



Stealing Youth: Responses to Trafficking in Connecticut

February 18, 2020

6:00 p.m. to 8:00 p.m.

CT Bar Association

New Britain, CT

CT Bar Institute, Inc.

CT: 2.0 CLE Credits (General)

NY: 2.0 CLE Credits (AOP)

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

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Stealing Youth: Responses to Trafficking in Connecticut

6:00-6:10: Intro from Moderator

- Moderator (Ali Toumekian) will introduce the panelist. She will give them the chance to speak to how they've become connected to their work in trafficking and why.

6:10-6:45: What is human trafficking and what is Connecticut doing to combat it?

- Moderator will ask Prof. Sheila Hayre to speak to the legal definitions of trafficking.
- DCF social worker Christopher Biordirini will also speak to what trafficking can look like and how he encounters it in his line of work
- Prof. Sheila Hayre will additionally speak to what the Connecticut Legislator is doing to combat trafficking and help survivors. Prof. Hayre will also speak to current trafficking cases and how trafficking has recently come through the courts, both criminally and civilly.

6:45-7:15: Department of Children and Families (“DFC”) policies and procedures on human trafficking, and how DCF implements its policies and procedures in the field.

- Moderator will be in conversation with DCF Social Worker Chris Biordirini about the updated DCF policies and procedures in regards to trafficking survivors. Social worker Biordirini will speak to how/why the policies were updated and how DCF is currently handling cases where there are trafficking concerns.

7:15-7:30: When and how will you represent a Survivor?

- Prof. Hayre will speak to the various situations in which an attorney may be representing a survivor of trafficking and how to proceed once you know your client is a survivor.

7:30-7:45: Best Practices in Representing Survivors.

- Prof. Hayre will be questioned by Moderator about trauma informed representation and why it sometimes does or does not work.

7:45-8:00: Q & A

Faculty Biographies

[Christopher Bidorini, Connecticut Department of Children and Families, New Britain](#)

Christopher Bidorini is a social worker in the New Britain area office of the Department of Children and Families. Chris has been working for DCF for over 10 years and has been involved with their Human Anti-Trafficking Response Team (aka HART) as a trainer for over 8 years. In 2018, Chris received his Master's Degree from UCONN's School of Social Worker and was also the HART Leadership Award recipient. In recent years, Chris has presented at dozens of schools, universities, and community organizations, as well as spoken at the US Attorney's Office and various state conferences. Last month (January 2020), Chris joined the Board of Directors for The Underground, one of CT's local anti-trafficking organizations.

[Sheila N. Hayre, Quinnipiac University School of Law, North Haven](#)

Sheila is a Visiting Associate Professor and the Waring and Carmen Partridge Faculty Fellow. She joined the faculty at Quinnipiac University School of Law in the fall of 2016 and teaches immigration law and Introduction to Representing Clients. In the Civil Justice Clinic, she supervises students as they represent low-income clients in need of immigration assistance, including asylum seekers, unaccompanied minors, and undocumented victims of domestic violence and other serious crimes such as trafficking. Sheila is also the faculty advisor for the International Human Rights Society and for the Human Trafficking Prevention Project, a program that she helped to create in which law students train employees in the hospitality industry and other "frontline" industries on how to recognize and respond to signs of human trafficking. As an educator, Sheila embraces experiential methodologies that bring her students into contact with real-world problems and, often, real clients.

Sheila received an A.B. in psychology and an A.M. in anthropology from Stanford University. After graduating from Yale Law School in 2002, she clerked for the U.S. Court of Appeals for the Second Circuit and then the U.S. District Court for the District of Connecticut. For the next ten years, she worked as a staff attorney at New Haven Legal Assistance Association, Inc., where she practiced both family law and immigration law, working primarily with victims of domestic violence and abuse. From 2013 until 2016, Sheila taught in the Faculty of Law at the National University of Singapore.

Sheila currently chairs the Committee on Human Trafficking for the Connecticut Bar Association; she also serves on the Board of Directors of Connecticut Legal Services, the largest legal aid organization in the state; on the Advisory Board for Quinnipiac's Albert Schweitzer Institute; and on the Grievance Panel for the Judicial District of New Britain and the Judicial District of Hartford (Avon, Bloomfield, Canton, Farmington, and West Hartford). Sheila was recently chosen as a James W. Cooper Fellow of the Connecticut Bar Foundation.

Stealing Youth

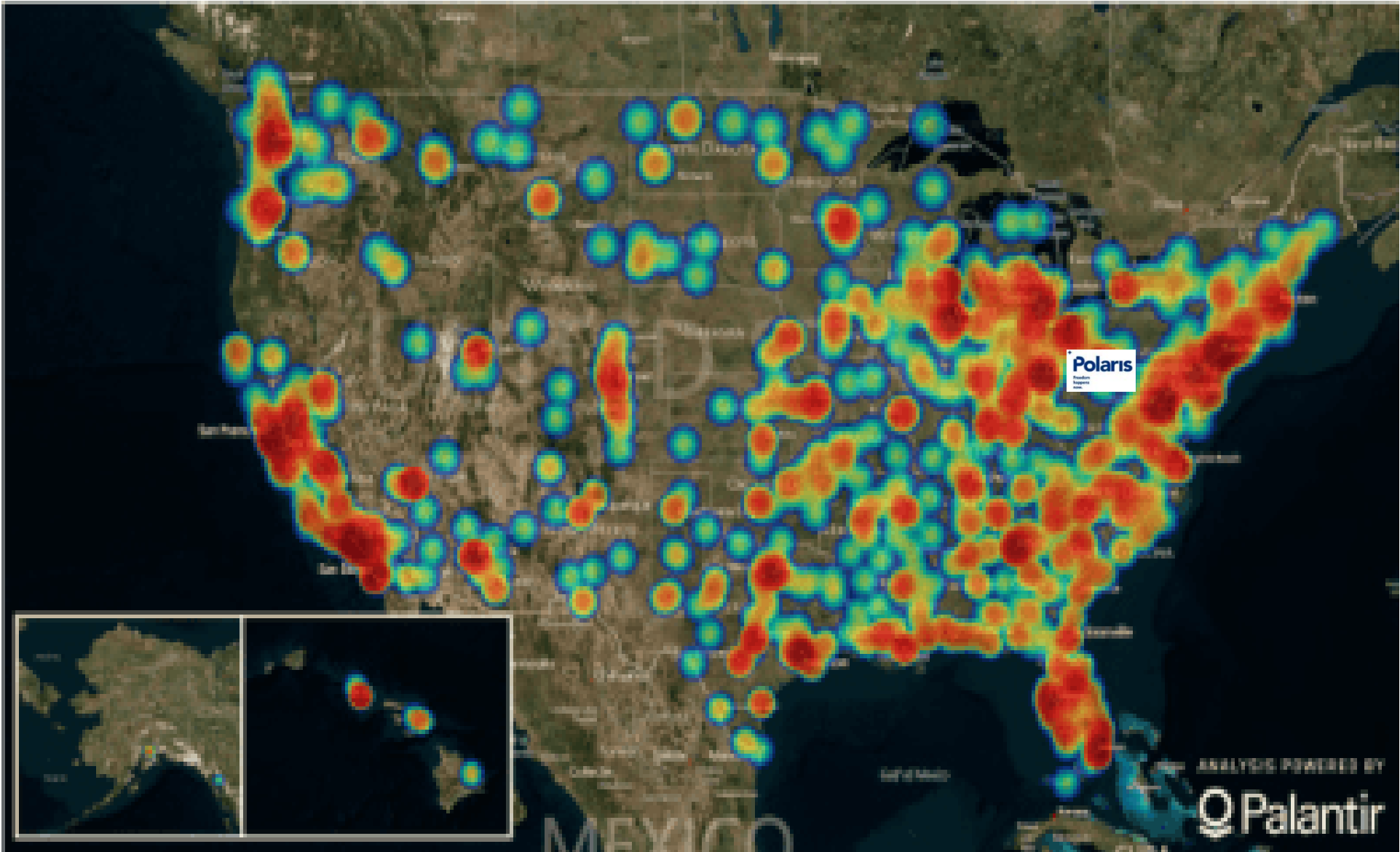
Sheila N. Hayre

Visiting Associate Professor of Law
Quinnipiac University School of Law

Introduction: Who Am I? (Not?)

- ▶ I practiced immigration & family law for 10 years as a legal aid lawyer working with **dv & trafficking victims**.
- ▶ I lived in **Singapore** for 3 years and taught at the National University of Singapore Faculty of Law doing “pro bono” work on behalf of **migrant workers** there (e.g. labor exploitation and labor trafficking).
- ▶ I now teach **immigration** law & an immigration clinic at QU where we handle **trafficking** cases & conduct trainings.
- ▶ I chair the CBA Committee on Human Trafficking which is working to improve state laws on HT.
My *new* focus? **criminal record relief for victims**
- ▶ I am **not** an expert on child sex trafficking (a/k/a DMST or “domestic minor sex trafficking” when it occurs in the U.S.).





3 Moments of Possible Victimization

- ▶ at the hands of the trafficker (Parts I & II)
- ▶ in interacting with the criminal justice system/
law enforcement (Part II)
- ▶ in recovering/reentering society as a survivor
(Part III: employment, housing, education, etc.)



Three Agenda Items

PART I:

What is Human Trafficking?

- a) definitions & myths
- b) labor vs. sex trafficking
- c) the “3 Ps” & the 3 moments of victimization

PART II:

Why Don't Victims Come Forward?

(i.e. Why Are Trafficking Victims So Hard to Identify?)

PART III:

Victims & the Justice System: Criminal Record Relief

- a) the problem
- b) legislative solutions (vacatur, affirmative defense; etc.)

PART I
WHAT
IS
HUMAN
TRAFFICKING?



“Trafficking in Persons” (or “TIP”)

compelled (through force, fraud or coercion)
Service (sex or labor) for commercial gain

- ▶ labor trafficking: forced labor
- ▶ sex trafficking: forcing someone to have sex (with third-party?) for gain/profit

With minor victims of sex trafficking, consent is irrelevant—
i.e. there is no “force, fraud, or coercion” requirement

Trafficking Victims Protection Act (TVPA 2000 plus TVPRA iterations)

TVPA defines "severe forms of trafficking in persons" as:

- ▶ (a) ***sex trafficking*** in which a commercial sex act is induced by force, fraud, or coercion, *or in which the person induced to perform such act has not attained 18 years of age*; or
- ▶ (b) [***labor trafficking***, which is] the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

8 C.F.R. §214.11(a)

CGS §53a-192a: Trafficking in persons: Class A felony.

Section 1. Section 53a-192a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective Oct. 1, 2020*):

- (a) A person is guilty of trafficking in persons when such person knowingly
- (1) compels or induces another person to engage in conduct involving sexual contact with one or more third persons, or provide labor or services that such person has a legal right to refrain from providing, by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section 53a-192,
 - (2) *compels or induces another person who is under eighteen years of age to engage in conduct involving sexual contact with one or more third persons that constitutes sexual contact for which such third person may be charged with a criminal offense*, or
 - (3) otherwise commits an act that constitutes sex trafficking.

For the purposes of this subsection, "sexual contact" means any contact with the intimate parts of another person, and "sex trafficking" means the recruitment, harboring, transportation or provision of a person for the purpose of engaging in sexual conduct with another person [for a fee] for anything of value.

- (b) Trafficking in persons is a class A felony.

Defining Force, Fraud, or Coercion

All labor trafficking and sex trafficking of adults requires force, fraud, or coercion.

- ▶ **Force** refers to physical assaults, sexual assaults, beatings, and isolation and/or confinement;
- ▶ **Fraud** refers to false or deceptive offers of employment, education, romance, marriage or a better life, and/or debt bondage;
- ▶ **Coercion** predominantly consists of threat of serious harm to the victim, the victim's family or other loved ones; psychological abuse or manipulation designed to create dependency (also known as "trauma bonding"); use, or exploitation of dependency on, controlled substances; and/or threatened abuse of legal or immigration systems.

Conn. Gen. Stat. § 53a-192

Coercion: Class A misdemeanor or class D felony.

(a) A person is guilty of coercion when he **compels or induces** another person to engage **in conduct** which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a **fear** that, if the demand is not complied with, the actor or another will: (1) commit any criminal offense; or (2) **accuse any person of a criminal offense**; or (3) **expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute**; or (4) **take or withhold action as an official, or cause an official to take or withhold action.**

Child Sex Trafficking

T or F:

In a criminal case involving sex trafficking of a minor victim, the **prosecution does not need to prove that force, fraud, or coercion** was used to get the victim to comply; in other words, even if a 17-year-old victim insists that she wanted to have sex with a third party in order to please her boyfriend and make money for their future together, the elements of sex trafficking have been met.

True (analogy: statutory rape)

Human Trafficking and Movement

T or F:

In order to qualify as either sex or labor trafficking, the perpetrator must have transported the victim across an international border.

False:

trafficker is not the same as smuggling,
nor does it require smuggling

(i.e. no cross-border movement is required;

U.S. citizens can be victims without leaving the country)

“3 P” Paradigm of TVPA

The authors of the the TVPA created a three-pronged framework known as the "three P's" approach:

- ▶ *prosecution* of traffickers;
- ▶ *protection* of trafficking victims (identifying victims, referrals for services, & support to rebuild their lives); &
- ▶ *prevention* of trafficking.

Prosecution v. Protection: A False Dichotomy?!?

(without victims there are no prosecutions; when victims receive protections, they are likely to willingly cooperate with prosecutors, so prosecutions are more successful)
(see debate on affirmative defenses for minor victims)

Rights of Victims Under The TVPA

- ▶ Victims should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked.
- ▶ Victims are not not to be detained in facilities inappropriate to their status as a crime victim.
- ▶ Victims are to receive necessary medical care and other assistance.
- ▶ Victims are to be provided protection if their safety is at risk or if there is danger that they will sustain additional harm through recapture by their trafficker. Protection may including:
 - Taking measures to protect victims and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and
 - Ensuring that the names and identifying information of victims and their family members are not disclosed to the public.



Child Trafficking Legislation Connecticut



- ▶ Minors under the age of 18 cannot not be arrested for prostitution.
- ▶ Buyers paying to sexually abuse a child can be charged with **Commercial Sexual Abuse of a Minor**. This crime is a Class B felony when the child being purchased is age 15 to 17 and Class A felony when the child is under the age of 15.
- ▶ T or F: Victims of child trafficking can be classified as “uncared for” in order for DCF to provide services.
- ▶ T or F: Victims of child trafficking are guaranteed an affirmative defense to prosecution.

THIS IS DISTURBING—see next slide!!!

Proposed Affirmative Defense Language *...for minors (!!!)*

It shall be an affirmative defense in any prosecution or delinquency proceeding under this section that the defendant was under eighteen years of age and his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes trafficking in persons in violation of subsection (a) of this section.

WHY NOT?



PART II
Why Don't
Victims
Come Forward?

(i.e. why are trafficking
victims so hard to identify?)

Why Don't Victims Come Forward?

(i.e. Why Are Trafficking Victims So Hard to Identify?)

Trafficking victims usually don't come forward voluntarily. (Apart from those caught up in police raids, trafficking victims do not approach police or even lawyers.) Victims approach people and organizations they know and trust: an acquaintance or friend; a priest/rabbi/imam; maybe a community group.

- ▶ fear of trafficker
 - history of actual physical & emotional abuse
 - threats of retaliation (including threats re: repatriation, identity documents kept, threats to report to police, threats of retaliation, including those against family back home)
- ▶ dependence on trafficker: monetarily, emotional, social (including housing, employment), sexual victimization, language, culture, etc. (so-called "Stockholm syndrome")
- ▶ **fear & mistrust of the authorities** (law enforcement and criminal justice system)
 - In their home countries
 - Learned fear: trafficker has taught them to be afraid of law enforcement ("the enemy")
 - fear of having to face trafficker in court;
 - shame/retraumatization, often without any benefit to victim (no restitution)

In light of this reticence to come forward, victims desperately need **predictability and transparency** as to what they can expect once they come forward and report.

At the least, they must be able to avoid re-victimization or even prosecuted by law enforcement; at most they will need **incentives** to come forward.



Preying on Vulnerabilities....

- ▶ Traffickers prey on vulnerabilities and exploit these vulnerabilities.
- ▶ Two major vulnerabilities for Valeria:
 - 1) undocumented status (U.S. citizen kids?!?)
 - 2) crimes and other violations (immigration?)
- In my experience, most traffickers ensure their victims fear law enforcement by convincing/forcing them to break the law....

PART III

Victims
&

the Criminal Justice System:
Criminal Record Relief



3 Moments of Possible Victimization

- ▶ at the hands of the trafficker (Parts I & II: **prevention**)
- ▶ in interacting with the criminal justice system/law enforcement (Part II: **prosecution**)
- ▶ protection: in recovering and reentering society as a survivor (Part III: **protection**)

Prosecution v. Protection: A False Dichotomy?!?

(without victims there are no prosecutions; when victims receive protections, they are likely to willingly cooperate with prosecutors, so prosecutions are more successful) (see debate on affirmative defenses for minor victims)

Barriers to Recovery/Reentry

“Third Victimization”

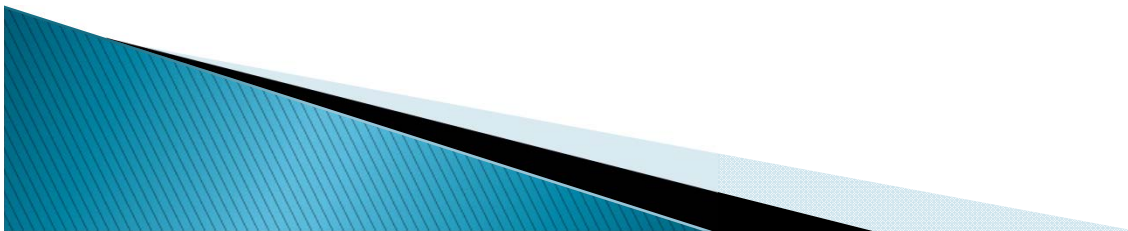
Criminal records (from arrest records to convictions) can prevent survivors from reestablishing their lives post-trafficking....

My recent focus is on vacatur of convictions occurring as a result of the individual having been a victim of trafficking....

2019 State Report Cards: “Criminal Record” Relief for HT Survivors

- ▶ 91% of respondents reported having been arrested or convicted of a crime.
- ▶ 42% arrested as minors.
 - (52.3% first trafficked as children).
- ▶ Over 40% reported being arrested 9 times or more.
- ▶ 60% arrested for crimes other than prostitution or drugs

What Criminal Violations Do Trafficking Survivors Face?



Trafficking Victims & Forced Criminality (If not prostitution, then what?)

- ▶ loitering
- ▶ vagrancy
- ▶ trespass
- ▶ shoplifting
- ▶ larceny/theft (property, auto, stolen checks, etc.)
- ▶ disorderly conduct
- ▶ forgery
- ▶ resisting arrest
- ▶ crimes against nature
- ▶ drug offenses (manufacture, possession, distribution, drug paraphernalia)
- ▶ insufficient fund or credit offenses
- ▶ immigration offenses
- ▶ criminal possession of a weapon
- ▶ assault
- ▶ murder?
- ▶ trafficking? (“bottoms”)

My current client? tampering with evidence

COLLATERAL CONSEQUENCES

Criminal Records (from arrests to convictions) can prevent survivors from...

- obtaining employment (ban the box legislation in 30 states) & licensing
- receiving housing assistance
- pursuing education
- obtaining public benefits (esp. if ongoing criminal issues; drug convictions)
- applying for a loan (federal student loans)
- maintaining family stability (e.g. obtaining/keeping custody; child support; etc.)
- accessing immigration relief or adjusting status
- voting (some progress 😊)
- healing from trauma (relieve shame & victimization—tough choices...)



CGS §53a-192a: Trafficking in persons: Class A felony.

Sec. 3. Subsection section § 53a-192a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2020*):

(b) It shall be an affirmative defense in any prosecution or delinquency proceeding under this section that the defendant was under eighteen years of age and his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes trafficking in persons in violation of subsection (a) of this section.

Vacatur in CT for Trafficking Victims

Connecticut's vacatur statute
allows trafficking victims
to vacate
only convictions
for
prostitution.

See C.G.S. § 52a-82.

?!?!

What is vacatur?



Less Relief

More Relief

Sealing of Records

- Similar to having criminal records expunged, but the record is less “hidden.”
- Records are not available to the public including private investigators, creditors, and employers.
- The main difference is simply that a sealed record still ‘exists’ in the legal and physical sense, while expungement typically results in the deletion of any record of an arrest relating to an eligible charge.

Expungement of Records

- Legal record of an arrest or a criminal conviction is erased in the eyes of the law.
- In most cases, during background search or public records inspection no record of the arrest or criminal conviction will appear.
- However, in some cases, the record is not completely erased as it is accessible as part of a person’s criminal record. This means certain government agencies can still see it and in some legal proceedings such as immigration/deportation proceedings, it can be used as proof of prior conviction.

Vacatur of Records

- The previous judgment of a conviction is nullified.
- Akin to exoneration.
- Vacatur alters the merits of the underlying record unlike sealing or expungement which does not.

VACATUR NOW: C.G.S. § 54-95(c)

Application to vacate prostitution conviction on basis of being a victim of trafficking in persons. Prosecutor's response. Court order.

At any time after a judgment of conviction is entered pursuant to section 53a-82, the defendant may apply to the Superior Court to vacate the judgment of conviction on the basis that, at the time of the offense, the defendant was a victim of conduct of another person that constitutes

- (1) trafficking in persons under section 53a-192a, or
- (2) a criminal violation of 18 USC Chapter 77, as amended from time to time.

Prior to rendering a decision on a defendant's application to vacate the judgment of conviction, the court shall afford the prosecutor a reasonable opportunity to investigate the defendant's claim and an opportunity to be heard to contest the defendant's application. If the defendant proves that he or she was a victim of trafficking in persons under said section or a victim of a criminal violation of said chapter at the time of the offense, the court shall vacate the judgment of conviction and dismiss any charges related to the offense. The vacating of a judgment of conviction and dismissal of charges pursuant to this section shall not constitute grounds for an award of compensation for wrongful arrest, prosecution, conviction or incarceration pursuant to section 54-102uu or any other provision of the general statutes.

VACATUR AMENDED.... § 54-95(c)

Application to vacate **prostitution** conviction on basis of being a victim of trafficking in persons. Prosecutor's response. Victim notification. Court order.

(a) At any time after a judgment of conviction is entered pursuant to section 53a-82 or any other section under the Connecticut General Statutes, the defendant may apply to the Superior Court to vacate any judgment of conviction on the basis that his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes (1) trafficking in persons under section 53a-192a, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time.

(b) Prior to rendering a decision on a defendant's application to vacate any judgment of conviction, the court shall afford the prosecutor a reasonable opportunity to investigate the defendant's claim and an opportunity to be heard to contest the defendant's application. Any person who files an application pursuant to this statute shall notify the Office of Victim Services of the filing of such application. Prior to granting or denying such application, the court shall consider any information or statement provided by the victim.

(c) If the defendant proves that he or she was a victim of trafficking in persons under said section or a victim of a criminal violation of said chapter at the time of the offense, (1) the court shall vacate any judgment of conviction entered pursuant to section 53a-82 and dismiss any charges related to the offense, and (2) the court may in its discretion vacate any other judgment of conviction under the Connecticut General Statutes and dismiss any charges related to the vacated offense.

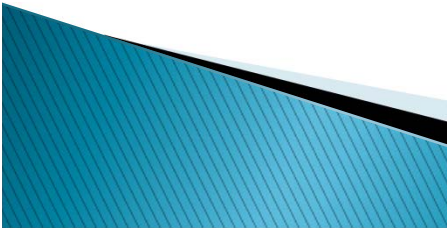
(d) The vacating of a judgment of conviction and dismissal of charges pursuant to this section shall not constitute grounds for an award of compensation for wrongful arrest, prosecution, conviction or incarceration pursuant to section 54-102uu or any other provision of the general statutes.

Overall Ranking Order

Ranking	State	Total Score	Grade
1	Nebraska	81	B
2	Wyoming	78	C
3	Florida	72	C
4	Idaho	69	D
5	D.C.	68	D
6	California	67	D
6	New Mexico	67	D
8	Alabama	63	D
8	Massachusetts	63	D
8	New York	63	D
11	Ohio	62	D
12	Indiana	61	D
13	Montana	60	D
14	Arkansas	59	F
14	New Jersey	59	F
16	Vermont	58	F
17	Mississippi	56	F
17	Pennsylvania	56	F
19	Utah	52	F
20	Colorado	50	F
21	Illinois	49	F
21	Nevada	49	F
21	North Carolina	49	F
21	West Virginia	49	F
25	Kentucky	47	F
26	Washington	46	F

Ranking	State	Total Score	Grade
27	Connecticut	45	F
27	Rhode Island	45	F
27	South Carolina	45	F
30	Delaware	44	F
30	New Hampshire	44	F
30	Oklahoma	44	F
30	Wisconsin	44	F
34	Michigan	41	F
35	North Dakota	37	F
36	Oregon	36	F
37	Hawaii	35	F
38	Kansas	34	F
39	Arizona	33	F
39	Texas	33	F
41	Maryland	26	F
*	Georgia	0	0
*	Louisiana	0	0
*	Missouri	0	0
*	Tennessee	0	0
*	Virginia	0	0
*	Alaska	0	0
*	South Dakota	0	0
*	Maine	0	0
*	Minnesota	0	0
*	Iowa	0	0

*not ranked because there is no criminal record relief statute for adult survivors in these states



State	Total Score	Grade
Alaska	81	B
Aluminum	78	C
Arizona	72	C
Ohio	69	D
Illinois	68	D
California	67	D
New Mexico	67	D
Alabama	63	D
Massachusetts	63	D
New York	63	D
Idaho	62	D

Ranking	State	Total Score	Grade
27	Connecticut	45	F
27	Rhode Island	45	F
27	South Carolina	45	F
30	Delaware	44	F
30	New Hampshire	44	F
30	Oklahoma	44	F
30	Wisconsin	44	F
34	Michigan	41	F
35	North Dakota	37	F
36	Oregon	36	F
37	Hawaii	35	F

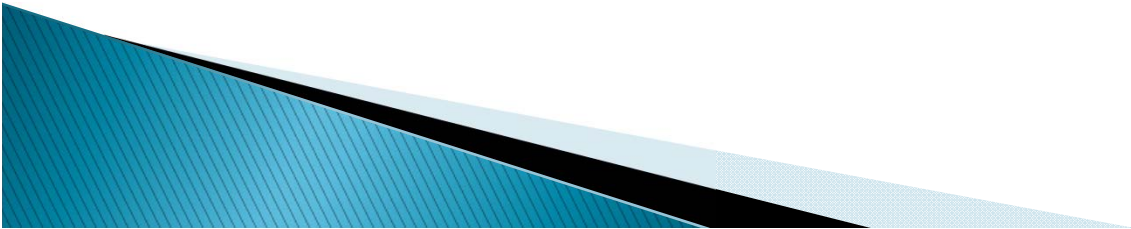
Websites / Links / Resources

- ▶ ABA Survivor Reentry Project: ambar.org/srp
 - https://www.americanbar.org/content/dam/aba/multimedia/trafficking_task_force/resources/TFHT_Toolkit/HumanTrafficking_Bar.authcheckdam.pdf
- ▶ CAST: <https://www.castla.org/>
- ▶ Polaris
- ▶ Shared Hope: <https://sharedhope.org>
- ▶ ECPAT: End Child Prostitution and Trafficking

We need
your help
as CT voters!

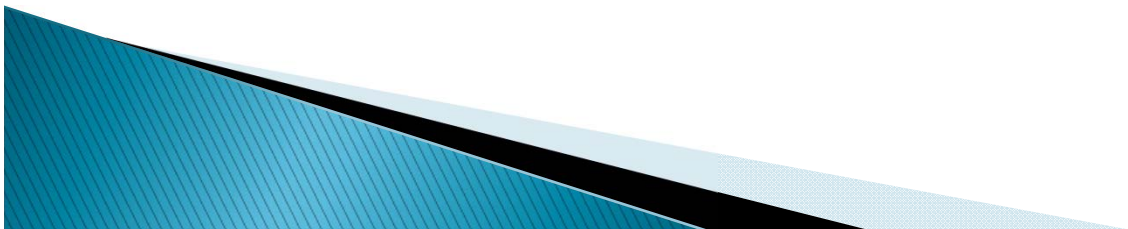
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Common Myths about Trafficking

- ▶ Requires crossing borders
- ▶ Can't be paid for work
- ▶ Involves only US citizen children or only immigrants
- ▶ Same as smuggling, prostitution, or labor exploitation



T Visas (TVPA 2000)

INA §101(a)(15)(T)

Provides benefits and legal immigration status for **undocumented victims of severe forms of human trafficking** who are helpful to federal, state, or local law enforcement in the investigation or prosecution of the crime.

Rationale? (Why?)

Dual Rationales for the T Visa?

- Humanitarian: because it's the right thing to do for trafficking victims who have suffered
- Law enforcement: because it's the key to successful criminal investigations and prosecutions (no false dichotomy; instead prosecution requires protection)
- **Prosecution vs Victim Protection?**
 - prosecutions fails without victims (especially in complex trafficking cases)
 - but victim protection ideally should be independent of prosecution

T Visa Eligibility

To be eligible for a T-visa, a non-citizen trafficking victim must show that he or she:

- ▶ Is or has been a victim of a “severe form of trafficking” (as defined by the TVPA);
- ▶ Is physically present in the U.S. (or American Samoa, or the Mariana Islands or at a port of entry on account of trafficking);
- ▶ **NOT MANDATORY: law enforcement endorsement** (i.e. has complied with any “reasonable request” for assistance in investigating or prosecuting trafficking (if 18 or older),
 - A victim may be exempted from this requirement of cooperation if she:
 - is a child under the age of 18;
 - has suffered substantial physical or mental trauma.
- ▶ Would suffer extreme hardship if removed from the U.S. (involving unusual and severe harm)

Agreed Upon Language from Last Session with Minor Edits

Section 1. Subsection (b) of section 46a-170 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2020):

(b) The council shall consist of the following members: (1) The Chief State's Attorney, or a designee; (2) the Chief Public Defender, or a designee; (3) the Commissioner of Emergency Services and Public Protection, or the commissioner's designee; (4) the Labor Commissioner, or the commissioner's designee; (5) the Commissioner of Social Services, or the commissioner's designee; (6) the Commissioner of Public Health, or the commissioner's designee; (7) the Commissioner of Mental Health and Addiction Services, or the commissioner's designee; (8) the Commissioner of Children and Families, or the commissioner's designee; (9) the Commissioner of Consumer Protection, or the commissioner's designee; (10) the director of the Basic Training Division of the Police Officer Standards and Training Council, or the director's designee; (11) the Child Advocate, or the Child Advocate's designee; (12) the Victim Advocate, or the Victim Advocate's designee; (13) the chairperson of the Commission on Women, Children and Seniors or the chairperson's designee; (14) one representative of the Office of Victim Services of the Judicial Branch appointed by the Chief Court Administrator; (15) a municipal police chief appointed by the Connecticut Police Chiefs Association, or a designee; (16) the Commissioner of Education, or the commissioner's designee; (17) an adult victim of trafficking, appointed by the Governor; ~~and (18) ten~~ (18) the Director of the Connecticut Children's Alliance; (19) a judge of the Superior Court appointed by the Chief Court Administrator; (20) a state's attorney appointed by the Chief State's Attorney; (21) a public defender appointed by the Chief Public Defender; and (22) twelve public members appointed as follows: The Governor shall appoint two members, one of whom shall represent victims of commercial exploitation of children and one of whom shall represent sex trafficking victims who are children, the president pro tempore of the Senate shall appoint two members, one of whom shall represent the Connecticut Alliance to End Sexual Violence and one of whom shall represent an organization that provides civil legal services to low-income individuals, the speaker of the House of Representatives shall appoint two members, one of whom shall represent the Connecticut Coalition Against Domestic Violence and one of whom shall represent the Connecticut Lodging Association, the majority leader of the Senate shall appoint ~~one member who~~ two members, one of whom shall represent an organization that deals with behavioral health needs of women and children and one of whom shall represent the Connecticut Coalition to End Homelessness, the majority leader of the House of Representatives shall appoint ~~one member who~~ two members, one of whom shall represent an organization that advocates on social justice and human rights issues and one of whom shall represent the Connecticut Criminal Defense Lawyers Association, the minority leader of the Senate shall appoint one member who shall represent the Connecticut Immigrant and Refugee Coalition, and the minority leader of the House of Representatives shall appoint one member who shall represent the Motor Transport Association of Connecticut, Inc.

Sec. 2. Subsection (a) of section 54-47a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2020):

(a) Whenever in the judgment of the Chief State's Attorney, a state's attorney or the deputy chief state's attorney, the testimony of any witness or the production of books, papers or other

evidence of any witness (1) in any criminal proceeding involving narcotics, arson, bribery, gambling, election law violations, felonious crimes of violence, any violation which is an offense under the provisions of title 22a, corruption in the executive, legislative or judicial branch of state government or in the government of any political subdivision of the state, fraud by a vendor of goods or services in the medical assistance program under Title XIX of the Social Security Act amendments of 1965, as amended, any violation of chapter 949c, or any other class A, B or C felony or unclassified felony punishable by a term of imprisonment in excess of five years for which the Chief State's Attorney or state's attorney demonstrates that he has no other means of obtaining sufficient information as to whether a crime has been committed or the identity of the person or persons who may have committed a crime, before a court or grand jury of this state, [or] (2) in any investigation conducted by an investigatory grand jury as provided in sections 54-47b to 54-47g, inclusive, [or \(3\) in any delinquency proceeding](#), is necessary to the public interest, the Chief State's Attorney, the state's attorney, or the deputy chief state's attorney, may, with notice to the witness, after the witness has claimed his privilege against self-incrimination, make application to the court for an order directing the witness to testify or produce evidence subject to the provisions of this section.

Sec. 3. Subsection section § 53a-192a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2020*):

(a) A person is guilty of trafficking in persons when such person (1) compels or induces another person to engage in conduct involving sexual contact with one or more third persons, or provide labor or services that such person has a legal right to refrain from providing, by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section 53a-192, (2) compels or induces another person who is under eighteen years of age to engage in conduct involving sexual contact with one or more third persons that constitutes sexual contact for which such third person may be charged with a criminal offense, or (3) otherwise commits an act that constitutes sex trafficking. For the purposes of this subsection, “sexual contact” means any contact with the intimate parts of another person, and “sex trafficking” means the recruitment, harboring, transportation or provision of a person for the purpose of engaging in sexual conduct with another person for a fee.

[\(b\) It shall be an affirmative defense in any prosecution or delinquency proceeding under this section that the defendant was under eighteen years of age and his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes trafficking in persons in violation of subsection \(a\) of this section.](#)

~~[(b)]~~ (c) Trafficking in persons is a class A felony.

NEW Language with Agreement

Section 1. Section 53a-192a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2020):

(a) A person is guilty of trafficking in persons when such person knowingly (1) compels or induces another person to engage in conduct involving sexual contact with one or more third persons, or provide labor or services that such person has a legal right to refrain from providing, by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section 53a-192, (2) compels or induces another person who is under eighteen years of age to engage in conduct involving sexual contact with one or more third persons that constitutes sexual contact for which such third person may be charged with a criminal offense, or (3) otherwise commits an act that constitutes sex trafficking. For the purposes of this subsection, "sexual contact" means any contact with the intimate parts of another person, and "sex trafficking" means the recruitment, harboring, transportation or provision of a person for the purpose of engaging in sexual conduct with another person **[for a fee]** for anything of value.

(b) Trafficking in persons is a class A felony.

Sec. 4. Subsection (b) and (c) of section 17a-106h of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2020):

(b) The training program shall include a video presentation, developed and approved by said commissioners, that offers awareness of human trafficking issues and guidance to law enforcement personnel, judges of the Superior Court, prosecutors, public defenders and other attorneys who represent criminal defendants, hospital emergency room staff and urgent care facility staff who have contact with patients and persons employed by a local or regional board of education or a constituent unit, as defined in section 10a-1, who have contact with students.

(c) Any person described in subsection (b) of this section shall complete the initial educational training program not later than July 1, 2018, and shall complete the refresher training program **[annually]** every three years thereafter, provided any person being employed as such a person shall complete such initial educational training program not later than six months after beginning such employment or July 1, 2018, whichever is later.

VILLANOVA

Public Law and Legal Theory Working Paper Series



Decriminalizing Victims of Sex Trafficking

By

Michelle Madden Dempsey

2014

**Villanova University School of Law
Public Law and Legal Theory
Working Paper No. 2014-1015**

This paper can be downloaded without charge from the
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From: Civil Justice Clinic at Quinnipiac University School of Law
Re: Expanding Connecticut's Vacatur Statute for Victims of Human Trafficking
Date: January 2020

Connecticut General Statutes § 54-95c (2016) currently allows trafficking victims to request that their convictions be vacated, but only if they have a conviction for prostitution. Our proposed amendment would give courts the discretion to vacate any conviction—regardless of whether the applicant has a prostitution conviction—if the trafficking victim can demonstrate that the commission of the crime resulted from their¹ having been trafficked. This proposal has the support of the Office of the Chief Public Defender and the Connecticut Bar Association's Committee on Human Trafficking, as well as that of a number of victim rights and anti-trafficking organizations across the state.²

I. RATIONALE: THE NEED FOR VACATUR RELIEF FOR VICTIMS OF TRAFFICKING

Victims of trafficking² are first and foremost victims. Traffickers use force, fraud, and coercion to target and isolate their victims and then to manipulate and control them. Some traffickers give their victims drugs to get them addicted; others beat and rape their victims as punishment; while others threaten to harm or kill their victims' family and friends. Many traffickers do all of these things. This process often leads to trauma bonding, a destructive connection between trafficker and victim created by ongoing cycles of abuse designed to create dependency.

Traffickers also control their victims by compelling them to engage in illegal activity and then threatening to expose them to criminal prosecution. This helps traffickers avoid criminal liability themselves while ensuring the continued vulnerability of their victims. When victims try to resist or leave their traffickers, they know their past criminal activities will be used against them by the trafficker. In a National Survivor Network survey of 130 trafficking survivors, 60% reported being arrested for crimes other than prostitution or drug related offenses.³ Such crimes include forgery, larceny, burglary, loitering,

¹ Our use of the gender-neutral pronoun is intentional. Trafficking victims can be anyone—male, female, LGBTQ, etc. ² Human trafficking—which includes both labor and sex trafficking—is defined somewhat differently under federal and state law. For our purposes, the U.N. Palermo Protocol definition of trafficking is instructive: human trafficking involves the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

² These organizations include the: Center for Children's Advocacy, Center for Family Justice in Bridgeport, Connecticut Coalition Against Domestic Violence (CCADV), Connecticut Alliance to End Sexual Violence (formerly CONNSACS), Love 146, The Underground, and Victim Rights Center of Connecticut.

³ https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSN_TSRAfinal.pdf.

vagrancy, disorderly conduct, assault, and resisting arrest. As trafficking survivors struggle to rebuild their lives, their criminal records severely limit access to employment, housing, education, and other building blocks of civic life.

Connecticut should not criminalize victims of human trafficking. Unfortunately, nearly all states—including Connecticut—currently lack programs and protocols for identifying human trafficking victims, who remain hidden as their cases wind through the criminal system. This proposed amendment addresses the final stage of the criminal process by allowing trafficking victims to request vacatur for any conviction that occurred as a result of their having been trafficked.

As our state considers other criminal justice reforms aimed at addressing the unique plight of human trafficking victims, such as an affirmative defense provision for minor victims of trafficking,⁴ legislators should at a minimum amend Connecticut’s vacatur statute to extend eligibility to more victims. Giving judges the discretion to consider vacatur requests from any trafficking victim for any criminal conviction arising out of trafficking, would offer survivors an opportunity to become productive members of our communities.

II. CURRENT LAW & LEGISLATIVE HISTORY

Connecticut’s vacatur statute has yet to be invoked by a single trafficking victim, even though it has already been amended once to expand its reach. Enacted in 2013, the original vacatur statute was a narrow provision that allowed a person convicted of prostitution to apply to the Superior Court to vacate the conviction based on a showing that “at the time of the offense” the defendant was a victim of trafficking. If such a showing was made, the Superior Court was required to grant vacatur (“the court shall vacate the judgment of conviction”) and dismiss any charges related to the offense.

In 2016, this vacatur provision was broadened into its current formulation. Instead of tying eligibility to the person’s status as a trafficking victim “at the time of the offense,” the current statute makes trafficking victims eligible to apply for vacatur so long as they can show that their “participation in the offense was a result of having been a victim of [trafficking].”

Notably, legislators may have inadvertently added to the list of crimes requiring mandatory vacatur by substituting the words “the judgment of conviction” with the words “any judgment of conviction” (emphases added) at three critical points throughout the statute—see yellow highlighted language in

⁴ Currently, there is no affirmative defense in Connecticut for trafficking victims caught in the criminal justice system.

statute below. Coupled with the word “shall,” this substitution arguably has the effect of *requiring* any court that grants vacatur to a trafficking victim with a prostitution conviction to also vacate “any judgment of conviction,” so long as the trafficking victim can demonstrate that their participation in the crime at issue was as a result of having been a trafficking victim. In other words, if a trafficking victim with both a prostitution and a murder conviction can show that both of these crimes resulted from their having been trafficked, the court would be required to grant vacatur with respect to both offenses. Our proposed amendment would remedy this oversight by making vacatur for all non-prostitution convictions discretionary.

III. LAWS & LEGISLATION IN OTHER STATES

The purpose of this legislation is to strengthen protection for victims of trafficking who are convicted of a range of offenses as a result of that trafficking. New York's 2010 landmark law, which provided for the vacatur of convictions for prostitution-related offenses that resulted from trafficking, has been the model for statutes in over thirty additional states.⁵ This year, New York is considering an amendment that would expand eligibility for vacatur beyond prostitution for trafficking victims.⁶ By broadening the statute to include convictions other than prostitution, our proposed amendment would bring Connecticut in line with at least seven other states—including California, Florida, Delaware, Idaho, and Montana⁷—that allow victims to seek vacatur of convictions beyond prostitution.

IV. OUR PROPOSAL FOR CONNECTICUT

As noted, notwithstanding previous attempts to expand its reach, not a single trafficking victim has yet to make use of Connecticut’s vacatur provision. By providing for the discretionary vacatur of any conviction resulting from trafficking, our proposed amendment would reach more trafficking survivors, giving them renewed hope for rebuilding their lives. We therefore propose amending Connecticut law to give courts the discretion to vacate any conviction, regardless of whether the victim has been convicted of prostitution, if the trafficking victim can demonstrate that the commission of the crime resulted from their having been trafficked.

⁵ N.Y. Crim. Proc. Law § 440.10,

⁶ NY State Senate Bill S4981A (Apr. 3, 2019), <https://www.nysenate.gov/legislation/bills/2019/s4981>.

⁷ Cal. Penal Code § 236.14; Fla. Stat. Ann. § 943.0583; Del. Code tit. 11, § 787(j); Idaho Code Section 67-3014(3); Mont. Code Ann. § 46-18-608.

Our proposal preserves the existing statutory framework while allowing trafficking victims with convictions for crimes other than prostitution to apply for vacatur. The Superior Court would continue to be required to grant the vacatur of a prostitution conviction where the applicant can show it was a result of their having been a victim of trafficking. However, with respect to applications to vacate convictions for crimes other than prostitution, our amendment would give courts full discretion as to whether to grant vacatur, so long as the applicant can show that the crime was a result of their having been a trafficking victim. Finally, our proposed amendment adds a new victim notification provision requiring all vacatur applicants to inform the Office of Victim Services of their applications and requiring the court to consider any information or statement provided by the victim.

Connecticut General Statutes § 54-95c. Application to vacate [prostitution] conviction on basis of being a victim of trafficking in persons. Prosecutor’s response. Victim notification. Court order.

(a) At any time after a judgment of conviction is entered pursuant to section 53a-82 or any other section under the Connecticut General Statutes, the defendant may apply to the Superior Court to vacate **any** judgment of conviction on the basis that his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes (1) trafficking in persons under section 53a-192a, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time.

(b) Prior to rendering a decision on a defendant’s application to vacate **any** judgment of conviction, the court shall afford the prosecutor a reasonable opportunity to investigate the defendant’s claim and an opportunity to be heard to contest the defendant’s application. Any person who files an application pursuant to this statute shall notify the Office of Victim Services of the filing of such application. Prior to granting or denying such application, the court shall consider any information or statement provided by the victim.

(c) If the defendant proves that he or she was a victim of trafficking in persons under said section or a victim of a criminal violation of said chapter at the time of the offense, (1) the court shall vacate **any** judgment of conviction entered pursuant to section 53a-82 and dismiss any charges related to the offense, and (2) the court may in its discretion vacate any other judgment of conviction under the Connecticut General Statutes and dismiss any charges related to the vacated offense.

(d) The vacating of a judgment of conviction and dismissal of charges pursuant to this section shall not constitute grounds for an award of compensation for wrongful arrest, prosecution, conviction or incarceration pursuant to section 54-102uu or any other provision of the general statutes.