

Expungement = Dismissal

AND

Certificate of Rehabilitation



Overview

■ Expungement

- Eligibility
- Requirements
- What it means to be granted an Expungement
- Early Termination of Probation
- Reducing a Felony to a Misdemeanor

■ Certificate of Rehabilitation



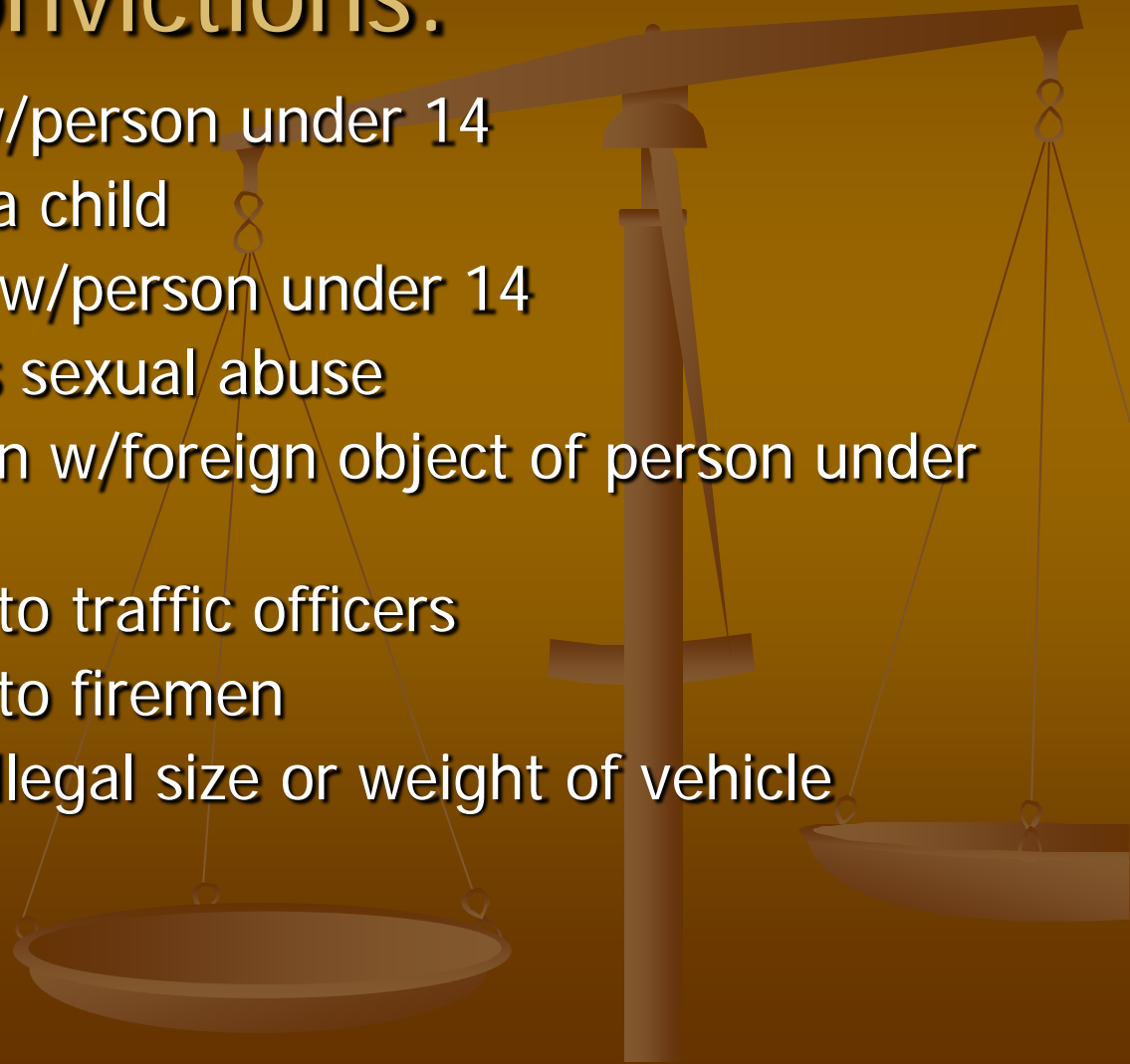
Who is eligible?

- Any adult who was granted probation on a misdemeanor or a felony case and *successfully completed* probation by...
 - Fulfilling all conditions *or*
 - Being discharged (not "terminated") before the end of the probationary period

Fulfilling - restitution, fines, fees. The Court cannot deny 1203.4 relief due to outstanding probation costs and/or attorney fees.

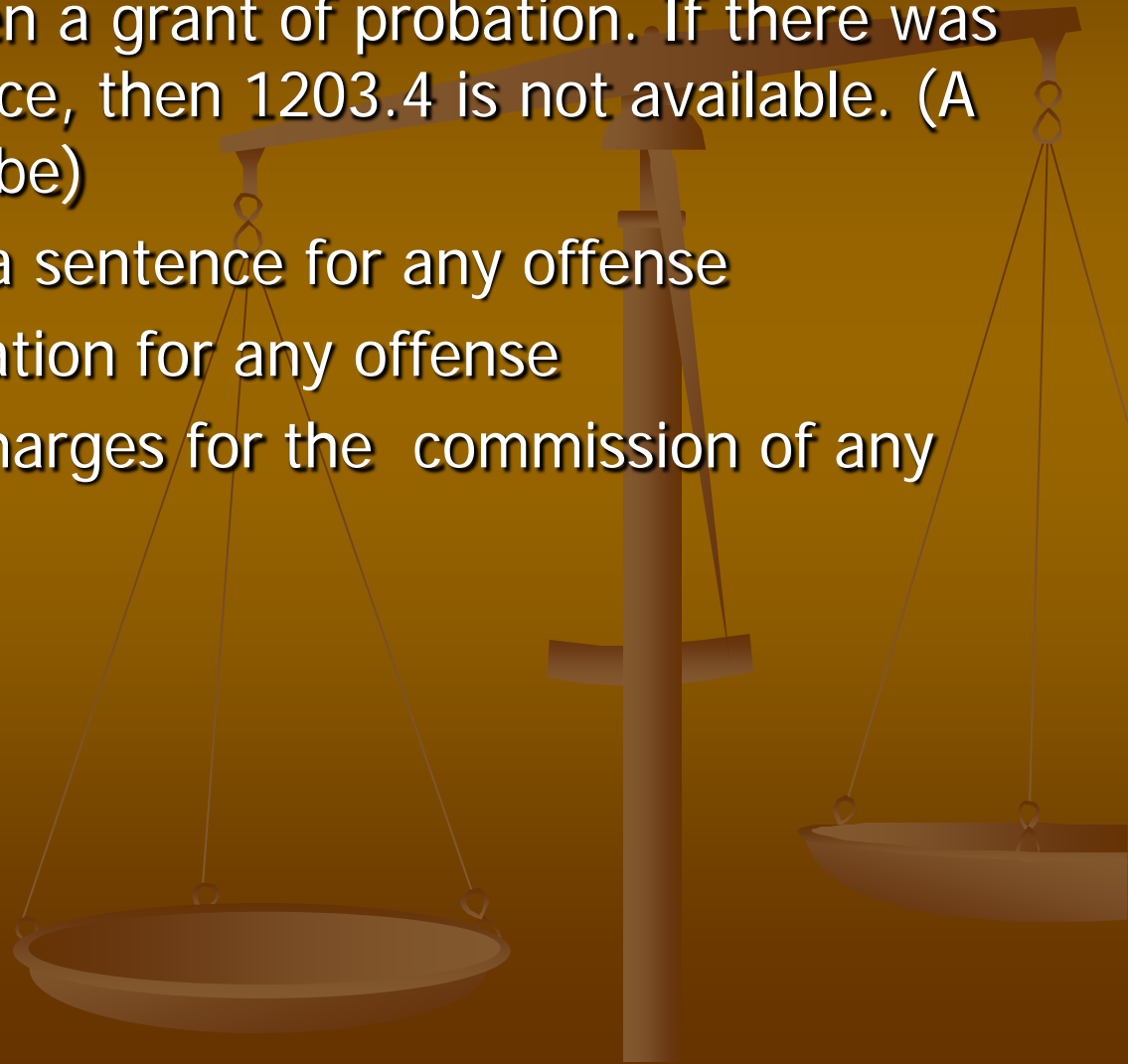
There is no Expungement relief available for the following convictions:

- PC286(c) – sodomy w/person under 14
- PC288 – lewd act on a child
- PC288a(c) – oral cop w/person under 14
- PC288.5 – continuous sexual abuse
- PC289(j) – penetration w/foreign object of person under 14
- VC2800 – Obedience to traffic officers
- VC2801 – Obedience to firemen
- VC2803 – Control of illegal size or weight of vehicle



Requirements

- There must have been a grant of probation. If there was a state prison sentence, then 1203.4 is not available. (A Cert of Rehab might be)
- Must not be serving a sentence for any offense
- Must not be on probation for any offense
- Must not be facing charges for the commission of any offense



What will Expungement do?

- Result in dismissal of the case
- If conviction was for a felony, it's the first step in obtaining a pardon
- Enhance an ex-felon's potential for becoming licensed by state boards".
 - *IMPORTANT NOTE:* must still disclose the conviction in response to any direct question on any employment questionnaire or application for public office, licensure by any state or local agency, or for contracting with the California State Lottery

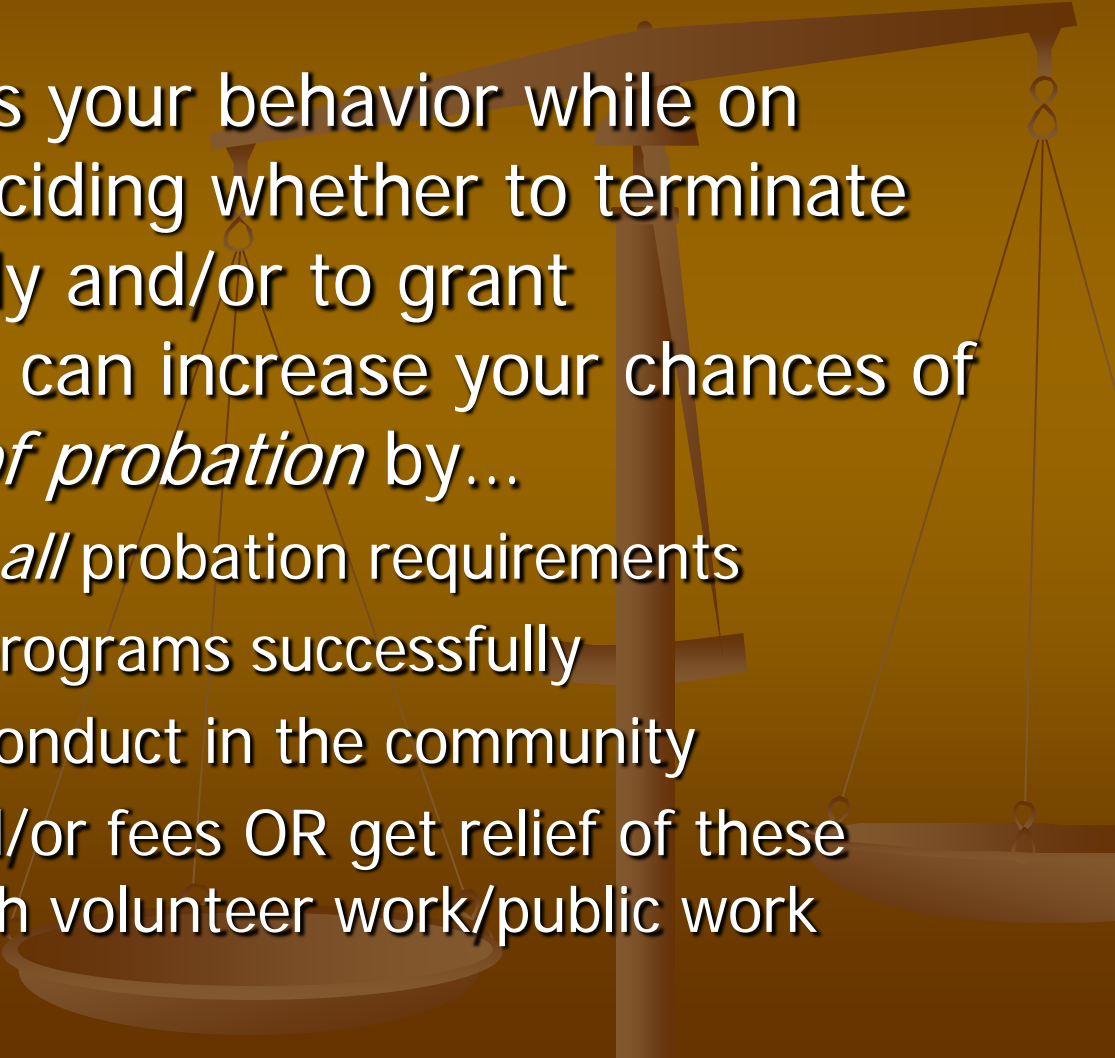
Expungement will NOT

- Remove the conviction from a "Rap Sheet"
 - (California DOJ and FBI will still show the conviction and dismissal)
 - Restore the right to possess a firearm
 - (Unless there is also a reduction to a misdemeanor non-violent offense)
 - Seal or remove the court case from public inspection
 - Prevent the conviction from being used as a "prior" to increase punishment for subsequent convictions
 - Prevent the conviction from being used for impeachment purposes if called as a witness
 - Prevent the conviction from being used by INS for removal or exclusion
 - It does not relieve PC 290 registrants from the duty to register.
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- A big problem is that employers have become much more sophisticated in running background checks on prospective employees. The mere fact the charge shows up on the computer as "Dismissed" does not deter them from obtaining the attendant court records, which are still public, and seeing that it was at one time a 'conviction'.
 - Expungement does not restore a person's privilege to drive – that has to be worked out with the DMV.

Discretionary v. Non-Discretionary

- If a defendant has successfully completed probation and paid all fines and fees then the court MUST grant the expungement
 - If there has been a probation violation but subsequent successful completion, then it is discretionary with the court
 - If a defendant has not completed the probationary term then he/she may apply for early termination pursuant to PC 1203.3 within the same motion as the expungement request
[These are special situations...]
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- ❖ There are some Vehicle Code sections that are always discretionary (per PC1203.4(c)(2) – VC 20001 (felony hit & run), VC 20002 (misd hit & run), VC 23152 (misd DUI), VC 23153 (felony DUI), PC191.5 – misdo manslaughter, VC 2800.2 (evading), and all the 14601 & 2 (driving on suspended licenses). So, if the DA points out or judge realizes this – Def must be prepared to show why he/she is deserving of the 1203.4 relief.

What You Should Do While On Probation

- The court considers your behavior while on probation when deciding whether to terminate your probation early and/or to grant expungement. You can increase your chances of *early termination of probation* by...
 - Complying with *all* probation requirements
 - Completing all programs successfully
 - Maintain good conduct in the community
 - Pay all fines and/or fees OR get relief of these fine/fees through volunteer work/public work service
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Early Termination of Probation

(PC 1203.3)

- A court may terminate probation and discharge the probationer before expiration of the 3 or 5 year term:

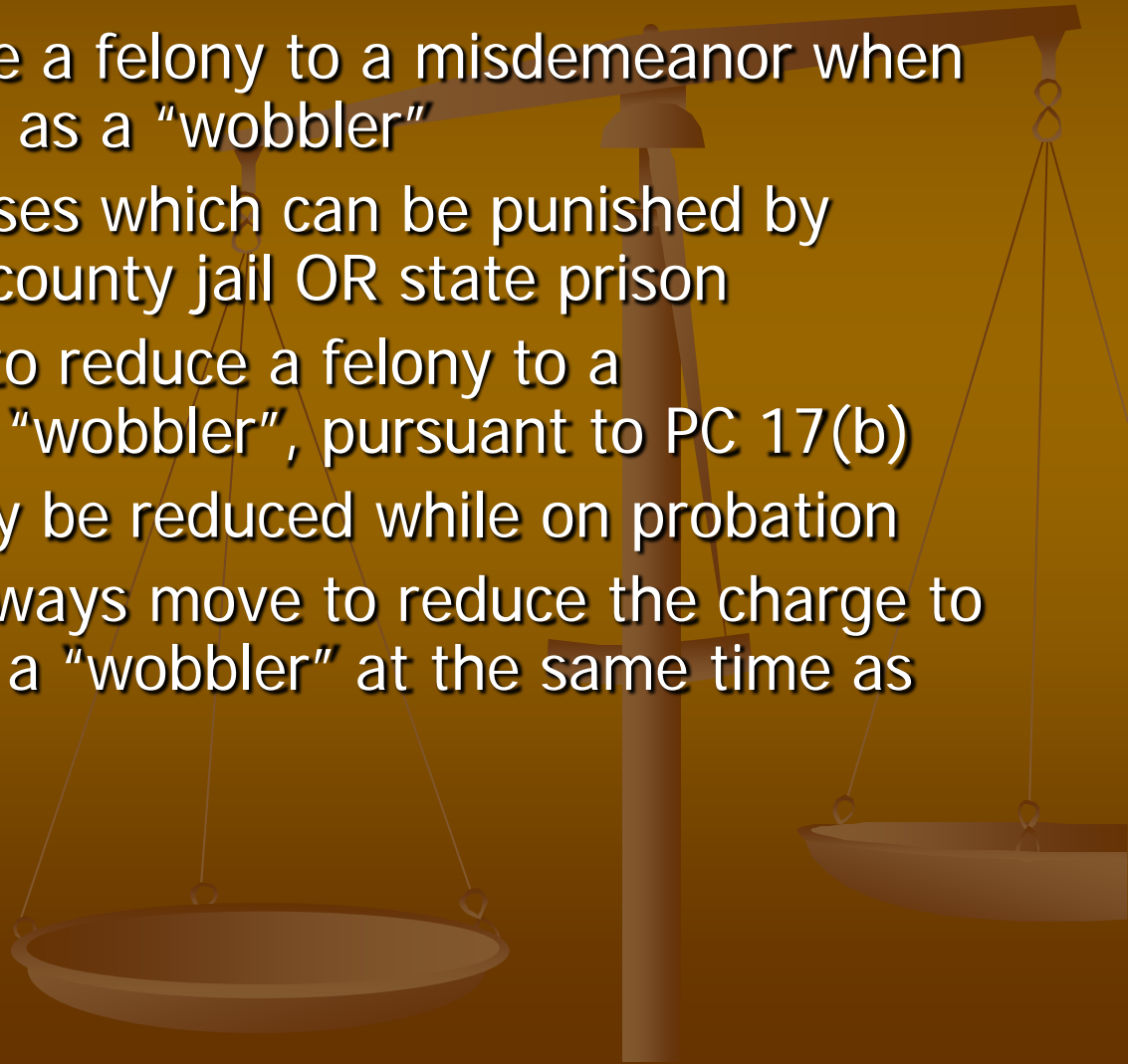
"when the ends of justice will be subserved and when the good conduct and reform of the probationer shall warrant"

*In other words, there must be a compelling reason why the court should terminate probation early, i.e. entering the military, current job offer, etc. Keep in mind all probation conditions must be satisfied; it helps if PO is in agreement; should be on probation for at least half the proscribed term; and a 'compelling' reason is NOT doing well on probation – it is expected/hoped that person will do well!

Reduction of a Felony to a Misdemeanor

“Wobblers” and PC 17(b)

- The court may reduce a felony to a misdemeanor when a offense is classified as a “wobbler”
- “Wobblers” are offenses which can be punished by imprisonment in the county jail OR state prison
- Court has *discretion* to reduce a felony to a misdemeanor if it’s a “wobbler”, pursuant to PC 17(b)
- Some “wobblers” may be reduced while on probation
- No matter what.... Always move to reduce the charge to a misdemeanor if it’s a “wobbler” at the same time as expungement



Non-Reduceable Charges

- PC 118 – Perjury
- PC 211 – Robbery
- PC 459 - Residential Burglary
 - PC459 - Commercial Burglary is reduceable
- PC 261 Rape
- HS 11350(a) – Poss. of Controlled Substance
- HS11351- Poss. or Purchase for Sale of Controlled Substance
- HS11358 – Cultivation of Marijuana
- HS11359 – Poss. of Marijuana for Sale
- HS1160(a) – Transportation, Distribution or Importation of Marijuana for Sale
- HS11378 – Possession for Sale of Controlled Substance
- HS11379 – Importation, Sale, Distribution Controlled Substance

Please Note: There are more non-reduceable charges, but the above charges are the most common.

Exception: Be sure to check the Change of Plea to see if there was a plea agreement made, perhaps to withdraw the plea to non-reduceable charge and plea to a charge that is reduceable.

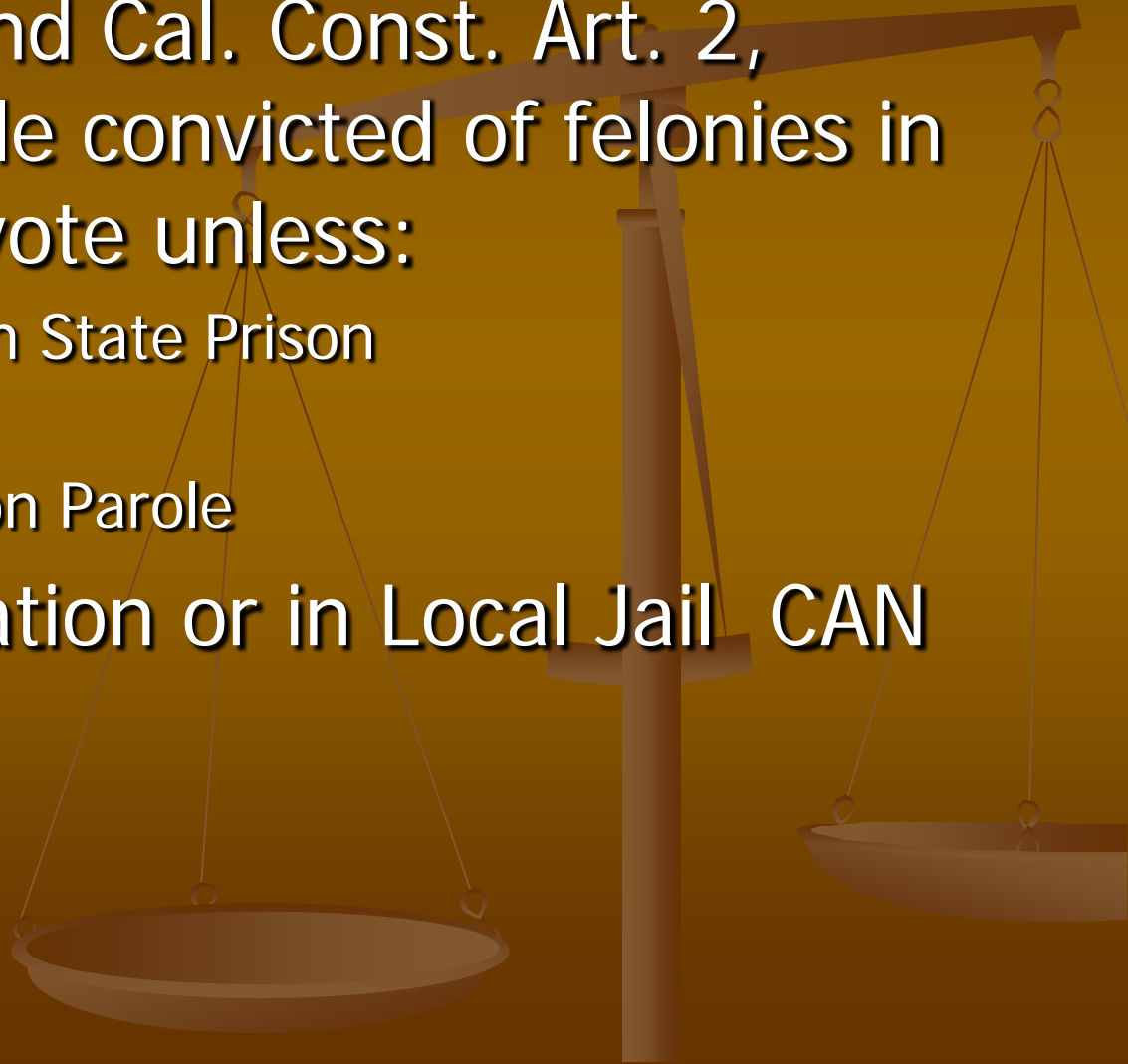
Certificate of Rehabilitation



- A Certificate of Rehabilitation is a court order declaring that a person convicted of a felony is now rehabilitated.
- Who is eligible?
 - A person convicted of a **felony**, was **sentenced to state prison**, and **released from custody on parole**.
 - Generally a person is eligible 7 years after he/she was released from custody.
- If the Certificate of Rehabilitation is granted it acts as an automatic application for a pardon.
 - If granted, the Certificate of Rehabilitation **does not** guarantee that a pardon will be granted

VOTING

- EC2150(a)(9) and Cal. Const. Art. 2, Section 4- People convicted of felonies in California CAN vote unless:
 - The person is in State Prison
OR
 - The person is on Parole
- People on Probation or in Local Jail CAN vote



Petition for Dismissal of Misdemeanor and Felony

You will need to fill out a SEPERATE Petition Form for each case

Insert your name, address, telephone number, and e-mail address

Insert full legal name

Insert your Date of Birth

Call the San Diego Superior Court Clerk at (619)450-5400 (when prompted press 4 then press 0) to find out the date of conviction

PETITIONER OR ATTORNEY FOR PETITIONER (Name, State Bar number, and address) _____

FOR COURT USE ONLY _____

TELEPHONE NO: _____ FAX NO. (Optional): _____

E-MAIL ADDRESS (Optional): _____

ATTORNEY FOR PETITIONER: _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☐ CENTRAL DIVISION, COUNTY COURTHOUSE 223 W. BROADWAY, SAN DIEGO, CA 92101

☐ EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92021

☐ NORTH COUNTY DIVISION, 225 E. SPRING DR., VISTA, CA 92081

☐ SOUTH COUNTY DIVISION, 800 RD AVE., CULLEY STA., CA 91910

PLAINTIFF _____

PEOPLE OF THE STATE OF CALIFORNIA

DEFENDANT _____

PETITION FOR DISMISSAL

SUPERIOR COURT CASE NUMBER _____

CITY/DISTRICT ATTORNEY NUMBER _____

Insert Case Number

Insert EXACT code section of your conviction

Insert Probation dates and Probation length

PETITION

Defendant hereby petitions for dismissal pursuant to Pen. Code § ☐ 1203.4 ☐ 1203.4a

STATEMENT OF FACTS

Defendant's date of birth: _____

Defendant was convicted on _____ of the following charges: _____

Probation was ☐ NOT granted ☐ granted by the court for a period of _____ year(s) and ended on _____

Defendant is entitled to the relief requested based on the following:

☐ Defendant has fulfilled the conditions of probation for the entire period of probation, OR ☐ Defendant has been granted early termination of probation.

AND of the following:

(1) Defendant is not now serving a sentence on any offense.

(2) Defendant is not on probation for any offense.

(3) Defendant is not now charged with committing any offense.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ at _____ (City) _____ (State) by _____ Petitioner's Attorney for Petitioner

Petition filed must be served on the prosecuting agency.

If the court grants the relief herein requested, defendant may have the right to petition for a Certificate of Rehabilitation and pardon pursuant to Pen. Code § 4852 et seq. An information packet (SDSC #PKT-016) regarding this may be obtained from the court or found at www.sdcourt.ca.gov

NOTICE OF HEARING

Defendant's petition will be heard on _____ at _____ in Dept. _____

Clerk of the Superior Court:

Date: _____ by _____ Deputy

Defendant by _____ or _____ to ☐ Probation - Community Care ☐ Defendant ☐ Probation ☐ Probate Services

SDSC 01/14/10 Pen. Code

PETITION FOR DISMISSAL

Pen. Code §§ 1203.4, 1203.4a

A Step-by-Step Process to Expunging Your Record

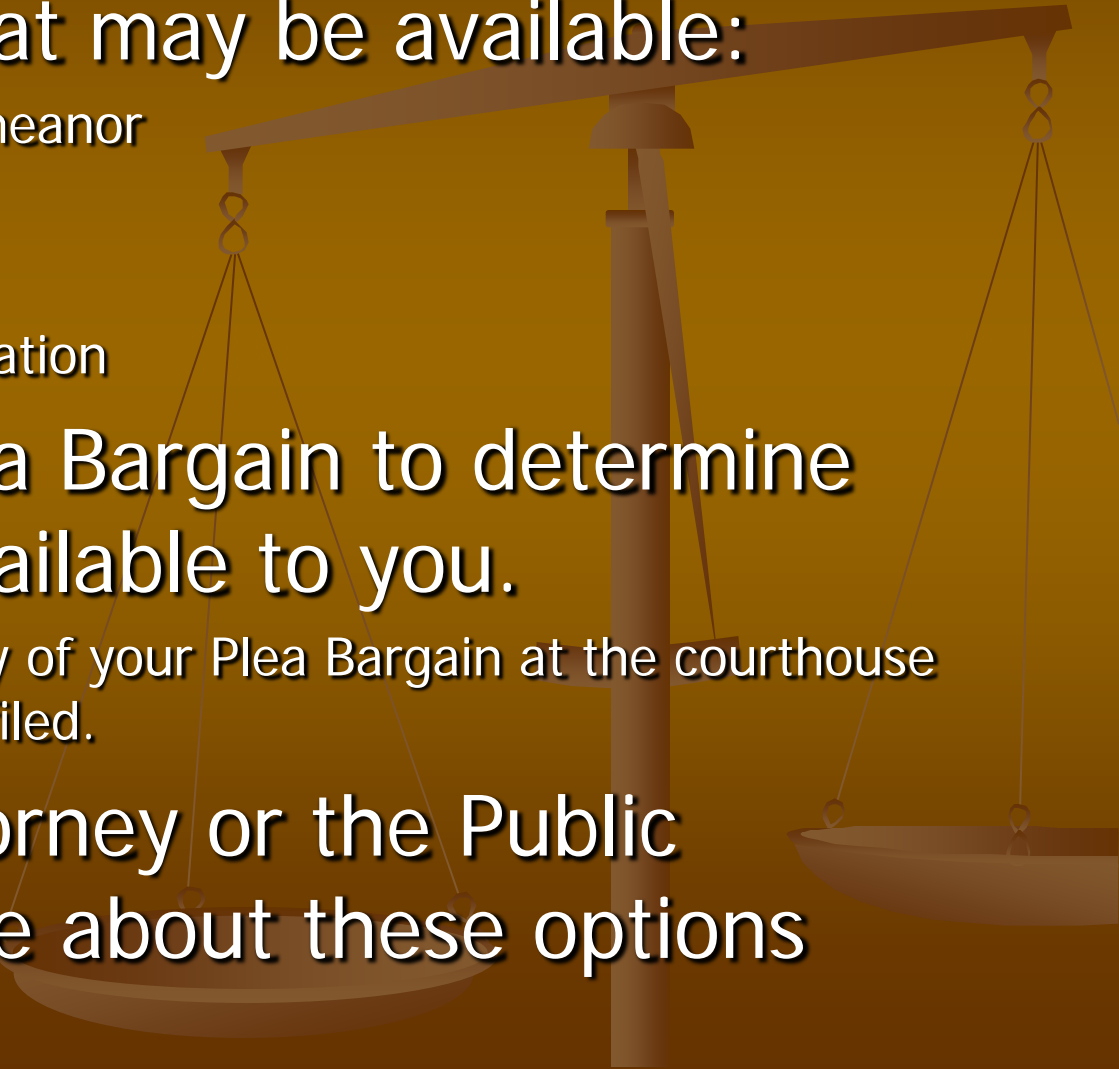


Step 1- Know Your Criminal History

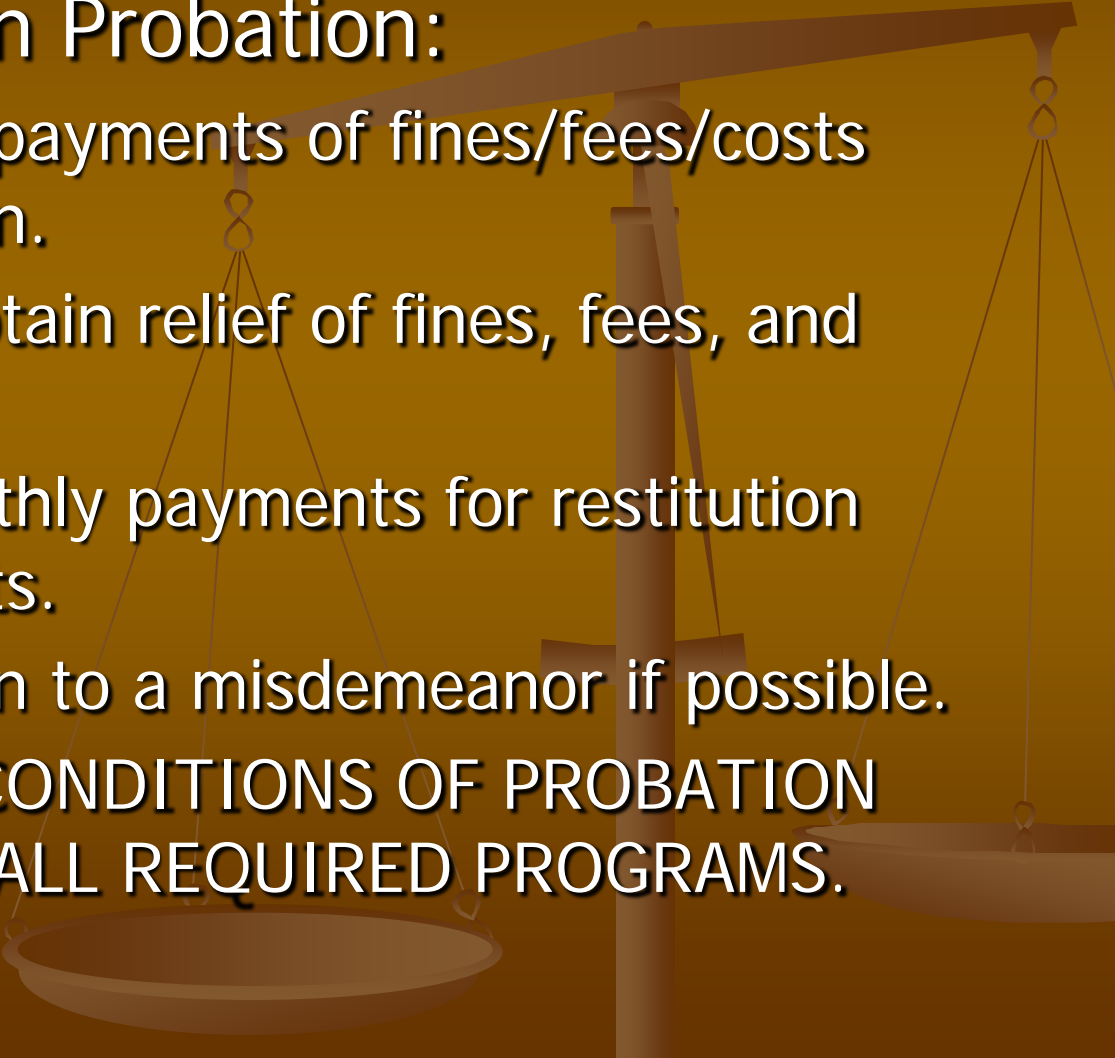
■ You may access your criminal history by:

- Reviewing your court papers
- Contacting your attorney or the Public Defender's Office
- Checking with the court where your court case was filed
 - You may either call the courthouse or go into the clerk's office at the courthouse
- OR you may get a more detailed Criminal History Report from the California Department of Justice. To obtain a Criminal History Report from the DOJ you must:
 - Print ***Application for Criminal History and Fee Waiver Form*** from the DOJ Website . <http://ag.ca.gov/fingerprints/security.php>
 - Get fingerprints digitally scanned. You may locate fingerprint scanning locations on-line at <http://ag.ca.gov/fingerprints/publications/contact.php> (this will cost money).
 - This process takes about 1-2 weeks. Please make sure all information is accurate.

Step 2- Understand What Relief is Available to YOU

- Type of relief that may be available:
 - Reduction to a Misdemeanor
 - Probation Modification
 - Expungement
 - Certificate of Rehabilitation
 - Review your Plea Bargain to determine what may be available to you.
 - You may obtain a copy of your Plea Bargain at the courthouse where your case was filed.
 - Talk to your attorney or the Public Defender's Office about these options
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Step 2- Continued

- If you are still on Probation:
 - Keep up with all payments of fines/fees/costs and/or Restitution.
 - Go to court to obtain relief of fines, fees, and costs.
 - Modify your monthly payments for restitution and/or other costs.
 - Reduce conviction to a misdemeanor if possible.
 - COMPLETE ALL CONDITIONS OF PROBATION AND COMPLETE ALL REQUIRED PROGRAMS.
- 

Step 3- File the Petition for Expungement

- 1st- Print Petition from website or get the Petition from courthouse.

http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/FORMS/CRIMINALFORMS/PKT027_RE_0.PDF

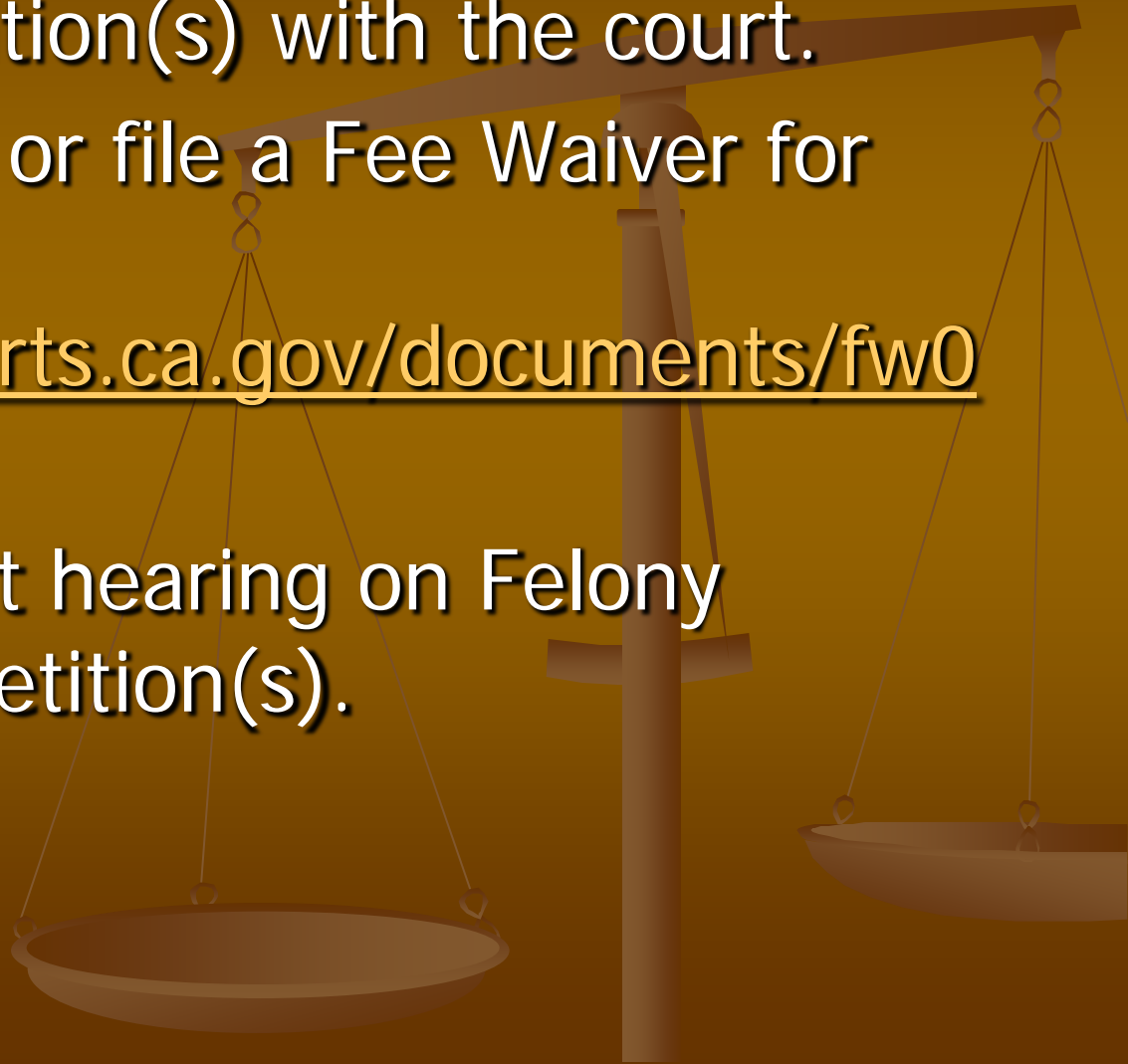
- 2nd- Obtain all case information in order to properly fill out form.
 - Date of conviction
 - Case Number
 - Penal Code Section for conviction
 - Probation Dates and Length of Probation
- 3rd- Fill out separate Petition for **EACH** case.
 - In some situations you may need to attach addition information or file a motion. You should speak to an attorney or the Public Defender's Office if that is the case.
 - It is helpful to attach a letter explaining your situation, the steps you have taken to improve your situation, and the improvements you have actually made.

Step 3- Continued

- 4th- File the petition(s) with the court.
- 5th -Pay the fee or file a Fee Waiver for each Petition.

<http://www.courts.ca.gov/documents/fw001.pdf>

- 6th- Attend court hearing on Felony Expungement Petition(s).

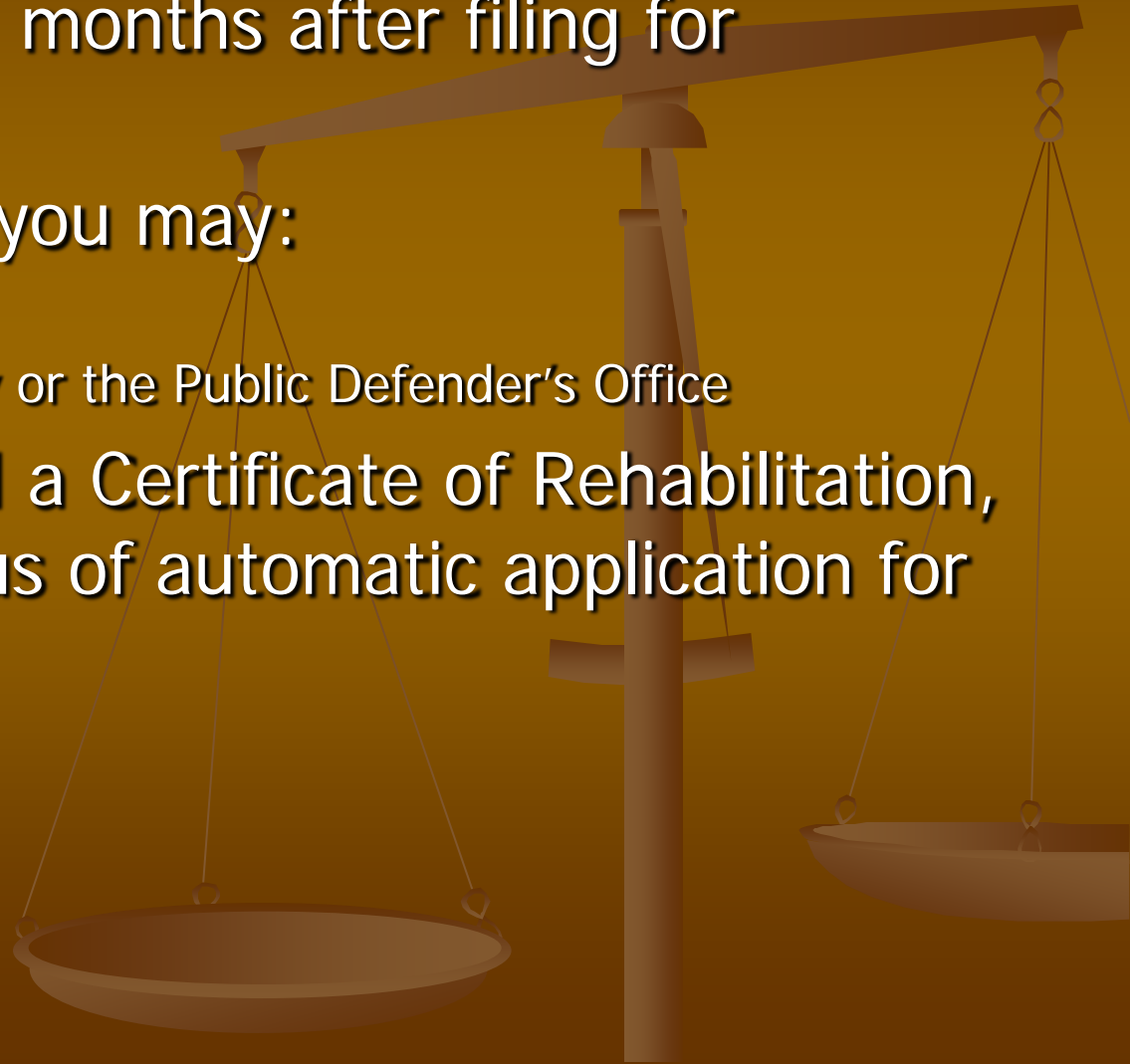


Step 4- File for Certificate of Rehabilitation

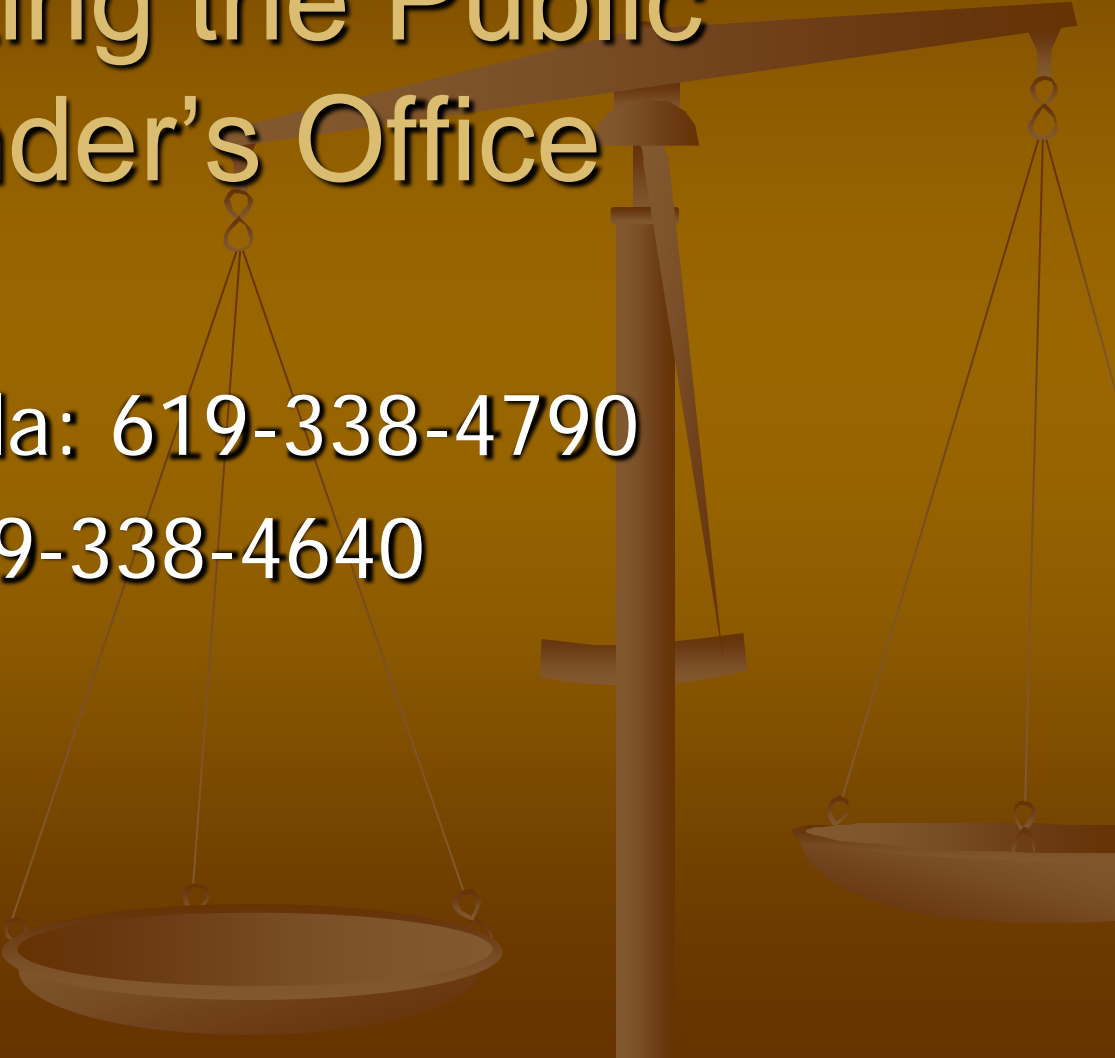
- If enough time has passed since your release from custody you may petition for Certificate of Rehabilitation (typically 7 years)
 - 1st- Print petition from court website or obtain the petition from the courthouse.
http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/FORMS/CRIMINALFORMS/PKT016_RE.PDF
 - 2nd- Fill out petition and deliver to District Attorney's Office.
 - 3rd- Fill out and submit the Investigation/Background form that is provided to you by the District Attorney's Office
 - 4th- ATTEND COURT HEARING

Step 5- Follow Up

- Follow-up about 3 months after filing for expungement.
- If you are denied you may:
 - Re-file
 - Contact your attorney or the Public Defender's Office
- If you are granted a Certificate of Rehabilitation, check on the status of automatic application for pardon.



Contacting the Public Defender's Office



- Mary Ann Knutilla: 619-338-4790
- Jane Gilbert: 619-338-4640

**NEVER, EVER, EVER
GIVE UP**

