



**BROOKLYN
DEFENDER
SERVICES**

MEMORANDUM OF SUPPORT

S4997 (Lanza)/A4540 (Gottfried) – Expanding New York’s Vacatur Law for Survivors of Trafficking

June 1, 2018

Brooklyn Defender Services (BDS) urges the Legislature to pass and the Governor to sign **S4997 (Lanza)/A4540 (Gottfried)** this session. **We strongly support this bill, which would provide greater protection for survivors of sex trafficking and labor trafficking.** A broad-based vacatur bill will remedy current statutory limitations by allowing victims to vacate *all* convictions where the offense was a result of being trafficked.

BDS provides multi-disciplinary and client-centered criminal defense, family defense, immigration and other civil legal services, social work support, and tools for self-advocacy to more than 30,000 indigent Brooklyn residents every year. Over the past 22 years we have represented close to half a million people in criminal matters in Kings County, New York.

Since the inception of Human Trafficking Intervention Courts, BDS has developed a model of specialization to best represent victims of human trafficking. BDS’s specialized trafficking team provides extensive wrap-around services that meet the needs of trafficking survivors in a comprehensive way.

S4997/A4540 has already passed the Assembly and is on the floor calendar in the Senate. Brooklyn Defender Services calls on the Senate to join their colleagues in the Assembly to bring this bill to a vote to further protect trafficking victims.

EXISTING LAW

In 2010, New York State became the first state to enact legislation enabling victims of sex trafficking to vacate their convictions for prostitution and loitering for the purposes of prostitution. Though the bill was limited in scope, it recognized the victimization and discrimination trafficking survivors face with a criminal record after their escape from trafficking. The current law also allows vacatur when: “the defendant’s participation in the

offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act.”¹

However, the law as it exists only allows victims to vacate, or clear, criminal convictions for prostitution offenses (such as solicitation for a prostitute, loitering, disorderly conduct, enticement of persons for purpose of prostitution, etc.), and does not address the myriad of other offenses that labor and sex traffickers force victims to commit. Also, Penal Law Section 230.34 places the onus on the survivor to prove they are a victim of trafficking.

PROPOSED AMENDMENT

S4997/A4540 expands the current trafficking vacatur law to allow judges the discretion to vacate all types of criminal convictions that stem from a person’s experience as a victim of trafficking upon consideration of the defendant’s individual circumstances and the interest of justice. In addition to expanding the list of convictions that can be considered for vacatur, this amendment ends the unworkable requirement that survivors provide official documentation certifying them as victims of trafficking in order to file a motion for vacatur.

JUSTIFICATION

Due to the criminal nature of trafficking, law enforcement agencies have largely focused on the criminalization of people engaged in sex work, willingly or coerced, with the ostensive goal of gaining intel for the apprehension and prosecution of the trafficker. However, these approaches reinforce a criminal justice approach that criminalizes trafficking victims. Often, trafficking victims become involved with the criminal justice system as a result of crimes committed under duress from their trafficker.

Current vacatur laws that recognize only prostitution offenses as a symptom of trafficking neglect the various other illegal activities trafficking victims are forced to do. Though prostitution-related offenses make up the bulk of arrests, many trafficking victims are also arrested for activities such as: drug possession, trespassing, unauthorized street vending, and possession of a weapon.² As a result, trafficking victims often have criminal records, which limit access to employment, education, housing, financial resources, and inevitably prevent them from lifting out of poverty and attaining a new life. A criminal record can also result in severe immigration consequences, including deportation and the inability to adjust immigration status or become a citizen. Therefore, New York’s narrowly focused vacatur law³ does not reflect the reality of trafficking, but in fact allows for the further criminalization and stigmatization of victims of human trafficking.

CLIENT STORY

¹ Reports by the Criminal Courts Committee and the Sex and Law Committee. https://www2.nycbar.org/pdf/report/uploads/4_20072482-RecommendationstoLawreVacatingTraffickingVictimsProstitutionConvictions.pdf

² Sex Worker Project, Vacating Criminal Convictions for Trafficking Persons. <http://sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf>

³ New York Penal Law § 230.00 Prostitution or NYPL § 240.37 Loitering for the Purpose of Engaging in a Prostitution Offense

Ms. D was a teenager when she was first introduced to her traffickers. A young boyfriend sold her to them in order to repay a debt he owed. Thereafter, her life and the life of her family were threatened by these traffickers if Ms. D did not comply with their demands. Ms. D was forced to use drugs, engage in daily sex work in order to make money for them and was brutalized whenever she refused or did not perform to their standard. This occurred all before Ms. D turned 17 years old.

Held emotionally and physically captive by these traffickers, Ms. D realized the only way she could survive was to comply. After working for her traffickers for several years, their demands of her changed. Instead of just demanding sex work for money, they demanded that she recruit other women to work for them. Ms. D was solely responsible for recruiting other women and girls; her traffickers kept a safe distance from the recruitment of other women to protect themselves from being detected by law enforcement. Their demands continued to be accompanied by violent threats against her and her family.

Unfortunately, Ms. D was arrested for a felony charge of promoting prostitution and ultimately convicted.

Ms. D has since participated in a program aimed at assisting victims of trafficking. She hopes to finish her degree and holds a minimum wage job. The criminal record she received as a direct result of being trafficked has hindered her ability to move on in many ways. In addition to preventing her from getting a better paying job, she continues to suffer from the compounding post-traumatic stress as a result of her years of victimization and her experience in the criminal legal system.

CONCLUSION

Criminal records continue to haunt survivors long after they have escaped the victimization and exploitation of human trafficking. It is imperative that the state recognize the ways survivors are hindered from complete healing and reintegration with a narrow vacatur law. The New York State Senate must join with their colleagues in the Assembly to pass a comprehensive vacatur law, S4997/A4540, to alleviate the life-long, detrimental impacts that criminal convictions have on trafficking survivors.

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