

CHAPTER 467

AN ACT concerning relief from criminal and other proceedings pertaining to certain violations or alleged violations of law committed by a person while a victim of human trafficking, and amending P.L.2013, c.51.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 10 of P.L.2013, c.51 (C.2C:44-1.1) is amended to read as follows:

C.2C:44-1.1 Certain convictions vacated, expunged.

10. a. (1) A person convicted of an offense or other violation of law, except for 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, committed as a result of the person's status as a victim of human trafficking as described in section 1 of P.L.2005, c.77 (C.2C:13-8) or 22 U.S.C. s.7102, and which offense was committed as a result of the trafficking scheme or other course of conduct in violation of either of those acts that resulted in the person's victimization, or committed at the direction of an organizer, supervisor, financier, or manager of that scheme or other course of conduct as described in paragraph (2) of subsection a. of section 1 of P.L.2005, c.77 (C.2C:13-8), may file an application with the Superior Court in accordance with the Rules of Court to have each conviction, finding of guilt, or, in the case of an offense committed while a juvenile, adjudication of delinquency vacated at any time following entry of a judgment of conviction, finding of guilt, or adjudication of delinquency. The application shall be made to the Superior Court in the county in which the most recent disposition was adjudged, and may include any other prior disposition which the person is seeking to be vacated, regardless of where that prior disposition occurred.

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

b. (1) (a) Applications made to the Superior Court under this section and all associated supporting documents filed with the applications shall remain under seal and kept confidential, and shall not be disseminated or disclosed, in whole or in part, except to another court, or a law enforcement or correctional agency as set forth in this subparagraph. The application, together with a copy of all supporting documents, shall be served pursuant to the Rules of Court upon: 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. Each recipient of the application and supporting documents shall keep them confidential, shall only use them in a manner consistent with and in furtherance of the purpose for which they were received, and shall not further disseminate or disclose them, in whole or in part, to any party outside of the parties set forth in this subparagraph.

(b) Unless a party given notice pursuant to subparagraph (a) of this paragraph files an objection to the application and requests a hearing within 60 days of the date of receipt of the application, the application shall be deemed unopposed and the court may grant the relief sought in accordance with subsections c. and d. of this section. Any objection filed by a noticed party shall not be deemed determinative, and the court may grant relief over any party's objection.

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

(2) With respect to any court appearance by the person concerning the application, if required, the court shall, consistent with the Rules of Court, 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 is a compelling reason to so deny.

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

(2) In making a determination:

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

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

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

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

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

d. If the court finds, pursuant to subsection c. of this section, that the person was a victim of human trafficking, it shall enter an order vacating the conviction, finding of guilt, or adjudication of delinquency and directing that all court records be revised accordingly. When the person's application also seeks an order for expungement, the court order shall require that any court, law enforcement and correctional agency noticed pursuant to subsection b. of this section expunge all references to the person's arrest, charge, complaint, conviction, adjudication of delinquency, or other disposition, and any related proceedings from all records in their custody that relate to the vacated conviction. An expungement ordered pursuant to this section shall have the same force as an expungement ordered pursuant to N.J.S.2C:52-1 et seq. and section 9 of P.L.1994, c.136 (C.53:1-20.25), as applicable. In addition, notwithstanding any law to the contrary, once an order to vacate and expunge has been entered on a conviction, finding of guilt, or adjudication of

delinquency for an offense in which the petitioner participated as a result of having been a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or as defined in paragraph (14) of 22 U.S.C. s.7102, the conviction, finding of guilt, or adjudication of delinquency shall not be considered for any purpose except upon order of the court. An order concerning the expungement of the person's DNA record and other identifiable information from the State DNA Database shall require the Division of Criminal Justice in the Department of Law and Public Safety to purge this information in accordance with section 9 of P.L.1994, c.136 (C.53:1-20.25).

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

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

Approved January 18, 2022.