



OPEN SESSION

AGENDA ITEM

7.4 JANUARY 2025

**LEGAL SERVICES TRUST FUND COMMISSION ELIGIBILITY AND
SUPPORT COMMITTEE**

DATE: January 27, 2025

TO: Members, Legal Services Trust Fund Commission Eligibility and
Support Committee

FROM: Michael Chong, Program Analyst

SUBJECT: Action on Defining Vacatur (Penal Code Sections 236.14 and 236.15) as Civil
Legal Services

EXECUTIVE SUMMARY

Some grantees have inquired if IOLTA and EAF funds could be utilized for providing vacatur relief to individuals with arrests or criminal convictions. Amendments to the IOLTA statute classify various legal proceedings, including expungements and record sealing, as civil legal services, which raises the question of whether vacatur work should also be included. Staff recommends that the Committee advise the Legal Services Trust Fund Commission (LSTFC) to approve vacatur work under Penal Code sections 236.14 and 236.15 as qualifying civil legal services, provided that a finding of factual innocence is not explicitly required.

RECOMMENDED ACTION

Staff recommend that the Committee recommend that the LSTFC approve vacatur work under Penal Code sections 236.14 and 236.15 as qualifying civil legal services as long as a finding of factual innocence continues to not be explicitly required.

DISCUSSION

GOVERNING AUTHORITIES AND OFFICE PRACTICE

Applicants for Interest on Lawyer Trust Accounts (IOLTA) and Equal Access Funds (EAF) funds must comply with criteria set forth in the IOLTA statute¹, Rules of the State Bar, Eligibility Guidelines for Legal Services Projects and Support Centers, General Grant Provisions, and Standards for Financial Management Systems and Audits. Additionally, the IOLTA statute states, “The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons.”²

Effective January 1, 2022, the IOLTA statute was amended to specify that “[c]ivil legal services’ includes, in addition to matters traditionally considered civil, legal services related to expungements, **record sealing or clearance proceedings not requiring a finding of factual innocence**, and infractions” (emphasis added).³ On July 1, 2023, [State Bar Rule 3.672](#) was amended to adopt a definition of “civil,” which states: “[p]roceedings concerning expungements, record sealing, or clearance proceedings not requiring a finding of factual innocence, or infractions are not criminal proceedings, and legal services related thereto are civil legal services.”

State Bar staff have allowed grantees to use IOLTA and EAF funds for work on expungements, record sealing and clearance proceedings, as the definition of civil legal services was amended. However, some grantees have recently asked if vacatur work would be allowed in the same context.

VACATUR UNDER PENAL CODE SECTIONS 236.14 AND 236.15

Penal Code section [236.14](#) and [236.15](#) provide for vacatur⁴ for arrests or convictions for nonviolent offenses based upon a showing that the arrest or conviction was the direct result of being: “a victim of human trafficking that demonstrates that the person lacked the requisite intent to commit the offense” (Penal Code section 236.14(a)) or “a victim of intimate partner violence or sexual violence that demonstrates that the person lacked the requisite intent to commit the offense” (Penal Code section 236.15(a)).

Work related to such vacaturs could potentially be considered criminal legal services as this legal elimination of requisite intent, even based on an after-the-fact determination regarding status as a victim of human trafficking or intimate partner or sexual violence, could be viewed as a “finding of factual innocence.” An alternative view is that the showing required for vacatur under Penal Code sections 236.14 and 236.15 does not constitute a “finding of factual

¹ In this memo, the “IOLTA statute” refers to California Business and Professions Code sections 6210–6228.

² Business and Professions Code § 6216.

³ Business and Professions Code § 6213(l). When adding this definition to the statute, the Legislature also added the word “civil” before “legal services” in several provisions.

⁴ If granted, vacatur pursuant to these statutes “means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed[.]” See Penal Code §§ 236.14(t)(2), 236.15(t)(2).

innocence” as that term is used in the IOLTA statute and State Bar Rules because the focus is on the specific status of the person (i.e., victim of human trafficking, intimate partner, or sexual violence) at the time of the crime, rather than the facts of the crime itself.

Anecdotal evidence shows there is a large gap in services when it comes to vacatur relief in California. Defendants are not constitutionally entitled to representation in these matters as they are traditionally in criminal proceedings. While some public defenders may assist in these matters, they are often overwhelmed with the number of post-conviction relief cases, leaving persons who were arrested for and/or convicted of crimes directly resulting from their status as victims of human trafficking or sexual or intimate partner violence unable to obtain the relief they seek and may be entitled to under these Penal Code provisions.⁵ And, should those public defenders who do provide such assistance decide to stop offering assistance altogether, these victims of human trafficking or sexual and intimate partner violence would have no other recourse if legal aid were not able to provide these much-needed services. As important as expungements, vacatur provides vulnerable Californians a path to clearing their criminal record. Otherwise, there may be collateral civil legal impacts in housing, employment, immigration, and other areas. Thus, finding vacatur work under Penal Code sections 236.14 and 236.15 to be “civil legal services” would be consistent with the purposes of the IOLTA statute.

The Office of General Counsel has reviewed this memorandum, and opined that finding vacatur work under Penal Code sections 236.14 and 236.15 to be civil legal services is a permissible interpretation of the IOLTA statute and State Bar rules.

RECOMMENDATIONS

State Bar staff recommends that vacatur work under Penal Code sections 236.14 and 236.15 be considered civil legal services under the IOLTA statute and State Bar Rules. Should the committee concur in the State Bar staff’s recommendation, staff recommends that the committee recommend to the LSTFC that it determine vacatur work under Penal Code sections 236.14 and 236.15 be considered civil legal services and allow IOLTA and EAF funds to be used for this work.

ATTACHMENTS LIST

- A.** Penal Code section 236.14
- B.** Penal Code section 236.15

⁵ A grantee reported to us that although the public defender in their area advertises a post-conviction relief program, it has not accepted applications for several months.



State of California

PENAL CODE

Section 236.14

236.14. (a) If a person was arrested for or convicted of any nonviolent offense committed while they were a victim of human trafficking, including, but not limited to, prostitution as described in subdivision (b) of Section 647, the person may petition the court for vacatur relief of their convictions, arrests, and adjudications under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking that demonstrates that the person lacked the requisite intent to commit the offense. Upon this showing, the court shall find that the person lacked the requisite intent to commit the offense and shall therefore vacate the conviction as invalid due to legal defect at the time of the arrest or conviction.

(b) The petition for relief shall be submitted under penalty of perjury and shall describe all of the available grounds and evidence that the petitioner was a victim of human trafficking and the arrest or conviction of a nonviolent offense was the direct result of being a victim of human trafficking.

(c) 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.

(d) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition.

(e) The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

(f) If the petition is opposed or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The hearing may consist of the following:

- (1) Testimony by the petitioner, which may be required in support of the petition.
- (2) Evidence and supporting documentation in support of the petition.
- (3) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

(g) After considering the totality of the evidence presented, the court may vacate the conviction and the arrests and issue an order if it finds all of the following:

- (1) That the petitioner was a victim of human trafficking at the time of the alleged commission of the qualifying crime.

(2) The arrest for or conviction of the crime was a direct result of being a victim of human trafficking.

(3) It is in the best interest of justice.

(h) An order of vacatur shall do all of the following:

(1) Set forth a finding that the petitioner was a victim of human trafficking at the time of the alleged commission of the qualifying crime and therefore lacked the requisite intent to commit the offense.

(2) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of arrest or conviction.

(3) Notify the Department of Justice that the petitioner was a victim of human trafficking when they committed the crime and of the relief that has been ordered.

(i) Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has already been paid. With the exception of restitution, the collection of fines imposed as a result of a nonviolent offense that is the subject of the petition shall be stayed while the petition is pending.

(j) A person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code because they committed a qualifying nonviolent offense while they were a victim of human trafficking, including, but not limited to, prostitution, as described in subdivision (b) of Section 647, may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of human trafficking, the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.

(k) (1) If the court issues an order as described in subdivision (a) or (j), the court shall also order all of the following agencies to seal and destroy their records:

(A) Any law enforcement agency having jurisdiction over the offense.

(B) The Department of Justice.

(C) Any law enforcement agency that arrested the petitioner.

(D) Any law enforcement agency that participated in the arrest of the petitioner.

(E) Any law enforcement agency that has taken action or maintains records because of the offense, including, but not limited to, departments of probation, rehabilitation, corrections, and parole.

(2) Any government agency described in paragraph (1) shall seal its records of arrest and the court order to seal and destroy the records within one year from the date of arrest or within 90 days after the court order is granted, whichever occurs later. The agency shall thereafter destroy their records of the arrest and court order to seal and destroy those records within one year of the date of the court order.

(3) The court shall provide the petitioner a certified copy of any court order concerning the sealing and destruction of the arrest records. The court shall provide the petitioner and petitioner's counsel a copy of any form that the court submits to any agency, including the Department of Justice, related to the sealing and destruction of the arrest records.

(4) The Department of Justice shall notify the petitioner and the petitioner's counsel that the department has complied with the order to seal the arrest records by the applicable deadline.

(l) A petition pursuant to this section shall be made and heard at any time after the person has ceased to be a victim of human trafficking or at any time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section. The right to petition for relief pursuant to this section does not expire with the passage of time and may be made at any time after the time specified in this subdivision. A court shall not refuse to hear a petition that was properly made pursuant to this section on the basis of the petitioner's outstanding fines and fees or the petitioner's failure to meet the conditions of probation.

(m) (1) For the purposes of this section, official documentation of a petitioner's status as a victim of human trafficking may be introduced as evidence that their participation in the offense was the result of their status as a victim of human trafficking.

(2) For the purposes of this subdivision, "official documentation" means any documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of human trafficking. Official documentation shall not be required for the issuance of an order described in subdivision (a).

(n) If the petition is unopposed, the petitioner may appear at all hearings on the petition, if any, by counsel. If the petition is opposed and the court orders a hearing for relief on the petition, the petitioner shall appear in person unless the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear by telephone, videoconference, or by other electronic means established by the court.

(o) Notwithstanding any other law, a petitioner who has obtained an order pursuant to this section may lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order.

(p) Notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

(q) The record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner's full name.

(r) A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section.

(s) If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial may be without prejudice. The court may state the reasons for its denial in writing or on the record that is memorialized by transcription, audiotape, or videotape, and, if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

(t) For the purposes of this section, the following terms apply:

(1) “Nonviolent offense” means any offense not listed in subdivision (c) of Section 667.5.

(2) “Vacate” means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section. The court shall provide the petitioner with a copy of the orders described in subdivisions (a), (j), and (k), as applicable, and inform the petitioner that they may thereafter state that they were not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

(3) “Victim of human trafficking” means the victim of a crime described in subdivisions (a), (b), and (c) of Section 236.1.

(Amended by Stats. 2023, Ch. 131, Sec. 148. (AB 1754) Effective January 1, 2024.)



State of California

PENAL CODE

Section 236.15

236.15. (a) If a person was arrested for or convicted of any nonviolent offense committed while the person was a victim of intimate partner violence or sexual violence, the person may petition the court for vacatur relief of their convictions, arrests, and adjudications under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of intimate partner violence or sexual violence that demonstrates that the person lacked the requisite intent to commit the offense. Upon this showing, the court shall find that the person lacked the requisite intent to commit the offense and shall therefore vacate the conviction as invalid due to legal defect at the time of the arrest or conviction.

(b) The petition for relief shall be submitted under penalty of perjury and shall describe all of the available grounds and evidence that the petitioner was a victim of intimate partner violence or sexual violence and the arrest or conviction of a nonviolent offense was the direct result of being a victim of intimate partner violence or sexual violence.

(c) 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.

(d) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition.

(e) The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

(f) If the petition is opposed or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The hearing may consist of the following:

- (1) Testimony by the petitioner, which may be required in support of the petition.
- (2) Evidence and supporting documentation in support of the petition.
- (3) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

(g) After considering the totality of the evidence presented, the court may vacate the conviction and expunge the arrests and issue an order if it finds all of the following:

- (1) That the petitioner was a victim of intimate partner violence or sexual violence at the time of the alleged commission of the qualifying crime.

(2) The arrest or conviction of the crime was a direct result of being a victim of intimate partner violence or sexual violence.

(3) It is in the best interest of justice.

(h) An order of vacatur shall do all of the following:

(1) Set forth a finding that the petitioner was a victim of intimate partner violence or sexual violence at the time of the alleged commission of the qualifying crime and therefore lacked the requisite intent to commit the offense.

(2) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of the arrest or conviction.

(3) Notify the Department of Justice that the petitioner was a victim of intimate partner violence or sexual violence when they committed the crime and of the relief that has been ordered.

(i) Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent offense unless it has already been paid.

(j) A person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code because they committed a qualifying nonviolent offense while they were a victim of intimate partner violence or sexual violence may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of intimate partner violence or sexual violence, the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.

(k) If the court issues an order as described in subdivision (a) or (j), the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records within three years from the date of the arrest or within one year after the court order is granted, whichever occurs later and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall provide the petitioner a copy of any court order concerning the destruction of the arrest records.

(l) A petition pursuant to this section shall be made and heard within a reasonable time after the person has ceased to be a victim of intimate partner violence or sexual violence or within a reasonable time after the petitioner has sought services for being a victim of intimate partner violence or sexual violence, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of intimate partner violence or sexual violence who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section.

(m) For the purposes of this section, official documentation of a petitioner's status as a victim of intimate partner violence or sexual violence may be introduced as evidence that their participation in the offense was the result of their status as a victim of intimate partner violence or sexual violence. For the purposes of this subdivision,

“official documentation” means any documentation issued by a federal, state, or local agency that tends to show the petitioner’s status as a victim of intimate partner violence or sexual violence. Official documentation shall not be required for the issuance of an order described in subdivision (a).

(n) A petitioner, or their attorney, may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear telephonically, via videoconference, or by other electronic means established by the court.

(o) Notwithstanding any other law, a petitioner who has obtained an order pursuant to this section may lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order.

(p) Notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

(q) The record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner’s full name.

(r) A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section.

(s) If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial may be without prejudice. The court may state the reasons for its denial in writing or on the record that is memorialized by transcription, audiotape, or videotape, and if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

(t) For the purposes of this section, the following terms apply:

(1) “Nonviolent offense” means any offense not listed in subdivision (c) of Section 667.5.

(2) “Vacate” means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section. The court shall provide the petitioner with a copy of the orders described in subdivisions (a), (j), and (k), as applicable, and inform the petitioner that they may thereafter state that they were not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

(Amended by Stats. 2023, Ch. 131, Sec. 149. (AB 1754) Effective January 1, 2024.)