



The START Act – Expanded Criminal Record Relief for Trafficked Individuals

On November 16, 2021, Governor Hochul signed the START Act (Survivors of Trafficking Attaining Relief Together) which expands New York’s “trafficking vacatur” statute. The START Act allows trafficked individuals to file a motion asking a court to vacate **all** criminal convictions where their participation in the offense was a result of having been a victim of sex or labor trafficking or compelling prostitution under New York law or trafficking in persons as defined by federal law. Previously, vacatur was limited to prostitution and loitering for prostitution convictions but the START Act eliminates that limitation on the type of conviction that may be vacated. Any conviction is now eligible, including violent offenses - if they were a result of an individual having been trafficked. If a vacatur motion is successful, the client’s criminal convictions are vacated, the cases are dismissed, and the public records are sealed.

The START Act does not provide a defense to trafficked individuals who have open criminal cases, but we believe the START Act can be a powerful advocacy tool in these circumstances. Criminal defense attorneys have been successful in using as mitigation a client’s past or current trafficking experience in plea negotiations. The START Act allows us to make arguments that the legislature has recognized that trafficked individuals should not be convicted of offenses they were forced or coerced to commit.

Who is Eligible?

1. A client whose experience fits the legal definition of trafficking (relevant statutes below);
2. The client’s participation in the offense was “a result of having been a victim” of trafficking – how broadly this will be interpreted by the courts is unknown. A client who committed a criminal offense at the direction of their trafficker would have the strongest argument, but we may be able to fashion strong arguments for clients whose criminal offense has a less direct tie to their trafficker’s control. (If in doubt, make a referral.); **and**
3. The offense was committed during the time the client was trafficked.

Things to look for:

- Client has a history of prostitution or loitering arrests;
- Client engaged in sex work and their conviction involved a buyer;
- Client worked in a massage parlor; nail salon, or as a domestic worker who reported having debt, worked very long hours, and didn’t get a salary or was paid only in tips;
- Client worked to pay off debt;
- Client experienced fraud in hiring process;
- Client’s employer threatened their immigration status;
- Client has or is applying for a “T” visa which grants a trafficking victim legal status;
- Client has been or is currently a prosecution witness on a trafficking case.

What Can I Expect After a Legal Referral?

The legal provider will want to confer with you to get some background information and make a preliminary assessment of your client’s eligibility for vacatur. While this sharing of information is very helpful, your client will need to be prepared to do an in-depth intake with the legal provider to determine eligibility for vacatur. If the client is eligible and decides to proceed, the process of preparing a vacatur motion is intrusive and time consuming, but if successful of great benefit to the client as their convictions

will be vacated and the court records sealed. They will no longer have to fear the harm that results from the disclosure of a criminal record. Many clients also find the sealing of their record emotionally liberating.

Legal Resources:

1. For convictions in NYC:

The Exploitation Intervention Project

Leigh Latimer, Supervising Attorney, lelatimer@legal-aid.org, 646-385-5025

Shakisha Vaughan, Paralegal/Case Handler, svaughan@legal-aid.org, 646-784-5118

2. For convictions outside NYC or nationally:

The Survivor Reentry Project, freedomnetworkusa.org/advocacy/survivor-reentry-project

Trafficking Statutes

Very broadly, the federal definition of trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for labor (including commercial sex acts) through the use of force, fraud, or coercion, or in which the person induced to perform a commercial sex act is less than eighteen years of age. 22 U.S.C. § 7102 (2006)

P.L. § 230.34 defines sex trafficking as advancing or profiting from prostitution of another person by:

- (1) providing a narcotic drug or a narcotic preparation to impair the victim's judgement;
- (2) making false statements, misstatements, or omissions;
- (3) withholding, destroying, or confiscating ID documents to prevent freedom of movement;
- (4) requiring that prostitution be performed to retire, repay, or service a real or purported debt;
- (5) using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following: . . . cause physical injury, serious physical injury, or death to a person... cause damage to property...engage in conduct constituting a felony or unlawful imprisonment...accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted...expose a secret...use or abuse his or her position as a public servant...or perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is

patronized materially with respect to his or her health, safety, or immigration status.

P.L. § 230.34-a defines sex trafficking of a child as intentionally profiting or advancing from prostitution when:

- (1) The actor is 21 years old or more, and
- (2) the victim is less than 18 years old.
- (3) Lack of knowledge of the victim's age is not a defense.

P.L. § 135.35 defines labor trafficking as compelling or inducing another to engage in labor or recruiting, enticing, harboring or transporting another by intentionally:

- (1) recruiting labor to repay a debt (purported or real) through a fraudulent course of conduct;
- (2) withholding ID documents to prevent freedom of movement;
- (3) using force or engaging in any scheme, plan or pattern to compel or induce the person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following . . . cause physical injury, serious physical injury, or death to a person; cause damage to property...engage in conduct constituting a felony or unlawful imprisonment...or accuse some person of a crime or cause deportation proceedings to be instituted...or abuse his or her position as a public servant...in a manner that affects some person adversely.