

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR15-15

Title	Action Requested
Criminal Procedure: Petition and Order for Dismissal (Military Personnel)	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms CR-183 and CR-184	January 1, 2016
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 two new optional forms, a *Petition for Dismissal (Military Personnel)* (form CR-183) and an *Order for Dismissal (Military Personnel)* (form CR-184) in response to recent legislation that authorizes courts to order dismissal relief to certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military. The proposed forms would incorporate the new statutory basis for relief.

Background

Recent legislation¹ added Penal Code section 1170.9(h) to authorize a defendant to petition the court for dismissal relief if the defendant was, or currently is, a member of the United States military, acquired a criminal record due to a mental health disorder stemming from service in the military, was granted probation, and has substantially complied with the conditions of probation.

For the defendant to receive dismissal relief, section 1170.9(h) requires a trial court or a court monitoring the defendant's probation to find that the defendant:

1. Is a current or former member of the United States military who acquired a criminal record due to a mental health disorder stemming from service in the military, was granted probation and, at the time probation was granted, was suffering from sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems as a result of that service;

¹ [Assem. Bill 2371](#) (Butler); Stats. 2012, ch. 403.

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 These proposals are circulated for comment purposes only.

2. Is in substantial compliance with the conditions of probation;
3. Has successfully participated in court-ordered treatment and services to address the problems stemming from military service;
4. Does not represent a danger to the health and safety of others; and
5. Has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief would be in the interests of justice.

In determining whether granting restorative relief is in the interests of justice, the court may consider, among other factors, the defendant's completion and degree of participation in education, treatment, and rehabilitation; development of career potential; leadership and personal responsibility efforts; and contribution of service in support of the community.

If the court finds that the defendant satisfies each of the requirements noted above, section 1170.9(h) authorizes the court, by a written order setting forth the reasons for so doing, to:

1. Deem all conditions of probation, other than court-ordered victim restitution, to be satisfied, including fines, fees, assessments, and programs, and terminate probation prior to the expiration of the term of probation;
2. Reduce eligible felonies to misdemeanors pursuant to Penal Code section 17(b); and
3. Grant relief in accordance with section 1203.4.

Penal Code section 1170.9(h) dismissal distinguished from section 1203.4 dismissal

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, 1203.4a, and 1203.41. It is anticipated that dismissal procedures authorized by Penal Code section 1203.49 will soon be added to these forms. Although the eligibility requirements and available relief differ to some extent with each of the subdivisions noted above, they are sufficiently similar to be contained in a single *Petition* form and a single *Order* form. The same is not true for dismissals authorized by Penal Code section 1170.9(h).

A dismissal under Penal Code section 1170.9(h) differs from the dismissals provided by sections 1203.4, 1203.4a, 1203.41, and 1203.49 in two significant ways: the manifold, explicit criteria the defendant must meet in order to be eligible for section 1170.9(h) relief, and the somewhat more extensive relief provided to those eligible defendants. Under section 1170.9(h), the defendant is released from all penalties and disabilities resulting from the conviction, with certain exceptions:

- The court has discretion to order the sealing of police records of the arrest and court records of the dismissed action, which are thereafter viewable by the public only in accordance with a court order;
- The defendant is not obligated to disclose the arrest or the set-aside conviction when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, except in response to a direct question in a questionnaire or application for any law enforcement position; and
- The dismissal is a bar to any future action based on the conduct in the dismissed action, though the set-aside conviction may be pleaded and proved as a prior conviction in any subsequent prosecution or for administratively revoking or suspending the defendant's driving privilege.

However, if dismissal is granted under section 1170.9(h), the defendant's DNA sample remains in the DNA databank, and the defendant is not authorized to own, possess, or have a firearm in his or her custody or control.

The Proposal

The Criminal Law Advisory Committee proposes two new optional forms, a *Petition for Dismissal (Military Personnel)* (form CR-183) and an *Order for Dismissal (Military Personnel)* (form CR-184) to incorporate the new statutory basis for relief under Penal Code section 1170.9(h) by including:

- In the caption of both forms, a reference to Penal Code section 1170.9(h);
- In item 2 of the *Petition for Dismissal (Military Personnel)*, the mandatory eligibility criteria as delineated in section 1170.9(h)(1);
- In item 3 of the *Petition for Dismissal (Military Personnel)*, the criteria for the court to consider in determining whether granting restorative relief is in the interests of justice, as delineated in section 1170.9(h)(2);
- In item 4 of the *Petition for Dismissal (Military Personnel)*, the various types of relief the court may provide as delineated in section 1170.9(h)(3);
- In item 1 of the *Order for Dismissal (Military Personnel)*, an option for the court to deem all conditions of probation to be satisfied;
- In item 2 of the *Order for Dismissal (Military Personnel)*, an option for the court to terminate probation prior to the expiration of probation;

- In items 5 and 6 of the *Order for Dismissal (Military Personnel)*, a reference to section 1170.9(h) specifying that the court grants or denies dismissal of the *felony* convictions;
- In item 7 of the *Order for Dismissal (Military Personnel)*, an option for the court to seal the police records of the arrest and the court records of the dismissed action; and
- In item 8 of the *Order for Dismissal (Military Personnel)*, the various types of relief that are automatically provided to the petitioner when the order is granted under section 1170.9(h), including certain exceptions.

By providing forms that specifically detail the requirements for a dismissal under Penal Code section 1170.9(h), and the relief available, the proposed forms will facilitate court implementation of a new procedure with unique procedural requirements, promote access to justice for self-represented defendants with military histories, and facilitate the requirement that court orders be in writing and set forth the reasons for providing the relief granted.

Alternatives Considered

In consideration of the additional burden that any new forms or form changes place on the courts, the committee considered postponing or declining to propose new forms to implement the provisions of Penal Code section 1170.9(h), and alternatively considered implementing the provisions through revisions to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181). The committee determined, however, that it was appropriate to propose the creation of new forms to implement the provisions of Penal Code section 1170.9(h) because implementation is required by recent legislation. Given the significant differences in eligibility and relief between Penal Code section 1170.9(h) and dismissals under sections 1203.4, 1203.4a, 1203.41, and 1203.49, the committee determined that establishing a separate set of forms for conviction dismissals for military personnel will reduce confusion and assist courts in providing dismissal relief for eligible defendants who were, or are, members of the United States military.

Implementation Requirements, Costs, and Operational Impacts

Because the forms are optional, 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 new forms, *Petition for Dismissal (Military Personnel)* (form CR-183) and *Order for Dismissal (Military Personnel)* (CR-184), an effective way to address the legislation adding Penal Code section 1170.9(h)?

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 *Petition for Dismissal (Military Personnel)* (form CR-183) and *Order for Dismissal (Military Personnel)* (form CR-184), at pages 6–9
2. *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181), at pages 10–13
3. [Assem. Bill 2371](#) (Butler); Stats. 2012, ch. 403

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): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	
PETITION FOR DISMISSAL (Military Personnel) (Pen. Code, §§ 17(b), 1170.9(h))	CASE NUMBER: _____
INSTRUCTIONS Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1.	

1. **HEARING INFORMATION:** A hearing on this petition for dismissal has been scheduled as follows:

Date: _____	Time: _____	Department: _____
Location (if different than court address above): _____		

If an interpreter is needed, please specify language: _____

2. On (date): _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following:

Offense <i>(Specify each offense in the case noted above.)</i>	Code	Section	Type of offense: <i>(Felony; Misdemeanor; Infraction)</i>	Eligible for reduction to misdemeanor under Penal Code § 17(b) <i>(Yes or No)</i>

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form (form MC-025)*.

3. **Felony or misdemeanor with probation granted (Penal Code § 1170.9(h)):**

Petitioner was granted probation on the terms and conditions set forth in the docket of the above-entitled court. At the time probation was granted, the petitioner was a person described in Penal Code section 1170.9(a) (a member of the United States military suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her service) and the petitioner:

- is in substantial compliance with the conditions of that probation;
- has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from military service;
- does not represent a danger to the health or safety of others; and
- has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief would be in the interests of justice.

(Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents in support of one or more of the above statements.)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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4. The petitioner has (check all that apply):

- a. participated in education, treatment, and rehabilitation as ordered by the court (indicate the degree of participation and whether it was completed).
- b. progressed in formal education.
- c. developed career potential.
- d. demonstrated leadership and personal responsibility efforts.
- e. contributed service in support of the community.
- f. other factors.

(Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents in support of one or more of the statements checked above to explain why granting a dismissal would be in the interests of justice.)

5. The petitioner requests that the court order (check all that apply):

- a. deem all conditions of probation, other than victim restitution, to be satisfied, including fines, fees, assessment, and programs, and terminate probation prior to the expiration of the term of probation.
- b. reduce the eligible felony offenses listed above to misdemeanors under Penal Code section 17(b).
- c. permit the petitioner to withdraw the plea of guilty, or set aside the verdict or finding of guilt and enter a plea of not guilty, and the court dismiss this action and grant relief in accordance with Penal Code section 1170.9(h).

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, PETITIONER)

 (CITY) _____ (STATE) (ZIP CODE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (Name):	STATE BAR NO.:	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:		
ORDER FOR DISMISSAL (Military Personnel) (Pen. Code, §§ 17(b), 1170.9(h))		CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that granting restorative relief is in the interests of justice, and that the petitioner (*the defendant in the above-entitled criminal action*) is eligible for the following requested relief:

1. The court deems all conditions of probation, other than victim restitution, to be satisfied, including fines, fees, assessments, and programs.
2. The court terminates probation prior to the expiration of the term of probation, if the term of probation has not yet expired.
3. The court **GRANTS** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors:
 - ALL FELONY CONVICTIONS in the above-entitled action; or
 - Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):
4. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) for the following felony convictions:
 - ALL FELONY CONVICTIONS in the above-entitled action; or
 - Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):
5. The court **GRANTS** the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h), and it is ordered that the pleas, verdicts, or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed:
 - ALL FELONY CONVICTIONS in the above-entitled action; or
 - Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):
6. The court **DENIES** the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h):
 - ALL FELONY CONVICTIONS in the above-entitled action; or
 - Only the following felony convictions in the above-entitled action (*specify charges and date of conviction*):
7. The court ORDERS, or DOES NOT ORDER the sealing of police records of the arrest and court records of the dismissed action, thereafter viewable by the public only in accordance with a court order.

8. If this order is granted under the provisions of Penal Code section 1170.9(h):
- a. The petitioner is released from all penalties and disabilities resulting from the offense(s) of which he or she has been convicted in the dismissed action.
 - b. Dismissal of the conviction does not *automatically* relieve a person from the requirement to register as a sex offender under Penal Code section 290. (See, e.g., Pen. Code, § 290.5.)
 - c. The petitioner is not obligated to disclose the arrest on the dismissed action, or the conviction that was set aside when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, except when he or she is required to disclose the arrest, the conviction that was set aside, and the dismissed action in response to any direct question contained in any questionnaire or application for any law enforcement position.
 - d. The dismissal of the action shall be a bar to any future action based on the conduct charged in the dismissed action.
 - e. In any subsequent prosecution for any other offense, a conviction that was set aside in the dismissed action may be pleaded and proved as a prior conviction and shall have the same effect as if the dismissal had not been granted.
 - f. A conviction that was set aside in the dismissed action may be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the petitioner's driving privilege on the ground of two or more convictions.
 - g. The petitioner's DNA sample and profile in the DNA data bank shall not be removed by a dismissal.
 - h. Dismissal of an accusation, information, or conviction does not authorize a petitioner to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction pursuant to Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.
 - i. Dismissal of the conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b) or 1170.9(h) does *not* release petitioner 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 he or she 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).

FOR COURT USE ONLY

Date:

(JUDICIAL OFFICER)