

SENATE BILL 292

D4, E2, E3
SB 768/22 – JPR

3lr1341
CF HB 297

By: **Senators Waldstreicher, Hettleman, Elfreth, M. Washington, and Folden**

Introduced and read first time: January 27, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 11, 2023

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
5 required to follow when the law enforcement officer or 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 under certain provisions of law for a certain offense if the minor committed
9 the offense as a direct result of being a victim of sex trafficking or being a victim of
10 human trafficking; altering the list of offenses for which a person may file a motion
11 to vacate judgment if the person's participation was a result of being a victim of
12 human trafficking; and generally relating to victims of child sex trafficking and
13 human trafficking.

14 BY repealing and reenacting, without amendments,
15 Article – Courts and Judicial Proceedings
16 Section 3–8A–01(a) and (dd)
17 Annotated Code of Maryland
18 (2020 Replacement Volume and 2022 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Courts and Judicial Proceedings
21 Section 3–8A–14
22 Annotated Code of Maryland
23 (2020 Replacement Volume and 2022 Supplement)

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.



1 BY adding to
2 Article – Courts and Judicial Proceedings
3 Section 3–8A–17.13
4 Annotated Code of Maryland
5 (2020 Replacement Volume and 2022 Supplement)

6 BY adding to
7 Article – Criminal Law
8 Section 1–402
9 Annotated Code of Maryland
10 (2021 Replacement Volume and 2022 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Procedure
13 Section 8–302(a)
14 Annotated Code of Maryland
15 (2018 Replacement Volume and 2022 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article – Criminal Procedure
18 Section 8–302(b)
19 Annotated Code of Maryland
20 (2018 Replacement Volume and 2022 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Family Law
23 Section 5–701(a) and (x)
24 Annotated Code of Maryland
25 (2019 Replacement Volume and 2022 Supplement)

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

28 **Article – Courts and Judicial Proceedings**

29 3–8A–01.

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

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

33 (1) § 5–601 of the Criminal Law Article involving the use or possession of
34 cannabis;

35 (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) (1) (i) 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 in a manner reasonably calculated to give actual notice of the action.

(ii) The notice required under subparagraph (i) of this paragraph shall:

1. Include the child's location;

2. Provide the reason for the child being taken into custody;

and

3. Instruct the parent, guardian, or custodian on how to make immediate in-person contact with the child.

(2) After making every reasonable effort to give actual notice to a child's parent, guardian, or custodian, the law enforcement officer shall with all reasonable speed:

(i) 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

(ii) 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:

(1) Issue a writ of attachment directing that the child be taken into custody and brought before the court; and

(2) Proceed against the parent, guardian, or custodian for contempt.

(d) **(1) (I) IN THIS SUBSECTION 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[, as defined in § 5–701 of the Family Law Article] **OR A VICTIM OF HUMAN TRAFFICKING**, 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 COMMISSION OF A QUALIFYING OFFENSE OR § 3-1102 OF THE CRIMINAL LAW ARTICLE.

(e) The Supreme Court of Maryland may adopt rules concerning age-appropriate language to be used to advise a child who is taken into custody of the child's rights.

3-8A-17.13.

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

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

(5) "VICTIM OF HUMAN TRAFFICKING" HAS THE MEANING STATED IN § 8-302 OF THE CRIMINAL PROCEDURE ARTICLE.

(B) (1) AT ANY TIME AFTER A PETITION ALLEGING THAT A CHILD HAS COMMITTED A QUALIFYING OFFENSE, A VIOLATION, OR AN OFFENSE UNDER § 3-1102 OF THE CRIMINAL LAW ARTICLE 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:

(I) MAKE THE DETERMINATION REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION;

(II) STAY ALL PROCEEDINGS UNTIL THE DETERMINATION IS MADE; AND

(III) REFER THE CHILD TO A REGIONAL NAVIGATOR AND NOTIFY THE DEPARTMENT OF HUMAN SERVICES.

(2) THE COURT:

(I) SHALL SCHEDULE A HEARING WITHIN 15 DAYS AFTER A MOTION IS FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) MAY, ON GOOD CAUSE SHOWN, EXTEND THE TIME FOR THE HEARING AN ADDITIONAL 15 DAYS.

(3) THE COURT SHALL DETERMINE, BY EVIDENCE PRESENTED ON THE RECORD AND BY A PREPONDERANCE OF THE EVIDENCE, WHETHER THE CHILD:

(I) IS A VICTIM OF SEX TRAFFICKING OR A VICTIM OF HUMAN TRAFFICKING; AND

(II) COMMITTED THE QUALIFYING OFFENSE, VIOLATION, OR OFFENSE UNDER § 3-1102 OF THE CRIMINAL LAW ARTICLE AS A DIRECT RESULT OF BEING A VICTIM OF SEX TRAFFICKING OR BEING A VICTIM OF HUMAN TRAFFICKING.

(4) THE COURT SHALL DISMISS THE ~~CASE~~ CHARGE FOR ANY QUALIFYING OFFENSE, VIOLATION, OR OFFENSE UNDER § 3-1102 OF THE CRIMINAL LAW ARTICLE IF THE COURT FINDS THAT THE CHILD:

(I) IS A VICTIM OF SEX TRAFFICKING OR A VICTIM OF HUMAN TRAFFICKING; AND

(II) COMMITTED THE QUALIFYING OFFENSE, VIOLATION, OR OFFENSE UNDER § 3-1102 OF THE CRIMINAL LAW ARTICLE AS A DIRECT RESULT OF BEING A VICTIM OF SEX TRAFFICKING OR BEING A VICTIM OF HUMAN TRAFFICKING.

Article – Criminal Law

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.

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

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

(B) A MINOR MAY NOT BE CRIMINALLY PROSECUTED OR PROCEEDED AGAINST UNDER TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE FOR A QUALIFYING OFFENSE, A VIOLATION, OR AN OFFENSE UNDER § 3-1102 OF THIS ARTICLE IF THE MINOR COMMITTED THE UNDERLYING ACT AS A DIRECT RESULT OF BEING A VICTIM OF SEX TRAFFICKING OR BEING A VICTIM OF HUMAN TRAFFICKING.

Article – Criminal Procedure

8-302.

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

(2) “Qualifying offense” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (3) “Victim of human trafficking” means a person who has been subjected
4 to an act of another committed in violation of:

5 (i) Title 3, Subtitle 11 of the Criminal Law Article; or

6 (ii) § 1589, § 1590, § 1591, or § 1594(a) of Title 18 of the United States
7 Code.

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

11 **Article – Family Law**

12 5–701.

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2023.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.