

116TH CONGRESS
2D SESSION

S. 3240

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

JANUARY 28, 2020

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 2020”.

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 prisoner’ means an indi-
7 vidual who—

8 “(A) was convicted of a level B offense;

9 “(B) was sentenced to a term of imprison-
10 ment for the level B offense; and

11 “(C) is imprisoned under such term of im-
12 prisonment;

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

15 “(4) the term ‘Federal offense’ means an of-
16 fense that is punishable under Federal law;

17 “(5) the term ‘level A offense’ means a Federal
18 offense that is not a violent crime;

19 “(6) the term ‘level B offense’—

20 “(A) means a Federal offense that is a vio-
21 lent crime; and

22 “(B) does not include a Federal offense
23 that is a violent crime of which a child was a
24 victim;

25 “(7) the term ‘level C offense’ means any Fed-
26 eral offense that is not a level A offense;

1 “(8) the term ‘victim of trafficking’ has the
 2 meaning given that term in section 103 of the Traf-
 3 ficking Victims Protection Act of 2000 (22 U.S.C.
 4 7102); and

5 “(9) the term ‘violent crime’ has the meaning
 6 given that term in section 103 of the Juvenile Jus-
 7 tice and Delinquency Prevention Act of 1974 (34
 8 U.S.C. 11103).

9 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
 10 PUNGE ARRESTS.—

11 “(1) IN GENERAL.—

12 “(A) CONVICTIONS OF LEVEL A OF-
 13 FENSES.—A person convicted of any level A of-
 14 fense (or an attorney representing such a per-
 15 son) may move the court that imposed the sen-
 16 tence for the level A offense to vacate the judg-
 17 ment of conviction if the level A offense was
 18 committed as a direct result of the person hav-
 19 ing been a victim of trafficking.

20 “(B) ARRESTS FOR LEVEL A OFFENSES.—

21 A person arrested for any level A offense (or an
 22 attorney representing such a person) may move
 23 the district court of the United States for the
 24 district and division embracing the place where
 25 the person was arrested to expunge all records

1 of the arrest if the conduct or alleged conduct
2 of the person that resulted in the arrest was di-
3 rectly related to the person having been a vic-
4 tim of trafficking.

5 “(C) ARRESTS FOR LEVEL C OFFENSES.—

6 A person arrested for any level C offense (or an
7 attorney representing such a person) may move
8 the district court of the United States for the
9 district and division embracing the place where
10 the person was arrested to expunge all records
11 of the arrest if—

12 “(i) the conduct or alleged conduct of
13 the movant that resulted in the arrest was
14 directly related to the movant having been
15 a victim of trafficking; and

16 “(ii)(I) the movant was acquitted of
17 the level C offense;

18 “(II) the Government did not pursue
19 or dismissed criminal charges against the
20 movant for the level C offense; or

21 “(III)(aa) the charges against the
22 movant for the level C offense were re-
23 duced to an offense that is a level A of-
24 fense; and

1 “(bb) the movant was acquitted of the
 2 level A offense, the Government did not
 3 pursue or dismissed criminal charges
 4 against the movant for the level A offense,
 5 or any subsequent conviction of the level A
 6 offense was vacated.

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

9 “(A) be in writing;

10 “(B) describe any supporting evidence;

11 “(C) state the offense; and

12 “(D) include copies of any documents
 13 showing that the movant is entitled to relief
 14 under this section.

15 “(3) HEARING.—

16 “(A) MANDATORY HEARING.—

17 “(i) MOTION IN OPPOSITION.—Not
 18 later than 30 days after the date on which
 19 a motion is filed under paragraph (1), the
 20 Government may file a motion in opposi-
 21 tion of the motion filed under paragraph
 22 (1).

23 “(ii) MANDATORY HEARING.—If the
 24 Government files a motion described in
 25 clause (i), not later than 15 days after the

1 date on which the motion is filed, the court
2 shall hold a hearing on the motion.

3 “(B) DISCRETIONARY HEARING.—If the
4 Government does not file a motion described in
5 subparagraph (A)(i), the court may hold a
6 hearing on the motion not later than 45 days
7 after the date on which a motion is filed under
8 paragraph (1).

9 “(4) FACTORS.—

10 “(A) VACATING CONVICTIONS OF LEVEL A
11 OFFENSES.—The court may grant a motion
12 under paragraph (1)(A) if, after notice to the
13 Government and an opportunity to be heard,
14 the court finds, by clear and convincing evi-
15 dence, that—

16 “(i) the movant was convicted of a
17 level A offense; and

18 “(ii) the participation in the level A
19 offense by the movant was a direct result
20 of the movant having been a victim of traf-
21 ficking.

22 “(B) EXPUNGING ARRESTS FOR LEVEL A
23 OFFENSES.—The court may grant a motion
24 under paragraph (1)(B) if, after notice to the
25 Government and an opportunity to be heard,

1 the court finds, by clear and convincing evi-
2 dence, that—

3 “(i) the movant was arrested for a
4 level A offense; and

5 “(ii) the conduct or alleged conduct
6 that resulted in the arrest was directly re-
7 lated to the movant having been a victim
8 of trafficking.

9 “(C) EXPUNGING ARRESTS FOR LEVEL C
10 OFFENSES.—The court may grant a motion
11 under paragraph (1)(C) if, after notice to the
12 Government and an opportunity to be heard,
13 the court finds, by clear and convincing evi-
14 dence, that—

15 “(i) the movant was arrested for a
16 level C offense and the conduct or alleged
17 conduct that resulted in the arrest was di-
18 rectly related to the movant having been a
19 victim of trafficking; and

20 “(ii)(I) the movant was acquitted of
21 the level C offense;

22 “(II) the Government did not pursue
23 or dismissed criminal charges against the
24 movant for the level C offense; or

1 “(III)(aa) the charges against the
2 movant for the level C offense were re-
3 duced to a level A offense; and

4 “(bb) the movant was acquitted of the
5 level A offense, the Government did not
6 pursue or dismissed criminal charges
7 against the movant for the level A offense,
8 or any subsequent conviction of that level
9 A offense was vacated.

10 “(5) SUPPORTING EVIDENCE.—

11 “(A) REBUTTABLE PRESUMPTION.—For
12 purposes of this subsection, there shall be a re-
13 buttable presumption that the movant is a vic-
14 tim of trafficking if the movant includes in the
15 motion—

16 “(i) a copy of an official record, cer-
17 tification, or eligibility letter from a Fed-
18 eral, State, Tribal, or local proceeding, in-
19 cluding an approval notice or an enforce-
20 ment certification generated from a Fed-
21 eral immigration proceeding, that shows
22 that the movant was a victim of traf-
23 ficking, including a victim of a trafficker
24 charged with a violation of chapter 77; or

1 “(ii) an affidavit or sworn testimony
2 from a trained professional staff member
3 of a victim services organization, an attorney,
4 a member of the clergy, a medical
5 professional, or another professional from
6 whom the movant has sought assistance in
7 addressing the trauma associated with
8 being a victim of trafficking.

9 “(B) OTHER EVIDENCE.—

10 “(i) IN GENERAL.—For purposes of
11 this section, in determining whether the
12 movant is a victim of trafficking, the court
13 may consider any other evidence the court
14 determines is of sufficient credibility and
15 probative value, including an affidavit or
16 sworn testimony of the movant.

17 “(ii) AFFIDAVIT OR SWORN TESTI-
18 MONY OF MOVANT SUFFICIENT EVI-
19 DENCE.—The affidavit or sworn testimony
20 of the movant described in clause (i) shall
21 be sufficient evidence to vacate a conviction
22 or expunge an arrest under this section
23 if the court determines that—

24 “(I) the affidavit or sworn testimony
25 is credible; and

1 “(II) no other evidence is readily
2 available.

3 “(6) CONVICTION OR ARREST OF OTHER PER-
4 SONS NOT REQUIRED.—It shall not be necessary
5 that any person other than the movant be convicted
6 of or arrested for an offense before the movant may
7 file a motion under paragraph (1).

8 “(7) DENIAL OF MOTION.—

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

12 “(B) REASONS FOR DENIAL.—If the court
13 denies a motion filed under paragraph (1), the
14 court shall state the reasons for the denial in
15 writing.

16 “(C) REASONABLE TIME TO CURE DEFICI-
17 CIENCIES IN MOTION.—If the motion was de-
18 nied due to a curable deficiency in the motion,
19 the court shall allow the movant sufficient time
20 to cure the deficiency.

21 “(8) APPEAL.—An order granting or denying a
22 motion under this section may be appealed in ac-
23 cordance with section 1291 of title 28.

24 “(c) VACATUR OF CONVICTIONS.—

1 “(1) IN GENERAL.—If the court grants a mo-
2 tion to vacate a conviction of a level A offense under
3 subsection (b), the court shall immediately vacate
4 the conviction for cause, set aside the verdict and
5 enter a judgment of acquittal, and enter an
6 expungement order that directs that there be ex-
7 punged from all official records all references to—

8 “(A) the arrest of the movant for the level
9 A offense;

10 “(B) the institution of criminal pro-
11 ceedings against the movant relating to the
12 level A offense; and

13 “(C) the results of the proceedings.

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

16 “(A) the conviction shall not be regarded
17 as a conviction under Federal law and the mov-
18 ant for whom the conviction was vacated shall
19 be considered to have the status occupied by the
20 movant before the arrest or the institution of
21 the criminal proceedings related to such convic-
22 tion; and

23 “(B) no alien may be removed, determined
24 to be inadmissible, or lose any immigration ben-

1 efit because of such conviction, arrest, or insti-
 2 tution of criminal proceedings.

3 “(d) EXPUNGEMENT OF ARRESTS.—

4 “(1) IN GENERAL.—If the court grants a mo-
 5 tion to expunge all records of an arrest for an of-
 6 fense under subsection (b), the court shall imme-
 7 diately enter an expungement order that directs that
 8 there be expunged from all official records all ref-
 9 erences to—

10 “(A) the arrest of the movant for the of-
 11 fense;

12 “(B) the institution of any criminal pro-
 13 ceedings against the movant relating to the of-
 14 fense; and

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

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

18 “(A) the arrest shall not be regarded as an
 19 arrest under Federal law and the movant for
 20 whom the arrest is expunged shall be consid-
 21 ered to have the status occupied by the movant
 22 before the arrest or the institution of the crimi-
 23 nal proceedings related to such arrest, if any;
 24 and

1 “(B) no alien may be removed, determined
 2 to be inadmissible, or lose any immigration ben-
 3 efit because of arrest or institution of criminal
 4 proceedings, if any.

5 “(e) MITIGATING FACTORS.—

6 “(1) IN GENERAL.—The court that imposed
 7 sentence for a level B offense upon a covered pris-
 8 oner may reduce the term of imprisonment for the
 9 level B offense—

10 “(A) upon—

11 “(i) motion by the covered prisoner or
 12 the Director of the Bureau of Prisons; or

13 “(ii) the court’s own motion;

14 “(B) after notice to the Government;

15 “(C) after considering—

16 “(i) the factors set forth in section
 17 3553(a);

18 “(ii) the nature and seriousness of the
 19 danger to any person; and

20 “(iii) the community, or any crime
 21 victims; and

22 “(D) if the court finds, by clear and con-
 23 vincing evidence, that the covered prisoner com-
 24 mitted the level B offense as a direct result of

1 the covered prisoner having been a victim of
2 trafficking.

3 “(2) REBUTTABLE PRESUMPTION.—For the
4 purposes of this subsection, there shall be a rebutta-
5 ble presumption that a covered prisoner is a victim
6 of trafficking if the covered prisoner provides—

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

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

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

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

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

10 “(g) CONFIDENTIALITY OF MOVANT.—

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

14 “(2) INFORMATION NOT AVAILABLE FOR PUB-
15 LIC INSPECTION.—An officer or employee may make
16 not make available for public inspection any report,
17 paper, picture, photograph, court file, or other docu-
18 ment, in the custody or possession of the officer or
19 employee, that identifies the movant.

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

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of sections of chapter 237 of title 18, United

1 States Code, is amended by adding at the end the fol-
 2 lowing:

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

3 **SEC. 3. REPORTS.**

4 (a) UNITED STATES ATTORNEYS.—Not later than 1
 5 year after the date of enactment of this Act, each United
 6 States attorney shall submit to the Attorney General a re-
 7 port that details—

8 (1) the number of motions for vacatur or
 9 expungement filed under section 3772 of title 18,
 10 United States Code, as added by section 2, in the
 11 district of the United States attorney; and

12 (2) for each motion described in paragraph
 13 (1)—

14 (A) the underlying offense;

15 (B) the response of the United States at-
 16 torney to the motion; and

17 (C) the final determination of the court
 18 with respect to the motion.

19 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—Not
 20 later than 3 years after the date of enactment of this Act,
 21 the Comptroller General of the United States shall submit
 22 to Congress a report that—

23 (1) assesses the impact of the enactment of sec-
 24 tion 3772 of title 18, United States Code, as added
 25 by section 2; and

1 (2) includes—

2 (A) the number of human trafficking sur-
3 vivors who have filed motions for vacatur or
4 expungement under such section 3772;

5 (B) the final determination of each court
6 that adjudicated a motion described in subpara-
7 graph (A); and

8 (C) recommendations to increase access to
9 post-conviction relief for human trafficking sur-
10 vivors with Federal criminal records.

11 **SEC. 4. USE OF GRANTS FOR POST-CONVICTION RELIEF**
12 **REPRESENTATION.**

13 The Office of Justice Programs or the Office on Vio-
14 lence Against Women, in awarding a grant that may be
15 used for legal representation, may not prohibit a recipient
16 from using the grant for legal representation for post-con-
17 viction relief.

18 **SEC. 5. SENSE OF CONGRESS.**

19 It is the sense of Congress that—

20 (1) this Act is a first step to address the chang-
21 ing tactics of human traffickers, who are using
22 forced criminality as a form of force, fraud, and co-
23 ercion in their human trafficking enterprises; and

- 1 (2) Congress is committed to continuing to find
- 2 solutions as needed to thwart human traffickers and
- 3 protect survivors of human trafficking.

