



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

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**Title**

Criminal Procedure: Dismissal of Penal Code  
Section 647f Convictions

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2019

**Rules, Forms, Standards, or Statutes Affected**

Approve forms CR-404 and CR-405

**Date of Report**

August 6, 2018

**Recommended by**

Criminal Law Advisory Committee  
Hon. Tricia Ann Bigelow, Chair

**Contact**

Eve Hershcopf, 415-865-7961  
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### Executive Summary

The Criminal Law Advisory Committee recommends approving two new optional forms in response to recent legislation that invalidates convictions for violations of Penal Code section 647f (felony prostitution) and outlines a petition and application process for the dismissal of section 647f convictions. The proposed forms incorporate the new statutory basis for resentencing and dismissal relief.

### Recommendation

The Criminal Law Advisory committee recommends that the council, effective January 1, 2019, approve the following optional forms:

1. *Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-404), which may be used by persons currently serving or having completed eligible sentences, incorporates the new statutory basis for relief under section 1170.22 and allows the petitioner/applicant to:
  - Identify an eligible conviction for a violation of Penal Code section 647f;
  - Request the desired relief;

- Waive the statutory requirement under section 1170.22(a) that the matter be heard by the trial court that entered the judgment of conviction in the case; and
  - Waive his or her appearance; and
2. *Order After Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-405), which provides the court with the ability to:
- Grant the requested relief; or
  - When applicable, resentence the petitioner/applicant.

The new forms are attached at pages 4–5.

### **Relevant Previous Council Action**

None.

### **Analysis/Rationale**

Senate Bill 239 (Weiner; Stats. 2017, ch. 537), effective January 1, 2018, invalidates convictions for violations of Penal Code section 647f (felony prostitution) and adds section 1170.22 to the Penal Code, which outlines a petition and application process for the dismissal of section 647f convictions. Penal Code section 1170.22(b) specifically states that, “[i]f the court’s records show that the petitioner was convicted for a violation of Section 647f as it read on December 31, 2017, the court shall vacate the conviction and resentence the person for any remaining counts.” The Criminal Law Advisory Committee recommends two optional forms to be used for petitioners/applicants to request the relief under Penal Code section 1170.22. The statute, in subdivision (i), 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.”

### **Comments**

The proposal circulated for comment from April 9 to June 8, 2018. A total of three comments were received. The Superior Court of San Diego County and the Orange County Bar Association both agreed with the proposal. Mr. De la Isla, a principal analyst with the Superior Court of Orange County, did not indicate his position but provided numerous suggestions in response to the invitation to comment’s Request for Specific Comments, including the following two suggestions:

1. After noting that some Judicial Council forms are written in “plain English” and in a consistent format but that the proposed forms were not, he suggested converting the proposed forms to the easier-to-read format. The committee declined the suggestion to convert proposed forms CR-404 and CR-405 into “plain English” forms at this time but will retain the suggestion for consideration at a later date when the committee plans to review a number of Judicial Council criminal forms for possible conversion into “plain English.”
2. After noting that the *Order* (form CR-405), as drafted, did not clearly provide the court with an option to deny the petition, although the court could make a notation in item 1(d) or 2(c),

“Other,” he suggested providing the court with a checkbox option to clearly denote when the court denies the petition on the basis that the petitioner is ineligible for the requested relief. The committee agreed and included these revisions to proposed form CR-405 as items 1(e) and 2(d).

### **Alternatives considered**

The committee considered making the forms mandatory but determined that optional forms would allow courts the flexibility of developing their own forms to fit their unique needs, while still providing the convenience of standard forms for those courts that choose to use them.

Under rule 1.35(a) of the California Rules of Court, courts will be required to accept petitions/applications submitted on the proposed optional Judicial Council form even if they develop their own petition and order forms.

The committee considered including an item in the *Order* for the court to order the conviction sealed. The committee did not include a sealing provision because the relevant statutes are silent on whether the records of conviction are to be sealed.

### **Fiscal and Operational Impacts**

Expected costs include 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. Revised forms CR-404 and CR-405, at pages 4–5
2. Chart of comments, at pages 6–7
3. Link A: Senate Bill 239,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB239](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB239)

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): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b> <b>2018-02-27</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	
<b>PETITION/APPLICATION FOR RESENTENCING AND DISMISSAL</b> <b>(Pen. Code, § 1170.22)</b>	CASE NUMBER: _____
	<b>FOR COURT USE ONLY</b> DATE: _____ TIME: _____ DEPT: _____

**1. CONVICTION INFORMATION**

☐ Petitioner/applicant was convicted of a violation of Penal Code section 647f in the above-captioned case.

**2. REQUEST**

☐ PETITION: Petitioner is currently serving a sentence in the above-captioned case and now requests the court to recall, resentence, or dismiss and vacate the conviction.

**OR**

☐ APPLICATION: Applicant has completed his or her sentence in the above-captioned case and now requests the court to dismiss and vacate the conviction as invalid under Penal Code sections 1170.21 and 1170.22(e).

**3. CONSENT TO HEARING BY ANY JUDGE (optional)**

☐ Petitioner/applicant waives the right to have this matter heard by the original sentencing judge. Petitioner/applicant consents to having the presiding judge of the court designate any judge to rule on this matter.

**4. WAIVER OF APPEARANCE (optional)**

☐ Petitioner/applicant understands there is a right to personally attend any hearing held in this matter. Petitioner/applicant gives up that right; the matter may be heard without his or her appearance.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

 \_\_\_\_\_  
(SIGNATURE OF PETITIONER/APPLICANT)

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): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b> <b>2018-03-19</b>
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT: _____	CASE NUMBER: _____
<b>ORDER AFTER PETITION/APPLICATION FOR RESENTENCING AND DISMISSAL (Pen. Code, § 1170.22)</b>	<b>FOR COURT USE ONLY</b> DATE: _____ TIME: _____ DEPT: _____

From the petition/application 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 RESENTENCING AND DISMISSAL**

- a. ☐ The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court recalls the sentence imposed for the designated crime and enters the following additional orders:
- (1) ☐ Refer to the court minute order from (date): \_\_\_\_\_
- OR (check all that apply)**
- (2) ☐ The following sentence is imposed for the commission of the crime:
- (3) ☐ The petitioner is given credit for time served of \_\_\_\_\_ days.
- (4) ☐ Petitioner is required to complete the period of supervision imposed as a condition of parole, postrelease community supervision, mandatory supervision, or probation.
- b. ☐ The court releases the petitioner from any form of supervision.
- c. ☐ The court **DISMISSES** the conviction for violation of Penal Code section 647f as legally invalid.
- d. ☐ Other: \_\_\_\_\_
- e. ☐ The petition is **DENIED**. The petitioner is ineligible for the requested relief.

**2. APPLICATION FOR DISMISSAL OF A COMPLETED SENTENCE**

- a. ☐ The applicant is eligible for the requested relief. The application is **GRANTED**. The court **DISMISSES** the conviction for a violation of Penal Code section 647f as legally invalid.
- b. ☐ 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.
- c. ☐ Other: \_\_\_\_\_
- d. ☐ The application is **DENIED**. The applicant is ineligible for the requested relief.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

## SPR18-18

### Criminal Procedure: Judicial Council Forms for Dismissal of a Conviction of a Violation of Penal Code Section 647f

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

	Commentator	Position	Comment	Committee Response
1.	De la Isla, Albert Principal Analyst IMPACT Team—Criminal Operations Superior Court of California, County of Orange	N/I	<p>Does the proposal appropriately address the stated purpose? <b>Yes.</b></p> <p>Would the proposal provide cost savings? If so please quantify. <b>It is not anticipated that it will provide cost savings to the Orange County Superior Court due to the extremely low number of filings for PC 647f.</b></p> <p>What would the implementation requirements be for the 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. <b>Due to the extremely low number of filings for PC 647f, the Orange County Superior Court will process this petition / application (if received) on an ad hoc basis, and will not pursue changes in processes or systems due to the minimal expected volume.</b></p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Yes.</b></p> <p>How well would this proposal work in courts of different sizes? <b>I believe it will work well with courts of different sizes. The volume is expected to be minimal, and the form and order are easy to understand.</b></p>	<ul style="list-style-type: none"> <li>• No response required.</li> <li>• No response required.</li> <li>• No response required.</li> <li>• No response required.</li> <li>• No response required.</li> </ul>

## SPR18-18

### Criminal Procedure: Judicial Council Forms for Dismissal of a Conviction of a Violation of Penal Code Section 647f

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

	Commentator	Position	Comment	Committee Response
			<p>Some forms are written in plain English and in a consistent format (similar to Civil forms) and this one is not. Suggest converting to that easy to read form for the petition and order.</p> <p>Also, on the order, there is not specific place to deny it, the only reason we would do so is if the conviction was not for 647f, or is it anticipated it would be entered in the Other section of the form?</p>	<ul style="list-style-type: none"><li>• The committee declines the suggestion to convert proposed forms CR-404 and CR-405 into “plain English” forms at this time, but will retain the suggestion for consideration at a later date when the committee plans to review a number of Judicial Council criminal forms for possible conversion into “plain English.”</li><li>• The committee accepts the suggestion and has revised proposed form CR-405 accordingly.</li></ul>
2.	Orange County Bar Association By: Nikki P. Miliband President	A		No response required.
3.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.