

SENATE BILL 327

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CF HB 266

By: Senators Forehand, Benson, Colburn, Ferguson, Garagiola, Jacobs,
Jennings, Jones-Rodwell, Kelley, King, Madaleno, Manno,
Montgomery, Pinsky, Ramirez, Raskin, Simonaire, Stone, and Young

Introduced and read first time: February 2, 2011

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 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~~ construed to limit a person's right to certain restitution; clarifying
9 that certain provisions of law related to restitution apply to an order of
10 restitution under this Act; ~~authorizing a person convicted of prostitution to file a~~
11 ~~petition to vacate the judgment if the person's involvement in prostitution was~~
12 ~~the result of the person having been a victim of human trafficking; establishing~~
13 ~~the requirements for a petition filed under this Act; requiring a person filing a~~
14 ~~petition under this Act to provide a certain notice to the State; authorizing the~~
15 ~~State to file a certain response in a certain period of time; requiring the court to~~
16 ~~hold a hearing on the petition under certain circumstances, with a certain~~
17 ~~exception; authorizing the court to take certain actions in ruling on the petition;~~
18 ~~requiring the court to state on the record the reasons for its ruling on the~~
19 ~~petition; establishing that a petitioner in a proceeding under this Act has the~~
20 ~~burden of proof~~ authorizing the expungement of certain records by certain
21 persons convicted of prostitution under certain circumstances; and generally
22 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.



BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 11–303
Annotated Code of Maryland
(2002 Volume and 2010 Supplement)

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

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 10–105
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Criminal Law

11–303.

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

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

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

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

(iv) 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;

(v) 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 physical harm; or

(vi) 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 violate this subsection.

(2) 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.

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

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

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

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

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

(3) (I) IN ADDITION TO THE PENALTIES PROVIDED IN THIS SUBSECTION, THE COURT MAY ORDER A PERSON CONVICTED UNDER THIS SECTION TO PAY RESTITUTION TO THE VICTIM FOR EXPENSES INCURRED BY THE VICTIM:

1. THAT ARE A DIRECT RESULT OF THE PERSON’S CRIMINAL ACTIONS;

2. IN RELOCATING THE VICTIM AND THE VICTIM’S FAMILY AWAY FROM THE PERSON OR THE PERSON’S ASSOCIATES; OR

3. IN THE REPATRIATION OF THE VICTIM OR THE VICTIM’S FAMILY TO THE VICTIM’S COUNTRY OF CITIZENSHIP IF THE PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE VICTIM WAS BROUGHT TO THE UNITED STATES BY FRAUD OR DECEPTION.

(II) ANY EXPENSES ALLEGED TO BE INCURRED UNDER THIS PARAGRAPH MAY BE VERIFIED BY:

1 1. A LAW ENFORCEMENT OFFICER, AS TO EXPENSES
2 ALLEGEDLY INCURRED IN RELATION TO THE SAFETY OF THE VICTIM OR THE
3 VICTIM'S FAMILY; OR

4 2. A PROVIDER OF MENTAL HEALTH SERVICES, AS TO
5 EXPENSES ALLEGEDLY INCURRED IN RELATION TO THE EMOTIONAL
6 WELL-BEING OF THE VICTIM.

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

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

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

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

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

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

26 Article – Criminal Procedure

27 ~~§ 302.~~

28 ~~(A) A PERSON CONVICTED OF PROSTITUTION UNDER § 11 306 OF THE~~
29 ~~CRIMINAL LAW ARTICLE MAY FILE A PETITION TO VACATE THE JUDGMENT IF~~
30 ~~THE PERSON'S INVOLVEMENT IN PROSTITUTION WAS THE RESULT OF THE~~
31 ~~PERSON HAVING BEEN A VICTIM OF HUMAN TRAFFICKING UNDER § 11 303 OF~~
32 ~~THE CRIMINAL LAW ARTICLE OR UNDER FEDERAL LAW.~~

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

~~(1) BE IN WRITING;~~

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

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

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

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

~~(2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN 90 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION OR WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.~~

~~(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE COURT SHALL HOLD A HEARING ON A PETITION FILED UNDER THIS SECTION IF THE PETITION SATISFIES THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION AND A HEARING WAS REQUESTED.~~

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

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

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

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

1 (a) A person who has been charged with the commission of a crime, including
2 a violation of the Transportation Article for which a term of imprisonment may be
3 imposed, or who has been charged with a civil offense or infraction, except a juvenile
4 offense, as a substitute for a criminal charge may file a petition listing relevant facts
5 for expungement of a police record, court record, or other record maintained by the
6 State or a political subdivision of the State if:

7 (1) the person is acquitted;

8 (2) the charge is otherwise dismissed;

9 (3) a probation before judgment is entered, unless the person is
10 charged with a violation of § 21–902 of the Transportation Article or Title 2, Subtitle 5
11 or § 3–211 of the Criminal Law Article;

12 (4) a nolle prosequi or nolle prosequi with the requirement of drug or
13 alcohol treatment is entered;

14 (5) the court indefinitely postpones trial of a criminal charge by
15 marking the criminal charge “stet” or stet with the requirement of drug or alcohol
16 abuse treatment on the docket;

17 (6) the case is compromised under § 3–207 of the Criminal Law
18 Article;

19 (7) the charge was transferred to the juvenile court under § 4–202 of
20 this article;

21 (8) the person:

22 (i) is convicted of only one criminal act, and that act is not a
23 crime of violence; and

24 (ii) is granted a full and unconditional pardon by the Governor;
25 [or]

26 (9) the person was convicted of a crime under any State or local law
27 that prohibits:

28 (i) urination or defecation in a public place;

29 (ii) panhandling or soliciting money;

30 (iii) drinking an alcoholic beverage in a public place;

(iv) obstructing the free passage of another in a public place or a public conveyance;

(v) sleeping on or in park structures, such as benches or doorways;

(vi) loitering;

(vii) vagrancy;

(viii) riding a transit vehicle without paying the applicable fare or exhibiting proof of payment; or

(ix) except for carrying or possessing an explosive, acid, concealed weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation Article, any of the acts specified in § 7-705 of the Transportation Article; OR

(10) (I) THE PERSON WAS CONVICTED OF PROSTITUTION UNDER § 11-306 OF THE CRIMINAL LAW ARTICLE; AND

(II) THE PERSON'S INVOLVEMENT IN PROSTITUTION WAS THE RESULT OF THE PERSON HAVING BEEN A VICTIM OF HUMAN TRAFFICKING UNDER § 11-303 OF THE CRIMINAL LAW ARTICLE OR UNDER FEDERAL LAW.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person shall file a petition in the court in which the proceeding began.

(2) If the proceeding began in one court and was transferred to another court, the person shall file the petition in the court to which the proceeding was transferred.

(3) (i) If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the person shall file the petition in the appellate court.

(ii) The appellate court may remand the matter to the court of original jurisdiction.

(c) (1) Except as provided in paragraph (2) of this subsection, a petition for expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within 3 years after the disposition, unless the petitioner files with the petition a written general waiver and release of all the petitioner's tort claims arising from the charge.

1 (2) A petition for expungement based on a probation before judgment
2 or a stet with the requirement of drug or alcohol abuse treatment may not be filed
3 earlier than the later of:

4 (i) the date the petitioner was discharged from probation or the
5 requirements of obtaining drug or alcohol abuse treatment were completed; or

6 (ii) 3 years after the probation was granted or stet with the
7 requirement of drug or alcohol abuse treatment was entered on the docket.

8 (3) A petition for expungement based on a nolle prosequi with the
9 requirement of drug or alcohol treatment may not be filed until the completion of the
10 required treatment.

11 (4) A petition for expungement based on a full and unconditional
12 pardon by the Governor may not be filed later than 10 years after the pardon was
13 signed by the Governor.

14 (5) Except as provided in paragraph (2) of this subsection, a petition
15 for expungement based on a stet or a compromise under § 3–207 of the Criminal Law
16 Article may not be filed within 3 years after the stet or compromise.

17 (6) A petition for expungement based on the conviction of a crime
18 under subsection (a)(9) of this section may not be filed within 3 years after the
19 conviction or satisfactory completion of the sentence, including probation, that was
20 imposed for the conviction, whichever is later.

21 (7) A court may grant a petition for expungement at any time on a
22 showing of good cause.

23 (d) (1) The court shall have a copy of a petition for expungement served
24 on the State's Attorney.

25 (2) Unless the State's Attorney files an objection to the petition for
26 expungement within 30 days after the petition is served, the court shall pass an order
27 requiring the expungement of all police records and court records about the charge.

28 (e) (1) If the State's Attorney files a timely objection to the petition, the
29 court shall hold a hearing.

30 (2) If the court at the hearing finds that the person is entitled to
31 expungement, the court shall order the expungement of all police records and court
32 records about the charge.

33 (3) If the court finds that the person is not entitled to expungement,
34 the court shall deny the petition.

1 (4) The person is not entitled to expungement if:

2 (i) the petition is based on the entry of probation before
3 judgment, a nolle prosequi, a stet, including a nolle prosequi with the requirement of
4 drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse
5 treatment, a conviction for a crime specified in subsection (a)(9) of this section, or the
6 grant of a pardon by the Governor; and

7 (ii) the person:

8 1. since the full and unconditional pardon, entry, or
9 conviction has been convicted of a crime other than a minor traffic violation; or

10 2. is a defendant in a pending criminal proceeding.

11 (f) Unless an order is stayed pending an appeal, within 60 days after entry
12 of the order, every custodian of the police records and court records that are subject to
13 the order of expungement shall advise in writing the court and the person who is
14 seeking expungement of compliance with the order.

15 (g) (1) The State's Attorney is a party to the proceeding.

16 (2) A party aggrieved by the decision of the court is entitled to
17 appellate review as provided in the Courts Article.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.