

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3433

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 2, 2021

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 3433.

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 violations of law committed by the person as a result of the person's status as a victim of human trafficking, and which violations were committed as a result of a trafficking scheme or other course of conduct that resulted in the person's victimization or done at the direction of an organizer, supervisor, financier, or manager of that scheme or other course of conduct, with limited exceptions. The process would not be available to a person convicted of murder pursuant to N.J.S.2C:11-3, 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, or sexual assault pursuant to 2C:14-2.

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 nearly all convictions and other dispositions for violations of law committed under the conditions of victimization as described above may be vacated and expunged, as applicable. Additionally, the victim could also seek, in a separate application to be considered in conjunction with the general vacating and expungement application, an order to expunge the person's DNA record and other identifiable information from the State DNA Database.

Under the bill, a general vacating and expungement 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. The 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 and provided an opportunity to object: 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 would also have a duty to keep the application and supporting documents confidential.

However, when one or more convictions sought to be vacated involved a crime of the first or second degree, any victims of such crimes would also be given an opportunity to submit a written statement about the impact of the particular crime to the court. The county prosecutor that was provided a copy of the application would be responsible for making a good faith effort to notify any victim, but would have the discretion to waive the victim notification when the victim was the trafficker or the notification could endanger the petitioner.

The bill provides that unless one of the above noticed law enforcement or judicial 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.

If the Superior Court found by a preponderance of the evidence that a person was a victim of human trafficking, and that the offense or other violations of law to be vacated was a result of the person having been a victim of human trafficking, then the court may vacate the conviction or other disposition for each such offense or other violation of law. Concerning any expungement request with the application, the court order would require that any court, and any 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. If the court also entered, pursuant to the separate but simultaneously considered application concerning DNA

information, any order to expunge the person's DNA record and other identifiable information from the State DNA Database, such order would require the Division of Criminal Justice in the Department of Law and Public Safety to purge the information in accordance with section 9 of P.L.1994, c.136 (C.53:1-20.25).

This bill, as amended and reported by the committee, is identical to the Second Reprint of Assembly Bill No. 5322, also reported by the committee today.

The committee amendments to the bill:

- specify that a human trafficking victim applying to vacate convictions or other dispositions, as well as expunge records related to such convictions or other dispositions, may also file a separate application, to be considered in conjunction with the general vacating and expungement application, seeking an order to expunge the person's DNA record and other identifiable information from the State DNA database;

- increase, from 45 days to 60 days, the time period for the various parties given notice of a human trafficking victim's application to vacate convictions or other dispositions to file an objection and request a hearing on the matter, as described in the statement above;

- eliminate the requirement that a conviction or other disposition to be vacated be done on the basis of a finding of a substantive defect with the underlying proceedings resulting in the original disposition; instead the order to vacate (and any accompanying expungement) need only be based upon the court's factual findings that a person was a human trafficking victim, and the offense or other violation of law committed was a result of the person having been a victim; and

- make a correction to reference the Division of Criminal Justice in the Department of Law and Public Safety, and not the Division of State Police, as being the lead entity responsible for purging a person's DNA record and other identifiable information from the State DNA Database, when ordered by a court in accordance with a separate application to expunge a person's DNA information.