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CALIFORNIA EXPUNGEMENT BASICS

LEGAL AID FOUNDATION OF LOS ANGELES

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AGENDA

Statistics

Remedies / Eligibility

Requirements for 1203.4 Dismissals

Prop 47

Procedure and Practice

STATISTICS

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Approximately 1 in 4 Americans (65 million) has a criminal record

The US has 5% of the world's population and 25% of the world's prisoners.

One in 31 adults are under some form of correctional control.

One in 99 adults are living behind bars in the U.S. This marks the highest rate of imprisonment in American history

Since 1970, our prison population has risen 700%.

RACIAL DISPARITY

People of color constitute 60% of our prison population while remaining a distinct minority of our general population.

Racial/Ethnic Disparity in Incarceration in CALIFORNIA

Black : White Ratio 6.5 to 1

We incarcerate Latinos at almost twice the rate of their white counterparts.



EMPLOYMENT

- Having a criminal record reduces callbacks by 50%
 - Background checks can be misleading.
 - Many people with criminal records have never been convicted of a crime. 1/3 of felony arrests never lead to a conviction (US Bureau of Justice Statistics)
- Ban the Box
 - Removes questions about convictions from state agency, city, county and special district job applications and postpones such inquiries until later in the hiring process (July 2014)
 - Some exceptions – law enforcement
 - Target and Wal-Mart have removed questions about criminal history from its job applications

REMEDIES

AVAILABLE REMEDIES

Dismissal (aka “Expungement”)

- PC § 1203.4
 - Felony or misdemeanor with probation granted
- PC § 1203.4a
 - Misdemeanor or infraction with sentence other than probation
- PC §1203.41
 - Felony county jail sentence under PC 1170(h)(5)

Reducing felony to misdemeanor

- PC § 17(b)

Modifying/terminating probation

- PC § 1203.3

Prop 47

- Reclassifies several low-level, non-violent crimes into misdemeanors

Prop 64

- Reduces most felony and misdemeanor penalties for marijuana offenses

Other Remedies

- Felonies With Prison – Certificate of Rehabilitation/Pardon
- No Conviction – Sealing of Arrest Record
- Juvenile Records Sealing
- Federal Convictions – Presidential Pardon

ELIGIBILITY

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Not currently involved with the criminal justice system

- P.C. §§1203.4(a) / 1203.4a(a) / 1203.41(a)(3)
- Not serving a sentence
- Not on probation/parole
- Not facing charges

SOME CONVICTIONS CANNOT BE DISMISSED

Some offenses are barred:

P.C. §1203.4(b)

- §261.5(d) - California's statutory rape law which prohibits sexual intercourse between persons who are 21 years and older with persons younger than 16.
- §286(c) - California's law against sodomy with a child
- §288 - California's lewd acts with a child law,
- §288a(c) - California's law against oral copulation with a child
- §288.5 - California's law against sexual conduct with a child under the age of 14
- VC §42002.1 Failure to submit to inspection, unsafe condition endangering a person

Felony – Prison Sentence – Certificate of Rehabilitation

Juvenile Conviction – Juvenile Court

Federal Crime – Federal Public Defenders Office

Military Convictions – JAG (Judge Advocate General's Office)

REQUIREMENTS FOR SET ASIDE AND DISMISSAL

WHAT IS A DISMISSAL?

A dismissal 'sets aside or dismisses' some criminal convictions under Penal Code §§ 1203.4, 1203.4a and 1203.41

- It's a remedy for adult convictions where a prison sentence was not executed
- It is a remedy for California convictions
- The conviction remains on your record for many purposes, including sex registration and immigration consequences. What the statute provides is, except as elsewhere stated, the defendant is 'released from all penalties and disabilities resulting from the offense.'

IS DISMISSAL MANDATORY?

- In some instances, an individual is entitled to a dismissal as a matter of right!
- Evidence of pre / post – probation conduct is irrelevant
- An individual must
 - Successfully completion all terms and conditions of probation
 - Prison sentence never executed
 - Conviction not a serious sex offense
 - Not on parole or probation
 - Paid all fines/fees/restitution

Some offenses are never mandatory

- **Penal Code §191.5(b) or 192(c); Vehicle Code § 2800.2, 2800.3, 14601, 14601.1, 14601.2, 14601.3, 14601.5, 20001, 20002, 21651(b), 22348(b), 23103, 23109(a), 23109(c), 23109.1, 23140(a), 23140(b), 23152, 23153, or 31602**
- **Vehicle Code §12810(a) – (e)**
 - DUI's, suspended license, reckless driving and related offenses

STANDARD FOR DISCRETIONARY DISMISSALS

Discretionary dismissals are “in [the court’s] discretion and the interests of justice” – P.C. §§1203.4(a), 1203.4a(a), 1203.41(a)

Court will consider many things, even those that are irrelevant if dismissal was mandatory

- Unpaid fees/costs that are not condition of probation
- Post and pre-probation conduct

‘Upstanding’ citizen:

- Have no IRS arrears
- Have no child support arrears, unless they can show that they are current with payments in accordance with a payment arrangement
- Have no outstanding parking tickets
- And have otherwise met the requirements for an expungement (no current charges for any offense, completed all requirements of probation, paid all fines/fees/restitution, etc.)
- If dismissal is discretionary, it’s suggested that defendant attend hearing and provide supporting documentation:
 - Declaration
 - Letters of support from church, work, etc.
 - Diplomas/Certificates

REDUCTION UNDER §17(B)(3)

May petition the court for reduction of a felony to a misdemeanor at the same time

- Felony to misdemeanor under P.C. §17(b)(3)
- Wobblers can be charged as either a felony or misdemeanor
- Look at the statute
- Do not need to disclose as a felony
- Will still count as a strike
- Always discretionary and require a declaration

1. On (date): _____, the petitioner (*the defendant in the above-entitled criminal action*) was convicted of a violation of the following:

Offense (Specify each offense in the case noted above.)	Code	Section	Type of offense: (Felony; Misdemeanor; Infraction)	Eligible for reduction to misdemeanor under Penal Code § 17(b) (Yes or No)

AB 109 - REALIGNMENT

Two functions:

1. Allows for current non-violent, non-serious, and non-sex offenders, who after they are released from California State prison, to be supervised at the local County level;
2. Mandates that individuals sentenced to non-serious, non-violent or non-sex offenses will serve their sentences in county jails instead of state prison.

Split Sentence:

- A. Jail sentence and out-of-custody mandatory supervision (1)

Straight Sentence:

- B. Serve entire sentence in county jail (2)

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, 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 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.)

WOBBLER FELONY

PC §368(b)

- (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

STRAIGHT FELONY

PC §368(b)

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the **defendant shall receive an additional term in the state prison** as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

A DISMISSAL WILL NOT...

Will **not** reinstate the right to possess a firearm,

Will **not** prevent the dismissed conviction from being used as a "prior" if defendant is prosecuted for another offense,

Will **not** prevent the US government from considering the offense for immigration purposes,

Will **not** relieve sex offenders of their duty to register,

Will **not** re-instate driving privileges if they have been suspended as a result of the case

PROP 47

THE SAFE NEIGHBORHOODS AND SCHOOLS ACT

WHAT IS PROP 47?

Prop 47 reclassifies several categories of theft and drug-possession crimes from felonies or 'wobblers' (crimes that may be charged as either a felony or misdemeanor) to straight misdemeanors.

Prop 47 will benefit those individuals who have yet to be charged with a crime, those with pending charges, and those who are currently serving sentences.

THEFT CRIMES

Any type of property theft

- including shoplifting by entering a business during regular business hours with intent to commit a theft, if the value of the property is \$950 or less

Receiving stolen property, if the value of the property is \$950 or less;

Forgery of a check, money order, cashier's check, etc for \$950 or less, unless the person is also convicted of ID theft under PC 530.5 (then it's a wobbler).

Passing a bad check(s) for \$950 or less, unless the person has 3 or more prior convictions for PC 470, 473, 475 or 476 (forgery related offenses)

Petty theft with a prior, unless the person has a prior conviction for a theft offense of elder abuse, served a term for the prior and is required to register as a sex offender (then it's a wobbler).

DRUG POSSESSION CRIMES

Possession of various controlled substances, including cocaine and heroin
[CA H&S Code §11350]

Possession of concentrated cannabis
[CA H&S Code 11357(a)]

Possession of methamphetamine
[CA H&S Code 11377]

EXCLUSIONS

Those with any prior convictions for “serious or violent” offenses under PC §667(e)(2)(C)(iv), or

Those with any prior convictions which require sex offender registration under PC §290(c). Includes many, but not all, sex offense convictions.

<http://www.lacourt.org/division/criminal/CR0103.aspx>

EXCLUSIONS

People who have been convicted of a “super prior”

- Sexually violent offenses
- Homicide (including attempted and solicitation)
- Assault with a machine gun on a peace officer or fire fighter
- Possession of a weapon of mass destruction
- Life or death sentence offenses

PROCEDURES FOR PROP 47 RELIEF

Petitions for resentencing or reclassification must be submitted by November 4, 2017.

Pending charges:

- Anyone charged after November 4, 2014 with one of the qualifying crimes and who does not have a disqualifying prior, will automatically be charged with a misdemeanor.

Currently serving sentences

- If currently serving a sentence in prison or county jail with one of the qualifying crimes and who does not have a disqualifying prior may petition to court to have their felony conviction converted to a misdemeanor

Completed sentences

- Individuals who have completed their sentence with any of the qualifying crimes and who does not have a disqualifying prior may petition to court to have their felony conviction converted to a misdemeanor

COLLATERAL BENEFITS

Probationers/Parolees

- Individuals still on probation or parole may be eligible for early termination of probation or parole

Fines & Fees

- Individuals who still owe fines and fees may have their fines and fees reduced. However, restitution orders will remain in full force.

Expungement

- Individuals who have served prison time for convictions that are reclassified under Prop 47 may be eligible to have those convictions expunged

PROCEDURE AND PRACTICE

CRIMINAL RECORD HISTORY

Court dockets/transcripts or RAP sheet

- Preferably a client would have both their RAP sheet and a docket for the specific cases that they want expunged.
- Dockets provide in-depth information on one case.
 - Dockets show if probation was terminated and fines/fees paid.
 - Dockets don't show if the person got another arrest/conviction.
- RAP sheets show a complete criminal history
 - Rap sheets provide short version of events
 - Client must do cost benefits analysis of time and money
 - Rap sheets provide a complete timeline of arrests/convictions.
 - You can identify errors in your criminal history (previous expungements not reported, identity theft)
- RAP sheet costs \$25-60 and usually are fairly quick to get (LiveScan)
<http://ag.ca.gov/fingerprints/publications/contact.php>
- Dockets costs are minimal (often free) but require trips to courthouses.

PETITION FORMS

- Los Angeles County uses Judicial Counsel forms
 - CR-180 – Petition for Dismissal
 - CR-181 – Order for Dismissal
 - FW-001(Request to Waive Court Fees)
 - FW-003 (Order on Court Fee Waiver)
 - CR-115 (Defendant’s Statement of Assets)
 - MC-030 (Declaration)
 - Proof Of Service
- Some counties use their own local forms so check county website
- Some counties/courts also have their own procedures

HEARINGS

- Hearings are set in criminal courtrooms
 - When you arrive, ask the District Attorney or the City Attorney if they oppose the petition.
 - The prosecution will either oppose, not oppose, or submit to the court.
 - Typically they submit when they haven't reviewed the file.
 - Make your appearance on the record, and advocate for your client.
 - Especially for discretionary expungements.
 - The judge will rule on the order.
 - If you don't attend the hearing and the order is denied, you will likely not get any information about why the petition was denied.
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