

HOUSE BILL 266

E2

11r1139
CF SB 327

By: Delegates Waldstreicher, Alston, Anderson, Arora, Aumann, Clippinger,
Dumais, Frank, Frush, Haddaway-Riccio, Hough, Lee, Luedtke,
McDermott, Mitchell, Morhaim, S. Robinson, Smigiel, Tarrant,
Valderrama, Valentino-Smith, and Wilson

Introduced and read first time: January 31, 2011

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 2011

CHAPTER _____

1 AN ACT concerning

2 **Human Trafficking Victim Protection Act**

3 FOR the purpose of ~~authorizing a court to order a person who has been convicted of~~
4 ~~human trafficking to pay restitution to the victim for certain expenses incurred~~
5 ~~by the victim; providing for the verification of certain expenses alleged to be~~
6 ~~incurred by the victim; establishing that certain absences of the victim may not~~
7 ~~be a basis for denial of restitution; establishing that this Act may not be~~
8 ~~constructed to limit a person's right to certain restitution; clarifying that certain~~
9 ~~provisions of law related to restitution apply to an order of restitution under~~
10 ~~this Act;~~ authorizing a person convicted of prostitution to file a petition motion
11 to vacate the judgment if the person's involvement in prostitution was the result
12 of the person having been a victim of human trafficking under certain
13 circumstances; establishing the requirements for a petition motion filed under
14 this Act; ~~requiring a person filing a petition under this Act to provide a certain~~
15 ~~notice to the State; authorizing the State to file a certain response in a certain~~
16 ~~period of time;~~ requiring the court to hold a hearing on the petition motion
17 under certain circumstances, with a certain exception; authorizing the court to
18 take certain actions in ruling on the petition motion; requiring the court to state
19 on the record the reasons for its ruling on the petition motion; establishing that
20 a petitioner defendant in a proceeding under this Act has the burden of proof;
21 and generally relating to victims of human trafficking.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, ~~with~~ without amendments,
2 Article – Criminal Law
3 Section 11–303
4 Annotated Code of Maryland
5 (2002 Volume and 2010 Supplement)

6 BY adding to
7 Article – Criminal Procedure
8 Section 8–302
9 Annotated Code of Maryland
10 (2008 Replacement Volume and 2010 Supplement)

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

13 **Article – Criminal Law**

14 11–303.

15 (a) (1) A person may not knowingly:

16 (i) take or cause another to be taken to any place for
17 prostitution;

18 (ii) place, cause to be placed, or harbor another in any place for
19 prostitution;

20 (iii) persuade, induce, entice, or encourage another to be taken to
21 or placed in any place for prostitution;

22 (iv) receive consideration to procure for or place in a house of
23 prostitution or elsewhere another with the intent of causing the other to engage in
24 prostitution or assignation;

25 (v) engage in a device, scheme, or continuing course of conduct
26 intended to cause another to believe that if the other did not take part in a sexually
27 explicit performance, the other or a third person would suffer physical restraint or
28 serious physical harm; or

29 (vi) destroy, conceal, remove, confiscate, or possess an actual or
30 purported passport, immigration document, or government identification document of
31 another while otherwise violating or attempting to violate this subsection.

32 (2) A parent, guardian, or person who has permanent or temporary
33 care or custody or responsibility for supervision of another may not consent to the
34 taking or detention of the other for prostitution.

1 (b) (1) A person may not violate subsection (a) of this section involving a
2 victim who is a minor.

3 (2) A person may not knowingly take or detain another with the intent
4 to use force, threat, coercion, or fraud to compel the other to marry the person or a
5 third person or perform a sexual act, sexual contact, or vaginal intercourse.

6 (c) (1) (i) Except as provided in paragraph (2) of this subsection, a
7 person who violates subsection (a) of this section is guilty of the misdemeanor of
8 human trafficking and on conviction is subject to imprisonment not exceeding 10 years
9 or a fine not exceeding \$5,000 or both.

10 (ii) A person who violates subsection (a) of this section is subject
11 to § 5-106(b) of the Courts Article.

12 (2) A person who violates subsection (b) of this section is guilty of the
13 felony of human trafficking and on conviction is subject to imprisonment not exceeding
14 25 years or a fine not exceeding \$15,000 or both.

15 ~~(3) (i) IN ADDITION TO THE PENALTIES PROVIDED IN THIS~~
16 ~~SUBSECTION, THE COURT MAY ORDER A PERSON CONVICTED UNDER THIS~~
17 ~~SECTION TO PAY RESTITUTION TO THE VICTIM FOR EXPENSES INCURRED BY~~
18 ~~THE VICTIM;~~

19 ~~1. THAT ARE A DIRECT RESULT OF THE PERSON'S~~
20 ~~CRIMINAL ACTIONS;~~

21 ~~2. IN RELOCATING THE VICTIM AND THE VICTIM'S~~
22 ~~FAMILY AWAY FROM THE PERSON OR THE PERSON'S ASSOCIATES; OR~~

23 ~~3. IN THE REPATRIATION OF THE VICTIM OR THE~~
24 ~~VICTIM'S FAMILY TO THE VICTIM'S COUNTRY OF CITIZENSHIP IF THE~~
25 ~~PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE VICTIM WAS BROUGHT~~
26 ~~TO THE UNITED STATES BY FRAUD OR DECEPTION.~~

27 ~~(ii) ANY EXPENSES ALLEGED TO BE INCURRED UNDER THIS~~
28 ~~PARAGRAPH MAY BE VERIFIED BY:~~

29 ~~1. A LAW ENFORCEMENT OFFICER, AS TO EXPENSES~~
30 ~~ALLEGEDLY INCURRED IN RELATION TO THE SAFETY OF THE VICTIM OR THE~~
31 ~~VICTIM'S FAMILY; OR~~

32 ~~2. A PROVIDER OF MENTAL HEALTH SERVICES, AS TO~~
33 ~~EXPENSES ALLEGEDLY INCURRED IN RELATION TO THE EMOTIONAL~~
34 ~~WELL-BEING OF THE VICTIM.~~

~~(III) THE RETURN OF THE VICTIM TO THE VICTIM'S COUNTRY OF CITIZENSHIP OR ANY OTHER ABSENCE OF THE VICTIM FROM THE VICTIM'S COUNTRY OF RESIDENCE MAY NOT BE A BASIS FOR A DENIAL OF RESTITUTION.~~

~~(IV) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A PERSON TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.~~

~~(V) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, THE PROVISIONS OF TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE APPLY TO AN ORDER OF RESTITUTION UNDER THIS PARAGRAPH.~~

(d) A person who violates this section may be charged, tried, and sentenced in any county in or through which the person transported or attempted to transport the other.

(e) (1) A person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in subsection (a) or (b) of this section is subject to the same penalties that would apply if the person had violated that subsection.

(2) A person who knowingly aids, abets, or conspires with one or more other persons to violate any subsection of this section is subject to the same penalties that apply for a violation of that subsection.

Article – Criminal Procedure

8-302.

~~(A) A PERSON CONVICTED OF PROSTITUTION UNDER § 11-306 OF THE CRIMINAL LAW ARTICLE MAY FILE A PETITION MOTION TO VACATE THE JUDGMENT IF: ~~THE PERSON'S INVOLVEMENT IN PROSTITUTION WAS THE RESULT OF THE PERSON HAVING BEEN A VICTIM OF~~~~

(1) WHEN THE PERSON COMMITTED THE ACT OR ACTS OF PROSTITUTION, THE PERSON WAS ACTING UNDER DURESS CAUSED BY THREATS OF HARM TO THE PERSON OR THE PERSON'S FAMILY; AND

(2) THE PERSON'S CONVICTION FOR PROSTITUTION WAS THE RESULT OF ANOTHER'S VIOLATION OF THE PROHIBITION AGAINST HUMAN TRAFFICKING UNDER § 11-303 OF THE CRIMINAL LAW ARTICLE OR UNDER FEDERAL LAW.

(B) A ~~PETITION~~ MOTION FILED UNDER THIS SECTION SHALL:

1 (1) BE IN WRITING;

2 (2) BE SIGNED AND CONSENTED TO BY THE STATE'S ATTORNEY;

3 ~~(2) (3)~~ BE MADE WITHIN A REASONABLE PERIOD OF TIME
4 AFTER THE ~~PETITIONER IS NO LONGER THE VICTIM OF HUMAN TRAFFICKING OR~~
5 ~~HAS SOUGHT SERVICES FOR VICTIMS OF HUMAN TRAFFICKING, IN LIGHT OF~~
6 ~~CONCERNS FOR THE SAFETY OF THE PETITIONER, THE PETITIONER'S FAMILY,~~
7 ~~OR OTHER VICTIMS OF HUMAN TRAFFICKING;~~ CONVICTION; AND

8 ~~(3) (4)~~ DESCRIBE THE EVIDENCE AND PROVIDE COPIES OF ANY
9 ~~OFFICIAL DOCUMENTS SHOWING THAT THE PETITIONER DEFENDANT WAS THE~~
10 ~~VICTIM OF HUMAN TRAFFICKING AND THAT THE PETITIONER'S INVOLVEMENT~~
11 ~~IN PROSTITUTION WAS THE RESULT OF THE PETITIONER HAVING BEEN THE~~
12 ~~VICTIM OF HUMAN TRAFFICKING; AND~~

13 ~~(4) IF THE PETITIONER WANTS A HEARING, INCLUDE A REQUEST~~
14 ~~FOR A HEARING.~~

15 ~~(c) (1) A PETITIONER SHALL NOTIFY THE STATE IN WRITING OF THE~~
16 ~~FILING OF A PETITION UNDER THIS SECTION.~~

17 ~~(2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN~~
18 ~~90 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION~~
19 ~~OR WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS IS ENTITLED TO~~
20 ~~RELIEF UNDER THIS SECTION.~~

21 ~~(d) (c)~~ (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
22 SUBSECTION, THE COURT SHALL HOLD A HEARING ON A PETITION MOTION
23 FILED UNDER THIS SECTION IF THE PETITION MOTION SATISFIES THE
24 REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION ~~AND A HEARING WAS~~
25 ~~REQUESTED.~~

26 (2) THE COURT MAY DISMISS A PETITION MOTION WITHOUT A
27 HEARING IF THE COURT FINDS THAT THE PETITION MOTION FAILS TO ASSERT
28 GROUNDS ON WHICH RELIEF MAY BE GRANTED.

29 ~~(e) (d)~~ (1) IN RULING ON A PETITION MOTION FILED UNDER THIS
30 SECTION, THE COURT MAY VACATE THE CONVICTION, MODIFY THE SENTENCE,
31 OR GRANT A NEW TRIAL, ~~AS THE COURT CONSIDERS APPROPRIATE.~~

32 (2) THE COURT SHALL STATE THE REASONS FOR ITS RULING ON
33 THE RECORD.

1 ~~(F)~~ (E) A ~~PETITIONER~~ DEFENDANT IN A PROCEEDING UNDER THIS
2 SECTION HAS THE BURDEN OF PROOF.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.