

# Reducing a Felony to a Misdemeanor

Written by: [Jeffrey Donald Kent](#)

Attorney licensed in California

If you are eligible to have your felony charge reduced to a misdemeanor, do so, and do so now! Not all felonies are eligible for reduction, but if yours is, do it as soon as possible. This does not happen automatically, and requires a motion filed in court and an order by the judge.

## Is my Felony Reducible to a Misdemeanor?

This is not a difficult to determine, but it is also not a simple answer. First, only felonies which are called "wobblers" can be reduced from a felony to a misdemeanor. A wobbler is a legal term which means that a particular charge may be filed as either a misdemeanor or a felony. How do you know if it is a wobbler? Any criminal code section - Penal, Vehicle, Health & Safety, etc. - which states it is punishable in county jail and/or state prison is a wobbler. Common examples of wobblers are: PC 459 (2nd Degree Burglary), PC 487 (Grand Theft), PC 245 (Assault with a Deadly Weapon), H&S 11377 (Possession of Methamphetamine), and VC 10851 (Auto Theft). Secondly, you must have never been sentenced to state prison. If you were sentenced to state prison, whether initially, or as a result of a probation violation, the offense is forever a felony. If you were sentenced to a particular term in state prison, and that sentence was stayed, and you were placed on probation it is a felony.

## How Do I go about Reducing my Felony to a Misdemeanor?

A reduction from a felony to a misdemeanor does not happen automatically, even if you are eligible. Sometimes an attorney will work in to a plea agreement that the offense may be reduced from a felony to a misdemeanor upon an event, such as: successful completion of probation, half your probation, rehab, etc. However, you still must file a motion and have the court order the matter a misdemeanor. Also, unlike an expungement, a reduction from a felony to a misdemeanor is not a right. It is subject to the court's discretion. Therefore, the more time that has passed the better. The better you performed on probation, the better. All the things you have been doing since the offense that put you in a positive light, become very important. It is typically best to retain a lawyer to write, and file the motion on your behalf, in order to have the best chance of success. The motion is filed with the court, the prosecutor, and the probation department. A hearing is then set in court.

## **It was granted! What now?**

Congratulations! You are now a misdemeanor, and no longer a felon! Pursuant to Penal Code section 17(b), you are now a misdemeanor for all purposes! Therefore, assuming you have no other felony offenses, you can lawfully answer you have never been convicted of a felony, and the rights you lost and disabilities you incurred as a result no longer apply! However, the misdemeanor is still on your record. Oftentimes, it is prudent to ask the matter be expunged at the same time you request it reduced to a misdemeanor. However, the biggest victory is the reduction from a felony to a misdemeanor. Remember, certain misdemeanors still have some rather harsh loss of rights and disabilities. For example, even a misdemeanor PC 245 (Assault with a Deadly Weapon) has a 10 year prohibition from owning a firearm! A reduction to a misdemeanor reduced it from life, but does nothing about the 10 year prohibition. Lastly, expungement of the offense does not restore ones gun rights.

## **Additional Resources**

This is the type of motion that is not only incredibly important in one's life, but discretionary for the court. Therefore, I do recommend you hire an experienced criminal defense attorney. Here are some resources to help you start:

[Lawyers.com](http://Lawyers.com)

[Martindale-Hubbell](http://Martindale-Hubbell)

[National Association of Criminal Defense Attorneys](http://National Association of Criminal Defense Attorneys)