

116TH CONGRESS
1ST SESSION

H. R. 3627

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

IN THE HOUSE OF REPRESENTATIVES

JULY 5, 2019

Mrs. WAGNER (for herself, Mr. SPANO, and Mrs. BEATTY) 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 2019”.

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 be-
9 fore the date of enactment of this section;

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

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

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

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

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

19 “(C) a public defender’s office;

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

22 “(5) the term ‘Federal offense’ means an of-
23 fense that is punishable under Federal law;

24 “(6) the term ‘level A offense’—

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

26 “(i) a violent crime; or

1 “(ii) an offense of which a child was
2 a victim; and

3 “(B) includes—

4 “(i) a conspiracy to commit an offense
5 described in subparagraph (A)(i) of which
6 a child was not a victim; and

7 “(ii) a conspiracy to commit an of-
8 fense described in subparagraph (A)(ii)
9 that is not a violent crime;

10 “(7) the term ‘level B offense’—

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

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

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

18 “(8) the term ‘level C offense’ means any Fed-
19 eral offense that is not a level A offense;

20 “(9) the term ‘victim of trafficking’ has the
21 meaning given that term in section 103 of the Traf-
22 ficking Victims Protection Act of 2000 (22 U.S.C.
23 7102); and

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

1 tice and Delinquency Prevention Act of 1974 (34
2 U.S.C. 11103).

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

5 “(1) IN GENERAL.—

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

14 “(B) ARRESTS FOR LEVEL A OFFENSES.—
15 A person arrested for any level A offense (or an
16 eligible entity representing such a person) may
17 move the district court of the United States for
18 the district and division embracing the place
19 where the person was arrested to expunge all
20 records of the arrest if the conduct or alleged
21 conduct of the person that resulted in the ar-
22 rest was directly related to the person having
23 been a victim of trafficking.

24 “(C) ARRESTS FOR LEVEL C OFFENSES.—
25 A person arrested for any level C offense (or an

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

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

10 “(ii)(I) the movant was acquitted of
11 the level C offense;

12 “(II) the Government did not pursue
13 or dismissed criminal charges against the
14 movant for the level C offense; or

15 “(III)(aa) the charges against the
16 movant for the level C offense were re-
17 duced to an offense that is a level A of-
18 fense; and

19 “(bb) the movant was acquitted of the
20 level A offense, the Government did not
21 pursue or dismissed criminal charges
22 against the movant for the level A offense,
23 or any subsequent conviction of the level A
24 offense was vacated.

1 “(D) TRAFFICKING OFFENSE UNNECES-
2 SARY.—A person may file a motion under this
3 section regardless of whether any individual, in-
4 cluding the individual accused of trafficking the
5 person, has been arrested, prosecuted, or con-
6 victed for an offense related to human traf-
7 ficking.

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

10 “(A) be in writing;

11 “(B) describe any supporting evidence;

12 “(C) state the offense; and

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

16 “(3) HEARING.—

17 “(A) MANDATORY HEARING.—

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

24 “(ii) MANDATORY HEARING.—If the
25 Government files a motion described in

1 clause (i), not later than 15 days after the
2 date on which the motion is filed, the court
3 shall hold a hearing on the motion.

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

10 “(4) FACTORS.—

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

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

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

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

1 Government and an opportunity to be heard,
2 the court finds, by clear and convincing evi-
3 dence, that—

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

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

10 “(C) EXPUNGING ARRESTS FOR LEVEL C
11 OFFENSES.—The court may grant a motion
12 under paragraph (1)(C) 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 arrested for a
17 level C offense and the conduct or alleged
18 conduct that resulted in the arrest was di-
19 rectly related to the movant having been a
20 victim of trafficking; and

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

23 “(II) the Government did not pursue
24 or dismissed criminal charges against the
25 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 EVIDENCE.—The affidavit or sworn testimony
19 of the movant described in clause (i) shall
20 be sufficient evidence to vacate a conviction
21 or expunge an arrest under this section
22 if the court determines that—

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

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 not
16 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.”.

