

22103923D

HOUSE BILL NO. 579

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 18.2-361.1, 19.2-327.15, 19.2-327.17, and 19.2-327.18 of the Code of Virginia, relating to victims of human trafficking; affirmative defense; writ of vacatur.*

Patron—Convirs-Fowler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-361.1, 19.2-327.15, 19.2-327.17, and 19.2-327.18 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-361.1. Victims of human trafficking; affirmative defense.

A. For the purposes of this section:

"Human trafficking" means sex trafficking or severe forms of trafficking in persons as defined in the federal Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7101 et seq.) and in the federal Justice for Victims of Trafficking Act of 2015 (P.L. 114-22).

"Qualifying offense" means a:

1. A charge for a violation of ~~§ 18.2-346 or 18.2-347~~ any offense other than a felony considered a violent felony as defined in § 17.1-805 or an act of violence as defined in § 19.2-297.1 or any attempt to commit any such crime, except as set forth in subdivision 2; or

2. A charge for a violation of clause (i) or (ii) of subsection B of § 18.2-46.3; a violation of § 18.2-51.4, 18.2-89, 18.2-92, or 18.2-308.2, or subsection M or N of § 18.2-308.2:2; a violation of § 18.2-357.1, 18.2-374.1, 18.2-374.1:1, or 18.2-374.3; a second or subsequent violation of § 18.2-379; a violation of § 18.2-460; or any conspiracy or attempt to commit any offense specified in this subdivision, or any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States, and such offense was committed as part of a human trafficking scheme or at the direction of an operator of a human trafficking scheme.

"Victim of ~~sex~~ human trafficking" means any person, including a minor, charged with a qualifying offense in the Commonwealth who (i) committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, bought, purchased, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent, as described in § 18.2-346, (ii) was subjected to human trafficking or (iii) committed such offense while younger than 18 years of age, regardless of whether any other person has been charged or convicted of an offense related to the ~~sex~~ human trafficking of such person.

B. It is an affirmative defense to prosecution of a qualifying offense if at the time of the offense leading to such charge, such person was a victim of ~~sex~~ human trafficking and (i) was coerced to engage in the offense through the use of force or intimidation ~~or~~, (ii) such offense was committed at the direction of another person other than the individual with whom the person engaged in the acts of prostitution or unlawful sexual intercourse for such money or its equivalent, or (iii) such offense was committed when such person was younger than 18 years of age.

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:

"Human trafficking" means sex trafficking or severe forms of trafficking in persons as defined in the federal Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7102 et seq.) and in the federal Justice for Victims of Trafficking Act of 2015 (P.L. 114-22).

"Official government 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:

1. A conviction or adjudication of delinquency for any ~~violation of § 18.2-346 or 18.2-347~~ offense other than a felony considered a violent felony as defined in § 17.1-805 or an act of violence as defined in § 19.2-297.1 or any attempt to commit any such crime, except as set forth in subdivision 2; or

2. A conviction or adjudication of delinquency for a violation of clause (i) or (ii) of subsection B of § 18.2-46.3; a violation of § 18.2-51.4, 18.2-89, 18.2-92, or 18.2-308.2, or subsection M or N of §

INTRODUCED

HB579

59 18.2-308.2:2; a violation of § 18.2-357.1, 18.2-374.1, 18.2-374.1:1, or 18.2-374.3; a second or
60 subsequent violation of § 18.2-379; a violation of § 18.2-460; or any conspiracy or attempt to commit
61 any offense specified in this subdivision, or any substantially similar offense under the laws of another
62 state or territory of the United States, the District of Columbia, or the United States, and such offense
63 was committed as part of a human trafficking scheme or at the direction of an operator of a human
64 trafficking scheme.

65 "Victim of ~~sex~~ human trafficking" means any person, including a minor, convicted or adjudicated
66 delinquent of a qualifying offense in the Commonwealth who (i) committed such offense as a direct
67 result of being solicited, invited, recruited, encouraged, forced, intimidated, *bought, purchased*, or
68 deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its
69 equivalent, as described in ~~subsection A~~ of § 18.2-346, (ii) *was subjected to human trafficking*, or (iii)
70 *committed such offense while younger than 18 years of age*, regardless of whether any other person has
71 been charged or convicted of an offense related to the ~~sex~~ human trafficking of such person.

72 **§ 19.2-327.17. Contents and form of the petition for vacatur.**

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

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

80 2. The petitioner committed the qualifying offense as a direct result of being a victim of ~~sex~~ human
81 trafficking; and

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

84 B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the
85 time of filing. The petition shall be filed on a form provided by the Supreme Court. If the petitioner
86 fails to submit a completed form, the circuit court may allow the petitioner to amend the petition to
87 correct any deficiency. If the petitioner fails to submit a completed form containing the allegations set
88 forth in subsection A, or if the circuit court has previously dismissed a petition for vacatur from the
89 same petitioner for the same qualifying offense following a hearing conducted pursuant to § 19.2-327.18,
90 the court may dismiss the petition. Any false statement in the petition, if such statement is knowingly or
91 willfully made, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

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

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

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

106 F. A victim of human trafficking may file a petition under this section regardless of whether any
107 other person has been charged or convicted of an offense related to the human trafficking of such
108 person.

109 **§ 19.2-327.18. Hearing on petition for vacatur.**

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

115 B. If the attorney for the Commonwealth of the county or city in which the petition is filed objects
116 to the petition or does not file an answer, the court shall conduct a hearing on the petition after
117 reasonable notice has been provided to both the petitioner and the attorney for the Commonwealth. The
118 attorney for the Commonwealth shall make reasonable efforts to notify any victim, as defined in
119 § 19.2-11.01, of any qualifying offense of such hearing. The circuit court shall not be required to
120 conduct a hearing if it has previously dismissed a petition for vacatur from the same petitioner for the

121 same qualifying offense.

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

126 D. *There shall be a rebuttable presumption that a petitioner is a victim of human trafficking if the*
127 *petitioner provides official government documentation of the petitioner's status as a victim of human*
128 *trafficking at the time of the qualifying offense.*

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

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

137 ~~E.~~ G. If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines,
138 costs, forfeitures, and penalties paid in relation to the qualifying offense that was vacated. If the clerk of
139 the court where the conviction was entered is in possession of any records detailing any fines, costs,
140 forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner
141 shall be entitled to a refund of such amount. If the clerk of the court where the conviction was entered
142 is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the
143 petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by
144 the petitioner of the amount of fines, costs, forfeitures, and penalties paid.