

Expunging Adult Criminal Records in Santa Clara County

Disclaimer

SCCLL staff members are not practicing attorneys or court employees and are not permitted to give legal advice. We compiled the information that we were able to obtain into this pathfinder for informational purposes only. For advice specific to your situation, please consult an attorney.

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Intended Readers

The guide may apply to you if:

- Your adult criminal convictions occurred in Santa Clara County. Please check with the county you were convicted in to see if their local practices differ. Many county law libraries have created research guides similar to this one.
- You were sentenced to jail or probation rather than to state prison time or parole. Certificate of Rehabilitation is a different legal remedy and is for those sentenced to state prison or parole. The topic is not covered in this guide.
- You do not owe restitution (money owed a victim). You can contact County Department of Revenue at (408) 282-3200 to find out whether you have any restitution balance due (a balance for fees is different from restitution).
- You are not serving any sentence.
- You are not on probation (how to ask for early termination of probation is not discussed in this guide).
- You have not been charged with any new offense.

Free Assistance

Your Probation Officer

If you were on formal probation assigned a probation officer, it may help to talk to your probation officer before starting to clear your record on your own. He/she might be able to assess your eligibility, advise you on how to proceed with the petition and explain to you the consequences of an expungement. To find out who your probation officer is, please contact the Probation Department at (408) 435-2000.

Santa Clara County Public Defender

<https://www.sccgov.org/sites/pdo/cases/pgms/Pages/expungement.aspx>

The Public Defender's Office has a Reentry Expungement Program

Location: Reentry Resource Center
151 W. Mission Street
San Jose, CA 95110
Call (408) 535-4290 to schedule an appointment

San Jose State University Record Clearance Project (RCP)

<http://www.sjsu.edu/justicestudies/programs-events/rcp/>

Since 2008, students enrolled in the Justice Studies classes have been helping clients prepare court petitions and assisting them with court hearings. The process normally starts with a Speed Screening session, followed by a one-on-one consultation for those chosen.

Phone: (408) 924-2758
Email: expunge@sjsu.edu

Stanford Community Law Clinics

<https://law.stanford.edu/community-law-clinic/criminal-record-expungement/>

The clinic is a law school educational program and accepts clients generally at the beginning of each semester. Appointment can be scheduled after an initial evaluation over the phone.

Stanford Community Law Clinic
2117 University Ave., Suite A
East Palo Alto, CA 94303
(650) 725-9200

Requesting Your Criminal Record

You generally will need the following information from your RAP sheet (**Record of Arrests and Prosecutions**) to fill out an expungement application/petition:

- All case numbers
- The dates and types of all convictions
- The code section(s) violated, and
- The sentence.

There are two types of RAP sheets, state and county. People who are certain that they have only Santa Clara County convictions usually request their county RAP sheets because it has more detail.

Table 1 : Places to Get a RAP Sheet

	State	Santa Clara County
Approximate Fee	\$45	\$25
Fee Waiver?	Might be Available. Contact Agency.	Might be Available. Contact Agency.
Processing Time	1 week	1 month
Agency	California Department of Justice Record Review Unit P.O. Box 903417 Sacramento, CA 94203-4170	County Sheriff's Office 55 West Younger Avenue, San Jose, CA 95110
Phone	(916) 227-3849	(408) 808-4700
More Info	http://oag.ca.gov/fingerprints/security	http://bit.ly/ITM80J
Coverage	State-wide records in all counties	Santa Clara County records only with more information for each conviction

Types of Expungement

An expungement petition falls into one of two categories: mandatory or discretionary. The type of expungement depends on whether a judge has a choice when making a decision. Discretionary petitions require a court hearing so that petitioners can explain why they should be granted an expungement/dismissal in the interest of justice. While the same set of forms are used for both, discretionary dismissal petitioners will have to do some persuasive writing in one of the filings called a Declaration.

Table 2 : Types of Expungement

	Mandatory Dismissal	Discretionary Dismissal
Nature of Action	Entitlement	Persuasion
Buzzwords	Required by Law	“Interest of Justice”
Decision made through	Documentation	Documentation & Hearing
Hearings	Not Required (may request a hearing to expedite the process)	Yes
Results	Decision mailed to you	Decision made at the end of the hearing.

Expungement Law

The law that describes both types of expungement can be found in various sections of the Penal Code, primarily section 1203.4 and section 1203.4a. Generally speaking, in order to find out what type of expungement you are eligible for, you need to gather the information listed below from your RAP sheet.

- The types of your convictions,
- Whether probation is part of your convictions,
- What you did during your probation or during the year following your conviction in non-probation cases

Ways to Do An Expungement

In Santa Clara, the Probation Department and the Superior Court work together on expungement petitions. After an application/petition is filed, the Probation Department drafts a recommendation regarding the outcome of the petitions. The Court will then make a final decision in an order.

Although it is the court that makes a final decision on your application/petition, an expungement application does not necessarily have to be filed with the court. It could be filed with the Probation Department. It does not matter what types of conviction you have (i.e. felony, misdemeanor or infraction), whether you were on supervised (formal) probation or court (informal) probation, or how you have behaved since conviction.

Table 3 : Ways to Do An Expungement

	Probation Department	Court
Fee	\$150 or \$60	Depending on your convictions
Fee Waivers	Might be available	Might be available
Documents to submit/file	<ul style="list-style-type: none"> • A completed Application Form & • Other documents requested in the form. 	A complete pleading <ul style="list-style-type: none"> • A petition • A declaration • An order • A proof of service
Parties to Notify	None	<ul style="list-style-type: none"> • District Attorney & • Probation Dept.

Going Through the Probation Department

After receiving your application, the Probation Department will draft a recommendation based on your records and pass the paperwork on to the court for a final decision/order. The Probation Department will then mail you the order once it is received from the court. The whole process takes about four months.

The order will tell you what convictions are dismissed and you can petition with the court for those that are not. Because the Probation Department recommends dismissal in all mandatory cases and no dismissal in all discretionary cases, your end results vary depending on the type of the expungement. If you choose to continue with the court, the procedures will be the same as if you start the initial filings with the court, which are described in the section below.

People who have difficulties in determining the type of expungement and those with multiple convictions normally choose to start with the Probation Department. The Probation Department will clear up the mandatory convictions and leave the discretionary ones for the court.

Probation Department Forms

The Probation Department has its own application forms available on its website here:
<https://www.sccgov.org/sites/probation/adult/record/Pages/default.aspx>

The forms allow you to simultaneously reduce a wobbler to a misdemeanor. The instruction sheet answers many common questions. If you still have questions, please contact the Probation Department at the phone number listed at the bottom of the instruction sheet.

Going Through the Superior Court

Some people skip the Probation Department and file a petition with the court directly because they have only discretionary convictions or want a quicker decision (i.e. in the process of applying for a professional license or a job pending). It takes about one month to get the final decision/order from the date you file with the court.

After receiving your petition, the court will ask for a recommendation from the Probation Department on your case before making a decision. The Probation Department will make the same type of recommendations discussed above (i.e. based on the type of expungement you are eligible for). However, this time you are provided with an opportunity to present your argument in front of a judge in a judicial hearing.

Court Forms

Each conviction requires a separate pleading. Each pleading includes all four forms listed below. At least three copies of each pleading are needed when filing with the court. As we will discuss below, in addition to the copy for the court, another copy will be sent to the Probation Department and the Office of District Attorneys respectively. For a self-help guide to filling out these forms, we highly recommend looking at the Sacramento County Law Library's guide to expunging criminal records (<http://www.saclaw.org/wp-content/uploads/sbs-expunging-criminal-records.pdf>)

1. CR-180 Petition for Dismissal

<http://www.courts.ca.gov/documents/cr180.pdf>

This form tells the judge what you want based on what law.

2. MC-031 Attached Declaration

<http://www.courts.ca.gov/documents/mc031.pdf>

While this form is required only for discretionary dismissal petitions, many people will voluntarily attach one to their mandatory dismissal petition, because it enables them to tell the judge with their own words why they need an expungement. For discretionary dismissal petitioners, such a Declaration is required. This is your chance to present evidence to convince the judge that you deserve an expungement.

- Tips from the SJSU RCP training materials :

First state the basic information about your convictions and sentences and then let the judge know about your eligibilities. For a long declaration, you can use headings or sub-headings for better organization. Sample headings for "interest of justice" facts could be:

- *Difficult situation at time of conviction*
- *Turning my life around*
- *Problems completing probation*
- *Employment history*
- *Current opportunity*
- *Family need*

You have to write about your personal knowledge and not something someone else told you. On the one hand, you want to be specific and include as many details as possible to give

the judge a concrete picture of what happened. On the other hand, you want to make sure you do not include irrelevant or unnecessary information to distract him/her.

Submitting supporting documents could be helpful, such as a letter of support from your employer or pastors, a certificate of completion of programs and accomplishments, or photos showing community service and volunteer work. However, some people prefer to bring these supporting documents for the hearing while others like to submit them in the initial filings. Once filed all supporting documents become public record.

3. CR-181 Order for Dismissal

<http://www.courts.ca.gov/documents/cr181.pdf>

A judge will sign it at the end of the hearing when a decision is made.

4. POS-040 Proof of Service

<http://www.courts.ca.gov/documents/pos040.pdf>

In Santa Clara County, the court will serve the papers for you. A Proof of Service form needs to be filed during your initial filing. The court clerk will complete it later when the papers are served.

The completed form will show the judge that the Probation Department and the Office of District Attorneys have been notified of your petition by receiving a copy of all your filings and that they know when and where to send a staff member to attend your hearing.

The Hearing

The court clerk will tell you the date of your hearing during your initial filing. At the hearing, you want to try your best to convince the judge that it is in the interest of justice to dismiss your criminal record. You want to bring evidence to support what you said in your declaration (MC-031) (i.e. how you've changed). You want to make the judge believe that you won't have another conviction. If you fail to have your records expunged, do not be discouraged. You could always start another petition/application in 2-3 months when you are confident that you can do better in showing the judge that you have changed.

Additional Resources

Online

- California Courts : Cleaning Your Criminal Record : <http://www.courts.ca.gov/1070.htm>
Be sure to click on the + signs next to each section to show the contents.
- Santa Clara County Superior Court : Self-Help Center :
http://www.sccourt.org/self_help/criminal/clearing_crim_records.shtml
- Sacramento County Law Library Step-by-Step Expungement Guide :
<http://www.saclaw.org/wp-content/uploads/sbs-expunging-criminal-records.pdf>
Guide to how to file for expungement in the California courts, includes line-by-line instructions on how to fill out forms and how to read a RAP sheet.
- California Penal Code Section 1203.4 and 1203.4a : <http://bit.ly/2mkhoQ2>
- *Santa Clara County Probation Department's* application form :
<https://www.sccgov.org/sites/probation/adult/record/Pages/default.aspx>
Whether or not you decide to use the Probation Department's service, the instruction sheet is a good starting point in finding answers to common questions.

In the Library

In the Reading Room

- ***California Criminal Defense Practice***, Ch. 103, Bookcase A12
- ***California Criminal Law***, 3rd ed. By Witkin on Bookcase A12.
- ***Judicial Council Forms*** Bookcase A10
- ***California Criminal Law Procedure & Practice***, §41.15-41.16, KFC1102 .C34 CEB-[YEAR], Bookcase A12
- ***Levenson on California Criminal Procedure*** KFC 1155 .L48, Bookcase A12
- ***Levenson on California Criminal Motions*** KFC 1155 .L484, Bookcase A12

On bookcase A80-81 on the First Floor

- ***Deering's Annotated California Code***
Be sure to check the pocketpart/supplement for the most recent updates to the law.