



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

Title	Agenda Item Type
Criminal Justice Realignment: Petition and Order for Dismissal	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Criminal Justice Realignment: Revise forms CR-180 and CR-181	January 1, 2015
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	September 16, 2014
	Contact
	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud

Executive Summary

In response to criminal justice realignment legislation that provides a new statutory basis for dismissals, the Criminal Law Advisory Committee recommends revising the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to add data fields to facilitate dismissals under Penal Code section 1203.41 for cases in which the petitioner received a felony county jail sentence under Penal Code section 1170(h)(5). The committee recommends revising forms CR-180 and CR-181 to assist courts in specifying the granting or denial of a dismissal request under Penal Code sections 1203.4, 1203.4a, or 1203.41 for each conviction in a case, and to confirm which convictions, if any, are reduced from felonies to misdemeanors under Penal Code section 17(b). The committee also recommends related revisions to the format, advisements, and instructions on both forms.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015, revise the *Petition for Dismissal* (form CR-180) and the *Order for Dismissal* (form CR-181) to:

1. Add references to Penal Code section 1203.41 to items 3 and 4 and to the advisements in items 5, 6, and 7 on form CR-181 to incorporate an additional statutory basis for dismissal;
2. Add check boxes and related instructions to revised item 4 on form CR-180 to facilitate requests for dismissal under Penal Code section 1203.41;
3. Add check boxes to items 3 and 4 on form CR-181 to clarify whether the court is granting or denying the request for dismissal relief, under which Penal Code section the court is providing the requested relief, and whether the court's decision to grant or deny the requested relief is for all or only selected convictions in the case;
4. Convert item 1 on form CR-180 into a table format that provides space for the petitioner to list each conviction in the case separately, and to specify whether each conviction is a felony eligible for reduction to a misdemeanor under Penal Code section 17(b);
5. Revise items 1 and 2 on form CR-181 to clarify whether the court is granting or denying the request for reduction of a felony to a misdemeanor under Penal Code section 17(b), and whether the court's decision to grant or deny the requested relief is for all or only selected convictions in the case;
6. Revise item 6 on form CR-181 to include an advisement about the effect of a dismissal on a subsequent prosecution; and
7. Revise the format, advisements, and instructions on the forms by (a) adding a reference to Penal Code section 1203.41 to the caption of both forms; (b) using the term "petitioner" in place of "defendant" on both forms; (c) expanding the instructions on providing information to support a request for dismissal in the interests of justice on form CR-180; and (d) adding an advisement to form CR-181 that in any subsequent prosecution the prior conviction may be pleaded and proved, and have the same effect as if the accusation or information had not been dismissed.

The proposed revised forms are attached at pages 5–8.

Previous Council Action

Revisions to both forms were previously approved by the Judicial Council on October 25, 2013, with an effective date of January 1, 2014, in response to legislation that amended Penal Code section 1203.4a to extend dismissal relief to certain infractions and clarified that petitioners are not relieved of any prohibition against holding public office, and also amended Penal Code section 1203.4 to authorize courts to grant dismissal relief "in the interests of justice."

Rationale for Recommendation

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are optional forms used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4 and 1203.4a. In 2013, criminal justice realignment legislation added section 1203.41 to authorize courts to issue orders for dismissal in cases in which the defendant received a felony county jail sentence under Penal Code section 1170(h)(5).¹ In response, the committee recommends adding the new statutory basis for relief to the petition and order for dismissal forms.

On June 30, 2014, the Court of Appeal, First Appellate District, Division One, issued a decision in *People v. Smith*² that indicated that courts should evaluate each conviction in a case individually to determine whether the requested dismissal relief should be granted or denied for all or only selected convictions, citing *People v. Mgebrov*.³ In response, the committee recommends revisions to the forms to facilitate the listing of each conviction for which dismissal relief is requested, the court's grant or denial of dismissal relief for each conviction, and the court's decision on which convictions, if any, are reduced from felonies to misdemeanors under Penal Code section 17(b).

To reduce confusion and update and enhance the information on the forms, the committee also recommends revising the format, advisements, and instructions on both forms.

Comments, Alternatives Considered, and Policy Implications

The attached forms were circulated for public comment from April 18, 2014, to June 18, 2014. A total of seven comments were received; of those, four agreed with the proposal and three agreed if modified. No commentators opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 9–14.

During the public comment period, one commentator noted that forms CR-180 and CR-181 are used to request and order a dismissal of convictions *and* to request and order a reduction of a felony conviction to a misdemeanor under Penal Code section 17(b), and observed that the current forms did not clearly distinguish between those two separate determinations. In response, the committee recommends revisions to the forms that assist the petitioner to clearly request a reduction from a felony to a misdemeanor for each conviction and assist the court in confirming whether it is granting or denying section 17(b) reduction relief for each conviction. Following

¹ Assem. Bill 651 [Bradford]; Stats. 2013, ch. 787.

² 227 Cal.App.4th 717, 726, 174 [Cal.Rptr.3d 103] (2014) (Ct. App., First Dist., Div. One) ["We conclude the motion for expungement was sufficient to apprise the court it should evaluate each of defendant's four convictions individually under section 1203.4."].

³ 166 Cal.App.4th 579, 595, 82 [Cal.Rptr.3d 778] (2008) (Ct. App., First Dist., Div. Two) ["The plain and commonsense meaning of the text of section 1203.4 indicates trial courts may set aside guilty verdicts on individual counts in an information and dismiss the counts pursuant to section 1203.4, subdivision (a)."].

the comment period, the committee added recommendations in response to the *Smith* and *Mgebrov* cases noted above.

Notable comments

One commentator noted that “some judges will not check both numbers 2 and 4 when granting only PC §§ 1203.4/1203.4a/1203.41 relief but denying a § 17(b) petition. The order should reflect that the judge may be considering two independent motions.”

The committee agreed with the comment and revised the form to more clearly reflect the petitioner’s request for consideration of a Penal Code section 17(b) reduction for eligible felony offenses in addition to the petitioner’s request for the court to grant dismissals for each conviction in the identified case. The committee revised the petition to enable the petitioner to list multiple convictions in a particular case, some of which may be eligible for dismissal and others ineligible, and for the court to clearly indicate on the order its determination to grant or deny the requested relief for each offense.

Alternatives considered

The committee considered postponing or declining to recommend any form revisions in light of the severe economic circumstances faced by courts. The committee, however, decided to recommend the revisions in response to recent legislation and case law. The committee believes the revisions would not impose any significant change in court practices; rather, the recommended revisions are designed to improve dismissal procedures and Penal Code section 17(b) felony reduction procedures by enhancing the information on the forms.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and implementation requirements are limited to training and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-180 and CR-181, at pages 5–8
2. Comment chart, at pages 9–14

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

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: (Felony; Misdemeanor; Infraction)	Eligible for reduction to misdemeanor under Penal Code § 17(b) (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 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.)

Continued

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <div style="text-align: center; border: 2px solid black; padding: 5px;"> DRAFT Not Approved by the Judicial Council </div>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	
ORDER FOR DISMISSAL (Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41)	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, 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 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. **If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:**

- 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.**
- b. **Dismissal of the conviction does not automatically relieve petitioner from the requirement to register as a sex offender. (See, e.g., Penal Code section 290.5.)**
- c. **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.**

Continued

PETITIONER:	CASE NUMBER:
-------------	--------------

6. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, or 1203.41, 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.
7. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 1203.4, 1203.4a, or 1203.41 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)

SPR14-08

Criminal Justice Realignment: Petition and Order for Dismissal (*revise forms CR-180 and CR-181*)

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

	Commentator	Position	Comment	Committee Response
1.	East Bay Community Law Center Eliza Hersh, Director Clean Slate Practice	AM	<ul style="list-style-type: none"> • <u>RE CR 180</u> Sections 3(c), 4(b), and 5(b) on the current form include the following advisement: <i>“Please note: You must explain why granting a dismissal would be in the interests of justice by completing and attaching the Attached Declaration (form MC-031).”</i> <p>We request a change to this sentence to reflect that (1) there is no statutory requirement that a petitioner file a MC-031 form or any other documents with a petition for dismissal pursuant to Penal Code § 1203.4; (2) many litigants, especially those represented by counsel, file documents in support of their petitions—including letters of support and sworn declarations—that do not conform to the format of MC-031, and make that form extraneous; and (3) in many counties it is not the current practice of court clerks to inform <i>pro per</i> litigants about, or provide with, the MC-031 form.</p> <p>A proposed alternative might be: “You may explain why granting a dismissal would be in the interests of justice by completing and attaching the Attached Declaration (form MC-031) or submitting other documents relevant to this issue.”</p> <ul style="list-style-type: none"> • <u>RE CR 181</u> We request reformatting of the top section of the order (Numbers 1 to 4) to address the 	<ul style="list-style-type: none"> • To ensure that courts receive sufficient information when considering what constitutes “in the interests of justice” for granting a dismissal, including any documents offered in support of the petition, the committee revised items 2(c), 3(b), and 4 on form CR-180 to read: <i>(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the optional Attached Declaration (form MC-031) or submit other relevant documents.)</i> • The committee agrees that the forms should more clearly reflect that the court is responding to two separate motions: a felony

SPR14-08

Criminal Justice Realignment: Petition and Order for Dismissal (*revise forms CR-180 and CR-181*)

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

	Commentator	Position	Comment	Committee Response
			<p>instances when a judge grants/denies the petition <u>in part</u>. Specifically, we have noted that some judges will not check both numbers 2 and 4 when granting only PC §§ 1203.4/1203.4a/1203.4 relief but denying a § 17(b) petition. The order should reflect that the judge may be considering two independent motions.</p> <p>We also have noted that some judges forget or overlook the need to check both box 2 and box 4. We have heard from representatives from some licensing agencies that those orders, with only box 2 checked, are deemed defective.</p> <p>A possible revision is:</p> <p>1. <input type="checkbox"/> The court grants the petition for <input type="checkbox"/> § 1203.4 <input type="checkbox"/> § 1203.4a <input type="checkbox"/> § 1203.41 and it is ordered that the plea, verdict, or finding of guilt regarding the following conviction 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 (specify charges and dates of convictions): <input type="text"/></p> <p>2. <input type="checkbox"/> The court denies the petition for <input type="checkbox"/> § 1203.4 <input type="checkbox"/> § 1203.4a <input type="checkbox"/> § 1203.41</p>	<p>reduction motion under Penal Code section 17(b) and a dismissal motion under section 1203.4, 1203.4a, or 1203.41.</p> <p>The committee revised items 1, 2, 3, and 4 on form CR-181 to aid the court in clearly indicating its determination whether to grant or deny the requested section 17(b) reduction relief <i>and/or</i> the requested dismissal relief for each conviction.</p> <p>Because varying collateral consequences are associated with each type of dismissal, the committee revised form CR-181 for the court to indicate whether the dismissal is granted under Penal Code section 1203.4, 1203.4a, or 1203.41.</p> <p>To enable the petitioner to list multiple convictions in a case, and to clearly request both a section 17(b) reduction and dismissal relief <i>for each eligible conviction</i>, the committee revised item 1 on form CR-180 into a table format.</p>

SPR14-08

Criminal Justice Realignment: Petition and Order for Dismissal (*revise forms CR-180 and CR-181*)

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

	Commentator	Position	Comment	Committee Response
			3. <input type="checkbox"/> The court reduces the felony offense to a misdemeanor. 4. <input type="checkbox"/> The court denies the petition to reduce the felony to a misdemeanor.	
2.	Orange County Bar Association Thomas Bienert, Jr., President	AM	For Penal Code section 1203.41 dismissals, may consider adding subdivision (b)(1) language on order (CR-181) that dismissal does not bar use of conviction as prior in subsequent prosecution.	The committee agrees. Item 6 on form CR-181 has been revised to add the following advisement, which conforms with the statutory language and applies to all dismissals: <i>“In any subsequent prosecution of the defendant 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.”</i>
3.	State Bar Standing Committee on the Delivery of Legal Services (SCDLS) Maria Livingston, Vice Chair	A	Agree with proposal in its entirety These forms are frequently used by self-represented parties, and the proposed improvements benefit those without means to pay for a lawyer because they add references to the statutes, meaning that individuals can more easily research the law, and add an additional checkbox to each form to allow individuals to request expungement. <u>Disclaimer</u> This position is only that of the State Bar of California’s Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar’s Board of Trustees or overall membership, and is not to be construed as representing the position of	No response required.

SPR14-08

Criminal Justice Realignment: Petition and Order for Dismissal (*revise forms CR-180 and CR-181*)

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

	Commentator	Position	Comment	Committee Response
			the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	
4.	Superior Court of Los Angeles County	A		No response required.
5.	Superior Court of Riverside County Daniel Wolfe, Managing Attorney	A	Agree with proposal. This is a welcome modification of the forms CR-180 and CR-181 in light of the enactment of Penal Code section 1203.41 and will be very helpful to the court.	No response required.
6.	Superior Court of San Diego County Mike Roddy, Executive Officer	A	Our court already has its own court forms for this process, therefore, this one will not have any effect on us.	No response required.
7.	Yolo County Public Defender’s Office Hannah Labaree, Record Mitigation Attorney	AM	I write with proposed modifications to the new CR180 forms. I handle all of the 1203.4, 17(b) and 1203.41 matters for the Yolo County Public Defender's office. My goal when recommending these modifications is for the form to be both accurate and clear, to the degree that is possible. <ul style="list-style-type: none"> • First, I think the form should use one term consistently to refer to the individual filing the form - i.e., use “petitioner” instead of both “petitioner” and “defendant.” (I believe petitioner is more appropriate in this context, given that the individual is petitioning the court for relief). • Second, I don't see that it's necessary to repeat the following language in each of #3- 	<ul style="list-style-type: none"> • The committee agrees. To more accurately reflect the status of the person seeking relief, the committee has revised forms CR-180 and CR-181 to consistently use the term “petitioner” throughout the forms. • The committee declines the suggestion because the language specifying the eligibility

SPR14-08

Criminal Justice Realignment: Petition and Order for Dismissal (*revise forms CR-180 and CR-181*)

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

	Commentator	Position	Comment	Committee Response
			<p>5: “the defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime,” or in the case of #5, to delineate that the petitioner is not currently “under supervision under Penal Code section 1170(h)(5)(B).” Instead, I think it would be sufficient to add that language in at the end, just before the “under penalty of perjury” statement:</p> <p>“the defendant is not serving a sentence for any offense, nor on probation for any offense or under supervision under Penal Code section 1170(h)(5)(B), nor under charge of commission of any crime.”</p> <p>In this way, the petitioner is being alerted to the fact that he is attesting, under penalty of perjury, that he meets the threshold eligibility requirements.</p> <ul style="list-style-type: none"> • Third, I think that #5 is unnecessarily confusing. As above, I don't believe it is necessary to specify that the petitioner is not currently serving a sentence, etc., and so that language should be eliminated and placed later in the form. I propose the following (or similar) modifications to #5, to maximize clarity and accuracy: <p>Felony county jail sentence under PC section 1170(h)(5) (Pen. Code § 1203.41)</p>	<p>requirements for a dismissal differs in each of the three Penal Code sections (1203.4, 1203.4a, and 1203.41), and it is critical to set forth the specific requirements accurately on form CR-180.</p> <ul style="list-style-type: none"> • To reduce confusion and more clearly explain the bases for relief, the committee revised item 4 on form CR-180 by reversing the order of items 4a and 4b and bolding essential wording to highlight the difference between the two statutory requirements. <p>“a. <input type="checkbox"/> more than one year has elapsed since defendant completed the felony county jail sentence with a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); or</p>

SPR14-08

Criminal Justice Realignment: Petition and Order for Dismissal *(revise forms CR-180 and CR-181)*

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

	Commentator	Position	Comment	Committee Response
			<p>Please check one of the following:</p> <p>a. Received county jail sentence WITHOUT a period of supervision, and two years have passed since the date of completion of jail time:</p> <p>b. Received county jail sentence WITH a period of supervision, and one year has passed since the date of completion of supervision.</p> <ul style="list-style-type: none"> • Fourth, and last, I believe it would be useful to reinstate a portion of the previous CR181, which leaves room for the petitioner to provide not only their Date of Birth (which still exists on current form), but also their CII, Cal. Driver's License, and last four of their SS#. In my opinion, this only really matters with the CR181, as it makes the official Order from the court that much more useful given that it has very specific identifying information on it. <p>Thank you.</p>	<p>b. <input type="checkbox"/> more than two years have elapsed since defendant completed the felony county jail sentence without a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).”</p> <ul style="list-style-type: none"> • To protect personal information in a public record when that information is not needed for identifying the petitioner or the case, the committee declines the suggestion to reinstate requests for the petitioner’s personal information on form CR-181.