

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee  
Hon. Steven Z. Perren, Chair  
Joshua Weinstein, Committee Counsel, 415-865-7688,  
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DATE: September 23, 2004

SUBJECT: Criminal Procedure: New Form for Person Convicted of Crime to Petition for Expungement (approve form CR-180), (Action Required)

Issue Statement

Penal Code sections 1203.4 and 1203.4a provide procedures for defendants who have satisfactorily completed probation to petition the court to have the conviction removed from their record. If the court grants the petition, the guilty plea will be withdrawn or finding of guilt will be set aside, a plea of not guilty will be entered, and the case will be dismissed. (Pen. Code, §§ 1203.4(a) and 1203.4a(a).)

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005, approve form CR-180, *Petition and Order for Expungement*, so defendants may petition courts to remove criminal convictions from their record.

The text of the proposed form is attached at pages 3 and 4.

Rationale for Recommendation

Petitioning the court to set aside a conviction can be confusing, and hiring an attorney to do so can be costly. The procedures under Penal Code sections 1203.4 and 1203.4a are complex and seldom used. Thus, it is difficult to petition the court without hiring an attorney, yet practitioners are unfamiliar with the procedure. This optional form is designed to alleviate those burdens by presenting the petition in a simple check-box format that can be used by self-represented defendants.

The form would allow defendants with misdemeanor or certain felony convictions to petition for the conviction to be expunged under Penal Code sections 1203.4 or 1203.4a. Felony convictions would be expunged only if the court first granted a motion to reduce the conviction to a misdemeanor under Penal Code section 17(b); the petition includes a provision requesting that reduction. A defendant may seek expungement when the conditions of probation have been satisfied; when the defendant has been discharged from probation prior to the termination of the probationary period; or where no probation was granted and the defendant has remained crime free for one year or more after the completion of his or her sentence.

#### Alternative Actions Considered

As the Judicial Council is not statutorily required to implement forms in this area, the committee considered not proposing adoption of the form. The committee concluded the form should be adopted because procedure on seeking expungement is arcane and not commonly understood.

#### Comments From Interested Parties

The proposal was circulated in the spring comment cycle. Eleven comments were received. One commentator with the proposal, one disagreed, and nine agreed if modified. One comment disagreed, suggesting that “it should be left to local courts to provide appropriate information such as local fees or notices necessary for setting hearings,” and asked that the form be kept optional. As the form is optional, local courts are free to set their own procedures.

Another comment was to not include the social security number and to make the form confidential. Staff has modified the form to ask only for the last four digits of the social security number, to protect against identity theft, but there does not appear to be any authority to make the form confidential.

Most of the other suggested modifications are technical ones that were adopted. The two remaining substantive suggestions were to remove the Penal Code section 17(b) reduction provision. The committee decided to retain that provision because the procedure should be available in both misdemeanor and felony cases. The other suggestion was that the form include an ability to pay section for courts to use to impose the administrative fee. As this is not necessary on every petition, it seems best to leave that for an attached form regarding the ability to pay.

A chart summarizing the comments is attached at pages 5–12.

#### Implementation Requirements and Costs

Implementation costs for the forms would be limited to the cost of copying forms.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT #10</b> <b>09/23/04</b> <b>Not approved</b> <b>by Judicial</b> <b>Council</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
<b>PETITION AND ORDER FOR EXPUNGEMENT</b> <b>(Pen. Code, §§ 17, 1203.4, 1203.4a)</b>  <b>DEFENDANT'S INFORMATION</b>  CII: DRIVER'S LIC #: SSN # (LAST FOUR DIGITS ONLY): DATE OF BIRTH:	

**PETITION**

1. On (date): \_\_\_\_\_ the defendant in the above-entitled criminal action was convicted of a violation of section(s) (specify): \_\_\_\_\_ of the (specify): \_\_\_\_\_ Code.

2. 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.

3.  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

a.  fulfilled the conditions of probation for the entire period thereof.

b.  been discharged from probation prior to the termination of the period thereof.

4.  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.

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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.  
(DATE) (CITY)

\_\_\_\_\_  
(DEFENDANT)

\_\_\_\_\_  
(ADDRESS, DEFENDANT) (CITY) (STATE) (ZIP CODE)

**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.
- 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.

Date: \_\_\_\_\_  
(JUDICIAL OFFICER)

**SPR04-20**  
**New Form for Petition and Order for Expungement of Criminal Cases**  
**(approve form CR-180)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Hon. Ronald L. Bauer Orange County Rules and Forms Committee Superior Court of California, County of Orange Santa Ana	AM	Y	<p>Agree with proposed changes only if modified.</p> <p>Judge Ronald L. Bauer and the Rules &amp; Forms Committee members from Orange County Superior Court reviewed this item and felt the form should be modified.</p> <ol style="list-style-type: none"> <li>1. In the Defendants Information box, add an apostrophe to the word ‘DEFENDANTS.’</li> <li>2. In the first line of text in the body of the petition, delete the comma.</li> <li>3. On page 2, first line, change the word “his” to “the” to read “...defendant be permitted to withdraw the plea of guilty, or that the verdict...”</li> <li>4. In the second section of the Order, replace the word “appearing” with the word “appears”.</li> <li>5. In the last two paragraphs of the Order, add a check box before each.</li> </ol> <p>There is also a question whether the defendant’s driver’s license number and social security number are necessary in the Defendant’s Information box.</p>	Agree. Form has been so modified.
2.	Ms. Linda Durand Court Program Manager Superior Court of California, County of Ventura Ventura	AM	N	<p>Agree with proposed changes only if modified.</p> <p>Document should be confidential with so much personal information listed. If felonies are handled in the office and not in the courtroom, can a processing fee be assessed?</p>	<p>Disagree.</p> <p>There is no authority to make the document confidential. However, will ask for only last four digits of social security number.</p>
3.	Timothy Gee	AM		Agree with proposed changes only if modified.	Agree. Form will ask for last four digits

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	Management Analyst Superior Court of California, County of San Mateo San Mateo			Our court does have a concern regarding the requirement that the social security number is required to be entered on the form, especially on the front. Is this form to be filed as confidential? If not, then anyone can obtain a copy of the form and have access to the information on the form. Perhaps you can require one form to be filed under seal with all of the information and another redacted version for the main public file.	only.
4.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego San Diego	N	N	The following comments were received from our court managers:  San Diego Superior Court is establishing a more informative packet that local judges can use to make appropriate decisions related to the expungement of cases. It should be left to local courts to provide appropriate information such as local fees or notices necessary for setting hearings. We would be happy to provide the AOC with our packet once it is finalized. <b>Keep CR-180 OPTIONAL.</b>	Form is optional.
5.	Mr. Patrick McGrath District Attorney Yuba County Marysville	AM	N	Agree with proposed changes only if modified.  There is no compelling need to mix 1203 relief with 17(b) relief. 1203 petitions have become ministerial in nature: they are regularly filed and relief must be granted if the petitioner meets eligibility criteria. 17(b) petitions are infrequent and have significant impact on the “priorability” of the case and on prohibitions from firearm possession. Consequently,	Disagree.  Including 17(b) allows more flexibility and application.

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				these petitions often involve written oppositions and contested hearings not best served by mixing 1203 and 17(b) on the same form.	
6.	Ms. Andrea Nelson Deputy Court Executive Officer Superior Court of California, County of Butte Oroville	AM	N	<p>Agree with proposed changes only if modified.</p> <p>Really like the form. Just a few corrections. Caption delete extra (s) in defendants. Add apostrophe “s” to the word “defendant’s” in the block Defendant’s Information.</p> <p>Make a longer line to after the word “of” for code section.</p> <p>Page 2 – delete the “s” in defendant in the street address wording and add space for mailing address if different than street address.</p> <p>Order – Add the numbers in front of three boxes and change the order of the them and add “Petition Granted” as follows:</p> <ol style="list-style-type: none"> <li>1. ( ) The Court hereby denies the above petition.</li> <li>2. ( ) The Court reduces the felony offense to a misdemeanor.</li> <li>3. ( ) Petition Granted as it appearing to the court from the records....</li> </ol>	<p>Changed to “address.”</p> <p>Agree.</p>
7.	Sharon Ngim Staff Liaison to the Standing Committee on the Delivery	AM		<p>Agree with proposed changes only if modified.</p> <p>Proposed Form CR-180 appears to be an excellent</p>	

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	of Legal Services The State Bar of California			<p>vehicle for use by <i>pro per</i> defendants. However, to clarify the information needed from the Petitioner, it is recommended that the first sentence of the Petition be modified as follows (proposed changes in boldface type):</p> <p>“On _____, the defendant in the  <b>(date of judgment)</b> above-entitled criminal action was convicted of a violation section(s) _____ of the _____ <b>Code.</b>  <b>(code name)</b></p> <p>Our reviewer points out that the last paragraph of the Order (page 2) addresses only the prohibition concerning <b>concealable</b> firearms contained in Penal Code section 12021.1. This paragraph should be expanded to also reference <i>section 12021</i>, which proscribes possession of <b>any</b> firearm. We recommend that this paragraph be amended to state: “...the defendant is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections <b>12021 and 12021.1...</b>” The final sentence should also be changed to read: “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 <b>12021 or 12021.1.</b>” This gives the Petitioner fair warning that he or she may not possess <b>any</b> firearm.</p> <p>This reference to section 12021 is necessary because</p>	<p>Agree.</p> <p>Agree.</p>

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				<p>of the express language of section 1203.4 and by the decision in <i>People v. Frawley</i> (2000) 82 Cal.App.4th 784. Penal Code section 1203.4, subdivision (a), specifically states:</p> <p style="padding-left: 40px;">Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody control <b>any firearm</b> or <b>prevent his or her conviction under Section 12021</b>. (Emphasis added.)</p> <p>This provision is not limited to concealable weapons, addressed by section 12021.1. In <i>People v. Frawley</i> (2000) 82 Cal.App.4th 784, the Court expressly rejected the defendant’s argument that expungement of a conviction under 1203.4 permitted him to possess firearms <i>other</i> than concealable firearms. (Id. At p. 796.) Specifically, <i>Frawley</i> held:</p> <p style="padding-left: 40px;">We conclude that the Legislature intended the second half of the 1961 amendment to remain “permanently parallel”...so that section 1203.4 would not afford a defense to any prosecution under section 12021 for possession of <b>any</b> weapon the Legislature might thereafter include within that section (<i>Ibid.</i>, emphasis added.)</p> <p>Finally, it is recommended that this form include</p>	

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				<p>advice to the Petitioner that he or she must <b>serve</b> the District Attorney. Proof of service is required by Penal Code section 1203.4, subdivision (d), which specifically states:</p> <p style="text-align: center;">No relief shall be granted under this section unless the prosecuting attorney has been given 15 days notice of the petition for relief...It shall be presumed that the prosecuting attorney has received notice if proof of service is filled with the court.</p>	
8.	Jody Patel Court Executive Officer Superior Court of California, County of Sacramento Sacramento	AM		<p>Agree with proposed changes only if modified.</p> <p>Though the form has been improved, we suggest that it include a declaration section to avoid the defendant from having to fill out a separate form. The reason the declaration is necessary is due to the <i>Lewis v. Clark</i> (2003) case law decision which requires the court to hold an ability to pay determination before the court can attach a filing fee to this action. To streamline the process, we currently include a declaration in our filing packet that allows defendants to declare that that they waive the ability to pay determination so that the judge must only grant/deny the petition. For those defendants who elect not to use the declaration form, they are then scheduled for a formal ability to pay determination hearing.</p>	<p>Disagree.</p> <p>The ability to pay is a separate issue to be handled separately.</p>
9.	Tina Rasnow Coordinator	AM	N	Agree with proposed changes only if modified	Agree.

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	Superior Court of California, County of Ventura Ventura			Remove ch # and ss# from caption – or make document confidential b/c of identity theft.	
10.	Ms. Joy A. Simmons Directing Attorney Legal Aid Foundation of Los Angeles Los Angeles	AM	N	<p>Agree with proposed changes only if modified.</p> <p>Under a contract with the City of Los Angeles we prepare many of these petitions as a service to our client community.</p> <p>While the proposed form is somewhat simplified over the current form, it is confusing in one respect and appears to require two petitions in some cases, i.e., one to have a felony reduced to a misdemeanor and then a second petition to have that misdemeanor expunged. This is not the case with the current form.</p> <p>The user of the form, if convicted of a felony, will be confused at item 3.</p> <p>This could be corrected if in item #3 you eliminate the word “Misdemeanor”. Otherwise petitioner will not be able to expunge a Penal Code §17 felony under Penal Code §1203.4a using just a single form. This will result in additional paper and process for the courts as well as an additional filing fee for the petitioner.</p>	Agree.
11.	Mr. Kent Vander Schuit Director, Public Law Center Superior Court of California,	A	N	<p>Agree with proposed changes.</p> <p>Great idea, perhaps more information on what going</p>	Explanation form will be considered by the committee.

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	County of Nevada Nevada City			through this process will and will not achieve.	