



Trafficked and Arrested: Understanding the Criminalization of Human Trafficking Survivors

October 2023

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“My experience as a Black trafficked survivor that was criminalized instead of supported as a victim would come to be just as harmful in my life as my trafficking experience. Not having the justice system understand and identify that I was being victimized would only prolong my journey to help, healing and hope for the future... I believe there needs to be more education to identify victims, and more education can help victims identify themselves. Especially when it comes to women of color.”

– Cierra Robinson, Lived-Experience Advisor and Executive Director of *Inspired Innovation*

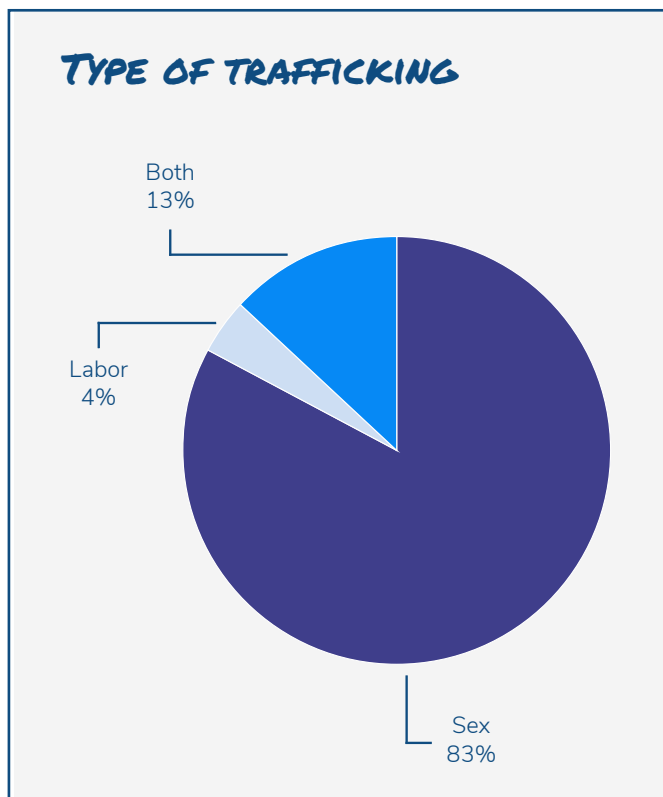
Most people assume that when law enforcement encounters a victim¹ of human trafficking², they arrest the perpetrator and provide aid to the victim. Unfortunately, victims are often treated as criminals and arrested for crimes related to their exploitation. In fact, a national survey of survivors³ found that over 90% of those surveyed had been arrested and over 50% were arrested at least once as a minor. Over 39% of respondents reported being arrested four times or more, and over 40% reported being arrested over nine times or more.

This data is consistent with what we see at Free to Thrive⁴. Among the 169 human trafficking survivor clients we served,⁵ 150 (88.8%) were previously arrested, charged and/or convicted of a crime. An analysis of the California Department of Justice (DOJ) criminal backgrounds for 55 of our vacatur⁶ clients reveals they were arrested for 1,241 individual offenses, at an average of 22.6 offenses per client. When we interview our clients about their backgrounds, the vast majority had no involvement with the criminal legal system prior to their exploitation. The purpose of this report is to share what we’ve learned about the criminalization of victims from this work over the past six years.

Who Are These Criminalized Victims and Survivors?

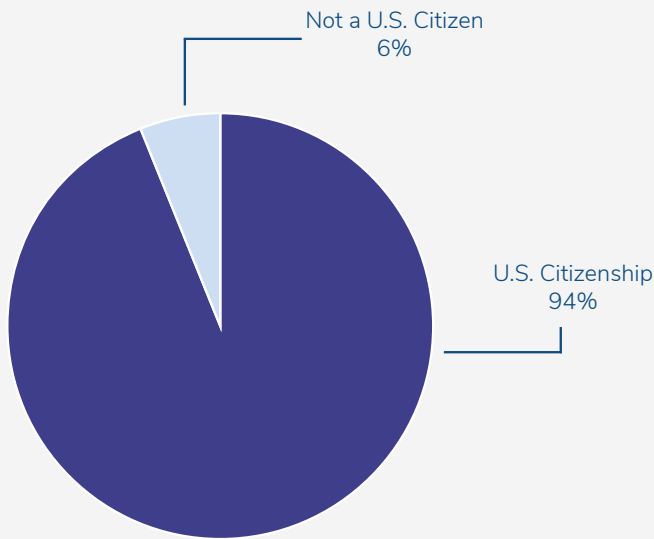
There are many misconceptions about victims and survivors of human trafficking. What we've learned is that there is no single victim prototype. The criminalized survivors we serve are a diverse group of individuals of all identities, ages, genders, and races. The common thread that weaves them all together is that someone exploited their vulnerabilities and coerced them to engage in commercial sex⁷ or exploited labor. These vulnerabilities include: poverty, childhood trauma and abuse, prior physical and/or sexual violence, gender identity, sexual orientation, lack of familial support, substance use/addiction, and/or foster system involvement.

What follows is the demographic information we've gathered about the criminalized survivors we serve.

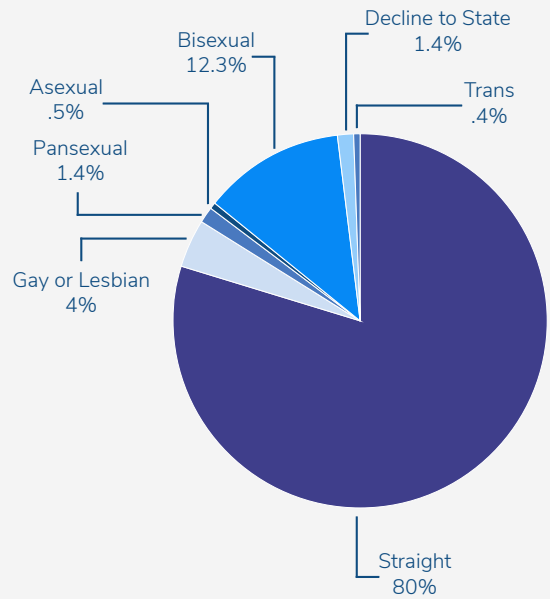


Demographics of Criminalized Survivors

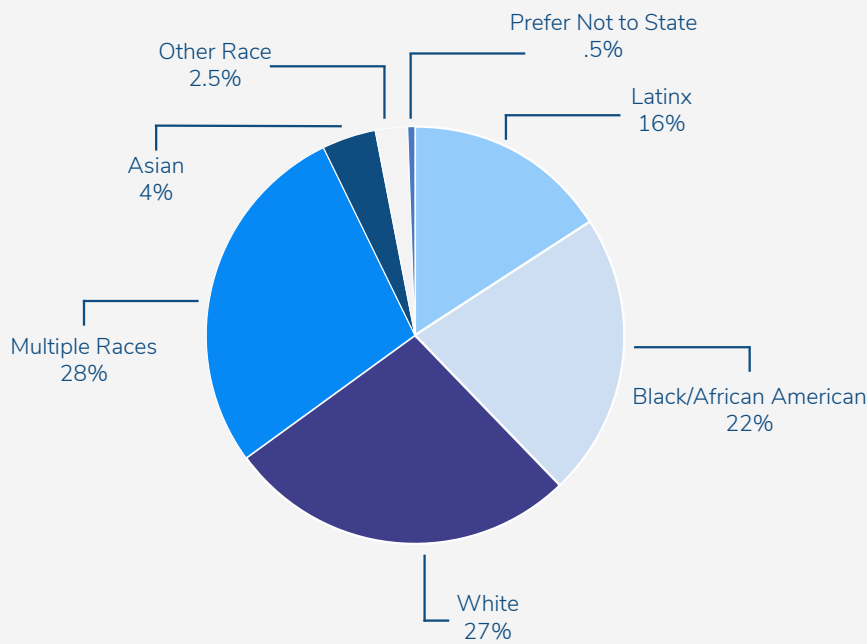
CITIZENSHIP



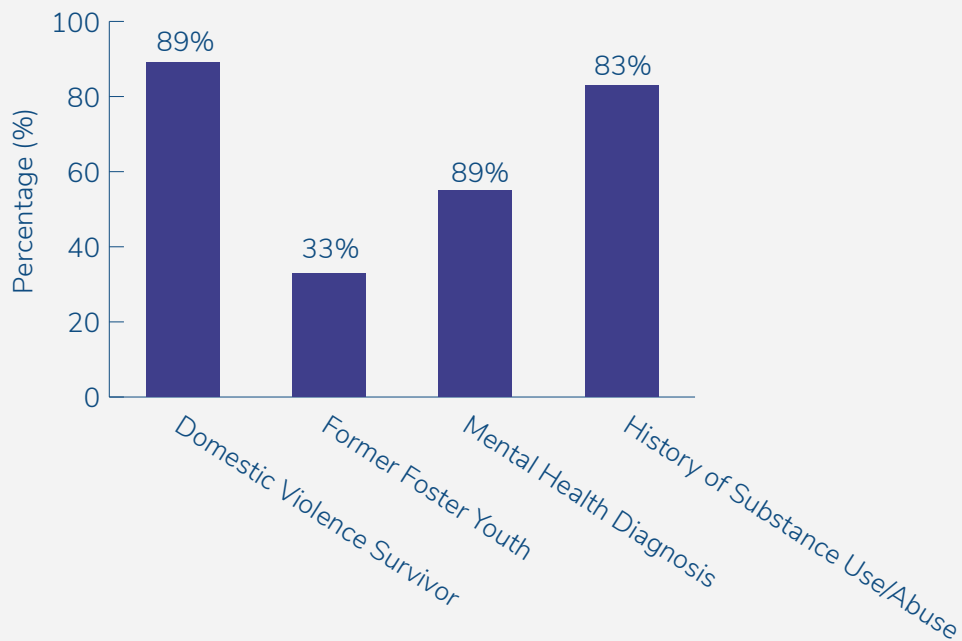
LGBTQ+



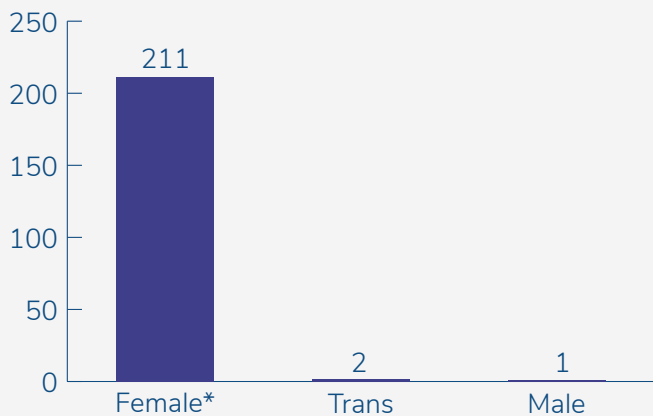
RACE



INTERSECTION WITH OTHER ISSUES



GENDER



*The fact that the vast majority of our clients identify as female reflects the reality that many social service providers for trafficking survivors (particularly residential housing programs) only serve women and they are one of our primary referral sources. Moreover, male, transgender and non-binary survivors are even less likely to self-identify as victims and seek out services than cis-gender and female survivors.

How Does Race Factor Into the Criminalization of Victims and Survivors?

At Free to Thrive, we have heard numerous stories from the Black clients we serve about their interactions with law enforcement. These clients share that they were either never identified as a victim, or offered help even when there were clear signs of trafficking at the time of their arrest. At times, the victims who are white are offered services and support while Black victims are arrested and charged with crimes. Given this reality, it is important that we understand and acknowledge the ways in which race intersects with and impacts the criminalization of trafficking victims and survivors.

As you can see from our client demographics, over 70% of our clients are people of color (POC). The overrepresentation of POC among survivors with criminal records mirrors the overrepresentation of POC in jails and prisons⁸. According to the FBI 57.5% of all juvenile prostitution arrests are Black children⁹. California currently reports the highest number of cases of human trafficking in the U.S. The largest county (by population) in California (and the largest county in the United States), Los Angeles County, reported 92% of girls in the juvenile justice system identified as victims of sex trafficking are Black¹⁰.

What Types of Crimes are Human Trafficking Victims and Survivors Charged with?

People are often surprised to learn that prostitution charges are not the most prevalent charges we see on survivors' records. In fact, prostitution makes up only 26% of the charges, meaning that 74% of the time, victims and survivors are being criminalized for other things.

Traffickers are skilled at getting their victims to do their dirty work and shielding themselves from criminal liability. Victims are often made to carry and sell their exploiter's drugs and weapons, steal, and even traffic others. Moreover, many victims end up committing other crimes that are directly related to their exploitation. For example, victims may rely on illegal substances to stay awake for long hours or numb themselves to the realities of their experience. Victims and survivors may also steal to meet their basic needs because their traffickers do not allow them to keep any of the money they earn. They may also steal to meet daily quotas imposed by their traffickers. Once free from their traffickers, survivors may continue to struggle to make ends meet and may continue to use the illegal substances they relied on during their exploitation.

Survivors often miss court dates while they're being exploited leading to bench warrants and being charged with "failure to appear" - a separate criminal charge than can be added to a survivor's criminal history if they miss a court date. Victims and survivors may even be charged with crimes that involve bodily injury to another person when they are defending themselves from a trafficker or violent sex-buyer. Likewise, trafficking victims and survivors experience complex trauma, which means they may be more likely to respond violently when they feel threatened.

The facts and circumstances of each case are unique to the individual survivor's past experience and situation at the time of the arrest. A common theme, however, is that but for the trafficking, the victim/survivor would not have been in the situation that led to their criminal charges. What follows is a breakdown of the charges that we see on our client's criminal background reports.

Type of Charge	Number of Charges	Percentage of Charges
Prostitution	346	25.74%
Drug Arrests (possession, transport, paraphernalia)	604	44.94%
Perjury, false ID, forgery, impersonation	44	3.27%
Violation of Court Order (protective or otherwise)	28	2.08%
Failure to Appear	59	4.39%
Parole/Probation Violation	52	3.87%
Open Warrant Related Arrests	106	7.89%
Battery (simple, non-firearm, willful harm to child)	118	8.78%
Weapons Charges	35	2.60%
Theft (Petty, Grand), Stolen Property, Stolen Vehicle	298	22.17%
Driving Without a License/Suspended License	51	3.79%
Driving Under the Influence	46	3.42%
Misc. Other	234	17.41%
Violent Felonies (Non-Vacatable) ¹¹	91	6.77%
Human Trafficking/Pimping Pandering	8	.60%

The Impact of a Criminal Record on Victims and Survivors

Criminal records create barriers that prevent victims and survivors from escaping a life of exploitation and moving forward with their lives. Some of the most common challenges survivors face include issues with:

- Obtaining employment/licensure
- Housing
- Pursuing an education
- Obtaining a loan
- Accessing public benefits
- Financial independence and family stability
- Accessing immigration relief or adjusting immigration status
- Community involvement/volunteering

California's Response to the Criminalization of Trafficking Survivors

California recognized the injustice of a survivor being unable to move forward with their life due to criminal charges related to their exploitation when it enacted California's Human Trafficking Vacatur Law, codified under Penal Code § 236.14¹². This law went into effect January 1, 2017 and has been amended twice since then¹³.

The elements of California's current vacatur law are:

1. The petitioner was a victim of human trafficking at the time of the alleged commission of the qualifying crime;
2. The arrest for or conviction of the crime was a direct result of being a victim of human trafficking; and
3. It is in the best interest of justice to grant the vacatur request.

Vacatur

Vacatur is a complete form of post-conviction or post-arrest relief for victims. The result of a successful vacatur petition is the vacated record is sealed and destroyed. Senator Marty Block, the author of the vacatur statute, explained that the central purpose of the vacatur law is to “give victims of human trafficking a fresh start by creating a pathway to erase any nonviolent arrests and convictions from their records.”¹⁴ By vacating criminal records, the statute removes both explicit and implicit barriers to employment, housing and services that human trafficking survivors face as a result of their records. This, in turn, allows survivors to become full participants in their communities, living as parents, students, neighbors, colleagues, and professionals who are no longer held back by their past. California’s vacatur statute reflects a fundamental shift in the law towards viewing survivors of human trafficking more accurately and justly – as victims rather than criminals – and providing a remarkable form of relief to remedy their past criminalization.

Free to Thrive’s Work Helping Survivors Clear their Records

Since beginning this work in 2017, Free to Thrive has successfully cleared more than 215 criminal records through over 45 petitions in 19 counties in California. We have a 99.5% success rate in our vacatur work.

“Without record clearing I really don’t see how someone like me could ever dream of getting back to where I once was and moving beyond. Without this, I truly believe my reality would be very depressing, bleak, and overall just feeling like I ruined my life and there’s no hope for ever being able to be okay again and I’d have to live with this the rest of my life. This criminal background would keep me closer to where I don’t want to be and farther away from where I want to go ... I don’t think I could ever truly put into words how this will change my life for the better in so many different layers... I will never ever ever forget what you’ve done for me, and am so grateful that there are people - professionals like you who after all the things you must see and hear from people in your line of work ... still believe in the good in a person and that everyone is capable and valuable and worthy of a second chance despite what others might say or think... So to me and my family you’ve helped and changed all of us for the better you’ve made a real difference in someone’s life, who a lot of people wouldn’t even bother to consider.”

- Former Free to Thrive Vacatur Client





Challenges in Doing This Work

After assisting survivors petitioning for vacatur for the past six years, we have learned a lot of lessons. What follows is a high-level summary of the challenges we have identified in doing this work.

- The level of detail needed to meet the clear and convincing evidence burden of proof can be extremely retraumatizing for survivors. To meet this standard, they usually have to recount their traumatic experiences and this process can significantly prolong the filing process. In addition, some survivors eligible for this relief decide not to go forward or stop mid-way through the process due to the impact on their mental health.
- Many prosecutorial agencies and courts are unfamiliar with this law so attorneys representing survivors must work extra hard to educate them about the law and the dynamics of human trafficking.
- Due to challenges with consolidation across counties, attorneys may have to file separate petitions in each county where a victim has a record.
- Each county has a different process for vacatur petitions and some counties have no process at all. This requires significant time and resources to identify and comply with each jurisdiction's procedures.
- It takes an extraordinary amount of resources to ensure government agencies and law enforcement comply with court orders to seal and destroy vacated records.
- Few public defender offices have attorneys with an expertise in vacatur.¹⁵
- There is a lack of government and private funding for nonprofits to do this work
- Few nonprofit organizations offer vacatur legal services; the demand for the service is far greater than the current capacity of existing providers.
- The majority of counties in California do not have any vacatur legal services for survivors.

Impact of Record Clearing on Survivors



Criminal vacatur is life-changing; criminal records perpetuate trauma cycles and cycles of poverty. Clearing a human trafficking survivors' criminal record removes significant barriers to stable employment, safe housing, loans, government benefits, and family reunification. Vacatur also enables them to access victim's benefits, volunteer at their children's schools, and ultimately shed the stigma of having a criminal record. Vacatur promotes equity for some of the most marginalized members of society and improves the survivor's chance of financial independence/economic security and self-sufficiency. We cannot undo the harm of criminalization - but we can remove the barriers survivors face as a result of their criminalization so they can move forward with their lives and be free to thrive.

Conclusion

We have come a long way, but additional work is needed to reduce the criminalization of victims and survivors of human trafficking and repair the harm caused when they are treated as criminals rather than victims. We must continue to improve and expand the laws impacting survivors, including California's vacatur law. Law enforcement and prosecutors need additional training so they can better identify victims and survivors. Vacatur repairs the harm caused by a criminal record, but it cannot erase the harm caused by the criminal system itself. The only way to eliminate this harm is to stop arresting victims for crimes related to their exploitation. Moreover, we need statewide training for judges and court clerks and uniform systems for handling vacatur petitions. We need more funding for nonprofits and public defenders to represent survivors in vacatur cases and we need more law firms to take cases pro bono. **We must all work together to support survivors in clearing their criminal records so they can break free from their exploitation and THRIVE!**

Endnotes

- 1 In this report, the term “victim” is used to describe someone who is still being exploited for sex or labor. The term “survivor” is used to describe someone who was previously exploited.
- 2 Human trafficking at its core is the exploitation of another person for purposes of commercial sex or labor, by means of force, fraud or coercion. It is also the commercial sexual exploitation of a minor.
- 3 “National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking,” <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf> August 2016
- 4 Free to Thrive was founded in 2017 and is a Southern California based nonprofit organization that advances justice and transforms the legal system for human trafficking survivors through legal services, education, and policy advocacy. To learn more about our work please visit our website at www.FreetoThrive.org.
- 5 From December 15, 2021-December 15, 2022.
- 6 Criminal Vacatur is post conviction relief California has made available to survivors of human trafficking, domestic violence and sexual assault for arrests, charges, and convictions related to their victimization.
- 7 Commercial sex can take many forms including, but not limited to: prostitution, illicit massage, brothels, pornography, video-cam sex such as Only Fans, sex acts at strip-clubs, and survival sex to meet basic needs such as food, clothing or shelter.
- 8 Davey, Samantha, “Snapshot on the State of Black Women and Girls: Sex Trafficking in the U.S.” 2020. <https://www.cbcfinc.org/wp-content/uploads/2020/05/SexTraffickingReport3.pdf>
- 9 Id.
- 10 Id.
- 11 Violent felonies as defined under California law include: murder, manslaughter, mayhem, rape, sodomy, oral copulation, lewd acts, death penalty cases, life in prison cases, great bodily injury on non-accomplice, robbery, sexual penetration, attempted murder, kidnapping, assault with intent to commit specified felony, continuous sexual abuse of a child, carjacking, extortion, threats to victim or witness (136.1, 186.2), and first degree burglary, 12022.53, 11418(a) or (c).
- 12 California also has a parallel vacatur law that applies to victims of intimate partner violence and sexual violence which is codified under Penal Code § 236.15. This code section was added to the California Penal Code as a part of Assembly Bill 124 (2021) (AB 124). AB 124 sought to reduce the criminalization of survivors at every stage of the criminal process. Free to Thrive was a co-sponsor of AB 124 and a member of the statewide coalition that drafted and advocated for this new law.
- 13 The two bills amending Penal Code § 236.14 were California Assembly Bill 262: Vacatur Relief for Victims (2021) and Assembly Bill 2169 (2022). Free to Thrive sponsored both of these bills and actively advocated for them throughout the legislative process in collaboration with our community partners.
- 14 See S. Floor Analyses, 2015-16 Leg., (daily ed. Aug. 24, 2016) (statement of Sen. Block) <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB823>
- 15 One office to look to as a model is the San Diego Public Defender’s Office Fresh Start Program. They provide all forms of post-conviction relief including criminal vacatur.



FREE TO **THRIVE**

A Fresh Start for Human Trafficking Survivors

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