

Research Guide: Expunging Your Criminal Record

Law Library for San Bernardino County

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What is an Expungement?

According the *West's California Digest*, the term expungement is defined as,

“...the eradication of a record of conviction or adjudication upon the fulfillment of prescribed conditions...a redefinition of status, a process of erasing the legal event of conviction or adjudication and thereby restoring to the regenerative offender his status quo ante.”¹

In other words, an expungement has the potential to re-open your criminal case in order for your conviction to be dismissed and possibly set aside. If your conviction is set aside, your case could be closed without the conviction. It is important to keep in mind that even though your record may be expunged, your criminal case record will still exist, and the expungement will appear if a criminal record check is conducted. 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 information on the expungement 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://saclaw.com/pages/expunging-criminal-records.aspx> or review some of the other print and electronic resource guides listed below.

Types of Expungement

Many people are not aware that there are three types of expungement. The first type of expungement is provided in [Penal Code §1203.4](#). This type of expungement includes cases in which probation was ordered as part of the sentence.

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

Finally, the third type of expungement is listed under [Penal Code §17](#). This type of expungement 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>

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. Additionally, online information on this topic is provided by the California Department of Corrections and Rehabilitation 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, (Please see the bottom of page 2 of this guide.)

http://www.cdcr.ca.gov/BOPH/docs/apply_for_pardon.pdf

What Must I Do to Qualify for Expungement?

You must 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 expungement if you were sentenced to state prison, and there are certain offenses that cannot be expunged. Further, you will not be able to apply for expungement proceedings if you owe money for fines, fees, and restitution.

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

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

Court Fees

There will be a court fee for filing your documents with the court clerk. The filing fee is based on the type of conviction to be expunged. Fee waivers are available for low-income filers, and these forms can be found online at www.courts.ca.gov/forms and in print at the law library in the *California Judicial Council Forms Manual*. For additional information regarding court fees, you are encouraged to call the court clerk at the courthouse where your documents are being filing.

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>. If you were represented by a public defender in a different county, please review the public defender links available on the California Public Defenders Association website at <http://www.cpda.org/County/CountyPDWebSites.html> for contact information.

Resource Guides for Expunging 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
- ❖ *Deering's 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>

Sacramento County Public Law Library

<http://saclaw.com/pages/expunging-criminal-records.aspx>

San Diego County Public Law Library Research Guide

http://www.sdcppl.org/resources/guides/Clean_Up_Your_Criminal_Record.pdf

Requesting Your Criminal Record

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

¹ 55 West's California Digest 2d, Words and Phrases, p. 304 (2005).

For Felony Convictions

CR-180

Enter your name and address here.
Enter your phone number here.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

TELEPHONE NO.: _____ FAX NO.: _____

E-MAIL ADDRESS (Optional): _____

ATTORNEY FOR (Name): **In Pro Per**

PEOPLE OF THE STATE OF CALIFORNIA
v.
DEFENDANT:
Enter your name here

PETITION FOR DISMISSAL
(Pen. Code, §§ 17, 1203.4, 1203.4a)

FOR COURT USE ONLY

CASE NUMBER: **Enter your case number in this box.**

Enter the words, "In Pro Per" on the line that states "Attorney For (Name)". This means you are representing yourself in this petition.

DEFENDANT'S INFORMATION

CII: _____

DRIVER'S LIC #: _____

SSN # (LAST FOUR DIGITS ONLY): _____

DATE OF BIRTH: _____

Date of your conviction

The CII number is found on your DOJ Criminal Record printout in the top left hand corner. This is not a required entry. You will need to enter your driver's license number, the last four digits of your social security number, and your date of birth.

1. On (date): _____ of section(s) (specify): **459** the defendant in the above-entitled criminal action was convicted of a violation of the (specify): **Penal** Code.

Enter the code section violated, e.g., 459.

Enter the code violated here, e.g., Penal.

2. The offense was a misdemeanor felony.

Felony offense (Pen. Code, § 17):

Check here for felony conviction.

The offense listed above is a felony that may be reduced to a misdemeanor under Penal Code section 17.

If your felony conviction may be reduced to a misdemeanor under PC 17, check this box.

3. Offense with probation granted (Pen. Code, § 1203.4):

Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the defendant (check one):

If probation was part of your sentence, check here.

Which box best describes your probation; a., b., or c.

- 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; or
- 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 by completing and attaching the optional Attached Declaration (form MC-031).)

If probation was not part of your sentence, check this box.

4. Offense with sentence other than probation (Pen. Code, § 1203.4a):

Check here if all the above statements are true in the paragraph.

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The defendant has complied with the sentence of the court and is not serving a sentence for any offense nor under charge of commission of any crime, and since said pronouncement of judgment has lived an honest and upright life and conformed to and obeyed the laws of the land.

Check here if probation was not part of your sentence.

Petitioner requests that defendant 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 or 1203.4a of the Penal Code.

Petitioner requests that the felony charge be reduced to a misdemeanor under Penal Code section 17.

Check here if you felony conviction can be reduced to a misdemeanor under PC 17.

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

Executed on: _____ (DATE) _____ (CITY) _____ (STATE) _____ (ZIP CODE)

Date petition signed **Your signature**

(ADDRESS, DEFENDANT) (SIGNATURE OF PETITIONER OR ATTORNEY)

(CITY) (STATE) (ZIP CODE)

Check here if probation was part of your sentence.

Enter your name and address here.

Enter your phone number here.

For Misdemeanor Convictions

CR-180

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

TELEPHONE NO.: _____ FAX NO.: _____

E-MAIL ADDRESS (Optional): _____

ATTORNEY FOR (Name): **In Pro Per**

PEOPLE OF THE STATE OF CALIFORNIA
v.
DEFENDANT:
Enter your name here.

PETITION FOR DISMISSAL
(Pen. Code, §§ 17, 1203.4, 1203.4a)

FOR COURT USE ONLY

CASE NUMBER: **Enter your case number in this box.**

DEFENDANT'S INFORMATION

CII: _____

DRIVER'S LIC #: _____

SSN # (LAST FOUR DIGITS ONLY): _____

DATE OF BIRTH: _____

The CII number is found on your DOJ Criminal Record printout in the top left hand corner. This is not a required entry. You will need to enter your driver's license number, the last four digits of your social security number, and you date of birth.

Date of your conviction

Enter the code section violated, e.g., 459.

Enter the code violated here, e.g., Penal.

1. On (date): _____ the defendant in the above-entitled criminal action was convicted of a violation of section(s) (specify): **459** of the (specify): **Penal** Code.

2. The offense was a misdemeanor felony.
 Felony offense (Pen. Code, § 17):
 The offense listed above is a felony that may be reduced to a misdemeanor under Penal Code section 17.

Check misdemeanor conviction

3. Offense with probation granted (Pen. Code, § 1203.4):

Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the defendant (check one):

- 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; or
- 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 by completing and attaching the optional Attached Declaration (form MC-031).)

Which box best describes your probation; a., b., or c.

If probation was part of your sentence, check here.

If probation was not part of your sentence, check here.

Check here if all the statements in the above paragraph are true.

4. Offense 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 defendant has complied with the sentence of the court and is not serving a sentence for any offense nor under charge of commission of any crime, and since said pronouncement of judgment has lived an honest and upright life and conformed to and obeyed the laws of the land.

Petitioner requests that defendant 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 or 1203.4a of the Penal Code.
 Petitioner requests that the felony charge be reduced to a misdemeanor under Penal Code section 17.

Check here if probation was not part of your sentence.

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

Executed on: _____ (DATE) _____ (SIGNATURE OF PETITIONER OR ATTORNEY)

_____ (ADDRESS, DEFENDANT) _____ (CITY) _____ (STATE) _____ (ZIP)

Date petition signed

Your signature

Your address information here

Check here if probation was part of your sentence.

ATTORNEY OR PARTY WITHOUT ATTORNEY		FOR COURT USE ONLY	
TELEPHONE NO.:	FAX NO. (Optional):	<div style="border: 1px solid black; padding: 5px;"> Enter the words "In Pro Per" here. This means you are representing yourself in this petition. </div>	
E-MAIL ADDRESS (Optional):	ATTORNEY FOR (Name):		
PEOPLE OF THE STATE OF CALIFORNIA		<div style="border: 1px solid black; padding: 5px;"> Enter the case number of your conviction here. </div>	
DEFENDANT:			
<div style="border: 1px solid black; padding: 5px;"> Your name here </div>		<div style="border: 1px solid black; padding: 5px;"> Enter the same information as presented on form CR-180. </div>	
ORDER FOR DISMISSAL (Pen. Code, §§ 17, 1203.4, 1203.4a)			
DEFENDANT'S INFORMATION			
CII: DRIVER'S LIC #: SSN # (LAST FOUR DIGITS ONLY): DATE OF BIRTH:			

Place your name, address and phone number here.

In Pro Per

Your name here

Enter the case number of your conviction here.

Enter the same information as presented on form CR-180.

DO NOT WRITE BELOW THIS LINE! This is where the judge will sign your petition.

1. The court denies the petition.
2. The court grants the petition. The court finds from the records on file in this case, and from the foregoing petition, that the defendant is eligible for the relief requested.
 - The court reduces the felony offense to a misdemeanor.
 - The court denies the request to reduce the felony offense to a misdemeanor.

It is ordered that the plea, verdict, or finding of guilt in the above-entitled action be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed.

The order is granted under the provisions of Penal Code section 1203.4:

The defendant is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency or for contracting with the California State Lottery. The dismissal of the conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

- c. The defendant may also be eligible to obtain a certificate of rehabilitation and pardon under the procedure set forth in Penal Code section 4852.01 et seq.
6. If the order is granted under the provisions of either Penal Code section 1203.4 or 1203.4a, the defendant is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 12021 and 12021.1 and Vehicle Code section 13555. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 12021 or 12021.1.
7. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17, 1203.4, or 1203.4a does not release defendant from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if defendant was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

Date: _____
(JUDICIAL OFFICER)

FOR COURT USE ONLY