

# The True Freedom Act of 2020 and Updates on Filing for Criminal Record Relief in Maryland

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# Our Speakers Today



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# Agenda

## Part 1: Changes to MD Criminal Record Relief Laws

- Why is Criminal Record Relief Important for Survivors?
- Criminal Record Relief Laws in the U.S.
- Maryland's Previous Criminal Record Relief Statute
- The True Freedom Act of 2020

## Part 2: Vacating Convictions for Survivors in MD

- Statutory Definitions
- Legal Elements
- When to File for Relief
- What Makes Up a Motion to Vacate?
- Constructing a Client Vacatur Affidavit
- Special Circumstances to Consider

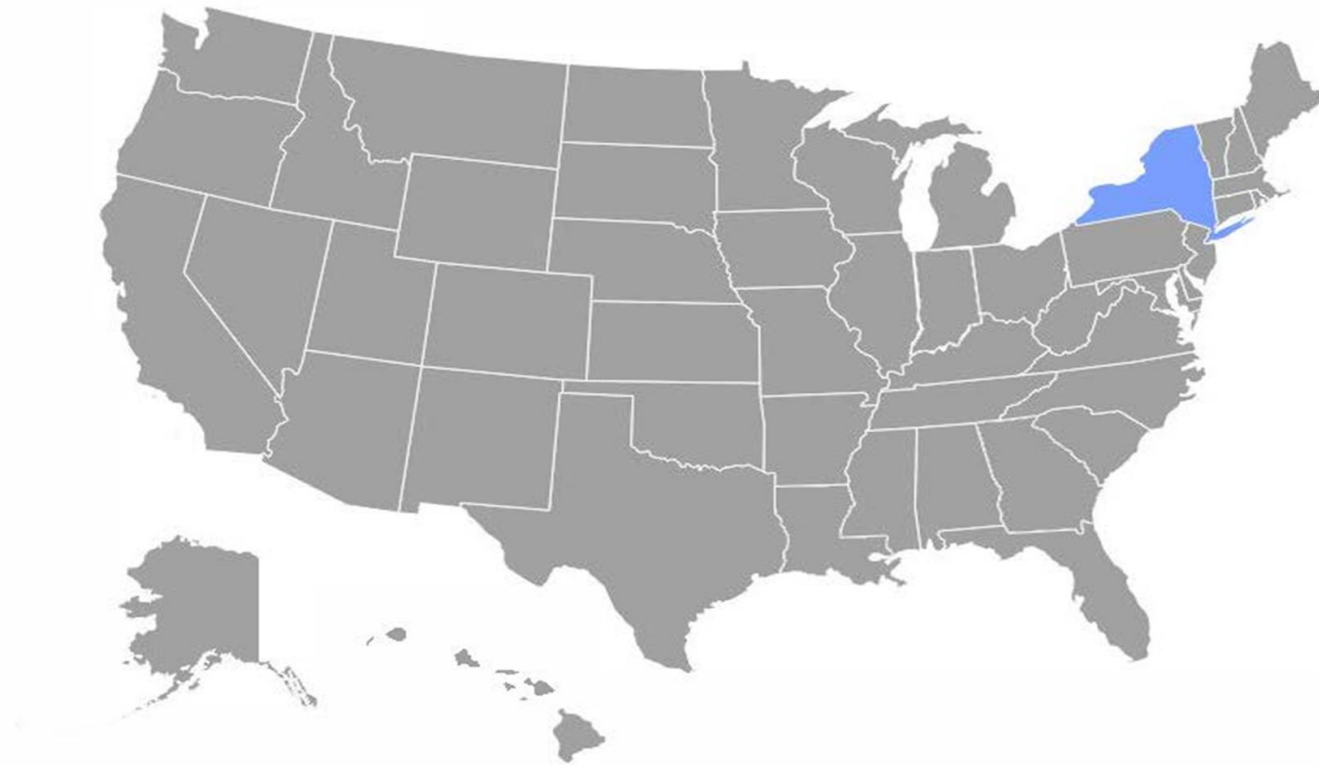
# Part 1:

# Changes to Maryland Criminal Record Relief Laws

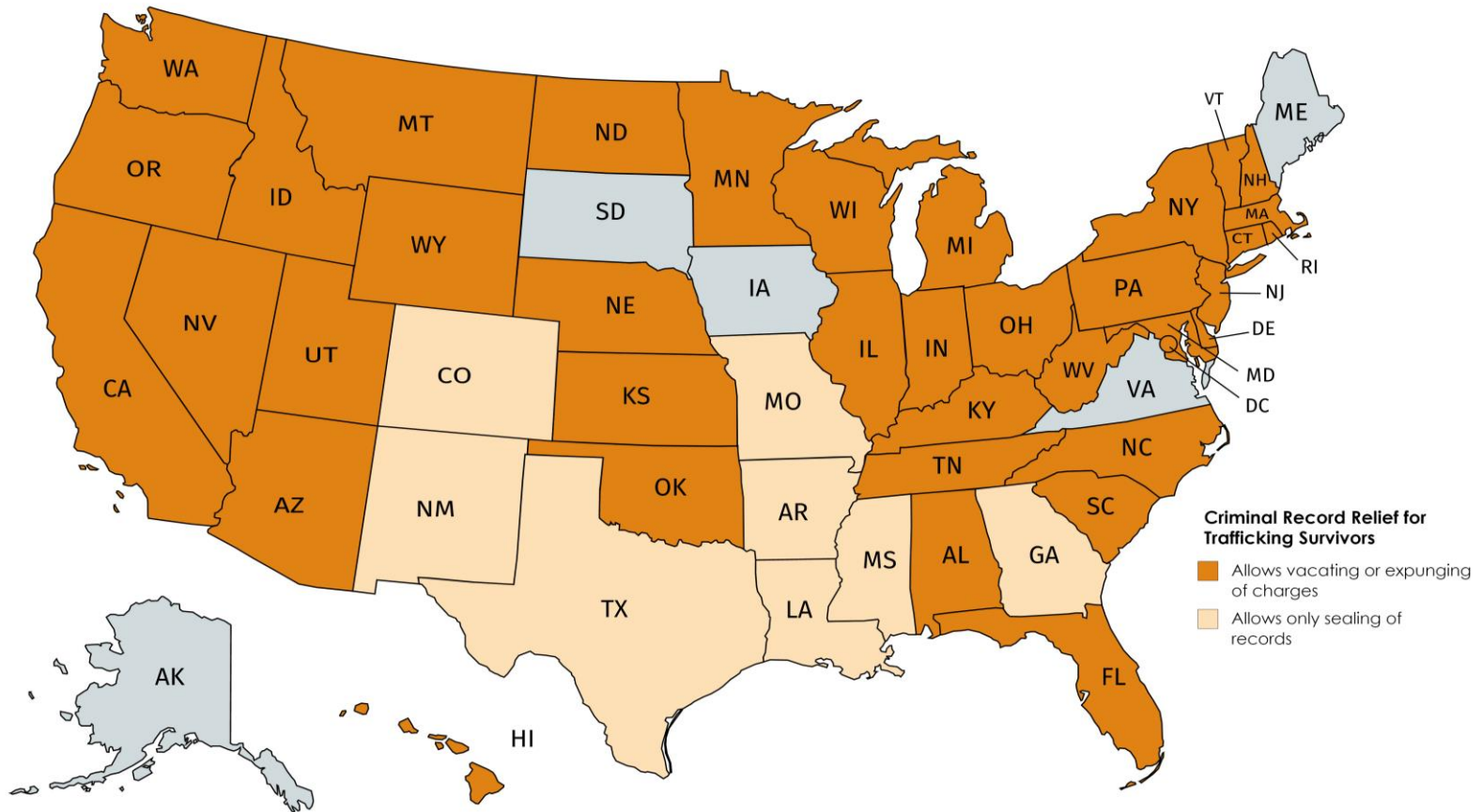
# Conviction/Arrest Histories Can Prevent Survivors From:

- Obtaining employment
- Receiving housing assistance
- Pursuing their education
- Obtaining public benefits
- Applying for credit and/or loans
- Family stability
- Accessing immigration relief or adjusting their status
- Healing from trauma

# Criminal Record Relief Laws for Survivors in 2010



# Criminal Record Relief Laws for Survivors in 2020



# Vacatur

Definition: To *undo* a court's judgment; returns movant to the position they were in prior to conviction

Is vacatur different from other forms of post-conviction relief available in MD?

- Yes - vacating a conviction means there was an error in the original judgment/conviction
- While all forms of criminal record relief help people have an easier time getting housing and jobs, vacatur contains the added emotional benefit of acknowledging that the law made a mistake!
- However...vacatur is not the only form of criminal record relief available to survivors!



# MD's (Previous) Criminal Procedure § 8-302

## Grounds for motion to vacate judgment:

(a) A person convicted of prostitution . . . may file a motion to vacate the judgment if, when the person committed the act or acts of prostitution, the person was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking under [state or] federal law.

# MD's (Previous) Criminal Procedure § 8-302

## Form and contents of motion:

(b) A motion filed under this section shall:

- (1) be in writing;
- (2) be signed and consented to by the State's Attorney;
- (3) be made within a reasonable period of time after the conviction; and
- (4) describe the evidence and provide copies of any documents showing that the defendant is entitled to relief under this section

# MD's (Previous) Criminal Procedure § 8-302

## Hearing on filed motion:

(c) [T]he court shall hold a hearing on a motion filed under this subsection if the motion satisfies the requirements of subsection (b) of this section.

## Ruling on motion:

(d) [T]he court may vacate the conviction, modify the sentence, or grant a new trial.

## Burden of proof:

(e) A defendant in a proceeding under this section has the burden of proof.

# Maryland's (New!) Criminal Procedure § 8-302

## Grounds for motion to vacate judgment:

(b) A person convicted of a qualifying offense may file a motion to vacate the judgment if the person's participation in the offense was a direct result of being a victim of human trafficking.

- Definition of “victim of human trafficking”
  - Meeting the requirements of MD's trafficking statute, OR § 1589 (forced labor), § 1590 (trafficking generally), § 1591 (sex trafficking of children or adults by force, fraud or coercion), or § 1594 (attempted trafficking) of the federal code

# “Qualifying Offenses” Under § 8-302(a)

- Possessing/administrating a controlled dangerous substance (§ 5-601)
- Possessing/purchasing a noncontrolled dangerous substance (§ 5-618)
- Possessing/distributing controlled paraphernalia (§ 5-620(a)(2))
- Fourth degree burglary (§ 6-205)
- Malicious destruction of property in the lesser degree (§ 6-301(c))
- Trespass (any offenses under Title 6, Subtitle 4)
- Misdemeanor theft (§ 7-104)
- Misdemeanor obtaining property or services by bad check (§ 8-103)
- Possession of a fraudulent government identification document (§ 8-303)
- Public assistance fraud (§ 8-503)
- False statement to a law enforcement officer or public official (§ 9-501, § 9-502, or § 9-503)
- Disturbing the public peace and disorderly conduct (§ 10-201)
- Indecent exposure (§ 11-107)
- Prostitution (§ 11-303)
- Driving with a suspended registration (TA § 13-401(h))
- Failure to display registration (TA § 13-409(b))
- Driving without a license (TA § 16-101)
- Failure to display license to police (TA § 16-112(c))
- Possession of a suspended license (TA § 16-301(j))
- Driving while privilege is canceled, suspended, refused, or revoked (TA § 16-303)
- Owner failure to maintain security on a vehicle (TA § 17-104(b))
- Driving while uninsured (TA § 17-107)
- Prostitution or loitering as prohibited under local law.

# Maryland's (New!) Criminal Procedure § 8-302

## Procedure:

(c) A motion filed under this section shall:

- (1) be in writing;
- (2) be made within a reasonable period of time after the conviction;
- (3) describe the evidence and provide copies of any documents showing that the defendant is entitled to relief under this section;
- (4) be served on the State's Attorney in the jurisdiction where the conviction [] occurred; and
- (5) if the qualifying offense occurred within 5 years before the filing of the motion, be mailed to any victim or victim's representative at the victim's or victim's representative's last known address.

# Maryland's (New!) Criminal Procedure § 8-302

## Ruling on motion:

(d)(1) The court may grant a motion filed under this section on a finding based on a preponderance of the evidence that the movant committed the qualifying offense as a direct result of being a victim of human trafficking.

(2) When making a finding under this subsection, the court shall consider:

- (i) the length of time between the offense and the trafficking of the movant;
- (ii) the dynamics of the relationship between the movant and the person committing trafficking against the movant; and
- (iii) any other relevant evidence.

# Maryland's (New!) Criminal Procedure § 8-302

## Grant without hearing:

(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 [served on the crime victim].



# Maryland's (New!) Criminal Procedure §8-302

## Dismiss without hearing:

(f) The court may dismiss a motion filed under this section without a hearing if the court finds that:

- (1) the motion fails to assert grounds on which relief may be granted;
- (2) the motion offers no additional evidence beyond that which has previously been considered by the court;  
or
- (3) the movant acted fraudulently or in bad faith in filing the motion.

# Maryland's (New!) Criminal Procedure §8-302

## Results of granting motion:

(g)(1) If a court grants a motion filed under this section, the court shall vacate the conviction.

(2) The court shall state the reasons for its ruling on the record.

## Burden of Proof:

(h) A movant in a proceeding under this section has the burden of proof.

## Not a Conviction:

(i) A conviction that has been vacated under this section may not be considered a conviction for any purpose.

# True Freedom Act: Important Considerations

- Qualifying offenses
- Labor trafficking survivors are now included!
- Elimination of the consent requirement (but we won't be doing business any differently!)
- Victim notification
- Direct result:
  - Nexus
  - Dynamics of the trafficking relationship
  - *Any other relevant evidence*
- Judge can grant a motion without a hearing
  - Consent + no objection + 60 days from service
  - Who is responsible for notice?
- Judge can dismiss a motion without a hearing
  - Ineligible/no new evidence/bad faith
- *Shall* vacate + reasons on the record + immediately expungeable without a waiver
- NOT a conviction for any purpose!

# (Continued) Limitations of Maryland's Vacatur Law

- Only applies to convictions for prostitution:
  - Arrests for prostitution that resulted in a defendant pleading to lower or alternative charges would not be eligible
- Does not allow the Court to take additional appropriate action beyond the plain language of the statute.
  - Other statutes include language allowing the court to “take any additional action that the court deems appropriate under the circumstances”
- Does not provide a presumption of eligibility if official documentation is provided.

# Limitations of Maryland's Vacatur Law

- No explicit confidentiality provisions contained within the statute
- Does not automatically expunge the arrest or the resulting non-conviction
- Does not include funding for assisting victims with vacating their convictions

# Additional 2020 Legislation to be Aware of

- **HB 81/SB 735:** Repeal of common law sodomy and perverted practice
  - Survivors can file for expungement of these convictions beginning in October
- **HB 1336/SB 589:** Ability to expunge 4<sup>th</sup> degree burglary conviction (yay!), automatic shielding of all non-convictions (boo...)
  - VETOED by the Governor

## Part 2:

# Vacating Convictions for Survivors in Maryland

# Vacatur: Legal Elements

## 1. Eligible Offense

- Is conviction eligible under vacatur law?

## 2. Status as Trafficking Victim

- Does the client's experiences meet the legal definition of human trafficking?

## 3. Nexus to Arrest/Conviction

- Did the conviction arise “as a direct result of” human trafficking?

## 4. Due Diligence/Timeliness

- Has the motion been filed within a reasonable time after the conviction?



# Vacatur: When to File for Relief

## Has the Survivor Been Fingerprinted?

Attorneys must have the survivor's complete criminal record before legal options are discussed!

-Survivor may have:

- Used different names, DOB's, etc.
- Been arrested in multiple states
- Inaccurate recollection of arrest record

The HTPP will get vacatur clients fingerprinted prior to making the referral.

# Vacatur: When to File for Relief

## Is the Survivor Ready to Go Through the Process?

- Often takes years (or longer) before a survivor is willing or able to work with an attorney to seek this form of relief
- Survivors have often experienced multiple forms of victimization
- Essential that the survivor is driving the process, as regaining control is crucial to the healing process
- Frank discussion of benefits and challenges is necessary
- The attorney and the survivor should proactively identify the forms of support available to the survivor, and make referrals as appropriate

# Vacatur: When to File for Relief

## Can You Obtain Consent from the State's Attorney's Office?

- While the SAO's consent is *no longer* required in MD, working collaboratively with prosecutors is considered best practices
- In jurisdictions where relationships have not yet been formed with the SAO, please contact the HTPP for assistance in beginning this process
- Once these connections have been made, approach the SAO with the intent of working collaboratively:
  - Explain what you have learned about the survivor that their office could not have known at the time of the survivor's prosecution
  - Offer in-person meetings and links to prosecutors in other jurisdictions who are supportive of the process

# What is Included in a Motion to Vacate?

- Affidavit of Survivor
- Attorney Affirmation
- Memorandum of Law
- Corroborating Evidence

# Vacatur: Constructing Client Narratives

## Creating a Timeline:

- Critical to presenting the events in a survivor's trafficking experience
- Helps organize the narrative, identify gaps, and identify potential sources of collaboration
- Can start with a timeline that highlights the convictions that will be the subject of the motion, or begin from the survivor's childhood and move on from there
- To prevent re-traumatizing the client, update a pre-existing timeline if one exists
- Ultimately, the client controls the content!

# Vacatur: Affidavit Outline

## Pre-Trafficking:

- Survivor's background
- Survivor's specific vulnerabilities (abuse/neglect, parental instability, homelessness, immigration status, addiction, etc.)

## Trafficking Experience:

- How did the survivor meet the trafficker?
- How did the trafficker use force, fraud, or coercion to obtain control of, and eventually exploit the survivor?
- What is the nexus of the victimization to the conviction?

## Post-Trafficking:

- Connection to services
- Accomplishments/aspirations
- Obstacles caused by convictions

# Vacatur: Gathering Corroborating Evidence

## First-Hand Accounts:

- The survivor's story in their own words (technically this is legally sufficient on its own!)

## Official Documentation:

- Form I-914, Supplement B (Declaration of Law Enforcement Officer for Victim of Trafficking in Persons)
- HHS Certification Letter
- T Visa/U Visa
- Court records demonstrating survivor's status as a trafficking victim
  - Court orders for damages to survivors
  - Orders for vacatur of convictions from other jurisdictions
  - Court records of trafficker
  - Subpoenas issued to client as a witness for the prosecution of their trafficker
  - VINE notifications

# Vacatur: Gathering Corroborating Evidence

## Other Corroborating Evidence:

- Child welfare records
- Medical records documenting injuries/events described in the affidavit
- Police reports documenting events described in the affidavit
- Photos of the survivor with the trafficker
- Photos of tattoos or scars relating to the survivor's trafficking experience
- Internet listings used to sell sex acts with the survivor
- Letters of support from victim service providers, community/religious leaders, etc.
- Mental health evaluations where trafficking history is mentioned
- Newspaper articles
- Diplomas/degrees/certifications
- Rejection letters

**\*\*\*Be Creative!\*\*\***



# Once Vacatur Motion is Complete

- Submit the completed motion to the SAO for review
- If consent has been obtained, file motion, new vacatur form, and certificate of service with the court
- If consent has *not* been obtained, prepare for a hearing!
- Send courtesy copy to SAO
- Request to file under seal (MD Rule 16-912)
  - If unable to file under seal, request that survivor's personal info be redacted in all public court documents
  - Consider filing as "Jane Doe"
  - If survivor is involved in the prosecution of their trafficker, consider filing a motion containing minimal details; please contact the HTPP for more info if this becomes an issue
- Proactively prepare expungement paperwork to address the vacated conviction and submit to the judge or the court immediately following the hearing (but remember, the non-conviction is immediately expungeable without a waiver!)



CIRCUIT COURT  DISTRICT COURT OF MARYLAND FOR

Located at  Court Address  City/County  Case No.

STATE OF MARYLAND vs.  Defendant

**MOTION TO VACATE JUDGMENT OF CONVICTION  
UNDER CRIMINAL PROCEDURE § 8-302**

I move to vacate the judgment of conviction in the above captioned case. On  Date

- I was convicted of the following qualifying offense as a result of being a victim of human trafficking:
- unnatural or perverted sexual practice under § 3-322 of the Criminal Law Article
  - possessing or administering a controlled dangerous substance under § 5-601 of the Criminal Law Article
  - possessing or purchasing a noncontrolled substance under § 5-618 of the Criminal Law Article
  - possessing or distributing controlled paraphernalia under § 5-620(a)(2) of the Criminal Law Article
  - fourth-degree burglary under § 6-205 of the Criminal Law Article
  - malicious destruction of property in the lesser degree under § 6-301(c) of the Criminal Law Article
  - a trespass offense under Title 6, Subtitle 4 of the Criminal Law Article
  - misdemeanor theft under § 7-104 of the Criminal Law Article
  - misdemeanor obtaining property or services by bad check under § 8-103 of the Criminal Law Article
  - possession or use of a fraudulent government identification document under § 8-303 of the Criminal Law Article
  - public assistance fraud under § 8-503 of the Criminal Law Article
  - false statement to a law enforcement officer or public official under § 9-501, § 9-502, or § 9-503 of the Criminal Law Article
  - disturbing the public peace and disorderly conduct under § 10-201 of the Criminal Law Article
  - indecent exposure under § 11-107 of the Criminal Law Article
  - prostitution under § 11-303 of the Criminal Law Article
  - driving with a suspended registration under § 13-401(h) of the Transportation Article
  - failure to display registration under § 13-409(b) of the Transportation Article
  - driving without a license under § 16-101 of the Transportation Article
  - failure to display license to police under § 16-112(c) of the Transportation Article
  - possession of a suspended license under § 16-301(j) of the Transportation Article
  - driving while privilege is canceled, suspended, refused, or revoked under § 16-303 of the Transportation Article
  - owner failure to maintain security on a vehicle under § 17-104(b) of the Transportation Article
  - driving while uninsured under § 17-107 of the Transportation Article
  - prostitution or loitering as prohibited under local law

Describe the evidence showing that you are entitled to this relief as a direct result of being a victim of human trafficking and include copies of any documents that support your claim:

Number of pages included.

**CERTIFICATE OF SERVICE/MAILING:** I certify that on the date indicated below I served a copy of the above Motion on the State's Attorney for  City/County by  mail  other method (describe) \_\_\_\_\_, and if the offense occurred within 5 years before the filing of this Motion,

that I mailed a copy of the Motion to the victim or the victim's representative at their last known address.

Date

Telephone Number

Fax

Email

Signature  CPF ID No.

Printed Name

Address

City, State, Zip

**Notice to victim(s) of the qualifying offense:** You have the right to offer objections to the relief requested in this motion. Submit your information in writing to the court listed above. The court may act as soon as 60 days after the motion is served on the State's Attorney and notice to the victim.

**Reset**

# Special Circumstances to Consider

## Convictions Occurring *After* the Survivor Exited the Trafficking Situation:

- Many survivors continue to get arrested for crimes that are directly related to their trafficking, despite the fact that they have already fled their trafficker
- Every effort should be made to include these convictions in the client's vacatur motion by explaining the connection to the survivor's trafficking situation, the nature of the trafficking relationship, and *any other relevant evidence* as the court now explicitly must consider these factors

# Special Circumstances to Consider

- **Examples of Clients Who Continue to Face Arrest:**
  - Clients who are homeless as a result of their trafficking experience, either because they fled or are living on the margins to escape detection
  - Clients who did not have the chance to seek treatment for their substance use
  - Clients who continue to engage in sex work because it is the only way they know to survive, or because it reinforces the messages they received that trading sex is all they are good for
  - Clients who cannot or believe they cannot work in the legal economy

# Special Circumstances to Consider

## Convictions as a Minor:

- While this is not something we are seeing in MD, it is common in other states for victims of trafficking to have been charged as and convicted as minors
- Victims frequently give fake DOB's, either in an attempt to escape detection by the child welfare system, or because they were instructed to do so by their trafficker
- Some victims are convicted as adults even when they do disclose their status as a minor
- Because any minor engaging in commercial sex acts is considered a victims of sex trafficking *per se*, these motions are usually fairly straightforward
- Contact the HTPP for more information if this becomes an issue!

# Special Circumstances to Consider

## Vacatur and Immigration:

Do not begin work on a vacatur petition on behalf of an undocumented survivor unless you are working in consultation with an immigration attorney

- !!!!!!!!!!!!!!!
- Immigration Attorneys are Needed:
  - To think through immigration consequences relating to the narrative your client presents
  - To advise as to how to craft the vacatur order so that it doesn't harm the client's immigration options
  - To review the final motion through an immigration lens

# Special Circumstances to Consider

## Multi-Jurisdictional Practice:

- Many survivors have trafficking-related arrests or convictions in multiple counties or states
- Separate motions will have to be filed in each jurisdiction where they have been convicted
- Strategy for placement of cases should occur at the outset- consider whether the order of filing will positively or negatively impact eligibility in another jurisdiction!
- Attorney must manage client expectations
- Reach out to the HTPP or the Survivor Re-Entry Network for assistance with making these referrals

# Special Circumstances to Consider

## Convictions Occurring *After* the Survivor Has Already had Prostitution Convictions Vacated:

- Contact the HTPP!
- We are in the process of developing an updated order and attorney affidavit, which will include the additional convictions and will reference the previous vacatur order and moving papers
- Should still make an effort to collaborate with the SAO!



# Support for Survivors

**Survivors may have the following service needs:**

- Behavioral health
- Addiction services
- Crisis assistance (shelter, public benefits, etc.)
- Additional legal assistance (immigration, orders of protection, family law matters, etc.)
- Medical care
- Employment assistance

To make referrals for supportive services,  
contact the HTPP!

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- **Human Trafficking Prevention**
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- **Miscellaneous (business and soft skills)**

# Thank you!

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