



**Statement Supporting 2022 Proposed Legislation Impacting Trafficking Survivors**

**Summary**

The Virginia Coalition Against Human Trafficking (VCAHT) is an alliance of service providers, attorneys, survivor-advocates, and community members on a mission to remove barriers preventing survivors from achieving full and healthy lives through public awareness campaigns, policy reform and enacting survivor-centered human trafficking legislation.

**Introduction**

This report discusses various proposed legislation which would impact survivors of human trafficking in the Commonwealth of Virginia. The report begins with a brief discussion of human trafficking, including statistics specific to trafficking in Virginia. Next, the report identifies and summarizes legislation that has been introduced in the 2022 legislative session that would directly impact survivors of human trafficking. The report then provides specific position statements for each identified bill. The report concludes by making recommendations for survivor-centered policies.

**Human Trafficking in Virginia**

The federal Victims of Trafficking and Violence Protection Act defines human trafficking, in part, as the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of commercial sex acts or labor services through the use of force, fraud, or coercion.<sup>1</sup> Human trafficking is a unique crime, and one that is often hard to identify, investigate, and prosecute. Human trafficking activities often occur in conjunction with other crimes, which may mask the trafficking components of the activities. Victims of human trafficking may be unwilling or afraid to cooperate with first responders, law enforcement, and victim advocates. Language and cultural barriers can hinder even voluntary communication with trafficking victims.

Between 2007 and 2020, the National Human Trafficking Hotline identified 1,712 cases of human trafficking in Virginia based on contacts, including phone calls, texts, emails, and online chats.<sup>2</sup> The most common form of trafficking identified through these contacts was sex trafficking and 317 of these reported victims were minors.<sup>3</sup>

<u>Bill Number</u>	<u>Patron(s)</u>	<u>Summary</u>
<u>HB 257</u>	Del. Shelly A. Simonds	Establishing a stakeholder work group by the Virginia State Crime Commission to create a uniform definition of human trafficking for the Code of Virginia. Work group will also consider and define other forms of trafficking and report their finding to the Governor and

<sup>1</sup> See 22 U.S.C. Section 7102.

<sup>2</sup> National Human Trafficking Hotline, Virginia Statistics, <https://humantraffickinghotline.org/state/virginia>

<sup>3</sup> *Id.*

		General Assembly by Nov. 1, 2022
<u>HB 258</u>	Del. Shelly A. Simonds	Amends § 9.1-102 of the Code of Virginia and adds § 35.1-15.1. § 9.1-102 amendment establishes an online course to train hotel proprietors and their employees on instances of human trafficking. § 35.1-15.1 requires all hotel proprietors and its employees to complete the course and report instances; the course will be provided by the Dept. of Criminal Justice Services. Each hotel employee must complete the training within six months of employment, and then repeat the course once every 2 years
<u>HB 260</u>	Del. Shelly A. Simonds	Amending § 9.1-116.5 of the Code of Virginia and adding § 9.1-116.5:1 to the Code. § 9.1-116.5 amendments establishes within the dept a Sex Trafficking Response Coordinator, and will develop a Human Trafficking Victim Support Certification program, establish minimum training standards for the program for victim service providers and conduct evaluations every other year of the treatment programs. § 9.1-116.5:1 defined victims service providers, and provides that these providers working for a treatment program for victims of human trafficking shall receive a certificate which can be renewed through the program every 2 years
<u>HB 283</u> <u>HB 412</u> <u>SB 467</u>	Del. Emily M. Brewer Del. Karrie K. Delaney Sen. Jill Holtzman Vogel	Requires the Department of Criminal Justice Services to establish standards for law-enforcement personnel regarding trauma-informed training for the recognition, prevention, and reporting of human trafficking.

<p><u>HB 413</u> <u>SB 664</u></p>	<p>Del. Karrie K. Delaney Sen. Chap Petersen</p>	<p>Establishes an exception to § 18.2-346 (which defines prostitution); minor engaging in this conduct shall not be proceeded as a delinquent and shall be referred to the local dept of social services for an assessment and service perr § 63.2-1506.1. Extends this exception to § 18.2-347 (which defines bawdy place)</p>
<p><u>HB 475</u></p>	<p>Del. Kathleen Murphy</p>	<p>Adds to definitions of "family abuse" and "act of violence, force, or threat" used in the protective order provisions that acts of violence, force, or threat include acts in furtherance of human trafficking or commercial sex trafficking. The bill also allows a minor to petition for a protective order on his own behalf without the consent of a parent or guardian and without doing so by next friend.</p>
<p><u>HB 526</u></p>	<p>Del. Amanda E. Batten</p>	<p>Provides that a non-Virginia student who is currently present in the Commonwealth as a result of being a victim of human trafficking, defined in the bill, is eligible for in-state tuition. The bill provides that a person may be a victim of human trafficking regardless of whether any person has been charged with or convicted of any offense and that eligibility for in-state tuition may be proved by a certification of such status as a victim of human trafficking by a federal, state, or local agency or not-for-profit agency, one of whose primary missions is to provide services to victims of human trafficking. Also requires public institutions of higher education to automatically record such a student as opting out of making any directory or educational information</p>

		available to the public unless the student voluntarily and affirmatively chooses to opt in to allowing such directory or educational information to be made available
<u>HB 578</u>	Del. Kelly K. Convirs-Fowler	Makes changes to the definitions of victim of sex trafficking used for the purposes of the issuance of a writ of vacatur and the affirmative defense available to victims of sex trafficking to include a minor charged with, convicted, or adjudicated delinquent of a qualifying offense in the Commonwealth who committed such offense while younger than 18 years old
<u>HB 579</u>	Del. Kelly K. Convirs-Fowler	Expands the definition of qualifying offense for the purposes of the issuance of a writ of vacatur for victims of commercial sex trafficking and the affirmative defense available to victims of sex trafficking to include a number of additional offenses enumerated in the bill. The bill also changes the term "victim of sex trafficking" to "victim of human trafficking" as used in reference to such writ of vacatur and affirmative defense and adds to the definition of "victim of human trafficking" any person subjected to human trafficking, as defined in the bill, and any person who committed such offense while younger than 18 years of age. Bill also provides that there shall be a rebuttable presumption that a petitioner is a victim of human trafficking if the petitioner provides official government documentation of the petitioner's status as a victim of human trafficking at the time of the qualifying offense.
<u>HB 711</u>	Del. Mark L. Keam	Provides that a petitioner for a

		writ of vacatur for victims of sex trafficking shall not be required to pay any fees or costs for filing such petition if the petitioner is found to be unable to pay them.
<u>HB 755</u>	Del. Paul E. Krizek	Creates the Anti-Human Trafficking and Survivor Trust Fund, which shall be administered by a Board of Trustees and used for the support and development of services for the prevention of human trafficking and the treatment and support of human trafficking victims.
<u>HB 1023</u>	Del. Elizabeth R. Guzman	Permits any family life education curriculum offered by a local school division before high school to incorporate age-appropriate elements of effective and evidence-based programs on the prevention, recognition, and awareness of human trafficking of children.
<u>HB 1115</u>	Del. Candi Mundon King	Requires the Department of Juvenile Justice to use trauma-informed screening measures to identify whether any child committed to the Department has been a victim of human trafficking and determine appropriate treatment and service options. The bill also requires that, in cases in which a juvenile and domestic relations district court or circuit court orders that a juvenile within its jurisdiction be physically examined and treated by a physician or local mental health center, such examination include trauma-informed screening measures to identify whether the juvenile has been a victim of human trafficking and determine appropriate treatment and service options.

<p><u>HB 1150</u></p>	<p>Del. Candi Mundon King</p>	<p>Provides that a defendant's ignorance of the victim's age, the victim's misrepresentation of his age, or the defendant's belief that the victim was an adult shall not be raised as a defense in a prosecution for certain crimes related to commercial sex trafficking and prostitution involving a minor victim.</p>
<p><u>HB 1213</u></p>	<p>Del. Jackie H. Glass</p>	<p>Provides that no minor shall be subject to arrest, delinquency charges, or prosecution for (i) a status offense, (ii) an act that would be a misdemeanor if committed by an adult, or (iii) an act that would be a felony if committed by an adult other than a violent juvenile felony if the minor (a) is a victim of sex trafficking or severe forms of trafficking and (b) committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent, regardless of whether any other person has been charged or convicted of an offense related to the sex trafficking of such minor. The bill also clarifies that it is not a defense to a commercial sex trafficking charge where the adult committed such violation with a person under 18 years of age that such person under 18 years of age consented to any of the prohibited acts.</p> <p>The bill also provides that the local department of social services shall refer any child suspected or determined to be a victim of sex trafficking to an available victim assistance organization that provides comprehensive trauma-informed</p>

		services designed to alleviate the adverse effects of trafficking and victimization and to aid in the child's healing, including assistance with case management, placement, access to educational and legal services, and mental health services.
<u>HB 1334</u>	Del. Kathleen J. Murphy	Amends the definition of "abused or neglected child" to include a child who is sexually exploited or abused by an intimate partner of the child's parent or caretaker and allows a complaint of child abuse or neglect to be deemed valid by a local department of social services (local department) in such instances. The bill allows a complaint of child abuse or neglect that alleges child trafficking to be deemed valid regardless of who the alleged abuser is or whether the alleged abuser has been identified. The bill requires a local department that receives a complaint or report of child abuse or neglect over which it does not have jurisdiction to forward such complaint or report to the appropriate local department, if the local department that does have jurisdiction is located in the Commonwealth.

**Position Statements**

Juvenile Justice and Child Welfare

**VCAHT unequivocally supports HB413/SB664.** These bills prohibit minors from being arrested, charged, and prosecuted for prostitution-related offenses and instead, referred to the local department of social services for an assessment and services.

Commercially sexually exploited minors are not prostitution offenders; contrarily, all minors who experience commercial sex are victims of sex trafficking and should be identified and responded to as such. Under the TVPA, all minors engaging in commercial sex work are victims of sex trafficking. This is true regardless of the presence of force, fraud, or coercion, or whether a trafficker/pimp or other third party is involved. Moreover, under Virginia law, victims of sex trafficking are victims of child abuse under § 16.1-228. As such, they should be proceeded upon as victims of abuse and not as delinquents.

This bill expressly states that § 18.2-346 and § 18.2-346.01 of the Virginia Code are inapplicable to persons under 18 years of age.

Because the trafficked minor is a victim of child abuse in VA, law enforcement has a statutorily mandated duty to treat the child as a victim of child abuse and report the matter to the Department of Social Services (DSS). This bill simply brings the criminal code in conformity with the rest of the code and eliminates this criminalization of a child abuse victim of human trafficking. Law enforcement has not lost their ability to intervene in the child's life if DSS was hesitant to act. Under § 63.2-1517(A) of the Virginia Code, law enforcement have the ability, if needed, to hold the child temporarily up to 72 hours, but as a victim of child abuse, not as a criminal. Further, the bill allows DSS to petition the court for services deemed necessary<sup>4</sup> so minors are not losing the services available to them through the juvenile courts. Therefore it is not necessary for law enforcement or the State to take a punitive approach, but rather they should be cooperating with DSS to help facilitate the necessary investigation and services called for under the Code. Accordingly, we urge the passage of HB413/SB664.

**VCAHT supports HB1115.** This bill amends the Code to require the Department of Juvenile Justice to use trauma-informed screening measures to identify whether any child committed to the Department has been a victim of human trafficking and determine appropriate treatment and service options. Additionally, the bill requires that, in cases in which a court orders that a juvenile within its jurisdiction be physically examined and treated by a physician or local mental health center, such examination include trauma-informed screening measures to identify whether the juvenile has been a victim of human trafficking.

While it can happen to anyone, commercially sexually exploited minors are disproportionately more likely to be involved in the juvenile justice system for offenses related to their trafficking victimization or offenses committed as a result of other life circumstances. Studies consistently report that children, specifically girls, who have experienced sexual abuse have high rates of juvenile justice involvement.<sup>5</sup> Juvenile justice, as a rehabilitation and child serving entity, plays an important role in identifying and providing an appropriate, service-based response to all children in its care. Because children already involved in the juvenile justice system are disproportionately more likely to have experienced or be at risk of experiencing commercial sexual exploitation, juvenile justice professionals are in a unique position to identify these children and connect them to services. To ensure identification of victimization and the provision of specialized care, as well as the prevention of future harm, juvenile justice agencies should adopt trauma-informed human trafficking and CSEC screening measures to screen children at risk of human trafficking. Mandating that all minors coming through a juvenile justice agency be screened for human trafficking will result in greater identification and access to supportive services for those experiencing exploitation, as well as prevent further delinquency. Accordingly, the Virginia General Assembly should pass HB1115 to require juvenile justice agencies to perform trauma-informed human trafficking screenings so that they are able to identify children experiencing exploitation and connect to appropriate treatment and services.

**VCAHT supports HB1150.** This bill provides that a defendant's ignorance of the victim's age, the victim's misrepresentation of their age, or the defendant's belief that the victim was an adult shall not be raised as a defense in a prosecution for certain crimes related to commercial sex trafficking and commercial sex acts involving a minor victim.

A Mistake of Age Defense allows a defendant to escape criminal liability based on a reasonable belief that a victim was of a specified age (e.g., at least 18 years of age). Permitting a Mistake of Age defense subverts the intention of protecting children from exploitation and creates a weakness in the laws needed to deter child sex trafficking and commercial sexual exploitation of children (CSEC). Under federal law, all children who have experienced commercial sexual exploitation are recognized as sex

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<sup>4</sup> § 63.2-1506.1(c)(2)

<sup>5</sup><https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf>



trafficking victims.<sup>6</sup> The harm caused by buyers and traffickers is not mitigated by the offender's apparent ignorance regarding the child victim's age. The offender, not the child victim, should bear the risk of that. Clear criminal laws, including those that criminalize buyers of sex with children, are needed to ensure all sex trafficking offenders can be held accountable. Currently, Virginia law does not expressly prohibit a mistake of age defense in prosecutions for child sex trafficking and CSEC. Virginia should clearly prohibit buyers and traffickers from asserting a mistake of age defense in a prosecution for those crimes in all cases involving minor victims who are under 18 years of age. Accordingly, the General Assembly should enact HB1150.

**VCAHT generally supports HB1213, but has recommendations to improve the bill.** This bill prohibits arrest, delinquency charges, or prosecution for (1) status offenses, (2) offenses that would be considered misdemeanors if committed by an adult, and (3) offenses that would be considered nonviolent felonies if committed by an adult when the minor (a) is a victim of sex trafficking or severe forms of trafficking *and* (b) committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent. The bill also prohibits a defense that a person under the age of 18 years of age consented to any of the prohibited acts in a commercial sex trafficking charge, and requires DSS refer any child suspected or determined to be a victim of sex trafficking to an available victim services agency.

Recognizing that many child sex trafficking victims are forced or compelled to engage in other criminal conduct as a result of their victimization, state non-criminalization laws should extend to offenses beyond prostitution, including status offenses as well as misdemeanor and non-violent felony offenses committed pursuant to trafficking victimization. VCAHT supports HB1213 insofar as it prevents criminalization of minors for offenses they're forced to commit because of their victimization. However, VCAHT strongly recommends that the bill language be amended to ensure that third party control is not necessary. Under federal law, all minors engaged in commercial sex work are victims of sex trafficking, regardless of whether a trafficker/pimp or other third party is involved. By requiring proof that an offense was committed as a direct result of some action committed by another, we are needlessly limiting an entire group of exploited minors from being afforded the relief available under this bill. Accordingly, VCAHT recommends striking §16.1-260.1(A)(iii)(b) altogether. If the General Assembly is reluctant to strike the language altogether, VCHAT suggests adding the following: "*engaged in conduct as a direct result of being offered payment or something of value, solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another.*" This language should ensure that minors engaged in survival sex are eligible for the bill's intended relief.

VCAHT supports the language that prohibits a defense that a minor consented to any acts prohibited by 18.2-357.1 of 18.2-346, but would amend the bill to include additional provisions like those in HB1150 that prohibit a defendant from raising, as a defense, ignorance of the victim's age, the victim's misrepresentation of their age, or the defendant's belief that the victim was an adult. Additionally, we would extend this prohibition to all Code sections that involve the commercial sexual exploitation of minors for the reasons articulated above in the analysis of HB1150.

Finally, VCAHT supports the language requiring DSS to refer any child suspected or determined to be a victim of sex trafficking to an available victim assistance organization that provides comprehensive trauma-informed services designed to alleviate the adverse effects of trafficking and victimization and to aid in the child's healing, including assistance with case management, placement, access to educational and legal services, and mental health services. However, we would recommend amending the language from victim of sex trafficking to victim of *human* trafficking to ensure that victims of labor trafficking are also receiving the same access and level of services readily available to them.

#### Criminal Record Relief for Survivors of Trafficking

**VCAHT supports the criminal record relief efforts reflected in HB579** because as a result of the power and control exercised by their traffickers, victims are forced to engage in activities in which

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<sup>6</sup> *Supra* note 4.

they would not have otherwise engaged. These activities often lead to victims' arrests, resulting in victim-defendants in the criminal justice system. As such, proposed legislation that effectively allows a trafficking survivor to petition for the vacatur and expungement of these convictions would positively impact a survivor's recovery and path to self-reliance.

In 2021, the General Assembly passed a Writ of Vacatur for Victims of Commercial Sex Trafficking emphasizing the understanding that trafficking victims should not be held criminally liable for crimes they were forced to commit as a result of their victimization. Additionally, the General Assembly passed an affirmative defense for victims of sex trafficking. While VCAHT is grateful for the efforts and leadership evidenced by the General Assembly and the Virginia State Crime Commission for their endorsement of this legislation, VCAHT strongly urges the need for *comprehensive* criminal record relief for trafficking survivors. As such, we strongly support the passage of HB579 for the following reasons:

- HB579 amends *both* the Writ of Vacatur and Affirmative Defense statutes to use the Federal definition for human trafficking which is used elsewhere in the Code concerning this issue, including within the definition of child abuse, thereby preventing unnecessary definitional inconsistencies. Additionally, it amends the definition of "victim of human trafficking" to clarify and ensure that minors who are not able to prove third-party control are entitled to relief.
- HB579 amends *both* the Writ of Vacatur and Affirmative Defense statutes from sex trafficking to human trafficking, ensuring that labor trafficking survivors are entitled to this relief.
- HB579 amends *both* the Writ of Vacatur and Affirmative Defense statutes to provide for relief for misdemeanors and nonviolent felonies which survivors are frequently forced to commit as part of their victimization.
  - In a national survey of trafficking survivors, 60 percent of the survivors had felony offenses.<sup>7</sup>
  - While it always includes the exchange of sex for something of value with a sex buyer, sex trafficking is deeply intertwined with forced criminality where other crimes are committed. Forced criminality can include any crime, but in the sex trafficking context, it commonly encompasses shoplifting, theft, robbing sex buying customers, recruiting and trafficking other victims, transporting or dealing illegal drugs, and selling of stolen items.<sup>8</sup>
  - The logic behind allowing prostitution related offenses to be qualifying should apply to any offenses that a victim was forced to commit as a direct result of their trafficking victimization. It is inconsistent logic to limit it to these offenses if the underlying premise is the same for other offenses. Vacating only one misdemeanor prostitution related offense when a victim might have failure to appear, contempt, misdemeanor drug offenses or petty theft offenses as well is limiting in terms of reducing barriers to employment and housing.
  - Failure to provide this relief will ensure that these survivors' lives remain unstable, cut off from services and avenues for improvement, and assuring their continued vulnerability to be trafficked or commercially sexually exploited.

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<sup>7</sup> Beth Jacob and Stephanie Richard, Survey, Impact of Criminal Arrest and Detention on Survivors of Human Trafficking, National Survivor Network (2016).

<sup>8</sup> Dominique Roe-Sepowitz, Elynne Greene, James Walters, James Gallagher, Trick Roll Study: Forced Criminality in Sex Trafficking Situations, ASU Office of Sex Trafficking Intervention Research 1,2 (2020).

- By expanding eligible offenses, it ensures juveniles are entitled to relief, as they are far more likely to be arrested on misdemeanor and felony crimes than prostitution.
- HB579 amends *both* the Writ of Vacatur and Affirmative Defense statutes to cover certain violent felonies that survivors would be forced to commit including recruitment under VA Code § 18.2-357.1
  - The phrase “bottom” is used to refer to a victim of human trafficking who is forced by the trafficker to control and coerce other victims. Often bottoms have been trafficked for many years, beginning when they were teenagers and are indeed victims themselves. However, they are often charged with trafficking offenses like those enumerated in VA Code § 18.2-357.1. Failure to include these offenses will inevitably result in victims being ineligible for the very relief intended for them.
- HB579 amends the Writ of Vacatur statute to provide for a rebuttable presumption that the petitioner is a victim of human trafficking if they present official government documentation of the petitioner’s status as a victim of human trafficking at the time of the qualifying offense.
  - This language not only makes the process more efficient for the courts, but would help minimize the amount of retraumatization the survivor would be subjected to in pursuing relief.
  - The Department of Social Services has been tasked with identifying at risk juveniles, and developing training materials. Moreover, the Department of Criminal Justice Services training manual provides model guidelines for investigating human trafficking crimes, including victim identification. As such, these agencies and others should be capable of providing such certification.
- HB579 amends the Writ of Vacatur statute to ensure indigent litigants are not required to pay fees or costs for filing a petition for a Writ of Vacatur.<sup>9</sup>

Survivors’ criminal records hinder them from moving forward with their lives in many ways. Many applications for public benefits require disclosure of criminal records and many programs are unavailable to those with criminal records. Specifically, a criminal record can prevent a survivor from getting a job, receiving medical care, furthering their education<sup>10</sup>, receiving housing assistance<sup>11</sup>, or applying for a loan. Thus, VCAHT supports criminal record relief in the form of affirmative defense, vacatur, and expungement to ensure victims are not criminalized for crimes they were forced to commit, and to provide the best possibility of recovery, wholeness, and self-reliance upon leaving their trafficking situation.

**Additionally, VCAHT generally supports HB578, however the language in HB579 is preferred as it provides more comprehensive relief to trafficking survivors.** HB578 amends the Writ of Vacatur and Affirmative Defense statutes to change the definitions of victim of sex trafficking used to

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<sup>9</sup> HB711 also amends § 18.2-361.1 to ensure indigent litigants are not required to pay fees or costs for filing a petition for a Writ of Vacatur. As such, VCAHT also supports this bill and expresses sincere gratitude to Delegate Mark Keam for his patronage.

<sup>10</sup> Individuals convicted of forcible or non-forcible sexual offenses are ineligible to receive Federal Pell Grants to help with college expenses. Available at <http://studentaid.ed.gov/eligibility/criminal-convictions>.

<sup>11</sup> For a report on housing law, the drug-felon ban, and restrictions on individuals with sexual offenses on their criminal records, see Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance, available at <http://www.fas.org/sgp/crs/misc/R42394.pdf>.

include a minor charged with, convicted, or adjudicated delinquent of a qualifying offense in the Commonwealth who committed such offense while younger than 18 years old. Currently, the definition of “victim of sex trafficking” requires third party control<sup>12</sup> This is a problem because under Federal law, minors engaged in commercial sex are victims of sex trafficking, regardless of whether they were under the control of a trafficker, pimp, or other third party. HB578 amends the definition of “victim of human trafficking” to clarify and ensure that minors who are not able to prove third-party control are entitled to relief. While few survivors self-identify until after they have escaped their trafficking situation and received counseling or other specialized services, having this remedy available to those survivors who are ready to leave their traffickers will work to prevent them from receiving new or additional criminal charges. Additionally, defense attorneys will be in a much better position to refer these survivors to the continuum of care necessary for healing and rebuilding their lives. However, the amendments to this Code section in HB579 are preferred for the reasons articulated above.

### Safety and Protective Measures

**VCAHT supports HB475.** This bill amends the definition of “family abuse” and “acts of violence force or threat” to clarify that acts of violence, force, or threat also include acts in furtherance of human trafficking or commercial sex trafficking. This bill also allows a minor to petition for a protective order on their own behalf with or without the consent of a parent or legal guardian, and without doing so by next friend.

Currently, Protective Orders in Virginia prohibits acts of family abuse and acts violence, force, or threat or criminal offenses resulting in injury to person or property.<sup>13</sup> This does not include acts that result in the furtherance of human trafficking, excluding exploited and vulnerable trafficked individuals from protecting themselves. VCAHT supports the inclusion and clarification that “family abuse” and “acts of violence force or threat” includes acts in furtherance of human trafficking to ensure that individuals who may not otherwise meet the Protective Order standard are able to petition for protection from their traffickers and abusers.

Additionally, VCAHT supports this bill’s provision in allowing minors to file for protective orders on their own behalf without requiring the consent of a parent, legal guardian, or next friend. Parents or legal guardians are often the individuals trafficking and exploiting these children. Indeed, familial trafficking is one of the most common forms of trafficking among minors.<sup>14</sup> It would not make sense that children should need the consent of their parent or legal guardian, in situations where the parent or legal guardian are the trafficker. Vulnerable and trafficked children deserve protection and a clear path to filing for a protective order against their traffickers.

**VCAHT supports HB 1334.** This bill amends the definition of "abused or neglected child" to include a child who is being sexually exploited or abused by an intimate partner of the child's parent or

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<sup>12</sup> See 18.2-361.1 ““Victim of sex trafficking” means any person charged with a qualifying offense in the Commonwealth who committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived *by another* to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent, as described in § 18.2-346, regardless of whether any other person has been charged or convicted of an offense related to the sex trafficking of such person.” Emphasis added.

<sup>13</sup> Va. Code Ann. § 19.2-152.8 B.1 (“B. When a law-enforcement officer or an alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force, or threat and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent: 1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property”).

<sup>14</sup> A 2018 Polaris report found that “27% of sex trafficking cases reported to the USA’s National Human Trafficking Hotline in 2018 were instances of familial trafficking.” *Familial Trafficking Warning Signs*, Shared Hope (2020), [https://sharedhope.org/wp-content/uploads/2020/06/SHI\\_Warning-Signs-of-Familial-Trafficking.pdf](https://sharedhope.org/wp-content/uploads/2020/06/SHI_Warning-Signs-of-Familial-Trafficking.pdf).

caretaker. Additionally, the bill allows a complaint of child abuse or neglect that alleges child trafficking to be deemed valid, regardless of who the alleged abuser is or whether the alleged abuser has been identified.

The current definition of “abused or neglected child” does not include abuse by an intimate partner of the child’s parents or caretaker.<sup>15</sup> Expanding this definition is critical in protecting children from exploitation and abuse. A 2019 Polaris report found that 5,359 sex trafficking survivors were identified as minors and that familial relations was the second highest recruitment method for sex trafficking.<sup>16</sup> It is incredibly likely that children will be victimized and exploited by the intimate partner of a child’s parent or caretaker in these situations. Child welfare’s ability to respond in child sex trafficking and CSEC cases should not hinge on whether a parent, guardian, or other person responsible for the child’s welfare is responsible for the child’s harm.

Additionally, while Virginia law allows for a child welfare response to non-familial child sex trafficking cases that does not hinge on caregiver fault under § 63.2-1508, the language does not make clear that child welfare is required to respond when the alleged abuser/trafficker is unknown or not yet identified. HB1334, if passed, will make clear that DSS is required to respond to a report or complaint of a child victim of human trafficking regardless of who the alleged abuser/trafficker is, or whether any person suspected to have caused such abuse or neglect has been identified at all. This is critical to child victims of sex trafficking, in particular, as many commercially exploited minors often cannot meet third party control requirements. This bill will help prioritize and support child sex trafficking survivors by expanding the definition to include other perpetrators and exploitative situations, validating such complaints of child abuse and neglect, and allowing a complaint of child abuse or neglect to stand regardless of the identification of the abuser. Accordingly, VCAHT supports HB1334 and urges the General Assembly to pass this bill.

### Mandatory Training

**VCAHT supports HB283, HB412 and SB467.** These bills require that mandatory and minimum training standards be established for law-enforcement officers with regard to trauma-informed training for the recognition, prevention, and reporting of human trafficking.

Currently, officers in Virginia are not statutorily mandated to have human trafficking training. Mandatory trauma-informed training at all stages of the criminal justice system is necessary so that victims of human trafficking do not fall through the cracks. As law enforcement officers are usually the first point of contact in the criminal justice system, it is important that they are trained and informed on the signs of human trafficking and how to work with survivors. Trauma-informed officers lead to less criminalization of victims and connecting them to services, identification of more victims, and bridging the fractured relationship between victims and the system. Additionally, training for school resource officers is necessary as children are especially vulnerable to grooming and human trafficking; school resource officers with trauma-informed training can better identify victims and effectively intervene in human trafficking situations.

**However while VCAHT supports these bills it prefers HB412.** HB412 that the training standard be trauma informed due to the overwhelming presence of complex trauma suffered by victims of human trafficking. VCAHT also supports HB412’s inclusion of updated training requirements, not just recertification. With officers receiving continuing and updated training, they will be more informed on the changing tactics and factors of human trafficking.

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<sup>15</sup> Va. Ann. Code § 63.2-100.

<sup>16</sup> 2019 Data Report, Polaris Project (2019),

<https://polarisproject.org/wp-content/uploads/2019/09/Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf>

Unfortunately, none of the bills require compulsory training and accordingly still fall short of what is needed for making sure that all law enforcement have been trained to handle human trafficking matters with victims in a trauma informed victim centered manner. Accordingly, VCAHT recommends that all three bills' language be amended to reflect the trauma-informed and compulsory training that is needed to ensure that all law enforcement officers, school resources officers are required to the training that has been standardized for the reasons articulated above.

**VCAHT generally supports HB258.** This bill amends § 9.1-102 and directs the Department of Criminal Justice (DCJS) to develop a curriculum to train hotel proprietors<sup>17</sup> and their employees on recognizing and responding to human trafficking. Additionally, it amends the statute to require hotel proprietors provide initial and ongoing training to its employees on recognizing and reporting instances of human trafficking.

VCAHT recognizes that hotel and lodging industries are in a unique position to recognize and respond to human trafficking because the victimization often occurs in and out of hotel and lodging properties. VCAHT supports legislation that educates and trains stakeholders on how to identify trafficking and respond appropriately. As such, VCAHT generally supports HB258. However, VCAHT recommends the bill be amended to ensure that s DCJS consults survivors, victim service providers, and subject matter experts when setting any curriculum on the identification and response of human trafficking. In addition, hotels and motels that are currently offering such training to employees should have the ability to have their existing training methods evaluated for compliance.

#### Access to Services

**VCAHT supports HB 755.** This bill creates the Anti-Human Trafficking and Survivor Trust Fund (“the Fund”) to support the development of services for the prevention of human trafficking and the support of human trafficking victims. The Fund will be governed by a Board and fulfill their duties will include monitoring financial activities, fundraising for the Fund, advising various government agencies, and raising public awareness for human trafficking. The Fund will use all money appropriated or gifted solely for the development of services and support of victims.

To break the cycle of exploitation and victimization, funds are needed to raise awareness of human trafficking and support victims through trauma-informed services. There is a lack of funding for the continuum of care needed to support survivors when they are leaving “the life.” The Fund will help support the existing service providers in their service delivery and create additional services for survivors. Accordingly, VCAHT urges the General Assembly to pass HB755.

#### Education

**VCAHT supports HB526.** This bill provides that a non-Virginia student who is present in the Commonwealth as a result of being a victim of human trafficking, defined in the bill, is eligible for in-state tuition regardless of whether any person has been charged with or convicted of any offense. Eligibility for in-state tuition may be proved by a certification of such status as a victim by a public or not-for-profit agency one of whose primary missions is to provide services to such victims. The bill also prohibits any institution of higher education from disclosing any personally identifying information or individual information related to the status of any non-Virginia student applying for in-state tuition as a victim of human trafficking.

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<sup>17</sup> “Hotel proprietor” is not defined in this Section. However, in 12VAC5-431-10, "Hotel" means any establishment offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels and similar facilities by whatever name called that consist of two or more lodging units.

VCAHT understands the importance the role of education plays in a survivor's ability to move on and live a self-reliant life. Forcing survivors to pay out of state tuition because of the unique scenario that brought them here and preventing them from establishing an address revictimizes them and eats up valuable resources that would otherwise be available to help more than one survivor.<sup>18</sup> Further, based on a technicality, survivors of human trafficking who were trafficked completely or almost entirely within Virginia, would be penalized because their victimization prevented them from establishing that they were in fact residents of Virginia within the one year residency required to be considered eligible for in-state tuition. As such, we support legislation that would enable trafficking survivors to qualify for in-state tuition, thus making the opportunity to receive an education more accessible and allowing service providers and victim advocacy groups to maximize the number of survivors they are able to help obtain such education.

**VCAHT supports HB1023.** This bill allows any family life education curriculum offered by a local school division before high school to incorporate age-appropriate programs on the prevention, recognition, and awareness of human trafficking of children.

In 2019, Polaris reported that 5,359 known trafficking survivors were minors.<sup>19</sup> Youth are one of the most vulnerable populations to trafficking; this vulnerability is only increased if they are also other risk factors at play such as minors who run away, are homeless, are dealing with addiction, and/or have experienced or are currently experiencing physical or sexual abuse. Traffickers take advantage of that vulnerability by appearing to the child as a friend who can help them.<sup>20</sup> This type of grooming can occur even at school or in a child's home.<sup>21</sup> An age-appropriate child sex trafficking curriculum provides resources and tools for "students to recognize and safely report suspected or known personal exploitative experiences or the experiences of their peers."<sup>22</sup> VCAHT recommends that the school utilize organizations who work in human trafficking prevention to be consulted on the creation and implementation of this human trafficking prevention program so that the program is providing best and most accurate information to the children. The program's instructors should be trained and taught by experts in this field, who work in organizations and nonprofits dedicated to the prevention of trafficking to be properly trained.

#### Misc.

**VCAHT supports HB257.** This bill establishes a stakeholder work group by the Virginia State Crime Commission to create a uniform definition of human trafficking for the Code of Virginia. Within this work group will include state and local representatives from the Department of Criminal Justice Services, including the Sex Trafficking Response Coordinator; the Department of Social Services, the Department of Health; the Department of Juvenile Justice, and the Department of Public Safety and Homeland Security; representatives of the Virginia Indigent Defense Commission and the Virginia Association of Commonwealth's Attorneys; representatives from law-enforcement anti-human trafficking task forces or work groups; representatives from national or local organizations that support victims of human trafficking; survivors of human trafficking; and representatives from any other relevant state or local entities. This work group will also consider and define other forms of trafficking, such as labor and sex trafficking.

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<sup>18</sup> For example, victim service providers receive grant funding to help support educational costs for survivors of trafficking. However, when a survivor is required to pay out-of-state tuition due to the circumstances that brought them to the Commonwealth, it takes away funding that would be available to additional survivors.

<sup>19</sup> *2019 US National Human Trafficking Hotline Statistics*, Polaris Project (2019), <https://polarisproject.org/2019-us-national-human-trafficking-hotline-statistics/>.

<sup>20</sup> *What We Know About How Child Sex Trafficking Happen*, Polaris Project (Aug. 28, 2020), <https://polarisproject.org/blog/2020/08/what-we-know-about-how-child-sex-trafficking-happens/>.

<sup>21</sup> *Id.*

<sup>22</sup> *2021 Toolkit*, Shared Hope (2021), <https://reportcards.sharedhope.org/wp-content/uploads/2021/10/2021Toolkit.pdf>.

VCAHT recognizes that the Virginia code needs a uniform definition of human trafficking. Currently, the definition of human trafficking is inconsistent and varies within the Code. However, VCAHT would like to stress the importance of including survivors and local organizations that support victims of human trafficking in the work group. It is important to empower survivors to participate in such groups to actively combat human trafficking to ensure that the definition is informed by the lived experiences of victims and survivors. However, it is important not to re-traumatize these survivors during this process and use a victim-centered and trauma-informed approach when working with trafficking survivors.<sup>23</sup> Local organization who work with survivors and are experts in this field should also be included as to make sure that the definition of human trafficking is representative of survivors' experiences and needs.

**Additionally, VCAHT generally supports HB260, but has recommendations to improve the bill.** This bill requires the Sex Trafficking Response Coordinator to develop and oversee a Human Trafficking Victim Support Certification Program and establish training standards requiring victim service providers to obtain human trafficking victim support certification. The amended bill will further require that treatment programs for victims of human trafficking be evaluated biennially in accord with certification requirements. Victim service providers include government employees as well as employees or volunteers with organizations whose duties involve providing victim assistance or advocacy. All treatment programs for victims of human trafficking will be required to ensure that all victim service providers obtain and maintain such certification.

VCAHT supports minimum training standards for agencies, organizations, and individuals providing services to victims. However, many organizations who have been providing their own training for years should not be required to adopt the DCJS training. Instead, they should have the ability to have their existing training certified by DJCS for reaching the minimum training standard. Additionally, it is important to note that many, if not most, organizations providing services to survivors are over capacity. Adding additional administrative burdens by requiring biennial certifications may overextend small organizations, resulting in a loss of funding and less available services to survivors. Accordingly, we suggest ensuring that the administrative burden on certification is minimal.

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<sup>23</sup> *Engaging Survivors of Human Trafficking*, Office to Monitor and Combat Trafficking in Persons (June 2017), <https://www.state.gov/wp-content/uploads/2019/02/Engaging-Survivors-of-Human-Trafficking.pdf>.