

559--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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

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

LBD00400-02-4

1 ARTICLE OR SECTION 240.37 OF THIS PART SHALL BE GUILTY OF A CLASS B  
2 MISDEMEANOR.

3 S 3. Sections 230.05 and 230.06 of the penal law, as added by chapter  
4 627 of the laws of 1978, are amended to read as follows:

5 S 230.05 Patronizing a prostitute in the second degree.

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

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

11 S 230.06 Patronizing a prostitute in the first degree.

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

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

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

19 S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

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

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

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

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

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

28 S 230.07 Patronizing a prostitute; defense.

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

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

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

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

41 S 230.11 PROSTITUTION; DEFENSE.

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

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

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

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

51 S 230.33 Compelling prostitution.

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

56 Compelling prostitution is a class B felony.

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

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

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

16 S 60.13 Authorized dispositions; felony sex offenses.

17 When a person is to be sentenced upon a conviction for any felony  
18 defined in article one hundred thirty of this chapter, including a sexu-  
19 ally motivated felony, or patronizing a prostitute in the first degree  
20 as defined in section 230.06 of this chapter, SEXUAL EXPLOITATION OF A  
21 CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, incest in the  
22 second degree as defined in section 255.26 of this chapter, or incest in  
23 the first degree as defined in section 255.27 of this chapter, or a  
24 felony attempt or conspiracy to commit any of these crimes, the court  
25 must sentence the defendant in accordance with the provisions of section  
26 70.80 of this title.

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

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

39 S 13. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
40 168-a of the correction law, as amended by chapter 405 of the laws of  
41 2008, is amended to read as follows:

42 (i) a conviction of or a conviction for an attempt to commit any of  
43 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,  
44 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two  
45 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20  
46 or 135.25 of such law relating to kidnapping offenses, provided the  
47 victim of such kidnapping or related offense is less than seventeen  
48 years old and the offender is not the parent of the victim, or section  
49 230.04, where the person patronized is in fact less than seventeen years  
50 of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section  
51 230.30, or section 230.32 or 230.33 of the penal law, or

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

54 2. proves or tends to prove that the victim has been convicted of an  
55 offense under section 230.00 OR 230.01 of the penal law within three

1 years prior to the sex offense which is the subject of the prosecution;  
2 or

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

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

8 (E) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.01 OF THE PENAL  
9 LAW.

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

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

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

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

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

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

1 230.32, notice of the time and place when and where the petition will be  
2 presented shall be served, in like manner as a notice of a motion upon  
3 an attorney in an action, upon the district attorney of every county in  
4 which such person has been convicted of such felony and upon the court  
5 or courts in which the sentence for such felony was entered. Unless a  
6 shorter period of time is ordered by the court, said notice shall be  
7 served upon each such district attorney and court or courts not less  
8 than sixty days prior to the date on which such petition is noticed to  
9 be heard.

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

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

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

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

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

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

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

54 2. If there be two or more convictions in such dwelling within a peri-  
55 od of six months, under [sections] SECTION 230.00, 230.01, 230.25, or  
56 230.40 of the penal law.

1 S 23. Section 2324-a of the public health law, as amended by chapter  
2 260 of the laws of 1978, is amended to read as follows:

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

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

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

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

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

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

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

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