

116TH CONGRESS
2D SESSION

S. _____

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

Mrs. GILLIBRAND (for herself and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on

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 2020”.

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 who—

13 “(A) was convicted of a level B offense;

14 “(B) was sentenced to a term of imprison-
15 ment for the level B offense; and

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

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

20 “(4) the term ‘Federal offense’ means an of-
21 fense that is punishable under Federal law;

22 “(5) the term ‘level A offense’ means a Federal
23 offense that is not a violent crime;

24 “(6) the term ‘level B offense’—

25 “(A) means a Federal offense that is a vio-
26 lent crime; and

1 “(B) does not include a Federal offense
2 that is a violent crime of which a child was a
3 victim;

4 “(7) the term ‘level C offense’ means any Fed-
5 eral offense that is not a level A offense;

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

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

14 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
15 PUNGE ARRESTS.—

16 “(1) IN GENERAL.—

17 “(A) CONVICTIONS OF LEVEL A OF-
18 FENSES.—A person convicted of any level A of-
19 fense (or an attorney representing such a per-
20 son) may move the court that imposed the sen-
21 tence for the level A offense to vacate the judg-
22 ment of conviction if the level A offense was
23 committed as a direct result of the person hav-
24 ing been a victim of trafficking.

1 “(B) ARRESTS FOR LEVEL A OFFENSES.—

2 A person arrested for any level A offense (or an
3 attorney representing such a person) may move
4 the district court of the United States for the
5 district and division embracing the place where
6 the person was arrested to expunge all records
7 of the arrest if the conduct or alleged conduct
8 of the person that resulted in the arrest was di-
9 rectly related to the person having been a vic-
10 tim of trafficking.

11 “(C) ARRESTS FOR LEVEL C OFFENSES.—

12 A person arrested for any level C offense (or an
13 attorney representing such a person) may move
14 the district court of the United States for the
15 district and division embracing the place where
16 the person was arrested to expunge all records
17 of the arrest if—

18 “(i) the conduct or alleged conduct of
19 the movant that resulted in the arrest was
20 directly related to the movant having been
21 a victim of trafficking; and

22 “(ii)(I) the movant was acquitted of
23 the level C offense;

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

4 “(III)(aa) the charges against the
5 movant for the level C offense were re-
6 duced to an offense that is a level A of-
7 fense; and

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

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

16 “(A) be in writing;

17 “(B) describe any supporting evidence;

18 “(C) state the offense; and

19 “(D) include copies of any documents
20 showing that the movant is entitled to relief
21 under this section.

22 “(3) HEARING.—

23 “(A) MANDATORY HEARING.—

24 “(i) MOTION IN OPPOSITION.—Not
25 later than 30 days after the date on which

1 a motion is filed under paragraph (1), the
2 Government may file a motion in opposi-
3 tion of the motion filed under paragraph
4 (1).

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

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

16 “(4) FACTORS.—

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

23 “(i) the movant was convicted of a
24 level A offense; and

1 “(ii) the participation in the level A
2 offense by the movant was a direct result
3 of the movant having been a victim of traf-
4 ficking.

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

11 “(i) the movant was arrested for a
12 level A offense; and

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

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

23 “(i) the movant was arrested for a
24 level C offense and the conduct or alleged
25 conduct that resulted in the arrest was di-

1 rectly related to the movant having been a
2 victim of trafficking; and

3 “(ii)(I) the movant was acquitted of
4 the level C offense;

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

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

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

17 “(5) SUPPORTING EVIDENCE.—

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

23 “(i) a copy of an official record, cer-
24 tification, or eligibility letter from a Fed-
25 eral, State, Tribal, or local proceeding, in-

1 cluding an approval notice or an enforce-
2 ment certification generated from a Fed-
3 eral immigration proceeding, that shows
4 that the movant was a victim of traf-
5 ficking, including a victim of a trafficker
6 charged with a violation of chapter 77; or

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

15 “(B) OTHER EVIDENCE.—

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

23 “(ii) AFFIDAVIT OR SWORN TESTI-
24 MONY OF MOVANT SUFFICIENT EVI-
25 DENCE.—The affidavit or sworn testimony

1 of the movant described in clause (i) shall
2 be sufficient evidence to vacate a convic-
3 tion or expunge an arrest under this sec-
4 tion if the court determines that—

5 “(I) the affidavit or sworn testi-
6 mony is credible; and

7 “(II) no other evidence is readily
8 available.

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

14 “(7) DENIAL OF MOTION.—

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

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

22 “(C) REASONABLE TIME TO CURE DEFICI-
23 CIENCIES IN MOTION.—If the motion was de-
24 nied due to a curable deficiency in the motion,

1 the court shall allow the movant sufficient time
2 to cure the deficiency.

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

6 “(c) VACATUR OF CONVICTIONS.—

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

14 “(A) the arrest of the movant for the level
15 A offense;

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

19 “(C) the results of the proceedings.

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

22 “(A) the conviction shall not be regarded
23 as a conviction under Federal law and the mov-
24 ant for whom the conviction was vacated shall
25 be considered to have the status occupied by the

1 movant before the arrest or the institution of
2 the criminal proceedings related to such convic-
3 tion; and

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

8 “(d) EXPUNGEMENT OF ARRESTS.—

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

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

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

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

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

23 “(A) the arrest shall not be regarded as an
24 arrest under Federal law and the movant for
25 whom the arrest is expunged shall be consid-

1 ered to have the status occupied by the movant
2 before the arrest or the institution of the crimi-
3 nal proceedings related to such arrest, if any;
4 and

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

9 “(e) MITIGATING FACTORS.—

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

14 “(A) upon—

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

17 “(ii) the court’s own motion;

18 “(B) after notice to the Government;

19 “(C) after considering—

20 “(i) the factors set forth in section
21 3553(a);

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

24 “(iii) the community, or any crime
25 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 make
18 not 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-
2 ercion 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.