STATE OF NEW YORK

1351

2021-2022 Regular Sessions

IN SENATE

January 11, 2021

Introduced by Sens. HOYLMAN, SALAZAR, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BRISPORT, BROOKS, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, HINCHEY, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MAY, MAYER, MYRIE, PARKER, PERSAUD, RAMOS, REICHLIN-MELNICK, RIVERA, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed 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:

Section 1. The repeal of section 240.37 of the penal law, as effected by section two of this act, is hereby declared to be ameliorative, and it is the intent of the legislature that no prosecution under such section be commenced, continued, or refiled.

§ 2. Section 240.37 of the penal law is REPEALED.

§ 3. Section 230.01 of the penal law, as amended by chapter 189 of the laws of 2018, is amended to read as follows:

§ 230.01 Prostitution; affirmative defense.

In any prosecution under section 230.00, section 230.03, section 230.19, **section** 230.20, subdivision 2 of section 230.25, subdivision 2 of section 230.30[~~,~~] **or** section 230.34-a [~~**or subdivision two of section 240.37**~~] of this [~~**part**~~] **article**, it is an affirmative defense that the defendant's participation in the offense was a result of having been a victim of compelling prostitution under section 230.33 **of this article**, a victim of sex trafficking under section 230.34 of this article, a victim of sex trafficking of a child under section 230.34-a of this

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

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article or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78).

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

§ 60.47 Possession of condoms; receipt into evidence.

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

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

§ 6. 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.

§ 7. 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:

§ 8. Subdivision 2 of section 420.35 of the criminal procedure law, as amended by chapter 144 of the laws of 2020, is amended to read as follows:

2. Except as provided in this subdivision or subdivision two-a of this section, under no circumstances shall the mandatory surcharge, sex offender registration fee, DNA databank fee or the crime victim assistance fee be waived. 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 of sex trafficking under section 230.34 of the penal law or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78); or [~~(v)~~] (iv) the court finds that the defendant is a victim of sex trafficking of a child under section 230.34-a of the penal law.

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

4. Notwithstanding any provision in this article, a person charged with prostitution as defined in section 230.00 of the penal law [~~or loitering for the purposes of prostitution as defined in 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, and such person is aged sixteen or seventeen when such offense occurred,~~] regardless of whether such person (i) had prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, or (ii) subsequent to such conviction for prostitution [~~or loitering for prostitution~~] is convicted of a crime or found a youthful offender, the provisions of subdivisions one and two of this section requiring or authorizing the accusatory instrument filed against a youth to be sealed, and the arraignment and all proceedings in the action to be conducted in private shall apply.

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

1. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction only for the purposes of transfer of supervision and custody pursuant to section two hundred fifty-nine-m of the executive law. A defendant for whom a youthful offender adjudication was substituted, who was originally charged with prostitution as defined in section 230.00 of the penal law [~~or loitering for the purposes of prostitution as defined in 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, for an offense allegedly committed when he or she was sixteen or seventeen years of age~~], shall be deemed a "sexually exploited child" as defined in subdivision one of section four hundred forty-seven-a of the social services law and therefore shall not be considered an adult for purposes related to the charges in the youthful offender proceeding or a proceeding under section 170.80 of this chapter.

§ 11. Paragraphs (c) and (d) of subdivision 1 of section 447-a of the social services law, as amended by chapter 189 of the laws of 2018, are amended to read as follows:

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

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

§ 12. The third undesignated paragraph of subdivision a of section 3-118 of the administrative code of the city of New York, as amended by chapter 189 of the laws of 2018, is amended to read as follows:

Sexually exploited youth. The term "sexually exploited youth" means persons under the age of 18 who have been subject to sexual exploitation because they (a) are the victim of the crime of sex trafficking as defined in section 230.34 of the penal law; (b) engage in any act as defined in section 230.00 of the penal law; (c) are a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law; (d) are a victim of the crime of sex trafficking of a child as defined in section 230.34-a of the penal law; or (e) engage in acts or conduct described in article [~~263 or section 240.37~~] **two hundred sixty-three** of the penal law. The term shall also mean persons under the age of 18 who have been subject to incest in the third degree, second degree or first degree, as defined in sections 255.25, 255.26, and 255.27 of the penal law, respectively, or any of the sex offenses enumerated in article [~~130~~] **one hundred thirty** of the penal law.

§ 13. The opening paragraph of subdivision 1 and subdivisions 2 and 3 of section 160.55 of the criminal procedure law, the opening paragraph of subdivision 1 as amended by chapter 359 of the laws of 2019, subdivision 2 as amended by chapter 476 of the laws of 2009 and subdivision 3 as amended by chapter 249 of the laws of 1981 and renumbered by chapter 142 of the laws of 1991, are amended to read as follows:

Regardless of the class of offense for which a person is initially charged, upon the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than [~~a violation of loitering as described in paragraph (d) of subdivision one of section 160.10 of this article or~~] the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, unless the district attorney upon motion with not less than five days' notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days' notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated by such conviction. Upon receipt of notification of such termination:

2. A report of the termination of the action or proceeding by conviction of a traffic violation or a violation other than [~~a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this title or~~] the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, shall be sufficient notice of sealing to the commissioner of the division of criminal justice services unless the report also indicates that the court directed that the record not be sealed in the interests of justice. Where the court has determined pursuant to subdivision one of this section that sealing is not in the interests of justice, the clerk of the court shall include notification of that determination in any

report to such division of the disposition of the action or proceeding. When the defendant has been found guilty of a violation of harassment in the second degree and it was determined pursuant to subdivision eight-a of section 170.10 of this title that such violation was committed against a member of the same family or household as the defendant, the clerk of the court shall include notification of that determination in any report to such division of the disposition of the action or proceeding for purposes of paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of this section.

3. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than [~~a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or~~] the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

§ 14. Subparagraph (iii) of paragraph (k) of subdivision 3 of section 160.50 of the criminal procedure law, as amended by chapter 132 of the laws of 2019, is amended to read as follows:

(iii) the conviction is for an offense defined in section 221.05 or 221.10 of the penal law**; or**

(iv) the conviction was for an offense defined in section 240.37 of the penal law.

§ 15. This act shall take effect immediately.