

# Criminal Record Clearing in a Nutshell



*Summer 2023*

# Laws change. Individual cases differ.



Because laws and legal procedures change, please check to be sure that the information here is current before you rely on it.

We expect to post an updated version of this information at <https://www.sjsu.edu/rcp/community-resources.php>

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

# Getting started: Get a RAP sheet

RAP = Record of Arrests and Prosecutions

State Department of  
Justice (“LiveScan”)

- Includes all counties
- Arrives in ~ one week

**RCP LiveScan**

**appointments:**

[expunge@sjsu.edu](mailto:expunge@sjsu.edu)

Find LiveScan offices at  
[https://oag.ca.gov/fingerprints/  
record-review](https://oag.ca.gov/fingerprints/record-review)

County

- Usually more complete than state RAP
- 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

# Speed Screenings

Students (under attorney supervision) review clients' RAP sheets and advise them about next steps toward expungement



Contact the RCP for details regarding the next Speed Screening at [expunge@sjsu.edu](mailto:expunge@sjsu.edu)

Meetings are online or by phone

# RCP provides: Court petition preparation

In Santa Clara County:

RCP has limited capacity to assist people in court.

Meetings are online or by phone



The Santa Clara County Public Defender's office assists with expungement petition preparation at the Reentry Resource Center.

(408) 535-4290

# Record Clearing Options



# Record cleaning options

The following information applies to California state convictions only

## Expungements = dismissals of convictions

(jail, AB 109, prison)

## Reducing felonies to misdemeanors

("wobblers," Prop 64)

## Sealing and Vacatur

(drug diversions, juvenile offenses, offenses resulting from being trafficked)

## Certificates of Rehabilitation

# Expungements

“Expungement” = dismissal of a conviction

What does an expungement do?

withdraws a plea bargain or dismisses a conviction

Expungements are either:

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



Whether expungement is must be dismissed (“mandatory”) or can be dismissed (“discretionary”) depends on:

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



# 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

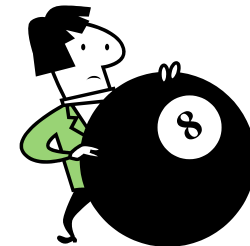
Exception: Requests to dismiss many Vehicle Code offenses *must* be heard in court



# Expungements

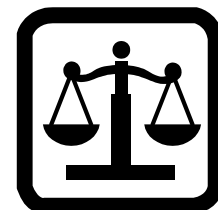
When probation **was** part of the sentence:

- ❑ 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



# 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



# Expungements

When probation was not part of the sentence

☐ If the Petitioner had no new convictions 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 the felony can be reduced (next section). If so, ask to reduce the felony to a misdemeanor and to dismiss.

# Expungements

When probation was not part of the sentence

❑ If the Petitioner had another conviction within one year following the conviction,

→ then the dismissal of the first 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



# Expungements

AB 109 = Realignment = PC section 1170(h)

October 2011 law moved many cases that were served in state prison to be served in county jail.

Sentences for these AB 109 cases include “PC 1170(h).”

**All AB 109 convictions are eligible to be dismissed.**



It is up to a judge to decide whether it is “**in the interests of justice**” to dismiss AB 109 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)

# Expungements

New law effective 1.1.23:



## All California prison cases can be dismissed

- can apply 2 years after completion of sentence
- all are up to a judge to decide whether it is **“in the interests of justice”** to dismiss the conviction

*Exception:*  
most serious  
sex offenses  
are ineligible  
for dismissal

Many people who worked at **fire camps while in custody** are eligible to have their sentence shortened and their conviction dismissed.

SB 731, effective 1.1.2023 re prison convictions, amending PC 1203.41;  
PC 1203.42 permits dismissal of prison cases prior to October 2011 where 1170(h) is in the sentencing info;  
Firefighters: PC 1203.4b

# Expungements

## Summary of main expungement laws

<u>Law</u>	<u>Applies to</u>	<u>Can / Must be dismissed</u>
<b>1203.4</b>	sentences w/ probation	<b>must</b> if successfully complete probation <b>can</b> if in “interest of justice” to dismiss
<b>1203.4a</b>	sentences w/out probation	<b>must</b> if go one year w/ no new convictions <b>can</b> if in “interest of justice” to dismiss
<b>1203.41</b>	all AB 109 / 1170(h) sentences (all are <i>after</i> Oct 2011) + all prison cases effective Jan 2023	<b>can</b> if in “interest of justice” to dismiss

*Exception:* most serious sex offenses are ineligible for dismissal

# Expungements

**When** can a person file for expungement?

- Not serving time
- Not on probation, parole or supervision  
Can ask court to release from supervision early
- No criminal charges pending

Owing money to the County does NOT bar expungements

# Expungements: balance due to County

California recently eliminated many **administrative fees** (such as probation) and related debt.

The court can waive debt for fines or other fees at a record clearance hearing.

Restitution owed a victim cannot be waived. A judge can dismiss a conviction when restitution is due, leaving the balance in place.

AB 177 (2022); AB 1869 (2021); SB 1106 (owing restitution is not a basis for denying dismissal, 2023)

# 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 suggests clients who have immigration issues consult an attorney who specializes in immigration law before beginning the expungement process.

Courts can set aside convictions for failure to explain immigration consequences at the time of the conviction

AB 1259 (effective 2022, amending PC 1473.7)



# Now some practice!

The following 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			
1.1.2010	Misd	petty theft		1 day jail	1 year	Mand	Disc	Inel
6.1.2013	Inf	resist arrest		no jail	fine only	Mand	Disc	Inel
12.7.2014 12.8.2016	Fel	sale cont subs		30 days jail probation terminated early	3 years	Mand	Disc	Inel
1.1.2017	Misd	give false name to officer		4 days jail	2 years	Mand	Disc	Inel
2.2.2018	Fel	assault deadly weapon		1 year 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			
1.1.2006	Misd	resist arrest	2 days	0	Mand	Disc	Inel
3.1.2006	Misd	resist arrest	2 days	0	Mand	Disc	Inel
1.1.2008	Fel	sales contrl subs not marijuana	3 months	3 years	Mand	Disc	Inel
1.1.2013 1.1.2016	Fel	child endangermt probation violation	6 months	5 years	Mand	Disc	Inel
1.1.2018	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			
1.1.2010	Misd	resist arrest	2 days		1 year	Mand	Disc	Inelig
3.1.2010	Misd	domestic battery	2 months		3 years	Mand	Disc	Inelig
1.1.2014	Fel	sales contrl subs	2 years prison		3 years parole	Mand	Disc	Inelig
6.1.2017 6.1.2019	Fel	child endangermt probation terminated early	6 months		5 years	Mand	Disc	Inelig

# Is dismissal of Ms. D's convictions

## Mandatory, Discretionary or Ineligible?

		Sentence:	Incarceration: jail, prison or none	Probation, supervision, parole, or none			
1.2.2000	Fel	identity theft	2 months jail	2 years	Mand	Disc	Inelig
1.2.2003	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	2 years prison	2 yrs parole	Mand	Disc	Inelig
9.9.2012	Fel	own/rent drug house	16 months jail per 1170(h)	--	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			
1.1.2010	Fel	child endangermt	6 months	5 years	Mand	Disc	Inel
1.1.2012		probation terminated early					
1.1.2016	Fel	poss contrl subs not marijuana	drug diversion		Mand	Disc	Inel
3.1.2016	Fel	assault w/ deadly weapon	8 months	3 years	Mand	Disc	Inel
1.1.2022	Fel	grand theft	20 days	2 years	Mand	Disc	Inel

What? Still on probation!  
-> wait till 1.1.2024 or  
ask for early termination  
of probation

# What does *not* change after expungement

- 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
- Still counts as a "prior"



# 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

Expungements = Dismissals of convictions

(jail, AB 109, prison)

Reducing felonies to misdemeanors

(“wobblers,” Prop 64)

Sealing and Vacatur

(drug diversions, juvenile offenses, offenses resulting from being trafficked)

Certificates of Rehabilitation



# Summary of felony reduction rules

<u>Law</u>	<u>Applies to</u>	<u>Type of case</u>
<b>17b</b>	jail only	wobbler = current sentencing language lists: * jail OR prison * jail OR 1170(h)
<b>P 64</b>	jail + 1170(h) + prison	marijuana-related (including sales)

# Why reduce a felony if the conviction is dismissed?

Even when a conviction is dismissed, reducing a felony to a misdemeanor can help with:

- Regaining firearm privileges
- Immigration
- Occupational licensing
- Public housing access (drug felonies)
- Student loans (drug felonies)
- Family reunification
- Visiting people in custody

# Voting with a conviction history

Past convictions do not keep people from voting in California.

The only thing that keeps an otherwise eligible person from voting is if they are currently in state or federal prison.

People who have moved need to register at their current address:

<https://registertovote.ca.gov/>



For more information about voting with a conviction history, visit <https://www.letmevotecalifornia.org/>

# Reducing felonies to misdemeanors



Many felonies sentenced to jail are **wobblers**.

Those jail felonies are eligible to be reduced to misdemeanors using Penal Code section **17b**.

A felony is a wobbler if the **current sentence** for the offense includes the words:

jail **OR** prison     *or*

jail **OR** 1170(h)

*Some wobblers:*

second degree burglary

assault with deadly weapon

child endangerment

possession of meth

grand theft

auto theft

domestic violence

DUI with injury

## Example: wobblers



Cal. Penal Code sections 459 and 460(b) define **second degree burglary**; section 461(b) defines sentencing:

[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 section 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...

# Example: wobblers



Cal. Penal Code section 487 **grand theft**, section 489(c)(1):

Grand theft is punishable ... by imprisonment in a **county jail** not exceeding one year, **or** pursuant to subdivision **(h) of Section 1170**.

Cal. Vehicle Code section 10851(a) **auto theft**:

Any person who drives or takes a vehicle not his or her own, without the consent of the owner ... shall be punished by imprisonment in a **county jail** for not more than one year or pursuant to subdivision **(h) of Section 1170** ...

# Reducing felonies to misdemeanors



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

- The judge can reduce and dismiss a felony in the same petition
- The judge considers evidence of rehabilitation and the interests of justice



# Prop 64: marijuana-related expungement and reduction of felonies

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:

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



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

# Prop 64: marijuana-related expungement and reduction of felonies

These should already be reduced:

State law required automatic dismissal of most marijuana convictions and reduction of most marijuana felonies.

In Santa Clara County, the DA's office cleared thousands of marijuana-related cases listed in county records in April 2020.

# Possible upcoming law change – Prop 47

Prop 47 required courts to reduce most felonies for

- possession of drugs and
- theft-related offenses under \$950

once a person applied.

Prop 47 lapsed in November 2022.

Senate Bill 749 would put Prop 47 back in effect.

# Summary of felony reduction rules

<u>Law</u>	<u>Applies to</u>	<u>Type of case</u>	<u>Can / Must be reduced</u>
<b>17b</b>	jail only	wobbler = sentence can be to jail OR prison/1170(h)	can
<b>P 64</b>	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 or Prop 64

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

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

Incarceration: jail, 1170(h),  
or prison

Law

Can / Must / Can't  
be reduced

Auto theft  
VC 10851

jail

17b

P 64

Can

Must Can't

Assault with  
deadly weapon PC 245

jail

17b

P 64

Can

Must Can't

Assault with  
deadly weapon PC 245

prison

17b

P 64

Can

Must

Can't

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

Incarceration: jail, 1170(h),  
or prison

Law

Can / Must / Can't  
be reduced

Grand theft      jail      17b      P 64      Can      Must      Can't  
PC 487

Sale of              prison 17b      P 64      Can      Must      Can't  
marijuana      (adults involved, not at school or daycare)  
HS 11359

Possess            jail      17b      P 64      Can      Must      Can't  
marijuana HS 11379      (adults involved, not at school or daycare)

# 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

- Expungements = Dismissals of convictions  
(jail, AB 109, prison)
- Reducing felonies to misdemeanors  
(“wobblers,” Prop 64)
- Sealing and Vacatur  
(drug diversion, human trafficking, juvenile)
- Certificates of Rehabilitation



# Sealing

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

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.

# 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

- arrests not leading to conviction or factual innocence

PC 851.87-.92, 1000.4, 1001.9, 1005

PC 851.8

- many juvenile offenses

Welf. & Inst. C 781, 786

# Vacatur of most offenses committed as a result of trafficking / DV / sexual violence

A person subject to human trafficking or intimate partner violence or sexual violence can have conviction records destroyed if:

- Crime was direct result of being trafficked, DV, sexual violence
- Destroying records is “in the interests of justice”

Exceptions: among convictions that cannot be dismissed are 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; 236.15 - AB 124 (effective 2022; adding intimate partner / sexual violence)  
AB 262 (effective 2022; adding provisions disregarding fees and fines in holding hearing; no time limit)

- Expungements = Dismissals of convictions**  
(jail, AB 109, prison)
- Reducing felonies to misdemeanors**  
("wobblers," Prop 64)
- Sealing**  
(drug diversion, human trafficking, juvenile, factual innocence)
- Certificates of Rehabilitation**



# Certificates of Rehabilitation

## **Certificates of Rehabilitation (COR)**

A COR is a judge's "certification" that a person has been rehabilitated

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

A COR provides the evidence of the rehabilitation helpful for many professional licenses

# 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 conviction not resulting in custody sentence (whichever is later)
- person must have no new convictions for 7 years (for most offenses)  
Judge can shorten the 7 years if it is “in the interests of justice” to do so

# Change in registration requirements for most sex offenses

Starting in July 2021, most people who had to register as sex offenders could ask the court to end their registration.

Three levels (“tiers”) of registrants:

Tier 1: can ask to be removed after registering for 10 years\*

Tier 2: can ask to be removed after registering for 20 years\*

Tier 3: continues lifetime registration requirement

\* Time spent incarcerated does not count for the required years; time is added for convictions for failure to register

For most people who meet the time requirements, “the petition for termination [of registration] shall be granted...”

- ☑ Expungements = Dismissals of convictions  
(jail, AB 109, prison)
- ☑ Reducing felonies to misdemeanors  
(“wobblers,” Prop 64)
- ☑ Sealing  
(drug diversion, human trafficking, juvenile)
- ☑ Certificates of Rehabilitation



# Procedure: How to apply

## **Automatic dismissal of convictions for**

- convictions (including felonies) with probation when person has no probation violations or new convictions, and
- misdemeanor and infraction convictions without probation where the person went for one year with no new convictions
- (starting July 1, 2023) four years have passed since person completed supervision for the case and person was not convicted of a new felony in those four years

Excluded are convictions under PC 1192.7(c) (“serious”) or PC 667.6(c) (“violent”) or registerable sex offenses

Will automatically be expunged – no application needed

Person must not be serving time; not under supervision, probation, or parole; not charged with any offense and not required to register per 290.

SB 731 (effective 7.1.23); AB 145 (2022) made retroactive AB 1076 – creating PC 1203.425 (effective 1.1.21)

# Procedure: How to apply

**Automatic removal of arrests** if found not guilty or DA does not prosecute after:

- one year for misdemeanors,
- three years for felonies, or
- successful completion of diversion.

No application needed.

*Exception:* felony arrests where sentencing information includes state prison are not automatically removed.

Removing the arrest is like sealing = deemed not to have occurred

*Exceptions:* applications for peace officer, law enforcement agency or court records, firearms, holding office, some Health & Safety code sections

# Procedure: How to apply

**Disclosure prohibited** of removed arrests and dismissed convictions

neither courts nor the state Dept of Justice can report dismissed convictions or removed arrests

Applies both to automatic dismissals and petitions

*Exceptions:* The following can see dismissed cases:

courts and criminal justice agencies

In-Home Supportive Services and Waiver Personal Care Services

K-12 educational institutions and Commission on Teacher Credentialing (licensing board)

firearms, holding office, some Health & Safety code sections

plus other sections

# Procedure: How to apply

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

# Procedure: How to apply



## *Filing a form (no court appearance)*

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

- When person successfully completed probation
- If didn't get probation, when person did not have a new conviction in the following year

In Santa Clara County, you can use an easy form from the Probation Department. (There is no fee.)

<https://probation.sccgov.org/adult-services/record-clearance>

# Procedure: How to apply

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

There may be a fee, depending on the county, though fee waivers are available.

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

Keep a copy.

CR-180

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:		FOR COURT USE ONLY		
NAME:				
FIRM NAME:				
STREET ADDRESS:				
CITY:	STATE: ZIP CODE:			
TELEPHONE NO.:	FAX NO.:			
E-MAIL ADDRESS:				
ATTORNEY FOR (Name):				
PEOPLE OF THE STATE OF CALIFORNIA		CASE NUMBER:		
v.		FOR COURT USE ONLY		
DEFENDANT:	DATE OF BIRTH:	DATE:		
PETITION FOR DISMISSAL		TIME:		
(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.43, 1203.49)		DEPARTMENT:		

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

Code	Section	Type of offense (felony, misdemeanor, or infraction):	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (yes or no)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (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, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (check all that apply):

- has fulfilled the conditions of probation for the entire period thereof.
- has been discharged from probation prior to the termination of the period thereof.
- 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):

- has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land.
- 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.)

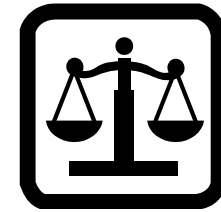
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Form Approved for Optional Use  
Judicial Council of California  
CR-180 (Rev. January 1, 2017)

PETITION FOR DISMISSAL

Penal Code, §§ 17(b), 17(d)(2),  
1203.4, 1203.4a, 1203.41, 1203.43 and 1203.49  
www.courts.ca.gov

# Procedure: How to apply



*Preparing a petition for a court hearing:*

For **discretionary** dismissals when:

- Did not successfully complete probation
- Had new conviction within one year of non-probation case
- Seeks to reduce a wobbler felony to a misdemeanor
- Seeks to dismiss a AB 109 (realignment) or 1203.41 prison case
- Seeks to terminate probation early

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9 Attorney for Defendant

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SANTA CLARA

12 PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: C1234567  
13 Plaintiff, ) NOTICE OF PETITION AND PETITION  
14 vs. ) TO SET ASIDE AND DISMISS  
15 XX YYYY, ) COMPLAINT; MEMORANDUM OF  
16 Defendant. ) POINTS AND AUTHORITIES (PENAL  
17 ) CODE § 1203.4) -- IN THE INTERESTS  
18 ) OF JUSTICE  
19 ) Date:  
20 ) Time: 2:35 PM  
21 ) Dept.: 42

22 TO THE CLERK OF THE ABOVE-ENTITLED COURT, and  
23 TO THE DISTRICT ATTORNEY FOR SANTA CLARA COUNTY:  
24 NOTICE IS HEREBY GIVEN that at the date, time and in the department specified  
25 above, the defendant will petition the court pursuant to California Penal Code section 1203.4 to  
26 set aside and dismiss the complaint in the case number listed above.  
27 Dated: April 16, 2021 Respectfully submitted,  
28 \_\_\_\_\_  
Margaret Stevenson, Attorney for Defendant

1  
NOTICE & PETITION TO DISMISS COMPLAINT; MEMO OF Ps & As (PC § 1203.4); DECLARATION

# Procedure: How to apply

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

- a Declaration (sworn, personal statement showing that “that was then, this is now”),  
and
- supporting documents
  - letters of support from
    - co-workers
    - friends and family
    - church
    - community volunteer placements
  - certificates of accomplishments
  - other evidence of moving forward and giving back



# 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.

# 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)

# “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 or initial interviews.

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

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 (8<sup>th</sup> 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.

# 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

# 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

# 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

# Different employers can see different information: Licensing boards

Different licensing boards can see different things

*Examples:* Real estate agents, Security guards, Accountants

People with convictions can present evidence to persuade licensing boards to give permission to work by showing rehabilitation, including

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

# Different employers can see different information: Licensing boards

Most boards regulated by the Dept of Consumer Affairs cannot deny a license to someone based on:

- Convictions that have been dismissed (expunged)
- Most criminal convictions older than 7 years
- Arrests, diversions, sealed records

If the conviction is within the last 7 years, or is “serious” older felony, the board cannot deny someone a license unless the conviction is “substantially related” to license desired

Most boards are not supposed to ask people applying for a professional license about criminal history. The boards can run a LiveScan check; the Dept of Justice will report results.

# Different employers can see different information: Licensing boards

Expungement and Certificates of Rehabilitation can be useful. Current law still protects people with convictions and rehabilitation.

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

Business & Professions Code 480(c), revised language from AB 2138 effective 2020

[A] person shall not be denied a license **on the basis** that he or she has been convicted of a crime ... if he or she has obtained a **certificate of rehabilitation** ... or has made a showing **of rehabilitation** ...

Business & Professions Code 480(b), revised language from AB 2138 effective 2020

# 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>.

New legislation speeds approval of exemptions. AB 1720 (effective 1.1.23)

# 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?

# 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

# Some additional resources:



## General:

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

## Employment:

- (in San José) Alexander Community Law Center workers' rights clinic: <http://law.scu.edu/kgaclc/#services> (408) 288-7030
- National Employment Law Project: [www.nelp.org](http://www.nelp.org)
- National H.I.R.E. network: [www.reentry.net](http://www.reentry.net)

## Government agencies for complaints regarding employment violations:

- Calif. Civil Rights Department: [calcivilrights.ca.gov](http://calcivilrights.ca.gov)
- Equal Employment Opportunity Commission: [eeoc.gov](http://eeoc.gov)



RCP website:  
[www.sjsu.edu/rcp](http://www.sjsu.edu/rcp)



Email the SJSU Record Clearance Project at  
**[expunge@sjsu.edu](mailto:expunge@sjsu.edu)**