

Research Guide: Petition for Dismissal

Law Library for San Bernardino County

Research Guide, www.sblawlibrary.org, (909) 885-3020. Updated as of May 2015.

Our Guide is adapted from the Sacramento County Law Library's Guide on Expunging Criminal Records available at www.saclaw.org

Disclaimer

The information in this research guide is intended to assist patrons with their legal research and is in no way intended to replace the counsel of an attorney. Any decisions about how to proceed must be determined by the patron. The library staff can recommend and refer you to print and web-based resources that will help you find answers to your law-related questions. The staff at the Law Library for San Bernardino County cannot explain or interpret the law, and we are not permitted to give legal advice.

Is a Dismissal the same as an Expungement?

The court no longer provides expungements in which a conviction is removed from your criminal record. The courts now provide for a different procedure called a petition for Dismissal however it is still commonly referred to as an expungement.

What is a Petition for Dismissal?

The Petition for Dismissal is a process that allows you to clean up your criminal record. The Petition will reopen your criminal case and allows you to withdraw the plea or guilty verdict, dismiss the charges, and re-close the case without a conviction.

Will the Petition for Dismissal Remove a Conviction from My Record?

No. The conviction will still appear on your criminal record but the record will now note that the conviction was dismissed. Additionally, some parts of your sentence will remain unchanged and cannot be dismissed including the issuance of strikes, firearms prohibitions, and exclusions from serving jury duty.

For more detailed information on the process, and what it may or may not do for you, refer to the resource guide titled *Expunging Criminal Records: Step by Step* that is provided by the Sacramento County Public Law Library at <http://www.saclaw.org/uploads/files/Step-by-Step/expungingcriminalrecords.pdf> or review some of the other print and electronic resource guides listed below.

How Does the Petition for Dismissal Benefit Me? The Dismissal Will...

- Remove the conviction from your criminal history. California and FBI criminal history records will still show the conviction and the subsequent dismissal.
- Seal the court case file from public inspection. The court file remains public record.

- Reinstate your right to possess firearms. In some cases, reduction of a nonviolent felony to a misdemeanor may accomplish this.
- Relieve you of your duty to register as a sex offender. In some cases, this may be accomplished by a different motion to the court.
- Allow you to omit the conviction from applications for government-issued licenses. You must disclose your conviction and dismissal in your license application.
- Allow you to omit the conviction from application for government employment. If you are applying for a government job, a job that requires security clearance, or a job that requires a government-issued license, certificate, or permit, you must disclose the conviction and dismissal.
- Allow you to hold public office, if the conviction prevented you from doing so.
- Prevent the conviction from being used to refuse or revoke a government license or permit, such as real estate license, teaching credential, security guard certificate, etc.
- Prevent the conviction from being used as a "prior." The dismissed conviction can be used for determining sentencing enhancements in subsequent convictions.
- Prevent the conviction from being used by the DMV. Expunged convictions may be used to suspend or revoke driving privileges.
- Prevent the conviction from being used by US Citizenship and Immigration Services. In many situations, an expunged conviction may be considered for removal or exclusion purposes.

Types of Dismissal

There are various types of dismissal. The first type of dismissal is provided in [Penal Code §1203.4](#). This type of dismissal includes cases in which probation was ordered as part of the sentence.

The next type of dismissal is available under [Penal Code §1203.4\(a\)](#). Dismissal under this section should include cases in which probation was **NOT** ordered as part of the sentence.

The next type of dismissal is listed under [Penal Code §17](#). This type of dismissal should reduce a felony conviction to a misdemeanor, after which, the misdemeanor could be dismissed. The following dismissal forms are available online at www.courts.ca.gov/forms in a format you can fill out and print:

Petition for Dismissal: CR-180

<http://www.courts.ca.gov/documents/cr180.pdf>

Order for Dismissal: CR-181

<http://www.courts.ca.gov/documents/cr181.pdf>

Attached Declaration (if included): MC-031

<http://courts.ca.gov/documents/mc031.pdf>

Certificate of Rehabilitation

If you were sentenced to state prison, you may need to fill out and submit a Certificate of Rehabilitation, instead of the forms listed above. The Certificate of Rehabilitation is made under [Penal Code § 4852.01](#), et. seq. For more information regarding the Certificate of Rehabilitation, you might want to review the *California Criminal Defense Manual* by Matthew Bender at the law library. Additional online information regarding the Certificate of Rehabilitation is provided below:

Certificate of Rehabilitation and Pardon Quick Reference for Restoration of Rights:

http://www.cdcr.ca.gov/boph/docs/restoration_of_rights_reference.pdf

How to Apply for a Pardon: State of California, Office of the Governor:

http://gov.ca.gov/s_pardonsandcommutations.php

What Must I Do to Qualify for a Petition for Dismissal?

- ❖ You should have successfully completed probation or you must have been discharged before the end of your probation sentence. See [Penal Code §1203.4\(a\)](#)
- ❖ You may not be currently serving a sentence or be on probation for any other offense. See [Penal Code §1203.4\(a\)](#)
- ❖ You cannot be charged with any further offenses. See [Penal Code §1203.4\(a\)](#)
- ❖ You will not be eligible for dismissal if you were sentenced to state prison, and there are certain offenses that cannot be dismissed. Further, you will not be able to apply for dismissal proceedings if you owe money for fines, fees, and restitution.

Will I Need a Copy of My Criminal Record Before Filing for a Dismissal?

Before you file for the dismissal process, you will need to obtain a copy of your criminal record. You will need to obtain case information for each conviction you want to dismiss. The case history sheet should include information that will be pertinent to filling out your dismissal documents.

How Do I Obtain a Copy of My Criminal Record?

You can request a copy of your criminal records from the State of California Justice Department at <http://ag.ca.gov/fingerprints/security.php> or you might want to review your options under the subheading *Get a Copy of the Information on Your Criminal Record* near the bottom of the page at <http://www.courts.ca.gov/1070.htm> . When you file your original documents, an original Proof of Service needs to be included in your packet showing that copies of all documents were served to the District Attorney's Office.

Where Do I File My Petition for Dismissal?

You will need to file your petition in the Superior Court in the county where you were convicted.

Court Fees

You will need to pay a court filing fee when you take your documents to the court clerk. The filing fee is based on the type of conviction to be dismissed. For additional information regarding filing fees, you are encouraged to call the court clerk at the courthouse where your documents are being filed.

What if I Fill Out the Forms Incorrectly?

If you fill out your forms incorrectly, they will be returned to you. Occasionally, there will be an explanation as to what is incorrect on your forms. You may correct your forms and return it to the court without an additional filing fee.

If My Conviction Is Dismissed, Can I Answer "No" to Questions about Convictions on Job applications?

Legally, you may answer "No" to these types of questions, but keep in mind that background checks typically go back ten years, so employers might see you had a conviction dismissed. Answering "No" on an application may look dishonest.

Your conviction could be discovered during a standard background check when applying for a government job, a job that requires security clearance, or a job that requires a government-issued license, certificate, or permit. You might want to disclose your conviction and dismissal in these situations and you must disclose your conviction and dismissal when applying for a government-issued license, certificate, or permit.

Do I have to file a Petition for Each Conviction?

You will need to complete a separate Petition for Dismissal (CR-180) and Order for Dismissal (CR-181) for each conviction you wish to dismiss. (Each conviction may consist of convictions for multiple offenses).

Additional Information and Resources

You might consider contacting the Public Defender's Office for additional information or for assistance with filling out your forms if they represented you in court. In San Bernardino County, you can find contact information for the San Bernardino County Public Defender's Office at <http://www.sbcounty.gov/PublicDefender/Default.asp>

What if I Was Convicted in Another County?

If you were represented by a public defender in a different county, please contact the public defender office in that county for additional information regarding their services.

Resource Guides for Cleaning Up Your Criminal Record at the Law Library for San Bernardino County

- ❖ *California Criminal Defense Practice* by Matthew Bender; KFC 1155 .C342, available at all branches
- ❖ *California Criminal Law*, 3rd edition by Witkin; KFC 1100 .W5, available at all branches
- ❖ *California Criminal Law Forms Manual*, 2nd edition by CEB; KFC 1155 .A65 C3424, available at all branches
- ❖ *California Criminal Law Practice and Procedure* by CEB; KFC 1155 A65 .C3424, available at all branches
- ❖ *California Judicial Council Forms Manual*; KFC 955 .A65 C34, available at all branches
- ❖ *Criminal Law Handbook* by Nolo Press; see staff at the reference desk, available at all branches
- ❖ *Deerings California Codes Annotated*; KFC 30.5 .D4, available at all branches
- ❖ *Levenson on California Criminal Procedure*, KFC 1155 .L475, available at the San Bernardino Branch only.
- ❖ *West's Annotated California Codes*; KFC 30.5 .W4, available at all branches

Electronic Research Guides for Expunging Your Criminal Record

Cleaning Your Record Self-Help Guide

<http://www.courts.ca.gov/1070.htm>

California Courts Judicial Council Forms

www.courts.ca.gov/forms

Requesting Your Criminal Record

<http://ag.ca.gov/fingerprints/security.php>

Sacramento County Public Law Library

<http://www.saclaw.org/uploads/files/Step-by-Step/expungingcriminalrecords.pdf>

San Diego County Public Law Library Research Guide

http://sandiegolawlibrary.org/wp-content/uploads/2013/04/Clean_Up_Your_Criminal_Record.pdf

How Do I File a Petition for Dismissal?

Step 1: Decided whether you qualify for the Petition for Dismissal. See above.

Step 2: Determine which type of Dismissal applies to you.

The type of dismissal used depends on the original conviction and sentence. The information below will help you determine which type of dismissal is right for you. Misdemeanor or Infraction Convictions.

- **Probation ordered and completed: File a Petition for Dismissal under PC § 1203.4.**

- **Probation ordered, but not yet completed:** File a Motion to Terminate Probation (see the Step-by-Step guide on filing a Motion to Terminate Probation on our website <http://www.sblawlibrary.org/research-guides--self-help-info.html>). If that is granted, file a Petition for Dismissal under PC § 1203.4.
- **Probation not ordered:** File a Petition for Dismissal under PC § 1203.4a. Felony Convictions.
- **County Jail and/or Probation ordered and completed:** File a Petition under PC § 17(b)(3) to reduce the felony to a misdemeanor, and Petition for Dismissal under PC § 1203.4 to expunge the misdemeanor.
- **Probation ordered, but not yet completed:** File a Motion to Terminate Probation (see the Step-by-Step guide on filing a Motion to Terminate Probation on our website at <http://www.sblawlibrary.org/research-guides--self-help-info.html>). If that is granted, file a Petition under PC § 17(b) to reduce the felony to a misdemeanor, and Petition for Dismissal under PC § 1203.4 to expunge the misdemeanor.
- **State Prison ordered but time served in county jail:** File a Petition under PC § 1203.41.
- **Other Situations:** If you are not eligible for the procedures described in this guide, you may need to apply for a Certificate of Rehabilitation and/or a Pardon. More information is available from the California Department of Corrections and Rehabilitation at www.cdcr.ca.gov/BOPH/pardons.html.

Step 3: Obtain a Copy of Criminal Record. See above.

Step 4: Complete the Forms.

Petition for Dismissal (CR-180)
 Order for Dismissal (CR-181)
 Attached Declaration (MC-031)

The Declaration is your opportunity to tell the judge anything you think is relevant to them granting the petition, this may include any of the following:

- Your plans for the future.
- The reasons you offended, and how your life is different today than it was before.
- How the conviction has hurt your employment chances.
- If you have received any training or education since your conviction.
- Any 12-step or religious affiliations you have.

2. **Felony or misdemeanor with probation granted (Pen. Co**
Probation was granted on the terms and conditions set forth
serving a sentence for any offense, nor on probation for any
the petitioner (check all that apply):

If probation was ordered in your case, check the box
next to 2. Then check box a, b, or c, depending on
which best describes your situation.

- a. has fulfilled the conditions of probation for the entire period thereof;
- b. has been discharged from probation prior to the termination of the period thereof;
- c. should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

3. **Misdemeanor or infraction with sentence other than probation (Pen. Code, § 1203.4a)**
Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner
has complied with the sentence of the court and is not serving
any crime; and the petitioner (check one):

If probation was not ordered in your case, check the
box next to 3. Check box a if you have not been
charged or convicted of a crime since this case. Check
box b if you have had subsequent criminal cases, and
attach a declaration explaining why this expungement
is in the interests of justice.

- a. has lived an honest and upright life since pronouncement of the sentence; or
- b. should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: Paul Sample	CASE NUMBER: 05M012345
--	---------------------------

4. **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**
The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on
probation for, or charged with the commission of any offense, and
(check one):

If you only were sentenced to state prison, yet you
served time only in a county jail, then you will be
eligible to have your record expunged under the new
law California PC 1203.41.

- a. more than one year has elapsed since petitioner completed mandatory supervision imposed under Penal Code section 1170(h)(5)(A); or
- b. more than two years have elapsed since petitioner completed mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(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.)

**Note: You are asking the court that any eligible
felonies get reduced to misdemeanors**

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b).

Petitioner requests that he/she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

Sign and Date

Check 1203.4 if probation was ordered;
1203.4a if probation was not ordered;
1203.41 if state prison time was served
in a county jail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: 06/22/2011 (DATE) _____ (SIGNATURE OF PETITIONER OR ATTORNEY)

1234 Main Street (ADDRESS, PETITIONER) Sacramento (CITY) CA 95835 (STATE) (ZIP CODE)

Enter your address

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Paul Sample 1234 Main Street Sacramento, CA 95814		ONLY
TELEPHONE NO.: 916-555-1423 E-MAIL ADDRESS: ATTORNEY FOR (Name): In Pro Per	FAX NO.:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: Paul Sample	DATE OF BIRTH: 05/01/1975	
ORDER FOR DISMISSAL (Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41)		CASE NUMBER: 05M012345

Your name, address, and phone number. "In Pro Per" means you are representing yourself.

Your name and birthdate

Case number for the conviction you're trying to expunge

LEAVE THE REST OF THIS FORM BLANK!
The judge will complete this form after reviewing your petition.

- I. The court **GRANTS** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors:
- ALL FELONY CONVICTIONS in the above-entitled action; or
 - Only the following felony convictions in the above-entitled action (specify charges and date of conviction):

PLAINTIFF/PETITIONER: People of the State of California DEFENDANT/RESPONDENT: Paul Sample	CASE NUMBER: 05M012345
--	---------------------------

Parties in the original case

DECLARATION

Case number for the conviction you're trying to expunge

form must be attached to another form or court paper before

At the time of my conviction in 2005, I was only 19 years old, I had dropped out of high school, and was not working. I had too much time on my hands and was hanging out with people who were a bad influence. This led me to getting in trouble.

After the birth of my daughter in 2007, I realized that I needed to get my life back on track, so that I could support her. With the help of my parents, I got my GED, and enrolled at UniTech to study Automotive Technology. I worked part time at an auto parts store while going to school part time, so I could support my daughter and help my parents with bills, since they were letting me stay with them. I finished my schooling in

.....

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6/22/2011

Paul Sample

(TYPE OR PRINT NAME)

Print name, Sign and Date

(SIGNATURE OF DECLARANT)

Check "Defendant"

- Attorney for
- Plaintiff
- Petitioner
- Defendant
- Respondent
- Other (Specify):

California Department of Justice Criminal History Transcript

CRIMINAL HISTORY TRANSCRIPT

DATE	AGENCY/FILE NUMBER	DOB:	COUNT	ACTION
19980922	CASOSACRAMENTO	19751020	01	-ATTEMPTED 187 PC MURDER ARRESTED BY CAPDSACRAMENTO
19990612	CASACRAMENTO		01	-245(C) PC-ADW -DISMISSED
	98F01234		02	69 PC OBSTRUCTION/RESISTING EXECUTIVE OFFICER -CONVICTED - PROBATION FELONY
				SEN: 003 YEARS PROBATION, WORK PROGRAM

Annotations:

- Date of Arrest:** Points to the date 19980922.
- Date format is YYYYMMDD:** Points to the date 19980922.
- Date of Conviction:** Points to the date 19990612.
- Your Case Number:** Points to the file number 98F01234.
- Code section you were convicted of violating:** Points to 69 PC.
- Your sentence:** Points to 003 YEARS PROBATION, WORK PROGRAM.

**In addition to this guide the Law Library hosts a Criminal Record
Expungement Informational & Legal Clinic. Hosted by the Inland Empire
Latino Lawyers Association, Inc.,**

Every Third Friday of the Month @ 10:00 AM

**San Bernardino County Law Library
402 North D. Street, Mezzanine Level
San Bernardino, CA 92401**

***This is an information session and clinic session. Come learn what
expungement really means, if your convictions qualify, what to bring to begin
the process and where to get it***

**For more information, see their website IE Expungement Project
www.iellaaid.org (951) 369-3009**