

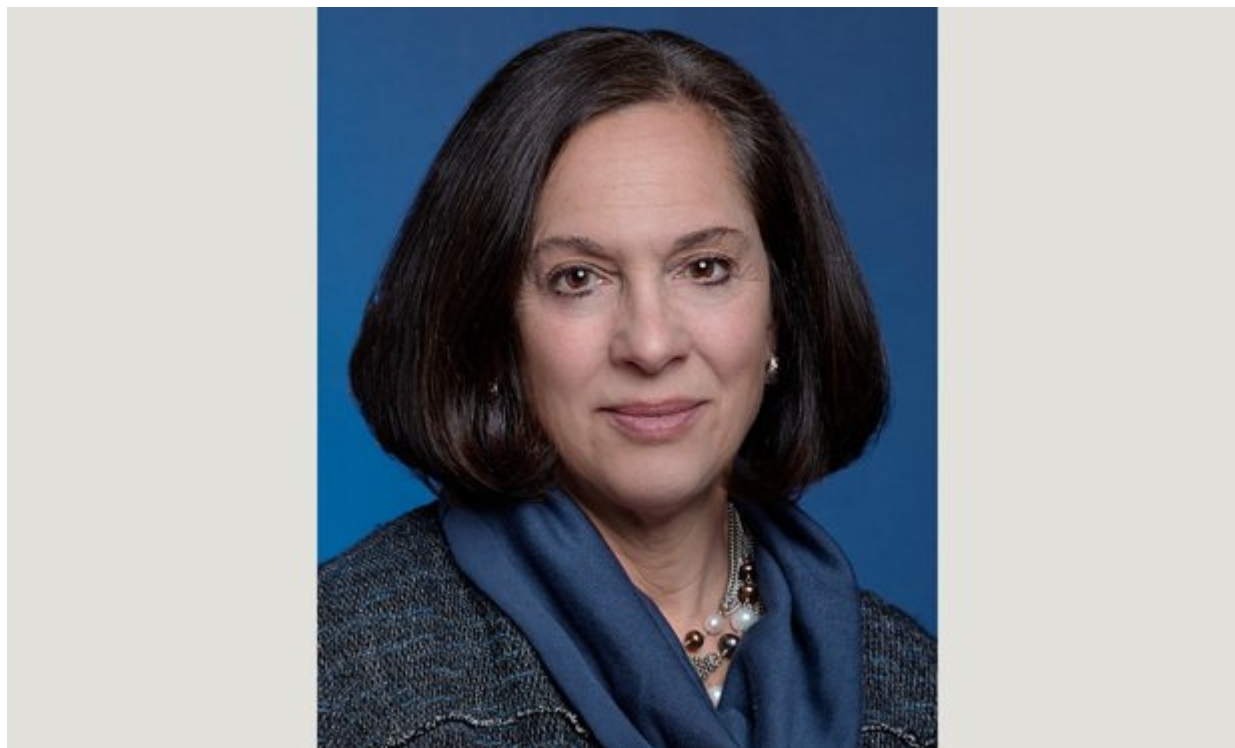
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Victims of Sex Trafficking Deserve Fairness in Preserving Dignity

It is time to work with the Legislature again to expand opportunities for relief for victims of sex trafficking.

By **Joette Katz** | December 29, 2020



Former Connecticut Supreme Court Justice and DCF Commissioner Joette Katz.

When I became Commissioner of the Department of Children and Families in 2011, I learned about the scourge of sex trafficking in Connecticut. I learned there had been more than 300 youth—girls, boys and transgender individuals—in Connecticut who had been identified as victims of sex trafficking.

By working with the legislature to enact C.G.S. sec. 17a-106f, the Department, as part of its statutory mandate, was able to deploy staff, expend resources, provide services and treat victims. By the time I stepped down, there were nearly 1,100 youth whom we had identified, and Connecticut had become a model in identifying and treating youth victims of sex trafficking, even as we continued to face the challenges associated with recognizing and prosecuting those who were complicit in allowing sex trafficking to exist and flourish.

It's time to work with the legislature again. Trafficking survivors face three forms of victimization: at the hands of their traffickers; in interacting with the criminal justice system; and as they try to recover and rebuild their lives as survivors. Nearly all states offer some type of relief to survivors of sex trafficking in connection with their criminal records: some only to minor victims, some for only a small subset of offenses, such as prostitution or sex-related crimes. The nature of the crime of trafficking, however, is such that survivors are forced to commit a wide range of offenses. In addition to prostitution, survivors of sex trafficking are commonly convicted of drug possession, larceny, assault, forgery, burglary, loitering, vagrancy, disorderly conduct, assault, resisting arrest and even trafficking of other victims.

Trafficking victims commit these crimes under duress from their traffickers who target and isolate them based on vulnerabilities and then use force, fraud and coercion to manipulate and control them. Traffickers often beat, rape and torture their victims, give them drugs to get them addicted, threaten to harm or kill their victims' family and friends if they ever disobey or try to leave. This process leads to trauma bonding, a destructive connection between a trafficker and victim created by ongoing cycles of abuse designed to create dependency and obedience. And when victims try to resist or leave their traffickers, they know their past criminal behavior can always be used against them by the trafficker.

Survivors' criminal records hinder them from moving forward with their lives in many ways; they have a profound impact on the ability of an individual to obtain future gainful employment and find affordable and safe housing. Employers and landlords often run background checks, which can cause elimination from the applicant pool altogether or require applicants to provide information about the circumstances surrounding their convictions.

Connecticut currently provides for criminal convictions to be vacated. C.G.S. sec 54-95c. Enacted in 2013, the original vacatur statute was a narrow provision that allowed a person convicted of prostitution to apply to the Superior Court to vacate any judgment of conviction based on a showing that "at the time of the offense" the defendant was a victim of trafficking. If such a showing was made, the Superior Court was required to grant vacatur ("the court shall vacate the judgment of conviction") and dismiss any charges related to the offense (prostitution).

In 2016, this vacatur provision was broadened into its current formulation. "At any time after a judgment of conviction is entered pursuant to section 53a-82 (prostitution), the defendant may apply to the Superior Court to vacate any 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 ... trafficking." Instead of tying eligibility to the person's status as a trafficking victim "at the time of the offense (prostitution)," the current statute makes trafficking victims eligible to apply for vacatur of their convictions as long as they can show that their "participation in the offense (prostitution) was a result of having been a victim of [trafficking]." Because of its narrow application, that is because there had to have been a prostitution conviction, it is not surprising that Connecticut's vacatur statute has been invoked only one time, despite the amendment to widen its reach.

There is a new bill before the Connecticut legislature that expands the opportunity for relief. The purpose of this legislation is to strengthen protection for victims of trafficking who are convicted of a range of offenses, excluding A and B felonies. No longer is the relief tethered to or dependent upon a prostitution conviction. The court will have the discretion whether to grant vacatur if the applicant can show that the crime was a result of having been a trafficking victim. The amendment also adds a new victim notification provision requiring all 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. By broadening the statute to include convictions other than prostitution, the amendment would bring Connecticut in line with at least a handful of other states to provide an opportunity for trafficking victims to rebuild their lives.

Under this amendment, the trial court will no doubt require evidence that the crimes were committed because of trafficking and that the victim is no longer in that life. The state's right to investigate and contest the vacatur request is preserved, and any affected crime victim has the right to be heard. After hearing from all interested parties, and after having considered all the evidence, the court can then exercise its discretion to grant or deny the vacatur request. That's fair. Let's treat those injured by human trafficking as the victims they truly are by giving them an opportunity to rebuild their lives and become productive members of our communities.

Shipman & Goodwin partner Joette Katz is a retired associate justice of the Connecticut Supreme Court and former commissioner of the state Department of Children and Families.

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