

LAWS OF DELAWARE
VOLUME 85
CHAPTER 255
153rd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 201

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIMS OF HUMAN TRAFFICKING.

WHEREAS, the Delaware Anti-Trafficking Action Council (Council) was established to, among other things, develop a comprehensive plan to provide victims of human trafficking with services; effectuate coordination between agencies, departments, and the courts with victims of human trafficking; and collect and evaluate data on human trafficking in this State; and

WHEREAS, while collecting and evaluating data on human trafficking in this State, the Council found that victims of human trafficking are not seeking remedies available to them under the law, including petitioning to vacate adjudications of delinquency or convictions obtained as a result of being a victim of human trafficking and expunging the related criminal or juvenile records; and

WHEREAS, reducing barriers to vacating adjudications and convictions and expungement remedies furthers an important public policy goal in this State to provide support to victims of human trafficking in rebuilding their lives after being trafficked.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 787, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 787. Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

(h) *Defense to charge of prostitution or loitering.* — An individual charged with prostitution or loitering committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim of human trafficking.

(j) *Application for pardon and petition to expunge; motion to vacate adjudication of delinquency or conviction and expungement record.* — ~~Pardon and petition to expunge; motion to vacate adjudication or conviction and expungement of related police and court records.~~ (1) ~~Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, a Pardon.~~ A person arrested or convicted of any crime, except those deemed to be violent felonies pursuant to § 4201 of this title a crime committed as a direct result of being a victim of human trafficking may file an application for a pardon pursuant to article under Article VII of the Delaware Constitution and § 4361 et seq. of this title and may file a petition requesting expungement of such that criminal record pursuant to under § 4371 et seq. of this title.

(2) Motion to vacate adjudication or conviction.

a. For purposes of this subsection:

1. “Adjudication” means an adjudication of delinquency.

2. “Case” means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.

3. “Court” means a State court.

4. “Official documentation” means any document issued by a local, state, or federal government agency in that agency’s official capacity.

b. A person convicted or adjudicated delinquent of any a crime committed, except those deemed to be violent felonies pursuant to under § 4201 of this title, committed as a direct result of being a victim of human trafficking may trafficking, may get the adjudication or conviction vacated. To vacate the adjudication or conviction, the person must file a motion in the court in which the adjudication of delinquency or conviction was obtained to vacate the adjudication or judgment of conviction. obtained. A motion filed under this paragraph must: (j)(2)b. must satisfy all of the following:

a. 1. Be in writing; writing.

b. 2. Be sent to the Delaware Department of Justice; served on the Attorney General.

e. ~~[Repealed.]~~

~~d. 3. Describe the evidence and provide copies of any official documents~~ documentation showing that the ~~person~~ movant is entitled to relief under this ~~paragraph~~, paragraph (j)(2)b.

c. On receipt of a motion to vacate, the Attorney General shall contact any victim of the underlying crime sought to be vacated at the victim's last known address or telephone number to inform the victim about the motion and ascertain the victim's position on the motion. The Attorney General shall provide the victim's position, if known, in the Attorney General's answer to the motion.

~~d. If the motion satisfies the foregoing requirements, the court shall hold a hearing on a motion, provided that~~ The court shall summarily issue an order vacating the adjudication or conviction if the movant demonstrates by a preponderance of the evidence that the movant is entitled to relief under paragraph (j)(2)b. of this section and the Attorney General does either of the following:

1. Consents to the motion to vacate.

2. Fails to respond to the motion to vacate in writing to the court within 30 days of being served with the motion, or within any extension of time granted under paragraph (j)(2)h. of this section.

e. The court may hold a hearing on the motion if the court requires additional information to determine whether the movant is entitled to relief under paragraph (j)(2)b. of this section.

f. The court shall hold a hearing on the motion if the Attorney General files an answer objecting to the motion to vacate within 30 days of being served with the motion, or within any extension of time granted under paragraph (j)(2)h. of this section.

g. The court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.

h. The court shall grant the Attorney General's request for an extension of time to review and respond to a motion under paragraph (j)(2)b. of this section if all of the following occur:

1. The Attorney General requests the extension of time within 30 days of the motion being served on the Attorney General.

2. The request for an extension of time is in writing.

3. The Attorney General demonstrates good cause for an extension of time. For purposes of this paragraph (j)(2)h.3., "good cause" includes difficulty obtaining records related to the adjudication or conviction sought to be vacated or locating a victim of the underlying adjudication or conviction.

i.1. A court shall seal or close:

A. A motion filed under paragraph (j)(2)b. of this section.

B. A hearing or proceeding held in relation to a motion filed under paragraph (j)(2)b. of this section.

C. A record relating to the motion, hearing, or proceeding, including a docket entry.

2. Notwithstanding paragraph (j)(2)i.1. of this section, if a court finds there is good cause to do so, the court may require that a hearing or proceeding be open or that a motion or record be unsealed.

j. The movant is not required to attend a hearing or a proceeding in person unless ordered to do so by the court. The court may take testimony from the movant remotely.

k. Official documentation of the ~~person's~~ movant's status as a victim of this section, "trafficking in persons", or "a severe form of trafficking" ~~from a federal, state, or local government agency shall create~~ creates a presumption that the ~~person's~~ movant's participation in any crime committed, except those deemed to be violent felonies ~~pursuant to~~ under § 4201 of this title, ~~committed~~ was a direct result of having been a victim of human trafficking but shall is not be required for the court to grant a ~~petition under this paragraph~~, motion under paragraph (j)(2)b. of this section.

~~l. If the petitioner can show to the satisfaction of the court that such petitioner is~~ If the movant can show, by a preponderance of the evidence, that the movant is entitled to relief in the motion or at a hearing or proceeding under this paragraph, this paragraph (j)(2)b., then the court shall do all of the following:

1. ~~grant the motion and, pursuant to this paragraph, enter~~ Grant the movant's motion to vacate.

2. ~~Enter~~ an order vacating the adjudication ~~of delinquency or judgment~~ of conviction and dismissing the accusatory ~~pleading, and pleading,~~ underlying charges, and indicia of arrest.

3. ~~Enter~~ a final disposition of the adjudication or conviction indicating that it is dismissed and terminated in favor of the movant.

4. Discharge any unpaid fine, fee, restitution, or other financial obligation.

5. may take such Take additional action as is appropriate in the circumstances or as justice requires.

m. An adjudication or conviction vacated under this section is not a showing that the conviction was wrongful for purposes of Chapter 70 of Title 10.

n. A fine, fee, restitution, or any other financial obligation associated with the conviction or adjudication that has been paid is nonrefundable.

~~(3) Expungement. Notwithstanding any provisions of Chapter 43 of this title, Chapter 9 of Title 10, or any other law to the contrary, any person filing a motion under paragraph (j)(2) of this section in Superior Court or Family Court may also seek in that motion expungement of the criminal or juvenile record related to such conviction. If the court grants the motion to vacate the adjudication of delinquency or conviction under paragraph (j)(2) of this section and the movant also requested expungement, the court's order shall require expungement of the police and court records relating to the charge and conviction or adjudication of delinquency. This order must contain a statement that the expungement is ordered under this paragraph (j)(3) and, notwithstanding any limitations to the contrary, that the provisions of §§ 4372(e), 4376, and 4377 of this title and § 1019 of Title 10 apply to the order.~~

a. The vacated case is eligible for automatic mandatory expungement and may also be expunged as provided under §§ 1013 through 1019 of Title 10 or Chapter 43 of this title.

b. A court may order immediate expungement sua sponte or at the request of the movant.

~~(4) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, upon granting the motion, the Court of Common Pleas shall provide Superior Court with the certified order granting the motion to vacate. Upon finding that the Court of Common Pleas entered an order under paragraph (j)(2) of this section, the Superior Court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. This order must contain a statement that the expungement is ordered under this paragraph (j)(4) and, notwithstanding any limitations to the contrary, that the provisions of §§ 4372(e), 4376, and 4377 of this title apply to the order.~~

Approved May 14, 2026