

HOW TO OBTAIN VACATUR FOR HT SURVIVORS

Overview

“A perpetrator of human trafficking uses force, fraud, or coercion to compel labor, services, or commercial sex from his or her victims. Many victims of this crime are forced to commit crimes themselves during the course of their exploitation. As a result, victims are often arrested, detained, prosecuted, convicted of or have pled guilty to criminal charges. These convictions can result in a lifetime of limited access to critical opportunities for survivors such as: jobs, loans, immigration visas, or educational programs. States can help survivors overcome these barriers by enacting statutes that authorize courts to vacate convictions that were the result of being trafficked. A vacating convictions statute offers survivors a life without the stigma or challenges that come with a criminal record.”¹

The outcome of vacatur varies by state. It is important to know how a survivor’s criminal record or other official documents will reflect a vacated conviction. In some states, an order of expungement accompanies the vacatur. In most states, this will remove the charge from criminal records. Many states have only enacted expungement statutes, which remove the charge from the record, but not the conviction. For survivors, the effect of expungement alone will depend on the state. Consult the law in your state to determine what types of action will be required to provide the best protection for survivors.²

Step-by-Step

- Is your client a human trafficking survivor? Do they fit into that client population?
- Not all states offer vacatur, and some offer only sealing of records or expungement. Look at your state’s law to determine the next steps to take. 35 states have a vacatur provision that could be used for a victim of human trafficking. The 15 states that do not have a vacatur provision are: Alabama, Alaska, Arkansas, Colorado, Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Nebraska, Oklahoma, South Dakota, Tennessee, Virginia [DC also does not have a vacatur provision].³

¹ Polaris Project, Human Trafficking Issue Brief: Vacating Convictions (2015)

<https://polarisproject.org/sites/default/files/2015%20Vacating%20Convictions%20Issue%20Brief.pdf>

² Polaris Project, State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking (2019)

<https://polarisproject.org/sites/default/files/Grading%20Criminal%20Record%20Relief%20Laws%20for%20Survivors%20of%20Human%20Trafficking.pdf>

³ Shared Hope International, National State Law Survey: Expungement and Vacatur Laws (2017)

https://sharedhope.org/wp-content/uploads/2016/03/NSL_Survey_Expungement-and-Vacatur-Laws.pdf



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- The Polaris Project provides grades for states with vacatur statutes for victims of human trafficking: The top 5 states with effective vacatur laws are Nebraska, Wyoming, Florida, Idaho, and D.C. The bottom 5 are Maryland, Texas, Arizona, Kansas, and Hawaii. States with higher rankings provide the most extensive relief, cover the most offenses, provide lengthy statutes of limitation, and otherwise provide a more effective and confidential process for survivors.⁴
- Compare what is on your client’s RAP sheet with what is in your state’s statute for vacatur.
- If your client meets the elements of the statute, draft a narrative for them for their vacatur petition.
- Know your state’s process for filing vacatur petitions.⁵

How to Draft Client Narratives for Vacatur Petitions

1. Create a timeline of your client’s experiences with your client. This timeline should include “important landmarks (birth of children, world events); arrest history (including even sealed cases, unrelated arrests, and arrests of relevant individuals); educational accomplishments; or sobriety.”
2. Collect corroborating evidence, such as firsthand accounts of your client’s experiences, or documentation of school records.
3. If possible, collect official documentation that shows your client was a victim of human trafficking.
4. Use “trauma-informed strategies” to help your client tell their story.⁶

⁴ Polaris Project, State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking (2019) <https://polarisproject.org/sites/default/files/Grading%20Criminal%20Record%20Relief%20Laws%20for%20Survivors%20of%20Human%20Trafficking.pdf>

⁵ Free to Thrive, Jamie Beck <https://freetothrive.org>

⁶ ABA Survivor Re-entry Project, Post-Conviction Advocacy for Survivors of Human Trafficking (2016) https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.pdf



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Resources

For an example of a vacatur petition, see the following (form for vacatur in California, San Diego County):

Stipulated Petition for and Declaration in Support of Relief Pursuant to Penal Code §236.14
<https://www.courts.ca.gov/documents/BTB24-PreCon1D-03.pdf>

For more information on vacatur by state, see the following website:

Restoration of Rights Project, *50-State Comparison: Judicial Expungement, Sealing, and Set-aside* (2019)
<https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>

For more information on vacatur solutions for survivors of human trafficking, see the following website:

ABA Survivor Re-entry Project, *Workable Solutions for Criminal Record Relief*
https://www.americanbar.org/groups/domestic_violence/survivor-reentry-project/workable-solutions-report/

For a list of effective vacatur law attributes, see the following blog entry:

Journal of Gender, Social Policy, and the Law, Rudy Castillo (2016)
<http://www.jgspl.org/vacatur-laws-decriminalizing-sex-trafficking-survivors/>

