

Criminal Record Clearing in a Nutshell



Fall 2024

SJSU | RECORD CLEARANCE PROJECT



10.2.24

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



Contact the RCP for details regarding the next Speed Screening at 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

5

Record Clearing Options



Record cleaning options

The following information applies to California state adult convictions only

Expungements = dismissals of convictions
(jail, AB 109, prison)

Reducing felonies to misdemeanors
("wobblers," Prop 47, Prop 64)

Sealing and Vacatur
(drug diversions, juvenile offenses, offenses resulting from being trafficked)

Other record clearing laws
(Certificates of Rehabilitation, Relief from 290 registration, automatic dismissals)

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 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 after Oct 2011]	can if in "interest of justice" to dismiss
and	prison cases	can if in "interest of justice" to dismiss <i>Except: most serious sex offenses cannot be dismissed</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")



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

PC 1203.4



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 when a person is moving forward

Example: 5 years probation, terminated after 4 years

- ☐ If a judge grants a person **early termination of probation**,
✓ even after an earlier probation violation

PC 1203.3



→ 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 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.

PC 1203.4a

13

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:



Almost all California prison cases can be dismissed

- can apply 2 years after completion of sentence
- 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

Also:

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

Law	Applies to	Can / Must be dismissed
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) + almost all prison cases	can if in "interest of justice" to dismiss

As of July 1, 2024, if four years pass after a person completes all terms of a felony sentence and the person is not convicted of a new felony in those four years, DOJ will dismiss the conviction automatically. Exceptions: "serious" PC 1192.7(c) or "violent" PC 667.5 felonies or one requiring 290 registration. PC 1203.425 (a)(1)(B)(iv)(II)

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

Even if not eligible to apply now, a person can start *preparing* to file today

Owing money to the County does NOT bar expungements

18

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)

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)



☑ Expungements = Dismissals of convictions

(jail, AB 109, prison)

☐ Reducing felonies to misdemeanors

("wobblers," Prop 47, Prop 64)

☐ Sealing and Vacatur

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

☐ Other record clearing laws

(Certificates of Rehabilitation, Relief from 290 registration, automatic dismissals)



Summary of felony reduction rules

Law	Applies to	Type of case
17(b)	jail convictions only	wobbler = sentence listed has * jail OR prison * jail OR 1170(h)
P 47	all convictions	2 parts: * drug possession * theft-related \$950 or less
P 64	all convictions	marijuana-related (including sales)

22

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

23

Voting with a conviction history

Past convictions do not keep people from voting in California.

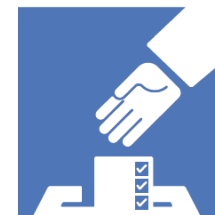
The only thing that keeps an otherwise eligible person from voting is if they are currently in state or federal prison.

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/>



24

Reducing felonies to misdemeanors



Penal Code section 17(b) allows many felonies sentenced to jail to be reduced to misdemeanors.

For felonies sentenced to jail to be reduced using 17(b), they must be **wobblers**.

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)

25

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...

26

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** ...

27

Reducing felonies to misdemeanors



When a felony jail sentence is a wobbler, 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 whether reducing a wobbler felony to a misdemeanor is in the interests of justice (discretionary)



28

Reducing felonies to misdemeanors

Currently, Proposition 47 requires* reducing a felony to a misdemeanor when the conviction is for:



(1) These three drug possession offenses: Health & Safety Code sections:

11350: possession of cocaine and other narcotics

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

11377: possession of methamphetamines and other controlled substances

PC 1170.18 and other sections

* If passed, Proposition 36 on the November 2024 ballot would increase penalties if a person has two prior drug or theft convictions, making them felonies, as well as other changes.

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).

29

Reducing felonies to misdemeanors

Proposition 47 requires* reducing a felony to a misdemeanor when the conviction is for:

(2) theft offenses when \$950 or less is involved in:



- o commercial burglary during business hours (PC 459)
- o theft (PC 487, 488) and petty theft with a prior (PC 666)
- o receiving stolen property (PC 496(a))
- o 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)

* See the note on Prop 36 on the prior slide

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).

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:

- o 11357 (possession)
- o 11358 (cultivation)
- o 11359 (possession with intent to sell) or
- o 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
17(b)	jail felonies only	wobbler = current sentencing language is to: jail OR prison <i>or to</i> jail OR 1170(h)	can
P 47	all convictions	drug possession theft-related \$950 or less	must*
P 64	all convictions	marijuana-related (including sales)	must

* This may change after November 5, 2024

33

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 47, Prop 64)

Sealing and Vacatur

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

Other record clearing laws

(Certificates of Rehabilitation, Relief from 290 registration, automatic dismissals)



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
- successful mental health diversions
PC 1001.35-.36
- many juvenile offenses
Welf. & Inst. C 781, 786
- arrests not leading to conviction or factual innocence
PC 851.87-.92, 1000.4, 1001.9, 1005 PC 851.8

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 47, Prop 64)

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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

Automatic dismissals

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

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) (see 1203.425(a)(1)(B)(iv)(II))

43

Automatic dismissals

Automatic dismissal of convictions for

- Starting July 1, 2024, if four years pass after a person completes their sentence for a felony and the person is not convicted of a new felony in those four years, DOJ must dismiss the conviction

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) (see 1203.425(a)(1)(B)(iv)(II))

44

Automatic removal of arrests

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

Automatic dismissals

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

Expungements = Dismissals of convictions

(jail, AB 109, prison)

Reducing felonies to misdemeanors

("wobblers," Prop 47, Prop 64)

Sealing and Vacatur

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

Other record clearing laws

(Certificates of Rehabilitation, Relief from 290 registration, automatic dismissals)



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

48

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 - drop down menu: "criminal"

There is no fee in any county.

AB 134, effective 7.10.23

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

Keep a copy.

The image shows a sample of the Judicial Council of California Form CR-180, 'Petition for Dismissal'. It includes fields for the petitioner's name, address, and date of birth. A table lists offenses with columns for Code, Section, Type of offense, and Eligibility for dismissal. Below the table are checkboxes for various conditions such as 'Petitioner was granted probation' and 'Petitioner was not granted probation'. The form also includes a section for 'Additional issues' and a footer with the title 'PETITION FOR DISMISSAL'.

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
- Seek to reduce a wobbler felony to a misdemeanor
- Seek to dismiss a AB 109 (realignment) or 1203.41 prison case
- Seek to terminate probation early



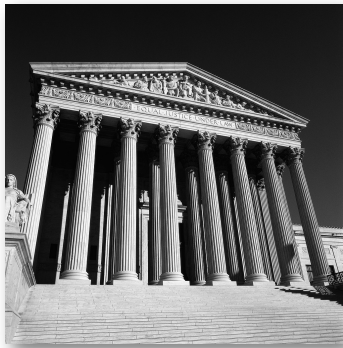
Procedure: How to apply

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
 - certificates of accomplishment
 - other evidence of moving forward and giving back



Employment rights of people with criminal convictions



“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.

BAN THE BOX!

Have you ever been convicted of a felony?

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)

54

“Ban the Box” on most job applications in California

If an employer withdraws a job offer based on conviction history, they must

- do so in writing
- state what disqualifies the applicant
- provide a copy of criminal history report
- give applicant five days to respond
- consider any response
- provide notice of final decision and
- advise of right to file a complaint with:

BAN THE BOX!

Have you ever been convicted of a felony?

California Civil Rights Department
(formerly Department of Fair Employment and Housing)
<https://calcivilrights.ca.gov/fair-chance-act/>

Gov't Code 12952(a)

55

“Ban the Box” on most job applications in California

Applicants have three years from the violation to file a complaint

BAN THE BOX!

Have you ever been convicted of a felony?

In their response to an employer’s proposed withdrawal of a job offer, applicants can explain

- circumstances of conviction history, and
- why individual is good fit for position

Gov't Code 12952(a)

56

Employers must make an **individualized assessment** of each applicant, considering:

- 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.

Arrests that did not lead to a conviction and diversion programs cannot be considered as reasons to deny employment for almost any job.

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

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

57

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)

58

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

59

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)

60

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)

61

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

62

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

63

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
Exceptions: “serious” felony, many sex offenses, some felony financial crimes
- 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

64

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

65

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)

66

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?

Some additional resources:



Employment:

- (in San José) Alexander Community Law Center workers' ri
<http://law.scu.edu/kgaclc/#services> (408) 288-7030
- Legal Aid at Work: <https://legalaidatwork.org/self-help-library/>
- 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
<https://calcivilrights.ca.gov/fair-chance-act/>
- Equal Employment Opportunity Commission: [eeoc.gov](http://www.eeoc.gov)
<https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>

General:

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



RCP website:
www.sjsu.edu/rcp



Email the SJSU Record Clearance Project at

expunge@sjsu.edu