

Title	Criminal and Juvenile Law: DNA Expungement Forms (approve forms CR-185/JV-796 and CR-186/JV-798)
Summary	<i>Petition for Expungement of DNA Profiles and Samples</i> (form CR-185/JV-796) and <i>Order for Expungement of DNA Profiles and Samples</i> (form CR-186/JV-798) are proposed for optional use by petitioners and courts. The purpose of these forms is to clarify and facilitate the statutory procedure to expunge DNA database profiles and destroy DNA samples and specimens.
Source	<p>Criminal Law Advisory Committee Justice Steven Z. Perren, Chair</p> <p>Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs</p>
Staff	<p>Arturo Castro, Attorney Office of the General Counsel</p> <p>Audrey Fancy, Supervising Attorney Center for Families, Children & the Courts</p>
Discussion	<p>Penal Code section 296 requires certain criminal offenders to provide DNA samples upon arrest or conviction for specified offenses. Beginning January 1, 2009, the classification of persons required to submit DNA samples will expand to include any adult person arrested or charged with any felony arrest. (Pen. Code, § 296(a)(2)(C).) In addition to adult offenders, Penal Code section 296 requires certain juveniles to submit DNA samples, including, for example, juveniles adjudged wards of the court for commission of a felony offense (Pen. Code, §296(a)(1)) and juveniles required to register as sex offenders. (Pen. Code, § 296(a)(3).)</p> <p>Penal Code section 299 authorizes eligible persons, including juveniles, to request a court order requiring the California Department of Justice to destroy previously obtained DNA specimens and samples and to expunge searchable DNA database profiles.</p> <p>Currently, there is no Judicial Council form for use by petitioners seeking expungement, nor a Judicial Council order form for use by the courts. The proposed forms would provide specific instructions and other relevant information needed by both petitioners and courts.</p> <p>Petitions for expungement are often filed by petitioners who are not</p>

represented by counsel. In addition, because the change in the law effective January 1, 2009, will require a larger number of persons to submit DNA samples, the number of expungement petitions is expected to rise considerably.

Because the proposed forms impact both adult and delinquency proceedings, this proposal is co-authored by the Criminal Law Advisory Committee and Family and Juvenile Law Advisory Committee (Committees). The proposed forms are dual numbered for use in both criminal and juvenile proceedings.

The Committees seek public comment on the proposed forms, generally, and, in particular, on whether the *Petition for Expungement of DNA Profiles and Samples* (form CR-185) should include a section for the date, time, and place of the noticed hearing to be entered by court staff when the petition is filed.

Attachments

ATTORNEY OR PETITIONER WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ORDER FOR EXPUNGEMENT OF DNA PROFILES AND SAMPLES (Pen. Code, § 299)	CASE NUMBER (IF APPLICABLE):
NAME: CII: DRIVER'S LICENSE #: SSN # <i>(Last four digits only):</i> DATE OF BIRTH:	PETITIONER'S INFORMATION

ORDER

- The court denies the petition.
- The court grants the petition and orders that petitioner's DNA specimen and sample be destroyed and petitioner's searchable database profile be expunged from the California Department of Justice's DNA and Forensic Identification Database and Data Bank Program as required by Penal Code section 299. Additionally, the court finds (a) that petitioner has made the necessary showing at a noticed hearing, (b) no retrial or appeal of the qualifying case (if any) is pending, (c) at least 180 days have passed since petitioner notified the prosecuting attorney and the Department of Justice of petitioner's request for expungement, and (d) the court has not received an objection from the Department of Justice or the prosecuting attorney. (Pen. Code, § 299(c)(2).)

Date: _____

(JUDICIAL OFFICER)

ADDITIONAL INSTRUCTIONS:

As required by Penal Code section 299(c)(2), the California Department of Justice must destroy petitioner's specimen and sample and expunge petitioner's searchable DNA database on receipt of this court order, which must also include the written petition for expungement, proof of written notice of the petition to the California Department of Justice and the prosecuting attorney, and one of the following:

- a. A certified copy of the court order reversing and dismissing the conviction or case; or
- b. A letter from the prosecuting attorney certifying that:
 - (1) No accusatory pleading has been filed;
 - (2) The qualifying charges have been dismissed before adjudication;
 - (3) Petitioner has been found factually innocent;
 - (4) Petitioner has been found not guilty;
 - (5) Petitioner has been acquitted of the underlying offense;
 - (6) The qualifying conviction has been reversed and the case dismissed; or
 - (7) The qualifying sustained delinquency petition has been reversed and the case dismissed.

Item SPR08-34 Response Form

Title: **Criminal and Juvenile Law: New DNA Expungement Forms** (approve forms CR-185/JV-796 and CR-186/JV-798)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*