

# SENATE BILL 206

E2  
SB 691/19 – JPR

0lr1389  
CF HB 242

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By: **Senators Lee, Carter, Elfreth, Ellis, Guzzone, Hester, Kagan, Kelley, King, Klausmeier, Kramer, Lam, McCray, Patterson, Pinsky, Smith, Sydnor, Waldstreicher, West, Young, and Zucker**

Introduced and read first time: January 16, 2020

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 11, 2020

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## 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)

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### 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 Annotated Code of Maryland  
2 (2018 Replacement Volume and 2019 Supplement)

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

5 **Article – Criminal Procedure**

6 8–302.

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
8 INDICATED.

9 (2) “QUALIFYING OFFENSE” MEANS:

10 (I) UNNATURAL OR PERVERTED SEXUAL PRACTICE UNDER §  
11 3–322 OF THE CRIMINAL LAW ARTICLE;

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

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

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

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

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

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

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

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

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

1 (XI) PUBLIC ASSISTANCE FRAUD UNDER § 8-503 OF THE  
2 CRIMINAL LAW ARTICLE;

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

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

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

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

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

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

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

18 (XIX) FAILURE TO DISPLAY LICENSE TO POLICE UNDER §  
19 16-112(C) OF THE TRANSPORTATION ARTICLE;

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

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

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

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

28 (XXIV) PROSTITUTION OR LOITERING AS PROHIBITED UNDER  
29 LOCAL LAW.

1           **(3) “VICTIM OF HUMAN TRAFFICKING” MEANS A PERSON WHO HAS**  
2 **BEEN SUBJECTED TO AN ACT OF ANOTHER COMMITTED IN VIOLATION OF:**

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

4           **(II) § 1589, § 1590, § 1591, OR § 1594(A) OF TITLE 18 OF THE**  
5 **UNITED STATES CODE.**

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

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

14           (1) be in writing;

15           (2) [be signed and consented to by the State’s Attorney;

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

17           **[(4)] (3)** describe the evidence and [provide] **INCLUDE** copies of any  
18 documents showing that the [defendant] **MOVANT** is entitled to relief under this section;

19           **(4) BE SERVED ON THE STATE’S ATTORNEY IN THE JURISDICTION**  
20 **WHERE THE CONVICTION FOR THE QUALIFYING OFFENSE OCCURRED; AND**

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

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

32           **(2) WHEN MAKING A FINDING UNDER THIS SUBSECTION, THE COURT**  
33 **SHALL CONSIDER:**

1           **(I) THE LENGTH OF TIME BETWEEN THE OFFENSE AND THE**  
2 **TRAFFICKING OF THE MOVANT;**

3           **(II) THE DYNAMICS OF THE RELATIONSHIP BETWEEN THE**  
4 **MOVANT AND THE PERSON COMMITTING TRAFFICKING AGAINST THE MOVANT; AND**

5           **(III) ANY OTHER RELEVANT EVIDENCE.**

6           **(E) THE COURT ~~SHALL~~ MAY GRANT A MOTION FILED UNDER THIS SECTION**  
7 **WITHOUT A HEARING IF:**

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

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

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

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

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

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

18           **(3) THE MOVANT ACTED FRAUDULENTLY OR IN BAD FAITH IN FILING**  
19 **THE MOTION.**

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

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

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

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

28 10-105.

1 (a) A person who has been charged with the commission of a crime, including a  
2 violation of the Transportation Article for which a term of imprisonment may be imposed,  
3 or who has been charged with a civil offense or infraction, except a juvenile offense, may  
4 file a petition listing relevant facts for expungement of a police record, court record, or other  
5 record maintained by the State or a political subdivision of the State if:

6 (1) the person is acquitted;

7 (2) the charge is otherwise dismissed;

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

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

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

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

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

19 (8) the person:

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

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

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

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

26 (ii) panhandling or soliciting money;

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

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

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

1 (vi) loitering;

2 (vii) vagrancy;

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

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

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

10 (i) trespass;

11 (ii) disturbing the peace; or

12 (iii) telephone misuse;

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

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

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
20 1, 2020.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.