

# STATE OF NEW YORK

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3181

2019-2020 Regular Sessions

## IN SENATE

February 4, 2019

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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, in relation to vacating 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:

1 Section 1. Legislative intent. The purpose of this legislation is to  
2 strengthen protection for the victims of sex trafficking, labor traf-  
3 ficking, compelling prostitution and trafficking in persons, who are  
4 convicted of a range of offenses as a result of that trafficking or  
5 compelling. New York's landmark law offering the vacating of convictions  
6 for prostitution-related offenses that were a result of this trafficking  
7 has been the model for laws in more than half of the states. However,  
8 several states wisely offer this relief to victims who may be compelled  
9 to participate in other offenses as well. This legislation would follow  
10 that example. Granting relief under this provision has always been based  
11 on consideration of the circumstances and the interest of justice; this  
12 legislation reiterates that.

13 § 2. Paragraph (i) of subdivision 1 of section 440.10 of the criminal  
14 procedure law, as amended by chapter 368 of the laws of 2015, the open-  
15 ing paragraph as amended by chapter 189 of the laws of 2018, is amended  
16 to read as follows:

17 (i) The judgment is a conviction where [~~the arresting charge was under~~  
18 ~~section 240.37 (loitering for the purpose of engaging in a prostitution~~  
19 ~~offense, provided that the defendant was not alleged to be loitering for~~  
20 ~~the purpose of patronizing a person for prostitution or promoting pros-~~  
21 ~~titution) or 230.00 (prostitution) or 230.03 (prostitution in a school~~  
22 ~~zone) of the penal law, and] the defendant's participation in the  
23 offense was a result of having been a victim of sex trafficking under  
24 section 230.34 of the penal law, sex trafficking of a child under~~

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

LBD03508-01-9

1 section 230.34-a of the penal law, labor trafficking under section  
2 135.35 of the penal law, aggravated labor trafficking under section  
3 135.37 of the penal law, compelling prostitution under section 230.33 of  
4 the penal law, or trafficking in persons under the Trafficking Victims  
5 Protection Act (United States Code, title 22, chapter 78); provided that

6 (i) a motion under this paragraph shall be made with due diligence,  
7 after the defendant has ceased to be a victim of such trafficking or  
8 compelling prostitution crime or has sought services for victims of such  
9 trafficking or compelling prostitution crime, subject to reasonable  
10 concerns for the safety of the defendant, family members of the defend-  
11 ant, or other victims of such trafficking or compelling prostitution  
12 crime that may be jeopardized by the bringing of such motion, or for  
13 other reasons consistent with the purpose of this paragraph; ~~and~~

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

22 (iii) a motion under this paragraph, and all pertinent papers and  
23 documents, shall be confidential and may not be made available to any  
24 person or public or private agency except where specifically authorized  
25 by the court; and

26 (iv) the granting of a motion under this paragraph shall be determined  
27 by the court in consideration of the circumstances and the interest of  
28 justice.

29 § 3. This act shall take effect immediately; provided that subpara-  
30 graph (iii) of paragraph (i) of subdivision 1 of section 440.10 of the  
31 criminal procedure law, as added by section two of this act, shall take  
32 effect on the sixtieth day after it shall have become a law.