# SENATE BILL 206

E2 0lr1389
SB 691/19 – JPR CF HB 242

By: **Senators Lee, Carter, Elfreth, Ellis, Guzzone, Hester, Kagan, Kelley, King, Klausmeier, Kramer, Lam, McCray, Patterson, Pinsky, Smith, Sydnor, Waldstreicher, West, Young, and Zucker**

Introduced and read first time: January 16, 2020
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 11, 2020

CHAPTER _____

AN ACT concerning

**Criminal Procedure – Motion to Vacate Judgment – Human Trafficking (True Freedom Act of 2020)**

FOR the purpose of altering the eligibility for the filing of a certain motion to vacate judgment; altering the required contents of a certain motion; requiring that a certain motion be served on a certain State's Attorney; requiring that a certain motion be mailed to a certain victim or victim's representative at a certain address under certain circumstances; authorizing the court to grant a certain motion under certain circumstances; requiring the court to take certain factors into consideration when making a certain finding; ~~requiring~~ authorizing the court to grant a certain motion without a hearing under certain circumstances; authorizing the court to dismiss a certain motion without a hearing under certain circumstances; repealing the authority of the court to take certain actions in ruling on a certain motion; requiring the court to vacate a certain conviction if the court grants a certain motion; providing that a certain conviction may not be considered a conviction for any purpose; authorizing a person to file a petition for expungement of certain records if the person was convicted of a crime and the conviction was vacated under a certain provision of law; defining certain terms; making a conforming change; and generally relating to human trafficking and motions to vacate judgment.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 8–302 and 10–105(a)

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.

Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

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

**Article – Criminal Procedure**

8–302.

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

**(2) "QUALIFYING OFFENSE" MEANS:**

**(I) UNNATURAL OR PERVERTED SEXUAL PRACTICE UNDER § 3–322 OF THE CRIMINAL LAW ARTICLE;**

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

**(III) POSSESSING OR PURCHASING A NONCONTROLLED SUBSTANCE UNDER § 5–618 OF THE CRIMINAL LAW ARTICLE;**

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

**(V) FOURTH–DEGREE BURGLARY UNDER § 6–205 OF THE CRIMINAL LAW ARTICLE;**

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

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

**(VIII) MISDEMEANOR THEFT UNDER § 7–104 OF THE CRIMINAL LAW ARTICLE;**

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

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

**(XI) PUBLIC ASSISTANCE FRAUD UNDER § 8–503 OF THE CRIMINAL LAW ARTICLE;**

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

**(XIII) DISTURBING THE PUBLIC PEACE AND DISORDERLY CONDUCT UNDER § 10–201 OF THE CRIMINAL LAW ARTICLE;**

**(XIV) INDECENT EXPOSURE UNDER § 11–107 OF THE CRIMINAL LAW ARTICLE;**

**(XV) PROSTITUTION UNDER § 11–303 OF THE CRIMINAL LAW ARTICLE;**

**(XVI) DRIVING WITH A SUSPENDED REGISTRATION UNDER § 13–401(H) OF THE TRANSPORTATION ARTICLE;**

**(XVII) FAILURE TO DISPLAY REGISTRATION UNDER § 13–409(B) OF THE TRANSPORTATION ARTICLE;**

**(XVIII) DRIVING WITHOUT A LICENSE UNDER § 16–101 OF THE TRANSPORTATION ARTICLE;**

**(XIX) FAILURE TO DISPLAY LICENSE TO POLICE UNDER § 16–112(C) OF THE TRANSPORTATION ARTICLE;**

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

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

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

**(XXIII) DRIVING WHILE UNINSURED UNDER § 17–107 OF THE TRANSPORTATION ARTICLE; OR**

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

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

**(I) TITLE 3, SUBTITLE 11 OF THE CRIMINAL LAW ARTICLE; OR**

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

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

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

(1) be in writing;

(2) **[**be signed and consented to by the State's Attorney;

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

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

**(4) BE SERVED ON THE STATE'S ATTORNEY IN THE JURISDICTION WHERE THE CONVICTION FOR THE QUALIFYING OFFENSE OCCURRED; AND**

**(5) IF THE QUALIFYING OFFENSE OCCURRED WITHIN 5 YEARS BEFORE THE FILING OF THE MOTION, BE MAILED TO ANY VICTIM OR VICTIM'S REPRESENTATIVE AT THE VICTIM'S OR VICTIM'S REPRESENTATIVE'S LAST KNOWN ADDRESS**.

**[**(c)**] (D)** (1) **[**Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (b) of this section**] ~~AFTER A HEARING, THE~~ THE COURT MAY GRANT A MOTION FILED UNDER THIS SECTION ON A FINDING BASED ON A PREPONDERANCE OF THE EVIDENCE THAT THE MOVANT COMMITTED THE QUALIFYING OFFENSE AS A DIRECT RESULT OF BEING A VICTIM OF HUMAN TRAFFICKING**.

**(2) WHEN MAKING A FINDING UNDER THIS SUBSECTION, THE COURT SHALL CONSIDER:**

**(I) THE LENGTH OF TIME BETWEEN THE OFFENSE AND THE TRAFFICKING OF THE MOVANT;**

**(II) THE DYNAMICS OF THE RELATIONSHIP BETWEEN THE MOVANT AND THE PERSON COMMITTING TRAFFICKING AGAINST THE MOVANT; AND**

**(III) ANY OTHER RELEVANT EVIDENCE.**

**(E) THE COURT ~~SHALL~~ MAY GRANT A MOTION FILED UNDER THIS SECTION WITHOUT A HEARING IF:**

**(1) THE STATE'S ATTORNEY CONSENTS TO THE MOTION;**

**(2) NO OBJECTION TO THE RELIEF REQUESTED HAS BEEN FILED BY A VICTIM OR VICTIM'S REPRESENTATIVE; AND**

**(3) AT LEAST 60 DAYS HAVE ELAPSED SINCE NOTICE AND SERVICE UNDER SUBSECTION (C) OF THIS SECTION.**

**[**(2)**] (F)** The court may dismiss a motion **FILED UNDER THIS SECTION** without a hearing if the court finds that**:**

**(1)** the motion fails to assert grounds on which relief may be granted**;**

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

**(3) THE MOVANT ACTED FRAUDULENTLY OR IN BAD FAITH IN FILING THE MOTION**.

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

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

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

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

10–105.

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

(1) the person is acquitted;

(2) the charge is otherwise dismissed;

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

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

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

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

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

(8) the person:

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

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

(9) the person was convicted of a crime or found not criminally responsible under any State or local law that prohibits:

(i) urination or defecation in a public place;

(ii) panhandling or soliciting money;

(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;

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

(i) trespass;

(ii) disturbing the peace; or

(iii) telephone misuse;

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2020.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.