



**REPORT ON LEGISLATION BY THE
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE,
CRIMINAL COURTS COMMITTEE,
IMMIGRATION AND NATIONALITY LAW COMMITTEE,
INTERNATIONAL HUMAN RIGHTS COMMITTEE
AND SEX AND LAW COMMITTEE**

**A.459
S.674**

**M. of A. Gottfried
Sen. Ramos**

AN ACT to amend the criminal procedure law, in relation to vacating convictions for offenses resulting from sex trafficking, labor trafficking and compelling prostitution

The Survivors of Trafficking Attaining Relief Together (START) Act

THIS BILL IS APPROVED

The New York City Bar Association’s Corrections and Community Reentry Committee, Criminal Courts Committee, Immigration and Nationality Law Committee, International Human Rights Committee and Sex and Law Committee (“the Committees”) respectfully submit this report in support of A.459/S.674, the Survivors of Trafficking Attaining Relief Together (START) Act (the “Bill”), which would amend CPL 440.10 to make post-conviction relief more broadly available to survivors of sex and labor trafficking.¹

The City Bar’s 25,000 members include attorneys in private practice, government service, non-profit practice, and academia dedicated to improving the administration of justice.

I. INTRODUCTION

In 2010, with the enactment of Criminal Procedure Law (CPL) 440.10 (1) (i) and (6),² New York State became the first jurisdiction in the United States to provide a procedural mechanism

¹ See also, <http://documents.nycbar.org/files/2020633-SupportNYSSTARTAct012120.pdf>. (All websites cited in this report were last visited on Feb. 24, 2021.)

² Press Release, Urban Justice Center, Governor Patterson Signs First in the Nation Bill Allowing Survivors of Sex Trafficking to Clear Prostitution Convictions (Aug. 16, 2010), <http://sexworkersproject.org/press/releases/swp-press-release-20100816.html>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

for sex and labor trafficking victims to petition the court to vacate convictions and dismiss cases that resulted from having been trafficked. Under this statute, in order for a court to vacate prior convictions, the movant must establish that she or he was arrested on a charge of loitering for the purposes of engaging in a prostitution offense, prostitution or prostitution in a school zone and the movant's "participation in the offense" leading to arrest resulted from being trafficked.³ The plain language of the current statute limits relief to those persons who were arrested on prostitution related charges, regardless of the charge for which they are ultimately convicted.⁴ The amendment was enacted in recognition of the dynamic that victims of human trafficking lack agency over their actions and therefore should not be unduly punished for acts committed under the coercive control of their exploiter.⁵

In order to prevail on a motion for vacatur, the movant will typically provide to the court an extensive affidavit outlining their experiences as a trafficking victim, an affirmation from the defense counsel who interviewed them and frequently letters from social workers with whom the movant has received counseling. The motion may also reference records pertaining to the prosecution and conviction of the traffickers, when available. Foreign born defendants may also supply evidence that they were issued a T-visa from the United States government, which creates a statutory presumption that they were a sex trafficking victim.⁶ In rare cases, a hearing may be held to establish the period of trafficking.⁷ Due to the traumatic experience of being trafficked, it is common for these types of motions to be filed many years after the conviction, or convictions, at issue. While there are many reasons a trafficked individual may wait years to file for relief, in many cases these motions are made because the survivor feels sufficiently stable in housing, education or employment, and after having had the benefit of therapy feels personally empowered to divulge their traumatic past to counsel and the court.

The Legal Aid Society's (LAS) Exploitation Intervention Project reports that since the creation of the statutory vacatur remedy for trafficking victims in 2010, they have filed 168 motions for 97 survivors of sex trafficking under CPL 440.10(1)(i) and have successfully vacated 1704 convictions. While this is significant relief for these survivors, the LAS estimates that 30% of their clients who are survivors of sex trafficking also have non-prostitution convictions directly related to their trafficking experience that are ineligible for relief since they do not meet the narrow statutory criteria.⁸ This highlights a significant deficiency in the current law that the Bill seeks to remedy: removing the limiting requirement that a person first be arrested on a prostitution related charge before vacatur relief can be considered. The current statute permits a court to grant relief

³ *People v P.V.*, 2019 N.Y. Slip Op. 29126, 2019 WL 1941750, at *2 (Crim Ct, Queens County Apr. 30, 2019).

⁴ *Id.* at *6; *see also People v L.G.*, 41 Misc 3d 428, 442-443 (Crim Ct, Queens County 2013) (conviction on guilty plea to criminal possession of a weapon in the fourth degree vacated and case dismissed because defendant arrested on loitering for the purpose of engaging in a prostitution offense charge and defendant's participation in offense which led to weapon conviction was direct result of her actions as sex trafficking victim).

⁵ Sponsor's Letter in Support, July 20, 2010 at 10, Bill Jacket, L. 2010, ch. 332, §§ 1-5; *see also, People v L.G.*, 41 Misc 3d at 439.

⁶ CPL 440.10 (1) (ii); *People v A.B.*, 35 Misc 3d 1243(A) (Crim Ct, New York County 2012).

⁷ *People v P.V.*, 2019 N.Y. Slip Op. 29126, 2019 WL 1941750 (Crim Ct, Queens County 2019).

⁸ The Legal Aid Society, Memorandum in Support of S04981/A06983 and interview with Leigh Latimer, Supervising Attorney of The Exploitation Intervention Project, CDP.

to trafficking survivors from convictions whether for prostitution or other crimes only if he or she was arrested on a prostitution related offense, but not if arrested only on another charge. This has caused unfair results in which individuals who have been adjudicated sex trafficking victims were denied vacatur relief for offenses clearly perpetrated while under the coercive control of their trafficker because they were not arrested on a prostitution or loitering charge.⁹ While such “anomalous results” due to the arrest charge requirement were anticipated by Governor David Patterson when the 2010 amendment was enacted, and clearly thwart the ameliorative purpose of the statute, the legislature in 2010 only approved the more restrictive language.¹⁰ In contrast, California, Florida, Idaho, Indiana, Nebraska and Utah, for example, have already enacted post-relief conviction laws for trafficking survivors that do not impose a limitation based on arrest charges.¹¹

II. RECOMMENDATION

The Committees support the proposed amendments to CPL 440.10 as they represent a significant step forward in making post-conviction relief broadly available to victims of sex and labor trafficking. Importantly, the bill removes the arrest charge limitation from operating as a bar to relief by excising all language referencing the arrest charge that led to conviction in CPL 440.10 (1) (i).

The bill also expressly renders any motion for post-conviction relief confidential and effectively under court seal, including “all pertinent papers and documents” by creating a new subsection (1) (iii). Because a movant must divulge their entire personal history as a trafficking victim, their motion papers frequently contain not only intensely personal, intimate and potentially humiliating information, they also may reveal details about their lives which must be protected from their traffickers whom the movants may still reasonably fear. Currently, movants typically request that courts regard filed motions as confidential under Civil Rights Law § 50 b. However, that statute only renders the identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law, as confidential. Although CPL 440.10 (1) (i) is based upon an understanding that movants are frequently victims of sex trafficking, they do not easily fit the definition of a victim of a sex offense under the laws enumerated in Civil Rights Law § 50 b. The proposed bill remedies this deficiency.

Another important addition in the bill is authorization to permit a court to consolidate judgments from various state jurisdictions to be considered in one motion. This is important, in terms of judicial economy, both in New York City, where a movant may easily have been

⁹ See *e.g.*, *People v P.V.*, 2019 N.Y. Slip Op. 29126, 2019 WL 1941750 (dismissal of assault and harassment charges denied despite finding defendant sex trafficking victim); *People v. Gonzalez*, 32 Misc. 3d 831, 835, 927 N.Y.S.2d 567 (Crim. Ct., New York County 2011) (court granted dismissal of 86 cases for trafficking survivor but denied vacatur for resisting arrest conviction lacking prostitution arrest charge).

¹⁰ Governor’s Approval Mem, Bill Jacket, L 2010 ch 332 (NY Assembly Bill A7670).

¹¹ Cal. Penal Code § 236.14 (<http://bit.ly/31qgdmX>); Fla. Code § 943.0583 (<http://bit.ly/31mUHIV>); Idaho Code Ann. § 67-3014 (<http://bit.ly/31mUM6d>); Ind. Code § 35-38-10-2 (<http://bit.ly/31iDFmh>); Neb. Rev. St. § 29-3005 (<http://bit.ly/31pijYA>); Utah Code 78B-9-104 (<http://bit.ly/31qgq9J>); see also, Erin Marsh, Brittany Anthony, Jessica Emerson and Kate Mogulescu, *State Report Cards Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, <https://polarisproject.org/criminal-record-relief-laws-survivors-human-trafficking>.

convicted in more than one borough, and in other instances where individuals may have convictions in multiple counties statewide. Rather than filing a motion in each county where convictions occurred, movants and counsel will save time and resources by filing only one motion to address a person’s entire history of convictions while a victim of trafficking.

Finally, the inclusion of language in CPL 440.10 (6) would have significant beneficial immigration effect. The bill seeks to amend subsection (6) to direct a court that grants the motion to “vacate the judgment on the merits because the defendant’s participation in the offense was a result of having been a victim of trafficking . . .” Federal immigration courts have previously held that CPL 440.10 “is neither an expungement statute nor a rehabilitative statute,”¹² and instead is a “statute authorizing vacation of a conviction based on the legal merits of the underlying proceedings.”¹³ Accordingly, judgments vacated under CPL 440.10 do not constitute convictions for immigration purposes.¹⁴ The additional proposed language for subsection (6) would conform the statute to federal immigration case law and help preserve effective vacatur of convictions for immigration purposes.

Corrections and Community Reentry Committee
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Danny Alicea, Chair

International Human Rights Committee
Lauren Melkus, Chair

Sex and Law Committee
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Reissued February 2021¹⁵

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¹² *In re Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000).

¹³ *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

¹⁴ *Id.*

¹⁵ This report was first issued in June 2019 during the terms of the following committee chairs: Alexander Lesman (Corrections and Community Reentry Committee); Kerry Ward (Criminal Courts Committee); Victoria F. Neilson (Immigration and Nationality Law Committee); Lauren Melkus (International Human Rights Committee); Mirah E. Curzer and Melissa S. Lee (Sex and Law Committee).