

SENATE BILL 691

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9lr2257
CF 9lr2586

By: **Senators Lee, Augustine, Carter, Elfreth, Kagan, Kelley, King, Klausmeier, Nathan–Pulliam, Patterson, Pinsky, Smith, Waldstreicher, Washington, and West**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Motion to Vacate Judgment – Human Trafficking**
3 **(True Freedom Act of 2019)**

4 FOR the purpose of altering the eligibility for the filing of a certain motion to vacate
5 judgment; altering the required contents of a certain motion; authorizing the court
6 to dismiss a certain motion without a hearing under certain circumstances; repealing
7 the authority of the court to take certain actions in ruling on a certain motion;
8 requiring the court to vacate a certain conviction if the court grants a certain motion;
9 providing that a certain conviction may not be considered a conviction for any
10 purpose; authorizing a person to file a petition for expungement of certain records if
11 the person was convicted of a crime and the conviction was vacated under a certain
12 provision of law; defining certain terms; making a conforming change; and generally
13 relating to human trafficking and motions to vacate judgment.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Procedure
16 Section 8–302 and 10–105(a)
17 Annotated Code of Maryland
18 (2018 Replacement Volume)

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

21 **Article – Criminal Procedure**

22 8–302.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (2) “QUALIFYING OFFENSE” MEANS:

4 (I) UNNATURAL OR PERVERTED SEXUAL PRACTICE UNDER §
5 3-322 OF THE CRIMINAL LAW ARTICLE;

6 (II) POSSESSING OR ADMINISTERING A CONTROLLED
7 DANGEROUS SUBSTANCE UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE;

8 (III) POSSESSING OR PURCHASING A NONCONTROLLED
9 SUBSTANCE UNDER § 5-618 OF THE CRIMINAL LAW ARTICLE;

10 (IV) POSSESSING OR DISTRIBUTING CONTROLLED
11 PARAPHERNALIA UNDER § 5-620(A)(2) OF THE CRIMINAL LAW ARTICLE;

12 (V) FOURTH-DEGREE BURGLARY UNDER § 6-205 OF THE
13 CRIMINAL LAW ARTICLE;

14 (VI) MALICIOUS DESTRUCTION OF PROPERTY IN THE LESSER
15 DEGREE UNDER § 6-301(C) OF THE CRIMINAL LAW ARTICLE;

16 (VII) A TRESPASS OFFENSE UNDER TITLE 6, SUBTITLE 4 OF THE
17 CRIMINAL LAW ARTICLE;

18 (VIII) MISDEMEANOR THEFT UNDER § 7-104 OF THE CRIMINAL
19 LAW ARTICLE;

20 (IX) MISDEMEANOR OBTAINING PROPERTY OR SERVICES BY BAD
21 CHECK UNDER § 8-103 OF THE CRIMINAL LAW ARTICLE;

22 (X) POSSESSION OR USE OF A FRAUDULENT GOVERNMENT
23 IDENTIFICATION DOCUMENT UNDER § 8-303 OF THE CRIMINAL LAW ARTICLE;

24 (XI) PUBLIC ASSISTANCE FRAUD UNDER § 8-503 OF THE
25 CRIMINAL LAW ARTICLE;

26 (XII) FALSE STATEMENT TO A LAW ENFORCEMENT OFFICER OR
27 PUBLIC OFFICIAL UNDER § 9-501, § 9-502, OR § 9-503 OF THE CRIMINAL LAW
28 ARTICLE;

1 (XIII) DISTURBING THE PUBLIC PEACE AND DISORDERLY
2 CONDUCT UNDER § 10-201 OF THE CRIMINAL LAW ARTICLE;

3 (XIV) INDECENT EXPOSURE UNDER § 11-107 OF THE CRIMINAL
4 LAW ARTICLE;

5 (XV) PROSTITUTION UNDER § 11-306(A)(1) OF THE CRIMINAL
6 LAW ARTICLE;

7 (XVI) DRIVING WITH A SUSPENDED REGISTRATION UNDER §
8 13-401(H) OF THE TRANSPORTATION ARTICLE;

9 (XVII) FAILURE TO DISPLAY REGISTRATION UNDER § 13-409(B) OF
10 THE TRANSPORTATION ARTICLE;

11 (XVIII) DRIVING WITHOUT A LICENSE UNDER § 16-101 OF
12 THE TRANSPORTATION ARTICLE;

13 (XIX) FAILURE TO DISPLAY LICENSE TO POLICE UNDER §
14 16-112(C) OF THE TRANSPORTATION ARTICLE;

15 (XX) POSSESSION OF A SUSPENDED LICENSE UNDER § 16-301(J)
16 OF THE TRANSPORTATION ARTICLE;

17 (XXI) DRIVING WHILE PRIVILEGE IS CANCELED, SUSPENDED,
18 REFUSED, OR REVOKED UNDER § 16-303 OF THE TRANSPORTATION ARTICLE;

19 (XXII) OWNER FAILURE TO MAINTAIN SECURITY ON A VEHICLE
20 UNDER § 17-104(B) OF THE TRANSPORTATION ARTICLE;

21 (XXIII) DRIVING WHILE UNINSURED UNDER § 17-107 OF THE
22 TRANSPORTATION ARTICLE; OR

23 (XXIV) PROSTITUTION OR LOITERING AS PROHIBITED UNDER
24 LOCAL LAW.

25 (3) "VICTIM OF HUMAN TRAFFICKING" MEANS A PERSON WHO HAS
26 BEEN SUBJECTED TO AN ACT OF ANOTHER COMMITTED IN VIOLATION OF:

27 (I) § 11-303(A) OR (B) OF THE CRIMINAL LAW ARTICLE; OR

28 (II) § 1589, § 1590, § 1591, OR § 1594(A) OF TITLE 18 OF THE
29 UNITED STATES CODE.

1 [(a)] (B) A person convicted of [prostitution under § 11–306 of the Criminal Law
2 Article] **A QUALIFYING OFFENSE** may file a motion to vacate the judgment if[, when the
3 person committed the act or acts of prostitution, the person was acting under duress caused
4 by an act of another committed in violation of the prohibition against human trafficking
5 under § 11–303 of the Criminal Law Article or under federal law] **THE PERSON’S**
6 **PARTICIPATION IN THE OFFENSE WAS A PROXIMATE RESULT OF BEING A VICTIM OF**
7 **HUMAN TRAFFICKING.**

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

9 (1) be in writing;

10 (2) [be signed and consented to by the State’s Attorney;

11 (3)] be made within a reasonable period of time after the conviction; and

12 [(4)] (3) describe the evidence and provide copies of any documents
13 showing that the [defendant] **MOVANT** is entitled to relief under this section.

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

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

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

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

22 (III) **THE MOVANT ACTED FRAUDULENTLY OR IN BAD FAITH IN**
23 **FILING THE MOTION.**

24 [(d)] (E) (1) [In ruling on] **IF A COURT GRANTS** a motion filed under this
25 section, the court [may] **SHALL** vacate the conviction[, modify the sentence, or grant a new
26 trial].

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

28 [(e)] (F) A [defendant] **MOVANT** in a proceeding under this section has the
29 burden of proof.

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

3 10–105.

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

9 (1) the person is acquitted;

10 (2) the charge is otherwise dismissed;

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

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

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

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

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

22 (8) the person:

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

25 (ii) is granted a full and unconditional pardon by the Governor;

26 (9) the person was convicted of a crime or found not criminally responsible
27 under any State or local law 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;

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

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

4 (vi) loitering;

5 (vii) vagrancy;

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

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

11 (10) the person was found not criminally responsible under any State or
12 local law that prohibits misdemeanor:

13 (i) trespass;

14 (ii) disturbing the peace; or

15 (iii) telephone misuse;

16 (11) the person was convicted of a crime and the act on which the conviction
17 was based is no longer a crime; [or]

18 (12) the person was convicted of possession of marijuana under § 5-601 of
19 the Criminal Law Article; **OR**

20 **(13) THE PERSON WAS CONVICTED OF A CRIME AND THE CONVICTION**
21 **WAS VACATED UNDER § 8-302 OF THIS ARTICLE.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
23 1, 2019.