



Vacatur Statutes for Survivors of Sex Trafficking

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Introduction

This report discusses vacatur statutes and their importance to the anti-trafficking movement. The purpose of this report is to educate readers about the existence of a gap in DC law. DC currently lacks any statute permitting survivors of human trafficking to vacate their prostitution and related offenses. The report first describes the importance of vacatur statutes to survivors of sex trafficking. Next, the report reviews vacatur statutes passed in other jurisdictions and outlines the provisions of those statutes. The report then provides specific examples of how vacatur statutes have helped survivors of sex trafficking move forward with their lives and shares resources from other anti-trafficking agencies that analyze which elements make vacatur statutes most effective. The report concludes by offering The Amara Legal Center's recommendations for a DC vacatur statute.

The Need for Vacatur Statutes

In addition to prostitution, survivors of sex trafficking are often involved in a wide range of unlawful activity and incur hefty criminal records. Survivors are commonly convicted of crimes such as drug possession and theft, and minors are commonly convicted of truancy, running away, and violating state curfew laws. In many instances, the survivors only committed these crimes under duress from traffickers and pimps. In fact, those benefiting from sex trafficking often push survivors into these crimes intentionally, as a means of control. Survivors' criminal records hinder them from moving forward with their lives in many ways. Many applications for public benefits require disclosure of criminal records and many programs are unavailable to those with criminal records. Specifically, a criminal record can prevent a survivor from getting a job, receiving medical care, furthering her education¹, receiving housing assistance², or applying for a loan.

¹ Individuals convicted of forcible or non-forcible sexual offenses are ineligible to receive Federal Pell Grants to help with college expenses. Available at <http://studentaid.ed.gov/eligibility/criminal-convictions>.

² For a report on housing law, the drug-felon ban, and restrictions on individuals with sexual offenses on their criminal records, see *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, available at <http://www.fas.org/sgp/crs/misc/R42394.pdf>.



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Several states have enacted vacatur statutes, which permit survivors of sex trafficking to vacate the records of their convictions for prostitution and other criminal activities that they committed as a result of their involvement in sex trafficking. These statutes significantly help survivors move past their experiences with sex trafficking and rebuild their lives. As of this writing, fifteen states have passed vacatur statutes. However, Washington, DC does not yet have such a statute in place.

In crafting an effective vacating statute, the recourse should be available for a wide range of criminal offenses, and not just prostitution. In addition, it is important not to require that petitioners present official documentation as evidence that they have left the sex industry. Some states statutes simply provide for the expunction of criminal records, which is not as helpful since the Department of Homeland Security/Citizenship and Immigration Services can access and view expunged records and use them to deport survivors. Finally, a vacatur statute is most effective if it refrains from giving courts *discretion* to vacate a survivor’s criminal record and instead states that courts *must* vacate a criminal record if the survivor meets all of the elements according to her burden of proof. The chart below highlights the most effective and least helpful provisions of the fifteen state vacatur statutes currently in force.

| | Provisions |
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| Connecticut | HB 5666 (2013) – Allows survivors to file motions to vacate a conviction “at any time” after the entry of a judgment. The statute covers a broad range of convictions, not just prostitution, “on the basis that, at the time of the offense, the defendant was a victim of conduct of another person that constitutes (1) trafficking in persons . . . or (2) a criminal violation of 18 USC Chapter 77.” The statute explicitly places the burden of proof on the petitioner seeking to vacate a prior conviction. |
| Florida | HB 1325 (2013) – Allows survivors to file motions to expunge “any conviction for an offense committed while he or she was a victim of human trafficking.” If a conviction is expunged under this statute, “it is deemed to have been vacated due to a substantial defect in the underlying criminal proceedings.” Because Florida’s is just an expungement statute, survivors with immigration issues are still left with obstacles to achieving normalcy and the risk that they will be deported due to their criminal records. |
| Hawaii | 712-1209.6 Prostitution; motion to vacate conviction – Petitioner must be a victim of prostitution as defined under section 712-1202 or a severe form of trafficking as defined in title 22 United States Code section 7102(13). Petitioner must file motion to vacate within 6 years after s/he ceases to be a victim of trafficking or involved in trafficking. The statute places the burden of proof on the petitioner. |
| Illinois | 725 ILCS 5/116-2.1 Sec. 116-2.1. – Allows victims to file motions to vacate a conviction “at any time” (but it should be filed with due diligence) after the entry of a judgment or finding of guilt where conviction falls under the IL statute defining |



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| | <p>prostitution or trafficking or under the federal Trafficking Victims Protection Act. “The court may grant the motion if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking If the court grants a motion under this Section, it must vacate the conviction and may take such additional action as is appropriate in the circumstances.”</p> |
| Maryland | <p>§ 8-302. Motion to vacate judgment of prostitution – Provides that a motion to vacate convictions related to prostitution may be filed if, “when the person committed the act or acts of prostitution, the person was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking under § 11-303 of the Criminal Law Article or under federal law.” The motion must be filed “within a reasonable period of time after the conviction[s].” The statute places the burden of proof on the petitioner.</p> |
| Mississippi | <p>HB 673 (2013) 97-3-54.6. Injunctive and other relief for victims of trafficking; confidentiality – Allows survivors to file motions to vacate a conviction “at any time” after the entry of a judgment. “Official documentation from a federal, state, or local government agency as to the person’s status as a victim at the time of the offense creates a presumption that his or her participation in the offense was a result of being a victim [of human trafficking] but isn’t required.”</p> |
| Montana | <p>SB 259 (2013) Motion to vacate prostitution conviction -- trafficking victims – “[A] court may vacate the person's conviction of the offense of prostitution under 45-5-601 if the court finds that the person's participation in the offense was a result of having been a victim of trafficking for commercial sexual activity under 45-5-306 or of sex trafficking under the federal Trafficking Victims Protection Act.” The motion to vacate must be filed within a reasonable period of time after the person ceases to be a victim of trafficking or involved in trafficking. Official documentation as to the person’s status as a victim at the time of the offense creates a rebuttable presumption that his or her participation in the offense was a result of being a victim of human trafficking. “After the conviction is vacated, all records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103, and the public access to the information may be obtained only by district court order upon good cause shown.”</p> |
| Nevada | <p>NRS 176.515 – The court may grant a motion to vacate a judgment if: 1) judgment is a conviction for a violation of NRS 201.354, for engaging in prostitution or solicitation for prostitution, provided that the defendant was not alleged to be a customer of a prostitute and 2) the petitioner’s involvement was as a victim of trafficking as defined by the federal Trafficking Victims Protection Act. The motion must be filed with “due diligence” after the petitioner has ceased to be a victim. If the court grants the motion to vacate, it “(a) Shall vacate the judgment and dismiss the accusatory pleading; and (b) May take any additional action that the court deems appropriate under the circumstances.”</p> |



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| <p>New Jersey</p> | <p>A 3352 (2013) – Addresses convictions of “prostitution and related offenses,” suggesting it may be read broadly. The motion to vacate must be filed within a reasonable period of time after the petitioner ceases to be a victim of/involved in trafficking. Official documentation from a government agency as to the person’s status as a victim at the time of the offense creates a rebuttable presumption that his or her participation in the offense was a result of being a victim of human trafficking. The court needs to find that the petitioner was a victim of trafficking by a preponderance of the evidence. Finally, a survivor may, in the same application, apply to have a conviction vacated, and seek an order for the expunction of any reference to the person’s arrest, conviction, and any proceedings for prostitution in any records.</p> |
| <p>New York</p> | <p>§ 440.10 Motion to vacate judgment – “. . . permits a victim of sex trafficking to file a motion in state court seeking to vacate his or her conviction for prostitution and related offenses where the victim’s participation in the underlying illicit activity resulted from his or her status as a victim of sex trafficking. Once a judgment is vacated, it is legally null and void as if it had been overruled by a higher court.” Petitioners may file motions to vacate a conviction “at any time” after the entry of a judgment but must be made with “due diligence” after the individual has ceased to be a victim of trafficking or has sought services, subject to reasonable considerations for the safety of the victim or her/his family. This language, while imposing a limit, was written with the intent to include as many survivors as possible and to be retroactive. “[I]f a Court grants a motion under paragraph (I) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, <i>and may</i> take such additional action as is appropriate in the circumstances.” Room for the court’s discretion is one element that makes this a particularly pro-survivors version of the vacatur statute.</p> |
| <p>North Carolina</p> | <p>S 683 (2013) § 15A-1416.1. Motion by the defendant to vacate prostitution conviction for sex trafficking victim – Petitioner may file at any time after the conviction but must use due diligence. The court uses its own discretion to grant motions. If granted, “[the court] must vacate the conviction and <i>may</i> take such additional action as is appropriate in the circumstances.” The motion specifically mentions prostitution convictions, so it’s narrower and thus less beneficial to survivors.</p> |
| <p>Ohio</p> | <p>The Safe Harbor Bill, H.B. 262, established Revised Code § 2953.38, "Expungement of certain crimes for victims of human trafficking" – Sex trafficking survivors may file, at any time, to expunge their prostitution-related convictions. “If the court finds that the applicant has proven by a preponderance of the evidence that the applicant's conviction was the result of human trafficking, the court shall grant the application and order the record of conviction expunged.” Again, expunged records leave survivors with immigration issues vulnerable to deportation.</p> |
| <p>Vermont</p> | <p>§ 2658. Prostitution conviction; motion to vacate by victim of human trafficking – The statute allows survivors to file petitions at any time. Official documentation of the</p> |



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| | <p>petitioner’s status as a victim of trafficking will create a presumption that the prostitution conviction was obtained as a result of having been a victim of human trafficking. The court shall grant the motion “if it finds by a preponderance of the evidence that: (A) the moving party was convicted of prostitution in violation of section 2632 of this title; and (B) the conviction was obtained as a result of the moving party’s having been a victim of human trafficking.” If granted, the court will vacate the conviction and issue an order to expunge all records and files related to the moving party’s arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.</p> |
| Washington | <p>§9.96.060. Misdemeanor offenses--Vacating records – Petitioners’ prostitution convictions must have resulted from trafficking as defined under WA law or the federal Trafficking Victims Protection Act. A survivor may not have his or her record of conviction for prostitution vacated if: (i) there are any criminal charges currently pending against him or her in any court; (ii) the victim has been convicted of another crime since the date of the conviction at issue; or (iii) the victim has ever had the record of another prostitution conviction vacated.</p> |
| Wyoming | <p>HB 133 (2013) §6-2-708. Victim defenses; vacating convictions – The statute uses very general terms, including “a conviction,” and “vacate the conviction,” suggesting that survivors may petition to vacate any conviction that was the result of being a victim of human trafficking. Survivors may file motions to vacate a conviction “at any time” after the entry of a judgment. Official documentation from a government agency as to the person’s status as a victim at the time of the offense creates a presumption that his or her participation in the offense was a result of being a victim of trafficking.</p> |

Vacatur Statutes in Action

Illinois passed its vacatur statute, the Justice for Victims of Sex Trafficking Crimes Act, in 2012 and it has already helped two survivors of sex trafficking clear their criminal records. One survivor, Brenda Meyers-Powell, was able to clear her record after wrongfully being labeled a criminal for over two decades. Despite the amount of time that had passed since she had been trafficked for sex, Meyers-Powell’s criminal record had prevented her from fostering children and getting licensed to open a crisis center. Because of Illinois’ vacatur statute, and specifically its lack of any time constraints on filing, Meyers-Powell is now fully able to move on from her victimization and to help others break free from victimization as well.³

³ Annie Sweeney, *Cook County court clears sex trafficking victim of prostitution record*, Chicago Tribune, August 23, 2013. Available at http://articles.chicagotribune.com/2013-08-23/news/ct-met-prostitution-trafficking-adoption-20130823_1_dreamcatcher-foundation-abusive-pimps-brenda-myers-powell.



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With the passage of the New York Vacating Convictions law in 2010, New York became the first state to enact a vacatur statute. Last year, Barbara Amaya succeeded in vacating her New York criminal record nearly forty years after her captors released her from their prostitution ring. Amaya ran away from her home in Virginia at the age of thirteen and ended up on the streets of Washington, DC. Traffickers picked up Amaya and trafficked her for several weeks in DC before they sold her to a trafficker who transported her to New York. In New York, Amaya was arrested for prostitution “dozens of times” and had been trained to recite a series of lies about her age and name. She developed a drug addiction, at which point her captors no longer found her “useful” to them and so they released her onto the streets of New York. Forty years after all of these horrors and struggles, she is “. . . very happy to have the records that never should have happened in the first place be vacated. These records have haunted me throughout my lifetime. People think that criminal records obtained when you’re a minor somehow just go away . . . they do not.”⁴ If Amaya had been trafficked exclusively in D.C., the recourse of vacating her criminal record would still not be available to her.

The above are just two examples of the kinds of success stories that have come about in states with vacatur statutes in place. As of July 2013, The Legal Aid Society of New York has filed thirty motions to vacate convictions for trafficking survivors, with twenty successful motions and ten still pending.⁵

Additional Resources

The Polaris Project has developed ten categories of laws that it deems “critical to a basic legal framework that combats human trafficking, punishes traffickers and supports survivors.”⁶ The project then reviewed the anti-trafficking laws and resources in place in all fifty states and in the District of Columbia and gave each a rating based on how effectively they combat sex trafficking and aid survivors.⁷ As part of Polaris Project’s 2013 Analysis of State Human Trafficking Laws, the organization wrote an in depth analysis of the current vacatur statutes in place and which

⁴ Barbara Amaya: Author, Advocate, Speaker; June 6, 2012. Available at <http://www.barbaraamaya.com/1/category/vacating%20criminal%20record/1.html>.

⁵ Available at <http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/qandaonlegalaidinnovativetraffickingvictimsadvocacyprogram.aspx>.

⁶ Available at <http://www.polarisproject.org/storage/documents/2013-Analysis-Category-10-Vacating-Convictions.pdf>.

⁷ The Polaris Project categorized DC as a Tier 2 state, recognizing it as a state that has “passed numerous laws that combat human trafficking, and should take more steps to improve and implement its laws.” DC received a score of 6 out of 10 for its overall approach against toward human trafficking.



elements are most effective.⁸ The Sex Workers Project is also engaged in raising the public's awareness on this issue, and wrote a memo entitled "Vacating Criminal Conviction for Trafficking Persons: A Legal Memorandum for Advocates and Legislators," which discusses the need for vacatur statutes. The memo provides examples from existing statutes and highlights the elements that are especially important in creating an effective vacatur statute.⁹

Recommendations

The Amara Legal Center recommends to the DC Council that the District of Columbia adopt the following vacatur statute:

Definitions

- (a) "Human trafficking" has the same meaning as provided in §22-1831 or federal code 22 USC § 7102
- (b) "Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.
- (c) "Victim of human trafficking" means a person subjected to coercion, as defined in §22-1831, for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.
- (d) "Due Diligence" due diligence shall be judged on the basis of when a victim has ceased being victimized and when the human trafficking victim becomes aware of the option to file for expungement under this act.

Grounds for motion to vacate judgment

- (a) A victim of human trafficking convicted of any prostitution related violation under §§ 27-2701 through 27-2725, any human trafficking violation under §§ 22-1831 through 1841 or any other criminal violation of the District of Columbia Criminal Law and Procedure and Prisoners Code which is related to the individual's victimization through human trafficking may file a motion to vacate the judgment(s) if, when the person committed the act or acts in question, the person was acting under coercion as defined by § 22-1831 of the Criminal Law and Procedure and Prisoners Code or under federal law.
- (b) Notwithstanding any law to the contrary, the person may also in the same application seek an order for the expungement of any reference to the person's arrest, conviction, and any proceedings relating to the conviction seeking to be vacated in any records in the custody of a

⁸ Available at <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws#statereports>.

⁹ Available at <http://sexworkersproject.org/downloads/2012/20120422-summary-vacating-convictions.pdf>.



court, or law enforcement or correctional agency entitled to be served with the application pursuant to subsection (a) of this section.

Form and contents of motion

(a) A motion filed under this section shall:

- (1) be in writing;
- (2) be made with due diligence, after the movant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the movant, family members of the movant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and
- (3) describe the evidence and provide copies of any other supporting documents showing that the movant is entitled to relief under this section.

Hearing on filed motion

- (a) Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (??) of this section.
- (b) The court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.

Ruling on motion

- (a) In ruling on a motion filed under this section, the court may vacate the conviction or deny the motion.
- (b) The court shall state the reasons for its ruling on the record.
- (c) A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.
- (d) If the court finds that the person was a victim of human trafficking at the time of the conviction, it must vacate the conviction, directing that all court records be revised accordingly, and may take such additional action as is appropriate in the circumstances.
- (e) When the application also seeks an order for expungement, the court shall order all court, law enforcement and correctional agencies, as well as all other government agencies with actual notice of the order expunge all references to the person's arrest, conviction, and related proceedings for the corresponding violation that relate to the vacated conviction within 14 days of the issuance of the order. Any agency which fails to comply with the judicial order will be ordered to show cause for their failure to comply.

Burden of proof

- (a) A movant in a proceeding under this section has the burden of proof.
- (b) Determination of the petition under this section should be by a preponderance of the evidence



(c) In making a determination,

(1) evidence documenting the person's status as a victim of human trafficking at the time of the offense from a federal, state, or local governmental agency shall create a rebuttable presumption that the person's participation in the offense was a result of having been a victim, but shall not be required to vacate a conviction under this section; and
(2) the court may additionally consider other evidence it deems appropriate in determining whether the person was a victim of human trafficking, including, but not limited to:

- (i) certified records of federal or State court proceedings which demonstrate that the movant was a victim of a trafficker charged with a human trafficking offense as defined by §14-311(a)(3) or chapter 77 of Title 18 of the United States Code;
- (ii) certified records of approval notices or law enforcement certifications [SS18] generated from a federal immigration proceeding available to victims of human trafficking; and
- (iii) registration as a certified victim of a human trafficking related crime in the District of Columbia's Crime Victim's Compensation Unit,
- (iv) testimony or a sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy or a health care or other professional from whom the person has sought assistance in addressing being a victim of human trafficking.

How to disseminate

The department shall forward the order to expunge to the Federal Bureau of Investigation, and shall certify a copy of the order to any other agency that, according to the records of the court, had received notice of the conviction. All actions must be taken within 60 days.

Conclusion

Vacatur and expungement statutes have fueled many success stories like the ones above. Survivors of sex trafficking are finally given the tools to vacate misleading criminal records and move on with their lives. But survivors of sex trafficking in Washington, DC are currently without recourse. They are not yet able to overcome the obstacles their criminal records create, resulting in years of state-sponsored re-victimization. Clients of the Amara Legal Center, as well as clients of other agencies involved in similar work in the area, would benefit significantly from a vacatur statute in the District of Columbia.