

Title	Criminal Law: <i>Petition and Order for Expungement</i> (amend Judicial Council form CR-180)
Summary	<p>The proposed amendments to the <i>Petition and Order for Expungement</i> (form CR-180) would create a separate order form, change the title of the forms, and provide additional information and advisements to reduce confusion and misuse by defendants.</p> <p>In addition, this proposal includes minor, non-substantive changes designed to conform the <i>Petition and Order for Expungement</i> (form CR-180) to current style guidelines for Judicial Council forms, e.g., adjusting spacing after periods and deleting unnecessary commas.</p> <p>For future consideration, the Criminal Law Advisory Committee also seeks public comment on a few general questions related to the content of the forms.</p>
Source	Criminal Law Advisory Committee Justice Steven Z. Perren, Chair
Staff	Arturo Castro, 415-865-7702, arturo.castro@jud.ca.gov.
Discussion	<p>To address concerns about defendants improperly filling out the order portion of the form and to assist court case management systems, this proposal recommends separating the <i>Petition and Order for Expungement</i> (from CR-180) into two forms, one for the petition (CR-180) and a separate one for the order (CR-181).</p> <p>Further, to reduce confusion and enhance the amount of information contained in the forms, this proposal recommends adding two statutorily derived advisements to the order form. First, under Penal Code section 4852.21(b), a defendant who obtains relief under section 1203.4 must be advised of the “right, if any, to petition for, and the procedure for filing a petition for, and obtaining, a certificate of rehabilitation and pardon . . .” Second, Penal Code section 299(f) specifies that defendants who obtain relief under Penal Code sections 17, 1203.4, and 1203.4a are <i>not</i> relieved of their “duty to provide specimens, samples, or print impressions” as required by the DNA and Forensic Identification Database and Data Bank Act. The proposed amendments would add these two advisements to the order form.</p> <p>In response to concerns that use of the word “expungement” is confusing and misleading, this proposal would replace the word “expungement” with the word “dismissal” in the title of the forms.</p>

The new forms would be entitled *Petition for Dismissal* (CR-180) and *Order for Dismissal* (CR-181).

The Criminal Law Advisory Committee also seeks public comment on the following particular questions:

- (1) Should a section for the date, time, and place of the hearing to be filled out by the clerk when the petition is filed be added to the face of the petition?
- (2) Should the forms provide instructions to the defendant on how to comply with statutory notice requirements?
- (3) Should a section to indicate compliance with notice and proof of service requirements be added to the forms?
- (4) Should additional advisements be added to the order to clarify whether a conviction dismissed under Penal Code section 1203.4 or 1203.4a is truly erased from a petitioner's record?

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT ONLY NOT FOR USE
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	CASE NUMBER: _____
PETITION FOR DISMISSAL (Pen. Code, §§ 17, 1203.4, 1203.4a) DEFENDANT'S INFORMATION CII: _____ DRIVER'S LIC #: _____ SSN # (LAST FOUR DIGITS ONLY): _____ DATE OF BIRTH: _____	

PETITION

- On (date): _____ the defendant in the above-entitled criminal action was convicted of a violation of section(s) (specify): _____ of the (specify): _____ Code.
- The offense was a misdemeanor felony.
 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 has
 - fulfilled the conditions of probation for the entire period thereof.
 - been discharged from probation prior to the termination of the period thereof.
- 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 since said pronouncement of judgment has lived an honest and upright life and conformed to and obeyed the laws of the land.

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: _____ at _____ California.

(DEFENDANT)

(ADDRESS, DEFENDANT)

(CITY)

(STATE)

(ZIP CODE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <div style="text-align: center;"> DRAFT ONLY NOT FOR USE </div>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	
ORDER FOR DISMISSAL (Pen. Code, §§ 17, 1203.4, 1203.4a)	CASE NUMBER: _____
DEFENDANT'S INFORMATION CII: _____ DRIVER'S LIC #: _____ SSN # (LAST FOUR DIGITS ONLY): _____ DATE OF BIRTH: _____	

ORDER

- The court denies the above petition.
- The court grants the above 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.
- The court reduces the felony offense to a misdemeanor.
- It is ordered that the plea, verdict, or finding of guilt 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. If this order is granted under the provisions of Penal Code section 1203.4, 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. Further, if this order is granted under the provisions of Penal Code section 1203.4, 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.
- 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 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 12021 or 12021.1. 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 (Penal Code section 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)

Item SPR08-35 Response Form

Title: Criminal Law: Petition and Order for Expungement (revise form CR-180)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*