STATE OF NEW YORK

937

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. GOTTFRIED, PAULIN, D'URSO -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to confidentiality of records in proceedings to vacate convictions for offenses resulting from sex trafficking, labor trafficking and compelling prostitution

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

Section 1. Paragraph (i) of subdivision 1 of section 440.10 of the criminal procedure law, as amended by chapter 368 of the laws of 2015, the opening paragraph as amended by chapter 189 of the laws of 2018, is amended to read as follows:

(i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a person for prostitution or promoting prostitution) or 230.00 (prostitution) or 230.03 (prostitution in a school zone) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law, sex trafficking of a child under section 230.34-a of the penal law, labor trafficking under section 135.35 of the penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 of the penal law, or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

(i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or compelling prostitution crime or has sought services for victims of such trafficking or compelling prostitution crime, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking or compelling prostitution

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

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crime that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; [~~and~~]

(ii) official documentation of the defendant's status as a victim of trafficking, **labor trafficking, aggravated labor trafficking,** compelling prostitution**,** or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking, **labor trafficking, aggravated labor trafficking,** compelling prostitution or trafficking in persons, but shall not be required for granting a motion under this paragraph**; and**

(iii) a motion under this paragraph, and all pertinent papers and documents, shall be confidential and may not be made available to any person or public or private agency except where specifically authorized by court order; provided, however, that availability of copies of a motion under this paragraph and all pertinent papers and documents shall be made available to the defendant or their authorized representative upon request.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.