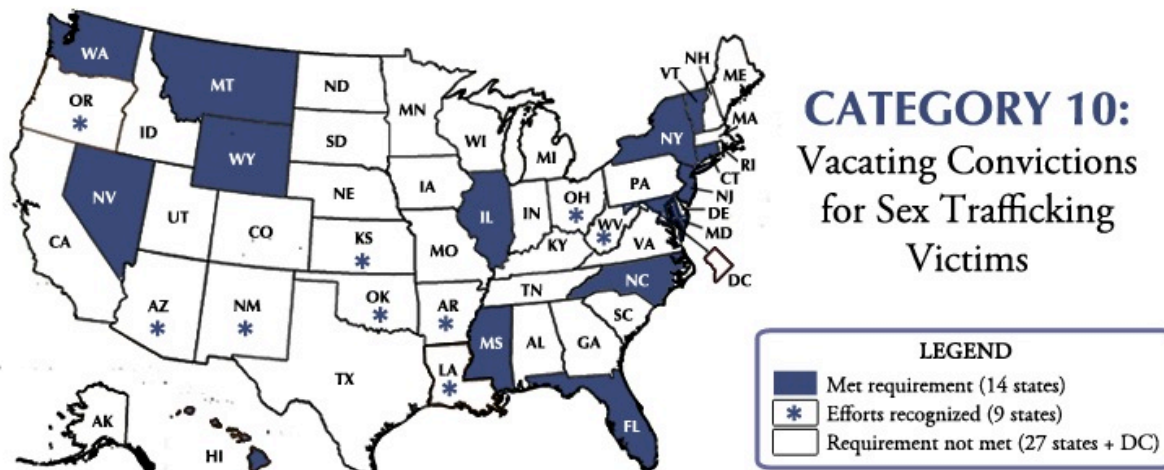




Vacating Convictions for Sex Trafficking Victims



I. INTRODUCTION

Sex trafficking victims often are compelled to engage in prostitution and other criminal activity, but are not always identified as victims when they are arrested, detained, prosecuted, convicted, and/or plead guilty to these crimes. The resulting criminal records inhibit the ability of these victims to move forward with their lives because they can no longer obtain certain jobs or loans, or go to school as a result of the stigma that is attached to having to report a conviction for prostitution. States can help victims to rebuild their lives by enacting statutes that permit courts to vacate convictions for prostitution-related offenses and other non-violent crimes that victims of human trafficking were forced to commit.

II. VACATING CONVICTIONS UNDER STATE LAW

Fourteen states have enacted statutes that permit their courts to vacate the convictions of human trafficking victims. These states are: Connecticut, Florida, Hawaii, Illinois, Maryland, Mississippi, Montana, Nevada, New Jersey, New York, North Carolina, Vermont, Washington, and Wyoming.

A. The New York Statute

New York was the first state to enact legislation to provide victims of human trafficking with the ability to seek the vacatur of convictions for related criminal activity. More specifically, New York's statute, enacted in 2010, permits a victim of sex trafficking to file a motion in state court seeking to vacate his or her conviction for prostitution and related offenses where the victim's participation in the underlying illicit activity resulted from his or her status as a victim of sex trafficking. Once a judgment is vacated, it is legally null and void as if it had been overruled by a higher court.

The Criminal Court of the City of New York, Queens County, decided a motion to vacate certain convictions in *New York v. G.M.*, 32 Misc. 3d 274 (Criminal Court of the City of New York, Queens County, Apr. 29, 2011). That case involved a native of the Dominican Republic who had been forced to prostitute herself, carry drugs, and commit other crimes for her abusive husband under threat of further harm or actual violence to herself, her children, or others close to her if she did not comply. In a single five-month span during years of abuse, the woman was arrested on six separate occasions—twice each for prostitution, criminal trespass, and criminal possession of a controlled substance. The woman pled guilty in each of these cases. Years later, after the victim had suffered much physical and emotional abuse her captor abandoned her and the victim was able to seek assistance. She received a T Visa (T-1 Nonimmigrant Classification Status) after proving to the federal government that she was a victim of human trafficking. However, she still was terminated from her job as a home health care attendant after the Department of Health (“DOH”) discovered her criminal convictions during a background check. The woman had to fight for nearly three years, with the help of public legal assistance, to successfully contest the DOH’s decision and be approved to work again.

The woman applied to vacate the convictions to clear her criminal record. The court found that she had provided “a very compelling narrative of the circumstances surrounding all of her arrests, demonstrating that they were the product of years of brutal physical, psychological and sexual violence by her husband, which resulted in having been trafficked by him.” The court therefore vacated the woman’s convictions on all six counts. In doing so, the court explained that although only the two convictions that were for prostitution offenses technically were covered by the New York vacatur statute, that statute “allows the court to ‘take such additional action as is appropriate in the circumstances.’” The court found that, based on the circumstances presented in this case, the woman was entitled to have all of her convictions vacated. This decision exemplifies why it is beneficial to afford judges broad discretion to vacate convictions not just for prostitution but also for other criminal acts committed as a result of human trafficking.

B. Statutes in Other States

The thirteen other states identified above have enacted statutes that mirror New York’s in important respects. That said, some of these statutes make it more difficult for victims to obtain relief.

1. Scope of Vacatur

Most of the state statutes regarding vacatur of convictions have not been interpreted by a court. As a result, it is unclear how many of these statutes will be read as broadly as the New York statute discussed above.

Some state statutes explicitly reference prostitution convictions, but not other related crimes, suggesting that they may apply to fewer types of convictions than the New York statute. For example, the Connecticut statute references convictions entered pursuant to Section 53a-82 of the state’s general statutes, which defines prostitution as a Class A misdemeanor. Similarly, Montana’s statute states that a court may vacate a person’s conviction of the offense of prostitution. North Carolina’s statute also specifically references convictions for prostitution, and does not reference other crimes or convictions.

Conversely, the Florida statute is broad, and discusses “any conviction for an offense committed while he or she was a victim of human trafficking.” Wyoming’s statute uses very general terms,

including “a conviction,” and “vacate the conviction,” suggesting that any conviction that was the result of being a victim of human trafficking may be vacated. And New Jersey’s statute addresses convictions of “prostitution and related offenses,” suggesting it may be read broadly.

2. Time Period For Requesting Vacatur

Some state statutes limit the time period within which a victim may seek to vacate a prior conviction. For example, the Maryland statute provides that a motion to vacate convictions related to human trafficking must be filed “within a reasonable period of time after the conviction[s].” Similarly, the statutes in Hawaii, Montana, and New Jersey require that the motion to vacate be filed within a reasonable period of time after the person ceases to be a victim of trafficking or involved in trafficking. Although these statutes provide that a motion to vacate may be filed at a later time where there are reasonable concerns for the victim’s safety, this exception may not be of much use to victims who may have been living in a safe environment for years without discovering the roadblocks created by their previous convictions.

In contrast, some state statutes allow victims to file motions to vacate a conviction “at any time” after the entry of a judgment. This is the case in Connecticut, Illinois, Mississippi, New York, North Carolina, and Wyoming.

3. Burden and Standard of Proof

State statutes also vary with respect to the burden of proof they impose and other obstacles to relief. Connecticut, Hawaii, and Maryland have enacted statutes that explicitly place the burden of proof on the trafficking victim seeking to vacate a prior conviction. Washington’s statute goes further and does not permit a trafficking victim to have his or her record for conviction for prostitution vacated if: (i) there are any criminal charges currently pending against him or her in any court; (ii) the victim has been convicted of another crime since the date of the conviction at issue; or (iii) the victim has ever had the record of another prostitution conviction vacated.

The evidentiary standard of proof in some states also may represent an insurmountable obstacle for some trafficking victims. The statutes enacted by Vermont and Maryland, for example, require that a victim’s motion to vacate a conviction describe supporting evidence with particularity, and provide documentary evidence showing that the victim is entitled to relief. Some victims will not have access to such information. Moreover, these statutes require victims to disclose sensitive information that may be painful or embarrassing for them.

However, other states have created a rebuttable presumption that should be useful to victims of human trafficking attempting to prove their cases. For example, Mississippi, Montana, New Jersey, and Wyoming provide that official documentation from a federal, state, or local government agency as to the person’s status as a victim at the time of the offense creates a presumption that his or her participation in the offense was a result of being a victim of human trafficking.

4. Affirmative Defenses

Similarly, several states explicitly permit a defendant to assert his or her status as a human trafficking victim as an affirmative defense to prostitution and other criminal charges. For example, a New Jersey statute provides that “it is an affirmative defense to prosecution for [prostitution and related offenses] that, during the time of the alleged commission of the offense, the defendant was a victim

of human trafficking” However, many of the states that provide this defense do not provide a mechanism for vacating a previous conviction.

C. Vacating Versus Expunging Convictions

Several of these state statutes—including those enacted in Hawaii, Illinois, Maryland, Nevada, New York, Washington, and Wyoming—focus on *vacating* as opposed to *expunging* convictions (which would not only render those convictions null and void, but also would seal the records of earlier law enforcement and judicial processes making them unavailable through state and federal repositories).

On the other hand, the statute enacted in Vermont permits judges to vacate convictions of human trafficking victims and expunge the records related to such convictions. That statute explains that, if the victim’s motion is granted:

[T]he court shall vacate the conviction, strike the adjudication of guilt, and expunge the record of the criminal proceedings. The court shall issue an order to expunge, or redact the moving party's name from, all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.

This statute is particularly beneficial to trafficking victims because it not only allows their personal records to be cleared of trafficking-related convictions, but also allows the removal or redaction of their names and personal information from other legal records. The New Jersey statute similarly addresses both vacatur and expunging convictions. It provides that a person may apply to have a conviction vacated, and also in the same application seek an order for the expungement of any reference to the person’s arrest, conviction, and any proceedings for prostitution in any records.

Statutes in California, Florida, and Ohio similarly permit courts to expunge records to protect victims of human trafficking. The California statute requires that courts grant petitions to seal records where a petitioner has shown that her violations were the results of human trafficking. Similarly, the Ohio statute allows a victim of human trafficking to petition the adjudicating court to expunge her record of adjudication. And the Florida statute permits courts to expunge convictions, and explains that a conviction expunged under the statute is deemed to have been vacated due to a substantial defect in the underlying criminal proceedings.

III. CONCLUSION

State statutes that allow victims to seek the vacatur of criminal convictions for trafficking-related activity recognize that these individuals are not responsible for the illicit activities in which they have been forced to engage. Polaris Project stands ready to assist policymakers in developing and implementing such statutes at the state level.

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