

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-15

Title	Action Requested
Criminal Procedure: Vacatur Relief for Human Trafficking Victims	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve Cal. Standards of Judicial Administration, standard 4.15	January 1, 2020
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Sarah Fleischer-Ihn, 415-865-7702 Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes adding standard 4.15 to the California Standards of Judicial Administration to provide guidance to judges and court administrators on procedures to implement vacatur relief under Penal Code section 236.14. Section 236.14 provides, in relevant part, for a petition process to vacate an arrest or conviction for a nonviolent offense while the petitioner was a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest records.

Background

In September 2016, the Legislature enacted [Senate Bill 823](#) (Block; Stats. 2016, ch. 650), which added Penal Code section 236.14, effective January 1, 2017, establishing a petition process to vacate a conviction or adjudication for a person who has been arrested for or convicted of a nonviolent offense while he or she was a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records. (SB 823 also provides for relief for a person adjudicated a ward of the juvenile court for committing a nonviolent offense while a victim of human trafficking. The Judicial Council approved *Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim)* (form JV-748) at its September 2018 meeting.)

To obtain relief under Penal Code section 236.14, the petitioner is required to establish that he or she was a human trafficking victim at the time the nonviolent crime was committed, that the commission of the crime was a direct result of being a human trafficking victim, and that the victim is engaged in a good-faith effort to distance himself or herself from the human trafficking

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

scheme. (Pen. Code, § 236.14(g).) The court is authorized, on making specified findings, to expunge the arrests and to vacate the convictions. (*Ibid.*)

Prior Circulation

In the spring of 2018, the committee circulated a proposal for two new optional forms, *Petition to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-407) and *Order to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-408) in response to legislation establishing a petition process under Penal Code section 236.14. The committee received eight comments in response. Two of the commenters agreed with the proposal, but the other six raised significant issues and proposed various solutions, some of which were contrary to each other. Many of the issues arose from the absence of statutory guidance on implementing procedures, including procedures for multijurisdictional petitions, and concerns about the use of potentially incriminating information in the petition by prosecuting agencies or law enforcement.

In response, the committee chair appointed a working group of subject-matter experts from the committee to review the comments and suggest options to the full committee. After a thorough review of the comments to the proposal, the working group concluded that statewide forms were limited in their ability to provide guidance on the implementation of section 236.14, and considered whether a rule of court would be more effective. The committee subsequently decided that a standard of judicial administration, a nonbinding guideline or goal recommended by the Judicial Council, was more appropriate at this time because of the absence of definitive legal authority on some of the issues related to the petition process.

The Proposal

The proposal would add a new standard of judicial administration to provide guidance to courts on how to implement section 236.14. The proposed standard addresses four areas identified by the committee where further guidance would be helpful: (1) procedures for petitions to vacate multiple arrests and convictions that occurred in the same county; (2) confidentiality of the petition, related filings, court records, and confidentiality of the petitioner's identity at the hearing or any other proceeding accessible to the public; (3) implementation of an initial court review period; and (4) additional relief for the petitioner, such as sealing of court records.

Alternatives Considered

As noted, the committee circulated a proposal for optional forms in 2018; it also considered proposing a rule of court. However, absent definitive legal authority, the committee decided that a standard of judicial administration, a nonbinding guideline or goal recommended by the Judicial Council, was more appropriate at this time.

The committee considered alternatives in response to section 236.14(e), which states “[t]he court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.” The committee concluded that it would be extremely difficult operationally for one petition to include multiple arrests and convictions from different jurisdictions because of

the challenges in accurately notifying, tracking, filing, and recording the order in each court's files and case management systems, given that the types of convictions and decision on vacatur relief in each case may differ. Additionally, the committee was not certain that the authority for consolidation in section 236.14(e) was sufficient, on its own, to transfer jurisdiction of an offense that was adjudicated in one county to the superior court in another county for dismissal, merely on the agreement of the involved parties.

In other contexts, if a party seeks to transfer a case to another superior court, a number of procedural steps are required, usually starting with a noticed motion filed in the originating court by the party requesting transfer, with the originating court ruling on the request. These steps are required for intercounty probation transfers under Penal Code section 1203.9 and its related rule of court, California Rules of Court, rule 4.530; for changes of venue under rule 4.151; and in the civil context, under Code of Civil Procedure section 403 and its related rule of court, rule 3.500, Transfer and consolidation of noncomplex common-issue actions filed in different courts. For these reasons, the committee decided not to develop statewide standards on the consolidation of hearings for arrests and convictions that occurred in different counties.

The committee discussed how the parties should be notified of the court's decisions to grant or deny a request to consolidate, grant relief without a hearing, set a hearing date, or deny the petition, after the initial review period provided in standard 4.15(c). The committee discussed whether petitioner's counsel should notify the local and state prosecutorial agencies or, if petitioner was self-represented, whether the court should do so. The committee concluded that the court was generally in the best position to notify the parties of these decisions.

The committee also discussed how best to implement section 236.14(q), which mandates that the record of a proceeding related to a vacatur petition that is accessible by the public must not disclose the petitioner's full name. Section 3 of SB 823 further states the following:

The Legislature finds and declares that Section 1 of this act, which adds Section 236.14 to the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of victims of human trafficking and to improve their opportunities for recovery, it is necessary that this act limit the public's right of access to the full name of a petitioner who seeks relief from an arrest or conviction for an offense in which the petitioner participated as a result of his or her status as a victim of human trafficking.

(Sen. Bill No. 823 (2015–2016 Reg. Sess.) § 3.)

Taking this statutory language and legislative intent into account, the standard recommends that the court implement privacy measures at the hearing or other public proceedings, such as ordering the identity of the petitioner to be either “Jane Doe” or “John Doe,” similar to provisions for victims of designated sex offenses under Penal Code section 293.5.

Additionally, the committee discussed options regarding a petitioner’s privacy in court records, including having the petition filed using initials or “Jane Doe” or “John Doe,” having the court redact the name of the petitioner, or having the court order the file sealed once the petition is filed. But the committee was concerned that each of these approaches would still allow a level of public disclosure in court records, and would place a significant burden on the petitioner and the courts. Ultimately, the committee concluded that the most effective approach was for the petition, related filings, and court records to be designated as confidential. With this approach, the petition would be confidential upon filing and immediately placed in the confidential portion of the court’s file together with any supporting documentation, responsive pleadings, and so on.

The committee considered, but declined, including instructions in the standard to guide petitioners on how to file for relief, noting that standards of judicial administration are not intended to provide petitioners with such guidance.

Fiscal and Operational Impacts

The proposed standard is nonbinding. It is intended to provide guidance to courts on procedures to implement Penal Code section 236.14. If implemented by a court, expected costs are limited to training and possible case management system updates. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Please comment on the committee's decision to propose a nonbinding standard of judicial administration rather than a mandatory rule of court.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Stds. Jud. Admin., std. 4.15, at pages 6–8
2. Link A: Pen. Code, § 236.14,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=236.14

Standard 4.15 of the Standards of Judicial Administration would be adopted, effective January 1, 2020, to read:

1
2 **Standard 4.15. Vacatur relief under Penal Code section 236.14.**

3
4 **(a) Request to consolidate arrests and convictions that occurred in the same**
5 **county**

6
7 (1) The court should allow the filing of a single petition requesting vacatur relief
8 under Penal Code section 236.14(a) for multiple arrests and convictions that
9 occurred in the same county.

10
11 (2) The court should favor consolidating hearings under Penal Code section
12 236.14(e) for multiple arrests and convictions that occurred in the same
13 county.

14
15 (3) The court may require the following documentation before granting a request
16 to consolidate hearings:

17
18 (A) An agreement between petitioner and all the involved state or local
19 prosecutorial agencies, as defined in Penal Code section 236.14(c), to
20 consolidate the hearings;

21
22 (B) Documentation that states whether any of the involved state or local
23 prosecutorial agencies, as defined in Penal Code section 236.14(c),
24 intend to file an opposition to the petition; and

25
26 (C) Proof of service of the request to consolidate hearings on the involved
27 state or local prosecutorial agencies, as defined in Penal Code section
28 236.14(c).

29
30 (4) The court should consider the following factors when deciding whether to
31 consolidate hearings:

32
33 (A) The common questions of fact or law, if any;

34
35 (B) The convenience of parties, witnesses, and counsel;

36
37 (C) The efficient utilization of judicial facilities and staff resources;

38
39 (D) The calendar of the courts; and

40
41 (E) The disadvantages of duplicative and inconsistent orders.
42

Standard 4.15 of the Standards of Judicial Administration would be adopted, effective January 1, 2020, to read:

1
2 **(b) Confidentiality**

- 3
4 (1) The court should designate the petition and related filings and court records
5 as confidential.
6
7 (2) At the hearing or any other proceeding accessible to the public, the court
8 should consider implementing procedures consistent with section 236.14(q),
9 such as ordering the identity of the petitioner to be either “Jane Doe” or
10 “John Doe.”

11
12 **(c) Initial court review and orders**

- 13
14 (1) After 45 days from the filing of the petition, the court should conduct an
15 initial review of the case. Concurrent with granting or denying a request to
16 consolidate hearings, the court should:
17
18 (A) Grant relief without a hearing when the prosecuting agency files
19 no opposition within 45 days from the date of service and the
20 court finds that the petitioner meets the requirements for relief;
21
22 (B) Set a hearing date if an opposition is filed or is otherwise
23 warranted; or
24
25 (C) Deny the petition without prejudice if petitioner fails to provide
26 the information required by Penal Code section 236.14(b).
27
28 (2) The court must timely notify the petitioner and prosecuting agency of its
29 decisions under subdivisions (c)(1).

30
31 **(d) Additional relief**

32
33 When granting the petition for vacatur relief under Penal Code section 236.14(a),
34 the court should consider ordering the following additional relief, including the:
35

- 36 (1) Sealing or destruction of probation or other post-conviction supervision
37 agency records related to the conviction;
38
39 (2) Expungement of DNA profiles and destruction of DNA samples, if they
40 qualify under Penal Code section 299;
41
42 (3) Recall or return of court fines and fees, if paid; and

Standard 4.15 of the Standards of Judicial Administration would be adopted, effective January 1, 2020, to read:

1

2 (4) Sealing of the court file, if warranted under the factors in rule 2.550(d).