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DEERING'S CALIFORNIA CODES ANNOTATED  
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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND  
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

PENAL CODE  
Part 2. Of Criminal Procedure  
Title 10. Miscellaneous Proceedings  
Chapter 7. Compromising Certain Public Offenses by Leave of the Court

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Pen Code § 1378 (2007)*

**§ 1378. Compromise by permission of the court; Conditions; Order to bar subsequent prosecution**

If the person injured appears before the court in which the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

**HISTORY:**

Enacted 1872. Amended Stats 1957 ch 102 § 2 p 678.

**NOTES:**

**Amendments:**

**1957 Amendment:**

Substituted "action is pending" for "depositions are required to be returned" in the first sentence.

**Historical Derivation:**

(a) Criminal Practice Act §§ 676, 677 (Stats 1851 ch 29 §§ 676, 677 p 288).

(b) Stats 1850 ch 119 §§ 725, 726 p 330.

(c) NY Code Crim Proc §§ 664, 665.

**Cross References:**

Restoration of property embezzled, as ground for mitigation of punishment: *Pen C* § 513.

Statement in disposition report that defendant was discharged because restitution or other satisfaction was made: *Pen C* § 13151.1.

**Collateral References:**

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Governmental Authority §§ 22, 23, 24, 25.

Witkin & Epstein, Criminal Law (3d ed), Defenses §§ 229, 230.

Cal Jur 3d (Rev) Criminal Law §§ 2328, 2825.

*Am Jur 2d (Rev) Compounding Crimes* § 1.

**Forms:**

Calif Criminal Forms & Instructions (BW, 1983) § 27:1.

Suggested form is set out below.

**Law Review Articles:**

Bargain with victim by misdemeanants. *1 SCLR 1*; *2 SCLR 97*.

Effect of compromise of offense. *2 SCLR 97*.

Rehabilitation of crime victims; restitution by the offender. *21 UCLA LR 323*.

**Attorney General's Opinions:**

Merchandise need not be physically damaged in order for merchant to recover in civil action amount of \$50 to \$500 specified in *Penal Code* § 490.5; disposition of criminal court action is not prerequisite for recovery of damages, and payment of demand for damages does not in itself result in compromise as specified in *Penal Code* § 1378. (1986) *69 Ops. Cal. Atty. Gen.* 271.

**Annotations:**

Applicability of double jeopardy to juvenile court proceedings. *5 ALR4th 234*.

**Hierarchy Notes:**

Pt. 2, Tit. 10, Ch. 7 Note

**NOTES OF DECISIONS**

Issues to be considered by a trial judge in determining whether to dismiss a misdemeanor criminal prosecution pursuant to a civil compromise include the questions of whether the civil injury was coextensive with the criminal violation, whether the circumstances of the offense and injury were such that the public's interest is fully vindicated by the compromise, and whether the victim's settlement agreement was completely voluntary. Thus, the trial court erred in discharging, pursuant to a civil compromise, defendant charged with grand theft, where there was only fragmentary information about the theft, where a letter of compromise from the victim was presented to the court, where, though the judge had been informed by several attorneys that she wished to compromise, the victim never appeared in court, and where the victim was agreeable to compromising with defendant but not with the other suspect in the theft. The information presented did not make it clear whether the private remedy overlapped the public injury or whether the compromise adequately vindicated the public's interest in enforcing its criminal laws. *People v. Moulton* (1982, Cal App Dep't Super Ct) 131 Cal App 3d Supp 10, 182 Cal Rptr 761, 1982 Cal App LEXIS 1490.

In enacting the civil compromise statute (*Pen. Code*, §§ 1377-1379), the Legislature intended to empower the trial court, in its discretion, to compromise certain misdemeanor offenses when a civil remedy is available to the victim, the victim acknowledges before the court that he has received satisfaction for the injury, and costs are paid. In order to protect the public against abuses of discretion, the Legislature requires that when the court exercises its discretion to compromise the matter "the reasons for the order must be set forth therein, and entered on the minutes." It is clear that "must" in § 1378 can only be imbued with a mandatory meaning, rather than a directory one, in order to effectuate the legislative intent. *People v. Stephen* (1986, Cal App Dep't Super Ct) 182 Cal App 3d Supp 14, 227 Cal Rptr 380, 1986 Cal App LEXIS 1758.

**SUGGESTED FORMS**

Request for Dismissal-Satisfaction Rendered