

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR14-08

Title	Action Requested
Criminal Justice Realignment: Petition and Order for Dismissal	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CR-180 and CR-181	January 1, 2015
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 expands court authority to issue orders for dismissal in cases in which the defendant received a felony county jail sentence 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 and 1203.4a. These are two of the most heavily used optional criminal law forms and are frequently submitted by unrepresented petitioners.

Criminal justice realignment implemented sweeping changes to long-standing felony sentencing laws, including eliminating prison as a sentence option for certain eligible defendants and authorizing courts to impose a period of “mandatory supervision” upon a defendant’s release from county jail under newly added Penal Code section 1170(h)(5). The felony county jail sentence/mandatory supervision scheme became effective October 1, 2011. More recent legislation¹ added Penal Code section 1203.41 to authorize courts to permit a defendant who received a felony county jail sentence under Penal Code section 1170(h)(5) to withdraw his or her guilty or no contest plea and enter a plea of not guilty, and then dismiss the action. The plea may be withdrawn after the lapse of one year (for defendants sentenced to a term of mandatory

¹ [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 These proposals are circulated for comment purposes only.

supervision under Penal Code section 1170(h)(5)(B)) or two years (for defendants sentenced to a felony county jail sentence under Penal Code section 1170(h)(5)(A)) following completion of the sentence. The relief is available in the interests of justice and at the court's discretion, provided that the defendant is not under mandatory supervision or 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 conviction, 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:

- Add a reference to Penal Code section 1203.41 to the caption of both forms;
- Add item 5 to form CR-180 for petitioners to indicate the new option for requesting relief under Penal Code section 1203.41, with check boxes to specify the applicable basis for relief;
- Add three references to Penal Code section 1203.41 to the body of form CR-181 to incorporate the new basis for relief in the *Order for Dismissal*.

The proposal also includes several other minor, nonsubstantive revisions designed to improve the format and clarity of the forms' content.

Alternatives Considered

The committee alternatively considered postponing or declining to propose revisions to the *Petition for Dismissal* (CR-180) and *Order for Dismissal* (CR-181) in consideration of the additional burden that any form change places on the courts, particularly when there have been very recent revisions to these forms. The committee, however, decided to propose these revisions because they are required by recent legislation, will reduce confusion, and will facilitate court implementation of criminal justice realignment.

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 adding Penal Code section 1203.41?

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 4–5

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 yellow; 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: _____
PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41)	FOR COURT USE ONLY Date: _____ Time: _____ Department: _____

1. On (date): _____, the defendant in the above-entitled criminal action was convicted of a violation of the following (specify code(s) and section(s)):
2. The offense was a felony misdemeanor infraction.
 The offense listed above is a felony that may be reduced to a misdemeanor under Penal Code section 17(b).
3. **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 defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the defendant (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 by completing and attaching the optional Attached Declaration (form MC-031).)
4. **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 defendant 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 defendant (select 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 by completing and attaching the Attached Declaration (form MC-031).)
5. **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**
The defendant 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 (select one-)
 - a. **more than two years have elapsed since defendant completed the felony county jail sentence imposed under Penal Code section 1170(h)(5)(A); or**
 - b. **more than one year has elapsed since defendant completed the felony county jail sentence that included a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B);****The defendant 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 by completing and attaching the Attached Declaration (form MC-031).)**

Petitioner requests that defendant 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, **or** **1203.41** of the Penal Code.

Petitioner requests that the felony charge be reduced to a misdemeanor under Penal Code section 17(b).

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, DEFENDANT) (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;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT Not Approved by the Judicial Council</p>
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: _____

1. The court denies the petition.
2. The court grants the petition. The court finds from the records on file in this case, and from the foregoing petition, that the defendant is eligible for the relief requested.
3.
 - a. The court reduces the felony offense to a misdemeanor.
 - b. The court denies the request to reduce the felony offense to a misdemeanor.
4. It is ordered that the plea, verdict, or finding of guilt regarding the following convictions 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*):

5. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:
 - a. The defendant 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 a person from the requirement to register as a sex offender. (See, e.g., Penal Code section 290.5.)
 - c. The defendant 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.
6. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, or 1203.41, the defendant 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. 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 the 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 defendant 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 defendant 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).

Date: _____

(JUDICIAL OFFICER)

<i>FOR COURT USE ONLY</i>