



Proposition 47: A Bay Area Resource Guide

(March 2016)

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A note to attorneys: Legal services providers and other attorneys may distribute this guide to incarcerated people, formerly incarcerated people, and/or their loved ones who contact them for legal assistance.

Disclaimer for non-attorneys: This guide is not intended to answer all your legal questions or take the place of an attorney. LSPC does not provide direct legal representation. Laws and policies are subject to frequent change; it is your responsibility to make sure the information and forms in this guide are up to date. The information in this guide is based on California law only and is not applicable in other states.

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I. INTRODUCTION

On November 4, 2014, California voters passed Proposition 47 (“Prop 47”). When this law became effective on November 5, 2014, it reclassified several categories of theft and drug-possession crimes from felonies or “wobblers” (crimes that may be charged as either felonies or misdemeanors) to straight misdemeanors.

This guide is intended to supplement Legal Services for Prisoners with Children’s January 2015 manual *Using Proposition 47 to Reduce Convictions and Restore Rights*, available from LSPC or online at www.prisonerswithchildren.org.

The information in this resource guide is intended to help Prop 47-eligible individuals connect with legal assistance in the Bay Area and to make the most of Prop 47 relief. This guide contains resources for San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and Marin counties only. Some information, however, will also be helpful to individuals and advocates outside those counties.

Important reminders:

1. Prop 47 *does not automatically* convert existing felony convictions to misdemeanors. People with qualifying felonies must petition the sentencing court for relief.
2. Prop 47 is a record reduction (not dismissal) relief.
3. Petitions for resentencing or reclassification must be submitted *by November 4, 2017*.

II. PUBLIC DEFENDERS

Though it is not strictly necessary for an individual applying for record reduction under Prop 47 to be represented by an attorney, potential record sealing or immigration consequences of Prop 47 relief make it advisable to seek legal counsel before beginning a record reduction application.

Since the passage of Prop 47, county Public Defenders’ offices have sought to provide legal assistance to currently incarcerated people with Prop 47-eligible convictions. Public Defenders may also be able to provide legal assistance to formerly incarcerated people seeking to reduce their convictions under Prop 47.

ALAMEDA PUBLIC DEFENDER:

Lakeside/Main Office
1401 Lakeside Dr., Ste. 400
Oakland, CA 94612
Ph: (510) 272-6600

Oakland Office
545 4th St.
Oakland, CA 94607
Ph: (510) 268-7400

Hayward Office
24085 Amador St., Ste. 200
Hayward, CA 94544
Ph: (510) 670-5000

Fremont Office
39439 Paseo Padre Pkwy, Room 105
Fremont, CA 94538
Ph: (510) 795-2600

Pleasanton Office
5672 Stoneridge Dr.
Pleasanton, CA 94588
Ph: (925) 551-6863

CONTRA COSTA PUBLIC DEFENDER:

Main Office
800 Ferry St.
Martinez, CA 94553
Ph: (925) 335-8000

Richmond Office
3811 Bissell Ave.
Richmond, CA 94805
Ph: (510) 412-4900

MARIN PUBLIC DEFENDER:

3501 Civic Center Dr., Ste. 139
San Rafael, CA 94903
Ph: (415) 473-6321

SAN FRANCISCO PUBLIC DEFENDER:

555 7th St.
San Francisco, CA 94103
Ph: (415) 553-1671

SAN MATEO PRIVATE DEFENDER PROGRAM:

(Provides Public Defender equivalent services)

San Mateo County Bar Association
333 Bradford St., Ste. 200
Redwood City, CA 94063
Ph: (650) 298-4000

SANTA CLARA PUBLIC DEFENDER:

Main Office
120 West Mission St.
San Jose, CA 95110
Ph: (408) 299-7700

South County Office
17275 Butterfield Blvd., Ste. B
Morgan Hill, CA 95037
Ph: (408) 201-0500

Palo Alto Office
231 Grant Ave.
Palo Alto, CA 94306
Ph: (408) 918-7740

III. CLEAN SLATE CLINICS

A criminal conviction history, unfortunately, carries with it many potential obstacles to full reentry into society that can last long after incarceration has ended. Despite the many collateral consequences that can come with a criminal conviction, however, California does provide some mechanisms for the restoration of rights for formerly incarcerated or convicted people.

One of these mechanisms is the “set-aside and dismissal” procedure.¹ While this process is often called “expungement” or “clean slate,” in California it does not remove convictions from a person’s record entirely.² It can, however, prevent some employers from asking about dismissed convictions or allow an individual to legally answer “no” when asked if he or she has been convicted of certain crimes.³

The following agencies and organizations provide assistance with “clean slate” record remedies. See Appendix A for a more thorough discussion of California mechanisms for post-conviction restoration of rights.

ALAMEDA:

East Bay Community Law Center Clean Slate Practice In collaboration with the Public Defender’s Office:

Call (510) 548-4040 x390 or drop in at a clinic location
RAP sheets required for consultation

Hayward Clinic
Tuesdays: 2pm-4pm
Hayward Public Defender’s Office
24085 Amador St., 2nd Floor
Hayward, CA 94544

Oakland Clinic
Thursdays: 9am-11am
545 4th St.
Oakland, CA 94607

¹ Cal. Penal Code §§ 1203.4, 1203.4a, and 1203.41.

² Several felonies and misdemeanors are not eligible for set-aside and dismissal relief. Being granted relief also does not fully relieve an individual of disclosure duties to certain government agencies, restore driving privileges or gun rights, or excuse sex registration. For a full list of exclusions and exceptions, see the text of Penal Code §§ 1203.4, 1203.4a, and 1203.41.

³ Cal. Lab. Code § 432.7.

Certificates of Rehabilitation:

Public Defender
380 Washington St.
Oakland, CA 94607
Ph: (510)268-7400

CONTRA COSTA:

Public Defender
Contact: Shahla Nikanjam
Call for intake on Thursdays and Fridays after 4pm
800 Ferry St.
Martinez, CA 94553
Ph: (925) 335-8000

MARIN:

Probation Department
3505 Civic Center, Room 265
San Rafael, CA 94903
Ph: (415) 499-6599

Public Defender
Contact: Michelle Berrong
3501 Civic Center Dr., Room 139
San Rafael, CA 94903
Ph: (415) 499-6321

SAN FRANCISCO:

Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Second Chance Legal Clinic
Clinics occur twice per month
Call to sign-up: (415) 814-7610

Public Defender Clean Slate Program
Ph: (415) 553-9337
www.sfpublicdefender.org/services/clean-slate
Clean Slate drop-in hours:
Every Tues, 9am-11am: Public Defender's Office, 555 Seventh St.
Every 1st and 3rd Mon, 10am-11am: Community Justice Center, 555 Polk St. 2nd Floor
Every 2nd and 4th Mon, 10:30am-12:30pm: Arriba Juntos, 1850 Mission St.
Every 1st Thurs, 9am-11am: Ella Hill Hutch Community Center, 1050 McAllister St.
Every 4th Weds, 3pm-5pm: The Village Community Center, 1099 Sunnydale Ave.
Every 1st and 3rd Thurs, 9am-11am: Southeast Community Center, 1800 Oakdale Ave.

SAN MATEO:

Probation Department
21 Tower Rd.
San Mateo, CA 94402
Ph: (650) 363-4244

Private Defender Program
303 Bradford St., Ste. B.
Redwood City, CA 94063
Ph: (650) 298-4030

Community Legal Services of
East Palo Alto
Clinics occur twice per month
1861 Bay Rd.
East Palo Alto, CA 94303
Ph: (650) 326-6440

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

SANTA CLARA:

Public Defender
Reentry Expungement Program
151 W. Mission St.
San Jose, CA 95110
Ph: (408) 535-4290

San Jose State University
Record Clearance Project
Ph: (408) 924-2758
www.sjsurcp.org

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

IV. GETTING INFORMATION ABOUT FINES & FEES

The language of Prop 47 declares that the reduction of a qualifying felony to a misdemeanor means that the reduced conviction should be considered a misdemeanor for all purposes.⁴ By extension, it follows that the sentencing court should, in most cases, reduce court-ordered fines, restitution, etc. to reflect that the conviction is now a misdemeanor instead of a felony. Therefore, though it is not required for a person with a completed sentence to have a hearing to have his or her felony reduced under Prop 47, it may nonetheless be advantageous to request one because a hearing provides an opportunity to request that the judge reduces any court-ordered fines, restitution, etc.

Information about restitution costs can usually be obtained by contacting the **California Franchise Tax Board**, or the probation or parole department in the county in which a person was convicted (see below).

- The California Franchise Tax Board can be contacted at (916) 845-4064, or you can access information about court-ordered debt online at www.ftb.ca.gov/online/Court_Ordered_Debt.

⁴ Except that resentencing under Prop 47 does not restore the right to own or possess a firearm. Cal. Penal Code § 1170.18(k).

- For Northern California parole offices, call (916) 255-2758, or locate regional parole offices online at www.cdcr.ca.gov/Parole/Public_Officers_and_Regional_Offices.

The process of administering fines, fees, and restitution differs by county. In general, an individual interested finding out more about the amount or status of his or her court-ordered fines or fees can contact the clerk for the superior court in which he or she was convicted for a copy of the minute order for his or her case. Note that some courts may charge a fee for searching for records or making copies.

ALAMEDA:

Probation Department:

400 Broadway, P.O. Box 2059
Oakland, CA 94604
Ph: (510) 268-7050

Superior Court Clerks:

Fremont Hall of Justice
39439 Paseo Padre Parkway
Fremont, CA 94538
Ph: (510) 818-7500

René C. Davidson Courthouse
1225 Fallon St.
Oakland, CA 94612
Ph: (510) 891-6000

Hayward Hall of Justice
24405 Amador St.
Hayward, CA 94544
Ph: (510) 690-2700

Wiley W. Manuel Courthouse
661 Washington St.
Oakland, CA 94607
Ph: (510) 627-4700

Gale Schenone Hall of Justice
5672 Stoneridge Dr.
Pleasanton, CA 94588
Ph: (925) 227-6700

Court Collections Unit:

Ph: (510) 891-6286

Online Criminal Records:

www.criminalrecords.alameda.courts.ca.gov:453/crrweb

CONTRA COSTA:

Probation Department:

50 Douglas Dr., Ste. 200
Martinez, CA 94553
Ph: (925) 313-4000

Superior Court Clerks:

Wakefield Taylor Courthouse
725 Court St.
Martinez, CA 94553
Ph: (925) 646-4099

A. F. Bray Courthouse
1020 Ward St.
Martinez, CA 94553
Ph: (925) 646-4099

Walnut Creek Superior Court
649 Ygnacio Valley Rd.
Walnut Creek, CA 94596
Ph: (925) 646-4099

Court Collections Unit:

P.O. Box 1509
Martinez, CA 94553
Ph: (925) 957-5611

MARIN:***Probation Department:***

3501 Civic Center Dr., Ste. 259
San Rafael, CA 94903
Ph: (415) 473-6599

Enhanced Court Collections:

P.O. Box 6171
Novato, CA. 94948
Ph: (415) 473-3150

SAN FRANCISCO:***Probation Department:***

880 Bryant St., Room 200
San Francisco, CA 94103
Ph: (415) 553-1706

Comprehensive Collections Unit:

Hall of Justice, Room 101
850 Bryant St.
San Francisco, CA 94103
Ph: (415) 551-8576

Arnason Justice Center
1000 Center Dr.
Pittsburg, CA 94565
Ph: (925) 646-4099

George D. Carroll Courthouse
100 37th St.
Richmond, CA 94805
Ph: (925) 646-4099

Superior Court Clerk:

P.O. Box 4988
San Rafael, California 94913
Ph: (415) 444-7070

Superior Court Clerk:

Hall of Justice, Room 101
850 Bryant St.
San Francisco, CA 94103
Ph: (415) 551-0322

SAN MATEO:

Probation Department:

Redwood City Office
400 County Center, 5th Floor
Redwood City, CA 94063
Ph: (650) 363-4244

East Palo Alto Office
2415 University Ave.
East Palo Alto, CA 94303
Ph: (650) 363-4243

Superior Court Clerk:

400 County Center, 4th Floor
Redwood City, CA 94063
Ph: (650) 261-5200

SANTA CLARA:

Probation Department:

Those *with* a probation officer, call (408) 299-8336
Those *without* a probation officer, call (408) 299-4013

Main Office
2314 N. First St.
San Jose, CA. 95131
Ph: (408) 435-2000

North County Office
270 Grant Ave.
Palo Alto, CA. 94306
Ph: (650) 324-650

South County Office
17275 Butterfield Blvd., Ste. C
Morgan Hill, CA. 95037
Ph: (408) 201-0600

Superior Court Clerks:

Hall of Justice
190-200 West Hedding St.
San Jose, CA 95110
Ph: (408) 808-6600

South County Courthouse
301 Diana Ave.
Morgan Hill, CA 95037
Ph: (408) 695-5000

Palo Alto Courthouse
270 Grant Ave.
Palo Alto, CA 94306
Ph: (650) 462-3800

Terraine Courthouse
115 Terraine St.
San Jose, CA 95110
Ph: (408) 491-4700

Online Criminal Records:

www.scsccourt.org/court_divisions/criminal/index_search.asp

V. MAKING SURE YOUR NEW RECORD IS ACCURATELY REFLECTED

If a person's criminal record is changed through a Prop 47 petition or other record clearance relief, he or she should make sure to obtain a copy of the court order for his or her records. Once relief is granted, the court will typically update its own records within 48 hours of relief being granted. The court should also notify the California Department of Justice (DOJ) of the record change. The DOJ then has up to 30 days to update their records.

UPDATING DOJ RECORDS:

It is important that DOJ records properly reflect the change in a person's conviction, because government agencies and background companies usually obtain their information about individuals' criminal records from the DOJ. Once 30 days has elapsed since the court granted an individual's record reduction, under Prop 47 or other mechanisms, he or she may wish to request a new RAP sheet copy from the DOJ.

If a person feels his or her conviction change is not properly reflected in DOJ records, he or she may submit a formal challenge by completing and returning the Form BCIA 8706 "Claim of Alleged Inaccuracy or Incompleteness" mailed with the RAP sheet.⁵ A challenge must specifically state the basis for the claim of inaccuracy and include any supporting documentation (such as the court order granting a record reduction). The challenge will be reviewed and a written response will be provided, along with an amended copy of the person's criminal history record, if appropriate.

NOTIFYING GOVERNMENT AGENCIES:

Individuals may also wish to contact certain government agencies directly to make sure their updated records are properly reflected. These agencies may include professional licensing boards, county CalWORKS and CalFresh offices, Child and Family Services offices or courts in which a person has any active child custody cases, county Housing Authorities, and the Department of Motor Vehicles, to name a few.

NOTIFYING BACKGROUND CHECK COMPANIES:

Unfortunately, courts do not proactively notify private background check companies about changed criminal records. Private background check companies receive updated information when they do their periodic updates, usually once a year.

In order to ensure that background check companies are properly reporting a new, reduced record to prospective employers, landlords, etc., individuals may wish to

⁵ California Penal Code sections 11120-11127.

contact these companies directly. The following is a list of ten commonly used background check companies.

US Search:

Ph: (800) 877-3272
www.ussearch.com

LexisNexis PeopleWise:

Ph: (800) 831-2578
www.peoplewise.com

Intelius:

Ph: (888) 445-2727
www.intelius.com

Instant Checkmate:

Ph: (866) 490-5980
www.uspeoplerecords.com

BeenVerified:

Ph: (888) 579-5910
www.beenverified.com

PeopleFinders:

Ph: (800) 718-8997
www.peoplefinders.com

ID True:

Ph: (800) 443-2205
www.idtrue.com

GoodHire:

Ph: (888) 906-4284
www.goodhire.com

eVerify:

Ph: (800) 791-1427
www.everify.com

Verispy:

www.verispy.com

VI. COMMUNITY RESOURCES

REENTRY RESOURCES:

Most California counties have reentry resources to help formerly incarcerated people secure basic services like housing, job training, addiction and mental health counseling, and more. These resources are too plentiful to list here. For more information on reentry resources available in each county, see the CDCR Community Resource Directory at:

Office of Community Partnerships
PO Box 942883
Sacramento, CA 94283
Ph: (916) 327-4901
www.cdcr.ca.gov/Community_Partnerships

ADVOCACY AND SUPPORT GROUPS ACROSS CALIFORNIA:

A Time for Change

Time for Change Foundation has operates a homeless shelter for women recovering from the effects of mental and physical abuse, substance abuse and incarceration. They provide housing, food, clothing and supportive services to women in need.
PO Box 25040

San Bernardino, CA 92406
Ph: (909) 886-2994
www.timeforchangefoundation.org

Action Committee for Women in Prison

The mission of ACWP is to advocate for the humane and compassionate treatment of all incarcerated women everywhere. They work for the release of all women who are unjustly imprisoned, and strive to reduce the over-reliance on incarceration.
769 Northwestern Dr.
Claremont, CA 91711
Ph: (626) 710-7543
www.acwip.net

All of Us or None

All of Us or None (AOUON) is a national organizing initiative of incarcerated, formerly incarcerated and convicted people fighting the discrimination they face as the result of felony convictions through community outreach initiatives and campaigns for human and civil rights.
1540 Market St. Ste. 490
San Francisco, CA 94102
Ph: (415) 255-7036 x337
www.allofusornone.org

Barrios Unidos

The mission of Barrios Unidos is to prevent and curtail violence among youth within Santa Cruz County by providing them with life-enhancing alternatives. Over the past 25 years Barrios Unidos has developed a model that seeks to reclaim and restore the lives of struggling youth while promoting unity amongst families and neighbors through community building efforts.
1817 Soquel Ave.
Santa Cruz, CA 95062
Ph: (831) 457-8208
www.barriosunidos.net

Books Not Bars

Books Not Bars, a project of the Ella Baker Center in Oakland, is a statewide campaign aiming to shut down California's abusive and costly youth prisons and replace them with alternatives that work, like regional rehabilitation centers and community-based programs.
1970 Broadway, Ste. 450
Oakland, CA 94612
Ph: (510) 428-3939
www.ellabakercenter.org

California Coalition for Women Prisoners

CCWP is a grassroots racial justice organization that challenges the institutional violence imposed on women and communities of color by prisons and the criminal justice system. It is building a movement with women prisoners, family members of prisoners,

and the larger communities through organizing, leadership development, and political education.

1540 Market St., Ste. 490
San Francisco, CA 94102
Ph: (415) 255-7036 x4
www.womenprisoners.org

California Prison Focus

California Prison Focus is an organization working to stop human rights violations, improve medical care and end long-term isolation in California prisons.

1904 Franklin St., Ste. 507
Oakland, CA 94612
Ph: (510) 836-7222
www.prisons.org

California Prison Moratorium Project

CPMP seeks to stop all public and private prison construction in California. Throughout all their campaigns and chapters, CPMP provides research, writing and information on the myths of prison development and the forces driving prison expansion as well as organizes grassroots resistance and advocacy support.

1055 N. Van Ness Ave., Ste. C
Fresno, CA 93728
Ph: (559) 266-5901
www.calipmp.org

Center on Juvenile and Criminal Justice

CJCJ provides direct service, technical assistance and policy research in the field of juvenile and criminal justice. They have a number of different diversion and independent living programs and publications available.

40 Boardman Place
San Francisco, CA 94103
Ph: (415) 621-5661
www.cjcj.org

Centerforce

The Centerforce mission is to support, educate, and advocate for individuals, families and communities impacted by incarceration. Centerforce provides services for prisoners, former prisoners, and family members of prisoners through direct services, its annual conference, and through consultation and training for government agencies, community-based organizations, and correctional facilities across the country and internationally.

PO Box 415
San Quentin, CA 94964
Ph: (415) 456-9980
www.centerforce.org

Critical Resistance

Critical Resistance is a national prison abolition organization that seeks to build an international movement to end the Prison Industrial Complex by challenging the belief that caging and controlling people makes us safe. They work to build safe and healthy communities, where the basics are provided, such as food, shelter, and self-determination. They work to create and promote alternatives to the current system.

1904 Franklin St., Ste. 504
Oakland, CA 94612
Ph: (510) 444-0484
www.criticalresistance.org

Families with a Future

FWAF is a network of everyday people interested in minimizing the damaging effects when a parent goes to prison. They recognize the tremendous pain children suffer when they lose a parent to prison, and their mission is to render support to families and their children, specifically with transportation for children to visit their incarcerated parents.

1540 Market St., Ste. 490
San Francisco, CA 94103
Ph: (415) 999-8084

Friends Outside

Friends Outside is a volunteer-run organization that assists prisoners and their families by acting as an intermediary between the family, the prisoner, and the criminal justice system. They help prisoners and their families locate community resources, and provide regular support groups for formerly incarcerated people. They staff hospitality trailers at every California prison. Friends Outside case managers inside the prisons work directly with prisoners.

PO Box 4085
Stockton, CA 95204
Ph: (209) 955-0701
www.friendsoutside.org

Just Detention International

Just Detention International is a health and human rights organization that seeks to end sexual abuse inside all detention facilities.

3325 Wilshire Blvd., Ste. 340
Los Angeles, CA 90010
Ph: (213) 384-1400
www.justdetention.org

Justice Now

Justice Now is a prison abolition organization that provides legal services and support to women prisoners and works with prisoners and their families on political education and health campaigns with the goal of building a world without prisons.

1322 Webster St., Ste. 210
Oakland, CA 94612
Ph: (510) 839-7654
www.jnow.org

Life Support Alliance

LSA is an advocacy organization based in the Sacramento area that works to change the parole system that denies parole to prisoners serving life sentences. Its newsletter and website provide valuable information for families of lifers.

P.O. Box 277

Rancho Cordova, CA 95741

Ph: (916) 402-3750 or (916) 743-1654

www.lifesupportalliance.org

A New Way of Life

A New Way of Life Reentry Project is an organization that provides housing and reentry support to formerly incarcerated women and their children. A New Way of Life operates four sober living homes serving 40-50 women and children per year, and offers a wide range of services to help facilitate a successful transition back to community life.

PO Box 875288

Los Angeles, CA 90087

Ph: (323) 563-3575

www.anewwayoflife.org

Prison Activist Resource Center

PARC provides progressive and radical news and other information about prisons and the prison prosecution system.

PO Box 70447

Oakland, CA 94612

Ph: (510) 893-4648

www.prisonactivist.org

Prison Law Office

The Prison Law Office is a public interest law firm protecting the constitutional rights of prisoners. The Prison Law Office represents individual prisoners, engages in class action and other impact-litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the US.

1917 5th St.

Berkeley, CA 94710

Ph: (510) 280-2621

www.prisonlaw.org

Project WHAT!

Project WHAT! raises awareness about the impacts of parental incarceration on children, with the goal of improving services and policies that affect these children.

4681 Telegraph Ave.

Oakland, CA 94609

Ph: (510) 486-2340

www.communityworkswest.org/index.php/project-what

San Francisco Children of Incarcerated Parents Partnership

SFCIPP is a coalition of social service providers, representatives of government bodies, advocates and others who work with or are concerned about children of incarcerated

parents and their families. They have created a “Bill of Rights for Children of Incarcerated Parents.”

PO Box 293

1563 Solano Ave. #293

Berkeley, CA 94707

Ph: (415) 819-0337

www.sfcipp.org

ABOUT LEGAL SERVICES FOR PRISONERS WITH CHILDREN:

LSPC organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights and to reunify families and communities. We build public awareness of structural racism in policing, the courts and prison system and we advance racial and gender justice in all our work. Our strategies include legal support, trainings, advocacy, public education, grassroots mobilization and developing community partnerships.

For additional resources on Prop 47 and clearing records, including referrals for legal assistance, please contact:

Legal Services for Prisoners with Children

1540 Market St., Ste. 490

San Francisco, CA 94102

(415) 255-7036

www.prisonerswithchildren.org

JANUARY 2, 2015

CALIFORNIA

I. Restoration of Civil Rights/Firearms Privileges

Civil Rights: The right to vote is suspended while a person is “imprisoned or on parole for the conviction of a felony.” CAL. CONST. art. II, § 4. A person whose prison sentence is suspended does not lose the right to vote unless and until actually incarcerated. While state parolees may not vote, the Administrative Office for U.S. courts takes the position that federal offenders on supervised release may.¹

Persons convicted of a felony or malfeasance in office may not serve on a jury. CAL. CIV. PROC. § 203(a)(5). The California Constitution disqualifies from office anyone convicted of vote-buying, and authorizes laws disqualifying from public office anyone convicted of bribery, perjury, forgery, malfeasance in office, and other “high crimes.” CAL. CONST. art VII, § 8; *See* CAL. GOV’T § 1021 (West 2010); CAL. PENAL §§ 67, 68, 74, 88, 98. If lost, these civil rights may be regained only by a governor’s pardon.

Firearms: A person convicted of a felony in any jurisdiction, or of a misdemeanor offense involving the violent use of a firearm, cannot own, purchase, receive, possess or exercise custody or control over any firearm. *See* CAL. PENAL §§ 29800, 29805. Federal offenders lose privileges under state law only if their offense would be a felony under California law or if they spent at least 30 days in prison. § 29800(c). The right to possess a firearm is restored by pardon based on a certificate of rehabilitation except when the underlying offense involved the use of a dangerous weapon. § 4852.17.² *See People v. Frawley*, 98 Cal. Rptr.2d 555, 563-64 (Cal. App. 2000); *People v. Ratcliff*, 273 Cal. Rptr. 253, 259 (Cal. App. 1990). When granting a pardon, the governor may also provide for a restoration of firearm rights, except where the person was convicted of a felony involving a dangerous weapon. CAL. PENAL § 4854. Federal offenders may regain right to possess firearms only through full and unconditional presidential pardon, and those convicted of out-of-state convictions may regain rights by pardon expressly restoring firearms rights. *See* 66 Ops. Cal. Att’y Gen. 343 (1983). Set-aside of conviction does not restore gun rights under state law. *See Frawley*, 98 Cal. Rptr.2d at 791 (set-aside remedy under CAL. PENAL § 1203.4 does not “expunge” a conviction so as to remove state firearms disabilities). It is not entirely clear whether a California set-aside relieves federal firearms liability.³ *See also infra* Part II B.

Certain misdemeanor offenses, including domestic violence, may result in loss of firearms privileges for a period of 10 years. § 29805. Special relief provisions for law enforcement personnel and those convicted prior to enactment in 1991. §§ 29855, 29860.⁴

¹ In an opinion dated October 31, 2008, the General Counsel, Administrative Office for U.S. Courts, opined that federal supervised release, as a penalty imposed separately from a prison sentence, is analogous to probation as opposed to parole. (Opinion on file with author.)

² CAL. PENAL § 4852.17:

Whenever a person is granted a full and unconditional pardon by the Governor, based upon a certificate of rehabilitation, the pardon shall entitle the person to exercise thereafter all civil and political rights of citizenship, including, but not limited to: (1) the right to vote; (2) the right to own, possess, and keep any type of firearm that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 17800 and 23510 and Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6 shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.

³ In 2007, the federal court of appeals for the 9th Circuit followed *Frawley* in holding that a set-aside under § 1203.4 does not “expunge” a prior conviction for purposes of eliminating liability under 18 U.S.C. § 922(g), the federal felon in possession statute. *See Jennings v. Mukasey*, 511 F.3d 894 (9th Cir. 2007). However, that court had earlier held in *U.S. v. Laskie*, 258 F.3d 1047 (9th Cir. 2001) that a Nevada conviction that had been set aside could not serve as predicate felony for federal firearms prosecution.

⁴ Law enforcement personnel with a single misdemeanor domestic violence conviction may petition the court to regain firearms privileges, but only once. CAL. PENAL § 29855(a). “In making its decision, the court shall consider the

Summary of California Relief Mechanisms: California offers a variety of routes to restoration of rights, depending on the particular type of conviction or disposition, the individual’s circumstances (including residence), and the reasons for seeking relief. These are listed below, and most are discussed in the pages that follow. Individuals uncertain about which type of relief best suits their needs and circumstances should seek advice of a legal aid lawyer familiar with the range of possible routes to relief.

PC § 17(b) (“wobbler” felony reduction)
 PC § 17(d) (misdemeanor reduction)
 PC § 1203.3 (early termination of probation)
 PC § 1203.4 (set aside & dismissal – probation imposed)*
 PC § 1203.4a (set aside & dismissal – no probation imposed)*
 PC § 1203.41 (set aside & dismissal – PC § 1170(h) sentence)*
 PC § 1203.45 (sealing misdemeanor adult conviction by minor)
 Certificate of Rehabilitation & Pardon
 Direct Pardon (notably for out-of-state residents)
 PC § 1170.9 (restoration remedy for veterans)
 PC § 851.6 (certificate describing arrest as detention)
 PC § 851.7 (record sealing - juvenile misdemeanor arrest)
 PC § 851.8 (record sealing & destruction following arrest – factual innocence)
 PC § 851.85 (record sealing following acquittal – factual innocence)
 PC § 851.86 (record sealing following conviction – factual innocence)
 PC § 851.87 (record sealing following non-drug DEJ) NEW 01/01/2014
 PC § § 530.6/530.7 (record sealing & registration following identity theft)
 PC § 851.90 (record sealing following drug diversion)
 Juvenile Record Sealing & Other Juvenile Record Remedies (W & I Code §§ 781, 1772, 1179, PC § § 851.7, 1203.47)
 HS § 11361.5 (automatic destruction of records of some marijuana arrests/convictions)

* Also known as “expungement”

II. Discretionary Restoration Mechanisms

A. Governor’s Pardon:

- *Authority:* For first offenders, pardon power exclusively in governor, who may request investigation and advisory recommendation from the Board of Parole Hearings (formerly the Board of Prison Terms). CAL. CONST. art. V, § 8(a); CAL. PENAL §§ 4800, 4812-4813 (West 2011). “The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring. CAL. CONST. art. V, § 8. The governor is required by statute to refer

petitioner’s continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court.” § 29855(e). Persons subject to this prohibition by virtue of a conviction prior to the date of enactment may also petition the court for relief, but here again only once. § 29860(a). In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted.” § 29860(e).

applications from persons twice convicted of a felony to the BPH (though he is not bound by its recommendation). CAL. PENAL § 4802. The BPH “after investigation, shall transmit its written recommendation upon such application to the Governor, together with all papers filed in connection with the application.” § 4813. Governor required by the constitution to report to the legislature “each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it.” CAL. CONST. art. V, § 8; CAL. PENAL § 4852.16.

- *Administration:* The BPH consists of nine members appointed by the governor to staggered four-year terms, which may be renewed. Commissioners are full-time employees, and can be removed by the governor only for misconduct or incompetence or neglect, after a full hearing. Effective July 1, 2005, a new California Department of Corrections and Rehabilitation (CDCR) assumed responsibility for all correctional services. The BPH was created by collapsing three boards into one – the BPT, Youthful Offender Parole Board, and the Narcotic Addict Evaluation Authority. See CA SB 737 (enrolled May 10, 2005.) The newly constituted BPH will consist of 17 commissioners appointed by the governor to staggered 3 year terms. Of the 17, five will handle exclusively all hearings involving youthful offenders. The other 12 will be responsible for adult offender hearings and will act as the governor’s Clemency Advisory Board. See Cal. Dep’t of Corrs. & Rehab., www.cdcr.ca.gov.
- *Eligibility:* Instructions issued by the Governor’s Office describe a pardon as “an honor [that is] traditionally granted only to individuals who have demonstrated exemplary behavior following conviction for a felony.” See Office of the Governor, *How to Apply for a Pardon*, available at http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf (revised February 21, 2013):

A gubernatorial pardon is an honor that may be granted to people who have demonstrated exemplary behavior following their conviction. A pardon will not be granted unless it has been earned. Obtaining a pardon is a distinct achievement based upon proof of a productive and law-abiding life following conviction. Historically, governors have granted very few pardons.

Absent extraordinary and compelling circumstances, an application will not be considered unless the applicant has been discharged from probation or parole for at least 10 years without further criminal activity during that period. The 10-year rule may be waived in truly exceptional circumstances (for example, factual innocence), if the applicant can demonstrate such circumstances warranting a specific need for the pardon. (Compare the criteria for eligibility for “certificate of rehabilitation,” below.) Federal offenders and persons convicted under the laws of a state other than California are ineligible for a gubernatorial pardon, and may regain their civil rights (other than the right to vote) only through a pardon or similar action in the jurisdiction of their conviction.

- *Effect:* A pardon restores civil rights lost and removes occupational bars, but does not seal or expunge the record of conviction. The conviction may still be considered by a state agency in licensing proceedings. CAL. PENAL §§ 4852.15, 4853 (West 2011). The right to possess a firearm is restored upon a pardon except when the underlying offense involved the use of a dangerous weapon. § 4852.17. Only a pardon, and not a certificate of rehabilitation (see below), restores rights and removes occupational bars. See Office of the Governor, *How to Apply for a Pardon*, available at http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf, for a comparison of the effects of pardon and certificate of rehabilitation.
- *Process:* There are two procedural routes to pardon. For those who reside in the state, the pardon process ordinarily starts with an application for a certificate of rehabilitation in the county of residence. Convicted persons who reside outside the state, or who are otherwise ineligible for a “certificate of rehabilitation” (e.g. misdemeanants, certain sex offenders) may apply directly to the Governor. See *How to Apply for a Pardon*, above.
 - *Certificate of Rehabilitation:* A California resident ordinarily starts pardon application by applying to the Superior Court of his county of residence for a “Certificate of Rehabilitation.” CAL. PENAL §§

4852.06, 4852.19. The certificate is an order embodying a court's finding that the defendant is rehabilitated and its recommendation that he be pardoned. § 4852.13.⁵ Prison warden is required to advise prisoners of their right to apply for this certificate upon their release from prison. § 4852.21(a). A person may apply to court after completion of "period of rehabilitation" running from release from prison or release on probation: five years residence in CA plus four years for serious offenses and two years for less serious – court may order additional years in case of concurrent sentences. (Sex offenders who are required to register, except for indecent exposure, have an additional five-year waiting period, for a total necessary rehabilitation period of 10 years.) § 4852.03. Petitioner must contact DA where petitioner resides and where petitioner was convicted.

Petitioner is entitled to the assistance of all state rehabilitative agencies, and to be represented by public defender. § 4852.04. The public defender has a duty to appear for court proceedings. *Ligda v. Superior Court of Solano County*, 85 Cal. Rptr. 744, 752 (Cal. Ct. App. 1970).

Court holds hearing – may require investigation by DA. If Court finds that the petitioner has demonstrated rehabilitation, court issues certificate and forwards to Governor (and Supreme Court in the case of recidivists) with a recommendation that the individual be pardoned. § 4852.14.

Investigation by BPT: Upon receipt of certificate of rehabilitation and recommendation from court, Governor may request BPT to conduct further investigation and in some make recommendation. DA and court are asked for views. § 4803. BPT may sit in panels of three, decides by majority of those present.

- "Traditional pardon" applications (persons ineligible for Certificate of Rehabilitation) – process explained in "How to Apply for a Pardon," *supra*.

Supreme Court consideration – For recidivists CA Supreme Court must hold hearing and at least four justices must concur. The governor then has the option of granting or denying the pardon. § 4852.16. Notice must be given to DA at least 10 days before action. § 4804. Pardon applications from recidivists treated like a case, assigned a number. Cal. Sup. Ct., Internal Operating Practices and Procedures, § XIVA, XV. If indigent, applicant assigned counsel.

- Whenever a person is issued a certificate of rehabilitation or pardon, it must be recorded on the person's criminal record and reported to the FBI. § 4852.17.
- *Frequency of Grants:* As of December 24, 2014, Governor Jerry Brown had issued 438 pardons in his second time as governor, at Christmas and Easter. (During his first two terms (1976-1984) he issued 403 pardons.) A majority of the convictions pardoned were drug offenses, almost all more than two decades old, and all recipients residing in the state first received a certificate of rehabilitation from a court, in accordance with the established process.⁶ Governor Schwarzenegger issued only 16 pardons during his two terms, two to the same person.⁷

⁵ A certificate of rehabilitation is given independent legal effect to avoid exemption from employment in certain professions. See, e.g., CAL. HEALTH & SAFETY § 1522, subd. (g)(1)(A)(ii) (West 2008) (licensed community care facilities); Cal. Admin. Code tit. 10, § 3723 (real estate license); *Newland v. Board of Governors* (1977) 19 Cal.3d 705, 712-714 (Cal. 1977) (teaching certificate).

⁶ See Margaret Colgate Love, *Governor's pardon power used too rarely*, SAN FRANCISCO CHRON. Dec. 31, 2012, <http://www.sfgate.com/opinion/openforum/article/Governor-s-pardon-power-used-too-rarely-4153130.php#page-1>. In February 2012 he rejected parole for 71 first- and second-degree murderers who had been recommended for release by the parole board, and approved one parole.

⁷ See Office of the Governor, *Gov. Schwarzenegger Grants Eight Pardons and one Conditional Pardon*, available at <http://gov.ca.gov/news.php?id=16864>. Kevin Joseph Martino was pardoned in 2007, and was subsequently issued an amended pardon in 2008, for the same 2004 misdemeanor offense, to facilitate his employment in law enforcement. Also in 2009 Governor Schwarzenegger pardoned Merle Haggard, celebrated country music star, who sought restoration of firearms privileges that had not been restored by his 1970 pardon by then-Governor Reagan. See Chris Richards, *Merle Haggard was Pardoned for the Second Time by Gov. Schwarzenegger in 2009*, WASH. POST (Dec. 3, 2010).

There are several thousand pardon applications filed each year through court-issued certificates of rehabilitation. Pardoning record of previous governors is as follows: Governor Davis granted none; Governor Wilson granted 13; Governor Deukmejian, 328; Governor Brown, 403; Governor Reagan, 575. Source: California Board of Parole Hearings.

- *Contact:* Kevin Wilson, Office of the Governor, Kevin.Wilson@GOV.CA.GOV, (916) 445-0873.

B. Judicial set-aside and sealing

- ***Set-Aside of Conviction for Probationers, Misdemeanants, and Minor Felony Offenders sentenced to county jail***
 - *Probationers:* In any case where a person sentenced to probation (including felony offenders, but not including any sex offenders) has successfully completed the sentence and has no charges pending, “or in any other case in which a court, in its discretion and in the interests of justice, determines that a defendant should be granted the relief available under this section,” the person may apply to the court to withdraw the plea and the court must (“shall”) “set aside” the verdict of guilty. CAL. PENAL § 1203.4(a)(1). This has the effect of releasing the offender “from all penalties and disabilities resulting from the offense of which he or she has been convicted.” Section 1203.4(a) also provides that “the probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon.” No relief shall be granted under § 1203.4 unless the prosecuting attorney has been given 15 days’ notice of the petition for relief. § 1203.4(e)(1).
 - *Misdemeanants not sentenced to probation, and those convicted of infractions* (including traffic infractions, possession of small amounts of marijuana), may apply for change of plea and dismissal of charges one year from entry of judgment, which the court “shall” grant if the petitioner can show, in addition to successful completion of probation and no charges pending, that they have, “since the pronouncement of judgment, lived an honest and upright life and ha[ve] conformed to and obeyed the laws of the land.” § 1203.4a(a). In 2011 a provision was added providing that the court “may” grant relief to misdemeanants who do not satisfy the “honest and upright life” standards in (a).” § 1203.4a(b). Anomalous higher standard under this provision compared to § 1203.4 is noted in *People v. Bradley*, 57 Cal. Rptr. 82, 84 (Cal. Ct. App. 1967).
 - *Minor felony offenders sentenced to county jail:* In October 2013 Governor Brown signed into law a new authority for courts to set aside the conviction of defendants sentenced to county jail for a felony under the so-called Realignment legislation enacted in 2011. A defendant so sentenced may withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty, after the lapse of one or 2 years following the defendant’s completion of the sentence, provided that the defendant is not currently serving a sentence or charged with the commission of any offense. CAL. PENAL § 1203.41(a).
 - *Proposition 47* – Proposition 47 substantially expanded the number of offenses that are eligible for set-aside by reducing certain felonies to misdemeanors, and limiting sentences that may be imposed. A number of individuals previously convicted of felonies are permitted under this 2014 authority to return to court to have their convictions reduced to misdemeanors, and therefore become eligible for set-aside under § 1203.4a. See <http://ccresourcecenter.org/2014/11/22/stereotypes-criminal-conviction-presidents-immigration-speech/>.
- ***Effect of set-aside:*** While these statutes are frequently characterized as authorizing “expungement,” the setting aside of a conviction does not seal or otherwise limit public access to the record. Under § 1203.4(a)(1), “the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for

http://blog.washingtonpost.com/clicktrack/2010/12/merle_haggard_was_pardoned_for.html. Governor Schwarzenegger approved parole for over 300 persons serving life sentences.

public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.” See, e.g., *People v. Field*, 31 Cal. App. 4th 1778 (1995) (“Expungement, however, does not obliterate a conviction for all purposes, and records of an expunged conviction are accessible to the public”).

Under California law, convictions that are set aside may be used when sentencing petitioner for subsequent convictions, for prosecution for possession of firearm by ex-felon, for purposes of California's "three strikes" law, and for denial of professional licenses. See *Doe v. Brown*, 177 Cal. App. 4th 408, 423 (Cal. App. 2009) (sex offender whose conviction set aside pursuant to § 1203.4 still required to register); *People v. Frawley*, 98 Cal. Rptr.2d 555, 563-64 (Cal. App. 2000) (set-aside does not “expunge” conviction so as to restore firearms privileges); see also *Jennings v. Mukasey*, 511 F.3d 894 (9th Cir. 2007) (set-aside under § 1203.4 does not “expunge” a prior conviction for purposes of eliminating liability under 18 U.S.C. § 922(g), the federal felon in possession statute). In addition, setting aside alien's plea of guilty, substitution of plea of not guilty and dismissal of information pursuant to § 1203.4(a) does not expunge conviction for purposes of avoiding deportation, *Garcia-Gonzales v. Immigration and Natur. Service*, 344 F.2d 804, 806 (9th Cir. 1965), cert. denied, 382 U.S. 840 (1965). Finally, the 9th Circuit has held that state convictions that were "set aside" were not "expunged" for purposes of calculating defendant's criminal history under United States Sentencing Guidelines. *U.S. v. Hayden*, 255 F.3d 768, 770 (9th Cir. 2001) (California set-aside does not amount to expungement under USSG 4A1.2(j)), cert. denied, 534 U.S. 969, 122 S. Ct. 383 (2001).

That said, there are substantial employment benefits for individuals in having a conviction set aside. See CAL. LABOR CODE § 432.7(a) and Part III infra. In addition, under regulations of the California Fair Employment and Housing Commission, it is unlawful for a public or private employer to inquire into or seek information about a conviction that has been set-aside and dismissed pursuant to this authority. See CAL. CODE REGS. tit. 2 § 7287.4(d)(1).

Set-aside procedure: The procedure for obtaining a set-aside is explained at this advocacy website: STARTING OVER STRONG, http://www.startingoverstrong.com/Home_Page.php. See also “A Cost-Benefit Analysis of Criminal Record Expungement in Santa Clara County,” Stanford University, Public Policy Program, <http://publicpolicy.stanford.edu/system/files/A%20Cost%20Benefit%20Analysis%20of%20Criminal%20Record%20Expungement.pdf>.

- **Sealing**

- *Under-age first offender misdemeanants:* Misdemeanants who were under 18 at the time their crime was committed, and who are eligible for or who received relief under either 1203.4 or 1203.4a, may petition the court to have the record sealed. CAL. PENAL § 1203.45(a).
- *Juvenile adjudications:* Most juvenile adjudications may be sealed after 5 years upon petition to the court, by the individual or the probation department, after jurisdiction is terminated or after the child reaches age 18. Court must find that 1) the child has not subsequently been convicted of a felony or a misdemeanor crime of moral turpitude; and 2) that “rehabilitation has been attained to the satisfaction of the court.” See CAL. WELF. & INST. § 781(a). DA must be notified. A sealing order may direct that a person be removed from sex offender registry. Id. “The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.” Id. “Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section” after five years. § 781(d). DMV records may not be sealed, and neither may the records of certain serious offenses committed after reaching age 14. § 781(a) and (b). “Once the court has ordered a person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.” § 781(a). Effective January 1, 2015, the juvenile court or probation officer must inform any person brought within their jurisdiction of the availability of sealing, and must develop explanatory materials. See § 781(g).

- *Nonconviction records:* CAL. PENAL § 851.8(d): In any case where a person has been arrested and an accusatory pleading has been filed, but where no guilty plea or conviction has occurred, the court may, with the concurrence of the prosecuting attorney, order that the records be sealed and destroyed. Most juvenile misdemeanor arrest records may be sealed pursuant to § 851.7(a).
- *See Part III for discussion of prohibition on employer inquiry into and consideration of non-conviction records, sealed records, convictions that have been set aside*
- *Certificate of Rehabilitation:*
 - *Eligibility:* A California resident convicted of a state law offense may apply to the Superior Court of his county of residence for a “Certificate of Rehabilitation.” CAL. PENAL §§ 4852.01 through .06, 4852.19 (West 2011). The certificate is an order embodying a court’s finding that the defendant is rehabilitated and its recommendation that he be pardoned. § 4852.13. *See* Section IIA, above. A certificate serves as the first step in the process of applying for a Governor’s pardon. *See* Office of the Governor, *How to Apply for a Pardon*, available at http://publicdef.co.riverside.ca.us/opencms/relief/how_to_apply_for_a_pardon.pdf (revised February 1, 2008). A COR also has some independent legal effect in connection with licensing under the California Business and Professional Code, and with employment in a number of professions. To obtain a Certificate of Rehabilitation, a convicted person must complete his or her sentence and period of parole, remain a resident of the state for a specified period (3 or 5 years) with no further violations of the law, demonstrate good conduct, and satisfy other statutory requirements. §§ 4852.01, 4852.03, 4852.05, 4852.06. Prison wardens are required to advise prisoners of their right to apply for this certificate upon their release from prison. § 4852.21.
A person may apply to court after completion of “period of rehabilitation” running from release from prison or release on probation: five years residence in CA plus four years for serious offenses and two years for less serious offenses. Court may order additional years in case of concurrent sentences. (Sex offenders who are required to register, except for indecent exposure, have an additional five-year waiting period, for a total necessary rehabilitation period of 10 years.) § 4852.03.
Effective January 1, 2014, a trial court hearing an application for a certificate of rehabilitation before the applicable period of rehabilitation has elapsed may grant the application if the court, in its discretion, believes relief serves the interests of justice. § 4852.22.
Petitioner must contact DA where resides and where convicted. Persons convicted of misdemeanors are ineligible to obtain a certificate of rehabilitation, except for certain sex offenders. *See Newland*, 19 Cal.3d at 712-714.
 - *Effect of certificate:* Sections 480(b) and 490 of the Bus. & Prof. Code provide that no one who has been granted a COR shall be denied an occupational license “solely” on the basis that he has been convicted of a felony.⁸ *See* Part III *infra*. A certificate of rehabilitation is given independent legal effect to avoid disqualification from employment in certain licensed professions. *See, e.g.,* CAL. HEALTH & SAFETY § 1522, subd. (g)(1)(A)(ii) (West 2008) (licensed community care facilities); Cal. Admin. Code tit. 10, § 3723 (real estate license); *Newland v. Board of Governors* (1977) 19 Cal.3d 705, 712-714 (Cal. 1977) (teaching certificate). *See also Doe v. Saenz*, 45 Cal. Rptr. 3d 126, 142-43 (Cal. App. 2006) (limitation of certificate to certain serious offenses in connection with employment in community care and childcare facilities violates Equal Protection).

⁸ “Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.”

- *Procedure for Applying:* The petition for Certificate of Rehabilitation must be filed in the superior court of the applicant's current county of residence. § 4852.06. The petition form can usually be obtained from the court clerk, probation department, or public defender's office. The petitioner is required to notify the district attorney in their county of residence and the district attorney of each county in which the petitioner was convicted of a felony. The notice must identify all crimes for which the person is requesting a Certificate of Rehabilitation. The form for sending these notices can also be obtained from the court clerk, probation department, or public defender. Once a petition is filed, the court will schedule a hearing. Before the hearing, the court may require an investigation by the district attorney. § 4852.10. At the hearing, the court may require testimony and records pertaining to the petitioner, including information about the conviction offense and the person's conduct while incarcerated and since release.
- *Representation:* Persons applying for the Certificate of Rehabilitation are entitled to assistance in processing their petitions from the county probation office(s), state parole office(s), and for persons under the age of 30, from the California Youth Authority. The person may also be represented by counsel of his or her own selection. If the person does not have counsel, he or she may be represented by the public defender, the probation department, or the court may assign counsel. CAL. PENAL § 4852.08 (West 2011).
- *Standards:* CAL. PENAL § 4852.13(a):
 Except as otherwise provided in subdivision (b), if after hearing, the court finds that the petitioner has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship, the court may make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner. This order shall be filed with the clerk of the court, and shall be known as a certificate of rehabilitation.
 (Exception in subsection (b) for registered sex offenders "if the court determines that the petitioner presents a continuing threat to minors . . .").
- *Felony treated as misdemeanor ("Wobbler" offenses):* A crime that is otherwise a felony ("punishable by either imprisonment in the state prison or the county jail") may be treated as a misdemeanor "for all purposes" if the court imposes punishment other than a state prison term, or "grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor." CAL. PENAL § 17(b)(1) and (b)(3). Also, the prosecutor may file a complaint treating the offense as a misdemeanor. § 17(b)(4). Upon a request by California's Commission on Peace Officer Standards and Training, the California Attorney General opined that the Commission's power to revoke a peace officer license when an officer is convicted of a felony did not extend to convictions under § 17(b) which are to be treated as misdemeanors "for all purposes" unless the conduct itself involved moral turpitude or some other indication of the applicant's unfitness to be a peace officer. 76 Op. Cal. Att'y Gen. 270, 275 (1993). However, while a blanket prohibition would be inappropriate in light of the purposes of § 17(b), case-by-case analysis of an applicant's conduct would permit denial of licensure by the California Commission on an individual basis.

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment:

- A. **California Business and Professional Code, §§ 480 *et seq.*** contains detailed provisions for considering conviction in the context of licensing. The list of boards covered by these provisions is at http://www.dca.ca.gov/about_dca/entities.shtml.

- *Denial of License: Effect of Certificate of Rehabilitation:* Effective January 1, 2015, CAL. BUS. & PROF. § 480(b) prohibits denial of a license based on a felony conviction if the person has received a certificate of rehabilitation, or based on a misdemeanor conviction if the person is deemed rehabilitated:

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

Sections 481 and 482 provide that each Board must develop criteria for determining rehabilitation, for considering rehabilitation, and for determining substantial relationship. For example, criteria for determining rehabilitation for real estate license in Cal. Admin. Code tit. 10, § 3723, include passage of time, restitution to victim, judicial relief (certificate of rehabilitation), evidence of involvement in community and stability of family life, abstinence from controlled substances, testimony of affiant.

Procedure for Denial of License Based on Conviction: §§ 485-489.

- *Suspension and Revocation of Licensee - Substantial Relationship Standard:* § 490: A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime only if the crime is “substantially related” to the qualifications, functions, or duties of the business or profession for which the license was issued. *Procedures for Suspension and Revocation:* CAL. BUS. & PROF. § 494 (West 2003). *Compare Petropoulos v. Department of Real Estate*, 47 Cal. Rptr 3d 812, 822-23 (Cal. App. 2006), modified on denial of rehearing (misdemeanor domestic battery not substantially related to real estate license) with *Robbins v. Davi*, 95 Cal. Rptr. 3d 792, 797 (Cal. App. 2009) (misdemeanor building code violations substantially related to license as real estate broker).

B. Prohibition of employer inquiry into certain criminal records, including non-conviction records and convictions that have been sealed or set aside.

Under amendments to CAL. LABOR CODE § 432.7(a) that took effect January 1, 2014, public and private employers are prohibited in most situations from inquiring into or considering any arrest or detention that did not result in conviction, participation in any pretrial or post-trial diversion program, or any conviction that has been ordered sealed, or judicially dismissed (set aside) pursuant to Cal. Penal § 1203.4, 1203.4a, 1203.41, or 1203.345. *See Part II, supra. See also* Cal. Code Regs. tit. 2 § 7287.4(d)(1). The prohibition on inquiry does not apply if the employer is required by law to obtain that information, the applicant would be required to possess or use a firearm in the course of his or her employment, an individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been sealed, statutorily eradicated, or judicially dismissed following probation, or if the employer is prohibited by law from hiring an applicant who has been convicted of a crime.

See also CAL. LABOR CODE § 432.7 (g)(1)-(3) (law enforcement agencies and others authorized to receive criminal history information may not disclose “with intent to affect a person’s employment” any information about arrest not resulting in conviction, or about referral to pretrial or post-trial diversion program).

The California Fair Employment and Housing Commission regulations provide that it is unlawful for an employer or other covered entity to inquire or seek information regarding any applicant concerning: [. . .] any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed pursuant to Penal Code Section 1203.4 . . . 2 CCR 7287.4(d)(1)(B).) The California Department of Fair Employment or Housing will investigate violations of

this provision, or will automatically generate a right to sue letter upon request. See <http://esq5.houdiniesq.com/dfch2/esq/reg/>.

- C. **Regulation of background-checking:** Under California’s Investigative Consumer Reporting Agencies Act, Cal. Civ. C. § 1786 *et seq.* (the California analogue to FCRA), background check companies “may not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate applicable federal or state equal employment opportunity law or regulation.” (Cal. Civ. C. § 1786.20(c).) Note that by inquiring into and reporting misdemeanors dismissed pursuant to §§ 1203.4, 1203.4a, the background check company is going beyond what a private employers can do.

Effective in January 2013, every entity that conducts a criminal background check under the mandate of a state or local occupational or licensing law must automatically provide the subject of the background check with a copy of his or her state and federal rap sheet whenever the agency makes a negative decision based on the record. *See* CAL. PENAL CODE § 11105(t).⁹

- D. **Notice of reasons for denial of public employment:** Gov. Code § 11546.6 requires that a person, who is rejected as a result of a criminal background check by a state agency for employment, contract, or volunteer work involving confidential or sensitive information, be provided with a copy of his or her criminal record. Additionally, this law requires the state to institute a written appeals process for rejected individuals to challenge ineligibility determinations based on the individual’s criminal record.

- E. **Recognition of prison training in qualifications for license:** CAL. BUS. & PROF. § 23.9 (West 2012):

[A]ny individual who, while imprisoned in a state prison or other correctional institution, is trained, in the course of a rehabilitation program approved by the particular licensing agency concerned and provided by the prison or other correctional institution, in a particular skill, occupation, or profession for which a state license, certificate, or other evidence of proficiency is required by this code shall not, when released from the prison or institution, be denied the right to take the next regularly scheduled state examination or any examination thereafter required to obtain the license, certificate, or other evidence of proficiency and shall not be denied such license, certificate, or other evidence of proficiency, because of his imprisonment or the conviction from which the imprisonment resulted, or because he obtained his training in prison or in the correctional institution, if the licensing agency, upon recommendation of the Adult Authority or the Department of the Youth Authority, as the case may be, finds that he is a fit person to be licensed.

- F. **Ban-the-Box:** Under CAL. LABOR § 432.9, a state or local agency “shall not ask an applicant for employment to disclose, orally or in writing, information concerning the conviction history of the applicant

⁹ *See* Madeline Neighly & Maurice Emsellem, National Employment Law Project, WANTED: ACCURATE BACKGROUND CHECKS FOR EMPLOYMENT 24 (July 2013):

[I]n FY 2011/12, California exceeded one million FBI criminal background checks for employment and licensing purposes, thus representing a considerable share of the nearly 17 million rap sheets generated by the FBI for employment screening. California laws mandating FBI background checks cover a range of occupations, with the highest volume of FBI background checks produced for school employees, social services workers, private security guards, healthcare workers, and law enforcement personnel. California lawmakers and state officials have taken their responsibility seriously to ensure that the large numbers of FBI checks conducted for employment and licensing purposes are up to date and that workers have the information they need to verify accuracy. While the California state repository only has dispositions for 57 percent of all arrests, the California Department of Justice timely ensures the completeness and accuracy of records that are requested for employment and licensing decisions.

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... until the agency has determined the applicant meets the minimum employment qualifications, as stated in any notice issued for the position.” This section does not apply to any position for which is background check is mandated by law, to any person working on a temporary or permanent basis for a criminal justice agency. This provision is effective July 1, 2014. Under policies put in place under Governor Schwarzenegger, questions asking about criminal convictions were removed from the state employment form. Even where a criminal record is “pertinent” to a particular job, the Criminal Record Supplemental Questionnaire restricts inquiries to felonies and domestic violence misdemeanors.

APPENDIX B: HOW PROPOSITION 47 CAN HELP IMMIGRANT COMMUNITIES



TEACHING, INTERPRETING AND CHANGING LAW SINCE 1979

How Proposition 47 Can Help Immigrant Communities

What is Proposition 47?

In November 2014, California voters passed the Safe Neighborhoods and Schools Act, also called "Proposition 47." Prop 47 changes California law so that some low-level, non-violent offenses will be punished as misdemeanors instead of felonies. These offenses are drug possession and, as long as the amount taken is \$950 or less, "property crimes" like theft, shoplifting, receipt of stolen property, passing bad checks, and forgery. By reducing the penalties for these crimes, Prop 47 makes the law more fair and saves counties money by reducing jail populations. It also can help people avoid some immigration problems.

How can a criminal conviction harm an immigrant?

Anyone who is not a U.S. citizen, including lawful permanent residents and refugees, can be deported if he or she has been convicted of certain crimes -- including low level non-violent offenses like theft or possessing a small amount of drugs. Even lawful permanent residents who have lived in the U.S. for many years and have all their family here can lose their legal status and be deported for such a conviction, even if the offense happened many years ago.

- *Michelle has lived in the U.S. for 15 years, part of that time as a lawful permanent resident (green card-holder). She has three U.S. citizen children. During a very hard time for the family she stole some items, and was convicted of felony theft. Now she can be put in deportation proceedings. Depending on her circumstances, she might not be allowed to even ask an immigration judge to consider giving her a second chance, based on the terrible hardship her children would face if she were deported.*

Certain convictions can prevent undocumented immigrants from ever getting legal status, for example through family. Certain convictions can prevent immigrants from getting temporary protection from deportation, through the administrative relief programs DACA (Deferred Entry for Childhood Arrivals) and DAPA (Deferred Entry for Parents of Americans).

- *Mark, a dreamer and college graduate, was arrested five years ago after a college party for possession of cocaine, which was a felony under California law. Although Mark has lived in the U.S. since he was a baby and meets all other requirements for DACA, he cannot apply because anyone convicted of a felony is not eligible for DACA (or DAPA).*

How do the changes made by Proposition 47 benefit immigrants?

By changing some felonies to misdemeanors, Prop 47 can help more immigrants to be eligible to get legal status or temporary protection from deportation, or to avoid losing the status they have. Immigrants will also be less likely to be targeted for deportation in places where local law enforcement works with immigration authorities. This means that immigrants will be less likely to be deported and fewer families will be separated by deportation. For example:

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- **More immigrants are eligible to qualify for the DACA and DAPA programs.** DAPA and DACA are barred by any felony conviction. By causing some felonies to become misdemeanors, Prop 47 can keep people eligible for these programs. With Prop 47, immigrants like Mark will be eligible to apply for DACA or DAPA after the criminal court designates his felony drug possession conviction as a misdemeanor.

Warning: Immigration law treats drug convictions more harshly than offenses like theft. Outside of DAPA, DACA, and a few other programs, even a misdemeanor drug conviction, or even a DEJ, will cause an immigrant to be deportable and barred from applying for status. Always get expert advice where drugs are involved.

- **Immigrants with Prop 47 convictions may no longer be the federal government's top enforcement priority and may be able to apply for a more lenient exception to deportation.** Conviction of any felony makes a noncitizen a target for arrest by ICE.
- **More immigrants will be eligible to obtain legal status.** For example, it will be easier for U.S. citizens and lawful permanent residents to help their family members obtain legal status in the U.S., despite the fact that the person has a theft conviction.
- **Some lawful permanent residents will no longer be found deportable for a conviction of just one of the property offenses covered by Prop 47.** Here Prop 47 may be combined with another new law, Penal Code § 18.5, which makes a misdemeanor have a 364-day sentence rather than 365 days.
- **An undocumented person who lived in the U.S. for ten years, and who can show great hardship to U.S. citizen or permanent resident family, may be able to avoid deportation despite conviction of a property offense covered by Prop 47.** Again Prop 47 may be combined with the new Penal Code § 18.5, so the person may apply for "cancellation of removal."

What can immigrants do to obtain the benefits of Prop 47?

Immigrants should consult with expert immigration advocates or criminal defenders to get complete information about how their criminal record may affect their immigration case, including eligibility for the DACA and DAPA programs, and whether Prop 47 can help. Sometimes Prop 47 will be combined with Penal Code § 18.5. Because these laws are brand new, and applying them to immigration laws can be complicated, it is important to get advice from an advocate who really understands the area.

People can get help with past convictions. A qualifying prior felony conviction can be re-designated as a misdemeanor. People who still are serving time in jail may be able to get their sentence reduced and be released early under Prop 47.

For more information, go to www.safeandjust.org/prop47 and www.ilrc.org/crimes.