

1 S.217

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Crimes; human trafficking; prostitution; domestic and sexual violence

6 Statement of purpose of bill as introduced: This bill proposes to allow a court
7 to deviate from sentencing rules when the person being sentenced was under
8 18 years of age when he or she committed the crime and the person against
9 whom the offense was committed trafficked the person who committed the
10 offense; to provide limited immunity from criminal prosecution to a person if
11 he or she reports to law enforcement that he or she is a victim of or a witness to
12 a crime that arose from his or her involvement in prostitution or human
13 trafficking; to create a Sex Work Study Committee for the purpose of
14 examining and modernizing the State's prostitution laws; to provide a process
15 for a victim of domestic assault or sexual assault to petition the court to vacate
16 a conviction on their record if it was obtained as a result of the person having
17 been a victim of domestic assault or sexual assault.

18 An act relating to human trafficking and prostitution

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

2 Sec. 1. 13 V.S.A. § 2659 is added to read:

3 § 2659. SENTENCING FOR A CRIME COMMITTED BY A VICTIM OF
4 TRAFFICKING WHO WAS A MINOR AT THE TIME OF THE
5 OFFENSE

6 If a person is convicted of a crime that was committed when the person was
7 under 18 years of age and the court finds by clear and convincing evidence that
8 at any time during the one-year period immediately preceding the commission
9 of the offense the person against whom the offense was committed trafficked
10 the person who committed the offense in violation of this subchapter, the court
11 may, in its discretion:

12 (1) depart from any mandatory minimum sentence or mandatory
13 additional penalty; or

14 (2) suspend any portion of an otherwise applicable sentence.

15 Sec. 2. 13 V.S.A. § 2638 is added to read:

16 § 2638. IMMUNITY FROM LIABILITY

17 (a) As used in this section:

18 (1) “Human trafficking” has the same meaning as in section 2651 of this
19 title.

20 (2) “Prostitution” has the same meaning as in section 2631 of this title.

1 (b) A person who, in good faith and in a timely manner, reports to law
2 enforcement that he or she is a victim of or a witness to a crime that arose from
3 his or her involvement in prostitution or human trafficking shall not be cited,
4 arrested, or prosecuted for a violation of the following offenses:

5 (1) section 2632 of this title (prostitution);

6 (2) section 2601a of this title (prohibited conduct);

7 (3) 18 VSA § 4230(1)(A) (marijuana possession);

8 (4) 18 VSA § 4231(a)(1) and (2) (cocaine possession);

9 (5) 18 VSA § 4232(a)(1) and (2) (LSD possession);

10 (6) 18 VSA § 4233(a)(1) and (2) (heroin possession)

11 (7) 18 VSA § 4234(a)(1) and (2) (depressant, stimulant, and narcotic

12 drugs possession);

13 (8) 18 VSA § 4234a(a)(1) and (a) (methamphetamine possession);

14 (9) 18 VSA § 4235(b)(1) (hallucinogenic drugs possession); and

15 (10) 18 VSA § 4235a(a)(1) (Ecstasy possession).

16 (c) The immunity provisions of this section apply only to the use and
17 derivative use of evidence gained as a proximate result of the person reporting
18 to law enforcement that he or she is a victim of or a witness to a crime that
19 arose from his or her involvement in prostitution or human trafficking and do
20 not preclude prosecution of the person on the basis of evidence obtained from
21 an independent source.

1 (d) A person who qualifies for immunity pursuant to subsection (b) or (c)
2 of this section shall not be subject to the provisions of 18 V.S.A. chapter 84,
3 subchapter 2 concerning property subject to forfeiture, except that prima facie
4 contraband shall be subject to forfeiture.

5 (e) Except in cases of reckless or intentional misconduct, law enforcement
6 shall be immune from liability for citing or arresting a person who is later
7 determined to qualify for immunity under this section.

8 Sec. 3. SEX WORK STUDY COMMITTEE

9 (a) Creation. There is created the Sex Work Study Committee to make
10 recommendations to the General Assembly regarding modernization of
11 Vermont's prostitution laws.

12 (b) Membership. The Committee shall be composed of the following
13 members:

14 (1) a current member of the House of Representatives appointed by the
15 Speaker of the House;

16 (2) a current member of the Senate appointed by the Committee on
17 Committees;

18 (3) the Attorney General or his or her designee;

19 (4) The Executive Director of the Department of State's Attorneys and
20 Sheriffs or his or her designee;

21 (5) the Defender General or his or her designee;

1 (6) the Executive Director of the Center for Crime Victim Services or
2 his or her designee;

3 (7) the Executive Director of the Network Against Domestic and
4 Sexual Violence or his or her designee;

5 (8) the Executive Director of the Vermont Chapter of the American
6 Civil Liberties Union or his or her designee; and

7 (9) the Executive Director of the Vermont Pride Center or his or her
8 designee.

9 (c) Powers and duties. The Committee shall review 13 V.S.A. chapter 59,
10 subchapter 2 for the purpose of developing a modern approach to State
11 involvement in sexual activity for hire by consenting adults while
12 maintaining criminal penalties for trafficking, coercion, and exploitation of
13 minors and strong protections for victims of those crimes.

14 (d) Assistance. For purposes of scheduling meetings and preparing
15 recommended legislation, the Committee shall have the assistance of the
16 Office of Legislative Council.

17 (e) Report. On or before December 15, 2020, the Committee shall submit
18 proposed legislation to the General Assembly based upon its
19 recommendations.

1 (f) Meetings.

2 (1) The member of the House of Representatives and the member of
3 the Senate shall be co-chairs of the Committee and call the Committee to
4 order.

5 (2) A majority of the membership shall constitute a quorum.

6 (3) The Committee shall cease to exist on December 31, 2020.

7 (g) Compensation and reimbursement. For attendance at meetings during
8 adjournment of the General Assembly, a legislative member of the
9 Committee serving in his or her capacity as a legislator shall be entitled to per
10 diem compensation and reimbursement of expenses pursuant to 2 V.S.A.
11 § 406 for not more than four meetings.

12 Sec. 4. 13 V.S.A. § 1049 is added to read:

13 § 1049. MOTION TO VACATE BY VICTIM OF DOMESTIC ASSAULT

14 (a) As used in this section:

15 (1) “Qualifying crime” means a criminal offense in this State that is not
16 listed in 33 V.S.A. § 5204(a).

17 (2) “Victim of domestic assault” means a victim of a violation of this
18 subchapter.

19 (b) A person convicted of a qualifying crime may file a motion to vacate
20 the conviction if it was obtained as a result of the person having been a victim
21 of domestic assault. The motion shall be in writing, describe the supporting

1 evidence with particularity, and include copies of any documents showing that
2 the moving party is entitled to relief under this section.

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

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

8 (A) the moving party was convicted of a qualifying crime; and

9 (B) the conviction was obtained as a result of the moving party's
10 having been a victim of domestic assault.

11 (2) If the motion is granted, the court shall vacate the conviction, strike
12 the adjudication of guilt, and expunge the record of the criminal proceedings.

13 The court shall issue an order to expunge or redact the moving party's name
14 from all records and files related to the moving party's arrest, citation,
15 investigation, charge, adjudication of guilt, criminal proceedings, and
16 probation for the offense.

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

1 Sec. 5. 13 V.S.A. § 3260 is added to read:

2 § 3260. MOTION TO VACATE BY VICTIM OF SEXUAL ASSAULT

3 (a) As used in this section:

4 (1) “Qualifying crime” means a criminal offense in this State that is not
5 listed in 33 V.S.A. § 5204(a).

6 (2) “Victim of sexual assault” means a victim of a violation of this
7 subchapter.

8 (b) A person convicted of a qualifying crime may file a motion to vacate
9 the conviction if it was obtained as a result of the person having been a victim
10 of sexual assault. The motion shall be in writing, describe the supporting
11 evidence with particularity, and include copies of any documents showing that
12 the moving party is entitled to relief under this section.

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

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

18 (A) the moving party was convicted of a qualifying crime; and

19 (B) the conviction was obtained as a result of the moving party’s
20 having been a victim of sexual assault.

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

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

12 Sec. 6. EFFECTIVE DATE

13 This act shall take effect on July 1, 2020.