

# SENATE BILL 767

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By: **Senator Lee**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Human Trafficking – Vacatur and Expungement**

3 FOR the purpose of altering certain requirements relating to a court granting a motion to  
4 vacate a certain conviction relating to human trafficking under certain  
5 circumstances including requirements for dismissal of charges, dissemination of  
6 expungement, information, and timing; requiring certain pleadings and records filed  
7 with the court to be sealed by the court and a certain hearing to be closed to the  
8 public; and generally relating to human trafficking.

9 BY repealing and reenacting, with amendments,  
10 Article – Criminal Procedure  
11 Section 8–302  
12 Annotated Code of Maryland  
13 (2018 Replacement Volume and 2021 Supplement)

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

16 **Article – Criminal Procedure**

17 8–302.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) “Qualifying offense” means:

20 (i) unnatural or perverted sexual practice under § 3–322 of the  
21 Criminal Law Article;

22 (ii) possessing or administering a controlled dangerous substance  
23 under § 5–601 of the Criminal Law Article;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (iii) possessing or purchasing a noncontrolled substance under §  
2 5–618 of the Criminal Law Article;
- 3 (iv) possessing or distributing controlled paraphernalia under §  
4 5–620(a)(2) of the Criminal Law Article;
- 5 (v) fourth-degree burglary under § 6–205 of the Criminal Law  
6 Article;
- 7 (vi) malicious destruction of property in the lesser degree under §  
8 6–301(c) of the Criminal Law Article;
- 9 (vii) a trespass offense under Title 6, Subtitle 4 of the Criminal Law  
10 Article;
- 11 (viii) misdemeanor theft under § 7–104 of the Criminal Law Article;
- 12 (ix) misdemeanor obtaining property or services by bad check under  
13 § 8–103 of the Criminal Law Article;
- 14 (x) possession or use of a fraudulent government identification  
15 document under § 8–303 of the Criminal Law Article;
- 16 (xi) public assistance fraud under § 8–503 of the Criminal Law  
17 Article;
- 18 (xii) false statement to a law enforcement officer or public official  
19 under § 9–501, § 9–502, or § 9–503 of the Criminal Law Article;
- 20 (xiii) disturbing the public peace and disorderly conduct under §  
21 10–201 of the Criminal Law Article;
- 22 (xiv) indecent exposure under § 11–107 of the Criminal Law Article;
- 23 (xv) prostitution under § 11–303 of the Criminal Law Article;
- 24 (xvi) driving with a suspended registration under § 13–401(h) of the  
25 Transportation Article;
- 26 (xvii) failure to display registration under § 13–409(b) of the  
27 Transportation Article;
- 28 (xviii) driving without a license under § 16–101 of the Transportation  
29 Article;
- 30 (xix) failure to display license to police under § 16–112(c) of the

1 Transportation Article;

2 (xx) possession of a suspended license under § 16–301(j) of the  
3 Transportation Article;

4 (xxi) driving while privilege is canceled, suspended, refused, or  
5 revoked under § 16–303 of the Transportation Article;

6 (xxii) owner failure to maintain security on a vehicle under § 17–104(b)  
7 of the Transportation Article;

8 (xxiii) driving while uninsured under § 17–107 of the Transportation  
9 Article; or

10 (xxiv) prostitution or loitering as prohibited under local law.

11 (3) “Victim of human trafficking” means a person who has been subjected  
12 to an act of another committed in violation of:

13 (i) Title 3, Subtitle 11 of the Criminal Law Article; or

14 (ii) § 1589, § 1590, § 1591, or § 1594(a) of Title 18 of the United States  
15 Code.

16 (b) A person convicted of a qualifying offense may file a motion to vacate the  
17 judgment if the person’s participation in the offense was a direct result of being a victim of  
18 human trafficking.

19 (c) A motion filed under this section shall:

20 (1) be in writing;

21 (2) be made within a reasonable period of time after the conviction;

22 (3) describe the evidence and include copies of any documents showing that  
23 the movant is entitled to relief under this section;

24 (4) be served on the State’s Attorney in the jurisdiction where the  
25 conviction for the qualifying offense occurred; and

26 (5) if the qualifying offense occurred within 5 years before the filing of the  
27 motion, be mailed to any victim or victim’s representative at the victim’s or victim’s  
28 representative’s last known address.

29 (d) (1) The court may grant a motion filed under this section on a finding based  
30 on a preponderance of the evidence that the movant committed the qualifying offense as a  
31 direct result of being a victim of human trafficking.

1 (2) When making a finding under this subsection, the court shall consider:

2 (i) the length of time between the offense and the trafficking of the  
3 movant;

4 (ii) the dynamics of the relationship between the movant and the  
5 person committing trafficking against the movant; and

6 (iii) any other relevant evidence.

7 (e) The court may grant a motion filed under this section 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 victim or victim's  
10 representative; and

11 (3) at least [60] **30** days have elapsed since notice and service under  
12 subsection (c) of this section.

13 (f) The court may dismiss a motion filed under this section without a hearing if  
14 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 which has  
17 previously been considered by the court; or

18 (3) the movant acted fraudulently or in bad faith in filing the motion.

19 (g) (1) If a court grants a motion filed under this section, the court shall:

20 (I) vacate the conviction;

21 (II) **DISMISS THE UNDERLYING CHARGE RELATING TO THE**  
22 **COMMISSION OF A CRIME; AND**

23 (III) **INFORM THE MOVANT OF THE ABILITY TO PETITION FOR**  
24 **EXPUNGEMENT OF THE VACATED CONVICTION IN ACCORDANCE WITH §**  
25 **10-105(A)(13) OF THIS ARTICLE.**

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

27 (H) (1) **ALL PLEADINGS AND RECORDS FILED WITH THE COURT UNDER**  
28 **THIS SECTION SHALL BE SEALED BY THE COURT.**

1           **(2) ANY HEARING ON A MOTION UNDER THIS SECTION SHALL BE**  
2 **CLOSED TO THE PUBLIC.**

3           **(I) A MOVANT MAY WAIVE THE RIGHT TO BE PRESENT AT ANY HEARING ON**  
4 **A MOTION UNDER THIS SECTION IF THE MOVANT:**

5                   **(1) IS VOLUNTARILY ABSENT AFTER THE COMMENCEMENT OF A**  
6 **PROCEEDING; OR**

7                   **(2) PERSONALLY, OR THROUGH COUNSEL, AGREES TO OR**  
8 **ACQUIESCES TO THE MOVANT'S ABSENCE.**

9           **[h] (J)**       A movant in a proceeding under this section has the burden of proof.

10           **[i] (K)**       A conviction that has been vacated under this section may not be  
11 considered a conviction for any purpose.

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2022.