



POLICYMAKER'S GOAL 4.3

JLM POLICY GOAL 7

State law should allow sex trafficked children and youth to vacate convictions for any offenses arising from their victimization.



SEX TRAFFICKED CHILDREN AND YOUTH ARE COMMONLY COMPELLED TO COMMIT CRIMINAL

offenses during their victimization. In addition to harms caused by criminalization, related records present detrimental challenges and barriers to the restoration and healing process for survivors of sex trafficking and commercial sexual exploitation (CSE). Criminal records hinder survivors from obtaining employment, securing safe housing, taking out loans, seeking education, and obtaining visas.¹ Such collateral consequences result in further victimization, including psychological harm, that may hinder a survivor's ability to rebuild his or her life.²

States, recognizing the hardships faced by victims with criminal records due to their victimization, have begun formulating post-conviction reliefs.³ Post-conviction relief for trafficking survivors can include sentence mitigation, record expungement, and vacatur.⁴ Each is an important tool in offering relief to survivors. Expunging records can apply to either arrest records or convictions, or both.⁵ Expungement “erases” the record in the eyes of the law, but it is still “accessible as part of a person’s criminal record,” making it available for some government agencies.⁶ Vacatur, however, “sets aside” the conviction, recognizing that it never should have occurred.⁷ Accordingly, state law should allow survivors to vacate any convictions arising from their trafficking victimization and expunge all related records.

It is imperative that states do not limit the types of crimes or charges for which a sex trafficking survivor can seek post-conviction relief to sex offenses. Sex trafficking and CSE victims are victimized in a variety of ways and charged with an array of crimes, including prostitution, theft, drug trafficking, conspiracy to commit sex trafficking, or even crimes of violence.⁸ States limiting post-conviction relief to trafficking survivors who are convicted of prostitution or other sex offenses leave many sex trafficking survivors without any avenue for relief. States that require survivors to have an arrest or conviction for prostitution in order to qualify for post-conviction relief eliminates access for a large group of sex trafficking survivors who have been arrested for other crimes.

Additionally, some states impose a statute of limitation, requiring survivors to apply for relief within a certain amount of time while others require survivors to wait a prescribed amount of time before being eligible to apply for post-conviction relief.⁹ To prevent ongoing discrimination and harm, state law should allow sex trafficked children and youth to seek vacatur relief for all convictions received as a result of their trafficking victimization without mandating a waiting period between completion of their sentence and filing of a petition for vacatur relief.

Finally, state law should include measures, in addition to removal of waiting periods, to ensure that the process for seeking post-conviction relief is victim-centered and minimizes re-traumatization including the following: utilizing the least restrictive burden of proof standard, allowing official documentation of trafficking victimization to serve as a presumption of eligibility for legal relief, eliminating filing fees, mandating the return of fees/fines/restitution upon granting vacatur, and instituting measures to protect confidentiality.¹⁰

DRAFTING CONSIDERATIONS:

TO ACCOMPLISH THIS POLICY GOAL, STATE LAW SHOULD...

- ▶ Ensure vacatur is available for convictions and, ideally, delinquency adjudications.
- ▶ Ensure vacatur is available for prostitution and other offenses committed as a result of trafficking victimization.
- ▶ Ensure vacatur has the effect of the conviction being vacated (i.e., the individual is returned to the status of innocent) and make record expungement automatic upon granting vacatur.
- ▶ Remove waiting periods for vacatur and provide for a victim-centered approach to vacatur.
- ▶ Allow court to grant relief regardless of whether the prosecutor consents, so long as the prosecution had notice.
- ▶ Lower evidentiary burdens so survivors need only prove by preponderance of evidence the underlying offense was committed as a result of trafficking.
- ▶ Ensure official documentation (e.g., governmental document, court order) creates a rebuttable presumption of eligibility.
- ▶ Include language that protects a survivor's confidential information (e.g., allow petitions to be filed under seal).
- ▶ Require any fines/fees paid in connection with a vacated conviction to be returned to the survivor.

1 Jessica Emerson & Alison Aminzadeh, *Left Behind: How the Absence of a Federal Vacatur Law Disadvantages Survivors of Human Trafficking*, 16 U. Md. L.J. RACE, RELIGION, GENDER & CLASS 239, 241 (2016); *Victims of Human Trafficking Aren't Criminals*, POLARIS (Sept. 29, 2016), <https://polarisproject.org/blog/2016/09/victims-of-human-trafficking-arent-criminals/>.

2 Emerson, *supra* note 1.

3 *See id.* (explaining how in 2010 New York became the first state to enact a vacatur law for trafficking victims to have prostitution-related convictions due to their victimization set aside).

4 *See* NATIONAL STATE LAW SURVEY: EXPUNGEMENT AND VACATUR LAWS, SHARED HOPE, INT'L (2019) [hereinafter Expungement and Vacatur].

5 ERIN MARSH, ET AL., POLARIS, STATE REPORT CARDS: GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING 7 (2019).

6 *Id.*

7 *See id.*

8 MARSH, ET AL., *supra* note 5; *see* SHARED HOPE INT'L, RESPONDING TO SEX TRAFFICKING VICTIM-OFFENDER INTERSECTIONALITY: A GUIDE FOR CRIMINAL JUSTICE STAKEHOLDERS 2, 48–49 (2020).

9 MARSH ET AL., *supra* note 5; *see* Expungement and Vacatur, *supra* note 4 (illustrating how some states that provide vacatur relief require a 1 or 2 year waiting period before the survivor can apply).

10 MARSH ET AL., *supra* note 5; *see also* *Nelson v. Colorado*, 581 U.S. 128 (2017).