

LEGAL RELIEF FOR SURVIVORS OF HUMAN TRAFFICKING

Hosted by the Criminal Law Section of the Contra Costa County Bar Association

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~~PART 1~~

I. Legal Relief for HT survivors who are crime victims and witnesses

a. CA Human Trafficking statutes and definitions

- i. Liberty Deprivation with intent to:
 1. Force labor: Penal Code Sec. 236.1(a)
 2. Effect or maintain a listed sex offense with an adult: Penal Code Sec. 236.1(b)
- ii. Commercial Sexual Exploitation of Children (CSEC)
 1. Inducing or attempting to induce a minors into Commercial Sex: Penal Code Sec. 236.1(c)
- iii. Understanding "liberty deprivation"
 1. Pen. Code Sec. 236.1(e)
 2. *People v. Oliver* (2020) 54 Cal.App.5th 1084
 3. *People v. Guyton* (2018) 20 Cal.App.5th 499

b. DA files charges when admissible evidence supports a conviction

- i. CA Bus. & Prof. Sec. 6068(c)
- ii. ABA Crim. Justice Stds. 3-3.9(a)
- iii. *People v. Sanchez* (2014) 228 Cal.App.4th 1517

c. Towards a more victim-centered and trauma-informed approach to prosecution:

Victims have *rights* if criminal charges are investigated and/or filed

- i. *Marsy's Law*: CA Const. Ar. 1, Sec. 28(b)
- ii. HT Victim-Caseworker Privilege: CA Evid. Code Sec. 1038-1038.2
- iii. HT victim confidentiality in public records: Pen. Code Sec. 293(e), Gov. Code 6254(f), 7923.615(c)
- iv. HT victim as John Doe / Jane Doe in Court: Pen. Code Sec. 293.5
- v. Court-issued Protective Orders
 1. EPO (if also DV): Pen. Code Sec. 646.91
 2. Civil TRO / Order after Hearing (CA Civ. Code Sec. 527.6)
 3. CPO: PC 136.2
 - a. During Prosecution
 - b. Post Conviction
 4. All carry firearms ban: Felony to possess per Pen. Code Sec. 29826

- vi. Court Protections for witnesses in court
 - 1. Protect from undue harassment or embarrassment: Pen. Code Sec. 765(a)
 - 2. Special care for witnesses under 14: Pen. Code Sec. 765(b)
 - 3. Nonthreatening court environment for witnesses under 16: Pen. Code Sec. 868.6
 - 4. Two support persons of victim's own choosing: Pen. Code Sec. 868.5
- vii. Court protections for HT Victims
 - 1. Exploiter's character can support victim testimony as proof that exploiter is the kind of person who would commit human trafficking
 - a. Cases charging sex crimes: Evid. Code Sec. 1108
 - b. Cases also charging domestic violence: Evid. Code Sec. 1109
 - 2. No victim blaming or shaming allowed!
 - a. Expert witnesses can explain effects of trafficking on a victim: Evid. Code Sec. 1107.5
 - b. Lawyers can't use evidence of a victim's sexual history or history of engaging in commercial sex acts to attack their credibility or character: Evid. Code Sec. 1161(b)
 - i. "History" means any time before the trial: *People v. Calhoun* 2019 38 Cal.App.5th 275
- viii. HT Victim rights after a criminal conviction
 - 1. Court orders exploiter to pay full restitution for all economic losses suffered as a result of the crime: *Marsy's Law*, CA Penal Code Sec. 1202.4(f)(3)
 - 2. Trafficking victims can apply to CA VCB for lost income during the time they were trafficked: Gov. Code Sec. 13957, 13957.2, 13957.5
 - a. <https://victims.ca.gov/victims/issues/humantrafficking/>
 - 3. Victims can register for VINELink to updated on custody status and criminal case information
 - a. <https://www.vinelink.com>

~~PART 2~~

II. Legal Relief for HT Survivors if arrested, charged or convicted

- a. HT coercion is a defense for nonviolent offenses: Pen. Code Sec. 236.23(f), Pen. Code Sec. 667.5(c)
 - i. Coercion defined: Pen. Code Sec. 236.1(h) and *In re D.C.* (2021) 60 Cal.App.5th 915
- b. HT can reduce criminal sentences if a contributing factor
 - i. Prosecutor must consider as factor in mitigation: Pen. Code Sec. 1016.7
 - ii. Judge must consider as factor in mitigation: Pen. Code Sec. 1170
- c. Leaving HT can clear a survivor's criminal record of nonviolent arrests/convictions
 - i. Petition for vacatur: Pen. Code Sec. 236.14
 1. Filed in court and served on DA
 - a. Under seal to protect against trauma: victim-centered, trauma-informed approach
 2. Shows clear and convincing evidence that the arrest/conviction was the direct result of being a victim of HT and the victim is distancing themselves from the HT Scheme
 3. Prosecution has 45 days to file opposition or court may grant
 4. Court can allow survivor to appear through counsel or by phone/zoom if compelling reason
 5. Court can't refuse to hear if survivor still has fines/fees or failed probation
 6. Can file again if court denies it (without prejudice)
 7. If court grants it:
 - a. Verdict set aside, charges dismissed, records ordered sealed/destroyed
 - b. Deemed never to have occurred
 - c. Survivor may legally deny the arrest/conviction or refuse to acknowledge it
 - d. Records don't go to state licensing boards

III. Lessons Learned | Challenges | Stories from the Trenches

Local HT Resources: Collaboration is Key!

a. Survivors can call 24/7:

- i. Community Violence Solutions
 1. Crisis Line: 800-670-7273
- ii. CSEC / CFS:
 1. Contra Costa: 800-388-2900
 2. Alameda: 510-259-1800
- iii. National HT Hotline: 888-373-7888 / text BeFree (233-733)

b. Community can report: Non-Emergency / Anonymous

- i. Contra Costa DA Tip Line: 925-957-8658
- ii. Alameda H.E.A.T. Watch Tip Line: 510-208-4050

c. Stakeholders can nominate: HT MDT Teams

- i. State law authorizes: See Pen. Code Sec. 13753
- ii. Contra Costa County: Natalie Oleas, J.D. 925 521-6366 or natalie@cocofamilyjustice.org for nomination form

d. All can engage local direct service providers:

- i. Community Violence Solutions www.cvsolutions.org
- ii. Bay Area Legal Aid <https://baylegal.org/>
- iii. International Rescue Committee www.help.rescue.org
- iv. Justice at Last <https://www.justiceatlast.org>
- v. Love Never Fails <https://www.loveneverfailsus.com>
- vi. MISSEY <https://missey.org>
- vii. STAND! <https://www.standffov.org>
- viii. Family Justice Centers
 1. Contra Costa <https://www.cocofamilyjustice.org>
 2. Alameda: <https://www.acfjc.org>
- ix. Victim-Witness Assistance Programs
 1. Contra Costa <https://www.contracosta.ca.gov/972/Victim-Witness-Assistance-Program>
 2. Alameda https://www.alcoda.org/victim_witness/

e. Find More local resources:

- i. Contra Costa DA Webpage:
 1. <https://www.contracosta.ca.gov/7690/Human-Trafficking-Unit>
- ii. Alameda County H.E.A.T. Watch Webpage:
 1. <https://www.heatwatch.org>