

MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
IN SUPPORT OF SB 767: CRIMINAL PROCEDURE – HUMAN TRAFFICKING –
VACATURE AND EXPUNGEMENT (with Sponsor Amendments)
MARCH 8, 2022

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Chair Smith and distinguished members of the Committee, thank you for the opportunity to testify in support of Senate Bill 767.

My name is Heather Heiman, and I am the Project Manager for the Human Trafficking Prevention Project at Maryland Volunteer Lawyers Service (MVLS). MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. Since MVLS' founding in 1981, our statewide panel of over 1,700 volunteers has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. In FY21, MVLS volunteers and staff lawyers provided legal services to 3,353 people across the state. In fiscal year 2017, MVLS started the Human Trafficking Prevention Project, a co-grant project through the Governor's Office of Crime, Control and Prevention with the University of Baltimore School of Law Human Trafficking Prevention Project Legal Clinic. For the reasons explained below, MVLS respectfully requests the committee return a favorable report on SB 767 (with Sponsor Amendments).

The Human Trafficking Prevention Project (HTPP) at MVLS is a pro bono project that provides post-conviction relief such as expungement, shielding, and vacatur as well as assistance with additional civil legal matters to those who meet the legal definition of a victim of human trafficking and others who are at high risk for exploitation. Since its inception, the HTPP at MVLS has served over 200 clients who were survivors of human trafficking or at high risk for exploitation, many of whom sought legal help with criminal record relief under Maryland's vacatur law.

Senate Bill 767 would strengthen Maryland's "vacating convictions" law by adding protections necessary to support survivor safety and confidentiality as well as provide guidance to the court on motions granted without a hearing. Maryland Volunteer Lawyers Service supports this bill because it will enhance the effectiveness of Maryland's trafficking-specific criminal record relief law by improving privacy protections for survivors seeking to vacate their trafficking-related convictions, as well as clarifying judicial procedures relating to motions practice.

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. Data recently obtained from a national survey of both sex and labor trafficking survivors demonstrates the need for easily accessible criminal record relief, with 91% of survivors reported being arrested during the time they were being trafficked, the majority

for crimes other than prostitution.¹ Of those surveyed, 73% reported barriers to employment because of their criminal records, while 58% reported barriers to accessing housing.²

Maryland responded to this injustice in 2011, becoming just the second state in the country to enact a trafficking-specific criminal record relief law, which allowed survivors of sex trafficking to vacate, or, set aside their prostitution convictions. In 2020, the Maryland General Assembly passed the "True Freedom Act," a much-needed revision to the state's vacatur law which significantly expanded the list of convictions that were eligible for vacatur and eliminated certain procedural hurdles that were impeding trafficking survivors from accessing this crucial form of legal relief.

However, implementation of Maryland's updated vacatur law has not been without its challenges, particularly around privacy protections for survivors and how to dispose of convictions that are vacated without a hearing. The lack of consistency and clarity surrounding the process has created confusion for both the court and the attorneys representing the survivors seeking access to this form of relief, as well as for the survivors themselves. In an attempt to safeguard the confidentiality of the survivors as well as to reduce the risk of retraumatizing them during the process, both of which are considered best practices in the design of trafficking-specific criminal record relief statutes,³ SB 797 would require the following: (1) that all vacatur petitions be filed under seal without requiring a separate hearing to determine whether the filings qualify for sealing; (2) closing the court to the public while hearings on these motions are being held; and, (3) allowing survivors to waive their appearance at the hearing on their petition should one be required. Additionally, SB 767 would clarify that the initial charge underlying any conviction vacated by the court *without a hearing*⁴ must also be dismissed by the court, as well as require that the court alert the survivor of their right to expunge the resulting non-conviction, an often-forgotten part of the process.

In recent years, Maryland has shown its strong support for remedying the impact a deeply flawed criminal legal system has on the ability of its citizens to escape poverty and lead productive lives. Further refining Maryland's vacatur law to protect survivor confidentiality and make the process less onerous for both survivors *and* the court is an example of this commitment. For these reasons, Maryland Volunteer Lawyers Service supports SB 767 with sponsor amendments. We respectfully urge a favorable report.

¹ National Survivor Network, National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking (2016) <https://mvslaw.org/wp-content/uploads/2017/06/NSN-Survey-on-Impact-of-Criminalization-2017-Update.pdf>.

² *Id.*

³ Erin Marsh et. al., *State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking* 18, 19 (2019), <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf> (citing best practices surrounding allowing survivors to waive their rights to appeal as well as the necessity of confidentiality provisions designed to protect survivor safety).

⁴ MD CODE ANN., CRIM. PROC. § 8-302(e) (West, 2020).