



BILL NO: House Bill 242/Senate Bill 206

TITLE: Criminal Procedure – Motion to Vacate Judgment – Human Trafficking (True Freedom Act of 2020)

COMMITTEE: Judiciary/Judicial Proceedings

HEARING DATE: January 28, 2020/January 29, 2020

POSITION: SUPPORT

The Amara Legal Center writes to support House Bill 242/Senate Bill 206 (HB242/SB206). While we are concerned that the bill does not address all of the charges victim-defendants may face and that the bill includes a prosecutorial consent requirement, we are grateful that Senators Lee, Carter, Elfreth, Ellis, Guzzone, Hester, Kagan, Kelley, King, Klausmeier, Kramer, Lam, McCray, Patterson, Pinsky, Smith, Sydnor, Waldstreicher, West, Young, and Zucker, and Delegate Atterbeary introduced this important legislation to address convictions for crimes survivors were forced to commit while they were victimized by their traffickers. We believe that this bill is a step in the right direction especially because it explicitly includes victims of labor trafficking. Thank you for giving us the opportunity to share our thoughts.

The Amara Legal Center (“Amara”) provides free legal services in Washington, D.C., Maryland, and Northern Virginia to anyone whose rights are violated while involved in commercial sex, most commonly our clients are sex trafficking survivors. Since 2013, Amara has served over 500 clients. Although many believe that sex trafficking only occurs overseas or among foreign nationals, the vast majority of Amara’s clients are U.S. citizens, both adults and juveniles born and raised in the D.C. metro area. Amara provides brief legal advice, partial and full representation for civil legal issues such as civil protection orders, divorce, child custody and support, and name changes. In addition to civil legal services, Amara also provides victim-witness advocacy for clients working with law enforcement, criminal defense, and representation in criminal record sealing and expungement cases.

As a result of the power and control exercised by their traffickers, victims engage in activities in which they would not have otherwise engaged. These activities often lead to victims’ arrests, which create victim-defendants in the criminal legal system. Involvement in the criminal legal system impacts most of Amara’s clients, regardless of the legal issues clients are seeking to resolve. A majority of our criminal defense cases from victim-defendants come from Maryland. Involvement may come from being arrested for prostitution or solicitation; arrests for drug use; mental illness that may precede, occur during, or be exacerbated by sex trafficking; struggles with housing insecurity and homelessness; and a variety of crimes related to survival such as shoplifting and trespassing. The vast majority of crimes for which Amara’s clients are arrested are low level misdemeanors. Of these misdemeanors, roughly 90% of them are prostitution or prostitution-related offenses. A typical situation involves a trafficker posting online commercial sex advertisements for one of his¹ victims against her² will and then using threats of bodily harm to coerce her into the selling of sexual services for money.

At Amara, we often hear the argument that if our clients are victims and we simply informed the prosecutors of that, then our clients would never be convicted; however, this argument is flawed for a number of reasons. First, few clients self identify as trafficking survivors. It is Amara’s experience that clients would rather identify as domestic violence victims or plead guilty than turn on their traffickers or admit to being trafficking victims. As Fair Girls, one of our partners, has shared: “self-identification as

¹ We use the pronoun he but it could be she as well.

² Similarly, a victim can be a biological man.



a trafficking victim is a healing process that may take years.” As a result, victims may not have shared with their defense attorneys that they were victims when they were charged and convicted, and it is only after obtaining counseling or other services that they are ready to address their victimization. Second, we are only now beginning to address human trafficking as a country. Congress did not pass the Trafficking Victims Protections Act until 2000. Maryland responded to human trafficking in 2011, becoming the second state in the country to enact a “vacating convictions” law. Nonetheless, prior to and since 2011 there have been State’s Attorneys and defense attorneys who do not understand trafficking and do not identify survivors human trafficking with whom they come into contact. Third, even in 2020, sometimes State’s Attorneys, like any human being, simply get it wrong and prosecute cases where there are clear signs of trafficking. Even in cases where a State’s Attorney is sympathetic to a client’s status as a victim, they move forward with prosecution because their office policy requires it. Also, law enforcement may pressure a State’s Attorney to try to get victim-defendants to cooperate with an investigation. For these reasons, we need vacatur as a remedy to help address the criminal legal system’s failure to properly identify victims, and to allow victims to move forward with their lives after they survive their trafficking victimization.

In the years since its enactment, Maryland’s vacatur law has proved inadequate in meeting the needs of Maryland’s survivors. First, in Maryland the majority of trafficking victims who have been convicted of crimes, were not convicted for prostitution, but for charges such as trespassing, drug possession, assault, or burglary. Second, Maryland’s current law does not expressly include survivors of labor trafficking, who are similarly convicted of crimes they were forced to commit. Third, **Maryland is one of only two states in the entire country requiring the consent of the agency that prosecuted the victim before the victim can file a petition for vacatur with the court.** The consent requirement is a problematic provision that puts a prosecutor in the role of a judge in determining whether the survivor was trafficked at the time of their conviction. This consent requirement eliminates the ability of the court to act independently. Additionally, the consent requirement often adds months to what can already be a lengthy and retraumatizing process, which is not in the best interest of the survivor seeking the relief. There is no other similar consent requirement in Maryland criminal procedure that requires a defendant to seek prosecutorial permission before filing a motion, including Motions for a New Trial, Motions to Reconsider, Motions for Post Conviction Relief, or a Petition for *Coram Nobis*.

The purpose of vacatur is recognizing the harsh reality that survivors are often forced to commit many crimes, even violent crimes, under extreme duress. If we agree that survivors should not be criminalized for committing crimes while under duress, then a vacatur statute serves to clear their wrongful convictions and expunge the records. We now understand that victims of trafficking are coerced by physical violence, emotional manipulation, fraud, financial control, and for survival they bend to the will of their traffickers. Maryland should be commended for pursuing its current efforts to eradicate trafficking. However, we must not overlook the need for survivor-centered approaches to eradicate trafficking. If we agree that survivors are not at fault for crimes they were forced to commit, then they should not be arrested and charged in the first place.

HB242/SB206 will help set the record straight, right past wrongs, and allow more survivors to move forward with their lives by expanding the post-conviction relief available to survivors of human trafficking. These survivors are already recognized as lacking the criminal intent to commit the crimes for which they were convicted. The law is finally catching up to reality. For these reasons, the Amara Legal Center supports HB242/SB206. We respectfully urge a favorable report.