

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

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.
19 S 3. Sections 230.05 and 230.06 of the penal law, as added by chapter
20 627 of the laws of 1978, are amended to read as follows:

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

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1 S 230.05 Patronizing a prostitute in the second degree.

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

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

7 S 230.06 Patronizing a prostitute in the first degree.

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

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

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

14 S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

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

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

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

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

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

23 S 230.07 Patronizing a prostitute; defense.

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

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

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

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

36 S 230.11 PROSTITUTION; DEFENSE.

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

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

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

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

46 S 230.33 Compelling prostitution.

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

51 Compelling prostitution is a class B felony.

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

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

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

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

11 S 60.13 Authorized dispositions; felony sex offenses.

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

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

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

34 S 13. Subparagraph (i) of paragraph (a) of subdivision 2 of section
35 168-a of the correction law, as amended by chapter 405 of the laws of
36 2008, is amended to read as follows:

37 (i) a conviction of or a conviction for an attempt to commit any of
38 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,
39 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two
40 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20
41 or 135.25 of such law relating to kidnapping offenses, provided the
42 victim of such kidnapping or related offense is less than seventeen
43 years old and the offender is not the parent of the victim, or section
44 230.04, where the person patronized is in fact less than seventeen years
45 of age, 230.05 [or], 230.06 OR 230.06-A, or subdivision two of section
46 230.30, or section 230.32 or 230.33 of the penal law, or

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

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

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

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

(E) 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 section 54 of subpart B of part C of chapter 62 of the laws of 2011, 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 department of corrections and community supervision 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 section 55 of subpart B of part C of chapter 62 of the laws of 2011, 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 department of corrections and community supervision 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

1 shorter period of time is ordered by the court, said notice shall be
2 served upon each such district attorney and court or courts not less
3 than sixty days prior to the date on which such petition is noticed to
4 be heard.

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

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

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

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

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

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

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

49 2. If there be two or more convictions in such dwelling within a peri-
50 od of six months, under [sections] SECTION 230.00, 230.01, 230.25, or
51 230.40 of the penal law.

52 S 23. Subdivision 1 of section 2302 of the public health law, as
53 amended by chapter 680 of the laws of 1967, is amended to read as
54 follows:

55 1. Every person arrested OR charged with a violation of section
56 230.00, 230.01 or 230.40 of the penal law, or arrested for failure to

1 comply with the order of a judge or justice issued pursuant to the
2 provisions of section two thousand three hundred one of this [chapter]
3 TITLE, or any person arrested for frequenting disorderly houses or hous-
4 es of prostitution, shall be reported within twenty-four hours by the
5 court or magistrate before whom such person is arraigned to the health
6 officer of the health district in which the alleged offense occurred,
7 and shall be examined in accordance with the provisions of section two
8 thousand three hundred of this [chapter] TITLE.

9 S 24. Section 2324-a of the public health law, as amended by chapter
10 260 of the laws of 1978, is amended to read as follows:

11 S 2324-a. Presumptive evidence. For the purposes of this title, two or
12 more convictions of any person or persons had, within a period of one
13 year, for any of the offenses described in section 230.00, 230.01,
14 230.05, 230.20, 230.25 or 230.30 of the penal law arising out of conduct
15 engaged in at the same real property consisting of a dwelling as that
16 term is defined in subdivision four of section four of the multiple
17 dwelling law shall be presumptive evidence of conduct constituting use
18 of the premises for purposes of prostitution.

19 S 25. Subdivision 2 of section 715 of the real property actions and
20 proceedings law, as added by chapter 494 of the laws of 1976, is amended
21 to read as follows:

22 2. For purposes of this section, two or more convictions of any person
23 or persons had, within a period of one year, for any of the offenses
24 described in section 230.00, 230.01, 230.05, 230.20, 230.25, 230.30 or
25 230.40 of the penal law arising out of conduct engaged in at the same
26 real property consisting of a dwelling as that term is defined in subdi-
27 vision four of section four of the multiple dwelling law shall be
28 presumptive evidence of conduct constituting use of the premises for
29 purposes of prostitution.

30 S 26. Subdivision 3 of section 231 of the real property law, as
31 amended by chapter 203 of the laws of 1980, is amended to read as
32 follows:

33 3. For the purposes of this section, two or more convictions of any
34 person or persons had, within a period of one year, for any of the
35 offenses described in section 230.00, 230.01, 230.05, 230.20, 230.25,
36 230.30, or 230.40 of the penal law arising out of conduct engaged in at
37 the same premises consisting of a dwelling as that term is defined in
38 subdivision four of section four of the multiple dwelling law shall be
39 presumptive evidence of unlawful use of such premises and of the owners
40 knowledge of the same.

41 S 27. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
42 and traffic law, as amended by chapter 400 of the laws of 2011, is
43 amended to read as follows:

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

1 under a former section of the penal law, or any offenses committed under
2 a former section of the penal law which would constitute violations of
3 the aforesaid sections of the penal law, or any offenses committed
4 outside this state which would constitute violations of the aforesaid
5 sections of the penal law.

6 S 28. This act shall take effect on the ninetieth day after it shall
7 have become a law.