

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-15

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**Title**

Criminal Procedure: Petition and Order to Vacate Arrest or Conviction (Human Trafficking Victim)

**Action Requested**

Review and submit comments by June 8, 2018

**Proposed Effective Date**

January 1, 2019

**Proposed Rules, Forms, Standards, or Statutes**

Approve forms CR-407 and CR-408

**Contact**

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**Proposed by**

Criminal Law Advisory Committee  
Hon. Tricia Ann Bigelow, Chair

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes 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 recent legislation<sup>1</sup> that establishes a petition process under Penal Code section 236.14 to vacate a conviction or adjudication for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for committing 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.

### Background

In 2014, legislation<sup>2</sup> added Penal Code section 1203.49 to authorize a defendant who had been convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), and who had completed a term of probation for that conviction, to petition the court for dismissal relief. For relief under section 1203.49, the petitioner must establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. The court is then authorized to issue an order that (1) finds that the petitioner was a victim of human trafficking when he or she committed the crime, (2) orders any of the relief described in Penal

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<sup>1</sup> [Sen. Bill 823](#) (Block; Stats. 2016, ch. 650).

<sup>2</sup> [Assem. Bill 1585](#) (Alejo; Stats. 2014, ch. 708).

*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 These proposals are circulated for comment purposes only.*

Code section 1203.4, and (3) notifies the Department of Justice that the petitioner was a victim of human trafficking and of the relief ordered.

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, and establishes a petition process to vacate a conviction or adjudication for a person who has been arrested for or convicted of committing 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. (The legislation 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, which is addressed in a separate Invitation to Comment.)

In order 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 scheme. Section 236.14 authorizes the court, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, to consolidate petitions with multiple convictions from different jurisdictions into one hearing. If the court finds a compelling reason why a petitioner and/or counsel cannot attend the hearing on the petition, the petitioner or his or her attorney may appear via alternate electronic means. Section 236.14(g) authorizes the court, upon making specified findings, to expunge the arrests and to vacate the convictions.

The court’s order granting vacatur relief must provide for the sealing and destruction of the petitioner’s arrest and court records by relevant law enforcement agencies and the Department of Justice. Penal Code section 236.14 also 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. These records likely include the index, the register of actions, as well as other court records.<sup>3</sup>

## **The Proposal**

The Criminal Law Advisory Committee proposes 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) to address the new statutory basis for relief under section 236.14. Both forms are proposed to be confidential forms to address the directive in section 236.14, subdivision (q) that, “the record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner’s full name.” The petition form also directs the petitioner to file a separate petition for each court case

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<sup>3</sup> Penal Code section 851.92(d)(2) provides the following definition for “court records” that must be sealed when relief is granted under certain statutes: “Court records” means records, files, and materials created, compiled, or maintained by or for the court in relation to court proceedings, and includes, but is not limited to, indexes, registers of actions, court minutes, court orders, court filings, court exhibits, court progress and status reports, court history summaries, copies of state summary criminal history information and local summary criminal history information, and any other criminal history information contained in any of those materials.

for which the petitioner is seeking relief. Both of these elements of the forms are discussed below, in the section on “Alternatives Considered.”

The proposed *Petition to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-407):

- Provides instructions to guide the petitioner in filling out and filing the petition form. The fourth bullet of the instructions directs the petitioner to file a separate petition for each court case in a particular county, and to file separate petitions in the superior courts in each county in which the petitioner has an arrest or conviction.
- Prompts the petitioner to provide identifying details regarding the dates and locations of arrests and convictions that the petitioner is seeking to have expunged or vacated, and supporting facts regarding the petitioner’s status as a victim of human trafficking and commission of the crime as a direct result of being a victim of human trafficking.
- Provides an option for the petitioner to request that the court consolidate into one hearing the court’s review of all of the petitions to vacate filed by the petitioner.
- Provides an option for the petitioner to request that the court hold the hearing on a petition without the personal presence of the petitioner or counsel, and to permit the petitioner and/or counsel to appear for the hearing via electronic means.

The proposed *Order to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-408):

- Provides an option for the court to indicate whether the prosecutorial agency has filed an opposition to the petitioner, and to deem the petition unopposed.
- Provides an option for the court to indicate in its findings whether the elements necessary to grant relief are present.
- Provides an option for the court to indicate whether it grants or denies the requested relief.
- Notifies the California Department of Justice of the petitioner’s status as a victim of human trafficking when the crime was committed, and of the relief ordered.
- Directs the California Department of Justice and the law enforcement agencies with jurisdiction over the expunged arrests to seal and destroy their records of the petitioner’s arrest(s) and then to destroy the court order to seal and destroy those records.
- Provides an option for the court to grant additional relief.
- Provides an option, if the court denies the petition, for the court to provide reasons for the denial and to grant the petitioner a reasonable period of time to cure the noted deficiencies.

### **Alternatives Considered**

The committee alternatively considered adding section 236.14 relief to forms CR-180 and CR-181, *Petition for Dismissal* and *Order for Dismissal*, but determined that the relief provided under section 236.14 was sufficiently complex and different from section 1203.49 relief to warrant the development of new forms. The committee discussed a variety of options regarding

the mandate in section 236.14(q) that “the record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner’s full name.” Options discussed included having the petitioner file the petition using initials or “Jane Doe,” having the court redact the name of the petitioner, or having the court order the file sealed once the petition is filed.

The committee was concerned that each of these approaches would result in court records with some level of public disclosure, and would also place a significant burden on petitioners and the courts. The committee concluded that the most effective approach is for the petition and order to be confidential forms so that the petition is confidential upon filing and placed in the confidential portion of the court’s file. This approach serves to protect the reputation of the petitioner from public redisclosure of the original criminal offense and additional disclosure of his or her status as a human trafficking victim, and is consistent with the sealing standard set forth in *In re Marriage of Burkle*.

The committee also considered alternatives in response to section 236.14(e), which states that, “The 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 agreed that it would be extremely difficult operationally for courts, and likely not in the best interests of petitioners, for one petition to include multiple convictions from the same or different jurisdictions because of the challenges in accurately tracking, filing, and recording the order in each court’s files and case management systems, given that there may be different types of convictions and a different decision on vacatur relief in each case. For these reasons, the committee recommends that form CR-407 instruct the petitioner to file a separate petition for each court case.

The committee recommends that form CR-407 instruct the petitioner that if the court(s) and prosecutorial agencies agree, the court(s) may consolidate the hearings on the separate petitions into one hearing, and provide the petitioner with an option to request that the petitioner and/or counsel be permitted to appear at the hearing(s) by telephone, videoconference, or other electronic means, as authorized by section 236.14(n).

### **Implementation Requirements, Costs, and Operational Impacts**

Expected costs are limited to training, possible case management system updates, and the production of new forms. 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?
- Are the proposed revisions an effective way to address the legislation adding Penal Code section 236.14?

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 two 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. Forms CR-407 and CR-408, at pages 6–10

PETITIONER (the person who is filing this petition): NAME: DATE OF BIRTH: STREET ADDRESS: CITY: STATE: ZIP CODE: MAILING ADDRESS (if different): CITY: STATE: ZIP CODE: TELEPHONE NO.: E-MAIL ADDRESS (if available):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b>  <b>Not approved by</b>  <b>the Judicial Council</b></p>
ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
<b>PETITION TO VACATE ARREST OR CONVICTION          (HUMAN TRAFFICKING VICTIM)          (Pen. Code, § 236.14)</b>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> DATE: TIME: DEPARTMENT:
<p style="text-align: center;"><b>Instructions — Read Carefully</b></p> <ul style="list-style-type: none"> <li>• This petition must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).</li> <li>• Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use <i>Attachment to Judicial Council Form</i> (form MC-025) as your additional page.</li> <li>• Serve the petition on the state or local prosecuting agency that was responsible for the conviction or that had jurisdiction over the arrest.</li> <li>• File the petition(s) in the superior court in the county where the arrest(s) or conviction(s) occurred. If you have multiple arrests or convictions within one county, file a <i>separate</i> petition for <i>each</i> court case. If you have arrests or convictions in more than one county, file a <i>separate</i> petition in the superior court in each county. (If the court(s) and all of the state or local prosecutorial agencies agree, the court(s) <i>may</i> consolidate the hearings on the separate petitions into one hearing.) Only the original petition needs to be filed unless local rules require additional copies.</li> <li>• Notify the clerk of the court in writing if you change your address after filing your petition.</li> </ul>	

1. This petition concerns the arrests for a nonviolent offense (any offense not listed in Pen. Code, § 667.5(c)) listed below:
  - a. Date(s) of the arrest(s):
  - b. Location(s) of the arrest(s) (include city and county):
  - c. Law enforcement agency(ies) that made the arrest(s). (If it was a police department, include the city name; if it was a county sheriff, list the county):
  - d. Arrest report number(s) or police report number(s), if available:
  - e. Include any other information about the arrest(s) that is available from the prosecutor or the court, including the case number that the prosecutor used to review the arrest or used to file a case:

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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2. This petition concerns the conviction(s) for a nonviolent offense (any offense not listed in Pen. Code § 667.5(c)) listed below:
- a. Date of the conviction(s):
  - b. Location of the conviction(s) *(include city and county)*:
  - c. Court case number for the conviction(s):

3. I was a victim of human trafficking at the time the nonviolent crime was committed.

4. The commission of the crime was the direct result of my being a victim of human trafficking.

- Supporting facts

Tell your story briefly. Describe the facts you allege constitute evidence of your being a victim of human trafficking, and that constitute evidence that the commission of the crime was the direct result of you being a human trafficking victim. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

5.  I have attached the following official documentation of my status as a victim of human trafficking issued by a federal, state, or local agency *(describe)*:

6.  I request that the court, with the agreement of all of the involved state or local prosecutorial agencies, consolidate the hearing on this petition with the hearing(s) on the following petitions *(list court case number and county)*:

Case Number

County

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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PETITIONER (the person who is filing this petition): NAME: DATE OF BIRTH: STREET ADDRESS: CITY: STATE: ZIP CODE: MAILING ADDRESS (if different): CITY: STATE: ZIP CODE: TELEPHONE NO.: E-MAIL ADDRESS (if available):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b>  <b>Not approved by</b>  <b>the Judicial Council</b></p>
ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
<b>ORDER TO VACATE ARREST OR CONVICTION          (HUMAN TRAFFICKING VICTIM)          (Pen. Code, § 236.14)</b>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> DATE: TIME: DEPARTMENT:

**FOR PURPOSES OF PENAL CODE SECTION 236.14 RELIEF**

1.  The petitioner and/or counsel were personally present at the hearing on this matter, or appeared telephonically, via videoconference, or by other electronic means.
2.  The state or local prosecutorial agency has not filed an opposition to the petition, and the petition is deemed unopposed.
3. The court finds:
  - The petitioner was a victim of human trafficking when he or she committed the offense(s).
  - The commission of the crime(s) was a direct result of the petitioner being a human trafficking victim.
  - The petitioner is engaged in a good faith effort to distance himself or herself from the human trafficking scheme.
  - It is in the best interest of the petitioner and in the interests of justice for this court to order the requested relief.
4. The court  grants  denies the petitioner's request to expunge the arrest(s) listed in the petition.
5. The court  grants  denies the petitioner's request to set aside the verdict(s) of guilty, to dismiss the accusation(s) or information(s), and to vacate the conviction(s) listed in the petition.

**If the court grants the requested relief:**

6. a. The Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.
- b. The following agencies and officials are ordered to seal and destroy their records of the petitioner's arrest within three years from the date of the arrest or within one year after the granting of this order, whichever occurs later, and thereafter to destroy the court order to seal and destroy those records:
  - California Department of Justice
  - Law enforcement agency(ies), with jurisdiction over the offense(s) (specify all):
  
  - Law enforcement agency(ies) that arrested the petitioner or participated in an arrest of the petitioner (specify all):

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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- 7. The petitioner may lawfully deny or refuse to acknowledge an arrest or conviction that is set aside and vacated pursuant to this order.
- 8. The records of a set aside and vacated arrest or conviction shall not be distributed to any state licensing board.
- 9. The record of a proceeding related to this petition that is accessible to the public shall not disclose the petitioner's full name.
- 10.  The court grants additional relief as follows:

11.  The denial of the petition due to insufficient evidence to establish grounds for vacating the arrest or conviction is made without prejudice. The reasons for denial are as follows:

12.  The petitioner is hereby granted a reasonable period of time to cure the deficiencies noted above.

Date: \_\_\_\_\_  
(JUDICIAL OFFICER)

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