



BILL NO: Senate Bill 767

TITLE: Criminal Procedure - Human Trafficking - Vacatur and Expungement

COMMITTEE: Judicial Proceedings

HEARING DATE: March 8, 2022

SUBMITTED BY: Caitlyn Burnitis, Lead Maryland Attorney, Amara Legal Center

POSITION: SUPPORT

The Amara Legal Center writes to support Senate Bill 767 (SB767). We are grateful that Senator Lee introduced this important legislation to 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.

The Amara Legal Center ("Amara") provides free legal services in Washington, D.C., Maryland, and Northern Virginia to survivors of sex trafficking and to anyone whose rights are violated while involved in commercial sex. Since 2013, Amara has served over 500 clients with more than 800 legal matters. Although many believe that sex trafficking only occurs overseas or among foreign nationals, the vast majority of Amara's clients are U.S. citizens, both juveniles and adults born and raised in the D.C. metro area. Amara provides brief legal advice, partial, and full representation for civil legal issues such as civil protection orders, divorce, child custody and support, and name changes. In addition to civil legal services, Amara provides victim-witness advocacy for clients working with law enforcement, criminal/juvenile defense, and representation in criminal record sealing and expungement cases.

In addition to the abuse, coercive control and manipulation that 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.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

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.*



confusion for the court, the attorneys, and 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 legal process,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 any hearing scheduled on their petition. Additionally, SB 767 would clarify that the initial charge underlying any conviction vacated by the court *without a hearing*⁴ must also be dismissed, 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 to make the process less onerous for both survivors *and* the court is an example of this commitment. For these reasons, the Amara Legal Center supports SB767. We respectfully urge a favorable report.

³ See 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 around allowing survivors to waive their right to appear in criminal record relief hearing as well as the necessity of building in confidentiality provisions designed to protect survivor safety).

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