

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 19.2-327.15, 19.2-327.17, 19.2-327.18, and 19.2-327.19 of the Code of Virginia, relating to issuance of writ of vacatur for victims of human trafficking.

[H 2393]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 19.2-327.15, 19.2-327.17, 19.2-327.18, and 19.2-327.19 of the Code of Virginia are amended and reenacted as follows:

CHAPTER 19.4.

ISSUANCE OF WRIT OF VACATUR FOR VICTIMS OF ~~COMMERCIAL SEX~~ HUMAN TRAFFICKING.**§ 19.2-327.15. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Labor trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to debt bondage, involuntary servitude, peonage, or slavery.

"Qualifying offense" means a conviction or adjudication of delinquency for any attempted, completed, or conspired (i) violation of § 18.2-250 or (ii) misdemeanor violation of § 18.2-96, 18.2-102, or 18.2-103; subsection A of § 18.2-108; § 18.2-108.01, 18.2-117, 18.2-118, 18.2-119, 18.2-137, 18.2-146, 18.2-147, 18.2-160.2, 18.2-173, 18.2-178, 18.2-181, or 18.2-186.2; subdivision B 1 of § 18.2-186.3; § 18.2-195, 18.2-197, 18.2-206, 18.2-258, 18.2-266.1, 18.2-346 ~~or~~, 18.2-347, 18.2-349, 18.2-388, 18.2-415, 46.2-300, or 46.2-301; or subdivision A 1, 2, or 3 of § 46.2-346.

"Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act that is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age.

"Victim of sex human trafficking" means any person convicted or adjudicated delinquent of a qualifying offense in the Commonwealth who committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent, as described in subsection A of § 18.2-346 subjected to an act or the practice of labor trafficking or sex trafficking, regardless of whether any other person has been charged or convicted of an offense related to the labor trafficking or sex trafficking of such person.

§ 19.2-327.17. Contents and form of the petition for vacatur.

A. Any victim of sex human trafficking may file a petition for vacatur setting forth the relevant facts and requesting that the judgment of a conviction or adjudication of delinquency be vacated. Such petition shall allege categorically and with specificity, under oath, all of the following:

1. The petitioner was convicted or adjudicated delinquent of a qualifying offense, including the date on which the qualifying offense occurred, the date of final disposition on which the conviction or adjudication of delinquency was entered, the petitioner's date of birth, and the full name used by the petitioner at the time of the offense;

2. The petitioner was a victim of human trafficking at the time he committed the qualifying offense as a direct result of being and his status as a victim of sex human trafficking was the proximate cause of the commission of the qualifying offense; and

3. Whether the petitioner has previously filed any other petition in accordance with this chapter in any circuit court and, if so, the disposition of such petition.

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing, which shall include a short, plain statement demonstrating (i) that the petitioner is entitled to relief under this chapter; (ii) the identity of the human trafficker, to the best of the petitioner's knowledge; (iii) the approximate date, time, place, and manner in which the petitioner became a victim of human trafficking; (iv) the petitioner's age at the time he became a victim of human trafficking; (v) how the petitioner became involved in the activities resulting in his arrest, prosecution, and conviction or adjudication; and (vi) that the petitioner has ceased to be a victim of human trafficking or has sought rehabilitative services. Such statement shall be filed under seal and provided only to the circuit court and the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may provide the information provided in such statement, with the exception of the petitioner's identity, to any law-enforcement agency to investigate or prosecute criminal activity. The identity of the petitioner shall only be provided to law enforcement upon notice to the petitioner and an order of the circuit court authorizing such disclosure. Nothing in this subsection shall be construed to mandate a petitioner's cooperation with law enforcement in

any resulting investigation or prosecution.

The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the circuit court may allow the petitioner to amend the petition to correct any deficiency. If the petitioner fails to submit a completed form containing the allegations set forth in subsection A, or if the circuit court has previously dismissed a petition for vacatur from the same petitioner for the same qualifying offense following a hearing conducted pursuant to § 19.2-327.18, the court may dismiss the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

C. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall file those fingerprints with the circuit court with the petition.

D. The Commonwealth shall be made party defendant to the proceeding. The petitioner shall provide a copy of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 30 days after receipt of the petition. Upon the motion of the attorney for the Commonwealth and for good cause shown, the court may allow the attorney for the Commonwealth up to an additional 30 days to respond to the petition.

E. A person convicted or adjudicated delinquent of multiple qualifying offenses shall include all qualifying offenses in one petition, if such convictions or adjudications were all entered in the same city or county. A person convicted or adjudicated delinquent of qualifying offenses in different cities or counties shall file petitions in the circuit courts of the cities or counties in which the convictions or adjudications of delinquency were entered.

§ 19.2-327.18. Hearing on petition for vacatur.

A. If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court that he does not object to the petition and (ii) stipulates in such written notice that the petitioner was convicted or adjudicated delinquent of a qualifying offense and that the petitioner *was a victim of human trafficking at the time he committed the qualifying offense as a direct result of being and his status as a victim of sex human trafficking was the proximate cause of the commission of the qualifying offense*, the circuit court may grant the writ and vacate the qualifying offense without conducting a hearing.

B. If the attorney for the Commonwealth of the county or city in which the petition is filed objects to the petition or does not file an answer, the court shall conduct a hearing on the petition after reasonable notice has been provided to both the petitioner and the attorney for the Commonwealth. The attorney for the Commonwealth shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, of any qualifying offense of such hearing. *In any such hearing, the attorney for the Commonwealth may proffer any evidence pertaining to the guilt or innocence of the petitioner, including evidence that was suppressed at trial.* The circuit court shall not be required to conduct a hearing if it has previously dismissed a petition for vacatur from the same petitioner for the same qualifying offense.

C. Upon finding that the petitioner has by a preponderance of the evidence proven the elements contained in subsection A of § 19.2-327.17, the circuit court shall grant the writ and vacate the qualifying offense. If the petitioner fails to prove any of these elements, the court shall dismiss the petition.

D. *Prior to any decision to grant the writ, the court shall determine whether any restitution is unpaid under the terms of the sentencing order for the qualifying offense. If the court grants the writ, the petitioner shall be forever discharged from any such restitution obligation, and the victim, as defined in § 19.2-11.01, of the qualifying offense shall be deemed a victim of crime as defined in § 19.2-368.2. Such victim shall be eligible to petition for awards pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.), and his claim for restitution reimbursement shall be deemed to accrue on the date the court grants the writ.*

E. The court may grant the writ and vacate the qualifying offense regardless of whether any person other than the petitioner has been charged or convicted of an offense related to the petitioner being a victim of ~~sex~~ human trafficking.

§ 19.2-327.19. Relief under writ of vacatur.

A. Upon granting a writ of vacatur pursuant to subsection C of § 19.2-327.18, the circuit court shall provide the petitioner with a copy of the writ, and such copy shall be sufficient proof that the person named in the writ is no longer under any disability, disqualification, or other adverse consequence resulting from the vacated conviction or adjudication of delinquency.

B. If a writ of vacatur is granted, and no appeal is made to the Supreme Court, or the Supreme Court refuses or denies the Commonwealth's petition for appeal or upholds the decision of the circuit court, an order of expungement for the qualifying offense shall be entered by the circuit court. Upon entry of the order of expungement, the clerk of court shall cause a copy of the writ of vacatur, the order of expungement, and the complete set of petitioner's fingerprints to be forwarded to the Department of State Police, which shall expunge the qualifying offense.

C. The writ to vacate the qualifying offense *and the record of the proceedings* shall not be expunged pursuant to subsection B and shall be maintained by the circuit court. Access to the writ *or the record of the*

119 *proceedings* may be provided only upon court order. Any person seeking access to the writ *or the record of*
120 *the proceedings* may file a written motion setting forth why such access is needed. The court shall issue an
121 order to disclose the writ *or the record of the proceedings* upon the written motion of the petitioner named in
122 the writ *or the attorney for the Commonwealth of the city or county in which the petition is filed*. The court
123 may issue an order to disclose the writ *or the record of the proceedings* if it finds that such disclosure best
124 serves the interests of justice. *Court-ordered disclosure of the record of the proceedings pursuant to this*
125 *subsection shall not subject the recipient of the disclosure to the provisions of § 19.2-392.3.*

126 D. Costs shall be as provided in § 17.1-275 but shall not be recoverable against the Commonwealth. A
127 petitioner shall not be required to pay any fees or costs for filing a petition pursuant to this chapter if the
128 petitioner is found to be unable to pay fees or costs pursuant to § 17.1-606. If the circuit court enters a writ of
129 vacatur, the clerk of the court shall refund to the petitioner such costs paid by the petitioner.

130 E. If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines; ~~costs,~~
131 ~~forfeitures,~~ and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the court
132 where the conviction was entered is in possession of any records detailing any fines; ~~costs,~~ ~~forfeitures,~~ and
133 penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner shall be entitled to a
134 refund of such amount. If the clerk of the court where the conviction was entered is no longer in possession of
135 any records detailing any fines; ~~costs,~~ ~~forfeitures,~~ and penalties paid by the petitioner for a qualifying offense
136 that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines;
137 ~~costs,~~ ~~forfeitures,~~ and penalties paid.