

HOUSE BILL 1267

E2

8lr3155
CF SB 869

By: **Delegates Dumais, Atterbeary, Chang, Glenn, Hettleman, C. Howard, J. Lewis, Lierman, Moon, Sanchez, Sydnor, and Valentino-Smith**

Introduced and read first time: February 9, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Motion to Vacate Judgment – Human Trafficking**

3 FOR the purpose of altering the eligibility for the filing of a certain motion to vacate
4 judgment; altering the required contents of a certain motion; requiring a certain
5 person to provide a copy of a certain motion to the State’s Attorney; authorizing the
6 State’s Attorney to file a response to a certain motion within a certain time; requiring
7 the court to send a certain notice of a certain motion to a certain victim; authorizing
8 the court to dismiss a certain motion without a hearing under certain circumstances;
9 providing that it is not necessary that a certain person be arrested for or convicted
10 of a certain offense before a certain motion may be filed; repealing the authority of
11 the court to take certain actions in ruling on a certain motion; repealing a
12 requirement that the court state certain information on the record; authorizing a
13 court to grant a certain motion if the court makes a certain finding; authorizing the
14 court to order that certain records be expunged in accordance with a certain provision
15 of law under certain circumstances; providing that a certain conviction may not be
16 considered a conviction for any purpose; requiring the court to state the reasons for
17 a certain denial in writing; requiring that a certain motion, documents, pleadings,
18 and orders be maintained under seal; defining a certain term; making conforming
19 and clarifying changes; and generally relating to human trafficking and motions to
20 vacate judgment.

21 BY repealing and reenacting, with amendments,
22 Article – Criminal Procedure
23 Section 8–302
24 Annotated Code of Maryland
25 (2008 Replacement Volume and 2017 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Criminal Procedure

8–302.

(a) IN THIS SECTION, “VICTIM OF HUMAN TRAFFICKING” MEANS A PERSON WHO HAS BEEN SUBJECTED TO AN ACT OF ANOTHER COMMITTED IN VIOLATION OF:

(1) § 11–303(A) OR (B) OF THE CRIMINAL LAW ARTICLE; OR

(2) §§ 1589 THROUGH 1591, OR § 1594(A) OF TITLE 18 OF THE UNITED STATES CODE.

(B) A person convicted of [prostitution under § 11–306 of the Criminal Law Article] A CIVIL OFFENSE OR A CRIMINAL OFFENSE OTHER THAN A CRIME OF VIOLENCE may file, IN THE CASE IN WHICH THE CONVICTION WAS ENTERED, a motion to vacate the judgment if [, when the person committed the act or acts of prostitution, the person was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking under § 11–303 of the Criminal Law Article or under federal law] THE PERSON’S PARTICIPATION IN THE OFFENSE WAS A DIRECT RESULT OF HAVING BEEN A VICTIM OF HUMAN TRAFFICKING.

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

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

(4) INCLUDE COPIES OF ANY SUPPORTING DOCUMENTS.

(D) (1) THE MOVANT SHALL PROVIDE A COPY OF THE MOTION TO VACATE TO THE STATE’S ATTORNEY.

(2) THE STATE’S ATTORNEY MAY FILE A RESPONSE TO THE MOTION WITHIN 90 DAYS AFTER RECEIPT OF THE MOTION OR AS OTHERWISE ORDERED BY THE COURT.

(E) THE COURT SHALL SEND WRITTEN NOTICE OF THE MOTION TO VACATE TO EACH IDENTIFIED VICTIM IN THE CASE AT THE ADDRESS LISTED IN THE COURT FILE ADVISING THE VICTIM OF THE RIGHT TO OFFER ADDITIONAL INFORMATION

1 **RELEVANT TO THE MOTION TO THE COURT.**

2 **[(c)] (F)** (1) Except as provided in paragraph (2) of this subsection, the court
3 shall hold a hearing on a motion filed under this section if the motion satisfies the
4 requirements of subsection **[(b)] (C)** of this section.

5 (2) The court may dismiss a motion without a hearing if the court finds
6 that:

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

8 **(II) THE MOTION OFFERS NO ADDITIONAL EVIDENCE BEYOND**
9 **THAT WHICH HAS PREVIOUSLY BEEN CONSIDERED BY THE COURT; OR**

10 **(III) THE MOVANT ACTED FRAUDULENTLY OR IN BAD FAITH IN**
11 **FILING THE MOTION.**

12 **[(d)] (1)** In ruling on a motion filed under this section, the court may vacate the
13 conviction, modify the sentence, or grant a new trial.

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

15 **[(e)] (G)** A [defendant] **MOVANT** in a proceeding under this section has the
16 burden of proof.

17 **(H) IT IS NOT NECESSARY THAT ANY PERSON OTHER THAN THE MOVANT BE**
18 **ARRESTED FOR OR CONVICTED OF AN OFFENSE BEFORE THE MOVANT MAY FILE A**
19 **MOTION UNDER THIS SECTION.**

20 **(I) THE COURT MAY GRANT A MOTION FILED UNDER THIS SECTION IF,**
21 **AFTER NOTICE AND OPPORTUNITY FOR THE STATE'S ATTORNEY AND VICTIMS TO BE**
22 **HEARD, THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

23 **(1) THE MOVANT WAS CONVICTED OF A CIVIL OFFENSE OR A**
24 **CRIMINAL OFFENSE OTHER THAN A CRIME OF VIOLENCE; AND**

25 **(2) THE CONDUCT BY THE MOVANT RESULTING IN THE CONVICTION**
26 **OF THE OFFENSE WAS A DIRECT RESULT OF THE MOVANT HAVING BEEN A VICTIM OF**
27 **HUMAN TRAFFICKING.**

28 **(J) IF THE COURT GRANTS A MOTION UNDER THIS SECTION, THE COURT**
29 **MAY, AT THE REQUEST OF THE MOVANT, ORDER THAT ALL POLICE RECORDS AND**
30 **COURT RECORDS RELATING TO THE VACATED CONVICTION BE EXPUNGED IN**
31 **ACCORDANCE WITH § 10-105 OF THIS ARTICLE.**

1 **(K) A CONVICTION THAT HAS BEEN VACATED UNDER THIS SECTION MAY**
2 **NOT BE CONSIDERED A CONVICTION FOR ANY PURPOSE.**

3 **(L) IF THE COURT DENIES A MOTION FILED UNDER THIS SECTION, THE**
4 **COURT SHALL STATE THE REASONS FOR THE DENIAL IN WRITING.**

5 **(M) A MOTION FILED UNDER THIS SECTION AND ANY DOCUMENTS,**
6 **PLEADINGS, AND ORDERS RELATING TO THE MOTION SHALL BE MAINTAINED UNDER**
7 **SEAL.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2018.