

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5322

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2021

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 5322.

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

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

court. These parties, in turn, would also have a duty to keep the application and supporting documents confidential.

The amended bill provides that unless one of the above noticed parties filed an objection to the application and requested a hearing within 60 days of the date of receipt of the application, the application would be deemed unopposed and the court could grant the relief sought. If the person seeking relief was required to make a court appearance concerning the application, the court would be required, consistent with the Rules of Court, to permit the person to enter an appearance by telephone, video link as approved by the Administrative Office of the Courts, or other approved means of audio or audio and visual communication, unless there was a compelling reason to so deny.

The bill as amended requires that if the Superior Court finds that a person was a victim of human trafficking, it would be required to enter an order vacating each conviction or other disposition, which indicates the disposition to be vacated due to the determination that a factual or legal proposition has been established to negate the disposition, and directing that all court records be revised accordingly. Concerning any expungement request with the application, the court order would require that any court, law enforcement and correctional agency which received a copy of the application expunge all references to the victim's arrest, charge, complaint, conviction, or other disposition and any related proceedings from records relating to each vacated conviction or other disposition.

The bill as amended provides that in the case of an order concerning the expungement of the person's DNA record and other identifiable information from the State DNA Database, the order would additionally require the Division of Criminal Justice in the Department of Law and Public Safety to purge this information. Under the bill, there is no option of expungement for those persons specifically charged with murder pursuant to N.J.S.2C:11-3, manslaughter or aggravated manslaughter pursuant to N.J.S.2C:11-4, kidnapping pursuant to N.J.S.2C:13-1, luring or enticing a child pursuant to N.J.S.2C:13-6 and sexual assault pursuant to N.J.S.2C:14-2.

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

As introduced, the bill had provided that if the court finds that the person was a victim of human trafficking as set forth in subsection c. of section 10 of P.L.2013, c.51 (C.2C:44-1.1), it shall

enter an order vacating the conviction, finding of guilt, or adjudication of delinquency, which indicates the disposition to be vacated due to a substantive defect in the underlying proceedings that resulted in the disposition. The committee amendments delete the language concerning a substantive defect in the underlying proceedings. Instead, pursuant to the amendments, the court would enter an order vacating the conviction, finding of guilt, or adjudication of delinquency, which indicates the disposition to be vacated due to the determination that a factual or legal proposition has been established to negate the disposition.

The committee amendments also increase the time for a party to object to the application and request a hearing, from 45 days to 60 days. In addition, the amendments add certain clarifying language to the bill.

COMMITTEE AMENDMENTS:

The amendments:

- Delete a provision concerning the court's order that refers to vacating the disposition "due to a substantive defect in the underlying proceedings that resulted in the disposition"; provide instead that the court's order would indicate the disposition to be vacated "due to the determination that a factual or legal proposition has been established to negate the disposition";
- Provide that an order for the expungement of a DNA record and other information from the State DNA Database may be sought in a separate application which shall be considered in conjunction with an application to vacate the conviction, finding of guilt, or adjudication of delinquency;
- Increase the time for a party to object to the application and request a hearing, from 45 days to 60 days;
- Concerning the responsibility for purging the information, delete an incorrect reference to the Division of State Police in the Department of Law and Public Safety and replace it with the correct reference to the Division of Criminal Justice in the Department of Law and Public Safety.