

MYTH VERSUS FACT

MYTH 1

“Vacatur and affirmative defenses undermine law enforcement and prosecutors’ efforts because it allows perpetrators to avoid criminal accountability.”

FACT 1

The criminal justice system operates to hold true offenders liable for crimes committed. Measures to protect survivors against unjust criminalization and its effects free up and allow law enforcement and prosecutorial resources to be appropriately directed towards investigating, prosecuting, and holding actual offenders—traffickers, buyers and facilitators—accountable.

MYTH 2

“Vacatur should be limited to certain crimes and unavailable for serious offenses, including human trafficking, because it’s unjust to victims of those crimes.”

FACT 2

The relief established by this bill is premised on recognizing a criminalized survivors’ lack of choice and agency when engaging in the underlying criminal conduct. Narrowing the eligible offenses departs from the purpose of the bill, principles of criminal law, and research findings which demonstrate the phenomenon of traffickers coercing or forcing victims into committing an array of offenses on their behalf, including human trafficking. Holding the actual offender(s) accountable will achieve justice for all impacted victim(s).

MYTH 3

“Trafficking offenders will falsely claim victimization to avoid criminal accountability or receive records relief.”

FACT 3

To access protection or relief, the TSRA requires the defendant/petitioner to establish, by a preponderance of the evidence, that the underlying criminal conduct was committed as a *direct result* of trafficking victimization. This prevents traffickers from pursuing or accessing such relief, as well as trafficking victims who engage in criminal conduct that is unrelated to their experience(s) of victimization.

MYTH 4

“The floodgates will open and the criminal justice system will be overburdened because individuals will falsely claim trafficking victimization.”

FACT 4

States with similarly existing protections against unjust criminalization or access to criminal records relief have *not* witnessed an overburdening of systems or persons falsely identifying as victims.

MYTH 5

“Traffickers will be incentivized to coerce victims into committing offenses if they can avoid criminal liability.”

FACT 5

To the contrary, under the current criminal scheme and practice, traffickers are incentivized to deploy victims to carry out crimes on their behalf to insulate themselves from liability. Further, protecting survivors from criminal liability or removing barriers created by existing records will reduce vulnerabilities and a dependence on persons seeking to exploit them.

MYTH 6

“A specific affirmative defense for trafficking survivors is unnecessary because they can utilize affirmative defenses available to all criminal defendants (e.g., self-defense, duress).”

FACT 6

Current criminal relief measures are insufficient for addressing the complexities and realities of trafficking victimization. While a trafficking victim may be able to demonstrate lack of choice or will, they may be unable to satisfy the required elements of existing defenses (e.g., threat of death). A trafficking-specific affirmative defense accounts for the unique nature of control, coercion, and trauma-bonding utilized by traffickers to achieve survivors’ compliance with an expectation, request, or demand.

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What is Victim-Offender Intersectionality (VOI)?



VOI Case Studies



Criminal Justice Stakeholder Tool



Responding to VOI: Full Report and Guide



Affirmative Defense for Human Trafficking Victims

