

**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](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](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](https://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_5.2.pdf)