

# **HOW TO CLEAN UP YOUR CRIMINAL RECORD**

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## **1. Ways to obtain your criminal record**

- a. In order to begin cleaning up your criminal record, you first need to obtain a copy of the information on your criminal record. You can obtain your criminal record from a variety of sources such as:
  - i. The California State Department of Justice, Criminal Record Unit. This report will provide you your criminal record information for the entire state of California. In order to receive a copy of your criminal history record you must submit fingerprint images, pay a \$25.00 processing fee to the Department of Justice and follow the instructions below.
    1. Use the Live Scan Form
    2. Check "Record Review" as the "Type of Application"
    3. Enter "Record Review" as the "Reason for Application".
    4. Fill out all your personal information
    5. Take the completed form to any Live Scan site for fingerprinting services. Fingerprinting services are available at most local police department and sheriff's office. To find the sites nearest to you visit:  
<https://oag.ca.gov/fingerprints/locations>.
  - ii. The superior court where you were convicted.
    1. Keep in mind if you have cases in other counties you will need to go to each court individually to request those records.
    2. You will need to obtain the following information:
      - a. Case Number
      - b. Date of Conviction
      - c. The code name and section number of what you were convicted of violating.
        - i. For example, Penal Code §484; Health and Safety Code §11377; Vehicle Code §14601(a)
      - d. What was the verdict. Did you enter a plea, was it "guilty" or "no contest" (also called "NOLO contendere")
      - e. Were you ordered to serve any time on probation (either formal or informal probation,)? If so, for how long?
      - f. Were you ordered to make any payments, such as restitution, as part of your probation?
      - g. Did you comply with all the terms and conditions of probation?
      - h. If you were sentenced to state prison, on what date were you released?
      - i. If you were released on parole, on what date did your parole end?

## **2. Your Options to Clean Up Your Criminal Record**

### **a. Expungements**

- i. An Expungement is a method for clearing up your criminal record. The procedure opens your criminal case, dismisses the conviction, and re-closes the case without

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a conviction. Expungements are available for nearly all infractions, misdemeanors and most felonies that meet the criteria listed in Penal Code §1203.4 (b).

ii. To be eligible to expunge your conviction, you must meet all the following conditions:

1. At least one year must have passed since your conviction
2. You must have completed the terms of your sentence
3. You cannot be serving a sentence for any offense, or be charged with the commission of any other offense
4. Your probation for the conviction you're trying to expunge must not have been revoked, and not reinstated

iii. If you were convicted of any of the following offenses, you are not eligible for a dismissal:

1. Any misdemeanor within the provisions of Vehicle Code §42002.1
2. Any infraction within the provisions of Vehicle Code § 42001
3. Any violation of Penal Code § 286(c), 288, 288.5, 288a(c)m or 289(j)
4. Any violation of Penal Code § 311.1, 311.2, 311.3, or 311.11 or
5. A felony under Penal Code § 261.5(d)

iv. In order to request a dismissal of a conviction you must file FORM CR-180 and a FORM CR-181 in the county where you were convicted.

You must serve the district attorney with a copy of the petition in the county you were convicted. For most counties no court hearing will be scheduled. Instead the petition will automatically be granted as long as you meet all the requirements. The turnaround for an expungement is from 30 to 90 days.

b. Termination of Probation Early

i. If you were convicted of a misdemeanor and are still on probation you can request early release from probation and file a petition under Penal Code § 1203.3 to have probation terminated early, and a petition under Penal Code § 1203.4 for a dismissal.

ii. If the judge grants an early termination of probation, the court will often expunge the defendant's criminal record. And in a felony wobbler case, the judge may also reduce the felony to a misdemeanor at the same time.

1. Before terminating your probation early, the judge will want to ensure that:

- a. You have successfully completed the terms of your probation (such as fines, classes and restitution),
- b. There are circumstances that justify early termination of probation. Valid reasons may include (but are not limited to) the fact that your probation is keeping you from securing gainful employment, preventing you from advancing at work, or restricting necessary travel.

2. Penal Code §1203.3 gives the court the discretion to grant a request for early termination of probation at any time during the probation period. In practice, however, most judges want to see people complete at least 12 to

18 months of their probation before they will seriously consider the motion to terminate probation early.

c. Dismissal and reductions under proposition 64 and proposition 47

- i. Proposition 47 implemented three broad changes to felony sentencing laws. First, it reclassified certain theft and drug possession offenses from felonies to misdemeanors. Second, it authorizes defendants currently serving sentences to felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions. Third, it authorizes defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors. Felony convictions resentenced or reclassified as misdemeanors under the proposition are considered misdemeanors for all purposes, except that such relief does not permit the person to own, possess, or have in his or her custody or control any firearm.
- ii. Proposition 64, which opened the door to the legalization of marijuana for recreational purposes in California, allow you to clean up many types of prior marijuana-related charges, either by dismissal or reduction.
  1. If you were convicted of the following convictions you may apply to the court to have your conviction dismissed or re-designated under the more lenient sentencing provisions of Proposition 64:
    - a. Possession under Health & Safety Code § 11357
    - b. Cultivation under Health & Safety Code § 11358
    - c. Possession for sale under Health and Safety Code § 11359; or
    - d. Unlawful transport under Health and Safety Code § 11360
  2. You must apply with the Petition/Application FORM CR- 400 and the Proof of Service for Petition/Application FORM CR-401.

d. Certificate of Rehabilitation

- i. a certificate of rehabilitation (COR) is a California court-order declaring that a person previously convicted of a felony (or misdemeanor sex offense) is now rehabilitated
- ii. the purpose of a COR is to restore civil and political rights of citizenship to ex-felons who have proved to be rehabilitation
- iii. The COR process is available for those persons who have been convicted of a felony or misdemeanor sex offense which required the person to register as a sex offender. In very limited circumstances, a COR can relieve a person from registering as a sex offender. There are exceptions for other sex offenses.
- iv. In California, a person must file a Petition for a Certificate of Rehabilitation in the Superior Court of the county where the applicant resides. A California Superior Court judge has the broad discretion to issue each COR (on proper petition/motion only). If the judge grants the COR, it is then forwarded to the California Governor by the Superior Court and constitutes an automatic application for a pardon.

- v. An applicant must offer evidence of having completed a satisfactory period of rehabilitation beginning from the date he or she was released from custody.
- vi. Certain cases (such as sex offender, serving a mandatory life parole, under a death sentence, currently in the military service) are ineligible to file a petition for COR.

e. Governor's Pardon

- i. Individuals who have been convicted of a crime in California may apply to the Governor for a pardon. A gubernatorial pardon is an honor that may be granted to people who have demonstrated exemplary behavior following their conviction.
- ii. A pardon will not be granted unless it has been earned.
- iii. Obtaining a pardon is a distinct achievement based upon proof of a productive and law-abiding life following conviction. Historically, governors have granted very few pardons.
- iv. Applications generally will not be considered unless the applicant has been discharged from probation or parole for at least 10 years without further criminal activity during that period. There is no fee for applying for a pardon.
- v. The first step in applying for a pardon is to obtain a Certificate of Rehabilitation from the Superior Court in the county where the applicant currently lives. People who live outside of California and people who are ineligible for a Certificate of Rehabilitation must use a direct pardon application. The procedure utilized will depend on the circumstances of each applicant.

f. Seal and destroy your adult arrest and criminal records

- i. Under Penal Code § 851.8 you can destroy arrest records with the law enforcement agency that arrested you if you were arrested and no formal court case was filed accusing you of a crime. Additionally, if you were arrested and a case against you was filed, but the charges against you were dismissed you can file a petition under Penal Code §851.8.
- ii. If you were acquitted at trial you may request records in the case to be sealed, including any record of your arrest or detention.
- iii. You can file a written or oral motion, with notice to all parties under Penal Code §851.85. If the court finds you were factually innocent of the charges, the court will order your records sealed.
- iv. If you successfully complete a pre-filing diversion program you can request records in the case to be sealed, including any record of your arrest or detention after two years under Penal Code § 851.87.

g. Juvenile Records

- i. If you were arrested or involved in a court case or had contact with the juvenile justice system when you were under 18, the courts, police, schools, or other public agencies may have records about what you did.
- ii. If you are able to get those records sealed, it could be easier for you to find a job, get a driver's license, get a loan, rent an apartment, or go to college. In

some cases, the court will automatically order your records sealed. In others, you must file a petition asking the court to seal your records.

- iii. When the court seals your records, it means that your court case no longer exists. This means that you can legally and truthfully say you do not have a criminal record when someone asks about your criminal history (there may be an exception to this if you want to join the military or get a federal security clearance).
- iv. If your case is dismissed by the juvenile court after January 1, 2015 and you were NOT found to have committed an offense listed in Welfare and Institutions Code § 707(b) when you were 14 years of age or older (these are violent offenses like killing, raping, or kidnapping, and also some offenses involving drugs or weapons), you may not need to ask the court to seal your records. The court will do it automatically if you satisfactorily complete your probation. If the court finds that you satisfactorily completed your probation, it must dismiss your case.
- v. You qualify if:
  - 1. You are at least 18; or
  - 2. It has been at least 5 years since:
    - a. your case was closed, or
    - b. your last contact with probation; and
    - c. a judge decides you have been rehabilitated.

### **3. Immigration and Criminal Convictions**

- a. Expungement is a state criminal law mechanism and does not affect federal law or policies
  - i. A client, if they are seeking to remain in the US, will still have to reveal any arrests, charges, or convictions
  - ii. Expungements generally do not remove the immigration implications of convictions for clients (*Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9th Cir. 2002.))
    - 1. For most offenses, “a state conviction expunged under state law is still a conviction for purposes of eligibility for cancellation of removal and adjustment of status. And even though incarceration is not required, the federal definition of conviction is satisfied regardless of the rehabilitative purpose of probation, where the [individual] was punished or his liberty was restrained by the terms of his probation.” (*Reyes v. Lynch* (9th Cir. 2016) 834 F.3d 1104, 1108)
- b. EXCEPTION - US Court of Appeals, 9th Circuit has held certain offenses may be affected by state expungements for the purposes of immigration
  - i. An expungement is valid for immigration purposes if the conviction was for simple possession of a controlled substance and there were no probation violations (*Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (en banc).)