

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 782
 Judiciary

(Delegate Atterbeary, *et al.*)

Judicial Proceedings

Criminal Procedure - Motion to Vacate Judgment - Human Trafficking (True Freedom Act of 2019)

This bill expands eligibility to file a motion to vacate a judgment under § 8-302 of the Criminal Procedure Article by authorizing a person convicted of a “qualifying offense” to file a motion to vacate the judgment if the person’s participation in the offense was a direct result of being a “victim of human trafficking.” The bill also authorizes a person whose conviction is vacated to petition for expungement of the conviction under § 10-105 of the Criminal Procedure Article. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by \$42,400 in FY 2020 only. Potential minimal increase in general fund revenues from filing fees. It is assumed there is no impact in FY 2019.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	42,400	0	0	0	0
Net Effect	(\$42,400)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: A “qualifying offense” is defined as:

- unnatural or perverted sexual practice;
- possessing or administering a controlled dangerous substance;
- possessing or purchasing a noncontrolled substance;
- possessing or distributing controlled paraphernalia;
- fourth-degree burglary;
- malicious destruction of property in the lesser degree;
- a trespass offense;
- misdemeanor theft;
- misdemeanor obtaining property or services by bad check;
- possession or use of a fraudulent government identification document;
- public assistance fraud;
- false statement to a law enforcement officer or public official;
- disturbing the public peace and disorderly conduct;
- indecent exposure;
- prostitution under § 11-306(a)(1) of the Criminal Law Article;
- driving with a suspended registration;
- failure to display registration;
- driving without a license;
- failure to display license to police;
- possession of a suspended license;
- driving while privilege is canceled, suspended, refused, or revoked;
- owner failure to maintain security on a vehicle;
- driving while uninsured; or
- prostitution or loitering as prohibited under local law.

A “victim of human trafficking” is a person who has been subjected to an act of another committed in violation of § 11-303(a) or (b) of the Criminal Law Article or specified federal statutes.

The bill removes the current requirement that the motion to vacate be signed and consented to by the State’s Attorney. Instead, the bill requires that the motion be (1) served on the appropriate State’s Attorney, as specified, and (2) mailed to any victim or victim’s representative, if the qualifying offense occurred within five years before the filing of the motion. After a hearing, the court may grant a motion to vacate if the court finds that, based on a preponderance of the evidence, the movant committed the qualifying offense as a

direct result of being a victim of human trafficking. When making a finding under the bill, the court must consider (1) the length of time between the offense and the trafficking; (2) the dynamics of the relationship between the movant and the person committing trafficking against the movant; and (3) any other relevant evidence. The court must grant a motion without a hearing if (1) the State's Attorney consents to the motion; (2) no objection to the relief requested has been filed by a victim or victim's representative; and (3) at least 60 days have elapsed since notice and service.

The court may dismiss a motion without a hearing if the court finds that (1) the motion fails to assert grounds on which relief may be granted; (2) the motion offers no additional evidence beyond that which has previously been considered by the court; or (3) the movant acted fraudulently or in bad faith in filing the motion.

A conviction vacated under the bill's provisions 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.

Human Trafficking

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. Section 11-303(b) of the Criminal Law Article prohibits a person from engaging in the human trafficking of a minor or human trafficking through compelled marriage or the performance of specified acts.

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.

Human Trafficking of a Minor

Under § 11-303(b) of the Criminal Law Article, 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)

Section 11-303(b) of the Criminal Law Article also applies the felony human trafficking penalty 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.

The District Court has concurrent jurisdiction with the circuit courts over the crime of felony human trafficking under § 11-303(b).

Expungements

In general, §§ 10-105 and 10-110 of the Criminal Procedure Article establish eligibility for the expungement of records pertaining to a criminal charge or conviction. Expungement of a court or police record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Section 10-105 of the Criminal Procedure Article

Under § 10-105 of the Criminal Procedure Article, a person who has been charged with the commission of a crime for which a term of imprisonment may be imposed or who has been charged with a civil offense or infraction, except a juvenile offense, may file a petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon. Individuals convicted of a crime that is no longer a crime, convicted of possession of marijuana under § 5-601 of the Criminal Procedure Article, or convicted of or found not criminally responsible for specified public nuisance crimes or specified misdemeanors are also eligible for expungement of the associated criminal records under certain circumstances.

If two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge in the unit.

A person is not entitled to expungement if (1) the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person, within three years of the entry of the probation before judgment, has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime or (2) the person is a defendant in a pending criminal proceeding.

Section 10-110 of the Criminal Procedure Article

Chapter 515 of 2016, also known as the Justice Reinvestment Act, established the availability of and procedures for expungements under § 10-110 of the Criminal Procedure Article. Chapter 515 expanded eligibility for expungements by authorizing an individual convicted of any of a list of approximately 100 specified misdemeanor offenses and the felony of bigamy (or an attempt, a conspiracy, or a solicitation of any of these offenses) to file a petition for expungement of the conviction, subject to specified procedures and requirements. Chapter 143 of 2018 further expanded eligibility for expungement to include convictions for the following felonies: theft under § 7-104 of the Criminal Law Article; possession with intent to distribute a controlled dangerous substance under § 5-602(2) of the Criminal Law Article; and burglary under §§ 6-202(a), 6-203, or 6-204 of the Criminal Law Article. **Appendix 1** contains an itemized list of convictions eligible for expungement under Chapter 515 of 2016 and Chapter 143 of 2018. If a person is not eligible for expungement of one conviction in a unit, the person is not eligible for expungement of any other conviction in the unit.

In general, a petition for expungement of these convictions is subject to a 10-year waiting period from when the petitioner completed the sentences imposed for all convictions for which expungement is sought, including parole, probation, or mandatory supervision. However, a petition for expungement of a felony or a conviction for misdemeanor second-degree assault, common law battery, or for an offense classified as a domestically related crime under § 6-233 of the Criminal Procedure Article is subject to a 15-year waiting period.

State Revenues: General fund revenues may increase minimally from filing fees for expungements in the District Court. The District Court charges a \$30 filing fee for expungements of guilty dispositions.

State Expenditures: General fund expenditures for the Judiciary increase by \$42,376 in fiscal 2020 only for computer reprogramming. Currently, expungements are based on established disposition types, and a vacated conviction is not an established disposition type in the District Court.

The Judiciary advises that the bill requires reprinting and restocking of expungement forms and brochures, at a one-time cost of \$8,256 in fiscal 2020. However, the Department of Legislative Services advises that the revision and reprinting of forms and brochures to reflect statutory changes is a routine function of the Judiciary and can be incorporated into existing plans.

This estimate assumes that the bill's expungement provisions do not materially affect State finances given that (1) the bill applies to a limited number of individuals; (2) eligibility for

expungement under the bill is dependent on a court vacating a conviction; and (3) convictions for many of the crimes listed as “qualifying offenses” under the bill are already eligible for expungement under § 10-110 of the Criminal Procedure Article.

Additional Information

Prior Introductions: None.

Cross File: SB 691 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Montgomery County; City of Bowie; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Archives; Department of Legislative Services

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Appendix – Convictions Eligible for Expungement

Convictions Eligible for Expungement under Section 10-110 of the Criminal Procedure Article

Misdemeanors Eligible for Expungement

Alcoholic Beverages Article

AB, § 6-320 – Disorderly Intoxication

Business Occupations and Professions Article

BOP, § 17-613(a): Crimes relating to real estate brokers and agents (*e.g.*, failure to deposit money in trust accounts, engaging in discriminatory real estate practices, acting as a dual agent, providing brokerage services without a license, etc.)

Business Regulation Article

BR, § 5-610: Violation of Business Regulation Article, Title 5, Subtitle 6 (perpetual care of cemeteries)

BR, § 5-712: Failure to deposit money received under or in connection with a preneed burial contract

BR, § 5-904: Violation of any provision of Title 5, Subtitle 9 of the Business Regulation Article (cemetery-related violations – failure to register as operator, operating a cemetery without the proper form of business entity, and unauthorized representations)

BR, § 19-304: Violations of laws relating to returnable containers and returnable textiles (improper use, improper registration, defacing, etc.)

BR, § 19-308: Violations of laws relating to plastic secondary packaging

Courts and Judicial Proceedings Article

CJ, § 3-1508: Failure to comply with a peace order

CJ, § 10-402: Divulging contents of communications (subsection (d))

Commercial Law Article

CL, § 14-1915: Violations of the Maryland Credit Services Businesses Act

CL, § 14-2902: False and fraudulent advertising

CL, § 14-2903: Bait and switch

Criminal Procedure Article

CP, § 5-211: Failure to surrender after forfeiture of bail or recognizance

Criminal Law Article

CR, § 3-203: Assault in the second degree (misdemeanor)

CR, § 3-808: Filing a fraudulent lien or encumbrance

CR, § 5-601: Possession or administration of a controlled dangerous substance (not involving use or possession of marijuana)

CR, § 5-618: Possession or purchase of noncontrolled substance that the person reasonably believes is a controlled substance

CR, § 5-619: Use or possession of drug paraphernalia

CR, § 5-620: Obtaining, possessing, or distributing controlled paraphernalia

CR, § 5-703: Unsolicited mailing of a controlled dangerous substance, prescription drug, or medicine

CR, § 5-708: Smelling or inhaling harmful substances

CR, § 5-902: Omitting, removing, altering, or obliterating a symbol required by federal law for a substance governed by Title 5 of the Criminal Law Article (controlled dangerous substance (CDS), prescriptions, and other substances); refusal or failure to maintain specified documentation required under Title 5; refusing entry into a premises or inspection of a premises authorized under Title 5), maintaining a place resorted to by others for illegal use of CDS or for the keeping or selling of a CDS; unauthorized manufacturing, dispensing, or distribution of CDS by a registrant; CDS/paraphernalia-related violations by authorized provider; and contraband

CR, § 6-105: Malicious burning of personal property in the second degree

CR, § 6-108: Willful and malicious burning of a trash container

CR, § 6-206: Breaking and entering a motor vehicle – rogue and vagabond

CR, § 6-303: Public utility interference – electrical equipment

CR, § 6-306: Alteration of manufacturer's serial number or sale of good with altered serial number

CR, § 6-307: Sale or possession of stolen serial number or vehicle identification plate or possession of a manufactured serial number or vehicle identification plate with intent to affix to stolen property or use for fraudulent purposes

CR, § 6-402: Trespass on posted property

CR, § 6-503: Unauthorized riding on railroad vehicle or unauthorized entry onto railroad property

CR, § 7-104: General theft (less than \$100 and at least \$100 but less than \$1,500)

CR, § 7-203: Unauthorized removal of property

CR, § 7-205: Abandonment of or failure to return leased or rented motor vehicle

CR, § 7-304: Obtaining telephone records without authorization

CR, § 7-308: Prohibited transfer of recorded sounds or images (penalty contained in CR, § 7-309)

CR, § 8-103: Obtaining property or services by bad check (less than \$100 and at least \$100 but less than \$1,500)

CR, § 8-206: Misdemeanor credit card crimes (less than \$100 and at least \$100 but less than \$1,500)

CR, § 8-401: Fraudulent conversion of partnership assets

CR, § 8-402: Fraudulent misrepresentation by corporate officer or agent

CR, § 8-404: Pyramid promotional schemes

CR, § 8-406: Misuse of documents of title

CR, § 8-408: Unlawful subleasing of motor vehicle

CR, § 8-503: Public assistance fraud – generally

CR, § 8-521: Fraudulently obtaining legal representation from the Office of the Public Defender

CR, § 8-523: Housing assistance fraud, making false statements

CR, § 8-904: Racing a horse under a name other than its registered name

CR, § 9-204: Bribing a person participating in or connected with an athletic contest

CR, § 9-205: Acceptance of a bribe by a person participating in or connected with an athletic contest

CR, § 9-503: Making a false statement to a State or local official/agency concerning a crime or hazard

CR, § 9-506: Making a false statement on an application for funds from the Maryland Higher Education Commission

CR, § 10-110: Illegal Dumping and Violation of Litter Control Law

CR, § 10-201: Disturbing the peace and disorderly conduct

CR, § 10-402: Unlawful removing or attempting to remove human remains from burial site

CR, § 10-404: Removal or destruction of funerary objects, graveyard plants, disorderly conduct in graveyards

CR, § 10-502: Bigamy (listed as a misdemeanor but is a felony)

CR, § 11-306(a): Prostitution

CR, § 12-102: Betting, wagering, gambling, etc.; pool on races/contests

CR, § 12-103: Playing specified games for money (*e.g.*, craps, thimbles, etc.)

CR, § 12-104: Keeping a gaming device or a place for gambling

CR, § 12-105: Offshore gambling

CR, § 12-109: Prearrangement or predetermination of horse race results

CR, § 12-203: Holding a lottery or selling a lottery device

CR, § 12-204: Keeping a location for the sale or barter of lottery devices

CR, § 12-205: Importing a lottery device or possession of lottery records or money

CR, § 12-302: Unlawful possession or operation of a slot machine

Election Law Article

EL, § 13-401: Failure to comply with authority line requirements in campaign material

EL, § 13-602: Specified campaign finance/election-related violations (*e.g.*, providing money/aid or a thing of value to induce or procure a vote, influence by employer of employee's vote, etc.)

EL, § 16-201: Voting-related offenses (*e.g.*, impersonation of another in order to vote, voting under a false name, etc.)

Family Law Article

FL, § 4-509: Failure to comply with protective order

Health General Article

HG, § 18-215: Violations relating to infectious or contagious disease reports

Housing and Community Development Article

HCD, § 4-411: Making a false statement or report to the Department of Housing and Community Development (DHCD) for Rental Housing Program loan

HCD, § 4-2005: Making a false statement or report to DHCD for Energy-Efficient Homes Construction Loan Program loan

Insurance Article (fraudulent insurance acts)

IN, § 27-403: Failure to return premiums, making false or misleading claims to an insurer

IN, § 27-404: Insurer doing business with unlicensed persons

IN, § 27-405: Representations to public by unlicensed persons

IN, § 27-406: False applications and statements; unregulated insurers

IN § 27-406.1: Fraudulent insurance acts of individual sureties

IN, § 27-407: Solicitation of injured persons; solicitation of clients for lawyer or health care practitioner

IN, § 27-407.1: Organizing, planning, or knowingly participating in an intentional motor vehicle accident

IN, § 27-407.2: Compensation for insurance deductible

Public Safety Article

PS, § 5-307: Scope of handgun permit (listed in statute but is not a crime)

PS, § 5-308: Possession of handgun permit required

PS, § 6-602: Interference or obstruction of fire marshal, false representation as a fire marshal

PS, § 7-402: Interference, obstruction of fire or emergency services personnel

PS, § 14-114: Violation of order, rule, or regulation issued under Maryland Emergency Management Agency Act

Real Property Article

RP, § 7-318.1: Failure of foreclosure consultant to obtain a real estate broker's license or violation by foreclosure consultant of Maryland Real Estate Brokers Act

RP, § 7-509: Does not refer to a prohibited act – penalty provision for violations of provisions of Maryland Mortgage Assistance Relief Services Act

RP, § 10-507: Violation of Custom Home Protection Act (subsection (b)(3))

State Government Article

SG, § 9-124: Prohibited acts relating to State lottery

Tax General

TG, § 13-1001: Willful failure to file tax return

TG, § 13-1004: Income tax preparer – false return, false claim for refund, or attempted tax evasion

TG, § 13-1007: Violations of income tax withholding requirements

TG, § 13-1024: Failure to provide information with intent to evade taxes

Common Law Offenses

Affray

Battery

Criminal contempt

Hindering a law enforcement officer

Rioting

Felonies Eligible for Expungement

Criminal Law Article

CR, § 7–104: General Theft (at least \$1,500)

CR, § 5-602(2): Possession with intent to distribute a controlled dangerous substance

CR, § 6-202(a): Burglary in the first degree – breaking and entering with intent to commit theft

CR, § 6-203: Burglary in the second degree

CR, § 6-204: Burglary in the third degree

An attempt, conspiracy, or solicitation of any offense listed above is also eligible for expungement under CP, § 10-110