S T A T E O F N E W Y O R K

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:

Section 1. Section 170.30 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. AFTER ARRAIGNMENT UPON AN INFORMATION, A SIMPLIFIED INFORMATION, A PROSECUTOR'S INFORMATION OR MISDEMEANOR COMPLAINT ON A CHARGE OF PROSTITUTION PURSUANT TO SECTION 230.00 OF THE PENAL LAW OR LOITERING FOR THE PURPOSES OF PROSTITUTION PURSUANT TO SUBDIVISION TWO OF SECTION 240.37 OF THE PENAL LAW, PROVIDED THAT THE PERSON DOES NOT STAND CHARGED WITH LOITERING FOR THE PURPOSE OF PATRONIZING A PROSTITUTE, WHERE SUCH OFFENSE ALLEGEDLY OCCURRED WHEN THE PERSON WAS SIXTEEN OR SEVENTEEN YEARS OF AGE, THE LOCAL CRIMINAL COURT MAY DISMISS SUCH CHARGE IN ITS DISCRETION IN THE INTEREST OF JUSTICE ON THE GROUND THAT A DEFENDANT PARTICIPATED IN SERVICES PROVIDED TO HIM OR HER.

S 2. Section 170.80 of the criminal procedure law, as added by chapter 555 of the laws of 2013, is amended to read as follows:

S 170.80 Proceedings regarding certain prostitution charges; certain [teenagers] PERSONS AGED SIXTEEN OR SEVENTEEN.

1. Notwithstanding any other provision of law, [when a person is arrested for prostitution] AT ANY TIME AT OR AFTER ARRAIGNMENT ON A CHARGE OF PROSTITUTION PURSUANT TO SECTION 230.00 OF THE PENAL LAW or loitering for the purposes of prostitution [and] PURSUANT TO SUBDIVISION TWO OF SECTION 240.37 OF THE PENAL LAW, PROVIDED THAT THE PERSON DOES NOT STAND CHARGED WITH LOITERING FOR THE PURPOSE OF PATRONIZING A PROSTITUTE, WHERE such offense allegedly occurred when the person was sixteen or seventeen years of age[:

1. unless] EXCEPT WHERE, after consultation with counsel, a knowing 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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or justice hearing any stage of such case may, upon consent of the defendant after consultation with counsel[,]:

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

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

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

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

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

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

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

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

(III) IF SUCH ACCUSATORY INSTRUMENT IS RESTORED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PROCEEDING SHALL CONTINUE IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION. IF THE INDIVIDUAL DOES NOT COMPLY WITH SERVICES OR DOES NOT RETURN TO COURT, THE INDIVIDUAL SHALL BE RETURNED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SEVEN OF THE FAMILY COURT ACT.

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

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

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

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

S 720.25 YOUTHFUL OFFENDER ADJUDICATION; CERTAIN EXEMPTIONS.

NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF LAW:

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

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

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

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

S 6. Section 60.02 of the penal law is amended by adding a new subdivision 4 to read as follows:

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

S 7. This act shall take effect immediately.