Brief Guide on Vacatur Relief Under CA Penal Code § 236.14

February 2024

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1. What is California Penal Code § 236.14?

California Penal Code § 236.14 allows survivors of human trafficking to petition the court to vacate convictions and destroy records of arrests, non-prosecuted cases, adjudications, and other records resulting from nonviolent offenses committed while they were a victim of human trafficking.[1]

1.1. What Can a Petition for Vacatur Relief Under § 236.14 Do?

- The Court will deem the arrest and any adjudications or convictions not to have occurred;
- All the records will be sealed and ultimately destroyed;[2] and
- Survivors can legally deny ever having been arrested for or convicted of the offense for which relief was granted.[3]

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[1] Cal. Penal Code § 236.14 (2023), available at https://castla.box.com/v/2023CAVacaturLawUpdate; Freedom Network USA, Survivor Reentry Project, *California*, Criminal Record Relief Laws for Survivors, https://freedomnetworkusa.org/srp_states/ca/ (last accessed Dec. 7, 2022).
[2] Cal. Penal Code §§ 236.14(g), (t).
[3] § 236.14(t)(2) states that a petitioner "may thereafter state that he or she was not arrested for the charge, or adjudicated or convicted of the charge, that was vacated."

1.2. What Can't a Petition for Vacatur Relief under § 236.14 Do?

- Vacatur will not relieve a survivor of any financial restitution orders that directly benefit the victim of the offense;[4] and
- It will not vacate or otherwise change arrests or convictions from other states or federal court.

2. Eligibility Requirements

The statute at § 236.14(g), states that the court may vacate the conviction and expunge the arrests if:

(1) The petitioner was a victim of human trafficking at the time of the alleged commission of the qualifying crime;
(2) The arrest for or conviction of the crime was a direct result of being a victim of human trafficking; and
(3) Vacatur is "in the best interest of justice."[5]

A person who is a minor at the time of the offense and establishes that the arrest or adjudication was a direct result of being a victim of human trafficking is entitled to a rebuttable presumption that the vacatur requirements have been met.[6]

Note that the California legislature amended § 236.14 via AB 2169, which took effect on January 1, 2023.[7] Practitioners already familiar with § 236.14 should review the revised statute prior to preparing any new vacatur petitions.

2.1. Requirement #1: Victim of Human Trafficking During Commission of the Nonviolent Offense

2.1.1. Defining Human Trafficking

The petitioner must establish that they are a victim of trafficking under Cal. Penal Code §§ 236.1(a)-(c). While the California definition of human trafficking somewhat differs from the federal definition, the analysis is similar to the analysis of *severe form of trafficking* under the federal definition at 22 USC § 7102(11).[8] For those unfamiliar with human trafficking analysis, use CAST'S Ends-Means-Process Toolkit.[9]

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[4] Cal. Penal Code § 236.14(i),
[5] The eligibility requirements were updated in 2022 by California Assembly Bill 2169, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2169 (last accessed Dec. 7, 2022).
[6] Cal. Penal Code § 236.14(j).
[7] AB 2169, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2169 (last accessed Dec. 7, 2022).
[8] The CA definition of human trafficking is equivalent to the federal definition of a severe form of trafficking found in Section 7102(11) of Title 22 of the United States Code. Cal. Penal Code § 236.1(g).
[9] Additionally, for more information about the federal definition of trafficking, please view CAST's free Human Trafficking Defined training for attorneys, accessible here: https://castla.quickbase.com/db/bmbtwqw58?a=nwr&_fid_29=128&dfid=18.

To provide the survivor the broadest form of relief, it is important to establish the timeline of the victimization, paying particular attention to identifying when the victimization began and ended. In establishing the timeline, attorneys should consider whether there was a recruiting or grooming period at the start of the victimization. Attorneys should also consider periods of time where the petitioner may not have been under the direct physical control of the perpetrator but was still under the trafficker(s)'s control through the use of legal coercion.[10]

2.1.2. Nonviolent Offenses

A nonviolent offense is any offense that is not listed in CA Penal Code § 667.5(c).[11] This can include any nonviolent offense that a survivor was cited, arrested, or convicted of, including infractions. These offenses can fall within the criminal, civil, or other parts of the California Code.

Practitioner tip: Mobile applications like CA Crime Finder Pro for Android or iOS allow you to enter the offense in the app to easily determine if the offense has been categorized as a violent offense.

2.2. Requirement #2: The Arrest or Conviction Was a Direct Result of Being a Victim of Human Trafficking.

Cal. Penal Code § 236.14 requires that the nonviolent offense the person was arrested for or convicted of was related to their trafficking victimization; however, it does not provide a definition or explanation of "direct result."[12] However, other state vacatur laws provide illustrative examples of what a "direct result" entail. For example, Maryland's vacatur statute states that courts should consider:

- "[t]he length of time between the offense and the trafficking of the [petitioner];
- the dynamics of the relationship between the [petitioner] and the person committing trafficking against the [petitioner]; and
- any other relevant evidence."[13]

"Direct result" should be broadly interpreted as human trafficking is not solely defined by the threat or presence of physical force; rather, human trafficking includes psychological means of coercion including

[10] Minors who were victims of sex trafficking are not required to show force, fraud, or coercion as part of their victimization. However, if the minor was no longer within the physical control of the trafficker(s), practitioners should use the legal definition of coercion to explain how the minor was still within the trafficker(s)'s control in order to show that the offence occurred during the period of victimization.

[11] Cal. Penal Code § 236.14(t)(1). Nonviolent offenses can include offenses that are outside of the penal code so long as there was an arrest or criminal charges. Cal. Penal Code § 236.14(a) allows for the vacatur of arrests, convictions, or adjudications.

[12] Cal. Penal Code §§ 236.14(a)-(b).

[13] Md. Crim. Proc. § 8-302(d)(2), available at https://castla.box.com/v/MDVacaturStatute. The Maryland statute uses the term "movant" instead of "petitioner." This advisory uses the term "petitioner" to be consistent with the language used in the California statute.

threats, manipulation, and lies to control a victim.[14] Practitioners should not restrict the interpretation of “direct result” to only offenses committed while a survivor was actively in their trafficking situation. Instead, practitioners should seek to include offenses that occurred in the aftermath of the survivor’s victimization, including but not limited to offenses resulting from meeting survival needs after escape from a trafficking situation.

Cal. Penal Code §236.14(r) states “A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purpose of this section.”[15] This provision allows courts broad discretion to vacate any and all charges. Advocates should use §236.14(r) to argue that vacatur applies to offenses that have occurred in the aftermath of the survivor’s victimization. This section can also be used for offenses that may be years outside of the victimization. Practitioners can argue that these offenses should be vacated in the best interest of justice as allowed by §236.14(r) so that the survivor can truly move on from the victimization and unrestricted by any criminal record.[16]

2.3. Requirement #3: Vacatur Is in the Best Interest of Justice

“Best interest of justice” is not defined by Cal. Penal Code § 236.14. Attorneys should advocate that “best interest of justice” contemplates that justice is better served with the dismissal and vacatur of the offense. If the petitioner establishes that the offense was a direct result of being a victim of human trafficking, the court **shall** find that the petitioner lacked the mens rea to commit the offense due to a legal defect at the time of the offense.[17] It is important to emphasize to the court that there is an interest to vacate the offense because a legal error was made and the survivor is factually innocent.

3. Process of Filing for Vacatur Under § 236.14

3.1. Identifying Potential Offenses

Practitioners need to obtain a full criminal history for their clients prior to starting the vacatur process. Survivors might not remember all their arrests, interactions with law enforcement, or what appears on their criminal record. There are two background checks that are necessary in addition to requesting documents for the court: a California Department of Justice (CA DOJ) background check, and a Federal Bureau of Investigation (FBI) background check.

The Immigration Legal Resource Center (ILRC) guide, *How to Check if You Have a Criminal Record*, provides step-by-step guidance on how to access a criminal record.

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[14] Polaris Project, *State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, https://polarisproject.org/resources/state-report-cards-grading-criminal-record-relief-laws-for-survivors-of-human-trafficking/ (2019) (last accessed Dec. 7, 2022).

[15] Cal. Penal Code § 236.14(r).

[16] Typically, CAST argues that nonviolent offenses should be vacated both under §236.14(g), and in the alternative §236.14 (r) for offenses that prosecutors or the court may not agree is a direct result of the trafficking. §236.14(r) allows judges the option to vacate offenses even if they don’t clearly fall under the “direct result” standard.

[17] Cal. Penal Code § 236.14(a).

3.1.1. CA Department of Justice Background Check
CA DOJ records focus on only arrests and convictions within the state of California. These may provide more detailed information on California offenses than a FBI background check. The CA Attorney General's Office provides instructions on how to request CA DOJ records on its website here: https://oag.ca.gov/fingerprints/record-review.

3.1.2. FBI Background Checks
Federal FBI background checks provide a search of the national criminal history database. This background check will show out-of-states arrests or convictions. Practitioners should inform their clients that the CA vacatur process cannot address out-of-state offenses. Practitioners should also connect with the Freedom Network's Survivor Reentry Project to assist with referrals for out-of-state crimes. In some cases, the CA vacatur application and order may be helpful in resolving out-of-state offenses.

3.1.3. Live Scan Sites
Because trafficking survivors are often marginalized populations, practitioners should avoid using law enforcement or government offices for Live Scan fingerprinting services to avoid putting their clients at risk. The CA Attorney General's Office provides a list of private and public Live Scan locations. Practitioners may access that list here: https://oag.ca.gov/fingerprints/locations.

3.1.4. Additional Court Records
Unfortunately, not all arrest or conviction records will appear on background check results. Therefore, as a matter of practice, attorneys should run the client's name through the court websites in the counties where cases may exist. Some courts may charge nominal fees for name searches in their databases if the case number is unknown.

3.1.5. Identifying all the Offenses
It is common for survivors to have several offenses that must be vacated. While not required for the vacatur filing, it is recommended that attorneys develop an internal spreadsheet or table organizing the offenses so that once vacatur is granted, it is easy to check that all offenses have been removed from any background checks and court websites. The spreadsheet is also helpful to coordinate legal efforts in situations where the petitioner has arrests in multiple states and is working with several attorneys.

CAST recommends that the spreadsheet track the following:

- Date of arrest
- Arresting agency
- Charge/statutory section
- Court of conviction
- Case number
- Disposition

- Sentence
- Report on which the offense appears
- Whether court records exist

A sample spreadsheet is available here: https://castla.box.com/v/CriminalHistorySpreadsheet.

3.1.6. Minute Orders

Once all relevant court cases are identified, attorneys should request the minute orders for all offenses. Minute orders are required for all offenses to assist the court in understanding the disposition of the case. Attorneys will need to follow the particular court's process to obtain the court records, as each county will have different requirements. In some cases, practitioners may be able to contact the public defender for help obtaining court documents.

If a practitioner discovers that there are any open warrants against the petitioner in reviewing the minute order, those warrants will need to be addressed prior to the filing of any vacatur petitions. Root & Rebound provides guidance on how to deal with warrants in *Roadmap to Reentry*, which can be accessed here: https://roadmap.rootandrebound.org/understanding-cleaning-up-your-criminal-record/key-concepts-for-understanding-your-criminal-recor/types-of-criminal-records/arrest-warrants/.

Practitioners should also be aware that if their arrests or convictions are not eligible for vacatur under § 236.14, other forms of criminal record relief such as expungement or sealing may be available.[18] However, practitioners should keep in mind the broad interpretation of §236.14(r) which allows the court to take additional action to fulfill the purpose of the statute. Practitioners should still attempt to request vacatur under §236.14(r) in the best interest of justice.

3.1.7. Providing Background Check Results to the Court

Certain local courts suggest that practitioners consider including background checks along with the petition. Nonetheless, caution should be exercised when including fingerprint results, especially those associated with legal matters ineligible for vacatur, as they can potentially influence the viewpoints of judges and prosecutors. Thoroughly assessing docket and arrest numbers for accuracy is highly advisable to prevent errors during the record-clearing process.

Furthermore, it is crucial to acknowledge that specific jurisdictions are now requesting background checks to verify the accuracy of docket and arresting numbers concerning record clearance. This aids court clerks in submitting the appropriate paperwork to the Department of Justice more efficiently. Practitioners are advised to decline such requests in order to mitigate potential influence on the case's outcome. However, practitioners can carefully consider the risks if the request for the check is made subsequent to the grant of the order for vacatur.

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[18] Root & Rebound provides guidance on multiple forms of criminal record here: https://roadmap.rootandrebound.org/understanding-cleaning-up-your-criminal-record/cleaning-up-your-criminal-record-later-in-reentry/.

4. Drafting the Client Statement[19]

While preparing client statements required for the vacatur process, attorneys should take steps to be trauma-informed when working with survivors of trafficking. For general tips for trauma-informed interviewing and how to construct client narratives, please see the Survivor Reentry Project's (SRP) guide, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys*.[20] SRP also provides free sample affidavits that can be accessed on their website here: https://freedomnetworkusa.org/advocacy/survivor-reentry-project/guide-for-attorneys/.

For purposes of developing a client narrative, the focus should be on three main areas: background, trafficking victimization, and life post trafficking. Below are topics to help focus the client statement, but attorneys should always prioritize focusing on trauma-informed practices and legally relevant information. Remember that to the client, you are a stranger to whom they must now disclose intimate and embarrassing details of their life. Prior to working with any clients, review trainings on trauma-informed engagement such as the training by CAST and Sanar Institute on *Trauma Informed Engagement in Legal Settings*.

4.1. Background/Pre-Trafficking

Background information relevant to the offenses that the client is petitioning to vacate. This section should clearly set up the client's vulnerability to the trafficking. Topics that can be covered in background include:

- Facts leading up to recruitment or how the client were connected to the trafficker(s);
- Past interaction with law enforcement or the legal system; and
- Past victimizations that contributed to the client's vulnerability.

4.2. Trafficking Victimization

In the victimization section, the facts should focus on the elements of human trafficking and the connection between the offenses and the victimization. Using CAST's Ends-Means-Process Toolkit can help to sort out the facts within the framework of the legal definition of trafficking. The topics that can be covered in this section may include:

- How the client came to know the trafficker(s);
- The client's relationship with the trafficker(s);
- Information about the actions the trafficker(s) took to coerce or force the client into the trafficking situation;
- Information about the actions the trafficker(s) took to coerce or force the client to commit any offenses;

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[19] Client statements are also referred to as "narratives" or "affidavits." In this advisory, the terms are used interchangeably.
[20] For more resources on trauma-informed practices, see Project Trust: https://refugees.org/project-trust-resources/.

- The nexus between the victimization and the offense(s), including date/location of each offense and the disposition; and
- How the client escaped from their victimization.

Within this section, focus on the physical abuse, psychological abuse, control, etc. in relation to the services the victim was made to perform. Pay particular attention to instances where the trafficker(s) used coercion to make the victim commit specific criminal offenses.[21]

4.3. Post-Trafficking/Life Since Trafficking

The post-trafficking information helps educate the court on how trafficking victimization can be ongoing even if the survivor is out of the trafficker(s)'s physical control. This section also educates the court on the barriers caused by the arrests and convictions. However, information about post-trafficking life should **only be included for charges or convictions that occurred many years after the trafficking victimization**. This is done to demonstrate to the court that these charges and convictions are eligible for relief.

The topics that can be covered in this section may include:

- The client's last contact with the trafficker(s);
- Explanation of types of supportive services the client is receiving; and
- Impact of the criminal record on the survivor's life.

4.4. Drafting Tips

The survivor's declaration should mirror the § 236.14 requirements. Attorneys should organize the client statement to mirror the eligibility requirements using headers such as: 1) Victim of Human Trafficking; 2) Nonviolent Offense is a Direct Result of the Trafficking; and 3) Interest of Justice to Grant Vacatur. These headers help demonstrate to the court and prosecutors that all of the eligibility requirements have been met.

If clients have additional legal processes (e.g., T visa applications, family law petitions, etc.) practitioners should work with those attorneys to make sure there is a consistency of facts in the public record. If a client has prepared statements for other forms of legal relief, it may be helpful to start drafting the client's vacatur statement using those previously drafted narratives. This is not only helpful for consistency, but also minimizes re-traumatization by reducing the number of times the client has to fully disclose details of their victimization.[22]

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[21] If the survivor was/is a minor at the time of victimization **and** was a victim of sex trafficking, there may not be an additional requirement to demonstrate the force, fraud, or coercion. However, practitioners should consider providing context to the court on the coercive environment that induced the minor into the victimizations.

[22] See the Survivor Reentry Project's (SRP) guide, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys*

4.5. Reviewing the Statement with Client

The client statement is signed under penalty of perjury which requires the client to fully understand and agree with the statement filed on their behalf. Be sure to use interpreters when necessary so that the client can fully engage with the legal process.

5. Corroborating Evidence

Though not required, § 236.14(m) allows for submission of an official document of a petitioner's status as a victim of trafficking.[23] This evidence can include T visa approval notices or other official documents from federal, state, or local agencies.[24] As with any form of legal relief for survivors, practitioners must be mindful of how much evidence is included in vacatur petition and strive for creating a minimal footprint. Practitioners should note that corroborating evidence is **not required** and should be limited to the required evidence as much as possible (i.e., minute orders, client statement).

Additional evidence that might be helpful in certain cases may include minute orders or news articles showing that the trafficker(s) has been convicted of trafficking or related crimes.

6. Preparing the Petition

6.1. Writing the Petition

The client narrative will form a significant basis for the petition. As a result, CAST recommends finalizing the narrative as much as possible prior to finalizing the petition, to ensure that the petition is consistent with the narrative.

The petition generally contains five main parts:

1. Preliminary statement: provides context for the facts and argument to follow as well as briefs the court on the important issues in the case.
2. Statement of facts: a summary of the trafficking victimization. Practitioners should make sure that any facts included in this section are also in the client statement.
3. Argument and authorities: provide the legislative history of § 236.14 and statutory requirements.
4. Argument for relief pursuant to § 236.14:
    - Petitioner meets the legal definition of a victim of human trafficking.

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[23] Cal. Penal Code § 236.14(m).

[24] Cal. Penal Code § 236.14(m)(2). Some prosecutor's offices may raise hearsay arguments against the use of other documentation. For example, Santa Clara's Office of the District Attorney (DA) raised potential hearsay issues with the affirmative defense of human trafficking. Specifically, the Santa Clara DA's office states that "it is an open question whether the language in (m)…authorizes the admission of hearsay evidence at the hearing and/or is only meant to allow such hearsay into evidence over other valid foundational objections." Memo and Podcast: IPG#28 (NEW HUMAN TRAFFICKING LAWS), County of Santa Clara Office of the District Attorney https://countyda.sccgov.org/sites/g/files/exjcpb1121/files/2017-IPG28.pdf (February 12, 2017).

        - In the petition, focus on the coercive mechanisms that the trafficker(s) used so that the court understands the controlling relationship between the trafficker(s) and the victim.
    - Petitioner's nonviolent offenses were a direct result of being trafficked.
        - In this section, practitioners should discuss the circumstances around the arrests, convictions, and dispositions in detail. Pay particular attention to connecting the trafficker(s)'s coercive actions with placing the victim in a situation to commit the offense.
    - The vacatur of the petitioner's arrests and convictions is in the best interest of justice
5. Conclusion

A sample petition is available for download in CAST's Box Drive: https://castla.box.com/v/23614Samples.[25]

6.2. Coordinating Prosecutorial Agencies and Consolidating Petitions

Prior to filing the vacatur petition, practitioners should reach out to the relevant prosecutorial agency so that they do not oppose the petition in court. Points of contact change frequently. Practitioners should reach out to local legal services agencies who are working on vacatur to identify current points of contact and can also contact the local prosecutor's office to ask for the human trafficking vacatur point of contact.

The prosecutor's office should be provided with an email that includes a copy of the petition, the client statement, exhibits, and a proposed order. It is important to try to ensure that the petition is unopposed to avoid the survivor having to appear in court and testify about their victimization. Any back-end work prior to filing will help minimize the chances that the survivor will have to appear at the hearing. It is ideal to have the stipulation not to oppose from the prosecutor to attach to the petition to avoid hearing being scheduled and to allow for the judge to grant the order on the petition.

If there are multiple convictions, the petition can be filed in the county where the client is located so long as there is an offense that was committed in that county and the applicant is seeking vacatur of that offense. Practitioners should try to obtain stipulation from the prosecutors to consolidate and not oppose all the offenses into one hearing in one county.[26] When deciding where the petitions should be consolidated, practitioners should consider the location of the client, the politics of the area, and the cooperability of the prosecutors. It is important to keep in mind that whatever jurisdiction is selected for consolidation, the prosecuting agency will have to coordinate and consolidate with the other prosecuting agencies. If it is their first time dealing with a human trafficking petition, it may take more time to consolidate and coordinate all the offices.

[25] Samples in our Box drive may have been created prior to the January 2023 updates Cal. Penal Code § 236.14. Be sure to check the link for updated samples in the future.
[26] Cal. Penal Code § 236.14(e).

6.3. Serving Parties

Once the petition is completed, the petition must be served on the local prosecutorial agency where vacatur is sought.[27] Each prosecutorial agency, if there are cases from multiple jurisdictions, must be served even if they agree to consolidate.

After the filing of the petition, prosecutorial agencies have 45 days to respond to the petition.[28] If the prosecutorial agency hasn't responded with opposition in that time frame, the court will find the petition unopposed and may grant the petition.[29] If the attorney for the petitioner has already coordinated with the prosecuting agency, they should be able to anticipate any opposition to the motion.

6.4. Filing the Petition

File a copy of the petition, exhibits, any stipulations, the proposed order, and proof(s) of service with the clerk's office at the local court. Practitioners should bring the original and a copy but should check with local courts to see how many copies may be required. Once filed, the court will provide the attorney with a conformed copy.

There is no statute of limitation for the filing of this petition. §236.14(l) only requires that the petition be made "any time after the person has ceased to be a victim of human trafficking, or at any time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later…"[30] Once the court reviews the petition, it will decide whether a hearing is necessary. Under § 236.14(d), the court may grant the petition if there is no opposition filed by any of the prosecutorial agencies.[31] If the petition is opposed, or if the court deems it necessary, the court will schedule a hearing.[32]

If the vacatur petition is unopposed, § 236.14(n) allows for counsel to appear at hearings on behalf of the petitioner. However, if the petition is opposed and the court orders a hearing, the petitioner must appear in person unless the court finds a compelling reason as to why the petitioner cannot attend. The court may then allow the petitioner other means of appearance.[33]

6.5. Filing Confidential Records

The vacatur petition must be placed in a seal envelope to be filed confidentially.[34] California Rules of Court state that confidential records (as well as the envelope holding the filing) must be marked as "*Confidential (Cal. Penal Code §236.14(q) and Cal. R. Ct. 4.15(b))-May Not Be Examined Without Court*

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[27] Cal. Penal Code § 236.14(c).
[28] Cal. Penal Code § 236.14(c).
[29] Cal. Penal Code § 236.14(d).
[30] Cal. Penal Code § 236.14(l).
[31] "If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition." Cal. Penal Code § 236.14(d).
[32] Cal. Penal Code § 236.14(f).
[33] Cal. Penal Code § 236.14(n).
[34] Cal. R. Ct. 8.45(c)(1)(A).

Order."[35] The court clerk is required to prepare a confidential index of the materials for the reviewing court.[36] For other requirements of confidential filings, practitioners should review California Rules of Court at §§ 8.45(c)-(d).

It is a recommend that practitioners affix a cover sheet onto the envelope. A sample cover sheet is available here: https://castla.box.com/v/23614coversheet. When filing the petition at the court, practitioners should wait to seal the envelope in front of the court clerk so that the petition inside can be stamped as received. Practitioners should also bring an extra copy of the filing for their records and ask that the court clerk stamp the additional copy as received.

7. Approval

If the court approves the petition, they will sign an order granting vacatur relief and order the following agencies to seal and destroy the survivor's records:

- "[a]ny law enforcement agency having jurisdiction over the offense;
- The Department of Justice;
- Any law enforcement agency that arrested the petitioner;
- Any law enforcement agency that participated in the arrest of the petitioner; and
- Any law enforcement agency that has taken action or maintains records because of the offense including, but not limited to, departments of probation, rehabilitation, corrections, and parole."[37]

These agencies are required to seal and destroy the records within one year from the date of arrest, or within 90 days after the court order is granted, whichever occurs later. The agencies are also required to destroy their records of the arrest and court order to seal and destroy those records within one year of the date of the court order.[38]

The court is also required to provide a certified copy of any court order concerning the sealing and destruction of the arrest records as well as any copies of any form that the court submits to any agency related to the sealing and destruction of the arrest records.[39] While this is the court's responsibility, practitioners may want to make sure all necessary agencies have a copy of the file order (e.g., probation offices). Practitioners should also maintain copies for their files as once the records are sealed and destroyed, it will become very difficult to find proof that the order was granted.

[35] Cal. R. Ct. 8.45(c)(1)(C).
[36] Cal. R. Ct. 8.45(c)(1)(D).
[37] Cal. Penal Code § 236.14(k)(1).
[38] Cal. Penal Code § 236.14(k)(2).
[39] Cal. Penal Code § 236.14(k)(3).

7.1. Fees/Restitution

Per § 236.14(i), collection of fines are stayed while the petition is pending. Once the petition is granted, the fines/fees should be terminated. However, if fees are in a jurisdiction where the vacatur was not filed, practitioners should follow up with the court where the fees were ordered to make sure the court receives a copy of the approved order.

Restitution will not be relieved upon the approval of the vacatur petition.[40] As a result, the petitioner will need to continue paying restitution as prior to the vacatur petition.

7.2. Enforcing the Vacatur Orders with DOJ and FBI

It's important to note that at the latest publication of this advisory, there have been challenges regarding the enforcement of vacatur orders with the CA DOJ. Despite the issuance of vacatur orders, the CA DOJ lacks formalized procedures to implement these orders consistently. As a result, there has been inconsistency in the methods used to ensure that vacatur orders are effectively used to update the survivor's background check. This section will cover steps that legal practitioners have taken to ensure the enforcement of the orders.

7.2.1. Procedures with CA DOJ

If practitioners haven't received confirmation from the court or CA DOJ that the criminal record has been cleared, they can submit a LiveScan along with a correction packet to the DOJ.

The packet should include the following: (Sample Packet)

- ☐ BCIA 8706 form:
  - This form should list the attorney's address to protect the client's privacy.
  - The attorney should list their name and organization as a designate at the bottom of the form.
  - This form also requires a wet signature. E-signatures will be rejected.
- ☐ Client's most recent LiveScan (no more than 2 years old; if older, the client will need a new LiveScan).
  - Practitioners can use the LiveScan taken prior to the order if it is less than 2 years old.
- ☐ The order granting vacatur

As per the statute at § 236.14(k)(2), DOJ is required to clear the record "within 90 days after the court order is granted."[41] However, in practice, it is taking longer. After 90 days, practitioners can email recordreview@doj.ca.gov to check the status.

Once the record is cleared, CA DOJ will send two documents:

1. A letter on DOJ letterhead confirming that the record has been sealed.

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[40] Cal. Penal Code § 236.14(i).
[41] Cal. Penal Code § 236.14(k)(2).

2. An amended LiveScan showing all the CA charges have been removed.

A sample of the DOJ letter confirming the record sealing can be found here.

7.2.2. Procedures with FBI

Once confirmation is received from the CA DOJ that the records have been sealed, the following email to CK_CHAT_CHALLENGE@FBI.GOV:

"My client, [Insert client name], was recently granted vacatur relief under California Penal Code § 236.14, which mandates the sealing and destruction of her entire California criminal history as if the charges never occurred. We have recently received confirmation from the California Department of Justice that they received the court's order for vacatur relief under California Penal Code § 236.14 and have subsequently destroyed her records, as attached herein. Could you please confirm that the CA DOJ has relayed this information to the FBI and that my client's entire California criminal history with the FBI is now destroyed accordingly? Attached, please find a copy of her previous FBI fingerprint summary, which was mailed to our office."

The following documents should be attached to the email:

- ☐ CA DOJ confirmation letter confirming the record sealing
- ☐ A copy of the client's most recent FBI criminal history summary or a Release of Information acknowledging that the client consents to the practitioner's communication with the FBI on their behalf. It is preferable to attach the FBI history because it shows which charges need to be removed.

Once the record is cleared, FBI will send two documents:

1. A letter on FBI letterhead confirming that the record has been sealed.
2. An amended FBI background check showing all the CA charges have been removed.

A sample of the FBI letter confirming the record sealing can be found here.

7.3. Verifying the Record is Clear

Section 7.2, "Enforcing the Vacatur Orders with DOJ and FBI Practitioners," aims to streamline the verification process for clients to ensure their record is clear and to minimize the potential cost of obtaining a new LiveScan. However, if verification becomes necessary, the following section provides guidance on the standard practice for checking the status of the background check. It's important to note that as of the latest update of this guide, practitioners have reported this process to be ineffective. Nonetheless, we have included this information in the guide for historical reference and in case it may provide any assistance.

If running a new background check, it should be done no sooner than 90 days after the order is granted and for the purpose of ensuring that all of the relevant offenses are removed. The actual process of removing offenses from the record can sometimes be laborious as the orders are manually entered by local clerks. If the offenses have not been fully removed, practitioners will need to work with the CA DOJ, FBI, and/or court to address these issues.

7.3.1. Correcting Errors on the CA DOJ Rap Sheet

To correct an error, practitioners may contact the CA DOJ Record Review unit at (916) 227-3835 or via email at recordreview@doj.ca.gov. The organization Root & Rebound provides the following advice if using the telephone:

> "This is an automated system (a recording) that contains information on many DOJ-related issues. Follow the prompts that ask you if you want to "verify or challenge the accuracy of your criminal history" …If you are asked to leave a message, make sure that your information is clear so that the right person can call you back."[42]

If CA DOJ overlooked the request or failed to meet deadline, practitioners may need to remind the Record Review department of the § 236.14 requirement to destroy the records within 90 days. If there is an issue, practitioners may have to reach out to the court clerk so that the clerk may resend the order and appropriate forms to the DOJ.

7.3.2. Correcting Errors on the FBI Background Check

In order to correct information from a California court, practitioners must contact the California Bureau of Criminal Information and Analysis as required by the FBI and ask them to send the FBI corrected or updated information.[43]
The contact information for the bureau is:

> Bureau of Criminal Information and Analysis
> California Department of Justice
> Room G-118
> 4949 Broadway
> Sacramento, CA 95820-1528
> (916) 227-3849
> appagencyquestions@doj.ca.gov

[42] Root & Rebound, *Roadmap to Reentry, Fixing Errors in Your California (DOJ) RAP Sheet*, https://roadmap.rootandrebound.org/understanding-cleaning-up-your-criminal-record/expungement-appendix/fixing-errors-in-your-california-doj-rap-sheet/ (last accessed Dec. 7, 2022).

[43] Federal Bureau of Investigation, *State Identification Bureau Listing*, https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/identity-history-summary-checks/state-identification-bureau-listing (last accessed Dec. 7, 2022); Root & Rebound, *Roadmap to Reentry, How can I fix errors in my federal (FBI) RAP sheet?*, https://roadmap.rootandrebound.org/understanding-cleaning-up-your-criminal-record/key-concepts-for-understanding-your-criminal-recor/types-of-criminal-records/fixing-errors-in-rap-sheets/how-can-i-fix-errors-in-my-federal-fbi-rap-sheet (last accessed Dec. 7, 2022).

7.4. Ensuring the Client Has Copies of Vacatur Orders

Once the records are sealed and destroyed, it will be difficult for the survivor to find evidence of this process should they lose a copy of their order.[44] Practitioners should ensure that the client has a copy of the final order granting vacatur as well as information on how to access a copy from your office should they lose it. Attorneys should consider this issue in developing or revising their office's record retention policies, as it may be difficult to later obtain a copy of a vacatur order from the court in the future.

7.5. Advisements for Clients

The CA vacatur statute is still fairly new and not all systems may be caught up. Clients should be advised on how to talk to employers once vacatur is granted. For example, clients should be aware that employers cannot ask about arrests that don't result in convictions, and that they can mark "no" on job applications regarding convictions and arrests.

[44] Inform the survivor that it will be difficult to get a copy of the final order without court involvement. Once the record is sealed, the survivor may need a court order to unseal the final order granting vacatur. If the record is destroyed, the survivor may not be able to access any copies of the final order. Make sure the survivor has multiple copies and/or knows how to access a copy if they lose one.

8. Vacatur Checklist

- ☐ Background checks[45]
  - CA DOJ
  - FBI record check
- ☐ Court documents
  - Minute orders
- ☐ Client statement
- ☐ Draft Petition[46]
  - Vacatur petition/motion (Sample)
  - Exhibit list (Sample)
  - Minute orders
  - Client statement
  - Corroborating evidence (if applicable)
  - Proposed order (Sample)
  - Stipulation to consolidate hearing (if applicable) (Sample)
  - Stipulation to not oppose (if applicable) (Sample #1) (Sample #2)
- ☐ Contact prosecutorial agencies for stipulations
  - To consolidate hearings
  - To not oppose petition
- ☐ File the petition with the appropriate court in marked envelope
- ☐ Serve the petition on prosecutorial agencies
- ☐ Prepare client for hearing (if hearing ordered)
- ☐ Follow-up background checks 90 days after vacatur ordered
  - CA DOJ
  - FBI record check
- ☐ Provide client copies of orders

[45] Previous editions have suggested including background checks with the petition. However, we strongly advise against including fingerprint results, especially those that pertain to legal matters ineligible for vacatur, as they could potentially influence the perspectives of judges and prosecutors. It is highly recommended to thoroughly review docket and arrest numbers for accuracy to prevent any errors when attempting to clear the record.

[46] Check with local practitioners to confirm that there are no regional specific court forms that need to be included with the petition.

9. Additional Resources

For the basics of criminal record relief, CAST recommends the following resources:

- Webinars and Live Trainings, Freedom Network USA, Survivor Reentry Project: https://freedomnetworkusa.org/advocacy/survivor-reentry-project/webinars-and-live-training/
- Guides for Attorneys, Freedom Network USA, Survivor Reentry Project: https://freedomnetworkusa.org/advocacy/survivor-reentry-project/guide-for-attorneys/
- *New Options for Survivors of Trafficking and Domestic Violence*, ILRC: https://www.ilrc.org/new-options-victims-trafficking-and-domestic-violence
- *Understanding & Cleaning Up Your Criminal Record*, Root & Rebound: https://roadmap.rootandrebound.org/understanding-cleaning-up-your-criminal-record/
- *State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, Polaris Project: https://polarisproject.org/resources/state-report-cards-grading-criminal-record-relief-laws-for-survivors-of-human-trafficking/
- *CS Training – Vacatur Nuts & Bolts*, Bet Tzedek: https://bettzedek.org/resources/cs-training-vacatur-nuts-bolts-2/
- *California Post-Conviction Relief for Immigrants: How to Use Criminal Courts to Erase the Immigration Consequences of Crimes,* ILRC: https://www.ilrc.org/publications/california-post-conviction-relief-immigrants-how-use-criminal-courts-erase-immigration

10. Further Questions

If you have additional questions, please submit an individual technical assistance request here: https://casttta.nationbuilder.com/individual_ta.

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