

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 502
Judiciary

(Delegates Dumais and Morales)

Criminal Procedure - Shieldable Conviction - Motion to Vacate Judgment

This bill authorizes a person convicted of a shieldable conviction under § 10-301 of the Criminal Procedure Article to file a motion to vacate the judgment if the person's participation in the offense was a result of having been a victim of (1) human trafficking under § 11-303(a) or (b) of the Criminal Law Article or specified related federal laws or (2) extortion under § 3-701(b) of the Criminal Law Article. The bill also makes several changes to existing statutory procedural requirements for these motions.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: A filed motion must be in writing, contain an affirmation of compliance with specified procedural requirements, be made within a reasonable amount of time after the conviction, and describe the evidence and provide copies of any documents showing that the movant is entitled to relief.

The bill repeals the requirement under existing statute that a State's Attorney sign and consent to a motion to vacate a judgment. Instead, the bill requires that the motion contain an affirmation of compliance with the requirement that the movant provide a copy of the motion to the State's Attorney and the authorization for a State's Attorney to file a response to the motion within 30 days after the motion is filed or as otherwise ordered by the court.

The court must hold a hearing on a motion that contains the information required under statute and contains an affirmation of compliance but must dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. The court must grant a motion without a hearing if both the movant and the State's Attorney agree on *vacatur* of the judgment or, when applicable, sentence modification.

If the court grants a motion to vacate a judgment, the court must vacate the conviction or modify the sentence.

Current Law: Chapter 218 of 2011 authorizes a person convicted of prostitution to file a motion to vacate the judgment if the person committed the act or acts of prostitution while under duress caused by an act of another committed in violation of the prohibitions against human trafficking under Maryland or federal law. The motion must (1) be in writing; (2) be signed and consented to by the State's Attorney; (3) be made within a reasonable period of time after the conviction; and (4) describe the evidence and provide copies of official documents showing that the defendant is entitled to a vacated judgment for a conviction of prostitution in accordance with the bill's eligibility criteria.

The court must hold a hearing on the motion if the motion meets the statutory requirements. However, a court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. The defendant has the burden of proof in a proceeding to vacate the conviction. In ruling on a motion, the court may vacate the conviction, modify the sentence, or grant a new trial.

Shieldable Convictions: Under § 10-301 of the Criminal Procedure Article, a "shieldable conviction" means a conviction of one of the following crimes:

- disorderly conduct under § 10-201(c)(2) of the Criminal Law Article;
- disturbing the peace under § 10-201(c)(4) of the Criminal Law Article;
- failure to obey a reasonable and lawful order under § 10-201(c)(3) of the Criminal Law Article;
- malicious destruction of property in the lesser degree under § 6-301 of the Criminal Law Article;
- trespass on posted property under § 6-402 of the Criminal Law Article;
- possessing or administering a controlled dangerous substance under § 5-601 of the Criminal Law Article;
- possessing or administering a noncontrolled substance under § 5-618(a) of the Criminal Law Article;
- use of or possession with intent to use drug paraphernalia under § 5-619(c)(1) of the Criminal Law Article;
- driving without a license under § 16-101 of the Transportation Article;

- driving while privilege is canceled, suspended, refused, or revoked under § 16–303 of the Transportation Article;
- driving while uninsured under § 17–107 of the Transportation Article; or
- a prostitution offense under § 11–306(a)(1) of the Criminal Law Article if the conviction is for prostitution and not assignation.

Human Trafficking of an Adult (in General): Under the human trafficking prohibition, a person may not knowingly:

- take or cause another to be taken to any place for prostitution;
- place, cause to be placed, or harbor another in any place for prostitution;
- persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;
- engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious harm; or
- destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to commit these acts.

Also, a parent, guardian, or person who has permanent or temporary care or custody or responsibility for supervision of another may not consent to the taking or detention of the other for prostitution.

In general, a person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000. While a misdemeanor generally carries a 1-year statute of limitations, the misdemeanor offense of human trafficking is subject to prosecution at any time. The violator is subject to confinement in the penitentiary and may reserve a point or question for *in banc* review as provided by the Maryland Constitution.

Human Trafficking of a Minor: A person who commits human trafficking involving a victim who is a minor (defined as an individual younger than age 18) is guilty of a felony and subject to imprisonment for up to 25 years and/or a maximum fine of \$15,000. In a prosecution for human trafficking of a minor, it is not a defense that the defendant did not know the age of the victim. A felony may be prosecuted at any time.

Human Trafficking (Compelled Marriage or Performance of Specified Acts): The felony human trafficking penalty also applies to a person who knowingly takes or detains another person with the intent to use force, threat, coercion, or fraud to compel the other person to

marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse.

The District Court has concurrent jurisdiction with the circuit courts over the crime of felony human trafficking.

Extortion: Under the State’s general extortion statute, a person may not obtain, attempt to obtain, or conspire to obtain money, property, labor, services, or anything of value from another person with the person’s consent, if the consent is induced by wrongful use of actual or threatened (1) force or violence; (2) economic injury; (3) destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person; or (4) notification of law enforcement officials about another person’s undocumented or illegal immigration status.

The prohibition does not apply to legitimate efforts by employees or their representatives to obtain certain wages, hours, or working conditions.

Classification of and penalties for violations of the statute vary based on the value of the property, labor, or services extorted, as noted in **Exhibit 1**. A prosecution for felony extortion must be instituted within five years after the crime was committed.

Exhibit 1
Classification of and Penalties for Violations of the General Extortion Statute

| Value of Property, Labor, or Services Extorted | Classification and Penalty |
|---|---|
| Less than \$1,000 | Misdemeanor Imprisonment for up to 18 months and/or a \$1,000 maximum fine |
| At least \$1,000 but less than \$10,000 | Felony Imprisonment for up to 10 years and/or a \$10,000 maximum fine |
| At least \$10,000 but less than \$100,000 | Felony Imprisonment for up to 15 years and/or a \$15,000 maximum fine |
| \$100,000 or more | Felony Imprisonment for up to 25 years and/or a \$25,000 maximum fine |

Source: Department of Legislative Services

Additional Information

Prior Introductions: HB 623 of 2016, a similar bill, received a hearing in the House Judiciary Committee. No further action was taken on the bill. Its cross file, SB 866, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: SB 480 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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