

**TESTIMONY IN SUPPORT OF SB 327
HUMAN TRAFFICKING VICTIM PROTECTION ACT
PRESENTED TO THE HOUSE JUDICIARY COMMITTEE
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I am submitting this testimony on behalf of the Sex Workers Project at the Urban Justice Center (SWP), a legal and social services organization in New York City. SWP represents individuals who are involved in the sex industry through force, circumstances, or coercion. Approximately half of our clients are survivors of trafficking in prostitution and we represent these clients on a variety of legal cases, including immigration, family reunification, criminal defense, and collateral consequences of convictions. We also have a social service component comprised of dedicated social workers who provide direct therapy to survivors. SWP has been recognized as a leader in the anti-trafficking movement in the ten years since its founding.

SWP has significant expertise on the issue of vacatur of convictions of prostitution for survivors of trafficking. Specifically, SWP co-authored and helped to pass New York State's "Vacating Convictions for Trafficked Persons" legislation, which was signed into law in August 2010 by Governor Patterson. New York State Senate Bill 4429; New York State Assembly Bill 7670; now New York Criminal Procedure Law 440.10(1)(i). We filed the first motions under this new law for survivors of both domestic and international commercial sex trafficking. As attorneys for trafficking survivors, we know how important such provisions are, but would also like to share our insights into how to craft a comprehensive law to ensure that this critical remedy is available to the greatest number of survivors.

There are critical distinctions between New York's and Maryland's laws with regards to criminal procedure and remedies available post conviction. New York's post-conviction remedies including vacatur, certificates of relief, and appeal. Vacatur is a remedy by which the Court decrees that there was a serious enough error warranting the convictions to be undone or removed from the history of the defendant's case. Vacatur operates to "turn back the clock" to before the conviction to ensure the legal effect of the defendant never having been convicted of the crime. Expungement, which is not available in New York, generally applies as an administrative remedy that merely erases evidence of a conviction from a record, but does not entail a judgment as to an underlying error in the case. Vacatur is a more thorough remedy, which has implications especially for victims of international trafficking. Currently, migrants who seek admission to the United States can be excluded if found to be convicted of 2 or more prostitution offenses, even if those convictions are subsequently expunged. However, convictions that are vacated because of an error in the underlying case cannot count against a petitioner for immigration status. Eliminating this immigration bar was one of the goals of the NY bill and we recommend you make clear that it is a goal of yours as well.

Another difference between the New York bill and SB 327 pertains to evidence of human trafficking. Under NYCPL 440.10(1)(i)), documentation from federal, state, or local governmental agencies showing that the defendant is a victim of trafficking create a presumption that the defendant's participation in the offense was a result of trafficking, but such official documentation is *not required* for these motions. We strongly urge Maryland to consider adopting language that makes absolutely clear that official documentation is not required, as few victims of trafficking will have "official" documentation recognizing them as victims of trafficking.

In addition, under 440.10(1)(i), the court "*must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances*" whereas SB 327 bill permits the Court broader discretion "to vacate, modify the sentence, or grant a new trial." We are concerned that in cases where a defendant definitively proves that she sustained a prostitution conviction while being trafficked that the court could still use its discretion to simply change her sentence. We believe this kind of discretion invites inconsistent or discriminatory application of the law, and will not ensure the rights of trafficked persons. We strongly urge Maryland to adopt such similar language to ensure that all survivors receive the same full remedy, namely vacatur.

Finally, the NY law permits survivors of trafficking to vacate prior convictions that resulted from an arrest for Prostitution (Penal Law 230.00) or Loitering for the Purpose of Engaging in a Prostitution Offense (Penal Law 240.20) if the defendant's participation in the offense was a result of having been trafficked. This limitation has proven to be, in practice, not comprehensive enough. Many survivors of trafficking were forced by their traffickers to engage in activities beyond prostitution, which sometimes resulted in criminal convictions. Activities we have seen include purchasing of drugs for traffickers/abusers, violating street vendor laws, trespassing, and others. Further, individuals can sustain convictions of lesser offenses in plea arrangements even when the underlying act was prostitution. It is advisable to build some discretion into the law to take into account these situations.

We commend the Maryland legislature for addressing this important issue and invite any questions or dialogue towards the goal of protecting the rights and ensuring the futures of survivors of trafficking.

Urban Justice strongly supports the goals of this section of SB 327 and urges the adoption of these recommendations to create a more comprehensive remedy for survivors of trafficking.