

SENATE, No. 3678

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 13, 2019

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Senators Codey, A.R.Bucco, Gopal, Pennacchio and Singleton

SYNOPSIS

Provides for process to vacate and expunge, as applicable, arrests, charges, complaints, convictions, or other dispositions, as well as DNA records, associated with violations of law committed by person while victim of human trafficking.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/19/2019)

1 AN ACT concerning relief from criminal and other proceedings
2 pertaining to actual or alleged violations of law committed by a
3 person while a victim of human trafficking, and amending
4 P.L.2013, c.51.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. Section 10 of P.L.2013, c.51 (C.2C:44-1.1) is amended to
10 read as follows:

11 10. a. (1) A person convicted of **[N.J.S.2C:34-1, prostitution**
12 **and related offenses, or section 3 of P.L.1997, c.93 (C.2C:34-1.1),**
13 **loitering for the purpose of engaging in prostitution, or a similar**
14 **local ordinance,]** an offense or other violation of law committed as
15 a result of the person's status as a victim of human trafficking as
16 described in section 1 of P.L.2005, c.77 (C.2C:13-8) or 22 U.S.C.
17 s.7102, and which offense was committed as a result of the
18 trafficking scheme or other course of conduct in violation of either
19 of those acts that resulted in the person's victimization, or
20 committed at the direction of an organizer, supervisor, financier, or
21 manager of that scheme or other course of conduct as described in
22 paragraph (2) of subsection a. of section 1 of P.L.2005, c.77
23 (C.2C:13-8), may file an application with the Superior Court in
24 accordance with the Rules of Court to have **[the] each** conviction,
25 finding of guilt, or, in the case of an offense committed while a
26 juvenile, adjudication of delinquency vacated at any time following
27 entry of a judgment of conviction, **[when the person's participation**
28 in the offense was a result of having been a victim of human
29 trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or as
30 defined in paragraph (14) of 22 U.S.C. s.7102] **finding of guilt, or**
31 adjudication of delinquency. The application shall be made to the
32 Superior Court in the county in which the most recent disposition
33 was adjudged, and may include any other prior disposition which
34 the person is seeking to be vacated, regardless of where that prior
35 disposition occurred.

36 (2) **[Notwithstanding any law to the contrary,]** In the same
37 application filed pursuant to paragraph (1) of this subsection, the
38 person may also **[in the same application]** seek an order for the
39 expungement of any reference to the person's arrest, charge,
40 complaint, conviction, adjudication of delinquency, or other
41 disposition, and any proceeding **[for prostitution]** related thereto
42 in any records in the custody of a court, or law enforcement or
43 correctional agency entitled to be served with the application
44 pursuant to subsection b. of this section, as well as an order for the
45 expungement of the person's DNA record and other identifiable

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 information from the State DNA Database in accordance with
2 section 9 of P.L.1994, c.136 (C.53:1-20.25).

3 b. (1) (a) An application made to the Superior Court under
4 this section and all associated supporting documents filed with the
5 application shall remain under seal and kept confidential, and shall
6 not be disseminated or disclosed, in whole or in part, except to
7 another court, or a law enforcement or correctional agency as set
8 forth in this subparagraph. The application, together with a copy of
9 all supporting documents, shall be served pursuant to the Rules of
10 Court upon: the Attorney General; the county prosecutor of the
11 county wherein the court is located; the Superintendent of State
12 Police; the chief of police or other executive head of the police
13 department of the municipality wherein [the] each offense or other
14 violation of law was committed or alleged to have been committed;
15 the chief law enforcement officer of any other law enforcement
16 agency of this State that participated in the arrest of the person; the
17 superintendent or warden of any institution in which the person was
18 confined; and, if a disposition was made in municipal court, upon
19 the judge of that court. [Any of the noticed parties herein may
20 make an appearance or file a submission responding to the person's
21 application.] Each recipient of the application and supporting
22 documents shall keep them confidential, shall only use them in a
23 manner consistent with and in furtherance of the purpose for which
24 they were received, and shall not further disseminate or disclose
25 them, in whole or in part, to any party outside of the parties set
26 forth in this subparagraph.

27 (b) Unless a party given notice pursuant to subparagraph (a) of
28 this paragraph files an objection to the application and requests a
29 hearing within 45 days of the date of receipt of the application, the
30 application shall be deemed unopposed and the court may grant the
31 relief sought in accordance with subsections c. and d. of this
32 section. Any objection filed by a noticed party shall not be deemed
33 determinative, and the court may grant relief over any party's
34 objection.

35 (2) [The application shall be made and heard within a
36 reasonable time after] With respect to any court appearance by the
37 person [has ceased to be a victim of human trafficking or has
38 sought services for being a victim of human trafficking, whichever
39 occurs later, subject to reasonable concerns for the safety of the
40 person, family members of the person, or other victims of human
41 trafficking that may be jeopardized by the bringing of] concerning
42 the application, [or for other reasons consistent with the purposes
43 of this paragraph] if required, the court shall, consistent with the
44 Rules of Court, permit the person to enter an appearance by
45 telephone, video link as approved by the Administrative Office of
46 the Courts, or other approved means of audio or audio and visual
47 communication, unless there is a compelling reason to so deny.

1 c. (1) The court may vacate **[a]** any conviction, finding of
2 guilt, or adjudication of delinquency pursuant to this section if it
3 finds by a preponderance of the evidence that the person was a
4 victim of human trafficking **[pursuant to]** as described in section 1
5 of P.L.2005, c.77 (C.2C:13-8) or **[as defined in paragraph (14) of]**
6 22 U.S.C. s.7102 **[at the time of the offense]**, and that the offense
7 or other violation of law to be vacated was a result of the person
8 having been a victim of human trafficking.

9 (2) In making a determination:

10 (a) evidence documenting the person's status as a victim of
11 human trafficking **[at the time of the offense]** from a federal, state,
12 or local governmental agency shall create a rebuttable presumption
13 that the person's participation in the offense was a result of having
14 been a victim, but shall not be required to vacate a conviction under
15 this section; and

16 (b) the court may additionally consider other evidence it deems
17 appropriate in determining whether the person was a victim of
18 human trafficking, including, but not limited to:

19 (i) certified records of federal or State court proceedings which
20 demonstrate that the defendant was a victim of a trafficker charged
21 with a human trafficking offense under section 1 of P.L.2005, c.77
22 (C.2C:13-8) or chapter 77 of Title 18 of the United States Code;

23 (ii) certified records of approval notices or law enforcement
24 certifications generated from a federal immigration proceeding
25 available to victims of human trafficking; and

26 (iii) testimony or a sworn statement from a trained professional
27 staff member of a victim services organization, an attorney, a
28 member of the clergy or a health care or other professional from
29 whom the person has sought assistance in addressing the trauma
30 associated with being a victim of human trafficking.

31 d. (1) If the court finds, pursuant to subsection c. of this
32 section, that the person was a victim of human trafficking, it shall
33 enter an order vacating the conviction, finding of guilt, or
34 adjudication of delinquency, which indicates the disposition to be
35 vacated due to a substantive defect in the underlying proceedings
36 that resulted in the disposition, and directing that all court records
37 be revised accordingly. When the person's application also seeks an
38 order for expungement, the court order shall require that any court,
39 law enforcement and correctional **[agencies, and other]** agency
40 noticed **[parties]** pursuant to subsection b. of this section expunge
41 all references to the person's arrest, charge, complaint, conviction,
42 adjudication of delinquency, or other disposition, and any related
43 proceedings **[for the violation of N.J.S.2C:34-1, prostitution and**
44 **related offenses, or section 3 of P.L.1997, c.93 (C.2C:34-1.1),**
45 **loitering for the purpose of engaging in prostitution, or a similar**
46 **local ordinance]** from all records in their custody that relate to the
47 vacated conviction or other disposition, and in the case of an order

1 concerning the expungement of the person's DNA record and other
2 identifiable information from the State DNA Database, the order
3 shall require the Division of State Police in the Department of Law
4 and Public Safety to purge this information in accordance with
5 section 9 of P.L.1994, c.136 (C.53:1-20.25). An expungement
6 ordered pursuant to this section shall have the same force as an
7 expungement ordered pursuant to N.J.S.2C:52-1 et seq. and section
8 9 of P.L.1994, c.136 (C.53:1-20.25), as applicable.

9 e. A court that grants relief pursuant to this section may take
10 any additional action as appropriate under the circumstances to
11 carry out the purposes of this section.

12 (cf: P.L.2013, c.51, s.10)

13
14 2. This act shall take effect on the first day of the fourth month
15 next following enactment, except the Attorney General and
16 Administrative Director of the Courts may take any anticipatory
17 administrative action in advance thereof as shall be necessary for
18 the implementation of the act.

21 STATEMENT

22
23 This bill would provide a process for a person to vacate and
24 expunge, as applicable, all arrests, charges, complaints, convictions,
25 or other dispositions, as well as DNA records, for actual or alleged
26 violations of law committed by the person as a result of having been
27 a victim of human trafficking. Under current law, a victim can
28 make an application to the Superior Court for an order to vacate and
29 expunge convictions and related records only for violations of
30 N.J.S.2C:34-1, prostitution and related offenses, or section 3 of
31 P.L.1997, c.93 (C.2C:34-1.1), loitering for the purpose of engaging
32 in prostitution, or a similar local ordinance. The bill would remove
33 this limitation on qualifying convictions and instead provide that all
34 convictions and other dispositions for violations of law committed
35 while a person was a victim of human trafficking, as well as the
36 person's DNA record and other identifiable information from the
37 State DNA Database, may be vacated and expunged, as applicable.

38 Under the bill, the application would be made to the Superior
39 Court in the county in which the most recent disposition was
40 adjudged, and could include any other prior disposition which the
41 person is seeking to be vacated, regardless of where that prior
42 disposition occurred. An application, and all associated supporting
43 documents filed therewith, would remain under seal and kept
44 confidential, and would not be disseminated or disclosed except to
45 the following parties, who would be noticed with copies of the
46 filing: the Attorney General; the county prosecutor of the county
47 wherein the court is located; the Superintendent of State Police; the
48 chief of police or other executive head of the police department of

1 the municipality wherein each offense or other violation of law was
2 committed or alleged to have been committed; the chief law
3 enforcement officer of any other law enforcement agency of this
4 State that participated in the arrest of the person; the superintendent
5 or warden of any institution in which the person was confined; and,
6 if a disposition was made in municipal court, upon the judge of that
7 court. These parties, in turn, would also have a duty to keep the
8 application and supporting documents confidential.

9 Unless one of the above noticed parties filed an objection to the
10 application and requested a hearing within 45 days of the date of
11 receipt of the application, the application would be deemed
12 unopposed and the court could grant the relief sought. If the person
13 seeking relief was required to make a court appearance concerning
14 the application, the court would be required, consistent with the
15 Rules of Court, to permit the person to enter an appearance by
16 telephone, video link as approved by the Administrative Office of
17 the Courts, or other approved means of audio or audio and visual
18 communication, unless there was a compelling reason to so deny.

19 If the Superior Court found that a person was a victim of human
20 trafficking, it would be required to enter an order vacating each
21 conviction or other disposition. The order would indicate that the
22 conviction or other disposition was vacated due to a substantive
23 defect in the underlying proceedings that resulted in such
24 disposition, and direct that all court records be revised accordingly.
25 Concerning any expungement request with the application, the court
26 order would require that any court, law enforcement and
27 correctional agency which received a copy of the application
28 expunge all references to the victim's arrest, charge, complaint,
29 conviction, or other disposition and any related proceedings from
30 records relating to each vacated conviction or other disposition; and
31 in the case of an order concerning the expungement of the person's
32 DNA record and other identifiable information from the State DNA
33 Database, the order would additionally require the Division of State
34 Police in the Department of Law and Public Safety to purge this
35 information.