

Criminal Record Clearing in a Nutshell



May 2018

SJSU | RECORD CLEARANCE PROJECT



5.2.18

Laws change. Individual cases differ.



Be advised: this information is currently accurate. Because laws and legal procedures change, please check to be sure that the information here is current at the time you use it.

This is general information and may not apply to your individual, specific situation.

May 2018

Adapted from a slideshow by the Stanford Community Law Clinic by
Shaun Naidu, Jr. and Margaret Stevenson.
An earlier version was developed from materials prepared by
the East Bay Community Law Center

RCP provides: Community education presentations

Proyecto de SJSU Para Retirar sus Antecedentes Penales

Información para la Comunidad



Basic information regarding the expungement process and the SJSU Record Clearance Project

SAN JOSÉ STATE UNIVERSITY
Record Clearance Project
DEPARTMENT OF JUSTICE STUDIES
Community Education Presentations

Clearing A Criminal Record
Come learn the law and procedure involved in clearing a criminal record. Hear about how the San José State University Record Clearance Project works with individuals to help clear their criminal records.

Wednesday, February 27
10:00 a.m.
Center for Training and Career
249 Stone Road, San José

Wednesday, March 6
2:00 p.m.
Department Justice Team
First Christian Church, 845 Fifth Street, San José

Tuesday, March 12
10:00 a.m.
Center for Employment Training (CERT)
701 West Street, San José

Tuesday, April 9
8:30 - 8:30 p.m.
(English and Spanish)
Service Community Center
1031 Service Drive, San José

Friday, April 29
5:00 p.m.
Alexander Life Christian Fellowship
2444 Lighthouse Street, Mountain View

For more info regarding the SJSU Record Clearance Project, email: rcp@sjsu.edu, call (408) 924-2758

For more information, please visit: www.sjsu.edu/recordclearanceproject

SAN JOSÉ STATE UNIVERSITY | OFFICE OF HUMAN RESOURCES AND ARTS

RCP provides: Free/low-cost RAP sheets

“RAP” =
Record of
Arrests and
Prosecutions

At SJSU: Most
Wednesdays from
2:00 – 6:00 PM

By appointment only
Please call or email
408 924-2758 or
expunge@sjsu.edu

At Speed Screenings

Department of Justice Studies
SAN JOSÉ STATE UNIVERSITY
Record Clearance Project
Changing lives...one petition at a time.

Free/Low-Cost LiveScan to get your RAP sheet
Getting a copy of your criminal history report is the first step to clearing your criminal record. Come see us to order your free/low-cost RAP sheet.

Every Wednesday San José State University
By Appointment MacQuarrie Hall 521
2:00-6:00 pm www.sjsu.edu/map/

Items to Bring:
Any photo identification
AND EITHER

- \$25 cash (exact change) for the Department of Justice fee.
- OR
- Proof of inability to pay. LiveScans are free to those who are unable to pay. You can prove inability to pay by bringing either pay stubs or proof of government assistance. Proof of government assistance includes CalWORKS, MediCal, disability insurance, housing assistance, food stamps, Supplemental Security Income (SSI) or unemployment benefits.

The Department of Justice will mail your LiveScan results to you in approximately 1 to 2 weeks. You can bring your RAP sheet to our next Speed Screening for a free rap sheet review consultation.

* Please inform us if a reasonable accommodation for a disability is required.

For more information: (408) 924-2758 or expunge@sjsu.edu

SJSU | RECORD CLEARANCE PROJECT



www.sjsu.edu/expunge


RCP provides: Speed Screenings

- Individual interviews regarding next steps for record clearance.

SJSU students work under attorney supervision

Please bring your RAP sheet or other criminal history report.

- LiveScan fingerprinting
- Presentation on expungement law



Department of Justice Studies

SAN JOSÉ STATE UNIVERSITY
Record Clearance Project
"Changing lives...one petition at a time."

Speed Screening Free RAP Sheet Review

Thursday, October 26 3:30–5:30 pm Maramatha Christian Center 1811 S. 7th Street, San José	Tuesday, November 28 3:30–5:30 pm Hank Lopez Community Center 1694 Adrian Way, San José
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How to get your RAP sheet:
Freeflow-out LiveScans are available:

- Wednesdays at San José State University in MacCormac Hall, Room 521 from 2 to 6 pm. Please call (408) 924-2755 to schedule an appointment.
- On-site the day of the Speed Screening.

The Department of Justice will mail your RAP sheet to you in approximately 1 to 2 weeks.

Notes to bring for RCP LiveScan: Any photo identification, and either:

- \$25 cash (exact change) for the Department of Justice fee, or
- Proof of ability to pay. LiveScans are free to those who are unable to pay. You can prove inability to pay by bringing either paystubs or proof of government assistance.

You may also contact any LiveScan provider or the Sheriff's Department at (408) 924-4700. Fees of \$40 to \$60 apply. For locations, visit <http://my.sj.edu/justice/locations>.

County RAP Sheet

If you are certain that you have no convictions outside of Santa Clara County, you can order a county RAP sheet at the Sheriff's office, bring a photo ID and \$25 payment.

Be sure you have no outstanding warrants before going to the Sheriff's office.

Services Provided:

- ❖ RAP sheet review: one-on-one interviews to determine the next steps toward expungement (clearing criminal convictions). Please bring your RAP sheet or background check report.
- ❖ Presentation on record clearance law and employment rights
- ❖ Freeflow-out LiveScans to get your RAP Sheet

You may attend any or all of the above services. If a court hearing is not required, we likely can help you complete necessary expungement forms at your interview. Completing legal paperwork for court hearings is beyond the scope of Speed Screening interviews.

All services are free. A voluntary, \$10 donation is requested.

Please inform us if a reasonable accommodation for a disability is required.

Please RSVP or for more information:
expunge@sjsu.edu or (408) 924-2758

SJSU | RECORD CLEARANCE PROJECT

Golden Gate Community College

www.sjsu.edu/expunge

RCP provides: Speed Screenings

For future sessions:

Check www.sjsu.edu/expunge for details



Before Speed Screening Get a RAP sheet

State (“LiveScan”)

- Includes all counties
- **RCP**: free or \$25 (depending on income)
elsewhere: ~ \$ 45-\$60
- Arrives in ~ one week
- Get from Record Clearance Project or other LiveScan provider

→ If all convictions are in one county, then best to get county rap sheet. If convictions in more than one county, get a state LiveScan.

County

- More complete than state
- \$ 25
- Arrives in ~ one month
- Get from Sheriff’s office

Important: Make sure that there are no **warrants** pending before going to the Sheriff’s Office

RCP provides: Court petition preparation

RCP has limited capacity to assist people in court.



The Public Defender’s office assists with expungement petition preparation at the Reentry Resource Center.

151 W. Mission (corner San Pedro & Mission), San José

(408) 535-4290

Monday 9:30 a.m. – 11:00 a.m.
Tuesday 1:00 p.m. – 4:00 p.m.
Thursday 1:00 p.m. – 4:00 p.m.
Friday 9:30 a.m. – 11:00 a.m.

Record Clearing Options



Record cleaning options

The following information applies to California state convictions only

- Expungements = dismissals of convictions**
(jail sentences, including 1170(h) / “realignment”)
- Reducing felonies to misdemeanors**
 (“wobblers,” Prop 47 and Prop 64)
- Certificates of Rehabilitation** (prison sentences that don’t have PC 1170(h) in sentence now)
- Sealing** (drug diversions , factual innocence, juvenile offenses, offenses related to being involved in human trafficking, marijuana)

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Expungements

“Expungement” = dismissal of a conviction

Almost all convictions involving county **jail** or **probation** or **fin**es can be dismissed

Exception: most sex and child pornography offenses cannot be dismissed

All **AB 109/1170(h)** convictions can be dismissed

As of January 2018: All state prison cases prior to October 2011 for non-serious, non-violent, non-sex cases can be dismissed

What does an expungement do?

withdraws a plea bargain or dismisses a conviction

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Expungements

Expungements are either:

- required (“mandatory”), or
- up to a judge (“discretionary”)



Whether expungement is mandatory or discretionary depends on:

- The sentence, *and*
- What happened *after* the sentence?

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Expungements

When probation **was** part of the sentence:

For record clearances, it does not matter whether probation was formal (reporting) or court (non-reporting)

- ❑ If a person successfully completed probation

no new convictions during probation
no probation violations



- then the court must dismiss the conviction (“mandatory”)



PC 1203.4

Exception: Requests to dismiss many Vehicle Code offenses *must* be heard in court



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Expungements

When probation **was** part of the sentence:

- ❑ If a person did not successfully complete probation,

new conviction during probation
probation violation



- then the dismissal of the conviction is up to a judge (“discretionary”)

A judge will decide in court whether it is “**in the interests of justice**” to dismiss the conviction



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Expungements

Early termination of probation

Example: 5 years probation, terminated after 4 years

- ❑ If a judge grants a person early termination of probation,
 - ✓ even after an earlier probation violation
 - ✓ even with victim restitution due

PC 1203.3



People v. Seymour (2015) 239 Cal.App.4th 1418

- then the court must dismiss the conviction (“mandatory”)



PC 1203.4

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Expungements

When probation was not part of the sentence

- ❑ If the Petitioner had no new conviction during the one year following the conviction,



- then the court must dismiss the conviction (“mandatory”)



Exception: Vehicle Code infractions are *ineligible* for dismissal

Note: PC 1203.4a – the expungement law that applies when probation is *not* a term of sentence – does not apply to felonies. For the (rare) felony with no probation, see if it is a wobbler or Prop 47 or Prop 64 felony. If so, ask to reduce the felony to a misdemeanor and seek to dismiss.

PC 1203.4a

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Expungements

When probation **was not** part of the sentence

- ❑ If the Petitioner had further involvement with the criminal justice system within one year following the conviction,



→ then the dismissal of the conviction is up to a judge (**discretionary**)

A judge will decide in court whether it is “**in the interests of justice**” to dismiss the conviction



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Expungements

AB 109 = Realignment = §1170(h)

- October 2011 law turned non-serious, non-violent, non-sex offenses that used to be state prison sentences into ones to be served in county jail

All 1170(h) cases are eligible for expungement

All 1170(h) cases are discretionary:

A judge will decide in court whether it is “**in the interests of justice**” to dismiss 1170(h) convictions



People with a split sentence (released with a “tail”) can apply for expungement one year after completing supervision PC 1170(h)(B)(5)

People with straight time (no “tail”) can apply two years following release from custody PC 1170(h)(A)(5)

PC 1203.41

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Expungements

New law effective January 1, 2018!

PC 1203.42 is an AB 109 equalizer:

State prison convictions *prior* to AB 109 are eligible to be dismissed the same as those *after* AB 109's start date of October 2011.

If the sentence for a conviction now includes Penal Code 1170(h) (=AB 109 / realignment), state prison sentences prior to October 2011 can be dismissed "in the interests of justice"

More information and court forms coming.



PC 1203.42, AB 1115 (state law creating PC 1203.42)

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Expungements

When can a person file for expungement?

- Not serving time
- Not on probation, parole or supervision
- No criminal charges pending

Owing money to the County does NOT bar expungements

People v. Bradus (2007) 149 Cal.App.4th 636,638 (successful completion of probation);
People v. Holman (2013) 214 Cal.App.4th 1438 (early termination of probation);
People v. Seymour (2015) 239 Cal.App.4th 1418 (early termination of probation requires expungement even when victim restitution due)

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Expungements: balance due to County

It helps to know what the County believes a person owes *before* filing for expungement.

Call Department of Tax and Collections (408) 282-3200

Ask for detailed statement of any balance due to see whether it is fees, fines or restitution

The court can forgive (“commute”) balances for fines and fees due at a record clearance hearing

If the petitioner wants to ask the court to forgive the balance due, he/she must include this request in the expungement papers filed

- Provide an explanation as to why it is needed
- Making small, regular payments when one is able, can be beneficial to a later request for commutation of fees

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Immigration status

There is no immigration status requirement to be eligible to petition for expungement.

However, criminal histories can affect immigration cases. The Record Clearance Project asks its clients who have immigration issues to consult an attorney who specializes in immigration law before beginning the expungement process.

Some agencies that offer immigration legal services:

- Alexander Community Law Center, San José: (408) 288-7030
- Asian Law Alliance, San José: (408) 287-9710
- Catholic Charities, San José: 408 (408) 944-0691
- Community Legal Services, East Palo Alto: (650) 326-6440
- International Institute, Redwood City: (650) 780-7530
- SIREN, San José: (408) 453-3003

And various private attorneys ...



Now some practice!

Five people come to you to ask which of their convictions *must* be dismissed and which *can* be dismissed.

Assume that

- Unless shown, the people are eligible to file for expungement (dismissal)
- They have no probation violations other than from new convictions shown on their records
- The last conviction shown is their last conviction

Abbreviations used:

Infrac = Infraction;

Misd = misdemeanor,

Fel = Felony

Mand = Mandatory dismissal

Disc = discretionary dismissal

Inelig = ineligible for dismissal

Is dismissal of Mr. A's convictions Mandatory, Discretionary or Ineligible?

			Sentence:	Incarceration: jail, prison or none	Probation, supervision, parole, or none			
1.1.2000	Misd	petty theft	1 day jail	1 year	Mand	Disc	Inel	
6.1.2003	Inf	resist arrest	no jail	fine only	Mand	Disc	Inel	
12.7.2004 12.8.2006	Fel	sale cont subs probation terminated early	30 days jail	3 years	Mand	Disc	Inel	
1.1.2007	Misd	false name	4 days jail	2 years	Mand	Disc	Inel	
2.2.2008	Fel	robbery 2 nd deg	8 months jail	3 years	Mand	Disc	Inel	

Is dismissal of Ms. B's convictions Mandatory, Discretionary or Ineligible?

Sentence:			Incarceration: jail, prison or none	Probation, supervision, parole, or none			
1.1.2000	Misd	resist arrest	2 days	0	Mand	Disc	Inel
3.1.2000	Misd	petty theft	2 days	0	Mand	Disc	Inel
6.1.2002	Fel	sales contrl subs not marijuana	3 months	3 years	Mand	Disc	Inel
1.1.2006 1.1.2010	Fel	child endangermt probation violation	6 months	5 years	Mand	Disc	Inel
1.1.2012	Fel	domestic violence	10 months	3 years	Mand	Disc	Inel

Is dismissal of Mr. C's convictions Mandatory, Discretionary or Ineligible?

Sentence:			Incarceration: jail, prison or none	Probation, supervision, parole, or none			
1.1.2000	Misd	resist arrest	2 days	1 year	Mand	Disc	Inelig
3.1.2000	Misd	domestic battery	2 months	3 years	Mand	Disc	Inelig
1.1.2004	Fel	sales contrl subs (now 1170(h) sentence)	2 years prison	3 years parole	Mand	Disc	Inelig
6.1.2007 6.1.2009	Fel	child endangermt probation terminated early	6 months	5 years	Mand	Disc	Inelig
1.1.2012 1.1.2014	Fel	poss contrl subs	drug diversion successfully completed		Mand	Disc	Inelig

not applicable –
no conviction to
dismiss

Is dismissal of Ms. D's convictions
Mandatory, Discretionary or Ineligible?

		Sentence:	Incarceration: jail, prison or none	Probation, supervision, parole, or none			
1.1.1999	Fel	child endangermt	45 days jail	3 years	Mand	Disc	Inelig
2.2.2000	Fel	assault w/ deadly weapon	2 months jail	2 years	Mand	Disc	Inelig
6.6.2002	Fel	sale of marijuana (adults involved, not on school or daycare)	6 months jail	2 years	Mand	Disc	Inelig
8.8.2006	Fel	sale of heroin (now 1170(h) sentence)	2 years prison	2 yrs parole	Mand	Disc	Inelig
9.9.2012	Fel	own/rent drug house	16 months jail per 1170(h)	1 year tail	Mand	Disc	Inelig

Is dismissal of Mr. E's convictions
Mandatory, Discretionary or Ineligible?

		Sentence:	Incarceration: jail, prison or none	Probation, supervision, parole, or none			
1.1.2006	Fel	child endangermt	6 months	5 years	Mand	Disc	Inel
1.1.2008		probation terminated early					
1.1.2010	Fel	poss contrl subs not marijuana	drug diversion		Mand	Disc	Inel
1.1.2011	Fel	assault w/ deadly weapon	8 months	3 years	Mand	Disc	Inel
1.1.2017	Misd	disorderly conduct	2 days	2 years	Mand	Disc	Inel

What? Still on probation!
-> wait till 1.1.2019 or
ask for early termination
of probation

What does *not* change after expungement

- Still counts as a “prior”
- Still counts as a strike if it previously counted as a strike
- Firearm ban remains unchanged
- Sex offender registration remains unchanged
- Driver’s license suspension remains unchanged



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What *does* change after expungement

Expungement often helps with:

- Employment
- Housing
- Family unification
- Immigration*
- Student loans
- Civil rights
- Fundamental fairness
- Dignity value

* Check with an immigration attorney before proceeding to determine possible consequences for immigration situation

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Expungements = Dismissals of convictions

(jail, probation, 1170(h) sentences)

Reducing felonies to misdemeanors

("wobblers," Prop 47 and Prop 64)

Certificates of Rehabilitation

(prison sentences that don't have PC 1170(h) in sentence now)

Sealing

(drug diversion, human trafficking, juvenile, factual innocence)



Reducing felonies to misdemeanors

Many felonies are **wobblers** eligible to be reduced to misdemeanors under Penal Code section 17b.

If the offense can be charged either as a misdemeanor OR as a felony, it is a wobbler.

Test to see if it's a wobbler: does sentence include

Jail OR prison
Jail OR 1170(h)

Examples:

assault with deadly weapon
vandalism
domestic violence
DUI with injury
second degree burglary
grand theft



PC 17(b)

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Example: wobblers



- Cal. Penal Code §§ 459 and 460(b) second degree burglary:
 - Burglary in the second degree is punished by: “imprisonment in the **county jail** not exceeding one year or **imprisonment pursuant to subdivision (h) of Section 1170** (Cal. Penal Code § 461 (b)).
- Cal. Penal Code § 245(a)(1) assault with a deadly weapon:
 - Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the **state prison** for two, three, or four years, **or** in a **county jail** for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Reducing felonies to misdemeanors



When a jail sentence has a wobbler felony, a judge can reduce it to a misdemeanor at any time.

- Petitioner can ask for reduction and dismissal in the same petition
- The judge considers evidence of rehabilitation and the interests of justice



Once a felony is reduced to a misdemeanor, it is considered as a misdemeanor for all purposes.

Reducing felonies to misdemeanors

The new Proposition 47 requires:



- misdemeanor instead of felony sentence for three drug possession offenses, Health & Safety Code sections:

11350 (possession of cocaine and other controlled substances)

11357 (possession of concentrated cannabis – also look at Prop 64)

11377 (possession of methamphetamines and other controlled substances)

PC 1170.18 and other sections

Prop 47 allows sentences for the above offenses to remain as felonies if the person has a previous conviction for crimes such as rape, murder, or child molestation, or is required to register as a sex offender per PC 290(c).

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Reducing felonies to misdemeanors

The new Proposition 47 requires:

- misdemeanor instead of a felony sentence for the following theft offenses when \$950 or less is involved:



- commercial burglary during business hours (PC 459)
- theft (PC 487, 488) and petty theft with a prior (PC 666)
- receiving stolen property (PC 496(a))
- forging/writing bad checks (PC 473, PC 476a)

Re 476a: unless the person has 3 or more prior convictions for forgery or insufficient funds checks

Re 473: unless the person is also convicted in the same case of identity theft (PC 530.5)

Prop 47 allows sentences for the above offenses to remain as felonies if the person has a previous conviction for crimes such as rape, murder, or child molestation, or is required to register as a sex offender per PC 290(c).

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SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA		ATTACHMENT CR-6087 <small>POST-CASEY VERSION 1/17</small>
PLAINTIFF: PEOPLE OF THE STATE OF CALIFORNIA		<div style="border: 1px solid red; padding: 5px; color: red; font-size: small;"> To keep other people from seeing what you have entered on your form, please press the Reset Form button at the end of the form when finished. </div>
DEFENDANT in private person Name: Street Address: City, State, Zip Code: Phone:		
<input type="checkbox"/> PETITION TO REDESIGNATE FELONY CONVICTION AS MISDEMEANOR (PC § 117A.15)(2) <small>(Use when sentence is completed and you are not on probation, parole, or suspension)</small>		<input type="checkbox"/> PETITION FOR RESENTENCING (PC § 1170.18)(a) <small>(Use when you are still in custody or on probation or suspension)</small>
CASE NUMBER: _____		
1. <input type="checkbox"/> I am the Defendant in the above-captioned case and was convicted of the following offenses (list all counts which you think are eligible for resentencing or redesignation): 2. <input type="checkbox"/> I have never been convicted of any of the "Disqualifying Offenses" listed on the back of this petition. 3. <input type="checkbox"/> A copy of this petition has been served on the Santa Clara County District Attorney, 100 West Hedding St., San Jose, CA 95113		
4. PETITION TO REDESIGNATE FELONY CONVICTION(S) AS MISDEMEANOR(S): a. <input type="checkbox"/> I have completed my sentence an am no longer on probation, parole, Post Release Community Supervision or Mandatory Supervision. I hereby petition to have the eligible felony conviction(s) redesignated as a misdemeanor. b. <input type="checkbox"/> I request a hearing only if the petition is opposed. <input type="checkbox"/> do <input type="checkbox"/> do not request a hearing on this petition.		
5. PETITION TO RECALL FELONY SENTENCE AND RESENTENCE AS MISDEMEANOR(S): a. <input type="checkbox"/> I am in custody at _____ My release date is _____ b. <input type="checkbox"/> I am out of custody and <input type="checkbox"/> on parole <input type="checkbox"/> on formal probation <input type="checkbox"/> on PIVCS or mandatory supervision. c. <input type="checkbox"/> I hereby petition to have my sentence recalled and to be resentenced.		
6. I understand that if my petition is granted, I will still be prohibited from owning, possession, or having in my custody or control any firearms. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this petition is executed on (date) _____ 20____. <div style="text-align: right;">_____ (Signature of Petitioner)</div>		
7. DISTRICT ATTORNEY RESPONSE (must be filed within 30 days of service of the petition)		COUNTY CASE NO. _____
a. <input type="checkbox"/> The District Attorney requests that the petition be GRANTED. b. <input type="checkbox"/> The District Attorney requests that the petition be DENIED for the following reason(s): (1) <input type="checkbox"/> The defendant has a prior conviction <input type="checkbox"/> under PC § 987(b)(2)(B) and/or a conviction requiring registration under PC § 26002. (List convictions by statute # and code section). (2) <input type="checkbox"/> The following felony offenses do not qualify for resentencing or redesignation. (List each count and code section and provide a brief explanation). (3) <input type="checkbox"/> The defendant poses an unreasonable risk to public safety as defined in PC § 1170.18(c).		I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief and that the response is executed on (date) _____ 20____. <div style="text-align: right;">_____ Deputy/Assistant District Attorney</div>
CR-6087 12/12/14 PRO OF PETITION FOR RESENTENCING OR REDESIGNATION OF OFFENSES (PC § 1170.18(a) - (f)) Page 1 of 2		37

Procedure: Prop 47 in Santa Clara County

Use form
CR-6087 for previous felonies

http://www.sccscourt.org/forms_and_filing/forms/CR-6087.pdf

Or contact the
Public Defender's Prop 47 unit

in-custody: (408) 299-7747
out of custody: (408) 299-7347

Application deadline:
November 5, 2022

Prop 64: marijuana-related expungement and reduction of felonies

Effective January 1, 2017, Prop 64 can improve records for many marijuana-related offenses (reduce some felonies, seal some convictions) if the conviction was for violation of Health and Safety code section:

- o 11357 (possession)
- o 11358 (cultivation)
- o 11359 (possession with intent to sell) or
- o 11360 (transportation, sales)



HSC 11361.8(e)-(f)

Different rules apply if people under age 21 are involved or present, if offense occurred on school or daycare.

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Procedure: Prop 64

Use forms
CR-400 and CR-403 for
Prop 64 cases

<http://www.courts.ca.gov/>
Click on "Forms" tab

Search in the drop-down
menu for Criminal forms

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Procedure: Filing in Santa Clara County

- Fill out form, make 3 copies
 - Original to file, 1 copy for DA, 1 for Probation, 1 to keep for yourself
- File form by mail or in person at the Clerk's Office, Hall of Justice

Street Address: 190-200 West Hedding Street, San Jose, CA 95110

Mailing Address: 191 N. First Street San Jose, CA 95113
- No filing fee
- The court will process the application and send you the completed paperwork at the address you list
- Serving (=giving a copy of the form) to the DA and Probation:
 - If you file in court in person, you can ask the court clerk to "serve" the DA and Probation
 - If you file by mail, ask someone over 18 (not you!) to send a copy of completed form to the DA (70 W. Hedding, San Jose 95110) and to Probation (2314 N. First St., San Jose 95131)
 - Ask that person to complete a Proof of Service form showing the DA and Probation got a copy and file that in court

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Summary of felony reduction rules

<u>Law</u>	<u>Applies to</u>	<u>Type of case</u>	<u>Can / Must be reduced</u>
17b	jail only	wobbler = sentence can be to jail OR prison/1170(h)	can
P 47	jail + 1170(h) + prison	drug possession theft-related \$950 or less	must
P 64	jail + 1170(h) + prison	marijuana-related (including sales)	must

Now some practice!

Following are some felony convictions.

Assume that all offenses involved people who were over the age of 21 and not on school grounds (matters for Prop 64)

Decide what law applies, if any:

17b, Prop 47 or Prop 64

Then decide whether the conviction can be reduced, must be reduced or can't be reduced.

Reducing misdemeanors to infractions

Some misdemeanors can be reduced to infractions

Examples:

PC 415: disturbing the peace

Bus & Prof C 25658(b): minor buying or drinking alcohol in public

VC 23109(c): speed contests on highway

VC 5201.1: obscured license plate

VC 12500: driving without a license

VC 14601.1: driving with a suspended license

PC 17(d), 19.6, 19.8

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Expungements = Dismissals of convictions

(jail, probation, 1170(h) sentences)

Reducing felonies to misdemeanors

(“wobblers,” Prop 47 and Prop 64)

Certificates of Rehabilitation

(prison sentences that don’t have PC 1170(h) in sentence now)

Sealing

(drug diversion, human trafficking, juvenile, factual innocence)



Certificates of Rehabilitation

Certificates of Rehabilitation are available for prison sentences that can't be dismissed by PC 1203.42 and convictions that cannot be expunged

A Certificate of Rehabilitation does not erase or dismiss a conviction

It does:

- ✓ certify rehabilitation by the court
- ✓ relieve registration requirement for some sex offenses PC 290.5
- ✓ demonstrate evidence of the rehabilitation needed for many professional licenses PC 4852.15

PC 4852.15

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Certificates of Rehabilitation: Requirements

- Residence requirements
 - must have lived in California for five years immediately before filing,
and
- Time requirements
 - starting with either the
 - last release from last custody, or
 - last encounter with law enforcement (whichever is later)
 - person must have no problems with law for 7 years (for most offenses)
Judge can shorten the 7 years if it is "in the interests of justice" to do so

Procedure: Certificates of Rehabilitation

Expunge all eligible jail convictions *before* applying for Certificate of Rehabilitation

File application with court

Include supporting statement and documents
(similar to filing for discretionary expungements)

District Attorney's office conducts an investigation

Judge considers request for Certificate of Rehabilitation
at a hearing

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- Expungements = Dismissals of convictions
(jail, probation, 1170(h) sentences)
- Reducing felonies to misdemeanors
(“wobblers,” Prop 47 and Prop 64)
- Certificates of Rehabilitation**
(prison sentences that don't have PC 1170(h) in sentence now)
- Sealing
(drug diversion, human trafficking, juvenile, factual innocence)



Sealing

Limited types of records may be sealed:

- successful drug diversions
 - Prop 36 or Deferred Entry of Judgment (“DEJ”)
PC 1210.1 PC 1000.4
- factual innocence (“it wasn’t me”) or arrests not leading to conviction
PC 851.8 PC 851.87-.92, 1000.4, 1001.9, 1005, effective January 1, 2018
- some juvenile offenses
Welf. & Inst. C 781, 786
- most offenses committed by survivors of trafficking as a “direct result” of being trafficked
PC 236.14, effective January 1, 2017

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Sealing

Once a case is sealed, no conviction exists and there is nothing to dismiss

Example:

Upon successful completion of a deferred entry of judgment [drug diversion] program, the arrest upon which the judgment was deferred shall be **deemed to have never occurred**.

The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was **not arrested or granted deferred entry of judgment** for the offense, except [in employment applications for peace officer].

There is similar language for other types of cases where record sealing is allowed.

PC 1000.4(a)

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Sealing of most offenses committed as a result of human trafficking

A person subject to human trafficking can have conviction records destroyed if:

- Person was being trafficked at time he/she committed the crime
- Crime was direct result of being trafficked
- Person is distancing him/herself from trafficking
- Destroying records is “in the interests of justice”

File within “reasonable time” after seeking services for or ending trafficking

Exceptions: some convictions that cannot be dismissed include robbery, first degree burglary, carjacking and more serious offenses such as rape, murder, arson, kidnapping and other felonies listed in PC 667.5(c)

PC 236.14, effective January 1, 2017

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Expungements = Dismissals of convictions

(jail, probation, 1170(h) sentences)

Reducing felonies to misdemeanors

(“wobblers,” Prop 47 and Prop 64)

Certificates of Rehabilitation

(prison sentences that don’t have PC 1170(h) in sentence now)

Sealing

(drug diversion, human trafficking, juvenile, factual innocence)



Procedure:

How to apply for expungement

Apply in the county where the conviction took place

File a separate petition for each **case number**

One case may have several “counts” (“charges”);
once the one case is dismissed, all the counts are dismissed

Two ways to apply for expungement:

- *filing a form*
 - no court appearance
 - fill out application form
- *going to court*
 - court appearance required
 - prepare a petition

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Procedure:

How to apply for expungement

Filing a form (no court appearance)

Useful for **mandatory** dismissals (court must dismiss the conviction)

- When person successfully completed probation
- If didn't get probation, when person did not have another problem with law enforcement within the year following the conviction



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Procedure: How to apply for expungement

Other counties (not Santa Clara):
California has “Judicial Council”
forms to file for expungements:
forms CR-180 and CR-181

www.courts.ca.gov/forms.htm -
drop down menu: “criminal”

Send to the court clerk’s office
in the county where the
conviction took place.

Keep a copy.

CB-180

ATTORNEY OR FIRM (WHICH ATTORNEY) STATE BAR NO. PAF COURT USE ONLY

NAME
FIRM NAME
STREET ADDRESS
CITY STATE ZIP CODE
TELEPHONE NO. FAX NO.
FIRM ADDRESS

ATTORNEY OR FIRM
PEOPLE OF THE STATE OF CALIFORNIA
DEFENDANT: DATE OF BIRTH: COURT NUMBER:

PETITION FOR DISMISSAL
(Pen. Code, §§ 1790, 17902, 1203.4, 1203.4a, 1203.41, 1203.43, 1203.45)

1. On (date) the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offense(s) or was granted deferred entry or judgment for the following offense(s):

Code	Section	Type of offense (felony, misdemeanor, or infraction)	Eligible for reduction to misdemeanor under Penal Code, § 17091 (yes or no)	Eligible for reduction to infraction under Penal Code, § 170922 (yes or no)

If additional space is needed for listing offenses, use Attachment to Judicial Council Form (form MC-025).

2. Felony or misdemeanor with probation granted (Pen. Code, § 1203.4)
Probation was granted on the terms and conditions stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, not on probation for any offense, nor under charge of commission of any crime, and the petitioner (check all that apply):
a. has fulfilled the conditions of probation for the entire period thereof.
b. has been discharged from probation prior to the termination of the period thereof.
c. should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

3. Misdemeanor or infraction with sentence other than probation (Pen. Code, § 1203.4a)
Probation was not granted, more than one year has elapsed since the date of pronouncement of judgment; Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime, and the petitioner (check one):
a. has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land.
b. should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

Page 1 of 2
FORM NO. CB-180 (12/02)
100-A 100-A 100-A 100-A 100-A 100-A
PETITION FOR DISMISSAL
www.courts.ca.gov

Procedure: How to apply for expungement

The petition shows the judge that “**the interests of justice**” support dismissing the conviction by:

- a Declaration (sworn, personal statement),
and
- supporting documents
 - letters of support from
 - co-workers
 - friends and family
 - church
 - community volunteer placements
 - certificates of accomplishments
 - other evidence of rehabilitation



Employment rights of people with criminal convictions



Expunged convictions shielded

Most California employers cannot ask about or consider expunged convictions in employment decisions

No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information . . . concerning a conviction that has been judicially dismissed or ordered sealed...

. . . nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record ... concerning a conviction that has been judicially dismissed or ordered sealed ...

Referring to PC sections 1203.4, 1203.4a, 1203.45 and 1210.1.

Labor Code 432.7(a)

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When California employers can consider expunged convictions

Exceptions to Labor Code section 432.7: employers can consider dismissed convictions in the following circumstances:

- peace officers §§ (b), (e)
- health facilities § (f)
- PC § 290-related arrests for positions with regular access to patients
- HS § 11590-related arrests for positions with access to medication
- concessionaires [selling or contracting] with government § § (k), (l)
though keep in mind new § 432.9 – Ban the Box – re government employment
- employer required by law to obtain conviction information § (m)
- position requires possession/use of firearm in employment § (m)
- conviction bars applicant from holding position, notwithstanding dismissal § (m)
- employer is prohibited from employing applicant with conviction § (m)

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“Ban the Box” on most job applications in California

“Ban the Box”: most employers in California with more than 5 employees may not ask applicants about criminal histories on employment applications.

They must wait until after “a conditional offer of employment” before asking about criminal history

BAN THE BOX!



Exceptions: Employers can ask on the application form about conviction history if

- the agency is required to do a background check
- the position is with a criminal justice agency
- farm labor contractors

Gov't Code 12952(a) (effective January 1, 2018)

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Most employers cannot have an absolute ban on hiring anyone with a conviction history.

We cannot conceive of any business necessity that would automatically place every individual convicted of any offense in the permanent ranks of the unemployed.

Court decision in *Green v. Missouri Pacific Railroad*, 523 F.2d 1290 (8th Cir. 1975)

Employers must make an individualized assessment of each applicant to consider:

- The **nature and gravity of the offense** or conduct;
- The **time that has passed** since the offense, conduct and/or completion of the sentence; and
- The **nature of the job** held or sought.

Gov't Code 12952(b) (effective January 1, 2018)

2 Cal. Code Reg. 11017.1; EEOC Guidance p. 11

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Different employers can see different information

Once a conviction is dismissed (“expunged”), it remains on a rap sheet, with a notation that the conviction was dismissed.

Rap sheets are highly private documents. The law limits who is permitted to see them.

Government employers, law enforcement and the courts can see full record, including expunged convictions

Banking and hospitals / medical facilities have greater access than private employers

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Different employers can see different information: Licensing boards

Licensing boards can see full record, including expunged convictions

Examples: Real estate agents
 Security guards
 Accountants

People can advocate with licensing boards for permission to work even with convictions on their records

In deciding whether to give professional licenses to someone with a criminal history, licensing boards may consider:

- Time passed since last conviction
- Expungement of conviction(s)
- Letters of support
- Whether convictions are “substantially related” to license desired

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Different employers can see different information: Licensing boards

Expungement and Certificates of Rehabilitation can be useful. The following laws apply to licensing boards regulated by the Department of Consumer Affairs:

[A] person shall not be denied a license **solely on the basis of a conviction that has been dismissed...**

Business & Professions Code 480(c)

[A] person shall not be denied a license **solely on the basis** that he or she has been convicted of a felony if he or she has obtained a **certificate of rehabilitation** ... *or* that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the **criteria of rehabilitation** developed by [each licensing board]...

Business & Professions Code 480(b)

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Different employers can see different information: Caregivers

Employers in the care-giving fields must request criminal history reports of job applicants

Examples: Child care workers
Disabled people's assistants
Elder care workers

- the California Department of Social Services will notify the employer if applicant has a conviction
- caregivers with a criminal record can ask the Department of Social Services for an 'exemption' to be eligible to work

PC §11105.3; Exemption process outlined at California Department of Social Services
<http://cclid.ca.gov/PG404.htm>

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Different employers can see different information: private employers

Private employers do not have access to state computer files

Examples: Target, Cisco, Safeway cannot see rap sheets

Private employers usually buy **background check reports**

In California, **background check companies** are not *supposed to* report:

- past arrests, or
- convictions that are older than 7 years

Cal. Civil Code 1786.18(a)(7)

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Background check companies

Applicants must give permission for employers to order a background check report.

Employers must offer the applicant a copy of the report

Cal. Civil Code 1786.26(b)(1), Cal. Civil Code 1786.16(a)(2), (b) and 15 USC 1681j

Getting a copy of the report allows people to know what is on their report.

Mistakes on background reports are common

People who are the subject of an unlawful report can sue for \$10,000

Cal. Civil Code 1786.50

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Answering questions on a job application

Keep in mind: An employer can use an employee's false statements on a job application as a legal reason to not hire or to fire someone, even after years of work

Learn what is actually on a record:

many people are unaware of what is on their record

Read the application question **carefully**

Does it ask about current convictions only?

Does it ask about felonies only?

Does it ask about recent convictions only?

Does it ask about ever having been convicted of a crime?

Answering questions on a job application

If a job application asks about current convictions only:

If the applicant has dismissed or sealed all convictions and no convictions remain on the record:

What is the answer to the question:

“Do you have any current criminal convictions?”

No.

If a job application asks about felonies only:

If all felonies on the applicant’s record have been reduced to misdemeanors:

What is the answer to the question:

“Do you have any felony convictions?”

No.

Answering questions on a job application

If a job application asks about recent convictions only:

Verify the date of the conviction by looking at rap sheet

If a job application asks about whether a person has ever been convicted of a crime:

If the applicant has only expunged convictions on his/her record:

- Employer is not supposed to ask regarding expunged convictions

- Possible responses:

“Yes, but it has been expunged.”

“My background check will not be a problem.”

“I have no convictions.”

The employer's questions are unlawful, but what can I do?

- Practice responses to questions
 - Career training agencies can help
- Get it in writing if possible (e.g., job application form, letters of rejection)
- Take notes about who said what, when
- Talk to others about a specific employers' actions

Now some practice!

On the next slides are imaginary employment situations and job applicant backgrounds.

Imagine that you are applying for a job that you would like, for which you are well-qualified.

When you are called in for an interview, the interviewer asks you the following questions.

Practice how you would respond.

Now some practice!

Job:

Manager in the home furnishings department of Department Store

The job does not require driving

Your background:

AA degree in interior design

Four years of retail experience

DUI conviction six years ago, which is still on your record

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Interviewer asks ...

Have you ever been arrested?

Most California employers cannot ask about:

- Arrests that did not lead to convictions
- Records that have been expunged
- Arrests for which a person successfully completed a drug diversion program

Do you have any convictions?

Yes, BUT:

Employer is supposed to consider the

- nature and gravity of the offense
- job duties
- time that has passed

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Now some practice!

Job:

Counselor for at-risk youth in City-run program

Your background:

10 years of experience working with 18- to 24-year-olds in gang prevention program

Prior to 10 years ago, three drug-related convictions, all of them **sealed**

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Interviewer asks ...

Have you ever been arrested?

If person's record is sealed (= successfully completed a drug diversion program), they can answer "no"

I checked your record and you had three drug diversion cases. You answered that you didn't have any arrests. Do you want to reconsider your answer?

No. My answer was correct.

The drug diversion laws say that you can answer 'no' to questions regarding whether you were arrested.

- Note that people working with those under age 18 will be subject to a Department of Social Services review. This should not be a problem for people with sealed convictions, however.

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Now some practice!

Job: event planner for corporate parties
(does not require professional license)

Your background:

Prison conviction for possession of methamphetamines.

Four older misdemeanor drug cases for which you served sentences in jail.

It has been six years and six months since you were released from prison.

You have no new convictions since your release from prison.

Your felony was reduced to a misdemeanor under Prop 47

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Interviewer asks ...

Do you have any felony convictions?

Answer is “no” – the felony has been reduced to a misdemeanor

What is your background check going to show?

Currently background check will show prison case.
can apply for Certificate of Rehabilitation & ask for early consideration

Background check should not show older jail cases – more than 7 years

Should get those expunged before applying for Certificate of Rehabilitation

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Some additional resources:

General:

- All of Us or None: www.allofusornone.org
- Collateral Consequences Resource Center: www.ccresourcecenter.org
- Clean Slate Clearinghouse: www.cleanslate.csgjusticecenter.org
- Californians for Safety and Justice: www.safeandjust.org/resources
- Root and Rebound: www.rootandrebound.org
- The Papillon Foundation: www.papillonfoundation.org

Employment:

- National Employment Law Project www.nelp.org
- National H.I.R.E. network: www.reentry.net

In San José:

- Alexander Community Law Center workers' rights clinic
<http://law.scu.edu/kgaclc/#services> (408) 288-7030
- Ascent Employment Services <http://www.ascent-jobs.org> (408) 257-8302





For more information, or to sign up for Speed Screening or
LiveScan fingerprinting
leave a message for the SJSU Record Clearance Project at

expunge@sjsu.edu

Or (408) 924-2758 (message line)

www.sjsu.edu/expunge

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