

EXPUNGEMENT - What is it? When can I do it? How do I do it? Does it really matter?

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What is expungement? This is a question I am asked probably more than any other. Expungement is a reference to Penal Code section 1203.4 It allows successful probationers to have their plea withdrawn and case dismissed. Hold on, it's not all that it may first appear to be.

What is it?

Expungement is Penal Code section 1203.4, and as mentioned above, if granted, allows your plea of guilty or conviction after trial to be vacated or set aside, and the charge to be dismissed. You are then legally entitled to state that you have never been convicted of that charge and are released from all penalties and disabilities with certain exceptions. First, in response to any direct question in an application or questionnaire for any state or local license, public office or for contracting with the California State Lottery it must still be disclosed. Second, it does not relieve you from any firearm prohibitions that may have been related to the dismissed charge. Third, if the offense dismissed was priorable, it can still be used against you in the future as a prior. Lastly, the facts and circumstances may be proven in a subsequent proceeding for purposes such as impeachment, and bias and credibility.

Who can file for expungement?

Anyone convicted of a misdemeanor, no matter what the sentence, and anyone convicted of a felony, which did not result in a prison conviction, may file a petition to have their matter expunged. However, they must not currently be on probation, and have no other charges pending at the time the petition is made.

When can I do it?

You have an absolute right to an expungement once you have successfully completed all the terms of your probation for the entire period thereof. Huh? If you had no probation violations, you are absolutely entitled to having your expungement granted. You must simply not be on any other grants of probation or have any charges pending at the time. If that is the case, the court shall grant your petition! What if you had just a small violation, like failure to make a timely payment? Not all is lost. You can still petition for an

expungement, assuming you are not currently on probation, and have no charges pending. However, it now becomes up to the discretion of the judge. Meaning that it will depend on the nature of your violation or violations, how much time has passed since your probation ended, and what you have been up to personally. If granted, the effects are the same. It is also possible to request your probation to end early so you can then petition for expungement.

What if I was never placed on probation?

If you were never placed on probation, often called a terminal disposition, you must wait 1 year from the date of sentence to petition for expungement. Otherwise, it works the same way as the application if you were on probation with one exception. You are NOT required to acknowledge the conviction in an application or questionnaire for state or local license, public office, or contracting with the California State Lottery. As stated above, the offense may still prohibit you from owning a firearm, be used as a prior conviction, or be proven in court to attack your credibility.

How do I do it?

If you were fortunate enough to successfully complete probation, this is a pretty simple process. You can fill out a California Judicial Council form CR-180 and file it along with the appropriate fee, generally \$75 to \$150. If you had a probation violation or violations, you are probably best off to hire a lawyer to help you out. As mentioned above, this now becomes discretionary and the boiler plate CR-180 form does not give you the opportunity to explain the violation, what you have done since, or why it is this is so important for you. An attorney can file a petition that addresses these issues. Since most of these petitions are handled as chambers work - handled by a judge without an appearance in court - it is all the more important that your paperwork is in order. If it is denied, an attorney may be able to get you a hearing in court to address the matter again.

What now?

I used to advise clients to simply follow the statute. In other words, don't disclose it if you don't have to, and disclose it when you must. However, we now live in an era where information is so easily obtained, even by those that don't know how to interpret it, that I have changed my advice. If you are applying for a job that you really want and are not legally required to disclose the conviction, you may want to. What? Well, so many employers now do background checks, and they're done by people or relied upon by people who don't know how to read them or know the law. In other words, you could not get that

job, because a prospective employer erroneously believes that you lied on your application or in your interview. Moreover, you may not get that interview, or second interview in order to clear it up, but just a thanks for applying but we decided not to hire you. It's up to you whether you disclose when you don't legally have to, but I'd hate for you to miss out on that job!

Additional Resources

Here are some forms and resources that may help you. If you successfully completed your probation, this may be something you can do yourself. If you did not, I highly recommend you hire a lawyer to supplement the forms with your recent good behavior and possibly set it for hearing.

[Petition for Expungement form](#)

[Order for Expungement form](#)