
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No: AB 938 **Hearing Date:** July 8, 2025
Author: Bonta
Version: June 25, 2025
Urgency: No **Fiscal:** Yes
Consultant: CA

Subject: *Criminal procedure: sentencing*

HISTORY

Source: California Coalition for Women Prisoners (Co-Sponsor); Californians for Safety and Justice (Co-Sponsor); Coalition to Abolish Slavery and Trafficking (Co-Sponsor); Immigrant Legal Resource Center (Co-Sponsor); Los Angeles Center for Law and Justice (Co-Sponsor); San Francisco Public Defender (Co-Sponsor)

Prior Legislation: AB 2534 (Bonta), died in Assembly Appropriations, 2024
AB 1497 (Haney), died in Assembly Appropriations, 2024
AB 2169 (Gipson), Ch. 776, Stats. of 2022
AB 124 (Kamlager), Ch. 695, Stats. of 2021
AB 262 (Patterson), Ch. 193, Stats. of 2021
AB 2868 (Patterson), died in Assembly Public Safety, 2020
AB 2869 (Patterson), died in Assembly Public Safety, 2020
SB 823 (Block), Ch. 650, Stats. of 2016
AB 1761 (Weber), Ch. 636, Stats. of 2016
AB 1762 (Campos), vetoed, 2016
AB 1585 (Alejo), Ch. 708, Stats. of 2014

Support: ACLU California Action; Asian American Advancing Justice-Southern California; California Catholic Conference; California Immigrant Policy Center; California Public Defenders Association; California-Hawaii State Conference of the NAACP; Children's Law Center of California; Ella Baker Center for Human Rights; Initiate Justice; Initiate Justice Action; Justice2jobs Coalition; LA Defensa; National Center for Youth Law; Smart Justice California; Vera Institute of Justice; One Individual

Opposition: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California District Attorneys Association; California Narcotic Officers' Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers'

Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association

Assembly Floor Vote:

48 - 21

PURPOSE

The purpose of this bill is to expand vacatur relief available to victims of human trafficking, intimate partner violence or sexual violence to apply to violent crimes as opposed to just nonviolent (including serious) crimes, and to similarly expand the affirmative defense available to these victims to apply to any crime except murder (unless it is felony murder).

Existing law authorizes a person who was arrested for, or convicted of, any nonviolent (including serious) offense, as specified, committed while they were a victim of human trafficking, to petition the court for vacatur relief of their convictions and arrests. (Pen. Code, § 236.14.)

Existing law authorizes a person who was arrested for or convicted of any nonviolent (including serious) offense, as specified, committed while they were a victim of intimate partner violence or sexual violence, to petition the court for vacatur relief of their convictions and arrests. (Pen. Code, § 236.15.)

This bill expands vacatur relief for crimes committed by a victim of human trafficking, intimate partner violence or sexual violence to apply to “violent” felonies including murder.

Existing law requires the petitioner to establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence which demonstrates that the person lacked the requisite intent to commit the offense. (Pen. Code, §§ 236.14, subd. (a); 236.15, subd. (a).)

Existing law provides that, after considering the totality of the evidence presented, the court may vacate the conviction and the arrest if it finds all the following:

- The petitioner was a victim of human trafficking, intimate partner violence or sexual violence at the time of the alleged commission of the offense;
- The arrest for or conviction of the crime was a direct result of being a victim of human trafficking, intimate partner violence or sexual violence; and,
- It is in the best interests of justice. (Pen. Code, §§ 236.14, subd. (g); 236.15, subd. (g).)

Existing law requires the court, in issuing an order of vacatur, to do the following:

- Set forth a finding that the petitioner was a victim of human trafficking, intimate partner violence or sexual violence when they committed the offense and therefore lacked the requisite intent;

- Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of arrest or conviction; and,
- Notify the Department of Justice (DOJ) that the petitioner was a victim of human trafficking, intimate partner violence or sexual violence when they committed the crime and of the relief that has been ordered. (Pen. Code, §§ 236.14, subd. (h); 236.15, subd. (h).)

Existing law provides that intimate partner violence or sexual violence vacatur does not relieve the petitioner of any financial restitution order that directly benefits the victim of a nonviolent crime, unless it has already been paid. (Pen. Code, §§ 236.14, subd. (i); 236.15, subd. (i).)

This bill provides that if the petition for vacatur relief is granted, unpaid restitution, fines, and fees shall be vacated.

This bill specifies that any unpaid restitution, fines, or fees vacated by this relief shall not affect any victim's eligibility when applying for compensation from the California Victim Compensation Board.

Existing law states that a petitioner who was adjudicated as a minor for committing a qualifying nonviolent offense while they were a victim of human trafficking, intimate partner violence or sexual violence who establishes that the arrest or adjudication was the direct result of being a victim of human trafficking, intimate partner violence or sexual violence is entitled to a rebuttable presumption that the requirements for relief have been met. (Pen. Code, §§ 236.14, subd. (j) and 236.15, subd. (j).)

This bill expands vacatur relief for juvenile adjudications to apply to "violent" felonies including murder.

Existing law provides that when the court orders the conviction vacated based on intimate partner violence or sexual violence, the court shall also order the law enforcement agency (LEA) having jurisdiction over the offense, DOJ, and any LEA that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall also provide the petitioner a copy of any court order concerning the destruction of the arrest records. (Pen. Code, § 236.15, subd. (k).)

This bill requires any government agency to seal and destroy the records within one year (rather than three years) of the arrest, or within 90 days (rather than one year) after the court order is granted, whichever occurs first.

Existing law provides that if the court issues an order for human trafficking vacatur relief it shall also order any LEA that has taken action or maintains records because of the offense including, but not limited to, departments of probation, rehabilitation, corrections, and parole, to seal and destroy their records. (Pen. Code, § 236.14, subd. (k)(1).)

Existing law requires the specified entities to seal their records within one year of the date of arrest, or 90 days from the date of the court order, whichever is later. (Pen. Code, § 236.14, subd. (k)(2).)

Existing law requires agencies to subsequently destroy the records within one year of the date of the court order. (Pen. Code, § 236.14, subd. (k)(2).)

Existing law requires that, if the court issues an order for human trafficking vacatur relief, it shall also provide the petitioner and their counsel with a copy of any form the court submits to any agency related to the sealing and destruction of arrest records. DOJ shall notify the petitioner and their counsel that the department has complied with the order to seal the arrest records by the applicable deadline. (Pen. Code, § 236.14, subd. (k)(3)-(4).)

This bill makes the above provision applicable in intimate partner violence/sexual violence vacatur relief.

This bill requires, if requested by the petitioner, the court to file the final order granting relief as confidential.

Existing law requires an intimate partner violence or sexual violence vacatur petition to be made and heard within a reasonable time after the person has ceased to be a victim, or within a reasonable time after the petitioner has sought services for being a victim, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of intimate partner violence and sexual violence who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this relief. (Pen. Code, § 236.15, subd. (l).)

Existing law states that a human trafficking vacatur petition can be made and heard at any time after the person has ceased to be a victim, or at any time after the petitioner has sought services for being a victim, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this relief. (Pen. Code, § 236.14, subd. (l).)

This bill states that a human trafficking, intimate partner violence, or sexual violence vacatur petition may be made and heard at any time.

Existing law provides that the right to petition for human trafficking vacatur relief on a nonviolent conviction does not expire with the passage of time. (Pen. Code, § 236.14, subd. (l).)

This bill adds the above provision to intimate partner violence and sexual violence vacatur relief.

Existing law prohibits the court from refusing to hear a human trafficking vacatur petition on the basis of the petitioner's outstanding fines and fees or the petitioner's failure to meet the conditions of probation. (Pen. Code, § 236.14, subd. (l).)

This bill adds the above provision to intimate partner violence and sexual violence vacatur relief.

Existing law defines a “nonviolent offense” for the purposes of vacatur relief, as one that does not appear on California’s violent felony list. (Pen. Code, §§ 236.14, subd. (t)(1), 236.15, subd. (t)(1).)

Existing law defines “vacate” to mean that the arrest and any adjudications or convictions suffered by the petitioner which are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2), 236.15, subd. (t)(2).)

Existing law provides that, a petitioner who has obtained vacatur relief may lawfully deny or refuse to acknowledge the arrest, conviction, or adjudication that is set aside pursuant to the order. (Pen. Code, §§ 236.14, subd. (o); 236.15, subd. (o).)

Existing law provides rules that apply to postconviction proceedings. (Pen. Code, § 1171.)

This bill specifies that petitions for vacatur relief constitute postconviction proceedings.

Existing law provides that, in addition to any other affirmative defense, it is a defense to a crime that the person was coerced to commit the offense as a direct result of being a human trafficking, intimate partner violence or sexual violence victim at the time of the offense and in reasonable fear of harm. (Pen. Code, §§ 236.23, subd. (a), 236.24, subd. (a).)

Existing law states that this affirmative defense does not apply to a violent felony. (Pen. Code, §§ 236.23, subd. (a), 236.24, subd. (a).)

Existing law establishes the standard of proof for the human trafficking affirmative defense as the preponderance of evidence standard. (Pen. Code, §§ 236.23, subd. (b), 236.24, subd. (b).)

Existing law provides that the human trafficking affirmative defense can be asserted at any time before entry of plea or before the end of a trial. The defense can also be determined at the preliminary hearing. (Pen. Code, §§ 236.23, subd. (d), 236.24, subd. (d).)

Existing law entitles a person who successfully raises the human trafficking affirmative defense to the following relief:

- Sealing of all court records in the case;
- Release from all penalties and disabilities resulting from the charge, and all actions that led to the charge shall be deemed not to have occurred; and,
- Permission to attest in all circumstances that they have never been arrested for, or charged with the subject crime, including in financial aid, housing, employment, and loan applications. (Pen. Code, §§ 236.23, subd. (e), 236.24, subd. (e).)

Existing law provides that records sealed after prevailing on the human trafficking affirmative defense may still be accessed by law enforcement for subsequent investigatory purposes involving persons other than the defendant. (Pen. Code, §§ 236.23, subd. (e)(1)(B), 236.24, subd. (e)(1)(B).)

Existing law states that, in any juvenile delinquency proceeding, if the court finds that the alleged offense was committed as a direct result of being a victim of human trafficking then it shall dismiss the case and automatically seal the case records. (Pen. Code, §§ 236.23, subd. (f), 236.24, subd. (f).)

Existing law states that the person may not be thereafter charged with perjury or otherwise giving a false statement based on the above relief. (Pen. Code, §§ 236.23, subd. (e)(3)(C), 236.24, subd. (e)(3)(C).)

Existing law requires certifying agencies, upon the request of a noncitizen victim of crime or their family member, or licensed attorney representing the victim, to certify victim helpfulness on the applicable form so that they may apply for a U-visa. (Pen. Code, § 679.10, subd. (g).)

Existing law creates a rebuttable presumption that a noncitizen victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Pen. Code, § 679.10, subd. (h).)

Existing law mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.10, subd. (j).)

Existing law requires certifying agencies, upon the request of a noncitizen human-trafficking victim, their family member, or licensed attorney representing the victim, to certify victim helpfulness on the applicable form so that they may apply for a T-visa. (Pen. Code, § 679.11, subd. (f).)

Existing law creates a rebuttable presumption that a noncitizen human-trafficking victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Pen. Code, § 679.11, subd. (g).)

Existing law mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.11, subd. (i).)

Existing law codifies the procedures for a noncitizen qualified criminal informant to obtain certification from a certifying entity for purposes of obtaining an S-Visa. (Pen. Code, 679.13.)

This bill provides that a judge of the court, in addition to any other certifying entity, shall review and sign any certification request, submitted pursuant to existing procedures, by or on behalf of a person petitioning for vacatur relief regardless of the outcome of the petition. Provides the same with respect to a defendant asserting the affirmative defense, regardless of the outcome of the affirmative defense raised.

COMMENTS

1. Need for This Bill

According to the author:

California has made important strides in supporting survivors of human trafficking, intimate partner violence, and sexual exploitation. However, gaps in existing law still result in many survivors carrying criminal records for actions they were coerced into committing. These convictions can create significant barriers to employment, housing, and education, hindering survivors' ability to reintegrate into society fully.

AB 938 seeks to support survivors instead of criminalizing them, allowing survivors to present the full context of their victimization in court through an affirmative defense and to petition for vacatur of convictions directly related to their abuse and exploitation. The bill includes important safeguards, requiring judicial review to ensure each petition serves the interest of justice, and permits prosecutors to contest relief when appropriate.

Marginalized communities—including Black, Brown, Indigenous, immigrant, and LGBTQ+ survivors—are disproportionately affected by these challenges. This legislation aims to strengthen legal protections while maintaining public safety and fairness in the judicial process.

Similar laws have been successfully enacted in states such as New York, Georgia, and Nebraska, with bipartisan support. AB 938 aligns California with these efforts by promoting a trauma-informed and survivor-centered approach that balances compassion with due process.

This bill provides survivors a pathway to rebuild their lives while upholding the principles of justice and public safety that Californians value.

2. Expansion of Human Trafficking Affirmative Defense to Include All Violent Crimes Except Murder (Unless it is Felony Murder)

Penal Code section 236.23 provides an affirmative defense to a crime that is not violent if the person accused establishes by a preponderance of evidence that they were “coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm.” (Pen. Code, § 236.23, subds. (a) & (b).) In addition to being a non-violent offense, the following elements must be met for the defense to apply: “(i) the accused was a victim of human trafficking at the time the offense was committed, (ii) the accused was coerced to commit the offense as a direct result of being a human trafficking victim, (iii) the accused had a reasonable fear of harm when the offense was committed.” (*In re D.C.* (2021) 60 Cal.App.5th 915, 920.) Penal Code section 236.24 provides such an affirmative defense for victims of intimate partner violence or sexual violence.

In addition to these affirmative defenses, California has a duress defense. Duress “is available as a defense to defendants who commit a crime ‘under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.’ (Pen. Code, § 26, subd. Six; *People v. Otis* (1959) 174 Cal.App.2d 119, 124-125 [(*Otis*)).” (*People v. Saavedra* (2007) 156 Cal.App.4th 561, 567.) However, duress is not a defense to murder (unless it is felony-murder, in which case duress can negate the underlying felony). (*People v. Anderson* (2002) 28 Cal.4th 767, 772; Pen. Code, § 26.) The rationale behind allowing duress as a defense for any crime except murder is explained as follows:

The basic rationale behind allowing the defense of duress for other crimes “is that, for reasons of social policy, it is better that the defendant, faced with a choice of evils, choose to do the lesser evil (violate the criminal law) in order to avoid the greater evil threatened by the other person.” (Fn. omitted.) This rationale, however, “is strained when a defendant is confronted with taking the life of an innocent third person in the face of a threat on his own life. . . . When the defendant commits murder under duress, the resulting harm--i.e. the death of an innocent person--is at least as great as the threatened harm--i.e. the death of the defendant.” (*People v. Anderson, supra*, 28 Cal.4th at p. 772, citing *U.S. v. LaFleur* (1992) 971 F.2d 200, 205.)

California also has a necessity defense. The necessity defense is available to a defendant who “‘violated the law (1) to prevent a significant and imminent evil, (2) with no reasonable legal alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and (6) under circumstances in which [they] did not substantially contribute to the emergency.’” (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1164-1165; see also CALCRIM No. 3403.)

Under California’s self-defense laws, one can use proportional force when they reasonably believe they are in imminent danger of physical harm and that force is necessary to stop it. (CALCRIM No. 3470.) Deadly force may only be used if one reasonably believes it is necessary to stop an imminent danger of death or serious injury. (CALCRIM No. 505.)

This bill extends the human trafficking/intimate partner violence/sexual violence affirmative defenses to crimes on the violent felonies list, except murder (unless it is felony murder). As noted above, the defense would be available to defendants who were coerced to commit a violent felony as a direct result of being a victim of human trafficking, intimate partner violence, or domestic violence, as long as they had a “reasonable fear of harm.” The harm they fear need not be serious or violent. The defense would apply even if the crime committed created greater harm than what the human trafficking/intimate partner/domestic violence victim avoided.

This goes farther than our duress defense. This goes farther than our necessity defense. This even goes farther than our laws on self-defense. Is this fair public safety policy or a step too far?

3. Expansion of Vacatur Relief to Include All Violent Crimes Including Murder

Penal Code section 236.14 provides post-conviction relief to human trafficking victims by vacating nonviolent arrests, charges and convictions that were a direct result of human trafficking.

The law allows a person to file a petition with the court, under penalty of perjury, and shall establish by clear and convincing evidence that the arrest or conviction was the direct result of being a victim of human trafficking that demonstrates that the person lacked the requisite intent to commit the crime. (Pen. Code, § 236.14, subd. (a).) The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief. If the petition is opposed, then the court shall hold a hearing. (Pen. Code, § 236.14, subds. (c).) If opposition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition. (Pen. Code, § 236.14, subd. (d).) Petitioners, who were minors at the time of the offense who establish that the arrest or adjudication was the direct result of being a victim of human trafficking, are entitled to a rebuttable presumption that the requirements for relief have been met. (Pen. Code, § 236.14, subd. (i).) If opposition is filed, or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. (Pen. Code, § 236.14, subd. (f).)

If, after considering the totality of evidence presented, the court finds that the petitioner was a victim of human trafficking at the time of the crime, the arrest or conviction was a direct result of being a victim of human trafficking, and it is in the best interest of justice, the court may vacate the conviction and arrests and issue an order reflecting the court's determination. (Pen. Code, § 236.14, subds. (g)-(h).) The petitioner shall not be relieved of any financial restitution order that directly benefits the victim of the crime, unless it is already paid. (Pen. Code, § 236.14, subd. (i).)

"Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2).) The purpose of these laws is to provide relief for individuals who have criminal records as a result of their exploitation, by vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers. (See, Assembly Public Safety Analysis for SB 823 (Block), Chapter 650, Statutes of 2016.)

Penal Code section 236.15 extends a substantially similar form of post-conviction relief to intimate partner violence and/or sexual violence victims by vacating nonviolent arrests, charges and convictions that were a direct result of the intimate partner or sexual violence. This bill makes technical and conforming changes to make this statute operate more similarly to the human trafficking vacatur law in terms of record sealing and destruction and how to proceed on unopposed petitions. For both types of vacatur petitions, this bill provides more specific destruction of records requirements to carry out the purposes of vacatur.

Additionally, existing law under both types of vacatur petitions prohibit a petitioner who is granted vacatur relief from being relieved of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has already been paid. This bill instead provides that if the petition is granted, unpaid restitution, fines, and fees shall be vacated. Because vacatur relief makes it so that the conviction should not have occurred due to the petitioner's lack of intent to commit the crime, the restitution and fines tied to the conviction

should not continue to be imposed. The bill specifies that any unpaid restitution, fines, or fees vacated by this relief shall not affect any victim's eligibility when applying for compensation from the California Victim Compensation Board.

Importantly, this bill also extends the vacatur relief available to victims of human trafficking, intimate partner violence, and sexual violence, to all crimes, not just nonviolent crimes. Moreover, unlike the affirmative defense discussed above, vacatur relief under this bill is also available for murder convictions (not just felony murder convictions). So while the affirmative defense does not apply in these circumstances, a defendant could nonetheless return to court after being convicted of murder and request to have that same conviction vacated under this provision. This appears wholly inconsistent.

4. T-Visas, U-Visas, and S-Visas

“Congress created this nonimmigrant status (commonly referred to as a T visa) in October 2000 as part of the Victims of Trafficking and Violence Protection Act. Human trafficking, also known as trafficking in persons, is a crime in which traffickers use force, fraud, or coercion to compel individuals to provide labor or services, including commercial sex. Traffickers often take advantage of vulnerable individuals, including those lacking lawful immigration status. T visas offer protection to victims and strengthen the ability of law enforcement agencies to detect, investigate and prosecute human trafficking.”

(<https://www.uscis.gov/humanitarian/victims-of-human-trafficking-t-nonimmigrant-status> [as of June 30, 2025].)

“The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.” (<https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status> [as of June 30, 2025].)

“An S nonimmigrant is an individual who has assisted a law enforcement agency as a witness or informant...A law enforcement agency may submit an application for permanent residence (a Green Card) on behalf of a witness or informant when the individual has completed the terms and conditions of his or her S classification. Only a federal or state law enforcement agency or a U.S. Attorney's office may submit a request for permanent residence as an S nonimmigrant on behalf of a witness or informant. The requesting agency must also be the same agency that initially requested S nonimmigrant status on behalf of the individual...Qualifying family members of the principal S nonimmigrant may also be eligible to apply for a Green Card.” (<https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-an-informant-s-nonimmigrant> [as of June 30, 2025].)

California law codifies the procedures to obtain certification from a certifying entity for purposes of obtaining a T-Visa, U-Visa, or S-Visa. (Pen. Code, §§ 679.10, 679.11, 679.13.)

This bill provides that a judge of the court, in addition to any other certifying entity, shall review and sign any certification request, submitted pursuant to existing procedures, by or on behalf of a person petitioning for vacatur relief regardless of the outcome of the petition. This bill provides the same with respect to a defendant asserting the affirmative defense, regardless of the outcome of the affirmative defense raised.

5. Argument in Support

According to the Coalition to Abolish Slavery and Trafficking, a co-sponsor of the bill:

California has the highest reported cases of human trafficking in the nation, 1 and 34% of women in our state will experience domestic violence. Human trafficking and intimate partner violence impact all communities, but research shows that Black, brown, and indigenous women, immigrants, and queer and trans people are disproportionately impacted. In fact, more than 80% of American Indian and Alaska Native women experience violence in their lifetime, while Black women are almost three times more likely than white women to die at the hands of a current or ex-partner.

Despite California's commitment to protecting survivors, survivors are often arrested and punished for protecting their or their family's lives. A 2023 National Survivor Survey by the Polaris Institute found that 90% of trafficked individuals with criminal records had offenses directly tied to their exploitation. The criminalization of victims by California's legal system leaves survivors without access to resources for survival, like housing, employment, education, and financial independence, and subjects them to continued cycles of violence, homelessness, and poverty. The criminalization of survivors exacerbates cycles of trauma and harm and undermines community well being and safety. Additionally, immigrant and refugee survivors face the added threat of detention and deportation when they enter the criminal legal system.

Too often, victims and survivors of violence are blocked from the opportunity to heal because their trauma is used against them, ignored, or not accounted for during legal proceedings. Vacatur relief and affirmative defense are legal remedies with the legislative intent of preventing the incarceration of individuals who can demonstrate, by clear and convincing evidence, that they were forced to commit a crime.

AB 938 would recognize the trauma and coercion many survivors face, offering a path to justice by acknowledging their criminalization was a result of their experience of intimate partner violence, human trafficking, or sexual violence. It offers a path to justice and empowers survivors to rebuild their lives without the burden of a record tied to their abuse.

6. Argument in Opposition

According to the California District Attorneys Association:

This bill would amend the vacatur relief statutes to expand the provisions to include violent offenses, prohibit crime victims from collecting restitution when vacatur relief is granted, and expand existing affirmative defenses to apply to most violent crimes (with the exception of certain murders).

The vacatur relief provisions – Penal Code section 236.14 and 236.15 – were enacted in 2016 and 2021, respectively. The statutes provide that individuals arrested or convicted of a nonviolent offense while they were a victim of human trafficking, intimate partner violence, or sexual violence may petition the court for relief. Importantly, both provisions specifically exclude violent offenders such as murderers, rapists, kidnappers and other serious offenders who committed offenses listed in Penal Code section 667.5(c). Recent amendments to the bill do not change the scope of the bill as vacatur relief would still apply to all violent offenses, including murder, rape, child molest, kidnapping, etc.

AB 938, as amended, removes the exclusion for violent offenses. The bill provides that vacatur relief is available for any offense, including violent offenses. Thus, convicted murderers, rapists and kidnappers, among other violent offenders, would be eligible for relief. Recent amendments to the bill that exclude certain murders only apply to the affirmative defense provisions of the bill, not the vacatur relief sections. In addition, if relief is granted, AB 938 would also require that any victim restitution order be vacated and that the arrest or conviction be deemed never to have occurred with all records sealed. Furthermore, this bill expands existing limited affirmative defenses to apply to most violent crimes (with the exception of certain murders).

Because AB 938, as amended, mandates such drastic action as expanding relief to violent offenders and negatively impacting victims' rights, CDAA must oppose the bill.

– END –