

Criminal Record Clearing in a Nutshell



Spring 2023

SJSU | RECORD CLEARANCE PROJECT



2.17.23

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.

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

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

Find LiveScan offices at <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



People can contact the RCP for details regarding the next Speed Screening expunge@sjsu.edu

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

5

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

7

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

8

Expungements

General summary of expungement laws

Law	Applies to	Can / Must be dismissed
Jail cases:		
1203.4	sentences w/ probation	must if successfully complete probation can if in "interest of justice" to dismiss
1203.4a	sentences w/out probation	must if go one year w/ no new convictions can if in "interest of justice" to dismiss <i>Except: some sex and child pornography offenses cannot be dismissed</i>
AB 109 and Prison cases:		
1203.41	all AB 109 cases [all are <i>after</i> Oct 2011]	can if in "interest of justice" to dismiss
and	all prison cases	can if in "interest of justice" to dismiss <i>unless person must register as PC 290 sex offender (except for prison convictions before Oct 2011 where 1170(h) now is in the sentence, 1203.42)</i>

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



10

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



11

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

12

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 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

3

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



14

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)

PC 1203.41

15

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

Except: if person must register as sex offender under PC 290, unless the case was before October 2011 and 1170(h) now appears in the sentencing law

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

16

Expungements

Summary of main expungement laws

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

unless person must register as PC 290 sex offender (except for prison convictions before Oct 2011 where 1170(h) now is in the sentence, 1203.42)

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

18

Expungements: balance due to County

In July 2021, the state eliminated debt from 23 types of **administrative fees** (such as probation) in California.

In January 2022, the state eliminated debt from 17 more types of **administrative fees**.

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)

19

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)



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"



21

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

22

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>
17b	jail only	wobbler = current sentencing language lists: * jail OR prison * jail OR 1170(h)
P 64	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

25

Voting with a conviction history

Past convictions do not keep people from voting in California.

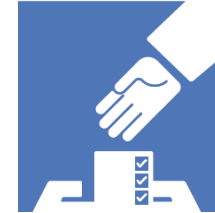
The only thing that keeps an otherwise eligible person from voting is if they are currently in state or federal prison.

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.letmevoteca.org/>



26

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	grand theft
assault with deadly weapon	auto theft
child endangerment	domestic violence
possession of meth	DUI with injury

PC 17(b)

27



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



30

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.

HS 11361.8(e)-(f), effective 1.2017

31

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.

HS 11361.9

32

Summary of felony reduction rules

Law	Applies to	Type of case	Can / Must be reduced
17b	jail only	wobbler = sentence can be to jail OR prison/1170(h)	can
P 64	jail + 1170(h) + prison	marijuana-related (including sales)	must

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

34

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.

PC 1000.4(a)

36

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

37

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)

38

- 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

PC 4852.15, Govt Code 12952(a)(3)(C)

40

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...”

SB 384 (2017) created PC 290(d)(e), 290.5; apply first birthday after July 1, 2021

42

- 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)

44

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

AB 145 (2022) made retroactive AB 1076 – creating PC 851.93 (effective 1.1.21)

45

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

SB 731 (effective 1.1.23); AB 1076 – amending PC 11105(p)(2)(A) (effective 1.1.21)

46

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

47

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>

48

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 - 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
PETITION FOR DISMISSAL
People of the State of California
Date: April 16, 2021

Code	Section	Type of Offense/Infraction, misdemeanor, or infraction	Eligible for reduction to misdemeanor under Penal Code § 17021 (yes or no)	Eligible for reduction to infraction under Penal Code § 17062 (yes or no)



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

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
Case No. C124567
MARGARET STEVENSON, Plaintiff,
vs.
CHRISTOPHER MENDOZA, Defendant.
NOTICE OF PETITION AND PETITION FOR EARLY AND DISCRETIONARY DISMISSAL OF PROBATION AND AUTHORITY TO REVOKE OR REScind PROBATION
Date: April 16, 2021
Time: 2:33 PM
Place: 42
Maggaret Stevenson, Attorney for Defendant

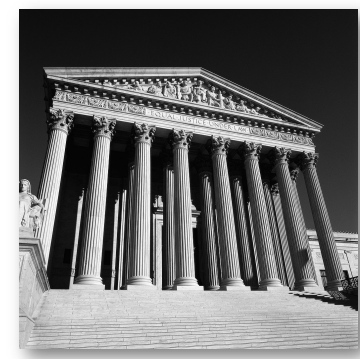
Procedure: How to apply

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.

Labor Code 432.7(a); Govt. Code 12952(a)(3)(C) (AB 2845)

53

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)

54

“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

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)

55

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

56

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)

57

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

58

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

59

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

60

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.

AB 2138, passed in 2018, eff 7.1.2020

61

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

62

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://ccid.ca.gov/PG404.htm>.
New legislation speeds approval of exemptions. AB 1720 (effective 1.1.23)

63

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
- 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:

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

Government agencies for complaints regarding employment violations:

- Calif. Civil Rights Department: calcivilrights.ca.gov
- Equal Employment Opportunity Commission: eoc.gov



RCP website:
www.sjsu.edu/rcp



Email the SJSU Record Clearance Project at

expunge@sjsu.edu