


[NY CLS Soc Serv § 447-a](#)

Current through 2018 Chapters 1-321

New York Consolidated Laws Service > Social Services Law (Arts. 1 — 12) > Article 6 Children (Titles 1 — 11) > Title 8-A Safe Harbour for Exploited Children Act (§§ 447-a — 447-b)

Notice

 This section has more than one version with varying effective dates.

§ 447-a. Definitions [Effective November 13, 2018]

As used in this title:

1.The term “sexually exploited child” means any person under the age of eighteen who has been subject to sexual exploitation because he or she:

(a)is the victim of the crime of sex trafficking as defined in [section 230.34 of the penal law](#) or the crime of sex trafficking of a child as defined in section 230.34-a of the penal law;

(b)engages in any act as defined in [section 230.00 of the penal law](#);

(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](#).

2.The term “short-term safe house” means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of a runaway and homeless youth crisis services program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides emergency shelter, services and care to sexually exploited children including food, shelter, clothing, medical care, counseling and appropriate crisis intervention services at the time they are taken into custody by law enforcement and for the duration of any legal proceeding or proceedings in which they are either the complaining witness or the subject child. The short-term safe house shall also be available at the point in time that a child under the age of eighteen has first come into the custody of juvenile detention officials, law enforcement, local jails or the local commissioner of social services or is residing with the local runaway and homeless youth authority.

3.The term “advocate” means an employee of the short-term safe house defined in subdivision two of this section that has been trained to work with and advocate for the needs of sexually exploited children. The advocate shall accompany the child to all court appearances and will serve as a liaison between the short-term safe house and the court.

4.The term “safe house” means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five

NY CLS Soc Serv § 447-a

hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides shelter for sexually exploited children. In addition, a long-term safe house may be operated by a transitional independent living support program as defined in subdivision six of section five hundred thirty-two-a of the executive law. A safe house serving sexually exploited children as defined in this title shall provide or assist in securing necessary services for such sexually exploited children either through direct provision of services, or through written agreements with other community and public agencies for the provision of services including but not limited to housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse services. Where appropriate such safe house in accordance with a service plan for such sexually exploited child may also provide counseling and therapeutic services, educational services including life skills services and planning services to successfully transition residents back to the community. Nothing in the provisions of this title or article nineteen-H of the executive law shall prevent a child who is the subject of a proceeding which has not reached final disposition from residing at the safe house for the duration of that proceeding nor shall it prevent any sexually exploited child who is not the subject of a proceeding from residing at the safe house. An advocate employed by a short-term safe house or other appropriate staff of a short-term safe house shall, to the maximum extent possible, preferably within twenty-four hours but within no more than seventy-two hours following a sexually exploited child's admission into the program other than pursuant to a court order, notify such child's parent, guardian or custodian of his or her physical and emotional condition and the circumstances surrounding the child's presence at the program, unless there are compelling circumstances why the parent, guardian or custodian should not be so notified. Where such circumstances exist, the advocate or other appropriate staff member shall either file an appropriate petition in the family court, refer the youth to the local social services district, or in instances where abuse or neglect is suspected, report such case pursuant to title six of this article.

5.The term "community-based program" means a program operated by a not-for-profit organization that provides services such as street outreach, voluntary drop-in services, peer counseling, individual counseling, family-therapy and referrals for services such as educational and vocational training and health care. Any such community-based program may also work with the safe house serving sexually exploited children as defined in this title to provide transitional services to such children returning to the community.

History

Add, [L 2008, ch 569, § 1](#), eff April 1, 2010; amd, [L 2010, ch 58, § 1](#) (Part G), eff July 2, 2010, deemed eff on and after April 1, 2010; [L 2017, ch 56, § 8](#) (Part M), eff Jan 1, 2018; [L 2018, ch 189, § 11](#), eff Nov 13, 2018.

Annotations

Notes

Editor's Notes

Laws 2017, ch 56, § 9 (Part M), eff Jan 1, 2018, provides:

§ 9. This act shall take effect January 1, 2018; provided however, that: (a) the office of children and family services is authorized to promulgate regulations regarding any of the provisions of this act on or before the effective date of such act; provided, however, such office shall promulgate regulations specifying that services authorized in a municipality's consolidated services plan in accordance with items (A) and (B) of clause (iii) of

NY CLS Soc Serv § 447-a

subparagraph 3 of paragraph a of subdivision 2 of [section 420 of the executive law](#), as amended by section one of this act, may be provided by a program but are not required;

(b) the amendments to article 19-H of the executive law made by section six of this act that require that certain residential runaway and homeless youth programs be operated by authorized agencies shall be deemed to apply to such programs that are certified by the office of children and family services on or after the effective date of this act;

(c) the amendments to:

(i) paragraph a of subdivision 2 of [section 420 of the executive law](#), made by section one of this act, shall not affect the expiration and reversion of such subdivision pursuant to section 9 of part G of chapter 57 of the laws of 2013 and shall expire and be deemed repealed therewith; and

(ii) subdivisions 4 and 6 of [section 532-a of the executive law](#), made by section two of this act, shall not affect the expiration and reversion of such subdivisions pursuant to section 9 of part G of chapter 57 of the laws of 2013 and shall expire and be deemed repealed therewith;

(iii) subdivision 2 of [section 532-b of the executive law](#) made by section three of this act, shall not affect the expiration and reversion of such subdivision pursuant to section 9 of part G of chapter 57 of the laws of 2013 and shall expire and be deemed repealed therewith.

Laws 2018, ch 189, § 24, eff November 13, 2018, provides:

§ 24. This act shall take effect on the ninetieth day after it shall have become a law.

Amendment Notes

The 2017 amendment by ch 56, § 8 (Part M), substituted “a runaway and homeless youth crisis services program” for “an approved runaway program” in the first sentence of 2.

The 2018 amendment by ch 189, § 11, added “or the crime of sex trafficking of a child as defined in section 230.34-a of the penal law” in 1(a).

Research References & Practice Aids

Hierarchy Notes:

[NY CLS Soc Serv](#)

[NY CLS Soc Serv, Art. 6](#)

New York Consolidated Laws Service
Copyright © 2018 Matthew Bender, Inc.,
a member of the LexisNexis (TM) Group All rights reserved.

End of Document

NY CLS Soc Serv § 447-b

Current through 2018 Chapters 1-321

New York Consolidated Laws Service > Social Services Law (Arts. 1 — 12) > Article 6 Children (Titles 1 — 11) > Title 8-A Safe Harbour for Exploited Children Act (§§ 447-a — 447-b)

§ 447-b. Services for exploited children

1. Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available specifically therefor ensure that a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children. Crisis intervention services, short-term safe house care and community-based programming may, where appropriate, be provided by the same not-for-profit agency. Local social services districts may work cooperatively to provide such short-term safe house or other short-term safe placement, services and programming and access to such placement, services and programming may be provided on a regional basis, provided, however, that every local social services district shall to the extent that funds are available ensure that such placement, services and programs shall be readily accessible to sexually exploited children residing within the district.

2. All of the services created under this title may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services created under section seven hundred thirty-five of the family court act, through a proceeding under article three of the family court act, a proceeding under article ten of the family court act or through a referral from a local social services agency.

3. The capacity of the crisis intervention services and community-based programs in subdivision one of this section shall be based on the number of sexually exploited children in each district who are in need of such services. A determination of such need shall be made in two thousand ten and every five years thereafter in every social services district by the local commissioner of social services and be included in the integrated county plan. Such determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local social services commissioners, the runaway and homeless youth coordinator for the local social services district, local law guardians, presentment agencies, public defenders and district attorney's offices and child advocates and services providers who work directly with sexually exploited youth.

4. In determining the need for and capacity of the services created under this section, each local social services district shall recognize that sexually exploited youth have separate and distinct service needs according to gender and, where a local social services district determines that the need exists, to the extent that funds are available, appropriate programming shall be made available.

5. To the extent funds are specifically appropriated therefor, the office of children and family services shall contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate at least one long-term safe house in a geographically appropriate area of the state which shall provide

NY CLS Soc Serv § 447-b

safe and secure long term housing and specialized services for sexually exploited children throughout the state. The appropriateness of the geographic location shall be determined taking into account the areas of the state with high numbers of sexually exploited children and the need for sexually exploited children to find shelter and long term placement in a region that cannot be readily accessed by the perpetrators of sexual exploitation. The need for more than one long-term safe house shall be determined by the office of children and family services based on the numbers and geographical location of sexually exploited children within the state. Nothing herein shall be construed to preclude an agency from applying for and accepting grants, gifts and bequests of funds from private individuals, foundations and the federal government for the purpose of creating or carrying out the duties of a long-term safe house.

6. The local social services commissioner may, to the extent that funds are available, in conjunction with the division of criminal justice services and local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The division of criminal justice services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and the office of juvenile justice and delinquency prevention.

History

Add, [L 2008, ch 569, § 1](#), eff April 1, 2010; amd, [L 2010, ch 58, § 2](#) (Part G), eff July 2, 2010, deemed eff on and after April 1, 2010.

Annotations

Research References & Practice Aids

Hierarchy Notes:

[NY CLS Soc Serv](#)

[NY CLS Soc Serv, Art. 6](#)

New York Consolidated Laws Service
Copyright © 2018 Matthew Bender, Inc.,
a member of the LexisNexis (TM) Group All rights reserved.


End of Document

NY CLS CPL § 440.10

Current through 2018 Chapters 1-321

New York Consolidated Laws Service > Criminal Procedure Law (Pts. ONE — THREE) > Part TWO The Principal Proceedings (Titles H — M) > Title M Proceedings After Judgment (Arts. 440 — 470) > Article 440 Post-Judgment Motions (§§ 440.10 — 440.70)

Notice

 This section has more than one version with varying effective dates.

§ 440.10. Motion to vacate judgment [Effective November 13, 2018]

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

- (a) The court did not have jurisdiction of the action or of the person of the defendant; or
- (b) The judgment was procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor; or
- (c) Material evidence adduced at a trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false; or
- (d) Material evidence adduced by the people at a trial resulting in the judgment was procured in violation of the defendant's rights under the constitution of this state or of the United States; or
- (e) During the proceedings resulting in the judgment, the defendant, by reason of mental disease or defect, was incapable of understanding or participating in such proceedings; or
- (f) Improper and prejudicial conduct not appearing in the record occurred during a trial resulting in the judgment which conduct, if it had appeared in the record, would have required a reversal of the judgment upon an appeal therefrom; or
- (g) New evidence has been discovered since the entry of a judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence on his part and which is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant; provided that a motion based upon such ground must be made with due diligence after the discovery of such alleged new evidence; or
- (g-1) Forensic DNA testing of evidence performed since the entry of a judgment, (1) in the case of a defendant convicted after a guilty plea, the court has determined that the defendant has demonstrated a substantial probability that the defendant was actually innocent of the offense of which he or she was convicted, or (2) in the case of a defendant convicted after a trial, the court has determined that there exists a reasonable probability that the verdict would have been more favorable to the defendant.
- (h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States; or

NY CLS CPL § 440.10

(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 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

2. Notwithstanding the provisions of subdivision one, the court must deny a motion to vacate a judgment when:

(a) The ground or issue raised upon the motion was previously determined on the merits upon an appeal from the judgment, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue; or

(b) The judgment is, at the time of the motion, appealable or pending on appeal, and sufficient facts appear on the record with respect to the ground or issue raised upon the motion to permit adequate review thereof upon such an appeal. This paragraph shall not apply to a motion under paragraph (i) of subdivision one of this section; or

(c) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him; or

(d) The ground or issue raised relates solely to the validity of the sentence and not to the validity of the conviction.

3. Notwithstanding the provisions of subdivision one, the court may deny a motion to vacate a judgment when:

(a) Although facts in support of the ground or issue raised upon the motion could with due diligence by the defendant have readily been made to appear on the record in a manner providing adequate basis for review of such ground or issue upon an appeal from the judgment, the defendant unjustifiably failed to adduce such matter prior to sentence and the ground or issue in question was not subsequently determined upon appeal. This paragraph does not apply to a motion based upon deprivation of the right to counsel at the trial or upon failure of the trial court to advise the defendant of such right, or to a motion under paragraph (i) of subdivision one of this section; or

(b) The ground or issue raised upon the motion was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment, or upon a motion or proceeding in a federal court; unless since the time of such determination there has been a retroactively effective change in the law controlling such issue; or

(c) Upon a previous motion made pursuant to this section, the defendant was in a position adequately to raise the ground or issue underlying the present motion but did not do so.

Although the court may deny the motion under any of the circumstances specified in this subdivision, in the interest of justice and for good cause shown it may in its discretion grant the motion if it is otherwise meritorious and vacate the judgment.

4. If the court grants the motion, it must, except as provided in subdivision five or six of this section, vacate the judgment, and must dismiss the accusatory instrument, or order a new trial, or take such other action as is appropriate in the circumstances.

5. Upon granting the motion upon the ground, as prescribed in paragraph (g) of subdivision one, that newly discovered evidence creates a probability that had such evidence been received at the trial the verdict would

NY CLS CPL § 440.10

have been more favorable to the defendant in that the conviction would have been for a lesser offense than the one contained in the verdict, the court may either:

(a) Vacate the judgment and order a new trial; or

(b) With the consent of the people, modify the judgment by reducing it to one of conviction for such lesser offense. In such case, the court must re-sentence the defendant accordingly.

6. If the court grants a motion under paragraph (i) 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.

7. Upon a new trial resulting from an order vacating a judgment pursuant to this section, the indictment is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time the previous trial was commenced, regardless of whether any count was dismissed by the court in the course of such trial, except (a) those upon or of which the defendant was acquitted or deemed to have been acquitted, and (b) those dismissed by the order vacating the judgment, and (c) those previously dismissed by an appellate court upon an appeal from the judgment, or by any court upon a previous post-judgment motion.

8. Upon an order which vacates a judgment based upon a plea of guilty to an accusatory instrument or a part thereof, but which does not dismiss the entire accusatory instrument, the criminal action is, in the absence of an express direction to the contrary, restored to its prepleading status and the accusatory instrument is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time of the entry of the plea, except those subsequently dismissed under circumstances specified in paragraphs (b) and (c) of subdivision six. Where the plea of guilty was entered and accepted, pursuant to subdivision three of section 220.30, upon the condition that it constituted a complete disposition not only of the accusatory instrument underlying the judgment vacated but also of one or more other accusatory instruments against the defendant then pending in the same court, the order of vacation completely restores such other accusatory instruments; and such is the case even though such order dismisses the main accusatory instrument underlying the judgment.

History

Add, L 1970, ch 996, § 1; amd, [L 2010, ch 332, §§ 1–5](#) (see 2010 note below); [L 2012, ch 19, § 4](#), eff Aug 1, 2012 (see 2012 notes below); L 2015, ch 368, § 29, eff Jan 19, 2016; L 2018, ch 189, § 9, eff Nov 13, 2018.

Annotations

Notes

Editor's Notes:

[Laws 2010, ch 332, § 6](#), eff August 13, 2010, provides as follows:

§ 6. This act shall take effect immediately and shall apply to convictions taking place before or after it takes effect.

[Laws 2012, ch 19, §§ 7, 9](#), eff Aug 1, 2012, provide as follows:

§ 7. Nothing in this act shall be construed to create or impose an affirmative obligation upon laboratories, police departments, district attorneys, or any other law enforcement agencies or personnel to retain or preserve property that may contain DNA if such obligation did not exist prior to the effective date of this act, provided, however, that nothing in this act shall be construed to affect or remove any such obligation if it did exist prior to the effective date of this act.

