

Survivors of Trafficking as Defendants in the Criminal Legal System

Background

Traffickers use multiple forms of power and control over victims. In addition to physical and sexual abuse, traffickers use threats, emotional manipulation, social isolation, and abuse of the legal system, to exert control. As a result of the power and control exercised by their traffickers, victims engage in activities in which they would not have otherwise engaged. This often leads to victims being arrested and charged with crimes, such as prostitution, theft, or drug possession. Some traffickers strategically arrange for victims to be found and arrested by police while engaging in sex work to punish or discourage victims from seeking assistance from law enforcement or the legal system.

Victims are often not identified as victims during their involvement with the criminal legal system and instead, they are prosecuted and convicted for crimes they were forced or coerced to commit. A criminal record exacerbates one's vulnerability to trafficking and exploitation because it prevents one from accessing education, employment opportunities, housing, and public benefits. The inability to pass a background check prevents survivors from accessing important resources and often subjects them to unnecessary stigma and shame. Survivors continue to be impacted long after leaving a trafficking situation as their criminal histories disqualify them from becoming foster parents or chaperoning school field trips. Traffickers use this vulnerability to keep victims in trafficking situations and to make them feel that there is no other choice. Enabling survivors to clear their criminal records gives them an opportunity to move forward with their lives and leave their trafficking situation behind.

Maryland Laws

Maryland has taken steps to recognize and address the wrongful convictions of trafficking survivors. In 2011, Maryland's legislature passed a law enabling trafficking survivors to vacate prostitution convictions by proving that the prostitution offense was committed under the duress of a trafficker. *See* Md. Criminal Procedure Code Ann. § 8-302. Vacatur reverses a conviction. If a trafficking survivor is able to prove that he or she committed the prostitution offense as part of his or her victimization, the conviction can be reversed and the case is dismissed. After a conviction is vacated, it is as if the conviction never happened and the survivor was never found guilty. (Note: The case record including the arrest and case dismissal will still be available after vacatur is granted unless the record is sealed or expunged.) This law recognizes that trafficking survivors should not be criminalized for committing prostitution offenses while under duress.

In March 2020, the Maryland legislature passed the True Freedom Act of 2020, effective June 1, 2020. This act recognizes that survivors of trafficking often commit crimes other than prostitution as a result of their victimization. The act expands the types of crimes that are eligible for vacatur beyond prostitution-related offenses. Under the new legislation, trafficking survivors can request vacatur for offenses including, but not limited to, trespass, misdemeanor theft, indecent exposure, false statement to a police officer, and certain drug possession and distribution offenses. *See* Md. Criminal Procedure Code Ann. § 8-302. For a vacatur motion to succeed, the survivor must prove that his or her participation in the offense was a direct result of

being a trafficking victim. Consequently, survivors who are arrested and charged after leaving a trafficking situation are still eligible for vacatur if they can explain the connection to their victimization.

While Maryland has taken steps to provide post-conviction relief to survivors, the current vacatur law does not account for more serious offenses, such as assault or unlawful possession of a firearm, that survivors may commit as a result of their victimization.

Maryland's Human Trafficking Task Force includes multiple legal service providers that can provide assistance with filing vacatur motions. In particular, contact the following legal service providers if you are interested in vacatur:

Amara Legal Center

Llamilet Gutierrez, Esq., Executive Director
Caroline Ackerman, Esq., Maryland Staff Attorney
info@amaralegal.org or (240) 257-6492
www.amaralegal.org

Human Trafficking Prevention Project

Jessica Emerson, LMSW, Esq., Director and Supervising Attorney
jemerson@ubalt.edu or 410-837-4566

Heather Heiman, Esq., Project Manager
hheiman@mvslaw.org or 443-451-4075