



## Rights Restoration for Sex Trafficking Survivors

An Arizona citizen convicted of prostitution before July 24, 2014 may be eligible to have their rights restored, if there is evidence that the person's offense was a result of sex trafficking.

Victims and survivors of sex trafficking convicted of prostitution who can show that the conviction was a result of sex trafficking are eligible to petition the court for restoration of their rights as part of Arizona's vacatur law.

Arizona is one of forty-one states in the country to have what is known as a vacatur law. Criminal record relief legislation can take many different forms: set aside, expungement, sealing of records, and vacatur of records, among others. Vacatur of records refers to the removal of a previous conviction from a person's record. While vacatur laws vary by state, Arizona's vacatur law is specific to serving survivors or victims of sex trafficking who were wrongly convicted of prostitution.

Under Arizona Revised Statute § 13-909, a person who was convicted of prostitution, or a city or town ordinance with similar elements, prior to July 24, 2014, who was being trafficked at the time of arrest may apply to have their conviction vacated.

Many survivors of sex trafficking are wrongly misidentified as criminals and convicted of prostitution, and for some that means the establishment of a criminal record. Criminal records impact a person's access to housing, job opportunities, and, if a felony conviction, a person's civil liberties. Arizona's vacatur law was passed with the goal of helping victims and survivors of sex trafficking, who have lost their civil rights because of being trafficked, vacate the conviction from their record and restore their rights. A vacated conviction releases a person from all consequences associated with the prostitution conviction. Once a person has successfully vacated an unjust prostitution conviction, they are then able to state that they have never been arrested for, charged with, or convicted of the prostitution crime vacated in response to questions for employment, housing, financial aid, or loan applications.

# FAQ

## What is sex trafficking?

[A.R.S. §13-1307](#) defines sex trafficking as intending to cause another “person to engage in any prostitution or sexually explicit performance by deception, force or coercion” or having knowledge that another person is engaging in these activities through force, fraud, or coercion.

The definitions for coercion, force, sexually explicit performance, and traffic, based on ARS § 13-1307, are below.

1. "Coercion" includes:

- (a) Abusing or threatening to abuse the law or the legal system.
- (b) Knowingly destroying, concealing, removing, confiscating, possessing or withholding another person's actual or purported passport or other immigration document, government issued identification document, government record or personal property.
- (c) Extortion.
- (d) Causing or threatening to cause financial harm to any person.
- (e) Facilitating or controlling another person's access to a controlled substance.

2. "Force" includes causing or threatening to cause serious harm to another person or physically restraining or threatening to physically restrain another person.

3. "Sexually explicit performance" means a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interest of patrons.

4. "Traffic" means to entice, recruit, harbor, provide, transport, or otherwise obtain another person.

Any individual under 18 engaging in the sale of sex is also a trafficking victim. Minors cannot consent to selling sex and adults who buy from minors are participating in their trafficking.

However, despite this definition, the answer is not as cut and dry as some would like to believe. Many sex trafficked victims do not know they have been trafficked, or that the abuse they are experiencing is illegal. Traffickers thrive on misinformation and work hard to convince their victims that they are to blame for their abuse. This is a primary reason why victims do not tell law enforcement or do not come forward to explore clearing their record; they have been convinced they are at fault for the abuse they have experienced.

If you are or have been abused, it is important to know it is not your fault.

If you, or someone you know, has engaged in the sale of sex and any of these elements were part of that situation then you may qualify for relief as a victim of human trafficking:

- If someone used violence or the threat of violence against you, or someone you love, as a means of forcing you to sell sex.
- If someone else profited partially or totally from the sale of sex (it is still trafficking if you turn your money over and someone gives you an allowance from that money or use that money to pay for your room, food, clothing, etc. If you did not get to keep it, it was not yours).
- If someone is using pictures or video of you to blackmail you into selling sex.
- If someone has taken your documentation or IDs and will not let you have access.
  - Abusing or threatening to abuse the law or the legal system.
  - Knowingly destroying, concealing, removing, confiscating, possessing, or withholding another person's actual or purported passport or other immigration document, government issued identification document, government record or personal property.
  - Extortion.
  - Causing or threatening to cause financial harm to any person.
  - Facilitating or controlling another person's access to a controlled substance.

### **Who is eligible under this law?**

To restore your rights under Arizona's vacatur law, all the following must be true:

- The conviction must have happened in the state of Arizona.
- The prostitution crime that you were convicted of must have occurred on or before July 24<sup>th</sup>, 2014.

It is important to note that Arizona vacatur law only allows for the vacatur of a prostitution conviction and not any other convictions, even if they are associated with the trafficking victimization.

### **What if my prostitution conviction occurred after July 24<sup>th</sup>, 2014 but, I would otherwise be eligible to vacate my conviction?**

Unfortunately, if the conviction occurred after July 24, 2014, you would not be eligible under A.R.S. § 13-909. When the vacatur law was passed this date was added in light of the following:

In 2014, the Arizona Revised Statute §13-205 *Affirmative defenses; justification; burden of proof* passed in the Arizona state legislature. This legislation allows for victims/survivors of sex trafficking to assert an affirmative defense to prosecution for the crime of prostitution. An affirmative defense allows the defendant, or the person convicted with the crime, to assert that there is additional information needed to make a judgement on a particular prior case. The additional information, within the context of vacatur law in Arizona, would include documentation proving that one was a victim of sex trafficking and not someone engaged in criminal prostitution.

## **Do I have to turn over my trafficker?**

You do not have to turn over your trafficker to vacate your prostitution conviction.

## **Do I have to work with an attorney to vacate my conviction and restore my rights?**

While it is not required that you work with an advocate or an attorney to vacate a prostitution conviction, it is highly recommended that you seek professional support to navigate this process. The requirements for submitting paperwork are different in each county. Having support will help to increase the likelihood of success when applying to clear a felony prostitution conviction.

## **What is the cost to vacate a prostitution conviction and restore my rights?**

You should not have to pay a fee to vacate a felony prostitution conviction in Arizona. If you decide to retain an attorney to help you navigate the vacatur and rights restoration processes, there may be a cost associated, but that is entirely dependent on the legal services you seek out.

## **What forms do I need to complete?**

There are two forms you will need to complete to vacate your conviction and restore your rights. The first form is the *Application to Vacate Conviction for a Prior Offense*. When you submit this initial form, you have the option to attach additional information supporting your claim that the prostitution conviction was a result of sex trafficking. This is a uniform state-wide form, so no matter the county where the conviction occurred, this is the form one would use if the conviction happened in the state of Arizona.

If the case is successful and the conviction is vacated, the second form that will need to be completed is the Rights Restoration application. Rights Restoration applications are designated by county. We have provided the [Maricopa County Restoration application](#) for reference. There is also one available on the Arizona Supreme Court's website [AOC CR41FORM32A](#).

## **What does vacatur law mean?**

Criminal record relief legislation can take many different forms: set aside, expungement, sealing of records, and vacatur of records, among others. According to "[The Survivor Reentry Project American Bar Association Commission on Domestic & Sexual Violence](#)," vacatur is defined as "a form of relief that, in theory, effectively undoes a conviction: in most instances, it returns the movant to the position they were in when originally facing prosecution. Some states mandate dismissal of the accusatory instrument upon vacatur, and others require a separate proceeding to accomplish that final step. Once vacated and dismissed, all records of the conviction are deleted, because the conviction itself no longer exists as a matter of law. Arrest records may remain, and may need to be expunged or sealed separately (pg. 9)" According to the Polaris Project, "vacatur alters the merits of the underlying record unlike sealing or expungement which does not." When a prior conviction is vacated in the state of Arizona, the conviction is completely erased from one's criminal history. Arizona is one of forty-one states in the country to have a vacatur law.

## Can setting aside a conviction also be a step to restoration of a person's civil rights?

Arizona's set aside law is in [ARS 13-905](#). While Arizona does not expunge criminal records, an order setting aside the judgement of conviction pursuant to A.R.S. § 13-905 and [13-907](#) (Automatic restoration of civil rights for first offenders;) does not remove the conviction from the public record. However, it can be used as a first step to [restoring a person's civil rights](#). Consulting with an attorney in these matters is recommended and encouraged. Setting aside a person's conviction is not available to a person who was convicted of any of the following:

1. A dangerous offense.
2. An offense for which the person is required or ordered by the court to register pursuant to section 13-3821.
3. An offense for which there has been a finding of sexual motivation pursuant to section 13-118.
4. A felony offense in which the victim is a minor under fifteen years of age.
5. An offense in violation of section 28-3473, any local ordinance relating to stopping, standing or operation of a vehicle or title 28, chapter 3, except a violation of section 28-693 or any local ordinance relating to the same subject matter as section 28-693. ([ARS 13-905 \(K\)](#)).

## For more information on Arizona's Vacatur Law, please see the resources below.

- The Arizona Sexual and Domestic Violence Helpline (ACESDV)  
Open Monday – Friday, 8:30AM – 5:00PM  
Phone: (602) 279-2980  
SMS Text Line: (520) 720-3383  
Arizona Relay Service 7-1-1  
Email and Chat services: <https://www.acesdv.org/helpline/>
- The National Trafficking Helpline  
Open 24/7  
Phone: 1(888) 373-7888  
Text: "HELP" or "INFO" to 233-733
- American Civil Liberties Union (ACLU) of Arizona  
\*ALL requests for legal assistance or legal inquiries must be submitted by completing our complaint form.  
Contact us: <https://www.acluaz.org/en/contact-us-0>  
Phone: (602) 650-1854

- Polaris Project  
<https://polarisproject.org/how-to-help/>
- *“Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys: The Survivor Reentry Project American Bar Association Commission on Domestic & Sexual Violence”*  
<https://mvlslaw.org/wp-content/uploads/2017/06/Practice-Guide-Post-Conviction-Advocacy-for-Survivors-of-Human-Traffick....pdf>

## **Arizona Court(s) Forms**

- Arizona State Vacatur Form  
<https://www.azcourts.gov/Portals/34/Forms/AOCCR41FORM21-010120.docx?ver=2020-01-09-111607-440>
- Maricopa County Restoration Application  
<https://www.maricopa.gov/DocumentCenter/View/2386/Restoration-of-Rights-Application-PDF>
- Arizona Judicial Branch Post Conviction Relief forms (i.e. Apply to Have Conviction Set Aside and Application to Restore Civil Rights)  
<https://www.azcourts.gov/selfservicecenter/Criminal-Law/Criminal-Forms>