CALIFORNIA CRIMINAL VACATUR PRACTICE GUIDE

A Guide to Helping Survivors of Human Trafficking, Intimate Partner Violence and Sexual Violence Clear Criminal Records Related to their Victimization

2024

FREE TO THRIVE

Written By Jamie D. Beck, J.D.

Free to Thrive

Contributors

Individuals
Carla Gomez, J.D.
Chelsea Estes, J.D., L.L.M.
Lisa Charukul, J.D.
Michelle Carey, J.D.
Tanya A. Cooper, M.A., J.D., L.LM

Organizations
Immigrant Legal Resource Center
Los Angeles Center for Law and Justice
Office of the San Diego Public Defender
Pepperdine Caruso School of Law
San Mateo Bar Association Private Defender Program

We extend our deepest gratitude to the individuals and organizations who generously shared their knowledge, experience and expertise in contributing to this practice guide. The vacatur practice is complex, ever-evolving, and varies across jurisdictions. Your dedication, time and unwavering commitment to supporting survivors are invaluable. We are profoundly thankful for all that you do.

TABLE OF CONTENTS

I. INTRODUCTION

Criminal vacatur pursuant to California Penal Code (P.C.) §§ 236.14 and 236.15 is intended to repair the harm caused by the unjust criminalization of victims[1] of human trafficking, sexual and interpersonal violence. Senator Marty Block, the author of the vacatur statute, explained that the central purpose of the vacatur law is to "give victims of human trafficking a fresh start by creating a pathway to erase any nonviolent arrests and convictions from their records.[2]

Senator Marty Block, the author of the vacatur statute, explained that the central purpose of the vacatur law is to "give victims of human trafficking a fresh start by creating a pathway to erase any nonviolent arrests and convictions from their records.

By vacating criminal records, the statute removes both explicit and implicit barriers to employment, housing, immigration status, and services that survivors face as a result of their records. This, in turn, allows survivors to become full participants in their communities, living as parents, students, neighbors, colleagues and professionals who are no longer held back by their past. In sum, California's vacatur statute reflects a fundamental shift in the law towards viewing survivors more accurately and justly – as victims rather than criminals – and providing a remarkable form of relief to remedy their past criminalization.

[1] Please note that this practice guide uses the terms "victim" and "survivor" interchangeably. Because a "victim" is typically defined by harm done to them, many advocates choose to instead use the word "survivor" to refer to clients. "Survivors" are defined by their lives after the harm, allowing them to reclaim control of their lives and their recovery. While our goal as advocates is to help community members survive and thrive despite harms they have suffered, we sometimes use the term "victim" when that is the language used in the penal code and when an individual is not yet removed from the harm. Thank you to the ILRC for this helpful explanation from footnote 4 at: https://www.ilrc.org/resources/california-u-visa-law-update

[2] See S. Floor Analyses, 2015-16 Leg., (daily ed. Aug. 24, 2016) (statement of Sen. Block). http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB823.

The impact of vacatur on the lives of survivors and their families is immeasurable. As one survivor whose record was vacated shared:

> **The impact of vacatur on my life goes beyond the legal benefits of having a clean record. For me, the greatest value was in the spiritual release of the attachment to the trauma associated with the legal unbinding. Although each meeting was a bit challenging as I relived the moments and shared my story, it was a crucial part of unraveling my connection to the trauma. This work goes beyond the 3D realm. It is supporting the breaking of generational curses by breaking the labels that were placed on us that unknowingly kept us binded. The best feeling of all was the release of heaviness that I was unaware of prior to the moment my attorney called to let me know that our petition was approved and that my record would be sealed.**
>
> **- Survivor seeking post-conviction relief**

This practice guide is intended to serve as a resource for attorneys representing survivors in vacatur petitions, prosecutors, judges and court staff, and survivors entitled to this relief. Despite the fact that the law went into effect in 2017, it is still relatively novel and often unknown by key stakeholders. Hopefully, this practice guide will shed light on this area of the law and help more survivors access the justice they deserve.

II. HUMAN TRAFFICKING OVERVIEW

1. What is Human Trafficking?

At its most basic level, human trafficking is exploiting another person for sex or labor by means of force, fraud or coercion. [3] It is also the commercial sexual exploitation of a child ("CSEC") which under most laws does not require force, fraud or coercion because a minor cannot legally consent to engage in commercial sex. This definition identifies the two main types of trafficking in the United States: (1) labor trafficking and (2) sex trafficking.

California is a hot spot for human trafficking. Although it is notoriously difficult to quantify the scale of this illicit industry, there are significant indicators that California has one of the highest rates of human trafficking in the country.[4] San Diego, Los Angeles, and San Francisco have the nefarious distinction of being named in an FBI list of 13 top child sex trafficking areas,[5] and a study in Sacramento shed light on the scale of trafficking in our state's capital city.[6]

There is no population that is not reached by human trafficking. All ages, races, gender identities and nationalities are vulnerable to human trafficking. Human trafficking impacts people born in countries around the world and also in the U.S., those who recently arrived to the U.S. and those who have navigated being undocumented in the U.S. for decades, LGBTQ+ and cis populations, disabled and able-bodied folks.

---

[3] Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. §§ 7101-7114 (2018).

[4] In 2020, California's volume of communications to the National Human Trafficking Hotline was the highest in the country. See National Human Trafficking Hotline, National Human Trafficking Hotline Data Report, Report: 1/1/2020-12/31/2020 (Jul. 2021) Substantive Signal Data, p. 1-2. https://humantraffickinghotline.org/sites/default/files/California%20State%20Report%20For%202020.pdf [as of Apr. 6, 2022]. It is theorized that sex trafficking in California cities is fueled by a booming tourism economy, a large transient population, proximity to other high trafficking areas such Las Vegas and Mexico, and numerous forms of transportation in and out of each city. Additionally, major California cities also face gang networks which operate on the supply side of the sex trafficking industry. Uniquely, San Diego and Monterey County are characterized by large military populations that also fuel the demand for commercial sex.

[5] FBI Office of the Inspector General, The Federal Bureau of Investigation's Efforts to Combat Crimes Against Children (Jan. 2009) Chapter 4: Non-Cyber Sexual Exploitation of Children https://oig.justice.gov/reports/FBI/a0908/chapter4.htm

[6] Estimating Sex Trafficking in Sacramento County: Final Report (2022) https://www.rti.org/sites/default/files/cash-est-sextrf-sacramento-final-report-7-15-22-rev2_sm.pdf.

Human trafficking is an underground crime and therefore it is inherently difficult to accurately measure the full scope of its impact. Most data on human trafficking is gathered from those who self-report or seek out services. Undocumented victims are far less likely to report given additional barriers and fear related to possible deportation. Therefore, data reflecting the impact of human trafficking on undocumented individuals is particularly problematic.

2. Human Trafficking Under Federal Law

Federal law defines trafficking in persons as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”[7]

3. Human Trafficking Under California Law

As codified in the California Penal Code section 236.1, anyone who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, procure or sell the individual for commercial sex, or exploit the individual in an obscene matter, is guilty of human trafficking. Sex trafficking of minors is defined as causing, inducing, persuading, or attempting to cause, induce or persuade a minor to engage in a commercial sex act.[8]

---

[7] 22 U.S.C. § 7102; https://oag.ca.gov/human-trafficking/what-is; see also https://www.law.cornell.edu/uscode/text/22/7102

[8] https://oag.ca.gov/human-trafficking/what-is. Because a minor cannot legally consent to engage in commercial sex under California law, exploitation of a minor for commercial sex qualifies as human trafficking – regardless of whether any form of force, fraud, or coercion was used. (See Cal. Pen. Code section 236.1, subds. (c)-(e); see also Judicial Council of California, Overview of California’s Girls’ and CSEC Courts: Process Evaluation Report (2021) p. 2, https://www.courts.ca.gov/documents/Girls-Court-Process-Evaluation-Report-FINAL2.pdf.

Note that this is a broader definition than the definition of human trafficking under federal law, and therefore applies to a greater array of individuals. When representing clients in criminal vacatur cases in California, you will be relying on the definition of human trafficking in P.C. § 236.1.

You can also look to the Judicial Council of California Criminal Jury Instructions for guidance on when someone is "a victim of human trafficking." Specifically, CALCRIM No. 3414 (the jury instruction for the human trafficking affirmative defense under P.C. § 236.23 states that "to prove the defendant was the victim of human trafficking, the defendant must prove that:

> 1. Another person either deprived the defendant of personal liberty or violated the defendant's personal liberty;
> [AND]
> 2A. When the other person acted, (he/she) intended to obtain forced labor or services;
> [OR]
> 2B. When the other person acted, (he/she) intended to (commit/ [or] maintain) a [felony] violation of __________________ <insert appropriate code section[s]>."

4. Human Trafficking v. Human Smuggling

Human trafficking and human smuggling are different crimes. Human smuggling is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border in violation of one or more countries' laws, either clandestinely or through deception, such as the use of fraudulent documents. Although human smuggling is not itself human trafficking, the two concepts can still be associated. For example, human smuggling could be a precursor to later human trafficking in situations where those fleeing violence and/or migrant workers are smuggled into the United States and then coerced into forced labor, forced criminality and/or sex trafficking. However, it is also important to remember that no crossing of international, state or any other borders is required for human trafficking to take place.

5. Sex Trafficking

Sex trafficking involves commercial sexual exploitation of minors and exploiting adults for sex by means of force, fraud and coercion. Commercial sex is a sex act performed in exchange for money or something of value (drugs, food, shelter, clothing, protection). Commercial sex can take many forms, including: sex work, pornography, illicit massage, escort services and stripping, to name a few.[9] Consumer use of the internet for sexual gratification drives the creation of new platforms where sexual exploitation can occur such as "Only Fans" and "Porn Hub," among countless others. Commercial sex happens in many places such as: hotels/motels, cars, night clubs, strip clubs, private homes, truck stops, agricultural sites, public parks and restrooms, sporting events and swap meets.

Commercial sex can take many forms, including: sex work, pornography, illicit massage, escort services and stripping.

6. Labor Trafficking

The International Labor Organization defines forced labor as: work that is performed involuntarily and under the menace of any penalty. It refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as manipulated debt, retention of identity papers or threats of denunciation to immigration authorities.

[9] Judicial Council of California, Toolkit for Judicial Officers (2017) II. Summary: Human Trafficking Cases in California's Courts: Successful Practices in the Emerging Field of Human Trafficking, p. 1 https://www.courts.ca.gov/documents/human-trafficking-toolkit-cfcc.pdf.

Labor trafficking arises in many industries including: domestic servitude, restaurant work, janitorial work, factory work, agricultural work and construction. It is often marked by unsanitary and overcrowded living and working conditions, nominal or no pay for work done, debt bondage and document servitude.

Labor trafficking arises in many industries including: domestic servitude, restaurant work, janitorial work, factory work, agricultural work and construction.

It occurs in homes and workplaces and is sometimes perpetuated by traffickers who are the same cultural origin and ethnicity as the victims, which allows the traffickers to use a cultural hierarchy and cultural power to ensure the compliance of their victims. Traffickers may also be family members or intimate partners. Like in other forms of human trafficking, labor traffickers often tell their victims that they will not be believed by authorities, that they will be deported and that they have nowhere to run. Traffickers teach their victims to trust no one but the traffickers, so victims are often suspicious of genuine offers to help; they suspect that they will have to give something in return.[10]

7. Forced Criminality as Labor Trafficking

Exploited labor can take many forms, including illegal activities.[11] Vulnerable youth are particularly susceptible to this form of human trafficking. Labor trafficking by forced criminality ("LTFC") refers to all labor trafficking where the labor or services the victim is being forced, coerced or defrauded into performing are activities that would otherwise be classified as a crime.[12]

10 https://oag.ca.gov/human-trafficking/what-is; see also https://www.justice.gov/usao-cdca/human-trafficking#LAB
11 U.S. Dept. State, Office to Monitor and Combat Human Trafficking, "The Use of Forced Criminality: Victims Hidden Behind the Crime," (2014) https://2009-2017.state.gov/documents/organization/233938.pdf.
12 Einbond, Julia; Zedalis, Kaitlyn; Stoklosa, Hanni, "A Case of Mistaken Identity: The Criminalization of Victims of Labor Trafficking by Forced Criminality," Criminal Law Bulletin, Vol. 59 No 1. (2023), p. 62.

Labor trafficking by forced criminality ("LTFC") refers to all labor trafficking where the labor or services the victim is being forced, coerced or defrauded into performing are activities that would otherwise be classified as a crime.

LTFC can take many forms including: cultivation, transport and sale of drugs, as well as theft, fraud and other criminal activities.[13] "Trafficked individuals who are forced to commit a crime are commonly mistaken for criminals—rather than being identified as victims—and therefore treated as such by law enforcement and judicial officials."[14] "Like in child sex trafficking cases where the commercial sex is an illegal service and this is per se trafficking, children who work in other illegal services when a third-party receives some form of benefit is likely per se child labor trafficking."[15]

---

[13] Martinez, Anabel, "Identifying and Addressing the Needs of Youth Who Are Labor Trafficked By Forced Criminality in the Los Angeles Area," Loyola Law School (2024), https://www.lls.edu/media/loyolalawschool/academics/clinicsexperientiallearning/sji/publicationsandreports/LTFC%20Report.pdf
[14] See U.S. Dep't State, supra note 16.
[15] See Martinez, supra note 8, at p. 18.

One study on youth who experienced LTFC found that 67% of the victims were male and 33% were female.[16] The majority of victims identified in that study were U.S. citizens who were trafficked within the U.S.[17] The most common underlying crime was drug distribution.[18] Other crimes included assault/battery, robbery and theft/shoplifting, with multiple youth being forced to commit more than one type of crime.[19] The youth were trafficked by known and unknown traffickers, family and non-family, friends and intimate partners.[20] The existence of a relationship with a purpose separate and apart from the relationship created by the trafficking victimization was present in all of the LTFC cases identified.[21]

8. Power & Control in Human Trafficking Cases

Human trafficking is all about exerting power and control over another human being. There are many ways in which traffickers control their victims including: coercion and threats, intimidation, emotional abuse, isolation, denying, blaming, minimizing, threats to contact ICE, sexual abuse, physical abuse, using privilege, including status as a U.S. citizen and emotional abuse.[22]

16 *See* Einbond, Zedalis, and Stoklosa, supra note 8 at 63.
17 *Id.*
18 *Id.* at 68.
19 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*
22 https://humantraffickinghotline.org/en/resources/human-trafficking-power-and-control-wheel


SEX TRAFFICKING
street/online prostitution, residential/commercial - front brothels, truck stops
LABOR TRAFFICKING
businesses, farms, domestic work, begging/peddling, stripping
POWER and CONTROL
COERCION and THREATS
Threatens to harm victim or family • Threatens to expose or shame victim • Threatens to report to police or immigration
INTIMIDATION
Harm other victims, children or pets • Displays or uses weapons • Destroys property • Lies about police involvement in trafficking situation
EMOTIONAL ABUSE
Humiliates in front of others • Calls names • Plays mind games • Makes victim feel guilt/ blame for situation • Convinces victim they're the only one that cares about them
ISOLATION
Keeps confined • Accompanies to public places • Creates distrust of police/others • Moves victim to different locations • Doesn't allow victim to learn English or to go to school • Denies access to children, family and friends
DENYING, BLAMING, MINIMIZING
Makes light of abuse or exploitation • Denies that anything illegal or exploitative is occuring • Places blame on the victim for the trafficking situation
SEXUAL ABUSE
Uses sexual assault as punishment or means of control • Forces victim to have sex multiple times a day with strangers • Treats victim as an object for monetary gain • Normalizes sexual violence and selling sex
PHYSICAL ABUSE
Shoves, slaps, hits, punches, kicks, strangles • Burns, brands, tattoos • Denies food/water • Exposes to harmful chemicals • Forces pregnancy termination • Induces drug addiction as means of control
USING PRIVILEGE
Treats victim like a servant • Uses gender, age or nationality to suggest superiority • Uses certain victims to control others • Hides or destroys important documents
ECONOMIC ABUSE
Creates debt that can never be repaid • Takes money earned • Prohibits access to finances • Limits resources to a small allowance

III. INTIMATE PARTNER VIOLENCE

1. Who is a Victim of IPV?

The term "Intimate Partner Violence" is not defined in California civil or criminal law. Therefore, courts may look to legal definitions of domestic violence to determine who is a victim of IPV.

Under Cal. Family Code § 6211, "Domestic Violence" is abuse perpetrated against any of the following persons:

- Spouse/former spouse
- Cohabitant or former cohabitant as defined in Section 6209
- Has or had a dating or engagement relationship
- A person with whom the petitioner has a child with
- A child of the abuser
- Any person related by consanguinity or affinity within the second degree
  (1st Degree = parent & child)
  (2nd Degree = grandparents, grandchildren, and siblings)

Under Cal. Pen Code § 13700, "Domestic Violence" means abuse committed against of the following people:

- Spouse/former spouse
- Cohabitant/former cohabitant
- Cohabitant – two adult persons living together for a substantial period of time, resulting in some permanency of relationship
- Person with whom the petitioner has as child
- Dating/engagement relationship

An "intimate partner" may not include all of the above relationships.

2. What Counts as IPV?

Similarly, "violence" is not defined by P.C. § 236.15, but "abuse" is defined under Fam. Code § 6203(a) as:

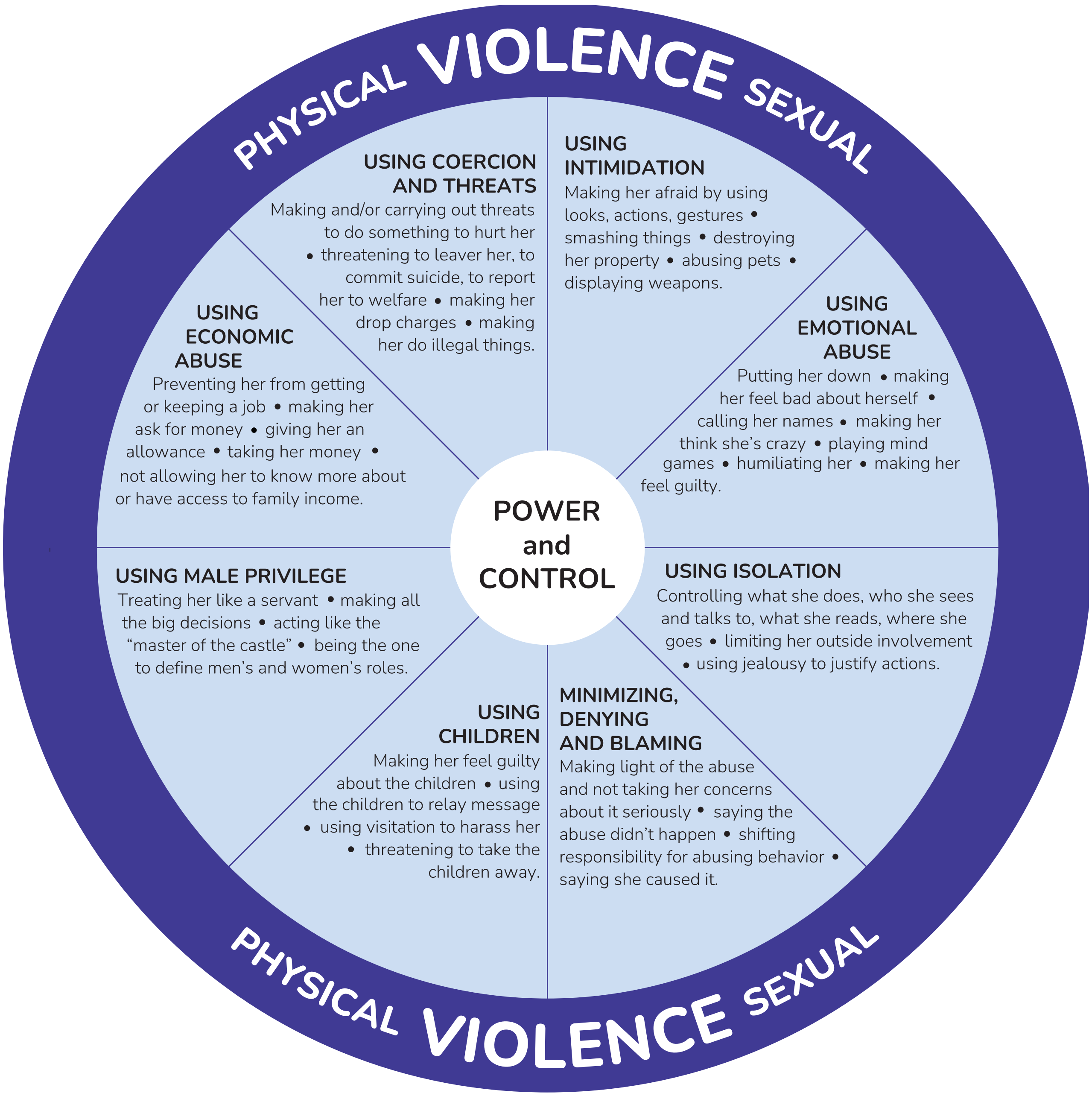
- Intentionally or recklessly causing or attempting to cause bodily injury;
- Sexual assault;
- Placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or
- Engaging in any behavior that has been or could be enjoined pursuant to Section 6320.

Fam. Code § 6203(b) also states that "Abuse is not limited to the actual infliction of physical injury or assault."

3. Power & Control

Just like human trafficking, IPV is all about exerting power and control over another person. The forms of power and control in a domestic violence/IPV situation are very similar to those used in the HT context. They include: using intimidation, emotional abuse, isolation, children, male privilege, economic abuse, coercion, threats, minimizing, denying and blaming.[23] There are also situations where the trafficker is an intimate partner, meaning the abusive and exploitative partner has forced or coerced the survivor to engage in labor or commercial sex.

[23] https://www.thehotline.org/identify-abuse/power-and-control/


PHYSICAL VIOLENCE SEXUAL
USING COERCION AND THREATS
Making and/or carrying out threats to do something to hurt her • threatening to leaver her, to commit suicide, to report her to welfare • making her drop charges • making her do illegal things.
USING INTIMIDATION
Making her afraid by using looks, actions, gestures • smashing things • destroying her property • abusing pets • displaying weapons.
USING ECONOMIC ABUSE
Preventing her from getting or keeping a job • making her ask for money • giving her an allowance • taking her money • not allowing her to know more about or have access to family income.
USING EMOTIONAL ABUSE
Putting her down • making her feel bad about herself • calling her names • making her think she's crazy • playing mind games • humiliating her • making her feel guilty.
POWER and CONTROL
USING MALE PRIVILEGE
Treating her like a servant • making all the big decisions • acting like the "master of the castle" • being the one to define men's and women's roles.
USING ISOLATION
Controlling what she does, who she sees and talks to, what she reads, where she goes • limiting her outside involvement • using jealousy to justify actions.
USING CHILDREN
Making her feel guilty about the children • using the children to relay message • using visitation to harass her • threatening to take the children away.
MINIMIZING, DENYING AND BLAMING
Making light of the abuse and not taking her concerns about it seriously • saying the abuse didn't happen • shifting responsibility for abusing behavior • saying she caused it.
PHYSICAL VIOLENCE SEXUAL

IV. SEXUAL VIOLENCE

1. Who is a Victim of Sexual Violence?

There is also no legal definition of "sexual violence" in California law. Therefore, courts may look at definitions of sexual abuse to determine who is a victim of sexual violence.

Cal Pen Code § 11165.1 defines sexual abuse as:

- Rape (Section 261)
- Statutory rape (Section 261.5)
- Rape in concert (Section 264.1)
- Incest (Section 285)
- Sodomy (Section 286)
- Oral copulation (Section 288a)
- Lewd or lascivious acts upon a child (Section 288)
- Sexual penetration (Section 289)
- Child molestation (Section 647.6)

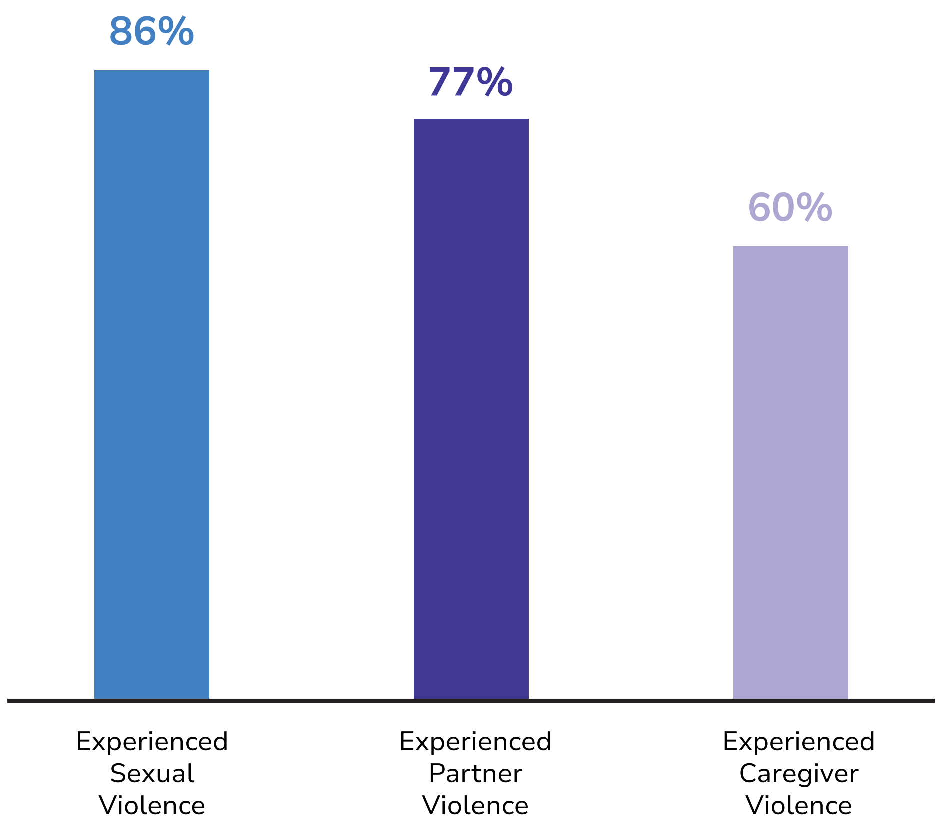
Cal Pen Code § 11165.1 defines sexual exploitation as:

- Conduct involving a minor and obscene acts (Section 311.2; 311.4)

V. VICTIM-OFFENDER INTERSECTIONALITY

1. Understanding Victim-Offender Intersectionality

The criminalization of victims in our legal system is pervasive. In fact, according to a study by the Vera Institute, 86% of the women in jails and prisons experienced sexual violence, 77% experienced partner violence and 60% experienced caregiver violence.[24] Survivors of human trafficking, intimate partner and sexual violence are particularly vulnerable to criminalization connected to abuse, exploitation, poverty and lack of immigration status. This is especially true for Black, Brown, and LGBTQ+, and immigrant survivors due to systemic racism, homophobia, transphobia and anti-immigrant discrimination.



[24] Elizabeth Swavola, Kristine Riley, Ram Subramanian. Overlooked: Women and Jails in an Era of Reform. New York: Vera Institute of Justice, 2016. https://www.vera.org/downloads/publications/overlooked-women-and-jails-report-updated.pdf

Victims of human trafficking are often forced to commit crimes by their exploiters. They are often forced or coerced to engage in illegal activity during and after their trafficking experience as a means of survival due to the trauma they endured.[25] Over 90% of human trafficking survivors reported being arrested or convicted of a crime. Nearly 42% were first arrested as minors and 40% were arrested nine times or more.[26] The crimes they were arrested for included: prostitution (65%); solicitation (43%); intent to solicit (25%); drug possession (40%); drug sales (9%); other crimes (60%).[27]

These criminal records harm victims and their families' decades after they escape their trafficking situation. Having a criminal record traps victims and leads to re-exploitation due to their inability to obtain: employment, housing, education, public benefits, lawful immigration status and financial independence. Moreover, it can result in dire, additional immigration consequences for noncitizen survivors of trafficking, including: detention, deportation from the United States, and/or permanent separation from family members.

---

[25] National Survivor Network Survey Criminal Arrest and Convictions of Human Trafficking Victims (2016). https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSNVacate-Survey-2018.pdf
[26] *Id.*
[27] *Id.*

2. The Impact of a Criminal Record on Survivors

Having a criminal record is a barrier in all aspects of a person's life: employment, education, housing, public benefits, loans, community involvement and immigration relief. The result of the criminalization of survivors is that they are unable to provide for themselves and their families and are extremely vulnerable to further victimization. Regardless of their culpability, survivors take plea deals for a variety of reasons including: fear of retaliation from their perpetrators and a desire to return to their children as soon as possible. Oftentimes, when survivors take a plea deal, they do not understand the long-term impact of a criminal record on their lives. Rather than criminalize victims, our legal system should connect them to services and support to help them heal from their traumatic experiences and stay safe from their perpetrators.

> **"I knew if they fingerprinted me, I would have to deal with all these memories again, and I knew they wouldn't hire me."**
>
> **- Survivor seeking post-conviction relief**

3. Addressing Criminalized Victims in the Criminal System

There are opportunities at every stage of the criminal process to address the unjust criminalization of victims and survivors. Those opportunities include:

- **Arrest** - Discretion by local law enforcement not to arrest victims
- **Prosecution** - Prosecutorial discretion not to bring charges or to dismiss charges once they learn the defendant is a victim/survivor
- **Affirmative Defenses** - The victim/survivor of human trafficking and/or of intimate partner violence can assert an affirmative defense to a crime pursuant to P.C. §§ 236.23 and P.C. 236.24[28]

    - **Eligibility**: To qualify for this affirmative defense, the individual must demonstrate that their involvement in the criminal activity was a direct result of being a victim of human trafficking or intimate partner violence.
    - **Burden of Proof**: The defendant has the burden of establishing this defense by a preponderance of the evidence. This means they must show that it is more likely than not that their criminal conduct was a result of their victimization.
    - **Legal Support**: Legal professionals should gather comprehensive evidence to support this defense, which may include documentation of abuse, expert testimony, and other relevant materials that illustrate the connection between the victimization and the alleged criminal conduct.

- **Plea Bargaining** - California law now requires prosecutors to consider the following circumstances as factors in support of a mitigated sentence if they were a contributing factor in the commission of the alleged offense:

    - The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation or sexual violence.

[28] The expansion of the affirmative defense to victims of interpersonal violence and sexual violence along with the statutes discussed below relating to plea bargaining, sentencing and resentencing were all encompassed in AB 124 (Kamlager). AB 124 became law in 2021 after zealous advocacy by the Justice for Survivors Coalition. That coalition continues to advocate for new laws that reduce the criminalization of survivors and seeks to repair the harm suffered as a result of their criminalization.

- The person is a youth.[29], or was a youth at the time of the commission of the offense.
- Prior to the instant offense, or during the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.[30]

- **Sentencing** - There is also a presumption to impose a lower term at sentencing, if any of the following was a contributing factor in the commission of the offense:

  - The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation or sexual violence.
  - The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.
  - Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.[31]

- **Resentencing** - California law now requires courts to consider the following when a person petitions for resentencing:

  - If the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation or sexual violence
  - If the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or
  - If the defendant is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.[32]

If the victim/survivor is charged with/convicted of a non-violent crime that is directly related to their victimization, criminal vacatur can be used to help the victim/survivor clear their record.

---

[29] A "youth" for purposes of this section includes any person under 26 years of age on the date the offense was committed. P.C. § 1016.7(b).
[30] P.C. § 1016.7(a).
[31] P.C. § 1170(b)(6).
[32] P.C. § 1172.1(a)(4).

VI. CRIMINAL VACATUR

1. What is Criminal Vacatur?

Criminal vacatur is a form of post-conviction relief that allows survivors of human trafficking ("HT"), intimate partner violence ("IPV") and sexual violence ("SV") to clear non-violent criminal records related to their victimization. California's vacatur law is codified under P.C. §§ 236.14 and 236.15. In California, vacatur is a much broader remedy than an expungement. Expunged records still show up on a survivor's criminal record ("rap sheet") and can serve as a barrier to any licensed profession. A vacated record is sealed and destroyed. It's like a big eraser for criminalized survivors.

Criminal vacatur is a form of post-conviction relief that allows survivors of human trafficking ("HT"), intimate partner violence ("IPV") and sexual violence ("SV") to clear non-violent criminal records related to their victimization.

Vacating a survivor's record is a very difficult process for survivors because it requires them to recount their trauma history and once again engage with a criminal legal system that not only previously failed to recognize their trauma, but also actively harmed them. The harm from the system includes, but is not limited to, months or years of their life taken from them, separation from their families, loss of custody of children, degradation, humiliation, physical and sexual abuse within the jail and prison systems, loss of immigration status and heightened risk of removal from the United States, and numerous other barriers to successful reentry into society as a result of their criminal record.

Nevertheless, the process can be healing because the end-result is a court order completely clearing a survivor's record, recognizing the legal error in their case and giving them a fresh start. It helps survivors see themselves as victims of crime, not criminals. Vacatur opens doors to: employment, education, housing, public benefits, immigration protection and relief, financial independence and community engagement.

2. Elements of Vacatur Relief in California

The elements of vacatur pursuant to P.C. §§ 236.14(g) and 236.15(g) are:

(1) The petitioner was a victim of HT, IPV or SV at the time of the alleged commission of the qualifying crime;
(2) The arrest or conviction was a direct result of being a victim of HT, IPV or SV; and
(3) Vacatur relief is in the best interest of justice.

The burden of proof is on the petitioner by clear and convincing evidence.

If a minor establishes that the arrest/adjudication was the direct result of being a victim of HT, IPV or SV, the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met. P. C. § 236.14(j)/236.15(j).

3. Arrests, Adjudications, and/or Convictions Not Eligible for Vacatur

- Any violent felony listed under P.C. § 667.5(c)[33];
- The individual was not a victim of HT, IPV or SV at the time the crime occurred[34;] or
- The crime was not a direct result of being a victim of HT, IPV or SV.

[33] https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=667.5.&lawCode=PEN
[34] Note that whether or not someone was "a victim" at the time the crime occurred is a fact-specific analysis as discussed further below. There are many circumstances, where the individual was no longer actively being victimized, but the crime occurred "as a direct result of" their victimization and therefore is still eligible for vacatur.

4. When is an Arrest/Conviction a "Direct Result" of the Victimization?

Because P.C. § 236.14 does not define "direct result," stakeholders should turn to human trafficking case law for the applicable definition. In *In Re D.C.*, the Court evaluated nearly identical language from the human trafficking affirmative defense statute at P.C. § 236.23 and concluded that a "direct result" between the offense and the accused's status as a trafficking victim can exist even without evidence that the trafficker "directly coerced" the accused to commit the specific offense.[35]

To establish a direct result, there is "no requirement that the accused act at the behest of the trafficker or that the trafficker [was] aware that the victim was planning or had committed a crime."[36]

"Rather, the coercion suffered by the accused must result directly from [their] status as a victim. That coercion may, but need not, be provided directly by the trafficker."[37]

In light of this case law and P.C. § 236.14's statutory history, it is appropriate to think of the requisite causal connection as a "but for" analysis: but for your client's trafficking victimization, they would not have committed the offense they are now seeking to vacate. It is not necessary to show the trafficker's direct connection to the offense.

5. Can You Vacate a Record if the Survivor is Still Serving Time?

The vacatur statute states that a petition may be filed "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 subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section.[38]

[35] *In Re D.C.*, 60 Cal.App.5th 915, 920 (Cal. Ct. App. 2021).
[36] *Id.* at 920.
[37] *Id.* at 920-21.
[38] P.C. §§ 236.14(l) and 236.15(l).

The law does not require that the survivor has completed any jail or prison sentence. It also does not require that the survivor is no longer on probation or parole. Therefore, it is technically possible to vacate a survivor's charges and get them released from jail or prison. That being said, a more direct route is to seek resentencing pursuant to P.C. § 1172.1(a)(4). It will be important to explore this option more fully with a criminal/immigration expert if the survivor is a noncitizen.

6. Can You Vacate a Record Sustained After a Survivor is No Longer Being Actively Trafficked or Abused?

If an arrest or conviction is sustained after a survivor's abuse or exploitation ends, but is still directly related to the previous trafficking, intimate partner or sexual violence they endured (i.e., a drug offense stemming from a substance abuse disorder acquired while being trafficked or abused), you can seek vacatur. The impacts of victimization do not end when trafficking ends. Survivors deal with the effects of physical and psychological trauma long after breaking away from a life of abuse or exploitation. Severe trauma can even cause neurological changes to a person's brain that interfere with responses to stress, fear, emotional regulation and executive functioning for years to come.

7. Prosecuting Agency-Initiated Vacatur

It is also theoretically possible for a prosecuting agency to initiate vacatur of a survivor's record. While this is not a common practice, prosecutor-initiated vacatur would increase the access to justice for survivors. Attorneys representing survivors with cases that are still pending should reach out to defense attorneys to ensure they have been fully informed of the facts regarding the survivor's victimization. They can then work in collaboration with defense attorneys to contact the prosecutor on the case in an effort to encourage prosecutorial discretion or to explore the possibility of using an affirmative defense under P.C. §§ 236.23 or P.C. 236.24.

8. Improvements to California's Vacatur Law

California's vacatur law has been amended three times since it went into effect in 2017. Two additional bills were brought before the legislature to expand the vacatur law to empower more survivors to obtain this relief.

- **AB 124 (2021):** Expanded California's vacatur law (P.C. § 236.15) and affirmative defense (P.C. § 236.24) to victims of interpersonal and sexual violence.[39]

- **AB 262 (2021):** Shortened time for compliance and cleaned up other language to improve the compliance process. This bill only applies to P.C. § 236.14, resulting in different language around compliance in P.C. § 236.14(k)/236.15(k).

- **AB 2169 (2022):** Removed requirement to "distance oneself from the trafficking" and clarified that California's vacatur laws erase a survivor's criminal record because their criminalization was legally invalid due to a lack of requisite intent to commit the offense – a critical clarification that further protects noncitizen survivors from being harmed by negative immigration consequences due to their legally erroneous criminal history. In addition, this change further benefited all survivors, given that the statute no longer required them to share their personal circumstances post abuse or exploitation, but shifted the focus instead to demonstrating the legal error in their case.

- **AB 1497 (2023):** Would have expanded California's vacatur law and affirmative defense to all crimes, but this bill did not pass.

- **AB 2354 (2024):** Would have empowered all survivors of intimate partner violence, human trafficking, and other forms of violence, regardless of their background or the nature of their conviction, to petition for vacatur of arrests and convictions that stem from circumstances related to their victimization.

As of the writing of this practice guide there is an ongoing effort to expand California's vacatur law to include all crimes, not only nonviolent offenses.

[39] As discussed earlier, AB 124 also created remedies for survivors at other stages of the criminal process including: plea negotiations, sentencing and resentencing. It also expanded the human trafficking affirmative defense to include victims of interpersonal and sexual violence.

9. Immigration Considerations

If you are representing a survivor who is not a U.S. citizen ("noncitizen") in vacatur proceedings, it is important to consult a criminal/immigration law expert to ensure your pleadings and proposed order will satisfy standards for immigration relief.

For noncitizen survivors, any criminal conviction brings the additional risk of severe immigration consequences such as detention, deportation, and permanent separation from their families. In general, a conviction is not eliminated for immigration purposes if it was removed from your client's record for reasons related to rehabilitation or other humanitarian factors.

To eliminate a conviction for immigration purposes, it must be based on a legal error in the original proceedings. This is referred to as the *Pickering* rule, after *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003). In contrast, if a court vacates a conviction for reasons solely related to rehabilitation, humanitarian factors, or to avoid adverse immigration hardships, rather than a legal defect in the underlying criminal proceeding, the conviction is not eliminated for immigration purposes–meaning it can still be used against noncitizen survivors in both removal proceedings and when seeking affirmative immigration relief.

As noted above (in **Improvements to California's Vacatur Law**), former versions of P.C. §§ 236.14 and 236.15 did not explicitly identify or require a finding of a legal error, which resulted in immigration officials declining to give effect to vacatur, on the grounds that it merely provided humanitarian relief. As of January 1, 2023, the statutes were amended to make clear that a vacatur is based on legal defect, requiring petitioners to establish by clear and convincing evidence that their arrest(s) and/or conviction(s) were the direct result of being a victim of human trafficking or intimate partner or sexual violence, "which demonstrates that the person lacked the requisite intent to commit the offense. Upon this showing, the court shall find that the person lacked the requisite intent to commit the offense and shall therefore vacate the conviction as invalid due to legal defect at the time of the arrest or conviction." P.C. §§ 236.14(a); P.C. 236.15(a).

Practitioners who are vacating a conviction for immigration purposes, (e.g. to avoid deportability or render someone eligible for relief from deportation) should be aware of the other California vacatur vehicles that are also based on legal invalidity including P.C. §§ 1018, 1473.7, 1016.5. It is important to consult with a immigration/criminal law expert to analyze your case to determine which form of relief is best for your client.

For more information on vacating convictions for noncitizens including survivors see Immigrant Legal Resource Center ("ILRC") Practice Advisory: "New Options for Survivors of Trafficking and Domestic Violence: Vacaturs and Criminal Defenses for Survivors of Trafficking and Intimate Partner or Sexual Violence"; For an Overview of California Post-Conviction Relief see immigrant legal resource center | July 2022 (ilrc.org); For a sample vacatur order see Sample Vacatur Order 236.14_236.15 Vacatur Order.pdf (ilrc.org).

9. Procedure for Juvenile Charges

If your client has prior juvenile arrests or adjudications directly related to their trafficking, you can seek to vacate them through the Juvenile Court with jurisdiction by filing three documents:

- **California Court Form JV-748**
  - This is a request to expunge or vacate pursuant to P.C. § 236.14
  - You can attach your client's declaration to this form (*see Section VIIII (7) below for detailed information about drafting a client declaration*)
- **California Court Form JV-749**
  - This is a proposed order for requests for expungement or vacatur pursuant to P.C. § 236.14
- **Letter of Stipulation**
  - Contact the prosecuting agency that handled the case you are seeking to vacate and request that they stipulate to vacatur
  - If the prosecuting agency agrees to stipulate, draft a simple letter, addressed to the Juvenile Court, listing which offenses you are seeking to vacate and noting the prosecuting agency's stipulation. Then, have the prosecuting attorney sign the letter.

10. What Does a Vacatur Order from the Court do?

A vacatur order does all of the following:

- The court will deem the arrest, adjudication and/or conviction not to have occurred;
- Order the Department of Justice and law enforcement agencies to seal and eventually destroy the related records;
- The victim/survivor can legally deny ever having been arrested for or convicted of the offense for which relief was granted;[40]
- The conviction will not be distributed to any state licensing board;
- Sets forth a finding that the petitioner was a victim of [HT, SV or DV] at the time and therefore lacked the requisite intent to commit the offense; and
- Dismisses the accusation or information against the petitioner as invalid due to a legal defect at the time of arrest or conviction.

11. What Won't a Vacatur Order Do?

The vacatur order has the following limitations:

- If a survivor owes restitution, they will still have to pay it.[41]
  It will not change arrests/convictions in other states or in federal court.[42]
- For noncitizen survivors, it may still be necessary to disclose arrests/convictions post-vacatur when filing immigration petitions for affirmative relief and/or when responding to related questions from ICE/EOIR in removal proceedings. It is critical to seek advice from a reputable immigration attorney for noncitizen survivors seeking immigration relief and/or in removal proceedings regarding these types of issues.
- For individuals seeking federal security clearance, they may need to disclose vacated records even though the statute indicates that they can answer "no" to questions about their record.

---

40 https://www.sandiegocounty.gov/content/sdc/public_defender/human_trafficking.html. Attorneys representing a noncitizen should seek advice from an immigration expert before advising a client on how to respond to questions from USCIS/DHS/EOIR/ICE about whether or not they have ever been arrested/convicted (post vacatur).

41 §§ P.C. 236.14 (i) and 236.15(i) state: "Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime, unless it has already been paid. With the exception of restitution, the collection of fines imposed as a result of a nonviolent offense that is the subject of the petition shall be stayed while the petition is pending."

42 https://www.sandiegocounty.gov/content/sdc/public_defender/human_trafficking.html

VII. WHAT DOCUMENTS DO YOU NEED TO FILE FOR VACATUR IN CALIFORNIA?

Every jurisdiction is a little different in terms of the required documents for vacatur filing. For example, in San Diego, vacatur petitions are automatically sealed so you do not need to file a motion to seal or proposed order on the motion to seal. In Los Angeles, the current judge in Department 56 (who hears all vacatur petitions) has a specific template proposed order they require for all vacatur petitions. As such, it is important to check with vacatur attorneys in the jurisdiction where you are filing and/or the court to find out what documents are required.

Generally speaking, vacatur filings should include all of the following:

- Petition for Vacatur Pursuant to Cal. Penal Code §§ 236.14 and/or 236.15
- Declaration of Petitioner in Support of Petition for Vacatur[43]
- [Proposed] Order for Relief Pursuant to Cal. Penal Code §§ 236.14 and/or 236.15
- Motion to Seal and Brief in Support of Petitioner's Request for All Vacatur Records to be Sealed Pursuant to California Rule of Court 2.550(D)
- [Proposed] Order to Seal Brief In Support Of Petitioner's Request For All Vacatur Records Sealed Pursuant To California Rule Of Court 2.550(d)
- Proof of Service[44]
- Stipulated Petition - If all parties stipulate to vacatur you can file a separate stipulated petition that is signed by all parties
- BCIA 8272 - Petitioner and Counsel Contact Request Form

[43] Note: This declaration can include any supporting documents as exhibits. Consider listing included exhibits at the end of this declaration, along with a statement verifying their authenticity. https://oag.ca.gov/system/files/media/bcia-8700.pdf

[44] The statute requires the prosecuting agency be served with the vacatur petition. For personal service or service by mail, use CR 106 - Proof of Service Record Clearing. If the prosecuting agency consents to electronic service, use POS-050/EFS-050 - Electronic Service. https://www.courts.ca.gov/documents/efs050.pdf

VIII. THE STEPS IN A VACATUR CASE

1. Screening Potential Clients for Eligibility

The first step in a vacatur case is to screen the potential client for eligibility. In order to do that, you need to confirm that their case meets the basic elements of vacatur.

- **Petitioner has arrests or convictions in California while a victim of HT/SV/IPV**
  - **Human trafficking screening questions:**
    - ☐ Were you ever encouraged to perform sex acts in exchange for housing, food, protection or to meet some other basic need you had?
    - ☐ How old were you when this happened? (if they were a minor at the time, they are legally a victim of human trafficking)
    - ☐ Have you ever performed sex acts or other types of services because you or others were being threatened?
    - ☐ Has anyone—including a family member, an intimate partner, a supervisor, or anyone else—ever made you work or provide any type of services in a way that caused you to feel afraid or unable to stop working?
    - ☐ Did you ever have to do housework or childcare that felt like far more than what others are typically required to do in their households?
    - ☐ If you were born outside the U.S., did someone else pay for your travel to the U.S. and you then owed them a debt?
    - ☐ Did you live in the U.S. while you were under age 18? If yes, during that time did you ever miss school because an adult in your life told you that you needed to work?
  - **Sexual violence screening questions:**
    - ☐ Have you ever experienced a non-consensual sex act?
  - **Intimate partner violence screening questions:**
    - ☐ Have you ever been in a relationship that was physically violent?
    - ☐ Have you ever experienced emotional abuse in a relationship?
    - ☐ Have you ever been pressured by an intimate partner to do sex acts that you did not want to do?

        - ☐ Have you ever felt unsafe in a relationship?
        - ☐ Have you ever been in a relationship where the other person controlled or isolated you?

    - **While a Victim of HT/IPV/SV**
        - ☐ If yes to any of the above, were you ever arrested for a crime during or after the time of that sex act, non-consensual sex act, or abusive relationship?

    - **Were those arrests in California?**
        - ☐ P.C. §§ 236.14 and 236.15 only apply to charges in California

    - **Were they State or Federal Charges?**
        - ☐ Only state charges are eligible for vacatur under P.C. §§ 236.14 and 236.15

- **Arrests or convictions are for nonviolent offense(s)**
    - What crime or crimes were you arrested for?
    - Look up the crimes and ensure they are not listed as violent crimes under P.C. § 667.5(c).
    - If the client was charged with a violent crime, but was not convicted, you can still try to get the charge vacated arguing that they were not convicted of the crime and vacating the arrest is in the interests of justice. If the survivor is a noncitizen, the plan for post-conviction relief should be reviewed by a reputable immigration/criminal law expert.

- **The arrest or conviction was a direct result of being a victim of HT/SV/IPV**
    - Ask some basic questions about the facts surrounding the arrest/conviction.
    - You are looking to see if there is a nexus between the charge and the victimization.
    - Another way to think about it is “but for” the victimization, they would not have been in the situation that led to their arrest.

- **Relief is in the Interests of Justice**
    - If your client satisfies all of the previous elements, nothing further is required to establish that relief is in the interests of justice.
    - Because your client was a victim of trafficking at the time of the non-violent offense(s) and the offense(s) was/were directly related to their trafficking, the offense(s) are legally invalid because your client had insufficient mens rea to commit the offense(s).
    - As explained above (in **Improvements to California's Vacatur Law**), California Assembly Bill 2169 (2022) amended Penal Codes §§ 236.14 and 236.15 to remove the requirement that a survivor seeking vacatur must demonstrate good faith efforts to distance themselves from their perpetrator.
    - Although no equities are required to establish that relief is in the interests of justice, given that vacating an unlawfully obtained conviction is always in the interest of justice, you may still consider gathering information from your client about their goals for the future, how their record is holding them back from achieving those goals, and/or any goals they've already successfully accomplished despite their victimization, so that you will have them available to consider sharing with the prosecuting agency when you ask them to stipulate to vacatur.
    - In the rare contested case, consider also including these client-specific facts in your petition to tell the court your client's complete story and explain why specific facts in your client's case indicate that vacatur is in the best of interests of justice *in addition to* legal invalidity. As counsel, you should feel empowered to plead your client's case in the best way possible considering all of the specific facts and circumstances involved, while at the same time always keeping in mind that the survivor does not have any obligation to state any facts in the petition that focus on their equities or otherwise reach beyond the statutory requirements.
    - If you are representing a noncitizen client, NEVER include your client's equities in the pleadings and make sure the proposed order notes the basis for vacatur is legal defect. *See* **Immigration Considerations** above.

Note that it is important to set reasonable expectations with your client at every stage of the case. At this stage, even if the screening interview confirms they appear to be eligible for this relief, you may learn additional information at later stages that makes some or all charges ineligible. Therefore, at the screening stage, you want to help manage your client's expectations by informing them that you believe they *may* be eligible for this relief, but you will need to gather additional information to confirm that.

2. Criminal Record Request

The California Department of Justice ("DOJ") allows attorneys representing clients in post-conviction cases to receive a free copy of a client's Records of Arrests and Prosecutions ("RAP Sheet").[45] In order to request a RAP Sheet on behalf of a survivor, you must be the attorney of record. That means, following the initial client screening, they must formally retain you to represent them in this case.[46]

[45] It is also advisable to get a copy of the client's FBI background check, which will list any out of state records as well. An FBI background check can be obtained at any fingerprinting service provider for a fee. If a client has out of state charges, you can refer them to the Survivor Reentry Project or another organization. You can then work in tandem with the out of state attorney.

[46] It is highly advisable that you have your client sign a limited scope engagement wherein you limit the scope of the representation to the vacatur case. You should consider including language that states you will only represent them in the vacatur matter after you can make a determination that the client is likely eligible for vacatur relief. The reason being that once you review the client's RAP Sheet, you may learn additional information that makes the client ineligible for this relief. Moreover, it is advisable to limit the scope of the representation to the vacatur case because survivors have many legal needs. You need to make clear in writing that you are only their attorney with respect to this legal issue and you do not represent them with respect to any other legal issue that may arise. This will avoid inadvertently creating an attorney-client relationship beyond the vacatur matter.

Here are the steps to requesting a client's DOJ Rap Sheet:

- Fill out BCIA 8700 – Certification of Attorney of Record *– Request for Records (Make sure you are using current version)
- Submit DOJ Report Request to ATTYOFRECORDRESPONSE@doj.ca.gov with subject line "Attn: Research Reconciliation & Resolution Section"
- Keep track of when you sent request (you can utilize Google Sheets, an Excel spreadsheet or another system that works for you)
- The DOJ will email you when the report is ready. You will be prompted to create a username/password when you request a report for the first time. You have to log on to view encrypted email whenever a new report is received. It typically takes 24-48 hours to receive the client's DOJ report via email. If you do not receive it in five days, send an email to the above email address to check on the status of the request.

What is included in a RAP Sheet?

- Arrests and detentions [when someone is held as a suspect to a crime]
- Convictions [following a plea or trial]
- Dismissed charges [those charges not pursued after arrest or dismissed by a judge]
- Drug diversion or Deferred Entry Judgment (DEJ) [if a person successfully completes a diversion program, there is no conviction and it is as if the arrest never happened]
- Probation violations
- Applications for professional licenses.
- An entry every time a person is fingerprinted.

* https://oag.ca.gov/system/files/media/bcia-8700.pdf

How to Read a California DOJ RAP Sheet

- Each event on a RAP Sheet is identified by a name and DOB. The names and DOB are listed at the top of the RAP sheet as aliases.
- Each event is separated by asterisks like this: ****.
- Event Organization
  - The event is organized by first listing the arrest or detention information.
  - Next is the county in which the individual was arrested, followed by a file number which usually represents the booking number for the event, but sometimes represents the police or prosecuting agency file number.
  - Next is a list of charges, also called "counts" (CNT), followed by the code violation, such as (647(B) PC) which we read as P.C. 647(B) for Penal Code Section 647(B).
  - When the arresting agency is different than the booking agency, then the arresting agency is listed under the CNT, after "ARR BY".
- Court Action: - - - -
  - When the prosecuting agency (usually District Attorney or City Attorney) decides to prosecute a case, there is court action, represented by a court case number. Each action is separated by dashes, like this - - - -.
  - The court case number is usually included in the action and is located under the - - - - and across from "CNT:001"
  - "DISPO" is short for disposition, which shows what happened to each charge in court. Under DISPO, if a person pleads guilty or was found guilty at trial, the word "Convicted" will follow the count or charge; if the word "Dismissed" follows the count or charge, then that charge or count was dismissed.
  - "Dismissed" counts/charges. Usually the RAP sheet will note the reason or section of the Penal Code that authorized its dismissal. "FOJ" means in furtherance of justice. Notes referring to PC 1203.4, PC 1203.4a, and PC 1203.41 all mean the case was dismissed based on those laws. If a felony was reduced, a note on the RAP sheet will show the law that permitted the reduction, often 17b.

- Not all events result in Court Action, meaning, sometimes the prosecuting agency decides to reject the case rather than prosecute.
- Convictions are dismissed by case number.
    - Typically, when a case is dismissed, then all counts are dismissed. For example, if one person has three felony counts, then a person has one felony case and if it is dismissed then the felony is dismissed.
    - Dismissed convictions show up on RAP sheets. However, those who can see RAP sheets or find out about dismissed convictions are restricted. For example, Labor Code Section 432.7(a) provides that most California employers cannot ask about or consider convictions in making employment decisions.
- When a RAP Sheet is wrong. If a RAP sheet has an error, a person can ask the DOJ to correct it. A person should have corroborating information to send to the DOJ as evidence of the errors, when possible. The DOJ will then check with the County where the conviction took place and correct the record based on what it learns. The process to do so involves submitting a claim of alleged inaccuracy or incompleteness (DOJ form BCIA 8706).

Abbreviations, etc. decoded

<table>
<tr><td colspan="3">Key</td></tr>
<tr><td colspan="3">CII Criminal Identification and Information [anyone who has been fingerprinted [even for employment purposes] has one.</td></tr>
<tr><td>DOB Date of Birth</td><td>NAM: 001 Name given at time of arrest [001 corresponds to alias 001 - there may be many]</td><td>FBI Federal Bureau of Investigation identification number</td></tr>
<tr><td colspan="3">* * * * Signifies a new event/entry on the Rap Sheet. Each event/entry to be vacated must be listed separately in the court order]</td></tr>
<tr><td>ARR/DET/CITE
Arrest/Detention/Citation</td><td>19830620
Represents date of arrest/ detention/citation</td><td>CASO San Diego
Represents the county, and usually the booking agency</td></tr>
<tr><td>CNT:001 Represents count/charge and then first offense charged [there might be several 002, 003, etc.]</td><td colspan="2">CNT: 001 #83-146347A
= The booking number [sometimes this is the police file number such as, when the person is not taken into custody]</td></tr>
<tr><td>Example Charge:
647(B) PC- DISORDERLY CONDUCT: PROSTITUTION
Represents the section, code and description of the offense charged</td><td>TOC: N = no arrest received
TOC: M = misdemeanor arrest
TOC: F = felony arrest</td><td>ARR BY: Arresting agency [but always include the booking agency in the offense chart as well]</td></tr>
<tr><td colspan="3">- - - - Signifies court action taken</td></tr>
<tr><td>19840806
Date charges were filed by prosecuting agency</td><td>CAMC San Diego
[Now SDSC San Diego] Court that has jurisdiction over the case</td><td>CNT: 001 #M457638
= The court case number</td></tr>
</table>

Other Abbreviations

AKA *Also Known As*	**CONV** *Conviction*	**COR** *Certificate of Rehabilitation*
DEJ *Deferred Entry of Judgment*	**DISM** *Dismissed*	**FEL RED** *Felony Reduction*
FTA *Failure to Appear*		
IMP SENT SUSP *A judge can hold off from either imposing or executing the punishment as long as the defendant fulfills the condition of suspension.*		
MISD *Misdemeanor*		
NOLO CONTENDRE *When you plead no contest you are not technically admitting guilt but are still allowing the judge to determine punishment.*		
OR *Released on Own Recognizance*	**PNC** *Plead no contest*	**PROS REJ** *Prosecution rejected*
17b *allows a person convicted of a felony "wobbler" offense to petition the court to reduce the felony to a misdemeanor. A wobbler offense is a crime that can be charged as either a misdemeanor or a felony, depending on the circumstances of the case.*		
Prop 47 *Felony may be/must be reduced to a misdemeanor*		
Prop 64 *Provides for retroactive relief for prior marijuana-related convictions per HS 11361.8(e)-(k).*		

3. Preparing an Offense Chart

Preparing an offense chart can help streamline your review of the charges. The offense chart should be included in the proposed order and petition. You may also want to include it in the client declaration.

COUNTY #1

Offense Date	CNT: Arrested Offense	Arresting Agency	Sheriff's Booking No.	Prosec. Agency	Court Case No.	CNT: Convicted Offense
Arrest Date		Agency No.				

COUNTY #2

Offense Date	CNT: Arrested Offense	Arresting Agency	Sheriff's Booking No.	Prosec. Agency	Court Case No.	CNT: Convicted Offense
Arrest Date		Agency No.				

- Only include the Arrest Date if different from the Offense Date.
- Agency No. can be found on the Police Report if obtained or in file.
- Sheriff's Booking No. is the number across from CNT:01 #XXXXXXXA
- Prosecuting Agency: City Attorney or District Attorney
- Case No. only if the charges were prosecuted

Key for Common Offenses

HS 11350(A)	POSSESS NARC CONTROL SUBSTANCE
HS 11364	POSSESS CONTROL SUBSTANCE PARAPHERNA
HS 11377(A)	POSSESS CONTROLLED SUBSTANCE
HS 11379(A)	TRANSPORT ETC/CNTL SUBSTANCE
HS 11550(A)	USE/UNDER INFL CONTRLD SUBSTANCE
PC 136.1(B)(1)	ATT PRVNT/ETC VICTIM/ETC:REPORT
PC 148.9(A)	FALSE ID TO SPECIFIC PEACE OFFICERS
PC 182(A)(4)	CONSPIRACY: DEFRAUD/ETC PERSON
PC 211	ROBBERY
PC 242	BATTERY
PC 242	BAT: SPOUSE/EX SPOUSE/DATE/ETC
PC 245(A)(1)	FORCE/ADW NOT FIREARM-GBI LIKELY
PC 415(3)	OFFENSIVE WORKS IN PUBLIC PLACE
PC 417(A)(1)	EXHIBIT DEADLY WEAPON; NOT FIREARM
PC 422	THREATEN CRIME W/INTENT TO TERRORIZE
PC 459	BURGLARY
PC 460(B)	BURGLARY:SECOND DEGREE
PC 466	POSSESS/ETC BURGLARY TOOLS
PC 470(A)	FORGERY
PC 484/488	THEFT/PETTY THEFT
PC 484E(3)	PT OF CREDIT CARD: SELL W/INT DEFRAUD
PC 484E(C)	SELL/ETC ACCESS CARD:INT; DEFRAUD
PC 484G	THEFT BY USE OF ACCESS CARD DATA
PC 484/666	THEFT/PETTY THEFT W/PRIOR
PC 487(C)	GRAND THEFT FROM PERSON

Key for Common Offenses

PC 488	PETTY THEFT
PC 496.1	RECEIVE/ETC KNOWN STOLEN PROPERTY
PC 496(A)	RECEIVE/ETC KNOWN STOLEN PROPERTY
PC 496(C)	RECEIVE/ETC KNOWN STOLEN PROPERTY
PC 496(D)	POSSESS STOLEN VEHICLE/VESSEL/ETC
PC 647(B)	DISORDERLY CONDUCT: PROSTITUTION
PC 667.5(B)	PR PRISON:NEW FELONY:ENHANCE TERM
PC 1170(H)	SENTENCING
PC 1320.5	FAILURE TO APPEAR ON FELONY CHARGE
PC 3056	VIOLATION OF PAROLE-FELONY
PC 3454	PRCS: FLASH INCARCERATION
PC 3455	POST RELEASE COMMUNITY SUPV VIOLATION
PC 12020(A)	POSSESS/MFG/SELL DANGEROUS WPN/ETC
PC 12403.7(A)(8)	ILL USE TEAR GAS/TEAR GAS WPN
PC 12403.7(E)(1)	POS/ETC PROJECTILE TR GAS WPN
PC 12403.7(G)	ILL USE OF TEARGAS.TEARGAS WPN
PC 12420	SEE/ETC/ TEAR GAS/TEAR GAS WPN
VC 10851(A)	TAKE VEH W/O OWN CONSENT/VEH THEFT
VC 10852	TAMPER WITH VEHICLE

4. Review RAP Sheet with Client for Vacatur Eligibility

Once you have obtained the client's RAP Sheet and prepared the offense chart, the next step is to review the RAP Sheet with your client. Go through each charge on the RAP Sheet and ask your client about the facts and circumstances surrounding the arrest/conviction. Here you are starting to get into the "related to" element. You are doing a second-level screening to see if the charge is related to their victimization. You are discussing this with the client again because clients often cannot recall all of the cases at the screening stage. The DOJ report will help fill in any blanks and gather additional information from the client relating to each arrest/conviction.

In order to do this, you need to know the timing of the victimization and if the circumstances surrounding the case happened before, during or after the victimization. You also want to know if the perpetrator was directly or indirectly involved in the case. Again, you're looking for "but for" causation - but for the victimization, they would not have incurred this criminal charge. In the event some of the charges are not eligible for vacatur, you can still vacate any charges that are eligible. It is also possible the survivor may be eligible to obtain another form of post conviction relief for those convictions not eligible for vacatur under P.C. §§ 236.14 or 236.15.[47] Just be sure to explain this to your client (verbally and in writing) to ensure they are clear on what you can and cannot do in this case.

[47] *See* ILRC practice advisory for broader post-conviction relief options. https://www.ilrc.org/sites/default/files/2023-02/New%20Options%20for%20Survivors%20of%20Trafficking%20and%20Domestic%20Violence.pdf

5. Clearing Open Warrants

When you review a client's RAP sheet, you may see a reference to a warrant. You will need to make sure that any warrants that show up on the client's RAP sheet are, in fact, closed out – and assist the client in closing them if they are still open. It is not uncommon for old warrants that were never dealt with to remain open.

In addition, sometimes a client recalls having an open warrant in a certain county, but it may not show up on the RAP sheet. It is possible that the client was arrested in that county for an open warrant in another county and that they do not in fact have an open warrant. Or they may have an open warrant that just is not showing up on their RAP sheet. In cases like this, it is good practice to reach out to the public defender's office in the jurisdiction(s) in question to inquire if there is an open warrant (follow the "Process for Checking on Warrants" section, below).

Finally, in rare instances you may find that when you send the client's declaration to the prosecuting agency(ies), they note there is an open warrant in their system that did not appear on the client's RAP sheet. In these instances, you can work with the prosecuting agency to recall the warrant, or you can reach out to the Public Defender's Office in the jurisdiction where the warrant is located (or where the originating case is located) to ask if they can help you recall the open warrant(s).

STEP ONE: Determine Warrants Listed on the Client's RAP Sheet

Start from the top of the RAP Sheet and scroll through until you see that a "warrant" entry appears. **The warrant number that is listed is the same as the originating case number.** The warrant number comes from the originating case number. You want to match the warrant entries to the related case entries.

How to Match the Warrant Entries to the Corresponding Case Entries

- Locate the first time the word "warrant" appears. See if there is any court action that is attached (directly follows).
- If there is a warrant entry that is just an arrest, with no court action, this means that the client was arrested for this warrant, but there is no court action that occurred. If that happens, keep looking through the RAP sheet to find that same warrant number with court information (*a related court case*).

- Note where the related court case is from (City or County). The court case associated should be the same number associated with the warrant. The case # will be the same as the warrant # that appears in the earlier entries that don't have court action, so you know it is the same). **The most important information you'll need to ask about the status of the warrant and to recall an active warrant will come from the arrest entry and related court case entry.**
- **You'll know you have the right information because you'll see * * * * [arrest info that relates to a warrant] followed by - - - - [court info that relates to the warrant] followed by * * * *.** All the information between the two sets of * * * * is one related grouping of information.
- Next, create a warrant chart for yourself, and plug in the arrest and court information from the RAP Sheet into the client's chart. This helps you stay organized.

The warrant chart can include the following columns:

- Client Date of Birth;
- Arrest Date;
- Arresting Agency;
- Court Date and County;
- Case #; Misdemeanor or Felony;
- Charge(s); Public Defender Contact Information;
- Notes (anything you find out after reviewing the RAP sheet or contacting the Public Defender).

- Continue going through the RAP sheet, noting any other warrants and find their related arrest and court action entries for each warrant. Add this information to the client's chart.

TIP: Write down all warrant numbers that you find on the RAP sheet so you don't lose track of any.

STEP TWO: Confirm the Status of Each Warrant

Process for Checking on the Status of Warrants:

- Have Client's Name, DOB, and Warrant #/Court Case # ready
- Contact the Public Defender's Office in the jurisdiction of the courthouse which issued the warrant (where the warrant is located). The Public Defender's offices are often responsive to these requests.
- To find the Public Defender's contact information, Google the office (for example, "San Diego Public Defender's Office") and you can locate the appropriate phone number for the office. Call the main line. If the Client has multiple warrants, call the main line of each Public Defender office (each office where the client has a warrant). Make sure you have the client's info handy (all the info in the chart).
- If the Public Defender's Office did not handle the case, they should be able to tell you if the client had a private attorney or if the client handled the warrant in a self-represented manner.
- Inform the Public Defender's office that you represent Client in a post-conviction relief matter and you are calling to confirm if the client has an active warrant. Provide the Public Defender's office with client's information.

TIP: In large counties with multiple Public Defender's offices, you can usually call one PD Office and ask if they are able to see other warrants in the County.

Questions to ask if warrant is ACTIVE:

- What is the status of the case?
- Who is handling the warrant? What attorney is assigned to the case?
- What is outstanding? (Fees/probation/etc.)

If the Public Defender's office is handling the case, ask to be connected to the attorney handling the case. Ask the attorney/Public Defender's office if they can help recall the warrant. Every jurisdiction is a little different, so follow whatever process the Public Defender provides. For example, if the Public Defender's office agrees to help get the warrant recalled, you may need to connect the client to them, or you may need to provide a letter, etc.

Ask the Public Defender to keep you updated as to the progress of the warrant recall.

Questions to ask if warrant is CLOSED:

- When was it closed?
- Is there anything outstanding? (fees/probation)

6. Obtain Files from Underlying Case(s)

It is often helpful to get copies of the case files from the attorney that represented the client in the underlying case(s). You'll want to find out from your client if they had a public defender or private attorney. Then you'll need your client to sign a release of information that authorizes their previous attorney to give you their case file. Then, send the release of information to the attorney requesting a copy of the case file.

If you are unable to obtain a copy of the case file(s), consider ordering conviction documents directly from the court of conviction (e.g. case summary, minute orders, abstract of judgment, etc.). Some jurisdictions have an online system that allows you to request specific documents for minimal cost. You can also try to get records from the prosector and/or law enforcement.

In some cases it can be challenging to get a copy of the client's case file. In the event you have a hard time getting these files, you should consider how helpful they will be in your case. For example, if the charge is for P.C. 647(b) prostitution, and the arrest took place during the time they were being trafficked, you likely do not need a copy of the case file because the nexus between the charge and the trafficking should be apparent. Moreover, the prosecution is unlikely to challenge the facts of the case. In contrast, if the case involves charges where: (1) the nexus is less clear; (2) the charges are more serious; and/or (3) the client does not clearly recollect the facts of the case you should try your best to get copies of the case file.

7. Drafting Client Declaration

Drafting the client's declaration is the most time consuming part of the vacatur process. You will need to tell your client's story in a manner that satisfies each element of the vacatur statute. You will do this by interviewing the client and using the information you gather in those interviews to prepare the declaration. This can be a time consuming process, given that the length of the declaration drafting process is directly correlated to the client's ability to recall and convey important information. For some clients, the difficulty of detailing their traumatic history results in a slower process. For those survivors who are interested, it can be helpful for them to connect with a mental health professional to get further support since recounting details of their victimization can be retraumatizing.

In deciding what level of detail, you will want to balance the desire not to unnecessarily retraumatize your client with the need to meet the legal requirements for the vacatur petition. If the client feels strongly about including certain information, you should honor that choice since the vacatur is a tool for healing for some survivors. However, it is important to let your client know they have a right to privacy of their story and they do not need to share all of the details. You should also inform your client that what they do share will be provided to the prosecution and it could be used against them if the vacatur petition is opposed and a further hearing is necessary.

The declaration should be organized into sections to help the reader understand the story. Let the client know that they will have the opportunity to review the declaration before it is finalized and submitted to the Court. This is their story and they control it. If there is anything they are not comfortable including they can tell you and you can discuss together and see if it is something that can be omitted. Below are suggested sections for the declaration.

I AM A VICTIM OF HUMAN TRAFFICKING/SEXUAL VIOLENCE/INTIMATE PARTNER VIOLENCE

- **Childhood/Early Years**
  - ☐ This section should include information about the petitioner's life that are relevant to their petition
  - ☐ Include any information about the factors that made them vulnerable to victimization. This may include instances of child abuse, neglect, sexual violence, abuse in the home, loss of a partent or family member, foster system involvement, drug and alcohol use, poverty, etc.
- **Beginnings of Victimization**
  - ☐ In the case of human trafficking, this is referred to as grooming/ recruitment
  - ☐ How and when they first meet their perpetrator
  - ☐ The dynamics of that relationship
  - ☐ How long they knew the perpetrator before they victimized them
  - ☐ Note: in the case of trafficking victims, they may be extremely reticent to name their perpetrator in the pleadings. You can use initials or a label such as "trafficker #1" to identify the perpetrator instead of their real name.
- **Experience(s) of HT/SV/IPV**
  - ☐ Discuss specific experiences of HT/SV/IPV.
  - ☐ Note that this is often the hardest part of the story to discuss. Wait until you have established trust with your client before delving into these experiences. Let your client know that they do not have to tell you everything that happened. If you need more details you will ask.

I WAS CHARGED WITH A/SEVERAL NON-VIOLENT CRIMES AND THESE CRIMES WERE DIRECTLY RELATED TO MY VICTIMIZATION

- In a case with relatively few charges, you can write a narrative about the circumstances surrounding each charge and the ultimate outcome of the case. In cases where there are extensive charges, it may not be feasible to discuss the details of each charge. Instead, you can provide the most relevant information about the charges and how they are related to the trafficking broadly. In either case, it is always helpful to include a chart that lists all of the charges.
- You need to establish the nexus between the criminal activity and being a victim at the time the criminal activity took place.
- If you are representing a noncitizen survivor, keep in mind that they may have already submitted a T Visa or other affirmative immigration petition and it is extremely important that there is consistency across these petitions. So you should reach out to the survivor's immigration attorney to request a copy of any immigration petitions previously filed and review them before filing their vacatur petition. If no immigration petition has been filed yet but the immigration attorney is currently preparing to file, you should provide them with a copy of the declaration to review before filing the vacatur petition. This will help avoid any inconsistencies and prevent the inclusion of any details in the vacatur petition that might inadvertently prejudice the client in terms of their immigration case.

8. Gather Corroborating and Supporting Documents

The vacatur statutes provide that official documentation of a petitioner's status as a victim of human trafficking, intimate partner violence or sexual violence may be introduced as evidence that their participation in the offense was the result of their status as a victim. The statutes define "official documentation" as "any documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of [human trafficking] intimate partner violence or sexual violence." Examples of "official documentation" include: indictments against the trafficker naming petitioner as a victim, redacted T visa approval notices, and other vacaturs that have been granted. That being said, there is no requirement that petitioner include "official documentation" with their vacatur petition.[48]

In addition to "official documentation," a petition may include a variety of unofficial documentation. Be creative and think outside the box. A petitioner can include any documents that corroborate any part of the survivor's story.

Examples of documents that may corroborate a survivor's story include:

- declarations from friends or family
- medical records
- school transcripts
- certificates
- degrees
- letters from social services providers or other programs the survivor participated in
- court orders and records from other court cases
- employment records
- social media posts
- text messages
- emails
- denials of employment
- photographs

You can provide these documents as exhibits to the survivor's declaration, or you can submit a supplemental declaration to authenticate the documents. The list above is not exhaustive and there may also be situations where no additional documentation is available.

[48] P.C. §§ 236.14(m) and 236.15(m).

Please keep in mind that many vacatur petitions are successful with no such additional supporting documentation. Also, as discussed above, you should balance the need to satisfy the legal requirements with what is best for your client's well-being. That means being thoughtful in what evidence you use to support your client's petition.

We also recommend providing documentation of fees/fines that the petitioner had to pay for the vacated convictions so that you can request a refund in the petition. If refunds are necessary, it is important to ensure that language is placed in the order. In *Nelson v. Colorado*,[49] the U.S. Supreme Court held that states cannot keep fines and other money from people who were wrongfully convicted. Not only is enforcing the refund of property confiscated through fines and fees for a conviction that is vacated enforcing a constitutional right for unlawful seizure of property, it also adds to the healing of a survivor and sense of justice for survivors that go through the vacatur process.

9. Petition Drafting

The petition is the primary legal pleading in a vacatur case. The petition should address each element of the vacatur statute and refer to supporting documents to support the facts set forth in the petition. Keep in mind many prosecutors and courts are unfamiliar with human trafficking and the vacatur statutes so the petition is an opportunity to educate them and fill in any knowledge gaps.

[49] *Nelson v. Colorado*, 581 U.S. ___ (2017).

Petition Sections:

- Case Summary
- Procedural History
- Introduction to Vacatur
- Procedure Under P.C. §§ 236.14 and/or 236.15
- Background on Human Trafficking (in P.C. § 236.14 cases)
- Legal Argument (addressing each element of vacatur).
    - You'll want to include your offense chart here at the beginning of the section that discusses the nexus between the victimization and the charges
- Conclusion

10. Multi-Jurisdictional Consolidated Petitions

The vacatur statutes recognize that victims may have been criminalized in multiple jurisdictions. Penal Code §§ 236.14(e) and 236.15(e) permit the filing of a single consolidated petition with multiple convictions from different jurisdictions as long as petitioner and all prosecutorial agencies agree to consolidation.

In order to seek a stipulation, you will need to reach out to the prosecutorial agency in each jurisdiction and ask them if they will stipulate to consolidation. Be sure to include your vacatur materials with this request so they have the information they need to consider your request. In that communication, it is advisable to ask them if they will stipulate to vacatur as well. This will streamline the vacatur process for your client. Moreover, it is unlikely that a jurisdiction opposed to the petition will agree to consolidation without also stipulating to the vacatur itself. If they are opposed to the petition, they will likely want to litigate it themselves.

Sometimes, it is quite challenging to determine which agency is the correct prosecuting agency or what specific individual within an office is responsible for reviewing vacatur petitions. A good starting point is looking at a prosecuting agency's website to determine which types of cases they are responsible for prosecuting. For example, the San Diego City Attorney's Office website explains that its criminal division "prosecutes criminal misdemeanors and infractions committed within the City limits." **(Criminal & Community Justice Divisions | City of San Diego Official Website).**

By comparison, the San Diego County District Attorney's Office website states that it is "responsible for prosecuting felony crimes committed in the County," and "misdemeanor offenses that occur outside the City of San Diego." **(About SDCDA - San Diego County District Attorney).**

Often, you can use this type of publicly available information in conjunction with information from your client's RAP sheet to deduce which prosecuting agency to make contact with. From there, you can start the process of identifying which prosecutor within the office you need to speak with. Typically, if you are dealing with a human trafficking case, you will want to ask if there is a prosecutor assigned to human trafficking cases. In the alternative, you can start with the sex crimes unit. In some situations, it's not as straightforward and it can take weeks or even months to get this information. Be persistent and savvy. Also, reach out to practitioners in that jurisdiction to see if they have any contacts.

11. Stipulated Petitions

Even in cases involving a single jurisdiction, you should consider reaching out to the prosecutorial agency pre-filing to see if they are willing to stipulate to vacatur. If you do a lot of vacatur work in a particular jurisdiction, take the time to get to know the prosecutor(s) responsible for reviewing vacatur petitions. Find out if they have anything in particular they would like you to include with your request. You may also have the opportunity to develop a collaborative process for these cases. In San Diego, the District Attorney and City Attorney have assigned a specific prosecutor to review vacatur petitions and they work very collaboratively with vacatur attorneys. While this may be a novel arrangement outside of San Diego, much of this success comes down to: (1) leadership from the top in support of these cases and this process; and (2) cultivating collaborative relationships rather than taking an adversarial approach.

12. File Vacatur Packet with Court

Filing a vacatur packet at times can be an adventure. You may get to the clerk's office and the clerk might be unfamiliar with the vacatur process or the court might not have a set process. There is also high turnover in clerk's offices so experienced clerks might have left. This can make filing extremely challenging and frustrating. This may seem obvious, but vacatur cases are criminal post-conviction cases and should be filed in a criminal court.[50] Think of each and every step in this case as an opportunity to educate courts and prosecutors about the unjust criminalization of victims of human trafficking, interpersonal and sexual violence. Your advocacy for your client includes this seemingly simple step in the process. If you experience a clerk new to vacatur take an extra effort to not just explain what you are trying to do but why this relief is needed.

When you file your vacatur petition, you want to ensure that the filings are confidential. Not all courts have procedures for confidential filings. If you are filing in a jurisdiction that does not automatically seal vacatur filings, you will need to include a motion to seal and proposed order on the motion to seal with your vacatur filing. Moreover, you should encourage the prosecutor and the court to destroy the records after their review to ensure that all vacatur-related documents are destroyed.

13. Opposition

The prosecution has 45 days from the date of receipt of service to file an opposition.[51] If no opposition is filed, then the court may deem the petition unopposed.[52] The court may grant the petition or set a hearing.

[50] More than once, a clerk unfamiliar with vacatur has instructed attorneys to file a vacatur petition in civil court.
[51] P.C. §§ 236.14(c) and 236.15(c).
[52] P.C. §§ 236.14(c) and 236.15(c).

14. Hearing

The vacatur statutes provide for a hearing if the petition is opposed or if the court otherwise deems it necessary.[53] Typically courts do not hold an evidentiary hearing when a petition is unopposed. The court may, however, hold a hearing for the purposes of ruling on the unopposed motion. If a court sets a hearing, reach out to the clerk to find out if the court intends to hear evidence at the hearing.

An evidentiary hearing may consist of the following:

(1) Testimony by the petitioner, which may be required in support of the petition.

(2) Additional testimony in support of the petition. For example: a human trafficking expert, a forensic psychologist, trauma expert, social worker/case manager, percipient witnesses or family members.

(3) Testimony presented by the prosecutorial agency such as expert witnesses.[54]

Both statutes have slightly different language regarding the petitioner's appearance at the hearing.

P.C. § 236.14(n) states: "If the petition is unopposed, the petitioner may appear at all hearings on the petition, if any, by counsel. If the petition is opposed and the court orders a hearing for relief on the petition, the petitioner shall appear in person unless the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear by telephone, videoconference, or by other electronic means

[53] P.C. §§ 236.14(f) and 236.15(f).
[54] P.C. §§ 236.14(f) and 236.15(f).

established by the court." For a hearing on an unopposed petition, it's a good idea to contact the clerk ahead of time to find out if you need to appear, or if the judge will be reviewing the pleadings in chambers.

P.C. §236.15(n) states: "A petitioner, or their attorney, may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear telephonically, via videoconference, or by other electronic means established by the court."

In the case of a contested hearing, petitioner's attorney should consider hiring an expert witness to testify on subjects including, but not limited to: educating the court about the dynamics of human trafficking and the mental health impacts of HT, IPV and/or SV.

Although most petitions are not opposed, it is important to prepare the petition with the possibility that you may encounter an opposition. It is important to be mindful of what is included in the initial petition and avoid inconsistent statements as much as possible. Be mindful of what evidence is included and determine whether it is necessary to include because evidence included to prove trafficking victimization may be used against the petitioner. Only include pertinent information in the narrative declaration of the survivor that is related to the trafficking to ensure that the prosecution and the court focus on the trafficking victimization and not other unintended areas like rehabilitation of the survivor or invasive and unrelated questioning about a petitioner's health or alleged drug-addiction.

15. Order Vacating Records

A vacatur order should do all of the following:

(1) Set forth a finding that the petitioner was a victim of human trafficking at the time of the alleged commission of the qualifying crime and therefore lacked the requisite intent to commit the offense.

(2) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of arrest or conviction.

(3) Notify the Department of Justice that the petitioner was a victim of human trafficking when they committed the crime and of the relief that has been ordered.[55]

If your client paid any fines and fees, you should also include in the order that the fines and fees shall be refunded.

Note that some courts may have a specific template they require for vacatur hearings. If you are uncertain as to the court's preference, you can inquire with the clerk of court.

P.C. 236.14 (k)(1) states that: "If the court issues an order as described in subdivision (a) or (j), the court shall also order all of the following agencies to seal and destroy their records:

(A) Any law enforcement agency having jurisdiction over the offense.

(B) The Department of Justice.

[55] P.C. §§ 236.14(h) and 236.15(h).

(C) Any law enforcement agency that arrested the petitioner.

(D) Any law enforcement agency that participated in the arrest of the petitioner.

(E) 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."

It goes on to state in paragraph (3) that: "The court shall provide the petitioner a certified copy of any court order concerning the sealing and destruction of the arrest records. The court shall provide the petitioner and petitioner's counsel a copy of any form that the court submits to any agency, including the Department of Justice, related to the sealing and destruction of the arrest records."

Ensure that the final order contains language that mirrors the statute to allow for notification of the sealing and destruction of records not only from DOJ and the law enforcement entities, but also from any other governmental agency that may have criminal records in connection with the vacated arrest or convictions including the DMV.

16. Post-Order Compliance

Your work is not over when the court grants your vacatur petition. At that juncture, the court's order is merely a piece of paper saying your client is entitled to vacatur relief. In the absence of compliance from the DOJ and law enforcement agencies, it will remain a piece of paper with zero impact. Unfortunately, like other steps in this process, post-order compliance can be surprisingly cumbersome.

The statutes have different requirements when it comes to post order compliance.

P.C. §236.14 (k)(2) provides that: "Any government agency described in paragraph (1) shall seal their records of arrest and the court order 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 agency shall thereafter 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."

P.C. §236.15(k) states that: "If the court issues an order as described in subdivision (a) or (j), the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records **within three years from the date of the arrest or within one year after the court order is granted, whichever occurs later** and thereafter to destroy their records of the arrest and the court order to seal and destroy those records."

Once the statutory period for compliance has passed, re-run your client's RAP Sheet and check it against the court order to ensure any reference to the vacated charge(s) no longer appear. In the event your client's record is not completely cleared after the statutory time period, assist your client in submitting a "Claim of Alleged Inaccuracy or Incompleteness" **(DOJ form BCIA 8706)**. Submit a copy of the court order vacating the records along with the form.

IX. TRAUMA AND HT, IPV AND SV

In this section we will provide some broad definitions to further explain trauma and its impacts on survivors to help prepare attorneys to successfully engage with their vacatur clients and do this work in a way that is as trauma-informed as possible. This section is a very high level overview. Anyone working on vacatur cases should receive in depth training on trauma-informed legal skills prior to working with survivors.

1. Trauma

Trauma is an individual's personal experience of an event(s) or enduring condition (can be a singular event or chronic events), where the person's ability to integrate their emotions are overwhelmed or the person experiences a threat to their life, bodily integrity or sanity.[56]

2. Impact of Trauma on HT/IPV/SA Victims/Survivors

- **Physiological:**
  - Traumatic events activate the body's stress response system, including the amygdala, prefrontal cortex and hippocampus. Trauma victims have smaller amygdala, which can result in hypersensitivity. When the amygdala is engaged, it sends a signal to speed heart rate, raise blood pressure, and release hormones such as adrenaline and cortisol. The engagement of the amygdala also inhibits the prefrontal cortex, which controls judgment and impulse control and the hippocampus, which aids in effective recollection of events.[57]
  - Result: Overactivity of a person's stress response system affects a person's behaviors and decision-making abilities.
  - Result: Survivors may only have access to fragmented non-sequential memories.
  - Result: Without buffers from healthy social relationships and/or stable environments, these changes may lead to short and long-term difficulties on physical and mental health.

---

[56] "Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders". Shared Hope International (2020) page 8. https://sharedhope.org/wp-content/uploads/2020/01/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL.pdf
[57] *Id.*

- Result: Toxic stress which is the result of repeated heightened stress responses, can impair the nervous, cardiac, endocrine and immune system, increasing the likelihood of chronic health conditions.[58]

- **Psychological:**
  - May lead to a sense of hopelessness, anger, inability to recall, loss of sleep, distrustfulness, disassociation or difficulty concentrating.
  - May lead to an exaggerated startle response, hypervigilance, efforts to avoid any reminders of the traumatic event, self-mutilation, suicidal behaviors or increased risk taking.
  - At high risk for multiple mental and behavioral problems, especially: depression, anxiety, PTSD.
  - Co-occurring substance abuse issues are especially common among human trafficking victims because substances may be used as a coping mechanism, as a method of dissociation, or may have been used as a means of coercion by traffickers.[59]

- **Complex Trauma:**
  - Children and adolescents exposed to multiple traumatic events experience "complex trauma", meaning, they experience immediate and long-term consequences of the traumatic experiences they were exposed to.
  - Victims of IPV, HT, refugee/asylee trauma and family violence may experience complex trauma due to the often prolonged and repetitive nature of the trauma.
  - May result from severe exploitation, direct harm, maltreatment, or from being in a position of disempowerment or dependency.

3. Trauma Response of a Trafficking Victim-Offender

- Crisis reaction: a crime victim's reaction to a crime; depends on a victim's level of personal violation they experience and their state of equilibrium at the time of victimization.

---

58 *Id.*
59 *See Id.*

- Past experiences relevant. Trafficking victims that have experienced violence and trauma in the past, prior to their trafficking victimization, may already have an altered state of equilibrium at the time of their trafficking victimization.
- Result: Victims may engage in behaviors that violate the law.
- High levels of trauma exposure correspond with anger, verbal and physical aggression.
- Significance of cumulative trauma. Higher cumulative trauma is a predictor of greater anger/aggressive behavior.
- Compulsion to the Trauma. A term used to describe the link between unresolved trauma and criminal behavior.
- Chronic trauma may evolve into a dysfunctional routine, creating a link between experience of trauma as a victim and later experience of trauma as a perpetrator.
- Trauma may urge individuals to engage in greater risk-taking behavior or in seeking out dangerous and sensational situations as part of compulsive re-exposure to trauma as an attempt to heal unresolved trauma through reenactment of earlier experiences, this may include harm to others and criminal activity.

4. Trauma Bonding

Victims often feel a bond with their traffickers/abusers where they develop positive, loving, or loyal feelings toward the very people that are hurting and/or exploiting them. This is especially true if the victim was exposed to past trauma, neglect, abuse, etc., because they may view their trafficker as the only person who ever loved them.

5. Protective Measures

Victims may engage in forced criminality as a way to protect themselves. They might recruit or force others to engage in criminal acts to avoid violence from a trafficker or have a lower quota themselves, meaning they would be harmed less and therefore face less exposure to ongoing violence.[60]

---

60 *See Id.*

X. ORGANIZATIONS/AGENCIES OFFERING FREE VACATUR LEGAL SERVICES IN CALIFORNIA[61]

Organizations/ Agencies	Jurisdiction(s)/ Counties	Website
Office of the San Diego County Public Defender - Fresh Start Program	San Diego	https://www.sandiegocounty.gov/content/sdc/public_defender/fresh_start.html
Justice at Last	Alameda Contra Costa Merced Marin Monterey Napa Santa Cruz Santa Clara San Francisco San Mateo Sonoma	https://www.justiceatlast.org
Neighborhood Legal Services of Los Angeles	Los Angeles	https://nlsla.org
A New Way of Life	Los Angeles	https://anewwayoflife.org
Los Angeles Center for Law and Justice	Los Angeles	https://www.laclj.org
Free to Thrive	San Diego	https://www.freetothrive.org
Freedom Network USA - Survivor Reentry Project	Nationwide	https://freedomnetworkusa.org/advocacy/survivor-reentry-project

[60] Note, various public defender's offices throughout the state and other organizations may offer vacatur services as well. Also, there are additional organizations that provide vacatur services but requested not to be listed due to limited capacity. There is a huge need for additional funding for vacatur services in California to expand the capacity of existing service providers and encourage other providers to offer these services.

Organizations/ Agencies	Jurisdiction(s)/ Counties	Website
Alliance to Lead Impact in Global Human Trafficking ("ALIGHT")	Los Angeles	https://alightnet.org
San Francisco Public Defender - Clean Slate Program	San Francisco	https://sfpublicdefender.org/services/clean-slate/clean-slate-application/

Thank you for taking the time to review this Practice Guide. We hope it is a valuable resource for you as you work to support survivors in criminal vacatur cases. Your efforts are truly transformative, helping to break down barriers and create new opportunities for those who need them most. We wish you every success in your work, assisting survivors in obtaining vacatur and achieving the stability and healing that come with this crucial form of relief. Please save this guide as a reference tool and share it widely within your network, so that more attorneys and survivors can benefit.