

Declaration Program FAQs

Where are the clients in the clean slate process?

1. Clients attended a sponsored Live Scan and Know Your Rights event in February or March. Those clients' RAP sheets were sent to TAP for analysis.
2. In April, pro bono volunteers analyzed the RAP sheets, determined remedies and prepared petitions.
3. Normally, the next step would have been a follow-up appointment with Legal Services of Northern California, our local legal services partner. These follow-up appointments did not happen.

Where we are now:

4. Once clients have completed their declaration with you, they will be contacted for a follow-up appointment with their local LSNC office. At these appointments, the clients will review and finalize their petitions, and get counseling to answer all their questions. These appointments will be done by Zoom if possible, or by phone if the client can't do an online appointment.
5. After the follow-up appointment, the petitions will be filed and served for the clients. They don't need to do it.
6. Once the petitions are filed, we don't know how long the courts will take to set up hearings or issue decisions. Some courts seem to be working at their regular pace, but most are very slow.

What are the clean slate remedies?

- **Expungement Remedies:** these statutes allow an applicant to apply for dismissal of the conviction. There are several types of expungement under California law.
 - [PC 1203.4](#) is for convictions with a sentence of probation. Probation must be completed before applying.
 - **Mandatory:** If the applicant completed their probation with no problem, they are entitled to a **mandatory expungement**. The judge does not have discretion to deny the petition, so there is no need for supporting evidence.
 - **Discretionary:** If the applicant had a probation violation, got another conviction, or otherwise ran into some difficulty during probation, they can still get expungement but the judge has discretion to deny the petition "in the interests of justice." In those cases, the client must provide supporting evidence, such as a declaration and letters of support.
 - [PC 1203.4a](#) is for with misdemeanor or infraction convictions with no probation granted, i.e. with a sentence of jail time or a fine.

- **Mandatory:** If the applicant completes one year from the date of conviction with no problem (“has lived an honest and upright life”), they are entitled to a **mandatory expungement**. The judge does not have discretion to deny the petition, so there is no need for supporting evidence.
 - **Discretionary:** If the applicant had another conviction, arrest leading to conviction, etc. during the year after conviction, they can still get expungement but the judge has discretion to deny the petition “in the interests of justice.” In those cases, the client must provide supporting evidence, such as a declaration and letters of support.
 - [PC 1203.41](#) is for a certain set of felony convictions, and only where the applicant was sentenced to “felony jail.” These cases are **always discretionary**. The judge may deny the petition “in the interests of justice” so every applicant must provide supporting evidence, such as a declaration and letters of support.
 - [PC 1203.42](#) is for a certain set of felony convictions, and only where the applicant was sentenced to prison. These cases are **always discretionary**. The judge may deny the petition “in the interests of justice” so every applicant must provide supporting evidence, such as a declaration and letters of support.
- **Reduction remedies:** these statutes allow the court to reduce a felony to a misdemeanor or reduce a misdemeanor to an infraction under certain circumstances.
 - [PC 17\(b\)](#): applies to a certain set felony convictions, only if the applicant was **not** sentenced to prison. Under 17(b), the felony is reduced to a misdemeanor. . These cases are **always discretionary**. The judge may deny the petition “in the interests of justice” so every applicant must provide supporting evidence, such as a declaration and letters of support.
 - [Prop 64](#): reduces certain marijuana convictions to misdemeanors. **Always mandatory**.
 - [Prop 47](#): reduces a small set of felonies to misdemeanors. **Always mandatory**.
- **Why is a reduction from a felony to a misdemeanor important for the client?**
 - Many employers will consider a job applicant who has misdemeanor convictions, but will reject an applicant with felony convictions. So even if expungement is denied, the client benefits from reducing the conviction.
 - For people who are convicted of Prop. 64 or Prop. 47 crimes and were sentenced to prison, the reduction may be the only avenue to get to expungement.
 - **Firearms rights:** Under California law, a felony conviction creates a lifetime ban on firearms possession. Expungement does **not** lift the ban.
 - Reduction to misdemeanor under PC 17(b) restores firearms rights.
 - Reduction to misdemeanor under Prop. 64 restores firearms rights.
 - Reduction to misdemeanor under Prop. 47 does **not** restore firearms rights.

Tell the client to ask about their firearms rights at their follow-up appointment with LSNC.

- **The client has a misdemeanor conviction but says that they are subject to a firearms ban. Is that right?**
 - Some misdemeanor convictions (mostly for domestic violence) carry a 10-year ban. Expungement does not lift this ban. The client should ask about firearms rights at their follow up appointment.

What does expungement do and not do?

- **Expungement does:**
 - Dismiss the conviction for most purposes.
 - The client can truthfully tell a private employer that they do not have a conviction.
 - The conviction should not appear on a background check for a private employer. If it does, the client can have it removed.
 - Licensing boards may not deny a license on the basis of an expunged conviction (new law).
- **Expungement does not:**
 - Restore firearms rights
 - Affect sex offender registration, if any
 - Affect immigration status. Other remedies may be available to assist non-citizens.

What if the client has no remedy for a particular conviction?

- They should still apply for all available remedies. The shorter their record of convictions is, the better off they will be.
- After a certain period of time, they may become eligible for a Certificate of Rehabilitation. A COR does not restore any rights, but it can be presented to private employers as proof of rehabilitation
- If a COR is granted, they can apply to the governor for a pardon.
- The client should discuss these options at the LSNC follow-up appointment.

Does the client's conviction make them ineligible to vote?

- **Almost never.**
- Who cannot vote:
 - People in state prison and people who are **currently** under supervised release from prison. There is an initiative on the ballot this fall to change this law. If it passes, everyone who is not currently incarcerated in state prison will be eligible to vote.

Can the client serve on a jury?

- **Many people can.**
- Who cannot serve:
 - People who are currently incarcerated
 - People who are currently on probation or post-release supervision for a felony conviction
 - People on the sex offender registry