

Overview

When conducting a comprehensive needs assessment for survivors of human trafficking, either in crisis or as part of long-term support plan, it is critical to incorporate a discussion of criminal legal involvement and needs. Many survivors have been arrested, often more than once, and their arrest records can greatly impact their stability, eligibility for services, programs, licenses, and jobs, and impede empowerment and well-being.

Often individuals who have been arrested do not know the final outcome of that arrest and it is not uncommon for survivors to be unclear about, or simply not remember, how many times they have been arrested, or even where those arrests occurred. This is complicated by the fact that not every arrest results in a conviction (a finding of guilt). Arrests and convictions have different legal ramifications, but most people who have been involved in the criminal legal system are not aware of the various collateral consequences created by their criminal records.

Depending on the state, both arrests and convictions can cause ongoing issues in survivors' lives. Survivors frequently experience arrests and convictions while being trafficked, as well as before and after their trafficking experience. Many states have laws that allow general relief from criminal records from which survivors benefit. These recent laws allow survivors to vacate (meaning clear), expunge or seal arrests or prior convictions in limited circumstances.

While relief specific to trafficking victims may not apply to records that predate a survivor's trafficking experience, it is important to explore both scenarios, and get as much information as possible, in order to determine eligibility for any relief.

The law in this area is very state specific, but service providers can use the following general checklist to assess eligibility, including specific questions to explore with the survivor and best practices for explaining potential relief.

As a preliminary matter, when working with a survivor, ascertain whether they have been previously arrested for any reason, in any place. Then proceed through the following questions to help navigate eligibility.



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The American Bar Association Commission on Domestic & Sexual Violence

Survivor Reentry Project

Assessing Eligibility for Post-Conviction Relief for Survivors of Human Trafficking:

Tips for Service Providers

1. Does the survivor have a copy of their criminal history based on a fingerprint search?

If yes, move to Question 2.

a. If no, work with the survivor to obtain fingerprints and request a copy of their criminal history. Be sure to rely only on fingerprint records, rather than name searches, for accuracy. For the most comprehensive national arrest history, obtain the survivor's FBI fingerprint record. Information about that process is available at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. Though the FBI has the most comprehensive records for a nation-wide search of a survivor's criminal history, it is not uncommon for FBI records to be incorrect or incomplete. For instance, FBI records often omit the final disposition of a given charge, making it impossible to know whether an arrest ended in a conviction from the FBI record alone. Therefore, the FBI fingerprint record is a critical first step, but may require additional record gathering in order to get the survivor's complete criminal history. You may consider obtaining the survivor's fingerprint records from the states or local municipalities in which they have criminal histories. The processes for obtaining state criminal records are state-specific. More detailed information on where to obtain state records can be found at <https://www.fbi.gov/services/cjis/identity-history-summary-checks/state-identification-bureau-listing>.

b. Note that if the client is undocumented, you may want to exercise care in having state/local fingerprinting done through a local police or law enforcement agency and opt instead to use a private fingerprinting agency.

c. Additionally, if you find that the survivor has an open warrant or a pending criminal matter, post-conviction relief will likely await the conclusion of the pending criminal matter. You should consult with a local public defender or criminal attorney on best ways to handle clearing a warrant and the specific risks this might entail. There may be a way to vacate the warrant without the client having to appear. If the client has to appear, criminal defense attorneys can help plan around potential risks and local practice.



2. Were any of the arrests directly related to having been trafficked or to the time in which the survivor was struggling with the immediate consequences of having been trafficked?

If yes, move to Question 3.

a. If no, the survivor may be eligible for non-trafficking related general expungement or sealing. Often, these laws apply if a certain amount of time has passed, and the survivor has not been convicted of any additional offenses. These laws can apply to convictions and/or arrests that did not result in a conviction. Expungement and sealing laws are state specific.

More information about the general expungement and sealing options available in each state can be found at <http://ccresourcecenter.org/resources-2/state-specific-resources/>



4. Contact the Survivor Reentry Project for technical assistance and referrals at www.ambar.org/srp.

3. Did the arrests/convictions occur in a state that has a law offering relief for survivors?

a. Not every state offers survivors the relief of vacating, expunging or sealing convictions or arrests that are the result of having been trafficked. The Survivor Reentry Project website provides a current list of states offering relief, and the types of eligible offenses, at www.ambar.org/srp.

b. If the arrests occurred in states that offer survivors relief, a survivor should know that there is a legal process available that could eliminate, or at least lessen, the negative consequences of their criminal history. The process is different in every state, and very new in most states, but at a minimum involves demonstrating to the court that the convictions were related to trafficking. This often, but not always, includes creating a narrative of the survivor's experience, usually in the form of an affidavit, and preparing a written motion or petition to be filed in the court. Many state laws have specific privacy provisions, and many make the process easier for survivors with official documentation, such as a T Visa approval, HHS certification, or state equivalent.

c. If no, remember that general expungement and sealing provisions not specifically related to trafficking may still be available and worthwhile, as described above in Section 2(a).