

2869--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 20, 2015

Introduced by M. of A. SEPULVEDA -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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 230.00-a to read
10 as follows:
11 S 230.00-A 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.

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

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1 S 3. Sections 230.05 and 230.06 of the penal law, as amended by chap-
2 ter 368 of the laws of 2015, are amended to read as follows:

3 S 230.05 Patronizing a person for prostitution in the second degree.

4 A person is guilty of patronizing a person for prostitution in the
5 second degree when, being [eighteen] TWENTY-ONE years old or more, he or
6 she patronizes a person for prostitution and the person patronized is
7 less than [fifteen] SEVENTEEN years old.

8 Patronizing a person for prostitution in the second degree is a class
9 E felony.

10 S 230.06 Patronizing a person for prostitution in the first degree.

11 A person is guilty of patronizing a person for prostitution in the
12 first degree when[:

13 1. He or she patronizes a person for prostitution and the person
14 patronized is less than eleven years old; or

15 2. Being] BEING eighteen years old or more, he or she patronizes a
16 person for prostitution and the person patronized is less than [thir-
17 teen] FIFTEEN years old.

18 Patronizing a person for prostitution in the first degree is a class D
19 felony.

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

22 S 230.06-A SEXUAL EXPLOITATION OF A CHILD.

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

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

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

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

29 S 5. Section 230.07 of the penal law, as amended by chapter 368 of the
30 laws of 2015, is amended to read as follows:

31 S 230.07 Patronizing a person for prostitution; defense.

32 In any prosecution for patronizing a person for prostitution in the
33 first or second degrees, SEXUAL EXPLOITATION OF A CHILD or patronizing a
34 person for prostitution in a school zone, it is [a] AN AFFIRMATIVE
35 defense that the defendant did not have reasonable grounds to believe
36 that the person was less than the age specified.

37 S 6. The opening paragraph of section 230.10 of the penal law, as
38 amended by chapter 368 of the laws of 2015, is amended to read as
39 follows:

40 In any prosecution for SEXUAL EXPLOITATION OF A CHILD, prostitution or
41 patronizing a person for prostitution, the sex of the two parties or
42 prospective parties to the sexual conduct engaged in, contemplated or
43 solicited is immaterial, and it is no defense that:

44 S 7. The penal law is amended by adding a new section 230.14 to read
45 as follows:

46 S 230.14 PROSTITUTION; DEFENSE.

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

50 S 8. Subdivision 2 of section 240.37 of the penal law, as amended by
51 chapter 368 of the laws of 2015, is amended to read as follows:

52 2. Any person who remains or wanders about in a public place and
53 repeatedly beckons to, or repeatedly stops, or repeatedly attempts to
54 stop, or repeatedly attempts to engage passers-by in conversation, or
55 repeatedly stops or attempts to stop motor vehicles, or repeatedly
56 interferes with the free passage of other persons, for the purpose of

1 prostitution as that term is defined in article two hundred thirty of
2 this part, shall be guilty of a violation and is guilty of a class B
3 misdemeanor if such person has previously been convicted of a violation
4 of this section or of section 230.00 OR 230.00-A of this part.

5 S 9. Section 60.13 of the penal law, as amended by chapter 368 of the
6 laws of 2015, is amended to read as follows:

7 S 60.13 Authorized dispositions; felony sex offenses.

8 When a person is to be sentenced upon a conviction for any felony
9 defined in article one hundred thirty of this chapter, including a sexu-
10 ally motivated felony, or patronizing a person for prostitution in the
11 first degree as defined in section 230.06 of this chapter, SEXUAL
12 EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER,
13 aggravated patronizing a minor for prostitution in the third degree as
14 defined in section 230.11 of this chapter, aggravated patronizing a
15 minor for prostitution in the second degree as defined in section 230.12
16 of this chapter, aggravated patronizing a minor for prostitution in the
17 first degree as defined in section 230.13 of this chapter, incest in the
18 second degree as defined in section 255.26 of this chapter, or incest in
19 the first degree as defined in section 255.27 of this chapter, or a
20 felony attempt or conspiracy to commit any of these crimes, the court
21 must sentence the defendant in accordance with the provisions of section
22 70.80 of this title.

23 S 10. Paragraph (a) of subdivision 1 of section 70.80 of the penal
24 law, as amended by chapter 368 of the laws of 2015, is amended to read
25 as follows:

26 (a) For the purposes of this section, a "felony sex offense" means a
27 conviction of any felony defined in article one hundred thirty of this
28 chapter, including a sexually motivated felony, or patronizing a person
29 for prostitution in the first degree as defined in section 230.06 of
30 this chapter, patronizing a person for prostitution in the second degree
31 as defined in section 230.05 of this chapter, SEXUAL EXPLOITATION OF A
32 CHILD AS DEFINED IN SECTION 230.06-A OF THIS CHAPTER, aggravated patron-
33 izing a minor for prostitution in the third degree as defined in section
34 230.11 of this chapter, aggravated patronizing a minor for prostitution
35 in the second degree as defined in section 230.12 of this chapter,
36 aggravated patronizing a minor for prostitution in the first degree as
37 defined in section 230.13 of this chapter, incest in the second degree
38 as defined in section 255.26 of this chapter, or incest in the first
39 degree as defined in section 255.27 of this chapter, or a felony attempt
40 or conspiracy to commit any of the above.

41 S 11. Subparagraph (i) of paragraph (a) of subdivision 2 of section
42 168-a of the correction law, as amended by chapter 368 of the laws of
43 2015, is amended to read as follows:

44 (i) a conviction of or a conviction for an attempt to commit any of
45 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,
46 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two
47 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20
48 or 135.25 of such law relating to kidnapping offenses, provided the
49 victim of such kidnapping or related offense is less than seventeen
50 years old and the offender is not the parent of the victim, or section
51 230.04, where the person patronized is in fact less than seventeen years
52 of age, 230.05, 230.06, 230.06-A, 230.11, 230.12, 230.13, subdivision
53 two of section 230.30, section 230.32, 230.33, or 230.34 of the penal
54 law, or section 230.25 of the penal law where the person prostituted is
55 in fact less than seventeen years old, or

1 S 12. Subdivision 2 of section 60.42 of the criminal procedure law, as
2 added by chapter 230 of the laws of 1975, is amended to read as follows:

3 2. proves or tends to prove that the victim has been convicted of an
4 offense under section 230.00 OR 230.00-A of the penal law within three
5 years prior to the sex offense which is the subject of the prosecution;
6 or

7 S 13. Paragraph (d) of subdivision 1 of section 160.10 of the criminal
8 procedure law, as amended by chapter 232 of the laws of 2010, is amended
9 and a new paragraph (e) is added to read as follows:

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

12 (E) UNLAWFUL PROSTITUTION AS DEFINED IN SECTION 230.00-A OF THE PENAL
13 LAW.

14 S 14. Subdivision 6 of section 380.50 of the criminal procedure law,
15 as separately amended by chapters 368 and 394 of the laws of 2015, is
16 amended to read as follows:

17 6. Regardless of whether the victim requests to make a statement with
18 regard to the defendant's sentence, where the defendant is sentenced for
19 a violent felony offense as defined in section 70.02 of the penal law or
20 a felony defined in article one hundred twenty-five of such law or any
21 of the following provisions of such law sections 130.25, 130.30, 130.40,
22 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,
23 135.25, 230.05, 230.06, 230.06-A, 230.11, 230.12, 230.13, subdivision
24 two of section 230.30 or 230.32, the prosecutor shall, within sixty days
25 of the imposition of sentence, provide the victim with a form, prepared
26 and distributed by the commissioner of the division of criminal justice
27 services, in consultation with the director of the office of victim
28 services, on which the victim may indicate a demand to be informed of
29 any petition to change the name of such defendant. Such forms shall be
30 maintained by such prosecutor. Upon receipt of a notice of a petition to
31 change the name of any such defendant, pursuant to subdivision two of
32 section sixty-two of the civil rights law, the prosecutor shall promptly
33 notify the victim at the most current address or telephone number
34 provided by such victim in the most reasonable and expedient possible
35 manner of the time and place such petition will be presented to the
36 court.

37 S 15. Subdivision 2 of section 61 of the civil rights law, as amended
38 by section 54 of subpart B of part C of chapter 62 of the laws of 2011,
39 is amended to read as follows:

40 2. If the petitioner stands convicted of a violent felony offense as
41 defined in section 70.02 of the penal law or a felony defined in article
42 one hundred twenty-five of such law or any of the following provisions
43 of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26,
44 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06,
45 230.06-A, subdivision two of section 230.30 or 230.32, and is currently
46 confined as an inmate in any correctional facility or currently under
47 the supervision of the department of corrections and community super-
48 vision or a county probation department as a result of such conviction,
49 the petition shall for each such conviction specify such felony
50 conviction, the date of such conviction or convictions, and the court in
51 which such conviction or convictions were entered.

52 S 16. Subdivision 2 of section 62 of the civil rights law, as amended
53 by section 55 of subpart B of part C of chapter 62 of the laws of 2011,
54 is amended to read as follows:

55 2. If the petition be to change the name of a person currently
56 confined as an inmate in any correctional facility or currently under

1 the supervision of the department of corrections and community super-
2 vision or a county probation department as a result of a conviction for
3 a violent felony offense as defined in section 70.02 of the penal law or
4 a felony defined in article one hundred twenty-five of such law or any
5 of the following provisions of such law sections 130.25, 130.30, 130.40,
6 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10,
7 135.25, 230.05, 230.06, 230.06-A, subdivision two of section 230.30 or
8 230.32, notice of the time and place when and where the petition will be
9 presented shall be served, in like manner as a notice of a motion upon
10 an attorney in an action, upon the district attorney of every county in
11 which such person has been convicted of such felony and upon the court
12 or courts in which the sentence for such felony was entered. Unless a
13 shorter period of time is ordered by the court, said notice shall be
14 served upon each such district attorney and court or courts not less
15 than sixty days prior to the date on which such petition is noticed to
16 be heard.

17 S 17. The closing paragraph of section 64 of the civil rights law, as
18 separately amended by chapters 258, 320 and 481 of the laws of 2006, is
19 amended to read as follows:

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

39 S 18. Subdivision 2 of section 344.4 of the family court act, as added
40 by chapter 761 of the laws of 1987, is amended to read as follows:

41 2. proves or tends to prove that the victim has been convicted of an
42 offense under section 230.00 OR 230.00-A of the penal law within three
43 years prior to the sex offense which is the subject of the juvenile
44 delinquency proceeding; or

45 S 19. Subdivision (p) of section 10.03 of the mental hygiene law, as
46 amended by chapter 368 of the laws of 2015, is amended to read as
47 follows:

48 (p) "Sex offense" means an act or acts constituting: (1) any felony
49 defined in article one hundred thirty of the penal law, including a
50 sexually motivated felony; (2) patronizing a person for prostitution in
51 the first degree as defined in section 230.06 of the penal law, SEXUAL
52 EXPLOITATION OF A CHILD AS DEFINED IN SECTION 230.06-A OF THE PENAL LAW,
53 aggravated patronizing a minor for prostitution in the first degree as
54 defined in section 230.13 of the penal law, aggravated patronizing a
55 minor for prostitution in the second degree as defined in section 230.12
56 of the penal law, aggravated patronizing a minor for prostitution in the

third degree as defined in section 230.11 of the penal law, incest in the second degree as defined in section 255.26 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

S 20. Subdivision 2 of section 353 of the multiple dwelling law, as amended by chapter 680 of the laws of 1967, is amended to read as follows:

2. If there be two or more convictions in such dwelling within a period of six months, under [sections] SECTION 230.00, 230.00-A, 230.25, or 230.40 of the penal law.

S 21. Section 2324-a of the public health law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

S 2324-a. Presumptive evidence. For the purposes of this title, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.00-A, 230.05, 230.06, 230.08, 230.11, 230.12, 230.13, 230.20, 230.25, 230.30 or 230.32 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 22. Subdivision 2 of section 715 of the real property actions and proceedings law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

2. For purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.00-A, 230.05, 230.06, 230.11, 230.12, 230.13, 230.20, 230.25, 230.30, 230.32 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

S 23. Subdivision 3 of section 231 of the real property law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.00-A, 230.05, 230.06, 230.11, 230.12, 230.13, 230.20, 230.25, 230.30, 230.32 or 230.40 of the penal law arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owners knowledge of the same.

S 24. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

(c) The offenses referred to in subparagraph (i) of paragraph (b) of subdivision one and subparagraph (i) of paragraph (c) of subdivision two of this section that result in disqualification for a period of five years shall include a conviction under sections 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13, 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,

1 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,
2 230.00-A, 230.05, 230.06, 230.06-A, 230.11, 230.12, 230.13, 230.19,
3 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivi-
4 sion two of section 260.20 and sections 260.25, 265.02, 265.03, 265.08,
5 265.09, 265.10, 265.12, 265.35 of the penal law or an attempt to commit
6 any of the aforesaid offenses under section 110.00 of the penal law, or
7 any similar offenses committed under a former section of the penal law,
8 or any offenses committed under a former section of the penal law which
9 would constitute violations of the aforesaid sections of the penal law,
10 or any offenses committed outside this state which would constitute
11 violations of the aforesaid sections of the penal law.
12 S 25. This act shall take effect on the ninetieth day after it shall
13 have become a law.