

CHAPTER 82  
HB 1577-FN - FINAL VERSION

2022 SESSION

22-2113  
04/05

HOUSE BILL

***1577-FN***

AN ACT                   relative to exemptions from prosecution for victims of human trafficking.

SPONSORS:           Rep. Abbas, Rock. 8; Rep. Steven Smith, Sull. 11; Rep. Bordenet, Ches. 5; Rep. Rhodes, Ches. 15; Sen. Ward, Dist 8

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill establishes exemptions from prosecution for victims of human trafficking, and establishes procedures to protect the privacy of court records relating to human trafficking and for vacating convictions and juvenile adjudications in human trafficking cases.

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Explanation:           Matter added to current law appears in ***bold italics***.  
                              Matter removed from current law appears ~~[in brackets and struck through.]~~  
                              Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT                    relative to exemptions from prosecution for victims of human trafficking.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            82:1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after  
2 paragraph VI the following new paragraph:

3            VII. "Victim of human trafficking" means:

4            (a) An individual who, at any point in time, was the victim of a trafficking in persons offense  
5 under RSA 633:7, I-III, whether or not the offense was prosecuted; or

6            (b) An individual who at any point in time was the victim of a severe form of trafficking in  
7 persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

8            82:2 Trafficking in Persons; Exemption From Prosecution. RSA 633:7, VI is repealed and reenacted  
9 to read as follows:

10           VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise  
11 chargeable conduct was committed as a direct result of being trafficked, provided that the conduct  
12 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

13           82:3 New Paragraphs; Trafficking in Persons; Exemption From Prosecution for Juvenile Victims;  
14 Privacy of Records; Vacating a Conviction or Adjudication. Amend RSA 633:7 by inserting after  
15 paragraph VI the following new paragraphs:

16           VII. A victim of human trafficking who was under 18 years of age at the time of the offense shall  
17 not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise chargeable  
18 offense, where the conduct was committed as a direct result of being trafficked, provided that the conduct  
19 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

20           VIII.(a) This paragraph shall apply to:

21                    (1) An individual convicted for an offense which was committed as a direct result of being  
22 trafficked;

23                    (2) An individual who was under 18 years of age at the time of the offense, who was  
24 adjudicated as delinquent for an offense which was committed as a direct result of being trafficked; or

25                    (3) An individual who entered into a diversion agreement in lieu of further criminal  
26 proceedings for an offense which was committed as a direct result of being trafficked.

27                    (b) A victim of human trafficking who was subject to adjudication as specified in  
28 subparagraph (a), may, at any time, file a motion with the circuit court, district division or superior court to  
29 vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court records  
30 and arrest records, for any offense. A copy of the motion to vacate shall be provided to the agency that  
31 prosecuted the offense.

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1 (c) After a hearing, the court shall grant the motion to vacate the conviction, adjudication of  
2 delinquency, or diversion agreement upon a finding by a preponderance of the evidence that the  
3 petitioner's participation in the offense underlying the conviction, delinquency adjudication, or diversion  
4 agreement was the direct result of being trafficked. A finding by the court that the petitioner was a victim  
5 of human trafficking at the time of the offense shall be a prima facie evidence that the petitioner's  
6 participation in the offense was a direct result of being trafficked.

7 (d) The petitioner shall not be required to provide any official documentation indicating that  
8 he or she was a victim of human trafficking at the time of the offense. However, if such documentation is  
9 provided, it shall be prima facie evidence that the petitioner's participation in the offense was a direct  
10 result of being trafficked. In this subparagraph, "official documentation" means:

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

14 (2) An affidavit or sworn testimony from a member of the clergy, a medical professional,  
15 a trained professional staff member of a victim services organization, or other professional from whom the  
16 petitioner has sought legal counsel or other assistance in addressing the trauma and other challenges  
17 associated with being a victim of human trafficking.

18 (e) In determining whether the petitioner was a victim of human trafficking at the time of the  
19 offense, the court may consider any other evidence the court finds has sufficient credibility and probative  
20 value. Such evidence may include, but is not limited to:

21 (1) The affidavit or sworn testimony of the petitioner;

22 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner as  
23 having had a trafficker;

24 (3) Photographic evidence of branding or other tattoos on the body of the petitioner that  
25 identify the petitioner as having or having had a trafficker;

26 (4) Affidavits or sworn testimony of police, police interview notes, or police reports;

27 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the  
28 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked or  
29 exploited by the same individual or group of individuals who trafficked the petitioner;

30 (6) Financial records showing revenues or expenses from the trafficking;

31 (7) Internet listings, print advertisements, or business cards used to promote the  
32 petitioner for services; or

33 (8) Email, text messages, or voicemail records between the petitioner, the trafficker, or  
34 solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting control over  
35 the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or discussion of meeting  
36 times or payments.

37 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner in  
38 the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication, between the  
39 petitioner, the judge, and any other present in the courtroom for the hearing, if the petitioner is

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1 represented by counsel and upon request of the petitioner, the petitioner's personal appearance shall be  
2 waived and counsel for petitioner shall be permitted to appear on the petitioner's behalf.

3 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection any  
4 information identifying the petitioner, including any records of the motion hearing which could provide  
5 circumstantial details that may identify the petitioner. Information regarding the petitioner that is sealed  
6 pursuant to this paragraph shall be disclosed only to the following:

7 (a) The judge of the circuit court, district division or superior court and members of the staff of  
8 the court as designated by the judge;

9 (b) Parties to the proceedings and their attorneys;

10 (c) With the consent of the petitioner, any individual or public or private agency or institution  
11 providing educational, medical, or mental health service to the petitioner;

12 (d) When necessary for the discharge of official duties, law enforcement officers,  
13 prosecutors, or law enforcement or prosecution staff, or

14 (e) When authorized by court order, any other person, subject to any conditions imposed by  
15 the order, consistent with the petitioner's safety and privacy interests.

16 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement shall:

17 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

18 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a  
19 substantive defect in the underlying criminal proceedings;

20 (3) Remove all civil disabilities and disqualifications imposed as a result of the conviction,  
21 delinquency adjudication, or diversion agreement; and

22 (4) Place the petitioner in the position of never having been investigated, arrested,  
23 convicted, deemed delinquent, or diverted for the offense.

24 (b) Upon a finding that the petitioner's participation in the offense underlying the conviction,  
25 delinquency adjudication, or diversion agreement was a direct result of being trafficked and an entry of an  
26 order vacating the conviction, delinquency's adjudication, or diversion agreement the court shall:

27 (1) Order the conviction, delinquency adjudication, or diversion agreement and any  
28 related court records expunged and purged from all applicable state and federal systems. The court shall  
29 enter this order regardless of whether the petitioner had any criminal record prior or subsequent to the  
30 conviction, delinquency adjudication, or diversion agreement being vacated.

31 (2) Order the division of state police to purge the conviction, delinquency adjudication, or  
32 diversion agreement, and any related court records or arrest records from the criminal history record  
33 information repository and all applicable state and federal databases. The clerk of the court shall send a  
34 certified copy of the order to the division of state police, which shall carry out the order and shall notify the  
35 following of the court's order: the Federal Bureau of Investigation, the New Hampshire department of  
36 corrections, and any other criminal justice agency that may have a record of the conviction, adjudication of  
37 delinquency, or diversion agreement and related court records or arrest records.

38 (c) Upon a finding that the petitioner's participation in the offense underlying the conviction,  
39 delinquency adjudication, or diversion agreement was a direct result of being trafficked and an entry of an

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1 order vacating the conviction, delinquency adjudication, or diversion agreement, the court may, in its  
2 discretion, grant other relief to the petitioning victim in the interests of justice.

3 (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not affect  
4 any right of the person whose offense was vacated to appeal the conviction or sentence.

5 82:4 Effective Date. This act shall take effect January 1, 2023.

Approved: May 20, 2022  
Effective Date: January 01, 2023

