

# STATE OF NEW YORK

9704

## 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 -- Multi-Sponsored by -- M. of A. DE LA ROSA, MAGEE -- read once and referred to the Committee on Codes

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. Section 240.37 of the penal law is REPEALED.

2 § 2. Section 230.01 of the penal law, as added by chapter 368 of the  
3 laws of 2015, is amended to read as follows:

4 § 230.01 Prostitution; affirmative defense.

5 In any prosecution under section 230.00[~~7~~] or section 230.03 [~~or~~  
6 ~~subdivision two of section 240.37~~] of this part, it is an affirmative  
7 defense that the defendant's participation in the offense was a result  
8 of having been a victim of compelling prostitution under section 230.33,  
9 a victim of sex trafficking under section 230.34 of this article or a  
10 victim of trafficking in persons under the trafficking victims  
11 protection act (United States Code, Title 22, Chapter 78).

12 § 3. Section 60.47 of the criminal procedure law, as added by section  
13 2 of part I of chapter 57 of the laws of 2015, is amended to read as  
14 follows:

15 § 60.47 Possession of condoms; receipt into evidence.

16 Evidence that a person was in possession of one or more condoms may  
17 not be admitted at any trial, hearing, or other proceeding in a prose-  
18 cution for section 230.00 [~~or section 240.37~~] of the penal law for the  
19 purpose of establishing probable cause for an arrest or proving any  
20 person's commission or attempted commission of such offense.

21 § 4. Paragraphs (c) and (d) of subdivision 1 of section 160.10 of the  
22 criminal procedure law, paragraph (c) as amended by chapter 762 of the

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

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laws of 1971 and paragraph (d) as amended by chapter 232 of the laws of 2010, are amended to read as follows:

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

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

§ 5. Subdivision 4 of section 170.30 of the criminal procedure law, as added by chapter 402 of the laws of 2014, is amended 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.

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

Notwithstanding any other provision of law, 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 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 except where]~~, after consultation with counsel, a knowing and voluntary plea of guilty has been entered to such charge, any judge or justice hearing any stage of such case may, upon consent of the defendant after consultation with counsel:

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

2. Under no circumstances shall the mandatory surcharge, sex offender registration fee, DNA databank fee or the crime victim assistance fee be waived provided, however, that a court may waive the crime victim assistance fee if such defendant is an eligible youth as defined in subdivision two of section 720.10 of this chapter, and the imposition of such fee would work an unreasonable hardship on the defendant, his or her immediate family, or any other person who is dependent on such defendant for financial support. A court shall waive any mandatory surcharge, DNA databank fee and crime victim assistance fee when: (i)

~~[the defendant is convicted of loitering for the purpose of engaging in prostitution under section 240.37 of the penal law (provided that the defendant was not convicted of loitering for the purpose of patronizing a person for prostitution); (ii)]~~ the defendant is convicted of prostitution under section 230.00 of the penal law; ~~[(iii)]~~ (ii) the defendant is convicted of a violation in the event such conviction is in lieu of a plea to or conviction for ~~[loitering for the purpose of engaging in prostitution under section 240.37 of the penal law (provided that the defendant was not alleged to be loitering for the purpose of patronizing a person for prostitution) or]~~ prostitution under section 230.00 of the penal law; or ~~[(iv)]~~ (iii) the court finds that a defendant is a victim

1 of sex trafficking under section 230.34 of the penal law or a victim of  
2 trafficking in persons under the trafficking victims protection act  
3 (United States Code, Title 22, Chapter 78).

4 § 8. The opening paragraph of paragraph (i) of subdivision 1 of  
5 section 440.10 of the criminal procedure law, as amended by chapter 368  
6 of the laws of 2015, is amended to read as follows:

7 The judgment is a conviction where the arresting charge was under  
8 section ~~[240.37 (loitering for the purpose of engaging in a prostitution~~  
9 ~~offense, provided that the defendant was not alleged to be loitering for~~  
10 ~~the purpose of patronizing a person for prostitution or promoting pros-~~  
11 ~~titution) or]~~ 230.00 (prostitution) or 230.03 (prostitution in a school  
12 zone) of the penal law, and the defendant's participation in the offense  
13 was a result of having been a victim of sex trafficking under section  
14 230.34 of the penal law, labor trafficking under section 135.35 of the  
15 penal law, aggravated labor trafficking under section 135.37 of the  
16 penal law, compelling prostitution under section 230.33 of the penal  
17 law, or trafficking in persons under the Trafficking Victims Protection  
18 Act (United States Code, title 22, chapter 78); provided that

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

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

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

38 1. A youthful offender adjudication is not a judgment of conviction  
39 for a crime or any other offense, and does not operate as a disquali-  
40 fication of any person so adjudged to hold public office or public  
41 employment or to receive any license granted by public authority but  
42 shall be deemed a conviction only for the purposes of transfer of super-  
43 vision and custody pursuant to section two hundred fifty-nine-m of the  
44 executive law. A defendant for whom a youthful offender adjudication was  
45 substituted, who was originally charged with prostitution as defined in  
46 section 230.00 of the penal law ~~[or loitering for the purposes of pros-~~  
47 ~~titution as defined in subdivision two of section 240.37 of the penal~~  
48 ~~law provided that the person does not stand charged with loitering for~~  
49 ~~the purpose of patronizing a prostitute, for an offense allegedly~~  
50 ~~committed when he or she was sixteen or seventeen years of age]~~, shall  
51 be deemed a "sexually exploited child" as defined in subdivision one of  
52 section four hundred forty-seven-a of the social services law and there-  
53 fore shall not be considered an adult for purposes related to the charg-  
54 es in the youthful offender proceeding or a proceeding under section  
55 170.80 of this chapter.

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

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

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

8 § 12. The third undesignated paragraph of subdivision a of section  
9 3-118 of the administrative code of the city of New York, as added by  
10 local law number 39 of the city of New York for the year 2016, is  
11 amended to read as follows:

12 Sexually exploited youth. The term "sexually exploited youth" means  
13 persons under the age of 18 who have been subject to sexual exploitation  
14 because they (a) are the victim of the crime of sex trafficking as  
15 defined in section 230.34 of the penal law; (b) engage in any act as  
16 defined in section 230.00 of the penal law; (c) are a victim of the  
17 crime of compelling prostitution as defined in section 230.33 of the  
18 penal law; or (d) engage in acts or conduct described in article 263 [~~or~~  
19 ~~section 240.37~~] of the penal law. The term shall also mean persons under  
20 the age of 18 who have been subject to incest in the third degree,  
21 second degree or first degree, as defined in sections 255.25, 255.26,  
22 and 255.27 of the penal law, respectively, or any of the sex offenses  
23 enumerated in article 130 of the penal law.

24 § 13. This act shall take effect on the ninetieth day after it shall  
25 have become a law.