



BILL NO: Senate Bill 206
TITLE: Criminal Procedure – Motion to Vacate Judgment of Conviction (True Freedom Act of 2020)
COMMITTEE: Judicial Proceedings
HEARING DATE: January 29, 2020
POSITION: **SUPPORT**

To the Chairman and members of the Committee:

The Virginia Coalition Against Human Trafficking (VCAHT) is a coalition of service providers, attorneys, survivor-advocates, and community members working to pass survivor-centered human trafficking legislation in the Commonwealth of Virginia. VCAHT among its collective members has worked with hundreds of survivors and accordingly, sets forth the following in respectfully urging the Committee to vote in support of a favorable report.

Based upon VCAHT’s work and because of its proximity to Maryland and the victims that have been trafficked there finding their way to Virginia, we are writing in support of Senate Bill 206 which would expand the impact of Maryland’s “vacating convictions” law by explicitly including labor trafficking survivors as well as increasing the number of convictions eligible for vacatur under MD Crim. Pro. § 8-302. VCHAT supports this bill because it will enhance the effectiveness of Maryland’s human trafficking framework by providing improved access to justice for survivors who have been criminalized as a result of their involvement with a trafficker.

In addition to the abuse, coercive control and manipulation victims of trafficking routinely face, many victims are convicted of crimes they were forced to commit by their trafficker. While unfortunately Virginia has yet to do so, although we are hoping to remedy this lack in 2020, Maryland responded to this injustice in 2011, becoming the second state in the country to enact a “vacating convictions” law, which allows survivors of sex trafficking to vacate, or, set aside their prostitution convictions. Since that time, all but six states and the District of Columbia offer some form of criminal record relief specific to survivors of trafficking.

In the years since its enactment, however, it is our understanding that Maryland’s vacatur law has proved inadequate in meeting the needs of Maryland’s survivors, the majority of whom have trafficking-related convictions other than prostitution, such as trespassing and drug possession. Maryland’s law also does not expressly include survivors of labor trafficking, who are similarly convicted of crimes they were forced to commit. Additionally, **Maryland is one of only two states in the entire country requiring the consent of the agency that prosecuted the victim before the victim can file a petition for vacatur with the court.** This is a particularly problematic provision, in that it essentially puts a prosecutor in the role of a judge in determining whether the survivor was trafficked at the time of their conviction. This eliminates the ability of the court to act independently, as is the role of the court in the legal process. Additionally, this needless step often adds months to what can already be a lengthy and retraumatizing process, which is not in the best interest



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of the survivor seeking the relief and places an additional hurdle in front of the survivor already faced with a monumental task of coming forward in the first place.

Data recently obtained from a national survey of both sex and labor trafficking survivors echoes the need for access to broader relief, with 91% of survivors reported being arrested during the time they were being trafficked, the majority for crimes *other than* prostitution. Of those surveyed, 73% reported barriers to employment because of their criminal records, while 58% reported barriers to accessing housing.

In recent years, we have admired how Maryland has shown its strong support for remedying the impact a deeply flawed criminal justice system has on the ability of its citizens to escape poverty and lead productive lives. We have seen firsthand how criminalized survivors of trafficking suffer similarly if they are unable to obtain such relief, as they too struggle with being unable to obtain safe housing and gainful employment and other resources essential to their escaping revictimization and recriminalization. **Survivors of human trafficking who have been unjustly convicted deserve better in the State of Maryland.**

Senate Bill 206 would remedy these significant legal gaps by expanding the post-conviction relief available to survivors of human trafficking who are already recognized as lacking the criminal intent to commit the crimes they were convicted of. For these reasons, VCAHT supports the foregoing bills and respectfully urge a favorable report.

Sincerely,

/s/Patrick J. McKenna

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Virginia Coalition Against Human Trafficking

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