

# STATE OF NEW YORK

9704--A

## IN ASSEMBLY

February 2, 2018

Introduced by M. of A. PAULIN, SEAWRIGHT, DICKENS, DINOWITZ, D'URSO, GALEF, GOTTFRIED, HOOPER, JAFFEE, JENNE, JOYNER, PICHARDO, L. ROSENTHAL, SIMON, STECK, ERRIGO, NIOU -- Multi-Sponsored by -- M. of A. DE LA ROSA, MAGEE -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to repeal section 240.37 of the penal law, relating to loitering for the purpose of engaging in a prostitution offense; and to amend the penal law, the criminal procedure law, the social services law and the administrative code of the city of New York, in relation to making technical corrections relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The repeal of section 240.37 of the penal law, as effected  
2 by section two of this act, is hereby declared to be ameliorative, and  
3 it is the intent of the legislature that no prosecution under such  
4 section be commenced, continued, or refiled.  
5 § 2. Section 240.37 of the penal law is REPEALED.  
6 § 3. Section 230.01 of the penal law, as added by chapter 368 of the  
7 laws of 2015, is amended to read as follows:  
8 § 230.01 Prostitution; affirmative defense.  
9 In any prosecution under section 230.00[~~7~~] or section 230.03 [~~or~~  
10 ~~subdivision two of section 240.37~~] of this part, it is an affirmative  
11 defense that the defendant's participation in the offense was a result  
12 of having been a victim of compelling prostitution under section 230.33,  
13 a victim of sex trafficking under section 230.34 of this article or a  
14 victim of trafficking in persons under the trafficking victims  
15 protection act (United States Code, Title 22, Chapter 78).  
16 § 4. Section 60.47 of the criminal procedure law, as added by section  
17 2 of part I of chapter 57 of the laws of 2015, is amended to read as  
18 follows:  
19 § 60.47 Possession of condoms; receipt into evidence.  
20 Evidence that a person was in possession of one or more condoms may  
21 not be admitted at any trial, hearing, or other proceeding in a prose-

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

LBD13841-03-8

1 cution for section 230.00 [~~or section 240.37~~] of the penal law for the  
2 purpose of establishing probable cause for an arrest or proving any  
3 person's commission or attempted commission of such offense.

4 § 5. Paragraphs (c) and (d) of subdivision 1 of section 160.10 of the  
5 criminal procedure law, paragraph (c) as amended by chapter 762 of the  
6 laws of 1971 and paragraph (d) as amended by chapter 232 of the laws of  
7 2010, are amended to read as follows:

8 (c) A misdemeanor defined outside the penal law which would constitute  
9 a felony if such person had a previous judgment of conviction for a  
10 crime~~, or~~

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

13 § 6. Subdivision 4 of section 170.30 of the criminal procedure law, as  
14 added by chapter 402 of the laws of 2014, is amended to read as follows:

15 4. After arraignment upon an information, a simplified information, a  
16 prosecutor's information or misdemeanor complaint on a charge of prosti-  
17 tution pursuant to section 230.00 of the penal law [~~or loitering for the~~  
18 ~~purposes of prostitution pursuant to subdivision two of section 240.37~~  
19 ~~of the penal law, provided that the person does not stand charged with~~  
20 ~~loitering for the purpose of patronizing a prostitute, where such~~  
21 ~~offense allegedly occurred when the person was sixteen or seventeen~~  
22 ~~years of age,~~] the local criminal court may dismiss such charge in its  
23 discretion in the interest of justice on the ground that a defendant  
24 participated in services provided to him or her.

25 § 7. The opening paragraph of subdivision 1 of section 170.80 of the  
26 criminal procedure law, as amended by chapter 402 of the laws of 2014,  
27 is amended to read as follows:

28 Notwithstanding any other provision of law, at any time at or after  
29 arraignment on a charge of prostitution pursuant to section 230.00 of  
30 the penal law [~~or loitering for the purposes of prostitution pursuant to~~  
31 ~~subdivision two of section 240.37 of the penal law, provided that the~~  
32 ~~person does not stand charged with loitering for the purpose of patron-~~  
33 ~~izing a prostitute, where such offense allegedly occurred when the~~  
34 ~~person was sixteen or seventeen years of age except where~~], after  
35 consultation with counsel, a knowing and voluntary plea of guilty has  
36 been entered to such charge, any judge or justice hearing any stage of  
37 such case may, upon consent of the defendant after consultation with  
38 counsel:

39 § 8. Subdivision 2 of section 420.35 of the criminal procedure law, as  
40 amended by chapter 426 of the laws of 2015, is amended to read as  
41 follows:

42 2. Under no circumstances shall the mandatory surcharge, sex offender  
43 registration fee, DNA databank fee or the crime victim assistance fee be  
44 waived provided, however, that a court may waive the crime victim  
45 assistance fee if such defendant is an eligible youth as defined in  
46 subdivision two of section 720.10 of this chapter, and the imposition of  
47 such fee would work an unreasonable hardship on the defendant, his or  
48 her immediate family, or any other person who is dependent on such  
49 defendant for financial support. A court shall waive any mandatory  
50 surcharge, DNA databank fee and crime victim assistance fee when: (i)  
51 [~~the defendant is convicted of loitering for the purpose of engaging in~~  
52 ~~prostitution under section 240.37 of the penal law (provided that the~~  
53 ~~defendant was not convicted of loitering for the purpose of patronizing~~  
54 ~~a person for prostitution); (ii)] the defendant is convicted of prosti-  
55 tution under section 230.00 of the penal law; [~~(iii)~~] (ii) the defendant  
56 is convicted of a violation in the event such conviction is in lieu of a~~

1 plea to or conviction for [~~loitering for the purpose of engaging in~~  
2 ~~prostitution under section 240.37 of the penal law (provided that the~~  
3 ~~defendant was not alleged to be loitering for the purpose of patronizing~~  
4 ~~a person for prostitution) or~~] prostitution under section 230.00 of the  
5 penal law; or [(iv)] (iii) the court finds that a defendant is a victim  
6 of sex trafficking under section 230.34 of the penal law or a victim of  
7 trafficking in persons under the trafficking victims protection act  
8 (United States Code, Title 22, Chapter 78).

9 § 9. Subdivision 4 of section 720.15 of the criminal procedure law, as  
10 added by chapter 402 of the laws of 2014, is amended to read as follows:

11 4. Notwithstanding any provision in this article, a person charged  
12 with prostitution as defined in section 230.00 of the penal law [~~or~~  
13 ~~loitering for the purposes of prostitution as defined in subdivision two~~  
14 ~~of section 240.37 of the penal law, provided that the person does not~~  
15 ~~stand charged with loitering for the purpose of patronizing a prosti-~~  
16 ~~tute, and such person is aged sixteen or seventeen when such offense~~  
17 ~~occurred,~~] regardless of whether such person (i) had prior to commence-  
18 ment of trial or entry of a plea of guilty been convicted of a crime or  
19 found a youthful offender, or (ii) subsequent to such conviction for  
20 prostitution [~~or loitering for prostitution~~] is convicted of a crime or  
21 found a youthful offender, the provisions of subdivisions one and two of  
22 this section requiring or authorizing the accusatory instrument filed  
23 against a youth to be sealed, and the arraignment and all proceedings in  
24 the action to be conducted in private shall apply.

25 § 10. Subdivision 1 of section 720.35 of the criminal procedure law,  
26 as amended by chapter 402 of the laws of 2014, is amended to read as  
27 follows:

28 1. A youthful offender adjudication is not a judgment of conviction  
29 for a crime or any other offense, and does not operate as a disquali-  
30 fication of any person so adjudged to hold public office or public  
31 employment or to receive any license granted by public authority but  
32 shall be deemed a conviction only for the purposes of transfer of super-  
33 vision and custody pursuant to section two hundred fifty-nine-m of the  
34 executive law. A defendant for whom a youthful offender adjudication was  
35 substituted, who was originally charged with prostitution as defined in  
36 section 230.00 of the penal law [~~or loitering for the purposes of pros-~~  
37 ~~titution as defined in subdivision two of section 240.37 of the penal~~  
38 ~~law provided that the person does not stand charged with loitering for~~  
39 ~~the purpose of patronizing a prostitute, for an offense allegedly~~  
40 ~~committed when he or she was sixteen or seventeen years of age~~], shall  
41 be deemed a "sexually exploited child" as defined in subdivision one of  
42 section four hundred forty-seven-a of the social services law and there-  
43 fore shall not be considered an adult for purposes related to the charg-  
44 es in the youthful offender proceeding or a proceeding under section  
45 170.80 of this chapter.

46 § 11. Paragraphs (c) and (d) of subdivision 1 of section 447-a of the  
47 social services law, as amended by section 1 of part G of chapter 58 of  
48 the laws of 2010, are amended to read as follows:

49 (c) is a victim of the crime of compelling prostitution as defined in  
50 section 230.33 of the penal law;

51 (d) engages in acts or conduct described in article two hundred  
52 sixty-three [~~or section 240.37~~] of the penal law.

53 § 12. The third undesignated paragraph of subdivision a of section  
54 3-118 of the administrative code of the city of New York, as added by  
55 local law number 39 of the city of New York for the year 2016, is  
56 amended to read as follows:

1 Sexually exploited youth. The term "sexually exploited youth" means  
2 persons under the age of 18 who have been subject to sexual exploitation  
3 because they (a) are the victim of the crime of sex trafficking as  
4 defined in section 230.34 of the penal law; (b) engage in any act as  
5 defined in section 230.00 of the penal law; (c) are a victim of the  
6 crime of compelling prostitution as defined in section 230.33 of the  
7 penal law; or (d) engage in acts or conduct described in article 263 [~~ex~~  
8 ~~section 240.37~~] of the penal law. The term shall also mean persons under  
9 the age of 18 who have been subject to incest in the third degree,  
10 second degree or first degree, as defined in sections 255.25, 255.26,  
11 and 255.27 of the penal law, respectively, or any of the sex offenses  
12 enumerated in article 130 of the penal law.  
13 § 13. This act shall take effect immediately.