

**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  
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Family and Juvenile Law Advisory Committee  
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs  
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DATE: August 11, 2008

SUBJECT: Criminal and Juvenile Law: DNA Expungement Forms (approve forms CR-185/JV-796 and CR-186/JV-798) (Action Required)

Issue Statement

Penal Code section 296 requires certain offenders, including juveniles, to provide DNA samples upon arrest, conviction, or adjudication for specified offenses. Penal Code section 299 authorizes eligible persons, including juveniles, to request a court order in writing requiring the California Department of Justice to destroy previously obtained DNA specimens and samples and to expunge searchable DNA database profiles. Currently, there is no Judicial Council form for use by petitioners seeking expungement, nor a Judicial Council form for use by the courts in issuing orders on these petitions.

Recommendation

The Criminal Law and Family and Juvenile Law Advisory Committees (committees) jointly recommend that the Judicial Council, effective January 1, 2009, approve forms CR-185/JV-796, *Petition for Expungement of DNA Profiles and Samples*, and CR-186/JV-798, *Order for Expungement of DNA Profiles and Samples*, for optional use by petitioners and courts.

The proposed forms are attached at pages 4 and 5.

### Rationale for Recommendation

The eligibility requirements and procedure to expunge DNA samples and profiles under Penal Code section 299 are particularly detailed. The court order alone, for example, must include the written request for expungement; proof of written notice of the petition to the prosecuting attorney and Department of Justice; verification of certain eligibility, objection, and timing requirements; and either a certified copy of a prior court order or a letter from the district attorney certifying yet other eligibility requirements.<sup>1</sup> Thus, the proposed optional forms are designed to facilitate the expungement procedure by providing specific instructions and detailed information to petitioners in a simple check-box format that can be used by self-represented petitioners and attorneys alike.

The proposed forms are also designed to promote standardized statewide petitions and orders by ensuring the availability of forms that contain all statutorily required data elements. Additionally, the proposed forms are intended to reduce the filing of improper petitions by providing important procedural instructions, including advisements about statutorily mandated notice and proof of service requirements. Further, beginning January 1, 2009, the classification of persons required to submit DNA samples and specimens will expand to include any adult person arrested or charged with any felony.<sup>2</sup> This broad additional category of eligibility is expected to significantly increase the number of petitions filed after January 1, 2009, simultaneously increasing the utility of standardized forms.

### Alternative Actions Considered

The committees considered developing separate forms for use by adult and juvenile petitioners. However, to foster consistency and familiarity with the forms by court and law enforcement personnel and to eliminate confusion about what form adult petitioners would use when seeking to expunge DNA samples obtained when they were juveniles, the committees ultimately decided against developing separate forms.

### Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 21, 2008, through June 20, 2008, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. The distribution lists included judges, court administrators, prosecutors, defense attorneys, probation officers, and other professionals. In addition to comments on the forms generally, the committees also specifically sought public comments on whether the forms should include a section for the date, time, and place of a noticed hearing to be filled in by court staff when a petition is filed.

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<sup>1</sup> Pen. Code, §§ 299(c)(2)(A)–(D).

<sup>2</sup> Pen. Code, § 296(a)(2)(C).

A total of 12 comments were received. Of those, five agreed with the proposal, four agreed with the proposal if modified, one disagreed without further comment, and two did not specify a position. The full text of the comments received and the responses of the committees are attached beginning at page 6.

Notably, several commentators suggested that space should be added to the forms to note compliance with proof of service requirements, while several others supported adding a section for the date, time, and place of a noticed hearing. The committees, however, decided against implementing these suggestions. As to the former, the committees agreed to separately consider developing a generic proof of service form for optional use in all criminal and delinquency matters. As to the latter, the committees felt strongly that local courts should have complete discretion, consistent with the statute, to accommodate the expungement procedure according to their particular needs and rules. Thus, to avoid suggesting that a particular notice or hearing procedure is required and to reduce potential misuse by petitioners, the committees decided against including space on the forms to note a hearing date, time, and place.

Several other commentators requested that additional instructions and information be added to the forms to assist petitioners, including, for example, providing the address of the Department of Justice laboratory where orders to expunge must be forwarded and instructions on how to achieve proper proof of service. In response, the committees agreed to separately develop an instruction form containing relevant information and advisements. Because a distinct instruction form would contain important *substantive* information, however, the committees decided that any such form should not be considered for potential adoption without first circulating for public comment. Accordingly, the committees will develop an instruction form during future meetings.

The majority of other comments were directed toward minor, nonsubstantive aspects of the forms, several of which the committees agreed to implement, including, for example, adding space for court seals. Other nonsubstantive and formatting suggestions, however, were declined for lack of need.

#### Implementation Requirements and Costs

Expected costs for the proposed forms include typical production costs for new forms and any associated court staff and judicial officer training on the new forms.



ATTORNEY OR PETITIONER WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY  <h1 style="margin: 0;">DRAFT</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	Court or Arresting Agency Case Number:
<b>PETITION FOR EXPUNGEMENT OF DNA PROFILES AND SAMPLES (Pen. Code, § 299)</b>	
NAME: CII: DRIVER'S LICENSE #: SSN # (Last four digits only): DATE OF BIRTH:	<b>PETITIONER'S INFORMATION</b>

**PETITION**

1. Petitioner has been included in the California Department of Justice's DNA and Forensic Identification Database and Data Bank Program as required by Penal Code section 296.
2. No past or present offense or pending charge qualifies petitioner for inclusion in the California Department of Justice's DNA and Forensic Identification Database and Data Bank Program, nor is there any legal basis for the continued retention of petitioner's specimen, sample, or searchable profile.
3. Petitioner requests that the California Department of Justice destroy petitioner's DNA sample or specimen, or both, and expunge petitioner's searchable DNA database profile as provided for in Penal Code section 299 on the following grounds (check one):
  - a.  No qualifying charges were filed within the applicable period allowed by law following petitioner's arrest.
  - b.  The qualifying charges were dismissed before adjudication.
  - c.  The qualifying conviction has been reversed and the case dismissed.
  - d.  Petitioner has been found factually innocent of the qualifying offense under Penal Code section 851.8 or Welfare and Institutions Code section 781.5.
  - e.  Petitioner was acquitted or found not guilty of the qualifying offense.
  - f.  Petitioner's previously sustained delinquency petition alleging an offense that would be a felony if committed by an adult has been reversed and dismissed.
4. 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)



\_\_\_\_\_  
(PETITIONER'S SIGNATURE)

\_\_\_\_\_  
(PETITIONER'S ADDRESS) (CITY) (STATE) (ZIP CODE)

**ADDITIONAL INSTRUCTIONS:** Penal Code section 299(c)(1) requires petitioner to send a copy of this petition to the DNA Laboratory of the California Department of Justice, and the trial court and prosecuting attorney of the county where petitioner was arrested, convicted, adjudicated, or had the disposition rendered, and to provide the court with proof of service on all parties.



ATTORNEY OR PETITIONER WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<b>FOR COURT USE ONLY</b>  <h1 style="margin: 0;">DRAFT</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<b>ORDER FOR EXPUNGEMENT OF DNA PROFILES AND SAMPLES (Pen. Code, § 299)</b>	Court or Arresting Agency Case Number:
NAME: CII: DRIVER'S LICENSE #: SSN # <i>(Last four digits only):</i> DATE OF BIRTH:	<b>PETITIONER'S INFORMATION</b>

**ORDER**

- The court denies the petition.
- The court grants the petition and orders that petitioner's DNA specimen and sample be destroyed and petitioner's searchable database profile be expunged from the California Department of Justice's DNA and Forensic Identification Database and Data Bank Program as required by Penal Code section 299. Additionally, the court finds (a) that petitioner has made the necessary showing at a noticed hearing, (b) no retrial or appeal of the qualifying case (if any) is pending, (c) at least 180 days have passed since petitioner notified the prosecuting attorney and the Department of Justice of petitioner's request for expungement, and (d) the court has not received an objection from the Department of Justice or the prosecuting attorney. (Pen. Code, § 299(c)(2).)

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

**FOR COURT USE ONLY**

**ADDITIONAL INSTRUCTIONS:**  
 As required by Penal Code section 299(c)(2), the California Department of Justice must destroy petitioner's specimen and sample and expunge petitioner's searchable DNA database profile on receipt of this court order, which must also include the written petition for expungement, proof of written notice of the petition to the California Department of Justice and the prosecuting attorney, and one of the following:

- a. A certified copy of the court order reversing and dismissing the conviction or case; or
- b. A letter from the prosecuting attorney certifying that:
  - (1) no accusatory pleading has been filed;
  - (2) the qualifying charges have been dismissed before adjudication;
  - (3) petitioner has been found factually innocent;
  - (4) petitioner has been found not guilty;
  - (5) petitioner has been acquitted of the underlying offense;
  - (6) the qualifying conviction has been reversed and the case dismissed; or
  - (7) the qualifying sustained delinquency petition has been reversed and the case dismissed.



**SPR08-34****Criminal and Juvenile Law: DNA Expungement Forms** (approve forms CR-185/JV-796 and CR-186/JV-798)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Responses of the Criminal and Family and Juvenile Law Advisory Committees</b>
1.	California Department of Corrections and Rehabilitation Donald J. Currier Assistant Secretary Office of Legal Affairs		<p>We believe that these forms contain all of the requirements of Penal Code section 299. For consistency with other Judicial Council forms, and because a noticed hearing is required, it would be helpful to include a section for the date, time, and place of the noticed hearing to be entered by court staff when the petition is filed.</p> <p>In addition, in the section entitled “Additional Instructions,” on the Order form, the word “profile” should be inserted in the second line after “database,” as the Department of Justice will be ordered to delete a specific profile and not its entire database.</p>	<p>Despite several suggestions to add space to the forms for hearing information, the committees have decided against further revisions. A large number of petitions are expected to be filed once the category of persons that are required to provide DNA samples and profiles is expanded on January 1, 2009. The committees feel very strongly, therefore, that local courts should remain free to accommodate the expungement procedure according to their local needs and rules. Thus, the committees have decided not to add space for hearing information to avoid suggesting that a <i>particular</i> notice or hearing procedure is required. Further, the committees have decided that not providing space for hearing information would also reduce the potential for misuse by petitioners.</p> <p>The committees agree. The word “profile” will be inserted in the second line of the “Additional Instructions” section of the order after the word “database.”</p>
2.	Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County	AM	The address to the DNA lab of the DOJ would need to be provided to the petitioner in the ADDITIONAL INSTRUCTIONS section of the form for noticing purposes.	The committees agree that the Department of Justice DNA laboratory address is important information that should be provided to petitioners. A separate instruction sheet with Department of Justice DNA laboratory information and other important instructions and advisements will be separately developed during future committee meetings.

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3.	Los Angeles County Alternate Public Defender Janice Y. Fukai Alternate Public Defender	A	* The commentator indicates agreement.	No response required.
4.	Orange County Bar Association Cathrine Castaldi President	AM	The inclusion of a section for the date, time and place of the noticed hearing to be entered by the court staff would be particularly helpful especially when these forms are used by petitioners who are not represented by counsel.	Please see response to #1 above.
5.	Hon. Kenneth G. Peterson Superior Court of Sacramento County		* The Petition (JV796) should be separated into two distinct forms, one for adults and one for juvenile use. Since box "f" was the only option for juvenile use, it would seem less confusing just to have a separate form.	Although having one petition for both adult and juvenile petitioners may cause confusion for some, the committees believe that the need for consistency and familiarity with the forms used by court and law enforcement personnel outweighs any potential confusion. Also, the committees will develop a separate instruction sheet with important information and advisements, which should further reduce any potential confusion.
6.	William Richmond District Attorney Alpine County	N	No specific comment.	No response required.
7.	Laura Rusk Supervising Court Clerk Superior Court of Kern County	A	Include an area for Date, Time & Dept on the form. Otherwise, OK.	Please see response to #1 above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

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8.	Superior Court of Kern County Marian Knight Supervising Superior Court Clerk	A	The Kern County Superior Court agrees with all changes as proposed. We would also like to see the Date/Time/Department preprinted on the form for the Petitioner to fill out.	Please see response to #1 above.
9.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
10.	Superior Court of Orange County Erin Rigby Staff Analyst Rules & Forms Committee	AM	<p><u>Question by AOC:</u> Should the form include a section for the date, time and place of the noticed hearing to be entered by court staff when the petition is filed? <u>Answer:</u> No.</p> <p><u>Comments:</u></p> <p>(1) Can specific instruction sheets be developed; one for petitioner and one for the court personnel to follow?</p> <p>(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 should be using?</p> <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><u>Forms:</u></p>	<p>The committees agree. No further response is required.</p> <p>The committees will develop an instruction sheet containing relevant instructions and other important information and advisements.</p> <p>To address this and other requests to accommodate proof of service requirements on criminal and delinquency forms, the committees will jointly consider developing a generic proof of service form for use in all criminal and delinquency matters.</p> <p>Please see response above.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

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	Commentator	Position	Comment	Responses of the Criminal and Family and Juvenile Law Advisory Committees
			<p>CR-185/JV-796: “Petition for Expungement of DNA Profiles and Samples”:</p> <p>(1) As DNA may be supplied via an arrest, not necessarily after filing of a case can the box labeled “Case Number (if applicable)” be changed to “Court or Arresting Agency Case Number”?</p> <p>(2) Petitioner’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>(3) 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>(4) Is the Petitioner’s address required for identification purposes? If so, maybe it should be included in the Petitioner’s Information in the header if it stays there, or within the body of the document, as specific boxes in a row format. Also, should “driver’s license” be “driver</p>	<p>The committees agree. The caption on both the order and petition will be changed from “Case Number (If applicable)” to “Court or Arresting Agency Case Number.”</p> <p>Requiring the petitioner’s information to be provided in the header allows for a quick and easy reference to that information and is consistent with the Judicial Council form for expungement under Penal Code section 1203.4 (CR-180).</p> <p>Criminal Investigation and Identification (CII) numbers provide additional identifying information and are requested on the Judicial Council form for expungement under Penal Code section 1203.4 (CR-180). For the sake of consistency and because providing the CII number is not mandatory, the committees have decided that there is no need to remove it.</p> <p>Although these suggestions are appreciated, the committees prefer the phrase “driver’s license” and the location for noting petitioner address information as currently contained in the proposed petition.</p>

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	Commentator	Position	Comment	Responses of the Criminal and Family and Juvenile Law Advisory Committees
			<p>license” removing the ‘s?</p> <p>(5) Additional Instructions in the footer: It makes reference to the petitioner having to send a copy to the DNA Laboratory, but doesn’t provide an address?</p> <p>(6) 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-186/JV-798: “Order for Expungement of DNA Profiles and Samples”:</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) Additional Instructions in the footer: It makes reference to “proof of written notice” but doesn’t give instructions on how to proceed with obtaining such a notice. 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</p>	<p>Please see response to #2 above.</p> <p>The committees will separately develop an instruction sheet containing relevant instructions and other important information and advisements.</p> <p>Please see the response to (1) above.</p> <p>Please see the response to (2) above.</p> <p>Please see the response to (3) above.</p> <p>Please see the response to (4) above.</p> <p>A separate instruction sheet containing relevant instructions and other important information and advisements will be separately developed. Further, to address this and other requests to accommodate proof of service requirements on criminal and delinquency forms, the committees will jointly consider developing a generic proof of</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Responses of the Criminal and Family and Juvenile Law Advisory Committees</b>
			<p>service requirements and the necessary criminal proof of service form they should utilize?</p> <p>(6) Should there be a line _____ after “date:”?</p> <p>(7) Should the signature line be preceded with a line to print the name of the judicial officer?</p> <p>(8) Should we consider including an area for a “Court Seal”?</p>	<p>service form for use in all criminal and delinquency matters.</p> <p>No, omitting a line after “date:” conforms to the style guidelines for all Judicial Council forms.</p> <p>The committees feel that there is no need to add a line to print the name of the judicial officer.</p> <p>Yes, a box for a court seal has been added to the order form.</p>
11.	Superior Court of Riverside County David Gutknecht Supervising Management Analyst	A	<p>The proposed [forms] . . . will serve to clarify the statutory procedure to expunge DNA database profiles and should make it easier for petitioners to understand the process outlined in Penal Code section 299. The form is very thorough, particularly section 3 on the petition, which explains the grounds upon which DNA samples may be destroyed.</p> <p>If a noticed hearing is required regarding this petition, the form should include a section for the date, time, and place of the hearing to be entered by court staff when the petition is filed.</p>	Please see response to #1 above.
12.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	* The instruction section at the bottom of form CR-185/JV-796 should be amended to add the underlined phrase below, requiring a proof of service of the petition to be filed with the court: “ADDITIONAL INSTRUCTIONS: Penal Code section 299(c)(1) requires petitioner to send a copy of this petition to . . . , <u>and to provide the court</u> with proof of service on all parties.”	The phrase “and to provide the court” has been added to the “additional instructions” section of the petition.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Responses of the Criminal and Family and Juvenile Law Advisory Committees</b>
			The information provided on the form or on a separate information sheet should also include the address for the DNA lab; include the timelines for service, if a separate proof of service form is not used; indicate that denial is final with no right to appeal; and include filing instructions for the petition. It may also be of assistance to the public to create packets with forms CR-185/JV-796, CR-186/JV-798, a proof of service form and a newly created information sheet for the petitioner.	The committees will develop a separate instruction sheet containing this information and other important instructions and advisements.