



**TITLE:** Record Sealing Modernization Act of 2017, Criminal Record Accuracy Assurance Act of 2017  
**FROM:** Yvette Butler, Esq., Director of Policy and Strategic Partnerships, Amara Legal Center  
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### **Introduction**

The Amara Legal Center provides free legal assistance to survivors of human trafficking and sex workers in the DC metro area. One of our most sought after services is criminal record sealing and expungement. It can be easy for people to write off our clients, and others with criminal records, as undeserving of more opportunities to change. Amara applauds the broad effort being made to improve public safety and to give individuals who have served their time more opportunities to improve their lives and the lives of their families and communities.

### **Importance of Record Sealing and Expungement**

Regardless of how an individual gets involved in commercial sex, whether by coercion, choice or circumstance, criminal records are often an unfortunate consequence. Trafficking survivors, those who were coerced to engage in commercial sex, are often not “perfect” victims. A survivor’s criminal record is often built while under coercion. Even when survivors escape their traffickers, the trauma they experienced may mean that they don’t take a linear path to full recovery. Mistakes are bound to happen and they commit crimes that are grounded in self-preservation and survival.

Similarly, our clients who engage in sex work by choice or circumstance are doing so in order to make a living, have a place to stay, pay for education, or any number of reasons. A failure to seal convictions does nothing to set them up for future success and only serves to limit their opportunities and keep them grounded in the past. Moreover, it prevents someone who wants to leave sex work from doing so because their options are severely limited by their criminal record.

### **Continued Necessity of Vacatur**

While Amara supports this broad effort to seal convictions, it is important to remember that vacatur is still the preferred option for survivors of trafficking. While the DC Council is



considering several criminal record sealing bills, Bill 22-0239, the Trafficking Survivors Relief Amendment Act of 2017 (“vacatur”), should still be considered on its own merits, as it serves a different purpose from sealing and expungement.

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 assert a duress defense during their trials, because doing so would mean risking their safety by testifying against their traffickers. Because the defense of duress is not a practical option for survivors of human trafficking during their trials, vacatur is necessary. If we agree that survivors should not be criminalized for committing crimes while under duress, then this statute serves to right their wrongful convictions.

The intent of DC’s record sealing statutes is to rehabilitate past offenders and strengthen communities by removing barriers to housing, employment, and other necessities. However, the current DC statute does not provide adequate relief to human trafficking survivors because it fails to affirmatively recognize that trafficking survivors are victims of crime who were forced to commit crimes under duress by their trafficker. The proposed record sealing bills also fail to recognize that trafficking survivors are victims who received unjust convictions.

The fact that sealed records are merely placed in a non-public file means that their ability to resurface and be used by law enforcement, potential employers, or others reinforces the myth that trafficking survivors are criminals and not victims. For example, the accessibility of sealed records to licensing boards means that survivors would still need to disclose the unjust records they were saddled with as victims of crime.

Vacatur seeks to wipe the survivor’s slate clean and restore their record to a state where it would be had the trafficking never occurred. As a practical matter, an expanded record sealing statute, such as sealed records would be a great safety net if a survivor is otherwise unable to have a petition for vacatur granted. However, record sealing should not be the only avenue available to survivors.

### **Breadth of Eligible Offenses**

While most of our clients receive charges for prostitution and solicitation, others are burdened with a variety of other charges, including burglary, shoplifting, trespassing, disorderly conduct, and other related crimes. This is why it is so important to include a broad spectrum of charges that are eligible for removal from their records. Given this unfortunate reality, Amara



supports the effort to expand the number of misdemeanors and felonies eligible for expungement, if there was no conviction; and sealing, if the individual was convicted.

### **Automatic Expungement of Non-Convictions**

We know from experience that the DC code is dense and difficult to decipher, especially when it comes to the record sealing provisions. Individuals are not easily able to determine if they are eligible to get their records sealed. Under the current law, many individuals try, and fail, to seal their records without counsel. In part, this is why Amara supports the automatic expungement of non-convictions.

### **No Limit to the Number of Convictions Eligible for Sealing**

Furthermore, given the reality that one incident could lead to a number of charges or that a particularly unfortunate time in someone's life led them to be charged and convicted of several crimes, there should be no limit to the number of charges or convictions eligible for sealing. Consequently, subsequent convictions should not bar an individual from sealing previous convictions.

### **Private and Public Accuracy and Accountability**

Finally, accuracy and accountability is vital. It is important to hold background reporting companies responsible for inaccurate information. An error in a criminal history report can have devastating effects.

Relatedly, our clients often do not receive the certifications that government agencies have complied with the court's order within the required statutory period. The process for enforcing this is complicated and should be made less so. For example, if an agency does not provide a certification, agencies generally do not respond to direct requests from attorneys checking on the status of the certification. If an attorney contacts the judge who granted the motion to seal, the judge contacts the attorney advisor who contacts the criminal motion seal team who then contacts the agencies. There must be a more efficient and effective way to demand timely compliance from the agencies.

### **Conclusion**

Thank you for your time and attention to these issues. If any of you have further questions, please feel free to contact me.



Sincerely,

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