

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 767

(Senator Lee)

Judicial Proceedings

Criminal Procedure - Human Trafficking - Vacatur and Expungement

This bill alters provisions regarding a motion to vacate a judgment under § 8-302 of the Criminal Procedure Article, which authorizes 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 (1) reduces, from 60 days to 30 days, the amount of time after service to the State’s Attorney and notice to the victim or victim’s representative that must elapse before the court can grant a motion without a hearing and (2) requires a court that grants a motion to vacate a conviction under § 8-302 to dismiss the underlying charge relating to the commission of a crime and inform the movant of the ability to petition for expungement of the vacated conviction under § 10-105(a)(13) of the Criminal Procedure Article. The bill makes additional changes to procedures for these motions.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: All pleadings and records filed with the court under § 8-302 must be sealed by the court, and any hearings on these motions must be closed to the public. A movant may waive the right to be present at any hearing on a motion under § 8-302 if the movant

(1) is voluntarily absent after the commencement of a proceeding or (2) agrees to or acquiesces to the movant's absence, personally or through counsel.

Current Law: As noted above, § 8-302 of the Criminal Procedure Article authorizes 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.” Approximately 24 crimes are listed as qualifying offenses under § 8-302. Specific procedural requirements apply to these motions. A “victim of human trafficking” is a person who has been subjected to an act of another committed in violation of Title 3, Subtitle 11 of the Criminal Law Article (sex trafficking and marriage trafficking) or specified federal statutes. A conviction that has been vacated under § 8-302 may not be considered a conviction for any purpose.

Pursuant to Chapters 126 and 127 of 2020, a person who was convicted of a crime and has the conviction vacated under § 8-302 of the Criminal Procedure Article is eligible to file a petition to expunge records regarding the vacated conviction under § 10-105(a)(13) of the Criminal Procedure Article.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Charles, Frederick, Montgomery, and Somerset counties; City of Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

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