

P.L. 2021, CHAPTER 467, *approved January 18, 2022*
Assembly, No. 5322 (*Second Reprint*)

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:

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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.

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 (2) **【Notwithstanding any law to the contrary,】** In the same
2 application filed pursuant to paragraph (1) of this subsection, the
3 person may also **【in the same application】** seek an order for the
4 expungement of any reference to the person's arrest, charge,
5 complaint, conviction, adjudication of delinquency, or other
6 disposition, and any proceeding **【for prostitution】** related thereto in
7 any records in the custody of a court, or law enforcement or
8 correctional agency entitled to be served with the application pursuant
9 to subsection b. of this section¹**【, as well as】** . The person may also
10 seek, in a separate application which shall be considered in
11 conjunction with an application filed pursuant to paragraph (1) of this
12 subsection,¹ an order for the expungement of the person's DNA record
13 and other identifiable information from the State DNA Database in
14 accordance with section 9 of P.L.1994, c.136 (C.53:1-20.25).

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

39 (b) Unless a party given notice pursuant to subparagraph (a) of this
40 paragraph files an objection to the application and requests a hearing
41 within ¹**【45】** 60¹ days of the date of receipt of the application, the
42 application shall be deemed unopposed and the court may grant the
43 relief sought in accordance with subsections c. and d. of this section.
44 Any objection filed by a noticed party shall not be deemed
45 determinative, and the court may grant relief over any party's
46 objection.

1 (c) When one or more of the convictions sought to be vacated is
2 for a crime of the first or second degree, any victims of these crimes
3 shall be given an opportunity to submit a written statement about the
4 impact of the crime to the court. It shall be the responsibility of the
5 county prosecutor given notice of the application pursuant to
6 subparagraph (a) of this paragraph to make a good faith effort to notify
7 any victim. The prosecutor's office shall have the discretion to waive
8 victim notification in instances when the victim was the trafficker or
9 the notification could endanger the petitioner.

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

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

31 (2) In making a determination:

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

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

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

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

1 (iii) testimony or a sworn statement from a trained professional
2 staff member of a victim services organization, an attorney, a member
3 of the clergy or a health care or other professional from whom the
4 person has sought assistance in addressing the trauma associated with
5 being a victim of human trafficking.

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

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

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

1 2. This act shall take effect on the first day of the fourth month
2 next following enactment, except the Attorney General and
3 Administrative Director of the Courts may take any anticipatory
4 administrative action in advance thereof as shall be necessary for
5 the implementation of the act.

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