

[First Reprint]

ASSEMBLY, No. 5322

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 29, 2021

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District 4 (Camden and Gloucester)

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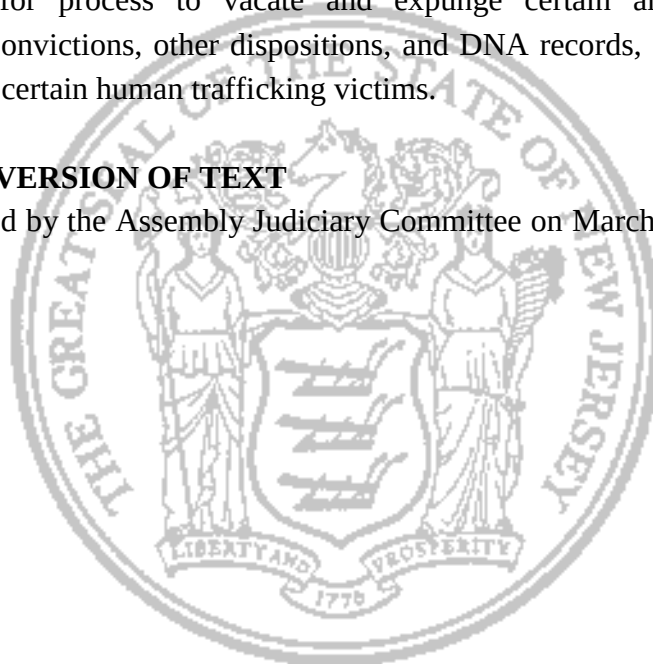
Assemblyman Mukherji, Assemblywoman Quijano, Assemblyman Webber, Assemblywomen Jasey, McKnight, Assemblyman Chiaravalloti and Assemblywoman Dunn

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 reported by the Assembly Judiciary Committee on March 15, 2021, with amendments.



(Sponsorship Updated As Of: 6/3/2021)

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted March 15, 2021.

1 disposition, and any proceeding **【for prostitution】** related thereto in
2 any records in the custody of a court, or law enforcement or
3 correctional agency entitled to be served with the application
4 pursuant to subsection b. of this section **‘【, as well as】** . The person
5 may also seek, in a separate application which shall be considered in
6 conjunction with an application filed pursuant to paragraph (1) of this
7 subsection,¹ an order for the expungement of the person’s DNA
8 record and other identifiable information from the State DNA
9 Database in accordance with section 9 of P.L.1994, c.136 (C.53:1-
10 20.25).

11 b. (1) (a) **‘【An application】** Applications¹ made to the
12 Superior Court under this section and all associated supporting
13 documents filed with the ‘【application】 applications¹ shall remain
14 under seal and kept confidential, and shall not be disseminated or
15 disclosed, in whole or in part, except to another court, or a law
16 enforcement or correctional agency as set forth in this
17 subparagraph. The application, together with a copy of all
18 supporting documents, shall be served pursuant to the Rules of
19 Court upon: the Attorney General; the county prosecutor of the
20 county wherein the court is located; the Superintendent of State
21 Police; the chief of police or other executive head of the police
22 department of the municipality wherein 【the】 each offense or other
23 violation of law was committed or alleged to have been committed;
24 the chief law enforcement officer of any other law enforcement
25 agency of this State that participated in the arrest of the person; the
26 superintendent or warden of any institution in which the person was
27 confined; and, if a disposition was made in municipal court, upon
28 the judge of that court. 【Any of the noticed parties herein may
29 make an appearance or file a submission responding to the person's
30 application.】 Each recipient of the application and supporting
31 documents shall keep them confidential, shall only use them in a
32 manner consistent with and in furtherance of the purpose for which
33 they were received, and shall not further disseminate or disclose
34 them, in whole or in part, to any party outside of the parties set
35 forth in this subparagraph.

36 (b) Unless a party given notice pursuant to subparagraph (a) of
37 this paragraph files an objection to the application and requests a
38 hearing within ‘【45】 60¹ days of the date of receipt of the
39 application, the application shall be deemed unopposed and the
40 court may grant the relief sought in accordance with subsections c.
41 and d. of this section. Any objection filed by a noticed party shall
42 not be deemed determinative, and the court may grant relief over
43 any party’s objection.

44 (c) When one or more of the convictions sought to be vacated is
45 for a crime of the first or second degree, any victims of these crimes
46 shall be given an opportunity to submit a written statement about
47 the impact of the crime to the court. It shall be the responsibility of

1 the county prosecutor given notice of the application pursuant to
2 subparagraph (a) of this paragraph to make a good faith effort to
3 notify any victim. The prosecutor's office shall have the discretion
4 to waive victim notification in instances when the victim was the
5 trafficker or the notification could endanger the petitioner.

6 (2) **【**The application shall be made and heard within a
7 reasonable time after**】** With respect to any court appearance by the
8 person **【**has ceased to be a victim of human trafficking or has
9 sought services for being a victim of human trafficking, whichever
10 occurs later, subject to reasonable concerns for the safety of the
11 person, family members of the person, or other victims of human
12 trafficking that may be jeopardized by the bringing of**】** concerning
13 the application, **【**or for other reasons consistent with the purposes
14 of this paragraph**】** if required, the court shall, consistent with the
15 Rules of Court, 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 is a compelling reason to so deny'**【.】.**¹

19 c. (1) The court may vacate **【a】** any conviction, finding of
20 guilt, or adjudication of delinquency pursuant to this section if it
21 finds by a preponderance of the evidence that the person was a
22 victim of human trafficking **【pursuant to】** as described in section 1
23 of P.L.2005, c.77 (C.2C:13-8) or **【as defined in paragraph (14) of】**
24 22 U.S.C. s.7102 **【at the time of the offense】**, and that the offense
25 or other violation of law to be vacated was a result of the person
26 having been a victim of human trafficking.

27 (2) In making a determination:

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

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

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

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

44 (iii) testimony or a sworn statement from a trained professional
45 staff member of a victim services organization, an attorney, a
46 member of the clergy or a health care or other professional from

1 whom the person has sought assistance in addressing the trauma
2 associated with being a victim of human trafficking.

3 d. If the court finds, pursuant to subsection c. of this section,
4 that the person was a victim of human trafficking, it shall enter an
5 order vacating the conviction, finding of guilt, or adjudication of
6 delinquency, which indicates the disposition to be vacated due to
7 '[a substantive defect in the underlying proceedings that resulted in
8 the disposition,] the determination that a factual or legal
9 proposition has been established to negate the disposition,'¹ and
10 directing that all court records be revised accordingly. When the
11 person's application also seeks an order for expungement, the court
12 order shall require that any court, law enforcement and correctional
13 **[agencies, and other] agency** noticed **[parties]** pursuant to
14 subsection b. of this section expunge all references to the person's
15 arrest, charge, complaint, conviction, adjudication of delinquency,
16 or other disposition, and any related proceedings **[for the violation**
17 **of N.J.S.2C:34-1, prostitution and related offenses, or section 3 of**
18 **P.L.1997, c.93 (C.2C:34-1.1), loitering for the purpose of engaging**
19 **in prostitution, or a similar local ordinance]** from all records in
20 their custody that relate to the vacated conviction '[or other
21 disposition, and in the case of an order concerning the expungement
22 of the person's DNA record and other identifiable information from
23 the State DNA Database, the order shall require the Division of
24 State Police in the Department of Law and Public Safety to purge
25 this information in accordance with section 9 of P.L.1994, c.136
26 (C.53:1-20.25)]'¹. An expungement ordered pursuant to this section
27 shall have the same force as an expungement ordered pursuant to
28 N.J.S.2C:52-1 et seq. and section 9 of P.L.1994, c.136 (C.53:1-
29 20.25), as applicable. ¹An order concerning the expungement of the
30 person's DNA record and other identifiable information from the State
31 DNA Database shall require the Division of Criminal Justice in the
32 Department of Law and Public Safety to purge this information in
33 accordance with section 9 of P.L.1994, c.136 (C.53:1-20.25).¹

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

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

38
39 2. This act shall take effect on the first day of the fourth month
40 next following enactment, except the Attorney General and
41 Administrative Director of the Courts may take any anticipatory
42 administrative action in advance thereof as shall be necessary for
43 the implementation of the act.