

VIRGINIA STATE CRIME COMMISSION



Sex Trafficking - Vacatur of Convictions and Data Collection

2020 ANNUAL REPORT

SEX TRAFFICKING – VACATUR OF CONVICTIONS AND DATA COLLECTION

EXECUTIVE SUMMARY

The Crime Commission conducted a comprehensive study on sex trafficking in Virginia during 2018 and continued work on that study throughout 2019.¹ During the 2020 Regular Session of the General Assembly, several bills were referred to the Crime Commission which were meant to provide criminal conviction relief to sex trafficking victims by removing or limiting access to certain convictions relating to sex trafficking from their criminal records.² The Executive Committee of the Crime Commission directed staff to examine criminal conviction relief for sex trafficking victims as part of the Crime Commission’s broader study of the expungement and sealing of criminal records.

Staff conducted a general review of literature and research related to criminal conviction relief for sex trafficking victims and found that:

- Common forms of criminal conviction relief include vacatur, expungement, and sealing;
- Vacatur signifies that a sex trafficking victim did not have the criminal intent to commit certain crimes related to being sex trafficked; and,
- Vacatur is a mechanism used to help alleviate the collateral consequences that sex trafficking victims face as a result of convictions related to being sex trafficked.

Staff also examined criminal conviction relief laws across the United States that were enacted specifically to assist sex trafficking victims. Virginia law does not provide any viable criminal conviction relief mechanisms for sex trafficking victims. In reviewing the remaining states, staff found that:

- 45 states authorize some form of criminal conviction relief specifically for sex trafficking victims;
- All states that authorize criminal conviction relief for sex trafficking victims require the victim to petition the court for such relief;
- All states that authorize criminal conviction relief for sex trafficking victims include prostitution offenses in their relief statutes; however, states vary substantially in terms of other offenses that qualify for such relief;

- 20 states have statutes which create a rebuttable presumption that a person is a sex trafficking victim when that person presents official government documentation of their victim status to the court as part of the criminal conviction relief process; and,
- 9 states require sex trafficking victims to prove that they are no longer involved in sex trafficking in order to qualify for criminal conviction relief.

As a result of studying sex trafficking, staff determined that collecting data in Virginia is difficult due to the criminal penalties for both prostitution and solicitation of prostitution being combined into one statute.³ Staff found that including both of these provisions within the same statute presented significant data collection challenges, as it was often difficult to determine whether an individual had been charged with or convicted of engaging in prostitution, as opposed to being charged with or convicted of soliciting prostitution.

Crime Commission members reviewed study findings at the January 5, 2021, Commission meeting and were presented with the following two recommendations:

Recommendation 1: Virginia should enact legislation that allows sex trafficking victims to vacate convictions for prostitution and maintaining a bawdy place.

- **Policy Decision:** Should any other offenses be eligible for vacatur?

Members unanimously endorsed this recommendation and determined that convictions and adjudications of delinquency for prostitution, solicitation of prostitution, and maintaining a bawdy place should be eligible for vacatur. Legislation to allow sex trafficking victims to petition a circuit court for vacatur of certain convictions and adjudications of delinquency related to being sex trafficked was introduced during the 2021 Regular Session of the General Assembly (House Bill 2133 - Del. Karrie K. Delaney).⁴

Recommendation 2: Divide Virginia's prostitution statute into two separate Code sections to better distinguish between prostitution and solicitation of prostitution.

Members unanimously endorsed this recommendation to divide Virginia's prostitution statute (Va. Code § 18.2-346) into two separate Code sections in order to better distinguish between prostitution and solicitation of prostitution offenses. Legislation endorsed by the Crime Commission to separate the prostitution statute was also

introduced during the 2021 Regular Session of the General Assembly (House Bill 2169 - Del. Candi Mundon King).⁵

Both Crime Commission bills passed the General Assembly unanimously and were signed into law by the Governor.⁶

BACKGROUND

Crime Commission staff engaged in the following activities as part of the study on criminal conviction relief for sex trafficking victims:

- Conducted an overview of relevant literature and research on criminal conviction relief;
- Reviewed Virginia expungement laws, procedures, and case law;
- Examined the vacatur process set forth in the writ of actual innocence statutes in Virginia;⁷
- Conducted a 50 state review to identify and analyze all criminal conviction relief statutes for sex trafficking victims;⁸ and,
- Consulted with practitioners, subject-matter experts, and advocates.

Additionally, staff reviewed previous research from the Crime Commission's study published in 2018 which found that sex trafficking is occurring in Virginia.⁹ During this 2018 study, staff identified various dynamics within the commercial sex industry which present unique challenges to identifying and assisting sex trafficking victims, such as:

- Traffickers frequently prey on a victim's desire for love, hope, and a sense of belonging;
- Traffickers often target victims from vulnerable populations, such as runaway and homeless youth, foreign nationals, individuals with a history of domestic, sexual, or emotional abuse, persons with dysfunctional families, low self-esteem, or drug dependence, and people of lower socioeconomic status;
- Victims are difficult to identify because they often do not see themselves as victims or realize that they are being sex trafficked;
- Victims face various challenges in leaving the commercial sex industry, such as a lack of a support structure, limited basic life skills, lack of an education, a criminal record, difficulty securing housing or employment, mental health conditions, and health issues; and,
- The traditional criminal justice response has led to sex trafficking victims being treated as criminals.¹⁰

CRIMINAL CONVICTION RELIEF

Common forms of criminal conviction relief include vacatur, expungement, and sealing.

Vacatur is defined as the “act of annulling or setting aside.”¹¹ In the criminal context, vacatur is the removal of a conviction as if a person had never been found guilty of an offense. For example, if a sex trafficking victim was found guilty of prostitution and that conviction was vacated, the conviction would be removed from that victim’s criminal record.

Expungement is generally defined as erasing or destroying a record;¹² whereas, sealing is generally defined as preventing access to a record.¹³ Despite these general definitions, states vary substantially in how the terms expungement and sealing are statutorily defined. For example, while several states define expungement as “to permanently destroy, delete, or erase a record of an offense from the criminal history record,”¹⁴ other states define expungement as “the sealing of criminal records.”¹⁵ Similar contradictions emerge when examining the definition of sealing across states.¹⁶ In contrast to vacatur, expungement and sealing do not remove a criminal conviction from a person’s criminal record, but instead prevent access to that conviction on a person’s criminal record.¹⁷

Vacatur signifies that a sex trafficking victim did not have the criminal intent to commit certain crimes related to being sex trafficked.

In order to be convicted of a criminal offense, a person must generally have the criminal intent (*mens rea*) to commit the prohibited act.¹⁸ Sex trafficking victims may commit a variety of criminal acts either as a direct result of manipulation or intimidation by their trafficker, or as a consequence of being induced or forced to participate in the commercial sex industry.¹⁹ Criminal conviction relief laws enacted specifically to aid sex trafficking victims recognize that these particular victims did not have the criminal intent to commit certain crimes related to their sex trafficking. Of the three common forms of criminal conviction relief, vacatur serves as the strongest indicator that the criminal justice system no longer views a sex trafficking victim as being culpable for a certain criminal offense, as this form of relief specifically removes the conviction from the victim’s criminal record.²⁰

Vacatur is a mechanism used to help alleviate the collateral consequences that sex trafficking victims face as a result of convictions related to being sex trafficked.

After a sex trafficking victim has been convicted of a criminal offense, that victim will likely face a vast array of collateral consequences, such as barriers to obtaining employment, housing, higher education, financial aid, loan eligibility and credit, and professional licensing.²¹ These collateral consequences can severely limit a victim's ability to leave the commercial sex industry and reintegrate into society. Additionally, a criminal conviction can impose a significant negative social stigma which serves to amplify the difficulties that victims face when attempting to rehabilitate their lives.²²

Vacatur can be an important means of alleviating the collateral consequences of a criminal conviction that sex trafficking victims face. Victims who are able to have criminal convictions vacated and removed from their criminal records may face fewer barriers when seeking to establish a life outside of the commercial sex trafficking industry.²³

VIRGINIA LAW

Virginia does not allow for the expungement of any criminal convictions.

Sex trafficking victims in Virginia cannot expunge convictions from their criminal records because Virginia law does not allow for the expungement of any convictions.²⁴ The term expungement is not defined in the Code of Virginia; however, per the Administrative Code of Virginia, expungement means "to remove, in accordance with a court order, a criminal history record or a portion of a record from public inspection or normal access."²⁵ The Code of Virginia only allows for the expungement of certain charges that did not result in a conviction, including charges that concluded in an acquittal, a *nolle prosequi*, or a dismissal.²⁶ Virginia courts have interpreted these categories fairly narrowly. For example, the Supreme Court of Virginia has denied expungement petitions for acquittals by reason of insanity,²⁷ dismissals following a plea of *nolo contendere*,²⁸ and where a finding of evidence sufficient for guilt was made and the charge was deferred before ultimately being dismissed.²⁹

Virginia allows felony convictions to be vacated if an individual can demonstrate that they are actually innocent; however, sex trafficking victims are unlikely to qualify for criminal conviction relief under these laws.

Virginia has created a vacatur process for felony convictions in its writ of actual innocence statutes.³⁰ In order to have a writ of actual innocence granted, a convicted person must file a petition with the court and prove numerous elements by a preponderance of the evidence.³¹ If the convicted person proves these elements, then the writ of actual innocence is issued, the felony conviction is vacated, and the criminal records relating to the charge are expunged.³²

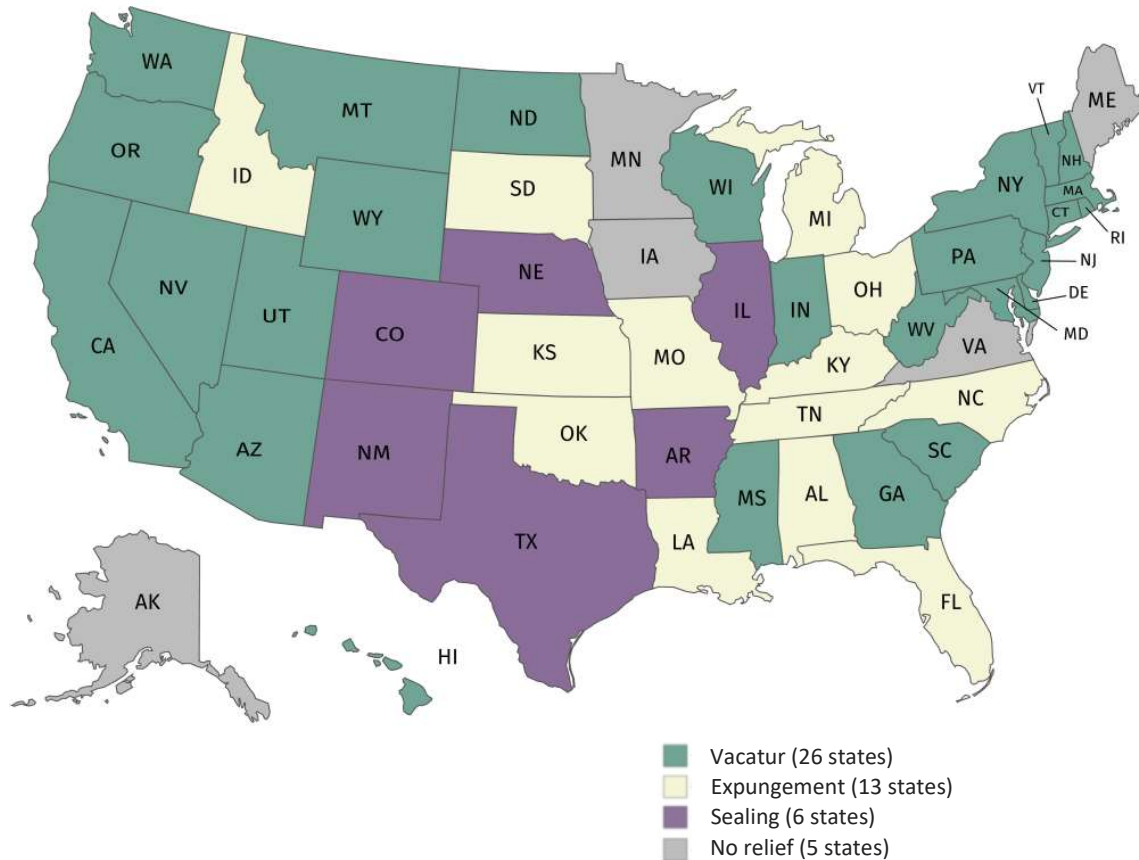
A significant element that a convicted person must prove when petitioning for a writ of actual innocence is that they are in fact “actually innocent” of the offense for which they were convicted.³³ Therefore, sex trafficking victims are not likely to qualify for such a writ because they did in fact commit the criminal offense for which they were convicted. Furthermore, writs of actual innocence are limited to felony convictions, creating an additional bar to sex trafficking victims who were convicted of misdemeanor offenses, such as prostitution.³⁴

50 STATE REVIEW

Forty-five states authorize some form of criminal conviction relief specifically for sex trafficking victims.

Nearly every state has enacted some form of criminal conviction relief specifically for sex trafficking victims.³⁵ As the map below illustrates, of the 45 states with such criminal conviction relief laws, 26 states authorize vacatur, 13 states permit expungement, and 6 states allow for sealing. The remaining 5 states, including Virginia, do not provide criminal conviction relief specifically for sex trafficking victims.

Criminal Conviction Relief Laws for Sex Trafficking Victims



Map prepared by Crime Commission staff.

All states that authorize criminal conviction relief for sex trafficking victims require the victim to petition the court for such relief.

Due to the complex nature of sex trafficking and the unique characteristics of sex trafficking victims, all of the states that allow criminal conviction relief for sex trafficking victims require the victim to petition for such relief. This means that a sex trafficking victim seeking to vacate, expunge, or seal a conviction must file a petition with the court and must then prove that the conviction meets the standards for criminal conviction relief as set out in statute. The standards for criminal conviction relief vary by state; however, the most common standard, as used in 31 states, is that the petitioner must prove that they committed the offense either as a result or as a direct result of being a victim of sex trafficking.³⁶ While almost every state requires a court hearing to determine whether the standards for criminal conviction relief have been met, 6 states allow the court to grant a petition for relief without a hearing when a prosecutor's office does not object to the petition.³⁷

All states that authorize criminal conviction relief for sex trafficking victims include prostitution offenses in their relief statutes; however, states vary substantially in terms of other offenses that qualify for such relief.

While all 45 states that provide criminal conviction relief for sex trafficking victims include prostitution-related offenses in their relief statutes, these states vary dramatically in terms of which other offenses are eligible for relief. An analysis of these 45 states found that:

- 17 states allow criminal conviction relief for only prostitution-related offenses (Arizona, Arkansas, Connecticut, Hawaii, Kansas, Louisiana, Michigan, Missouri, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Washington, West Virginia, and Wisconsin);
- 15 states allow criminal conviction relief for a broad range of offenses, such as all nonviolent offenses, any offense other than violent felonies, and any non-homicide offense (Alabama, California, Colorado, Delaware, Florida, Idaho, Indiana, Kentucky, Montana, Nevada, New Mexico, North Carolina, Ohio, South Dakota, and Vermont);
- 9 states allow criminal conviction relief for a list of specific offenses (Maryland, Massachusetts, Mississippi, New Hampshire, Pennsylvania, South Carolina, Tennessee, Texas, and Utah);³⁸ and,
- 4 states allow criminal conviction relief for any offense (Georgia, Illinois, Nebraska, and Wyoming).

Twenty states have statutes that create a rebuttable presumption that a person is a sex trafficking victim when that person presents official government documentation of their victim status to the court as part of the criminal conviction relief process.

Twenty of the states that authorize criminal conviction relief for sex trafficking victims have provisions that create a rebuttable presumption that a person is a sex trafficking victim when that person presents official government documentation of their victim status to the court as part of the relief process.³⁹ Laws that allow the use of official government documentation to create a rebuttable presumption of a person's victim status can assist sex trafficking victims in two ways. First, this rebuttable presumption provides support to a person's legal position during the criminal conviction relief process, as the person always bears the burden of proving that they were a sex trafficking victim in order to obtain such relief. Second, this rebuttable presumption can help to avoid re-traumatizing a sex trafficking victim, as the person can use

documentation from a prior event to establish that they were a victim, as opposed to requiring the person to prove their victim status all over again in a new legal proceeding.⁴⁰

While these rebuttable presumption laws can offer benefits to sex trafficking victims, such laws also pose certain challenges during the criminal conviction relief process. First, staff was unable to determine what specific documents constitute “official government documentation.” States with such provisions generally did not define this phrase, and the definitions in the 6 states that attempted to define the phrase were quite broad and vague.⁴¹ Therefore, such official government documentation could potentially include complex documents like a T-visa,⁴² or a brief notation in a report by a person’s probation officer. Second, such legal presumptions serve to limit a court’s discretion when ruling on a matter. Furthermore, the decision not to include a rebuttable presumption in the relief process does not prohibit the sex trafficking victim from introducing official government documentation of their victim status. Such documentation is still admissible, but its admission does not create a rebuttable presumption that the person is a sex trafficking victim.

Nine states require sex trafficking victims to prove that they are no longer involved in sex trafficking in order to qualify for criminal conviction relief.

Nine states have enacted provisions within their criminal conviction relief laws that require a sex trafficking victim to prove that they are no longer involved in sex trafficking as a condition of the relief process.⁴³ This requirement stems from concerns that traffickers will use the criminal conviction relief process as an additional means to control their victims by promising to help the victim through the process if they are convicted of a crime. While this concern is certainly a possibility, it is highly unlikely that a trafficker will actually assist a victim during the criminal conviction relief process. First, if a victim successfully has a conviction concealed on or removed from their criminal record, the trafficker has one less means to control that victim. Second, traffickers have a strong self-interest against victims testifying in court about their sex trafficking and identifying who else might be involved in the sex trafficking scheme. Finally, because individuals must petition the court for criminal conviction relief, those victims who do petition tend to have left the commercial sex industry and stabilized their lives.⁴⁴

CRIME COMMISSION LEGISLATION

The Crime Commission met on January 5, 2021, and heard a presentation from staff on criminal conviction relief for sex trafficking victims across the United States and data collection in Virginia.⁴⁵ Staff provided Crime Commission members with the following two recommendations.

Recommendation 1: Virginia should enact legislation that allows sex trafficking victims to vacate convictions for prostitution and maintaining a bawdy place.

- **Policy Decision:** Should any other offenses be eligible for vacatur?

Staff recommended that Virginia enact legislation to allow sex trafficking victims to petition a circuit court for vacatur of certain convictions and adjudications of delinquency related to being sex trafficked, including convictions and adjudications of delinquency for prostitution and maintaining a bawdy place.⁴⁶ Staff made this recommendation for several reasons. First, 45 states have laws that provide some form of criminal conviction relief specifically for sex trafficking victims, with Virginia being 1 of the 5 states that does not allow for such relief. Second, a majority of the states that provide criminal conviction relief to sex trafficking victims allow these victims to have convictions vacated. Third, vacatur signifies that these sex trafficking victims did not have the criminal intent to commit these particular offenses. Finally, by allowing a conviction to be vacated, the conviction will be removed from a person's criminal record, and this may limit some of the collateral consequences that sex trafficking victims face as a result of such convictions.

Staff provided Crime Commission members with draft legislation to create a process in Virginia for sex trafficking victims to have convictions and adjudications of delinquency for prostitution and maintaining a bawdy place vacated. In drafting this legislation, staff sought to balance the need to assist these particular victims with the interest of the Commonwealth in preventing abuse of the process. The newly created vacatur process will require the sex trafficking victim to file a petition for vacatur with the circuit court in the jurisdiction where the conviction or adjudication of delinquency was entered. The petition is filed under oath, subject to the penalty of perjury. A copy of the petition must be provided to the attorney for the Commonwealth, who can then concur with or object to the petition. If the attorney for the Commonwealth objects to the petition, the circuit court must conduct a hearing and the sex trafficking victim must prove by a preponderance of the evidence that they committed the criminal offense as a direct result of being a victim of sex trafficking. If the court grants the petition, then the

conviction is vacated, the criminal records related to the conviction are expunged, the court maintains a copy of the vacatur order, and the sex trafficking victim may receive a refund of court costs, fines, and fees paid as a result of the vacated conviction. There are no limits on the number of petitions for vacatur that a sex trafficking victim may file, but the petitioner must disclose any prior petitions to the court.

Staff also presented a policy option as to whether additional offenses should be eligible for vacatur. Crime Commission members voted to also include solicitation of prostitution as an eligible offense for vacatur.⁴⁷ The Crime Commission then voted unanimously to endorse Recommendation 1. The Crime Commission voted unanimously to endorse the draft legislation for introduction during the 2021 Regular Session of the General Assembly (House Bill 2133 - Del. Karrie K. Delaney).⁴⁸

Recommendation 2: Divide Virginia's prostitution statute into two separate Code sections to better distinguish between prostitution and solicitation of prostitution.

During the Crime Commission study on sex trafficking conducted in 2018, staff found that data on the extent of commercial sex trafficking in Virginia is not readily available.⁴⁹ As part of the presentation to the Crime Commission on January 5, 2021, staff advised members that one particular challenge to data collection was the structure of Virginia's prostitution statute (Va. Code § 18.2-346). This challenge was due to the fact that Virginia's prostitution statute includes two subsections that encompass two distinctly different offenses: prostitution⁵⁰ and solicitation of prostitution.⁵¹ Therefore, if a person is charged with or convicted of a violation of this statute and no subsection is listed on the summons or warrant, then it is incredibly difficult to determine whether the charge related to engaging in prostitution or soliciting prostitution. A review of data from FY2014 to FY2018 included a significant number of charges and convictions for violations of Virginia Code § 18.2-346 in Virginia's general district courts where it was unclear whether the charge was related to prostitution or solicitation of prostitution.⁵²

Staff provided Crime Commission members with draft legislation to divide Virginia's prostitution statute into two separate Code sections in order to better distinguish between prostitution and solicitation of prostitution offenses.⁵³ Staff advised that by dividing this Code section into two distinct Code sections, data on sex trafficking in Virginia could be tracked more accurately, which could in turn aid in better identifying the supply and demand components of the commercial sex industry in Virginia. The Crime Commission voted unanimously to endorse the draft legislation for introduction

during the 2021 Regular Session of the General Assembly (House Bill 2169 - Del. Candi Mundon King).⁵⁴

Both Crime Commission bills passed the General Assembly unanimously and were signed into law by the Governor.⁵⁵

ACKNOWLEDGEMENTS

The Virginia State Crime Commission extends its appreciation to the following agencies and organizations for their assistance and cooperation on this study:

Amara Legal Center

Brooklyn Law School

Henrico County Commonwealth's Attorney's Office

Office of Executive Secretary of the Supreme Court of Virginia

Richmond Regional Human Trafficking Collaborative

Shared Hope International

Virginia Association of Commonwealth's Attorneys

Virginia Coalition Against Human Trafficking

Virginia Indigent Defense Commission

Virginia State Police

ENDNOTES

¹ See Virginia State Crime Commission. *2018 Annual Report: Sex Trafficking in Virginia*. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Sex%20Trafficking%20in%20Virginia.pdf>. See also Virginia State Crime Commission. *2019 Annual Report: Sex Trafficking in Virginia*. Available at <http://vscc.virginia.gov/2020/Sex%20Trafficking%20Update.pdf>.

² The bills referred to the Crime Commission during the Regular Session of the 2020 General Assembly included House Bill 128 (Del. Jason S. Miyares), House Bill 268 (Del. Steven E. Heretick), House Bill 1033 (Del. Charniele L. Herring), and Senate Bill 914 (Sen. Mamie E. Locke).

³ VA. CODE ANN. § 18.2-346 (2020).

⁴ House Bill 2133 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2133>.

⁵ House Bill 2169 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2169>.

⁶ 2021 Va. Acts, Sp. Sess. I, ch. 543 (vacatur). 2021 Va. Acts, Sp. Sess. I, ch. 188 (dividing prostitution statute).

⁷ VA. CODE ANN. §§ 19.2-327.2 *et seq.* and 19.2-327.10 *et seq.* (2020).

⁸ The database of criminal conviction relief laws compiled by the Restoration of Rights Project was a key resource in conducting the 50 state review. The laws of each state were reviewed on LexisNexis and staff performed additional searches on LexisNexis within each of the state statutes to ensure that all relevant laws were reviewed. See Restoration of Rights Project. *50 State comparison: Expungement, sealing, & other record relief*. Retrieved from <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/> (last updated Jan. 24, 2021).

⁹ Virginia State Crime Commission. *2018 Annual Report: Sex Trafficking in Virginia*. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Sex%20Trafficking%20in%20Virginia.pdf>.

¹⁰ *Id.*

¹¹ *Vacatur*, BLACK'S LAW DICTIONARY (9th ed. 2009).

¹² *Expunge*, BLACK'S LAW DICTIONARY (9th ed. 2009) ("to erase or destroy"); *Expungement of Record*, *Id.* ("the removal of a conviction from a person's criminal record").

¹³ *Sealing of Records*, BLACK'S LAW DICTIONARY (9th ed. 2009) ("act or practice of officially preventing access to particular records, in the absence of a court order").

¹⁴ MONT. CODE ANN. § 46-18-1103(1) (2020). See also DEL. CODE ANN. tit. 11, § 4372(c)(3) (2020); 20 ILL. COMP. STAT. ANN. 2630/5.2(a)(1)(E) (LexisNexis 2020); KY. REV. STAT. ANN. § 431.079(3) (LexisNexis 2020); MD. CODE ANN., CRIM. PROC. § 10-101(d) and (e) (LexisNexis 2020); and, TENN. CODE ANN. § 40-32-101(g)(12)(A) (2020).

¹⁵ OKLA. STAT. tit. 22, § 18(B) (2020). See also LA. CODE CRIM. PROC. ANN. art. 972(1) (2020); MINN. STAT. § 609A.01 (2020); N.J. REV. STAT. § 2C:52-1 (2020); SD CODIFIED LAWS § 23A-3-26 (2020); and, UTAH CODE ANN. § 77-40-102(9) (LexisNexis 2020).

¹⁶ See ARK. CODE ANN. § 16-90-1404(4)(A) (2020). "Seal" means to expunge, remove, sequester, and treat as confidential the record or records in question according to the procedures established by this subchapter.

¹⁷ *Supra* notes 12 and 13.

¹⁸ *Mens rea*, BLACK'S LAW DICTIONARY (9th ed. 2009) ("The state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime; criminal intent or recklessness.")

¹⁹ Virginia State Crime Commission. *2018 Annual Report: Sex Trafficking in Virginia*, pp. 76-78 & 82-83. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Sex%20Trafficking%20in%20Virginia.pdf>

²⁰ Mullins, K. (2019). A path to protection: Collateral crime vacatur for Wisconsin's victims of sex trafficking. *Wisconsin Law Review*, 2019(6), 1551-1587 at p. 1567 ("vacatur is the favored method of relief for victims of trafficking ... because it stops victims from being viewed as criminals..."); United States Department of State. (2016). *Protecting victims from wrongful prosecution and further victimization*, at p. 2, available at <https://2009-2017.state.gov/documents/organization/259304.pdf> ("Vacatur is the formal recognition of 'factual innocence.' Vacatur laws should apply to both adults and children, given that anyone who has been forced, tricked, or coerced into criminal activity should not be considered as having consented to that activity.... These laws not only allow victims to correct past injustices, but also thereby help trafficking victims reclaim and rebuild their lives. Vacatur increases a survivor's ability to find work, reducing their economic vulnerabilities and the risk of being re-trafficked."); Lawrenson, C.P. (2014). The injustice of convicting sex trafficking victims: A model vacating convictions law. *Thomas Jefferson Law Review*, 36(1), 343-371 at p. 345 (Vacatur "laws acknowledge that victims face complex psychological and legal challenges as a consequence of trafficking. Accordingly, these laws recognize that convictions obtained by a victim during a trafficking situation should be vacated.")

²¹ Adams, E., Chen, E.Y., & Chapman, R. (2017). Erasing the mark of a criminal past: Ex-offenders' expectations and experiences with record clearance. *Punishment & Society*, 19(1), 23-52 at pp. 25-26; Roberts, J. (2015). Expunging America's rap sheet in the information age. *Wisconsin Law Review*, 2(321), 321-347 at pp. 327-328; Prescott, J.J., & Starr, S.B. (2020). Expungement of criminal convictions: An empirical study. *Harvard Law Review*, 133(8), 2460-2555 at p. 2462; Solomon, A. (2012). In search of a job: Criminal records as barriers to employment. *NIJ Journal*, 270, 42-51 at pp. 44-46; Haber, E. (2018). Digital expungement. *Maryland Law Review*, 77(2), 337-385 at pp. 343-344 (provides a list of collateral consequences faced by those who have a criminal record).

²² Roberts, *supra* note 21, at pp. 329-330 (access to criminal records has "helped create a tiered society in which individuals with a criminal history are effectively second-class citizens.").

²³ See *supra* note 20.

²⁴ VA. CODE ANN. § 19.2-392.2(A) (2020).

²⁵ 6 VA. ADMIN. CODE 20-120-20 (2020).

²⁶ VA. CODE ANN. § 19.2-392.2(A) (2020).

²⁷ *Eastlack v. Commonwealth*, 282 Va. 120, 710 S.E.2d 723 (Jun. 9, 2011).

²⁸ *Commonwealth v. Dotson*, 276 Va. 278, 661 S.E.2d 473 (Jun. 6, 2008); *Commonwealth v. Jackson*, 255 Va. 552, 499 S.E.2d 276 (Apr. 17, 1998).

²⁹ *Daniel v. Commonwealth*, 268 Va. 523, 604 S.E.2d 444 (Nov. 5, 2004).

³⁰ VA. CODE ANN. §§ 19.2-327.2 *et seq.* and 19.2-327.10 *et seq.* (2020).

³¹ VA. CODE ANN. §§ 19.2-327.3, 19.2-327.5, 19.2-327.11, and 19.2-327.13 (2020).

³² VA. CODE ANN. §§ 19.2-327.5 and 19.2-327.13 (2020).

³³ VA. CODE ANN. §§ 19.2-327.3(A) and 19.2-327.11(A) (2020).

³⁴ See VA. CODE ANN. § 18.2-346(A) (2020).

³⁵ See Appendix A for more detailed information on the criminal conviction relief laws for sex trafficking victims across all 50 states.

³⁶ The 31 states which require a person to prove that they committed an offense either as a result or a direct result of being a victim of sex trafficking include Arizona, Arkansas, California, Delaware, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, and Wyoming. See Appendix A for a listing of individual state statutes.

³⁷ See Arizona (ARIZ. REV. STAT. § 13-909(B) (LexisNexis 2020)); Arkansas (ARK. CODE ANN. § 16-90-1413(b)(2) (2020)); California (CAL. PENAL CODE § 236.14(d) (West 2020)); Georgia (GA. CODE ANN. § 17-10-21(a)(4) (2020)); Illinois (20 ILL. COMP. STAT. ANN. 2630/5.2(h)(3) (LexisNexis 2020)); and, Maryland (MD. CODE ANN., CRIM. PROC. § 8-302(e) (LexisNexis 2020)).

³⁸ See Appendix B for additional information on the specified offenses that are eligible for criminal conviction relief in each state.

³⁹ See Appendix A. The 20 states that allow individuals to use official government documentation to create a rebuttable presumption that they are a sex trafficking victim include Arkansas, California, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Vermont, and Wyoming.

⁴⁰ Amara Legal Center, Brooklyn Law School, and Shared Hope International, personal communication, Dec. 18, 2020.

⁴¹ These six states include Arkansas, Florida, Georgia, Massachusetts, Nebraska, and New Jersey. See Appendix A for a listing of individual state statutes.

⁴² A T-visa is a visa granted to non-U.S. citizen sex trafficking victims in order to allow them to remain in the United States to assist in the investigation and prosecution of human traffickers. See United States Department of State – Bureau of Consular Affairs, *Visas for Victims of Human Trafficking*. Retrieved from <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-for-victims-of-human-trafficking.html> (last visited May 5, 2021).

⁴³ These nine states include California, Florida, Maryland, Michigan, Montana, Nevada, New Jersey, New York, and Wisconsin. See Appendix A for a listing of individual state statutes.

⁴⁴ Amara Legal Center, Brooklyn Law School, and Shared Hope International, personal communication, Dec. 18, 2020.

⁴⁵ Virginia State Crime Commission. (Jan. 5, 2021). *Vacatur of Convictions for Victims of Sex Trafficking*. Available at <http://vscc.virginia.gov/2021/VSCC%20Vacatur%20Victims%20Sex%20Trafficking%20FINAL.pdf>.

⁴⁶ VA. CODE ANN. §§ 18.2-346(A) and 18.2-347 (2020).

⁴⁷ VA. CODE ANN. § 18.2-346(B) (2020).

⁴⁸ House Bill 2133 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2133>.

⁴⁹ Virginia State Crime Commission. *2018 Annual Report: Sex Trafficking in Virginia*. p. 81. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Sex%20Trafficking%20in%20Virginia.pdf>.

⁵⁰ VA. CODE ANN. § 18.2-346(A) (2020).

⁵¹ VA. CODE ANN. § 18.2-346(B) (2020).

⁵² Virginia State Crime Commission. *2018 Annual Report: Sex Trafficking in Virginia*. p. 98.

Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Sex%20Trafficking%20in%20Virginia.pdf>.

⁵³ The draft legislation to divide Virginia's prostitution statute into two separate Code sections was prepared by the Virginia Division of Legislative Services.

⁵⁴ House Bill 2169 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2169>.

⁵⁵ 2021 Va. Acts, Sp. Sess. I, ch. 188.

APPENDIX A: Criminal Conviction Relief Statutes for Sex Trafficking Victims

STATE	STATUTE(S)	TYPE OF CONVICTION RELIEF	ELIGIBLE OFFENSES	REBUTTABLE PRESUMPTION** (Y/N)	PETITIONER NO LONGER A VICTIM*** (Y/N)
Alabama	ALA. CODE §§ 15-27-1, 15-27-2	Expungement	Any offense other than violent felonies	N	N
Alaska	None	--	--	--	--
Arizona	ARIZ. REV. STAT. § 13-909	Vacatur	Prostitution offenses only	N	N
Arkansas	ARK. CODE ANN. § 16-90-1412	Sealing	Prostitution offenses only	Y	N
California	CAL. PENAL CODE § 236.14	Vacatur	Any nonviolent offense	Y	Y
Colorado	COLO. REV. STAT. § 24-72-707	Sealing	Any nonviolent misdemeanor	N	N
Connecticut	CONN. GEN. STAT. § 54-95c	Vacatur	Prostitution offenses only	N	N
Delaware	DEL. CODE ANN. tit. 11, § 787	Vacatur	Any offense other than violent felonies	Y	N
Florida	FLA. STAT. § 943.0583	Expungement	Any offense other than violent felonies	Y	Y
Georgia	GA. CODE ANN. §§ 17-10-21, 35-3-37	Vacatur	Any offense	Y	N
Hawaii	HAW. REV. STAT. § 712-1209.6	Vacatur	Prostitution offenses only	N	N
Idaho	IDAHO CODE § 67-3014	Expungement	Any offense other than offenses for which a defense of coercion would not be available	Y	N
Illinois	20 ILL. COMP. STAT. 2630/5.2	Sealing	Any offense	N	N
Indiana	IND. CODE § 35-38-10-2	Vacatur	Any nonviolent offense	N	N
Iowa	None	--	--	--	--
Kansas	KAN. STAT. ANN. § 21-6614	Expungement	Prostitution offenses only	N	N
Kentucky	KY. REV. STAT. ANN. § 529.160	Expungement	Any nonviolent offense	Y	N
Louisiana	LA. CHILD. CODE ANN. art. 923	Expungement	Prostitution offenses only	Y	N
Maine	None	--	--	--	--

STATE	STATUTE(S)	TYPE OF CONVICTION RELIEF	ELIGIBLE OFFENSES	REBUTTABLE PRESUMPTION** (Y/N)	PETITIONER NO LONGER A VICTIM*** (Y/N)
Maryland	MD. CODE ANN., CRIM. PROC. § 8-302	Vacatur	List of specified offenses*	N	Y
Massachusetts	MASS. GEN. LAWS ch. 265, § 59	Vacatur	List of specified offenses*	Y	N
Michigan	MICH. COMP. LAWS § 780.621	Expungement	Prostitution offenses only	N	Y
Minnesota	None	--	--	--	--
Mississippi	MISS. CODE ANN. § 97-3-54.6	Vacatur	List of specified offenses*	Y	N
Missouri	MO. REV. STAT. § 610.131	Expungement	Prostitution offenses only	N	N
Montana	MONT. CODE ANN. § 46-18-608	Vacatur	Any nonviolent offense	Y	Y
Nebraska	NEB. REV. STAT. §§ 29-3005, 29-3523	Sealing	Any offense	Y	N
Nevada	NEV. REV. STAT. ANN. § 179.247	Vacatur	Any nonviolent offense	N	Y
New Hampshire	N.H. REV. STAT. ANN. § 633:7	Vacatur	List of specified offenses*	Y	N
New Jersey	N.J. STAT. ANN. § 2C:44-1.1	Vacatur	Prostitution offenses only	Y	Y
New Mexico	N.M. STAT. ANN. § 30-52-1.2	Sealing	Any non-homicide offense	N	N
New York	N.Y. CRIM. PROC. LAW § 440.10	Vacatur	Prostitution offenses only	Y	Y
North Carolina	N.C. GEN. STAT. §§ 15A-145.9, 15A-1416.1	Expungement	Any nonviolent offense	N	N
North Dakota	N.D. CENT. CODE § 12.1-41-14	Vacatur	Prostitution offenses only	Y	N
Ohio	OHIO REV. CODE. ANN. § 2953.38	Expungement	Any offense other than murder or rape	N	N
Oklahoma	OKLA. STAT. tit. 22, § 19c	Expungement	Prostitution offenses only	N	N
Oregon	OR. REV. STAT. § 137.221	Vacatur	Prostitution offenses only	N	N
Pennsylvania	18 PA. CONS. STAT. § 3019	Vacatur	List of specified offenses*	Y	N
Rhode Island	R.I. GEN. LAWS § 11-67.1-17	Vacatur	Prostitution offenses only	Y	N
South Carolina	S.C. CODE ANN. § 16-3-2020	Vacatur	List of specified offenses*	N	N

STATE	STATUTE(S)	TYPE OF CONVICTION RELIEF	ELIGIBLE OFFENSES	REBUTTABLE PRESUMPTION** (Y/N)	PETITIONER NO LONGER A VICTIM*** (Y/N)
South Dakota	S.D. CODIFIED LAWS § 26-7A-115.1	Expungement	Any delinquency offense	N	N
Tennessee	TENN. CODE ANN. § 40-32-105	Expungement	List of specified offenses*	N	N
Texas	TEX. GOV'T CODE ANN. § 411.0728	Sealing	List of specified offenses*	N	N
Utah	UTAH CODE ANN. § 78B-9-104	Vacatur	List of specified offenses*	N	N
Vermont	VT. STAT. ANN. tit. 13, § 2658	Vacatur	Any offense other than specified violent offenses	Y	N
Virginia	None	--	--	--	--
Washington	WASH. REV. CODE § 9.96.060	Vacatur	Prostitution offenses only	N	N
West Virginia	W. VA. CODE § 61-14-9	Vacatur	Prostitution offenses only	N	N
Wisconsin	WIS. STAT. § 973.015	Vacatur	Prostitution offenses only	N	Y
Wyoming	WYO. STAT. ANN. § 6-2-708	Vacatur	Any offense	Y	N

* States that list specified offenses vary dramatically. See Appendix B for additional information on each of these states.

** "Rebuttable Presumption" refers to states with laws which create a rebuttable presumption that a person is a sex trafficking victim when that person presents official government documentation to the court as part of the criminal conviction relief process.

*** "Petitioner No Longer a Victim" refers to states with laws which require a person to demonstrate that they are no longer involved in sex trafficking in order to be granted criminal conviction relief.

APPENDIX B: States with Specific Offenses Eligible for Criminal Conviction Relief for Sex Trafficking Victims

STATE	STATUTE	ELIGIBLE OFFENSES
Maryland	MD. CODE ANN., CRIM. PROC. § 8-302	<p>Burglary offense: fourth degree burglary</p> <p>Driving offenses: driving with suspended registration; failure to display registration; driving without a license; failure to display license to police; possession of suspended license; driving while privilege is canceled, suspended, refused, or revoked; owner failure to maintain security on a vehicle; driving while uninsured</p> <p>Fraud offenses: possession or use of fraudulent government identification; public assistance fraud; false statement to law enforcement or public official</p> <p>Larceny offenses: misdemeanor theft; misdemeanor bad check</p> <p>Property offenses: malicious destruction of property in the lesser degree; trespass</p> <p>Peace & Order offenses: disturbing the peace and disorderly conduct</p> <p>Sex offenses: specified bestiality offenses; indecent exposure; prostitution; prostitution or loitering as prohibited by local law</p>
Massachusetts	MASS. GEN. LAWS ch. 265, § 59	<p>Resorting to restaurants or taverns for immoral purpose;</p> <p>Common night walkers, disorderly persons and disturbers of the peace;</p> <p>Engaging in sexual conduct for a fee; and,</p> <p>Simple possession of a controlled substance</p>
Mississippi	MISS. CODE ANN. § 97-3-54.6(5)	Any conviction under Mississippi's Human Trafficking Act (Miss. CODE ANN. §§ 97-3-54 to 97-3-54.9)
New Hampshire	N.H. REV. STAT. ANN. § 633:7	<p>Indecent exposure and lewdness;</p> <p>Prostitution;</p> <p>Any other misdemeanor; and,</p> <p>Any Class B felony</p>
Pennsylvania	18 PA. CONS. STAT. § 3019	<p>Trespass;</p> <p>Disorderly conduct;</p> <p>Loitering and prowling at night;</p> <p>Obstructing highways and other public passages;</p> <p>Prostitution offenses; and,</p> <p>Possession of controlled substances</p>
South Carolina	S.C. CODE ANN. § 16-3-2020(F)	Prostitution convictions and any conviction under South Carolina's Trafficking in Persons Article (S.C. CODE ANN. §§ 16-3-2010 to 16-3-2100)
Tennessee	TENN. CODE ANN. § 40-32-105	Any offenses eligible for expungement under Tennessee's expungement statute (TENN. CODE ANN. § 40-32-101(g))

STATE	STATUTE	ELIGIBLE OFFENSES
Texas	TEX. GOV'T CODE ANN. § 411.0728	Misdemeanor delivery of marijuana; Possession of marijuana; Misdemeanor theft; and, Prostitution
Utah	UTAH CODE ANN. § 78B-9-104	Possession of controlled substance; Aiding prostitution; Criminal trespass; Release of fur-bearing animals; Possession of forged writing or device; Retail theft; Unlawful possession of another's identification document; Lewdness; Prostitution; and, Sexual solicitation

