



Criminal Record Relief *for* Trafficking Survivors

UPDATING GRADES TO REFLECT IMPROVEMENTS SINCE 2019





Polaris would like to thank **all the survivors who shared their frustrating, painful, and unjust experiences to help us bring these laws to life. Some of their stories and quotes are reflected here. Many are not.** The quotes from survivors in this report are to detail and emphasize in survivors' own words the challenges and difficulties they face in getting criminal record relief as well as how necessary this type of assistance can be to their ability to rebuild their lives. These quotes come from focus groups and individual interviews with Polaris as well as reports and communication with other non profit organizations that work with trafficking survivors on criminal record relief.

Special thanks to **Kia Dupclay** (Program Director for Restoration Diversion Services INC), **Keyana Marshall**, and **Jessica Kauffman**, survivor leaders, for their expertise and assistance on this project. We remain grateful to **Beth Jacobs**, survivor advocate/leader whose groundbreaking research helped us to understand the depth of the problem. Additionally, we would like to thank Kate Mogulescu and Jessica Emerson for their continuing leadership and work on providing criminal record relief to trafficking survivors.



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Introduction

Jessica was 17 when her trafficker — the man she would have called her boyfriend — turned her out to sell sex and support him. She was traded to other pimps, moved from state to state, and racked up a string of prostitution-related misdemeanors and DUIs as a result of her trafficking. Today, Jessica is raising her family in Idaho and working to clear these charges from her record so she can rent a home for them. She is still in transitional housing with her family because with her record, many landlords won't rent to her. Jessica, like many trafficking survivors, is caught in an ironic loop. She needs money — a lot of it — to cover the cost of clearing her record in multiple states. Yet the fact that she has a record makes it difficult or impossible for her to get a job that would allow her to earn that money. Already she has paid \$2,500 to clear fines and pay for legal help for charges in California, and she can't do anything about charges in Iowa until she pays off \$700 in fines. These fines are the result of convictions that logically never should have happened, since Jessica was a trafficking victim, under the control of someone else.

Jessica's situation is just a single example of the illogical, frustrating, retraumatizing, and expensive process many survivors of human trafficking endure to get their criminal records cleared so they can move on from their exploitation. Most states have some kind of statute recognizing that survivors of sex and labor trafficking should not be held criminally responsible for crimes they commit while they are under the control of a trafficker. Many of these statutes, however, could still use improvement. What's more, there are still far too many states in which there is no trafficking-specific pathway to criminal record relief.

In March 2019, Polaris released [a report grading all 50 states and D.C. on the effectiveness and completeness of these laws](#). Each state report card included detailed information about ways to improve the current law — presuming there was one. This report updates the report cards to reflect the new laws, both improvement and regression, enacted since the original publication. To the extent feasible, the updated scores reflect use of the same rubric as their predecessors. In some cases this is impossible and noted accordingly.

“I've had my record expunged, which is great. It's awesome, but it took a lot of years, it took having to rehash my trauma. All of that other stuff I don't need.”



Stock photo. Posed by model.

Many states took up the challenge and made a great deal of progress to expand criminal record relief for survivors of sex and labor trafficking. However, a great deal of work remains to be done to ensure survivors have a realistic opportunity to legally remove the record of the worst period of their lives.

This is a priority for the survivor community. From April to July 2022, Polaris conducted online and phone surveys with 457 sex and labor trafficking survivors as part of the National Survivor Study. Sixty-two percent of survivors reported being cited, detained, or arrested by law enforcement. Most of those survivors arrested (80 percent) were arrested, detained, or cited during their



trafficking situation. Of those arrested, 71 percent had criminal records that resulted from the original citation, detention, or arrest. This led to a majority of survivors who had a criminal record (90 percent) reporting that all or at least some of their criminal record was related to their trafficking victimization. Seventy-seven percent of respondents with a criminal record reported needing assistance removing or clearing their criminal records at some time after their exit from their trafficking situation.

An earlier, survivor-led National Survivor Network (NSN) study [shows that the vast majority of human trafficking survivors have some kind of criminal record](#) as a result of their trafficking experience.¹ These unjust records make it difficult for survivors to rent apartments, get jobs, and apply for certain kinds of scholarships and government assistance. They can even affect a parent’s ability to maintain custody of their children or coach their kid’s soccer teams.

“When you have that going against you, that can stop you in your tracks from achieving anything.”

Notably, there is still no federal pathway to criminal records relief for trafficking survivors, although efforts are being made in both chambers of Congress to change that.

Polaris and our survivor partners are gratified at the improvements made since the original report and excited to work with partners to move additional change forward.

Major Changes and Updates

Top 10 States 2019	→	Top 10 States 2022
1 Nebraska (81)		1 New York (99) ▲ 9
2 Wyoming (78)		2 Nebraska (81) ▼ 1
3 Florida (72)		3 Georgia (80) ▲ 39
4 Idaho (69)		4 Louisiana (79) ▲ 38
5 D.C. (68)		5 Wyoming (78) ▼ 3
6 California (67)		6 Florida (75) ▼ 3
7 New Mexico (67)		7 Connecticut (73) ▲ 20
8 Alabama (63)		8 California (71) ▼ 2
9 Massachusetts (63)		9 Idaho (69) ▼ 5
10 New York (63)		10 D.C. (68) ▼ 5



At the time of the first report in 2019, most states received a failing grade. Since then, 17 states responded to the call for better statutes that are more inclusive and easier to access, while two states actually dropped to lower scores, reversing their progress. The range of improvements is broad, from states that made significant changes or even enacted brand-new legislation to those that made more incremental changes. The grading has been updated in our report cards for each of these 19 states and can be found on our [website](#) with significant changes highlighted.

TABLE OF CHANGES IN STATES' LAWS FROM 2019 TO 2022

State	Old Grade	New Grade	Change
Georgia	0	80	▲ +80
Louisiana	0	79	▲ +79
Virginia	0	49	▲ +49
Tennessee	0	44	▲ +44
New York	63	99	▲ +36
Connecticut	45	73	▲ +28
Maryland	26	41	▲ +15
Nevada	49	63	▲ +14
Colorado	50	62	▲ +12
North Carolina	49	57	▲ +8
Delaware	44	52	▲ +8
Washington	46	54	▲ +8
California	67	71	▲ +4
Florida	72	75	▲ +3
New Hampshire	44	0	▼ -44
Michigan	41	38	▼ -3
South Dakota	0	0	-No change*
Hawaii	35	N/A	-No change**
Texas	33	33	-No change***

*South Dakota went from having no law for criminal record relief for trafficking survivors to having a statute, but as it only applies to minors, it remains a zero in our grading.

**Hawaii enacted automatic expungement for prostitution convictions, which differs from the other legislation on specific criminal record relief for trafficking survivors and cannot be graded using our rubric. For more information about this legislation, read [here](#).

***Texas enacted new legislation, but the changes were not made on the variables graded in our rubric, and therefore their grade stayed the same.



States with Significant Improvements

- **New York** became the first state to enact a specific statute on criminal record relief for trafficking survivors in 2010. In 2021, the law was revisited, and changes were made, such as adding confidentiality provisions, expanding the offenses covered, and removing any time limitations before survivors can apply for relief. New York's new statute received the highest grade at 99 points and provides relief for sex and labor trafficking survivors, as well as survivors trafficked as minors and adults, while ensuring the process is as easy, efficient, and safe as possible.
- In 2019, **Georgia** received a zero because the criminal record relief statute for trafficking survivors only applied to survivors who were minors at the time of arrest or conviction. Georgia's new legislation provides relief to more survivors and is expansive in what offenses are covered. The new statute also includes the elimination of fees previously required to apply for record relief. Notably, Georgia is the first state to include a provision returning already paid fees and fines that were part of the survivor's conviction once the conviction is vacated.
- In May 2022, **Louisiana** passed legislation that applies to more survivors in the state — not just minors — and does not restrict offenses covered. This legislation also eliminates fees for trafficking survivors to apply for criminal record relief and is one of the first states to include a reporting mechanism through which district attorneys are required to submit information on how many survivors are applying for relief and the outcomes (acceptances and denials) of those requests.
- In 2019, **Virginia** had no criminal record relief for trafficking survivors at all, while **Tennessee** had relief only for trafficking survivors who were arrested as minors. Newly enacted statutes for both states are still limited in the offenses covered and lack some of the other recommended provisions, but their new laws are significant steps forward and include some survivor-centered provisions. Notably, the Virginia law mandates that once a survivor's conviction is vacated, they can have fees or fines they paid as part of their conviction returned to them — one of the first statutes in the country to do so.



Expanding Offenses Covered Led to Minor Changes

Expanding eligible offenses is extremely important because in many states, only crimes related to prostitution were eligible. This left out labor trafficking survivors, many of whom are also forced to commit crimes, such as fraud and having false documents. It also belies the reality that sex trafficking survivors may have non-sex-related crimes on their records as a result of their trafficking, such as theft or drug possession. Several states made minor changes to expand their offenses covered from only sex related or prostitution offenses or only misdemeanor offenses to include a wider variety of offenses covered. These states include **North Carolina**, **Nevada**, **Connecticut**, **Colorado**, and **Washington**.



Minor Changes to Correct Specific Statute Issues

- **Florida** eliminated a restriction that survivors could only apply for criminal record relief for one conviction at a time.
- **California** removed a restriction in which survivors had to wait a "reasonable time" before applying for criminal record relief.
- **Delaware** removed time restrictions, allowing for survivors to apply for criminal record relief at any time.



Decreased Scores

- **New Hampshire** went from scoring a 44, with a statute that applied to trafficking victims regardless of their age when charged, to now scoring a zero. The decrease was the result of a 2019 law that now allows *only* minor trafficking victims to have their records cleared of juvenile delinquency adjudications that resulted from their trafficking. This means that adult trafficking survivors in New Hampshire who used to be eligible for relief no longer have that opportunity.
- **Michigan** also lost points. Although they removed some previous caveats in their law that allowed the court to judge the conduct and behavior of the survivor after their conviction when deciding relief, the new statute also removed any burden of proof. Having a burden of proof — specifically “preponderance of the evidence” — included would be the most clear and helpful to trafficking survivors.



Gaining Momentum

We are encouraged by the progress made in just a few years and by the availability of such strong examples for other states to follow. These innovative, survivor-centered, and meaningful improvements happened in states with leaders who represent the breadth of the political spectrum. There is no one political party that owns the compassion and common sense it takes to see the need for real, accessible ways for trafficking survivors to clear their criminal records. Across the United States, arrests, charges, and convictions for crimes — ranging from prostitution and possession to identity theft and financial crimes — continue to have a profound impact on trafficking survivors’ attempts to obtain future employment and safe and affordable housing.

There are three states (Iowa, Maine, and Alaska) that still have no criminal record relief specific for trafficking survivors, and there is still no federal law, which is necessary to provide survivors the relief they need and deserve. Polaris encourages states to follow the example of the majority of the states highlighted in this update by introducing and passing legislation to improve criminal record relief for survivors of trafficking in their states.

Similarly, Congress must pass legislation to provide criminal record relief for survivors arrested and convicted for federal crimes who currently have no option for relief. Your Senators and Representatives need to hear from you. [Take action](#) by urging your members of Congress to support real, inclusive, trafficking-specific federal criminal record relief for survivors of sex and labor trafficking.

We recognize that there may be pending legislation and other efforts in states that we are not aware of. If you are a survivor, attorney who provides record relief, advocate, legislator, or other elected or non-elected government official, and you believe that your state has enacted improved legislation that we did not consider in our updated grading process or would like further assistance in improving your record relief statute for survivors of trafficking and the overall grade in your state, contact us at policy@polarisproject.org.



Work is Still Needed in Some States

NO RELIEF FOR SURVIVORS

In 2019, six states (Virginia, Alaska, South Dakota, Maine, Iowa, and Minnesota) and the federal government did not have a trafficking-specific criminal record relief process or law.

Since our last report, several states above had made changes to their laws to adapt criminal record relief for trafficking survivors. For example, Minnesota does have a pathway for citizens to have records vacated or expunged under a range of circumstances including trafficking, but the law does not specifically apply to trafficking survivors. In 2019, Virginia passed and now has a law for trafficking survivors. South Dakota did as well; however their statute only applies to minors.

Today, only three states have no criminal record relief statute for trafficking survivors.



HELP FOR MINORS ONLY

In 2019, four states (Georgia, Louisiana, Tennessee and Missouri) had a pathway to criminal record relief for trafficking survivors who were trafficked and committed crimes when they were under the age of 18.

Since the first report, Georgia, Louisiana, and Tennessee's laws have changed to apply to survivors of trafficking regardless of the age they were trafficked. By contrast, New Hampshire made its statute less survivor centered, moving from a more expansive statute that provided relief to both adult and minor trafficking victims to a more restrictive one that only applies to survivors who were arrested when they were minors.

Today, three states have criminal record relief that only applies to minors.





The Burden of a Criminal Record: Why It Matters

“*When you have to put down prostitution on an application for a job or an apartment, there’s so much shame in that.*”

The first time trafficking survivors come into contact with law enforcement officers is often as an offender, not as a victim. Sex trafficking victims are commonly arrested for prostitution or for other crimes, such as possession of weapons, drugs, or identity theft — all of which most likely have been orchestrated in some way by their trafficker. Labor traffickers may force their victims to manufacture or sell drugs or to move drugs from place to place. Labor trafficking victims can also be arrested for possession of false identification documents, financial crimes, or minor crimes like trespassing. Children who are trafficked for sex and/or labor are often charged with status offenses like truancy and running away.

A criminal record has a profound impact on the ability of any individual to obtain future gainful employment and find affordable and safe housing. Employers and landlords often run background checks. This can result in the automatic elimination of individuals who have a criminal history from the applicant pool, while other employers and landlords who have the discretion to hire or house those with criminal records do not give the applicant the opportunity to provide information about the circumstances surrounding their arrests.

“*There’s so many needs that you can’t get when you have a criminal record. It makes it more difficult to get your employment, it makes it more difficult to get housing, it makes it more difficult to get services. It affects everything.*”

Additionally, individuals with criminal records who want to begin or continue their education at a college, university, or even a vocational school may not be accepted due to their criminal record. Those who are admitted can struggle with the financial burden of paying for their education because they may be disqualified from financial aid or private loans.

Of the 174 survivors in Polaris’s National Survivor Study (NSS) who reported having a criminal record, 69 percent reported that it prevented them from getting or keeping a job, 63 percent reported their record affected their ability to receive education, training, or a professional license, 59 percent said their record affected their ability to get good, safe housing, and 35 percent of those with a criminal record who also had children reported their record affected their custody of their children.

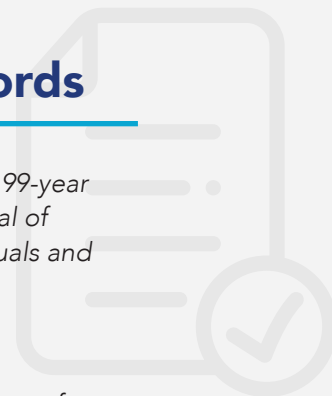
“*[I] was required in Washington to register as a sex offender... as a result my children were taken away, and I lost these children for life.*”

“*With this program I’m part of, if you’re a victim and you have a record, they don’t give you the program because you have something on your record. Even if you were the victim. I feel that it’s very important that they overlook your record when it comes to you being the victim.*”

Criminal records can impact an individual’s access to crucial governmental benefits. For example, some survivors in the NSN survey reported difficulties applying for food stamps because of their criminal records.² For foreign national survivors, the consequences may be more dire, as their ability to remain and/or work in the United States depends greatly on their criminal record.



Quick Facts on the Impact of Criminal Records



EMPLOYMENT:

- As of 2018, 80 percent of employers run background checks.³
- A criminal record reduces job callbacks by approximately 50 percent and significantly limits earning potential.⁴
- As of 2018, there are more than 27,000 licensing/occupational laws that restrict the employment of persons with criminal convictions. Of those, over 12,000 disqualify any individual with any type of felony, and over 6,000 disqualify those with misdemeanors. Roughly 19,000 exclusions are permanent, and over 11,000 are mandatory.⁵
- Recognizing these patterns, by 2021, 37 states and over 150 cities had adopted “Ban the Box” laws or policies, which eliminate criminal history questions from initial job applications.⁶

MEDICAL CARE:

- Research has shown that those with criminal convictions are discriminated against by healthcare providers.⁷

IMMIGRATION RELIEF:

- Criminal convictions or arrests can lead to removal or deportation.
- If a survivor is applying for a green card or work visa, a criminal record of any kind can mean a denial.⁸

FAMILY LAW:

- Criminal convictions commonly factor into “best interest” standards for purposes of child custody and visitation.⁹

HOUSING:

- Public Housing Authorities, owners of federally assisted public housing, and private landlords have broad discretion, when anti-discrimination laws are not otherwise present, to set their own screening of prospective tenants.¹⁰

This can mean policies such as a 99-year “lookback,” no appeals for refusal of tenancy, and flat bans on individuals and their family members.¹¹

EDUCATION:

- Between 60 percent and 80 percent of private institutions and 55 percent of public institutions require undergraduate applicants to answer criminal history questions as part of the admissions process.
- Forty percent of community colleges also report collecting this information.¹²

STUDENT LOANS:

- Eligibility for federal aid may be limited for individuals convicted of certain offenses.
- Thousands of students each year choose not to apply or are denied admission due to the mistaken belief that any drug conviction is a disqualifier for federal financial aid.¹³

VOTING:

- In 16 states, individuals with felony convictions lose their voting rights, not only during their incarceration, but also for some time after their release.¹⁴
- In 11 states, they lose their voting rights indefinitely for some felony crimes or require a pardon from the governor to have their voting rights restored.¹⁵

TRAVEL:

- Some countries restrict individuals with criminal records from entering their country, making it stressful and embarrassing for survivors when traveling.¹⁶
- Oftentimes, these situations result in survivors being required to explain their past to strangers who have little understanding of trafficking, which can be extremely retraumatizing.

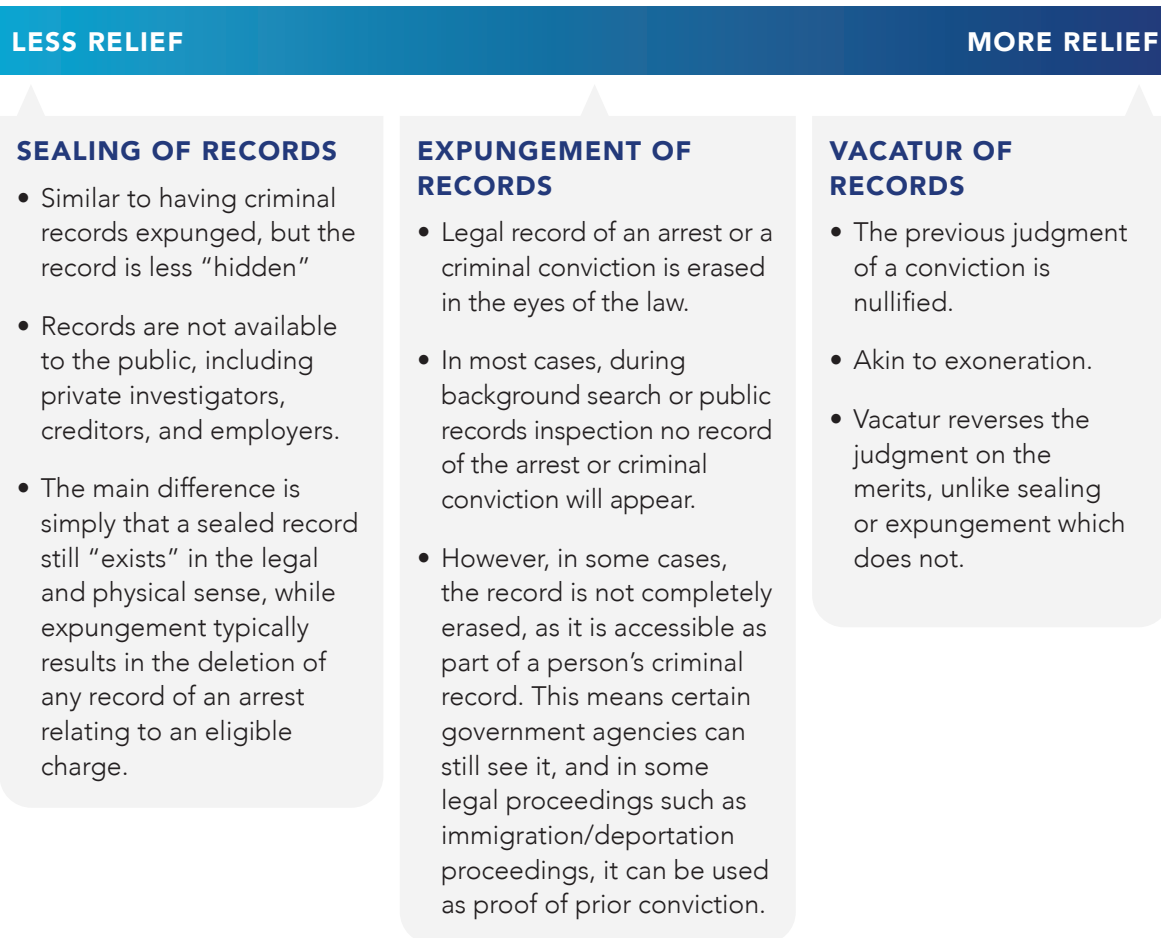


Varieties of Criminal Record Relief

Legislation varies widely as to the type of legal remedies available to survivors with criminal records. Some laws offer the sealing of records, others the expungement of records, and others full vacatur of records. Though admittedly clunky, the term “criminal record relief statutes” represents the full range of statutes that allow for some form of setting aside an arrest or conviction or prohibiting disclosure of its existence. These laws can apply to arrest and court records, as well as to convictions, meaning outcomes of a criminal prosecution that involve a finding or admission of guilt.

Conviction records are maintained by courts in court databases and communicated by state agencies to federal/national repositories. Arrest records are generated by the arresting law enforcement agencies and can exist separately and apart from the outcome of the court proceeding. Both arrest and court records can and do follow people after their court case is concluded. In most states, there are separate processes that apply to the clearing of records depending on the outcome of the case.

Criminal Record Relief Statutes





In some cases, survivors must seek relief using criminal record relief statutes or procedures that are not specific to human trafficking victims, either because the state does not have a trafficking-specific law or because the arrests and convictions in question are not covered by the trafficking-specific statute. Most of these general statutes for criminal record relief only offer expungement and/or sealing — rather than full vacatur — of records.

“[The expungement process was] not really set up to help victims. There are protocols, things you have to do that don’t make a lot of sense for trafficking victims, and there is no support or anything to help you heal from the trauma.”

The waiting period for general relief statutes can be exceedingly long. For example, before the District of Columbia passed its trafficking-specific record relief statute in February 2019,¹⁷ trafficking survivors had to apply to clear their records through the District’s general sealing statute, which contains numerous eligibility restrictions and only “hides” the conviction from public view. The waiting period to access this form of relief was also problematic for survivors, with a *minimum* waiting period of eight years. The waiting period could increase by five years if the survivor was also convicted of an ineligible or subsequent offense and by 10 years if the subsequent conviction was a felony. This means that trafficking survivors could be prevented from relief for the better part of *two decades* before they were deemed eligible.

“After the conviction was on my record, all doors seemed to be closed for me. I lived in a prison. People might say it was in my mind, but it really wasn’t. It was reality.”



Stock photo. Posed by model.



History of Criminal Record Relief Statutes for Survivors

State Level

It wasn't until 2010, a full decade after the federal Trafficking Victims Protection Act (TVPA) went into effect, that criminal record relief for trafficking survivors began to take form. New York was the first state to enact such legislation.¹⁸ The New York law allowed survivors of trafficking to vacate prostitution and related convictions that were a result of having been trafficked.¹⁹ The legislature recognized that "[e]ven after [survivors] escape from sex trafficking, the[ir] criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve."²⁰

“It's a horrible, horrible thing to live with, a secret that's over your head all the time. You can't really tell anybody why you aren't applying for this job or going for that opportunity. I basically ran from this for the next 20 years.”

Following New York's lead, other states began enacting criminal record relief legislation for trafficking survivors. Today, **all but three remaining states (Alaska, Iowa, and Maine) and the federal government offer some form of criminal record relief specific for survivors of trafficking.** Some states (South Dakota, Missouri, and New Hampshire) restrict relief to minor victims. While these laws are a good start, the passage of a criminal record relief law alone does not mean a state's work is complete. Many of these laws need to be strengthened and improved.

The Need for Data on the Use of Criminal Record Relief Statutes by Trafficking Survivors



Currently, there are no public reporting mechanisms available in states to track how criminal record relief statutes are being used. As states do not collect this data, it has been up to legal advocates and anti-trafficking organizations to keep track of how many survivors have applied for and been granted criminal record relief. In New York, a collaboration among the [Exploitation Intervention Project at The Legal Aid Society of New York](#), [Brooklyn Law School's Criminal Defense & Advocacy Clinic](#), and a wide range of private pro bono partners estimated that from 2010 to 2019, more than 1,800 convictions had been vacated for 109 individual trafficking survivors in the state. A reporting mechanism built into state laws would be a valuable addition that would make it easier to determine how those laws are working — and not working — and what is needed to change the laws and expand access. Louisiana is the first to add such language to its statute (included below). Though not explicitly included in the law, we recommend that reports tracking use of criminal record relief for trafficking survivors are made public. The newly introduced [legislation](#) in the House of Representatives also mandates that each U.S. Attorney submit information to the U.S. Attorney General one year after the enactment of the legislation, to be used by the Government Accountability Office in a report on the effectiveness of the legislation for Congress after a period of three years.

LOUISIANA STATUTE:

The Louisiana District Attorneys Association shall annually submit a report to the legislature, no later than February first, that includes the number of applications for, denials of, and approvals of the certification provided for by this Subsection for the prior year.



Federal Level

While trafficking-specific criminal record relief legislation has been introduced in previous sessions of Congress, a federal law has not yet been passed that includes criminal record relief for trafficking survivors. The [Trafficking Survivors Relief Act \(H.R. 8672\)](#), the latest proposed legislation introduced in the U.S. House of Representatives in August 2022 would apply to trafficking survivors with federal nonviolent convictions not involving a child victim.

There are positive measures in this proposal and we support its passage. If enacted, this law would provide eligible survivors the opportunity for full vacatur — the highest level of relief that suggests the person never should have been convicted in the first place. This is particularly important for immigrant survivors, as it nullifies any argument for deporting or denying benefits to undocumented survivors as a consequence of their conviction or arrest for the vacated offense.

Additional components of the proposed bill include a reporting mechanism to track motions for record relief filed under this law and whether or not they were granted, so recommendations can be made for improving federal relief for survivors. The proposal also includes provisions allowing for affirmative defense during initial court proceedings, which would permit survivors to show proof that they are victims and that the charges they are facing are due to their victimization.

However, as proposed, the introduced legislation excludes many survivors who need and deserve relief because the charges it covers drastically differ from the charges survivors are frequently charged with on the federal level. Moving forward, Congress should work with survivors and anti-trafficking groups to draft additional provisions that provide appropriate relief for all trafficking survivors charged with federal crimes.



Stock photo. Posed by model.

When Laws Fail Survivors

Keyana Marshall is a trafficking survivor. Her story is in many ways typical of the thousands of vulnerable young people who are targeted, groomed, manipulated, addicted, dehumanized, and then sold while still not old enough to drive or vote. But hers has an additional layer of horror. In the eyes of the law, Keyana is considered a trafficker herself. She served time in federal prison for conspiracy charges she obtained while being abused in pimp-controlled exploitation.

Keyana and her husband recently moved to Ohio so she could work with a program supporting other survivors of sex trafficking. She is also working on developing her own survivor-led organization called "We Survived." This organization will support survivors and give them resources to navigate in many different areas of life. Keyana wants to support survivors' journeys in academia, entrepreneurship, and community re-entry.

In any state Keyana lives in or visits, she is required to register as a sex offender. She feels this has stifled her ability to flourish in the community and limits employment opportunities. "I have been threatened, denied employment, and stigmatized on this sex offender registry. **I was exploited, and I couldn't choose who my trafficker exploited.** I was charged with conspiracy to commit sex trafficking of children. This forced me onto a sex offender registry three years after I was released from federal custody. I didn't do anything wrong. My abuser forced me to post ads online, pay the phone bills, and get his cars fixed. Those actions were enough to land me in prison. I am still facing many hardships, and **I'm still being punished for being exploited,**" Keyana explains in frustration.



Methodology for State Report Cards

Grades and rankings were determined by comparing existing applicable statutes against an ideal statute, as defined by Polaris and lawyers with expertise in criminal record relief with trafficking survivors. We are grateful for their assistance and guidance. We developed 11 central categories along with a scoring system to reflect the relative importance of each category. **This project looks solely at criminal record relief statutes specifically intended for victims of human trafficking arrested or prosecuted as adults.**

Additionally, scoring reflects the strong conviction that the laws must be as clear and complete as possible. For example, a state that has strong confidentiality language in another section of law but does not mention confidentiality protections in the trafficking-specific statute will not get points for confidentiality in this analysis. These report cards encourage laws that provide guidance to both survivors and attorneys who might not be as familiar with criminal record practice.

There are a maximum of 100 points in the score. Points that can be earned for each category are indicated in the point values box. A scale, detailed below, was applied to determine letter grades. States with zeros — that is, states with no law in place — did not receive letter grades.

Several states had innovative statutes that, while not specific to trafficking survivors, could be beneficial to both trafficking survivors and other vulnerable individuals in the states. For those states, we gave them a N/A, as we could not grade them with our rubric but wanted to acknowledge the progress and ingenuity. The report cards for these states (Minnesota and Hawaii) have an explanation of what their statutes cover and provide for trafficking survivors.

It is also important to acknowledge that grades and rankings reflect only the statutes as written, not implemented. This is one reason why elements like judicial discretion and publicly accessible data are so critical, so survivors, advocates, lawyers, and policymakers can assess effectiveness and impact and strengthen both the laws and how they are used moving forward.

GRADING SCALE

90-100 points	A
80-89 points	B
70-79 points	C
60-69 points	D
1-59 points	F

POINT VALUES:

	Range of Relief	10
	Arrests and Adjudications Relief	10
	Offenses Covered	30
	Judicial Discretion	10
	Nexus to Trafficking	10
	Time Limits and Wait Times	8
	Hearing Requirement	5
	Burden of Proof	5
	Official Documentation	5
	Confidentiality	5
	Additional Restrictive Conditions on Relief	2
TOTAL		100



Category Descriptions

Range of Relief

“Range of Relief” refers to the type of criminal record relief statutes the state has in place: sealing or expungement vs. vacatur. If a state does not have a trafficking-specific record relief statute on the books at all, then the state received a zero for this and every subsequent category.

Three states have trafficking-specific criminal record relief statutes that apply only to survivors who were minors at the time of their arrests and convictions (Missouri, South Dakota, and New Hampshire). For potential victims reported to the National Human Trafficking Hotline between January 1, 2018, and October 31, 2021, the average age at entry into trafficking was 18 years old.²¹ Therefore, **states which only grant criminal record relief to individuals victimized as minors leave a gaping hole in the provision of assistance to survivors in their state.** These states received a zero for this and all subsequent categories.

While vacatur is a strong form of relief, vacatur that is based on **the merits** is the strongest; therefore, states employing this relief earn the most points because it confirms that the **vacatur was due to a substantive defect in the judgment against the victim in the first place.** This is the closest thing to legal recognition that the survivor should not have been convicted at all. It indicates that had the court known all the information that is now available, the survivor would not have been convicted of the offense. Vacatur that does not specifically codify its basis as a substantive defect is still an important form of relief and is preferable to the other options of expungement or sealing of records, but it earns slightly fewer points than vacatur on the merits. For more detail about the differences in the range of criminal record relief, please refer to Figure 1 on page 12 in the report.

Range of Relief



- 0** No statute specific to victims of human trafficking.
- 4** Statute only provides partial relief (e.g. some combination of sealing or expungement).
- 8** Statute provides vacatur of convictions.
- 10** Statute provides vacatur of convictions based on a *substantive defect or on the merits*.

Arrests and Adjudication Relief

In many instances and jurisdictions, even arrests that do not result in a formal adjudication of guilt still appear on an individual’s record when members of the public or law enforcement do a background check. The same holds true for juvenile adjudications and non-prosecuted cases. Unfortunately, most criminal record relief statutes only cover convictions. This leaves far too many survivors with arrest records that can impede their lives and career options.

Arrests and Adjudication Relief



- 0** No statute specific to victims of human trafficking.
- 5** Statute applies only to convictions (formal adjudications of guilt).
- 10** Statute comprehensively includes arrests, non-prosecuted cases, adjudications, and/or other records that are not exclusive to convictions.

Offenses Covered

It is important that criminal record relief statutes include all types and levels of offenses because trafficking survivors are not all victimized or charged in the same way. The nature of the crime of trafficking is such that survivors can be forced to commit a wide range of offenses such as trespassing, selling or purchasing drugs, or even violence. Yet some statutes only provide



relief for a small subset of offenses, such as prostitution or sex-related crimes. One well-known example is the case of Cyntoia Brown, who was pardoned in 2019 after being convicted in Tennessee at the age of 16 for the murder of a 43-year-old man who purchased her for sex.²² Her 51-year sentence has been commuted, but, like others who committed aggravated offenses like murder or assault, this conviction will stay on her record for life because most states (including Tennessee) do not allow criminal record relief for these types of crimes.

Survivors are frequently arrested for theft offenses when their traffickers specifically compel them to steal. Young victims are often used as bait for violent robberies against “johns” or other individuals perpetrated by traffickers or their associates. Often, survivors are arrested and prosecuted for this role, even when it is minimal and their participation is coerced. Accordingly, in the scoring system, significant weight is given to laws that recognize this phenomenon, including all of its dimensions.

Offenses Covered	
5	Only prostitution- or sex-related crimes are eligible for relief.
8	Only prostitution and specifically enumerated misdemeanor offenses are eligible for relief.
12	All misdemeanor offenses are eligible for relief.
17	All misdemeanor and nonviolent felony offenses are eligible for relief.
23	All misdemeanor offenses, non-violent felonies, and specifically-enumerated violent felony offenses are eligible for relief.
30	All offenses are eligible for relief.



Stock photo. Posed by model.

Hotline Case Spotlight: Labor Trafficking Arrests

Law enforcement identification of human trafficking has improved over the last several years, and many officials can recognize signs of trafficking even while pursuing seemingly unrelated investigations. For example, the National Human Trafficking Hotline received a call from a law enforcement official who identified dozens of labor trafficking victims while conducting a drug raid where foreign national victims were being forced to cultivate marijuana. They were living in squalor, sleeping on bare mattresses on the floor; they had their documentation withheld and were unable to seek help because they did not speak English and had no access to phones. The victims were arrested during the drug raid, and the law enforcement official called not only to identify the victims but also to connect the victims to shelter services once they were released from jail hours later.

Although it is unknown whether these victims ever attempted to get their criminal records cleared, they wouldn't have qualified because the state in which they were arrested does not offer relief for arrests (only convictions) or any non-prostitution- or sex-related crimes. This case highlights the sad reality that labor trafficking victims are far too often overlooked in many state criminal record relief statutes.



Judicial Discretion

“Judicial Discretion” refers to the ability of the court to grant relief over objection when the elements of the statute are satisfied and exercise further discretion on issues not explicitly detailed in the statute. This can be beneficial for survivors because even the most comprehensive legislation is unlikely to cover every survivor’s unique circumstances. With these provisions built into the statute, courts may explicitly take action appropriate to the circumstances — such as granting relief over objections from the original prosecutor. These explicit provisions could also allow judges to consider requests from survivors relating to offenses not covered in the statute, the type of hearing required, if a survivor has to appear in person, and what type of official documentation is required to prove they were a victim of human trafficking.

However, even laws that are explicit in additional actions the judiciary can take risk narrow interpretation. Therefore, although important, these inclusions alone are not a sufficient safeguard in all cases (see the quote below from Polaris’s earlier 2019 report). It allows judges some leeway, but ideally laws would be written clearly and explicitly, and this provision would be used to deal with other collateral issues not enumerated in the law.

“***I am a transgender woman who fled Mexico to come to the United States because I was not able to express myself in a feminine way. I was a victim of human trafficking for many years.... I tried to use New York’s vacatur law to deal with my criminal record that resulted from having been [a victim of trafficking]. A decision on my request to vacate my convictions took many years. In the end, the judge found that I was a victim of trafficking by multiple traffickers and vacated most, but not all, of my convictions, leaving me with a criminal record.... These remaining misdemeanor charges involve theft, disorderly conduct, and drugs. The judge felt that even though all these convictions were tied to my [trafficking experience,] only the prostitution-related convictions could be vacated because of the way the law is written.***”

Nexus to Trafficking

“Nexus to Trafficking” refers to the degree to which a criminal offense is connected to a survivor’s trafficking experience. The most restrictive criminal record relief statutes only allow survivors to access relief if they committed a crime “while under duress.” This is commonly understood to apply only to criminal acts committed in response to an immediate threat of death or serious physical harm. However, human trafficking is not defined merely by the threat or presence of force. Rather, the law recognizes that traffickers regularly use psychological means, such as threats, manipulation, and lies, to control their victims.²³ Many survivors of trafficking are not able to show that they were under duress at the time of their arrest because duress doesn’t align with all manifestations of trafficking. Requiring a survivor to establish duress renders relief unattainable for victims and the law unresponsive to the crime itself.

Another restrictive statute applies to crimes that occur only “as a direct result” of the trafficking, which would presumably limit relief to crimes committed while the survivors were *actively* being trafficked. Both of these more restrictive criminal record relief statutes ignore the reality that

Judicial Discretion



- 0** Statute does not allow any judicial discretion.
- 5** Statute allows the court to grant relief in spite of prosecutor’s objection as long as prosecutors had notice of the request for relief.
- 10** Statute allows the court to grant relief in spite of prosecutor’s objection as long as prosecutors had notice and to “take such additional action as is appropriate in the circumstances.”



survivors commonly engage in criminal activity in the aftermath of their trafficking, either as a way to cope with what has happened to them, such as through drug or alcohol abuse, or because they have no way to meet their survival needs after fleeing their trafficker.

The ideal criminal record relief statute recognizes that the path of a trafficking victim will rarely be perfectly sequential or linear and that the instability that commonly results from having been a victim of trafficking can impact a survivor's options and actions long after they have exited their trafficking situation. However, to account for the lack of uniformity in the expression of this concept from state to state, where a state law fell in between two categories, analysts assigned the more favorable rating.

Time Limits and Wait Times

"Time limits" include restricting the amount of time a survivor has to apply for criminal record relief, similar to the statute of limitations for crimes to be prosecuted. Some states impose "wait times" that require a certain period of time to pass before relief is available. Such time limitations either force survivors to start the cumbersome process of criminal record relief before they have fully healed post-trauma or prolong the time in which they live with the barrier of a criminal record. Both time limitations and wait times are problematic for survivors in need of relief.

The ideal criminal record relief statute would have time limits that are either "reasonable" or no time limits or wait times at all for survivors.

Hearing Requirement

"Hearing Requirement" refers to whether or not the survivor is required to appear in person at hearings related to the criminal record relief process. This can be a significant barrier to survivors seeking relief for a number of reasons including, but not limited to, safety concerns on the part of the survivor. It may also be a financial burden for survivors who now live far away from where the arrest took place. A strong statute allows survivors to waive their right to appear in court or grants them the ability to utilize alternate methods of appearance (e.g., written statement, video, or telephone conference call).

Nexus to Trafficking



- 2 Survivors must prove that offenses were committed "while under duress."
- 4 Survivor must prove that offenses were committed "as a *direct result*" of the trafficking.
- 6 Survivor must prove that offenses were committed "while they were a victim" of trafficking.
- 8 Survivor must prove that offenses were "proximately caused" by the trafficking.
- 10 Survivor must prove that crimes were committed "as a result" of the trafficking.

Time Limitations and Wait Times



- 0 Statute provides an explicit statute of limitations running from the end of the trafficking situation or requires the survivor to wait an explicit amount of time since the last conviction to apply for relief.
- 4 Statute provides leniency regarding time limits (such as allowing survivors to apply in a "reasonable time" after trafficking has ended).
- 8 Statute provides no time limit, restriction, or wait time.

Hearing Requirement



- 0 Hearing required in all instances and survivor must appear
- 1 Hearing required in all instances, but survivor can appear by alternate methods (e.g. telephone, video, written statements)
- 2 Hearing required only if opposition and survivor must appear in person
- 3 Hearing required only if opposition, but survivor can appear by telephone, video, or other alternate methods
- 4 Hearing required only if opposition, but survivor can waive right to be present
- 5 No hearing required



Burden of Proof

“Burden of Proof” refers to the standard that a party seeking to prove a fact in court must meet in order to prevail on their claim. In the case of criminal record relief statutes, this refers to the level of proof that a survivor must provide in order to show that they were a victim of trafficking at the time of the criminal offense at issue and, as a result, are eligible for relief under the law. The ideal statute utilizes a **“preponderance of evidence”** standard, which means that a survivor must prove that it is **more likely than not** that they were a victim of trafficking at the time they were arrested for a criminal offense.

More restrictive statutes require a showing of **“clear and convincing”** evidence, which means that a survivor must prove that it is **highly probable** that their claim is true.²⁴ The least effective statutes are silent as to the burden of proof, which may result in inconsistencies with regard to what is required of a survivor from case to case or within different jurisdictions throughout the same state.

A less restrictive burden of proof is recommended because of the variation that exists with regard to the ability of survivors to provide evidence of their trafficking experience. While some survivors may be able to provide more tangible proof because they have been linked with knowledgeable service providers, have testified in court against their traffickers, or have received certification of their victimization from a governmental agency, the majority of survivors will not be able to do so. It is essential that a state’s criminal record relief statute reflects the reality that the crime of human trafficking is by its very nature covert and stigmatizing, and because of that, the evidence a survivor will be able to offer will vary significantly from case to case.

Burden of Proof



- 0 Statute silent on standard of proof
- 2 Clear and convincing evidence
- 5 Preponderance of the evidence

Official Documentation

In certain states, the ability of a survivor to provide official documentation of their trafficking experience creates a legal presumption that the survivor’s participation in the underlying offense was a result of their trafficking experience. For example, New York’s statute allows for a presumption of eligibility for legal relief if the survivor can provide documentation that federal, state, or local authorities have certified them as a trafficking victim. While official documentation should never be required in order to access relief for the reasons stated above, a strong statute allows for a presumption of eligibility for the relief if the survivor can provide official documentation of their trafficking experience. For survivors who have already been through a certification process or cooperated with law enforcement in an investigation, allowing for the presumption of eligibility avoids the possibility of continued trauma caused by being required to share their experience repeatedly in different contexts. Best practices demand that legislators consider this as states implement their legal framework.

Official Documentation



- 0 Official documentation does not create presumption of eligibility.
- 5 Official documentation creates a presumption of eligibility.



Confidentiality

Criminal record relief statutes should include provisions designed to protect confidentiality throughout the process. For example, the statutes should allow motions to be filed as sealed documents and ensure that documents remain shielded from public disclosure. Failure to protect confidentiality defeats the purpose of these laws and puts some survivors in danger.

Confidentiality

- 0 There is no provision in the statute that protects confidentiality or allows for filing documents under seal.
- 5 There is an express provision in the statute that protects confidentiality or allows for filing documents under seal.

“**Having to appear in court is stressful. Even just submitting a document to the court with the name of my trafficker causes a lot of stress, a lot of anxiety. Record relief documents should just be automatically sealed — without us having to ask — to protect survivors.**”



Stock photo. Posed by model.

As stated previously, the analysts *did not* consider or examine other state legislation or local court rules that would provide a basis or procedure for sealing of petitions or documents submitted for general criminal record relief. This language must have been explicitly included in the trafficking-specific statute in order to earn points.

Additional Restrictive Conditions on Relief

While all previous rubric categories outline some conditions on relief for trafficking survivors, “Additional Restrictive Conditions on Relief” was specifically meant to identify and discourage any additional restrictive conditions, such as excluding survivors with pending charges, those with subsequent arrests or convictions, or those with convictions vacated in other states, from accessing relief. Many survivors may have multiple convictions in several jurisdictions throughout the country, and these conditions can make it almost impossible for these survivors to obtain criminal record relief across the states. The ideal statute places no additional restrictive conditions (other than what is accounted for in other categories of the rubric) on survivors that would preclude them from relief.

Additional Restrictive Conditions on Relief

- 0 Statute places explicit additional restrictive conditions on survivors being able to apply for relief.
- 2 Statute places no explicit additional restrictive conditions on survivors being able to apply for relief.



Additional Recommendations

Enacting new legislation or amending existing laws is the first and most important step toward creating a consistent and fair system that supports survivors of human trafficking as they seek to clear criminal records. But the work of supporting survivors does not end with the passage of a law. There must, for example, be consistent and reasonable implementing regulations, data collection, and financial resources available so that we can learn what works and make additional improvements and corrections along the way.

1 Institute Comprehensive Data Collection Processes

While the anti-trafficking field has made progress on data collection, there is still almost no information available on the utilization of state criminal record relief laws for trafficking survivors. Understanding how many survivors have attempted to utilize the law, how many were successful in doing so, and what kinds of convictions were most likely to be cleared is the first step towards addressing the gaps and barriers that still exist. For more information on this, see the box “The Need for Data on the Use of Criminal Record Relief Statutes by Trafficking Survivors” on page 14.

2 Ensure Funding for Criminal Record Relief Legal Support

Most legal proceedings have a cost attached, and criminal record relief is no exception. One of the most significant costs is legal fees, as the process is often extremely complicated for a non-lawyer to manage. If survivors can't afford to pay for lawyers, they often just give up — or don't even get started — in the process of trying to clear their criminal records. It is important that federal, state and local governments allocate resources to provide legal services for survivors. This can include providing training on criminal record relief, as well as the costs of the legal representation survivors desperately need.

While there are nonprofit organizations and attorneys who volunteer their services, there is nowhere near enough capacity to meet the need. Those who assist with criminal record relief stress that federal, state, and local funds and grants should be directed toward some of the expenses associated with this work so that more attorneys would be available to do it.

In 2018, the Office for Victims of Crime (OVC) at the Department of Justice restricted funding for legal services to represent trafficking victims trying to clear criminal records.²⁵ While this restriction has been lifted, it is important that Congress explicitly protects the ability of grants to be used for criminal record relief for survivors. Language to this effect was included in the federal Trafficking Survivors Relief Act (H.R. 8672) introduced in the U.S. House in August 2022.



Stock photo. Posed by model.

Survivors are Prevented Relief Due to Financial Barriers

Kia was 15 and trying to survive in foster care when she was first trafficked. She grew up in a tough environment and often found herself in physical altercations with others while trying to protect herself. As a result, Kia developed a juvenile record, which expanded to a string of DUI and prostitution-related charges connected to her trafficking situation as an adult. The transient nature of Kia's trafficking situation made it impossible for her to keep up with paperwork and information about the charges she was facing and any upcoming court appearances. Several years after leaving her trafficking situation, Kia often works multiple jobs to support herself but continues to have her wages garnished to repay fees and fines as a result of charges she incurred while in her trafficking situation. The financial burden as a result of her criminal record has made it difficult for Kia to reach out for legal assistance in clearing her record, as most of the attorneys she has encountered have charged for initial consultations or services. Kia's criminal record has hindered her career aspirations by preventing her from pursuing roles where she can use her expertise and experience as a survivor to work directly with at-risk youth and other survivors of trafficking.



3 Remove Any Financial Burden Associated with Obtaining Criminal Record Relief and Return Unjustly Paid Fines and Fees to Survivors

In 2017, the Supreme Court held that it is a violation of due process to retain fines or other surcharges obtained as a result of a criminal conviction that is later vacated or reversed.²⁶ Therefore, trafficking survivors who had to pay a fine or fee based on their conviction (e.g., a \$250 fine for a prostitution charge) should have that money returned to them once their conviction is vacated. Only two states (Georgia and Virginia) have included this type of language in their statutes to date. Many survivors, and even attorneys, may be unaware of this holding. It would be beneficial for every state’s criminal record relief statute to explicitly provide for the return of fines, fees, and surcharges and to lay out a clear mechanism for the refund.

Along similar lines, some states are charging survivors to apply for criminal record relief. In other cases, specific agencies require a fee to actually remove the record once relief is granted. Several states (Georgia, Florida, Colorado, and Louisiana) have included specific language in their statutes that prohibits the charging of fees for trafficking survivors to gain relief. More states should include this explicitly in their laws.

EXAMPLES OF STATUTORY LANGUAGE MANDATING RETURN OF FEES AND FINES

Georgia:

“For any sentence vacated pursuant to this Code section, any fines and fees paid by the defendant under such sentence shall be returned to the defendant in the amount paid by the defendant.”

Virginia:

“If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines, costs, forfeitures, and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the court where the conviction was entered is in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner shall be entitled to a refund of such amount. If the clerk of the court where the conviction was entered is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines, costs, forfeitures, and penalties paid.”

EXAMPLES OF STATUTORY LANGUAGE PREVENTING APPLICATION FEES

Georgia:

“No fee shall be charged to an individual for restricting access to criminal history record information under this paragraph.”
“If such order to vacate is issued, the court shall also issue an order restricting access to criminal history record information for such offense and no fee shall be charged by the Georgia Crime Information Center or any other entity for restricting access to criminal history record information under this paragraph.”

Florida:

“The clerk of court may not charge a filing fee, service charge, copy fee, or any other charge for a petition filed under this section.”

Colorado:

“A defendant moving to have his or her criminal record sealed pursuant to this section is not required to pay a processing fee.”

Louisiana:

“An applicant for the expungement of a record of offense who was a victim of human trafficking, in accordance with R.S. 14:46.2, shall not be required to pay any fees relative to the application for expungement to the clerk of court, the Louisiana Bureau of Criminal Identification and Information, the sheriff, the district attorney, or any other agency.”



4 Design Trauma-Informed Implementing Regulations

“You really need help and support to get through this process. I feel bad for anyone else who goes through what I had to go through to try to get it cleared up. The ultimate goal is you just want to live as normal a life as possible. Then you are hit with restriction after restriction or having to tell people what happened to you over and over again, and you don’t necessarily want to do that. It makes you have to live in the shame, over and over again. There is a sense of freedom from having a choice on whether or not to tell others your life experiences. Now, I finally feel free.”

Even the strongest laws on paper can become the least effective in practice if the implementing regulations — the logistical and procedural steps — are so onerous that survivors ultimately choose not to pursue relief. **Of the 25 percent of NSN survey respondents who were successful in clearing their convictions, most reported that it was a long, painful, confusing, and expensive process.** NSN survivors have reported it was retraumatizing to have to constantly retell their experience, and that while the outcome of getting their record cleared was achieved, they felt that the exhaustive process it took to get there greatly impacted their journey to recovery.²⁷

“They were digging up really traumatic information, trying to determine if I was lying or not. I’m grateful that the state has a process now ... but it’s a horrible process.”



Stock photo. Posed by model.

A logistical concern for survivors is the potential long distance they must travel for hearings or to comply with mundane filing procedures. As many courts found during the COVID-19 pandemic, it is possible for normal court proceedings to happen remotely. Some states have begun allowing for remote electronic methods, such as video, phone, etc., to be used so survivors are able to get relief without having to make costly trips or return to places they may not feel safe. This does not mean that every state has to execute every step exactly the same way but rather that policymakers should work with survivor leaders and legislators to minimize the barriers and potential retraumatization for those seeking relief in their jurisdiction.

“It was excruciating; I felt let down by lawmakers, but there was just nobody to reach out to.”

One way to make the process less traumatizing for survivors is for NGOs and legal aid offices to engage survivor leaders as case managers, peer mentors, and advocates to help guide survivors through the criminal record relief process. This interdisciplinary approach to lawyering is transformative. However, this would require funding commitments to NGOs from federal, state, and local governments. It is also important that lawyers and service providers working with foreign nationals for criminal record relief collaborate and consult with immigration specialists due to unique risks that exist for foreign nationals with criminal records.



Mugshot Websites

Many survivors seeking to clear criminal records are doing so for practical as well as personal reasons. Unscrupulous businesses prey on people with criminal-legal records, mining law enforcement databases for photos (mugshots) taken upon arrest. Websites like mugshots.com and mugshotsonline.com pull data from public records such as police, sheriff, state, and federal records for mugshots from both arrests and convictions. These websites then charge people to remove their mugshots from the site in order to gain hefty profits. For example, mugshots.com, using a third-party website, unpublisharrest.com, charged \$64,000 in fees to about 175 people in California in two years and about \$2 million from nearly 6,000 people nationwide.²⁸ Heartbreakingly, survivors have paid websites to remove a photo only to see it appear on another.

Even legitimate or well-meaning companies that provide background checks on prospective employees don't always update their records on a regular basis. Therefore, even after an arrest or conviction is cleared, survivors report that it may still come up in background checks. This can be due to lags in the system as well as data entry errors.²⁹

States like Florida and Maryland have enacted laws that require websites to remove the mugshots of individuals whose charges were dismissed, whose arrests did not lead to convictions, and whose convictions were vacated.³⁰⁻³¹ Even more effective are state laws such as those in Louisiana, Utah, New York, Oregon, and several others restricting law enforcement from putting mugshots online at all, preventing third-party websites from accessing them in the first place.³²



5 Allocate State and Local Resources for Outreach and Awareness for Survivors

While the necessary first step, of course, is enacting strong laws or amending weak ones, those laws will make little difference without a concerted effort to inform the intended beneficiaries of their existence. According to the 2016 NSN survey³³, many survivors who did not go through the criminal record relief process either did not know about pathways for relief or, if they knew they existed, did not know how to start the process. Allocating resources for targeted outreach and awareness campaigns — for example, outreach to local legal and social service providers, community-based organizations, and government agencies working on criminal record relief — would help ensure the legislation is effective.



Overall Ranking Order

2022

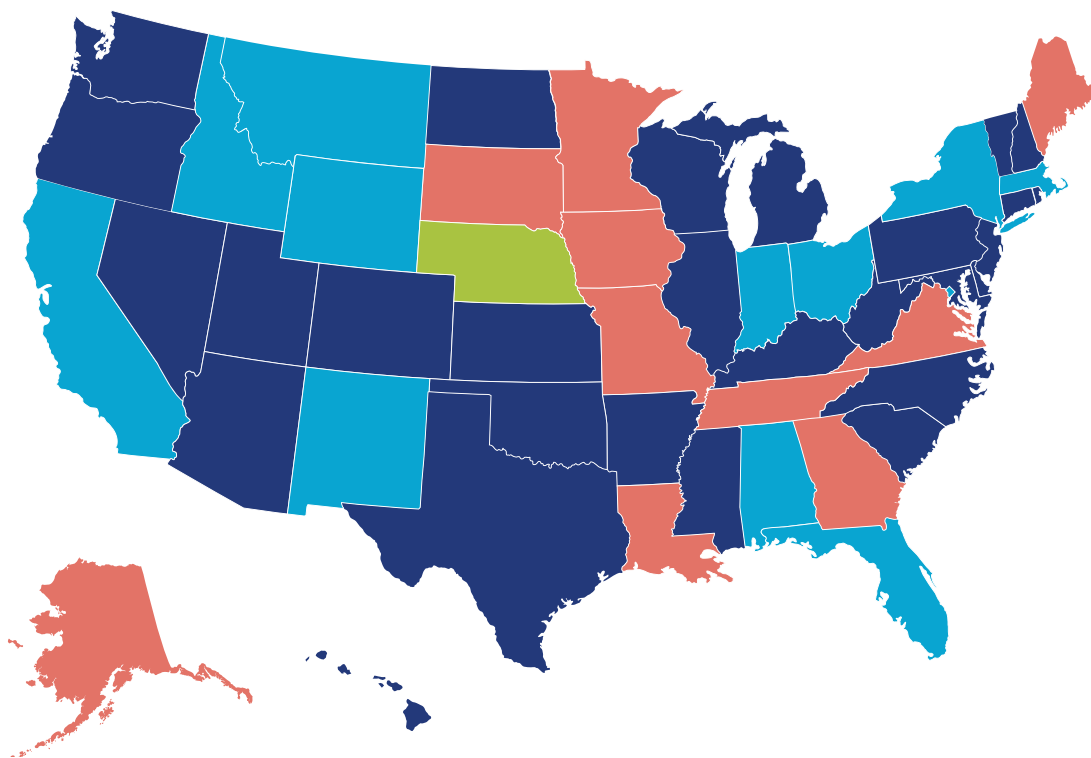
Ranking	State	Total Score	Grade	Ranking	State	Total Score	Grade
1	New York	99	A	26	Delaware	52	F
2	Nebraska	81	B	28	Illinois	49	F
3	Georgia	80	B	28	Virginia	49	F
4	Louisiana	79	C	28	West Virginia	49	F
5	Wyoming	78	C	31	Kentucky	47	F
6	Florida	75	C	32	Rhode Island	45	F
7	Connecticut	73	C	32	South Carolina	45	F
8	California	71	C	34	Oklahoma	44	F
9	Idaho	69	D	34	Wisconsin	44	F
10	District of Columbia	68	D	34	Tennessee	44	F
11	New Mexico	67	D	37	Maryland	41	F
12	Massachusetts	63	D	38	Michigan	38	F
12	Nevada	63	D	39	North Dakota	37	F
14	Colorado	62	D	40	Oregon	36	F
15	Alabama	61	D	41	Kansas	34	F
15	Indiana	61	D	42	Arizona	33	F
17	Ohio	60	D	42	Texas	33	F
17	Montana	60	D	*	Missouri	0	0
19	Arkansas	59	F	*	New Hampshire	0	0
19	New Jersey	59	F	*	South Dakota	0	0
21	Vermont	58	F	*	Alaska	0	0
22	North Carolina	57	F	*	Iowa	0	0
23	Mississippi	56	F	*	Maine	0	0
23	Pennsylvania	56	F	**	Minnesota	0	0
25	Washington	54	F	**	Hawaii	0	0
26	Utah	52	F				

* Not ranked because there is no criminal record relief statute for adult survivors in these states.

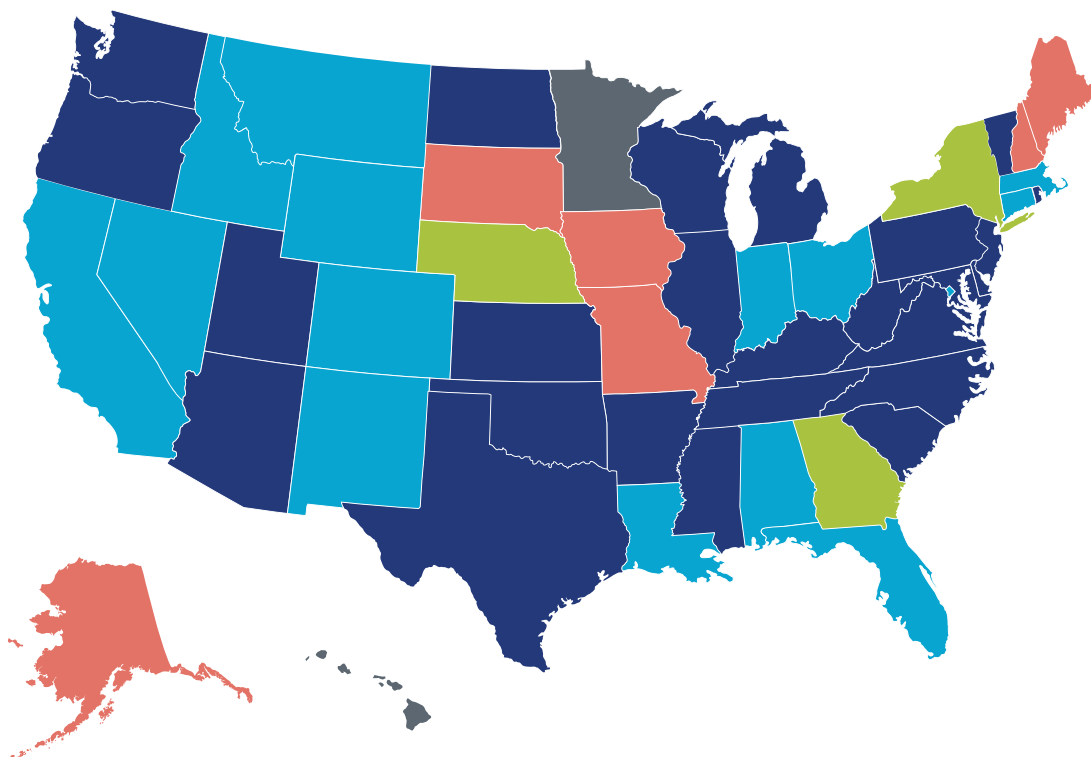
** Not ranked due to the laws not being specific for trafficking survivors.



2019



2022



GRADE ● **A-B** ● **C-D** ● **F** ● **O** ● *not ranked due to the laws not being specific for trafficking survivors.*



Hall of Shame

While completing the state-by-state analysis, it became clear that some states have additional language and requirements that increase the time, expense, and difficulty for survivors trying to access criminal record relief in their state. While these issues are not related to categories in the rubric for the report cards, it is important to acknowledge that many of these additional requirements and restrictions may end up preventing trafficking survivors from obtaining criminal record relief. A description of some of the more common issues that came up are discussed below.

Using affirmative defense to decrease the criminal record relief available to survivors:

An affirmative defense allows a survivor facing criminal charges to assert a defense to criminal liability.

Some states, such as Arizona, have used the presence of affirmative defense to lessen or eliminate the criminal record relief offered in the state. Other states like Wisconsin and Idaho have limited access to criminal record relief by requiring a survivor applying for relief to explain why they did not raise an affirmative defense during their criminal proceedings. This places the blame on survivors for not raising an affirmative defense that they may not have been aware of and forces a survivor to later justify that reasoning if convicted and applying for criminal record relief from that conviction.

Not raising an affirmative defense should never be used as a basis to limit or deny record relief to a criminalized survivor. There are many reasons why a survivor who is eligible to assert an affirmative defense may not do so:

- Trafficking survivors need time to recognize that the situation they were in was indeed trafficking and that they were in fact a victim.
- Trafficking survivors may be scared of their trafficker, who likely told them throughout the entirety of their victimization that if they asked for help they would be physically harmed and arrested by law enforcement.
- Trafficking survivors may be ashamed and uncomfortable testifying in open court about their victimization.

It is problematic to create barriers to accessing post-conviction criminal record relief just because a trafficking survivor did not initially raise the victimization at their trial.

Mandating cooperation with law enforcement: In some states like Texas and Idaho, part of the eligibility criteria for survivors to apply for relief is cooperation with law enforcement or identification of their trafficker to the court. Survivors may have chosen not to disclose this information to law enforcement or even report their trafficker at all for numerous reasons, including fears about their safety, reluctance to trust law enforcement, and a lack of faith in the criminal legal system to keep them safe or hold the trafficker accountable.

Survivors should not be forced to disclose information that may jeopardize their safety to law enforcement. In many cases, survivors have learned from firsthand experience how the criminal legal system works, including a low likelihood their trafficker will face any punishment. In many cases, the risks and potential negative consequences outweigh anything a survivor could gain from cooperating with law enforcement. Therefore, by limiting access to or mandating that record relief can only be obtained by cooperation with law enforcement or naming their trafficker is incredibly problematic, restrictive, and potentially unsafe. Restrictions on relief that ask survivors to compromise their safety in order to have their criminal record cleared should be removed.



Mandating survivors complete onerous conditions before applying for relief: In some states, survivors must complete certain conditions before they can apply for relief. They may have had to finish paying their restitution completely (Alabama, Washington, and California); fully serve their sentence (District of Columbia); or finish their term of community supervision (Texas). This can prevent a survivor from obtaining relief for years. It seems contrary to the intended goals and rationale for providing criminal record relief for trafficking survivors. Criminal record relief acknowledges that the court understands that traffickers utilize force, fraud, and coercion to compel survivors to engage in certain behaviors and activities, including criminal activity, and that survivors should not be held accountable for what they were coerced or forced into doing by their trafficker. To make survivors carry out conditions tied to the full sentence or pay the full restitution ignores that the conviction should not have happened in the first place.

Charging survivors to apply for relief: Several states (Ohio and Kansas) charge survivors a filing, processing, or application fee to apply for criminal record relief. States should eliminate this financial barrier to accessing relief. Specifically, states should amend their laws to ensure survivors are not charged application or processing fees and are not charged by any agency, including law enforcement, to remove their records after they have successfully been granted vacatur or expungement.

Survivors often have to pay these fees to clear their records, which makes access to relief difficult and costly — at a crucial time when survivors are trying to rebuild their lives. Many survivors applying for criminal record relief are already struggling with finances due to employment barriers, lack of safe and affordable housing, and other discriminations due to biases about people with criminal records. While survivors know that criminal record relief is a necessary process to rebuilding their lives, it may feel too out of reach for many to initiate. Survivors should never be denied relief due to a lack of finances. Several states have recently begun to explicitly include this type of language, but more states should follow suit.

All State Report Cards can be found at polarisproject.org/criminal-record-relief-report.



If you are a survivor of human trafficking, member of a state legislature, journalist, or anyone wanting to learn more about criminal record relief or efforts to improve individual state statutes, please email policy@polarisproject.org.



Endnotes

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