

114TH CONGRESS
2D SESSION

S. 3441

To provide for the vacating of certain convictions and expungement of certain arrests of victims of human trafficking.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

Mrs. GILLIBRAND (for herself and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the vacating of certain convictions and expungement of certain arrests of victims of human trafficking.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trafficking Survivors
5 Relief Act of 2016”.

6 **SEC. 2. FEDERAL EXPUNGEMENT FOR VICTIMS OF TRAF-**
7 **FICKING.**

8 (a) IN GENERAL.—Chapter 237 of title 18, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

1 **“§ 3772. Motion to vacate; expungement; mitigating**
 2 **factors**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘child’ means an individual who
 5 has not attained 18 years of age;

6 “(2) the term ‘covered offense’—

7 “(A) means a Federal offense that is not—

8 “(i) a violent crime; or

9 “(ii) an offense of which a child was
 10 a victim; and

11 “(B) includes—

12 “(i) a conspiracy to commit an offense
 13 described in subparagraph (A)(i) of which
 14 a child was not a victim; and

15 “(ii) a conspiracy to commit an of-
 16 fense described in subparagraph (A)(ii)
 17 that is not a violent crime;

18 “(3) the term ‘covered prisoner’ means an indi-
 19 vidual who—

20 “(A) was convicted of a noncovered offense
 21 before the date of enactment of this section;

22 “(B) was sentenced to a term of imprison-
 23 ment for the noncovered offense; and

24 “(C) is imprisoned under such term of im-
 25 prisonment;

26 “(4) the term ‘eligible entity’ includes—

1 “(A) a legal aid society or legal services or-
2 ganization that provides indigent legal services;

3 “(B) a nonprofit organization that provides
4 legal services to victims of trafficking; and

5 “(C) a public defender’s office;

6 “(5) the terms ‘employee’ and ‘officer’ have the
7 meanings given the terms in section 2105 of title 5;

8 “(6) the term ‘Federal offense’ means an of-
9 fense that is punishable under Federal law or the
10 laws of the District of Columbia;

11 “(7) the term ‘noncovered offense’—

12 “(A) means a Federal offense that is a vio-
13 lent crime;

14 “(B) does not include a Federal offense
15 that is a violent crime of which a child was a
16 victim; and

17 “(C) includes a conspiracy to commit an
18 offense described in subparagraph (B);

19 “(8) the term ‘victim of trafficking’ has the
20 meaning given that term in section 103 of the Traf-
21 ficking Victims Protection Act of 2000 (22 U.S.C.
22 7102); and

23 “(9) the term ‘violent crime’ has the meaning
24 given that term in section 103 of the Juvenile Jus-

1 tice and Delinquency Prevention Act of 1974 (42
2 U.S.C. 5603).

3 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
4 PUNGE ARRESTS.—

5 “(1) IN GENERAL.—

6 “(A) CONVICTIONS OF COVERED OF-
7 FENSES.—A person convicted of any covered of-
8 fense (or an eligible entity representing such a
9 person) may move the court which imposed the
10 sentence for the covered offense to vacate the
11 judgment of conviction if the covered offense
12 was committed as a direct result of the person
13 having been a victim of trafficking.

14 “(B) ARRESTS FOR COVERED OF-
15 FENSES.—A person arrested for any covered of-
16 fense (or an eligible entity representing such a
17 person) may move the district court for the dis-
18 trict and division embracing the place where the
19 person was arrested to expunge all records of
20 the arrest if the conduct or alleged conduct of
21 the person which resulted in the arrest was di-
22 rectly related to the person having been a vic-
23 tim of trafficking.

24 “(C) ARRESTS FOR NONCOVERED OF-
25 FENSES.—A person arrested for any noncovered

1 offense (or an eligible entity representing such
2 a person) may move the district court for the
3 district and division embracing the place where
4 the person was arrested to expunge all records
5 of the arrest if—

6 “(i) the conduct or alleged conduct of
7 the person which resulted in the arrest was
8 directly related to the person having been
9 a victim of trafficking; and

10 “(ii)(I) the person is acquitted of the
11 noncovered offense;

12 “(II) the government does not pursue
13 or dismisses criminal charges against the
14 person for the noncovered offense; or

15 “(III)(aa) the charges against the per-
16 son for the noncovered offense are reduced
17 to an offense that is a covered offense; and

18 “(bb) the person is acquitted of the
19 covered offense, the government does not
20 pursue or dismisses criminal charges
21 against the person for the covered offense,
22 or any subsequent conviction of the cov-
23 ered offense is vacated.

24 “(2) CONTENTS OF MOTION.—A motion de-
25 scribed in paragraph (1) shall—

1 “(A) be in writing;

2 “(B) describe any supporting evidence;

3 “(C) state the offense; and

4 “(D) include copies of any documents
5 showing that the movant is entitled to relief
6 under this section.

7 “(3) HEARING.—

8 “(A) MANDATORY HEARING.—

9 “(i) MOTION IN OPPOSITION.—Not
10 later than 30 days after the date on which
11 a motion is filed under paragraph (1), the
12 Government may file a motion in opposi-
13 tion of the motion filed under paragraph
14 (1).

15 “(ii) MANDATORY HEARING.—If the
16 Government files a motion described in
17 clause (i), not later than 15 days after the
18 date on which the motion is filed, the court
19 shall hold a hearing on the motion.

20 “(B) DISCRETIONARY HEARING.—If the
21 Government does not file a motion described in
22 subparagraph (A)(i), the court may hold a
23 hearing on the motion not later than 45 days
24 after the date on which a motion is filed under
25 paragraph (1).

1 “(4) FACTORS.—

2 “(A) VACATING CONVICTIONS OF COVERED
3 OFFENSES.—The court may grant a motion
4 under paragraph (1)(A) if, after notice to the
5 Government and an opportunity to be heard,
6 the court finds, by clear and convincing evi-
7 dence, that—

8 “(i) the movant was convicted of a
9 covered offense; and

10 “(ii) the participation in the covered
11 offense by the movant was a direct result
12 of the movant having been a victim of traf-
13 ficking.

14 “(B) EXPUNGING ARRESTS FOR COVERED
15 OFFENSES.—The court may grant a motion
16 under paragraph (1)(B) if, after notice to the
17 Government and an opportunity to be heard,
18 the court finds, by clear and convincing evi-
19 dence, that—

20 “(i) the movant was arrested for a
21 covered offense; and

22 “(ii) the conduct or alleged conduct
23 which resulted in the arrest was directly
24 related to the movant having been a victim
25 of trafficking.

1 “(C) EXPUNGING ARRESTS FOR NON-
2 COVERED OFFENSES.—The court may grant a
3 motion under paragraph (1)(C) if, after notice
4 to the Government and an opportunity to be
5 heard, the court finds, by clear and convincing
6 evidence, that—

7 “(i) the movant was arrested for a
8 noncovered offense and the conduct or al-
9 leged conduct which resulted in the arrest
10 was directly related to the movant having
11 been a victim of trafficking; and

12 “(ii)(I) the person is acquitted of the
13 noncovered offense;

14 “(II) the government does not pursue
15 or dismisses criminal charges against the
16 person for the covered offense; or

17 “(III)(aa) the charges against the per-
18 son for the noncovered offense are reduced
19 to a covered offense; and

20 “(bb) the person is acquitted of the
21 covered offense, the government does not
22 pursue or dismissed criminal charges
23 against the person for the covered offense,
24 or any subsequent conviction of that cov-
25 ered offense is vacated.

1 “(5) SUPPORTING EVIDENCE.—

2 “(A) REBUTTABLE PRESUMPTION.—For
3 purposes of this section, there shall be a rebut-
4 table presumption that the movant is a victim
5 of trafficking if the movant includes in the mo-
6 tion—

7 “(i) a copy of an official record, cer-
8 tification, or eligibility letter from a Fed-
9 eral, State, tribal, or local proceeding, in-
10 cluding an approval notice or an enforce-
11 ment certification generated from a Fed-
12 eral immigration proceeding, that shows
13 that the movant was a victim of traf-
14 ficking, including a victim of a trafficker
15 charged with a violation of chapter 77; or

16 “(ii) an affidavit or sworn testimony
17 from a trained professional staff member
18 of a victim services organization, an attor-
19 ney, a member of the clergy, or a medical
20 or other professional from whom the mov-
21 ant has sought assistance in addressing
22 the trauma associated with being a victim
23 of trafficking.

24 “(B) OTHER EVIDENCE.—

1 “(i) IN GENERAL.—For purposes of
2 this section, in determining whether the
3 movant is a victim of trafficking, the court
4 may consider any other evidence the court
5 determines is of sufficient credibility and
6 probative value, including an affidavit or
7 sworn testimony of the movant.

8 “(ii) AFFIDAVIT OR SWORN TESTI-
9 MONY OF MOVANT SUFFICIENT EVI-
10 DENCE.—The affidavit or sworn testimony
11 of the movant described in clause (i) shall
12 be sufficient evidence to vacate a convic-
13 tion or expunge an arrest under this sec-
14 tion if the court determines that—

15 “(I) the affidavit or sworn testi-
16 mony is credible; and

17 “(II) no other evidence is readily
18 available.

19 “(6) CONVICTION OR ARREST OF OTHER PER-
20 SONS NOT REQUIRED.—It shall not be necessary
21 that any person other than the movant be convicted
22 of or arrested for a covered offense before the mov-
23 ant may file a motion under paragraph (1).

24 “(7) DENIAL OF MOTION.—

1 “(A) IN GENERAL.—If the court denies a
2 motion filed under paragraph (1), the denial
3 shall be without prejudice.

4 “(B) REASONS FOR DENIAL.—If the court
5 denies a motion filed under paragraph (1), the
6 court shall state the reasons for the denial in
7 writing.

8 “(C) REASONABLE TIME TO CURE DEFICI-
9 CIENCIES IN MOTION.—If the motion was de-
10 nied due to a curable deficiency in the motion,
11 the court shall allow the movant sufficient time
12 for the movant to cure the deficiency.

13 “(8) APPEAL.—An order granting or denying a
14 motion under this section may be appealed in ac-
15 cordance with section 1291 of title 28 and section
16 3731 of this title.

17 “(c) VACATUR OF CONVICTIONS.—

18 “(1) IN GENERAL.—If the court grants a mo-
19 tion to vacate a conviction under subsection (b), the
20 court shall immediately vacate the conviction for
21 cause, set aside the verdict and enter a judgment of
22 acquittal, and enter an expungement order that di-
23 rects that there be expunged from all official records
24 all references to—

1 “(A) the arrest of the person for the cov-
2 ered offense;

3 “(B) the institution of criminal pro-
4 ceedings against the person relating to the cov-
5 ered offense; and

6 “(C) the results of the proceedings.

7 “(2) EFFECT.—If a conviction is vacated under
8 an order entered under paragraph (1)—

9 “(A) the conviction shall not be regarded
10 as a conviction under Federal law and the per-
11 son for whom the conviction was vacated shall
12 be considered to have the status occupied by the
13 person before the arrest or the institution of the
14 criminal proceedings related to such conviction;
15 and

16 “(B) no alien may be removed, determined
17 to be inadmissible, or lose any immigration ben-
18 efit because of such conviction, arrest, or insti-
19 tution of criminal proceedings.

20 “(d) EXPUNGEMENT OF ARRESTS.—

21 “(1) IN GENERAL.—If the court grants a mo-
22 tion to expunge an arrest under subsection (b), the
23 court shall immediately enter an expungement order
24 that directs that there be expunged from all official
25 records all references to—

1 “(A) the arrest of the person for the cov-
2 ered offense;

3 “(B) the institution of any criminal pro-
4 ceedings against the person relating to the cov-
5 ered offense; and

6 “(C) the results of the proceedings, if any.

7 “(2) EFFECT.—If an arrest is expunged under
8 an order entered under paragraph (1)—

9 “(A) the arrest shall not be regarded as an
10 arrest under Federal law and the person for
11 whom the arrest is expunged shall be consid-
12 ered to have the status occupied by the person
13 before the arrest or the institution of the crimi-
14 nal proceedings related to such arrest, if any;
15 and

16 “(B) no alien may be removed, determined
17 to be inadmissible, or lose any immigration ben-
18 efit because of arrest or institution of criminal
19 proceedings, if any.

20 “(e) MITIGATING FACTORS.—

21 “(1) IN GENERAL.—The court which imposed
22 sentence for a noncovered offense upon a covered
23 prisoner may reduce the term of imprisonment for
24 the noncovered offense—

1 “(A) upon motion by a covered prisoner,
2 the Director of the Bureau of Prisons, or the
3 court’s own motion;

4 “(B) after notice to the Government;

5 “(C) after considering—

6 “(i) the factors set forth in section
7 3553(a);

8 “(ii) the nature and seriousness of the
9 danger to any person; and

10 “(iii) the community, or any crime
11 victims; and

12 “(D) if the court finds, by clear and con-
13 vincing evidence, that the covered prisoner com-
14 mitted the noncovered offense as a direct result
15 of the covered prisoner having been a victim of
16 trafficking.

17 “(2) REBUTTABLE PRESUMPTION.—For the
18 purposes of this subsection, there shall be a rebutta-
19 ble presumption that a covered prisoner is a victim
20 of trafficking if the covered prisoner provides—

21 “(A) a copy of an official record, certifi-
22 cation, or eligibility letter from a Federal,
23 State, tribal, or local proceeding, including an
24 approval notice or an enforcement certification
25 generated from a Federal immigration pro-

ceeding, that shows that the covered prisoner was a victim of trafficking, including a victim of a trafficker charged with a violation of chapter 77; or

“(B) an affidavit or sworn testimony from a trained professional staff member of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the covered prisoner has sought assistance in addressing the trauma associated with being a victim of trafficking.

“(3) REQUIREMENT.—Any proceeding under this subsection shall be subject to section 3771.

“(4) PARTICULARIZED INQUIRY.—For any motion under paragraph (1), the Government shall conduct a particularized inquiry of the facts and circumstances of the original sentencing of the covered prisoner in order to assess whether a reduction in sentence would be consistent with this section.

“(f) ADDITIONAL ACTIONS BY COURT.—The court may, upon granting a motion under this section take such additional action as the court determines is appropriate.

“(g) CONFIDENTIALITY OF MOVANT.—

1 “(1) IN GENERAL.—A motion under this sec-
 2 tion and any documents, pleadings, or orders relat-
 3 ing to the motion shall be filed under seal.

4 “(2) INFORMATION NOT AVAILABLE FOR PUB-
 5 LIC INSPECTION.—No officer or employee may make
 6 any report, paper, picture, photograph, court file or
 7 other document, in the custody or possession of the
 8 officer or employee, that identifies the movant avail-
 9 able for public inspection.

10 “(h) APPLICABILITY.—This section shall apply to any
 11 conviction or arrest occurring before, on, or after the date
 12 of enactment of this section.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 14 The table of sections of chapter 237 of title 18, United
 15 States Code, is amended by adding at the end the fol-
 16 lowing:

“3772. Motion to vacate; expungement; mitigating factors.”.

