



# Vacatur of Convictions for Victims of Sex Trafficking

January 5, 2021



# Overview

---

- Study Findings
- Recommendations



# Study Findings

---

- Sex trafficking is occurring in Virginia and continues to be a serious problem.
  - Victims are often vulnerable, struggling with dysfunctional families, past abuse, trauma, and low self-esteem.
  - Victims are frequently recruited into the lifestyle as juveniles.



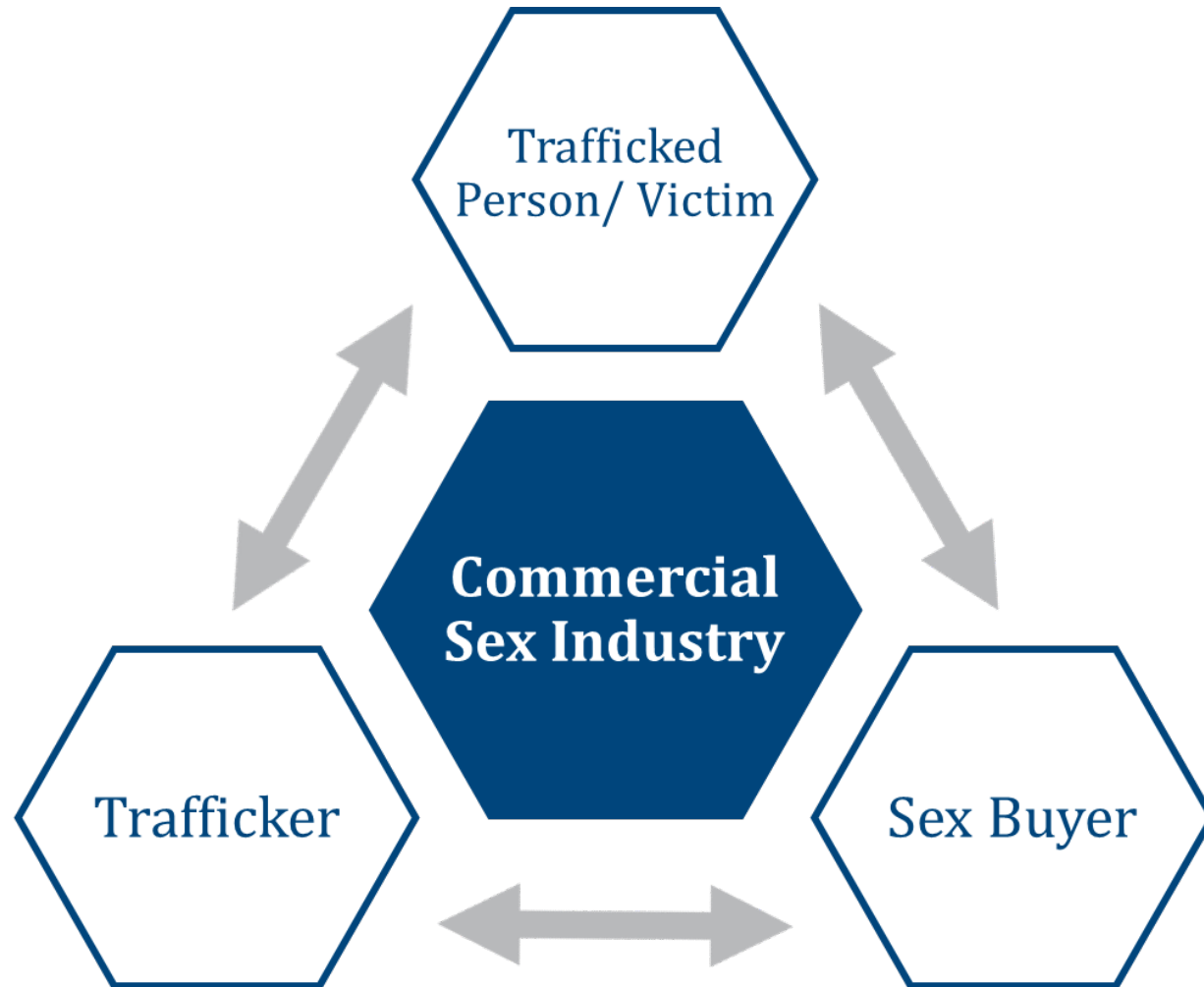
# Study Findings

---

- Victims of sex trafficking often do not see themselves or self-identify as victims.
  - Traditional criminal justice response has led to victims being treated as criminals.
  
- Data related to sex trafficking is often unavailable or incomplete.



# Study Findings



Credit: Benjamin Gauen, King County, WA - Prosecuting Attorney's Office



# Study Findings

---

- What is vacatur?
  - Removing a conviction as if the person had never been found guilty of an offense.
- Why vacate convictions for victims of sex trafficking?
  - Victims lacked criminal intent to commit certain acts related to being sex trafficked.
  - Victims committed these acts as a direct result of force, intimidation, or deception.



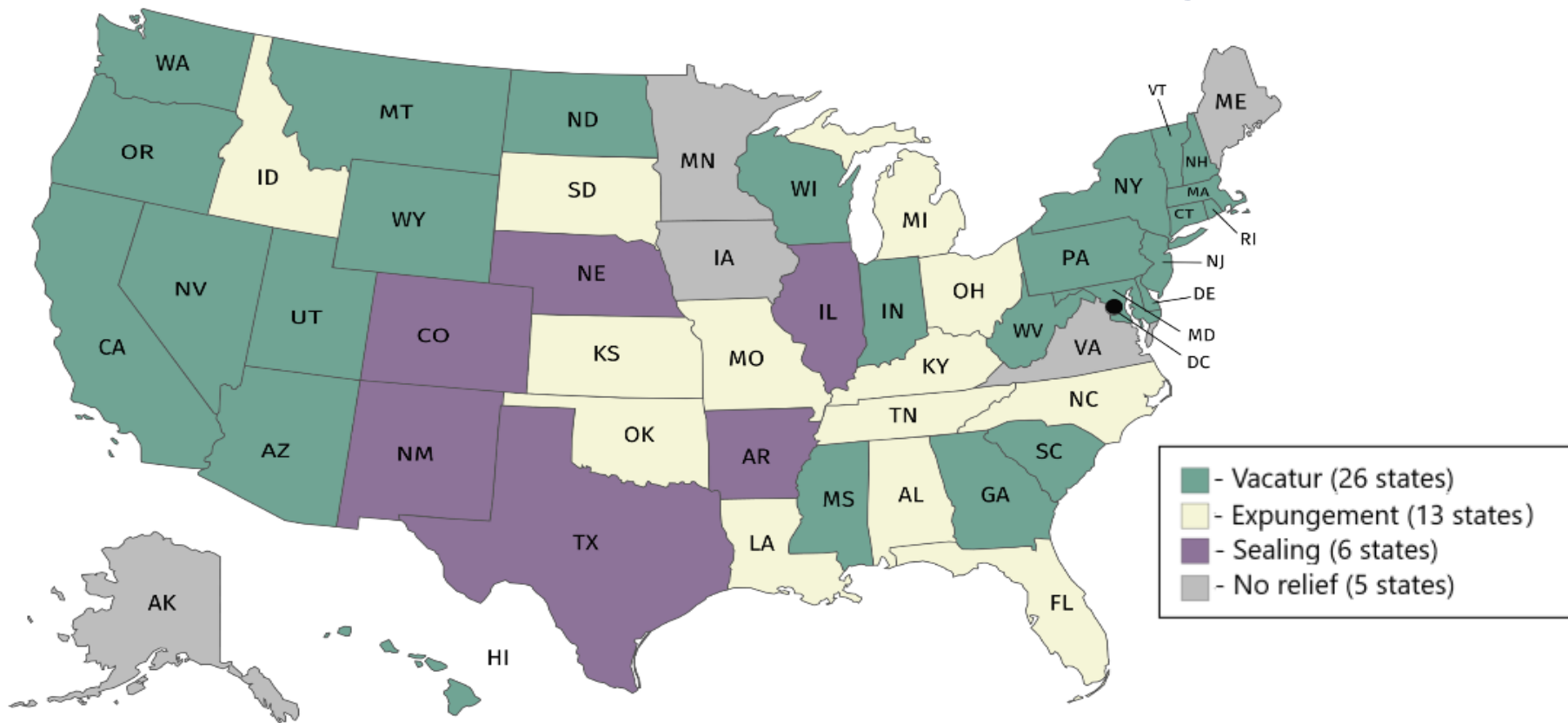
# Study Findings

---

- How does vacatur help victims of sex trafficking?
  - Alleviates collateral consequences, such as bars to employment, housing, education, and federal and state assistance.
  - Can help victims establish themselves outside of the commercial sex industry.

# Study Findings

## 45 States Allow Relief to Sex Trafficking Victims



Map by Crime Commission staff based on legal analysis.





# Recommendations

---

- **Recommendation 1:** Create a statute which allows victims to vacate prostitution and maintaining a bawdy place convictions.
- **Recommendation 2:** Divide Virginia's prostitution statute into two separate code sections to better distinguish between prostitution and solicitation of prostitution.



# Recommendation 1

---

- **Recommendation 1:** Create a statute which allows victims to vacate prostitution and maintaining a bawdy place convictions.
  - All 45 states include prostitution offenses.
  - States vary substantially on which additional offenses qualify for conviction relief.
  
- **Should any other convictions be included?**



# Recommendation 1

---

- Conviction relief allowed in other states in addition to prostitution offenses:
  - 15 states: broad range of offenses
    - Misdemeanors; non-violent felonies; any non-homicide offense
  - 9 states: specific offenses
  - 4 states: all offenses



# Recommendation 1

---

The legislation includes:

1. Vacatur for adult and juvenile convictions;
2. Petition process in the circuit court;
  - Filed under oath, subject to perjury
  - No limit on number of petitions, but petitioner must disclose any prior petitions
  - Commonwealth may concur with or object to the petition for vacatur



# Recommendation 1

---

The legislation includes:

3. Petitioner bears the burden of proof by a preponderance of the evidence;
  - Petitioner committed an eligible offense as a direct result of being a victim of sex trafficking
4. Records of the offense are expunged after the writ of vacatur is entered;



# Recommendation 1

---

The legislation includes:

5. Writ of vacatur is maintained by the court; and,
  - Victim has access as needed
  - Prevents abuse of the process
6. Refund of court costs, fines, and fees to petitioner.



# Recommendation 1

---

- Other state statute provisions:
  - 20 states have created a rebuttable presumption of petitioner's victim status when petitioner presents official government documentation to the court.
  - 9 states require that the petitioner demonstrate they are no longer involved in sex trafficking.



## Recommendation 2

---

- **Recommendation 2:** Divide Virginia's prostitution statute into two separate code sections to better distinguish between prostitution and solicitation of prostitution.
  - Allows for more accurate data collection.
  - Aids in clearer identification of the supply and demand components of the commercial sex trafficking industry.





# Discussion