

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SP22-13

Title

Criminal Procedure: Request for Dismissal of Conviction for Violation of Penal Code Section 653.22

Proposed Rules, Forms, Standards, or Statutes

Approve forms CR-425 and CR-426

Proposed by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Action Requested

Review and submit comments by October 11, 2022

Proposed Effective Date

January 1, 2023

Contact

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Executive Summary and Origin

The Criminal Law Advisory Committee recommends two optional forms relating to resentencing, dismissal, and sealing of Penal Code section 653.22 convictions. Senate Bill 357 (Weiner; Stats. 2022, ch. 86), effective January 1, 2023, repeals Penal Code section 653.22 (loitering with the intent to commit prostitution) and adds Penal Code section 653.29, which outlines the process for resentencing, dismissal, and sealing of section 653.22 convictions. Penal Code section 653.29(f) 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 includes a request for relief and a court order granting or denying relief.

Background

Effective January 1, 2023, SB 357 repealed Penal Code section 653.22 and added Penal Code section 653.29, authorizing conviction relief for persons convicted of a violation of former Penal Code section 653.22.

Under section 653.29(a), a person currently serving a sentence for a conviction of violating former section 653.22 may petition for recall or dismissal of a sentence before the trial court that entered the judgment of conviction. The court must presume the petitioner qualifies for relief, unless the opposing party proves by clear and convincing evidence that the petitioner is ineligible. If the petitioner was convicted of violating former section 653.22, the court must grant the petition to recall or dismiss the sentence because it is legally invalid and shall seal the conviction.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Under section 653.29(b), a person who has completed a sentence for a conviction of violating former section 653.22 may file an application before the trial court that entered the judgment of conviction to have the conviction dismissed and sealed because it is legally invalid. The court must presume the applicant qualifies for relief, unless the opposing party proves by clear and convincing evidence that the applicant is ineligible. If the applicant was convicted of violating former section 653.22, the court must dismiss and seal the conviction as legally invalid. Unless requested by the applicant, no hearing is necessary to grant or deny an application by a person who has completed a sentence.

The Proposal

This proposal recommends approval of a form requesting resentencing and dismissal (form CR-425) and a court order granting or denying relief (form CR-426).

Petition/Application

Optional *Request for Resentencing and Dismissal (Pen. Code, § 653.29)* (form CR-425) may be used by persons currently serving a sentence or having completed a sentence. The forms are drafted in the first person so that they are easy to follow for self-represented petitioners and applicants. The form incorporates the statutory basis for relief under section 653.29 and allows the petitioner or applicant to:

- Identify an eligible conviction;
- Request the desired relief;
- Waive appearance at a hearing (for persons currently serving a sentence);
- Request a hearing (for persons who have completed a sentence); and
- Waive the statutory requirement under section 653.29(a)(1) and (b)(1) that the matter be heard by the sentencing judge.

Order

Optional *Order After Request for Resentencing and Dismissal (Pen. Code, § 653.29)* (form CR-426) provides the court with the ability to:

- Grant or deny the requested relief; and
- When applicable, to resentence the petitioner/applicant on remaining counts.

Alternatives Considered

The committee did not consider the alternative of taking no action, because the new law mandates that the council “promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.” (Pen. Code, § 653.29(f).)

Fiscal and Operational Impacts

Any impacts will arise from the new statutory provisions, rather than council action. It is anticipated that the volume of petitions/applications for relief under section 653.29 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 1 month 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-425 and CR-426, at pages 4–5
2. SB 357 (Stats. 2022, ch. 86),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB357

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (<i>name</i>): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT: _____	CASE NUMBER: _____
REQUEST FOR RESENTENCING AND DISMISSAL (Pen. Code, § 653.29)	FOR COURT USE ONLY DATE: _____ TIME: _____ DEPT: _____

1. CONVICTION INFORMATION

- a. My name is: _____
- b. I was convicted of a violation of Penal Code section 653.22 in this case.

2. REQUEST (*check one*)

- a. PETITION: I am currently serving a sentence in this case and request the court that entered the judgment of conviction in this case to recall or dismiss the sentence and seal the conviction.
 - (1) *Optional Waiver*: I understand there is a right to personally attend any hearing held in this matter. I give up that right so that the request may be heard without my presence.

OR

- b. APPLICATION: I have completed the sentence in this case and request the court that entered judgment of conviction in this case to dismiss and seal the conviction.
 - (1) I understand that the court can rule on the request without a hearing. I want do not want a hearing.

3. CONSENT TO HEARING BY ANY JUDGE

I waive the right to have this matter heard by the judge who sentenced me in this case.

Date: _____

 (TYPE OR PRINT NAME)

▶

 (SIGNATURE OF PETITIONER/APPLICANT OR ATTORNEY)

Proof of Service (form CR-106) may be used to provide proof of service of this petition.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: ATTORNEY FOR (name): _____	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
ORDER AFTER REQUEST FOR RESENTENCING AND DISMISSAL (Pen. Code, § 653.29)	<i>FOR COURT USE ONLY</i> DATE: TIME: DEPT:

Based on request 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 RECALL AND DISMISSAL

- a. The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court recalls the sentence for the convictions in this case and enters the following additional orders:
 - (1) Refer to the court minute order from (date):
 - OR (Check all that apply):**
 - (2) The court **DISMISSES** the conviction for a violation of Penal Code section 653.22 as legally invalid and orders the conviction sealed. The sentence for the remaining convictions is as follows:
 - (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 a violation of Penal Code section 653.22 as legally invalid and orders the conviction sealed.
- d. Other:
- e. The petition is **DENIED**. The petitioner is ineligible for the requested relief.

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 653.22 as legally invalid and orders the conviction sealed.
- 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:
- d. The application is **DENIED**. The applicant is ineligible for the requested relief.

IT IS SO ORDERED.

Date: _____

JUDICIAL OFFICER