



EXPUNGING CRIMINAL RECORDS: Step-by-step

Effective July 2009, the Solano County Public Defender's Office no longer provides 1203.4 Expungement services for their clients.

Disclaimer: This packet is intended as general information only to guide you to filing your own expungement. Your situation may have factors requiring different procedures or forms. If you need further assistance, you may want to hire a private attorney.

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This instructional packet includes:

- ❖ Petition for Dismissal with instructions
- ❖ Order for Dismissal with instructions
- ❖ Sample California criminal record report
- ❖ Petition and Order for dismissal forms to file with the Court
- ❖ Court Fee waiver information and form

BACKGROUND

What is an expungement?

AN expungement reopens your criminal case, dismisses and sets aside the conviction, and re-closes the case without a conviction. In effect, you are no longer a convicted person. However, the case record itself will still exist, and the expungement will appear on your record.

Why would you want an expungement?

It can be difficult to get a job with a conviction on your record. Many employers must carry insurance on their employees, and insurance companies often refuse to insure employees with convictions.

What types of expungement exits?

There are three types of expungements:

- 1) The first, governed by Penal Code §1203.4, will expunge cases in which probation was part of the sentence.
- 2) The second, under Penal Code §1203.4(a), will expunge cases in which there was no probation.
- 3) The third, under Penal Code § 17, will reduce a felony conviction to a misdemeanor. This misdemeanor can then be dismissed.

If you received state prison as your sentence, you will need to file paperwork for a Certificate of Rehabilitation, rather than a Petition and Order for Dismissal.

Once my conviction is expunged, can I answer "No" to questions about convictions on job applications?

Legally, you may answer "No" to these types of questions. Keep in mind, though, that background checks typically go back 10 years, and employers can see that you had a conviction dismissed. Answering "No" may look dishonest. A better response may be "Yes, expungement granted."

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, the conviction will be discovered during the standard



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background check. You should disclose the conviction and expungement in these situations. If you are applying for a government-issued license, certificate, or permit, you **must** disclose your conviction and expungement.

How does an expungement affect strikes or other sanctions?

Although your conviction may be dismissed, the sanctions such as firearms prohibitions, exclusions from jury duty, or strikes, cannot be dismissed. These remain intact for life.

An expungement does not:

- ❖ Remove the conviction from your criminal history. California and FBI criminal history records will still show the conviction and the subsequent dismissal.
- ❖ Reinstate your right to possess firearms.
- ❖ Allow you to omit the conviction from applications for government-issued licenses.
- ❖ Seal the court case file from public inspection. The court file remains public record.
- ❖ Prevent the conviction from being used as a “prior” for sentencing enhancements in subsequent convictions.
- ❖ Prevent the conviction from being used to impeach your testimony if you are called as a witness in court.
- ❖ 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 by US Citizenship and Naturalization Services for removal or exclusion purposes.

ARE YOU ELIGIBLE FOR A DISMISSAL?

You are eligible for dismissal of a conviction, and the court *will* dismiss your conviction, if:

- ❖ You received probation for that conviction and:
 1. You successfully completed probation or obtained early release,
 2. You also have paid all the fines, restitution, and reimbursements ordered by the court as part of your sentence,
 3. You are not currently serving another sentence or on probation for another offense, AND
 4. You are not currently charged with another offense.
- ❖ You never received probation and:
 1. Your conviction was a misdemeanor,
 2. It has been at least one year since the date you were convicted,
 3. You have complied fully with the sentence of the court,
 4. You are not currently serving another sentence,
 5. You are not currently charged with another offense, AND



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6. You have obeyed the law and lived an honest and upright life since the time of your conviction.


You are eligible for a dismissal and the court has the *discretion (choice)* to grant you that dismissal if:

- ❖ You received probation but you did not get an early release, did not fulfill all the conditions of probation, or were convicted of any offense listed in [Vehicle Code 12810\(a\) to \(e\)](#) BUT:
 1. You have paid all the fines, restitution, and reimbursements ordered by the court as part of your sentence, AND
 2. You are not currently charged with, on probation for, or serving a sentence on any other offense.

Some Convictions are Not Eligible for Dismissal

If you were convicted of any of the following offenses you are not eligible for a dismissal under Penal code section 1203.4(a): Any misdemeanor within the provisions of Vehicle Code section 42001(b), Any violation of Penal Code section 286(c), 288, 288a(c), 288.5, or 289(j), A felony under Penal Code section 261.5(d), Any infraction.

EXPUNGEMENT ELIGIBILITY CHART

Situation	You may be able to	How to do it
You were convicted of a misdemeanor and are still on probation.	Request early release from probation and file petition to have conviction dismissed.	File a PC 1203.3 petition to have probation terminated early, and PC 1203.4 petition for expungement.
You were convicted of a misdemeanor and have successfully completed probation.	File petition to have conviction dismissed.	File PC 1203.4 petition for expungement.
You were convicted of a misdemeanor and were never given any probation at all.	File petition to have conviction dismissed.	File PC 1203.4a petition for expungement.
You were convicted of a felony and are still on probation.	Request early release from probation and file petition to have conviction reduced to misdemeanor and dismissed.	File a PC 1203.3 petition to have probation terminated early. File a PC 17(b) petition to get felony reduced, and PC 1203.4 petition for expungement.
You were convicted of a felony and are done with probation and/or county jail time.	File petition to have conviction reduced and dismissed.	File a PC 17(b) petition to get felony reduced, and PC 1203.4 petition for expungement.
You were convicted of a felony and were never given any probation at all and were sentenced to county jail.	File petition to have felony reduced to a misdemeanor and file petition to have conviction dismissed.	File a PC 17(b) petition to get felony reduced, and PC 1203.4a petition for expungement.
You were convicted of a felony and were sentenced to state prison or under the authority of the Department of Corrections and Rehabilitation  .	File a petition for Certificate of Rehabilitation and Pardon.	See requirements about this process, and the ten-year rule, under Certificate of Rehabilitation and Pardon.



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PROCEDURE

Should I obtain a copy of my criminal record prior to filing for an expungement?

Yes, you will need a copy of your criminal record or case information from each conviction you wish to expunge. Your criminal record or case history includes information essential to filing out the expungement papers.

Find Out the Details of Your Convictions

In order to begin cleaning up your criminal record, you first need to know what is on your criminal record. The court will require you to fill out forms. Whether you are requesting a dismissal or a Certificate of Rehabilitation, you will need to know the details of your convictions(s) in order to complete the forms. Also, certain details will affect whether you are eligible. There are several details you will need to know in order to accomplish your goals:

1. Your Case Number(s) [Sometimes called docket number.]
2. Your Date(s) of Conviction(s) [The date of your plea or verdict.]
3. The Code Name(s) and Section Number(s) you were convicted of violating.
4. Was there a "Verdict" or did you "Enter a Plea"? If you Entered a Plea, was it "Guilty" or "Nolo Contendere" (No Contest)?
5. Were you ordered to serve any time on "Probation"? If so, how long? [Formal and informal probation are treated the same.]
6. Were you ordered to pay any "Fines," "Restitution," or "Reimbursement"?
7. If you were sentenced to state prison, which one?
8. If you were sentenced to state prison, what date were you released?
9. If you were released on "Parole," what date did your parole end?

Your criminal records information can be obtained from a variety of sources. Below is a list of the sources most commonly used.

1. Your court papers received at the time of conviction.
2. The [Superior Court](#) where you were convicted. They will only have information for convictions from that county and not other counties. You will need to make a copy of your order(s) of judgment.

To get case information for your *Solano County convictions*, visit <http://www.solanocourts.com>. Click on "Court Connect", then on "Search by person name" and use the search engine to find your cases.

Once you have found your case number(s), write down the case number(s). You will need to go to the criminal division located in the district in which your case was sentenced (FAIRFIELD Branch: 530 Union Ave, Fairfield, Ca. or VALLEJO Branch: 321 Tuolumne, Vallejo, Ca). Give the case number(s) to the criminal clerk and request your file(s) for review. In the file, look for

the minute order pertaining to your judgment and sentence (this will tell you the date you were sentenced, what you were convicted of etc.). Ask the clerk to make a copy of the minute order (.50 per page). Repeat this step for all cases you wish to expunge.

3. The [California State Department of Justice](#), Criminal Records Division. They will have your criminal records information for the entire State of California. They are located at 4949 Broadway, First Floor Fingerprinting Office, Sacramento, California. Their phone number is (916) 227-3400. There is a fee, but you may be eligible for a fee waiver. You must provide written proof of your income. It may take several weeks for the record to arrive in the mail.

How much does it cost to get a conviction expunged?

The maximum amount is \$120, but many petitions may be filed for \$60. The filing fee is based on the type of conviction to be expunged. Fee waivers are available for low-income petitioners.

I cannot afford my court fees. What can I do?

If you are low-income and cannot afford to pay the fee to file your court papers, you can ask for a "Fee Waiver".

There are 3 ways to qualify for a fee waiver:

- If you are receiving public benefits, like Medi-Cal, Food Stamps, Cal-Works, General Assistance, SSI, SSP, Tribal TANF, IHHS or CAPI;
- If your household income, before taxes, is less than the amounts listed on Form FW-001 in item 5b, *or*
- If the court finds that you do not have enough income to pay for your household's basic needs AND the court fees.

What fees and costs can the trial court waive if I qualify for the fee waiver?

If you file a *Request to Waive Court Fees* ([Form FW-001](#)) and your request is granted, you will not have to pay fees for:

- Filing papers in superior court (except for appeals in cases worth over \$25,000)
- Making and certifying copies
- Sheriff's fee to give notice
- Court-appointed interpreter in small claims court
- Court fees for telephone hearings
- Giving notice and certificates
- Sending papers to another department
- Court reporter's daily fees (for the first 60 days following the grant of the fee waiver)
- Preparing, copying, and certifying a clerk's transcript on appeal and transmitting it to the appellate court and the party.

A copy of the fee waiver instructions and form is attached in the back of this packet.

Where do I find forms for an expungement?

There are two forms you will need to expunge your conviction:

- ❖ Petition for Dismissal (CR-180) <http://www.courtinfo.ca.gov/forms/fillable/cr180.pdf>
- ❖ Order for Dismissal (CR-181) <http://www.courtinfo.ca.gov/forms/documents/cr181.pdf>

These forms also attached in this packet, but are also available at the courthouse.



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Complete the Petition(s)

Complete the entire petition. Everything you need to know in order to fill out the petition is in the minute order from your sentencing or your criminal record history from the DOJ.

A sample copy of the petition with instructions is attached hereto.

1. Ask if you need to submit additional photocopies of the petition, and how many?
2. Ask if their rules of court require you to serve copies of your petition on the district attorney and/or probation department?

File Your Petition(s) with the Court(s)

If you are filing a petition for reducing a felony or a petition for early release from probation or a dismissal, you will need to mail (or deliver in person) your filing materials to the Clerk of the Superior Court *for the county of your conviction(s)*.

Be sure to include any supportive materials such as letters of support, school diplomas and/or transcripts, and if applying for early release from probation, include a letter to the judge explaining why you feel you should be released from probation early. At the time you file your papers, the clerk will set a hearing date.

If required in your county, be sure to serve the district attorney and/or probation department.

You will be required to attend the hearing, although for 1203.4 and 1203.4a petitions you may not have to appear. If you are required to attend the hearing, **BE SURE TO ATTEND**. Be on time and dress conservatively. If your petition is granted, make sure to put the order in a safe place for your records.

The court cannot charge you a filing fee to file your petition. But, the court can charge you a fee after it makes a decision on your petition. Currently, the law allows for a maximum of \$120 fee. But, in order to charge you this fee, the court has to determine that you are able to pay. So, if you cannot afford to pay, you can ask for a fee waiver.

What is a Proof of Service, and how is it used in an expungement case?

In many counties, the court will perform service for you. In counties that do not provide this service, you will need to handle the service of papers yourself. You are required to notify other parties of the date and place of the hearing. After you complete your Petition and Order for Dismissal forms, you will file them with the court. The court will give you stamped copies of your papers, which must be served on the District Attorney and the Probation Department. You will then complete a Proof of Service form, and turn it into the court. The Proof of Service tells the courts the specifics of how and when the DA and Probation Department were served.



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What if I fill out the forms incorrectly?

The forms will be returned to you, often with an explanation of what is incorrect. You may correct the petition and return it to the court. There is no additional filing fee.

Can I expunge multiple convictions at the same time?

Yes, you can file several petitions for expungement simultaneously. You will need to file a separate Petition and Orders for *each* conviction.

What if I have changed my name since my conviction?

Fill out the forms with the name under which you were convicted. Sign the forms with your current name.

AFTER FILING THE PAPERS

What happens if the court denies my expungement?

Do not despair! If you attend the hearing, you may ask the judge what you can do to get your conviction expunged. You may re-file your petition for expungement in 3-6 months, after you've made the changes recommended by the judge.

What happens if I am arrested while trying to get a previous conviction expunged?

You can not apply for expungement if you have any ongoing criminal proceeding, or are on probation for any criminal offense. If you are arrested after you apply for expungement, your petition will be denied.

How long will the expungement process take?

It will take anywhere from 4 weeks to 4 months, depending on how busy the court's calendar is.