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Massachusetts

Massachusetts Law

MASSACHUSETTS M.G.L.A. 265 § 59

Effective: July 12, 2018

§ 59. Human trafficking victimization as affirmative defense to certain offenses; grounds to vacate conviction, adjudication of delinquency or continuance without finding and to withdraw guilty plea

Currentness

<[Text of section added by 2018, 69, Sec. 132 effective July 12, 2018. See 2018, 69, Sec. 232.]>

(a) At any time after the entry of a judgment of disposition on an indictment or criminal or delinquency complaint for an offense under section 26, subsection (a) of section 53 or subsection (a) of section 53A of chapter 272 or under section 34 of chapter 94C for simple possession of a controlled substance, the court in which it was entered shall, upon motion of the defendant, vacate any conviction, adjudication of delinquency or continuance without a finding and permit the defendant to withdraw any plea of guilty, plea of nolo contendere, plea of delinquent or factual admission tendered in association therewith upon a finding by the court of a reasonable probability that the defendant's participation in the offense was a result of having been a human trafficking victim as defined by section 20M of chapter 233 or a victim of trafficking in persons under 22 U.S.C. 7102; provided, however, that:

(1) except as provided in paragraphs (2) and (3) of this subsection, the defendant shall have the burden to establish a reasonable probability that the defendant's participation in the offense was the result of having been a victim of human trafficking;

(2) where a child under the age of 18 was adjudicated delinquent for an offense under section 26, subsection (a) of section 53 or subsection (a) of section 53A of chapter 272, based on allegations of prostitution, there shall be a rebuttable presumption that the child's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons;

(3) where the conviction, adjudication of delinquency or continuance without a finding was for an offense under section 26, subsection (a) of section 53 or subsection (a) of section 53A of chapter 272 committed when the defendant was 18 years of age or older, official documentation from any local, state or federal government agency of the defendant's status as a victim of human trafficking or trafficking in persons at the time of the offense shall create a rebuttable presumption that the defendant's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons, but shall not be required for granting a motion under this subsection;

(4) for purposes of paragraph (3) of this subsection, "official documentation" shall be defined as any document issued by a local, state or federal government agency in the agency's official capacity;

(5) the rules concerning the admissibility of evidence at criminal trials shall not apply to the presentation and consideration of information at a hearing conducted pursuant to this section and the court shall consider hearsay contained in official documentation from any local, state or federal government agency of the defendant's status as a victim of human trafficking or trafficking in persons offered in support of a motion pursuant to this section; and

(6) a motion pursuant to this section may be heard by any sitting justice of a court of competent jurisdiction.

(b) Upon vacatur of a conviction, adjudication of delinquency or continuance without a finding, the court shall enter a plea of not guilty. It shall be an affirmative defense to the charges against the defendant that, while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted or against whom juvenile delinquency proceedings have commenced.

(c) The administrative justices of the superior court, district court, juvenile court and the Boston municipal court departments shall jointly promulgate a motion form for use under this section.

(d) A conviction, adjudication of delinquency or continuance without a finding vacated under this section shall be deemed to have been vacated on the merits.

Credits

Added by St.2018, c. 69, § 132, eff. July 12, 2018.

M.G.L.A. 265 § 59, MA ST 265 § 59

Current through Chapter 155, except Chapter 154 of the 2018 2nd Annual Session