

How does AB 109 affect reduction of charges from felony misdemeanor and expungement?¹

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1. Does prison realignment change where a sentence is served?

Yes. Felony offenses can now be punished by sentencing to county jail or state prison. A felony will be a county jail felony if it is non-violent, non-sexual, and non-serious. The term of imprisonment will typically not be for more than three years, unless a statute specifically calls for a longer term. Misdemeanors are still punished by no more than one year of imprisonment in the county jail.²

¹ See DRC fact sheet, "Prison and Jail Realignment under California's Assembly Bill (AB) 109, available at:

<http://www.disabilityrightsca.org/CalMHSA/CalMHSAfactsheets.html>.

² A list of County Jail felonies can be found in this document starting on page 130: <http://www.claraweb.us/wp-content/uploads/2011/12/California-Public-Safety-Realignment-Analysis-by-Garrick-Byers-June-10-2012-Edition.pdf>.

2. Is there a way to change a felony into a misdemeanor?

A small number of crimes are known as wobblers, meaning they can be either felonies or misdemeanors. A sentence containing state prison time is automatically a felony. These crimes are considered misdemeanors if:

- a. The prosecutor charges you with a misdemeanor.
- b. The prosecutor charges you with a felony but you make a plea bargain agreement to reduce it to a misdemeanor.
- c. The judge gives you a sentence with no jail time, only probation or a fine.
- d. The judge commits you to a juvenile facility and specifies that the crime is to be considered a misdemeanor.

Before AB 109 was passed, you could also get a felony reduced to a misdemeanor after serving county jail time and then requesting that the judge reduce it to a misdemeanor. If this situation applies to you, ask your criminal defense attorney whether you can do this.

3. Is there a benefit of having a misdemeanor instead of a felony?

A misdemeanor can be removed from your record after you serve your jail time or probation through a process known as expungement.

4. How can a misdemeanor be expunged?

Depending on your sentence, there are different times expungements can be requested:

- a. Misdemeanors without Probation: You can apply for dismissal one year after your conviction date.
- b. Misdemeanors with Probation: You can apply for dismissal upon completion of probation or early discharge from probation.
- c. Felony with Probationary jail term: You can request a reduction to misdemeanor from the court and then request expungement.

- d. Diversion Program: These convictions are cleared automatically upon successful completion of the program.

5. Does the court have to expunge a conviction?

If you meet the criteria and the offense is eligible, the court must expunge the conviction after you ask it to. If you do not meet all the conditions of your sentence, such as not completing probation or committing another offense, or if you committed a certain kind of crime, like a Driving under the Influence (DUI), the judge can decide whether or not to expunge.

6. What is the benefit of expungement?

You do not have to list an expungement on an application for non-government employment and can legally state that you have no convictions. But remember that some employers will conduct a background check and may find out about it anyway.

7. When do you still have to disclose a conviction that was expunged?

You still have to disclose all convictions, even those that were expunged when applying to the following:

- a. A government agency (although some, like the City and County of Los Angeles, do not require applicants to disclose expunged convictions).
- b. A job that requires a government-issued license, certificate, or permit (such as a realtor's or barber's license).
- c. A job that requires security clearance.
- d. A job working in a hospital or with the elderly or children.
- e. A job that involves a government contract.

8. How do you file for an expungement?

You will need to make sure you have the proper paperwork. You should talk to the clerk at the court where your criminal case was handled to find out exactly what you need to file. Usually you need the documents below, some of which are available from the California Courts website (at <http://www.courts.ca.gov/forms.htm>) and some of which you can get from the clerk. You can also ask your criminal defense attorney for help.

- a. Your Criminal History Record: from the court docket or DOJ criminal history record (if convictions in multiple courts).
- b. Form CR-180: Petition for Dismissal
- c. Form CR-181: Order for Dismissal
- d. FW-001: Fee Waiver Request
- e. FW-003: Fee Waiver Order
- f. CR-115: Defendant's Statement of Assets (some courts require)
- g. POS-040: Proof of Service (some courts require local proofs of service forms, talk to the court clerk to see if you need one of those).

9. How long does the process take?

The Court should rule on your petition within a few months. If they ask you to come in for a hearing, you should call the Public Defender's office and ask them to represent you. You must attend the hearing or the petition will be dismissed by the court.

10. Can I do anything if the petition is denied?

You should ask the court clerk why the petition was denied. If there was a mistake in your paperwork or you left something out, you should be able to re-file the papers to correct it.

11. How can I make sure it was expunged?

You can request a copy of your criminal record from the Department of Justice to make sure that it has been changed. It may take a month or so to be updated. If it hasn't been updated, you should send in a copy of the court order granting the expungement and a form called "Claim of Alleged Inaccuracy or Incompleteness" which is also available on the California Courts website.

We want to hear from you! After reading this fact sheet please take this short survey and give us your feedback.

English version: <http://fs12.formsite.com/disabilityrightsca/form54/index.html>

Spanish version: <http://fs12.formsite.com/disabilityrightsca/form55/index.html>

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The California Mental Health Services Authority (CalMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.



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