

HOUSE BILL NO. 1298

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Delegate Delaney)

A BILL to amend and reenact §§ 19.2-327.15 through 19.2-327.19 of the Code of Virginia, relating to issuance of vacatur for victims of human trafficking.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-327.15 through 19.2-327.19 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-327.15. Definitions.

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

"Ancillary matter" means any (i) violation or alleged violation of the terms and conditions of a suspended sentence, probation, or parole; (ii) violation or alleged violation of contempt of court; (iii) charge or conviction for failure to appear; or (iv) appeal from a bail, bond, or recognizance order related to a qualifying offense.

"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.

"Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

"Qualifying offense" means a conviction or adjudication of delinquency for any attempted, completed, or conspired (i) violation of § 18.2-250 or (ii) felony that is not a violent felony offense listed under subsection C of § 17.1-805, (ii) misdemeanor violation of § 18.2-96; 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, 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, or (iii) specifically identified ancillary matter.

"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.

32 "Victim of human trafficking" means any person subjected to an act or the practice of labor trafficking or
33 sex trafficking, regardless of whether any other person has been charged *with* or convicted of an offense
34 related to the labor trafficking or sex trafficking of such person.

35 **§ 19.2-327.16. Issuance of writ of vacatur for victims of human trafficking.**

36 A. Notwithstanding any other provision of law or rule of court, upon a petition of a person who was
37 *arrested for, charged with, or convicted or adjudicated* delinquent of a qualifying offense, the circuit court of
38 the county or city in which ~~the such arrest, charge, conviction, or adjudication of delinquency was entered~~
39 shall have the authority to issue writs of vacatur under this chapter. *Such court shall also have the authority*
40 *to issue writs of vacatur under this chapter for any specifically identified ancillary matter.*

41 B. The Rules of Supreme Court of Virginia governing practice and procedures in civil actions shall be
42 applicable to proceedings under this chapter.

43 C. The circuit court shall have the authority to conduct hearings on petitions for vacatur.

44 D. Any party aggrieved by the decision of the circuit court may appeal ~~the such~~ decision to the Supreme
45 Court of Virginia.

46 **§ 19.2-327.17. Contents and form of the petition for vacatur.**

47 A. Any victim of human trafficking may file a petition for vacatur setting forth the relevant facts and
48 requesting that *any arrest record or charge, the judgment of a conviction or adjudication of delinquency, or*
49 *an ancillary matter, if any,* be vacated. Such petition shall allege categorically and with specificity, under
50 oath, all of the following:

51 1. The petitioner was *arrested for, charged with, or convicted or adjudicated* delinquent of a qualifying
52 offense, including the date on which the qualifying offense occurred, the date of final disposition ~~on which~~
53 ~~the conviction or adjudication of delinquency was entered~~, the petitioner's date of birth, and the full name
54 used by the petitioner at the time of the offense;

55 2. The petitioner was a victim of human trafficking at the time he committed, *was arrested for, or was*
56 *charged with* the qualifying offense and his status as a victim of human trafficking was the proximate cause
57 of ~~the such arrest, charge, or commission of the qualifying offense~~; and

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

60 B. *Such Subject to the reasonable concerns for the safety of the petitioner, the petitioner's family, or any*
61 *other victim of human trafficking who may be jeopardized by the filing of a petition, such petition shall*
62 *contain all relevant allegations of facts that are known to the petitioner at the time of filing, which shall*

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

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

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

85 D. The Commonwealth shall be made party defendant to the proceeding. The petitioner shall provide a
86 copy of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth
87 of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection
88 or answer to the petition or may give written notice to the court that he does not object to the petition within
89 30 days after receipt of the petition. Upon the motion of the attorney for the Commonwealth and for good
90 cause shown, the court may allow the attorney for the Commonwealth up to an additional 30 days to respond
91 to the petition.

92 E. A person *arrested for, charged with, or convicted* or adjudicated delinquent of multiple qualifying
93 offenses shall include all qualifying offenses in one petition, if such *arrests, charges, convictions*, or

94 adjudications were all entered in the same city or county, *and ancillary matters, if any*. A person *arrested for,*
95 *charged with, or* convicted or adjudicated delinquent of qualifying offenses in different cities or counties
96 shall file petitions in the circuit courts of the cities or counties in which ~~the~~ *such arrests, charges, convictions*
97 ~~or,~~ adjudications of delinquency, *or ancillary matters, if any*, were entered.

98 **§ 19.2-327.18. Hearing on petition for vacatur.**

99 A. If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives
100 written notice to the court that he does not object to the petition and (ii) stipulates in such written notice that
101 the petitioner was *arrested for, charged with, or* convicted or adjudicated delinquent of a qualifying offense
102 and that the petitioner was a victim of human trafficking at the time he committed, *or was arrested for or*
103 *charged with,* the qualifying offense and his status as a victim of human trafficking was the proximate cause
104 of ~~the~~ *such arrest, charge, or* commission ~~of the~~ *qualifying offense*, the circuit court may grant the writ and
105 vacate the qualifying offense without conducting a hearing.

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

114 C. Upon finding that the petitioner has by a preponderance of the evidence proven the elements contained
115 in subsection A of § 19.2-327.17, the circuit court shall grant the writ and vacate the qualifying offense. If the
116 petitioner fails to prove any of these elements, the court shall dismiss the petition. *Additionally, the circuit*
117 *court may issue a writ of vacatur for any specifically identified ancillary matter.*

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

124 E. The court may grant the writ and vacate the qualifying offense *and ancillary matter, if any*, regardless

125 of whether any person other than the petitioner has been *arrested for*, charged *with*, or convicted *or*
126 *adjudicated delinquent* of an offense related to the petitioner being a victim of human trafficking.

127 *F. There shall be a rebuttable presumption that a person's participation in an offense was a result of*
128 *having been a victim of human trafficking if there is official documentation of the petitioner's status as a*
129 *victim of human trafficking at the time of the offense.*

130 **§ 19.2-327.19. Relief under writ of vacatur.**

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

135 B. If a writ of vacatur is granted; and (i) no appeal is made to the Supreme Court; or, (ii) the Supreme
136 Court refuses or denies the Commonwealth's petition for appeal, or (iii) *the Supreme Court* upholds the
137 decision of the circuit court, an order of expungement for the qualifying offense *and ancillary matter, if any,*
138 shall be entered by the circuit court. Upon entry of the order of expungement, the clerk of court shall cause a
139 copy of the writ of vacatur, the order of expungement, and the complete set of petitioner's fingerprints to be
140 forwarded to the Department of State Police, which shall expunge the qualifying offense *and ancillary*
141 *matter, if any.*

142 C. The writ to vacate the qualifying offense *and ancillary matter, if any*, and the record of the proceedings
143 shall not be expunged pursuant to subsection B and shall be maintained by the circuit court. Access to the
144 writ or the record of the proceedings may be provided only upon court order. Any person seeking access to
145 the writ or the record of the proceedings may file a written motion setting forth why such access is needed.
146 The court shall issue an order to disclose the writ or the record of the proceedings upon the written motion of
147 the petitioner named in the writ or the attorney for the Commonwealth of the city or county in which the
148 petition is filed. The court may issue an order to disclose the writ or the record of the proceedings if it finds
149 that such disclosure best serves the interests of justice. Court-ordered disclosure of the record of the
150 proceedings pursuant to this subsection shall not subject the recipient of the disclosure to the provisions of
151 § 19.2-392.3.

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

156 E. If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines and penalties
157 paid in relation to the qualifying offense *and ancillary matter, if any*, that was vacated. If the clerk of the
158 court where the conviction *or adjudication* was entered is in possession of any records detailing any fines and
159 penalties paid by the petitioner for a qualifying offense *and ancillary matter, if any*, that was vacated, the
160 petitioner shall be entitled to a refund of such amount. If the clerk of the court where the conviction *or*
161 *adjudication* was entered is no longer in possession of any records detailing any fines and penalties paid by
162 the petitioner for a qualifying offense *and ancillary matter, if any*, that was vacated, a refund shall be
163 provided only upon a showing by the petitioner of the amount of fines and penalties paid.