

A LEGAL GUIDE FOR VACATUR MOTIONS IN PENNSYLVANIA



VILLANOVA UNIVERSITY
CHARLES WIDGER SCHOOL OF LAW

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This Guide represents the opinions and conclusions of its authors and do not necessarily reflect the views of the Villanova University Charles Widger School of Law or of Villanova University.

As vacatur is unique and still relatively new, expansion and application of a robust vacatur practice throughout Pennsylvania continues to be a key objective of the CSE Institute. This guide is intended as an introductory tool for Public Defenders, Legal Aid Attorneys, District Attorneys, and other stakeholders representing trafficking victims seeking vacatur in Pennsylvania. This Guide does not purport to provide legal advice or to give an opinion as to the outcome of a particular case. Practitioners are advised to consult an attorney who specializes in this area of law and to conduct their own research on the possible consequences in particular cases. In addition, practitioners are cautioned to keep abreast of changes in federal and state law since this guide was last revised. Finally, cases cited within this Guide are intended to provide useful guidance and should be viewed merely as a starting point for a practitioner’s own research; the practitioner should verify the continued relevance and validity of any case cited. Links to given websites were current as of the time of publication.

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I. PURPOSE AND SCOPE OF THIS GUIDE

At its core, human trafficking is the coercive exploitation of another person for financial gain through commercial sex acts or forced labor. Human trafficking is a crime of violence and has been reported in every state of the nation including Pennsylvania.¹ The policy intentions of international, federal, and state anti-trafficking laws are to protect victims, prosecute perpetrators, and prevent human trafficking from occurring.² These laws fail to achieve their policy intentions of protecting victims when trafficked individuals forced to commit criminal activity are routinely treated as criminals rather than victims because of a lack of proper victim identification and screening. Criminalizing victims also impedes prevention efforts because perpetrators of human trafficking often use the victim's criminalization as a coercive tactic.

One aspect of Pennsylvania's comprehensive anti-trafficking legislation, which was enacted in 2014, enables criminalized survivors of human trafficking to clear certain crimes off their criminal records through a remedy known as vacatur.³ Vacatur symbolizes Pennsylvania's recognition that it has unjustly convicted and punished these victims – and that they are not, and never were, criminally culpable for conduct that was a direct result of their victimization. By acknowledging the stigmas associated with criminalization, vacatur empowers survivors to continue their lives past their victimization.

Despite being available since 2014, the vacatur remedy remains under-utilized in Pennsylvania. The reasons for underutilization are three-fold: (1) survivors are unaware or uninformed about the remedy; (2) attorneys are unaware of the remedy or are not adept at representing survivors; and (3) misunderstandings about the realities of sex trafficking limit judges' and district attorneys' willingness to accept petitions.*

This guide serves as a roadmap for practitioners, such as public defenders, legal services lawyers, pro bono attorneys, and other stakeholders who will be representing trafficking survivors in vacatur proceedings throughout Pennsylvania.

* In Pennsylvania, prosecutorial consent is required to file a vacatur motion. Pennsylvania is the only state in the nation that requires this additional burden. Requiring District Attorney Consent creates an additional and unnecessary barrier to vacatur and potentially bars victims from arguing their vacatur petition in front of the court.

The goal of representing a client on a vacatur motion is to ensure the client feels empowered by the legal system through the erasure of unwarranted convictions while avoiding further harm.

In this guide you will find an introduction to post-conviction practice for survivors of human trafficking, an explanation of important concepts of Pennsylvania's vacatur law, and the steps to prepare a vacatur motion. This guide also includes best practices for employing a trauma-informed and survivor-centered approach to client interviewing and representation,

along with other practice tips to consider at each step in the process.

While this Guide is intended to be used primarily by attorneys representing trafficking survivors on a vacatur motion in Pennsylvania, prosecutors play an important role in the success of a vacatur motion. Thus, prosecutors will also find this Guide useful.

II. INTRODUCTION TO HUMAN TRAFFICKING AND POST CONVICTION RELIEF

DEFINING HUMAN TRAFFICKING UNDER FEDERAL LAW

The Trafficking Victims Protection Act (“TVPA”), first enacted in 2000, and its reauthorizations (“TVPRA”)⁴ recognize two types of human trafficking:

Sex Trafficking — “The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.”⁵ A **commercial sex act** means “any sex act on account of which anything of value is given to or received by any person.”⁶

Labor Trafficking — “The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”⁷

Involuntary Servitude means “a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process.”⁸

Put simply, the TVPA generally requires the elements of 1) an **act** and 2) a **means** for 3) the **purpose** of exploitation of another human being. The word “trafficking” often leads to the misconception that moving the victim from one place to another is a required element of the crime. It is not. While the action element of human trafficking *may* involve the act of transporting a victim, it can also include the acts of recruiting, harboring, providing, obtaining, patronizing, or soliciting.

Under the TVPA, the elements of force, fraud, or coercion is not required if a victim is a minor and the purpose is commercial sex. In determining force, fraud, or

coercion, a fact finder should take into account the victim’s specific vulnerabilities.⁹ The TVPA also 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.¹⁰

DEFINING HUMAN TRAFFICKING UNDER PENNSYLVANIA LAW

Pennsylvania’s comprehensive anti-trafficking statute, colloquially known as “Act 105,” was enacted in September 2014.¹¹ It is codified in Chapter 30 of the Commonwealth’s Crimes Code.¹² Like federal law, prosecutors for the Commonwealth have clear elements that must be met to prove the crime of human trafficking; the commission of an **act**, accomplished by a **means**, for the **purpose** of engaging in a commercial sex act or forced labor. In cases where the victim is a minor and the purpose is commercial sex, a showing of means is not necessary.¹³

Section 3011 of Pennsylvania’s Crimes Code lists the different **acts** under the statute where only one must be established to prove the crime of trafficking. A person commits a trafficking offense when he “recruits, entices, solicits, patronizes, advertises, harbors, transports, provides, obtains, or maintains an individual if the person knows or recklessly disregards that the individual will be subject to involuntary servitude.”¹⁴

The federal and state definitions of human trafficking are similar in regard to the **means** required. Federal law requires a showing of force, fraud, or coercion and Pennsylvania law enumerates thirteen means under 18 Pa.C.S. § 3012 (b) that can be categorized as various forms of force, fraud, or coercion.



The full text of Pennsylvania’s anti-trafficking law is available [HERE](#).

Or at https://bit.ly/PACrimesChapt_30

WHY IS VACATUR NEEDED?

Victims are too often criminally charged as defendants when they are arrested and prosecuted for acts in which they were compelled to engage. Unfortunately, victims are rarely identified as such at the time of arrest and prosecution, resulting in unwarranted criminal records. In a 2016 survey of 130 survivors conducted by the National Survivor Network, more than 90% of trafficking survivors surveyed reported having been arrested at least once, with more than 50% reporting that every arrest on their record was trafficking related.¹⁵

*“People shouldn’t be criminalized for crimes that are happening **to** them.”*

– Shea Rhodes, Esq.

Nearly every state has enacted some form of criminal conviction relief specifically for sex trafficking victims that help seal, expunge, or vacate arrest and/or criminal records for certain crimes related to their trafficking victimization.¹⁶ However, these laws vary greatly and provide varying levels of relief.

In Pennsylvania, criminalized survivors of human trafficking can petition the Court to clear six enumerated crimes off their criminal records through a remedy known as vacatur.¹⁷ Vacatur symbolizes Pennsylvania’s recognition that it has unjustly convicted and punished these victims – and that they are not, and never were, criminally culpable for conduct that was a direct result of their victimization.

The legal remedy of vacatur is critical to assisting survivors in moving forward with their lives. A criminal record can negatively impact employment, housing, education, and other economic opportunities. In addition to denying victims opportunities, employers and landlords have attempted to exploit our clients for sexual acts in exchange for jobs and housing upon seeing their criminal records. By acknowledging the stigmas associated with criminalization, vacatur also empowers survivors to continue their lives past their victimization.

THE BURDEN OF A CRIMINAL RECORD



- In a national survey of 130 survivors, 58% reported their criminal record was a barrier to obtaining housing¹⁸
- Lack of housing is a significant vulnerability to trafficking or other forms of exploitation



- 92% of employers run criminal background checks on all or some job candidates, as reported by the Equal Employment Opportunity Commission¹⁹



- In a national survey of 130 survivors, 17% reported losing educational opportunities due to their criminal record²⁰



- A criminal record can also impact child custody matters
- Survivors also report having a record prevented them from obtaining federal benefits and loans²¹

III. TYPES OF CRIMINAL RECORD RELIEF AVAILABLE IN PENNSYLVANIA

Criminal record relief in Pennsylvania takes various forms and provides varying levels of relief. Most, such as sealing, expungement, and pardons, are available to all eligible individuals, while vacatur is a post-conviction remedy specifically for trafficking survivors.

SEALING

Sealing is the least protective form of criminal record relief. When a record is sealed, the charge or conviction still exists, but is hidden from the view of most agencies outside the criminal justice system.²² Thus, an employer running a background check will not be able to see the criminal record, but the criminal record will still be available to the police and court systems. In Pennsylvania, determining whether a conviction can be sealed depends both on the offense itself and the overall criminal history of the individual.²³ The person applying for sealing must have also paid all court costs and restitution.

EXPUNGEMENT

In Pennsylvania, the expungement remedy is relatively limited. Those who are eligible for expungement include: a person who is at least 70 years of age who has not been arrested or prosecuted for ten years following final release from confinement or supervision; a defendant who has been dead for three years; a defendant with a summary offense who has not been arrested or prosecuted for five years; or a person whom the court determines is acquitted of an offense.²⁴ The benefit to expungement is that the person has the ability to erase most arrest and conviction information from public view which means future employers or landlords will not be privy to the information. However, arrest information is still available to law enforcement to be used to determine subsequent eligibility for accelerated rehabilitative programs, grading of subsequent offenses, and as part of background investigations.²⁵ As with sealing, the person petitioning for an expungement must have also paid all court costs and restitution.

PARDONS

Pardons are an incredibly powerful form of criminal record relief. A pardon is the exercise of the sovereign's prerogative of mercy. In Pennsylvania, an individual can seek a pardon by applying to the Board of Pardons.²⁶ Generally, if the majority of the Board of Pardons recommends an individual should be pardoned, the Governor can pardon that person.²⁷ A pardon restores all rights lost as a result of a conviction.²⁸

VACATUR

The Pennsylvania vacatur law exists solely to provide criminal record relief to victims of human trafficking. Vacatur not only involves expunging criminal record information, but it also serves as a judicial recognition that the individual should not have been criminalized in the first place.

Vacatur provides much stronger protections than sealing and expungement. Vacatur differs from expungement in that it is available only to trafficking victims and it only applies to convictions for six enumerated crimes. Unlike expungement, which simply erases criminal information, vacatur erases criminal information and declares the survivor factually innocent of the criminal activity and eliminates the vacated offense's associated fines and costs. In practical terms, that means that it is unnecessary to pay any remaining court costs and fines prior to filing a vacatur motion. Also, any costs and fines that have already been paid should be refunded to the client if the vacatur motion is granted.²⁹

VACATUR

Definition: *the act of annulling or setting aside.*

Black's Law Dictionary

IV. WHAT ARE THE LEGAL ELEMENTS/BURDEN OF PROOF FOR A VACATUR MOTION?

Before getting into the nuts and bolts of preparing a vacatur motion, it is important to first understand the legal elements required. This section describes who is eligible for vacatur and what must be established in a successful vacatur motion.

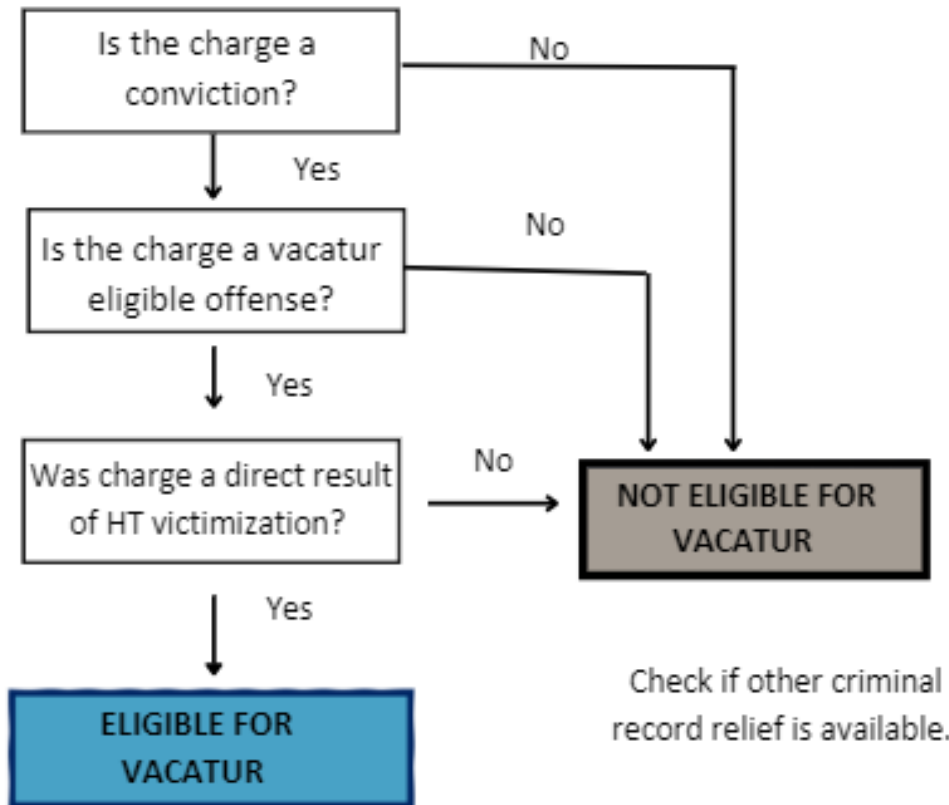
Eligibility for Vacatur

To be eligible for vacatur in Pennsylvania, a trafficking survivor must show:

- ✓ They were convicted of one of the six enumerated offenses eligible for the remedy,
- ✓ Status as a victim of human trafficking, AND
- ✓ There is a nexus between the conviction and their status as a trafficking victim.

Burden of Proof: While Pennsylvania law is currently silent on the burden of proof required, the law does explicitly state the motion *must* be granted if the court finds that the moving party was convicted of an eligible offense and “[t]he conviction was obtained as a result of the moving party’s having been a victim of human trafficking.”³⁰

What Are You Trying to Vacate?



PRACTICE TIP:

Many courts use diversionary programs for prostitution related offenses and simple possession of a controlled substance. Successful completion of a diversionary program typically **does not result in a conviction** and therefore would **not be eligible for vacatur**. These cases may, however, qualify for an expungement.

CONVICTION OF AN OFFENSE ELIGIBLE FOR VACATUR

Pennsylvania law explicitly enumerates six criminal offenses eligible for relief through vacatur of the conviction; two are misdemeanors while the other four are summary offenses.

Offenses Eligible for Vacatur

- Criminal trespass (18 Pa.C.S. § 3503),
- Disorderly conduct (18 Pa.C.S. § 5503),
- Loitering and prowling at nighttime (18 Pa.C.S. § 5506),
- Obstructing highways (18 Pa.C.S. § 5507),
- Prostitution and related offenses (18 Pa.C.S. § 5902) and
- Simple possession of a controlled substance.

Does the Vacatur Remedy Apply to Offenses not Explicitly Enumerated? While not explicitly enumerated, the vacatur statute should be interpreted as also applying to the corresponding inchoate offenses of criminal attempt, criminal solicitation, and criminal conspiracy of the explicitly enumerated offenses.

Simple possession of a controlled substance is the only enumerated offense where the specific section of the crimes code is not explicitly enumerated, leaving some room for interpretation. The CSE Institute has been successful in achieving vacatur for the following related offenses:

- Purchase/Receipt of Controlled Substance by Unauthorized Person (35 P.S. § 780-113 §§ A19)
- Intentional Possession of a Controlled Substance by Person Not Registered (35 P.S. § 780-113 §§ A16)
- Use/Possession of Drug Paraphernalia (35 P.S. § 780-113 §§ A32)

HUMAN TRAFFICKING VICTIMIZATION

It is the exploitive conduct of the trafficker that defines the crime of human trafficking, not the acts of the victim. Thus, to determine whether a person is a human trafficking victim, it is the criminal actions of the perpetrator who subjected the client to human trafficking that must be considered, **not the actions of the client/victim**.

As mentioned previously, proving the crime of human trafficking requires showing the perpetrator committed any one or more prohibited act(s) listed in 18 Pa.C.S. § 3011, facilitated by the means of either force, fraud, and/or coercion (federal law) or one of the thirteen listed means under 18 Pa.C.S. § 3012(b), for the purpose of engaging in a commercial sex act or forced labor.

PRACTICE TIP:

Determining whether a person is a human trafficking victim requires considering the actions of the perpetrator who subjected the client to trafficking, not the actions of the client/victim. Vacatur motions are available regardless of whether the individual accused of trafficking has been arrested, prosecuted, or convicted. However, it is important to provide sufficient evidence that trafficking occurred using the client's affidavit and corroborating evidence if it exists.

ELEMENTS OF HUMAN TRAFFICKING

Act

Recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes or solicits
Or... knowingly financially benefits, or receives anything of value



Means

Force, fraud, or coercion
Not an element of the crime if victim is a minor and the purpose is sexual servitude



Purpose

Sexual servitude/commercial sex act
Labor servitude

Defining the Acts

The acts element is delineated in 18 Pa.C.S. § 3011, which lists the different acts under the statute where only one must be established to prove the crime of trafficking. The law criminalizes a broad spectrum of conduct and indiscriminately applies to traffickers, buyers, and facilitators alike. A plain meaning definition of each act,³¹ common tactics employed by traffickers, and relevant case law, is provided below to assist with establishing the presence of trafficking victimization.

- **Recruits** — to persuade someone to work or become a new member.
 - Recruitment by family members and intimate partners is common and recruitment tactics frequently used by traffickers include offering false promises or offering food, shelter, or drugs.³² False promises can range from promises of love or safety to falsely offering job opportunities, such as modeling, acting, or dancing.³³
 - Traffickers often use social media and online chat rooms to recruit and will also target vulnerable populations, such as those in prison, juvenile detention, group homes, or recovery/treatment facilities.³⁴ Traffickers primarily target women and girls, particularly those with vulnerabilities due to “poverty, lack of access to education, chronic unemployment, discrimination, and [] lack of economic opportunities.”³⁵ Victims may also be targeted based on vulnerabilities due to “membership in single-parent households, unemployment, homelessness, low social status . . . mental impairment, or substance dependence.”³⁶
 - *Commonwealth v. Pearson*, No. 2116 EDA 2018, 2019 WL 1412365 (Pa. Super. Ct. Mar. 28, 2019). The defendant, an employee of a recovery house, provided the victim with drugs, and arranged for her to leave the recovery home and stay at a hotel as part of the recruitment tactics. The defendant advertised the services of the victim on backpage.com and coerced the victim to exchange sex for drugs and a place to live.
 - *U.S. v. Mozie*, 752 F.3d 1271 (11th Cir. 2014) Victims did not actually engage in commercial sex acts. The Court found the defendant guilty; accepting evidence that the defendant recruited the victims for the purpose of engaging in commercial sex acts even though those acts never occurred.

Defendant recruited victims using business cards and providing applications. This case also supports the assertion that when proving the crime of human trafficking, the purpose element can be established based on intent if the commission of the purpose is not completed.

- **Entices** — to attract someone to a particular place or activity by offering something pleasant or advantageous.
 - Common tactics used by traffickers include buying gifts, clothing, beauty products and treatments, making false promises, selling “the dream”, and using pseudo family dynamics to entice victims.

- **Solicits** — to ask for something in a persuasive and determined way.
 - The act of soliciting can be applied to how traffickers solicit sex buyers as well as to how a trafficker or buyer solicits individuals to exploit.
 - The internet is a major platform used by traffickers to solicit and recruit sex trafficking victims as well as to solicit buyers of commercial sex.³⁷
 - “Outdoor solicitation” occurs where the victim is forced to find buyers in a public setting. Outdoor solicitation often occurs within major cities on particular a block or at cross streets often referred to as a “track” or “stroll”, or in more rural areas at truck or rest stops along major highways.³⁸

- **Patronizes** — to frequent as a customer.

- **Advertises** — to make a product or service known about in order to sell it.
 - Advertising tactics can range from word of mouth to distributing covert business cards or placing online advertisements on forums known for commercial sex.³⁹

- **Harbors** — to protect someone by providing a place to hide.

-
- *United States v. Paul*, 885 F.3d 1099, 1103 (8th Cir. 2018) – defendant harbored victim in hotel rooms in between commercial sex transactions.
 - *United States v. Zitlalpopca-Hernandez*, 495 F. App'x 833 (9th Cir. 2012) – defendant harbored illegal immigrants on U.S. land for the purpose of sexual servitude.

➤ **Transports** — to move people or goods from one place to another.

- A common myth is that the act of transporting requires movement across a border. However, transporting merely requires movement from one place to another, including moving the victim from where they are being harbored to where the commercial sex act will take place.
- *United States v. Brooks*, 610 F.3d 1186 (9th Cir. 2010) - Defendant was convicted of transporting minors to engage in a commercial sex act when he drove the minors to the bus station, purchased the minors bus tickets, and rented a car to drive the minors to be prostituted.
- *United States v. Barnes*, 822 F.3d 914 (6th Cir. 2016) – Court found hotel and rental car receipts and hotel keys were sufficient evidence to constitute transportation had occurred.
- *United States v. Bryant*, 654 F. App'x 807 (6th Cir. 2016) – forced relocation from Michigan to Arizona constituted transportation.

➤ **Provides** — to give another something they need.

- The act of providing can be in relation to the sex buyer (e.g., arranging dates, finding the buyers) as well as providing basic necessities or drugs to maintain control over the victim.

➤ **Obtains** — to get something, especially by a planned effort.

- The act of obtaining applies to both sex traffickers and sex buyers. Even where a third-party facilitator is not involved, victims can be obtained for the purposes of sexual servitude when they are coerced to engage in sex on an

ongoing basis in order to receive basic needs such as food, shelter, and/or access to controlled substances.⁴⁰

- *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013) – At issue in *Jungers* was whether the TVPA applied to sex buyers. The defendant responded to online ads offering sex with children placed by law enforcement officers as part of a sting operation. Following conviction, the defendant moved for acquittal, arguing that the TVPA did not apply to sex buyers. The Court held that the plain and unambiguous provisions of the statute are expansive and “apply to both suppliers and consumers of commercial sex acts.”⁴¹ The Court reasoned that the TVPA definition of sex trafficking “readily includes the actions of a purchaser whose sole purpose is obtaining a child for sex.”⁴²

- **Maintains** — to provide someone with food and whatever is necessary for them to live on. “Maintain” can also mean to continue to have or to keep in existence.
 - Common tactics used by traffickers include limiting access to transportation or communication or providing access to controlled substances.

Defining the Means

18 Pa.C.S. § 3012 (b) lists thirteen means of subjecting an individual to involuntary servitude.⁴³ As noted previously, under the TVPA, the means element requires the use of force, fraud, or coercion, unless the victim is less than 18 years old and the purpose is a commercial sex act. While the TVPA simply refers to “force, fraud, and coercion,” Pennsylvania law lists thirteen factors that broadly define what behaviors constitute force, fraud, or coercion in 18 Pa. C.S. § 3012(b). The thirteen means listed under § 3012 (b) are categorized below as force, fraud, or coercion, with additional statutory definitions and case law where relevant.

- **Force** — 18 Pa.C.S. § 3012 (b) (1-3) further define what constitutes force under Pennsylvania’s anti-trafficking statute:

(1) Causing or threatening to cause serious harm to any individual

(2) Physically restraining or threatening to physically restrain another individual

(3) Kidnapping or attempting to kidnap any individual

➤ **Fraud** — 18 Pa.C.S. § 3012 (b) (8)

- While the statutory language does not provide specific examples of what constitutes fraud in the context of human trafficking, case law has defined “fraud” as “any deliberate act of deception, trickery or misrepresentation.”⁴⁴
- Case law that may be useful in establishing fraud includes:
 - *United States v. Bell*, 761 F.3d 900 (8th Cir. 2014) - “Boyfriend behavior,” including deception about marital status and using a “pattern of convincing [the] women that he loved them and would take care of them at the exclusion of all others” and that “they would be financially secure, emotionally secure, and loved” rose to the level of deception which constituted fraud.
 - *United States v. Paul*, 885 F.3d 1099 (8th Cir. 2018) – promising victims a “fun lifestyle” and an “easy way to make money” constituted fraud.

➤ **Coercion** - 18 Pa.C.S. § 3012 (b) (4-7) and (9-13) further define what constitutes coercion under Pennsylvania’s anti-trafficking statute:

(4) Abusing or threatening to abuse the legal process

(5) Taking or retaining the individual’s personal property or real property as a means of coercion

(6) Engaging in unlawful conduct with respect to documents – this type of coercion is further defined in 18 Pa.C.S. § 3014 to mean:

to prevent or restrict or attempt to prevent or restrict, without lawful authority, the ability of an individual to move or travel, the person knowingly destroys, conceals, removes, confiscates, or possesses an actual or purported: (1) passport or other immigration document

of an individual; or (2) government identification document of an individual.

(7) Extortion – this type of coercion is further defined in 18 Pa.C.S. § 3923 (theft by extortion) to mean:

intentionally obtain or withhold property of another by threatening to:

- (1) commit another criminal offense;
- (2) accuse anyone of a criminal offense;
- (3) expose any secret tending to subject any person to hatred, contempt or ridicule;
- (4) take or withhold action as an official, or cause an official to take or withhold action;
- (5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;
- (6) testify or provide information or withhold testimony or information with respect to the legal claim or defense of another; or
- (7) inflict any other harm which would not benefit the actor.

(9) Criminal coercion – this type of coercion is further defined in 18 Pa.C.S. § 2906 to mean:

threatening to commit a criminal offense, accuse another of a criminal offense, expose a secret tending to subject another to hatred, contempt, or ridicule; or taking or withholding action as an official, or cause an official to take or withhold action.

(10) Duress, through the use of or threat to use unlawful force against the person or another

(11) Debt coercion – this type of coercion is further defined in 18 Pa.C.S. § 3001 to mean:

Exploitation of the status or condition of a debtor arising from a pledge by the debtor of the personal services of the debtor or an individual under the debtor's control as a security or payment for debt, if any of the following apply:

- (1) The value of those services as reasonably assessed is not applied toward the liquidation of the debt.
- (2) The length and nature of those services are not respectively limited and defined.
- (3) The principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.
- (4) The debtor is coerced to perform sex acts as payment for the debt.
- (5) The creditor controls and determines the movement, housing and services performed by the debtor until repayment of the debt.

(12) Facilitating or controlling the individual's access to a controlled substance

- *Commonwealth v. Dunbar*, No. 1032 WDA 2022, 2023 WL 4417525 (Pa. Super. Ct. July 10, 2023) - Defendant supplied narcotics to drug-addicted females in exchange for them providing sexual services to men. The Defendant was responsible for setting the appointments, the services to be performed, the prices to charge, and kept the proceeds.
- *United States v. Fields*, 625 F. App'x 949, 953 (11th Cir. 2015) – A trafficker was convicted based on victims' testimony that he recruited and enticed women to engage in prostitution by (1) proposing to advertise their prostitution services online, (2) driving them to their prostitution locations, and (3) offering them drugs, money, and a place to live if they prostituted for him. The trafficker would withhold pills to force victims to engage in prostitution, relying on the threat of

withdrawal sickness if they did not comply. The court found that the victims' drug addictions rendered them particularly susceptible to the defendant's coercive tactics.

(13) Using any scheme, plan or pattern intended to cause the individual to believe that, if the individual does not perform the labor, services, acts or performances, that individual or another individual will suffer serious harm or physical restraint.

NEXUS BETWEEN VICTIMIZATION AND CRIMINAL CONVICTION

There is no statutory language or case law in Pennsylvania to define the term “direct result” as it pertains to vacatur. Because five of the six vacatur eligible offenses are prostitution or commonly charged masking crimes for prostitution, nexus is often relatively obvious if the conviction occurred during trafficking victimization and involved one of these eligible offenses.

How do you establish nexus with substance use related offenses?

The nexus between trafficking victimization and a simple possession conviction can often be established because substance use and commercial sexual exploitation are commonly interrelated. For example:

- Facilitating/controlling access to a controlled substance is one of the coercive means enumerated in Pennsylvania's human trafficking law.⁴⁵
- Self-medication is often used to cope with the ongoing trauma of victimization.⁴⁶ The more traumas a person has experienced, the more likely they are to develop issues with substances.⁴⁷
- Substance use is often a vulnerability exploited by traffickers; providing illegal drugs may be used as a means of enticing or recruiting victims or as a means of coercion to maintain control over the victim.⁴⁸

What if the conviction occurred after trafficking ended?

Convictions obtained subsequent to a victim escaping third party-controlled prostitution are often still a result of the trafficking victimization. There are several factors including severe and complex trauma, poverty, substance use, and homelessness that impair a victim's ability to recover and leave them vulnerable to re-victimization. These factors can impact a survivor's ability to work or engage in other activities.⁴⁹

V. PROCEDURAL REQUIREMENTS OF A VACATUR MOTION

The procedural requirements for a vacatur motion are outlined in 18 Pa. C.S. § 3019(d) and include:

- **A motion in writing** — A written motion must be submitted to the clerk of courts in the county of arrest.
- **Consent of an Attorney for the Commonwealth** — Prosecutorial consent of the motion is a required element for a vacatur motion in Pennsylvania. How to go about gaining consent is discussed in more detail in Section VII.
- **Description of Supporting Evidence Given “With Particularity”** — The particularity requirement can be challenging, especially when trying to avoid re-traumatizing victims of trafficking. Traffickers routinely use illegal substances such as crack-cocaine and heroin to control their victims, which may impair memories of the details surrounding a specific event. Additionally, this memory impairment may be heightened due to the victim's trauma response mechanisms. Often, however, the only evidence you will have to support the vacatur motion is the victim's affidavit. Thus, understanding how to balance eliciting sufficient detail from the client to satisfy the burden of proof and particularity required for the motion with avoiding re-traumatizing the client is critical. This topic is explored in more detail in Section VIII.
- **Include copies of any documents showing that the moving party is entitled to vacatur relief** — This requirement has been interpreted to mean corroborating

evidence should be included in the motion *if available*. The CSE Institute has been successful in obtaining vacatur for many **clients solely on their affidavit**.

Pennsylvania law explicitly states that no official documentation is required to grant a vacatur motion. Where official documentation from a government agency indicating status as a human trafficking victim does exist, including that documentation in the motion to vacate creates a presumption that the survivor’s “participation in the offense was a direct result of being a victim.”⁵⁰

Other procedural requirements, such as whether the motion can be efiled, filing fees, and whether a hearing is needed will vary by jurisdiction. Please refer to Section XI for procedural considerations when establishing a vacatur motion process in a particular county for the first time.

VI. WHEN TO FILE A VACATUR MOTION IN PENNSYLVANIA

This section explains when to file a vacatur motion in Pennsylvania on behalf of a trafficking victim. While there is no statutorily defined time limitation on when a vacatur motion may be filed,⁵¹ the two important readiness considerations are:

- 1) Completion of criminal proceedings related to the vacatur eligible offense and
- 2) Client readiness.

COMPLETION OF CRIMINAL PROCEEDINGS RELATED TO VACATUR ELIGIBLE OFFENSE(S)

Since a key element to filing a vacatur motion is a conviction of a vacatur eligible offense, all criminal proceedings related to the offense(s) for which vacatur is sought must be completed. It is not clear on the face of the statute whether completion of sentencing is required, however, since prosecutorial consent is a required element of a vacatur motion in Pennsylvania, this should be managed on a case-by-case level when seeking consent to the motion from the prosecuting attorney.

Many clients we have worked with have had more than one criminal matter on their record. Be sure to confirm there are no other open criminal matters before proceeding with a vacatur motion. If you find that the survivor has an open warrant or a pending criminal matter, post-conviction relief should wait until the pending criminal matter(s) is concluded.

The practice of the CSE Institute has been:

- **For ongoing criminal matters** — wait until any open matters are resolved prior to proceeding with a vacatur motion. A key outcome of representing a client in a vacatur motion is to avoid further harm.
- **Where an open bench warrant exists** — consult with a local public defender or criminal attorney on the best ways to handle clearing a warrant and the specific risks this might entail.

-
- **For other completed criminal matters that are not vacatur eligible** — proceed with developing a criminal record clearing plan; presence of other completed criminal matters does not preclude seeking vacatur for all completed vacatur eligible offenses.

CLIENT READINESS

Client readiness is an important factor to consider when determining when to file a vacatur motion. Survivors have often suffered multiple forms of trauma. Legal proceedings may be re-traumatizing, so it is important to discuss this during the intake interview to confirm that the client understands the process, has a support system in place if needed, and is ready to proceed. If

PRACTICE TIP:

If there are immigration matters, it is important to consult an immigration attorney before proceeding with any type of post-conviction record relief.

the client does not have their basic needs met, refer them to a social service agency that can assist them. See Section XIII for list of resources for trafficking survivors if you need referral information for the client.

VII. HOW TO PREPARE A VACATUR MOTION

This section explains how to prepare a vacatur motion in Pennsylvania on behalf of a trafficking victim. After describing the general process for preparing a vacatur motion, this section then introduces what should be included in a vacatur motion, including practical tips throughout.

Steps in Preparing a Vacatur Motion

- **Step 1:** Conduct initial intake with client.
- **Step 2:** Obtain and review the client's complete criminal record history.
- **Step 3:** Develop a holistic plan for criminal record clearance.
- **Step 4:** Compile corroborating evidence, if any.
- **Step 5:** Draft court documents.
- **Step 6:** Engage the prosecutor to gain consent.

STEP 1: CONDUCT INITIAL INTAKE

An initial intake interview should be held to determine if the client seeking vacatur is eligible for the remedy and to assess client readiness. As part of the intake discussion, you will need to explain vacatur law and the process to the client in plain language. Topics to cover at the initial intake discussion generally include:

- Gather basic information from client
- Explain and sign representation documentation, if applicable
- Explain and sign release form(s), if needed
- Discuss the vacatur process, eligibility requirements, and timeline
- Discuss client's role and responsibility in the process
 - Client affidavit
 - Gathering corroborating evidence, if applicable
- Confirm client's understanding and readiness to begin process
- Review next steps and anticipated timeline with client

To make an initial determination of eligibility for vacatur, obtain the client’s full name, including any previously used names or aliases, and run a search on the client’s criminal record history. In Pennsylvania, a preliminary search of criminal records can be conducted using The Unified Judicial System of Pennsylvania (“UJS”) website at <https://ujportal.pacourts.us/CaseSearch>

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

PRACTICE TIP:

When gathering complete criminal record information, it is important to remember survivors may have:

- Used an alias
- Provided false information, particularly date of birth, when arrested
- Difficulty recalling when and where they have been arrested
- Multiple convictions
- Have criminal records in multiple jurisdictions, including in other states

STEP 2: OBTAIN AND REVIEW THE CLIENT’S COMPLETE CRIMINAL HISTORY RECORD

Successful representation requires gathering information about the client’s case to determine the form of relief to seek. It is important to have the survivor’s complete criminal record before legal options are pursued further. If the preliminary search reveals a vacatur eligible offense, best practice is to next conduct a Pennsylvania State Background Check to develop a more complete picture of the survivor’s criminal record history within Pennsylvania. Depending on the circumstances, you may also want to reach out to the defense attorney/public defender to obtain the case file.

Obtaining a Pennsylvania State Background Check for the Client

The Pennsylvania State Police has an online application called “Pennsylvania Access To Criminal History,” (PATCH) where you can request and review Pennsylvania criminal history online.

- Go to <https://epatch.state.pa.us/Home.jsp>
Note: The \$22 fee is subject to change.
- Select the “Submit a New Record Check” button
- After accepting the “Terms and Conditions” for the use of PATCH, select the “Individual Request” option, then click “Continue.”
- The website will ask for information relating to the requestor, including reason for request. If you, as the attorney are requesting the information, the information provided in this section should be your information. Select “Other” as the reason for request.
- The website will then ask for information on the person for whom the background check will be performed. It is important to provide as much identifying information as possible, including date of birth, social security number, and/or aliases, if you have them.
- After submitting all the required information, click “Submit” to check out and pay the fee for requesting criminal records.

FBI Background Check – Nationwide Record Search

As noted previously, as part of client intake you should inquire about 1) the possibility of a criminal record existing outside of Pennsylvania, and 2) the reason the client wants assistance with criminal record clearing. We have found the process of obtaining a national criminal history record using FBI fingerprinting to be a barrier for many of our clients. Thus, we only recommend completing FBI fingerprinting if the survivor indicates the potential of a criminal record outside of Pennsylvania or where the client’s aspirations will require FBI Fingerprinting in the

future (e.g., certain employment opportunities, adopting a child, volunteering with children, etc.)

An FBI Report will include a record of criminal legal involvement in any of the 50 states and Washington D.C. This is the most comprehensive criminal history search. More information regarding how to obtain an FBI background check can be found at <https://tinyurl.com/fbibbackgroundcheckinfo>.

PRACTICE TIP:

It is important to note that findings on the FBI Background check can be inconsistent with state records, as the federal database reflects only the information that has been provided to the federal government by each individual state. Some clients may also find the process of being fingerprinted retraumatizing. For these reasons, it is recommended that attorneys fully understand why the client is seeking criminal record clearance to balance the benefits of obtaining an FBI Background check with the potential harm.

STEP 3: DEVELOP A HOLISTIC PLAN

Once you have a complete picture of the client’s criminal record history, you can develop a holistic plan. Each criminal matter appearing on the client’s criminal record should be assessed to see if it is eligible for vacatur. If it does not meet the

elements of a vacatur motion, consider whether the client is eligible for criminal record relief through sealing, expungement, or pardon. Assessing the client’s criminal record holistically allows consideration of specific procedural requirements that may impact the ability to file in more than one place simultaneously or may dictate the sequence of filing.

PRACTICE TIP:

If a client has multiple cases eligible for relief in Pennsylvania, **a separate motion is required to vacate each docket/criminal matter.** The motion will likely be rejected if you file one motion for multiple, separate cases.

A complex multijurisdictional approach can be difficult for the attorney to figure out and potentially even harder for the client to understand. It is important to explain in clear terms the strategy and appropriately manage client expectations.

The nature of the relief sought for each criminal matter will depend in part on the client’s history. For example:

- For a client convicted of an eligible offense, consider whether the record supports a vacatur motion.
- For a client arrested and/or prosecuted for any crime, but not convicted, consider whether the record is eligible for expungement.
- For a client with open or pending criminal matters, including active warrants, consider addressing these matters before proceeding with any criminal record clearing efforts on another docket.
- While sealing is a less robust form of relief than vacatur or expungement, some clients may wish to seal a record if they want to maintain access to

their court files for other purposes, such as civil litigation, or because the case is not eligible for vacatur or expungement but is eligible for sealing.

- Immigration matters – As noted previously, it is important to consult an immigration attorney before proceeding with any type of post-conviction record relief when representing a non-citizen. An immigration attorney can advise on whether additional facts included will cause adverse consequences in subsequent immigration proceedings. For clients who have not previously had immigration representation, it is essential to contact an immigration attorney to see if there are any forms of immigration relief for which they may be eligible.

PRACTICE TIP:

If the client has vacatur eligible offenses in more than one county, it is beneficial to first pursue vacatur in the county with more experience granting vacatur motions because an order from one Court can be used as official documentation of trafficking victimization when seeking vacatur in another jurisdiction. Developing a holistic plan avoids duplicating efforts and exposing clients to repetitive fact gathering that can be re-traumatizing.

STEP 4: COMPILE CORROBORATING EVIDENCE

While it is possible for a vacatur motion to be granted based solely on the client's affidavit, including corroborating evidence will increase the likelihood of a successful outcome.

You may want to contact the criminal defense attorney who originally represented the client in the matter to try to obtain the case file. Another good place to start is to gather court documents for each conviction. These documents can be obtained from the court in the county where the client was convicted. For each case, you should request copies of:

- Criminal Complaint and Affidavit of Probable Cause
- Criminal Information/Indictment/Charging Document
- Final Plea or Verdict
- Disposition/Sentencing Order
- Statement of Balance of Financial Obligations

Official Documentation: Pennsylvania law explicitly states that no official determination or documentation is required to grant a vacatur motion.⁵² The CSE Institute has been successful in obtaining vacatur for many clients solely on their affidavit.

Where official documentation from a government agency indicating status as a human trafficking victim does exist, including that documentation in the motion to vacate creates a presumption that the survivor's "participation in the offense was a direct result of being a victim."⁵³ Documentation indicating the client is a human trafficking victim from either a federal, state, or local government agency is considered "official documentation."

Examples of Official Documentation

- Documents from immigration officials or law enforcement certifying the client as a human trafficking victim.
 - Form I-914, Supplement B
 - HHS Certification Letter
 - T Visa/U Visa
- Court records demonstrating the client's status as a trafficking victim.
 - Court orders for damages to survivors
 - Court orders vacating convictions from other jurisdictions
 - Subpoenas issued to client as witness in prosecution of trafficker
- Other court or law enforcement records
- Victim certification letters from a federal or state government agency

Corroborating Evidence of Trafficking Victimization: Some examples of corroborating evidence of trafficking victimization that the client might have knowledge of include:

- Police reports documenting events described in the affidavit
- Newspaper articles
- Photographs of tattoos or scars relating to their trafficking experience
- Criminal proceedings against the trafficker
- Internet listings, print advertisements, or business cards that evidence how the client was victimized
- Email, text, photographs, or voice mail records
- Medical records documenting injuries/events described in the affidavit
- Civil proceedings for damages to survivors
- Subpoenas issued to the client

Other Corroboating Evidence: Even where there is no corroborating evidence of trafficking victimization, providing corroborating evidence of specific facts in the client’s affidavit can help establish credibility. Examples of corroborating evidence of vulnerabilities leading to trafficking victimization include:

- **Vulnerabilities leading to trafficking victimization** – this may include a birth certificate, child welfare records, mental health records, or letters of support from service providers.
- **Obstacles Caused from Convictions** – this may include rejection letters (housing, employment, school, financial aid), licensing regulations that show conviction as a bar to licensing, benefits denial letters, or records from child custody disputes.
- **Achievements**- this may include degrees or diplomas, letters of support from employers, clergy or community members, or records of volunteerism.

STEP 5: DRAFT COURT DOCUMENTS

A complete motion for vacatur in Pennsylvania should include the items listed below. A sample motion is available in [Appendix A](#) to serve as an example.

- Confidential Information – This form is required to comply with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania if you include the client’s social security number.
- Draft Order
- Petition to Expunge (depending on jurisdiction requirements and/or whether the docket also contains charges that are expungable (e.g., charges that were withdrawn))
- Unopposed Motion to Vacate
- Exhibits
 - Letter from Prosecutor consenting to the motion
 - Client’s Affidavit
 - Corroborating Evidence, if available
 - Memorandum of Points and Authorities – consider including, especially if this is the first vacatur motion being filed in the county

STEP 6: GAIN PROSECUTOR CONSENT TO FILE

Gaining prosecutorial consent to the vacatur motion is a required element for a vacatur motion in Pennsylvania. This step may seem daunting at first because prosecutors generally are not predisposed to joining post-conviction relief efforts. However, they do have experience working to help crime victims achieve justice and are generally open to learning about the client’s experience.

If you do not already have a relationship with the prosecutor, please contact the CSE Institute for assistance in beginning this process. Some additional tips for

building a collaborative relationship with the prosecutor while working to gain consent are provided below.

- **Find out which prosecutor you should work with on the motion.** If you do not know which prosecutor to approach regarding gaining consent for a vacatur motion, the best place to start is to reach out to the district attorney’s office and inquire whether there is a specific point of contact on criminal record relief cases, particularly vacatur. You can also contact your local human trafficking coalition or task force if it exists or consult with local human trafficking victim service providers in the jurisdiction to see if they have suggestions.

“We all know that traffickers prey on vulnerability and that having a record is a form of vulnerability. Justice is not just convictions; it is doing the right thing. Reducing vulnerability is a prosecutorial/long-term objective.”

Prosecutor, Participant of Survivor Reentry Project Round Table Discussion

- **Assess general understanding regarding the dynamics of human trafficking and familiarity with the vacatur remedy.** It is best to start by assessing how informed the prosecutor is about the dynamics of trafficking generally and familiarity with vacatur motions specifically. If the prosecutor is unfamiliar, refer to **Appendix B** for a list of resources you can provide for background education. It may also be beneficial to connect the prosecutor with prosecutors in other jurisdictions who are supportive of the vacatur process.
- **Determine expectations.** Try to determine up front what level of detail and corroboration the prosecutor expects to see in the vacatur motion. Some prosecutors focus on eligibility for the relief by expecting corroboration of trafficking victimization while others may focus more on the nexus element. You may also want to discuss whether the motion should include a Memorandum of Points and Authorities.
- **Agree on procedural requirements.** Discuss whether there will be a filing fee and if there are other procedural requirements expected. This is an opportunity

to provide a template letter to the prosecutor for consenting to the motion. See [Appendix A](#) for an example letter.

COMMON OBJECTIONS FROM PROSECUTORS

Our experience working with prosecutors in counties across the Commonwealth has generally been positive, especially when we work up front to build rapport. However, some prosecutors unfamiliar with the dynamics of sex trafficking or the availability of the vacatur remedy have been resistant to consent to a vacatur motion. The two most common objections we have heard and suggestions for overcoming them are summarized below.

“If I consent, the ‘floodgates will open.’” This objection is a general opposition of the vacatur remedy based on the idea that granting relief to one person would cause many others to come forward and “take advantage” of the relief process.

This objection was discussed at a Roundtable of prosecutors with experience working with victims of human trafficking who were unpersuaded by the notion of “floodgates.”⁵⁴ Most of the participants noted that not only had this NOT happened in their jurisdiction, but instead they felt that more outreach was required to alert the survivor community about the availability of this remedy. Even where familiarity with the remedy exists, survivors often feel the process is complicated and are hesitant to subject themselves to a stressful and potentially retraumatizing experience.⁵⁵ If faced with this objection, connecting the prosecutor with the DA in another county who is familiar and has experience with vacatur process may help alleviate this concern.⁵⁶

The “floodgates” objection was raised in *People v. Gonzalez*, 927 N.Y.S. 567 (N.Y. Crim. Ct. 2011). In *Gonzalez*, the prosecution argued that granting the vacatur motion would “open the flood gates of prior prostitution convictions insofar as those defendants can just come into court and claim that they were the victims of sex trafficking without any further corroboration and have their convictions vacated.” The court found this argument unpersuasive, stating that the remedy was not merely a “rubber stamped” activity, but rather required a judicial determination of credibility. The court further reasoned that even if the “flood gates” did open by way of frivolous motions, a trafficking victim’s “ability to

continue putting her life back together after the horrendous ordeal that she experienced . . . heavily outweighs any increased motion practice that may result hereafter.”

“This client/conviction is not vacatur eligible.” Often, this objection is really about what the prosecutor feels they need to justify a decision to consent to vacatur to their supervisor. If you hear this objection, try discussing how the prosecutor’s concerns may be addressed. The prosecutor may be questioning the credibility of the client’s affidavit or want to see more corroborating evidence. Once you have a better understanding of what the obstacle is, you can problem solve to try to address their concerns. For instance, if the issue is a matter of client credibility, even if you do not have corroborating evidence for the trafficking victimization, providing evidence of other aspects, such as client vulnerabilities, may be helpful. Alternatively, a technical expert may be able to provide written or oral testimony to validate that the client’s experiences are not uncommon to what other victims have experienced. If the client sought services, a letter of support from the service organization may be helpful. If you run into this objection, please reach out to us at the CSE Institute for technical assistance.

PRACTICE TIP

In certain instances when seeking consent, the prosecutor may ask for a meeting with the client. It is important to remember that requiring a conversation between the prosecutor and the client is not required under the law. If you decide that meeting with a prosecutor would be helpful to your client's case, it is important to minimize the risk of harmful consequences for your client. You should:

1. Fully explain to your client the purpose and details of the meeting (who, what, where, why), as well as the risks (trauma, anxiety, etc.) of meeting with a prosecutor so that the client can make an informed decision regarding whether to meet with the prosecutor.
2. Ensure that the prosecutor is informed of the trauma that commonly afflicts trafficking survivors, the risk of re-traumatization attached to meeting with your client, and how this trauma may impact the client's memory and responsiveness to questions.
3. Ensure the prosecutor agrees to a set of "ground rules" for the meeting. The place and duration of the meeting should be decided based on minimizing trauma for the client. The types of questions should be limited to the issues most relevant to the motion itself. It is not the client's role to help build a case against their trafficker and should NEVER be a condition of consenting to vacatur. Likewise, punishing a victim by withholding consent is inappropriate.
4. During the conversation, you should intervene if questions seem inappropriate, either in tone or substance.

VIII. PREPARING THE AFFIDAVIT

The affidavit is often the most significant piece of evidence in support of the motion to vacate a conviction because 1) the client's credible testimony can be sufficient on its own to sustain the burden of proof and 2) it is common that little or no other corroborating evidence is available.

To establish the client's credibility in the affidavit and meet the statutory burden of describing evidence "with particularity", it is important to include sufficient detail to answer the who, what, where, when, why, and how of the client's eligibility for vacatur. At the same time, it's also crucial not to include the kinds of details that are not material to the claim, especially where the prosecutor may have contradictory information in case records from the original conviction.

In interviewing sex trafficking survivors, attorneys may encounter challenges they are not accustomed to in other cases. For example, many clients may initially be reluctant to share the details necessary to sustain a motion to vacate due to the personal nature of the information or because they may not understand why it is necessary to share such information in the first place. Others may fear that the information may be used against their perpetrator where they may still have an emotional bond with their trafficker or fear retaliation.

Often clients have had horrific past experiences with the criminal justice system. Using a collaborative process has the power to make them feel they have a team of people willing to fight for them. At the same time, it is important to go at the client's speed and in a way that feels best for the client.

To ensure you minimize re-traumatizing the client while obtaining sufficient information needed to meet the evidentiary burden for the sought-after relief, it is important to properly prepare for the interview in advance, conduct the interview using trauma-informed care, and draft the affidavit in such a way that is credible while avoiding sensationalizing certain events or contradicting information the prosecutor or court may already have. This section explores each of these three topics in more detail below.

PRACTICE TIP:

Clients often **do not self-identify as trafficking victims**. It can be harmful to call clients “victims” or to discuss their “victimization” if that is not how they identify and feel. When communicating with the client, 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.” Be sure to also explain that in the court documents you will need to use legal definitions even if they do not identify themselves as a victim or their experience as sex trafficking.

PREPARATION BEFORE THE INTERVIEW

It is important to be properly prepared before meeting with the client to conduct the affidavit interview. Some important considerations are discussed further below.

- **Assess what you need.** This includes thinking about:
 - What is the purpose of this interview and how will I explain it to the client? Generally, the purpose of the affidavit interview is to elicit sufficient information from the client where the client’s story telling can be interpreted into written testimony that establishes eligibility for vacatur while using the client’s voice.
 - What background information/learning is needed be able to persuasively tell the client’s story? This might include asking the client if they have already created a written timeline or narrative of their experiences, possibly for therapeutic reasons or because they have/will testify in a court proceeding about their victimization. If a timeline/narrative exists, ask the client if they are willing to share it with you so that you can review it and build the affidavit using this information and avoid potentially re-traumatizing them by unnecessarily interviewing them about their past experiences.
 - Is there corroborating evidence I want to ask about?

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- **Anticipate questions.** Before the interview, consider what questions you anticipate the client will have and how you will respond to them using plain language rather than legal jargon. Some common questions to anticipate are:
 - How long will the whole process take?
 - Will I have to appear in court?
 - Will anyone know that I filed this motion – is this information public?
 - What happens if we win/lose?

 - **Consider what the client might need.** During the affidavit interview you will be asking very personal questions and gathering information about traumatic experiences in the client’s life. Keep in mind that you are asking the person to relive their trauma, and when they do, they will not feel safe. Minimize potential triggers that might remind the client of past trauma wherever possible. This includes the meeting location and room set up, whether to have other staff in the room with you, the genders of all staff involved, lighting in the room, and environmental factors like noise and smells. Look at your space and make sure it will be comfortable. Be sure to have tissues and water readily available. Additional practice tips and the importance of trauma-informed lawyering is discussed further in Section X.

 - **Consider how to support the client if they experience a trauma response.** It is important to plan ahead regarding how you will respond if the client experiences a trauma response during the affidavit interview. While there is no one size fits all approach, a few tips are provided below.
 - Listen actively; validate and acknowledge the client’s experiences and feelings.
 - Ask them what might help – do they need to take a break, get a drink of water, stop the interview, and reschedule?
 - Help them get grounded in the present by using their senses. For example, ask them to pick up a stress ball or look out a window and describe what they see or ask them to place their hands on their knees, take a deep breath, count to three, and exhale.

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- **Communicate logistics to client.** Ensure the client has the information needed to get to the office or the space where you are meeting. This includes:
 - Considering what support they might need to travel to the location - money, mobility, childcare, safety, etc.
 - Providing clear directions. If they are driving that may include directions and parking options. If they will be using public transportation, ensure they know the public transit route.
 - Explaining what to expect when they enter the building (e.g., Is there a security desk, do they need to take an elevator?) Also be sure to remind them who they can contact once they arrive.

CONDUCTING THE AFFIDAVIT INTERVIEW USING TRAUMA-INFORMED CARE

The purpose of the affidavit interview is to use “trauma-informed strategies” to help the client tell their story. A few tips to keep in mind are summarized below.

- **Build rapport.** Remember that the client may feel nervous. Provide a welcoming environment and work to build trust and rapport before diving into a potentially difficult conversation. Before diving right into interview questions, offer the client coffee or refreshments, and simply chat for a few minutes.
- **Provide a roadmap for the meeting.** The client will likely be nervous about the affidavit interview. Providing transparency about what they can expect during the session can help alleviate some of their fears. Inform the client of what will happen during the interview session. If you plan to type or take written notes, explain that and why you will do it. Explain the reason you need to discuss their story. Giving as much information as possible gives the client a sense of safety.
- **Give the client control.** Remind the client to ask questions and take breaks when needed. Tell them you will stop any time they ask. Tell them they can skip over questions if they are too difficult. If you have not already done so, this is also when you can review their criminal record history with the client to transition into building a timeline of their experiences.
- **Consider how you phrase questions.** Try to use open-ended questions and avoid “why” questions, which can imply blame.

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- **Be purposeful in what questions you ask.** Ask yourself whether asking for more details is necessary and/or if you really need the client to repeat details, which can be difficult and retraumatizing for many victims/survivors. Before asking sensitive or potentially retraumatizing questions, provide introductory information about why you are asking to help the client understand the purpose behind your question.
 - **Adopt the language the client uses to describe themselves and their experiences.** Remember that not all clients will identify as victims of human trafficking. Take cues from the client instead of making assumptions about how they might want to label themselves or their trafficker.
 - **Watch and respond to non-verbal cues.** Body language and other non-verbal cues may indicate that the client is experiencing a traumatic response to the interview process. Be prepared to respond accordingly to help your client be grounded in the present and re-establish a sense of safety.
 - **Wrap up the interview by discussing something that brings the client into the present and into safety.** At the conclusion of the interview, thank the client for their time and fully explain the next steps. Let the client know that you will be using the information they shared to prepare their affidavit and when they can expect to hear back from you. Also remind them of the next steps in the process and when and how you will keep them informed. Finally, it is important to remember that sharing their experiences with you is often traumatic for the survivor so be sure to help the client plan for what they can do after the interview to relax and decompress.

DRAFTING THE CLIENT AFFIDAVIT

This section provides an overview of what to include in the client's affidavit based on the information gathered from the affidavit interview and other corroborating evidence. Some other tips to keep in mind when drafting the affidavit are provided below.

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- **Describe the facts in a numbered list.** State each fact in a separate, numbered paragraph. Each paragraph of the affidavit should include one fact or a small number of facts if one cannot be stated alone.
 - **Write the affidavit from the client’s point of view.** This includes writing from the first-person point of view (i.e., *I was born in . . .*”), using plain language and short sentences.
 - **Describe each fact clearly and concisely.** Provide names, dates, addresses, and other supporting information as needed. Do not include speculations.
 - **Organize information effectively.** To improve readability and comprehension, add headers and organize information around key legal points. Important information to include in the affidavit includes:
 - **Background/Vulnerability:** Include information regarding the client’s background, especially their specific vulnerabilities (abuse/neglect, parental instability, homelessness, immigration status, addiction, etc.)
 - **Trafficking Experience:** Ensure there is sufficient detail to establish the presence of trafficking victimization. This should include what act(s) were committed by the trafficker, how the trafficker used force, fraud, or coercion to gain control of and eventually exploit the client, and the nexus between the conviction(s) for which you are seeking vacatur and the trafficking victimization.
 - **Present time:** Discuss connection to services, efforts towards recovery and rehabilitation, if relevant. This should also include accomplishments/aspirations to highlight reason for seeking vacatur and any obstacles the client has faced because of the convictions.
 - **Create a signature block.** The affidavit serves as written testimony for a court filing; thus it is beneficial to have the affidavit notarized before submitting it to the court. At the end of the affidavit, provide a space for the client's signature with his or her typed or printed name below, along with a blank space to fill in the date the affidavit is signed. Also include a notary signature block.

Once the affidavit is drafted, you will want to review it to ensure it addresses all the necessary legal points in a credible manner. Some factors that may influence credibility include internal consistency of each statement made in the affidavit, consistency of statements with evidence provided and with other records or reports the prosecutor or court may have, inherent plausibility of the client's account, and any inaccuracies or falsehoods contained in the affidavit. Then provide a copy of the draft affidavit to the client for review. Ask the client to review the draft document for accuracy and once they are comfortable with the content, ask them to sign the affidavit in front of a notary.

IX. THE IMPACT OF TRAUMA ON THE CLIENT/SURVIVOR

The impacts of trauma are threaded throughout the lives of trafficked and exploited individuals. For example, research shows that the majority of commercially sexually exploited persons suffered past abuse, violence, and neglect in their early years.⁵⁷ Survivors of trafficking often experience life-long psychological impacts from the repeated trauma of their victimization, resulting in extensive impacts on the brain both in the short and long term. Often, the trafficker uses a victim's mental health issues to manipulate them. Mental health disabilities also make it difficult to reach out for help escaping their trafficker. Understanding trauma and the impact it has on the client will ensure you are able to provide competent representation.

WHAT IS TRAUMA?

Trauma is the unique individual **experience** of an **event** or enduring condition as physically or emotionally harmful or life threatening and that has lasting adverse **effects** on the individual's functioning.⁵⁸ The definition of trauma is purposefully broad to be applicable to a singular traumatic event, such as natural disasters, as well as chronic traumatic events, like human trafficking.⁵⁹ Additionally, the definition intentionally highlights the individual's perception, as it is up to each individual survivor to determine whether a particular event is traumatic.

There are two key components of a traumatic experience: the objective and the subjective. It is the **subjective** experience of the **objective** event(s) that constitutes the trauma. The more an individual believes they are endangered, the more traumatized they are.⁶⁰ Thus, two individuals may undergo the same experience and only one may be traumatized while the other may not be.

The core issue with trauma is that **people feel unsafe in their bodies.**

THE EFFECTS OF TRAUMA

The effects of trauma are also unique to the survivor. Traumatic effects can occur immediately or be delayed, and duration can vary from short term to life-long.⁶¹ Trauma can manifest as hyperarousal or hypo-arousal. **Hyperarousal** includes hyperactivity, panic, rage, hypervigilance, and elation/mania. **Hypo-arousal** includes depression, disconnection, deadness, or exhaustion. Additionally, some survivors may form maladaptive behaviors to cope and shield themselves from the trauma they experienced and may, at times, re-experience.⁶² Some of those maladaptive behaviors include disassociation, numbing, and hypervigilance.⁶³

Trauma alters reality. Trauma changes the brain, how one sees the world, how a survivor perceives danger, how the body reacts to one's environment, and what the individual considers relevant and irrelevant to their survival.⁶⁴ When an individual experiences repeated or prolonged traumatic experiences, the pain and other negative experiences simply begin to feel "normal." And, understandably, the survivor resists changing what has come to feel "normal" to them.

Trauma alters memory. Survivors may not remember details about their victimization or they may be unable to recall events chronologically.⁶⁵ This is because, in times of danger, all bodily systems not crucial to survival are switched off, including the hippocampus or “thinking brain,” which is the region of the brain primarily associated with memory.⁶⁶ When switched off, the hippocampus stops filing memories chronologically.⁶⁷ Instead, the body encodes memories via the senses. This results in difficulty recalling traumatic events in an organized, linear, and easily articulable way. Thus, survivors more often recall their reactions to the traumatic event—images, sensations, fear, emotions.

PRACTICE TIP:

Do not misinterpret inconsistencies as evasiveness or lying; keep open dialogue and address gaps later. It is often helpful to use key milestones, such as the birth of a child, or probes around the time of year, to elicit details and fill in gaps.

HOW DO MANIFESTATIONS OF TRAUMA AFFECT CLIENT INTERACTIONS?

Trauma can manifest in many ways that have the potential to affect the client attorney relationship. Understanding the manifestations of trauma can help you engage with the client in a more trauma-informed way. If you understand why the client reacts in a certain way, you will be able to tailor your approach to fit the

How Trauma Can Impact the Client Attorney Relationship

- Clients may be unreliable or erratic in their communications
- Clients may be volatile in their reactions
- Mistrust is pervasive
- It may appear as though the client's story changes over time
- Clients may be unable to remember certain events or confuse facts
- Manipulation and dishonesty are adaptive survival strategies
- Trauma bonding may be strong
- Client may relapse into maladaptive behaviors many times before moving forward

client's needs. When we see "symptoms" in a trauma survivor, it is always significant to ask ourselves: what purpose does this behavior serve? Every symptom helped a survivor cope at some point in the past and is still helpful in the present – in some way.

Trauma-informed lawyering places the realities of the client's trauma at the forefront of how you engage with the client and requires you to adjust your typical practice approach so it is informed by the client's specific trauma experiences and individual reactions to those experiences.

A trauma-informed approach results in more trusting relationships- which lead to better results. Trauma-Informed Lawyering is discussed in more detail in Section X. If this is your first time working with a trafficking survivor, we also encourage you to review the additional resources regarding trauma and trauma-informed care listed in **Appendix B**.

X. TRAUMA-INFORMED LAWYERING

Employing a trauma-informed approach to your representation is not only ethically necessary,* it is essential when avoiding re-traumatization of the client while working with them on their case. The legal process should be empowering for all those who engage it, especially for survivors of sex trafficking. Survivors engage the legal process uniquely due to the trauma they experienced during their victimization. However, complex trauma impedes the empowering result the legal process can provide. Thus, to ensure that the legal process is empowering for survivors, attorneys must be trauma-informed.

The “Three R’s” of Trauma-Informed Lawyering†

- **Recognize** signs and symptoms of trauma in clients, families, staff, and others;
- **Respond** by fully integrating knowledge about trauma into policies procedures and practices; and
- **Resist** re-traumatization.

† Adapted from SAMHSA’s *Concept of Trauma and Guidance for a Trauma-Informed Approach* (2014), available at <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf>

Without a sense of safety, the anxiety and stress created by engaging in the legal process may add new trauma, amplify old trauma, and impact behavior, often emerging as unhealthy maladaptive behaviors replayed long after the physical threat is gone.⁶⁸ Being trauma-informed requires service providers to reconsider

* Rule 1.1 of the PA Rules of Professional Conduct addresses competence and mandates that “a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Understanding Trauma and the impact it has on your clients will ensure you are able to provide competent representation.

the way they support survivors, including the language they use and even the physical environment they create.

The concept of trauma-informed care first emerged in the 1970s and has been evolving ever since. Today, trauma-informed care is defined as a strengths-based service delivery approach grounded in an understanding of and responsiveness to the impact of trauma on individuals.⁶⁹ It emphasizes physical, psychological, and emotional safety for providers and survivors, while also creating opportunities for survivors to rebuild a sense of control and empowerment.⁷⁰

A trauma-informed care approach is built on five core values:

- **Safety**, both physical and emotional;
- **Trustworthiness**, which relates to the clarity of expectations, providing consistent service delivery, and maintaining boundaries;
- **Choice**;
- **Collaboration**; and
- **Empowerment**.

The most important value of those five is safety.⁷¹ It is important to ensure that a client is safe; not just physically but emotionally as well. If the client isn't safe, work on safety until that is established before proceeding.

A list of resources that explain trauma, provide best practices for trauma-informed interviewing, and offer practical tips for attorneys is provided in **Appendix B**. Some take-aways from these resources is summarized in the Table on the following pages.

Practice Tips for Trauma-Informed Lawyering

SAFETY

- Create a safe, comfortable, and non-threatening environment for in person meetings. As much as possible, clients should be offered a choice of where and when the meeting will be and how the physical environment is set up as much as possible. Ask the client what trauma triggers they have (e.g., lighting, temperature, sounds, smells) and which topics are off-limits.
- Avoid triggers and re-victimization by having the client re-tell his or her story as few times as possible.
- Be aware of symptoms of psychological distress and have a plan for de-escalation. Each client is their own person, and they may or may not exhibit symptoms; and the symptoms that they may exhibit may vary.
- Be aware of the client's emotions. Do not take distrust personally. If a client shuts down and stops communicating, they could be overwhelmed. Try to understand why emotions and/or behaviors are manifesting and adjust accordingly.

TRUSTWORTHINESS

- Avoid directly asking the client to trust you – instead, allow for genuine and honest communication to guide the relationship process naturally.
- Do not blame or make statements that imply judgment such as asking “why” questions.
- Explain legal processes clearly and consistently to the client so you are managing expectations. Check in regularly to make sure the client understands the information you are conveying and use whatever method of communication they prefer.
- Monitor expectations with clear, consistent communication. Provide accurate and timely updates on events and return phone calls in a timely manner. Be clear about how and when the client can expect to hear from you and what the definition of “timely” is up front. Not providing transparency on timelines can accelerate stressors for the client.
- Do not underestimate your own emotional response to the client's experiences. Be aware of your facial expressions and body language, and never let your own emotional reactions take over the relationship.
- Maintain boundaries by defining your role as an attorney.

Practice Tips for Trauma-Informed Lawyering

CHOICE

- Allow the client to control the pace of the meeting. Give them opportunities to take breaks whenever they need. Always respect the victim/survivor's boundaries and abilities.
- Be transparent about your role as an attorney and in explaining options at every step in the process. Allow the client to consider options once they have the information.
- Make sure the client knows exactly what is being submitted to the court and has had an opportunity to review and approve everything before providing to the prosecutor for consent and filing.
- Don't pressure a client to answer questions if they hesitate. Instead, explain why you are asking the question and the legal consequences of not providing the information, if any, so that they can choose if they want to answer or move on to the next topic.

COLLABORATION

- Ensure that clients have the support they need before and after your meeting (e.g., mental health providers, case managers, or victim advocates.)
- Set expectations up front that prosecutor consent to file a vacatur motion is necessary. Do not discuss a client's case with a prosecutor or judge without the client's knowledge and clear agreement.

EMPOWERMENT

- Refrain from language that has the victim pleasing or performing for you.
- Listen actively, validate, and acknowledge the client's experiences.
- Respect the decisions the client makes, even if you disagree.
- Combat the client's feelings of powerlessness by giving the client decisions and control over as much as possible in the attorney-client relationship and legal process generally.

XI. HOW TO FILE A VACATUR MOTION

A vacatur motion should be filed in the court in which the client was convicted of the vacatur eligible offense(s). Pennsylvania's vacatur law is silent regarding filing procedure. As a practical matter the process for filing the motion varies by county, and because the vacatur remedy is relatively new and use has been limited, many counties within the Commonwealth do not have an existing process for filing a vacatur motion.

WHAT TO CONSIDER WHEN ESTABLISHING A FILING PROCEDURE FOR THE FIRST TIME

Establishing a filing procedure should be a collaborative process between the attorney representing the client seeking vacatur, the prosecutor, the court administrator and/or the clerk of court to work out acceptable filing practices. Leveraging filing procedures used in another county within the state can also serve as a starting point in developing a procedure. Several points for consideration when establishing a process are highlighted below.

PRACTICE TIP:

If this is your first time filing a vacatur motion, please contact us at the CSE Institute to determine if a filing process already exists in that county or for technical assistance in establishing a filing process.

➤ **Can the motion be efiled?**

The CSE Institute provides post-conviction criminal record relief across the Commonwealth and has established processes in multiple counties. Within Philadelphia, a motion to vacate may be efiled at <https://www.courts.phila.gov/>

Other counties may require paper filing of a vacatur motion. To file in person, once the packet is complete, bring the original documents AND three (3) copies for filing to the Clerk of Courts, Criminal Division for filing and service.

➤ **What language should be included in the draft order with the motion?**

Language to include in a draft order may vary based on local practice at the county level. Please refer to **Appendix A** for a Sample Vacatur Order that can be used as a starting point.

➤ **How do you document prosecutorial consent?**

Because prosecutorial consent is a required element for a vacatur motion, it is important to address how consent is documented. In Philadelphia, a vacatur motion is efiled, and the prosecutor provides consent electronically, so consent is documented on the docket.

For counties where a motion is paper filed, the CSE Institute has provided the prosecutor with a draft consent memo upon providing the draft motion for review. The prosecutor then uses the draft language to provide written consent on their letterhead. The CSE Institute then includes the consent memo as an appendix to the motion. Please refer to **Appendix A** for a sample draft memo.

➤ **How do you manage confidential information?**

Confidentiality is important. Refer to your jurisdictional rules on how to manage confidential information. Where possible, consider filing under seal and use initials when referring to individuals.

➤ **Is there a process for waiving filing fees?**

Pennsylvania law is silent on whether there is a filing fee associated with a vacatur motion. When establishing a filing procedure for the first time within a jurisdiction, it is important to address whether there will be a filing fee for the motion. To date, the CSE Institute has established a process where filing fees are waived for every county for which we have sought vacatur. If the individual is indigent, they may also file an *in forma pauperis* motion to request a waiver of fees.

➤ **What happens with costs and fines associated with the underlying conviction?**

If the motion is granted, the conviction will be vacated, and the clerk of courts finance office should review and clear any remaining balances.

Any money already paid on costs and fines will likely first be redistributed toward unpaid balances on other non-vacatur eligible convictions if any exist. If the client does not have an outstanding balance owed to the court, the remaining refund will be paid to the client. All information in the motion must be up-to-date, particularly the client's name and address, as the finance office will mail checks if there is an amount owed to the client.

XII. RESOLUTION OF A VACATUR MOTION

A vacatur motion will likely be resolved in one of two ways:

- **On the papers:** Some counties within the Commonwealth resolve the motion on the papers and without a hearing.
- **Hearing:** Other counties require a hearing. When a hearing is required, it is a good idea to consult with the client to determine whether they want to be present at the hearing because clients often prefer not to attend the hearing. Conversely, some clients prefer to be present at the hearing because it provides a sense of empowerment. If the client prefers not to attend the hearing, you should seek a waiver of presence to try to accommodate the client's preference.

If a hearing is required and the client will be present, you should prepare them for the hearing. The client will likely be nervous about attending the hearing so be sure to mitigate any unnecessary anxiety by communicating logistics, setting expectations, and preparing them to testify before the judge.

WHAT HAPPENS ONCE THE COURT GRANTS THE MOTION?

If a vacatur motion is granted, obtain a copy of the signed Vacatur Order. Typically, the court staff (i.e., the clerk's office) will forward the signed order to the Pennsylvania State Police (PSP) police and other criminal-justice agencies that remove the information from the public record. The destruction of the criminal history record occurs when these agencies comply with the signed Vacatur Order.

Some of these agencies may send a letter to confirm that the information has been removed and the vacatur and expungement process has been completed.

Whether or not confirmation of destruction is received, it has been the practice of the CSE Institute to repeat a PSP criminal record check six months after vacatur is granted to confirm expungement of records has occurred.

Additionally, pursuant to *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) (holding that courts may not retain money collected pursuant to subsequently overturned convictions), if the client previously paid fees, costs, and/or fines for the vacated conviction, they should anticipate receiving a refund. However, **if the client has an outstanding balance with that court from other criminal matters, the refund may be applied to the outstanding balance instead.** It has been the experience of our clients that a refund is received within three months of the vacatur being granted.

WHAT HAPPENS IF THE COURT DENIES THE MOTION?

The law is silent on whether there is a right of appeal if a vacatur motion is denied at the hearing phase. However, existing case law in Pennsylvania suggests that a denied expungement motion can be appealed to the Superior Court,⁷² so it can be argued that right of appeal should also exist for a vacatur motion.

XIII. ADDITIONAL RESOURCES

Statewide resources for service providers of human trafficking victims is provided below.

- **Pennsylvania Coalition Against Domestic Violence (PCADV)**
3605 Vartan Way, Suite 101, Harrisburg PA 17110
<http://www.pcadv.org>
- **Pennsylvania Coalition to Advance Respect (PCAR)**
125 North Enola Drive, Enola, PA 17025,
<http://www.pcar.org>

- **Pennsylvania Commission on Crime and Delinquency (PCCD)**
3101 N Front St, Harrisburg, PA 17110,
<http://www.pccd.pa.gov/Victim-Services/Pages/default.aspx#.V1dD62PvHsE>
- **Department of Human Services**
P.O. Box 2675, Harrisburg PA 17105-2675
<http://www.dhs.pa.gov>
- **Justice at Work**
990 Spring Garden Street, Suite 300 Philadelphia, PA 19123,
1010 Western Ave, Suite 300 Pittsburgh, PA 15233
<https://www.justiceatworklegalaid.org/>
- **Villanova University Charles Widger School of Law Institute to Address Commercial Sexual Exploitation (CSE Institute)**
299 N Spring Mill Rd, Villanova, PA 19085
<http://cseinstitute.org>

¹ VANESSA BOUCHÉ, OFF. OF JUST. NAT’L CRIM. JUST. REFERENCE SERV., *AN EMPIRICAL ANALYSIS OF THE INTERSECTION OF ORGANIZED CRIME AND HUMAN TRAFFICKING IN THE UNITED STATES* (2017), <https://www.ncjrs.gov/pdffiles1/nij/grants/250955.pdf>.

² *3Ps: Prosecution, Protection, and Prevention*, U.S. DEP’T OF STATE, <https://www.state.gov/3ps-prosecution-protection-and-prevention/> (last visited Nov. 9, 2023)

³ 18 PA. CONS. STAT. § 3019(d) (2022).

⁴ The TVPA was reauthorized in 2003, 2005, 2008, 2012, 2018, 2019, 2021, and 2022.

⁵ 22 U.S.C. § 7102(12) (2018).

⁶ 22 U.S.C. § 7102(4) (2018).

⁷ 22 U.S.C. § 7102(11)(B) (2018).

⁸ 22 U.S.C. § 7102(8) (2018).

⁹ 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”); *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.”)

¹⁰ Trafficking Victims Protection Act, 18 U.S.C. § 1591(e)(4) (2018) (emphasis added) (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.”)

¹¹ Act of July 2, 2014, 2014 Pa. Laws, <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2014&sessInd=0&act=105>.

¹² *Id.*

¹³ 18 PA. CONS. STAT. §§ 3011-12 (2022).

¹⁴ 18 PA. CONS. STAT. § 3011 (2024).

¹⁵ See NAT'L SURVIVOR NETWORK, *National Survivors Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf> [hereinafter NAT'L SURVIVOR NETWORK].

¹⁶ See Survivor Reentry Project, *Criminal Record Relief Laws for Survivors*, FREEDOM NETWORK USA, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/> (last updated May 2023).

¹⁷ 18 PA. CONS. STAT. § 3019(d) (2022).

¹⁸ See NAT'L SURVIVOR NETWORK, *supra* note 15.

¹⁹ See *Background Checking: Conducting Criminal Background Checks*, SOC'Y FOR HUM. RES. MGMT. fig.3 (Jan. 22, 2010), http://www.slideshare.net/shrm/background-check-criminal?from=share_email (noting that 73% of the responding employers reported that they conducted criminal background checks on all of their job candidates, 19% reported that they conducted criminal background checks on selected job candidates, and a mere 7% reported that they did not conduct criminal background checks on any of their candidates. The survey excluded the "not sure" responses from its analysis, which may account for the 1% gap in the total number of employer responses.).

²⁰ NAT'L SURVIVORS NETWORK, *supra* note 15.

²¹ *Id.*

²² 18 PA. CONS. STAT. § 9122.2 (2022) (a conviction is eligible for sealing if it carries a prison sentence of two years or less, and if the person has not committed another offense that carries a prison sentence of one year or more in the ten years since their conviction).

²³ *Id.*

²⁴ 18 PA. CONS. STAT. § 9122 (2022).

²⁵ 18 PA. CONS. STAT. § 9122 (c) (2022).

²⁶ 37 PA. CODE § 81.211 (2022).

²⁷ 37 PA. CODE § 81.301 (2022).

²⁸ See *PA Guide to Pardons*, PA. BD. OF PARDONS 1, 6, <https://www.bop.pa.gov/Apply%20for%20Clemency/Documents/Guide%20to%20Pardons%20-%20Davis%202023.pdf> (last visited Nov. 15, 2023).

²⁹ *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) (holding that courts may not retain money collected pursuant to subsequently overturned convictions.)

³⁰ 18 PA. CONS. STAT. § 3019(f) (2022).

³¹ The plain meanings of the acts discussed in this section are found in the relevant entries of the dictionary. See CAMBRIDGE DICTIONARY: ENGLISH DICTIONARY, <https://dictionary.cambridge.org/dictionary/English> (last visited Jan 3, 2024).

³² POLARIS, *Sex Trafficking in the U.S.: A Closer Look at U.S. Citizen Victims* (2015), <https://polarisproject.org/wp-content/uploads/2019/09/us-citizen-sex-trafficking.pdf> [hereinafter *Sex Trafficking in the U.S.*].

³³ POLARIS, *The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States* (2017), <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf>.

³⁴ See *The Trap: The Deadly Sex Trafficking Cycle in American Prisons*, GUARDIAN, June 2018, <https://www.theguardian.com/us-news/ng-interactive/2018/jun/29/the-trap-sex-trafficking-american-prisons>.

³⁵ 22 U.S.C. § 7101(b)(4).

³⁶ 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

³⁷ Emma Ecker, *HTI Report Finds U.S. Federal Courts Handled 579 Human Trafficking Cases in 2020*, HUM. TRAFFICKING INST. (June 8, 2021), <https://traffickinginstitute.org/hti-report-finds-u-s-federal-courts-handled-579-human-trafficking-cases-in-2020/>.

³⁸ See *Sex Trafficking in the U.S.*, *supra* note 33, at 14.

³⁹ *Id.* at 17.

⁴⁰ *Id.* at 36.

⁴¹ See *United States v. Jungers*, 702 F.3d 1066, 1069 (8th Cir. 2013).

⁴² *Id.* at 1072.

⁴³ 18 PA. CONS. STAT. § 3012(b) (2022).

⁴⁴ *United States v. Bell*, 761 F.3d 900, 909 (8th Cir. 2014).

- ⁴⁵ 18 PA. CONS. STAT. § 3012(b)(12) (2022).
- ⁴⁶ Lamya Khoury, et. Al., *Substance use, childhood traumatic experience, and posttraumatic stress disorder in an urban civilian population*, 27:12 DEPRESS ANXIETY. 1077, 1082 (2010), <https://onlinelibrary.wiley.com/doi/10.1002/da.20751>
- ⁴⁷ Katja Weber, et al. *Stress load during childhood affects psychopathology in psychiatric patients*. 8:63 BMC PSYCHIATRY, (2008), <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/1471-244X-8-63>
- ⁴⁸ 18 PA. CONS. STAT. § 3012(b) (12) (2022); also see POLARIS, *supra* note 331 at 36.
- ⁴⁹ Nicole Yuan et al., *The Psychological Consequences of Sexual Trauma*, VAWA.NET. NAT’L ONLINE RES. CTR. ON DOMESTIC VIOLENCE (2006), <https://vawnet.org/material/psychological-consequences-sexual-trauma>.
- ⁵⁰ 18 PA. CONS. STAT. § 3019(e) (2022).
- ⁵¹ 18 PA. CONS. STAT. § 3019(d) (2022).
- ⁵² 18 PA. CONS. STAT. § 3019(e) (2022).
- ⁵³ *Id.*
- ⁵⁴ See Jessica Kitson & Kate Mogulescu, *Workable Solutions for Criminal Record Relief: Recommendations for Prosecutors Serving Victims of Human Trafficking*, ABA SURVIVOR REENTRY PROJECT, (2019), <https://freedomnetworkusa.org/app/uploads/2020/06/SRP-Workable-Solutions-November-2019.pdf> [hereinafter WORKABLE SOLUTIONS].
- ⁵⁵ See *Id.*; NAT’L SURVIVORS NETWORK, *supra* note 15.
- ⁵⁶ See WORKABLE SOLUTIONS, *supra* note 55.
- ⁵⁷ See Jody Raphael & Kate Feifer, *GET THE FACTS: What We Know About Sex Trafficking, Sexual Exploitation and Prostitution in the United States*, WORLD WITHOUT EXPLOITATION (2020), <https://www.worldwithoutexploitation.org/stats>.
- ⁵⁸ SUBSTANCE ABUSE AND MENTAL HEALTH SERVS., *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach* (2014), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf>.
- ⁵⁹ See Esther Giller, SIDRAN INST., *What is Psychological Trauma?* (May 1999), <https://www.theannainstitute.org/What%20is%20Psychological%20Trauma.pdf?contentID=88>.
- ⁶⁰ See generally JON G. ALLEN, *COPING WITH TRAUMA: A GUIDE TO SELF-UNDERSTANDING* (Am. Psychiatric Publ’g Inc., 1995).
- ⁶¹ SUBSTANCE ABUSE AND MENTAL HEALTH SERVS., *supra* note 58.
- ⁶² See Giller, *supra* note 59.
- ⁶³ *Id.*
- ⁶⁴ BESSEL VAN DER KOLK, *THE BODY KEEPS SCORE* (Penguin Books, reprinted ed., 2015).
- ⁶⁵ *Id.*
- ⁶⁶ See Giller, *supra* note 59.
- ⁶⁷ See NHS LANARKSHIRE’S ENDING VIOLENCE & ABUSE SERVS., *Trauma and the Brain*, YOUTUBE (Sept. 21, 2015), <https://www.youtube.com/watch?v=4-tcKYx24aA&t=20s>.
- ⁶⁸ Christopher Menschner and Alexandra Maul, CENTER FOR HEALTH CARE STRATEGIES, *Issue Brief. Key Ingredients for Successful Trauma-Informed Care Implementation* (Apr 2016), https://www.samhsa.gov/sites/default/files/programs_campaigns/childrens_mental_health/atc-whitepaper-040616.pdf
- TRAUMA-INFORMED CARE IMPLEMENTATION
- ⁶⁹ See Lisa Conradi et al., *Trauma-Informed Care*, in *ENCYCLOPEDIA OF SOC. WORK* (Nat’l Ass’n of Soc. Workers Press & Oxford Univ. Press, 2013), <http://oxfordre.com/socialwork/view/10.1093/acrefore/9780199975839.001.0001/Acrefore-9780199975839-e-1063>.
- ⁷⁰ *Id.*
- ⁷¹ *Id.*
- ⁷² See, e.g., *Commonwealth v. Blaiklock*, 436 A.2d 226 (Pa. Super. Ct. 1981); *In re Jacobs*, 483 A.2d 907 (Pa. Super. Ct. 1984); *In re John W.*, 446 A.2d 621 (Pa. Super. Ct. 1981).

APPENDIX A

Sample Redacted Motion to Vacate

**CONFIDENTIAL
INFORMATION
FORM**



Case Records Public Access Policy of the Unified Judicial System of Pennsylvania
204 Pa. Code § 213.81
www.pacourts.us/public-records

Commonwealth of Pennsylvania
(Party name as displayed in case caption)

CP-22-CR- [REDACTED]
Docket/Case No.

Vs.

[REDACTED]
(Party name as displayed in case caption)

Dauphin County Court of C. P.
Court

This form is associated with the pleading titled Order to Vacate and Expunge, dated March 16, 2023.

Pursuant to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, the Confidential Information Form shall accompany a filing where confidential information is **required by law, ordered by the court, or otherwise necessary to effect the disposition of a matter**. This form, and any additional pages, shall remain confidential, except that it shall be available to the parties, counsel of record, the court, and the custodian. This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

This Information Pertains to:	Confidential Information:	References in Filing:
<p><u>[REDACTED]</u> (full name of adult)</p> <p>OR</p> <p>This information pertains to a minor with the initials of ____ and the full name of _____ (full name of minor)</p> <p>and date of birth: _____</p>	<p>Social Security Number (SSN): <u>[REDACTED]</u></p> <p>Financial Account Number (FAN): _____</p> <p>Driver License Number (DLN): _____</p> <p>State of Issuance: _____</p> <p>State Identification Number (SID): _____</p>	<p>Alternative Reference: SSN 1</p> <p>Alternative Reference: FAN 1</p> <p>Alternative Reference: DLN 1</p> <p>Alternative Reference: SID 1</p>
<p><u>_____</u> (full name of adult)</p> <p>OR</p> <p>This information pertains to a minor with the initials of ____ and the full name of _____ (full name of minor)</p> <p>and date of birth: _____</p>	<p>Social Security Number (SSN): _____</p> <p>Financial Account Number (FAN): _____</p> <p>Driver License Number (DLN): _____</p> <p>State of Issuance: _____</p> <p>State Identification Number (SID): _____</p>	<p>Alternative Reference: SSN 2</p> <p>Alternative Reference: FAN 2</p> <p>Alternative Reference: DLN 2</p> <p>Alternative Reference: SID 2</p>

**CONFIDENTIAL
INFORMATION
FORM**



Additional page(s) attached. 18 total pages are attached to this filing.

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Mary Haggerty
Signature of Attorney or Unrepresented Party

03/16/23
Date

Name: Mary Haggerty

Attorney Number: (if applicable) 330535

Address: 299 N. Spring Mill Road

Telephone: (862) 200-1234

Villanova, PA 19085

Email: mary.haggerty@law.villanova.edu

NOTE: Parties and attorney of record in a case will have access to this Confidential Information Form. Confidentiality of this information must be maintained.

BY The Institute to Address
Commercial Sexual Exploitation
BY: Mary Haggerty, Esq.
Identification No 330535

299 North Spring Mill
Road, Villanova PA
19085

Attorney for [REDACTED]

COMMONWEALTH OF PENNSYLVANIA

vs.

[REDACTED]

: IN THE COMMON PLEAS COURT
: OF DAUPHIN COUNTY,
: PENNSYLVANIA
: CRIMINAL DIVISION
: CP-22-CR-[REDACTED]
: Originating Docket: [REDACTED]
: OTN # [REDACTED]

ORDER FOR CONVICTION TO BE VACATED AND EXPUNGED

AND NOW, this ____ day of _____, 2023, after consideration of the motion to Vacate and Expunge under 10 Pa.C.S § 3019(d) (g) and Petition for Expungement pursuant to Pa.R.Crim.P. 790 presented by Elaine Marling it is ORDERED that the Petition/Motion is _____.

All criminal justice agencies upon which this order is served shall expunge all criminal history record information from defendant's arrest record pertaining to the charges below. Criminal history record information includes information collected by criminal justice agencies concerning this individual and arising from the initiation of these criminal proceedings including but not limited to all fingerprints, photographs, identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges, any dispositions arising from the above-captioned proceedings, and all electronic or digital records regarding any of the foregoing.

The Pennsylvania State Police shall request the Federal Bureau of Investigation to return to them all records pertaining to said arrest(s), which shall be destroyed by said agency upon their receipt of same.

Pursuant to Nelson v. Colorado, 137 S.Ct. 1249 (2017), all owing costs, fines, restitution and any other monies associated with the charges below are annulled. Any monies defendant has paid into court in association with these charges are to be reimbursed.

The information required under Pa.R.Crim.P. 790 appears on the attached page(s) which is hereby incorporated into this ORDER by reference.

BY THE COURT:

J.

Pursuant to Pa.R.Crim.P. 790, the following information is provided:

1. **Petitioner Name:** [REDACTED]
2. **Alias(es):** [REDACTED]
3. **Petitioner's Address:** [REDACTED]
4. **Petitioner's Date of Birth:** [REDACTED]
5. **Petitioner's Social Security Number: SSN 1**
6. **Name and address of the judge who accepted the guilty plea or heard the case:**
Judge Scott Arthur Evans
Dauphin County Courthouse, 101 Market Street, Harrisburg, PA 17101
7. **Name and mailing address of the affiant as shown on the complaint, if available:**
N/A
8. **Docket Number: CP-22-CR-0** [REDACTED]
9. **Originating Docket Number:** [REDACTED]
10. **Offense Tracking Number (OTN):** [REDACTED]
11. **The date on the complaint, or the date of arrest, and if available, the criminal justice agency that made the arrest:** Arrest Date: 11/17/2011; Arresting Agency: Harrisburg Police Dept.
12. **The specific charges, as they appear on the charging document, to be expunged and applicable dispositions:**

Code Section	Statute Description	Grade	Dispo. Date	Disposition
18 § 5902 §§ A1	Prom Pros- Inmate In House of Prost/Business	M2	1/22/2013	Guilty Plea

13. **If the sentence includes a fine, costs, or restitution, whether the amount due has been paid:**
The Petitioner's sentence includes fines, costs and/or restitution in the amount of \$1,326 and \$1,326 has been paid off/adjusted.
14. **The reason for expungement:**
As a result of these arrests and subsequent photographing and fingerprinting, Petitioner has been caused to suffer embarrassment and irreparable harm and loss of job opportunities. Expungement is proper under 18 Pa.C.S. 9122 as the charges were vacated.

15. The criminal justice agencies upon which certified copies of the order shall be served:

1. The Clerk of Courts of Dauphin County, Criminal Division
2. The Dauphin County District Attorney's Office
3. The Pennsylvania State Police, Central Records
4. A.O.P.C. Expungement Unit
5. Harrisburg Police Dept
6. Dauphin County Department of Adult Probation and Parole

The Institute to Address Commercial
Sexual Exploitation
BY: Mary Haggerty, Esq.
Identification No.: 330535

299 North Spring Mill
Road, Villanova PA
19085
610 519 7037

Attorney for [REDACTED]

COMMONWEALTH OF PENNSYLVANIA

vs.

[REDACTED]

: IN THE COMMON PLEAS COURT
: OF DAUPHIN COUNTY,
: PENNSYLVANIA
: CRIMINAL DIVISION
: CP-22-CR-[REDACTED]
: Originating Docket: [REDACTED]
: OTN # [REDACTED]

Petition for Vacatur and Expungement Pursuant to Pa.R.Crim.P. 790

AND NOW, the Petitioner, through counsel Mary Haggerty, avers the following and requests that this petition for Vacatur and Expungement pursuant to Pa.R.Crim.P. 790 be granted for the reasons set forth below.

PETITIONER INFORMATION		
Full Name: [REDACTED]	DOB: [REDACTED]	SSN: SSN 1
Address: [REDACTED] Harrisburg PA, 17101	Alias(es): [REDACTED]	
CASE INFORMATION		
Judge: Judge Scott Arthur Evans	Address: Dauphin County Courthouse, 101 Market Street, Harrisburg, PA 17101	
Docket(s): CP-22-CR-[REDACTED]	Offense Tracking Number (OTN): [REDACTED]	
Arresting Agency: Harrisburg Police Dept.	Date of Arrest: [REDACTED]	Date on Complaint:
Affiant:	Address:	

Code Section	Statute Description	Grade	Dispo. Date	Disposition
18 § 5902 §§ A1	Prom Pros-Inmate In House of Prost/Business	M2	01/22/2013	Guilty
The Petitioner's sentence includes fines, costs and/or restitution in the amount of \$1,326 and \$1,326 has been paid off/adjusted.				
<p>List the reason(s) for the Expungement (attach additional sheet(s) of paper if necessary): As a result of these arrests and subsequent photographing and fingerprinting, Petitioner has been caused to suffer embarrassment and irreparable harm and loss of job opportunities. Expungement is proper under 18 § Pa.C.S. 9122 as the charges to be expunged were vacated.</p>				

The facts set forth in this petition are true and correct to the best of my personal knowledge or information and belief, and are made subject to the penalties of unsworn falsification to authorities under 18 Pa.C.S. § 4904.

Dated: March 15, 2023

/s/ Mary Haggerty
Mary Haggerty, Esquire
Counsel for Petitioner

VILLANOVA LAW INSTITUTE TO ADDRESS
COMMERCIAL SEXUAL EXPLOITATION
By: Mary Haggerty, Esq.
Identification No.: 330535

299 N. Spring Mill Road
Villanova, PA 19085
610-519-4328

Attorney for [REDACTED]

COMMONWEALTH OF PENNSYLVANIA : COURT OF CRIMINAL PLEAS
vs. : CRIMINAL TRIAL DIVISION
[REDACTED] : DAUPHIN COUNTY
[REDACTED] : CP-23-CR-[REDACTED]
[REDACTED] : OTN #: [REDACTED]
: :
:

MOTION TO VACATE AND EXPUNGE CONVICTION PURSUANT TO 18 PA.C.S. § 3019 (d), (g)

Ms. [REDACTED], by her counsel avers the following in support of the above captioned motion and requests that this Court grant the motion and vacate the conviction pursuant to 18 Pa.C.S. § 3019 (d), (g) for the reasons set forth below.

Background

1. On November 17, 2011, [REDACTED] was arrested and charged with Promoting Prostitution- Inmate in House of Prostitution, 18 § 5902 §§ A1 in the above-captioned matter. [REDACTED] was found guilty of Promoting Prostitution before the Honorable Scott Arthur Evans on January 22, 2013. Parole and a fine were imposed.
2. [REDACTED] seeks to vacate the above-captioned conviction under 18 Pa.C.S. § 3019(d), a provision of the Commonwealth’s comprehensive anti-trafficking statute

which allows survivors of human trafficking to petition to vacate prior convictions for certain offenses¹ committed as a direct result of their victimization.

3. Enacted in 2014, the vacatur law was designed to enable victims of human trafficking to clear their records of unwarranted convictions in the interest of justice. The vacatur law recognizes that trafficked individuals are victims of exploitation, not perpetrators of crime. Currently, Pennsylvania is one of over forty states that have laws in place allowing trafficking victims to reduce the harms associated with their convictions.²
4. The District Attorney's office for Dauphin County, Pennsylvania consents to this vacatur motion. See letter of March 12, 2023, attached hereto as Exhibit A.

Petitioner is Entitled to the Relief Sought

5. Pursuant to 18 Pa.C.S. § 3019(f), a Court must grant a Motion to Vacate if the Court finds (1) the Petitioner was convicted of an eligible offense, and (2) that the conviction was obtained as a result of the Petitioner being a victim of human trafficking.
6. The conviction in the above-captioned docket is for an offense that is explicitly enumerated in the list of vacatur eligible offenses under 18 Pa.C.S. § 3019(d)(1).

Therefore, [REDACTED] has met her burden under 18 Pa.C.S. § 3019(f)(1).

¹ The types of convictions included under 18 Pa.C.S. § 3019(d) include: criminal trespass under 18 Pa.C.S. §3503; disorderly conduct under 18 Pa.C.S. § 5506; loitering and prowling at nighttime under 18 Pa.C.S. § 5506; obstructing highways and other public passages under 18 Pa.C.S. § 5507; prostitution and related offenses under 18 Pa.C.S. § 5902; and "simple possession of a controlled substance." See 18 Pa.C.S. § 3019(d)(1). As there is not a statute delineated for simple possession of a controlled substance, the law has been broadly construed to include simple possession, possession of a small amount of marijuana, possession of drug paraphernalia, and other similar conduct.

²² See Freedom Network USA Survivor Re-Entry Project, Criminal Record Relief Laws for Survivors (updated May 2023), <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>.

7. Establishing 18 Pa.C.S. § 3019(f)(2) is a two-part analysis -the Court must find (1) that the Petitioner is a victim of human trafficking, and (2) the conduct underlying the conviction was a result of that victimization.
8. ██████████ supporting documents demonstrate that she meets the federal³ and state⁴ definitions of a victim of human trafficking. ██████████ details her experiences as a victim of sex trafficking in and around Philadelphia and Dauphin County in an Affidavit. (Attached hereto as Exhibit B.)
9. When ██████████ was arrested and convicted in the above captioned matter, sex trafficking was not a recognized crime in Pennsylvania. As the law did not recognize the realities of sex trafficking at the time of ██████████ offenses, the court did not have the opportunity to recognize that she was trafficked. Since then, there has been a dramatic shift with respect to identifying and understanding human trafficking within the Commonwealth. Enacted in 2014, Pennsylvania passed its first comprehensive anti-trafficking law which is codified in 18 Pa.C.S. §§ 3001-3072.
10. Pennsylvania law defines a victim of human trafficking as “an individual who has been subjected to human trafficking.” Thus, determining ██████████ status as a trafficking victim requires an analysis of the exploitive conduct of her traffickers. By law, a victim is not required to have an identifiable pimp or trafficker to meet the definition of a victim of human trafficking. The elements of the crime of Trafficking in Individuals unequivocally apply to traffickers, sex buyers, and third-party facilitators alike.

³ 22 U.S.C. § 7102(14).

⁴ 18 Pa.C.S. § 2001.

11. Proving the crime of human trafficking requires showing the perpetrator committed a prohibited act, facilitated by the means of either force, fraud, and/or coercion (federal law) or one of the thirteen listed means under 18 Pa. C.S. § 3012(b), for a purpose. In the realm of sex trafficking, the purpose is a commercial sex act, which is further defined as anything of value in exchange for a sex act.
12. [REDACTED] affidavit details her experiences as a victim of sex trafficking. For years her trafficker maintained, provided, and harbored [REDACTED] using physical force, debt coercion, and through facilitating access to controlled substances for the purpose of commercial sex.
13. The nexus between [REDACTED] victimization and the conduct underlying this criminal matter is apparent given the underlying conduct in this criminal matter. Therefore [REDACTED] [REDACTED] has met her burden under 18 Pa.C.S. § 3019(f)(2).
14. [REDACTED] is committed to putting her victimization behind her. However, she remains unduly burdened by her unwarranted criminal record, particularly in her struggle to find adequate employment and housing.

WHEREFORE, Petitioner, by her counsel, respectfully requests that the Court, pursuant to 18 Pa.C.S. § 3019(d), (g), issue an order to vacate the conviction and expunge all records and files related to Petitioner's arrest, charge, and conviction in the above caption matter, as her conviction was the direct result of being a victim of human trafficking.

RESPECTFULLY SUBMITTED,

Dated: 03/15/2023

/s/ Mary Haggerty
Mary Haggerty, Esquire
Counsel for Petitioner

VERIFICATION

The facts set forth in the foregoing are true and correct to the best of the undersigned's knowledge, information and belief, and are verified subject to the penalties for unsworn falsification to authorities under the Pennsylvania Crimes Code, 18 Pa. C.S.A. Section 4904.

Dated: March 16, 2023

/s/ Mary Haggerty

Mary Haggerty, Esq.
Attorney No. 330535
Institute to Address Commercial Sexual
Exploitation
299 North Spring Mill Road
Villanova, PA 19085

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania that requires filing confidential information and documents differently than non-confidential information and documents.

RESPECTFULLY SUBMITTED,

Dated: March 16, 2023

/s/ Mary Haggerty

Mary Haggerty, Esq.
Attorney No. 330535
Institute to Address Commercial Sexual
Exploitation
299 North Spring Mill Road
Villanova, PA 19085

EXHIBIT A

FRANCIS T. CHARDO
District Attorney

OFFICE OF THE
District Attorney

101 Market Street
Harrisburg, Pennsylvania 17101-2028
Telephone: (717) 780-6767
Fax: (717) 255-1396



Dauphin County

March 12, 2023

To the Honorable Scott Arthur Evans:

The District Attorney of Dauphin County, Francis T. Chardo, by Deputy District Attorney, Erin Varley, hereby consents to vacatur in the matter of Commonwealth v [REDACTED], CP-22-CR-[REDACTED] (originating docket: MJ-12104-CR-[REDACTED]), CP-22-CR-[REDACTED] (originating docket: MJ-12205-CR-[REDACTED]). The conviction to be vacated are two counts of Promoting Prostitution - Inmate in House Prostitution, 18 Pa.C.S. § 5902(A)(1).

The Commonwealth is satisfied that Ms. Daly meets the requirements for vacatur under 18 Pa.C.S. § 3019(d)(1) as a victim of human trafficking. The Commonwealth does not object to vacatur and expungement on these dockets, nor does the Commonwealth object to waiving fees and court costs associated with the above-referenced dockets and associated filings.

Should you have any questions or wish to speak with me further about this matter, I can be reached via the contact information below. Thank you for your time and consideration.

Sincerely,

Erin Varley
Deputy District Attorney
Dauphin County
101 Market Street
Harrisburg, PA 17101
Office: 717-780-6744
evarley@dauphincounty.gov

Copied:

Mary Haggerty, Villanova University Institute to Address Commercial Sexual Exploitation
Kim Sourbeer, Dauphin County Human Trafficking Victim Advocate
Megan Kauffman, Dauphin County Human Trafficking Coordinator
File

EXHIBIT B

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For sample affidavit templates, please visit

<https://freedomnetworkusa.org/advocacy/survivor-reentry-project/guide-for-attorneys/>

APPENDIX B

ADDITIONAL RESOURCES

I. TRAUMA INFORMED LAWYERING

A. Written Resources

- Andre P. Levin and Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. R. 245 (Fall 2003) available at: <https://digitalcommons.pace.edu/plr/vol24/iss1/11/>
- Bessel van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (Penguin Books 2014).
- Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, 34 ABA CHILD L. PRACTICE 129 (Sept 2015) available at: <https://tinyurl.com/3mjhufj6>
- Esther Giller, SIDRAN INST., *What is Psychological Trauma?* (May 1999), available at <https://www.theannainstitute.org/What%20is%20Psychological%20Trauma.pdf?contentID=88>
- Heather Clawson, et. al., *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking*, U.S. DEPT OF HEALTH AND HUMAN SRVS., (2008), available at <https://aspe.hhs.gov/reports/treating-hidden-wounds-trauma-treatment-mental-health-recovery-victims-human-trafficking>
- Kimberly Lonsway, et. Al., *Becoming Trauma-Informed: Understanding and Appropriately Applying the Neurobiology of Trauma*, END VIOLENCE AGAINST WOMEN INT'L, (2022) available at https://evawintl.org/wp-content/uploads/2019-12_TB-Becoming-Trauma-Informed-Trauma-to-Victim-Interviews.pdf
- SAMHSA'S TRAUMA AND JUSTICE STRATEGIC INITIATIVE, *SAMHSA'S Concept of Trauma and Guidance for a Trauma-Informed Approach*, (July 2014) available at: <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf>

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- SURVIVOR REENTRY PROJECT, AMERICAN BAR ASSOCIATION, COMMISSION ON DOMESTIC & SEXUAL VIOLENCE, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys*, <https://freedomnetworkusa.org/app/uploads/2020/02/survivor-reentry-project-guide-for-attorneys.pdf>

B. Visual Media Resources

- “Trauma and the Brain” available at <https://tinyurl.com/2ahuvknn>
- “Trauma-Informed Interviewing Techniques” available at: <https://vimeo.com/233584799>

THE SOLUTION



VILLANOVA UNIVERSITY
CHARLES WIDGER SCHOOL OF LAW

**THE INSTITUTE TO ADDRESS
COMMERCIAL SEXUAL EXPLOITATION**