

From: Civil Justice Clinic, Quinnipiac University School of Law (January 2021)  
Re: Compromise Bill to Expand Connecticut's Vacatur Statute for Human Trafficking Victims

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Connecticut General Statutes Section 54-95c currently allows trafficking victims to request that their convictions be vacated, but only if they have a conviction for prostitution. The proposed vacatur legislation<sup>1</sup> would give courts the discretion to vacate any conviction—with the exception of Class A and B felonies<sup>2</sup>—regardless of whether the applicant has a prostitution conviction, if the trafficking victim can demonstrate that their<sup>3</sup> participation in the crime resulted from having been trafficked. This compromise vacatur proposal has the support of the Office of the Chief State's Attorney, the Office of the Chief Public Defender, and the Connecticut Bar Association's Committee on Human Trafficking, as well as that of nearly every victim rights and anti-trafficking organization in the state.

## **I. RATIONALE: THE NEED FOR VACATUR RELIEF FOR VICTIMS OF TRAFFICKING**

Connecticut's vacatur law was intended to erase the official stigma that marks trafficking victims even after they escape their traffickers: their criminal records. Victims of trafficking<sup>4</sup> 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 give their victims drugs to get them addicted; others beat and rape their victims as punishment; while others threaten to harm or kill their victims' family and friends. Many traffickers do all 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.<sup>5</sup> Such crimes include forgery, larceny, burglary, loitering,

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<sup>1</sup> The text of the proposed legislation is reproduced in full at the end of this document. It forms part of the proposed 2020 omnibus trafficking bill, which can be found at: <https://www.cga.ct.gov/2020/TOB/h/pdf/2020HB-05502-R00-HB.PDF>.

<sup>2</sup> For a list of Class A and B felonies, see, e.g., Office of Legislative Research Report (February 26, 2020) found at: <https://www.cga.ct.gov/2020/rpt/pdf/2020-R-0091.pdf>.

<sup>3</sup> Use of the gender-neutral pronoun here is intentional. Trafficking victims can be anyone—male, female, LGBTQ, etc. Notably, the current statute, which uses the terms “his or her,” is also intended to be gender neutral.

<sup>4</sup> Human trafficking—which includes both labor and sex trafficking—is defined somewhat differently under federal and state law; however, both definitions require the use of force, fraud or coercion. Compare Conn. Gen. Stats. § 53a-192a with 18 U.S.C. Chapter 77. Trafficking is a Class A felony in Connecticut. C.G.S. § 53a-192a(b).

<sup>5</sup> [https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSN\\_TSRAfinal.pdf](https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSN_TSRAfinal.pdf).

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.

Connecticut should not criminalize victims of human trafficking. Unfortunately, most 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 compromise vacatur provision addresses the final stage of the criminal process by allowing trafficking victims to request vacatur for convictions other than prostitution that occurred as a result of their having been trafficked.

As our state considers other criminal justice reforms to address the unique plight of human trafficking victims, such as an affirmative defense provision for minor victims of trafficking,<sup>6</sup> legislators should at a minimum amend Connecticut’s vacatur statute to extend eligibility to more victims. Allowing courts to consider vacatur requests from trafficking victims who have convictions for crimes other than prostitution would offer more survivors a chance to become productive members of our communities.

## II. CURRENT LAW & LEGISLATIVE HISTORY

Connecticut’s vacatur statute<sup>7</sup> is both unduly narrow and dangerously overbroad. Despite legislative attempts to expand its reach, the law has been invoked by only a single victim. Enacted in 2013, the original statute was a limited 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 applicant was a victim of trafficking. If such a showing was made, the Court was required to grant vacatur (“the court shall vacate the judgment of conviction”) and dismiss any charges related to the offense.

In 2016, in order to reach more victims, the Legislature made two distinct changes, which resulted in the law’s current formulation.<sup>8</sup> First, the statute’s nexus requirement was made less stringent: instead

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<sup>6</sup> Currently, there is no affirmative defense in Connecticut for trafficking victims caught in the criminal justice system.

<sup>7</sup> The Legislature wisely adopted vacatur—and not the pardon—as the appropriate vehicle to address criminal record relief for trafficking victims. Because the Board of Pardons and Parole does not typically re-examine evidence underlying a conviction, but instead focuses on the applicant’s rehabilitation years afterward, its process is not well suited to evaluating such requests. The cases of trafficking victims necessarily raise questions of diminished culpability arising from force, fraud, or coercion. Unlike the Board, courts possess the mechanisms and procedures necessary to adjudicate such questions of law and fact.

<sup>8</sup> The 2016 revisions amended the 2013 statute as follows:

“At any time after a judgment of conviction is entered pursuant to section 53a-82, the defendant may apply to the Superior Court to vacate ~~the~~ any judgment of conviction on the basis that, ~~at the time of the offense, the defendant was 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, as amended by this act, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time. Prior to rendering a decision on a defendant’s application to vacate ~~the~~ 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. 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, the court shall vacate ~~the~~ any judgment of conviction and dismiss any charges related to the offense. . . .”

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].”

The second change introduced a fatal flaw. Legislators added to the list of crimes eligible for vacatur by substituting the words “the judgment of conviction” with “any judgment of conviction” (emphases added) at three critical points throughout the statute (see *infra* note 8). Coupled with the word “shall,” however, these substitutions arguably have the effect of *requiring* any court that grants vacatur to a trafficking victim with a prostitution conviction also to vacate “any judgment of conviction,” so long as the victim can demonstrate that their participation in the crime resulted from their having been a victim of trafficking. In other words, if a trafficking victim with both a prostitution and a murder conviction can show that their participation in both these crimes resulted from trafficking, the court would be required to grant vacatur with respect to both offenses. The compromise legislation remedies this troubling result by preserving mandatory vacatur for prostitution convictions, while making vacatur for convictions other than prostitution discretionary.

### **III. COMPROMISE LEGISLATION FOR CONNECTICUT: SUMMARY**

The proposed legislation 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 that it resulted from their having been trafficked. However, with respect to applications to vacate convictions for crimes other than prostitution (excluding the more serious Class A & B felonies), this legislation would give courts full discretion to grant or deny vacatur, even where the applicant has shown that their participation in the crime was a result of trafficking. Finally, this compromise proposal adds a new victim notification provision requiring 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 of the crime at issue.

Notwithstanding previous attempts to expand the statute’s reach, only a single trafficking victim has used Connecticut’s law to vacate her prostitution conviction. By providing for the discretionary vacatur of convictions other than prostitution, the proposed bill would reach more trafficking survivors, giving them renewed hope for rebuilding their lives. The Connecticut Legislature should therefore enact the compromise legislation and take this critical step toward decriminalizing victims of trafficking.

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**Sec. 4. Section 54-95c of the general statutes is repealed and the following is substituted in lieu thereof:**

(a) At any time after a court enters a judgment of conviction [is entered pursuant to section 53a-82,<sup>9</sup>] for any misdemeanor offense or a class C, D or E felony or any unclassified felony offense carrying a term of imprisonment of not more than ten years, the defendant may apply to the Superior Court to vacate [any] such 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, as amended by this act, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time.<sup>10</sup>

(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 of the crime for which the applicant was convicted.

(c) If the defendant proves that he or she was a victim of trafficking in persons under [said] section 53a-192a, as amended by this act, or a victim of a criminal violation of [said chapter] 18 USC Chapter 77, as amended from time to time, at the time of the offense, (1) the court shall vacate any judgment of conviction [and dismiss any charges related to the offense] pursuant to section 53a-~~82~~<sup>11</sup>, and (2) the court may in its discretion vacate any other judgment of conviction pursuant to an application under subsection (a) of this section, and dismiss any charges related to any offense vacated pursuant to subdivision (1) or (2) of this subsection.

(d) The vacating of a judgment of conviction and dismissal of charges pursuant to this section shall not constitute grounds for an award of 141 compensation for wrongful arrest, prosecution, conviction or incarceration pursuant to section 54-102uu or any other provision of the general statutes.<sup>12</sup>

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<sup>9</sup> Section 53a-82 refers to prostitution (i.e., it is the Connecticut criminal statute that makes prostitution illegal). See *infra* note 4.

<sup>10</sup> This phrase—"trafficking in persons under section 53a-192a [ ] or [ ] a criminal violation of 18 USC Chapter 77 [ ]"—cites the state and federal statutes that criminalize human trafficking. See *supra* note 5. This phrase is also used in subsection (c).

<sup>11</sup> The bill contains a scrivener's error: it cites the statute that criminalizes kidnapping (53a-~~92~~) rather than prostitution (53a-~~82~~).

<sup>12</sup> In Connecticut, trafficking is a Class A felony. Thus, under the proposed compromise bill, trafficking victims who themselves have been convicted of trafficking cannot ask that those convictions be vacated. Including trafficking as an offense eligible for vacatur could be accomplished by adding the following phrase in subsection (a) after the word "conviction": "pursuant to section 53a-192a, as amended by this act."