

CR-430-INFO Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

Penal Code § 1203.4b allows eligible former inmates to ask the court to dismiss a conviction and take other actions that can improve your criminal record (“record clearing”).

Read this information carefully to learn whether you may be eligible for § 1203.4b relief, and how to complete *Petition for Dismissal—Incarcerated Individual Hand Crew* (form CR-430) to request relief. (Form CR-430 is available at www.courts.ca.gov/forms.)

1 Who is eligible to apply for relief under Penal Code § 1203.4b?

You must meet ALL of these requirements to be eligible to apply (petition) for relief under Penal Code § 1203.4b:

- a. You were incarcerated in state prison or county jail.
- b. While in state prison or in county jail, you successfully participated as a hand crew member (“grade eligible”) in a California Conservation Camp program operated by the California Department of Corrections and Rehabilitation (CDCR);

OR

While in county jail, you successfully participated in an incarcerated individual fire camp hand crew program operated by a county agency (for example, the sheriff’s department).

- c. You have been released from custody (i.e., you are not in state prison or county jail).
- d. You are not currently charged with committing any offense.

NOTE: You are NOT eligible for Penal Code § 1203.4b relief if your conviction was for any of these offenses: murder; kidnapping; rape (as defined in Penal Code §§ 261(a)(2), (6) or 262(a)(1), (4)); a violation of Penal Code § 288 (specified sex offenses); any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration under Penal Code § 290; escape from a secure perimeter within the previous 10 years; or arson.

2 I’m still on probation, parole, or supervised release. Can I apply for § 1203.4b relief now?

- 1 Yes, you can still petition for a § 1203.4b dismissal even if you are on a term of probation, parole, or supervised release. The law says that you are *not* required to complete your term of supervision before you can ask the court to dismiss your conviction.
- 1 If you are still on a term of supervision and have not violated any terms or conditions of your supervision, and the court grants your petition for a § 1203.4b dismissal, the court will also order early termination of supervision.

3 What information do I need to include on my petition?

Form CR-430 is the form for requesting § 1203.4b relief. It is available at www.courts.ca.gov/forms. You do not have to use form CR-430 for your petition, but it helps organize the information for the court.

You will need to file a separate petition for each case. You will need to list on your petition:

- 1 The case number; and
- 1 Your local identifying number (if any, and if known).

It is helpful to provide details about your participation in a CDCR fire camp program:

- 1 The CDCR number you had while participating in fire camp;
- 1 The name of the fire camp; and
- 1 The approximate dates that you were in fire camp.

For example: CDCR No. TK12345; Eel River Camp, August – November, 2020

You are *not* required by law to provide this information in your petition. It can help speed up the court’s decision on your request by making it easier for CDCR to locate and confirm your participation in fire camp and report back to the court.

Tip: If you were a county jail inmate and participated in a fire camp, it is *very likely* the fire camp was operated by CDCR. You would have been given a CDCR number during your time in fire camp.

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You may also explain why granting a dismissal would be in the interests of justice. You can write in the allotted space on the form, or you can use *Attached Declaration* (form MC-031), available at www.courts.ca.gov/forms.

4 Where and how do I file my § 1203.4b petition with the court?

- a. **You must file your petition with the court. File in the county where you were sentenced for the conviction you want the court to dismiss.**

First, check with the court clerk or check the court's website to see whether there are any local rules about filing and service of the petition, as well as how to obtain proof of filing.

- 1 In many counties, you must serve the original § 1203.4b petition with the court, have the court file-stamp one copy, and then you must serve the file-stamped copy of the petition on the prosecuting attorney.
 - 1 If you “file first,” as described in b. and c. below, the court has a chance to add a hearing date to the petition before you serve it.
 - 1 Some courts require you to first serve a copy of the § 1203.4b petition on the prosecuting attorney and then file the original petition with the court, together with a completed and signed proof of service. (See 5 and 6 for information on service and proof of service.)
- b. Fill out the petition form, CR-430, and make at least 2 copies. You will use one copy to notify the prosecuting attorney. Be sure to keep the other copy for your own records.
- c. File the original § 1203.4b petition with the court by:
- 1 taking the original petition and a copy to the court in person and handing it to the court clerk; or
 - 1 mailing the petition and a copy to the court; or
 - 1 filing the petition electronically, if the local court rules permit this type of filing.

- d. When the court files the original petition, ask the court clerk to file-stamp the copy of the petition and return it to you. *This is an important step because, in many counties, the file-stamped copy must be served on the prosecuting attorney.* If you file the petition by mail, include the copy for the court clerk to file-stamp and then return to you. Include a self-addressed, stamped envelope for the clerk to use to mail the file-stamped copy back to you.

5 How do I “serve” a copy of my § 1203.4b petition on the prosecuting attorney?

- a. “Serving” a petition means delivering a copy of the petition to the prosecuting attorney.
- b. You must serve a copy of your § 1203.4b petition on the prosecuting attorney in the county where you filed your petition with the court.
- c. You can serve the petition by:
- 1 **Personal service:** You or another person over age 18 go in person to hand-deliver a copy of the petition to the prosecuting attorney’s office during business hours by handing it to an employee. Be sure to get the name of the employee for your proof of service.
 - 1 **Service by mail:** Mail a copy of the petition to the prosecuting attorney’s office. You may mail the petition by first-class mail or by certified mail with a return receipt requested.
 - 1 **Electronic service:** Contact the prosecuting attorney’s office to see if they accept electronic service. If they do, the court may require proof of their consent to electronic service. You can use *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV), available at www.courts.ca.gov/forms.

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6 How do I prove that I served my § 1203.4b petition on the prosecuting attorney?

- a. It is very important that you properly serve your § 1203.4b petition and then file proof with the court. This “proof of service” tells the court that you gave the prosecuting attorney the required notice of your § 1203.4b petition.
- b. You will need to confirm that you served the petition by filing a proof of service form that describes who, when, where, and how you served your § 1203.4b petition. You can use *Proof of Service—Criminal Record Clearing* (form CR-106) for this purpose.
- c. Fill out form CR-106. (Follow the directions on form CR-106-INFO. Both forms are available at www.courts.ca.gov/forms). Form CR-106 has spaces for you to write how you served the prosecuting attorney with your § 1203.4b petition. If you had someone else help you serve the petition on the prosecuting attorney, that person will have to fill out the proof of service form.
- d. After filling out the proof of service (form CR-106), make a copy for you to keep.
- e. You must file the original proof of service with the court to prove that you gave the prosecuting attorney the required notice of your § 1203.4b petition. You can file the proof of service form the same way you filed the petition.

7 What happens next?

- a. **The court can consider your petition 15 days after you serve the prosecuting attorney with your petition. The prosecuting attorney can object to your petition at any time before the court grants or denies the petition.**
- b. If the prosecuting attorney does object, you will receive a copy of the objection in the mail and the court will schedule a hearing. (See 10 for more information about the hearing.)
- c. Before the court can grant your § 1203.4b petition, the court must get certification of your participation in fire camp from CDCR or the appropriate county authority.

8 What is "certification" by CDCR or the appropriate county authority?

- a. In order for the court to decide whether to grant your § 1203.4b petition, the court must have “certification” from CDCR or the county authority that:
 - 1 you successfully participated in fire camp as a hand crew member; AND
 - 1 you participated in fire camp during the time you were incarcerated for the conviction you are asking the court to dismiss.
- b. After you file your § 1203.4b petition, the court will contact CDCR or the appropriate county authority and ask for a written statement that confirms (“certifies”) your successful participation in fire camp.
- c. “Successful participation” in fire camp means that you adequately performed your hand crew duties and did not have any violations that could have led to your removal from fire camp.

9 When will the court make a decision?

- a. The court will not make a decision until it hears from CDCR or the appropriate county agency certifying participation.
- b. The law does not set a time frame, but the court may ask CDCR or the appropriate county authority to respond to a request for certification by a certain date.
- c. After CDCR or the appropriate county authority certifies whether your participation in fire camp was successful, the court likely will contact you and the prosecuting attorney. But the law does not require the court to contact you, so you may want to check with the court to confirm that the certification has been received.

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10 Will I have to attend a hearing?

- a. The law does not *require* the court to hold a hearing in order to make a decision on your § 1203.4b petition. The court can make a decision on your petition without holding a hearing. But the law allows the court to hold a hearing if it chooses to do so.
- b. The law allows the prosecuting attorney to request a hearing and to ask the court to deny your § 1203.4b petition.
- c. If the court schedules a hearing, you will be notified of the hearing date and time. You have a right to attend the hearing and to explain why your § 1203.4b petition should be granted and your conviction dismissed.
- d. *Note:* Even if the prosecuting attorney does not object to your § 1203.4b petition, the court may ask the prosecuting attorney to tell the court whether there is anything it should consider when deciding whether to grant your petition.

11 How will the court make its decision?

- a. If you meet all of the eligibility factors, and the court receives certification of your successful participation in fire camp, the court may grant your § 1203.4b petition *if it is in the interests of justice*.
- b. If the court determines that it's not in the interests of justice to grant relief, the court can deny your petition even if you meet all the eligibility requirements. You may resubmit your petition in the future if you think the court's decision was incorrect.
- c. Once the court makes a decision on your § 1203.4b petition, it will issue an order (likely on form CR-432) that states whether the court granted or denied your petition. If the court grants your petition, the order will state which convictions have been dismissed and whether supervision has been terminated. The court will also report this change in your record to the Department of Justice so that your statewide criminal history summary can be updated.

12 If the court grants relief, what happens to my conviction?

- a. If the court grants relief and dismisses the conviction, you will be released from most of the penalties and restrictions that are connected to the conviction. The law keeps certain penalties in place.
- b. A dismissal will NOT:
 - ┆ Reinstate your right to possess firearms.
 - ┆ Prevent suspension of your driver's license in some cases.
 - ┆ Allow you to omit the conviction from applications for the California Commission on Teacher Credentialing, a position as a peace officer, public officer, or for contracting with the California State Lottery Commission.
 - ┆ Permit you to hold public office if the law prohibits people from holding public office as a result of that conviction.
 - ┆ Seal or remove the court file from public inspection.
 - ┆ Prevent the conviction from being used as a "prior" in the future.
 - ┆ Remove from your record the fact that an arrest occurred.