

SENATE BILL 768

E3, E1, E2

2lr1598
CF HB 833

By: **Senators Lee and Watson**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 29, 2022

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Victims of Child Sex Trafficking and Human Trafficking – Safe**
3 **Harbor and Service Response**

4 FOR the purpose of altering procedures that a law enforcement officer ~~and a court are~~ is
5 required to follow when the law enforcement officer ~~or a court~~ has reason to believe
6 that a child who has been detained is a victim of sex trafficking or a victim of human
7 ~~trafficking; providing that a minor may not be criminally prosecuted or proceeded~~
8 ~~against as a delinquent child for a certain crime or civil offense if the minor~~
9 ~~committed the crime or civil offense as a direct result of sex trafficking; providing~~
10 ~~that certain criminal prohibitions do not apply to minors providing that it is an~~
11 ~~affirmative defense of duress to certain offenses if the defendant who is a minor in a~~
12 ~~criminal proceeding or a delinquency proceeding against a child if the defendant or~~
13 ~~child committed the offense as a result of being the victim of another under certain~~
14 ~~State and federal prohibitions against human trafficking; altering the list of offenses~~
15 ~~for which a person may file a motion to vacate judgment if the person's participation~~
16 ~~was a result of being a victim of human trafficking; and generally relating to victims~~
17 ~~of child sex trafficking and human trafficking.~~

18 BY repealing and reenacting, without amendments,

19 Article – Courts and Judicial Proceedings

20 Section 3-8A-01(a) and (dd)

21 Annotated Code of Maryland

22 (2020 Replacement Volume and 2021 Supplement)

23 BY repealing and reenacting, with amendments,

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 Article – Courts and Judicial Proceedings
2 Section 3–8A–14
3 Annotated Code of Maryland
4 (2020 Replacement Volume and 2021 Supplement)

5 ~~BY adding to~~
6 ~~Article – Courts and Judicial Proceedings~~
7 ~~Section 3–8A–17.13~~
8 ~~Annotated Code of Maryland~~
9 ~~(2020 Replacement Volume and 2021 Supplement)~~

10 BY adding to
11 Article – Criminal Law
12 Section 1–402
13 Annotated Code of Maryland
14 (2021 Replacement Volume and 2021 Supplement)

15 ~~BY repealing and reenacting, with amendments,~~
16 ~~Article – Criminal Law~~
17 ~~Section 11–303 and 11–306~~
18 ~~Annotated Code of Maryland~~
19 ~~(2021 Replacement Volume and 2021 Supplement)~~

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Procedure
22 Section 8–302(a)
23 Annotated Code of Maryland
24 (2018 Replacement Volume and 2021 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article – Criminal Procedure
27 Section 8–302(b)
28 Annotated Code of Maryland
29 (2018 Replacement Volume and 2021 Supplement)

30 BY repealing and reenacting, without amendments,
31 Article – Family Law
32 Section 5–701(a) and (x)
33 Annotated Code of Maryland
34 (2019 Replacement Volume and 2021 Supplement)

35 ~~BY repealing and reenacting, with amendments,~~
36 ~~Article – Human Services~~
37 ~~Section 1–202~~
38 ~~Annotated Code of Maryland~~
39 ~~(2019 Replacement Volume and 2021 Supplement)~~

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

3 **Article – Courts and Judicial Proceedings**

4 3–8A–01.

5 (a) In this subtitle the following words have the meanings indicated, unless the
6 context of their use indicates otherwise.

7 (dd) “Violation” means a violation for which a citation is issued under:

8 (1) § 5–601 of the Criminal Law Article involving the use or possession of
9 less than 10 grams of marijuana;

10 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

11 (3) § 10–132 of the Criminal Law Article;

12 (4) § 10–136 of the Criminal Law Article; or

13 (5) § 26–103 of the Education Article.

14 3–8A–14.

15 (a) A child may be taken into custody under this subtitle by any of the following
16 methods:

17 (1) Pursuant to an order of the court;

18 (2) By a law enforcement officer pursuant to the law of arrest;

19 (3) By a law enforcement officer or other person authorized by the court if
20 the officer or other person has reasonable grounds to believe that the child is in immediate
21 danger from the child’s surroundings and that the child’s removal is necessary for the
22 child’s protection;

23 (4) By a law enforcement officer or other person authorized by the court if
24 the officer or other person has reasonable grounds to believe that the child has run away
25 from the child’s parents, guardian, or legal custodian; or

26 (5) In accordance with § 3–8A–14.1 of this subtitle.

27 (b) If a law enforcement officer takes a child into custody, the officer shall
28 immediately notify, or cause to be notified, the child’s parents, guardian, or custodian of
29 the action. After making every reasonable effort to give notice, the law enforcement officer
30 shall with all reasonable speed:

6 (2) Deliver the child to the court or a place of detention or shelter care
7 designated by the court.

12 (d) (1) (I) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
13 MEANINGS INDICATED.

16 (III) "SEX TRAFFICKING" HAS THE MEANING STATED IN § 5-701
17 OF THE FAMILY LAW ARTICLE.

1 WELFARE AGENCY IF THERE IS REASON TO BELIEVE THAT THE CHILD'S SAFETY WILL
2 BE AT RISK IF THE CHILD IS RETURNED TO THE CHILD'S PARENTS, GUARDIAN, OR
3 CUSTODIAN.

4 (3) A LAW ENFORCEMENT OFFICER WHO TAKES A CHILD WHO IS A SUSPECTED VICTIM OF SEX TRAFFICKING OR A SUSPECTED VICTIM OF HUMAN
5 TRAFFICKING INTO CUSTODY UNDER SUBSECTION (A)(3) OF THIS SECTION MAY NOT
6 DETAIN THE CHILD IN A JUVENILE DETENTION FACILITY, AS DEFINED UNDER §
7 9-237 OF THE HUMAN SERVICES ARTICLE, IF THE REASON FOR DETAINING THE
8 CHILD IS A SUSPECTED VIOLATION OF A QUALIFYING OFFENSE OR AN OFFENSE
9 UNDER TITLE 3, SUBTITLE 11 § 3-1102 OF THE CRIMINAL LAW ARTICLE.

11 ~~3-8A-17.13.~~

12 (A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
13 ~~INDICATED.~~

14 (2) ~~“REGIONAL NAVIGATOR” HAS THE MEANING STATED IN § 5-704.4~~
15 ~~OF THE FAMILY LAW ARTICLE.~~

16 (3) ~~“SEX TRAFFICKING” HAS THE MEANING STATED IN § 5-701 OF THE~~
17 ~~FAMILY LAW ARTICLE.~~

18 (B) (1) ~~AT ANY TIME AFTER A PETITION ALLEGING THAT A CHILD HAS~~
19 ~~COMMITTED A DELINQUENT ACT IS FILED WITH THE COURT UNDER THIS SUBTITLE,~~
20 ~~THE COURT ON ITS OWN MOTION, OR ON MOTION OF THE CHILD'S COUNSEL OR THE~~
21 ~~STATE'S ATTORNEY, SHALL STAY ALL PROCEEDINGS AND ORDER THAT THE~~
22 ~~REGIONAL NAVIGATOR FOR THE RELEVANT JURISDICTION CONDUCT AN~~
23 ~~EVALUATION OF THE CHILD'S STATUS AS A VICTIM OF SEX TRAFFICKING, IF THE~~
24 ~~COURT FINDS THAT.~~

25 (i) ~~THERE IS PROBABLE CAUSE TO BELIEVE THAT THE CHILD~~
26 ~~HAS COMMITTED THE DELINQUENT ACT; AND~~

27 (ii) ~~THERE IS REASON TO BELIEVE THAT THE CHILD~~
28 ~~COMMITTED THE ACT AS A DIRECT RESULT OF SEX TRAFFICKING.~~

29 (2) ~~IF THE REGIONAL NAVIGATOR FINDS THAT THE CHILD IS A VICTIM~~
30 ~~OF SEX TRAFFICKING, AND IF THE COURT FINDS THAT THE CHILD COMMITTED THE~~
31 ~~VIOLATION AS A DIRECT RESULT OF, OR INCIDENTAL OR RELATED TO, SEX~~
32 ~~TRAFFICKING, THE COURT SHALL DISMISS THE CASE AND TRANSFER THE CASE TO~~
33 ~~THE DEPARTMENT OF HUMAN SERVICES.~~

1 1-402.

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

4 (2) "QUALIFYING OFFENSE" HAS THE MEANING STATED IN §
5 8-302 OF THE CRIMINAL PROCEDURE ARTICLE.

6 (3) "~~SEX TRAFFICKING~~" HAS THE MEANING STATED IN § 5-701 OF THE
7 ~~FAMILY LAW ARTICLE~~.

8 (B) ~~A MINOR MAY NOT BE CRIMINALLY PROSECUTED OR PROCEEDED
9 AGAINST AS A DELINQUENT CHILD UNDER TITLE 3, SUBTITLE 8A OF THE COURTS
10 ARTICLE FOR A QUALIFYING OFFENSE OR AN OFFENSE UNDER TITLE 3, SUBTITLE
11 11 OF THIS ARTICLE IF THE MINOR COMMITTED THE UNDERLYING ACT AS A DIRECT
12 RESULT OF SEX TRAFFICKING.~~

13 ~~11-303~~

14 (e) ~~[A person] AN ADULT~~ may not knowingly:

15 (1) ~~engage in prostitution or assignation by any means; or~~

16 (2) ~~occupy a building, structure, or conveyance for prostitution or
17 assignation.~~

18 (b) ~~A person who violates this section is guilty of a misdemeanor and on conviction
19 is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.~~

20 (e) (1) ~~Subject to paragraph (2) of this subsection, in a prosecution under this
21 section, it is an affirmative defense of duress if the defendant committed the act as a result
22 of being a victim of an act of another in violation of Title 3, Subtitle 11 of this article or the
23 prohibition against human trafficking under federal law.~~

24 (2) ~~A defendant may not assert the affirmative defense provided in
25 paragraph (1) of this subsection unless the defendant notifies the State's Attorney of the
26 defendant's intention to assert the defense at least 10 days prior to trial.~~

27 (D) ~~A LAW ENFORCEMENT OFFICER WHO ENCOUNTERS A MINOR
28 SUSPECTED OF OR KNOWN TO HAVE ENGAGED IN CONDUCT THAT AN ADULT IS
29 PROHIBITED FROM ENGAGING IN UNDER THIS SECTION MAY TAKE THE MINOR INTO
30 CUSTODY IN ACCORDANCE WITH § 3-8A-14 OF THE COURTS ARTICLE.~~

31 ~~11-306~~

1 (a) ~~[A person] AN ADULT may not knowingly procure or solicit or offer to procure~~
2 ~~or solicit prostitution or assignation.~~

3 (b) A person who violates this section is guilty of a misdemeanor and on conviction
4 is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.

12 (D) A LAW ENFORCEMENT OFFICER WHO ENCOUNTERS A MINOR
13 SUSPECTED OF OR KNOWN TO HAVE ENGAGED IN CONDUCT THAT AN ADULT IS
14 PROHIBITED FROM ENGAGING IN UNDER THIS SECTION MAY TAKE THE MINOR INTO
15 CUSTODY IN ACCORDANCE WITH § 3-8A-14 OF THE COURTS ARTICLE.

18 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN A CRIMINAL**
19 **PROSECUTION AGAINST A MINOR, OR IN A PROCEEDING AGAINST A DELINQUENT**
20 **CHILD UNDER TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE, FOR A QUALIFYING**
21 **OFFENSE, A VIOLATION, OR AN OFFENSE UNDER § 3-1102 OF THIS ARTICLE IT IS AN**
22 **AFFIRMATIVE DEFENSE OF DURESS IF THE DEFENDANT OR CHILD COMMITTED THE**
23 **ACT AS A RESULT OF BEING THE VICTIM OF ANOTHER UNDER TITLE 3, SUBTITLE 11**
24 **OF THIS ARTICLE OR THE PROHIBITION AGAINST HUMAN TRAFFICKING UNDER**
25 **FEDERAL LAW.**

26 **(2) A DEFENDANT OR A CHILD IN A DELINQUENCY PROCEEDING MAY**
27 **NOT ASSERT THE AFFIRMATIVE DEFENSE PROVIDED IN PARAGRAPH (1) OF THIS**
28 **SUBSECTION UNLESS THE DEFENDANT OR CHILD NOTIFIES THE STATE'S ATTORNEY**
29 **OF THE DEFENDANT'S OR CHILD'S INTENTION TO ASSERT THE DEFENSE AT LEAST 10**
30 **DAYS BEFORE TRIAL.**

Article – Criminal Procedure

32 8-302.

33 (a) (1) In this section the following words have the meanings indicated.

34 (2) "Qualifying offense" means:

15 (viii) misdemeanor theft under § 7-104 of the Criminal Law Article.

22 (xii) false statement to a law enforcement officer or public official
23 under § 9-501, § 9-502, or § 9-503 of the Criminal Law Article;

24 (xiii) disturbing the public peace and disorderly conduct under §
25 10–201 of the Criminal Law Article;

26 (xiv) indecent exposure under § 11-107 of the Criminal Law Article;

27 (xv) prostitution under § 11–303 of the Criminal Law Article:

28 (xvi) driving with a suspended registration under § 13-401(h) of the
29 Transportation Article;

1 (xvii) failure to display registration under § 13-409(b) of the
2 Transportation Article;

5 (xix) failure to display license to police under § 16-112(c) of the
6 Transportation Article;

(xxi) driving while privilege is canceled, suspended, refused, or revoked under § 16-303 of the Transportation Article;

13 (xxiii) driving while uninsured under § 17-107 of the Transportation
14 Article; [or]

15 (xxiv) prostitution or loitering as prohibited under local law;

22 (i) Title 3, Subtitle 11 of the Criminal Law Article; or

25 (b) A person convicted of a qualifying offense may file a motion to vacate the
26 judgment if the person's participation in the offense was a direct result of being a victim of
27 human trafficking.

Article – Family Law

(x) "Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

~~Article~~ Human Services

6 1 ~~202.~~

7 (A) IN THIS SECTION, “SEX TRAFFICKING” HAS THE MEANING STATED IN §
8 5-701 OF THE FAMILY LAW ARTICLE.

9 **(a) (B)** Except as otherwise provided in Title 5, Subtitles 7 and 12 of the Family
10 Law Article, § 1-203 of this subtitle, and this section, a person may not disclose a report or
11 record concerning child abuse [or], neglect, OR SEX TRAFFICKING.

12 ~~(b) (C)~~ A report or record concerning child abuse ~~or~~, neglect, OR SEX
13 ~~TRAFFICKING~~ shall be disclosed.

14 (1) ~~under a court order;~~

15 (2) under an order of an administrative law judge, if:

16 (i) the request for disclosure concerns a case pending before the
17 Office of Administrative Hearings; and

18 (ii) provisions are made to comply with other State or federal
19 confidentiality laws and to protect the identity of the reporter or other person whose life or
20 safety is likely to be endangered by the disclosure; or

27 (e) (D) A report or record concerning child abuse or neglect.

28 (1) ~~may be disclosed on request to:~~

29 (i) personnel of the Social Services Administration or a local
30 department of social services, law enforcement personnel, and members of
31 multidisciplinary case consultation teams, including an addiction specialist as defined in
32 Title 5, Subtitle 12 of the Family Law Article or § 5-314 of this article, who are investigating

1 a report of known or suspected child abuse or neglect or providing services to or assessing
2 a child or family that is the subject of the report;

3 (ii) local or State officials responsible for the administration of child
4 protective services, juvenile services, or child care, foster care, or adoption licensing,
5 approval, or regulations, as necessary to carry out their official functions;

6 (iii) the State Council on Child Abuse and Neglect or its designee, the
7 State Citizens Review Board for Children or its designee, or a child fatality review team,
8 as necessary to carry out their official functions;

9 (iv) a person who is the alleged abuser or neglecter, if that person is
10 responsible for the child's welfare and provisions are made for the protection of the identity
11 of the reporter or any other person whose life or safety is likely to be endangered by
12 disclosing the information;

13 (v) a licensed practitioner who, or an agency, institution, or program
14 that, is providing treatment or care to a child who is the subject of a report of child abuse
15 or neglect for a purpose relevant to the treatment or care;

16 (vi) a parent or other person who has permanent or temporary care
17 and custody of the child, if provisions are made for the protection of the identity of the
18 reporter or any other person whose life or safety is likely to be endangered by disclosing the
19 information;

20 (vii) 1. The appropriate public school superintendent or the
21 principal or equivalent employee of a nonpublic school that holds a certificate of approval
22 from the State or is registered with the State Department of Education to carry out
23 appropriate personnel or administrative actions following a report of suspected child abuse
24 involving a student committed by:

25 A. a public school employee in that school system;

26 B. an employee of that nonpublic school;

27 C. an independent contractor who supervises or works
28 directly with students in that school system or that nonpublic school; or

29 D. an employee of an independent contractor, including a bus
30 driver or bus assistant, who supervises or works directly with students in that school
31 system or that nonpublic school; and

32 2. if the report concerns suspected child abuse involving a
33 student committed by an employee, independent contractor, or employee of an independent
34 contractor described in item 1 of this item and employed by a nonpublic school under the
35 jurisdiction of the superintendent of schools for the Archdiocese of Baltimore, the

1 ~~Archdiocese of Washington, or the Catholic Diocese of Wilmington, the appropriate~~
2 ~~superintendent of schools;~~

3 ~~(viii) the director of a licensed child care facility or licensed child~~
4 ~~placement agency to carry out appropriate personnel actions following a report of suspected~~
5 ~~child abuse or neglect alleged to have been committed by an employee of the facility or~~
6 ~~agency and involving a child who is currently or was previously under the care of that~~
7 ~~facility or agency;~~

8 ~~(ix) the Juvenile Justice Monitoring Unit of the Office of the Attorney~~
9 ~~General established under Title 6, Subtitle 4 of the State Government Article;~~

10 ~~(x) subject to subsection [(d)] (E) of this section, a licensed~~
11 ~~practitioner of a hospital or birthing center to make discharge decisions concerning a child,~~
12 ~~when the practitioner suspects that the child may be in danger after discharge based on~~
13 ~~the practitioner's observation of the behavior of the child's parents or immediate family~~
14 ~~members; or~~

15 ~~(xi) the president of a Maryland public institution of higher~~
16 ~~education, as defined in § 10-101 of the Education Article, or the Chancellor of the~~
17 ~~University System of Maryland, to carry out appropriate personnel or administrative~~
18 ~~actions following a report of child abuse committed.~~

19 ~~1. by an employee of the institution who has on campus~~
20 ~~contact with children; or~~

21 ~~2. by a contractor, an employee of a contractor, or a volunteer~~
22 ~~of the institution who has on campus contact with children; and~~

23 ~~(2) may be disclosed by the Department of Human Services to the operator~~
24 ~~of a child care center that is required to be licensed or to hold a letter of compliance under~~
25 ~~Title 5, Subtitle 5, Part VII of the Family Law Article or to a family child care provider who~~
26 ~~is required to be registered under Title 5, Subtitle 5, Part V of the Family Law Article, to~~
27 ~~determine the suitability of an individual for employment in the child care center or family~~
28 ~~child care home.~~

29 ~~[(d)] (E) Only the following information concerning child abuse and neglect may~~
30 ~~be disclosed to a practitioner of a hospital or birthing center under subsection [(e)(1)(x)]~~
31 ~~(D)(1)(X) of this section:~~

32 ~~(1) whether there is a prior finding of indicated child abuse or neglect by~~
33 ~~either parent; and~~

34 ~~(2) whether there is an open investigation of child abuse or neglect pending~~
35 ~~against either parent.~~

1 ~~[(e)] (F)~~ A person who violates this section is guilty of a misdemeanor and on
2 conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or
3 both.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.