



UNIVERSITY OF  
**BALTIMORE**

School of Law



## Testimony of the Human Trafficking Prevention Project

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**BILL NO:** House Bill 459  
**TITLE:** Criminal Law – Victims of Human Trafficking – Affirmative Defense  
**COMMITTEE:** Judiciary  
**HEARING DATE:** February 11, 2020  
**POSITION:** SUPPORT

House Bill 459 would expand the number of crimes for which a defendant could assert a trafficking-specific affirmative defense at trial. The Human Trafficking Prevention Project, a partnership between the University of Baltimore School of Law and the Maryland Volunteer Lawyers Service, supports this bill because it will enhance the effectiveness of Maryland’s human trafficking framework by providing an “off-ramp” out of the criminal legal system for survivors who have been charged with crimes as a result of their involvement with a trafficker.

In addition to the abuse, coercive control and manipulation victims of trafficking routinely face, many victims are convicted of crimes they were forced to commit by their trafficker. Data recently obtained from a national survey of both sex and labor trafficking survivors supports the epidemic of criminalization as well the impact it has on a victim’s ability to become self-sufficient and heal from the trauma of their trafficking experience. Of the survivors surveyed, 91% of survivors reported being arrested during the time they were being trafficked, 60% of which were for crimes *other than* prostitution. Of that 91%, over 40% reported being arrested *nine times or more*, while over 50% reported that *every single arrest* on their criminal record was trafficking-related. Barriers resulting from their criminal records were significant as well, with 73% reporting barriers to employment, and 58% reporting barriers to accessing housing.

Maryland responded to this injustice in 2011, becoming just the second state in the country to enact a “vacating convictions” law, which allows survivors of sex trafficking to vacate, or, set aside their prostitution convictions. However, Maryland’s vacatur law only allows survivors who have already been *convicted* of a crime to access the relief. Recognizing the opportunity to proactively undo the damage caused by involvement in the criminal legal system, Maryland took a second positive step in 2015, passing a law allowing defendants charged with prostitution to assert an affirmative defense prior to trial, based solely on the fact that they were being trafficked at the time of their arrest.

In the years since the enactment of Maryland’s trafficking-specific affirmative defense law, however, it has become clear that broader access to this form of legal relief is needed, given that the majority of survivors of trafficking are charged with offenses *other than* prostitution, such as trespassing and drug possession. HB 459 would remedy this by making trafficking an affirmative defense to a larger number of low-level, misdemeanor crimes. Additionally, this approach is a part of a nationally recognized set of best practices for supporting criminalized victims of trafficking. While awareness-raising has led to policy changes that reduce the likelihood of arrest for victims of trafficking and criminal record relief laws like Maryland’s vacatur law offer relief for victims who have already been criminalized, HB 459 represents an often overlooked but crucial middle ground — an “off-ramp” out of the criminal legal system. For these reasons, the Human Trafficking Prevention Project supports HB 459. We respectfully urge a favorable report.

For more information, please contact:  
Jessica Emerson, LMSW, Esq.  
[jemerson@ubalt.edu](mailto:jemerson@ubalt.edu)