



**NORTH CAROLINA
HUMAN TRAFFICKING
COMMISSION**

**NORTH CAROLINA
HUMAN TRAFFICKING
COMMISSION REPORT TO THE
2019 GENERAL ASSEMBLY**

TABLE OF CONTENTS

PREFACE	3
COMMISSION’S STATUTORY REPORT	4
STATUTORY CHARGE N.C. GEN. STAT §143A-55.10 (2013)	5
COMMISSION MEMBERSHIP (AS OF 2018)	5
<u>APPOINTMENTS BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES</u>	5
<u>APPOINTMENTS BY THE SENATE PRESIDENT PRO TEMPORE</u>	6
<u>APPOINTMENTS BY THE GOVERNOR</u>	6
<u>JUDICIAL BRANCH APPOINTMENTS (NONVOTING MEMBERS)</u>	6
<u>COMMISSION STAFF</u>	6
SUMMARY OF COMMISSION ACTIVITIES	7
EXECUTIVE SUMMARY	8
COMMISSION MEETING SUMMARIES	9
STAKEHOLDER COMMENTS AND RECOMMENDATIONS	13
COMMISSION RECOMMENDATIONS FOR LEGISLATIVE ACTION	15
<u>REDUCE DEMAND FOR HUMAN TRAFFICKING</u>	15
<u>CIVIL REMEDY FOR HUMAN TRAFFICKING VICTIMS</u>	16
<u>POST-CONVICTION RELIEF</u>	17
<u>RECURRING FUNDING FOR THE HUMAN TRAFFICKING COMMISSION</u>	21
APPENDIX A	
NC SENTENCING AND POLICY ADVISORY COMMISSION HUMAN TRAFFICKING CONVICTION DATE	22
APPENDIX B	
STAKEHOLDER COMMENTS AND RECOMMENDATIONS.....	23

To the members of the 2019 General Assembly:

The North Carolina Human Trafficking Commission presents the enclosed report and recommendations for your review and consideration. The successes memorialized in this report were a true collaboration, and the Commission recognizes the many stakeholders who remain dedicated to ending human trafficking in our state.

Respectfully submitted,



Elizabeth M. Coles
Chair
North Carolina Human Trafficking Commission

PREFACE

The North Carolina Human Trafficking Commission was first created in Session Law 2012-142, Section 15.3A, as a time-limited commission that would terminate on December 31, 2014.

The current structure of the Commission was established by Session Law 2013-368, which provided for the Commission's permanent existence. The Commission is housed within the North Carolina Administrative Office of the Courts.

The Commission's strategic plan is based upon the duties enumerated in its authorizing legislation. While the Commission is not required by law to submit regular reports to the North Carolina General Assembly, the Commission desires to provide information about its work and accomplishments to interested parties.

The Commission held its inaugural meeting March 27, 2014 and meets no less than bimonthly. The Commission has established the following committees: Legislative Committee, Public Safety Committee, Public Health Committee, Standards Committee (Ad Hoc), and Appropriations Committee (Ad Hoc). All meetings are open to the public and provide opportunity for public comment.

COMMISSION’S STATUTORY REPORT ¹

Per Session Law 2018-75, the North Carolina Trafficking Commission, in consultation with the Conference of District Attorneys and the Office of Indigent Defense Services shall study the human trafficking offenses set forth in Article 10A of Chapter 14 of the General Statutes. At a minimum, the study shall consider (i) the appropriate level of sentencing for each offense, (ii) whether any revisions to the sentencing levels would reduce human trafficking, and (iii) the effects of expanding the eligibility of any post-conviction relief to human trafficking victims. The North Carolina Human Trafficking Commission shall submit its findings from the study required under subsection (a) of this section, including any legislative recommendations, to the Joint Legislative Overnight Committee on Justice and Public Safety by February 1, 2019.

¹ The Commission would like to extend special thanks to Tolu Adewale, Zachary Anstett, Sarah Byrne, Erin Daugherty, Danyelle Smith, and Christopher Willis for their gracious assistance with the information provided in this report.

COMMISSION’S STATUTORY POWERS (N.C. GEN. STAT §7A-354)

- (1) To apply for and receive, on behalf of the State, funding from federal, public or private initiatives, grant programs, or donors that will assist in examining and countering the problem of human trafficking in North Carolina.
- (2) To commission, fund, and facilitate quantitative and qualitative research to explore the specific ways human trafficking is occurring in North Carolina and the links to international and domestic human trafficking, and to assist in creating measurement, assessment, and accountability mechanisms.
- (3) To contribute to efforts to inform and educate law enforcement personnel, social services providers, and the general public about human trafficking so that human traffickers can be prosecuted and victim-survivors can receive appropriate services.
- (4) To suggest new policies, procedures, or legislation to further the work of eradicating human trafficking and to provide assistance and review with new policies, procedures, and legislation.
- (5) To assist in developing regional response teams or other coordinated efforts to counter human trafficking at the level of law enforcement, legal services, social services, and nonprofits.
- (6) To identify gaps in law enforcement or service provision and recommend solutions to those gaps.
- (7) To consider whether human trafficking should be added to the list of criminal convictions that require registration under the sex offender and public protection registration program.

COMMISSION MEMBERSHIP (AS OF 2018)

APPOINTMENTS BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Ms. Elizabeth “Libby” M. Coles (Chairperson)
JusticeMatters, Inc.
Representing: Faith-Based or Benefits Organization

Ms. Monika Johnson Hostler
North Carolina Coalition Against Sexual Assault (NCCASA)
Representing: Public-at-Large

Honorable William R. West Jr.
Cumberland County District Attorney
Representing: District Attorney

APPOINTMENTS BY THE SENATE PRESIDENT PRO TEMPORE

Major William M. Nichols, NC State Highway Patrol (Ret.)
Representing: County Sheriff's Department

Captain Suzanne Mauney-Smith
Gaston County Police Department
Representing: City or Town Police Department

Ms. Caitlin Ryland
Legal Aid of North Carolina
Representing: Legal Aid of North Carolina

Ms. Dianne Layden
Representing: Public-at-Large

APPOINTMENTS BY THE GOVERNOR

Ms. Pamela B. Cashwell
N.C. Department of Public Safety
Secretary of Public Safety's Designee

Ms. Jennifer Haigwood
N.C. Department of Labor
Commissioner of Labor's Designee

Ms. Jasmine McGhee
N.C. Department of Justice
Attorney General's Designee

JUDICIAL BRANCH APPOINTMENTS (NONVOTING MEMBERS)

Honorable Tom Jarrell
Chief District Court Judge, District 18
President, N.C. Association of District Court Judges

Honorable Claire V. Hill
Superior Court Judge, District 12A
Designee – President, N.C. Conference of Superior Court Judges

Mr. Ryan S. Boyce
Senior Counsel for Policy
Designee – Director of the N.C. Administrative Office of the Courts

COMMISSION STAFF

Ms. Christine Shaw Long
Executive Director

SUMMARY OF COMMISSION ACTIVITIES

The Commission continues to make significant progress in combating human trafficking in North Carolina. The Commission has engaged in activities including, but not limited to, the following in fulfilling its legislative mandate:

- 2017 Darkness to Light Stewards of Children Training
- 2017 Truckers Against Trafficking Coalition Build
- 2017 Regional Multidisciplinary Training – Raleigh, NC
- 2017 Human Trafficking Hotline Notice posting in over 20,000 key locations across the state. (S.L.2017-57).
- 2017 Participation in NC DHHS “Feasibility Study for Provision of Anti-Human Trafficking Training”, SL 2017-151.
- 2018 Regional Multidisciplinary Training – New Bern, NC
- 2018 North Carolina “A” rating in Shared Hope International’s Protected Innocence Challenge report.
- 2018 Development of Statewide Standards for Direct Service Providers
- 2018 Development of Partnership with U.S. DHS Blue Campaign
- Enactment of the Human Trafficking Restorative Justice Act. (S.L. 2018-75)
- Awarded over \$1M in victims services grants with funds appropriated in 2018.

EXECUTIVE SUMMARY

North Carolina's human trafficking laws are comparatively robust and carry some of the nation's strictest criminal penalties. However, additional legislative action is needed to both reduce the demand fueling human trafficking and to expand the avenues of post-conviction and civil relief available to victims. The Commission recommends that the General Assembly take the following action in the 2019 legislative session:

- Preserve the current offense classifications of human trafficking crimes.
- Expand the definition of "sexual servitude" to apply to all instances of buyer conduct.
- Prohibit the promotion or sale of "sex tourism" services.
- Create a civil cause of action for victims to recover damages from individuals who trafficked them or financially benefitted from the trafficking activity.
- Expand and streamline the process for human trafficking victims to expunge convictions for nonviolent crimes that were committed as a direct result of their being a victim of human trafficking.
- Expand the grounds for appropriate relief and vacatur of convictions for nonviolent crimes committed by individuals as a direct result of their being victims of human trafficking.
- Provide the Commission with recurring funding to continue operations in future fiscal years.

COMMISSION MEETING SUMMARIES

February 22, 2018

Chairman Libby Coles called the meeting to order at 10 am on February 22, 2018.

At this meeting, Cindy Frago Rizo, UNC Chapel Hill, School of Social Work, and Sandra Martin, UNC- Chapel Hill, Gillings School of Global Public Health gave an update on projects that are part of a collaborative MOU that the Commission has facilitated working with the Governor's Crime Commission. Cindy Frago Rizo discussed a school-based program called Protect NC Youth Initiative. Both Cindy Frago Rizo and Sandra Martin engaged in Q&A with Commission members and the public. After the Q&A, Rachel Parker, World Relief Triad, Anti-Human Trafficking Manager reviewed the work that World Relief Triad has done in 2017.

Next, the Commission discussed the new posting requirement of human trafficking awareness poster in all establishments licensed by the NC ABC Commission. The poster was crafted with the intent of being eye catching and easily readable. The poster will be distributed to the all establishments licensed by the ABC Commission, 100 Job Link centers in North Carolina, 125 emergency rooms as well as some areas managed by the Department of Transportation such as rest areas. Further, the Commission moved to approve a contract with NC Coalition Against Sexual Assault to provide consultation services.

There was an update from Ben Thompson, Legal Counsel to the NC Board of Massage and Bodywork Therapy. The NC Board of Massage and Bodywork Therapy can conduct inspections and require that a poster be posted; however, they do not have power to discipline those practicing without a license. Before Chairman Coles adjourned the meeting, the Commission discussed the importance of changing the public's understanding of Human Trafficking in order to ensure that policies have a true effect.

May 17, 2018

Chairman Libby Coles called the meeting to order at 10 am on May 17, 2018.

At this meeting, Russ Conner, 30th Judicial District DV-SA Alliance, gave a presentation on the Regional Response of the 30th Judicial District DV-SA Alliance. This Alliance is responsible for the Human Trafficking Rapid Response Team. Russ Conner highlighted the importance of maintaining strong relationships and collaboration with law enforcement.

A motion was made to form a new committee on Public Safety which will be headed by Commissioner Marc Nichols in order to increase the involvement of law enforcement in human trafficking. This motion was seconded and passed. Another motion was made to form a new committee on healthcare, partnered with NC DHHS, which was seconded and passed. Additionally, a motion was made to formalize the Committee on Policy and Legislation to be chaired by Commissioner Jennifer Haigwood, the motion is seconded and passed.

Next, Leslye Orloff, Director of the National Immigrant Women's Advocacy Project spoke on behalf of the National Immigrant Women's Advocacy Project regarding work with immigrant survivors of domestic violence and sexual assault. She discussed a survey of judges, law enforcement, prosecutors, victim advocates and attorneys nationally. She argued that agencies should provide certifications of cooperation with law enforcement for U-visa applicants as well as T-visa applicants, and that NC is the only state in which state courts do not also provide these certifications. Additionally, Ryan Boyce, Senior Counsel for Policy at the North Carolina Administrative Office of the Courts, reviewed the bill he drafted titled "Human Trafficking Restorative Justice". A motion was made to approve to approve the draft legislation. This motion was seconded and approved.

Director Bob Schurmeier, NC State Bureau of Investigation discussed the importance of communication and data collecting on human trafficking crimes and enforcement to see strengths, weaknesses, and strategies and to take existing programs and connect them. The meeting was adjourned by Chairman Coles and it was decided that the next meeting will be held on Thursday, June 28th at 10am at the Governor's Crime Commission, 1201 Front Street, Raleigh, NC.

June 28, 2018

Chairman Libby Coles called the meeting to order at 10 am on June 28, 2018.

Executive Director and Co-Founder, Courtney Dunkerton, and Victim Advocate and Director of Youth Services, Bria Miller, shared an update from Alamance for Freedom. This organization will be merged with Crossroads Child Advocacy Center. Alamance for Freedom and the Sheriff's office have an interest in increasing identification of youth that are being trafficking.

Mary Williams Stover, Executive Director of the NC Council for Women & Youth Involvement shared an update on Project Community Leaders Initiating Change through Collaboration. This project kicked off in 2017-2018 through Governor's Crime Commission funding and is focused on strengthening work done through current partners to serve underserved and vulnerable populations. Next, Liz Kline and Niel Sollod of Capitol Broadcasting Company and Nancy Hagan of Project NO REST presented the results of the "What's at Stake" initiative. Results from the two-month initiative showed that many of those engaged took the extra step to go to the website and those engaged at/around strip clubs showed the highest click through rate to visit the website, especially on the military ad.

Commissioner McGhee and DOJ staff provided an update from NC DOJ regarding posters being distributed and posted in ABC-permitted establishments. Commissioner Haigwood reported the passage of SB 162, the Restorative Justice Bill, and HB 986, which requires DPI to work with DHHS to develop a model health training program.

Alycia Blackwell-Pittman, Senior Policy Analyst with NC DHHS, provided an update concerning child welfare policy updates, legislative updates and the status of the Feasibility Study Recommendations. Next, Steve Shirley with SAS NC Government Account Team presented about how a strategic data initiative is needed to detect and prevent human trafficking. The meeting was

adjourned by Chairman Coles and it was decided that the next meeting will be held on Thursday, August 23rd at 10 am at the Administrative Office of the Courts in Raleigh.

August 23, 2018

Chairman Libby Coles called the meeting to order at 10 am on August 23, 2018.

Chairman Libby Coles communicated that she and Director Long will be presenting with Deputy Director Wooten of the NC AOC at a national labor trafficking conference in Kentucky. Chairman Libby Coles provided an update on the HTC's transition from NC DOJ to NC AOC that was effective on July 1, 2018. Christine Long began her position as Executive Director for the HTC at NC AOC on August 1, 2018.

Erin Conner, LINKS Program Coordinator, reviewed changes in NC DHHS Child Welfare policy, such as corrections to the parent or caretaker loop hole. She also discussed the state's Multiple Response System, which includes the investigative assessment response now being the required response to human trafficking cases. The meeting was adjourned by Chairman Coles at 12:46 pm.

October 4, 2018

Chairman Libby Coles called the meeting to order at 10 am on October 4, 2018.

Chairman Coles discussed the draft bylaws created by Commissioner Boyce and distributed prior to the meeting, and a motion was made and seconded to pass the draft bylaws without change. The motion passed unanimously.

Director Christine S. Long reviewed the General Assembly mandate for the HTC to review Article 10A offense classifications and post-conviction relief statutes. John Madler presented about the NC Sentencing and Policy Advisory Commission's (SPAC's) study of the offense classifications and how those are determined. He reported on the original classification of offenses within Article 10A and recent legislative increases, as well as the small number of state convictions within the article over the past five years.

Director Long referenced a handout of recommended laws from other states related to vacating charges and convictions. Director Long referenced an additional finding that NC does not currently have a civil remedy within Article 10A for victims and it was determined that the committee would also investigate this further as well. Director Long continued her presentation by sharing other items for potential inclusion in the HTC's report. She referenced the Polaris Project report again due to their recommendation to examine NC industry regulations. Other states have found that improving industry regulations can deter human trafficking, and Director Long suggests the HTC final report indicate a need to examine these ideas further over the next year. Other considerations noted were diversion program research and demand reduction strategies. Commissioner Boyce recommended that any report given to the General Assembly contain all legislative requests of the HTC. Director Long highlights the need for recurring funding the HTC in the report.

Committee Chair Nichols communicated that the Committee is talking with Assistant Secretary John Hill with U.S. Department of Homeland Security about partnering on efforts to highlight NC's work in anti-trafficking.

December 7, 2018

Chairman Libby Coles called the meeting to order at 10:26 am.

Executive Director Christine Long discussed a handout from the NC Sentencing and Policy Advisory Commission. Chairman Coles lead a discussion about legislative recommendations and which recommendations the Committee supported.

Next, Commissioner Haigwood circulated a handout of a rough draft civil remedy and asked that other commissioners send her feedback. Commissioner Haigwood also stated the Committee on Policy and Legislation recommended a request for recurring Commission funding. Also, Commissioner Haigwood, speaking on behalf of the Ad Hoc Committee on Appropriations, provided a summary of the grant application and scoring process. Commissioner Haigwood introduced fifteen applications for discussion and vote, regarding whether to fund, and in what amount, via grants from the \$1,350,000 appropriated to the HTC by the NC General Assembly. After discussion and vote, the Commission awarded \$1,005,296 to fund ten proposals. Chairman Coles and Commissioner Hostler recused themselves from consideration of grant number fourteen. Commissioner Cashwell recused herself from consideration of grant number eleven. An amount of \$344,704 is left to be disbursed before the end of the fiscal year. The Ad Hoc Committee on Appropriations will meet to create recommendations for that amount.

The next meeting will be held by phone in January. At 1:05 pm Chairman Coles adjourned the meeting.

STAKEHOLDER COMMENTS AND RECOMMENDATIONS

RECOMMENDATIONS FROM SHARED HOPE INTERNATIONAL

Shared Hope International submitted twelve legislative recommendations intended to address perceived gaps in North Carolina's human trafficking laws. The Conference of District Attorneys was given an opportunity to review and comment on these recommendations prior to the Commission's consideration. The Commission discussed the proposals at its December meeting and voted to adopt the following recommendations:

- 1) **Shared Hope Recommendation #1:** Amend N.C. Gen. Stat. §14-43.13 (Sexual Servitude) to clarify that buyer conduct is included as a violation of N.C. Gen. Stat. §14-43.13.
- 2) **Shared Hope Recommendation #7:** Prohibit selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in conduct that would be a sexual offense if committed in North Carolina.

RECOMMENDATIONS FROM SURVIVOR RE-ENTRY PROJECT

The Survivor Re-Entry Project recommended that the Commission adhere to the following general principles while developing proposals to expand post-conviction relief.

- 1) Fullest remedy possible (vacating convictions rather than simply sealing or shielding), putting the person in the position as if the arrest never happened, including destruction of all arrest records, etc.
- 2) No restrictions on eligible offenses – all offenses/charges eligible to be vacated. (As a good second choice, all offenses except for specific enumerated violent felonies.
- 3) Prosecutors must be given notice, but court has discretion to grant relief over prosecutor's objection. Statute should state a specific time period in which a prosecutor may respond/object.
- 4) Confidentiality provision that guarantees identifying and sensitive information contained in motions/petitions not be disclosed to public.
- 5) No filing fees **and** an explicit mechanism included for return of all fees/surcharges originally paid in adjudication of case.
- 6) Alternate methods of appearance for hearings (if hearings required) – video, telephone, etc.
- 7) Statute should make clear that vacating conviction is due to substantive defect in underlying proceedings (critical for foreign national victims).
- 8) Broad discretion to grant additional relief “in the interest of justice” or “as appropriate under the circumstances.”
- 9) Evidentiary standard should be preponderance of the evidence to protect survivors from being penalized for evidence they couldn't possibly have or obtain.
- 10) There should be no limits on relief because of subsequent or previous arrests or convictions.

PROFESSOR KATE MOGULESCU, CRIMINAL DEFENSE & ADVOCACY CLINIC,
BROOKLYN SCHOOL OF LAW

Professor Mogulescu provided the following general comments on post-conviction relief for human trafficking victims:

- 1) North Carolina and New York are behind in post-conviction relief for survivors.
- 2) Suggestion to look at the introduction of Florida law as it provides a good summary. The substantive defect makes the vacating automatic with a person is determined a victim. This makes sense because victims need not go through a rehabilitative process because they shouldn't have been charged initially or been convicted.
- 3) North Carolina should also move away from a restrictive expunction framework.

SARAH DOHONEY BYRNE, HUMAN TRAFFICKING PRO BONO PROJECT,
MOORE & VAN ALLEN PLLC

Ms. Byrne, on behalf of the Human Trafficking Pro Bono Project, provided the following general comments on post-conviction relief for human trafficking victims:

- 1) Expand existing post-conviction relief eligibility to allow for relief from convictions other than prostitution. Victims of human trafficking are often forced or coerced into criminal conduct beyond prostitution such as drug sales, theft, illegal firearms, etc. Without a path for relief from these unjust convictions, survivors are often unable to pursue work, housing, or education.
- 2) Provide a civil remedy for human trafficking survivors to be pursued not just against the trafficking but any organization that participates in or benefits financially from the scheme.
- 3) Elimination of three-year waiting period before an individual can petition for an expunction pursuant to N.C. Gen. Stat. § 15A-145.6.

COMMISSION RECOMMENDATIONS FOR LEGISLATIVE ACTION²

REDUCE DEMAND FOR HUMAN TRAFFICKING

The Commission recommends that the General Assembly enact the below draft legislation to combat the demand for human trafficking services:

CRIMINALIZE BUYER CONDUCT IN INSTANCES OF SEXUAL SERVITUDE

SECTION X.(a) G.S. 14-43.13 reads as rewritten:

§ 14-43.13. Sexual servitude.

(a) A person commits the offense of sexual servitude when that person knowingly or in reckless disregard of the consequences of the action ~~subjects or maintains~~ subjects, maintains, or obtains another in for the purposes of sexual servitude.

(b) A person who violates this section is guilty of a Class D felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(b1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

SECTION X.(b) This section is effective December 1, 2019 and applies to offenses committed on or after that date.

PROHIBIT THE PROMOTION OR SALE OF SEX TOURISM SERVICES

SECTION X.(a) Article 27 of Chapter 14 of the General Statutes is amended by adding a new section to read:

“§ 14-208.1. Promoting travel for unlawful sexual conduct.

(a) A person commits the offense of promoting travel for unlawful sexual conduct if the person sells or offers to sell travel services that the person knows to include travel for the purpose of engaging in conduct that would be a criminal sexual offense if occurring within the state.

(b) "Travel services" means, but is not limited to, transportation by air, sea, road or rail, related ground transportation, hotel accommodations, or package tours, whether offered on a wholesale or retail basis.

(c) Promoting travel for unlawful sexual conduct is a Class G felony.

(d) Nothing in this section shall be construed to prohibit prosecution under any other law.”

SECTION X.(b) This section is effective December 1, 2019 and applies to offenses committed on or after that date.

² These recommendations were adopted by the Commission’s voting membership and do not represent endorsement by the Administrative Office of the Courts or by the North Carolina Judicial Branch.

CIVIL REMEDY FOR HUMAN TRAFFICKING VICTIMS

The Commission recommends that the General Assembly enact the following draft legislation to provide a civil remedy to human trafficking victims:

PROVIDE A CIVIL REMEDY FOR HUMAN TRAFFICKING VICTIMS

Article 10A of Chapter 14 of the General Statutes is amended by adding a new section to read:

“§ 14-43.18 Civil cause of action; damages and attorneys’ fees; limitation.

(a) Cause of Action. - An individual who is a victim as defined by G.S. 14-43.10(a)(6) may bring a civil action against a person who violates this Article or a person who knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known violates this Article.

(b) Relief and Damages. - The victim may seek and the court may award any or all of the following types of relief:

(1) An injunction to enjoin continued violation of this Article.

(2) Compensatory damages including the greater of (i) the gross income or value to the defendant of the victim’s labor; or (ii) value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) and any costs reasonably incurred by the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from a violation of this Article.

(3) General damages for non-economic losses.

(c) Attorneys’ Fees. - The court may award to the plaintiff and assess against the defendant the reasonable costs and expenses, including attorneys' fees, of the plaintiff in bringing an action pursuant to this section. If the court determines that the plaintiff's action is frivolous, it may award to the defendant and assess against the plaintiff the reasonable costs and expenses, including attorneys' fees, of the defendant in defending the action brought pursuant to this section.

(d) Stay Pending Criminal Action. - Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the plaintiff is the victim. The term “criminal action” includes investigation and prosecution, and is pending until final adjudication in the trial court.

(e) Statute of Limitations. - No action may be maintained under this section unless it is commenced no later than:

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age if the victim was a minor at the time of the alleged offense.

(f) Jury Trial. - Parties to a civil action brought pursuant to this section shall have the right to a jury trial as provided under G.S. 1A-1, Rules of Civil Procedure.”

SECTION X.(b) This section becomes effective July 1, 2019, and applies to causes of action accruing on or after that date.

POST-CONVICTION RELIEF

Post-conviction relief is a critical component of efforts to allow victims of human trafficking to heal and avoid re-victimization. The Commission recommends that the General Assembly enact the following 1 draft legislation to expand the availability of post-conviction relief to human trafficking victims:

EXPAND EXPUNCTION ELIGIBILITY FOR HUMAN TRAFFICKING VICTIMS

SECTION X.(a) G.S. 15A-145.6 reads as rewritten:

“§ 15A-145.6. Expunctions for certain defendants convicted of ~~prostitution~~, prostitution and for victims of human trafficking.

(a) The following definitions apply in this section:

- (1) Prostitution offense. - A conviction for (i) violation of G.S. 14-204 or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to October 1, 2013.
- (2) Violent felony or violent misdemeanor. - A Class A through G felony or a Class A1 misdemeanor that includes assault as an essential element of the offense.
- (3) Nonviolent offense. – Any misdemeanor or felony except the following:
 - a. A Class A through G felony or a Class A1 misdemeanor.
 - b. An offense that includes assault as an essential element of the offense.
 - c. An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
 - d. Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
 - e. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
 - f. An offense under G.S. 14-401.16.
 - g. Any offense that is an attempt to commit an offense described in subdivisions (a.) through (f.) of this subsection.

(b) A person who has been convicted of a prostitution offense may file a petition in the court of the county where the person was convicted for expunction of the prostitution offense from the person's criminal record provided that ~~all~~ any one of the following criteria are met:

- (1) ~~The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.~~
- (2) ~~The person satisfies any one of the following criteria:~~
 - a. ~~The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).~~
 - b. ~~The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the~~

~~completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.~~

~~e. The person received a conditional discharge pursuant to G.S. 14-204(b).~~

~~(1) The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.~~

~~(2) The person received a conditional discharge pursuant to G.S. 14-204(b).~~

(b1) A person who has been convicted of a nonviolent offense may file a petition in the court of the county where the person was convicted for expunction of the nonviolent offense from the person's criminal record provided that the person's participation in the offense was a direct result of having been a trafficking victim as defined by G.S. 14-43.10(a)(6) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

(c) The petition shall contain all of the following:

~~(1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of a violent felony or violent misdemeanor, (ii) has been of good moral character since the date of conviction of the prostitution offense in question, and (iii) has not been convicted of any felony or misdemeanor under the laws of the United States or the laws of this State or any other state since the date of the conviction of the prostitution offense in question.~~

~~(2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.~~

~~(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

~~(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; individual and (ii) a search by the Department of Public Safety for any outstanding warrants or pending criminal cases; cases. and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their its findings to the court.~~

~~(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

(d) The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(e) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a prostitution an offense under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the ~~prostitution~~ offense in question.
- (2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers ~~and district attorneys.~~ attorneys, or licensed social workers.

(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

- (1) The criteria set out in subsection (b) or (b1) of this section are satisfied.
- (2) The petitioner has remained of good moral character ~~and has been free of conviction of any felony or misdemeanor, other than a traffic violation,~~ since the date of conviction of the ~~prostitution~~ offense in question.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (5) ~~The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.~~

(g) No person as to whom an order has been entered pursuant to subsection (f) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(g1) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or 17E of the General Statutes, however, shall disclose ~~any and all prostitution~~ convictions to the certifying Commission regardless of whether or not the ~~prostitution~~ convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(h) The court shall also order that the conviction of the ~~prostitution~~ offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(i) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the ~~prostitution~~ offense which is to be expunged under this section.”

SECTION X.(b) This section becomes effective December 1, 2019, and applies to petitions filed on or after that date.

EXPAND GROUNDS FOR APPROPRIATE RELIEF FOR HUMAN TRAFFICKING VICTIMS

SECTION X.(a) G.S. 15A-1415 reads as rewritten:

“§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.

(a) At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section. In a capital case, a postconviction motion for appropriate relief shall be filed within 120 days from the latest of the following:

...

(10) The defendant was convicted of a ~~first offense of prostitution under G.S. 14-204, and the court did not discharge the defendant and dismiss the charge pursuant to G.S. 14-204(b);~~ nonviolent felony or nonviolent misdemeanor as defined by G.S. 15A-145.5(a); and the defendant's participation in the offense was a direct result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.”

SECTION X.(b) This section becomes effective December 1, 2019, and applies to motions filed on or after that date

EXPAND THE ELIGIBILITY OF VACATUR FOR NONVIOLENT OFFENSES RESULTING FROM A DEFENDANT’S VICTIMIZATION

SECTION X.(a) G.S. 15A-1416.1 reads as rewritten:

“§ 15A-1416.1. Motion by the defendant to vacate ~~prostitution~~ a nonviolent offense conviction for sex human trafficking victim.

(a) A motion for appropriate relief seeking to vacate a conviction for ~~prostitution~~ a nonviolent offense based on the grounds set out in G.S. 15A-1415(b)(10) shall be filed in the court where the conviction occurred. The motion may be filed at any time following the entry of a verdict or finding of ~~guilty under G.S. 14-204.~~ guilty. Any motion for appropriate relief filed under this section shall state why the facts giving rise to this motion were not presented to the trial court and shall be made with due diligence after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section. ~~Reasonable notice of the~~ The motion shall be contemporaneously served upon ~~the State.~~ the district attorney in the prosecutorial district in which the conviction was entered. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the motion.

(b) The court may grant the motion if, in the discretion of the court, the defendant has demonstrated, by the preponderance of the evidence, that the violation was a direct result of the defendant having been a victim of human trafficking or sexual ~~servitude.~~ servitude and that the offense would not have been committed but for the defendant having been a victim of human trafficking or sexual servitude. Evidence of such may include any of the following documents listed in subdivisions (1) through ~~(3)~~(4) of this subsection; alternatively, the court may consider

such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim:

- (1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.
- (2) Certified records of “approval notices” or “enforcement certifications” generated from federal immigration proceedings available to such victims.
- (3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.
- (4) A sworn statement or affidavit from a federal, state, or local law enforcement officer who investigated the violations of G.S. 14-43.11, G.S. 14-43.11, or the federal Trafficking Victims Protection Act as stated within the defendant’s motion.

(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances.

(d) A previous or subsequent conviction shall not affect a person’s eligibility for relief under this section.”

SECTION X.(b) This section becomes effective December 1, 2019, and applies to motions filed on or after that date

RECURRING FUNDING FOR THE HUMAN TRAFFICKING COMMISSION

In July 2018, the General Assembly administratively transferred the Commission to the Administrative Office of the Courts from the Department of Justice. The Commission is currently funded by a nonrecurring appropriation and has no dedicated funding source in future fiscal years. The Commission requests that the General Assembly appropriate \$150,000 in recurring funds to enable the Commission to continue its operations. This sum includes one FTE, (the Executive Director), and all operating costs.

APPENDIX A

NC SENTENCING AND POLICY ADVISORY COMMISSION HUMAN TRAFFICKING CONVICTIONS 2018



HUMAN TRAFFICKING COMMISSION DATA REQUEST

October 2018

Human Trafficking Convictions in North Carolina: Offenses within Article 10a

Offense	Class	Number of Convictions						Active rate	Notes
		FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	Total		
Human Trafficking Adult Victim	C	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
	F	0	0	2	0	2	4	25%	Reclassified effective 12/1/17
Human Trafficking Child Victim	B2	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
	C	0	1	2	1	1	5	Mandatory Active	Reclassified effective 12/1/17
Invol Servitude Adult Victim	F	0	0	0	0	0	0	n/a	
Invol Servitude Minor Victim	C	0	0	0	0	0	0	n/a	
Sexual Servitude Adult Victim	D	n/a	0	0	1	0	1	Mandatory Active	
	F	1	0	n/a	n/a	n/a	1	0%	Reclassified effective 10/1/13
Sexual Servitude Minor Victim	C	0	0	1	0	1	2	Mandatory Active	
Total Article 10a		1	1	5	2	4	13		

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2013 – FY 2017 Felony Statistical Report Data

APPENDIX B

STAKEHOLDER COMMENTS AND RECOMMENDATIONS

NORTH CAROLINA

REPORT CARD | 2018

North Carolina criminalizes child sex trafficking without requiring use of force, fraud, or coercion; however, benefitting financially is not included as prohibited conduct under the trafficking law. Minors do not face prosecution under the prostitution law, and North Carolina law authorizes law enforcement training on child sex trafficking.

Final Score	90
Final Grade	A

					
10	23	13	4.5	25	14.5
10	25	15	10	27.5	15

Criminalization of Domestic Minor Sex Trafficking

North Carolina's "human trafficking" law criminalizes child sex trafficking without requiring use of force, fraud, or coercion. The state commercial sexual exploitation (CSEC) laws include: "solicitation of prostitution," "patronizing a prostitute," "promoting prostitution," "sexual exploitation of a minor" in the first, second, and third degree, and "employing or permitting a minor to assist in offense under Article." The prostitution statutes refer to the "human trafficking" and "sexual servitude" statutes to acknowledge the intersection of prostitution with trafficking victimization. North Carolina's continuing criminal enterprise statute, which includes any felony as a predicate act, could be used to prosecute sex trafficking crimes committed in concert by five or more persons.

Criminal Provisions for Demand



Buyers may be prosecuted under North Carolina's "sexual servitude" and "human trafficking" laws. Three CSEC laws apply to buyers: "patronizing a prostitute," "solicitation of prostitution," and, in limited circumstances, "promoting prostitution." State law distinguishes between soliciting an adult versus a minor for a commercial sex act by enhancing the penalty for the latter. Convictions under the trafficking law are punishable by 125–157 months imprisonment, while buyers convicted of "sexual servitude" face 58–73 months imprisonment. Penalties for CSEC convictions range from 10–73 months imprisonment. "Human trafficking" and "sexual servitude" expressly prohibit a mistake of age defense in a prosecution under those statutes. No statute criminalizes the use of the Internet to purchase commercial sex acts from a minor, but the statute on "solicitation of child by computer or certain other electronic devices to commit an unlawful sex act" might apply to buyers who use the Internet. Buyers convicted of "human trafficking" or "sexual servitude" must pay victim restitution. Buyers face mandatory criminal forfeiture of assets acquired through commission of any felony and possible civil forfeiture of vehicles and other property used in connection with prostitution offenses. Convicted buyers of commercial sex acts with minors are required to register as sex offenders.

Criminal Provisions for Traffickers



A violation of North Carolina's trafficking offense is punishable by 125–157 months imprisonment. While violations of "sexual servitude," using a minor to create images of child sexual exploitation (ICSE), use of a minor in a live sexual performance for pecuniary gain, and "promoting prostitution" of a minor are felonies, the presumptive sentences of 58–73 months imprisonment do not reflect the seriousness of those offenses. The statute on "solicitation of child by computer or certain other electronic devices to commit an unlawful sex act" provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts. Traffickers face mandatory restitution, mandatory criminal forfeiture of assets acquired through commission of any felony, and civil forfeiture of real and personal property used in connection with prostitution offenses. Traffickers are required to register as sex offenders. A conviction for "human trafficking" or "sexual servitude" can serve as grounds for terminating parental rights based on the definition of "abused juveniles."



Criminal Provisions for Facilitators

The “human trafficking” law does not include the crime of assisting, enabling, or financially benefitting from human trafficking. However, the CSEC offense of “promoting prostitution” of a minor is a felony that applies to facilitators and carries a presumptive sentence of 58–73 months imprisonment. A facilitator is subject to mandatory criminal forfeiture of assets acquired through commission of any felony, civil forfeiture of real and personal property

used in connection with prostitution offenses, and some facilitators are subject to mandatory restitution. Facilitating a minor to engage in sexual conduct for ICSE is a felony punishable with a presumptive sentence of 58–73 months imprisonment. Distributing, transporting, or exhibiting ICSE is a felony punishable by a presumptive sentence of 20–25 months. No laws in North Carolina address sex tourism.

Protective Provisions for the Child Victims



All commercially sexually exploited children are defined as juvenile sex trafficking victims. North Carolina’s “human trafficking,” “involuntary servitude,” and “sexual servitude” laws expressly prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Minors do not face prosecution under the prostitution law, and law enforcement must file a report of suspected child abuse, enabling many victims to avoid a punitive response and to access services; however, provision of specialized services is not statutorily mandated. For purposes of child welfare intervention, child sex trafficking is included as a form of abuse regardless of the relationship between the child and the perpetrator. While CSEC victims would likely be eligible for state crime victims’ compensation, several eligibility criteria may limit their ability to recover, including requirements to cooperate with law enforcement, to report the crime to law enforcement within 72 hours unless good cause is shown, and to file a

claim for compensation within 2 years. Victim-friendly court procedures such as the “rape shield” law, which limits traumatizing cross-examination of testifying victims, are available to victims of “sexual servitude,” but the ability to testify via closed circuit television is limited to children under 16. North Carolina law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be expunged after a waiting period. A court must order an offender of human trafficking and CSEC offenses to pay victim restitution, and a victim may pursue civil remedies against an offender. North Carolina does not have a statute of limitations for felonies and, thus, allows a CSEC felony to be brought at any time. Additionally, the statute of limitations for CSEC victims pursuing a civil cause of action does not begin to run until the victim reaches 18.

Criminal Justice Tools for Investigation and Prosecution



The North Carolina Justice Academy is authorized to develop a protocol and training materials on human trafficking, which is made available to law enforcement. Single party consent to audiotaping is permitted. Wiretapping is allowed in CSEC and sex trafficking investigations. No law expressly prohibits an offender from raising a defense based on the use of a law enforcement decoy posing as a minor in the investigation of prostitution or sex trafficking cases, but law enforcement may utilize the Internet

to investigate buyers and traffickers relying on the crime of “solicitation of a child by computer,” which includes communicating with a person the offender believes is under 16 to meet with the offender or another person to commit an unlawful sex act. North Carolina established a statewide reporting and response system for lost, missing, or runaway children, and failure to report a missing child is a crime.

The Report Card is based on the Protected Innocence Challenge Legislative Framework, an analysis of state laws performed by Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Challenge Legislative Framework Methodology, all state Report Cards, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.

Post-Conviction Relief for Human Trafficking Victims Convicted of Crimes Coerced By a Trafficker

Human trafficking victims may be coerced or pressured into the commission of a variety of crimes due to demands of a trafficker, as a result of the physical or psychological trauma associated with being a victim of human trafficking. Some of the more common crimes that a trafficking victim may be coerced into committing include the following:

- prostitution;
- drug use;
- drug sales;
- theft;
- illegal peddling;
- resisting arrest;
- using false identification;
- gang activity; and
- recruiting other victims for the trafficker.

Trafficking victims who are convicted of crimes coerced by a trafficker may face serious collateral consequences that greatly increase the effects of their victimization. As a result of these collateral consequences, having a conviction removed from the record of a human trafficking victim may be an important component of freeing the victim from the control of the trafficker.

COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

Eligibility for Employment

Criminal convictions can have consequences for eligibility for a variety of types of employment and access to other privileges that may be a requirement for certain jobs, such as driving or possessing a firearm. Further, employers may take into account any criminal or juvenile conviction that reasonably relates to the fitness of an individual for a particular job.

The following are some of the crimes that can result in mandatory or discretionary denial of employment or ineligibility for a state license. The list includes both felonies and misdemeanors.

- crimes involving moral turpitude, as defined under state law;
- theft;
- crimes indicating dishonesty, fraud, or breach of trust;
- offenses involving a child victim or endangering the welfare of a child;
- any misdemeanor;

- drug trafficking;
- any crime related to a controlled substance; and
- human trafficking, such as recruiting new victims for a trafficker.

The following is a partial list of areas of employment that may be barred, depending on the laws of the particular state:

- occupations with likelihood of significant contact with children in the form of care, guidance, supervision, or training (e.g. social workers, clergy, hospital personnel, mental health professionals, counselors, librarians and doctors);
- health and behavioral services, including home health care, behavioral services, mental health services, residential or assisted living, batterer intervention programs;
- school employment, including teacher, administrator, counselor, school nurse, school social worker, school psychologist, assistant, aide, contractor, etc.;
- justice system employment, including law enforcement officer, court interpreter, municipal court judge, juvenile justice employee;
- state agency employee or contractor;
- professional licenses, including physician, optometrist, dentist, architect, attorney, pharmacist, chiropractor, speech pathologist;
- occupational licenses, including physical therapist, massage therapist, dental hygienist, medical imaging technician, emergency medical technician, social worker, midwife, private investigator, massage parlor employee;
- financial industry licenses, including insurance broker, securities broker/dealer, investment advisor, accountant, real estate broker;
- federal employment in a variety of jobs; or
- various other occupations, including staff working at airports, auctioneer, motor vehicle dealer or salesperson, security guard, electrician, HVAC technician, interior designer, plumber, hairstylist, barber, cosmetologist.

Immigration Status and Eligibility for Immigration Relief

In addition, for victims who are immigrants a criminal conviction or juvenile delinquency disposition can affect the individual's immigration status and eligibility for many forms of immigration relief. While many of the types of crimes typically committed

by trafficking victims are misdemeanors and may appear as minor offenses, some of those misdemeanors can fall under the definition of aggravated felony or crime involving moral turpitude under federal immigration law. Conviction of those crimes may make the defendant deportable, and both adult convictions and juvenile delinquency dispositions may make the defendant inadmissible and thus ineligible for some forms of immigration relief. There is a more detailed discussion on immigration issues for human trafficking victims on a separate information card on www.htcourts.org.

POST-CONVICTION RELIEF TO NULLIFY A CRIMINAL CONVICTION DUE TO TRAFFICKING VICTIMIZATION

At the criminal trial or plea hearing it may not be obvious to the judge or prosecutor that the defendant is a human trafficking victim. The possible presence of human trafficking may not have been raised or even recognized by the prosecution. Further, the victim may not self-identify as a victim and believe that, despite repeated abuse, the trafficker is a loving boyfriend, spouse, or parent. The trafficker may even push a victim to plead guilty, as a guilty plea will likely result in a suspended sentence that enables the victim to return to the trafficker. In addition, trafficking victims often appear uncooperative and hostile and thus do not make sympathetic defendants for prosecutors or judges.

Once a conviction has been entered, through a guilty plea or trial, the only recourse open to the victim will be to seek some form of post-conviction relief, assuming that the trial itself did not contain any appealable legal defects. The two main types of post-conviction relief that are available are vacatur and expungement.

Vacating or Expunging a Conviction for Prostitution

As of May 2014, 15 states provided a means to vacate or expunge a judgment if it is later shown that the conviction was for an offense resulting from coercion by a trafficker, and another 9 states had such legislation pending. Vacating a conviction makes the conviction legally invalid. Expunging the conviction physically seals all official records pertaining to the case and treats the proceeding as not having occurred. Note that vacating a conviction for legal insufficiency also removes the conviction for immigration purposes, while expungement alone does not provide an immigrant defendant with relief from the immigration consequences of the original conviction.

The New York Vacatur statute is an example of trafficking victimization as a basis for vacating a conviction.

NEW YORK CRIMINAL PROCEDURE LAW S 440.10 MOTION TO VACATE JUDGMENT.

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

- (i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that
- (i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and
- (ii) official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph.

6. If the court grants a motion under paragraph (i) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances.

The Ohio statute, Ohio Revised Code Title 29, Chapter 2953, Section 2953.38, is an example of trafficking victimization as a basis for expunging a conviction. The effect of expungement is specified in Section 2953.39(G).

OHIO REVISED CODE SECTION 2953.38(G)

1. The court shall send notice of the order of expungement to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (E) of this section, determines both of the following:

- (a) That the applicant has been convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code;
- (b) That the interests of the applicant in having the records pertaining to the applicant's conviction expunged are not outweighed by any legitimate needs of the government to maintain those records.

2. The proceedings in the case that is the subject of an order issued under division (F) of this section shall be considered not to have occurred and the conviction of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under section 109.572 of the Revised Code. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

The Vermont statute provides for both vacating the conviction and expunging the record.

VERMONT TITLE 13: CRIMES AND CRIMINAL PROCEDURE

Chapter 060: Human Trafficking

§ 2658. Prostitution conviction; motion to vacate by victim of human trafficking

- (d)(1) The Court shall grant the motion if it finds by a preponderance of the evidence that: (A) the moving party was convicted of prostitution in violation of section 2632 of this title; and (B) the conviction was obtained as a result of the moving party's having been a victim of human trafficking. (2) If the motion is granted, the Court shall vacate the conviction, strike the adjudication of guilt, and expunge the record of the criminal proceedings. The Court shall issue an order to expunge, or redact the moving party's name from, all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.

Vacating or Expunging Crimes Other Than Prostitution Coerced by a Trafficker

All of the above statutes are specifically aimed at the crime of prostitution committed due to the coercion of a trafficker. The states differ as to the application of the statutory provisions for vacatur or expungement to crimes other than prostitution. Some states have statutes more broadly written to permit expungement of all crimes committed due to the coercion of a trafficker. For example, Florida provides:

FLORIDA CRIMINAL PROCEDURE, SECTION 943.0583

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

The one New York criminal court opinion interpreting the New York statute quoted above interpreted it broadly. The court noted that the bill was passed based on the recognition that trafficking victims who are arrested for prostitution are blocked from many jobs and are thus victimized for life even after they are no longer under the control of their trafficker. Further, the court vacated six convictions of the defendant, two for prostitution, two for criminal trespass, and two for drug possession, noting that while the section 440.10(1) applies only to prostitution, section 440.10(6) allows the court to take such additional action as is appropriate in the circumstances. See *New York v. G.M.*, 32 Misc. 3d 274 (Criminal Court of the City of New York, Queens County, Apr. 29, 2011).

Other Issues in the Application of Vacatur and Expungement

In addition, the statutes in different states differ with regard to the burden of proof of victimization, including: (1) the evidence required and presumptions that may be made regarding proof of victimization; (2) the time limits after a conviction within

which a motion to vacate must be made; and (3) subsequent criminal convictions that may affect eligibility for a vacatur or expungement.

The ability to provide evidence of victimization by a trafficker may pose a significant hurdle to overcome for some victims. Evidence may be difficult or painful to procure. Some state laws, including the New York statute cited above, provide that documentation from a local, state, or federal agency as to the defendant's status as a trafficking victim creates a rebuttable presumption that the conviction was for a crime coerced by the trafficker.

With regard to timing, some states require that the motion to vacate a judgment be filed within a reasonable time, while other states allow the motion to be filed at any time. The determination of what is a reasonable time may take into account concerns for the victim's safety if the victim is still in danger from the trafficker.

The Washington statute, RCW 9.96.060, provides an example of limitations placed on a person seeking expungement of a conviction if the person is the subject of other criminal actions. The statute provides, in part:

WASHINGTON CRIMINAL CODE RCW 9.96.060

Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or trafficking in persons, or of violating a certain statute or rule regarding the regulation of fishing — Vacating records.

1. Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the tests prescribed in subsection (2) of this section, the court may in its discretion vacate the record of conviction by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

2. An applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

- (a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court; ...

As trafficking victims are often coerced into in a variety of criminal activities by a trafficker and may continue to engage in such activities if they remain under the control of the trafficker after the conviction for which expungement is being sought, this restriction may prove to be a significant burden.

CONCLUSION

In another information card we discuss possible approaches available to the courts to avoid a conviction for an offense committed by a human trafficking victim for a crime coerced by a trafficker. (See the information card titled "Human Trafficking Victims as Criminal Defendants" on the web site www.htcourts.org.) Avoiding a conviction altogether is the best legal result for the victim. Once that opportunity has passed and a conviction has been entered, the options discussed in this card may still be available for undoing the some of the more important legal effects of the conviction on the victim's ability to move on to a life free of dependence on the trafficker.

**Discussion Draft:
Advancing Protections for Survivors of Child Sex Trafficking in NC**

Prospective Goals:

- 1) Amend and expand vacatur law to clearly apply to youth survivors and cover offenses beyond prostitution committed as a result of the trafficking victimization.
 - a. State examples: CA, FL, NE
- 2) Amend expungement provision to remove a waiting period for youth survivors.
 - a. State examples: TN, WI
- 3) Prohibit a mistake of age defense for buyers under the “Solicitation of prostitution” offense.
 - a. State examples: LA, SC, TN

Possible Legislative Fixes:

- 1) **Amending vacatur law to: clearly apply to youth survivors of sex trafficking, expand the offenses covered by this protection, and authorize immediate records expungement.**

N.C. Gen. Stat. § 7B-3203 (Expungement and vacatur of records for juvenile victims of human trafficking or sexual servitude)

(a) At any time following the completion of disposition, a juvenile adjudicated in a juvenile court for a prostitution or other non-violent offense may file a motion to vacate an adjudication if: (i) the juvenile was a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C § 7102(13)); and (ii) the juvenile’s participation in the offense was a result of the victimization.

(b) In determining whether a juvenile’s participation in the offense was the result of the trafficking or sexual servitude victimization, the court may consider the following documentation, factors, or evidence of: (i) an affidavit or sworn testimony from an attorney, a member of the clergy, a medical professional, a trained or licensed service provider, or other professional from whom the juvenile sought assistance to address the harms caused by the trafficking victimization; (ii) email, text, audio or visual messages, or other records between the juvenile and his or her trafficker, solicitor, or other victims demonstrating aspects of the victimization, including arrangements, meeting times, or payments; (iii) branding or other tattoos; (iv) testimony or signed affidavits from those with firsthand knowledge of the victimization; (v) financial records or receipts, including those from hotels and transportation companies; (vi) records of employment or financial records demonstrating employment of indoor adult venues; (vii) internet or print listings or advertisements; or (viii) any other piece of evidence, documentation, testimony, or affidavit that the court deems credible and of probative value to help determine the existence of trafficking victimization.

(c) Upon the granting of a petition under this section, the court shall immediately order that all records, including any information or data concerning the arrest or any proceedings related to the case, be expunged and not subject to the limitations set forth under G.S. 7B-3200

***Points for consideration:**

- National trends:
 - 16 states have vacatur laws that apply to juvenile proceedings and records.

- 9 states have vacatur laws that apply to offenses beyond prostitution for sex trafficking survivors.
- 10 states do not require a waiting period for minors seeking expungement of records.
- 12 states make record expungement automatic upon granting vacatur.
- Expanding vacatur and expungement laws for youth survivors reduces the barriers that such youth face in accessing opportunities that increase post-victimization stabilization, including accessing safe housing, higher education, and employment opportunities.

***Resources:**

- Expungement and Vacatur Law Policy Brief: <https://sharedhope.org/wp-content/uploads/2017/11/Expungement-and-Vacatur-Law-Policy-Brief.pdf>
- Expungement and Vacatur National State Law Survey: https://sharedhope.org/wp-content/uploads/2016/03/NSL_Survey_Expungement-and-Vacatur-Laws.pdf
 - Does not include 2018 legislative advancements in Nebraska and South Dakota

2) Amend the “Solicitation of prostitution” offense to prohibit both a mistake of age and consent defense.

N.C. Gen. Stat. § 14-205.1 (Solicitation of prostitution)

(a) Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense. Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony. Any person who willfully solicits a person who is severely or profoundly mentally disabled for the purpose of prostitution is guilty of a Class E felony. Punishment under this section may include participation in a program devised for the education and prevention of sexual exploitation (i.e. "John School"), where available. A person who violates this subsection shall not be eligible for a disposition of prayer for judgment continued under any circumstances.

(1) Mistake of age is not a defense to prosecution under this section. Consent of a minor is not a defense to prosecution under this section.

***Points for consideration:**

- Prohibiting a mistake of age and consent defense under the prostitution provision ensures that buyers charged with the lower level solicitation offense cannot avoid criminal accountability while simultaneously and importantly recognizing that minors cannot consent to sex with adults.
- Addressing demand is a form of primary prevention and current defenses that are likely available to buyers under the prostitution offense are potentially re-traumatizing for youth survivors who are forced to refute such defenses in a criminal trial.

***Resources:**

- Mistake of Age Issue Brief: https://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_2.6.pdf
- Consent defense Issue Brief: https://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_5.2.pdf

October 3, 2018

Analysis of North Carolina Sentencing for Human Trafficking Violations and Industry
Specific Recommendations

Part I: Analysis of North Carolina Sentencing Statutes

1. Human Trafficking Sentences in North Carolina:
 - I. N.C. Gen. Stat. § 14-43.11. Human Trafficking.
 - a. Adult Victim: Class C felony
 - i. I: 44-58 min to 73-92 max
 - ii. VI: 87-117 min to 146-182 max
 - b. Minor Victim: Class B2 felony
 - i. I: 94-125 min to 157-196 max
 - ii. VI: 189-251min to 314-393 max
 - c. *Cumulative for each violation
 - II. N.C. Gen. Stat. § 14-43.12. Involuntary Servitude.
 - a. Adult Victim: Class F felony
 - i. I: 10-13 min to 16-20 max
 - ii. VI: 20-26 min to 33-41 max
 - b. Minor Victim: Class C Felony
 - i. I: 44-58 min to 73-92 max
 - ii. VI: 87-117 min to 146-182 max
 - III. N.C. Gen. Stat. § 14-202.13. Sexual Servitude.
 - a. Adult Victim: Class D felony
 - i. I: 38-51 min to 64-80 max
 - ii. VI: 77-103 to 128-160 max
 - b. Minor Victim: Class C felony
 - i. I: 44-58 min to 73-92 max
 - ii. VI: 87-117 min to 146-182 max
 - IV. N.C. Gen. Stat. § 14-202.14. Unlawful Sale, Surrender, or Purchase of a Minor.
 - a. Class F felony and \$5,000.00 fine
 - i. I: 10-13 min to 16-20 max
 - ii. VI: 20-26 min to 33-41 max
 - b. Each subsequent violation: Class F felony and \$10,000.00
 - i. I: 10-13 min to 16-20 max
 - ii. VI: 20-26 min to 33-41 max
2. Analysis of sentencing on National level



In terms of Human Trafficking in the first degree, North Carolina has the harshest sentences for adult trafficking in the nation. In fact, the changes made in the last legislative session took North Carolina from the seventh harshest sentence for adult victims in the US to the harshest overall. North Carolina already had the harshest laws for human trafficking of minor victims, but these laws were made even harsher in the last session. Human trafficking in the first degree has the potential to carry harshest sentence nationally when it is applied to minor victims as an offender with a prior record level of VI could be sentenced to a maximum of 314-393 years imprisonment.¹ Most human trafficking statutes cap their sentences at life imprisonment rather than carrying this sentence length.

Of all of the states that have a separate offense for labor trafficking or involuntary servitude, North Carolina has the harshest sentence for minor victims and the third harshest for adult victims.² Of all of the states that have a separate offense for sex trafficking, North Carolina carries the harshest sentence for both adult and minor victims.

3. Sentencing Recommendation

Based off an analysis of a national survey of human trafficking sentences, it is recommended that the sentencing for North Carolina's human trafficking statutes remain the same. North Carolina's human trafficking sentences are among the harshest in the country. As such, the sentences in North Carolina meet the suggestions of the State Department under the TVPA as they involve significant jail time, with a majority of sentences being one year imprisonment or more.³ These sentences, used effectively, should curb human trafficking in North Carolina.

Part II: Industry Specific Recommendations for Massage Regulations

1. Analysis of Massage Portions of SL-2017-151

Overall, the licensing scheme established by this bill for massage establishments is in line with those of other states who have elected to have a state licensing board for massage establishments and therapists. The board will license massage establishments in addition to practitioners themselves, which places the burden on establishments to meet the state requirements rather than workers. This is a good, strong anti-trafficking measure along with requiring initial and periodic inspections for massage and bodywork establishments.

¹ 8 states in the U.S. carry a max sentence of life imprisonment for human trafficking of a minor victim.

² Behind both Georgia and Nebraska, who both carry a maximum sentence of 50 years imprisonment.

³ Punishing Trafficking Offenders Adequately,
<https://www.state.gov/j/tip/rls/tiprpt/2008/105378.htm>.



2. Recommendations for North Carolina Massage Laws

It is recommended that North Carolina add more anti-trafficking measures to their state-wide massage laws such as:

- Regulating hours of operation
- Prohibiting structures like buzzer-controlled front doors and back-door entrances that obscure buyer behavior

Resources:

- Human Trafficking in Illicit Massage Businesses (specifically Creating Strong Laws, pgs. 51-52):
https://polarisproject.org/sites/default/files/Full_Report_Human_Trafficking_in_Illicit_Massage_Businesses.pdf
- Delaware statewide massage law

PO Box 65323
Washington, DC 20035

TEL: 202-745-1001
info@polarisproject.org

Legal Aid of North Carolina, Inc.

Raleigh Office

224 South Dawson Street (27601) • P.O. Drawer 1731 (27602) • Raleigh, NC
(919) 828-4647 • Fax (919) 714-6876

Serving low-income clients in Wake and Johnston Counties

Victor J. Boone, Esq.
Senior Managing Attorney

www.legalaidnc.org

December 6, 2018

Libby Magee Coles, Esq.
Chair, NC Human Trafficking Commission
Governor's Crime Commission
1201 Front Street
Raleigh, NC 27609

Chairperson Coles:

This letter was prepared in response to a request for a comment on how a proposed legislative amendment entitled “Discussion Draft: Advancing Protections for Survivors of Child Sex Trafficking in NC” may affect our clients. The amendment proposes two changes to state legislation: 1) creating North Carolina General Statute § 7B -3203 to introduce a new expungement/vacatur remedy for juvenile records; and 2) amending the criminal statute for solicitation of prostitution. Legal Aid makes no comment on the second proposal. We believe the first proposal could affect Legal Aid clients as described herein.

Generally, expungements (also known as expunctions) relieve the collateral consequences of an adjudication or an adult conviction. Collateral consequences block people from jobs, housing, education, and other opportunities to remain stable and productive. So **expungements help people to remain stable and productive**. The proposed amendment could give our clients increased access to this meaningful legal relief.

For example, the new statute would allow juveniles to petition for vacatur and expungement “any time” after disposition. The other expungements in Chapters 7B impose lengthy waiting periods that tend to make expungements inaccessible because it is incumbent on juveniles to track and identify when they become eligible and to affirmatively file for an expunction at that later date. In practice, this results in very few juveniles actually accessing expungements. The proposed amendment could make expungements more accessible to juveniles who were trafficked by enabling their defenders or other advocates to assist them in immediately seeking an expungement. **This immediate legal relief can give a juvenile stability and resilience against future trafficking by reducing collateral consequences or by preventing them entirely.**

Also, if the amendment applies retroactively to trafficked individuals who were adjudicated of eligible offenses prior to the amendment, then the “any time” language of § 7B -3203(a) would give people who were trafficked access to this legal relief years after their juvenile adjudication. This is meaningful because juvenile adjudications can have lasting consequences. However, it is not clear if the amendment is meant to apply retroactively.

Two other very significant possible benefits of the proposed amendment are that: 1) Juveniles could expunge multiple adjudications if they all resulted from trafficking. Under most other expungement statutes in Chapters 7B and 15A, a petitioner is barred from getting an expungement if they have multiple adjudications or adult convictions. 2) The proposed amendment would also allow juveniles to expunge adjudications based on prostitution and non-prostitution offenses, as long as the offense resulted from being trafficked. In these two ways **the proposed amendment tailors legal relief to more closely match the realities of trafficking**: a lot of people who have been trafficked were forced to participate in multiple criminal offenses, and those offenses are often non-prostitution offenses.

However, we have identified three features of the proposed amendment that could create disparate access to legal relief, and that would create confusion and therefore would make it difficult for us to advise clients about their legal rights and responsibilities.

First, the amendment does not make clear whether expungements under the proposed § 7B -3203 would disqualify a juvenile from receiving a future expungement under Chapter 15A. This is because the existing § 7B -3200(i) requires that information related to juvenile expungements be disclosed to judges “for the purpose of ascertaining whether any person charged with an offense has been previously granted an expunction.” The proposed language of § 7B -3203(c), stating that records expunged under § 7B -3203 are “not subject to the limitations set forth under G.S. 7B-3200,” could be interpreted to mean that these expungements will not be reported to and considered by judges as would otherwise be required by § 7B -3200(i). But this language is not clear enough to enable us to confidently counsel our clients regarding future negative impacts of a § 7B -3203 expungement. The language could be interpreted differently by different judges, and that would cause disparate outcomes.

While the collateral consequences of juvenile records are very real and problematic, their impacts are not as significant as the collateral consequences of criminal convictions due to the fact that juvenile records are sealed. Accordingly, **it is crucial to the long-term stability of our clients who have been trafficked for them to be guaranteed that accessing this juvenile protection will not prevent them from accessing Chapter 15A protections**, if they are needed, in the future.

Second, the amendment does not describe the procedural and substantive requirements in as much detail as the other Chapter 7B and 15A expungement statutes do. So each jurisdiction within the state could fill in the gaps with their own requirements. **Such a patchwork system would produce different outcomes for petitioners who are similarly situated.** This would make it very difficult to advise clients about their legal rights and responsibilities.

For example, the proposed § 7B -3203(a) does not define “violent” or “non-violent” offenses. §7B-3200 does not define these terms. The Chapter 15A expungements have at least 3 different definitions. Each district, maybe even each judge, could have their own definition. So it would be difficult to advise clients about whether or not they are eligible to file a petition.

Further, the amendment does not describe important procedural requirements, such as:

- whether or not there is a filing fee;
- the role of DA’s Office and the Juvenile Counselors during the petition process and the hearing;
- must the petition be served on the DA’s Office and/or the Juvenile and/or Chief Court Counselor;
- must there be a hearing on the petition, or can the judge grant or deny a petition without a hearing;
- in which court or forum the petition must be filed;
- whether the clerk is responsible for forwarding copies of the expunction order to law enforcement agencies so records relating to the underlying proceedings can be destroyed;
- whether the DA’s Office or other agencies may file objections, and the deadline for doing so;
- if the expunction is adjudicated after the completion of disposition, but before the juvenile fulfills the terms of the sentence, whether the juvenile is released from the sentencing terms, including paying costs, fines, and/or restitution;
- if the juvenile has adjudications for multiple nonviolent offenses in the same session of court, are they treated as one offense for purposes of this law.

So it would be difficult to tell clients what to expect in court or how to prepare. The existing §7B-3200 fleshes out some of these procedural requirements for expungement petitions under §7B-3200(a), (b) & (h), but it does not flesh out all of them.

Finally, the proposed §7B-3203(a) would allow eligible juveniles to file a “motion to vacate an adjudication.” This language seems to treat “vacate” and “expunge” interchangeably. **But these terms are not interchangeable. Treating them interchangeably would lead to confusion in advising clients.**

Nationwide, the word “vacatur” refers to a wide variety of expunction and record sealing procedures. But under North Carolina law, “to vacate” an adjudication or conviction means overturn or undo it. “To expunge,” means to delete and destroy the electronic and physical public records of an adjudication or conviction. The NCGS Chapter 15 expunction statutes do not cause convictions to be “vacated.” Although, state and local government agencies must “vacate” an adverse administrative action if it is based on a conviction that is subsequently expunged. (§§ 15A-145.4 & -145.5) And the current Chapter 7B expunction statutes do not use the term “vacate” at all. Therefore, the inconsistent language of the proposed §7B-3203(a) could lead to confusion and disparate interpretation among judges, District Attorney’s Offices, and Juvenile Counselors.

In summary, the proposed amendment could provide meaningful relief for clients who have juvenile adjudications resulting from being trafficked. But the amendment is silent on some important procedural and substantive requirements; and some of its language is inconsistent with the existing legal framework for expunctions. Therefore, the current version of the amendment could result in disparate outcomes for similarly situated juveniles. And it would make it very difficult for us to advise or prepare clients about their legal rights and responsibilities.

Respectfully,

Tolu Adewale
Staff Attorney
Legal Aid of North Carolina, Inc.
224 S. Dawson Street
Raleigh, NC 27601
P: (919) 863-1443
F: (919) 714-6876
E: ToluA@legalaidnc.org

Long, Christine S.

From: Sarah Byrne <sarahbyrne@mvalaw.com>
Sent: Wednesday, October 03, 2018 2:39 PM
To: Long, Christine S.
Cc: Christopher Thompson; Sally Hentz
Subject: Priorities for Legislative Change - HT

Christine,

Thank you for reaching out to collect industry feedback on how to improve NC legislation for human trafficking survivors. In summary, below are my priorities which I believe are shared by other lawyers who represent survivors.

1. Expansion of NCGS 15A-1415 (b)(10) and NCGS 15A-145.6 to allow for relief from convictions *other than* prostitution. Victims of human trafficking are often forced or coerced into criminal conduct beyond prostitution (involving, for example, drug sales, theft, illegal firearms, etc.). Without a path for relief from these unjust convictions, survivors are often unable to pursue work, housing or education.
2. Regulation of service providers that support/house trafficking survivors. Those that provide wrap around services to survivors and support them in their greatest time of need, and most vulnerability, are completely unregulated. There is tremendous risk in survivors being re-traumatized or harmed if they are in the care of organizations and individuals who are held to no standards. Standards should include state agency oversight, insurance requirements, staff training requirements and other mandated safety measures.
3. Civil remedy for HT survivors (to be pursued not just against the trafficking but any organization that participates in or benefits financially from the scheme).
4. Elimination of 3 year waiting period under NCGS 15A-145.6.
5. There are some areas of DSS/YFS related law/regulation that need enhancements but that may be outside the scope of your request. But do let me know if you would like to hear more about that.

I copied my Project co-leads in case they have any additions.

Best,
Sarah

Sarah Dohoney Byrne
Ethics & Compliance Counsel
T 704.331.3794
F 704.339.5921
sarahbyrne@mvalaw.com Bio

Moore&VanAllen

100 North Tryon Street
Suite 4700
Charlotte, NC 28202
704.331.1000
www.mvalaw.com

Moore & Van Allen



NORTH CAROLINA HUMAN TRAFFICKING COMMISSION

FOR MORE INFORMATION ABOUT THE COMMISSION, CONTACT:

CHRISTINE LONG
EXECUTIVE DIRECTOR

CHRISTINE.S.LONG@NCCOURTS.ORG
PO BOX 2448, RALEIGH, NC 27602
919-890-1424

HTC.NCCOURTS.GOV

"Committed to the freedom and flourishing of all North Carolinians"