

Penal Code § 236.14 – Fact Sheet

Vacating Arrests & Convictions for Victims of Human Trafficking

1. Background

On January 1, 2017, a new law went into effect, Penal Code (P.C.) section 236.14. This law was enacted pursuant to Senate Bill 823 (Block), a bill designed to give victims of human trafficking a fresh start by creating a pathway to erase any nonviolent arrests and convictions from their records.¹

2. What does P.C. § 236.14 do?

Under the new law, victims of human trafficking who have been arrested, convicted, or adjudicated in juvenile court for a non-violent offense as a result of being a victim can petition the court to have the offense vacated. If the petition is granted, the records are sealed and destroyed, and the individual may lawfully state that he or she has never been arrested, convicted, or adjudicated.

3. Who is eligible for relief under P.C. § 236.14?

This law applies to *any person*, adult or minor; however, use special care when advising clients under 21 who may be receiving extended foster care benefits.²

In order to be eligible for relief under this law, a person must meet the following requirements:

- **Must be a victim of human trafficking**, meaning the victim of a crime as described by Penal Code section 236.1(a)-(c), which defines the offense of trafficking as:
 - A person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services;
 - A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of [specified laws related to prostitution, sexual exploitation, pornography, and extortion];
 - A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of [specified laws related to prostitution, sexual exploitation, pornography, and extortion].
- **Must have an arrest, conviction, or juvenile adjudication for a "non-violent offense,"** defined as an offense that is not listed in Penal Code section 667.5(c), excluding the following offenses from relief:
 - **(1)** Murder or voluntary manslaughter; **(2)** Mayhem; **(3)** Rape; **(4)** Sodomy; **(5)** Oral copulation; **(6)** Lewd or lascivious act per subdivision (a) or (b) of Section 288; **(7)** Any felony punishable by death or imprisonment for life; **(8)** Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which it was charged and proved that the defendant used a firearm; **(9)** Robbery; **(10)** Arson; **(11)** Sexual penetration per subdivision (a) or (j) of Section 289; **(12)** Attempted murder; **(13)** A violation of Section 18745, 18750, or 18755; **(14)** Kidnapping; **(15)** Assault with the intent to commit a specified felony, in violation of Section 220; **(16)** Continuous sexual abuse of a child; **(17)** Carjacking; **(18)** Rape in violation of Section 264.1; **(19)** Extortion; **(20)** Threats to victims or witnesses; **(21)** Any first degree burglary where another person was present in the residence; **(22)** Any violation of Section 12022.53; **(23)** A violation of subdivision (b) or (c) of Section 11418.³

¹ Also effective January 1, 2017, Penal Code section 236.23 establishes an affirmative defense for victims of human trafficking. Defense attorneys should review this new defense for trafficking victims currently facing charges.

² **Please consult with an attorney familiar with extended foster care (AB12) benefits and eligibility before filing a petition to vacate a juvenile adjudication if the petitioner is under age 21. Vacating adjudications for some of these individuals could result in a loss of AB12 benefits such as housing, case management, or health access.**

³ See full text of Penal Code section 667.5(c) for complete statutory definitions.

4. What has to be shown to be eligible for relief?

To be eligible for relief, a person must show that the non-violent offense:

- Was committed while the person was a victim of human trafficking; and
- Was the direct result of being a victim of human trafficking, as demonstrated by clear and convincing evidence.

In order to grant relief, the judge must also find that:*

- The victim is engaged in a good faith effort to distance him/herself from the trafficking; and
- It is in the best interest of the victim and the interests of justice to grant relief.

*Note – if the offense was adjudicated while the victim was a minor, there is a rebuttable presumption in favor of relief, if it is established that the arrest/adjudication was the direct result of being a victim.

5. What is the process for filing for relief?

- A petition must be submitted to the court under penalty of perjury.
- It should be filed within a "reasonable time" after the person ceased to be a victim or sought services for being a victim, whichever occurs later.
- The petition must be served on the prosecuting agency with jurisdiction over the case, which will have 45 days to file opposition.
- If no opposition is filed, the court must deem it unopposed and may grant the petition.
- If the petition is opposed, the court must schedule a hearing.

6. What happens at the hearing?

- A single hearing can be held for multiple convictions from different jurisdictions.
- The hearing may include:
 - Testimony by the petitioner,
 - Other evidence and supporting documentation in support of the petition, and
 - Any opposition evidence presented by the prosecutorial agencies involved.
- The court must consider the totality of the evidence, and if it finds that the standards for relief have been met, issue a vacatur order that:
 - Finds that the petitioner was a victim when he/she committed the offense;
 - Sets aside any conviction and dismisses the accusation;
 - Notifies the Department of Justice that relief has been ordered.

7. What happens if the petition is granted and vacatur is ordered?

- When an arrest, conviction, or adjudication is vacated, it is deemed not to have occurred.
- The conviction is set aside, but the petitioner is not relieved of the duty to pay restitution.
- The court will order sealing and destruction of the records by the California Department of Justice and law enforcement agencies:
 - The records will be sealed for three years from the date of the arrest, or one year from the date of the court order, whichever is later.
 - After that period, the records shall be destroyed.
- The petitioner can deny or refuse to acknowledge the arrest, conviction, or adjudication.
- The conviction shall not be distributed to any state licensing board.

For more information about vacatur relief under Penal Code § 236.14, please contact Bay Area Legal Aid, recordsealing@baylegal.org, 510-663-4744