

115TH CONGRESS  
1ST SESSION

# S. 104

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 11, 2017

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

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## 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 2017”.

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 offense’—

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

13 “(i) a violent crime; or

14 “(ii) an offense of which a child was  
 15 a victim; and

16 “(B) includes—

17 “(i) a conspiracy to commit an offense  
 18 described in subparagraph (A)(i) of which  
 19 a child was not a victim; and

20 “(ii) a conspiracy to commit an of-  
 21 fense described in subparagraph (A)(ii)  
 22 that is not a violent crime;

23 “(3) the term ‘covered prisoner’ means an indi-  
 24 vidual who—

25 “(A) was convicted of a noncovered offense  
 26 before the date of enactment of this section;

1           “(B) was sentenced to a term of imprison-  
2           ment for the noncovered offense; and

3           “(C) is imprisoned under such term of im-  
4           prisonment;

5           “(4) the term ‘eligible entity’ includes—

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

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

10          “(C) a public defender’s office;

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

13          “(6) the term ‘Federal offense’ means an of-  
14          fense that is punishable under Federal law or the  
15          laws of the District of Columbia;

16          “(7) the term ‘noncovered offense’—

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

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

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

24          “(8) the term ‘victim of trafficking’ has the  
25          meaning given that term in section 103 of the Traf-

1       ficking Victims Protection Act of 2000 (22 U.S.C.  
2       7102); and

3               “(9) term ‘violent crime’ has the meaning given  
4       that term in section 103 of the Juvenile Justice and  
5       Delinquency Prevention Act of 1974 (42 U.S.C.  
6       5603).

7       “(b) MOTIONS TO VACATE CONVICTIONS OR EX-  
8       PUNGE ARRESTS.—

9               “(1) IN GENERAL.—

10               “(A) CONVICTIONS OF COVERED OF-  
11       FENSES.—A person convicted of any covered of-  
12       fense (or an eligible entity representing such a  
13       person) may move the court which imposed the  
14       sentence for the covered offense to vacate the  
15       judgment of conviction if the covered offense  
16       was committed as a direct result of the person  
17       having been a victim of trafficking.

18               “(B) ARRESTS FOR COVERED OF-  
19       FENSES.—A person arrested for any covered of-  
20       fense (or an eligible entity representing such a  
21       person) may move the district court for the dis-  
22       trict and division embracing the place where the  
23       person was arrested to expunge all records of  
24       the arrest if the conduct or alleged conduct of  
25       the person which resulted in the arrest was di-

1           rectly related to the person having been a vic-  
2           tim of trafficking.

3           “(C) ARRESTS FOR NONCOVERED OF-  
4           FENSES.—A person arrested for any noncovered  
5           offense (or an eligible entity representing such  
6           a person) may move the district court for the  
7           district and division embracing the place where  
8           the person was arrested to expunge all records  
9           of the arrest if—

10                   “(i) the conduct or alleged conduct of  
11                   the person which resulted in the arrest was  
12                   directly related to the person having been  
13                   a victim of trafficking; and

14                   “(ii)(I) the person is acquitted of the  
15                   noncovered offense;

16                   “(II) the Government does not pursue  
17                   or dismisses criminal charges against the  
18                   person for the noncovered offense; or

19                   “(III)(aa) the charges against the per-  
20                   son for the noncovered offense are reduced  
21                   to an offense that is a covered offense; and

22                   “(bb) the person is acquitted of the  
23                   covered offense, the Government does not  
24                   pursue or dismisses criminal charges  
25                   against the person for the covered offense,

1 or any subsequent conviction of the cov-  
2 ered offense is vacated.

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

5 “(A) be in writing;

6 “(B) describe any supporting evidence;

7 “(C) state the offense; and

8 “(D) include copies of any documents  
9 showing that the movant is entitled to relief  
10 under this section.

11 “(3) HEARING.—

12 “(A) MANDATORY HEARING.—

13 “(i) MOTION IN OPPOSITION.—Not  
14 later than 30 days after the date on which  
15 a motion is filed under paragraph (1), the  
16 Government may file a motion in opposi-  
17 tion of the motion filed under paragraph  
18 (1).

19 “(ii) MANDATORY HEARING.—If the  
20 Government files a motion described in  
21 clause (i), not later than 15 days after the  
22 date on which the motion is filed, the court  
23 shall hold a hearing on the motion.

24 “(B) DISCRETIONARY HEARING.—If the  
25 Government does not file a motion described in

1           subparagraph (A)(i), the court may hold a  
2           hearing on the motion not later than 45 days  
3           after the date on which a motion is filed under  
4           paragraph (1).

5           “(4) FACTORS.—

6                   “(A) VACATING CONVICTIONS OF COVERED  
7           OFFENSES.—The court may grant a motion  
8           under paragraph (1)(A) if, after notice to the  
9           Government and an opportunity to be heard,  
10          the court finds, by clear and convincing evi-  
11          dence, that—

12                           “(i) the movant was convicted of a  
13                           covered offense; and

14                           “(ii) the participation in the covered  
15                           offense by the movant was a direct result  
16                           of the movant having been a victim of traf-  
17                           ficking.

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

24                           “(i) the movant was arrested for a  
25                           covered offense; and

1           “(ii) the conduct or alleged conduct  
2           which resulted in the arrest was directly  
3           related to the movant having been a victim  
4           of trafficking.

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

11           “(i) the movant was arrested for a  
12           noncovered offense and the conduct or al-  
13           leged conduct which resulted in the arrest  
14           was directly related to the movant having  
15           been a victim of trafficking; and

16           “(ii)(I) the person is acquitted of the  
17           noncovered offense;

18           “(II) the Government does not pursue  
19           or dismisses criminal charges against the  
20           person for the covered offense; or

21           “(III)(aa) the charges against the per-  
22           son for the noncovered offense are reduced  
23           to a covered offense; and

24           “(bb) the person is acquitted of the  
25           covered offense, the Government does not



1           pursue or dismissed criminal charges  
2           against the person for the covered offense,  
3           or any subsequent conviction of that cov-  
4           ered offense is vacated.

5           “(5) SUPPORTING EVIDENCE.—

6           “(A) REBUTTABLE PRESUMPTION.—For  
7           purposes of this section, there shall be a rebut-  
8           table presumption that the movant is a victim  
9           of trafficking if the movant includes in the mo-  
10          tion—

11           “(i) a copy of an official record, cer-  
12          tification, or eligibility letter from a Fed-  
13          eral, State, tribal, or local proceeding, in-  
14          cluding an approval notice or an enforce-  
15          ment certification generated from a Fed-  
16          eral immigration proceeding, that shows  
17          that the movant was a victim of traf-  
18          ficking, including a victim of a trafficker  
19          charged with a violation of chapter 77; or

20           “(ii) an affidavit or sworn testimony  
21          from a trained professional staff member  
22          of a victim services organization, an attor-  
23          ney, a member of the clergy, or a medical  
24          or other professional from whom the mov-  
25          ant has sought assistance in addressing

1 the trauma associated with being a victim  
2 of trafficking.

3 “(B) OTHER EVIDENCE.—

4 “(i) IN GENERAL.—For purposes of  
5 this section, in determining whether the  
6 movant is a victim of trafficking, the court  
7 may consider any other evidence the court  
8 determines is of sufficient credibility and  
9 probative value, including an affidavit or  
10 sworn testimony of the movant.

11 “(ii) AFFIDAVIT OR SWORN TESTI-  
12 MONY OF MOVANT SUFFICIENT EVI-  
13 DENCE.—The affidavit or sworn testimony  
14 of the movant described in clause (i) shall  
15 be sufficient evidence to vacate a convic-  
16 tion or expunge an arrest under this sec-  
17 tion if the court determines that—

18 “(I) the affidavit or sworn testi-  
19 mony is credible; and

20 “(II) no other evidence is readily  
21 available.

22 “(6) CONVICTION OR ARREST OF OTHER PER-  
23 SONS NOT REQUIRED.—It shall not be necessary  
24 that any person other than the movant be convicted

1 of or arrested for a covered offense before the mov-  
2 ant may file a motion under paragraph (1).

3 “(7) DENIAL OF MOTION.—

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

7 “(B) REASONS FOR DENIAL.—If the court  
8 denies a motion filed under paragraph (1), the  
9 court shall state the reasons for the denial in  
10 writing.

11 “(C) REASONABLE TIME TO CURE DEFICI-  
12 CIENCIES IN MOTION.—If the motion was de-  
13 nied due to a curable deficiency in the motion,  
14 the court shall allow the movant sufficient time  
15 for the movant to cure the deficiency.

16 “(8) APPEAL.—An order granting or denying a  
17 motion under this section may be appealed in ac-  
18 cordance with section 1291 of title 28 and section  
19 3731 of this title.

20 “(c) VACATUR OF CONVICTIONS.—

21 “(1) IN GENERAL.—If the court grants a mo-  
22 tion to vacate a conviction under subsection (b), the  
23 court shall immediately vacate the conviction for  
24 cause, set aside the verdict and enter a judgment of  
25 acquittal, and enter an expungement order that di-

1       rects that there be expunged from all official records  
2       all references to—

3               “(A) the arrest of the person for the cov-  
4               ered offense;

5               “(B) the institution of criminal pro-  
6               ceedings against the person relating to the cov-  
7               ered offense; and

8               “(C) the results of the proceedings.

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

11               “(A) the conviction shall not be regarded  
12               as a conviction under Federal law and the per-  
13               son for whom the conviction was vacated shall  
14               be considered to have the status occupied by the  
15               person before the arrest or the institution of the  
16               criminal proceedings related to such conviction;  
17               and

18               “(B) no alien may be removed, determined  
19               to be inadmissible, or lose any immigration ben-  
20               efit because of such conviction, arrest, or insti-  
21               tution of criminal proceedings.

22       “(d) EXPUNGEMENT OF ARRESTS.—

23               “(1) IN GENERAL.—If the court grants a mo-  
24               tion to expunge an arrest under subsection (b), the  
25               court shall immediately enter an expungement order

1 that directs that there be expunged from all official  
2 records all references to—

3 “(A) the arrest of the person for the cov-  
4 ered offense;

5 “(B) the institution of any criminal pro-  
6 ceedings against the person relating to the cov-  
7 ered offense; and

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

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

11 “(A) the arrest shall not be regarded as an  
12 arrest under Federal law and the person for  
13 whom the arrest is expunged shall be consid-  
14 ered to have the status occupied by the person  
15 before the arrest or the institution of the crimi-  
16 nal proceedings related to such arrest, if any;  
17 and

18 “(B) no alien may be removed, determined  
19 to be inadmissible, or lose any immigration ben-  
20 efit because of arrest or institution of criminal  
21 proceedings, if any.

22 “(e) MITIGATING FACTORS.—

23 “(1) IN GENERAL.—The court which imposed  
24 sentence for a noncovered offense upon a covered

1 prisoner may reduce the term of imprisonment for  
2 the noncovered offense—

3 “(A) upon motion by a covered prisoner,  
4 the Director of the Bureau of Prisons, or the  
5 court’s own motion;

6 “(B) after notice to the Government;

7 “(C) after considering—

8 “(i) the factors set forth in section  
9 3553(a);

10 “(ii) the nature and seriousness of the  
11 danger to any person; and

12 “(iii) the community, or any crime  
13 victims; and

14 “(D) if the court finds, by clear and con-  
15 vincing evidence, that the covered prisoner com-  
16 mitted the noncovered offense as a direct result  
17 of the covered prisoner having been a victim of  
18 trafficking.

19 “(2) REBUTTABLE PRESUMPTION.—For the  
20 purposes of this subsection, there shall be a rebutta-  
21 ble presumption that a covered prisoner is a victim  
22 of trafficking if the covered prisoner provides—

23 “(A) a copy of an official record, certifi-  
24 cation, or eligibility letter from a Federal,  
25 State, tribal, or local proceeding, including an

1 approval notice or an enforcement certification  
2 generated from a Federal immigration pro-  
3 ceeding, that shows that the covered prisoner  
4 was a victim of trafficking, including a victim  
5 of a trafficker charged with a violation of chap-  
6 ter 77; or

7 “(B) an affidavit or sworn testimony from  
8 a trained professional staff member of a victim  
9 services organization, an attorney, a member of  
10 the clergy, or a medical or other professional  
11 from whom the covered prisoner has sought as-  
12 sistance in addressing the trauma associated  
13 with being a victim of trafficking.

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

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

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

25 “(g) CONFIDENTIALITY OF MOVANT.—

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

4           “(2) INFORMATION NOT AVAILABLE FOR PUB-  
5           LIC INSPECTION.—No officer or employee may make  
6           any report, paper, picture, photograph, court file or  
7           other document, in the custody or possession of the  
8           officer or employee, that identifies the movant avail-  
9           able for public inspection.

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

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

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

○