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FISCAL AND POLICY NOTE
First Reader

Senate Bill 869

(Senator Lee, *et al.*)

Judicial Proceedings

Criminal Procedure - Motion to Vacate Judgment - Human Trafficking

This bill authorizes a person convicted of a civil offense, or a criminal offense other than a crime of violence, to file a motion to vacate the judgment in the case in which the conviction was entered if the person's participation in the offense was a direct result of having been a victim of human trafficking under § 11-303(a) or (b) of the Criminal Law Article or specified related federal laws. The bill also makes several changes to existing statutory procedural requirements for these motions.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for the Judiciary to process additional motions under the bill. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures for circuit courts to process additional motions under the bill. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A filed motion must be in writing, be made within a reasonable amount of time after the conviction, describe the evidence showing that the movant is entitled to relief, and include copies of any supporting documents.

The bill repeals the requirement under existing statute that a State's Attorney sign and consent to a motion to vacate a judgment. Instead, the bill requires the movant to provide a copy of the motion to vacate to the State's Attorney and authorizes the State's Attorney

to file a response to the motion within 90 days after receipt of the motion or as otherwise ordered by the court.

The court must send written notice of the motion to vacate to each identified victim in the case advising the victim of the right to offer additional information relevant to the motion to the court.

In addition, the court may dismiss a motion without a hearing if the court finds that the motion offers no additional evidence beyond the evidence previously considered by the court or the movant acted fraudulently or in bad faith in filing the motion. A movant has the burden of proof, and it is not necessary that any person other than the movant be arrested for or convicted of an offense before the movant may file a motion. The court must state its reasons for denying a motion in writing.

The bill repeals authorization for a court to vacate the conviction, modify the sentence, or grant a new trial in response to a motion to vacate. Instead, a court may grant a motion if, after notice and opportunity for the State's Attorney and victims to be heard, the court finds by clear and convincing evidence that (1) the movant was convicted of a civil offense or a criminal offense other than a crime of violence and (2) the conduct by the movant resulting in the conviction of the offense was a direct result of the movant having been a victim of human trafficking.

If the court grants a motion, the court may, at the request of the movant, order that all police records and court records relating to the vacated conviction be expunged. A filed motion, any supporting documents and related orders must be maintained under seal.

A vacated conviction may not be considered a conviction for any purpose.

Current Law: Chapter 218 of 2011 authorizes a person convicted of prostitution to file a motion to vacate the judgment if the person committed the act or acts of prostitution while under duress caused by an act of another committed in violation of the prohibitions against human trafficking under Maryland or federal law. The motion must (1) be in writing; (2) be signed and consented to by the State's Attorney; (3) be made within a reasonable period of time after the conviction; and (4) describe the evidence and provide copies of official documents showing that the defendant is entitled to a vacated judgment for a conviction of prostitution in accordance with the bill's eligibility criteria.

The court must hold a hearing on the motion if the motion meets the statutory requirements. However, a court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. The defendant has the burden of proof in a proceeding to vacate the conviction. In ruling on a motion, the court may vacate the conviction, modify the sentence, or grant a new trial.

Section 11-303 of the Criminal Law Article prohibits a person from engaging in human trafficking. The penalties for the offense vary based on the type of victim and the circumstances involved.

Human Trafficking of an Adult (In General)

Under the human trafficking prohibition, a person may not knowingly:

- take or cause another to be taken to any place for prostitution;
- place, cause to be placed, or harbor another in any place for prostitution;
- persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;
- engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious harm; or
- destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to commit these acts.

In general, a person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000. While a misdemeanor generally carries a 1-year statute of limitations, the misdemeanor offense of human trafficking is subject to prosecution at any time. The violator is subject to confinement in the penitentiary and may reserve a point or question for *in banc* review as specified in the Maryland Constitution.

Human Trafficking of a Minor

A person who commits human trafficking involving a victim who is a minor (defined as an individual younger than age 18) is guilty of a felony and subject to imprisonment for up to 25 years and/or a maximum fine of \$15,000. In a prosecution for human trafficking of a minor, it is not a defense that the defendant did not know the age of the victim.

Human Trafficking (Compelled Marriage or Performance of Specified Acts)

The felony human trafficking penalty also applies to a person who knowingly takes or detains another person with the intent to use force, threat, coercion, or fraud to compel the

other person to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse.

Human Trafficking (Financial Benefit or Aiding and Abetting)

Under § 11-303(e) of the Criminal Law Article, a person who knowingly aids, abets, or conspires in the violation of human trafficking laws or knowingly benefits financially from ventures or activities in violation of State human trafficking laws is subject to the same penalties imposed on a person who violated the applicable statute.

The District Court has concurrent jurisdiction with the circuit courts over the crime of felony human trafficking.

Crimes of Violence (§ 14-101 of the Criminal Law Article)

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Sections 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State Expenditures: General fund operational expenditures for the Judiciary may increase if the bill results in a noticeable increase in the volume of filed motions to vacate judgment and the time required to process motions under the bill.

The bill significantly expands the pool of judgments eligible for vacatur, alters the requirement of the connection of human trafficking to the applicable judgment, and expands the clerical/administrative responsibilities of a court when a motion is filed.

The bill requires the court to notify victims in the case, which creates additional administrative duties for court personnel to review files, identify victims, and ascertain last known addresses for victims. The Judiciary also advises that ambiguities in the bill regarding dismissal of a motion without a hearing and procedural consequences for a State's Attorney's failure to respond may lead to additional hearings.

The Judiciary advises that it does not have data from which to project the fiscal and operational impact of the bill on the courts.

Local Expenditures: For the reasons stated above, operational expenditures for the circuit courts may increase to process additional motions filed as a result of the bill.

The Maryland State's Attorneys' Association advises that the bill has no effect on prosecutors.

Additional Information

Prior Introductions: None.

Cross File: HB 1267 (Delegate Dumais, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

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