

POLICY BRIEF

VACATUR OF DELINQUENCY ADJUDICATIONS ARISING FROM TRAFFICKING VICTIMIZATION AND EXPUNGEMENT OF RELATED RECORDS

This memo explains the importance of allowing child sex trafficking victims to vacate delinquency adjudications and expunge related records. This brief reviews a range of potential consequences associated with having a juvenile record with specific state examples. This brief also analyzes the extent to which vacatur and expungement of delinquency adjudications are currently available under existing state laws and proposes a framework for developing these laws in your state.

Definitions:

- > **Expungement:** process by which records are destroyed, purged, or otherwise rendered unavailable
- > **Vacatur:** reversal of a delinquency adjudication or finding of guilt
- > **Note:** Terms vary by state; similar terms may be used to accomplish the same objective (e.g., record sealing).

COLLATERAL CONSEQUENCES ASSOCIATED WITH A JUVENILE DELINQUENCY RECORD

Impact of Juvenile Records: 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 an adult conviction, juvenile records may still prevent survivors from securing an academic scholarship and may result in suspension or expulsion from the survivor's school. In Indiana, for example, certain scholarship programs require applicants to certify that they have not committed a delinquent act. In Ohio, suspension or expulsion is an automatic consequence associated with having a juvenile record.¹ 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 involving children. In Idaho, for example, juvenile records can be grounds for denying a license to practice law or for denying a job generally. Further, those required to register as juvenile sex offenders are prohibited from working in day care centers.²

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.³ In Nevada, for example, a juvenile record may prevent military service, affect driver's license privileges, or result in eviction from public housing. In Arkansas, crime victim's compensation may be denied or reduced if the victim participated in the crime.

Accessibility: Although limited, access to a child sex trafficking victim's juvenile record results in further victimization for the reasons noted above. To protect against the long-term harm of a juvenile record, state law must allow juvenile records to be expunged and the underlying adjudication to be vacated.

Statutory Highlight:

Florida Stat. Ann. § 943.0583 (Human trafficking victim expunction) states, “(3) 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 part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings (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”

EXPUNGEMENT AND VACATUR IN CONJUNCTION

Expungement refers to the process by which records are destroyed, purged, or otherwise rendered unavailable. Vacatur goes further by reversing the actual adjudication or finding of guilt, thereby acknowledging the minor’s status as a victim rather than as a criminal. Together, expungement and vacatur allow survivors to heal and move forward without the collateral consequences associated with having a juvenile record.

The Goal: State vacatur and expungement laws should contain the following key elements to adequately protect child sex trafficking survivors from the adverse consequences of a juvenile record:

Applicability to Delinquency Adjudications. Although many states permit victims of human trafficking to vacate convictions for certain crimes, those laws generally do not apply to delinquency adjudications. Indeed, the juvenile code in most states distinguishes between convictions and adjudications. As a result, only 14 states currently allow child sex trafficking victims to vacate delinquency adjudications for offenses committed pursuant to their victimization.

Offenses Including, But Not Limited to Prostitution. Child sex trafficking victims face criminal liability for prostitution in 27 states. Even in states that prohibit the criminalization of minors for prostitution, child sex trafficking victims may still be charged with other offenses committed as a result of their victimization. In some cases, states may provide immunity for these types of offenses; however, a minor may not be immediately identified as a trafficking victim and, therefore, may be adjudicated delinquent for a host of offenses related to their victimization.

Without a Waiting Period. Collateral consequences, as noted above, may have an immediate impact on survivors; accordingly, victims should be permitted to vacate delinquency adjudications and expunge related records at any time.

Single Proceeding. Allowing victims to vacate adjudications and expunge related records within a single proceeding reduces delay and expense. Further, the child would not be required to testify at multiple hearings and to relive traumatizing events.

Affidavits and Presumptions. Strong expungement and vacatur laws allow signed affidavits as proof of a minor’s trafficking victim status. Other laws may establish a presumption of victim

**State Vacatur &
Expungement Laws at a
Glance:**

- > 49 states & DC allow for expungement or sealing of juvenile delinquency records.
- > 35 states have vacatur laws that apply to victims of human trafficking.
- > 14 of those vacatur laws apply to juvenile delinquency adjudications.
- > 8 of the 14 apply to prostitution and other offenses resulting from a minor's trafficking victimization.
- > 9 of the 14 do not mandate waiting periods.

status. Either approach has the goal of preventing a child from having to testify about his or her exploitation in a court proceeding.

These key elements focus on the threshold issue of application to delinquency adjudications; however, other procedural requirements, including approval of the prosecutor, may pose barriers to accessing the protection of vacatur and expungement laws.

IMPACT ON LEGISLATIVE FRAMEWORK

Redefining Component 5.9: As part of an annual effort to analyze the laws of all 50 states and the District of Columbia, the Protected Innocence Challenge provides a consistent measure of state progress. However, the Legislative Framework must also be dynamic to account for practices that inform and shape protections available to child sex trafficking victims. To ignore these developments would be unhelpful at best and harmful at worst and would undermine the ultimate goal of research in action. Accordingly, the Legislative Framework is able to adapt to incorporate the expanded knowledge that comes from implementation.

As a result of ongoing policy research on protections for child sex trafficking victims, the importance of allowing child sex trafficking victims to both vacate delinquency adjudications and expunge related records has emerged as a key component of a comprehensive protective response. This required reframing Component 5.9 of the Framework from an analysis of laws allowing for expungement of prostitution records into an analysis of vacatur and expungement laws for a broader range of offenses arising from trafficking victimization.

Current State Laws Allowing Vacatur and Expungement of Offenses Related to Trafficking Victimization: While the majority of states allow adult victims of human trafficking to vacate convictions, only a fraction of states provide similar protections to minor victims adjudicated delinquent for offenses related to their trafficking victimization. Only 14 states have vacatur laws that extend to delinquency adjudications and roughly half of those laws only permit vacatur of prostitution offenses. Only 2 states, provide both of these protections for a wide range of offenses without mandating a waiting period.

¹ See e.g., *Indiana*, THINK BEFORE YOU PLEA, <http://beforeyouplea.com/?q=in> (last visited Feb. 27, 2017); *Ohio*, THINK BEFORE YOU PLEA, <http://beforeyouplea.com/?q=oh> (last visited Feb. 27, 2017). See also, UNC Center for Civil Rights, *Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records* 7 (2010).

² See e.g., *Idaho*, THINK BEFORE YOU PLEA, <http://beforeyouplea.com/?q=id> (last visited Feb. 27, 2017). See also, Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders* 24 (2011) <http://www.sentencingproject.org/wp-content/uploads/2016/01/Addressing-the-Collateral-Consequences-of-Convictions-for-Young-Offenders.pdf> (last visited Oct. 5, 2017).

³ See e.g., *Ohio* *supra* note 1; *Nevada*, THINK BEFORE YOU PLEA, <http://beforeyouplea.com/?q=nv> (last visited Feb. 27, 2017). See also, UNC Center for Civil Rights, *Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records* 1, <http://www.law.unc.edu/documents/civilrights/centerforcivilrightsexpungementreport.pdf> (last visited Oct. 5, 2017).