



## Post-Conviction Relief for Trafficking Survivors, National Survivor Network Position

### **Overview of Need**

- The National Survivor Network (NSN) promotes comprehensive post-conviction criminal record relief at the federal level for two primary reasons:
  - 1) Create a gold standard legislation model that states can follow.
  - 2) Create protocol under which trafficking survivors can apply for post-conviction relief.
- The Trafficking Survivors Relief Act of 2016 was introduced by Senator Kirsten Gillibrand (D-NY) in 2016<sup>1</sup> and was reintroduced by Representative Ann Wagner (R-MO) in 2017.<sup>2</sup>
- In 2019 Polaris published a State Report Card to evaluate and grade all trafficking specific criminal record relief laws.<sup>3</sup> No state earned an "A."
  - 1) Nebraska had the highest score of 81 and Maryland the lowest of 26.
  - 2) 10 states had no criminal record relief laws that applied to adult trafficking survivors, 6 had no laws at all and 4 had laws that only applied to minors.
- In 2016, NSN surveyed members to quantify their experiences with the criminal justice system and what criminal charges they received related to their trafficking situation.<sup>4</sup>
  - 1) NSN membership was approximately 200 at the time of the survey and 130 survivors participated in the survey.
  - 2) Respondents were survivors of both sex and labor trafficking.
  - 3) Of those who responded, 91% reported being arrested, and 40% of those respondents were arrested more than nine times
  - 4) 60% reported being arrested for crimes other than prostitution or drug related offenses.
- The survey also identified that survivors of trafficking with felony convictions lose custody of their children and face significant barriers to housing, social services, education, and employment.
  - 1) 73% reported losing or not receiving employment because of their criminal records and 58% suffered barriers to accessing safe and affordable housing due to their past criminal convictions.
  - 2) Research specific to criminal records and college admissions inform us that 60-80% of private institutions and 55% of public institutions require undergraduate applicants to answer criminal history questions as part of the admissions process; 40% of community colleges also report collecting this information.<sup>5</sup>
- National Human Trafficking Hotline data for January 1, 2015 - June 30, 2018, as cited in the Polaris report, indicates 3,712 potential victims interacted with law enforcement or the criminal legal system. This is the second most frequently reported access point.

### **To Address Misconstructions**

- Vacatur does not help trafficking victims circumvent legal culpability.
- Vacatur does not alter the right of minor victims to receive justice.
- Vacatur is only available after a conviction has been imposed.



### **Realities of Surviving Forced Criminality**

- Per the federal definition of trafficking in persons, severe forms of trafficking involve force, fraud, coercion and/or minors involved in commercial sex.<sup>6</sup>
- Traffickers use their victims as a human buffer between themselves and law enforcement scrutiny, in that victims are directed and forced to engage in the most risky and visible criminal activities.
- Trafficking victims do not bear the locus of responsibility when their trafficker targets minors.
- Trafficking victims find themselves in violent situations regularly, both at the hands of their trafficker(s) and within trafficking situations of forced labor and commercial sex; the trauma response to survive or escape can result in impulsive and aggressive actions.
- To exclude convictions that involve violence and/or crimes against minors from relief is to blatantly ignore the context of human trafficking as defined under TVPA, subsequent reauthorizations and the reality of trafficking victims' experience.

### **Minimal Standards for Acceptable Federal Post-Conviction Legislation**

- A human trafficking survivor who has been convicted of a criminal offense stemming from their trafficking may petition the court to vacate the relevant arrest(s) and conviction(s).
- This motion to vacate will be decided by a sitting federal judge, who will review the original charge(s) as well as relevant information about the petitioner's trafficking experience.
- Motions shall not be contingent on prosecution of the trafficker(s); and the judge shall not deny petitions with prejudice.
- If the motion to vacate is granted, the court must vacate the conviction, enter a judgment of acquittal, and expunge the record, including arrests without conviction. Vacatur should restore the survivor to the same position as if the arrest and prosecution had not occurred.
- The survivor's identity will be protected; no law enforcement officers or representatives of the court may make public any document or image that identifies the survivor.
- Vacatur should be completed within a reasonable time to cure deficiencies in motion.

### **Policy Team Recommendations**

- Conduct more comprehensive national research to broadly assess the post-conviction needs of human trafficking survivors, and to create a larger database of information to support advocacy and legislative reform efforts.
- Educate legislators on the modulation of forced criminality.

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<sup>1</sup> <https://www.congress.gov/bill/114th-congress/senate-bill/3441>

<sup>2</sup> <https://www.congress.gov/bill/115th-congress/senate-bill/104/all-info>

<sup>3</sup> State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking, March 2019, available at <https://polarisproject.org/sites/default/files/Grading%20Criminal%20Record%20Relief%20Laws%20for%20Survivors%20of%20Human%20Trafficking.pdf>

<sup>4</sup> National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking, August 2016, available at <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>

<sup>5</sup> Scott-Clayton, J. (2017). Thinking "beyond the box": The Use of Criminal Records in College Admissions. Brookings. Available at <https://www.brookings.edu/research/thinking-beyond-the-box-the-use-of-criminal-records-in-college-admissions/>

<sup>6</sup> <https://www.state.gov/j/tip/laws/61124.htm>