

118TH CONGRESS  
2D SESSION

# S. 4214

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

APRIL 30, 2024

Mrs. GILLIBRAND (for herself, Mr. RUBIO, Mr. WYDEN, Mrs. HYDE-SMITH, Ms. CORTEZ MASTO, Mr. ROUNDS, Mr. WELCH, Mr. DAINES, Mr. COONS, and Ms. MURKOWSKI) 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 2024”.

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 **“§ 3771A. 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 A offense or  
14 level B offense;

15 “(B) was sentenced to a term of imprison-  
16 ment for the offense described in subparagraph  
17 (A); and

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

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

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

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

26 “(6) the term ‘level B offense’—

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

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

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

8           “(8) the term ‘victim of trafficking’ has the  
9           meaning given that term in section 103 of the Traf-  
10          fficking Victims Protection Act of 2000 (22 U.S.C.  
11          7102); and

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

16          “(b) MOTIONS TO VACATE CONVICTIONS OR EX-  
17          PUNGE ARRESTS.—

18                 “(1) IN GENERAL.—

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

1 committed as a direct result of the person hav-  
2 ing been a victim of trafficking.

3 “(B) ARRESTS FOR LEVEL A OFFENSES.—

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

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

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

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

24 “(ii)(I) the movant was acquitted of  
25 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 a preponderance of the 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 a preponderance of the 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 a preponderance of the 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) IN GENERAL.—For purposes of this  
19           section, in determining whether the movant is a  
20           victim of trafficking, the court may consider  
21           any evidence the court determines is of suffi-  
22           cient credibility and probative value, including  
23           an affidavit or sworn testimony of the movant.

24           “(B) AFFIDAVIT OR SWORN TESTIMONY OF  
25           MOVANT SUFFICIENT EVIDENCE.—The affidavit

1 or sworn testimony of the movant described in  
2 subparagraph (A) may be sufficient evidence to  
3 vacate a conviction or expunge an arrest under  
4 this section if the court determines that—

5 “(i) the affidavit or sworn testimony  
6 is credible; and

7 “(ii) no other evidence is readily avail-  
8 able.

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—

10                   “(A) vacate the conviction for cause;

11                   “(B) set aside the verdict and enter a  
12                   judgment of acquittal;

13                   “(C) enter an expungement order that di-  
14                   rects that there be expunged from all official  
15                   records all references to—

16                           “(i) the arrest of the movant for the  
17                           level A offense;

18                           “(ii) the institution of criminal pro-  
19                           ceedings against the movant relating to the  
20                           level A offense; and

21                           “(iii) the results of the proceedings;  
22                           and

23                   “(D) return to the movant any fine, fee,  
24                   cost, or restitution associated with the convic-  
25                   tion and paid by the movant.

1           “(2) EFFECT.—If a conviction is vacated under  
2           an order entered under paragraph (1) the conviction  
3           shall not be regarded as a conviction under Federal  
4           law and the movant for whom the conviction was va-  
5           cated shall be considered to have the status occupied  
6           by the movant before the arrest or the institution of  
7           the criminal proceedings related to such conviction.

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) the arrest  
23           shall not be regarded as an arrest under Federal law  
24           and the movant for whom the arrest is expunged  
25           shall be considered to have the status occupied by

1 the movant before the arrest or the institution of the  
2 criminal proceedings related to such arrest, if any.

3 “(e) MITIGATING FACTORS.—

4 “(1) IN GENERAL.—The court that imposed  
5 sentence for a level A offense or level B offense upon  
6 a covered prisoner may reduce the term of imprison-  
7 ment for the offense—

8 “(A) upon—

9 “(i) motion by the covered prisoner or  
10 the Director of the Bureau of Prisons; or

11 “(ii) the court’s own motion;

12 “(B) after notice to the Government;

13 “(C) after considering—

14 “(i) the factors set forth in section  
15 3553(a);

16 “(ii) the nature and seriousness of the  
17 danger to any person, if applicable; and

18 “(iii) the community, or any crime  
19 victims; and

20 “(D) if the court finds, by a preponderance  
21 of the evidence, that the covered prisoner com-  
22 mitted the offense as a direct result of the cov-  
23 ered prisoner having been a victim of traf-  
24 ficking.

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

3           “(3) 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 shall, upon granting a motion under this section, take any  
11 additional action necessary to grant the movant full relief.

12           “(g) NO FEES.—A person may not be required to pay  
13 a filing fee, service charge, copay fee, processing fee, or  
14 any other charge for filing a motion under this section.

15           “(h) CONFIDENTIALITY OF MOVANT.—

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

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

1       “(i) APPLICABILITY.—This section shall apply to any  
2 conviction or arrest occurring before, on, or after the date  
3 of enactment of this section.”.

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

“3771A. Motion to vacate; expungement; mitigating factors.”.

8 **SEC. 3. REPORTS.**

9       (a) UNITED STATES ATTORNEY MOTIONS FOR  
10 VACATUR OR EXPUNGEMENT.—Not later than 1 year  
11 after the date of enactment of this Act, each United States  
12 attorney shall submit to the Attorney General a report  
13 that details—

14           (1) the number of motions for vacatur or  
15 expungement filed under section 3771A of title 18,  
16 United States Code, as added by section 2, in the  
17 district of the United States attorney; and

18           (2) for each motion described in paragraph  
19 (1)—

20                   (A) the underlying offense;

21                   (B) the response of the United States at-  
22 torney to the motion; and

23                   (C) the final determination of the court  
24 with respect to the motion.

1 (b) UNITED STATES ATTORNEY TRAINING ON  
2 HUMAN TRAFFICKING INDICATORS.—Not later than 1  
3 year after the date of enactment of this Act, the Attorney  
4 General shall submit to Congress a report that details all  
5 professional training received by United States attorneys  
6 on indicators of human trafficking during the preceding  
7 12-month period.

8 (c) GOVERNMENT ACCOUNTABILITY OFFICE.—Not  
9 later than 3 years after the date of enactment of this Act,  
10 the Comptroller General of the United States shall submit  
11 to Congress a report that—

12 (1) assesses the impact of the enactment of sec-  
13 tion 3771A of title 18, United States Code, as added  
14 by section 2; and

15 (2) includes—

16 (A) the number of human trafficking sur-  
17 vivors who have filed motions for vacatur or  
18 expungement under such section 3771A;

19 (B) the final determination of each court  
20 that adjudicated a motion described in subpara-  
21 graph (A);

22 (C) recommendations to increase access to  
23 post-conviction relief for human trafficking sur-  
24 vivors with Federal criminal records; and

1 (D) recommendations for improving the  
2 implementation and tracking of professional  
3 training of United States attorneys on indica-  
4 tors of human trafficking.

5 **SEC. 4. USE OF GRANTS FOR POST-CONVICTION RELIEF**  
6 **REPRESENTATION.**

7 The Office of Justice Programs or the Office on Vio-  
8 lence Against Women, in awarding a grant that may be  
9 used for legal representation, may not prohibit a recipient  
10 from using the grant for legal representation for post-con-  
11 viction relief.

12 **SEC. 5. SENSE OF CONGRESS.**

13 It is the sense of Congress that—

14 (1) this Act is a first step to address the chang-  
15 ing tactics of human traffickers, who are using  
16 forced criminality as a form of force, fraud, and co-  
17 ercion in their human trafficking enterprises; and

18 (2) Congress is committed to continuing to find  
19 solutions as needed to thwart human traffickers and  
20 protect survivors of human trafficking.

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

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

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

2 “(a) DEFINITION.—In this section, the term ‘covered  
3 Federal offense’ means a level A offense or level B offense,  
4 as those terms are defined in section 3771A.

5 “(b) PRESUMPTION OF DURESS.—In a prosecution  
6 for a covered Federal offense, a defendant who establishes  
7 by clear and convincing evidence that the defendant was  
8 a victim of trafficking at the time at which the defendant  
9 committed the offense shall create a rebuttable presump-  
10 tion that the offense was induced by duress.

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

16 “(d) POST-CONVICTION RELIEF.—A failure to assert,  
17 or failed assertion of, a defense under subsection (b) by  
18 an individual who is convicted of a covered Federal offense  
19 may not preclude the individual from asserting as a miti-  
20 gating factor, at sentencing or in a proceeding for any  
21 post-conviction relief, that at the time of the commission  
22 of the offense, the defendant was a victim of trafficking  
23 and committed the offense under duress.

24 “(e) FEDERAL AID.—A failure to assert, or failed as-  
25 sertion of, a defense under subsection (b) by an individual  
26 who is convicted of a covered Federal offense may not be

1 used for the purpose of disqualifying the individual from  
2 participating in any federally funded program that aids  
3 victims of human trafficking.”.

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

“28. Human trafficking defense.”.

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