



BILL NO: HB 242

TITLE: True Freedom Act of 2020

COMMITTEE: Judiciary

HEARING DATE: January 28, 2020

POSITION: SUPPORT

My name is Erin Andrews. I am the Executive Director of FAIR Girls, a nonprofit headquartered in D.C. but serving girls across Maryland, aged 11 to 26 who have escaped all forms of human trafficking. Prior to working at FAIR Girls, I was an Assistant United States Attorney prosecuting sexual assault, child abuse, and human trafficking cases on a local and federal level. FAIR Girls supports HB 242 and urges a favorable report for this legislation as it will make a significant impact on survivors of human trafficking across the state.

FAIR Girls was established in 2004 and in pursuit of our mission to end human trafficking one life at a time, FAIR Girls has provided more than 1,100 girls and young women safe housing, client-centered, trauma-informed direct services, and life skills they need to transition from victim to survivor. FAIR Girls provides emergency crisis response services, emergency and transitional housing, case management, direct services, job and educational assistance, court advocacy for survivors. FAIR Girls also conducts outreach and prevention education in communities and schools throughout Maryland. In 2014, FAIR Girls opened the Vida Home, a 90-day safe home specialized for young survivors of trafficking aged 18 to 26 who identify as female. Our services are individually tailored and focus on the strengths and resiliencies of our clients and our policy positions are rooted in their lived experiences and needs.

FAIR Girls is an engaged member of the Maryland Human Trafficking Task Force, including the victim services and legislative subcommittees, as well as the human trafficking task forces for Montgomery and Prince George's counties. FAIR Girls currently serves as the Vice-Chair of the Montgomery County Human Trafficking Prevention Committee. We are engaged in these task forces because while FAIR Girls is located in Washington, D.C., last year, approximately at least 61% of the clients FAIR Girls served were either referred from, trafficked in, or residents of Maryland.

Historically, FAIR Girls' trafficking clients have all too often been treated as criminals despite both federal and local legislation that categorizes them as victims of a violent crime. Over the past decade, the survivors FAIR Girls serves were arrested at least 50% of the time they engaged

with law enforcement. However, we know from a 2016 survey conducted by the National Survivors Network polling survivors nationally that approximately 91% of trafficking survivors polled reported having been arrested, including 42% as minors, and that over 40% of survivors polled had been arrested 9 or more times. Over 60% of the survivors polled reported being arrested for crimes other than prostitution and 80% of those polled had not disclosed that they were victims at the time of conviction.¹

Victims of trafficking, including those right here in Maryland, specifically do not self-identify for many reasons, including the coercive and threatening relationship between a victim and a trafficker, including control by traffickers through subtle or overt, physical or psychological means; isolation from victims' support networks; withholding immigration documents or threat of exposing immigration status; financial control over victims' income, access to money, or amount of debt; the psychological, emotional and physical exploitation that victims suffer, and the powerful trauma-bonding that may occur with a trafficker. Survivors will tell you that self-identification as a trafficking victim is a healing process that often takes years.

Consequently, trafficking victims have sadly been misidentified and re-victimized by the criminal justice system. Instead of being treated as innocent victims who need services, trafficking survivors, including juveniles, have suffered through being arrested, detained, and convicted for crimes that they were forced to commit by their traffickers. These arrests and convictions, and the negative stigma and destabilization that accompany them, have a profound impact on a trafficking victim's ability to attend school, find gainful employment or secure safe housing.

Over the last fifteen years, through concerted efforts at raising awareness and specialized human trafficking training, we have made progress in the law enforcement community. Through educating our law enforcement officers, prosecutors, and judges, some have begun to recognize that the old model of prosecuting human trafficking cases - that is, treating victims as criminal defendants in order to leverage them into forced cooperation against their traffickers - is ineffective, unproductive, and misunderstands the coercive nature of the victimization that occurs in human trafficking. With this progress toward trauma-informed, victim-centered prosecutions, one day we hope to not need laws like HB 242. However, despite the best efforts and good intentions of our community today, we often still get it wrong.

That is why vacatur bills, like HB 242, are a necessary and important safety net for victims who have managed to escape their traffickers but are still not truly free, for victims who want to stop the cycle of recidivism and become productive members of our community but cannot because of these unjust convictions. This bill allows for Maryland to start to build this safety net for survivors, while still providing a rigorous and adversarial process that ensures that it will not be abused.

Vacatur is when the court overturns a conviction and dismisses the underlying charge. Expungement is the complete destruction or redaction of criminal records. The purpose of vacatur is recognizing the harsh reality that survivors are often forced to commit many crimes,

¹ <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>

under duress. If we agree that survivors should not be criminalized for committing crimes while under duress, then a vacatur statute serves to clear their wrongful convictions and expunge the records. We as a community now understand that those who have been trafficked are **forced** to commit crimes under duress and their victimization is often not identified while they are moving through the criminal justice system, even if they did have an affirmative defense available to them at the time of trial. Survivors are now and were always coerced by physical violence, emotional manipulation, fraud, financial control, and more to bend to the will of their traffickers. This is the evolution of our society's awareness about the dynamics of human trafficking and now Maryland law needs to evolve too to reflect that awareness. Therefore, vacatur and expungement combined, not just mere sealing, is what is necessary to truly return a victim who has been wrongly arrested, prosecuted and convicted to the status quo before they were exploited, abused, sold and punished for it.

Vacatur laws, like this one, are the next logical, essential step to supporting victims of human trafficking in their attempt to transition to independent, confident, inspired survivors - a result that leads not only to a more humane treatment of trafficking victims but also to an overall reduction of recidivism. The statistics support the reality our client-survivors have been telling us all along, that if victims cannot obtain housing or jobs because of convictions obtained while being trafficked, they will end up being trafficked again. HB 242 is a balanced and common sense start to give victims another tool to make this life-saving transition.

HB 242 was drafted with the intention to allow flexibility in balancing the competing societal concerns of holding offenders accountable for criminal conduct and the very real complexities of being a victim of human trafficking. However, one of the main reasons why the current vacatur and sealing laws in Maryland have been largely insufficient and ineffective to date is that they do not take into account all the types of crimes victims are being forced to commit. As prosecutors and advocates working with victims know, the reality is a trafficker forces his victims to commit a vast array of crimes, not just prostitution-related offenses, to keep his criminal enterprise operating while avoiding any direct criminal exposure. I have personally seen how these victims are forced to take drugs, give them to other victims, and sell them to johns. They are forced to drive themselves and other victims to locations to engage in commercial sex while under the influence of drugs and alcohol or without their license, as traffickers often take their identification documents. Traffickers will stash their firearms under the seat of the car while victims are driving or in their apartments or force them to apply for purchase of firearms for the trafficker. Traffickers often force their victims to steal from those that they are sold to, exponentially increasing their risk of violence. Victims are forced to miss court dates and lie to law enforcement and prosecutors, compounding their criminal liability, because they cannot escape their trafficker's control. Perhaps most tragically, victims are forced by their traffickers to perpetuate the cycle of abuse they have suffered by making them recruit, train, create online ads for and drive other victims, even minors, around for the purpose of trafficking them, especially in the increased occurrence of gang-related trafficking. This is how a trafficker makes his criminal enterprise thrive - on the backs of his victims and hidden from criminal exposure.

Accordingly, FAIR Girls believes that the list of eligible crimes enumerated in HB 242 is a good start but should be viewed as merely the first step in bringing Maryland's laws into alignment

with the reality of human trafficking and providing survivors with a true pathway to justice. For example, it does not appear that §21-902 - Driving while under the influence of alcohol, while under the influence of alcohol per se, while impaired by alcohol, or while impaired by a drug, a combination of drugs, a combination of one or more drugs and alcohol, or while impaired by a controlled dangerous substance - is included in the list of eligible crimes in HB 242, even though other driving-related offenses are included in recognition that traffickers do often make victims drive in violation of Maryland law. Further, FAIR Girls strongly recommends that this list be expanded beyond misdemeanors and that eligibility remain broad so that Maryland's vacatur law may keep pace with the ever-evolving criminal enterprise of human trafficking and reflect the reality of what crimes victims are forced by their traffickers to commit everyday. Only with broad eligibility can Maryland ensure that it is offering all trafficking survivors access to "True Freedom," as HB 242 suggests, not just those with misdemeanor convictions.

Other minor amendments to HB 242 that FAIR Girls recommends are as follows:

Page 4, line 11: This provision states that a motion shall "be made within a reasonable period of time after the conviction." "Reasonable period of time" is not otherwise defined in HB 242. As the case with victims of child sexual abuse where Statutes of Limitations are often longer than for other crimes, the reality is that it often takes trafficking victims years to get to a place where they can identify themselves as such and are safe and stable enough to apply for vacatur. In recognition of this reality, FAIR Girls recommends either removing this time constraint from HB 242 or, alternatively, adding language that indicates that the "reasonable period of time" calculation begins only after the movant has identified themselves as a victim of trafficking. Otherwise, the risk is that trafficking victims will be denied justice under this law because they were either in danger or too traumatized by their victimization to come forward sooner.

Page 4, lines 16-19: FAIR Girls fully understands and agrees with the need to protect victim's rights and agrees that notification to victims of a motion under this section is reasonable. However, FAIR Girls recommends that the language of HB 242 make clear that it is the responsibility of the State's Attorney in the jurisdiction where the conviction for the qualifying offense, not the movant, to notify any victims. As a practical matter, the movant is not in the best position to complete this notification as many victims would not want the movant or their counsel to have their address or receive notifications directly from the movant or their counsel. It would not be a significant burden for the State's Attorney to provide this notification, as it is already done in the normal course of criminal cases and sentencing.

Page 5, lines 11-12: FAIR Girls agrees this provision is reasonable to address concerns of potential abuse through repeated frivolous motions under this section. However, FAIR Girls recommends adding the language "in other motions under this Section" after "(2) The motion offers no additional evidence beyond that which has previously been considered by the court."

Vacating convictions for survivors of human trafficking is a crucial part of survivors' recovery and the definition of survivor-informed policy. If we agree that survivors are not at fault for crimes they were forced to commit, then they should have never been arrested and charged in the first place. Vacatur would set the record straight and right past wrongs, allowing survivors to

move on with their lives. With the passage of this legislation, Maryland has the opportunity to demonstrate that it believes in righting the wrongs of the past for trafficking victims, by helping survivors free themselves from the shackles of unjust criminal charges so that they may be truly free to rebuild their lives.

I want to share with you two stories of survivors that FAIR Girls has worked with over the last five years to illustrate what happens when a human trafficking victim is treated like a criminal, not a victim. When she is unjustly arrested, charged or convicted for crimes she was forced to commit by her trafficker and does not have access to vacating her criminal record. We hope by sharing these actual survivor experiences that we are showing you just how critical this legislation is to supporting trafficking survivors overcoming barriers to life-changing housing, employment and educational resources and opportunities. FAIR Girls supports HB 242 and respectfully urges a favorable report.

In 2014, “Kelli,” a 13 year girl abused by her own mother and frequently homeless throughout her youth, was lured by a female trafficker who sold her for five years. Kami was arrested as a minor and repeatedly placed in the juvenile detention facility. At 18, she was arrested for prostitution. A local youth shelter referred her to FAIR Girls for support. We worked tirelessly to offer Kami counseling, job training, and safe space. Her arrest cost her a scholarship to university. After working with FAIR Girls she was gainfully employed and safely housed at the time, but sadly, she gave up on her dream of college.

In 2019, “Jamilla” is a 22- year old survivor who was trafficked by her boyfriend across Maryland, DC and Virginia. She was first trafficked when she was 21 years old. She was then trafficked by her boyfriend shortly after this. Her trafficker forced her to commit an array of crimes and also be present while he committed others, both misdemeanors and felonies, so that she was available to take the fall for him if they were caught. Her trafficker stole someone’s phone worth more than \$250 while Jamilla was in another room in an apartment and then he sold it to someone in Texas for \$200. Jamilla was never involved with the stealing or selling of the phone but was charged with grand larceny and receiving money under false pretenses because of her presence in the apartment while the theft occurred. Jamilla was arrested for grand larceny, receiving money under false pretenses, failure to appear in court, violation of probation, 2 counts of occupying a building for assignation, and 2 counts of occupying a building for prostitution. Other charges arose out of her being forced to participate in prostitution out of fear for her life and her family’s life by her trafficker. She plead guilty because her public defender did not explain the charges, evidence or consequences to her, her trafficker had threatened her, and she was not ready to disclose to anyone that she was a victim of trafficking at the time and had been abused and exploited by her trafficker.

“I plead guilty because I was just scared. I was overwhelmed and thought everything would eventually be ok because I had proof my trafficker was guilty. I didn’t feel safe to say anything about the trafficker before now. I plead guilty because I felt forced to and I was threatened by the prosecutor of being charged with 3 felonies if I didn’t plead guilty to the charges. It was either ‘take the deal’ or bump up the charges and they said that was what was called ‘doing

me a favor'."- Jamilla

As a result of pleading guilty, Jamilla was placed on probation for a year and required to report in monthly with her probation officer. However, her trafficker would not let her go to check in with her probation officer and she missed her appointment and a warrant was issued for her arrest. By the time that she learned of the warrant, Jamilla was working with FAIR Girls and living in the Vida Home. Her FAIR Girls case manager accompanied Jamilla to court when she turned herself in and shared with her public defender how Jamilla had been a victim of trafficking at the time of the underlying offense and during the probation violation. The public defender said that he would share the information with the court and give Jamilla or her FAIR Girls case manager the opportunity to tell the Court. However, the public defender never shared this information with the Court nor gave Jamilla or her case manager the opportunity to address the Court and her probation was revoked and she was sent to jail to finish her sentence. Even though Jamilla had found the courage to leave her trafficker, find safe housing and engage in case management services to address her victimization with FAIR girls, and disclose to her lawyer that she had been a victim at the time she was forced to commit the crime at issue, the criminal justice system failed her again.

"Even before I got the prostitution charge, it was like I can't get a job. With these charges I can't get a job. I just got turned down at McDonald's and working at a front desk at a hotel because of the open prostitution charges. Just the fact that the label is there, it messes up your reputation. Now I'm just a nobody. If you don't have a job, it means you don't have food, you have to rely on the system, and you can't even afford to go to court to deal with your charges and you can't even pay your court fines for the charges." -Jamilla