

A perpetrator of human trafficking uses force, fraud, or coercion to compel labor, services, or commercial sex from his or her victims. Many victims of this crime are forced to commit crimes themselves during the course of their exploitation. As a result, victims are often arrested, detained, prosecuted, convicted of or have pled guilty to criminal charges. These convictions can result in a lifetime of limited access to critical opportunities for survivors such as: jobs, loans, immigration visas, or educational programs. States can help survivors overcome these barriers by enacting statutes that authorize courts to vacate convictions that were the result of being trafficked. A vacating convictions statute offers survivors a life without the stigma or challenges that come with a criminal record.

What a Vacating Conviction Statute Does

A vacating convictions statute allows a survivor of human trafficking to file a motion with a court to have convictions removed. When a conviction is vacated, the court acknowledges that an error has been made and the conviction is reversed. In order to be successful, the applicant must present evidence that the conviction was the result of being trafficked. The types of evidence that constitute acceptable proof vary by state, but official documentation from a government entity is not required.

The effect of a vacated conviction varies from state to state, and it is important to know how a vacated conviction will be reflected on a survivor's criminal record or other official documents. In some states, vacating a conviction must be paired with an order of expungement, which, in most states, will remove the charge from criminal records. Many states have only enacted expungement statutes, which will remove the charge from the record, but the conviction will remain. The effect of expungement alone on a survivor will depend on the state. It is important to consult the law in the state to determine what types of action will be required to provide the best protection for survivors.

Current Policy

The first state to enact a vacating convictions statute was New York in 2010. Since then, twenty-three other states have enacted similar statutes. The New York law as well as most of the laws that followed only specifically allow for prostitution charges to be vacated. While the enactment of these restrictive types of vacating convictions statutes is immensely helpful to survivors, the limited scope excludes offenses that sex trafficking victims are forced to commit in addition to prostitution and excludes labor trafficking victims from this form of relief altogether. Thus, there is a need to expand the original conception of vacating convictions laws beyond just prostitution offenses.

The scope of the New York statute has been expanded through case law. In *New York v. G.M.* 32 Misc. 3d 274 (Criminal Court of the City of New York, Queens County, Apr. 29, 2011), the court vacated a survivor's prostitution charges as well as charges for trespassing and possession of a controlled substance. The judge ruled that since the statute allowed the court to order additional actions that are appropriate under the circumstances and that the additional charges were the result of the petitioner having been trafficked, the additional charges should be vacated as well. This is a victory for survivors in New York, but not all vacating statutes may be interpreted this broadly. It is important for those drafting this type of legislation to ensure that survivors of both labor and sex trafficking have a conviction vacated by consciously widening the scope of the statute to include more than just prostitution offenses.

New Policy Considerations

This new approach to vacating convictions has been endorsed by leading legal organizations. In early 2013 the American Bar Association (ABA), a trusted expert on legal issues, passed a resolution calling upon states to create laws that would allow survivors of human trafficking to have myriad criminal charges removed. The resolution called for prostitution and *other non-violent offenses* to be vacated.

The approach endorsed by the ABA was reflected in the Uniform Law Commission's (ULC) Uniform Act on Prevention of and Remedies for Human Trafficking (Uniform Act). This guide for state legislators, which was adopted in 2013, proposes language for a vacating convictions statute that goes beyond prostitution offenses and includes non-violent offenses. The Uniform Act allows for greatly expanding the relief available to victims.

Since 2013, states have begun to enact vacating convictions statutes that go beyond prostitution offenses. This hopefully signals a new trend for states passing these types of laws, which will lead to increased access and relief for all survivors of human trafficking.

Suggested Statutory Language from the Uniform Act on Prevention of and Remedies for Human Trafficking

Section 17. Motion to Vacate Conviction

- (a) An individual convicted of [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may apply to [insert name of appropriate court] to vacate the applicant's record of conviction for the offense. A court may grant such motion on a finding that the defendant's participation in the offense was a direct result of being a victim of human trafficking.
- (b) No official determination or documentation is required to grant a motion under this section, but official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offenses was a direct result of being a victim.
- (c) A motion filed under subsection (a), any hearing conducted on the motion, and any relief granted, are governed by [insert the appropriate state code section governing post-conviction relief procedures].