



TITLE: Senate Bill 869. An Act concerning Criminal Procedure -- Motion to Vacate Judgment -- Human Trafficking
COMMITTEE: Judicial Proceedings Committee
HEARING DATE: February 20, 2018
POSITION: SUPPORT

The Amara Legal Center strongly supports Senate Bill 869 to expand the offenses eligible for vacatur. For the past four years, Amara has provided direct legal services specifically to sex workers and survivors of human trafficking in the DC, Maryland, and Northern Virginia. One of the largest needs Amara identified was that of criminal record sealing, expungement and vacatur. Unfortunately, many of our clients continue to be burdened by criminal records from past victimization that go beyond prostitution convictions.

I. Background

The purpose of vacatur is recognizing the harsh reality that survivors are often forced to commit many crimes, even violent crimes, under extreme duress. In Amara's experience, survivors do not always assert a duress defense during their trials, because doing so would mean risking their safety by testifying against their trafficker. Because the defense of duress is not a practical option for survivors of human trafficking during their trials, an expanded statute is necessary. If we agree that survivors should not be criminalized for committing crimes while under duress, then this statute should serve to right their wrongful convictions.

The vast majority of the crimes that Amara's clients are arrested for are low level misdemeanors. Of these misdemeanors, roughly 90% of them are prostitution or prostitution-related offenses. A typical situation involves a trafficker posting online commercial sex advertisements for one of his victims against her will and then using threats of bodily harm to coerce her into the selling of sex for money.

However, we cannot ignore that victims are also forced to commit more serious crimes. These crimes range from drug offenses and firearm offenses to the crime of human trafficking itself. The phrase "bottom girl" is used to refer to a victim of human trafficking who is forced by her trafficker to control and coerce his other victims. This often involves committing crimes under duress. Often bottom girls have been trafficked for many years, beginning when they were teenagers. The bottom girls, and other victims, become saddled with criminal records. As a result, they are prevented from obtaining employment, housing, education and other necessities.

In order to properly address these situations, the vacatur statute must be written by directly facing the painful reality that survivors are forced to commit serious offenses, instead of the myth that survivors are only forced to commit certain low level offenses. Human trafficking survivors should not continue to be penalized for the actions of their abusers.



II. Recommendations

If the General Assembly wants to remove criminal records that should never have burdened survivors in the first place, the bill should make the number of covered offenses as expansive as possible. The General Assembly should legislate to address reality and not wishful thinking. The reality is that victims are often forced by their traffickers to commit violent felonies and control other victims and are therefore charged with serious crimes, like sex trafficking and burglary.

There is often concern about fraudulent motions for vacatur, especially when vacatur statutes permit the removal of serious offenses. The General Assembly should take comfort in the fact that fraudulent motions are unlikely and unlikely to be successful if filed. The bill places a high burden on survivors to demonstrate that they committed the offenses under the control of a trafficker and grants the presiding judge such a great amount of discretion in ruling on a motion. The bill has the protections in place to prevent granting fraudulent vacatur motions.

Finally, Amara supports the provision in this bill that all proceedings and filings should be automatically sealed. This should be the case even if the motion for vacatur is denied. When a survivor finally gains the courage to come forward to mend his or her past, that past should not be made even more public by way of public hearings and publicly available court filings. Indeed, this would likely have a deterrent effect on survivors coming forward. The purpose of vacatur is to erase evidence of their past exploitation, not to highlight it.

III. Other Jurisdictions

Maryland would not be alone in including violent offenses in its vacatur statute, should the General Assembly decide to explore this possibility further. Wyoming permits survivors to vacate convictions for all crimes committed as a direct or incidental result of being a victim of trafficking.¹ Idaho also permits “prostitution and any other offense determined by the court to be appropriate,” so long as a coercion defense is available for the charge.² Similarly, Kentucky³ permits survivors to expunge all crimes except for felonies that cause death or serious injury and New Mexico⁴ permits sealing of all crimes except for homicide. Finally, Florida allows for all offenses to be vacated as long as the person has not been deemed a “habitual violent felony offender.”⁵

¹ Wyo. Stat. Ann. 6-2-708.

² Idaho Code Ann. 67-3014

³ K.Y. Rev. Stat. Ann. 529.160

⁴ N.M. Stat. Ann. 30-52-1.2

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https://www.americanbar.org/content/dam/aba/administrative/human_rights/SRP/Practice%20Guide-%20Post-Conviction%20Advocacy%20for%20Survivors%20of%20Human%20Trafficking.authcheckdam.pdf



IV. Conclusion

Vacating convictions for survivors of human trafficking is a crucial part of our clients' recovery. Given the purpose of vacatur, which acknowledges the lack of mens rea and presence of duress when a survivor was forced to commit a crime, the General Assembly is on the right track in expanding the offenses eligible for vacatur. It is vital that the law recognize the duress that was present when a survivor was forced to commit a crime. Moreover, this vacatur law would provide expansive relief to many survivors. Victims of trafficking are forced to commit many more crimes than prostitution and a realistic law must be in place to right historical wrongs.

Sincerely,

A handwritten signature in black ink that reads "Yvette Butler". The signature is written in a cursive, flowing style.

Yvette Butler, Esq.
Director of Policy and Strategic Partnerships
Amara Legal Center
202-836-7976
yvette.butler@amaralegal.org