

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT SPR13-15

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Title	Action Requested
Criminal Procedure: Petition and Order for Dismissal	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CR-180 and CR-181	January 1, 2014
Proposed by	Contacts
Criminal Law Advisory Committee Hon. Tricia Bigelow, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to the *Petition for Dismissal* (form CR-180) and the *Order for Dismissal* (form CR-181) that would delete certain personal identifying information, add an advisement to the order form to clarify that dismissals generally do not relieve petitioners of requirements to register as a sex offender, add a check box to the petition to apply the forms to infractions, and incorporate an additional statutory basis for dismissal. The committee also proposes several revisions to the format, advisements, and instructions on both forms to reduce confusion and update and enhance the information on the forms.

### Background

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4 and 1203.4a.

The first two proposed revisions described below were originally developed by the committee and circulated for public comment in spring 2011. The committee, however, tabled the two proposed revisions after the comment period to focus on work related to criminal justice realignment legislation enacted later that year. Meanwhile, the committee developed several additional proposed revisions, also described below. For ease of review, the committee is circulating *all* proposed revisions together, including the two that previously circulated in 2011.<sup>1</sup>

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<sup>1</sup> A total of nine comments were received on the proposed revisions previously circulated. The committee will consider those nine comments in conjunction with any new comments received during this circulation period.

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

## The Proposal

The Criminal Law Advisory Committee proposes the following revisions to forms CR-180 and CR-181:

- **Personal identifying information.** The committee proposes deleting from the captions of both forms the data fields for entry of petitioner’s driver’s license number and last four digits of petitioner’s social security number. Driver’s license and social security information is personal in nature and subject to identity theft. The information is unnecessary because courts only require the petitioner’s name and date of birth to properly process requests for dismissals.
- **Sex offender registration requirements.** Under Penal Code 290.007, dismissals under Penal Code section 1203.4 do not relieve petitioners of sex offender registration requirements. A person required to register may only be relieved of the registration requirement if he or she obtains a certificate of rehabilitation and is entitled to relief under Penal Code section 290.5. To enhance the information contained in the order (form CR-181), the committee proposes to add the following advisement about sex offender registration to item 5b of that form:
  5. If this order is granted under the provisions of Penal Code section 1203.4:  
[¶]
    - b. Dismissal of the conviction does not relieve a person from the requirement to register as a sex offender. A person required to register as a sex offender may only be relieved of the registration requirement if he or she obtains a certificate of rehabilitation and is entitled to relief from registration under Penal Code section 290.5.
- **Hearing information.** To facilitate the scheduling of hearings, the committee proposes adding a data field to the caption of the petition for the clerk to note a date, time, and place for any hearing. In addition, to clarify that clerks—not petitioners—must input the hearing information, the committee also proposes adding the phrase “for court use only” to the top of the new data field.
- **Conviction information.** To ensure that the petition includes complete conviction information, including convictions based on multiple code sections, the committee proposes adding the following instruction to item 1 on the petition: “(specify codes and sections):.” In addition, to ensure that the order includes specific information about the convictions dismissed by the court, the committee proposes adding data fields to item 4 for courts to specify the charges and dates of the convictions dismissed.

- **Infractions.** In response to recent legislation<sup>2</sup> that extended the dismissal relief under Penal Code section 1203.4a to certain infractions, the committee proposes adding a check box to item 2 of the petition for petitioners to note that the underlying offense was an infraction.
- **Basis for relief.** To clarify that more than one basis for relief may apply to petitions under Penal Code section 1203.4, the committee proposes replacing the instruction “(check one)” with “(check all that apply)” in item 3 and deleting the word “or” from item 3b. In addition, in response to recent legislation<sup>3</sup> that amended Penal Code section 1203.4a to authorize courts to grant dismissal relief “in the interests of justice,” the committee proposes adding item 4b to the petition to incorporate the new basis for relief and advise petitioners that they must explain why granting a dismissal would be in the interests of justice by completing and attaching an *Attached Declaration* (form MC-031).
- **Holding public office.** Recent legislation<sup>4</sup> amended Penal Code section 1203.4a to clarify that dismissals under that section do not relieve petitioners of any resulting prohibition against holding public office, a consequence that previously only applied to dismissals under Penal Code section 1203.4. In response, the committee proposes amending the order form to move the related advisement from item 5b to item 6, which applies to dismissals under both sections.
- **Statutory updates.** In response to recent legislation that renumbered Penal Code sections 12021 and 12021.1, the committee proposes updating the reference to those sections in item 6 of the order (form CR-181) as follows:

6. ... except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. This dismissal does not permit a person to own ... a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1).

### Alternatives Considered

The committee alternatively considered postponing or declining to propose any form revisions in light of the severe economic circumstances faced by courts. The committee, however, decided to propose the form revisions because some are required by recent statutory amendments. In addition, because the proposed revisions would not impose any significant change in court practices, the committee believes that the proposal would not impose undue burdens on courts; rather, the proposed changes are designed to improve dismissal procedures by reducing confusion and enhancing the information on the forms.

<sup>2</sup> Assem. Bill 2582 (Adams; Stats. 2010, ch. 99, p. 95).

<sup>3</sup> Assem. Bill 1384 (Bradford; Stats. 2011, ch. 284, p. 94).

<sup>4</sup> *Ibid.*

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

Expected costs are limited to training and the production of new forms. No other implementation requirements or operational impacts are expected.

### **Request for Specific Comments**

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

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

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

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

### **Attachments**

1. *Petition for Dismissal* (form CR-180)
2. *Order for Dismissal* (form CR-181)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. : _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not Approved by the</b> <b>Judicial Council</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	
<b>PETITION FOR DISMISSAL</b> <b>(Pen. Code, §§ 17, 1203.4, 1203.4a)</b>	CASE NUMBER: _____
<b>DEFENDANT'S INFORMATION</b>  CI: _____ DATE OF BIRTH: _____	<b>FOR COURT USE ONLY</b>  Date: _____ Time: _____ Department: _____

- On (date): \_\_\_\_\_, the defendant in the above-entitled criminal action was convicted of a violation of the following (specify code(s) and section(s)):
- The offense was a  misdemeanor  felony  infraction.  
 Felony offense (Pen. Code, § 17):  
 The offense listed above is a felony that may be reduced to a misdemeanor under Penal Code section 17.
- Offense with probation granted (Pen. Code, § 1203.4):  
 Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the defendant (check all that apply):
  - has fulfilled the conditions of probation for the entire period thereof;
  - has been discharged from probation prior to the termination of the period thereof;
  - should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice by completing and attaching the optional Attached Declaration (form MC-031).)
- Offense with sentence other than probation (Pen. Code, § 1203.4a):  
 Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The defendant has complied with the sentence of the court and is not serving a sentence for any offense nor under charge of commission of any crime; and the defendant (select one):
  - has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; or
  - should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice by completing and attaching the optional Attached Declaration (form MC-031).)

Petitioner requests that defendant be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section  1203.4 or  1203.4a of the Penal Code.

Petitioner requests that the felony charge be reduced to a misdemeanor under Penal Code section 17.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: \_\_\_\_\_ (DATE)

 \_\_\_\_\_ (SIGNATURE OF PETITIONER OR ATTORNEY)

\_\_\_\_\_  
(ADDRESS, DEFENDANT)

\_\_\_\_\_  
(CITY)

\_\_\_\_\_  
(STATE)

\_\_\_\_\_  
(ZIP CODE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;">FOR COURT USE ONLY</p> <p style="text-align: center;"><b>DRAFT</b> <b>Not Approved by the</b> <b>Judicial Council</b></p>
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT: _____	
<b>ORDER FOR DISMISSAL</b> <b>(Pen. Code, §§ 17, 1203.4, 1203.4a)</b>	CASE NUMBER: _____
<b>DEFENDANT'S INFORMATION</b>  CII: _____ DATE OF BIRTH: _____	

1.  The court denies the petition.
2.  The court grants the petition. The court finds from the records on file in this case, and from the foregoing petition, that the defendant is eligible for the relief requested.
3.
  - a.  The court reduces the felony offense to a misdemeanor.
  - b.  The court denies the request to reduce the felony offense to a misdemeanor.
4.  It is ordered that the plea, verdict, or finding of guilt regarding the following convictions in the above-entitled action be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed (specify charges and dates of convictions):
5. If this order is granted under the provisions of Penal Code section 1203.4:
  - a. The defendant is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency or for contracting with the California State Lottery.
  - b. Dismissal of the conviction does not relieve a person from the requirement to register as a sex offender. A person required to register as a sex offender may only be relieved of the registration requirement if he or she obtains a certificate of rehabilitation and is entitled to relief from registration under Penal Code section 290.5.
  - c. The defendant may also be eligible to obtain a certificate of rehabilitation and pardon under the procedure set forth in Penal Code section 4852.01 et seq.
6. If the order is granted under the provisions of either Penal Code section 1203.4 or 1203.4a, the defendant is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of the conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
7. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17, 1203.4, or 1203.4a does not release defendant from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if defendant was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

Date: \_\_\_\_\_

\_\_\_\_\_  
(JUDICIAL OFFICER)

FOR COURT USE ONLY
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