

HOUSE BILL 242

E2
HB 782/19 – JUD

01r0609
CF SB 206

By: **Delegate Atterbeary**

Introduced and read first time: January 17, 2020

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 11, 2020

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Motion to Vacate Judgment – Human Trafficking**
3 **(True Freedom Act of 2020)**

4 FOR the purpose of altering the eligibility for the filing of a certain motion to vacate
5 judgment; altering the required contents of a certain motion; requiring that a certain
6 motion be served on a certain State’s Attorney; requiring that a certain motion be
7 mailed to a certain victim or victim’s representative at a certain address under
8 certain circumstances; authorizing the court to grant a certain motion under certain
9 circumstances; requiring the court to take certain factors into consideration when
10 making a certain finding; ~~requiring~~ authorizing the court to grant a certain motion
11 without a hearing under certain circumstances; authorizing the court to dismiss a
12 certain motion without a hearing under certain circumstances; repealing the
13 authority of the court to take certain actions in ruling on a certain motion; requiring
14 the court to vacate a certain conviction if the court grants a certain motion; providing
15 that a certain conviction may not be considered a conviction for any purpose;
16 authorizing a person to file a petition for expungement of certain records if the person
17 was convicted of a crime and the conviction was vacated under a certain provision of
18 law; defining certain terms; making a conforming change; and generally relating to
19 human trafficking and motions to vacate judgment.

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Procedure
22 Section 8–302 and 10–105(a)
23 Annotated Code of Maryland
24 (2018 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Criminal Procedure**

4 8–302.

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) “QUALIFYING OFFENSE” MEANS:

8 (I) UNNATURAL OR PERVERTED SEXUAL PRACTICE UNDER §
9 3–322 OF THE CRIMINAL LAW ARTICLE;

10 (II) POSSESSING OR ADMINISTERING A CONTROLLED
11 DANGEROUS SUBSTANCE UNDER § 5–601 OF THE CRIMINAL LAW ARTICLE;

12 (III) POSSESSING OR PURCHASING A NONCONTROLLED
13 SUBSTANCE UNDER § 5–618 OF THE CRIMINAL LAW ARTICLE;

14 (IV) POSSESSING OR DISTRIBUTING CONTROLLED
15 PARAPHERNALIA UNDER § 5–620(A)(2) OF THE CRIMINAL LAW ARTICLE;

16 (V) FOURTH–DEGREE BURGLARY UNDER § 6–205 OF THE
17 CRIMINAL LAW ARTICLE;

18 (VI) MALICIOUS DESTRUCTION OF PROPERTY IN THE LESSER
19 DEGREE UNDER § 6–301(C) OF THE CRIMINAL LAW ARTICLE;

20 (VII) A TRESPASS OFFENSE UNDER TITLE 6, SUBTITLE 4 OF THE
21 CRIMINAL LAW ARTICLE;

22 (VIII) MISDEMEANOR THEFT UNDER § 7–104 OF THE CRIMINAL
23 LAW ARTICLE;

24 (IX) MISDEMEANOR OBTAINING PROPERTY OR SERVICES BY BAD
25 CHECK UNDER § 8–103 OF THE CRIMINAL LAW ARTICLE;

26 (X) POSSESSION OR USE OF A FRAUDULENT GOVERNMENT
27 IDENTIFICATION DOCUMENT UNDER § 8–303 OF THE CRIMINAL LAW ARTICLE;

28 (XI) PUBLIC ASSISTANCE FRAUD UNDER § 8–503 OF THE
29 CRIMINAL LAW ARTICLE;

1 (XII) FALSE STATEMENT TO A LAW ENFORCEMENT OFFICER OR
2 PUBLIC OFFICIAL UNDER § 9-501, § 9-502, OR § 9-503 OF THE CRIMINAL LAW
3 ARTICLE;

4 (XIII) DISTURBING THE PUBLIC PEACE AND DISORDERLY
5 CONDUCT UNDER § 10-201 OF THE CRIMINAL LAW ARTICLE;

6 (XIV) INDECENT EXPOSURE UNDER § 11-107 OF THE CRIMINAL
7 LAW ARTICLE;

8 (XV) PROSTITUTION UNDER § 11-303 OF THE CRIMINAL LAW
9 ARTICLE;

10 (XVI) DRIVING WITH A SUSPENDED REGISTRATION UNDER §
11 13-401(H) OF THE TRANSPORTATION ARTICLE;

12 (XVII) FAILURE TO DISPLAY REGISTRATION UNDER § 13-409(B) OF
13 THE TRANSPORTATION ARTICLE;

14 (XVIII) DRIVING WITHOUT A LICENSE UNDER § 16-101 OF
15 THE TRANSPORTATION ARTICLE;

16 (XIX) FAILURE TO DISPLAY LICENSE TO POLICE UNDER §
17 16-112(C) OF THE TRANSPORTATION ARTICLE;

18 (XX) POSSESSION OF A SUSPENDED LICENSE UNDER § 16-301(J)
19 OF THE TRANSPORTATION ARTICLE;

20 (XXI) DRIVING WHILE PRIVILEGE IS CANCELED, SUSPENDED,
21 REFUSED, OR REVOKED UNDER § 16-303 OF THE TRANSPORTATION ARTICLE;

22 (XXII) OWNER FAILURE TO MAINTAIN SECURITY ON A VEHICLE
23 UNDER § 17-104(B) OF THE TRANSPORTATION ARTICLE;

24 (XXIII) DRIVING WHILE UNINSURED UNDER § 17-107 OF THE
25 TRANSPORTATION ARTICLE; OR

26 (XXIV) PROSTITUTION OR LOITERING AS PROHIBITED UNDER
27 LOCAL LAW.

28 (3) "VICTIM OF HUMAN TRAFFICKING" MEANS A PERSON WHO HAS
29 BEEN SUBJECTED TO AN ACT OF ANOTHER COMMITTED IN VIOLATION OF:

1 (I) TITLE 3, SUBTITLE 11 OF THE CRIMINAL LAW ARTICLE; OR

2 (II) § 1589, § 1590, § 1591, OR § 1594(A) OF TITLE 18 OF THE
3 UNITED STATES CODE.

4 [(a)] (B) A person convicted of [prostitution under § 11–303 of the Criminal Law
5 Article] A QUALIFYING OFFENSE may file a motion to vacate the judgment if[, when the
6 person committed the act or acts of prostitution, the person was acting under duress caused
7 by an act of another committed in violation of Title 3, Subtitle 11 of the Criminal Law
8 Article or the prohibition against human trafficking under federal law] THE PERSON'S
9 PARTICIPATION IN THE OFFENSE WAS A DIRECT RESULT OF BEING A VICTIM OF
10 HUMAN TRAFFICKING.

11 [(b)] (C) A motion filed under this section shall:

12 (1) be in writing;

13 (2) [be signed and consented to by the State's Attorney;

14 (3)] be made within a reasonable period of time after the conviction; [and]

15 [(4)] (3) describe the evidence and [provide] INCLUDE copies of any
16 documents showing that the [defendant] MOVANT is entitled to relief under this section;

17 (4) BE SERVED ON THE STATE'S ATTORNEY IN THE JURISDICTION
18 WHERE THE CONVICTION FOR THE QUALIFYING OFFENSE OCCURRED; AND

19 (5) IF THE QUALIFYING OFFENSE OCCURRED WITHIN 5 YEARS
20 BEFORE THE FILING OF THE MOTION, BE MAILED TO ANY VICTIM OR VICTIM'S
21 REPRESENTATIVE AT THE VICTIM'S OR VICTIM'S REPRESENTATIVE'S LAST KNOWN
22 ADDRESS.

23 [(c)] (D) (1) [Except as provided in paragraph (2) of this subsection, the court
24 shall hold a hearing on a motion filed under this section if the motion satisfies the
25 requirements of subsection (b) of this section] ~~AFTER A HEARING, THE~~ THE COURT MAY
26 GRANT A MOTION FILED UNDER THIS SECTION ON A FINDING BASED ON A
27 PREPONDERANCE OF THE EVIDENCE THAT THE MOVANT COMMITTED THE
28 QUALIFYING OFFENSE AS A DIRECT RESULT OF BEING A VICTIM OF HUMAN
29 TRAFFICKING.

30 (2) WHEN MAKING A FINDING UNDER THIS SUBSECTION, THE COURT
31 SHALL CONSIDER:

32 (I) THE LENGTH OF TIME BETWEEN THE OFFENSE AND THE
33 TRAFFICKING OF THE MOVANT;

1 (II) THE DYNAMICS OF THE RELATIONSHIP BETWEEN THE
2 MOVANT AND THE PERSON COMMITTING TRAFFICKING AGAINST THE MOVANT; AND

3 (III) ANY OTHER RELEVANT EVIDENCE.

4 (E) THE COURT ~~SHALL~~ MAY GRANT A MOTION FILED UNDER THIS SECTION
5 WITHOUT A HEARING IF:

6 (1) THE STATE'S ATTORNEY CONSENTS TO THE MOTION;

7 (2) NO OBJECTION TO THE RELIEF REQUESTED HAS BEEN FILED BY A
8 VICTIM OR VICTIM'S REPRESENTATIVE; AND

9 (3) AT LEAST 60 DAYS HAVE ELAPSED SINCE NOTICE AND SERVICE
10 UNDER SUBSECTION (C) OF THIS SECTION.

11 [(2)] (F) The court may dismiss a motion FILED UNDER THIS SECTION
12 without a hearing if the court finds that:

13 (1) the motion fails to assert grounds on which relief may be granted;

14 (2) THE MOTION OFFERS NO ADDITIONAL EVIDENCE BEYOND THAT
15 WHICH HAS PREVIOUSLY BEEN CONSIDERED BY THE COURT; OR

16 (3) THE MOVANT ACTED FRAUDULENTLY OR IN BAD FAITH IN FILING
17 THE MOTION.

18 [(d)] (G) (1) [In ruling on] IF A COURT GRANTS a motion filed under this
19 section, the court [may] SHALL vacate the conviction[, modify the sentence, or grant a new
20 trial].

21 (2) The court shall state the reasons for its ruling on the record.

22 [(e)] (H) A [defendant] MOVANT in a proceeding under this section has the
23 burden of proof.

24 (I) A CONVICTION THAT HAS BEEN VACATED UNDER THIS SECTION MAY
25 NOT BE CONSIDERED A CONVICTION FOR ANY PURPOSE.

26 10-105.

27 (a) A person who has been charged with the commission of a crime, including a
28 violation of the Transportation Article for which a term of imprisonment may be imposed,
29 or who has been charged with a civil offense or infraction, except a juvenile offense, may

1 file a petition listing relevant facts for expungement of a police record, court record, or other
2 record maintained by the State or a political subdivision of the State if:

3 (1) the person is acquitted;

4 (2) the charge is otherwise dismissed;

5 (3) a probation before judgment is entered, unless the person is charged
6 with a violation of § 21–902 of the Transportation Article or Title 2, Subtitle 5 or § 3–211
7 of the Criminal Law Article;

8 (4) a nolle prosequi or nolle prosequi with the requirement of drug or
9 alcohol treatment is entered;

10 (5) the court indefinitely postpones trial of a criminal charge by marking
11 the criminal charge “stet” or stet with the requirement of drug or alcohol abuse treatment
12 on the docket;

13 (6) the case is compromised under § 3–207 of the Criminal Law Article;

14 (7) the charge was transferred to the juvenile court under § 4–202 of this
15 article;

16 (8) the person:

17 (i) is convicted of only one criminal act, and that act is not a crime
18 of violence; and

19 (ii) is granted a full and unconditional pardon by the Governor;

20 (9) the person was convicted of a crime or found not criminally responsible
21 under any State or local law that prohibits:

22 (i) urination or defecation in a public place;

23 (ii) panhandling or soliciting money;

24 (iii) drinking an alcoholic beverage in a public place;

25 (iv) obstructing the free passage of another in a public place or a
26 public conveyance;

27 (v) sleeping on or in park structures, such as benches or doorways;

28 (vi) loitering;

29 (vii) vagrancy;

1 (viii) riding a transit vehicle without paying the applicable fare or
2 exhibiting proof of payment; or

3 (ix) except for carrying or possessing an explosive, acid, concealed
4 weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation
5 Article, any of the acts specified in § 7-705 of the Transportation Article;

6 (10) the person was found not criminally responsible under any State or
7 local law that prohibits misdemeanor:

8 (i) trespass;

9 (ii) disturbing the peace; or

10 (iii) telephone misuse;

11 (11) the person was convicted of a crime and the act on which the conviction
12 was based is no longer a crime; [or]

13 (12) the person was convicted of possession of marijuana under § 5-601 of
14 the Criminal Law Article; **OR**

15 **(13) THE PERSON WAS CONVICTED OF A CRIME AND THE CONVICTION**
16 **WAS VACATED UNDER § 8-302 OF THIS ARTICLE.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
18 1, 2020.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.