



## BACKGROUND

Penal Code section 236.14 gives survivors of human trafficking a fresh start by creating a pathway to vacate and seal any nonviolent arrests, convictions or juvenile adjudications from their records, when those offenses were the direct result of being a victim of trafficking. Penal Code section 236.15 similarly allows this same process for survivors of intimate partner violence or sexual violence.

## WHAT IS VACATUR RELIEF?

The process of vacatur, requires a survivor of human tracking or intimate partner violence or sexual violence to file a petition with the court requesting to have their records vacated, sealed and destroyed. When a crime is “vacated” it means that the arrest or conviction is deemed not to have occurred.

## WHY IS VACATUR RELIEF IMPORTANT?

Survivors of human trafficking and intimate partner violence or sexual violence sometimes have criminal records caused directly by being a victim of trafficking or other abuse. Criminal records create barriers to employment, safe housing, education, financial assistance, citizenship status, and other key components of stability and independence. Vacatur relief eliminates these barriers and spares survivors from having to explain their traumatic past to future employers, housing managers, etc.

## WHO IS ELIGIBLE FOR VACATUR RELIEF?

A person is eligible for vacatur relief if:

- (1) the person was arrested for, convicted or adjudicated of any nonviolent offense committed while they were a victim of human trafficking or intimate partner violence/sexual violence; and
- (2) the nonviolent offense was the direct result of being a victim of human trafficking or intimate partner violence/sexual violence which demonstrates that the person lacked the required intent to commit the offense, as established by clear and convincing evidence.<sup>1</sup>

## WHAT IS A NONVIOLENT OFFENSE?

*\*Even a person with a violent offense, can petition for vacatur relief for other nonviolent offenses.*

A nonviolent offense is any offense not listed in Penal Code section 667.5(c). Examples of nonviolent offenses include: theft-related offenses such as petty theft, grand theft auto, certain types of burglary, prostitution/solicitation, drug possession or drug sales, driving under the influence, benefits or welfare fraud, certain types of assault and battery, domestic violence and human trafficking.

All misdemeanors and most felonies are nonviolent.

## HOW IS A VICTIM OF HUMAN TRAFFICKING OR INTIMATE PARTNER VIOLENCE OR SEXUAL VIOLENCE DEFINED BY THE LAW?

Victims or survivors of these offenses include persons providing forced labor or services (not limited to sexual acts such as domestic service, agriculture, sweatshop or factory work, etc.), adults manipulated or forced into performing commercial sexual acts or minors performing commercial sexual acts (such as prostitution, sexual exploitation, pornography, and extortion). Penal Code section 236.1(a)-(c) defines the offenses of human trafficking.

<sup>1</sup> Anyone arrested or convicted of Penal Code section 653.22 is entitled to vacatur relief under section 653.29. Because this offense has been repealed, the conviction is no longer valid.

Survivors of intimate partner violence or sexual violence are eligible for vacatur relief. Penal Code section 13700(b) defines domestic violence as “abuse” committed against an adult or minor who is an intimate partner. An intimate spouse, former spouse, registered domestic partner, cohabitant, former cohabitant, or person whom the perpetrator of harm has had a child or is having or has had a dating or engagement relationship. Penal Code section 13700(a) defines “abuse” as intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to themselves or another.

**HOW DOES ONE DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT THE NONVIOLENT OFFENSE WAS COMMITTED AS A DIRECT RESULT OF BEING A VICTIM OF HUMAN TRAFFICKING OR INTIMATE PARTNER VIOLENCE OR SEXUAL VIOLENCE?**

The burden of proof is on the person filing the petition to get their records erased. The petitioner must demonstrate that their conviction was a direct result of being trafficked or abused, through their own narrative statement, statements from others, and/or any corroborating exhibits.

Evidence can include “official documentation” of the person’s status as a victim of human trafficking or intimate partner violence/sexual violence. “Official documentation” means any documentation issued by a federal, state or local agency that tends to show the person’s status as a victim of human trafficking or intimate partner violence/sexual violence.

However “official documentation” is not required for a court to grant vacatur relief.

Petitions may be filed under seal to protect the privacy of the person presenting the information. Filing under seal is a procedure allowing sensitive or confidential information to be filed in court without becoming a matter of public record. In order to file under seal, the applicant must get a court order.

**CONFIDENTIALITY:** The record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner’s full name. This means that if an applicant files for vacatur relief, their full name will not show in public records.

Additionally, if the court grants vacatur relief, the court may take additional action as appropriate under the circumstances to carry out the purposes of vacatur relief, such as take whatever measures are necessary to protect the applicant’s confidentiality and privacy.

A “direct result” can be shown by explaining how there is a nexus between the offense committed and being a victim, meaning that the offense was committed in connection to being a victim of human trafficking or intimate partner violence/sexual violence.

But a direct result or nexus does not require the applicant to show that the offense was directed by the perpetrator.

## **WHAT ELSE MUST THE COURT FIND TO GRANT VACATUR RELIEF?**

In order to grant relief, the judge must find that it is in the interest of justice to grant relief.

## **WHAT SHOULD THE PETITION INCLUDE?**

Because every survivor's circumstances are different, the petition should include as much detail and information to show that the arrest, conviction or adjudication was a direct result of being a victim of human trafficking or intimate partner violence/sexual violence. This can include providing information about the applicant's experiences with the human trafficking scheme or intimate partner violence/sexual violence including the names of the perpetrators, witnesses or parties involved or dates of being trafficked or harmed. An applicant can support their declaration by providing letters of support from service providers such as social workers, therapists or counselors, and/or family or friends, etc.

The petition should also include why the applicant is seeking vacatur relief and how relief would help them. It must be submitted to the court under penalty of perjury and should be filed within a "reasonable time" after the person ceased to be a victim or sought services for being a victim, whichever occurs later. There is no expiration date to petition for relief and a court cannot refuse to hear the petition even if the applicant has outstanding fines or fees or is not in compliance with probation.

## **WHAT IF IT IS A JUVENILE RECORD THEY WANT TO CLEAR?**

Minors or adults who wish to clear their juvenile record only, may want to consider sealing their record through the juvenile sealing process pursuant to Welfare and Institutions Code section 781. This process will eliminate the need to provide all evidence that their offense(s) was a direct result of human trafficking or intimate partner violence/sexual violence and demonstrate that vacatur serves the best interests of justice by "clear and convincing evidence." The juvenile sealing process only requires the applicant to show that "rehabilitation is demonstrated to the satisfaction of the court."

## **WHAT IS THE ROLE OF THE PROSECUTING AGENCY?**

The prosecutor (usually the district attorney or city attorney) must be served with the petition and has 45 days to respond. If there is no opposition filed by the prosecution, the court will find that they do not oppose the petition.

If there is no opposition, the court may grant relief without a hearing. If there is opposition, the court must schedule a hearing.

## WILL THERE BE A HEARING IN COURT? WHAT HAPPENS?

A petitioner should file their petition in the county where they were convicted. The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

The petitioner may appear by telephone, videoconference, or by other electronic means if the court finds a compelling reason why they cannot attend the hearing in person.

The hearing may include:

- (1) Testimony
- (2) Other evidence and supporting documentation in support of the petition, and
- (3) Any opposition evidence presented by the prosecutorial agencies involved.

The court must consider the totality of the evidence, and if it finds that the standards for relief have been met, the court will grant relief and make the following orders:

- (1) Make a finding that petitioner was a victim of human trafficking or intimate partner violence/sexual violence at the time of the alleged commission of the qualifying crime and therefore lacked the required intent to commit the offense;
- (2) Set aside the arrest, conviction or adjudication and dismiss the accusation or information against the applicant as invalid due to a legal defect at the time of the arrest or conviction;
- (3) Notify the Department of Justice that relief has been ordered.

## WHAT HAPPENS IF THE PETITION IS...

### **GRANTED**

The court will vacate the eligible arrests, convictions or juvenile adjudications, meaning that they are “deemed not to have occurred.” All agencies (including but not limited to law enforcement, probation, parole, correctional facilities and juvenile facilities) with records of the case(s) will be ordered to seal and destroy them within one year from the date of arrest, or 90 days from the date of the court ordered relief, whichever is later. The agencies must seal and destroy the records within one year of the date of the court ordered relief.



The petitioner may now lawfully deny or refuse to acknowledge an arrest, conviction or adjudication that is vacated pursuant to the court’s order. The criminal records will not be distributed to any state licensing board. However, the applicant is not relieved of the duty to pay restitution.

### **DENIED**

If the court denies the application because there is not enough evidence to show that the applicant meets all the requirements for vacatur relief, the applicant may re-apply with additional supporting records.



There are a number of service providers in California that provide representation to survivors seeking vacatur relief free of charge, including public defenders’ offices and non-profit law centers. Please see “Resources” section below.

### **RESOURCES:**

For legal assistance with vacatur, the local public defender’s office may be able to help. There are also several non-profit organizations that provide pro bono legal assistance:

<https://www.calbar.ca.gov/Access-to-Justice/Pro-Bono/Pro-Bono-Directory>

For other questions about victim services, contact DOJ’s Victim Services Unit:

<https://oag.ca.gov/victimservices>

CA DOJ Fingerprint and Background Check Information:

<https://oag.ca.gov/fingerprints>

CA DOJ Record Review Forms

<https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/instructions.pdf>

Court form to request vacatur of juvenile record

<https://selfhelp.courts.ca.gov/jcc-form/JV-748>