



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

**MEMORANDUM**

DATE: February 15, 2017

TO: Honorable Floyd Prozanski, Chair  
Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: SB 249 – Motion to Vacate in Trafficking Cases

This testimony is presented in support of SB 249.

**BACKGROUND**

A person who falls victim to sex trafficking faces a long and difficult road in distancing themselves from both their abuser and their abuse. A person forced by a trafficker to sell sexual contact will often accrue criminal convictions as a result of their trafficking, particularly convictions for prostitution. Many trafficked persons are unwilling to testify against their trafficker, whether due to fear, mistrust of law enforcement, or other reasons.

17 states have passed legislation allowing a victim of trafficking to petition for a motion to vacate prostitution convictions or adjudications accrued as a result of their trafficking. Oregon is not among them. While Oregon does possess an expungement mechanism, this mechanism is appropriate when a convicted person demonstrates that they have been crime free for a sufficient amount of time. Allowing a motion to vacate is a more appropriate remedy for a victim of trafficking. Whereas an expungement essentially rewards good behavior, the vacating of an underlying sentence allows a victim to be recognized.

**CONCEPT**

SB 249 comes from the standing Committee on Sex Trafficking Prevention chaired by Sen. Taylor and Rep. Huffman. SB 249 was generated after a careful examination of other states' relevant statutes, focusing on the appropriate standard of proof, the appropriate duration for the remedy to be made available, and who ultimately decides whether to grant the remedy.

SB 249 does not impose a time restriction on when a motion to vacate may be filed. This is consistent with a trauma-informed approach, recognizing that a victim may be too frightened or damaged by their experience to find the courage to come forward immediately, and that a

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confession of abuse can come only when the victim is ready to speak out. This mirrors the approach taken by at least six other states (CT, MS, NC, NH, OH, PA).

SB 249 also requires a clear and convincing evidentiary threshold before a motion can be vacated. While SB 249 is intended to provide victims of trafficking with a remedy to help move beyond their victimization, it is not intended to serve as a way for prostitution committed in the absence of trafficking to be rationalized. The clear and convincing standard will require a petitioner to demonstrate with tangible evidence the fact of their victimization. While this language does not include a requirement that a trafficked person name their trafficker, it does require a sufficient factual showing to convince the court that it is far more likely than not that the individual is the victim of trafficking.

Under existing law, the victims of trafficking will carry their convictions as the tangible evidence of their victimization unless and until they are fortunate enough to expunge them, a remedy that will not exist equally for all victims and which does not fairly reflect the reality of their victimization. Allowance of a motion to vacate in trafficking cases is fair, equitable, and already standard practice in much of the country.

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