

**CHANGE OF PLEA
DISMISSAL OF CHARGES UNDER PC 1203.4
17b MOTIONS; AND
CERTIFICATION OF REHABILITATION**

AUTHORITY: Sections 290.007, 1203.3, 1203.4, 1203.4a, 1203.45 and 4852.01 through 4852.21 California Penal Code
Sections 12021 and 11590 Health and Safety Code

RESCINDS: Procedure Manual Item 2-3-009, dated 12/29/11

FORMS:

1203.4 Pre-Packet Application (worksheet)	(F057-1280AF)
Notice of Ineligibility Letter	(F057-1281AF)
Application Packet for Change of Plea:	
a.) 1203.4 Guidelines and Information	(F057-1270(b)AF)
b.) Change of Plea Application for 1203.4	(F057-1270(a)AF)
c.) Authorization for Representation by P.O.	(F057-1116AF)
d.) Information Blue Sheet	(F057-1270(c)AF)
Record Check Request	(F057-1064)
1203.4 PC Report	(F057-1282AF)
Superior Court Petition and Order	(F0363-2229.1)
Notification Letter to the District Attorney	(F057-2064(A)AF)
Proof of Service by Mail Letter	(F057-1324AF)

PURPOSE: To establish procedure to investigate and to process 1203.4 PC applications for Change of Plea and Dismissal of Charges.

I. GENERAL INFORMATION

A. Eligibility

1. Probationers are eligible for relief under Section 1203.4 PC if they have fulfilled the conditions of probation for the entire period of probation. When the Probation Officer signs the petition for dismissal of charges, he is representing to the Court that the probationer has complied in full with the requirements of the Court and the Probation Officer. This includes payment of court-ordered restitution, fines, fees, and cost of probation.
2. Generally, a probationer who has formally been found in violation of probation has not "complied in full" with the requirements of the Court and Probation Officer. Probationers in this violation category who are identified as ineligible will be advised in writing regarding the reason for their ineligibility. However, these applicants will be informed that they may still seek relief under Section 1203.4 PC by filing the appropriate paperwork with the Court Clerk, or by obtaining legal counsel (please refer to attached departmental letter of ineligibility).
3. The Probation Officer may still submit a petition for dismissal of charges to the Court even if a formal finding of probation violation has occurred, if the case meets the following criteria:

- a. The probation violation occurred early in the probationary period, and since the violation the probationer has displayed ongoing stability and there is no evidence that the violational behavior continues.
 - b. The probation violation was minor in nature and did not represent recurrence of the behavior for which the probationer was placed on probation.
 - c. The probationer has made good adjustment since the probation violation.
4. In instances where the Probation Officer is recommending for a change of plea when a probation violation occurred, the facts of that violation, as well as the reasons for the Probation Officer's recommendation, must be explained in a 1203.4 Report and presented to the Court along with the 1203.4 PC petition.

B. Advice to Probationer

1. Inform the probationer that the order does not relieve him of the obligation to disclose the conviction in any questionnaire or application for public office, or for licensure by any state or local agency.
2. Advise the probationer to seek further clarification from an attorney about how to answer questions about prior record on applications or questionnaires other than those mentioned in Section 1203.4 PC.
3. Dismissal of an accusation or information does not permit a person to own, possess, or have in his custody or control, any firearm or prevent conviction under Section 12021.
4. Persons required to register as sex offenders under Section 290 PC must continue to do so, even if relief under Section 1203.4 PC or 1203.4a PC is granted. The only relief from 290 Registration is by getting a Certificate of Rehabilitation, which is applied for through the District Attorney.
5. Probationer should be advised that the process is somewhat lengthy and usually takes a minimum of 90 days to complete.

C. Responsibility for Processing 1203.4 PC Applications

NOTE: The assigned Probation Officer should discuss the opportunity of 1203.4 PC with probationers approximately 30 days prior to expiration of the probation grant and refer the matter to the 1203.4PC officer.

1. If the applicant is no longer on active probation when a PC 1203.4 application is made through the Probation Department, the procedure below will be followed:

2. The Supervisor of Adult Investigation (Unit 011) will be responsible for processing all applications after expiration or termination of formal probation. In these instances, applicants will be instructed to call the 1203.4 PC Clerk for an application. The 1203.4 PC Clerk is stationed at the Santa Ana Office, phone number 569-2114, Monday through Friday during normal working hours.
3. If the application involves a defendant who was never on formal probation, then the application is the responsibility of the applicant, and he/she should be directed to the Criminal Clerk's Office of the Court where convicted, or to an attorney.

D. Certificate of Rehabilitation

1. A Certificate of Rehabilitation, as mentioned in PC 1203.4, is an action separate from and following relief under PC 1203.4.
2. The District Attorney's Office is the designated agency to investigate applications for a Certificate of Rehabilitation (PC 4852.01 through 4852.21).
3. Direct inquiries about a Certificate of Rehabilitation to the District Attorney's Office.

E. PC 17b Motions

The Orange County Probation Department will not process these motions. All requests for PC 17b Motions will be rejected and returned to the initiating party.

II. PROCEDURE

- A. Prior to initiation of the 1203.4 PC process, the probationer must pay a \$120.00 non-refundable fee for investigating and processing the change of plea, and submit a signed Authorization for Representation by P.O. (F057-1116AF). The payment of this fee will be collected in the same manner as other court-ordered financial obligations, with the exception that no accounting ledger needs to be submitted and the receipts need to indicate the payment is for "change of plea."
- B. The Probation Officer will review the probationer's A-file for information regarding eligibility for relief under 1203.4 PC.
- C. Submit "Record Check Request" (F057-1064). Await response. Review regarding probationer's eligibility.
- D. Check the probationer's offense record in the Orange County District Attorney's computer.
- E. Verify that persons required to register per 290 PC are registered.
- F. Verify with Probation Accounting (PFS-13 SCREEN) that the applicant has no outstanding accounts.

- G. The Probation Officer will prepare a brief 1203.4 PC Report (F057-1282AF) on all 1203.4 PC requests that are submitted to the Superior Court. The formal 1203.4 PC Report (F057-1282AF) will be formatted to include the following sections: Circumstances of the Original Offense; Progress on Probation; Arrest and Conviction History; and a Summary Recommendation.
- H. Attorney-initiated 1203.4 PC requests will be investigated and processed in the same manner as indicated above; however, the probationer does not complete the "Authorization for Representation by the Probation Officer."
- I. The Probation Officer will send "Notification Letters" to the District Attorney's Office on all 1203.4 PC Requests (F057-26064AF) once we have determined we will support and submit the petition to the Court, not before. Included with the notice to the District Attorney will be a copy of our 1203.4 PC report. The 1203.4 PC Clerk will submit the petition to the Court 15 days after sending "Notice to the District Attorney." The 1203.4 PC Clerk must also file a "proof of service" document with the Court regarding notification of the District Attorney.

NOTE: Misdemeanor offenses occurring within the City of Anaheim are prosecuted by the Anaheim City Attorney's Office. If the probationer was prosecuted by the City Attorney a Notification Letter must be sent by Certified Mail to that office utilizing the aforementioned timeframes. Please refer to "Notice to the District Attorney" form letter (F057-2064AF) for appropriate format. Correspondence should be directed to:

Anaheim City Attorney's Office
1275 N. Berkeley Avenue, Room 400
Anaheim, CA 92632

- J. Superior Court Cases
1. Complete five (5) copies of "Court's Dismissal Order" (F063-2229). If early termination pursuant to 1203.3 PC is not requested, cross out references on form. Retain one copy in the probation file.
 2. Complete the "Authorization for Representation by Probation Officer" form (F0502-1116) in duplicate. The probationer must sign both copies of the form. Please note that this form is not required with attorney-initiated requests.
 3. Complete a brief 1203.4 PC Report (F057-1282AF) on all Superior Court cases and attach the report to the Court's Dismissal Order.
 4. Submit four (4) copies of the "Court's Dismissal Order," the 1203.4 PC Report, current record check, notification letter to the District Attorney, and the proof of service document, Authorization for Representation, and proof of payment to K-100-1203.4, Central Superior Court.
- K. The Clerk of the Court will:
1. Return a copy of the court order to the Deputy Probation Officer.

