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:

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

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

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

(i) the chief administrator of the courts shall promptly notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments, district attorney's offices and other law enforcement agencies of all convictions that have been vacated and dismissed pursuant to paragraph (a) of this subdivision and that all records related to such convictions shall be expunged and the matter shall be considered terminated in favor of the accused and deemed a nullity, having been rendered legally invalid. Upon receipt of notification 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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to such conviction or convictions, or the criminal action or proceeding, as the case may be, shall be marked as expunged by conspicuously indicating on the face of the record and on each page or at the beginning of the digitized file of the record that the record has been designated as expunged. Upon the written request of the individual whose case has been expunged or their designated agent, such records shall be destroyed. Such records and papers shall not be made available to any person, except the individual whose case has been expunged or such person's designated agent; and

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

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

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

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

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

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

(d) The office of court administration, in conjunction with the division of criminal justice services, shall develop an affirmative information campaign and widely disseminate to the public, through its website, public service announcements and other means, in multiple languages and through multiple outlets, information concerning the expungement and vacatur of loitering for the purposes of prostitution convictions established by the chapter of the laws of two thousand twenty-two that added this subdivision, including, but not limited to, the automatic expungement of certain past convictions, the means by which an individual may

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

§ 2. The opening paragraph of subdivision 1, subdivision 2 and paragraph (a) of subdivision 3 of section 170.80 of the criminal procedure law, the opening paragraph of subdivision 1 as amended by chapter 23 of the laws of 2021, and subdivision 2 as amended and paragraph (a) of subdivision 3 as added by chapter 402 of the laws of 2014, are 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, **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:

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

(a) When a charge of prostitution [~~or loitering for the purposes of prostitution~~] has been conditionally converted to a person in need of supervision proceeding pursuant to subdivision one of this section, the defendant 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 person in need of supervision proceeding. Sections seven hundred eighty-one, seven hundred eighty-two, seven hundred eighty-two-a, seven hundred eighty-three and seven hundred eighty-four of the family court act shall apply to any proceeding conditionally converted under this section.

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

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

§ 4. This act shall take effect immediately.