

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4323**

OFFERED BY M ____.

Strike all that follows after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Trafficking Survivors
3 Relief Act”.

4 SEC. 2. FEDERAL EXPUNGEMENT FOR VICTIMS OF TRAF-
5 FICKING.

(a) IN GENERAL.—Chapter 237 of title 18, United States Code, is amended by adding at the end the following:

9 **“§ 3771A. Motion to vacate; expungement; mitigating**
10 **factors**

11 “(a) DEFINITIONS.—In this section—

12 “(1) the term ‘child’ means an individual who
13 has not attained 18 years of age;

14 “(2) the term ‘covered prisoner’ means an indi-
15 vidual who—

16 “(A) was convicted of a level A offense or
17 level B offense;

1 “(B) was sentenced to a term of imprison-
2 ment for the offense described in subparagraph
3 (A); and

4 “(C) is, or was previously, imprisoned or
5 incarcerated under such sentence for a term of
6 imprisonment;

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

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

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

13 “(6) the term ‘level B offense’—

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

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

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

23 “(8) the term ‘violent crime’ has the meaning
24 given the term ‘crime of violence’ in section 16(a) of
25 this title.

1 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
2 PUNGE ARRESTS.—

3 “(1) IN GENERAL.—

4 “(A) CONVICTIONS OF LEVEL A OF-
5 FENSES.—A person convicted of any level A of-
6 fense (or an attorney representing such a per-
7 son) may move the court that imposed the sen-
8 tence for the level A offense to vacate the judg-
9 ment of conviction if the level A offense was
10 committed as a direct result of the person hav-
11 ing been a victim of trafficking.

12 “(B) ARRESTS FOR LEVEL A OFFENSES.—
13 A person arrested for any level A offense (or an
14 attorney representing such a person) may move
15 the district court of the United States for the
16 district and division embracing the place where
17 the person was arrested to expunge all records
18 of the arrest if the conduct or alleged conduct
19 of the person that resulted in the arrest was di-
20 rectly related to the person having been a vic-
21 tim of trafficking.

22 “(C) ARRESTS FOR LEVEL B OFFENSES.—
23 A person arrested for any level B offense (or an
24 attorney representing such a person) may move
25 the district court of the United States for the

1 district and division embracing the place where
2 the person was arrested to expunge all records
3 of the arrest if—

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

8 “(ii)(I) the movant was acquitted of
9 the level B offense;

10 “(II) the Government did not pursue,
11 or the Government moved to dismiss,
12 criminal charges against the movant for
13 the level B offense; or

14 “(III)(aa) the charges against the
15 movant for the level B 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 the Government moved to dis-
21 miss, criminal charges against the movant
22 for the level A offense, or any subsequent
23 conviction of the level A offense was va-
24 cated.

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

3 “(A) be in writing;

4 “(B) describe any supporting evidence;

5 “(C) state the offense; and

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

9 “(3) HEARING.—

10 “(A) MANDATORY HEARING.—

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

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

22 “(B) DISCRETIONARY HEARING.—If the
23 Government does not file a motion described in
24 subparagraph (A)(i), the court may hold a
25 hearing on the motion not later than 45 days

1 after the date on which a motion is filed under
2 paragraph (1).

3 “(4) FACTORS.—

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

10 “(i) the movant was convicted of a
11 level A offense; and

12 “(ii) the participation in the level A
13 offense by the movant was a direct result
14 of the movant having been a victim of traf-
15 ficking.

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

22 “(i) the movant was arrested for a
23 level A offense; and

24 “(ii) the conduct or alleged conduct
25 that resulted in the arrest was directly re-

1 lated to the movant having been a victim
2 of trafficking.

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

9 “(i) the movant was arrested for a
10 level B offense and the conduct or alleged
11 conduct that resulted in the arrest was di-
12 rectly related to the movant having been a
13 victim of trafficking; and

14 “(ii)(I) the movant was acquitted of
15 the level B offense;

16 “(II) the Government did not pursue,
17 or the Government moved to dismiss,
18 criminal charges against the movant for
19 the level B offense; or

20 “(III)(aa) the charges against the
21 movant for the level B offense were re-
22 duced to a level A offense; and

23 “(bb) the movant was acquitted of the
24 level A offense, the Government did not
25 pursue, or the Government moved to dis-

1 miss, criminal charges against the movant
2 for the level A offense, or any subsequent
3 conviction of that level A offense was va-
4 cated.

5 “(5) SUPPORTING EVIDENCE.—

6 “(A) IN GENERAL.—For purposes of this
7 section, in determining whether the movant is a
8 victim of trafficking, the court—

9 “(i) shall consider an affidavit or
10 sworn testimony of an anti-human traf-
11 ficking service provider or clinician; and

12 “(ii) may consider any supporting evi-
13 dence the court determines is of sufficient
14 credibility and probative value, including
15 sworn testimony from a law enforcement
16 officer detailing the role of the movant in
17 coercing other victims of trafficking into
18 committing criminal offenses.

19 “(B) AFFIDAVIT OR SWORN TESTIMONY
20 SUFFICIENT EVIDENCE.—The affidavit or
21 sworn testimony described in subparagraph
22 (A)(i) shall be sufficient evidence to vacate a
23 conviction or expunge an arrest under this sec-
24 tion if the court determines that—

1 “(i) the affidavit or sworn testimony
2 is credible; and

3 “(ii) no other evidence is readily avail-
4 able.

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

10 “(7) DENIAL OF MOTION.—

11 “(A) FINALITY.—If the court denies a mo-
12 tion filed under paragraph (1), the denial shall
13 be final, except as provided under subparagraph
14 (C) of this paragraph and subject to the dis-
15 covery of any new and compelling evidence or
16 information.

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

21 “(C) REASONABLE TIME TO CURE DEFI-
22 CIENCIES IN MOTION.—If the court denies a
23 motion filed under paragraph (1) due to a cur-
24 able deficiency in the motion, the court shall

1 allow the movant sufficient time to cure the de-
2 ficiency.

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; and

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 “(2) LIMITATION.—Nothing in this subsection
23 requires a court to amend or remove any fine or res-
24 titution order in a criminal or civil proceeding.

1 “(3) 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;
10 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) DEFINITIONS.—In this section—

3 “(1) the term ‘covered Federal offense’ means
4 a level A offense or level B offense, as those terms
5 are defined in section 3771A; and

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

10 “(b) DURESS.—In a prosecution for a covered Fed-
11 eral offense, a defendant may establish duress by dem-
12 onstrating that the defendant was a victim of trafficking
13 at the time at which the defendant committed the offense.

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

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

1 “(e) FEDERAL AID.—A failure to assert, or failed as-
2 sersion of, a defense under subsection (b) by an individual
3 who is convicted of a covered Federal offense may not be
4 used for the purpose of disqualifying the individual from
5 participating in any federally funded program that aids
6 victims of trafficking.”.

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

“28. Human trafficking defense.”.

11 **SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.**

12 Section 103 of the Trafficking Victims Protection Act
13 of 2000 (22 U.S.C. 7102) is amended—

14 (1) in paragraph (16), by striking “(9)” and in-
15 sserting “(11)”; and

16 (2) in paragraph (17), by striking “(9) or (10)”
17 and inserting “(11) or (12)”.

18 **SEC. 8. RULE OF CONSTRUCTION.**

19 Nothing in this Act, or the amendments made by this
20 Act, may be construed to conflict with any of the crime
21 victims’ rights described in section 3771 of title 18, United
22 States Code.

