

# 2021 SPECIAL SESSION I

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## HOUSE BILL NO. 2133

House Amendments in [ ] - January 26, 2021

A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 19.4, consisting of sections numbered 19.2-327.15 through 19.2-327.20, relating to issuance of writ of vacatur for victims of commercial sex trafficking.

Patron Prior to Engrossment—Delegate Delaney

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 19.4, consisting of sections numbered 19.2-327.15 through 19.2-327.20, as follows:

### CHAPTER 19.4.

#### ISSUANCE OF WRIT OF VACATUR FOR VICTIMS OF COMMERCIAL SEX TRAFFICKING.

##### § 19.2-327.15. Definitions.

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

"Qualifying offense" means a conviction or adjudication of delinquency for any violation of § 18.2-346 or 18.2-347.

"Victim of sex trafficking" means any person convicted or adjudicated delinquent of a qualifying offense in the Commonwealth who committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse, as described in subsection A of § 18.2-346, regardless of whether any other person has been charged or convicted of an offense related to the sex trafficking of such person.

##### § 19.2-327.16. Issuance of writ of vacatur for victims of commercial sex trafficking.

A. Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted or adjudicated delinquent of a qualifying offense, the circuit court of the county or city in which the conviction or adjudication of delinquency was entered shall have the authority to issue writs of vacatur under this chapter.

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

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

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

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

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

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

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

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

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

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

D. The Commonwealth shall be made party defendant to the proceeding. The petitioner shall provide a copy of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth

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59 may file an objection or answer to the petition or may give written notice to the court that he does not  
60 object to the petition within 30 days after receipt of the petition. Upon the motion of the attorney for the  
61 Commonwealth and for good cause shown, the court may allow the attorney for the Commonwealth up  
62 to an additional 30 days to respond to the petition.

63 E. A person convicted or adjudicated delinquent of multiple qualifying offenses shall include all  
64 qualifying offenses in one petition, if such convictions or adjudications were all entered in the same city  
65 or county. A person convicted or adjudicated delinquent of qualifying offenses in different cities or  
66 counties shall file petitions in the circuit courts of the cities or counties in which the convictions or  
67 adjudications of delinquency were entered.

68 **§ 19.2-327.18. Hearing on petition for vacatur.**

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

74 B. If the attorney for the Commonwealth of the county or city in which the petition is filed objects to  
75 the petition or does not file an answer, the court shall conduct a hearing on the petition after  
76 reasonable notice has been provided to both the petitioner and the attorney for the Commonwealth. The  
77 attorney for the Commonwealth shall make reasonable efforts to notify any victim, as defined in  
78 § 19.2-11.01, of any qualifying offense of such hearing. The circuit court shall not be required to  
79 conduct a hearing if it has previously dismissed a petition for vacatur from the same petitioner for the  
80 same qualifying offense.

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

85 D. The court may grant the writ and vacate the qualifying offense regardless of whether any person  
86 other than the petitioner has been charged or convicted of an offense related to the petitioner being a  
87 victim of sex trafficking.

88 **§ 19.2-327.19. Relief under writ of vacatur.**

89 A. Upon granting a writ of vacatur pursuant to subsection C of § 19.2-327.18, the circuit court shall  
90 provide the petitioner with a copy of the writ, and such copy shall be sufficient proof that the person  
91 named in the writ is no longer under any disability, disqualification, or other adverse consequence  
92 resulting from the vacated conviction or adjudication of delinquency.

93 B. If a writ of vacatur is granted, and no appeal is made to the Supreme Court, or the Supreme  
94 Court refuses or denies the Commonwealth's petition for appeal or upholds the decision of the circuit  
95 court, an order of expungement for the qualifying offense shall be entered by the circuit court. Upon  
96 entry of the order of expungement, the clerk of court shall cause a copy of the writ of vacatur, the order  
97 of expungement, and the complete set of petitioner's fingerprints to be forwarded to the Department of  
98 State Police, which shall expunge the qualifying offense.

99 C. The writ to vacate the qualifying offense shall not be expunged pursuant to subsection B and shall  
100 be maintained by the circuit court. Access to the writ may be provided only upon court order. Any  
101 person seeking access to the writ may file a written motion setting forth why such access is needed. The  
102 court shall issue an order to disclose the writ upon the written motion of the petitioner named in the  
103 writ. The court may issue an order to disclose the writ if it finds that such disclosure best serves the  
104 interests of justice.

105 D. Costs shall be as provided in § 17.1-275 but shall not be recoverable against the Commonwealth.  
106 If the circuit court enters a writ of vacatur, the clerk of the court shall refund to the petitioner such  
107 costs paid by the petitioner.

108 E. If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines, costs,  
109 forfeitures, and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the  
110 court where the conviction was entered is in possession of any records detailing any fines, costs,  
111 forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner  
112 shall be entitled to a refund of such amount. If the clerk of the court where the conviction was entered  
113 is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the  
114 petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by  
115 the petitioner of the amount of fines, costs, forfeitures, and penalties paid.

116 **§ 19.2-327.20. Claims of relief.**

117 Except for appeals to the Supreme Court of Virginia as authorized by subsection D of § 19.2-327.16,  
118 an action under this chapter or the performance of any attorney representing the petitioner under this  
119 chapter shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this  
120 chapter shall create any cause of action for damages against the Commonwealth or any of its political

**121** subdivisions or any officers, employees, or agents of the Commonwealth or its political subdivisions.

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