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## Criminal Record Relief for Human Trafficking Survivors: Analysis of Current State Statutes and the Need for a Federal Model Statute

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CRIMINAL RECORD RELIEF FOR HUMAN  
TRAFFICKING SURVIVORS:  
ANALYSIS OF CURRENT STATE STATUTES  
AND THE NEED FOR A FEDERAL MODEL  
STATUTE

*Ashleigh Pelto*

ABSTRACT

*This Note defines criminal record relief and analyzes the effectiveness of three state criminal record relief statutes at protecting trafficking survivors. This analysis is based on State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking by Polaris, a leading human trafficking nonprofit. It next discusses the absence of federal criminal record relief and how a statute at the federal level could provide relief for survivors with federal convictions while simultaneously providing a model for states to ensure their statutes incorporate best practices for record relief moving forward. This Note then discusses how Polaris's report stops short of providing a model statute for states to draw from. Finally, this Note provides a best practice statute based on Polaris's evaluation criteria and recommends it be added as an amendment to the Trafficking Victims Protection Act.*

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#### I. INTRODUCTION: THE NEED FOR CRIMINAL RECORD RELIEF FOR TRAFFICKING VICTIMS

In 2016, the National Survivor Network (“NSN”) released the results of a survey<sup>1</sup> of 130 trafficking survivors.<sup>2</sup> In response to the survey,

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1. NAT'L SURVIVOR NETWORK, NATIONAL SURVIVOR NETWORK MEMBERS SURVEY: IMPACT OF CRIMINAL ARREST AND DETENTION ON SURVIVORS OF HUMAN TRAFFICKING 1 (Aug. 2016) [hereinafter NSN SURVEY], <https://mvslaw.org/wp-content/uploads/2017/06/NSN-Survey-on-Impact-of-Criminalization-2017-Update.pdf> [<https://perma.cc/92KQ-JMBL>].

2. Throughout this Note, the terms “survivor” and “victim” will be used interchangeably to identify a person who has been trafficked. In practice, it is best to identify a

which asked whether they had ever been charged with a crime in connection with their exploitation, over 90% of the survivors reported that they had been arrested at least once during the course of being trafficked.<sup>3</sup> Over half of all survey respondents believed that 100% of their arrests, charges, and convictions were directly related to their trafficking experience.<sup>4</sup> The charges can vary widely in nature depending on how a trafficker is exploiting their victim, the law enforcement priorities in a given district, and the specific vulnerabilities of a given victim. In its guide to attorneys advocating for trafficking survivors with convictions, the Survivor Reentry Project wrote:

Different policing strategies, for example those that prioritize a high volume of arrests for low-level offenses, increase the likelihood that victims of trafficking will come into contact with the police by virtue of their own arrest. For sex trafficking victims these crimes are frequently prostitution charges, but may also include other charges such as weapons, drugs, financial crimes, and identity theft. Labor traffickers, like sex traffickers, can also benefit from forcing a victim to commit illegal acts such as selling or cultivating drugs or, commonly at the U.S. border, forcing individuals to be drug mules or bring people into the country illegally. Additionally, other common offenses for labor trafficking can include possession of false identification documents, financial crimes, or other minor offenses such as trespassing. Minors who are trafficked are often charged with status offenses such as truancy and running away.<sup>5</sup>

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person who has been trafficked by the term that they would use to describe themselves, e.g., victim, survivor, survivor leader. For the purposes of this Note, the Author has attempted to identify an individual as a “victim” while their trafficking experience is ongoing and as a “survivor” after the trafficking experience has ended. Statutes and sources cited throughout this piece use both terms without this framework and the Author follows the term used within each source for the portion of the Note when that source or statute is being discussed. These terms are interchangeable for the purposes of this discussion.

3. NSN SURVEY, *supra* note 1, at 1, 3.

4. *Id.* at 5.

5. THE SURVIVOR REENTRY PROJECT, AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC & SEXUAL VIOLENCE, POST-CONVICTION ADVOCACY FOR SURVIVORS OF HUMAN TRAFFICKING: A GUIDE FOR ATTORNEYS 4-5 (2016) [hereinafter THE SURVIVOR REENTRY PROJECT], [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/SRP/practice-guide.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.pdf) [https://perma.cc/ZJ7Y-UL4Q].

If a person is not identified as a trafficking victim at the time of arrest or prosecution,<sup>6</sup> their experience frequently ends with a criminal record on top of the myriad traumas they have endured. The resulting record of such arrests and convictions impacts survivors' lives for years after they escape their traffickers. A survivor with a criminal record may face rejection from a job or housing application when a potential employer or landlord discovers the conviction in a background check, thus barring the survivor from finding gainful employment or affordable housing. The NSN survey found that of the 91% of survivors with criminal convictions on their records, 72.7% faced barriers with employment and 57.6% with housing.<sup>7</sup> Survivors with criminal records or convictions may also be disqualified from financial aid and private loans if they seek to continue their education.<sup>8</sup> They may lose or be unable to regain custody of their children.<sup>9</sup> They may not be able to access government benefits.<sup>10</sup> Or they may face removal from the country or be barred from re-entry because they are a foreign national with a criminal conviction.<sup>11</sup>

These convictions force survivors to live with criminal records for crimes they were forced, coerced, and compelled to commit by their traffickers. Such a criminal record can serve as "a constant reminder of past abuse and a source of tremendous shame" for survivors.<sup>12</sup> And this shame is often compounded because the existence of such a record will

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6. *Id.* at 5 (explaining that reasons for lack of identification of a victim may be that systems are overwhelmed, overburdened, and fail to consider individual circumstances; that victims often do not disclose during the arrest process; or that there is conflict between trafficking laws and existing criminal laws).

7. NSN SURVEY, *supra* note 1, at 7.

8. POLARIS, STATE REPORT CARDS: GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING 6 (Mar. 2019) [hereinafter STATE REPORT CARDS], <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf> [https://perma.cc/LQ34-4HGH].

9. THE SURVIVOR REENTRY PROJECT, *supra* note 5, at 6 ("[I]n instances where they have children in common, traffickers have pointed to the survivor's record as evidence of unfit parenting in custody disputes.").

10. STATE REPORT CARDS, *supra* note 8, at 6.

11. *Id.*; THE SURVIVOR REENTRY PROJECT, *supra* note 5, at 6 ("Prostitution-related convictions, drug offenses and crimes that meet the definition of a 'crime of moral turpitude' also present specific dangers to foreign-born survivors who have previously adjusted or attempt to adjust their citizenship status. Non-citizens may be denied initial or return entry to the U.S. if immigration officials have reason to suspect they are entering for the purposes of prostitution, which can be based on arrest or conviction records. Convictions may also bar foreign national victims from a variety of forms of immigration relief.").

12. *Id.*

place survivors in “the tragic dilemma of explaining to a potential employer or housing manager the source of their arrest or conviction and therefore must choose between sharing their trafficking experience or simply walking away from an opportunity.”<sup>13</sup> Fortunately, there is relief at the state level for trafficking survivors who are convicted of crimes in connection with their trafficking experience. Specifically, several states have passed criminal record relief statutes.<sup>14</sup>

This Note defines criminal record relief in Section II, discusses the current status of state trafficking victim record relief laws in Section III, and analyzes the effectiveness of three state criminal record relief statutes at protecting trafficking survivors in Section IV. This analysis is based on *State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking* by Polaris, a leading U.S. human trafficking nonprofit that centers its work around data research and analysis and policy advocacy.<sup>15</sup> In Section V, this Note discusses the absence of federal criminal record relief and how a statute at the federal level could provide relief for survivors with federal convictions while simultaneously providing a model for states to ensure their statutes incorporate best practices for record relief moving forward. This Note then discusses how Polaris’s report stops short of providing a model statute for states to draw from. Finally, in Section V.B and C this Note provides a model statute based on Polaris’s evaluation criteria and recommends it be added as an amendment to the Trafficking Victims Protection Act.

## II. TYPES OF CRIMINAL RECORD RELIEF

Criminal record relief encompasses the “range of legal relief that allows for some form of setting aside an arrest or conviction or prohibiting disclosure of its existence.”<sup>16</sup> State criminal record relief statutes provide an avenue for trafficking survivors to clear their records of criminal convictions incurred from crimes their traffickers forced, compelled, or coerced them into committing. There are three available forms of record relief:

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13. *Id.*

14. See discussion of current state statutes *infra*, in Section III.A.

15. See generally STATE REPORT CARDS, *supra* note 8; *About Us*, POLARIS, <https://polarisproject.org/about-us/> [<https://perma.cc/9BA7-DUHM>].

16. STATE REPORT CARDS, *supra* note 8, at 7.

1. Seal a survivor's criminal record;
2. Expunge an arrest or conviction from a criminal record;  
or
3. Vacate an arrest or conviction from a criminal record.

Sealing a record is the least effective form of relief for the survivor: While it hides the record from the public, it leaves the underlying conviction intact.<sup>17</sup> A sealed conviction would not turn up on a standard background check, but a party can still gain access to it through a court order.<sup>18</sup> Arrests or convictions that are expunged, while inaccessible to the public, can remain visible to certain government agencies, and expunged convictions may still be used against a survivor in later legal proceedings.<sup>19</sup> Vacatur is the most effective form of relief for survivors. Once a conviction is “vacated and dismissed, all records of the conviction are deleted, because the conviction itself no longer exists as a matter of law.”<sup>20</sup> Vacatur exonerates the survivor. Vacatur that is “based on the merits” is the most effective form of relief “because it confirms that the vacatur was due to a substantive defect in the judgment against the victim in the first place.”<sup>21</sup> Polaris’s *State Report Cards* report asserts that vacatur on the merits is:

The closest thing to a legal recognition that the survivor should not have been convicted in the first place. It indicates that had the court known all the information that is now available, the survivor would not have been convicted of the offense. Vacatur that does not specifically codify its basis as a substantive defect is still an important form of relief and is preferable to the other options of expungement or sealing of records . . . .<sup>22</sup>

States do not always use these terms consistently. For example, Michigan uses the term “set aside” but its record relief law clears records at the level of expungement.<sup>23</sup> By comparison, Florida uses the term “expunc-

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17. See *Expungement and Record Sealing*, JUSTIA (Apr. 2018), <https://www.justia.com/criminal/expungement-record-sealing/> [https://perma.cc/BDX4-RFQV].

18. *Id.*

19. STATE REPORT CARDS, *supra* note 8, at 8.

20. THE SURVIVOR REENTRY PROJECT, *supra* note 5, at 9.

21. STATE REPORT CARDS, *supra* note 8, at 14.

22. *Id.*

23. See MICH. COMP. LAWS § 780.621 (2019).

tion” but the record is cleared “on the merits” or based on a substantive defect, and therefore the relief functions as *vacatur*.<sup>24</sup>

Michigan has also incorporated record relief for trafficking survivors into its existing record relief statute. The statute only enables trafficking survivors to apply for the same type of record relief available to all qualifying individuals with convictions: The entry of an order which sets aside those convictions.<sup>25</sup> Failing to distinguish records of trafficking survivors from other criminal records can prove problematic given the purpose of record relief for trafficking survivors differs from the purpose of general record relief. The purpose of record relief for trafficking survivors is not to exonerate a survivor for the charges they incurred, but to provide relief from convictions of crimes their trafficker forced, coerced, or compelled them into committing. These are crimes the victims should never have been convicted of because they engaged in the illegal behavior under duress from their trafficker. General record relief statutes do not adequately meet the needs of trafficking survivors. Having separate statutes that specifically address record relief for trafficking victims would address the unique needs of trafficking victims. A separate statute would not be met with the same political hurdles that can accompany discussions of general relief since the justifications for record relief for survivors are different from general record relief.

Because the justification for general record relief is frequently to reward record holders for their subsequent law-abiding behavior, general record relief often takes the form of record sealing and expungement, because they allow the records to be used in future prosecutions, rather than *vacatur*, which exonerates the record holder completely. The justification for record relief for survivors, however, is that survivors committed their crimes as an element of their exploitation and victimization. General record relief thus fails to give survivors the relief they deserve. *Vacatur*-level relief outlined through a trafficking-specific statute is then the optimal solution to free survivors from criminal records arising from incidents during trafficking. Polaris’s 2019 *State Report Cards* analyzes the ability of these statutes to provide accessible and effective relief to victims.<sup>26</sup>

Polaris is a national human trafficking nonprofit organization founded in 2002.<sup>27</sup> For over a decade, Polaris gathered data from its U.S. National Human Trafficking Hotline on the nature of human traf-

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24. See FLA. STAT. § 943.0583 (2019).

25. See MICH. COMP. LAWS § 780.621.

26. STATE REPORT CARDS, *supra* note 8, at 4.

27. POLARIS, <http://polarisproject.org/> [<https://perma.cc/E2B6-7VQT>].

ficking in the United States.<sup>28</sup> In March 2019, Polaris, along with the American Bar Association's Survivor Reentry Project, Brooklyn Law School, the University of Baltimore Law School, and numerous survivor consultants, released a report based on this data identifying the critical components of effective criminal record relief law.<sup>29</sup> The report outlines a number of categories when determining the efficacy of a record relief statute for trafficking survivors.<sup>30</sup> Those statutes and Polaris's report criteria are discussed below.

### III. CRIMINAL RECORD RELIEF STATUTES

Record relief specifically designed to address the needs of trafficking victims is a relatively new area of law. This area of law is constantly evolving and much of the evolution has been catalyzed by the Polaris Project's campaign to "name and shame" states in its *State Report Cards* report for not meeting the needs of trafficking survivors, even those which were first on the record relief scene.<sup>31</sup>

#### A. Current Status Among States

In 2010, New York became the first state to pass a law specifically allowing survivors of trafficking to vacate prostitution and related convictions that they incurred as a result of having been trafficked.<sup>32</sup> The New York law became a model for legislation in at least fifteen other states.<sup>33</sup> As of September 2020, all but six states and the federal govern-

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28. *Data & Research*, POLARIS, <http://polarisproject.org/data-and-research/> [https://perma.cc/TX23-T7TC].

29. See STATE REPORT CARDS, *supra* note 8, at 2, 4.

30. *Id.* at 13.

31. For example, in June 2020, Georgia updated its trafficking record relief law changing its score from zero to seventy-two, tying it with Florida as the third best law in the nation. *New Georgia Law Helps Trafficking Survivors Clear Their Records*, POLARIS (July 13, 2020), [https://polarisproject.org/blog/2020/07/new-georgia-law-helps-trafficking-survivors-clear-their-records/?fbclid=IwAR11KV-7koajgJDX1dEwiCxJvYh4p0kbMlz3ZDP67\\_K67EZLpTvhfGYvbM](https://polarisproject.org/blog/2020/07/new-georgia-law-helps-trafficking-survivors-clear-their-records/?fbclid=IwAR11KV-7koajgJDX1dEwiCxJvYh4p0kbMlz3ZDP67_K67EZLpTvhfGYvbM) [https://perma.cc/X4JB-66GP].

32. STATE REPORT CARDS, *supra* note 8, at 10; see also Erin Marsh, *Relief Not Arrests: Strengthening Laws for Survivors of Human Trafficking*, LEGAL EXEC. INST. (Apr. 3, 2019), <https://www.legalexecutiveinstitute.com/polaris-arrests-human-trafficking/> [https://perma.cc/G7EP-M796].

33. Compare N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2005) with Connecticut, Florida, Hawaii, Illinois, Maryland, Mississippi, Montana, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Vermont, Washington, and Wyoming. See

ment have some form of record relief statute for trafficking victims. Alaska, Iowa, Maine, Minnesota, South Dakota, and Virginia have yet to enact a statute which would provide specific relief to trafficking victims.<sup>34</sup> Louisiana, Missouri, and Tennessee only provide relief for victims who were minors at the time of their arrest.<sup>35</sup>

Nationwide, as advocates seek ways to improve care for survivors of trafficking, these disparities in relief efficacy are creating a legal gap among states. This can prove problematic for survivors because traffickers do not confine their trafficking activities to a single state's borders.<sup>36</sup> Victims who are compelled to commit the crimes in different states during their trafficking experiences currently have varying access to record relief solely based on where they happened to be at the time—something often entirely out of their control. Given the reality of trafficking, a uniform approach by the states would be the most effective way to assure survivors relief.

Since the publishing of Polaris's report, "Hawaii and Nevada . . . made dramatic improvements to their criminal records relief laws for trafficking survivors. Several other[] [states] took major steps forward including Kansas, New York, and Maryland, where bills were intro-

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CONN. GEN. STAT. § 54-95c (2019) (enacted 2013); FLA. STAT. § 943.0583 (2015) (enacted 2013); HAW. REV. STAT. § 712-1209.6 (2018) (amended 2019) (enacted 2012); 725 ILL. COMP. STAT. 5/116-2.1 (2018) (enacted 2012); MD. CODE ANN., CRIM. PROC. § 8-302 (LexisNexis 2018) (enacted 2011); MISS. CODE § 97-3-54.6 (2014) (enacted 2013); MONT. CODE § 46-18-608 (2020) (enacted 2013); NEV. REV. STAT. § 176.515 (2018) (amended 2017) (enacted 2011); N.J. STAT. § 2C:44-1.1 (West 2016) (enacted 2013); N.C. GEN. STAT. § 15A-1416.1 (2019) (enacted 2013); OHIO REV. CODE § 2953.38 (West 2014) (enacted 2012); OKLA. STAT. tit. 22, § 19c (2020) (enacted 2013); VT. STAT. tit. 13, § 2658 (2018) (enacted 2012); WASH. REV. CODE § 9.96.070 (2020) (enacted 2014); WYO. STAT. § 6-2-708 (2019) (enacted 2013).

34. STATE REPORT CARDS, *supra* note 8, at 10.

35. *Criminal Record Relief for Trafficking Survivors: Louisiana*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Louisiana.pdf> [<https://perma.cc/4G7C-3ZMV>]; *Criminal Record Relief for Trafficking Survivors: Missouri*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Missouri.pdf> [<https://perma.cc/GG9Y-GWMB>]; *Criminal Record Relief for Trafficking Survivors: Tennessee*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Tennessee.pdf> [<https://perma.cc/Z2HH-4K2Z>].

36. *Truck-Stop Based*, NATIONAL HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/truck-stop-based#:~:text=Traffickers%20may%20move%20victims%20quickly,for%20continued%20transportation%20and%20support> [<https://perma.cc/AUB3-QPK9>]. ("Traffickers may move victims quickly to new locations or states in order to perpetuate an unfamiliarity with their surroundings.").

duced but not enacted.”<sup>37</sup> North Carolina also revised its vacatur statute in the summer of 2019.<sup>38</sup> Polaris’s evaluation of state statutes against best practices has spurred states on towards quicker and more effective reform.

### B. Analyzing the Efficacy of Existing Statutes

Polaris identified a host of elements that factor into the efficacy of a record relief statute and divided those elements into eleven separate categories in which Polaris compares the at-issue statute to the best practice they have identified for each category.

**Point Values**

PROPOSED CATEGORIES	MAXIMUM POINT VALUE
 Range of Relief	10
 Arrests and Adjudications Relief	10
 Offenses Covered	30
 Judicial Discretion	10
 Nexus to Trafficking	10
 Time Limits and Wait Times	8
 Hearing Requirement	5
 Burden of Proof	5
 Official Documentation	5
 Confidentiality	5
 Additional Restrictive Conditions on Relief	2
<b>TOTAL</b>	<b>100</b>

37. *Our Work, Criminal Record Relief*, POLARIS, <http://polarisproject.org/our-work/> [<https://perma.cc/5L5Z-6D2G>]; see HAW. REV. STAT. § 702-1209.6 (2018); NEV. REV. STAT. § 179.247 (2019).

38. See N.C. GEN. STAT. § 15A-145.6 (2019); NORTH CAROLINA HUMAN TRAFFICKING COMMISSION, NORTH CAROLINA HUMAN TRAFFICKING COMMISSION REPORT TO THE 2019 GENERAL ASSEMBLY 17–19 (2019), <https://www.nccourts.gov/assets/documents/publications/HTC-General-Assembly-Report-20190131.pdf?pX53iG9C1oij6GK2j9e5csQe92Owdn53> [<https://perma.cc/B8C9-6H7L>]. North Carolina allows expunctions for certain defendants convicted of prostitution.

1. Range of Relief: Refers to the type of statute the state has in place: sealing, expungement, vacatur, or vacatur on the merits.<sup>39</sup> As discussed above, vacatur, and especially vacatur on the merits, is the most effective form of record relief.

2. Arrests & Adjudications: Whether the relief extends only to adjudicated findings of guilt or all elements of a record, such as arrests, juvenile adjudications, and non-prosecuted cases.<sup>40</sup> Polaris awards full points to statutes comprehensively addressing all elements of a criminal record.<sup>41</sup>

3. Offenses Covered: The number and kind of offenses covered in a statute. As discussed above, traffickers may force victims to engage in a range of criminal behaviors.<sup>42</sup> This category allots thirty of the 100 points attainable under Polaris's grading system, awarding full points to statutes which cover all offenses thereby acknowledging the variety of ways traffickers exploit their victims.<sup>43</sup>

4. Judicial Discretion: Whether a court may "grant relief where it finds the elements of the statute satisfied and take action on issues not explicitly covered in the statute. Allowing for broad judicial discretion is beneficial for survivors because even the most comprehensive legislation is unlikely to cover every survivor's unique circumstances."<sup>44</sup> Full points are awarded where the statute "allows the court to grant relief in spite of prosecutor's objection as long as prosecutors had notice and to 'take such additional action as is appropriate in the circumstances.'"<sup>45</sup>

5. Nexus to Trafficking: The extent to which the offense needs to be connected to the survivor's trafficking experience.<sup>46</sup> Polaris's report asserts that many states are too restrictive in defining nexus:

The most restrictive criminal record relief statutes only allow survivors to access relief if they committed a crime 'while under duress.' This is commonly understood to apply only to criminal acts committed in response to an immediate threat of death or serious physical harm. However, human trafficking is not defined merely by the threat or presence of force. Rather, the law recognizes that traffickers regularly use psy-

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39. STATE REPORT CARDS, *supra* note 8, at 14.

40. *Id.*

41. *Id.*

42. *Id.* at 15.

43. *Id.*

44. *Id.* at 16.

45. *Id.*

46. *Id.* at 17.

chological means such as threats, manipulation, and lies to control their victims. Many survivors of trafficking are not able to show that they were under duress at the time of their arrest because duress doesn't align with all manifestations of human trafficking. Requiring a survivor to establish duress renders relief unattainable for victims and the law unresponsive to the crime itself.<sup>47</sup>

Rather, Polaris awards ten of ten available points to statutes whose burden of proof requirement is that survivors establish the crimes were committed "as a result" of the trafficking.<sup>48</sup>

6. Time Limitations and Wait Times: How long a survivor must wait after receiving their conviction before seeking record relief. Full marks are awarded to statutes with no time requirements or restrictions.<sup>49</sup>

7. Hearing Requirement: This refers to:

Whether or not the survivor is required to appear in person at hearings related to the criminal record relief process. This can be a significant barrier to survivors seeking relief for a number of reasons including, but not limited to, safety concerns on the part of the survivor. It may also be a financial burden for survivors who now live far away from where the arrest took place.<sup>50</sup>

The Report finds that the best practice is to remove a hearing requirement entirely.<sup>51</sup>

8. Burden of Proof: The threshold a survivor must meet in order to receive record relief. Many survivors have little to no documentation of their trafficking experience, so statutes with a preponderance of the evidence standard are the most accommodating. As Polaris discusses, "it is essential that a state's criminal record relief statute reflect the reality that the crime of human trafficking is by its very nature covert and stigmatizing, and because of that the evidence a survivor will be able to offer will vary significantly from case to case."<sup>52</sup>

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47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 18.

51. *Id.*

52. *Id.*

9. Official Documentation: Whether the statute requires a victim to produce official documentation of their trafficking experience.<sup>53</sup> While official documentation should not be required because of the above discussion in the Burden of Proof section regarding survivor's often limited ability to produce evidence, best practice statutes will find that a production of official documentation creates a presumption of eligibility for vacatur.<sup>54</sup>

10. Confidentiality: The inclusion of a provision to provide confidentiality throughout the record relief process is important to many survivors.<sup>55</sup> Polaris awards five of five points for statutes for which "[t]here is an express provision in the statute that protects confidentiality or allows for filing documents under seal."<sup>56</sup>

11. Additional Restrictive Conditions on Relief: This category "is specifically meant to identify and discourage any additional restrictive conditions such as excluding survivors with pending charges from accessing relief, as well as those with subsequent arrests or convictions, or with convictions vacated in other states."<sup>57</sup> The lack of additional restrictions beyond the above criteria awards statutes two of two points in this category.<sup>58</sup>

Using these criteria, Polaris graded every state on how its existing law measured up against Polaris's rubric.<sup>59</sup> For example, in 2019, Michigan's statute received forty-one out of the 100 available points, resulting in an F grade.<sup>60</sup> Michigan was not alone; in fact, twenty-seven other states received a failing grade.<sup>61</sup> Two states, Florida and Wyoming, each received a C for their statutes.<sup>62</sup> Nebraska's was the single statute to receive a B ranking.<sup>63</sup> No state received an A.<sup>64</sup>

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53. *Id.* at 19.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 19-20.

58. *Id.*

59. *Id.* at 4.

60. See *Criminal Record Relief for Trafficking Survivors: Michigan*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Michigan.pdf> [<https://perma.cc/2DG9-99DU>].

61. STATE REPORT CARDS, *supra* note 8, at 28.

62. *Id.*

63. *Id.*

64. STATE REPORT CARDS, *supra* note 8, at 28. While New York's current law scored poorly on Polaris's report card:

[New York's] state legislature . . . is proposing additions to its 2010 criminal record relief statute for human trafficking survivors to include the

To highlight the successes and failures of current state legislation, this Note examines the contours of Michigan, Florida, and Nebraska's statutes, and analyzes how Polaris arrived at each state's respective grade based on the criteria outlined above.

#### IV. CRIMINAL RECORD RELIEF STATUTE EXAMPLES

##### A. Michigan's Statute<sup>65</sup>

Polaris gave Michigan's statute an F and placed Michigan in its "Hall of Shame" in its report.<sup>66</sup> Most of the other states in the "Hall of Shame" lack a criminal record relief statute altogether.<sup>67</sup> Michigan added criminal record relief for trafficking victims to its existing record relief statute in 2014,<sup>68</sup> but the statute does not adequately protect victims of human trafficking.

##### 1. Statute Breakdown

Michigan's statute uses the term "set aside" to describe the record relief available; however, as defined by the statute, this means applicants are entitled only to expungement, not vacatur.<sup>69</sup> Specifically, Michigan's statute provides that a person who is convicted of a prostitution violation<sup>70</sup> may apply to have that conviction set aside if they "committed the

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types of offenses covered and add confidentiality protections into the statute. If this legislation passes, New York would move to the top of the grading with a score of 93 and continue to be a leader in providing criminal record relief for trafficking survivors.

*Criminal Record Relief for Trafficking Survivors: New York*, POLARIS, (emphasis omitted), <https://polarisproject.org/wp-content/uploads/2019/10/2019-Criminal-RecordRelief-NewYork.pdf> [<https://perma.cc/EP7E-8THP>].

65. An abbreviated analysis of Michigan's statute can be found at: Ashleigh Pelto, *Criminal Record Relief for Trafficking Survivors: A Michigan Case Study*, TRAFFICKING MATTERS, <https://www.traffickingmatters.com/criminal-record-relief-for-trafficking-survivors-a-michigan-case-study/> [<https://perma.cc/LBF3-RZTH>].

66. See *Criminal Record Relief for Trafficking Survivors: Michigan*, *supra* note 60; STATE REPORT CARDS, *supra* note 8, at 30.

67. STATE REPORT CARDS, *supra* note 8, at 29-30.

68. MICH. COMP. LAWS § 780.621(4) (2019).

69. *Id.* § 780.621.

70. *Id.* § 780.621(4) (citing eligible offenses as including: solicitation, § 750.448; admitting to a place for the purpose of prostitution, § 750.449; and aiding or abetting another person's prostitution-related offense(s), see § 750.450).

offense as a direct result of [their] being a victim of a human trafficking violation.”<sup>71</sup> The survivor must provide a statement of the facts demonstrating they meet these criteria.<sup>72</sup> If the applicant proves their victim status by a preponderance of the evidence, the court then determines if the circumstances and behavior of the applicant “from the date of [their] conviction to the filing of their application warrant setting aside the conviction,” and if setting aside the conviction “is consistent with the public welfare.”<sup>73</sup> If both of these conditions are found by a preponderance of the evidence, the court may set aside the conviction. Finally, an application under this section may be filed at any time following the date of the conviction to be set aside.<sup>74</sup>

## 2. Efficacy Analysis

Although Michigan’s statute certainly has room for improvement, there are several aspects of the statute that adhere to best practices. First, Michigan’s burden of proof is a preponderance of the evidence,<sup>75</sup> the lowest standard possible in the law. Preponderance of the evidence only requires that it is “more likely than not” that the applicant’s claim is true.<sup>76</sup> Polaris argues that this is the best burden of proof for survivors because they often have difficulty providing evidence of their trafficking experience and are often only able to offer their own testimony.<sup>77</sup> Another positive element is that Michigan’s statute has no restrictions on when a survivor can apply for a conviction to be set aside.<sup>78</sup> Expungement for other criminal convictions in Michigan requires a five-year waiting period after the receipt of the conviction before applicants can seek expungement.<sup>79</sup> The trafficking-specific provision within the statute without this limit acknowledges that survivors’ behavior does not need to be evaluated over any time period. If they can establish their victim status at any time, then the conviction is expungable.

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71. *Id.* § 780.621(4).

72. *Id.* § 780.621(8)(g).

73. *Id.* § 780.621(13)-(14).

74. *Id.* § 780.621(7).

75. *Id.* § 780.621(13).

76. Cornell Law School, *Preponderance*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/preponderance#:~:text=Preponderance%20refers%20to%20the%20evidentiary,likely%20true%20than%20not%20true> [https://perma.cc/584B-943Z].

77. STATE REPORT CARDS, *supra* note 8, at 18.

78. MICH. COMP. LAWS § 780.621(7) (2019).

79. *Id.* § 780.621(5).

Despite these positive aspects, Polaris gave Michigan a failing grade. Michigan scored four out of ten in the “Range of Relief” category.<sup>80</sup> Michigan’s record relief statute is only an expungement statute. Therefore, survivors’ convictions may be used against them in future prosecutions or other legal proceedings since the record still remains in existence and the finding of guilt is not voided.<sup>81</sup> Further, Michigan’s statute covers a very limited range of offenses—so few that Polaris only allotted Michigan five points out of thirty for this category.<sup>82</sup> The statute will provide relief for a prostitution or solicitation conviction, for example, but does not expunge charges for other crimes traffickers frequently force their victims to engage in, such as drug possession, drug sales, or disorderly conduct.<sup>83</sup> According to the NSN survey, when asked what crimes respondents were arrested for throughout their trafficking experience, 65.3% of respondents indicated they had been arrested for prostitution, 42.7% for solicitation, and 25.3% for intent to solicit.<sup>84</sup> Michigan’s statute covers these types of criminal offenses.<sup>85</sup> However, NSN also found that 40% of respondents also reported being arrested for drug possession, 18.7% for drug sales, and 60% for other crimes:<sup>86</sup>

Survivors are frequently arrested for theft offenses when their traffickers specifically compel them to steal or when they do so in order to meet imposed quotas. Young victims are often used as bait for violent robberies against “johns” or other individuals perpetrated by traffickers or their associates. Often, survivors are arrested and prosecuted for this role, even when it is minimal and their participation is coerced.<sup>87</sup>

Michigan’s statute fails to provide relief for these other crimes, denying relief for survivors whose traffickers chose to exploit them in these ways. These criminal record relief statutes are intended to apply to crimes that victims were compelled to engage in as a part of their exploitation. Since not all traffickers exploit their victims in the same way, it is imperative

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80. See *Criminal Record Relief For Trafficking Survivors: Michigan*, *supra* note 60.

81. STATE REPORT CARDS, *supra* note 8, at 8.

82. MICH. COMP. LAWS § 780.621(4); *Criminal Record Relief for Trafficking Survivors: Michigan*, *supra* note 60.

83. MICH. COMP. LAWS § 780.621(4).

84. NSN SURVEY, *supra* note 1, at 3.

85. MICH. COMP. LAWS § 780.621(4).

86. NSN SURVEY, *supra* note 1, at 3.

87. STATE REPORT CARDS, *supra* note 8, at 15.

that criminal record relief laws encompass any and all crimes in which a trafficker may force their victim to engage.

Further, Michigan's statute requires courts to look at the survivor's behavior and circumstances *following* their conviction. As Polaris explains, this "inappropriately shifts the focus from the exploitation the survivor faced to the survivor's worthiness, asking them to prove their own merit by having their criminal record cleared through what the court deems is appropriate behavior indicative of rehabilitation."<sup>88</sup> A survivor's behavior after they received a conviction is irrelevant in a determination of whether they were a victim forced, compelled, or coerced to commit a crime. Unlike Michigan's statute, by shifting the focus to the trafficker's actions against the victim, a best practice statute affirms to the victim that they should not have been convicted in the first place. Additionally, Michigan requires that a victim provide a statement detailing their trafficking experience in order to complete their petition for record relief.<sup>89</sup> This requirement can re-traumatize a victim by forcing them to reengage with the specific facts and circumstances of their trafficking experience.<sup>90</sup> Polaris gave Michigan zero points for "Additional Restrictive Conditions on Relief" because of these additional conditions.<sup>91</sup>

Finally, Michigan requires a separate filing fee be paid for each conviction from which survivors are seeking relief.<sup>92</sup> Convictions already place substantial barriers in front of survivors seeking employment and education.<sup>93</sup> This filing fee is yet another obstacle survivors have to over-

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88. *Id.* at 30; see also *Criminal Record Relief for Trafficking Survivors: Michigan*, *supra* note 60.

89. MICH. COMP. LAWS § 780.621(8)(g).

90. Polaris explains:

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

STATE REPORT CARDS, *supra* note 8, at 22 (citing NSN SURVEY, *supra* note 1, at 9-10).

91. *Criminal Record Relief for Trafficking Survivors: Michigan*, *supra* note 60.

92. MICH. COMP. LAWS § 780.621(10).

93. As discussed in Section I, *supra*.

come. Overall, Michigan's statute has some successes but needs improvement. This Note will return to Michigan's statute in the best practices discussion in Section V.

### B. *Florida's Statute*

Florida implemented its human trafficking criminal record relief statute in 2013.<sup>94</sup> Unlike Michigan's statute, Florida's statute is separate from any other form of criminal record relief.<sup>95</sup> Florida is one of only two states to receive a C grade from Polaris, placing it third in the overall rankings.<sup>96</sup>

#### 1. Statute Breakdown

Although Florida's statute uses the language of expunction, it provides vacatur-level relief.<sup>97</sup> The statute provides that a person who has "any criminal record history resulting from an arrest or filing of charges for an offense committed while the person was a victim of human trafficking" and was committed "as a part of the human trafficking scheme of which they were a victim" is eligible to petition for vacatur of the record in any court that has jurisdiction.<sup>98</sup> The person must provide a sworn statement of their eligibility for expunction and, if available, official documentation of their status as a victim of human trafficking.<sup>99</sup> Having such documentation creates a presumption of victim status.<sup>100</sup> If no documentation is available, the applicant must establish their victim status by clear and convincing evidence.<sup>101</sup>

If the applicant proves the above criteria to the court by a preponderance of the evidence, the court may vacate the record.<sup>102</sup> A person may only seek vacatur after they have ceased to be a victim of human

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94. FLA. STAT. § 943.0583 (2019).

95. *Id.*

96. STATE REPORT CARDS, *supra* note 8, at 28; see *New Georgia Law Helps Trafficking Survivors Clear Their Records*, *supra* note 31 (regarding Georgia's new ranking).

97. FLA. STAT. § 943.0583(3) ("A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.").

98. *Id.*

99. *Id.* § 943.0583(5)-(6).

100. *Id.* § 943.0583(5).

101. *Id.*

102. *Id.* § 943.0583(3).

trafficking or have sought services as a victim.<sup>103</sup> Further, a person may not petition for vacatur of more than one conviction at a time.<sup>104</sup>

## 2. Efficacy Analysis

Florida received a C ranking from Polaris, receiving seventy-two out of 100 possible points on the Polaris grading scale.<sup>105</sup> Polaris allotted Florida ten out of ten points in the “Range of Relief” category.<sup>106</sup> Florida’s statute not only offers vacatur-level relief, it additionally vacates the conviction on the merits.<sup>107</sup> This makes it “the best form of relief for trafficking survivors . . . and ensures that the relief as implemented aligns with the full legislative intent” of acknowledging trafficking survivors should never have received their convictions in the first place.<sup>108</sup> Florida also provides record relief for “arrests, adjudications, non-prosecuted cases, and convictions,” as opposed to convictions only, earning it full marks in the “Arrests and Adjudications” category.<sup>109</sup>

Florida’s statute also received positive marks in the “Nexus to Trafficking” category.<sup>110</sup> The language of Florida’s statute indicates that the offense for which someone seeks relief only needs to be proximately caused by the victim’s trafficking experience; it does not require that the offense be committed while “under duress” of trafficking.<sup>111</sup> Polaris ranked Florida’s statute highly for this because this is a reasonable standard for survivors to meet and:

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103. *Id.* § 943.0583(4). Unfortunately, the statute provides no explanation or guidance as to how to determine whether an applicant has achieved these statuses.

104. Florida’s statute provides:

Each petition to a court to expunge a criminal history record is complete only when accompanied by . . . [t]he petitioner’s sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

*Id.* § 943.0583(6)(a).

105. *Criminal Record Relief for Trafficking Survivors: Florida*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Florida.pdf> [<https://perma.cc/7X44-Z8JV>].

106. *Id.*

107. FLA. STAT. § 943.0583(3) (stating that a “conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.”).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* § 943.0583(3).

Many survivors of trafficking are not able to show that they were under duress at the time of their arrest . . . [D]uress doesn't align with all manifestations of human trafficking. Requiring a survivor to establish duress renders relief unattainable for victims and the law unresponsive to the crime itself.<sup>112</sup>

Florida's statute remains weak, however, in the "Burden of Proof" category, receiving only two of five available points.<sup>113</sup> Specifically, while the preponderance of the evidence standard is applied if a survivor is able to produce official documentation of their trafficking experience, the more burdensome "clear and convincing" standard applies if a survivor does not have such documentation.<sup>114</sup> According to Polaris's report:

A less restrictive burden of proof is recommended because of the variation that exists with regard to the ability of survivors to provide evidence of their trafficking experience. While some survivors may be able to provide more tangible proof because they have been linked with knowledgeable service providers, have testified in court against their traffickers, or have received certification of their victimization from a governmental agency, the majority of survivors will not be able to do so.<sup>115</sup>

If their trafficker has not been arrested or convicted, a survivor cannot point to any official documentation identifying themselves as a victim of their specific trafficker.<sup>116</sup> Further, traffickers will often maintain control and possession of a survivors' belongings.<sup>117</sup> If a survivor has an oppor-

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112. STATE REPORT CARDS, *supra* note 8, at 17.

113. *Criminal Record Relief for Trafficking Survivors: Florida*, *supra* note 105.

114. FLA. STAT. § 943.0583(5).

115. STATE REPORT CARDS, *supra* note 8, at 18.

116. As the Survivor Reentry Project's guide discusses:

For a number of reasons, not every survivor will have official documentation to create a presumption that they committed the offense as a result of being a victim of human trafficking. Survivors who are U.S. citizens do not qualify for the certifications that the immigration process confers, and many survivors of any type never report their victimization. Two types of survivors, in particular, often lack official documentation: older survivors and survivors whose traffickers have not yet been investigated.

THE SURVIVOR REENTRY PROJECT, *supra* note 5 at 24.

117. DEP'T OF HEALTH AND HUMAN SERVS., *Resources: Identifying and Interacting with Victims of Human Trafficking* 1, <https://www.acf.hhs.gov/sites/default/files/orr/tips>

tunity to escape their trafficker, there is no guarantee that they will be able to take their possessions with them and so they will not be able to provide tangible evidence of their exploitation.<sup>118</sup> Having a high evidentiary burden in this area punishes survivors for not being able to control the way in which their trafficker exploited them, or for not having collected and retained evidence while they were being abused and traumatized. While Florida's statute is still superior for actually establishing the burden of proof compared to other state statutes that remain silent as to an applicant's evidentiary burden, an across the board preponderance standard is the most accommodating of the varied experience and evidence a survivor may have to offer.

Finally, Florida received no points in the "Additional Restrictive Conditions on Relief" category because it prohibits survivors from petitioning for record relief in multiple jurisdictions at once.<sup>119</sup> This requirement "significantly lengthens the amount of time it takes for survivors to obtain complete relief," forcing survivors to live even longer with the obstacles and reinforced trauma that accompany these records.<sup>120</sup>

While much of this analysis focuses on Florida's areas of improvement, at seventy-two points, Florida only has a nine-point differential from Nebraska, the state which currently holds the highest ranking.<sup>121</sup>

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\_for\_identifying\_and\_helping\_victims\_of\_human\_trafficking.pdf [https://perma.cc/MM78-XNC4] (listing "[c]onfiscation of passports, visas and/or identification documents" and "[c]ontrol of the victims' money, e.g., holding their money for 'safe-keeping'" as techniques traffickers employ against their victims.).

118. See, e.g., Shandra Woworuntu, *Shandra Woworuntu: My Life as a Sex-Trafficking Victim*, BBC NEWS (Mar. 30, 2016), <https://www.bbc.com/news/magazine-35846207> [https://perma.cc/N2AQ-XNYK] (survivor Shandra Woworuntu's story in which she "managed to escape from [her] new trafficker and [ ] took off down the street, wearing only slippers and carrying nothing but [her] pocketbook."), see also Lisa Deaderick, *From One Survivor to Another, Helping Survivors of Human Trafficking Escape and Stay Safe*, SAN DIEGO UNION-TRIBUNE (Dec. 22, 2019), <https://www.sandiegouniontribune.com/lifestyle/people/story/2019-12-22/from-one-survivor-to-another-helping-survivors-of-human-trafficking-escape-and-stay-safe> [https://perma.cc/WNY9-594R] (survivor leader Marjorie Saylor, the founder and CEO of The Well Path, a nonprofit working to provide emergency housing for survivors of human trafficking, explained that emergency housing is the biggest need for survivors since they often have no shelter when they escape.).
119. *Criminal Record Relief for Trafficking Survivors: Florida*, supra note 105; FLA. STAT. § 943.0583(6)(a).
120. *Criminal Record Relief for Trafficking Survivors: Florida*, supra note 105.
121. *Id.*; *Criminal Record Relief for Trafficking Survivors: Nebraska*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Nebraska.pdf> [https://perma.cc/CRG2-Q4YT].

### C. Nebraska's Statute

Nebraska's statute was implemented in 2018.<sup>122</sup> Like Florida's statute, Nebraska's statute is separate from any other form of criminal record relief.<sup>123</sup> Nebraska is the only state in the country to have received a B, placing it highest in the rankings.<sup>124</sup> Although, like Michigan, Nebraska uses the term "set aside" within its statute, the level of relief the statute provides is *vacatur*.<sup>125</sup>

#### 1. Statute Breakdown

Nebraska's statute states that at "any time following the completion of a sentence or disposition" a victim of sex trafficking may apply in the court in which the movant was convicted or adjudicated.<sup>126</sup> An applicant is able to receive record relief for any offense committed as a "direct result of" or which was "proximately caused by" their status as a trafficking victim.<sup>127</sup> An applicant is able to provide official documentation in order to create a rebuttable presumption of their victim status, but it is not required and a court may consider any other evidence it deems credible.<sup>128</sup> Further, at the request of the applicant, "any hearing related to the motion shall be conducted *in camera*."<sup>129</sup>

#### 2. Efficacy Analysis

As with Florida's statute, Nebraska's statute scored well in the "Arrests and Adjudications" category since it provides relief for not only convictions, but also arrests, adjudications, and non-prosecuted cases.<sup>130</sup> However, the most notable element of Nebraska's statute is in its "Offenses Covered" category. Specifically, the statute's language indicates

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122. NEB. REV. STAT. § 29-3005 (2016).

123. *See id.*

124. STATE REPORT CARDS, *supra* note 8, at 28.

125. NEB. REV. STAT. § 29-3005; *Criminal Record Relief for Trafficking Survivors: Nebraska*, *supra* note 121.

126. *Id.* § 29-3005(2).

127. *Id.*

128. *Id.* § 29-3005(4)-(5).

129. *Id.* § 29-3005(6). A hearing conducted *in camera* is held within a closed courtroom or in the judge's private chambers.

130. *Criminal Record Relief for Trafficking Survivors: Nebraska*, *supra* note 121, at 1-2.

that any offense is eligible for relief as long as the survivor can meet the evidentiary burden.<sup>131</sup> It received full marks in this category.

However, Nebraska's statute is silent as to "Burden of Proof" and therefore provides no clarity to applicants or judges as to what evidentiary burden applicants need to meet to make their case.<sup>132</sup> This is surprising given the level of detail Nebraska's statute goes into when describing the type of evidence an applicant can bring for the court to consider, which provides clarity for both applicants and fact finders.<sup>133</sup>

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131. NEB. REV. STAT. § 29-3005(2) (2016).

132. *Criminal Record Relief for Trafficking Survivors: Nebraska*, *supra* note 121, at 1-2.

133. Nevada's statute provides:

(4) Such official documentation includes:

(a) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows that the movant is a victim of sex trafficking; or

(b) An affidavit or sworn testimony from an attorney, a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the movant has sought legal counsel or other assistance in addressing the trauma associated with being a victim of sex trafficking.

(5) In considering whether the movant is a victim of sex trafficking, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Examples of such evidence include, but are not limited to:

(a) Branding or other tattoos on the movant that identified him or her as having a trafficker;

(b) Testimony or affidavits from those with firsthand knowledge of the movant's involvement in the commercial sex trade such as solicitors of commercial sex, family members, hotel workers, and other individuals trafficked by the same individual or group of individuals who trafficked the movant;

(c) Financial records showing profits from the commercial sex trade, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs, or strip clubs, or employment at an escort service;

(d) Internet listings, print advertisements, or business cards used to promote the movant for commercial sex; or

(e) Email, text, or voicemail records between the movant, the trafficker, or solicitors of sex that reveal aspects of the sex trade such as

One crucial element of relief that Polaris's criteria does not address is that Nebraska's statute limits relief only to victims of sex trafficking as opposed to victims of human trafficking as a whole.<sup>134</sup> This means that any victim of labor trafficking who is forced, coerced, or compelled to commit an offense during their trafficking experience is not afforded relief under the language of the statute. Nebraska received eighty-one of 100 total available points,<sup>135</sup> so while it did receive the highest ranking among states, Nebraska's statute has a number of shortcomings, just like all other statutes.

#### *D. Lack of Relief at the Federal Level*

In addition to the fact that six states have no criminal record relief statutes for human trafficking victims, there is no specific statute at the federal level for victims who have been forced to engage in federal criminal offenses by their traffickers.<sup>136</sup> While the introduction of trafficking-specific record relief legislation in Congress indicates a belief that such federal relief is generally necessary,<sup>137</sup> "[t]here is ongoing debate about whether [this] federal legislation would be effective, particularly with regard to the offenses it would cover, which drastically differs from what survivors are frequently charged with on the federal level."<sup>138</sup> Regardless, no such federal legislation has yet been enacted, leaving survivors with federal convictions vulnerable to the consequences such records bring.

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behavior patterns, meeting times, or payments or examples of the trafficker exerting force, fraud, or coercion over the movant.

NEB. REV. STAT. § 29-3005(4)-(5).

134. *See id.* § 29-3005(2).

135. *Criminal Record Relief for Trafficking Survivors: Nebraska*, *supra* note 121, at 1-2.

136. Alaska, Iowa, Maine, Minnesota, South Dakota, and Virginia. *See supra* Section III.A.

137. *See, e.g.*, Trafficking Survivors Relief Act of 2017, H.R. 459, 115th Cong. (2017-18).

138. The State Report Cards discuss Erica's story:

When her trafficker was arrested for money laundering and Mann Act violations, Erica was prosecuted alongside him because of the activities in which he forced her to engage. She cooperated fully with the prosecution to convict her trafficker. But she pleaded guilty to conspiracy charges, served her time under house arrest, and was required to register as a sex offender . . . Erica will be able to vacate all of the convictions on her record resulting from state level arrests and prosecutions, however, the only option to help her clear her federal record is a Presidential Pardon, which is incredibly difficult to obtain, even for the most deserving.

STATE REPORT CARDS, *supra* note 8, at 12.

The NSN has endorsed previously proposed bills in the House and Senate, demonstrating survivors' beliefs in the importance of addressing this need at the federal level.<sup>139</sup> Centering survivors and anti-trafficking groups in the legislative process is the best way to ensure that whatever statute is passed provides effective relief for survivors.

#### V. THE TRAFFICKING VICTIMS PROTECTION ACT AS A BEST PRACTICE STATUTE

In 2000, the federal government passed the Trafficking Victims Protection Act (TVPA), codifying human trafficking as a crime.<sup>140</sup> Washington followed suit in 2003, and was the first state to develop a state-level human trafficking law.<sup>141</sup> In 2014, the Polaris Project published a list of state rankings, evaluating individual states on their ability to establish “a basic legal framework to effectively combat human trafficking, punish traffickers, and support survivors.”<sup>142</sup> These rankings included a list of states that were “lagging behind.”<sup>143</sup> Polaris published this report for the next four years. Over that period, there was sweeping change across states implementing a variety of measures to improve their approach to the issue.<sup>144</sup> However, while Polaris's ranking system showed states where they fell on the spectrum when compared to their peers, states also had a federal model in the TVPA to use as a guide when making changes to their legislative landscape.

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139. *See Survivor's Perspective on Federal Post-Conviction Relief for Victims of Trafficking Act*, NATIONAL SURVIVOR NETWORK, <https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSN-VacaturFactSheet2018.pdf> [https://perma.cc/7349-F4FM].

140. Victims of Trafficking and Violence Protection Act of 2000, H.R. 3244, 106th Cong. (2000) (enacted) [hereinafter TVPA].

141. WASH. REV. CODE § 9A.40.100 (2020).

142. *A Look Back: Building a Human Trafficking Legal Framework*, POLARIS (2014), <https://polarisproject.org/wp-content/uploads/2019/09/2014-Look-Back.pdf> [https://perma.cc/R5KC-49WU].

143. *How Does Your State Rate on Human Trafficking Laws?*, POLARIS (2011), <https://polarisproject.org/wp-content/uploads/2019/09/2011-State-Ratings.pdf> [https://perma.cc/4SLW-V5J9].

144. *See A Look Back: Building a Human Trafficking Legal Framework*, *supra* note 142, at 1-3.

### A. *The Need for a Model Statute*

The Polaris Project has not drafted a model statute for states to follow for criminal record relief. However, its publication of individual state reports cards, as well as its detailed report explaining the reasoning behind all of its criteria, provides states with substantial guidance for what to include—and what not to include—in their record relief statutes. This area of law has only been developing for ten years, starting with New York’s passage of the first legislation of this type in 2010. Immediately following the creation of the statute, fifteen states passed their own statutes using New York’s statute as a model.<sup>145</sup> Unfortunately, New York’s statute garnered a D ranking from Polaris’s criteria and few states with legislation based on New York’s have scored higher than a D.<sup>146</sup>

This area of law is constantly growing and evolving as legal practitioners are coming to understand the realities and complexities of the crime of human trafficking. As more information is gained by listening to survivors’ voices, both through the National Survivor Network Survey and through individual survivor testimony, the true needs of trafficking victims in criminal record relief begin to emerge.<sup>147</sup> State and federal legislators owe it to this vulnerable population to effectively remedy their wrongful convictions.

### B. *Creating a Model Statute*

#### 1. Identifying the Best Practices Within Each of Polaris’s Categories

Polaris not only evaluated states based on the categories identified in its report, it also suggested best practices within each of those categories. This section draws heavily on Polaris’s *Report Card* criteria and also looks to states that received some of the highest rankings from Polaris to

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145. See N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2005).

146. STATE REPORT CARDS, *supra* note 8, at 28 (scoring Connecticut with a ranking of forty-five, Hawaii with a ranking of thirty-five, and Illinois with a ranking of forty-nine).

147. See THE SURVIVOR REENTRY PROJECT, *supra* note 5, at 11 (supporting that “regular reflection should involve asking survivors about their experiences, and making adjustments as necessary. Using more general feedback from local and national survivor-led organizations, such as the National Survivor Network and the Survivor Leadership Institute, can also be helpful in understanding trauma-informed best practices.”).

determine not only what the best practice for each category is, but also how that practice looks when applied. The below strategies demonstrate how to incorporate best practices into effective relief statutes and include elements of state statutes that substantially underperformed or excelled in the respective categories, and, in some cases, those that go above and beyond Polaris's suggestions.

#### a) Range of Relief

As with Florida's statute, Massachusetts also provides vacatur relief "on the merits" for trafficking survivors.<sup>148</sup> This is the most effective form of criminal record relief offered since it acknowledges a fundamental defect in the judgment. Vacatur on the merits is "the closest thing to a legal recognition that the survivor should not have been convicted in the first place. It indicates that had the court known all the information that is now available, the survivor would not have been convicted of the offense," highlighting the substantive defect of the earlier proceedings.<sup>149</sup>

#### b) Arrests and Adjudications

Idaho<sup>150</sup> and the District of Columbia<sup>151</sup> both offer relief not only for convictions but also for any adjudication on a victim's record that is

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148. MASS. GEN. LAWS ch. 265, § 59(d) (2018).

149. STATE REPORT CARDS, *supra* note 8, at 14.

150. IDAHO CODE § 67-3014(13) (2020) ("Upon the entry of an order of expungement under this section, the petitioner shall be deemed to have never been arrested, prosecuted or convicted with respect to the matters that are the subject of the order of expungement.").

151. The District of Columbia law provides:

(a) A person convicted of an eligible offense may apply by motion to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking.

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

related to their trafficking experience. Providing record vacating for every form a criminal record can take allows survivors to move forward with their lives without the professional, educational, and other hurdles that come from having a residual criminal record.<sup>152</sup>

#### c) Offenses Covered

Wyoming, the only state other than Florida to receive a C ranking, permits vacatur of any offense a person was convicted of while a victim of trafficking.<sup>153</sup> As seen in the NSN survey, traffickers force their victims to engage in any number of criminal acts depending on the nature of their exploitative scheme.<sup>154</sup> Allowing vacatur for any type of offense acknowledges the variety of ways trafficking victims are exploited and does not punish a survivor for not having been victimized by their trafficker in a particular manner.<sup>155</sup>

#### d) Judicial Discretion

As demonstrated by the NSN survey, exploitation due to trafficking varies greatly and it is not possible for a statute, no matter how carefully drafted, to anticipate every trafficking situation that may arise.<sup>156</sup> The best statutes allow courts discretion to rule over a prosecutor's objection. If a court is not permitted discretion, statutes will often instead turn to prosecutors to consent to a survivor's application for relief before a court may hear the survivor's petition.<sup>157</sup> To bar a court from discretion "essentially puts a prosecutor in the role of a judge in determining whether the survivor was trafficked at the time of their conviction, eliminating the ability of the court to act independently."<sup>158</sup> This is especially problematic because prosecutors often lack the incentive to admit that

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D.C. CODE § 22-1844 (2015).

152. See STATE REPORT CARDS, *supra* note 8, at 7; NSN SURVEY, *supra* note 1, at 8.

153. WYO. STAT. ANN. § 6-2-708(c) (2019).

154. See NSN SURVEY, *supra* note 1, at 4.

155. See STATE REPORT CARDS, *supra* note 8, at 15.

156. See generally NSN SURVEY, *supra* note 1 (reporting on trafficking survivors' experiences with arrests, criminal charges, and experience with law enforcement).

157. See, e.g., MD. CODE., CRIM. PROC. § 8-302(a)-(b) (LexisNexis 2018) ("A person convicted of prostitution . . . may file a motion to vacate the judgment if, when the person committed the act or acts of prostitution, the person was acting under duress caused by [human trafficking] . . . A motion filed under this section shall . . . be signed and consented to by the State's Attorney.").

158. See STATE REPORT CARDS, *supra* note 8, at 16.

they have wrongfully charged someone, whereas leaving discretion with the court retains an impartial arbiter of the facts surrounding a survivor's conviction.<sup>159</sup> To accommodate this, Polaris suggests that a statute include language that would “[allow] the court to grant relief in spite of the prosecutor’s objection as long as prosecutors had notice and . . . ‘take such additional action as is appropriate in the circumstances.’”<sup>160</sup>

#### e) Nexus to Trafficking

The best practice for this category requires the survivor to prove only that the offense was committed “as a result” of the trafficking, meaning a survivor’s ability to draw a causal connection between the trafficking and the criminal act is what is required.<sup>161</sup> To require more than this—such as Michigan’s “direct result” requirement—again forces a survivor to fit into a narrow framework of a stereotypical trafficking scheme by proving the criminal act is an immediate consequence of a trafficker’s use of force or coercion. Not all traffickers use the same means for controlling their victims. Requiring a survivor to prove that they were a victim of trafficking at the time of the offense and that the offense was committed as a result of that victim status, and nothing more, “recognizes that the path of a trafficking victim will rarely ever be perfectly sequential or linear and that the instability that commonly results from having been a victim of trafficking can impact a survivor’s options and actions long after they have exited their trafficking situation.”<sup>162</sup> Higher requirements invite judges to impose their own biases as to the form they believe trafficking exploitation takes, and so a victim whose trafficker had them under a more subtle form of coercion rather than under constant threat of physical violence may not receive the same relief as a victim of a more “traditionally” violent trafficker.

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159. *See, e.g., id.* at 30 (discussing Hawaii’s statutory requirement for a survivor to receive written approval from the prosecutor prior to filing: “This is problematic because the prosecutor’s office is the one that prosecuted the survivor in the first place. Prosecutors may not be open to acknowledging issues in the first court proceedings which led to a survivor being convicted of a crime.”).

160. *Id.* at 16.

161. *Id.* at 17.

162. *Id.*

#### f) Time Limitations and Wait Times

Michigan's statute has no required time period in which a survivor must wait before filing a motion to set aside their conviction,<sup>163</sup> and Polaris agrees that this is the best practice for record relief statutes in this area.<sup>164</sup> Time limitations force survivors to live with criminal records they should never have received, or alternatively, can force survivors to seek relief before they have adequately recovered from their traumatic experience.<sup>165</sup> Removing restrictions on application periods allows survivors to seek relief when it is most appropriate in their own recovery journey.

#### g) Hearing Requirement

Survivors may not want or be able to physically appear in court for a hearing. Many will have to face financial burdens such as finding legal representation, paying for transportation, taking time off work, or finding childcare in order to make it to court to seek relief from a conviction they should never have received. This burden punishes a survivor further for an act they were forced, coerced, or compelled into committing. Other survivors whose traffickers are still at large may be fearful of their trafficker finding out about their application and appearing at the court building.<sup>166</sup> Additionally, forcing a survivor to appear in the same court where they were convicted during their trafficking experience or forcing them to discuss their case in open court can re-traumatize a survivor who is working to heal.<sup>167</sup> Polaris urges that “a strong statute [would al-

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163. MICH. COMP. LAWS § 780.621(7) (2019) (“An application . . . may be filed at any time following the date of the conviction to be set aside.”)

164. STATE REPORT CARDS, *supra* note 8, at 17.

165. *Id.*

166. *Id.* at 18.

167. The Survivor Reentry Project provides this guidance to attorneys representing survivors in vacatur hearings:

Realize that you may be asking your client to return to a jurisdiction /territory, area, or even building where they haven't been since they were trafficked. Many survivors have a severe emotional reaction when they return to, for example, a court where they were prosecuted. If your client reports that it's difficult for them to go back to the courthouse, put this information in your client's statement so the court is aware of the trauma an appearance may trigger; the information might be helpful in explaining behavior in the courtroom or convincing a court to excuse a client's appearance.

low] survivors to waive their right to appear in court or [grant] them the ability to utilize alternate methods of appearance (e.g. a written statement, video, or telephone conference call),” freeing them of the burdens imposed by such a requirement.<sup>168</sup>

#### h) Burden of Proof

As discussed above, the ideal burden of proof is a preponderance of the evidence standard for survivors to show the offense was committed as a result of their exploitation as a trafficking victim. Both Michigan and Idaho follow this best practice.<sup>169</sup> This less restrictive evidentiary burden acknowledges that because of the variety of survivor experiences it is likely that each survivor will have varied amounts of proof to offer in support of their claim.<sup>170</sup> The most harmful practice is that of statutes such as Wyoming’s that are silent on the evidentiary burden.<sup>171</sup> This provides no guidance for survivors applying for relief, which can be particularly harmful for pro se applicants.

#### i) Official Documentation

It is important not to require official documentation, such as a certified record of the trafficker’s conviction of trafficking, because of the variety of victim experiences and the difficulty for trafficking victims in meeting specific documentation burdens. However, it is also helpful for statutes to acknowledge the strong weight official documentation has in meeting evidentiary burdens, should a survivor have such documenta-

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THE SURVIVOR REENTRY PROJECT, *supra* note 5, at 30. The Survivor Reentry Project continues:

You should warn and prepare your client that testifying in open court can cause a wide range of reactions and feelings, and you should reassure your client that it is common and acceptable to become emotional or experience some difficulty remembering precise details. You should explain that it is okay to say that they don’t remember or that they need a break. You should also suggest to your client that they meet with a therapist or counselor at some point after the hearing for emotional support.

*Id.* at 38 (emphasis omitted).

168. STATE REPORT CARDS, *supra* note 8, at 18.

169. MICH. COMP. LAWS § 780.621(13) (2019); IDAHO CODE § 67-3014(10) (2020).

170. STATE REPORT CARDS, *supra* note 8, at 18.

171. *See* WYO. STAT. § 6-2-708 (2019).

tion.<sup>172</sup> New York's statute illustrates the best practice: It does not require official documentation, but, should a survivor produce such documentation, it creates "a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking."<sup>173</sup>

j) Confidentiality

To achieve high marks in the "Confidentiality" category, Polaris suggests that statutes should have "an express provision . . . that protects confidentiality or allows for filing documents under seal."<sup>174</sup> For many survivors, there is shame or fear that comes with the filing of a petition for vacatur as it re-exposes survivors to the court process and the risks that come with asserting a claim in open court.<sup>175</sup> To have a statute acknowledge the legitimacy of those feelings by protecting confidentiality, or to go even further and provide automatic protection for survivors by shielding their application and the related proceedings from the public, demonstrates to these survivors that the state perceives those feelings and safety concerns as valid.

k) Additional Restrictive Conditions of Relief

California's statute demonstrates a best practice by not placing any additional restrictions on survivors who are seeking relief, such as excluding survivors with pending charges, subsequent arrests or convictions, or with convictions vacated in other states.<sup>176</sup> Any restrictions additional to those discussed in the above criteria would simply create further barriers between survivors and the relief they are entitled to as victims of trafficking.

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172. STATE REPORT CARDS, *supra* note 8, at 19.

173. N.Y. CRIM. PROC. LAW § 440.10(1)(i)(ii) (McKinney 2005).

174. STATE REPORT CARDS, *supra* note 8, at 19.

175. THE SURVIVOR REENTRY PROJECT, *supra* note 5, at 30; STATE REPORT CARDS, *supra* note 8, at 19 (a survivor reporting that "[h]aving to appear in court is stressful. Even just submitting a document to the court with the name of my trafficker causes a lot of stress, a lot of anxiety. record relief documents should just be automatically sealed—without us having to ask—to protect survivors.").

176. See CAL. PENAL CODE § 236.14 (2017). *Cf.* WASH. REV. CODE § 9.96.070 (2020) (which provides relief under the general record relief statute); WASH. REV. CODE § 9.96.060(3) (2020) (which limits applicants with pending charges from being able to seek record relief).

## 2. Proposed Model Statute for Criminal Record Relief for Human Trafficking Victims

By evaluating all of Polaris’s criteria and the statutory provisions of some of the states that received the highest rankings in Polaris’s report, this Note proposes a new statute. This should ideally be a federal statute that would serve as a model for states when drafting or improving their own trafficking-specific record relief statutes. This Note proposes that any model statute should be trafficking-specific and separate from other statutory record relief offered by states. As discussed, trafficking-specific statutes acknowledge the unique circumstances of trafficking victims seeking record relief and free the statute from policy considerations that do not apply to relief sought specifically by trafficking victims. Below is the proposed statute that aims to incorporate all of Polaris’s criteria, as well as considerations raised by NSN and the Survivor Reentry Project:

### **Victims of Trafficking Criminal Record Relief Act**

#### **An Act**

To provide vacatur of convictions trafficking victims incurred as a result of the force, fraud, or coercion of their traffickers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### **SECTION 1. SHORT TITLE; TABLE OF CONTENTS**

(a) **SHORT TITLE.**—This Act may be cited as the “Victims of Trafficking Criminal Record Relief Act.”

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings; sense of Congress.

Sec. 3. Record relief.

#### **SECTION 2. FINDINGS; SENSE OF CONGRESS**

(a) **FINDINGS.**—Congress finds the following:

- (1) The crime of human trafficking involves the exploitation of adults through force, fraud, or coercion, and for children for such purposes as forced labor or commercial sex.
- (2) The nature of trafficking exploitation and the collected testimony of trafficking victims has demonstrated that human trafficking

regularly results in trafficking victims incurring criminal records as a result of their exploitation.

- (3) These records result in increased housing, employment, education, rehabilitation, and other barriers for victims when they try to recover from their trafficking experience.
  - (4) Creating an avenue for victims to remove these records would aid not only in victim recovery but would also prevent further exploitation of their records in the future.
- (b) SENSE OF CONGRESS.—It is the sense of Congress that Congress create a vacatur statute to allow victims of human trafficking to clear their records of criminal convictions incurred as a result of their exploitation.

### SECTION 3. CRIMINAL RECORD RELIEF

- (1) If a person was arrested for or convicted of any offense committed while they were a victim of human trafficking and as a result of their being a victim of trafficking, such person may petition the court for vacatur relief of their convictions and arrests under this section.
- (2) A petition under this section may be filed at any time following the date of the arrest or conviction to be vacated. A person may petition to have more than one conviction vacated at a time under this section in any jurisdiction and no such petition in any jurisdiction will affect their ability to petition for relief in other jurisdictions simultaneously or otherwise.
- (3) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and shall grant the petition as long as prosecutors had notice of the petition. If the petition is opposed, the court may still grant the petition if the requirements are met, or if the court finds justice so requires.
- (4) If the court finds the petitioner established by a preponderance of the evidence that the offense was committed as a result of their being a victim of trafficking, then such relief must be granted and an order of vacatur entered.
- (5) Official documentation of petitioner's status as a victim, though not required, shall create a presumption of eligibility for relief under this statute.
- (6) A hearing is not required. However, if a hearing takes place on the matter, the hearing may be conducted in person, via a written statement by the petitioner, or by video or telephone confer-

ence call. Alternatively, the petitioner may move for their presence to be waived without leave of the court or consent of the prosecutor which motion may be granted also without consent of the prosecutor.

- (7) Any filings related to the petition shall be automatically filed under seal, and any hearings that take place shall be confidential, unless otherwise requested by the applicant.
- (8) Upon entry of an order of vacatur under this section, the petitioner shall be deemed to have never been arrested, prosecuted or convicted with respect to the matters that are the subject of the order of vacatur. A conviction vacated under this section is deemed to have been vacated on the merits due to a substantive defect in the underlying criminal proceedings. Further, the court may take any such additional action as is appropriate in the circumstances to ensure full relief is granted to the petitioner on these matters.

While this Note focuses on examples of state legislation, there is no federal legislation on criminal record relief for trafficking survivors.<sup>177</sup> Model statutes may be useful to states so that they can follow best practices in addressing this issue. However, in the case of record relief for trafficking victims, an operational federal statute providing record relief would serve the dual purpose of filling a need-gap for survivors with federal convictions while simultaneously providing a model statute for states to follow. The most appropriate place for such a statute to be incorporated is in the Trafficking Victims Protection Act (TVPA).

### *C. The TVPA as a Site for Inclusion of the Proposed Statute in Federal Legislation*

Passing a federal statute that amends the TVPA to include record relief could provide guidance to states on this issue much as it did when the TVPA codified human trafficking as a federal crime in 2000.<sup>178</sup>

The passage of the TVPA created a national model for prosecuting traffickers, protecting victims, and preventing further trafficking.<sup>179</sup>

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177. See *supra* Sections IV and V.

178. See TVPA, *supra* note 140; 22 U.S.C. § 7101 (to promote effective state enforcement of the TVPA, the Attorney General shall promulgate a model statute for states).

Since then, the TVPA has been reauthorized and updated seven times.<sup>180</sup> The TVPA and its subsequent reauthorizations have addressed areas impacting trafficking with greater breadth and efficacy with each update.<sup>181</sup> States have used the TVPA as a model when drafting their own legislation since its passage, relying on the TVPA's definition of trafficking and criminalization of different trafficking acts, for example.<sup>182</sup> The TVPA is the most appropriate place to locate a federal criminal record relief statute for human trafficking victims. If passed, a federal statute that perfectly meets all of Polaris's criteria can serve as a model for states to rely on as they update or create new legislation at the state level to best meet the needs of trafficking survivors.

## VI. CONCLUSION

Polaris's *State Report Cards* provide a much-needed framework for legislators passing criminal record relief statutes for trafficking victims in their jurisdictions. The model statute included in this Note aims to provide a checklist for states to ensure they have met all of Polaris's criteria and draws from state statutes currently modeling those best practices. There are certainly ways for states to go above and beyond the suggested statute to effectively support survivors. For example, Nebraska's decision to include a list of suggested evidence within its statute<sup>183</sup> helps pro se applicants, attorneys new to this type of petition, and judges who are reviewing these petitions for the first time. Further, the difference between receiving an order of vacatur and the effectuation of that order are often separate processes. A statute which automatically incorporates the processes of the state's method of vacatur would remove that burden from the applicant and provide more immediate relief.

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179. See OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP'T OF STATE, *3Ps: Prosecution, Protection, and Prevention*, <https://www.state.gov/3ps-prosecution-protection-and-prevention/> [<https://perma.cc/P5N3-QC8M>].

180. See OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP'T OF STATE, *International and Domestic Law*, <https://www.state.gov/international-and-domestic-law/> [<https://perma.cc/22B5-NQ5E>].

181. *Id.*

182. See POLARIS, 2013 ANALYSIS OF STATE HUMAN TRAFFICKING LAWS 7, 12 (2013), <https://polarisproject.org/wp-content/uploads/2019/09/2013-State-Ratings-Analysis.pdf> [<https://perma.cc/5G5V-YPBJ>] (noting that, in definitions of both sex and labor trafficking, "much of the language in state statutes is modeled on the TVPA.").

183. See NEB. REV. STAT. § 29-3005(4)-(5) (2016).

The best place for a model statute is in the TVPA. Were a criminal record relief statute to be included during the next reauthorization of the TVPA, it would serve the dual purpose of creating record relief opportunities for trafficking victims with federal convictions related to their trafficking experience and providing states with an example of what effective record relief looks like for drafting their own state statutes. This would encourage a unified approach to addressing this issue which, if realized, would also relieve survivors of the burden of accessing varying relief depending on the state in which their trafficker exploited them.

States have the ability to provide necessary help and support to trafficking survivors who have criminal records from their jurisdictions. Legislators need to listen to the voices of survivors as they speak about the realities of their trafficking experiences and the voices of advocates who dedicate their lives and resources to understanding how the law can be used to ease survivors' burdens. If they choose to do so, Michigan, Florida, Nebraska, and other states will be able to provide much needed relief for survivors living with criminal records for crimes their traffickers forced them to commit. ❀