

STATE OF KANSAS

SENATE CHAMBER

MADAM PRESIDENT:

I move to amend **SB 373**, on page 1, following line 9, by inserting:

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

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

(A) Prostitution, as defined in K.S.A. 21-3512, prior to its repeal, or selling a sex act, as defined in K.S.A. 2019 Supp. 21-6419, and amendments thereto;

(B) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or promoting the sale of a sex act, as defined in K.S.A. 2019 Supp. 21-6420, and amendments thereto;

(C) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or buying a sex act, as defined in K.S.A. 2019 Supp. 21-6421, and amendments thereto;

(D) human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2019 Supp. 21-5426, and amendments thereto; or

(E) commercial sexual exploitation of a child, as defined in K.S.A. 2019 Supp. 21-6422, and amendments thereto;

(2) convicted of an attempt, conspiracy or criminal solicitation to commit any of the offenses described in this subsection as the underlying offense;

(3) who entered into a diversion agreement in lieu of further criminal proceedings for any offense described in this subsection; or

(4) arrested for any offense described in this subsection.

(b) A person described in subsection (a) may file a petition to vacate the arrest records, conviction or diversion agreement described in subsection (a) at any time. A petition to vacate:

- (1) Arrest records shall be filed in the court of the county in which the arrest occurred;
- (2) a conviction and related arrest records shall be filed in the convicting court; and
- (3) a diversion agreement and related arrest records shall be filed in the court of the county in which the diversion agreement was entered into.

(c) (1) When a petition is filed pursuant to this section, the court shall set a date for a hearing on the petition and shall give notice of such hearing to the prosecutor and the arresting law enforcement agency. The petition shall state the:

- (A) Petitioner's full name;
 - (B) full name of the petitioner at the time of arrest, conviction or diversion, if different than the petitioner's current name;
 - (C) petitioner's sex, race and date of birth;
 - (D) offense for which the petitioner was arrested, convicted or diverted;
 - (E) date of the petitioner's arrest, conviction or diversion;
 - (F) identity of the arresting law enforcement authority, convicting court or diverting authority;
- and
- (G) specific facts the petitioner will rely on to support the claim that the petitioner was a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child and was acting under coercion caused by the act of another.

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

(3) All petitions under this section shall be docketed as a new case in the court described in subsection (b). Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any

reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(d) (1) At the hearing on the petition, the court shall grant such petition to vacate the petitioner's arrest record, conviction and related arrest records, or diversion agreement and related arrest records if:

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

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

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

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

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

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

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

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

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

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

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

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

(E) email, text, voicemail or other records between the petitioner, the trafficker or solicitors of

sex that reveal aspects of the trafficking or exploitation, such as behavior patterns, meeting times, payments or examples of the trafficker exerting coercion over the petitioner.

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

- (1) A judge of the district court and members of the staff of the court designated by the judge;
 - (2) parties to the proceedings and their attorneys;
 - (3) with the consent of the petitioner, any individual or any public or private agency or institution providing educational, medical or mental health services to the petitioner;
 - (4) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties; and
 - (5) any other person when authorized by a court order, subject to any conditions imposed by the order.
- (f) An order vacating the petitioner's arrest records, conviction and related arrest records, or diversion agreement and related arrest records under this section shall:
- (1) Nullify the arrest, conviction or diversion agreement;
 - (2) deem the arrest, conviction or diversion agreement to have been vacated due to a substantive defect in the underlying criminal proceedings; and
 - (3) remove all civil disabilities and disqualifications imposed as a result of the arrest,

conviction or diversion agreement.

(g) Upon entry of an order vacating the petitioner's arrest records, conviction and related arrest records, or diversion agreement and related arrest records under this section:

(1) The court shall order the arrest records, conviction and related arrest records, or diversion agreement and related arrest records expunged and purged from all applicable state and federal systems pursuant to this subsection. The court shall enter the order regardless of whether the petitioner has been convicted of any other offense or entered into a diversion agreement for any other offense;

(2) the court shall direct the Kansas bureau of investigation to purge the arrest records, conviction and related arrest records, or diversion agreement and related arrest records from the criminal justice information system central repository and all applicable state and federal databases. The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation, which shall carry out the order and shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency that may have a record of the conviction or diversion and arrest. The Kansas bureau of investigation shall provide confirmation of such action to the court; and

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

(h) This section shall be a part of and supplemental to the Kansas criminal code.";

And by renumbering sections accordingly;

Also on page 1, in the title, in line 2, after "to" by inserting "petitions by certain victims of human trafficking to vacate certain arrest records, convictions or diversion agreements;"

Senator _____