



## **Statement Supporting 2020 Proposed Legislation Impacting Trafficking Survivors**

### **Summary**

The Virginia Coalition Against Human Trafficking (VCAHT) is a coalition of service providers, attorneys, survivor-advocates, and community members working to pass survivor-centered human trafficking legislation in the Commonwealth of Virginia.

### **Introduction**

This report discusses various proposed legislation which would impact survivors of human trafficking in the Commonwealth of Virginia. The report begins with a brief discussion of human trafficking, including statistics specific to trafficking in Virginia. Next, the report identifies and summarizes legislation that has been introduced in the 2020 legislative session that would directly impact survivors of human trafficking. The report then provides specific position statements for each identified bill. The report concludes by making recommendations for survivor-centered policies.

### **Human Trafficking in Virginia**

The federal Victims of Trafficking and Violence Protection Act defines human trafficking, in part, as the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of commercial sex acts or labor services through the use of force, fraud, or coercion.<sup>1</sup> Human trafficking is a unique crime, and one that is often hard to identify, investigate, and prosecute. Human trafficking activities often occur in conjunction with other crimes, which may mask the trafficking components of the activities. Victims of human trafficking may be unwilling or afraid to cooperate with first responders, law enforcement, and victim advocates. Language and cultural barriers can hinder even voluntary communication with trafficking victims.

Between 2007 and 2018, the National Human Trafficking Hotline identified 1,235 cases of human trafficking in Virginia based on contacts, including phone calls, texts, emails, and online chats.<sup>2</sup> The most common form of trafficking identified through these contacts was sex trafficking and 252 of these reported victims were minors.<sup>3</sup>

### **Proposed Bills Impacting Survivors of Trafficking**

	<b>Sponsor</b>	<b>Summary</b>
<b>HB1033</b>	Del. Charniele Herring, Chief Patron	Allows any person who was a human trafficking victim at the time of an offense that led to a criminal charge or

<sup>1</sup> See 22 U.S.C. Section 7102.

<sup>2</sup> National Human Trafficking Hotline, Virginia Statistics, <https://humantraffickinghotline.org/state/virginia>

<sup>3</sup> *Id.*



	<p><i>VCAHT supports this bill as the best and most comprehensive bill being considered by the General Assembly for the relief of trafficking victims</i></p>	<p>conviction of certain crimes, to petition the court to vacate such conviction and expunge the police and court records related to such conviction, or to expunge the police and court records related to such charge, including non-violent felonies. The bill provides that there is a rebuttable presumption that a person's participation in an offense was a result of having been a victim of human trafficking if there is official government documentation, defined in the bill, of the petitioner's status as a victim of human trafficking at the time of the offense.</p>
<p><b>HB268, SB914</b></p>	<p>Del. Steve Heretick, Chief Patron</p> <p>Senate version - Chief Patron, Mamie Locke</p>	<p>This bill is, in most respects identical to HB1033, however, it limits eligible offenses to prostitution, prostitution-related offenses, and other misdemeanors, but not non-violent felonies.</p>
<p><b>HB128</b></p>	<p>Del. Jason Miyares, Chief Patron</p>	<p>Allows a person to petition for expungement of convictions for prostitution when the person was induced to engage in prostitution through the use of force, intimidation, or deception by another.</p>
<p><b>HB1006, SB706</b></p>	<p>Del. Charniele Herring, Chief Patron</p> <p>Senate Version - Chief Patron, Sen. Obenshain</p>	<p>Changes the name of sex trafficking assessments to human trafficking assessments. Allows local departments of social services conducting such human trafficking assessments to interview the alleged child victim, or their siblings, without the consent and outside the presence of such child's or siblings' parent, guardian, legal custodian, or other person standing in <i>loco parentis</i>, or school personnel. This bill is a recommendation of the Virginia State</p>



		Crime Commission.
<b>HB985</b>	Del. Amanda Batten, Chief Patron	Provides that a non-Virginia student who is present in the Commonwealth as a result of being a victim of human trafficking, defined in the bill, is eligible for in-state tuition regardless of whether any person has been charged with or convicted of any offense. Eligibility for in-state tuition may be proved by a certification of such status as a victim by a public or not-for-profit agency the primary mission of which is to provide services to such victims. The bill also prohibits any institution of higher education from disclosing any personally identifying information or individual information related to the status of any non-Virginia student applying for in-state tuition as a victim of human trafficking.
<b>HB606</b>	Del. Jason Miyares, Chief Patron	Directs the Department of Criminal Justice Services, under the direction of the Criminal Justice Services Board, to develop an online course to train hotel proprietors on recognizing the signs of human trafficking and how to respond appropriately. The bill also defines "hotel" and "hotel proprietor."

### **Position Statements**

#### Criminal Record Relief for Survivors of Trafficking

VCAHT supports the criminal record relief efforts reflected in HB1033, HB268 (Senate Version, SB914), and HB128 because as a result of the power and control exercised by their traffickers, victims are forced to engage in activities in which they would not have otherwise engaged. These activities often lead to victims' arrests, resulting in victim-defendants in the criminal justice system. As such, proposed legislation that effectively allows a trafficking



survivor to petition for the vacatur and expungement of these convictions would positively impact a survivor's recovery and path to self-reliance.

While VCAHT is grateful for the efforts and leadership evidenced by the patrons of the bills that are noted, for reasons set forth below, VCAHT strongly supports HB1033 as the most comprehensive criminal record relief bill for trafficking survivors being considered by the General Assembly and encourages its enactment. It represents the result of months of work of survivor advocates, attorneys, law school faculty and victim advocacy groups representing hundreds of survivors trying to put together the most comprehensive relief for those who have been victimized and criminalized by this horrible crime. HB1033 allows any person who was a human trafficking victim at the time of an offense that led to a criminal charge or conviction of certain crimes to petition the court to vacate such charge or conviction and expunge the police and court records related to such charge or conviction *including* non-violent felonies.

The inclusion of nonviolent felony relief is critical to survivors because without such relief most survivors will remain unable to break free of bondage to traffickers and the "Life" because their felony records continue to be a significant barrier to obtaining employment with livable wages and safe living conditions. The reality is that a number of the survivors with whom members of the Coalition are working do not even have misdemeanor solicitation or related misdemeanor charges having missed being arrested for these charges but not for other victim centered crimes such as drug possession, false ID, credit card fraud, obtaining money by false pretenses, etc. In fact, those benefiting from trafficking often coerce or force survivors into committing these crimes intentionally, as a means of control and keeping the survivor totally dependent on them.

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 their education<sup>4</sup>, receiving housing assistance<sup>5</sup>, or applying for a loan. Thus, VCAHT supports the most comprehensive criminal record relief of trafficking victims to ensure victims are not criminalized for crimes they were forced to commit, and to provide the best possibility of recovery, wholeness, and self-reliance upon leaving their trafficking situation.

As noted above, there are several other bill seeking to address the issue of providing criminal record relief for survivors of human trafficking. HB268 and SB914 are similar to HB1033, however, HB268 limits eligible offenses to prostitution, prostitution-related, and misdemeanors and potentially some violent felony relief to those survivors who were forced to recruit others. HB128 allows a person to petition for expungement of convictions for prostitution

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<sup>4</sup> 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>.

<sup>5</sup> 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>.



when the person was induced to engage in prostitution through the use of force, intimidation, or deception by another. While VCAHT applauds these efforts and is grateful for the leadership of Sen. Locke, Del. Herring, Del. Miyares, and those legislators who have joined in supporting such legislation, VCAHT would encourage support HB1033 as providing the most comprehensive and much needed relief to trafficking survivors that is currently lacking in the Commonwealth of Virginia.

**Conclusion:** Criminal record relief for survivors of trafficking is urgent. Virginia is behind every state in the country when offering legal support to victims that were charged. In the United States, 44 states have already passed criminal record relief laws for trafficking survivors. Virginia has not. Moreover, of the 6 states left to pass these laws, Virginia is the only state that does not allow victims to raise the affirmative defense that they were victims when they committed the crime with which they've been charged. Accordingly, we are requesting favorable action on HB1033 to redress this injustice and help empower survivors forward in their healing journeys.

### **Other Legislation Supported by VCAHT**

#### Human Trafficking Assessment

**VCAHT supports HB1006/SB706.** This bill amends the name of “sex trafficking assessments” to “human trafficking assessments” and allows local departments of social services conducting such human trafficking assessments to interview the alleged child victim or his siblings without the consent and outside the presence of such child's or siblings' parent, guardian, legal custodian, or other person standing in *loco parentis*, or school personnel. This bill is a recommendation of the Virginia State Crime Commission.

VCAHT supports the amendment from “sex trafficking assessment” to “human trafficking assessment” to allow for the identification and referral to services for victims of labor trafficking that would otherwise not fit within the definition of “sex trafficking.” Moreover, VCAHT supports language that would encourage and enable minor victims of trafficking to disclose their trafficking experience and increase their access to services.

#### Educational Opportunities

**VCAHT supports HB985.** This bill provides that a non-Virginia student who is present in the Commonwealth as a result of being a victim of human trafficking, defined in the bill, is eligible for in-state tuition regardless of whether any person has been charged with or convicted of any offense. Eligibility for in-state tuition may be proved by a certification of such status as a victim by a public or not-for-profit agency the primary mission of which is to provide services to such victims. The bill also prohibits any institution of higher education from disclosing any personally identifying information or individual information related to the status of any non-Virginia student applying for in-state tuition as a victim of human trafficking.



VCAHT understands the importance the role of education plays in a survivor's ability to move on and live a self-reliant life. Moreover, VCAHT understands the unique obstacles that survivors of trafficking face in securing education, including maintaining confidentiality to ensure the survivors safety as well as that of significant others in their lives and the challenges to service providers with limited resources to help them obtain such education. Forcing survivors to pay out of state tuition because the unique scenario that brought them here and preventing them from establishing an address revictimizes them and eats up valuable resources that would otherwise be available to help more than one survivor. As such, we support legislation that would enable trafficking survivors to qualify for in-state tuition, thus making the opportunity to receive an education more accessible and allowing service providers and victim advocacy groups maximize the number of survivors they are able to help obtain such education.

**VCAHT supports HB606.** This bill directs the Department of Criminal Justice Services, under the direction of the Criminal Justice Services Board, to develop an online course to train hotel proprietors on recognizing the signs of human trafficking and how to respond appropriately. The bill also defines "hotel" and "hotel proprietor."

VCAHT recognizes that the hotel and motel industries are in unique positions to recognize indicators of trafficking and to provide a means of escape for the trafficking victim because the victimization of human trafficking victim often occurs in the hotel/motel setting. VCAHT supports legislation that educates and trains stakeholders on how to identify trafficking and respond appropriately.

## **Conclusion**

Virginia should be commended for pursuing its current efforts to eradicate trafficking; however, we must not overlook the need for survivor-centered approaches to eradicating trafficking. Virginia must continue to educate, train, develop, and implement strategies that not only allow for the identification of trafficking victims, but enable survivors to access services and other resources on the journey to self-reliance and completeness.