
Systems Barriers to Expungement

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Executive Summary

In 2015, Minnesota passed a statute that aimed to help survivors of sex trafficking and sexual exploitation expunge criminal records they might have as a result of their victimization. Hennepin County’s No Wrong Door Initiative wanted to investigate whether or not individuals were utilizing this statute and if it was effective. Through collaboration with the Family Partnership Promoting Recovery, Independence, Dignity, and Equality (PRIDE) program, two research teams investigated the barriers facing those individuals seeking expungements in Hennepin County. One team conducted interviews with attorneys, advocates, and court officials in order to identify barriers from a “systems” perspective. The other team conducted a focus group with advocates and individuals with lived experience attempting to obtain expungements for prostitution-related offenses. The two resulting reports, while separate, are intended to illuminate barriers and offer recommendations for improving access to, and increasing participation in, the expungement process. Some of the major findings of both reports include:

- Individuals who have the right to expunge records are not made aware of this.
- Individuals face stigma and intimidation throughout the expungement process.
- The expungement process itself can cause harm and trigger past traumas.
- The methods used to file an expungement petition are outdated, inaccessible, and require a huge amount of time, administrative effort, and resources.
- Lack of access to legal counsel is a major barrier to successfully obtaining an expungement.
- There is no statewide agreed upon process for expungements and how to decide whether or not a petition is granted.
- Judicial discretion and the amount of power one official within each county has in deciding whether to grant expungements can be problematic.
- Throughout and after the expungement process, the Minnesota Department of Human Services background check process is a barrier to individuals finding meaningful work.
- Minnesota Statute 609A.03 subdivision 6a was created with the intent to help individuals with a history of sexual or domestic violence receive an expungement, but there is a lack of agreement and understanding of how to interpret and utilize this part of the statute.

Overview of Shared Recommendations

- Distribute information and target awareness-building materials to service providers so that survivors are aware of their right to seek expungement.
- Provide trauma-informed training to court officials and legal assistance.
- Offer specialized training for pro-bono attorneys who will be working with victims of sexual exploitation, and partner with service providers to increase access to legal representation for expungement hearings.
- Offer electronic filing options for elements of the expungement process.
- Introduce legislation that would allow for automatic expungement in some cases.

Please refer to individual reports for further recommendations.

Introduction

Description of report

Current Minnesota statute states that for individuals with criminal records from prostitution charges, as well as crimes related to those charges, it is possible to restore their status to that of a citizen before the crime if they were also a victim of a crime at the time of conviction. However, the number of individuals filing a petition for an expungement of crimes related to prostitution is low. In partnership with Hennepin County's No Wrong Door initiative, we sought to discover what the barriers to expungement are by analyzing the legal and court systems in order to inform further action on this issue.

The research team consisted of Sasha Hulse, Kshitiz Karki, Liv Reyes, and Alyssa Scott, four graduate students pursuing Master in Public Policy degrees at the Humphrey School of Public Affairs at the University of Minnesota. We worked with Hennepin County's No Wrong Door initiative, which provides services and support to survivors of sex trafficking and commercial sexual exploitation. In this project, we analyzed the legal and court systems to discover the systems barriers to expungement. We interviewed experts who have experience working with the expungement process and have insight into how people with prostitution and other related charges access expungement. Based on a rigorous review of related literature, legal documents, and in-depth interviews with individuals working within the system, we offer recommendations to help remove the barriers and offer greater access to expungement for victims of sex trafficking and sexual exploitation.

There are several terms used for and by the individuals who have experienced sex trafficking or sexual exploitation, and each individual may define themselves and their experiences differently. To be inclusive and respectful of their lived experience, we will utilize the terminology 'provider/victim'.¹ This language is taken from a report done by the Urban Research and Outreach-Engagement Center at the University of Minnesota and the Women's Foundation of Minnesota. Their approach to terminology was intentional and inclusive, thus we will mirror this language in our report. It is important to mention that statutes use language like 'prostitute' and 'prostitution'. These statutes do not differentiate between engagement or coercion in 'prostitution,' but we recognize that there is no consensual engagement on behalf of provider/victims in trafficking or exploitation.

Minnesota context

Conversations on sex trafficking at the statewide level began in earnest in 2005 with the passage of Minnesota's first major human trafficking legislation, which recognized human trafficking as a crime.² Since that time, legislation in Minnesota has evolved. In 2008, the state passed legislation that increased penalties against traffickers.³ In 2011, Minnesota changed the fundamental way systems view juvenile victims through the Safe Harbor for Sexually Exploited Youth Act.⁴ Youth who are victims of sexual

¹ See Martin, L. (2017)

² Laws of Minnesota 2005, chapter 136, article 17, sections 15-25.

³ Laws of Minnesota 2008, chapter 137, sections 3-6.

⁴ Laws of Minnesota 2011, 1st Spec. Sess., chapter 1, article 4.

exploitation are no longer recognized as criminals or delinquents. Outside of the decriminalization of exploited youth, this law also created the No Wrong Door initiative, a statewide system of regional navigators connecting exploited youth to services and support.

Since Safe Harbor for Youth came into effect in 2014, key stakeholders have begun to question if the Safe Harbor model could be applied to adults. A strategic planning process, mandated by the Minnesota Legislature, began in 2017 to investigate the extension of the Safe Harbor model to adult victims of sexual exploitation and sex trafficking.⁵ Through a participatory community engagement process, the Safe Harbor for All report was released detailing recommendations such as the decriminalization of selling sex, funding more social services, and providing statewide training.

The current criminal legislation for prostitution in Minnesota is significant to understand for the remaining analysis. Minnesota Statute § 609.324, subdivisions 6 and 7 detail penalties for individuals in ‘prostitution’.⁶ Subdivision 6 is specifically about prostitution in public spaces, while subdivision 7 relates to general prostitution crimes. An individual can be convicted of either a misdemeanor or gross misdemeanor if they are caught engaging “in prostitution with an individual 18 years of age or older; or is hired, offers to be hired, or agrees to be hired by an individual 18 years of age or older to engage in sexual penetration or sexual contact.” The use of ‘prostitution’ in legal contexts has been difficult for survivors of sex trafficking because they feel it does not adequately capture their experience, which is discussed in the Lived Experience Report.

Expungement comes into play when an individual wants to seal their criminal records, with the idea that expunged records will not show up on background checks for housing and employment. It is a process begun by an individual petitioning the court to seal certain records, and if expungement is granted will end with court-ordered sealing of records within different agencies.

OVERVIEW OF EXPUNGEMENT

- Wait the mandated amount of time since the conviction or last probation period ended
- Set a court date (at least 60 days from serving the petition)
- Fill out the necessary paperwork for the expungement petition (see Self-Help Center resources for assistance)
- Serve all necessary paperwork to appropriate agencies
- Pay a fee of \$297 per case to expunge when filing paperwork with the court administrator’s office
- Consider filing an affidavit of financial status to waive or reduce filing fees
- Attend court hearing and plea case
- Within 90 days the deciding authority issues a decision
- Results will be sent to petitioner and agencies served
- 60-day window for agencies to appeal
- Once expungement is granted there is a six-month period before a case is fully sealed to ensure that there is no violation of probation

⁵ Laws of Minnesota 2017, 1st Spec. Sess., chapter 6, article 10, section 145.

⁶ Laws of Minnesota 2008, chapter 137, sections 7,8.

It is important to briefly outline the steps to expungement. An individual must wait a certain amount of time after a conviction before starting the expungement process, two years for misdemeanor charges and four years for gross misdemeanor charges. All fees and fines for cases must also be paid. The petitioner then calls for a court date, which will be scheduled at least 60 days out because of the assumption that they will serve all necessary agencies in the meantime. The individual can complete the petition for expungement and serve the agencies that have their record(s).

Once the petition is filed, the petitioner pays a \$297 fee for each case they hope to expunge. *Informa pauperis* is an affidavit of their financial status that can be signed by a judge to waive or reduce the fee a petitioner must pay. The expungement court is scheduled in Hennepin County on Thursday mornings, where the petitioner will appear and argue their case in front of the deciding authority, which in Hennepin County is a referee (an attorney appointed by judges). The referee takes the case into advisement for up to 90 days and creates an order that a judge then signs. Once the expungement order comes in, the results are sent to the petitioner and all served agencies. The result can be an order granting expungement, an order granting partial/limited expungement, an order denying expungement, an order continuing case, or an order deferring expungement.

If the petitioner is granted any form of expungement, there is a 60-day window for agencies to appeal the expungement decision. Even once expungement is granted, and the appeal period ends, an individual has to wait six months before the case is fully closed in case any probation violations occur.

During this process, legally unrepresented individuals tend to receive support from Self-Help Centers. The Self-Help Centers are a service of the Minnesota Judicial Branch where individuals who represent themselves in Minnesota District Courts can access information and resources. There is a statewide phone line and walk-in centers in Hennepin County (4th district), Ramsey County (2nd district), and county courts within the 10th district. Following is a high-level overview of their process.

First, Self-Help will check an individual's case to ensure that it is closed. They also ensure that the individual has no outstanding fines to pay. Self-Help Center staff directs the individual to the Traffic Violation Bureau at Hennepin County Government Center to print their packet of forms to fill out for a petition to expunge. The number of cases the individual wants expunged determines the next steps of the Self-Help Center. If the individual has five or fewer cases they want to expunge, then the Self-Help Center can assist them on the same day. If the individual has more than five cases they want to expunge, the Self-Help Center will schedule a follow-up appointment. This allows their staff time to draft all of the documents except essays and previous addresses, which the petitioner has to complete. At the follow-up appointment, Self-Help Center staff will go through the petition packet with the individual and discuss the next steps.

It is important to understand how courts make the ultimate decision whether or not to grant expungement. Minnesota Statute § 609A.03 details everything related to the petition to expunge criminal records.⁷ Within this statute, subdivision 5(c) outlines 12 factors deciding authorities consider when determining whether or not the petitioner is granted an expungement.

⁷ Laws of Minnesota 2014, chapter 246, section 11.

12 Factors Court Considers When Determining Expungement

- (1) The nature and severity of the underlying crime, the record of which would be sealed
- (2) The risk, if any, the petitioner poses to individuals or society
- (3) The length of time since the crime occurred
- (4) The steps taken by the petitioner toward rehabilitation following the crime;
- (5) Aggravating or mitigating factors relating to the underlying crime, including the petitioner's level of participation and context and circumstances of the underlying crime
- (6) The reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities
- (7) The petitioner's criminal record
- (8) The petitioner's record of employment and community involvement
- (9) The recommendations of interested law enforcement, prosecutorial, and corrections officials
- (10) The recommendations of victims or whether victims of the underlying crime were minors
- (11) The amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted
- (12) Other factors deemed relevant by the court

Section One: Methods

Tasked with identifying barriers that people with prostitution-related convictions might face when navigating the expungement process, we first reviewed existing documents related to expungement in Minnesota and around the country. In addition, we conducted 17 interviews between March and May 2019 with professionals in the legal and court systems whose work relates to the expungement process. We used a purposeful sampling technique to gather information utilizing connections from a coalition started by Hennepin County's No Wrong Door initiative.⁸ Interviews were conducted both in person and via phone with a standard procedure of describing the project and receiving consent to use the information interviewees provided. We had a standard set of questions about their role within the legal and/or court system and their knowledge of expungement, as well as additional questions specific to their individual role.

In order to maintain confidentiality, these 17 individuals were classified as part of three different groups: advocates, attorneys, and court officials. Some individuals overlap between the three groups, but they were placed in a group based on the aspects of the system and process they spoke about most frequently.

Group	Number of people interviewed
Advocates	5
Attorneys	5
Court Officials	7

Participation in interviews was voluntary and participants were free to skip any question they preferred not to answer. The information shared by each individual was combined with the feedback from others for qualitative data analysis. From the data analysis, we found six resonant themes for systems barriers to expungement: personal factors, process, the criminal justice system, the statute, Self-Help Centers, and general awareness of expungement. These themes were then distilled even further into the findings presented, as well as recommendations offered.

⁸See Stringer, E. T. (2014)

Limitations

As with any research, there are limitations to consider in terms of design and the interpretation of interview data. Data collection included a group of people primarily based within Hennepin County, so the information gathered from interviews and synthesized below is not entirely comprehensive of the barriers to seeking expungement from a statewide level. Our own perspectives as researchers, including the ideas and experiences we brought with us may also be a limitation. As public policy graduate students who self-selected into a course about research and policy with a focus on sex trafficking and sex work, we likely brought some bias to this project.

Additionally, the project timeline influenced who we were able to interview and how much information we could collect about the barriers individuals seeking expungement face. Due to a condensed timeline, we noticed a lack of intersectionality in our research approach. We did not intentionally engage advocates, attorneys, or court officials who primarily work with Black and Indigenous people of color; lesbian, gay, transgender, and questioning folks; or other marginalized communities who are disproportionately affected by the criminal justice system.

Section Two: Findings

Interview Themes

Individuals who have the right to expunge are not made aware of this.

We found that generally, individuals who are eligible to petition for criminal expungement are unaware of this right. Multiple attorneys and advocates argued that the lack of knowledge about expungement was in part due to the fact that expungement is a civil court matter, whereas their convictions occurred in criminal court. If an individual had an attorney represent them in their criminal proceedings, it is not standard practice for that attorney to explain the option of expungement to their client. This can also apply for individuals who have a public defender for their criminal cases because public defenders do not handle civil cases.

Advocates also shared stories about individuals who have been in and out of incarceration for 30-some years but do not know what expungement is, let alone that it is an option for them. Therefore, when they found obstacles to seeking employment or housing, they returned to the life even though it risked adding to their criminal record because this seemed to be their only option. Advocates and attorneys we spoke with shared their opinion that this might be a part of a larger issue – the criminal justice system is intentionally withholding this information to keep people in the system. This finding is elaborated upon further in the Lived Experiences Report.

Advocates, attorneys, and court officials perceive that individuals face stigma and intimidation throughout the expungement process.

Experts we interviewed noted that individuals seeking an expungement for prostitution-related offenses often felt embarrassed, intimidated and re-traumatized by recounting their stories. We heard similar statements regarding mistrust of the police and criminal justice system overall due to a lack of feeling empowered. Although the majority of our findings have been based on the perspective of systems barriers, the experts we interviewed all understood stigma and emotional trauma as barriers for individuals seeking expungement. For a more detailed analysis of the perspective of provider/victims, see the Lived Experiences Report.

Expungement requires an immense amount of resources from the petitioner.

All interviewees said that navigating the process to file for expungement is long and complicated. The time it takes from start to finish, transportation concerns, and the challenge of finding a pro-bono or low-bono attorney to help with expungement cases were the most common factors we heard. The required forms are cumbersome and complicated, so much so that completing them without an attorney can seem impossible and even attorneys have filed them incorrectly. This can directly affect the outcome of an expungement petition because many people appear in court only to find out they did not file their petition correctly and have to start over. These challenges are mirrored in the Lived Experiences Report.

Traveling time and transportation concerns are also barriers. Cases need to be filed in the county where the crime took place and oftentimes a successful expungement petition requires the petitioner to appear in court,

which can be even more difficult for people who do not reside in the county where the crime occurred. The lack of access to qualified pro-bono or low-bono attorneys was addressed by attorneys, advocates, and court officials. Because of the complexity of filing one or more expungement petitions, the benefits for a petitioner to have a qualified attorney are great. Interviewees agreed that having an attorney present was important for a successful petition. Finally, the expungement fee of \$297 per case is a high cost, especially for individuals who may not be employed due to their criminal record.

Self-Help Centers cannot provide legal advice.

Attorneys, advocates, and court officials all mentioned that the Self-Help Centers were a valuable resource for individuals seeking expungement. One caveat is that Self-Help Centers must operate in a neutral way without providing counsel for individuals seeking expungement. This can be difficult for individuals without access to an attorney because several questions on the expungement petition form do not have clear information about what the deciding authority is looking for. Attorneys have an easier time advocating for the client, offering advice throughout the expungement process, and making their case as successful as possible. Attorneys can help individuals in a way that Self-Help is unable. This report includes a resource list of pro-bono and low-bono attorneys who are available to represent individuals convicted of prostitution and related charges in expungement hearings (see the Lived Experiences Report).

The methods used to file an expungement petition are outdated and inaccessible to the people who could be helped most by expungement.

In the digital age, much of the expungement process is outdated and requires even more resources from individuals seeking expungement. Attorneys and court officials said that serving notice to relevant agencies is the most complicated and resource-intensive part of the expungement petition process. Petitioners have to serve six to 10 standard agencies who are involved in criminal charges, make copies of their petition and materials, and mail it to each agency. The average amount of material to print and mail is 10 to 15 pages per case, and most individuals seeking expungement have more than one case they want to expunge.

Because mailing materials to agencies is required, finding the correct addresses for these agencies is imperative. Advocates, attorneys, and court officials all mentioned this can be unnecessarily hard, especially if individuals do not have access to a Walk-In Self-Help Center that will print address labels. This is all required for the expungement petition process despite the fact that each of the agencies accepts e-filing from the courts.

In addition, the way the county and other local governments keep official records makes seeking an expungement a challenge. There is no central search tool for an individual to find all of their records to begin the expungement process or double check that their records have been sealed appropriately when expungement is granted. The hardships experienced by provider/victims to file their petition is further discussed in the Lived Experiences Report.

There is no statewide agreed upon process for expungements and how to decide whether or not a petition is granted.

Lack of statewide coordination on expungement interpretations and decisions is a barrier because Walk-In Self-Help Centers may not exist where an individual lives or received criminal charges. We heard from

advocates and court officials that individual counties operate in isolation; some counties do not grant expungements at all. Similarly, some counties are more likely to understand why a provider/victim might have committed other crimes during that time of their life while others are not. We heard from multiple court officials within Hennepin County that they receive calls and requests from other counties around the state about how to handle various expungement-related cases and issues, but there is no official determination from the state about how to put the 609A.03 statute outlining expungement into practice.

Judicial discretion and the amount of power one official within each county has in deciding whether to grant expungements can be problematic.

All attorneys and advocates we interviewed discussed judicial discretion as a barrier to expungement. Each county has its own system to determine who hears expungement cases, but interviewees perceive a common thread between all counties in Minnesota being that there is generally one official deciding whether to grant expungements. Several experts we interviewed noted that because expungement is a particularly tricky area of law, there is a benefit to one official presiding over all expungement hearings for the county: to create consistency in rulings. However, all of the attorneys and advocates interviewed mentioned that this was also problematic because it gives the deciding authority in each county a great deal of judicial discretion. Their decisions often turn into the standards that must be met for a successful expungement. Additionally, both attorneys and advocates mentioned some of the 12 factors lend themselves to subjectivity in decision-making. Rehabilitation and citing specific hardships are two factors where deciding authorities tend to subjectively make decisions on whether to grant expungements.

Throughout and after the expungement process the Minnesota Department of Human Services (DHS) background check process is a barrier to individuals finding meaningful work.

The way in which DHS accesses criminal records and determines whether individuals pass background checks for a variety of licenses exists outside of the court and legal systems. If DHS has run a background check prior to an individual successfully expunging their criminal record, that initial background check will hold for a significant amount of time. Advocates, attorneys, and court officials all shared that many people exiting the life want to work in healthcare and social service fields to support others. Many of these positions require licenses from DHS. Not much was known from the experts we interviewed about the internal processes at DHS and how these decisions are made. However, advocates, attorneys, and court officials all mentioned that DHS rejects and appeals a large amount of expungement cases.

Subdivision 6a was created with the intent to help individuals with a history of sexual or domestic violence receive an expungement, but there is a lack of agreement and understanding of how to interpret and utilize this part of the statute.

Minnesota Statute § 609A.03, subdivision 6a was passed in 2015 as an extra provision for expungement for people involved in or harmed by issues such as sexual exploitation and domestic violence. Based on differing interpretations we heard from attorneys and court officials, the intention behind subdivision 6a has not been implemented. Additionally, attorneys shared a perception that invoking subdivision 6a might also harm an individual's petition for expungement if the deciding authority viewed the individual as not taking responsibility for the crimes they committed. Some of the professionals we interviewed were

unaware of subdivision 6a, and we heard from attorneys and court officials that it rarely comes up in expungement petitions or proceedings.

Expungement is an ineffective solution because it does not repair the harm done to individuals.

Representatives from each of the three groups we interviewed said that expungement as a solution does not solve any of the collateral consequences individuals with a criminal record face. It is therefore an ineffective solution, especially as there is no way to fully seal any record because the information will still exist on the internet, including mug shots and any local newspaper coverage (see further discussion in Lived Experiences Report). Even with an expungement of official records, there is little to no chance of removing all of this information from being found. If there is no major shift in societal perception of individuals with criminal records, these individuals will continue to be harmed by an arrest record alone. Another reason expungement is an ineffective solution is that there is no agreed upon legal interpretation of how to answer the question, ‘Have you ever been convicted of a crime’ when an individual has successfully expunged criminal records.

Attorneys and advocates also shared concerns with the time individuals are required to wait based on the level of their charges and the time it takes for the court to fully process an expungement. Many individuals initiate a petition to expunge their criminal record because of a rejection for employment or housing due to failing to pass a background check. Before filing an expungement petition, an individual must wait for two-four years after their probation is complete. Any additional convictions that occur before the probation period is complete will reset an individual’s wait time to file an expungement. Once an individual files their petition for expungement it takes a minimum of six months for their petition to be processed, a hearing scheduled, a decision made, and their records sealed if they are successful. If an individual is seeking expungement because of a denial of employment or housing, having to wait for this length of time can be a deterrent.

Literature and Document Review Highlights

As previously stated, Minnesota Statute § 609.324, subdivisions 6 and 7 detail the penalties for individuals engaging in prostitution. Subdivision 6 is specifically about prostitution in public spaces, which results in a gross misdemeanor, while subdivision 7 is for general prostitution crimes not in public spaces, which result in a misdemeanor. The use of the term ‘prostitution’ in these statutes can be problematic due to stigma and the fact that it does not adequately capture the experience of provider/victims.

Within Minnesota Statute § 609A.03, which outlines criminal expungement, subdivision 6a was created to address individuals who are victims of a crime at the same time they commit crimes.⁹ This statute recognizes that crimes committed when an individual is a victim in another context should be able to be expunged, but is vague and difficult to interpret.

⁹ Laws of Minnesota 2014, chapter 246, section 11.

For individuals seeking criminal record expungement, Self-Help Centers have provided resources to assist in navigating the filing process. Two of the resources on the website are: ‘Step-by-Step Guide to Criminal Expungement Forms’ created by Volunteer Lawyer Network and ‘How to File for Criminal Expungement’- a series of 16 videos detailing the filing process.¹⁰ Both review the same process through different formats. Both formats include tips for filling out the necessary forms, yet both also recommend utilizing legal representation for further help. As these tools are meant to replace representation, this demonstrates how complex the expungement process is. As previously mentioned, walk-in Self-Help Centers only exist in a few districts, making it extremely difficult to receive assistance if an individual committed a crime in a different district or does not have reliable transportation to get to the Self-Help Center.

Multiple reports, including Safe Harbor for All and State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking, outline vacatur laws for victims of sex trafficking.¹¹ A vacatur law restores an individual to their status before obtaining a criminal record. These reports discuss how vacatur laws validate the experiences of provider/victims and remove the barriers that criminal records create, such as difficulty obtaining housing, employment, education, and more. Vacatur laws differ from expungement in that a vacatur alters the merits of the underlying record, akin to exoneration of the crime. More information on these reports is included in Appendix A.

Findings Conclusion

There are common themes that emerged from the document and literature review and interviews with advocates, attorneys, and court officials. The interviewees were forthcoming with their opinions, perspectives and experiences, and we found many opportunities for considerations for Hennepin County and the state of Minnesota. Based on all of the findings, further discussion and recommendations are outlined below.

¹⁰ Self-Help Centers (n.d.) <http://www.mncourts.gov/Help-Topics/Criminal-Expungement.aspx>

¹¹ See for example Marsh (2019); Martin (2018); Polaris (2015); National Council of Jewish Women (2016)

Section Three: Discussion

Vacatur Law

We frequently encountered the idea of a vacatur law as a possible alternative to expungement. A vacatur law, unlike expungement, would render previous convictions nullified. This process would remove the barriers that accompany a criminal record, such as issues accessing housing, employment, education, and maintaining or obtaining child custody. One interview with an advocate also revealed the merit of vacatur laws based on their work in another state and seeing some of the women they worked with able to live their lives free of criminal records. However, in conversations with advocates and attorneys, some concerns about how a vacatur law may impact various marginalized groups, such as undocumented immigrants, were mentioned. If Minnesota pursues a vacatur law, it will be important to consider the implications from the perspectives of all groups affected.

Broad Criminal Justice System Reform

The broader discussion of criminal justice reform and issues within the system itself was acknowledged by many of the people we interviewed. Although this report does not focus on recommendations that will address some of these larger issues, the discussion around who is or is not deserving of justice and concerns about post-conviction relief was brought up in interviews by experts. For example, advocates shared stories about additional complications native and indigenous people face with no clearly outlined authority between tribal, state, and federal government. Providing recommendations specifically to address issues such as these is outside the purview of this report, but we would be remiss not to acknowledge these systemic issues as consideration for context regarding the barriers that individuals face while interacting with the criminal justice system.

Automatic Expungements

There was a great deal of information that experts we interviewed identified as barriers related to the criminal justice system. Some were focused on broader systemic concerns about the criminal justice system in the United States, and others discussed individual petitioners and their interactions with the system. Advocates, attorneys, and court officials all mentioned the fact that juvenile offenses are not automatically expunged even though many people, including systems professionals, assume they are. The majority of these experts believe this should change. We also heard from court officials that there is significant administrative burden on counties, cities, and other agencies to comply with the expungement process and resulting court orders. When agencies are served expungement petitions, they must consider documentation included in the petition as well as the 12 factors from the statute and provide a response to the court about whether they object. This administrative burden could be lessened if there were more options for convictions to be automatically expunged, such as in the case of juveniles or when someone committed a crime during a time of victimization.

Section Four: Opportunities for Consideration

Based on document review and themes that emerged from interviews with advocates, attorneys, and court officials we have determined some opportunities for consideration to remove barriers that individuals with prostitution-related convictions may face when seeking expungement. The first few recommendations were informed by the findings of both groups.

Joint Opportunities for Consideration

Increase awareness-building activities so that provider/victims are **aware of their right to seek expungement**. There should be multiple mechanisms for this without relying on systems professionals alone to inform individuals because we have heard this does not always happen. Information provided should also be tested for understanding and comprehension of individuals at a variety of reading levels.

There are **many legal professionals who want to help provider/victims, but they need more education about how to work with this population**. Emphasis should be placed on being trauma-informed and listening to those with lived experience about what they need and how to best support them. It is also advised to get buy-in from organizations that work with survivors and provider/victims to utilize their expertise when designing or planning support services.

Increase training on being trauma-informed for court officials to increase their capacity to understand and support the situation provider/victims are in.

Offer electronic filing options for elements of the expungement process. Provide a way to fill out the necessary forms online and allow for electronic service of the petition to agencies. These agencies accept e-service from the courts and also e-file documents themselves, therefore it would benefit both individuals and agencies to develop a system to electronically file petitions for expungement.

Introduce legislation that would **allow for automatic expungement in some cases** to alleviate administrative burden for agencies and resource burden for individuals seeking expungement. One of these cases identified by attorneys and court officials should be for juvenile convictions.

Systems Barriers Opportunities to Consider

Implement Walk-In Self-Help Centers across the state that can provide information for individuals who are seeking expungement.

Determine a statewide accepted interpretation of Minnesota Statute § 609A.03 subdivision 6a and communicate this to court officials, attorneys, and advocates whose work is affected by it. This subdivision was created with the intent of providing additional support to provider/victims but confusion about how it should be interpreted and utilized is preventing that from being the case.

In any policy or measure created with the provider/victim population in mind, **consider harm reduction.** Because individuals often seek expungement after being denied employment or housing, considering how to connect them back to supports and services once they have received an expungement is of the utmost importance.

Consider a vacatur law, which would guarantee criminal record relief of prostitution convictions. When considering this, work with other groups who are organizing around the idea of vacatur and post-conviction relief because this law could affect other marginalized groups, such as immigrants who are applying for visas.

Report Conclusion

Living with a criminal record creates barriers to housing, employment, education, and much more. Survivors of sex trafficking and sexual exploitation deserve to live safe and healthy lives. This fact is what brought our group together. Working with Hennepin County's No Wrong Door initiative, we sought to discover systems barriers that exist for individuals seeking expungement for prostitution and related charges.

These findings have large implications for Hennepin County and survivors of sex trafficking and sexual exploitation. The opportunities for consideration, especially those shared by the group investigating the lived experience perspective, offer Hennepin County immediate actions toward removing barriers and increasing participation in the expungement process.

Appendices

Appendix A: Literature Review

The purpose of this literature review is to investigate recent research and state responses to provider/victims seeking expungement. The sources of the literature review include the Minnesota Legislature, the Minnesota Judicial Branch, and reports by Polaris and the University of Minnesota Urban Research and Outreach-Engagement Center. This appendix summarizes the review organized by each document.

A.1 Statutes

Minn. Stat. § 609.324, subdivisions 6 and 7. These statutes detail penalties for individuals engaging in what the state defines as prostitution. Subdivision 6 is specifically about prostitution in public spaces, while subdivision 7 is for general prostitution crimes. An individual can be found guilty of a gross misdemeanor or misdemeanor respectively if they are found engaging “in prostitution with an individual 18 years of age or older; or is hired, offers to be hired, or agrees to be hired by an individual 18 years of age or older to engage in sexual penetration or sexual contact.” The use of the term prostitution is problematic due to stigma and the fact that it does not adequately capture the experience of provider/victims.

Minn. Stat. § 609A.03, subdivision 6a. This statute was created in 2015 for individuals who are victims of a crime. It states, “If the court finds...that the context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and the person's status as a crime victim, then the effect of the court order to seal the record of the proceedings shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information.” This statute recognizes that crimes committed as a victim are connected to the status as a victim. The statute’s inherent vagueness makes it difficult to understand how best to utilize this statute, which means individuals seeking expungement are not able to receive the benefits this statute has to offer.

A.2 Vacatur

Fact Sheet: Vacatur Laws. In 2016 the National Council of Jewish Women (NCJW) identified areas of focus for state anti-trafficking advocacy, one of which was vacatur laws. A vacatur law restores an individual to their status before obtaining a criminal record. For victims of sex trafficking, a vacatur law shows them that the state recognizes they are not responsible for the criminal activity they were forced to engage in. NCJW is aware that having a criminal record creates barriers for individuals seeking employment, housing, education, and much more.

Human Trafficking Issue Brief: Vacating Convictions. Polaris and the Uniform Law Commission (ULC) have provided template legislation for a vacatur law. What is key here is the focus on creating a broad enough statute that vacates more than prostitution charges alone. Trafficked individuals are often coerced into other crimes while they are exploited, so a vacatur law must recognize those crimes were committed due to the exploitation experienced while being trafficked. This inclusive approach to vacatur laws was endorsed by the American Bar Association and is reflected in the ULC’s Uniform Act on

Prevention of and Remedies for Human Trafficking (Uniform Act). The Polaris brief includes suggested statutory language for a vacatur law that was utilized in the Uniform Act. State lawmakers can create a vacatur law that will improve the lives of trafficked individuals with the help of this outline.

A.3 Self-Help Center Resources

A Self-Help Center is a service within the Minnesota Judicial Branch, with locations in Hennepin County (4th district), Ramsey County (2nd district), and multiple county court locations within the 10th district. Individuals without an attorney who represent themselves in the Minnesota District Courts can access information and resources. For individuals seeking criminal record expungement, Self-Help has provided resources to help navigate the filing process.

Step-by-Step Guide to Criminal Expungement Forms. This form was created by the Volunteer Lawyers Network and is accessible through the Self-Help Centers website. It is exactly as it sounds: a step-by-step guide for individuals filing for an expungement of their criminal record(s). The guide starts with discussing how to gather records then outlines, in length, the process of filling out the “Notice of Hearing and Petition for Expungement,” “Proposed Order,” and “Affidavit (Proof) of Service” forms. The document ends in the necessary steps to take after the petition for expungement is filed, including preparing for the expungement hearing. What is largely successful in this document are the embedded tips. For practically every part of the expungement forms, there are detailed explanations for individuals to learn what needs to be included.

While Self-Help Centers, and thus these resources, exist for individuals without representation, the Step-by-Step Guide mentions that having representation could make the process clearer. It is not feasible for most individuals seeking expungement to hire a lawyer. When their sole avenue for help is also mentioning the need for a lawyer, individuals can feel stranded without legal representation.

There is a section where individuals can detail “mitigating or aggravating factors relating to the underlying crime.” This is a prime opportunity for provider/victims to discuss their victimhood, thereby increasing the likelihood of their criminal record(s) getting expunged and potentially utilizing Minn. Stat. § 609A.03 subdivision 6a. Instead of an opportunity to discuss victimhood, the tips included in Self-Help Center guides for this particular question advise individuals to avoid making excuses and even leaving this section blank to avoid appearing as if you do not take responsibility of your actions. By not including a tip outlining that this section could be an opportunity to explain one’s victimhood, provider/victims will likely not consider including this in their petition for expungement.

Videos: How to File for Criminal Expungement. In 16 parts, this video series gives a step-by-step guide to the complete criminal expungement process. It walks through the process of filling out each form correctly with necessary tips and instructions on serving the petition to necessary agencies. This visual presentation makes it much simpler for people to follow the guidelines as they can fill out the forms while watching the video. The video is quite helpful as it also provides sample answers to the questions that require detailed explanations of their victimhood and their need for seeking expungement. These answers are vital in successfully expunging records. Similar to the Step-by-Step Guide, these videos also talk about the need for legal advice in case of any confusion through the filing process. This is not an option for many individuals, which is why they resort to these tools in the first place.

A.4 State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking

Polaris, in conjunction with the University of Baltimore School of Law and the Brooklyn Law School, analyzed state criminal record relief laws for survivors of human trafficking. Similar to the documentation above, this report discusses the harm that criminal records cause and the difference between the sealing of records, expungement, and vacatur laws (ordered here from least to most relief). This report then outlines how each state's criminal record relief law was graded with criteria including the range of relief, arrests and adjudication relief, offenses covered, judicial discretion, nexus to trafficking, time limits and wait times, hearing requirements, burden of proof, official documentation, confidentiality, and additional restrictive conditions on relief.

Some of the measurements are worth discussing further as they relate more broadly to other findings. Offenses covered is a measurement based on which statutes cover more than simply the prostitution charge(s) themselves. This might include drug offenses, theft, etc. The nexus to trafficking is an interesting measurement because some statutes for victims of trafficking require the crimes to have happened "under duress," while the best case is a statute recognizing that being a victim of trafficking is not a linear experience and often unstable. The official documentation is in reference to certification of trafficking from federal, state, or local authorities. This documentation can aid in criminal record relief as it can be used to explain the underlying offense as a result of the trafficking.

Minnesota did not receive a grade in this report because Minnesota does not have a specific criminal record relief statute for victims of trafficking. Twenty-eight states received F scores, 10 states received D scores, two states received C scores, and one state received a B score. The 10 remaining states could not be graded due to their lack of trafficking-specific criminal record relief statutes. The report recommends instituting comprehensive data collection processes, restoring federal funding for criminal record relief legal advocacy, implementing provisions for returns of fines/surcharges, designing trauma-informed regulations, and allocating state and local resources for outreach and awareness for survivors.

A.5 Safe Harbor For All

Minnesota passed the Safe Harbor For Exploited Youth in 2011 recognizing the harm of sex trafficking leading to commercial sexual exploitation of youth. The law has been successful in changing the way Minnesota views prostitution and responses to sexually exploited youth. The new victim-centered response approach has been able to meet the needs of these exploited youth. However, recognizing that the vulnerability to sex trafficking does not end at 18 or 24, Minnesota legislation sought recommendations and consequences on expanding this law to address adults who are a victim of sex trafficking.

The Safe Harbor For All report uses a participatory engagement process to gather information from across the state to inform the process, findings, and recommendations for the legislation. These findings are vital as they are informed by both lived experience and system perspectives. This report highlights how the right to health, safety, dignity, and justice is violated due to the criminalization of adults who are trafficked and

exploited in Minnesota. The report draws a conclusion that full criminalization of transactional sex has been causing the greatest harm to the people in this industry. The decriminalization of selling sex with criminal accountability for buying sex can be the first step towards mitigating the harm experienced by the people in this industry.

The report also considers how prostitution charges can cause long-term effects on an individual's life post-conviction. They have a very hard time finding a job, securing housing, getting access to public benefits, and retaining custody of their children once they have been convicted for prostitution. These hardships often result in individuals resorting back to the life of a provider/victim and can hardly recover. The report also highlights that Minnesota has the provision of expungement of criminal records (Minn. Stat. § 609A.03, subdivision 6a) to reduce the burden of criminal liability. However, the findings show that even when the law allows for expungement there has been a huge disconnect. There is very little awareness about the availability of expungement and the misinterpretation of these statutes makes it more complex. Stakeholders in the report point out that the process of obtaining an expungement is complicated, difficult, and expensive which creates a huge barrier in utilizing this law. One of the major recommendations after post-conviction is automatic expungements and vacatur laws. The legal system, as well as some people with lived experience, agrees that these remedies can be highly effective in reducing the burden posed by conviction.

Appendix B: Consent Form

Consent to Participate in Expungement Research Interview

Overview. Current Minnesota Statute 609A.03 states that for people with prostitution charges, as well as crimes related to these charges, it is possible to restore status if they were also a victim of crime at the time of conviction. However, evidence suggests that the number of people going through the expungement process related to sex trafficking is low. We seek to discover what the barriers to expungement are by analyzing systems, including the court and public defenders.

In this conversation, we want to know more information about your experiences as an expert about how people with prostitution and other related charges access expungement. We will ask questions such as: How are decisions on expungements made? Is there a difference in expungement case success for those who self-represent versus those who have legal counsel? What legal resources are available for those who seek expungement? We are not asking for your personal information or your stories. We're talking with you as an expert with important knowledge and experience. We want to make sure the State of Minnesota understands the pros and cons and any potential problems that might happen based on new legislation.

Confidentiality/Voluntary. Your participation in this conversation is completely voluntary. You are free to skip any question that we ask you if you'd prefer not to answer.

The information that you share will be combined with the feedback from others and summarized in a report for Hennepin County, the Minnesota State Legislature, as well as the general public. We may want to use quotes or paraphrases of the information you provide. However, we will not identify you by name. We are not mandated reporters, so we will not share any information that you tell us with any authorities unless you ask us to do so.

Note taking. Before we get started, we'd like to point out that we will be taking notes throughout the interview. These notes will not be shared with anyone outside of the research team. We will store them on password-protected computers and they will be destroyed after the project is over.

Eligibility. We are having these conversations with individuals currently 18 years of age or older. Is everyone here [are you] 18 years of age or older?

Consent. We just talked through all of the elements of this consent form. What additional questions do you have? Please check the boxes below if you want to participate.

I consent to participate.

I do not consent to participate.

Print Name

Date

Signature

Appendix C: Interview Protocol

Project: Systems Barriers to Expungement for Prstitution Charges

Interview Introduction

We are conducting interviews for Hennepin County No Wrong Door initiative to investigate the systems barriers that exist for individuals with prostitution charges as they seek expungement. We are public policy graduate students from the Humphrey School of Public Affairs enrolled in a course analyzing policy and research with individuals selling and/or trading sex. The class culminates in a project with our community partner. From documentation and literature review, and information gained from interviews with advocates, attorneys, and court officials, we are reporting our findings and offering opportunities for considerations. Hennepin County will be able to use the recommendations to remove barriers for accessing expungement.

We have a consent form detailing this information as well as how we plan on utilizing any information gained through this interview. Please read through it, ask any questions, and sign if you consent to us using the information you provide in our final report. Now we will ask you a set of general questions we are asking everyone we interview. We will end this interview with questions more tailored to your expertise and work within this system.

General Questions

- What is your role in the criminal justice system and how does it relate to expungement?
- Does your role/department have any experience working with people who have prostitution charges?
- Are there any barriers to seeking or achieving expungement that you notice in your interactions with this group?
- What other barriers might there be in the broader criminal justice system?

Tailored Questions

Here we asked specific questions depending on where the individual worked or in what capacity they dealt with expungement. Because of this fact, and the multiple varieties of questions, we will not be including examples.

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