



for Criminal Record Relief for Trafficking Survivors

Updating Grades and Rubric to Reflect
Current Improvements and Changes





Polaris would like to thank **all the survivors who shared their frustrating, painful, and unjust experiences to help us bring these laws to life. Some of their stories and quotes are reflected here. Many are not.** The quotes from survivors in this report are to detail and emphasize in survivors' own words the challenges and difficulties they face in getting criminal record relief as well as how important it can be to their ability to rebuild their lives. These quotes come from focus groups and individual interviews with Polaris as well as reports and communication with other non profit organizations that work with trafficking survivors on criminal record relief.

Special thanks to **Kia Dupclay** (Program Director for Restoration Diversion Services INC), **Keyana Marshall**, and **Jessica Kauffman**, survivor leaders, for their expertise and assistance on this project. We remain grateful to **Beth Jacobs**, survivor advocate/leader whose groundbreaking research helped us to understand the depth of the problem.



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Introduction

Jessica was 17 when her trafficker — the man she would have called her boyfriend — turned her out to sell sex and support him. She was traded to other pimps, moved from state to state, and racked up a string of prostitution-related misdemeanors and DUIs as a result of her trafficking. Today, Jessica is raising her family in Idaho and working to clear these charges from her record so she can rent a home for them. She is still in transitional housing though, because with her record, many landlords won't rent to her. Jessica, like many trafficking survivors, is caught in an ironic loop. She needs money — a lot of it — to cover the cost of clearing her record in multiple states. Yet the fact that she has a record makes it difficult or impossible for her to get a job that would allow her to earn that money. Already she has paid \$2,500 to clear fines and pay for legal help for charges in California, and she can't do anything about charges in Iowa until she pays off \$700 in fines. These fines are the result of convictions that logically never should have happened since Jessica was a trafficking victim under the control of someone else.

Jessica's situation is just a single example of the illogical, frustrating, retraumatizing, and expensive process many survivors of human trafficking endure to get their criminal records cleared so they can move on from their exploitation. Most states have some kind of statute recognizing that survivors of sex and labor trafficking should not be held criminally responsible for crimes they commit while they are under the control of a trafficker. That's good news, but it doesn't quite tell the story. While some of these laws work well, many are in dire need of improvement if they are to serve the intended purpose. What's more, there are still far too many states in which there is no trafficking-specific pathway to criminal record relief.

In March 2019, Polaris released [a report grading all 50 states and D.C. on the effectiveness and completeness of their criminal record relief laws](#) at the time. This report updates the report cards to reflect changes to laws, both for better and for worse, enacted since the original publication. **It is important to note that the new grades do not necessarily reflect an exact comparison - as in, moving from a "C" grade to an "A", for example, as the grading system or rubric has been revised in an effort to most accurately reflect what survivors have available to them in each state.**

“I’ve had my record expunged, which is great. It’s awesome, but it took a lot of years, it took having to rehash my trauma. All of that other stuff I don’t need.”



Stock photo. Posed by model.



We returned to this issue because criminal record relief is a clear priority for the survivor community. As part of the National Survivor Study¹, a research partnership with survivors, [Polaris conducted online and phone surveys with 457 sex and labor trafficking survivors](#). Sixty-two percent of survivors reported being cited, detained, or arrested by law enforcement. Most of those survivors arrested (81 percent) were arrested, detained, or cited during their trafficking situation. Of those arrested, 71 percent had criminal records that resulted from the original citation, detention, or arrest. This led to a majority of survivors who had been arrested (90 percent) reporting that all or at least some of their criminal record was related to their trafficking victimization. Seventy-seven percent of respondents with a criminal record reported needing assistance removing or clearing their criminal records at some time after their exit from their trafficking situation.

“***When you have that going against you, that can stop you in your tracks from achieving anything.***”

An earlier, survivor-led National Survivor Network (NSN) study [shows that the vast majority of human trafficking survivors have some kind of criminal record](#) as a result of their trafficking experience.² These unjust records make it difficult for survivors to rent apartments, get jobs, and apply for certain kinds of scholarships and government assistance. They can even affect a parent's ability to maintain custody of their children or coach their kid's soccer teams.

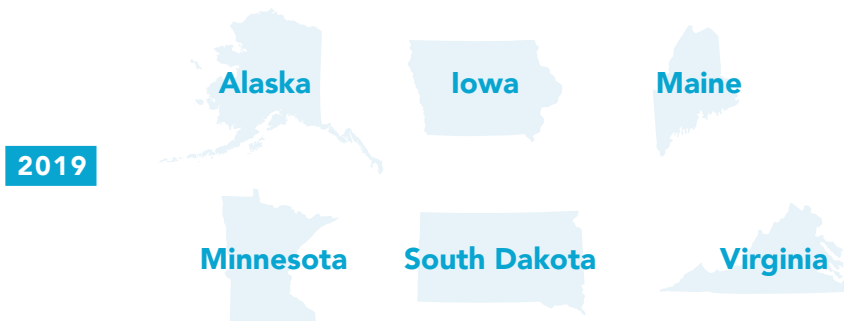
Notably, there is still no federal pathway to criminal records relief for trafficking survivors, although efforts are being made in both chambers of Congress to change that.

Polaris and our survivor partners are gratified at the improvements made since the original report and excited to work with partners to move additional change forward.



More States Have Some Type of Relief for Survivors

In 2019, six states and the federal government did not have a trafficking-specific criminal record relief process or law.



Minnesota does have a pathway for citizens to have records vacated or expunged under a range of circumstances including trafficking, but the law does not apply directly to trafficking survivors. In 2019, Virginia passed and now has a law for trafficking survivors. South Dakota did as well; however, their statute only applies to minors.

Today, only three states have no criminal record relief statute specifically for trafficking survivors.



In Some States, Relief Is Only for Survivors Who Were Minors When Trafficked.

In 2019, four states had a pathway to criminal record relief for trafficking survivors who were trafficked and committed crimes when they were under the age of 18.



Today, Georgia, Louisiana, and Tennessee's laws apply to survivors of trafficking regardless of the age they were trafficked. The states that still only have relief for trafficking survivors trafficked and who committed crimes when they were under the age of 18 are:





▲ Some States Have Made Significant Progress

- **New York** became the first state to enact a specific statute on criminal record relief for trafficking survivors in 2010. In 2021, the law was revisited, and changes were made, such as adding confidentiality provisions, expanding the offenses covered, and removing any time limitations before survivors can apply for relief. New York's new statute provides relief for sex and labor trafficking survivors, as well as survivors trafficked as minors and adults, while ensuring the process is as easy, efficient, and safe as possible.
- In 2019, **Georgia** received a zero because the criminal record relief statute for trafficking survivors only applied to survivors who were minors at the time of arrest or conviction. Georgia's new legislation provides relief to more survivors and is expansive in what offenses are covered. The new statute also includes the elimination of fees previously required to apply for record relief. Notably, Georgia is the first state to include a provision returning already paid fees and fines that were part of the survivor's conviction once the conviction is vacated.
- In May 2022, **Louisiana** passed legislation that applies to more survivors in the state — not just minors. This legislation also eliminates fees for trafficking survivors to apply for criminal record relief and is one of the first states to include a reporting mechanism through which district attorneys are required to submit information on how many survivors are applying for relief and the outcomes (acceptances and denials) of those requests.
- In 2019, **Virginia** had no criminal record relief for trafficking survivors at all, while **Tennessee** had relief only for trafficking survivors who were arrested as minors. Newly enacted statutes for both states are still limited in the offenses covered and lack some of the other recommended provisions, but their new laws are significant steps forward and include some survivor-centered provisions. Notably, the Virginia law mandates that once a survivor's conviction is vacated, they can have fees or fines they paid as part of their conviction returned to them — one of the first statutes in the country to do so.
- **New Hampshire's** new law just went into effect in January 2023, and it expands the offenses covered to include all offenses and provides full criminal record relief for survivors. It also allows for survivors to use electronic communication in hearings which can be beneficial as survivors may be unable due to timing, expenses, or safety to travel to the location of the hearing.
- **New Jersey** also recently adopted new legislation in 2022 that expands the offenses covered from only those related to prostitution to include all except some serious offenses. It also includes protections for confidentiality and is not solely for convictions and adjudications of guilt but includes arrests, charges, complaints, and other records. Additionally, survivors are able to attend hearings electronically.

△ Some Minor Changes to Correct Specific Statute Issues

- **Florida** eliminated a restriction that survivors could only apply for criminal record relief for one conviction at a time.
- **California** removed a restriction in which survivors had to wait a "reasonable time" before applying for criminal record relief.
- **Delaware** removed time restrictions, allowing for survivors to apply for criminal record relief at any time.

**This is not a comprehensive list of all the states who have addressed and modified their criminal record relief statutes, but an example of some of the improvements being made, including those that are making significant changes.*



Federal Law

We are encouraged by the progress made in just a few years and by the availability of such strong examples for other states to follow. These innovative, survivor-centered, and meaningful improvements happened in states with leaders who represent the breadth of the political spectrum. There is no one political party that owns the compassion and common sense it takes to see the need for real, accessible ways for trafficking survivors to clear their criminal records. Across the United States, arrests, charges, and convictions for crimes — ranging from prostitution and possession to identity theft and financial crimes — continue to have a profound impact on trafficking survivors' attempts to obtain future employment and safe and affordable housing.

All that points to a very clear conclusion: It is time for the federal government to act. Congress must pass legislation to provide criminal record relief for survivors arrested and convicted for federal crimes, who currently have no option for relief. Your Senators and Representatives need to hear from you. Take action by urging your members of Congress to support real, inclusive, trafficking-specific federal criminal record relief for survivors of sex and labor trafficking.

Finally, please note that this report does not include pending legislation and other efforts in states that have not yet resulted in a new or different law. If you are a survivor, attorney who provides record relief, advocate, legislator, or other elected or non-elected government official, and you believe that your state has enacted improved legislation that is not included in this updated grading process or if you would like assistance or support in your work improving your record relief statute for survivors of trafficking and the overall grade in your state, please contact us at policy@polarisproject.org. We would love to help in any way we can to support your efforts and the hard but powerful work you do every day to improve these laws and support survivors.

This analysis is meant to be a tool for your work, not a judgment of it. You know your communities, what works, and what is possible, best. We are grateful for all you do.



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, not as a victim. Sex trafficking victims are commonly arrested for prostitution or for other crimes, such as possession of weapons or 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 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.

Of the 174 survivors in Polaris’s National Survivor Study (NSS)³ who reported having a criminal record, 69 percent reported that it prevented them from getting or keeping a job, 63 percent reported their record affected their ability to receive education, training, or a professional license, 59 percent said their record affected their ability to get good, safe housing, and 35 percent of those with a criminal record who also had children reported their record affected their custody of their children.

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. 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.

“There’s so many needs that you can’t get when you have a criminal record. It makes it more difficult to get your employment, it makes it more difficult to get housing, it makes it more difficult to get services. It affects everything.”

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

“With this program I’m part of, if you’re a victim and you have a record, they don’t give you the program because you have something on your record. Even if you were the victim. I feel that it’s very important that they overlook your record when it comes to you being the victim.”



A criminal history can also impact the ability of parents to retain custody of their children and 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.⁴ 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.

“*[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.*”

In 16 states, individuals with felony convictions lose their voting rights, not only during their incarceration, but also for some time after their release.⁵ **In 11 states, they lose their voting rights indefinitely for some felony crimes** or require a pardon from the governor to have their voting rights restored.⁶ Some countries restrict individuals with criminal records from entering their country, making it stressful and embarrassing for survivors when traveling. Often, these situations result in survivors being required to explain their past to strangers who have little understanding of trafficking, which can be extremely retraumatizing.

“*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.*”



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Quick Facts on the Impact of Criminal Records

EMPLOYMENT:

- As of 2018, 80 percent of employers run background checks.⁷
- A criminal record reduces job callbacks by approximately 50 percent and significantly limits earning potential.⁸
- As of 2018, there are more than 27,000 licensing/occupational laws that restrict the employment of persons with criminal convictions. Of those, over 12,000 disqualify any individual with any type of felony, and over 6,000 disqualify those with misdemeanors. Roughly 19,000 exclusions are permanent, and over 11,000 are mandatory.⁹
- Recognizing these patterns, by 2021, 37 states and over 150 cities had adopted “Ban the Box” laws or policies, which eliminate criminal history questions from initial job applications.¹⁰

MEDICAL CARE:

- Research has shown that those with criminal convictions are discriminated against by healthcare providers.¹¹

IMMIGRATION RELIEF:

- Criminal convictions or arrests can lead to removal or deportation.
- If a survivor is applying for a green card or work visa, a criminal record of any kind can mean a denial.¹²

FAMILY LAW:

- Criminal convictions commonly factor into “best interest” standards for purposes of child custody and visitation.¹³

HOUSING:

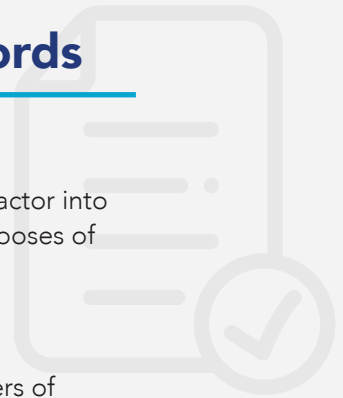
- Public Housing Authorities, owners of federally assisted public housing, and private landlords have broad discretion, when anti-discrimination laws are not otherwise present, to set their own screening of prospective tenants.¹⁴
This can mean policies such as a 99-year “lookback,” no appeals for refusal of tenancy, and flat bans on individuals and their family members.¹⁵

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.
- Forty percent of community colleges also report collecting this information.¹⁶

STUDENT LOANS:

- Eligibility for federal aid may be limited for individuals convicted of certain offenses.
- Thousands of students each year choose not to apply or are denied admission due to the mistaken belief that any drug conviction is a disqualifier for federal financial aid.¹⁷





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.¹⁸ The New York law allowed survivors of trafficking to vacate prostitution and related convictions that were a result of having been trafficked.¹⁹ 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."²⁰

“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.”

Following New York’s lead, other states began enacting criminal record relief legislation for trafficking survivors. Today, **all but three remaining states (Alaska, Iowa, and Maine) and the federal government offer some form of criminal record relief specific for survivors of trafficking.** Some states (South Dakota and Missouri) 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.

The Need for Data on the Use of Criminal Record Relief Statutes by Trafficking Survivors



Currently, there are no public reporting mechanisms available in states to track how criminal record relief statutes are being used. As states do not collect this data, it has been up to legal advocates and anti-trafficking organizations to keep track of how many survivors have applied for and been granted criminal record relief. In New York, a collaboration among 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 estimated that from 2010 to 2019, more than 1,800 convictions had been vacated for 109 individual trafficking survivors in the state. A reporting mechanism built into state laws would be a valuable addition that would make it easier to determine how those laws are working — and not working — and what is needed to change the laws and expand access. Louisiana is the first to add such language to its statute (included below). Though not explicitly included in the law, we recommend that reports tracking the use of criminal record relief for trafficking survivors are made public. Previously introduced legislation in the House of Representatives mandated that each U.S. Attorney submit information to the U.S. Attorney General one year after the enactment of the legislation, to be used by the Government Accountability Office in a report on the effectiveness of the legislation for Congress after a period of three years.

LOUISIANA:²¹

The Louisiana District Attorneys Association shall annually submit a report to the legislature, no later than February first, that includes the number of applications for, denials of, and approvals of the certification provided for by this Subsection for the prior year.



Federal Level

While trafficking-specific criminal record relief legislation has been introduced in several sessions of Congress, a federal law has not yet been passed that includes a criminal record relief statute for trafficking survivors. The latest proposed legislation, the bipartisan Trafficking Survivors Relief Act, would apply to trafficking survivors with nonviolent federal convictions and convictions that do not involve a child victim.

There are positive measures in this proposal. If enacted, this law would provide eligible survivors the opportunity for full vacatur — the highest level of relief that suggests the person never should have been convicted in the first place. This is particularly important for immigrant survivors, as it nullifies any argument for deporting or denying benefits to undocumented survivors as a consequence of their conviction or arrest for the vacated offense.

Additional components of the proposed bill include a reporting mechanism to track motions for record relief filed under this law and whether or not they were granted, so recommendations can be made for improving federal relief for survivors. The proposal also includes provisions allowing for affirmative defense during initial court proceedings, which would permit survivors to show proof that they are victims and that the charges they are facing are due to their victimization.

However, as proposed, the introduced legislation excludes many survivors who need and deserve relief because the charges it covers drastically differ from the charges survivors are frequently charged with on the federal level. Moving forward, Congress should work with survivors and anti-trafficking groups to draft additional provisions that provide appropriate relief for all trafficking survivors charged with federal crimes.



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When Laws Fail Survivors

Keyana Marshall is a trafficking survivor. Her story is, in many ways, typical of the thousands of vulnerable young people who are targeted, groomed, manipulated, addicted, dehumanized, and then sold while still not old enough to drive or vote. But hers has an additional layer of horror. In the eyes of the law, Keyana is considered a trafficker herself. She served time in federal prison for conspiracy charges she obtained while being abused in pimp-controlled exploitation.

Keyana and her husband recently moved to Ohio so she could work with a program supporting other survivors of sex trafficking. She is also working on developing her own survivor-led organization called "We Survived." This organization will support survivors and give them resources to navigate many different areas of life. Keyana wants to support survivors' journeys in academia, entrepreneurship, and community re-entry.

In any state Keyana lives in or visits, she is required to register as a sex offender. She feels this has stifled her ability to flourish in the community and limits employment opportunities. "I have been threatened, denied employment, and stigmatized on this sex offender registry. I was exploited, and I couldn't choose who my trafficker exploited. I was charged with conspiracy to commit sex trafficking of children. This forced me onto a sex offender registry three years after I was released from federal custody. I didn't do anything wrong. My abuser forced me to post ads online, pay the phone bills, and get his cars fixed. Those actions were enough to land me in prison. I am still facing many hardships, and I'm still being punished for being exploited," Keyana explains in frustration.



Methodology:

The information in this report is based on a review of state criminal record relief statutes that explicitly apply to adults who have experienced human trafficking and are contained within the human trafficking section of the state criminal code. States were awarded points based on a detailed rubric that compares each section of the statute at issue to an ideal or preferred version from another state. States that only offer relief to survivors who were arrested as children earn an automatic F grade. Additionally, states with no trafficking-specific criminal record relief statutes also received F grades.

We recognize that human trafficking survivors in some states can and have successfully used other statutes designed to provide criminal record relief to a broader range of individuals who have not experienced trafficking. However, the experience of both survivors and legal practitioners suggests that laws specifically designed to address this population are easier to find, use, and amend, as needed, to make them stronger.

Additionally, the research team prioritized the inclusion of specific, clear language within each criminal record relief statute, rather than having to rely on combining multiple state law statutes. For example, a state that has strong confidentiality language in another, but not directly related, statute, and does not mention confidentiality protections in the trafficking-specific statute, will not get points for confidentiality in this analysis.

Statutory Interpretation

The rubric includes detailed descriptions of how the statutes were reviewed and interpreted. We recognize that with any legal analysis, there will be differences of opinion about how statutes are interpreted.

Process

Polaris engaged a North Carolina-based law firm, Moore & Van Allen PLLC, to conduct a review of the existing state statutes and advise on modifications to the 2019 rubric to increase practicality and accuracy. For quality control purposes, each statute received a minimum of two reviews and the team reconciled ranking differences through internal discourse. The complexity of varying state statutes and interpretations of statutory effect render any 50-state survey necessarily imperfect. The goal is to share the hard work of states with model language and highlight areas for improvement based on evolving understandings of survivor needs in seeking criminal records relief. We believe those goals are accomplished with these grades and reflected in our report.

Model Laws

There is no single state that has a perfect criminal record relief law for trafficking survivors to offer as a model. Instead, we chose sections of laws that correspond to the areas survivors and attorneys say matter most based on their experience. We are acutely aware that what works in one state does not necessarily make sense in another - either politically or because of some very specific context. See [Appendix B](#) for each of the model sections.

Rubric Explanation

The grades assigned to each state are based on points assigned via an updated rubric that reflects changes in thinking from the 2019 report. Accordingly, the new report cards/grades are not a direct comparison to the prior version.

Below please find an explanation of the key components as well as the sample legislation we used as a model for each concept. The full grading breakdown for each of the sections is included in [Appendix A](#).



1 Legal Effect:



This section considers the breadth of relief offered. The highest scores for legal effect are afforded those states that offer full relief.

- ▼ No relief
States without criminal record relief specifically for trafficking survivors or the statute only applies to juvenile offenders.
- △ Partial relief
The statute vacates, expunges, sets aside, or seals the criminal record but does not nullify, reverse or void the record in a way that eliminates the adverse effects of the record's existence.
- ▲ Full relief
Laws that return the survivor to pre-record status. For example, the statute both indicates vacatur on the merits and provides for records destruction in the same proceeding.

EXAMPLES OF MODEL LEGISLATION ON LEGAL EFFECT:

New York:

"In the case of a motion granted under paragraph (i) of subdivision one of this section, the court must vacate the judgment on the merits because the defendant's participation in the offense was a result of having been a victim of trafficking."

Washington, D.C.:

"(a) A person convicted of an eligible offense may apply by motion to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking."

2 Records Protection:



Despite best intentions, survivors frequently report that records they had gone through a legal process to clear still show up in background checks and other situations where these records could be used against them.

Therefore, the rubric takes into account whether laws include language that make it clear these records should be destroyed or otherwise made permanently inaccessible. Points are given accordingly based on whether states had:

- ▼ No record protection language in their statutes.
- △ Some statutory record protection but tend to still allow the records to be accessible by law enforcement, government agencies, or by court order.
- ▲ Full protection in which the record is purged and not accessible by anyone.



EXAMPLES OF MODEL LEGISLATION ON RECORDS PROTECTION:

Oklahoma:

"Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records, provide information that has been sealed, including any reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the refusal of the applicant to disclose arrest and criminal records information that has been sealed."

Massachusetts:

"'Expunge', 'expunged', or 'expungement', the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency. If the record contains information on a person other than the petitioner, it may be maintained with all identifying information of the petitioner permanently obliterated or erased."

3

Trafficking Nexus:



Trafficking Nexus refers to the degree to which a criminal offense is connected to a survivor's trafficking experience. Statutes were ranked accordingly based on how restrictive the language is or is not, with more points going to the least restrictive/most accessible language.

- ▼ **Overly restrictive** criminal record relief statutes limits survivors to access relief only 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, trafficking law recognizes that traffickers regularly use psychological means, such as threats, manipulation, and lies, to control their victims.
- △ More **moderate** statutes provide criminal record relief but only if a survivor proves that either
 - crimes that occurred were "**as a direct result**" or "**proximately caused**" by the trafficking, which can be difficult for survivors to prove how a crime was caused or resulted from their trafficking victimization or
 - the offense occurred "**while they were a victim**" of trafficking which limits relief to crimes committed while the survivor was actively being trafficked.
 - Both of these more limiting 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 through drug or alcohol use or because they have no way to meet their survival needs after fleeing their trafficker.
- ▲ **Preferable** trafficking nexus language: Requires a survivor to prove the offense was committed "**as a result**" of trafficking, a standard that tends to be easier for survivors to prove and speaks more to their actual experience.



EXAMPLES OF MODEL LEGISLATION ON TRAFFICKING NEXUS:

Connecticut:

"At any time after a judgment of conviction is entered pursuant to section 53a-82, the defendant may apply to the Superior Court to vacate any judgment of conviction on the basis that his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes (1) trafficking in persons under section 53a-192a, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time."

Louisiana:

"To obtain certification, the applicant has the burden of establishing by a preponderance of the evidence to the prosecuting authority that the offense was committed, in substantial part, as the result of the applicant being a victim of human trafficking in accordance with R.S. 14:46.2."

4

Eligible Offenses:



The nature of trafficking is such that survivors can be forced to commit a wide range of offenses such as trespassing, selling or purchasing drugs, and even violence.

- ▼ Restrictive statutes only provide relief for a small subset of offenses, such as **prostitution or sex-related crimes**. In some cases, they also include certain "**low level**" **enumerated offenses** but they are still very restrictive.
- △ Better statutes include relief for more "**serious crimes**" like violent crimes, felonies, and more, but still may not have all offenses covered.
- ▲ Ideally, the best statutes include that **all offenses are eligible** for relief and therefore, all survivors have the ability to clear their criminal records.

EXAMPLES OF MODEL LEGISLATION ON ELIGIBLE OFFENSES:

Wyoming:

"(a) A victim of human trafficking is not criminally liable for any commercial sex act or other criminal acts committed as a direct result of, or incident to, being a victim of human trafficking in violation of W.S. 6-2-702 through 6-2-707.

(c) At any time after the entry of a conviction, the court in which it was entered may vacate the conviction if the defendant's participation in the offense is found to have been the result of having been a victim."

Georgia:

"(a)(1) A defendant convicted of an offense and sentenced as a direct result of the defendant being the victim of an offense of trafficking under Code Section 16-5-46 may petition the court imposing the sentence to vacate such conviction. Such court shall maintain the jurisdiction, power, and authority to vacate such conviction and sentence."



5 Procedural Confidentiality:



Criminal record relief statutes should include provisions designed to protect confidentiality throughout the process. Failure to protect confidentiality defeats the purpose of these laws and puts survivors in danger. Statutes should allow motions to be filed as sealed documents and ensure that documents remain shielded from public disclosure. States were graded based on what type of confidentiality of the petition for relief, or records of the proceedings, included.

- ▼ Some states **do not include any language** on confidentiality of documents.
- △ Some states may indicate there is a **process to request** that records of the petition and any record of the proceedings be placed under seal.
- ▲ Ideally, states would **automatically seal** all motions and petition papers connected to the survivor applying for criminal record relief.

EXAMPLES OF MODEL LEGISLATION ON PROCEDURAL CONFIDENTIALITY:

New Jersey:

"Applications made to the Superior Court under this section and all associated supporting documents filed with the applications shall remain under seal and kept confidential, and shall not be disseminated or disclosed, in whole or in part, except to another court, or a law enforcement or correctional agency as set forth in this subparagraph."

Massachusetts:

"petition for an expungement, any records related to a petition for an expungement, records related to judicial proceedings required to hear the petition for an expungement or an order of expungement pursuant to section 100F, section 100G, section 100H or section 100K shall not be a public record. Any information obtained by a county, municipal or state employee acting in their official capacity and related to a petition for or order for an expungement shall not be a public record as defined by clause twenty-sixth of section 7 of chapter 4 and shall be confidential information. Within 60 days of ordering an expungement pursuant to section 100F, section 100G, section 100H or section 100K the court and the commissioner shall expunge all records of the petition, the order and any related proceedings within their care, custody or control."



6 Time Limitations and Wait Times:



Some states have statutes of limitations or a wait time that restrict survivors' ability to access criminal record relief. These limitations serve no practical purpose. In many cases these limitations cause actual harm, either forcing survivors to start the cumbersome process of criminal record relief before they are emotionally ready, or prolonging the time in which they live with the barrier of a criminal record.

- ▼ Some restrictive statutes have an **explicit time limitation** that runs from a survivor's end of exploitation to when a survivor can apply for relief, and after that time lapses, survivors cannot apply for relief. Additionally, some statutes make a survivor **wait a specific amount of time** before they can apply for relief.
- △ A better statute would provide some leniency for when a survivor can file such as a **"reasonable period"** after trafficking.
- ▲ However, an ideal criminal record relief statute would have **no time limits or wait times** at all for survivors.

EXAMPLES OF MODEL LEGISLATION ON TIME LIMITATIONS AND WAIT TIMES:

Arkansas:

"(2) A uniform petition under this section may be filed at any time and may be filed for a conviction imposed at any time."

Colorado:

"At any time after conviction, a defendant may file a motion in the case in which any conviction records exist pertaining to the defendant's conviction for any misdemeanor offense or municipal code or ordinance violation, excluding any offense of a crime as defined in section 24-4.1-302 (1)."

7 Hearing Requirements:



Whether or not a survivor must appear before a court at any point in this process can make a significant difference in whether relief is accessible in practice as well as in theory. For example, survivors may have safety or financial concerns that make it difficult for them to attend hearings.

- ▼ The most restrictive statutes require a **hearing be held**.
- △ Some statutes are either **silent** on the issue of whether a hearing is required or the **hearing is conditional** such as at the **discretion of the court** or **required only if certain state authorities object**.
- ▲ The strongest statutes would **explicitly not have a hearing required**. Unfortunately, no state has this clause and therefore the examples given below are of states that offer the best example currently which is a hearing being conditional.



EXAMPLES OF MODEL LEGISLATION ON HEARING REQUIREMENTS:

Maryland:

"(e) The court may grant a motion filed under this section without a hearing if:

- (1) the State's Attorney consents to the motion;*
- (2) no objection to the relief requested has been filed by a victim or victim's representative; and*
- (3) at least 60 days have elapsed since notice and service under subsection (c) of this section."*

California:

"(c) The petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.

(d) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition."

8 Judicial Discretion:

Judicial Discretion refers to the ability of the court to grant relief when a survivor satisfies the statutory requirements.



- ▼ The lowest rankings were given when the court has **no authority** to grant relief for trafficking survivors which occurs when there is no criminal record relief statute specific for trafficking survivors or the statute is only applicable to juvenile offenders.
- △ Some statutes are **silent** on this issue and other statutes "**may**" grant a petition for relief upon making necessary findings.
- ▲ An ideal statute includes language where the court "**shall**" or "**must**" order relief if the survivor meets the requirements set forth in the statute.

EXAMPLES OF MODEL LEGISLATION ON JUDICIAL DISCRETION:

Arizona:

"The court shall grant the application and vacate the conviction if the court finds by clear and convincing evidence that the person's participation in the offense was a direct result of being a victim of sex trafficking pursuant to section 13-1307."

North Carolina:

"(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances."



9

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. Points were awarded with a preference for the least restrictive statutes.

- ▼ The most 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.
- △ Some 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 in the same state.
- ▲ 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.

EXAMPLES OF MODEL LEGISLATION ON BURDEN OF PROOF:

Florida:

“Determination of the petition under this section should be by a preponderance of the evidence.”

Vermont:

“(d)(1) The court shall grant the motion if it finds by a preponderance of the evidence that:

A. the moving party was convicted of a qualifying crime; and

B. the conviction was obtained as a result of the moving party’s having been a victim of human trafficking.”

10

Arrest and Adjudication Relief:



In many jurisdictions, arrests 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. Compounding this issue is that most criminal record relief statutes only cover convictions. This leaves many survivors with arrest records that impede their lives and limit both their housing and career options. An ideal statute **explicitly includes arrests, non-prosecuted cases, adjudications, and other records** as eligible to be cleared if shown to be a result of a survivor’s victimization.

EXAMPLES OF MODEL LEGISLATION ON ARREST AND ADJUDICATION RELIEF:

Pennsylvania:

“(g) Conviction vacated.--If the motion under subsection (d) is granted, the court shall vacate the conviction, strike the adjudication of guilt and order the expungement of the record of the criminal proceedings. The court shall issue an order to expunge all records and files related to the moving party’s arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings and probation for the offense.”



New Hampshire:

"(a) This paragraph shall apply to:

(1) An individual convicted for an offense which was committed as a direct result of being trafficked;

(2) An individual who was under 18 years of age at the time of the offense, who was adjudicated as delinquent for an offense which was committed as a direct result of being trafficked; or

(3) An individual who entered into a diversion agreement in lieu of further criminal proceedings for an offense which was committed as a direct result of being trafficked."

11 Additional Restrictions:



This is the catch-all section for the range of additional barriers states have come up with which prevent survivors from gaining relief. Because they are specific to only a few states, if these presented themselves in the statutes we deducted a lump sum of five points. For more explanation of these barriers, please see the [Hall of Shame](#) section. Some examples include additional barriers that:

- Require survivors have no other charges or a criminal record in that state or in another state.
- Require survivors cooperate with law enforcement by forcing them to identify or help in investigation or prosecution of their trafficker.
- Require survivors explain why trafficking facts or affirmative defense were not used in original court proceedings.
- Require survivors serve sentences imposed in full and/or pay restitution and fines ordered for convictions before a survivor can apply for relief.
- Limit the number of petitions of relief a survivor can file.
- Allow the court to take the relationship between a trafficker and survivor and/or rehabilitation efforts of survivors into account when making a decision on whether to grant a survivor criminal record relief.
- Requires survivors to notify victims of the original offense when applying for relief.
- Explicitly apply only to sex trafficking survivors which leaves out labor trafficking survivors.



12 Extra Points:



In this section, states were awarded extra points for additions to their statutes that make the process of relief easier, more accessible, and helpful for survivors. These include:

- **Fees and fines related to original conviction or sentence are returned to survivors once they receive criminal record relief.**

EXAMPLES OF MODEL LEGISLATION ON RETURN OF FEES AND FINES:

Georgia:

“(1) For any sentence vacated pursuant to this Code section, the court vacating such sentence shall include in the order to vacate an order for the return of any fines and fees paid by the defendant under such sentence in the amount paid by the defendant; (2) The Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be responsible for the return to the defendant of fines and fees paid by the defendant.”

Virginia:

“E. If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines, costs, forfeitures, and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the court where the conviction was entered is in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner shall be entitled to a refund of such amount. If the clerk of the court where the conviction was entered is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines, costs, forfeitures, and penalties paid.”

- **Explicitly states survivors will be not charged any fees to apply for criminal record relief.**

EXAMPLES OF MODEL LEGISLATION ON NOT CHARGING FOR RELIEF:

Louisiana:

“(5) An applicant for the expungement of a record of offense who was a victim of human trafficking, in accordance with R.S. 14:46.2, shall not be required to pay any fees relative to the application for expungement to the clerk of court, the Louisiana Bureau of Criminal Identification and Information, the sheriff, the district attorney, or any other agency.”

Colorado:

A defendant moving to have his or her criminal records sealed pursuant to this section is not required to pay a processing fee.



- **Official documentation provided when applying for relief creates a presumption of victim status, and the documentation is not required to apply for relief.**

EXAMPLES OF MODEL LEGISLATION ON PRESUMPTION OF VICTIM STATUS:

New Hampshire:

“(d) The petitioner shall not be required to provide any official documentation indicating that he or she was a victim of human trafficking at the time of the offense. However, if such documentation is provided, it shall be prima facie evidence that the petitioner’s participation in the offense was a direct result of being trafficked. In this subparagraph, “ official documentation ” means:

(1) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking; or

(2) An affidavit or sworn testimony from a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the petitioner has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of human trafficking.”

Georgia:

“(D) May include documentation of a defendant’s status as a victim of an offense of trafficking under Code Section 16-5-46 at the time of the offense; provided, however, that official documentation shall not be required to obtain relief under this Code section. Such documentation shall create a rebuttable presumption that the defendant was a victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the term ‘official documentation’ includes, but is not limited to, the following:

(i) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding showing that the defendant was a victim of trafficking under Code Section 16-5-46;

(ii) An affidavit, a letter, or sworn testimony from a member of the clergy, medical professional, member of a victim services organization, or certified, licensed, or registered professional from whom the defendant has sought assistance, counseling, or legal counsel related to his or her victimization; or

(iii) Any other evidence that the court determines is of sufficient credibility or probative value.”

- **When hearing is required, survivors can appear by alternate methods (e.g. telephone, written statements, and/or an attorney).**

EXAMPLES OF MODEL LEGISLATION ON ALTERNATIVE HEARING METHODS:

Florida:

(b) The petitioner or the petitioner’s attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means.

Georgia:

“For purposes of considering a petition provided for under subsection (a) of this Code section, testimony from the defendant, petitioner, expert witness, or any other party may be taken by the court by remote electronic means.”



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 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 progress on data collection, 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.

“*[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.*”

2 Ensure Funding for Criminal Record Relief Legal Support

Most legal proceedings have a cost attached, and criminal record relief is no exception. One of the most significant costs is legal fees, as the process is often extremely complicated for a non-lawyer to manage. If survivors can’t afford to pay for lawyers, they often just give up — or don’t even get started — in the process of trying to clear their criminal records. It is important that states and local governments allocate resources to provide legal services for survivors. This can include providing training on criminal record relief, as well as the costs of the legal representation survivors desperately need.

While there are nonprofit organizations and attorneys who volunteer their services, there is nowhere near enough capacity to meet the need. Those who assist with criminal record relief stress that federal, state, and local funds and grants should be directed toward some of the expenses associated with this work so that more attorneys would be available to do it.

In 2018, the Office for Victims of Crime (OVC) at the Department of Justice restricted funding for legal services to represent trafficking victims trying to clear criminal records.²² While this restriction has been lifted, it is important that Congress explicitly protects the ability for grants to be used for criminal record relief for survivors. Language to this effect was included in the federal criminal record relief bill introduced in the U.S. House in August 2022.



Kia was 15 and trying to survive in foster care when she was first trafficked. She grew up in a tough environment and often found herself in physical altercations with others while trying to protect herself. As a result, Kia developed a juvenile record, which expanded to a string of DUI and prostitution-related charges connected to her trafficking situation as an adult. The transient nature of Kia's trafficking situation made it impossible for her to keep up with paperwork and information about the charges she was facing and any upcoming court appearances. Several years after leaving her trafficking situation, Kia often works multiple jobs to support herself but continues to have her wages garnished to repay fees and fines as a result of charges she incurred while in her trafficking situation. The financial burden as a result of her criminal record has made it difficult for Kia to reach out for legal assistance in clearing her record, as most of the attorneys she has encountered have charged for initial consultations or services. Kia's criminal record has hindered her career aspirations by preventing her from pursuing roles where she can use her expertise and experience as a survivor to work directly with at-risk youth and other survivors of trafficking.



3 Design Trauma-Informed Implementing Regulations

“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.”

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 survivors ultimately 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 retraumatizing 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.²³

“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.”



Stock photo. Posed by model.

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. As many courts found during the COVID-19 pandemic, it is possible for normal court proceedings to happen remotely. Some states have begun allowing for remote electronic methods, such as video, phone, etc., to be used so survivors are able to get relief without having to make costly trips or return to places they may not feel safe. 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 NGOs and legal aid offices to engage survivor leaders as case managers, peer mentors, and advocates to help guide survivors through the criminal record relief process. This interdisciplinary approach to lawyering is transformative. 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.’”



Mugshot Websites

Many survivors seeking to clear criminal records are doing so for practical as well as personal reasons. Unscrupulous businesses prey on people with criminal-legal records, 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 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 two years and about \$2 million from nearly 6,000 people nationwide.²⁴ Heartbreakingly, survivors have paid websites to remove a photo only to see it appear on another.

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.²⁵

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, and whose convictions were vacated.²⁶⁻²⁷ Even more effective are state laws such as those in Louisiana, Utah, New York, Oregon, and several others restricting law enforcement from putting mugshots online at all, preventing third-party websites from accessing them in the first place.²⁸



4 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 survey²⁹, 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, community-based organizations, and government agencies working on criminal record relief — would help ensure the legislation is effective.



Hall of Shame

All survivors of trafficking should have access to the same rights and support. In reality though, the analysis found that 21 states have added elements to their laws that restrict relief to certain kinds of victims - those who have the fewest barriers of access. For example, some states restrict relief to sex trafficking survivors - and completely leave out labor trafficking survivors, while other states require that trafficking survivors know that they were being trafficked and are prepared to testify against their traffickers at the moment they are no longer entangled in the abusive conditions. States that contain elements such as these lost five points per element.

Examples are listed below:

Survivors have no other charges or a criminal record in that state or in another state:

In several states, including Georgia, Oklahoma, Tennessee, and Washington, survivors cannot clear their records of the charges they incurred while being trafficked if they have any other charges pending, a separate criminal record in the state, or are in the process of trying to clear records in another state. Many survivors have a long history of arrests and convictions connected to their victimization. In fact, it's these conditions that can make them more vulnerable to sex and labor traffickers in the first place. States should eliminate these restrictions and educate themselves on the totality of survivors' circumstances and experiences. These additional restrictions function as discriminatory barriers that delay relief that a survivor is entitled to under the law.

Survivors cooperate with law enforcement by forcing them to cooperate in the investigation and prosecution of their trafficker: In some states, such as Idaho and Texas, survivors have to cooperate with law enforcement and even identify their trafficker in court in order to be eligible for relief. This requirement puts survivors in danger by forcing them into a situation that causes further trauma and endangers them. Survivors may not have reported their trafficker to law enforcement for any number of logical reasons, to include, real safety concerns, lack of trust of law enforcement, and a lack of faith in the criminal-legal system to keep them safe or hold the trafficker accountable.

Survivors are required to explain details of trafficking or why an affirmative defense was not raised in original court proceedings: An affirmative defense allows a survivor facing criminal charges to raise a defense negating criminal liability because they are a victim of trafficking. Some states, such as Idaho, have used the presence of affirmative defense to lessen or eliminate the criminal record relief offered in the state. In Idaho, if affirmative defense of coercion and being a trafficking survivor is brought up at trial and the survivor is still convicted, then they are not eligible later for criminal record relief.

Illinois, Montana, North Carolina, and Wisconsin have limited access to criminal record relief by requiring a survivor applying for relief to explain why they did not raise an affirmative defense during their criminal proceedings. This does not recognize that many survivors do not see themselves as trafficking victims until some time long after they are free from that abuse. This places blame on survivors for not raising a defense that they may not have been aware of and unreasonably requires a survivor to later explain complex legal procedures and try to recall their state of trauma when later applying for criminal record relief from that conviction.

Survivors have to serve the full sentence imposed and/or pay restitution or fines ordered for convictions before applying for relief: Criminal record relief acknowledges that traffickers utilize force, fraud, and coercion to compel survivors to engage in certain behaviors and activities, including criminal activity, and that survivors should not be held accountable for what they



were forced into doing by their trafficker. To make survivors complete all conditions tied to the original sentence and/or pay full restitution stands in contrast with the acknowledgement that the conviction should not have been upheld in the first place.

States with these requirements are District of Columbia, Kansas, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, and Washington.

Limits the number of offenses eligible for relief: Michigan is the only state with this restriction. Michigan restricts the total number of convictions that can be set aside for an assaultive-crime to no more than two during the survivor's lifetime. Michigan also restricts the amount of convictions a survivor can have set aside depending on the length of sentence imposed.

Allows court to consider the dynamics of the relationship between trafficker and survivor and any rehabilitation efforts: Some states allow courts to weigh into their decision on whether the survivor "deserves" criminal record relief by considering factors like rehabilitation efforts - such as whether the victim sought services for victims of trafficking - the relationship dynamics the survivor had with their trafficker, etc. This puts the onus of responsibility and judgment on the survivor even though the original conviction was tied to their own victimization. Survivors already face stigma and judgment based on their victimization and criminal records, and the courts should recognize that these arrests, adjudications, convictions, and other records were not the fault of the survivor but a product of the victimization they experienced. To attempt to evaluate a survivor's rehabilitation or the relationship they had with their trafficker sends the message that the survivor is in some way responsible for the abuse they endured. States with statutes like this, including Maryland and Nevada, should consider amending and removing these types of non-trauma informed restrictive requirements.

Requires survivors to notify victims when applying for relief: Several states; Connecticut, Kentucky, Maryland, and New Jersey, require a survivor to notify any named victims of the original offense before applying for relief. In some cases, the victims of the original offense are able to submit impact statements that may affect the ability of the survivor to receive criminal record relief. Notifying victims and allowing them to submit a statement could put a survivor who has exited trafficking at risk. This also places blame on the survivor for an offense that occurred only due to their own victimization.

Explicitly applies only to sex trafficking survivors: In several states, the statutes are only for sex trafficking survivors and completely leave out the experience and victimization of labor trafficking survivors. Arizona, Oregon, Nebraska, and Virginia record relief statutes are explicitly only for "sex trafficking victims," although offenses resulting from labor trafficking are just as prevalent. A recent statute in New York has moved to include labor trafficking survivors as qualifying for relief, which is movement in the right direction since it makes it clear to labor trafficking survivors and those assisting them with record relief that their experiences are understood and they may be eligible for relief.

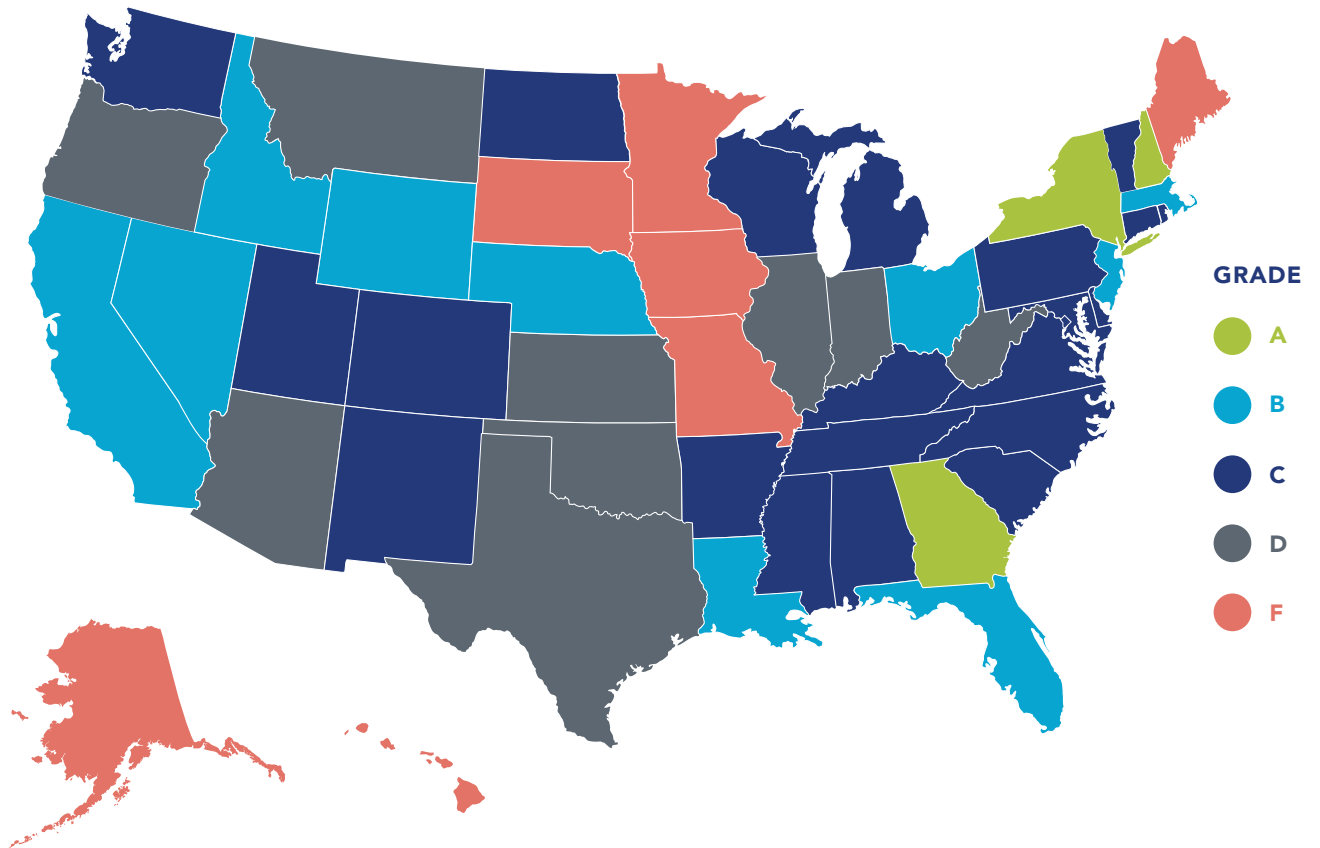
All State Report Cards can be found at polarisproject.org/criminal-record-relief-report.

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





Breakdown on State Grades



A Georgia
New Hampshire
New York

B California
Florida
Idaho

Louisiana
Massachusetts
Nebraska

Nevada
New Jersey

Ohio
Wyoming

C Alabama
Arkansas
Colorado
Connecticut
District of Columbia

Delaware
Kentucky
Maryland
Michigan
Mississippi

New Mexico
North Carolina
North Dakota
Pennsylvania

Rhode Island
South Carolina
Tennessee
Utah

Vermont
Virginia
Washington
Wisconsin

D Arizona
Illinois
Indiana

Kansas
Montana
Oklahoma

Oregon
Texas
West Virginia

F* Alaska
Hawaii
Iowa

Maine
Minnesota

Missouri
South Dakota

*or no statute specifically for adult trafficking survivors



APPENDIX A:

Rubric with Point Breakdown of Grading for Updated Criminal Record Relief Statutes

Points values were assigned to states based on the rubric below, which weighs elements of each statute against an ideal or preferred version.

Guidelines: Grades and rankings are determined by comparing elements of existing criminal record relief statutes against an ideal statute, as defined by Polaris and lawyers with expertise on criminal record relief for trafficking survivors. This project looks solely at criminal record relief statutes specifically intended for victims of human trafficking arrested or prosecuted as adults. Accordingly, states that only offer relief to survivors with arrests from when they were juveniles received an F grade. Additionally, the research team prioritized the inclusion of specific and clear language within each criminal record relief statute, rather than having to rely on combining multiple state law statutes.

Legal Effect



- | | |
|----|---|
| 0 | No statute providing criminal records relief for trafficking survivors, or the statute only applies to juveniles |
| 10 | Partial relief: Statutory relief either vacates, expunges, sets aside or seals the criminal record but does not serve to nullify, reverse, or void the record in a way that eliminates any adverse effect of the record's existence |
| 20 | Full relief: Statutory relief returns the petitioner to the pre-record status. For example, the statute both indicates vacatur on the merits and provides for records destruction in the same proceeding |

Records Protection



- | | |
|----|--|
| 0 | Statutes are silent as to permitted disclosure of records upon grant of relief |
| 5 | Records are not publicly accessible, but may be made available to law enforcement, certain government agencies, or pursuant to a court order |
| 10 | Records are destroyed, purged, or otherwise rendered permanently irretrievable |

Trafficking Nexus



- | | |
|----|--|
| 0 | Survivor must prove that offenses were committed "while under duress" |
| 2 | Survivor must prove that their participation in an offense was "proximately caused by" or "as a direct result of" being trafficked |
| 5 | Survivor must prove that offenses were committed "while they were a victim" of trafficking |
| 10 | Survivor must prove that crimes were committed "as a result" of the trafficking |



Time Limitations and Wait Times



- | | |
|---|--|
| 0 | Statute explicitly prescribes a period of limitation for the filing of a petition for relief, either requiring a survivor to file within a certain period of time following a specified event, or to wait a certain amount of time before filing a petition for relief |
| 2 | Statute provides leniency regarding timing to file a petition for relief (e.g., allowing survivors a "reasonable time" after trafficking has ended) |
| 5 | Statute provides no time limit, restrictions or wait times |

Procedural Confidentiality



- | | |
|---|---|
| 0 | Statute is silent as to the confidentiality of the petition for relief or records of the proceedings |
| 2 | Statute establishes a process for requesting that the petition and any record of the proceedings be placed under seal |
| 5 | Statute includes a mechanism that automatically places the petition and any record of the proceedings under seal |

Offenses Covered



- | | |
|----|---|
| 0 | No offenses are eligible for relief |
| 5 | Only prostitution-related offenses and certain enumerated low level offenses are eligible for relief |
| 15 | Relief is generally available for more "serious crimes" i.e. violent crimes, sex crimes, and serious felonies |
| 25 | Any offense is eligible for relief |

Judicial Discretion



- | | |
|---|--|
| 0 | Court has no authority to grant relief |
| 2 | Statute is silent on the issue of judicial discretion, or the statute provides that the court "may" grant a petition for relief upon making the necessary findings |
| 5 | Statute provides that the court "shall" order relief if petitioner meets certain statutory requirements |



Hearing Requirement



- 0 Statute requires a hearing on any petition for relief
- 5 Statute is silent on the issue of whether a hearing is required, or the statute contains a conditional hearing requirement (e.g., a hearing is required at the discretion of the court, or upon the objection of certain state authorities)
- 10 Statute explicitly states that a hearing is not required

Burden of Proof



- 0 Statute requires a petitioner to demonstrate that they are entitled to relief "by clear and convincing" evidence
- 2 Statute silent as to burden of proof
- 5 Statute explicitly states that the survivor need only demonstrate that they are entitled to relief by "a preponderance of the evidence," or some similar lower standard

Arrest and Adjudication Relief



- 0 No statute providing criminal records relief for trafficking survivors
- 2 Statute indicates it applies only to convictions, adjudications, or other formal declarations of guilt
- 5 Statute explicitly includes arrests, non-prosecuted cases, adjudications, and/or other records (e.g., incident reports, photographs, fingerprints, disposition, or other information related to an arrest event)

Additional Restrictions



- 5 Statute requires absence of other charges or absence of criminal records in or out of state
- 5 Statute has a requirement related to the identification, investigation or prosecution of the trafficker, or requires an explanation of why trafficking facts or affirmative defense were not asserted upon charge for the record for which the survivor now seeks relief
- 5 Statute requires satisfaction of sentence imposed, or restitution or fines ordered, for conviction(s) from which the survivor is now seeking relief or from prior court involvement before accessing relief
- 5 Statute limits the number of contemporaneous petitions for relief
- 5 Statute allows for courts to take the relationship between trafficker and survivor and/or rehabilitation efforts of the survivor into account when making a decision



-5 Statute requires survivor petitioning for relief to notify victims of the original offense

-5 Statute confines relief to “sex trafficking victims” (it doesn’t state that it applies to human trafficking victims or applies to “sex and labor trafficking victims”)

Extra Points



+5 Statute calls for any fees or fines related to the original conviction or sentence to be returned to the survivor once relief is granted

+5 Statute explicitly requires that survivors not be charged any fees to apply for relief

+5 Statute allows for a presumption of victim status when official documentation is given. This documentation is not required and is available through governmental records or affidavits from service providers and other means

+5 Survivor may appear at a hearing by alternate methods (e.g., telephone, video, written statements, attorney substitute)



APPENDIX B:

Model Legislative Language Examples from States



Legal Effect

New York:

"In the case of a motion granted under paragraph (i) of subdivision one of this section, the court must vacate the judgment on the merits because the defendant's participation in the offense was a result of having been a victim of trafficking."

Washington, D.C.:

"(a) A person convicted of an eligible offense may apply by motion to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking."



Records Protections

Oklahoma:

"Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records, provide information that has been sealed, including any reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the refusal of the applicant to disclose arrest and criminal records information that has been sealed."

Massachusetts:

"'Expunge', 'expunged', or 'expungement', the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency. If the record contains information on a person other than the petitioner, it may be maintained with all identifying information of the petitioner permanently obliterated or erased."



Trafficking Nexus

Connecticut:

"At any time after a judgment of conviction is entered pursuant to section 53a-82, the defendant may apply to the Superior Court to vacate any judgment of conviction on the basis that his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes (1) trafficking in persons under section 53a-192a, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time."

Louisiana:

"To obtain certification, the applicant has the burden of establishing by a preponderance of the evidence to the prosecuting authority that the offense was committed, in substantial part, as the result of the applicant being a victim of human trafficking in accordance with R.S. 14:46.2."



Eligible Offenses

Wyoming:

"(a) A victim of human trafficking is not criminally liable for any commercial sex act or other criminal acts committed as a direct result of, or incident to, being a victim of human trafficking in violation of W.S. 6-2-702 through 6-2-707.

(c) At any time after the entry of a conviction, the court in which it was entered may vacate the conviction if the defendant's participation in the offense is found to have been the result of having been a victim."

Georgia:

"(a)(1) A defendant convicted of an offense and sentenced as a direct result of the defendant being the victim of an offense of trafficking under Code Section 16-5-46 may petition the court imposing the sentence to vacate such conviction. Such court shall maintain the jurisdiction, power, and authority to vacate such conviction and sentence."



Procedural Confidentiality

New Jersey:

"Applications made to the Superior Court under this section and all associated supporting documents filed with the applications shall remain under seal and kept confidential, and shall not be disseminated or disclosed, in whole or in part, except to another court, or a law enforcement or correctional agency as set forth in this subparagraph."

Massachusetts:

"Petition for an expungement, any records related to a petition for an expungement, records related to judicial proceedings required to hear the petition for an expungement or an order of expungement pursuant to section 100F, section 100G, section 100H or section 100K shall not be a public record. Any information obtained by a county, municipal or state employee acting in their official capacity and related to a petition for or order for an expungement shall not be a public record as defined by clause twenty-sixth of section 7 of chapter 4 and shall be confidential information. Within 60 days of ordering an expungement pursuant to section 100F, section 100G, section 100H or section 100K the court and the commissioner shall expunge all records of the petition, the order and any related proceedings within their care, custody or control."



Time Limitations and Wait Times

Arkansas:

"(2) A uniform petition under this section may be filed at any time and may be filed for a conviction imposed at any time."

Colorado:

"At any time after conviction, a defendant may file a motion in the case in which any conviction records exist pertaining to the defendant's conviction for any misdemeanor offense or municipal code or ordinance violation, excluding any offense of a crime as defined in section 24-4.1-302 (1)."



Hearing Requirements

Maryland:

"(e) The court may grant a motion filed under this section without a hearing if:

- (1) the State's Attorney consents to the motion;*
- (2) no objection to the relief requested has been filed by a victim or victim's representative; and*
- (3) at least 60 days have elapsed since notice and service under subsection (c) of this section."*

California:

"(c) The petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.

(d) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition."



Judicial Discretion

Arizona:

"The court shall grant the application and vacate the conviction if the court finds by clear and convincing evidence that the person's participation in the offense was a direct result of being a victim of sex trafficking pursuant to section 13-1307."

North Carolina:

"(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances."



Burden of Proof

Florida:

"Determination of the petition under this section should be by a preponderance of the evidence."

Vermont:

"(d)(1) The court shall grant the motion if it finds by a preponderance of the evidence that:

- A. the moving party was convicted of a qualifying crime; and*
- B. the conviction was obtained as a result of the moving party's having been a victim of human trafficking."*



Arrest and Adjudication Relief

Pennsylvania:

“(g) Conviction vacated.--If the motion under subsection (d) is granted, the court shall vacate the conviction, strike the adjudication of guilt and order the expungement of the record of the criminal proceedings. The court shall issue an order to expunge all records and files related to the moving party’s arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings and probation for the offense.”

New Hampshire:

“(a) This paragraph shall apply to:

(1) An individual convicted for an offense which was committed as a direct result of being trafficked;

(2) An individual who was under 18 years of age at the time of the offense, who was adjudicated as delinquent for an offense which was committed as a direct result of being trafficked; or

(3) An individual who entered into a diversion agreement in lieu of further criminal proceedings for an offense which was committed as a direct result of being trafficked.”



EXTRA POINTS

Return of Fees and Fines:

Georgia:

“(1) For any sentence vacated pursuant to this Code section, the court vacating such sentence shall include in the order to vacate an order for the return of any fines and fees paid by the defendant under such sentence in the amount paid by the defendant; (2) The Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be responsible for the return to the defendant of fines and fees paid by the defendant.”

Virginia:

“E. If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines, costs, forfeitures, and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the court where the conviction was entered is in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner shall be entitled to a refund of such amount. If the clerk of the court where the conviction was entered is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines, costs, forfeitures, and penalties paid.”



Not Charging for Relief:

Louisiana:

“(5) An applicant for the expungement of a record of offense who was a victim of human trafficking, in accordance with R.S. 14:46.2, shall not be required to pay any fees relative to the application for expungement to the clerk of court, the Louisiana Bureau of Criminal Identification and Information, the sheriff, the district attorney, or any other agency.”

Colorado:

A defendant moving to have his or her criminal records sealed pursuant to this section is not required to pay a processing fee.

Presumption of Victim Status:

New Hampshire:

“(d) The petitioner shall not be required to provide any official documentation indicating that he or she was a victim of human trafficking at the time of the offense. However, if such documentation is provided, it shall be prima facie evidence that the petitioner’s participation in the offense was a direct result of being trafficked. In this subparagraph, “ official documentation ” means:

(1) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking; or

(2) An affidavit or sworn testimony from a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the petitioner has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of human trafficking.”

Georgia:

“(D) May include documentation of a defendant’s status as a victim of an offense of trafficking under Code Section 16-5-46 at the time of the offense; provided, however, that official documentation shall not be required to obtain relief under this Code section. Such documentation shall create a rebuttable presumption that the defendant was a victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the term ‘official documentation’ includes, but is not limited to, the following:

(i) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding showing that the defendant was a victim of trafficking under Code Section 16-5-46;

(ii) An affidavit, a letter, or sworn testimony from a member of the clergy, medical professional, member of a victim services organization, or certified, licensed, or registered professional from whom the defendant has sought assistance, counseling, or legal counsel related to his or her victimization; or

(iii) Any other evidence that the court determines is of sufficient credibility or probative value.”



Alternate Hearing Methods:

Florida:

"(b) The petitioner or the petitioner's attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means."

Georgia:

"For purposes of considering a petition provided for under subsection (a) of this Code section, testimony from the defendant, petitioner, expert witness, or any other party may be taken by the court by remote electronic means."



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