

AO

Providing legal services
and whole person advocacy
for human trafficking victims.



About Advocating Opportunity

Advocating Opportunity is a non-profit organization that provides direct legal services and whole person advocacy to human trafficked and exploited persons. Providing access to legal advocates gives human trafficking victims a voice in the judicial system, and in their community, by leveling the playing field and creating an opportunity for clients to choose their life's course. AO strives to end human trafficking through outreach, education, legal services, health and wellness, and whole person advocacy on our clients' behalf.

FIFTY-STATE SURVEY
**SAFE HARBOR LAWS AND
EXPUNGEMENT, SEALING, AND
VACATUR PROVISIONS, WITH RELATED
STATUTES, PERTAINING TO TRAFFICKED
PERSONS**



LexisNexis®



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APPENDIX

Ohio Safe Harbor Flow Chart

Ohio Legislative Services Commission Document

ALABAMA

SAFE HARBOR STATUTES

Code of Ala. § 13A-6-159 - Permitted defenses

This statute applies to any prosecution for prostitution or sexually explicit performance of a human trafficking victim performed as a result of labor or sexual servitude. The statute provides an affirmative defense that the person was a victim of human trafficking.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Code of Ala. § 12-15-136 - Proceedings for sealing legal and social files and records of courts, pertaining to certain persons and effect thereof

Upon the motion of a person subject to a delinquency petition, the juvenile court may order that the legal and social files and records of the court be sealed if: 1) two years have passed since the entry of any order of the juvenile court not involving custody or supervision; and 2) prior to the filing of the motion to seal, the person has not been convicted or adjudicated delinquent of any felony or a misdemeanor involving sexual offenses, drugs, weapons or violence or no proceeding is pending seeking a conviction or adjudication.

Code of Ala. § 15-27-1 - Petition for expungement of record of a misdemeanor criminal offense, violation, traffic violation, or municipal ordinance violation. (Effective July 6, 2014)

This statute applies to charges that were dismissed with prejudice, a no bill was returned by the grand jury, the person was found not guilty or the charged was dismissed without prejudice more than two years prior and has not been refiled.

ALASKA

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**Alaska Stat. § 12.62.180 - Sealing of criminal justice information**

A written request to seal records must be directed to the head of each criminal justice agency responsible for maintaining past conviction or current offender information. The request will apply only to the information that the specific agency is responsible for maintaining.

ARIZONA***SAFE HARBOR STATUTES*****A.R.S. § 13-3214 - Prostitution; classification**

This statute provides an affirmative defense to prosecution under the section if the defendant committed the acts as a direct result of being a victim of sex trafficking.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**A.R.S. § 13-921**

The statute applies to a judgment of guilt where the defendant is placed on probation if the following apply: 1) the defendant is under 18; 2) defendant is convicted of a felony; 3) the defendant is not sentenced to imprisonment; and 4) the defendant does not have a prior felony conviction. If the defendant successfully completes the probation, the court can set aside the judgment of guilt and expunge the defendant's record.

Ariz. R. Crim. P. 24.2 - Motion to vacate judgment [Effective January 1, 2015]

This Rule allows for a judgment and sentence to be vacated under very specific circumstances, lack of jurisdiction, newly discovered material facts or that the conviction was obtained in violation of the Federal or State Constitutions.

ARKANSAS

SAFE HARBOR STATUTES

A.C.A. § 5-70-102 - Prostitution

This section provides an affirmative defense to a prosecution for prostitution if the person engaged in the act as a result of being a victim of trafficking of persons under § 5-18-103.

A.C.A. § 5-70-103 - Sexual solicitation

This section provides an affirmative defense to a prosecution for sexual solicitation if the person engaged in the act as a result of being a victim of trafficking in persons under § 5-18-103.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

A.C.A. § 16-90-123-Sealing certain convictions

This section applies to victims of human trafficking who have been convicted of prostitution. The person must file a petition and the court must hold a hearing.

Title 16, Subtitle 6, Chapter 90, Subchapter 6, Expungement of Record, A.C.A. § 16-90-601 through 605

These sections relate to expungement of minor's offenses.

Title 16, Subtitle 6, Chapter 90, Subchapter 14 - Comprehensive Criminal Record Sealing Act of 2013, A.C.A. § 16-90-1413-Procedure for sealing of records

This statute requires that a petition be filed in the circuit or district court in the county where the offense was committed. The statute applies to the records of the court, prosecutor and arresting agency.

RELATED STATUTES

A.C.A. § 9-27-323 - Diversion -- Conditions -- Agreement - Completion

This statute is specific to juvenile prosecutions and allows for diversion of a delinquency case where the juvenile admits involvement in the delinquent act and the prosecuting attorney, in consultation with the intake officer, determines that a diversion is in the best interests of the juvenile and the community. Upon successful completion of the diversion program, the juvenile must be dismissed without further proceedings and the complaint and the agreement may be expunged by the court from the juvenile's file.

A.C.A. § 12-19-101 - State Task Force for the Prevention of Human Trafficking

This statute authorizes the establishment of a State Task Force for the Prevention of Human Trafficking by the Attorney General to address all aspects of human trafficking, including sex and labor trafficking.

A.C.A. § 16-118-109 - Civil cause of action for victims of human trafficking

This statute provides a civil cause of action for damages and other appropriate relief by an individual who is a victim of human trafficking. If the defendant's acts were willful and malicious, the treble damages must be awarded.

A.C.A. § 19-5-1252 - Safe Harbor Fund for Sexually Exploited Children

This statute establishes a fund from fines collected under the human trafficking statutes and other revenues which is to be administered by the Department of Human Services. The fund is to be used for services and treatment and grants to service providers. A sexually exploited child means a child less than 18 years of age and includes a victim of trafficking of persons under 5-18-103, a victim of child sex trafficking under 18 USC 1591 or a child engaged in prostitution under 5-70-102 or sexual solicitation under 5-70-103.

CALIFORNIA

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Cal Pen Code § 851.7 - Petition to seal record of arrest for misdemeanor during minority

A person arrested for a misdemeanor while a minor may petition the court in the jurisdiction where the arrest was made or the proceedings occurred for an order sealing the records including any records of arrest and detention under any of the following conditions: 1) the person was released pursuant to Cal Pen Code 849(b)(1); 2) the proceedings were dismissed or the person was discharged without a conviction; or 3) the person was acquitted. The statute does not apply to offenses for which registration is required under Section 290, offenses under Division 10 of the Health and Safety Code or offenses under the Vehicle Code or any local ordinance regarding the operation of a motor vehicle.

Cal Pen Code § 851.87 - Sealing records upon successful completion of pre-filing diversion program; Disclosure of arrest subsequent to completion of program

A person who successfully completes a pre-filing diversion program in lieu of filing an accusatory pleading may file a petition two years after completion can petition the court to seal the records of the arresting agency and related court files and records. If the court determines that it would be in furtherance of justice, the court can order the records sealed. If the record is sealed, the individual may respond to any question concerning a prior criminal record that the person was not arrested.

Cal Pen Code § 1203.45 - Sealing of minor's misdemeanor record; Application of section; Reimbursement to county or city

A person under the age of 18 years at the time of the commission of a misdemeanor can petition the court for an order sealing the record of conviction and other official records in the case. If the Court orders the record to be sealed, the conviction, arrest or other proceeding is deemed not to have occurred and the person can answer accordingly with respect to any question relation to the occurrence.

Cal Pen Code § 1203.47 - Sealing of record of person described in Welfare & Institutions Code Section 602 for commission of violation of specified provisions prohibiting prostitution: Petition; Applicability

A juvenile brought under the jurisdiction of the juvenile court for prostitution or solicitation of prostitution or loitering with intent to commit prostitution can petition the court upon turning 18 years of age to have the record sealed. The petitioner does not have to show that he or she has not been convicted of a felony or any misdemeanor involving moral turpitude or that rehabilitation has been achieved to the court's satisfaction. If the petition is granted all records relating to the violation must be sealed. The section applies to adjudications occurring before and after the effective date of the statute, January 1, 2014.

RELATED STATUTES

Cal Civ Code § 52.5 - Action by victim of human trafficking

This section allows a civil action for damages and other appropriate relief for a victim of human trafficking defined in Cal Pen Code 236.1. Attorney's fees and costs can be awarded if plaintiff prevails. It also provides for treble damages or ten thousand dollars whichever is greater.

Cal Wel & Inst Code § 18259 - Pilot program for treatment of commercially sexually exploited minors

This statute authorizes Alameda County to establish a pilot project to develop a comprehensive, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained for prostitution or solicitation of prostitution.

Cal Wel & Inst Code § 18259.7 - Pilot project to address needs of arrested or detained commercially sexually exploited minors; Protocols; Diversion program; Multidisciplinary team; Report

This statute authorizes Los Angeles County to establish a pilot project to develop a comprehensive, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained for prostitution or solicitation of prostitution.

COLORADO

SAFE HARBOR STATUTES

None

EXPUNGMENT, SEALING, OR VACATUR STATUTES

C.R.S. 18-1.3-101 - Pretrial diversion

A defendant placed under a diversion agreement pursuant to this section can petition the court to seal all arrest and other criminal records after the diversion agreement is completed.

C.R.S. 19-1-306 - Expungement of juvenile delinquent records

Expungement proceedings can be initiated by filing a petition with the juvenile court requesting an order of expungement. The court can order the record expunged if the court finds that: 1) the juvenile has not been convicted of or adjudicated delinquent for any felony offense or misdemeanor involving domestic violence, unlawful sexual behavior or possession of a weapon since the termination of the court's jurisdiction or the juvenile's unconditional release from parole supervision; 2) no proceeding felony, misdemeanor or delinquency action is pending or is being instituted; 3) the petitioner has been rehabilitated to the satisfaction of the court; and 4) the expungement is in the best interests of the juvenile and the community. Under Subsection (d), the records of a juvenile must be expunged when the juvenile has been convicted of prostitution, soliciting for prostitution or other similar enumerated offenses and that have been trafficked by another person for the purpose of performing the offense or coerced by another person to perform the offense.

C.R.S. 24-72-702 - Sealing of arrest and criminal records other than convictions

A person in interest can petition the court of a district where an arrest or criminal records information is located to seal all of the records if: 1) the records involve a criminal offense for which the person completed a diversion agreement; or 2) was not charged and the statute of limitations has run; or 3) was not charged and the statute of limitations has not run but the person is no longer being investigated; or 4) the case was completely dismissed; or 5) the person was acquitted.

C.R.S. 24-72-706 - Sealing of criminal conviction records information for offenses committed by victims of human trafficking

This statute allows for the filing of a petition in the district court to seal records of a conviction for prostitution, soliciting for prostitution, keeping a place of prostitution, public indecency or any corresponding municipal code or ordinance. The petition must be granted if the defendant establishes by a preponderance of the evidence that he or she had been trafficked by another person for the purpose of performing the offense.

CONNECTICUT

SAFE HARBOR STATUTES

Conn. Gen. Stat. § 53a-82 - Prostitution: Class A misdemeanor

This statute allows that any person sixteen years of age or older is guilty of prostitution when he or she engages or agrees or offers to engage in sexual conduct with another person for a fee. Subsection (b) provides an affirmative defense for anyone charged under this statute that the person was a victim of conduct that violates Conn. Gen. Stat. § 53a-192a, Trafficking in persons or the Trafficking Victims Protection Act. For any person who is sixteen or seventeen years of age being prosecuted under this section, the statute allows a presumption that the actor was a victim of conduct that violates Conn. Gen. Stat. § 53a-192a, Trafficking in persons or the Trafficking Victims Protection Act.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Conn. Gen. Stat. § 54-95c - Application to vacate prostitution conviction on basis of being a victim of trafficking in persons. Prosecutor's response. Court order

Any person convicted of prostitution under Sec. 53a-82 can apply to the Superior Court to vacate the judgment of conviction on the basis that he or she was a victim of conduct that constitutes trafficking in persons. If the person proves that he or she was a victim of trafficking in persons, the court must vacate the judgment of conviction and dismiss any charges related to the offense.

RELATED STATUTES

Conn. Gen. Stat. NEW: Added by P.A. 14-186, § 3 - DCF services for trafficking victims. Training to law enforcement officials re trafficking of minor children.

This statute authorizes the Department of Children and Families to provide services to a minor child who is a victim of trafficking.

DELAWARE

SAFE HARBOR STATUTES

11 Del. C. § 787 - Trafficking an individual, forced labor and sexual servitude

Subsection g(1) (special provisions regarding a minor) provides that a minor engaged in commercial sexual activity is presumed to be a neglected or abused child. If a police officer has probable cause to believe that a minor has engaged in commercial sexual activity, the officer must immediately report to the Department of Services for Children, Youth and Their Families.

Subsection g(2) provides that a party to a juvenile delinquency proceeding in which a minor is charged with prostitution or loitering, an attorney or a guardian ad litem may file a motion seeking to stay the delinquency proceedings. Upon granting the motion, the Department of Services for Children can order specialized services. If the minor substantially complies with the requirement of services, the attorney general shall nolle prosequi the stayed charges after one year from the stay being imposed.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

11 Del. C. § 787 - Trafficking an individual, forced labor and sexual servitude

Subsection (j) of this section that a person convicted of prostitution, loitering or obscenity committed as a direct result of being a victim of human trafficking may file an application for a pardon, may file a petition requesting expungement of the criminal record and may file a motion to vacate the judgment of conviction.

DISTRICT OF COLUMBIA***SAFE HARBOR STATUTES***

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**D.C. Code § 16-803 - Sealing of public criminal records in other cases**

This statute permits a person to file a motion to seal publicly available records regarding an arrest or charge of an eligible misdemeanor where the prosecution terminated without conviction if at least two years has passed since the termination

D.C. Code § 16-2335 - Sealing of records

Upon the motion of a person who has been the subject of a petition alleging delinquency or need of supervision under D.C. Code § 16-2305 or upon Family Division (Family Court)'s own motion, the Division must vacate an order and findings and seal the case, social records and law enforcement records and files. Two years must have elapsed from the final discharge or other order, and the person cannot have been subsequently convicted of a crime or adjudicated delinquent or in need of supervision or have a pending proceeding seeking a conviction or adjudication.

D.C. Code § 16-2335.01 - Motion to vacate adjudication or grant a new fact finding hearing on the ground of actual innocence

This statute provides for a motion to vacate an adjudication of delinquency in the Superior Court or allow a new fact finding hearing on the grounds of actual innocence based on new evidence.

D.C. Code § 16-2335.02 - Sealing of records on ground of actual innocence

This statute applies to any arrest for a violation of any District of Columbia Code or Municipal Regulation or was the subject of a delinquency petition or a petition in need of supervision where the prosecution was terminated without adjudication. The person can file a motion with the Family Court at any time to seal all of the records of the arrest and related court proceedings on the grounds of actual innocence.

RELATED STATUTES

D.C. Code § 4-501 -

D.C. Code § 14-311 - Human trafficking counselors

This statute requires the confidentiality of communications exchanged between a victim and a human trafficking counselor, including any records kept by the counselor and the human trafficking program.

D.C. Code § 22-1839 - Reputation or opinion evidence

In a criminal case for the offense of trafficking in commercial sex, sex trafficking of children or benefitting financial from human trafficking, reputation or opinion evidence regarding the past sexual behavior of the victim is not admissible.

D.C. Code § 22-1840 - Civil action

This statute provides a civil action for a victim of the offenses of forced labor, trafficking in labor or commercial sex acts, sex trafficking of children, unlawful conduct with respect to documents in furtherance of human trafficking and benefitting financially from human trafficking. The victim can recover actual, compensatory or punitive damages, injunctive relief and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Where a defendant's acts were willful and malicious, treble damages shall be awarded.

FLORIDA

SAFE HARBOR STATUTES

There is no Safe Harbor Statute for Florida that defers, diverts or otherwise provides immunity to a minor arrested or charged with a prostitution related offense. However, there is a series of statutes that allow for services to sexually exploited children which includes allowing, encouraging or forcing a child to solicit for or engage in prostitution (See Fla. Stat. § 39.01 - Definitions)

Fla. Stat. § 39.524 - Safe-harbor placement

A child 6 years of age or older who is a victim of sexual exploitation must be assessed for placement in a safe house or safe foster home using the assessment and screening tools provided for in Fla. Stat. § 409.1754.

Fla. Stat. § 409.1678 - Specialized residential options for children who are victims of sexual exploitation

This statute allows for the certification of same houses and safe foster homes for sexually exploited children specifically providing trauma-informed therapeutic approaches. The statute also provides the requirements for certification, the services to be provided in residential treatment or hospital setting and funding for services. The statute also specifically requires that, to the extent possible, the services can be available to all sexually exploited children regardless of whether they are accessed voluntarily, as a condition or probation or through a diversion program.

Fla. Stat. § 409.1754 - Sexually exploited children; screening and assessment; training; case management; task forces

This statute requires the development and adoption by the Department of Children and Families and the Department of Juvenile Justice of initial screening and assessment instruments to identify and determine the needs and services, including placement, for sexually exploited children. The Department of Children and Families is also required to assign a child known or suspected to be sexually exploited to child protective investigators and case managers with specialized training in handling cases involving sexually exploited children.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**Fla. Stat. § 943.0582 - Pre-arrest, post-arrest, or teen court diversion program expunction**

This section allows for the expunction of a nonjudicial record of arrest of a minor who successfully completes a pre-arrest or post-arrest diversion program for minors. The minor must file an application for expunction signed by the parents or legal guardian if the applicant has not yet reached the age of majority. The application must be submitted no later than 6 months after completion of the diversion program. The diversion program must expressly authorize or permit that an expunction can occur.

Fla. Stat. § 943.0583 - Human trafficking victim expunction

This statute applies to a victim of human trafficking as defined under Fla. Stat. § 787.06, any child under 18 years of age subjected to human trafficking or an individual subjected to human trafficking as defined by federal law. A persona may petition the court of original jurisdiction for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking and the offense was committed as a direct result of being a victim of human trafficking. The disposition of the arrest or any charges is irrelevant.

A conviction expunged under this section is considered vacated due to a substantive defect in the underlying criminal proceedings. Official documentation of the victim's status as a victim of human trafficking creates a presumption that the participation in the offense was a result of having been a victim of human trafficking. However, official documentation is not required. The effect of expunction of the record is to allow the petitioner to deny the arrest covered by the expunged record unless a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.

Fla. Stat. § 943.0585 - Court-ordered expunction of criminal history records

This section extends jurisdiction to the courts of the state over their own procedures for expunction or correction of judicial records containing criminal history information. Any court may order a criminal justice agency to expunge the criminal history record of a minor or adult who complies with the requirements established by this section.

Fla. Stat. § 943.059 - Court-ordered sealing of criminal history records

Similar to section 943.0585, this section extends jurisdiction to the courts of the state over their own procedures for sealing of judicial records containing criminal history information. Any court may order the sealing of a criminal record of a minor or adult who complies with the requirements established by this section.

Fla. Stat. § 958.13 - Sealing, expunction, and dissemination of records

Records related to the arrest, indictment, information trial or disposition of alleged offenses of a person adjudicated as a youthful offender are subject to sealing, expunction to the same extent as records of other adult offenders.

RELATED STATUTES**Fla. Stat. § 39.01 - Definitions**

Fla. Stat. § 39.01(69)(g) defines sexual exploitation of a child as include the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of a prostitution related offense, or allowing, encouraging or forcing a child to: 1) solicit for or engage in prostitution; 2) engage in a sexual performance as defined by chapter 827; or 3) participate in the trade of human trafficking as provided in Fla. Stat. §787.06(3)(g).

Fla. Stat. § 772.104 - Civil cause of action

Under subsection (2) of this statute, a person who proves that he or she has been injured due to sex trafficking or human trafficking will have a civil cause of action to recover treble the amount gained from the sex trafficking or human trafficking with minimum damages of \$200 along with attorney's fees and costs. The provision prohibits punitive damages.

Fla. Stat. § 796.09 - Coercion; civil cause of action; evidence; defenses; attorney's fees

This section provides a civil cause of action for compensatory and punitive damages against a person who coerced a person into prostitution, to remain in prostitution or used coercion to collect or receive any part of a person's earnings derived from prostitution. Coercion includes, but is not limited to, a threat of legal complaint or report of delinquency. Evidence of conviction for prostitution or prostitution-related offenses is inadmissible for purposes of attacking the plaintiff's credibility. An award of attorney fees and costs are at the court's discretion.

Fla. Stat. § 985.125 - Pre-arrest or postarrest diversion programs

This section allows for the establishment of a pre-arrest or post-arrest diversion program by a law enforcement agency or school district. As part of the program, a child who is alleged to have committed a delinquent act can undergo a program that could include surrender of a driver's license. Completion of the diversion program may provide for expunction of the arrest record upon successful completion.

Fla. Stat. § 985.145 - Responsibilities of the department during intake; screenings and assessments

The Department of Juvenile Justice must serve as the primary case manager to manage, coordinate and monitor services provided to a child. During the intake process of a report of delinquency, the department must screen each child to determine the appropriateness for release, referral to a diversionary program or referral to some other program or agency for the purpose of nonofficial or nonjudicial handling. After determining that probably cause exists, the department can recommend that a delinquency petition not be filed if the interest of the child and the public will be best served. The child can be referred for care, diagnostic and evaluation services, a diversionary program or other programs or treatment services.

GEORGIA***SAFE HARBOR STATUTES***

No safe harbor statutes specific to minors, but see below:

O.C.G.A. § 16-3-6 - Affirmative defenses to certain sexual crimes

Subsection (b) of this section provides that a person is not guilty of a sexual crime if the conduct was committed under coercion or deception while the accused was being trafficked for sexual servitude in violation of Section 16-5-46(c). Sexual crime includes prostitution. Subsection c provides that a defense based upon the provisions of this section is an affirmative defense.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**O.C.G.A. § 15-11-32 - Modification or vacation of orders; retroactive application**

Subsection (d) of this statute provides that an order of adjudication of delinquency can be modified or vacated if the adjudication was for a sexual crime defined in Section 16-3-6 and the crime resulted from the child being trafficked for sexual servitude in violation of Section 16-5-46 or was a victim of sexual exploitation as defined in Section 49-5-40. The modification or vacation of the adjudication must be requested by petition to the court. The petition can be brought by any party to the proceeding, the probation officer or any person with supervision, legal custody or an interest with respect to the child. The court will schedule a hearing on the petition.

O.C.G.A. § 15-11-701 - Sealing of files and records; hearings; limitations on disclosure; identity of victim

Subsection (a) of this section applies to: 1) the dismissal of a petition or complaint alleging delinquency or that a child is a child in need of services; or 2) the completion of a process for a case that was handled through informal adjustment, mediation or other non-adjudicatory procedure. In these instances, the court must order the sealing of the files and records of the case. Subsection (b) applies to a person who has been adjudicated for committing a delinquent act or as a child in need of services. The person can apply for the files and records to be sealed or the court on its own motion and after a hearing can order the files and records sealed if: 1) two years have elapsed since the final discharge; 2) since the final discharge, there has been no conviction of a felony, a misdemeanor involving moral turpitude or an adjudication for committing a delinquent act or a child in need of services and no proceeding seeking a conviction or adjudication is pending; and 3) the person has been rehabilitated.

Subsection c applies specifically to a delinquency adjudication where the court finds that the adjudication was for a sexual crime as defined in Section 16-3-6 and the crime resulted from the child being either trafficked for sexual servitude in violation of Section 16-5-46 or a victim of sexual exploitation as defined in Section 49-5-40.

RELATED STATUTES**O.C.G.A. § 16-5-46 - Trafficking of persons for labor or sexual servitude**

This section provides the definition of sexual servitude as used in O.C.G.A. § 16-3-6.

O.C.G.A. § 35-3-37 - Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection

This statute allows for a petition to limit access to a felony criminal record in instances where a case was dismissed, nolle prosequi, was found guilty of the felony but convicted of a misdemeanor, where a conviction was vacated or reversed by an appellate court, where the case has remained on the dead docket for more than 12 months or where the conviction was as a youthful offender.

HAWAII***SAFE HARBOR STATUTES***

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**HRS § 571-88 - Orders expunging juvenile arrest records**

A juvenile arrest record can be expunged by order of the court upon application by the person or the person's parent or guardian if the person is a minor conditions if the arrest was made pursuant to HRS 571-11 (jurisdiction of Family Court) and the arrest meets the following criteria: 1) the person was not counseled and was released by the police; or 2) the person was counseled and released by the police and the person is now an adult; or 3) the matter was referred to the prosecutor or family court and the person was not adjudicated responsible by the court or the matter was dismissed with prejudice. According to this statute, expunged means a process which the agency establishes in which records are segregated and kept confidential or destroyed.

HRS § 831-3.2 - Expungement orders

This statute applies to persons arrested or charged but not convicted of a crime. The section requires that a written application be filed with the attorney general or the attorney general's authorized representative. The effect of the issuance of the expungement certificate is that the person must be treated as not having been arrested unless otherwise provided for in the section.

HRS § 853-1 - Deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records

This statute applies to any felony or misdemeanor where a defendant voluntarily pleads guilty or nolo contendere before trial, is not likely to engage in a criminal course of conduct again and it serves the ends of justice and the welfare of society. Upon motion, the court can withhold acceptance of the plea and defer further proceedings for a period of time that the court directs. After the completion of the period and assuming compliance with any other terms and conditions established by the court, the court must discharge and dismiss the charge. After one year following the discharge, the defendant can apply for expungement pursuant to section 831.3.2.

HRS § 712-1209.6 - Prostitution; motion to vacate conviction

Any person convicted of prostitution, loitering for the purpose of engaging in or advancing prostitution, street solicitation of prostitution in designated areas or originally charged with such a crime but convicted of a lesser offense can file a motion to vacate the conviction if the participation in the offense resulted from the person being a victim of 1) promoting prostitution in the first degree; or 2) a severe form of trafficking as defined by the Trafficking Victims Protection Act. The motion must be in writing and signed and sworn to by the petitioner, the court must hold a hearing and the petitioner has the burden of proof by a preponderance of the evidence.

RELATED STATUTES**HRS § 706-650.5 - Human trafficking victim services fund**

This statute establishes a human trafficking victim services fund to be used to supplement programs, grants or purchase of service contracts for the support or provision of services to victims of labor trafficking crimes or crimes related to prostitution.

HRS § 663J-3 - Cause of action for coercion into prostitution

This section provides a civil cause of action for coercion into or to remain in prostitution, coercion to collect or receive any earnings derived from prostitution or hired or attempted to hire an individual to engage in prostitution when there would be a reasonable belief that an individual was coerced into prostitution by another.

IDAHO

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Idaho Code § 20-525A - Expungement of record -- Hearing -- Findings necessary -- Special index -- Effect of order (part of the Juvenile Corrections Act)

This statute establishes the criteria for filing a petition for expungement of a record in the case of a juvenile adjudication for a felony or misdemeanor or status offense or in the case of a diversion process or informal adjustment. The statute also lists the offenses for which the juvenile's record cannot be expunged. A hearing on the petition is required.

RELATED STATUTES

Idaho Code § 20-511 - Diversion or informal disposition of the petition (part of the Juvenile Corrections Act)

This statute allows for the prosecutor to request a preliminary inquiry from the probation office to determine whether the interest of the public or the juvenile requires a formal court proceeding. If court action is not required, the prosecutor may utilize the diversion process and refer the case to county probation or a community based diversion program for informal probation and counseling.

ILLINOIS

SAFE HARBOR STATUTES

720 ILCS 5/11-14 - Prostitution

Subsection (d) requires that if the person suspected of or charged with a violation of this statute on prostitution is under 18 years, the person is immune from prosecution for a prostitution offense and is subject to temporary protective custody provisions of 705 ILCS 405/2-5 and 705 ILCS 405/2-6. Any law enforcement officer who takes a person under 18 years into custody for a violation of this statute must immediately make a report to the Department of Children and Family Services. The Department of Children and Family Services conduct an initial investigation into child abuse or neglect within 24 hours.

EXPUNGMENT, SEALING, OR VACATUR STATUTES

20 ILCS 2630/5.2 - Expungement and sealing

This statute sets out the criteria and procedure by which a petitioner can seek to have arrest or criminal records either expunged or sealed.

705 ILCS 405/1-9 - Expungement of law enforcement and juvenile court records (other than delinquency proceedings)

This section allows a person to petition the court to expunge law enforcement records related to incidents occurring before the person's 18th birthday and/or juvenile court records where the minor was placed under supervision and the order of supervision has been terminated successfully. The petition can be filed when the person attains the age of 18 or when all juvenile court proceedings relating to the person have been terminated, whichever is later.

705 ILCS 405/5-915 - Expungement of juvenile law enforcement and court records

This section allows a person to petition the court to expunge law enforcement records relating to incidents occurring before the 18th birthday and/or juvenile court records under the following circumstances: 1) the minor was arrested and no delinquency petition was filed; or 2) the minor was charged but was found not delinquent of the charged offense; or 3) the minor was placed under supervision and the order of supervision was successfully terminated;

or 4) the minor was adjudicated for an offense that would be a Class B or C misdemeanor or would be a petty or business offense if committed by an adult. The section has more specific requirements regarding this process and includes a form to use for the petition.

725 ILCS 5/116-2.1 - Motion to vacate prostitution convictions for sex trafficking victims

This section allows a motion to be filed at any time after the verdict or finding of guilty is entered on a conviction for prostitution or first offender; felony prostitution or any similar local ordinance where the defendant's participation in the offense resulted from being a trafficking victim as defined under Illinois law or under the Trafficking Victims Protection Act. If the court grants the motion, it must vacate the conviction.

RELATED STATUTES

730 ILCS 5/5-9-1.21 - Specialized Services for Survivors of Human Trafficking Fund

This statute establishes a special fund in the State treasury to be available for the purposes of the Department of Human Services and to be used to provide specialized, trauma informed services.

720 ILCS 5/36.5-5 - Vehicle impoundment

720 ILCS 5/36.5-5 provides for impoundment of a vehicle used by a person in the course of certain criminal acts (listed in the statute). The owner can redeem the vehicle for a \$1000 fee, with half of that fee going to the Department of Human Services, who must then distribute it to NGOs that provide services to "persons encountered" during investigations into prostitution and related offenses as long as those persons are "prostituted persons or other victims of human trafficking."

INDIANA

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Title 35 Criminal Law and Procedure, Article 38 Proceedings Following Dismissal, Verdict or Finding, Chapter 9 Sealing and Expunging Conviction Records.

Indiana's statutes relating to sealing and expungement of criminal records are contained within this Chapter and apply to both adult convictions or juvenile adjudications, including records of arrests where there was no conviction or juvenile adjudication or the conviction or adjudication was vacated on appeal.

RELATED STATUTES

Burns Ind. Code Ann. § 5-2-6-3 - Purpose of institute (Indiana Criminal Justice Institute)

This statute requires the Indiana Criminal Justice Institute to administer assistance to victims of human sexual trafficking offenses.

Burns Ind. Code Ann. § 35-42-3.5-2 - Restitution to victim

This statute requires that any person convicted of a violation of Indiana's human trafficking law (IC 35-42-3.5-1) must be ordered to make restitution to the victim in addition to any sentence or fine imposed for the violation.

Burns Ind. Code Ann. § 35-42-3.5-3 - Victim has civil cause of action against person convicted of offense -- Damages recoverable -- Statute of limitations

This section allows a civil cause of action against a person convicted of a violation of Indiana's human trafficking law (IC 35-42-3.5-1) and allows the recovery of actual and punitive damages as well as costs and attorney fees. There is a two year statute of limitations for the civil action which runs from the date the person is convicted of the offense.

Burns Ind. Code Ann. § 35-42-3.5-4 - Additional rights of victim

This section details other rights of a victim of a violation of Indiana's human trafficking law (IC 35-42-3.5-1). These rights include 1) not being detained in a facility inappropriate to a victim's status as a crime victim; 2) prohibiting the victim from being jailed, fined or otherwise penalized due to having been the victim of the offense of human trafficking; and 3) being provided protection if the victim's safety is at risk or if there is danger of harm by recapture by the

person who committed the offense. This third right includes taking measures to protect the victim and the victim's family members from intimidation and threats of reprisals and ensuring that the names and identifying information of the victim and the victim's family members are not disclosed publicly. Law enforcement agencies and the Indiana Criminal Justice Institute are responsible for the administration of these measures.

The statute also provides a process that allows the law enforcement agency to provide the victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons according to 8 CFR 214.11(f)(1).

Burns Ind. Code Ann. § 35-37-4-8 - Taking of child's testimony -- Closed circuit television -- Videotape - Conditions

In a criminal prosecution for a violation of human and sexual trafficking crimes (IC 35-42-3.5), a court may order that the testimony of a protected person be taken via closed circuit television.

IOWA

SAFE HARBOR STATUTES

2014 Ia. ALS 1097 amending Iowa Code § 725.1 Prostitution (signed by governor 7/30/2014 but not yet codified)

The newly enacted section provides that if a person who sells or offers for sale services as a partner in a sex act is under the age of eighteen, the county attorney can refer the person to the department of human services for the filing of a petition as a child in need of assistance. This would be in lieu of filing a petition for delinquency. Additionally, if a person under the age of eighteen is convicted of a violation of 725.1(a) or a similar local ordinance, the person can petition the court to expunge the conviction after two years following the conviction. If the person has had no other convictions other than local traffic violations or simple misdemeanor violations during that two year period, the conviction must be expunged as a matter of law.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Iowa Code § 232.150 - Sealing of records (This statute was amended and was chaptered on June 27, 2014 but the amended version is not yet in the Code. What appears below reflects the 2014 amendment)

This statute provides that with an adjudication of delinquency, the court must schedule a hearing to be held two years after the date of the last official action in the case or the date that the child becomes 18 to seal the records, or a person who was taken into custody for a delinquent act, was the subject of a complaint alleging delinquency or was the subject of a delinquency petition can apply to have the records sealed. The court must order the official juvenile court records sealed following a hearing if: 1) the person is 18 years or older and two years have passed since the last official action in the case; 2) there has been no subsequent conviction of a felony or aggravated or serious misdemeanor or adjudicated as delinquent for an action that would have been a felony, an aggravated misdemeanor or a serious misdemeanor if committed as an adult and there is no such proceeding pending; and 3) the person was not on youthful offender status, transferred back to district court after the youthful offender's eighteenth birth and sentenced for the offense precipitating the youthful offender placement. The statute does provide for a means for sealing the records where a person was adjudicated delinquent for an offense which if committed by an adult would be an aggravated misdemeanor or a felony. Once sealed, the records shall no longer be deemed to exist.

KANSAS***SAFE HARBOR STATUTES*****K.S.A. § 21-6419 - Selling sexual relations**

This section establishes an affirmative defense to any prosecution under this section if the defendant was subjected to human trafficking or aggravated human trafficking (K.S.A. 2013 Supp. 21-5426) or the commercial exploitation of a child (K.S.A. 2013 Supp. 21-6422).

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

K.S.A. § 38-2312, 38-2312c - Expungement of records; docket fee

Upon application to the court and a hearing, any records or files regarding a juvenile can be expunged with the exception of: 1) records or files concerning acts committed by a juvenile which, if committed by an adult would violate any of the enumerated statutes listed in subsection (b) of this statute; or 2) if the offender is required to register as provided in the Kansas offender registration act (K.S.A. 22-4901 et seq). The statute also establishes the criteria for granting the application.

K.S.A. § 21-6614 - Expungement of certain convictions, arrest records and diversion agreements

This section allows for a petition to the convicting court for the expungement of conviction and arrest records related to the list of crimes or classes of crimes contained in Subsection (a)(1). Three or more years must have elapsed since the person either satisfied the sentence imposed or was discharged from probation, a community correctional program, parole, post-release supervision, conditional release or a suspended sentence. Subsection (a)(2) refers to the expungement of diversion agreements. Subsection (b) specifically refers to the expungement of a prostitution conviction or diversion agreement if the offense was committed under coercion caused by the act of another.

RELATED STATUTES

K.S.A. § 38-2231 - Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway

Subsection (b)(3) of this statute requires a law enforcement officer to take a child under 18 years of age into custody when the officer reasonably believes that the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.

K.S.A. § 38-2287 - Child in custody, victim of certain conduct; special assessment to determine safety, placement and treatment needs

This section requires that the court refer a child to the secretary of the department for children and families to assess safety, placement and treatment needs whenever a child is in custody and 1) has been subjected to

human trafficking or aggravated human trafficking; or 2) falls within the commercial sexual exploitation of a child; or 3) the child committed an action which, if committed by an adult would constitute a violation of the statute on selling sexual relations. Further, when any law enforcement officers take a child into custody as provided in K.S.A. 83-2231(b)(3), the officer must contact the department for children and families to begin an assessment to determine safety, placement and treatment needs for the child.

K.S.A. § 75-756 - Authorizing coordination of training regarding human trafficking

This section authorizes the attorney general to coordinate training regarding human trafficking for law enforcement agencies.

K.S.A. § 75-757 - Human trafficking advisory board

This statute establishes the make-up of the human trafficking advisory board.

K.S.A. § 75-758 - Human trafficking victim assistance fund established; expenditures

This section authorizes the establishment of a human trafficking victim assistance fund. All moneys are to be used for training and for care, treatment and other services for victims of human trafficking and commercial sexual exploitation of a child.

KENTUCKY

SAFE HARBOR STATUTES

KRS § 529.120 - Treatment of minor suspected of prostitution offense

This statute provides that a person under the age of 18 shall not be prosecuted for an offense of prostitution or loitering for prostitution. If a law enforcement officer takes a minor into custody for either of these offenses, the officer must immediately report to the Cabinet for Health and Family Services pursuant to KRS 620.030 and may take the minor into protective custody consistent with KRS 620.040. The Cabinet for Health and Family services must start an investigation into child dependency, neglect or abuse.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

KRS § 431.076 - Expungement of criminal records for those found not guilty of crimes or for whom charges have been dismissed with prejudice

This statute requires the filing of a motion after 60 days from the date of the acquittal or dismissal. A hearing is not mandatory. The Court must find that there are no current charges or proceedings pending relating to the matter for which the expungement is sought. The effect of the expungement is that the proceedings in the matter will be deemed to have occurred.

KRS § 431.078 - Expungement of misdemeanor, violation, and traffic infraction records of convictions and dismissed or amended charges

This section allows a person to file a petition for expungement no sooner than five years after the completion of a sentence or after successful completion of probation whichever comes later. The Court must hold a hearing and shall expunge all records if the court finds that the crime was not a sex offense or an offense committed against a child, the person had no previous felony conviction, the person had not been convicted of any other misdemeanor or violation offense in the five years before the conviction, the person had not been convicted of a felony, misdemeanor or a violation since the time of the subject conviction, no proceeding is pending and the offense was an offense against the Commonwealth of Kentucky. The effect of the expungement is that the proceedings in the matter will be deemed to have occurred.

KRS § 529.160 - Expungement of records relating to violation of chapter when person charged or convicted was a victim of human trafficking at time of offense -- Motion -- Finding - Presumption

This section falls under Chapter 529 Prostitution Offenses of Title L Kentucky Penal Code. The statute provides that a person charged or convicted under Chapter 529 or with an offense which is not a violent crime defined in KRS 17.165 where the participation in the offense is determined to be the direct result of being a human trafficking victim, the person can move the court to expunge all records of the offense. The motion can be filed after 60 days from the date of the final judgment. If the court finds that the participation was a direct result of being a trafficking victim, the charges are deemed dismissed with prejudice.

KRS § 610.330 - Expungement of juvenile court records

This section applies to a child who as adjudicated under KRS Chapters 630, 635 or 645, but not under KRS Chapters 620 or 640. The child may petition the court for expungement of the juvenile court record. There is an exception for adjudications involving guilt of an offense which would have been a felony if the offense was committed by an adult. The petition can be filed two years after the date of termination of the court's jurisdiction or after the unconditional release from commitment. The two year period can be waived under extraordinary circumstances. The effect of the expungement is that the proceedings will be deemed to have never occurred.

RELATED STATUTES**KRS § 431.082 - Civil action by victim against defendant -- Damages - Construction**

This statute allows a civil cause of action by a victim of any human trafficking offense. The section allows for the recovery of attorney fees and other costs of litigation even with an award of nominal damages. Punitive damages and compensatory damages can be recovered.

KRS § 630.125 - Child not to be charged with or found guilty of status offense related to human trafficking

This statute only applies to status offenses which are defined in KRS § 600.020 as an action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would NOT be a crime. Status offenses include beyond the control of school or parents, habitual runaway, habitual truant, tobacco offenses or alcohol offenses. KRS § 630.125 provides that a child will not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child.

KRS § 529.140 - Human trafficking victims fund

This section establishes a fund with the Justice and Public Safety Cabinet to be distributed to agencies serving victims of human trafficking.

KRS § 620.029 - Duties of cabinet relating to children who are victims of human trafficking

This section applies to the Cabinet of Health and Family Services and requires the cabinet to investigate a report alleging a child as a victim of human trafficking, provide or insure the provision of appropriate treatment, housing and services and pursue any dependency, neglect or abuse allegations.

LOUISIANA

SAFE HARBOR STATUTES

La. Ch.C. Art. 839 - Availability of an informal adjustment agreement

This section applies to delinquency proceedings and provides that the district or the court can authorize an informal adjustment agreement after the filing of a petition but before the attachment of jeopardy. With the agreement of the district attorney, the court can either dismiss the petition or allow the petition to remain pending during the period of informal adjustment. Where the petition involves the offense of prostitution (R.S. 14:82), prostitution by massage (R.S. 14:83.3 or 83.4) or crimes against nature by solicitation (R.S. 14:89.2) and it is the minor's first offense, the district attorney can initiate an informal adjustment agreement which includes specialized services for the sexually exploited children if the minor expresses a willingness to cooperate. It is within the district attorney's discretion whether to continue with a delinquency proceeding instead of an informal adjustment if the minor has previously been adjudicated delinquent on any charge of prostitution, prostitution by massage or crimes against nature by solicitation or if the minor expresses an unwillingness to cooperate with specialized services. The specialized services can include safe, stable housing, comprehensive on-site case management, mental health and chemical dependency services, including trauma informed care, education and employment training and referrals to off-site specialized services.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Louisiana Children's Code, Title 8. Delinquency. Chapter 18. Expungement

This Chapter contains the sections governing the expungement of delinquency records. La. Ch.C. Art. 918 provides the grounds as follows: 1) where there was no adjudication, the records may be expunged; 2) where there was a misdemeanor adjudication, the records may be expunged if two or

more years have passed since the satisfaction of the judgment; 3) where there was a felony adjudication, the records may be expunged only if the adjudication was not for murder, manslaughter, any sexual crime, kidnapping or armed robbery, five or more years have passed since the satisfaction of the most recent judgment, there is no criminal court felony conviction and not criminal court conviction for a misdemeanor involving a weapon, and the person has no outstanding indictment or bill of information. Subsection D of Art. 918 also provides that any misdemeanor or felony for a violation of prostitution may be expunged upon petition to the court and a showing that the person was a victim of trafficking of children for sexual purposes (RS 14:46.3E) as long as there is no outstanding indictment or bill of information. La. Ch.C. Art. 923 applies to the expungement of adjudications involving human trafficking victims. At any time following an adjudication of delinquency for the offenses of prostitution, prostitution by massage or crime against nature by solicitation, a motion can be filed to set aside an adjudication when the child's participation was a result of having been a victim of human trafficking under R.S. 14:46 or a victim of a severe form of trafficking under the TVPA (22 U.S.C. 7101, et seq). The burden is a preponderance of the evidence, and the motion must be granted if the court finds that the violation was a result of the child having been a victim of human trafficking.

Louisiana code of criminal Procedure, Title 34. Expungement of Records

This title contains the Legislative findings and forms to be used in connection with the expungement of certain arrest and conviction records including the forms to be used (Art. 986 and 987)

2014 La. ACT 145; 2014 La. HB 55 - House Bill No. 55

This legislation was signed by the Governor on May 22, 2014, but the new sections have not yet been codified. The legislation enacted Title 34 of the Code of Criminal Procedure adding Articles 971-995 providing for the expungement of certain criminal records. The new sections include, but are not limited to the following:

Art. 976. Motion to expunge record of arrest that did not result in a conviction

Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor offense

Art. 978. Motion to expunge record of arrest and conviction of a felony offense

RELATED STATUTES

La. R.S. § 46:2163 - Civil cause of action for victims of human trafficking

This section provides a civil cause of action for a trafficking victim for injunctive relief as well as the recovery of actual, compensatory and punitive damages. A prevailing plaintiff can recover attorney fees and costs. If defendant's actions were willful and malicious, plaintiff can recover treble damages where actual damages are proven.

Louisiana Children's Code, Title 6. Child in need of care. Chapter 20. Safe Harbor for Sexually Exploited Children

This Chapter was added in 2013 and includes a section on the Findings and purpose (Art. 725) and a definitional section (Art.215.1) which defines a sexually exploited child as any person under the age of 18 who has been subject to sexual exploitation due to being a victim of trafficking of children for sexual purposes (R.S. 14:46.3) or a victim of child sex trafficking under 18 USC 1591. Art. 725.2 provides for the operation of one or more safe houses to provide safe and secure housing and specialized services for sexually exploited children. Art. 725.3 requires the development of a statewide protocol for the coordination and delivery of services to sexually exploited children and also requires that the court intake officers ensure that all state, federal and community based resources for sexually exploited children are known and available to children who are under an informal adjustment agreement.

MAINE

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

15 M.R.S. § 3308 - Court records; inspection

This section applies to juvenile proceedings and provides for the sealing of records of a person adjudicated to have committed a juvenile crime. A

person may petition the court to seal all records pertaining to the juvenile crime and its disposition and any prior juvenile records and their dispositions if: 1) at least 3 years have elapsed since the person's discharge from the disposition; 2) since the date of disposition, the person has not been adjudicated to have committed a juvenile crime and has not been convicted of committing a crime; and 3) there are no current adjudicatory proceedings pending for a juvenile or other crime. Unless the court finds that the public's right to information substantially outweighs the juvenile's interest in privacy, the court can grant the petition. Once sealed, the person may respond to inquiries (other than the courts and criminal justice agencies) as if the juvenile crimes had never occurred.

RELATED STATUTES

5 M.R.S. § 4701 - Remedies for human trafficking

This section allows a victim of human trafficking to bring a civil action for injunctive relief and actual, compensatory and punitive damages. A prevailing plaintiff is entitled to an award of attorney's fees and costs.

MARYLAND

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 3-8A-27.1 - Expungement of records

This section is specific to juvenile proceedings and allows for a petition for expungement of the juvenile record. The statute provides 9 specific criteria that the court must consider in ordering the record expunged.

Md. CRIMINAL PROCEDURE Code Ann. § 8-302 - Motion to vacate judgment for acts of prostitution committed under duress

This section allows a person convicted of prostitution to file a motion to vacate the judgment if, when the person committed the act of prostitution the person was under duress by another in violation of the prohibition against human trafficking under Section 11-303.

**Md. CRIMINAL PROCEDURE, Title 10. Criminal Records. Subtitle 1.
Expungement of Police and Court Records**

This Subtitle contains the requirements for expungement of police and criminal court records.

10-103 - Expungement of police record when no charge is filed

10-103.1. Expungement of police records after release without charge.

10-104. Expungement on nolle prosequi before service

10-105. Expungement of record after charge is filed

10-106. Expungement of criminal charge transferred to juvenile court

RELATED STATUTES

Md. STATE GOVERNMENT, Title 7. Secretary of State. Subtitle 3. Human Trafficking Address Confidentiality Program

This subtitle provides a means for a victim of human trafficking to maintain confidentiality with respect to the victim's contact information and protect that information from public record access.

MASSACHUSETTS

SAFE HARBOR STATUTES

ALM GL ch. 119, § 39L - Sexually Exploited Children -- Safeguarding Welfare During Criminal Proceedings

This section provides that in any juvenile delinquency or criminal proceeding against a sexually exploited child (see ALM GL ch. 119, § 21 - Definitions Applicable to §§ 21 to 55H) for a violation of the prohibition against common night walking or common streetwalking or engaging in sexual conduct for a fee, a presumption is raised that a care and protection petition or a child in need of services petition shall be filed on behalf of the child. The Court can delay proceedings, including arraignment, to consider the petition. Upon a finding that the child is in need of care and protection or in need of services:

1. the Court must indefinitely stay the arraignment, if it has not already occurred, and place the proceedings on file. If the child does not substantially comply with the provision of services, the Court can remove the proceeding from file, arraign the child and restore the delinquency or criminal complaint;
2. If arraignment has already occurred, the court must place the child on pretrial probation under Chapter 276, Section 87 which can require that the child comply with orders regarding the provision of services. If the child fails to substantially comply with services, the Court can restore the delinquency or criminal complaint for further proceedings.

ALM GL ch. 265, § 57 - Human Trafficking -- Victims Accused of Common Night Walking or Streetwalking -- Affirmative Defense

This statute allows for an affirmative defense to charges of engaging in common night walking or common streetwalking in any prosecution or juvenile delinquency proceeding if the offense was committed while a human trafficking victim and the person was under duress or coerced into committing the offense.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

ALM GL ch. 276, § 100A - Sealing of Certain Criminal Record Files by Commissioner of Probation; Conditions; Exceptions; Effect

Any person that has a record of criminal court appearances and dispositions on file with the office of commissioner of probation may request that the commissioner seal the file. The commissioner must seal the file if: 1) the court appearance and disposition occurred not less than 5 years prior to the request for any misdemeanor; 2) the court appearance and disposition occurred not less than ten years prior to the request for any felony; 3) the person had not been found guilty of any criminal offense within five years prior and for a felony within ten years prior; 4) the person has had no convictions or had not been in prison in any other state or federal jurisdiction for a misdemeanor within five years and a felony within ten years, except for motor vehicle offenses; 5) the record does not include convictions of offenses detailed in Chapter 140, sections 121 to 131H, Chapter 140, Chapter 268 or Chapter 268A.

ALM GL ch. 276, § 100B - Sealing of Certain Juvenile Record Files; Conditions; Effect

Any record of entries of a delinquency court appearance on file in the office of the commissioner of probation must be sealed upon request if 1) any court or appearance or disposition related to the records to be sealed terminated not less than three years prior to the request; 2) that the person had not been adjudicated delinquent or found guilty of any criminal offense within the three years prior to the request, except for motor vehicle offenses within a certain threshold and 3) the person has not been adjudicated delinquent or found guilty of any criminal offense in any other state or federal jurisdiction, except for motor vehicle offenses under the threshold. If the records of delinquency appearances and dispositions are sealed by the commissioner, the commissioner must notify the clerk, probation officer of the courts and the department of youth services and the records with those entities must also be sealed.

ALM GL ch. 276, § 100C - Sealing of Certain Criminal Records; Effect

This statute provides for the sealing of criminal records when a defendant has been found not guilty, a no bill has been returned, a finding of no probable cause has been made or a nolle prosequi or a dismissal has been entered. If the records are sealed, an applicant for employment can respond that there is no record.

RELATED STATUTES

ALM GL ch. 119, § 21 - Definitions Applicable to §§ 21 to 55H (Chapter 119 Protection and Care of Children, and Proceedings Against Them)

Sexually exploited child is defined as any person under the age of 18 who has been subject to sexual exploitation because of being the victim of the crime of sexual servitude under Chapter 265, Section 50 or the crime of sex trafficking under 22 USC 7105. The definition also includes a person under the age of 18 who engages or agrees or offers to engage in sexual conduct with another person in return for a fee, food shelter, clothing, educate or care or engages in common night walking or streetwalking.

ALM GL ch. 119, § 39K - Sexually Exploited Children -- Child Welfare Services

This section requires the department of children and families to provide for the child welfare services needs of sexually exploited children and provide appropriate services to a child reasonably believed to be a sexually exploited child. Sexually exploited children shall also have access to an advocate. Either the advocate or a member of a multidisciplinary service team must accompany the child to all court appearances and may serve as a liaison between the service providers and the court.

ALM GL ch. 260, § 4D - Actions by Victims of Sexual Servitude, or Forced Labor or Services

This statute provides for a civil action for trafficking of persons for forced labor or services or sexual servitude. The victim can recover actual, compensatory or punitive damages, injunctive relief or any other appropriate relief along with attorney fees and costs. On proof of actual damages, if the defendant's acts were willful and malicious, treble damages may be awarded.

MICHIGAN

SAFE HARBOR STATUTES

MCLS § 750.451 - Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition. [Effective until January 14, 2015]

This statute allows a rebuttable presumption in the prosecution of a person under 18 years of age for violation of MCLS 750.448 (Soliciting, accosting or inviting to commit prostitution), MCLS 750.449 (Admitting to place for purpose of prostitution), MCLS 750.449a (Engaging services for purpose of prostitution), MCLS (aider and abettor to 750.448 or 750.449) and MCLS 750.462 (Female 16 years of age or less in house of prostitution). The person under 18 years of age is presumed that the person was coerced into child sexually abusive activity or commercial sexual activity in violation of 462e or otherwise forced or coerced into committing the offense by a person engaged in human trafficking. The prosecution can overcome this presumption by proving beyond a reasonable doubt that the person was not forced or coerced into committing the offense. The prosecution can also petition the court to find the person to be dependent and in danger of substantial physical or psychological harm.

A law enforcement officer encountering a person under 18 years of age engaging in any conduct violating the enumerated statutes or substantially similar local ordinance must immediately report to the department of human services a suspected violation of human trafficking. The department of human services must begin an investigation of a human trafficking violation within 24 hours after the report and must determine if the person is dependent and in danger of substantial physical or psychological harm.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

MCLS § 712A.18e - Application for entry of order setting aside adjudication

With certain exceptions, a person who has been adjudicated of no more than 1 juvenile offense that would be a felony if committed by an adult, and not more than 3 juvenile offenses of which no more than one that would be a felony if committed by an adult can file an application with the adjudicating court for the entry of an order setting aside the adjudications. The application cannot be filed until one year after the disposition of the adjudication.

MCLS § 780.621 - Application for order setting aside conviction; setting aside of certain convictions prohibited; time and contents of application [Effective January 14, 2015]

This statute provides that a person convicted of not more than one offense, certain crimes excluded, can file an application for an order setting aside the conviction. The application cannot be filed until at least five years following the imposition of the sentence or five years following completion of any term of imprisonment for that conviction. Subsection (3) provides that a person convicted of a violation of MCLS 750.448, 750.449 or 750.450 can apply to have the conviction set aside if the offense was committed as a direct result of being a victim of human trafficking. The setting aside of the conviction shall have the effect of the conviction not having occurred with the exception of the sex offenders registration act.

RELATED STATUTES

Chapter 722 - Children, Act 13 of 1988 Juvenile Diversion Act

This Chapter of the Michigan Statutes was enacted to permit certain minors to be diverted from the court system having jurisdiction over minors and to

establish diversion criteria and procedures. This act is not specific to trafficking victims.

MCLS § 722.822 - Definitions

Under the diversion act, minor is defined as an individual less than 17 years of age.

MCLS § 722.823 - Powers of law enforcement official or court intake worker where petition not filed or authorized; diversion of minor

If a petition has not yet been authorized, a law enforcement official or a court intake worker can: 1) Release the minor and discontinue the investigation; 2) divert the matter by making an agreement provided for under this Chapter; or 3) file a petition or authorize a petition that has been filed. Diversion is not available to a minor charged with an assaultive offense.

MCLS § 722.828 - Opening record; destruction of record

The record kept under the diversion act must be destroyed within 28 days after the minor turns 17 years of age.

MCLS § 750.451c - Individual as victim of human trafficking violation; applicability of subsection (2); deferred proceedings; duties of court; violation of term or condition of probation; adjudication of guilt; circumstances; discharge and dismissal; proceedings open to public; record; nonpublic record; "human trafficking violation" defined. [Effective January 14, 2015]

This section applies to any person who pleads guilty or is found guilty of violations of MCLS 750.448, 449, 450 or 462 or a substantially similar local ordinance and the violation was the direct result of the person being a victim of human trafficking. With the agreement of the accused and the prosecuting attorney, the court can defer further proceedings without entering a judgment of guilt and place the accused on probation after following the steps enumerated in the statute. The accused bears the burden of proof by a preponderance of evidence that the violation was a direct result of being a victim of human trafficking. After fulfillment of the terms and conditions, the court must discharge the person and dismiss the proceedings which shall be without adjudication of guilt and not considered to be a conviction.

MINNESOTA

SAFE HARBOR STATUTES

Minn. Stat. § 145.4716 - SAFE HARBOR FOR SEXUALLY EXPLOITED YOUTH

This statute authorizes the commissioner of health to set a position for a director of child sex trafficking prevention who is responsible for, among other things, developing and providing training, compiling and sharing information on sexual exploitation and services statewide and conducting a comprehensive evaluation of the statewide program for safe harbor of sexually exploited youth. Sexually exploited youth is defined in Minn. Stat. § 260C.007 and includes, but is not limited to, a sex trafficking victim and an individual who is alleged to have engaged in conduct which would violate statutes or ordinances regarding offering sexual services for hire. Sections 145.4717 requires the Commissioner to provide grants for navigators of six regions of the state. The regional navigator must develop a work plan that contains a needs statement, regional resources available and grant goals. Section 145.4718 145.4718 requires the director of child sex trafficking prevention to conduct an evaluation of the state program for safe harbor for sexually exploited youth, the first of which must be completed by June 30, 2015 and then every two years thereafter.

Minn. Stat. § 609.325 - DEFENSES

This section is not specific to minors; however, Subdivision 4 provides an affirmative defense to a charge under 609.3243 (LOITERING WITH INTENT TO PARTICIPATE IN PROSTITUTION) if the defendant can prove by a preponderance of the evidence that he or she is a labor trafficking victim or a sex trafficking victim. The defendant must also prove that the act was committed under compulsion by explicit or implicit threats which created a reasonable apprehension that the person would inflict bodily harm upon the defendant if he or she did not commit the offense.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Minn. Stat. § 260B.198 - DISPOSITIONS; DELINQUENT CHILD [Effective Jan. 1, 2015]

Subdivision 6 of this statute allows the court to expunge all records relating to delinquency at any time if the court determines that the benefit of expungement would outweigh the detriment to the public and public safety in

sealing the record. A record expunged under the subdivision is considered sealed and can only be accessed by criminal justice agencies. The subdivision details a series of factors for the court to consider in deciding whether to expunge a delinquency record.

Minn. Stat. § 609A.01, et seq. - Crimes, Criminals, Chapter 609A, Expungement

This chapter provides the grounds and procedures for expungement of criminal records. The statutes allow sealing of the records and prohibiting the disclosure of their existence but it does not authorize destruction of the records.

Minn. Stat. § 609A.02 establishes the grounds for an order of expungement or sealing. Subdivision 2 is specific to juveniles prosecuted as adults and allows a petition for sealing the conviction record if the person is finally discharged by the commissioner or has been placed on probation under section 609.135 and has been discharged after satisfactory fulfillment of probation. Minn. Stat. § 609A.03 details the requirements for the contents and filing of the petition for sealing.

RELATED STATUTES

Minn. Stat. § 260B.141 - PETITION

This statute provides for the filing of a petition of delinquency. Subdivision 5 of this sections requires the county attorney to determine whether concurrent jurisdiction is necessary to provide appropriate intervention for a child alleged to have engaged in prostitution. If it is determined that intervention is necessary, the county attorney must file a petition alleging the child to be both delinquent and in need of protection or services.

Minn. Stat. § 299A.71 - COMBATING JUVENILE PROSTITUTION; PREVENTION GRANTS

This statute establishes a grant program to enhance law enforcement efforts and education and training to combat juvenile prostitution. The goal is to equip law enforcement officers with the knowledge and skills to recognize individuals who sexually exploit youth.

Minn. Stat. § 299A.785 - TRAFFICKING STUDY

Provides for the collaboration of government and nongovernmental agencies and organizations in the collection of trafficking data.

Minn. Stat. § 609.3232 - PROTECTIVE ORDER AUTHORIZED; PROCEDURES; PENALTIES

This statute allows a parent or guardian who knows or believes that a person is inducing, coercing, soliciting or promoting the prostitution of the parent or guardian's minor child can seek an order for protection pursuant to this section.

2014 Minn. Chapter Law 156

This appropriations act authorizes \$500,000 in fiscal year 2014 and again in 2015 for safe harbor shelter and housing and supportive services for sexually exploited youth.

MISSISSIPPI***SAFE HARBOR STATUTES*****Miss. Code Ann. § 97-3-54.1-Human Trafficking Act; prohibited conduct; penalty**

Subsection (5) provides an affirmative defense to prosecution under the Human Trafficking act to victims who are subjected to a reasonable apprehension of serious harm to themselves, a member of their family, or a close associate.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Mississippi uses the term expunction; Mississippi currently has no statute to provide for expungement of offenses committed as an adult

Mississippi Code, Title 43 Public Welfare Chapter 21 Youth Court Records, Miss. Code Ann. § 43-21-251, et seq

Miss. Code Ann. § 43-21-255-Law enforcement records; Miss. Code Ann. § 43-21-257- Agency records; Miss. Code Ann. § 43-21-259-Confidentiality of other records involving children

These sections all fall under Title 43 Public Welfare, Chapter 21 Youth Court Records and mandate confidentiality for specific records that pertain to children.

Miss. Code Ann. § 43-21-261-Disclosure of records

Court records remain confidential with limited exceptions.

Miss. Code Ann. § 43-21-263-Sealing of records

This section permits the youth court to seal juvenile records under one the following circumstances: 1) the person has attained 20 years of age; or 2) the youth court has dismissed the matter; or 3) the youth court set aside the adjudication.

Miss. Code Ann. § 43-21-265-Destruction of records

This section permits the youth court to order the destruction of juvenile records in its discretion.

Miss. Code Ann. § 43-21-267-Penalty for violation

This section makes it a misdemeanor to disclose youth court records without authorization.

Miss. Code Ann. § 97-3-54.6-Human Trafficking Act; injunctive and other relief for victims of trafficking; confidentiality

Subsection (5) of this section allows the court to vacate a conviction if the court finds that participation in the offense was as a result of being a victim of trafficking.

RELATED STATUTES

Miss. Code Ann. § 97-3-54, et seq.-Human Trafficking Act

Human Trafficking Act, Miss. Code Ann. § 97-3-54 through 97-3-54.9 outlaws human trafficking, provides for a human trafficking coordinator and programs to protect and assist trafficking victims.

MISSOURI

SAFE HARBOR STATUTES

No Safe Harbor statutes specific to minors. However, see the following section which applies to prosecutions for the offense of prostitution.

566.223 R.S.Mo- Federal Trafficking Victims Protection Act of 2000 to apply, when -- affirmative defense -- procedures to identify victims, training on protocols

This section provides any individual alleging a violation of Trafficking Offenses, Sections 566.200 through 566.221, all of the rights and protections afforded under the Federal Trafficking Victims Protection Act. Subsection (2) of this statute also provides for an affirmative defense for the offense of prostitution under 567.020 R.S. Mo. that the conduct charged as a result of coercion, threat or unlawful physical force upon the person or a third person sufficient that the person would have been unable to resist.

See Miscellaneous and Related Statutes discussion below regarding additional provisions in this statute.

This section also provides for procedures to identify victims of trafficking. Any law enforcement agency which encounters a person who reasonably appears to be a victim of trafficking, must notify the department of social services and juvenile justice authorities so that the appropriate agencies can determine if the person is eligible for state or federal services, programs or assistance.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**211.321 R.S. Mo-Juvenile court records, confidentiality, exceptions -- records of peace officers, exceptions, release of certain information to victim**

This section provides that records of juvenile court proceedings and all information obtained or social records prepared must not be open to inspection or disclosure except by court order. The exception would be if the offense charged would be a class A felony or capital murder, first degree murder or second degree murder if committed by an adult.

610.105 R.S.Mo-Effect of nolle pros -- dismissal -- sentence suspended on record -- not guilty due to mental disease or defect, effect -- official records available to victim in certain cases

This section applies in circumstances where a person is charged after an arrest but the case is nolle prosequi, dismissed, the accused is found not guilty or imposition of a sentence is suspended. Under these circumstances, the official records pertaining to the case shall be closed records once the case is finally terminated.

610.122 R.S.Mo.-Arrest record expunged, requirements

This section allows for the expungement of any record of arrest if the court determines that the arrest was based on false information and other specified conditions exist or the court determines that the person was arrested or charged with a misdemeanor offense of chapter 303 or a moving violation and certain other conditions are met.

610.123 R.S.Mo.-Procedure to expunge, supreme court to promulgate rules -- similar to small claims

This section requires that a verified petition be filed requesting that a record of arrest be expunged. The section details the specific information which must be included in the petition. The court is required to hold a hearing on the petition.

RELATED STATUTES

211.081 R.S.Mo-Preliminary inquiry as to institution of proceedings

This section requires the Juvenile Court to make a preliminary inquiry to determine whether further action should be taken with respect to a juvenile based on whether or not the interests of the public or of the child require further action. The court is authorized to make an informal adjustment without a petition or may also authorize the filing of a petition.

566.223 R.S.Mo- Federal Trafficking Victims Protection Act of 2000 to apply, when -- affirmative defense -- procedures to identify victims, training on protocols

See discussion in Safe Harbor Statutes above regarding affirmative defense provided to charge of prostitution.

This section also provides for procedures to identify victims of trafficking. Any law enforcement agency which encounters a person who reasonably appears to be a victim of trafficking, must notify the department of social services and juvenile justice authorities so that the appropriate agencies can determine if the person is eligible for state or federal services, programs or assistance. The statute authorizes the department of social services to coordinate with state, federal and local agencies to implement programs and services for confirmed victims.

The section allows a victim to initiate a civil action against a person who has plead guilty or is found guilty of a violation of the criminal trafficking statutes to recover actual damages, court costs, reasonable attorney fees and punitive damages. The attorney general is also authorized to bring a civil action to recover from any person benefiting from the trafficking a penalty of no more than \$50,000 for each violation of the criminal trafficking statutes which must be used to pay restitution to the victims of the trafficking.

MONTANA

SAFE HARBOR STATUTES

Montana does not have a safe harbor statute to protect juveniles who have been trafficked into providing sexual services.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

41-5-216, MCA - Disposition of youth court, law enforcement, and department records -- sharing and access to records

This section requires physical sealing of juvenile records once the juvenile reaches his or her 18th birthday. If the court's jurisdiction is extended beyond the 18th birthday, then the records must be sealed upon termination of the extended jurisdiction. Also see Mont. Admin. R. 23.12.204

46-18-608, MCA-Motion to vacate prostitution conviction -- trafficking victims

A person can move the court to vacate a conviction of the offense of prostitution under 45-5-601, MCA, and the court can vacate the conviction if it is found that the participation in the offense was a result of having been a victim of trafficking under 45-5-306 or under the federal Trafficking Victims Protection Act.

46-23-510, MCA-Expungement of records on reversal of conviction.

Sexual or violent offenders shall have their records expunged if the offender has his or her sentence finally reversed.

NEBRASKA

SAFE HARBOR STATUTES

R.R.S. Neb. § 28.801 – Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties

Prostitution is a criminal offense as a class I or class II misdemeanor with certain exceptions. § 28.801(3) provides it is an affirmative defense to a prostitution charge that the person charged is a trafficking victim as defined in R.R.S. Neb. 28-830. § 28.801(5) provides that if the person charged is a person under eighteen years of age, the offender is immune and is subject to temporary custody and further disposition under the Nebraska Juvenile Code. The law enforcement officer shall immediately report an allegation of human, labor or sex trafficking of a minor in violation of R.R.S. Neb. § 28.831 to the Department of Health and Human Services.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

R.R.S. Neb. § 43-2,108.01 through R.R.S. Neb. § 43-2,108.05

These sections provide for the sealing and confidentiality of certain juvenile court reports and records and specify the notices, scope and eligibility for sealing of juvenile records.

RELATED STATUTES

R.R.S. Neb. § 81-1430- Task force; established; members; terms; duties; quorum; report; Department of Labor; posters

Task force established to investigate, study and recommend prevention and rehabilitative services.

R.R.S. Neb. § 81-1431- Training regarding issues in human trafficking; task force; duties

This section mandates training on issues in human trafficking for all law enforcement and criminal justice personnel.

NEVADA

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

**Title 5 Procedure in Juvenile Cases Chapter 62H Records Related to Children
Sealing and Unsealing of Records, Nev. Rev. Stat. Ann. Chapter 62H.100, et seq.**

These sections provide the requirements and procedures regarding the sealing of Juvenile Court records.

Nev. Rev. Stat. Ann. § 176.515-Court may grant new trial or motion to vacate judgment in certain circumstances

This section allows a court to grant a motion to vacate a judgment if the judgment is a conviction for engaging in prostitution or solicitation for prostitution and the participation of the defendant was the result of being a victim of trafficking under the Trafficking Victims Protection Act or involuntary servitude under NRS 200.463 or 200.4631.

Title 14 Procedure in Criminal Cases Chapter 179 Special Proceedings of a Criminal Nature; Sealing Records of Criminal Proceedings, Nev. Rev. Stat. Ann.179.241, et seq.

These sections provide the requirements and procedures regarding the sealing of records of criminal proceedings for Nevada.

RELATED STATUTES**Nev. Rev. Stat. Ann. § 201.351- Forfeiture of assets; temporary restraining order to preserve property subject to forfeiture; use of proceeds derived from forfeiture**

This section provides for forfeiture of any assets related to or derived from prostitution, pandering or sex trafficking. Assets forfeited are to be used for programs to prevent child prostitution or to fund victim services.

Nev. Rev. Stat. Ann. § 217.070-"Victim" defined

This section defines a victim for the purposes of compensation for certain victims of criminal acts, Nev. Rev. Stat. Ann. § 217.070(2) includes a minor involved in production of pornography, Nev. Rev. Stat. Ann. § 217.070 (8) includes a person who is trafficked in violation of Nev. Rev. Stat. Ann. § 201.300.

Nev. Rev. Stat. Ann. § 217.105-Confidentiality of information

This section imposes confidentiality on information received while investigating a victim's compensation claim.

Nev. Rev. Stat. Ann. § 217.400-Definitions

Subsection (7) of this section defines a victim of human trafficking as a victim for purposes of assistance to victims of domestic violence.

Nev. Rev. Stat. Ann. § 217.462- Fictitious address for victim of domestic violence, human trafficking, sexual assault or stalking: Eligibility; Application to Secretary of State; penalty for providing false information.

This section provides for a fictitious address for victims of human trafficking under the Assistance to Victims of Domestic Violence statutes.

NEW HAMPSHIRE

SAFE HARBOR STATUTES

RSA 645:2-Prostitution and Related Offenses

Subsection V under this section provides that a person under 18 years of age cannot be the subject of a juvenile delinquency proceeding under RSA 169-B:1 or a criminal prosecution for a violation of subsection I(a) involving sexual contact or sexual penetration. Further, subsection IV allows an affirmative defense to a charge under subsection I(a) based on the defendant having engaged in the conduct as a result of being a trafficking victim.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

RSA 169-B:35-Juvenile Case and Court Records

This section provides that all juvenile case and court records are to be kept separate and closed to the public, except for RSA 169-B:36, Access is strictly limited to specific persons, including parents and guardians. Once child reaches age of 21, files are to be closed and placed in inactive files. RSA 169-B:35 III (a) and (b) authorizes police and prosecutors of criminal acts to access juvenile records of individuals and witnesses. RSA 169-B:35 III (d) requires the department of safety to provide registration information for juveniles required to register as sexual offenders or offenders against children, but the information is not to be made available to the general public per RSA 651-B:7. There are 2 versions of RSA 169-B:35, one is effective until July 1, 2015, the second goes into effect as of July 1, 2015.

RSA 169-B:37-Publication of Delinquency Restricted.

This statute restricts the publication or broadcast of the name of a delinquent juvenile charged with an offense. RSA 169-B:37 II provides an exception where the juvenile has escaped and there is an imminent threat to public safety.

RSA 633:7-Trafficking in Persons

Subsection VI(b) allows a person convicted of indecent exposure or lewdness or prostitution or related offenses to file a motion to vacate the conviction. The court must hold a hearing and can grant the motion where there is clear and convincing evidence that the defendant's participation in the offense was the direct result of being trafficked. No official document is required but such documentation will create a presumption that the participation in the offense was the direct result of being trafficked.

RSA 651:5-Annulment of Criminal Records

This section provides for the annulment of a record of arrest, conviction and sentence of any person after filing a petition consistent with the requirements set out in this statute. The petitioner must have completed the terms and conditions of the sentence and not have been convicted of another crime according to the time schedule set out in the statute. This statute also applies to persons whose arrest resulted in a finding of not guilty, a dismissed case or a nolle prosequi.

RELATED STATUTES**RSA 169-B:10-Juvenile Diversion**

This section provides for a juvenile diversion program that allows an arresting agency or prosecutor to screen a petition for diversion to determine if it is an appropriate option prior to seeking court involvement.

RSA 169-B:35 provides all juvenile case and court records are to be kept separate and closed to the public, except for RSA 169-B:36, Access is strictly limited to specific persons, including parents and guardians. Once child reaches age of 21, files are to be closed and placed in inactive files. RSA 169-B:35 III (a) and (b) authorizes police and prosecutors of criminal acts to access juvenile records of individuals and witnesses. RSA 169-B:35 III (d) requires the department of safety to provide registration information for juveniles required

to register as sexual offenders or offenders against children, but the information is not to be made available to the general public per RSA 651-B:7.

There are 2 versions of RSA 169-B:35, one is effective until July 1, 2015, the second goes into effect as of July 1, 2015.

NEW JERSEY

SAFE HARBOR STATUTES

2C:34-1- Prostitution and Related Offenses(not specific to only juveniles)

N.J. Stat. § 2C:34-1 (e) provides that it is an affirmative defense to prostitution if one was a victim of human trafficking as defined under N.J. Stat. § 2C:13-8 or compelled by another to engage in sexual activity regardless of the defendant's age.

N.J. Stat. § 2A:4A-71-Review and processing of complaints

This section requires that every complaint in the juvenile justice system must be reviewed by court intake services for recommendation as to whether to dismiss, divert or refer for court action. Subsection (b) provides factors that court intake services should consider in making a determination to recommend diversion. Subsection (b)(11) provides for consideration of any information relevant to the offense when the juvenile is charged with prostitution or any offense which the juvenile alleges is related to being a victim of trafficking.

N.J. Stat. § 2A:4A-74-Court intake service conference

If a juvenile is diverted to a court intake services conference, this statute provides factors to be considered in determining the appropriate resolution of a complaint. Subsection b(12) allows consideration of any information relevant to the offense where the juvenile is charged with an act of prostitution or alleges that the offense is related to being a victim of human trafficking.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

N.J. Stat. § 2A:4A-62-Sealing of records

A person who has been the subject of a complaint in the juvenile justice system can file a motion for the court to vacate its order and order nondisclosure of social, medical, psychological, legal and other records of the court, probation services and records of law enforcement. The court can vacate the order and order nondisclosure if: 1) two years have elapsed since the final discharge from legal custody or supervision or other order of the court if no custody or supervision; and 2) there has been no other conviction or a crime or offense during the two years prior to the motion.

N.J. Stat. § 2C:44-1.1-Certain convictions vacated, expunged

This statute provides that any person convicted of prostitution or related offense or loitering for the purpose of engaging in prostitution, or any similar local ordinance, can apply to the Superior Court to have the conviction vacated at any time after the entry of the judgment of conviction when the person's participation in the offense was a result of having been a victim of trafficking. The person can also seek expungement of any reference to the arrest, conviction any any proceeding for prostitution in any court or law enforcement records.

Title 2C The New Jersey Code of Criminal Justice Subtitle 3 Sentencing Chapter 52 Expungement, N.J. Stat. § 2C:52-1, et seq.

These statutes provide the general requirements and procedures governing the expungement of criminal justice records.

N.J. Stat. § 2C:52-4.1- Juvenile delinquent; expungement of adjudications and charges

This section provides that any person adjudged a juvenile delinquent can have the adjudication expunged if 1) five years have elapsed since the final discharge from custody or supervision or five years after the court order if not custody or supervision; 2) there has been no conviction of a crime or offense or been adjudged delinquent or in need of supervision during the five years prior to the petition; 3) there is no adjudication on the basis of an act which if committed by an adult would not be subject to expungement; 4) there is no adult conviction expunged; and 5) there are no adult criminal charges dismissed following completion or a supervisory or diversion program.

Further any person charged with an act of delinquency where the charges were dismissed may have the charges expunged.

RELATED STATUTES

N.J. Stat. § 2A:4A-21-Purposes

§ 2A:4A-21 (g) states one purpose of the act is to protect sexually exploited juveniles or juveniles who are victims of human trafficking.

N.J. Stat. § 2A:84A-32.4- Prosecutions or actions for sexual assault, criminal sexual contact, human trafficking, child abuse or neglect; closed circuit testimony for minor

This statute provides on motion in human trafficking cases, if child is 16 years of age or younger, child may testify on closed circuit television.

N.J. Stat. § 2C:13-8-Human trafficking

This section criminalizes human trafficking, and it is an affirmative defense to the crime that the defendant was himself or herself a victim of human trafficking

N.J. Stat. § 2C:13-8.1-Civil action permitted by injured person

This section permits a civil action to be brought by any injured person against an actor who committed a human trafficking offense. In addition to damages, the court can award attorney's fees and costs. A criminal prosecution is not a prerequisite for the civil action, but a final judgment rendered in favor of the prosecution in a criminal proceeding estops the defendant from denying the conduct a civil action.

N.J. Stat. § 52:4B-44.1-Establishment of standard protocols for provision of information and services to victims of human trafficking, minors charged with prostitution

This section requires the Attorney General to coordinate the establishment of standard protocols for the delivery of information and services to victims of human trafficking and minors under the age of 18 who are charged with prostitution.

N.J. Stat. § 52:17B-238-"Human Trafficking Survivor's Assistance Fund"

This section establishes a dedicated fund to be administered by the Attorney General or the provision of services to victims of human trafficking, to promote awareness and to develop and distribute training on human trafficking.

NEW MEXICO

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

NMSA 30-52-1.2-Sealing of records of human trafficking victims

Victims of human trafficking who have been charged with crimes arising from the actions of someone charged with human trafficking may have all legal and law enforcement records of the charges and convictions sealed if the court finds that 1) the petitioner is the victim of human trafficking; 2) the charge or conviction is for a non-homicide crime; and 3) the petitioner's involvement in the offense was due to duress, coercion, use of force, threat to or fraud committed against the petitioner by a person who has committed human trafficking involving the petitioner.

N.M. Stat. Ann. § 32A-2-26-Sealing of records

This statute applies specifically to persons who have been the subject of a delinquency petition and allows for the vacating of the court's findings, orders and judgments on a delinquency petition and also provides that the legal and social files and records of the court, probation and any other agency in the case be sealed. The statute sets out other requirements which must be met for this action to be taken.

RELATED STATUTES

NMSA 30-52-1- Human trafficking

New Mexico has criminalized human trafficking under Chapter 30, Article 52 of its statutes. Under the statutes, human trafficking consists of a person knowingly: 1) recruiting, soliciting, enticing, transporting or obtaining by any

means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, service or commercial activity; 2) recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or 3) benefitting financially by or receiving anything of value from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, service or commercial sexual activity.

N.M. Stat. Ann. § 30-52-1.1-Human trafficking; civil remedy for human trafficking victims

New Mexico also provides for civil remedies for victims for the recovery of actual, compensatory or punitive damages and injunctive relief. Treble damages can be awarded if the court finds that the defendant acted willfully and maliciously. If plaintiff prevails, attorney fees and costs can also be recovered.

N.M. Stat. Ann. § 30-52-2-Human trafficking; benefits and services for human trafficking victims

This statute allows for benefits and services from the state to be available to victims of trafficking until the victim qualifies for benefits and services under the Victims of Trafficking and Violence Protection Act of 2000 as long as the victim cooperates with the investigation and prosecution of the person charged with the crime of human trafficking. The statute also requires the assignment of a human trafficking advocate immediately upon identification by law enforcement of a human trafficking victim.

Other Laws Relating to Minor Victims

While there is no specific safe harbor statute, the human trafficking statute does provide that a human trafficking victim shall not be charged with accessory to the crime of human trafficking. NMSA 30-52-1(E). Also, the New Mexico statute concerning filing of a delinquency complaint sets forth a procedure which allows for referral to another agency and conditions, adjustments or agreements which may result in the dismissal of a delinquency complaint or obviate the necessity for filing a delinquency petition. NMSA 32A-2-7. The children's court attorney must also determine and endorse that the filing of the petition is in the best interest of the public and the child. NMSA 32A-2-8.

NEW YORK

SAFE HARBOR STATUTES

NY CLS Soc Serv 447-a, et seq (Safe Harbor for Exploited Children Act)

New York has a specific safe harbor law relating to sexually exploited children, defined as any person under the age of eighteen who has been subject to sexual exploitation because he or she: 1) is the victim of the crime of sex trafficking as defined in Penal Law 230.34; 2) engages in any act as defined in section 230.00 of the penal law (prostitution); 3) is the victim of the crime of compelling prostitution as defined by Penal Law 230.33; or 4) engages in acts or conduct described in article 263 (sexual performance by a child) or section 240.37 of the penal law (loitering for the purpose of engaging in a prostitution offense). NY CLS Soc Serv 447-a, et seq. However, the safe harbor statute provides exclusively for services to be provided to the child. NY CLS Soc Serv 442-b.

NY CLS Soc Serv 483-bb, 483-dd

New York provides for services to be provided to victims of human trafficking generally. NY CLS Soc Serv 483-bb, 483-dd.

NY CLS Family Ct Act § 311.4-Substitution of petition or finding

This statute provides that in any juvenile delinquency proceeding based on an arrest for an act of prostitution, there is a presumption that the juvenile meets the criteria as a victim of a serve form of trafficking. Upon the motion of the juvenile under these circumstances, a delinquency petition must be substituted with a petition alleging that the juvenile is in need of supervision. There are exception where the juvenile has been previously adjudicated as a juvenile delinquent for a crime under Article 230 of the Penal Law, if the respondent is an adult or has expressed an unwillingness to cooperate with specialized services for sexually exploited youth. The Court then has discretion as to whether to continue with delinquency proceedings.

Family Ct. Act 712(a)

In addition to Safe Harbor legislation, the New York legislature also amended the definition of a “person in need of supervision” (PINS) under Family Ct. Act 712(a) to include a child up to the age of 18 charged with prostitution or

loitering for the purpose of prostitution. Based upon this, courts in New York have found that it is appropriate to dismiss prosecutions against minors charged with prostitution or loitering, or converting the delinquency complaint for prostitution or loitering into a PINS petition. See *Matter of Bobby P.*, 2010 N.Y. Misc. LEXIS 1392; *People v. Samatha R.*, 2011 N.Y. Misc. LEXIS 5891.

NY CLS CPL § 170.80-Proceedings regarding certain prostitution charges; certain persons aged sixteen or seventeen

Any time at or after an arraignment on a charge of prostitution (Penal Law 230.00) or loitering for the purposes of prostitution (Penal Law 240.37) a person who was 16 or 17 years of age when charged with such an offense can have the charge conditionally converted to a person in need of supervision proceeding for all purposes unless the person, after consultation with counsel, has entered a voluntary plea of guilty. In the event of a conviction or verdict to either of these charges, the court must find the person a youthful offender for the purpose of the charge and proceed under Article 720. In that event, the records of the investigation and proceedings relating to the charge must be sealed according to NY CLS CPL § 720.35 (Youthful offender adjudication; effect thereof; records). Also see NY CLS CPL § 720.15 (Youthful offender procedure; sealing of accusatory instrument; privacy of proceedings). When the charge is conditionally converted to a person in need of supervision proceeding, the person must be deemed a sexually exploited child under NY CLS Soc Serv 447-a, et seq. and not an adult for purposes related to the charges.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

N.Y. CLS CPL 440.10-Motion to vacate judgment

The court may, upon motion of the defendant and at any time after entry of a judgment, vacate the judgment upon the ground that 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 prostitute or promoting prostitution) or 230.00 (prostitution), and the defendant's participation in the offense was the result of having been a victim of sex trafficking under Penal Law 230.34 or trafficking in persons under the Trafficking Victims Protection Act (USC, title 22, chapter 78), provided that :

- 1) The motion shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and
- 2) Official documentation of the defendant's status as a victim of sex trafficking 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 or trafficking in persons; but shall not be required for granting a motion under this paragraph.

N.Y. CLS CPL 440.10(1)(i). If a court grants the motion, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances. N.Y. CLS CPL 440.10(6). The procedural requirements for the motion are contained in NY CLS CPL § 440.30.

NY CLS CPL § 720.15- Youthful offender procedure; sealing of accusatory instrument; privacy of proceedings

The accusatory instrument against an eligible youth must be filed as a sealed instrument with respect to the public unless the offender has previously been adjudicated a youthful offender or convicted of a crime. This applies to a person charged with prostitution or loitering for the purposes of prostitution where the offender is 16 or 17 years of age when the offense occurred.

NY CLS Family Ct Act § 375.2-Motion to seal after a finding

This statute allows a respondent in a delinquency proceeding to move to seal the records after a finding of delinquency under NY CLS Family Ct Act § 352.1 except if the finding related to a designated felony act. The motion cannot be filed under the respondent's sixteenth birthday.

NY CLS Family Ct Act § 375.3- Expungement of court records

This provision confirms the court's inherent power to order the expungement of court records.

RELATED STATUTES

NY CLS CPL § 720.15- Youthful offender procedure; sealing of accusatory instrument; privacy of proceedings

This statute provides that a youthful offender adjudication is not a judgment of conviction of a crime or offense. It will be deemed a conviction only for the transfer of supervision and custody.

NY CLS Exec § 529-b-Supervision and treatment services for juveniles program

This statute allows funding for services to divert youth alleged to be or adjudicated as delinquent or persons adjudicated in need of supervision or youth alleged to be or convicted as juvenile offenders from detention or residential care.

NY CLS Exec § 620, et seq.-Executive Law, Article 22. Office of Victim Services

This Article provides for claim for victim services on behalf of victims of sex and labor trafficking. NY CLS Exec § 621

NORTH CAROLINA

SAFE HARBOR STATUTES

N.C. Gen. Stat. 14-204-Prostitution

North Carolina's prostitution statute provides for immunity from prosecution for minors. **N.C. Gen. Stat. 14-204(c)**. Under the statute, the minor shall instead be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19, Chapter 7B. The law enforcement officer who takes the minor into custody shall immediately report an allegation of a violation of the human trafficking or sexual servitude statutes to the director of social services in the county where the minor resides or is found, as appropriate, which shall then commence an initial investigation into child abuse or child neglect within 24 hours pursuant to **G.S. 7B-301** of **7B-302**.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

N.C. Gen. Stat. § 7B-3200- Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined

Under this section, once a person reaches 18 years old, he or she can petition the court to expunge all records of an adjudication of undisciplined. If the adjudication was as delinquent, the person can petition court once he or she turns 18 and the offense would have been a crime other than a Class A, B1 or 2, C D or E felony if committed by an adult and at least 18 months has elapsed since release from the juvenile court jurisdiction. For a delinquency adjudication, the person cannot have any subsequent adjudications as delinquent or adult convictions for any felony or misdemeanor other than a traffic violation.

N.C. Gen Stats Chapter 15A Criminal Procedure Act, Subchapter 10, Article 5 Expunction of records, N.C. Gen Stat 15-145, et seq.

This Chapter of the Criminal Procedure Act contains all of the statutes related to expunging criminal records in North Carolina.

N.C. Gen. Stat. 15A-1416.1- Motion by the defendant to vacate prostitution conviction for sex trafficking victim

Under N.C. Gen. Stat. 15A-1416.1, the victim of sex trafficking may file a motion to vacate a conviction for prostitution based on the grounds set out in G.S. 51A-1415(b)(10)(the defendant's participation in the offense was the result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13 or the Federal Trafficking Victims Protection Act).

The motion shall be filed as follows:

1. The motion shall be filed in the county in which the conviction occurred.
2. The motion may be filed at any time following the entry of a verdict of finding of guilty under G.S. 14-204 (prostitution).
3. The motion shall state why the facts giving rise to the motion were not presented to the trial court, and shall be made with due diligence after the defendant has ceased to be a victim of trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant or other victims of such trafficking that may be

- jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section
4. Reasonable notice of the motion shall be served upon the state.

N.C. Gen Stat. 15A-1416.1(a).

The court may grant the motion if, in the discretion of the court, the violation was the result of the victim having been the victim of human trafficking or sexual servitude.

Evidence of such may include any of the following documents listed in subdivisions (1) through (3) of this subsection; alternatively, the court may consider such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim:

1. Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.
2. Certified records of "approval notices" or "enforcement certifications" generated from federal immigration proceedings available to such victims.
3. A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.

If the court grants the motion, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances.

RELATED STATUTES

N.C. Gen. Stat. 7B-1701- Preliminary inquiry

North Carolina provides for a preliminary inquiry as to whether a juvenile is a delinquent or undisciplined juvenile. N.C. Gen. Stat. 7B-1701.

If the juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition. *Id.* Upon a finding of legal sufficiency, except in

cases involving non-divertible offenses set out in G.S. 7B-1701, the juvenile court counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Division. The intake process shall include the following steps if practicable:

1. Interviews with the complainant and the victim if someone other than the complainant;
2. Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
3. Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone. N.C. Gen. Stat. 7B-1702.

N.C. Gen. Stat. 7B-1706- Diversion plans and referral

Upon a finding of legal sufficiency, a juvenile may be diverted to a diversion plan as set forth in this section.

NORTH DAKOTA

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

North Dakota does not appear to have any statutes specific to expungement or sealing of criminal or delinquency records.

“Although our legislature has enacted various statutes dealing with the retention, use, and destruction of public records, there is no statutory authority for expunction of arrest records in this state.” *State v. Howe*, 308 N.W.2d 743, 746 (N.D. 1981). Courts can expunge record for one who is wrongfully arrested in violation of his constitutional rights. *Id.*

RELATED STATUTES

N.D. Cent. Code 12.1-04-01-Juveniles

Persons under the age of seven years are deemed incapable of commission of an offense. N.D. No person under the age of fourteen can be tried as an adult. *Id.*

N.D. Cent. Code 12.1-05-10-Duress

Duress is an affirmative defense to a crime.

Chapter 12.1-35 Child Victim and Witness Fair Treatment Standards, N.D. Cent. Code 12.1-35-01, et seq.

A minor cannot be charged with fornication pursuant to **12.1-20-08** if the sexual act committed against the minor was a violation of section **12.1-20-01** through **12.1-20-07**. North Dakota has also passed legislation regarding the treatment standards for child victims and witnesses.

OHIO

SAFE HARBOR STATUTES

ORC Ann. 2152.021- Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings

Summary:

Ohio's Safe Harbor provision for juveniles is a two-step process. First, a court **shall** appoint a guardian *ad litem* if the court has a "reason to believe" that a child is being exploited or trafficked and that the charges might related to the child's trafficking or exploitation. Second, the court will determine whether the acts charged in the complaint are related to the child's victimization.

If the charges are related, and the child agrees, then the court will place the complaint in abeyance for 90 days to allow the child to participate in diversion services. This period may be extended twice, for up to 270 days. If at the end of the 90, 180, or 270-day period, the child has participated to the court's satisfaction, then the court **shall** dismiss, seal, and expunge the case. If the child does not participate to the court's satisfaction or if the child chooses to end their participation, then the court shall proceed on the complaint.

Explanation:

If the court has a “reason to believe” (this standard is very low and is comparable to a reasonable suspicion) that a child may be either exploited (acts charged as adult would be a violation of O.R.C. 2907.24 (solicitation), 2907.241 (loitering to engage in solicitation), or 2907.25 (prostitution)) or trafficked (pursuant to O.R.C. 2705.32, regardless of whether anyone has been convicted or charged under that statute) and the charges may be related to the child’s trafficking or exploitation, then the court **shall** promptly appoint a guardian *ad litem*, who is not the child’s attorney, who may make recommendations that are in the child’s best interest. The court is not required to hold a hearing to determine if the child might be exploited or trafficked or to appoint a guardian *ad litem*, and may make these orders *sua sponte* or upon information received from law enforcement, probation, juvenile detention, court services, parent, child protective services, other juveniles, attorneys, other courts, on the face of the complaint. O.R.C. 2152.021(F)(1) and (2); O.R.C. 2152.021(F)(3).

Upon appointment, the guardian *ad litem* must investigate whether the child may be either exploited or trafficked. If the guardian *ad litem* determines that the child is likely being trafficked or exploited (the child is not required to identify as a victim and there need not be proof that the child is trafficked or exploited), then the child is Safe Harbor Eligible (SHE).

If the guardian *ad litem* further determines that the act charged is related to the child’s victimization, then the child qualifies for Safe Harbor Status (SHS). A child may be SHE but the acts charged may not be related to the child’s victimization.

The court may hold a hearing to then determine if the child qualifies for SHS. The prosecuting attorney has the right to request a hearing, participate in that hearing, make recommendations, and object to recommendations. O.R.C. 2152.021(F)(1) and (2). However, any statements made by the child at that hearing may not be used against the child in any subsequent proceeding. NB: The recommendations MUST not include a requirement to cooperate with law enforcement.

If the child qualifies for SHS, and if the child agrees to participate, then the child’s guardian *ad litem* or attorney moves the court to place the case in abeyance under Safe Harbor Status (SHS) for 90 days. O.R.C. 2152.021(F)(5). If the court holds the complaint in abeyance, the court may make any orders

regarding placement, services, supervision, diversion actions and condition of abeyance. O.R.C. 2152.021(F)(4).

If the court denies the motion for SHS, the court will proceed on the complaint. This is a final, appealable, order. The court may deny SHS and order that the appointment of the guardian *ad litem* continue until further order of the court, if this is in the child's best interest, or the court may permit the guardian *ad litem* to withdraw.

If granted, then during those 90 days the child participates in services, supervision, or diversion actions as ordered by the court upon recommendation by the guardian *ad litem*, attorney, or prosecuting attorney. If the child participates to the court's satisfaction, then, at the end of the 90-day period, the court **shall** order Safe Harbor Diversion (SHD) and shall dismiss, seal, and expunge the case. If the child does not participate to the court's satisfaction, then the child's attorney or guardian *ad litem* may move the court to extend a second, and then a third 90-day period, to allow the child to participate.

If, after no more than 270 days, the child has not participated to the court's satisfaction or if the child chooses to stop participating then the complaint will proceed.

See attached flow chart in appendix.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

ORC Ann. 2151.356-Procedure for sealing records of alleged and adjudicated delinquent and unruly children and adjudicated juvenile traffic offenders

This statute requires the juvenile court to order the immediate sealing of records regarding a juvenile in any one of the following 5 circumstances: a) when the court receives a record from a public office or agency under subsection (B)(2) which requires the delivery of all records to the court regarding a juvenile who was arrested or taken into custody for a delinquent or unruly act, no complaint was filed and the juvenile to not appear before the court; b) the juvenile was brought before or referred to the court for the commission of a delinquent or unruly act, and the case was resolved without the filing of a complaint; or c) when a juvenile is charged with an offense regarding intoxicating liquor or been under 4301.69(E) and successfully completes a diversion program under that section; d) a complaint was filed alleging that the juvenile was delinquent and unruly or a traffic offender and

the court dismisses the complaint after a trial on the merits or otherwise find the juvenile to not be delinquent, unruly or a traffic offender; e) if a juvenile has been adjudicated unruly, has attained eighteen years of age and is not under the court's jurisdiction relating to a complaint of delinquency.

In the absence of any of these 5 circumstances, upon the court's own motion or upon the application of a person who has been adjudicated delinquent, unruly or a traffic offender; and if the person is not under the jurisdiction of the court in relation to a complaint alleging delinquency. The motion or application can be made: a) if the person is under 18 and six months have elapsed after the termination of any order relating to the adjudication; b) the unconditional discharge from the department of youth services or other institution or facility; or c) the court enters an order that contains a determination that the child is no longer a juvenile offender registrant. The prosecutor must be notified of the motion or application; but, if the prosecutor does not respond or fails to object to the sealing, the court can order the records sealed without a hearing.

The court cannot seal or expunge the record of a juvenile adjudicated delinquent for committing a violation of ORC Ann. 2903.01 (Aggravated murder), ORC Ann. 2903.02 (Murder) or ORC Ann. 2903.02 (Rape).

Note: this does NOT apply to Safe Harbor motions where the child is not adjudicated delinquent.

ORC Ann. 2151.358-Expungement of records (Juvenile victims of human trafficking)

In addition to the general statute for expungement of juvenile records, Ohio has enacted O.R.C. 2151.358, which provides for expungement of records for minors who have been adjudicated a delinquent for conduct which would be a crime under O.R.C. 2907.24(solicitation), O.R.C. 2907.241(loitering to engage in solicitation) or O.R.C. 2907.25(prostitution), provided the person's participation in the act was the result of the person having been a victim of human trafficking. Application for expungement shall be in the same manner as set forth in ORC 2953.38.

NOTE: This statute is somewhat redundant as either the court, *sua sponte*, or upon motion by the juvenile may seal and expunge these records as outlined above.

Pursuant to O.R.C. 2953.38, an application for expungement for adults is filed in the following manner:

(B) Any person who is or was convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code may apply to the sentencing court for the expungement of the record of conviction if the person's participation in the offense was a result of the person having been a victim of human trafficking. The person may file the application at any time. The application shall do all of the following:

- (1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of that offense, and the court in which the conviction occurred;
- (2) Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under this section;
- (3) Include a request for expungement of the record of conviction of that offense under this section.

(C) The court may deny an application made under division (B) of this section if it finds that the application fails to assert grounds on which relief may be granted.

(D) If the court does not deny an application under division (C) of this section, it shall set a date for a hearing and shall notify the prosecutor for the case from which the record of conviction resulted of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court may direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

(E) At the hearing held under division (D) of this section, the court shall do both of the following:

- (1) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;
- (2) Determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense was a result of having been a victim of human trafficking.

(F) If after a hearing the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking, the court shall grant the application and order that the record of conviction be expunged.

(G)

(1) The court shall send notice of the order of expungement to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (E) of this section, determines both of the following:

- (a) That the applicant has been convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code;
- (b) That the interests of the applicant in having the records pertaining to the applicant's conviction expunged are not outweighed by any legitimate needs of the government to maintain those records.

(2) The proceedings in the case that is the subject of an order issued under division (F) of this section shall be considered not to have occurred and the conviction of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under section 109.572 of the Revised Code. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(H) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

NOTE:

The Ohio Legislative Service Commission has done an analysis of the expungement statute and has determined that persons who have been convicted of a predicate offense under section 2907.24, 2907.241, or 2907.25 of the Revised Code can apply to have any related offenses expunged. The Ohio Office of Criminal Justice Services interprets these provisions similarly.

Several Ohio courts have expunged all related offenses in this manner including Franklin County Municipal Court, Toledo Municipal Court, and the Whitehall Mayor's Court.

ORC Ann. 2953.32- Sealing of record of conviction or bail forfeiture

This statute allows an eligible offender to apply to the sentencing court or to the court of common pleas if convicted in another state or federal court, the seal the record of a case pertaining to the conviction. The application can be made three years after the final discharge if convicted of a felony or one year after the final discharge if convicted of a misdemeanor. If there are multiple

convictions, the applicant can request the sealing of all of the records of conviction in a single application. The court must hold a hearing on the application, and the prosecutor has the opportunity to object. ORC Ann. 2953.31 defines eligible offender as anyone who has been convicted of not more than one felony conviction or not more than two misdemeanor convictions or not more than one felony conviction and one misdemeanor convictions.

ORC Ann. 2953.38-Expungement of record of convictions available for victims of human trafficking

Any person convicted of a violation of ORC 2907.24 (Soliciting), ORC 2907.241 (Loitering to engage in solicitation) or ORC 2907.25 (Prostitution) can apply to the sentencing court for the expungement of the record of conviction if the participation in the offense was the result of having been a victim of human trafficking in violation of ORC 2905.32, regardless of whether anyone was convicted of that section or any other section related to the victimization of the applicant. The court must hold a hearing and provide the prosecutor with an opportunity to object. The applicant must prove by a preponderance of the evidence that the participation in the offense resulted from being a victim of human trafficking.

ORC Ann. 2953.52-Sealing of official records after not guilty finding, dismissal of proceedings or no bill

This statute allows any person found not guilty by a court of a jury or who is the named defendant in a dismissed complaint, indictment or information to apply to the court for an order to seal the person's official records. The application can be filed any time after the not guilty finding or the dismissal. The statute sets out further procedures and requirements that must be filed in making a determination regarding the sealing of the records.

ORC Ann. 2967.04- Pardons and commutations; conditions; effect

This statute sets out the conditions under which a pardon or commutation can be granted and the effect of the pardon or commutation.

RELATED STATUTES

ORC Ann. 2151.031-Abused child defined

Ohio also recognizes that a child who is a victim of sexual activity under chapter 2907 is an abused child, regardless of whether any person has been convicted of an offense involving the child under Chapter 2907. A child alleged to be an abused child may be taken into custody but may NOT be held in any of the following places: a state correctional institution, county, multi-county or municipal jail or workhouse, anyplace in which an adult convicted of a crime, under arrest or charged with a crime is held, a secure correctional facility, or any detention facility. O.R.C. 2151.312. A “child” for purposes of juvenile court jurisdiction is any person who is under eighteen years of age, except the court has jurisdiction over any person who is adjudicated unruly child prior to their turning eighteen years of age until the child attains twenty-one years of age. O.R.C. 2151.011(B)(6).

ORC Ann. 2307.51-Right of victim of human trafficking to bring civil suit

A victim of a violation of the crime of Trafficking in persons under ORC 2905.32 can file a civil action for compensatory and punitive damages against the trafficker in addition to any other cause of action available under statutory or common law.

OKLAHOMA

SAFE HARBOR STATUTES

21 Okl. St. § 748.2- Guidelines for treatment of human trafficking victims-- Right to civil action--Notice of rights--Remand to Human Services

For minors, upon a showing that a minor may be a victim of human trafficking or sexual abuse, the law enforcement officer must immediately notify the Dept. of Human Services and the minor shall be transferred to the custody of the Dept. of Human Services. 21 Okl. St. 748.2(E). Law enforcement and the Dept. of Human Services shall conduct a joint investigation into the claim. Id. The minor shall remain in the custody of the Dept. of Human Services until the investigation has been completed but for no longer than 72 hours, for the show cause hearing. Id. If criminal charges were filed against the minor and the investigation shows, at the show-cause hearing, that it is more likely than not that the minor is a victim of human trafficking or sexual abuse, then the criminal charges shall be dismissed and the Dept. of Human Services case and

services shall proceed. Id. 21 Okl. St. 748.2 (A) provides that a human trafficking victim shall be housed in appropriate shelter as soon as practicable, shall not be jailed, fined or otherwise penalized due to having been trafficked and must be provide prompt medical care, access to legal assistance and other services.

21 Okl. St. § 1029-Engaging in prostitution, etc.--Soliciting or procuring--Residing or being in place for prohibited purpose--Aiding, abetting or participating--Child prostitution--Presumption of coercion

Oklahoma's prostitution statute creates a presumption that a person of 16 or 17 years of age committing a prostitution offense was coerced into committing such an offense by another person in violation of the human trafficking provisions. 21 Okl. St. 1029(C).

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

22 Okl. St. § 18-Expungement of records--Persons authorized

This statute provides 12 separate categories of persons authorized to file a motion for expungement which is defined by the statute as sealing.

22 Okl. St. § 19- Sealing and unsealing of records—Procedure outlines the procedures for any person qualified under Section 18.

22 Okl. St. § 19c-Arrest or charge as result of human trafficking--Expungement on motion of court or defendant

Upon its own motion or upon petition by the defendant and for good cause shown, a court may enter an order or expungement of law enforcement and court records relating to a charge or conviction for a prostitution related offense committed as a result of the defendant having been a victim of human trafficking. 22 Okl. St. 19c. The order shall contain a statement that the expungement is ordered pursuant to the section and shall be subject to the notice requirements and provisions of subsection B through M of 22 Okl. St. 19. Records shall be sealed to the public but not the law enforcement agencies for law enforcement purposes.

RELATED STATUTES

10A Okl. St. § 2-2-104-Preliminary inquiry—Petition

Oklahoma juvenile law provides for a preliminary inquiry which may be conducted to determine whether the interests of the public or of the child require further court action be taken, whether treatment should be obtained, and whether the complaint will be dismissed or informally adjusted. This can include referring a child to treatment or other services.

21 Okl. St. § 748.2-Guidelines for treatment of human trafficking victims-- Right to civil action

Subsection (B) of this section allows for a civil cause of action for trafficking victims to recover actual and punitive damages and reasonable attorney fees and costs. A criminal case or prosecution is not a necessary precedent to the civil action.

This statute also authorizes the attorney general to establish and emergency hotline number for trafficking victims to request assistance or rescue. Any peace officer who comes in contact with a trafficking victim must inform the victim of the emergency hotline number and give office to the victim of certain rights, including a written statement of the rights enumerated in Subsection (A) of this section.

OREGON

SAFE HARBOR STATUTES

No safe harbor statutes specific to minors. However, Oregon does provide that a person who is a victim of human trafficking may assert the defense of duress as described in O.R.S. 161.270 if the person is prosecuted for conduct that constitutes services under O.R.S. 163.261 (activities performed by one person under the supervision of or for the benefit of another person) that the person was caused to provide. O.R.S. 163.269. Under the statute defining duress, the commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance. O.R.S. 161.720.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

ORS § 137.225-Order setting aside conviction or record of arrest; fees; prerequisites; limitations

This section allows any defendant who has fully complied with and performed the court's sentence and whose conviction is identified in subsection (5) of this section to apply to the court for an entry of an order setting aside the conviction after three years from the date of the pronouncement of judgment. Where there was an arrest, but no accusatory instrument or acquittal or dismissal, the person arrest can apply for an order setting aside the record of the arrest any time after one year has elapsed since the date of the arrest. If the court grants the application to set aside, the applicant shall be deemed to not have been convicted or arrested, and the court shall issue an order sealing the record of conviction or arrest.

ORS § 419A.262-Expunction proceeding; notice to victim; effect of expunction; confidentiality; penalties (applies to juvenile records)

A juvenile record may be expunged. An expunction shall be commenced in the county where the subject person resided at the time of the most recent termination. Id. Upon application of either a person who is the subject of a record or a juvenile department, or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter is contested, it finds that:

1. At least five years have elapsed since the date of the person's most recent termination;
2. Since the date of the most recent termination the person has not been convicted of a felony or a Class A misdemeanor
3. No proceedings seeking a criminal conviction or an adjudication in a juvenile court are pending against the person;
4. The person is not within the jurisdiction of any juvenile court on the basis of a petition alleging an act or behavior as defined in O.R.S. 419B.100(a) to (c) and (f) or 419C.005; and
5. The juvenile department is now aware of any pending investigation of the conduct of the person by any law enforcement agency. Id.

When an expunction proceeding is commenced by application of the person whose records are to be expunged, the person shall set forth as part of the application the names of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that the person has

reason to believe possess an expungeable record of the person. The juvenile department shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that a reasonable search of department files indicates have expungeable records. When an expunction proceeding is commenced by application of the juvenile department or upon the court's own motion, the application or motion shall set forth the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that a reasonable search of department files indicates have expungeable records and those provided by the subject person.

Notice and a copy of an application for expunction under subsections (2) to (8) of this section shall be given to:

- (A) The district attorney of the county in which the expunction proceeding is commenced and the district attorney of each county in which the record sought to be expunged is kept; and
- (B) The person who is the subject of the record if the person has not initiated the expunction proceeding.

A district attorney who receives notice under this subsection shall notify the victim of the acts that resulted in the disposition that is the subject of the application for expunction and shall mail a copy of the application for expunction to the victim's last known address.

Within 30 days of receiving the notice of application for expunction under subsection (12) of this section, a district attorney shall give written notice of any objection and the grounds therefor to the person whose records are to be expunged and to the juvenile court.

Except as provided in subsection (14)(c) of this section, if no objection is filed the court may decide the issue of expunction either without a hearing or after full hearing under subsections (14) to (17) of this section.

When an expunction is pending under subsections (2) to (8) of this section, the court may proceed with or without a hearing, except that:

- (a) The court may not enter an expunction judgment without a hearing if a timely objection to expunction has been filed under subsection (13) of this section;
- (b) The court may not deny an expunction without a hearing if the proceeding is based on an application of the subject; and

- (c) The court shall proceed without a hearing if:
 - (A) No objection is filed under subsection (13) of this section;
 - (B) The application requests expunction of only that part of the person's record that involves a charge, allegation or adjudication based on conduct that if done by an adult would constitute the crime of prostitution under O.R.S. 167.007; and
 - (C) The person was under 18 years of age at the time of the conduct.

Notice of a hearing on a pending expunction shall be served on the subject and any district attorney filing a timely objection under subsection (13) of this section.

When a district attorney receives notice of a hearing for expunction of a record concerning a youth or youth offender proceeding under O.R.S. chapter 419C, if the victim of the acts that resulted in the disposition that is the subject of the application for expunction requests, the district attorney shall mail notice of the hearing to the victim's last-known address.

The court shall conduct a hearing on a pending expunction in accord with the provisions of O.R.S. 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as defined in O.R.S. 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting expunction.

At the conclusion of a hearing on a pending expunction, the court shall issue judgment granting or denying expunction.

The juvenile court or juvenile department shall send a copy of an expunction judgment to each agency subject to the judgment. Upon receipt of a copy of the judgment, the agency shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court or juvenile department with an endorsement indicating compliance.

When all agencies subject to an expunction judgment have indicated their compliance or in any event no later than six weeks following the date the judgment was delivered as required by subsection (18) of this section, the juvenile court shall provide the person who is the subject of the record with a copy of the expunction judgment, a list of complying and noncomplying agencies, and a written notice of rights and effects of expunction. The juvenile court and juvenile department then shall expunge forthwith all records which they possess and which are subject

to the judgment, except the original expunction judgment and the list of complying and noncomplying agencies which must be preserved under seal.

In addition to those agencies identified in O.R.S. 419A.260 (1)(d), the juvenile, circuit, municipal and justice courts, and the district and city attorneys of this state, are bound by an expunction judgment of any juvenile court of appropriate jurisdiction in this state issuing an expunction judgment.

Upon entry of an expunction judgment, the contact that is the subject of the expunged record shall not be disclosed by any agency. An agency that is subject to an expunction judgment shall respond to any inquiry about the contact by indicating that no record or reference concerning the contact exists.

RELATED STATUTES

ORS § 30.867- Action for violation of criminal laws relating to involuntary servitude or trafficking in persons

This section allows for a civil cause of action for a trafficking victim regardless of a criminal prosecution or the result of a criminal prosecution. If a plaintiff prevails, the plaintiff can recover special and general damages, including damages for emotional distress, and punitive damages. The court must also award reasonable attorney fees to the prevailing plaintiff but can also award attorney fees and costs incurred by a defendant who prevails if the plaintiff had not objectively reasonable basis for asserting a claim.

O.R.S. 163.315-Incapacity to consent; effect of lack of resistance

Also of note, Oregon considers any person under the age of 18 years incapable of consenting to a sex act.

ORS § 192.854-Application assistants; application assistance not legal advice

This section authorizes the attorney general to designate employees or volunteers of public or private entities that provide counseling and shelter services to victims of human trafficking to assist the victims in applying to participate in the address confidentiality program.

ORS § 419C.261-Amendment and dismissal of petition

A court may set aside or dismiss a delinquency petition filed under O.R.S. 419C.005 in furtherance of justice after considering the circumstances of the youth and the interests of the state in the adjudication of the petition.

O.R.S. 419C.225-Authorized diversion programs

Oregon law also provides that following a review of a police report and other relevant information, a county juvenile department may refer a youth to an authorized diversion program if the youth is eligible to enter into a formal accountability agreement under O.R.S. 419C.230.

PENNSYLVANIA

SAFE HARBOR STATUTES

No safe harbor statutes specific to juveniles. However, the human trafficking statutes provide an affirmative defense that an individual charged with any violation under section 5902 (prostitution and related offenses) may offer the defense at trial that he was engaged in the conduct charged because he was compelled to do so by coercion or the use of, or threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist. 18 Pa.C.S. 3019(b). Additionally, an individual who is charged with violating a trespassing, loitering, obstruction of highway, disorderly conduct or simple possession of a controlled substance as a direct result of being a victim of human trafficking, where the violation is a first offense, shall be given first consideration for a pretrial diversionary program by the judicial authority with jurisdiction over the violations. 18 Pa.C.S. 3019(c). If the individual completes the diversionary program, the court shall order the individual's records of the charge expunged.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

18 Pa.C.S. § 3019-Victim protection during prosecution

See discussion above regarding 18 Pa.C.S. § 3019(c) related to completion of diversion program.

A victim of human trafficking may move to vacate a conviction under section 3503(relating to criminal trespass), 5503 (relating to disorderly conduct),

5506 (relating to loitering and prowling at night time), 5507 (relating to obstructing highways and other public passages) or 5902 (prostitution and related sex offenses) or an offense for simple possession of a controlled substance committed as a direct result of being a victim of human trafficking. 18 Pa.C.S. 3019(d). The motion must:

1. Be in writing;
2. Be consented to by the attorney for the Commonwealth;
3. Describe the supporting evidence with particularity; and
4. Include copies of any documents showing the moving party is entitled to relief under the statute.

Id. No official documentation is required, but official documentation from a Federal, State or local government agency indicating the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offense was the direct result of being a victim. Id. The court shall grant the motion if it find that: 1) the moving party was convicted of one of the specified offenses; and 2) the conviction was the result of the moving party's having been a victim of human trafficking. Id. If the motion to vacate is granted, the court shall vacate the conviction, strike the adjudication of guilty and order the expungement of the record of the criminal proceedings. The court shall issue and order to expunge all records and files relating to the person's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings and probation for the offense. Id. The statutes further provide that law enforcement agencies shall take reasonable steps necessary to identify, protect and assist victims of human trafficking. 18 Pa.C.S. 3052. The provision of services to a minor victim of human trafficking shall be carried out in a manner that is in the best interest of the minor and appropriate to the particular situation. 18 Pa.C.S. 3053.

18 Pa.C.S. § 912-Expungement

This section allows for criminal history record information to be expunged when an individual reaches 70 years of age and has been free of arrest or prosecution for ten years following the final release from confinement or supervision or an individual has been dead for three years.

18 Pa.C.S. § 9123-Juvenile records

Upon the court's motion or upon the motion of a child or parents or guardian, expungement of records of juvenile delinquency or cases involving summary

offenses committed when the individual was under 18 years of age can occur 30 days after notice to the district attorney in the following instances:

1. When a complaint is filed but not substantiated or is dismissed by the court; an allegation is not approved for prosecution; or six months have elapsed since the successful completion of an informal adjustment with no pending proceeding seeking adjudication or conviction.
2. The individual is 18 years of age or older and six months have elapsed since the individual has satisfied all terms of the sentence for a conviction of a summary offense (except section 308 relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages) and there are no subsequent or pending convictions or proceedings;
3. Five years have elapsed since the final discharge of the person from commitment, placement, probation or other disposition and there are no other subsequent or pending convictions, adjudications or proceedings.
4. The commonwealth consents to the expungement and the court orders expungement in consideration of five factors enumerated in the statute.

RELATED STATUTES

Pennsylvania Consolidated Statutes, Title 18, Part II, Article B, Chapter 30. Trafficking of Persons

This Chapter contains the statutes relative to the criminal elements, restitution, forfeiture, prosecution, prevention and protection of victims.

18 Pa.C.S. § 3051-Civil causes of action

This section allows for a civil cause of action and permits an award of relief including, actual, compensatory and punitive damages, injunctive relief, attorney fees and costs to the prevailing victim and treble damages with proof of defendant's willful and malicious acts.

18 Pa.C.S. § 3053-Appropriate implementation for minor victims of human trafficking

Services should be delivered based on the best interests of the child.

18 Pa.C.S. § 3054-Services

This section sets out the requirements for the preparation of a model information form to be used by persons having contact with victims of trafficking.

18 Pa.C.S. § 3055-Victims in shelters

Placement is not mandatory and may not be conditioned on cooperation with law enforcement.

42 Pa.C.S.6323-Informal adjustment

Before a delinquency petition is filed, a probation officer may refer a child and his parents to an agency for assisting in the matter. 42 Pa.C.S.6323(a). The agency may return the referral to the probation office or other officer for further information adjustment if it is in the best interests of the child. Id.

RHODE ISLAND

SAFE HARBOR STATUTES

No Safe Harbor statutes for minors. However, it is an affirmative defense to a prostitution charge that the accused was forced to commit a commercial sexual activity by: 1) being threatened or subjected to physical harm; 2) being physically restrained or threatened to be physically restrained; 3) being subject to threats of abuse of law or legal process; 4) being subject to destruction, concealment, removal or confiscation of any passport or other immigration document or any other actual or purported governmental identification document; or 5) being subject to intimidation in which the accused's physical wellbeing was perceived as threatened. R.I. Gen. Laws 11-34.1-2(c).

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

R.I. Gen. Laws 11-34.1-5-Expungement of certain criminal records

Records of any person convicted of, placed on probation for, or whose case was filed for a violation of 11-34.1-2(prostitution) or 11-34.1-4(loitering) may be expunged one year after completion of that person's sentence. The motion may be granted in the court's discretion regardless of the person's first

offender status. Id. The motion shall be filed in accordance with Chapter 12-1.3 (see below).

Title 12 Criminal Procedure, Chapter 1.3 Expungement of Criminal Records, Section 12-1.3-1, et seq.

This set of statutes only applies to first offenders which is defined as a person who has been convicted of a felony or a misdemeanor and has not previously been convicted of or placed on probation for a felony or misdemeanor and there is not proceeding pending. Convictions for crimes of violence are excepted, and the crimes of violence are defined in Section 12-1.3-1(1). The requirements for filing a motion for expungement are as follows:

(a) Any person filing a motion for expungement of the records of his or her conviction pursuant to § 12-1.3-2 shall give notice of the hearing date set by the court to the department of the attorney general and the police department which originally brought the charge against the person at least ten (10) days prior to that date.

(b) The court, after the hearing at which all relevant testimony and information shall be considered, may in its discretion order the expungement of the records of conviction of the person filing the motion if it finds:

(1) That in the five (5) years preceding the filing of the motion, if the conviction was for a misdemeanor, or in the ten (10) years preceding the filing of the motion if the conviction was for a felony, the petitioner has not been convicted nor arrested for any felony or misdemeanor, there are no criminal proceedings pending against the person, and he or she has exhibited good moral character;

(2) That the petitioner's rehabilitation has been attained to the court's satisfaction and the expungement of the records of his or her conviction is consistent with the public interest.

(c) If the court grants the motion, it shall, after payment by the petitioner of a one hundred dollar (\$ 100) fee to be paid to the court order all records and records of conviction relating to the conviction expunged and all index and other references to it deleted. A copy of the order of the court shall be sent to any law enforcement agency and other agency known by either the petitioner, the department of the attorney general, or the court to have possession of the records. Compliance with the order shall be according to the terms specified by the court. R.I. Gen. Laws 12-1.3-3.

R.I. Gen. Laws 14-1-6.1-Records

Juvenile records shall be automatically sealed in any case where a court shall have obtained jurisdiction of a juvenile having attained the age of seventeen years.

RELATED STATUTES

R.I. Gen. Laws 14-1-10-Preliminary investigation on information furnished to court

In delinquency proceedings the court has a duty to make a preliminary inquiry to determine whether the interests of the public or of the child require that further action should be taken. The inquiry may include a preliminary investigation of the home and environmental situation of the child, his or her previous history, and the circumstances which were the subject of the information.

R.I. Gen. Laws § 14-1-40-Adjudication not having effect of conviction

This section provides that the adjudication regarding any child will not result in the child being deemed a criminal and will not be deemed a conviction.

SOUTH CAROLINA

SAFE HARBOR STATUTES

No Safe Harbor statutes for minors.

However, the criminal human trafficking statute provides that in a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he or she was under duress or coerced into committing the offenses for which he or she is subject to prosecution, if the offenses were committed as a direct result of, or incidental to, trafficking. S.C. Code Ann. 16-3-2020(J).

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Title 17 Criminal Procedures, Chapter 22 Intervention Programs, Article 9 Uniform Expungement of Criminal Records, S.C. Code Ann. § 17-22-910, et seq.

S.C. Code Ann. § 17-22-910-Applications for expungement; administration

This section details each of the other sections of the South Carolina statutes which provide the procedures and requirements of expunging criminal records. It appears that South Carolina has separate procedures and requirements depending on the level of offenses as well as the specific court. Please note that the section listed for the expungement of juvenile records no longer exists. See below for the appropriate statute for juvenile records.

S.C. Code Ann. § 63-19-2050-Petition for record destruction (Juvenile Records)

This section is part of Chapter 19 Juvenile Justice Code and Article 19 Juvenile Records. The section allows a person who has been taken into custody for, charged with or adjudicated delinquent for any status or nonviolent offense to file a petition with the court for an order destroying all official records relating to being taken into custody, the charges filed against the child, the adjudication and disposition. The granting of the order is in the court's discretion. The person must be 18 years of age, successfully completed any dispositional sentence and cannot have any subsequent charges for a criminal offense. Adjudications for violent crimes (defined in S.C. Code Ann 16-1-60) must not be expunged. If the expungement is ordered, no records may be retained by any law enforcement, municipal, county, state agency or department. The expungement has the effect of restoring the person to the status occupied prior to being taken into custody.

RELATED STATUTES

S.C. Code Ann. § 16-3-2020-Trafficking in persons; penalties; defenses

The criminal human trafficking statute provides that in a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he or she was under duress or coerced into committing the offenses for which he or she is subject to prosecution, if the offenses were committed as a direct result of, or incidental to, trafficking. S.C. Code Ann. 16-3-2020(J).

S.C. Code Ann. 63-19-1010-Intake and probation

South Carolina provides for an initial intake assessment for juveniles brought before the family courts and for persons committed or referred to the Department of Juvenile Justice. The role is to independently assess the circumstances and needs of children, to determine whether prosecution should be initiated, and, if circumstances warrant, referral to a treatment or diversionary program. S.C. Code Ann. 63-19-1010.

S.C. Code Ann. 63-19-1030-Prehearing inquiry

The court must make a preliminary inquiry to determine whether the interest of the public or child requires further action be taken. S.C. Code Ann. 63-19-1030. The investigation shall include all facts pertaining to the issue, including examination of the parentage and surroundings of the child, the child's age, habits and history, home conditions, habit and character of the child's parents or guardian and when, appropriate, the child's mentality or physical condition. Id. The court may then make an informal adjustment as is practicable without a petition for delinquency. Id.

SOUTH DAKOTA

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

S.D. Codified Laws § 23A-3-26 - Expungement

Defines expungement as the sealing of all records on file within any court, detention or correctional facility, law enforcement agency, criminal justice agency or department of public safety concerning a detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.

S.D. Codified Laws § 23A-3-27 - Motion for expungement

S.D. Codified Laws § 23A-3-30 - Order

S.D. Codified Laws § 26-7A-115 – Sealing of records and files in actions involving a delinquent child

This statute provides that in any action that involves a delinquent child, the records and files of the court may be sealed by court order on the court's own motion or on petition of the child or the child's parents. The petition cannot be filed until one year from the date of the child's unconditional release from the court's jurisdiction or the discharge of the child by the department of corrections, whichever is later. The court must hold a hearing.

RELATED STATUTES

S.D. Codified Laws § 22-49-1 – Human trafficking prohibited

This statute defines the crime of human trafficking in South Dakota.

TENNESSEE

SAFE HARBOR STATUTES

Tenn. Code Ann. § 39-13-513. Prostitution -- Defenses.

1. Immunity from prosecution as a juvenile or adult if, after a reasonable detention, or investigation, it is determined that the person suspected of or charged with prostitution is under 18 years of age.
2. Any law enforcement officer who takes a person into custody for prostitution and determines that the person is a minor shall:
 - a. Provide the minor with the national human trafficking resource center hotline number; and
 - b. Release the minor to the custody of a parent or legal guardian.

Note: This statute also provides a defense to any person charged with prostitution if the conduct occurred because the person charged was a victim as defined under the Trafficking Victims Protection Act or a victim of any act in violation of Tennessee's statute 39-13-307- Involuntary labor servitude or 39-13-309-Trafficking for commercial sex act.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Tenn. Code Ann. § 37-1-153. Court files and records -- Inspection limited -- Exceptions for certain violent offenders -- Confidentiality -- Expunction.

This statute provides for confidentiality of files and records of Juvenile Court proceedings with inspection allowed by certain classes of individuals such as judges or court staff. Records and files regarding a delinquency adjudication can be expunged by court order upon petition. The petitioner must be 18 years of age or older and must meet other specific criteria.

Tenn. Code Ann. § 37-1-154. Law enforcement records -- Inspection limited -- Exceptions for certain violent offenders

This statute provides that law enforcement records and files related to a charge of delinquency are not subject public inspection except for inspection by specific classes of individuals such as the juvenile court or counsel for a child.

Tenn. Code Ann. § 37-1-155 - Fingerprints and photographs -- Use -- When destroyed -- Video and audio recordings

Unless the charge of delinquency would be a felony if committed by an adult, fingerprints and photographs of a child in the investigation of a delinquency charge are prohibited without court permission. If fingerprints or photographs are taken, they must be maintained in a file separate from an adult identification system and are confidential. This statute provides for circumstances by which the fingerprints or photographs can be destroyed or expunged. The statute also sets out specific circumstances where a law enforcement officer in the course of official duties can photograph or video or audio record a juvenile.

Tenn. Code Ann. § 38-6-118 - Expunged criminal offender and pretrial diversion database

Tenn. Code Ann. §40-32-101 - Destruction or release of records

Public records of any misdemeanor or felony shall be removed and destroyed when the charge has been dismissed, no true bill was returned, the person was arrested and released without being charged, the person successfully completed a pretrial diversion program, excluding diversion of a sexual offense, or a verdict of not guilty was returned.

Tenn. Code Ann. § 40-35-313 - Probation -- Conditions -- Discharge and dismissal -- Expunction from official records -- Fee

RELATED STATUTES

Tenn. Code Ann. § 24-7-120 - Child's testimony—Closed circuit television

This statute provides that the court upon a finding of necessity can order that a child, 13 years of age or younger, who is a victim of specified offenses, including Trafficking for commercial sex act as defined in § 39-13-309 and Patronizing prostitution as defined in § 39-13-514, testify by two way closed circuit television.

Tenn. Code Ann. § 37-1-403 - Reporting of brutality, abuse, neglect or child sexual abuse -- Notification to parents of abuse on school grounds or under school supervision -- Confidentiality of records.

The department of children services is mandated to report any references to human trafficking of a child in any information that the department receives regardless of whether an investigation is opened by the department. The report must be made to the appropriate law enforcement agency immediately.

Tenn. Code Ann. § 38-14-101 - Text of compact (National Crime Prevention and Privacy Compact)

This uniform act has been adopted by Tennessee. With respect to juvenile records, Tennessee has agreed to recognize each state's determination of a sealed record based on each state's law and procedure.

TEXAS

SAFE HARBOR STATUTES

Tex. Fam. Code § 54.0326 - Deferral of Adjudication and Dismissal of Certain Cases on Completion of Trafficked Persons Program

1. Applies to a juvenile court or to an alternative juvenile court (hearing proceedings under the juvenile justice code combined with proceedings on the protection of the child) See Tex. Fam. Code

51.0413-Jurisdiction Over and Transfer of Combination of Proceedings

2. Court can defer adjudication proceedings until 18th birthday and require a child to participate in a program under Tex. Hum. Res. Code § 152.0016-Trafficked Persons Program, IF:
 - a. The child is alleged to have engaged in or is adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision, AND
 - b. The child may be a victim of conduct constituting an offense under Penal Code 20A.02-Trafficking of Persons
3. Upon completion of the program and satisfactory proof of completion, the court shall dismiss with prejudice

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Tex Fam. Code 58.003 – Sealing of Records

This statute allows a juvenile court to order the sealing of records concerning a child:

1. Found to have engaged in delinquent conduct or conduct indicating a need for supervision (See Tex. Fam. Code § 51.03 – Delinquent Conduct; Conduct Indicating a Need for Supervision); or
2. Taken into custody to determine whether the child engaged in delinquent conduct or conduct indicating a need for supervision,

IF the child completed a trafficked persons program established under **Tex. Hum. Res. Code § 152.0016-Trafficked Persons Program.**

The Court can

1. Order the sealing of the records immediately without a hearing, or
2. Hold a hearing to determine whether to seal the records

If the Court orders the record to be sealed, the prosecuting attorney or the juvenile probation department may maintain a record of the child's name, date of birth and date of successful completion of the trafficked persons program until the child's 18th birthday. This record must be sent to the court as soon as practicable once the child turns 18 to be added to the other sealed records. Pursuant to Tex. Gov't Code § 411.151 – Expunction or Removal of DNA Records, this also applies to any DNA samples that may have been collected.

Tex. Code Crim. Proc. art. 45.0216 - Expunction of Certain Conviction Records

This statute provides that a person may apply to a court in which the person was convicted for expungement of the conviction on or after the person's 17th birthday if:

1. the person was convicted of not more than one offense listed in Tex. Penal Code § 8.07(a)(4) or (5) while the person was a child; or
2. the person was convicted only once of an offense under Tex. Penal Code § 43.261 - Electronic Transmission of Certain Visual Material Depicting Minor.

The request for expungement must be made in writing under oath.

Tex. Code Crim. Proc. art. 55.02 - Procedure for Expunction

This statute provides the procedure for expunction of criminal records for both acquittals and convictions.

RELATED STATUTES

Tex. Fam. Code § 54.04011- Trafficked Persons Program

1. Applies to juvenile court or an alternative juvenile court exercising simultaneous jurisdiction over proceedings under the juvenile justice code and the protection of child;
2. Court may require a child to participate in a program under Section 152.0016, Human Resources Code-Trafficked Persons Program, IF
 - a. The child is adjudicated to have engaged in delinquent conduct indicating a need for supervision; AND
 - b. The child is a victim of conduct constituting an offense under Penal Code 20A.02-Trafficking in Persons
3. The court may require a child participating in the program to appear in court for monitoring and compliance purposes
4. Upon completion of the program, the court may order the record of the case sealed in conformance with Sections 58.003(c-7) and (c-8). 58.003(c-7) allows the court to seal the records without a hearing or may hold a hearing to determine whether to seal the records. 58.003(c-8) allows a prosecuting attorney or juvenile probation department to maintain a separate record of the child's name, date

of birth and date of successful completion of the trafficked persons program. Once the child turns 18, the prosecuting attorney or probation department must transfer the record to the court to be placed with the rest of the sealed record.

Tex. Hum. Res. Code § 221.0035 - Best Practices to Identify and Assess Victims of Sex Trafficking

This statute applies specifically to sex trafficking of a child under Tex. Penal Code Section 20A.02(a)(7) and requires that juvenile probation departments develop a recommended set of best practices to use in the early identification of juveniles who are victims of sex trafficking. Suggested best practices are examining a juvenile's referral history, history of sexual abuse, assessing a need for services and asking a specifically designed series of questions to determine whether the juvenile is at high risk of being a victim of sex trafficking.

Tex. Gov't Code § 552.138 - Exception: Confidentiality of Family Violence Shelter Center, Victims of Trafficking Shelter Center, and Sexual Assault Program Information

This statute provides for the confidentiality of information maintained by a victims of trafficking shelter center relating to personally identifying information, location or physical layout of the shelter center and the provision of services to a victim of trafficking.

Tex. Code Crim. Proc. art. 38.071 - Testimony of child who is Victim of Offense

Applies to the testimony of a child younger than 13 years of age where the court determines that the child is unavailable to testify in the presence of the defendant regarding specific offenses including Penal Code Section 43.05(a)(2) - Compelling Prostitution or Section 20A.02(a)(7) or (8) - Trafficking of Persons. The statute allows for admissibility of an oral statement of the child after specific findings by the court or presentation of the child's testimony through closed circuit television upon the motion of either the prosecutor or the defense counsel.

Tex. Code Crim. Proc. art. 38.072 - Hearsay Statement of Certain Abuse Victims

Applies to hearsay statements meeting specific criteria with respect to specified offenses committed against a child young than 14 years of age or with a disability. The specified offenses include Penal Code Section 43.05(a)(2) - Compelling Prostitution or Section 20A.02(a)(7) or (8) - Trafficking of Persons.

Tex. Code Crim. Proc. art. 56.83 - Eligibility to Participate in Program

For address confidentiality program for victims of family violence, sexual assault or stalking. This program is available for victims of trafficking of persons.

Tex. Penal Code § 20A.02 - Trafficking of Persons

This statute provides for the criminal offense of Trafficking of Persons and applies to the trafficking of adults and children with the intent that the trafficked person engage in forced labor or services. As it relates to minors, there is no requirement for force, fraud or coercion for sex trafficking. The statute also contains a subsection for a child trafficked to engage in or become the victim of specific prohibited conduct, including but not limited to prostitution, promotion or prostitution, compelling prostitution and sexual performance by a child.

Tex. Fam. Code § 262.2015 - Aggravated Circumstances

The court can waive the requirement of establishing a service plan and to make reasonable efforts to return a child to a parent and can accelerate the trial schedule regarding the parent-child relationship if the parent has subjected the child to aggravated circumstances including engaging in conduct that would constitute an offense in violation of Penal Code Section 43.05(a)(2) - Compelling prostitution or Penal Code Section 20A.02(a)(7) or (8) -Trafficking of persons.

UTAH***SAFE HARBOR STATUTES*****Utah Code Ann. § 76-10-1302 - Prostitution**

76-10-1302(3) requires a law enforcement officer who encounters a child (defined as a person younger than 18 years of age) engaged in prostitution or sexual solicitation must:

1. Conduct an investigation
2. Refer the child to the Division of Child and Family Services
3. If an arrest is made, take the child to a receiving center which is defined as a nonsecure, nonresidential program established by Child and Family Services for juveniles taken into custody by a law enforcement officer for status offenses or delinquent acts but do not meet the criteria for admission to a secure detention center
4. Contact the child's parent or guardian, if practicable

If the child is referred to Child and Family Services, the Division must check its records to verify whether law enforcement referred the child to the Division on a prior occasion and must provide that information to the law enforcement officer.

If law enforcement had not previously referred the child to the division on at least one occasion, the Division must provide services to the child.

If law enforcement has previously referred the child to the Division on at least one occasion, the child may be subject to delinquency proceedings.

Prostitution and sexual solicitation are defined in the statute at 76-10-1302(a) and 76-10-1302(3)(a)(iii) respectively.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**Title 77 Utah Code of Criminal Procedure, Chapter 40 Utah Expungement Act****Utah Code Ann. § 77-40-103 - Expungement procedure overview**

The expungement process applies to records regarding arrest, investigation, detention or conviction of a petitioner. The petitioner applies to the Bureau

of Criminal Identification of the Department of Public Safety for a certificate of eligibility for expungement. The certificate of eligibility is filed with a petition for expungement in the court where the proceedings occurred or the district court in the jurisdiction where the arrest occurred. A copy is served upon the prosecutor's office in the jurisdiction where the proceedings occurred or the office of the district attorney in the jurisdiction where the arrest occurred. If an objection is filed, the court will hold a hearing. An expungement can be granted without a hearing if not objection is received.

Utah Code Ann. § 77-40-104 and Utah Code Ann. § 77-40-105

Sets out the requirements for eligibility for expungement of arrest, investigation, detention or conviction.

Utah Code Ann. § 78A-6-1104 - When photographs, fingerprints, or HIV infection tests may be taken -- Distribution - Expungement

This statute provides that when a minor's juvenile record is expunged, all photographs and other records shall be destroyed by the law enforcement agency. However, fingerprint records may not be destroyed.

Utah Code Ann. § 78A-6-1105 - Expungement of juvenile court record -- Petition - Procedure

A person who has been adjudicated under the Juvenile Court Act may petition the court for the expungement of the juvenile court record and any related records in the custody of a state agency if:

1. The person has reached 18 years of age;
2. One year has elapsed from the date of termination of the continuing jurisdiction of the juvenile Court, or in the case of a commitment, one year from the date of the unconditional release from the custody of the Division of Juvenile Justice Services.

The court can waive these requirements if the court finds and states on the record the reason why waiver is appropriate. The petition must include identification of any agencies know or alleged to have any documents related to the offense sought to be expunged and must include the original criminal history report obtained from the Bureau of Criminal Identification. A copy must be sent to the county or district attorney.

Upon filing of the petition, the court must:

1. Set a date for a hearing
2. Notify the county or district attorney and the agency in custody of any records and the victim at least 30 days prior to the hearing and must provide notice of the date of the hearing

The court can order all of the petitioner's records under the control of the juvenile court as well as records under the control of any other agency or official if the petitioner has not since the termination of jurisdiction or unconditional release been convicted of a felony, a misdemeanor involving moral turpitude, that no proceeding involving a felony or misdemeanor is pending or being instituted and any judgment for restitution has been satisfied. The petitioner is responsible for service of the order to all affected agencies and officials.

RELATED STATUTES

Utah Code Ann. § 62A-4a-105 - Division responsibilities

This statute requires Child and Family Services to provide services for minors who are victims of human trafficking or human smuggling as defined in Utah Code Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Utah Code Section 76-10-1302.

VERMONT

SAFE HARBOR STATUTES

13 V.S.A. § 2652 - Human trafficking

This statute first describes the crime of human trafficking and includes a prohibition from knowingly recruiting, enticing, harboring, transporting, providing or obtaining by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act. With respect to adults (18 years of age or older), the statute requires force, fraud or coercion. The victim's alleged consent to the human trafficking is immaterial in a prosecution of an offender for human trafficking.

The Safe Harbor provisions of this statute provide:

1. If a person is a victim of commercial sex trafficking, that person cannot be found in violation of or be the subject of a delinquency

- petition based on Title 13, Chapter 59 (Lewdness and Prostitution) or Title 13, Chapter 63 (Obscenity) for any conduct committed as a victim of sex trafficking.
2. A person under the age of 18 is immune from prosecution in the Criminal Division of the Superior Court for a violation of Title 13, Section 2632 for prohibited acts and prostitution; however, the person may be treated as a juvenile under Title 33, Chapter 52, Delinquency Proceedings, or referred to the department for children and families for treatment.
 3. If a person who is a victim of sex trafficking is prosecuted for any offense or is the subject of any delinquency petition, other than a violation of Title 13, Chapter 59 (Lewdness and Prostitution) or Title 13, Chapter 63 (Obscenity), which arises out of the sex trafficking or benefits the sex trafficker, that person may raise an affirmative defense that the offense was committed as a result of force, fraud or coercion by a sex trafficker.

If a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Title 13, Chapter 230 EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS

This is the Chapter which contains Vermont's statutes regarding the expungement and sealing of criminal history records. Several of those statutes are detailed below as well as the statute for sealing of records of Juvenile Proceedings.

13 V.S.A. § 2658- Prostitution conviction; motion to vacate by victim of human trafficking

This section allows a person convicted of prostitution to file a motion to vacate the conviction if it was obtained as a result of having been a victim of human trafficking. The court must hold a hearing.

13 V.S.A. § 7602 - Expungement and sealing of record, post-conviction; procedure

This statute applies to convictions of qualifying crimes defined in 13 V.S.A. § 7601. The State's Attorney or Attorney General is the respondent. No hearing is required if the petitioner and the respondent agree on granting the petition. The Court should grant the petition and order that the criminal history record be expunged (defined in 13 V.S.A. § 7606) if specified conditions are met. Additionally, the court can order that the criminal history record be sealed if the court determines that sealing the record (defined in 13 V.S.A. § 7607) would better serve the interest of justice than expungement and the petitioner committed the qualifying crime after reaching 19 years of age.

13 V.S.A. § 7603 - Expungement and sealing of record, no conviction; procedure

This statute applies where a person was cited or arrested for a qualifying crime if the specified conditions are met. If the conditions are met, the court should grant the petition and order the criminal history record expunged (defined in 13 V.S.A. § 7606) if expungement serves the interest of justice. The Court can order that the record be sealed (defined in 13 V.S.A. 7607) if the conditions are met and the court determines that sealing the record would better serve the interest of justice than expungement and the petitioner committed the qualifying crime after reaching 19 years of age.

33 V.S.A. § 5119 - Sealing of records (Juvenile Proceedings)

The court should order that all records and files of a delinquency adjudication be sealed after two years since the final discharge unless the State's Attorney files a motion and the Court finds that either: 1) the person has been convicted of a crime defined in 13 V.S.A. § 5301 (Murders - degree defined) or adjudicated delinquent of such a crime after the initial adjudication or a case is pending seeking such a conviction or adjudication; or 2) rehabilitation of the person has not been attained to the satisfaction of the Court.

RELATED STATUTES

13 V.S.A. § 2663 - Classification of victims; immigration assistance

After an initial encounter with a person under the age of 18 who reasonably appears to a law enforcement agency, state's attorneys' office or Office of the Attorney General to be a victim of human trafficking, that agency must notify the Family Services Division of the Department of Children and Families.

13 V.S.A. § 7041 - Deferred sentence**Title 13, Part 5, Chapter 231 UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION.**

The sections of this Chapter are not effective until January 1, 2016. Conviction is defined as a juvenile adjudication.

15 V.S.A. § 1152 - Address Confidentiality Program; application; certification

This statute allows victims of human trafficking to apply to the Secretary of State to have an address designated by the Secretary to serve as the person's address.

VIRGINIA***SAFE HARBOR STATUTES***

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES**Title 16.1, Chapter 11, Article 12 Confidentiality and Expungement**

This is the area in the Virginia Code covering the confidentiality and expungement of Juvenile records including fingerprints and photographs and law enforcement records.

Va. Code Ann. § 16.1-306 - Expungement of court records

The Juvenile and Domestic Relations Courts must destroy all files, papers and records, including electronic records, connected with any proceeding concerning a juvenile when the juvenile turns 19 years old and five years have elapsed since the date of the last hearing in any case involving the juvenile. The exceptions are 1) records required to be furnished to the Department of Motor Vehicles under Section 46.2-383 which will be destroyed when the juvenile turns 29 years old; 2) if the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult which will be retained. With respect to the two exceptions, records of ancillary offenses of which a juvenile was found guilty will also be retained. The destruction shall be done by the Court automatically on January 2 or some other date designated by the court.

Title 19.2, Chapter 23.1 Expungement of Criminal Records

The compilation of statutes regarding expungement of criminal records not related to a juvenile prosecution.

Va. Code Ann. § 19.2-392.2 - Expungement of police and court records

This statute applies if a person is charged with the commission of a crime or any offense defined in Title 18.2 and is either acquitted or a nolle prosequi is taken or the charge dismissed. A petition must be filed with the court that disposed of the charge for expungement. The statute provides the procedures required which include: obtaining one complete set of fingerprints from the Central Criminal Records Exchange. The CCRE must forward, under seal, a copy of the criminal history and a set of fingerprints. Once this information is received, the court must hold a hearing.

WASHINGTON

SAFE HARBOR STATUTES

Rev. Code . (ARCW) § 13.40.070 - Complaints -- Screening -- Filing information -- Diversion -- Modification of community supervision -- Notice to parent or guardian -- Probation counselor acting for prosecutor -- Referral to mediation or reconciliation programs

Where a case is legally sufficient to charge an alleged juvenile offender with either prostitution or prostitution loitering and it is the first prostitution or prostitution loitering offense, the prosecutor must divert the case. The details regarding the requirements for diversion agreements are contained in Rev. Code Wash. (ARCW) § 13.40.080.

Rev. Code Wash. (ARCW) § 13.40.213 - Juveniles alleged to have committed offenses of prostitution or prostitution loitering - Diversion

A prosecutor may divert an allegation against a juvenile for the offenses of prostitution or prostitution loitering when, if proved, it would not be the juvenile's first offense if the county in which the offense was committed has a comprehensive program that provides safe and stable housing, comprehensive on site case management, integrated mental health and chemical dependency services, including specialized trauma recovery services, education and employment training delivered on site and referrals to

off-site specialized services. A prosecutor can divert a case for these offenses into the comprehensive program notwithstanding the filing criteria set forth in RCW 13.40.070(5). The diversion agreement can last up to 12 months. This statute also provides for the compilation of data to be reported to the governor on an annual basis.

Rev. Code Wash. (ARCW) § 13.40.219 - Arrest for prostitution or prostitution loitering -- Alleged offender -- Victim of severe form of trafficking, commercial sex abuse of a minor

This section provides a presumption that any juvenile arrested for prostitution or prostitution loitering meets the criteria for a certification as a victim of a severe form of trafficking in persons as defined in 22 USC 7105 and that the juvenile is also a victim of commercial sex abuse of a minor.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Rev. Code Wash. (ARCW) § 9.96.060 - Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons -- Vacating records (as amended by 2014 c 109)

Subsection (3) of this statute allows a person who has been convicted of prostitution (RCW 9A.88.030), who committed the offense as a result of being a victim of trafficking (RCW 9A.40.100), promoting prostitution in the first degree (RCW 9A.88.070), promoting commercial sexual abuse of a minor (RCW 9.68A.101), or trafficking in persons under the Trafficking Victims Protection Act of 2000 (22 U.S.C. Sec. 7101 et seq.), can petition the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. Exceptions are if there are any criminal charges pending against the person in any court for any crime other than prostitution or if the person has been convicted of another crime, except prostitution, in any court since the date of the conviction sought to be vacated. The effect of vacating the conviction is that the person shall be released from all penalties and disabilities resulting from the offense, the conviction cannot be included in the person's criminal history in determining a sentence for a subsequent conviction and the person need not disclose the conviction on an employment or housing application.

NOTE: There are two versions of this statute. The second version differs by eliminating the promotion of commercial sex of a minor from the qualifying

list and adds an exception for a person who has ever had the record of another prostitution conviction vacated.

Rev. Code Wash. (ARCW) § 9.96.070 - Vacating records of conviction -- Prostitution offenses

This statute provides the elements that a person must prove, by a preponderance of evidence, in order to have a conviction for a prostitution offense vacated. Subsection (3) of this statute specifically applies to a prostitution offense for being a victim of promoting commercial sexual abuse of a minor under RCW 9.68A.101, and it requires proof that: 1) the applicant had not attained the age of 18 at the time of the prostitution offense; 2) a person advanced commercial sexual abuse or a sexually explicit act of the applicant at the time the applicant had not attained the age of 18; 3) the person who committed the act did so knowingly; and 4) the applicant's record for conviction prostitution resulted from the commercial sexual abuse or commercial sexually explicit act.

Title 13, Chapter 13.50 - Keeping and Release of Records by Juvenile Justice or Care Agencies

Rev. Code Wash. (ARCW) § 13.50.260 - Sealing hearings -- Sealing of records

This statute requires the Juvenile Court to hold regular sealing hearings during which the court must seal a juvenile's court records unless the court receives an objection or the court determines that there is a compelling reason not to seal the record. The juvenile and juvenile's attorney must be given at least 18 days' notice of any contested sealing hearing. The date for a sealing hearing must be scheduled at any disposition hearing of a juvenile offender must be scheduled after the latest of the following events: 1) the juvenile's 18th birthday; 2) anticipated completion of a juvenile's probation, if ordered; or 3) anticipated release from confinement at the juvenile rehabilitation administration or the completion of parole.

As it relates to a juvenile who was referred for deferred pursuant to RCW 13.40.070 on a charge of prostitution or prostitution loitering, if the record has not already been sealed, the juvenile can file a motion with the court to have the court vacate its order and findings, if any, and order the sealing of the official juvenile court record, the social file and records of the court and of any agency in the case. Once these records are ordered to be sealed, the proceedings in the case must be treated as if they never occurred, and the

juvenile can reply accordingly to any inquiry. Any adjudication of a juvenile offense or crime that occurs subsequent to the sealing has the effect of nullifying a sealing order although the court can order the record resealed after the disposition of the subsequent offense. Any charge of an adult felony subsequent to the sealing will nullify the sealing order.

RELATED STATUTES

Title 7, Chapter 7.68 - Victims of Crimes - Compensation, Assistance

Washington's Victim's compensation statutes allow for compensation to victims of the crime of trafficking as defined by RCW 9A.40.100. Specifically, RCW 7.68.060(6)(b) provides that any person identified as the minor in the charge of commercial sexual abuse of a minor (RCW RCW 9.68A.100), promoting commercial sexual abuse of a minor (RCW 9.68A.101) or promoting travel for commercial sexual abuse of a minor (RCW 9.68A.102) is considered to be a victim of a criminal act in order to recover benefits under the Chapter. This includes minors also charged with prostitution under RCW 9A.88.030. This chapter also provides for a commercially sexually exploited children statewide coordinating committee (RCW 7.68.801) to address the issue of children who are sexually exploited, including making recommendations as to local and regional policies and services to be provided.

Rev. Code Wash. (ARCW) § 9A.44.150 - Testimony of child by closed-circuit television

This statute allows that a child under the age of fourteen may testify in a room outside the presence of the defendant and the jury via one way closed circuit television if the testimony will describe specifically defined criminal acts, including a violation of trafficking under RCW 9A.40.100. A motion must be made by the prosecutor in the criminal proceedings.

Rev. Code Wash. (ARCW) § 13.32A.270 - Youth who have been diverted -- Alleged prostitution or prostitution loitering offenses -- Services and treatment

If funding allows, a minor who has been diverted under RCW 13.40.070 for an allegation of prostitution or prostitution loitering and is referred to the department of social and health services, the child must be connected with services and treatment specified in RCW 74.14B.070 - Child victims of sexual assault or sexual abuse -- Early identification, treatment. This identical statute is also contained at Rev. Code Wash. (ARCW) § 13.40.087.

Rev. Code Wash. (ARCW) § 13.34.050 - Court order to take child into custody, when – Hearing

This statute provides that a juvenile court can order that a child be taken into custody when there is a risk of imminent harm. Imminent harm can include sexual exploitation of a child as defined in RCW 26.44.020, which includes allowing or permitting or encouraging a child to engage in prostitution.

Rev. Code Wash. (ARCW) § 13.34.132 - Petition seeking termination of parent-child relationship – Requirements

Under this statute, the Juvenile Court can order that a petition seeking termination of the parent/child relationship be filed where conviction of a parent of promoting commercial sexual abuse of a minor when the victim is the child or a sibling exists as an aggravating circumstance. Reasonable efforts to unify the family would not be required.

Rev. Code Wash. (ARCW) § 13.50.270 - Destruction of records

All juvenile records maintained by any court or law enforcement agency shall be automatically destroyed within ninety days of becoming eligible for destruction. The criteria for eligibility include: 1) the juvenile has turned 18 years of age; 2) the juvenile's criminal history consists of one diversion agreement or counsel and release entered on or after June 12, 2008; 3) two years have elapsed since completion of the agreement or counsel and release; 4) there is no pending proceeding seeking the conviction of a criminal offense; and 5) no restitution is owed.

WEST VIRGINIA

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

W. Va. Code § 61-2-17-Human trafficking; criminal penalties

Subsection (f) of this section permits any person convicted of prostitution to petition for expungement of the conviction if it was the result of the person being a victim of human trafficking.

W. Va. Code § 61-11-26 - Expungement of certain criminal convictions; procedures; effect

For any misdemeanor conviction(s) committed between the ages of 18 and 26, a petition for expungement of the conviction(s) and record can be filed with the circuit court in which the conviction(s) occurred. The petition cannot be filed until one year after the conviction(s) or completion of any sentence or incarceration or probation, whichever is later.

The court can summarily grant or deny the petition or can set the petition for a hearing. The petitioner has the burden of proof by clear and convincing evidence to establish that he or she meets the requirements of this statute.

W. Va. Code § 61-11-25 - Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed

A civil petition to expunge all records relating to arrest, charge or other matters arising out of an arrest or charge can be filed when a person: 1) has been found not guilty of an offense; or 2) where charges have been dismissed not in exchange for a guilty plea to another offense. Subsection (a) details exceptions to this provision. The petition can be filed after sixty days following the order of acquittal or dismissal by the court.

RELATED STATUTES**W. Va. Code § 49-5-17 - Confidentiality of juvenile records**

Records of juvenile proceedings are not public records and may not be disclosed unless disclosure is authorized by this section. The section specifically identifies those officials or persons to whom these records can be disclosed.

W. Va. Code § 49-5-18 - Confidentiality of juvenile records

One year after the 18th birthday or one year after personal or juvenile jurisdiction has been terminated, the records of a juvenile proceeding, including law enforcement files and records, may be kept in a separate secure confidential place and may not be inspected except by order of the circuit court. The records must be physically marked that they are to remain confidential which has the legal effect of extinguishing the offense as if it never occurred. There is an exception for cases where juvenile jurisdiction

was waived and the proceeding was transferred to the criminal jurisdiction of the court.

W. Va. Code § 49-5-2a - Pre-petition diversion to informal resolution

This section is not specific to any charge or offense; however, it does allow for a court referral to a state department worker or probation officer for a preliminary inquiry to determine whether an informal resolution can be reached before a formal juvenile petition is filed.

W. Va. Code § 61-2-17 - Human trafficking; criminal penalties

This is the statute covering the crime of human trafficking. There is an exception for work or services provided by a minor to a parent or legal guardian unless the custody or guardianship was obtained for purposes of compelling the minor to participate in commercial sex acts or sexually explicit performance or perform forced labor or services. Sex trafficking of minors is defined as the promotion, recruitment, transportation, transfer, harboring enticement, provision, obtaining or receipt of a person under the age of eighteen by any means for the purpose of causing the minor to engage in sexual acts or in sexual conduct violating Section 61-8-5(b) (prostitution, lewdness or assignation or the solicitation of prostitution or lewdness or assignation) or Article 8 (Crimes Against Chastity, Morality and Decency) or Article 8C (Filming of Sexually Explicit Conduct of Minors).

WISCONSIN

SAFE HARBOR STATUTES

None

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Wis. Stat. § 938.355 - Dispositional orders

A juvenile who has been adjudicated as delinquent under Wis. Stat. 48.12 94 or 938.12 can petition the court to expunge the record of the adjudication. The petition cannot be filed until the juvenile has turned 17 years of age. The court must expunge the record if it was the first adjudication based on a violation of 942.08(2)(b), (c) or (d), and if the juvenile has satisfactorily complied with the conditions of the dispositional order.

Wis. Stat. § 973.015 - Special disposition

At the time of sentencing, a court can order that the record be expunged upon successful completion of the sentence when a person is under the age of 25 at the time of the commission of an offense for which the maximum period of imprisonment is 6 years or less and the court determines that the person will benefit and society will not be harmed by the expungement. In the case of a violation of 942.08(2)(b), (c) or (d)(Invasion of privacy), the court must order, at the time of sentencing, that the record be expunged upon successful completion of the sentence if the person was under the age of 18 when he or she committed it.

RELATED STATUTES**Wis. Stat. § 938.245 - Deferred prosecution**

This statute is not specific to juveniles charged with prostitution or solicitation or as a victim of trafficking. It does allow for an intake worker in reviewing a delinquency charge to enter into a written deferred prosecution agreement if 1) the worker determines that neither the interests of the juvenile nor the public require filing of a petition; 2) the facts persuade the intake worker that the jurisdiction of the court, if sought, would exist; and 3) the juvenile, parent guardian or legal custodian consent.

WYOMING***SAFE HARBOR STATUTES*****Wyo. Stat. § 6-2-708 - Victim defenses; vacating convictions**

This statute is not specific to minors, but does provide that a victim of human trafficking is not criminally liable for any commercial sex act or other criminal act committed as a direct result of or as incident to being a victim of trafficking in violation of W.S. 6-2-702 through 6-2-707. If the victim is a minor, the minor must be deemed a child in need of supervision pursuant to the Children in Need of Supervision Act or a neglected child pursuant to the Child Protection Act.

If a conviction has been entered, the court in which it was entered can vacate the conviction if the participation in the offense is determined to have been the result of being a victim. Official documentation from a federal, state or local government agency creates a presumption that the participation in the

offense was a result of being a victim. However, official documentation is not required in order for a court to order the conviction vacated.

EXPUNGEMENT, SEALING, OR VACATUR STATUTES

Wyo. Stat. § 7-13-1401 - Petition for expungement; records of arrest, dismissal of charges, disposition; eligibility; no filing fee

This statute provides that a petition can be filed with the court in which a proceeding occurred for an order expunging records of arrest, charges or dispositions. The statute sets out the specific criteria that must be met in order for expungement to occur. If an expungement is ordered, the person can respond to any inquiry as though the arrest or charges did not occur.

Wyo. Stat. § 7-13-1501 - Petition for expungement of records of conviction of misdemeanors; filing fee; notice; objections; hearing; definitions

Wyo. Stat. § 7-13-1502 - Petition for expungement of records of conviction of certain felonies; filing fee; notice; objections; hearing; definitions; restoration of rights

Wyo. Stat. § 14-6-241 - Expungement of records in juvenile and municipal court

This statute applies to any person who is adjudicated delinquent as a result of committing a delinquent act other than a violent felony defined by W.S. 6-1-104(a)(xii). It also applies to a record of a violation of municipal ordinances. The person can petition the court for the expungement of the record in the juvenile court after reaching the age of majority. The court must order expungement of all records in the custody of the court of any agency or official regarding the case if: 1) the petitioner has not been convicted of a felony since adjudication; 2) no proceeding involving a felony is pending or being initiated; and 3) the rehabilitation of the petitioner has been attached to the satisfaction of the court or the prosecutor. The record of a minor convicted of a misdemeanor in circuit court may be expunged in the same manner.

Wyo. Stat. § 14-6-440 - Expungement of records in juvenile court

If a juvenile has been adjudicated in need of supervision, the juvenile can petition the court for the expungement of the record in juvenile court upon reaching the age of majority. This statute relates back to the requirement in §

6-2-708 that requires that a minor trafficking victim be deemed a child in need of supervision.

RELATED STATUTES

Wyo. Stat. § 6-2-709 - Victims' rights; services

This statute requires that after the initial encounter with a person who reasonably appears to be a victim of human trafficking, a law enforcement agency, district or county, and the prosecuting attorney's office must: 1) notify the victim services division with the office of the attorney general that the person may be eligible for services; 2) conduct a preliminary assessment to determine if the victim meets criteria for eligibility to services or benefits. In the case of a minor, the agency or office must notify the department of family services.

The statute also provides that victims of human trafficking are entitled to restitution and compensation under the Crime Victims Compensation Act. In any prosecution, police and prosecuting agencies must keep the identity of the victim and victim's family confidential, and the prosecutor must take reasonable steps to protect the victim and victim's family from being re-victimized.

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Safe Harbor, Expungement, Sealing, and Vacatur Laws and Legislation by State

State	Safe Harbor Statute	Section Title	Key Provisions/Notes	Expungement	Sealed	Vacatur	Pending Legislation	Notes	Related Statutes
AL	Code of Ala. § 13A-6-159	Permitted defenses.	Allows affirmative defense for victim of human trafficking	N/A	Code of Ala. § 12-15-136 for juveniles, Code of Ala. § 15-27-1 for misdemeanor, Code of Ala. § 15-27-2 for felonies	N/A	N/A	N/A	N/A
AK	No safe harbor provision	N/A		N/A	Alaska Stat. § 12.62.180	N/A	N/A	N/A	N/A
AZ	A.R.S. § 13-3214	Prostitution; classification	Allows affirmative defense for victim of human trafficking	A.R.S. § 13-921 for juveniles	N/A	Ariz. R. Crim. P. 24.2	2014 Bill Text AZ S.B. 1371	Minors not to be charged with child prostitution; Last action was 2/4/2014 committee referral	
AR	A.C.A. § 5-70-102; A.C.A. § 5-70-103	Prostitution; Solicitation	Allows affirmative defense for victim of human trafficking	N/A	A.C.A. § 16-90-1413; A.C.A. § 16-90-123-Sealing certain convictions (applies to victims of trafficking convicted of prostitution); Title 16, Subtitle 6, Chapter 90, Subchapter 6, Expungement of Record, A.C.A. § 16-90-601 through 605 (relates to minor's offenses)	N/A	N/A	N/A	A.C.A. § 9-27-323 (referral protocol), A.C.A. § 12-19-101 (task force), A.C.A. § 18-18-109 (civil cause of action for victims), A.C.A. § 19-5-1252 (fund)
CA	No safe harbor provision	N/A	N/A	N/A	Cal Pen Code § 851.7 for minors, Cal Pen Code § 851.87 after diversion program, Cal Pen Code § 1203.45 for minors' misdemeanors, Cal Pen Code § 1203.47 for prostitution	N/A	N/A	N/A	Cal Civ Code § 52.5 (civil cause of action for victims), Cal Wel & Inst Code § 18259, 18259.7, 18259.1 (pilot program for Alameda and Los Angeles Counties with possible expansion)
CO	No safe harbor provision	N/A	N/A	N/A	C.R.S. 18-13-101 after diversion agreement, C.R.S. 19-1-306 for juveniles, C.R.S. 24-72-702, C.R.S. 24-72-706 for victims of human trafficking	N/A	H.B. 1019	H.B.1019 concerning prostitution by a minor/minors who are victims of human trafficking/establishes immunity for a minor who is charged with prostitution. Also allows victim compensation	N/A
CT	Conn. Gen. Stat. § 53a-82	Prostitution; Class A misdemeanor.	Allows affirmative defense, rebuttable presumption	N/A	N/A	Conn. Gen. Stat. § 54-95c vacating prostitution conviction of trafficking victim	N/A	N/A	Conn. Gen. Stat. NEW: Added by P.A. 14-186, § 3 Department of Children and Families authorized to provide services to minor victims of human trafficking
DC	no safe harbor provision (but see pending legislation)	N/A	N/A	D.C. Code § 16-2335.01-Motion to vacate adjudication or grant a new factfinding hearing on the ground of actual innocence (delinquency proceedings)	D.C. Code § 16-803-Sealing of public criminal records in other cases; D.C. Code § 16-2335-Sealing of records (applies to delinquency proceedings); D.C. Code § 16-2335.02, Sealing of records on ground of actual innocence (delinquency adjudication)	N/A	2013 D.C. Act 560	Immunity from prosecution; child referred to social services (passed council/signed by mayor/projected law date 4/22/2015)	D.C. Code § 4-501 (includes labor and commercial sex trafficking and sex trafficking of minors as crimes for which victims can recover under the crime victim; compensation statutes); D.C. Code § 14-311 (provides for confidentiality of records and communications between victim and human trafficking counselor); D.C. Code § 22-1839 (evidence of past sexual behavior of trafficking victim inadmissible); D.C. Code § 22-1840 (civil action for damages for trafficking victims)
DE	11 Del. C. § 787	Trafficking an individual, forced labor and sexual servitude	Allows presumption; motion to stay proceedings	11 Del. C. § 787; 11 Del. C. § 4373 - Mandatory expungement; 11 Del. C. § 4374, 11 Del. C. § 4375- Discretionary expungement	10 Del. C. § 1025	11 Del. C. § 787			11 Del. C. § 787 (creates Council)
FL	Fla. Stat. § 39.524; Fla. Stat. § 409; Fla. Stat. § 409.1754	Safe-harbor placement; Specialized residential options for children who are victims of sexual exploitation; Sexually exploited children; screening and assessment; training; case management; task forces	No Safe Harbor provisions for diversion, deferral or immunity before or in lieu of prosecution; Sections provide for the delivery of services to victims of sexual exploitation which includes a child being forced to solicit for or engage in prostitution	Fla. Stat. § 943.0582 - Prearrest, postarrest, or teen court diversion program expunction; Fla. Stat. § 943.0583 - Human trafficking victim expunction; Fla. Stat. § 943.0585 - Court-ordered expunction of criminal history records	Fla. Stat. § 943.059 - Court-ordered sealing of criminal history records; Fla. Stat. § 958.13 for Youthful Offenders (not minors)	N/A	H.B. 183(2015); H.B. 205(2015); S.B. 488(2015); S.B. 1316(2015); S.B. 1334(2015)	H.B. 183/S.B. 488/S.B. 1334 amends the statute relating to juvenile expunction; H.B. 205/S.B. 1316 relates to the criminal history records of minors	Fla. Stat. § 39.01 - Definitions (definition of sexual exploitation); Fla. Stat. § 772.104 - Civil cause of action (provides civil cause of action for damages for victims of sex or human trafficking); Fla. Stat. § 796.09 - Coercion; civil cause of action; evidence; defenses; attorney's fees (civil cause of action for coercion into prostitution); Fla. Stat. § 985.125 - Prearrest or postarrest diversion programs (relates to diversion programs for minor for delinquent act); Fla. Stat. § 985.145 - Responsibilities of the department during intake, screenings and assessments (allows for referral to diversion program as part of intake of delinquency report)
GA	No safe harbor for minors provision, but see O.C.G.A. § 16-3-6	Affirmative defenses to certain sexual crimes	Provides affirmative defense for any person charged with a sexual crime including prostitution if committed under coercion or deception while being trafficked	N/A	O.C.G.A. § 15-11-701	O.C.G.A. § 15-11-32	H.B.244(2015); S.B. 8(2015)	H.B. 244/S.B.8 increases protections for sexually exploited children; creates Safe harbor for sexually exploited children fund; establishes plan for provision of services to sexually exploited children	O.C.G.A. § 16-5-46 - Trafficking of persons for labor or sexual servitude; O.C.G.A. § 35-3-37 - allows the filing of a petition to limit access to an adult or youthful offender (not a minor) criminal record
HI	No safe harbor provision	N/A	N/A	HRS § 571-88 (Orders Expunging Juvenile Arrest Records); HRS § 831-3.2 (Expungement Orders); HRS § 853-1 (Deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records)	N/A	HRS § 712-1209.6-Prostitution; motion to vacate conviction	N/A	N/A	HRS § 706-650.5 (Human trafficking victim services fund); HRS § 663-3 (Cause of action for coercion into prostitution)
ID	No safe harbor provision	N/A	N/A	N/A	Idaho Code § 20-525A	N/A	N/A	N/A	N/A

State	Safe Harbor Statute	Section Title	Key Provisions/Notes	Expungement	Sealed	Vacatur	Pending Legislation	Notes	Related Statutes
IL	720 ILCS 5/11-14(d)	Prostitution	Immunity from prosecution	705 ILCS 405/1-9 (Expungement of law enforcement and juvenile court records); 705 ILCS 405/5-915 (Effective until January 1, 2015, Expungement of juvenile law enforcement and court records); 705 ILCS 405/5-915 (Expungement of juvenile law enforcement and court records)	N/A	725 ILCS 5/116-2.1-Motion to vacate prostitution convictions for sex trafficking victims	2013 Bill Text IL S.B. 1645 would amend prostitution statute to provide limited immunity to violators arrested after calling to police for emergency services because they were a victim of violent crime -- but the bill leaves the language in the Safe Harbor provision intact	The last action on this bill was a referral to the Committee on Assignments. Depending on Illinois' legislative schedule, this bill may be dead or may need to be reintroduced.	730 ILCS 5/5-9-1.21 (effective January 1, 2015) creates "Specialized Services for Survivors of Human Trafficking Fund"; 720 ILCS 5/36.5-5 provides for impoundment of a vehicle used by a person in the course of certain criminal acts (listed in the statute). The owner can redeem the vehicle for a \$1000 fee, with half of that fee going to the Department of Human Services, who must then distribute it to NGOs that provide services to "persons encountered" during investigations into prostitution and related offenses as long as those persons are "prostituted persons or other victims of human trafficking."
IN	No safe harbor provision	N/A		Burns Ind. Code Ann. 35-38-9-1 through 35-38-9-1 expunging adult convictions/juvenile adjudications	N/A	N/A	N/A	N/A	Burns Ind. Code Ann. § 5-2-6-3 Indiana Criminal Justice Institute to administer assistance to victims of human sex trafficking; Burns Ind. Code Ann. § 35-42-3.5-2 - Restitution to victim; Burns Ind. Code Ann. § 35-42-3.5-3 civil cause of action for victims; Burns Ind. Code Ann. § 35-42-3.5-4 Additional rights of victim
IA	2014 Ia. ALS 1097 amending Iowa Code § 725.1 (signed by governor 7/30/2014;not yet codified)	Prostitution	Under 18 years, prosecutor can refer to Dept. of Human Services as child in need of services	2014 Ia. ALS 1097 amending Iowa Code § 725.1 amending Iowa Code § 725.1 (signed by governor 7/30/2014;not yet codified)	Iowa Code § 232.150 Sealing of records (juveniles)	N/A	N/A	N/A	N/A
KS	K.S.A. § 21-6419	Selling sexual relations	Affirmative defense for victim of human trafficking (K.S.A. § 21-5426) or commercial exploitation of a child (K.S.A. § 21-6422). The human trafficking statute applies to victims of any age (with an "aggravated" provision that does take age into account in some circumstances). The commercial sexual exploitation statute applies to victims under 18.	K.S.A. § 38-2312 and K.S.A. § 38-2312c (and K.S.A. § 21-6614, K.S.A. § 21-6614d generally)	N/A	N/A	S.B. 214(2015)	S.B. 214 a bill related to human trafficking and providing a civil action for victims	K.S.A. § 38-2231 - Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway; K.S.A. § 38-2287 Child in custody, victim of certain conduct; special assessment to determine safety, placement and treatment needs; K.S.A. § 75-757 creates. Human trafficking advisory board, K.S.A. § 75-758 creates fund
KY	KRS § 529.120	Treatment of minor suspected of prostitution offense	No prosecution of minor for prostitution or loitering for prostitution; Health and Family Services must investigate	KRS § 431.076 Expungement of criminal records for those found not guilty of crimes or for whom charges have been dismissed with prejudice; KRS § 431.078 Expungement of misdemeanor, violation, and traffic infraction records of convictions and dismissed or amended charges; KRS § 610.330 Expungement of juvenile court records; KRS § 529.160 Expungement of records relating to violation of chapter when person charged or convicted was a victim of human trafficking at time of offense	N/A	N/A			KRS § 431.082 - Civil action by victim against defendant; KRS § 630.125 - Child not to be charged with or found guilty of status offense related to human trafficking; KRS § 529.140 - Human trafficking victims fund; KRS § 620.029 treatment for victims
LA	La. Ch.C. Art. 839	Availability of an informal adjustment agreement (La. Ch.C. Art. 725 has findings and purpose for creation of safe harbor)	Allows informal adjustment for minor's first offense for prostitution (RS 14:82), prostitution by massage or crimes (RS 14:83.3) against nature by solicitation (RS14:89.2); informal adjustment includes specialized services. Minor must be willing to cooperate.	La. Ch. C Art. 918 Grounds or expungement in delinquency proceedings, generally; La. Ch. C. Art. 923 Expungement for delinquency adjudications of prostitution, prostitution by massage, crimes against nature by solicitation when victim of human trafficking; 2014 La. ACT 145; 2014 La. HB 55 added Title 34 to Code of Criminal Procedure regarding expungement	N/A	N/A	N/A	N/A	La. R.S. 14:89, 14:89.2 affirmative defenses for victims of trafficking for "crimes against nature";Louisiana Children's Code, Title 6. Child in need of care. Chapter 20. Safe Harbor for Sexually Exploited Children applies to child victim of sex trafficking and provides for safe house and services;La. R.S. § 46:2163 Allows a civil cause of action of trafficking victims
ME	No safe harbor provision	N/A	N/A	N/A	15 M.R.S. § 3308-Court records;inspection (for juveniles)	N/A	N/A	N/A	5 M.R.S. § 4701 (civil cause of action for victims)
MD	no safe harbor provision (but see Md. CRIMINAL PROCEDURE Code Ann. § 8-302)	N/A	N/A	Md. Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 3-8A-271 - Expungement of records (specific to juvenile proceedings); CRIMINAL PROCEDURE, Title 10, Criminal Records. Subtitle 1, Expungement of Police and Court Records (sections within this subtitle address expungement of police and court criminal records)	N/A	Md. CRIMINAL PROCEDURE Code Ann. § 8-302 - Motion to vacate judgment for acts of prostitution committed under duress (applies to victims of human trafficking)	SENATE BILL 16, SENATE BILL 87,HOUSE BILL 131 and HOUSE BILL 124	Amending Criminal Procedure Code, Title 10, Section 10-105 and 10-106 on expungement	N/A
MA	ALM GL ch. 119, § 39L; ALM GL ch. 265, § 57	Sexually Exploited Children - Safeguarding Welfare During Criminal Proceedings; Human Trafficking -- Victims Accused of Common Night Walking or Streetwalking -- Affirmative Defense	Stay of arraignment and proceedings place on file if not arraigned yet, if arraigned, pretrial probation	N/A	ALM ALM GL ch. 276, § 100A - Sealing of Certain Criminal Record Files by Commissioner of Probation; ALM GL ch. 276, § 100B -Sealing of Certain Juvenile Record Files; Conditions; Effect	N/A	N/A	N/A	ALM GL ch. 119, § 21 (sexually exploited child includes victim of sexual servitude, child engaging in sexual conduct for a fee or common night walking or streetwalking); ALM GL ch. 119, § 39K (Requires dept of children and families to provide services to sexually exploited children); ALM GL ch. 260, § 4D (civil claim for damages for victims of labor and sexual servitude)

State	Safe Harbor Statute	Section Title	Key Provisions/Notes	Expungement	Sealed	Vacatur	Pending Legislation	Notes	Related Statutes
MI	MCLS § 750.451	Violation of §§ 750.448, 750.449, 750.449a, 750.450, and 750.462	Rebuttable presumption for person under 18 years for violation of offenses of soliciting prostitution, engaging in prostitution, aiding/abetting prostitution or female under 16 year in house of prostitution	N/A	N/A	MCLS MCLS § 712A.18e - Application for entry of order setting aside adjudication; MCLS § 780.621 - Application for order setting aside conviction	N/A	N/A	Chapter 722 - Children, Act 13 of 1988 Juvenile Diversion Act (provides a process for certain minors to be diverted from the court system, establishes diversion criteria and procedures. Not specific to trafficking victims); MCLS § 750.451c - Individual as victim of human trafficking violation (provides for deferral or proceedings for any person who is victim of trafficking and found or pled guilty on offense of soliciting prostitution, engaging in prostitution, aiding/abetting prostitution or a female 16 years of age or less in house of prostitution)
MN	Minn. Minn. Stat. § 145.4716; Minn. Stat. § 609.325	Safe Harbor for Sexually Exploited Youth; Defenses	Establishes position of director of child sex trafficking prevention; Affirmative defense for loitering with intent to participate in prostitution	N/A	Minn. Minn. Stat. § 260B.198 - Dispositions; Delinquent Child (Sealing of delinquency records; Minn. Stat. § 609A.01, et seq. - Crimes, Criminals, Chapter 609A, Expungement (allows sealing of criminal records)	N/A	N/A	N/A	Minn. Stat. § 260B.141 - Petition (prosecutor must determine is child alleged to have engaged in prostitution is child in need of protection or services); Minn. Stat. § 299A.71 - Combatting Juvenile Prostitution; Prevention Grants (provides for grants to law enforcement for training to recognize individuals who sexually exploit youth); Minn. Stat. § 299A.785 - Trafficking Study (collaboration of government and nongovernmental agencies to collect trafficking data); Minn. Stat. § 609.3232 - Protective Order authorized (parent or guardian can seek protective order against person inducing, coercing or soliciting their minor child for prostitution); 2014 Minn. Chapter Law 156 (appropriations act which authorizes \$500,000 for housing and supportive services for sexually exploited youth)
MS	Miss. Code Ann. § 97-3-54.1	Human Trafficking Act; prohibited conduct; penalty	Miss. Code Ann. § 97-3-54.1 (5) provides an affirmative defense to prosecution under the Human Trafficking act to victims who are subjected to a reasonable apprehension of serious harm to themselves, a member of their family, or a close associate.	2014 Bill Text MS H.B. 178-bill introduced died in committee.	Miss. Code Ann. § 43-21-261 through 43-21-267 - juvenile records confidential with limited exceptions.	Miss. Code Ann. § 97-3-54.6 - Human Trafficking Act; injunctive and other relief for victims of trafficking; confidentiality (court can vacate conviction if participation was result of being victim of trafficking)	N/A	N/A	Miss. Code Ann. §§ 99-37-25; 99-41-1; 99-47-1, Mississippi Crime Victims Compensation Act. The Code of Mississippi Rules provides for a division of victim compensation, see CMSR 03-000-01, Mississippi Human Trafficking Act, Miss. Code Ann. § 97-3-54 through 97-3-54.9 outlaws human trafficking, provides for a human trafficking coordinator, programs to protect trafficking victims.
MO	No safe harbor statutes specific to minors, but see 566.223 R.S. Mo	For 566.223-Federal Trafficking Victims Protection Act of 2000 to apply, when -- affirmative defense -- procedures to identify victims, training on protocols	566.223(2) R.S. Mo provides an affirmative defense for persons trafficked because of threats or use of force against victim or third party.	610.122 R.S.Mo / 610.123 R.S.Mo allows for expungement of arrest records in certain circumstances.	211.321 R.S.Mo - juvenile records are open only to specified persons with a legitimate interest; 610.105 R.S.Mo - Records closed where nolle prosequi, dismissed not guilty of suspended sentence	N/A	H.B. 152(2015)	Replaces the criminal statutes on sexual trafficking of a child with new language	566.223, R.S. Mo, provides services for trafficking victims, including programs to assist victims, educate officials and employees, and allows a trafficking victim to sue to recover damages from a trafficker. The Attorney General may recover civil penalties and obtain an injunction against a trafficker.
MT	No safe harbor provision (but see pending legislation H.B. 89)	N/A	N/A	46-23-510, MCA, only if the person convicted has his or her sentence finally reversed.	41-5-216, MCA and Mont. Admin. R. 23.12.204 require juvenile records to be physically sealed once the juvenile reaches age 21.	46-18-608, MCA - Motion to vacate prostitution conviction -- trafficking victims	H.B.89(2015); H.B.474	H.B. 89 provides a new section allowing immunity from criminal liability to a child for a charge of prostitution, promoting prostitution if the child was a victim of trafficking. The child will be presumed to be a youth in need of care; allows a new section for an affirmative defense to a charge of prostitution, promoting prostitution if committed as a result of trafficking; provides a civil action to trafficking victim eligibility for services or benefits; H.B.474(2015) requires dept. of justice to undertake efforts to prevent child sex trafficking	N/A
NE	R.R.S. Neb. § 28.801	Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties.	Victims of trafficking have an affirmative defense to a charge of prostitution. If the person charged with prostitution is reasonably believed to be a minor, the minor is subject to temporary custody and further disposition under the Nebraska Juvenile Code.	N/A	R.R.S. Neb. § 43-2.108, et seq. provides for sealing of juvenile records.	N/A	L.B. 294	L.B. 294 adds Human Trafficking Victims Civil Remedy Act	R.R.S. Neb. § 81-1430 establishes task force to investigate, study and recommend prevention and rehabilitative services; R.R.S. Neb. § 81-1431 mandates training on human trafficking issues for law enforcement and criminal justice personnel

State	Safe Harbor Statute	Section Title	Key Provisions/Notes	Expungement	Sealed	Vacatur	Pending Legislation	Notes	Related Statutes
NV	No safe harbor provision	N/A	N/A	N/A	Nev. Rev. Stat. Ann. Chapter 62H establishes the procedure for sealing juvenile records. Nev. Rev. Stat. Ann. § 179.245 et seq. provides the procedure and eligibility for sealing adult criminal records; Nev. Rev. Stat. Ann. § 179.285-Order sealing records; Effect; proceedings deemed never to have occurred; restoration of civil rights	Nev. Rev. Stat. Ann. § 176.515 court can grant motion to vacate conviction for prostitution or solicitation of prostitution if result of being trafficking victim	A.B. 113(2015);A.B. 153(2015)	Nev. Rev. Stat. Ann. § 201.300;A.B. 113 revises provisions related to the sealing of juvenile records;A.B. 153 defines sexually exploited child as less than 18 years who has engaged in prostitution or solicitation for prostitution;provides sexually exploited child is child in need of supervision and must not be considered a delinquent child	Nev. Rev. Stat. Ann. § 201.351- Forfeiture of assets;Nev. Rev. Stat. Ann. § 217.070-"Victim" defined includes trafficking victim for crime victims compensation relief;Nev. Rev. Stat. Ann. § 217.400 provides for assistance to victims of domestic violence;Nev. Rev. Stat. Ann. § 217.105- Confidentiality of information for victim's compensation claimants;Nev. Rev. Stat. Ann. § 217.462- Fictitious address for victim of domestic violence, human trafficking,
NH	RSA 645:2 (also see RSA 633:7 V(a))	Prostitution and Related Offenses.	RSA 645:2 provides an affirmative defense to prostitution charges to human trafficking victim, and juvenile cannot be prosecuted for prostitution.		RSA 169-B:35- Juvenile Case and Court Records	RSA 651:5. Annulment of Criminal Records (effective 1/1/2015);RSA 633:7 Trafficking in Persons (allows motion to vacate)	N/A	N/A	RSA 633:7 prohibits trafficking in persons, with enhanced penalties for persons who traffic in juveniles and provides other protections;RSA 633:8 and 633:9 allow forfeiture of items used in connection with trafficking;RSA 633:10 requires a person convicted under the trafficking statutes to pay restitution to the victim;633:11 allows a civil action by a trafficking victim; and, if the victim prevails, attorney's fees and costs are allowed.
NJ	N.J. Stat. § 2C:34-1(not specific to only juveniles); N.J. Stat. § 2A:4A-71;N.J. Stat. § 2A:4A-74	Prostitution and related offenses	Allows affirmative defense for victim of human trafficking (N.J. Stat §2:C34-1(e). Court may consider specific factors listed in N.J. Stat. § 2A:4A-71(b)(11)	N.J. Stat. § 2C:52-1, et seq. (adult offenders) and N.J. Stat. § 2C:52-4.1 (juvenile offenders);N.J. Stat. § 2C:44-1-1-Certain convictions vacated, expunged (applies to conviction for prostitution or related offenses where person is victim of trafficking)	N.J. Stat. § 2A:4A-62-Sealing of records	N.J. Stat. § 2C:44-1-1-Certain convictions vacated, expunged (applies to conviction of prostitution or related offenses where person was victim of trafficking)	S.B. 521(2014)	S.B. 521- An Act concerning the expungement of certain offenses committed by juveniles and supplementing Title 2C of the New Jersey Statutes	N.J. Stat. § 2C:13-8-Human trafficking (criminalizes trafficking and provides affirmative defense if defendant was victim of trafficking; N.J. Stat. § 2C:13-8.1-Civil action permitted by injured person; N.J. Stat. § 52:4B-44.1- Establishment of standard protocols for provision of information and services to victims of human trafficking, minors charged with prostitution N.J. Stat. § 2A:84A-32.4 permits victim to testify via closed-circuit television; N.J. Stat. 2C:64-1 Property subject to forfeiture ;N.J. Stat. 52:17B-237-Human Trafficking Task Force;N.J. Stat. 52:17B-238-Human Trafficking Survivor's Assistance Fund
NM	No safe harbor provision	N/A	N/A	N/A	NMSA 30-52-1.2 Sealing of records of human trafficking victims;N.M. Stat. Ann. § 32A-2-26 Sealing of records (delinquency)	N/A	NM H.M. 16 (2014); NM H.B. 556; NM S.M. 62 (2014)		NM provides a procedure which allows for referral to another agency and conditions adjustments or agreements which may result in the dismissal of a delinquency complaint or obviate the necessity for filing a delinquency petition. NMSA 32A-2-7
NY	NY CLS Soc. Serv. 447-a, 447-b; NY CLS CPL § 170.80	Safe Harbor for Exploited Children Act; Proceedings regarding certain prostitution charges; certain persons aged sixteen or seventeen;NY CLS Family Ct Act § 311.4-Substitution of petition or finding	Provides for services for exploited children;Charge of prostitution or loitering for purposes of prostitution by person 16 or 17 years of age converted to person in need of supervision;Presumption that juvenile in an arrest for an act of prostitution isa victim of severe form of trafficking requiring substitution of delinquency petition to person in need of supervision	NY CLS Family Ct Act § 375.3- Expungement of court records	NY CLS CPL § 720.15- Youthful offender procedure; sealing of accusatory instrument; privacy of proceedings;NY CLS Family Ct Act § 375.2	NY CLS CPL 440.10-Motion to vacate judgment	ASSEMBLY BILL 2831;ASSEMBLY BILL 2869;Senate Bill 112);ASSEMBLY BILL 3006(Senate Bill 2006);ASSEMBLY BILL 4213	(2831)Amends Penal Law 240.37 (loitering for purpose of prostitution) to specifically require a person under 16 years of age to be found a juvenile delinquent; (2869)Amends Penal Law 230.00 (Prostitution) to apply to person 17 years old or more, adds Penal Law 230.01 Unlawful Prostitution applying to a person less than 17 years old, adds Penal Law 230.06 as the crime of sexual exploitation of a child and amends Penal Law 230.11 adding an affirmative defense to prostitution that defendant is victim of sex trafficking;(3006)Adds new section CPL 160.56 Conditional sealing of certain convictions for defendant 20 years of age or younger of a juvenile offender; (4213)Amends section 311.4 of the family court act to add an arrest for loitering for prostitution and also a requirement that the delinquent was intimidated, forced, threatened or coerced to require a petition for child in need of services. Otherwise, it would be in the Court's discretion.	NY CLS CPL § 720.35-Youthful offender adjudication; effect thereof; records;NY CLS Exec § 529-b-Supervision and treatment services for juveniles program;NY CLS Exec § 620, et seq. (provides for Victim Services claim for victims of sex and labor trafficking);
NC	N.C. Gen. Stat. 14-204(c)	Prostitution/Immunity from Prosecution for minors	Minors immune from prosecution for prostitution and shall be taken into temporary protective custody as an undisciplined juvenile; law enforcement to immediately report allegation of human trafficking violation	N.C. Gen. Stat. § 7B-3200- Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined;N.C. Gen Stats Chapter 15A Criminal Procedure Act, Subchapter 10, Article 5 Expunction of records, N.C. Gen Stat 15-145, et seq	N/A	N.C. Gen Stat. 15A-146.1-Motion by the defendant to facate prostitution conviction for sex trafficking victim	N/A	N/A	NC provides for a preliminary inquiry upon a delinquency complaint that may result in dismissal or diversion. N.C. Gen Stat. 7B-1701, et seq.

State	Safe Harbor Statute	Section Title	Key Provisions/Notes	Expungement	Sealed	Vacatur	Pending Legislation	Notes	Related Statutes
ND	No safe harbor provision	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N.D. Cent. Code 121-04-01-Juveniles(Under 14 cannot be tried as an adult);N.D. Cent. Code 121-05-10-Duress(duress is an affirmative defense to a crime);Chapter 12.1-35 Child Victim and Witness Fair Treatment Standards, N.D. Cent. Code 12.1-35-01, et seq.
OH	O.R.C. 2152.021	Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings	Court may hold a hearing to determine whether to hold the complaint in abeyance pending successful completion of diversion program;Specifically, O.R.C. 2152.021(F) provides that the Court must appoint a guardian ad litem for youth where the court has reason to believe that the child is a human trafficking victim; the guardian ad litem will determine whether the child is a victim under the statute and whether the delinquency charge is related to the child's trafficking; if so, the court will hold the complaint in abeyance and, pending successful completion of a diversion program, will immediately dismiss, seal, and expunge the charge. There are no limits on the number of times Safe Harbor can be employed or what type of charges may qualify.	O.R.C. 2151.358-(Juveniles) Any person who has been convicted of one of the enumerated predicate offenses (soliciting R.C. 2907.24, loitering to solicit R.C. 2907.241, or prostitution R.C. 2907.25) may apply to expunge "the record related to a conviction or plea of guilty to an offense," if the person's "participation in the offense was a result of the person having been a victim of human trafficking." ORC Ann. 2953.38-Expungement of record of convictions available for victims of human trafficking	ORC 2953.32-ORC 2953.32 allows for sealing of adult conviction records and ORC 2953.52 allows for sealing of adult nonconviction records. ORC 2151.356 allows sealing of juvenile court records and ORC 2151.358 allows expungement of sealed juvenile records;ORC 2953.52 Sealing of official records after not guilty finding, dismissal of proceedings or no bill	ORC 2967.04-ORC 2967.04 -- A pardon relieves the person to whom it is granted of disabilities arising out of the conviction or convictions from which it is granted.	N/A	N/A	ORC Ann. 2151.031-Abused child defined (a child victim of sexual activity falls within the definition of an abused child);ORC Ann. 2307.51-Right of victim of human trafficking to bring civil suit
OK	21 Okl. St. 748.2	Guidelines for treatment of human trafficking victims--Right to civil action--Notice of Rights--Remand to Human Services	Minor taken into custody of Dept. of Human Services; Charges dismissed if minor is more than likely a victim of trafficking or sex abuse. Prostitution statute provides for a presumption that person of 16 or 17 is a victim of human trafficking. 21 Okl. St. 1029(c)	22 Okl. St. § 18-Expungement of records--Persons authorized;22 Okl. St. 19- Sealing and unsealing of records--Procedure;22 Okl. St. § 19c-Arrest or charge as result of human trafficking--Expungement on motion of court or defendant	See 22 Okl. St. § 18 and 22 Okl. St. § 19	N/A	2014 OK Laws 309 (S.B. 1538 (2013)); H.B. 1078(2015);	S.B. 1538-Signed by governor and chaptered 5/16/2014. Not yet codified. Effects provisions of 21 Okl. St. 748 and 748.2;H.B. 1078 bill mandates law enforcement to report any child identified as sex trafficking victim	10A Okl. St. 2-2-104-(provides for a preliminary inquiry in delinquency cases to determine whether further treatment should be obtained and whether the complaint should be dismissed or informally adjusted.); 21 Okl. St. 748(criminal statute for human trafficking allows affirmative defense for victim of trafficking);21 Okl. St. § 748.2(B) (allows a civil action for trafficking victims);21 Okl. St. 865-869(specifically criminalizes trafficking in children)
OR	No safe harbor provision but see ORS 163.269	N/A	ORS 163.269 makes the defense of duress available to victims of human trafficking	ORS 419A.262 -Expunction proceeding; notice to victim; effect of expunction; confidentiality; penalties (specific to juveniles)	ORS 137.225 Order setting aside conviction or record of arrest; fees; prerequisites; limitations		HOUSE BILL 2205;HOUSE BILL 2196	2196 directs Dept of Human Services to submit report relating to child victims of commercial sexual exploitation; 2205 establishes fund to end commercial sexual exploitation including services, interventions and treatment for child victims.	ORS § 30.867-(civil cause of action for trafficking victims);O.R.S. 163.315(18 years of age or less incapable of consent to sex act);ORS § 419C.261-Oregon juvenile code provides for setting aside, dismissing, or diverting youth in the furtherance of justice;O.R.S. 419C.225(authorizes diversion program for youth)ORS 92.854 (allows for the employees or volunteers counseling and shelter services to victims of human trafficking to assist in applying for address confidentiality)
PA	No safe harbor provision but see (18 Pa CS. 3019(b))	N/A	Human trafficking statutes provide for a defense that the person was a victim of human trafficking at the time of the offense. 18 Pa.C.S. 3019(b)	18 Pa.C.S. 3019(c-)Victim protection during prosecution;18 Pa.C.S. § 9122-Expungement;18 Pa.C.S. § 9123-Juvenile records	N/A	18 Pa.C.S. 3019(d)-Victim protection during prosecution	S.B. 32 (2015)	Bill amends Title 18 Crimes and Offenses and Title 42 Judiciary providing for pretrial diversion program for juveniles	Title 18,Part II, Article B, Chapter 30 Trafficking of Persons; 18 Pa.C.S. 3051, et seq provides section regarding Protection of Victims including civil cause of action, services and shelters. 42 Pa.C.S. 6323-PA provides for a preliminary inquiry for juvenile offenders to determine whether informal adjustment is appropriate.
PR	No safe harbor provision	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RI	No safe harbor provision (but see R.I. Gen Laws 11-34.1-2®)	N/A	Prostitution statute provides for an affirmative defense that the accused was forced to commit a commercial sexual activity. R.I. Gen. Laws 11-34.1-2(c)	None specifically for human trafficking victims. See R.I. Gen Laws 11-34.1-5 for expungement relating to prostitution offenses;Title 12 Criminal Procedure, Chapter 1.3 Expungement of Criminal Records, Section 12-1.3-1, et seq. provides the requirements for expungement in general	Juvenile records automatically sealed. R.I. Gen. Laws 14-1-6.1	N/A	S.B. 64(2015)	Amends statutes related to expungement of criminal records to change first offender to qualified offender and allow expungement if there are no more than 2 convictions.	R.I. Gen. Laws 14-1-10R.I. provides for preliminary inquiry for juvenile offenders to determine whether filing delinquency petition is in the interest of the child or justice

State	Safe Harbor Statute	Section Title	Key Provisions/Notes	Expungement	Sealed	Vacatur	Pending Legislation	Notes	Related Statutes
SC	No safe harbor provision (but see S.C. Code Ann. 16-3-2020(J))	N/A	S.C. Code Ann. 16-3-2020(J) makes the defenses of duress and coercion available to victims of trafficking.	S.C. Code Ann. § 63-19-2050- Petition for record destruction (Juvenile Records); S.C. Code Ann. § 17-22-910- Applications for expungement; administration; S.C. Code Ann. § 22-5-910- Expungement of criminal records; S.C. Code Ann. 22-5-920 - Conviction as a youthful offender;	N/A	N/A	H.B. 3342(2015-16); S.B. 133(2015-16); S.B. 183(2015-16); S.B. 236(2015-16)	3342 is an act to amend Sec 16-3-2100 to enact the Safe Harbor for Exploited Minors Act and provide protections to minors charged with crimes involving prostitution; 133 Amends SC Code 63-19-2050 related to expungement of juvenile records; 183 Amends SC Code 16-3-2010 allowing a victim convicted of trafficking to move to vacate the conviction; also a victim is not subject to prosecution for trafficking or prostitution if a minor at the time of the offense; amends SC Code 16-3-2070 relating to a victim's rights and the crime victim's compensation fund; 236 Amends sections relating to expungement of criminal records	S.C. Code Ann. § 16-3-2020 affirmative defense for charge of human trafficking if defendant is a victim of trafficking; S.C. Code Ann. 63-19-1010 requires an initial intake for juveniles to determine whether prosecution is appropriate; S.C. Code 63-19-1030 provides for preliminary inquiry for juvenile offenders to determine whether filing delinquency petition is in the interest of justice or the child and whether treatment or a diversion program is appropriate
SD	No safe harbor provision	N/A	S.D. Codified Laws § 23A-3-26 - Expungement; S.D. Codified Laws § 23A-3-27 - Motion for expungement; S.D. Codified Laws § 23A-3-30 - Order; S.D. Codified Laws § 26-7A-115 - Sealing of records and files in actions involving a delinquent child	N/A	N/A	N/A	S.B.96	Amends Section 22-23-1- Prostitution-Penalty to exclude any person under 18 years of age	N/A
TN	Tenn. Code Ann. § 39-13-513	Prostitution -- Defenses	Immunity from prosecution under 18 years of age	Tenn. Code Ann. § 37-1-153. Court files and records -- Inspection limited -- Exceptions for certain violent offenders -- Confidentiality -- Expunction; Tenn. Code Ann. § 38-6-118 - Expunged criminal offender and pretrial diversion database; Tenn. Code Ann. § 40-32-101 - Destruction or release of records	N/A	N/A	N/A	N/A	Tenn. Code Ann. § 24-7-120 - Child's testimony--Closed circuit television (applies to child victims of trafficking); Tenn. Code Ann. § 38-14-101 - Text of compact (National Crime Prevention and Privacy Compact) (Tenn recognizes sealed records from other states)
TX	Tex. Fam. Code § 54.0326	Deferral of Adjudication and Dismissal of Certain Cases on Completion of Trafficked Persons Program	Applies to any delinquent conduct or conduct indicating a need for supervision AND the child may be a victim of trafficking; proceedings deferred; dismissal w/prejudice if program completed	Tex. Code Crim. Proc. art. 45.0216 - Expunction of Certain Conviction Records; Tex. Code Crim. Proc. art. 55.02 - Procedure for Expunction	Tex Fam. Code 58.003 - Sealing of Records (contains provision specific to trafficked juveniles);	N/A	H.B. 263(2015); H.B. 1217(2015)	H.B. 263 adds a section relating to sealing of juvenile records of adjudication in certain cases; H.B. 1217 department of children services must report certain information regarding foster children who are victims of human trafficking	Tex. Fam. Code § 54.0401- Trafficked Persons Program; Tex. Hum. Res. Code § 221.0035 - Best Practices to Identify and Assess Victims of Sex Trafficking; Tex. Gov't Code § 552.138 - Exception: Confidentiality of Family Violence Shelter Center, Victims of Trafficking Shelter Center, and Sexual Assault Program Information; Tex. Code Crim. Proc. art. 38.071 - Testimony of child who is Victim of Offense; Tex. Code Crim. Proc. art. 38.072 - Hearsay Statement of Certain Abuse Victims; Tex. Penal Code § 20A.02 - Trafficking of Persons; Tex. Fam. Code § 262.2015 - Aggravated Circumstances (allows for termination of parent/child relationship without reasonable efforts to reunify when child is subjected to circumstances by parent that would violate the penal code sections for compelling prostitution or trafficking of persons.)
UT	Utah Code Ann. § 76-10-1301		Applies to person under 18 involved in prostitution or sexual solicitation; law enforcement must conduct investigation; refer to family services	Utah Code Ann. § 77-40-103 - Expungement procedure overview; Utah Code Ann. § 77-40-104 and Utah Code Ann. § 77-40-105 (requirements for eligibility); Utah Code Ann. § 78A-6-1105 - Expungement of juvenile court record -- Petition -- Procedure	N/A	N/A	N/A	N/A	Utah Code Ann. § 62A-4a-105 - Division responsibilities (requires Family Services to provide services for minors who are victims of trafficking or who have engaged in prostitution or sexual solicitation)
VT	13 V.S.A. § 2652	Human Trafficking	Victim of commercial sex trafficking cannot be found in violation of or be subject of delinquency petition based on specified statutes including prostitution if committed as victim of sex trafficking; under 18 years, can be considered a child in need of care or supervision	13 V.S.A. § 7602 Expungement and sealing of record, postconviction; procedure; 13 V.S.A. § 7603 - Expungement and sealing of record, no conviction; procedure	33 V.S.A. § 5119 - Sealing of records (Juvenile Proceedings)	13 V.S.A. § 2658 - Prostitution conviction; motion to vacate by victim of human trafficking	N/A	N/A	13 V.S.A. § 2663 - Classification of victims; immigration assistance (victim of human trafficking under 18 must be referred to Family Services; 13 V.S.A. § 7041 - Deferred sentence (general deferral statute if person is 28 years or younger); Title 13, Part 5, Chapter 231 UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION. The sections of this Chapter are not effective until January 1, 2016. Conviction is defined as a juvenile adjudication; 15 V.S.A. § 1152 - Address Confidentiality Program; application; certification (trafficking victim can have address designated by Secretary of State as victim's address)
VA	No safe harbor provision	N/A	Va. Code Ann. § 16.1-306 - Expungement of court records (specific to juvenile records); Title 19.2, Chapter 23.1 Expungement of Criminal Records (set of statutes on expungement of criminal records)	Va. Code Ann. § 16.1-306 - Expungement of court records (specific to juvenile records); Title 19.2, Chapter 23.1 Expungement of Criminal Records	N/A	N/A	N/A	N/A	N/A

State	Safe Harbor Statute	Section Title	Key Provisions/Notes	Expungement	Sealed	Vacatur	Pending Legislation	Notes	Related Statutes
WA	Rev. Code . (ARCW) § 13.40.070; Rev. Code Wash. (ARCW) § 13.40.213; Rev. Code Wash. (ARCW) § 13.40.219	Complaint/Complaints -- Screening -- Filing information -- Diversion; Juveniles alleged to have committed offenses of prostitution or prostitution loitering -- Diversion; Arrest for prostitution or prostitution loitering -- Alleged offender -- Victim of severe form of trafficking, commercial sex abuse of a minor	Juvenile's first prostitution/prostitution loitering charge must be diverted; If not the first charge, 13.40.213 allows the prosecutor to divert under certain criteria; any juvenile arrested for prostitution / prostitution loitering meets criteria under TVPA and is victim of commercial sex abuse or minor	N/A	Rev. Code Wash. (ARCW) § 13.50.260 - Sealing hearings -- Sealing of records (applies to juvenile court)	Rev. Code Wash. (ARCW) § 9.96.060 - Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking; Rev. Code Wash. (ARCW) § 9.96.070 - Vacating records of conviction -- Prostitution offenses	N/A	N/A	Rev. Code Wash le 7, Chapter 7.68 - Victims of Crimes - Compensation, Assistance (allows for compensation to victims of trafficking); Rev. Code Wash. (ARCW) § 9A.44.150 - Testimony of child by closed-circuit television (applies to trafficking victims under the age of fourteen); Rev. Code Wash. (ARCW) § 13.32A.270 - Youth who have been diverted -- Alleged prostitution or prostitution loitering offenses -- Services and treatment; Rev. Code Wash. (ARCW) § 13.34.050 - Court order to take child into custody, when -- Hearing (includes allowing or encouraging prostitution); Rev. Code Wash. (ARCW) § 13.34.132 - Petition seeking termination of parent-child relationship - Requirements (reasonable effort not required where parent promotes commercial sex abuse of child); Rev. Code Wash. (ARCW) § 13.50.270 - Destruction of records (applies to juvenile records for court and law enforcement agency)
WV	No safe harbor provision	N/A	N/A	W. Va. Code § 61-2-17 - Human trafficking; criminal penalties (any person convicted of prostitution can move to expunge if result of being victim of trafficking); W. Va. § 61-11-26 - Expungement of certain criminal convictions; procedures; effect; W. Va. Code § 61-11-25 - Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed	N/A	N/A	H.B. 2641(2015)	H.B. 2641 amends juvenile justice statutes to require mandatory prepetition diversion process for status and misdemeanor offenses	W. Va. § 49-5-17 - Confidentiality of juvenile records; W. Va. Code § 49-5-18 - Confidentiality of juvenile records; W. Va. Code § 49-5-2a - Pre-petition diversion to informal resolution (pre-petition proceeding for juvenile); W. Va. Code § 61-2-17 - Human trafficking; criminal penalties
WI	No safe harbor provision	N/A	N/A	Wis. Stat. § 938.355-Dispositional orders; Wis. Stat. § 973.015	N/A	N/A	N/A	N/A	Wis. Stat. § 938.245 - Deferred prosecution (general juvenile code statute; not specific to trafficking victims, prostitution or solicitation)
WY	Wyo. Stat. § 6-2-708	Victim defenses; vacating convictions.	Applies to all trafficking victims for commercial sex acts and other criminal acts; minors deemed neglected or child in need of supervision	Wyo. Stat. § 14-6-241 - Expungement of records in juvenile and municipal court; 14-6-440. Expungement of records in juvenile court; Wyo. Stat. § 7-13-1401 - Petition for expungement; records of arrest, dismissal of charges, disposition; eligibility; no filing fee; Wyo. Stat. § 7-13-1501 - Petition for expungement of records of conviction of misdemeanors; filing fee; notice; objections; hearing; definitions; Wyo. Stat. § 7-13-1502 - Petition for expungement of records of conviction of certain felonies; filing fee; notice; objections; hearing; definitions; restoration of rights	N/A	Wyo. Stat. § 6-2-708-Victim defenses; vacating convictions) court may vacate conviction if participation the result of being a victim of trafficking.	H.B. 123(2015)	H.B. 123 amends statutes related to expungement of records in juvenile courts	Wyo. Stat. § 6-2-709 (Victims' rights; services.) provides for services for victims or trafficking

SAFE HARBOR PROCEDURAL FLOW CHART FOR MINORS - OHIO

REFERRAL TO COURT - COURT HAS A REASON TO BELIEVE THE CHILD IS TRAFFICKED OR EXPLOITED

SOURCE: Law enforcement, probation, juvenile detention, parent, CPS, other juveniles, attorneys, other courts, complaint, *sua sponte*

STANDARD: "Reason to believe" - VERY LOW

ACTION: Court **immediately** appoints a *separate guardian ad litem* (GAL) **and** an attorney

PURPOSE: To intervene, protect, and provide services to the child **as quickly as possible**

GAL begins investigation

Court sets next hearing

Court informs all parties of possible Safe Harbor Application

Is child charged with loitering with intent, solicitation, or prostitution?

Is child charged with something other than loitering with intent, solicitation, or prostitution?

Child and charges **PER SE** qualify for **Safe Harbor Status (SHS)** as the child is trafficking victim or exploited and acts charged are related

GAL believes the child is **Safe Harbor Eligible (SHE)** as the child is a victim based on the investigation

GAL believes the child is **NOT SHE** and court agrees OR child **REFUSES** to participate, the **CASE PROCEEDS**

Child agrees to participate

GAL believes the acts charged are related to the child's victimization and **QUALIFIES** for **SHS**

Defense or GAL (who is an attorney) moves for **SHS** under (F)(1)(b) IF court finds that the acts charged are **NOT** related, the **CASE PROCEEDS**

Defense or GAL (who is an attorney) moves for **SHS** as the child is a victim and the acts charged are related, **PER SE** under (F)(1)(a)

Child agrees to participate

Defense or GAL (who is an attorney) moves for **SHS** under (F)(1)(b) IF the court agrees, the charge is held in abeyance for 90 days

Note: If all parties agree, a hearing is **NOT** required, only findings under (F)(1)(b). If all parties **DO NOT AGREE**, the court must hold a hearing on the application of (F)(1)(b).

The court makes findings accordingly and the charge(s) is held in abeyance for 90 days

If child has successfully completed diversion requirements within the allowed period (270 days maximum) the court grants **Safe Harbor Diversion (SHD)**

After 90 days, if child has unsuccessfully completed diversion, move court to renew diversion for additional 90 days (can be renewed twice)



Ohio Legislative Service Commission

Research Memorandum

Dennis M. Papp
November 21, 2014

HUMAN TRAFFICKING EXPUNGEMENT MECHANISM

SUMMARY

R.C. 2953.38 provides a mechanism for a person who is a victim of human trafficking to have the "record of conviction" expunged in specified circumstances. The section's language regarding the "record of conviction" that is to be expunged is somewhat ambiguous, and it is unclear whether the expungement order is to apply to all offenses that the person was convicted of committing and that resulted from the victim having been a victim of trafficking in persons or only to the conviction of the specified prostitution-related offense that is the basis of the person being eligible to make the application. The Legislative Service Commission analyses of the act that enacted R.C. 2953.38 did not expressly address that issue. No court decision since the enactment of R.C. 2953.38 has discussed, interpreted, or applied the section, but a few decisions that pertain to other laws that provide for conviction record sealing at least imply that conviction record expungement laws are to be liberally construed in favor of the offender and strictly construed against the state. If R.C. 2953.38 is to be construed in that manner, although the issue cannot be determined with certainty, its provisions arguably could be interpreted as providing for the expungement of the records related to all offenses that the person committed and that resulted from the person having been a victim of trafficking in persons.

A member of the General Assembly asked our office to review R.C. 2953.38, which provides a mechanism for a person who is a victim of human trafficking to have the "record of conviction" expunged in specified circumstances, and provide information as to whether the mechanism provides for expungement of records for all offenses that the person was convicted of committing and that resulted from the victim having been a victim of trafficking in persons or only to the convictions of prostitution-related offenses that are the basis of the person being eligible to make the application.

Human trafficking expungement mechanism

The mechanism

R.C. 2953.38, which took effect on June 27, 2012, sets forth a mechanism pursuant to which any person who is or was convicted of a specified predicate offense may apply to the sentencing court for the "expungement" of the "record of conviction" if the person's participation in the offense was a result of the person having been a "victim of human trafficking" (see below for definitions of the terms in quotation marks). The specified predicate offenses are soliciting, soliciting after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, and prostitution after a positive HIV test.¹ The person may file the application at any time. The application must identify the applicant, the offense for which the expungement is sought, and the date on which and court in which the conviction of that offense occurred. It also must describe the evidence and provide copies of any documentation showing that the person is entitled to relief under the mechanism, and include a request for expungement of the record of conviction of the offense for which expungement is sought.

The court may deny an application if it finds that the application does not assert grounds on which relief may be granted. Unless the court denies an application, it must set a date for a hearing and notify the prosecutor for the case from which the record of conviction resulted of the hearing. The prosecutor may object to the granting of the application by filing with the court prior to the hearing date an objection that specifies the reasons for believing a denial of the application is justified. At the hearing, the court must consider the prosecutor's reasons specified in an objection, if the prosecutor filed one, and determine whether the applicant has shown by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was a result of having been a victim of human trafficking. If after a hearing the court finds that the applicant has made that showing by a preponderance of the evidence, the court must grant the application and order that the record of conviction be expunged.

The court must send notice of the order of expungement to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court determines that the applicant has been convicted of one of the specified predicate offenses and that the interests of the applicant in having the records pertaining to the applicant's conviction expunged are not outweighed by any legitimate needs of the government to maintain those records.

¹ R.C. 2907.24, 2907.241, and 2907.25.

If a court issues an expungement order under the mechanism, the proceedings in the case that is the subject of the order must be considered not to have occurred and the conviction of the person who is the subject of the proceedings must be expunged. The record of the conviction may not be used for any purpose, including, but not limited to, a criminal records check under the state's general Criminal Records Check Law. The applicant may, and the court must, reply that no record exists with respect to the applicant upon any inquiry into the matter.²

As used in the mechanism:³

"Expunge" means to destroy, delete, or erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

"Record of conviction" means the record related to a conviction of or plea of guilty to an offense.

"Victim of human trafficking" means a person who is or was a victim of the offense of trafficking in persons,⁴ regardless of whether anyone has been convicted of that offense or of any other offense for victimizing the person.

Records that are to be expunged under the mechanism

The language of the expungement mechanism is somewhat ambiguous regarding the records that are to be expunged, and does not expressly address the issue posed by the member:

(1) The introductory language of the mechanism states that any person who is or was convicted of any of the specified predicate offenses (i.e., an R.C. 2907.24, 2907.241, or 2907.25 violation) may apply for the expungement of the "record of conviction," which is defined as the record related to a conviction of or plea of guilty to *an offense*, if the person's participation in *the offense* was a result of the person having been a victim of human trafficking. The language regarding the content of the application requires that the applicant specify *the offense* for which expungement is sought. The language regarding the conduct of the hearing states that the court must determine whether the applicant has demonstrated that the applicant's participation in *the offense* (presumably, the offense identified in the application) was a result of having been a victim of human

² R.C. 2953.38(B) to (H).

³ R.C. 2953.38(A).

⁴ R.C. 2905.32.

trafficking. The language regarding the findings at the hearing states that, if the court finds at the hearing that the applicant's participation in *the offense* that is the subject of the application was the result of the applicant having been a victim of human trafficking, the court must grant the application and order that *the record of conviction* be expunged. None of these provisions expressly states or even implies that the "record of conviction" that is to be the subject of the expungement order is the record of, or must have a nexus with, the predicate offense that is the basis of the application. Arguably, the provisions could be interpreted as providing for the expungement of the records related to a conviction of *any offense* if the person's participation in that offense was a result of the person having been a victim of human trafficking. If this is true, then, if a person is convicted of one or more of the predicate offenses and applies for expungement, if the person also was convicted of another offense, such as a theft offense or a drug abuse offense, and if the person's participation in the predicate offense and the other offense was a result of the person being a victim of human trafficking, then the expungement order could provide for the expungement of the records related to the predicate offense and of those related to the other offense.

(2) However, the language of the mechanism regarding the court sending notice of the expungement order to public offices and agencies specifies that the court must send the notice to each such office or agency that it believes may have an official record pertaining to the case if the court, after making the determinations at the hearing, determines that the applicant has been *convicted of one or more of the specified predicate offenses* and that the interests of the applicant in having the records *pertaining to the applicant's conviction* expunged are not outweighed by any legitimate needs of the government to maintain those records. This provision does not expressly state that, in determining whether the applicant's interest in having conviction records expunged are not outweighed by any legitimate needs of the government to maintain those records, the court is to consider only the records *pertaining to the applicant's conviction of the predicate offense*, but, arguably, it could be interpreted in that manner. If this is true, then, if a person is convicted of one or more of the predicate offenses and applies for expungement, if the person also was convicted of another offense, such as a theft offense or a drug abuse offense, and if the person's participation in the predicate offense and the other offense was a result of the person being a victim of human trafficking, then the expungement order could provide only for the expungement of the records related to the predicate offense and could not provide for the expungement of the records related to the other offense.

Legislative Service Commission analyses available to members of the General Assembly

R.C. 2953.38, among other provisions, was enacted in Am. Sub. H.B. 262 of the 129th General Assembly (H.B. 262), effective June 27, 2012. A similar provision was included in R.C. 2152.358(E) regarding expungement of the record of a delinquent child adjudication. Ohio has no formal legislative history, but when considering H.B. 262, the members of the General Assembly were provided an analysis of the bill prepared by the Legislative Service Commission. The analysis was updated at each stage of the legislative process. Other information that likely was available to members in their deliberations on H.B. 262 include testimony provided before the committees considering the bill – that testimony possibly could be available from the clerk of the House of Representative or the Senate. The portion of the Legislative Service Commission analysis that related to R.C. 2953.38 (and to the similar R.C. 2152.358(E)), at each stage of the process, is specified as follows:

(1) **As Introduced.** R.C. 2953.38 was not included in H.B. 262 as it was introduced.

(2) **As Reported by the House Judiciary and Ethics Committee.** R.C. 2953.38, and the similar R.C. 2151.358(E), were added to H.B. 262 by the House Judiciary and Ethics Committee. The analysis of the bill as reported by that committee generally repeated the language of R.C. 2953.38 and did not expressly address the issue posed by the member.

(3) **As Passed by the House of Representatives.** The bill was not amended on the floor of the House of Representatives and, as a result, the portion of the analysis described above in (2) was not changed.

(4) **As Reported by Senate Judiciary.** H.B. 262 was amended by the Senate Judiciary Committee. The changes regarding R.C. 2953.38 removed the language that established a rebuttable presumption, in specified circumstances, that the applicant's participation in the offense or act was the result of the applicant's having been a victim of human trafficking, and added language that requires a court that issues an expungement order to send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case. The analysis of the bill as reported by that committee reflected those changes, generally repeated the language of R.C. 2953.38, and did not expressly address the issue posed by the member.



Court decisions

No court decision since the enactment of R.C. 2953.38 has discussed, interpreted, or applied the section, but a few decisions pertaining to the application of other conviction record sealing laws include language that could be helpful in determining the issue posed by the member. In one decision, the Ohio Supreme Court stated that the conviction record sealing laws in R.C. 2953.32 and 2953.33 are remedial in nature and that, as such, under the rules of construction set forth in R.C. 1.11, they must be liberally construed to promote their purposes.⁵ R.C. 1.11 specifies in relevant part that remedial laws and all proceedings under them must be liberally construed in order to promote their object and assist the parties in obtaining justice. In other decisions, three courts of appeals referred to the application of R.C. 1.11 and also referred to R.C. 2901.04(A) in construing the conviction record sealing laws.⁶ R.C. 2901.04(A) specifies that, in general, sections of the Revised Code defining offenses or penalties are to be strictly construed against the state and liberally construed in favor of the accused.

Although these decisions pertain to conviction record sealing laws, and not conviction record expungement laws, arguably, the decisions and the cited statutory provisions at least imply that expungement laws are to be liberally construed in favor of the offender and strictly construed against the state and could be relevant to the issue posed by the member. If they are applicable to the issue and R.C. 2953.38 is to be liberally construed in favor of the offender and strictly construed against the state, then the section's expungement provisions arguably could be interpreted as providing for the expungement of the records related to a conviction of any offense if the person's participation in that offense was a result of the person having been a victim of human trafficking. If this is true, then the possible outcome described above in (1) under "**Records that are to be expunged**" would apply. However, because of the lack of any court decision discussing, interpreting, or applying R.C. 2953.38, the validity of this argument cannot be determined with certainty.

Conclusion

In conclusion, the language of the human trafficking conviction record expungement mechanism provided in R.C. 2953.38 is somewhat ambiguous, and does not expressly address whether an order issued under the mechanism is to apply to all offenses that the person was convicted of committing and that resulted from the victim

⁵ *State ex rel. Gains v. Rossi* (1999), 86 Ohio St.3d 620; *Barker v. Ohio* (1980), 62 Ohio St.2d 35.

⁶ *State v. V.M.D.* (May 1, 2014), Cuyahoga App. Case No. 100522, 2014 Ohio App. LEXIS 1802, discret. appeal allowed (September 24, 2014), 2014 Ohio App. LEXIS 2409; *City of Fairborn v. Domenico* (Greene App., 1996), 114 Ohio App.3d 590; *State v. McGinnis* (Scioto App., 1993), 90 Ohio App.3d 479.

having been a victim of trafficking in persons or only to the conviction of the specified prostitution-related offense that is the basis of the person being eligible to make the application. Some provisions in the section arguably could be interpreted as standing for the former conclusion, and some arguably could be interpreted as standing for the latter. Ohio has no formal legislative history, but when considering the act in which R.C. 2953.38 was enacted, the members of the General Assembly were provided an analysis of the bill, prepared by the Legislative Service Commission. The analysis, which was updated at each stage of the legislative process, generally repeated the language of the section and did not expressly address that issue. No court decision since the enactment of R.C. 2953.38 has discussed, interpreted, or applied the section, but a few decisions that pertain to the application of other laws that provide for conviction record sealing at least imply that conviction record expungement laws are to be liberally construed in favor of the offender and strictly construed against the state. If R.C. 2953.38 is to be construed in that manner, although the issue cannot be determined with certainty, its provisions arguably could be interpreted as providing for the expungement of the records related to all offenses that the person committed and that resulted from the person having been a victim of trafficking in persons.

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This Fifty-State Survey and the corresponding Chart of Safe Harbor, Expungement, Sealing, and Vacatur Laws and Legislation by State, with appendix, will assist legal practitioners, service providers, and advocates for trafficked and exploited persons to understand the laws and available options for their clients, both youth and adults, in all 50 U.S. states.

Please also consider visiting and contributing material to the [Vacatur & Expungement Database](#), hosted by The Human Trafficking Pro Bono Legal Center. The Vacatur and Expungement Database is a collaboration between Advocating Opportunity, Human Trafficking Pro Bono Legal Center, The Legal Aid Society, Exploitation Intervention Project, The Women's Law Center of Maryland, the Chicago Alliance Against Sexual Exploitation (CAASE), the Urban Justice Center, and Weil, Gotshal & Manges LLP.

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