

No. 94. An act relating to human trafficking and prostitution.

(S.122)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 2658 is added to read:

§ 2658. PROSTITUTION CONVICTION; MOTION TO VACATE BY
VICTIM OF HUMAN TRAFFICKING

(a) As used in this section, “victim of human trafficking” means:

(1) a victim of a violation of section 2652 of this title; or

(2) “a victim of a severe form of trafficking” as defined by 22 U.S.C.

§ 7102(13) (federal Trafficking Victims Protection Act).

(b) A person convicted of prostitution in violation of section 2632 of this title may file a motion to vacate the conviction if it was obtained as a result of the person having been a victim of human trafficking. The motion shall be in writing, describe the supporting evidence with particularity, and include copies of any documents showing that the moving party is entitled to relief under this section.

(c) The court shall hold a hearing on the motion, provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert a claim for which relief may be granted.

(d)(1) The court shall grant the motion if it finds by a preponderance of the evidence that:

(A) the moving party was convicted of prostitution in violation of section 2632 of this title; and

(B) the conviction was obtained as a result of the moving party's having been a victim of human trafficking.

(2) If the motion is granted, the court shall vacate the conviction, strike the adjudication of guilt, and expunge the record of the criminal proceedings. The court shall issue an order to expunge, or redact the moving party's name from, all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.

(e) Official documentation of a person's status as a victim of human trafficking provided by a federal, state, or local government agency shall create a presumption that the person's prostitution conviction was obtained as a result of having been a victim of human trafficking. Such documentation shall not be required to grant a motion under this section.

Sec. 2. 15 V.S.A. § 1151 is amended to read:

§ 1151. DEFINITIONS

Unless the context clearly requires otherwise, the definitions in this section apply throughout the subchapter.

(1) "Actual address" means the physical location where the applicant resides and may include a school address or work address of an individual, as

specified on the individual's application to be a program participant under this chapter.

(2) "Agency" means any subdivision of the state of Vermont, a municipality, or a subdivision of a municipality.

(3) "Domestic violence" means an act of abuse as defined in subdivision 1101(1) of this title and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers.

(4) "Human trafficking" means conduct prohibited by 13 V.S.A. § 2652 or § 2653, and includes a threat of such, regardless of whether the conduct or threat of conduct have been reported to law enforcement officers.

~~(4)~~(5) "Law enforcement agency" means the department of public safety, a municipal police department, a sheriff's department, the attorney general's office, a state's attorney's office, or certified law enforcement officers of the department of motor vehicles, the agency of natural resources, or the department of liquor control. "Law enforcement agency" shall also mean the department of social and rehabilitation services for children and families when engaged in:

(A) the investigation of child abuse and neglect;

(B) the delivery of services to families and children with whom the department is working with pursuant to the provisions of 33 V.S.A. chapter 55 of ~~Title 33~~; or

(C) the performance of the department's responsibilities pursuant to an interstate compact to which the state is a party.

~~(5)~~(6) "Law enforcement purpose" means all matters relating to:

(A) the prevention, investigation, prosecution, or adjudication of criminal offenses, civil matters, or juvenile matters;

(B) the investigation, prosecution, adjudication, detention, supervision, or correction of persons suspected, charged, or convicted of criminal offenses or juvenile delinquencies;

(C) the protection of the general health, welfare, and safety of the public or the state of Vermont;

(D) the execution and enforcement of court orders;

(E) service of criminal or civil process or court orders;

(F) screening for criminal justice employment;

(G) other actions taken in performance of official duties, as set forth by statutes, rules, policies, judicial case law, and the United States and Vermont constitutions; and

(H) criminal identification activities, including the collection, storage, and dissemination of criminal history records, as defined in 20 V.S.A.-

§ 2056a(a)(1), sex offender registry information, and DNA material and information.

~~(6)~~(7) “Program participant” means a person certified as a program participant under this chapter.

~~(7)~~(8) “Public record” means a public record as defined in 1 V.S.A. § 317.

~~(8)~~(9) “Secretary” means the Vermont secretary of state.

~~(9)~~(10) “Sexual assault” means an act of assault as defined in ~~subsection~~ 13 V.S.A. § 3252(a) or (b) (sexual assault) or ~~in 13 V.S.A. § 3253(a)~~ (aggravated sexual assault), and includes a threat of such acts, regardless of whether these acts or threats have been reported to law enforcement officers.

~~(10)~~(11) “Stalking” means conduct as defined in 13 V.S.A. § 1061 (stalking) or ~~in 13 V.S.A. § 1063~~ (aggravated stalking), and includes a threat of such acts, regardless of whether these acts or threats have been reported to law enforcement officers.

~~(11)~~(12) “Substitute address” means the secretary’s designated address for the address confidentiality program.

Sec. 3. 15 V.S.A. § 1152 is amended to read:

§ 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION;
CERTIFICATION

(a) An adult person, a parent or legal guardian acting on behalf of a minor, or a legal guardian acting on behalf of an incapacitated person, may apply to the secretary of state to have an address designated by the secretary serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state, and if it contains:

(1) a statement made under oath by the applicant that:

(A) the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, ~~or~~ stalking, or human trafficking;

(B) the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(C) the parent or legal guardian applying on behalf of a minor or incapacitated person has legal authority to act on the person's behalf;

(D) if the applicant is under the supervision of the department of corrections, the applicant has notified the department of the actual address and the applicant authorizes the release of the actual address to the department; and

(E) if the applicant is required to report the actual address for the sex offender registry under 13 V.S.A. chapter 167, subchapter 3 ~~of chapter 167 of Title 13~~, the applicant authorizes the release of the actual address to the registry;

(2) a designation of the secretary as agent for purposes of service of process and for the purpose of receipt of mail;

(3) the mailing address where the applicant can be contacted by the secretary and the phone number or numbers where the applicant can be called by the secretary;

(4) the new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, sexual assault ~~or~~, stalking, or human trafficking;

(5) the signature of the applicant and the name of any individual or representative of any office who assisted in the preparation of the application and the date on which the applicant signed the application.

(b) Applications shall be filed with the office of the secretary.

(c) Upon receipt of a properly completed application, the secretary shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing, unless the certification is withdrawn or cancelled before that date. The secretary shall by rule establish a renewal procedure.

(d) A person who knowingly provides false or incorrect information to the secretary as required by this chapter may be prosecuted under 13 V.S.A. § 2904.

(e) A program participant shall notify the secretary of state of a change of actual address within seven days of the change of address.

Sec. 4. 15 V.S.A. § 1157 is amended to read:

§ 1157. ASSISTANCE FOR PROGRAM APPLICANTS

The secretary of state shall make available a list of state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence, sexual assault ~~and~~, stalking, and human trafficking to assist persons applying to be program participants. Such information provided by the office of the secretary or designees to applicants shall in no way be construed as legal advice.

Sec. 5. 15 V.S.A. § 1160 is amended to read:

§ 1160. ADOPTION OF RULES

The secretary of state shall adopt rules necessary to perform his or her duties under this subchapter relating to: program application and certification; certification cancellation; agency use of designated addresses and exceptions; voting by program participants; and recording of vital statistics for program participants. All such rules shall conform with the findings and intent of the general assembly, as described in section 1150 of this title, and shall be

designed with an understanding of the needs and circumstances of victims of domestic violence, sexual assault ~~and~~, stalking, and human trafficking.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

Approved: May 1, 2012