Criminal Record Relief for Human Trafficking Survivors in Maryland Part I: Vacatur of Convictions

"I always felt like a criminal. I never felt like a victim at all. Victims don't do time in jail, they work on the healing process. I was a criminal because I spent time in jail."

Tonya, Human Trafficking Survivor, *2012 Trafficking in Persons Report*

Many human trafficking survivors have arrests and convictions for criminal activity arising from being trafficked, or from the instability that so commonly precedes or follows this experience. A criminal record can keep survivors trapped in the very industries they are trying to escape, make them vulnerable to re-victimization, as well as bar them from accessing housing, employment, education, and access to credit. Criminal record relief laws in Maryland allow for vacatur, expungement, shielding, and pardons of various types of records. These laws are crucial tools for human trafficking survivors on their road to recovery and healing. This fact sheet is the first in a series of two focusing on the range of criminal record relief options available to survivors in Maryland.

Vacatur of Convictions - The Gold Standard for Criminal Record Relief

Vacatur is a powerful remedy available to individuals who have experiences that meet the legal definition of sex and/or labor trafficking in Maryland. If granted, vacatur essentially *undoes* the court's judgment and returns the petitioner to the legal position they were in prior to getting convicted. While all forms of criminal record relief can help people have an easier time getting housing and jobs, vacatur contains the added emotional benefit of the court acknowledging that the conviction was made in error – a particularly impactful message for survivors seeking to rebuild trust in a system that previously failed them.

Maryland's trafficking-specific criminal record relief law is codified under MD Criminal Procedure § 8-302. The law states that if a survivor of human trafficking, as defined by Maryland or Federal law,[1] is convicted of a qualifying offense,[2] they may file a motion to vacate the judgment of that conviction if their participation in the offense was a direct result of their victimization.

For additional information on vacatur of convictions, including webinars, factsheets, and links to the substantive law, please visit https://htprevention.org/resources/.

For information on expungement, including webinars, factsheets, discussions of recent changes to expungement and cannabis laws, and links to substantive law, please visit our partner MVLS's website, at https://mvlslaw.org/volunteer/criminal-record-resources/.

In addition to the substantive elements, there are several procedural elements that must be considered, including timeliness,[3] and victim notification.[4] Additionally, the motion must be in writing, filed in the jurisdiction where the conviction occurred, and include any evidence showing that the survivor is entitled to relief under the law.

After the petition is filed, the court can:

- **Grant the motion without a hearing and vacate the conviction(s)** as long as there is consent from the State's Attorney's office, no objections from any victim(s) in the case, and 60 days have passed since service of the motion;

- **Dismiss the motion without a hearing** if they find that the petitioner is not entitled to relief under the law, or they determine the filing to be in bad faith; or

- **Grant the motion during an in-person hearing**, vacate the conviction(s), and state the reasons for its ruling on the record.

After vacatur is granted, the judge will either dismiss the case or enter a "nolle prosequi" at the request of the State, indicating that they no longer wish to prosecute the case. Additionally, although the law explicitly states that a conviction vacated under the law "may not be considered a conviction for any purpose," the law does not require automatic expungement of the resulting non-conviction, which means that the survivor must immediately petition the court for expungement of the charge; otherwise, the non-conviction remains on the survivor's record.

---

[1] MD Crim. Law § 3-1102 (sex trafficking), § 3-1202 (labor trafficking); 18 U.S.C.A § 1589 (forced labor), § 1590 (trafficking generally), § 1591 (sex trafficking of children or adults by force, fraud or coercion), or § 1594 (attempted trafficking).

[2] Maryland's law contains approximately a dozen qualifying offenses, including prostitution, drug possession, and trespass.

[3] The motion must be filed within a "reasonable time" after the conviction. Given that most survivors only learn about this relief shortly before filing, this element is typically not of concern.

[4] If the qualifying offense occurred within 5 years before the filing of the motion, notification must be mailed to any victim or the victim's representative, to allow an opportunity for them to weigh in on the petition.

[5] It is crucial to note that the law does not *require* that any specific documentation be filed; for many survivors, their stories *are* the evidence, and it is important that criminal record relief laws are inclusive of survivors who may not have interacted with any systems or service providers and therefore have no traditional "evidence" to provide.

This tip sheet is part of a webinar series designed by the Human Trafficking Prevention Project (HTPP), which works in partnership with the Maryland Volunteer Lawyers Service (MVLS).

Recommendations on this tip sheet are adapted from the HTPP webinar:
"A (Re)Introduction to Maryland's Criminal Record Relief Laws: How to Help Survivors (or Anyone!) Assess and Address Their Criminal Records.

For more information about the Human Trafficking Prevention Project, please contact:
HTPP Director, Jessica Emerson, LMSW, Esq., at jemerson@htprevention.org, 410-404-0286
MVLS HTPP Partnership Manager, Heather Heiman, Esq., at hheiman@mvlslaw.org, or 443-451-4075