

Invitation to Comment

Title	Criminal Law: Petition and Order for Dismissal (revise forms CR-180 and CR-181)
Summary	The proposed revisions to the <i>Petition for Dismissal</i> (form CR-180) and <i>Order for Dismissal</i> (form CR-181) add a basis for dismissal to the petition and an advisement to the order to indicate that dismissals under Penal Code section 1203.4 do not restore a defendant’s ability to hold public office.
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
Discussion	<p>A defendant who was granted probation may petition to dismiss the conviction under three circumstances: (1) after successful completion of probation, (2) after early discharge from probation, or (3) in the “interests of justice.” (Pen. Code, § 1203.4.)</p> <p>The current <i>Petition for Dismissal</i> (form CR-180) contains check boxes to petition for dismissal after successful completion of probation and early discharge from probation, but <i>not</i> in the “interests of justice.” The proposed revisions incorporate this additional statutory basis for dismissal to the petition and advise defendants that they must explain why granting a dismissal would be in the interests of justice by completing and attaching the <i>Attached Declaration</i> (form MC-031).</p> <p>Recent legislation, Assembly Bill 2092 (De La Torre; Stats. 2008, ch. 94), amended Penal Code section 1203.4 to clarify that a dismissal under that section does not permit a defendant prohibited from holding public office as a result of the underlying conviction to thereafter hold public office. (Pen. Code, § 1203.4(a).) The proposed revision of the <i>Order for Dismissal</i> (form CR-181) adds an advisement to indicate that dismissals under Penal Code section 1203.4 do not restore a defendant’s ability to hold public office.</p> <p>The proposed form revisions are attached on pages 2–3.</p>
	Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT:	
ORDER FOR DISMISSAL (Pen. Code, §§ 17, 1203.4, 1203.4a)	CASE NUMBER:
<p style="text-align: center;">DEFENDANT'S INFORMATION</p> CII: _____ DRIVER'S LIC #: _____ SSN # (LAST FOUR DIGITS ONLY): _____ DATE OF BIRTH: _____	

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. The court reduces the felony offense to a misdemeanor.
4. It is ordered that the plea, verdict, or finding of guilt 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.
5. If this order is granted under the provisions of Penal Code section 1203.4:
 - 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.
 - b. Dismissal of the conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
 - 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 or 1203.4a, the defendant is released from all penalties and disabilities resulting from the offense except as provided in Penal Code 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 12021 or 12021.1.
7. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17, 1203.4, or 1203.4a 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)

FOR COURT USE ONLY

Item SPR09-23 Response Form

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

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

Comments: _____

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

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

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

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.