

SENATE BILL No. 154

By Senator Haley

2-12

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to victims of human trafficking, aggravated human trafficking or
3 commercial sexual exploitation of a child; petition to set aside certain
4 conviction or diversion agreements and related arrest records.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) This section shall apply to a person:

8 (1) Convicted of any offense if the person alleges that the conviction
9 concerned acts committed by the person as a result of being a victim of
10 human trafficking, aggravated human trafficking or commercial sexual
11 exploitation of a child, including, but not limited to:

12 (A) Prostitution, as defined in K.S.A. 21-3512, prior to its repeal, or
13 selling sexual relations, as defined in K.S.A. 2018 Supp. 21-6419, and
14 amendments thereto;

15 (B) promoting prostitution, as defined in K.S.A. 21-3513, prior to its
16 repeal, or promoting the sale of sexual relations, as defined in K.S.A. 2018
17 Supp. 21-6420, and amendments thereto;

18 (C) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its
19 repeal, or buying sexual relations, as defined in K.S.A. 2018 Supp. 21-
20 6421, and amendments thereto;

21 (D) human trafficking or aggravated human trafficking, as defined in
22 K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-
23 5426, and amendments thereto; or

24 (E) commercial sexual exploitation of a child, as defined in K.S.A.
25 2018 Supp. 21-6422, and amendments thereto;

26 (2) convicted of attempt, conspiracy, criminal solicitation, being an
27 accessory to, aiding and abetting, aiding the consummation of or
28 compounding a felony with any of the offenses described in this
29 subsection as the underlying offense; or

30 (3) who entered into a diversion agreement in lieu of further criminal
31 proceedings for any violation described in this subsection.

32 (b) A person described in subsection (a) may petition the convicting
33 court to set aside the conviction or diversion agreement described in
34 subsection (a) and related arrest records at any time.

35 (c) (1) When a petition is filed pursuant to this section, the court shall
36 set a date for a hearing on the petition and shall give notice of such hearing

1 to the prosecutor and the arresting law enforcement agency. The petition
2 shall state the:

3 (A) Defendant's full name;

4 (B) full name of the defendant at the time of arrest, conviction or
5 diversion, if different than the defendant's current name;

6 (C) defendant's sex, race and date of birth;

7 (D) crime for which the defendant was arrested, convicted or
8 diverted;

9 (E) date of the defendant's arrest, conviction or diversion; and

10 (F) identity of the convicting court, arresting law enforcement
11 authority or diverting authority; and

12 (G) the specific facts the defendant will rely on to support the claim
13 that the defendant was a victim of human trafficking, aggravated human
14 trafficking or commercial sexual exploitation of a child and was acting
15 under coercion caused by the act of another.

16 (2) No surcharge or fee shall be imposed to any person filing a
17 petition pursuant to this section.

18 (3) All petitions under this section shall be docketed as a new case in
19 the same court as the original criminal action. Any person who may have
20 relevant information about the petitioner may testify at the hearing. The
21 court may inquire into the background of the petitioner and shall have
22 access to any reports or records relating to the petitioner that are on file
23 with the secretary of corrections or the prisoner review board.

24 (d) (1) At the hearing on the petition, the court shall grant such
25 petition to set aside the petitioner's arrest record, conviction or diversion if:

26 (A) The court finds that the petitioner is a victim of human
27 trafficking, aggravated human trafficking or commercial sexual
28 exploitation of a child; and

29 (B) the petitioner can prove by a preponderance of the evidence that
30 they were acting under coercion caused by the act of another at the time of
31 the offense.

32 (2) (A) A finding by the court that the petitioner was a victim of
33 human trafficking, aggravated human trafficking or commercial sexual
34 exploitation of a child at the time of the offense shall be prima facie
35 evidence of coercion.

36 (B) For purposes of this subsection, "coercion" means: Causing or
37 threatening to cause injury to any person; physically restraining or
38 threatening to physically restrain another person; abusing or threatening to
39 abuse the law or legal process; threatening to withhold food, lodging or
40 clothing; threatening to or destroying, concealing, removing, confiscating
41 or possessing any actual or purported government identification document
42 of another person; or any other scheme, plan or pattern intended to cause a
43 person to believe that failure to perform an act would result in bodily harm

1 or physical restraint against any person.

2 (3) Official documentation of a petitioner's status as a victim of
3 human trafficking, aggravated human trafficking or commercial sexual
4 exploitation of a child at the time of the offense shall create a rebuttable
5 presumption that the petitioner was a victim of human trafficking,
6 aggravated human trafficking or commercial sexual exploitation of a child
7 at the time of the offense. Official documentation shall not be required to
8 obtain relief under this section. As used in this subsection, "official
9 documentation" means:

10 (A) A copy of an official record, certification or eligibility letter from
11 a federal, state, tribal or local proceeding, including an approval notice or
12 an enforcement certification generated from a federal immigration
13 proceeding, that shows that the petitioner was a victim of human
14 trafficking, aggravated human trafficking or commercial sexual
15 exploitation of a child; or

16 (B) an affidavit or sworn testimony from a member of the clergy, a
17 medical professional, a trained professional staff member of a victim
18 services organization, or other professional from whom the petitioner has
19 sought legal counsel or other assistance in addressing the trauma and other
20 challenges associated with being a victim of human trafficking, aggravated
21 human trafficking or commercial sexual exploitation of a child.

22 (4) In considering whether the petitioner is a victim of human
23 trafficking, aggravated human trafficking or commercial sexual
24 exploitation of a child, the court may consider any other evidence the court
25 determines is of sufficient credibility and probative value, including an
26 affidavit or sworn testimony. Such evidence may include, but is not limited to:
27

28 (A) Branding or other tattoos on the petitioner that identified the
29 petitioner as having a trafficker;

30 (B) testimony, police interview notes, police reports or affidavits from
31 those with firsthand knowledge of the petitioner's involvement in the
32 trafficking or exploitation, such as solicitors of commercial sex, family
33 members, hotel workers and other individuals trafficked or exploited by
34 the same individual or group of individuals who trafficked or exploited the
35 petitioner;

36 (C) financial records showing profits from the trafficking or
37 exploitation, such as records of hotel stays, employment at indoor venues
38 such as massage parlors, bottle clubs or strip clubs, or employment at an
39 escort service;

40 (D) internet listings, print advertisements or business cards used to
41 promote the petitioner for trafficking or exploitation; or

42 (E) email, text or voicemail records between the petitioner, the
43 trafficker or solicitors of sex that reveal aspects of the trafficking or

1 exploitation, such as behavior patterns, meeting times, payments or
2 examples of the trafficker exerting coercion over the petitioner.

3 (e) Upon request of the petitioner, all hearings conducted pursuant to
4 this section shall be conducted in camera, by two-way electronic audio-
5 video communication between the petitioner and the judge in lieu of
6 personal presence of the petitioner or the petitioner's attorney in the
7 courtroom from any location, or both. In addition, upon the request of the
8 petitioner, the court shall not disclose or open to public inspection any
9 information identifying the victim or alleged victim of human trafficking,
10 aggravated human trafficking or commercial sexual exploitation of a child.
11 Nothing in this subsection shall prohibit the victim or alleged victim from
12 voluntarily disclosing such victim's identity. Information regarding the
13 victim or alleged victim that is sealed pursuant to this subsection shall be
14 disclosed only to the following:

15 (1) A judge of the district court and members of the staff of the court
16 designated by the judge;

17 (2) parties to the proceedings and their attorneys;

18 (3) with the consent of the victim or alleged victim, any individual or
19 any public or private agency or institution providing educational, medical
20 or mental health services to the victim or alleged victim;

21 (4) law enforcement officers or county or district attorneys, or their
22 staff, when necessary for the discharge of their official duties; and

23 (5) any other person when authorized by a court order, subject to any
24 conditions imposed by the order.

25 (f) An order setting aside a conviction or diversion agreement under
26 this section shall:

27 (1) Nullify the conviction or diversion agreement;

28 (2) deem the conviction or diversion agreement to have been vacated
29 due to a substantive defect in the underlying criminal proceedings; and

30 (3) remove all civil disabilities and disqualifications imposed as a
31 result of the conviction or diversion agreement.

32 (g) Upon entry of an order setting aside a conviction or diversion
33 agreement under this section:

34 (1) The court shall order the conviction or diversion agreement and
35 related arrest records expunged and purged from all applicable state and
36 federal systems pursuant to this subsection. The court shall enter the order
37 regardless of whether the petitioner has prior criminal convictions;

38 (2) the court shall direct the Kansas bureau of investigation to purge
39 the conviction or diversion and arrest information from the criminal justice
40 information system central repository and all applicable state and federal
41 databases. The clerk of the court shall send a certified copy of the order to
42 the Kansas bureau of investigation, which shall carry out the order and
43 shall notify the federal bureau of investigation, the secretary of corrections

1 and any other criminal justice agency that may have a record of the
2 conviction or diversion and arrest. The Kansas bureau of investigation
3 shall provide confirmation of such action to the court; and

4 (3) the petitioner shall be treated as not having been arrested,
5 convicted or diverted for the crime.

6 (h) This section shall be part of and supplemental to the Kansas
7 criminal code.

8 Sec. 2. This act shall take effect and be in force from and after its
9 publication in the statute book.