

# REMOVING THE STATE-INGRAINED BRAND: RESTORING VICTIMS OF HUMAN TRAFFICKING TO THEIR TRUE LEGAL STATUS

JOSE A. WARD\*

## Abstract

Hundreds of years, countless resources, and several constitutional amendments later, the United States is still institutionalizing slavery. States are defectively arresting and prosecuting the victims, eroding life-saving trust in police and creating a culture where traffickers prevail. States brand victims with criminal records, harming the opportunity to reintegrate into free society and break free from the coercive, fearful existence of modern day slavery. States can help victims break free and foster trickle-down trust by completely voiding the defective proceedings, which would truly liberate them and others from state-inflicted damage. The National Conference of Commissioners on Uniform State Laws modeled a Uniform Act on Prevention of and Remedies for Human Trafficking (“UAPR”) addressing many facets of the injustice to victims including immunities from prosecution, affirmative defenses, presumptions of coerciveness, rape shield protections, and vacatur or expungement relief.<sup>1</sup> The UAPR is close to a holistic solution, but leaves open a “glaring loophole” – states reserve vast authority to divulge the facts surrounding the records they claim to have vacated or expunged.

This article proposes adopting the UAPR, but closing the loophole by completely voiding records and providing the information related to the proceedings not be divulged in any way, not subject to any exception.<sup>2</sup> The Thirteenth Amendment abolishes slavery and all incidents and badges with it.<sup>3</sup> Without closing loopholes, states are continuing to institutionalize slavery. Moreover, victims have fundamental rights to privacy, like any other person. So, when states restore victims to their pre-arrest status, they have a right to be treated like any other person that holds a pre-arrest status. Federal and State Governments spend vast resources to combat the pestilence that is human trafficking in America, without fully harnessing a very effective tool—gaining the trust of victims and removing barriers for survivors to reintegrate and have a voice.

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<sup>1</sup> The Uniform Act on Prevention of and Remedies for Human Trafficking (“UAPR”), in recognizing human trafficking often crosses jurisdictional boundaries, seeks to end modern-day slavery by “harmoniz[ing] legislation” within and across multiple jurisdictions. UNIF. ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING 11 U.L.A. 1 cmt. background.

<sup>2</sup> *Infra* Part IV.

<sup>3</sup> U.S. CONST. amend. XIII § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”); see William M. Carter, Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 U.C. DAVIS L. REV. 1311, 1324–25 n.34 (2007).

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**I. Introduction**

It started with smoking a cigarette.<sup>4</sup> Then a joint, then a beer.<sup>5</sup> She got involved with a bad crowd, and her attitude spoiled.<sup>6</sup> Her schoolwork began to suffer.<sup>7</sup> This is a common American teenager’s story.<sup>8</sup> This is

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<sup>4</sup> *Selling the Girl Next Door* (CNN television broadcast Jan. 23, 2011). (<https://www.youtube.com/watch?v=S4kil67IIDs>)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

also Selena’s story.<sup>9</sup> Eventually, she ran away at thirteen years old.<sup>10</sup> A guy offered her a ride while she waited at a bus stop.<sup>11</sup> She liked the guy a lot.<sup>12</sup> “It wasn’t like oh bitch go get me money. But then it got like that.”<sup>13</sup>

Selena’s mother is a school teacher.<sup>14</sup> Selena’s mother sent her to therapists; she tried tough love with her daughter.<sup>15</sup> This is a common American parent’s story.<sup>16</sup> Selena was sold by a man and a woman on “Backpage”<sup>17</sup> for the standard rate of \$300 an hour, \$150 for a half hour.<sup>18</sup> In Selena’s market “you could get a girl as quick as you can get a pizza.”<sup>19</sup> Selena is fortunate to currently be in a rehabilitative drug program that can save her.<sup>20</sup>

Others are not so fortunate to be saved in their youth. CNN interviewed Jasmine, who was trafficked by a pimp named Sweet. She was “fifteen at the time and that’s when Sweet wasn’t so sweet.”<sup>21</sup> In their arrangement, the pimp got all the money.<sup>22</sup> Jasmine was too petrified to fight because she wanted to live.<sup>23</sup> Sounds like a common 18<sup>th</sup> century American slave’s story. Jasmine was a modern slave.<sup>24</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Backpage is a “major classified advertising website that has been repeatedly accused of enabling prostitution and sex trafficking of minors.” Charlie Savage & Timothy Williams, *U.S. Seizes Backpage.com, a Site Accused of Enabling Prostitution*, N.Y. TIMES (Apr. 7, 2018), <https://www.nytimes.com/2018/04/07/us/politics/backpage-prostitution-classified.html>. Courts “shield” Backpage and other sites like it from liability applying 47 U.S.C. § 230(c)(1). *Doe v. Backpage.com, LLC*, 817 F.3d 12, 21 (1st Cir. 2016); see *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 823 (M.D. Tenn. 2013); *M.A. v. Vill. Voice Media Holdings*, 809 F. Supp. 2d 1041, 1058 (E.D. Mo. 2011). *Gibson v. Craigslist, Inc.*, 2009 U.S. Dist. LEXIS 53246, at \*7 (S.D.N.Y. 2009). Section 230(c)(1) is a federal statute protecting websites from being considered publishers of information where the information is posted by a third party. 47 U.S.C. § 230. Years later, evidence compiled showing “Backpage was actively involved” in the sex ads. Alina Selyukh, *Section 230: A Key Legal Shield for Facebook, Google is About to Change*, ALL TECH CONSIDERED: NPR (Mar. 21, 2018, 5:11 AM) <https://www.npr.org/sections/alltechconsidered/2018/03/21/591622450/section-230-a-key-legal-shield-for-facebook-google-is-about-to-change>; see BACKPAGE <http://backpage.com/> (last visited Feb. 21, 2020) (Notice from April 7, 2018, “backpage.com and its affiliated sites have been seized” “by the Federal Bureau of Investigations, the U.S. Postal Inspection Service, and the Internal Revenue Service Criminal Investigation Division.”)[<https://perma.cc/8P5Y-X63U>]. Now, congress is amending Section 230(c) to make websites more responsible and stem “online sex trafficking.” Selyukh, *supra*.

<sup>18</sup> *Selling the Girl Next Door*, *supra* note 4.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See INT’L LAB. OFF. & WALK FREE FOUND., GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE, 15–19 (2017) [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf) [hereinafter GLOBAL ESTIMATES OF MODERN SLAVERY] (Forced sexual exploitation of adults, like Jasmine’s situation, is included in the umbrella term “forced labour” which is included under the umbrella term “modern slavery.”).

Yet others do not live to tell their stories. A judge that oversees cases like Selena and Jasmine’s keeps one file on his desk to remind him of why these victims need to be safe.<sup>25</sup> He recalls, “[a victim] was released [from custody] on February 7<sup>th</sup>, and she was found dead on February 10<sup>th</sup>. She was murdered and her throat was cut.”<sup>26</sup>

Lives are at stake here, but states continue to draconianly institutionalize human trafficking. I look to New York, an archetypal state in the rise and fall of human trafficking, that many other states shadow. For example, New York will arrest a victim of human trafficking, prosecute that victim, and convict that victim. About ten years ago, New York realized more victims are being processed in the criminal justice system than traffickers. They also realized that the proceedings were substantively defective in its failure to identify these individuals as victims. In response, New York passed a conviction relief act, allowing some victims to vacate their convictions. Yet, this relief is only available after the damage is instilled. Now, New York is reviewing proposed legislation that would broaden the relief and eligibility.

This article will show the proposed New York legislation is not sufficient to achieve their goal of placing victims in the place they were before their defective proceedings. Expanding law enforcement training is not as effective as expanding diversity in law enforcement to include survivors. Change from top down is not as effective as change from within an organization.<sup>27</sup> However, New York statutes require victims to divulge information regarding their interaction with law enforcement to become employed as law enforcement officers and become members of the New York bar, despite their conviction being vacated or record being sealed. In addition, although this article does not detail its extent, a criminal record, regardless of whether it is vacated, sealed, or expunged, could affect a person’s ability to obtain higher education, employment, child custody, guardianship over an elderly parent, access to safe housing, financial aid, insurance, more permanent immigration status, and other professional licenses and certifications in other states and from the federal government.<sup>28</sup>

Notably, confidentiality of defective proceedings is one subsection of the proposed bill where improvement is necessary. Other, very helpful tools have been discussed extensively in the legal community. Those include exemption from prosecution and conviction for victims. For example, the Uniform Act on

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<sup>25</sup> *Selling the Girl Next Door*, *supra* note 4.

<sup>26</sup> *Id.*

<sup>27</sup> See *How Diversity is Changing the Workplace*, RESEARCH PARTNERS, <https://research-partners.com/diversity-changing-workplace/> (last visited Feb. 21, 2020) (discussing the “positive impacts” of diversity on organizations, including “enhance[ing] a brand’s reputation with the customer”). Applied to the legal profession and law enforcement fields, diversity including survivors of human trafficking would enhance trust with future victims.

<sup>28</sup> ABA, COMM’N ON DOMESTIC AND SEXUAL VIOLENCE, WORKABLE SOLUTIONS FOR CRIMINAL RECORD RELIEF: RECOMMENDATIONS FOR PROSECUTORS SERVING VICTIMS OF HUMAN TRAFFICKING A REPORT BY THE SURVIVOR REENTRY PROJECT 1(2019) (citing *National Survivors Network Member Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking*, NAT’L SURVIVOR NETWORK 3, 5 (Aug. 2016)).

Prevention of and Remedies for Human Trafficking (“UAPR”)<sup>29</sup> provides provisions for immunity from prosecution for some victims.<sup>30</sup> The UAPR has been adopted by several states, and even those that have not adopted the full language, have incorporated many provisions, including exemption from prosecution for victims.<sup>31</sup> Additionally, rebuttable presumption efforts are effective tools for preventing wrongful convictions.<sup>32</sup> However, these tools are not as proactive as diversifying law enforcement and the legal profession with survivors of human trafficking to better identify and earn the trust of future victims.

This article proposes closing the loophole requiring victims to divulge information about when they were a victim and fully remove the brand New York State has defectively ingrained in victims, in the effort that New York and other states will enact the adequate reforms discussed. Part II will provide an understanding of the development of human trafficking (also known as slavery), the state of modern-day slavery (also known as human trafficking), and an overview of New York’s statutes affecting victims.<sup>33</sup> Part III will analyze the New York Victim Relief statute in force, including the underlying vacatur and sealing relief; Rape Shield laws that bar inquiry into a victim’s experience surrounding trafficking in certain situations and how that protection is expanding; and how New York’s Human Trafficking Courts are an inadequate tool to proactively prevent injustice to future victims.<sup>34</sup> Part IV will prove why having the defective criminal record vacated is just the first, but incomplete step in removing the brand defectively ingrained by New York State.<sup>35</sup> Part V will propose a revised statute, affirmatively closing the loophole, and therefore completely redressing New York’s wrong and allowing victims to actually be restored to the place they were before their substantively defective proceedings.<sup>36</sup>

Once fully restored, victims of human trafficking will have less barriers to, among other integrating channels, enter into and therefore diversify the legal profession and law enforcement fields. Survivors working in these fields will help prevent harm to future victims of human trafficking that would otherwise fall victim to states’ substantively defective proceedings.

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<sup>29</sup> UAPR, *supra* note 1.

<sup>30</sup> *Id.* at 19–21.

<sup>31</sup> *Id.* at 16; CSG Committee on Suggested State Legislation, *Uniform Act on Prevention of and Remedies for Human Trafficking (UAPR) (Note)*, COUNCIL OF ST. GOV’TS (June 20, 2015, 12:00 AM) <https://knowledgecenter.csg.org/kc/content/uniform-act-prevention-and-remedies-human-trafficking-uapr-note>.

<sup>32</sup> Matthew Myatt, *The “Victim-Perpetrator” Dilemma: The Role of State Safe Harbor Laws in Creating a Presumption of Coercion for Human Trafficking Victims*, 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 555, 593–598 (2019) (advocating for creating a rebuttable presumption of coercion for human trafficking victims); UAPR, *supra* note 1.

<sup>33</sup> *Infra* Part II.

<sup>34</sup> *Infra* Part III.

<sup>35</sup> *Infra* Part IV.

<sup>36</sup> *Infra* Part V.

## II. Background

### A. *Development of Human Trafficking – Slavery*

Human trafficking is slavery.<sup>37</sup> It follows that victims of human trafficking are slaves.<sup>38</sup> The origins of human trafficking in the United States began in either 1625 or 1626 in, what is now known as, New York, when the Dutch imported eleven men from Africa.<sup>39</sup> Far from outlawed, human trafficking thrived during the early years of the United States.<sup>40</sup> Even presidents of the United States participated in human trafficking, some while they were in office.<sup>41</sup>

Since then, the United States drastically changed their view on human trafficking. New York was one of the first states to begin abolishing human trafficking in 1799 and fully abolishing slavery in 1827.<sup>42</sup> New York was a leader—it abolished slavery about thirty five years before Abraham Lincoln emancipated victims in

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<sup>37</sup> President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012) (“ . . . [H]uman trafficking, . . . must be called by its true name -- modern slavery.”) (transcript available at <https://perma.cc/Q5HT-62W7>); see also *Human Trafficking is Slavery*, 161 CONG. REC. E123, 123–124 (statement of Hon. Ted Poe: “. . . I learned about the scourge of human trafficking. It is slavery. . . . [R]ight here in the United States . . . . We cannot give up on these [victims]. They deserve to know love and trust. As a society, we must embrace them.”); *Trafficking Prevention in Foreign Affairs Contracting ACT*, H.R. 400, 114th Cong. (2016); 161 Cong. Rec. H537, H541 (daily ed. Jan. 26, 2015) (statement of Mr. Cicilline: “Put simply, human trafficking is slavery.”); *Foreign Operations, Export, Financing, and Related Programs Appropriations Act*, 2007, H.R. 5522, 152 Cong. Rec. H3645, 3697 (daily ed. June 9, 2006) (statement of Ms. Loretta Sanchez: “Human trafficking is slavery, plain and simple, and we are morally bound to do everything we can to put an end to it.”); Mary G. Leary, “*Modern Day Slavery*” – *Implications of a Label*, 60 ST. LOUIS U. L.J. 115, 143 (2015) (“The label of human trafficking as ‘modern-day slavery’ is accurate . . . .”); NEW YORK STATE INTERAGENCY TASK FORCE ON HUMAN TRAFFICKING, A REPORT BY THE INTERAGENCY TASK FORCE, IMPLEMENTATION OF THE 2007 LAW 1 (Aug. 2008) <https://nysl.ptfs.com/data/Library1/101139.PDF> [<https://perma.cc/ZM4Y-KU6G>] (New York State “join[ed] the steadily growing number of states to recognize that ‘slavery’ still exists in this country in the form of sex and labor trafficking.”)

<sup>38</sup> See President Barack Obama, *supra* note 37; *Human Trafficking is Slavery*, *supra* note 37; *Human Trafficking Prioritization Act*, *supra* note 37; *Foreign Operations, Export, Financing, and Related Programs Appropriations Act*, *supra* note 37; Leary, *supra* note 37; N.Y. STATE INTERAGENCY TASK FORCE, *supra* note 37.

<sup>39</sup> Albert Rosenblatt, *Dutch Influences on Law and Governance in New York*, 82 ALB. L. REV. 1, 15 (2018) (“Most writers report that the first slaves, eleven men, arrived in 1625 or 1626, with three women arriving in 1628.”).

<sup>40</sup> Marisa Silenzi Cianciarulo, *The Trafficking and Exploitation Victims Assistance Program: A Proposed Early Response Plan for Victims of International Human Trafficking in the United States*, 38 N.M. L. REV. 373, 377 (2008) (noting the most “well-known and infamous form of human trafficking was the African slave trade” which supported, among other economies, the “agrarian economy of the Southern United States”). Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621, 628–29 (2010) (noting the protections and rewards traffickers historically received from legal systems).

<sup>41</sup> Evan Andrews, *How Many U.S. Presidents Owned Enslaved People?* HISTORY, <https://www.history.com/news/how-many-u-s-presidents-owned-slaves> (last updated Sept. 3, 2019) (George Washington kept 300 bondsmen; Thomas Jefferson kept 175 slaves; James Madison, James Monroe, and Andrew Jackson “kept several dozen;” Martin Van Buren kept one; William Henry Harrison kept several; John Tyler and James K. Polk each kept at least one; Zachary Taylor kept 150 slaves across several states; Andrew Johnson kept at least half a dozen slaves).

<sup>42</sup> Sandra L. Rierson, *The Thirteenth Amendment as a Model for Revolution*, 35 VT. L. REV. 765, 782 (2011); Stuart Gold, *The “Gift” of Liberty: Testamentary Manumission in New Jersey – 1791–1805*, 15 RUTGERS RACE & L. REV. 1, 12 (2014).

1863;<sup>43</sup> additionally, before the United States passed the Thirteenth Amendment, abolishing slavery and the Fourteenth Amendment, safeguard against substantive due process violations.<sup>44</sup>

### **B. Modern-day Slavery – Human Trafficking**

In present day, criminals use victims of human trafficking in their criminal pursuits. Victims of human trafficking are typically classified into the two most common groups of trafficking—forced labor and forced sexual exploitation.<sup>45</sup> New York code defines victims of human trafficking as individuals who were compelled into labor or commercial sex by traffickers' use of force, fraud, coercion or fear.<sup>46</sup> Victims involved in forced labor may be defectively charged with crimes such as drug manufacturing, possession of drugs with intent to distribute, illegal importation of drugs, possession of weapons, fraud, financial crimes, and trespassing.<sup>47</sup> While victims involved in forced sexual exploitation may be defectively charged with crimes such as prostitution, possession of weapons, drugs, identity theft, truancy, and running away.<sup>48</sup>

Any criminal charge has the ability to significantly impact an individuals' ability to vote, attain higher education, meaningful employment, child custody, guardianship over an elderly parent, access to safe housing, financial aid, insurance, more permanent immigration status, and other professional licenses and certifications in other states and from the federal government.<sup>49</sup> Applications or conditions for receiving the above frequently involve submitting to a background check or questions requesting self-disclosure with an explanation of the

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<sup>43</sup> Proclamation No. 17, 12 Stat. 1268 (Jan. 1, 1863); see also Paul Finkelman, *Lincoln v. the Proslavery Constitution: How a Railroad Lawyer's Constitutional Theory Made Him the Great Emancipator*, 47 ST. MARY'S L.J. 63, 66 (2015) (“Two months later, on September 22, 1862, Lincoln would issue the preliminary Emancipation Proclamation, declaring that all slaves in the rebellious states would be free if those states did not return to the Union within one hundred days. A hundred days later, the President issued the final Emancipation Proclamation, freeing all slaves in the Confederacy.”).

<sup>44</sup> U.S. CONST. amends. XIII, XIV. The 14<sup>th</sup> amendment was also a great relief for slaves by establishing birthright citizenship, overturning the “unfortunate aberration” that was *Scott v. Sandford*. Fletcher v. Haas, 851 F. Supp. 2d 287, 294 (D. Mass. 2012) (discussing *Scott v. Sandford* 60 U.S. 393 (1856) (holding a former slave was not considered “the people” protected by the United States Constitution where the former slave was not a citizen)). See also Martha S. Jones, *The Real Origins of Birthright Citizenship: Its Purpose 150 Years Ago was to Incorporate Former Slaves into the Union*, THE ATLANTIC (Oct. 31, 2018), <https://www.theatlantic.com/ideas/archive/2018/10/birthright-citizenship-was-won-freed-slaves/574498/> (discussing the origins of birthright citizenship and its value to former slaves).

<sup>45</sup> See GLOBAL ESTIMATES OF MODERN SLAVERY, *supra* note 24, at 10–11.

<sup>46</sup> *People v. L.G.*, 972 N.Y.S.2d 418, 424 (Crim Ct. 2013); see Sex Trafficking, N.Y. PENAL LAW § 230.34 (McKinney 2008); Labor Trafficking, N.Y. PENAL LAW § 135.35 (McKinney 2020).

<sup>47</sup> See e.g., *United States v. Montoya De Hernandez*, 473 U.S. 531, 536 (1985) (possession of cocaine with intent to distribute, unlawful importation of cocaine); see also e.g., Erin Marsh, *Relief Not Arrests: Strengthening Laws for Survivors of Human Trafficking*, THOMSON REUTERS INST. (Apr. 3, 2019), <https://www.legalexecutiveinstitute.com/polaris-arrests-human-trafficking/> (drug manufacturing, smuggling, falsification of documents, financial crimes, trespassing, truancy, running away).

<sup>48</sup> *L.G.*, 972 N.Y.S.2d at 419–20 (criminal possession of a weapon, disorderly conduct, loitering for the purpose of engaging in a prostitution offense); see e.g., ERIN MARSH, BRITTANY ANTHONY, JESSICA EMERSON, KATE MOGULESCU, STATE REPORT CARDS: GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING 5–6 (2019) <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf> (listing prostitution, possession of weapons, drugs, identity theft, truancy, running away as crimes).

<sup>49</sup> See MARSH et al., *supra* note 48, at 5–7.

circumstances, which are factored in the eligibility of the victim.<sup>50</sup> New York must provide better redress to amend defective proceedings and preemptive measures to avoid the potential harm to survivors in the first place.

### C. *Overview of New York's Statutes Affecting Victims*

New York continues to draconianly institutionalize human trafficking by improperly arresting and prosecuting the victims for the involuntary acts their traffickers force them to commit, even though the resulting proceeding would be “substantive[ly] defective.”<sup>51</sup> A substantive defect in proceedings recognizes that a statutory or constitutional right was violated and voids the proceedings.<sup>52</sup> However, rather than completely void the proceedings, New York only allows vacating convictions, which leaves behind a permanent legal mark on these victims. These legal marks are similar to, if not worse, than the brands many human trafficking victims already physically carry.<sup>53</sup> Proactively, New York and other state and federal law enforcement agencies recognize how important it is to have law enforcement officers at the front line who are properly trained to identify victims before any substantively defective proceedings begin. The agencies accomplish this by contracting with

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<sup>50</sup> *Id.* Even though states like New York have passed “Ban the Box” laws eliminating criminal history questions from some job applications, the laws still allow these questions to be asked as a condition of employment. *Id.* at 6.

<sup>51</sup> *See*. Webinar presentation A.B.A. Survivor Reentry Project: part 5 Vacatur & Immigration, [https://www.americanbar.org/groups/domestic\\_violence/our-projects/survivor-reentry-project/part-ii---post-conviction-advocacy-for-survivors-of-trafficking-/](https://www.americanbar.org/groups/domestic_violence/our-projects/survivor-reentry-project/part-ii---post-conviction-advocacy-for-survivors-of-trafficking-/) [https://perma.cc/A5EB-TJNV] featuring Kate Mogulsecu, Ryan Muennich & Natalie Nanasi, *Post-Conviction Advocacy for Survivors of Trafficking & Immigration: Best Practices for Attorneys*, (July 17, 2018), [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/webinar-ppt/survivor\\_reentry/part2/part5.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/webinar-ppt/survivor_reentry/part2/part5.pdf) (citing FLA. STAT. ANN. § 943.0583 (West 2021) (Florida’s Human trafficking victim expunction statute). The Florida statute provides: “A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.”) FLA. STAT. ANN. § 943.0583 (West 2021). Although Florida recognizes their defect, they too, still provide exceedingly broad loopholes where the confidential criminal records may be used by law enforcement or other governmental agencies “in the furtherance of its official duties and responsibilities.” *Id.*

<sup>52</sup> *Id.* at 25 (citing *Matter of Roldan*, 22 I&N Dec. 513, 523 (BIA 1999)).

<sup>53</sup> *See e.g.*, *Bigler-Engler v. Breg, Inc.*, 213 Cal. Rptr. 3d 82, 107 (Cal. Ct. App. 2017) (where an identifying mark was made by branding iron); Sara Sidner, *Old Mark of Slavery is being Used on Sex Trafficking Victims*, CNN (Mar. 14, 2017, 10:54 AM), <https://www.cnn.com/2015/08/31/us/sex-trafficking-branding/index.html> (“The practice is not new. It used to be done by slave owners using brands on slaves to show ownership. Now it’s back in a different form, but for the same horrible purpose.”); *Trafficking Terms*, SHARED HOPE INT’L, <https://sharedhope.org/the-problem/trafficking-terms/>, (last visited Feb. 17, 2020) (brands left by tattoos or carving); Colin Moynihan, *Life as a Nxivm ‘Slave’: Branding, Whippings and Cold Showers*, N.Y. TIMES (May 20, 2019) <https://www.nytimes.com/2019/05/20/nyregion/nxivm-cult-trial.html> (brands left by leather strap whippings, burning with cauterizing pen); *Ex parte Bushnell*, 9 Ohio St. 77, 150 (Ohio 1859) (The Attorney General of Ohio addressed the United States Supreme Court describing incidents of slavery as the whipping post, slitting ears with knives, use of branding iron and revolver.).



urvivors to help train their personnel.<sup>54</sup> For the purpose of this article, law enforcement officers include police officers, investigators, detectives, prosecutors, and court officers.<sup>55</sup>

Further, rape shield and victim rights laws have been enacted, ensuring that “victims and their survivors are treated fairly and respectfully during the criminal justice process.”<sup>56</sup> Unfortunately, victims of human trafficking are not properly identified as victims and therefore afforded these rights, rather they are arrested and prosecuted.

Ultimately, New York passed the Victim Relief Statute. This statute empowers courts to vacate the convictions of these victims and place them back in the place they were before their convictions.<sup>57</sup> “Sponsors of the legislation explained that the law was motivated by a desire to close a ‘glaring loophole’ in the criminal law.”<sup>58</sup> When they were not convicted, but instead had a favorable outcome, victims have the relief of sealing their record.<sup>59</sup>

The New York statute is now being revised to catch up to the wisdom other states. Other states expanded on the New York statute when enacting similar statutes, including the relief given and who is eligible for the relief.<sup>60</sup> Notably, if the current proposed legislation passes, New York would surpass any other states’ relief, becoming a leader once again.<sup>61</sup> But, even then, the relief would still leave room for improvement, like those proposed in this article.<sup>62</sup>

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<sup>54</sup> See Taylor Goebel, *Sex Trafficking: Police Get Special Training to Spot it Early*, DELMARVA NOW (Oct. 9, 2018, 6:00 AM), <https://www.delmarvanow.com/story/news/local/delaware/2018/10/09/sex-trafficking-police-get-special-training-spot-early/1369477002/> (discussing Barbara Amaya, a survivor of human trafficking, who helps train law enforcement agencies on how to identify and approach trafficking, rather than treat victims like criminals and lose their trust). How much more trust would victims have if the people wearing law enforcement badges were survivors? If the prosecutors who read the police reports were survivors? Their judges were survivors?

<sup>55</sup> *People v. Tomaselli*, 7 N.Y. 2d 350, 355 (1960).

<sup>56</sup> N.Y. EXEC. LAW §§ 640–649 (McKinney 2020) (Fair Treatment Standards for Crime Victims also known as the Crime Victims Bill of Rights). Besides the Crime Victim Bill of Rights, over several decades New York has passed a plethora of laws granting victims rights. See N.Y. STATE OFF. ATT’Y GEN., INDEX OF KEY VICTIM-ORIENTED STATE STATUTES 2006, [https://ag.ny.gov/sites/default/files/pdfs/bureaus/intergov\\_affairs/Crime\\_Victims\\_State\\_Statutes\\_full.pdf](https://ag.ny.gov/sites/default/files/pdfs/bureaus/intergov_affairs/Crime_Victims_State_Statutes_full.pdf) [https://perma.cc/C8SV-MAUP]

<sup>57</sup> N.Y. CRIM. PROC. LAW § 160.60 (McKinney 2019).

<sup>58</sup> Alyssa M. Barnard, “*The Second Chance They Deserve: Vacating Convictions of Sex Trafficking Victims*,” 114 COLUM. L. REV. 1463, 1463 (2014) (citing Letter from Thomas Duane, Chair, N.Y. Senate Comm. on Health, to David Paterson, Governor, N.Y. (Aug. 12, 2010), in Bill Jacket, Assemb. 7670, 233rd Leg., Reg. Sess., 8 (N.Y. 2010), available at <https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/21697>).

<sup>59</sup> N.Y. CRIM. PROC. LAW § 160.50 (McKinney 2019).

<sup>60</sup> See MARSH, *supra* note 48, at 14–19, 28 (describing the range of various states’ description of range of relief, eligible offenses, judicial discretion, nexus to trafficking, and burden of proof; and grading New York’s statutes a D).

<sup>61</sup> *Id.* at 28, 31.

<sup>62</sup> *See id.* at 31.

### III. Analysis

#### A. *New York's Trafficking Survivors Conviction Relief Act*

The statute at issue is NY CLS CPL § 440.10, also known as the New York's Trafficking Survivors Conviction Relief Act.<sup>63</sup> In pertinent part, the statute provides:

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

....

(i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a person for prostitution or promoting prostitution) or 230.00 (prostitution) or 230.03 (prostitution in a school zone) of the penal law, and 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, sex trafficking of a child under section 230.34-a of the penal law, labor trafficking under section 135.35 of the penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 of the penal law, or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

(i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or compelling prostitution crime or has sought services for victims of such trafficking or compelling prostitution crime, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking or compelling prostitution crime that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and

(ii) official documentation of the defendant's status as a victim of trafficking, compelling prostitution or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking, compelling prostitution or trafficking in persons, but shall not be required for granting a motion under this paragraph;

....

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<sup>63</sup> N.Y. CRIM. PROC. LAW § 440.10 (McKinney Supp 2021).

6. If the court grants a motion under paragraph (i) or paragraph (k) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances.<sup>64</sup>

This statute provides for some redress when law enforcement and prosecutors wrongfully charge victims. For example, in *People v. L.G.*, the court considered granting a motion to vacate disorderly conduct and criminal possession of a weapon convictions.<sup>65</sup> L.G.'s convictions stemmed from being trafficked by a pimp who forced her into sex labor.<sup>66</sup> After an arrest in 2001, the court mandated that L.G. participate in the Girls Educational & Mentoring Services (“GEMS”) program,<sup>67</sup> where she received support and counseling.<sup>68</sup> She was able to leave her trafficker, become an active member in GEMS, received a home health aid degree and worked in that capacity for some time.<sup>69</sup> Later, her convictions caused her to be terminated and barred her from working in that same capacity and to be questioned about her fitness to be a guardian of her nephew.<sup>70</sup> Now, she is pursuing a degree in public administration and social work.<sup>71</sup> She told the court she wanted “to vacate [her] convictions so that [she] [could] move forward with [her] life and career without being held back by [her] past.”<sup>72</sup> The court granted her motion, and her convictions were vacated.<sup>73</sup>

Although groundbreaking, the statute is not without flaws. Courts have criticized the statute for limiting the conviction eligibility to those that result from an arrest for a prostitution-related offenses.<sup>74</sup> For example, if a victim is arrested for a prostitution related offense and later convicted of murder, there could be

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<sup>64</sup> *Id.* at §§ 440.10(1)(i)(i)–(ii), (6) (McKinney Supp 2021).

<sup>65</sup> *People v. L.G.*, 972 N.Y.S.2d 418, 422 (Crim Ct. 2013).

<sup>66</sup> *Id.* In an affidavit L.G. made to the court she recounts, “I remember how fearful I felt when I left. I was always afraid that ‘E’ was going to come and hurt me.” *People v. L.G.*, 972 N.Y.S.2d 418, 422 (Crim Ct. 2013) (internal quotations omitted). “[A]rresting, prosecuting[,] and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem.” *People v. Samatha R.*, 941 N.Y.S.2d 540, 540 (Crim Ct. 2011).

<sup>67</sup> “Girls Educational and Mentoring Services’ (GEMS) mission is to empower girls and young women, ages 12–24, who have experienced commercial sexual exploitation and domestic trafficking to exit the commercial sex industry and develop to their full potential. GEMS is committed to ending commercial sexual exploitation and domestic trafficking by changing individual lives, transforming public perception, and revolutionizing the systems and policies that impact commercially sexually exploited youth.” *Our Mission*, GIRLS EDUCATIONAL & MENTORING SERVICES, <https://www.gems-girls.org/our-mission> (last visited Feb. 21, 2020) [<https://perma.cc/68GL-T28U>]. “For the past 20 years, Girls Educational & Mentoring Services (GEMS) has served as the nation’s leading organization for empowering commercially sexually exploited and domestically trafficked girls and young women. Through cultural change, advocacy, training, and survivor leadership, GEMS is committed to shifting public perception and policy.” *Id.*

<sup>68</sup> *L.G.*, 972 N.Y.S.2d at 422

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 428.

<sup>74</sup> *People v. P.V.*, 100 N.Y.S.3d 496, 503–06 (Crim Ct. 2019).

relief for that conviction.<sup>75</sup> Contrastingly, if a victim is arrested for a non-prostitution related offense and later convicted of prostitution, they could not obtain relief.<sup>76</sup> These inconsistent outcomes could not have been the original intent of the drafters, or, more generally, just and equitable.

Additionally, prostitution related offenses are not the only offenses victims of human trafficking are typically arrested for. Victims are coerced into other forms of labor by their traffickers, such as “drug possession, theft, and fraud” that could result in an arrest for other than prostitution-related offenses.<sup>77</sup> When other states drafted similar statutes, they prudently included broader definitions for the offenses that could trigger conviction relief.<sup>78</sup>

### **B. *New York’s Vacatur Statute***

New York’s Trafficking Survivors Conviction Relief Act authorizes courts to order *vacatur* of survivor’s convictions. In pertinent part, New York’s Vacatur Statute provides:

Upon the termination of a criminal action or proceeding against a person in favor of such person,<sup>79</sup> as defined in subdivision two of section 160.50 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused **shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution.** The arrest or prosecution **shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling.** *Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.*<sup>80</sup>

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<sup>75</sup> *Id.* at 505.

<sup>76</sup> *Id.*

<sup>77</sup> *Our 2019 New York State Legislative Agenda*, SANCTUARY FOR FAMILIES (Apr. 29, 2019) <https://sanctuaryforfamilies.org/our-2019-legislative-agenda/> [https://perma.cc/Q38X-TJGL]. *See e.g.*, *United States v. Montoya De Hernandez*, 473 U.S. 531, 536 (1985); *see also* Marsh, *supra* note 47 (drug manufacturing, smuggling, falsification of documents, financial crimes, trespassing, truancy, running away).

<sup>78</sup> *See* Melissa Owens, *Human Trafficking Victims’ Need for Vacatur: Demolishing Roadblocks to Freedom an Analysis of the Current State Laws in the United States, the Current Federal Landscape, and A Call for the United Nations to Amend an Existing Protocol to Allow Victims of Human Trafficking to Vacate Their Criminal Records*, 28 AM. U. J. GENDER SOC. POL’Y & L. 203, 213 (2020) (providing examples of states which permit victims more encompassing nonviolent offenses to be vacated). For example, California (“any nonviolent offenses committed at the behest of their captors”), Kentucky (“other non-violent offenses committed while victimized by human trafficking”), Idaho (“any other offense determined by the court to be appropriate”), Montana, North Dakota, and Utah all include broader non-violent offenses that could trigger vacatur relief for a victim. *Id.*

<sup>79</sup> A favorable decision also includes when charges are dismissed before there is a conviction or no charges are pressed after an arrest. N.Y. CRIM. PROC. LAW § 160.50 (McKinney 2019).

<sup>80</sup> N.Y. CRIM. PROC. LAW § 160.60 (McKinney 2019) (emphasis added).

The survivor can also have the record of the proceeding sealed pursuant to N.Y. Criminal Procedure Law § 160.50.<sup>81</sup> Even when sealed, law enforcement agencies can make an ex parte request the records be unsealed.<sup>82</sup> Black’s Law Dictionary defines an ex parte order as “[a]n order made by the court upon the application of one party to an action without the notice to the other.”<sup>83</sup> Survivors, who at this point should feel safe from prying eyes, would have no say in the matter or even know that records containing facts to their most vulnerable life circumstances are being divulged.

Additionally, regardless of whether the individual is supposedly “restored” or the records are sealed, judicial committees are empowered to inquire into any interaction the individual has had with law enforcement.<sup>84</sup> The New York Bar application states:

[c]andor throughout the admission process is required of all applicants, and **even convictions that have been expunged should be disclosed** in response to th[e] question[.]. . . [h]ave you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding?<sup>85</sup>

Even law school applications require disclosure of interactions with law enforcement.<sup>86</sup> The New York judiciary then requires applicants to authorize their law schools to release all documents, including their law school application.<sup>87</sup> A candidate’s misstatement or omission on their law school application could lead to expulsion from the law school or serve as a barrier to being admitted to the bar in any state.<sup>88</sup>

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<sup>81</sup> N.Y. CRIM. PROC. LAW § 160.50(1) (McKinney 2019).

<sup>82</sup> N.Y. CRIM. PROC. LAW § 160.50 (1)(d)(ii) (McKinney 2019).

<sup>83</sup> *Order – Ex Parte Order*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>84</sup> Certificate of Character and Fitness, N.Y. C.P.L.R. LAW Rule 9404 (McKinney 1981).

<sup>85</sup> *Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York: Application for Admission Questionnaire*, N.Y. ST. SUP. CT. APP. DIV. 10 (Mar. 2020) (emphasis added) [hereinafter *New York’s Application for Admission to Practice as an Attorney*].

<sup>86</sup> Christie Thompson, *Five Things You Didn’t Know About Clearing Your Record: A Primer on the Complicated Road to Expungement*, THE MARSHALL PROJECT (Sept. 17, 2015, 5:50 PM), <https://www.themarshallproject.org/2015/09/17/five-things-you-didn-t-know-about-clearing-your-record>.

<sup>87</sup> *Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York: Form Law School Certificate*, N.Y. ST. SUP. CT. APP. DIV. 1 (Nov. 2020) [https://www.nybarexam.org/Admission/E-Bar\\_Admissions-Law%20School%20Certificate.pdf](https://www.nybarexam.org/Admission/E-Bar_Admissions-Law%20School%20Certificate.pdf).

<sup>88</sup> See *In re Powers v. St. John’s Univ. Sch. of L.*, 32 N.E.3d 371, 376 (2015). Powers was a law student with an expunged criminal record. *Id.* He disclosed some of his expunged criminal record on his law school application. After completing three semesters, the law school he was enrolled in rescinded his admission based on “material misrepresentations and omissions in his application.” *Id.* at 372. The court held the penalty was not too excessive. *Id.* at 376. However, the dissent would otherwise hold the penalty was too excessive for the alleged infraction. *Id.* at 377 (Pigott, J., dissenting).

Other states have similar questions, which a substantively defective New York proceeding may inadvertently affect a victims eligibility to be admitted to that state’s bar. For example, the court in *In re Jeb F.* ordered Jeb F.’s application for admission to the Maryland Bar be denied.<sup>89</sup> Years before the proceeding in Maryland, Jeb F. had a criminal conviction in New York. New York then issued him a “Certification of Relief from Disability.”<sup>90</sup> That Certification “absolv[ed] him from all civil liabilities and disabilities” stemming from the conviction.<sup>91</sup> At the Maryland proceeding, he raised several constitutional arguments, including that the denial of his application “constituted a denial of his constitutional right to equal protection, due process, privileges and liberties, and his right to have the Court give full faith and credit.”<sup>92</sup> However, the court found no merit to these arguments and concluded Jeb F. “failed to establish present good moral character and fitness” required to be admitted to the bar at that time.<sup>93</sup> New York’s substantively defective proceedings may cause a survivor’s application for admission to the bar to be denied.<sup>94</sup>

### ***C. Current Bill Amending New York’s Trafficking Survivors Conviction Relief Act***

Since New York’s “landmark law” was passed, several states have followed suit, looking to the New York law as a model.<sup>95</sup> Many of those states have prudently extended the eligibility of relief to other offenses.<sup>96</sup> Further, where New York allows for sealing of these records, other states permit expungement.<sup>97</sup> Expungement orders the destruction of records, and the individual is restored to their legal status before interactions with law enforcement surrounding the proceeding.<sup>98</sup> Expungement affords better relief than simply sealing records.

Now, New York is reviewing legislation that would amend its statute to incorporate some of the protections other states offer. The purpose of this amendment is “[t]o strengthen protections for victims of sex trafficking, labor trafficking, compel[ed] prostitution, and traffick[ed] in persons, who are convicted of a range of offenses as a result of that trafficking or comp[ulsion].”<sup>99</sup> The proposed amendment mostly addresses flaws in the eligibility for relief discussed in the New York Victim Relief Statute section above.<sup>100</sup> The draft does not address the permanent, re-traumatizing brand New York has left on victims by leaving the loopholes discussed in this article standing.<sup>101</sup>

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<sup>89</sup> *In re Jeb. F.*, 558 A.2d 378, 379 (Md. 1989).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *See id.*

<sup>95</sup> S.B. S4981B, 242<sup>nd</sup> Leg., Reg. Sess. (N.Y. 2019) <https://legislation.nysenate.gov/pdf/bills/2019/S4981B>.

<sup>96</sup> *Id.*

<sup>97</sup> *See e.g.* FLA. CONST. art. I, § 24.

<sup>98</sup> *See In re Inman v. Coughlin*, 516 N.Y.S.2d 350, 351 (App. Div. 1987).

<sup>99</sup> *Supra* note 95.

<sup>100</sup> *Id.*

<sup>101</sup> *See id.*

The legislation acknowledges the current statute's shortfalls. The lack of confidentiality and privacy afforded to victims: (1) "[t]he CPL is further amended to protect the confidentiality of information contained in motions brought under the statute," and (2) "[c]ourts may also take other action, such as offering a closed courtroom for court appearances."<sup>102</sup> Additionally, the retraumatization effect of the various brands victims carry: (1) "[t]his explicit and mandatory protection is necessary to meet the legislation's goals of severing victims of human trafficking from their traumatic past," and (2) "to ensure that victims of human trafficking will not be endangered by the process of vacating their convictions."<sup>103</sup>

Although broadening protection to catch up to other states's criminal reform, the proposed amendment to the New York relief statute is, once again, missing the intended mark by not fully restoring victims to their pre-victim legal status.

#### ***D. Rape Shield Law***

New York, like many states, provides victims of sex offenses vast protection from inquiry in court through their rules of evidence. Commonly referred to as rape shield laws, these laws prohibit inquiry into a victim's past sexual history as evidence, unless it is especially relevant when the victim is a witness in a criminal trial against their accused sex offender.<sup>104</sup> The law gives victims some comfort in stepping forward to report the crime and lowers the likelihood of serious re-traumatization.<sup>105</sup> The reason the rape shield protection may be lifted at a criminal trial, and the threshold to do so is high, is because of the right to a fair trial and the liberties at stake in another individual's criminal conviction is paramount.<sup>106</sup>

Further institutionalizing human trafficking, when originally drafted in the 1970s, the New York legislature excluded rape shield protection in sex trafficking cases and in cases where a victim had a history of prostitution.<sup>107</sup> This exclusion harmed victim witness credibility and allowed their traffickers to go free.

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<sup>102</sup> *Id.*

<sup>103</sup> *Id.* In line with New York's recognition of the sensitivity and confidentiality necessary for victims, other states, like Texas, provide relief in the form of an "order of nondisclosure." STATE OF TEX. OFF. CT. ADMIN., *An Overview of Orders of Nondisclosure* 1 (Jan. 2020) <https://www.txcourts.gov/media/1445464/overview-of-orders-of-nondisclosure-2020.pdf> [<https://perma.cc/8YW4-VJYX>]. The order would "legally free" a victim from being required to divulge information in an employment setting. *Id.* However, despite being legally freed, certain state agencies can still obtain the information subject to the order of nondisclosure. *Id.* Just as heinous, a victim who obtained a Texas nondisclosure order may be ineligible for vacatur. MARSH, *supra* note 48, at 30.

<sup>104</sup> Rules of Evidence; Admissibility of Evidence of Victim's Sexual Conduct in Sex Offense Cases ("Rape Shield Law"), N.Y. CRIM. PROC. LAW § 60.42 (McKinney 2019).

<sup>105</sup> SANCTUARY FOR FAMILIES, *supra* note 77; see *Legislative Memo: The Rape Shield Reform Bill*, N.Y. CIVIL LIBERTIES UNION, <https://www.nyclu.org/en/legislation/legislative-memo-rape-shield-reform-bill> (last visited Feb. 21, 2020) [<https://perma.cc/E7UN-D84Z>] (supporting the Rape Shield Reform Bill that would expand protections afforded to victims to include victims with prior convictions of prostitution by removing the "prostitution exception").

<sup>106</sup> See *Legislative Memo: The Rape Shield Reform Bill*, *supra* note 105.

<sup>107</sup> See *supra* note 104, at § 60.42 (2) (the prostitution exception: if evidence "proves or tends to prove that the victim has been convicted of an offense under section 230.00 of the penal law within three years prior to the sex offense which is the subject of the prosecution" then it may be admitted).

Currently, several bills are proposed to revise the Rape Shield Law to afford victims of human trafficking protection.<sup>108</sup> The protection would only be afforded for admissibility of evidence, but not for employment or licensing settings, such as law enforcement applications or application for admission to the bar. This oversight may be in part due to the fact that in employment and licensing settings, the traditional victim of a sex offense is not required to divulge such information.<sup>109</sup> Thus, more comprehensive protections for victims of human trafficking are required to shield them in employment settings like any other victim of a sex offense would be.

### *E. New York Human Trafficking Courts*

In 2012, about “3,400 prostitution-related arrests” were made and “only 40 arrests for sex trafficking.”<sup>110</sup> Attempting to address some of the injustices victims of human trafficking experience, New York created Human Trafficking Intervention Courts in 2013.<sup>111</sup> These courts handle cases where individuals are charged with prostitution related offenses.<sup>112</sup> In a press release, New York recognized human trafficking as “modern-day slavery” that cannot be tolerated in a civilized society.<sup>113</sup> They see the criminal convictions as an “indelible scar” on victims.<sup>114</sup> The creation of these courts is part of a commitment to “break the cycle of exploitation and arrest,” treat trafficked human beings as “victims, not criminals,” and offer victims “protection, hope, and justice.”<sup>115</sup>

New York’s Human Trafficking Intervention Courts have been highly criticized as a “band-aid” on a wound, “[in]correctly diagnosed” in a report by Global Health Justice Project.<sup>116</sup> For a victim to be eligible to be seen in this court, the victim must be charged with a prostitution-related offense—a similar flaw to the New York Human Trafficking Victim Conviction Relief statute. This is problematic because, as discussed above, in the New York Human Trafficking Victim Conviction Relief statute section, victims of human trafficking are often charged with offenses that are not prostitution related, and therefore victims would not be eligible.<sup>117</sup> Further, these courts do not address how new victims enter their doors: by being arrested.<sup>118</sup>

<sup>108</sup> S.5070 240<sup>th</sup> Leg. Reg. Sess. (N.Y. 2017), <https://legislation.nysenate.gov/pdf/bills/2017/S5070>.

<sup>109</sup> *Id.*

<sup>110</sup> *Human Trafficking Intervention Courts: Overview*, N.Y.COURTS.GOV, [http://ww2.nycourts.gov/courts/problem\\_solving/htc/index.shtml](http://ww2.nycourts.gov/courts/problem_solving/htc/index.shtml) (last visited Feb. 2021).

<sup>111</sup> Press Release, New York State Unified Court System, *NY Judiciary Launches Nation’s First Statewide Human Trafficking Intervention Initiative* (Sept. 25, 2013) [http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR13\\_11.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR13_11.pdf) (announcing the launch of Human Trafficking Courts).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> GLOB. HEALTH JUST. P’SHIP YALE LAW SCH. & YALE SCH. PUB. HEALTH, UN-MEETABLE PROMISES: RHETORIC AND REALITY IN NEW YORK CITY’S HUMAN TRAFFICKING INTERVENTION COURTS 10 (2018) [ <https://perma.cc/G76W-FCRQ>]

<sup>117</sup> *Id.* at 46.

<sup>118</sup> *See id.* at 7.



#### IV. Argument

New York can continue to lead the country in criminal reform for victims of human trafficking. They can do this by closing the loophole that provides where a victims' sealed record can be disclosed and when these interactions with law enforcement can be invaded.

Improvement for just outcomes for victims of human trafficking proactively is much sought out.<sup>119</sup> Although rebuttable presumption and assistance of counsel to indigent movant efforts are helpful to preventing wrongful convictions,<sup>120</sup> there is a path to improvement available even earlier in the criminal process. Often, states work with federal programs for funding, providing access to task forces, training, and dedicating specialized personnel in human trafficking to help conduct proper investigations.<sup>121</sup> However, if New York and other states decreased the barriers for victims to have a voice in the investigation process, the states would have a very powerful tool to see issues before they become an injustice.

Victims of human trafficking are grossly underrepresented in the legal and law enforcement fields, shown by their lack of diversity. The percentage of male to female lawyers is additionally overwhelming.<sup>122</sup> The United States Bureau of Labor Statistics reported in 2018 that only 37.4% of lawyers are female.<sup>123</sup> The discrepancy is more drastic between white attorneys and people of color.<sup>124</sup> In 2018, U.S. Bureau of Labor

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<sup>119</sup> See Matthew Myatt, *The "Victim-Perpetrator" Dilemma: The Role of State Safe Harbor Laws in Creating a Presumption of Coercion for Human Trafficking Victims*, 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 555, 593–598 (2019) (advocating for creating a rebuttable presumption of coercion for human trafficking victims); UAPR, *supra* note 1, at 1; NY CITY BAR, *Report By the Criminal Courts Committee and the Sex and Law Committee: Recommendations to Enhance Criminal Procedure Law § 440.10(1)(i), Regarding the Vacatur of Prostitution and Trafficking Related Convictions for Victims of Sex Trafficking*, 7 (Mar. 2015) [https://www2.nycbar.org/pdf/report/uploads/4\\_20072482-RecommendationstoLawreVacatingTraffickingVictimsProstitutionConvictions.pdf](https://www2.nycbar.org/pdf/report/uploads/4_20072482-RecommendationstoLawreVacatingTraffickingVictimsProstitutionConvictions.pdf) (recommending “[a]n amendment providing for the assistance of counsel to indigent movants in preparing the motion”). “In terms of advancing the policy behind the law, such an amendment would make sense. The bill was intended to have broad remedial scope, in acknowledgment of the fact that victims of sex trafficking who become saddled with a criminal record are ‘blocked from decent jobs and other prospects for rebuilding their lives,’ essentially becoming life-long victims.” *Id.* [“hereinafter *Recommendations to Enhance Criminal Procedure Law*”]

<sup>120</sup> *Id.*; *Recommendations to Enhance Criminal Procedure Law*, *supra* note 119, at 7 (recommending “[a]n amendment providing for the assistance of counsel to indigent movants in preparing the motion”). “In terms of advancing the policy behind the law, such an amendment would make sense. The bill was intended to have broad remedial scope, in acknowledgment of the fact that victims of sex trafficking who become saddled with a criminal record are “blocked from decent jobs and other prospects for rebuilding their lives,” essentially becoming life-long victims.” *Id.*

<sup>121</sup> AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING CASES, 8–9 (Apr. 2012). <https://www.urban.org/sites/default/files/publication/25526/412593-Identifying-Challenges-to-Improve-the-Investigation-and-Prosecution-of-State-and-Local-Human-Trafficking-Cases.PDF> [https://perma.cc/CDK2-TA2H]

<sup>122</sup> *Labor Force Statistics from the Current Population Survey*, U.S. BUREAU LAB. STAT <https://www.bls.gov/cps/cpsaat11.htm> (last updated Jan. 22, 2021). [https://perma.cc/M9ZZ-YMCZ]

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

Statistics reports an overwhelming 86.5% of attorneys are white.<sup>125</sup> Whereas protective services, including police officers, detectives, investigators, and supervisors, consist of only 23.6% females.<sup>126</sup>

The International Labor Association and Walk Free Foundation estimate females constitute 58% of victims of forced labor, exclusive of commercial sex industry, and 99% of victims of forced labor in the commercial sex industry.<sup>127</sup> Following those numbers, the legal and law enforcement fields could be more inclusive of victims.

A barrier to entry in these fields is the re-traumatization of victims experienced through the required inquiry into their interactions with law enforcement. Even in just a research setting, victims expressed caution, particularly with regard to victim (re)traumatization.<sup>128</sup> Also, the ABA is conscious that even imposing requirements to seek criminal record relief on victims of human trafficking can cause re-traumatization and acts to “discourage [victims] from seeking the relief.” It follows, imposing requirements that victims divulge information relating in any way to the matters surrounding their substantively defective proceedings as a victim of human trafficking would have a more severe re-traumatization effect, discouraging them from successfully reintegrating into society as a non-criminal.

State laws that cause sealed or vacated information related to a victim’s interactions with law enforcement violate the individual’s substantive due process rights. States violate substantive due process protections when a compelling governmental interest furthered by a statute unduly infringes on an individual’s fundamental right or interest.<sup>129</sup> Laws that unduly infringe on fundamental rights or interests are those that are not “narrowly tailored” when furthering the compelling government interest.<sup>130</sup>

The fundamental rights or interests invoked here are protection against badges and incidents of slavery, right to privacy, right to expression of identity, and a right to sexual privacy.

First, the thirteenth amendment establishes a fundamental interest in protecting against badges and incidents of slavery.<sup>131</sup> Human trafficking is a form of modern day slavery.<sup>132</sup> The drafters of the thirteenth

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See GLOBAL ESTIMATES OF MODERN SLAVERY, *supra* note 24, at 10.

<sup>128</sup> See NAT’L INST. JUST., EXPERT WORKING GROUP ON TRAFFICKING IN PERSONS RESEARCH MEETING, 3 (Apr. 2014), <https://www.ncjrs.gov/pdffiles1/nij/249914.pdf> [<https://perma.cc/87G3-J53S>]

<sup>129</sup> See *e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>130</sup> *Id.*

<sup>131</sup> U.S. CONST. amend. XIII (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”); William M. Carter, Jr., *supra* note 3, at 1324-25 n. 3.

<sup>132</sup> See President Barack Obama, *supra* note 37; *Human Trafficking is Slavery*, *supra* note 37; *Human Trafficking Prioritization Act*, *supra* note 37; *Foreign Operations, Export, Financing, and Related Programs Appropriations Act*, *supra* note 37; Leary, *supra* note 37; N.Y. STATE INTERAGENCY TASK FORCE, *supra* note 37.

amendment envisioned future forms of slavery, beyond the circumstances that prompted its enactment.<sup>133</sup> A victim's slavery experience is a badge or incident of slavery.<sup>134</sup> A state, law school, or law enforcement agency forcing these victims to recount their slavery experience is a substantial infringement on their on their right to not be oppressed for being a slave.

Further, the court in *Griswold v. Connecticut* established a general right to privacy, which the government cannot intrude.<sup>135</sup> In *Griswold*, the court held a state law prohibiting married couples from using, or doctors from assisting the use of, contraceptives was unconstitutional.<sup>136</sup> The court's reasoning was that this right to privacy to use contraceptives was implicit in the third, fourth, fifth, and ninth amendments.<sup>137</sup> Even more explicitly granted than in the amendments named in *Griswold*, the thirteenth amendment established a right to privacy for victims of human trafficking and slaves, particularly their personal sufferings as a slave.<sup>138</sup> The violation by New York's substantively defective arrest and criminal proceeding, does not diminish that expectation of privacy. In fact, New York recognizes the importance of the relief provided to victims with confidentiality of these proceedings.<sup>139</sup> The New York statute authorizing anyone, including a state, law school, or law enforcement agency to force these slaves to recount their personal suffering is a substantial infringement on their on victims' right to privacy of personal sufferings as a slave.<sup>140</sup>

Second, even if the thirteenth amendment does not establish this fundamental interest, in our post-civil war history, our society has never required slaves to recount their experience as slaves as a requirement to

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<sup>133</sup> Carter, Jr., *supra* note 3, at 318 n. 15 (“As will be demonstrated below, the Thirteenth Amendment’s framers conceived their mission as remedying the permanent disabilities that the institution of slavery inflicted in perpetuity upon an identifiable and stigmatized group, where those injuries were inflicted in furtherance of maintaining slavery and subordination.”). See U.S. CONST. amend. XIII.

<sup>134</sup> See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 441–44 (1968) (holding a per se deprivation of property rights because of race is an incident to slavery); *United States v. Stanley*, 109 U.S. 3, 59 (1883) (Harlan, J., dissenting) (“... no State, nor the officers of any State, nor any corporation or individual wielding power under State authority for the public benefit or the public convenience, can, consistently either with the freedom established by the fundamental law, or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens, in those rights, because of their race, or because they once labored under disabilities of slavery imposed upon them as a race. The rights which Congress, by the act of 1875, endeavored to secure and protect are legal, not social, rights.”).

<sup>135</sup> *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (“Various guarantees create zones of privacy. The right of association contained in the penumbra of the *First Amendment* is one, as we have seen. The *Third Amendment* in its prohibition against the quartering of soldiers ‘in any house’ in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the ‘right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’ The *Fifth Amendment* in its *Self-Incrimination Clause* enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The *Ninth Amendment* provides: ‘The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.’”).

<sup>136</sup> *Id.* at 485.

<sup>137</sup> *Id.* at 484.

<sup>138</sup> See *id.*

<sup>139</sup> *Supra* note 95.

<sup>140</sup> See generally *Griswold*, 381 U.S. 479.

obtain public benefits, join law enforcement, or gain admission to the bar.<sup>141</sup> For victims of human trafficking, the only reason they have a reportable interaction with law enforcement is because the state committed a substantive defect in the proceeding.<sup>142</sup> When New York State returns a victim of human trafficking to the legal state they were in before an arrest was made and charges were pressed, they should hold the same legal status as a traditional freed slave.<sup>143</sup> Although other implicit barriers to entry have existed, the legal profession or law enforcement fields have not required slaves to recount their experience as slaves as a requirement to be admitted to the legal profession or be a law enforcement officer.<sup>144</sup>

Third, if our history, bafflingly, does not hold slaves have a right to not be oppressed or have privacy surrounding their slave experience, these rights are necessary for our democratic society when a cultural shift changes norms.<sup>145</sup>

Take a step back to analogize victims of human trafficking to same sex couples. The Supreme Court held states banning same sex marriages violates individuals' right to expression of identity.<sup>146</sup> Hypothetically, a state law mandating same sex couples to be married to be admitted to the bar or join law enforcement would infringe on their right to expression. Similarly, New York's law mandating victims to expose their identities as slaves would infringe on that very same right right.<sup>147</sup>

The cultural shift toward protections owed to slaves and victims of human trafficking is a tide that has long been rising. American society has spent the last 150 years integrating and protecting the abuse of slaves and their descendants.<sup>148</sup> Over the past sixty years, the United States has recognized the deficiency in minority representation in the legal and law enforcement communities. Law schools across the country have developed

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<sup>141</sup> See Kevin M. Clermont, *The Life of George Washington Fields*, 39 CORNELL L. FORUM (FACULTY ED.) 4, 9–10 (2013) (discussing law school, apprenticeship, and becoming the first former slave turned attorney); see also Robert V. Ward, Jr., *From the Slave Quarters to the Courtroom: The Story of the First African American Attorney in the United States*, BLACKPAST (Sept. 15, 2009), <https://www.blackpast.org/african-american-history/william-henry-squire-johnson-slave-quarters-courtroom/> (discussing the silent mystery behind William Henry Johnson, a former slave, and his eligibility to, but deferment to formally be admitted to, practice law).

<sup>142</sup> Mogulsecu, et al., *supra* note 51.

<sup>143</sup> See GLOBAL ESTIMATES OF MODERN SLAVERY, *supra* note 24 at 15–19.

<sup>144</sup> See Clermont, *supra* note 141; Ward, *supra* note 141.

<sup>145</sup> See *Obergefell v. Hodges*, 576 U.S. 644, 675–77 (2015).

<sup>146</sup> See *id.* at 703.

<sup>147</sup> See *id.*

<sup>148</sup> See e.g., U.S. CONST. amend. XIII.

initiatives to diversify the legal field.<sup>149</sup> The American Bar Association (“ABA”)<sup>150</sup> now requires law schools to “demonstrate by concrete action a commitment to diversity and inclusion” in offering enrollment to students from “underrepresented groups.”<sup>151</sup> The ABA encourages the inclusion of underrepresented groups to further the ABA’s goal of “eliminat[ing] bias and enhance[ing] diversity” in the legal profession.<sup>152</sup> Law enforcement seeks to improve community relations by being a better reflection of the community.<sup>153</sup> The United States enacted the Trafficking Victims Prevention Act (“TVPA”) to address the vast injustice to victims of human trafficking.<sup>154</sup> New York enacted a landmark law to address the vast injustice to victims of human trafficking.<sup>155</sup> More than half of the United States has enacted similar or broader laws in an attempt to correct their defective prosecution of victims of human trafficking.<sup>156</sup> Many of those states expunge the records and enable victims to answer “no” to inquiries regarding interaction with law enforcement surrounding their wrongful convictions.<sup>157</sup> Our society has acknowledged the right for victims of human trafficking to express their identity.

Alas, if victims of human trafficking do not have a right privacy of their personal sufferings, at least those victims that have been enslaved by being sexually abused or have been coerced into performing sex labor should have a constitutional right to sexual privacy.<sup>158</sup> A narrower interpretation of *Griswold v. Connecticut*, would have the same result. The Supreme Court held a state statute prohibiting the use of and doctors from prescribing contraceptives was unconstitutional, but for different reasoning—because it violated individuals right to sexual

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<sup>149</sup> See *Grutter v. Bollinger*, 539 U.S. 306 (2003) (holding a law school’s policy, seeking to accept a critical mass of minority students, to achieve diversity among its student body was not unconstitutional); see e.g., Marcia Brown, *Once Upon a Time (Commemorating MSP)*, RUTGERS (Apr. 2000), <https://law.rutgers.edu/sites/law/files/attachments/Marcia%20Brown%20Poem.pdf> (“Well, MSP thrived and the place within a place produced [a] new court[,] [n]ew barristers[,] [n]ew judges[,] [a]nd people who created new fertile areas and expanded the rule of law across the land to accommodate all of the people, all of the faces, all of the voices, and all of the hopes.”).

<sup>150</sup> “The ABA is the largest voluntary association of lawyers in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law.” News, ABA Commission Report Offers Support for Trafficking Survivors, Recommends Best Practices for Prosecutors, A.B.A. (Nov. 18, 2019), <https://www.americanbar.org/news/abanews/abanews-archives/2019/11/aba-commission-report-offers-support-for-trafficking-survivors--/>.

<sup>151</sup> Amy H. Soled & Barbara Hoffman, *Building Bridges: How Law Schools Can Better Prepare Students from Historically-Underserved Communities to Excel in Law School*, 69 J. LEG. EDUC. (forthcoming 2021) (citing A.B.A. Standards and Rules of Procedure for Approval of Law Schools Rule 206(a) (2018-2019)). (on file with STCLH HISPANIC J. L. & POL’Y)

<sup>152</sup> *Id.*

<sup>153</sup> *Improving Police and Community Relations*, LOCAL GOV’T COMM’N, <https://www.lgc.org/newsletter/jul2016/> (last visited Feb. 21, 2020).

<sup>154</sup> Trafficking Victims Protection Act (TVPA), 22 U.S.C. § 7101 (2018).

<sup>155</sup> *Supra* note 95.

<sup>156</sup> See *Human Trafficking State Laws*, NAT’L CONFERENCE ST. LEGIS., <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx> (last visited Feb. 21, 2020).

<sup>157</sup> See MARSH, *supra* note 48, at 5–6.

<sup>158</sup> *Our 2019 New York State Legislative Agenda*, *supra* note 77; *Legislative Memo: The Rape Shield Reform Bill*, NYCLU, <https://www.nyclu.org/en/legislation/legislative-memo-rape-shield-reform-bill> (last visited Feb. 21, 2020).

privacy.<sup>159</sup> A clearer example is *Lawrence v. Texas*, where the Supreme Court held a state statute criminalizing sexual conduct between two consenting adults was unconstitutional because it violated individuals' right to sexual privacy.<sup>160</sup> Here, much like the statutes in *Griswold* and *Lawrence*, the New York State statute would violate individuals' right to sexual privacy by compelling victims of sex trafficking or sexual abuse to disclose their sexual conduct.

Turning to the government interest involved, upholding this barrier to entry is counterintuitive to the New York government's interest. The government's interest in vetting the legal profession and law enforcement fields is public safety and integrity of the law. However, that objective can be accomplished in a narrower manner as proposed in Part V.<sup>161</sup> Governments also have an interest to prevent injustice to future victims and abide by the constitution, which their current provisions contradict. By protecting victims' information from being divulged without their knowledge or from being compelled to speak of their interactions with law enforcement, the government can achieve all of their interests most effectively.

Current state provisions and those proposed by the New York legislature, relating to the divulgence of information and compulsion of victims to speak of their interactions with law enforcement regarding the circumstances of their trafficking, violate those victims' substantive due process.

## V. Proposed revision to the Bill

This article's proposed revision to the current bill is clear and effective to aid compelling government interests without infringing on victims' fundamental rights and interests. Amend. CPL § 440.10.6<sup>162</sup> from “. . . it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances” to:

it must vacate the judgment and dismiss the accusatory instrument; void, expunge, destroy, and order all entities or agencies possessing any data or information associated with crimes charged for being a victim of human trafficking to destroy such data or information; redact identifying information of victims where the data or information is related to other proceedings, such as against the trafficker; and may take such additional action as is appropriate in the circumstances that is consistent with this provision. No such person shall be required to divulge information pertaining to the arrest or prosecution or involvement with law enforcement in any way relating to these circumstances. (a) This section is only subject to the exception provided in section 60.42 of the criminal procedure law. Any exception granted

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<sup>159</sup> See *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>160</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>161</sup> *Infra* Part IV.

<sup>162</sup> *Infra* Section III.A.

by any other statute, authorization, or provision allowing questioning about, or disclosure of, facts relating in any way to the matters voided and expunged under this section shall not apply to expungements granted under this section. (b) Any individual, entity, or agency found to use or divulge any data concerning data or information hereby voided and expunged will be subject to additional penalties beyond any civil remedy available. (c) To the furthest extent of the State of New York's authority, no individual, entity, or agency will have any immunity from 440.10.6(b).

This provision would close the loophole the proposed bill currently leaves open by offering relief further than simple vacatur. The relief would also proactively order all data of these records be destroyed and for any identifying information of the victim be redacted when the record is related to another proceeding, such as against the trafficker. This relief would make clear that under no circumstance would the victim be required to divulge any information relating to these circumstances, including in employment settings or when seeking public assistance. No other law or provision can override this protection, except the Rape Shield Law, which would permit questioning of the victim only to the same extent as would be permitted of a victim of a sex offense. The statute provides that any type of immunity is not a defense to violating this provision. It also provides penalties beyond traditional civil remedies, which may be difficult to quantify. This provision fully realizes the drafters intent in restoring victims to the legal status they possessed before their substantively defective proceedings.

Similar provisions should be enacted across the United States to void, expunge, destroy, and order others to do the same when an interaction with law enforcement does not result in a conviction, but does result in any state action surrounding the circumstances of being a victim of human trafficking, such as indictments, charges, arrests, reports, or other involvement with law enforcement. Such provisions would relieve victims of the state ingrained brand.

## **VI. Conclusion**

My brethren say, that when a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.<sup>163</sup>

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<sup>163</sup> United States v. Stanley, 109 U.S. 3, 61 (1883) (Harlan, J., dissenting).

Justice Harlan's strong dissent hundreds of years ago was just as relevant a hundred years later, when the Supreme Court recognized in *Jones v. Mayer* that badges and incidents of slavery do exist, as it is today. Today, the United States does not see mere badges or incidents of slavery rampant throughout our land. Today, the United States sees millions of slaves beaten down on its own free land. These slaves are not just victims to their traffickers, they also fall victim to the states' defective criminal proceedings. How rotten would the United States landscape be had the Supreme Court in *Jones v. Mayer* decided that real estate covenants barring African-Americans from owning land was not protected by the Thirteenth Amendment? Today, the United States is creating a landscape that the decision in *Jones* denounced by creating barriers for contemporaneously freed victims of human trafficking—slaves—to fully own their own experiences.

Selena, Jasmine, and L.G. each have very unique experiences and a tremendous amount of potential. However, states create barriers that prevent them from fully reintegrating back into free society. So, we ask for victims of human trafficking that our statesmen take their feet off victims' necks—before someone cuts their throat.<sup>164</sup>

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<sup>164</sup> Ruth Bader Ginsburg, *The Status of Women*, 20 AM. J. COMPAR. L. 585, 590 (1972).