



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

JACKIE LACEY • District Attorney
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VIA ELECTRONIC MAIL

yhaile@aclunc.org

June 11, 2019

Yoel Haile
ACLU, Northern California
San Francisco Office
39 Drumm Street
San Francisco, CA 94111

yhaile@aclunc.org

Dear Mr. Haile:

CALIFORNIA PUBLIC RECORDS ACT REQUEST

This is in response to your Public Records Act request dated May 13, 2019 seeking:

"5. Copies of all office policies that relate to immigration including but not limited to: a. Records that refer to office efforts to implement its obligations under penal code 1016.3(b). b. Records that refer to office efforts to implement its obligations under penal code 1473.7. c. Records, memoranda, and emails that relate to the creation and development of an immigration policy for the office. d. Request #5 is not limited to calendar year 2017 and 2018."

As we advised you on May 28, 2019, we needed additional time to search for and locate any potentially responsive information. After undertaking a search and review of records, our office has determined the following: that any responsive records are exempt from disclosure based on the following exemptions

As to item (a), we have search our records and we have no responsive documents.

As to item (b), we have located three Special Directives responsive to your request. Special Directives are Office Policies disseminated to the entire staff of the Los Angeles County District Attorney's Office. Attached please find Special Directives 17-09, 18-04, and 18-11 related to Penal Code section 1473.7. Also attached is a training video for our attorneys on Penal Code section 1473.7, in CD format.

Hall of Justice
211 West Temple Street
Suite 1200
Los Angeles, CA 90012
(213) 257-2905

As to items (c) and (d), any responsive records are exempt from disclosure based on the following exemptions:

1. Records containing or related to attorney work product.

Government Code section 6254 subdivision (a) allows an agency to withhold a record relating to preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

2. Records where the facts of the particular case dictate that the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Government Code section 6255(a) allows an agency to withhold a record when the public interest served by withholding the record clearly outweighs the public interest in disclosure. Some responsive records contain information that reveals the County's decision-making process. The public interest in protecting the deliberative process of government agencies clearly outweighs the public interest in disclosure. Otherwise responsive records that reveal the County's deliberative process are, therefore, exempt from disclosure.


3. Burdensome request.

Government Code section 6255 speaks broadly of the "public interest," a phrase which encompasses public concern balanced against the cost and efficiency of government, and permits an agency to withhold records where the burden of segregating exempt from non-exempt records is so great and the utility of disclosing nonexempt information so minimal. (See *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453, *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.)

Based upon the foregoing, the Los Angeles County District Attorney's Office will not disclose any records under items (c) and (d). Should you have any further questions, please do not hesitate to contact me.

Very truly yours,


JACKIE LACEY
District Attorney

By 
Ruth Low, Deputy District Attorney
Special Assistant
Administration

See Special Directive 18-04 Addendum to
Special Directive 17-09 Penal Code Section
1473.7 Motions

SPECIAL DIRECTIVE 17-09

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: PENAL CODE SECTION 1473.7 MOTIONS

DATE: JUNE 07, 2017

This Special Directive sets forth the Los Angeles County District Attorney's Office (Office) policy regarding a Penal Code section 1473.7 motion to vacate a conviction or sentence based on prejudicial error damaging his or her ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction. The statute also authorizes the trial court to set aside a conviction based upon newly discovered evidence of the defendant's actual innocence. The statute applies to defendants who are no longer in state custody and whose probation or parole has expired.

New section 17.01.03 of Chapter 17 (Post-Conviction Proceedings) of the Legal Policies Manual (LPM) will be inserted into the 2017 edition of the LPM. Former section 17.01.03 Conviction Review Unit will be renumbered as 17.01.04, and former section 17.01.04 Indemnification of Persons Wrongfully Convicted and Imprisoned will be renumbered as section 17.01.05.

17.01.03 Motion to Vacate a Conviction or Sentence – Penal Code § 1473.7

Penal Code § 1473.7 authorizes a defendant to file a motion to vacate a conviction or sentence based on prejudicial error damaging his or her ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction. The statute also authorizes the trial court to set aside a conviction based upon newly discovered evidence of the defendant's actual innocence. The statute applies to defendants who are no longer in state custody and whose probation or parole has expired.

The Habeas Corpus Litigation Team (“HABLIT”) shall litigate Penal Code § 1473.7 motions alleging claims of actual innocence in the Superior Court.

The trial units which originally prosecuted the case shall litigate all other Penal Code § 1473.7 motions based on alleged error during the plea proceedings. The Head Deputy or Deputy-in-Charge of the trial unit may contact the Deputy-in-Charge of HABLIT for assistance. HABLIT deputies shall be available to consult with the assigned deputy to suggest practical steps to take in defense of the motions.

All Penal Code § 1473.7 motions that set forth a prima facie case for relief are entitled to a hearing, and, at the request of the moving party, the court may hold the hearing without the

personal presence of the moving party if counsel for the moving party is present and the court finds good cause for the moving party's absence. However, the following objections shall be made to ensure a full and fair hearing:

- Deputies shall object to a moving party's absence from the Penal Code § 1473.7 hearing;
- Deputies shall object to the admission of hearsay evidence (*In re Fields* (1990) 51 Cal.3d 1063, 1070);
- Deputies shall insist on exercising the right to cross-examine hearsay declarants pursuant to Evidence Code § 1203;
- Deputies shall object to plea withdrawals which do not take place in open court as required by Penal Code §§ 977 and 1018.


If a Court grants a petition on the basis of inadmissible hearsay evidence and denies the People's right to cross-examine the hearsay declarant, or permits a petitioner to withdraw his or her plea in violation of Penal Code § 1018, the handling deputy shall immediately contact the Appellate Division for consideration of appealing the trial court's rulings.

Templates for an opposition motion, waiver of the attorney-client privilege and order waiving the attorney-client privilege have been uploaded to LADAnet under Library>Brief Bank>All Brief Bank Documents>Post-Trial Motions>PC 1473.7.

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SPECIAL DIRECTIVE 18-04

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: ADDENDUM TO SPECIAL DIRECTIVE 17-09 –
PENAL CODE SECTION 1473.7 MOTIONS

DATE: APRIL 17, 2018

Special Directive 17-09 set forth the Los Angeles County District Attorney's Office (Office) policy regarding motions brought under Penal Code section 1473.7 to vacate a conviction or sentence based on prejudicial error damaging a defendant's ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction. Although not expressly mentioned in the policy, templates and training materials posited that such motions were not ripe unless the moving party had actually received a notice of removal proceedings or a final removal order from federal authorities, relying on subdivision (b) of the statute.

Upon reexamination, the Office is persuaded that the Legislature intended section 1473.7 to apply regardless of whether the moving party has received notice of removal proceedings or a removal order. The moving party must still demonstrate that the conviction or sentence subjects him or her to adverse immigration consequences (e.g., that a federal statute makes him or her deportable, excludable or ineligible for citizenship). The moving party must also file the motion with "reasonable diligence" if he or she does receive a removal notice or order.

The Brief Bank on LADAnet no longer contains the Opposition Motion referenced in SD 17-09. The Opposition Motion template in PIMS has been edited to reflect the new policy. A training video on the Training Division Home Page on LADAnet has also been edited to remove reference to our previous policy.

Section 17.01.03 (Motion to Vacate a Conviction or Sentence – Penal Code § 1473.7) of Chapter 17 (Post Conviction Proceedings) of the Legal Policies Manual has also been revised in two places. The following new paragraph has been inserted after the current third paragraph:


The Office's position is that the moving party may bring a motion pursuant to Penal Code § 1473.7 (a)(1) even though there is no pending removal proceeding or final removal order, if the moving party proves that he or she may potentially suffer an adverse immigration consequence as the result of the conviction (e.g., that a federal statute makes the defendant deportable, excludable, or ineligible for citizenship).

The last paragraph of section 17.01.03 has been modified to read, "Templates for an opposition motion, waiver of the attorney-client privilege and order waiving the attorney-client privilege are available in PIMS."

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SPECIAL DIRECTIVE 18-11

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOSEPH P. ESPOSITO 
Chief Deputy District Attorney

SUBJECT: AB 2867 AMENDMENTS TO PENAL CODE SECTION 1473.7

DATE: DECEMBER 28, 2018

This Special Directive (SD) updates and modifies SD 17-09 and SD 18-04. Effective January 1, 2019, Assembly Bill (AB) 2867 amends Penal Code section 1473.7,¹ and authorizes a defendant who is no longer in criminal custody, i.e., no longer in actual custody or on probation or parole, to seek to set aside his or her conviction on grounds that the conviction is legally invalid due to "prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere." (§ 1473.7, subd. (a)(1).) The statute also authorizes the trial court to set aside a conviction based upon newly discovered evidence of the defendant's actual innocence. (§ 1473.7, subd. (a)(2).)

The trial units which originally prosecuted the case shall litigate all section 1473.7 motions based on alleged error during the plea proceedings. The Head Deputy or Deputy-in-Charge of the trial unit may contact the Deputy-in-Charge of HABLIT for assistance. HABLIT deputies shall be available to consult with the assigned deputy to suggest practical steps to take in defense of the motions. An updated template for an opposition motion ("Opposition to Penal Code § 1473.7 Motion to Vacate Judgment") is available in PIMS.

The Habeas Corpus Litigation Team ("HABLIT") shall litigate section 1473.7 motions alleging claims of actual innocence.

Deputies shall notify victims or next of kin that they have a right to be present and to be heard as required under Marsy's law. (Cal. Const. Art. I, § 28, subd. (b)(8).)

The 2019 amendments to the statute are as follows:

- The statute affords relief to individuals who are no longer in criminal custody, i.e., defendants who are neither in actual custody or whose probation or parole has expired. A party may bring a motion pursuant to section 1473.7, subdivision (a)(1) even if there is no currently pending removal proceeding or final removal order if the moving party proves by a preponderance of the evidence that he or she has actually or may potentially suffer an adverse immigration consequence as the result of the conviction (e.g., that a federal statute makes the defendant deportable, excludable, or ineligible for citizenship).

¹ All further statutory references are to the Penal Code.

Further, a motion to set aside the conviction may be brought even if the conviction has previously been set aside pursuant to Penal Code section 1203.4.

- A motion pursuant to section 1473.7 will be deemed to have been timely filed if it is brought with reasonable diligence after the moving party learns that the underlying conviction will be used as a basis for removal or denial of an immigration benefit. However, the motion must be filed promptly after a petitioner learns of the facts which support a claim for relief. The statute was amended to clarify that a petitioner may bring a motion under the section even if he or she has not yet received a notice to appear in immigration court or a final removal order.
- Commonly, a petitioner will assert that the prejudicial error which occurred during plea proceedings was due to ineffective assistance of trial counsel. While the statute requires a court to state the legal basis for its finding that prejudicial error occurred, damaging the party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse consequences of a guilty or no contest plea, the court may make a specific finding that trial counsel was ineffective only if the moving party or the prosecutor gave counsel timely advance notice of the motion. (§ 1473.7, subd. (g).) The court may make a finding of legal invalidity on grounds other than ineffective assistance of counsel. (§ 1473.7, subd. (a)(1).)
- All Penal Code section 1473.7 motions that set forth a prima facie case for relief are entitled to a hearing. Upon the request of the moving party, the court may hold the hearing without the personal presence of the moving party provided that it finds good cause as to why the moving party cannot be present. The court may not grant the motion without a hearing over the prosecution's objection. (§ 1473.7, subd. (d).)

Effective January 1, 2019, Legal Policies Manual (LPM), section 17.01.03, will be modified as follows:

**17.01.03 MOTION TO VACATE A CONVICTION OR SENTENCE – PENAL
CODE SECTION 1473.7**

Penal Code section 1473.7 authorizes a defendant to file a motion to vacate a conviction or sentence based on prejudicial error damaging his or her ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction. The statute also authorizes the trial court to set aside a conviction based upon newly discovered evidence of the defendant's actual innocence. The statute applies to defendants who are no longer in state custody and whose probation or parole has expired.

The Habeas Corpus Litigation Team (“HABLIT”) shall litigate Penal Code section 1473.7 motions alleging claims of actual innocence in the Superior Court.

The trial units which originally prosecuted the case shall litigate all other Penal Code section 1473.7 motions based on alleged error during the plea proceedings. The Head Deputy or Deputy-in-Charge of the trial unit may contact the Deputy-in-Charge of HABLIT for assistance.

HABLIT deputies shall be available to consult with the assigned deputy to suggest practical steps to take in defense of the motions.

The statute affords relief to individuals who are no longer in criminal custody, i.e., defendants who are neither in actual custody or whose probation or parole has expired. A party may bring a motion pursuant to Penal Code section 1473.7, subdivision (a)(1) even though there is no pending removal proceeding or final removal order, if the moving party proves by a preponderance of the evidence that he or she has actually or may potentially suffer an adverse immigration consequence as the result of the conviction (e.g., that a federal statute makes the defendant deportable, excludable, or ineligible for citizenship). Further, a motion to set aside the conviction may be brought even if the conviction has previously been set aside pursuant to Penal Code section 1203.4.

A motion under the section will be deemed to have been timely filed at any time in which the petitioner is no longer in criminal custody. However, the motion must be filed promptly after a petitioner learns of the facts which support a claim for relief.

Commonly, a petitioner will assert that the prejudicial error which occurred during plea proceedings was due to ineffective assistance of trial counsel. While the statute requires a court to state the legal basis for its finding that prejudicial error occurred, damaging the party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse consequences of a guilty or no contest plea, the court may make a specific finding that trial counsel was ineffective only if the moving party or the prosecutor gave counsel timely advance notice of the motion. (§ 1473.7, subd. (g).) The court may make a finding of legal invalidity on grounds other than ineffective assistance of counsel. (§ 1473.7, subd. (a)(1).)

All Penal Code section 1473.7 motions that set forth a prima facie case for relief are entitled to a hearing, and, at the request of the moving party, the court may hold the hearing without the personal presence of the moving party if the court finds good cause for the moving party's absence. The court may not grant the motion without a hearing over the prosecution's objection. (§ 1473.7, subd. (d).)

If the underlying conviction was for a crime committed against an individual, Marsy's Law requires the handling deputy to notify the victim or the victim's next of kin that the conviction may be set aside and that the individual has the right to be informed about, be present and be heard at any post-conviction proceeding.

The following objections shall be made to ensure a full and fair hearing:

- Deputies shall object to a moving party's absence from the Penal Code § 1473.7 hearing;
- Deputies shall object to the admission of hearsay evidence (*In re Fields* (1990) 51 Cal.3d 1063, 1070);
- Deputies shall insist on exercising the right to cross-examine hearsay declarants pursuant to Evidence Code § 1203;
- Deputies shall object to plea withdrawals which do not take place in open court as required by Penal Code §§ 977 and 1018.

If a Court grants a petition on the basis of inadmissible hearsay evidence and denies the People's right to cross-examine the hearsay declarant, or permits a petitioner to withdraw his or her plea in violation of Penal Code § 1018, the handling deputy shall immediately contact the Appellate Division for consideration of appealing the trial court's rulings.

Templates for an opposition motion, waiver of the attorney-client privilege and order waiving the attorney-client privilege are available in PIMS.

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