

DIY Information - Partial Expungements

What Is A Partial Expungement And What Does It Do?

A partial expungement is a court document proving the person named in the document has done everything he or she needed to do after conviction of a criminal offense, and that the Court certifies the person is back in good standing with the Court. There are different ways to obtain these certificates/declarations of rehabilitation, depending upon the type of sentence imposed (probation, jail or prison), the class of offense (misdemeanor, felony, or an infraction), and the type of crime involved. If a person has successfully completed probation, a partial expungement is available under Penal Code section 1203.4; if the defendant did not receive probation or was sent to jail, a partial expungement is available through Penal Code section 1203.4a.

A partial expungement does not "erase" the conviction itself. Even expunged convictions must still be reported when applying for a license from a state or local government agency (and perhaps federal agencies, since they have their own rules about state criminal records), and the conviction can return and appear as a prior conviction should a person commit a new criminal violation (since the conviction has not been "erased").

A partial expungement will not permit a person to own or possess a concealable firearm, nor to avoid the prohibition against owning or possessing a firearm found in Penal Code section 12021. However, there is a different rule for felony charges reduced to misdemeanors under Penal Code sec. 17(b).

Often, persons ask whether an "expunged" conviction has to be reported in an application for employment. There is no answer that will cover every situation, and it would be wise to speak with an attorney if you have any questions. But, Penal Code section 11116.5 permits a person who has obtained 1203.4 relief to truthfully answer they have not been convicted of a criminal offense; and Title 2, 7287.4 (d) (1) (B) of the California Code of Regulations (CCR) limit an employer's ability to inquire about expunged convictions. This limitation is not absolute, and there are many types of employment where employers can ask about all criminal convictions. For instance, health care workers or workers with access to restricted drugs, are required to acknowledge all convictions, even those that have been expunged when applying for licensing or employment. The effect of the expungement will have in any specific case will depend upon the purpose for which the expungement will be used.

Another example of a situation where a partial expungement of a criminal offense will have limited effect are those offenses related to driving a vehicle, or affecting a person's ability to obtain a license. In these circumstances, an expungement has a limited effect upon that applicant's ability to obtain a license or permit from DMV. Though the

licensing agency may not be permitted to automatically refuse a license because of the expunged conviction, the agency may be able to use the conduct underlying the conviction as one element taken into account when making a licensing decision.

Partial Expungements

As you can see, once an adult has been convicted of a criminal offense, there is almost no way to completely clear that record. If a court grants a partial expungement, information about the conviction showing in that person's "rap sheet" will contain a notation to the effect "conviction set aside pursuant to Penal Code sec. 1203.4", or similar language. This declaration doesn't completely clear the person's record; it will not remove the "rap sheet" or booking information, nor will it remove the case file from the courthouse records, but it does officially confirm that person's reformation. Most record checks, even from commercial providers, not just law enforcement, will be able to find the original information about the conviction, so it is important to keep the official court document proving the expungement.

Penal Code Section 1203.4 And 1203.4a

An adult convicted of either a felony or a misdemeanor and placed on probation can obtain a partial expungement if: (1) that person has successfully completed probation, (2) if that person has had their probation ended early, or (3) if there is a good reason to expunge the conviction even when probation was not completed

successfully. Not all offenses can be expunged, and the statute limits its application.

In some, but not all cases, a person convicted of a felony offense that is also punishable as a misdemeanor can petition to have the felony reduced to a misdemeanor and partially expunged in the same petition asking for 1203.4 relief.

If a person is convicted of a misdemeanor and not given probation, but rather sent to the county jail, section 1203.4a permits expungement of these offenses too.

In every case, it important that the person applying for a partial expungement have paid court ordered restitution.

Infractions

A person convicted of an infraction cannot expunge the conviction. Sections 1203.4 and 1203.4a do not apply to infractions. But, records pertaining to infractions are destroyed by the court after three years and in some cases may not be reported to the state's criminal records database.

"DO IT YOURSELF" APPLICATIONS FOR A PARTIAL EXPUNGEMENT (1203.4/1203.4A RELIEF)

After completing probation (or serving your sentence) you can apply for 1203.4/1203.4a relief by yourself. If you have a computer, go to the "California Courts Self-Help Center, a website set up by the Judicial Council of California.

The web address is:
<http://www.courts.ca.gov/1070.htm> .
This website provides a step by step guide to clearing your record, providing information as well as links to other useful information. The website links to the forms a person needs to submit for 1203.4 relief [Form CR180 and CR 181] and provides the necessary information on how to complete the forms and how to file the forms. Form CR180 can be used to request expungement in both felony and misdemeanor cases, though it might be a good idea to ask for help if you are seeking to expunge a felony offense.

The California Courts' self-help website contains information about a variety of topics. Clicking on the information tabs at the top of the web page will direct you to the relevant part of the website.

The forms you'll need can be obtained by clicking on the link provided in the "Cleaning Your Record" portion of the webpage, or by selecting the Criminal Forms tab and looking for the appropriate form.

Our Santa Barbara Court uses a slightly different form than the one found on the Judicial Council website, so get the information you need from the California website, but use the Santa Barbara form if you are filing in our local court because it will make filing the petition easier. There are two differences in the form used in Santa Barbara; one is that the Santa Barbara form is intended to be used in misdemeanor cases.

The second difference is that Santa Barbara charges a \$57 fee to process a request for expungement (both felonies and misdemeanors), so the form contains a space dedicated to collecting the \$57 fees charged by the court for an expungement.

If a petitioner can not pay the fee, he or she need to request a "fee waiver" by completing forms FW 001

and FW 001INFO, found at the Judicial Council website:

<http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>

This form is then submitted with the application for 1203.4 relief and the court decides whether or not to waive the fee. The Santa Barbara expungement form is **SC3004**, and it can be downloaded from the Santa Barbara court's own website:

http://www.sbcourts.org/general_info/formslist.htm

Form **SC3004a**, also found on the same website, explains how to fill out the request for expungement. The information you need to complete your application (charge and date of conviction) can be found on your original court paperwork, or you can go to the Criminal Clerk's Office to obtain that information. Once you complete your application, follow the instructions provided by the court. You will need to submit your original application, five (5) copies, a stamped self-addressed envelope with the proper postage, and the applicable processing fee.

Normally, the court will act on the requested expungement within about four weeks of the submission.

If you submit a petition for expungement and it is denied, you can come to the Public Defender's Office and apply for our services and we will resubmit the petition if you qualify for our services and for the grant of the petition.

If you do not have a computer and wish to seek an expungement yourself, you should be able to get these forms from the Criminal Clerk's Office, or come by the Public Defender's Office and we will help you obtain these forms.

1 EAST ANAPAMU STREET
SANTA BARBARA, CA 93101
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COUNTY OF SANTA BARBARA
OFFICE OF THE PUBLIC DEFENDER

Expungement of Records (1203.4 PC)

The Public Defender's Office charges a \$125 fee to process each 1203.4 P.C. application for a misdemeanor and a \$175 fee to process each felony application. If you require multiple applications, we will consider an adjustment of the fee per application. You must pay this Public Defender fee before we will file your application. To help us in determining if you qualify for our services you must first completely fill out the Application for Relief and the Confidential Financial Declaration.

Please note that you are NOT eligible for this relief if:

1. You are currently serving a sentence, on probation, or currently charged with a crime; or
2. You were sentenced to prison on the offense for which you now seek relief; or
3. You have not complied with the conditions of probation.

Step One: Fill out in detail the personal information section in our Application for Relief (we can use that information, if necessary, to apply for a Request for Record Transcript from the State of California Department of Justice). Only by providing all available information can optimum record check results be obtained. Please fill out the entire application to the best of your ability as the more complete it is, the easier it will be for us to assist you.

Step Two: You need to conduct an inquiry with the probation department to determine if you have a balance due on your account. You may either go to the probation office at 117 E. Carrillo Street, Santa Barbara, CA 93101; or if you cannot go to their office call 805-882-3741. You need to provide the probation office with your name, date of birth, case number, phone number and current mailing address.

Step Three: You need to conduct an inquiry with the Santa Barbara Clerk of the Court to determine if you owe any money to the court. You may do this by going to the Santa Barbara Superior Court at 118 East Figueroa Street, Santa Barbara, California 93101. The criminal law clerks located at the window on the main floor on the right side can assist you from 7:45 a.m. to 3:00 p.m., Monday through Friday, excluding holidays. If you cannot physically go to the Courthouse then call 805-568-3959 and work your way through their phone tree [first press option #2 (criminal court), then press option #3 (SB Courts), then press option #1 to provide the case number (if you don't have the case # then don't say anything and the call will be transferred to a criminal court clerk)].

Step Four: Along with your Application please also attach supporting evidence that you have been rehabilitated i.e. letters of recommendation from employers, letters from people that can attest to your character, transcripts from school, certificates of completion of rehab/anger management, etc.

Documents Provided:

1. Application for Relief
2. Confidential Financial Declaration

APPLICATION FOR RELIEF PURSUANT TO PENAL CODE SECTION 1203.4

PLEASE READ BEFORE YOU COMPLETE THIS FORM

Note: You are NOT eligible for this relief if:

1. You are serving a sentence, or are on probation, or are charged with a crime; or
2. You have not complied with the conditions of probation (if any) including payment of fines or restitution; or
3. You have not completed the probation or one year has not expired since the date of your sentencing; or
4. You went to prison on this offense.

We need ALL of the following for your application to be considered:

- 1) Rap sheet listing all prior convictions, obtainable through the Department of Justice
- 2) Supporting evidence that you have been rehabilitated (Examples: letters from employers, transcripts from school, certificates of completion of rehab/anger management, etc.)
- 3) Evidence showing successful payment of all fines and restitution owed to the court and the probation department
- 4) Payment of fee (\$175 PER FELONY CASE, \$125 PER MISDEMEANOR CASE)

PLEASE COMPLETELY FILL OUT ALL OF THE FOLLOWING INFORMATION:

CONTACT INFORMATION:

1. Name (include aliases/maiden name): _____
2. Phone (Home): _____ (Cell): _____
3. Email Address: _____
4. Current Address: _____

PERSONAL INFORMATION:

- | | |
|--------------------------|--------------------------------|
| 1. Date of Birth: _____ | 7. Height: _____ |
| 2. Place of Birth: _____ | 8. Weight: _____ |
| 3. Race: _____ | 9. Driver's License No.: _____ |
| 4. Gender: _____ | 10. Social Security No.: _____ |
| 5. Hair: _____ | 11. FBI No.: _____ |
| 6. Eyes: _____ | 12. Prison No.: _____ |

CONVICTION INFORMATION:

1. Court: _____; Court Case No.'s: _____; _____;
2. Charges: _____ [] Felony or [] Misdemeanor
3. Date (Conviction): _____ (Sentencing): _____
4. Did the Public Defender's Office represent you in the original matter? [] Yes [] No
If not, who was your attorney?: _____
5. Were you placed on probation? [] Formal [] Informal ("Formal" probation requires supervision; "Informal" probation does not.) How long?: _____

6. Did you ever violate your probation? Yes No
If yes, was it a result of a new case? Yes No
If yes, please provide case number and date of violation:

CURRENT INFORMATION:

1. Are you currently on probation in this county, or another county? Yes No

If yes, please state where and when: _____

2. Have you had any arrests or convictions since you were granted probation? Yes No

If yes, please explain charges: _____

Who was your attorney?: _____

3. Do you currently have any cases pending? Yes No

If yes, please explain and provide case number: _____

4. Do you currently owe any fines, fees, or restitution? Yes No

If yes, how much?: _____ (You must pay fines and restitution owed in order to be eligible for this relief)

5. What is the reason why you are seeking this relief?: (Attach extra sheet if necessary)

This statement is true and made under the penalty of perjury. Executed on this _____ day of _____,
20__, at _____ California.

(Signature)

<input type="checkbox"/>	APPROVED BY: _____
<input type="checkbox"/>	DOES NOT QUALIFY BY: _____

COUNTY OF SANTA BARBARA
APPLICATION FOR APPOINTED COUNSEL

CONFIDENTIAL
FINANCIAL DECLARATION

	NEXT COURT DATE:
	MM/DD/YY _____
	Dept # _____
	Case # _____

Full name (please print): _____	Birth Date: _____	Charges: _____
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Address: _____

Marital Status: [] Single [] Married [] Separated [] Divorced [] Domestic Partner

Number of dependents: _____
Relationship and age(s): _____

E-mail address: _____
 I WOULD LIKE TO BE CONTACTED BY EMAIL

Home Phone: _____
Cell Phone: _____
Work Phone: _____
Social Security No.: _____

MONTHLY EXPENSES	Self	Spouse
Rent	\$ _____	\$ _____
Mortgage	\$ _____	\$ _____
Utilities	\$ _____	\$ _____
Food	\$ _____	\$ _____
Vehicle	\$ _____	\$ _____
Other (explain)	\$ _____	\$ _____
	\$ _____	\$ _____

Your Employer: _____
Address: _____

Length of time at job: _____ Supervisor: _____

Take home pay \$ _____ per _____ Unemployment Benefits: Yes \$ _____ No _____

OTHER INCOME & ASSETS	Self	Spouse
Government Aid: (explain)	\$ _____	\$ _____
	\$ _____	\$ _____
Do you own Real Estate? Yes / No	\$ _____	\$ _____
WHAT IS THE VALUE: _____	\$ _____	\$ _____
Located at: _____	\$ _____	\$ _____

Spouse/Partner Employer: _____
Address: _____

Length of time at job: _____ Supervisor: _____

Take-home pay \$ _____ per _____ Unemployment Benefits: Yes \$ _____ No _____

Amount in Checking account:	\$ _____	\$ _____
Amount in Savings account:	\$ _____	\$ _____
Cash on hand:	\$ _____	\$ _____
Other income or assets valued at:	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

I am submitting this form to apply for the services of appointed counsel. When this case ends, this information can also be used to decide, after a hearing, whether and how much I can be ordered to pay for the legal services provided. An order to pay for legal services can be enforced as a civil judgment against my property. (Penal Code§987.8)

If represented by the Public Defender, I can agree to pay to fixed amount for their services, or I can ask the judge to decide If and how much I should pay. If I ask a judge to decide if and how much I should pay for Public Defender services, I understand that the hourly rate set by the County is \$95 per hour worked on my case. If I give up the right to a hearing, I can agree to be charged \$125 for representation in most misdemeanor cases, and \$175 for representation in most felony cases.

PLEASE CHOSE AN OPTION AND INITIAL:

- I do not want a reimbursement hearing; I agree to pay \$125 if charged with a misdemeanor and \$175 if charged with a felony.
- I want a judge to decide if and how much I should pay for legal services. The Public Defender will not represent me at this hearing and their role will be to present the information necessary to make an order for reimbursement. The Court can order the reimbursement hearing when the case ends, and up to six months after the case ends. If I do not agree with the amount set by the court at this hearing, I must immediately let the court know I object to the fee amount and my reasons for disagreeing.

It will not violate your probation or any law if you fail to pay any ordered Public Defender fees. However, the order has the same effect as a judgment in a civil action. It can be enforced by the County against you and your property like any other money judgment.

I certify under penalty of perjury under the laws of the state of California that all of the above is true and correct and that I have read and understand all of the above.