

6804

I N S E N A T E

March 12, 2014

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the penal law, 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 ASSEMBLY, 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[:
25 1. unless] EXCEPT WHERE, after consultation with counsel, a knowing
26 and voluntary plea of guilty has been entered to such charge, any judge

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

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1 or justice hearing any stage of such case may, upon consent of the
2 defendant after consultation with counsel[,]:

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

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

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

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

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

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

52 (II) NOTICE OF SUCH AN APPLICATION TO RESTORE AN ACCUSATORY INSTRUMENT
53 SHALL BE SERVED ON THE PERSON AND HIS OR HER COUNSEL BY THE COURT. THE
54 NOTICE SHALL INCLUDE A STATEMENT SETTING FORTH A REASONABLE DESCRIPTION
55 OF WHY THE PERSON IS NOT IN SUBSTANTIAL COMPLIANCE WITH THE CONDITION OR
56 CONDITIONS OF THE CONVERSION AND A DATE UPON WHICH SUCH PERSON SHALL

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

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

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

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

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

44 S 4. The criminal procedure law is amended by adding a new section
45 720.25 to read as follows:

46 S 720.25 YOUTHFUL OFFENDER ADJUDICATION; CERTAIN EXEMPTIONS.

47 NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF LAW:

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

53 2. A YOUTHFUL OFFENDER ADJUDICATION PURSUANT TO SECTION 170.80 OF THIS
54 CHAPTER SHALL NOT BE CONSIDERED IN DETERMINING WHETHER A PERSON IS AN
55 ELIGIBLE YOUTH, OR IN DETERMINING WHETHER TO FIND A PERSON A YOUTHFUL
56 OFFENDER, IN ANY SUBSEQUENT YOUTHFUL OFFENDER ADJUDICATION.

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

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

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

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

37 S 7. This act shall take effect immediately.