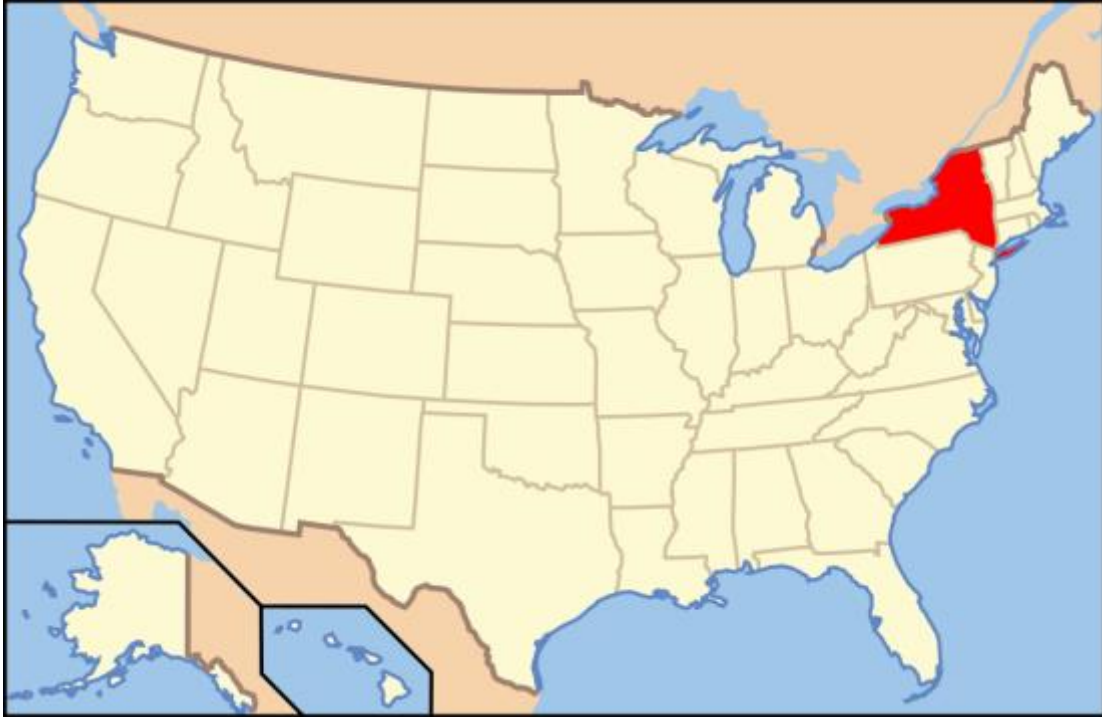


Policy Brief

Human Trafficking: Vacating Convictions in Virginia

At the age of 13, a girl named Barbara Amaya ran away from her home in Virginia. Finding her way to the streets of Washington, D.C., traffickers picked Amaya up and she was soon sold to another trafficker in New York. While in New York, Amaya was arrested multiple times for prostitution and had been taught to recite lies about her name and age. She was later released onto the streets of New York once her captors no longer found her “useful” because of a drug addiction she had developed. 40 years after all of the trauma and horrors she went through, her criminal record was finally erased with the passage of the New York Vacating Convictions law in 2010. 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.”¹ If Amaya had exclusively been trafficked in Virginia, the option of vacating her criminal record would still not be available to her.



**New York Was the First State to Pass
Legislation in 2010**

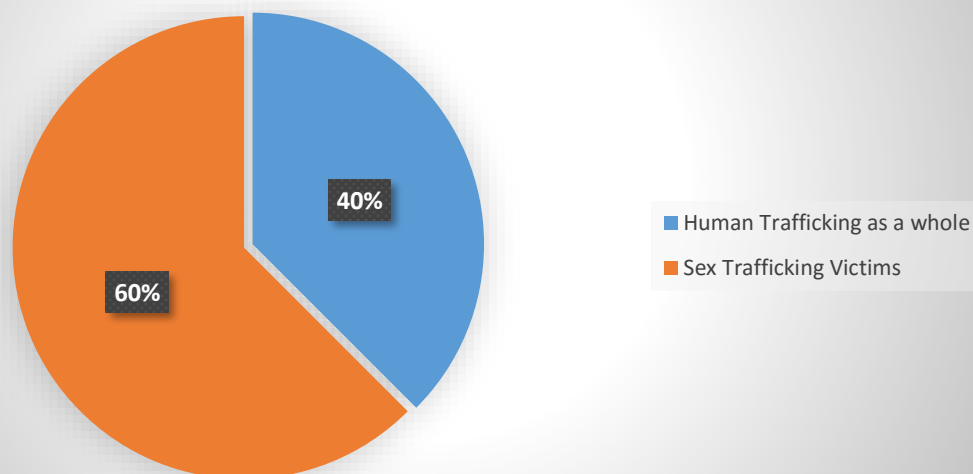
In 2012, Illinois passed its vacating convictions law, the Justice for Victims of Sex Trafficking Crimes. As a result of this being passed, one survivor, Brenda Meyers-Powell, was finally given the opportunity to clear her record after more than two decades for wrongfully being labeled a criminal. Even though years had passed since she was being trafficked for sex, Meyers-Powell could not foster children or get a license to open a crisis center due to her criminal record. Because of Illinois' vacating convictions law, Meyers-Powell can now move on from her dark past and help others who have been victimized as well.ⁱⁱ

One can see the types of success stories that come with having vacating convictions set in place just by looking at the above two examples.^{iv} Following behind New York's Vacating Convictions law, 23 other states have implemented similar laws. Currently, Virginia does not allow survivors of sex trafficking this opportunity.

The Problem

Almost 6 in 10 identified trafficking survivors are sex trafficking victims.ⁱⁱⁱ In Virginia, most of the cases that deal with human trafficking are related to sex trafficking, with the rest of the cases focusing on forced labor. Also in Virginia, 89 of the 116 victims so far in 2017 have been female, indicating that female victims of human trafficking tend to be the dominant sex. Victims of sex trafficking are forced to engage in sexual acts and prostitution by their trafficker. As a result, many times these victims are arrested, prosecuted, and charged with prostitution or prostitution-related acts. Due to this, many of these victims find it hard to return to the life they deserve – it's difficult to find a job, safe housing, loans, continued education, and immigration visas. By implementing a vacating law for victims of sex trafficking, this will create a tool to expunge convictions from the victim's criminal record in order that he or she can have a future not determined by the past.

Sex Trafficking Victims to Human Trafficking as a Whole



Human Trafficking in Virginia

As of 2017, Virginia has been counted as number 8 in a list of the 11 worst states for human trafficking in the United States. The Human Trafficking Hotline reported that since 2007, they have received just about 3,600 calls, while the number of victims in the same timeframe remain to be 757. Minors are also more vulnerable to being victims of trafficking, making up about 40% of victims.^v

Until 2015, Virginia had no pre-existing laws on human trafficking. On April 1st, 2015, Virginia became the last state in the country to establish a human trafficking law where Virginia Governor Terry McAuliffe signed SB 1188 and HB 1964 into law.^{vi} These much needed bills were advocated for by Chief Patron Delegate Timothy Hugo (HB 1964) and Chief Patron Senator Mark Obenshain (SB 1188). Despite the fact that these bills were important in helping the fight against human trafficking, they did little to ensure a safe life for victims after trafficking and this is what a vacating convictions law would do.

“Thank you for all of your help. I am so grateful for all the time, effort and work you all did for me. This would not have happened without all of your hard work. I am so thrilled to have my record clean, and I hope that all victims like me get the chance to do the same!” – SR, successfully vacated one



What a Vacating Law Does

Through a vacating convictions law, victims of human trafficking are able to have convictions removed by filing a motion with a court. The court admits an error has been made when a conviction is vacated and the conviction is overturned. The individual who applies for this must prove that being trafficked was the cause of their conviction in order to be successful. Although the types of evidence proving one was trafficked varies from state to state, official documentation is not required from a government institution.

Impact of Vacating Convictions

By implementing a vacating convictions law in Virginia, this would help to ensure that these victims of human trafficking are not treated as criminals, but as victims. It is mandatory for an individual to disclose prior convictions when applying for loans, jobs, or to schools. As a result of these convictions being removed from a victim's record, this would open up more opportunities for them. Having a clean record would provide victims with the confidence they need in order to go out and pursue a new life and opportunities without the worry of being a convicted criminal for prostitution. A

vacating convictions law would thus provide increased protection and a second chance for survivors of human trafficking to begin living normal lives and become fully functioning members of society.^{vii}

Legislative Solution

Here are two state bills that Virginia can follow when making its own vacating convictions law:

New York Statute § 440.10 Motion to vacate judgment.

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that: i. The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that: (i). a motion under this paragraph shall be made with due diligence, after the defendant 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 defendant, family members of the defendant, 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 (ii). official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state, or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph.

Illinois Statute (725 ILCS 5/116-2.1) Sec. 116-2.1. Motion to vacate prostitution convictions for sex trafficking victims

(a) A motion under this Section may be filed at any time following the entry of a verdict or finding of guilty where the conviction was under Section 11-14 (prostitution) or Section 11-14.2 (first offender; felony prostitution) of the Criminal Code of 1961 or similar local ordinance and the defendant's participation in the offense was a result of having been a trafficking victim under Section 10-9 (involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services) of the Criminal Code of 1961; or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. Section 7103(13)); provided that: 1. A motion under this Section shall state why the facts giving rise to this motion were not presented to the trial court, and shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such a motion, or for other reasons consistent with the purpose of this Section; and (b) 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. Evidence may include, but is not limited to: 1. Certified records of federal or state court proceedings which demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under Section 10-9 of the Criminal Code of 1961 or under 22 U.S.C. Chapter 78; 2. Certified records of "approval notices" or "law enforcement certifications" generated from federal immigration proceedings available to such victims; or 3. A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked. Alternatively, the court may consider

such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim or a victim of a severe form of trafficking (c) 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.

“[I wanted] that stigma off of me. I wasn’t consciously walking around every day thinking ‘I have a criminal record’ but I knew it was there. Also...I want other people to know about this, especially younger women that are working, or who want to get a passport, or get any other kind of governmental opportunity. It doesn’t just affect jobs, it affects your life in so many other areas.” – BA, successfully vacated numerous convictions from the 1970’s

New Policy Considerations

This newly developed vacating convictions law has received praise from various leading legal organizations. The American Bar Association (ABA), a highly approved expert on legal issues, approved a resolution in the beginning of 2013, requesting states to enact laws that would help surviving victims of human trafficking to have their criminal charges erased. Not only did the resolution mandate prostitution be vacated, but other non-violent offenses as well.

In the Uniform Law Commission’s (ULC) Uniform Act on Prevention of and Remedies for Human Trafficking (Uniform Act), it was clearly seen the vacating convictions law endorsed by the ABA was reflected in it. Suggesting language for a vacating convictions law that goes further than prostitution charges but non-violent charges as well, was adopted in 2013 as a guide for state legislators. The Uniform Act is great for victims of human trafficking because it gives them additional relief when vacating convictions.

More states, since 2013, have started to implement vacating convictions laws that go further than just prostitution charges. Hopefully this is a trend that will progress into the future for when states pass these types. Also hopefully, Virginia will jump in, helping to get more access and relief for all victims of human trafficking.

Suggested Statutory Language from the Uniform Act on Prevention of and Remedies for Human Trafficking

Section 17. Motion to Vacate Conviction^{viii}

(a) An individual convicted of [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may apply to [insert name of appropriate court] to vacate the applicant's record of conviction for the offense. A court may grant such motion on a finding that the defendant's participation in the offense was a direct result of being a victim of human trafficking.

(b) No official determination or documentation is required to grant a motion under this section, but official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offenses was a direct result of being a victim. (c) A motion filed under subsection (a), any hearing conducted on the motion, and any relief granted, are governed by [insert the appropriate state code section governing post-conviction relief procedures].

“It’s almost like walking on eggshells. I have aspirations. I’m looking to get an advanced degree...I want to go as far as I can go. And it’s almost scary, because I’m thinking I’m going to hit [the convictions] and it’s going to just knock me back down...I really just want to put it behind me. People in my life today have no idea of where I’ve been. And I’d like to keep it that way. It’s none of their business.” – MR, speaking about her convictions prior to her successful motion

Conclusion

When one goes through an experience as horrendous as sex trafficking, he or she is guaranteed to feel the effects and pain they endured for the rest of their life. When an individual escapes and/or survives trafficking, they should be guaranteed all the help they can get after such a traumatic experience.

Unfortunately, many times this is not the case and are labeled criminals when they are actually victims.

A vacating convictions law has proven to be successful in 23 other states and Virginia should be the 24th state to implement this law. Let’s not be the last state again to implement another human trafficking law.

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