

Request for Dismissal (Criminal Record Expungement)



**LEGAL AID
FOUNDATION
OF LOS ANGELES**

Forms

Self-Help Legal Access Centers

Santa Monica	Inglewood	Torrance	Long Beach
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Jan. 2021

This guide is designed to help you fill out the forms yourself. It is not intended to provide legal advice nor strategy as to how to complete the case. The information provided in this packet only presents options and examples. This is not a substitute for professional legal advice from an attorney.

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
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, 1203.42, 1203.43, 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 or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense (felony, misdemeanor, or 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 stated 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 may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

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. 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 may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

4. **Misdemeanor conviction under Penal Code section 647(b) (*Pen. Code, § 1203.49*)**

Petitioner has completed a term of probation for a conviction under Penal Code section 647(b) and 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 provide evidence that the conviction was the result of your status as a victim of human trafficking. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

5. **Felony county jail sentence under Penal Code section 1170(h)(5) (*Pen. Code, § 1203.41*)**

Petitioner is not under supervision under Penal Code section 1170(h)(5)(B); 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 may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

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6. **Felony prison sentence that would have been eligible for a felony county jail sentence after 2011 under Penal Code section 1170(h)(5) (Pen. Code, § 1203.42)**

Petitioner is not under supervision and is not serving a sentence for, on probation for, or charged with the commission of any offense; more than two years have elapsed since petitioner completed the felony prison sentence; and petitioner should be granted relief in the interests of justice.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

7. **Deferred entry of judgment (Pen. Code, § 1203.43)**

Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under former Penal Code section 1000.3 on (date): _____ . Furthermore (check one),

- a. court records are available showing the case resolution; **or**
- b. petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner (check one)
 - (1) has
 - (2) has not

attached a copy of his or her state summary criminal history information.

- 8. 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).
- 9. Petitioner requests that he or 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 the Penal Code section(s) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ _____
(SIGNATURE OF PETITIONER OR ATTORNEY)

(ADDRESS OF PETITIONER)
(CITY)
(STATE)
(ZIP CODE)

NAME OF VICTIM ON WHOSE BEHALF RESTITUTION IS ORDERED:	<i>FOR COURT USE ONLY</i>
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA vs.	
DEFENDANT:	
DEFENDANT'S STATEMENT OF ASSETS	CASE NUMBER:

It is a misdemeanor to make any willful misstatement of material fact in completing this form. (Pen. Code, § 1202.4(f)(4).)

(Attach additional sheets if the space provided below for any item is not sufficient.)

PERSONAL INFORMATION

- | | |
|---|--|
| 1. a. Name:
b. AKA:
c. Date of birth:
d. Social security number:
e. Marital status: | f. Driver license number:
State of issuance:
g. Home address <i>(incl. city/zip)</i> :
h. Home telephone no.:
i. Employer's telephone no.: |
|---|--|

EMPLOYMENT

2. What are your sources of income and occupation? *(Provide job title and name of division or office in which you work.)*

3. a. Name and address of your business or employer *(include address of your payroll or human resources department, if different)*:

 b. If not employed, names and addresses of all sources of income *(specify)*:

4. How often are you paid (for example, daily, weekly, biweekly, monthly)? *(specify)*:
5. What is your gross pay each pay period? \$
6. What is your take-home pay each pay period? \$
7. If your spouse earns any income, give the name of your spouse, the name and address of the business or employer, job title, and division or office *(specify)*:

8. Other sources of income *(specify)*:

CASH, BANK DEPOSITS

9. How much money do you have in cash? \$
10. How much other money do you have in banks, savings and loans, credit unions, and other financial institutions either in your own name or jointly *(list)*:

	<u>Name and address of financial institution</u>	<u>Account number</u>	<u>Individual or joint?</u>	<u>Balance</u>
a.				\$
b.				\$
c.				\$

PROPERTY

11. List all automobiles, other vehicles, and boats owned in your name or jointly.

	<u>Make and year</u>	<u>Value</u>	<u>Legal owner if different from registered owner</u>	<u>Amount owed</u>
a.		\$		\$
b.		\$		\$
c.		\$		\$

(Continued on reverse)

12. List all real estate owned in your name or jointly:

	<u>Address of real estate</u>	<u>Fair market value</u>	<u>Amount owed</u>
a.		\$	\$
b.		\$	\$

OTHER PERSONAL PROPERTY (Do not list household furniture and furnishings, appliances, or clothing.)

13. List anything of value not listed above owned in your name or jointly *(continue on attached sheet if necessary)*

	<u>Description</u>	<u>Value</u>	<u>Address where property is located</u>
a.		\$	
b.		\$	
c.		\$	

ASSETS

14. List all other assets, including stocks, bonds, mutual funds, and other securities *(specify)*:

15. Is anyone holding assets for you? Yes No If yes, describe the assets and give the name and address of the person or entity holding each asset *(specify)*:

16. Except for attorney fees in this matter and ordinary and routine household expenses, have you disposed of or transferred any assets since your arrest on this matter? Yes No

If yes, give the name and address of each person or entity who received any asset and describe each asset *(specify)*:

DEBTS

17. Loans *(give details)*:

18. Taxes *(give details)*:

19. Support arrearages *(attach copies of orders and statements)*:

20. Credit cards *(give creditor's name and address and the account number)*:

21. Other debts *(specify)*:

Date:

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE)

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: Spanish Other *(specify)*:

_____ (INTERPRETER'S SIGNATURE) _____ DATE

_____ (TYPE OR PRINT INTERPRETER'S NAME) _____ (CERTIFICATION NUMBER)

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
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT: _____ DATE OF BIRTH: _____	
ORDER FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)	CASE NUMBER: _____

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
 - a. ALL FELONY CONVICTIONS in the above-entitled action.
 - b. ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
 - c. 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
 - a. ALL FELONY CONVICTIONS in the above-entitled action.
 - b. ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
 - c. 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 (*check all that apply*)

 § 1203.4 § 1203.4a § 1203.41 § 1203.42 § 1203.43 § 1203.49

 and it is ordered that the pleas of guilty or nolo contendere or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for (*check one*)
 - a. ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
 - b. only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

PEOPLE OF THE STATE OF CALIFORNIA v DEFENDANT:

CASE NUMBER:

4. The court **DENIES** the petition for dismissal under Penal Code (*check all that apply*)
 § 1203.4 § 1203.4a § 1203.41 § 1203.42 § 1203.43 § 1203.49 for (*check one*)
a. ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
b. only the following convictions or pleas for deferred entry judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):
5. In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when he or she committed the crime. The court orders (*check one*)
a. the relief described in section 1203.4.
b. the relief described in section 1203.4, with the following exceptions (*specify*):
6. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.
7. If this order is granted under the provisions of Penal Code section 1203.4, 1203.41 or 1203.42,
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; and
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.)
8. If the order is granted under the provisions of Penal Code section 1203.4, 1203.4a, 1203.41, 1203.42, 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, 1203.42, 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).
10. The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in former Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.

FOR COURT USE ONLY

Date:

(JUDICIAL OFFICER)

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
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff/Petitioner: Defendant/Respondent:	JUDICIAL OFFICER:
<p style="text-align: center;">PROOF OF SERVICE-CIVIL</p> <p>Check method of service (only one):</p> <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax	DEPARTMENT:

**Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.**

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:

3. The fax number from which I served the documents is (complete if service was by fax):

4. On (date): I served the following documents (specify):
 - The documents are listed in the Attachment to Proof of Service-Civil (Documents Served) (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
 - a. Name of person served:
 - b. (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
Business or residential address where person was served:

 - c. (Complete if service was by fax.)
Fax number where person was served:

 - The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service-Civil (Persons Served) (form POS-040(P)).
6. The documents were served by the following means (specify):
 - a. **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

CASE NAME:	CASE NUMBER:
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ _____
 (TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ _____
 (NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

INFORMATION SHEET FOR PROOF OF SERVICE-CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at www.courts.ca.gov/forms.htm.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1-6:

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.