

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Prohibition Against Human Trafficking Amendment Act of 2010 to allow for the vacatur of convictions and expungement or sealing of criminal records for certain offenses when the conduct of the person was the direct result of the person having been a victim of trafficking.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Trafficking Survivors Relief Amendment Act of 2018”.

Sec. 2. The Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1831 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 22-1831) is amended as follows:

(1) A new paragraph (4A) is added to read as follows:

“(4A) “Court” means the Superior Court of the District of Columbia.”.

(2) New paragraphs (5A) and (5B) are added to read as follows:

“(5A) “Eligible offense” means any criminal offense under the District of Columbia Official Code, except an ineligible offense.

“(5B) “Ineligible offense” means:

“(A) Assault with intent to kill or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse, under section 803 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-401) (“Section 803”); provided, that assault with intent to rob under Section 803 shall constitute an eligible offense.

“(B) Sex trafficking of children under section 104;

“(C) Murder in the first degree under section 798 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2101);

“(D) Murder in the first degree — Placing obstructions upon or displacement of railroads under section 799 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2102);

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“(E) Murder in the second degree under section 800 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2103);

“(F) Murder of law enforcement officer under section 802a of An Act To establish a code of law for the District of Columbia, effective May 23, 1995 (D.C. Law 10-256; D.C. Official Code § 22-2106);

“(G) Solicitation of murder under section 802b(a) of An Act To establish a code of law for the District of Columbia, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-2107(a));

“(H) Armed carjacking under section 854(b)(1) of An Act To establish a code of law for the District of Columbia, effective May 8, 1993 (D.C. Law 9-270; D.C. Official Code 22-2803(b)(1));

“(I) First degree sexual abuse under section 201 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002);

“(J) First degree child sexual abuse under section 207 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3008);

“(K) First degree sexual abuse of a minor under section 208a of the Anti-Sexual Abuse Act of 1994, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-3009.01);

“(L) First degree sexual abuse of a secondary education student under section 208c of the Anti-Sexual Abuse Act of 1994, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-3009.03);

“(M) First degree sexual abuse of a ward, patient, client, or prisoner under section 212 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3013);

“(N) First degree sexual abuse of a patient or client under section 214 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3015);

“(O) An act of terrorism under section 103 of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153);

“(P) Provision of material support or resources for an act of terrorism under section 103(m) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153(m));

“(Q) Solicitation of material support or resources to commit an act of terrorism under section 103(n) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153(n));

“(R) Manufacture or possession of a weapon of mass destruction under section 104(a) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3154(a));

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“(S) Attempt or conspiracy to manufacture or possess a weapon of mass destruction under section 104(b) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3154(b));

“(T) Use, dissemination, or detonation of a weapon of mass destruction under section 105(a) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3155(a));

“(U) Attempt or conspiracy to use, disseminate, or detonate a weapon of mass destruction under section 105(b) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3155(b)); or

“(V) Attempt or conspiracy to commit any of the offenses listed in this paragraph, except conspiracy to commit sex trafficking of children under section 104.”

(3) A new paragraph (12) is added to read as follows:

“(12) “Victim of trafficking” means:

“(A) A person against whom the following offenses were committed:

“(i) Forced labor under section 102;

“(ii) Trafficking in labor or commercial sex acts under section 103;

or

“(iii) Sex trafficking of children under section 104; or

“(B) A person who has been subject to an act or practice described in section 103(9) or (10) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(9) or (10)).”

(b) New sections 114, 115, 116, and 117 are added to read as follows:

“Sec. 114. Motion to vacate conviction or expunge criminal records for victims of trafficking.

“(a) A person convicted of an eligible offense may apply by motion to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking.

“(b) A person arrested but not prosecuted, or whose prosecution was terminated without conviction, for an eligible offense or an ineligible offense, may apply by motion to the Superior Court for the District of Columbia to expunge all records identifying the movant as having been arrested or prosecuted for the offense if the conduct of the person that resulted in the arrest or prosecution was a direct result of the person having been a victim of trafficking.

“(c) A motion filed under this section shall:

“(1) Be in writing;

“(2) State the arrests, prosecutions, and convictions for which the movant seeks relief;

“(3) State the grounds upon which eligibility for relief is based and facts in support of the movant’s claim;

“(4) Be accompanied by any appropriate exhibits, affidavits, and supporting documents; and

“(5) Be served upon the prosecutor.

“(d) A movant may file a motion under this section regardless of whether any other person, such as the person who made the movant a victim of trafficking, has been arrested, prosecuted, or convicted for an offense.

“(e) A person may file a motion under this section only after:

“(1) All criminal proceedings against the person related to the offenses that are the subject of the motion have completed; and

“(2) The person completes any sentence of incarceration, commitment, probation, parole, or supervised release related to the offenses that are the subject of the motion.

“(f) At the request of a movant or prosecutor, the Court may place any record or part of a proceeding related to a motion filed under this section under seal while the motion is pending.

“(g) A person may file a motion under this section for an arrest, prosecution, or conviction that occurred before, on, or after the effective date of the Trafficking Survivors Relief Amendment Act of 2018, passed on 2nd reading on October 16, 2018 (Enrolled version of Bill 22-329).

“Sec. 115. Review by Court.

“(a)(1) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings, that the movant is not eligible for relief or is not entitled to relief, the Court may dismiss or deny the motion.

“(2) If the motion contains a curable deficiency, the Court shall provide the movant with reasonable time to cure the deficiency and refile the motion.

“(b) If the motion is not dismissed or denied after initial review, the Court shall order the prosecutor to file a response to the motion. Within 90 days after the Court’s order for a response, the prosecutor shall file a response indicating whether the prosecutor supports or opposes the motion.

“(c) The Court may hold a hearing on any motion filed under section 114; provided, that if the prosecutor opposes a motion filed under section 114, the Court shall hold a hearing on the motion within 90 days after the filing of the opposition.

“(d) The Court shall grant a motion filed under section 114(a), if the movant establishes, by clear and convincing evidence that:

“(1) The movant was convicted of an eligible offense;

“(2) The movant is a victim of trafficking; and

“(3) The conduct by the movant resulting in the conviction was a direct result of the movant having been a victim of trafficking.

“(e) The Court shall grant a motion filed under section 114(b), if the movant establishes, by clear and convincing evidence that:

“(1) The movant was arrested but not prosecuted, or the prosecution was terminated without conviction, for an eligible offense or an ineligible offense;

“(2) The movant is a victim of trafficking; and

“(3) The conduct by the movant resulting in the arrest or prosecution was a direct result of the movant having been a victim of trafficking.

“(f) There shall be a rebuttable presumption that a movant is a victim of trafficking if the movant includes in the motion a copy of an official record from a federal, state, tribal, or local proceeding finding that the movant was a victim of trafficking, including a Certification Letter or Eligibility Letter from the U.S. Department of Health and Human Services.

“(g) The Court may grant a motion under this section based solely on an affidavit or sworn testimony of the movant.

“Sec. 116. Grants and denials of motion.

“(a) If the Court denies a motion filed under section 114, the Court shall state the reasons for denial in writing.

“(b) If the Court grants a motion filed under section 114(a), the Court shall vacate the conviction, dismiss the relevant count with prejudice, and, except as provided in subsection (d) of this section, enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order.

“(c) If the Court grants a motion filed under section 114(b), the Court shall, except as provided in subsection (d) of this section, enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested or prosecuted for the offenses specified in the Court’s order.

“(d)(1) At any time before the Court grants a motion under subsection (b) or (c) of this section, a movant may file a request that, if the movant’s motion is granted, the order granting the motion filed under section 114, in lieu of requiring the expungement of all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order, require the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to seal all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order.

“(2) A movant who filed a request under paragraph (1) of this subsection, whose motion filed under section 114 was subsequently granted, may file a second request with the Court, requesting that the Court amend the order issued under paragraph (1) of this subsection, to instead require the expungement of all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order.

“(3) Records sealed under this subsection shall be opened only on order of the Court upon a showing of compelling need; provided, that, upon request, the movant, or the authorized

representative of the movant, shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under this subsection was granted. A request for access to sealed court records may be made ex parte.

“(e) Within one year after the Court’s grant of a motion under subsection (b) or (c) of this section, or, if the movant filed a request pursuant to subsection (d)(1) of this section, within one year after the filing of a request pursuant to subsection (d)(2) of this section, the Clerk of the Court, the prosecutor, any relevant law enforcement agency, and any pretrial services, corrections, or community supervision agency shall certify to the Court that to the best of its knowledge and belief, all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order have been expunged from its records.

“(f) In a case involving co-defendants in which the Court orders the movant’s records expunged or sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be expunged or sealed.

“(g) In a case where a movant was arrested, prosecuted, or convicted of an offense other than the offense for which a Court orders the movant’s records expunged or sealed, the Court may order that only those records, or portions thereof, relating solely to the offense that is the subject of the Court’s order be expunged or sealed.

“(h) The Court shall not order the redaction of the movant’s name from any published opinion of the trial or appellate courts that refer to the movant.

“(i) The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested, prosecuted, or convicted. No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose.

“(j)(1) A copy of an order issued under this section and the certifications filed with the Court under subsection (e) of this section shall be provided to the movant or his or her counsel.

(2) Notwithstanding any provision of this section, the Court shall seal, but not expunge, an order issued under subsection (b) or (c) of this section or a certification filed with the Court under subsection (e) of this section.

(3) A movant may obtain a copy of an order issued under subsection (b) or (c) of this section or a certification filed with the Court under subsection (e) of this section at any time from the Clerk of the Court, upon proper identification, without a showing of need.

“Sec. 117. Appeals.

“An order dismissing, granting, or denying a motion filed under section 114 shall be a final order for purposes of appeal.”.

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Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia