

115TH CONGRESS
1ST SESSION

H. R. 459

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 2017

Mrs. WAGNER (for herself, Ms. GABBARD, Mr. SENSENBRENNER, Mrs. MIMI WALTERS of California, Mrs. COMSTOCK, Mrs. BEATTY, Mr. MEEHAN, Mr. DESANTIS, Mr. PAULSEN, Mrs. BROOKS of Indiana, Mrs. NOEM, Mr. KNIGHT, Mrs. BLACK, Mr. YOHO, Mr. CRAMER, Ms. MOORE, Mr. FARENTHOLD, Mr. JOYCE of Ohio, Ms. STEFANIK, Mr. YOUNG of Iowa, Mrs. HARTZLER, Mr. COSTELLO of Pennsylvania, Ms. TITUS, and Mr. ROYCE of California) introduced the following bill; which was 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 2017”.

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

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

6 **“§ 3772. Motion to vacate; expungement; mitigating**
7 **factors**

8 “(a) DEFINITIONS.—In this section—

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

11 “(2) the term ‘covered offense’—

12 “(A) includes any offense against the
13 United States and any offense punishable under
14 the laws of the District of Columbia; and

15 “(B) does not include—

16 “(i) a crime of violence; or

17 “(ii) an offense, if a child was a vic-
18 tim of the offense;

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

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

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

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

1 “(4) the term ‘crime of violence’ has the mean-
2 ing given that term in section 16;

3 “(5) the term ‘eligible entity’ includes—

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

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

8 “(C) a public defender’s office;

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

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

12 “(A) means an offense that is an offense
13 against the United States or punishable under
14 the laws of the District of Columbia; and

15 “(B) does not include an offense, if a child
16 was a victim of the offense; and

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

21 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
22 PUNGE ARRESTS.—

23 “(1) IN GENERAL.—

24 “(A) CONVICTIONS OF COVERED OF-
25 FENSES.—A person convicted of any covered of-

1 fense (or an eligible entity representing such a
2 person) may move the court which imposed the
3 sentence for the covered offense to vacate the
4 judgment of conviction if the covered offense
5 was committed as a direct result of the person
6 having been a victim of trafficking.

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

17 “(C) ARRESTS FOR NONCOVERED OF-
18 FENSES.—A person arrested for any noncovered
19 offense (or an eligible entity representing such
20 a person) may move the district court for the
21 district and division embracing the place where
22 the person was arrested to expunge all records
23 of the arrest if—

24 “(i) the conduct or alleged conduct of
25 the person which resulted in the arrest was

1 directly related to the person having been
2 a victim of trafficking; and

3 “(ii)(I) the person is acquitted of the
4 noncovered offense;

5 “(II) the Government does not pursue
6 or dismisses criminal charges against the
7 person for the noncovered offense; or

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

11 “(bb) the person is acquitted of the
12 covered offense, the Government does not
13 pursue or dismisses criminal charges
14 against the person for the covered offense,
15 or any subsequent conviction of the cov-
16 ered offense is vacated.

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

19 “(A) be in writing;

20 “(B) describe any supporting evidence;

21 “(C) state the offense; and

22 “(D) include copies of any documents
23 showing that the movant is entitled to relief
24 under this section.

25 “(3) HEARING.—

1 “(A) MANDATORY HEARING.—

2 “(i) MOTION IN OPPOSITION.—Not
3 later than 30 days after the date on which
4 a motion is filed under paragraph (1), the
5 Government may file a motion in opposi-
6 tion of the motion filed under paragraph
7 (1).

8 “(ii) MANDATORY HEARING.—If the
9 Government files a motion described in
10 clause (i), not later than 15 days after the
11 date on which the motion is filed, the court
12 shall hold a hearing on the motion.

13 “(B) DISCRETIONARY HEARING.—If the
14 Government does not file a motion described in
15 subparagraph (A)(i), the court may hold a
16 hearing on the motion not later than 45 days
17 after the date on which a motion is filed under
18 paragraph (1).

19 “(4) FACTORS.—

20 “(A) VACATING CONVICTIONS OF COVERED
21 OFFENSES.—The court shall grant a motion
22 under paragraph (1)(A) if, after notice to the
23 Government and an opportunity to be heard,
24 the court finds, by a preponderance of the evi-
25 dence, that—

1 “(i) the movant was convicted of a
2 covered offense; and

3 “(ii) the participation in the covered
4 offense by the movant was a direct result
5 of the movant having been a victim of traf-
6 ficking.

7 “(B) EXPUNGING ARRESTS FOR COVERED
8 OFFENSES.—The court shall grant a motion
9 under paragraph (1)(B) if, after notice to the
10 Government and an opportunity to be heard,
11 the court finds, by a preponderance of the evi-
12 dence, that—

13 “(i) the movant was arrested for a
14 covered offense; and

15 “(ii) the conduct or alleged conduct
16 which resulted in the arrest was directly
17 related to the movant having been a victim
18 of trafficking.

19 “(C) EXPUNGING ARRESTS FOR NON-
20 COVERED OFFENSES.—The court shall grant a
21 motion under paragraph (1)(C) if, after notice
22 to the Government and an opportunity to be
23 heard, the court finds, by a preponderance of
24 the evidence, that—

1 “(i) the movant was arrested for a
2 noncovered offense and the conduct or al-
3 leged conduct which resulted in the arrest
4 was directly related to the movant having
5 been a victim of trafficking; and

6 “(ii)(I) the person is acquitted of the
7 noncovered offense;

8 “(II) the Government does not pursue
9 or dismisses criminal charges against the
10 person for the covered offense; or

11 “(III)(aa) the charges against the per-
12 son for the noncovered offense are reduced
13 to a covered offense; and

14 “(bb) the person is acquitted of the
15 covered offense, the Government does not
16 pursue or dismissed criminal charges
17 against the person for the covered offense,
18 or any subsequent conviction of that cov-
19 ered offense is vacated.

20 “(5) SUPPORTING EVIDENCE.—

21 “(A) REBUTTABLE PRESUMPTION.—For
22 purposes of this section, there shall be a rebut-
23 table presumption that the movant is a victim
24 of trafficking if the movant includes in the mo-
25 tion—

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

10 “(ii) an affidavit or sworn testimony
11 from a trained professional staff member
12 of a victim services organization, an attor-
13 ney, a member of the clergy, or a medical
14 or other professional from whom the mov-
15 ant has sought assistance in addressing
16 the trauma associated with being a victim
17 of trafficking.

18 “(B) OTHER EVIDENCE.—

19 “(i) IN GENERAL.—For purposes of
20 this section, in determining whether the
21 movant is a victim of trafficking, the court
22 may consider any other evidence the court
23 determines is of sufficient credibility and
24 probative value, including an affidavit or
25 sworn testimony of the movant.

1 “(ii) AFFIDAVIT OR SWORN TESTI-
2 MONY OF MOVANT SUFFICIENT EVI-
3 DENCE.—The affidavit or sworn testimony
4 of the movant described in clause (i) shall
5 be sufficient evidence to vacate a convic-
6 tion or expunge an arrest under this sec-
7 tion if the court determines that—

8 “(I) the affidavit or sworn testi-
9 mony is credible; and

10 “(II) no other evidence is readily
11 available.

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

17 “(7) DENIAL OF MOTION.—

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

21 “(B) REASONS FOR DENIAL.—If the court
22 denies a motion filed under paragraph (1), the
23 court shall state the reasons for the denial in
24 writing.

1 “(C) REASONABLE TIME TO CURE DEFICIENCIES IN MOTION.—If the motion was denied due to a curable deficiency in the motion, the court shall allow the movant sufficient time for the movant to cure the deficiency.

6 “(8) APPEAL.—An order granting or denying a motion under this section may be appealed in accordance with section 1291 of title 28 and section 3731 of this title.

10 “(c) VACATUR OF CONVICTIONS.—

11 “(1) IN GENERAL.—If the court grants a motion to vacate a conviction under subsection (b), the court shall immediately vacate the conviction for cause, set aside the verdict and enter a judgment of acquittal, and enter an expungement order that directs that there be expunged from all official records all references to—

18 “(A) the arrest of the person for the covered offense;

20 “(B) the institution of criminal proceedings against the person relating to the covered offense; and

23 “(C) the results of the proceedings.

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

1 “(A) the conviction shall not be regarded
2 as a conviction under Federal law and the per-
3 son for whom the conviction was vacated shall
4 be considered to have the status occupied by the
5 person before the arrest or the institution of the
6 criminal proceedings related to such conviction;
7 and

8 “(B) no alien may be removed, determined
9 to be inadmissible, or lose any immigration ben-
10 efit because of such conviction, arrest, or insti-
11 tution of criminal proceedings.

12 “(d) EXPUNGEMENT OF ARRESTS.—

13 “(1) IN GENERAL.—If the court grants a mo-
14 tion to expunge an arrest under subsection (b), the
15 court shall immediately enter an expungement order
16 that directs that there be expunged from all official
17 records all references to—

18 “(A) the arrest of the person for the cov-
19 ered offense;

20 “(B) the institution of any criminal pro-
21 ceedings against the person relating to the cov-
22 ered offense; and

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

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

1 “(A) the arrest shall not be regarded as an
2 arrest under Federal law and the person for
3 whom the arrest is expunged shall be consid-
4 ered to have the status occupied by the person
5 before the arrest or the institution of the crimi-
6 nal proceedings related to such arrest, if any;
7 and

8 “(B) no alien may be removed, determined
9 to be inadmissible, or lose any immigration ben-
10 efit because of arrest or institution of criminal
11 proceedings, if any.

12 “(e) MITIGATING FACTORS.—

13 “(1) IN GENERAL.—The court which imposed
14 sentence for a noncovered offense upon a covered
15 prisoner may reduce the term of imprisonment for
16 the noncovered offense—

17 “(A) upon motion by a covered prisoner,
18 the Director of the Bureau of Prisons, or the
19 court’s own motion;

20 “(B) after notice to the Government;

21 “(C) after considering—

22 “(i) the factors set forth in section
23 3553(a);

24 “(ii) the nature and seriousness of the
25 danger to any person; and

1 “(iii) the community, or any crime
2 victims; and

3 “(D) if the court finds, by a preponderance
4 of the evidence, that the covered prisoner com-
5 mitted the noncovered offense as a direct result
6 of the covered prisoner having been a victim of
7 trafficking.

8 “(2) REBUTTABLE PRESUMPTION.—For the
9 purposes of this subsection, there shall be a rebutta-
10 ble presumption that a covered prisoner is a victim
11 of trafficking if the covered prisoner provides—

12 “(A) a copy of an official record, certifi-
13 cation, or eligibility letter from a Federal,
14 State, tribal, or local proceeding, including an
15 approval notice or an enforcement certification
16 generated from a Federal immigration pro-
17 ceeding, that shows that the covered prisoner
18 was a victim of trafficking, including a victim
19 of a trafficker charged with a violation of chap-
20 ter 77; or

21 “(B) an affidavit or sworn testimony from
22 a trained professional staff member of a victim
23 services organization, an attorney, a member of
24 the clergy, or a medical or other professional
25 from whom the covered prisoner has sought as-

1 sistance in addressing the trauma associated
2 with being a victim of trafficking.

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

5 “(4) PARTICULARIZED INQUIRY.—For any mo-
6 tion under paragraph (1), the Government shall con-
7 duct a particularized inquiry of the facts and cir-
8 cumstances of the original sentencing of the covered
9 prisoner in order to assess whether a reduction in
10 sentence would be consistent with this section.

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

14 “(g) CONFIDENTIALITY OF MOVANT.—

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

18 “(2) INFORMATION NOT AVAILABLE FOR PUB-
19 LIC INSPECTION.—No officer or employee may make
20 any report, paper, picture, photograph, court file or
21 other document, in the custody or possession of the
22 officer or employee, that identifies the movant avail-
23 able for public inspection.

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

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

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

