

Law Library for San Bernardino County

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Research Guide - Petition for Dismissal

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

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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. This resource is not comprehensive; you may need to do additional research and all references should be checked for accuracy reflecting changes to the law since this creation of this guide. Any decisions about how to proceed must be determined by the patron. The library staff can recommend and refer you to online and print 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 itself and we are not permitted to give legal advice.

How Do I File a Petition for Dismissal?

Step 1: Determine whether you qualify for the Petition for Dismissal

Who is Eligible?

If you were convicted of an infraction, a misdemeanor, or a felony and were NOT sentenced to state prison or put under the authority of the Department of Corrections, you can petition for a dismissal.

Misdemeanors with Probation Granted

1. You successfully completed probation or obtained early release;
2. You paid all restitution and other payments that were ordered as a term of probation;
3. You are not currently serving another sentence or on probation for another offense; AND
4. You are not currently charged with another offense

Misdemeanors when Probation is NOT granted

1. It has been at least 1 year since the date you were convicted
2. You have complied fully with the sentence of the court
3. You are not currently serving another sentence;
4. You are not currently charged with another offense; AND
5. You have obeyed the law and lived an honest and upright life since the time of your conviction.

Felony Convictions Sentenced to County Jail:

1. You were placed on “mandatory supervision” by the Probation department for a portion of your sentence, and more than a year has passed since you completed your sentence
2. You were NOT placed on “mandatory supervision for a portion of your sentence and at least two years have passed since you completed your sentence
3. You are not currently charged with, on probation for, or serving a sentence for any other offense
4. The court finds that it is in the interests of justice.

Step 2: Determine which type of Dismissal applies to you

For a Misdemeanor or Infraction Conviction:

- **If Probation WAS ordered and Completed:** File a Petition for Dismissal under PC § 1203.4.
- **Probation WAS NOT ordered:** File a Petition for Dismissal under PC § 1203.4a
- **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-information.html>). If that is granted, then file a Petition for Dismissal under PC § 1203.4.

For a Felony Conviction

- **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-information.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 <https://www.cdcr.ca.gov/boph/>

Step 3: Obtain a Copy of your Criminal Record

For cases in San Bernardino County, the necessary information can usually be found online at: <https://portal.sb-court.org/Portal/>

Step 4: Complete the Forms

Petition for Dismissal (CR-180)

Order for Dismissal (CR-181)

Optional: 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.

Step 5: Copy, File and Serve Your Forms

Copy

- Make three copies each of Petition for Dismissal (CR-180), Order for Dismissal (CR-181), Attached Declaration (MC-031).
- Give the clerk a Self-addressed stamped envelope if you want a copy of the signed Order mailed to you.

File

- Dismissal forms are filed in the county where you were convicted. For courthouse locations, see www.courts.ca.gov/superiorcourts.htm.

Serve

- Service is a formal way of giving copies of court documents to all parties in a case. In a dismissal proceeding, the District Attorney and Probation Department must be served. Some courts may serve the papers for you. If not you will need to have the papers served and fill out a proof of service. See San Bernardino Local Court Form SB 37 <http://www.sb-court.org/sites/default/files/Forms%20and%20Rules/SB-37.pdf>

Step 6: Attend your Court Hearing, if required

The following sample is provided to assist you with filing out the forms

CR-180

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		FOR COURT USE ONLY Your name, address, and phone number. "In Pro Per" means you are representing yourself Case number for the conviction you're trying to expunge
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:		CASE NUMBER:
Your name and birthdate PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)		FOR COURT USE ONLY DATE: TIME: DEPARTMENT:

1. On (date): _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense (felony, misdemeanor, or infraction):	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (yes or no)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (yes or no)

space is needed for listing offenses, use Attachment to Judicial Council Form (form MC-025)

Code and Section number that you were convicted of (e.g. Vehicle, Penal, etc.)

Were you convicted of a Felony, Misdemeanor, or infraction?

If your offense was a felony, but could have been charged as a misdemeanor, write yes

If your offense was a misdemeanor, but could have been charged as an infraction, write yes.

2. **Felony or misdemeanor with probation**
 Probation was granted on the terms and conditions of _____ court; the petitioner is not on probation for any offense, on probation for any offense, and the petitioner is not on probation for any crime, and the petitioner is not on probation for any crime, and the petitioner is not on probation for any crime.

If probation was ordered in your case, check this box. If probation was not Ordered, go to number 3.

a. has fulfilled the conditions of probation

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 may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

Check either a, b, or c; whichever best describes your situation

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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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. Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner (*check one*):

- a. has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; **or**
- b. should be granted relief in the interests of justice. (*Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

If sentenced to a Misdemeanor but probation was not Ordered, check the box next to 3. Then check a or b, depending on which best describes your situation. If b, use the space provided to explain why this expungement is in the interests of justice

4. **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**

Petitioner has completed a term of probation for a conviction under Penal Code section 647(b) and should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

(Please note: You may provide evidence that the conviction was the result of your status as a victim of human trafficking. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

If you can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, check this box

5. **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**

Petitioner is not under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or charged with the commission of any offense; and should be granted relief in the interests of justice, and (*check one*)

- a. more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or**
- b. more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

If you were sentenced to a felony and had to serve time in county jail, check box 5. Then check a or b, depending on which best describes your situation

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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6. **Felony prison sentence that would have been eligible for a felony county jail sentence after 2011 under Penal Code section 1170(h)(5) (Pen. Code, § 1203.42)**

Petitioner is not under supervision and is not serving a sentence for, on probation for, or charged with the commission of any offense; more than two years have elapsed since petitioner completed the felony prison sentence; and petitioner should be granted relief in the interests of justice.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

If you were sentenced to a felony and had to serve time in prison that would have been eligible for a county jail sentence after 2011, check box 6.

If you were sentenced to a deferred entry of judgment, check box 7, then check a or b, depending on which best describes your situation

7. **Deferred entry of judgment (Pen. Code, § 1203.43)**

Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge (s) were dismissed under former Penal Code section 1000.3 on (date): . Furthermore (check one),

- a. court records are available showing the case resolution; **or**
- b. petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner (check one)
 - (1) has
 - (2) has not
 attached a copy of his or her state summary criminal history information.

8. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

9. Petitioner requests that he or 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 the Penal Code section(s) noted above.

Sign, date, Address

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

Date:

(SIGNATURE OF PETITIONER OR ATTORNEY)

(ADDRESS OF PETITIONER)

(CITY)

(STATE)

(ZIP CODE)

FREQUENTLY ASKED QUESTIONS:

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.

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.

How Does the Petition for Dismissal Benefit Me? The Dismissal WILL NOT...

- 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:

<https://www.gov.ca.gov/wp-content/uploads/2017/07/How-To-Apply-for-a-Pardon-10.24.18.pdf>

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://sbpubdef.com/>

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

https://sandiegolawlibrary.org/wp-content/uploads/wpmc-trash/2013/04/Clean_Up_Your_Criminal_Record.pdf

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
<http://iella.org/> (951) 369-3009**