
BILL NO: Senate Bill 206
TITLE: Criminal Procedure - Motion to Vacate Judgment - Human Trafficking (True Freedom Act of 2020)
COMMITTEE: Judicial Proceedings
HEARING DATE: January 29, 2020
POSITION: **SUPPORT**

The Women's Law Center (WLC) supports Senate Bill 406 as it would expand relief available to survivors of human trafficking who have criminal backgrounds as a result thereof.

In 2011, Maryland became the second state in the country to enact a "vacating convictions" law, which allows survivors of sex trafficking to vacate (set aside) their prostitution convictions under Md. Crim. Pro. § 8-302. Since that time, 40 additional states have followed by enacting vacatur laws in their respective jurisdictions. However, our current law allows only for the vacatur of a prostitution conviction, not any other crime. SB 406 would expand the enumerated crimes for which a trafficked person could seek vacatur, including for trespass and drug possession. Maryland's law also does not expressly include survivors of labor trafficking, who are similarly convicted of crimes they were forced to commit. Additionally, Maryland is one of only two states in the country requiring the consent of the agency that prosecuted the victim before the victim can file a vacatur request. This was a result of compromise when the original law was passed, but in fact usurps proper judicial power and places it in the hands of the agencies.

Trafficked people often are forced into all sorts of criminal activity, and in order to effectively assist them in moving forward in their lives, they need to be able to seek vacatur of these additional crimes. Data recently obtained from a national survey of both sex and labor trafficking survivors echoes the need for access to broader relief, with 91% of survivors reported being arrested during the time they were being trafficked, the majority for crimes other than prostitution. Of those surveyed, 73% reported barriers to employment because of their criminal records, while 58% reported barriers to accessing housing.

Recently, the general assembly has shown its strong support for remedying the impact a deeply flawed criminal justice system has on the ability of its citizens to escape poverty and lead productive lives. Criminalized survivors of trafficking suffer similarly if they are unable to obtain such relief, as they too struggle with being unable to obtain safe housing and gainful employment. These consequences carry with them the additional risk of continued exploitation by a trafficker or the inability to exit the commercial sex trade. Survivors who were unjustly convicted of forced criminal activity deserve better.

Senate Bill 406 will permit sex trafficking survivors to ask the court to vacate any offense that is a result of being a victim of human trafficking if the offense is a "qualifying offense". "Qualifying offense" is defined in the bill and includes a range of petty crimes which victims of trafficking are often involved with as a result of being trafficked. SB 406 also eliminates the law's current requirement that the State's Attorney consent to a victim's motion. This is particularly important as the prosecutor should not be put in the role of judge. This bill would remedy significant legal gaps by expanding the post-conviction relief available to survivors of human trafficking who are already recognized as lacking the criminal intent to commit the crimes for which they were convicted.

Therefore, the WLC supports Senate Bill 206 and urges a favorable report.

The Women's Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.