



Judicial Council of California

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January 19, 2024

Subject Text

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File #: 17-137, **Version:** 1

Title

Criminal Procedure: Motion and Order to Vacate Conviction or Sentence (Action Required)

Summary

The Criminal Law Advisory Committee recommends two new optional forms to assist selfrepresented individuals and the courts in implementing recent legislation that permits criminally convicted individuals no longer in custody to file a motion to vacate a conviction or sentence and withdraw the plea of guilty or nolo contendere. The legislation provides for motions based on prejudicial errors related to immigration consequences or newly discovered evidence of actual innocence. The forms also provide for a motion under an existing statute that offers similar relief for a comparable judicial error related to immigration consequences.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018, approve:

1. *Motion to Vacate Conviction or Sentence* (proposed form MC-245) for use by individuals who have been criminally convicted and are no longer in custody to file a motion to vacate a conviction or sentence and withdraw the plea of guilty or nolo contendere based on (1) prejudicial error related to immigration consequences, or (2) newly discovered evidence of actual innocence; and
2. *Order on Motion to Vacate Conviction or Sentence* (proposed form MC-246), for use by courts to grant or deny the motion to vacate the conviction or sentence of individuals who have been criminally convicted and allege prejudicial error related to immigration consequences or newly discovered evidence of actual innocence.