

SENATE BILL 768

E3, E1, E2

2lr1598
CF HB 833

By: **Senators Lee and Watson**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 29, 2022

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Victims of Child Sex Trafficking and Human Trafficking – Safe**
3 **Harbor and Service Response**

4 FOR the purpose of altering procedures that a law enforcement officer ~~and a court are~~ is
5 required to follow when the law enforcement officer ~~or a court~~ has reason to believe
6 that a child who has been detained is a victim of sex trafficking ~~or a victim of human~~
7 trafficking; providing that a minor may not be criminally prosecuted or proceeded
8 against as a delinquent child for a certain crime or civil offense if the minor
9 committed the crime or civil offense as a direct result of sex trafficking; providing
10 that certain criminal prohibitions do not apply to minors providing that it is an
11 affirmative defense of duress to certain offenses if the defendant who is a minor in a
12 criminal proceeding or a delinquency proceeding against a child if the defendant or
13 child committed the offense as a result of being the victim of another under certain
14 State and federal prohibitions against human trafficking; altering the list of offenses
15 for which a person may file a motion to vacate judgment if the person's participation
16 was a result of being a victim of human trafficking; and generally relating to victims
17 of child sex trafficking and human trafficking.

18 BY repealing and reenacting, without amendments,

19 Article – Courts and Judicial Proceedings

20 Section 3–8A–01(a) and (dd)

21 Annotated Code of Maryland

22 (2020 Replacement Volume and 2021 Supplement)

23 BY repealing and reenacting, with amendments,

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.



Article – Courts and Judicial Proceedings
Section 3–8A–14
Annotated Code of Maryland
(2020 Replacement Volume and 2021 Supplement)

~~BY adding to~~

~~Article – Courts and Judicial Proceedings
Section 3–8A–17.13
Annotated Code of Maryland
(2020 Replacement Volume and 2021 Supplement)~~

BY adding to

Article – Criminal Law
Section 1–402
Annotated Code of Maryland
(2021 Replacement Volume and 2021 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Criminal Law
Section 11–303 and 11–306
Annotated Code of Maryland
(2021 Replacement Volume and 2021 Supplement)~~

BY repealing and reenacting, with amendments,

Article – Criminal Procedure
Section 8–302(a)
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,

Article – Criminal Procedure
Section 8–302(b)
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,

Article – Family Law
Section 5–701(a) and (x)
Annotated Code of Maryland
(2019 Replacement Volume and 2021 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Human Services
Section 1–202
Annotated Code of Maryland
(2019 Replacement Volume and 2021 Supplement)~~

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

Article – Courts and Judicial Proceedings

3–8A–01.

(a) In this subtitle the following words have the meanings indicated, unless the context of their use indicates otherwise.

(dd) “Violation” means a violation for which a citation is issued under:

(1) § 5–601 of the Criminal Law Article involving the use or possession of less than 10 grams of marijuana;

(2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

(3) § 10–132 of the Criminal Law Article;

(4) § 10–136 of the Criminal Law Article; or

(5) § 26–103 of the Education Article.

3–8A–14.

(a) A child may be taken into custody under this subtitle by any of the following methods:

(1) Pursuant to an order of the court;

(2) By a law enforcement officer pursuant to the law of arrest;

(3) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child is in immediate danger from the child’s surroundings and that the child’s removal is necessary for the child’s protection;

(4) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child has run away from the child’s parents, guardian, or legal custodian; or

(5) In accordance with § 3–8A–14.1 of this subtitle.

(b) If a law enforcement officer takes a child into custody, the officer shall immediately notify, or cause to be notified, the child’s parents, guardian, or custodian of the action. After making every reasonable effort to give notice, the law enforcement officer shall with all reasonable speed:

(1) Release the child to the child's parents, guardian, or custodian or to any other person designated by the court, upon their written promise to bring the child before the court when requested by the court, and such security for the child's appearance as the court may reasonably require, unless the child's placement in detention or shelter care is permitted and appears required by § 3–8A–15 of this subtitle; or

(2) Deliver the child to the court or a place of detention or shelter care designated by the court.

(c) If a parent, guardian, or custodian fails to bring the child before the court when requested, the court may issue a writ of attachment directing that the child be taken into custody and brought before the court. The court may proceed against the parent, guardian, or custodian for contempt.

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

(II) “QUALIFYING OFFENSE” HAS THE MEANING STATED IN § 8–302 OF THE CRIMINAL PROCEDURE ARTICLE.

(III) “SEX TRAFFICKING” HAS THE MEANING STATED IN § 5–701 OF THE FAMILY LAW ARTICLE.

(IV) “VICTIM OF HUMAN TRAFFICKING” HAS THE MEANING STATED IN § 8–302 OF THE CRIMINAL PROCEDURE ARTICLE.

(2) In addition to the requirements for reporting child abuse and neglect under § 5–704 of the Family Law Article, if a law enforcement officer has reason to believe that a child who has been detained is a victim of sex trafficking OR A VICTIM OF HUMAN TRAFFICKING[, as defined in § 5–701 of the Family Law Article], the law enforcement officer shall [notify any], **AS SOON AS PRACTICABLE:**

(I) NOTIFY AN appropriate regional navigator, as defined in § 5–704.4 of the Family Law Article, for the jurisdiction where the child was taken into custody or where the child is a resident that the child is a suspected victim of sex trafficking OR A SUSPECTED VICTIM OF HUMAN TRAFFICKING **SO THE REGIONAL NAVIGATOR CAN COORDINATE A SERVICE RESPONSE;**

(II) REPORT TO THE LOCAL CHILD WELFARE AGENCY THAT THE CHILD IS A SUSPECTED VICTIM OF SEX TRAFFICKING OR A SUSPECTED VICTIM OF HUMAN TRAFFICKING; **AND**

(III) RELEASE THE CHILD TO THE CHILD’S PARENTS, GUARDIAN, OR CUSTODIAN IF IT IS SAFE AND APPROPRIATE TO DO SO, OR TO THE LOCAL CHILD

WELFARE AGENCY IF THERE IS REASON TO BELIEVE THAT THE CHILD'S SAFETY WILL BE AT RISK IF THE CHILD IS RETURNED TO THE CHILD'S PARENTS, GUARDIAN, OR CUSTODIAN.

(3) A LAW ENFORCEMENT OFFICER WHO TAKES A CHILD WHO IS A SUSPECTED VICTIM OF SEX TRAFFICKING OR A SUSPECTED VICTIM OF HUMAN TRAFFICKING INTO CUSTODY UNDER SUBSECTION (A)(3) OF THIS SECTION MAY NOT DETAIN THE CHILD IN A JUVENILE DETENTION FACILITY, AS DEFINED UNDER § 9-237 OF THE HUMAN SERVICES ARTICLE, IF THE REASON FOR DETAINING THE CHILD IS A SUSPECTED VIOLATION OF A QUALIFYING OFFENSE OR ~~AN OFFENSE UNDER TITLE 3, SUBTITLE 11 § 3-1102~~ OF THE CRIMINAL LAW ARTICLE.

~~§ 8A-17.13.~~

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

~~(2) "REGIONAL NAVIGATOR" HAS THE MEANING STATED IN § 5-704.4 OF THE FAMILY LAW ARTICLE.~~

~~(3) "SEX TRAFFICKING" HAS THE MEANING STATED IN § 5-701 OF THE FAMILY LAW ARTICLE.~~

~~(B) (1) AT ANY TIME AFTER A PETITION ALLEGING THAT A CHILD HAS COMMITTED A DELINQUENT ACT IS FILED WITH THE COURT UNDER THIS SUBTITLE, THE COURT ON ITS OWN MOTION, OR ON MOTION OF THE CHILD'S COUNSEL OR THE STATE'S ATTORNEY, SHALL STAY ALL PROCEEDINGS AND ORDER THAT THE REGIONAL NAVIGATOR FOR THE RELEVANT JURISDICTION CONDUCT AN EVALUATION OF THE CHILD'S STATUS AS A VICTIM OF SEX TRAFFICKING, IF THE COURT FINDS THAT:~~

~~(I) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE CHILD HAS COMMITTED THE DELINQUENT ACT; AND~~

~~(II) THERE IS REASON TO BELIEVE THAT THE CHILD COMMITTED THE ACT AS A DIRECT RESULT OF SEX TRAFFICKING.~~

~~(2) IF THE REGIONAL NAVIGATOR FINDS THAT THE CHILD IS A VICTIM OF SEX TRAFFICKING, AND IF THE COURT FINDS THAT THE CHILD COMMITTED THE VIOLATION AS A DIRECT RESULT OF, OR INCIDENTAL OR RELATED TO, SEX TRAFFICKING, THE COURT SHALL DISMISS THE CASE AND TRANSFER THE CASE TO THE DEPARTMENT OF HUMAN SERVICES.~~

1-402.

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

(2) "QUALIFYING OFFENSE" HAS THE MEANING STATED IN § 8-302 OF THE CRIMINAL PROCEDURE ARTICLE.

~~(3) "SEX TRAFFICKING" HAS THE MEANING STATED IN § 5-701 OF THE FAMILY LAW ARTICLE.~~

~~(B) A MINOR MAY NOT BE CRIMINALLY PROSECUTED OR PROCEEDED AGAINST AS A DELINQUENT CHILD UNDER TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE FOR A QUALIFYING OFFENSE OR AN OFFENSE UNDER TITLE 3, SUBTITLE 11 OF THIS ARTICLE IF THE MINOR COMMITTED THE UNDERLYING ACT AS A DIRECT RESULT OF SEX TRAFFICKING.~~

~~11-303.~~

(a) ~~[A person]~~ AN ADULT may not knowingly:

(1) ~~engage in prostitution or assignation by any means; or~~

(2) ~~occupy a building, structure, or conveyance for prostitution or assignation.~~

(b) ~~A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.~~

(c) (1) ~~Subject to paragraph (2) of this subsection, in a prosecution under this section, it is an affirmative defense of duress if the defendant committed the act as a result of being a victim of an act of another in violation of Title 3, Subtitle 11 of this article or the prohibition against human trafficking under federal law.~~

(2) ~~A defendant may not assert the affirmative defense provided in paragraph (1) of this subsection unless the defendant notifies the State's Attorney of the defendant's intention to assert the defense at least 10 days prior to trial.~~

~~(D) A LAW ENFORCEMENT OFFICER WHO ENCOUNTERS A MINOR SUSPECTED OF OR KNOWN TO HAVE ENGAGED IN CONDUCT THAT AN ADULT IS PROHIBITED FROM ENGAGING IN UNDER THIS SECTION MAY TAKE THE MINOR INTO CUSTODY IN ACCORDANCE WITH § 3-8A-14 OF THE COURTS ARTICLE.~~

~~11-306.~~

~~(a) [A person] AN ADULT may not knowingly procure or solicit or offer to procure or solicit prostitution or assignation.~~

~~(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.~~

~~(c) (1) Subject to paragraph (2) of this subsection, in a prosecution under this section, it is an affirmative defense of duress if the defendant committed the act as a result of being a victim of an act of another in violation of Title 3, Subtitle 11 of this article or the prohibition against human trafficking under federal law.~~

~~(2) A defendant may not assert the affirmative defense provided in paragraph (1) of this subsection unless the defendant notifies the State's Attorney of the defendant's intention to assert the defense at least 10 days prior to trial.~~

~~(D) A LAW ENFORCEMENT OFFICER WHO ENCOUNTERS A MINOR SUSPECTED OF OR KNOWN TO HAVE ENGAGED IN CONDUCT THAT AN ADULT IS PROHIBITED FROM ENGAGING IN UNDER THIS SECTION MAY TAKE THE MINOR INTO CUSTODY IN ACCORDANCE WITH § 3-8A-14 OF THE COURTS ARTICLE.~~

(3) "VIOLATION" HAS THE MEANING STATED IN § 3-8A-01 OF THE COURTS ARTICLE.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN A CRIMINAL PROSECUTION AGAINST A MINOR, OR IN A PROCEEDING AGAINST A DELINQUENT CHILD UNDER TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE, FOR A QUALIFYING OFFENSE, A VIOLATION, OR AN OFFENSE UNDER § 3-1102 OF THIS ARTICLE IT IS AN AFFIRMATIVE DEFENSE OF DURESS IF THE DEFENDANT OR CHILD COMMITTED THE ACT AS A RESULT OF BEING THE VICTIM OF ANOTHER UNDER TITLE 3, SUBTITLE 11 OF THIS ARTICLE OR THE PROHIBITION AGAINST HUMAN TRAFFICKING UNDER FEDERAL LAW.

(2) A DEFENDANT OR A CHILD IN A DELINQUENCY PROCEEDING MAY NOT ASSERT THE AFFIRMATIVE DEFENSE PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION UNLESS THE DEFENDANT OR CHILD NOTIFIES THE STATE'S ATTORNEY OF THE DEFENDANT'S OR CHILD'S INTENTION TO ASSERT THE DEFENSE AT LEAST 10 DAYS BEFORE TRIAL.

Article – Criminal Procedure

8-302.

(a) (1) In this section the following words have the meanings indicated.

(2) "Qualifying offense" means:

1 (i) unnatural or perverted sexual practice under § 3–322 of the
2 Criminal Law Article;

3 (ii) possessing or administering a controlled dangerous substance
4 under § 5–601 of the Criminal Law Article;

5 (iii) possessing or purchasing a noncontrolled substance under §
6 5–618 of the Criminal Law Article;

7 (iv) possessing or distributing controlled paraphernalia under §
8 5–620(a)(2) of the Criminal Law Article;

9 (v) fourth-degree burglary under § 6–205 of the Criminal Law
10 Article;

11 (vi) malicious destruction of property in the lesser degree under §
12 6–301(c) of the Criminal Law Article;

13 (vii) a trespass offense under Title 6, Subtitle 4 of the Criminal Law
14 Article;

15 (viii) misdemeanor theft under § 7–104 of the Criminal Law Article;

16 (ix) misdemeanor obtaining property or services by bad check under
17 § 8–103 of the Criminal Law Article;

18 (x) possession or use of a fraudulent government identification
19 document under § 8–303 of the Criminal Law Article;

20 (xi) public assistance fraud under § 8–503 of the Criminal Law
21 Article;

22 (xii) false statement to a law enforcement officer or public official
23 under § 9–501, § 9–502, or § 9–503 of the Criminal Law Article;

24 (xiii) disturbing the public peace and disorderly conduct under §
25 10–201 of the Criminal Law Article;

26 (xiv) indecent exposure under § 11–107 of the Criminal Law Article;

27 (xv) prostitution under § 11–303 of the Criminal Law Article;

28 (xvi) driving with a suspended registration under § 13–401(h) of the
29 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;

(XXV) UNAUTHORIZED USE UNDER § 14-102 OF THE TRANSPORTATION ARTICLE; OR

(XXVI) SOLICITING OR OFFERING TO SOLICIT PROSTITUTION OR ASSIGNATION UNDER § 11-306 OF THE CRIMINAL LAW ARTICLE.

(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.

(b) A person convicted of a qualifying offense may file a motion to vacate the judgment if the person’s participation in the offense was a direct result of being a victim of human trafficking.

Article – Family Law

5-701.

(a) Except as otherwise provided in § 5–705.1 of this subtitle, in this subtitle the following words have the meanings indicated.

(x) “Sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

~~Article Human Services~~

~~1–202.~~

~~(A) IN THIS SECTION, “SEX TRAFFICKING” HAS THE MEANING STATED IN § 5–701 OF THE FAMILY LAW ARTICLE.~~

~~[(a)] (B) Except as otherwise provided in Title 5, Subtitles 7 and 12 of the Family Law Article, § 1–203 of this subtitle, and this section, a person may not disclose a report or record concerning child abuse [or], neglect, OR SEX TRAFFICKING.~~

~~[(b)] (C) A report or record concerning child abuse [or], neglect, OR SEX TRAFFICKING shall be disclosed:~~

~~(1) under a court order;~~

~~(2) under an order of an administrative law judge, if:~~

~~(i) the request for disclosure concerns a case pending before the Office of Administrative Hearings; and~~

~~(ii) provisions are made to comply with other State or federal confidentiality laws and to protect the identity of the reporter or other person whose life or safety is likely to be endangered by the disclosure; or~~

~~(3) to the Division of Parole and Probation in the Department of Public Safety and Correctional Services if, as a result of a report or investigation of suspected child abuse [or], neglect, OR SEX TRAFFICKING, the local department of social services has reason to believe that an individual who lives in or has a regular presence in a child’s home is registered under Title 11, Subtitle 7 of the Criminal Procedure Article based on the commission of an offense against a child.~~

~~[(c)] (D) A report or record concerning child abuse or neglect:~~

~~(1) may be disclosed on request to:~~

~~(i) personnel of the Social Services Administration or a local department of social services, law enforcement personnel, and members of multidisciplinary case consultation teams, including an addiction specialist as defined in Title 5, Subtitle 12 of the Family Law Article or § 5–314 of this article, who are investigating~~

~~a report of known or suspected child abuse or neglect or providing services to or assessing a child or family that is the subject of the report;~~

~~(ii) local or State officials responsible for the administration of child protective services, juvenile services, or child care, foster care, or adoption licensing, approval, or regulations, as necessary to carry out their official functions;~~

~~(iii) the State Council on Child Abuse and Neglect or its designee, the State Citizens Review Board for Children or its designee, or a child fatality review team, as necessary to carry out their official functions;~~

~~(iv) a person who is the alleged abuser or neglecter, if that person is responsible for the child's welfare and provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information;~~

~~(v) a licensed practitioner who, or an agency, institution, or program that, is providing treatment or care to a child who is the subject of a report of child abuse or neglect for a purpose relevant to the treatment or care;~~

~~(vi) a parent or other person who has permanent or temporary care and custody of the child, if provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information;~~

~~(vii) 1. The appropriate public school superintendent or the principal or equivalent employee of a nonpublic school that holds a certificate of approval from the State or is registered with the State Department of Education to carry out appropriate personnel or administrative actions following a report of suspected child abuse involving a student committed by:~~

~~A. a public school employee in that school system;~~

~~B. an employee of that nonpublic school;~~

~~C. an independent contractor who supervises or works directly with students in that school system or that nonpublic school; or~~

~~D. an employee of an independent contractor, including a bus driver or bus assistant, who supervises or works directly with students in that school system or that nonpublic school; and~~

~~2. if the report concerns suspected child abuse involving a student committed by an employee, independent contractor, or employee of an independent contractor described in item 1 of this item and employed by a nonpublic school under the jurisdiction of the superintendent of schools for the Archdiocese of Baltimore, the~~

~~Archdiocese of Washington, or the Catholic Diocese of Wilmington, the appropriate superintendent of schools;~~

~~(viii) the director of a licensed child care facility or licensed child placement agency to carry out appropriate personnel actions following a report of suspected child abuse or neglect alleged to have been committed by an employee of the facility or agency and involving a child who is currently or was previously under the care of that facility or agency;~~

~~(ix) the Juvenile Justice Monitoring Unit of the Office of the Attorney General established under Title 6, Subtitle 4 of the State Government Article;~~

~~(x) subject to subsection [(d)] (E) of this section, a licensed practitioner of a hospital or birthing center to make discharge decisions concerning a child, when the practitioner suspects that the child may be in danger after discharge based on the practitioner's observation of the behavior of the child's parents or immediate family members; or~~

~~(xi) the president of a Maryland public institution of higher education, as defined in § 10-101 of the Education Article, or the Chancellor of the University System of Maryland, to carry out appropriate personnel or administrative actions following a report of child abuse committed:~~

~~1. by an employee of the institution who has on-campus contact with children; or~~

~~2. by a contractor, an employee of a contractor, or a volunteer of the institution who has on-campus contact with children; and~~

~~(2) may be disclosed by the Department of Human Services to the operator of a child care center that is required to be licensed or to hold a letter of compliance under Title 5, Subtitle 5, Part VII of the Family Law Article or to a family child care provider who is required to be registered under Title 5, Subtitle 5, Part V of the Family Law Article, to determine the suitability of an individual for employment in the child care center or family child care home.~~

~~[(d)] (E) Only the following information concerning child abuse and neglect may be disclosed to a practitioner of a hospital or birthing center under subsection [(c)(1)(x)] (D)(1)(X) of this section:~~

~~(1) whether there is a prior finding of indicated child abuse or neglect by either parent; and~~

~~(2) whether there is an open investigation of child abuse or neglect pending against either parent.~~

1 ~~[(c)] (F) A person who violates this section is guilty of a misdemeanor and on~~
2 ~~conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or~~
3 ~~both.~~

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.