

Summary and Analysis of the Trafficking Survivors Relief Act (TSRA) (Public Law 119-73)

The Trafficking Survivors Relief Act (TSRA)¹ provides relief to survivors of human trafficking who committed certain offenses as a direct result of having been a victim of trafficking. The Act allows for various types of relief based on the stage or outcome of prosecution and the type of crime alleged or committed including vacatur, expungement, sentence mitigation, and affirmative defenses.

Section 2 of the Act provides the most substantive of these provisions, outlining new procedures, definitions, and standards for vacatur, expungement, and sentence mitigation.

Section 3 sets requirements for the Department of Justice.

Section 4 ensures access to grant funding.

Section 6 establishes a new affirmative defense.

Section 2. Federal Expungement for Victims of Trafficking

This section adds a new section to Chapter 237 of title 18 of the U.S. Code: 18 U.S.C. § 3771A. This section defines key terms used throughout the trafficking relief process that are unique to this section of the criminal code. It also sets forth the process that a victim may use to request the vacatur of a conviction, expungement of records, or reduction of a sentence.

Critical to the determination of who is eligible for relief under this new process is the separation of federal crimes into “**Level A**” and “**Level B**” offenses. This categorization only exists in this section and has no correlation to class determination of felonies or other criminal classification schemes. Generally, only **Level A offenses** will be eligible for vacatur.

Type of Offense	Eligible for Vacatur + Expungement	Eligible for Expungement	Eligible for Sentence Reduction
Level A- federal crime, not a “violent crime”	Yes	Yes	Yes
Level B- federal “violent crime,” no minor victim	No	Yes	Yes
“Violent crime” with a minor victim	No	No	No

Level A offenses are defined as *all* criminal offenses punishable under Federal law that are not a “violent crime.” **Level B offenses** are any “violent crimes” punishable under Federal law, as long as the victim is not a child.

¹ The Trafficking Survivors Relief Act was signed into law on January 23, 2026, <https://www.congress.gov/119/plaws/publ73/PLAW-119publ73.pdf>

Uncertain Definition of “Violent Crime”

Using “violent crime” as the definition of crimes eligible for relief creates significant uncertainty. Despite its use in multiple statutes, the Federal criminal code does not list which criminal violations qualify as a “violent crime.” The TSRA does not specifically define what “violent crime” means in the context of criminal record relief, leaving the determination of whether an offense is **Level A** or **Level B** or neither to the current “chaos” that is the current judicial doctrine.² The Supreme Court adopted the “categorical approach doctrine” which requires the judicial classification of crimes as violent or not violent without consulting case facts,³ in contrast to the most common state law approach where state legislatures will list what crimes qualify as violent crimes.

Therefore, case law in each circuit defines which federal crimes are considered to be “violent crimes” and circuits have not made determinations for all charges.

The Act places the burden of proof on the victim to show by a preponderance of the evidence that their conviction was for a non-violent crime. While preponderance of the evidence is a low standard (more likely than not), the complicated legal doctrine that exists surrounding what is or is not a “violent crime” will create a challenging barrier for any victim that attempts to seek vacatur without legal counsel.

Vacatur (includes Expungement)- Level A Offenses ONLY

A victim convicted of a **Level A offense** (any federal crime that is not a violent crime) may have their conviction vacated if the offense was committed as a direct result of being a victim of trafficking. The motion for vacatur must be filed with the court that imposed the sentence, describe any supporting evidence, state the underlying offense, and include copies of supporting documentation.

The victim must show, by a preponderance of the evidence, that:

- (1) the victim was convicted of a non-violent federal crime, and
- (2) the offense was committed as a direct result of having been a victim of trafficking.⁴

If granted, the conviction is vacated, which “sets aside” the criminal conviction and removes it from the publicly accessible criminal record. The Act also requires the court to automatically: vacate the conviction, set aside the verdict, enter a judgment of acquittal, and enter an expungement order for the arrest, charging, and criminal proceedings.

² See Erin C. Blondel, *Crimes of Violence and Violent Crime*, 100 NOTRE DAME L. REV. 431, 434 (2025) <https://scholarship.law.nd.edu/ndlr/vol100/iss2/1> (noting for example that the Courts have determined that breaking into someone’s garage to steal a lawnmower will be a “violent crime,” but murdering someone during a botched robbery attempt is not. (Citing *Taylor v. United States*, 495 U.S. 575, 588 (1990); *Quarles v. United States*, 139 S. Ct. 1872, 1879 (2019); *United States v. Taylor*, 142 S. Ct. 2015, 2021 (2022))).

³ *Taylor v. United States*, 495 U.S. 575, 602 (1990).

⁴ While a Congressional summary of the bill states that the victim must also “prove by clear and convincing evidence, that the defendant was a victim of human trafficking at the time the offense was committed,” (<https://fry.house.gov/news/documentsingle.aspx?DocumentID=1008>) this heightened standard was not included in the final bill. This may be a result of the Members discussing an older version of the bill.

Expungement Only- Level A Offenses

A person arrested (regardless of conviction status) of a **Level A offense** may have the court expunge all records of the arrest if the conduct or alleged conduct that resulted in the arrest was committed as a direct result of being a victim of trafficking. The motion for expungement must be filed in the Division of the U.S. District Court in which the individual was arrested, describe any supporting evidence, state the underlying offense, and include copies of supporting documentation.

The victim must show, by a preponderance of the evidence, that:

- (1) the victim was arrested for a non-violent federal crime, and
- (2) the conduct or alleged conduct was directly related to having been a victim of trafficking.

If granted, the arrest record will be expunged, or deleted from public data bases.

Expungement Only- Level B Offenses

Arrests for **Level B offenses** are eligible only for expungement, not for vacatur. The motion for expungement must be filed in the Division of the U.S. District Court in which the individual was arrested, describe any supporting evidence, state the underlying offense, and include copies of supporting documentation.

The victim must show, by a preponderance of the evidence, that:

- (1) the victim was arrested for a federal “violent crime” and there was no minor victim, and
- (2) the conduct or alleged conduct was directly related to having been a victim of trafficking, and
- (3) the status of the charges are either:
 - (a) victim was acquitted, or
 - (b) the government did not pursue, or dismissed charges, or
 - (c) the charges were reduced to “non-violent,” and, the victim was
 - (i) acquitted, or
 - (ii) the government did not pursue the reduced charge, or
 - (iii) the conviction of the reduced charge was vacated.

Demonstrating that there was no minor victim may be difficult for survivors, as it will require a careful analysis of all records related to all arrests, charges, and convictions related to the incident. Collaboration with the investigating or prosecuting offices will likely be required for these cases.

Hearings- Always possible, sometimes required

The government has 30 days after a vacatur or expungement motion is filed to formally oppose the action. If the government opposes the motion, then the court *must* hold a hearing on the motion within 15 days of the government’s motion-in-opposition. If the government does not oppose the motion, then the court at their discretion *may* decide to hold a hearing within 45 days of filing. It is unclear how often survivors will be required to appear in court to be granted relief. The Act does not specify a timeline for a decision to be handed down.

Supporting Evidence

The court must consider an affidavit or sworn testimony of an anti-human trafficking service provider or clinician in determining if the victim is a victim of trafficking, which alone is sufficient to grant the motion if it is credible and no other evidence is available. Survivors who have never sought or received services related to their trafficking experience might struggle to find an advocate or clinician willing to provide an affidavit or testimony.

The court *may*, but is not required to, consider any other credible supporting evidence. The Act specifically includes “sworn testimony from a law enforcement officer detailing the role of the movant in coercing other victims of trafficking into committing criminal offenses” which seems to suggest that the court is asking law enforcement to testify AGAINST survivors. The Act also explicitly states that it is also not required for the trafficker to have been convicted or arrested in order to grant relief.

Victim of Trafficking- While some survivors have documentation establishing that they have been identified as a trafficking survivor, many do not. Establishing their victimization may be a barrier for a survivor who has never accessed victim services, provided a victim/witness statement, or where the trafficker was not investigated by law enforcement.

Directly Related- While some charges may be obviously related to the trafficking experience, especially where the criminal act was a part of the trafficking scheme, others may be less obvious. Trafficking survivors can be left with a host of criminal records resulting from the trafficking experience, some that occur after the survivor has escaped the trafficker but is still struggling with the ensuing poverty, substance dependence, or physical or mental health consequences. Establishing the connection between the trafficking experience and the criminal records may be a challenge for many survivors.

Impact of Granted Motion

The Act states that vacatur means that the conviction is no longer considered a conviction under Federal law, and that expungement means that the arrest is no longer considered an arrest under Federal law. However, immigration law defines convictions differently from criminal law. Additionally, even vacated or expunged records may still show up on background checks, even if the full record is not available or has been deleted. It is unclear how DHS will interpret the impact of vacatur or expungement on applications for immigration status.

The Act states that this legislation does not require a court to amend or remove a fine or restitution order.⁵ Therefore, it may be difficult for survivors to convince the court to refund the fines, fees, penalties, or restitution that they have already paid.

⁵ This may contradict *Nelson v. Colorado* (2017), in which the Supreme Court found that states must refund fines, court costs, and restitution when convictions are overturned.
https://www.supremecourt.gov/opinions/16pdf/15-1256_5i36.pdf

Sentence Reduction- Level A or B

A victim sentenced for any **Level A or B offense** can have their term of imprisonment reduced if the offense was a direct result of being a victim of trafficking. The court may act on its own and does not have to wait to for a motion by the victim.

Privacy Protections

All motions, documents, pleadings, and orders will be under seal, while this restricts public access to the records they can potentially be unsealed in the future and can be viewed by certain government agencies.

Section 3. Reports

In one year, every US Attorney must report to the Attorney General (AG) on the status of motions under the Act, including the offense, the response of the US Attorney, and the decision. The AG must also report to Congress on the training that US Attorneys have received on human trafficking indicators during that year. In three years, the Government Accountability Office must report to Congress on the impact of the Act and recommendations for improvement.

Federal law does not allow for the routine vacatur or expungement of convictions or charges. The TSRA is the first criminal record relief for the federal courts. Therefore, these motions and decisions will be completely new for many of the judges who will be making these decisions. It is not clear what training will be provided to the prosecutors, public defenders, judges, investigating agencies, court clerks, and others upon whom the implementation of this law depends.

Section 4. Use of Grants

DOJ cannot bar OVW and OJP grant recipients from using grant money for legal representation to obtain post-conviction relief.

Section 5. Sense of Congress

This is the first step and Congress is committed to do more. Although nothing is specified.

Section 6. Human Trafficking Defense

A victim charged with a Level A or Level B offense can establish a duress defense by proving that they were a victim of human trafficking at the time of the offense. A victim who asserts this defense can also ask for the criminal proceedings to be sealed. This is codified at: 18 U.S.C. § 28.

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