STATE OF NEW YORK

459

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, PAULIN, NIOU, FAHY, HEVESI, SAYEGH, L. ROSENTHAL, KIM, QUART, EPSTEIN, AUBRY, WALKER, CRUZ, STECK, PERRY, DICKENS, HUNTER, REYES, COOK, SIMON, DARLING, WALCZYK, J. RIVERA, SEAWRIGHT, FERNANDEZ, GLICK, O'DONNELL, CARROLL, TAYLOR, BRONSON, OTIS -- read once and referred 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:

Section 1. Legislative intent. The purpose of this legislation is to strengthen protection for the victims of sex trafficking, labor trafficking, compelling prostitution and trafficking in persons, who are convicted of a range of offenses as a result of that trafficking or compelling. New York's landmark law offering the vacating of convictions for prostitution-related offenses that were a result of this trafficking has been the model for laws in more than half of the states. However, several states wisely offer this relief to victims who may be compelled to participate in other offenses as well. This legislation would follow that example.

§ 2. Paragraph (i) of subdivision 1 of section 440.10 of the criminal procedure law, as amended by section 3 of part OO of chapter 55 of the laws of 2019 and subparagraph (ii) of paragraph (i) of subdivision 1 as amended by chapter 131 of the laws of 2019, 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~~

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

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~~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 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 **sex** 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;

(ii) 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 entity except where specifically authorized by the court; and

(iii) when a motion is filed under this paragraph, the court may, upon the consent of the petitioner and all of the state and local prosecutorial agencies that prosecuted each matter, consolidate into one proceeding a motion to vacate judgments imposed by distinct or multiple criminal courts; or

§ 3. Subdivision 6 of section 440.10 of the criminal procedure law, as amended by chapter 131 of the laws of 2019, is amended to read as follows:

6. If the court grants a motion under paragraph (i) or paragraph (k) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances. **In the case of a motion granted under paragraph (i) of subdivision one of this section, the court must vacate the judgment on the merits because the defendant's participation in the offense was a result of having been a victim of trafficking.**

§ 4. This act shall take effect immediately; provided that subparagraph (ii) of paragraph (i) of subdivision 1 of section 440.10 of the criminal procedure law, as added by section two of this act, shall take effect on the sixtieth day after it shall have become a law.