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# the PRACTITIONER



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The Magazine of the Solo & Small Firm Section of the California Lawyers Association

# MCLE Article:

## 11 Most Commonly Asked Questions About Expungement



michael@ocampocriminaldefense.com.

**Michael J. Ocampo** is a former deputy district attorney and is the principal attorney at Michael J. Ocampo, Attorney at Law. He focuses his practice exclusively on criminal law. He can be reached at

By Michael J. Ocampo

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**P**roposition 47, Proposition 64, and AB 109 Realignment expanded the number of people who qualify for expungement. In light of these reforms, how does a criminal defense attorney answer these common questions about expungement?

Most criminal defense attorneys are familiar with Penal Code §1203.4, which allows those who have been convicted of a crime—after satisfying certain requirements—to expunge the conviction from their record.

Expungement does not erase a conviction from a person's record. However, it does signify that a person has completed probation, was not sentenced to prison, and has been rehabilitated to the lawful satisfaction of a judge.

It used to be that only persons sentenced to probation were eligible for an expungement. This meant that persons sent to jail or prison were ineligible and were stuck with a conviction on their record. However, given recent efforts at criminal justice reform (such as Proposition 47, Proposition 64, and AB 109 Realignment) those legally qualified to apply for expungement has changed.

Here are eleven (11) common questions that a criminal defense attorney can be asked about expungement—and how to answer them in light of the recent developments in criminal justice reform.

### QUESTION 1: I WAS CONVICTED OF A FELONY AND WENT TO PRISON. AM I ELIGIBLE FOR EXPUNGEMENT?

In most cases, no.<sup>1</sup> Expungement is not available to those who are sentenced to prison.<sup>2</sup> Nevertheless, there are thirteen felonies that can be expunged—even if they resulted in a prison sentence.

Certain drug and theft felonies have recently been reclassified as misdemeanors under Propositions 47 and 64.<sup>3</sup> Once reclassified, these now-misdemeanors are eligible for expungement—even if they originally resulted in a prison sentence.<sup>4</sup> The felonies that have been reclassified as misdemeanors are:<sup>5</sup>

- Commercial burglary under §950 – Penal Code §459/§461(b)<sup>6</sup>
- Check forgery under §950 – Penal Code §473(a)<sup>7</sup>
- Insufficient funds check fraud under §950 – Penal Code §476a<sup>8</sup>
- Grand theft under §950 other than firearm or vehicle – Penal Code §487(a)<sup>9</sup>
- Receipt of stolen property under §950 – Penal Code 496(a)<sup>10</sup>
- Receipt of stolen property under §950 by vendor – Penal Code 496(b)<sup>11</sup>

- Petty theft with a theft-related prior conviction that did not result in incarceration – Penal Code §666<sup>12</sup>
- Possession of a controlled substance – Health and Safety Code §11350<sup>13</sup>
- Possession of more than 1oz. of marijuana – Health and Safety Code §11357(b)(2)
- Cultivation of marijuana – Health and Safety Code §11358(c)
- Possession of marijuana for sale – Health and Safety Code §11359(b)<sup>14</sup>
- Sale, transportation of marijuana – Health and Safety Code §11360(a)(2)<sup>15</sup>
- Possession of methamphetamine – Health and Safety Code §11377<sup>16</sup>

Before reclassification, a conviction for one of the above felonies that resulted in a prison sentence could not be expunged.

Now, thanks to reclassification, even if you were convicted of one of the above felonies and sent to prison, your conviction is now mandated by law to be a misdemeanor and is now eligible for expungement.<sup>17</sup> Reclassification is retroactive, meaning that it will apply to your conviction regardless of when you received it.<sup>18</sup> To reclassify your conviction, you must petition the court.<sup>19</sup>

However, your record can affect whether your felony can be expunged. Most of these felonies cannot be reclassified as misdemeanors if you have a prior “serious”<sup>20</sup> or “violent”<sup>21</sup> conviction for certain sex, homicide, or weapons-related offenses (such as murder, lewd act with a child under 14, assault with a machine gun on a police officer);<sup>22</sup> or if you if you are required to register as a sex offender.<sup>23</sup> Some of the above felonies are also prohibited from reclassification if you have multiple prior convictions for the same, or a related, crime.<sup>24</sup>

In addition, at least one year must have passed from when you were sentenced before you can petition the court to expunge your now-reclassified misdemeanor.<sup>25</sup> So long as you are not currently charged with a new crime and you are not currently

serving a sentence for a different crime, the court is likely to grant your expungement of one of these drug- or theft-related crimes.<sup>26</sup> If you were sentenced to prison for a felony other than one of the thirteen felonies included in the above list, then your conviction cannot be expunged.<sup>27</sup>

## **QUESTION 2: I WAS CONVICTED OF A FELONY AND WENT TO PRISON. MY FELONY WAS A WOBBLER. CAN I REDUCE IT TO A MISDEMEANOR AND THEN EXPUNGE IT?**

No. A wobbler is a crime that can be charged as a felony or a misdemeanor at the prosecution’s discretion. A felony wobbler cannot be reduced to a misdemeanor unless a person was sentenced to probation or some punishment other than incarceration (such as a fine).<sup>28</sup> Being sentenced to prison typically disqualifies you from receiving an expungement. (See Question 1, above.)

## **QUESTION 3: I WAS CONVICTED OF A FELONY AND WENT TO JAIL. AM I ELIGIBLE FOR EXPUNGEMENT?**

Yes.<sup>29</sup> A relatively new law known as AB 109 mandated that, effective October 1, 2011, all persons convicted of a felony and sentenced under Penal Code §1170(h) be sent to jail instead of prison.<sup>30</sup> (There are exceptions to this rule as prison is mandatory if a person has a prior strike, a prior 290-registerable offense, or has suffered the aggravated white collar sentencing enhancement.)<sup>31</sup>

AB 109 is prospective, meaning that it applies to those who were sentenced on or after October 1, 2011.<sup>32</sup> Before this relatively new law, people convicted of felonies were sent to prison and so were ineligible for expungement. (See Question 1, above.) If you were convicted of a felony on or after October 1, 2011, sent to jail, and placed on a period of mandatory supervision, then you must wait one year before petitioning the court for an expungement.<sup>33</sup> If you were convicted of a felony and sentenced to jail *without* a period of mandatory supervision, then you must wait two years before you can petition the court.<sup>34</sup>

**QUESTION 4: I WAS CONVICTED OF A FELONY AND WENT TO JAIL. MY FELONY WAS A WOBBLER. CAN I REDUCE IT TO A MISDEMEANOR AND THEN EXPUNGE IT?**

Yes, you can expunge the conviction. (See Question 3, above.) However, you cannot reduce it to a misdemeanor. Again, a wobbler is a crime that can be charged as a felony or a misdemeanor at the prosecution's discretion. Even though you can expunge a felony wobbler, you cannot reduce it unless you received a sentence of probation or some punishment other than incarceration (such as a fine).<sup>35</sup> A jail sentence renders your felony conviction ineligible for reduction.

**QUESTION 5: I WAS CONVICTED OF A FELONY AND WAS ONLY SENTENCED TO PROBATION. AM I ELIGIBLE FOR EXPUNGEMENT?**

Yes, as soon as you have completed your probation.<sup>36</sup> When it comes to expungement, *your eligibility is determined by whether you went to prison*, not whether you were convicted of a misdemeanor or a felony.<sup>37</sup> If you were only sentenced to probation (e.g., you did not go to jail or prison), then you are eligible to expunge your felony conviction once you complete your probation.<sup>38</sup>

**QUESTION 6: I WAS CONVICTED OF A FELONY AND WAS ONLY SENTENCED TO PROBATION. MY FELONY WAS A WOBBLER. CAN I REDUCE IT TO A MISDEMEANOR AND THEN EXPUNGE IT?**

Yes, a felony wobbler that resulted in a probation-only sentence can be reduced to a misdemeanor.<sup>39</sup> Once reduced, the conviction can be expunged as a normal misdemeanor.<sup>40</sup> *Note:* you must complete your probation before you can expunge your conviction. (See Question 5, above.)

An expunged conviction communicates that you have completed your probation, that you were not sentenced to prison, and that you were able to rehabilitate to the lawful satisfaction of a judge. A felony that was further reduced to a misdemeanor and then expunged signals that your misconduct was less severe than initially charged by prosecutor.

Here are some felonies that, if they result in a probation-only sentence, can be reduced to misdemeanors:

- Vehicular manslaughter with gross negligence – Penal Code §192(c)(1)
- Sexual battery on unconscious person – Penal Code §243.4(c)
- Assault with a deadly weapon other than a firearm – Penal Code §245(a)(1)
- Child neglect – Penal Code §270
- Domestic battery with traumatic injury – Penal Code §273.5(a)
- Criminal threats – Penal Code §422(a)
- Burglary of structure other than a dwelling – Penal Code §461(b)
- Insufficient funds check fraud over \$950 – Penal Code §476a
- Vandalism over \$400 – Penal Code §594(b)(1)
- Petty theft with a theft-related prior conviction that did result in incarceration – Penal Code §666
- Possession of a firearm by person subject to the 10-year firearm ban – Penal Code §29805(a)<sup>41</sup>

**QUESTION 7: WILL EXPUNGING MY MISDEMEANOR CONVICTION RESTORE MY GUN RIGHTS?**

Your gun rights will *not* be restored if:

- Your expunged misdemeanor conviction is subject to the ten-year firearm ban; or
- Your expunged misdemeanor conviction is subject to the lifetime firearm ban.

Even if you are able to expunge your conviction, your gun rights will not be restored if your conviction subject to the **ten-year firearm ban**.<sup>42</sup> If you were convicted of any one of the following

crimes, you cannot own or possess a gun for ten years:<sup>43</sup>

- Threatening a government employee – Penal Code §71(a)(1)
- Threatening a public official – Penal Code §76(a)(1)
- Dissuading a witness from testifying – Penal Code §136.1(a)(1)
- Possession of a deadly weapon with intent to dissuade a witness – Penal Code §136.5
- Intimidating a witness – Penal Code §140(a)
- Attempting to take an officer's gun – Penal Code §148(d)
- Filing a false police report regarding stolen gun(s) – Penal Code §148.5(f)
- Bringing a weapon into a government building – Penal Code §171b
- Bringing a loaded firearm into a congressional or gubernatorial building – Penal Code §171c(a)(1)
- Bringing a loaded firearm to the residence of the Governor or a congressperson – Penal Code §171c(a)(1)
- Supplying a firearm to a gang member – Penal Code §186.28
- Assault – Penal Code §240
- Assault against a peace officer or parking officer – Penal Code §241
- Battery – Penal Code §242
- Battery against a peace officer, spouse, or causing serious bodily injury- Penal Code §243
- Sexual battery – Penal Code §243.3
- Assault with a stun gun – Penal Code §244.5
- Assault with a deadly weapon or with force likely to cause great bodily injury – Penal Code §245
- Assault with a deadly weapon on a school employee – Penal Code §245.5
- Negligent discharge of a firearm – Penal Code §246.3
- Discharging a firearm at unoccupied vehicle or aircraft, uninhabited dwelling or building – Penal Code §247
- Domestic battery causing traumatic injury – Penal Code §273.5
- Violation of a domestic violence restraining order – Penal Code §273.6
- Brandishing a weapon – Penal Code §417
- Brandishing a weapon causing serious bodily injury – Penal Code §417.6
- Criminal threats – Penal Code §422
- Possession of a firearm in a school zone – Penal Code §626.9
- Stalking – Penal Code §646.9
- Wearing a police uniform while picketing work conditions – Penal Code §830.95
- Sale of a concealable firearm to minor – Former Penal Code §12100
- Possession of a deadly weapon with intent to assault – Penal Code §17500
- Carrying a weapon while picketing – Penal Code §17510
- Possession of a firearm while masked – Penal Code §25300
- Possession of a firearm with intent to commit a felony – Penal Code §25800
- Possession of armor-piercing bullets – Penal Code §30315
- Possession of a machinegun – Penal Code §32625

- Participating as driver in a drive-by shooting – Penal Code §26100(b)
- Participating as shooter in a drive-by shooting – Penal Code §26100(d)
- Supplying a firearm to a minor – Penal Code §27510
- Possession of a deadly weapon by patient receiving treatment for a mental disorder – WIC §8100
- Supplying a deadly weapon to a person diagnosed with a mental disorder - WIC §8101
- Possession of a deadly weapon by diagnosed with a mental disorder – WIC §8103
- Bringing a firearm into juvenile hall – WIC §871.5
- Bringing a firearm into a Youth Authority camp or institution – WIC §1001.5
- Supplying handgun to a prohibited person – Penal Code §27590(c)

If your conviction is for one of the crimes listed below, then it is subject to the **lifetime firearm ban**, and it is illegal for you to ever possess a firearm—even if you are able to expunge your conviction:<sup>44</sup>

- Assault with a firearm – Penal Code §245(a)(2)
- Assault with a machine gun – Penal Code §245(a)(3)
- Assault with a firearm against a peace officer – Penal Code §245(d)
- Discharging a firearm at an inhabited dwelling – Penal Code §246<sup>45</sup>
- Brandishing a firearm at a peace officer – Penal Code §417(c)

Expunging your misdemeanor conviction does not guarantee that your gun rights will be restored.<sup>46</sup> If your misdemeanor is subject to the ten-year firearm ban, then you cannot own a gun until after the ban

expires. If your misdemeanor conviction is subject to the lifetime firearm ban, then you can never lawfully own a gun.

## QUESTION 8: WILL EXPUNGING MY FELONY CONVICTION RESTORE MY GUN RIGHTS?

Even if you can obtain an expungement, your gun rights cannot be restored if your felony conviction is subject to either the ten-year firearm ban or the lifetime firearm ban.<sup>47</sup> (See Question 7, above.) If your felony conviction is not subject to either duration firearm ban, then you may be able to restore your gun rights. To do so, you must satisfy two additional requirements:

- Your felony must be a wobbler; and
- You were only sentenced to probation.

Penal Code §29800(a)(1) prohibits any person who has been convicted of a felony from ever possessing a firearm. To remove this restriction, your felony must be a wobbler, that is, it must be reducible to a misdemeanor. (See Question 7, above.) Additionally, you must have been sentenced only to probation and you cannot reduce your felony if you were sentenced to jail or prison.<sup>48</sup> Again, *if your felony conviction resulted in jail time or a prison sentence, then your gun rights cannot be restored.*

In summary, if the four requirements below are met, then you can petition the court to reduce your conviction to a misdemeanor and then expunge it.<sup>49</sup>

- (1) your felony conviction is not subject to the 10-year firearm ban;
- (2) your felony conviction is not subject to the lifetime firearm ban;
- (3) your felony conviction is a wobbler; and
- (4) you were sentenced to probation.

Once your felony is properly reduced to a misdemeanor, it is no longer subject to the firearm restriction of Penal Code §29800. Effectively, your gun rights will be restored.

**QUESTION 9: I WAS CONVICTED OF A MISDEMEANOR AND WAS ONLY SENTENCED TO PROBATION. AM I ELIGIBLE FOR AN EXPUNGEMENT?**

Yes, you are eligible for expungement once you have completed your probation.<sup>50</sup> Probation for a misdemeanor typically lasts between three and five years. Should you complete the terms of your probation sooner, you can petition the court to terminate your probation early.<sup>51</sup> In doing so, you may apply sooner for an expungement.

In addition, some misdemeanors can even be reduced further to infractions.<sup>52</sup> Including the benefits mentioned previously, a misdemeanor that is further reduced to an infraction and then expunged signals minor misconduct.<sup>53</sup> Here are some common misdemeanors that can be reduced to infractions:<sup>54</sup>

- Relinquishing possession of a vehicle to a minor – Penal Code §193.8
- Disturbing the peace – Penal Code §415
- Theft of lost property – Penal Code §485
- Failure to appear in court – Penal Code §853.7, Vehicle Code §40508(a)
- Refusing to leave private property after being asked to do so – Penal Code §602(o)
- Purchase or consumption of alcohol by person under 21 – Business & Professions Code §25658(b)
- Possession of alcohol in a public place by person under 21 – Business & Professions Code §25662
- Use of fake ID by person under 21 – Business & Professions Code §25661
- Exhibition of speed – Vehicle Code §23109(c)
- Obstruction of a vehicle's license plate – Vehicle Code §5201.1
- Driving while unlicensed – Vehicle Code §12500<sup>55</sup>

- Driving on a license suspended for a reason other than DUI, negligent operation, or reckless driving – Vehicle Code §14601.1
- Failure to attend court-ordered traffic school – Vehicle Code §42005(e)

**QUESTION 10: I WAS CONVICTED OF A MISDEMEANOR AND WAS SENTENCED TO JAIL. AM I ELIGIBLE FOR EXPUNGEMENT?**

Yes, most misdemeanors that result in jail time can be expunged.<sup>56</sup> However, there are exceptions. The following misdemeanor crimes can never be expunged if they resulted in jail time instead of probation:<sup>57</sup>

- Lewd act on fourteen- or fifteen-year-old by adult ten years or older – Penal Code §288(c)(1)
- Lewd act on a dependent adult by a caretaker – Penal Code §288(c)(2)
- Failure to submit to an authority's request to inspect equipment – Vehicle Code §§2800, 2801, 2803.

Other than the above offenses, misdemeanors that resulted in a jail sentence are eligible for expungement.<sup>58</sup>

Lastly, you must wait one year before you can petition the court.<sup>59</sup> So long as you are not currently charged with a new crime and you are not currently serving a sentence for a different crime, the court is likely to grant your expungement.<sup>60</sup>

**QUESTION 11: I WAS CONVICTED OF AN INFRACTION. AM I ELIGIBLE FOR EXPUNGEMENT?**

Yes.<sup>61</sup> However, after you are sentenced, you must wait one year before you can petition the court for an expungement.<sup>62</sup> So long as you are not currently charged with a new crime and you are not currently serving a sentence for a different crime, the court is likely to grant your expungement.<sup>63</sup> However, there is one exception. You are not eligible for expungement if you were convicted of a traffic infraction. Traffic infractions cannot be expunged.<sup>64</sup>

## CONCLUSION

A conviction can make all sorts of people—employers, lenders, landlords, insurance companies—think twice before deciding to do business with someone. Expunging the conviction will often reassure others that the person has atoned for his or her past missteps. Proposition 47, Proposition 64, and AB 109 Realignment have expanded the number of people who qualify for expungement. Now even more people, with the help of their criminal defense attorney, can take advantage of these reforms and stop the mistakes of their past from limiting their future.



## ENDNOTES

- 1 Penal Code §1203.4(a)(1), *People v. Borja* 110 Cal. App.3d 378, 381 (1980).
- 2 Penal Code §1203.4(a)(1), *People v. Borja* 110 Cal. App.3d 378, 381 (1980).
- 3 Penal Code §1170.18(a), Health and Safety Code §11361.8(a).
- 4 Penal Code §§1170.18(b), 1203.4a(a). “Once the trial court designated appellant’s 2002 felony conviction as a misdemeanor, ‘section 1170.18, subdivision (k) reclassified that conviction as a misdemeanor ‘for all purposes.’ [Citations omitted.] Appellant thus requested permission to withdraw her plea of guilty, enter a plea of not guilty, and have the court dismiss the action under section 1203.4a as a ‘defendant convicted of a misdemeanor and not granted probation.’ Whatever sentence appellant had served for that offense was irrelevant under section 1203.4a, and the trial court erred in denying appellant’s petition for dismissal.” *People v. Khamvongsa*, 8 Cal. App.5th 1239, 1247 (2017). Note: Proposition 47 affects those who were serving sentences for enumerated convictions as of November 4, 2014. Penal Code §1170.18(a). Affected persons have until November 4, 2022, to petition the Court to reclassify their eligible conviction(s). Penal Code §1170.18(j).
- 5 Penal Code §1170.18(a), Health and Safety Code §11361.8(a).
- 6 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex, homicide or weapons-related offenses; or is a Penal Code §290 registrant. Penal Code §§459.5, 667(e)(2)(C)(iv).
- 7 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; is a Penal Code §290 registrant; or is convicted of identity theft in the same matter. Penal Code §473(b).
- 8 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; is a Penal Code §290 registrant; or has three or more forgery-related prior convictions. Penal Code §476a(b).
- 9 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; or is a Penal Code §290 registrant. Penal Code §490.2(a). Note: Theft of a firearm or automobile is *still* considered grand theft, regardless of the value of the firearm or automobile. Penal Code §§487(d), 490.2(c).
- 10 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; or is a Penal Code §290 registrant. Penal Code §496(a).
- 11 Still punishable as a misdemeanor, even if person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; or is a Penal Code §290 registrant. Penal Code §496(b).
- 12 Punishable as a wobbler regardless whether the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; or is a Penal Code §290 registrant; or has a prior conviction for committing theft or fraud upon a dependent or elderly adult. Penal Code §666(b). Also, with the requirement that the person have served jail time for his prior conviction (whether as punishment or as a condition of probation) in order to charge section 666, then, by implication, a theft prior for which no jail time was issued means that he could still only be charged with petty theft, since his prior doesn’t count.



- 13 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; or is a Penal Code §290 registrant. Health and Safety Code §11350(a). Includes drugs such as cocaine, heroin, and LSD, as well as prescription drugs like Vicodin and Oxycontin.
- 14 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; is a Penal Code §290 registrant; has at least two prior convictions for §11359(b); in this instance, the person was trying to sell to a person under eighteen; or, in this instance, the person was twenty-one years old and used someone twenty years of age or younger to assist him, in any way, in cultivating, selling, or giving away marijuana. Health and Safety Code §11359(c), (d).
- 15 Still punishable as a felony under Penal Code 1170(h)—for 2, 3, or 4 years—if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; is a Penal Code §290 registrant; has at least two prior convictions for §11360(a)(2); in this instance, the act involved the sale or giving away of marijuana to a person under eighteen; or in this instance, the act involved the interstate transport of more than one ounce of marijuana. Health and Safety Code §11360(a)(3).
- 16 Still punishable as a felony under Penal Code 1170(h) if the person has a prior serious or violent conviction for certain sex-, homicide-, or weapons-related offenses; or is a Penal Code §290 registrant. Health and Safety Code §11377(a).
- 17 Penal Code §§1170.18(b), 1203.4a(a). “Once the trial court designated appellant’s 2002 felony conviction as a misdemeanor, ‘section 1170.18, subdivision (k) reclassified that conviction as a misdemeanor ‘for all purposes.’ [Citations omitted.] Appellant thus requested permission to withdraw her plea of guilty, enter a plea of not guilty, and have the court dismiss the action under section 1203.4a as a ‘defendant convicted of a misdemeanor and not granted probation.’ Whatever sentence appellant had served for that offense was irrelevant under section 1203.4a, and the trial court erred in denying appellant’s petition for dismissal.” *People v. Khamvongsa*, 8 Cal. App.5<sup>th</sup> 1239, 1247 (2017). Note: Proposition 47 affects those who were serving sentences for enumerated convictions as of November 4, 2014. Penal Code §1170.18(a). Affected persons have until November 4, 2022, to petition the court to reclassify their eligible conviction(s). Penal Code §1170.18(j).
- 18 Penal Code §1170.18(a), Health and Safety Code §11361.8(a).
- 19 Penal Code §1170.18(b), Health and Safety Code §11361.8(b).
- 20 Penal Code §1192.7(c).
- 21 Penal Code §667.5(c).
- 22 Penal Code §667(e)(2)(C)(iv).
- 23 Penal Code §1170.18(i). *See also supra* notes for the specific crimes listed above as Prop. 47 and Prop. 64 crimes.
- 24 *See, e.g., supra* notes 14, 15,.
- 25 Penal Code §1203.4a(a).
- 26 Expungement is mandatory if a person satisfies all the requirements of Penal Code §1203.4a(a). If, at the time you petition the court for your expungement, you have recently been arrested or detained, but were released and not charged with a crime, then you will fail to satisfy the “lived an honest and upright life” and “obeyed the laws of the land” requirements of section 1203.4a(a). In that case, granting your expungement becomes discretionary. *See* Penal Code §1203.4a(b).
- 27 Penal Code §1203.4(a)(1), *People v. Borja*, 110 Cal. App.3d 378, 381 (1980).
- 28 Penal Code §§17(b)(1) (3).
- 29 Penal Code 1203.4a(a).
- 30 Before October 1, 2011, all 16-2-3 crimes were to be served in prison. After October 1, 2011, all 16-2-3 crimes are to be served in jail (unless the person has a prior for a strike, a 290-registerable offense, or suffered the aggravated white collar sentencing enhancement). Penal Code §§1170(h)(1), (2), (6).
- 31 Penal Code §§1170(h)(3).
- 32 Penal Code §1170(h)(6).
- 33 Penal Code §§1203.41(a)(2), 1170(h)(5)(B). Note: A prior conviction for a “serious” or “violent” crime, a 290-registerable offense, or suffering the aggravated white collar crime enhancement requires that an 1170(h) sentence be served in prison instead of jail. Penal Code §1170(h)(3).
- 34 Penal Code §§1203.41(a)(2), 1170(h)(5)(A).
- 35 Penal Code §§17(b)(1) (3).
- 36 Penal Code §1203.4(a)(1).
- 37 Penal Code §§1203.4(a)(1); 1203.41(a)(1).
- 38 Penal Code §1203.4(a)(1).
- 39 Penal Code §§17(b)(1) (3).
- 40 Penal Code §1203.4(a)(1).

- 41 Note: Penal Code §29805 sets out the specific felonies, misdemeanors, and juvenile offenses that are subject to a ten-year firearm ban.
- 42 Penal Code §§29805(a), 1203.41(b)(3), 1203.4(a)(2).
- 43 Penal Code §29805(a).
- 44 Penal Code §§29800(a)(1); 23515(a), (b), (d); 1203.41(b)(3); 1203.4(a)(2).
- 45 This is the only offense that is subject to only the lifetime firearm ban, but not the ten-year firearm ban.
- 46 Penal Code §§1203.41(b)(3), 1203.4(a)(2).
- 47 Penal Code §§29805(a); 29800(a)(1); 23515(a), (b), (d); 1203.41(b)(3), 1203.4(a)(2).
- 48 Penal Code §§17(b)(1), (b)(3).
- 49 Penal Code §1203.4(a)(1).
- 50 Penal Code §1203.4(a)(1).
- 51 The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held.
- 52 Penal Code §19.8(a).
- 53 Penal Code §17(d)(2). When petitioning the court, you can ask to have your misdemeanor reduced to an infraction and then expunged.
- 54 Pursuant to Penal Code §19.8(a).
- 55 Note: Vehicle Code §12951, driving while you *forgot* your license, is just an infraction.
- 56 Penal Code §1203.4a(a).
- 57 Penal Code §1203.4a(d)(1), (2).
- 58 Penal Code §1203.4a(a).
- 59 Penal Code §1203.4a(a).
- 60 Expungement is mandatory if a person satisfies all the requirements of Penal Code §1203.4a(a). If, at the time you petition the court for your expungement, you have recently been arrested or detained, but were released and not charged with a crime, then you will fail to satisfy the “lived an honest and upright life” and “obeyed the laws of the land” requirements of section 1203.4a(a). In that case, granting your expungement becomes discretionary. *See* Penal Code §1203.4a(b).
- 61 Penal Code §1203.4a(a).
- 62 Penal Code §1203.4a(a).
- 63 Expungement is mandatory if a person satisfies all the requirements of Penal Code §1203.4a(a). If, at the time you petition the court for your expungement, you have recently been arrested or detained, but were released and not charged with a crime, then you will fail to satisfy the “lived an honest and upright life” and “obeyed the laws of the land” requirements of section 1203.4a(a). In that case, granting your expungement becomes discretionary. *See* Penal Code §1203.4a(b).
- 64 Penal Code §1203.4a(d)(3), Vehicle Code §§42001(a)-(d).

