

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

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 can 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 previously been arrested for any reason, in any place. Then proceed through the following questions to help navigate eligibility.

1. Does the survivor have a copy of their criminal history based on a fingerprint search? If yes, [move to Question 2.](#)

If no, the Survivor Reentry Project offers assistance with obtaining fingerprint records. The survivor can reach out directly for assistance using [this form](#), or a professional working with the survivor can reach out on their behalf using [this form](#).

If you would like to pursue the process of helping the survivor to obtain fingerprints outside of the project, here are some important tips to consider:

- a. 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 [here](#). 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 in order to get the survivor's complete criminal history, you may need to gather additional records. 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 [here](#).
- b. Note that if the client is undocumented, you may want to exercise care and not arrange state/local fingerprinting through a local police or law enforcement agency. Rather, 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 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 [here](#).

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

- a. Not every state offers criminal record relief for survivors. The Survivor Reentry Project website provides a current list of states offering relief, and the types of eligible offenses, at freedomnetworkusa.org/advocacy/survivor-reentry-project.
- b. If the arrests occurred in states that do 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 the arrests occurred in states that do not offer this relief to survivors, remember that general expungement and sealing provisions not specifically related to trafficking may still be available and worthwhile. More information about the general expungement and sealing options available in each state can be found [here](#).

4. Contact the [Survivor Reentry Project](#) for technical assistance, support and referrals.

SRP offers assistance on criminal record relief for trafficking survivors. The survivor can reach out directly for assistance using [this form](#), or a professional working with the survivor can reach out on their behalf using [this form](#).