

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR16-14

Title	Action Requested
Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CR-180 and CR-181	January 1, 2017
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov

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 for defendants who were granted deferred entry of judgment on or after January 1, 1997, who successfully completed a deferred entry of judgment program, and for whom the criminal charge(s) were dismissed under Penal Code section 1000.3 The committee also proposes minor revisions to the format of both forms to improve their usefulness for courts and petitioners.

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, 1203.41 and 1203.49.¹ These are two of the most heavily used optional criminal law forms and are frequently submitted by unrepresented petitioners.

Recent legislation added section 1203.43 to authorize a defendant who was granted deferred entry of judgment on or after January 1, 1997, to petition the court for dismissal relief.² Under section 1203.43, the court is required to permit a petitioner (the defendant in the underlying

¹ All further statutory references are to the Penal Code unless otherwise specified.

² [Assem. Bill 1352 \[Eggman\]; Stats. 2015, ch. 646.](#)

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 These proposals are circulated for comment purposes only.

criminal action) who performed satisfactorily during the period in which deferred entry of judgment was granted, and who had the criminal charge(s) dismissed under section 1000.3, to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty; the statute then requires the court to dismiss the complaint or information. The court's determination of the petitioner's eligibility for relief may be based on available court records showing the case resolution. If court records are no longer available, under new section 1203.43, the petitioner's declaration under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment shall be presumed to be true if the petitioner submits a copy of his or her state summary criminal history information that shows that the petitioner successfully completed the deferred entry of judgment program or that the record does not show a final disposition.

The Proposal

The Criminal Law Advisory Committee proposes adding the following items to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to incorporate the new basis for relief established by section 1203.43:

- A reference to section 1203.43 to the caption and footer of both forms;
- The phrase “or was granted deferred entry of judgment for the following offenses” to item 1 on form CR-180;
- New item 6 to form CR-180, including check boxes and related instructions, to facilitate requests for dismissal under section 1203.43;
- A check box for section 1203.43 to the request for relief in item 8 of form CR-180, and a reference to a plea of nolo contendere;
- Check boxes to items 3 and 4 on form CR-181 for courts to grant or deny dismissal relief under section 1203.43; and
- References to pleas for deferred entry of judgment and pleas of nolo contendere in items 3 and 4 on form CR-181, and removing the phrase “regarding the following convictions” from both items.
- Minor revisions to the format of both forms to improve their usefulness for courts and petitioners.

The proposed revised forms are attached at pages 4–7.

Alternatives Considered

The committee considered not proposing any changes to the forms at this time. The committee, however, determined that these revisions are appropriate 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

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 1203.43?

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. Proposed revised forms CR-180 and CR-181, at pages 4–7
2. Link A: [Assem. Bill 1352 \[Eggman\]; Stats. 2015, ch. 646](#)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.43, 1203.49)	FOR COURT USE ONLY Date: Time: Department:

1. On (date): _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses **or was granted deferred entry of judgment** for the following offenses:

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>)	Eligible for reduction to infraction under Penal Code § 17(d)(2) (<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.
- 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.*)

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4. **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**
- a. The petitioner has completed a term of probation for a conviction under Penal Code section 647(b).
 - 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); 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).
 - 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.)*

6. **Deferred entry of judgment (Pen. Code, § 1203.43)**
- Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under Penal Code section 1000.3 on: *(date):* _____ Furthermore *(check one)*
- a. court records are available showing the case resolution.
 - b. petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment, and petitioner has attached a copy of his or her state summary criminal history information maintained by the Department of Justice.

7. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

8. Petitioner requests that he **or** she be permitted to withdraw the plea of guilty **or nolo contendere**, 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, **1203.43**, 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.

Date: _____  (SIGNATURE OF PETITIONER OR ATTORNEY)

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

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	
ORDER FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.43, 1203.49)	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 (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces the following convictions (*check one*)
 - ALL FELONY CONVICTIONS in the above-entitled action.
 - ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
 - only the following 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) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for (*check one*)
 - ALL FELONY CONVICTIONS in the above-entitled action.
 - ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
 - only the following convictions in the above-entitled action (*specify charges and date of conviction*):

3. The court **GRANTS** the petition for dismissal under Penal Code § 1203.4, § 1203.4a, § 1203.41, § 1203.43, or § 1203.49, and it is ordered that the pleas of guilty or nolo contendere, or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for (*check one*)
 - ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
 - only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

4. The court **DENIES** the petition for dismissal under Penal Code § 1203.4, § 1203.4a, § 1203.41, § 1203.43, or § 1203.49 for (*check one*)
 - ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
 - only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

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5. In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when he or she committed the crime. The court orders *(check one)*
- the relief described in section 1203.4.
 - the relief described in section 1203.4, with the following exceptions *(specify)*:
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.)
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 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), 17(d)(2), 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)