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State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking

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State Report Cards

GRADING CRIMINAL RECORD RELIEF LAWS
for SURVIVORS OF HUMAN TRAFFICKING



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Abstract

Many survivors of human trafficking exploited in the commercial sex industry or other labor sectors have been arrested for offenses stemming from their victimization. Resulting criminal records – both arrest and court documents – then follow survivors and create barriers that impact their independence, stability, and safety. In 2010, New York became the first state to allow trafficking survivors to clear certain charges from their criminal records. In the years since, almost every state has enacted some form of criminal record relief for trafficking survivors. However, these laws vary greatly. Many are too limited to offer meaningful relief. Others include conditions that make relief inaccessible. **This report analyzes existing state criminal record relief laws for survivors of human trafficking, grades the laws, and recommends best practices.** The grading rubric was designed by researchers and practitioners and informed by the experiences of criminalized survivors of trafficking. The resulting “report cards” attempt to codify an ideal criminal record relief law for trafficking survivors. The hope is that this framework will serve as a blueprint for policymakers and advocates as to how best to draft, amend, or implement state law and that this will lead to more accessible relief for survivors across the country regardless of where their arrest or conviction occurred.

Introduction

Lisa* worked hard in college. She earned stellar grades and developed what she thought was a strong resume; she hoped she was well on her way to getting a great job that would launch her career. But the call never came.

Lisa knew why. She knew it wasn't fair. And she knew she could not do anything about it.

Lisa is a survivor of trafficking. She was young, scared and broke when a man she met forced her to set up a “date” for commercial sex. The date turned out to be a sting operation by law enforcement, and Lisa was arrested for, charged with, and convicted of prostitution.

This arrest haunted Lisa for nearly two decades until the state of Florida passed a law that allowed her to clear her criminal record and move forward with her life.

Lisa, unfortunately, is not alone. While there is no nationwide data on how many trafficking survivors have a criminal record as a result of their victimization, we do know that people in trafficking situations are frequently arrested, detained, prosecuted, convicted, and, in some cases, incarcerated or deported without ever being identified as a victim of human trafficking by the criminal legal system.

In 2016, the National Survivor Network (NSN) conducted a groundbreaking survey on the impact of criminal arrest and detention on survivors of human trafficking.¹ They found that **91 percent of 130 trafficking survivor respondents reported having been arrested.**² **Forty two percent reported that they were arrested as minors, and over 40 percent reported being arrested 9 times or more.**³

“I do not choose to identify as a prostitute, but that was what the penal code said I am. Just knowing that the law has labeled me as such played a part in the trauma, and getting past this label is part of the healing.”

Data from the National Human Trafficking Hotline generally supports these statistics. From January 1, 2015 - June 30, 2018, the National Hotline learned of 3,712 potential victims that had some interaction with law enforcement or the criminal legal system.⁴ This is the second most frequently reported access point for potential victims on the Hotline.⁶

**This story is a composite of countless survivor experiences with criminal records.*

To be clear: many law enforcement agencies, lawyers, and judges are doing powerful and important work, educating themselves about human trafficking and putting in place policies and procedures that dramatically reduce the criminalization of trafficking victims. Additionally, contemporaneous reform efforts in the criminal legal system have made significant progress in reducing mass incarceration more broadly.

Still, an overburdened criminal legal system, failing to identify victims at the time of their arrest, and policing that disproportionately impacts marginalized communities means that we, as a nation, still arrest and prosecute people who should instead be offered safety and resources. This especially applies to victims of human trafficking.

Ideally, as the public becomes aware of this injustice and improvements to current policies continue, such arrests will become far less frequent. In the meantime, though, it is incumbent upon each state to put in place a purposeful and accessible system to help survivors clear their criminal records so that they can move past their trafficking experience. At present, we have a patchwork system which is different in every state and can be difficult to navigate, is unresponsive to the impact of trauma, or is simply unworkable. In some states, the law is too narrow. In others, there is no relief at all.

“I used to obsess about my conviction, constantly replaying the situations and the people who trafficked me in my mind. I could never heal from my trafficking experience. But from the day my record was vacated, I never thought about it again.”

The Burden of A Criminal Record: Why it Matters

“When you have to put down prostitution on an application for a job or an apartment, there’s so much shame in that.”

The first time trafficking survivors come into contact with law enforcement officers is often as an offender, and not as a victim. Sex trafficking victims are commonly arrested for prostitution, or for other crimes such as possession of weapons, drugs, or identity theft, all of which most likely have been orchestrated in some way by their trafficker. Labor traffickers may force their victims to manufacture or sell drugs or to move drugs from place to place. Labor trafficking victims can also be arrested for various offenses such as possession of false identification documents, financial crimes, or minor crimes like trespassing. Children who are trafficked for sex and/or labor are often charged with status offenses like truancy and running away.

A criminal record has a profound impact on the ability of any individual to obtain future gainful employment and find affordable and safe housing. Employers and landlords often run background checks, and in some cases, this can result in the automatic elimination of individuals who have a criminal history from the applicant pool, while other employers and landlords who have the discretion to hire or house those with criminal records do not give the applicant the opportunity to provide information about the circumstances surrounding their arrests. In the NSN survey of 130 survivors, **73 percent of respondents reported losing or not receiving employment because of their criminal records.**⁵ Furthermore, **58 percent of respondents suffered barriers to accessing safe and affordable housing** due to their past criminal convictions.⁶

“After escaping, I found that I could not rent an apartment in my own name because of extensive background checks by property management. I always have a roommate and can’t have my name on mailboxes, report problems, or receive deliveries. Sometimes I have to hide from landlords.”
- Survivor from National Survivor Network Survey⁷

Additionally, individuals with criminal records who want to begin or continue their education at a college, university, or a vocational school may not be accepted due to their criminal record. Those who are admitted may struggle with the financial burden of paying for their education because they may be disqualified from financial aid or private loans.

“It was really heavy on my mind. Education was my first priority and I didn’t want this to ruin my life, to prevent the possibilities of me progressing in other areas of my life.”

A criminal history can also impact the ability of parents to retain custody of their children and can affect an individual’s access to crucial government benefits. For example, some survivors in the NSN survey reported difficulties applying for food stamps because of their criminal records.⁸ For foreign national survivors, the consequences may be more dire, as their ability to remain and/or work in the United States depends greatly on their criminal record.

In 22 states, individuals with felony convictions lose their voting rights, not only during their incarceration, but also for some time after their release.⁹ In 12 states, they lose their voting rights indefinitely for some felony crimes or require a pardon from the governor to have their voting rights restored.¹⁰ Some countries have restrictions on individuals with criminal records from entering their country, making it stressful and embarrassing for survivors when traveling. Oftentimes, these situations result in survivors being required to explain their past to strangers who have little understanding of trafficking, which can be extremely retraumatizing.

“[I] was required in Washington to register as a sex offender... as a result my children were taken away and I lost these children for life.”
- Survivor from National Survivor Network Survey¹¹



Quick Facts on the Impact of Criminal Records:

Employment:

- Between 80-92 percent of employers run background checks.¹²
- A criminal record reduces job callbacks by approximately 50 percent and significantly limits earning potential.¹³
- There are presently 16,772 licensing/occupational laws with criminal record provisions that restrict the employment of persons with criminal convictions, more than 6,000 of which carry mandatory/automatic exclusions.¹⁴
- Recognizing these patterns, by 2018, 33 states had adopted statewide “Ban the Box” laws or policies which eliminate the criminal history questions from initial job applications, allowing applicants with criminal records to explain the circumstances behind their conviction.¹⁵

Medical Care:

- Research has shown that those with criminal convictions are discriminated against by healthcare providers.¹⁶

Immigration Relief:

- Criminal convictions or arrests can lead to removal or deportation.
- If a survivor is applying for a green card or work visa, then a criminal record of any kind can mean a denial.¹⁷

Varieties of Criminal Record Relief

Legislation varies widely as to the type of legal remedies available to survivors with criminal records. Some laws offer the sealing of records, others the expungement of records, and others full vacatur of records. While admittedly clunky, the term “criminal record relief statutes” represents the full range of legal relief that allows for some form of setting aside an arrest or conviction or prohibiting disclosure of its existence. These laws can apply to arrest and court records, as well as to convictions, meaning outcomes of a criminal prosecution that involve a finding or admission of guilt.

Conviction records are maintained by courts in court databases and communicated by state agencies to federal/national repositories. On the other hand, arrest records are generated by the law enforcement agencies that effectuate the arrest and can exist separate and apart from the outcome of the court proceeding. Both arrest and court records can and do follow people after their court case is concluded. In most states, there are separate processes that apply to the clearing of records depending on the outcome of the case.

In some cases, survivors must seek relief using criminal record relief statutes or procedures that are not specific to human trafficking victims - either because the state does not have a trafficking-specific law or because the arrests and convictions in question are not covered by the trafficking-specific statute. Most of these general statutes for criminal record relief only offer expungement and/or sealing - rather than full vacatur - of records.

“**[The expungement process was] not really set up to help victims. There are protocols, things you have to do that don’t make a lot of sense for trafficking victims and there is no support or anything to help you heal from the trauma.**”

Additionally, the waiting period for general relief statutes can be exceedingly long. For example, before the District of Columbia recently passed its trafficking-specific record relief statute in February 2019,²⁴ trafficking survivors had to apply to clear their records through the district’s general sealing statute which contains numerous eligibility restrictions, and only “hides” the

Quick Facts on the Impact of Criminal Records:



Family Law:

- Criminal convictions commonly factor into “best interest” standard for purposes of child custody and visitation, despite the circumstances of the crime.¹⁸

Housing:

- Public Housing Authorities, owners of federally-assisted public housing, and private landlords have broad discretion to set their own screening of prospective tenants.¹⁹
- This can mean policies such as a 99 year “lookback,” no appeals for refusal of tenancy, and flat bans on individuals and their family members.²⁰

Education:

- Between 60 percent and 80 percent of private institutions and 55 percent of public institutions require undergraduate applicants to answer criminal history questions as part of the admissions process.
- 40 percent of community colleges also report collecting this information.²¹

Student Loans:

- Eligibility for federal aid may be suspended if convicted of any drug offense while receiving aid.
- This can include state or federal convictions, misdemeanor or felony, possession or distribution.²²
- Thousands of students each year chose not to apply or are denied admission due to the mistaken belief that any drug conviction is a disqualifier for federal financial aid.²³

conviction from public view. The waiting period to access this form of relief was also problematic for survivors, with a *minimum* waiting period to seal the record of an eligible misdemeanor conviction of 8 years. If the survivor was also convicted of an ineligible or subsequent offense, the waiting period could increase by 5 years, and by 10 years if the subsequent conviction was a felony. This means that trafficking survivors could be prevented from relief for the better part of two decades before they are deemed eligible.

“After the conviction was on my record, all doors seemed to be closed for me. I lived in a prison. People might say it was in my mind, but it really wasn’t. It was reality.”

Criminal Record Relief Statutes

Less Relief

Sealing of Records

- Similar to having criminal records expunged, but the record is less “hidden.”
- Records are not available to the public including private investigators, creditors, and employers.
- The main difference is simply that a sealed record still ‘exists’ in the legal and physical sense, while expungement typically results in the deletion of any record of an arrest relating to an eligible charge.

Expungement of Records

- Legal record of an arrest or a criminal conviction is erased in the eyes of the law.
- In most cases, during background search or public records inspection no record of the arrest or criminal conviction will appear.
- However, in some cases, the record is not completely erased as it is accessible as part of a person’s criminal record. This means certain government agencies can still see it and in some legal proceedings such as immigration/deportation proceedings, it can be used as proof of prior conviction.

Vacatur of Records

- The previous judgment of a conviction is nullified.
- Akin to exoneration.
- Vacatur alters the merits of the underlying record unlike sealing or expungement which does not.

More Relief



Kelly

Kelly applied for jobs as a school bus driver, a law enforcement officer and a correctional officer. She applied to nursing school. She volunteered to serve her country by trying to enlist in the U.S. military. In each case, she was turned away, deemed ineligible because of her criminal record. Kelly is a sex trafficking survivor and her criminal record reflected crimes of prostitution. In other words, Kelly was compelled to sell sex by her trafficker and, by extension, was forced into criminal activity.

Any type of criminal conviction related to trafficking creates a barrier to a survivor's long-term recovery and stability. For Kelly, the prostitution charge she picked up while being forced to solicit sex a few blocks from a school was the biggest barrier to her ability to find meaningful employment because it barred her from any position that put her in contact with children.

The irony is that Kelly was arrested and convicted when she was a minor herself, a 16-year-old, manipulated into believing she had to engage in commercial sex to support the love of her life. She left home with one trafficker and was ultimately passed along to another. She was cited and arrested on more than three occasions in Nevada and California.

Today, any minor involved in the commercial sex trade is automatically classified as a victim of human trafficking. And while California now recognizes children like Kelly as victims and has enacted a law that allows survivors like Kelly to vacate or seal their juvenile records, this was not the case in the 1990's when Kelly was being trafficked. At the time of Kelly's arrest in California, she was booked, adjudicated and sentenced as an adult - a fact that Kelly finds ridiculous, given that "prostitution is a contract between adults and a child cannot agree to such a contract." Nonetheless, the conviction remained visible to potential employers and licensing boards long after her escape from her trafficking and into her adulthood.

Any type of criminal conviction related to trafficking creates a barrier to a survivor's long-term recovery and stability.

"This thing, when it hovers over you, it can literally ruin your life," Kelly said. The first time she realized the extent it could have was when she was asked to leave her job working at a child-care center on a military base. This began an endless and exhausting series of rejected job applications and severely narrowed the career pathways available to her.

For years Kelly wrote to the jurisdiction in California where she was arrested and convicted, asking for help in getting her criminal record cleared or at least sealed. But there was always some piece of paperwork missing or some vague reason why she couldn't do it. Lawyers who might have been able to help her were expensive, and expungement was only an option if she had no other convictions within a particular number of years. Kelly was on her own.

Kelly eventually showed up in court and, after a near-comic series of dictates and directives including a judge sending a 30 year-old Kelly to juvenile court, the court ordered one of her trafficking-related convictions removed from her record.

From there she moved on to requesting an expungement of the other conviction and, in October 2018, the expungement was finally granted.

While the process eventually worked for Kelly, the stress of the years it took to submit and resubmit the paperwork, only to be rejected again and again, took its toll. "Every time I sent it in, I got it returned. It was frustrating. I was finally just going to forget it and say to myself 'I just won't ever get a job doing these things because everyone is going to judge me and I have to keep reliving my past.'

History of Criminal Record Relief Statutes for Survivors

State Level

It wasn't until 2010, a full decade after the Trafficking Victims Protection Act (TVPA) went into effect, that criminal record relief for trafficking survivors began to take form. New York was the first state to enact such legislation.²⁵ The New York law allowed survivors of trafficking to vacate prostitution and related convictions that were a result of having been trafficked.²⁶ The legislature recognized that, "[e]ven after [survivors] escape from sex trafficking, the[ir] criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve."²⁷

“It’s a horrible, horrible thing to live with; a secret that’s over your head all the time. You can’t really tell anybody why you aren’t applying for this job, or going for that opportunity. I basically ran from this for the next 20 years.”

While attempting to find data on the use of New York’s criminal record relief statute, the authors of this report reached out to the New York State Office of Court Administration to see if it tracks this information in any systematic way. Unfortunately, it does not; meaning, any aggregate data collection is largely left up to legal advocates and anti-trafficking organizations. Several legal aid offices and lawyers who specialize in criminal record relief for trafficking survivors in New York were able to contribute some statistics on the number of individuals who requested access to relief, the number of individuals for which it was successful, and the overall number of convictions they were able to clear for trafficking victims in the state of New York.

To date, a joint effort of the Exploitation Intervention Project at The Legal Aid Society of New York, Brooklyn Law School’s Criminal Defense & Advocacy Clinic and a wide range of private pro bono partners, has vacated over 1,800 convictions for 109 individual trafficking survivors in New York State. When taking into account the advocacy of other organizations across the state, the number of convictions vacated is well over 2,500.

In the wake of New York’s leadership in enacting criminal record relief legislation for trafficking survivors, other states began to follow suit. Today, **all but six remaining states (Alaska, Iowa, Maine, Minnesota, South Dakota, and Virginia) and the federal government offer some form of criminal record relief specific for survivors of trafficking.** Some states (Georgia, Louisiana, Missouri, and Tennessee) restrict relief to minor victims. While these laws are a good start, the passage of a criminal record relief law alone does not mean a state’s work is complete. Many of these laws need to be strengthened and improved.



Jill

Jill* is a survivor of a decade of sex trafficking that began in 2004. As a result, she had numerous arrests and convictions on her record for prostitution, shoplifting, and other offenses directly related to her trafficking experience. Most of the arrests were in Nevada, but her record also included arrests in California and Washington, DC.

When Jill left the commercial sex industry, she started taking classes and eventually connected with an anti-trafficking organization. She wanted to move forward with her life and clear her record. "When you have to put down prostitution on an application for a job or an apartment, there's so much shame in that."

A pro bono attorney helped her file for criminal record relief in California and Nevada where laws had been passed to facilitate the process. Jill's attorney explained that, in order to protect her from her former trafficker, whose family was still living in the area, it was important to request that all of the records submitted as part of the process be sealed, and to take other measures to ensure that no identifiable information would be publicly available. According to Jill, "Having to appear in court is stressful. Even just submitting a document to the court with the name of my trafficker causes a lot of stress, a lot of anxiety. Record relief documents should just be automatically sealed — without us having to ask — to protect survivors."

"Having to appear in court is stressful. Even just submitting a document to the court with the name of my trafficker causes a lot of stress, a lot of anxiety. Record relief documents should just be automatically sealed — without us having to ask — to protect survivors."

**This name has been changed for privacy purposes*

"The burden of having a criminal record is heavy. It prevents me from safely applying for a replacement green card and becoming a naturalized citizen. Since my escape from trafficking, I have become an activist working in the Translatina community and informing others on the challenges transgender people face in human trafficking. However, my convictions make it difficult for me to do my work for fear of arrest and deportation."

Federal Level

While trafficking-specific criminal record relief legislation has been introduced in previous sessions of Congress, the federal government still has not enacted a criminal record relief statute for human trafficking survivors. There is ongoing debate about whether previously proposed federal legislation would be effective, particularly with regard to the offenses it would cover, which drastically differs from what survivors are frequently charged with on the federal level. Moving federal legislation forward effectively requires working with survivor and anti-trafficking groups to draft the legislation so that it provides the appropriate relief for trafficking survivors.

When the Federal Government Fails Survivors

After years of sexual abuse by her step-father and step-brothers, Erica was primed to normalize and tolerate sexual violence. Her trafficker promised her love, but instead, he delivered rape, beatings, and psychological torture. The trafficker's control continued even when he sent Erica to Las Vegas to live with other women he exploited. He forced Erica to engage in prostitution in Las Vegas as well as collect cash from the other women and convert that money into money orders to mail to him. When women were arrested, he instructed Erica to use the money to pay for plane tickets for them to leave town. In order to ensure compliance, her trafficker would fly into Las Vegas for surprise visits to beat and rape Erica for small infractions such as eating without permission. When her trafficker was arrested for money laundering and Mann Act violations, Erica was prosecuted alongside him because of the activities in which he forced her to engage. She cooperated fully with the prosecution to convict her trafficker. But she pleaded guilty to conspiracy charges, served her time under house arrest, and was required to register as a sex offender.

Since then, despite going back to college and earning a professional certificate, she has difficulty finding even part-time work due to her conviction. She is also unable to watch her daughter play soccer or participate in her school play because of her sex offender status.

Erica will be able to vacate all of the convictions on her record resulting from state level arrests and prosecutions, however, the only option to help her clear her federal record is a Presidential Pardon, which is incredibly difficult to obtain, even for the most deserving.

Despite going back to college and earning a professional certificate, she has difficulty finding even part-time work due to her conviction.



Methodology for State Report Cards

Grades and rankings were determined by comparing existing applicable statutes against an ideal statute, as defined by Polaris and the Survivor Reentry Project. The research team developed eleven central categories along with a scoring system to reflect the relative importance of each category. **This project looks solely at criminal record relief statutes specifically intended for victims of human trafficking arrested or prosecuted as adults.**




Additionally, scoring reflects the strong conviction that the laws must be as clear and complete as possible. For example, a state that has strong confidentiality language in another section of law, but does not mention confidentiality protections in the trafficking-specific statute will not get points for confidentiality in this analysis. These report cards encourage laws that provide guidance to both survivors and attorneys who might not be as familiar with criminal record practice.

There are a maximum of 100 points in the score. The points that can be earned for each category are indicated in the point values box. A scale, detailed below, was applied to determine letter grades. States with zeros, that is, states with no law in place, did not receive letter grades.

Grading Scale

90-100 points	A
80-89 points	B
70-79 points	C
60-69 points	D
1-59 points	F

Point Values

PROPOSED CATEGORIES	MAXIMUM POINT VALUE
 Range of Relief	10
 Arrests and Adjudications Relief	10
 Offenses Covered	30
 Judicial Discretion	10
 Nexus to Trafficking	10
 Time Limits and Wait Times	8
 Hearing Requirement	5
 Burden of Proof	5
 Official Documentation	5
 Confidentiality	5
 Additional Restrictive Conditions on Relief	2
TOTAL	100


Category Descriptions

Range of Relief

“Range of Relief” refers to the type of criminal record relief statutes the state has in place: sealing or expungement vs. vacatur. If a state does not have a trafficking-specific record relief statute on the books at all, then the state received a 0 for this and every subsequent category.


Four states have trafficking-specific criminal record relief statutes that apply only to survivors who were minors at the time of their arrests and convictions. For potential victims reported to the National Human Trafficking Hotline between January 1, 2015 to June 30, 2018, the average age at entry into trafficking was 19 years old.²⁸ Therefore, **states which only grant criminal record relief to individuals victimized as minors leave a gaping hole in the provision of assistance to survivors in their state.** These states received a zero for this and all subsequent categories.

While vacatur is a strong form of relief, vacatur that is based on **the merits** is the strongest; therefore, states employing this relief earn the most points because it confirms that the **vacatur was due to a substantive defect in the judgment against the victim in the first place.** This is the closest thing to a legal recognition that the survivor should not have been convicted in the first place. It indicates that had the court known all the information that is now available, the survivor would not have been convicted of the offense. Vacatur that does not specifically codify its basis as a substantive defect is still an important form of relief and is preferable to the other options of expungement or sealing of records, but it earns slightly less points than vacatur on the merits. For more detail about the differences in the range of criminal record relief please refer to Figure 1.0 on page 8 in the report.

Range of Relief		
0	No statute specific to victims of human trafficking.	
4	Statute only provides partial relief (e.g. some combination of sealing or expungement).	
8	Statute provides vacatur of convictions.	
10	Statute provides vacatur of convictions based on a substantive defect or on the merits.	

Arrests and Adjudication Relief

In many instances and jurisdictions, arrests — even those that do not result in a formal adjudication of guilt — still appear on an individual’s record when members of the public or law enforcement do a background check. The same holds true for juvenile adjudications and non-prosecuted cases. Unfortunately, most criminal record relief statutes only cover convictions. This leaves far too many survivors with arrest records that can impede their lives and career options.

Arrests and Adjudication Relief		
0	No statute specific to victims of human trafficking.	
5	Statute applies only to convictions (formal adjudications of guilt).	
10	Statute comprehensively includes arrests, non-prosecuted cases, adjudications, and/or other records that are not exclusive to convictions.	

Offenses Covered

It is imperative that criminal record relief statutes include all types and levels of offenses because trafficking survivors are not all victimized or charged in the same way. The nature of the crime of trafficking is such that survivors can be forced to commit a wide range of offenses such as trespassing, selling or purchasing drugs, or even violence. Yet, some statutes provide relief for only a small subset of offenses, such as prostitution or sex-related crimes. One well-known example of this is the case of Cyntoia Brown, who was recently pardoned after being convicted in Tennessee at the age of 16 for the murder of a 43-year-old man who purchased her for sex.²⁹ Her 51 year sentence has been commuted, but, like others who committed aggravated offenses like murder or assault, this conviction will stay on her record for life since most states (including Tennessee) do not allow criminal record relief for these types of crimes.

Survivors are frequently arrested for theft offenses when their traffickers specifically compel them to steal or when they do so in order to meet imposed quotas. Young victims are often used as bait for violent robberies against “johns” or other individuals perpetrated by traffickers or their associates. Often, survivors are arrested and prosecuted for this role, even when it is minimal and their participation is coerced. Accordingly, in the scoring system, significant weight is given to laws that recognize this phenomenon including all of its dimensions.

Offenses Covered	
5	Only prostitution-related or sex-related crimes are eligible for relief.
8	Only prostitution and specifically-enumerated misdemeanor offenses are eligible for relief.
12	All misdemeanor offenses are eligible for relief.
17	All misdemeanor and nonviolent felony offenses are eligible for relief.
23	All misdemeanor offenses, non-violent felonies, and specifically-enumerated violent felony offenses are eligible for relief.
30	All offenses are eligible for relief.

Hotline Case Spotlight: Labor Trafficking Arrests

In the last several years, law enforcement identification and recognition of human trafficking has grown to where many law enforcement officials can recognize signs of human trafficking even while pursuing other seemingly unrelated investigations. For example, the National Human Trafficking Hotline (NHTH) received a call from a law enforcement official who identified dozens of labor trafficking victims while conducting a drug raid where foreign national victims were being forced to cultivate marijuana. They were living in squalor, sleeping on bare mattresses on the floor; they had their documentation withheld and were unable to seek help because they did not speak English and were without access to phones. The victims were arrested during the drug raid, and the law enforcement official called to not only identify the victims, but to connect the victims to shelter services once they were released from jail, hours later.

Although it is unknown whether these victims ever attempted to get their criminal records cleared, they wouldn't have qualified since the state in which they were arrested only offers relief for convictions, not arrests and only prostitution or sex-related crimes are eligible. This case highlights the sad reality that labor trafficking victims are far too often overlooked in many state criminal record relief statutes.




Judicial Discretion

“Judicial Discretion” refers to the ability of the court to grant relief where it finds the elements of the statute satisfied and take action on issues not explicitly covered in the statute. This is beneficial for survivors because even the most comprehensive legislation is unlikely to cover every survivor’s unique circumstances. With judicial discretion built into the statute, courts can take action appropriate to the circumstances - such as granting relief in spite of objections from the original prosecutor. Judicial discretion could also allow judges to consider requests from survivors relating to offenses not covered in the statute, the type of hearing required, if a survivor has to appear in person, and what type of official documentation is required to prove they were a victim of human trafficking.

For example, Maryland’s law denies judges the discretion to hear motions and evaluate them on the merits - the statute requires that the State’s Attorney’s Office in the jurisdiction that prosecuted the survivor consent to the survivor’s request for vacatur and sign off on the motion before it can even be submitted to the court. This essentially puts a prosecutor in the role of a judge in determining whether the survivor was trafficked at the time of their conviction, eliminating the ability of the court to act independently. Additionally, this needless step often adds months to an already lengthy process, which is not in the best interest of the survivor.

While Maryland precludes an independent judicial determination, New York’s statute contemplates judicial discretion.³⁰ This addition has allowed New York courts to apply the statute to a variety of crimes related to a survivor’s trafficking experience even though the New York statute only explicitly includes prostitution-related or sex-related crimes. Thus, in the scoring system, New York loses points for offenses covered but gains points for broad judicial discretion.

Judicial Discretion 	
0	Statute does not allow any judicial discretion.
5	Statute allows the court to grant relief in spite of prosecutor’s objection as long as prosecutors had notice of the request for relief.
10	Statute allows the court to grant relief in spite of prosecutor’s objection as long as prosecutors had notice and to “take such additional action as is appropriate in the circumstances.”

However, even laws that allow for judicial discretion risk narrow interpretation. Therefore, although important, judicial discretion is not a sufficient safeguard in all cases (see Ana’s quote below). It allows judges some leeway, but ideally laws would be written clearly and explicitly and this provision would be used to deal with other collateral issues not enumerated in the law.

“I am a transgender woman who fled Mexico to come to the United States because I was not able to express myself in a feminine way. I was a victim of human trafficking for many years.... I tried to use New York’s vacatur law to deal with my criminal record that resulted from having been [a victim of trafficking]. A decision on my request to vacate my convictions took many years. In the end, the judge found that I was a victim of trafficking by multiple traffickers and vacated most, but not all, of my convictions, leaving me with a criminal record.... These remaining misdemeanor charges involve theft, disorderly conduct, and drugs. The judge felt that even though all these convictions were tied to my [trafficking experience,] only the prostitution related convictions could be vacated because of the way the law is written.”


- Ana* (*This name has been changed for privacy purposes)

Nexus to Trafficking

“Nexus to Trafficking” refers to the degree to which a criminal offense is connected to a survivor’s trafficking experience. The most restrictive criminal record relief statutes only allow survivors to access relief if they committed a crime “while under duress.” This is commonly understood to apply only to criminal acts committed in response to an immediate threat of death or serious physical harm. However, human trafficking is not defined merely by the threat or presence of force. Rather, the law recognizes that traffickers regularly use psychological means such as threats, manipulation, and lies to control their victims.³¹ Many survivors of trafficking are not able to show that they were under duress at the time of their arrest because duress doesn’t align with all manifestations of human trafficking. Requiring a survivor to establish duress renders relief unattainable for victims and the law unresponsive to the crime itself.


Another restrictive statute applies to crimes that occur only “as a direct result” of the trafficking, which would presumably limit the relief to crimes committed while the survivors were *actively* being trafficked. Both of these more restrictive criminal record relief statutes ignore the reality that survivors commonly engage in criminal activity in the aftermath of their trafficking, either as a way to cope with what has happened to them, such as through drug or alcohol abuse, or because they have no way to meet their survival needs after fleeing their trafficker.

The ideal criminal record relief statute recognizes that the path of a trafficking victim will rarely ever be perfectly sequential or linear and that the instability that commonly results from having been a victim of trafficking can impact a survivor’s options and actions long after they have exited their trafficking situation. However, to account for the lack of uniformity in the expression of this concept from state to state, where a state law fell in between two categories, analysts assigned the more favorable rating.

Nexus to Trafficking 	
2	Survivors must prove that offenses were committed “while under duress.”
4	Survivor must prove that offenses were committed “as a direct result” of the trafficking.
6	Survivor must prove that offenses were committed “while they were a victim” of trafficking.
8	Survivor must prove that offenses were “proximately caused” by the trafficking.
10	Survivor must prove that crimes were committed “as a result” of the trafficking.

Time Limitations and Wait Times

“Time limitations” include restricting the amount of time a survivor has to apply for criminal record relief, similar to the statute of limitations for crimes to be prosecuted. For example, Hawaii only allows survivors to apply for criminal record relief in the six years following the end of their trafficking.³² Other states impose “wait times” that require a certain period of time to pass before relief is available. For example, Delaware requires survivors to wait for two years after their trafficking situation has ended to apply for relief.³³ Such time limitations either force survivors to start the cumbersome process of criminal record relief before they have fully healed post-trauma or prolong the time in which they live with the barrier of a criminal record. Both time limitations and wait times are problematic for survivors in need of relief.

Time Limitations and Wait Times 	
0	Statute provides an explicit statute of limitations running from the end of the trafficking situation, or requires the survivor to wait an explicit amount of time since the last conviction to apply for relief.
4	Statute provides leniency regarding time limits (such as allowing survivors to apply in a “reasonable time” after trafficking has ended).
8	Statute provides no time limit, restriction, or wait time.

The ideal criminal record relief statute would have time limits that are either “reasonable” or no time limits or wait times at all for survivors.

Hearing Requirement

“Hearing Requirement” refers to whether or not the survivor is required to appear in person at hearings related to the criminal record relief process. This can be a significant barrier to survivors seeking relief for a number of reasons including, but not limited to, safety concerns on the part of the survivor. It may also be a financial burden for survivors who now live far away from where the arrest took place. A strong statute allows survivors to waive their right to appear in court or grants them the ability to utilize alternate methods of appearance (e.g. a written statement, video, or telephone conference call).

Burden of Proof

“Burden of Proof” refers to the standard that a party seeking to prove a fact in court must meet in order to prevail on their claim. In the case of criminal record relief statutes, this refers to the level of proof that a survivor must provide in order to show that they were a victim of trafficking at the time of the criminal offense at issue, and, as a result, are eligible for relief under the law. The ideal statute utilizes a **“preponderance of evidence”** standard, which means that a survivor must prove that it is **more likely than not** that they were a victim of trafficking at the time they were arrested for a criminal offense.

More restrictive statutes require a showing of “clear and convincing” evidence, which means that a survivor must prove that it is **highly probable** that their claim is true.³⁴ The least effective statutes are silent as to the burden of proof, which may result in inconsistencies with regard to what is required of a survivor from case to case or within different jurisdictions throughout the same state.

A less restrictive burden of proof is recommended because of the variation that exists with regard to the ability of survivors to provide evidence of their trafficking experience. While some survivors may be able to provide more tangible proof because they have been linked with knowledgeable service providers, have testified in court against their traffickers, or have received certification of their victimization from a governmental agency, the majority of survivors will not be able to do so. It is essential that a state’s criminal record relief statute reflect the reality that the crime of human trafficking is by its very nature covert and stigmatizing, and because of that the evidence a survivor will be able to offer will vary significantly from case to case.

Hearing Requirement



0	Hearing required in all instances and survivor must appear.
1	Hearing required in all instances, but survivor can appear by alternate methods (e.g. telephone, video, written statements).
2	Hearing required only if opposition and survivor must appear in person.
3	Hearing required only if opposition, but survivor can appear by telephone, video, or other alternate methods.
4	Hearing required only if opposition but survivor can waive right to be present.
5	No hearing required.

Burden of Proof



0	Statute silent on standard of proof.
2	Clear and convincing evidence.
5	Preponderance of the evidence.

Official Documentation

In certain states, the ability of a survivor to provide official documentation of their trafficking experience creates a legal presumption that the survivor's participation in the underlying offense was a result of their trafficking experience. For example, New York's statute allows for a presumption of eligibility for legal relief if the survivor can provide documentation that federal, state, or local authorities have certified them as a trafficking victim. While official documentation should never be required in order to access relief for the reasons stated above, a strong statute allows for a presumption of eligibility for the relief if the survivor can provide official documentation of their trafficking experience. For survivors who have already been through a certification process or cooperated with law enforcement in an investigation, allowing for the presumption of eligibility avoids the possibility of continued trauma caused by being required to share their experience repeatedly in different contexts. Best practices demand that legislators consider this as states implement their legal framework.

Official Documentation



- 0 Official documentation does not create presumption of eligibility.
- 5 Official documentation creates a presumption of eligibility.

Confidentiality

Criminal record relief statutes should include provisions designed to protect confidentiality throughout the process. For example, the statutes should allow motions to be filed as sealed documents and ensure that documents remain shielded from public disclosure. Failure to protect confidentiality defeats the purpose of these laws and puts some survivors in danger.

“Having to appear in court is stressful. Even just submitting a document to the court with the name of my trafficker causes a lot of stress, a lot of anxiety. record relief documents should just be automatically sealed — without us having to ask — to protect survivors.”

As stated previously, the analysts **did not** consider or examine other state legislation or local court rules that would provide a basis or procedure for sealing of petitions or documents submitted for general criminal record relief. This language must have been explicitly included in the trafficking-specific statute in order to earn points.

Confidentiality



- 0 There is no provision in the statute that protects confidentiality or allows for filing documents under seal.
- 5 There is an express provision in the statute that protects confidentiality or allows for filing documents under seal.

Additional Restrictive Conditions on Relief

While all previous rubric categories outline some conditions on relief for trafficking survivors, “additional conditions on relief” was specifically meant to identify and discourage any additional restrictive conditions such as excluding survivors with pending charges from accessing relief, as well as those with subsequent arrests or convictions or with convictions vacated in other states. Many survivors may have multiple convictions in several jurisdictions throughout the country, and these conditions

Additional Restrictive Conditions on Relief



- 0 Statute places explicit additional restrictive conditions on survivors being able to apply for relief.
- 2 Statute places no explicit additional restrictive conditions on survivors being able to apply for relief.

can make it almost impossible for these survivors to obtain criminal record relief across the states. As an example, Washington State imposes all of these additional conditions.³⁵ This means that many trafficking survivors convicted in Washington who have other arrests that have occurred after their trafficking experience have no avenue for relief within the state. The ideal statute places no additional restrictive conditions (other than what is accounted for in other categories of the rubric) on survivors that would preclude them from relief.

Additional Recommendations

Enacting new legislation or amending existing laws is the first and most important step toward creating a consistent and fair system that supports survivors of human trafficking as they seek to clear criminal records. But, the work of supporting survivors does not begin and end with the passage of a law. There must, for example, be consistent and reasonable implementing regulations, data collection, and financial resources available so that we can learn what works and make additional improvements and corrections along the way.

1. Institute Comprehensive Data Collection Processes

While the anti-trafficking field has made significant progress toward comprehensive data collection over the past decade, there is still almost no information available on the utilization of state criminal record relief laws for trafficking survivors. Understanding how many survivors have attempted to utilize the law, how many were successful in doing so, and what kinds of convictions were most likely to be cleared is the first step towards addressing the gaps and barriers that still exist.

2. Restore Federal Funding for Criminal Record Relief Legal Advocacy

Any legal proceeding has a cost attached, and criminal record relief is no exception. In many cases, the biggest chunk of money goes to paying attorneys and case managers.

“You really need help and support to get through this process. I feel bad for anyone else who goes through what I had to go through to try to get it cleared up. The ultimate goal is: you just want to live as normal a life as possible. Then you are hit with restriction after restriction or having to tell people what happened to you over and over again, and you don’t necessarily want to do that. It makes you have to live in the shame, over and over again. There is a sense of freedom from having a choice on whether or not to tell others your life experiences. Now, I finally feel free.”

In June 2018, the Office for Victims of Crime (OVC) at the Department of Justice barred future grantmaking that would have funded nonprofit organizations to represent trafficking victims trying to clear criminal records.³⁶ This funding restriction is devastating to survivors. As the American Bar Association indicated in its response to the announcement, the legal community has not yet developed the capacity to address these cases in large numbers.³⁷ The unavailability of federal funds will mean even fewer organizations will have the financial resources or the training on criminal record relief to assist survivors in obtaining relief.

3. Implement Provisions for Returns of Fines/Surcharges

Recently, the Supreme Court held that states are not allowed to retain fines or other surcharges obtained as a result of a criminal conviction that is later vacated or reversed.³⁸ Therefore, trafficking survivors who had to pay a fine or fee based on their conviction (e.g. a \$250 fine for a prostitution charge) should have that money returned to them once their conviction is vacated. Since this is a recent decision, there is no explicit mention of this in any of the state relief statutes. Many survivors, and even lawyers, may be unaware of this right. It would be beneficial for every state's criminal record relief statute to explicitly provide for the return of fines, fees and surcharges, and to lay out a mechanism for the refund.

Sample Legislative Language Addressing Return of Fines/Fees

For states that are motivated to amend their criminal record relief statutes to include the return of fines, fees, and surcharges for successful record relief, it is worth noting that Colorado implemented the following provision after the Supreme Court's decision in 2017:

§ 18-1.3-703. Reimbursement of amounts paid following a vacated conviction or amended order for restitution - petition

(1) The following persons are eligible under this section for a refund of monetary payments actually paid:

(a) A defendant whose court-ordered fines, fees, costs, surcharges, restitution, interest, or other monetary amounts resulting from a criminal conviction in a district or county court of this state have been paid if the amount paid relates solely to a conviction:

(I) That is vacated after post-conviction proceedings or is overturned on appeal; and

(II) The charge on which the conviction was based is dismissed or the person is acquitted of the charge after a new trial;

(b) A defendant whose court-ordered restitution and interest resulting from a criminal conviction in a district or county court of this state have been paid and:

(I) The restitution ordered by the court is reversed on appeal; or

(II) The amount of restitution ordered by the court is reversed on appeal and the restitution, including interest, that has been paid is in excess of the amount upheld on appeal.

(2) (a) A defendant may file a written motion in the court in which the conviction was entered for a refund of any monetary amounts described in subsection (1) of this section within one year after the defendant becomes eligible for the refund. The court may only extend the one-year time limit for good cause.

(b) The defendant bears the burden of proving by a preponderance of the evidence that the amount was actually paid and that the defendant is eligible for a refund pursuant to subsection (1) of this section. If the court finds that the defendant has established eligibility for a refund, the court shall issue an order directing the state court administrator to issue a refund for the total monetary amount found to be due.

(3) Nothing in this section requires a victim to repay restitution received as a result of a criminal conviction.



4. Design Trauma-Informed Implementing Regulations

“They were digging up really traumatic information, trying to determine if I was lying or not. I’m grateful that the state has a process now... but it’s a horrible process.”

Even the strongest laws on paper can become the least effective in practice if the implementing regulations - the logistical and procedural steps - are so onerous that ultimately survivors choose not to pursue relief. **Of the 25 percent of NSN survey respondents who were successful in clearing their convictions, most reported that it was a long, painful, confusing and expensive process.** NSN survivors have reported it was re-traumatizing to have to constantly retell their experience, and that while the outcome of getting their record cleared was achieved, they felt that the exhaustive process it took to get there greatly impacted their journey to recovery.³⁹

For example, in some states, even if survivors are granted relief, they must pay for each government agency to destroy or seal their records. These costs can add up and become a significant financial burden on survivors who are trying to regain stability in their lives. Some may not have the resources. Another logistical concern for survivors is the potential long distance they must travel for hearings or to comply with mundane filing procedures. This does not mean that every state has to execute every step exactly the same way, but rather that states should work with survivor leaders and legislators to minimize the barriers and potential retraumatization for those seeking relief in their jurisdiction.

One way to make the process less traumatizing for survivors is for nongovernmental organizations and legal aid offices to engage survivor leaders as case managers, peer mentors and advocates to help guide the survivor through the criminal record relief process. This interdisciplinary approach to lawyering is transformative and critical. However, this would require funding commitments to NGOs from federal, state, and local governments. It is also important that lawyers and service providers working with foreign nationals for criminal record relief collaborate and consult with immigration specialists due to unique risks that exist for foreign nationals with criminal records.

“Every time I sent [the paperwork] in I got it returned. It was frustrating. I was finally just going to forget it and say to myself ‘I just won’t ever get a job doing these things because everyone is going to judge me.’”



Ummra

When Ummra's boyfriend was severely injured in a car accident, he told her she needed to sell her body to help him get back on his feet. They had been together for a couple of years - he was 18 when they met, she was 14. "He pretty much used this as his golden opportunity to traffic me," she explained. In retrospect, she realizes this was his plan from the beginning - that she was being groomed the whole time for a moment like this. "He expressed his being in my life all of this time, and caring, and loving me, and that now he needed my help. Throughout our relationship, he expressed that I could never find anyone that would love me like he would, and that I won't find a better situation than ours."

She had been in high school at the time and was committed to getting an education, but she was young, in love, and scared, so she did what he asked. Then she got arrested on charges related to prostitution.

When Ummra broke away from her trafficker, she wanted to continue her education and knew that the criminal conviction on her record would get in the way of future opportunities. "It was really heavy on my mind," she explained. "Education was my first priority and I didn't want this to ruin my life, to prevent the possibilities of my progressing in other areas of my life."

She educated herself about the process, got additional guidance from a legal non-governmental organization (NGOs), and got the charge expunged — that is, closed to potential employers and most other people but not completely erased for purposes such as law enforcement. The expungement process was not difficult, but it certainly was not convenient. She had to travel to Los Angeles from her home in Northern California basically to check in, be present, then turn around and go home. Overall, the expungement process was "not really set up to help victims. There are protocols, things you have to do that don't make a lot of sense for trafficking victims and there is no support or anything to help you heal from the trauma."

Overall, the expungement process was "not really set up to help victims. There are protocols, things you have to do that don't make a lot of sense for trafficking victims and there is no support or anything to help you heal from the trauma."

At the time, she was aware that it might be possible for her to have her conviction vacated completely. When she learned she might be able to take that next step, she felt like it was not something she was ready to revisit and endure, but the expungement alone felt to her like an important step toward recovery. "I do not choose to identify as a prostitute, but that was what the penal code said I am. Just knowing that the law has labeled me as such played a part in the trauma and getting past this label is part of the healing."

Today, Ummra holds a master's degree in social welfare from the University of California Los Angeles and works as a consultant and researcher, focusing on preventing human trafficking and supporting other survivors through a healing process. "Social work allows me to look at communities as a larger system, educate, and advocate for issues that people believe they lack power in controlling. My passion is to speak on my trauma and healing through agency and pursuing higher education; using that as a tool so that others are aware that it is possible regardless of what background and experiences you come from."



Mugshot Websites

Many survivors seeking to clear criminal records are doing so for practical as well as emotional reasons. Unscrupulous businesses prey on this desperation, mining law enforcement databases for photos (mugshots) taken upon arrest. Websites like mugshots.com and mugshotsonline.com pull data from public records such as police, sheriff, state, and federal records for mugshots from both arrests and convictions. These websites may then charge people to remove their mugshots from the site in order to gain hefty profits. For example, mugshots.com, using a third-party website, unpublisharrest.com, charged \$64,000 in fees to about 175 people in California in 2 years and about \$2 million from nearly 6,000 people nationwide.⁴⁰

Even legitimate or well-meaning companies that provide background checks on prospective employees don't always update their records on a regular basis. Therefore, even after an arrest or conviction is cleared, survivors report that it may still come up in background checks. This can be due to lags in the system as well as data entry errors.⁴¹

States like Florida and Maryland have enacted laws that require websites to remove the mugshots of individuals whose charges were dismissed, whose arrests did not lead to convictions, as well as those whose convictions were vacated.⁴²⁻⁴³ However, these laws are civil in nature and only lead to nominal fines for the websites, not criminal responsibility. An added layer of complication is that many of these websites are hosted overseas or are otherwise out of the jurisdiction of these well-meaning state laws.⁴⁴ Heartbreakingly, survivors have paid websites to remove a photo only to see it appear on another.



Sara

Sara* grew up with parents who had mental illness and who forced her out of her home as a teenager. Without guidance, she did not go to college after high school and moved across the country with her boyfriend. He later turned out to be abusive and threw all of her clothes away. She escaped from him and began working two jobs, but she was still without a car and basic necessities. Working as an exotic dancer seemed to be the only way to get herself out of poverty. At the club where she worked, a couple befriended her. They were kind at first but then isolated her and manipulated her into going up to a hotel room to sell sex. She did not want to do it, but did not see a way out of the situation. The very first time they sent her out she was arrested by an undercover police officer on prostitution charges. "Police didn't ask me anything. I tried to tell them what was going on and they just said I was a liar, and were rough with me," she remembers. With no one to post bail for her, her best option was to plead guilty or face three months of waiting in jail. Knowing that she couldn't afford to stay in jail — it would mean losing her car and all of her belongings — she pleaded guilty and was convicted of a misdemeanor. She still spent about two weeks in jail.

"After the conviction was on my record, all doors seemed to close for me. I lived in a prison," says Sara. "People might say it was in my mind, but it really wasn't. It was reality." Applying for jobs, applying for school, trying to get an apartment — anything involving a potential background check — was loaded with stress and anxiety. She said, "I know I would have stopped dancing after I got away from the couple that tried to traffick me, but with the conviction I felt I had no other option but to continue working as a dancer and living in the shadows."

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When Sara went to see if she could do anything to get the conviction off of her record, she found out that there were no options for her. The State of Florida would only help those who had an adjudication of guilt withheld, not a conviction. Because she had pleaded guilty, she had a conviction on her record and zero options.

“It’s a horrible, horrible thing to live with; a secret that’s over your head all the time. You can’t really tell anybody why you aren’t applying for this job, or going for that opportunity” explains Sara. “I basically ran from this for the next 20 years.”

She spent the next eleven years working as a dancer, before enrolling in community college, followed by a four-year college. All the while, she pressured herself to work harder and achieve more than everybody else, knowing that when the time came to apply for jobs, employers would see her conviction. She had to do everything possible to make sure they would want to hire her despite her criminal record. She got straight A’s, won scholarships, and was chosen for prestigious internships. Reflecting on the honor of being selected as graduation speaker for her department, Sara thought, “there I was, standing up in front of my whole class, and they didn’t know I had this horrible secret.”

As a new graduate, applying for jobs meant anxiously wondering whether the question on the application would read “have you ever been convicted of a crime” or “have you been convicted of a crime in the past seven years.” She always prayed for the latter, as the former would mean a humiliating revelation. Luckily, in 2010 Sara was recruited to a major company that only asked about the last seven years. She finally had her first real job in the corporate world.

Unfortunately, 2010 was also the year that the Florida county where she was arrested decided to publish all arrests with booking photos on their website. While the county website was not searchable by Google, websites like Mugshots.com quickly started to share the photo hoping for a profit [see Mugshot Websites box for more information]. Now, if anybody Googled Sara’s name, the top result would be her mugshot. Her anxiety went through the roof. Only for a fee — often several hundred dollars — would the websites agree to take it down. Having panic attacks, Sara started paying one website after another, trying to get control of her internet presence. She could not believe she was being extorted and there was no legal recourse, nobody that could help. “It was excruciating, I felt let down by lawmakers, but there was just nobody to reach out to,” Sara recalled. After about \$5,000 in payments with no end in sight, she contemplated killing herself. She finally decided that her only option was to legally change her name, which she did.

“It’s a horrible, horrible thing to live with; a secret that’s over your head all the time. You can’t really tell anybody why you aren’t applying for this job, or going for that opportunity. I basically ran from this for the next 20 years.”

In 2015, she heard on the radio that the federal government had passed a law requiring states to implement procedures for legal relief for victims of trafficking. She was in the car with friends who heard the same story but to them, this was just a random piece of news. Nobody knew how much it might affect her life. She felt alone and ashamed.

It took Sara until 2017 to build up the courage to reach out to a Florida anti-trafficking organization who then referred her to an attorney. Living in California at the time, Sara was able to handle everything remotely. She filled out extensive paperwork, answering intensely personal questions. “I felt like I was being interrogated. They were digging up really traumatic information, trying to determine if I was lying or not. I’m grateful that the state has a process now... but it’s a horrible

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process.” The final step was a video interview with the state attorney’s office. Luckily, her lawyer was able to connect Sara with a local organization in California, that supported her through the emotionally difficult call. One long month later, she received the decision: after 20 years and 6 months, her record would finally be vacated.

Sara still feels resentment towards the justice system for all of her missed opportunities over the years, but things are significantly better now. She says, “I used to obsess about my conviction, constantly replaying the situations and the people who trafficked me in my mind. I could never heal from my trafficking experience. But from the day my record was vacated, I never thought about it again.”

**This name has been changed for privacy purposes*

“I used to obsess about my conviction, constantly replaying the situations and the people who trafficked me in my mind. I could never heal from my trafficking experience. But from the day my record was vacated, I never thought about it again.”



5. Allocate State and Local Resources for Outreach and Awareness for Survivors

“It was excruciating, I felt let down by lawmakers, but there was just nobody to reach out to.”

While the necessary first step, of course, is enacting strong laws or amending weak ones, those laws will make little difference without a concerted effort to inform the intended beneficiaries of their existence. According to the 2016 NSN survey, many survivors who did not go through the criminal record relief process either did not know about pathways for relief, or, if they knew they existed, did not know how to start the process. Allocating resources for targeted outreach and awareness campaigns — for example, outreach to local legal and social service providers, to community-based organizations and to government agencies working on criminal record relief — would help ensure the legislation is effective.

Overall Ranking Order

Ranking	State	Total Score	Grade
1	Nebraska	81	B
2	Wyoming	78	C
3	Florida	72	C
4	Idaho	69	D
5	D.C.	68	D
6	California	67	D
6	New Mexico	67	D
8	Alabama	63	D
8	Massachusetts	63	D
8	New York	63	D
11	Ohio	62	D
12	Indiana	61	D
13	Montana	60	D
14	Arkansas	59	F
14	New Jersey	59	F
16	Vermont	58	F
17	Mississippi	56	F
17	Pennsylvania	56	F
19	Utah	52	F
20	Colorado	50	F
21	Illinois	49	F
21	Nevada	49	F
21	North Carolina	49	F
21	West Virginia	49	F
25	Kentucky	47	F
26	Washington	46	F

Ranking	State	Total Score	Grade
27	Connecticut	45	F
27	Rhode Island	45	F
27	South Carolina	45	F
30	Delaware	44	F
30	New Hampshire	44	F
30	Oklahoma	44	F
30	Wisconsin	44	F
34	Michigan	41	F
35	North Dakota	37	F
36	Oregon	36	F
37	Hawaii	35	F
38	Kansas	34	F
39	Arizona	33	F
39	Texas	33	F
41	Maryland	26	F
*	Georgia	0	0
*	Louisiana	0	0
*	Missouri	0	0
*	Tennessee	0	0
*	Virginia	0	0
*	Alaska	0	0
*	South Dakota	0	0
*	Maine	0	0
*	Minnesota	0	0
*	Iowa	0	0

*not ranked because there is no criminal record relief statute for adult survivors in these states

Hall of Shame

While completing the state-by-state analysis, it became clear that some states had additional language and requirements that increase the time, expense, and difficulty for survivors trying to access the process in their states. While these issues were not related to categories in the rubric for the report cards, it is still important to acknowledge that many of these additional requirements and restrictions will end up preventing trafficking survivors from obtaining criminal record relief.

Arizona has a particularly troubling additional restriction to criminal record relief because the law does not apply to any conviction imposed after July 24, 2014. This was due to Arizona passing legislation in 2014 that allowed victims of sex trafficking to assert an affirmative defense to prosecution for the crime of prostitution. In Arizona, survivors may use this defense when they are charged with prostitution; however, they are then prevented from any recourse to clear their criminal record in the future if they fail to do so. This puts all the pressure on the victim at the time of their arrest and conviction. There are many reasons why a survivor who is legally eligible to assert an affirmative defense may not do so. In fact, it is difficult to imagine a scenario where a victim will actually assert the defense in the course of their own prosecution.

Trafficking survivors will likely need time to recognize that the situation they were in *was indeed* trafficking and that they were themselves a victim. They may be scared of their trafficker, who may have told them throughout the whole of their victimization that if they asked for help they would be locked up by law enforcement. They may be uncomfortable testifying in open court about their victimization. It is therefore problematic to eliminate the possibility of criminal record relief just because trafficking survivors have the option to assert an affirmative defense. Arizona should recognize that the current statute penalizes trafficking survivors who fail to speak out at the time of their arrest. This limitation prevents them from clearing their criminal record which will continue to negatively impact their lives.

Arizona has made it clear that, in the state's eyes, having the ability to use an affirmative defense eliminates the need for criminal record relief. Several other states have not been as explicit, but they are also using affirmative defenses as a way to discount or punish survivors who do not use it at the time of their arrest or conviction. In **Wisconsin**, survivors are required to state the reason why they did not previously raise an affirmative defense which puts the survivors on trial to not only prove their victimization, but also to defend their decision to not use an affirmative defense when they were convicted. Idaho does not allow relief if the survivor raised an affirmative defense of coercion at their trial.

Idaho also has an additional restriction that is particularly problematic and extreme. They require that the survivor provide "the identity of the human trafficker to the best of the petitioner's knowledge" which means some survivors may have to compromise their safety in order to have their criminal record cleared. This condition is restrictive and unnecessary. Idaho should rethink this provision in its trafficking-specific criminal record relief statute.

Three states (**Illinois, Montana, and Oregon**) require that survivors state in their motion why facts were not presented in the initial court proceedings. Again, as argued above, states should not require an explanation from survivors who may not have been able to process their trauma, to face their trafficker, or to articulate their victimization for any other number of reasons during the initial proceeding. By imposing these requirements, states place undue blame and burden on trafficking survivors.

Colorado requires survivors trying to get their criminal record cleared to pay specific filing fees. It is explicit in the statute that the record will only be sealed after the filing fee is paid, and survivors also

have to pay the Colorado Bureau of Investigation any costs related to the sealing of their records. These can be additional expenses on top of an already expensive process, and it can prevent survivors from utilizing criminal record relief in Colorado.

Michigan's law also requires a specific filing fee. Michigan's law is also troubling in that the court must look at the survivor's behavior and conduct since their conviction occurred to make sure they deserve having their conviction cleared. Therefore, the Michigan statute inappropriately shifts the focus from the exploitation the survivor faced to the survivor's worthiness, asking them to prove their own merit by having their criminal record cleared through what the court deems is appropriate behavior indicative of rehabilitation. Trafficking-specific criminal record relief statutes should not require survivors to demonstrate rehabilitation. Doing so implies that the survivor is at fault and needs to change their behavior when that isn't the case. Even if a survivor of trafficking with a criminal record has no evidence of rehabilitation, although many do, they should be able to clear their criminal record where their arrest and prosecution was a result of their victimization.

California has a provision in its statute that even if the survivor has their conviction vacated, they still must pay restitution owed to the victim of a nonviolent crime. In *Nelson v. Colorado* (2017), the Supreme Court held that any fees, fines, or surcharges collected must be returned to an individual once their conviction is vacated or they are exonerated (see page 21 for more information about this decision). This provision in California's law for trafficking survivors seems to violate the court's mandate. It is problematic that a survivor can have their conviction vacated, which is treated by the courts as if it never happened, but the survivor still retains financial burdens from that same conviction.

Several states have additional restrictions in their statutes that make the process of criminal record relief for survivors longer and harder than is necessary. The **District of Columbia** just enacted a criminal record relief law for trafficking survivors, but a component of the statute is that survivors must fully serve their sentence before they can seek relief. This can prevent a survivor from obtaining relief for years.

In **Texas**, survivors must finish a term of community supervision, and they cannot have been granted any prior order of non-disclosure or had any other arrests. This means survivors have to wait to serve their supervision, and, in some cases where survivors have multiple arrests and convictions, they will be precluded from criminal record relief in Texas. It also penalizes survivors who have tried to find relief through non-disclosure orders which prohibit public entities like courts and police departments from disclosing certain criminal records and legally frees the recipient from having to disclose information about their conviction on job applications.

Florida has an additional condition which draws out the process for survivors. Its law mandates that survivors cannot have a motion pending for relief at the same time anywhere else. Survivors with convictions in multiple states or even multiple jurisdictions in Florida may have a long wait to clear their consecutive convictions. The requirement that the petitions be filed one at a time, and fully resolved before proceeding to the next jurisdiction, unnecessarily extends the process.

Lastly, **Hawaii** requires that motions get written approval by a prosecutor. This gives prosecutors complete power over the decision to award criminal record relief to the trafficking survivor. This is problematic because the prosecutor's office is the one that prosecuted the survivor in the first place. Prosecutors may not be open to acknowledging issues in the first court proceedings which led to a survivor being convicted of a crime. Courts must have the independence and authority to grant relief upon an appropriate finding.

Potential/Proposed Legislation

As of March 2019

NEW YORK:

Currently, the New York State Legislature is considering changes to its 2010 criminal record relief statute for human trafficking survivors. The bill, S3181/A00982, would add confidentiality protections to the statute which it currently lacks.⁴⁵⁻⁴⁶ The legislation also expands the types of offenses that are eligible to be vacated beyond solely prostitution or sex related offenses. This is incredibly important as trafficking victims are not solely arrested for prostitution or sex-related offenses, and if criminal record relief statutes only cover these offenses, large numbers of survivors, especially those trafficked into different forms of labor, will be without relief. If this legislation passes, New York would move to the top of the grading with a score of 93 and continue to be a leader in providing criminal record relief for trafficking survivors.

KANSAS:

Kansas has recently proposed new legislation, Senate Bill 154, which would update and expand criminal record relief available to human trafficking survivors in the state.⁴⁷ The bill creates a vacatur remedy and applies to all offenses. Currently, Kansas only allows for expungement of prior offenses and expungement only applies to a limited subset of charges. The legislation also protects confidentiality and allows for survivors to use an alternate method of appearance at hearings (electronic audio-video). Kansas' proposed legislation is unique and groundbreaking because it would be the first to explicitly provide for the return of fees and surcharges as per *Nelson v. Colorado* (2017). The legislation also ensures that survivors cannot be charged for filing petitions or going through the criminal record relief process. This is important because, as described above on page 21, in some states, survivors have to pay to file petitions and also pay to request agencies clear their record after vacatur/expungement/sealing is granted. These costs can be prohibitive. If Kansas passes this legislation, then its score would increase to an 87 which has the potential to increase its ranking to first place (or 2nd place if New York's legislation also passes).

MARYLAND:

Maryland has proposed new legislation, Senate Bill 691/House Bill 782, to improve the criminal record relief laws for human trafficking survivors within the state. The new statute would expand the number of offenses that would qualify for relief, as the current statute only applies to prostitution. It would also eliminate the need for survivors to obtain the consent of the state's attorney in the jurisdiction that prosecuted the survivor before being able to request relief from the court. This new statute would increase Maryland's score from a 26 (the nation's lowest ranking score, with the exception of the states that earned a 0) to a 47, which would advance their ranking from last place to 25th place. While there is still much more that could be changed within Maryland's statute, focusing on changes that reflect the lived experiences of survivors is an important advancement in the state's criminal record relief laws. Maryland should work on incorporating several of the recommendations from these report cards, as well as best practices from other states, and use this to enact a more complete and encompassing criminal record relief statute for survivors trafficked within the state.

NEVADA:

Currently, the Nevada state legislature is weighing proposed legislation that would expand the criminal record relief offered to trafficking survivors in the state. This legislation, Senate Bill 173, would no longer limit the covered offenses to prostitution, solicitation and related offenses that survivors committed while under duress.⁴⁸ The proposed legislation would cover all non-violent offenses and

also make it easier for survivors to attempt to vacate convictions from multiple jurisdictions in the state simultaneously. This would save survivors time, money, and energy as they currently have to file separate requests for criminal record relief in various counties in a state.” If this proposed legislation passes, Nevada will increase its grade to a 61 and its ranking will increase from 21st to 12th.

NEW HAMPSHIRE:

New Hampshire also is contemplating a legislative amendment. Proposed bill HB 189 would expand the offenses eligible to be vacated to include all misdemeanors and B felonies provided the charge did not include violence.⁴⁹ This addition would improve New Hampshire’s score from a 44 to a 56 and their ranking from 30th to 17th place. The bill would also include juvenile adjudications in criminal record relief, but, as explained prior, such provisions are outside the scope of this report. There is still potential for New Hampshire to modify this amendment to provide relief for more trafficking victims and to fix some of the other gaps in its current criminal record relief statute. New Hampshire should review the other states’ legislation and proposed legislation in states like New York and Kansas, as well as the recommendations in this report, to enact a more complete and effective criminal record relief statute for trafficking victims in its state.

MAINE:

Maine currently has no trafficking-specific criminal justice relief. A 2017 report from the Maine Advisory Committee to the U.S. Commission on Civil Rights stated that “human trafficking is a growing problem in Maine.”⁵⁰ So, while human trafficking occurs across Maine, there is no assistance to survivors who have been arrested as a result of being trafficked in that state. A criminal record relief bill is currently being drafted, and reports indicate that the bill will allow survivors to request that the court vacate or expunge convictions for crimes committed while they were trafficking victims. These crimes would include convictions for prostitution, trespassing, drug possession, and other offenses. Since the bill has not been introduced and enacted it cannot be graded for this report, but it is encouraging that Maine is taking steps to provide criminal record relief to trafficking survivors. Maine legislators should examine the best practices and recommendations in this report and capitalize on the opportunity to create an exemplary criminal record relief statute for trafficking survivors in the state.

All State Report Cards can be found at polarisproject.org/RecordRelief.

If you are a survivor of human trafficking, state legislature, journalist, or anyone wanting to learn more about criminal record relief or efforts to improve individual state statutes, please email recordrelief@polarisproject.org.

Endnotes

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