

# LB 1132 Set Aside Bill

## PROVIDING RELIEF FROM CRIMINAL CONVICTIONS FOR VICTIMS OF SEX TRAFFICKING

**The Issue:** Each month, hundreds of people across Nebraska are sold for sex without their consent, often multiple times. Sex traffickers threaten to harm survivors/victims or their loved ones, withhold food and housing, or abuse survivors/victim's drug dependencies in order to force victims to do illegal things to survive. This issue is widespread. More than 90% of sex trafficking survivors/victims report being arrested for crimes related to their trafficking<sup>1</sup>. As a result, many trafficking survivors/victims are arrested, tried, and convicted for crimes they didn't choose to commit.

Victims of sex trafficking rarely self-identify and are often not properly screened and identified when they are detained or arrested as criminal suspects. As a result, survivors/victims are still regularly convicted of crimes they were forced to commit<sup>2</sup>. This allows perpetrators to use the threat of criminalization as a way to coerce victims.

### Percentage of victims whose criminal records were a barrier to obtaining this need<sup>3</sup>



### Why it Matters

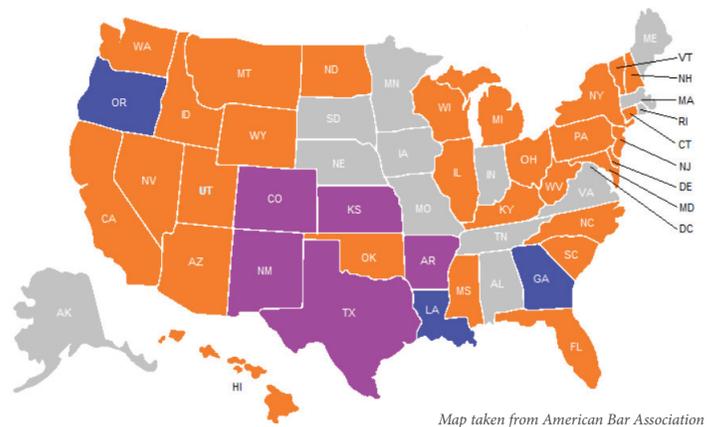
Sex trafficking is a public health issue, with profound economic and social impacts on all Nebraskans. Unjust criminal records harm survivors/victims of sex trafficking. Background checks can prevent them from building a life once they've escaped trafficking by prohibiting them from accessing housing, employment, and education. The stigma survivors/victims carry because of their criminal records makes it significantly harder for them to re-integrate into society.

As a result, survivors/victims with criminal records often live off public assistance programs, which puts an unnecessary drain on the Nebraska economy. Their criminal records also increase their likelihood of recidivism, which only exacerbates the negative public health impacts of trafficking.

### How This Bill Helps Survivors

LB 1132 would allow trafficking survivors/victims to come forward with their criminal records, and apply to have their conviction(s) (resulting from trafficking) set aside and their records sealed. While this bill will allow for the set aside of all crimes, we predict that most crimes set aside in Nebraska will relate to prostitution or drug use. A set aside law for sex trafficking survivors would provide survivors/victims a pathway to rebuild their lives without the burden of a criminal conviction.

### Many other states have more expansive laws than Nebraska providing relief to victims/survivors of sex trafficking.



■ Vacatur of Convictions
 ■ Sealing Only
 ■ Minors Only

## What is a “set aside?”

The conviction is voided from the survivor/victim’s criminal record. An order will contain the language that the conviction is “nullified,” meaning it was cancelled out.

## What is a sealed record?

If the conviction is set aside, records can be sealed— all records for that conviction would not be part of the public record or disseminated to persons other than criminal justice agencies (and other exceptions).

## How can survivors/victims of sex trafficking have their convictions set aside?

### Prostitution Related Offenses

- 1) The court recognizes their status as a victim of sex trafficking; and (b) they were a victim at the time of the offense.

### Non-Prostitution Related Offenses

- 1) The court recognizes their status as a victim of sex trafficking; and (b) they were a victim at the time of the offense.

—AND—

- 2) The court finds that the victim’s participation in the offense was **a direct result of or incidental to their being trafficked.**

## Why do we need this law in Nebraska?

Sex trafficking is a problem in Nebraska. Each month, between 600 and 700 individuals sold online for sex in Nebraska show indicators of being sex trafficked<sup>4</sup>. Nebraska survivors/victims of sex trafficking have identified post-conviction relief laws as a crucial step to moving forward from their experiences. In a local survivor/victim-informed study, Nebraska survivors/victims stated that paramount is the need for their records to be expunged, given that these citizens were trafficked and did not willingly participate in commercial sexual exploitation<sup>5</sup>.

## What do traffickers do to their victims that’s bad enough that they feel trapped?

Traffickers maintain control of their victims through a variety of violent tactics. As a result of this violence, 99% of sex trafficking survivors/victims report negative physical health consequences and 98% report negative mental health consequences. Over 80% are raped and 42% of survivors/victims attempt suicide during their trafficking<sup>6</sup>.

## Could criminals who haven’t been sex trafficked lie and use this law to set aside their convictions?

Sex trafficking victims will have to prove to the courts working in the interest of the Nebraska people that 1) they were sex trafficked and 2) the crime they committed was linked to their sex trafficking. Research shows that since the first post-conviction relief law was passed in New York in 2010, these laws are not being used nearly to the degree that they could be<sup>7</sup> and many states are increasingly developing more comprehensive laws to address this issue.

## Why do sex trafficking victims deserve to have their crimes set aside?

Sex traffickers coerce victims into committing crimes through violence and threats of violence against themselves or their loved ones. It’s not a possibility for victims to fight back against their traffickers. Traffickers are expert abusers who use a combination of positive reinforcement, like declarations of love and promises of a better future, and negative reinforcement, like beatings and drug withdrawal.

## Why couldn’t they address this in the initial trial? Why does there have to be a separate process?

Due to the psychological and physical impacts of their trauma, survivors/victims often struggle for years before they can escape the abuse of their traffickers. A widespread tactic among traffickers is manipulating their victims into fearing the criminal justice system<sup>8</sup>. Because of this coercion, many trafficking survivors/victims are unaware that they are trafficking victims in the eyes of the law. Trafficking survivors/victims are conditioned to believe that the system is stacked against them, so it’s best to not fight their charges<sup>9</sup>.

## Shouldn’t we be focusing on prosecuting traffickers, so we can end trafficking once and for all?

Ending trafficking once and for all means removing all opportunities for trafficking, to include eliminating demand for the market, adjusting the risk for traffickers, and focusing on alternative pathways for victims/survivors out of the industry. A set aside law takes away a coercion technique that traffickers use to maintain control over their victims and increases the likelihood of an escaped victim to become self sufficient and re-enter society.

1. National Survivor Network. 2016. National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking.

2. American Bar Association American Bar Association’s “Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys.” Page iii. [www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/SRP/practice-guide.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.authcheckdam.pdf)

3. National Survivor Network. 2016. National Survivor Network Members Survey

4. Women’s Fund of Omaha. 2017. Nebraska’s Commercial Sex Market. Omaha, Nebraska: The Women’s Fund of Omaha.

5. Rajaram and Tibball. Nebraska Sex Trafficking Survivors Speak.

6. Lederer, Laura, and Christopher Wetzel. “The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities.” *Annals of Health Law*, vol. 23, no. 1, 2014, p. 61-91.

7. Barnard, A. M. (2014). The Second Chance They Deserve: Vacating Convictions of Sex Trafficking Victims. *Colum. L. Rev.*, 114, 1463.

8. Annito, Megan. “Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors.” *Yale Law & Policy Review*, vol. 30, no. 1, 2011, p. 1-70.

9. American Bar Association American Bar Association’s “Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys.” Page iii. [www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/SRP/practice-guide.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.authcheckdam.pdf)