

To: Incarceration and Collateral Consequences Subcommittee, Connecticut Sentencing Commission
From: Civil Justice Clinic at Quinnipiac University School of Law
Re: Expanding Connecticut's Vacatur Statute for Victims of Human Trafficking
Date: November 15, 2019

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.

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 get their victims addicted to drugs; others use physical and sexual violence against their victims; while others threaten to harm 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, 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.

¹ Our use of the gender-neutral pronoun is intentional. Trafficking victims can be anyone—male, female, transgender, etc.

² State and federal definitions of human trafficking differ in various respects. 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 sexual or labor exploitation.

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

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 in 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, 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” at critical points throughout the statute. 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 landmark law providing for the vacatur of convictions for prostitution-related offenses that were a result of this trafficking has been the model for laws in more than half of the states.⁴ This year, New York is considering an amendment that would expand eligibility for vacatur beyond prostitution for trafficking victims.⁵ 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 Montana⁶—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.

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

⁴ N.Y. Crim. Proc. Law § 440.10,

⁵ NY State Senate Bill S4981A (Apr. 3, 2019), <https://www.nysenate.gov/legislation/bills/2019/s4981>.

⁶ 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.

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 the 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.