

Policy Goal

Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.

Juvenile delinquency records serve as barriers to the restoration and healing process for survivors of child sex trafficking. Though generally not publicly available like records for adult convictions, juvenile records may still prevent survivors from securing an academic scholarship and may result in expulsion from the survivor's school. Such academic consequences will follow a survivor from school to school and potentially bar access to higher education. Additional collateral consequences associated with juvenile delinquency records include denial of professional licenses and ineligibility for certain types of employment, including work with children. A juvenile record may also prevent survivors from joining the military, obtaining or retaining driver's licenses, or accessing benefits such as public housing and crime victims' compensation. Each of these collateral consequences results in further victimization and hinders a survivor's ability to rebuild his or her life. As such, state law must allow delinquency adjudications to be vacated and related records to be expunged. Expungement keeps juvenile records from public view or access, while vacatur sets aside the underlying adjudication, thereby acknowledging a survivor's status as a victim rather than as a criminal. Although many states already permit human trafficking victims to vacate convictions for certain crimes, those laws generally do not apply to delinquency adjudications since the juvenile code in many states distinguishes between convictions and adjudications. As such, state law must specifically allow survivors of child sex trafficking to vacate delinquency adjudications and expunge related records in order to prevent the child from systemic victimization. Our analysis focuses on the threshold issue of application to delinquency adjudications, but other procedural requirements, including approval of the prosecutor, may also pose barriers to accessing the protection of vacatur and expungement laws.

EXAMPLES OF LEGISLATIVE SOLUTIONS

CALIFORNIA

Cal. Penal Code § 236.14(g) (Petition for vacatur relief of arrest for or conviction of nonviolent offense committed while victim of human trafficking) states, "(g) After considering the totality of the evidence presented, the court may vacate the conviction and expunge the arrests and issue an order if it finds all of the following: (1) That the petitioner was a victim of human trafficking at the time the nonviolent crime was committed. (2) The commission of the crime was a direct result of being a victim of human trafficking. (3) The victim is engaged in a good faith effort to distance himself or herself from the human trafficking scheme. (4) It is in the best interest of the petitioner and in the interests of justice"

Under subsection (j), "[a] person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code [Persons subject to jurisdiction of juvenile court and to adjudication as ward for violation of law or ordinance defining crime; Persons subject to prosecution in criminal court] because he or she committed a nonviolent offense while he or she was a victim of human trafficking, including, but not limited to, prostitution, as described in subdivision (b) of Section 647, may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of human trafficking the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met."

FLORIDA

Fla. Stat. Ann. § 943.0583(3) (Human trafficking victim expunction)

states, “[a] person who is a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 [Prostitution] and 847 [Obscenity], without regard to the disposition of the arrest or of any charges. However, this section does not apply to any offense listed in s. 775.084(1)(b)1 [Violent career criminals] A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings”

Under subsection (8), “(a) Any criminal history record of a minor . . . that is ordered expunged pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record (b) The person who is the subject of a criminal history record that is expunged under this section may lawfully deny or fail to acknowledge the arrests covered by the expunged record”

Further, “[o]fficial documentation of the victim’s status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is not required for granting a petition under this section” Fla. Stat. Ann. § 943.0583(5).

NEBRASKA

Neb. Rev. Stat. Ann. § 29-3005 (Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect) states, “(2) At any time following the completion of sentence or disposition, a victim of sex trafficking convicted in county or district court of, or adjudicated in a juvenile court for, (a) a prostitution-related offense committed while the movant was a victim of sex trafficking or proximately caused by the movant’s status as a victim of sex trafficking or (b) any other offense committed as a direct result of, or proximately caused by, the movant’s status as a victim of sex trafficking, may file a motion to set aside such conviction or adjudication (3)(a) If the court finds that the movant was a victim of sex trafficking at the time of the prostitution-related offense or finds that the movant’s participation in the prostitution-related offense was proximately caused by the movant’s status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such prostitution-related offense. (b) If the court finds that the movant’s participation in an offense other than a prostitution-related offense was a direct result of or proximately caused by the movant’s status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such offense”

NEVADA

Enacted Senate Bill 368, §4 states, “1. If a child has been adjudicated delinquent for an unlawful act listed in subsection 2, the child may petition the juvenile court for an order: (a) Vacating the adjudication; and (b) Sealing all records relating to the adjudication. 2. A child may file a petition pursuant to subsection 1 if the child was adjudicated delinquent for an unlawful act in violation of: (a) NRS 201.354, for engaging in prostitution or solicitation for prostitution, provided that the child was not alleged to be a customer of a prostitute; (b) NRS 207.200, for unlawful trespass; (c) Paragraph (b) of subsection 1 of NRS 463.350, for loitering; or (d) A county, city or town ordinance, for loitering for the purpose of solicitation or prostitution. 3. The juvenile court may grant a petition filed pursuant to subsection 1 if: (a) The petitioner was adjudicated delinquent for an unlawful act described in subsection 2; (b) The participation of the petitioner in the unlawful act was the result of the petitioner having been a victim of: (1) Trafficking in persons as described in the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7107 et seq. . . . (c) The petitioner files a petition pursuant to subsection 1 with due diligence after the petitioner has ceased being a victim of trafficking . . . or has sought services for victims of such trafficking 5. If the court grants a petition filed pursuant to subsection 1, the court shall: (a) Vacate the adjudication and dismiss the accusatory pleading; and (b) Order sealed all records relating to the adjudication”