



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—Human Trafficking Victims	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms CR-180 and CR-181	January 1, 2016
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	October 14, 2015
	Contact
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Executive Summary

In response to legislation that provides a new statutory basis for dismissals, the Criminal Law Advisory Committee recommends revising the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to add data fields to facilitate dismissals under Penal Code section 1203.49 for victims of human trafficking. The committee also recommends revising both forms to incorporate reductions of misdemeanors to infractions under Penal Code section 17(d)(2) and to improve the format, advisements, and instructions on both forms.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise the *Petition for Dismissal* (form CR-180) and the *Order for Dismissal* (form CR-181) to:

1. Add new item 4 to form CR-180, including a check box and related instructions, to facilitate requests for dismissal under Penal Code section 1203.49, and add a check box for Penal Code section 1203.49 to the request for relief.

2. Revise items 1 and 2 on form CR-181 to include reductions from a misdemeanor to an infraction under Penal Code section 17(d)(2) and to clarify whether the court's decision to grant or deny the requested relief is for all or only selected convictions in the case.
3. Add check boxes to items 3 and 4 on form CR-181 for courts to grant or deny dismissal relief under Penal Code section 1203.49 for all or some of the convictions.
4. Add new item 5 to form CR-181 to facilitate the ordering of relief when the court grants the petition under Penal Code section 1203.49 to indicate whether the court is ordering all or some of the relief described in Penal Code section 1203.4.
5. Delete the following phrase (former item 5(c) on form CR-181) to reduce confusion about alternative forms of relief: "The petitioner 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. Add new item 7 to form CR-181 to notify the Department of Justice, when relief is granted under Penal Code section 1203.49, that the petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.
7. Add a reference to Penal Code section 1203.49 to the advisement in item 8, and references to Penal Code sections 17(d)(2) and 1203.49 to the advisements in item 9 on form CR-181.
8. Revise the format, advisements, and instructions by (a) adding a reference to Penal Code section 1203.49 and 17(d)(2) to the caption of both forms; (b) removing the box for specifying the titles of the offenses for which the petitioner is seeking dismissal in item 1 on form CR-180, and adding the word "offenses" to the introductory sentence; and (c) adding a box to item 1 on form CR-180 for specifying whether each offense is "[e]ligible for reduction to infraction under Penal Code section 17(d)(2) (Yes or No)."

The proposed revised forms are attached at pages 5–8.

Previous Council Action

Revisions to both forms were previously approved by the Judicial Council on October 28, 2014, with an effective date of January 1, 2015, in response to criminal justice realignment legislation that provided a new statutory basis for dismissals. The revisions added data fields to facilitate dismissals under Penal Code section 1203.41 for cases in which the defendant received a felony county jail sentence under Penal Code section 1170(h)(5), assist the court in specifying the granting or denial of a dismissal request for each conviction in a case, and confirm which convictions, if any, to reduce from felonies to misdemeanors under Penal Code section 17(b).

Rationale for Recommendation

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are optional forms used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, and 1203.41. In 2014, legislation added Penal Code section 1203.49 to authorize a defendant who has been convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), and who has completed a term of probation for that conviction, to petition the court for dismissal relief.¹ If the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the legislation authorizes the court to issue an order that (1) finds that the petitioner was a victim of human trafficking when he or she committed the crime, (2) orders any of the relief described in Penal Code section 1203.4, and (3) notifies the Department of Justice that the petitioner was a victim of human trafficking and of the relief ordered.

Because the framework for relief under Penal Code section 1203.49 is similar to dismissals under Penal Code sections 1203.4, 1203.4a, and 1203.41,² the committee recommends adding the new statutory basis for relief to the existing petition and order for dismissal forms.

Comments, Alternatives Considered, and Policy Implications

The attached forms circulated for public comment from April 17, 2015, to June 17, 2015. A total of 13 comments were received; of those, 5 agreed with the proposal, 5 agreed if modified, and 3 offered suggested modifications without indicating an overall position on the proposal. No commentators opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 9–26.

Notable comments

Notable comments and committee responses include:

- ***Misdemeanor reductions under Penal Code section 17(d)(2)***. The Superior Court of Los Angeles County noted that some petitioners request to have their misdemeanor convictions reduced to infractions under Penal Code section 17(d)(2), and that forms CR-180 and CR-181 currently do not provide for this option. In response, the committee added references and check boxes to both forms to facilitate determinations to grant or deny reductions to an infraction under Penal Code section 17(d)(2).
- ***Reference to maximum sentence for misdemeanors***. Six commentators noted that Penal Code section 18.5, effective January 1, 2015,³ provides that “[e]very offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to

¹ [Assem. Bill 1585 \[Alejo\]; Stats. 2014, ch. 708.](#)

² Please note that the committee is separately recommending adoption of a new set of optional forms (CR-183/MIL-183 and CR-184/MIL-184) to facilitate requests for dismissal relief under Penal Code section 1170.9, which is available to certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.

³ [Sen. Bill 1310 \[Lara\]; Stats. 2014, ch. 174.](#)

or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days.” The commentators requested that form CR-181 be revised to include language noting the maximum sentence for misdemeanors as set forth in Penal Code section 18.5 because this information can be significant for immigration and other purposes. In response, the committee revised item 1 on form CR-181 to include the requested language.

- **Reference to certificate of rehabilitation.** One commentator suggested deleting item 5(c) on existing form CR-181: “The petitioner 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.” In *People v. Moreno* (2014) 231 Cal.App.4th 934, the court held that that if a petitioner’s crimes are reduced to misdemeanors and dismissed, the petitioner no longer qualifies for a certificate of rehabilitation. In light of this recent ruling, the committee deleted the advisement to reduce confusion about the application of other forms of relief following reductions.

Alternatives considered

One commentator requested that the *Petition for Dismissal* (form CR-180) provide examples of documentation for establishing a presumption that the petitioner is a victim of human trafficking and that his or her crime is a result of that status. The commentator noted that providing this information to petitioners would increase court efficiency and reduce the likelihood of retraumatizing the victim, given the sensitive nature of these crimes. Although the committee declined to add the suggested examples to form CR-180, the committee is separately developing an informational form to accompany the dismissal forms that would explain the requirements for each basis for dismissal and provide instructions for completing the forms. As part of that effort, the committee will consider providing the suggested examples.

The committee also considered postponing or declining to recommend any form revisions in light of the severe economic circumstances faced by courts. The committee, however, decided to recommend the revisions to facilitate court implementation of the recent legislation. The committee believes the revisions would not impose any significant change in court practices; rather, the recommended revisions are designed to improve conviction reduction and dismissal procedures by enhancing the information on these optional forms.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and implementation requirements are limited to training and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Judicial Council forms CR-180 and CR-181, at pages 5–8
2. Chart of comments, at pages 9–26

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 <div style="border: 2px solid black; padding: 5px; display: inline-block; background-color: yellow;"> DRAFT Not Approved by the Judicial Council </div>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	CASE NUMBER: _____
PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)	FOR COURT USE ONLY Date: _____ Time: _____ Department: _____

1. 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; Misdemeanor; Infraction)	Eligible for reduction to misdemeanor under Penal Code § 17(b) (Yes or No)	Eligible for reduction to infraction under Penal Code § 17(d)(2) (Yes or No)

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

2. **Felony or misdemeanor with probation granted (Pen. Code, § 1203.4)**

Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (check all that apply):

- a. has fulfilled the conditions of probation for the entire period thereof;
- b. has been discharged from probation prior to the termination of the period thereof;
- c. should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

3. **Misdemeanor or infraction with sentence other than probation (Pen. Code, § 1203.4a)**

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner (check one):

- a. has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; **or**
- b. should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

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4. **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**
 The petitioner has completed a term of probation for a conviction under Penal Code section 647(b).
 The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. *(Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)*

5. **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**
 The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, and should be granted relief in the interests of justice, and *(check one)*:

a. more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or**

b. more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

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

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

Petitioner requests that he/she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section:

1203.4, 1203.4a, 1203.41, or **1203.49** of the Penal Code.

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 <div style="background-color: yellow; padding: 10px; border: 1px solid black; display: inline-block;"> DRAFT Not Approved by the Judicial Council </div>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	CASE NUMBER: _____
ORDER FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)	

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

1. 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/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces the following convictions:
 - ALL FELONY CONVICTIONS in the above-entitled action;
 - ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
 - Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for:
 - ALL FELONY CONVICTIONS in the above-entitled action;
 - ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
 - Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code § 1203.4, or § 1203.4a, or § 1203.41, or § 1203.49, 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 for:
 - ALL CONVICTIONS in the above-entitled action; or
 - Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

4. The court **DENIES** the petition for dismissal regarding the following convictions under Penal Code § 1203.4, or § 1203.4a, or § 1203.41, or § 1203.49 for:
 - ALL CONVICTIONS in the above-entitled action; or
 - Only the following convictions in the above-entitled action (*specify charges and date of conviction*):

5. In granting this order under the provisions of Penal Code section 1203.49:
 - a. The court finds that the petitioner was a victim of human trafficking when he or she committed the crime.
 - b. The court orders the relief described in section 1203.4; or
 The court orders the relief described in section 1203.4, with the following exceptions (*specify*):

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- 6. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:
 - a. The petitioner 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 Commission.
 - b. Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)

7. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and the relief ordered.

8. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. 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 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a 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), 17(d)(2), 1203.4, 1203.4a, 1203.41, or 1203.49 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 petitioner 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)

SPR15-14**Criminal Procedure: Petition and Order for Dismissal** (Revise forms CR-180 and CR-181)

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

	Commentator	Position	Comment	Proposed Advisory Committee Response
1.	Alameda County Public Defender Raha Jorjani, Immigration Defense Attorney	A	I would urge that CR-181 be amended to state that ‘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 which carry a potential maximum of 364 days, as provided by Penal Code s. 18.5.	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 1 on form CR-181.
2.	Coalition to Abolish Slavery & Trafficking (CAST) Kay Buck, Executive Director	NI	I am writing to submit the Coalition to Abolish Slavery and Trafficking’s (CAST) comments to revise forms CR-180 and CR-181. Founded in 1998 in Los Angeles, California, CAST was one of the first organizations in the United States to provide comprehensive social and legal services for survivors of human trafficking. Additionally, CAST opened the first shelter in the country exclusively dedicated to providing physically and psychologically safe housing for survivors. CAST serves male, female, and child victims of trafficking. CAST clients come from almost every region of the world including Asia, Latin America, Eastern Europe, Africa and the United States. To date, CAST has provided services to over 1000 survivors and their family members, as well as thousands of hours of technical consultation to organizations working on this issue across the country and internationally. Our experience providing legal and social services to survivors daily gives us critical information about the real-life experiences of trafficking victims and how the proposed amendments to the forms impact them.	

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>First, we would like to commend the Judicial Council for taking prompt action in response to Assembly Bill 1585 (Alejo) which provided for a separate standard for certain victims of human trafficking to: (1) petition the court for dismissal or relief of a conviction for prostitution or solicitation charges; (2) notify the Department of Justice that the petitioner was a victim of human trafficking and the relief ordered; and (3) prohibit the Department of Justice from disseminating the petitioner’s record of conviction when information is being used for employment or licensing.</p> <p>Although we were happy to see the updates provided to the forms by the Criminal Law Advisory Committee, CAST suggests that additional information/guidance be provided in the updates to the forms and additional training be in place to ensure the best implementation of the bill. These suggestions will also ensure that victims of human trafficking who already have likely suffered years of trauma and abuse are not re-traumatized by the court process when seeking relief.</p> <p>Establishing Burden of Clear and Convincing Evidence That the Crime is A Result of Human Trafficking</p> <p>CAST requests that the method for establishing that a petitioner is a victim of human trafficking be further clarified. The updated form currently indicates that:</p>	<ul style="list-style-type: none"> • Although the committee declines to add the suggested examples to form CR-180, the committee is separately developing an informational form to accompany the dismissal forms that would explain the requirements for each basis for dismissal and provide instructions for completing the forms. As part of that effort, the committee will

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Criminal Procedure: Petition and Order for Dismissal (Revise forms CR-180 and CR-181)

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>“The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. (Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)”</p> <p>CAST suggests the following changes to this language tracked in red:</p> <p>“The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. (Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking. <i>Documents that can be used to establish a presumption that the petitioner is a victim of human trafficking and that his or her crime is a result of the human trafficking include: 1) the petitioner was designated a material witness and/or provided testimony to federal or state law enforcement officials under a federal and/or state law for human trafficking, or (2) the federal or state government certifies that the petitioner is a human trafficking survivor, or (3) state or federal law enforcement certifies that the</i></p>	<p>consider providing the suggested examples.</p>

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p><i>petitioner is a human trafficking survivor, or (4) a victim services or social service agency certifies that the petitioner has received services as a human trafficking survivor due to exploitation during the relevant time period, or (5) a licensed therapist or medical doctor submits a declaration stating that the petitioner is a survivor of human trafficking during the relevant time period, or (6) the victim submits an affidavit detailing the elements of the crime for which dismissal is sought and the elements of the human trafficking experienced that were related to such crime during the relevant time period. No oral testimony from a victim is required to establish he or she was a victim of human trafficking.</i></p> <p>This additional language provides further guidance to both the court and to the petitioner on the type of documentation a survivor of human trafficking can use to prove they were a victim of this type of abuse. Given the sensitive nature of this crime, ensuring that the court can approve a petition based on outside supporting statements or documents is important and will lead to both court efficiency and also reduce the trauma of asking a trafficking victim to relive his or her trafficking experience. It is also important to further clarify that since many victims of trafficking may not have any other proof of their victimization because of the nature of the abuse and the length of time that may have elapsed since their victimization, that their own written statement is sufficient. It is</p>	

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			<p>important to clarify that this type of statement and no oral examination is necessary as victims may be hesitant to use this process if they felt like they might have to re-live their experience in court.¹</p> <p><i>(footnote 1: If the council does not want to include the more descriptive language provide above it could also include the language adopted by the Uniform Act on Human Trafficking which indicates in regard to expungement provisions that: “No official determination or documentation is required to grant a motion... but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual’s participation was a direct result of being a victim.” Available at: http://uniformlaws.org/Act.aspx?title=Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking)</i></p> <p>Training For Court Personnel and Judges</p> <p>Assembly Bill 1585 (Alejo) requires Judges and Court Personnel to understand the complex legal definition and dynamics of human trafficking to grant a motion to dismiss a conviction under this new provision. Given that the crime of human trafficking enumerated in CA penal code 236.1, human trafficking, is currently underutilized in criminal prosecutions</p>	<ul style="list-style-type: none"> The committee agrees about the importance of human trafficking issues and has referred the suggestion to the Center for Judicial Education and Research.

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			<p>or civil proceedings despite being passed into law in California in 2005, CAST strongly urges the Judicial Council to prioritize training for the Courts on the crime of human trafficking as well as the new petition for relief available under AB 1585. At a minimum Courts should be provided a copy of: A Guide to Human Trafficking for State Courts, By John A Martin, Center for Public Policy Studies, available at: http://www.htcourts.org/guide-chapter1.htm.</p> <p>If the cost or need for training creates any barrier to updating or implementing the forms in a timely manner, CAST would prefer to see the forms updated rather than delayed for training purposes. Human trafficking victims cannot wait to have their records cleared, as they have often lived under this burden for years.</p> <p>Updating Forms Will Save Court Time and Money</p> <p>On April 28, 2015, CAST filed its own motion under new provisions. CAST is waiting for a determination. CAST believes updating forms will save courts time and streamline the process. Court review of CR-180 and CR-181 with either of the above mentioned certification letters or affidavits is less time intensive than review of a motion and subsequent motion hearing.</p> <p>Timing</p> <p>CAST applauds the Judicial Council of</p>	<ul style="list-style-type: none"> • No response required. • No response required.

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			<p>California’s timeline for updating its forms in two months time. CAST will begin to use these forms promptly with its clients who are waiting for relief once the forms are updated. We believe it will create a far more streamed-lined process for relief. Since the updates to these forms are eminent we also commit to beginning to educate our own partners and legal networks on this new measure of protection for trafficking victims in California.</p> <p>Conclusion</p> <p>Thank you for considering these comments when updating the relevant forms and materials with regard to SB 1585. CAST and the survivors we serve greatly appreciate this effort by the California Judicial Counsel to amend these critical forms.</p>	
3.	Albert De La Isla Principal Analyst Superior Court of Orange County	AM	<p>Request the inclusion of the fee amount ordered by the judge as part of the CR-181 form changes.</p> <p>This would allow the bench officer to make an order of the fees as part of the actual order, not just the minutes.</p>	The committee declines the suggestion because Penal Code section 1203.49 does not expressly authorize the imposition of fees.
4.	East Bay Community Law Center Eliza Hersh, Director Clean Slate Practice	NI	<p><u>Suggested Amendments to CR-180</u></p> <ol style="list-style-type: none"> <i>Suggestion:</i> Remove all references to section 1203.49 relief from the proposed CR 180 & CR 181 and create separate a separate petition and order for section 1203.49 relief that includes confidentiality provisions similar to those on the CR 150 	<ul style="list-style-type: none"> The committee declines the suggestion to create separate forms because the revisions to current forms CR-180 and CR-181 adequately incorporate the relief provided by Penal Code section 1203.49. The committee also declines to add provisions to facilitate the sealing of

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>form (Certificate of Identity Theft: Judicial Finding of Factual Innocence, Penal Code § 530.6). Ideally, the 1203.49 forms would include the relief for Penal Code sections 1203.45 and 1203.47, along with section 1203.49, as they all provide for somewhat related relief and present the same confidentiality challenges.</p> <p><i>Reason:</i> Section 1203.49 requires a petitioner to establish that s/he was the victim of human trafficking. Petitioners or their counsel are required to file documents in support of their petition that are likely to include: police reports that are not properly redacted and may contain information about juvenile suspects or victims; documents and sworn declarations that contain sensitive information about the petitioner’s experiences of sexual trauma or other victimization; reports from medical or mental health experts subject to HIPAA; and/or documents containing information about other people who were involved in the petitioner’s trafficking, either as victims or perpetrators. Attached as exhibits to a filed petition, these documents will become part of publicly accessible court records, which could compromise the petitioner’s safety, and/or unnecessarily disclose confidential or sensitive information, and/or lead to the violation of laws regarding disclosure of confidential or protected information or reports.</p>	<p>records because the statute does not expressly authorize such an order, and separate provisions of law govern record sealing (see, e.g., California Rules of Court, Rules 2.550 and 2.551).</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 1 on form CR-180 to remove the box for specifying the name of

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>2. <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><u>Suggested Amendments to CR-181</u></p> <p>1. <i>Suggestion:</i> Amend section 1 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><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</p>	<p>the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read:</p> <p>1. <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"> • See related response to Commentator #1, above.

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			<p>maximum potential sentence that an offense carries.</p> <p>2. <i>Suggestion:</i> Remove references to Penal Code section 1203.49 for the reasons stated above.</p> <p>3. <i>Suggestion:</i> Remove section 6(c): “The petitioner 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.”</p> <p><i>Reason:</i> This advisement is most helpful only if it includes additional info, probably too much include on the this order (i.e., the new limitations under <i>People v. Moreno</i>, 231 Cal. App. 4th 934, the limitations of Penal Code section 290.5, etc.).</p> <p>4. <i>Suggestion:</i> Add a subsection to Number 6 that includes the following advisement: “The petitioner may also be eligible to obtain a reclassification of a felony to a misdemeanor pursuant to Penal Code section 1170.18” and/or add a box between the current numbers 2 and 3 that reads: “Court reclassifies this felony to a misdemeanor under Penal Code section 1170.18.”</p> <p><i>Reason:</i> These additions alert petitioners about the Prop 47 relief, which is particularly important for pro se petitioners.</p>	<ul style="list-style-type: none"> • See response to “Suggested Amendments to CR-180,” number 1, above. • In <i>People v. Moreno</i> (2014) 231 Cal.App.4th 934, the court held that that if a petitioner’s crimes are reduced to misdemeanors and dismissed, the petitioner no longer qualifies for a certificate of rehabilitation. In light of this recent ruling, the committee agrees to delete the advisement to reduce confusion about application of other forms of relief following reductions. • The committee declines to revise forms CR-180 and CR-181 to address Penal Code section 1170.18 relief due to its time-limited nature.

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			In some jurisdictions, judges are currently writing in by hand this relief on the CR 181 orders.	
5.	Azar Elihu Criminal Defense Attorney Los Angeles	AM	<p>Victims of human trafficking who are convicted of solicitation or prostitution should get their case dismissed for all purposes under PC 1385 instead of 1203.4/1203.49 which are referred to expungement.</p> <p>1203.4 dismissals result in some disabilities and economic obstacles that victims of human trafficking and sex crimes don't deserve to endure.</p> <p>If those victims prove they were forced to commit those crimes, they should get complete relief under PC 1385 that completely eradicate their convictions.</p> <p>Please see my April 23, 2015 Daily Journal article on this subject: Conviction Dismissed or Expunged</p>	The committee declines the suggestion as Penal Code section 1385 relief is beyond the scope of the proposed revisions to incorporate dismissal relief under Penal Code section 1203.49.
6.	Lawyers' Committee for Civil Rights Rose Cahn, Director, Immigrant Post-Conviction Relief Project	AM	<p>Please include a notation that all felonies reduced to misdemeanors carry a maximum possible punishment of 364 days pursuant to Penal Code s. 18.5 (E.g., "The misdemeanor carries a maximum potential sentence pursuant to Pen. C. 18.5."). This minor change, which accurately states the law, has tremendous potential benefits to immigrants.</p> <p>As of January 1, 2015, all one-year misdemeanor convictions will carry a potential sentence of 364 days, down one day from the</p>	See related response to Commentator #1, above.

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			<p>prior maximum of 365. See Cal. Pen. C. § 18.5. The legislature specifically enacted the new 364-day maximum to eliminate certain grounds of deportability and open up potential pathways for immigration relief.</p> <p>People who have already completed their sentences and who are now seeking reductions of felonies to misdemeanors can take advantage of the new misdemeanor maximum by specifying that the newly reduced misdemeanor is punishable under 18.5. As advocates in the field of criminal and immigration law, we are encouraging every one seeking reductions to secure orders specifying the new maximum. Ensuring that CR-180 and CR-181 state the max on the face of the order would help every defendant.</p> <p>The majority of immigrants are unassisted by counsel in removal proceedings. To avoid sentence-based grounds of removability, immigrants need criminal court documents that clearly delineate the potential maximum sentence a conviction carries.</p>	
7.	<p>Legal Services for Prisoners with Children Dorsey Nunn, Executive Director</p>	NI	<p><u>Suggested Amendments to CR-180</u></p> <p>Legal Services for Prisoners With Children (“LSPC”) writes to inform you to make the following suggestions for Petition for Dismissal (form CR-180) and Order for Dismissal (form CR-181). First, remove all references to section 1203.49 relief from the proposed CR 180 & CR 181 and create separate a separate petition and</p>	<ul style="list-style-type: none"> • See related response to Commentator #4, above.

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			<p>order for section 1203.49 relief that includes confidentiality provisions similar to those on the CR 150 form (Certificate of Identity Theft: Judicial Finding of Factual Innocence, Penal Code § 530.6). Ideally, the 1203.49 forms would include the relief for Penal Code sections 1203.45 and 1203.47, along with section 1203.49, as they all provide for somewhat related relief and present the same confidentiality challenges.</p> <p>The intent of these suggestions are for the following reasons, Section 1203.49 requires a petitioner to establish that s/he was the victim of human trafficking. Petitioners or their counsel are required to file documents in support of their petition that are likely to include: police reports that are not properly redacted and may contain information about juvenile suspects or victims; documents and sworn declarations that contain sensitive information about the petitioner’s experiences of sexual trauma or other victimization; reports from medical or mental health experts subject to HIPAA; and/or documents containing information about other people who were involved in the petitioner’s trafficking, either as victims or perpetrators. Attached as exhibits to a filed petition, these documents will become part of publicly accessible court records, which could compromise the petitioner’s safety, and/or unnecessarily disclose confidential or sensitive information, and/or lead to the violation of laws regarding disclosure of confidential or protected</p>	<ul style="list-style-type: none"> • See related response to Commentator #4, above.

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			<p>information or reports.</p> <p>Another suggestion to form CR-180, is on section 1, remove “Offense” Box. 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><u>Suggested Amendments to CR-181</u></p> <p>LSPC suggest amending section 1 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 <u>364-day maximum sentence</u> 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</p>	<ul style="list-style-type: none"> • See related response to Commentator #4, above. • See related response to Commentator #1, above.

SPR15-14**Criminal Procedure: Petition and Order for Dismissal** (Revise forms CR-180 and CR-181)

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			<p>potential sentence that an offense carries.</p> <p>Another suggestion would be to remove references to Penal Code section 1203.49 for the reasons stated above. Also, add a subsection to Number 6 that includes the following advisement: “The petitioner may also be eligible to obtain a reclassification of a felony to a misdemeanor pursuant to Penal Code section 1170.18” and/or add a box between the current numbers 2 and 3 that reads: “Court reclassifies this felony to a misdemeanor under Penal Code section 1170.18.”</p> <p>The intent of these suggestions are for the following reasons, these additions alert petitioners about the Prop 47 relief, which is particularly important for pro se petitioners. In some jurisdictions, judges are currently writing in by hand this relief on the CR 181 orders.</p>	<ul style="list-style-type: none"> • See related response to Commentator #4, above.
8.	Michael K. Mehr, Esq. Santa Cruz	AM	<p>CR-181 (page 6) should be amended to state: “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 which carry a potential maximum of 364 days, as provided by Penal Code 18.5.”</p> <p>The intent of P.C. 18.5 was to avoid adverse immigration consequences based on a 365 day sentence rather than a 364 day sentence or less. If this amendment to the form is added, this will further the legislative intent. At the very least, in the absence of case law about retroactivity of</p>	See related response to Commentator #1, above.

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			<p>this section, a judge should be able to make a decision as to whether it is appropriate. There already is case law under In re Estrada that P.C. 18.5 should be applied to crimes committed before the effective date of 1/1/15 when P.C. 18.5 took effect. The fact that the convictions may be final is not a bar to benefiting from the one-day sentence reduction contained in Penal Code 18.5. Statutory penalty reductions may apply retroactively to final convictions. See In re Chavez, 114 Cal.App.4th 989, 1000 (2004) (“There is nothing in Estrada that prohibits the application of revised sentencing provisions to persons whose sentences have become final if that is what the Legislature intended or what the Constitution requires.”); People v. California Community Release Board, 96 Cal.App.3d 792, 799 (1979); Way v. Superior Court, 74 Cal.App.3d 165, 168 –69 (1977).</p> <p>Here, the State Legislature’s intent was to eliminate the grounds of removability faced by immigrants sentenced to 365-day misdemeanors. Sen. Rules Com., Off. Of Sen. Floor Analyses, Bill No. SB1310, p.3.; Sen Com. On Public Safety Analysis, SB 1310, p. 5. “This small change will ensure, consistent with federal law and intent, legal residents are not deported from the state and torn away from their families for minor crimes.” Assem. Com. on Public Safety, Analysis on SB 1310, p. 2.</p> <p>The San Francisco Superior Court has this as part of their Prop 47 reclassification form.</p>	

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9.	Orange County Bar Association Ashleigh Aitken, President	A	<i>Does the proposal appropriately address the stated purpose? Yes</i> <i>Are the proposed revisions an effective way to address the legislation that added Penal Code section 1203.49? Yes.</i>	No response required.
10.	Santa Clara County Public Defender's Office Elizabeth Chance, Deputy Public Defender	AM	I agree if amended to state that "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 which carry a potential maximum of 364 days, as provided by Penal Code s. 18.5" This will make it clear to the immigration court and immigration officials that where a potential sentence of a year or more is relevant, the non-citizen is not convicted of a crime with a potential sentence of a year or more. This will have the additional benefit of giving pro se immigrants in immigration proceedings clear records without the need of counsel to argue what the maximum potential sentence is. This is important in immigration contexts where there is no right to appointed counsel.	See related response to Commentator #1, above.
11.	State Bar of California, Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	A	<u>Does the proposal appropriately address the stated purpose?</u> Yes. The proposal would allow petitioners to have their records expunged and sealed if they were victims of sexual/human trafficking. The form is one of the most heavily used by self-	No response required.

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			<p>represented litigants, so it would be beneficial to have it available for those individuals.</p> <p><u>Are the proposed revisions an effective way to address legislation that added Penal Code section 1203.49?</u></p> <p>Yes.</p>	
12.	Superior Court of Los Angeles County	A	<p>There are occasions when a reduction from a misdemeanor to an infraction occurs pursuant to Penal Code Section 17(d)(2). Although rare, it might be useful to include that type of reduction as an alternative on these forms rather than creating a new set of forms for this classification of cases.</p>	<p>To enhance the efficiency and usefulness of the forms, the committee agrees to revise form CR-180 to include an option for petitioners to request reduction of eligible misdemeanors to infractions under Penal Code section 17(d)(2), and to include checkboxes on form CR-181 for the court to grant or deny the requested reduction.</p>
13.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	(no comments were provided)	No response required.