

117TH CONGRESS
2D SESSION

S. 9

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

NOVEMBER 17, 2022

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 2022”.

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 A offense or
9 level B offense;

10 “(B) was sentenced to a term of imprison-
11 ment for the offense described in subparagraph
12 (A); and

13 “(C) is imprisoned under such term of im-
14 prisonment;

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

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

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

21 “(6) the term ‘level B offense’—

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

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

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

3 “(8) the term ‘victim of trafficking’ has the
4 meaning given that term in section 103 of the Traf-
5 ficking Victims Protection Act of 2000 (22 U.S.C.
6 7102); and

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

11 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
12 PUNGE ARRESTS.—

13 “(1) IN GENERAL.—

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

22 “(B) ARRESTS FOR LEVEL A OFFENSES.—
23 A person arrested for any level A offense (or an
24 attorney representing such a person) may move
25 the district court of the United States for the

1 district and division embracing the place where
2 the person was arrested to expunge all records
3 of the arrest if the conduct or alleged conduct
4 of the person that resulted in the arrest was di-
5 rectly related to the person having been a vic-
6 tim of trafficking.

7 “(C) ARRESTS FOR LEVEL C OFFENSES.—

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

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

18 “(ii)(I) the movant was acquitted of
19 the level C offense;

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

23 “(III)(aa) the charges against the
24 movant for the level C offense were re-

1 duced to an offense that is a level A of-
2 fense; and

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

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

11 “(A) be in writing;

12 “(B) describe any supporting evidence;

13 “(C) state the offense; and

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

17 “(3) HEARING.—

18 “(A) MANDATORY HEARING.—

19 “(i) MOTION IN OPPOSITION.—Not
20 later than 30 days after the date on which
21 a motion is filed under paragraph (1), the
22 Government may file a motion in opposi-
23 tion of the motion filed under paragraph
24 (1).

1 “(ii) MANDATORY HEARING.—If the
2 Government files a motion described in
3 clause (i), not later than 15 days after the
4 date on which the motion is filed, the court
5 shall hold a hearing on the motion.

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

12 “(4) FACTORS.—

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

19 “(i) the movant was convicted of a
20 level A offense; and

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

1 “(B) EXPUNGING ARRESTS FOR LEVEL A
2 OFFENSES.—The court may grant a motion
3 under paragraph (1)(B) if, after notice to the
4 Government and an opportunity to be heard,
5 the court finds, by a preponderance of the evi-
6 dence, that—

7 “(i) the movant was arrested for a
8 level A offense; and

9 “(ii) the conduct or alleged conduct
10 that resulted in the arrest was directly re-
11 lated to the movant having been a victim
12 of trafficking.

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

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

24 “(ii)(I) the movant was acquitted of
25 the level C offense;

1 “(II) the Government did not pursue
2 or dismissed criminal charges against the
3 movant for the level C offense; or

4 “(III)(aa) the charges against the
5 movant for the level C offense were re-
6 duced to a level A offense; and

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

13 “(5) SUPPORTING EVIDENCE.—

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

19 “(i) a copy of an official record, cer-
20 tification, or eligibility letter from a Fed-
21 eral, State, Tribal, or local proceeding, in-
22 cluding an approval notice or an enforce-
23 ment certification generated from a Fed-
24 eral immigration proceeding, that shows
25 that the movant was a victim of traf-

1 ficking, including a victim of a trafficker
2 charged with a violation of chapter 77; or

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

11 “(B) OTHER EVIDENCE.—

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

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

1 “(I) the affidavit or sworn testi-
2 mony is credible; and

3 “(II) no other evidence is readily
4 available.

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

10 “(7) DENIAL OF MOTION.—

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

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

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

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

1 “(c) VACATUR OF CONVICTIONS.—

2 “(1) IN GENERAL.—If the court grants a mo-
3 tion to vacate a conviction of a level A offense under
4 subsection (b), the court shall immediately—

5 “(A) vacate the conviction for cause;

6 “(B) set aside the verdict and enter a
7 judgment of acquittal;

8 “(C) enter an expungement order that di-
9 rects that there be expunged from all official
10 records all references to—

11 “(i) the arrest of the movant for the
12 level A offense;

13 “(ii) the institution of criminal pro-
14 ceedings against the movant relating to the
15 level A offense; and

16 “(iii) the results of the proceedings;
17 and

18 “(D) return to the movant any fine, fee,
19 cost, or restitution associated with the convic-
20 tion and paid by the movant.

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

23 “(A) the conviction shall not be regarded
24 as a conviction under Federal law and the mov-
25 ant for whom the conviction was vacated shall

1 be considered to have the status occupied by the
2 movant before the arrest or the institution of
3 the criminal proceedings related to such conviction;
4 and

5 “(B) no alien may be removed, determined
6 to be inadmissible, or lose any immigration benefit
7 because of such conviction, arrest, or institution
8 of criminal proceedings, or any related
9 conduct.

10 “(d) EXPUNGEMENT OF ARRESTS.—

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

17 “(A) the arrest of the movant for the offense;
18

19 “(B) the institution of any criminal proceedings
20 against the movant relating to the offense; and
21

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

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

1 “(A) the arrest shall not be regarded as an
2 arrest under Federal law and the movant for
3 whom the arrest is expunged shall be consid-
4 ered to have the status occupied by the movant
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 that imposed
14 sentence for a level A offense or level B offense upon
15 a covered prisoner may reduce the term of imprison-
16 ment for the offense—

17 “(A) upon—

18 “(i) motion by the covered prisoner or
19 the Director of the Bureau of Prisons; or

20 “(ii) the court’s own motion;

21 “(B) after notice to the Government;

22 “(C) after considering—

23 “(i) the factors set forth in section
24 3553(a);

1 “(ii) the nature and seriousness of the
2 danger to any person, if applicable; and

3 “(iii) the community, or any crime
4 victims; and

5 “(D) if the court finds, by a preponderance
6 of the evidence, that the covered prisoner com-
7 mitted the offense as a direct result of the cov-
8 ered prisoner having been a victim of traf-
9 ficking.

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

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

23 “(B) an affidavit or sworn testimony from
24 a trained professional staff member of a victim
25 services organization, an attorney, a member of

1 the clergy, a medical professional, or another
2 professional from whom the covered prisoner
3 has sought assistance in addressing the trauma
4 associated with being a victim of trafficking.

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

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

13 “(f) ADDITIONAL ACTIONS BY COURT.—The court
14 shall, upon granting a motion under this section, take any
15 additional action necessary to grant the movant full relief.

16 “(g) NO FEES.—A person may not be required to pay
17 a filing fee, service charge, copay fee, processing fee, or
18 any other charge for filing a motion under this section.

19 “(h) CONFIDENTIALITY OF MOVANT.—

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

23 “(2) INFORMATION NOT AVAILABLE FOR PUB-
24 LIC INSPECTION.—An officer or employee may make
25 not make available for public inspection any report,

1 paper, picture, photograph, court file, or other docu-
 2 ment, in the custody or possession of the officer or
 3 employee, that identifies the movant.

4 “(i) **APPLICABILITY.**—This section shall apply to any
 5 conviction or arrest occurring before, on, or after the date
 6 of enactment of this section.”.

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

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

11 **SEC. 3. REPORTS.**

12 (a) **UNITED STATES ATTORNEY MOTIONS FOR**
 13 **VACATUR OR EXPUNGEMENT.**—Not later than 1 year
 14 after the date of enactment of this Act, each United States
 15 attorney shall submit to the Attorney General a report
 16 that details—

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

21 (2) for each motion described in paragraph
 22 (1)—

23 (A) the underlying offense;

24 (B) the response of the United States at-
 25 torney to the motion; and

1 (C) the final determination of the court
2 with respect to the motion.

3 (b) UNITED STATES ATTORNEY TRAINING ON
4 HUMAN TRAFFICKING INDICATORS.—Not later than 1
5 year after the date of enactment of this Act, the Attorney
6 General shall submit to Congress a report that details all
7 professional training received by United States attorneys
8 on indicators of human trafficking during the preceding
9 12-month period.

10 (c) GOVERNMENT ACCOUNTABILITY OFFICE.—Not
11 later than 3 years after the date of enactment of this Act,
12 the Comptroller General of the United States shall submit
13 to Congress a report that—

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

17 (2) includes—

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

21 (B) the final determination of each court
22 that adjudicated a motion described in subpara-
23 graph (A);

1 (C) recommendations to increase access to
2 post-conviction relief for human trafficking sur-
3 vivors with Federal criminal records; and

4 (D) recommendations for improving the
5 implementation and tracking of professional
6 training of United States attorneys on indica-
7 tors of human trafficking.

8 **SEC. 4. USE OF GRANTS FOR POST-CONVICTION RELIEF**
9 **REPRESENTATION.**

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

15 **SEC. 5. SENSE OF CONGRESS.**

16 It is the sense of Congress that—

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

21 (2) Congress is committed to continuing to find
22 solutions as needed to thwart human traffickers and
23 protect survivors of human trafficking.

1 **SEC. 6. HUMAN TRAFFICKING DEFENSE.**

2 (a) IN GENERAL.—Chapter 1 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 18. Human trafficking defense**

6 “(a) DEFINITION.—In this section, the term ‘covered
7 Federal offense’ means a level A offense or level B offense,
8 as those terms are defined in section 3772.

9 “(b) PRESUMPTION OF DURESS.—In a prosecution
10 for a covered Federal offense, a defendant who establishes
11 by clear and convincing evidence that the defendant was
12 a victim of trafficking at the time at which the defendant
13 committed the offense shall create a rebuttable presump-
14 tion that the offense was induced by duress.

15 “(c) RECORD OR PROCEEDING UNDER SEAL.—In
16 any proceeding in which a defense under subsection (b)
17 is raised, any record or part of the proceeding related to
18 the defense shall, on motion, be placed under seal until
19 such time as a conviction is entered for the offense.

20 “(d) POST-CONVICTION RELIEF.—A failure to assert,
21 or failed assertion of, a defense under subsection (b) by
22 an individual who is convicted of a covered Federal offense
23 may not preclude the individual from asserting as a miti-
24 gating factor, at sentencing or in a proceeding for any
25 post-conviction relief, that at the time of the commission

1 of the offense, the defendant was a victim of trafficking
2 and committed the offense under duress.

3 “(e) FEDERAL AID.—A failure to assert, or failed as-
4 ssertion of, a defense under subsection (b) by an individual
5 who is convicted of a covered Federal offense may not be
6 used for the purpose of disqualifying the individual from
7 participating in any federally funded program that aids
8 victims of human trafficking.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.—
10 The table of sections for chapter 1 of title 18, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

“18. Human trafficking defense.”.

○