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Article: HOW TO OBTAIN AN EXPUNGEMENT OF A CRIMINAL RECORD

By: Christopher A. Kerosky

In California, an individual convicted of an infraction, a misdemeanor, or a felony and not sentenced to state prison can petition the Court for a dismissal or “expungement” of their record. Under Penal Code Section 1203.4, citizens can request a dismissal if they were given county jail time, probation, a fine, or a combination of those three types of punishment -- rather than being sentenced to state prison.

Upon receipt of a formal petition, the court may withdraw the person’s guilty or no contest (nolo contendere) plea, or even a guilty verdict, and enter a not guilty plea. If the court set asides and dismiss the conviction under **Penal Code Section 1203.4**, the individual is no longer considered to be “convicted” of the offense and their record will be changed to show a dismissal rather than a conviction.

This article explains how one obtains an expungement of their criminal record and what are the consequences of doing so.

When are is an individual eligible for a dismissal of a conviction?

One is eligible for dismissal of a misdemeanor conviction if:

The criminal defendant received probation for that conviction and:

- they successfully completed probation or obtained early release;
- they also have paid all restitution and other payments that were ordered as a term of probation;
- they are not currently serving another sentence or on probation for another offense; AND
- they are not currently charged with another offense.

OR

You never received probation and:

- Your conviction was a misdemeanor or an infraction;
- It has been at least 1 year since the date you were convicted;
- You have complied fully with the sentence of the court;
- You are not currently serving another sentence;
- You are not currently charged with another offense; AND
- You have obeyed the law and lived an honest and upright life since the time of your conviction.

What is the effect of an expungement?

Once all convictions have been dismissed, there are various circumstances where the conviction cannot be considered by potential employers. Under most circumstances, private employers cannot ask an applicant for a job about any convictions dismissed under Penal Code section 1203.4. So when applying for a job in the private sector, a person generally does not have to disclose a conviction if it was dismissed or expunged.

Also, in California, with certain exceptions, government employers and licensing agencies are supposed to treat a person the same as if they had never been convicted of any crime – if that conviction was dismissed.

Getting relief from the court

If you are filing a petition under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.41, 1203.43, and 1203.49, you can use the Petition for Dismissal (Form CR-180). Ask the local clerk if you need to submit additional photocopies of the petition and, if so, how many. Ask if their local rules of court require you to serve copies of your petition on the district attorney or probation department.

Remember, you can only dismiss 1 conviction at a time. This means you must fill out a separate petition for each conviction that you want to dismiss, but you can file them all at the same time. If you are currently on probation, you will need to deal with that conviction first; then you can proceed with the others.

You need to mail or deliver in person to the Court your filing materials to the clerk of the superior court for the county where you were convicted. If required in your county, be sure to serve a copy of the entire petition and supporting documentation on the district attorney or probation department.

It's very important to include any supportive materials such as letters of support, school diplomas or transcripts, and if applying for early release from probation, a letter to the judge explaining why you feel you should be released from probation early. At the time you file your papers, the clerk will set a hearing date.

You may be required to attend the hearing. Be on time and dress appropriate for court. The court cannot charge you a fee to file your petition, but the court may order you to reimburse the court, city, and county up to \$150 each after the court decides your petition, whether or not your petition was granted.

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CHRISTOPHER A. KEROSKY is a partner with Wilson Purves in the law firm of KEROSKY PURVES & BOGUE, with offices located in San Francisco, Santa Rosa, Ukiah, Napa, San Rafael, Walnut Creek, San Jose and Sacramento. Mr. Kerosky has been an attorney licensed to practice law in California for 25 years. He is a graduate of UC Berkeley (Boalt Hall) School of Law and a former trial lawyer for the Civil Division of the U.S. Department of Justice in Washington D.C. For 9 years, he has been honored as one of Northern California's top lawyers by San Francisco Magazine, "Super Lawyers" edition. Mr. Kerosky speaks English, Spanish and Polish and has also working knowledge of Russian.

WARNING: The article above is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case.