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Order vacates conviction under trafficking-victims act

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Three decades ago, a prostitute was viewed and convicted as a criminal.

Over time, the legal system has recognized many of these women as victims of sex trafficking, and changes in state law provided an avenue to clear prostitution convictions from their records.

But other convictions stemming from their prostitution cases were harder to wash away.

An order issued by a Cook County judge last month may open more doors for victims to have these convictions vacated.

Days before his retirement from the bench, Cook County circuit judge Paul P. Biebel Jr. vacated a public indecency conviction on June 24 for a female petitioner, known in court documents as B.J., who was forced into prostitution for six years in the 1980s.

Passed in 2011, the Justice for Victims of Sex Trafficking Crimes Act, or JVST, allows victims of sex trafficking to petition a court to remove prostitution convictions from their criminal records.

But Biebel's ruling was the first time an Illinois judge vacated a conviction other than prostitution under the JVST.

"The order is recognition that there are some women that have convictions that aren't per se prostitution but are connected to their trafficking situation," said Duane Morris LLP partner Rachael G. Pontikes, one of the attorneys who represented B.J.

B.J. was trafficked in the early to mid-1980s by multiple pimps in Cook County, according to court documents. The pimps used physical violence, threats, drugs, intimidation and emotional abuse to manipulate and control her. She had three prostitution convictions and one public indecency conviction on her record.

The JVST only addresses prostitution, Biebel wrote, and without direct guidance from the

law the court looked to statutory interpretation to glean the legislature's intent.

The Cook County Circuit Court had addressed a similar JVST petition involving a sex-trafficking victim with a conviction for driving on a suspended license and driving a vehicle without automobile insurance.

In that case, attorneys argued that the petitioner's arrests and convictions were directly tied to her trafficking situation because she was forced to drive her pimp to get alcohol and to a location to engage in prostitution. The judge in that case denied the petition and declined to extend the JVST to the conviction, finding the charge unrelated to prostitution.

But in B.J.'s case, Biebel ruled that her conviction for public indecency was "unequivocally prostitution-related."

The arrest report from February 1983 showed that she was arrested for performing oral sex on a man in a car. The man was also arrested.

Biebel wrote that the legislature enacted the JVST to provide legal closure to sex trafficking victims and that B.J.'s crime of public indecency could just as easily been charged as prostitution by the arresting officer.

"In cases such as this, where the nexus is so strong that it is possible to conclude that the conviction has direct nexus to an act of prostitution, this court believes that the law permits vacatur of that conviction and all other relief contemplated by the JVST," Biebel wrote.

Pontikes and Duane Morris associate Elinor Hart Murárová, who also represented B.J., said the expanded interpretation of the JVST is significant because so many trafficking victims often have criminal convictions other than prostitution directly tied to their captivity by traffickers.

"This is a marvelous decision and it's keeping in the spirit and efforts of the JVST," said Kaethe Morris Hoffer, executive director of the Chicago Alliance Against



Rachael G. Pontikes

Sexual Exploitation.

CAASE provides anti-trafficking education and legal services. It also pushes policy reforms to support victims and increase legal accountability for perpetrators of sexual exploitation.

Prior to a change in Illinois law in 2013 that made prostitution a misdemeanor, the crime was charged as a felony. Hoffer said similar to other convictions, criminal records can prevent sex trafficking victims from gaining employment, housing and education.

Pontikes called sex trafficking "modern day slavery" in which traffickers have financial control over their victims' lives and put them in situations where every aspect of their lives is criminalized.

For instance, a sex trafficking victim might have a weapons possession charge on her record because her pimp forced her to carry a gun or chose to have one for her own protection, Murárová said.

Biebel's order could pave the way for courts to vacate charges like this, she said, as well as petty theft or drug possession.

Loitering and solicitation charges may also be considered in the future, Hoffer said.

In the Chicago area, there are between 16,000 to 24,000 people involved in prostitution and the sex industry, Hoffer said, and there is no estimate for what



Elinor Hart Murárová

percentage of this number comprises trafficking victims.

The National Human Trafficking Resource Center, which runs a hotline for victims and survivors of human trafficking, has received 2,666 reports of trafficking that reference Illinois over the past eight years.

Since the JVST went into effect at the start of 2012, attorneys in Duane Morris' Chicago office have worked with CAASE to provide pro bono services to help victims of sex trafficking clear their records of prostitution convictions.

Six firm attorneys have been trained on how to file these petitions and have had three petitions granted in full or part for clients. They are currently working on five open cases.

As lawyers take on more cases, they develop expertise and build on previous experience to help trafficking victims.

"The private bar has a critical role to play in mending this massive injustice to women and girls," Hoffer said.

Duane Morris attorneys in New York, New Jersey, Pennsylvania, Massachusetts, Georgia and Florida have also partnered with nonprofits in those states to vacate criminal convictions related to trafficking.

Pontikes, who co-chairs pro bono efforts in the Chicago office, said the petitions can take a long time to process because it's

difficult for victims to talk about their abuse for affidavits and other court documents.

“The mental fortitude that it takes to go back to this dark place is unimaginable,” Pontikes said.

Along with legal briefs, attorneys also gather documents such as affidavits from counselors or social workers to show that someone is no longer being trafficked and is receiving victims’ services.

A JVST petition must also

establish why someone did not identify as a trafficking victim at the time of his or her prostitution conviction. Because of the criminal charge related to prostitution, Murárová said, some trafficking victims were mistreated by police at the time of their arrest, providing some evidence that there was no one to report their victim status to.

One of biggest misconceptions about sex trafficking is that victims are from foreign countries, Pontikes said, when

the majority are from the U.S.

Some victims are kidnapped into trafficking or forced into it by a family member or significant other. Hoffer said most adult women involved in prostitution are survivors of child sexual abuse and were first sold for sex before the age of 18.

Historically, the legal system has penalized women, she said, and advocates are trying to shift more accountability toward people who purchase sex, the traffickers and pimps.

Last year, the Illinois General Assembly passed a law that puts fines collected from traffickers and their customers into a special fund that goes to groups that work with former prostitutes and state’s attorney’s offices for anti-trafficking initiatives.

“For every exploited individual, there are tons if not hundreds of men that are financing the industry because they see it as something with no consequences,” Hoffer said.

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