

**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
Arturo Castro, Committee Counsel, 415-865-7702,
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DATE: August 11, 2008

SUBJECT: Criminal Law: Petition and Order for Dismissal (revise form CR-180
and approve form CR-181) (Action Required)

Issue Statement

Current form CR-180, *Petition and Order for Expungement*, is used by defendants and courts to facilitate the dismissal of prior convictions under Penal Code sections 1203.4 and 1203.4a. The proposed revisions are designed to address concerns that the form lacks two important advisements to petitioners, that the form's title is misleading, and that the petition and order should be separated into two distinct forms.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Revise form CR-180 by changing the form's title to *Petition for Dismissal*, by separating the petition and order into distinct forms, and by providing on the order additional advisements to petitioners regarding certificates of rehabilitation and the obligation to provide DNA samples under Penal Code section 299; and
2. Approve form CR-181, *Order for Dismissal*, for optional use by the courts.

In addition, this proposal includes minor, nonsubstantive changes designed to conform the forms to current style guidelines for Judicial Council forms, including, for example, adjusting spacing after periods and deleting unnecessary commas.

The proposed forms are attached at pages 5 and 6.

Rationale for Recommendation

The committee recommends the following revisions to current form CR-180 in response to three specific substantive and formatting concerns.

First, to address concerns about petitioners improperly filling out the order portion of the form and to facilitate electronic court case management systems, the committee proposes separating form CR-180 into two forms, one for the petition (CR-180) and one for the order (CR-181).

Second, to reduce confusion and enhance the amount of information contained in the forms, the committee proposes adding two statutorily derived advisements to the order. 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 of 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 *not* 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 revisions would add these two advisements to the order.

Further, in response to concerns that use of the word “expungement” is confusing and misleading, this proposal also replaces the word “expungement” with the word “dismissal” in the title of the forms. The proposed forms are entitled *Petition for Dismissal* (CR-180) and *Order for Dismissal* (CR-181).

Alternative Actions Considered

In addition to seeking comments on the proposed revisions, the committee sought—for future consideration—public comments on the following four questions related to the content of the forms:

1. Should a section for the date, time, and place of a 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?

As noted below, the committee received a considerable number of comments regarding these questions and will consider the comments—including proposals for a separate proof of service form for use in all criminal matters and a separate information sheet for petitioners with important instructions and advisements—at a future meeting.

Comments From Interested Parties

This proposal was circulated during the spring 2008 comment period. A total of 16 comments were received. Of those, seven agreed with the proposal, seven agreed with the proposal if modified, one did not specify a position, and one disagreed without further comment. A chart with all the comments received and committee responses is attached at pages 7–25.

In sum, the majority of commentators agreed with the proposed revisions to separate the petition and order into distinct forms, change the headings of the forms as described above, and add advisements to the order.

The committee also received several comments on its four specific questions, including numerous suggestions to add (a) a section for the date, time, and place of a hearing; (b) instructions to petitioners on how to comply with statutory notice requirements; (c) a section to indicate compliance with notice and proof of service requirements; and (d) a wide variety of instructions and advisements to facilitate the underlying procedure and clarify its consequences.

Notably, the committee declined to consider adding space to the forms to note hearing information. The committee feels very strongly that local courts should remain free to accommodate this procedure according to their local rules and needs, including, whenever appropriate, granting orders *without* a formal hearing. Thus, to avoid unduly suggesting that a formal hearing is required or preferred and to reduce the potential for misuse by unrepresented petitioners, the committee has decided not to pursue adding space to the forms for hearing information.

As to the other suggestions, however, the committee will separately consider them during future meetings. Possible future responses include developing a separate information sheet to provide petitioners with important information and advisements—including instructions on how to comply with statutory notice requirements and advisements to clarify whether a conviction dismissed under Penal Code section 1203.4 or 1203.4a is truly erased from a petitioner's record—

and separately developing a distinct proof of service form for use in all criminal matters.

The remaining comments were directed toward minor, nonsubstantive aspects of the forms, several of which the committee agreed to implement, including, for example, adding space for court seals and deleting unnecessary words from the order. Other nonsubstantive and formatting suggestions, however, were declined for lack of need.

Implementation Requirements and Costs

Expected costs for this proposal would be limited to (a) making revised form CR-180 available for use by petitioners, (b) typical production costs for new form CR-181, and (c) any associated training on the new and revised forms.

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: _____	

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.

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.

 (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. (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: _____		
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: _____		

- The court denies the petition.
- 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.
- 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 (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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Criminal Law: Petition and Order for Dismissal (revise form CR-180 and approve form CR-181)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Lynn Ervin Court Clerk Superior Court of El Dorado County	AM	<p>Now that the Order is a separate document the words “above” petition do NOT apply.</p> <p>Could there also be an additional choice on the order setting the matter for a hearing? Sometimes the judges will make the order without a hearing and other times they want a hearing set.</p> <p>On the Order 3rd box - The court reduces the felony offense to a misdemeanor. Could you add to it “pursuant to 17 PC”?</p>	<p>Agree. The word “above” has been removed from the new order form, CR-181.</p> <p>Recurring response #1: Despite several suggestions in favor of providing space on the forms to note hearing information, such as date, time, and location, the committee has decided against adding such space to the forms. The committee feels very strongly that local courts should remain free to accommodate the expungement procedure according to their local rules and needs and, whenever appropriate, <i>without</i> a formal hearing. The committee has decided, therefore, <i>not</i> to add space for hearing information to avoid unduly suggesting that a formal hearing is required or preferred. Further, the committee has decided that not providing space for hearing information also reduces the potential for misuse by unrepresented petitioners.</p> <p>Penal Code section 17 is referenced in the petition; the committee believes that adding another reference in the order would create unnecessary verbiage.</p>
2.	Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County	N	<p>Changing the title of the form to read “Dismissal” rather than “Expungement” is misleading. It implies a conviction never took place. The title on the form should remain as is.</p>	<p>The committee has decided that the word expunge—which literally means to erase—is the more misleading of the two options because defendants granted expungement relief are still required to disclose their convictions under certain prescribed circumstances. As such, convictions are not truly expunged. The word “dismissal,” in contrast, precisely describes the remedy prescribed</p>

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			<p>A section for the date, time, and place of the hearing should not be filled out by the clerk when the petition is filed. The cases are not always automatically calendared for court. Felonies are scheduled at the time of filing, misdemeanors are not.</p> <p>There should not be a section added indicating compliance with notice and proof of service. This procedure varies in each county, with some courts doing the actual noticing.</p>	<p>by sections 1203.4 and 1203.4a. Further, the word “dismissal” does not unduly imply that the conviction is erased; instead, it indicates that the verdict has been set aside or the plea of guilty withdrawn and the defendant has been released from most of the penalties and disabilities resulting from the conviction.</p> <p>Please see recurring response #1 above.</p> <p>Recurring response #2: Despite some suggestions in favor of providing space on the forms to indicate compliance with notice and proof of service requirements, the committee has decided against adding such space to the forms. The committee feels that because the expungement procedure varies greatly among courts, local courts should remain free to accommodate these petitions according to their particular rules, procedures, and needs. The committee will, however, separately consider developing a distinct proof of service form for optional use—designed to facilitate proof of service requirements in all criminal matters.</p>
3.	Hon. Suzanne N. Kingsbury Presiding Judge	AM	* The commentator offers the following suggestions to the questions raised by the	

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	Commentator	Position	Comment	Committee Response
	Superior Court of El Dorado County		<p>committee:</p> <p>Question #1: I believe that the form should be modified to add a section where the matter could be set for hearing. Ideally, I would like to see a form developed that, prior to being filed with the court, is required to be served upon the District Attorney. If the particular DDA or ADA reviewing the form does not oppose the request, then the form can be forwarded to the court by the District Attorney and the court can sign an order granting the appropriate relief. Should the District Attorney object to the request or wish to have the matter heard in open court, the particular DDA or ADA could check a box indicating their objections, and the reasons supporting their objections. The form could then be forwarded to the court and the clerk could set the matter for hearing before the appropriate judge. This would have a bit of an administrative impact because the clerk would have to advise the parties of the hearing date, but because many of these requests are not opposed by the District Attorney, the numbers would be much smaller and more manageable.</p> <p>The place for time and location of the hearing does not necessarily need to be on the face of the form. You might take a look at some of the juvenile forms for examples of forms that have a place for setting a hearing date on something other than the face page.</p>	<p>Although the committee appreciates this thoughtful comment and generally agrees that courts should strive to avoid formal expungement/dismissal hearings whenever possible, it has decided against developing a new form to be served on the prosecutor prior to filing with the court as suggested. The committee feels that because the expungement procedure varies greatly among courts, local courts should remain free to accommodate these petitions according to their particular rules, needs, and procedures.</p> <p>Please see recurring response #1 above.</p>

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			<p>Question #2: Yes! This is an area of the law that is very confusing for self represented litigants. Individuals who file petitions for relief pursuant to Penal Code section 1203.4 & 1203.4a are frequently under the mistaken impression that if the judge grants the order, the offense is no longer on their criminal history. There is also little understanding about the impact that 1203.4/1203.4a relief has on the ability to later allege the offense as a strike, etc.</p> <p>Question #3: If the form were modified in the fashion that I suggested in my response to the first question, then this wouldn't be necessary, as the form would automatically be delivered to the District Attorney as the first step in obtaining relief. If it not be modified in that manner, then compliance with notice and proof of service requirements sections should be added.</p> <p>Question #4: As I stated in my earlier comments, this is an absolute must. Some attorneys who file petitions of this nature do not appreciate that their client's convictions are not truly "erased" from their criminal records.</p> <p>* The commentator also offers the following comments:</p>	<p>Recurring response #3: The committee has decided that the best way to address the various suggestions for providing petitioners with important information and instructions would be to consider developing a distinct information sheet. A form containing important instructions and advisements—including, for example, information about whether an expunged conviction is truly erased from a petitioner's criminal history—would facilitate the petition procedure and clarify its consequences for petitioners. Thus, the committee will separately consider developing a distinct information form.</p> <p>Please see recurring response #2 above.</p> <p>Please see recurring response #3 above.</p>

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			<p>Non-lawyers often don't have a clear understanding of whether they were convicted of a felony or a misdemeanor. I frequently receive petitions from individuals requesting that a non-wobbler offense be reduced to a misdemeanor, or requests to reduce a crime to a misdemeanor when the offense WAS a misdemeanor in the first instance. Therefore, form CR-181 should add, just below the third paragraph, a fourth paragraph with a box that the judge can check that states something to the effect of: "The court denies the request to reduce the felony offense to a misdemeanor, as the offense is not one eligible for reduction to a misdemeanor pursuant to Penal Code section 17."</p> <p>There should also be a section at the bottom of the form, just above the signature and date lines, for "Other orders".</p>	<p>The committee respectfully disagrees. Item 2 on the petition already requires the petitioner to indicate if the offense was a misdemeanor or felony and whether the offense is one that may be reduced under Penal Code section 17. Although the committee appreciates the fact that unrepresented petitioners occasionally provide incorrect information, the committee does not feel that adding an order to indicate that the petition was denied because the offense is not in fact eligible for reduction would reduce the number of erroneous petitions filed. As such, the committee believes that the suggested order is unnecessary.</p> <p>Because the specific orders available to the court under the applicable statutes are narrow in scope, the committee feels that all possible orders should be specified in the form.</p>
4.	Tony Klein Process Server Institute San Francisco	A	* The commentator suggests a review of a Department of Prison Terms pamphlet for guidance on form and substance of these forms.	No response is required.
5.	Los Angeles County Alternate Public Defender Janice Y. Fukai Alternate Public Defender	A	No specific comment.	No response is required.

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			<p>request for relief is filed. If the court determines that a hearing is necessary, the court should then calendar such a hearing with notice to the defendant.</p> <p>(2) & (3) I believe it is very appropriate for the form to both explain, and provide for, statutorily required service.</p> <p>(4) This sort of information is available at the [California Courts Online Self-Help Center] web site and, as discussed above, should be included in an information sheet, rather than try to put it into the form itself.</p> <p>Additional matters:</p> <p>My experience indicates that many people convicted of felonies believe that they cannot vote unless they get 1203.4 relief. Of course, anybody placed on probation for a felony, and thus eligible for 1203.4 relief, remains entitled to vote and does not need 1203.4 relief to “regain” that right. This might be noted.</p> <p>A question which does not appear to have a specific answer is whether a person convicted of a felony who obtains 1203.4 relief is thereafter eligible to serve on a jury. If it is believed that there is a definitive answer to this question, it should be included in the information sheet. Otherwise, there should be a</p>	<p>Please see recurring response #2 above.</p> <p>Please see recurring response #3 above.</p> <p>Please see recurring response #3 above.</p> <p>Please see recurring response #3 above.</p>

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			<p>notation that the question is unresolved, so that a felon who obtains relief does not assume that he can, or cannot, serve on a jury.</p> <p>A continuing problem is the unlawful charging of fees to file 1203.4 petitions. It was held in Lewis v. Clarke (2003) 108 Cal.App.4th 563, that it is unlawful to charge a fee. The statute permits a court, at the CONCLUSION of the proceedings, to make a determination of ability to pay, and based upon that determination, make a cost assessment. Yet many courts are still illegally charging fees, and requiring people seeking 1203.4 relief to pay a fee, or seek a fee waiver, in order to file a 1203.4 request. Perhaps this can be rectified to some extent if the form for granting relief is amended to include a finding regarding ability to pay and an assessment of costs, with instructions on how, and when, this is to be done.</p>	<p>The committee believes that the authority governing fees is clear and need not be reflected in the order, but will consider including this information on the distinct information sheet noted in recurring response #3. The committee has also referred this suggestion to the Center for Judicial Education and Research/Education Division—which provides educational programs for judicial officers and court staff—for further consideration.</p>
7.	Orange County Bar Association Cathrine Castaldi President	AM	The addition of each of the four areas suggested by the . . . Advisory Committee would greatly assist pro per petitioners and attorneys who do not regularly file such petitions.	No response is required.
8.	Laura Rusk Supervising Court Clerk Superior Court of Kern County	A	<p>Agree with name change. Agree with separation of Petition from the Order.</p> <p>Questions:</p> <p>(1) Yes, include section for Date, Time & Dept. (in our court the petitioner must fill this in, not the clerk).</p>	<p>No response required.</p> <p>Please see recurring response #1 above.</p>

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			<p>(2) Yes, include information regarding service.</p> <p>(3) Yes, include a proof of service area or implement a separate document for criminal proofs of service.</p> <p>(4) Yes, include the [advisement].</p>	<p>Please see recurring response #2 above.</p> <p>Please see recurring response #2 above.</p> <p>Please see recurring response to #3 above.</p>
9.	San Diego County District Attorney's Office Craig Fisher Deputy District Attorney	AM	<p>We agree with the changes to the current expungement form. Also we would like to comment on the four questions asked by the committee:</p> <p>(1) We believe there should be a section on the petition to set a courtroom hearing on such petitions rather than treat these as a paper process.</p> <p>(2) & (3) It is very important that the prosecutor receive proper notice of any expungement request giving us the opportunity to do a background check and prepare for the hearing. Thus we recommend that the form clearly instruct the petitioner about the notice requirement and require filing a proof of service.</p> <p>(4) We recommend that the form also include an advisement for PC 290 registrants that an expungement does not relieve them of the duty to register.</p>	<p>Please see recurring response #1 above.</p> <p>As noted above, the committee has decided against adding a section on the forms to note compliance with notice and proof of service, but will separately consider developing a distinct information sheet and proof of service form for optional use in all criminal matters.</p> <p>Please see recurring response #3 above.</p>
10.	State Bar Standing Committee on the		Overall, SCDLS supports the specific	

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	<p>Delivery of Legal Services (SCDLS) Sharon Ngim Staff Liaison</p>		<p>amendments found in the proposal which clarify and simplify filing expungement petitions.</p> <p>As to the four particular questions of the Criminal Law Advisory Committee, SCDLS has these comments:</p> <p>(1) The section for date, time and place should be filled-in by the clerk on the face of the petition because the granting of the dismissal can take months to show up in various systems as dismissed, so many clients use the paper copy petition from the court as proof that they filed the petition;</p> <p>(2) The forms should provide instructions to the defendant on how to comply with statutory notice requirements and it should be explained to the filer that the certificate of rehabilitation is for prison time because it cannot be dismissed;</p> <p>(3) No comment;</p> <p>(4) Additional advisements should be added, specifically that expungement and dismissal are limited remedies that do not erase the case from the record, but rather they result in a notation to the RAP Sheet indicating that the conviction has been dismissed in the furtherance of justice.</p> <p>In addition, SCDLS recommends that the Judicial Council consider the possibility of developing and distributing a one-page sheet that explains the significance of expungement,</p>	<p>Please see recurring response #1 above.</p> <p>Please see recurring response #3 above.</p> <p>No response is required.</p> <p>Please see recurring response #3 above.</p> <p>Please see recurring response #3 above.</p>

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			as many do not realize that an expunged conviction still counts as priors and strikes, and providing specific information on how expungement may impact their rights with respect to: public assistance, student loans, impact on adoptive and foster parents, voting, immigration status, and employment.	
11.	Superior Court of Calaveras County Mary Beth Todd Court Executive Officer	AM	We are very pleased to see this form divided into separate forms for the petition and order. This will assist the court in accurately reflecting the filing of the individual actions. We would recommend the Order form include an additional item that would allow the judge to order and set a date and time for hearing on the petition.	Please see recurring response #1 above.
12.	Superior Court of Kern County Marian Knight Supervising Superior Court Clerk	A	<p>The Kern County Superior Court endorses all changes as proposed.</p> <p>(1) We support number 1. The only difference we have to the proposal is that we ask the defendant to fill in the date, time and location of the hearing. That said, having the space indicated is still a positive change.</p> <p>(2) We support number 2. The more information provided to the defendant regarding the process, the better.</p> <p>(3) We support number 3. In our Court, we ask that the District Attorney and Probation Department “clock in” the forms indicating</p>	<p>Please see recurring response #1 above.</p> <p>Please see recurring response #3 above.</p> <p>Please see recurring response #2 above.</p>

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			<p>service. Maybe an area that would make this type of service notice along an edge would be helpful.</p> <p>(4) We support number 4. I think the defendants or petitioners are truly confused by the results of this process.</p> <p>In Kern, we have a Law Library and staff that provide public access and assistance with these forms. This is a huge help to the Court and the Public. However, more information and clarity is helpful for all parties.</p>	<p>Please see recurring response #3 above.</p>
13.	Superior Court of Los Angeles County	AM	<p>Additional advisement should be included indicating the defendants are not eligible for Penal Code section 851.8 (factual innocence, record sealing) if an expungement order is granted.</p> <p>Also notice should be given that the defendant may be eligible for a certification of rehabilitation (Pen. Code, § 4852.01).</p>	<p>Please see recurring response #3 above.</p> <p>Notice of eligibility for rehabilitation is already included in the proposed revisions.</p>
14.	Superior Court of Orange County Erin Rigby Staff Analyst Rules & Form Committee	AM	<p>* The commentator provides the following responses to the committee’s four specific questions:</p> <p>(1) * Yes, the petition should include a section for the date, time, and place of the hearing to be filled out by the clerk when the petition is filed.</p> <p>(2) * Yes, the forms should provide instructions</p>	<p>Please see recurring response #1 above.</p> <p>Please see recurring responses #2 and #3 above.</p>

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			<p>to defendants by means of an additional instruction sheet. The forms should also include a proof of service form for criminal matters or a certificate of mailing.</p> <p>(3) * Yes, a section to indicate compliance with notice and proof of service requirements should be added to the forms.</p> <p>(4) * Yes, additional advisements should be provided on an instruction sheet.</p> <p>Additionally, should there be an advisement with regards to PC 290 sex offender registrations? A person is not relieved of the duty to register by obtaining a Penal Code 1203.4 dismissal. Prior to 1-1-95 for misdemeanor sex offenders and 1-1-82 on felonies, sex offenders were relieved of their responsibility to register as sex offenders upon a PC 1203.4 dismissal, however, as of today there is no such relief under this dismissal.</p> <p>Comments: (1) Agree with the renaming from “expungement” to “dismissal.” (2) Should “Proof of Service” be included on this form? If not, is there a specific Proof of Service form for Criminal matters such as this petition that the petitioner/defendant should be using and/or including?</p>	<p>Please see recurring response #2 above.</p> <p>Please see recurring response #3 above.</p> <p>Please see recurring response #3 above.</p> <p>The committee notes the commentator’s agreement.</p> <p>Please see recurring response #2 above.</p>

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Criminal Law: Petition and Order for Dismissal (revise form CR-180 and approve form CR-181)

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	Commentator	Position	Comment	Committee Response
			<p>(3) Should there be some type of reference within the petition to refer the petitioner to which proof of service form should be used?</p> <p>(4) Develop an “instruction sheet” and “applicable proof of service form.”</p> <p>Forms: CR-180 “Petition for Dismissal”:</p> <p>(1) The header doesn’t include an area for court location information.</p> <p>(2) Need at least one more row for attorney information in the header.</p> <p>(3) Defendant’s Information in header: Is there a particular reason this information is now in the header, versus in the body of the document as customarily done in other documents? If not, we recommend moving this information into the body as specific boxes in a row format.</p> <p>(4) Is the CII # required for expungement, as non-represented parties will not readily have that information? If it’s not required, we suggest removing it.</p> <p>(5) Should “driver’s lic #” be spelled out, but without the “s” in driver’s?</p>	<p>Please see recurring response #2 above.</p> <p>Please see recurring responses #2 and #3 above.</p> <p>The committee believes that the current headers are sufficient and that there is no need to add an area for court location information.</p> <p>The committee believes that the space provided is sufficient.</p> <p>The committee believes that the current location for defendant information on the form is appropriate and acceptable.</p> <p>Criminal Investigation and Identification (CII) numbers provide additional identifying information. Because CII number is not a mandatory field, it can be left blank without affecting the petition and need not be removed.</p> <p>The committee believes that the current phrase is appropriate.</p>

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			<p>(6) Suggest adding 3 checkboxes to the header to indicate: Felony reduced to misdemeanor, Felony, and another one for misdemeanor.</p> <p>(7) Checkbox under #2 related to felony eligible for reduction. How will pro per defendants know if their felony charge is 17b eligible? Good information for instruction sheet.</p> <p>(8) Last paragraph on page beginning with “Petitioner requests that defendant...” to be numbered as #5 and remove checkboxes, but text to remain.</p> <p>(9) Last checkbox on page doesn’t require a checkbox and suggest moving to under #2 as it’s applicable to that section.</p> <p>(10) Executed on line should include a comma before California.</p> <p>(11) Is the Defendant’s address in the footer required for identification purposes? If so, maybe it should be included in the Defendant’s Information in the header if it stays there, or within the body of the document, as specific boxes in a row format.</p> <p>(12) Is the line for (defendant) as a signature line, if so re-title as (Attorney for or</p>	<p>The committee feels that the current checkbox options are sufficient.</p> <p>Please see recurring response to #3 above.</p> <p>The committee believes that the available boxes properly narrow the scope of the petition.</p> <p>The committee believes that the unnumbered bottom portion of the petition provides space for the specific relief requested and should be kept together for ease of reference.</p> <p>The comma can be filled in along with the date.</p> <p>The committee believes that the present location for petitioner’s address information is appropriate.</p> <p>The committee agrees. The line will be changed to “(Petitioner or Attorney).”</p>

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			<p>Defendant/Petitioner), in addition to include a line above it for printing of name of person signing.</p> <p>(13) Can there be some type of instruction sheet for petitioners on how to obtain pertinent and/or required information for completion of this form, in addition to service requirements and the necessary criminal proof of service form they should utilize?</p> <p>CR-181 “Order for Dismissal”:</p> <p>(1) * Same as (1) above.</p> <p>(2) * Same as (2) above.</p> <p>(3) * Same as (3) above.</p> <p>(4) * Same as (4) above.</p> <p>(5) * Same as (5) above.</p> <p>(6) Remove the word “above” from both first and 2nd checkboxes.</p> <p>(7) Recommend the following sequence of boxes and data to flow accordingly based on the court’s action:</p> <p style="padding-left: 40px;">(a) The court denies the petition, following with the addition of “for the following reason(s):” _____.</p>	<p>Please see recurring response #3 above.</p> <p>Same as responses (1) through (5) above.</p> <p>Agree. The word “above” will be removed from the new order, form CR-181.</p> <p>The committee considered this suggestion but prefers the current proposed format.</p>

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	Commentator	Position	Comment	Committee Response
			<p>(b) The court reduces the offense to a misdemeanor.</p> <p>(c) 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.</p> <p>(d) Remove the checkbox from the 4th and 5th check boxed data, but leave the data specifically under the granting box.</p> <p>(e) In the text, remove each of the instances in which it references, if this order is granted as it would be included under the portion following the granting and applicable to such.</p> <p>(8) Should there be a line for the date?</p> <p>(9) Is the line for (Judicial Officer) as a signature line, if so re-title as (Signature, Judicial Officer), in addition to include a line above it for printing of name of Judicial Officer signing.</p> <p>(10) Should we consider including an area for a “Court Seal”?</p> <p>(11) * Same as (13) above.</p>	<p>No. Omitting a line after “date:” complies with style guidelines for Judicial Council forms.</p> <p>The committee considered this suggestion but decided that the present format is acceptable.</p> <p>Yes. A space for court seals has been added.</p> <p>Please see recurring response to #3 above.</p>

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	Commentator	Position	Comment	Committee Response
15.	Superior Court of Riverside County David Gutknecht Supervising Management Analyst	A	<p>The proposal to separate the Petition and Order for Expungement form into two forms, one for the petition (CR-180) and one for the order (CR-181) would assist courts in terms of clear entries into case management systems.</p> <p>The proposed two advisements to be included in the forms are appropriate.</p> <p>Replacing the word expungement with the word dismissal in the title of the forms would make it easier for defendants to understand; many do not understand the term expungement.</p> <p>As to the request for comments on the particular questions raised by the committee:</p> <p>(1) A section for the date, time, and place of the hearing to be filled out by the clerk could be useful, although these petitions are often handled in the same manner as correspondence and no actual hearing is set.</p> <p>(2) The forms should provide instructions to the defendant on how to comply with notice requirements.</p> <p>(3) A section to indicate compliance with notice and proof of service requirements should be added.</p> <p>(4) It is very important that the additional advisement be added that clarifies whether a</p>	<p>No response is required.</p> <p>No response is required.</p> <p>No response is required.</p> <p>Please see recurring response to #1 above.</p> <p>Please see recurring response to #3 above.</p> <p>Please see recurring response to #2 above.</p> <p>Please see recurring response to #3 above.</p>

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SPR08-35**Criminal Law: Petition and Order for Dismissal** (revise form CR-180 and approve form CR-181)

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	Commentator	Position	Comment	Committee Response
			conviction dismissed under Penal Code section 1203.4 is truly erased from a petitioner's record. This is the single greatest cause of confusion for those petitioning the court under this code section, as well as for court staff. Clarification is needed.	
16.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment.	No response is required.