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Human Trafficking Victims' Need for Vacatur: Demolishing Roadblocks to Freedom: An Analysis of the Current State Laws in the United States, the Current Federal Landscape, and a Call for the United Nations to Amend an Existing Protocol to Allow Victims of Human Trafficking to Vacate Their Criminal Records

Melissa Owens

Jackson Lewis, Melissa.Owens@jacksonlewis.com

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HUMAN TRAFFICKING VICTIMS' NEED FOR VACATUR: DEMOLISHING ROADBLOCKS TO FREEDOM

AN ANALYSIS OF THE CURRENT STATE LAWS IN THE UNITED STATES, THE
CURRENT FEDERAL LANDSCAPE, AND A CALL FOR THE UNITED NATIONS
TO AMEND AN EXISTING PROTOCOL TO ALLOW VICTIMS OF HUMAN
TRAFFICKING TO VACATE THEIR CRIMINAL RECORDS

MELISSA OWENS*

Introduction	204
I. Background	207
A. Human Trafficking	207
B. History of Vacatur Laws on the State Level in the United States	210
1. States that allow victims to vacate solely prostitution charges and convictions.	211
2. States that allow for vacatur of prostitution charges and convictions and other related offenses.	212
3. States that allow for vacatur of prostitution charges and more encompassing nonviolent offenses.	213
C. Vacatur on the Federal Level	213
II. Problem	214
A. The Inadequacy of Current State Vacatur Laws	214
III. Solution.....	215
A. State Laws Need to Strive for Uniformity and Broaden their Scope.....	215

* Melissa Owens is an attorney practicing in San Diego, California. She graduated magna cum laude from California Western School of Law. Prior to attending law school, she earned her BA in History from the University of Hawaii at Manoa in 2015. Melissa would like to thank those who contributed to this article, and Jamie Beck for inspiring her to become a pro bono intern turned attorney for Free to Thrive - a nonprofit organization assisting survivors of human trafficking with vacating their criminal records.

204 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 28:2

B. Pass the Trafficking Survivors Relief Act of 2019 217

C. Amend a Current United Nations Protocol to Encourage Nations Throughout the World to Implement Vacatur Legislation 217

IV. A Current United Nations Protocol, and the Need for its Amendment..... 218

V. Proposed Amendment..... 220

Conclusion 220

INTRODUCTION

Imagine a white American 16-year old girl from San Diego—her name is Sarah. She attends high school, has both parents at home, and during her sophomore year of high school starts a new relationship with a man named John. John tells her she is beautiful and makes her feel safe. She thinks he loves her, and their relationship is going well. Sarah does not realize it at the time, but from the moment she began dating John, he and his parents were preparing to sell her for sex. Within that same year, Sarah moves out of her family home and moves in with John.¹

The grooming process started when Sarah met John’s parents. They constantly tell her how beautiful she is and how many people would jump at the chance to be with her. Slowly, they convince Sarah that her real family does not love her. John and his parents tell Sarah that they are her family now—not the family that raised her. They tell her that they will take care of her now—not the family longing for her return. John’s mother teaches Sarah how to get a man’s attention and shows her how to dress provocatively. The attention Sarah receives from men makes her feel special, desired, and loved.

One day, John’s father introduced Sarah to a man who wanted to take her on a “date.” It was not until later that she learned this man paid to be with her. Sarah chooses not to tell John about this man or the other men that followed him—this became her secret with his parents. At the time, Sarah could not conceive the thought that John knew what was happening all along. Sarah did not realize until many years later that John and his father sexually exploited her and sold her for sex.

In 2015, Sarah celebrated her eighteenth birthday. John’s parents convinced her to undergo breast augmentation surgery. Though she did not want to go through with it, they convinced her that it would make her more

1. The author worked as a pro bono law clerk for *Free to Thrive*, a non-profit organization that provides legal services to victims of human trafficking. The story that follows is based on the facts of an actual case. The names have been changed to protect the identity of the victim and those involved.

desirable to men and offered to pay for it. Soon, they instructed her to go to Tijuana to dance in strip clubs. John's parents also transported Sarah into Mexico to meet other important clients.

Soon, John's parents began to use drugs, namely heroin, to manipulate and control Sarah. Sarah started using drugs to numb the pain of her exploitation. After becoming addicted to drugs, she lost complete control of her life.

One night, Sarah went to meet a client for a "date." After this date, the client brought her back to the hotel. Drugs were scattered throughout the room. Eventually, police arrived. The client told Sarah to hide the drugs, or he would kill her. She desperately tried to hide what she could, but there were too many and she could not hide them all. The client forced her to say that the drugs were hers. Sarah is charged and forced to plead guilty. After waiting for her release, John's parents immediately asked Sarah if she said anything to the police about them. John's parents threaten find and hurt her family should Sarah ever speak with the police. They continued to make these threats regularly—Sarah is petrified with fear.

For years John's parents continued to traffic Sarah in and out of Mexico. Some days she spent with clients in Tijuana, other days, she worked in strip clubs, and on other occasions, John's parents put her up for sale in San Diego on Craigslist. On rare occasions, John's parents let her return home to see her family, but they threatened to hurt her and her family should she betray her captors. If she stayed with her family too long, they would come looking for her.

Sarah continued her downward spiral with drugs, drinking, prostitution, and living a life she once believed glamorous. After a while, she stopped caring about anything—she just wanted to die.

Finally, Sarah escaped. She found a residential recovery program that took her in. They helped her to develop job skills, increased her self-esteem, and taught her about healthy relationships. She received therapy to support her recovery from the trauma she experienced as a result of her exploitation. Sarah even earned her G.E.D. Though she had no idea what the future held, she worked tirelessly to get her life back.

Sarah procured a job at a local restaurant, started saving money, and continued to rebuild her life. She left the restaurant hoping to find an office job to get better work experience. She interviewed for the first job she applied for and they offered her the job. A few days before the start of her training, she received a call stating that they could not hire her after all because of her background check. This crushed Sarah.

Sarah continued applying for different jobs—each one ending similarly. She would ace the interview, then the background check came through, and the employer revoked the offer. Circumstances forced Sarah to find another

restaurant job that did not require a background check. Sarah continued her education, working towards her Bachelor's degree. She earned straight A's and made the Dean's List every semester.

Today, Sarah is completely clean and sober. She has paid off her past debts. She has goals, dreams, expectations, and self-respect. Though this journey has not been easy, she has come far in her recovery emotionally, mentally, physically, and financially. She plans to keep moving forward. Her criminal charges remain in the back of her mind whenever she makes a decision about her life and future—revictimizing her. Sarah has overcome many obstacles standing in the way of her success, she has beaten the odds, and she made it out alive. Nevertheless, her criminal record hinders her progress in some of the most crucial areas of her life—her professional growth and financial security.

Through an amazing non-profit organization, Sarah learned about a process called *vacatur*. She learned that *vacatur* laws allow her, as a survivor of human trafficking, to clear her criminal record of crimes others forced her to commit. She met a wonderful attorney who helped her petition the court to vacate her criminal record. The court granted her petition—she was finally free.

The sad reality of this story is that it is a situation all too common to many victims and survivors of human trafficking. This story reflects the true story of a survivor who overcame all odds and worked tirelessly to get her life back. Even after escaping her traffickers and getting her G.E.D., Sarah's criminal record stood in her way. Luckily, in 2017, lawmakers in California decided to help survivors like Sarah.² This *vacatur* law allowed her to vacate her criminal record and eliminate the last remaining obstacle on her path to freedom.

States throughout the United States have recognized the need for some form of *vacatur* law that vacates the criminal records for victims of human trafficking. Currently, the Senate recognizes this need and has proposed the Trafficking Survivors Relief Act.³ Now, it is time for the United Nations to follow suit and recognize the need for an amendment to a United Nations treaty regarding the treatment of victims of human trafficking and allow them to petition for *vacatur*.

This article will begin in Part I(A) by discussing the extent of the problem of human trafficking, generally. Part I(B) will continue by discussing the response to this problem by analyzing the history of *vacatur* laws in the United States on the state level. Part I(C) will discuss the current federal bill,

2. See CAL. PENAL CODE § 236.14 (2018).

3. See Trafficking Survivors Relief Act of 2017, H.R. 459, 115th Cong. (2017-18).

the Trafficking Survivors Relief Act, and convey the importance of its passing. Part II will discuss the inadequacy of current state vacatur laws. Part III will discuss a solution that includes uniformity of laws across the United States. Part IV will discuss a current United Nations protocol—the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and explain why this protocol is the perfect platform for this amendment. Part V provides a proposed amendment. This article concludes by proposing an amendment to this international protocol allowing victims of human trafficking to petition the court for vacatur of their criminal record.

I. BACKGROUND

A. Human Trafficking

The United Nations has defined Trafficking in Persons as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁴

In June 2012, the International Labor Organization (ILO) estimated there were 20.9 million victims of human trafficking globally.⁵ Individuals and enterprises exploited 18.7 million (90%) of these people.⁶ Within this percentage, 4.5 million (22%) victims were sexually exploited.⁷ This estimate found that 11.4 million (55%) of these victims were women and girls, while 9.5 million (45%) were men and boys.⁸ Though there is no official estimate of human trafficking victims in the United States, Polaris—a leading organization dedicated to eradicating modern slavery—estimates that the total number of victims in the United States extends into the hundreds of thousands.⁹

In 2016, the ILO estimated there were 24.9 million victims of human trafficking.¹⁰ This demonstrates that in a mere four years, the statistics

4. See G.A. Res. 55/25, Art. 3 ¶ a (Nov. 15, 2000).

5. See International Labour Organization, *New ILO Global Estimate of Forced Labour: 20.9 Million Victims* (June 1, 2012), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang--en/index.htm.

6. See *id.*

7. See *id.*

8. See *id.*

9. See POLARIS, *The Facts*, <http://polarisproject.org/human-trafficking/facts>.

10. See *Global Estimates of Modern Slavery*, International Labour Office, 9 (2017),

increased by *four million* victims. Of these victims, 4.8 million involve forced sexual exploitation.¹¹ These numbers demonstrate that human traffickers exploited nearly one out of every four victims outside of their home country.¹²

Though these figures are alarming, they do not reflect the complete number of trafficked victims. These statistics rely primarily on reported cases.¹³ For various reasons, many cases are not reported.¹⁴ One of the factors playing into this reality is the psychological dynamics behind human trafficking. Many victims are unable to identify as victims because of the trafficker's psychological impact on them.

Senior lecturer Dr. Shirley Julich attributes this phenomenon to Stockholm Syndrome.¹⁵ She opines that Stockholm Syndrome is a survival technique that allows victims of trafficking to survive.¹⁶ The term "Stockholm Syndrome" was coined in 1973 to describe the reactions of four bank employees that were held hostage by two bank robbers in Stockholm, Sweden.¹⁷ While in captivity, these hostages developed an emotional bond with their captors to the extent that they began identifying with them and viewing the police as the enemy.¹⁸ These victims attempted to protect their captors from the police.¹⁹ Dr. Julich asserts that victims of sex trafficking are subjected to these very same conditions.²⁰

The reasoning behind this phenomenon focuses on two main issues—(1) the victims' perceived threat to their survival and (2) a distorted perception of kindness.²¹ Many victims see a clear and direct threat to not only their

https://www.ilo.org/wcmsp5/groups/public/---dgreports/-dcomm/documents/publication/wcms_575479.pdf.

11. *See id.* at 10.

12. *See id.* at 29.

13. *See id.*

14. *See* John Vanek, *Why are Human Trafficking Cases Difficult to Identify and Prosecute?*, <https://johnvanek.com/2018/01/25/why-are-human-trafficking-cases-difficult-to-identify-and-prosecute/> (last visited Mar. 11, 2020).

15. *See* Dr. Shirley Jülich, *Stockholm Syndrome and Sex Trafficking: Why Don't They Do Something?*, FAIR OBSERVER (Aug. 21, 2013), https://www.fairobserver.com/region/north_america/stockholm-syndrome-sex-trafficking-why-dont-they-do-something/.

16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

survival but to the survival of their loved ones.²² It is often the case that the victim does not perceive a threat from the trafficker.²³ Often, victims do not perceive the threat until both victim and trafficker have created a bond.²⁴ As with Sarah's situation, "[s]ome victims might experience threats to their family, believing that they are responsible for the safety of others around them."²⁵ Sarah's traffickers often threatened her family as a control mechanism. Though some may not experience such explicit threats, "[t]hey might believe that if they ask for help or attempt to escape, they or their families could be in danger."²⁶

A sex-trafficking victim's perception of kindness is different from that of an individual not living with similar fears.²⁷ The conditioning that victims undergo causes low self-esteem and self-worth, often resulting in victims viewing themselves as responsible for their own trauma.²⁸ This conditioning distorts their perceptions of kindness.²⁹ Many victims truly believe that their trafficker loves them—a dynamic that is similar to a pimp exerting control over a sex worker.³⁰ For instance, "[i]f victims are subjected to physical or sexual violence, its cessation is interpreted as kindness."³¹ This distorted perception of kindness may often result in victims not being able to identify themselves as victims.

Because of the psychological effects of human trafficking and their impact on the victim-trafficker relationship, the statistics mentioned are estimates based in part on reported instances.³² This demonstrates that the above estimates may understate the actual numbers.

Human trafficking is a global issue that affects families, businesses, economies, tourism, governments, nations, and, above all, the victims themselves.³³ Former United States President, Barack Obama said it best

22. *See id.*

23. *See* Gabrielle Fonrouge, *The sick tactics sex traffickers use to find victims*, <https://johnvanek.com/2018/01/25/why-are-human-trafficking-cases-difficult-to-identify-and-prosecute/> (last visited Mar. 10, 2020).

24. *See* Julich, *supra* note 15.

25. *See id.*

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*

32. *See* International Labour Organization, *supra* note 5.

33. *See* Emily Proctor, *Human trafficking continues to be a global issue*, https://www.canr.msu.edu/news/human_trafficking_continues_to_be_a_global_issue

when he said:

It ought to concern every person, because it is a debasement of our common humanity. It ought to concern every community, because it tears at our social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name - - modern slavery.³⁴

The world must respond to this travesty by allowing victims to be viewed as what they are—victims.

B. History of Vacatur Laws on the State Level in the United States

Vacatur is a Latin term meaning to “set aside a judgment.”³⁵ Many often confuse Vacatur with expungement—but the relief of vacatur is far more expansive.³⁶ A conviction still appears on an individual’s record when expunged, but vacatur erases the conviction.³⁷

Prior to 2010, vacatur laws did not exist for victims of human trafficking. On August 13, 2010, New York led the nation by becoming the first state to implement a vacatur law.³⁸ This statute recognized victims of human trafficking as victims rather than criminals. It permitted victims to vacate their records of crimes such as prostitution and loitering with an intent to commit prostitution.³⁹ Additionally, in application, this statute allows victims to vacate their records of non-violent offenses.⁴⁰

(last visited Mar. 11, 2020).

34. See The White House, *Remarks by the President to the Clinton Global Initiative*, (Sep. 25, 2012, 12:34 PM), <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

35. See US LEGAL, <https://definitions.uslegal.com/v/vacatur/> (last visited February 27, 2020) (showing the definition of “vacatur”).

36. See US LEGAL, <https://definitions.uslegal.com/c/criminal-law-and-procedure-expungement/> (last visited Mar. 11, 2020) (providing the definition and discussion of expungement).

37. See Sharedhope: Center for Law & Policy, *Vacatur of Delinquency Adjudications Arising from Trafficking Victimization and Expungement of Related Records* at 2, <https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2017/11/Expungement-and-Vacatur-Law-Policy-Brief.pdf> (2017).

38. See H.R. 4540, 116th Gen. Assemb., Reg. Sess. (Ny. 2019); see also Report by the Criminal Courts Committee and the Sex and Law Committee, NEW YORK CITY BAR, (May 2013), https://www2.nycbar.org/pdf/report/uploads/4_20072482-RecommendationstoLawreVacatingTraffickingVictimsProstitutionConvictions.pdf.

39. See *id.*

40. See *People v. L.G.*, 972 N.Y.S.2d 418, 420 (N.Y. Crim. Ct. 2013).

Now, almost ten years later, more than thirty states have joined New York.⁴¹ These statutes vary greatly in terms of what crimes they vacate, whether they allow for vacatur or expungement, and their limitations.⁴² These statutes fall under three general categories: (1) statutes that allow for vacatur of solely prostitution charges and convictions; (2) vacatur of prostitution charges and convictions and other related offenses; and (3) vacatur of prostitution charges and more encompassing nonviolent offenses.

1. States that allow victims to vacate solely prostitution charges and convictions.

Many states have chosen to implement vacatur statutes that have a more narrow scope in terms of what crimes they may vacate.⁴³ For example, in 2012, Washington implemented a vacatur statute allowing victims of human trafficking to vacate prostitution charges and convictions—provided that there are no other criminal charges pending in Washington, or any other state, for non-prostitution crimes.⁴⁴ Additionally, in 2013, Louisiana created a law allowing the expungement and sealing of adjudications involving victims of human trafficking, including: prostitution, prostitution by massage, and solicitation.⁴⁵ Though this is a step in the right direction, this statute only applies to children under the age of eighteen.⁴⁶ Illinois⁴⁷, North Carolina⁴⁸, Oklahoma⁴⁹, Oregon⁵⁰, Rhode Island⁵¹, Vermont⁵², West Virginia⁵³, Wisconsin⁵⁴, and Wyoming⁵⁵ have taken additional steps in implementing statutes allowing victims of human trafficking to petition the court for vacatur of prostitution charges and convictions, regardless of age.

In addition to allowing victims to petition the court for vacatur of their

41. *See infra* notes 44-78.

42. *See id.*

43. *See infra* notes 44-55.

44. *See* WASH. REV. CODE § 9.96.060 (2017).

45. *See* LA. CHILD. CODE ANN. art. 923 (2017).

46. *See id.*

47. *See* 725 ILL. COMP. STAT. ANN. 5/116-2.1 (2017).

48. *See* N.C. GEN. STAT. § 15A-1416.1 (2017).

49. *See* OKLA. STAT. tit. 22, § 22-19c (2017).

50. *See* OR. REV. STAT. ANN. § 137.221 (2018).

51. *See* 11 R.I. GEN. LAWS § 67.1-17 (2017).

52. *See* VT. STAT. ANN. tit. 13, § 2658 (2017).

53. *See* W. VA. CODE § 61-14-9 (2018).

54. *See* WIS. STAT. ANN. § 973.015(2m)(a) (2017).

55. *See* WYO. STAT. ANN. § 6-2-708 (2017).

prostitution charges and convictions, several states allow victims to raise their status as a victim of human trafficking as an affirmative defense. This includes states such as Arizona,⁵⁶ Connecticut,⁵⁷ Maryland,⁵⁸ Mississippi,⁵⁹ and South Carolina.⁶⁰

2. *States that allow for vacatur of prostitution charges and convictions and other related offenses.*

Several states have chosen to draft legislation encompassing prostitution and related offenses, that vary in terms of the exact enumerated related offenses.⁶¹ For example, in 2014, Colorado implemented a statute allowing victims to seal their record for prostitution and related offenses such as solicitation, maintaining a place of prostitution, and public indecency.⁶² In 2017, Colorado also allowed victims to use their status as an affirmative defense for these charges.⁶³ States such as Delaware,⁶⁴ Florida,⁶⁵ Hawaii,⁶⁶ and Ohio⁶⁷ expanded the scope of their statutes to include crimes such as loitering and obscenity. Michigan⁶⁸ included solicitation in the scope of their statute, while Nevada⁶⁹ included solicitation, trespass, and loitering. Some states, such as New Hampshire⁷⁰ and New Jersey,⁷¹ kept a vague scope, noting that vacatur or expungement for prostitution and “related offenses” falls within the statute. Pennsylvania added possession of a controlled substance to the list of offenses that they may vacate— due to a high number of victims with possession convictions.⁷²

56. See ARIZ. REV. STAT. §§ 13-907.01, 13-3214 (2017).

57. See CONN. GEN. STAT. §§ 53a-82, 54-95c95(c) (2019).

58. See MD. CODE ANN., CRIM. PROC. §§ 8-302, 11-303 (2018).

59. See MISS. CODE ANN. §§ 97-3-54.1(5), 97-3-54.6 (2017).

60. See S.C. CODE ANN. § 16-3-2020(f) (2018).

61. See *infra* notes 62-71.

62. See COLO. REV. STAT. § 24-72-706 (2017).

63. See COLO. REV. STAT. § 18-7-201.3 (2017) (providing that “a person charged with prostitution... may assert as an affirmative defense that he or she is a victim of human trafficking”).

64. See DEL. CODE ANN. TIT. 11, § 787(h) (2017).

65. See FLA. STAT. ANN. § 943.0583 (2017).

66. See HAW. REV. STAT. ANN. § 712-1209.6 (2017).

67. See OHIO REV. CODE ANN. § 2953.38 (2017).

68. See MICH. COMP. LAWS § 780.621 (2018).

69. See NEV. REV. STAT. § 176.515 (2017).

70. See N.H. REV. STAT. ANN. §§ 633:7; 645:2 (2017).

71. See N.J. STAT. ANN. §§ 2C:34-1, 2C:44-1.1 (2017).

72. See 18 PA. CONS. STAT. ANN. § 3019(d) (2017).

3. *States that allow for vacatur of prostitution charges and more encompassing nonviolent offenses.*

There are a few states that stand out among the rest because they epitomize the intent behind vacatur legislation—to provide victims with a fresh start and no longer view them as criminals. In 2017, California added a secondary vacatur statute.⁷³ In 2015, California had implemented a statute that allowed for vacatur of prostitution convictions.⁷⁴ Viewing this as insufficient, the California State Legislature enacted Penal Code § 236.14, which allowed victims to vacate their records of *any* nonviolent offenses that they committed at the behest of their captors. Similarly, in 2014, Kentucky implemented a statute that allowed for expungement of prostitution offenses and other non-violent offenses committed while victimized by human trafficking.⁷⁵ In 2015, Idaho implemented a statute that allowed for vacatur of prostitution or “any other offense determined by the court to be appropriate”⁷⁶ States such as Montana⁷⁷, North Dakota⁷⁸, and Utah⁷⁹ have also chosen a more encompassing vacatur statute that includes non-violent offenses.

C. Vacatur on the Federal Level

On October 28, 2000, the Trafficking Victims Protection Act (TVPA) took effect.⁸⁰ The enactment of the TVPA “[s]parked a decade of progress toward eradicating modern-day slavery, a national endeavor that traces back to the Thirteenth Amendment’s command, in 1865, that ‘neither slavery nor involuntary servitude . . . shall exist within the United States.’”⁸¹ In 2010, the Department of Justice Civil Rights Division reflected on the passing of the TVPA.⁸² They wrote:

In the decade since passage of the TVPA, we as a nation have made great

73. See CAL. PENAL CODE § 236.14(m) (Deering 2017).

74. See CAL. PENAL CODE § 1203.49 (Deering 2018).

75. See KY. REV. STAT. ANN. § 529.160 (LexisNexis 2017).

76. See IDAHO CODE § 67-3014 (2017).

77. See MONT. CODE ANN. § 46-18-608 (2017).

78. See N.D. CENT. CODE § 12.1-41-14 (2017); 12.1-41-13 (2017).

79. See UTAH CODE ANN. § 78B-9-104 (LexisNexis 2017).

80. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

81. U.S. DEP’T. OF JUSTICE, REPORT ON THE TENTH ANNIVERSARY OF THE TRAFFICKING VICTIMS PROTECTION ACT 3 (U.S. Dept. of Justice Civil Rights Division, 2010).

82. *Id.*

strides in the struggle to end human trafficking. But until we can truly relegate modern-day slavery to its rightful place in the past, alongside other shameful episodes in our nation's history, we will continue to make the fight against human trafficking a top criminal justice priority. We will continue to strengthen our partnerships and redouble our efforts to give victims a voice, bring traffickers to justice, and dismantle human trafficking networks.⁸³

The United States has made many great strides in regard to human trafficking; however, the process is far from over.⁸⁴ The TVPA serves as a prime example of this fact—even this document made no mention of the importance of vacatur or expungement for victims of human trafficking.⁸⁵

Additionally, many scholars have communicated the need for a federal vacatur law.⁸⁶ Currently, on the federal level, there are no vacatur laws. The federal government continues to lag behind states—many of which still do not provide an avenue for addressing the collateral consequences of forced sex trafficking. Because of this, many scholars have communicated the need for a federal vacatur law.⁸⁷

By their failure to provide this crucial avenue of relief, the federal government is depriving survivors of human trafficking both the opportunity to heal and the ability to significantly improve the quality of their lives. If proper legislation is not passed, the federal government will continue to be a key player in the revictimization of survivors of this horrific crime.⁸⁸

II. PROBLEM

A. The Inadequacy of Current State Vacatur Laws

Though the vacatur statutes discussed above vary in terms of scope, their mere existence is powerful because they provide a stepping stone toward justice. However, all fifty states have yet to implement some form of

83. *Id.* at 14.

84. See Elizabeth Holton, *Ending Modern Slavery: How America Is Working to Stop Human Trafficking*, US GLOBAL LEADERSHIP COALITION, <https://www.usglc.org/blog/ending-modern-slavery-how-america-is-working-to-stop-human-trafficking/> (July 31, 2017).

85. See Victims of Trafficking and Violence Protection Act, 114 Stat. 1464-1548.

86. See, e.g., Jessica Emerson, & Alison Aminzadeh, *Left Behind: How the Absence of a Federal Vacatur Law Disadvantages Survivors of Human Trafficking*, 16 U. Md. L.J. RACE RELIG., GENDER & CLASS 239, 241-42 (2016).

87. *Id.* at 243.

88. *Id.* at 257.

expungement or vacatur legislation.⁸⁹ States that have not yet implemented a vacatur statute must be encouraged to do so. States that have chosen a narrower scope should consider amending that statute or drafting a secondary statute to expand it. Traffickers often force their victims to commit crimes against their will. Some are forced to steal, carry controlled substances, or carry weapons⁹⁰ to protect themselves. The importance of having a broader, more encompassing vacatur statute is instrumental to preventing further injustice.

For example, in *People v. LG*⁹¹, LG was a victim of human trafficking. In addition to her prostitution-related offenses, the court convicted her for possession of a pen knife—a direct result of her victimization—that was carried for protection against an abusive “John.”⁹² The District Attorney objected to vacating the weapons charge, arguing that the offense was not a prostitution offense, making vacatur inapplicable as a matter of public policy. Judge Toko Serita disagreed.⁹³ In the past, Judge Serita vacated a prostitution and drug possession conviction of a woman trafficked by her husband.⁹⁴ Cases like these serve as prime examples of why vacatur statutes with a broader scope are essential in attaining the goal of many of these vacatur statutes—to “[a]llow survivors to move forward with their lives and not be held back by their victimization and criminalization.”⁹⁵

Though some states have broadened these statutes in application, the life of a victim should not be left at the judicial system’s discretion. Though judges like Judge Serita have seen the meaning behind vacatur statutes,⁹⁶ every judge may not be so inclined. It is imperative that states strive for uniformity, certainty, and brevity in this area of the law. The life of a victim of human trafficking is too important to leave to judicial inclination.

III. SOLUTION

A. *State Laws Need to Strive for Uniformity and Broaden their Scope*

There are currently six states in the United States that do not have any

89. See *supra* note 44-79.

90. See *e.g.*, *People v. L.G.*, 972 N.Y.S.2d 418, 425 (N.Y. Crim. Ct. 2013).

91. See *id.* at 434-35.

92. See *id.* at 439-40.

93. John Caher, *Judge Vacates Trafficking Victim’s Non-Prostitution Crimes*, N.Y. L.J., (Aug. 20, 2013).

94. See *People v. G.M.*, 32 Misc 3d 274 (N.Y. Crim. Ct. 2011).

95. See *Id.*; see also *L.G.*, 972 N.Y.S2d at 425.

96. See, *e.g.*, N.Y. CRIM. PROC. LAW § 440.10(1)(i)(i),(ii) (Consol. 2019).

form of criminal record relief for survivors of human trafficking: Virginia, Alaska, South Dakota, Maine, Minnesota, and Iowa.⁹⁷ These states must create vacatur laws to allow victims within the state to vacate certain criminal records. In doing so, the laws must encompass prostitution as well as non-violent offenses. States with statutes narrow in scope need to consider amending or drafting a secondary statute to encompass non-violent offenses.

In addition to the scope of the crimes permitted for vacatur, states should also consider the content of the statute itself. Many of these vacatur statutes provide for the evidentiary burden required to demonstrate one's status as a victim of human trafficking. For example, in California, official documentation may be introduced as evidence that the victim's participation in the offense was the result of being a victim of human trafficking.⁹⁸ This statute continues to define "official documentation" as: "[a]ny documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of human trafficking."⁹⁹ A statute that allows any documentation, even documentation from a local agency, makes it easier for victims to verify their status as such. Similarly, New York allows official documentation as evidence for one's status as a victim of human trafficking, indicating that it "[s]hall create a presumption that the defendant's participation in the offense was the result of having been a victim," but that it is not required to grant vacatur.¹⁰⁰ Considering what a victim must show to establish their status as a victim is crucial to making vacatur attainable.

Furthermore, states may choose to omit judicial discretion in the text of the statute. To provide uniformity, certainty, and brevity in vacatur legislation, states can make granting the motion for vacatur mandatory if the victim can satisfy all elements. For example, Delaware distinguishes between expungements that are mandatory¹⁰¹ and those that are discretionary.¹⁰² This will ensure that the life of a victim of human trafficking is not left to judicial inclination.

97. *New Analysis Grades States on Criminal Record Relief for Survivors of Human Trafficking*, POLARIS (Mar. 14, 2019), <https://polarisproject.org/press-releases/new-analysis-grades-states-on-criminal-record-relief-for-survivors-of-human-trafficking/>.

98. CAL. PENAL CODE § 236.14(m) (2018).

99. *Id.*

100. *See* § 440.10(1)(i)(ii).

101. *See* DEL. CODE ANN. tit. 11, § 4373 (2019).

102. *Id.* § 4374.

B. Pass the Trafficking Survivors Relief Act of 2019

On September 28, 2016, Congress saw this need and responded by proposing a bill—the Trafficking Survivors Relief Act.¹⁰³ This bill would allow victims of human trafficking to petition the court for vacatur of crimes committed as victims of trafficking.¹⁰⁴ This bill would allow for vacatur of convictions of nonviolent offenses and also expunge arrests for nonviolent offenses.¹⁰⁵ Unfortunately, this bill died in the House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations.¹⁰⁶ On January 11, 2017, hopes were renewed with the introduction of The Trafficking Survivors Relief Act of 2017.¹⁰⁷ Unfortunately, this bill suffered the same fate as its predecessor.¹⁰⁸ Most recently, on July 5, 2019, lawmakers introduced the Trafficking Survivors Relief Act of 2019.¹⁰⁹ On July 30, 2019, this bill followed a familiar path into the hands of the Subcommittee on Crime, Terrorism, and Homeland Security.¹¹⁰

Congress must pass this bill, so victims are able to vacate criminal records that they were forced to commit.

C. Amend a Current United Nations Protocol to Encourage Nations Throughout the World to Implement Vacatur Legislation

Though the United Nations has addressed the issue of human trafficking,¹¹¹ it has not utilized its platform to urge the rest of the world to implement vacatur legislation. Just as New York led the way for the United States in 2010 by being the first state to enact vacatur legislation,¹¹² so too can the United Nations lead impactful change. Though human trafficking has been a hot topic, the focus has been on prosecuting perpetrators, rather than

103. See Trafficking Survivors Relief Act of 2016, H.R. 6292, 114th Cong. § 3441 (2016).

104. *Id.*

105. *Id.*

106. *Id.*

107. See Trafficking Survivors Relief Act of 2017, H.R. 459, 115th Cong. § 104 (2017).

108. *Id.*

109. See Trafficking Survivors Relief Act of 2019, H.R. 3627, 116th Cong. (2019).

110. *Id.*

111. See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, T.I.A.S. 13127, 2225 U.N.T.S. 209. [hereinafter *Palermo Protocol*].

112. See N.Y. CRIM. PROC. LAW § 440.10 (McKinney 2019).

218 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 28:2

helping the victims.¹¹³ Amending an existing United Nations protocol will raise awareness and encourage other nations to follow suit.

IV. A CURRENT UNITED NATIONS PROTOCOL, AND THE NEED FOR ITS AMENDMENT

The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children¹¹⁴ (the “Protocol”) must be amended to allow victims of human trafficking to petition courts for vacatur of their criminal record.

The United States became a signatory to the Protocol on December 13, 2000, establishing the United States’ commitment to eradicating the legacy of servitude and slavery within the broader international campaign against the exploitation of human beings for labor, services, sexual servitude, and slavery.¹¹⁵ The enactment of the TVPA and the adoption of the Protocol propelled the United States and the rest of the world into a decade of unprecedented momentum—and into the fight to end human trafficking and modern-day slavery.¹¹⁶

Though the United States Department of Justice Civil Rights Division marked the United States becoming a signatory of the Protocol, a step towards delivering on the promise of freedom, neither this report nor the Protocol itself mentions vacatur.¹¹⁷ This must change.

The Protocol became effective on December 25, 2003 and was the “[f]irst global legally binding instrument with an agreed definition on trafficking in persons.”¹¹⁸ The Protocol effectively stated what *should* be a worldwide objective:

Declaring that effective action to prevent and combat trafficking in persons . . . requires a comprehensive international approach in the countries of origin, transit, and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights, [t]aking into account the fact that, despite the

113. Ivy Suriyopas, *More penalties for prostitution won't help victims of human trafficking*, The Guardian, Jan. 20, 2014, <https://www.theguardian.com/commentisfree/2014/jan/20/prostitution-human-trafficking-victims-penalties-law>.

114. See *Palermo Protocol*, *supra* note 111, at 2225.

115. U.S. DEP’T. OF JUSTICE, *supra* note 81, at 4.

116. *Id.*

117. See *id.*; see also *Palermo Protocol*, *supra* note 111.

118. United Nations Convention against Transnational Organized Crime and the Protocols Thereto (2018), <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html#Fulltext>.

existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, *there is no universal instrument that addresses all aspects of trafficking in persons . . .*¹¹⁹

One of the listed purposes of this Protocol is not only to protect and assist victims of human trafficking, but to “[p]romote cooperation among States Parties in order to meet those objectives.”¹²⁰

The Protocol’s purpose makes it an ideal platform for promoting vacatur legislation. It further states that “[e]ach State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons[.]”¹²¹ These measures include: housing, medical, psychological, and material assistance, employment and training opportunities, and even counseling in regards to legal rights.¹²² However, the Protocol still does not encourage nations to implement any form of vacatur legislation.

Fortunately, article eighteen of this Protocol provides a process for adding an amendment to reflect vacatur reform.¹²³ It states that after five years from implementation, a State Party may propose an amendment by filing it with the Secretary-General of the United Nations.¹²⁴ The Secretary-General will then communicate the proposed amendment to the State Parties and the Conference of the Parties to the Convention.¹²⁵ The State Parties to the Protocol who meet at the Conference make every effort to achieve consensus on the proposed amendment.¹²⁶ If parties are unable to reach a consensus, as a last resort, the parties may adopt the proposed amendment with a two-thirds majority vote of the State Parties to the Protocol present at the Conference.¹²⁷

This article proposes an amendment to this Protocol urging nations to adopt a measure allowing human trafficking victims an avenue to petition courts for vacatur of both sex work and related non-violent offenses. Currently, there are one-hundred and seventeen nations that are signatories of this Protocol.¹²⁸ Encouraging these nations to implement such legislation

119. *Palermo Protocol*, supra note 111, at 343 (emphasis added).

120. *Id.* at 344.

121. *Id.* at 345.

122. *Id.*

123. *See id.* at 350.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 350.

128. *Id.*

will change the lives of survivors everywhere.

V. PROPOSED AMENDMENT

This article proposes the following amendment to the Protocol:

Amendment 1. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons:

- (a) An avenue to petition for vacatur and/or expungement of convictions and/or charges for prostitution and other non-violent offenses committed as a direct result of their trafficking.
- (b) An option to assert their status as a victim of trafficking in persons as an affirmative defense to charges for offenses committed as a direct result of their trafficking.
- (c) Legal guidance through this process and access to materials that inform them of their legal rights, in a language that the victims of trafficking in persons can understand.

CONCLUSION

Human trafficking is a global epidemic. Though the United States has made great strides in efforts to prosecute traffickers,¹²⁹ the attention now must focus on helping the victims. Victims like Sarah have been hindered by their criminal record. In addition to being forced to commit sexual acts against their will, traffickers force their victims to commit crimes ranging from theft, to possession of illegal narcotics, to possession of a weapon—a weapon they must carry to defend themselves from abusive “Johns.”¹³⁰

The United States’ legal system has viewed these victims as criminals for far too long. Many, including President Obama,¹³¹ view human trafficking as the new modern-day slavery.¹³² As a nation, many believed slavery had

129. See *supra* notes 44-79 (showing the states that have enacted some form of vacatur law).

130. See *e.g.*, *People v L.G.*, 972 N.Y.S.2d 418, 434 (N.Y. Crim. Ct. 2013).

131. See The White House, President Barack Obama, Address of Human Trafficking at the Clinton Global Initiative Annual Meeting (Sept. 25, 2012), <https://obama.whitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

132. U.S. DEP’T OF STATE, *What is Modern Slavery*, <https://www.state.gov/what-is-modern-slavery/> (last visited Mar. 24, 2020).

ended in the United States on December 6, 1865, with the ratification of the Thirteenth Amendment.¹³³ Over 150 years later, not only the United States, but the entire world, continues to suffer the effects of human trafficking. In 2016, there were an estimated 24.9 million victims of human trafficking.¹³⁴ The criminal records that traffickers thrust upon their victims revictimizes them regularly, even those fortunate enough to escape their traffickers.

Over the past decade, the legal system in the United States has begun to recognize and respond to this injustice. From coast to coast, a vast majority of states have implemented some form of vacatur legislation.¹³⁵ More recently, we have seen recognition on the federal level. The time has come for Congress to pass the bill and for the United Nations to amend its treaty. A global issue demands a global response.

133. U.S. CONST. amend. XIII, § 1.

134. International Labour Office, *supra* note 10, at 29.

135. *See supra* notes 44-79.