

115TH CONGRESS
1ST SESSION

S. 104

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 11, 2017

Mrs. GILLIBRAND (for herself, Mr. PORTMAN, Mr. RUBIO, and Mr. BLUMENTHAL) 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 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) means a Federal offense that is not—

13 “(i) a violent crime; or

14 “(ii) an offense of which a child was
 15 a victim; and

16 “(B) includes—

17 “(i) a conspiracy to commit an offense
 18 described in subparagraph (A)(i) of which
 19 a child was not a victim; and

20 “(ii) a conspiracy to commit an of-
 21 fense described in subparagraph (A)(ii)
 22 that is not a violent crime;

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

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

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

3 “(C) is imprisoned under such term of im-
 4 prisonment;

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

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

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

10 “(C) a public defender’s office;

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

13 “(6) the term ‘Federal offense’ means an of-
 14 fense that is punishable under Federal law or the
 15 laws of the District of Columbia;

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

17 “(A) means a Federal offense that is a vio-
 18 lent crime;

19 “(B) does not include a Federal offense
 20 that is a violent crime of which a child was a
 21 victim; and

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

24 “(8) the term ‘victim of trafficking’ has the
 25 meaning given that term in section 103 of the Traf-

1 ficking Victims Protection Act of 2000 (22 U.S.C.
2 7102); and

3 “(9) term ‘violent crime’ has the meaning given
4 that term in section 103 of the Juvenile Justice and
5 Delinquency Prevention Act of 1974 (42 U.S.C.
6 5603).

7 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
8 PUNGE ARRESTS.—

9 “(1) IN GENERAL.—

10 “(A) CONVICTIONS OF COVERED OF-
11 FENSES.—A person convicted of any covered of-
12 fense (or an eligible entity representing such a
13 person) may move the court which imposed the
14 sentence for the covered offense to vacate the
15 judgment of conviction if the covered offense
16 was committed as a direct result of the person
17 having been a victim of trafficking.

18 “(B) ARRESTS FOR COVERED OF-
19 FENSES.—A person arrested for any covered of-
20 fense (or an eligible entity representing such a
21 person) may move the district court for the dis-
22 trict and division embracing the place where the
23 person was arrested to expunge all records of
24 the arrest if the conduct or alleged conduct of
25 the person which resulted in the arrest was di-

rectly related to the person having been a victim of trafficking.

“(C) ARRESTS FOR NONCOVERED OFFENSES.—A person arrested for any noncovered offense (or an eligible entity representing such a person) may move the district court for the district and division embracing the place where the person was arrested to expunge all records of the arrest if—

“(i) the conduct or alleged conduct of the person which resulted in the arrest was directly related to the person having been a victim of trafficking; and

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

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

“(III)(aa) the charges against the person for the noncovered offense are reduced to an offense that is a covered offense; and

“(bb) the person is acquitted of the covered offense, the Government does not pursue or dismisses criminal charges against the person for the covered offense,

1 or any subsequent conviction of the cov-
 2 ered offense is vacated.

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

5 “(A) be in writing;

6 “(B) describe any supporting evidence;

7 “(C) state the offense; and

8 “(D) include copies of any documents
 9 showing that the movant is entitled to relief
 10 under this section.

11 “(3) HEARING.—

12 “(A) MANDATORY HEARING.—

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

19 “(ii) MANDATORY HEARING.—If the
 20 Government files a motion described in
 21 clause (i), not later than 15 days after the
 22 date on which the motion is filed, the court
 23 shall hold a hearing on the motion.

24 “(B) DISCRETIONARY HEARING.—If the
 25 Government does not file a motion described in

1 subparagraph (A)(i), the court may hold a
2 hearing on the motion not later than 45 days
3 after the date on which a motion is filed under
4 paragraph (1).

5 “(4) FACTORS.—

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

12 “(i) the movant was convicted of a
13 covered offense; and

14 “(ii) the participation in the covered
15 offense by the movant was a direct result
16 of the movant having been a victim of traf-
17 ficking.

18 “(B) EXPUNGING ARRESTS FOR COVERED
19 OFFENSES.—The court may grant a motion
20 under paragraph (1)(B) if, after notice to the
21 Government and an opportunity to be heard,
22 the court finds, by clear and convincing evi-
23 dence, that—

24 “(i) the movant was arrested for a
25 covered offense; and

1 “(ii) the conduct or alleged conduct
 2 which resulted in the arrest was directly
 3 related to the movant having been a victim
 4 of trafficking.

5 “(C) EXPUNGING ARRESTS FOR NON-
 6 COVERED OFFENSES.—The court may grant a
 7 motion under paragraph (1)(C) if, after notice
 8 to the Government and an opportunity to be
 9 heard, the court finds, by clear and convincing
 10 evidence, that—

11 “(i) the movant was arrested for a
 12 noncovered offense and the conduct or al-
 13 leged conduct which resulted in the arrest
 14 was directly related to the movant having
 15 been a victim of trafficking; and

16 “(ii)(I) the person is acquitted of the
 17 noncovered offense;

18 “(II) the Government does not pursue
 19 or dismisses criminal charges against the
 20 person for the covered offense; or

21 “(III)(aa) the charges against the per-
 22 son for the noncovered offense are reduced
 23 to a covered offense; and

24 “(bb) the person is acquitted of the
 25 covered offense, the Government does not

1 pursue or dismissed criminal charges
2 against the person for the covered offense,
3 or any subsequent conviction of that cov-
4 ered offense is vacated.

5 “(5) SUPPORTING EVIDENCE.—

6 “(A) REBUTTABLE PRESUMPTION.—For
7 purposes of this section, there shall be a rebut-
8 table presumption that the movant is a victim
9 of trafficking if the movant includes in the mo-
10 tion—

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

20 “(ii) an affidavit or sworn testimony
21 from a trained professional staff member
22 of a victim services organization, an attor-
23 ney, a member of the clergy, or a medical
24 or other professional from whom the mov-
25 ant has sought assistance in addressing

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

3 “(B) OTHER EVIDENCE.—

4 “(i) IN GENERAL.—For purposes of
5 this section, in determining whether the
6 movant is a victim of trafficking, the court
7 may consider any other evidence the court
8 determines is of sufficient credibility and
9 probative value, including an affidavit or
10 sworn testimony of the movant.

11 “(ii) AFFIDAVIT OR SWORN TESTI-
12 MONY OF MOVANT SUFFICIENT EVI-
13 DENCE.—The affidavit or sworn testimony
14 of the movant described in clause (i) shall
15 be sufficient evidence to vacate a convic-
16 tion or expunge an arrest under this sec-
17 tion if the court determines that—

18 “(I) the affidavit or sworn testi-
19 mony is credible; and

20 “(II) no other evidence is readily
21 available.

22 “(6) CONVICTION OR ARREST OF OTHER PER-
23 SONS NOT REQUIRED.—It shall not be necessary
24 that any person other than the movant be convicted

1 of or arrested for a covered offense before the mov-
2 ant may file a motion under paragraph (1).

3 “(7) DENIAL OF MOTION.—

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

7 “(B) REASONS FOR DENIAL.—If the court
8 denies a motion filed under paragraph (1), the
9 court shall state the reasons for the denial in
10 writing.

11 “(C) REASONABLE TIME TO CURE DEFICI-
12 CIENCIES IN MOTION.—If the motion was de-
13 nied due to a curable deficiency in the motion,
14 the court shall allow the movant sufficient time
15 for the movant to cure the deficiency.

16 “(8) APPEAL.—An order granting or denying a
17 motion under this section may be appealed in ac-
18 cordance with section 1291 of title 28 and section
19 3731 of this title.

20 “(c) VACATUR OF CONVICTIONS.—

21 “(1) IN GENERAL.—If the court grants a mo-
22 tion to vacate a conviction under subsection (b), the
23 court shall immediately vacate the conviction for
24 cause, set aside the verdict and enter a judgment of
25 acquittal, and enter an expungement order that di-

1 rects that there be expunged from all official records
2 all references to—

3 “(A) the arrest of the person for the cov-
4 ered offense;

5 “(B) the institution of criminal pro-
6 ceedings against the person relating to the cov-
7 ered offense; and

8 “(C) the results of the proceedings.

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

11 “(A) the conviction shall not be regarded
12 as a conviction under Federal law and the per-
13 son for whom the conviction was vacated shall
14 be considered to have the status occupied by the
15 person before the arrest or the institution of the
16 criminal proceedings related to such conviction;
17 and

18 “(B) no alien may be removed, determined
19 to be inadmissible, or lose any immigration ben-
20 efit because of such conviction, arrest, or insti-
21 tution of criminal proceedings.

22 “(d) EXPUNGEMENT OF ARRESTS.—

23 “(1) IN GENERAL.—If the court grants a mo-
24 tion to expunge an arrest under subsection (b), the
25 court shall immediately enter an expungement order

1 that directs that there be expunged from all official
 2 records all references to—

3 “(A) the arrest of the person for the cov-
 4 ered offense;

5 “(B) the institution of any criminal pro-
 6 ceedings against the person relating to the cov-
 7 ered offense; and

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

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

11 “(A) the arrest shall not be regarded as an
 12 arrest under Federal law and the person for
 13 whom the arrest is expunged shall be consid-
 14 ered to have the status occupied by the person
 15 before the arrest or the institution of the crimi-
 16 nal proceedings related to such arrest, if any;
 17 and

18 “(B) no alien may be removed, determined
 19 to be inadmissible, or lose any immigration ben-
 20 efit because of arrest or institution of criminal
 21 proceedings, if any.

22 “(e) MITIGATING FACTORS.—

23 “(1) IN GENERAL.—The court which imposed
 24 sentence for a noncovered offense upon a covered

1 prisoner may reduce the term of imprisonment for
 2 the noncovered offense—

3 “(A) upon motion by a covered prisoner,
 4 the Director of the Bureau of Prisons, or the
 5 court’s own motion;

6 “(B) after notice to the Government;

7 “(C) after considering—

8 “(i) the factors set forth in section
 9 3553(a);

10 “(ii) the nature and seriousness of the
 11 danger to any person; and

12 “(iii) the community, or any crime
 13 victims; and

14 “(D) if the court finds, by clear and con-
 15 vincing evidence, that the covered prisoner com-
 16 mitted the noncovered offense as a direct result
 17 of the covered prisoner having been a victim of
 18 trafficking.

19 “(2) REBUTTABLE PRESUMPTION.—For the
 20 purposes of this subsection, there shall be a rebutta-
 21 ble presumption that a covered prisoner is a victim
 22 of trafficking if the covered prisoner provides—

23 “(A) a copy of an official record, certifi-
 24 cation, or eligibility letter from a Federal,
 25 State, tribal, or local proceeding, including an

1 approval notice or an enforcement certification
2 generated from a Federal immigration pro-
3 ceeding, that shows that the covered prisoner
4 was a victim of trafficking, including a victim
5 of a trafficker charged with a violation of chap-
6 ter 77; or

7 “(B) an affidavit or sworn testimony from
8 a trained professional staff member of a victim
9 services organization, an attorney, a member of
10 the clergy, or a medical or other professional
11 from whom the covered prisoner has sought as-
12 sistance in addressing the trauma associated
13 with being a victim of trafficking.

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

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

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

25 “(g) CONFIDENTIALITY OF MOVANT.—

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

4 “(2) INFORMATION NOT AVAILABLE FOR PUB-
 5 LIC INSPECTION.—No officer or employee may make
 6 any report, paper, picture, photograph, court file or
 7 other document, in the custody or possession of the
 8 officer or employee, that identifies the movant avail-
 9 able for public inspection.

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

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

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

