

HOUSE BILL 459

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0lr1668

By: **Delegates Cain, Acevero, Bagnall, Bartlett, Chang, Gilchrist, Guyton, Hettleman, Qi, Rogers, Smith, and Wells**

Introduced and read first time: January 24, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Victims of Human Trafficking – Affirmative Defense**

3 FOR the purpose of establishing an affirmative defense to certain crimes if a defendant
4 committed an act as a result of being a victim of an act of another in violation of
5 certain State and federal provisions of law prohibiting human trafficking;
6 prohibiting a defendant from asserting the affirmative defense established by this
7 Act unless the defendant provides a certain notice to the State's Attorney at least a
8 certain number of days prior to trial; making conforming changes; providing for the
9 interpretation of certain provisions of this Act; and generally relating to an
10 affirmative defense for victims of human trafficking.

11 BY adding to

12 Article – Criminal Law

13 Section 1–402

14 Annotated Code of Maryland

15 (2012 Replacement Volume and 2019 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article – Criminal Law

18 Section 11–303, 11–306, and 11–307

19 Annotated Code of Maryland

20 (2012 Replacement Volume and 2019 Supplement)

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

23 **Article – Criminal Law**

24 **1–402.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IN A PROSECUTION FOR ANY OF THE FOLLOWING OFFENSES, IT IS AN AFFIRMATIVE DEFENSE IF THE DEFENDANT COMMITTED AN 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:

(1) UNNATURAL OR PERVERTED SEXUAL PRACTICE UNDER § 3-322 OF THIS ARTICLE;

(2) POSSESSING OR ADMINISTERING A CONTROLLED DANGEROUS SUBSTANCE UNDER § 5-601 OF THIS ARTICLE;

(3) POSSESSING OR PURCHASING A NONCONTROLLED SUBSTANCE UNDER § 5-618 OF THIS ARTICLE;

(4) POSSESSING OR DISTRIBUTING CONTROLLED PARAPHERNALIA UNDER § 5-620(A)(2) OF THIS ARTICLE;

(5) FOURTH-DEGREE BURGLARY UNDER § 6-205 OF THIS ARTICLE;

(6) MALICIOUS DESTRUCTION OF PROPERTY IN THE LESSER DEGREE UNDER § 6-301(C) OF THIS ARTICLE;

(7) A TRESPASS OFFENSE UNDER TITLE 6, SUBTITLE 4 OF THIS ARTICLE;

(8) MISDEMEANOR THEFT UNDER § 7-104 OF THIS ARTICLE;

(9) MISDEMEANOR OBTAINING PROPERTY OR SERVICES BY BAD CHECK UNDER § 8-103 OF THIS ARTICLE;

(10) POSSESSION OR USE OF A FRAUDULENT GOVERNMENT IDENTIFICATION DOCUMENT UNDER § 8-303 OF THIS ARTICLE;

(11) PUBLIC ASSISTANCE FRAUD UNDER § 8-503 OF THIS ARTICLE;

(12) FALSE STATEMENT TO A LAW ENFORCEMENT OFFICER OR PUBLIC OFFICIAL UNDER § 9-501, § 9-502, OR § 9-503 OF THIS ARTICLE;

(13) DISTURBING THE PUBLIC PEACE AND DISORDERLY CONDUCT UNDER § 10-201 OF THIS ARTICLE;

1 (14) ENGAGING IN SEXUAL CONTACT WITH AN ANIMAL UNDER §
2 10-606(B) OF THIS ARTICLE;

3 (15) INDECENT EXPOSURE UNDER § 11-107 OF THIS ARTICLE;

4 (16) COMMITTING A CRIME RELATED TO PROSTITUTION OR
5 ASSIGNATION UNDER § 11-303, § 11-306, OR § 11-307 OF THIS ARTICLE;

6 (17) DRIVING WITH A SUSPENDED REGISTRATION UNDER §
7 13-401(H) OF THE TRANSPORTATION ARTICLE;

8 (18) FAILURE TO DISPLAY REGISTRATION UNDER § 13-409(B) OF THE
9 TRANSPORTATION ARTICLE;

10 (19) DRIVING WITHOUT A LICENSE UNDER § 16-101 OF THE
11 TRANSPORTATION ARTICLE;

12 (20) FAILURE TO DISPLAY LICENSE TO POLICE UNDER §
13 16-112(C) OF THE TRANSPORTATION ARTICLE;

14 (21) POSSESSION OF A SUSPENDED LICENSE UNDER § 16-301(J) OF
15 THE TRANSPORTATION ARTICLE;

16 (22) DRIVING WHILE PRIVILEGE IS CANCELED, SUSPENDED, REFUSED,
17 OR REVOKED UNDER § 16-303 OF THE TRANSPORTATION ARTICLE;

18 (23) OWNER FAILURE TO MAINTAIN SECURITY ON A VEHICLE UNDER §
19 17-104(B) OF THE TRANSPORTATION ARTICLE;

20 (24) DRIVING WHILE UNINSURED UNDER § 17-107 OF THE
21 TRANSPORTATION ARTICLE; OR

22 (25) PROSTITUTION OR LOITERING AS PROHIBITED UNDER LOCAL
23 LAW.

24 (B) A DEFENDANT MAY NOT ASSERT THE AFFIRMATIVE DEFENSE PROVIDED
25 IN SUBSECTION (A) OF THIS SECTION UNLESS THE DEFENDANT NOTIFIES THE
26 STATE'S ATTORNEY OF THE DEFENDANT'S INTENTION TO ASSERT THE DEFENSE AT
27 LEAST 10 DAYS PRIOR TO TRIAL.

28 11-303.

29 (a) A person 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.]

11-306.

(a) A person 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.]

11-307.

(a) A person may not knowingly:

(1) allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation;

(2) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or

(3) keep, set up, maintain, or operate a building, structure, or conveyance for prostitution or assignation.

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

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

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed
11 to substantively alter the affirmative defenses available under § 11–303, § 11–306, or §
12 11–307 of the Criminal Law Article as those sections existed prior to the effective date of
13 this Act.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2020.