

# South Dakota



*The letter grades reflect Polaris' evaluation of existing laws designed to provide survivors of human trafficking with a realistic pathway to clear their criminal records. For more information on the criteria graded, please read [here](#) and examples of model legislation for each criteria can be found [here](#). If you have any questions or issues, please contact [policy@polarisproject.org](mailto:policy@polarisproject.org).*

South Dakota has a trafficking-specific law for criminal record relief, but it **only applies to survivors who were minors** at the time of their arrests. The average age at entry into trafficking was **18 years old** for potential victims who contacted the National Human Trafficking Hotline between January 1, 2018-March 31, 2022. Currently, adult human trafficking survivors in South Dakota are without assistance if they were arrested or convicted of a crime while they were being trafficked. Therefore, we strongly recommend that South Dakota enact legislation that would help human trafficking survivors with criminal records in the state to move forward with their lives without the additional barrier of a criminal-legal record.

### **Survivor-centered legislation does the following:**

- Returns the survivor to pre-record status. That means that for all practical purposes, once the process is complete, it is as if the offense never happened.
- Records destruction/relief should be in the same proceeding, so survivors are not still faced with having to nullify, reverse, or void records even after relief is granted.
- Includes the broadest range of offenses, as well as arrests, adjudications, and non-prosecuted cases.
- Establishes the connection to trafficking to be the least burdensome, "as a result" of trafficking.
- Includes "preponderance of the evidence" as the burden of proof which is more straightforward and helpful to trafficking survivors and those petitioning on their behalf.
- Has no time restrictions on when a survivor can apply and no hearing requirements. If hearings are required, the legislation allows for alternative methods, such as remote appearance by video or representation by an attorney, so survivors are not forced to travel to hearings in person. Hearings are expensive and dangerous depending on where a survivor's convictions are and if their trafficker is in the area.
- Has an automatic mechanism that places the survivor's petition for relief and any records of the proceedings under seal, so survivors are protected when applying for and receiving relief.
- Includes language that removes any financial burdens survivors may face when applying for relief - by not charging survivors to apply to access relief and by returning any fees and fines they paid as part of their original conviction.



Statute: [26-7A-115.1](#)