

117TH CONGRESS
2D SESSION

H. R. 8672

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 2022

Mr. OWENS (for himself, Mr. LIEU, Mr. JEFFRIES, and Mrs. WAGNER) 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 2022”.

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 prisoner’ means an indi-
 12 vidual—

13 “(A) convicted of a level B offense before
 14 or after the date of enactment of this section;

15 “(B) sentenced to a term of imprisonment
 16 for the level B offense; and

17 “(C) imprisoned under such term of im-
 18 prisonment;

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

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

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

24 “(C) a public defender’s office;

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

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

3 “(6) the term ‘level A offense’—

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

5 “(i) a violent crime; or

6 “(ii) an offense of which a child was
7 a victim; and

8 “(B) includes—

9 “(i) a conspiracy to commit an offense
10 described in subparagraph (A)(i) of which
11 a child was not a victim; and

12 “(ii) a conspiracy to commit an of-
13 fense described in subparagraph (A)(ii)
14 that is not a violent crime;

15 “(7) the term ‘level B offense’—

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

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

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

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

1 “(9) the term ‘victim of trafficking’ has the
2 meaning given that term in section 103 of the Traf-
3 ficking Victims Protection Act of 2000 (22 U.S.C.
4 7102); and

5 “(10) the term ‘violent crime’ has the meaning
6 given that term in section 103 of the Juvenile Jus-
7 tice and Delinquency Prevention Act of 1974 (34
8 U.S.C. 11103).

9 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
10 PUNGE ARRESTS.—

11 “(1) IN GENERAL.—

12 “(A) CONVICTIONS OF LEVEL A OF-
13 FENSES.—A person convicted of any level A of-
14 fense (or an eligible entity representing such a
15 person) may move to vacate the judgment of
16 conviction if the level A offense was committed
17 as a direct result of the person having been a
18 victim of trafficking.

19 “(B) ARRESTS FOR LEVEL A OFFENSES.—
20 A person arrested for any level A offense (or an
21 eligible entity representing such a person) may
22 move to expunge all records of the arrest if the
23 conduct or alleged conduct of the person that
24 resulted in the arrest was directly related to the
25 person having been a victim of trafficking.

1 “(C) ARRESTS FOR LEVEL C OFFENSES.—

2 A person arrested for any level C offense (or an
3 eligible entity representing such a person) may
4 move to expunge all records of the arrest if—

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

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

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

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

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

24 “(D) TRAFFICKING OFFENSE UNNECES-
25 SARY.—A person may file a motion under this

1 section regardless of whether any individual, in-
2 cluding the individual accused of trafficking the
3 person, has been arrested, prosecuted, or con-
4 victed for an offense related to human traf-
5 ficking.

6 “(E) RULE OF CONSTRUCTION.—Nothing
7 in this section shall be construed to apply to
8 any arrest, prosecution, or conviction for an of-
9 fense that is not the direct result of human
10 trafficking.

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

13 “(A) be in writing;

14 “(B) describe any supporting evidence;

15 “(C) state the offense; and

16 “(D) include copies of any documents
17 showing that the movant is entitled to relief
18 under this section.

19 “(3) HEARING.—

20 “(A) MANDATORY HEARING.—

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

1 tion of the motion filed under paragraph
2 (1).

3 “(ii) MANDATORY HEARING.—If the
4 Government files a motion described in
5 clause (i), not later than 15 days after the
6 date on which the motion is filed, the court
7 shall hold a hearing on the motion.

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

14 “(4) FACTORS.—

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

21 “(i) the movant was convicted of a
22 level A offense; and

23 “(ii) the participation in the level A
24 offense by the movant was a direct result

1 of the movant having been a victim of traf-
2 ficking.

3 “(B) EXPUNGING ARRESTS FOR LEVEL A
4 OFFENSES.—The court may grant a motion
5 under paragraph (1)(B) if, after notice to the
6 Government and an opportunity to be heard,
7 the court finds, by clear and convincing evi-
8 dence, that—

9 “(i) the movant was arrested for a
10 level A offense; and

11 “(ii) the conduct or alleged conduct
12 that resulted in the arrest was directly re-
13 lated to the movant having been a victim
14 of trafficking.

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

21 “(i) the movant was arrested for a
22 level C offense and the conduct or alleged
23 conduct that resulted in the arrest was di-
24 rectly related to the movant having been a
25 victim of trafficking; and

1 “(ii)(I) the movant was acquitted of
2 the level C offense;

3 “(II) the Government did not pursue
4 or dismissed criminal charges against the
5 movant for the level C offense; or

6 “(III)(aa) the charges against the
7 movant for the level C offense were re-
8 duced to a level A offense; and

9 “(bb) the movant was acquitted of the
10 level A offense, the Government did not
11 pursue or dismissed criminal charges
12 against the movant for the level A offense,
13 or any subsequent conviction of that level
14 A offense was vacated.

15 “(5) SUPPORTING EVIDENCE.—

16 “(A) REBUTTABLE PRESUMPTION.—For
17 purposes of this subsection, there shall be a re-
18 buttable presumption that the movant is a vic-
19 tim of trafficking if the movant includes in the
20 motion—

21 “(i) a copy of an official record, cer-
22 tification, or eligibility letter from a Fed-
23 eral, State, Tribal, or local proceeding, in-
24 cluding an approval notice or an enforce-
25 ment certification generated from a Fed-

1 eral immigration proceeding, that shows
2 that the movant was a victim of traf-
3 ficking, including a victim of a trafficker
4 charged with a violation of chapter 77; or

5 “(ii) an affidavit or sworn testimony
6 from a trained professional staff member
7 of a victim services organization, an attor-
8 ney, a member of the clergy, a medical
9 professional, or another professional from
10 whom the movant has sought assistance in
11 addressing the trauma associated with
12 being a victim of trafficking.

13 “(B) OTHER EVIDENCE.—

14 “(i) IN GENERAL.—For purposes of
15 this section, in determining whether the
16 movant is a victim of trafficking, the court
17 may consider any other evidence the court
18 determines is of sufficient credibility and
19 probative value, including an affidavit or
20 sworn testimony of the movant.

21 “(ii) AFFIDAVIT OR SWORN TESTI-
22 MONY OF MOVANT SUFFICIENT EVI-
23 DENCE.—The affidavit or sworn testimony
24 of the movant described in clause (i) shall
25 be sufficient evidence to vacate a convic-

1 tion or expunge an arrest under this sec-
2 tion if the court determines that—

3 “(I) the affidavit or sworn testi-
4 mony is credible; and

5 “(II) no other evidence is readily
6 available.

7 “(6) CONVICTION OR ARREST OF OTHER PER-
8 SONS NOT REQUIRED.—It shall not be necessary
9 that any person other than the movant be convicted
10 of or arrested for an offense before the movant may
11 file a motion under paragraph (1).

12 “(7) DENIAL OF MOTION.—

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

16 “(B) REASONS FOR DENIAL.—If the court
17 denies a motion filed under paragraph (1), the
18 court shall state the reasons for the denial in
19 writing.

20 “(C) REASONABLE TIME TO CURE DEFI-
21 CIENCIES IN MOTION.—If the motion was de-
22 nied due to a curable deficiency in the motion,
23 the court shall allow the movant sufficient time
24 to cure the deficiency.

1 “(8) APPEAL.—An order granting or denying a
 2 motion under this section may be appealed in ac-
 3 cordance with section 1291 of title 28.

4 “(c) VACATUR OF CONVICTIONS.—

5 “(1) IN GENERAL.—If the court grants a mo-
 6 tion to vacate a conviction of a level A offense under
 7 subsection (b), the court shall immediately vacate
 8 the conviction for cause, set aside the verdict and
 9 enter a judgment of acquittal, and enter an
 10 expungement order that directs that there be ex-
 11 punged from all official records all references to—

12 “(A) the arrest of the movant for the level
 13 A offense;

14 “(B) the institution of criminal pro-
 15 ceedings against the movant relating to the
 16 level A offense; and

17 “(C) the results of the proceedings.

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

20 “(A) the conviction shall not be regarded
 21 as a conviction under Federal law and the mov-
 22 ant for whom the conviction was vacated shall
 23 be considered to have the status occupied by the
 24 movant before the arrest or the institution of

1 the criminal proceedings related to such convic-
2 tion; and

3 “(B) no alien may be removed, determined
4 to be inadmissible, or lose any immigration ben-
5 efit because of such conviction, arrest, or insti-
6 tution of criminal proceedings.

7 “(d) EXPUNGEMENT OF ARRESTS.—

8 “(1) IN GENERAL.—If the court grants a mo-
9 tion to expunge all records of an arrest for an of-
10 fense under subsection (b), the court shall imme-
11 diately enter an expungement order that directs that
12 there be expunged from all official records all ref-
13 erences to—

14 “(A) the arrest of the movant for the of-
15 fense;

16 “(B) the institution of any criminal pro-
17 ceedings against the movant relating to the of-
18 fense; and

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

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

22 “(A) the arrest shall not be regarded as an
23 arrest under Federal law and the movant for
24 whom the arrest is expunged shall be consid-
25 ered to have the status occupied by the movant

1 before the arrest or the institution of the criminal
2 proceedings related to such arrest, if any;
3 and

4 “(B) no alien may be removed, determined
5 to be inadmissible, or lose any immigration benefit
6 because of arrest or institution of criminal
7 proceedings, if any.

8 “(e) MITIGATING FACTORS.—

9 “(1) IN GENERAL.—The court that imposed
10 sentence for a level B offense upon a covered prisoner
11 may reduce the term of imprisonment for the
12 level B offense—

13 “(A) upon—

14 “(i) motion by the covered prisoner or
15 the Director of the Bureau of Prisons; or

16 “(ii) the court’s own motion;

17 “(B) after notice to the Government;

18 “(C) after considering—

19 “(i) the factors set forth in section
20 3553(a);

21 “(ii) the nature and seriousness of the
22 danger to any person; and

23 “(iii) the community, or any crime
24 victims; and

1 “(D) if the court finds, by clear and con-
2 vincing evidence, that the covered prisoner com-
3 mitted the level B offense as a direct result of
4 the covered prisoner having been a victim of
5 trafficking.

6 “(2) REBUTTABLE PRESUMPTION.—For the
7 purposes of this subsection, there shall be a rebutta-
8 ble presumption that a covered prisoner is a victim
9 of trafficking if the covered prisoner provides—

10 “(A) a copy of an official record, certifi-
11 cation, or eligibility letter from a Federal,
12 State, Tribal, or local proceeding, including an
13 approval notice or an enforcement certification
14 generated from a Federal immigration pro-
15 ceeding, that shows that the covered prisoner
16 was a victim of trafficking, including a victim
17 of a trafficker charged with a violation of chap-
18 ter 77; or

19 “(B) an affidavit or sworn testimony from
20 a trained professional staff member of a victim
21 services organization, an attorney, a member of
22 the clergy, a medical professional, or another
23 professional from whom the covered prisoner
24 has sought assistance in addressing the trauma
25 associated with being a victim of trafficking.

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

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

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

12 “(g) CONFIDENTIALITY OF MOVANT.—

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

16 “(2) INFORMATION NOT AVAILABLE FOR PUB-
17 LIC INSPECTION.—An officer or employee may not
18 make available for public inspection any report,
19 paper, picture, photograph, court file, or other docu-
20 ment, in the custody or possession of the officer or
21 employee, that identifies the movant.

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

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

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

5 **SEC. 3. REPORTS.**

6 (a) UNITED STATES ATTORNEYS.—Not later than 1
7 year after the date of enactment of this Act, each United
8 States attorney shall submit to the Attorney General a re-
9 port that details—

10 (1) the number of motions for vacatur or
11 expungement filed under section 3772 of title 18,
12 United States Code, as added by section 2, in the
13 district of the United States attorney; and

14 (2) for each motion described in paragraph
15 (1)—

16 (A) the underlying offense;

17 (B) the response of the United States at-
18 torney to the motion; and

19 (C) the final determination of the court
20 with respect to the motion.

21 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—Not
22 later than 3 years after the date of enactment of this Act,
23 the Comptroller General of the United States shall submit
24 to Congress a report that—

1 (1) assesses the impact of the enactment of sec-
2 tion 3772 of title 18, United States Code, as added
3 by section 2; and

4 (2) includes—

5 (A) the number of human trafficking sur-
6 vivors who have filed motions for vacatur or
7 expungement under such section 3772;

8 (B) the final determination of each court
9 that adjudicated a motion described in subpara-
10 graph (A); and

11 (C) recommendations to increase access to
12 post-conviction relief for human trafficking sur-
13 vivors with Federal criminal records.

14 **SEC. 4. USE OF GRANTS FOR POST-CONVICTION RELIEF**
15 **REPRESENTATION.**

16 The Office of Justice Programs or the Office on Vio-
17 lence Against Women, in awarding a grant that may be
18 used for legal representation, may not prohibit a recipient
19 from using the grant for legal representation for post-con-
20 viction relief.

21 **SEC. 5. SENSE OF CONGRESS.**

22 It is the sense of Congress that—

23 (1) this Act is a first step to address the chang-
24 ing tactics of human traffickers, who are using

1 forced criminality as a form of force, fraud, and co-
2ercion in their human trafficking enterprises; and

3 (2) Congress is committed to continuing to find
4 solutions as needed to thwart human traffickers and
5 protect survivors of human trafficking.

6 **SEC. 6. HUMAN TRAFFICKING DEFENSE.**

7 (a) IN GENERAL.—Chapter 1 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 **“§ 28. Human trafficking defense**

11 “(a) DEFINITION.—In this section, the term ‘covered
12 Federal offense’ means a level A offense or level B offense,
13 as those terms are defined in section 3772.

14 “(b) PRESUMPTION OF DURESS.—In a prosecution
15 for a covered Federal offense, a defendant who establishes
16 by clear and convincing evidence that the defendant was
17 a victim of trafficking at the time at which the defendant
18 committed the offense shall create a rebuttable presump-
19 tion that the offense was induced by duress.

20 “(c) RECORD OR PROCEEDING UNDER SEAL.—In
21 any proceeding in which a defense under subsection (b)
22 is raised, any record or part of the proceeding related to
23 the defense shall, on motion, be placed under seal until
24 such time as a conviction is entered for the offense.

1 “(d) POST-CONVICTION RELIEF.—A failure to assert,
2 or failed assertion of, a defense under subsection (b) by
3 an individual who is convicted of a covered Federal offense
4 may not preclude the individual from asserting as a miti-
5 gating factor, at sentencing or in a proceeding for any
6 post-conviction relief, that at the time of the commission
7 of the offense, the defendant was a victim of trafficking
8 and committed the offense under duress.

9 “(e) FEDERAL AID.—A failure to assert, or failed as-
10 ssertion of, a defense under subsection (b) by an individual
11 who is convicted of a covered Federal offense may not be
12 used for the purpose of disqualifying the individual from
13 participating in any federally funded program that aids
14 victims of human trafficking.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—
16 The table of sections for chapter 1 of title 18, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

“28. Human trafficking defense.”.

