



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title

Criminal Procedure: Vacatur Relief for Human Trafficking Victims

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Standards of Judicial Administration, standard 4.15

Effective Date

January 1, 2020

Date of Report

September 24, 2019

Recommended by

Criminal Law Advisory Committee

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends adopting a new standard of judicial administration to provide guidance to judges and court administrators on implementing vacatur relief under Penal Code section 236.14, which provides for a petition process to vacate an arrest or conviction for a nonviolent offense that occurred while the petitioner was a victim of human trafficking.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council adopt California Standards of Judicial Administration, standard 4.15, effective January 1, 2020, to:

1. Provide guidance on procedures to consolidate hearings to vacate multiple arrests and convictions that occurred in the same county;
2. Recommend measures to preserve the confidentiality of the petition, related filings, court records, and the petitioner's identity in proceedings accessible to the public;
3. Recommend an initial court review period prior to setting a hearing;

4. Recommend that courts provide timely notification of their decisions to relevant parties; and
5. Identify additional relief the court should consider when granting a petition for vacatur relief.

The text of the new standard is attached at pages 6–8.

Relevant Previous Council Action

In the spring of 2018, the Criminal Law Advisory Committee circulated a proposal (see Link B) for two new optional forms in response to legislation establishing Penal Code section 236.14. The committee received eight comments in response. Two of the commenters agreed with the proposal; 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, 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 (Cal. Rules of Court, rule 1.5(c))—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 committee also decided to move forward with the proposal due to the high level of public interest in guidance on the vacatur process.

Relatedly, at its September 2018 meeting, the Judicial Council approved two forms recommended by the Family and Juvenile Law Committee to implement section 236.14 for minors, *Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim)* (form JV-748) and *Order After Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim)* (form JV-749).

Analysis/Rationale

The Legislature enacted two criminal record clearing statutes for human trafficking victims in recent years. In 2014, section 1203.49 was added to the Penal Code, authorizing a defendant convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), who has completed a term of probation for that conviction, to petition the court for dismissal relief by establishing through clear and convincing evidence that the conviction was the result of their status as a victim of human trafficking.

Effective January 1, 2017, Penal Code section 236.14 established a petition process to vacate a conviction or adjudication for a person who has been arrested for or convicted of a nonviolent offense while a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records.

To obtain relief under Penal Code section 236.14, the petition is required to establish: (1) the petitioner was a human trafficking victim at the time the nonviolent crime was committed, (2) the commission of the crime was a direct result of being a human trafficking victim, and that (3) the petitioner is engaged in a good faith effort to distance himself or herself from the human trafficking scheme. (Pen. Code, § 236.14(g).) The court is authorized, on making specified findings, to expunge the arrests and to vacate the convictions. (*Ibid.*)

Section 236.14 includes both discretionary decisions, such as whether a court may consolidate into one hearing a petition with multiple convictions from different jurisdictions, and mandatory requirements, such as not disclosing the petitioner's full name at a hearing accessible to the public. However, the statute does not consistently specify criteria for courts to consider or procedures to follow. The proposed standard aims to provide courts with further guidance to implement section 236.14.

Policy implications

The committee recommends a standard of judicial administration due to the high level of public interest in receiving guidance on implementation of section 236.14. Two of the eleven commenters recommended that the Council, at a later point, adopt mandatory rules of court and statewide forms. However, the committee determined that statewide forms would be limited in their ability to provide guidance on implementation, and that the mandatory provisions of a rule of court would be premature at this time.

The committee received a significant number of comments from organizations serving or led by human trafficking victims, recommending additional guidelines intended to ease the vacatur process for petitioners. While the committee acknowledges the hardships facing human trafficking victims, the committee declines to recommend additional standards at this time absent a legislative directive or judicial interpretation. The committee believes it is prudent for the standard to have a limited scope at this time.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Eleven comments were received. Three commenters agreed with the proposal, four commenters agreed with the proposal if modified, and four commenters did not indicate a position. The committee revised the proposed standard in response to some of the comments.

Consolidating arrests and convictions from multiple jurisdictions

Four commenters requested the standard include a procedure to consolidate hearings requesting vacatur relief for arrests and convictions from multiple jurisdictions, with the responsibility for coordinating consolidation tasked to courts or law enforcement. In developing the standard, the

committee carefully considered multiple options regarding the consolidation of multijurisdictional petitions and decided not to develop and recommend statewide standards because, unlike many other court actions involving multiple jurisdictions, Penal Code section 236.14 does not identify who is responsible for the procedural steps to consolidate a multijurisdictional petition. The committee declined to recommend courts take on this role absent a legislative directive.

Courts to take a victim-centered, trauma-informed approach

Five commenters requested that the standard promote a victim-centered, trauma-informed approach by the courts. The committee determined that the comment was more appropriately addressed through judicial training and education and declined to include the recommendation in the standard.

Consolidating adult and juvenile petitions:

Three commenters requested the standard include guidance on consolidating adult and juvenile petitions. The committee declined to develop standards on consolidating adult and juvenile petitions at this time due to the limited scope of the proposed standard.

Additional statutory relief:

The committee received comments requesting additional standards based on the statute, such as allowing petitioners to appear by electronic means and stating that petitioner's statement alone may provide a sufficient basis for granting vacatur relief. The committee determined that while these additional provisions had a statutory basis, some related procedural elements were not clear. The committee decided not to incorporate them into the standard without seeking further public comment.

The committee also received comments requesting a standard directing courts to consider additional relief that will carry out the purposes of the statute. The committee accepted the recommendation and amended the standard.

Notification of probation:

Three commenters requested adding language directing the court to notify probation if the court terminated probation in conjunction with granting relief. The committee determined that the court was in the best position to notify probation and amended the standard.

Setting a hearing date upon filing of the petition:

One commenter expressed concern that a petition could languish if a hearing date was not set upon filing. The committee determined that section 236.14 does not require a hearing if the petition is unopposed and the court does not otherwise deem one necessary, so that setting a hearing date after the initial court review period promotes judicial economy and efficiency.

Specifying nonexclusivity of factors:

A commenter recommended that in the portions of the standard where the court is given guidance on factors to consider, that it be specified that those factors are nonexclusive. The committee agreed with the comment and amended the standard.

Other comments:

The proposal also received one comment recommending that the standard state that documentation of a petitioner's status as a victim of human trafficking issued by federal, state, or local agencies can be considered despite evidentiary hearsay rules. The committee declined the recommendation, finding that section 236.14(m) provided similar guidance.

One commenter suggested amending subdivision (e)(3) of the standard, "Recall or return of court fines and fees, if paid," to include fees paid to collection agencies. The committee declined the recommendation, finding the circulated language sufficient.

One commenter recommended adding a subparagraph to subdivision (e), "Additional relief," to include sealing of the records in the possession of the prosecutorial agencies involved in the arrest or conviction. The committee declined the recommendation, finding it to be a substantive change that would require public comment.

Alternatives considered

As noted, the committee circulated a proposal for optional forms in 2018; it also considered proposing a rule of court. However, absent more definite 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.

Fiscal and Operational Impacts

The proposed standard is nonbinding. It is intended to provide guidance to courts on recommended 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. A court may save costs if it consolidates hearings or grants relief without a hearing.

Attachments and Links

1. Cal. Standards of Judicial Administration, standard 4.15, at pages 6–8
2. Chart of comments, at pages 9–64
3. Link A: Pen. Code, § 236.14,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=236.14&lawCode=PEN
4. Link B: Invitation to Comment, SPR18-15, Criminal Procedure: Petition and Order to Vacate Arrest or Conviction (Human Trafficking Victim),
<https://www.courts.ca.gov/documents/SPR18-15.pdf>

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

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

2
3 **(a) Request to consolidate hearings for arrests and convictions that occurred in**
4 **the same county**

5
6 (1) The court should allow the filing of a single petition requesting vacatur relief
7 under Penal Code section 236.14(a) for multiple arrests and convictions that
8 occurred in the same county.

9
10 (2) The court should favor consolidating hearings for multiple arrests and
11 convictions that occurred in the same county.

12
13 (3) The court may require the following documentation before granting a request
14 to consolidate hearings:

15
16 (A) An agreement between the petitioner and all of the involved state or
17 local prosecutorial agencies, as defined in Penal Code section
18 236.14(c), to consolidate the hearings;

19
20 (B) Documentation that states whether any of the involved state or local
21 prosecutorial agencies, as defined in Penal Code section 236.14(c),
22 intend to file an opposition to the petition; and

23
24 (C) Proof of service of the request to consolidate hearings on all of the
25 involved state or local prosecutorial agencies, as defined in Penal Code
26 section 236.14(c).

27
28 (4) The court should consider the following nonexclusive list of factors when
29 deciding whether to consolidate hearings:

30
31 (A) The common questions of fact or law, if any;

32
33 (B) The convenience of parties, witnesses, and counsel;

34
35 (C) The efficient utilization of judicial facilities and staff resources;

36
37 (D) The calendar of the court; and

38
39 (E) The disadvantages of duplicative and inconsistent orders.
40

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 Penal Code section
9 236.14(q), such as ordering the identity of the petitioner to be either “Jane
10 Doe” or “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 a hearing is
23 otherwise warranted; or
24
25 (C) Deny the petition without prejudice if the petitioner fails to
26 provide the information required by Penal Code section
27 236.14(b).
28

29 **(d) Notification**

- 30
31 (1) The court should timely notify the petitioner and prosecuting agency of its
32 decisions under subdivision (c)(1).
33
34 (2) The court should timely notify the relevant probation department of any
35 decision to terminate probation.
36

37 **(e) Additional relief**

38
39 When granting the petition for vacatur relief under Penal Code section 236.14(a),
40 the court should consider ordering the following additional relief, including, but not
41 limited to:
42

- 1 (1) Sealing or destruction of probation or other postconviction supervision
2 agency records related to the conviction;
3
- 4 (2) Expungement of DNA profiles and destruction of DNA samples, if they
5 qualify under Penal Code section 299;
6
- 7 (3) Recall or return of court fines and fees, if paid;
8
- 9 (4) Sealing of the court file, if warranted under the factors in rule 2.550(d); and
10
- 11 (5) Additional relief that will carry out the purposes of Penal Code section
12 236.14.
13

SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>would like to thank the Judicial Council for continuing to review 236.14 filings and procedures in 2019. Bet Tzedek believes that taking the initial step of providing guidance to the Courts through the California Standards of Judicial Administration indicates movement in a positive direction. Bet Tzedek believes the outlined guidance, with some additional provisions that we propose below, is an important step toward allowing victims of human trafficking to seek relief under Penal Code 236.14.</p> <p>However, to be clear, in response to the Council’s first specific request for comment on the question “does the proposal appropriately address the stated purpose,” the answer is no. Bet Tzedek believes that this proposed guidance should be viewed by the Judicial Council as a first step only and encourages the committee of appointed experts to continue the work of promulgating forms and rules for 236.14 in 2020 and beyond. Penal Code 236.14 is a complex provision with statutory language that was designed to be more fully developed at various implementation stages. Given these complexities, it makes sense that full implementation by the Judicial Council would be a multi-year process informed by on-the-ground learning.</p> <p>Additionally, Bet Tzedek wants to directly respond to the Committee’s decision to propose a nonbinding Standard of Judicial Administration rather than a mandatory Rule of Court. Bet Tzedek believes that at this stage of learning on 236.14, implementation of a Standard of Judicial Administration may be appropriate. However, it urges the Court to work toward standardized forms</p>	<p>The committee intends to continue tracking further developments around the implementation of Penal Code section 236.14, including whether rules of court or forms may be appropriate at a later time.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>and mandatory court rules based on learning that Bet Tzedek hopes the Council will engage in during the next few years.</p> <p>To this end, Bet Tzedek’s first recommendation is that the Judicial Council ensure that the committee of experts convened to address Judicial Council's implementation of Penal Code 236.14 continue, with the Committee’s end goal being to publish final forms and mandatory rules for 236.14. Further, Bet Tzedek requests that attorneys and/or judges with expertise in human trafficking cases and the complex trauma involved be appointed to this ongoing Committee. Therefore, Bet Tzedek requests that as the Committee continues its work, the list of those appointed to the Committee be released, the Council solicit input about additional appropriate members, and that it adds additional members if needed.</p> <p>Consolidation Across Different Jurisdictions Bet Tzedek strongly urges the Judicial Council to reconsider the Committee’s position that it was uncertain if “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.” Under 236.14(e), the Legislature gave explicit guidance to the Courts that petitions can be consolidated. Given the explicit statutory language that allows for this in 236.14(e), the authority granted by the statute is clear. It is merely the process that must</p>	<p>A full list of advisory committee members is available here: https://www.courts.ca.gov/documents/crimcom.pdf More information about nominations is available here: https://www.courts.ca.gov/4650.htm</p> <p>The committee will track further judicial interpretation or legislative direction about the process required to consolidate multi-county petitions.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>be developed by the Court to receive the court files and the agreements of the parties for consolidation.</p> <p>Considering the complexity of the process of attempting to vacate convictions from various counties, Bet Tzedek asks the Judicial Council Committee to review its conclusion “not to develop statewide standards on the consolidation of hearings for arrests and convictions that occurred in different counties.” The Committee’s own assessment and discussion highlights the complexities of consolidating petitions. As the committee explains, “[i]t would be difficult operationally for one petition to include multiple arrests and convictions from different jurisdictions because of the challenges of 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” It is exactly because of such difficulties and the complexity of the process that the Judicial Council’s guidance is necessary. For example, while Bet Tzedek’s Clean Slate Project is just beginning, each of our current clients have arrests and/or convictions in multiple jurisdictions. In other words, none of our clients have convictions in only one jurisdiction, which serves to illustrate the importance of consolidation best practices to allow survivors meaningful access to this relief. At present, clients must travel to multiple courthouses and engage in multiple hearings - each presenting an opportunity for re-traumatization. This is costly and time-consuming</p>	<p>The committee carefully considered multiple options regarding statewide standards on the consolidation of multi-jurisdiction petitions and concluded that it was not appropriate here because, unlike many other court actions involving multiple jurisdictions, Penal Code section 236.14 does not identify who is responsible for or authorized to take the procedural steps to consolidate a multi-county petition. The committee acknowledges the hardships facing human trafficking victims but declines to recommend courts take on this role absent a legislative directive.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>for both petitioners as well as the court system, and most importantly, does not best serve these clients with a trauma-informed perspective. Bet Tzedek hopes this information will help to further educate the Committee on this difficult issue and inspire creative solutions from the Judicial Council that best support victims.</p> <p>Furthermore, the authority given the Courts to consolidate matters is an explicit recognition of the complex and very special nature of trafficking crimes and the Legislature’s concern with the increased trauma on victims as well as the costs to the Courts in hearing multiple petitions.¹ The Committee’s decision therefore fails to consider who should bear the burden of dealing with those complexities. Should it be the Courts and Law Enforcement Agencies, who criminalized trafficking victims? Or should it be the petitioner, who because of his or her victimization now must go through the arduous process of vacating arrests and/or convictions, often in multiple jurisdictions throughout California? As noted above, the legislature has already answered the question: the Courts and Law Enforcement should bear the burden, not the victims.</p> <p>¹ In the fiscal analysis of SB 823, the Committee highlights that if the court must hold a hearing for illustrative purposes, 100 such hearings would result in a cost of \$167,000 for two-hour hearings, and \$670,000 for full-day hearings. Given the cost to the courts in holding multiple hearings, it behooves Judicial Council to create a streamlined process for consolidation, even if</p>	
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>it initially entails a financial investment into a new system.</p> <p>Suggested language:</p> <p>Add as new (a)</p> <p>(a) Requests to consolidate arrests and convictions that occurred in California Jurisdictions</p> <p>(1) The court shall allow the filing of a single petition requesting vacatur relief under Penal Code Section 236.14(a) for multiple arrests and convictions that occurred anywhere in the jurisdiction of California courts in accord with the explicit statutory authority granted in 236.14(e). This shall be accomplished through a process that does not create undue burden for the petitioner but asks the Courts to ensure that files are properly transferred when necessary and that the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c), timely respond to request for stipulation for consolidation.</p> <p>Bet Tzedek appreciates Judicial Council’s review of the authority that in other contexts requires several procedural steps to transfer a case. These procedures place the burden on the petitioner. However, there are two important factors that make the transfer and consolidation process distinct for trafficking survivors. The first is that the petitioner is a victim. The second is that there is an explicit statutory process outlined, while in</p>	<p>The committee declines to make the suggested changes for reasons stated above.</p> <p>Please see response above.</p>
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SPR19-15

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		<p>other provisions, no such statutory process exists.² Therefore, the other situations are not strong precedent or comparable contexts. Bet Tzedek proposes that the Judicial Council consider that if the court has the ability to timely notify the petitioner and prosecuting agency of its decisions under subdivision (c)(1), as is recommended in the Proposed Standards of Judicial Administration, then the Courts too can be provided guidance on how they can notify the appropriate prosecuting agencies of the desire to consolidate the cases and provide a timeline for response. Therefore, Bet Tzedek proposes the following updated language to (c)(2).</p> <p>² Bet Tzedek believes the statutory authority for inter-county probation transfers under Penal Code 1203.9 and its related Rules of Court (as well as other California Rules for Change of Venue) considered by the court merely serve to highlight that what is proposed and legislated in Penal Code 236.14 is completely different and not at all in line with the requirements of these provisions where an explicit process was outlined in the statute.</p> <p>Suggested Language: (2) The court must timely notify the petitioner and prosecuting agency of its decision under subdivisions (c)(1). If the petitioner has requested consolidation of arrests and/or convictions that occurred in the same county or other California jurisdictions, the Court should implement a consolidation process without placing an undue burden on the victim</p>	<p>The committee declines this suggested change for reasons stated above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>that streamlines the courts’ decision-making on this issue in a timely manner.</p> <p>Factors to Consider When Consolidating Hearings Bet Tzedek appreciates the guidance provided by the Judicial Council in section (a)(4), which lists factors the court can consider when deciding whether to consolidate a hearing. To ensure the court properly considers the re-traumatization and re-triggering that can occur for victims in this process, Bet Tzedek suggests the below additions.</p> <p>Suggested Language: To (a)(4) add: (F) Promotion of a victim-centered, trauma-informed approach (G) The interest of the Court in creating a just result</p> <p>Request to Consolidate Arrests and Convictions that Occurred in the Same County Bet Tzedek was happy to see that Judicial Council suggested in its proposed guidance that a court “should allow the filing of a single petition for multiple arrests and convictions that occurred in the same county.” Bet Tzedek fully supports the proposed guidance in (a)(1) and (a)(2) but hopes the “should” can be changed to “shall.” As Bet Tzedek indicated in its 2018 comments, the approach proposed by the Council at that time only allowed courts to consolidate the hearings on separate petitions into one hearing. The option of</p>	<p>The committee declines the suggestion, as these concerns would be better addressed through judicial training and education.</p> <p>Per California Rules of Court, rule 1.5(c), the nonbinding nature of standards is indicated by the use of “should” instead of the mandatory “must” used in the rules. The committee declines the suggestion as a standard of judicial administration provides a more prudent approach overall at this time.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>consolidating the hearing, but not the filing of the petition, defeated the intent of Penal Code 236.14.</p> <p>Although Bet Tzedek supports the Council’s suggested language in (a)(1) and (a)(2), Bet Tzedek believes the guidance outlined in (a)(3)(A-B) should be removed. Section (a)(3)(A-B) indicates a court can require (1) an agreement between the petitioner and ALL (emphasis added) the involved state or local prosecutorial agencies to consolidate the hearing or (2) documentation that states whether any of the involved state or local prosecutorial agencies intend to file an opposition. The proposed standard of judicial administration in (a)(3)(A-B) suggests a court may require this documentation but provides no additional guidance as to how the court should secure such documentation. A lack of any guidance in the proposed Standard of Judicial Administration means that the petitioner in these cases is likely to be asked to secure this documentation prior to a consolidation being granted. This places an unreasonable burden on the petitioner to conduct extensive outreach and creates a situation where it would have been better for the victim petitioner to file petitions in numerous different courts as compared to trying to negotiate these agreements. If the Council keeps the guidance as proposed, advocates are in the same place they have been for the last two years where it is impossible to know whether it is best to advise a victim petitioner to file for consolidation if the arrests and convictions occurred in the same county or file in each of the courts, as the determination is still based on the responsiveness of agencies outside the petitioner</p>	<p>The committee declines to recommend that a specific entity take on this role absent a legislative directive.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>victim’s control. The proposed Standard of Judicial Administration gives the Court no additional information on how to best secure this information and clarifying this process is essential to the effective implementation of 236.14.</p> <p>Under Penal Code 236.14, petitioners are responsible only for serving petitions on the state and/or local prosecuting agency that was responsible for the conviction or had jurisdiction over the arrest. The statutory language in Penal Code 236.14 specifically requires that:</p> <p>“The petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.”</p> <p>This notice process and certification from the petitioner should be enough to apprise the relevant agencies of the filing of the petitions if a petitioner provides proof of service that occurred 45 days prior to the consolidation request. As is suggested in (a)(3)(C), a court should be able to find this sufficient to consolidate the arrests and convictions in the same county with proof of this notice. Bet Tzedek presumes that our law enforcement partners will not find this sufficient, but we would request the Council shift this burden to the Courts and law enforcement agencies and develop a</p>	<p>The committee declines to recommend statewide standards on this issue at this time absent further legislative direction.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>concrete solution for how a streamlined agreement between the parties can be secured. Until then, Bet Tzedek urges the Council to adopt (a)(1-2) and (a)(3)(C) for its Standards of Judicial Administration and suggest a process for the (a)(3)(C) provision. Bet Tzedek defers to Judicial Council's expertise to suggest language in this area.</p> <p>Bet Tzedek recommends updating the proposed language as highlighted below. Suggested Language:</p> <p>Remove (a)(3)(A-B) and replace with an updated victim-centered guidance on a process to secure consent for consolidation between parties in a streamlined manner.</p> <p>Update (a)(3)(C) with the following language: (A) (C) Proof of service of the request to consolidate hearings 45 days prior to consolidating the hearings, on the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c).</p> <p>Juvenile Petitions As it did in 2018, Bet Tzedek again requests that, since many trafficking survivors have both juvenile and adult arrest and conviction records, the Judicial Council further examine how the process can be better coordinated and streamlined with the juvenile court system. No additional guidance was provided by the Council on this issue. For example, Bet Tzedek would propose clarifying that juvenile arrests can be cleared</p>	<p>The committee declines to make the suggested changes for reasons stated above.</p> <p>The committee declines to recommend statewide standards on coordinating adult and juvenile petitions at this time.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>through the adult petition process and do not have to be done through the juvenile court. In addition, it would be beneficial to propose a system that enables courts to coordinate the sealing of juvenile convictions at the same time as adult petitions.</p> <p>Confidentiality Bet Tzedek is appreciative of the Council’s proposed standard to protect the 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. Providing this guidance lets Bet Tzedek and other advocates assure their clients that this process is confidential from the very beginning, easing the practical and emotional burdens on survivors when they choose to file vacatur petitions.</p> <p>Bet Tzedek believes the proposed guidance is consistent with the explicit statutory language and legislative intent and we agree with the guidance. However, Bet Tzedek believes that given the clear legislative language in 236.14, the Judicial Council could propose a rule, not merely a Standard for Judicial Administration. Bet Tzedek worries that without a court rule or standardized forms that instruct that the petition and related court records should be designated confidential at filing, errors will occur, and petitions filed will not receive this appropriate status. Without a rule or court forms, the burden again falls on the petitioner to advocate to make sure individual courts follow the proposed guidance in the Standards of Judicial Administration.</p>	<p>No response required.</p> <p>Per California Rules of Court, rule 1.5(c), the nonbinding nature of standards is indicated by the use of “should” instead of the mandatory “must” used in the rules. The committee declines the suggestion as a standard of judicial administration provides a more prudent approach overall at this time.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>Initial Court Review and Orders Bet Tzedek thanks the Judicial Council for proposing guidance in (c)(1)(A) to the courts that emphasizes that if the prosecuting agencies file no opposition within 45 days from the date of service and the petition meets the requirement, relief can be granted without a hearing. Bet Tzedek believes that guidance in (c)(1)(A-B) is consistent with the statutory and legislative intent. Given the trauma that trafficking survivors face in returning to court after they have been arrested and convicted during the trafficking experience, Bet Tzedek emphasizes how important it is that courts understand and be trained on this as standard practice. Bet Tzedek further emphasizes that if a Court sets a hearing, it should proceed in a trauma-informed and victim-centered manner, given the subject of these petitions.</p> <p>Bet Tzedek believes that because of the difficulty victims face in appearing in court, proposed guidance should also highlight the explicit statutory authority to appear telephonically and provide courts additional encouragement to proactively notify petitioner of this right if a hearing date is set. This is important because many trafficking victims have left the state of their trafficking for safety reasons or trauma reasons and coming back can be a barrier to applying for relief.</p> <p>Other additional guidance the Judicial Council could provide in its Standard of Judicial</p>	<p>The committee believes that these concerns would be better addressed through judicial training and education.</p> <p>While this suggestion is based on section 236.14, the committee determined that some some related procedural elements are not clear. Accordingly, the committee decided not to incorporate them into the standard without seeking public comment.</p> <p>While this suggestion is based on section 236.14, the committee determined that some some related procedural elements are not clear.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>Administration regards the documentation required by the petitioner to meet the requirements for relief. The statutory language of Penal Code 236.14(m) is clear that “Official documentation shall not be required for the issuance of an order described in subdivision (a).” Since trafficking by its nature is a hidden crime, and the exploitation of a victim can go on for years without a victim being identified, often a victim petitioner seeking relief under 236.14 will have no documentation except his or her personal statement about victimization and the crimes he or she was forced to commit. Since part of the legislative intent of 236.14 is to correct a mistake of the justice system in arresting and prosecuting a victim, it is important to highlight to Courts that victims’ statements alone are sufficient proof for a petition to be granted.</p> <p>Finally, although no official documentation is required, the Standards of Judicial Administration should make clear that documentation of a petitioner’s status as a victim of human trafficking issued by federal, state, or local agencies can be considered despite hearsay rules given the statutory language in 236.14(m).</p> <p>Suggested Language: Initial court review and orders</p> <p>Move (2) to (4) and insert</p> <p>(2) No official documentation is required to support a petition for relief under Penal Code 236.14. The court should find, if the petitioner's written statement of the facts of the matter</p>	<p>Accordingly, the committee decided not to incorporate them into the standard without seeking public comment.</p> <p>The committee declines the suggested change as section 236.14(m) provides similar guidance.</p> <p>The committee declines to make the suggested changes for reasons stated above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>is credible, that his or her statement alone is sufficient to find that the petitioner meets the requirements for relief.</p> <p>(3) A court should review any official documentation of a petitioner's status as a victim of human trafficking issued by federal, state or local agencies in accord with 236.14(m), despite court hearsay rules.</p> <p>Finally, although Bet Tzedek thanks Judicial Council for providing clear guidance that the courts must timely notify petitioner and prosecuting agency of its decisions, Bet Tzedek is disappointed that no guidance is provided to help ensure that courts notify the relevant agencies of a vacatur order so that the petitioner victim's records are cleared in a timely manner. One of the greatest hurdles for petitioners seeking this relief is ensuring that vacatur orders are implemented, and guidance from Judicial Council is necessary.</p> <p>Bet Tzedek defers to Judicial Council expertise in suggesting language in this area but believes that any enacted Standard of Judicial Administration adopted must provide this additional guidance to the courts. Bet Tzedek suggests that a prescriptive 30-day timeframe be required.</p> <p>Additional Relief Bet Tzedek thanks Judicial Council for its recommendations for additional relief listed under section (d) of the proposed standard. Bet Tzedek is especially thankful for the</p>	<p>The committee's position is that the statutory language is sufficient and declines to modify the proposal as suggested.</p> <p>Per California Rules of Court, rule 1.5(c), the nonbinding nature of standards is indicated by the use of "should" instead of the mandatory "must" used in the rules. The committee declines the suggestion as a standard of judicial</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>guidance that the court may recall or return court fines and fees if paid. For victims struggling with rebuilding their lives, a court proactively returning fines and fees can help victims feel like the system is finally correcting a past wrong. This guidance is especially important given the Supreme Court decision in <i>Nelson v. Colorado</i>, 137 S. Ct. 1249 (2017). In this case, the Supreme Court held that any fees, fines, or surcharges collected must be returned to an individual once their conviction is vacated or they are exonerated. Given this Supreme Court decision, Bet Tzedek suggests that the term “may” be changed to “shall.”</p> <p>Bet Tzedek suggests the following additions to the list of additional relief under section (d).</p> <p>Termination of Probation 236.14 allows victims to petition for relief while currently on probation. Therefore, if the petition is granted, Bet Tzedek suggests that in addition to the court sealing or destroying probation or post-conviction supervision agency records, the court also be instructed to notify the relevant probation office of the termination of probation after the grant of this relief.</p> <p>Suggested Language:</p> <p>(d) Additional relief (1) Notify probation agency of termination of probation and sealing or destruction of probation or other post-convictions supervision agency records related to the convictions.</p>	<p>administration provides a more prudent approach overall at this time.</p> <p>The committee agrees with this suggestion and has modified the proposed standard accordingly.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

			<p>Request for Additional Action Court May Take The intent of the Legislature and the clear statutory language of Penal Code 236.14(r) allows a Court to grant “additional relief to carry out the purposes of this section.” This explicit language should be included in Judicial Council's Standard of Administration.</p> <p>Suggested Language (d) Additional relief (5) Any additional relief the Court believes carries out the purposes of Penal Code 236.14.</p>	<p>The committee agrees with this suggestion and has modified the proposed standard accordingly.</p>
2.	<p>Coalition to Abolish Slavery & Trafficking (CAST) by Stephanie Richard, Policy & Legal Services Director Los Angeles, California</p>	AM	<p>*Founded in 1998 in Los Angeles, California, CAST was one of the first organizations in the United States to provide comprehensive social and legal services for survivors of human trafficking.</p> <p>[I]n response to the Council’s first specific request for comment on the question “Does the proposal appropriately address the stated purpose?”, our answer is an unequivocal “no.” This proposed guidance should only be viewed as the Council’s initial effort to address this admittedly complex issue. We encourage the Committee of appointed experts not to abandon work on developing forms and rules for implementing Cal PC 236.14, recognizing that the statute itself contemplates that its provisions will likely need to be implemented in stages. Given this reality, it makes sense that full implementation of the law by the Judicial Council will be a multi-year process, continuously informed by the experiences of survivor petitioners and their advocates, as well as the Courts and Law Enforcement Agencies (LEAs).</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>

SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>CAST also wants to take this opportunity to directly respond to the Committee’s decision to propose a non-binding Standard of Judicial Administration rather than a mandatory rule of court. While CAST believes that at this stage in the process of Cal PC 236.14 implementation, a Standard of Judicial Administration may be the appropriate vehicle. However, it urges the Council to work towards standardized forms and mandatory court rules based on knowledge acquired during the next few years.</p> <p>To this end, CAST’s first recommendation is that the Judicial Council ensure that the designated Committee of experts continues its work with the ultimate goal being to publish final forms and court rules for implementing Cal PC 236.14. CAST further requests that attorneys and/or judges with expertise in human trafficking cases and the associated physical and emotional trauma endured by survivors be appointed to the Committee. CAST also requests that the list of committee members be publicly released and that the Council solicits input from stakeholders regarding additional appropriate members, adding them to the Committee as needed.</p> <p>Consolidation Across Different Jurisdictions Starting with the premise that the Judicial Council should commit to a long-term goal of developing forms and additional court rules/ guidance, CAST makes two requests of the Committee of experts. First, that the Committee review its conclusion that “[i]t would be difficult operationally for one petition to include multiple arrests and convictions</p>	<p>A full list of advisory committee members is available here: https://www.courts.ca.gov/documents/crimcom.pdf More information about the nominations process is available here: https://www.courts.ca.gov/4650.htm</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>from different jurisdictions because of the challenges of 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....” Second, that the Committee revisit its decision “not to develop statewide standards on the consolidation of hearings for arrests and convictions that occurred in different counties.” It is exactly this complex process where the Judicial Council’s guidance is absolutely necessary.</p> <p>The Committee’s own assessment/discussion highlights the complexities of consolidating petitions. What the Committee fails to address is who should bear the burden of dealing with those complexities. Should it be the Courts and LEAs, who initially failed to identify a victim of trafficking and, as a result, arrested and criminalized the petitioner? Or should it be the victim petitioner who, solely as a result of this victimization, must now shoulder the arduous process of clearing his or her record often in multiple jurisdictions throughout California?</p> <p>*Under Cal PC 236.14(e), the Legislature explicitly authorized the Courts to allow consolidated petitions. It did so based on the often multi- jurisdictional records of trafficking victims combined with the unique nature of vacating convictions in the trafficking context, where the basis for the relief is that the defendant was not a</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>criminal but a victim.³ Our own data found that human trafficking victims are arrested seven times more frequently for activity directly related to their trafficking than for non-trafficking activity. Sadly, the records show that some victims had been arrested 30 or 40 times in only a few years under their trafficker’s control.</p> <p>³ In its initial comments, CAST highlighted to the Council the disproportionately large number of crimes for which trafficking victims are arrested or convicted solely as a result of their trafficking status. The National Survivor Network, in a survey of its membership, reports that 40% of the respondents were arrested and/or convicted of crimes 9 times of more while they were being trafficked.</p> <p>In light of the foregoing comments, CAST strongly urges the Judicial Council to revisit its determination of “uncertainty” as to whether “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.” Given the explicit statutory language in Cal PC 236.14(e) allowing for this process, there is no room for ambiguity. The authority granted by the statute is clear. It is only the process that must be developed by the Court to receive the court files and the agreements of the parties for consolidation. In fact, we have had at least two courts consolidate cases from multiple jurisdictions under the explicit authority provided in Cal PC 236.14(e). Thus, the</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>Judicial Council’s conclusion that courts may not have this authority is inconsistent with judicial practice. Moreover, as the original proponent for this language, and as the relevant legislative history demonstrates, CAST is confident that thinking creatively, the Judicial Council can design a system for consolidating vacatur cases that is well within the statutory authority provided.⁴</p> <p>⁴ The June 20, 2016 Assembly Committee on Public Safety Analysis highlights how SB 823 “takes a novel approach of setting up a statutory framework for vacating convictions for a particular class of individuals. Essentially, this bill creates parity between human trafficking victims and those individuals who are found factually innocent of crimes they never committed.” Further, it highlights how the motion is novel in that “the remedy is actually more forceful than an expungement. Unlike an expungement, getting a conviction vacated effectively means that the conviction never occurred. Under current California law and criminal procedure, motions to vacate a conviction are generally done through the appellate process.”</p> <p>Indeed, Cal PC 236.14(e) as drafted encourages the Council to exercise creativity in developing associated forms and rules precisely because this is “first of its kind” authority granted to the courts based on the very special nature of trafficking crimes and the Legislature’s concern with the increased trauma on victims, as well as the costs to the courts, from hearing multiple petitions.⁵ Therefore, in any enacted Administrative Court Guidance, the Judicial Council must, at a minimum, recognize the statutory authority allowing for consolidation of multiple cases originally brought in the same county (as already</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>proposed), as well as those from multiple jurisdictions throughout California.</p> <p>⁵ In the fiscal analysis of SB 823, the Committee highlights that if the court must hold a hearing... for illustrative purposes, 100 such hearings would result in a cost of \$167, 000 for two-hour hearings, and \$670,000 for full-day hearings. Given the cost to the courts in holding multiple hearings, it behooves Judicial Council to create a streamlined process for consolidation, even if it initially entails a financial investment into a new system.</p> <p>Suggested language:</p> <p>Add as new (a)</p> <ul style="list-style-type: none">(a) Requests to consolidate arrests and convictions that occurred in California Jurisdictions1) The court shall allow the filing of a single petition requesting vacatur relief under Penal Code Section 236.14 (a) for multiple arrests and convictions that occurred anywhere in the jurisdiction of California courts in accordance with the explicit statutory authority granted in 236.14(e). This shall be accomplished through a process that does not create an undue burden for the petitioner but puts the burden on the Courts to ensure that files are properly transferred when necessary and that the involved state or local prosecutorial agencies, as defined in Penal	<p>The committee declines to make the suggested changes for reasons stated above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>Code section 236.14(c), timely respond to requests for stipulation for consolidation.</p> <p>While CAST appreciates the Judicial Council’s discussion of court procedures for transferring cases in other contexts, they are inapplicable to the current situation. Petitioners in this case are victims; there is no justification for placing the procedural burdens on them as in the cited examples. Moreover, in this setting the law specifically empowers the court to consolidate cases via an explicit statutory process.⁶ Accordingly, the referenced cases have no precedential value nor do they provide informative models for the Council’s consideration.</p> <p>⁶ CAST believes the statutory authority for inter-county probation transfers under penal code section 1203.9 and its related rules of court and other CA rules for change of venue, considered by the court merely serve to highlight that what is proposed and legislated in PC 236.14 is completely different and not at all in line with the requirements of these provisions where an explicit process was outlined in the statute.</p> <p>Noting the Judicial Council’s Subdivision c (1) process, CAST suggests that the same method be employed for subdivision c (2). In c (1), the Council presumes that the court has the ability to timely notify the petitioner and prosecuting agency of its decisions. If that is the case, there is no reason the Counsel cannot provide guidance on how the court can notify the appropriate prosecuting agencies of a desire to consolidate cases and provide timelines for agency response in</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>Subdivision c (2). CAST thus proposes the following updated language to c (2).</p> <p>Suggested Language: (2) The court must timely notify the petitioner and prosecuting agency of its decision under subdivisions (c)(1). If the petitioner has requested consolidation of arrests and/or convictions that occurred in the same county or other California jurisdictions, the Court should implement a consolidation process without placing an undue burden on the victim that streamlines the court’s decision-making on this issue in a timely manner.</p> <p>Factors to Consider When Consolidating Hearings CAST appreciates the guidance provided by the Judicial Council in section (a)(4) that lists factors the court can consider when deciding whether to consolidate a hearing.</p> <p>To ensure the court properly considers the re-traumatization and re-triggering that can occur for victims in this process, CAST suggests the following additions.</p> <p>Suggested Language: To (a)(4) add:</p> <p>(F) Promotion of a victim-centered, trauma-informed approach. (G) The interest of the court in creating a just result.</p>	<p>The committee declines to make the suggested changes for reasons stated above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>Request to Consolidate Arrest and Convictions that Occurred in the Same County</p> <p>CAST was pleased to see that in its proposed guidance the Judicial Council suggests that a court “should allow the filing of a single petition...for multiple arrests and convictions that occurred in the same county.” CAST fully supports the proposed guidance in a (1&2) but requests that the permissive nature of the language be made mandatory, i.e., “should” becomes “shall.” As CAST indicated in its 2018 comments, the approach proposed by the Council at that time only allowed courts to consolidate hearings into one event upon the filing of separate petitions. The option of consolidating the hearing, but not the filing of the associated petition, defeats the purpose and intent of Cal PC 236.14. Indeed, in CAST’s experience, all of the petitions filed to date have been granted without a hearing.</p> <p>Although CAST supports the Council’s suggested language in a (1&2), CAST believes the guidance outlined in (a)(3)(A-B) should be removed. These sections authorize a court to require</p> <p>(1) an agreement between the petitioner and <u>ALL</u> (emphasis added) the involved state or local prosecutorial agencies to consolidate the hearing or (2) documentation stating whether any of the involved state or local prosecutorial agencies intend to file an opposition to the petition. However, the section provides no guidance as to <u>HOW</u> the court should secure it. This lack of guidance likely means that the petitioner will be asked to secure this</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>documentation prior to consolidation being granted. Conducting this extensive outreach places an unreasonable burden on the petitioner. LEAs are often unresponsive. In those cases, which are impossible to predict prior to engaging the actual LEAs, CAST’s experience shows that it would have been better for the victim petitioner to forgo any attempt at consolidation. It would have been easier for the petitioner to file petitions in all the different courts as opposed to trying to negotiate the requisite agreements.</p> <p>If the Council keeps the guidance as proposed, advocates are in the same place they have been for the last two years, during which it has been impossible to know whether to advise a victim petitioner to file for consolidation or file separately in each of the courts, as the determination is still based on the responsiveness of LEAs outside the petitioner victim’s control. The proposed Standard of Judicial Administration gives a court no additional information on how to best secure this information. Clarifying this process is essential to the effective implementation of Cal PC 236.14.</p> <p>Under Cal PC 236.14, petitioners are only responsible for servicing petitions on the state and/or local prosecuting agency that was responsible for the relevant conviction or had jurisdiction over the arrest. The statutory language in Cal PC 236.14 specifically requires that:</p> <p>“The petition for relief and supporting documentation shall be served on the state or local</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.”</p> <p>This notice process, and associated petitioner certification, should be sufficient to apprise the relevant agencies of the filing of the petitions if a petitioner provides proof that service occurred 45 days prior to the consolidation request. As is suggested in a (3)(C), a court should find this time period sufficient to consolidate the arrest and convictions in the same county. While CAST is certain that our law enforcement partners will argue that this time period is insufficient, we believe the Council should shift the burden to the courts and the LEAs to provide a concrete proposal that streamlines the process by which agreement between the parties can be secured. Until then, CAST urges the Council to adopt (a)(1 & 2) and (3)(C) for its Standards of Judicial Administration while suggesting a process for the a (3) A-B provisions.</p> <p>Because the Judicial Council's proposal is meant to guide the courts, it should provide real options in this novel area. CAST defers to the Judicial Council's expertise in suggesting language to meet this goal.</p> <p>CAST recommends updating the proposed language as highlighted below.</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>Suggested Language:</p> <p>Remove (a)(3) A & B and replace with an updated victim-centered process to secure consent for consolidation between parties in a streamlined manner. Update (a)(3)(C) with the following language:</p> <p>(A) (C) Proof of service of the request to consolidate hearings 45 days prior to consolidating the hearings, on the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c).</p> <p>Juvenile Petitions</p> <p>As included in our 2018 comments, because CAST knows that many trafficking survivors have both juvenile and adult arrest and conviction records, we request the Judicial Council to examine in more detail how the process can be better coordinated and streamlined with the juvenile system. No additional guidance was provided by the Council under the new proposed Standards of Judicial Administration on this issue. For example, clarifying that juvenile arrests can be cleared through the adult petition process, and do not have to be done through the juvenile court process, and further proposing a system that enables the adult court to coordinate sealing juvenile convictions at the same time as adult petitions, would be two very useful procedures.</p> <p>Confidentiality</p> <p>CAST is appreciative of the Council’s proposed standard to protect the confidentiality of the</p>	<p>The committee declines to make the suggested changes for reasons stated above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

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		<p>petition, related filings, court records and confidentiality of the petitioner’s identity at the hearing or any other proceedings or filings accessible to the public. Providing this guidance affords CAST and other advocates the opportunity to assure their clients that this process is confidential from the very beginning, easing the practical and emotional burdens on survivors when they choose to file under Cal PC 236.14.</p> <p>CAST believes the proposed guidance is consistent with the law's explicit language and legislative intent and agrees with its substance. However, CAST believes that given the clear language of Cal PC 236.14, the Judicial Council could propose a court rule, as opposed to mere guidance. CAST is concerned that without a court rule or standardized forms requiring confidentiality at the time of filing a petition, errors will occur and petitions will accidentally be made public. CAST has found that the newness of the provision, and court clerks’ unfamiliarity with its requirements, has resulted in clerks refusing to accept the initial filings. Without a rule of court or actual forms, the burden once again inappropriately falls on the petitioner to make sure individual courts follow the proposed guidance offered in the Standards of Judicial Administration.</p> <p>Initial Court Review and Orders CAST thanks the Judicial Council for proposing guidance to the courts in (c)(1)(A) that emphasizes that if the prosecuting agencies file no opposition within 45 days from the date of service, and petitioner otherwise meets the standards for</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>vacatur, relief can be granted without a hearing. CAST believes that the guidance in (c)(1)(A-B) is consistent with statutory and legislative intent. Given the trauma that trafficking survivors face in returning to court after having been arrested and convicted as a result of their trafficking experiences, CAST would like to emphasize how important it is that courts understand and receive training on this psychological harm as a matter of course. Moreover, CAST respectfully requests that if a court sets a hearing, it should proceed in a trauma-informed and victim-centered manner, given the sensitive subject matter and emotionally charged nature of these petitions.</p> <p>CAST believes that because of the difficulty victims face in appearing in court, the Council’s proposed guidance should also highlight the explicit statutory authority allowing them to appear telephonically. The guidance should further encourage courts to proactively notify petitioner of this right if a hearing date is set. This is important because many trafficking victims have left the state where they were trafficked either for safety reasons or to avoid continuing trauma. Coming back to the jurisdiction can thus be a significant barrier to applying for relief.</p> <p>Other additional guidance the Judicial Council could provide in its proposed Standard of Judicial Administration regards the documentation petitioners need to provide for relief. Cal PC 236.14(m) is clear that “Official documentation shall not be required for the issuance of an order described in subdivision (a).” Since trafficking by</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

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		<p>its nature is a hidden crime, and the exploitation of a victim can go on for years without a victim being identified, often a victim petitioner seeking relief under 236.14 will have no documentation except his or her personal statement about victimization and the crimes he or she was forced to commit. Because the legislative intent behind Cal PC 236.14 is to correct a mistake of the justice system in arresting and prosecuting a victim, it is important to explicitly remind courts that victims' statements alone are sufficient proof for a petition to be granted. And, while no documentation of trafficking status is required, the Standards of Judicial Administration should make clear that documentation of a petitioner's status as a victim of human trafficking issued by federal, state, or local agencies can be considered despite evidentiary hearsay rules.</p> <p>Suggested Language: <u>Initial court review and orders</u></p> <p>Move (2) to (4) and insert</p> <p>(2) No official documentation is required to support a petition for relief under PC 236.14. The court should find, if the petitioner's written statement of the facts of the matter is credible, that his or her statement alone is sufficient to find that the petitioner meets the requirements for relief.</p> <p>(3) A court should review any official documentation of a petitioner's status as a</p>	<p>The committee declines to make the suggested changes for reasons stated above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>victim of human trafficking issued by federal, state or local agencies in accord with 236.14(m), despite evidentiary hearsay rules.</p> <p>Finally, although CAST thanks the Judicial Council for providing clear guidance that the courts must timely notify both the petitioner and the prosecuting agency of its decisions, CAST is disappointed that no guidance is provided to ensure that courts immediately notify the relevant agencies of a vacatur order so that the petitioner victim’s records are actually cleared in a timely manner. In CAST’s experience, one of the greatest hurdles for petitioners seeking this relief is implementation of a vacatur order. More than one year after orders for relief have been granted under Cal Pc 236.14, CAST still has clients whose records have not been cleared. CAST has engaged in long-term advocacy with individual courts to correct this error. However, based on CAST’s on-the-ground experience, which has been both time consuming and devastating for the victims it serves, guidance from the Judicial Council on implementation of vacatur relief is essential.</p> <p>CAST defers to the Judicial Council and its expertise in suggesting language in this area, but believes that any Standard of Judicial Administration must provide this additional guidance to the courts. CAST suggests that a prescriptive 30 day timeframe be required.</p> <p>Additional Relief</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>CAST thanks Judicial Council for its recommendations for additional relief listed under section (d) of the proposed standard. CAST is especially thankful for the guidance expressly allowing the court to recall or return court fines and fees already paid. For victims struggling with rebuilding their lives, a court proactively returning fines and fees can help victims feel that the system is finally correcting a past wrong. This guidance is especially important given the U.S. Supreme Court Decision in <i>Nelson v. Colorado</i>, 137 S. Ct. 1249 (2017). In that case, the Court held that any fees, fines, or surcharges collected must be returned to an individual once their conviction is vacated or they are exonerated. Given this decision, CAST suggests that the permissive term “may,” be changed to the mandatory “shall.”</p> <p>CAST further suggests the following additions to the list of relief options enumerated in section (d).</p> <p>Termination of Probation Cal PC 236.14 allows victims to petition for relief while currently on probation. If the petition is granted, CAST suggests that in addition to the court sealing or destroying probation or post-conviction supervision agency records, the court also be instructed to notify the relevant probation office of the termination of probation.</p> <p>Suggested Language: <u>(d) Additional relief</u></p>	<p>Please see the responses to the comments of Bet Tzedek above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>(1) Notify probation agency of termination of probation and sealing or destruction of probation or other post-convictions supervision agency records related to the convictions</p> <p>Request for Additional Action Court May Take</p> <p>The intent of the legislature and the clear language of Cal PC 236.14 (r) allow a Court to grant “additional relief to carry out the purposes of this section.” This explicit language should be included in the Judicial Council's Standard of Administration.</p> <p>Suggested Language</p> <p>(d) Additional relief (5) Any additional relief the Court believes will carry out the purposes of Cal PC 236.14.</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

3.	HEAL Trafficking By Hanni Stoklosa, MD, MPH Executive Director	AM	<p>*HEAL Trafficking is a united group of survivors and multidisciplinary professionals dedicated to ending human trafficking and supporting its survivors, from a public health perspective. HEAL Trafficking is a global network of over 2500 professionals in 35 countries who work with and advocate for survivors of human trafficking. Over 600 of our network of esteemed professionals experienced in caring for trafficking victims are living and working in California.</p> <p>HEAL Trafficking believes that efforts to eliminate trafficking in persons must incorporate a public health perspective.</p> <p>Response to Request *Victims of human trafficking experience physical and mental health issues caused by trafficking. These include depression, anxiety, insomnia, social phobias, and symptoms of post-traumatic stress disorder (PTSD), as well as physical conditions such as headaches, gastrointestinal disorders, musculoskeletal injuries, sexually transmitted infections, and pelvic pain.</p> <p>*We have sometimes been called upon to provide services for trafficking survivors who are involved with the court system — such as when they cooperate in the investigation and/or prosecution of their traffickers, or in civil cases against traffickers. In these patients, we have observed an increase in mental and physical symptomatology caused by the intense stress of the ongoing legal cases. These symptoms include nausea, gastrointestinal reflux, and diarrhea, worsening of</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>headaches, increased depression and anxiety, and exacerbation of insomnia and nightmares. The legal process requires these patients to revisit their prior traumas, and reignites intense fear about retaliation from traffickers for escaping. We have witnessed worsening of physical and mental health symptoms when patients are navigating legal and even bureaucratic hurdles.</p> <p>While the end result of vacating convictions is a good one for victims, we want the Judicial Council to understand that the process of achieving that result may be traumatic for victims. We therefore urge the Council to adopt forms and procedures that minimize the trauma of the process. Any stressor or activity that results in victims feeling coerced, abused or helpless can be the basis for re-traumatization and result in an increase of symptoms such as nightmares, flashbacks, erratic emotions, fear, despondency, increased anxiety and/or depression, physical symptoms and suicidal ideation.</p> <p>We advise, therefore, that victims’ privacy and safety be protected as fully as the Court system allows. As noted, even bureaucratic hurdles can trigger traumatic symptoms. This is especially true when victims are required to provide details and documentation about their trafficking experience. We recommend that this be minimized, and that repetition not be required. The simpler the forms, the better they will be in terms of avoiding re-traumatization.</p>	<p>The committee believes that these concerns are better addressed through judicial training and education.</p> <p>The committee has included confidentiality measures in the proposed standard.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>We recommend consulting with trafficking survivor groups before considering the implementation of any requirements to physically visit a courthouse. Visiting a courthouse may trigger a re-visiting of trafficking trauma, especially revisiting the very courthouse where a trafficked person was convicted.</p> <p>We are aware that trafficking victims often have multiple arrests and convictions, and understand that the vacatur process can take 45 days or more, however anything the Courts can do to streamline this process may improve physical and mental health impacts in-the long-term.</p> <p>Finally, if a Court orders convictions to be vacated, it is extremely important that the records be, in fact, cleansed. Trafficking victims have difficulty trusting anyone, let alone systems that they believe have failed them in the past. If a Court orders a conviction to be vacated, and it still remains on a victim’s record, this can trigger new trauma, trust deficits, and prevent them from rebuilding their lives and thriving.</p> <p>Trafficking victims have a long journey to healing and the court system can exacerbate their underlying trauma. We urge the Council to take these impacts into account and implement a trauma-informed, victim-centered approach to dealing with these difficult issues. Thank you for considering our comments.</p>	<p>The proposed standard does not require a physical visit to a courthouse.</p> <p>No response required.</p> <p>The committee believes that these concerns are better addressed through court clerk training and education.</p> <p>The committee believes that these concerns are better addressed through judicial training and education.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

4.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee - Joint Rules Subcommittee	A	SPR19-15: Criminal Procedure: Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15) JRS Position: Agree with proposed changes. The JRS notes that the proposal is required to conform to a change of law. The JRS notes the following impact to court operations: <ul style="list-style-type: none">• Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)• Results in additional training, which requires the commitment of staff time and court resources.	No response required.
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

<p>5.</p>	<p>Los Angeles County Public Defender by Ricardo D. Garcia, Public Defender</p> <p>Los Angeles County Alternate Public Defender By Erika Anzoategui, Acting Alternate Public Defender</p>	<p>N/I</p>	<p>We are concerned that the non-binding standard of judicial administration assumes that much of the process will occur through the clerk’s office and in chambers, off the record. We are particularly concerned that, without a court date, prosecutorial agencies will not timely file oppositions, if they have any. This is problematic because, under Penal Code section 236.14, subdivision (d), the statute requires the petition be deemed unopposed if no opposition is filed within 45 days. Should more than 45 days elapse, the petitioner could potentially lose an opportunity to advance his or her petition. Even if there no opposition, petitions could languish if there is no date by which they must be addressed.</p> <p>We propose that, unless the <i>petitioner</i> prefers otherwise, Penal Code section 236.14 petitions be filed directly in a courtroom that has jurisdiction over at least one of the cases on which relief is sought. If a petitioner has cases or arrests in other jurisdictions that are also subject to Penal Code section 236.14 relief, they can be ordered to the same courtroom, provided all prosecutorial agencies are served and agree, as per Penal Code section 236.14, subdivisions (c) and (e).</p> <p>We believe the court has the authority under Penal Code section 236.14, subdivision (e), to order in cases from any other jurisdiction, not just cases from the same county. Should the Legislature have wanted to limit cases to those in the same county, it could have so indicated. While certainly this is novel and it will take operational adjustments, the entire purpose of the law is to right the wrongs</p>	<p>Penal Code section 236.14 does not require a hearing if the petition is unopposed and the court does not otherwise deem one necessary. Accordingly, the committee believes judicial economy and efficiency are promoted by not setting a potentially unnecessary hearing date at the time of filing.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>done to victims of human trafficking; allowing them to address all of their cases in a single hearing is a step in that direction.</p> <p>Suggested Changes to Proposed Language:</p> <p>Standard 4.15. Vacatur relief under Penal Code section 236.14.</p> <p>(a) Request to consolidate arrests and convictions that occurred in a California jurisdiction</p> <p>CHANGE (1) TO READ:</p> <p>(1) A petitioner who wishes to petition for Penal Code section 236.14(a) relief on multiple arrests or convictions should be allowed to file and request a hearing on all such petitions in the same courtroom, provided that:</p> <p>a. All the arrests or convictions occurred in California;</p> <p>b. One of the arrests or convictions is within the jurisdiction of the courtroom in which the petitioner wishes to file, and</p> <p>c. All the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14, subdivision (c), agree to have a single</p>	<p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>hearing, as per Penal Code section 23614, subdivision (e).</p> <p>ADD to (a)(4):</p> <p>(F) The importance of a trauma-informed approach to victimized persons.</p> <p>ADD to section (c) new language in italics:</p> <p>1) <i>If the petitioner has not requested a court date at the time of filing, then, after...</i></p> <p>ADD to (d):</p> <ol style="list-style-type: none"> 1) Termination of probation or other post-conviction supervision, sealing or destruction of probation or other post-conviction supervision agency records related to the conviction; 2) Recall or return of court fines and fees, including fees paid to collection agencies; 3) Sealing of the records in the possession of the prosecutorial agencies involved in the arrest or conviction, and 4) Any additional relief the court believes effects the purposes of Penal Code section 236.14. 	<p>The committee declines the suggestion, as these concerns would be better addressed through judicial training and education.</p> <p>The committee declines this suggestion for the reasons stated above.</p> <p>The committee agrees with this suggestion and has modified the proposed standard accordingly.</p> <p>The committee declines this suggestion as it finds that the proposed language is sufficient.</p> <p>The committee declines the suggested change at this time, because it is a substantive change that requires public comment.</p> <p>The committee agrees with this suggestion and has modified the proposed standard accordingly.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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<p>4.</p>	<p>National Survivor Network and Resilient Voices by Nat Paul, Policy Chair</p>	<p>N/I</p>	<p>The NSN is a Survivor Led Program of the Coalition to Abolish Slavery & Trafficking (CAST). In February 2011, CAST launched the NSN to foster connections between survivors of diverse forms of human trafficking and to build a national anti-trafficking movement in which survivors are at the forefront and recognized as leaders. Members of the NSN include survivors with various backgrounds and origins spanning 24 countries. Active members currently reside in over 40 states including 39 in California. The NSN’s diverse membership makes it uniquely representative of the myriad of situations experienced by survivors of human trafficking. By connecting survivors across the country, the NSN supports survivors to realize and develop their own leadership and fosters collaboration with others who value their insight and expertise in the field.</p> <p>RV is a survivor-led program of CAST created in 2004. This California specific group of survivors advocates directly upon the needs of California’s survivor community. The experiences of RV further enhance the national efforts of the NSN with an in-depth focus on CA advocacy. Currently the membership is 76 individual survivors living in the Los Angeles area.</p> <p>Response to request: The NSN and RV would like to first commend the Judicial Council for their consideration of this very serious issue. To address the non-binding factor of the proposals, we believe a non-binding pilot program for implementation that affectively addresses the nuances of implementation to such a</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>process is crucial to allow for growth and education around the complex structural changes being made. This program of working within the framework of implementation in stages would allow for attorneys, judges, courts, Law Enforcement agencies, and petitioner victims and advocates to learn the best practices of this process in an appropriate manner throughout the implementation process. We hope that non-binding process once addressed becomes a binding process moving forward as we learn together these best practices of real-life implementation.</p> <p>Safety considerations: In regard to consolidation of charges across jurisdictions we would like to note a few apprehensions we have in regard to the confidentiality of this process, while addressing the complex process of consolidating all charges across the State. Filing a petition in one jurisdiction is far easier for the mental duress of waiting for the long process to take place in multiple jurisdictions. Our concerns around safety are complicated knowing the crimes we were forced into committing as part of our trafficking experience are beyond familiar to our traffickers. Limiting who has access to these petitions is something we strongly support. In that, our traffickers may be a part of a familial trafficking network, a criminal syndicate, or even in some cases Law Enforcement officers. Even if a consolidated case is signed under Jane Doe/John Doe our trafficker and their networks are intricately familiar with crimes we committed through force, fraud or coercion. These networks</p>	<p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>may have employees within the system and limiting access to who can see these consolidated cases is crucial for safety of our safety.</p> <p>We trust the court has taken into consideration into the need of the confidentiality of these documents and destructions of records once the petition is approved. We are curious if consideration into files under Department of Children and Families are considered if a conviction history was the reason for a loss of a child and the trafficker’s family has custody of the child, how can these issues be resolved with the destruction of documents including conviction records, court records or other pieces? Can a consolidated report be subpoenaed for the purpose of taking a child from a victim of a crime? If a petitioner chose to file before their T-Visa or U-Visa is processed would those convictions and histories be confidential to DHS or ICE?</p> <p>I myself have apprehensions on one consolidated case, albeit a concern for the burden of petitioning in multiple courts across the state is an expensive process that a victim should not have to bear for being misidentified as a victim of a crime. It seems like the onerous of the burden should be upon the system that failed to identify a victim rather than the victim. If a Statewide option is not available is there a uniform process across all jurisdictions of application where a granted petition or a sworn affidavit from that court that can be shared to all additional county seats for additional convictions? Ideally once someone is identified as a victim of a crime that has been granted a petition of vacatur</p>	<p>The committee has included confidentiality measures in the proposed standard.</p> <p>The committee appreciates the comment, but it is beyond scope of the proposal.</p> <p>Please see the responses to the comments of Bet Tzedek above.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>that granting authority should be Statewide and be able to be used to vacate all convictions in the time frame of active trafficking without the need to repeat in all jurisdictions.</p> <p>Clarification around 45 days: PC 236.14 states: “The Petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.”</p> <p>When filing bankruptcy, the petition process for the court to notify creditors takes about a week and the court covers said notifications. We are curious how in bankruptcy there is a process set aside for the court to notify creditors but there is not a notice of court filing those additional petitions to Law Enforcement and Prosecutors in other jurisdictions for consolidation of jurisdiction and supporting documents? If the court can file notice to creditors of intent to file bankruptcy within a week of petition filed and resolve bankruptcy within 30 days. It seems like the 45 days for vacatur petition is more than sufficient. On the 46th day if uncontested a petition should be granted as uncontested. If a petition is denied it should be denied without prejudice to allow for additional documentation to be accumulated to attempt again. There is no clarification of “timely” notice should be sent. It seems like notice should be able to be sent within a week of the determination of the</p>	<p>Penal Code section 236.14 does not clearly identify who should coordinate a multi-jurisdiction petition.</p> <p>The statutory language states that courts may grant an uncontested petition.</p> <p>Proposed standard 4.15(c)(1)(C) suggests that a petition be denied without prejudice if the petitioner fails to provide the information required under statute.</p> <p>The committee declines to provide further guidelines on the provision of timely notice.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>petition as reasonable. If approved, there should be a specified timeline as in Bankruptcy of 30 days to complete removal of all records from systems that would ensure a timely notice and removal of all applicable records.</p> <p>Additional Considerations: There is no clarification around juvenile cases as many trafficking charges are mixed between juvenile courts and adult courts. Does the County jurisdiction also have a right to petition for all juvenile convictions that may still be present for vacatur as well?</p> <p>Destruction of all records in wrongful arrests for a victim of crime. If all police records, conviction records, probation records and court records are to be destroyed after vacatur—what becomes of the DNA records and fingerprints? Are these considered records of arrests and convictions being vacated and if so, are they to be destroyed? In the event of protection order of identity and name changes or other legal protections of a victim of trafficking would holding on to such records place hardship onto the victim’s identity that would place additional burdens on them that the court would have not considered?</p> <p>We would like to see clarification around the trauma informed approach to implementation of this policy and would ask for consideration if a telecommunication system is available and be noted in the documentation the petitioner receives as an option for a hearing. We would like to see how confidentiality within this space is defined for</p>	<p>The committee declines to recommend statewide standards on coordinating adult and juvenile petitions at this time.</p> <p>The committee appreciates the comment, but it is beyond scope of the proposal.</p> <p>The committee believes that a trauma-informed approach is better addressed through judicial training and education.</p> <p>Penal Code section 236.14(n) allows a court to excuse the petitioner from appearing in person based on a compelling reason. The committee</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>a hearing. Is this in a courtroom or in private chambers with only parties able to be present? Or will we be on open display with a potential for our trafficker to be present in the hearing rooms? We would recommend a private hearing in chambers or via phone with only appropriate entities present to protect confidentiality of this process.</p> <p>Is there additional clarification for probation that may still be ongoing? Would the court send orders to the probation offices to inform them of vacatur and the stopping of any ongoing probation?</p>	<p>decided not to incorporate guidelines on appearing telephonically into the standard without seeking public comment.</p> <p>The committee declines to recommend further guidelines on privacy considerations at this time.</p> <p>The committee agrees that the court should notify probation and has modified the proposed standard accordingly.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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5.	Office of Los Angeles City Attorney Michael N. Feuer by Anh Troung, Supervising Deputy City Attorney	N/I	<p>INTRODUCTION AND STATEMENT OF INTEREST</p> <p>The Los Angeles City Attorney’s Office handles all human trafficking vacatur petitions that arise from misdemeanor arrests in the City of Los Angeles. Because these petitions include prostitution-related offenses, we are receiving an increased number of petitions from a variety of sources. Historically, most of the petitions we received were from victim services providers and other pro bono counsel. We expect this to change. The public defense bar has expressed great interest in pursuing this remedy more frequently, and our office is working with them, among other agencies, toward our common goal of developing uniform, streamlined procedures and ensuring that victims of human trafficking receive appropriate and life-changing relief.</p> <p>Towards that end, we support the current proposal, and the use of non-binding standards appears appropriate at this time based on the lack of case law interpreting Penal Code section 236.14. These standards strike the correct balance and would guide courts to apply the law more consistently, but still allow for flexibility and innovation.</p> <p>COMMENTS</p> <p>STANDARD 4.15. VACATUR RELIEF UNDER PENAL CODE SECTION 236.14 Subsection (a) - Request to consolidate arrests and convictions that occurred in the same county:</p>	<p>No response required.</p> <p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>In our experience, consolidation for hearing pursuant to Penal Code section 236.14(e) has been the most complicated provision to implement. We appreciate the thoughtful approach the committee has taken to simplify hearings within counties while still respecting the autonomy and jurisdictional concerns of courts and prosecuting agencies. We therefore support a policy favoring consolidated hearings within a single county. This may impose some burden on agencies such as our office, which has limited jurisdiction within the greater Los Angeles County, but this impact is also mitigated by the proposal for courts to grant relief without a hearing in uncontested matters. (See below for further discussion of Standard 4.15, subd. (c).)</p> <p>In addition to supporting consolidated hearings within the same county, we would also support the consolidation of cases between counties. However, we acknowledge the committee's detailed concerns about the numerous and complex challenges and issues in attempting to provide uniform guidance to the courts. Moreover, as a practical matter, we found that courts in other counties are unlikely to transfer files in time for a hearing, if at all. The transfer of files is even less likely if only one petition is filed in a court outside the county of the originating court.</p> <p>Subsection (b) - Confidentiality: Our service provider partners have stressed to us how dangerous it can be for their clients to report their trafficking situations. It is consistent with the purpose of the statute and with the common goals</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>of both the prosecution and defense to ensure all documents pertaining to a vacatur petition be designated as confidential from the time of filing. We also see the value of allowing "Doe" designations to protect victims of human trafficking in court proceedings.</p> <p>We would recommend going one step further in the event a petition is granted. We have seen cases where even after the courts have granted a petition, the petitioner's conviction and even the petition hearing were still reported and publicly accessible on the court's online docket. While not explicitly addressed by Penal Code section 236.14, public access to these court records is devastating to victims of human trafficking who believe their criminal history is behind them and it is contrary to the spirit of the law. A policy to thus remove identifying information from the public records of cases where convictions have been vacated would help ensure that this does not happen.</p> <p>Subsection (c) - Initial court review and orders: The proposed procedure is efficient and consistent with our office's previous comments on SPR18-15. It will moderate the demand for consolidation in the vast majority of cases. By eliminating the requirement of a hearing in uncontested matters, petitions may be granted on paper by courts with jurisdiction over each offense without resort to the transfer of files.</p> <p>Defects in petitions can also be identified and corrected without a hearing. This furthers judicial economy and preserves the resources of the parties. This will benefit victims of human</p>	<p>The committee intends for proposed standard 4.15(d)(5), sealing of the court file if warranted under the factors in rule 2.550(d), to address this concern.</p> <p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

All comments are verbatim unless indicated by an asterisk (*).

		<p>trafficking who will no longer be required to attend court or pay for the appearance of counsel to do so.</p> <p>We therefore fully support this procedure, and appreciate that it is accompanied by a standard of timeliness.</p> <p>Subsection (d)-Additional relief: We do not object to the consideration of each of these forms of relief as appropriate.</p> <p>ADDITIONAL SUGGESTIONS While we would prefer a well-pleaded petition over a Judicial Council Form, it would nonetheless be useful to develop a cover sheet that would set forth all related cases and enable the court to quickly determine whether the petitioner seeks consolidation. Likewise, a standardized form response would enable prosecutors to not only oppose the petition, but also to express non-opposition, stipulate to a hearing before a commissioner, and waive appearance where warranted.</p>	<p>No response required.</p> <p>The committee declines to recommend a form at this time. The committee circulated proposed forms for public comment in spring 2018 and concluded that statewide forms were limited in their ability to provide guidance on implementation of Penal Code section 236.14.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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6.	Orange County Bar Association by Deirdre Kelly, President	A	<p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Proposed Standard 4.15 does appropriately address the stated purpose.</p> <p><i>Please comment on the committee's decision to propose a nonbinding standard of judicial administration rather than a mandatory rule of court.</i></p> <p>Penal Code § 236.14 sets forth certain mandatory requirements and procedures for requesting and granting relief. However, certain aspects of the statute remain legally unresolved under present law such as the potential incriminatory nature of testimony by a petitioner under subdivisions (f)(1) and (g)(3) or the consolidation “into one hearing a petition with multiple convictions from different jurisdictions” under subdivision (e). Perhaps further legislative clarification and/or statutory authority is required. In the absence of legal resolution to the aforementioned issues and others, a nonbinding standard appears prudent and at the very least, offers guidance in the four areas covered. Such guidance foreseeably would be helpful in the larger metropolitan areas where multiple prosecutorial agencies and multiple judicial districts are present in the same county.</p>	<p>No response required.</p> <p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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7.	Superior Court of Los Angeles County	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal addresses the stated purpose.</p> <p><i>Please comment on the committee's decision to propose a nonbinding standard of judicial administration rather than a mandatory rule of court.</i> We agree that it should be non-binding.</p> <p><i>The advisory committee also seeks comments from courts on the following cost and implementation matters:</i></p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> We do not anticipate cost savings.</p> <p><i>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?</i> Implementation requirements related to this proposal would not be significant since we have procedures developed for similar processes.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes, three months would be sufficient.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
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SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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			<p><i>How well would this proposal work in courts of different sizes?</i> This proposal should not cause any significant issues for any size court.</p>	No response required.
8.	Superior Court of Orange County	N/I	<p>Request for Specific Comments</p> <ul style="list-style-type: none"> • <i>Does the proposal appropriately address the stated purpose? Yes</i> • <i>Please comment on the committee’s decision to propose a nonbinding standard of judicial administration rather than a mandatory rule of court.</i> The nonbinding nature of the proposal is helpful in suggesting a workable solution for implementation of this legislation. • <i>Would the proposal provide cost savings? If so, please quantify.</i> Although I cannot quantify the savings, it appears to be significant based on the recommendation of consolidating into one filing the request for relief for multiple arrests and convictions. Additionally, savings could be achieved by consolidating hearings, or holding no hearings based on response from the prosecution. Since the proposal is directory in nature, and not mandatory, there is also no need to implement modifications, revision of processes, etc. which can be time consuming and/or costly. <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> • <i>Would the proposal provide cost savings? If so, please quantify.</i> See answer above. Although there 	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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		<p>may be significant cost savings in terms of petitions filed and hearings heard, the recommendation under 4.15(d)(3) to recall or return paid court fines and fees would negate some of the anticipated cost savings. If court fines and fees are vacated so as to void the collection of future uncollected monies, any savings or loss would be unchanged. However, if paid fines and fees are returned any costs savings would be reduced due to time expended on behalf of staff to initiate and finalize the return of those funds as well as the loss of the funds themselves.</p> <ul style="list-style-type: none"> • <i>What would the implementation requirements be for courts?</i> This is difficult to assess since the guidance is advisory only in nature and not mandatory. It is unclear if the standard would be adopted by our court. • <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes • <i>How well would this proposal work in courts of different sizes?</i> It seems it would work well. The advisory nature of the proposal enables courts of different sizes to adopt those areas that would be most helpful to their circumstances. 	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
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<p>9.</p>	<p>Superior Court of San Diego County by Mike Roddy, Executive Officer</p>	<p>AM</p>	<p>Because the new rules are intended to be “non-binding guidelines,” it would seem to make sense that some of the language in the proposed rule be changed from “should” to “may.” In addition, there are portions of the rule where the court is given guidance on factors to consider. It is recommended that those portions of the rule specify that the lists provided are nonexclusive. The following changes are recommended:</p> <p>Rule 4.15, subdivision (a)(1):</p> <p>“The court should may allow the filing of a single petition requesting vacatur relief under Penal Code section 236.14(a) for multiple arrests and convictions that occurred in the same county.”</p> <p>Rule 4.15, subdivision (d):</p> <p>“When granting the petition for vacatur relief under Penal Code section 236.14(a), the court should may consider order the following additional relief, including, but not limited to...”</p> <p>4.15, subdivision (a)(4), “The court should consider the following, non-exclusive list of factors when deciding whether to consolidate hearings:...”</p>	<p>The committee prefers the use of “should.” Per California Rules of Court, rule 1.5(b)(5), “should” expresses a preference for a nonbinding recommendation.</p> <p>See response above.</p> <p>See response above. The committee agrees with the suggestion to add “but not limited to,” and has incorporated it into the amendments that it is recommending for adoption.</p> <p>The committee agrees with the suggestion and has incorporated it into the amendments that it is recommending for adoption.</p>
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