



SB 1037: Illinois' Justice for Victims of Sex Trafficking Crimes Act | Polaris Project

INTRODUCTION TO ILLINOIS' JUSTICE FOR VICTIMS OF SEX TRAFFICKING CRIMES ACT

Overview of the Act: Illinois was the third state in the nation to pass a law to enable victims of sex trafficking to clear their records of prostitution convictions incident to their trafficking. This bill builds on the progress first made by the ground-breaking New York Vacating Convictions for Trafficked Persons Act of 2010 and the Maryland Human Trafficking Victim Protection Act of 2011. The Justice for Victims of Sex Trafficking Crimes Act represents a significant paradigm shift from one that treats sex trafficked persons as criminals to one that recognizes such persons as crime victims.

Current Status: Passed May 11, 2011 and sent to the governor on June 9, 2011.

Sponsors: In the House, Rep. William D. Burns was the chief sponsor with chief co-sponsors Reps. A. Williams, E. Hernandez, and K. Yarbrough and sponsors Reps. Howard, Leitch, Golar, Berrios, Davis, Acevedo, Lang, Zalewski, Soto, Connelly, Coladipietro, Colvin, Gordon, Cunningham, Bellock and Smith. In the Senate, Sen. Toi Hutchinson was the chief sponsor and Sens. J. Collins, Noland, Martinez were the chief co-sponsors. Sens. A. Collins, Kotowski, Raoul, Trotter, Althoff, Koehler, Lightford, Steans, Jones, Muñoz, Delgado, Holmes, Hunter, and McCarter were sponsors.

Effective Date: Effective upon signature by the governor.

BRINGING JUSTICE TO VICTIMS OF SEX TRAFFICKING CRIMES

Filing a Motion to Vacate Prior Convictions

Adds a new section within 725 ILCS 5/116 "Post-Trial Motions" in the criminal procedure code to allow victims of sex trafficking, as defined in either the Illinois or Federal human trafficking statutes, to file a petition requesting a court to vacate prior prostitution convictions, under specific criteria. A petition must state facts to support the claim that at the time of the prostitution offense, the petitioner was a victim of a sex trafficking crime defined by existing federal or state criminal laws, and state why these facts were not presented to the trial court. The motion would only apply to survivors who are now seeking services or have escaped the trafficking. A petition could be filed at any time after the entry of a prostitution conviction.

Statutory Language:

Section 5. The Code of Criminal Procedure of 1963 is amended by adding Section 116-2.1 as follows: (725 ILCS 5/116-2.1 new) Sec. 116-2.1. Motion to vacate prostitution convictions for sex trafficking victims.

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(a) A motion under this Section may be filed at any time following the entry of a verdict or finding of guilty where the conviction was under Section 11-14 (prostitution) or Section 11-14.2 (first offender; felony prostitution) of the Criminal Code of 1961 or a similar local ordinance and the defendant's participation in the offense was a result of having been a trafficking victim under Section 10-9 (involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services) of the Criminal Code of 1961; or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. Section 7102(13)); provided that:

(1) a motion under this Section shall state why the facts giving rise to this 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 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 Section; and

(2) reasonable notice of the motion shall be served upon the State.

Evidence to be Presented

Describes the type of evidence that sex trafficking victims must present to support the motion in subsection (b). This section allows, but does not require, a petitioner to introduce evidence of their status as a crime victim, which could include: certified court records; certified records from immigration proceedings that seek relief for trafficking victims; or sworn statements from certain professionals who have provided assistance to the petitioner related to the trafficking. Subsection (c) provides direction to the granting court.

Statutory Language:

(b) The court may grant the motion if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking. Evidence of such may include, but is not limited to:

(1) certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under Section 10-9 of the Criminal Code of 1961 or under 22 U.S.C. Chapter 78;

(2) certified records of "approval notices" or "law enforcement certifications" generated from federal immigration proceedings available to such victims; or

(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.

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 or victim of a severe form of trafficking.

(c) If the court grants a motion under this Section, it must vacate the conviction and may take such additional action as is appropriate in the circumstances.