

Testimony of the Gender Violence Clinic University of Maryland Carey School of Law

BILL NO: House Bill 242
TITLE: Criminal Procedure – Motion to Vacate Judgment of Conviction (True Freedom Act of 2020)
COMMITTEE: Judiciary
HEARING DATE: January 28, 2020
POSITION: **SUPPORT**

House Bill 242 would expand the impact of Maryland’s “vacating convictions” law by explicitly including labor trafficking survivors as well as increasing the number of convictions eligible for vacatur under MD Crim. Pro. § 8-302. The Gender Violence Clinic at the University of Maryland Carey School of Law supports this bill because it will enhance the effectiveness of Maryland’s human trafficking framework by providing improved access to justice for survivors who have been criminalized as a result of their involvement with a trafficker.

In addition to the abuse, coercive control and manipulation victims of trafficking routinely face, many victims are convicted of crimes they were forced to commit by their trafficker. Maryland responded to this injustice in 2011, becoming the second state in the country to enact a “vacating convictions” law, which allows survivors of sex trafficking to vacate, or, set aside their prostitution convictions. Since that time, all but six states and the District of Columbia offer some form of criminal record relief specific to survivors of trafficking.

In the years since its enactment, however, Maryland’s vacatur law has proved inadequate in meeting the needs of Maryland’s survivors, the majority of whom have trafficking-related convictions other than prostitution, such as trespassing 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 entire country requiring the consent of the agency that prosecuted the victim before the victim can file a petition for vacatur with the court.** This is a particularly problematic provision, in that it essentially puts a prosecutor in the role of a judge in determining whether the survivor was trafficked at the time of their conviction. This eliminates the ability of the court to act independently, as is the role of the court in the legal process. Additionally, this needless step often adds months to an already lengthy and retraumatizing process, which is not in the best interest of the survivor seeking the relief.

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.

In recent years, Maryland 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 of human trafficking who have been unjustly convicted deserve better in the State of Maryland.**

HB 242 would remedy these 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 they were convicted of. For these reasons, the Gender Violence Clinic at the University of Maryland Carey School of Law supports HB 242. We respectfully urge a favorable report.