

Criminal Record Clearing Remedies for Human Trafficking Survivors in Georgia

In 2020, Gov. Brian Kemp signed Senate Bill 435, known as “The Survivors First Act,” which created remedies for individuals to clean up their Georgia criminal history if they are survivors of sex or labor trafficking, as defined in O.C.G.A. § 16-5-46. Specifically, the new law gave trafficking survivors the opportunity to either vacate their convictions and then restrict and seal their criminal records, or restrict and seal their criminal records. The law was further updated by SB 565 in 2022 to eliminate waiting periods. These new remedies remove barriers to employment, housing, and other opportunities, as well as hopefully help heal the trauma survivors have experienced.

Summary

SB 435 and SB 565 help survivors of trafficking clean up their Georgia criminal history in two different ways.

- O.C.G.A. § 17-10-21 allows individuals to petition the original sentencing court to vacate a conviction that occurred **as a direct result of** their being a victim of trafficking. If vacated, it is no longer a conviction and can be restricted and sealed pursuant to O.C.G.A. § 35-3-37. (Note: Any fines and fees an individual paid in relation to the conviction must be returned to them if their conviction is vacated.)
- Alternatively, O.C.G.A. § 35-3-37 allows individuals to restrict and seal the record of a conviction that occurred **while** they were the victim of trafficking, so it will not appear on their criminal history and is no longer public record – this is a process most states call expungement. The records remain available to law enforcement.

Eligibility

- An individual may immediately seek relief for misdemeanor and felony convictions by petitioning the court to vacate and/or restrict and seal the record.

Process

- Vacating and/or restricting and sealing records are both petition-based processes. The petitions are submitted on forms created by the Attorney General and are filed under seal in the original sentencing court. A copy must be served on the prosecuting attorney. Documentation of status as a victim of trafficking may be included, but is NOT required. Any other relevant information may be included.
- If the prosecuting attorney consents to the petition to vacate or the petition to restrict and seal or does not respond within 30 days, the court shall issue an order granting the petition.
- If the prosecutor objects in writing, the court must hold a hearing within 90 days to determine by a preponderance of the evidence if the offenses were committed as a direct result of being a victim of trafficking or occurred while the victim was being trafficked.
- No fees shall be charged related to this process.

Georgia Justice Project provides free legal representation to individuals facing barriers due to their criminal history who cannot afford a private attorney. To apply for assistance call (404) 827-0027, ext. 238. See GJP.org for more details.