

ASSEMBLY, No. 5322

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 29, 2021

Sponsored by:

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman CHRISTOPHER P. DEPHILLIPS

District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Assemblyman Mukherji, Assemblywoman Quijano, Assemblyman Webber, Assemblywomen Jasey and McKnight

SYNOPSIS

Provides for process to vacate and expunge certain arrests, charges, complaints, convictions, other dispositions, and DNA records, associated with violations by certain human trafficking victims.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/15/2021)

1 AN ACT concerning relief from criminal and other proceedings
2 pertaining to certain violations or alleged violations of law
3 committed by a person while a victim of human trafficking, and
4 amending 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, except for
15 murder pursuant to N.J.S.2C:11-3, manslaughter or aggravated
16 manslaughter pursuant to N.J.S.2C:11-4, kidnapping pursuant to
17 N.J.S.2C:13-1, luring or enticing a child pursuant to N.J.S.2C:13-6,
18 and sexual assault pursuant to N.J.S.2C:14-2 committed as a result
19 of the person's status as a victim of human trafficking as described
20 in section 1 of P.L.2005, c.77 (C.2C:13-8) or 22 U.S.C. s.7102, and
21 which offense was committed as a result of the trafficking scheme
22 or other course of conduct in violation of either of those acts that
23 resulted in the person's victimization, or committed at the direction
24 of an organizer, supervisor, financier, or manager of that scheme or
25 other course of conduct as described in paragraph (2) of subsection
26 a. of section 1 of P.L.2005, c.77 (C.2C:13-8), may file an
27 application with the Superior Court in accordance with the Rules of
28 Court to have **[**the**]** each conviction, finding of guilt, or, in the case
29 of an offense committed while a juvenile, adjudication of
30 delinquency vacated at any time following entry of a judgment of
31 conviction, **[**when the person's participation in the offense was a
32 result of having been a victim of human trafficking pursuant to
33 section 1 of P.L.2005, c.77 (C.2C:13-8) or as defined in paragraph
34 (14) of 22 U.S.C. s.7102**]** finding of guilt, or adjudication of
35 delinquency. The application shall be made to the Superior Court
36 in the county in which the most recent disposition was adjudged,
37 and may include any other prior disposition which the person is
38 seeking to be vacated, regardless of where that prior disposition
39 occurred.

40 (2) **[**Notwithstanding any law to the contrary,**]** In the same
41 application filed pursuant to paragraph (1) of this subsection, the
42 person may also **[**in the same application**]** seek an order for the
43 expungement of any reference to the person's arrest, charge,
44 complaint, conviction, adjudication of delinquency, or other
45 disposition, and any proceeding **[**for prostitution**]** related thereto in

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 any records in the custody of a court, or law enforcement or
2 correctional agency entitled to be served with the application
3 pursuant to subsection b. of this section, as well as an order for the
4 expungement of the person's DNA record and other identifiable
5 information from the State DNA Database in accordance with
6 section 9 of P.L.1994, c.136 (C.53:1-20.25).

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

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

39 (c) When one or more of the convictions sought to be vacated is
40 for a crime of the first or second degree, any victims of these crimes
41 shall be given an opportunity to submit a written statement about
42 the impact of the crime to the court. It shall be the responsibility of
43 the county prosecutor given notice of the application pursuant to
44 subparagraph (a) of this paragraph to make a good faith effort to
45 notify any victim. The prosecutor's office shall have the discretion
46 to waive victim notification in instances when the victim was the
47 trafficker or the notification could endanger the petitioner.

1 (2) **【**The application shall be made and heard within a
2 reasonable time after**】** With respect to any court appearance by the
3 person **【**has ceased to be a victim of human trafficking or has
4 sought services for being a victim of human trafficking, whichever
5 occurs later, subject to reasonable concerns for the safety of the
6 person, family members of the person, or other victims of human
7 trafficking that may be jeopardized by the bringing of**】** concerning
8 the application, **【**or for other reasons consistent with the purposes
9 of this paragraph**】** if required, the court shall, consistent with the
10 Rules of Court, permit the person to enter an appearance by
11 telephone, video link as approved by the Administrative Office of
12 the Courts, or other approved means of audio or audio and visual
13 communication, unless there is a compelling reason to so deny.

14 c. (1) The court may vacate **【a】** any conviction, finding of
15 guilt, or adjudication of delinquency pursuant to this section if it
16 finds by a preponderance of the evidence that the person was a
17 victim of human trafficking **【pursuant to】** as described in section 1
18 of P.L.2005, c.77 (C.2C:13-8) or **【as defined in paragraph (14) of】**
19 22 U.S.C. s.7102 **【at the time of the offense】**, and that the offense
20 or other violation of law to be vacated was a result of the person
21 having been a victim of human trafficking.

22 (2) In making a determination:

23 (a) evidence documenting the person's status as a victim of
24 human trafficking **【at the time of the offense】** from a federal, state,
25 or local governmental agency shall create a rebuttable presumption
26 that the person's participation in the offense was a result of having
27 been a victim, but shall not be required to vacate a conviction under
28 this section; and

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

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

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

39 (iii) testimony or a sworn statement from a trained professional
40 staff member of a victim services organization, an attorney, a
41 member of the clergy or a health care or other professional from
42 whom the person has sought assistance in addressing the trauma
43 associated with being a victim of human trafficking.

44 d. If the court finds, pursuant to subsection c. of this section,
45 that the person was a victim of human trafficking, it shall enter an
46 order vacating the conviction, finding of guilt, or adjudication of
47 delinquency, which indicates the disposition to be vacated due to a

1 substantive defect in the underlying proceedings that resulted in the
2 disposition, and directing that all court records be revised
3 accordingly. When the person's application also seeks an order for
4 expungement, the court order shall require that any court, law
5 enforcement and correctional **【agencies, and other】** agency noticed
6 **【parties】** pursuant to subsection b. of this section expunge all
7 references to the person's arrest, charge, complaint, conviction,
8 adjudication of delinquency, or other disposition, and any related
9 proceedings **【for the violation of N.J.S.2C:34-1, prostitution and**
10 **related offenses, or section 3 of P.L.1997, c.93 (C.2C:34-1.1),**
11 **loitering for the purpose of engaging in prostitution, or a similar**
12 **local ordinance】** from all records in their custody that relate to the
13 vacated conviction or other disposition, and in the case of an order
14 concerning the expungement of the person's DNA record and other
15 identifiable information from the State DNA Database, the order
16 shall require the Division of State Police in the Department of Law
17 and Public Safety to purge this information in accordance with
18 section 9 of P.L.1994, c.136 (C.53:1-20.25). An expungement
19 ordered pursuant to this section shall have the same force as an
20 expungement ordered pursuant to N.J.S.2C:52-1 et seq. and section
21 9 of P.L.1994, c.136 (C.53:1-20.25), as applicable.

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

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

26
27 2. This act shall take effect on the first day of the fourth month
28 next following enactment, except the Attorney General and
29 Administrative Director of the Courts may take any anticipatory
30 administrative action in advance thereof as shall be necessary for
31 the implementation of the act.

32 33 34 STATEMENT

35
36 This bill would provide a process for a person to vacate and
37 expunge, as applicable, all arrests, charges, complaints, convictions,
38 or other dispositions, as well as DNA records, for actual or alleged
39 violations of law committed by the person as a result of having been
40 a victim of human trafficking. Under current law, a victim can make
41 an application to the Superior Court for an order to vacate and
42 expunge convictions and related records only for violations of
43 N.J.S.2C:34-1, prostitution and related offenses, or section 3 of
44 P.L.1997, c.93 (C.2C:34-1.1), loitering for the purpose of engaging
45 in prostitution, or a similar local ordinance. The bill would remove
46 this limitation on qualifying convictions and instead provide that all
47 convictions and other dispositions for violations of law committed
48 while a person was a victim of human trafficking, as well as the

1 person's DNA record and other identifiable information from the
2 State DNA Database, may be vacated and expunged, as applicable.

3 Under this bill, the application would be made to the Superior
4 Court in the county in which the most recent disposition was
5 adjudged, and could include any other prior disposition which the
6 person is seeking to be vacated, regardless of where that prior
7 disposition occurred. An application, and all associated supporting
8 documents filed therewith, would remain under seal and kept
9 confidential, and would not be disseminated or disclosed except to
10 the following parties, who would be noticed with copies of the
11 filing: the Attorney General; the county prosecutor of the county
12 wherein the court is located; the Superintendent of State Police; the
13 chief of police or other executive head of the police department of
14 the municipality wherein each offense or other violation of law was
15 committed or alleged to have been committed; the chief law
16 enforcement officer of any other law enforcement agency of this
17 State that participated in the arrest of the person; the superintendent
18 or warden of any institution in which the person was confined; and,
19 if a disposition was made in municipal court, upon the judge of that
20 court. These parties, in turn, would also have a duty to keep the
21 application and supporting documents confidential.

22 Unless one of the above noticed parties filed an objection to the
23 application and requested a hearing within 45 days of the date of
24 receipt of the application, the application would be deemed
25 unopposed and the court could grant the relief sought. If the person
26 seeking relief was required to make a court appearance concerning
27 the application, the court would be required, consistent with the
28 Rules of Court, to permit the person to enter an appearance by
29 telephone, video link as approved by the Administrative Office of
30 the Courts, or other approved means of audio or audio and visual
31 communication, unless there was a compelling reason to so deny.

32 If the Superior Court found that a person was a victim of human
33 trafficking, it would be required to enter an order vacating each
34 conviction or other disposition. The order would indicate that the
35 conviction or other disposition was vacated due to a substantive
36 defect in the underlying proceedings that resulted in such
37 disposition, and direct that all court records be revised accordingly.
38 Concerning any expungement request with the application, the court
39 order would require that any court, law enforcement and
40 correctional agency which received a copy of the application
41 expunge all references to the victim's arrest, charge, complaint,
42 conviction, or other disposition and any related proceedings from
43 records relating to each vacated conviction or other disposition; and
44 in the case of an order concerning the expungement of the person's
45 DNA record and other identifiable information from the State DNA
46 Database, the order would additionally require the Division of State
47 Police in the Department of Law and Public Safety to purge this
48 information. Under the bill, there is no option of expungement for

1 those persons specifically charged with murder pursuant to
2 N.J.S.2C:11-3, manslaughter or aggravated manslaughter pursuant
3 to N.J.S.2C:11-4, kidnapping pursuant to N.J.S.2C:13-1, luring or
4 enticing a child pursuant to N.J.S.2C:13-6 and sexual assault
5 pursuant to N.J.S.2C14-2.

6 Moreover, when one or more of the convictions sought to be
7 vacated is a crime in the first or second degree, any victims of those
8 matters are given an opportunity to submit a written statement about
9 the impact of the crime to the court. The respective county
10 prosecutor's office has the discretion to waive the victim
11 notification in instances when the victim was the trafficker or in
12 instances when the notification could endanger the petitioner.