

sexWORKERS PROJECT

VACATING CRIMINAL CONVICTIONS FOR TRAFFICKED PERSONS A Legal Memorandum for Advocates and Legislators¹ *Executive Summary*

In addition to other injustices and instances of coercion or abuse, survivors of human trafficking often do not have equal access to fair treatment under the law. Specifically, they deal with the dual issues of criminalization and stigmatization long after they escape from their trafficking situations. Individuals who are trafficked are often arrested and convicted of prostitution and related offenses.² Across the nation, there is a real need for a workable solution to alleviate the impact of collateral consequences of conviction for survivors of human trafficking.

The Sex Workers Project at the Urban Justice Center (SWP) is a legal and social services organization in New York City that has represented individuals who are involved in the sex industry through choice, circumstance, or coercion for the past 10 years. After playing a leading role in the passage of the landmark New York Anti-Trafficking Law in 2007, SWP united a network of organizations to successfully campaign for the passage of the first legislation of its kind – New York’s Vacating Convictions Law on August 14, 2010.³ In September 2010, SWP launched the “Restoring Opportunity Project” to assist survivors of trafficking with filing motions under the new law, and to assist all persons with criminal records because of their involvement in the sex industry in overcoming barriers to employment and other life opportunities by applying for certificates of relief of civil disabilities, and advocating for these individuals with their employers.

Presently, numerous other state legislatures are considering legislation based on the New York law. Currently, Pennsylvania, Wisconsin, California, Hawaii, and Colorado are writing or have introduced similar bills.⁴ Nevada, Illinois, Vermont, and Maryland have already passed similar bills.⁵

¹ Full length Memorandum authored by Melissa Broudo, Staff Attorney, and Sienna Baskin, Co-Director of the Sex Workers Project at the Urban Justice Center, with assistance from Juhu Thukral, Yekaterina Blinova, Jennvine Wong, and Moira Meltzer-Cohen. Issued in April 2012.

² See Melissa Ditmore, *The Use of Raids to Fight Trafficking in Persons* (Urban Justice Center/Sex Workers Project, New York, N.Y.), 2009, at 48-49, available at <http://www.sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf>.

³ S. 4429, 233d Leg., 233rd Sess. (N.Y. 2010); Assemb. 7670, 233d Leg., 233rd Sess. (N.Y. 2010); presently cited as N.Y. CRIM. PROC. LAW §440.10(1)(i) (McKinney 2010).

⁴ S. 885, 2011 Gen. Assemb., 2011-12 Sess. (P.A. 2011); SB2579 (HA); A. 702, 2011 Leg., 2011-12 Sess. (C.A. 2011). At the time of this writing, the Hawaii and Colorado bills have not yet been introduced into the legislature.

⁵ A. 6, 2011 Leg., 76th Sess. (N.V. 2011); S. 1037, 97th Gen. Assemb., Reg. Sess.(I.L. 2011); presently cited as Il. CRIM. PROC. LAW § 5/116-2.1 (2011); S. 122, 2012 Gen. Assemb., 2011-12 Sess. (V.T. 2012). S. 327, 2011 Gen. Assemb., 489th Sess. (M.D. 2011).

“Even after they escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve.”⁶

Based on our 10 years of experience serving victims of human trafficking, and our practical experience under the New York Vacating Convictions law, we consider the following as critical components of a model law on vacating convictions, and advise legislators that a strong law on vacating convictions should include the following elements:

- 1) Inclusion of prostitution *and* other offenses in vacatur remedy;
- 2) “Official documentation” of trafficking creates a presumption but is not required;
- 3) This remedy should not require the survivor to prove s/he has left the sex industry, is “rehabilitated,” or engaged in a social services program;
- 4) Offer confidentiality provisions to protect the client’s identity;
- 5) Be the most complete remedy possible under the law;
- 6) State that the Court *must* vacate the convictions and dismiss the accusatory instrument if an individual meets the elements;
- 7) Allow the Court to take additional appropriate action (beyond the mandate of the statute);
- 8) Be retroactive and inclusive of those with older convictions;
- 9) Ensure availability of the remedy by funding legal services attorneys to bring these motions; and
- 10) Those truly concerned with limiting the devastating impact of criminal convictions should consider a remedy that includes all individuals with prostitution records.

SWP strongly encourages other states to consider constructing their own Vacating Convictions laws and to push for other related endeavors to expand the field of services for trafficking survivors. SWP offers its expertise to assist in this work. This is a crucial opportunity for survivors of trafficking to rebuild their lives and move forward.

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⁶ [Assemb. Memo, B. A7670.](#)