

[Second Reprint]

ASSEMBLY, No. 5322

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 29, 2021

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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 amended by the General Assembly on June 21, 2021.

(Sponsorship Updated As Of: 1/10/2022)

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 read
10 as follows:

11 10. a. (1) A person convicted of **[N.J.S.2C:34-1, prostitution and**
12 **related offenses, or section 3 of P.L.1997, c.93 (C.2C:34-1.1), loitering**
13 **for the purpose of engaging in prostitution, or a similar local**
14 **ordinance,]** an offense or other violation of law, except for murder
15 pursuant to N.J.S.2C:11-3, manslaughter or aggravated manslaughter
16 pursuant to N.J.S.2C:11-4, kidnapping pursuant to N.J.S.2C:13-1,
17 luring or enticing a child pursuant to N.J.S.2C:13-6, and sexual assault
18 pursuant to ¹**[N.J.S.2C:14-2]** N.J.S.2C:14-2,¹ committed as a result of
19 the person's status as a victim of human trafficking as described in
20 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 or
22 other course of conduct in violation of either of those acts that resulted
23 in the person's victimization, or committed at the direction of an
24 organizer, supervisor, financier, or manager of that scheme or other
25 course of conduct as described in paragraph (2) of subsection a. of
26 section 1 of P.L.2005, c.77 (C.2C:13-8), may file an application with
27 the Superior Court in accordance with the Rules of Court to have **[the]**
28 each conviction, finding of guilt, or, in the case of an offense
29 committed while a juvenile, adjudication of delinquency vacated at
30 any time following entry of a judgment of conviction, **[when the**
31 person's participation in the offense was a result of having been a
32 victim of human trafficking pursuant to section 1 of P.L.2005, c.77
33 (C.2C:13-8) or as defined in paragraph (14) of 22 U.S.C. s.7102]
34 finding of guilt, or adjudication of delinquency. The application shall
35 be made to the Superior Court in the county in which the most recent
36 disposition was adjudged, and may include any other prior disposition
37 which the person is seeking to be vacated, regardless of where that
38 prior disposition occurred.

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted March 15, 2021.

²Assembly floor amendments adopted June 21, 2021.

1 any records in the custody of a court, or law enforcement or
2 correctional agency entitled to be served with the application pursuant
3 to subsection b. of this section¹ **["as well as"]** . The person may also
4 seek, in a separate application which shall be considered in
5 conjunction with an application filed pursuant to paragraph (1) of this
6 subsection,¹ an order for the expungement of the person's DNA record
7 and other identifiable information from the State DNA Database in
8 accordance with section 9 of P.L.1994, c.136 (C.53:1-20.25).

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

33 (b) Unless a party given notice pursuant to subparagraph (a) of this
34 paragraph files an objection to the application and requests a hearing
35 within ¹**["45"]** 60¹ days of the date of receipt of the application, the
36 application shall be deemed unopposed and the court may grant the
37 relief sought in accordance with subsections c. and d. of this section.
38 Any objection filed by a noticed party shall not be deemed
39 determinative, and the court may grant relief over any party's
40 objection.

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

1 victim notification in instances when the victim was the trafficker or
2 the notification could endanger the petitioner.

3 (2) **【**The application shall be made and heard within a reasonable
4 time after**】** With respect to any court appearance by the person **【**has
5 ceased to be a victim of human trafficking or has sought services for
6 being a victim of human trafficking, whichever occurs later, subject to
7 reasonable concerns for the safety of the person, family members of
8 the person, or other victims of human trafficking that may be
9 jeopardized by the bringing of**】** concerning the application, **【**or for
10 other reasons consistent with the purposes of this paragraph**】** if
11 required, the court shall, consistent with the Rules of Court, permit the
12 person to enter an appearance by telephone, video link as approved by
13 the Administrative Office of the Courts, or other approved means of
14 audio or audio and visual communication, unless there is a compelling
15 reason to so deny¹【.】.¹

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

24 (2) In making a determination:

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

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

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

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

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

46 d. If the court finds, pursuant to subsection c. of this section, that
47 the person was a victim of human trafficking, it shall enter an order

1 vacating the conviction, finding of guilt, or adjudication of
2 delinquency ²], which indicates the disposition to be vacated due to
3 ¹[a substantive defect in the underlying proceedings that resulted in
4 the disposition,] the determination that a factual or legal proposition
5 has been established to negate the disposition,¹² and directing that all
6 court records be revised accordingly. When the person's application
7 also seeks an order for expungement, the court order shall require that
8 any court, law enforcement and correctional **[agencies, and other]**
9 agency noticed **[parties]** pursuant to subsection b. of this section
10 expunge all references to the person's arrest, charge, complaint,
11 conviction, adjudication of delinquency, or other disposition, and any
12 related proceedings [for the violation of N.J.S.2C:34-1, prostitution
13 and related offenses, or section 3 of P.L.1997, c.93 (C.2C:34-1.1),
14 loitering for the purpose of engaging in prostitution, or a similar local
15 ordinance] from all records in their custody that relate to the vacated
16 conviction ¹[or other disposition, and in the case of an order
17 concerning the expungement of the person's DNA record and other
18 identifiable information from the State DNA Database, the order shall
19 require the Division of State Police in the Department of Law and
20 Public Safety to purge this information in accordance with section 9 of
21 P.L.1994, c.136 (C.53:1-20.25)]¹. An expungement ordered pursuant
22 to this section shall have the same force as an expungement ordered
23 pursuant to N.J.S.2C:52-1 et seq. and section 9 of P.L.1994, c.136
24 (C.53:1-20.25), as applicable. ²In addition, notwithstanding any law
25 to the contrary, once an order to vacate and expunge has been entered
26 on a conviction, finding of guilt, or adjudication of delinquency for an
27 offense in which the petitioner participated as a result of having been a
28 victim of human trafficking pursuant to section 1 of P.L.2005, c.77
29 (C.2C:13-8) or as defined in paragraph (14) of 22 U.S.C. s.7102, the
30 conviction, finding of guilt, or adjudication of delinquency shall not be
31 considered for any purpose except upon order of the court.² ¹An order
32 concerning the expungement of the person's DNA record and other
33 identifiable information from the State DNA Database shall require the
34 Division of Criminal Justice in the Department of Law and Public
35 Safety to purge this information in accordance with section 9 of
36 P.L.1994, c.136 (C.53:1-20.25).¹

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

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

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