

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR15-14

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Title	Action Requested
Criminal Procedure: Petition and Order for Dismissal	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CR-180 and CR-181	January 1, 2016
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) in response to recent legislation that provides dismissal relief to certain victims of human trafficking.

### Background

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, and 1203.41. These are two of the most heavily used optional criminal law forms and are frequently submitted by unrepresented petitioners.

Recent legislation<sup>1</sup> added Penal Code section 1203.49 to authorize a defendant who has been convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), and who has completed a term of probation for that conviction, to petition the court for dismissal relief. If the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the legislation authorizes the court to issue an order that (1) finds that the petitioner was a victim of human trafficking when he or she committed the crime, (2) orders any of the relief described in Penal Code section 1203.4, and (3) notifies the Department of Justice both that the petitioner was a victim of human trafficking and of the relief ordered.<sup>2</sup>

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<sup>1</sup> [Assem. Bill 1585](#) (Alejo); Stats. 2014, ch. 708.

<sup>2</sup> The legislation also amends the Penal Code and Family Code to prohibit the Department of Justice from disseminating the petitioner's record of conviction when the information is to be used for employment, licensing, or

*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.*

## **The Proposal**

The Criminal Law Advisory Committee proposes the following revisions to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to incorporate the new statutory basis for relief by adding:

- A reference to Penal Code section 1203.49 to the caption and footer of both forms;
- Item 4 to form CR-180, for petitioners to request relief under Penal Code section 1203.49;
- A check box for Penal Code section 1203.49 to the petitioner's final request for relief on form CR-180;
- Six references to Penal Code section 1203.49 to the body of form CR-181 to incorporate the new basis for relief in the order for dismissal;
- Item 5 to form CR-181 for the court to specify the relief granted under Penal Code section 1203.49; and
- Item 7 to form CR-181 to notify the Department of Justice, when the order is granted under Penal Code section 1203.49, that the petitioner was a victim of human trafficking and the relief ordered.

## **Alternatives Considered**

The committee alternatively considered postponing or declining to propose revisions to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) in consideration of the additional burden that any form change places on the courts. The committee, however, decided to propose these revisions because they are required by recent legislation and would reduce confusion, promote efficiencies, and facilitate court implementation of new criminal procedures.

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

As optional forms, expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

## 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?
- Are the proposed revisions an effective way to address the legislation that added Penal Code section 1203.49?

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 two 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 CR-180 and CR-181, at pages 4–7
2. [Assem. Bill 1585](#) (Alejo); Stats. 2014, ch. 708

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>Name</i> ): _____	<b>FOR COURT USE ONLY</b>  <div style="border: 2px solid yellow; padding: 5px; display: inline-block; text-align: center;"> <b>DRAFT</b>  <b>Not Approved by the</b>  <b>Judicial Council</b> </div>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	CASE NUMBER: _____  <b>FOR COURT USE ONLY</b> Date: _____ Time: _____ Department: _____
<b>PETITION FOR DISMISSAL</b> <b>(Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41, 1203.49)</b>	

1. On (*date*): \_\_\_\_\_, the petitioner (*the defendant in the above-entitled criminal action*) was convicted of a violation of the following:

Offense <i>(Specify each offense in the case noted above.)</i>	Code	Section	Type of offense: ( <i>Felony; Misdemeanor; Infraction</i> )	Eligible for reduction to misdemeanor under Penal Code § 17(b) ( <i>Yes or No</i> )

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2.  **Felony or misdemeanor 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 petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*):

- a.  has fulfilled the conditions of probation for the entire period thereof;
- b.  has been discharged from probation prior to the termination of the period thereof;
- c.  should be granted relief in the interests of justice. (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.*)

3.  **Misdemeanor or infraction 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 petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner (*check one*):

- a.  has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; **or**
- b.  should be granted relief in the interests of justice. (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.*)

4.  **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**  
 The petitioner has completed a term of probation for a conviction under Penal Code section 647(b).  
 The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. *(Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)*

5.  **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**  
 The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, and should be granted relief in the interests of justice, and *(check one:)*

a.  more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or**

b.  more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

*(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)*

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b).

Petitioner requests that he/she 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,  1203.4a,  1203.41, **or**  **1203.49** of the Penal Code.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: \_\_\_\_\_ (DATE) \_\_\_\_\_ (SIGNATURE OF PETITIONER OR ATTORNEY)

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;"><b>FOR COURT USE ONLY</b></p> <p style="text-align: center;"><b>DRAFT</b> <b>Not Approved by the</b> <b>Judicial Council</b></p>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	
<b>ORDER FOR DISMISSAL</b> <b>(Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41, 1203.49)</b>	CASE NUMBER: _____

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner (*the defendant in the above-entitled criminal action*) is eligible for the following requested relief:

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors.

- ALL FELONY CONVICTIONS in the above-entitled action; or
- Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):

2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) for:

- ALL FELONY CONVICTIONS in the above-entitled action; or
- Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):

3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code  § 1203.4, or  § 1203.4a, or  § 1203.41, or  § 1203.49, and it is ordered that the pleas, verdicts, or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed for:

- ALL CONVICTIONS in the above-entitled action; or
- Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

4. The court **DENIES** the petition for dismissal regarding the following convictions under Penal Code  § 1203.4, or  § 1203.4a, or  § 1203.41, or  § 1203.49 for:

- ALL CONVICTIONS in the above-entitled action; or
- Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

5. In granting this order under the provisions of Penal Code section 1203.49:

a. The court finds that the petitioner was a victim of human trafficking when he or she committed the crime.

- b.  The court orders the relief described in section 1203.4; or
- The court orders the relief described in section 1203.4, with the following exceptions:

6. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:
- The petitioner 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 Commission.
  - Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)
  - The petitioner 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.
7. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and the relief ordered.
8. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. 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 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 1203.4, 1203.4a, 1203.41, or 1203.49 does *not* release petitioner 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 petitioner 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).

FOR COURT USE ONLY

Date:

\_\_\_\_\_  
(JUDICIAL OFFICER)