

## Invitation to Comment

Title	Criminal Procedure: Dismissals in the Interests of Justice (amend Penal Code section 1385).
Summary	Penal Code section 1385(a) generally authorizes courts to dismiss actions in the furtherance of justice and requires courts to set forth the reasons for the dismissal in an order entered upon the minutes. This proposal would amend section 1385(a) to instead require courts to set forth the reasons for dismissal on the record or, if requested by any party, in an order entered upon the minutes.
Source	Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair
Staff	Arturo Castro, Attorney, Office of the General Counsel, 415-865-7702, arturo.castro@jud.ca.gov

### Background

Penal Code section 1385 generally authorizes trial courts to dismiss criminal actions in the “furtherance of justice” and requires the reasons for a dismissal to be “set forth in an order entered upon the minutes.” (Pen. Code, § 1385(a).)

Section 1385 was enacted in 1872. Although the Legislature has amended section 1385 on several occasions, the provision requiring that the reasons for dismissal be “set forth in an order entered upon the minutes” has never been altered.

### Purpose

The requirement that the reasons for dismissal be entered upon the minutes serves two primary purposes. First, the requirement promotes judicial accountability by requiring trial courts to explain why such a “great power” was exercised. (*People v. Beasley* (1970) 5 Cal.App.3d 617, 637.) Second, the requirement facilitates appellate review of the reasons for dismissal. (*People v. Superior Court* (1996) 13 Cal.4th 497, 531.)

Notably, the Supreme Court recently held that, based on the language of the statute, the requirement is mandatory and failure to set forth the reasons for dismissal in writing in the minutes is not harmless error, even when the reasons for dismissal appear on the transcript of the oral proceedings. (*People v. Bonnetta* (2009) 46 Cal.4th 143.)

### The Proposal

The Criminal Law Advisory Committee proposes amending subdivision (a) of section 1385 to require trial courts to set forth the reasons for dismissal on the record or, if requested by any party, in an order entered upon the minutes. As explained below, the proposed amendments would satisfy the underlying purposes of the current requirement while relieving trial courts of an unnecessary mandate.

Requiring trial courts to set forth the reasons for a dismissal on the record would satisfy the goals of judicial accountability and effective appellate review because the reasons would be fully set forth in the court reporter's transcript of the proceeding, which is a public record that may be examined by both the public and appellate courts.

In addition, as noted above, the current requirement is mandatory in nature, even when the reasons for dismissal are separately set forth in the transcript of the proceedings. The mandatory nature of the current requirement occasionally results in automatic reversals, even where the spirit of the requirement is satisfied because the record contains the rationale for the dismissals. This results in additional proceedings that would be unnecessary if courts were instead only required to state the reasons for dismissal on the record.

Further, stating the reasons for dismissal on the record is preferable because, as a practical matter, the reasons are often manifold and not easily summarized. Also, the minutes are typically a clerk's interpretation of the proceedings and one step removed from what was stated by the court. Thus, stating the reasons for dismissal on the record is also preferable because the transcript is the preferred source for reporting the court's comments.

Even so, the proposed amendment would still require that the reasons for dismissal be entered in the minutes at the request of any party, which eliminates the need to produce a formal transcript when parties desire a written summary of the reasons for dismissal in the absence of an appeal.

**§ 1385. Dismissal on judge or magistrate's own motion or application of prosecuting attorney; statement of reasons; ground of demurrer; authority to strike prior conviction of serious felony for purposes of enhancement of sentence**

- 1 (a) The judge or magistrate may, either of his or her own motion or upon the application of the  
2 prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The  
3 reasons for the dismissal must be set forth on the record or, if requested by any party, in an  
4 order entered upon the minutes. No dismissal shall be made for any cause which would be  
5 ground of demurrer to the accusatory pleading.

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## Item LEG10-01 Response Form

**Title:** **Criminal Procedure: Dismissals in the Interests of Justice** (amend Penal Code section 1385)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the PolicyCoordination and Liaison Committee. All comments will become part of the public record of the council's action.*