

INFORMATION AND INSTRUCTIONS FOR PETITION FOR DISMISSAL

(Pen. Code §§17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)

General Information:

After successful completion of probation, you may petition the court to dismiss the charges under Penal Code §1203.4. If it is in the interest of justice, the judge may allow you to file the petition before probation ends. Penal Code §1203.4 does not apply to a person who was denied probation and is currently on parole. Penal Code §1203.4 relief is not available to persons convicted of offenses specified in Penal Code §1203.4(b). These include most felony molestation offenses, certain other sex offenses, a few traffic offenses, and infractions.

Dismissal under Penal Code §1203.4(a) is available to a person convicted of a misdemeanor and not granted probation. To be eligible, the defendant must have fully complied with and performed the sentence of the court, must not be serving any other sentence, nor be charged with a crime, and must have, since judgment, “lived an honest and upright life,” obeying all laws.

- Disclosure – Granting of this petition does NOT relieve you of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.
- DMV – Granting of this petition does NOT affect DMV actions or future consequences for crimes involving operation of a motor vehicle. Granting of this petition does NOT affect any revocation or suspension of the defendant’s drivers license.
- Firearms – Granting of this petition does NOT permit you to own, possess, or have in your custody or control any concealable firearm.
- Sealing – Granting of this petition does NOT seal your record. The case, including the conviction will remain public record.
- Sex Registration – Granting of petition does NOT relieve you from any obligation to register under Penal Code §290.
- Public Office – Granting of this petition does NOT permit a person prohibited from holding public office as a result of that conviction to hold public office.
- Priors – Granting of this petition does NOT prevent the conviction from being pleaded and proved just like any other prior in any subsequent prosecution.
- Impeachment – Granting of this petition does NOT preclude the use of the conviction to impeach a testifying defendant. (Evidence Code 788(c))
- Licensing – Granting of this petition does NOT prevent state licensing agencies from using the conviction in their licensing decisions. (Business and Professions Code §§475, 480, 490)
- Foster Care – Granting of this petition does NOT prevent a conviction from disqualifying an individual from obtaining a foster care license. (Health & Safety Code 1522(g))
- Federal Government – The Federal Government has no general obligation to recognize relief under Penal Code §1203.4. But the Federal Government does give limited recognition to State Court dismissals. See 18USC921(a)(20).

This information is for general use and not intended as full and comprehensive instruction governing the laws and rules relating to relief granted under Penal Code §1203.4. For further information you may refer to Penal Code §1203.4 and 1203.4(a) or you may seek legal assistance.

Instructions:

NOTE: Clerks cannot advise or render assistance in the completion of this petition.

If your case has been destroyed pursuant to Government Code §68153, you must provide the court with either a copy of the probation order or the criminal history record from the California Department of Justice (RAP Sheet).

1. Complete the **Petition for Dismissal form CR-180**. *(Incomplete forms will not be filed and will be returned for correction.)*
2. Complete the top portion of the **Order for Dismissal form CR-181**.
3. Prior to filing your petition, you must contact the clerk's office to obtain a tentative hearing date. For Madera Criminal Cases contact the Madera Superior Court Calendar Division at 559-416-5540 and for Traffic Cases contact the Traffic Division at 559-416-5555.
4. Place the hearing date on page one of your petition and make 3 copies of the petition and order for filing.
5. The original petition and at least 3 copies of the petition and order must be filed at the clerk's office at least 16 days prior to your hearing date.
 - a. Madera Criminal Cases are to be filed at the Madera Criminal Division and Traffic Cases are to be filed at the Traffic Division.
 - b. **The hearing date will not be set on the Court's Calendar until the documents are filed.**
6. A conformed copy of the petition must be served upon the office of the District Attorney AND Probation Department. **You could use form CR-106 Proof of Service – Criminal Record Clearing.**
 - a. Service may be affected by mail or personal delivery.
 - i. Personal Service must be affected by someone other than yourself and by someone who is 18 years of age or older.
 - b. Notice of the Petition must be given at least 16 days prior to the hearing date.
7. When Service has been affected upon the office of the District Attorney AND Probation Department (either service by mail or personal delivery), then a **Proof of Service must be filed with the Court**. A Proof of Service form is included in this packet.
 - a. If service by mail, the Person who mailed the documents must complete the Proof of Service.
 - i. When affecting service by mail within California, it must be mailed at least 21 days prior to the hearing date. This allows 5 additional days for mail processing time. If mailing from out of state, it must be mailed 26 days prior to the hearing date. This allows 10 additional days for mail processing time.
 - b. If service by personal delivery, the Person who affected the service must complete the Proof of Service.
8. **Attend your Court Hearing.** You must be either personally present or represented by counsel at the hearing date or your request may be denied or taken off calendar.

Note: Pursuant to Penal Code 1203.4(d) a person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the County of Madera for the actual costs of services rendered at a rate to be determined by the court not exceeding \$150.00.