



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-190

For business meeting on: December 2, 2022

Title

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

Agenda Item Type

Action Required

Effective Date

January 1, 2023

Rules, Forms, Standards, or Statutes Affected

Approve forms CR-425 and CR-426

Date of Report

October 31, 2022

Recommended by

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

Contact

Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends two new optional forms relating to resentencing, dismissal, and sealing of Penal Code section 653.22 convictions. Senate Bill 357 (Stats. 2022, ch. 86), effective January 1, 2023, repeals Penal Code section 653.22 (loitering with the intent to commit prostitution) and adds Penal Code section 653.29, which outlines the process for resentencing, dismissal, and sealing of section 653.22 convictions. Penal Code section 653.29(f) specifically instructs the Judicial Council to “promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.” The proposal includes forms for a request for relief and a court order granting or denying relief.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2023, approve:

1. *Request for Resentencing and Dismissal (Pen. Code, § 653.29)* (form CR-425), for use by individuals who were convicted for violations of Penal Code section 653.22, are requesting relief, and are currently serving a sentence or have completed a sentence. The petitioner may

request or waive a hearing and may waive the statutory requirement under section 653.29(a)(1) and (b)(1) that the matter be heard by the sentencing judge.

2. *Order After Request for Resentencing and Dismissal (Pen. Code, § 653.29)* (form CR-426), for use by courts to grant or deny a petition requesting relief and to resentence the petitioner on remaining counts.

The proposed forms are attached at pages 5–6.

Relevant Previous Council Action

The council has taken no previous action regarding conviction relief under Senate Bill 357. It has approved similar forms for resentencing, dismissal, and sealing of convictions of former Penal Code section 647f (felony prostitution), and the forms recommended here are similar to those.

Analysis/Rationale

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

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

Under section 653.29(b), a person who has completed a sentence for a conviction of violating former section 653.22 may file an application before the trial court that entered the judgment of conviction to have the conviction dismissed and sealed because it is legally invalid. The court must presume the applicant qualifies for relief, unless the opposing party proves by clear and convincing evidence that the applicant is ineligible due to not having a qualifying conviction under former section 653.22. If the applicant was convicted of violating former section 653.22, the court must dismiss and seal the conviction as legally invalid. Unless requested by the applicant, no hearing is necessary to grant or deny an application by a person who has completed a sentence.

Penal Code section 653.29(f) specifically instructs the Judicial Council to “promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.” The proposal includes a request for relief and a court order granting or denying relief.

Policy implications

This proposal complies with the legislative mandate, and at the same time furthers the council’s policy of ensuring access to justice for all litigants.

Comments

The proposal circulated for public comment from September 21 to October 11, 2022,¹ and received two comments from the Superior Court of Orange County (agree if modified) and the Superior Court of San Diego (agree).

The Superior Court of Orange County made several suggestions to improve the format of the petition (form CR-425). The committee discussed the suggestions and incorporated the court's suggestion to modify the formatting of the forms that were circulated for comment for more consistency with other traditionally-formatted Judicial Council forms by replacing "I" with "petitioner" so that the petition may be used by either a self-represented petitioner or counsel, and simplifying the proposed form by taking out the titles in items 1 and 3 ("Conviction Information" and "Consent to Hearing By Any Judge"). The committee declined the court's suggestion to allow an incarcerated petitioner to include a housing location so that the court could arrange for transport to a hearing, as the committee anticipates that the vast majority of petitioners will be out of custody, and self-represented petitioners who are incarcerated may provide their contact information at the top portion of the petition.

The Orange court also suggested improving the order form (form CR-426) by separating the sections for granting or denying relief, which the committee incorporated. The committee declined the court's suggestion to include items regarding custody status in the order, as the committee does not anticipate many petitions filed by persons in-custody. Additionally, custody-related matters may be documented in the minute order. The committee also declined to include whether the matter was heard at a hearing or without a hearing, or whether the prosecution opposed granting of the petition. The committee thought that hearing-related information could be included in the minute order, and that the prosecution's position was not necessary to include in the order.

A chart with all comments received and the committee's responses is attached at pages 6–10.

Alternatives considered

The committee did not consider the alternative of taking no action, determining that it is important for the forms to conform to the legislative change.

Fiscal and Operational Impacts

As 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. Forms CR-425 and CR-426, at pages 5–6

¹ The shorter than normal circulation was to ensure that the new forms could be in effect by the time the new law becomes operative on January 1.

2. Chart of comments, at pages 7–11

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

1. Petitioner (*the defendant in the above-titled criminal action*) was convicted of a violation of Penal Code section 653.22 in this case.
2. **REQUEST** (*check one*):
 - a. **Petition for Recall and Dismissal:** Petitioner is currently serving a sentence in this case and requests the court that entered the judgment of conviction in this case to recall or dismiss the sentence and seal the conviction.
 - (1) Petitioner understands there is a right to personally attend any hearing held in this matter.
 - (2) *Optional Waiver:* Petitioner gives up that right so that the request may be heard without the petitioner's presence.
 - OR**
 - b. **Application for Dismissal of Completed Sentence:** Petitioner has completed the sentence in this case and requests the court that entered judgment of conviction in this case to dismiss and seal the conviction.
 - (1) Petitioner understands that the court can rule on the request without a hearing.
 - (2) Petitioner wants does not want a hearing.
3. Petitioner waives the right to have this matter heard by the judge who sentenced petitioner in this case.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER/APPLICANT OR ATTORNEY)

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

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

Based on request filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

1. PETITION FOR RECALL AND DISMISSAL

a. **Relief Granted**

(1) The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court recalls the sentence for the convictions in this case and enters the following additional orders:

(a) Refer to the court minute order from (*date*):

OR (*Check all that apply*):

(b) The court **DISMISSES** the conviction for a violation of Penal Code section 653.22 as legally invalid and orders the conviction sealed. The sentence for the remaining convictions is as follows:

(c) Petitioner is required to complete the period of supervision imposed as a condition of parole, postrelease community supervision, mandatory supervision, or probation.

(2) The court releases the petitioner from any form of supervision.

(3) The court **DISMISSES** the conviction for a violation of Penal Code section 653.22 as legally invalid and orders the conviction sealed.

(4) Other:

b. **Relief Denied**. The petitioner is ineligible for the requested relief.

2. APPLICATION FOR DISMISSAL OF A COMPLETED SENTENCE

a. **Relief Granted**

(1) The applicant is eligible for the requested relief. The application is **GRANTED**. The court **DISMISSES** the conviction for a violation of Penal Code section 653.22 as legally invalid and orders the conviction sealed.

(2) The petitioner was also convicted of a violation of (*other counts*): _____ on (*date*): _____ in the above captioned case. The conviction for a violation of (*other counts*): _____ on (*date*): _____ remains.

(3) Other:

b. **Relief Denied**. The applicant is ineligible for the requested relief.

IT IS SO ORDERED.

Date: _____ JUDICIAL OFFICER _____

SP22-13

Request for Dismissal of Conviction for Violation of Penal Code Section 653.22 (Approve Forms CR-425, CR-426)

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

	Commenter	Position	Comment	Committee Response
1.	Superior Court of Orange County By Iyana Doherty, Courtroom Operations Supervisor	AM	<p>CR-425 Overall, the size of the boxes and formatting of the form is not consistent with other judicial council forms. When there is a box, the text related to it should be indented with the label. For example, Consent to Hearing by Any Judge section looks odd as currently formatted</p> <p>Add this to the start of the form – “I am the Defendant/Petitioner; Attorney for Defendant/Petitioner in the above-entitled action” or something similar.</p> <p>Add housing location for the defendant if they are not waiving their presence and want to appear for the hearing. Court will need to know where to transport them from.</p>	<p>The committee agrees with the suggestion and has incorporated it, with modifications, into the form that it is recommending for approval. To make the form more consistent with other Judicial Council forms, the committee will take out the titles for items 1 and 3 (“Conviction Information” and “Consent to Hearing By Any Judge”), split current item #2(a)(1) into two separate items (explaining the right to be personally present and an option to waive the right to be personally present), and split current item #2(b)(1) into two items (explaining that the court can rule on the request without a hearing and an option to request/waive hearing).</p> <p>For consistency with similar Judicial Council forms, the committee will replace “I” with “petitioner” so that the petition may be used by either a self-represented petitioner or an attorney. The committee will also add a note in item 1 of the petition that the petitioner is the defendant in the above-titled criminal action, similar to other record cleaning forms.</p> <p>The committee discussed the suggestion but did not think including a separate housing location was necessary because it does not anticipate many petitions filed by persons in-custody. Self-represented petitioners who are in custody can include their contact information in the top part of the petition.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP22-13

Request for Dismissal of Conviction for Violation of Penal Code Section 653.22 (Approve Forms CR-425, CR-426)

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

	Commenter	Position	Comment	Committee Response
			<p>Modify section 2b(1), doesn't read correctly. Suggested modification (as shown below) as there is a lot of room on the form.</p> <p>The court can rule on my request without a hearing. I request a hearing on my request.</p> <p>Also, if they request a hearing, they may be in custody for another matter so custody information may be needed on those Applications as well.</p> <p>CR-426</p> <p>For the overall flow of the form, there should be a section clearly marked for Granting the Application / Petition and a separate section for denying the application / petition. Currently the denial and granting are bullets under each section.</p> <p>There should be check box to state the defendant is released from custody as an option</p> <p>In addition to stating credits for time served, there should be a box to return them to custody to serve the remaining sentence as to other counts.</p>	<p>The committee discussed the suggestion but believes the current format is sufficient.</p> <p>The committee declines this suggestion for the reason stated above.</p> <p>The committee agrees with the suggestion and has incorporated it into the form that it is recommending for approval.</p> <p>The committee discussed the suggestion but does not anticipate that many petitioners will be in custody, and for those that are, a release from custody may be documented in the minute order, which is included as an option for reference in the order form.</p> <p>The committee declines this suggestion for the reason stated above. The committee also decided to delete the credit for time served option from the order for this reason as well.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP22-13

Request for Dismissal of Conviction for Violation of Penal Code Section 653.22 (Approve Forms CR-425, CR-426)

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

	Commenter	Position	Comment	Committee Response
			<p>Suggest adding a checkbox to state whether it was heard in open court or through chambers work without a hearing</p> <p>Suggest adding prosecutor’s position (oppose / agree) as to the petitioners eligibility</p> <p>Request for Specific Comments <i>Does the proposal appropriately address the stated purpose? With the suggested changes added, yes.</i></p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p><i>Would the proposal provide cost savings? If so, please quantify. No.</i></p> <p><i>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? As this is part of legislation for this year, meetings with stakeholders will take place in the next few months to determine the workflow for these petitions / applications. This form will be used</i></p>	<p>The committee discussed the suggestion but did not think it was necessary to include in the order, since it will be noted in the minute order.</p> <p>The committee discussed the suggestion but did not think it was necessary to include in the order, especially since the only basis for opposition is that the petitioner did not have a conviction under Penal Code section 653.22.</p> <p>The committee appreciates the comments.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP22-13

Request for Dismissal of Conviction for Violation of Penal Code Section 653.22 (Approve Forms CR-425, CR-426)

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

	Commenter	Position	Comment	Committee Response
			<p>as the basis for those discussions and a local form may be created.</p> <p><i>Would 1 month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> We will implement a form by January 1st as required by the legislation, so timeline for implementation should be January 1st.</p> <p><i>How well would this proposal work in courts of different sizes?</i> No difference anticipated for different sized courts.</p>	
2.	Superior Court of San Diego County By Mike Roddy, Executive Officer	AM	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> No.</p> <p><i>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? Revisions to internal procedures, local packets, and training for staff.</i></p> <p><i>Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes, provided the final versions of the forms are provided to the court at that time. This will</p>	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SP22-13**Request for Dismissal of Conviction for Violation of Penal Code Section 653.22 (Approve Forms CR-425, CR-426)**

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

	Commenter	Position	Comment	Committee Response
			ensure the court is able to train staff, modify local packets, and obtain printed stock. <i>How well would this proposal work in courts of difference sizes? It appears that the proposal would work for courts of all sizes.</i>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated