

# Stop Trafficking! AwarenessAdvocacyAction

Anti-Human Trafficking Newsletter • January 2025 • Vol. 23 • No. 1

FOCUS: Survivors of human trafficking often have a criminal record for crimes they were forced to commit while a victim. This month's newsletter focuses on the realities of having a criminal record and processes currently in place that may help survivors clear their record.

Many victims of the crime of human trafficking are forced to commit crimes themselves while they are being exploited. Being forced into criminal activity compounds the trauma of being trafficked. As a result, victims are often arrested, detained, prosecuted, convicted of, or have pled guilty to criminal charges. Some of the crimes that trafficking victims are charged with include prostitution, selling or possessing drugs, shoplifting, trespass, forgery or false impersonation, theft, robbery, weapons, gang activity, coerced debt, and illicit marijuana cultivation.

The majority of trafficking survivors report having a criminal record as a result of being trafficked. The National Survivor Study (NSS) by Polaris found that of 439 participating trafficking survivors, 62 percent had been cited, arrested, or detained by law enforcement at least once, with 80 percent stating that the arrests came while they were being trafficked.

In some cases, traffickers will exploit a survivor's record as a coercive tool. They may assert that, for instance, if the survivor were to leave, they will have no credibility with law enforcement, be seen as an unfit parent, and will not find legal employment--unfortunately, all true.

A criminal record presents a significant obstacle for trafficking victims to rebuild their lives after escaping their traffickers. The impact of arrest on survivors is not just a logistical challenge, but also an emotional one. Survivors report that their criminal record results in a lack of ability to access essential financial tools, like bank accounts and credit cards, making it harder to rent an apartment, creating barriers to education and participating in community events, and difficulty getting a living-wage job.

We all have a role to play in supporting trafficking victims. To help them, some states have enacted legislation that allows them to have their criminal convictions connected to their trafficking sealed or expunged. However, the federal government does not yet have a legal pathway for survivors to clear their criminal records. Those involved with government and policy, criminal justice and legal systems, service providers, and financial institutions must step up. It's our collective responsibility to ensure survivors can get the support they need to rebuild their lives.



29 states and the District of Columbia have safe harbor laws that protect victims of Commercial Sexual Exploitation of Children. These laws prohibit the criminalization of CSEC victims for prostitution offenses.



# Long Term Impact of Criminal Arrests and Convictions on Trafficking Survivors

Most trafficking survivors <u>report</u> that they had suffered long-term impacts from the arrests and convictions they faced as a trafficking victim. These convictions can result in a lifetime of limited access to critical opportunities for survivors as outlined below.

#### **Employment**

The Professional Background Screening Association (PBSA) reports that screening employees is "nearly universal" among U.S. employers with 95% of U.S. employers conducting employee background screening with criminal background checks are the most common type of background check at 94% and 89% of employers relying on state/local resources for their criminal records than a fingerprint database. A criminal record reduces job callbacks by approximately 50 percent and significantly limits earning potential. Fifteen states have mandated the removal of conviction history questions from job applications for private employers.

#### **Medical Care**

Individuals with criminal convictions often face discrimination from healthcare providers. They may experience difficulty accessing quality healthcare due to their criminal history. This discrimination can lead to individuals avoiding necessary medical care, exacerbating existing health issues and potentially leading to poorer health outcomes. Some healthcare systems may have policies or procedures that unintentionally disadvantage individuals with a criminal history.

#### **Immigration**

Criminal convictions or arrests can lead to removal or deportation. If a survivor is applying for a green card or work visa, a criminal record of any kind can mean a denial. This threat is often used by traffickers to retain trafficking victims.

#### **Family Law**

Criminal convictions commonly factor into "best interest" standards for purposes of child custody and visitation.

#### Housing

Landlords may do criminal background checks, and, in some states, this may be done with written permission from the tenant.

Public Housing Authorities, owners of federally assisted public housing, and private landlords have broad discretion, when anti-discrimination laws are not otherwise present, to set their own screening of prospective tenants. Importantly, under federal and state statutes and case law, landlords cannot use applicants' criminal records as a pretext for rejecting them for an illegal reason, such as on the basis of their race or religion.

#### Education

Most colleges perform criminal background checks on prospective students as part of their application process.

#### Student Loans

Eligibility for federal aid may be limited for individuals convicted of certain crimes.

Other impacts reported included federal benefits such as food stamps, access to jails, and being able to keep their children.

Of particular concern is difficulty in obtaining housing and employment, which are often cited as significant factors in creating vulnerability to human trafficking and other forms of exploitation.

Of course, there are also non-legal impacts of a criminal record on any victim, such as stigma, shame, impact on relationships, and other barriers to recovery.

Click here to learn more.

## History of Human Trafficking Vacatur Laws in the United States

In 2010, New York made history by becoming the first state to pass a groundbreaking law that allowed survivors of sex trafficking to vacate prostitution-related convictions. This law was further expanded in 2021 to include all criminal convictions where the survivor's participation in the offense was a result of being a victim of sex or labor trafficking. This significant progress is a beacon of hope for many, as it addresses the plight of victims forced to commit crimes for their trafficker's financial benefit, such as theft and drug possession.

In New York, the law returns the survivor to pre-record status. This means that once the process is complete, it is as if the offense never happened; the conviction is vacated "on the merits"—meaning the charges never should have been brought in the first place. The highest-ranking statutes also include the automatic destruction of the records so they cannot be used against the survivor in the future.

Throughout the years, other states have followed New York's example to some degree, and various vacatur laws were created to counter the injustice survivors of human trafficking face when followed by a criminal record stemming from their victimization. Today, all but three remaining states, Alaska, Iowa, and Maine, and the federal government offer some form of criminal record relief specifically for survivors of trafficking.

Unfortunately, the existing criminal record relief statutes contain significant gaps that hinder their ability to provide survivors with the justice they deserve. An individual's eligibility for expungement or vacatur and the qualified offenses that can be cleared vary widely from state to state, creating a system that is not uniformly supportive of survivors.

In 2023, the Polaris Project released a comprehensive report card that evaluated each state's statute provisions on criminal record relief. This detailed report, which graded each state on multiple factors, provides a thorough understanding of the range of relief, the types of statutes in place, the timeline for relief, the offenses covered, and the proximity of the offense to the trafficking. This comprehensive report is a valuable resource that equips us with the knowledge needed to understand the current state of criminal record relief laws.

Human trafficking survivors in Minnesota, Maine, Alaska, and Iowa do not currently have a trafficking-specific criminal record relief statute; in these states, survivors are without assistance if they are arrested or convicted of a crime while they are

#### Expungement

Removes arrests and convictions from a person's criminal record, making it appear as if they never happened. Even the court and prosecutors cannot view an expunged record. Many states have only enacted expungement statutes.

#### Vacating/Vacatur

Removes a guilty plea or judgment from a criminal record and dismisses the case. The record remains in the court's electronic system and is available to the public. The record will be updated to show the vacation, but the conviction may still be used in future criminal prosecutions.

In some states, an order of expungement accompanies the vacatur. In most states, this will remove the charge from criminal records.

#### Sealing

Closes court records to the public, and in some cases destroys related records. Sealing laws vary by state, and the court will determine if the record poses a serious threat to an interested party. Sealing prevents the record from appearing on background checks for employment, housing, and education.

(continued on next page)

# Awareness

## History...(continued)

being trafficked. Meanwhile, South Dakota and Missouri have a trafficking-specific law for criminal record relief that only applies to survivors who were minors at the time of their arrests.

The reality is that a survivor may have successfully vacated their prostitution convictions in New York, cleared drug offenses in Pennsylvania, and still have a robbery conviction and prostitution convictions in Louisiana. The current piecemeal system among states must provide survivors with the comprehensive reprieve they need. Moreover, in some states, survivors can only file one expungement petition at a time, even if they have convictions in multiple counties. The cost may also prove prohibitive as people usually pay hundreds of dollars in filing fees for each petition they file. States may also expand their statutes to include broadening expungable crimes and reducing procedural barriers victims must go through with their expungement applications.

However, since 2010, thousands of trafficking-related convictions have been vacated, expunged, and sealed across the country, dramatically changing the lives of survivors for the better. This progress should encourage us to continue our efforts and provide hope for a better future for survivors.

KM was just 14 when she was manipulated into selling sex by a female trafficker. For six years she was passed from one trafficker to another.
Finally, law enforcement became involved; however, this only made things worse. KM was sentenced to five years in prison for the crimes the pimp who controlled her forced her to commit.



B. R. said that getting her criminal record expunged was a traumatizing process because she had to write out in detail what had happened for every charge that she wanted to get expunged, causing her to relive her trafficking experience.

Click here to learn more.

#### **Process**

The process for expungement, vacating, or sealing records, as outlined by <u>Freedom United, USA</u>, can be lengthy and emotionally draining. Survivors must discuss painful memories with legal service providers. The providers then write a report

with legal service providers. The providers then write a report based on these recollections, receive a sworn statement from the survivor, and share that statement and accompanying legal brief with prosecutors.

Despite the sworn statement, the prosecutors may interview the survivor separately and file that motion with the court. After reading that motion and potentially after an in-court hearing, the assigned judge will decide on the appropriate relief. Nationally, survivors win these cases most of the time.

Again, no relief currently exists for survivors with federal convictions. If the federal government were to pass such legislation, it could push states to pass better relief laws for victims.

## Racial Disparity

According to a 2021 report from the United States Department of State, Acknowledging Historical and Ongoing Harm: The Connections Between Systemic Racism and Human Trafficking, the "United States and other governments face human trafficking challenges and trends today that reflect the living legacy of the systemic racism and colonization globalized during the transatlantic slave trade through chattel slavery."

Black children are overrepresented in juvenile prostitution arrests, making up 53% of all arrests. In some areas, Black children, especially girls, are disproportionately trafficked, even when they make up a small percentage of the population. Victims are often not acknowledged as victims and are disproportionately impacted by the criminal legal system. This makes vacatur laws even more critical to achieve racial justice. The report underscores the crucial need for more targeted policymaking that adequately addresses the intersection of factors that lead to misidentification and overcriminalization of victims of color.

A study led by <u>Dr. Marija Jovanovic from the University of Essex</u>, stated that people like to think the government addresses human trafficking by arresting the perpetrators and identifying and protecting survivors.

But instead of being protected, Jovanovic found that many survivors were being sent to prison for crimes they were forced to commit, while sometimes the perpetrators went free. Survivors interviewed as part of the study said they felt it was easier for authorities to put victims in prison than offering support. Click here to learn more.

## The Non-Punishment Principle

The non-punishment principle, a victim-centered approach, is instrumental in protecting trafficking victims from being punished for illegal acts they committed as a direct result of being trafficked. This principle, deeply rooted in human rights and drawing on criminal defense principles like duress and necessity, is a vital part of a trauma-informed approach to anti-trafficking efforts, ensuring the well-being of the victims is at the forefront.

It's important to note that the non-punishment principle does not provide immunity from prosecution. Instead, it aims to protect trafficked people who had no choice but to commit an illegal act.

The non-punishment principle is referenced in the United Nations Trafficking Protocol and the United Nations High Commissioner for Human Rights, <u>Recommended Principles and Guidelines on Human Rights and Human Trafficking</u>.

would have her hold onto his drugs, and she would be the one to get arrested for drug possession. One for being a passenger in a stolen car with her she had 44 convictions drug possession, and had served more than 10 years in prison. When she tried almost impossible because her criminal records



# Human Trafficking and the Rights of Trafficked Persons

In October 2023, the International Bar Association (IBA) Legal Policy & Research Unit and the British Institute of International and Comparative Law published <a href="Human Trafficking and the Rights of Trafficked Persons">Human Trafficking and the Rights of Trafficked Persons</a>: An Exploratory Analysis on Applying the Non-punishment Principle. This document gives a good summary of the current conditions internationally regarding the plight of human trafficking survivors attempting to clear their record of crimes committed during their trafficking experience.

Although the principle of non-punishment is absent in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (UNCTOC), it is essential to the object and purpose of the Protocol, namely, to protect and assist trafficked persons with full respect for their human rights.

Human trafficking and the rights of trafficked persons

An exploratory analysis on the application of the non-punishment principle

IIIA Legal Policy & Research Unit and British Institute of International and Comparative Law.

As early as 2002, the Office of the UN High Commissioner for Human Rights (OHCHR) set out the principle in full in its Principles and Guidelines for Human Rights and Human Trafficking:

'Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.'

The principle of non-punishment has been included in the Organization of American States (OAS) Conclusions and Recommendations of the 2006 meeting of National Authorities on Trafficking. Although not part of a binding treaty, the conclusions state: The Member States must ensure, to the extent possible and in accordance with their respective domestic legislation, that the victims of trafficking in persons are not prosecuted for participating in illegal activities if they are the direct results of their being a victim of such trafficking'.

Moreover, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) also expressed its stance on the urgency of the adoption and implementation of the non-punishment principle, calling on states to: *Provide recourse for victims of trafficking to clear their criminal records in cases in which they have been convicted of crimes that were committed as a direct consequence of being a victim of trafficking.* 

Click here to learn more.

# Survey of Enactment of the Non-Punishment Principle

#### **United States**

At the time of the introduction of the Trafficking Victims Protection Act in 2000, (TVPA) Congress published a statement as part of the law that 'victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked.'

In December 2021, the Biden Administration published the National Action Plan to Combat Human Trafficking ('National Plan'), which includes a key 'Protection' principle to safeguard victims of human trafficking from being inappropriately incarcerated, fined, or otherwise penalized for unlawful acts committed as a direct result of being trafficked.'

However, the TVPA does not include specific statutory provisions to give binding effect to these statements, and they are yet to be made law at the federal level.

#### India

Current laws relating to trafficking, slavery, forced labor, and sexual exploitation in India lack an explicit provision of 'non-punishment.'

#### Canada

The Canadian Government has not yet taken concrete steps towards including the non-punishment principle in its domestic legal framework. However, Canada has increasingly adopted a rights-based and victim-centered approach to combatting the issue of human trafficking over the past two decades.

#### **Argentina**

Argentina criminalized human trafficking and enshrined the non-punishment principle and provided that: 'Trafficked persons will not be punished for the commission of any offense that is the direct result of having been subjected to human trafficking. The sanctions and impediments established in immigration law will also not be applicable when the infractions are a consequence of the activity carried out during the commission of the illegal act that harmed them.'

#### **United Kingdom**

The United Kingdom has given the non-punishment principle domestic legal effect through the Modern Slavery Act 2015, the Nationality and Borders Act 2022, and the power of the criminal courts to stay a prosecution as an abuse of process and through the review process via the appellate courts.

While there is no absolute bar on the prosecution of trafficked persons, it is recognized that the trafficked person is often drawn into a cycle of abuse, trafficking, and exploiting others as part of their own exploitation. In respect of adults: 'A person is not guilty of an offense if the person is aged 18 or over when the person does the act which constitutes the offense, the person does that act because the person is compelled to do it, the compulsion is attributable to slavery or to relevant exploitation, and a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act'. With regard to children, A person is not guilty of an offense if the person is under the age of 18 when the person does the act that constitutes the offense, the person does that act as a direct consequence of the person being or having been, a victim of slavery or a victim of relevant exploitation, and a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act'.

Click here to learn more.

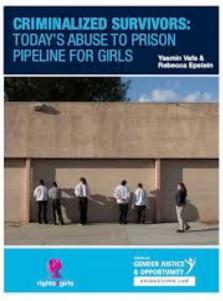


# Criminalized Survivors: Today's Abuse to Prison Pipeline for Girls

The Georgetown Initiative on Gender Justice & Opportunity and Rights4Girls jointly released a <u>new report</u> (2023) on the criminalization of girls who experience sexual violence. This report is a significant follow-up to their 2015 publication, *The Sexual Abuse to Prison Pipeline: The Girls' Story*. The 2015 publication was a groundbreaking study that raised awareness of how girls who have experienced sexual violence are sent into the juvenile justice system despite being child survivors, and it has since been a catalyst for numerous policy changes and advocacy efforts.

This new report urgently reveals that our systems are not only allowing girls to fall through the cracks, but they are still actively punishing victims rather than helping them heal. The report emphasizes the immediate and dire need for systemic change to stop sexual abuse and end the criminalization and re-victimization of survivors.

The report highlights three of the most urgent pathways for girls who are pushed into the legal system as a direct result of their victimization:



- Survivors of sex trafficking who are punished for prostitution or as traffickers themselves.
- Survivors who harm their abusers in their attempts to escape or in self-defense; and
- Survivors who report police abuse but are charged with filing false reports.

The lack of resources and alternatives result in the decision to detain survivors, justified by the paternalistic notion that putting children behind bars is the surest way to protect them. In some of the most extreme cases, survivors are forced to resort to violence to escape or defend themselves against their adult exploiters, then face decades of living in prison despite being child victims of crime.

Police and even schools play a significant role in perpetuating the criminalization of girls. Law enforcement and educators, who are entrusted with authority over girls' lives, perpetuate the pipeline by filing charges of false reporting or suspending girls from school when they report instances of sexual abuse— effectively turning the very systems that girls turn to for help into mechanisms of punishment. These systems can also criminalize survivors when they fail to recognize offenses like truancy and running away for what they are – signals of escaping abuse.

## Alliance to End Human Trafficking Conference

Pathways To Prevention February 5-7, 2025

The conference will explore avenues of human trafficking prevention that will include the use of tools like shareholder advocacy, understanding intergenerational trauma, and skills for parents, as well as awareness around the topics of forced migration, labor trafficking, and trafficking on college campuses.

BWI Airport Marriott 1743 West Nursery Road, Linthicum, MD 21090

To register, please click <u>here</u>.

## Expungement Help from the Reentry Clinic

### University of Akron School of Law

The Human Trafficking Clinic assists victims of human trafficking to expunge their criminal records. As a part of this clinic, students of the law school conduct investigations and screen for potential clients. The clinic assists with filing expungement applications with the court.

#### The Joseph Project is a

nonprofit organization that connects human trafficking survivors with pro bono legal services. It is inspired by the Biblical account of history's earliest-recorded survivor, Joseph, who transitioned from exploitation to empowerment.



# A Survivor's Guide to Criminal Expungement & Vacatur in the U.S.

#### The Human Trafficking Legal Center

Many survivors face hardships living with criminal records. Many of them struggle to have their criminal records cleared. Traffickers force their victims to perform acts through force, fraud, or coercion. In some instances, traffickers force their victims to commit criminal acts.

Please click here to view this very informative webinar.

# Federal Legislation on Expungement

The Trafficking Survivors Relief Act (H. R. 7137), (S.4214) would help eliminate the barriers that exist for survivors of human trafficking with a criminal record from re-entering society.

While most states have laws that provide a way for trafficking survivors to clear their records of offenses that resulted from being trafficked, no statute exists at the federal level. The legislation would create a process for survivors to defend against any prosecution for criminal activity they were coerced into committing and provides critical relief for survivors who have already been convicted. The bill would also require each United States attorney to submit a report to the attorney general detailing the number of vacatur or expungement petitions filed within one year of the legislation being enacted.

As of November 2024, the bill had 24 cosponsors in the House and nine in the Senate in the 118th Congress.



### The Survivor Reentry Project

The Survivor Reentry Project is the only national program that provides criminal record relief for human trafficking survivors by connecting them to a nationwide network of pro bono lawyers. SRP staff also provides training and support to ensure survivors receive trauma-informed, culturally responsive legal representation, and expand survivors' access to criminal record relief legal services. In addition to direct criminal record relief services for survivors, SRP provides individualized support, training, consultation, and technical assistance on criminal record relief for survivors of human trafficking.

Since late 2019, SRP has matched over 30 survivors with pro bono, post-conviction relief representation in 18 states. Altogether, these survivors have over 500 convictions related to their respective trafficking experiences. Of these 500 convictions, 54% are for prostitution and 46% are for drug offenses, trespass, forgery or false impersonation, and robbery, among many other crimes.

# Florida Expungement Laws: Helping Survivors of Human Trafficking

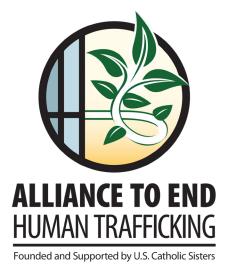
This webinar explains the law on expungement, describes the process for clearing a survivor's criminal history, details the effects of expungement on a survivor's life, and dispels myths and misconceptions regarding expungement.

Please click **here** to view this very informative webinar by Survive and Thrive. Well worth the time!



### The Justice Restoration Center

The Justice Restoration Center provides trauma-informed restorative pro bono legal services and advocacy for survivors of human trafficking, as well as to advocate on trafficking-related legislation and policy matters. The Justice Restoration Center features an alliance of legal professionals who provide free legal services for survivors, along with volunteer professionals, such as physicians, dentists, therapists, accountants, and others who are willing to assist at little or no cost to the survivor.



## Click on the links below to visit the websites of our sponsors

- Adorers of the Blood of Christ
- Adrian Dominicans
- Benedictine Sisters of Chicago
- Benedictine Sisters of Mount St. Scholastica, Atchison, KS
- Benet Hill Monastery
- Congregation of Notre Dame
- Congregation of Sisters of St. Agnes
- Congregation of S. Joseph
- Daughters of Charity, Province of the West
- Daughters of Charity, Province of St. Louise
- Daughters of the Holy Spirit
- Dominican Sisters of Houston, TX
- Dominican Sisters of Mission San Jose, CA
- Dominican Sisters of Peace
- Dominican Sisters of San Rafael, CA
- Dominican Sisters of Sinsinawa, WI
- Dominican Sisters of Sparkill
- Dominican Sisters of Springfield, IL
- Felician Sisters of North America
- Franciscan Sisters of Peace
- Franciscan Sisters of Perpetual Adoration
- Franciscan Sisters of the Sacred Heart
- Holy Spirit Missionary Sisters
- Institute of the Blessed Virgin Mary
- Marianites of Holy Cross
- Maryknoll Sisters
- Medical Mission Sisters
- Medical Missionaries of Mary
- Missionary Sisters of the Society of Mary
- Northern California Catholic Sisters Against Human Trafficking
- Our Lady of Victory Missionary Sisters
- Presentation Sisters, Aberdeen
- Presentation Sisters, San Francisco
- Racine Dominicans

- Religious of the Sacred Heart of Mary
- Religious Sisters of Charity
- School Sisters of Notre Dame, North America
- School Sisters of St. Francis of Christ the King
- Sisters of Bon Secours
- Sisters of Charity of Cincinnati
- Sisters of Charity of Halifax
- Sisters of Charity of Leavenworth
- Sisters of Charity of New York
- Sisters of Charity of St. Joan Antida
- Sisters of Charity of the Blessed Virgin Mary
- Sisters of Charity of the Incarnate Word Houston
- · Sisters of Charity of Nazareth
- · Sisters of Charity of Seton Hill
- Sisters of Christian Charity Mendham, NJ & Wilmette, IL
- Sisters of Mercy Catherine's Residence
- Sisters of Mercy of the Americas
- Sisters of Notre Dame of the United States
- Sisters of Notre Dame de Namur, USA
- Sisters of Providence, Mother Joseph Province
- Sisters of St. Chretienne
- · Sisters of St. Dominic Racine, WI
- Sisters of St. Francis of Clinton
- Sisters of St. Francis of Colorado Springs
- Sisters of St. Francis of Dubuque
- · Sisters of St. Francis of Philadelphia
- Sisters of St. Francis of Redwood City
- · Sisters of St. Francis of the Providence of God
- Sisters of St. Francis Rochester, MN
- Sisters of St. Joseph of Baden
- Sisters of St. Joseph of Carondelet
- Sisters of St. Joseph of Chestnut Hill Philadelphia
- Sisters of St. Joseph of Cluny, USA & Canada Provinces
- · Sisters of St. Joseph of Concordia, KS
- Sisters of St. Joseph of Orange
- · Sisters of the Blessed Sacrament
- Sisters of the Divine Savior
- · Sisters of the Good Shepherd
- Sisters of the Holy Cross
- Sisters of the Holy Family
- Sisters of the Holy Names of Jesus and Mary
- Sisters of the Humility of Mary
- Sisters of the Precious Blood
- Sisters of the Presentation of the Blessed Virgin Mary
- Sisters of the Sacred Hearts
- Sisters of the Sorrowful Mother
- Society of the Divine Savior
- Society of the Holy Child Jesus
- Society of the Sacred Heart
- Southern CA Partners for Global Justice
- St. Mary's Institute of O'Fallon
- Tri-State Coalition Against Human Trafficking & Slavery
- U.S. Ursuline Sisters of the Roman Union