

POLICY PRIORITY: Expanding Post Conviction Relief for Victims of Human Trafficking



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THE INSTITUTE TO ADDRESS
COMMERCIAL SEXUAL EXPLOITATION

THE ISSUE

Victims of human trafficking are frequently forced to commit crimes resulting in the potentially lifelong barrier of a criminal record. One aspect of Pennsylvania's comprehensive anti-trafficking legislation, which was enacted in 2014, enables criminalized survivors of human trafficking to clear certain crimes off their criminal records through a remedy known as vacatur. Vacatur symbolizes Pennsylvania's recognition that it has unjustly convicted and punished these victims – and that they are not, and never were, criminally culpable for conduct that was a direct result of their victimization. By acknowledging the stigmas associated with criminalization, vacatur empowers survivors to continue their lives past their victimization.

OVERVIEW OF CURRENT VACATUR LAW

To be eligible for vacatur in Pennsylvania, a trafficking survivor must show:

- They were convicted of one of the six enumerated offenses eligible for the remedy
- Status as a victim of human trafficking
- There is a nexus between the conviction and their status as a trafficking victim, and
- The prosecuting attorney consents to their filing a motion seeking vacatur

LIMITATIONS OF CURRENT VACATUR LAW

- The current list of eligible convictions does not encompass the wide breath of criminal conduct human traffickers force their victims to perform
- The requirement of District Attorney Consent to file bars victims from arguing their vacatur petition in front of the court
- Only convictions are vacatur eligible- leaving delinquency adjudications, probation without verdict cases, and withdrawn (i.e., dismissed or nolle prossed) cases on a survivor's criminal records
- The law places burdens on survivors in the form of filing fees and possible attendance at court hearings

THE IMPACT

Since the law passed, the CSE Institute has worked on behalf of countless survivors, successfully achieving vacatur of 181 cases with over 273 charges being erased from their criminal records. Due to the limited nature of Pennsylvania's vacatur law:

50% of CSE Institute clients still have convictions left on their criminal records AFTER the vacatur remedy is fully exhausted.

All client data as of June 2023

Percent of Clients with Non Vacatur Eligible Offenses



* Theft includes theft, theft by unlawful taking of movable property, and theft by deception

THE BURDEN OF A CRIMINAL RECORD: WHY THIS MATTERS



- 92% of employers run criminal background checks on all or some job candidates, as reported by the Equal Employment Opportunity Commission



- In a national survey of 130 survivors, 58% reported their criminal record was a barrier to obtaining housing
- Lack of housing is a significant vulnerability to trafficking or other forms of exploitation



- In a national survey of 130 survivors, 17% reported losing educational opportunities due to their criminal record



- A criminal record can also impact child custody matters
- Survivors also report having a record prevented them from obtaining federal benefits and loans

THE SOLUTION

To address the flaws preventing survivors from accessing this important remedy, the CSE Institute recommends the PA legislature amend the Commonwealth's vacatur provision to:

- ✓ **Change the DA consent requirement to a notice requirement.** Requiring DA consent to merely file a vacatur motion places an unnecessary step that in some cases has been a barrier to accessing the vacatur remedy. By changing to a notice requirement, prosecutors retain the ability to object to the motion while allowing the matter to be decided by a judge.
- ✓ **Expand the list of vacatur eligible offenses.** At a minimum, the list of eligible offenses should be expanded to meet the legislative intent "that we have to stop treating victims as criminals" by reflecting the experiences of survivors who have been trafficked within Pennsylvania.
- ✓ **Remove unnecessary barriers to access.** Common barriers to survivors accessing the vacatur remedy include filing fees and the fear of having to attend a hearing. Amending the statutory language to ensure that filing fees are not required and allowing the motion to be granted without a hearing where the DA has not objected would improve access. When a hearing is required, permit survivors to waive their right to appear in court or allow alternate methods of appearance (e.g., video, or telephone conference call).
- ✓ **Allow survivors to vacate non-convictions from their criminal record as well.** Many of our clients have records resulting from participation in diversionary programs. While these records are often sealed from public view after completion of the program, survivors are still harmed by the existence of the record on state and federal background reports. This change would close a loophole in the current law preventing survivors from accessing vacatur as intended.

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We all know that traffickers prey on vulnerability and that having a record is a form of vulnerability. Justice is not just convictions; it is doing the right thing. Reducing vulnerability is a prosecutorial/long-term objective.

Prosecutor, Participant of
Survivor Reentry Project
Round Table Discussion

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