the treatment of certain persons aged sixteen
or seventeen for certain prostitution offenses

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

1 Section 1. Section 170.30 of the criminal procedure law is amended by
2 adding a new subdivision 4 to read as follows:
3 4. AFTER ARRAIGNMENT UPON AN INFORMATION, A SIMPLIFIED INFORMATION, A
4 PROSECUTOR'S INFORMATION OR MISDEMEANOR COMPLAINT ON A CHARGE OF PROSTI-
5 TUTION PURSUANT TO SECTION 230.00 OF THE PENAL LAW OR LOITERING FOR THE
6 PURPOSES OF PROSTITUTION PURSUANT TO SUBDIVISION TWO OF SECTION 240.37
7 OF THE PENAL LAW, PROVIDED THAT THE PERSON DOES NOT STAND CHARGED WITH
8 LOITERING FOR THE PURPOSE OF PATRONIZING A PROSTITUTE, WHERE SUCH
9 OFFENSE ALLEGEDLY OCCURRED WHEN THE PERSON WAS SIXTEEN OR SEVENTEEN
10 YEARS OF AGE, THE LOCAL CRIMINAL COURT MAY DISMISS SUCH CHARGE IN ITS
11 DISCRETION IN THE INTEREST OF JUSTICE ON THE GROUND THAT A DEFENDANT
12 PARTICIPATED IN SERVICES PROVIDED TO HIM OR HER.
13 S 2. Section 170.80 of the criminal procedure law, as added by chapter
14 555 of the laws of 2013, is amended to read as follows:
15 S 170.80 Proceedings regarding certain prostitution charges; certain
16 [teenagers] PERSONS AGED SIXTEEN OR SEVENTEEN.
17 1. Notwithstanding any other provision of law, [when a person is
18 arrested for prostitution] AT ANY TIME AT OR AFTER ARRAIGNMENT ON A
19 CHARGE OF PROSTITUTION PURSUANT TO SECTION 230.00 OF THE PENAL LAW or
20 loitering for the purposes of prostitution [and] PURSUANT TO SUBDIVISION
21 TWO OF SECTION 240.37 OF THE PENAL LAW, PROVIDED THAT THE PERSON DOES
22 NOT STAND CHARGED WITH LOITERING FOR THE PURPOSE OF PATRONIZING A PROS-
23 TITUTE, WHERE such offense allegedly occurred when the person was
24 sixteen or seventeen years of age[:]

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

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1 1. unless] EXCEPT WHERE, after consultation with counsel, a knowing
2 and voluntary plea of guilty has been entered to such charge, any judge
3 or justice hearing any stage of such case may, upon consent of the
4 defendant after consultation with counsel[,]:

5 (A) CONDITIONALLY convert such charge IN ACCORDANCE WITH SUBDIVISION
6 THREE OF THIS SECTION and retain it as a person in need of supervision
7 proceeding for all purposes, and shall [have the authority to] MAKE SUCH
8 PROCEEDING FULLY SUBJECT TO THE PROVISIONS AND grant any relief avail-
9 able under article seven of the family court act[.]; AND/OR

10 (B) ORDER THE PROVISION OF ANY OF THE SPECIALIZED SERVICES ENUMERATED
11 IN TITLE EIGHT-A OF ARTICLE SIX OF THE SOCIAL SERVICES LAW, AS MAY BE
12 REASONABLY AVAILABLE.

13 2. [Any adverse finding and all records of the investigation and
14 proceedings relating to such charge shall be promptly expunged upon the
15 person's eighteenth birthday or the conclusion of the proceedings on the
16 charge before the court, whichever occurs later.] In the event of a
17 conviction [or] BY plea [of guilty] OR VERDICT to such charge or charges
18 of prostitution or loitering for the purposes of prostitution as
19 described in [the opening paragraph and] subdivision one of this
20 section, the court must find that the person is a youthful offender FOR
21 THE PURPOSE OF SUCH CHARGE and proceed in accordance with article seven
22 hundred twenty of this chapter, provided, however, that [where the
23 conviction for which the youthful offender finding is substituted is
24 loitering for the purposes of prostitution as defined in section 240.37
25 of the penal law,] the available sentence shall be the sentence that may
26 be imposed for a violation as defined in SUBDIVISION THREE OF SECTION
27 10.00 OF the penal law. IN SUCH CASE, THE RECORDS OF THE INVESTIGATION
28 AND PROCEEDINGS RELATING TO SUCH CHARGE SHALL BE SEALED IN ACCORDANCE
29 WITH SECTION 720.35 OF THIS CHAPTER.

30 3. (A) WHEN A CHARGE OF PROSTITUTION OR LOITERING FOR THE PURPOSES OF
31 PROSTITUTION HAS BEEN CONDITIONALLY CONVERTED TO A PERSON IN NEED OF
32 SUPERVISION PROCEEDING PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE
33 DEFENDANT SHALL BE DEEMED A "SEXUALLY EXPLOITED CHILD" AS DEFINED IN
34 SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL
35 SERVICES LAW AND THEREFORE SHALL NOT BE CONSIDERED AN ADULT FOR PURPOSES
36 RELATED TO THE CHARGES IN THE PERSON IN NEED OF SUPERVISION PROCEEDING.
37 SECTIONS SEVEN HUNDRED EIGHTY-ONE, SEVEN HUNDRED EIGHTY-TWO, SEVEN
38 HUNDRED EIGHTY-TWO-A, SEVEN HUNDRED EIGHTY-THREE AND SEVEN HUNDRED
39 EIGHTY-FOUR OF THE FAMILY COURT ACT SHALL APPLY TO ANY PROCEEDING CONDI-
40 TIONALLY CONVERTED UNDER THIS SECTION.

41 (B) THE COURT AFTER HEARING FROM THE PARTIES SHALL STATE THE CONDITION
42 OR CONDITIONS OF SUCH CONVERSION, WHICH MAY INCLUDE THE INDIVIDUAL'S
43 PARTICIPATION IN SPECIALIZED SERVICES PROVIDED PURSUANT TO TITLE EIGHT-A
44 OF ARTICLE SIX OF THE SOCIAL SERVICES LAW AND OTHER APPROPRIATE SERVICES
45 AVAILABLE TO PERSONS IN NEED OF SUPERVISION IN ACCORDANCE WITH ARTICLE
46 SEVEN OF THE FAMILY COURT ACT.

47 (C)(I) THE COURT MAY, UPON WRITTEN APPLICATION BY THE PEOPLE AT ANY
48 TIME DURING THE PENDENCY OF THE PERSON IN NEED OF SUPERVISION PROCEEDING
49 OR DURING ANY DISPOSITION THEREOF, BUT IN NO EVENT LATER THAN THE INDI-
50 VIDUAL'S EIGHTEENTH BIRTHDAY, RESTORE THE ACCUSATORY INSTRUMENT IF THE
51 COURT IS SATISFIED BY COMPETENT PROOF THAT THE INDIVIDUAL, WITHOUT JUST
52 CAUSE, IS NOT IN SUBSTANTIAL COMPLIANCE WITH THE CONDITION OR CONDITIONS
53 OF THE CONVERSION.

54 (II) NOTICE OF SUCH AN APPLICATION TO RESTORE AN ACCUSATORY INSTRUMENT
55 SHALL BE SERVED ON THE PERSON AND HIS OR HER COUNSEL BY THE COURT. THE
56 NOTICE SHALL INCLUDE A STATEMENT SETTING FORTH A REASONABLE DESCRIPTION

1 OF WHY THE PERSON IS NOT IN SUBSTANTIAL COMPLIANCE WITH THE CONDITION OR
2 CONDITIONS OF THE CONVERSION AND A DATE UPON WHICH SUCH PERSON SHALL
3 APPEAR BEFORE THE COURT. THE COURT SHALL AFFORD THE PERSON THE RIGHT TO
4 COUNSEL AND THE RIGHT TO BE HEARD. UPON SUCH APPEARANCE, THE COURT MUST
5 ADVISE THE PERSON OF THE CONTENTS OF THE NOTICE AND THE CONSEQUENCES OF
6 A FINDING OF FAILURE TO SUBSTANTIALLY COMPLY WITH THE CONDITIONS OF
7 CONVERSION. AT THE TIME OF SUCH APPEARANCE THE COURT MUST ASK THE PERSON
8 WHETHER HE OR SHE WISHES TO MAKE ANY STATEMENT WITH RESPECT TO SUCH
9 ALLEGED FAILURE TO SUBSTANTIALLY COMPLY. IN DETERMINING WHETHER SUCH
10 PERSON HAS FAILED TO SUBSTANTIALLY COMPLY WITH THE TERMS OF THE CONVER-
11 SION, THE COURT SHALL CONDUCT A HEARING AT WHICH TIME SUCH PERSON MAY
12 CROSS-EXAMINE WITNESSES AND PRESENT EVIDENCE ON HIS OR HER OWN BEHALF.
13 ANY FINDINGS THE COURT SHALL MAKE, SHALL BE MADE ON THE COURT RECORD. IF
14 THE COURT FINDS THAT SUCH PERSON DID NOT SUBSTANTIALLY COMPLY, IT MAY
15 RESTORE THE ACCUSATORY INSTRUMENT PURSUANT TO SUBPARAGRAPH (I) OF THIS
16 PARAGRAPH, MODIFY THE TERMS OF CONVERSION IN ACCORDANCE WITH THIS
17 SECTION OR OTHERWISE CONTINUE SUCH TERMS AS IN ITS DISCRETION IT DEEMS
18 JUST AND PROPER.

19 (III) IF SUCH ACCUSATORY INSTRUMENT IS RESTORED PURSUANT TO SUBPARA-
20 GRAPH (I) OF THIS PARAGRAPH, THE PROCEEDING SHALL CONTINUE IN ACCORDANCE
21 WITH SUBDIVISION TWO OF THIS SECTION. IF THE INDIVIDUAL DOES NOT COMPLY
22 WITH SERVICES OR DOES NOT RETURN TO COURT, THE INDIVIDUAL SHALL BE
23 RETURNED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SEVEN OF THE FAMI-
24 LY COURT ACT.

25 4. AT THE CONCLUSION OF A PERSON IN NEED OF SUPERVISION PROCEEDING
26 PURSUANT TO THIS SECTION, ALL RECORDS OF THE INVESTIGATION AND
27 PROCEEDINGS RELATING TO SUCH PROCEEDINGS, INCLUDING RECORDS CREATED
28 BEFORE THE CHARGE WAS CONDITIONALLY CONVERTED, SHALL BE SEALED IN
29 ACCORDANCE WITH SECTION 720.35 OF THIS CHAPTER.

30 S 3. Section 720.15 of the criminal procedure law is amended by adding
31 a new subdivision 4 to read as follows:

32 4. NOTWITHSTANDING ANY PROVISION IN THIS ARTICLE, A PERSON CHARGED
33 WITH PROSTITUTION AS DEFINED IN SECTION 230.00 OF THE PENAL LAW OR
34 LOITERING FOR THE PURPOSES OF PROSTITUTION AS DEFINED IN SUBDIVISION TWO
35 OF SECTION 240.37 OF THE PENAL LAW, PROVIDED THAT THE PERSON DOES NOT
36 STAND CHARGED WITH LOITERING FOR THE PURPOSE OF PATRONIZING A PROSTI-
37 TUTE, AND SUCH PERSON IS AGED SIXTEEN OR SEVENTEEN WHEN SUCH OFFENSE
38 OCCURRED, REGARDLESS OF WHETHER SUCH PERSON (I) HAD PRIOR TO COMMENCE-
39 MENT OF TRIAL OR ENTRY OF A PLEA OF GUILTY BEEN CONVICTED OF A CRIME OR
40 FOUND A YOUTHFUL OFFENDER, OR (II) SUBSEQUENT TO SUCH CONVICTION FOR
41 PROSTITUTION OR LOITERING FOR PROSTITUTION IS CONVICTED OF A CRIME OR
42 FOUND A YOUTHFUL OFFENDER, THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF
43 THIS SECTION REQUIRING OR AUTHORIZING THE ACCUSATORY INSTRUMENT FILED
44 AGAINST A YOUTH TO BE SEALED, AND THE ARRAIGNMENT AND ALL PROCEEDINGS IN
45 THE ACTION TO BE CONDUCTED IN PRIVATE SHALL APPLY.

46 S 4. The criminal procedure law is amended by adding a new section
47 720.25 to read as follows:

48 S 720.25 YOUTHFUL OFFENDER ADJUDICATION; CERTAIN EXEMPTIONS.

49 NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF LAW:

50 1. WHERE THE COURT IS REQUIRED TO FIND THAT A PERSON IS A YOUTHFUL
51 OFFENDER PURSUANT TO SECTION 170.80 OF THIS CHAPTER, THE FACT THAT SUCH
52 PERSON HAS PREVIOUSLY BEEN CONVICTED OF A CRIME OR ADJUDICATED A YOUTH-
53 FUL OFFENDER SHALL NOT PREVENT SUCH PERSON FROM BEING ADJUDICATED A
54 YOUTHFUL OFFENDER AS REQUIRED BY SUCH SECTION; AND

55 2. A YOUTHFUL OFFENDER ADJUDICATION PURSUANT TO SECTION 170.80 OF THIS
56 CHAPTER SHALL NOT BE CONSIDERED IN DETERMINING WHETHER A PERSON IS AN

1 ELIGIBLE YOUTH, OR IN DETERMINING WHETHER TO FIND A PERSON A YOUTHFUL
2 OFFENDER, IN ANY SUBSEQUENT YOUTHFUL OFFENDER ADJUDICATION.

3 S 5. Subdivision 1 of section 720.35 of the criminal procedure law, as
4 amended by section 87 of subpart B of part C of chapter 62 of the laws
5 of 2011, is amended to read as follows:

6 1. A youthful offender adjudication is not a judgment of conviction
7 for a crime or any other offense, and does not operate as a disquali-
8 fication of any person so adjudged to hold public office or public
9 employment or to receive any license granted by public authority but
10 shall be deemed a conviction only for the purposes of transfer of super-
11 vision and custody pursuant to section two hundred fifty-nine-m of the
12 executive law. A DEFENDANT FOR WHOM A YOUTHFUL OFFENDER ADJUDICATION
13 WAS SUBSTITUTED, WHO WAS ORIGINALLY CHARGED WITH PROSTITUTION AS DEFINED
14 IN SECTION 230.00 OF THE PENAL LAW OR LOITERING FOR THE PURPOSES OF
15 PROSTITUTION AS DEFINED IN SUBDIVISION TWO OF SECTION 240.37 OF THE
16 PENAL LAW PROVIDED THAT THE PERSON DOES NOT STAND CHARGED WITH LOITERING
17 FOR THE PURPOSE OF PATRONIZING A PROSTITUTE, FOR AN OFFENSE ALLEGEDLY
18 COMMITTED WHEN HE OR SHE WAS SIXTEEN OR SEVENTEEN YEARS OF AGE, SHALL BE
19 DEEMED A "SEXUALLY EXPLOITED CHILD" AS DEFINED IN SUBDIVISION ONE OF
20 SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW AND THERE-
21 FORE SHALL NOT BE CONSIDERED AN ADULT FOR PURPOSES RELATED TO THE CHARG-
22 ES IN THE YOUTHFUL OFFENDER PROCEEDING OR A PROCEEDING UNDER SECTION
23 170.80 OF THIS CHAPTER.

24 S 6. Section 60.02 of the penal law is amended by adding a new subdi-
25 vision 4 to read as follows:

26 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW IN THIS SECTION, IF THE
27 SENTENCE IS TO BE IMPOSED UPON A YOUTHFUL OFFENDER FINDING WHICH HAS
28 BEEN SUBSTITUTED FOR A CONVICTION OF PROSTITUTION OR LOITERING FOR THE
29 PURPOSES OF PROSTITUTION PROVIDED THAT THE PERSON DOES NOT STAND CHARGED
30 WITH LOITERING FOR THE PURPOSE OF PATRONIZING A PROSTITUTE, AND SUCH
31 OFFENSE OCCURRED WHEN THE PERSON WAS SIXTEEN OR SEVENTEEN YEARS OF AGE,
32 THE COURT MUST IMPOSE A SENTENCE AUTHORIZED TO BE IMPOSED UPON A PERSON
33 CONVICTED OF A VIOLATION AS DEFINED IN SUBDIVISION THREE OF SECTION
34 10.00 OF THE PENAL LAW AND WHERE THE COURT IMPOSES A REVOCABLE SENTENCE
35 AUTHORIZED FOR A VIOLATION MAY ORDER ANY OF THE SPECIALIZED SERVICES
36 ENUMERATED IN TITLE EIGHT-A OF ARTICLE SIX OF THE SOCIAL SERVICES LAW OR
37 OTHER APPROPRIATE SERVICES MADE AVAILABLE TO PERSONS IN NEED OF SUPER-
38 VISION IN ACCORDANCE WITH ARTICLE SEVEN OF THE FAMILY COURT ACT.

39 S 7. Section 2 of chapter 555 of the laws of 2013, amending the crimi-
40 nal procedure law relating to the treatment of certain juveniles for
41 certain prostitution offenses, is amended to read as follows:

42 S 2. This act shall take effect [immediately] ON THE ONE HUNDRED TWEN-
43 TIETH DAY AFTER IT SHALL HAVE BECOME A LAW and shall apply to such
44 offenses alleged to have been committed on or after such effective date,
45 as well as to charges for such offenses pending on such effective date
46 for which sentence had not yet been imposed.

47 S 8. This act shall take effect immediately, provided however that
48 sections one, two, three, four, five and six of this act shall take
49 effect on the same date and in the same manner as chapter 555 of the
50 laws of 2013, as amended, takes effect.