

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.