

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR18-14

Title

Criminal Justice Realignment: Petition and Order for Dismissal

Action Requested

Review and submit comments by June 8, 2018

Proposed Rules, Forms, Standards, or Statutes

Revise forms CR-180 and CR-181

Proposed Effective Date

January 1, 2019

Proposed by

Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Contact

Eve Hershcopf, 415-865-7961
eve.hershcopf@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to two Judicial Council forms in response to recent legislation that authorizes dismissal relief for defendants sentenced to state prison for a felony that, if committed after the 2011 Realignment legislation, would have been eligible for sentencing to a county jail under Penal Code section 1170(h)(5). The proposed revisions would incorporate the new statutory basis for relief on both forms.

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, 2103.41, 1203.43, and 1203.49.¹ These are two of the most heavily used optional criminal law forms and are frequently submitted by self-represented petitioners.

Criminal justice realignment implemented changes to long-standing felony sentencing laws, including authorizing that certain eligible defendants be sentenced to jail rather than prison under section 1170(h)(5). The felony county jail sentence option became effective October 1, 2011. In 2013, legislation² added section 1203.41 to authorize courts to permit a defendant who received a felony county jail sentence under section 1170(h)(5) to withdraw his or her guilty or no contest plea and enter a plea of not guilty after the lapse of one or two years following the defendant's completion of the sentence, and then dismiss the action.

¹ All further statutory references are to the Penal Code.

² Assem. Bill 651 (Bradford; Stats. 2013, ch. 787).

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 These proposals are circulated for comment purposes only.

In September 2017, the Legislature enacted Assembly Bill 1115,³ adding section 1203.42, which further expands dismissal relief by providing the same relief as in section 1203.41, but for defendants who were sentenced to state prison for a felony that, if committed after the 2011 Realignment legislation, would have been eligible for a county jail sentence under section 1170(h)(5). The relief is available in the interests of justice and at the court's discretion, provided that the defendant is not under supervised release and is not serving a sentence for, on probation for, or charged with the commission of any offense. The statute provides that the defendant is released from all penalties and disabilities resulting from the offense of which he or she has been convicted, with certain exceptions.

The Proposal

The Criminal Law Advisory Committee proposes the following revisions to the *Petition for Dismissal* (CR-180) and *Order for Dismissal* (CR-181) to incorporate the new statutory basis for relief under section 1203.42:

- Add a reference to section 1203.42 to the caption of both forms;
- Add new item 6 to form CR-180 for petitioners to indicate the new option for requesting relief under section 1203.42;
- Include in the instructions for new item 6 of form CR-180 that the petitioner “may provide an explanation in the space below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents” and revise the instructions in items 4 and 5 to indicate that the petitioner “may provide an explanation in the space below” for relief under sections 1203.49 and 1203.41.
- Add a check box with a citation to section 1203.42 to renumbered item 9 on form CR-180; and
- Add five references to section 1203.42 to the body of form CR-181 to incorporate the new basis for relief: a check box with a citation to section 1203.42 to items 3 and 4, and a citation to section 1203.42 to items 6, 8, and 9.

Alternatives Considered

The committee alternatively considered creating new forms to address the new form of relief, but this approach seemed unnecessarily burdensome and potentially confusing to petitioners and courts because the relief provided in section 1203.42 so closely resembles that provided by section 1203.41, which is currently included on forms CR-180 and CR-181. A second option considered was to remove section 1203.41 relief from forms CR-180 and CR-181 and create new optional dismissal forms for the relief provided under sections 1203.41 and 1203.42, but the committee rejected this approach as unnecessary and potentially confusing.

³ Assem. Bill 1115 (Jones-Sawyer; Stats. 2017, ch. 207).

Implementation Requirements, Costs, and Operational Impacts

Expected costs include 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 adding section 1203.42?

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 three 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 4–8
2. AB 651 (Stats. 2013, ch. 787),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB651&search_keywords=
3. AB 1115 (Stats. 2017, ch. 207),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1115

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, 1203.42, 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 (felony, misdemeanor, or infraction):	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (yes or no)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (yes or no)

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 stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, on probation for any offense, **or** 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. 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.)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

4. **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**
- a. Petitioner has completed a term of probation for a conviction under Penal Code section 647(b).
- b. 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 provide an explanation in the space below, or 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)**
- 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 provide an explanation in the space below, or complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)*

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, 1203.42, 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:

- 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 (*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*):

- 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*):

- The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code § 1203.4 § 1203.4a § 1203.41 § 1203.42 § 1203.43 § 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*):

- The court **DENIES** the petition for dismissal under Penal Code (*check all that apply*) § 1203.4 § 1203.4a § 1203.41 § 1203.42 § 1203.43 § 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 judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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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*):

- a. the relief described in section 1203.4.
- b. 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, 1203.41, or 1203.42,

- a. 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; and
- b. 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 petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.

8. If the order is granted under the provisions of Penal Code section 1203.4, 1203.4a, 1203.41, 1203.42, 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, 1203.42, 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).

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10. The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in former Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.

Date: _____
(JUDICIAL OFFICER)