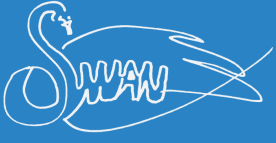


# THE IMPACT OF CONNECTICUT'S VACATUR LAWS ON SEX WORKERS' RIGHTS



SEX WORKERS &amp; ALLIES NETWORK

YALE GLOBAL HEALTH JUSTICE PARTNERSHIP

## OVERVIEW

- Vacatur refers to courts' ability to vacate, or remove, a record of a person's prior convictions.
- In Connecticut, a vacatur law introduced in 2013 allowed applicants to petition the Superior Court for vacatur if they have been convicted of prostitution and their "participation was the result of having been the victim of trafficking." [1] In 2021, the law was amended to allow victims of trafficking who do not have a prostitution conviction to apply for vacatur. [2]
- **The expansion of vacatur could be one important step to mitigate some of the harms of criminalization on sex workers' lives**, by providing needed relief to sex workers who have been trafficked and by opening a conversation around the harms of criminal convictions.
- While vacatur is a tool that can improve the lives of trafficking victims and sex workers, **limiting the reach of the criminal law on a case-by-case basis and only for trafficking victims is insufficient to address the harms caused by the criminalization of the sex sector.**
- Ultimately, **only full decriminalization of sex work can prevent the harmful consequences criminalization, and promote agency for sex workers and trafficking victims alike.** [3]

## SEX WORK AND TRAFFICKING

### HUMAN TRAFFICKING

Defined in Connecticut State law as the compulsion or inducement, by means of "force, fraud, or coercion" into one or more acts of sexual conduct, or of labor into any other sector. All individuals under 18 who exchange sex for money or anything of value are considered trafficking victims. [4]

### SEX WORK

The exchange of sexual services for money or goods, including food, housing, drugs and other informal forms of health care, or other basic necessities. [5]

- Although some people who sell sex are victims of trafficking, the majority of sex workers are not trafficked. [6] [7] Sex work and trafficking into the sex trades are often dangerously equated, ignoring the many experiences of people who trade sex along the spectrum of choice, circumstances, and coercion. Conflating sex work and trafficking also invisibilizes labor trafficking. [5]
- **The crime of trafficking at the federal and state level formally includes individuals trafficked into both sex and other labor sectors; however, popular and governmental responses to trafficking often focus only on trafficking into the sex trades.** [8] [9] For example, although Connecticut's vacatur law is based on the definition of trafficking by Connecticut State law, which includes trafficking into both sex and labor sector, until 2021 the law required applicants to have a prostitution conviction to be eligible for vacatur. [1] [2]

## H.B. 6657'S AMENDMENTS TO CT VACATUR LAWS

- A vacatur law was introduced in 2013 to allow petitioners to apply to have a prostitution conviction vacated if the conviction resulted from having been trafficked. A change to the statute introduced in 2016 broadened the range of convictions that can be vacated, but still requires petitioners to have a conviction for prostitution to apply. [1]
- The limitation of the basis of vacatur to prostitution convictions has been a significant barrier to the vacatur law's use. Since its initial passage, **only one applicant has invoked Connecticut's vacatur law to seek to vacate a trafficking-related prostitution conviction.**
- **HB 6657, "An Act Concerning Human Trafficking"** was introduced by the 2021 Session Connecticut General Assembly and **was signed into law by the Governor in June 2021.** HB 6657 broadened Connecticut's previous vacatur law to allow individuals to seek vacatur even if they do not have a prostitution conviction. [2]
- Under the new law, applicants can petition to vacate convictions for all misdemeanor and class C, D, & E felony. A & B felonies, included in the original proposed bill, were excluded from eligibility for vacatur by the House vote.

## THE BENEFITS OF VACATUR FOR SEX WORKERS

- Criminal convictions faced by many in the sex trades due to the criminalization of sex work make it harder to secure housing, access social services or public benefits, or find employment. In many states, convictions can leave people unable to vote, serve on criminal juries, hold public office, qualify for financial aid or college admission, or get professional licenses. These long-term consequences affect people's livelihoods and exacerbate racial and gender inequality. [10]
- **Expanding vacatur laws could be one important step to mitigate some of the harms of criminalization on sex workers' lives.** Vacatur could serve this goal in two ways:

**Some people in sex work may directly benefit from the passage of H.B 6657.** Some sex workers may be in trafficking situations at some point in their lives, but not in others. Sex workers who have experienced trafficking in the sex trades may be able to benefit from the expansions of vacatur by being able to vacate charges accrued as a result of having been trafficked.

**The rationale for vacatur acknowledges the harms caused by criminal records.** Police surveillance, arrests, incarceration, and criminal records harm trafficking victims and sex workers alike. The campaign for vacatur created an awareness of the impact of the harms of criminal records on the lives of trafficking victims; this may be a starting point to expand the conversation in the future to consider the harms of criminalization for sex workers who have not experienced trafficking as well.

## THE LIMITS OF VACATUR FOR SEX WORKER RIGHTS

- Trafficking concerns acts induced by force, fraud, and coercion; **individuals who are marginalized, vulnerable, or exploited, but do not meet the legal definition of trafficking, cannot have their criminal convictions vacated under this bill.** [11]
- Vacatur requires that judges and prosecutors recognize an individual as trafficked and understand the nature and scope of compulsion faced by a trafficked person. This process opens the potential for disparate application, especially as **racial minorities and transgender individuals are more likely to be viewed as criminals than as trafficking victims by the criminal legal system.** [9] [12]

- Even if some sex workers are able to avail themselves of vacatur relief, **the law was not designed to lift the burdens of criminal penalties for non-trafficked sex workers.** The rationale for vacatur risks implicitly supporting narratives that legitimize the criminalization of non-trafficked sex workers by offering relief for criminal convictions only to trafficking victims.
- Trafficking itself is a class A felony in Connecticut, and thus cannot be vacated under this current proposal. **Sex workers with trafficking convictions** due to having been involved in recruiting others while being trafficked themselves **would have no recourse for the conviction.** [13, 14]

## THE HARMS OF CONTINUED CRIMINALIZATION

- **Even under H.B. 6657, trafficking victims in the sex sector and sex workers still risk future arrest, prosecution, and conviction on prostitution charges.** Retrospective relief through vacatur does not undo the physical, mental, and material harms already caused by being or having been arrested or convicted for persons in any sector, and does not prevent the surveillance, stigmatization, overpolicing, and criminalization that makes life in the sex trades less safe for all and undermine sex workers' ability to organize and fight exploitation. Indeed, it requires further engagement with the criminal legal system.
- In addition to the vacatur provisions, other elements of HB 6657 increase the scope of the criminalization of clients, by broadening the definition of the crime of “patronizing a prostitute” from the payment of a fee to the exchange of anything of value in return for sexual conduct. [15] The coupling of these reforms is troubling: research shows that the “End Demand” or “Equality” model, which criminalizes buyers rather than sellers of sex, does not eliminate the stigmatizing and traumatizing effects of criminal-legal intervention into sex workers’ lives. Ongoing criminalization of the sex trade still forces sex workers into unsafe working conditions and impedes access to essential services. [16] **Anti-trafficking advocates should seek to reduce the criminalization of the sex trade, not expand it,** as labor rights, access to social services, and sex worker organizing have been proved to better protect against coercion, exploitation, and other crimes in the sex trade.
- The criminalization of sex work places undocumented sex workers in contact with the criminal legal system, as does the vacatur process, so any immigration-related harms of the that contact persist.
- Ultimately, **only full decriminalization of sex work can prevent criminalization and promote agency for sex workers and trafficking victims alike.** [3] Advocates interested in continuing to improve the lives of individuals who sell sex can productively work toward this goal. [17]

1. C.G.S. § 54-95C. [https://www.cga.ct.gov/current/pub/chap\\_961.htm#sec\\_54-95c](https://www.cga.ct.gov/current/pub/chap_961.htm#sec_54-95c).

2. Proposed Bill No. 6657, “An Act Concerning Human Trafficking,” Introduced by Judiciary Committee. [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=HB06657&which\\_year=2021](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06657&which_year=2021).

3. Global Health Justice Partnership and Sex Workers and Allies Network. (April, 2020). The Law and Sex Work: Four Legal Approaches to the Sex Sector. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/the\\_law\\_and\\_sex\\_work.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/the_law_and_sex_work.pdf).

4. Trafficking in Persons is a Class A felony in Connecticut. C.G.S. § 53a-192a. [https://www.cga.ct.gov/current/pub/chap\\_952.htm#sec\\_53a-192a](https://www.cga.ct.gov/current/pub/chap_952.htm#sec_53a-192a). The law defines “sexual conduct” as contact with the intimate parts of another person. [https://www.cga.ct.gov/current/pub/chap\\_952.htm#sec\\_53a-65](https://www.cga.ct.gov/current/pub/chap_952.htm#sec_53a-65).

5. Global Health and Justice Partnership. Sex Work and Trafficking: How They Are Different and Why it Matters. (June, 2020). [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/issue\\_brief\\_sex\\_work\\_vs\\_trafficking\\_v2.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/issue_brief_sex_work_vs_trafficking_v2.pdf).

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11. Chuang, J. (2014). Exploitation Creep and the Unmaking of Human Trafficking Law. *The American Journal of International Law*, 108(4), 609-649.

12. For example: *He was sexually abusing underage girls. Then, police said, one of them killed him.* (n.d.). Washington Post. Retrieved June 4, 2021, from <https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/>.

13. Berger, S. M. No End in Sight: Why the “End Demand” Movement Is the Wrong Focus for Efforts to Eliminate Human Trafficking. *Harvard J. of Law & Gender*, 35, 565-570 (2012).

14. C.G.S. 53a-192a. [https://www.cga.ct.gov/current/pub/chap\\_952.htm#sec\\_53a-192a](https://www.cga.ct.gov/current/pub/chap_952.htm#sec_53a-192a).

15. See File No. 694, Proposed Bill H.B. 6657, “An Act Concerning Human Trafficking,” at 9, <https://www.cga.ct.gov/2021/FC/PDF/2021HB-06657-R000694-FC.PDF>. (“The bill broadens the definition of the crime [of] ‘patronizing a prostitute,’...by making it a crime to engage in the following conduct in exchange for anything of value, instead of only for a fee, as under current law....2. for patronizing a prostitute: paying another person based on an understanding that in return, the other person or a third person will engage in sexual conduct with him or her.”)

16. Global Health Justice Partnership and Sex Workers and Allies Network (2020). The Consequences of Sex Work Criminalization on Health and Rights. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences\\_of\\_criminalization\\_v2.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences_of_criminalization_v2.pdf).

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