

12-15-2021

Justice for All? Impeding the Villainization of Human Trafficking Victims via the Expansion of Vacatur Laws

Sarah Devaney

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Sarah Devaney *Justice for All? Impeding the Villainization of Human Trafficking Victims via the Expansion of Vacatur Laws*, 49 Pepp. L. Rev. 241 (2021)

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Justice for All? Impeding the Villainization of Human Trafficking Victims via the Expansion of Vacatur Laws

Abstract

It is common for human trafficking victims to acquire a criminal record as a result of the activities they are forced to engage in whilst being trafficked. Once these victims become survivors, their criminal record hinders them from wholly reacclimating to society. The current state of human trafficking laws provides little to no relief for human trafficking survivors in regard to alleviating their criminal records. Accordingly, human trafficking survivors are perpetually victimized by the United States criminal justice system.

This Article explores the current state of human trafficking laws and their enduring effect on survivors. Specifically, the Article examines California's vacatur law and analyzes its fundamental advantages and disadvantages. Furthermore, this Article delineates the effective impact of actualizing exhaustive relief for human trafficking survivors and offers suggestions for overcoming obstacles to expansion of the proposed, improved vacatur law. Ultimately, this Article argues that the continued victimization of human trafficking survivors necessitates the implementation of a uniform, federal derivative of a comprehensive vacatur law.

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I. INTRODUCTION

To rehabilitate and reform or to villainize and revictimize?¹ The American criminal justice system currently treats victims of human trafficking in a manner that is arguably more disciplinary than the treatment of their abusers.² In 1994, sixteen-year-old sex-trafficking victim Sara Kruzan shot and killed her pimp and long-term abuser.³ Despite being two years shy of adulthood, she was tried as an adult and was sentenced to life in prison without the possibility of parole.⁴ Kruzan had been sexually abused by her pimp for six years, yet none of the abuse was allowed into evidence, and she was not permitted to speak of it during her trial.⁵ While Kruzan's story might appear to be a rare miscarriage of justice, it is the norm for many victims and survivors of human trafficking.⁶ Victims of human trafficking are abused, forced to commit crimes for the entire duration of their exploitation, and then punished for their discrepancies for the remainder of their lives.⁷ Survivors are victimized by their abusers and revictimized at the hands of the criminal "justice" system.⁸

Human trafficking, a problem that has become increasingly prevalent in the modern world, is perpetuated by systemic corruption and legislative deficiencies in the United States.⁹ The United States Department of Homeland Security has defined human trafficking as situations of exploitation "involv[ing] the use of force, fraud, or coercion to obtain some type of labor or

1. See *infra* Part III.

2. See Jessica Aycock, *Criminalizing the Victim: Ending Prosecution of Human Trafficking Victims*, 5 CRIM. L. PRAC. 5, 6–7 (2019) (proposing alterations to the current human trafficking statutes in California, Texas, and Florida).

3. See *Strategies: In Re Sara Kruzan*, NCYL, <https://youthlaw.org/case/in-re-sara-kruzan/> (last visited Oct. 7, 2021).

4. See *id.*

5. See *id.*; Tony Inglis, *Sara Kruzan, Imprisoned for Killing Her Sex Trafficker, Is Free and Fighting Back*, STREET ROOTS (June 21, 2019), <https://www.streetroots.org/news/2019/06/21/sara-kruzan-imprisoned-killing-her-sex-trafficker-free-and-fighting-back>.

6. See Rudy Castillo, *Vacatur Laws: Decriminalizing Sex Trafficking Survivors*, AM. U. J. GENDER, SOC. POL'Y & L. (May 24, 2016), <http://www.jgspl.org/vacatur-laws-decriminalizing-sex-trafficking-survivors/> (delineating the effectiveness of vacatur laws).

7. See AM. BAR ASS'N COMM'N ON DOMESTIC & SEXUAL VIOLENCE, POST-CONVICTION ADVOCACY FOR SURVIVORS OF HUMAN TRAFFICKING: A GUIDE FOR ATTORNEYS 6 (2016), <https://freedomnetworkusa.org/app/uploads/2020/02/survivor-reentry-project-guide-for-attorneys.pdf>.

8. See *infra* Part II.

9. See *infra* Part II (explaining that the American criminal justice system's treatment of human trafficking survivors is indicative of systematic corruption); see also *infra* Part III (highlighting the legislative shortcomings in regard to relief for human trafficking survivors in the United States).

commercial sex act.”¹⁰ In 2016, the International Labour Office stated that approximately 40.3 million people across the globe were victims of human trafficking.¹¹ Of these victims, 4.8 million were victims of forced sexual exploitation (sex trafficking).¹² “[T]he Justice for Victims of Trafficking Act of 2015 defines sex trafficking as ‘recruiting, harboring, transporting, providing, obtaining, patronizing, or soliciting of an individual . . . for the purpose of commercial sex.’”¹³ If the victim is under the age of eighteen, however, the demonstration of “force, fraud, or coercion” is unnecessary for the act to be considered sex trafficking.¹⁴ The majority of human trafficking victims are left with no choice but to commit crimes to survive during their forced sexual exploitation.¹⁵ Consequently, those who do survive are saddled with a criminal record that inhibits their ability to recover and function as productive

10. *Blue Campaign: What Is Human Trafficking?*, U.S. DEP’T HOMELAND SEC., <https://www.dhs.gov/blue-campaign/what-human-trafficking> (last visited Oct. 26, 2021); see INT’L LABOUR OFF., *GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOR AND FORCED MARRIAGE* 9 (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf (stating human trafficking involves contemptuous circumstances, namely, “a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power”). The Trafficking Victims Protection Act of 2000 defines “coercion” as follows:

(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.

22 U.S.C. § 7102(3) (2018).

11. INT’L LABOUR OFF., *supra* note 10. “Women and girls are disproportionately affected by modern slavery, accounting for 28.7 million, or 71 per cent of the overall total. More precisely, women and girls represent 99 per cent of victims of forced labour in the commercial sex industry . . .” *Id.* at 10.

12. *Id.* “An estimated 3.8 million adults were victims of forced sexual exploitation and 1.0 million children were victims of commercial sexual exploitation in 2016.” *Id.* at 11.

13. *Sex Trafficking*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/type-trafficking/sex-trafficking> (last visited Oct. 8, 2021); see Justice for Victims of Trafficking Act of 2015, S. 178, 114th Cong. (2015); *Human Trafficking*, U.S. DEP’T JUST., <https://www.justice.gov/humantrafficking> (last visited Oct. 8, 2021). The Trafficking Victims Protection Act of 2000 defines “commercial sex act” as “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(4) (2018).

14. *Sex Trafficking*, *supra* note 13; see *Human Trafficking*, *supra* note 13.

15. See Johanna Kanes, *IANGEL Attorney Training: CA Vacatur Law*, INT’L ACTION NETWORK FOR GENDER EQUITY & L. (Nov. 17, 2019), <https://www.iangel.org/ca-vacatur-law/>. The crime sex trafficking victims are typically accused of is prostitution, but they may also be subject to “charges such as weapons, drugs, financial crimes, and identity theft.” AM. BAR ASS’N COMM’N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 7, at 4; see also JUD. COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS (2017), <https://www.courts.ca.gov/documents/human-trafficking-toolkit-cfcc.pdf> (comprising information that is useful and relevant to judicial officers who may come across the variety of cases in which a sex trafficking victim may be a party or witness).

members of society.¹⁶ To address this issue, in 2017 California enacted a vacatur statute to annul these judgments.¹⁷ The statute gives human trafficking survivors the opportunity to have their criminal records sealed and nonviolent convictions vacated, effectively freeing them from this vicious cycle.¹⁸

This Comment explores the vacatur law currently in place in California and argues for its expansion through the incorporation of a wider range of crimes and implementation across all fifty states in order to attempt to effectively aid in the rehabilitation of victims of human trafficking.¹⁹ Part II details the federal and state laws surrounding human trafficking, the scope of the issue, the coercive tactics involved that aid in broadening that scope, and the way victims of commercial trafficking have been treated as defendants by the criminal justice system.²⁰ Part III evaluates the importance of vacatur laws, analyzes the effectiveness of California's vacatur law, and explains why these laws need to be expanded.²¹ Part IV delineates the impact expansion of these laws would have on the juvenile criminal justice system and survivors of

16. See *infra* Section II.C.

17. CAL. PENAL CODE § 236.14 (West 2017). “Vacatur” is defined as “[t]he act of annulling or setting aside” or “[a] rule or order by which a proceeding is vacated.” *Vacatur*, BLACK’S LAW DICTIONARY (11th ed. 2019).

18. CAL. PENAL CODE § 236.14 (West 2017); see POLARIS, HUMAN TRAFFICKING ISSUE BRIEF: VACATING CONVICTIONS 1–2 (2015), <https://polarisproject.org/wp-content/uploads/2019/09/2015-Vacating-Convictions-Issue-Brief.pdf>. A vacatur law permits

a survivor of human trafficking to file a motion with a court to have convictions removed. When a conviction is vacated, the court acknowledges that an error has been made[,] and the conviction is reversed. In order to be successful, the applicant must present evidence that the conviction was the result of being trafficked. The types of evidence that constitute acceptable proof vary by state, but official documentation from a government entity is not required.

POLARIS, *supra*, at 1. Vacatur laws have been endorsed by the American Bar Association since 2013. *Id.* at 2. The Uniform Act on Prevention of and Remedies for Human Trafficking, promulgated by the Uniform Law Commission, acted as a guide for state legislators and proposed “language for a vacating convictions statute that goes beyond prostitution offenses and includes [nonviolent] offenses. The Uniform Act allows for greatly expanding the relief available to victims. . . . Since 2013, states have begun to enact vacating convictions statutes that go beyond prostitution offenses.” *Id.* Changes in laws following this trend “will lead to increased access and relief for all survivors of human trafficking.” *Id.*; see also JUD. COUNCIL OF CAL., *supra* note 15, at 1–2 (illustrating a plan of increased relief for all survivors of human trafficking and implementing the respective plan by preparing and educating the judiciary on the signs and effects of human trafficking and their role in combating trafficking and advocating for victims). “As the area of human trafficking continues to emerge and evolve, the judicial branch and all of its stakeholders continue to work toward evolving with it to effectively punish traffickers and support victims.” JUD. COUNCIL OF CAL., *supra* note 15, at 2.

19. See *infra* Parts III, IV.

20. See *infra* Part II.

21. See *infra* Part III.

human trafficking.²² Finally, Part V concludes that the expansion of vacatur laws and the implementation of the expanded version across the United States is necessary in order to facilitate the betterment of the juvenile justice system and provide survivors with the protection and fresh start they deserve.²³

II. THE CURRENT STATE OF HUMAN TRAFFICKING LAWS & THEIR EFFECT ON SURVIVORS

Federal and state laws have been enacted in an attempt to protect survivors of human trafficking in the United States.²⁴ The federal laws include the Trafficking Victims Protection Act (TVPA) of 2000, which was “the first comprehensive federal law to address trafficking in persons. The law provides a three-pronged approach that includes prevention, protection, and prosecution.”²⁵ The intent “of the TVPA as enacted was twofold: ‘to ensure just and effective punishment of traffickers[] and to protect their victims.’”²⁶ This legislation “was reauthorized through the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005, 2008, 2013, and 2017.”²⁷ The Justice for Victims of Trafficking Act (JVTA) of 2015 consists of amendments developed specifically to enhance the country’s response to human trafficking.²⁸ The most recent update to federal law was in 2020, when the Trafficking Survivors Relief Act of 2020 was proposed in the Senate.²⁹

Unlike the federal government, which has not yet provided relief for human trafficking victims via a criminal record relief statute, forty-four states have enacted a criminal record relief statute for victims of human trafficking.³⁰

22. See *infra* Part IV.

23. See *infra* Part V.

24. See *infra* notes 25–29 and accompanying text.

25. *Federal Law*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/federal-law> (last visited Oct. 8, 2021).

26. MaryAnne McReynolds, *The Trafficking Victims Protection Act: Has the Legislation Fallen Short of Its Goals?*, 15 POL’Y PERSPS. 33, 38 (2008) (presenting the conflicting interests between victims of human trafficking and the government by analyzing the legislative history of the TVPA); see 22 U.S.C. § 7101 (2000) (delineating the purposes and findings of the TVPA of 2000). “The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” 22 U.S.C. § 7101.

27. *Federal Law*, *supra* note 25.

28. See Justice for Victims of Trafficking Act of 2015, S. 178, 114th Cong. (2015).

29. See Trafficking Survivors Relief Act of 2020, S. 3240, 116th Cong. (2020).

30. See ERIN MARSH, BRITTANY ANTHONY, JESSICA EMERSON & KATE MOGULESCU, STATE REPORT CARDS: GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN

The survivors protected by the individual relief statutes vary depending on the specifications and interests of each state.³¹ For example, four of the forty-four states that provide survivors with criminal record relief only provide relief for victims under the age of eighteen.³² The statutes then provide the specified survivors varying degrees of relief.³³ The aforementioned alleviation of a survivor's criminal record ranges from allowing the criminal record to be sealed, to allowing for the expungement of the record, to allowing for the criminal record to be completely vacated.³⁴ Sealing criminal records prevents the public from accessing the records, although these records can be accessed via a court order.³⁵ Expungement removes a conviction from a person's criminal record.³⁶ Vacatur laws completely clear the conviction from the victim's record, legally acknowledging that the survivor should never have been convicted for the crime.³⁷ While expungement clears a survivor's record by rendering the record unavailable, vacatur reverses the conviction and validates the survivor's role as a victim, rather than a criminal.³⁸ Therefore, the most

TRAFFICKING 10 (2019), https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2081&context=all_fac (analyzing how expansive each state's criminal record relief statute is). The six states that do not provide relief for human trafficking victims are Alaska, Iowa, Maine, Minnesota, South Dakota, and Virginia. *Id.*; see also Castillo, *supra* note 6. "As of today, thirty-one states have some sort of provision that help[s] seal, expunge, or vacate arrest and/or conviction records for prostitution or related crimes." Castillo, *supra* note 6; see SHARED HOPE INT'L, NATIONAL STATE LAW SURVEY: EXPUNGEMENT AND VACATUR LAWS 1–12 (2017), https://sharedhope.org/wp-content/uploads/2016/03/NSL_Survey_Expungement-and-Vacatur-Laws.pdf (providing a chart delineating the status of vacatur laws in each state).

31. See SHARED HOPE INT'L, *supra* note 30.

32. See MARSH ET AL., *supra* note 30. Four states have trafficking-specific criminal record relief statutes that apply only to survivors who were minors at the time of their arrests and convictions. *Id.* "For potential victims reported to the National Human Trafficking Hotline between January 1, 2015[,] to June 30, 2018, the average age at entry into trafficking was 19 years old." *Id.* (footnote omitted). As a result, "states which only grant criminal record relief to individuals victimized as minors leave a gaping hole in the provision of assistance to survivors in their state." *Id.*

33. See SHARED HOPE INT'L, *supra* note 30.

34. *Human Trafficking State Laws*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx#tabs-2> (last visited Oct. 8, 2021).

35. *What's the Difference Between Expunged vs. Sealed Records?*, LAWINFO (Mar. 30, 2021), <https://www.lawinfo.com/resources/criminal-defense/expungement/whats-the-difference-between-expunged-vs-sealed-records.html>.

36. *Id.*

37. *How To Obtain Vacatur for Survivors of Human Trafficking*, HUM. TRAFFICKING SURVIVOR ADVOC. TOOLKIT, <https://www.supportsurvivors.org/vacatur> (last visited Oct. 8, 2021).

38. SHARED HOPE INT'L, POLICY BRIEF: VACATUR OF DELINQUENCY ADJUDICATIONS ARISING FROM TRAFFICKING VICTIMIZATION AND EXPUNGEMENT OF RELATED RECORDS 2 (2017), <https://sharedhope.org/wp-content/uploads/2017/11/Expungement-and-Vacatur-Law-Policy-Brief.pdf>.

expansive statutes allow for vacatur of the survivor's criminal record.³⁹ The comprehensive nature of vacatur laws necessitates the need for every state to adopt an increasingly robust version of a vacatur statute.⁴⁰

A. *The Breadth of Vacatur Laws*

The need for the adoption of vacatur laws has been recognized throughout the United States.⁴¹ In 2010, New York passed the nation's first version of a vacatur law for victims of sex trafficking.⁴² The New York law allows survivors to vacate prostitution and related convictions that directly resulted from their forced sexual exploitation.⁴³ The implementation of this vacatur statute was a monumental development for survivors of human trafficking because it provides them an alternative to their usual fate—being channeled into the criminal justice system to be further punished for their victimization.⁴⁴

Presently, thirty-five states have adopted a variation of New York's novel vacatur law, creating a more complete and effective discourse regarding the re-acclimatization of human trafficking survivors to society.⁴⁵ For example,

39. MARSH ET AL., *supra* note 30, at 8.

40. *See infra* Part III.

41. *See infra* notes 42–45 and accompanying text.

42. *See* Alyssa M. Barnard, "The Second Chance They Deserve": *Vacating Convictions of Sex Trafficking Victims*, 114 COLUM. L. REV. 1463, 1463 (2014) (stating that "[o]n August 13, 2010, New York Governor David Paterson signed into law Assembly Bill 7670, amending section 440.10(1) of the New York Criminal Procedure Law to provide victims of sex trafficking with post-conviction relief for certain prostitution offenses").

43. *Id.* at 1463–64. According to the New York statute, convictions related to prostitution primarily include loitering with the intent to commit prostitution. *Id.* at 1471 (asserting that "those prostitutes most likely to be arrested—street prostitutes—are those most likely to be victims of trafficking"); *see also* *How To Obtain Vacatur for Human Trafficking Survivors*, *supra* note 37 (delineating how to draft client narratives for vacatur petitions by creating a timeline of the victim's experiences, collecting evidence to authenticate the victim's experiences, and then using "trauma-informed strategies" to construct an accurate discourse to effectively tell the client's story to the judge).

44. Melissa Owens, *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*, 28 AM. U. J. GENDER, SOC. POL'Y & L. 203, 208–10 (2020) (analyzing the psychological effects of human trafficking that aggravate and maintain the cycle of violence). Furthermore, five states (Arizona, Connecticut, Maryland, Mississippi, and South Carolina) allow for survivors to use their status as a victim of human trafficking as an affirmative defense to the crime with which they have been charged. *Id.* at 211–12; *see* ARIZ. REV. STAT. ANN. §§ 13-909, 13-3214 (2017); CONN. GEN. STAT. §§ 53a-82, 54-95c (2019); MD. CODE ANN., CRIM. PROC. §§ 8-302, 11-303 (West 2018); MISS. CODE ANN. §§ 97-3-54.1, 97-3-54.6 (2017); S.C. CODE ANN. § 16-3-2020(f) (2018).

45. *See How To Obtain Vacatur for Survivors of Human Trafficking*, *supra* note 37. The following

Washington allows for the record of a victim of human trafficking to be vacated for prostitution or promoting prostitution, as long as the victim does not have any charges pending in Washington or another state for crimes not related to prostitution.⁴⁶ Eight states (California, Florida, Delaware, Indiana, Kentucky, Michigan, New Mexico, and Texas) allow for offenses other than prostitution that result from a minor's trafficking victimization to be vacated.⁴⁷ In addition to the variation of whom is protected under the respective statutes and how all-encompassing the relief is, the offenses that can be vacated vary in each state.⁴⁸ There are three primary categories that delineate the scope of crimes eligible for vacatur.⁴⁹ The first category includes states that have statutes that provide for the vacatur of prostitution charges and convictions only.⁵⁰ These states do not consider any residual offenses, no matter how closely related they are to the survivor's trafficking.⁵¹ The second category consists of states with marginally broader statutes than the states that constitute the first category.⁵² The states in the second category provide for the "vacatur of

states have a statute that contains a vacatur provision for human trafficking victims: Arizona (ARIZ. REV. STAT. ANN. § 13-909); California (CAL. PENAL CODE § 236.14 (West 2017)); Connecticut (CONN. GEN. STAT. ANN. § 54-95c (West 2021)); Delaware (DEL. CODE ANN. tit. 11, § 787 (West 2021)); Florida (FLA. STAT. ANN. § 943.0583 (West 2021)); Georgia (GA. CODE ANN. § 15-11-32 (West 2014)); Hawaii (HAW. REV. STAT. ANN. § 712-1209.6 (West 2021)); Idaho (IDAHO CODE ANN. § 67-3014 (West 2015)); Illinois (725 ILL. COMP. STAT. ANN. 5/116-2.1 (West 2013)); Indiana (IND. CODE ANN. § 31-37-22-11 (West 2020)); Kentucky (KY. REV. STAT. ANN. § 610.330 (West 2017)); Louisiana (LA. CHILD. CODE ANN. art. 923 (2013)); Maryland (MD. CODE ANN., CRIM. PROC. § 8-302 (West 2020)); Michigan (MICH. COMP. LAWS ANN. § 712A.18e (West 2021)); Mississippi (MISS. CODE ANN. § 97-3-54.6 (West 2013)); Montana (MONT. CODE ANN. § 46-18-608 (West 2015)); Nevada (S. Res. 243, 2017 Leg., 79th Sess. (Nev. 2017)); New Hampshire (N.H. REV. STAT. ANN. § 633:7 (2020)); New Jersey (N.J. STAT. ANN. § 2C:44-1.1 (West 2013)); New Mexico (N.M. STAT. ANN. § 32A-3B-21 (West 1993)); New York (N.Y. CRIM. PROC. LAW § 440.10 (McKinney 2021)); North Carolina (N.C. GEN. STAT. ANN. § 15A-1416.1 (West 2019)); North Dakota (N.D. CENT. CODE ANN. § 12.1-41-14 (West 2019)); Ohio (OHIO REV. CODE ANN. § 2151.358 (West 2012)); Oregon (S. B. 249, 80th Gen. Assemb., Reg. Sess. (Or. 2019)); Pennsylvania (18 PA. CONS. STAT. § 3019 (2020)); Rhode Island (R.I. GEN. LAWS ANN. § 11-67.1-17 (West 2017)); South Carolina (S.C. CODE ANN. § 16-3-2020 (2018)); Texas (TEX. FAM. CODE ANN. § 58.003 (West 2017)); Utah (UTAH CODE ANN. § 78B-9-104 (West 2021)); Vermont (VT. STAT. ANN. tit. 13, § 2658 (West 2019)); Washington (WASH. REV. CODE ANN. § 9.96.060 (West 2021)); West Virginia (W. VA. CODE ANN. § 61-14-9 (West 2021)); Wisconsin (WIS. STAT. ANN. § 973.015 (West 2016)); and Wyoming (WYO. STAT. ANN. § 6-2-708 (West 2013)). SHARED HOPE INT'L, *supra* note 30.

46. WASH. REV. CODE ANN. § 9.96.060 (West 2021).

47. See SHARED HOPE INT'L, *supra* note 30.

48. See *How To Obtain Vacatur for Survivors of Human Trafficking*, *supra* note 37.

49. Owens, *supra* note 44, at 211.

50. *Id.*

51. See *id.*

52. See *id.* at 212.

prostitution charges and convictions and other related offenses.”⁵³ Lastly, the third category is the most extensive and comprehensive and is comprised of states that allow for the “vacatur of prostitution charges and more encompassing nonviolent offenses.”⁵⁴ Many of these states include qualifiers that further inhibit the nature and amount of crimes that can be vacated.⁵⁵ Accordingly, the more restrictive the state’s statute, the less impact it has on the survivor.⁵⁶

The Polaris Project,⁵⁷ a nonprofit organization that works to combat human trafficking, has developed a grading scale that evaluates the criminal record relief laws for survivors of human trafficking in each state.⁵⁸ Polaris awards grades based on the range of relief the state provides to survivors, the offenses covered in the statute, judicial discretion, arrests and adjudications relief, nexus to trafficking, the survivor’s burden of proof, hearing requirements, and confidentiality, among other factors.⁵⁹ While all fifty states have immense progress to make, states that fall into the third category, providing the most expansive form of relief to victims, have a higher grade than states

53. *Id.* at 211.

54. *Id.*

55. *See id.* at 213. Some states do not allow for the vacatur of a survivor’s criminal record if they have charges pending for prostitution in another state. *Id.* at 211 (stating that Washington has a vacatur statute that “allow[s] victims of human trafficking” to “vacate prostitution charges and convictions” only if “there are no other criminal charges pending in Washington, or any other state, for non-prostitution crimes”). On the other hand, some states work to expand the scope of crimes that are included in the criminal relief statute. *Id.* at 213 (citations omitted) (“States such as Montana, North Dakota, and Utah have all chosen a more encompassing vacatur statute that includes [nonviolent] offenses.”); *see Human Trafficking Legislation Tracker*, U.S. CHAMBER OF COM., <https://www.uschamber.com/issues/labor/task-force-eradicate-human-trafficking/human-trafficking-legislation-tracker> (last visited Oct. 8, 2021). Nevada, Arkansas, and Hawaii proposed bills that attempt to do away with mandatory minimum sentencing for juvenile victims who are tried as adults for perpetrating crimes against their abusers. *See* Olivia Exstrum, *Child Sex-Trafficking Victims Face Decades Behind Bars for Killing Their Abusers. That Could End Soon.*, MOTHER JONES, <https://www.motherjones.com/crime-justice/2019/05/cyntoia-brown-sara-kruzan-sex-trafficking-abuse-legislation/> (last visited Sept. 21, 2021).

56. *See infra* Part III.

57. POLARIS, <https://polarisproject.org/> (last visited Oct. 8, 2021).

58. *Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, POLARIS: STATE REPORT CARDS, <https://polarisproject.org/grading-criminal-record-relief-laws-for-survivors-of-human-trafficking/> (last visited Oct. 8, 2021). Nebraska has the most comprehensive criminal record relief laws for survivors. *See* POLARIS, CRIMINAL RECORD RELIEF FOR TRAFFICKING SURVIVORS: NEBRASKA 1–2 (2019), <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Nebraska.pdf>.

59. *See* POLARIS, CRIMINAL RECORD RELIEF FOR TRAFFICKING SURVIVORS: CALIFORNIA 1–2 (2019), <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-California.pdf>.

in the other two categories.⁶⁰

B. Recruitment and Treatment of Victims Results in a Criminal Record

Why is the implementation of vacatur statutes in all fifty states necessary to avoid injustice?⁶¹ Before attempting to comprehend why the implementation and expansion of vacatur statutes is imperative, it is necessary to understand how the survivors become victims, how they accumulate a criminal record, and the impact that record has on the rest of their lives.⁶²

The manipulative tactics that comprise the human trafficking process play an immense role in the psychological complications survivors face.⁶³ The combination of residual psychological issues and extortion by their traffickers commonly results in victims having to commit crimes in order to survive.⁶⁴ They are then charged with these crimes and are left with criminal records, thus creating the need for vacatur laws.⁶⁵

Traffickers recruit victims by various methods, then use manipulative tactics to emulate trauma bonding⁶⁶ in order to coerce the victims into forced

60. See *Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, *supra* note 58. States that fit into the third category are given a higher grade by Polaris because they do a better job of providing relief for victims of human trafficking in regard to the categories Polaris evaluates. See *id.*; see also MARSH ET AL., *supra* note 30, at 27–32 (depicting and analyzing the states' grades).

61. See *supra* Section II.A.

62. See *infra* Sections II.B, II.C.

63. See Owens, *supra* note 44, at 209.

64. See *id.* at 204–06.

65. See *supra* Section II.A.

66. Lois Zoppi, *What Is Trauma Bonding?*, MED. NEWS TODAY (Nov. 26, 2020), <https://www.medicalnewstoday.com/articles/trauma-bonding>. “Trauma bonding is a psychological response to abuse. . . . A trauma bond is a connection between an abusive person and the individual they abuse. It typically occurs when the abused person begins to develop sympathy or affection for the abuser. This bond can develop over days, weeks, or months.” *Id.*; see also Shirley Julich, *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/ (“Why do hostages find it so difficult to leave? The answer is simple—Stockholm Syndrome, a survival technique that enables a hostage to survive. It is also a technique that victims of sex trafficking use to survive. . . . For most victims of sex trafficking, there is a clear and direct threat to their physical survival and the belief that the abuser is willing to carry out that threat. . . . Emotional abuse, or the threat of harm, is a threat to physical survival. There might not be any threat to survival at the beginning of the relationship, but once the victim is bonded to the abuser and it is too late to escape, the victim will feel a very real threat to his or her survival. Victims are dependent on the abuser, no matter what their circumstances. They are very aware that they cannot survive without the protection and support of the abuser. Some victims might experience threats to their family and believe they are responsible for the safety of others around them. Some might not be threatened so explicitly[,] but they might believe that if they ask for help or attempt to escape, they or

sexual exploitation.⁶⁷ Traffickers typically target young women in dysfunctional homes or abusive situations, hoping that the recruitment process will be less difficult.⁶⁸ Traffickers might use violence, manipulation, false promises

their families could be in danger.”). The victims’ vulnerability also leaves them with a skewed perception of kindness, which can lead to a trauma bond or Stockholm Syndrome. Julich, *supra*. For example:

Victims are ashamed they are in these situations and so their self-esteem is very low. They might think they are responsible. Perceptions of kindness—even in the smallest form—can take on disproportionate understandings. Many victims believe that the abuser loves them[,] and this is perceived as kindness; as is often the case between a pimp and the prostitute he or she controls. If victims are subjected to physical or sexual violence, its cessation is interpreted as kindness. Some victims might minimize what has happened to them and make such comments as: “At least he didn’t . . .,” “. . . hurt my family,” “[I]t wasn’t that bad[,]” or “[I]t could have been worse.” In some instances, victims are just thankful to be alive. All victims of sexual trafficking over time are likely to misunderstand many small acts as a demonstration of kindness.

Id.

67. See *infra* notes 68–72 and accompanying text.

68. Stephen C. Parker & Jonathan T. Skrmetti, *Pimps Down: A Prosecutorial Perspective on Domestic Sex Trafficking*, 43 U. MEM. L. REV. 1013, 1020–23 (2013) (explaining how certain circumstances can leave women more susceptible to being trafficked). The most common recruiting tactic is for the trafficker to target the particular victim’s vulnerabilities. *Id.* at 1019 (“To understand why victims do not leave, one must understand the common factors, identified by research and experience, which make[] victims susceptible to exploitation by domestic sex traffickers.”); see Matthew Myatt, Comment, *The “Victim-Perpetrator” Dilemma: The Role of State Safe Harbor Laws in Creating a Presumption of Coercion for Human Trafficking Victims*, 25 WM. & MARY J. RACE, GENDER, & SOC. JUST. 555, 563–66 (2019) (explaining the psychological manipulation and coercion involved in the recruitment and exploitation of victims by their traffickers). “As many as 90 percent of sex-trafficking victims suffer abuse—mental, physical, sexual—long before they are forced onto the streets to sell themselves, and traffickers know and exploit the damage that such trauma can cause” Gabrielle Fonrouge, *The Sick Tactics Sex Traffickers Use To Find Victims*, N.Y. POST, (Apr. 17, 2018), <https://nypost.com/2018/04/17/how-sex-traffickers-hunt-for-victims-and-brainwash-them/>. Furthermore, it is reported that

[o]nce the exploitation begins, pimps and traffickers use a cycle of abuse and affection to keep their victims in their clutches and to essentially brainwash them into thinking this is the best situation for them and[,] most of all, keep them loyal so they won’t testify against them to police.

Id.; see also Barnard, *supra* note 42, at 1468–69 (footnotes omitted) (“In the United States, the most common form of domestic sex trafficking is violent pimp-controlled prostitution. These types of traffickers are particularly prone to target underage victims, as young people tend to be more vulnerable and easier to manipulate than adults. To take advantage of these vulnerabilities, traffickers frequently look for potential targets at middle and high schools, foster homes, group homes, homeless shelters, halfway houses, parks, and playgrounds. Upon identifying a potential female victim, a trafficker might initially seek to gain her trust through flattery, gifts, dates, and promises of a bright future together—in short, by showing romantic interest or playing the role of benefactor. . . . To increase his victim’s dependence, a trafficker might try to isolate her from friends and family, become her sole source of food and shelter, and ply her with drugs.”).

of well-paying jobs, or romantic relationships to lure victims into trafficking situations.⁶⁹ In the age of social media, traffickers essentially have a menu of victims to choose from.⁷⁰ Force is then used to ensure that the victims are

69. 2019 U.S. National Human Trafficking Hotline Statistics, POLARIS, <https://polarisproject.org/2019-us-national-human-trafficking-hotline-statistics/> (last visited Oct. 8, 2021). Polaris lists the offer of a romantic relationship, a familial offer, job offers, false promises, and the perpetrator posing as a benefactor as the top five sex trafficking recruitment tactics. *Id.*; see Barnard *supra* note 42, at 1469 (footnotes omitted) (“Slowly, the trafficker will ‘groom’ his victim through a combination of physical and emotional abuse. This grooming process—essentially a form of psychological conditioning—may include beatings, sexual assault, confinement, verbal abuse, brainwashing, document confiscation, and techniques, such as the renaming of the victim or the burning of personal items, intended to erase the victim’s former identity. At the same time, the trafficker will institute rules by which the victim is expected to live—what to wear, when to eat, when to sleep, how to walk, how to interact with her trafficker—using physical violence as punishment for disobedience.”).

70. See Mellissa Withers, *Social Media Platforms Help Promote Human Trafficking*, PSYCH. TODAY (Nov. 22, 2019), <https://www.psychologytoday.com/us/blog/modern-day-slavery/201911/social-media-platforms-help-promote-human-trafficking> (“Between 2015 and 2018, the National Human Trafficking Hotline documented almost 1,000 cases of potential victims of sex trafficking alone who were recruited through internet platforms, most often Facebook, but also Instagram, Snapchat, Craigslist, online dating sites, and chat rooms.”). As social media becomes more prevalent in everyday life,

[p]redators can easily pose online as someone looking for a date in order to build trust and recruit victims. Traffickers often identify vulnerable young people through their social media presence. For example, posts that may suggest low self-esteem, problems at home, or loneliness can signal to a trafficker that a person may be easily victimized.

Recruiting victims online is generally much less risky than recruiting victims in person. Sometimes when victims are recruited through social media sites, they never even meet their traffickers in person.

Id. Furthermore:

Traffickers also use social media for deceptive or fraudulent job advertisements. Some traffickers recruit victims through illegitimate job offers for models, nannies, or dancers. Sometimes these deceptions are facilitated through fake business profiles, sham event pages on Facebook, or posts on sites like Craigslist.

Traffickers may also contact potential victims directly, claiming to be a recruiter for a modeling agency or the owner of another kind of legitimate business. The trafficker will also usually spend some time interacting with potential victims to build trust before an “official job offer” is made in order to increase the likelihood that the victim will trust the trafficker and perceive the job to be real.

Id.; see MaryAnne Bobrow, *COVID-19’s Impact on Human Trafficking*, MEETING PROS. INT’L (July 29, 2020), <https://www.mpi.org/blog/article/covid-19-s-impact-on-human-trafficking> (“In 2018, an American Airlines ticket agent assisted local police authorities in preventing two teenage girls from traveling to New York after being promised they were to appear in a modeling video. The girls had lied to their parents, each telling parents they were staying at the other’s house overnight, and arrived

trapped and unable to visualize a conceivable way of escaping.⁷¹ Moreover:

The repeated use of these psychological pressures, when paired with physical abuse[,] . . . various forced behavior, [or both,] ultimately tear[s] down the victim's self-worth and leave[s] her dependent [on] and fearful of her trafficker. Soon thereafter, the trafficker encourages and solicits the victim to perform sexual acts for the benefit of the trafficker[,] and the cycle of survival sex ensues.⁷²

These tactics invent and perpetuate circumstances that lead victims to commit crimes.⁷³

The most common crime victims of sex trafficking are charged with is prostitution.⁷⁴ In addition to the forced sexual exploitation that victims face,

at the airport with one-way, first-class tickets to New York from California. If the ticket agent's instincts [had] not been acted upon, the girls would have arrived in New York and been delivered into the hands of traffickers.”).

71. See 2019 U.S. National Human Trafficking Hotline Statistics, *supra* note 69. Polaris lists the top five forms of force, fraud, and coercion as the induction or exploitation of substance abuse issues, physical abuse, sexual abuse, intimidation, and emotional abuse. *Id.*

72. Myatt, *supra* note 68, at 563 (footnotes omitted); see Kajal Patel, *Child Prostitutes or Sexually Exploited Minors: The Deciding Debate in Determining How Best To Respond to Those Who Commit Crimes as a Result of Their Victimhood*, 2017 U. ILL. L. REV. 1545, 1555–56 (2017) (describing the power pimps have over the children they groom).

73. See Owens, *supra* note 44, at 209; Myatt, *supra* note 68, at 556–57. In highlighting the victim-perpetrator dilemma, Myatt notes:

[D]istinguishing between varying degrees of coercion and the trafficker's role in the criminal conduct of his victims presents one of the most challenging problems for law enforcement, prosecutors, and social services to address: the “victim-perpetrator” dilemma. Victims are not immune from liability, and in instances in which a victim's conduct is “sufficiently harmful to others” and “insufficiently connected to coercion,” it may be appropriate for prosecutors to consider charging a victim despite their victimization. However, trafficking victims are uniquely situated and suffer varying degrees of coercion that often directly contribute to their involvement in criminal conduct.

Myatt, *supra* note 68, at 556–57 (footnotes omitted).

74. See NAT'L SURVIVORS NETWORK, NATIONAL SURVIVOR NETWORK MEMBERS SURVEY: IMPACT OF CRIMINAL ARREST AND DETENTION ON SURVIVORS OF HUMAN TRAFFICKING 1–2 (2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>; 2019 U.S. National Human Trafficking Hotline Statistics, *supra* note 69; Barnard, *supra* note 42, at 1470. Prostitution is seen as

a paradigmatic “quality of life” offense—a minor offense that, when aggregated, is thought to demoralize communities and diminish the satisfaction of residents in affected neighborhoods. Due to these “quality of life” concerns, local residents and business owners frequently complain to police about

they are also forced to commit collateral crimes.⁷⁵ For example, victims are brought into and forced to live in despicable conditions, without basic necessities such as toothpaste.⁷⁶ This leaves victims with no choice but to steal to survive.⁷⁷ Furthermore, it is typical for the victim's trafficker to try to increase their profits by forcing the victim not only to participate in prostitution but also to sell drugs or use a false identity.⁷⁸ Indeed, a common tactic that traffickers use to ensure the victims are unable to escape is to create a dependence

prostitution-related activity in their area. Consequently, police departments like the New York City Police Department (NYPD) aim to reduce quality-of-life offenses by increasing arrests for low-level crimes. Such strategies lead to prostitution-related arrests of thousands of people a year in large cities. These arrests frequently result from sting operations where undercover officers solicit sexual favors from individuals thought to be prostitutes or from patrols where officers target people dressed in a certain way lingering on known prostitution corners. The majority of people arrested for prostitution and loitering for the purpose of prostitution fulfill the legal criteria for sex trafficking, perhaps, in part, because those prostitutes most likely to be arrested—street prostitutes—are those most likely to be victims of trafficking. Despite the prevalence of trafficking in the commercial sex industry, however, those arrested for prostitution, particularly repeat offenders, are routinely prosecuted and convicted. In fact, there is some evidence to suggest that some people are prosecuted precisely because they are trafficked, in order to convince them to share information about their traffickers.

Barnard, *supra* note 42, at 1470–71 (footnotes omitted).

75. *The Importance of Criminal Record Relief for Human Trafficking Survivors*, POLARIS (Mar. 20, 2019), <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/> (stating that, in addition to prostitution offenses, trafficking victims “can be arrested for . . . possession of weapons, drugs, or identity theft—all of which likely have been orchestrated in some way by their trafficker”).

76. *See Resources: Common Health Issues Seen in Victims of Human Trafficking*, DEP’T HEALTH & HUM. SERVS., https://www.justice.gov/sites/default/files/usao-ndia/legacy/2011/10/14/health_problems.pdf (last visited Sept. 9, 2021) (stating that it is common for trafficking victims to face “inhumane living conditions, poor sanitation, inadequate nutrition, [and] poor personal hygiene”).

77. Bianca Bruno, *Expungement Law Helps Human Trafficking Victims Move Forward*, COURTHOUSE NEWS SERV. (Feb. 2, 2018), <https://www.courthousenews.com/expungement-law-helps-human-trafficking-victims-move-forward/> (“Her feet hurt; her trafficker required her to wear high heels every day. But she had no money to buy personal grooming items like nail clippers and a pumice stone, so she stole them.”).

78. Kelsey Mullins, *A Path to Protection: Collateral Crime Vacatur for Wisconsin’s Victims of Sex Trafficking*, 2019 WIS. L. REV. 1551, 1554–55 (2019) (illustrating the crimes sex trafficking victims are forced to commit to survive their exploitation). “According to the U.S. Institute Against Human Trafficking, ninety percent of trafficking victims are arrested for selling sex. . . . One survivor and advocate said that finding employment with a criminal record due to being trafficked ‘was incredibly difficult,’” and that having the convictions “was an insurmountable barrier.” *Id.* (alteration in original) (citing Telephone Interview with Anonymous Survivor and Advocate (Sept. 21, 2019)).

on drugs.⁷⁹ Victims then find themselves facing yet another criminal charge for possession.⁸⁰ Additionally, when the victims are minors, it is typical for them to be charged with truancy.⁸¹ Complicating matters even further, traffickers routinely “cross over several state lines while trafficking in persons.”⁸² This results in complicated jurisdictional issues as well as an increase in federal cases.⁸³

Even worse, victims—especially impressionable minors—begin to believe that they themselves are criminals rather than victims.⁸⁴ This results in the victims becoming exceedingly distrustful of law enforcement, which ultimately concludes with victims lying to law enforcement.⁸⁵ This adds to the list of crimes they are forced to commit, making it nearly impossible for them to safely escape their trafficker.⁸⁶ The victims are then prosecuted for these crimes and are left with a criminal record, which further solidifies their place as victims not only of their traffickers but also of the criminal justice system.⁸⁷

C. *The Encumbrance of a Criminal Record*

After being trafficked, ninety-one percent of victims are left with a

79. *Id.* at 1559–60. Substance abuse is a common problem human trafficking survivors face:

Intoxicants can be manipulated by traffickers and turned into powerful means for coercion. There are three pertinent uses of intoxicants in human trafficking schemes: incentives, tethers, and anesthetics. These tactics can be used to manipulate a victim’s preexisting dependency or can actively be used to create a new addiction or dependency. It is very common for victims to be under the influence of drugs or alcohol when law enforcement identifies them. This dependency frequently originates from the beginning of the victim’s relationship with her trafficker

Myatt, *supra* note 68, at 567 (citations omitted).

80. Mullins, *supra* note 78, at 1559.

81. See MARSH ET AL., *supra* note 30, at 5 (“Children who are trafficked for sex and/or labor are often charged with status offenses like truancy and running away.”).

82. See HERALD SCHOLARLY OPEN ACCESS, CRIMINAL PROVISIONS FOR HUMAN TRAFFICKING: RANKINGS, STATE GRADES, AND CHALLENGES 6 (2019), https://www.herallopenaccess.us/article_pdf/34/criminal-provisions-for-human-trafficking-rankings-state-grades-and-challenges.pdf (explaining that “many state level cases are often turned over to federal authorities” as the traffickers move their victims from state to state).

83. See *id.*

84. See Myatt, *supra* note 68, at 564 (asserting that, once ingratiated into life being trafficked, victims “slowly begin to believe they are criminals”).

85. *Id.* (stating that trafficking victims often “distrust law enforcement officers” because they believe the “lie that they are just as culpable as their trafficker”).

86. See *id.* at 563–64.

87. See *Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, *supra* note 58.

criminal record.⁸⁸ These victims, juveniles and adults alike, face the repercussions of the crimes they were forced to commit for the rest of their lives.⁸⁹ Namely:

Once convicted, victims are subject to additional problems both while they are trafficked and after they manage to leave their traffickers (if they are able to do so). Traffickers frequently tell victims that a criminal record will prevent them from obtaining employment and thus will make it difficult to provide for themselves and their families if they attempt to leave the sex industry. Traffickers also tell victims that no one will believe them if they file a report against their traffickers because of their convictions. Occasionally, traffickers will even use a victim's criminal record to threaten custody or other family-court proceeding. These threats prevent many victims from leaving their traffickers.⁹⁰

With this sex-trafficking-victim-to-juvenile-justice-system pipeline, it is rather rare for minors to recover from being trafficked.⁹¹

Sex trafficking survivors with a criminal record face tremendous lifelong

88. *Id.*

89. See Mullins, *supra* note 78, at 1558 (“The consequences of being a victim of sex trafficking make it difficult to gain employment and housing, which is exacerbated when a victim also has a criminal record for crimes committed as a direct result of being trafficked.”); Barnard, *supra* note 42, at 1472 (footnotes omitted) (“Even if they escape their traffickers, victims’ prostitution-related convictions continue to affect their lives. . . . Even an individual’s ability to raise a family is compromised, as a criminal conviction can serve as evidence of unfit parenting in a custody dispute.”).

90. Barnard, *supra* note 42, at 1472 (footnotes omitted).

91. See *id.*; MARSH ET AL., *supra* note 30, at 5 (“The first time trafficking survivors come into contact with law enforcement officers is often as an offender, . . . not as a victim. . . . A criminal record has a profound impact on the ability of any individual to obtain future gainful employment and find affordable and safe housing. Employers and landlords often run background checks, and in some cases, this can result in the automatic elimination of individuals who have a criminal history from the applicant pool”). “There are presently 16,772 licensing/occupational laws with criminal record provisions that restrict the employment of persons with criminal convictions, more than 6,000 of which carry mandatory/automatic exclusions.” *Id.* at 6. Further barring victims from recovery, individuals with criminal records who want to begin or continue their education at a college, university, or a vocational school may not be accepted due to their criminal record. Those who are admitted may struggle with the financial burden of paying for their education because they may be disqualified from financial aid or private loans.

Id. Additionally, “[a] criminal history can also impact the ability of parents to retain custody of their children and can affect an individual’s access to crucial government benefits.” *Id.*

hardships, including poverty, homelessness, and mental health issues as a result of the abuse and trauma they faced while being trafficked.⁹² Additionally, research shows that the trauma survivors of human trafficking face while being trafficked alters their decision-making skills.⁹³ Consequently, victims are forced into making decisions they would not normally make due to the trauma they have endured.⁹⁴ Historically, this trauma has not been taken into account when punishing survivors of human trafficking for the crimes they have committed.⁹⁵ The result is extremely harsh punishment for crimes that the victims were forced to commit for their survival; that they were unaware they were committing; or that they committed while not in the right state of mind to fully assess the situation at hand and use basic problem-solving skills to deduce what the best response to their current predicament would be.⁹⁶

Moreover, all of these factors, combined with survivors' revictimization in the criminal justice system, increase their risk of being re-trafficked.⁹⁷

92. 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, RELIGION, GENDER & CLASS 239, 241 (2016) (highlighting the issues survivors of sex trafficking encounter); see MARSH ET AL., *supra* note 30, at 6 (“A criminal record reduces job callbacks by approximately 50 percent and significantly limits earning potential.”); Whitney J. Drasin, *New York’s Law Allowing Trafficked Persons To Bring Motions To Vacate Prostitution Convictions: Bridging the Gap or Just Covering It Up?*, 28 TOURO L. REV. 489, 490 (2012) (“The stigmatizing effects of a criminal record create barriers for victims with respect to obtaining housing, jobs, and education.”). In twenty-two states, individuals with felony convictions lose their voting rights. See *Felon Voting Rights*, NAT’L CONF. STATE LEGISLATURES (June 28, 2021), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>. Additionally, survivors who are also immigrants may face deportation. See April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails To Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 232 (2007) (asserting that, given “well-founded fears of violence and deportation,” immigrants being trafficked in the United States feel they “have nowhere to turn for help”).

93. Livia Ottisova et al., *Psychological Consequences of Child Trafficking: An Historical Cohort Study of Trafficked Children in Contact with Secondary Mental Health Services*, 13 PLOS ONE 1, 2 (Mar. 8, 2018) (concluding that child trafficking involves astronomical levels of physical and sexual abuse, which results in the need for prolonged mental health services). Accordingly,

[a] large body of evidence from other child populations attests to the adverse effects of physical and sexual violence on children’s physical health and well-being. Child physical and sexual abuse are also causally associated with a range of mental disorders, substance abuse, and suicide attempts. Previous research with adults has found trafficking to be associated with high rates of posttraumatic stress disorder (PTSD), depression, and anxiety disorders.

Id. (citations omitted).

94. *See id.*

95. *See* Emerson & Aminzadeh, *supra* note 92.

96. *Id.*; *see* Ottisova et al., *supra* note 93.

97. Cherish Adams, *Re-Trafficking Victims: How A Human Rights Approach Can Stop the Cycle*

Without an exhaustive form of relief for the crimes that victims of human trafficking are forced to commit throughout their victimization, there is no justice being provided by the criminal justice system.⁹⁸

D. California's Vacatur Law

California's 2017 vacatur law is one of the most expansive adaptations of any of the existing vacatur laws in the United States.⁹⁹ The California statute allows not only for vacatur of prostitution charges and convictions, and offenses related to prostitution charges and convictions, but also for the vacatur of other nonviolent crimes, including drug possession, theft, and truancy, that "were directly related to having been trafficked."¹⁰⁰ Accordingly:

[T]he court may vacate the conviction and expunge the arrests . . . 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.¹⁰¹

The law allows for a trafficking victim to petition for their record to be vacated if "the person is not then incarcerated [and] . . . either has no other

of Re-Victimization of Sex Trafficking Victims, 43 GEO. WASH. INT'L L. REV. 201, 211 (2011) (asserting that, without specific "victim services, such as counseling, medical aid, legal aid, and financial support, . . . there is a high likelihood that the victim will be [retrafficked]").

98. *See infra* Part IV.

99. *See infra* notes 100–01.

100. CAL. PENAL CODE § 236.14 (West 2017). Subdivision (a) of the code states:

If a person was arrested for or convicted of any nonviolent offense committed while he or she was a victim of human trafficking, including, but not limited to, prostitution as described in subdivision (b) of [s]ection 647, the person may petition the court for vacatur relief of his or her convictions and arrests under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.

Id. California, Delaware, Florida, Indiana, Kentucky, Michigan, New Mexico, and Texas maintain expungement and vacatur laws that include offenses other than prostitution that result from a minor's trafficking victimization. SHARED HOPE INT'L, *supra* note 30.

101. PENAL § 236.14(g)(1)–(4).

convictions during the prior two years or has satisfied all conditions of probation.”¹⁰² California later enacted Penal Code section 236.14 in an effort to improve and expand upon its 2015 statute, which only allowed for the vacatur of prostitution convictions.¹⁰³ Evidence of this expansion’s effectiveness includes the three vacatur petitions that have been granted in San Diego since 2017.¹⁰⁴ Therefore, further expansion of the scope of California’s 2017 vacatur law will likely provide human trafficking survivors with an increasingly exhaustive form of relief.¹⁰⁵

III. THE PROS AND CONS OF CALIFORNIA’S VACATUR LAW

Expanding the scope of California’s current vacatur statute by amplifying the pros of the law and minimizing the cons would provide a comprehensive victim-centric relief statute.¹⁰⁶ Subsequently, this expansive version of California’s vacatur law should be federalized and implemented across all fifty states.¹⁰⁷ The uniform federal adaptation of a comprehensive vacatur law is

102. Kerry Armstrong, *California Human Trafficking Laws*, L. OFFICES KERRY L. ARMSTRONG (May 25, 2018), <https://sddefenseattorneys.com/blog/california-human-trafficking-laws/>.

103. CAL. PENAL CODE § 1203.49 (West 2017). The code states:

If a defendant has been convicted of solicitation or prostitution, as described in subdivision (b) of Section 647, and if the defendant has completed any term of probation for that conviction, the defendant may petition the court for relief under this section. If the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the court may issue an order that does all of the following: (a) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the crime. (b) Orders any of the relief described in [s]ection 1203.4. (c) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

Id.

104. *Human Trafficking Victim Conviction Relief FAQ*, SAN DIEGO CNTY. PUB. DEF. OFF., https://www.sandiegocounty.gov/content/sdc/public_defender/human_trafficking.html (last visited Sept. 23, 2021). In order for a victim’s criminal record to be vacated, they must

[d]escribe[] all of the available evidence that [they] were a victim of human trafficking; and [e]xplain[] how the arrest or conviction of a nonviolent offense was the direct result of being a victim of human trafficking; and [d]escribe[] [their] good faith effort to distance [themselves] from the human trafficking scheme; and [i]nclude[] any documents, letters, reports[,] or other evidence which support [their] claims.

Id.

105. *See infra* Section III.A.

106. *See infra* Part III.

107. *See infra* Sections III.B, III.C.

imperative for the American criminal justice system to function as intended.¹⁰⁸

A. Expansion of the Scope

While California has made strides in an effort to improve the relief it provides for survivors of human trafficking, the breadth of crimes that can be vacated needs to be expanded.¹⁰⁹ For example, while California allows for offenses beyond prostitution to be vacated, the crimes need to be “the direct result of” the victim having been trafficked.¹¹⁰ The burden of proof necessary for illustrating that the crime was “the direct result of being a victim of human trafficking” can inhibit the victim’s chance of their vacatur petition being granted.¹¹¹ Expansion of the amount and nature of the crimes that are deemed “the direct result of” human trafficking could aid victims in completely clearing their criminal record.¹¹² In order to retain the integrity of the American criminal justice system when it comes to providing relief for victims of human trafficking, the law needs to be expanded to include *not only* crimes that are the direct result of the survivor’s time as a victim of trafficking but all crimes related to self-defense, as well as crimes victims perpetrated against their abusers due to the abuse they suffered.¹¹³

It is a fatal systemic flaw that traffickers across the United States are virtually never punished as severely as the victims who commit crimes while being trafficked by them.¹¹⁴ To remedy this, the focus needs to be shifted to

108. See *infra* Section III.C.

109. See *infra* Section III.A.

110. CAL. PENAL CODE § 236.14 (West 2017). While California Penal Code section 236.14 does not explicitly elaborate on what is required to be the “the direct result of” trafficking, the San Diego County Public Defender Office provides guidance regarding what the term encompasses, stating: “The crimes covered by this law are not limited to arrests or convictions for prostitution. It is much broader than that. It may include, for example, crimes such as drug use and possession if the reason you were using was to cope with being a victim of human trafficking.” *Human Trafficking Victim Conviction Relief FAQ*, *supra* note 104.

111. PENAL § 236.14; see *Human Trafficking Victim Conviction Relief FAQ*, *supra* note 104.

112. PENAL § 236.14; see *Human Trafficking Victim Conviction Relief FAQ*, *supra* note 104.

113. See *infra* Section III.A; see also Barnard, *supra* note 42, at 1485 (“Vacating convictions in appropriate circumstances promotes justice and fairness by ensuring that people are not punished for crimes they did not commit.”).

114. See Jessica Contrera, *He Was Sexually Abusing Underage Girls. Then, Police Said, One of Them Killed Him*, WASH. POST (Dec. 17, 2019), <https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/>; Susan Coppedge, *Stop Criminalizing the Victims*, CNN (Mar. 17, 2016, 12:46 PM), https://www.cnn.com/2016/03/17/opinions/coppedge-freedom-project-new-lives/index.html?eref=rss_latest (“We now know that some of the very people being criminalized are those that need the most protection. . . . Victims of modern slavery, whether children or adults, should

implement laws that help victims recover and become productive members of society.¹¹⁵ Similarly, the laws need to be altered to mitigate the consequences of human trafficking.¹¹⁶ For example, alterations that include provisions which help to alleviate “the collateral consequences of previous convictions” are extremely impactful—some of the most effective additions to vacatur laws require that “[t]he scope is broad enough to cover arrest[s] and convictions for crimes beyond prostitution.”¹¹⁷ In addition, they “do not require official documentation to ‘certify’” that someone is a victim of human trafficking, but such documentation is “presumptive evidence of trafficking.”¹¹⁸ Similarly, such laws “do not require proof of ‘rehabilitation,’ especially if [the] survivor independently chooses to be a sex worker,” and regarding the laws’ procedural aspects, “they ensure confidentiality and continue to seal records, . . . [o]ffer [the] strongest remedy available through ‘vacatur’ rather than expungement, . . . [r]emove the judge’s discretion to grant [a] motion to vacate if all requirements are met,” and allow “courts to take additional measures to truly help survivors.”¹¹⁹ To ensure that remedies are available to victims, they “[e]nsure retroactive application for survivors who were convicted before passing of the law . . . [and] [a]ttach funding provisions to ensure this remedy is being offered by attorneys who work with these vulnerable populations.”¹²⁰ Taking these additions to vacatur laws into account, the implementation of these expansive remedies positively impacts the victim’s life post trafficking.¹²¹

not be held criminally responsible for their involvement in unlawful activities that are a direct consequence of their victimization.”).

115. See *infra* Part IV. Further hindering a survivor’s chances of successfully reentering society, California’s current vacatur law includes a provision that they must pay restitution owed to “the victim of a nonviolent crime.” Penal § 236.14; MARSH ET AL., *supra* note 30, at 30. But see Nelson v. Colorado, 137 S. Ct. 1249, 1254–55 (2017) (holding, contrary to California’s requirement that a trafficking victim still pay restitution even if their conviction is vacated, that, “[t]o comport with due process, a [s]tate may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated”). “It is problematic that a survivor can have their conviction vacated, which is treated by the courts as if it never happened, but the survivor still retains financial burdens from that same conviction.” MARSH ET AL., *supra* note 30, at 30. Hindrances such as this need to be remedied before survivors can become productive members of society. *Id.*; see also Barnard, *supra* note 42, at 1492 (“[V]acatur [laws] create[] a paradoxical system for sex trafficking victims where they are treated radically differently pre[] and postconviction.”).

116. See *infra* Part IV.

117. Castillo, *supra* note 6 (analyzing effective provisions of certain vacatur statutes).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*; see also Coppedge, *supra* note 114 (“At least one study found an estimated 80 percent or more of employers in the United States use criminal background checks during their employment

Furthermore, California only allows for “nonviolent” crimes to be vacated.¹²² The enactment of legislation to include crimes that are considered nonviolent but are a result of the victim’s time being trafficked would create a rhetoric that vehemently protects victims.¹²³ For example, some victims end up physically harming their abusers in an act of self-defense and preservation.¹²⁴ At trial, no evidence of the abuse that took place during the period in which the victim was trafficked is allowed.¹²⁵ This typically results in the victim receiving the maximum sentence for any violence they perpetrated against their abuser.¹²⁶ The President of the United States is the only person with the power to release victims from federal prison sentences.¹²⁷ Therefore,

process. Vacatur increases a survivor’s ability to find work, reducing economic vulnerabilities and the risk of being [retrafficked].”). “[T]he primary purpose of allowing motions to vacate in the first place is to permit wrongly convicted individuals to escape punishment for crimes they did not commit.” Barnard, *supra* note 42, at 1495. Without the proposed expansion, the primary purpose of allowing motions to vacate cannot be actualized. *See supra* notes 109–13 and accompanying text. “By enabling victims to rid themselves of a criminal history that can compromise their employment, their housing, and their families, these statutes allow victims to escape the stigma resulting from their victimization.” Barnard, *supra* note 42, at 1500.

122. PENAL § 236.14. While the California Penal Code does not define “nonviolent,” the *United States Code* defines the term “crime of violence” as follows:

[A]n offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or . . . any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 16 (2018).

123. *See infra* Part IV.

124. *See Contrera, supra* note 114; Jessica Contrera & Susan Berger, *Cyntoia Brown: Child Sex Abuse Victim Faces Life in Prison for Killing Wealthy White Man Who Preyed on Young Black Girls*, INDEP. (Dec. 18, 2019), <https://www.independent.co.uk/news/world/americas/child-sex-abuse-trafficking-chrystul-kizer-randy-volar-a9251301.html>.

125. *See Contrera, supra* note 114. Occasionally, evidence of previous abuse in domestic violence cases can be admitted as an affirmative defense. *See* Michaela Dunn, *Subjective Vulnerabilities or Individualized Realities: The Merits of Including Evidence of Past Abuse To Support A Duress Defense*, 54 SUFFOLK U. L. REV. 347, 351–56 (2021) (providing examples where courts have allowed defense counsel to use experience of past abuse as an affirmative defense). However, the affirmative defense is limited, which frequently results in judges excluding such evidence from trial because “a blanket affirmative defense to all acts leads to an absurd result.” Leah Carroll, *Why Is Chrystul Kizer Facing Life in Prison for Killing Her Trafficker?*, REFINERY29 (Dec. 17, 2019), <https://www.refinery29.com/en-us/2019/12/9018624/chrystul-kizer-case-facts>. This decision, effectively concluding that “all trafficking victims should be tried for violent crimes,” sets an “extremely dangerous precedent.” *Id.*

126. *Should Child Sex Trafficking Victims Face Jail for Killing Their Abusers?*, FREEDOM UNITED (May 10, 2019), <https://www.freedomunited.org/news/should-child-sex-trafficking-victims-face-jail-for-killing-their-abusers/>.

127. *See Frequently Asked Questions*, U.S. DEP’T J., <https://www.justice.gov/pardon/frequently->

victims charged with federal crimes are left with no way of redemption, apart from being granted clemency by the President.¹²⁸ Opponents of expanding victim relief statutes to incorporate vacatur laws argue vacating a victim's record is equivalent to clemency, which is "a function of the executive branch and not the judicial branch."¹²⁹ However, if vacatur laws were altered to incorporate a wider range of offenses, victims would not be subjected to life in prison without the possibility of parole for offenses that amount to self-defense.¹³⁰ Thus, there would be no need for clemency, and the scope of the issue would bypass executive dominion.¹³¹ Moreover, the adverse idea which suggests that vacatur laws are unnecessary is debunked by the multitude of survivors who have benefited immensely from comprehensive vacatur statutes.¹³²

Additionally, in regard to the need for the expansion of vacatur laws to include crimes beyond those that are considered nonviolent, California criminal law allows for mitigation of sentencing for murder dependent upon the human condition.¹³³ In California, voluntary manslaughter is defined as the "killing of a human being" during "a sudden quarrel or heat of passion."¹³⁴ Thus, the law provides a lesser sentence than first or second degree murder for voluntary manslaughter, despite the identical outcome: murder.¹³⁵ The

asked-questions (last visited Nov. 5, 2020); *see also* Kate Mogulescu & Leigh Goodmark, *Clemency for War Criminals but Not Survivors of Trafficking and Violence?*, GENDER POL'Y REP. (May 30, 2019), <https://genderpolicyreport.umn.edu/clemency-for-war-criminals-but-not-survivors-of-trafficking-and-violence/> ("There is a group of people seeking clemency from [the Trump] [A]dministration who deserve an immediate and just response[:] . . . survivors of trafficking, exploitation, and intimate partner violence who have been prosecuted and convicted, labeled sex offenders, and sentenced to long terms of incarceration. Advocacy efforts on behalf of criminalized survivors in state prisons resulted in the release of a number of women and girls, . . . [b]ut the President is the only one who can free trafficking survivors from federal prisons.").

128. Mogulescu & Goodmark, *supra* note 127; *see supra* note 124 and accompanying text.

129. *See* Aycock, *supra* note 2, at 14; LEGIS. REFERENCE LIBR. TEX., ALLOWING CERTAIN PROSTITUTION CONVICTION SET-ASIDES, RECORDS EXPUNGED 4–5 (2017), <https://www.lrl.texas.gov/scanned/hroBillAnalyses/85-0/HB269.PDF>.

130. *See supra* Section III.A.

131. *See Frequently Asked Questions, supra* note 127.

132. *See Georgia's New Vacatur Law Provides Extraordinary Support for Survivors*, VILL. L. INST. TO ADDRESS COM. SEXUAL EXPLOITATION (Sept. 10, 2020), <https://cseinstitute.org/georgias-new-vacatur-law-provides-extraordinary-support-for-survivors/> ("Vacatur laws across the United States have made significant strides toward justice for survivors but many still contain harmful and restrictive provisions.").

133. *See* CAL. PENAL CODE § 192 (West 2015); CAL. PENAL CODE § 187 (West 1996); CAL. PENAL CODE § 189 (West 2020).

134. PENAL § 192(a).

135. *See* PENAL § 189.

abated punishment is justified as it presumes the absence of malice.¹³⁶ When a person is killed “in the heat of passion,” California law surmises the murderer lacked ill intent, creating space for human emotions to validate actions.¹³⁷ If an individual can get a lesser sentence for a crime of passion, why would someone who suffered from the traumatic experience of being sex trafficked not be afforded the same leniency?¹³⁸ Ideally, California’s vacatur law would apply to both arrests and convictions and encompass any type of crime related to, or a result of, the victim’s time being trafficked.¹³⁹ This broadened version of California’s vacatur law should then act as a model for productive, victim-centric relief statutes across the country.¹⁴⁰

B. Uniform Federal Adaptation of a Comprehensive Vacatur Law

The uniform federal adaptation of a comprehensive vacatur law would provide homogeneous relief for survivors, as the expansiveness of the state’s vacatur law can also affect when and if an attorney decides to file a vacatur petition for a victim’s criminal record relief.¹⁴¹ For example, after an attorney obtains a victim’s record, the attorney must evaluate the number of crimes the victim was arrested for and in what jurisdictions.¹⁴² Consequently:

Where a client’s criminal history reveals arrests[,] . . .

136. PENAL § 192(a).

137. *Id.* (stating that voluntary manslaughter is “the unlawful killing of a human being *without malice*”) (emphasis added); see *Malice*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/malice> (last visited Sept. 23, 2021) (defining malice as the “desire to cause pain, injury, or distress to another”).

138. See U.S. DEP’T OF HEALTH & HUM. SERVS.: OFF. OF THE ASSISTANT SEC’Y FOR PLAN. & EVALUATION, TREATING THE HIDDEN WOUNDS: TRAUMA TREATMENT AND MENTAL HEALTH RECOVERY FOR VICTIMS OF HUMAN TRAFFICKING 1–7 (2008), <https://aspe.hhs.gov/system/files/pdf/75356/ib.pdf> (last visited Oct. 26, 2021). Victims of domestic violence “who have killed or attempted to kill their abusive partners recently have been provided a legal defense that rests on the justification of the act they have committed as necessary to protect themselves or someone else (usually their children) from further harm or death.” Lenore E. A. Walker, *Battered Women Syndrome and Self-Defense*, 6 NOTRE DAME J.L., ETHICS & PUB. POL’Y 321, 321 (1992) (arguing that the allowance of the battered woman syndrome defense provides victims of domestic violence with a fair trial). Human trafficking victims should be afforded the same opportunity to establish a similar defense. See *supra* Section III.A.

139. See *supra* Section III.A. The phrases “related to” and “as a result of” leave room for the vacatur of acts of self-defense, whereas the phrase “the direct result of” does not. See *supra* Section III.A.; see also *supra* notes 109–13 and accompanying text.

140. See *infra* Sections III.B, III.C.

141. See AM. BAR ASS’N COMM’N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 7, at 18–19.

142. *Id.* at 15–16.

convictions[, or both] in more than one jurisdiction, it is best to plan the sequencing of vacatur efforts and also coordinate representation from the outset. This allows consideration of specific procedural requirements that may impact the ability to file in more than one place simultaneously[] or may dictate the sequence of filing.¹⁴³

Thus, if the aforementioned expansive additions have not been adopted in the jurisdiction(s) in which the victim was charged with the crime, the vacatur petition is rendered useless.¹⁴⁴ This is where a federal adaptation of a uniform vacatur law, modeled after the more comprehensive version of California's current vacatur statute, would be extremely beneficial to victims, aiding their reentry into society on a macro level.¹⁴⁵ More specifically, omitting the word "direct" from the phrase, "the direct result of," and expanding the scope of the crimes that are eligible for vacatur are enhancements that would augment California's vacatur law and should be the standard for the vacatur law in each state.¹⁴⁶ The federalization of vacatur laws that reflect these modifications would provide blanket protection for criminal activities survivors were forced to engage in during their time being trafficked or as a result of their being trafficked, regardless of movement across state lines.¹⁴⁷

Opponents of the federalization of criminal laws argue "[t]he federalization phenomenon is inconsistent with the traditional notion that prevention of crime and law enforcement in this country are basically state functions."¹⁴⁸

143. *Id.* at 15.

144. *See* Castillo, *supra* note 6.

145. *See infra* Section III.B.

146. *See infra* Section III.C; *see also* Coppedge, *supra* note 114 (arguing for the expansion of vacatur laws for victims of human trafficking). "All 50 states now have laws that criminalize human trafficking, and many have task forces dedicated to implementing effective policies and procedures to combat human trafficking through the collaboration of prosecutors, law enforcement, and service providers. The next step is for all 50 states to have vacatur laws." Coppedge, *supra* note 114.

147. Steven D. Clymer, *Unequal Justice: The Federalization of Criminal Law*, 70 S. CAL. L. REV. 643, 652 (1997) ("Participants in the federalization debate commonly define the process as simply the enactment of federal legislation that allows prosecution in federal court of offenses that the states can also prosecute.").

148. John S. Baker et al., Am. Bar Ass'n, *The Federalization of Criminal Law*, 11 FED. SENT'G REP. 194, 194 (1999). "The Criminal Justice Section of the American Bar Association created [a] Task Force" on the federalization of criminal law in order to respond to wide-spread concern about the number of new federal crimes being created annually by Congress. Its initial objectives were to look systematically at whether there ha[d] been, in fact, an increase in federal crimes which duplicate state crimes, and[] if so, to determine whether that development adversely affected

However, there is an immense, innate difference between federalizing criminal laws that punish perpetrators and federalizing criminal statutes (anti-trafficking laws) that provide relief to victims whom those perpetrators harmed.¹⁴⁹ The two most prominent arguments leading the charge as to why certain criminal laws should not be federalized are: (1) undue infringement by the federal government on matters historically left to the states and (2) needlessly burdening the federal judiciary with criminal cases.¹⁵⁰ However, these arguments are rendered meritless when it comes to the implementation of federalized vacatur laws.¹⁵¹ The argument that the federalization of such a statute constitutes infringement by the federal government upon state power is irrelevant considering the law acts as a reprieve for victims rather than a reprimand for criminals.¹⁵² Additionally, the argument that the federal judiciary will be burdened with criminal cases is rendered null and void because the implementation of expansive vacatur laws would result in the lessening of criminal cases.¹⁵³ Indeed, as the vacatur of survivors' crimes and the education of decision-makers in the litigation and criminal processes become increasingly commonplace, victims of human trafficking will be viewed as victims and thus will not be charged as criminals.¹⁵⁴

the proper allocation of responsibility between the national and state government for crime prevention and law enforcement.

Id.

149. See Coppedge, *supra* note 114. "While government efforts can never fully undo the trauma that results from human trafficking, we can start by improving our laws and policies to ensure that human trafficking victims are not prosecuted for crimes they have been forced to commit in the first place." *Id.*

150. See Jamie S. Gorelick & Harry Litman, *Prosecutorial Discretion and the Federalization Debate*, 46 HASTINGS L.J. 967, 968 (1995) (illustrating that critics believe federalization of criminal laws infringes upon rights that were explicitly delineated as state matters in the Constitution).

151. See *infra* notes 152–54 and accompanying text.

152. Cf. Gorelick & Litman, *supra* note 150 (stating that some opponents of the federalization of crime believe that doing so "inappropriately infringe[s] on federalism interests" by taking punishment for criminal wrongdoing "out of the hands of local officials"); Brian W. Walsh, *Doing Violence to the Law: The Over-Federalization of Crime*, THE HERITAGE FOUND. (June 9, 2011), <https://www.heritage.org/crime-and-justice/commentary/doing-violence-the-law-the-over-federalization-crime> (asserting that the main concern in federalizing crime is the overcriminalization of "conduct without regard to prudential and constitutional limits").

153. See Gorelick & Litman, *supra* note 150, at 978 (asserting that an effective "approach to the federalization of crime" is one which makes "a significant impact on the nation's crime problem" while "prevent[ing federal] courts from being deluged with criminal cases"); see also Aycock, *supra* note 2, at 17–20.

154. Aycock, *supra* note 2, at 17–20.

C. *Uniform Expansion of Vacatur Laws Is Necessary To Preserve the Integrity of the Criminal Justice System*

As scientific, medical, societal, and technological developments are continuously emerging, the legal field needs to adapt to accommodate these changes in order to avoid undermining the public's confidence in the criminal justice system.¹⁵⁵ The expansion of the relief allotted to survivors by the criminal justice system is not only a reflection of the effectiveness of the criminal justice system but also a contribution to the progressive discourse surrounding mental health.¹⁵⁶ In order to mitigate the consequences of human trafficking, improving survivors' mental health needs to be prioritized.¹⁵⁷ Implementing expansive, uniform vacatur laws would serve as a beacon of refuge, likely mitigating victims' mental health issues, whereas the current state of the law achieves the opposite result by incarcerating the victim, amplifying her trauma.¹⁵⁸ Therefore, altering the laws to accommodate developments regarding the mental health issues human trafficking survivors face will not only provide survivors with a more effective form of relief but also increase public confidence in the criminal justice system.¹⁵⁹

Moreover, the purpose of the criminal justice system, as delineated by

155. See *Public Trust and Confidence Resource Guide*, NAT'L CTR. FOR STATE CTS., <https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide> (last visited Sept. 13, 2021) (providing resources that analyze public opinion of the judicial branch).

156. See Sukran Altun, Melanie Abas, Cathy Zimmerman, Louise M. Howard & Sian Oram, *Mental Health and Human Trafficking: Responding to Survivors' Needs*, 14 BJPSYCH INT'L 21, 21 (2017) (noting that mental health problems "are prevalent among trafficked people," namely, "depression, anxiety[,] and post-traumatic stress disorder"); Mazeda Hossain, Cathy Zimmerman, Melanie Abas, Miriam Light & Charlotte Watts, *The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women*, 100 AM. J. PUB. HEALTH 2442, 2442 (2010) ("Our findings inform the emerging field of mental [healthcare] for trafficked persons by highlighting the importance of assessing severity and duration of trafficking-related abuses and need for adequate recovery time. Therapies for anxiety, PTSD, and mood disorders in low-resource settings should be evaluated."); *Human Trafficking Task Force E-Guide: Mental Health Needs*, OFF. FOR VICTIMS OF CRIME: TRAINING & TECH. ASSISTANCE CTR., <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/44-comprehensive-victim-services/mental-health-needs/> (last visited Oct. 21, 2021) ("The types of physical and psychological abuse human trafficking victims experience often lead to serious mental or emotional health consequences, including feelings of severe guilt, posttraumatic stress disorder, depression, anxiety, substance abuse (alcohol or narcotics), and eating disorders. Victims of trafficking often need psychological care as part of comprehensive medical treatment."); cf. Hanni Stoklosa, Marti MacGibbon & Joseph Stoklosa, *Human Trafficking, Mental Illness, and Addiction: Avoiding Diagnostic Overshadowing*, 19 AMA J. ETHICS, 23, 23, 25–30 (2017) (proposing a "trauma-informed, multidisciplinary response to potentially trafficked patients").

157. See sources cited *supra* note 153.

158. See *supra* Part II.

159. See *supra* notes 155–56 and accompanying text.

precedent and the laws of criminal procedure, is to deter, rehabilitate, and deliver justice for all.¹⁶⁰ Federal, state, and local law enforcement officers work together to enforce the respective laws, dependent upon the jurisdiction.¹⁶¹ The commonality among these laws is that they all derive from the United States Constitution.¹⁶² The Preamble of the United States Constitution states, “We the People of the United States, in Order to form a more perfect Union, establish Justice . . . [and] promote the general Welfare . . . do ordain and establish this Constitution for the United States of America.”¹⁶³ Justice is defined as “the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments.”¹⁶⁴ The notion of “promot[ing] the general Welfare” has been interpreted to indicate “that issues such as poverty, housing, food[,] and other economic and social welfare issues facing the citizenry were of central concern to the framers.”¹⁶⁵ Therefore, if the criminal justice system were serving its intended purpose, human trafficking victims would be protected, as their abusers would be deterred and subsequently rehabilitated.¹⁶⁶ Instead,

160. See, e.g., Curtis R. Blakely & Vic W. Bumphus, *American Criminal Justice Philosophy: What's Old—What's New?*, 63 FED. PROB. J. 62, 64 (1999) (noting “[t]he restorative justice paradigm envisions a more proactive criminal justice system emphasizing preventing crime in the early stages, protecting society, and relying on incarceration as a last resort,” which stems from proactive-reactive posturing of the modern American criminal justice system).

161. See *U.S. Criminal Justice System*, CORR. OFFICER.ORG, <https://www.correctionalofficer.org/us-criminal-justice-system> (last visited Sept. 13, 2021).

162. *Id.*

163. *The U.S. Constitution: Preamble*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/us> (last visited Sept. 13, 2021).

164. *Justice*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/justice>.

165. Martha F. Davis, *To Promote the General Welfare*, AM. CONST. SOC’Y: EXPERT FORUM (Sept. 15, 2011), <https://www.acslaw.org/expertforum/to-promote-the-general-welfare/>. While recognizing economic and social welfare issues were delineated as issues to be resolved in the Preamble, the Bill of Rights provides

procedural mechanisms for fair adjudication of those rights rather than carving out claims on the government to ensure that individuals actually have any social and economic assets to protect. Efforts to convince courts of alternate constitutional interpretations have generally failed. The Supreme Court has ruled, for example, that while the [D]ue [P]rocess [C]ause of the 14th [A]mendment ensures fair processes for welfare recipients, there is no underlying constitutional right to a minimum standard of living. Similarly, the Supreme Court has not found a general right to education derived from the more explicit constitutional guarantees of political participation and equal protection that might be deemed to presuppose an educational baseline.

Id.

166. See Blakely & Bumphus, *supra* note 160 (asserting that “one objective of the American

the “[l]egislature has created a deeply contradictory system: [s]ex trafficking victims are routinely prosecuted and convicted for crimes that the legislature admits victims are not culpable for committing and that victims may later seek to vacate.”¹⁶⁷ Regarding the current state of California’s vacatur law, neither the definition of “justice” nor the commonly agreed-upon meaning of promoting the general welfare is satisfied.¹⁶⁸ Accordingly, the law in California is not fulfilling its intended duty of effectuating the intentions of the United States Constitution, further demonstrating that the expansion of California’s vacatur law is necessary in order to achieve the proactive objective of the criminal justice system.¹⁶⁹

In order to adequately execute and maintain laws that embody the intentions behind the development and maintenance of the American criminal justice system, the laws need to be altered so that the focus is on helping the victims.¹⁷⁰ For example, in order to satisfy the proactive pillar of the American criminal justice system that is rehabilitation, the system needs to begin by correctly identifying the actors in need of rehabilitation.¹⁷¹ By punishing victims, the criminal justice system further enables traffickers.¹⁷² The

correctional system has traditionally been rehabilitation” and “a belief in the innate goodness of humanity and one’s ability to change”).

167. See Barnard, *supra* note 42, at 1500 (2014) (arguing that “procedural and structural flaws in [vacatur] statutes prohibit them from having their intended effect: ensuring that victims of trafficking are not punished for crimes committed under coercion”).

168. See *supra* Sections III.A, III.B; *supra* notes 160–62 and accompanying text.

169. See *U.S. Criminal Justice System*, *supra* note 161. By further punishing victims of systematic violence, none of the aforementioned goals are achieved. See Blakely & Bumphus, *supra* note 160, at 63.

170. See Barnard, *supra* note 42, at 1464–65 (proposing that legislatures improve vacatur statutes so that they “help trafficking victims vacate existing criminal convictions and avoid amassing future ones”). The flaws in the vacatur laws “suggest ambivalence about trafficking victims in a system torn between the traditional criminal treatment of prostitution and the belief that victims of trafficking should not be punished.” *Id.* at 1500.

171. See Blakely & Bumphus, *supra* note 160, at 62–63 (discussing why a focus on preventing crime rather than punishing criminals is better for society). By channeling human trafficking survivors into the criminal justice system, the goal of rehabilitation is moot, as the survivors are not in need of reformative criminal rehabilitation. Cf. Etienne Benson, *Rehabilitate or Punish?*, MONITOR ON PSYCH., July-Aug. 2003, at 46, 46 (commenting on the prison system’s inability to rehabilitate prisoners).

172. See Emerson & Aminzadeh, *supra* note 92, at 245–48. “While it is clear that victims of human trafficking have experienced a violation of their fundamental human rights, the United States’ focus on a criminal justice approach to trafficking often results in prioritizing the prosecution of traffickers over the protection of victims’ rights.” *Id.* at 245 (footnote omitted). Things such as

[l]aw enforcement raids, long seen as the primary vehicles for identification and recovery of trafficking victims, are more often deemed successful “by the collection of evidence . . . [and] witnesses who may testify in prosecution of

manipulative tactics traffickers use to trap and keep victims in their cyclical sphere of abuse are reinforced when victims bear witness to survivors being punished at the hands of the law as a result of escaping their trafficking situation.¹⁷³

D. Overcoming Roadblocks to Expansion Through Education

The primary challenge policy makers have faced when attempting to implement more expansive laws for victims has been a lack of education.¹⁷⁴ Specifically, law enforcement officers and decision-makers involved in the adjudication process—such as police officers, prosecutors, and judges—need to obtain a greater understanding of the intricacies of human trafficking, the consequences of villainizing victims, and the detrimental impact of punishing

[trafficking] crimes,” than by the identification and support of victims. Instead, victims commonly find themselves arrested or detained, either because victims are not screened for trafficking by law enforcement, or because they fail to identify themselves as victims. For some, the threat of prosecution is used as a tool to get them to testify against their traffickers in court. This can result in trafficking survivors being treated as “instruments of criminal investigation, rather than as holders of rights.” Overall, these methods only serve to further traumatize victims. Furthermore, these methods create distrust in the systems set in place to assist victims, reducing the likelihood that they will disclose their trafficking history or cooperate in a criminal case against their trafficker.

Id. at 245–46 (alterations in original) (footnotes omitted).

173. See Mellissa Withers, *Psychological Tactics Used by Human Traffickers*, PSYCH. TODAY (Oct. 19, 2016), <https://www.psychologytoday.com/us/blog/modern-day-slavery/201610/psychological-tactics-used-human-traffickers>. Traffickers will use the threat of incarceration to their advantage, presenting the “worst-case scenario” to victims in an attempt to torment them and ensure they are unwilling to escape. *Id.*

174. See Caroline A. Ross, *Land of the Free, Home of the Slave: Human Trafficking Legislation in South Carolina*, 68 S.C. L. REV. 1015, 1038–42 (2017) (highlighting the need for law enforcement and policy maker education in order to combat human trafficking). Substantive and procedural education on human trafficking is necessary, namely:

Police officers need to be trained to know the signs of human trafficking, when to charge a defendant with trafficking, and how to work with victims, especially those victims [who] do not wish to cooperate. Judges need training to learn the trafficking law, what to expect from victims, and how to make a trafficking case run smoothly. Likewise, prosecutors need educational training in the law to give them the confidence to bring a case under the trafficking law, instead of using other statutes like prostitution or kidnapping.

Id. at 1038–39 (footnotes omitted); see also ELIZABETH CHESBROUGH, HUMAN TRAFFICKING AND LOCAL LAW ENFORCEMENT 2 (2018), <https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1452&context=honorsprojects> (highlighting the connection between the pervasiveness of human trafficking in the United States and “the lack of local law enforcement training on the issue”).

victims on the criminal justice system.¹⁷⁵ Studies have shown that law enforcement agencies across the United States lack human trafficking education.¹⁷⁶ For example:

[A] trend in the research that relates to local law enforcement's lack of human trafficking awareness is its misidentification. . . . [O]ne study that conducted interviews with officers stated that "[w]hen asked to define human trafficking, many officers provided definitions in conflict with their state's human trafficking laws." This mislabeling of trafficking goes hand in hand with officers mistaking trafficking for voluntary prostitution. Given that officers are typically well versed in the identification of and law pertaining to prostitution, many trafficking cases go misreported as prostitution.¹⁷⁷

Once law enforcement officers are educated on how to accurately and effectively identify human trafficking victims, they can address and investigate the trafficking situation and realize who the victim is (the survivor) and who the perpetrator is (the trafficker).¹⁷⁸ By educating law enforcement officers and policy makers, expanding vacatur laws will likely seem as though

175. See Ross, *supra* note 174; see also Carrie A. Bohnert, Aaron W. Calhoun & Olivia F. Mittel, *Taking Up the Mantle of Human Trafficking Education: Who Should Be Responsible?*, 19 *AMA J. ETHICS* 35, 35 (2017) ("Research and advocacy are needed to address the lack of rigorously evaluated curricula in this area, impact policy, and improve services for victims of this heinous form of exploitation."). Educating healthcare workers on how to identify and treat victims of human trafficking is equally as imperative. Bohnert et al., *supra*. "[S]tudies of clinicians' preparedness to identify trafficking victims demonstrate significant deficits in their knowledge. . . . A survey of physicians, nurses, physician assistants, and social workers indicated that 63 percent of respondents had no training in victim identification." *Id.* at 36 (citations omitted).

176. See CHESBROUGH, *supra* note 174, at 4–5 (finding that "very few local police departments conduct[] any type of human trafficking training").

177. See *id.* (citations omitted) (citing Amy Farrell, Rebecca Pfeffer & Katherine Bright, *Police Perceptions of Human Trafficking*, 38 *J. CRIME & JUST.* 315, 315 (2015) ("Previous research confirms that human trafficking definitions are ambiguous and police commonly lack the training and experience necessary to identify the crime.")).

178. See *id.* at 6 (stating that education, specifically the "implement[ation of] a curriculum in the police academy that centers on effective prevention, detection, and reporting strategies for trafficking," can help police officers understand the innocent role trafficking victims play in a trafficker's criminal enterprise). "In order to effectively battle modern slavery, law enforcement must be educated, and supervisors should ensure their officers are effectively applying the trafficking training and reporting all suspected incidents. The only way to effect a change in the human trafficking epidemic is through awareness among local police officers." *Id.* at 8.

it is the next logical step in providing relief for human trafficking victims.¹⁷⁹

Increasing access to and resources for education projects, such as the Human Trafficking Clemency Initiative (HTCI),¹⁸⁰ is the only way that the laws will change: people in positions of power will be educated, and victims will receive help.¹⁸¹ The HTCI was

formed in 2017 in response to a plea for help from a group of women incarcerated in the federal prison in Tallahassee, Florida. Each of these women was a victim of sex trafficking who was also convicted of crimes related to her own trafficking. They found each other in prison and recognized the similarities in their experiences: they were victims of trafficking, often prosecuted alongside their traffickers, sentenced to long terms in federal prison, facing registration as sex offenders when they were released. This shared experience galvanized them to contact organizations outside of prison walls.¹⁸²

Projects like HTCI provide a safe haven for victims who extricate themselves from their trafficking situations and serve as a beacon of hope for victims who are searching for ways to regain control of their lives.¹⁸³ Furthermore, distributing information regarding the impact race, class, and gender biases have on human trafficking will aid in avoiding issues regarding implementing federalized, expansive vacatur laws by providing clarity on their necessity.¹⁸⁴ Utilizing and sharing information about HTCI's cases will likely alter the narrative surrounding the criminalization of activities victims of

179. See Emerson & Aminzadeh, *supra* note 92, at 242 (proposing “[t]he enactment of a federal vacatur law” as “the proper recourse for these survivors”).

180. See Mogulescu & Goodmark, *supra* note 127. The Human Trafficking Clemency Initiative consists of clinics and organizations that seek clemency for victims of sex trafficking who are incarcerated due to crimes they committed as a result of their own trafficking. *Id.*

181. See *id.*; Ross, *supra* note 174 (discussing the need to increase training for government officials).

182. Mongulescu & Goodmark, *supra* note 127.

183. *Id.*; see also Barnard, *supra* note 42, at 1500 (citations omitted) (“[T]he creation of a trafficking-victim defense would send a message to victims that they would not be treated like criminals if they were to leave their traffickers, undermining traffickers’ threats to the contrary and perhaps encouraging victims to leave their traffickers sooner.”).

184. See Mogulescu & Goodmark, *supra* note 127. “[R]ace, class, and gender intersect in HTCI’s cases in deeply problematic ways.” *Id.* Distributing information on the disparate impact race, class, and gender bias have on human trafficking victims will educate lawmakers, highlighting the necessity for uniform vacatur laws in order to avoid the negative impact biases can have on victims. See *id.*

human trafficking are forced to participate in.¹⁸⁵ For example:

The prevailing narrative of trafficking victimization features a young, white woman being exploited by a man of color. But women are disproportionately prosecuted for federal sex trafficking offenses; a woman is nearly twice as likely to be charged with trafficking as with general federal crimes. And our experience suggests that women of color are overrepresented among those prosecuted for trafficking; 82% of the individuals that HTCI works with are women of color. The systemic racism that infects the criminal legal system more generally is certainly at play in these cases.¹⁸⁶

Combating the spread of misinformation by sharing data gathered by HTCI's cases will educate decision-makers such as legislators, law enforcement officers, and judges, which is instrumental in furthering anti-human trafficking efforts.¹⁸⁷ Accordingly, adequately educating policy makers and defenders of the criminal justice system allows for the creation and enforcement of an effective uniform federal vacatur law.¹⁸⁸

IV. THE CONSTRUCTIVE IMPACT OF EXHAUSTIVE RELIEF FOR TRAFFICKING SURVIVORS

Through the implementation of a comprehensive, federalized vacatur statute, the discourse surrounding human trafficking victims and the criminality associated with their plight will be ameliorated.¹⁸⁹ This reformation lends itself the opportunity to feasibly create a system in which victims are able to seamlessly reenter society, without the stigma that surrounds being a victim and the hardships that besiege being a survivor.¹⁹⁰

185. *See id.*

186. *Id.*

187. *Id.*

188. *See supra* Section III.D.

189. *See infra* Part IV.

190. *See infra* Section IV.A.

A. *Expansion of Vacatur Laws Will Mitigate the Residual Effects of Being Trafficked*

Federalizing a uniform vacatur law will aid in alleviating the long-lasting effects of human trafficking.¹⁹¹ Not only will expansive vacatur laws help survivors acclimate to society by making it easier for them to acquire things like employment, housing, and education but newly broadened vacatur laws will also alleviate the mental toll that being labeled a criminal takes.¹⁹² By changing the narrative and adopting victim-centric relief, survivors feel empowered to become advocates.¹⁹³ Recently, several survivors who have successfully vacated their convictions founded organizations that raise awareness and advocate for victims.¹⁹⁴ Projects like these lend themselves to combating trafficking, further validating the need for expansive vacatur laws.¹⁹⁵ With an increased number of survivors discovering newfound confidence in the freedom of having their arrests and convictions vacated, there will be an increased number of advocates, educational organizations and projects, and presumably, greater means for combating human trafficking in the future.¹⁹⁶

B. *How Comprehensive Vacatur Laws Will Combat Human Trafficking Post COVID-19*

The COVID-19 pandemic has had a profoundly negative impact on the United States' efforts to combat human trafficking¹⁹⁷: "Given the enormous

191. See *supra* Sections III.B, III.C.

192. See Bianca Bruno, *Expungement Law Helps Human Trafficking Victims Move Forward*, COURTHOUSE NEWS SERV. (Feb. 2, 2018), <https://www.courthousenews.com/expungement-law-helps-human-trafficking-victims-move-forward/>. When the vacatur laws were first implemented in Michigan, women in their sixties were calling to get their records cleared for things that happened over forty years ago purely based on principle, highlighting the "symbolic principle these laws represent." *Id.* Monica Charleston, a human trafficking survivor, was able to get her record sealed twenty years after her escape. *Id.* Charleston noted she can "hold [her] head high" now, as having her records sealed gives her the sense that her victimization is in the past. *Id.* "Charleston is now an advocate for human trafficking survivors . . ." *Id.*

193. See *supra* notes 155–59 and accompanying text.

194. See Bruno, *supra* note 192; *supra* text accompanying note 192.

195. See *supra* notes 180–83 and accompanying text.

196. See *supra* notes 180–83 and accompanying text.

197. See Christina Bain & Louise Shelley, *The Evolution of Human Trafficking During the COVID-19 Pandemic*, COUNS. ON FOREIGN RELS. (Aug. 13, 2020, 5:00 PM), <https://www.cfr.org/blog/evolution-human-trafficking-during-covid-19-pandemic>. "The COVID-19 pandemic has devastated human lives, the global economy, and educational systems." *Id.*; see Thomas Brewster, *Online Child Abuse Complaints Surpass 4 Million in April. This Is How Cops are Coping Despite COVID-*

financial hardship on families, the mass movement of people, and the closing of schools (through which many social interventions are delivered to those most at risk), human trafficking can flourish in this current environment.”¹⁹⁸ Additionally, the risk of being re trafficked has risen.¹⁹⁹ As the COVID-19 pandemic confines Americans to their homes,

individuals who managed to leave their human traffickers are now considering—or are being forced to—return to their exploiters as they have lost their jobs, shelter, and medical insurance. They are at severe risk of being [retrafficked,] and victims have reported being contacted by their traffickers again during the pandemic. Some who had found support in shelters are becoming homeless as many shelters that used to accommodate former trafficking victims are shutting down due to a lack of financial support.²⁰⁰

As survivors fight to regain their freedom, the pandemic has created an entirely new class of victims that are susceptible to human trafficking.²⁰¹ For

19, FORBES (May 9, 2020, 9:10 AM), <https://www.forbes.com/sites/thomasbrewster/2020/05/09/online-child-abuse-complaints-surpass-4-million-in-april-this-is-how-cops-are-coping-despite-covid-19/?sh=b71844748db4>. The pandemic not only directly negatively impacts survivors, but

for those already in trafficking situations, COVID-19 has worsened circumstances. Protecting against exposure to the virus in trafficking situations can be more challenging. In forced labor and commercial sex settings, those who are trafficked may have little access to or choice of whether to wear masks or to insist that others nearby do. And social distancing may be difficult, if not impossible, in these settings. Given the inequitable distribution of COVID-19’s impact, trafficked individuals may also live in neighborhoods with higher rates of infection.

Jonathan Todres & Angela Diaz, *COVID-19 and Human Trafficking—the Amplified Impact on Vulnerable Populations*, 175 JAMA PEDIATRICS 123, 123 (2021).

198. Bain & Shelley, *supra* note 197. Infectious disease has increased the risks of human trafficking in the past:

Previous outbreaks are likely to have caused rises in human trafficking as parents die, thus leaving children at risk, and the social and economic conditions that lead to trafficking are amplified. Ebola, for example, increased the number of orphans vulnerable to trafficking. Other disease outbreaks have forced states to divert resources needed to combat human trafficking to other critical community needs.

Id.

199. *See id.*

200. Bain & Shelley, *supra* note 197.

201. *Id.* “[H]uman trafficking has become a major lucrative crime in a pandemic-rocked

example, young women who are left struggling to pay their rent as a result of loss of employment due to the pandemic “are being subject to [sex trafficking] by their landlords.”²⁰²

Similarly, with prolonged school closures and a heightened amount of time spent on the internet, children have become increasingly vulnerable to online predators.²⁰³ Oftentimes, predators will stalk certain hashtags and accounts, seeking future victims that possess a low sense of self-worth.²⁰⁴

world with supply chains cut off for other forms of illicit activities and lockdown measures creating severe vulnerabilities for those most at risk, helping to create the next generation of human trafficking victims.” *Id.* Furthermore, “[a]s criminal ‘entrepreneurs,’ crime networks are looking to further exploit and profit off of the most vulnerable, becoming ever more creative in their illicit endeavors.” *Id.*

202. *Id.* “According to a survey by the U.S.-based National Fair Housing Alliance of one hundred fair housing organizations, 13 percent of organizations have seen an increase in sexual harassment complaints since the pandemic started.” *Id.*; see *Landlords Coercing Tenants Unable To Pay Rent To Provide Sex: Sex Trafficking or Not?*, POLARIS (May 6, 2020), <https://polarisproject.org/blog/2020/05/landlords-coercing-tenants-unable-to-pay-rent-to-provide-sex-sex-trafficking-or-not/> (emphasis omitted) (“In the case of a landlord soliciting sex in exchange for rent, the implied threat is clear: provide sex or you and your family will be homeless. No payment plan[] or reduced rent is offered. No alternative like cleaning work or building repair is put on the table. You are quarantined to your home, unable to earn income. There really is no choice. He forces you to trade your physical autonomy for what you pay that month in rent. Coercion in return for something of value is trafficking. . . . ‘Human trafficking’ may never come into their thinking because it is so often seen as a far off crime or something that’s only part of the underworld. But, of course, it isn’t. That’s why these definitions are worth knowing and clarifying now more than ever.”).

203. Bain & Shelley, *supra* note 197. “[P]redators realize that many children will be isolated, spending several hours a day online. Parents may also be unemployed and/or distracted given the challenges of the pandemic.” *Id.* Luring victims outside of their homes has also become easier over the course of the pandemic “as social services and interventions usually provided by schools are non-existent.” *Id.* “Compounding the problem is that social distancing further isolates young girls from their peers, mentors, and supportive adults.” *Id.* “John Shehan, vice president at the National Center for Missing and Exploited Children (NCMEC), tells Forbes his organization has received 4.2 million reports in April. That’s up 2 million from March 2020 and nearly 3 million from April 2019.” Brewster, *supra* note 197 (emphasis omitted); see Todres & Diaz, *supra* note 197 (“School closings have foreclosed opportunities for teachers and other education personnel to identify at-risk or exploited youth.”); Debbie L. Sklar, *Online Training Program for Teachers To Recognize Exploitation Amid Pandemic*, TIMES SAN DIEGO (May 19, 2020), <https://timesofsandiego.com/crime/2020/05/19/online-training-program-for-teachers-to-recognize-exploitation-amid-pandemic/> (“[T]he San Diego Human Trafficking Task Force has seen an increase in cases involving juvenile victims, with many involving recruiting and grooming by traffickers over social media, according to the [San Diego County District Attorney’s] Office.”).

204. See *How Sex Traffickers Use Social Media To Contact, Recruit, and Sell Children*, FIGHT THE NEW DRUG (Aug. 11, 2021), <https://fightthenewdrug.org/how-sex-traffickers-use-social-media-to-contact-recruit-and-sell-children-for-sex/> (“[T]raffickers are drawn to children who post expressions of fear, emptiness, and disappointment, such as, ‘[N]obody gets me,’ ‘[M]y life sucks,’ ‘I need to get out of here,’ and more. Traffickers also look for indicators of substance abuse, runaway activity, and home instability.”).

Moreover, victims of human trafficking that may have attended in-person school are now confined to the home.²⁰⁵ At first glance, it may seem odd that a victim whose basic needs are not even being met (i.e., safe shelter, proper grooming) is attending school; however, traffickers will enroll their victims in school to portray a sense of normalcy and to avoid detection.²⁰⁶ Essentially, these victims are hiding in plain sight.²⁰⁷ At times, teachers keen to the signs of trafficking were able to identify victims and report them as part of their mandatory reporting obligations, but now traffickers can hide their victims behind a screen.²⁰⁸

However, the unduly negative impact the COVID-19 pandemic has had on the United States' efforts to combat human trafficking can be mitigated with the uniform expansion of vacatur laws.²⁰⁹ Federalized implementation

205. See Todres & Diaz, *supra* note 197, at 123–24.

206. See Sklar, *supra* note 203 (“According to the [San Diego Trafficking Prevention] [C]ollective, 90% of high schools researched across the country reported cases of sex trafficking, with the victim’s average age of entry at 16 years old.”). See generally *Recognizing the Signs of Human Trafficking in Schools: A Guide for Texas Educators*, TEX. STATE: TEX. SCH. SAFETY CTR., <https://txssc.txstate.edu/topics/school-violence/articles/recognizing-human-trafficking> (last visited Oct. 25, 2021) (discussing instances of human trafficking in Texas school systems).

207. See *Recognizing the Signs of Human Trafficking in Schools: A Guide for Texas Educators*, *supra* note 206 (“A common misconception is that human trafficking is a crime that is found in city streets and dark motel rooms.”). See generally *The Skinny Confidential Him & Her Podcast, Survivor & Counter Human Sex Trafficking Specialist Coco Berthmann on Working To End Human Trafficking & the Sex Slave Trade*, APPLE PODCASTS (Jan. 25, 2020), <https://podcasts.apple.com/us/podcast/survivor-counter-human-sex-trafficking-specialist-coco/id1093028505?i=1000506476427> (discussing Coco Berthmann’s time as a victim of sex trafficking, during which she attended school and dance classes).

208. See Todres & Diaz, *supra* note 197 (observing that COVID-19 school closures have caused “children and adolescents [to] spend[] more time online, increasing risks that could lead to trafficking situations”). “With schools closed due to the COVID-19 pandemic, concerns that students are more susceptible than ever to sexual exploitation have led local human trafficking watchdog groups to establish online training tools for educators to recognize the telltale signs of exploitation.” Sklar, *supra* note 203. Specifically, “[t]he San Diego Trafficking Prevention Collective . . . is now providing online training to help teachers take notice of signs of potential exploitation, even while distance learning is the only way to monitor students.” *Id.* Continued education tailored to help victims of human trafficking, such as establishing training tools for educators to learn how to facilitate aid if needed, is akin to the kind of education policy makers and law enforcement officers should obtain in order to alter the rhetoric surrounding victims of human trafficking who have criminal records. See *supra* Section III.D.

209. Todres & Diaz, *supra* note 197 (“The COVID-19 pandemic has created circumstances that may increase the risk of trafficking, inhibit identification of those who are trafficked and those who survive trafficking, and make it harder to deliver comprehensive services to support survivors’ recovery.”); see Corinne Redfern, *The Pandemic’s Hidden Human Trafficking Crisis*, FOREIGN POL’Y (Apr. 30, 2020, 9:43 AM), <https://foreignpolicy.com/2020/04/30/coronavirus-pandemic-human-trafficking-crisis/> (“[I]n times of emergency—be it a flood, a drought, or a famine, a declaration of war or a recession—support structures shift and collapse. Communities that were once strong become

of these laws would provide the relief necessary to effectively protect the vulnerable new class of human trafficking victims, as human rights-centered policies assist in mitigating the residual effects of human trafficking.²¹⁰ As services for victims of human trafficking—such as emergency departments and mental health facilities—are currently compromised, hospitals cannot retain the level of care necessary to adequately help human trafficking victims due to the need to prioritize COVID-19 patients; therefore, vacatur laws would aid in offsetting these shortcomings.²¹¹ For example, many victims become survivors because they enter the healthcare system and are recognized as human

suddenly weak as people grapple with losing their families, their homes, and their jobs. For traffickers around the world, each disaster signals a sudden availability of potential prey.”)

210. See *supra* note 188–90 and accompanying text.

211. See Bain & Shelley, *supra* note 197. “Service provider organizations are facing extraordinary challenges given staffing shortages, social distancing regulations, and lockdowns as well as potential funding losses due to economic shortfalls.” *Id.*; see *COVID-19 Pandemic and Its Impact for Victims and Survivors of Trafficking in Persons*, UNITED NATIONS: OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/Webstories2020/covid-19-pandemic-and-its-impact-for-victims-and-survivors-of-trafficking-in-persons.html> (last visited Oct. 15, 2021) (listing resources that analyze the short and long-term impact the pandemic “will likely have on the crime of trafficking in persons and its victims”); Todres & Diaz, *supra* note 197 (“[A]s COVID-19 has burdened hospitals, and particularly emergency departments, individuals with less significant symptoms have been urged to stay home. This guidance, which can help hospitals avoid being overwhelmed, can have unintended consequences for many trafficked youths who are uninsured and often rely on emergency departments as their primary source of [healthcare]. Delays in seeking care risk both adverse consequences for trafficking survivors’ health and missed opportunities for identifying individuals trapped in trafficking situations.”). Furthermore, even if a trafficked victim is able to get to the hospital to seek help, the various protocols put in place due to COVID-19 make it exponentially harder for healthcare professionals to build a relationship with the victim. Todres & Diaz, *supra* note 197, at 123–24. For example, many victims are wary of adults, which makes creating a bond while healthcare workers are wearing masks and protective equipment nearly impossible. *Id.* at 123. Without this relationship, it is unlikely the healthcare worker would be able to gather the necessary information to deduce that the victim *is* a victim. *Id.* Additionally, if and when survivors are identified, COVID-19 may negatively affect the services they need to recover. *Id.* Due to the immense amount of trauma inflicted upon human trafficking survivors, they typically require a range of services in order to recover, the quality of which have been diminished due to the pandemic. *Id.* Moreover, the social isolation that has resulted from the pandemic has resulted in an increase in survivors’ need for mental health services. *Id.*; see also Bobrow, *supra* note 70 (“According to the Global Protection Cluster (an independent network of more than 1,000 international nongovernmental organizations), headed by the United Nations High Commissioner for Refugees, although a major effort was to have taken place in 2020 against sexual exploitation, an estimated 75 percent of humanitarian operations were paused by the pandemic and accompanying lockdowns. Globally, there is still a lack of awareness training on how to identify victims of trafficking among large-scale organizations. In a pandemic situation[,] it is difficult, if not impossible, to convince people to focus on the trafficked individuals from a humanitarian perspective when many are struggling to pay bills and buy food.”).

trafficking victims by healthcare workers.²¹² Doctors would identify mental health needs and subsequently provide victims with resources to get in contact with mental health services.²¹³ More often than not, the acceptance of these services would then connect victims with other services that are critical on their path to obtaining freedom, such as legal services.²¹⁴ However, as a result of the COVID-19 pandemic, business closures and work from home policies have become increasingly common, rendering the acquisition of these services much harder for victims, if not impossible.²¹⁵ The loss of these crucial

212. See Todres & Diaz, *supra* note 197, at 124; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: 20TH EDITION 30 (2020), <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf> (“[Healthcare] providers are . . . learning to use trauma-informed, survivor-informed, and culturally and linguistically appropriate services to build trust, strengthen screening, provide improved quality medical care, and reduce the risk of retraumatization. In addition, hospital networks have integrated responses to human trafficking into other [healthcare] violence prevention efforts. Public and private [healthcare] institutions, universities, and community organizations have been developing innovative partnerships and practices to provide specialized and comprehensive [healthcare] to survivors.”). Furthermore, California has programs in place that “strive[] to ensure all medical and professional staff receive training to approach survivor care consistently in a survivor-informed manner. An evidenced-based universal education model helps empower survivors through opportunities to share their experiences while building trust with providers.” U.S. DEP'T OF STATE, *supra*, at 39. If programs like this existed to provide information regarding the needs of survivors to policy makers and law enforcement officers, it is likely these decision-makers would advocate for the relief expansive vacatur laws could provide. See *supra* Section III.D.

213. See Todres & Diaz, *supra* note 197, at 124. In order to combat the loss of mental health services due to COVID-19,

[healthcare] entities must think creatively about how to provide the integrated services that trafficked individuals need while working within the constraints of the pandemic. That means not only addressing immediate health needs but also collaborating with other service providers to ensure trafficking survivors have access to safe housing, are not isolated in abusive situations, and have the support they need.

Id.

214. See *id.* (asserting that the healthcare system serves as a facilitator to other essential services for trafficking survivors, such as “mental health services” and “legal services”).

215. *Id.*; see *Tracking the COVID-19 Economy's Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET AND POL'Y PRIORITIES, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last updated Sept. 10, 2021); Hannah Stein, *The Impact of COVID-19 on Human Trafficking*, ARTWORKS OF FREEDOM, <https://www.artworksforfreedom.org/the-impact-of-covid-19-on-human-trafficking/> (last visited Sept. 26, 2021). Gaining access to resources has become increasingly difficult as

COVID-19 has restricted the availability of resources that trafficking victims and survivors rely on. These resources include access to healthcare, social support services, childcare facilities, and safehouses. Anti-trafficking organizations are struggling; donations have decreased, fundraising events have been cancelled, and the ability to provide direct services has been thwarted by the virus. While some organizations have shifted their services online (i.e., virtual counseling), many have been forced to halt their operations.

services, which may have been curbed by the existence of a uniform federal law, is guaranteed to exacerbate the effects of human trafficking, amplifying the need for exhaustive, victim-centric relief.²¹⁶ Additionally, with the adverse effect the COVID-19 pandemic has had on employment, it will be increasingly difficult for survivors with criminal records to obtain employment.²¹⁷ Therefore, vacatur laws will bridge this newfound, challenging gap survivors will face when attempting to become productive members of society.²¹⁸

With the COVID-19 pandemic confining individuals to the inside of their homes, or the homes of their abusers, victims are likely forced to spend increased amounts of time in close quarters with their traffickers, making “their desperate situation even worse.”²¹⁹ The escalation of these situations may likely be the most prominent contributing factor to an increased number of crimes perpetrated by human trafficking victims, whether they are crimes not of the victim’s own volition (at the demand of their trafficker) or whether they are “crimes” committed in self-defense.²²⁰ As evidenced by the increase in domestic violence cases during the COVID-19 pandemic, an upsurge in time

Stein, *supra*.

216. See Todres & Diaz, *supra* note 197.

217. See *Tracking the COVID-19 Recession’s Effects on Food, Housing, and Employment Hardships*, *supra* note 215 (stating that “[t]he unemployment rate jumped in April 2020 to a level not seen since the 1930s—and still stood at 5.2 percent in August 2021”); UNITED NATIONS OFF. ON DRUGS & CRIME, *IMPACT OF THE COVID-19 PANDEMIC ON TRAFFICKING IN PERSONS 1–4* (2020), <https://www.un.org/ruleoflaw/wp-content/uploads/2020/05/Thematic-Brief-on-COVID-19-EN-ver.21.pdf> (stating that the “dramatic increases in unemployment and reductions in income, especially for low wage and informal sector workers,” because of the COVID-19 pandemic “mean[s] that significant numbers of people who were already vulnerable find themselves in even more precarious circumstances”).

218. See *COVID-19 Crisis Putting Human Trafficking Victims at Risk of Further Exploitation, Experts Warn*, UNITED NATIONS NEWS (MAY 6, 2020), <https://news.un.org/en/story/2020/05/1063342> (asserting that, “with COVID-19 restricting movement, diverting law enforcement resources, and reducing social and public services, human trafficking victims have even less chance of escaping and finding help”).

219. *IMPACT OF THE COVID-19 PANDEMIC ON TRAFFICKING IN PERSONS*, *supra* note 217, at 2. “The increased levels of domestic violence reported in many countries is a worrying indicator for the living conditions of many trafficking victims, such as those in domestic servitude or sex slavery, forms of exploitation that disproportionately affect women and girls.” *Id.*; see Sklar, *supra* note 203 (“The [San Diego County] District Attorney’s Office said reports of technology-based exploitation to the National Center for Missing and Exploited Children have tripled during the COVID-19 pandemic.”).

220. See *IMPACT OF THE COVID-19 PANDEMIC ON TRAFFICKING IN PERSONS*, *supra* note 217, at 2 (stating that “COVID-related measures may disproportionately affect . . . people in the sex industry,” who “will be more vulnerable to exploitation” than before).

spent with the victim's trafficker will require means of self-defense.²²¹ The consequences victims will face as a result of committing these inevitable acts of self-defense will necessitate expansive vacatur laws, laws that reach beyond relief solely for nonviolent crimes that are "the direct result of" the victim's trafficking.²²² To that point, anti-trafficking organizations have reported:

Similar to the increase in reports of domestic violence we've seen over the course of the pandemic, economic stress, coupled with physical confinement in the home is likely to lead to increased abuse and violence for those trapped in trafficking situations. Restricted in their ability to ["earn,"] victims of sex trafficking trapped with intimate partners or pimps are particularly vulnerable. These risks are only exacerbated by limited social support services, shelter closures, and

221. *The Effect of COVID-19: Five Impacts on Human Trafficking*, TECH AGAINST TRAFFICKING, <https://techagainstrafficking.org/the-effect-of-covid-19-five-impacts-on-human-trafficking/> (last visited Oct. 21, 2021) (asserting that conditions arising out of the COVID-19 pandemic, which have left individuals confined in their homes, will increase the "abuse and violence" trafficking victims face); see *supra* text accompanying note 220; Megan L. Evans, Margo Lindauer & Maureen E. Farrell, *A Pandemic Within a Pandemic—Intimate Partner Violence During COVID-19*, NEW ENG. J. OF MED. (Dec. 10, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2024046> (explaining that "[s]tay-at-home orders, intended to protect the public and prevent widespread infection, left many [intimate partner violence] victims trapped with their abusers"); see also Redfern, *supra* note 209. Tatiana Kotlyarenko, an advisor on anti-trafficking issues for a human rights organization, stated:

I'm already hearing that victims are being forced to participate in even riskier activities to earn money for traffickers, that they're facing higher levels of violence, and also that they're in more debt [to their traffickers] every day We need to make sure that those who are still in situations of trafficking are detected and removed, and we need to make sure that survivors of trafficking have access to food, to shelter, and to medical assistance at the most basic level, and access to justice and access to information.

Redfern, *supra* note 209 (alteration in original). See generally UN WOMEN, ADDRESSING EMERGING HUMAN TRAFFICKING TRENDS AND CONSEQUENCES OF THE COVID-19 PANDEMIC 11–22 (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/guidance-addressing-emerging-human-trafficking-trends-and-consequences-of-the-covid-19-pandemic-en.pdf?la=en&vs=5216> (delineating a survey taken which illustrates that trafficking survivors have recognized that the pandemic has negatively impacted their physical and psychological well-being, not only because of the "new pandemic-related needs and challenges" but also due to "the implementation of various response measures"); *Cases of Human Trafficking Increase During the COVID-19 Pandemic*, CARITAS (July 27, 2020), <https://www.caritas.org/2020/07/covid-19-and-human-trafficking/> (discussing increased physical and psychological risks faced by domestic workers due to the pandemic).

222. See *supra* Section III.A.

restricted access to medical facilities and care.²²³

Thus, in order for victims to protect themselves from their traffickers in a COVID-19 environment, they may need to use force, validating the need for the expansion of vacatur laws to include vacatur for crimes that range beyond “nonviolent.”²²⁴ Furthermore, an increased number of human trafficking victims due to the COVID-19 pandemic will likely lead to an increased number of crimes victims are coerced to commit throughout their being trafficked, facilitating a greater need for expansive vacatur laws.²²⁵ Proactively expanding and implementing broadened vacatur laws will aid in combating the effects the COVID-19 pandemic has had on human trafficking victims.²²⁶

V. CONCLUSION

The most effective way to combat human trafficking is by decriminalizing victims.²²⁷ The law should be developed and utilized as a tool to aid survivors reacclimating to society, not as a barrier to their recovery.²²⁸ The expansion of vacatur laws and the implementation of the expanded version across the United States is necessary in order to provide survivors with the protection and fresh start they deserve as well as to facilitate the betterment of the juvenile justice system.²²⁹ Furthermore, as evidenced by the COVID-19 pandemic, the epidemic of human trafficking is worsening, resulting in an increase of survivors in need of expansive vacatur laws.²³⁰

With the anti-human trafficking laws in place in the United States right now, even after victims escape their trafficking situation, they remain victims—instead of survivors—of human trafficking for the rest of their lives.²³¹

223. *The Effect of COVID-19: Five Impacts on Human Trafficking*, *supra* note 221.

224. *See supra* Section III.A.

225. *See* Todres & Diaz, *supra* note 197, 123–24 (stating that the COVID-19 pandemic has had the effect of “increas[ing] the risk of trafficking [and] inhibit[ing] identification of those who are trafficked and those who survive trafficking”).

226. *See supra* Section IV.B.

227. *See* Aycock, *supra* note 2, at 14–20.

228. *See* Danica Baird, *Changing the Narrative: Sex Trafficking and Its Victims*, 33 *BYU J. PUB. L.* 321, 323 (2019) (“The narrative surrounding trafficking victims is often one that is fueled by blaming the victim and questioning the veracity of the victim’s claim of being trafficked. Until the narrative surrounding victims of sex trafficking changes, safe harbor, affirmative defense, and vacatur laws will not be adopted or will be adopted in a piece-meal or ineffective fashion.”).

229. *See supra* Parts III, IV.

230. *See supra* Section IV.B.

231. *See supra* Section II.B.

Victims like Sara Kruzan, who after years of petitioning was eventually allowed to use the battered woman's syndrome defense, would be protected from further victimization by the system.²³² While Kruzan is now an advocate for juvenile victims of human trafficking who are facing further victimization at the hands of the United States criminal justice system, that result only came after "nearly [twenty] incarcerated years, seven years of litigation, countless hours of volunteer and legal assistance, and several sharp turns and false hopes."²³³

Expansive alterations to California's current vacatur law and the subsequent implementation of a uniform federal vacatur law modeled after California's newly expanded version will positively impact and mitigate the victimization of survivors like Kruzan in the future.²³⁴ The revictimization of a class of the most vulnerable people at the hands of the criminal justice system reimagines the idea of "justice for all."²³⁵ Justice for all?²³⁶ Or justice for some, so long as they aren't survivors?²³⁷

Sarah Devaney*

232. See Inglis, *supra* note 5.

233. *Id.*

234. See *supra* Part IV.

235. See Blakely & Bumphus, *supra* note 160 (emphasizing the positive impact that a restorative approach to justice can have on individual offenders and communities as a whole); Baird, *supra* note 228, at 352 (footnote omitted) ("Congress has stated that '[t]he right to be free from slavery and involuntary servitude is among those unalienable rights' guaranteed by the Declaration of Independence.").

236. See Blakely & Bumphus, *supra* note 160.

237. See *supra* Part III; Baird, *supra* note 228, at 350 ("For a country that prides itself on human rights, we should care that our own laws violate human rights by allowing human trafficking victims to be prosecuted."). "In a country where we profess to be the land of the free, we have a duty to make sure we are not wrongfully criminalizing those deserving of our help. In relation to human trafficking, our society has 'prioritiz[ed] the prosecution of traffickers over the protection of victims' rights.'" *Id.* (citing Emerson & Aminzadeh, *supra* note 92, at 249).

* J.D. Candidate, Pepperdine University Caruso School of Law; B.A., University of Arizona. To my mom, in loving memory. Thank you to the incredible Note and Comment Editors of Volume XLVIII, to the exceptional staff of the *Pepperdine Law Review*, and to the wonderful Professors Kristine Knaplund and Tanya Asim Cooper for their unwavering support and guidance throughout the publication process.