

STATE OF NEW YORK

6165

2021-2022 Regular Sessions

IN SENATE

April 13, 2021

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 section 3 of part 00 of chapter 55 of the
15 laws of 2019, subparagraph (ii) as amended by chapter 131 of the laws of
16 2019, is amended and two new subparagraphs (iii) and (iv) are added to
17 read as follows:

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

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

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

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

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

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

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

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