

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 767
TITLE: Criminal Procedure – Human Trafficking – Vacatur and Expungement
COMMITTEE: Judicial Proceedings
HEARING DATE: March 8, 2022
POSITION: **FAVORABLE WITH SPONSOR AMENDMENTS**

Senate Bill 767 with sponsor amendments 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. The Human Trafficking Prevention Project at the University of Baltimore School of Law 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,³ SB 797 would require the following: (1) that, upon request of the survivor or the State’s Attorney, a survivor’s vacatur petition 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, also upon request of the survivor or the State; 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 Human Trafficking Prevention Project at the University of Baltimore School of Law 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 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).