

Date

District Attorney

County of _____

**NOTICE OF DEMAND FOR TRIAL OR DISPOSITION
PURUSANT TO PENAL CODE SECTION 1381 OR 1381.5**

TO THE DISTRICT ATTORNEY OF _____ COUNTY:

Please take notice that I, _____, was sentenced on or about _____, to serve a term of _____ [length of term in months or years] in _____ [name of correctional institution], located at _____. On or about _____, in _____ County, I was [charged with/convicted of] violating _____ [specify section of Penal or other code or name of offense]. The _____ County case number is _____. Under the provisions of Penal Code section [1381 or 1381.5], I desire and hereby demand, that I be [brought to trial/sentenced] on the charges set forth above, and on any and all other pending charges.

Dated: _____

[name]

ENDORSEMENT OF CUSTODIAL LAW ENFORCEMENT:

Cause of Commitment: _____

Date of Commitment: _____

Date of Release: _____

[Name of warden or jailer]

[Title]

1 Name:
2 Address:
3 Telephone:
4 In Pro Per

5 **Superior Court of California**
6 **County of [name of County]**

7) Case No. :
8)
9)
9 People of the State of California) **Motion to Dismiss**
10) **for Failure to Comply**
10 Petitioner/Plaintiff,) **with Demand for Trial**
11) **(Penal Code section 1381)**
11 vs.)
12 [name])
13 Respondent/Defendant)
14)
15 _____)

16 To the Honorable Court in the above entitled cause of action and
17 the District Attorney of the County of _____.

18 Please take notice that defendant, _____, moves this
19 court pursuant to Penal Code section 1381 for an Order dismissing the
20 indictment, information, and/or complaint in the above entitled
21 matter.

22 This motion is based upon this notice, the attached declaration,
23 all points and authorities submitted, testimony and other evidence
24 produced, all files and records of the case, and any other evidence
25 presented whether oral or documentary.

1 Dated _____

2
3 Respectfully Submitted

4 _____, Respondent/Defendant, in pro per

5
6
7 **Declaration of _____**

8 I, _____, hereby declare:

- 9 1. That I am the defendant in the above entitled action;
- 10 2. That I am a prisoner confined at _____, in the
11 State of California;
- 12 3. That on or about the ____ day of _____, 20__, I did serve on
13 the District Attorney of _____ County a demand letter for
14 trial, pursuant to the provisions of Penal Code section 1381;
- 15 4. That as of this date, over 90 days has elapsed and the District
16 Attorney has failed to respond as required by law;
- 17 5. Because of the pending charge against me in the aforementioned
18 county, a hold and/or detainer has been lodged in my custody file
19 thereby subjecting me to a harsher level of security and further
20 preventing my consideration for minimum security classification,
21 participation in training and/or other programs beneficial to my
22 interest and the interest of the public;
- 23 6. Notwithstanding the ability of the District Attorney to comply
24 with provisions of Penal Code section 1381, the District Attorney
25 has failed to comply with the mandate of Penal Code section 1381

1 and therefore dismissal of this action, case no. _____, is
2 necessary in the interest of justice.

3
4 **Verification**

5 I have read the above statements and declare under the penalty of
6 perjury that the above statements are true and correct as based upon
7 my information and belief. Executed this ____ day of _____, 20__,
8 at _____, State Prison, California pursuant to provisions of CCP
9 sections 446 and 2015.5.

10
11 _____, Declarant

12
13 **Memorandum of Points and Authorities**

14 Petitioner/Defendant is entitled to a dismissal of pending charges
15 and/or detainer as a matter of law.

16 Penal Code section 1381 reads in pertinent part as follows:

17 'Whenever a defendant has been convicted, in any court of this
18 state, of the commission of a felony or misdemeanor and has been
19 sentenced to and has entered upon a term of imprisonment in a
20 state prison or has been sentenced to and has entered upon a term
21 of imprisonment in a county jail for a period of more than 90
22 days or has been committed to and placed in a county jail for
23 more than 90 days as a condition of probation or has been
24 committed to and placed in an institution subject to the
25 jurisdiction of the Department of the Youth Authority or whenever
any person has been committed to the custody of the Director of
Corrections pursuant to Chapter 1(commencing with Section 3000)
of Division 3 of the Welfare and Institutions Code and has
entered upon his or her term of commitment, and at the time of
the entry upon the term of imprisonment or commitment there is
pending, in any court of this state, any other indictment,
information, complaint, or any criminal proceeding wherein the
defendant remains to be sentenced, the district attorney of the
county in which the matters are pending shall bring the defendant
to trial or for sentencing within 90 days after the person shall
have delivered to said district attorney written notice of the
place of his or her imprisonment or commitment and his or her

1 desire to be brought to trial or for sentencing unless a
2 continuance beyond the 90 days is requested or consented to by
3 the person, in open court, and the request or consent entered
 upon the minutes of the court in which event the 90-day period
 shall commence to run anew from the date to which the consent or
 request continued the trial or sentencing.'

4 Because the 90 day time period has expired since defendant served
5 written notice upon the District Attorney and expressed the desire to
6 be brought to trial, this motion to dismiss is properly before the Cour
7 and an order dismissing the above entitled action would be appropriate

8
9 Wherefore, defendant prays that an order to dismiss be issued forthwith
10 and that appropriate copies of said order be served upon the custodial
11 of Petitioner's/Defendant's body and the defendant herein.

12 Dated: _____

13
14 _____, Petitioner/Defendant