



**Vacatur of Convictions  
for Survivors of Trafficking:  
District of Columbia  
Toolkit**

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## I. INTRODUCTION

The Trafficking Survivors Relief Amendment Act of 2018 (“2018 Trafficking Survivors Act”) amended the Prohibition Against Human Trafficking Amendment Act of 2010, D.C. Law 18-239<sup>1</sup> to allow for the vacatur of convictions and expungement or sealing of criminal records for certain offenses when the conduct of the person was the direct result of the person having been a victim of trafficking. This toolkit describes how to determine if a client is eligible for vacatur, expungement, or sealing and the process for obtaining vacatur, expungement, or sealing.

As of the date of this toolkit, ten petitions for vacatur of convictions have been filed, all of which were granted. The District of Columbia Committee on the Judiciary and Public Safety also issued a report that provides the legislative history, purpose statement, section-by-section analysis, hearing record, and comparison to similar laws in other jurisdictions (the “Committee Report”).<sup>2</sup> The Committee Report’s purpose statement focuses on the desire to alleviate the “collateral consequences” of a criminal record resulting from being the victim of trafficking, while retaining the ability to distinguish appropriately between “uncoerced, culpable conduct” and conduct resulting from duress. According to the Committee Report:

The purpose of this bill is not merely to seal the records of conviction from public access. Rather, the intent is to recognize that convictions arising from conduct that was the direct result of being a victim of trafficking are essentially wrongful convictions. Instead of sealing the records for those convictions, the best remedy is to nullify the conviction altogether.

Committee Report at 21 (footnote omitted).

The 2018 Trafficking Survivors Act accomplishes this aim by “creating an adversarial process for movants seeking vacatur or expungement.” Committee Report at 3. The report explains that while the District of Columbia has general laws providing for record sealing, the 2018 Trafficking Survivors Act provides more powerful tools through access to vacatur and expungement.

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<sup>1</sup> The Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010, first established the crime of human trafficking in the District of Columbia and introduced new offenses subject to felony penalties: forced labor; trafficking in forced labor or commercial sex; sex trafficking in children; unlawful conduct with respect to documents in furtherance of human trafficking; and financial benefits from human trafficking. D.C. Code Ann. § 22-1831, *et seq.*

<sup>2</sup> Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, “Report on B22-0329, ‘The Trafficking Survivors Relief Amendment Act of 2018,’” *Council of the District of Columbia Committee Report* (Sept. 20, 2018), available at <http://lms.dccouncil.us/Download/38336/B22-0329-CommitteeReport1.pdf>.

## II. RELATIONSHIP TO THE AMERICAN BAR ASSOCIATION (“ABA”) GUIDE

The ABA’s Survivor Reentry Project maintains a document titled “Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys.”<sup>3</sup> That document, referred to in this toolkit as the “ABA Guide,” should be viewed as a starting point for users of this toolkit. The ABA Guide provides helpful explanations of, among other things, what constitutes human trafficking; why post-conviction relief is needed; practical advice, such as “do’s and don’ts” of working with trafficking survivors; how to gather information important to your client’s case; and meeting with prosecutors to obtain their consent. Where appropriate, this toolkit will refer to and identify portions of the ABA Guide that provide useful guidance on particular topics.

The ABA Guide does not provide guidance specific to the laws of each jurisdiction. Rather, it provides a survey across all jurisdictions. While that survey information may prove useful to you in formulating your approach to your case, it will not provide you with the tools to directly understand and apply the 2018 Trafficking Survivors Act. That is the goal of this toolkit, which can be thought of as a District of Columbia supplement to the ABA Guide.

Finally, the cases from other jurisdictions cited as examples in the ABA Guide may provide useful guidance for practitioners and Courts in the District of Columbia, particularly during the early process of implementing the 2018 Trafficking Survivors Act, as the District of Columbia develops its own practices and precedent for trafficking cases. Naturally, this should be viewed as a starting point for a practitioner’s own research, and the practitioner should verify the continued relevance and validity of any case cited.

## III. GOAL OF REPRESENTATION

The legal effect of relief granted in response to a motion filed under the 2018 Trafficking Survivors Act would be to make it as if the arrest, prosecution, and/or conviction never happened. *See* D.C. Code Ann. § 22–1846(i) (“The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested, prosecuted, or convicted.”) This is important because trafficking victims frequently come into contact with the police and the courts for low level criminal activity without ever being properly identified as a victim. *See* ABA Guide at Section I.C. The ability to purge the records resulting from such encounters is critical for trafficking survivors to be able to start a new life. This occurs both practically (by removing barriers to employment, financial assistance, housing, and education) and psychologically (by eliminating a criminal record linked to the survivor’s previous traumatic experiences). *See id.*

If this is your first time working with a trafficking survivor on post-conviction relief, we encourage you to read the relatively short section of the ABA Guide entitled, “Why is Post-Conviction Relief for Survivors of Human Trafficking Necessary.” This section provides a more

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<sup>3</sup> “Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys,” *The Survivor Reentry Project, American Bar Association*, at [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/SRP/practice-guide.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.authcheckdam.pdf).

thorough explanation of how trafficking survivors become involved in the criminal legal system and why your assistance in obtaining post-conviction relief is so critical.

#### **IV. OVERVIEW OF PROCEDURE AND AVAILABLE RELIEF**

There are two types of motions that you may file under the 2018 Trafficking Survivors Act:

1. Motion to vacate and expunge (or seal) a conviction of an eligible offense; or
2. Motion to expunge (or seal) an arrest and/or prosecution that terminated without conviction for an eligible or ineligible offense.

While this toolkit will largely refer to expungement, legal practitioners should note that, under either motion above, movants may choose to seal rather than expunge their records.<sup>4</sup> *See* D.C. Code Ann. § 22–1846(d)(1). In addition, the law also provides for: (a) potential sealing of the records in question, on an interim basis, while the motion is under consideration, and (b) sealing the few permanent records maintained by the court to show the motion was granted and the certificates of compliance with the expungement/sealing order provided by the relevant entities. *See* D.C. Code Ann. § 22-1844(f).

For a motion to be granted under the 2018 Trafficking Survivors Act, you must prove by clear and convincing evidence that:

1. The movant is a victim of trafficking;
2. The movant was convicted of an eligible offense OR charged, but not convicted of an eligible or ineligible offense (i.e. arrested or prosecuted without conviction); and
3. The conduct by the movant resulting in the conviction/arrest/prosecution was a direct result of the movant having been a victim of trafficking.

The elements of a successful claim for relief in the District of Columbia generally track the approach described in Section II of the ABA Guide. This toolkit provides specifics on the approach under the District of Columbia statute.

If it is not possible to meet the elements listed above, you should consider whether your client is eligible for relief under D.C.’s general sealing laws. *See* D.C. Code Ann. § 16–801-§16-807. Unlike the 2018 Trafficking Survivors Act, the general sealing laws do not require proof that the movant is a trafficking survivor and that there was a nexus between the trafficking and the involvement with the criminal legal system. However, the general sealing laws provide for sealing only and do not include vacatur and expungement. For more information on record sealing, please refer to Appendix A, Amara’s Training Memo entitled “Sealing of Criminal Records: District of Columbia.” For the remainder of the toolkit, discussions of sealing will refer to sealing under the 2018 Trafficking Survivors Act, not the general sealing laws under D.C. Code Ann. § 16–801-§16-807.

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<sup>4</sup> While sealing is a less robust form of relief than expungement, some movants may wish to seal so that they maintain access to their court files for other purposes, such as civil litigation.

The Committee Report on page 5 explains the differences between sealing, expungement, and vacatur, which are summarized in the table below.

	<u>Result</u>	<u>Use</u>
<b><i>Sealing</i></b> <b><i>(Least robust)</i></b>	<p>Removal of records from publicly available sources.</p> <p>Records sealed under the 2018 Trafficking Survivors Act under D.C. Code Ann. § 22–1846(d)(1) shall be opened only on order of the Court upon a showing of compelling need, provided that the movant also has access to such records. <i>See</i> D.C. Code Ann. § 22–1846(d)(3). <i>See also</i> Committee Report at 25-26.</p> <p><i>See</i> D.C. Code Ann. Sec. 16-806 regarding the availability of sealed records under D.C.’s general sealing laws.</p>	<p>Records of movant’s conviction/prosecution/arrest can be sealed on a temporary basis while the motion is pending.</p> <p>The court’s records showing that the movant filed for vacatur/expungement and the motion was granted can be sealed. The agency compliance certificates can also be sealed.</p> <p>If a client is not eligible for relief under the 2018 Trafficking Survivors Act, consider D.C.’s general sealing laws under D.C. Code Ann. § 16–801-§16-807.</p>
<b><i>Expungement</i></b>	<p>Destruction or alteration of criminal records or the removal of information that identifies a specific individual.</p>	<p>Records are eligible for expungement once a conviction is vacated.</p> <p>Records may be eligible for expungement if a client is arrested and/or prosecuted for a crime, but not convicted.</p>
<b><i>Vacatur</i></b> <b><i>(Most robust)</i></b>	<p>Nullification of a conviction; intended to restore an individual to the status he or she occupied prior to the arrest or conviction.</p>	<p>Vacatur is available to movants convicted of eligible offenses.</p>

The nature of the relief sought will depend in part on your client’s history. For example:

1. For a client **convicted** of an eligible offense, you should consider whether the record supports a motion to the court to **vacate** the judgment(s) and order **expungement** of associated records.

2. For a client **arrested and/or prosecuted** for any crime, **but not convicted**, you should consider whether the record supports a motion to the court to order **expungement** of associated records.

## V. INFORMATION GATHERING

Successful representation will require gathering information about your client’s case for a variety of reasons, including: (i) deciding the right form of relief to seek, and (ii) providing the factual support needed for the Court to grant your motion. Attachment A to this toolkit is a sample questionnaire to use when discussing the case with your client. You should review the D.C. statute, the remainder of this toolkit, and the ABA Guide, before conducting your interview.

While it is helpful to generally review the ABA Guide for background, we also recommend specific review of Sections IV and V of the ABA Guide for additional insight on what information to gather, and how to gather the information in a trauma-informed manner to construct an appropriate narrative.

Finally, for more information on obtaining records of arrests and convictions from District of Columbia entities, please refer to Section IV.A of Amara’s Training Memo titled, “Sealing of Criminal Records: District of Columbia,” attached as Appendix A.

## VI. WHO CAN MOVE TO VACATE AND EXPUNGE?

The D.C. Code provides relief, as discussed below, for both “eligible offenses” and “ineligible offenses.” Accordingly, we begin with the definitions of those terms:

“**Eligible offense**” means any criminal offense under the D.C. Code, except an ineligible offense. *See* D.C. Code Ann. § 22–1831(5A); *see also* Committee Report at 20-21.

“**Ineligible offense**” means the following pursuant to D.C. Code Ann. §§ 22-1831(5B)(A) - (V); *see also* Committee Report at 19-21:

- Assault with intent to kill or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse, under § 22-401; provided, that assault with intent to rob under § 22-401 shall constitute an eligible offense;
- Sex trafficking of children under § 22-1834;
- Murder in the first degree under § 22-2101;
- Murder in the first degree — Placing obstructions upon or displacement of railroads under § 22-2102;
- Murder in the second degree under § 22-2103;
- Murder of law enforcement officer under § 22-2106;
- Solicitation of murder under § 22-2107(a);
- Armed carjacking under § 22-2803(b)(1);
- First degree sexual abuse under § 22-3002;
- First degree child sexual abuse under § 22-3008;

- First degree sexual abuse of a minor under § 22-3009.01;
- First degree sexual abuse of a secondary education student under § 22-3009.03;
- First degree sexual abuse of a ward, patient, client, or prisoner under § 22-3013;
- First degree sexual abuse of a patient or client under § 22-3015;
- An act of terrorism under § 22-3153;
- Provision of material support or resources for an act of terrorism under § 22-3153(m);
- Solicitation of material support or resources to commit an act of terrorism under § 22-3153(n);
- Manufacture or possession of a weapon of mass destruction under § 22-3154(a);
- Attempt or conspiracy to manufacture or possess a weapon of mass destruction under § 22-3154(b);
- Use, dissemination, or detonation of a weapon of mass destruction under § 22-3155(a);
- Attempt or conspiracy to use, disseminate, or detonate a weapon of mass destruction under § 22-3155(b); or
- Attempt or conspiracy to commit any of the offenses listed in this paragraph, except conspiracy to commit sex trafficking of children under § 22-1834.

A person convicted of **an eligible offense** may **apply by motion** to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records that identify the movant as having been arrested, prosecuted, or convicted of the offense, **if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking**. *See* D.C. Code Ann. § 22–1844(a).

A person **arrested but not prosecuted**, or whose **prosecution was terminated without conviction**, for **an eligible offense or an ineligible offense**, may **apply by motion** to the Superior Court for the District of Columbia to expunge all records identifying the movant as having been arrested or prosecuted for the offense **if the conduct of the person that resulted in the arrest or prosecution was a direct result of the person having been a victim of trafficking**. *See* D.C. Code Ann. § 22–1844(b).

In other words, a person who was convicted may only move for relief (vacatur **and** expungement/sealing) if the conviction was for an eligible offense, but a person who was either not prosecuted or not convicted can move for relief (expungement/sealing) of **any** alleged offense, whether eligible or ineligible, if the conduct of the person that resulted in the arrest or prosecution was a direct result of the person having been a victim of trafficking.

A “**victim of trafficking**” can be an adult or a child; male or female; a U.S. citizen, legal permanent resident, undocumented immigrant, foreign national, or guest worker; and a victim of trafficking for sex or labor. *See* D.C. Code Ann. § 22-1831(12). As noted in the ABA Guide, it is a common misconception that trafficking is a crime of movement or crossing of jurisdictional

boundaries. *See* ABA Guide Section I.A. The District of Columbia’s 2018 Trafficking Survivors Act has no “movement” element to its definition of a victim of trafficking. Specifically, in the District of Columbia, “Victim of trafficking” means:

A person against whom the following offenses were committed:

- (i) Forced labor under section 22-1832;
- (ii) Trafficking in labor or commercial sex acts under section 22-1833; or
- (iii) Sex trafficking of children under section 22-1834; or

A person who has been subject to an act or practice described in section 103(9) or (10) of the Trafficking Victims Protection Act of 2000 (“TVPA”), approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(9) or (10)).

The ABA Guide provides a useful discussion of the TVPA at Section I.A.1. Additional statutory cross-references can be found at Appendix B of this toolkit.

## VII. WHEN TO BRING A MOTION?

A person may file a motion only after (i) **all criminal proceedings** against the person related to the offenses that are **the subject of the motion** are **completed** (note that it is not clear on the face of the statute whether this includes expiration of the appeal period but, arguably, since it is not referenced, it does not); **and** (ii) the person **completes any sentence of incarceration, commitment, probation, parole, or supervised release** related to the offenses that are the **subject of the motion**. *See* D.C. Code Ann. §§ 22-1844(e)(1)-(2).

A motion can be filed **regardless of whether any other person**, such as the person who made the movant a victim of trafficking, **has been arrested, prosecuted, or convicted for an offense**. *See* D.C. Code Ann. § 22-1844(d).

A person may file a motion under this section for an arrest, prosecution, or conviction that occurred **before, on, or after** April 5, 2019. *See* D.C. Code Ann. § 22-1844(g).

*See also, generally,* ABA Guide at Section III.A.

## VIII. HOW TO BRING A MOTION?

Bringing a successful motion will be easier with prosecutorial consent. The ABA Guide provides useful suggestions on how to seek prosecutorial consent, and how to proceed with or without it. *See* ABA Guide at Section VI.

As a general matter, every motion must include or be accompanied by a statement of the specific points and authorities that support the motion, including, where appropriate, a concise statement of facts. If a table of cases is provided, then counsel must place asterisks in the margin to the left of those cases or authorities on which counsel chiefly relies. *See* D.C. Super. Ct. R. Crim. P. 12-I(a).

Further, pursuant to D.C. Code Sections 22-1844(c)(1)-(5), a motion must: (i) be in writing; (ii) state the arrests, prosecutions, and convictions for which the movant seeks relief; (iii) state the grounds upon which eligibility for relief is based and the facts in support of the movant's claim; (iv) be accompanied by any appropriate exhibits, affidavits, and supporting documents; and (v) be served upon the prosecutor.

In practice, motions in the District of Columbia are e-filed on CaseFileXpress and require that notice is sent to the assigned judge. Given the nature of these cases and the length of time that may have lapsed since a judge was assigned to your client's case, we recommend sending notice to the Chief Judge when the motion is e-filed. The current Chief Judge is the Honorable Robert E. Morin.<sup>5</sup> On CaseFileXpress, under "Filing Information" and "Service List," you can search for the Chief Judge's name and select the email address for his chambers. By adding the chief judge to the service list and selecting "E-Serve" under "Service," you will enable CaseFileXpress to send electronic notice of your motion to their chambers.

Electronic notice should also be sent to the prosecutor's office. In the District of Columbia, there are two prosecuting agencies: the Office of the Attorney General for the District of Columbia and the United States Attorney's Office.<sup>6</sup> If your client was prosecuted by the Office of the Attorney General, you will need to e-serve their Civil Litigation Division, which processes cases before assigning them to various units. You can e-serve [chad.copeland@dc.gov](mailto:chad.copeland@dc.gov) within that division. If your client was prosecuted by the United States Attorney's Office, you can e-serve the Special Proceedings Division by adding the email address [USADC.ECFspecialproceedings@usdoj.gov](mailto:USADC.ECFspecialproceedings@usdoj.gov) to the service list.

As Attachment B, we have provided a sample motion to vacate and memorandum on points and authorities filed in the District of Columbia.<sup>7</sup> Both the motion and memorandum clearly delineate the client's eligibility for relief under the 2018 Trafficking Survivors Act. Practitioners should review these samples in terms of argument, structure, and use of supportive documentary evidence.

As Attachments C-E, we have provided a sample memorandum of law, client affidavit,<sup>8</sup> and court orders. As some of these samples are from other jurisdictions, we recommend reviewing them for guidance only. In particular, the memorandum of law and client affidavit set forth a clear narrative of the client's trafficking experience and explain the impact of the client's criminal record on her efforts to rebuild her life. The sample orders should be reviewed in terms

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<sup>5</sup> Judge Morin's term ends in October 2020. The next Chief Judge will be named on the D.C. Superior Court website. See "District of Columbia Superior Court Judges," *District of Columbia Courts*, at <https://www.dccourts.gov/superior-court/judges>.

<sup>6</sup> See Section IV.C of Amara's Training Memo, attached as Appendix A, for guidance on determining which prosecutorial agency to serve.

<sup>7</sup> Amara thanks Maya Dimant, Professor at George Washington University Law School, and the Prisoner and Reentry Clinic at George Washington University Law School, for sharing the motion, memorandum on points and authorities, and order as samples.

<sup>8</sup> Amara thanks Jessica Emerson, Director of the Human Trafficking Prevention Project at the University of Baltimore School of Law, for sharing her client affidavit and memorandum of law as samples.

of the obligations of law enforcement, courts, and other agencies to seal and destroy records relating to the client's prosecution and conviction once the motion is granted.

If a client has multiple cases eligible for relief under the 2018 Trafficking Survivors Act, the Court requires you to file separate motions for each case number. The motion will likely be rejected if you file one motion for multiple, separate cases.

At the request of a movant or prosecutor, the Court may place any record or part of a proceeding related to the motion **under seal** while the motion is pending. *See* D.C. Code Ann. § 22-1844(f). Since the motion and supporting documents will likely include personal information about your client, it is important to provide your client with the option of filing the motion under the sealed docket. When filing your motion and supporting exhibits on CaseFileXpress, under "Document Type," you will select "Sealed Docket." You should also add "SEALED DOCKET" to your case caption for any documents filed. Alternatively, attorneys may file the motion in person at the D.C. Superior Court Criminal Clerk's Office by notifying the clerk that they are filing under the sealed docket. Filing under the sealed docket enables you to file one motion (the motion to vacate and/or expunge) instead of two separate motions (the motion to vacate and the motion to seal your motion to vacate). After filing under the sealed docket in person or on CaseFileXpress, search for your client's name on D.C.'s case search tool (eAccess)<sup>9</sup> to verify that the clerk correctly processed the motion and that it does not appear in a public search.

If the motion is not dismissed or denied after initial review, the Court shall order the prosecutor to file a response to the motion. Within 90 days after the Court's order for a response, the prosecutor shall file a response indicating whether the prosecutor supports or opposes the motion. *See* D.C. Code Ann. § 22-1845(b). If 90 days passes without any action taken, we recommend filing an Order to Show Cause to grant the motion.

If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings, that the movant is not eligible for relief or is not entitled to relief, the Court may dismiss or deny the motion. *See* D.C. Code Ann. § 22-1845(a)(1).

If the motion contains a curable deficiency, the Court shall provide the movant with reasonable time to cure the deficiency and refile the motion. *See* D.C. Code Ann. § 22-1845(a)(2).

The Court may hold a hearing on the motion; provided, that if the prosecutor opposes the motion, the Court shall hold a hearing on the motion within 90 days after the filing of the opposition. *See* D.C. Code Ann. § 22-1845(c).

## **IX. WHAT ARE THE ELEMENTS/BURDEN OF PROOF FOR A MOTION TO VACATE?**

There is a **rebuttable presumption** that a movant is a victim of trafficking if the movant includes in the motion a copy of an official record from a federal, state, tribal, or local proceeding finding that the movant was a victim of trafficking, including a Certification Letter or

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<sup>9</sup> DC Superior Court Online Case Search (eAccess), at <http://www.dccourts.gov/superior-court/cases-online>.

Eligibility Letter from the U.S. Department of Health and Human Services. *See* D.C. Code Ann. § 22-1845(f). The two examples provided in the law itself “are not exhaustive. The Court should consider any official record that contains a formal finding that the movant was a victim of trafficking.” Committee Report at 24.

*See also* Jacob A. Stein, *Trial Handbook for D.C. Lawyers* § 21:17 (Aug. 2019), for a discussion on rebuttable presumptions under D.C. law. In general, the trier of fact must consider the evidence offered against a presumption, and give it such weight as seems just. *See Rizzi v. Fanelli*, 63 A.2d 872 (D.C. 1949). A presumption is rebutted only when uncontradicted proof clearly establishes a fact so that reasonable minds can draw but one inference. *See Koehne v. Price*, 68 A.2d 806 (D.C. 1949). Where a statutory presumption is met by some credible evidence, it becomes, in a sense, something in the nature of an inference, and when more than a single inference may be drawn from the evidence, a question of fact is presented for the jury. *See Bill's Auto Rental, Inc. v. Bonded Taxi Co.*, 72 A.2d 254 (D.C. 1950). When substantial evidence contrary to a presumption is introduced, the underlying facts that originally raised the presumption may or may not retain some degree of probative force as evidence, but they no longer have any artificial or technical force. A presumption never has and cannot acquire the attribute of evidence and its only office is to control the result where there is an entire lack of competent evidence. *See Harlem Taxicab Ass'n v. Nemes*, 191 F.2d 459 (D.C. Cir. 1951). Presumptions cannot be overturned by suspicions but must be countervailed by substantial evidence, and the countervailing evidence must, if believed by the trier of fact, establish facts from which reasonable minds can draw but one inference. *Wolfgang v. Burrows*, 181 F.2d 630 (D.C. Cir. 1950).

Pursuant to D.C. Code Section 22-1845(d), the Court shall grant a ***motion to vacate*** (of a **person convicted of an eligible offense**), if the movant establishes, **by clear and convincing evidence** that:

- 1) The movant was convicted of an **eligible offense**;
- 2) The movant **is a victim of trafficking**;<sup>10</sup> and
- 3) The **conduct** by the movant resulting in the conviction was a **direct result of the movant having been a victim of trafficking**.

Under D.C. law, “[c]lear and convincing evidence is evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *In re Ta.L.*, 149 A.3d 1060, 1084 (D.C. 2016).

The law deliberately does not define the term “direct result.” According to the Committee Report, the interpretation has been left to the courts. However, “the Committee intends for the Court’s inquiry to consider the totality of the circumstances, including the severity of the offense,

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<sup>10</sup> It will be important to note the elements of the offense(s) committed against an individual that will deem them a “victim of trafficking” for the purposes of the D.C. Code, as these will likely need to be established by clear and convincing evidence particularly in cases where the client has no official documentation. For example, for many of the qualifying offenses, a movant would need to show that they were “coerced” in order to prove they were a “victim of trafficking” - coercion however is not a prerequisite in cases involving sex trafficking of minors. *See* D.C. Code Ann. § 22-1834.

the form and duration of coercion exerted on the movant, and the nexus between the coercion exerted on the movant and the commission of the act for which the movant seeks relief.” Committee Report at 24.

The law also does not define “conduct.” Thus, “conduct” for the purposes of D.C. Code Section 22-1845(e), may foreseeably be any conduct noted in the client’s arrest or court record, circumstances that gave the arresting officer probable cause to make the arrest, and/or any conduct that forms part of the general elements or attendant circumstances of the underlying offense. The critical fact to identify will be the client’s “conduct” that resulted in the conviction (or the arrest or prosecution).

Pursuant to D.C. Code Section 22-1845(e), the Court shall grant a ***motion for expungement (of a person arrested but not convicted)***, if the movant establishes, by **clear and convincing evidence** that:

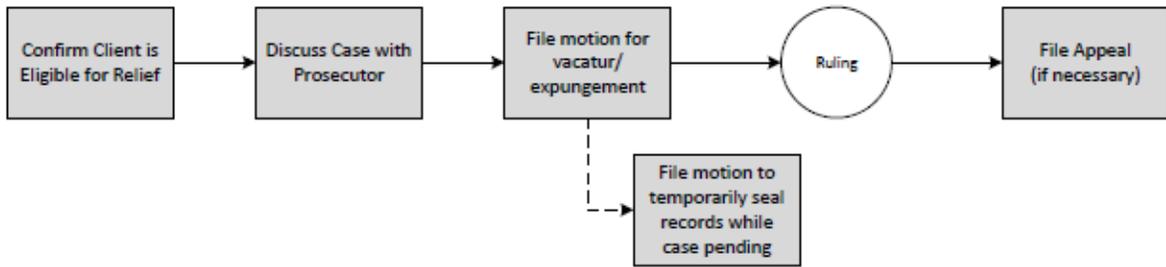
- 1) The movant was arrested but not prosecuted, or the prosecution was terminated without conviction, for **an eligible offense or an ineligible offense**;
- 2) The movant is a **victim of trafficking**; and
- 3) The **conduct** by the movant resulting in the arrest or prosecution was a **direct result of the movant having been a victim of trafficking**.

The Court may grant a motion **based solely on an affidavit or sworn testimony of the movant**. D.C. Code Ann. § 22-1845(g).

As the Committee Report states, “Of course, it is advisable that movants submit to the Court as much documentation as is practicable under the circumstances. There may be situations where documentation is scarce due to the passage of time.” Committee Report at 24-25. *See* Attachment C for a sample client affidavit.

**X. FLOW CHARTS: ELIGIBILITY AND PROOF – PATH TO A VIABLE MOTION**

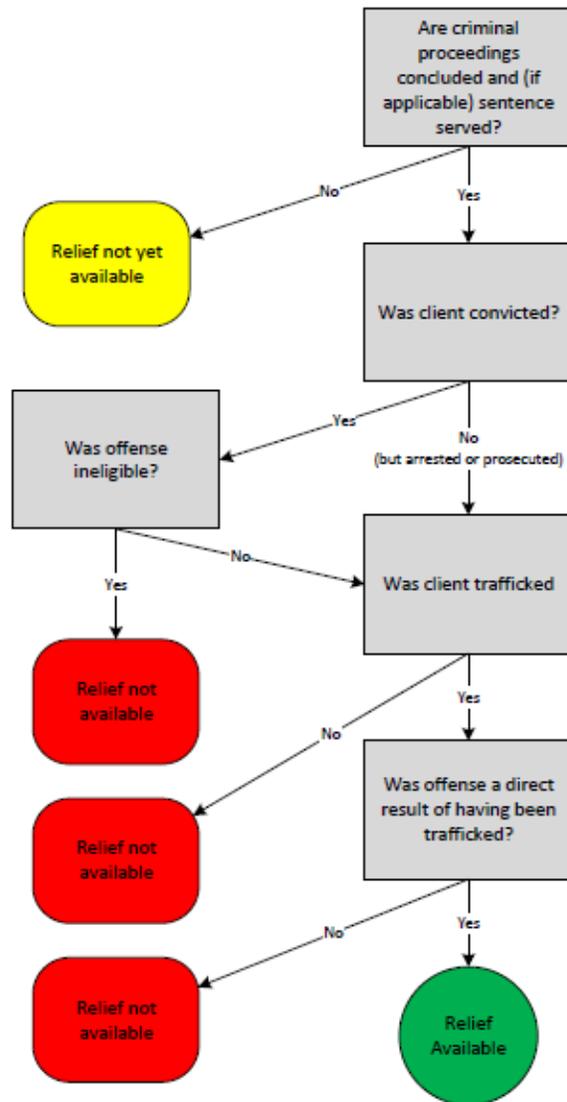
Overview of Procedure



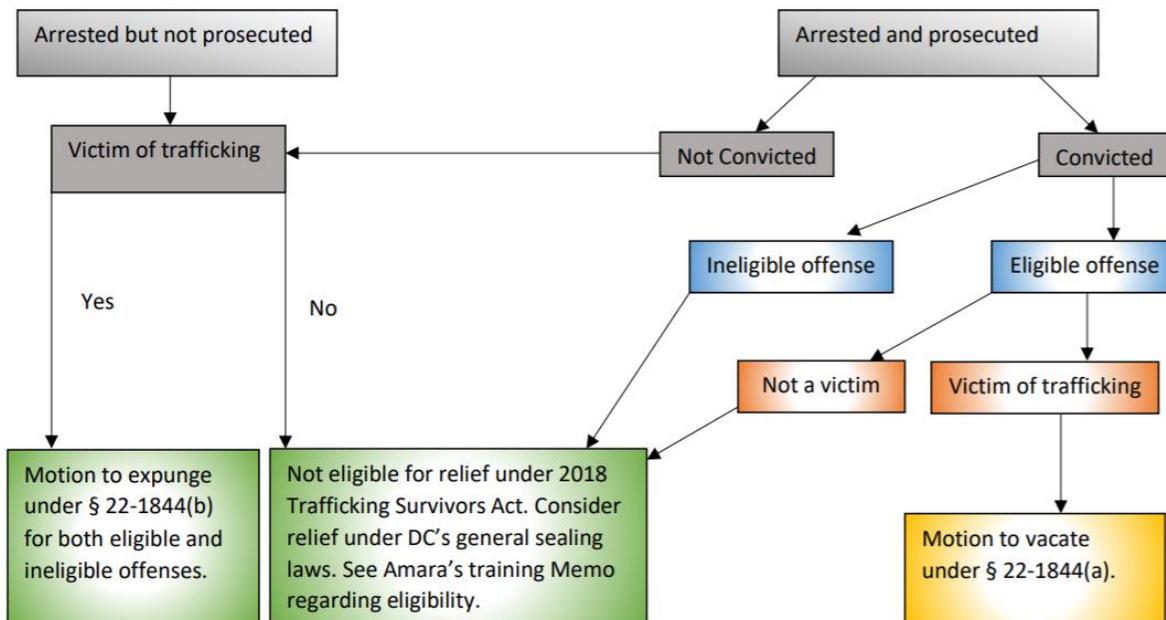
Confirming Client Eligibility

Ineligible Offenses:

- Assault with intent to kill or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse, under §22-401; (except intent to rob)
- Sex trafficking of children under §22-1834
- Murder in the first degree under §22-2101
- Murder in the first degree – placing obstructions upon or displacement of railroads under §22-2102
- Murder in the second degree under §22-2103
- Murder of law enforcement officer under §22-2106
- Solicitation of murder under §22-2107(a)
- Armed carjacking §22-2103(b)(1)
- First degree sexual abuse under §22-3002
- First degree child sexual abuse under §22-3008
- First degree sexual abuse of a minor under §22-3009.01
- First degree sexual abuse of a secondary education student under §22-3009.03
- First degree sexual abuse of a ward, patient, client, or prisoner under §22-3013
- First degree sexual abuse of a patient or client under §22-3015
- An act of terrorism under §22-3153
- Provision of material support or resources for an act of terrorism under §22-3153(m)
- Solicitation of material support or resources to commit an act of terrorism under §22-3153(n)
- Manufacture or possession of a weapon of mass destruction under §22-3154(a)
- Attempt or conspiracy to manufacture or possess a weapon of mass destruction under §22-3154(b)
- Use, dissemination, or detonation of a weapon of mass destruction under §22-3155(a)
- Attempt or conspiracy to use, disseminate, or detonate a weapon of mass destruction under §22-3155(b)
- Attempt or conspiracy to commit any of the ineligible offenses (except conspiracy to commit sex trafficking of children under §22-1834)



## Determining Appropriate Relief



## XI. IF THE COURT DENIES THE MOTION?

If the Court denies the motion, the Court shall state the reasons for denial in writing. *See* D.C. Code Ann. § 22-1846(a).

A copy of any order issued shall be provided to the movant or his or her counsel. *See* D.C. Code Ann. § 22-1846(j)(1).

An order dismissing, granting, or denying a motion shall be a **final order for purposes of appeal**. *See* D.C. Code Ann. § 22-1847.

*See How to Appeal a Decision or Order to the DC Court of Appeals* for basic background information provided by D.C. Superior Court on filing an appeal.<sup>11</sup>

## XII. IF THE COURT GRANTS THE MOTION?

If the Court grants a **motion to vacate (of a person convicted of an eligible offense)**, the Court shall vacate the conviction, dismiss the relevant count with prejudice, and enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order. *See* D.C. Code Ann. § 22-1846(b).

If the Court grants a **motion to expunge (of a person arrested but not convicted)**, the Court shall enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested or prosecuted for the offenses specified in the Court's order. *See* D.C. Code Ann. § 22-1846(c).

Attach a proposed order to your motion. The order should grant vacatur of your client's convictions and direct all relevant agencies to destroy all records related to your client's arrest, prosecution, and conviction without exception. If the prosecutor proposes an order, be sure to carefully review the terms therein to ensure there are no carve-outs for law enforcement or other agencies to keep your client's records. The 2018 Trafficking Survivors Act does not indicate any carve-outs. In fact, the Act intends to restore survivors to the position they held before being arrested by recognizing that they never should have been charged at all. Preserving carve-outs for specific agencies would defeat the legislative purpose of the statute.

At any time before the Court grants a motion to vacate a conviction or a motion to expunge criminal records, a movant may file a request that the Court's final order direct the prosecutor, the Court, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency **to seal (rather than expunge) all records identifying the movant as**

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<sup>11</sup> "How to Appeal a Decision or Order to the DC Court of Appeals," *District of Columbia Courts*, at <https://www.dccourts.gov/court-of-appeals/how-to-appeal>.

**having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.** *See* D.C. Code Ann. § 22–1846(d)(1).

If a movant changes his or her mind after requesting that the court enter an order to seal, instead of expunge, records, he or she may file a second request with the court. After the order to seal is entered, the movant may file a request to amend the order to instead require the expungement of all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order. *See* D.C. Code Ann. § 22–1846(d)(2). In essence, the client may decide whether he or she wants the records expunged (destroyed) or sealed (restricted from public access).

Records sealed under this subsection (D.C. Code Ann § 22–1846(d)(1)) shall be opened only on order of the Court upon a showing of compelling need provided that, upon request, the movant or the authorized representative of the movant shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under this subsection was granted. A request for access to sealed court records may be made *ex parte*. *See* D.C. Code Ann. § 22–1846(d)(3).

**Within one year** after the Court grants a motion to vacate a conviction and/or expunge criminal records, the Clerk of the Court, the prosecutor, any relevant law enforcement agency, and any pretrial services, corrections, or community supervision agency **shall certify to the Court that to the best of its knowledge and belief, all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order have been expunged from its records.** *See* D.C. Code Ann. § 22–1846(e). If the court order directed agencies to seal, rather than expunge, criminal records due to the movant's request under D.C. Code Ann. § 22–1846(d)(1), then agencies are not required to provide the aforementioned certifications until one year after the movant files a request to amend the order to require expungement under D.C. Code Ann. § 22–1846(d)(2). It is important to follow-up at the end of the year to ensure that all such certifications were received by the Court.

An order dismissing, granting, or denying a motion shall be a final order for purposes of appeal. *See* D.C. Code Ann. § 22–1847. Notwithstanding any provision of D.C. Code Section 22–1846, the Court shall seal, but not expunge, a granted order. *See* D.C. Code Ann. § 22–1846(j)(2). In essence, orders granting vacatur, expungement, or sealing of records under the 2018 Trafficking Survivors Act will be sealed, but not expunged.

**The effect of relief shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested, prosecuted, or convicted.** No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose. *See* D.C. Code Ann. § 22–1846(i).

### XIII. Other Considerations

In a case involving co-defendants in which the Court orders the movant's records expunged or sealed, the Court may order that **only those records, or portions thereof, relating solely to the movant be expunged or sealed**. *See* D.C. Code Ann. § 22–1846(f). It could be argued that the use of the term “may” suggests that the court has the discretion to expunge/seal the entire record, even as to other persons. However, the legislative intent seems to be to expunge “records, or portions thereof, relating solely to the movant.” *See* Committee Report at 25.

In a case where a movant was arrested, prosecuted, or convicted of an **offense other than the offense for which a Court orders the movant's records expunged** or sealed, **the Court may order that only those records, or portions thereof, relating solely to the offense that is the subject of the Court's order be expunged or sealed**. *See* D.C. Code Ann. § 22–1846(g). It could be argued that the use of the term “may” suggests that the court has the discretion to expunge/seal the entire record, even as to other offenses. Again, however, this would appear contrary to the legislative intent. *See* Committee Report at 25 (“It is the Committee’s intent that relief should be granted on an offense-specific basis. If an individual was arrested for a blend of eligible and ineligible offenses, a conviction for an ineligible offense does not foreclose relief with respect to any offenses that would otherwise qualify for relief . . .”).

The Court shall not order the redaction of the movant’s name from any published opinion of the trial or appellate courts that refer to the movant. *See* D.C. Code Ann. § 22–1846(h). Under the District of Columbia Court of Appeals Internal Operating Procedures, a “published” opinion is an “opinion by the court the text of which is printed electronically on the website of the District of Columbia Court of Appeals and in the pages of the Atlantic Reporter.” D.C. Ct. App. R. IOP § IX(A).<sup>12</sup>

A movant may obtain a copy of an order granting a motion at any time from the Clerk of the Court, upon proper identification, without a showing of need. *See* D.C. Code § 22–1846(j)(3).

Courts in other jurisdictions, such as Colorado, have extended the relief available to individuals whose convictions have been vacated or reversed to include a refund of fees, costs, and restitution paid as a result of the original conviction. Although the 2018 Trafficking Survivors Act does not directly address this issue, legal practitioners are encouraged to read *Nelson v. Colorado*, 581 U.S. \_\_\_, 137 (2017),<sup>13</sup> and consider its application to survivors’ cases.

### XIV. HELPING YOUR CLIENT UNDERSTAND THE WIN

Part of the difficulty in helping your client understand the win can be confusion as to the effect of vacatur, expungement, and sealing. The client knows he/she was charged and/or convicted of a crime. However, the law provides that, “[n]o person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a

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<sup>12</sup> *See also*, “Finding the Law in the District of Columbia: An Excerpt,” *Washington Lawyer*, at <https://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/january-2016-practice-manual-excerpt.cfm> (describing where the Court of Appeals, the Superior Court, and the United States Court of Appeals publish their opinions).

<sup>13</sup> *See* Appendix C for Amara’s case brief.

false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose.” See D.C. Code Ann. § 22–1846(i). This section of the law does not distinguish between the forms of possible relief: expungement under D.C. Code § 22–1846(c) or sealing under D.C. Code § 22–1846(d)(1). Arguably, the protections from perjury should apply to movants who request and receive either form of relief under the 2018 Trafficking Survivors Act. However, the Committee Report only refers to movants granted vacatur or expungement when discussing that movants are under no obligation to disclose arrests or convictions.<sup>14</sup> Consequently, movants who request sealing should be advised that D.C.’s general sealing laws do specifically outline exceptions, such as direct questions in connection with jury service and license applications, where movants must disclose sealed records for some criminal cases.<sup>15</sup>

The effect of vacatur and expungement on your client’s criminal record can be complex, and yet critically important because applications for employment, housing, or schooling may involve questions about arrests or convictions, and applicants may be told they are subject to perjury charges if they are untruthful. (Note in this regard that the District of Columbia has a “ban the box” law, which generally prohibits employers from asking applicants about arrests and convictions before extending a conditional offer of employment. See Committee Report at 4, 26.)<sup>16</sup> Each client will be different, but it will be important for you to impress upon them that the legal effect of the law, in the District of Columbia and as to arrests or convictions in the District of Columbia, is as if they were never arrested or convicted for the conduct that was the subject of a successful motion. For this reason, it is critical to verify that all agencies provide compliance certificates with the expungement order. You may also assist your client in running his or her background check after a year has passed to verify that the records have been expunged.<sup>17</sup> If there is doubt about agency compliance, the client may attach a copy of the expungement order to the background check application as a precautionary measure.

In addition to ensuring that state agencies expunge your client’s record, it is imperative to address the Federal Bureau of Investigation (FBI), which maintains the National Crime Information Center (NCIC), a comprehensive database of criminal record histories. Some

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<sup>14</sup> See Committee Report, at 26 (“Applications for employment, housing, and schooling frequently inquire into an applicant’s criminal history. If a movant is granted vacatur or expungement for certain convictions or arrests, they are under no obligation to disclose those convictions or arrests to entities requesting such information.”).

<sup>15</sup> See D.C. Code § 16-803(m) (“No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose **except that the sealing of records under this provision does not relieve a person of the obligation to disclose the sealed arrest or conviction in response to any direct question asked in connection with jury service or in response to any direct question contained in any questionnaire or application for a position with any person, agency, organization, or entity defined in § 16-801(11).**”). See also Appendix A, at 21-22.

<sup>16</sup> See also, “‘Ban the Box’: Fair Criminal Record Screening Act,” *OHR Guidance No. 16-02*, at [https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHRGuidance16-02\\_FCRSA\\_FINAL.pdf](https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHRGuidance16-02_FCRSA_FINAL.pdf).

<sup>17</sup> If your client is not passing background checks by employers or landlords after the court grants the requested relief, it is possible that private background check companies have not properly updated their records. The Foundation for Continuing Justice is a non-profit organization that performs free Criminal Database Updates. Individuals whose records have been expunged or sealed can provide a copy of the court order to the foundation, which then updates private background check companies. See “Update Background Check Reports,” *Foundation for Continuing Justice*, at <https://www.continuingjustice.org/our-projects/criminal-database-update/>.

employers run background checks through the NCIC. If your client's records were successfully expunged on the state level, they may still appear on an NCIC background check if the FBI did not expunge the records. Therefore, be sure to include the FBI in any order that grants your client vacatur and/or expungement. The Trafficking Survivors Relief Amendment Act of 2018 states that "any relevant law enforcement agency" can be ordered to expunge a movant's records.<sup>18</sup> Given the purpose of the statute to restore a movant to his or her position before arrest, we interpret that clause to include the FBI.

While the law provides protection from perjury charges if a client does not disclose his or her arrest or conviction, clients should be advised that there may be limited exceptions. For example, disclosure of expunged records may be requested on applications for professional licenses, positions in healthcare, childcare, or law enforcement, or on federal license or job applications. If a client has a question about a specific job application or request for disclosure, you should evaluate the request in light of the relevant federal or state laws and contact Amara with any further questions. Similarly, every state has different expungement laws, so if a client has concerns about expunged records from a different state, contact a legal provider in that state and/or Amara.

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<sup>18</sup> See D.C. Code Ann. § 22-1846(b) ("If the Court grants a motion filed under section 114(a), the Court shall vacate the conviction, dismiss the relevant count with prejudice, and, except as provided in subsection (d) of this section, enter an order requiring the Court, the prosecutor, **any relevant law enforcement agency**, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.").

## **Attachment A**

# **Sample Questionnaire for Survivor of Human Trafficking**

Client: \_\_\_\_\_

Date: \_\_\_\_\_

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## Questionnaire

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As a starting point, it is important to understand that your client will likely carry emotional, physical, and/or psychological trauma from their experiences as a survivor of human trafficking that will need to inform your approach to the interview. This includes not only the individual questions you ask, but also how you phrase them.

In order to prepare for the unique challenges of interviewing a potential survivor, we recommend that you first read the following helpful resources.

- Amara Legal Center, *Best Practices when Interviewing a Survivor of Sexual Assault*, available at: <https://www.amaralegal.org/wp-content/uploads/2016/06/Interview-Guide-for-Survivors-of-Sexual-Assault.pdf>
- The Office for Victims of Crime – Training and Technical Assistance Center, *Trauma-Informed Victim Interviewing*, available at: <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/>
- The ABA Guide, Part IV and V
- *Interviewing victims of human trafficking: Survivors offer advice*, available at: <https://www.commdiginews.com/life/interviewing-victims-of-human-trafficking-survivors-offer-advice-11238/>

Your interview should have two broad aims. The first is to identify any gaps in your client’s story that could be material to the case or impact how the Court or prosecutor view your client’s credibility. It is important to remember that trauma affects memory, so your client may not easily remember details about his or her trafficking experience. If a client provides inconsistent information, it is not necessarily a reflection of his or her credibility, but may instead be an effect of trauma on their brain and recollection. The second aim is to record your client’s narrative and construct a timeline to prepare your client’s affidavit. The affidavit will need to cover: (i) your client’s life before and up until the victimization; (ii) your client’s life and circumstances while they were being trafficked, including details of any arrests or prosecutions; and (iii) your client’s life as a survivor including their aspirations, any educational or professional accomplishments, and any obstacles that they have or are fearful of encountering as a result of their criminal record.

The ABA Guide suggests, for the purposes of preparing a client’s narrative and affidavit, that it may be helpful to “separate the timeline into [these] three periods: *pre-trafficking*, *trafficking*, and *post-trafficking*.” The high-level outline presented below may be helpful as a checklist to use as you conduct the interview:

## Client Affidavit Outline

1. Pre-trafficking (background, context, specific vulnerability)
2. Trafficking (victimization and nexus to convictions)
3. Post-trafficking (connection to services, educational/professional accomplishments or aspirations, obstacles caused by convictions)

**Please read or ideally paraphrase to client after introductions, so they know what to expect from their meeting with you.**

*I am [insert name and title] with \_\_\_\_\_. The purpose of us meeting today is an initial consultation to see if we can identify any areas where it might be helpful for you to get additional legal advice, particularly with respect to whether we may be able to help clear your record of any arrests, convictions or prosecutions. I may then be able to make an appropriate referral for you to get further and more in-depth advice.*

*As we go through this interview, I will be asking some questions. I understand that some of my questions may make you feel uncomfortable, but that is not my intention. My purpose for asking these questions is to gather information that I need to assess your case and properly advise you. If you would rather not talk about a particular subject, let me know and we will move on. I will try to steer our conversation, but ultimately you are in control. We can take a break at any time and you can end the meeting at any time.*

### Client Narrative

To begin the interview, ask the client to describe their circumstances in their own words, encouraging them to give their full life story from their childhood up until the point of your meeting. Note the language that your client uses to describe the circumstances of their trafficking and their traffickers so that you can incorporate it into more focused questions to build a comprehensive narrative and timeline. You should also note any obvious gaps in your client's description and flag those for yourself as points to return to and clarify at a later time.

Remember the purpose of your interview: (i) identify any gaps in your client's story that could be material to the case or impact how the Court or prosecutor view your client's credibility, and (ii) to capture information about your client's life before, during, and after their trafficking so that you are ultimately able to have sufficient information to prepare an affidavit.

**As an approach to establishing the backbone of the client's narrative, taken in part from the ABA Guide, it is suggested that you:**

1. **Start with basic biographical information.** For example: How old are you? Where were you born? Where have you lived? Where do you live now? What is your contact information?
2. Identify other **orienting dates** in your client's life to construct a chronology of events. For example, if your client has children, you might ask if an incident occurred before or after their children were born. Major world events can also help a client position their own memories and experiences.
3. **Use the arrest(s) as orienting dates.** Your client's arrest(s) is/are the most concrete, tangible, and relevant orienting fact that you can easily pin down.

4. If your client provides **conflicting information**, point out the conflicts in a non-accusatory way, as this can stem from trauma. Ensure that your client feels as if you are assisting them to sort out the facts, not that you think they are lying.

If it appears that your client has arrests, prosecutions, or convictions that could be subject to the 2018 Trafficking Survivors Act, we have included some suggested questions to elicit the specific information needed to: 1) analyze whether the 2018 Trafficking Survivors Act applies to your client; and 2) evaluate the probability of success of a motion to vacate judgment(s) and/or expunge records.

### **Initial Client Discussion**

#### **1. Client Description of Life Events**

#### **2. Pre-trafficking (background, context, specific vulnerability, if any)**

3. **Trafficking (victimization and nexus to convictions)**

4. **Post-trafficking (connection to services, educational/professional accomplishments or aspirations, obstacles caused by convictions)**

**Issues Identified:**

- Existing conviction of eligible offense
- Ongoing prosecution in relation to eligible offense
- Arrest for eligible offense
- Conviction/Arrest/Prosecution of ineligible offense

## CONVICTIONS

- 1) Does the client have a criminal record?  
 Yes    No
  
- 2) Please ask the client to list all **convictions** (not arrests). What was the date of each conviction, what was the conviction for, and where were they convicted (can they remember the court)?
  
- 3) How old was the client when they committed the offense they were convicted of? (You need to determine if the client made any misrepresentations about their age that might have led to a conviction despite the fact they were a minor. If they were convicted of an offense despite having been a minor, they may have grounds to vacate the conviction on jurisdiction in addition to a remedy under the 2018 Trafficking Survivors Act)
  
- 4) Please note if any of the matters described by the client could fall into one of the following offenses:
  - Assault with intent to kill or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse;
  - Sex trafficking of children;
  - Murder in the first degree;
  - Murder in the first degree — Placing obstructions upon or displacement of railroads;
  - Murder in the second degree;
  - Murder of law enforcement officer;
  - Solicitation of murder;
  - Armed carjacking;
  - First degree sexual abuse;
  - First degree child sexual abuse;
  - First degree sexual abuse of a minor;
  - First degree sexual abuse of a secondary education student;
  - First degree sexual abuse of a ward, patient, client, or prisoner;
  - First degree sexual abuse of a patient or client;
  - An act of terrorism;
  - Provision of material support or resources for an act of terrorism;
  - Solicitation of material support or resources to commit an act of terrorism;
  - Manufacture or possession of a weapon of mass destruction;
  - Attempt or conspiracy to manufacture or possess a weapon of mass destruction;

- Use, dissemination, or detonation of a weapon of mass destruction;
- Attempt or conspiracy to use, disseminate, or detonate a weapon of mass destruction; and/or
- Attempt or conspiracy to commit any of the ineligible offenses, except conspiracy to commit sex trafficking of children.

**ARRESTS**

- 1) Please ask the client to list all arrests. Where were they arrested, what was the date of each arrest, and what was the arrest/charge for?
- 2) If there are arrests for offenses not listed at [Question 1 above], clarify with the client whether there was or will be any related prosecution?

**PROSECUTIONS**

- 1) Please ask the client to list and describe any prosecutions that have been terminated without conviction.
- 2) Please ask the client to list any ongoing prosecutions, and ask:
  - What is the status of the prosecution?
  - What is the prosecution for?
  - What is your next court date?
  - Do you have any paperwork?
  - Are you represented by an attorney?

## CORROBORATING EVIDENCE

1) Ask the client if they have any official documentation that evidences their status as a survivor of human trafficking.

- Do you know if you have a T-Visa?
- Do you know if you have a U-Visa?
- Do you know if you have a Form I-914, Supplement B (Declaration of Law Enforcement Officer for Victim of Trafficking in Persons)? Did you ever comply with requests from law enforcement for assistance in a trafficking investigation and prosecution, such that we could get this form?
- Do you know if you have a Form I-918, Supplement B (U Nonimmigrant Status Certification)? Have you ever assisted in the investigation or prosecution of the crime you experienced?
- Do you know if you have ever been granted the status of Continued Presence?
- Do you have any letters from the Department of Health and Human Services (or similar state agencies) that certify that you are eligible to receive public benefits as a result of your victimization/trafficking experience?<sup>18</sup>
- Do you know if your experience was ever mentioned in any court proceedings? (civil proceedings for damages to survivors, criminal proceedings against traffickers, subpoenas issued to the client, notifications from a victim notification system)
- Do you have any communications (letters, messages, emails) from any federal or state agency regarding your trafficking experience?

2) Ask the client if they have or are aware of any of the following that might provide evidence of their experience.

- Arrest records of traffickers
- Medical records
- Tattoos, branding, or scars
- Newspaper articles
- Photographs
- Email, text, or voice mail records
- Internet listings, print advertisements, or business cards that evidence how the client was victimized

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<sup>18</sup> Clients often do not self-identify as trafficking victims or survivors. It can be harmful to call clients “victims” or to discuss their “victimization” if that is not how they identify and feel. Try to mirror the client’s language and use their words to describe their experience. For instance, clients may refer to their trafficker as their ex-boyfriend. Instead of referring to their victimization, you may say “during the time you were with your ex-boyfriend.”

<ul style="list-style-type: none"><li>● Financial records, including records of hotel stays, or employment in venues such as massage parlors, strip clubs, or escort services.</li></ul> <p>3) Ask your client if they have worked with or sought assistance from any persons or organizations that might have assisted them in relation to being a survivor of human trafficking.</p> <ul style="list-style-type: none"><li>● Lawyers</li><li>● Doctors</li><li>● Therapists</li><li>● Social Workers</li><li>● Law enforcement officials</li><li>● Clergy</li><li>● Educators</li><li>● Victim service providers</li><li>● Clinicians</li><li>● Community mental health centers</li><li>● Domestic violence agencies</li><li>● Rape crisis centers</li><li>● Court diversion programs</li><li>● Transitional supportive housing programs</li><li>● Substance treatment centers</li><li>● Case managers</li></ul>	
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Before concluding the consultation, you should inquire whether your client is engaged in any process where it may be necessary to search for and/or disclose their criminal record (for example, a visa application) and point out that they should consider how that process could be impacted if their DC criminal record is subsequently cleared. If they are working with advisors (for example, an immigration attorney) they should discuss the fact that they are considering a legal procedure to have their criminal record cleared.

At the conclusion of the consultation, thank the client for their time and fully explain the next steps. Let them know that, with the information that they provided you will assess whether you can assist. Be sure to tell the clients when they can expect to hear from you.

## **Attachment B**

### **Sample Motion to Vacate and Memorandum on Points and Authorities (D.C.)**



sexual relations in exchange for payment. *Id.* She “cried afterward and felt dirty.” *Id.*

██████████ kept all of the money ██████████ received in her first encounter.

3. After that first night, ██████████ resorted to threats, intimidation, and force in order to keep her working for him. *Id.* at ¶¶ 8-9. ██████████ continued to keep all of the funds from ██████████ ██████████ sexual exchanges. *Id.* at ¶¶ 7, 10. If ██████████ was unable to obtain what ██████████ deemed sufficient funds, he intimidated her verbally and physically. *Id.* at ¶¶ 8. ██████████ would choke her, hit her in the face, and pin her against the wall. *Id.* Once, ██████████ split ██████████ head open with a glass bottle. *Id.*
4. ██████████ coached her on how to proposition men, set her rates, and present herself to potential clients. *Id.* at ¶¶ 7. He also taught her how to walk in high heels, and told her to wear more makeup to appear older. *Id.* ██████████ had her rehearse a false name and social security number to give police so they would not learn she was underage. *Id.*
5. As ██████████ became disillusioned and tried to flee, ██████████ began threatening her family. *Id.* at ¶ 9. He told ██████████ that if she left him, he would force her mother and sister into prostitution. *Id.* ██████████ controlled ██████████ until one of her clients, ██████████ noticed what was happening and helped her escape from ██████████ *Id.* at ¶ 10.
6. While ██████████ was under the control of ██████████ she was arrested in the District of Columbia ██████████ times on ██████████ charges. She seeks vacatur and expungement of these charges and convictions pursuant to Trafficking Survivors Relief Amendment Act, codified at D.C. Code § 22-1844 *et seq.*
7. ██████████ was arrested on or about ██████████ for ██████████” in violation of D.C. Code ██████████. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. ██████████ provided her alias ██████████

██████████” at the time of her arrest. *See* Movant Aff. ¶ 7. The Superior Court of the District of Columbia found ██████████ guilty on ██████████. *See* ██████████ Case Jacket, Exhibit C. ██████████ was a minor at the time of this arrest and charge, however she was charged as an adult after providing a false name and birthdate as directed by her trafficker. *See* Birth Certificate, Ex. H; Movant Aff. ¶ 7. This arrest and charge is not exempted as an ineligible offense under D.C. Code § 22-1831(5)(B) and thus is eligible for vacatur pursuant to the Trafficking Survivors Relief Amendment Act. All criminal proceedings relating to this matter are completed. D.C. Code § 22-1844 (e)(1); *See* ██████████ ██████████ Case Jacket, Exhibit C. This offense was a direct result of ██████████ status as a victim of trafficking, because she was a minor coerced into ██████████ by her trafficker. D.C. Code § 22–1831(12)(A)(iii); *See* Movant Aff. ¶¶ 4, 7.

8. ██████████ was arrested on or about ██████████ and again charged under the alias ██████████ with ██████████ in violation of D.C. Code ██████████. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. Here too, ██████████ provided her alias and fake birthdate as instructed by her trafficker. *See* Movant Aff. ¶ 7. ██████████ was convicted and sentenced on June ██████████. *See* ██████████ Case Jacket, Exhibit D. This arrest and conviction is eligible for vacatur. D.C. Code § 22-1831(5A). All criminal proceedings relating to this matter were completed decades ago. D.C. Code § 22-1844(E)(1); *See* ██████████ Case Jacket, Exhibit D. ██████████ incurred this conviction as a minor forced into the sex trafficking trade, and thus the conviction is as a direct result of her status as a victim of trafficking. D.C. Code §§ 22-1831(12)(A)(iii), 1844(a); Movant Aff. ¶¶ 4, 7.

9. [REDACTED] was arrested on or about [REDACTED] and charged with [REDACTED] [REDACTED] in violation of [REDACTED]. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. [REDACTED] was charged under her alias [REDACTED] [REDACTED] was a minor at the time of this arrest and charge. *See* Birth Certificate, Ex. H; *See* Movant Aff. ¶¶ 4, 7. This case was entered Nolle Prosequi and dismissed. *See* [REDACTED] Case Jacket, Exhibit E; *See* FBI Identification Record, Ex. I. This arrest and charge is eligible for expungement under D.C. Code § 22-1844(b) because there was no conviction. [REDACTED] [REDACTED] was charged when she was a trafficked minor, and the charges were a direct result of her status as a victim of trafficking. D.C. Code §§ 22-1831(5)(A), (12)(A)(iii). All criminal proceedings relating to this matter have completed. D.C. Code § 22-1844(E); *See* FBI Identification Record, Ex. I.
10. [REDACTED] was arrested on or about [REDACTED] and charged under her alias [REDACTED] [REDACTED] with [REDACTED] in violation of [REDACTED]. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. She pled guilty to this charge in case on [REDACTED]. [REDACTED] Case Jacket, Exhibit F. [REDACTED] was a minor at the time of this arrest and charge. *See* Birth Certificate, Ex. H. As a misdemeanor, this conviction is eligible for vacatur. D.C. Code § 22-1831(5)(A). All criminal proceedings and sentences relating to this matter have completed. D.C. Code § 22-1844 (E); *See* 1983 CMD 005545 Case Jacket, Exhibit F. As [REDACTED] [REDACTED] was a minor coerced into this conduct by her trafficker, this offense was a direct result of [REDACTED] [REDACTED] status as a trafficking victim. D.C. Code §§ 22-1831(5)(A), (12)(A)(iii); *See* Movant Aff. ¶¶ 4, 7.

11. On or about [REDACTED] [REDACTED] was arrested and charged with [REDACTED] [REDACTED] in violation of D.C. Code [REDACTED] under her alias, [REDACTED]. *See* Metropolitan Police Department Arrest Record, Ex. B. *See* FBI Identification Record, Ex. I. The resulting case was entered Nolle Prosequi and subsequently dismissed. *See* [REDACTED] [REDACTED] Case Jacket, Exhibit G; *See* FBI Identification Record, Ex. I. [REDACTED] was a minor at the time of this arrest and charge. *See* Birth Certificate, Ex. H. This charge is eligible for expungement under § 22-1844(b) because there was no conviction, and [REDACTED] incurred it as a direct result of her status as a minor coerced into sex trafficking. D.C. Code § 22-1831(12)(A)(iii); *See* Movant Aff. ¶¶ 4, 7. All criminal proceedings relating to this matter have completed. D.C. Code § 22-1844(E)(1); *See* FBI Identification Record, Ex. I.
12. For the [REDACTED] years since her escape, [REDACTED] has worked consistently to change her life. She has held steady employment for that entire duration, most recently as an [REDACTED] at a school [REDACTED]. *Id.* at ¶¶ 12, 13. [REDACTED] is committed to working in helping professions, where she can serve as an advocate for vulnerable populations. *Id.* at ¶ 12. Additionally, [REDACTED] is a pillar in her community, engaging in volunteer work through her church and various non-profit organizations. *Id.* at ¶ 14.
13. While [REDACTED] has maintained steady employment, she recently resigned from her position, and background checks render her unable to seek certain employment opportunities. *Id.* at ¶ 17. Though [REDACTED] is far removed from the offenses that occurred [REDACTED] years ago, these offenses continue to directly impact her life. *Id.* They affect her ability to feel secure in her current employment, content in her personal life,

and to truly move on from this trauma. Society has labeled her a criminal and she seeks to remove this label. *Id.* at ¶ 17-18.

WHEREFORE, for the reasons set forth in the accompanying Memorandum, Movant respectfully requests that this Court issue an order vacating and expunging all records of the above-captioned cases. D.C. Code § 22-1844.

Dated: June 5<sup>th</sup>, 2019

Respectfully submitted,

/s/ Maya Lentz

---

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5<sup>th</sup>, 2019, I electronically filed the foregoing Motion and accompanying Memorandum of Points and Authorities and Proposed Order by using the ECF system of the Criminal Division of the Superior Court of the District of Columbia. I certify that I sent a courtesy copy of said documents to USADC.ECFspecialproceedings@usdoj.gov. I also certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

Special Proceedings Division  
Office of the United States Attorney  
555 Fourth Street, N.W.  
Room 10-435  
Washington, D.C. 20530

/s/ Maya Lentz

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Counsel for [REDACTED]



convicted of an eligible offense; (2) she is a victim of trafficking; and (3) the conduct resulting in the charges, arrests, or convictions was the direct result of having been a victim of trafficking. D.C. Code § 22-1845(d). A motion will only be granted if all criminal proceedings and sentences connected to the cases that are the subject of the motion have completed. D.C. Code § 22-1844(e). The Court may grant this motion based solely on an affidavit of sworn testimony of the movant. D.C. Code § 22-1845(g). A review of ██████████ record in light of these factors and eligibility criteria will demonstrate by clear and convincing evidence that ██████████ has only eligible convictions on her record, all proceedings and sentences from the cases ended decades ago, and all were as a result of her having been trafficked into prostitution as a minor, making those convictions eligible for vacatur under §1844(a). *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I.

The Act also provides for expungement of arrests and prosecutions that did not result in convictions. D.C. Code § 22-1844(b). In a motion filed under §1844(b), the movant must show, by clear and convincing evidence, that: (1) she was arrested but not prosecuted, or the prosecution was terminated without conviction; (2) she is a victim of trafficking; and (3) her conduct resulting in the arrest or prosecution was a direct result of having been a victim of trafficking. D.C. Code § 22-1845(e). No offenses are ineligible for expungement under §1844(b). An examination of the facts here will demonstrate first, that there are non-prosecuted charges on ██████████ record; second, that all proceedings and sentences from the cases ended decades ago; and finally, that all charges were because she was trafficked as a minor into prostitution, rendering those charges eligible for expungement under §1844(b).

**I. [REDACTED] CONVICTIONS ARE ELIGIBLE OFFENSES UNDER THE TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT**

For a trafficking-related conviction to qualify for vacatur under the Act, the conviction must be an “eligible” offense. D.C. Code §§ 22-1831(5A)-(5B), 22-1845(d)(1). No such eligibility requirement exists for arrests and charges that did not lead to a conviction. § 1844(b). The convictions on [REDACTED] record are all eligible offenses, defined as any criminal offenses under the D.C. Code that are not specifically exempted within the statute. D.C. Code § 22-1831(5)(B). The only convictions on [REDACTED] record are for [REDACTED] [REDACTED] and [REDACTED] neither of which are exempted offenses. *See* Metropolitan Police Department Arrest Record, Ex. B; FBI Identification Record, Ex. I. Indeed, the Act specifically intends [REDACTED] and related offenses such as lewdness and solicitation to be eligible for the remedies of the TSRA. *See* D.C. Council, Report on Bill 22-0329 at 6 (September 20, 2018). Therefore, the convictions on [REDACTED] record are eligible for relief under § 22-1844 (a).

**II. [REDACTED] IS ELIGIBLE FOR VACATUR AND EXPUNGEMENT OF HER ENTIRE CRIMINAL RECORD BECAUSE SHE IS A “VICTIM OF TRAFFICKING” AS DEFINED BY THE TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT**

To qualify for both vacatur and expungement under the Act, a movant must be a victim of trafficking. D.C. Code §§ 22-1844(a), (b). [REDACTED] qualifies because she satisfies two distinct definitions of “trafficking victim” within the statute.

**A. [REDACTED] Satisfies the Definition of “Trafficking Victim” Because She Was Coerced by Another to Engage in a Commercial Sex Act**

The Act defines a victim of trafficking as a person against whom the offenses of “trafficking in labor or commercial sex acts under § 22-1833” were committed. D.C. Code § 22-1831(12)(A)(ii). According to D.C. Code § 22-1833, “[i]t is unlawful for an individual or a

business to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person, knowing, or in reckless disregard of the fact that [c]oercion will be used or is being used to cause the person to provide labor or services or to engage in a commercial sex act.” In relevant part, D.C. Code § 22-1831 defines coercion as any one of, or a combination of:

(A) force, threats of force, physical restraint, or threats of physical restraint; (B) [s]erious harm or threats of serious harm;<sup>1</sup> (C) [t]he abuse or threatened abuse of law or legal process; (D) [f]raud or deception; (E) [a]ny scheme, plan, or pattern intended to cause a person to believe that if that person did not perform labor or services, that person or another person would suffer serious harm or physical restraint.

██████████ meets the statutory definition of sex trafficking victim under D.C. Code § 22-1833 because her trafficker, ██████████ coerced her to engage in commercial sex acts. *See* Affidavit of Movant (“Movant Aff”), Ex. A. The trafficker inflicted physical violence against ██████████ to force her to commit acts of prostitution. *Id.* at ¶ 8. He choked and beat her when she tried to refuse to “turn tricks.” *Id.* Moreover, her trafficker used psychological manipulation and threats of serious harm to ██████████ and her loved ones to prevent her from escaping. *Id.* at ¶¶ 8-9. She lived in terror for her family’s welfare because ██████████ threatened to abduct ██████████ and ██████████ and force them into prostitution if she were uncooperative. *Id.* As a result of ██████████ inflicting violent force, the resulting serious harm, and threats of serious harm to coerce ██████████ to continue prostituting herself, ██████████ meets this definition of trafficking victim.

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<sup>1</sup> “‘Serious harm’ means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform labor, services, or commercial sex acts to avoid incurring that harm.” D.C. Code § 22-1831(7).

**B. [REDACTED] Meets the Definition of “Trafficking Victim” Because She Was Under 18 When She Was Trafficked into Prostitution**

The TSRA also defines a victim of trafficking as an individual trafficked under the age of eighteen. D.C. Code § 22-1831(12)(iii) (incorporating D.C. Code § 22-1834). Pursuant to D.C. Code § 22-1834(a), it is unlawful for an individual to knowingly “transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.” Here, the trafficker was aware of [REDACTED] youth. Movant Aff. ¶¶ 4,7. [REDACTED] met her the summer after [REDACTED], and coerced her into committing the offenses on her record at ages 14 and 15. *Id.* at ¶¶ 4-10; Birth Certificate, Ex. H. He expended a great deal of time, energy and money trying to make her appear older using makeup, high heels, and more adult-like clothing. *Id.* at ¶7. [REDACTED] also gave [REDACTED] a fake identification card, a fake name, “a false SSN, and a birthdate over the age of 18 to use in case I was arrested.” *Id.* at ¶7. [REDACTED] [REDACTED] qualifies as a trafficking victim under this provision because [REDACTED] knowingly coerced her into engaging in commercial sex acts when she was under the age of 18.

**C. [REDACTED] Satisfies the Definition of “Trafficking Victim” within the Federal Statute Because She was Induced into Commercial Sex Acts When She Was under the Age of 18**

Finally, [REDACTED] is a victim of trafficking within D.C. Code § 22-1831(12)(B) because she also meets the federal definition of trafficking victim under the Trafficking Victim’s Protection Act of 2000 (hereinafter “TVPA”), which the TSRA incorporates. In relevant part, D.C. Code § 22-1831(12)(B) states that a person who has been subject to an act or practice described in § 103(9) or (10) of the TVPA is also considered a victim of trafficking under D.C.

Law.<sup>2</sup> The TVPA defines “sex trafficking” as the “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” 22 U.S.C.A. § 7102 (2019). The TVPA defines “severe forms of trafficking in persons” as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.” *Id.* Notably, the TVPA does not include a “knowledge” element for the trafficker. As a result, under the TVPA, people trafficked under the age of 18 are considered victims of trafficking whether or not their trafficker had knowledge of their age.

██████████ qualifies as a victim pursuant to the TVPA definition of “sex trafficking” because the trafficker recruited an unwitting ██████████ and transported her across jurisdictional lines—from ██████████ to ██████████.— with the intent of forcing her to commit acts of prostitution. 22 U.S.C.A. § 7102 (2019); D.C. Code § 22-1831(12)(B); *Movant Aff.* ¶¶ 4-10. ██████████ also satisfies the definition of a victim of “severe forms of trafficking” under the TVPA because her trafficker forcibly induced her to engage in commercial sex acts when she was still a child of 14 and 15 years of age. 22 U.S.C.A. § 7102 (2019); D.C. Code § 22-1831(12)(B); *Movant Aff.* ¶¶ 4-10; Birth Certificate, Ex. H. This demonstrates that ██████████ is a victim of trafficking under the federal TVPA law definition incorporated by the D.C. Code.

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<sup>2</sup> On January 9, 2019, the TVPA definitions section was modified, and what was section 103(9) is now section 103(11), and what was section 103(10) is now section 103(12). Pub. L. 114-22, Title I, §108(b); Pub. L. 115-427, §2. As a result, the TSRA now mistakenly incorporates irrelevant provisions of the TVPA. It is clear, however, that the TSRA intended to incorporate the federal definition of trafficking even though the referenced sections of the TVPA are no longer correct.

**III. [REDACTED] ARRESTS AND CONVICTIONS ARE A DIRECT RESULT OF HAVING BEEN A VICTIM OF TRAFFICKING**

[REDACTED] is entitled to relief under the Act because her conduct deemed criminal resulted directly from the control of a violent sex trafficker. Pursuant to both §1844 (a) and §1844(b), the final prong the movant must demonstrate is that the conduct that resulted in the arrest(s), charge(s), or conviction(s) was a direct result of having been a victim of trafficking. While the Act does not explicitly define “direct result,” the legislative history signals that the D.C. Council “intends for the Court’s inquiry to consider the totality of circumstances, including: the severity of the offense, the form and duration of the coercion exerted on the movant, and the nexus between the coercion exerted on the movant and the commission of the act for which the movant seeks relief.” D.C. Council, Report on Bill 22-0329 at 24 (September 20, 2018).

Here, a totality of circumstances analysis establishes that [REDACTED] offenses are the direct result of being trafficked. First, her record is comprised solely of misdemeanor charges and convictions related to prostitution that occurred when she was 14 and 15 years old. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. Her trafficker used physical, verbal, and psychological abuse over an extended period to force her into commercial sex. *See* Movant Aff. ¶¶ 4-10. From the beginning of their relationship, the trafficker manipulated a young, traumatized girl from a broken home with promises of love and material assistance. *Id.* at ¶¶ 2-5. Immediately after the trafficker lured [REDACTED] away from her family in [REDACTED] to [REDACTED] he forced her into prostitution. *Id.* at ¶ 6. He coached her on how to look older to obtain clients and took steps to shield her from criminal prosecution. *Id.* at ¶ 7. He exerted financial control over [REDACTED] and kept all money she earned from prostitution. *Id.* Observed holistically, it is evident that [REDACTED] was forced

and manipulated into the sex trade as a child, and her offenses are the direct result of having been the victim of sex trafficking.

**IV. ALL CRIMINAL PROCEEDINGS AGAINST [REDACTED] HAVE CONCLUDED, AND SHE HAS COMPLETED ALL SENTENCES RELATED TO THE OFFENSES THAT ARE THE SUBJECT OF THIS MOTION.**

In order to be eligible for relief under both §1844 (a) and §1844(b), all criminal proceedings against the person related to the offenses that are the subject of the motion must be complete. D.C. Code § 22-1844 (e)(1). The statute also requires that, “[t]he person completes any sentence of incarceration, commitment, probation, parole, or supervised release related to the offenses that are the subject of the motion.” *Id.* at (2). All of proceedings related to [REDACTED] [REDACTED] convictions have completed. *See* FBI Identification Record, Ex. I. Moreover, [REDACTED] [REDACTED] is no longer under any sentence of incarceration, commitment, probation, parole, or supervised release for these offenses. *See* § D.C. Code 21-1844 (e)(1), (2); *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I.

**V. [REDACTED] IS EXACTLY THE TYPE OF PERSON THE D.C. COUNCIL INTENDED TO ASSIST WITH THE ROBUST REMEDY OF THE TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT**

Given the Act’s legislative history and statutory language, it is clear that [REDACTED] is the ideal candidate to benefit under the TSRA. The D.C. Council passed the Act to grant victims of trafficking the most comprehensive restoration available. The Act recognizes that sex trafficking victims are hindered from reentering society by criminal records that are the result of duress and coercion. D.C. Code §§ 22-1834, 1844-1847. In passing the TSRA, the D.C. Council emphasized that the Act’s purpose is not merely to seal records from the public; rather, “the intent is to recognize that convictions arising from conduct that was the direct result of being a

victim of human trafficking are essentially wrongful convictions.” D.C. Council, Report on Bill 22-0329 at 21 (September 20, 2018).

Although [REDACTED] has taken extraordinary steps to rebuild her shattered life, her criminal history has proven to be an extreme impediment. She has worked consistently over more than three decades since her escape, most recently as an [REDACTED] [REDACTED] at a school [REDACTED]. Movant Aff. ¶¶ 12-13. She wants to expand her professional prospects, and “has big dreams” for her career and life; her prior convictions, however, have rendered her unable to branch out of her current role because many positions working with children, the elderly, and the government require extensive background checks. *Id.* at ¶ 17.

[REDACTED] has also worked hard to be a caring and active community member, volunteering through her church and various non-profit organizations. *Id.* at ¶ 14. [REDACTED] has volunteered with [REDACTED]; United Way; American Heart Association; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. *Id.*

Though [REDACTED] is far removed from the offenses that occurred, she is hindered from reintegrating further into society because of her record, which is a direct result of her status as a victim of a violent sex trafficker. In her own words:

[N]o longer having these convictions on my record would allow me to fully move on with my life. I met [REDACTED] when I was fourteen years old, and he emotionally and physically abused me for many years. I now know that the abuse was not my fault. These convictions, however, are a hold that [REDACTED] and his abuse still has over me. Vacating them would be a validating step in leaving that part of my life behind. Having my convictions vacated would provide an example to other trafficking victims that your trafficker will not define you forever.

*Id.* at ¶ 18. Expunging and vacating her criminal record will allow her the closure she deserves, and allow the D.C. Council to reach the very type of person they hoped would be restored through this Act.

## VI. CONCLUSION

There is substantial support for granting [REDACTED] motion for vacatur and expungement. [REDACTED] does not let her status as a victim define her. Instead, she uses her past circumstances as a mechanism to propel herself forward to achieve the stability she has long desired. As a communally engaged citizen, dedicated employee, and victim of child sex trafficking, [REDACTED] is entitled to relief under this Act, which the legislature codified as a path for victims to transform into survivors.

For the forgoing reasons, the Court should grant relief pursuant to D.C. Code § 22-1844 and issue an order to vacate all convictions and expunge all records for each of the convictions, arrests, and court proceedings that are subject to the motion.

WHEREFORE, for these reasons and others as may appear to the Court, [REDACTED] respects that the motion be respectfully granted.

Dated: June 5<sup>th</sup>, 2019

Respectfully submitted,

/s/ Maya Lentz

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Counsel for [REDACTED]

## **Attachment C**

### **Sample Memorandum of Law (Maryland)**

DISTRICT COURT FOR  
[REDACTED], MARYLAND

STATE OF MARYLAND,

v.

[REDACTED]

Defendant.

**MEMORANDUM OF  
LAW IN SUPPORT OF  
MOTION TO VACATE A  
CONVICTION**

Case No. [REDACTED]

**TO BE FILED UNDER SEAL PURSUANT TO RULE 16-1009**

THE UNIVERSITY OF BALTIMORE SCHOOL OF LAW  
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██████████ moves to vacate her prior prostitution conviction pursuant to MD. CODE ANN., CRIM. PROC. § 8-302. Enacted in 2011, § 8-302 provides a remedy for persons convicted of prostitution to vacate their convictions, if they were acting under duress caused by having been a victim of human trafficking as defined under federal or state law.

Ms. ██████████ was a victim of human sex trafficking at the time of her arrest and conviction for prostitution and drug possession in Maryland in ██████████. Although Ms. ██████████ has since fled her trafficker, she is unfairly burdened by her criminal record in her efforts to rebuild her life. Therefore, Ms. ██████████ seeks the remedy available to her under § 8-302 and asks this Honorable Court to vacate her prostitution conviction and shield the record of the associated conviction for drug possession.

### **PRELIMINARY STATEMENT**

Survivors of human trafficking are often overlooked as victims of a crime, and instead are punished for conduct in which they invariably had no choice in which to engage.<sup>1</sup> This is due in part to the fact that many trafficking victims are exploited through forced involvement in prostitution and are not identified at the time of their arrest

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<sup>1</sup> See, e.g., 22 U.S.C. § 7101(b)(19) (2000) (“Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked.”); Sex Workers Project, *Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advocates and Legislators*, available at <http://sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (“Individuals who are trafficked are often arrested and convicted of prostitution and related offenses.”); Colleen Owens, et al. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States* 214, available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF> (“Labor trafficking victims may also be arrested for crimes or violations committed pursuant to their labor trafficking victimization, such as operating as a food vendor without a license, quality of life crimes, stop and frisk violations, nonpayment of child support, or for being unauthorized immigrants.”).

or conviction for the crime.<sup>2</sup> Additionally, traffickers prey on individuals who exhibit specific vulnerabilities, particularly those with a history of child sexual abuse, poverty, and homelessness, some of whom enter the sex industry in an effort to meet their most basic needs.<sup>3</sup> Once these individuals enter the sex trade, they are often held there by the stigma and criminalization that accompanies a life of prostitution, greatly increasing their vulnerability to exploitation by a trafficker.<sup>4</sup>

Compounding these challenges are the severe and longstanding consequences of prostitution-related criminal convictions, which hinder victims' ability to find good jobs, apply for education funding, secure decent housing, and reintegrate into society.<sup>5</sup> In an

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<sup>2</sup> See, e.g., Phyllis J. Newton et al., *Finding Trafficking Victims*, 44 (Nat'l Opinion Research Ctr. 2008) (report ordered by the Department of Justice) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/224393.pdf> (reporting that only about ten percent of law enforcement respondents said they would be likely to recognize potential trafficking victims if they encountered them while working on the street or investigating another case); see also Sex Workers Project, *Kicking Down the Door: The Use of Raids to Fight Trafficking in Persons*, 24 (2009) available at <https://www.sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf> (presenting evidence of local law enforcement's failure to identify sex-trafficking victims); See generally Suzannah Phillips et. al., *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims* 21-25 (2014), available at <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf>.

<sup>3</sup> McClanahan, et al., *Pathways into Prostitution Among Female Jail Detainees and their Implications for Mental Health Services* Psychiatric Services, Dec. 1999, Vol. 50, No. 2 1606, 1606 (citing research indicating that “[c]hildhood sexual victimization, by contrast, nearly doubled the odds of entry into prostitution throughout the lives of women.”) (on file with author); Rachel McLean, et al., *The WINDOW Study: Release from Jail; Moment of Crisis or Window of Opportunity for Female Detainees in Baltimore City?* available at <http://www.powerinside.org/uploads/reports/WINDOW.Report.FinalRev.pdf> (identifying that, of the women surveyed, “34% had traded sex for money, drugs or a place to stay within the 30 days before their arrest.”); Freedom Network USA, *Human Trafficking and Sex Workers Rights*, 1 (2015), available at <http://freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf> (“Poverty, gender inequality, and lack of economically viable job options contribute to people entering into sex work.”).

<sup>4</sup> Freedom Network USA, *Human Trafficking and Sex Workers Rights*, 1 (2015), available at <http://freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf> (“[B]ecause sex work is so stigmatized, sex workers often face violence, discrimination and abuses of their rights.”); Phillips, *supra* note 2 at 22-23 (discussing how the criminalization of sex work imposes additional harms on individuals involved in the sex trade, including putting them at higher risk for trafficking).

<sup>5</sup> New York City Bar, *Report on Legislation by the Committee on Sex and Law*, 3-4 (2010), available at <http://www.nycbar.org/pdf/report/uploads/20071848-CommentonLegislationreVictimsofSexTrafficking.pdf> (“A record of prostitution-related offenses limits employment opportunities. It may limit housing opportunities, both public and private . . . [b]ut victims of sex trafficking need gainful employment [and] stable housing . . . in order to successfully reintegrate into

attempt to remedy this burden, Maryland enacted the Human Trafficking Victim Protection Act (hereinafter “HTVPA”) in 2011.<sup>6</sup> Currently, Maryland is one of thirty-three states that have laws in place allowing trafficking victims to reduce the harms associated with their prostitution-related convictions.<sup>7</sup>

It is under Maryland’s vacatur statute that Ms. ██████ petitions this Court for relief and asks that her conviction for prostitution be vacated.

## I. Background

### A. Elements of § 8-302

Pursuant to MD. CODE ANN., CRIM. PROC. § 8-302(a), a motion to vacate a judgment of conviction may be granted where:

[a] person convicted of prostitution under § 11-306 of the Criminal Law Article ... was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking under § 11-303 of the Criminal Law Article or under federal law.<sup>8</sup>

The statute further stipulates that the motion must: “(1) be in writing; (2) be signed and consented to by the State’s Attorney; (3) be made within a reasonable period of time after

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society. Otherwise, the heinous acts that victimized them in the first place also ensure that they are permanently denied a life within mainstream society.”); *People v. G.M.* 922 N.Y.S.2d 761, 765 (Crim. Ct. Queens Cnty. 2011) (“The passage of this new law was based on a recognition that “[v]ictims of sex trafficking who are forced into prostitution are frequently arrested for prostitution-related offenses and are saddled with the criminal record. They are blocked from decent jobs and other prospects for rebuilding their lives. Even after they escape from sex trafficking, the criminal record victimizes them for life.”). (quoting New York State Assembly, *Memorandum for Bill A07670*, available at [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A07670&term=2009&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A07670&term=2009&Memo=Y&Text=Y)).

<sup>6</sup> MD. CODE ANN., CRIM. PROC. § 8-302 (West 2011); see also Affirmation of Jessica Emerson (*hereinafter* “Attorney Affidavit”), Ex. A, pp. 15-16, Letter from Maryland Office of the Attorney General, Feb. 17, 2011 (expressing support for Md. C.P.L. 8-302 as addressing “what can rightly be viewed as an injustice. Under the present law, it is possible for a victim who was forced into prostitution to also be later convicted of that crime.”).

<sup>7</sup> See American Bar Association Survivor Re-Entry Project, *Vacatur Laws for Trafficking Survivors* (updated March 2016), [http://www.americanbar.org/groups/human\\_rights/projects/task\\_force\\_human\\_trafficking/survivor-reentry-project.html](http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/survivor-reentry-project.html); See generally Sex Workers Project, *supra* note 1.

<sup>8</sup> MD. CODE ANN., CRIM. PROC. § 8-302(a) (West 2011).

the conviction; and (4) describe the evidence and provide copies of any documents showing that the defendant is entitled to relief under this section.”<sup>9</sup>

## **B. Domestic Sex Trafficking**

Human trafficking is not confined to the physical movement of persons across state or national borders, nor is it limited to impoverished nations of the developing world. On the contrary, there is a vast and lucrative domestic trafficking industry in the United States that affects countless numbers of victims every year.<sup>10</sup> Much of this domestic trafficking activity occurs within the boundaries of American cities, where traffickers force vulnerable individuals to engage in prostitution for their benefit.<sup>11</sup>

Across the United States, traffickers typically target women and girls bearing certain hallmarks of heightened vulnerability, including a history of childhood sexual abuse, homelessness, and drug addiction.<sup>12</sup> Having selected vulnerable targets for

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<sup>9</sup> MD. CODE ANN., CRIM. PROC. § 8-302(b) (West 2011).

<sup>10</sup> See Chicago Alliance Against Sexual Exploitation, *Know The Facts: Domestic Sex Trafficking*, [http://g.virbedn.com/\\_f/files/77/FileItem-150157-KtF\\_DomesticSexTrafficking.pdf](http://g.virbedn.com/_f/files/77/FileItem-150157-KtF_DomesticSexTrafficking.pdf); see also Heather J. Clawson et al., *Human Trafficking Into and Within the United States: A Review of the Literature—Who are the Victims of Human Trafficking?* U.S. Dep’t of Health and Human Servs., (Aug. 2009), <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.shtml#Who>.

<sup>11</sup> U.S. Dep’t of State, *Trafficking in Persons Report 387-88* (2016) [hereinafter *2016 TIP Report*], available at <http://www.state.gov/documents/organization/258876.pdf> (“The United States is a source, transit, and destination country for men, women, transgender individuals, and children— both U.S. citizens and foreign nationals—subjected to sex trafficking[.]”); see also Heather J. Clawson & Nicole Dutch, *Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies from the Field*, 1 (Jan. 2008), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/IdentVict/ib.pdf> (“Current stereotypes depict the victim of human trafficking as innocent young girls from foreign countries who are manipulated, lied to, and often kidnapped and forced into prostitution. However it is not just young international girls who are trafficked. Men, women, children of all ages, U.S. citizens, and legal residents can all fall prey to traffickers[.]”).

<sup>12</sup> 22 U.S.C.A. § 7101(b)(4) (“Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and [] lack of economic opportunities[.]”); Elizabeth Hopper & Jose Hidalgo *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 Intercultural Hum. Rts. L. Rev. 185, 194 (2006), available at [http://www.traumacenter.org/products/pdf\\_files/Invisible\\_Chains.pdf](http://www.traumacenter.org/products/pdf_files/Invisible_Chains.pdf) (“Victims may be vulnerable due to . . . membership in single-parent households, unemployment, homelessness, low social status . . . mental impairment, or substance dependence.”); *Human Trafficking Into and Within the United States: A Review of the Literature*, 4,8-10 (Aug. 2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.pdf>; see also American Psychological

exploitation, the trafficker sets about recruiting these targets, often through the use of false promises and mock displays of concern and empathy.<sup>13</sup> These initial gestures of compassion allow the trafficker to gain the trust and dependence of his victim, prior to initiating manipulative tactics designed to dissipate any feelings of autonomy.<sup>14</sup> Once he has established a bond of trust with his victims – who may begin interpreting this manipulation as true care and concern – the trafficker quickly turns the tables.<sup>15</sup> The trafficker then begins inflicting physical and emotional abuse to establish complete subjugation, including forcing his victims to engage in commercial sex for his benefit.<sup>16</sup>

Traffickers perpetuate their control and power over their victims through various physical and psychological tactics. Physical abuse may range from beatings to rape, to threats of death and serious physical harm.<sup>17</sup> To maintain their psychological hold,

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Association, *Report of the Task Force on Trafficking of Women and Girls* 35, available at <http://www.apa.org/pi/women/programs/trafficking/report.pdf> (“[T]raffickers may target women and girls with particular vulnerabilities such as homelessness, addiction, disabilities, [or] mental illness[.]”).

13 Hopper, *supra* note 12, at 194 (“Traffickers typically use fraud as a method of persuasion during the recruitment phase. They typically offer misleading information to paint a picture of an ideal world.”); Celia Williamson & Terry Cluse-Tolar, *Pimp-Controlled Prostitution: Still an Integral Part of Street Life* 8 *Violence Against Women* 1074, 1081 (2002) (“There was a sense of belonging that women longed for, a sense of exciting hope for the future, an adventure that would take them from their meager existence into a life with a man who told them they had special skills, intelligence, and beauty.”);

Polaris Project, *In Their Shoes: Understanding Victims’ Mindsets and Common Barriers to Victim Identification*, 2, available at

<http://traffickingresourcecenter.org/sites/default/files/Understanding%20Victim%20Mindsets.pdf> (“Traffickers use sophisticated methods of manipulating the human desire to hope through false promises and lies about a future better life.”).

14 Hopper, *supra* note 12, at 194-195 (“Once victims are obtained, they are initiated into the culture of trafficking. Victims are forced to accept a distorted sense of reality where exploitation is expected and accepted. In this new environment, the traffickers are the ultimate authority.”).

15 *Id.* at 198-99 (“Because of the intense attunement needed for survival, a connection is often made with the perpetrator. Captives begin to identify with their captors initially as a defense mechanism, but over time a traumatic bonding occurs . . . Victims tend to magnify small acts of kindness of their captors and may be sympathetic to them.”).

16 *Id.* at 191 (“[T]hese coercive systems utilize high levels of control, exposure to chronic stress and threat, isolation, provocation of fear, and the creation of a sense of helplessness in victims.”).

17 Polaris Project, *Domestic Sex Trafficking: The Criminal Operations of the American Pimp*, 1, available at

[https://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic\\_Sex\\_Trafficking\\_Guide.p](https://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic_Sex_Trafficking_Guide.p)

traffickers frequently deny their victims the capacity to make even the most basic of life decisions, such as when they may eat or sleep,<sup>18</sup> or when and with whom they may speak.<sup>19</sup> Moreover, traffickers usually confiscate all or substantially all of the money exchanged for prostitution, making victims entirely dependent on them for basic necessities such as food and shelter.<sup>20</sup> This complete emotional and physical isolation disconnects the victim from others and fosters complete dependence on the trafficker.<sup>21</sup>

The end result is that victims of trafficking are left feeling scared, alone, and hopeless, lacking the means or will to seek assistance.<sup>22</sup> Even victims who do manage to escape may be stigmatized by their involvement in prostitution and other criminal activities, which further compounds their isolation from society.<sup>23</sup> For those victims who

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df (describing the range of force and threats used by traffickers); Hopper, *supra* note 12, at 198 (“Instillation of fear is a major method of control utilized by traffickers.”).

18 Jill Laurie Goodman, *What We Know about Human Trafficking: Research and Resources*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 1, 11 (Jill Laurie Goodman and Dorchen A. Leidholdt eds., 2011) [hereinafter *LAWYER’S MANUAL*] (“Abuse also takes the form of depriving victims of life’s most basic necessities, including food, sleep, and secure shelter.”); Hopper, *supra* note 12, at 197 (“Basic necessities, such as adequate food, water, clothing, shelter, and sleep may be withheld, leaving some victims resembling ‘walking skeletons.’”).

19 *Id.* at 10 (“Traffickers almost always cut victims off from their families, friends, communities, and cultures.”); Hopper, *supra* note 12, at 192 (“Victims are typically isolated from the outside world. They may be . . . prevented from having friends, and prevented from talking to others.”).

20 Polaris Project, *supra* note 17, at 2 (indicating that the trafficker “keeps all the money from the commercial sex acts of the women and girls he controls and prides himself on achieving higher and higher levels of blind obedience.”).

21 Hopper, *supra* note 12, at 193 (“As victims become more isolated they grow ‘increasingly dependent on the perpetrator, not only for survival and basic bodily needs, but also for information and even for emotional sustenance.’”).

22 Hopper, *supra* note 12, at 193 (“Cut off from contact with the outside world, [victims of trafficking] can lose their sense of personal efficacy and control[.]”).

23 See generally Jolanda Sallman, *Living with Stigma: Women’s Experiences of Prostitution and Substance Use*, 25 *AFFILIA: J. OF WOMEN AND SOC. WORK* 46 (May 2010) (noting the number of women involved in prostitution who reported daily societal discrimination and stigmatization); Joe Parker, Prostitution Research & Education, *How Prostitution Works*, available at <http://www.prostitutionresearch.com/How%20prostitution%20works.pdf> (discussing the societal stigma that makes prostitution an “identity”); Jean Bruggeman & Elizabeth Keyes, American Bar Association, *Meeting the Legal Needs of Human Trafficking: An Introduction for Domestic Violence Attorneys and Advocates*, 7 (2009), available at [http://apps.americanbar.org/humanrights/docs/project\\_docs/DV\\_Trafficking.pdf](http://apps.americanbar.org/humanrights/docs/project_docs/DV_Trafficking.pdf) (“[V]ictims are often left in poverty with few marketable skills and greatly damaged self-esteem.”).

do successfully leave the commercial sex industry and attempt to start life anew, a dark and debilitating reminder of their former life remains in the form of a criminal history resulting from having been trafficked. Criminal records frequently prevent sex-trafficking victims from obtaining gainful employment and otherwise fully moving forward with their lives.<sup>24</sup>

### **C. Ms. ██████████ History as a Trafficked Person**

Ms. ██████████ experience as a trafficked person began in early ██████████. Her experience reflects many of the common characteristics of women victimized by a sex trafficker.

#### **1. History of Sexual Abuse and Domestic Violence**

Ms. ██████████ considerable history of sexual abuse and interpersonal violence made her vulnerable to exploitation by a trafficker. This chronic pattern of abuse began at the age of seven, when she was molested by her grandmother's boyfriend. *See* ██████████ Aff., ¶ 4. Two additional instances of sexual assault followed at ages twelve and sixteen, causing Ms. ██████████ to feel powerless over her body. *Id.* at ¶¶ 7, 11. Despite this history, Ms. ██████████ never received counseling for the harms she suffered at the hands of the adults in her life. *Id.* at ¶ 15. Instead, the low self-esteem and shame that resulted from these assaults led Ms. ██████████ to a series of violent romantic relationships in her adulthood. *Id.* at ¶¶ 12-14. This powerful combination of chronic sexual abuse coupled with prolonged periods of domestic violence made her a prime target for her trafficker, who would use her feelings of powerlessness, guilt, and shame to his advantage.

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<sup>24</sup> *See generally* Phillips, *supra* note 2.

## **2. History of Substance Abuse and Homelessness**

To cope with the emotional impact of her early childhood abuse and general instability, Ms. ██████ began using alcohol and marijuana at a very young age. *See* ██████ Aff. at ¶ 6. Her alcohol use intensified in adulthood as she struggled to manage symptoms of depression and anxiety brought on by violence at the hands of her romantic partners. *Id.* at ¶ 13-15. Although the alcohol helped Ms. ██████ to numb the emotional pain she was experiencing, it also made her feel sluggish and increased her feelings of depression. *Id.* at ¶ 16. In her early twenties, however, she found an even more effective method of coping that made her feel energized and full of life—crack cocaine. *Id.*

As her crack addiction worsened, Ms. ██████ lost her job as a personal care assistant. *Id.* at ¶ 18. Without a source of income to support her drug habit, she turned to trading sex for to support her drug habit, a transition that felt familiar to her following years of sexual abuse. *Id.* In ██████, Ms. ██████ entered a drug rehabilitation program and eventually got sober. *Id.* at ¶¶ 19-20. She successfully maintained her sobriety until ██████, when an additional instance of domestic violence forced her back onto the streets. *Id.* at ¶ 24. Feeling like all her progress was for naught, she eventually relapsed and returned to trading sex for survival. *Id.* at ¶ 25.

## **3. Ms. ██████ was a Trafficked Person at the Time of her Arrest for Prostitution in Maryland**

In early ██████, Ms. ██████ met the man who would become her trafficker. After learning that she was homeless and trading sex to meet her survival needs, a man named ██████ offered her shelter and his protection on the streets. *See* ██████ Aff., ¶ 27. As a vulnerable woman homeless and barely surviving on the streets of ██████,

Ms. ██████ was moved by ██████ concern for her well-being. *Id.* Shortly after moving in with him however, Ms. ██████ learned that ██████ promises of shelter and safety were anything but altruistic. ██████ soon began demanding the money that Ms. ██████ earned through acts of prostitution as payment for allowing her to stay with him. *Id.* at ¶¶ 28-29.

██████ furthered his control and power over her through both physical threats and coercion designed to exploit Ms. ██████ particular vulnerabilities. *Id.* at ¶ 29. He would frequently brandish the gun he owned and threaten to harm her if she failed to bring in enough money to meet his needs. *Id.* He would also refuse to let her return home to eat or sleep until she earned an acceptable amount, despite the fact that it was routinely below freezing outside. *Id.* at ¶¶ 29-30. On the nights she was unable to earn enough money to satisfy him, Ms. ██████ would risk frostbite and sleep on the streets, fearful of what would happen to her if she returned home without the money he demanded. *Id.* at ¶ 30.

By the time she was arrested for prostitution in ██████, Ms. ██████ had endured months of ██████ manipulation and threats and felt she had no choice but to continue engaging in prostitution to have access to the food, shelter, and sleep that ██████ controlled. *Id.* at ¶ 28-31. ██████ then furthered his control over Ms. ██████ by sexually assaulting her, an especially effective method of control given her sexual abuse history. *Id.* at ¶ 32. Although this attack prompted an initial effort at escape, Ms. ██████ ongoing homelessness made it nearly impossible for her to escape ██████ for very long. *Id.* at ¶ 33. Caught in this cycle of fear and coercion, she endured being trafficked on and off by ██████ for the next several years. *Id.* at ¶ 33, 35.

## ARGUMENT

### **I. As A Victim Of Sex Trafficking As Defined By Federal And Maryland State Law, Ms. ██████████ Prostitution Conviction Should Be Vacated.**

Ms. ██████████ was convicted of prostitution in ██████████, Maryland on ██████████, case number. ██████████.25

#### **A. Ms. ██████████ was a Sex Trafficking Victim Under Federal and State Law**

Ms. ██████████ is eligible to vacate her prostitution conviction because at the time she committed the act giving rise to her arrest and ensuing conviction, she was acting under duress as a result of being a victim of sex trafficking, as defined under both the federal Trafficking Victims Protection Act (hereinafter “TVPA”) and Maryland Criminal Law, § 11-303.

#### **1. Standards for Sex Trafficking Under the Federal TVPA**

The federal TVPA defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>26</sup> The crime of trafficking is elevated to “severe” when “a commercial sex act is induced by force, fraud, or coercion.”<sup>27</sup> Force and fraud have their ordinary meaning, but coercion is specifically defined as including either physical *or* non-physical harm:

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

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<sup>25</sup> See Attorney Aff., Ex. B, Defendant Trial Summary of State of Maryland v. ██████████ ██████████ District Court of Maryland for ██████████, case no. ██████████

<sup>26</sup> 22 U.S.C. § 7101(19) (2013).

<sup>27</sup> 22 U.S.C. § 7102(8)(A) (2013).

(C) the abuse or threatened abuse of the legal process.<sup>28</sup>

Under the TVPA, a determination as to whether force, fraud, or coercion occurs depends on the victim's specific vulnerabilities.<sup>29</sup> Traffickers often target vulnerable individuals who come from dysfunctional environments, abuse drugs or alcohol, or who are emotionally or economically unstable.<sup>30</sup> They then use this information to craft the most effective method of recruitment.<sup>31</sup> Thus, there is not one specific act of economic, psychological, or physical coercion that defines the experience of being trafficked; rather, one must take into account the totality of a victim's trafficking experience.

Additionally, the TVPA specifically recognizes that an individual's initial consent to perform a commercial sex act does not preclude that individual from being victimized by a trafficker.<sup>32</sup> Even a victim who initially agrees to engage in sex work to benefit their trafficker is legally considered a trafficking victim if they are compelled to continue

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<sup>28</sup> 22 U.S.C. § 7102(3) (2008).

<sup>29</sup> 18 U.S.C. § 1591(e)(4) (2008) (Determining "serious harm" is an inquiry into "all the surrounding circumstances [which would] compel a reasonable person of the same background and in the same circumstances to perform . . . commercial sexual activity[.]"); *c.f.* H.R. Conf. Rep. No. 106-939 at 101 (2000), 2000 WL 1479163 (Oct. 5, 2000) (explaining relevance of victim's vulnerabilities in determining whether conduct amounts to coercion); *United States v. Kozminski*, 487 U.S. 931, 948, 952 (1988) (noting that under the related involuntary servitude statute, 18 U.S.C. § 1584, "the vulnerabilities of the victim are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve.").

<sup>30</sup> See generally, *supra* text accompanying note 12.

<sup>31</sup> See, e.g., Kelly Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 35-36 (2001), available at [http://heinonline.org/HOL/Page?handle=hein.journals/berkwolj16&div=6&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/berkwolj16&div=6&g_sent=1&collection=journals) (noting that "traffickers prey on vulnerabilities . . . [they] are deliberate in their actions and actively target their victims"); 22 U.S.C. § 7101(b)(4) ("Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination"); Attorney General's Report to Congress and Assessment of U.S. Gov't Activities to Combat Trafficking in Persons, 1 (2010), available at <http://www.justice.gov/archive/ag/annualreports/agreporthumantrafficking2010.pdf> ("Traffickers often prey on individuals who are poor and frequently unemployed or underemployed, and who may lack access to social safety nets.").

<sup>32</sup> 18 U.S.C. § 1591(e)(4) (2008) (Defining "serious harm" as that which is designed "to compel [an individual] to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.") (emphasis added).

engaging in that work against their will.<sup>33</sup> It is the exploitive conduct of the trafficker that defines the crime of human trafficking, not the acts of the victim.<sup>34</sup>

## **2. Standards for Sex Trafficking Under MD. CODE ANN., CRIM. LAW § 11-303**

MD. CODE ANN., CRIM. LAW § 11-303 defines the crime of sex trafficking through reference to the acts of the alleged trafficker. The offense includes those who knowingly:

- (i) take or cause another to be taken to any place for prostitution;
- (ii) place, cause to be placed, or harbor another in any place for prostitution;
- (iii) persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- (iv) receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignment;
- (v) engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious physical harm; or
- (vi) destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to violate this subsection.<sup>35</sup>

Under state law, no showing of force, fraud, or coercion is required— any person who takes another to “any place for prostitution” has committed the crime of human trafficking. However, as under the TVPA, the penalty of the crime is elevated if a

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<sup>33</sup> 2016 TIP Report at 30 (“People may be considered trafficking victims regardless of whether they were born into a state of servitude, were exploited in their hometown, were transported to the exploitive situation, *previously consented to work for a trafficker*, or participated in a crime as a direct result of being subjected to trafficking.” (emphasis added).

<sup>34</sup> Phillips, *supra* note 2, at 8.

<sup>35</sup> MD. CODE ANN., CRIM. PROC. § 11-303(a)(1) (West 2011).

trafficker “knowingly take[s] or detain[s] another with the intent to use force, threat, coercion, or fraud to compel the other to . . . perform a sexual act.”<sup>36</sup>

### **3. Ms. ██████ Meets the Federal and State Definitions of a Trafficking Victim**

When Ms. ██████ was arrested in ██████ in ██████, she was a victim of sex trafficking under both federal and state law. She was controlled by a man who used threats of physical violence, coercion and financial dependence to exploit her.

Ms. ██████ was acting under duress from her trafficker, ██████ when she was arrested. ██████ manipulated and coerced Ms. ██████ into continuing to prostitute for his benefit. *See* ██████ Aff., ¶ 27. As a woman struggling with drug addiction, homelessness, and a chronic history of sexual abuse and domestic violence, ██████ easily lured Ms. ██████ into his life based on his promises of shelter and protection. *Id.* at ¶¶ 27-28. Upon identifying Ms. ██████ vulnerabilities, ██████ used fraudulent promises to recruit and harbor Ms. ██████ for the purpose of forcing her to continue engaging in prostitution, and used threats, coercion and fraud to maintain his control over her. *Id.* at ¶¶ 29-30. ██████ actions make Ms. ██████ a victim of human trafficking under the law.

██████ broke his promises to provide protection and shelter for Ms. ██████ and instead, forced her to continue prostituting herself. *Id.* at ¶ 28. He would seize the money she made on the streets and deny her access to shelter if she did not make enough money to satisfy him. *Id.* at ¶ 29. He would also terrorize Ms. ██████ by making threats to use the gun he owned on her if she disobeyed him. *Id.* As a result, Ms. ██████ lived

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<sup>36</sup> *Id.* at (b)(2).

in fear of [REDACTED] and his threats of violent acts. *Id.* at ¶¶ 29-30. Her fears were further justified when [REDACTED] brutally raped her shortly after her release from jail. *Id.* at ¶ 32.

These facts make it clear that Ms. [REDACTED] meets the definition of a trafficked person under both the federal TVPA and Maryland law. Ms. [REDACTED] committed the offense leading to her arrest and conviction in [REDACTED] while she was a victim of sex trafficking.

**B. Requirements for Filing for Vacatur Under MD. CODE ANN., CRIM. PROC. § 8-302**

**1. Motion Signed and Consented To By State’s Attorney**

On [REDACTED], Ms. Emerson spoke with Ms. [REDACTED], an Assistant State’s Attorney (hereinafter “ASA”) for [REDACTED] about Ms. [REDACTED] case. Ms. [REDACTED] motion has been signed and consented to by ASA [REDACTED].

**2. Motion Made Within a Reasonable Period Of Time**

This motion is timely. Ms. [REDACTED] was convicted in [REDACTED], several years before the enactment of Maryland’s vacatur law. Since learning of the law in [REDACTED] and securing *pro bono* counsel, she has diligently worked with her attorney to gather evidence and participated in preparing all necessary filings.

**II. Ms. [REDACTED] Is Precisely the Type of Victim the HTVPA Is Meant To Benefit, and Her Conviction Should Be Vacated**

The experience of being trafficked can cause “persistent and devastating” physical and psychological effects, which often leave victims vulnerable to further exploitation.<sup>37</sup>

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<sup>37</sup> See Heather J. Clawson et al., *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking*, 1-2 (U.S. Dep’t of Health and Human Services 2008), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/Treating/ib.pdf> (describing trafficking victims’ post-trauma reactions); *Lawyer’s Manual on Human Trafficking*, *supra* note 18, at 11 (noting that prolonged exposure to stress compromises the immune system, making victims more susceptible to infections, and describing trafficking victims as being “left physically, emotionally, and spiritually

Thus, “it is not surprising that some victims of human trafficking experience difficulties . . . reintegrating back into society.”<sup>38</sup> This is often evidenced by victims who actually manage to escape a trafficker, but remain debilitated by psychological and physical issues stemming from their trafficking experience, as well as, lacking money, marketable skills to pursue job prospects, and a support system.<sup>39</sup>

Despite these challenges, Ms. ██████ has worked hard and persevered in building a successful new life. Since her arrest in ██████, Ms. ██████ has worked to maintain her sobriety,<sup>40</sup> stayed active in her church community, and has sought out care at a local medical services organization for people at risk of homelessness.<sup>41</sup> Ms. ██████ aspires to continue her work providing nursing and supportive care for fragile adults. To that end, she completed 140 hours of Certified Nursing Assistant and Geriatric Nursing Assistant Training in ██████.<sup>42</sup>

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shattered” as a result of psychological abuse); Erin Williamson et al., U.S. Dep’t of Health and Human Services, National Symposium on the Health Needs of Trafficking Victims, 6 (2008), *available at* <http://aspe.hhs.gov/hsp/07/HumanTrafficking/Symposium/ib.shtml> (“The consequences of human trafficking on mental health cannot be overstated. Victims of human trafficking have experienced considerable trauma, some of which does not present itself until years later.”); Cathy Zimmerman et al., *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe*, London School of Hygiene & Tropical Medicine, 12 (2006), *available at* <http://blogs.lshtm.ac.uk/samegroup/files/2015/05/Stolen-Smiles.pdf> (describing study finding that “psychological reactions [to trafficking] were multiple and severe, and compare to, or exceed, symptoms experienced by torture victims.”).

<sup>38</sup> See Clawson, *supra* note 37, at 2.

<sup>39</sup> See Cathy Zimmerman & Charlotte Watts, World Health Organization, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*, 2-3 (2003), *available at* <http://whqlibdoc.who.int/publications/2003/9241546255.pdf?ua=1> (describing the “complex circumstances” of women who have left a trafficking situation); Jean Bruggeman & Elizabeth Keyes, *Meeting the Legal Needs of Human Trafficking Victims, An Introduction for Domestic Violence Attorneys and Advocates*, 7 (American Bar Association 2009), *available at* [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/human\\_rights/dv\\_trafficking\\_intro.auth\\_checkdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/human_rights/dv_trafficking_intro.auth_checkdam.pdf) (“Victims are often left in poverty with few marketable skills and greatly damaged self-esteem.”).

<sup>40</sup> See Attorney Aff. Ex. C, Discharge Summary of ██████ ██████ from ██████ (█████ ██████).

<sup>41</sup> *Id.*, Ex. F, Letter of Support from ██████, Mental Health Therapist at ██████, Inc. (█████).

<sup>42</sup> *Id.*, Ex. E, 140-hour CAN/GNA Training Program Completion Certificate (█████).

Ms. [REDACTED] is taking the steps necessary to further both her personal and professional life; however, it is critical to her success in moving forward that she not continue to carry the burden of her prostitution conviction. Maryland enacted the HTPVA's vacatur provision with trafficking survivors like Ms. [REDACTED] in mind and to give such individuals the opportunity to clear their records of crimes they were forced to commit by their traffickers.

### CONCLUSION

Ms. [REDACTED] was a victim of sex trafficking and suffered from psychological force, fraud, and coercion at the hands of her trafficker. Maryland's human trafficking law<sup>43</sup> and the federal TVPA<sup>44</sup> both recognize that Ms. [REDACTED] should be considered a victim of trafficking under the law, and not a criminal. These laws, in conjunction with Maryland's recently enacted HTPVA<sup>45</sup> support Ms. [REDACTED] assertion that she should not be further punished by a criminal conviction that directly resulted from her actions as a trafficked person.

For these reasons, Ms. [REDACTED] respectfully seeks to vacate her conviction pursuant to MD. CODE ANN., CRIM. PROC. § 8-302 in order to obtain justice for the exploitation she suffered and allow her to finally move forward from this traumatic period of her life. Accordingly, she requests that this Honorable Court vacate the judgment of conviction for prostitution and shield the record of the associated drug possession conviction.

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<sup>43</sup> MD. CODE ANN., CRIM. LAW § 11-303 (West 2012).

<sup>44</sup> 22 U.S.C. § 7101(19) (2013).

<sup>45</sup> MD. CODE ANN., CRIM. PROC. § 8-302 (West 2011).

Dated: \_\_\_\_\_  
Baltimore, Maryland

Respectfully submitted,

THE UNIVERSITY OF BALTIMORE SCHOOL OF LAW

By: \_\_\_\_\_  
Jessica Emerson, Esq.

1420 North Charles Street  
Baltimore, MD 21201  
(410) 837-5706  
jemerson@ubalt.edu

Signed and Consented to,

OFFICE OF THE STATE'S ATTORNEY FOR [REDACTED]  
[REDACTED]

By: \_\_\_\_\_  
[REDACTED], Office of the State's Attorney  
[REDACTED]  
[REDACTED]

## **Attachment D**

### **Sample Client Affidavit**

DISTRICT COURT FOR  
[REDACTED] MARYLAND

----- X

STATE OF MARYLAND,

v.

[REDACTED]

Defendant.

----- X

**AFFIDAVIT OF**

[REDACTED]

Case No. [REDACTED]

**TO BE FILED UNDER SEAL PURSUANT TO RULE 16-1009**

[REDACTED] being duly sworn, deposes and says under penalty of perjury:

1. My name is [REDACTED] I am the person prosecuted and convicted under the name [REDACTED] in case number [REDACTED]. I submit this affidavit in support of the motion to vacate my [REDACTED] criminal conviction for prostitution in the State of Maryland.

**I. Background and Childhood**

2. I was born on [REDACTED] in [REDACTED] MD. I am the fifth of my mother's seven children. I never knew my father, as he was murdered before I was born.

3. When I was nine months old, my father's grandmother took me on vacation with her. When we returned two weeks later, my mother had disappeared. I found out later that she had been arrested after getting into a fight with someone in the neighborhood. Because she couldn't make bail, my brothers and sisters had been taken from the home and put in foster care. Upon learning this, my grandmother took custody of me and became the one who raised me throughout my childhood and young adulthood.

4. When I was seven years old, my grandmother moved us in with her boyfriend in the [REDACTED] section of [REDACTED]. Shortly after we moved in, my grandmother's boyfriend began sexually abusing me. Although I didn't understand what he was doing at the time, I knew it was wrong and that it made me feel dirty. I was afraid to tell my grandmother because they were supposed to get married, and I didn't want to upset her.

5. We moved again when I was nine years old, this time to a house off of [REDACTED] in [REDACTED] [REDACTED]. Because my grandmother was working two jobs to support us, it was her boyfriend's job to watch me when she wasn't home. I didn't feel safe around him because of what he had done to me, so to avoid being home alone with him, I started hanging out with some of the local neighborhood kids.

6. It was around that time that I was first introduced to alcohol and marijuana, which I quickly learned made all the bad thoughts in my head go away. This was the beginning of a pattern of addiction that I would struggle with for my entire life.

7. A few years later when I was twelve years old, I was hanging out with an older teenage girl from the neighborhood. She took me to an apartment nearby, where she told me to wait while she met up with a boy she liked. That afternoon, an

older man in that same apartment sexually assaulted me. I don't remember the attack clearly; instead, I closed my eyes and pretended I wasn't there. After the assault, I felt used and unlovable. I had always been taught that sex was something to be given to the right person, like a precious jewel. I didn't have that jewel to give anymore, and I hated myself for it.

8. Shortly after I was assaulted, I started dating a boy from the neighborhood named [REDACTED]. He was 17, but he lied and told me he was 14. The first time we had sex I didn't really want to, but by that time I didn't think it mattered very much what I wanted when it came to sex. [REDACTED] was physically violent toward me and abused me emotionally. He also provided me with alcohol and marijuana, even though he knew how young I was.

9. When I was 13, I got pregnant for the first time. I stopped attending school regularly because the school staff and the kids made me feel bad about being pregnant at such a young age. My school shipped me off to [REDACTED], which was a school for kids with behavior problems. The kids there teased me because I was pregnant, and so I transferred to [REDACTED]. I got a tutor and tried my best to stay in school.

10. On [REDACTED], I gave birth to my daughter, [REDACTED]. Despite my efforts to continue my education, I dropped out of school shortly after [REDACTED] birth. I had my second child, [REDACTED] III, on [REDACTED], when I was 16 years old. After [REDACTED] birth, I went back to school at [REDACTED],

now known as [REDACTED] High School. There I was able to receive both educational and career training, which I enjoyed.

11. That same year, I tried to get a job at a store near my house to earn some extra money. The owner asked me to come to the store to meet with him, but when I got there, he forced me to have sex with him at knifepoint. After the assault, I felt depressed and worthless. I felt powerless over my own body, as my life experiences taught me that I had no control over what people did to it.

## **II. Coping Through Addiction**

12. In the spring of [REDACTED], my family informed me that I had to marry [REDACTED] since I was then 18 and we already had two kids together. They wanted me to live like an “honest woman.” Unfortunately, our marriage was not a happy one. [REDACTED] was running the streets and would cheat on me regularly. When I got angry at him for how he was treating me, he would hit me.

13. When the violence became too much, I’d take the children from the apartment we shared and return to my grandmother, but I always ended up coming back. I knew the pain of being raised without a father, and I didn’t want [REDACTED] and [REDACTED] to have to grow up like I did. To cope with the sadness and anger I felt, I started drinking heavily. By the time I was 20, my relationship with [REDACTED] had ended completely, and I moved back in with my grandmother.

14. In [REDACTED], I met a man named [REDACTED] from the neighborhood, who went by the nickname [REDACTED]. He had a stable job in construction, which made him different from the other men in the neighborhood. I liked being with [REDACTED] but he

became physically abusive when he was drunk. However, he provided for my kids and me in a way that [REDACTED] never did, so I stayed with him. By that time, I also thought violence was a normal part of any relationship, so instead of blaming him for hitting me, I blamed myself.

15. Over the next few years, I continued to date [REDACTED] and work as a personal care assistant. My drinking worsened, and I would often disappear for days at a time on a binge. I remember believing that I was going to die young just like my father did, so the way I treated my body became meaningless to me. I know now that this belief is a common symptom of Post-Traumatic Stress Disorder, although I did not receive treatment for this until much later in life. Counseling was never something that I had access to or was encouraged to seek by anyone in my life.

16. On [REDACTED] [REDACTED] [REDACTED], I had my third child, [REDACTED] Jr. After [REDACTED] Jr. was born, [REDACTED] violence toward me started increasing and we separated. Shortly after, I started using crack cocaine. Crack helped numb the emotional pain that the alcohol always had, and also made me feel alive and full of energy instead of sluggish and depressed like I did while using alcohol.

17. Although I was able to continue working as a personal care assistant during the first few years of my addiction, I would spend the weekends getting high. In my grandmother's neighborhood I was known as a junkie, but when I was getting high, I didn't feel judged.

18. As my addiction got worse, I lost my job and turned to exchanging sex for money to supply myself with drugs. I had learned from so many years of being

powerless over sex how to go numb and separate myself from the physical act. I had no self-esteem and just accepted that this was the way things were going to be for me.

### **III. Sobriety**

19. I was arrested in [REDACTED] for drug possession and sentenced to 18 months of drug rehab, but I only completed 6 months before I relapsed again. I didn't return to rehab until [REDACTED], but that year I finally completed the program. I was sick of feeling like a junkie and I committed to staying clean.

20. Shortly after getting sober I moved back in with my grandmother and got a job working with the elderly. I maintained my sobriety through my faith in God, the skills I learned in rehab, and the need to rise above how I was living before. I also reunited with [REDACTED] and moved back in with him in an apartment outside of [REDACTED] where I was physically separated from my old life. I was happy for what felt like the first time in decades.

21. My life was stable and routine until early [REDACTED], when my daughter [REDACTED] took her children and moved down to Atlanta. Soon after they arrived, one of my granddaughters called me and said that they were homeless and sleeping on the street. I was terrified for them. I rented a van, drove down to Atlanta, and brought the kids back to Baltimore to live with me. [REDACTED] was very unhappy with my decision and forced me to choose between my grandkids and my life with him. I picked my grandkids.

22. I stayed at a family shelter with the children for two weeks, until a friend was able to rent me a house in [REDACTED], MD. Before we left the shelter, my

granddaughters went to stay with their aunt, while my middle grandson went to stay with his father. I kept the other three boys with me, who were 4, 5 and 7 at the time.

The house was comfortable for us, and there was a church nearby that the boys liked to go to. I was able to find a job working at an assisted living facility called ██████████ in ██████████, MD. Things were finally going smoothly again.

23. In late ██████████, ██████████ returned from Atlanta and moved in with me and the children. ██████████ was in and out of unstable relationships during the time she was living with me, and as a result, there was often violence taking place in the home and around the children. Although I begged ██████████ to leave or to let me leave and take the kids with me, she refused. In the spring of ██████████, I fled the house in ██████████ for my own safety.

24. I tried to move back in with ██████████ but he was still angry with me for picking my grandkids over him the year before. After a few months his anger turned into threats of violence, and he eventually kicked me out of the house. With nowhere else to go, I ended up back on the street.

#### **IV. Relapse and Exploitation**

25. I returned to my old neighborhood looking for a place to stay. Some acquaintances I used to do drugs with agreed to take me in because I was still working and able to pay them for a room in the house. The return to my old life caused me to become very depressed, and, because I was surrounded by people using drugs, I eventually relapsed after over ten years of sobriety.

26. In late [REDACTED], I lost my job at the assisted living facility. I tried living with [REDACTED] for a time, but our chaotic lifestyles caused stress between us, and she eventually kicked me out. Without any income to pay for a place to stay, I started trading sex for money again. I felt terrible about myself, like all the work I had done to make changes in my life was for nothing. I remember thinking that this must be all that was out there for me. My own family was doing nothing to care for me. And sex for money seemed to be all that anyone else wanted from me.

27. In early [REDACTED], I met a man named [REDACTED] at an acquaintance's house where I was hoping to be able to stay for the night. He told me he didn't like the way the people in the house were treating me, and encouraged me to leave with him. [REDACTED] said that he knew that I was trading sex for money and wanted to be my protection on the streets. I know now that traffickers operate by figuring out what vulnerable people need and use this information to exploit them, but back then, I jumped at the chance to have someone take care of me.

28. [REDACTED] was living in an abandoned row house in the [REDACTED] section of [REDACTED] that had a bed, a TV, and an electric heater that he kept running with electricity from a neighboring property. When I first moved in with him, we were both bringing in money to support ourselves and our drug habits. But soon enough, [REDACTED] revealed that because he was providing a place for me to stay, it was my job to bring in money for the both of us.

29. [REDACTED] had a gun and bragged about using it to rob stores and people in the neighborhood. If I didn't bring him enough money for him to get high, he would threaten me with it and refuse to let me sleep or eat until I went back out and earned him

the money he demanded. His behavior was completely unpredictable and I was terrified of him, but because I had no place to go, I stayed with him.

30. When I didn't earn enough money, I would try and rest in an alleyway or under the awning of an abandoned house because I was too afraid to go home without the amount he demanded. I never really slept much on those nights because it was the middle of the winter, and I had to get up and walk around every few hours so that I didn't freeze to death. I felt like a zombie. My entire life had become about making enough money so that [REDACTED] would let me inside to warm up and sleep for a few hours.

31. On [REDACTED], I was arrested for prostitution and drug possession near [REDACTED] in [REDACTED]. I wasn't able to afford bail so I stayed in jail until my court date ten days later. That day, I was told by my defense attorney that if I pled guilty I would be released that day. Being in jail for that long was scary and I was desperate to get out, so I took the plea. No one talked to me about how these convictions would impact me in the future, and I never told anyone about [REDACTED] because I was afraid of what he would do to me if I talked. After I was released from jail, I returned to him and the life he had forced upon me.

32. Soon after my arrest, I received my income tax money from the previous year when I had been working. In an effort to get some real rest for the first time in months, I rented a hotel room for the night. I didn't want [REDACTED] to stay with me, but he wouldn't take no for an answer. That night, he held me down in the hotel bed and raped me. I remember not resisting him, because I had learned from a lifetime of violence and sexual assault that if you fight it, you just get hurt.

33. After he assaulted me, I tried leaving him by avoiding the places I knew he hung around, but he always seemed to find me. During the times I was back under his control, he would force me to engage in sex acts for his benefit. He would also get physically violent with any man who looked at me but wasn't interested in being a customer. I was terrified of him.

34. I know now that [REDACTED] used my drug addiction and homelessness to control and profit off of me. Although he told me I was earning money through prostitution for the both of us, he is the only one who ever benefitted from it.

## V. Recovery

35. At some point in [REDACTED], I reconnected with my godmother. She had a room in her home and said that I could stay with her, as long as I was working to remain sober. With her help and support, I began cutting my use down to a few days a week. The days I allowed myself to recuperate did a lot for both my appearance as well as my self-esteem. Staying with my godmother also gave me a way to stay off the streets and safe from [REDACTED]

36. I started attending church at [REDACTED], and was honest with the congregation about my struggles with drug addiction. I started volunteering at the church, which helped me feel like my life might have a purpose again.

37. During a church service in [REDACTED], the pastor requested that the congregation pray for me to find what I needed to maintain my sobriety. Shortly after, she told me that a church member had made contact with a substance abuse program and had arranged for me to attend a recovery program there. I started my journey back to

sobriety at [REDACTED] in [REDACTED] for twenty-eight days of recovery. A copy of my Discharge Summary is attached as Exhibit C. After that, I transferred to [REDACTED] to spend sixty days in a sober living program.

## **VI. Potential Hardships Resulting from Criminal Convictions**

38. Once I was successful in getting sober and exiting prostitution, I began working to return to nursing care, which has been my passion since I began working in the field in [REDACTED]. A copy of my Maryland Medical Assistant Program Notification of Provider is attached as Exhibit D. On [REDACTED], I completed a 140-hour Certified Nursing Assistant/Geriatric Nursing Assistant training through the [REDACTED] at the [REDACTED] in [REDACTED]. A copy of my certification is attached as Exhibit E.

39. Because of my drug and prostitution convictions however, I have not been able to find a job in nursing care. I have applied for jobs at both local and national retail chains in the [REDACTED] area, but have always been turned down after the employer conducted a background check on me. I take odd jobs now where I can get them because I don't want to put myself through the humiliation of getting turned down for yet another job. I know what people think when they see the charges I have been convicted of, and it hurts too much to think about putting myself through that again.

40. Because I have no stable source of income, I am forced to rely on friends for places to stay. This instability has made it hard to stay focused on what I know is important- getting a job and staying sober. It is easy for me to get overwhelmed

thinking about everything I have been through, but I am doing the best I can to stay strong.

41. I attend Narcotics and Alcoholics Anonymous meetings daily, many of which are held at the [REDACTED] in [REDACTED] [REDACTED]. I have also reconnected with my healthcare providers at [REDACTED], who started me on Gabapentin and Trazodone to treat my anxiety and depression. I am also seeing a counselor there regularly. A letter from my therapist, [REDACTED] is attached as Exhibit F.

42. For these reasons, I am now seeking to have my prostitution conviction vacated, as it represents obstacles to my future progress and success. This conviction bars me from specific types of employment and housing, and has other negative consequences for me. I have worked hard to move on from my painful past and begin life again, yet I am forced to endure the costs associated with a criminal record for conduct I was forced to engage in by my trafficker.

43. I respectfully request that this Honorable Court grant this motion and enter an order vacating the judgment of conviction for prostitution entered under Case No. [REDACTED] and shield the record of the associated drug conviction.

Wherefore, I declare under penalty of perjury, this \_\_ day of \_\_\_\_ 20█ in  
█, MD that the foregoing is true and correct to the best of my knowledge.

\_\_\_\_\_

█

Sworn before me this \_\_\_\_\_ day of  
\_\_\_\_\_ 20█

\_\_\_\_\_

# **Attachment E**

## **Sample Orders**

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION**

**UNITED STATES OF AMERICA**

\*  
\* **Case Nos.**

**v.**

\*  
\* **Judge**  
\* **Closed Cases**

\*  
\*  
\*  
\* **UNDER SEAL**

**ORDER TO EXPUNGE CRIMINAL RECORDS**

Upon consideration of the defendant's unopposed motion to expunge criminal records pursuant to D.C. Code § 22-1844(a), filed on XXXX, 20XX, the Court hereby enters the following findings:

The defendant was arrested on or about XXXX, and charged with one count of XXXX in D.C. Superior Court case XXXX. On or about XXXX, she was found guilty by the Court and sentenced to ten days' incarceration, all suspended, and placed on probation for a period of three months.

The Court credits the defendant's version of events regarding the circumstances of the offense and finds by clear and convincing evidence that she is eligible for relief pursuant to D.C. Code § 22-1845(d) because she was convicted of an eligible offense, was a victim of trafficking at the time of her arrest and conviction, and that the conduct underlying the offense was a direct result of having been a victim of trafficking.

Accordingly, it is this \_\_\_\_ day of \_\_\_\_\_, 20XX,

ORDERED that the defendant's motion to expunge criminal records in this case is hereby GRANTED, and it is

FURTHER ORDERED that the defendant's conviction is hereby vacated and the case dismissed with prejudice; and it is

FURTHER ORDERED that the Clerk of the Superior Court shall issue a copy of this Order to the defendant, her attorney, and to the below listed agencies; and it is

FURTHER ORDERED, pursuant to D.C. Code ' 22-1846(b) that the United States Attorney's Office, the law enforcement agency responsible for defendant's arrest, the Metropolitan Police Department, the Federal Bureau of Investigation, the Pretrial Services Agency, the D.C. Department of Corrections, and the Court Services and Offender Supervision Agency, shall expunge any record that identifies the defendant as having been arrested, prosecuted, or convicted in this case; and it is

FURTHER ORDERED that the United States Attorney's Office arrange for any computerized record of defendant's arrest, prosecution, or conviction in this case to be eliminated; and it is

FURTHER ORDERED that the United States Attorney's Office, the law enforcement agency responsible for defendant's arrest, the Metropolitan Police Department, the Federal Bureau of Investigation, the Pretrial Services Agency, the D.C. Department of Corrections, and the Court Services and Offender Supervision Agency, each shall file with the Clerk of the Superior Court, within one year of the entry of this order, a certification that, to the best of the agency's knowledge and belief, all references that identify the defendant as having been arrested, prosecuted, or convicted in this case have been expunged; and it is

FURTHER ORDERED that the Clerk of the Superior Court shall purge any computerized record pertaining to the defendant's arrest, record, or conviction in this case; and it is

FURTHER ORDERED that the Clerk of the Superior Court shall collect this order, along with all Court records pertaining to the defendant's arrest, record, or conviction in this case, together with the certifications described above, and file them under seal, in a special file appropriately and securely indexed in order to preserve its confidentiality, within seven (7) days of the receipt of such records; and it is

FURTHER ORDERED that, unless otherwise ordered by the Court, the Clerk of the Superior Court shall reply in response to any inquiries concerning the existence of any record pertaining to the defendant's arrest, record, or conviction in this case that no records are available; and it is

FURTHER ORDERED that the defendant shall be restored, in the contemplation of the law, to the status the defendant occupied before being arrested and convicted in this case, and that the defendant may not be found guilty of perjury or giving a false statement by reason of defendant's failure to recite or acknowledge defendant's arrest, charge, or conviction in this case, in response to any inquiry made of defendant for any purpose.

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JUDGE  
SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA

Copies to:

In the County Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_ County,  
Florida

State of Florida )  
 )  
v. )  
 )  
 ) Criminal Division  
Defendant/Petitioner )  
 ) Case No.  
 )

**ORDER TO EXPUNGE DEFENDANT/PETITIONER'S  
CRIMINAL HISTORY RECORD PURSUANT TO  
SECTION 943.0583, FLA. STAT.**

This cause having come on to be heard before me upon a petition to expunge the criminal history record related to the Defendant/Petitioner's arrest that occurred on \_\_\_\_\_, by the \_\_\_\_\_ for violation of Section \_\_\_\_\_, Florida Statutes (2007) under Case No. \_\_\_\_\_, and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

1. Defendant/Petitioner was at all pertinent times a victim of human trafficking as defined under Section 787.06, Florida Statutes (2016), and federal law.
2. While a victim of human trafficking, Defendant/Petitioner committed an offense other than those offenses listed in 775.084(1)(b).
3. On \_\_\_\_\_, Defendant/Petitioner was arrested in \_\_\_\_\_ County, Florida for a violation of Section \_\_\_\_\_, Florida Statutes (2015) under Case No. \_\_\_\_\_, which offense was committed while Defendant/Petitioner was a victim of human trafficking and under

the coercion of an operator of a scheme of human trafficking, as part of a scheme of human trafficking.

5. Defendant/Petitioner is no longer a victim of human trafficking.

6. Defendant/Petitioner has filed her petition with due diligence.

7. Defendant/Petitioner is eligible for expunction under Section 943.0583, Florida Statutes (2016).

8. Defendant/Petitioner does not have any other petition to expunge or seal pending before any court.

9. Official documentation exists that creates a presumption that Defendant/Petitioner's participation in the offenses was a result of having been a victim of human trafficking.

10. Defendant/Petitioner has filed her Petition in the circuit where her arrests occurred and in a court that has jurisdiction over the class of offenses sought to be expunged.

11. Defendant/Petitioner has served her Petition for Expunction of Defendant/Petitioner's Criminal History Record, Petitioner's Memorandum of Law in Support of Petition, and Petitioner's Sworn Statement on the State Attorney's Office. The State Attorney has represented to Defendant/Petitioner's counsel in writing that the State does not oppose Defendant/Petitioner's Petition.

12. Defendant/Petitioner has served her Petition for Expunction of Defendant/Petitioner's Criminal History Record, Petitioner's Memorandum of Law in Support of Petition, and Petitioner's Sworn Statement on the arresting agency, the \_\_\_\_\_ Police Department, as required under Section 943.0583.

13. Any conviction or any other disposition associated with the criminal history record expunged by this Order under Section 943.0583 is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

Whereupon it is:

ORDERED AND ADJUDGED that Defendant/Petitioner's Petition to Expunge Defendant/Petitioner's Criminal History Record Under § 943.0583, Fla. Stat. is hereby granted. All court records pertaining to the above-styled cases shall be expunged in accordance with the procedures set forth in Section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.692; it is further

ORDERED AND ADJUDGED that any conviction or other disposition expunged by this Order under Section 943.0583 is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings; it is further

ORDERED AND ADJUDGED that all fines, costs, fees, penalties, probation, warrants, and/or other results of the offenses that are the subject of the criminal history record expunged by this Order are hereby vacated; it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this Order to the state attorney and the \_\_\_\_\_ Police Department, who will comply with the procedures set forth in Section 943.0583, Florida Statutes and Florida Rule of Criminal Procedure 3.692, and appropriate regulations of the Department of Law Enforcement, and who will further forward a copy of this Order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that the \_\_\_\_\_ Police Department and the \_\_\_\_\_ Sheriff's Office shall expunge all information concerning indicia of

arrest or criminal history information regarding Defendant/Petitioner in accordance with the procedures set forth in Section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the Defendant/Petitioner.

DONE AND ORDERED in Chambers at \_\_\_\_\_ County, Florida this \_\_\_\_\_ day  
of \_\_\_\_\_, 2016.

---

Circuit Judge

1 April T. Macaraeg (SBN 305303)  
2 Coalition to Abolish Slavery & Trafficking  
3 5042 Wilshire Blvd. #586  
4 Los Angeles, CA 90036  
5 Office: (213) 365-1906  
6 Fax: (213) 365-5257  
7 Email: april@castla.org

**FILED**  
Superior Court of California  
County of Los Angeles

AUG 21 2017

ATTORNEY FOR DEFENDANT

Sherri R. Carter, Executive Officer/Clerk  
By: [REDACTED]

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

11 People of the State of California,  
12 Plaintiff,

13 v.

14 [REDACTED]  
15 Defendant.

Case No.:

Law Enforcement Agency Arrest Numbers:

[REDACTED]  
~~[PROPOSED]~~ ORDER

17 **TO ALL PARTIES AND THEIR REPRESENTATIVES:**

18 Having reviewed all papers filed in support of the Defendant's Petition for Relief:

19 **IT IS HEREBY ORDERED** that pursuant to PC § 236.14, the Court:

- 20
- 21 1. Notify the Department of Justice that the defendant was a victim of human trafficking when  
22 she committed the crime, pursuant to § 236.14(h)(3).
  - 23 2. Issue an order directing the law enforcement agency having jurisdiction over the offense,  
24 the Department of Justice, and any law enforcement agency that arrested the defendant or  
25 participated in the arrest of the defendant to seal their records of the arrest and the court  
26 order to seal and destroy the records within one year after the court order is granted, and  
27 thereafter to destroy their records of the arrest and the court order to seal and destroy those  
28 records, pursuant to § 236.14(k).

[PROPOSED] ORDER

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- 3. Provide the defendant with a copy of any court order concerning the destruction of the arrest records, pursuant to § 236.14(k).
- 4. Issue such other relief that the Court determines is just and proper.

Dated: 8/21/17



A handwritten signature in black ink, appearing to read "M. Garcia", written over a horizontal line.

LOS ANGELES SUPERIOR COURT JUDGE  
**Michael Garcia**

# Appendix A



# **Sealing Criminal Records: District of Columbia**

## **Training Memo**

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## **I. INTRODUCTION**

The Criminal Records Sealing Act of 2006 and the Re-entry Facilitation Amendment Act of 2012 together create the Criminal Record Sealing chapter in the D.C. Code— Chapter 8 of Title 22. These laws state who is eligible to ask the D.C. Superior Court to seal their adult criminal records. This memo describes how to determine if a client is eligible to seal an adult criminal record and the process for sealing the record.

## **II. INFORMATION GATHERING**

To make an initial determination of eligibility to file a motion to seal a record, obtain the client's full name, including any previously used names or aliases, and run a search for any records using D.C.'s case search tool (eAccess), which can be found here: <http://www.dccourts.gov/superior-court/cases-online>.

Note that this record may be incomplete or incorrect, so your client is the best source when gathering information. If any portion of the record is eligible for sealing, you will eventually need to obtain the actual police report and court record, which is described in Section IV of this memo.

## **III. DETERMINING ELIGIBILITY**

A client is eligible to file a motion to seal a record under the following circumstances: 1) innocence, 2) not convicted, but cannot prove innocence, 3) convicted of an eligible misdemeanor or felony, 4) the crime was incorrectly attributed, 5) the crime was decriminalized after the date of conviction, or 6) movant arrested as a "Fugitive from Justice." Each of these circumstances is discussed below.

For the purpose of determining eligibility for record sealing, the following definitions apply:

Eligible felony (D.C. Code Ann. § 16-801(6)): A failure to appear.

Ineligible felony (D.C. Code Ann. § 16-801(8)): Any felony other than a failure to appear.

Eligible misdemeanor (D.C. Code Ann. § 16-801(7)): Any misdemeanor that is not an ineligible misdemeanor.

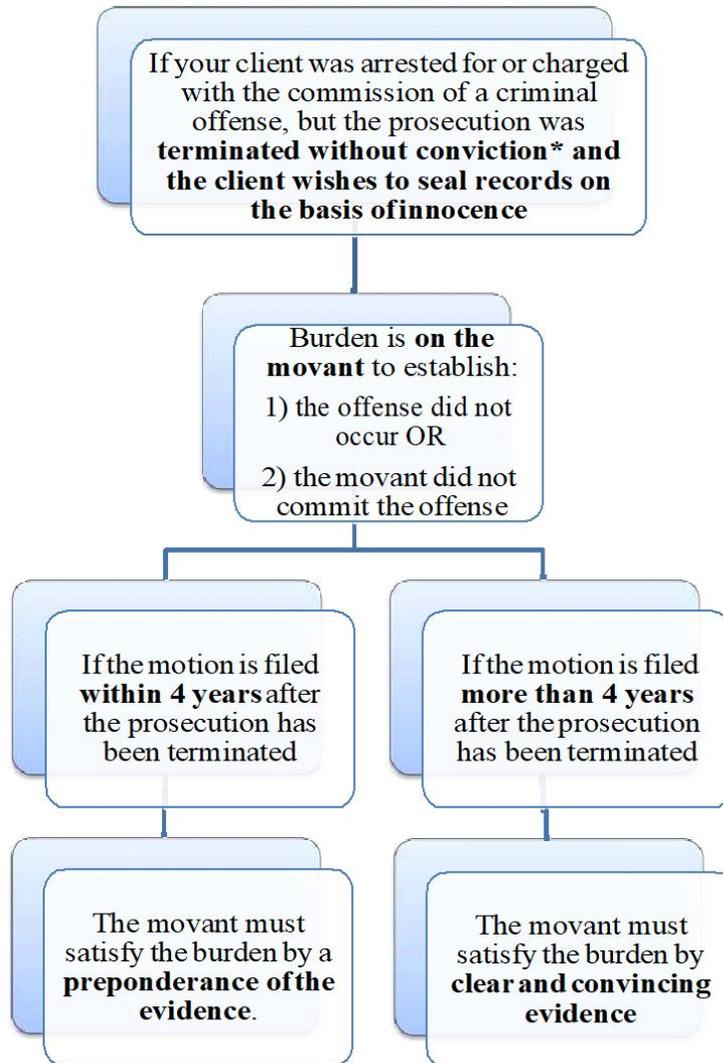
Ineligible misdemeanor: (See D.C. Code Ann. § 16-801(9) for complete list):

- Interpersonal violence, intimate partner violence, intrafamily violence;
- Driving while intoxicated, driving under the influence, and operating while impaired;

- A misdemeanor offense for which sex offender registration is required;
- Criminal abuse of a vulnerable adult;
- Interfering with access to a medical facility;
- Possession of a pistol by a convicted felon;
- Failure to report child abuse;
- Refusal or neglect of guardian to provide for child under 14 years of age;
- Disorderly conduct (peeping tom);
- Misdemeanor sexual abuse;
- Violating the Sex Offender Registration Act;
- Violating child labor laws;
- Election/Petition fraud;
- Public assistance fraud, Trademark counterfeiting;
- Attempted trademark counterfeiting;
- Fraud in the second degree; Attempted fraud;
- Credit card fraud and attempted credit card fraud;
- Misdemeanor insurance fraud and attempted insurance fraud;
- Telephone fraud; Attempted telephone fraud;
- Identity theft, second degree; Attempted identity theft;
- Fraudulent statements of failure to make statements to employee;
- Fraudulent withholding information or failure to supply information to employer;
- Fraud and false statements;
- False statement/dealer certificate;
- False information/registration;
- No school bus driver's license;
- False statement on DMV document;
- No permit – 2<sup>nd</sup> or greater offense;
- Altered title or registration;
- No commercial driver's license;
- A violation of building and housing code regulations;
- A violation of the Public Utility Commission regulations; and
- Attempt or conspiracy to commit any of the foregoing offenses.

**A. Actual innocence under D.C. Code D.C. Code Ann. § 16-802**

If your client was arrested or charged with a crime, but not convicted, the record may be sealed if the movant can prove that she is actually innocent. Being found “not guilty” is not proof of the client’s innocence, and additional evidence must be provided to support innocence. D.C. Code Ann. § 16-802(f). If your client is able to prove actual innocence, it does not matter which crimes were alleged or whether the client has other items on her criminal record.



\* Terminated without conviction means  
(1) the prosecutor did not paper or charge the case; OR  
(2) the prosecutor dropped the charges against the person before trial; OR  
(3) the court dismissed the charges against the person; OR  
(4) the person was found “not guilty” of the crime after a trial (note that the movant must still provide evidence of actual innocence in this case)

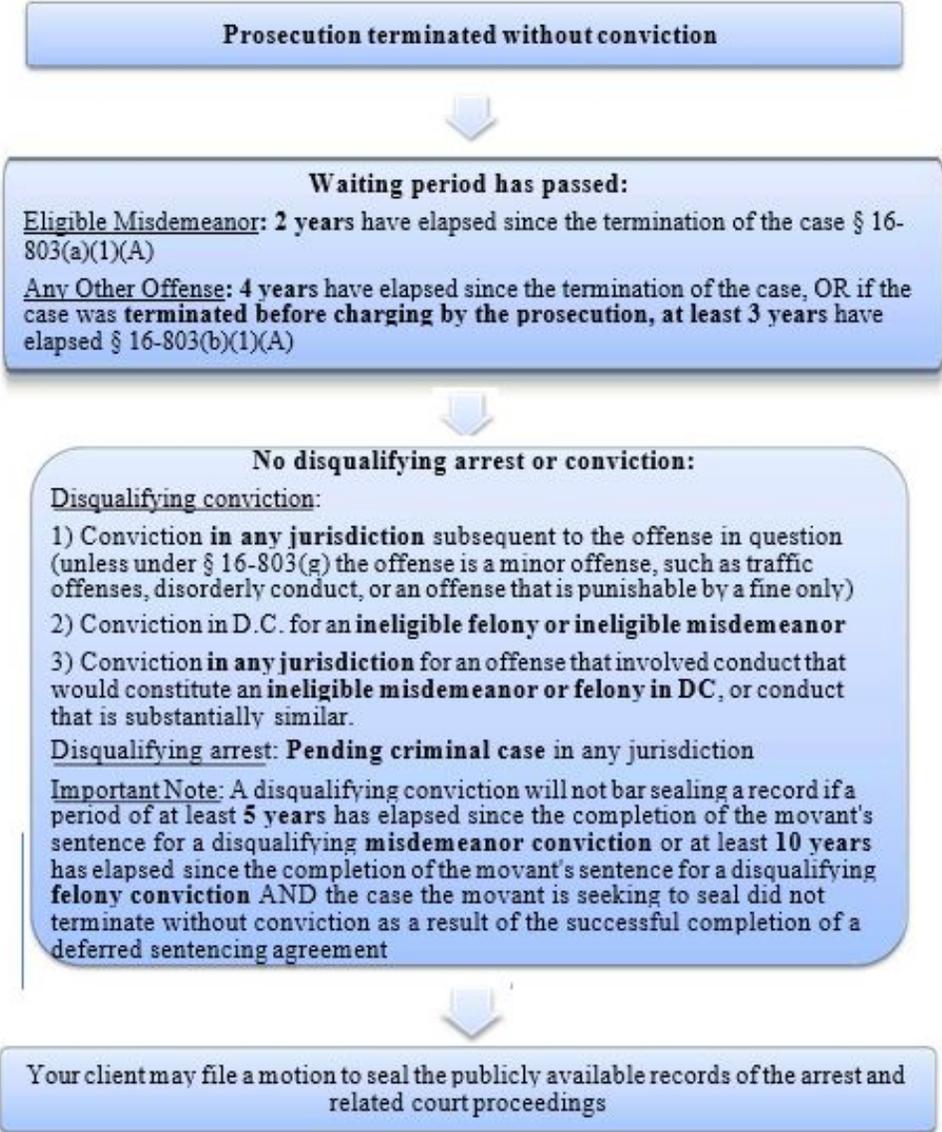
- 1) **Delay in filing a motion to seal for actual innocence:** If the court finds that the government has been substantially prejudiced in its ability to respond to the motion by a delay in its filing, then the court may apply a rebuttable presumption that the movant is not entitled to have her record sealed. D.C. Code Ann. § 16-802(e).
- 2) **Filing in the alternative:** If the client maintains innocence but is not sure she can prove her innocence, she may file “in the alternative” under D.C. Code Ann. § 16-803 (see requirements for filing under this provision in the below sections).
- 3) **Sealing a conviction on grounds of actual innocence:** If your client was convicted of a crime either via a trial or guilty plea, but maintains that she is innocent, then she must first challenge the conviction on grounds of actual innocence based on new evidence. D.C. Code Ann. § 22-4135. Unless the motion conclusively shows that the client is ineligible for relief, the court shall grant a hearing. After the hearing, if the court finds by clear and convincing evidence that the movant is actually innocent, the court shall vacate the conviction. The arrest and court records would then be eligible for sealing under D.C. Code Ann. § 16-802.

After the hearing, if the court finds that it is more likely than not that the movant is actually innocent, then the court shall grant a new trial. If that trial does not result in a conviction (either because the case is dismissed or the client is acquitted at trial), then D.C. Code Ann. § 16-802 can be used to seal all the records related to the arrest and court proceedings.

Before filing a motion under D.C. Code Ann. § 22-4135, attorneys and clients should be aware that any charges dismissed as part of a plea agreement can be reinstated if the movant does not prove actual innocence.

**B. Sealing non-convictions D.C. Code Ann. § 16-803(a), (b)**

If your client has a charge or arrest on her record but was NOT convicted, then your client can file to seal the record regardless of the crime once the waiting period has passed unless she has a disqualifying conviction or arrest.



## 1) Types of Non-Convictions

- a) **Arrest Only:** the government did not take any further action after the arrest
  - i. No papered (Declined to proceed with prosecution)
  - ii. Post and forfeit (D.C. Code Ann. § 5–335.01)
  
- b) **Arrest and Charge Only:** the government arrested and charged the client with a crime, but then dropped the charges
  - i. Nolle Prosequi or dismissal
  - ii. Dismissed for Want of Prosecution (DWP): this type of dismissal almost always happens on the day of trial
  - iii. Acquittal
  
- c) **Arrest, Charge, and a Court:**
  - i. Diversion: If the client successfully completed the requirements, such as performing forty hours of community service, under a *Deferred Prosecution Agreement*, the case will be dismissed and there will be no prosecution or conviction. If the client successfully completed the requirements under a *Deferred Sentencing Agreement*, the client’s guilty plea and conviction should be vacated and the case will be dismissed. In these two scenarios, clients will be eligible for record sealing because there is no outstanding conviction.

However, in cases involving felonies, clients may be offered *Amended Sentencing Agreements* wherein the client pleads guilty to the felony charge with the understanding that it will be reduced to a misdemeanor conviction upon successful completion of the diversion requirements. The misdemeanor conviction would prevent the client from being eligible for sealing.

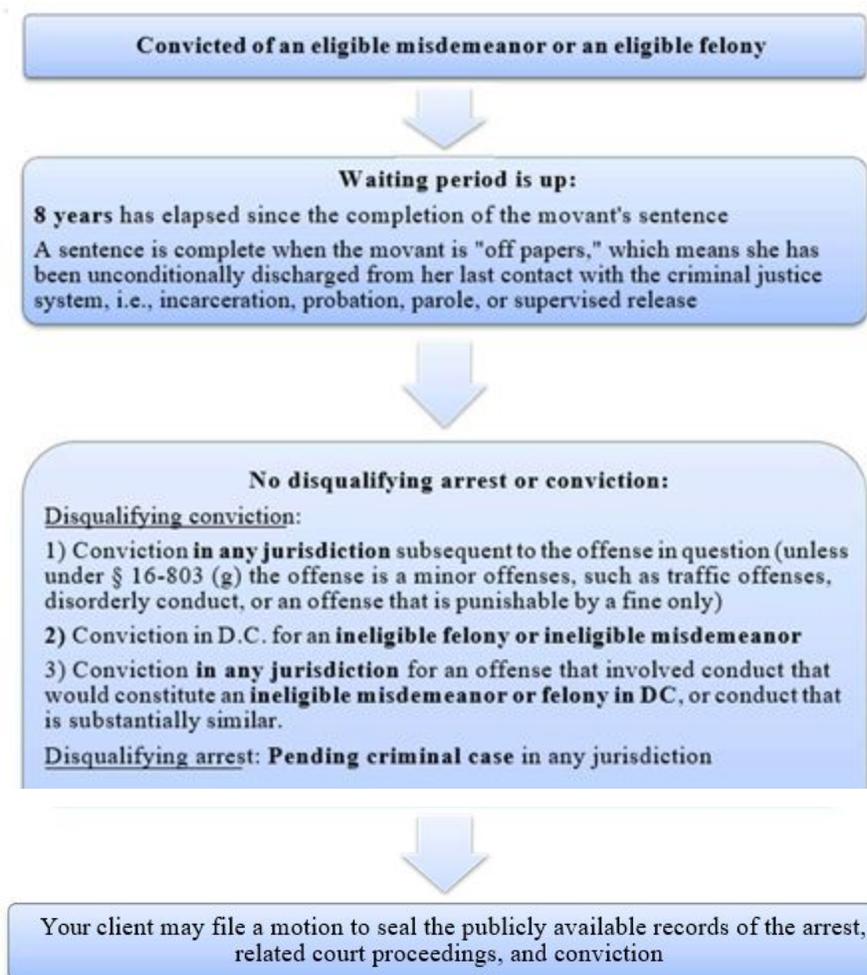
There are different forms of diversion programs available in D.C. Superior Court, including but not limited to Drug Court and Mental Health Court. Attorneys should carefully review the requirements of each diversion program with clients to ensure they fully understand the responsibilities involved and the legal ramifications of a failure to comply.

- ii. Youth Rehabilitation Act (YRA): If your client was under the age of 25 when she was sentenced, she MAY have been sentenced under the YRA. This means that the conviction may later be “set aside” if the sentence (probation or

commitment) was successfully completed.<sup>1</sup> If the conviction was set aside, then the client may be eligible for sealing under D.C. Code Ann. § 16-803(a) or (b).

### C. Sealing convictions under D.C. Code Ann. § 16-803(c)

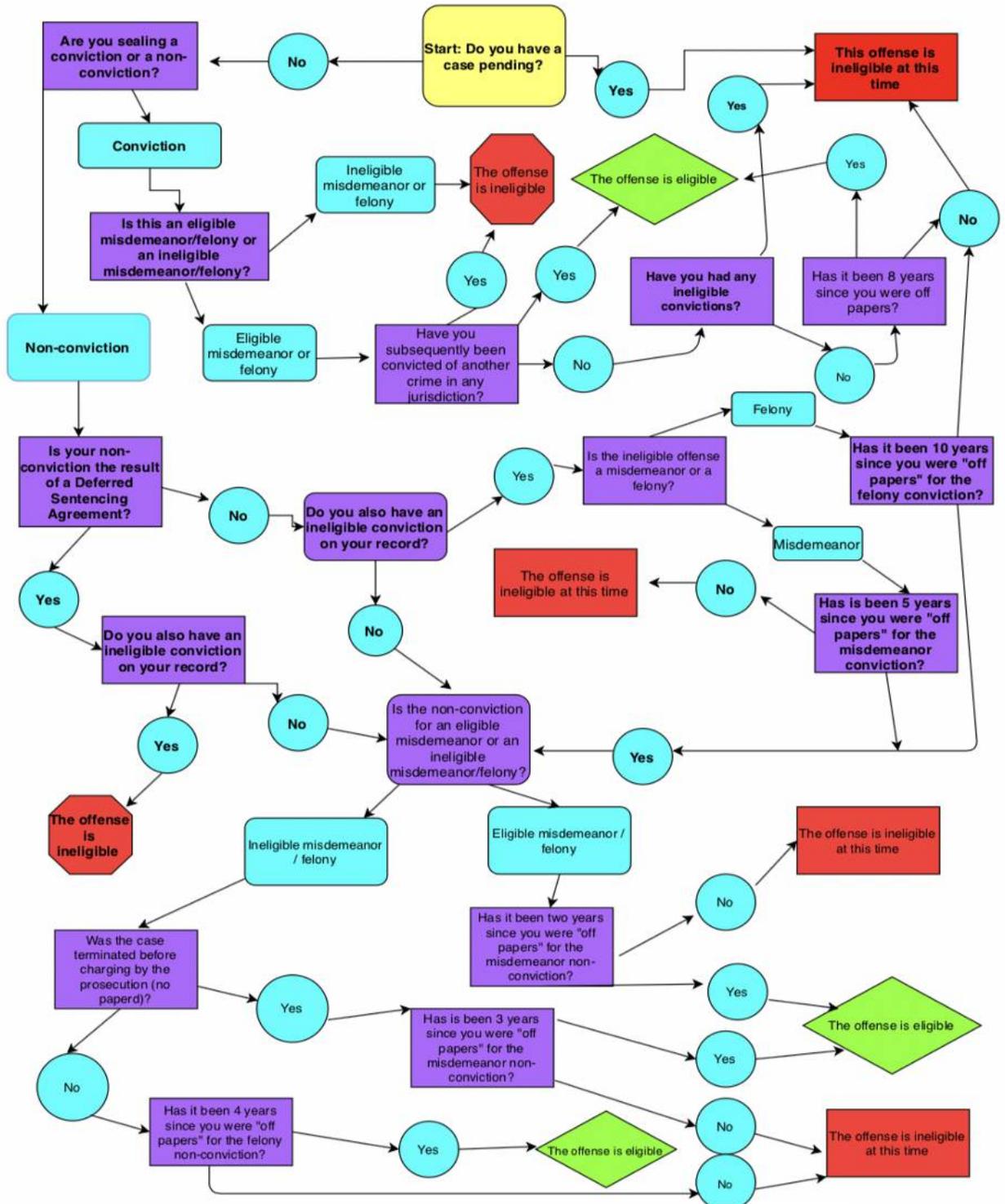
According to D.C. Code Ann. § 16–801(3), a client was convicted if she was found guilty at trial, pled guilty, found not guilty by reason of insanity, or pled nolo contendere. If your client has been convicted of an eligible misdemeanor (see D.C. Code Ann. § 16-801(9) for list of ineligible misdemeanors) or an eligible felony (failure to appear),<sup>2</sup> then she is eligible to seal her record as long as she has been “off papers”<sup>3</sup> for at least eight years and does not have a disqualifying conviction. A conviction for an ineligible misdemeanor or any felony other than a failure to appear can never be sealed.



<sup>1</sup> Ellen P. McCann, “The District’s Youth Rehabilitation Act: An Analysis,” *Criminal Justice Coordinating Council* (September 8, 2017) (“A set aside, often referred to as a sealing, means that the conviction is not information that is publicly available, and the offender does not have to disclose criminal history to potential employers, though the government may access this information for limited purposes such as impeachment or considerations of sentencing for later offense convictions.”).

<sup>2</sup> Also known as a violation of the Bail Reform Act or BRA.

<sup>3</sup> “Off papers” refers to the time after all jail and probation sentences have been served.



**D. Arrest for an incorrect identity: D.C. Code Ann. § 16-803(c-2)**

1) **Reasons for error:**

- a. **Clerical error:** sometimes an arrest was incorrectly attributed to a person because the incorrect name or the incorrect PDID (police department identification) number was used at booking.
- b. **Identity theft:** sometimes an arrest is incorrectly attributed to a person because the individual arrested purposely gave someone else's name or identifying documents at the time of arrest.

2) **Means of correction:**

- a. **Fingerprints available:** Submit the client's fingerprints to MPD to compare the prints taken at the time of arrest. If the prints do not match, the prosecution will likely agree to a motion requesting that the court correct the record by removing the client's name from the arrest record.
- b. **Fingerprints not available:** If fingerprints were not taken at the time of arrest and no other form of reliable identification was presented by the person who was arrested, the client may file to seal the record under D.C. Code Ann. § 16- 803(c-2) and attest under oath that she was incorrectly identified.

**E. Waiting Periods under D.C. Code Ann. § 16-803**

- 1) **Time waivers:** Under D.C. Code Ann. § 16-803(e), your client can request that the government waive the waiting periods prescribed in D.C. Code Ann. § 16-803(a)-(c). The request should have concrete proof of why the waiver is needed, such as denial of a job as a result of the record or a letter from a college denying admission because of the record. Waivers are rarely granted.
- 2) **Different waiting periods for separate incidents:** If your client has multiple incidents on her record and the incidents have different waiting periods, then your client can either waive in writing the right to seek sealing of an arrest or conviction that has not passed the waiting period, or wait until all waiting periods have passed. D.C. Code Ann. § 16-803(d). The movant must seek to seal all eligible arrests and convictions in the same proceeding unless the movant waives in writing the right to seek sealing with respect to a particular conviction or arrest. D.C. Code Ann. § 16-803(f).

**F. Fugitive from Justice: D.C. Code Ann. § 16-803.01**

- 1) **Definition:** Being arrested as a "fugitive from justice" means that the client was detained or arrested in D.C. due to a warrant or case from another jurisdiction.

- 2) **No Waiting Period:** An arrest for being a “fugitive from justice” is sealable at any time after the client appears before the proper official in the jurisdiction from which she was considered a “fugitive.”
- 3) **No Disqualifiers from Sealing:** The arrest is sealable regardless of any other arrests or convictions on the client’s record.
- 4) The court must grant a motion to seal the “fugitive from justice” arrest if all of the following are true:
  - a. The arrest resulted only from the “fugitive from justice” charge and did not involve any Regulations or federal charges in the United States District Court for the District of Columbia;
  - b. The client waived an extradition hearing and was released by the court to turn herself into the jurisdiction that issued the warrant OR the client was detained to wait for the other jurisdiction to transport her; AND
  - c. The client proved by a preponderance of the evidence that she did appear before the proper official in the jurisdiction from which she was considered a “fugitive.”
- 5) If the above three points are not all true, the court may still grant a motion to seal the fugitive arrest if the court finds that it is in the interest of justice to do so.
- 6) If the motion is granted, the record for the arrest in D.C. will be sealed so that it is not available to the public, but law enforcement and the court may still keep the record in a non-public file. Thereafter, the client cannot be “guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest as a fugitive from justice in response to any inquiry made of him or her for any purpose.” D.C. Code Ann. § 16-803.01(c)(5).

**G. Crime decriminalized: D.C. Code Ann. § 16–803.02**

- 1) A movant who was arrested, charged, or convicted of an offense that was decriminalized after the date of the arrest, charge, or conviction may file at any time to seal her record under D.C. Code Ann. § 16-803.02.
- 2) The court must grant the motion to seal if the arrest did not involve or result in any additional federal or D.C. charges.
- 3) If the arrest did involve other charges, the court may still grant a motion to seal if the court finds that it is in the interest of justice to do so.

#### IV. FILING PROCESS

##### A. Obtain copies of case documents

- 1) **Police Record:** A copy of the police record should be included in the motion as an Exhibit. Either you or your client will need to go to the following address to obtain it:

Metropolitan Police Department (MPD)  
300 Indiana Avenue, NW  
Criminal History Section, Room 1075 (on the first floor)  
Open M-F 9:00 a.m.-5:00 p.m.

Bring the following items:

- a. \$7.00 (cash or money orders only, payable to DC Treasurer; no credit cards or personal checks)
- b. Valid ID and social security number (if client goes herself) OR a copy of a notarized form giving permission for you to retrieve your client's record if you go on your client's behalf

##### Steps:

- a. Show valid identification (client) or a notarized permission letter (attorney) at the Criminal History Section, Room 1075 on the first floor of the police department. Notify the clerk that you are requesting a copy of your record *for sealing purposes*. You will be provided with a Criminal History Request form (also known as PD Form 70).
- b. After completing the form, take the elevator to the third floor where there is a payment machine. You will submit the \$7.00 and will then be provided a payment slip as a receipt.
- c. Return the payment slip and the completed request form to Room 1075.
- d. The Criminal History Section takes up to 10 days to process these requests. At the end of 10 days, you can return to Room 1075 with your identification and receipt to obtain a copy of your Police Record.<sup>4</sup>

**NOTE:** There are two different types of police records provided by the Criminal History Section. For a full listing of all adult arrests, you must specify that you are requesting the police record to determine eligibility for sealing. Otherwise, you may be provided a record that only shows D.C. arrests from the past 10 years that resulted in a conviction or a forfeiture. In that case, the absence of an arrest on the police record DOES NOT mean the record has been sealed. If your client knows she has D.C. arrests even though they are not listed, you must still include them in your motion as the law requires moving to seal all arrests at the same time. Failing to do so may result in the motion being dismissed without prejudice by the court.

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<sup>4</sup> Note that you can ask the clerk to pick up the records at a later date if there is a long waiting period for records.

If you are unable to go to the Criminal History office in person, you may send a request by mail to the address listed above. The request must include a notarized letter requesting a background check for sealing purposes. The request must include the client's full name, date of birth, social security number, self-addressed stamped envelope, and \$7.00 money order payable to the DC Treasurer.<sup>5</sup>

2) Court Record: Obtain your client's court record in order to get identifying case information (e.g., case number, judge, etc.) to file the motion. Case documents created after 2017 should be available on D.C.'s case search tool (eAccess) at <http://www.dccourts.gov/superior-court/cases-online>. If the case occurred before 2017, or if the documents are not available on eAccess, you can go to the following address:

Clerk's Information Office  
Criminal Records Division  
D.C. Superior Court, Room 4001 (on the 4<sup>th</sup> floor)  
500 Indiana Avenue, N.W.  
202-879-1373  
M-F, 8:30 a.m. – 5:00 p.m.

Either give your client's name and birth date to the Clerk and request her entire Superior Court criminal record OR enter your client's name into the Court View software on the computers in Room 4001 and search for the records.<sup>6</sup>

a. **Records for cases that were “no papered,” a post & forfeit, or “set aside” under the Youth Rehabilitation Act**: These records will NOT be at the Criminal Records Division. Instead, go to the following address:

Special Proceedings Branch  
D.C. Superior Court, Room 4002 (on the 4<sup>th</sup> floor)  
500 Indiana Avenue, N.W.  
202-879-1380  
M-F, 8:30 a.m.-5:00 p.m. (walk in if door is closed)

If your client goes in person, tell her to bring her ID to obtain her records. If you go on your client's behalf, call the clerk at 202-879-1380 for instructions, or ask Amara's staff. After receiving the record from the Special Proceedings clerk, ask if the case has a case number. If the case does NOT have a number (usually a “no papered” or post & forfeit case will not have a number), ask the Special Proceedings clerk to assign a case number. The case MUST have a number to be able to seal it.

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<sup>5</sup> “Police Clearances (Arrest and Criminal History Section),” *Metropolitan Police Department*, at <https://mpdc.dc.gov/service/police-clearances-arrest-and-criminal-history-section>.

<sup>6</sup> Note that you must type your client's name in ALL CAPS when using this computer system. Otherwise the records may not appear.

3) Sentence termination or release record: If your client is sealing a conviction under D.C. Code Ann. § 16-803, she will need the sentence termination or release record.

a. Sentence Termination Letter: Your client can get a Sentence Termination Letter from the following means:

- i. The Community Supervision Officer (CSO) at the Field Unit where your client last reported
- ii. The Supervising Community Supervision Officer (SCSO) of the Field Unit where your client last reported
- iii. Go in person to the following address:

Court Services and Offender Supervision Agency Offender  
Processing Unit  
300 Indiana Avenue, N.W., Room 2070  
M-F, 9:00 a.m. – 5:00 p.m.  
202-220-5300

b. Release Record: If your client served a sentence in a D.C. Jail or at Lorton Correctional Complex,<sup>7</sup> you must make a written request for a copy of the Release Record. Send the letter to the following address:

Department of Corrections Records Office  
2000 14th Street NW, Seventh Floor  
Washington, DC 20009  
202-523-7060  
202-671-2055

Example of letter:

Dear D.C. Jail Records Office:

I am writing to request a copy of an official D.C. Jail record that shows my release date from my incarceration in [YEAR]. I understand that this record is usually either my Release Authorization Form or a Jail & Community Corrections Systems (JACCS) print out. Here is the necessary information for you to retrieve my record:

---

<sup>7</sup> Misdemeanor sentences are served at the D.C. Jail and felony BRA may have been served in Lorton if it happened before 2000.

Name:

PDID #:

DCDC #: [if you do not know your DCDC number, leave this line blank. Jail Records will be able to figure out your DCDC number using your PDID number.]

Approximate Dates of Incarceration:

Please mail the record to me at the following address:

Thank you.

Sincerely,

---

## **B. Drafting the motion**

The motion should include the following information.

- The grounds upon which eligibility for sealing is based and the facts in support of the movant's claim;
- A statement of points and authorities in support of the motion; and
- Any appropriate exhibits, affidavits and supporting documents

**1) Interests of Justice:** Under D.C. Code Ann. § 16-803(h), when determining whether to grant the motion to seal your client's records, the court will determine what is in the "interests of justice" by looking at three factors:

- a. The interests of the movant in sealing the records
- b. The community's interest in retaining access to those records, including the interest of current or prospective employers in making fully informed hiring or job assignment decisions, and the interest in promoting public safety
- c. The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability

**2) D.C. Code Ann. § 16-803(h)(2) lists the following as factors the court may consider:**

- a. The history and characteristics of the movant, including the movant's:
  - i. Character;
  - ii. Physical and mental condition;
  - iii. Employment history;
  - iv. Prior and subsequent conduct;
  - v. History relating to drug or alcohol abuse or dependence and treatment opportunities;
  - vi. Criminal history; and
  - vii. Efforts at rehabilitation
- b. The number of arrests or convictions that are the subject of the motion

- c. The time that has elapsed since the arrests or convictions that are the subject of the motion;
- d. Whether the movant has previously obtained sealing or comparable relief other than by reason of actual innocence; and
- e. Any statement made by the victim of the offense.

**3) Burden of proof under D.C. Code Ann. § 16-803(i):**

Situation	Burden of proof
A movant arrested for or charged with an <b>eligible misdemeanor</b> whose prosecution has been terminated without conviction	The <b>prosecutor</b> has the burden to establish by a <b>preponderance of the evidence</b> that it is <b>not</b> in the interests of justice to grant relief.
A movant arrested for or charged with <b>any other offense</b> than an eligible misdemeanor whose prosecution has been terminated without conviction	The <b>movant</b> has the burden to establish by a <b>preponderance of the evidence</b> that it is in the interests of justice to grant relief.
A person who has been <b>convicted</b> of an <b>eligible misdemeanor</b> or an <b>eligible felony</b>	The <b>movant</b> has the burden to establish by <b>clear and convincing evidence</b> that it is in the interests of justice to grant relief.
A person convicted of an offense that was <b>decriminalized</b> after the date of conviction	The <b>prosecutor</b> has the burden to establish by a <b>preponderance of the evidence</b> that it is not in the interests of justice to grant relief.
A person to whom an arrest has been attributed but was <b>incorrectly identified or named</b>	The <b>prosecutor</b> has the burden to establish by a <b>preponderance of the evidence</b> that it is not in the interests of justice to grant relief.

**C. Filing the motion**

**1) Items to include**

- a. Motion
- b. Memorandum of points and authorities
- c. Exhibit A (ORIGINAL Police Department Criminal History Report)
- d. Exhibit B (Print out of the DC Superior Court’s Docket)
- e. If filing a motion to seal on grounds of actual innocence also include an Affidavit as well as any other related exhibits
- f. Proposed order
- g. Certificate of service

**2) Determine which Prosecutor’s Office to serve**

- a. Your client was prosecuted by the **United States Attorney’s Office** if:
  - i. Case name is United States v.
  - ii. Case is a felony

If your client was prosecuted by the United States Attorney, you will need to e-serve their office on CaseFileXpress using the email address: [usadc.casefilings@usdoj.gov](mailto:usadc.casefilings@usdoj.gov).

- b. Your client was prosecuted by the **Office of the Attorney General** if:<sup>8</sup>
  - i. Case name is District of Columbia v.
  - ii. Case carries only a fine
  - iii. Case was a post and forfeit
  - iv. Case was a traffic case

If your client was prosecuted by the Office of the Attorney General, you will need to e-serve their Civil Litigation Division which processes cases before assigning them to various units. You can e-serve [chad.copeland@dc.gov](mailto:chad.copeland@dc.gov) within that division.

- c. If you are filing to seal multiple cases and they were prosecuted by both offices, you will have to serve BOTH offices

### 3) Filing Procedure:

- a. Attorneys in D.C. electronically file motions using CaseFileXpress (<https://dc.casefilexpress.com/Login.aspx>). CaseFileXpress allows you to search by case number, enter contacts for electronic service, and upload documents. When uploading the motion, be sure to select the appropriate D.C. Code section (e.g. “Motion 16–803.02”) under “Document Type.”
- b. If the judge who originally presided over the case is still on the bench, include his or her chambers’ email address in the e-service contacts. Otherwise, you can send notice to the Chief Judge. The current Chief Judge is the Honorable Robert E. Morin. On CaseFileXpress, under “Filing Information” and “Service List,” you can search for Judge Morin’s name and select the email address for his chambers.

## V. AFTER FILING

- A. **Follow-up:** If you have not received a notice from the Court acknowledging the motion and assigning a judge in 2 weeks, contact the Criminal Clerk’s office.
- B. **Dismissal:** Motions may be dismissed with or without prejudice
  - 1) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, documents, and the record of any prior proceedings that the movant is not eligible for relief or is not entitled to relief, the Court may dismiss the motion with prejudice. D.C. Code Ann. § 16-805(a).

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<sup>8</sup> The D.C. Office of the Attorney General was previously named the D.C. Corporation Counsel, so older cases may include that name on the paperwork.

- 2) The motion may be dismissed without prejudice if there is a problem with the motion, but the court will allow this to be fixed. For example, the court may dismiss a motion without prejudice to permit the movant to renew the motion after further passage of time. This may include setting a waiting period before a renewed motion can be filed. D.C. Code Ann. § 16-803(j).
- 3) A motion may be dismissed if it appears that the movant has unreasonably delayed filing the motion and that the government has been prejudiced in its ability to respond to the motion by the delay. However, the movant can respond to the government by showing that the motion is based on grounds, which the individual could not have raised before. D.C. Code Ann. § 16-803(k).
- 4) The Court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant regarding the same offenses unless the previous motion was dismissed or denied without prejudice. D.C. Code Ann. § 16-805(g).

C. **Prosecutor's Response:** If the motion is not dismissed or denied after initial review, the Court shall order the prosecutor to file a response to the motion within 60 days of the issuance of the order. However, if the arrest in question had not been presented to the prosecutor for a charging decision, the prosecutor shall have 90 days to respond. D.C. Code Ann. § 16-805(b). The prosecutor shall not be required to respond unless ordered to do so by the Court.

- 1) Upon the filing of the prosecutor's response, the Court shall determine whether a hearing is required and if so, it shall be scheduled within 30 days of the prosecutor's response. D.C. Code Ann. § 16-805(c) and (d).
- 2) At the hearing, the movant and the prosecutor may present witnesses and information. Hearsay evidence is admissible. D.C. Code Ann. § 16-805(e).

D. **Court's Order**

- 1) The court will provide an order dismissing, granting or denying the motion in writing. The order will include reasons. D.C. Code Ann. § 16-805(f)
- 2) An order dismissing, granting, or denying a motion for sealing is a final order for purposes of appeal. D.C. Code Ann. § 16-805(h)

E. **Motion Granted**

- 1) The Court will order certain individuals to perform certain actions:

If the order was granted under D.C. Code Ann. § 16-802 (actual innocence):

Party responsible	Task
<ul style="list-style-type: none"> <li>• Prosecutor</li> <li>• Any relevant law enforcement agency</li> <li>• Any pretrial, corrections, or community supervision agency</li> </ul>	Seal any records that identify the movant as being arrested, prosecuted, or convicted
Prosecutor	Arrange for a computerized record of the movant's arrest, prosecution, or conviction to be eliminated, except a restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if ordered to do so by the Court
<ul style="list-style-type: none"> <li>• Prosecutor</li> <li>• Any relevant law enforcement agency</li> <li>• Any pretrial, corrections or community supervision agency</li> </ul>	File a certification with the court within 90 days of an order to seal the records that to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or convicted have been sealed
Clerk	Collect all court records pertaining to the movant's arrest, record or conviction and cause them to be purged by any computerized record
Clerk	File under seal, all court records retrieved under this motion, and certifications filed by the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency, within 7 days after receipt of such records
Clerk	Place the records in a special file, securely indexed in order to protect its confidentiality. Unless otherwise ordered by the court, the Clerk shall reply in response to inquiries concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

If the order was granted under D.C. Code Ann. § 16-803:

Responsible party	Task
<ul style="list-style-type: none"> <li>• Prosecutor</li> <li>• Any relevant law enforcement agency</li> <li>• Any pretrial, corrections, or community supervision agency</li> </ul>	Remove from their publicly available records all references that identify the movant as having been arrested, prosecuted, or convicted.
<ul style="list-style-type: none"> <li>• Prosecutor</li> <li>• Any relevant law enforcement agency</li> <li>• Any pretrial, corrections, or community supervision agency</li> </ul>	File a certification with the Court within 90 days that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or convicted have been removed from its publicly available records.
Clerk	Remove or eliminate all publicly available Court records that identify the movant as having been arrested, prosecuted, or convicted.

2) **What if the case involves co-defendants?**

a. If the order was granted under D.C. Code Ann. § 16-802 (actual innocence):

- i. The Court may order that only the records or portions relating solely to the movant be sealed.
- ii. The Court shall order that the movant’s name be redacted to the extent practicable from the records that are not sealed.
- iii. However, the court need not order the redaction of references to the movant that appear in a transcript of court proceedings involving the co-defendants.
- iv. After references to the movant have been redacted, the records relating to the co-defendants will be returned to the prosecutor or the clerk.

b. If the order was granted under D.C. Code Ann. § 16-803:

- i. The Court **may order** that only those records, or portions thereof, relating solely to the movant be redacted.
- ii. The Court **need not order** the redaction of references to the movant that appear in a transcript of court proceedings involving co-defendants.

3) **Where will the records remain?**

- a. If the order was granted under D.C. Code Ann. § 16-802 (actual innocence):
- i. The movant's name will NOT be redacted from any published opinion of the trial or appellate courts that refer to the movant.
  - ii. The prosecutor and law enforcement agencies will be expressly allowed to maintain a publically available record so long as it is not retrievable by the identification of the movant.
  - iii. The clerk shall expressly be allowed to maintain a record so long as the record is not retrievable by the identification of the movant.
- b. If the order was granted under D.C. Code Ann. § 16-803:
- i. The Court shall NOT order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.
  - ii. The prosecutor's office and agencies shall be entitled to retain any and all records relating to the movant's arrest and conviction in a non-public file.
  - iii. The Clerk shall be entitled to retain any and all records relating to the movant's arrest, related court proceedings, or conviction in a non-public file.

**Note:** If the movant files a motion to seal an arrest that is NOT in the Court database or an arrest and related court proceedings that are NOT in a publicly available database, the motion to seal and responsive pleadings shall not be available publicly. D.C. Code Ann. § 16-804(e).

4) **Who can access sealed records and for what purposes? (D.C. Code Ann. § 16-806)**

**a. If the order was granted under D.C. Code Ann. § 16-802 (actual innocence):**

Records can be opened on order of the Court showing compelling need.  
Records are also available to the movant and an authorized representative.

**b. If the order was granted under D.C. Code Ann. § 16-803, D.C. Code Ann. § 16-803.01, or D.C. Code Ann. § 16-803.02, records retained in a nonpublic file shall be available to:**

- To the **movant or authorized representative**
- **Any court, prosecutor, or law enforcement agency for:**  
The investigation or prosecution of any offense;  
The determination of whether a person is eligible to have an arrest or conviction sealed or expunged;

The determination of conditions of release for a subsequent arrest;  
The determination of whether a person has committed a second or subsequent offense for charging and sentencing purposes;  
Determining an appropriate sentence if the person is subsequently convicted of another crime; and  
Employment decisions

- For use in **civil litigation** relating to the arrest or conviction
- Upon **order of the Court** for good cause shown
- To any **licensing agency, any licensed school, day care center, before or after school facility or other education or child protection agency or facility, and any government employer or nominating or tenure commission** for any lawful purpose,<sup>9</sup> including:
  - The determination of whether a person is eligible to be licensed in a particular trade or profession; and
  - Employment decisions

5) **How will the Clerk and any other agency reply in response to inquiries from the public concerning the existence of records that have been sealed?**

- a. Unless otherwise ordered by the Court, the Clerk and any other agency shall reply that no records are available. D.C. Code Ann. § 16-803(L)(5).

6) **If the motion to seal is granted, does the movant need to disclose the arrest, charge, trial or conviction that has been sealed?**

- a. No, under most circumstances. The movant shall not be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement if they do not disclose their arrest, charge, trial or conviction. D.C. Code Ann. § 16-803(m).
- b. However, the movant must still disclose the sealed arrest or conviction in response to any direct question asked in connection with **jury service** or in response to any direct question contained in any questionnaire or application for a position with any court, any federal, state or local prosecutor, any law enforcement agency, any licensing agency with respect to an offense that may disqualify the movant from obtaining that license, any licensed school, day care center, before or after school facility or other educational or child protection agency or facility, and any government employer or nominating or tenure commission with respect to employment of a judicial or quasi-judicial officer or employment at a senior-level, executive-grade government position.

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<sup>9</sup> This category does not apply to records sealed under D.C. Code Ann. § 16-803.01 or D.C. Code Ann. § 16-803.02.

## **Appendix B**

## Statutory Cross-References for Definitions of Trafficking

- With respect to **forced labor**, D.C. Code Section 22-1832 provides that:
  - (a) It is unlawful for an individual or a business knowingly to use coercion to cause a person to provide labor or services.
  - (b) It is unlawful for an individual or a business knowingly to place or keep any person in debt bondage.
    - “Business” is defined in Section 22-1831(2) as “any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock, trust, and any legal entity through which business is conducted.”
    - “Labor” is defined in Section 22-1831(6) as “work that has economic or financial value.”
    - “Services” is defined in Section 22-1831(8) as “legal or illegal duties or work done for another, whether or not compensated.”
    - “Debt Bondage” is defined in Section 22-1831(5) as “the status or condition of a person who provides labor, services, or commercial sex acts, for a real or alleged debt, where:
      - (A) The value of the labor, services, or commercial sex acts, as reasonably assessed, is not applied toward the liquidation of the debt;
      - (B) The length and nature of the labor, services, or commercial sex acts are not respectively limited and defined; or
      - (C) The amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.”
    - “Commercial sex act” is defined in Section 22-1831(4) as “any sexual act or sexual contact on account of which or for which anything of value is given to, promised to, or received by any person. The term “commercial sex act” includes a violation of § 22-2701, § 22-2704, §§ 22-2705 to 22-2712, §§ 22-2713 to 22-2720, and § 22-2722.”
      - Per Section 22-1831(9), “Sexual act” shall have the same meaning as provided in § 22-3001(8), where it is defined as “(A) The penetration, however slight, of the anus or vulva of another by a penis; (B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. (D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph.”
      - Per Section 22-1831(10) “Sexual contact” shall have the same meaning as provided in § 22-3001(9), where it is defined as “the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of

any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.”

- With respect to **trafficking in labor or commercial sex acts**, D.C. Code Section 22-1833 provides that: “It is unlawful for an individual or a business to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person, knowing, or in reckless disregard of the fact that:
  - (1) Coercion will be used or is being used to cause the person to provide labor or services or to engage in a commercial sex act; or
  - (2) The person is being placed or will be placed or kept in debt bondage.”
    - “Coercion” is defined in Section 22-1831(3) as “any one of, or a combination of, the following:
      - (A) Force, threats of force, physical restraint, or threats of physical restraint;
      - (B) Serious harm or threats of serious harm;
      - (C) The abuse or threatened abuse of law or legal process;
      - (D) Fraud or deception;
      - (E) Any scheme, plan, or pattern intended to cause a person to believe that if that person did not perform labor or services, that person or another person would suffer serious harm or physical restraint;
      - (F) Facilitating or controlling a person’s access to an addictive or controlled substance or restricting a person’s access to prescription medication; or
      - (G) Knowingly participating in conduct with the intent to cause a person to believe that he or she is the property of a person or business and that would cause a reasonable person in that person’s circumstances to believe that he or she is the property of a person or business.”
        - Per Section 22-1831(1), “Abuse or threatened abuse of law or legal process” is “the use or threatened use of law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, to exert pressure on another person to cause that person to take some action or refrain from taking some action.”
        - Per Section 22-1831(7), “Serious harm” is “any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform labor, services, or commercial sex acts to avoid incurring that harm.”

- With respect to **sex trafficking of children**, D.C. Code Section 22-1834 provides that:

(a) It is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.

(b) In a prosecution under subsection (a) of this section in which the defendant had a reasonable opportunity to observe the person recruited, enticed, harbored, transported, provided, obtained, or maintained, the government need not prove that the defendant knew that the person had not attained the age of 18 years.

## **Appendix C**

**CASE BRIEF**  
**Christine Greene**

*Nelson v. Colorado, 581 U.S. \_\_\_\_\_, 137 (2017)*

**ISSUE:** Whether the State of Colorado’s statute requiring defendants whose convictions had been reversed or vacated--with no prospect of re-prosecution--to prove their innocence by clear and convincing evidence in order to obtain the refund of costs, fees and restitution paid pursuant to the invalid conviction violates the Fourteenth Amendment’s guarantee of due process.

**RULE:** The presumption of innocence is restored once a conviction is erased. Accordingly, states may not retain money collected pursuant to subsequently overturned convictions.

**STATEMENT OF FACTS:** A Colorado jury convicted Petitioner Nelson and Petitioner Madden of three misdemeanors and two felonies all of which stemmed from allegations that she sexually abused her four children. The trial court sentenced Nelson to a 20 years to life prison term and ordered her to pay \$8,192.50 in court costs, fees and restitution. Nelson’s conviction was reversed on appeal and she was acquitted of all charges on retrial.

In a separate case, a Colorado jury convicted Petitioner Madden of sexual assault and attempting to patronize a sex trafficked child. The trial court sentenced Madden to an indeterminate prison sentence and ordered him to pay \$4,413.00 in costs, fees and restitution. One of Madden’s charges was reversed on direct review and the other was vacated on post-conviction review. The state did not appeal or retry the case.

The Colorado Department of Corrections withheld \$702.10 from Nelson’s inmate account between her conviction and acquittal. Madden paid the State \$1,977.75 after his conviction. In both cases, the money paid was allocated to fees, costs and restitution.

Once their convictions were invalidated, Nelson and Madden sought return of fees, costs and restitution paid. The trial court denied Nelson’s motion. In Madden’s case, the post-conviction court permitted a refund of costs and fees only. The same Colorado Court of Appeals panel heard Nelson’s and Madden’s cases and held that both were entitled to seek refund of all monies paid. However, the Colorado Supreme Court reversed that decision holding that no due process issue existed under the Colorado Compensation for Certain Exonerated Persons statute (“Exoneration Act”). The parties appealed and the U.S. Supreme Court granted certiorari.

**APPLICATION:** Both cases are governed by *Matthews v. Eldridge, 424 U.S.319,96 S. Ct. 893, 47 L.Ed.2d 18 (1976)*. Under the *Matthews* balancing test a court must evaluate; 1) the private interest involved; 2) the risk of erroneous deprivation of that interest and 3) the governmental interest at stake.

- 1) Nelson and Madden had an interest in being refunded the money that they’d paid to the State of Colorado. Once their convictions were invalidated, the presumption of innocence was restored. A state may not retain funds solely on the grounds of invalidated convictions.
- 2) The Exoneration Act posed a risk of erroneous deprivation of a defendant’s private interest.
- 3) The Court held that the Exoneration Act violates due process as: 1) Nelson and Madden’s interest in recouping their funds was high; 2) the risk of erroneous deprivation under the Act was unacceptable; and 3) the State of Colorado had no interest in withholding monies paid by Nelson and Madden.

**CONCLUSION:**

Colorado’s Exoneration Act, which requires that individuals prove actual innocence by clear and convincing evidence before they can get a refund for fees, costs and restitution paid for subsequently overturned convictions, violates the Due Process Clause of the Fourteenth Amendment.