

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR18-18

Title	Action Requested
Criminal Procedure: Judicial Council Forms for a Dismissal of a Conviction of a Violation of Penal Code Section 647f	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms CR-404 and CR-405	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Eve Hershcopf, 415-865-7961
Hon. Tricia A. Bigelow, Chair	Eve.Hershcopf@jud.ca.gov

Executive Summary and Origin

Senate Bill 239 (Weiner; Stats. 2017, ch. 537), effective January 1, 2018, invalidates convictions for violations of Penal Code section 647f (felony prostitution) and adds section 1170.22 to the Penal Code, which outlines a petition and application process for the dismissal of section 647f convictions. The Criminal Law Advisory Committee proposes two optional forms to be used for petitioners/applicants to request the court for relief under Penal Code section 1170.22. Penal Code section 1170.22(i) specifically instructs the Judicial Council to “promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.”

The Proposal

The proposal recommends approval of two optional forms requesting resentencing and dismissal.

Petition/application. Optional *Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-404) may be used by both persons currently serving eligible sentences and persons who have completed eligible sentences. The form allows the petitioner/applicant to:

- Identify an eligible conviction for a violation of Penal Code section 647f;
- Request the desired relief;
- Waive the statutory requirement under section 1170.22(a) that the matter be heard by the trial court that entered the judgment of conviction in the case; and
- Waive his or her appearance.

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 These proposals are circulated for comment purposes only.

Order. Optional *Order After Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-405) provides the court with the ability to:

- Grant the relief; or
- When applicable, resentence the petitioner/applicant.

Alternatives Considered

The committee considered making the forms mandatory but determined that optional forms would allow courts the flexibility of developing their own forms to fit their own unique needs, while still providing the convenience of a standard form for those courts that choose to use them. Courts will still be required to accept petitions/applications submitted on the proposed optional Judicial Council forms even if they develop their own forms, under rule 1.35(a) of the California Rules of Court.

The committee considered including language in the order to seal the conviction. The committee decided not to include the language because the relevant statutes are silent on whether the records of conviction are to be sealed.

Implementation Requirements, Costs, and Operational Impacts

It is anticipated that the volume of petitions/applications for relief under will be minimal and will not impose significant workload burdens on courts. Expected costs are limited to training, possible case management system updates, and the production of new forms.

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?

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 3 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-404 and CR-405, at pages 4–5

2. SB 239 (Stats. 2017, ch. 537),

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB239

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): _____	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council 2018-03-19
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	CASE NUMBER: _____
ORDER AFTER PETITION/APPLICATION FOR RESENTENCING AND DISMISSAL (Pen. Code, § 1170.22)	<i>FOR COURT USE ONLY</i> DATE: _____ TIME: _____ DEPT: _____

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

1. PETITION FOR RESENTENCING AND DISMISSAL

- a. The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court recalls the sentence imposed on the designated crime and enters the following additional orders:
 - (1) Refer to the court minute order from (date): _____

OR (Check all that apply)

 - (2) The following sentence is imposed for the commission of the crime: _____
 - (3) The petitioner is given credit for time served of (days): _____
 - (4) Petitioner is required to complete the period of supervision imposed as a condition of parole, postrelease community supervision, mandatory supervision, or probation.
- b. The court releases the petitioner from any form of supervision.
 - c. The court **DISMISSES** the conviction for violation of Penal Code section 647f as legally invalid.
 - d. Other: _____

2. APPLICATION FOR DISMISSAL OF A COMPLETED SENTENCE

- a. The applicant is eligible for the requested relief. The application is **GRANTED**. The court **DISMISSES** the conviction for a violation of Penal Code section 647f as legally invalid.
- b. The petitioner was also convicted of a violation of (other counts): _____ on (date): _____
 in the above-captioned case. The conviction for a violation of (other counts): _____
 on (date): _____ remains.
- c. Other: _____

IT IS SO ORDERED.

Date: _____

 JUDICIAL OFFICER