



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title	Agenda Item Type
Criminal Procedure: Petition and Order for Dismissal (Military Personnel)	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve forms CR-183/MIL-183 and CR-184/MIL-184	January 1, 2016
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	October 14, 2015
	Contact
	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends two new optional forms, a *Petition for Dismissal (Military Personnel)* (form CR-183/MIL-183) and an *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184), to facilitate court implementation of recent legislation that authorizes courts to order dismissal relief for certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, approve:

1. *Petition for Dismissal (Military Personnel)* (form CR-183/MIL-183) for use by petitioners who acquired a criminal record due to a mental health disorder stemming from service in the United States military to request dismissal relief from courts; and
2. *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184) for use by courts to order dismissal relief for petitioners who acquired a criminal record due to a mental

health disorder stemming from service in the United States military and who meet the statutory requirements.

The proposed forms are attached at pages 5–8.

Previous Council Action

There has been no previous council action regarding these recommended forms.

Rationale for Recommendation

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.

In determining whether granting restorative relief under Penal Code section 1170.9 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. If the court finds that the defendant satisfies each of the requirements, Penal Code section 1170.9(h) authorizes the court to:

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

In addition, a defendant granted a dismissal under Penal Code section 1170.9(h) is released from all penalties and disabilities resulting from the conviction, with certain exceptions,² and:

- 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.

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

² 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.

Although there are currently other Judicial Council forms—*Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181)—to facilitate dismissal procedures under Penal Code sections 1203.4, 1203.4a, and 1203.41,³ the dismissal procedures authorized by section 1170.9(h) differ in two significant ways: the manifold eligibility criteria and the more extensive relief provided to eligible defendants.

By specifically detailing the requirements for a dismissal under Penal Code section 1170.9(h), and the relief available, the forms are designed to facilitate court implementation of a new procedure with unique procedural requirements, and promote access to justice for self-represented defendants with military histories.

Comments, Alternatives Considered, and Policy Implications

The attached forms circulated for public comment from April 17, 2015, to June 17, 2015. A total of nine comments were received; of those, four agreed with the proposal, and five agreed if modified. In addition, the Veterans Subcommittee of the Collaborative Justice Courts Advisory Committee reviewed the proposed dismissal forms. No opposition to the proposal was received. A chart with all comments received and the committee’s responses is attached at pages 9–16.

Notable comments

Notable comments and committee responses include:

- ***Dual titles.*** As circulated, the proposed forms were numbered “CR-183” and “CR-184.” Justice Eileen Moore of the Fourth Appellate District, Division Three, suggested that the forms be given dual numbers with a “MIL” prefix to clearly identify the forms as military-related forms as well as criminal forms. In response, the committee added a “MIL” prefix to the form numbers: “CR-183/MIL-183” and “CR-184/MIL-184.”
- ***Sealing records and notifying the Department of Justice.*** Justice Moore also suggested that form CR-184/MIL-184 include a check box for the court to order the sealing of the police and court records in the dismissed action, and another check box for the court to inform the Department of Justice that the court has ordered the records sealed. Under Penal Code section 1170.9(h)(4)(D), the court has discretion to order the sealing of police records of the arrest and court records of the dismissed action. In response to Justice Moore’s comment, the committee added subdivision (d) to item 5 on CR-183/MIL-183 to facilitate a request for the court to order sealing of the records, and added a check box to item 7 on form CR-184/MIL-184 to facilitate the court’s action in ordering the police and court records sealed. The committee also added item 8 to form CR-184/MIL-184 to provide a check box for the court to order that the Department of Justice be notified of the sealing order.

³ Please note that the committee is separately recommending revisions to existing council forms to incorporate similar dismissal procedures for victims of human trafficking under newly enacted Penal Code section 1203.49.

- **Ordering fees.** Another commentator suggested that form CR-184/MIL-184 include a check box for the court to order the amount of the “fees due for the order.” The committee, however, declined the suggestion because the statute does not expressly authorize the imposition of fees.

Alternatives considered

In consideration of the additional burden that any new forms 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). Alternatively, the committee considered implementing the provisions of Penal Code section 1170.9(h) through revisions to existing Judicial Council dismissal forms, *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181). The committee decided, however, to recommend two new optional forms to implement the provisions of Penal Code section 1170.9(h) because of the Legislature’s emphasis on providing dismissal relief for eligible defendants who were, or are, members of the United States military and, as noted above, because of the significant differences between Penal Code section 1170.9(h) dismissals and those granted under sections 1203.4, 1203.4a, and 1203.41. The committee determined that providing a separate set of forms that detail the requirements for Penal Code section 1170.9 dismissals will reduce confusion for petitioners and assist courts in providing appropriate dismissal relief to current or former military personnel.

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.

Attachments and Links

1. Judicial Council forms CR-183/MIL-183 and CR-184/MIL-184, at pages 5–8
2. Chart of comments, at pages 9–16

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: _____	CASE NUMBER: _____
PETITION FOR DISMISSAL (Military Personnel) (Pen. Code, §§ 17(b), 1170.9(h))	
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 offenses:

Code	Section	Type of offense: (Felony or Misdemeanor)	Eligible for reduction to misdemeanor under Penal Code § 17(b) (Yes or No)

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

3. **Felony or misdemeanor with probation granted (Pen. 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, posttraumatic 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, posttraumatic 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.

(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.

(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, assessments, 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 1203.4, as specified in Penal Code section 1170.9(h)(3)(C).
- d. seal police records of the arrest and court records of the dismissed action in accordance with Penal Code section 1170.9(h)(4)(D).

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: _____ 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: _____	
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 and ORDERS 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 (maximum punishment of 364 days per Pen. Code, § 18.5) 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 in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C), 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 section 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*):

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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- 7. The court ORDERS, in accordance with Penal Code section 1170.9(h)(4)(D), the sealing of police records of the arrest and court records of the dismissed action, hereafter viewable by the public only in accordance with a court order.

- 8. The court ORDERS that the Department of Justice be notified of the sealing order.

- 9. 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 Penal Code section 29800) of Division 9 of Title 4 of Part 6.

- 10. 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)

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Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
1.	Albert De La Isla Principal Analyst Superior Court of Orange County	AM	Need information as to whether these forms are subject to a similar administrative fee charged by the court on 1203.4 petitions. If so, we would request that the order from CR-184 have a section where the judge can enter the fees due for the order.	The committee declines the suggestion because Penal Code section 1203.49 does not expressly authorize the imposition of fees.
2.	East Bay Community Law Center Eliza Hersh, Director Clean Slate Practice	AM	<p><u>Suggested Amendments to CR-183</u></p> <p>1. <i>Suggestion:</i> On section 1, remove “Offense” Box. <i>Reason:</i> A petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the “Code” and “Section” boxes, which are too small.</p> <p>2. <i>Suggestion:</i> Should section 5(c) be amended to (suggested change is underlined): “. . . in accordance with Penal Code section <u>1203.4</u>”?</p> <p><u>Suggested Amendments to CR-184</u></p> <p>1. <i>Suggestion:</i> Amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined): "The court GRANTS the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony</p>	<ul style="list-style-type: none"> To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: <i>1. On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following <u>offenses</u>:</i> To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: “. . .in accordance with Penal Code section <u>1203.4, as specified in Penal Code section 1170.9(h)(3)(C).</u>” To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

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Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>convictions to misdemeanors <u>which carry a potential maximum of 364 days, as provided by Penal Code section 18.5.</u>”</p> <p><i>Reason for request:</i> Having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries.</p> <p>2. <i>Suggestion:</i> Should section 5 should be amended to read (suggested change is underlined): “The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h), <u>in accordance with § 1203.4</u>”?</p>	<ul style="list-style-type: none"> To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184/MIL-184 to read: “...in accordance with Penal Code section <u>1203.4, as specified in Penal Code section 1170.9(h)(3)(C).</u>”
3.	Azar Elihu Criminal Defense Attorney Los Angeles	A	(no comments were provided)	No response required.
4.	Legal Services for Prisoners with Children Dorsey Nunn, Executive Director	AM	<p><u>Suggested Amendments to CR-183</u></p> <p>Legal Services for Prisoners With Children (“LSPC”) writes to inform you to make the</p>	<ul style="list-style-type: none"> To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-

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Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>following suggestions on Petition For Dismissal (Military Personnel) (form CR-183), on section 1, remove “Offense” Box. The intent of these suggestions are for the following reasons, a petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the “Code” and “Section” boxes, which are too small.</p> <p>LSPC also suggest, section 5(c) be amended to (suggested change is underlined): “. . . in accordance with Penal Code section <u>1203.4</u>”.</p> <p><u>Suggested Amendments to CR-184</u></p> <p>LSPC also suggest to amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined): "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 <u>which carry a potential maximum of 364 days, as provided by Penal Code section 18.5.</u>"</p> <p>The intent of these suggestions are for the following reasons, having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of</p>	<p>183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read:</p> <p>2. <i>On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following <u>offenses</u>:</i></p> <ul style="list-style-type: none"> • To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: “. . .in accordance with Penal Code section <u>1203.4, as specified in Penal Code section 1170.9(h)(3)(C).</u>” • To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

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Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries.</p> <p>Another suggest Order for Dismissal (Military Personnel) (Form CR-184) section 5 should be amended to read (suggested change is underlined): “The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h), <u>in accordance with § 1203.4</u>”.</p>	<ul style="list-style-type: none"> To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184 to read: “...in accordance with Penal Code section <u>1203.4</u>, as specified in Penal Code section <u>1170.9(h)(3)(C)</u>.”
5.	<p>Hon. Eileen C. Moore Associate Justice of the Court of Appeal Fourth Appellate District, Division Three (Santa Ana)</p>	AM	<ol style="list-style-type: none"> Item 8 (i) on proposed from CR-184 does not have any stated statutory basis and there is nothing about public office in Penal Code § 1170.9. I suggest this subdivision be deleted. The title of the forms [CR-183; CR-184] is of concern to me. All of the other military forms have a title beginning with MIL. In other areas [AT-138/EJ-125 for example], forms have two titles. Because I fear people will not know to look at CR for military forms, I suggest the form be given dual titles: CR-183/MIL-XXX; CR-184-MIL-XXX. Because of the passage of Penal Code § 858, it is obvious to me the Legislature has concern that the veteran be personally told of his/her rights. I assume the Legislature thinks that criminal defense lawyers are not advising their veteran clients about their rights. Thus, I think finding 	<ul style="list-style-type: none"> Penal Code section 1170.9(h)(4) releases the defendant from all penalties and disabilities resulting from the offense except for those provided in that paragraph; a prohibition on holding public office is not one of the exceptions, and therefore the committee has deleted item 8(i) on form CR-184/MIL-184. The committee agrees with the suggestion that it would be helpful to include a prefix to clearly identify these optional Judicial Council forms as military-related forms as well as criminal forms, and has added a “MIL” form number: “CR-183/MIL-183” and “CR-184/MIL-184”.

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Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>forms that specifically relate to veterans should be made as easy as possible.</p> <p>3. Before I make my next suggestion, I want to give some background. The Collaborative Courts Advisory Committee has been trying to solve a problem concerning the restoration of rights granted to a defendant by the court under Penal Code § 1170.9. The problem is that the veteran who has had his/her rights restored states “no arrest/no conviction” on job application and it turns out the potential employer has information about the arrest/conviction already. We realized that one of the problems has been that the Dept. of Justice does not have a place on their forms for the clerks to check. We have tried to plug that hole and may have done so. We think the DOJ has added a place on their form, but I am not certain of that. Another hole which needs to be plugged is at the individual clerk level. That is, the clerk in the very same courthouse does not know the defendant’s file should be sealed. Now to my suggestion: It would seem to me that CR-184 is a perfect place to have the judge who restores the veteran defendant’s rights also order the DOJ be notified and that the clerk of the court seal the records.</p> <p>4. By far, this comment is the least of my concerns, but with regard to proposed form CR-183, at subdivision 4(b), it says “formal</p>	<ul style="list-style-type: none"> • The committee agrees with the suggestion. Under Penal Code section 1170.9(h)(4)(D) the court has discretion to order the sealing of police records of the arrest and court records of the dismissed action; the committee has added subdivision (d) to item 5 on CR-183/MIL-183 to facilitate a request for the court to order sealing of the records, and added check boxes as items 7 and 8 on form CR-184/MIL-184 for the court to order sealing and that the Department of Justice be notified of the sealing order. • The committee declines the suggestion. “Formal education” is the term included in Penal Code section 1170.9(h)(2)(B) and the

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Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>education.” I wonder why the court is only interested in “formal” education, as opposed to education in a trade. In fact, most of the veterans I see when I go to Veterans Court as a mentor are striving toward something like plumbing or electronics.</p>	<p>forms track the language of the statute on form CR-183/MIL-183, item 4b.</p>
6.	<p>Orange County Bar Association Ashleigh Aitken, President</p>	A	<p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Yes</p> <p><u>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)?</u></p> <p>Yes.</p>	<p>No response required.</p>
7.	<p>State Bar of California, Standing Committee on the Delivery of Legal Services Maria Livingston, Chair</p>	A	<p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Yes. The proposal would allow petitioners to obtain relief pursuant to Penal Code section 1170.9(h).</p> <p><u>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)?</u></p>	<p>No response required.</p>

SPR15-15**Criminal Procedure: Petition and Order for Dismissal (Military Personnel)** (Approve forms CR-183 and CR-184)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			Yes. The forms provide uniformity and clarity to the courts and to self-represented litigants requesting relief under the new Penal Code section.	
8.	Superior Court of Los Angeles County	A	(no comments were provided)	No response required.
9.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	(no comments were provided)	No response required.