

Trafficking Survivors Relief Act

The Trafficking Survivors Relief Act (S.9/H.R. 8672 in the 117th Congress) would provide federal criminal records relief to survivors of human trafficking who committed an offense as a direct result of having been a victim of trafficking. Most states have enacted laws that provide a way for trafficking survivors to clear their records,¹ but no such opportunity currently exists under federal statute.

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

- Quote from Trafficking Survivor in Polaris’s National Survivor Study

SURVIVORS WHO WERE ARRESTED AND CONVICTED FOR FEDERAL CRIMES WHILE THEY WERE TRAFFICKED HAVE NO ABILITY TO CLEAR THEIR CRIMINAL RECORDS.

By its very definition, the crime of human trafficking involves being forced, coerced, or tricked into activities that a person would not otherwise engage in - such as selling sexual services or performing work without pay. Human traffickers often force or coerce victims to engage in criminal activity involving weapons, drugs, identity theft and other financial fraud, or even facilitation of the trafficking scheme. Labor traffickers may require victims to possess false identification documents, violate immigration law, or commit financial crimes. This means that for many trafficking survivors, the first time they come into contact with law enforcement officers is as an offender, and not as a victim.

“Another need would be making sure that the survivor’s criminal record is clear, because when you have that going against you, that can stop you in your tracks from achieving anything.”

- Quote from Trafficking Survivor in Polaris’s National Survivor Study

People in trafficking situations are frequently arrested, detained, prosecuted, convicted, and, in some cases, incarcerated or deported without ever being identified as a victim of human trafficking by the criminal justice system.

Polaris recently conducted a national survey of survivors and found that of the 457 survivors who participated, 62 percent reported having been arrested, detained, or cited by law enforcement and of those 71 percent have a criminal record as a result.² Having a criminal record - even an arrest record without a conviction - can keep survivors from being able to get jobs, rent apartments, receive certain kinds of state and federal benefits, enroll in educational programming, and even coach their children’s sports teams. **It is long past time to create a pathway for criminalized trafficking survivors to clear federal records and move on with their lives.**

1 Polaris Project (2019). State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking. Retrieved from <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf>.
2 Polaris Project (2023). In Harm’s Way: How Systems Fail Human Trafficking Survivors: Survey Results from the National Survivor Study. Retrieved from <https://polarisproject.org/wp-content/uploads/2023/01/In-Harms-Way-How-Systems-Fail-Human-Trafficking-Survivors-by-Polaris.pdf>.



TRAFFICKING SURVIVORS RELIEF ACT

The bipartisan Trafficking Survivors Relief Act (S.9/H.R. 8672 in the 117th Congress) would allow human trafficking survivors with federal records for certain crimes committed as a direct result of their trafficking situation to vacate convictions and expunge arrest records. Also under the bill, survivors convicted of certain violent crimes would be eligible to have their sentences reduced.

We urge inclusion of the following provisions:

- **Evidence:** Allow for a broad range of evidence to prove there is a connection between a survivor's victimization and offense history, such as official government documentation; an affidavit or sworn testimony from a victim services organization, attorney, clergy member, or other professional that assisted the victim; or an affidavit or sworn testimony from the survivor themselves.
- **Remove financial barriers:** Include provisions that 1) prevent survivors from being charged for the process of having their records cleared and 2) return all fines and fees paid as a result of their convictions.
- **Burden of proof:** Require a burden of proof that is by a "preponderance of the evidence" which would render this relief more accessible to survivors of trafficking who were unjustly criminalized.
- **Confidentiality:** Provide confidentiality protections for trafficking survivors who are applying for relief, including mandating that motions and other documents are filed under seal and ensuring identifying information is not made public.
- **Reporting:** Require each U.S. Attorney to submit an initial report tracking the number of motions they receive and the offenses, responses, and final determinations for each motion. Reporting will help to monitor who is receiving relief and who is not.
- **Human trafficking defense:** Introduce a rebuttable presumption that an offense was induced by duress if the defendant was a victim of trafficking when committing the offense.
- **Trafficking investigation and prosecution not required:** Relief is not conditional on any other person being arrested, prosecuted, or convicted for human trafficking.
- **Add flexibility:** It can be difficult for survivors to prove that their conviction or arrest was a "direct result" of their trafficking victimization; instead, "as a result" would provide more flexibility for survivors to prove the nexus to trafficking.
- **Allow for alternative forms of evidence:** Adding a provision allowing survivors to appear electronically at mandatory hearings or admission of evidence through alternative forms would spare survivors the expense, potential danger of traveling to where their trafficker still may be residing, and re-traumatization of testifying in person about their exploitation.
- **Expand offenses covered:** Human trafficking victims are forced or coerced into committing all sorts of federal offenses, some violent and some involving minors. If the requisite criminal intent did not exist, survivors ought to be eligible for criminal records relief, regardless of the offense type.

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