

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-23**

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Title	Action Requested
Juvenile Law: Decriminalization of Convictions Under Penal Code Section 647f	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt forms JV-742 and JV-743	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Nicole Giacinti, (415) 865-7598
Hon. Jerilyn L. Borack, Cochair	<a href="mailto:nicole.giacinti@jud.ca.gov">nicole.giacinti@jud.ca.gov</a>
Hon. Mark A. Juhas, Cochair	

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee proposes approving two new forms to comply with Senate Bill 239 (Wiener; Stats. 2017, ch. 537), which decriminalizes convictions based on Penal Code section 647f and requires the Judicial Council to promulgate forms to implement the legislation. The proposed forms would allow those who are eligible for relief to request that their Penal Code 647f conviction be vacated and dismissed, and that they be resentenced, if appropriate.

### **Background**

Prior to SB 239, people who were found to be positive for HIV/AIDS at the time of a previous prostitution offense could be charged with a felony for a subsequent prostitution arrest pursuant to Penal Code section 647f (section 647f). SB 239, implemented through Penal Code sections 1170.21 and 1170.22, allows people convicted of a violation of section 647f to seek to have their conviction vacated and dismissed as invalid. Those people who are serving a sentence for a section 647f offense may not only request dismissal of the conviction but may also seek to be resentenced. Penal Code section 1170.22(h) makes this relief applicable to juvenile delinquency adjudications and dispositions.

While section 647f is a charge that is not often seen in juvenile court, the committee believes it is necessary to create these forms because the relief is specifically applicable to juveniles and because Penal Code section 1170.22(i) specifically directs the Judicial Council to create forms to implement the relief. The Criminal Law Advisory Committee (CLAC) is drafting forms for use

*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.*

in criminal proceedings; however, the differences between adult and juvenile court are significant enough that creating a joint form would be challenging.<sup>1</sup>

### **The Proposal**

The forms, which are modeled on the forms created for Proposition 64<sup>2</sup> (forms JV-744 and JV-746) during the winter 2017 cycle, are written in a format that is intended to be easier for non-lawyers to understand. Because children are no longer being prosecuted for prostitution crimes, these forms will be irrelevant in several years. As such, the committee recommends that the forms sunset after five years. The sunset date is reflected on the footer of the forms.

### **Request to dismiss and resentence**

Recognizing that many people who complete this form will not be represented by an attorney, the form includes instructions about how to fill out the form. The substantive elements of the form include:

- A section to request resentencing and dismissal, for those young people who may be on probation for multiple offenses, only one of which is a section 647f violation.
- A section for dismissal for those young people who are no longer on probation for the section 647f violation.
- A section where the applicant can waive his or her appearance.
- A section where the applicant can ask for an interpreter.
- A section where the applicant can waive the right to the original sentencing judge.

### **Order after request to reduce juvenile Penal Code section 647f offense**

The order form is straightforward. In those instances where resentencing is necessary, it allows the court to either terminate delinquency jurisdiction or state which terms of probation will be vacated.

### **Alternatives Considered**

The committee discussed the necessity of creating the forms, since section 647f is not a charge that is often seen in juvenile court. However, the committee decided it was necessary to create the petition and order because the Legislature specifically made the decriminalization of convictions under section 647f applicable to juveniles and required the Judicial Council to create forms to implement the legislation. The committee also considered developing dual forms with CLAC; however, the terminology in juvenile proceedings is sufficiently distinct from criminal proceedings that a joint form would frustrate attempts at plain language.

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<sup>1</sup> See the CLAC proposal titled, *Criminal Procedure: Petition/Application for Dismissal of a Conviction for a Violation of Penal Code Section 647f*.

<sup>2</sup> Commonly known as the Adult Use of Marijuana Act, Proposition 64 was adopted by the voters on November 8, 2016.

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

It is unlikely that this proposal will impose any implementation costs or result in operational impacts, since section 647f is a crime rarely seen in juvenile court. However, if there are eligible young people, there will be moderate workload burdens on the court as those young people seek to have their section 647f adjudications dismissed and vacated. The proposed forms are intended to mitigate those burdens by providing courts with forms to streamline the process.

### **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 appropriately address the stated purpose?
- It is recommended that forms JV-742 and JV-743 sunset in five years. Is five years a sufficient time period to provide young people time to request vacatur or should the sunset date be later?

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

- Would the proposal provide cost savings? If so please quantify.
- 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 six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## **Attachments and Links**

1. Forms JV-742 and JV-743, at pages 4–6

PARTY WITHOUT AN ATTORNEY OR ATTORNEY: STATE BAR NO. (if applicable): NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>REQUEST TO RESENTENCE AND DISMISS JUVENILE PENAL CODE SECTION 647f OFFENSE</b>	CASE NUMBER:  Date: Time: Department:

**INSTRUCTIONS**

- Use this form if you went to court and were found to have committed a Penal Code section 647f offense when you were under the age of 18 and you want to be resentenced or have the charge taken off your record. You need to use a different form if you were 18 or older at the time of the offense.
- If this form asks for information that you do not have, you can contact your attorney. If you don't have an attorney, the public defender's office in the court or county where you went to court can probably help you get the information.
- The court will serve this form for you unless you have an attorney. If you have an attorney, he or she must serve the form.
- How to fill out the form without an attorney:
  - A. Put your name and contact information in the box at the top of the form and in item number 1 below.
  - B. Put the address of the court from your court papers in the box below your address. This form must be filed in the same county where you went to court for this offense.
  - C. Fill out item number 2 about the Penal Code section 647f offense.
  - D. If you are on probation now for the Penal Code section 647f offense, also check item number 3 to ask the judge to make new dispositional orders (a new sentence) and take the charge off your record.
  - E. If you have completed probation for the Penal Code section 647f offense, check item number 4 to ask the judge to take the charge off your record. After the charge gets taken off your record, it can't be used against you later.
  - F. Your case may be heard by the judge who originally sentenced you or the court will have a different judge hear your request.
  - G. You can check item number 5 if you do not want to come to court if there is a hearing.
  - H. If you will need an interpreter, ask for one in item number 6.

**1. MY INFORMATION**

My name is:

I was born on (date):

**2. OFFENSE INFORMATION**

On (date): \_\_\_\_\_ I was found to come within the jurisdiction of the court under Welfare and Institutions Code section 602 for a violation of Penal Code section 647f.

CASE NAME:	CASE NUMBER:
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**3. REQUEST FOR A NEW DISPOSITIONAL ORDER (RESENTENCING)**

I am currently subject to a dispositional order (on probation) for the Penal Code section 647f offense in number 2. I request that the dispositional order be recalled and relief be granted in accordance with Penal Code Sections 1170.21 and 1170.22 so that I will be resentenced and my conviction will be dismissed and vacated.

**4. REQUEST FOR DISMISSAL**

I am no longer a ward of the court (completed probation) for the Penal Code section 647f offense in number 2. I request that the court dismiss and vacate the conviction (take the charge off my record) because it is invalid under Penal Code sections 1170.21 and 1170.22.

**5. WAIVER OF APPEARANCE**

I understand that I have a right to attend any hearing about my request and argue on my behalf. I give up that right. The case may be heard without my presence.

**6. REQUEST FOR INTERPRETER**

If there is a hearing, I will need a (*language*) \_\_\_\_\_ interpreter.

**7. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE**

I waive the right to have the judge who originally sentenced me hear my request. I understand that if I don't waive this right, I will not have the hearing in front of the original judge if he or she is unavailable.

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

 SIGNATURE OF PETITIONER

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	<i>FOR COURT USE ONLY</i>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: _____	
CASE NAME: _____	
<b>ORDER AFTER REQUEST TO REDUCE JUVENILE PENAL CODE SECTION 647f OFFENSE</b>	CASE NUMBER: _____  Date: _____ Time: _____ Department: _____

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

**1. NEW DISPOSITION AND DISMISSAL**

- The applicant is eligible for the requested relief. The petition is **GRANTED**. The court recalls its disposition for the designated offense and makes the following additional orders:
  - a.  The following Penal Code section 647f offense is vacated and dismissed as legally invalid (*indicate date of petition*):
  - b.  Wardship and delinquency jurisdiction for this offense is terminated.
  - c.  Delinquency jurisdiction remains in effect. All prior orders remain in full force and effect. The court vacates condition number(s) \_\_\_\_\_ of the terms and conditions of probation.

**2. DISMISSAL OF COMPLETED PROBATION**

- The applicant is eligible for the requested relief. The request is **GRANTED**. The court hereby vacates and dismisses the adjudication for a violation of Penal Code section 647f as legally invalid.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_ JUDICIAL OFFICER