

5-1-2022

Stop Revictimization in the Justice System: Human Trafficking Survivors are Victims Too

Kaelyn Tomkins

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>

Recommended Citation

Tomkins, Kaelyn (2022) "Stop Revictimization in the Justice System: Human Trafficking Survivors are Victims Too," *Seattle Journal for Social Justice*: Vol. 20: Iss. 3, Article 12.
Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol20/iss3/12>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons.

Stop Revictimization in the Justice System: Human Trafficking Survivors are Victims Too

Kaelyn Tomkins

I. INTRODUCTION

Solomon was dragged into the world of sex slavery in 2016 when she was living in Louisiana and she split up from her husband . . . “Um, so I trusted this guy that I really, that I knew, he knew my family, he knew my husband went to school with us, um, it started out that I was just driving him and this other lady around and it didn’t take long for me to figure out what was going on, you know, he was basically selling her,” Solomon says. A week into this arrangement that the woman wasn’t able to meet her daily quota and the trafficker told Solomon to drive them down a swamp road. “He dragged her out of my car and pulled her to back by the trunk and he started beating her and I watched from my rear view mirror. And he made me leave her there,” Solomon says. . . .”He was doing something on his phone,” Solomon says. “I wasn’t sure what turns out later I found out he was creating an ad on backpage.com but I’m in the ad.” . . . They traveled across Texas. Every two or three days he would set up shop in a new town. “He started renting rooms and he would have people come to the room. Um, he would, um, he would post these ads on backpage but he would talk to these guys online through like text messaging and stuff and set up, you know, all of these appointments. And there was times that he would have me tied to the bed with bed sheets other times after a while of this going on,” Solomon says. The trafficker would also force Solomon to smoke meth.¹

~Karla Solomon, human trafficking survivor

¹ David Martin Davies, *A Sex Trafficking Survivor Tells Her Story*, TEX. STANDARD, (Jan. 8, 2019, 9:30 AM), <https://www.texasstandard.org/stories/a-sex-trafficking-survivor-tells-her-story/> [<https://perma.cc/6N72-NTDN>].

Karla's story is nothing new; Karla's story is similar to thousands of human trafficking victims.² Human trafficking is a significant problem in the United States, with every state having reported some form.³ Also, human trafficking is a societal problem with victims across all genders and ages, all of whom have vulnerabilities that traffickers take advantage of.⁴ These traffickers place the victims into a world of forced criminality; forced criminality occurs when human traffickers force their victims to commit a wide range of crimes.⁵ Once traffickers force their victims to commit crimes, these victims' convictions revictimize them for years to come by hindering their attempts to obtain freedom.⁶

The revictimization of human trafficking victims through their criminal records—criminal records that victims obtain through forced criminality—is a vicious cycle that Washington must end.⁷ The cycle looks like this: (1) an individual is forced into trafficking, (2) the trafficker forces them to

² See U.S. DEP'T OF JUST., NCJ233732, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008–2010 SPECIAL REPORT 1, 3 (2011), <https://www.bjs.gov/content/pub/pdf/cshti0810.pdf> [<https://perma.cc/J3PR-ZUCQ>] (2,515 human trafficking incidents opened between 2008 and 2010 across the United States).

³ *Myths and Facts About Human Trafficking*, OFF. ON TRAFFICKING IN PERSONS, <https://www.acf.hhs.gov/otip/about/myths-facts-human-trafficking> [<https://perma.cc/Y94J-FQ72>].

⁴ *Id.*

⁵ U.S. DEP'T OF STATE, THE USE OF FORCED CRIMINALITY: VICTIMS HIDDEN BEHIND THE CRIME (2014), <https://2009-2017.state.gov/documents/organization/233938.pdf> [<https://perma.cc/L98E-GVLS>] [hereinafter FORCED CRIMINALITY]; see also U.S. DEP'T OF STATE: OFF. TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, PROTECTING VICTIMS FROM WRONGFUL PROSECUTION AND FURTHER VICTIMIZATION (2016), <https://2009-2017.state.gov/j/tip/rls/fs/2016/259138.htm> [<https://perma.cc/B36D-TZRR>] [hereinafter PROTECTING VICTIMS]; Erin Marsh et al., STATE REPORT CARDS; GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING 1, 5 (2019), <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf> [<https://perma.cc/X5LC-UW75>].

⁶ FORCED CRIMINALITY, *supra* note 6; see also PROTECTING VICTIMS, *supra* note 6.

⁷ See *Myths and Facts About Human Trafficking*, OFF. ON TRAFFICKING IN PERSONS, <https://www.acf.hhs.gov/otip/about/myths-facts-human-trafficking> [<https://perma.cc/Y94J-FQ72>]; see also FORCED CRIMINALITY, *supra* note 6; PROTECTING VICTIMS, *supra* note 6.

commit crimes, (3) the individual is convicted and their crimes end up on their records, (4) these criminal convictions may prevent the individual from accessing many forms of housing and employment, and then (5) the victim ends up in a vulnerable position that traffickers can once again take advantage of.⁸ Thus, the Washington State Legislature needs to step in and help human trafficking victims by having a system that automatically vacates all non-violent crimes.

First, this comment will discuss what human trafficking is and the types of criminal convictions human trafficking victims face. Second, this comment will discuss the effect these criminal convictions have on human trafficking victims, from getting a job to housing, and the current state of human trafficking vacatur laws within Washington. Lastly, this comment will propose a new strategy for decreasing the revictimization of human trafficking victims by amending Washington House Bill 1292 to remove restrictions on utilizing the vacating statute, to create an application-free vacating system, to cover all non-violent crimes, and to add a CLE/CJE (Continuing Legal Education/Continuing Judicial Education) human trafficking training requirement.

II. BACKGROUND

A. *What is Human Trafficking?*

Human trafficking is an international problem; countries all over the world may serve as a victim's origin, part of the victim's transit, or the

⁸ See Kate Mogulescu, *The Public Defender as Anti-Trafficking Advocate, an Unlikely Role: How Current New York City Arrest and Prosecution Policies Systematically Criminalize Victims of Sex Trafficking*, 15 CUNY L. REV. 471, 479 (2012) (discussing the traumatic impact of prostitution arrests); see also OFF. ON TRAFFICKING IN PERSONS, *supra* note 8; FORCED CRIMINALITY, *supra* note 6; see also PROTECTING VICTIMS, *supra* note 6.

victim's destination.⁹ This trafficking is a modern-day form of slavery; an individual steals another person's freedom to make a profit.¹⁰ To confront this form of slavery, the international community has identified three common elements: the act, the means, and the purpose.¹¹ First, the act is the "recruitment, transportation, transfer, harboring or receipt of persons."¹² Second, the means pertains to how a trafficker steals an individual's freedom through trick, fraud, force, assaults, threats, or manipulation.¹³ Last, the purpose regards the reason for trafficking, forcing victims into a wide range of areas from the sex trade to labor in factories, all of which are exploitative.¹⁴

Due to the wide range of areas where traffickers exploit victims, human trafficking has become a multi-billion-dollar industry that affects 24.9 million people worldwide.¹⁵ Many of these 24.9 million individuals become victims of the trafficking trade not through physical force, but rather by psychological means.¹⁶ A trafficker obtains the psychological relationship required for exploitation by being a stranger who has befriended the victim; a romantic partner, as in Karla's case; or a family member.¹⁷

By using these psychological means and close relationships to exploit victims, traffickers victimize more than just women and children; 29% of

⁹ *Human Trafficking: The Crime*, U.N.: OFF. ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/human-trafficking/crime.html> [<https://perma.cc/Z2P8-X6HH>].

¹⁰ *What is Human Trafficking?*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking> [<https://perma.cc/N3FG-E2F5>].

¹¹ U.N.: OFF. ON DRUGS AND CRIME, *supra* note 10.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ NAT'L HUM. TRAFFICKING HOTLINE, *supra* note 11.

¹⁶ *Myths & Facts*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/myths-misconceptions> [<https://perma.cc/QK9Y-W4P9>].

¹⁷ *Id.*

human trafficking victims are male.¹⁸ LGBTQ+ individuals are incredibly vulnerable to trafficking due to a lack of community support and the stigma that many societies attach to sexuality.¹⁹ Traffickers will thus take advantage of these victims' lack of support by offering to give the victims the psychological support they desire or by otherwise meeting their needs.²⁰

Another characteristic of human trafficking is that human trafficking does not require forced movement between borders.²¹ In fact, human trafficking does not require any movement—unlike human smuggling—because trafficking victims can be recruited and trafficked within their hometowns.²² Given the prevalence of human trafficking, there should be no surprise that the United States, like many other countries, finds itself a home for the trafficking industry.

1. Human Trafficking within the U.S.

In the United States, between 2008 and 2010, federally funded human trafficking task forces opened 2,515 incidents of trafficking.²³ Of these incidents, 82.1% involved sex trafficking, 13.9% involved labor trafficking, 2.6% involved other suspected trafficking, and 6.8% involved unknown

¹⁸ HUM. RTS. FIRST, HUMAN TRAFFICKING BY THE NUMBERS (Sept. 2017), <https://www.humanrightsfirst.org/sites/default/files/TraffickingbytheNumbers.pdf> [<https://perma.cc/JS5J-BAZV>].

¹⁹ See NAT'L HUM. TRAFFICKING HOTLINE, *supra* note 17; see also Shane Downing, *Boys in the Life*, IMPRINT NEWS (Oct. 5, 2017, 3:00 AM), <https://imprintnews.org/featured/boys-in-the-life/28325> [<https://perma.cc/4HNN-AW7F>]; *LGBTQ Victims*, OFF. OF JUST. PROGRAMS, U.S. DEP'T OF JUST., <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/45-victim-populations/lgbtq-victims/> [<https://perma.cc/Z993-X6UN>]; MEAGHAN L. TOMASIEWICZ, *SEX TRAFFICKING OF TRANSGENDER AND GENDER NONCONFORMING YOUTH IN THE UNITED STATES* 1, 4 (2018); Avi Boukli & Flora Renz, *Deconstructing the lesbian, gay, bisexual, transgender victim of sex trafficking: Harm, exceptionality and religion—sexuality tensions*, 25 INT'L REV. OF VICTIMOLOGY 72, 77 (2019).

²⁰ See NAT'L HUM. TRAFFICKING HOTLINE, *supra* note 17; see also Downing, *supra* note 20; *LGBTQ Victims*, *supra* note 20; TOMASIEWICZ, *supra* note 20.

²¹ NAT'L HUM. TRAFFICKING HOTLINE, *supra* note 17.

²² *Id.*

²³ U.S. DEP'T OF JUST., *supra* note 3.

trafficking types such as mail order brides or online solicitations.²⁴ Of the sex trafficking cases, 48.4% involved adult prostitution, 40.4% involved prostitution of a child or minor, 5.6% involved sexualized labor such as exotic dancing or massage parlors, and 2.4% involved “other” forms of sex trafficking.²⁵ For the labor trafficking cases, 5.2% involved commercial industry labor such as hair salons and hotels, 9.1% involved unregulated industry labor such as domestic workers or forced begging, and 1% involved “other” forms of labor trafficking.²⁶ Within these statistics, traffickers were more likely to victimize Black/African Americans, followed by Hispanic/Latinos.²⁷

To combat human trafficking within the United States, the federal government has implemented the AMP model, or the Action-Means-Purpose model—like the model used internationally—to identify a trafficking victim.²⁸ Action involves inducing, recruiting, harboring, transporting, providing, or obtaining a person; means involves the use of force, fraud, or coercion; and purpose categorizes whether the trafficker used the victim for commercial sex or labor services.²⁹ For the federal government to consider someone a trafficking victim, the victim must meet one of the elements in action, one of the elements in means, and one of the elements in purpose.³⁰ This requirement is lower if the potential victim is a minor because the victim only needs to meet one of the elements in action and the element of commercial sex in purpose.³¹ The federal government does not require a minor victim to show means given that “minors induced into commercial sex are human trafficking victims.”³² Following this AMP

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ NAT’L HUM. TRAFFICKING HOTLINE, *supra* note 11.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

approach, in 2017, the United States had 8,579 cases of human trafficking reported to the National Human Trafficking Hotline.³³ Human trafficking has also become an issue in Washington State.

2. Human Trafficking in Washington State

A report done by Washington's Task Force Against Trafficking of Persons detailed that Washington is becoming a hotbed for "the recruitment, transportation and sale of people for labor" because of the border with Canada, the abundance of ports, the rural areas, and the state's dependency on agricultural workers.³⁴ The report points out that eighteen counties have reported experiencing some form of trafficking, including "mail order brides," sex workers, domestic workers, and working children.³⁵ Within these counties, cities like Seattle have become part of trafficking circuits.³⁶ For example, Seattle is part of a trafficking circuit that includes "Honolulu, Las Vegas, New Orleans, Portland, Vancouver (Clark County), Yakima and Canada."³⁷

Within Washington, from December 2007 to December 2020, 6,074 people contacted the National Human Trafficking hotline.³⁸ Those contacts led to 1,689 human trafficking cases of which 1,905 show moderate level trafficking indicators and 1,235 show high level trafficking indicators.³⁹ Cases categorized as moderate have "several indicators of human trafficking[]" or resemble common trafficking scenarios but lack core details of force, fraud, or coercion" while a case categorized as high will contain "a high level of indicators," likely including some core details of force, fraud,

³³ *Id.*

³⁴ *Human Trafficking*, WASH. STATE OFF. OF THE ATT'Y GEN., <https://www.atg.wa.gov/human-trafficking> [<https://perma.cc/DGQ4-DZXH>].

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Washington*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/state/washington> [<https://perma.cc/XAX5-W232>].

³⁹ *Id.*

or coercion.⁴⁰ In 2019 alone, there were 830 contacts with the hotline and 271 cases reported, with 324 of those cases exhibiting moderate indicators and 184 cases exhibiting high indicators.⁴¹ Of those 271 cases, 197 were sex trafficking, forty-two were labor trafficking, eighteen were trafficking “type not specified,” and fourteen included both sex and labor trafficking.⁴² Within these fields, the top industries for labor trafficking were domestic work with nine cases, traveling sales crew with seven cases, agriculture with six cases, restaurant/food services with three cases, and factories with three cases.⁴³ Comparatively, the top industries for sex trafficking were illicit massage or spa businesses with forty-eight cases, online ads with fifteen cases, hotel or motel based with fifteen cases, residence-based commercial sex with fifteen cases, and other venues with twelve cases.⁴⁴ Of these cases, 209 of the victims were female while forty-three were male and 183 were adults, with the remaining forty-five being minors.⁴⁵ Given that human traffickers in Washington engage in both sex and labor trafficking, traffickers likely force their victims to commit crimes beyond prostitution.

B. Is Human Trafficking More Than Sex Trafficking in the Form of Prostitution?

“New forms of slavery such as forced labour, prostitution, [and] organ trafficking . . . are true crimes against humanity.”⁴⁶

Human trafficking does not only take the form of sex trafficking but also includes labor trafficking and trafficking of minors, so it should come as no surprise that the crimes human traffickers force their victims to commit can

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Pope Francis, Statement to Judges’ Summit on Human Trafficking and Organized Crime (June 3, 2016).

go beyond the limits of prostitution.⁴⁷ A trafficker may force their victims to commit crimes such as falsifying identification, trespassing, and selling drugs.⁴⁸

Human trafficking victims often end up within the criminal justice system long before the State brings charges against the trafficker because of the victim's minor, non-violent offenses.⁴⁹ The offenses committed will vary depending on whether the individual is a sex trafficking victim, a labor trafficking victim, or a child victim.⁵⁰ For victims of sex trafficking, these individuals may face convictions for prostitution, "possession of weapons, drugs, or identity theft, all of which most likely have been orchestrated in some way by their trafficker."⁵¹ Labor trafficking victims may face convictions for manufacturing drugs, selling drugs, transporting drugs, possessing false identification, committing financial crimes, or committing minor crimes like trespassing.⁵² Lastly, child victims may face additional convictions for truancy and running away.⁵³ These crimes are often committed due to force or coercion.⁵⁴ Traffickers often attempt to obtain "control" over victims by building a climate of fear, taking identification and travel documents, keeping any money the victim makes, or otherwise

⁴⁷ Marsh et al., *supra* note 6; NAT'L HUM. TRAFFICKING HOTLINE, *supra* note 11.

⁴⁸ Marsh et al., *supra* note 6.

⁴⁹ See INT'L WOMEN'S HUM. RTS. CLINIC AND TRAFFICKING VICTIMS ADVOC. PROJECT, CRIMINALIZATION OF TRAFFICKING VICTIMS 1, 3 (2015), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/hrgj/publications/Criminalization-of-Trafficking-Victims.pdf> [<https://perma.cc/5MVH-V3MU>].

⁵⁰ Marsh et al., *supra* note 6, at 5.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *The Principle of Non-criminalization of Victims*, UNODOC MODULE 8: A HUMAN RIGHTS BASED APPROACH TO TRAFFICKING IN PERSONS, <https://www.unodc.org/e4j/en/tip-and-som/module-8/key-issues/principle-of-non-criminalization-of-victims.html> [<https://perma.cc/BHR3-EU4Q>].

making them dependent on the trafficker.⁵⁵ Using this control, the trafficker then takes part in “forced criminality” where the trafficker forces the victim to undertake criminal activities.⁵⁶

A victim may be hurt because of these convictions in numerous ways, including: (1) at the trafficker’s hand or (2) at the hands of society when the victim tries to obtain necessities.⁵⁷ A trafficker may use a victim’s criminal history, particularly convictions during trafficking, to scare a victim into staying; these threats include taking the victim into family court or reporting the victim to ICE.⁵⁸ The victim then may believe that if they leave or report the trafficker, the victim will face arrest, deportation, or even abuse by authorities, all because the trafficker has succeeded in deceiving and isolating the victim.⁵⁹ Criminal convictions can also harm victims after they escape trafficking by limiting their ability to obtain housing, employment, and financial aid.⁶⁰

C. The Ramifications of Criminal Convictions on Victims Post Trafficking

Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans. Once you’re labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal.⁶¹

⁵⁵ KEVIN BALES & STEVEN LIZE, *TRAFFICKING IN PERSONS IN THE UNITED STATES* 37–38 (2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf> [<https://perma.cc/87R3-77FJ>].

⁵⁶ FORCED CRIMINALITY, *supra* note 6; U.S. DEP’T OF STATE: OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, *PROTECTING VICTIMS FROM WRONGFUL PROSECUTION AND FURTHER VICTIMIZATION* (2016), <https://2009-2017.state.gov/j/tip/rls/fs/2016/259138.htm> [<https://perma.cc/B36D-TZRR>].

⁵⁷ Mogulescu, *supra* note 9, at 482.

⁵⁸ *Id.* at 483.

⁵⁹ *Id.*

⁶⁰ Marsh et al., *supra* note 6.

⁶¹ MICHELLE ALEXANDER, *THE NEW JIM CROW 2* (2012).

As human trafficking victims go about their lives, the federal government and Washington State allow people to discriminate against these individuals in employment, housing, and financial aid because of the criminal convictions they incurred while trafficked.

1. The Effect of Criminal Convictions on Employment, Housing, and Access to Federal Financial Aid in Washington

Past criminal convictions often hamper a victim's access to employment, housing, and federal financial aid.⁶² First, a criminal record can significantly impact an individual's employment options.⁶³ In Washington, job discrimination based on a criminal record is not impossible or even illegal.⁶⁴ While RCW 49.94.010 stops an employer from asking questions, inquiring, or otherwise obtaining information regarding an applicant's criminal history before determining whether an applicant is qualified, the law still allows an employer to access that record after deciding on the applicant's qualifications.⁶⁵ This law also does not apply to every employer in Washington.⁶⁶ For example, the following employers may access an applicant's criminal history at the start of the application process: (1) employers looking to fill positions where the employee is unsupervised with a minor or vulnerable adult, (2) employers who are expressly permitted or required under federal law to inquire/consider criminal records, (3) employers for a Washington law enforcement or criminal

⁶² NING FU ET AL., THE EFFECTS OF A CRIMINAL RECORD ON EMPLOYMENT, WELFARE PARTICIPATION, AND HEALTH: A MODEL OF LONG-RUN BEHAVIORS AND OUTCOMES WHEN LAGGED VARIABLES ARE MISSING NON-RANDOMLY 2 (2017), <https://www.mathematica.org/our-publications-and-findings/publications/the-effects-of-a-criminal-record-on-employment-welfare-participation-and-health-a-model-of-long> [<https://perma.cc/X6VK-3SF6>].

⁶³ *Id.*

⁶⁴ SECOND CHANCES, GUIDE TO CRIMINAL RECORDS AND EMPLOYMENT IN WASHINGTON STATE 8 (2013), <https://www.aclu-wa.org/file/99150/download?token=m4Hs9loV> [<https://perma.cc/499K-8KX7>].

⁶⁵ WASH. REV. CODE § 49.94.010

⁶⁶ *Id.*

justice agency, (4) an employer seeking a nonemployee volunteer, and (5) an employer that is required to follow the rules of a self-regulatory organization.⁶⁷

While a victim's criminal record may not be an upfront bar to many employment options since they can still apply, their criminal record may become a bar after an employer determines their qualifications.⁶⁸ Once the employer has access to that criminal record, there is no restriction on whether the employer can use it to deny the applicant.⁶⁹ The government leaves the creations of those restrictions to the cities, and even a city's restrictions on what the employer can do with that criminal record are weak. For example, in Seattle, under Seattle's Fair Chance Employment Act, an employer is restricted from using the conviction as the reason to deny the applicant without a "legitimate business purpose."⁷⁰ However, this restriction does not apply if the employer can come up with any other reason besides criminal history to deny an applicant, according to the Seattle Office of Labor Standards.⁷¹

If the employer decides not to hire the applicant for a reason other than the applicant's criminal history, does the employer need to perform a legitimate business reason analysis? No. The Ordinance requires that an employer perform a legitimate business reason analysis if the employer is making the decision solely based on the applicant's criminal history. However, if the employer

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Fair Chance Employment*, SEATTLE OFF. OF LAB. STANDARDS, <https://www.seattle.gov/laborstandards/ordinances/fair-chance-employment> [<https://perma.cc/352A-97Q2>].

⁷¹ *Questions and Answer*, SEATTLE OFF. OF LAB. STANDARDS 15, [https://www.seattle.gov/documents/Departments/LaborStandards/FCE%20QA%201-31-18\(0\).pdf](https://www.seattle.gov/documents/Departments/LaborStandards/FCE%20QA%201-31-18(0).pdf) [<https://perma.cc/9YXN-EVFG>].

makes its hiring decision based in part on the applicant's criminal history, it is a good idea to analyze and document that decision.⁷²

Second, having a criminal record can negatively impact an individual's access to housing.⁷³ A criminal record can keep a victim from obtaining either federal or private housing in Washington.⁷⁴ For example, in King County, for federal housing, a victim may be denied access for having "a criminal record that KCHA [King County Housing Authority] believes could affect the health, safety, or welfare of other tenants or its employees."⁷⁵ Regrettably, the use of criminal records to deny housing is not limited to federal housing—it also occurs in private housing.⁷⁶

Under Washington's RCW 59.18.257, landlords can run criminal background checks before agreeing to rent so long as the landlords have told the applicant what information they will access and what criteria may result in denial.⁷⁷ This means Washington's law does not otherwise restrict a private landlord's use of criminal records, but the Fair Housing Act, a federal law, may provide some (admittedly, weak) protections for tenants in Washington.⁷⁸ Under the Fair Housing Act, a landlord may not have blanket

⁷² *Id.* (Business analysis refers to the test that an employer must go through to show that the employer had a "legitimate business purpose" for denying the applicant on the basis of the conviction.)

⁷³ Marsh et al., *supra* note 6.

⁷⁴ *Criminal History Discrimination*, TENANTS UNION OF WASH., <https://tenantsunion.org/rights/criminal-history-discrimination> [<https://perma.cc/SB26-5D4N>].

⁷⁵ *Find a Home: How to Apply for a Section 8 Voucher*, KING CNTY HOUS. AUTH., <https://www.kcha.org/housing/vouchers/apply> [<https://perma.cc/E5W9-Q7AH>].

⁷⁶ *Criminal History Discrimination*, TENANTS UNION OF WASH., <https://tenantsunion.org/rights/criminal-history-discrimination> [<https://perma.cc/VF3F-Q9YU>].

⁷⁷ WASH. REV. CODE § 59.18.257.

⁷⁸ U.S. DEP'T OF HOUS. AND URBAN DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS (2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [<https://perma.cc/TT7X-4WQW>].

bans on renting to anyone with a criminal record; instead, the landlord can only use that information to make individualized decisions based on the offense's type and severity.⁷⁹

While federal and state protections may be lacking, individual cities have started to expand protections for tenants with criminal records.⁸⁰ For example, in Seattle, the Fair Housing Ordinance prevents landlords from unfairly denying applicants based on their criminal history and prevents landlords from using advertising language that automatically excludes people with a criminal history.⁸¹ However, this protection may be short-lived due to the lawsuit filed by the Pacific Legal Foundation.⁸² Under this lawsuit, landlords claim that Seattle's Housing Ordinance takes away their rights to choose reliable and compatible tenants by preventing them from using criminal records, which violates their due process rights and both Washington's and the United States' free speech provision.⁸³ While the Washington Supreme Court handed down a decision against the landlords in *Yim v. City of Seattle*, the litigation on this matter continues in federal courts.⁸⁴ Therefore, this extra protection in Seattle may not be available much longer, and tenants will have to rely on the language in the Fair Housing Act and Washington state laws.

⁷⁹ *Id.*

⁸⁰ *Fair Chance Housing*, SEATTLE OFF. FOR CIVIL RIGHTS, <https://www.seattle.gov/civilrights/civil-rights/fair-housing/fair-chance-housing> [<https://perma.cc/PFD2-DPXG>].

⁸¹ *Id.*

⁸² *Yim v. City of Seattle: Seattle Wages Unconstitutional War on Landlords*, PAC. LEGAL FOUND., <https://pacificlegal.org/case/yim-v-city-of-seattle/> [<https://perma.cc/VXM3-NQ2X>]; *Yim v. City of Seattle*, 194 Wash. 2d 682, 451 P.3d 694 (2019).

⁸³ *Yim v. City of Seattle: Seattle Wages Unconstitutional War on Landlords*, *supra* note 83; *Yim v. City of Seattle*, 194 Wash. 2d 682, 451 P.3d 694 (2019).

⁸⁴ *Washington Supreme Court Rules in Yim v. City of Seattle*, PUB. LEGAL FOUND. (Nov. 14, 2019), <https://pacificlegal.org/press-release/washington-supreme-court-rules-in-yim-v-city-of-seattle/> [<https://perma.cc/F32Y-7BZ2>]; *Yim v. City of Seattle*, 194 Wash. 2d 682, 451 P.3d 694 (2019).

Third, a trafficking victim's criminal conviction can affect the victim's access to federal benefits. While Washington opted-out of the Personal Responsibility and Work Opportunity Act of 1996, banning individuals with drug offense convictions from obtaining Temporary Assistance to Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP) benefits, Washington citizens are still unable to obtain some federal financial aid benefits due to criminal convictions.⁸⁵ Under the 1988 amendment to the 1965 Higher Education Act, individuals with drug offenses, misdemeanors, or felonies face having any federal financial aid delayed or denied.⁸⁶ Also, individuals who have convictions for a forcible or non-forcible sexual offense that required civil commitment at the end of their incarceration cannot obtain a Federal Pell Grant.⁸⁷ Therefore, even though convictions are not a complete bar to federal funding for Washington trafficking victims, some convictions for drug and sex offenses can act as impediments towards obtaining federal funding for education. With financial aid being critical to increasing college access, these limitations will affect trafficking victims' access to education because these victims must either go into debt to obtain an education or forgo education altogether.⁸⁸

⁸⁵ Marc Mauer & Virginia McCalmont, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits*, THE SENT'G PROJECT (Nov. 14, 2013), <https://www.sentencingproject.org/publications/a-lifetime-of-punishment-the-impact-of-the-felony-drug-ban-on-welfare-benefits/> [<https://perma.cc/7MK5-E5T6>]; Eli Hager, *Six States Where Felons Can't Get Food Stamps*, THE MARSHALL PROJECT (Feb. 4, 2016, 7:15 AM), <https://www.themarshallproject.org/2016/02/04/six-states-where-felons-can-t-get-food-stamps> [<https://perma.cc/Q24E-JFC5>].

⁸⁶ FU ET AL., *supra* note 63, at 10.

⁸⁷ *Students With Criminal Convictions Have Limited Eligibility for Federal Student Aid*, FED. STUDENT AID, <https://studentaid.gov/understand-aid/eligibility/requirements/criminal-convictions> [<https://perma.cc/NVK7-F8UG>].

⁸⁸ THE INST. FOR COL. ACCESS & SUCCESS, *PAVING THE WAY: HOW FINANCIAL AID AWARENESS AFFECTS COLLEGE ACCESS AND SUCCESS 1* (2008); MICHELLE HODARA, *WHAT DOES THE RESEARCH SAY ABOUT BARRIERS TO FAFSA COMPLETION AND STRATEGIES TO BOOST COMPLETION?* 1, 3 (2017).

Thus, when the state convicts a trafficking victim of a crime, which the victim's trafficker forced them to commit, the victim then faces a decrease in job opportunities, housing opportunities, and federal financial aid due to that criminal history. In these cases, the state's real achievement is revictimizing the individual.

2. The Overall Experience of Revictimization for Trafficking Victims

Revictimization is a serious consequence of human trafficking.⁸⁹ Revictimization means "to victimize someone again."⁹⁰ Revictimization occurs in the lives of trafficking victims who obtain criminal convictions due to forced criminality because these individuals experience victimization twice; traffickers initially victimize these individuals by using their bodies through forced sexualized acts or labor for profit, then society victimizes these individuals again through criminal convictions and the ramifications of those criminal convictions later in life.⁹¹

A victim may first experience revictimization due to the criminal system's charging process.⁹² First, within the arresting period, human trafficking victims arrested for prostitution may experience inappropriate comments or language from police; some victims may even be forced to remain unclothed for long periods in front of officers.⁹³ Along similar lines, transgender victims who are arrested are generally misgendered, causing them to be placed in abusive, exploitive, and violating conditions.⁹⁴

⁸⁹ U.N. OFF. ON DRUGS AND CRIME VIENNA, AN INTRODUCTION TO HUMAN TRAFFICKING: VULNERABILITY, IMPACT AND ACTION 4 (2008).

⁹⁰ *Revictimize*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/revictimize> [<https://perma.cc/H68W-RX5K>].

⁹¹ FEMALE VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION AS DEFENDANTS, U.N. OFF. ON DRUGS AND CRIME 6 (2020), https://www.unodc.org/documents/human-trafficking/2020/final_Female_victims_of_trafficking_for_sexual_exploitation_as_defendants.pdf [<https://perma.cc/3EMW-9A2B>].

⁹² SUZANNAH PHILLIPS ET AL., CLEARING THE SLATE: SEEKING EFFECTIVE REMEDIES FOR CRIMINALIZED TRAFFICKING VICTIMS 18 (2014).

⁹³ *Id.*

⁹⁴ *Id.*

Secondly, when these victims face arraignment, they are often poorly clothed, likely tired, and have faced awful conditions overnight.⁹⁵

A victim will then face revictimization at the hands of society when those criminal convictions become an impediment to the victim's future. In a 2016 study performed by the National Survivor Network (NSN), 91% of the 130 respondents reported being arrested, with 39% having been arrested four times or less and 40% having been arrested nine times or more, often due to forced criminality.⁹⁶ These records revictimize because a criminal record can profoundly impact a victim's ability to gain future employment or housing, begin or continue a college education, obtain financial aid, or retain custody of children. A criminal record can also affect access to government benefits.⁹⁷ In NSN's survey, most respondents reported that their criminal records had long-term effects on them; in particular, 72.7% reported that their criminal record created a barrier for them when seeking employment, 57.6% reported having experienced a barrier when searching for housing, and 16.7% reported their criminal records prevented them from obtaining an education.⁹⁸ One respondent stated, "[h]ow can people who have been victimized get their lives together if . . . society does not let them work?"⁹⁹ Another respondent stated that many "prospective employers shut down and do not ask for explanations or do not want to listen," making it difficult to find employment with a criminal record; with no other options for work, victims become susceptible to re-trafficking.¹⁰⁰ Another respondent commented, "I continue to feel [t]he invisible bars even though

⁹⁵ *Id.*

⁹⁶ NATIONAL SURVEY NETWORK, NATIONAL SURVEY NETWORK MEMBER SURVEY: IMPACT OF CRIMINAL ARREST AND DETENTION ON SURVIVORS OF HUMAN TRAFFICKING 1, 5–8 (Aug. 2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSNVacate-Survey-2018.pdf> [<https://perma.cc/PU9J-DV6Q>]; FORCED CRIMINALITY, *supra* note 6; *see also* PROTECTING VICTIMS, *supra* note 6.

⁹⁷ NATIONAL SURVEY NETWORK, *supra* note 97, at 10–12.

⁹⁸ *Id.* at 7.

⁹⁹ *Id.* at 10.

¹⁰⁰ *Id.* at 11.

I am free.”¹⁰¹ Another described the feeling of revictimization as still being enslaved by their criminal charges, stating that their inability to find employment “year after year after year resulted in homelessness and suicide attempts. . . . I felt like, here you’re free, nobody wants to know you, talk to you, help you, date you, hire you, or have you living in their home so you might as well just be dead.”¹⁰²

While some states, like Washington, may attempt to reduce the amount of revictimization that victims face by vacating their past criminal convictions, these laws are often not enough. Without easy-to-use statutes that vacate crimes committed during periods of trafficking, trafficking victims will continue to face revictimization.

D. The Current State of Washington’s Vacatur Law to “Fix” the Revictimization Experienced by Human Trafficking Victims

To help limit the effect of criminal convictions on human trafficking victims, the Washington Legislature passed the Substitute House Bill 1292.¹⁰³ This substitute bill reenacted and amended RCW 9.96.060, adding a new section to the statute that will pertain to prostitution convictions.¹⁰⁴ This addition, which is relevant for human trafficking victims within the sex trafficking field, can be found in Section 2.¹⁰⁵ Under Section 2, a victim may vacate a charge of prostitution, promoting prostitution in the first degree, promoting commercial sex abuse of a minor, and trafficking in persons under the Trafficking Victim’s Protection Act of 2000, if the charge was incurred as a result of being a victim of trafficking.¹⁰⁶ For a sex

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ H.B. 1292 63rd Leg., Reg. Sess. (Wash. 2014); House Bill Analysis, H.R. 1292 63rd Leg., Reg. Sess.

¹⁰⁴ Act of March 28, 2014, Wash. Sess. Laws 534.

¹⁰⁵ *Id.* at 4–6.

¹⁰⁶ *Id.* at 4–5.

trafficking victim to receive the benefits of the bill, the victim must first meet the list of requirements below:

(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person; (ii) The person who committed any of the acts in (a)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or commercial sex act; and

(iii) The applicant's conviction record for prostitution resulted from such acts; or (b)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person; (ii) The person who committed any of the acts in (b)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that the applicant had not attained the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and (iii) The applicant's record of conviction for prostitution resulted from such acts.¹⁰⁷

While this bill will help vacate criminal charges for victims, only certain sex trafficking victims may receive help from this bill.¹⁰⁸ A victim may not be able to have the conviction vacated if any of the following exist:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any crime other than prostitution; or (b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction.¹⁰⁹

Under Washington's current scheme in RCW 9.96.060, only a specific type of human trafficking victim will receive help—a sex trafficking victim—and only when the victim's crime is prostitution.¹¹⁰ The bill does

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 3.

not help vacate convictions for the wide range of other crimes committed by victims of sex trafficking or victims of labor trafficking.¹¹¹ Therefore, to better help human trafficking victims, this comment will now discuss a reworking of Washington’s current “vacatur statute” (House Bill 1292).¹¹² The proposed amendments to this statute will help train actors in the criminal justice system to recognize human trafficking victims, vacate all non-violent crimes, create an application-free vacatur process, and reduce the limitations on who may use the vacatur statute.

III. PROPOSED SOLUTIONS TO PREVENT REVICTIMIZATION OF HUMAN TRAFFICKING SURVIVORS

With traffickers forcing victims to commit a wide range of crimes, Washington’s current vacatur law is ineffective in helping all human trafficking victims.¹¹³ A vacatur statute permits “courts to vacate—legally rendering null and void—convictions for prostitution related offenses and other nonviolent crimes that victims of trafficking have been forced to commit.”¹¹⁴ By reworking Washington’s current vacatur statute to include all non-violent crimes, similar to North Carolina’s expungement statute, Washington can help decrease the revictimization that human trafficking victims face due to their criminal convictions.¹¹⁵ Therefore, this comment

¹¹¹ SHARED HOPE, NATIONAL STATE LAW SURVEY: EXPUNGEMENT AND VACATUR LAWS 1, 10–11, https://sharedhope.org/wp-content/uploads/2016/03/NSL_Survey_Expungement-and-Vacatur-Laws.pdf [<https://perma.cc/84C5-E33Q>].

¹¹² NAT’L COUNCIL OF JEWISH WOMEN, FACT SHEET: VACATUR LAWS (Sept. 2016), https://www.ncjw.org/wp-content/uploads/2017/07/Fact-Sheet_Vacatur-Laws_Updated-2016.pdf [<https://perma.cc/J654-P4MS>] (“They permit courts to vacate — legally rendering null and void — convictions for prostitution related offenses and other nonviolent crimes that victims of trafficking have been forced to commit.”).

¹¹³ H.R. 1292 63rd Leg., Reg. Sess. (Wash. 2014).

¹¹⁴ NAT’L COUNCIL OF JEWISH WOMEN, *supra* note 113.

¹¹⁵ NATIONAL SURVEY NETWORK, *supra* note 97, at 10–11; North Carolina’s expungement statute expunges all non-violent criminal offenses someone incurs while trafficked as discussed later in this paper.

proposes adding non-violent crimes, an application-free system for vacating convictions, and a required CLE and CJE course onto Washington's current vacatur statute, RCW 9.96.060.

A. Amending House Bill 1292 to Alter the Limiting Provision on What Convictions May Be Vacated, Create a New Vacating Procedure, Vacate All Nonviolent Crimes, and Create a Required CLE/CJE Training

The Washington Legislature should amend House Bill 1292 to alter the limiting provision in Section 2; change the vacating procedure in Section 2 to an application-free system; include a new section, Section 3, which will extend the vacatur statute to all nonviolent crimes; and add a required CLE/CJE training on identifying victims of human trafficking and using the new vacatur system. The proposed law pertains to vacating convictions rather than expunging them. Washington courts may only expunge charges that did not result in a conviction, “allow[ing] a person to get law enforcement data on their investigation and arrest deleted;” whereas, a court can vacate charges that end in convictions.¹¹⁶

1. Rewriting House Bill 1292's Limiting Provision

Currently, Section 2 has a limiting provision on whether the victim may utilize the vacatur statute:

[a charge may not be vacated if] (a) [t]here are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any crime other than prostitution; or (b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction.¹¹⁷

¹¹⁶ *Expungement and Vacating Criminal Records*, THE CURTIS FIRM, <https://www.thecurtisfirm.com/expungement-and-vacating-criminal-records-in-washington> [<https://perma.cc/L4MZ-P9W7>].

¹¹⁷ H.R. 1292 63rd Leg., Reg. Sess. (Wash. 2014).

Under this provision, any nonviolent crimes other than prostitution could stop a human trafficking victim from vacating convictions obtained during “forced criminality.”¹¹⁸ In this proposed amendment, the Legislature would rewrite the restriction on using the vacatur statute to only pertain to violent crimes. This amendment would allow more victims to utilize the new Section 3, vacating nonviolent convictions. For example, the amendment would look like the following:

This vacatur statute is limited regarding what crimes a victim may or may not have vacated. A victim may only have non-violent crimes committed during the time of trafficking vacated. Pursuant to RCW 9.94A.030(33) non-violent offenses are those which are not a violent offense and pursuant to RCW 9.94A.030(55) a violent offense is (a) any of the following felonies: (1) Any felony defined under any law as a class A felony or an attempt to commit a class A felony; (ii) Criminal solicitation of or criminal conspiracy to commit a class A felony; (iii) Manslaughter in the first degree; (iv) Manslaughter in the second degree; (v) Indecent liberties if committed by forcible compulsion; (vi) Kidnapping in the second degree; (vii) Arson in the second degree; (viii) Assault in the second degree; (ix) Assault of a child in the second degree; (x) Extortion in the first degree; (xi) Robbery in the second degree; (xii) Drive-by shooting; (xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and (xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner; (b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and (c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

¹¹⁸ *Id.*

This statute will not extend to vacate (a) criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any violent crime; or (b) violent criminal charges that the offender has been convicted of, in this state, another state, or federal court.

2. Changing the Vacating Procedure to an Application-Free Process

The total amendment to House Bill 1292 will replace the language within the bill under Section 2, which currently requires a victim to apply to start the vacating process, with an application-free vacating system. The current procedure states:

In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking, RCW 9A.40.100, the applicant must prove each of the following elements by a preponderance of the evidence: (a)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person; (ii) The person who committed any of the acts in (a)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or commercial sex act; and (iii) The applicant's conviction record for prostitution resulted from such acts; or (b)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person; (ii) The person who committed any of the acts in (b)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that the applicant had not attained the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and (iii) The applicant's record of conviction for prostitution resulted from such acts.¹¹⁹

Under the current provision, the burden to vacate any prostitution convictions incurred during human trafficking is on the victim. The new

¹¹⁹ *Id.*

amended portion of House Bill 1292, covering the vacating procedure, will change the current system into a new application-free process where lawyers or judges obtain the essential information and input it into a computer Artificial Intelligence (AI) program.¹²⁰

This new procedure will place the burden of submitting information on the lawyers or judges, educated through the CLE/CJE program, rather than on the victim who may have little to no knowledge of Washington's vacatur statute. The amended vacating procedure would look like this:

The following procedure to vacate a record of conviction for any non-violent offense due to being a victim of trafficking, under RCW 9A.40.100, is as follows: (1) either the victim contacts any lawyer or judge about being trafficked; or the lawyer or judge identifies an individual as a potential victim due to the crime the individual commits or the individual's behavior or physical traits. (2) The lawyer or judge will then work with the identified victim, whether self-identified or identified by the lawyer or judge, to determine whether the applicable AMP elements are met: (i) the individual was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person; (ii) the person who committed any of the acts in (i) of subsection 2 against the individual did so through force, fraud, or coercion; (iii) the purpose of such trafficking was for commercial sex or forced labor; and (iv) the individual's conviction record for non-violent crimes resulted from such acts.¹²¹ (3) The lawyer or judge is then required to send the obtained information to any criminal judge within the State of Washington. (4) The criminal judge or clerk

¹²⁰ Jun Wu, *AI Is Helping Us Combat The Economic Problem Of Human Trafficking*, FORBES (Apr. 14, 2020), <https://www.forbes.com/sites/cognitiveworld/2020/04/14/ai-is-helping-us-combat-the-economic-problem-of-human-trafficking/?sh=5bf38b1e752c> [<https://perma.cc/NS9G-NDGB>] (This paper will not go into depth on this program given the knowledge required to set up such an AI system; however, the program used by the courts could run on a similar AI system as those used by Marinus Analytics in Traffic Jam which currently helps law enforcement track human trafficking patterns.).

¹²¹ WASH. REV. CODE § 9A.40.010 (Definitions applying to this section would be included in the applicable definition section of RCW 9A.40.010 which applies to trafficking under RCW 9A.40.100).

will then input the information into an Artificial Intelligence (AI)¹²² program that recognizes human trafficking victims, and the program will then run the information against all known trafficking rings, trafficking areas, and any other human trafficking data. (5) The AI system will then designate whether the individual is a human trafficking victim and make a record of all their non-violent criminal convictions determined to have occurred during the trafficking period. (6) The criminal judge will then take this information and place all those non-violent criminal convictions in a vacating order. (7) The judge will then send the order to the court clerk. (8) The clerk will then send the order off to the Washington State Patrol identification section and the local police agency, if any, which holds criminal history information for the convicted person. (9) The Washington State Patrol and any such local police agency shall immediately update their records to reflect the vacation and shall transmit the vacating order to the Federal Bureau of Investigation. (10) A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. (11) The victim shall be released from all penalties and disabilities resulting from the offense, and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, people whose convictions have been vacated under this section may state that they have never been convicted of that crime.¹²³

This amendment will help victims by decreasing the travel that victims must take to appear before the court, the level of frustration incurred by not

¹²² Katie Kackenmeister, *Artificial Intelligence and the Fight Against Human Trafficking*, LEIGH NEWS (Aug. 1, 2019), <https://www2.lehigh.edu/news/artificial-intelligence-and-the-fight-against-human-trafficking> [<https://perma.cc/4BGJ-A8LX>] (While there are no set human trafficking AI programs for Washington to model its program after, Washington can reach out to Professor Dan Lopresti who is working on an AI program to identify trafficking victims.)

¹²³ H.R. 1292 63rd Leg., Reg. Sess. (Wash. 2014).

having the appropriate material, and the time and expense of educating oneself on the vacatur statutes as a layperson.¹²⁴ Overall, by making this vacatur statute more accessible and application-free, fewer victims may feel discouraged from pursuing the process, and more victims may obtain crucial help.¹²⁵ Also, by using the AI program to determine whether an individual may use the vacatur statute or not, there may be a decrease in unconscious biases that can affect applicant reviewers and decrease overall court costs by not having to hire people to review applications.¹²⁶

3. Extending the Bill’s Scope to Include All Nonviolent Crimes

For Section 3 and the extension of House Bill 1292 to cover non-violent crimes, the Washington State Legislature should use similar language to North Carolina’s House Bill 198 Part II regarding civil and post-conviction relief for human trafficking victims.¹²⁷ While the North Carolina law uses the term “expunction,” that term is not synonymous with Washington’s use of expunction, which is why the proposed Washington law will use the term vacate. In North Carolina, “an expunction is the destruction of a criminal record by court order. An expunction (also called an “expungement”) of a criminal record restores the individual, in the view of the law, to the status he or she occupied before the criminal record existed”; whereas Washington only allows expungement for non-conviction crimes but allows

¹²⁴ JESSICA EMERSON, STATE REPORT CARDS: GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING 1, 22–23 (2019), https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2081&context=all_fac [<https://perma.cc/9G63-FHYS>].

¹²⁵ *Id.*

¹²⁶ Frida Polli, *Using AI to Eliminate Bias from Hiring*, HARV. BUS. REV. (Oct. 29, 2019), <https://hbr.org/2019/10/using-ai-to-eliminate-bias-from-hiring> [<https://perma.cc/5AMN-5YSK>].

¹²⁷ 2019 N.C. Sess. Laws 158.

courts to vacate convictions.¹²⁸ The applicable language of the North Carolina statute is as follows:

1. Expunction Authorized. – A person who has been convicted of a nonviolent offense may file a petition in the court of the county where the person was convicted for expunction of the nonviolent offense from the person’s criminal record if the court finds that the person was coerced or deceived into committing the offense as a direct result of having been a trafficking victim. . . .
2. Restoration of Status. – The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:
 - a. The criteria set out in subsection (b) of this section are satisfied.
 - b. The petitioner has remained of good moral character.
 - c. The petitioner has no outstanding warrants.
 - d. The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
3. Effect. – No person as to whom an order has been entered pursuant to subsection [3] of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving false statement by reason of that person’s failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons required by State law to obtain a criminal history record

¹²⁸ Daniel Bowes, *Summary of North Carolina Expunctions (2019)*, N.C. JUST. CENTER (Feb. 1, 2019), <https://www.ncjustice.org/publications/summary-of-north-carolina-expunctions-2018/> [<https://perma.cc/QF64-V4AF>]; *Expungement and Vacating Criminal Records*, THE CURTIS FIRM, *supra* note 117.

check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.¹²⁹

For Section 3, language from Section 2 for vacating prostitution convictions will be combined with language from North Carolina’s statute to create the proposed amendment. The proposed amendment is as follows:

1. Definition. – For purposes of this section, the following terms apply:
 - a. Nonviolent offense – means an offense which is not a violent offense except the following:¹³⁰
 - i. An offense that includes assault as an essential element.
 - ii. Any felony defined under any law as a class A felony or an attempt to commit a class A felony.
 - iii. Indecent liberties if committed by forcible compulsion.
 - iv. Kidnapping in the second degree.
 - v. Arson in the second degree.
 - vi. Robbery in the second degree.
 - vii. Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense.
 - viii. Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense.

¹²⁹ 2019 N.C. Sess. Laws 158.

¹³⁰ WASH. REV. CODE § 9.94A.030(33).

- ix. An offense requiring registration pursuant to RCW 9A.44.130, whether or not the person is currently required to register.¹³¹
 - b. Trafficking victim – A person that meets the definition for the term “victim” set forth in RCW 9.94A.030(54) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).
2. The individual was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person; the person who committed any of these acts against the individual used force, fraud, or coercion to cause the individual to commit any nonviolent act; and the individual’s conviction record, regarding nonviolent crime, resulted from such acts. If such is the case, the vacating process in section (2), shall also apply to the nonviolent crimes committed in this section. The Washington State Patrol and any relevant local police agency shall immediately update their records to reflect the conviction’s vacation and shall transmit the order vacating the conviction to the Federal Bureau of Investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. The victim shall be released from all penalties and disabilities resulting from the offense, and the fact that the person has been convicted of the offense shall not be included in the person’s criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, people whose

¹³¹ WASH. REV. CODE § 9A.44.130; WASH. REV. CODE § 9.94A.030(33).

convictions have been vacated under this section may state that they have never been convicted of that crime.¹³²

The Legislature amending RCW 9.96.060, Washington’s vacatur statute, to cover all non-violent crimes will allow numerous victims to live a life free of criminal record revictimization.¹³³ Human trafficking victims with non-violent convictions will finally be allowed to rebuild their lives by removing the barriers to employment, education, and housing that criminal records create.¹³⁴

4. Required CLE and CJE Course for All Lawyers and Judges

The Washington Legislature should require a CLE and CJE training under ethics and professional responsibility, which will educate lawyers and judges on the signs of human trafficking victims and how to initiate the vacating process.¹³⁵

This applicable section will follow language similar to Admission and Practice Rule (APR) 11, but it will also include a caveat that the requirement applies to judges for their required CJE.¹³⁶ For example, the proposed section would state:

- A. Section Four: CLE and CJE Human Trafficking Training Requirement
 - a. *Minimum Requirement.* Each lawyer and Judge must complete 45 credits of approved continuing legal education:
 - i. At least 6 credits must be in ethics and professional responsibility:

¹³² H.R. 1292 63rd Leg., Reg. Sess. (Wash. 2014).

¹³³ Marsh et al., *supra* note 6; WASH. REV. CODE § 9.96.060.

¹³⁴ NAT’L COUNCIL OF JEWISH WOMEN, *supra* note 113.

¹³⁵ Mandatory Continuing Legal Education Board, *Frequently Asked Questions For Lawyers*, WASH. STATE BAR ASS’N 1, https://www.wsba.org/docs/default-source/licensing/mcle/mcle-faq—with-late-fee-chart.pdf?sfvrsn=bafd07f1_4 [<https://perma.cc/BV54-GP9G>]; Wash. R. Gen. Application 16.

¹³⁶ Wash. APR 11.

ii. At least 2 of those credits must be obtained by attending a human trafficking training once every three years for 120 minutes, every 60 minutes accounting for one credit.

1. This training will follow the federal AMP model for determining whether an individual is a human trafficking victim: (i) The individual was recruited, harbored, transported, provided, obtained, bought, purchased, or in any other way received by another person; (ii) the person who committed any of these acts against the individual used force, fraud, or coercion to cause the individual to commit any nonviolent act; and (3) the individual's conviction record, regarding nonviolent crime, resulted from such acts.
2. This training will also educate lawyers on Washington's current vacatur statute and the requirement that anyone who believes an individual was a human trafficking victim should send the victim's name to any criminal judge to start the vacating process.
3. Each criminal judge will be required to attend an additional 60-minute training course on the uploading of victim information into the computer program, how the computer program will return the results (regarding whether the individual is a victim of human trafficking), how the program will notify the judge of which convictions the judge may vacate (since those are the non-violent convictions obtained while a trafficking victim), and how to use those results to implement a vacating order.
4. This specific CLE/CJE training will be covered as part of one's membership to the

Washington Bar Association, meaning that a portion of one's yearly membership dues will cover the cost of attending the human trafficking training.

By requiring this training to be a CLE or CJE requirement, every attorney or judge within Washington State will receive an education on identifying human trafficking victims regardless of the field they work in.¹³⁷ Lawyers and judges can encounter human trafficking victims in a wide range of legal areas.¹³⁸ For example, lawyers and judges may interact with victims in criminal law, while facing prosecution or as a victim; immigration law, while facing deportation hearings; and family law, while dealing with custody issues.¹³⁹ By extending the training's reach, attorneys and judges will be able to help more human trafficking victims utilize this statute.

This training will inform lawyers and judges about some of the first indicators that an individual is a human trafficking victim, such as crimes committed, physical appearances, or behavioral traits.¹⁴⁰ The lawyers and judges will learn to look closer at individuals who commit crimes such as prostitution; possession of weapons or drugs; manufacturing, selling, or transporting drugs; identity theft or false identification; and other non-violent crimes, since human trafficking victims commonly commit these crimes.¹⁴¹ They will also learn to look for specific physical and behavioral

¹³⁷ Mandatory Continuing Legal Education Board, *supra* note 136; Wash. R. Gen. Application 16.

¹³⁸ REBECCA HARRIS & DANIELLA GONCALVES, COMBATting HUMAN TRAFFICKING: A CAREER GUIDE FOR LAWYERS AND LAW STUDENTS 10, 12, 33, 37 (Alexa Shabecoff et al. eds., 2017).

¹³⁹ *Id.*

¹⁴⁰ Marsh et al., *supra* note 6; JOINT COMMISSION, DIV. OF HEALTHCARE IMPROVEMENT, QUICK SAFETY IDENTIFYING HUMAN TRAFFICKING VICTIMS 1, 1–2 (2018), https://www.jointcommission.org/-/media/tjc/newsletters/qs_41_human_trafficking_6_12_18_final1.pdf.pdf?db=web&hash=3DCCB6D913AEE7163280AD4DE164E999 [https://perma.cc/8YRC-VZRX].

¹⁴¹ Marsh et al., *supra* note 6.

signs which may indicate that an individual is a human trafficking victim.¹⁴² Some of these physical and behavioral signs include poor mental health, poor physical health, abnormal behavior, or confusion.¹⁴³ For example, human trafficking victims may be overly anxious, fearful, missing their identification, or not know where they are geographically.¹⁴⁴

Once a lawyer or judge identifies a potential victim or a potential victim self-identifies, the lawyer or judge should have a confidential conversation with the individual, either during a client-lawyer meeting or in a judge's chambers, to obtain the victim's information. Such information may include personal identifiers, time spent trafficked, location of trafficking, tasks required during trafficking, etc. Confidentiality in this process is essential to ensure the safety of trafficking victims.¹⁴⁵ This information will allow the lawyer or judge to make a quick comparison between the victim and the AMP model. An individual must meet at least one element from each category, under the AMP model. The three categories are: (1) action "involving the inducement, recruitment, harboring, transporting, providing, or obtaining," (2) means "involving the action done through force, fraud, or coercion," and (3) the purpose "for commercial sex or labor services."¹⁴⁶

However, determining whether an individual meets the AMP elements may prove difficult if the individual does not wish to disclose personal information due to fear or a distrust of the criminal system.¹⁴⁷ Therefore,

¹⁴² JOINT COMMISSION, DIV. OF HEALTHCARE IMPROVEMENT, *supra* note 141.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ JUD. COUNCIL OF CAL., HUMAN TRAFFICKING IN CALIFORNIA: TOOLKIT FOR JUDICIAL OFFICERS 46 (2017), <https://www.courts.ca.gov/documents/human-trafficking-toolkit-cfcc.pdf> [<https://perma.cc/QFZ8-Y4LN>].

¹⁴⁶ *What is Human Trafficking*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking> [<https://perma.cc/L5TL-46BH>].

¹⁴⁷ *Id.*; KHALED ALRABE ET AL., BUILDING TRUST: PERSPECTIVES ON A VICTIM-CENTERED APPROACH TO HUMAN TRAFFICKING INVESTIGATIONS IN LOS ANGELES COUNTY 27 (2017),

lawyers and judges will learn different techniques to develop a trusting relationship with the victim and will receive training on how to work with a victim who is unwilling to disclose personal information at first.¹⁴⁸ To create the necessary relationship to obtain the victim's information, the lawyers and judges will learn to implement the following actions: (1) letting the victim know that the lawyer or judge wishes to help, not harm; (2) using trauma-informed language when approaching a potential victim; (3) working to understand the victim's mindset such as considering why they may mistrust the criminal justice system; (4) maintaining regular contact with the victim, giving them another support system besides the traffickers.¹⁴⁹ Trust and cooperation can develop slowly, which can make obtaining the relevant information difficult. The key to obtaining any missing information is to not give up on the victim merely because the information is not coming quickly.¹⁵⁰

Once the lawyer or judge has obtained all the relevant information, the training instructs the lawyers and judges on the next steps to initiating the vacatur statute. First, they are to send the victim's name and any information obtained to a criminal judge within that district of Washington while also informing the victim about the vacatur process and the potential need for future cooperation. A criminal judge is not required to send the information to a colleague; instead, the judge may proceed to the next step. At this point, the lawyer's training will end. The lawyer may continue their other legal work with the victim or end the active attorney-client

https://humanrights.berkeley.edu/sites/default/files/publications/la_report_2017_nov20release.pdf [<https://perma.cc/7LSR-MAS2>].

¹⁴⁸ ALRABE ET AL., *supra* note 148, at 30; CA. COMM'N ON PEACE OFFICER STANDARDS AND TRAINING, GUIDELINES ON LAW ENFORCEMENT RESPONSE TO HUMAN TRAFFICKING 14 (2014), https://post.ca.gov/Portals/0/post_docs/publications/Human_Trafficking.pdf [<https://perma.cc/99AS-JTCZ>].

¹⁴⁹ ALRABE ET AL., *supra* note 148, at 30; CA. COMM'N ON PEACE OFFICER STANDARDS AND TRAINING, *supra* note 149.

¹⁵⁰ ALRABE ET AL., *supra* note 148, at 30.

relationship as allowed under the ethics rules, and the next portion will only apply to judges. The training instructs criminal judges to upload all the victim's information and any additional documentation such as phone records, online ads, or sworn testimony, into a computer system. This computer system will then compare the uploaded information and any other known data on trafficking victims programmed into the AI to each AMP model element.¹⁵¹ The program will inform the judge whether the AMP elements are met upon the AI program's completion. If the AMP elements are met, the judge will then take the list of applicable non-violent convictions, formulated by the AI, and initiate the same vacating procedure found under RCW 9.96.060.¹⁵² Lastly, this training will teach lawyers and judges that once a conviction has been vacated, the conviction "may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies."¹⁵³

B. Critiques

1. Defending the Issue of Having Cohesive and Uniform Trainings Across the State

One major critique of this model regards how to ensure a cohesive and uniform training regime for lawyers and judges across Washington since there are currently 26,701 lawyers and 217 judges within the state.¹⁵⁴ This critique is valid, but there is a way to ensure a cohesive and uniform

¹⁵¹ Wu, *supra* note 121.

¹⁵² WASH. REV. CODE § 9.96.060.

¹⁵³ *Id.*

¹⁵⁴ *ABA National Lawyer Population Survey*, ABA (2021), https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf [https://perma.cc/2GDZ-EVTX]; *Judicial Selection in Washington*, BALLOTPEdia, https://ballotpedia.org/Judicial_selection_in_Washington [https://perma.cc/3MGZ-EPVB].

training regime by incorporating this training as a part of the State Bar Association’s mandatory curriculum.

The way to ensure that each lawyer and judge receives the same caliber of training on human trafficking victims is by implementing a mandatory CLE/CJE training under the Washington State Bar Association (WSBA). In Washington, every individual who wishes to be licensed to practice law must be part of the WSBA and pay yearly dues.¹⁵⁵ Therefore, the WSBA can notify any licensed attorney or judge about this new training requirement, including when the WSBA will be putting on the training, and can use some of the yearly dues to cover the training’s cost like the WSBA does with its “Lunch and Learn” programs.¹⁵⁶ Washington will also be able to ensure that each of the WSBA trainings will cover the applicable trafficking information—the AMP model and the trafficking data—because every CLE/CJE training must receive approval from the MCLE board and Court Education Committee for the attendees to receive the necessary attendance credit.¹⁵⁷

2. Defending the Amendment of Washington RCW 9.96.060 to Cover Only Nonviolent Crimes

Another critique against this new amendment is that the bill does not go far enough because it should cover both violent crimes and non-violent crimes. While this critique is valid, there are current societal limitations on what an obtainable amendment can cover.

First, this proposed amendment does not include violent crimes because appointed officials are often hesitant to go against the wishes of their

¹⁵⁵ WASH. REV. CODE § 2.48.190; *State Bar Associations*, LAWYER LEGION, <https://www.lawyerlegion.com/associations/state-bar> [https://perma.cc/C946-3EGW]; *Law Links*, WASH. STATE BAR ASS’N (Jan. 7, 2021), <https://www.wsba.org/for-legal-professionals/member-support/law-links> [https://perma.cc/USD5-TG79].

¹⁵⁶ *How to Earn MCLE Credits*, WASH. STATE BAR ASS’N (Mar. 24, 2010), <https://www.wsba.org/for-legal-professionals/mcle/earning-credit> [https://perma.cc/S5GU-58BJ].

¹⁵⁷ *Id.*; Wash. R. Gen. Application 26.

constituents. Some of these officials may have delegates who believe that society should punish violent acts. For example, some individuals' opinions on this matter become apparent when reading comments on ABC's article about Cyntoia Brown, a trafficking victim who killed a man soliciting her for sex.¹⁵⁸ One commentator stated, "[s]he killed him in cold blood and they then slandered her victim to garner sympathy" while another states, "[s]orry, but being a victim of abuse does not excuse you to commit murder."¹⁵⁹ Yet another commenter stated, "[s]he cold blooded killed a man . . . She should be in jail. There are always options for people. If you choose the wrong one and you do something that is wrong, then you deserve punishment. Don't do the crime, unless you can do the time."¹⁶⁰ While these are not the opinions of everyone, these comments show the way some people in society react to victims using violence to escape traffickers. These comments represent delegates, and those delegates represent votes, meaning people who think this way may influence how their appointed legislatures vote on the issue.

Second, the amendment does not currently excuse violent crimes because the Legislature has proven unwilling to excuse such actions in analogous areas of abuse. Like trafficking victims, the Legislature has historically been unwilling to excuse the violent acts of domestic violence survivors. Like traffickers, domestic violence perpetrators use the same power and control tactics to groom their victims; these tactics include modes of coercion such as psychological manipulation, physical abuse, financial

¹⁵⁸ Mark Osborne & Meghan Keneally, *Cyntoia Brown, alleged sex trafficking victim who was convicted of murder, released from prison*, ABC NEWS (Aug. 7, 2019), <https://abcnews.go.com/US/cyntoia-brown-woman-convicted-killing-alleged-sex-trafficker/story?id=64822482> [<https://perma.cc/J9DX-BX55>]; Jessica Contrera, *Chrystal Kizer, accused of killing her alleged sex trafficker, freed on bail after two years*, THE WASH. POST (June 22, 2020), <https://www.washingtonpost.com/dc-md-va/2020/06/22/chrystal-kizer-child-sex-trafficking-killing-freed-bail/> [<https://perma.cc/G9SC-J84X>].

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

control, substance abuse.¹⁶¹ Like traffickers, abusers may even force their partner “to engage in commercial sex, forced labor, or involuntary servitude.”¹⁶² A well-known subcategory of Post-Traumatic Stress Disorder (PTSD) for domestic violence victims is Battered Spouse Syndrome, where a victim faces emotional and physical trauma due to another’s abusive acts.¹⁶³ Defense attorneys use this syndrome to mitigate an abused victim’s criminal charges by showing the victim’s state of mind under a theory of self-defense or insanity.¹⁶⁴ While a victim can use Battered Spouse Syndrome to mitigate, society has yet to give the victim a correlating defense.¹⁶⁵ Even Washington has been unwilling to allow Battered Spouse Syndrome to be a defense; instead, Washington, like other states, allows the testimony as a way of showing a defendant-victim’s state of mind when proving another defense.¹⁶⁶ Considering legislators and the public majority are still unwilling to excuse a domestic violence victim’s acts under Battered Spouse Syndrome, a form of PTSD that has been recognized since the 1970s, legislators are similarly unlikely to excuse a trafficking victim’s use of violence to escape.¹⁶⁷

¹⁶¹ Chic Dabby, *Domestic Violence and Human Trafficking: Advocacy at the Intersections*, FAM. AND YOUTH SERVICES BUREAU (Oct. 31, 2019), <https://www.acf.hhs.gov/fysb/news/domestic-violence-and-human-trafficking-advocacy-intersections> [<https://perma.cc/FNX9-AFTM>].

¹⁶² *The Intersections of Domestic Violence & Trafficking*, NATIONAL NETWORK TO END DOMESTIC VIOLENCE (Nov. 10, 2017), https://nnev.org/latest_update/intersections-domestic-violence-human-trafficking/ [<https://perma.cc/N52N-H24A>].

¹⁶³ Michelle Strucke & Kate Hajjar, *Battered Women Syndrome*, CORNELL UNIV. LAW SCHOOL SOC. SCI. & LAW, https://courses2.cit.cornell.edu/sociallaw/student_projects/BatteredWomanSyndrome.htm [<https://perma.cc/794E-3MWX>].

¹⁶⁴ *Battered Women Syndrome as a Legal Defense*, CRIM. JUST., <http://criminal-justice.iresearchnet.com/crime/domestic-violence/battered-woman-syndrome-legal-defense/> [<https://perma.cc/A5JB-HNJP>]; *State v. Kelly*, 102 Wash. 2d 188, 685 P.2d 564 (1984).

¹⁶⁵ *Id.*

¹⁶⁶ *Kelly*, 102 Wash.2d 188.

¹⁶⁷ *Id.*

This comment does not suggest that the reformation of Washington laws to protect human trafficking victims should stop at the amendment of House Bill 1292 and should forever only help victims who commit non-violent crimes. This comment is meant to serve as a starting point for reformation, a way to start helping trafficking victims, not the end.

3. Defending the Creation of an AI Program and the Use of Criminal Judges to Vacate Nonviolent Crimes

Another potential critique is that implementing the new AI program and using criminal judges in the vacating process could lead to higher taxes or a reduction in yearly budgets for other programs. The idea of using already existing funding to pay for this program could be particularly concerning to taxpayers given that only 6.7% of Washington's revenue goes towards Governmental administration.¹⁶⁸ However, this critique relies on the assumption that the only way to fund this program is through Washington taxes.

Funding for the AI program and criminal judges' salaries does not require using current Washington funds or increasing taxes. To fund this new AI program, Washington can consider applying for federal grants, particularly grants given by the Department of Justice (DOJ).¹⁶⁹ Under the DOJ, a state or organization can apply to receive grants that the DOJ created to combat human trafficking and to provide victims with resources.¹⁷⁰ As of 2020, through these grants, the DOJ awarded a total of

¹⁶⁸ *State and Local Government Revenue Sources*, OFF. OF FIN. MGMT. (2018), <https://www.ofm.wa.gov/washington-data-research/statewide-data/washington-trends/revenue-expenditures-trends/state-local-government-revenue-sources> [<https://perma.cc/6UN9-U8GQ>]; *State and Local Government Expenditures by Function*, OFF. OF FIN. MGMT. (2018), <https://www.ofm.wa.gov/washington-data-research/statewide-data/washington-trends/revenue-expenditures-trends/state-local-government-expenditures-function> [<https://perma.cc/L3FT-GDRC>].

¹⁶⁹ *Justice Department Awards Nearly \$101 Million to Combat Human Trafficking*, U.S. DEP'T OF JUST. (Sept. 21, 2020), <https://www.justice.gov/opa/pr/justice-department-awards-nearly-101-million-combat-human-trafficking> [<https://perma.cc/X9JK-FKKG>].

¹⁷⁰ *Id.*

\$101 million to combat human trafficking, with the Office of Victims of Crime (OVC) awarding \$97.4 million “to state, local and tribal jurisdictions, service providers and task forces all over the country” and the Office of Justice Programs (OJP) awarding the remaining 3.5 million.¹⁷¹ Washington could pursue the following grants funded by OVC and OJP. First, Washington could investigate the grant program titled “enhanced collaborative model task force to combat human trafficking.”¹⁷² This program has historically awarded over \$17.7 million to 27 programs that “support the effectiveness of collaborative and multidisciplinary task forces to combat human trafficking” and nearly \$5 million to “three organizations for training and technical assistance for the task forces.”¹⁷³ Secondly, Washington could look into the grant program titled “improving outcomes for child and youth victims of human trafficking.”¹⁷⁴ This “program awards over \$4.2 million total to four recipients” who are working to “integrate human trafficking policy and programming at the state or tribal level”; in particular, the program intends to “to improve outcomes for children and youth who are victims of human trafficking.”¹⁷⁵ Lastly, Washington could look into the grant program titled “services for victims of human trafficking.”¹⁷⁶ This “program awards more than \$23.6 million to 43 organizations to support services specific to victims of human trafficking,” meaning Washington State could utilize the money to create trafficking specific programs and services.¹⁷⁷ The above recommended legislation could fit into each one of these different categories because the state will use the program to identify victims of trafficking, help improve outcomes

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

for youth and child victims, and give human trafficking victims a specific service—the ability to vacate criminal convictions.

An AI program would be the best fit here because AI programs are built to perform sophisticated tasks that usually only humans perform, such as using imported data points to determine whether an individual is a trafficking victim.¹⁷⁸ This program, as of AI program price points in 2020, will require upwards of \$300,000 from a federal grant.¹⁷⁹ This price will give Washington a custom AI program that only requires a one-time payment and is preferable to a third-party program because third-party programs require a yearly payment of approximately \$40,000.¹⁸⁰ With the custom program, Washington may only need to make additional payments if a consultant or additional AI services are needed; this cost is about \$200 to \$350 per hour.¹⁸¹

For the criminal judges' salaries, Washington will not have to pay criminal judges any additional money for handling the vacating of these convictions.¹⁸² While judges may face additional work hours due to the vacating process, these extra hours would not create an additional financial burden on the taxpayer because the Legislature has excluded judges from making overtime.¹⁸³ Under Washington law, judges are salaried employees,

¹⁷⁸ Volha Listkevich, *How Much Does Artificial Intelligence (AI) Cost in 2020?*, AZATI (Nov. 25, 2020), <https://azati.ai/how-much-does-it-cost-to-utilize-machine-learning-artificial-intelligence/> [https://perma.cc/GTK6-RWK2].

¹⁷⁹ *AI Pricing: How Much Does Artificial Intelligence Cost?*, WEBFX, <https://www.webfx.com/internet-marketing/ai-pricing.html> [https://perma.cc/6TZC-7ZY5].

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² NAT'L CTR FOR STATE COURTS, SURVEY OF JUDICIAL SALARIES 2 (Vol. 45 No.2 2020), https://www.ncsc.org/_data/assets/pdf_file/0017/51164/JSS-Handout-July-2020.pdf [https://perma.cc/QJ3R-YGC8] (The Salary consideration for funding these programs is limited to the general jurisdiction because it is likely these will be the judges coming into contact with individuals that are facing criminal charges or who a lawyer will contact to start the vacatur process).

¹⁸³ STATE OF WASH. DEP'T OF LAB. AND INDUS., EMPLOYMENT STANDARDS 6–7 (2014), https://lni.wa.gov/workers-rights/_docs/esa8.1.pdf [https://perma.cc/C9L6-AGSJ].

which means they do not fall under the Minimum Wage Act’s protection, nor do they fall under one of the exceptions to when a salaried employee may obtain overtime wages.¹⁸⁴ With no overtime requirement, Washington will not have to pay general jurisdiction judges more than their yearly \$199,000 salary.¹⁸⁵ Therefore, the amendment will not require any additional taxes or reallocating of funds while still helping trafficking victims obtain a life uninhibited by any forced criminality criminal convictions.

IV. CONCLUSION

As the law currently stands, Washington State is failing to help human trafficking victims after they escape. The state uses a victim’s criminal record, created due to forced criminality, as a means of discriminating against them through employment, housing, and financial aid, leading to revictimization. Therefore, to reduce this revictimization, the Washington Legislature should amend RCW 9.96.060 to better address (1) the vacating of non-violent crimes; (2) the current lack of CLE/CJE training on human trafficking; (3) the application style vacating system which may discourage victims from vacating crimes; and (4) the restrictions on when a victim may not have a charge vacated.

¹⁸⁴ *Id.* at 6–10.

¹⁸⁵ NAT’L CTR FOR STATE COURTS, SURVEY OF JUDICIAL SALARIES 2 (Vol. 45 No.2 2020) https://www.ncsc.org/__data/assets/pdf_file/0017/51164/JSS-Handout-July-2020.pdf [<https://perma.cc/E4SA-CKJX>].