

STATE OF NEW YORK

8776

IN SENATE

April 14, 2022

Introduced by Sen. HOYLMAN -- 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 the former crime of loitering for the purpose of engaging in a prostitution offense and expunging criminal records for persons previously convicted of such crime

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

1 Section 1. Section 160.50 of the criminal procedure law is amended by
2 adding a new subdivision 6 to read as follows:

3 6. (a) A conviction for an offense described in former section 240.37
4 of the penal law as such section was in effect on February first, two
5 thousand twenty-one shall, on and after the effective date of this
6 subdivision, in accordance with the provisions of this paragraph, be
7 vacated and dismissed, and all records of such conviction or convictions
8 and related to such conviction or convictions shall be expunged, as
9 described in subdivision forty-five of section 1.20 of this chapter, and
10 the matter shall be considered terminated in favor of the accused and
11 deemed a nullity, having been rendered by this paragraph legally inval-
12 id. All such records for an offense described in this paragraph where
13 the conviction was entered on or before the effective date of the chap-
14 ter of the laws of two thousand twenty-two that added this subdivision
15 shall be expunged promptly and, in any event, no later than one year
16 after such effective date.

17 (b) Commencing upon the effective date of this subdivision:

18 (i) the chief administrator of the courts shall promptly notify the
19 commissioner of the division of criminal justice services and the heads
20 of all appropriate police departments, district attorney's offices and
21 other law enforcement agencies of all convictions that have been vacated
22 and dismissed pursuant to paragraph (a) of this subdivision and that all
23 records related to such convictions shall be expunged and the matter
24 shall be considered terminated in favor of the accused and deemed a
25 nullity, having been rendered legally invalid. Upon receipt of notifi-
26 cation of such vacatur, dismissal and expungement, all records relating

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

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1 to such conviction or convictions, or the criminal action or proceeding,
2 as the case may be, shall be marked as expunged by conspicuously indi-
3 cating on the face of the record and on each page or at the beginning of
4 the digitized file of the record that the record has been designated as
5 expunged. Upon the written request of the individual whose case has been
6 expunged or their designated agent, such records shall be destroyed.
7 Such records and papers shall not be made available to any person,
8 except the individual whose case has been expunged or such person's
9 designated agent; and

10 (ii) where automatic vacatur, dismissal, and expungement, including
11 record destruction if requested, is required by this subdivision but any
12 record of the court system in this state has not yet been updated to
13 reflect same:

14 (A) notwithstanding any other provision of law except as provided in
15 paragraph (d) of subdivision one of this section and paragraph (e) of
16 subdivision four of section eight hundred thirty-seven of the executive
17 law:

18 (1) when the division of criminal justice services conducts a search
19 of its criminal history records, maintained pursuant to subdivision six
20 of section eight hundred thirty-seven of the executive law, and returns
21 a report thereon, all references to a conviction for an offense
22 described in paragraph (k) of subdivision three of this section shall be
23 excluded from such report; and

24 (2) the chief administrator of the courts shall develop and promulgate
25 rules as may be necessary to ensure that no written or electronic report
26 of a criminal history record search conducted by the office of court
27 administration contains information relating to a conviction for an
28 offense described in paragraph (k) of subdivision three of this section;
29 and

30 (B) where court records relevant to such matter cannot be located or
31 have been destroyed, and a person or the person's attorney presents to
32 an appropriate court employee a fingerprint record of the New York state
33 division of criminal justice services, or a copy of a court disposition
34 record or other relevant court record, which indicates that a criminal
35 action or proceeding against such person was terminated by conviction of
36 an offense described in paragraph (k) of subdivision three of this
37 section, then promptly, and in any event within thirty days after such
38 notice to such court employee, the chief administrator of the courts or
39 his or her designee shall assure that such vacatur, dismissal, and
40 expungement, including record destruction if requested, have been
41 completed in accordance with subparagraph (i) of this paragraph.

42 (c) Vacatur, dismissal and expungement as set forth in this subdivi-
43 sion shall be without prejudice to any person or such person's attorney
44 seeking further relief pursuant to article four hundred forty of this
45 chapter or any other law. Nothing in this section is intended or shall
46 be interpreted to diminish or abrogate any right or remedy otherwise
47 available to any person.

48 (d) The office of court administration, in conjunction with the divi-
49 sion of criminal justice services, shall develop an affirmative informa-
50 tion campaign and widely disseminate to the public, through its website,
51 public service announcements and other means, in multiple languages and
52 through multiple outlets, information concerning the expungement and
53 vacatur of loitering for the purposes of prostitution convictions estab-
54 lished by the chapter of the laws of two thousand twenty-two that added
55 this subdivision, including, but not limited to, the automatic expunge-
56 ment of certain past convictions, the means by which an individual may

1 file a motion for vacatur, dismissal and expungement of certain past
2 convictions, and the impact of such changes on such person's criminal
3 history records.

4 § 2. The opening paragraph of subdivision 1, subdivision 2 and para-
5 graph (a) of subdivision 3 of section 170.80 of the criminal procedure
6 law, the opening paragraph of subdivision 1 as amended by chapter 23 of
7 the laws of 2021, and subdivision 2 as amended and paragraph (a) of
8 subdivision 3 as added by chapter 402 of the laws of 2014, are amended
9 to read as follows:

10 Notwithstanding any other provision of law, at any time at or after
11 arraignment on a charge of prostitution pursuant to section 230.00 of
12 the penal law, except where, after consultation with counsel, a knowing
13 and voluntary plea of guilty has been entered to such charge, any judge
14 or justice hearing any stage of such case may, upon consent of the
15 defendant after consultation with counsel:

16 2. In the event of a conviction by plea or verdict to such charge or
17 charges of prostitution [~~or loitering for the purposes of prostitution~~]
18 as described in subdivision one of this section, the court must find
19 that the person is a youthful offender for the purpose of such charge
20 and proceed in accordance with article seven hundred twenty of this
21 chapter, provided, however, that the available sentence shall be the
22 sentence that may be imposed for a violation as defined in subdivision
23 three of section 10.00 of the penal law. In such case, the records of
24 the investigation and proceedings relating to such charge shall be
25 sealed in accordance with section 720.35 of this chapter.

26 (a) When a charge of prostitution [~~or loitering for the purposes of~~
27 ~~prostitution~~] has been conditionally converted to a person in need of
28 supervision proceeding pursuant to subdivision one of this section, the
29 defendant shall be deemed a "sexually exploited child" as defined in
30 subdivision one of section four hundred forty-seven-a of the social
31 services law and therefore shall not be considered an adult for purposes
32 related to the charges in the person in need of supervision proceeding.
33 Sections seven hundred eighty-one, seven hundred eighty-two, seven
34 hundred eighty-two-a, seven hundred eighty-three and seven hundred
35 eighty-four of the family court act shall apply to any proceeding condi-
36 tionally converted under this section.

37 § 3. Subparagraph (iv) of paragraph (k) of subdivision 3 of section
38 160.50 of the criminal procedure law, as amended by chapter 92 of the
39 laws of 2021, is amended to read as follows:

40 (iv) the conviction was for an offense defined in former section
41 240.37 of the penal law; or

42 § 4. This act shall take effect immediately.