ROADMAP TO REENTRY:

A California Legal Guide

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Published by Root & Rebound

ABOUT ROOT & REBOUND

Root & Rebound is a nonprofit reentry legal resource and advocacy center. Our mission is to increase access to justice and opportunity for people in reentry from prison and jail, and to educate and empower those who support them, fundamentally advancing and strengthening the reentry infrastructure across the state of California and beyond.

Root & Rebound works to accomplish its mission through three key programs: ***direct services*** via our weekly reentry legal hotline, prison letter-writing service, and community clinics; ***public education*** that includes 'know-your-rights' resources, toolkits, and legal trainings and workshops; and ***policy & systems reform*** to improve the laws and structures that affect people and communities directly impacted by incarceration.

Learn more about Root & Rebound online at rootandrebound.org.

DISCLAIMER

YOUR RESPONSIBILITY WHEN USING THIS GUIDE:

When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information because we know that people who are currently or formerly incarcerated and those who support them often have difficulty getting legal information. However, the laws change frequently and are subject to differing interpretations. Root & Rebound does NOT have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is ***your responsibility*** to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library.

The *Roadmap to Reentry* guide is not intending to give legal advice, but rather general legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation. Learn how to get follow-up support from Root & Rebound in using the guide under the **"NEED HELP?"** section below.

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SEND US FEEDBACK ON THE SURVEY!

On PG. 19 of the guide, Root & Rebound has included a survey that we kindly ask you to return to provide feedback to our team about the *Roadmap to Reentry* legal guide. This will help us improve future versions of the guide as well as trainings that we provide on this material.

NEED HELP?

Coming home from prison and jail, or after any interaction with the criminal justice system, you will likely face legal and practical barriers that can be confusing and complicated. Throughout this guide, we have tried to flag times to consult with your own lawyer. On PG. 1127 of the guide, we include a list of **legal aid organizations** across California that may be able to assist you directly (organized by legal issue and region of the state). You can also contact a local bar association or nonprofit agency that provides free services for help with your issue.

Root & Rebound offers follow-up support on the material in the *Roadmap to Reentry* guide:

- **Visit Root & Rebound's website** at www.rootandrebound.org/roadmap, which has tons of resources for people navigating legal barriers related to having a criminal record. There you will find a free PDF of the guide and many other toolkits, fact sheets, and educational resources.
- **Call Root & Rebound's weekly Reentry Legal Hotline** at (510) 279-4662 (we accept Collect calls), any **Friday** (except Holiday and office closures). We will do our best to walk you through information in the guide, provide you with referrals and additional resources, and/or advocate on your behalf if we have the capacity and expertise to assist you.
- **Find training videos and additional resources on Root & Rebound's Online Reentry Training Hub** at www.reentrytraininghub.org
- **Write Root & Rebound a confidential, legal letter** to the following address: Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612 (no walk-ins).
- **Attend one of Root & Rebound's community clinics, trainings or workhops:** You can find our events calendar at www.rootandrebound.org.

ABOUT ROOT & REBOUND'S PROGRAMS AND SERVICES

Root & Rebound is a nonprofit **reentry legal resource and advocacy center**. Our mission is to increase access to justice and opportunity for people in reentry from prison and jail and people with records, and to educate and empower those who support them, fundamentally advancing and strengthening the reentry infrastructure across the state of California and beyond. We offer **statewide** resources and programs, which are summarized below. Please visit our website at rootandrebound.org, or call us at 510-279-4662, to learn more.

OUR PROGRAMS & SERVICES

PUBLIC EDUCATION: Through our **publications**—including the *Roadmap to Reentry* legal guide, topic-specific toolkits, and fact sheets—as well as through both **in-person and online trainings** (*see* reentrytraininghub.org), Root & Rebound works to expand the knowledge of community-based organizations, government agencies, and people with conviction histories across California and beyond. This education focuses on improving "reentry readiness"—so that people are prepared to navigate hurdles because of their record to employment, housing, financial stability, family reunification, education, and more.

DIRECT SERVICES: Root & Rebound runs the only statewide **Reentry Legal Hotline** in the country where currently and formerly incarcerated people and people with records, their family and loved ones, and service providers can call and speak to a reentry attorney *for free*. Call the Hotline any Friday, 9 a.m. - 5 p.m. PST, at phone number 510-279-4662. Please note: If you are currently incarcerated and do not have phone access, you can write us **confidential, legal mail** at: Root & Rebound, 1730 Franklin St., Suite 300, Oakland, CA 94612 (ATTN: Katherine Katcher, SBN 295448). We also offer **in-person legal clinics** across California, where people with records can sign up for a one-on-one appointment with a member of our legal team. We focus our clinics on issues and regions that are the most underserved, including in rural and tribal communities, and focusing on issues like family law, parole and probation, record-cleaning, and other hard-to-access legal services for people with past justice system involvement.

POLICY & SYSTEMS REFORM: Our policy advocacy and systems reform work encourages federal, state, and local governments and agencies to create **smarter reentry policies** that promote the well-being of individuals and their communities. We communicate our learnings on the ground to local, state, and federal government, and advocacy groups.

WHAT IS THE *ROADMAP TO REENTRY* GUIDE?

The ***Roadmap to Reentry Legal Guide*** is an encyclopedic resource for navigating the legal impact of a criminal record on getting ID, voting rights, parole and probation, housing, public benefits, employment, court-ordered debt, family and children, education, record-cleaning, tribal issues, immigration status, and more. For case-specific questions, start with the **Table of Contents** in any one of the 11 chapters that most closely relates to your question. Access our searchable website of the *Roadmap to Reentry* at roadmap.rootandrebound.org. *For a paper copy of the guidebook, the cost is as follows:*

- **If you are currently incarcerated:**
  - **FREE to check out from your institution's library.** If there is no copy in your institution's library, call us any Friday at 501-279-4662 from 9 a.m. – 5 p.m. PST (we accept collect calls); write us at Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612; or ask someone to email us at roadmap@rootandrebound.org on your behalf, and we will be sure to send on to the institution.
  - **If you want your own copy of the book,** the cost is **$20**. Someone can order this on your behalf by calling Root & Rebound at 510-279-4662 or ordering online at rootandrebound.org/roadmap.
- **For everyone else:**
  - **FREE to view or download a PDF** of the guide at rootandrebound.org/roadmap.
  - **FREE to access the searchable website** of the guide at roadmap.rootandrebound.org.
  - **If you want your own copy of the book,** the cost is $39. Order by phone at 510-279-4662 or online at rootandrebound.org/roadmap.

WHAT'S NEW IN THE 2018 *ROADMAP TO REENTRY* GUIDE?

- A new chapter and expanded information about the rights of immigrants/noncitizens with criminal records.
- A new chapter and expanded information about the rights of tribal members with criminal records, including tribal enrollment and identification; tribal benefits; special family law issues affecting Indian children, parents and caregivers;
- Information on recent changes in law, including information about: tiered sex offender registries in California; elder and youth parole laws; gun enhancements; the new Fair Chance Act and changes in California's "Ban the Box" employment laws; and new arrest-sealing procedures for record-cleaning.

WHAT OTHER RESOURCES & TOOLKITS DOES ROOT & REBOUND OFFER?

In addition to the *Roadmap to Reentry* legal guide, Root & Rebound has developed new toolkits and resources, including the following:

- ***Reentry Planning Toolkits:*** These are concise reentry planning guides tailored to the different audiences that rely on them. They contain key know-your-rights information, planning tools, and checklists. Our cost structure is as follows:
  - **1) *Reentry Planning Toolkit for People in Reentry & People with Records*:** FREE. By contacting Root & Rebound requesting reentry legal resources, currently incarcerated people and people with prior justice system involvement will be offered this Reentry Planning Toolkit for free. (Donations are always welcome; no amount is too small.)
  - **2) *Reentry Planning Toolkit for Family Members with a Loved One in Reentry*:** FREE. By contacting Root & Rebound, family members with a loved one in reentry will be offered this Reentry Planning Toolkit for free. (Donations encouraged, no amount is too small.)
  - **3) *Reentry Planning Toolkit for Service Providers Supporting People in Reentry*:** Cost: $10 each.
- ***"My Education, My Freedom": A Toolkit for Formerly Incarcerated and System-Impacted Students Pursuing Education in California:*** FREE to individuals who are currently and actively seeking to go back to school/enroll in college; $10 for all others.
- ***California Employers' Fair Chance Hiring Toolkit:*** This Toolkit is ideal for employers and workforce development professionals to learn about the benefits, best practices, and legal requirements around hiring people with conviction histories. Cost: $10 each.
- ***Online Reentry Training Hub (www.reentrytraininghub.org):*** In 2016, Root & Rebound launched the first online Reentry Legal Training Hub in the United States. Now you can "attend" one of our educational trainings with the click of a button! Visit the Hub from a computer, smartphone, or tablet, and you'll find complete on-demand, interactive training videos, worksheets, tools, and resources about reentry and navigating barriers with a record. Check back often, because we frequently update our Hub with the latest developments, legislation, cases, and policies related to reentry and criminal records!

Learn more and order our resources online at rootandrebound.org/roadmap. Please contact us with any questions by calling us at 510-279-4662, writing us at Root & Rebound, 1730 Franklin St., Suite 300, Oakland, CA 94612, or sending us an email at roadmap@rootandrebound.org.

ACKNOWLEDGEMENTS

There are many people whose work was instrumental in making this guide come to life.

We would like to thank Root & Rebound's dedicated and incredible staff: Thomas Alexander, Briana Barnes, Carmen Garcia, Lizzy Gilbert, Adriana Hazou, Nicole Jeong, Katherine Katcher, Aiasha Khalid, Cal Smith, K.C. Taylor, and Sonja Tonnesen.

We would like to thank Root & Rebound's team of brilliant contract attorneys and law clerks: Rashida Harmon, Margaret Laffan, Faride Perez-Aucar, and Deric Washington.

We would like to thank Root & Rebound's brilliant team of volunteers, fellows, law clerks, and former staff: Abbe Anderson, Deborah Awolope, Amanda Austin, Missy Austin, Madeline Bailey, Tara Bell, Hunter Bermudez, Elisa Bond, Hunter Bryce, Olivia Cahue-Diaz, Nicole Canonigo, James Carlin, Jennie Chenkin, Samantha Cook, Ryan Costello, Elliott Covert, Wesley Deimling, David Dexter, Jessica Dexter, Camille Dodson, Kristin D'Souza, James Dugan, Bruna Emmerich Aievera, Adam Gunther, Kenetta Hampton, Sophie Hart, Elizabeth Hecht, Annemarie Heineman, Pedro Hernandez, Rachel Hoerger, Sophia Hill, Buffy Hutchison, Emily Juneau, Margaret Katcher, Navneet Kaur, Abigail Khodayari, Kony Kim, Pascal Krummenacher, Kalina Kwong, Leslee Larner, Sean Larner, Dashia Lewis, Midori Li, Asia Liago, Vanessa Lim, Beile Lindner, Emily MacLeod, Rebecca Maxwell, Morgan McGinnis, Laura Merchant, Elie Miller, Airto Morales, Brian Moon, Eli Moreh, Marvin Mutch, Zachary Newman, Justin Nguyen, Brenda Orellana, Tunisia Owens, Cara Palanca, Erica Paul, Michelle Peralta, Chandra Peterson, Dana Pisacane, Jamie Popper, Kinga Rorat, Josue Ruiz, Kaly Rule, Al Sasser, Claire Seaver, Mathilde Semmes, Kiran Sidhu, Claritha Sims, Harry Stanwyck, Keerthi Sundaramurthy, Dominik Taylor, Paola Tobias, Melinda Valerio, Erik Velasco, Mark Walsh, Mila Veber, Christopher Wendt, Sofie Werthan, Troy Williams, Kaitlyn Willison, Amanda Woog, Sara Worth, and Dane Worthington.

We would like to give a special thank you to our amazing team of expert readers and content contributors, who lent their years of experience, expertise, and resources to improve the content of this guide:

We would like to thank expert readers: Maria "Alex" Alexander, Jessica Bartholow, Michael Bays, Jason Bell, Devin Bissman, Katherine Brady, Rose Cahn, Maurice Emsellem, Dorian Esters, Sr., Douglas Feinberg, Liz Gomez, Eliza Hersh, Tom Hoffman, Deep Jodhka, Kathy Kahn, Hannah Labaree, Andrew Lah, Samuel Lewis, Tom Hoffman, Ernest Melendrez, Airto Morales, Olinda Moyd, Stephanie Nishio, Adam Poe, Kellen Russoniello, Brittany Stringfellow-Otey, Deborah Thrope, David Wasserman, Mary Weaver, Steve Weiss, and Angela Wilson.

We would also like to thank those who helped us connect with experts in their respective fields: Sarah Palmer and Shirley Sanematsu.

Further thanks to the organizations whose resources we built upon and adapted to develop this content: ACLU of Northern California, Berkeley Initiative for Mindfulness in Law, Center for Community Alternatives, Center for Young Women's Development, East Bay Children's Law Offices, East Bay Community Law Center, Immigrant Legal Resource Center, Judicial Council of California, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Aid Society - Employment Law Center, Legal Services for Prisoners with Children, Legal Services of Northern California, National Housing Law Project, National Employment Law Project, Prison Law Office, The Public Defender Service for the District of Columbia, Rubicon Programs, and UnCommon Law.

A very special thank you to volunteer software engineer Ben Golder who turned this guide into a searchable website at: roadmap.rootandrebound.org

Cover Art & Design by Anuradha Murthy; Layout Design by Mila Veber

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A NOTE ABOUT THE ICONS: The icons shown next to each chapter title here will appear throughout the guide in the upper-outside corner of every page to remind you which chapter you are reading.

Foreword by Carmen Garcia

RESILIENCY MESSAGE

Someone once said that *how you climb a mountain is more important than reaching the top*. I was in the San Mateo County Jail waiting to be sentenced to Federal Prison, when I first heard this quote. I remember saying time and time again how I was going to be different the next time. So many promises were made during those lonely moments that I never thought of how I was going to keep those promises if I wasn't doing anything different. Life, I thought, doesn't have to be the same for me. Blind faith, they told me, is what you need in order to trust those who are trying to teach you a different way to live.

Unfortunately, in jails and in prisons, if you want rehabilitation, you have to seek it out. The same is true when you get out. The difference when you are out is that you have the power to choose when, how, and where, and although at times you might get discouraged because it seems overwhelming, don't give up. Remember, nobody said the climb was going to be easy.

Now that we are free to choose, let's take advantage of the opportunities that are in front of us. Today, we no longer have to abide by any prison codes or rules, and if you keep doing the right thing, then the climb won't seem so lonely and treacherous, and the rewards will be enormous, as they have been for me.

Keep in mind that the climb to anything, whether it's a mountain, a hill or a ladder, has to be taken carefully, cautiously and with an open mind. Each step we take has to be carefully guided and directed towards the direction that will cost us the least pain and regret. Even our old friends or acquaintances, although well intended, can bring us more harm than good, so carefully choose who you include in your circle. Cautiously approach any given situation, and when in doubt... don't. Luckily, we don't exist alone in the world, and regardless of who you are, you need someone. Collectively, rather than individually, we can accomplish more. So, have an open mind and pay attention to the message more than the messenger.

Jails and prisons don't have to be what defines us, or what breaks us; we choose who, what and where. Somehow, reaching the top is no longer that important, because the journey getting there is what will be embraced.

Peace,

Carmen

MINDFULNESS IN DAILY LIFE

5 PRACTICES TO DEVELOP CALM & CLARITY

As we all know, the process of reentry is incredibly stressful. Taking time to breathe deeply, to be aware of and to care for your body and your emotions, can be a big help. Mindfulness can help you to stay focused, calm, and balanced. 'Mindfulness' is just a fancy word for being aware of our thoughts, feelings, and physical sensations. Studies have shown that mindfulness can help reduce stress and improve our health. The practices and resources below may help you stay balanced and optimistic during what can be a challenging process of reentry. We hope these tools are helpful to you on your journey through reentry and throughout your life.[1]

1. MINDFUL WALKING
   As you walk from your car or train to an office, on your way to a meeting or job interview, try to be aware of your breath and body. Notice the rise and fall of your chest as you inhale and exhale, the feeling of your feet touching the ground, the sensation of the sun or air on your skin. Try to leave early enough for your appointments so that your walk can be slow and unhurried. This simple practice can introduce greater calm into your day, and provide a few moments of relaxation before a potentially stressful situation.

2. SITTING MEDITATION
   Simply sitting quietly, with eyes open or closed, following one's breath, can be a powerful way to calm the mind and relax the body. Many people find this practice challenging at first, but it becomes easier over time and provides tremendous benefits for body and mind. Start with just 5 minutes per day using one of the guided recordings listed below, or visit an introductory class at a local meditation center.

3. YOGA
   Yoga is another powerful mindfulness practice that can help with reducing stress and improving physical and mental health. Local yoga studios often offer donation-based or community classes.

4. MINDFUL EATING
   Mindful eating invites us to fully experience and enjoy our food. Whether eating alone or with others, we can make meals a peaceful time to refocus and enjoy life — by taking time to see, smell, taste, and appreciate our food, and by taking a break from TV, phones and work.

5. 4-7-8 BREATHING
   Dr. Andrew Weil's technique of deep breathing is a great way to calm the nervous system throughout the day. See www.drweil.com for details. The basic instruction is to inhale for four counts ("1, 2, 3, 4…"), hold for seven counts, and then slowly exhale for eight counts. Try doing five rounds of this breathing before bed and see how you feel.

ADDITIONAL MEDITATION RESOURCES:

- Guided meditation recordings at UCLA's Mindful Awareness Research Center: http://marc.ucla.edu/body.cfm?id=22
- East Bay Meditation Center: A meditation center in Oakland that provides numerous free and low-cost mindfulness programs. www.eastbaymeditation.org
- Yoga to the People: Athletic, donation-based yoga with locations in Berkeley and San Francisco. www.yogatothepeople.com
- International Vipassana Society: Donation-based meditation retreats offered at centers in Northern and Southern California. www.dhamma.org

[1] Thank you to Charles Halpern and Dan Carlin of the University of California's Berkeley Initiative for Mindfulness in the Law (BMIL) for providing these mindfulness techniques.

CHAPTER SNAPSHOTS OF *ROADMAP TO REENTRY*

CHAPTER 1: THE BUILDING BLOCKS OF REENTRY: Getting ID & Other Key Documents, Voting & Civic Participation – PG. 22

KEY TOPICS:

- What identification (ID) documents exist, and why they are important.
- An overview of key types of ID: birth certificates, Social Security numbers (SSN) and cards, California state ID cards & California Driver licenses, U.S. Passports, tribal ID cards, library cards, voter registration, and Selective Service registration.
- Which forms of ID are most important.
- When and how to get each ID document, and which documents to get first.
- How to get certain documents while incarcerated vs. after release.
- Some options for getting ID for undocumented people.
- Voting rights for people with criminal records, and how to register to vote.
- Selective Service registration requirements and how to register.

WHY IT'S IMPORTANT:

- ID is necessary to access public benefits and services; to apply for housing and employment; and to enroll in school and other programs.
- Basic ID is often necessary to apply for other indentification documents.
- Voting is a civil right to choose the government officials and policies that impact society. *There are many myths about voting eligibility — and the law changed in 2015 in California!*

COMMON BARRIERS TO REENTRY:

- People in reentry have only a prison/jail ID card, which is of limited use in reentry.
- People in reentry do not have the documents they need to enroll in programs and services they would otherwise qualify for.
- People with records have Driver License holds, suspensions, and revocations, often due to court-ordered debts that they don't have the financial means to pay back.
- Certain convictions restrict a person's access to a U.S. passport.
- Because of their prisoner or parolee status, people are disenfranchised and lose the right to vote.
- People who do have the legal right to vote are wrongly informed or wrongly identified as having lost the right to vote — missing out on the chance to make their political voices heard.
- Men who were required to register with the Selective Service between ages 18 and 26 were unable to do so because they were incarcerated, and as a result, they are barred from receiving federal financial aid until they prove the reason why they could not register.

CHAPTER 2: PAROLE & PROBATION – PG. 125

KEY TOPICS:

- The many different types of supervision in California, which include
    - *STATE FORMS OF SUPERVISION*: **state parole**; **county-level probation** (formal and informal); and the new AB 109 forms of supervision including **Mandatory Supervision** and **Post-Release Community Supervision (PRCS)**.
    - *FEDERAL FORMS OF SUPERVISION*: **federal probation**, **supervised release**, and **federal parole**.
- Step-by-step instructions on what to do when a person is first released from prison or jail.
- The length of supervision terms as required by law, including how the length of time on supervision is calculated, and how to get off of supervision early if possible.
- The "conditions" (rules) of supervision, including **general conditions** that apply to all people on that type of supervision, and **special or discretionary conditions** that apply to only certain people.
- How to challenge special conditions (rules) of supervision.
- How to transfer someone's supervision to another location — a different county, district, or state.
- For people with disabilities, the right to have reasonable accommodations, and the types of accommodations a person can ask for from his or her supervising officer.
- A person's rights during violation and revocation proceedings, and how the revocation process works.

WHY IT'S IMPORTANT:

- Supervision affects every aspect of a person's life—*housing, employment requirements, family reunification, schooling, civil rights, etc.*

- People need to understand their rules of supervision to succeed in reentry, and to avoid new legal issues or re-incarceration.

COMMON BARRIERS TO REENTRY:

- Being on community supervision can create barriers in every aspect of a person's life. For example, supervision rules can affect:
  - *Housing:* Where a person can (or can't) live and with whom.
  - *Employment:* Work opportunities, requirements and restrictions.
  - *Family:* Legal barriers to family reunification.
  - *Education:* Restrictions and scheduling conflicts.
  - *Basic liberties:* Some (not all) constitutional rights and freedoms may be taken away — like travel restrictions, and being subject to searches and seizures at any time.

CHAPTER 3: HOUSING – PG. 332

KEY TOPICS:

- Different types of housing options and tips for the housing search.
- Short-term vs. long-term planning for where someone can live in reentry.
- Housing application process, including bans or restrictions related to past convictions.
- What criminal records and other records can lawfully be accessed by government-assisted housing providers (including Public Housing Authorities, or PHAs) vs. by private landlords.
- Joining family and friends in housing — the differing rules of government-assisted housing providers (including PHAs) vs. private landlords.
- Challenging illegal housing denials by both government-assisted housing providers (including PHAs) and private landlords.
- Maintaining (keeping) housing.

WHY IT'S IMPORTANT:

- Housing is the first thing people need when leaving prison or jail.
- Shelter is a basic human need.
- Having approved housing plans is often a requirement of someone's conditions (rules) of supervision.
- Many housing-related restrictions and barriers exist.
- Rates of homelessness are extremely high among people in reentry.

COMMON BARRIERS TO REENTRY:

- Parole / probation housing requirements and restrictions can include: residential restrictions, a requirement to live in transitional housing, etc.
- *Discrimination in private housing:* Private landlords are hesitant to rent to people with criminal records, and may engage in discrimination, sometimes legally and sometimes in violation of fair housing law.
- *Discrimination in public/government-assisted housing:* Criminal record restrictions exist; some are legal, but others may be overbroad and violate fair housing law.
- Housing-related barriers to family reunification that prevent people from living with family or friends – these exist in both private and government-assisted housing.

CHAPTER 4: PUBLIC BENEFITS – PG. 440

KEY TOPICS:

- Key types of public benefits programs, including: cash assistance; food benefits; health care; work services; Social Security benefits; veterans' benefits; and cell phone benefits.
- Eligibility and enrollment rules for each program, including restrictions based on criminal records.
- What happens to your benefits during incarceration, and how to restart benefits after release.
- Applying for and keeping benefits — how to apply for each type of benefit; and how to deal with denials, disqualifications, or terminations of benefits.
- Resources and referrals.

WHY IT'S IMPORTANT:

- Rates of poverty are high among people in reentry as well as their families, making public benefits programs an essential safety net.
- Many people in reentry have health issues, disabilities, and other special needs that are met through public benefits programs.

- Most benefits in California do not disqualify people based on criminal records, yet myths persist and many people do not have accurate information about the rules and mistakenly think they are not eligible.

COMMON BARRIERS TO REENTRY:

- Some public benefits programs have restrictions and bans against people with certain criminal convictions (but most do not).
- People may be disqualified from certain benefits based on other items in their history, such as: *open felony warrants*; ***probation or parole violations***; or ***Intentional Program Violations*** (non-criminal violations of program rules).
- Many people do not get benefits that they can and should be getting, simply because of myths and misinformation. Some people may not know the exact program rules, especially new rules that have removed old drug felon bans. Even county welfare agency workers may not apply the correct rules.

CHAPTER 5: EMPLOYMENT – PG. 557

KEY TOPICS:

- Job readiness, applications, and interviewing well—*presenting your best self*.
- Hiring incentives for employers.
- People's rights with respect to background checks, including the following topics:
  - *Job seekers' rights.*
  - *Whether and when different types of employers can ask about criminal records.*
  - *Private, commercial background checks vs. "in-house" background checks.*
  - *Errors in background checks.*
- Discrimination based on criminal record—*legal and illegal forms of discrimination*, and *how to file a complaint*.
- Legal restrictions in employment and professional licensing.
- Alternatives to traditional employment, including starting a business and worker-owned cooperatives.
- For people with disabilities, the right to ask for reasonable accommodations from employers.

WHY IT'S IMPORTANT:

- Having or seeking employment is often a requirement of someone's supervision conditions.
- Employment is critical for many as a source of income—which impacts *someone's ability to afford housing; to pay for child care; to pay child support or other court-ordered debt; to go back to school; etc.*
- Employment is a key to self-efficacy, and contributing to society.
- Employment can help make a person's life more stable by providing structure and routine.
- In some cases, stable employment might be required to reconnect with children in reentry.

COMMON BARRIERS TO REENTRY:

- Background checks:
  - Criminal history information is readily available from many sources.
  - Background checks commonly contain errors and illegally reported information.
  - Employers often use criminal history information in illegal ways.
- Statutory employment and licensing restrictions:
  - Job-specific prohibitions may prevent people with records from holding some jobs.
  - Professional/occupational licensing rules, regulations, and restrictions may prevent people with records from getting certain professional/occupational licenses, or require them to go through a lengthy appeals process to successfully get a license.
- Discrimination based on criminal record:
  - People with criminal records experience both legal and illegal discrimination in employment, which often overlaps with other issues like racial discrimination in employment decisions.
  - People with criminal records may be disadvantaged by both individual acts of discrimination and broad discriminatory policies.
  - Intentional discrimination by employers may be hidden, and therefore difficult to prove.
  - Unintentional violations by employers may occur when employers do not know about laws that forbid discrimination based on someone's criminal record.

CHAPTER 6: COURT-ORDERED DEBT – PG. 654

KEY TOPICS:

- Understanding the different types of court-ordered debt, and what they are for, including: *restitution; court fines and penalties; administrative fees*; and *traffic fines.*

- Taking control of court-ordered debt—*figuring out how much debt you owe, and to whom.*
- Paying off or otherwise satisfying court-ordered debt, including:
    - *How to pay off a debt, and what to do if you can't pay.*
    - *Opportunities to reduce debts.*
    - *Consequences of unpaid debts.*

WHY IT'S IMPORTANT:

- People often leave prison and jail owing significant money in court-ordered debt.
- People may owe debts in many different places: *courts, collection agencies, victim restitution board, etc.* Tracking down multiple debts can be difficult, especially if they are from many years ago.
- Debts may increase during incarceration through *interest, administrative fees, and late-payment penalties.*
- Court-ordered debt creates financial, legal, and practical barriers to reentry.

COMMON BARRIERS TO REENTRY:

- People may owe multiple debts for one conviction—this adds up quickly!
- During incarceration, debts may continue to increase.
- After release:
    - Paying off court-ordered debt is a common condition (rule) of parole/probation.
    - Unpaid debt can be a reason for extending a probation term.
    - It's harder to clean up a criminal record (get "expungement") with unpaid criminal justice debt.
    - Driver license may be suspended for unpaid court-ordered debts.
    - Debts may be sent to collections agencies, which can lead to wage garnishment, bank and property liens, and lower credit scores. Debts also impact housing, employment, and credit opportunities.
    - Tracking down old fines and tickets can be difficult.

CHAPTER 7: FAMILY & CHILDREN – PG. 714

KEY TOPICS:

- Re-connecting with a child after incarceration, including:
    - First steps to take in locating and reconnecting with a child.
    - How to find out if there are any past or current court cases or court orders involving a child, and how to start or join a court case regarding a child.
    - Restraining and protective orders that can impact a parent or caregiver's rights.
    - Criminal record-related barriers to reconnecting with a child.
- An overview of custody and visitation.
- Three key courts that handle family-related issues in California: probate court; juvenile dependency court; and family court. (The court that handles juvenile justice issues is the juvenile delinquency court, which we describe only very briefly since juvenile justice is not a focus of this guide.)
- Paternity (or parentage) issues.
- Child Support and Spousal Support orders—issues with paying debts during and after incarceration.
- Issues that arise during incarceration, like mothering and pregnancy in prison, and ending a marriage or a domestic partnership.
- Domestic violence and stay-away orders.

WHY IT'S IMPORTANT:

- Incarceration creates wide-ranging obstacles to stable family relationships—especially regarding custody, visitation, and guardianship of children.
- Family can be a positive and motivating force in people's lives during and after incarceration, and it can reduce the chance of being re-incarcerated.
- Issues that arise in family courts — especially regarding visitation, custody, and child support — can create more barriers in the reentry process, such as housing restrictions or increasing debt.
- People need to know about the resources that exist, since there are not many legal aid offices that provide family law representation to people with records.

COMMON BARRIERS TO REENTRY

- Parents'/caregivers' rights to custody and visitation may be legally restricted because of their criminal history and system involvement:
    - Arrests, convictions, incarceration, and protective, no-contact, and restraining orders can affect parental rights to custody and visitation.

    - Courts have full access to expunged and old criminal history information, and they can consider it along with proof of rehabilitation.
- There are three different court systems to navigate — probate court; family court; and juvenile dependency court — and some cases may go from one to the other, or open or close, without a parent/caregiver fully understanding the legal process.
- Other barriers to reunification include: parole/probation conditions; travel and residency restrictions; protective and restraining orders; access to housing and employment; and time constraints.
- Child support debt — Payment obligations do NOT automatically stop during incarceration in most cases. Usually, people need to proactively ask the court to stop or pause the payments!
- Very few family law services exist for reentering parents/caregivers.

CHAPTER 8: EDUCATION – PG. 832

KEY TOPICS:

- Setting educational goals, including:
    - Choosing an educational path.
    - Prison-based programs.
    - Parole/probation considerations.
    - Current vs. future educational and careers goals.
- Assessment of one's current education level; placement tests; and assessment of learning challenges, disabilities, and special needs.
- Educational options, including: Adult Basic Education; high school diploma / GED; career and technical training; college and university degree programs; college credit programs while incarcerated (distance learning and correspondence courses); graduate and professional degree programs.
- Paying for education — Loans, grants, scholarships, other financial aid, and record-related bans.

WHY IT'S IMPORTANT:

- Investing in education during reentry can help people avoid re-incarceration:
    - Several studies suggest that educational and vocational training helps prevent people in reentry from going back to prison.
- Many jobs and job markets now require employees to have some higher education:
    - Educational qualifications vary from job to job.
    - Some jobs require special licenses or certifications.
    - The more education you have, the better your chances of getting hired and moving up the job ladder, and the higher your pay may be.

COMMON BARRIERS TO REENTRY:

- Application and admission process:
    - Some schools may run background checks.
    - Some schools may discriminate based on criminal record.
    - Employment and professional licensing limitations may apply.
- Financial aid:
    - Felony drug offense restrictions are rare, but are not well understood.
    - Selective Service registration is required for adult men.
- Conditions of supervision:
    - Travel limitations and residency restrictions may affect your ability to attend certain schools.
    - Curfews, work requirements, and other scheduling conflicts may affect your ability to study.

CHAPTER 9: UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD – PG. 931

KEY TOPICS:

- Types of criminal records and what information they contain — and the difference between RAP sheets, key types of background checks, and other public records.
- Errors in criminal records and how to fix them.
- Who can see the different types of criminal records.
- How to get copies of criminal records.

WHY IT'S IMPORTANT:

- Cleaning up a criminal record can create more opportunities in reentry, especially related to limit what convictions show up in a background check, which can open up new employment and housing opportunities, and in some cases, restore certain civil rights.
- Expungement is a way for someone to know what is on his or her criminal record, and to take control over how it impacts his or her life.
- Expungement is the government's way of providing official recognition of someone's efforts at rehabilitation.

COMMON BARRIERS TO REENTRY:

- A criminal record is a long-term barrier to reintegration and access to civil rights.
- Background checks commonly contain errors, incomplete information, and illegally reported information.
- There are many different sources of criminal history information, and some are always going to be public through the courts.
- Many people can see criminal history information, including:
    - Private employers and landlords can see convictions from past 7 years, and in rare cases, special categories of employers can see more than that.
    - Public (government) employers & Public Housing Authorities can see much more!

CHAPTER 10: TRIBAL ISSUES – PG. 1088

KEY TOPICS:

- Information about tribal enrollment and obtaining tribal identification
- Tribal registration for sex offenses.
- Housing programs that are available to tribal members.
- Tribal public benefits and healthcare information and an overview of the Tribal Temporary Assistance for Needy Families (TANF) program.
- Information on the Indian Child Welfare Act (ICWA) and how it impacts California family law cases.

WHY IT'S IMPORTANT:

- There are a number of special laws, programs, and protections that are available to and impact tribal members with arrest or conviction records.

COMMON BARRIERS TO REENTRY:

- Tribal areas often have more limited access to legal aid and other supportive services.

CHAPTER 11: IMMIGRANTS WITH RECORDS & IN REENTRY – PG. 1105

KEY TOPICS:

- How immigration status can impact your ability to obtain key documents and secure housing, public benefits, employment, and higher education.
- How a criminal record can affect your residency in the U.S. or immigration status.
- Expungement remedies available to noncitizens.
- How to prepare for and respond to an ICE raid.

WHY IT'S IMPORTANT:

- Immigrants with criminal records face unique reentry challenges and risk deportation.
- With immigration enforcement becoming increasingly common, people need to understand their rights and how to protect themselves and their loved ones.
- California has recently passed several laws designed to shield undocumented people from excessive immigration enforcement.

COMMON BARRIERS TO REENTRY:

- Noncitizens have limited access to government-based supportive services, like public benefits and housing programs.
- Criminal records can have an impact on residency or immigration status.

"REENTRY-READY CHECKLIST" FOR CURRENTLY INCARCERATED PEOPLE

For currently incarcerated people in particular, this checklist can **help you prepare now** before these common reentry issues become bigger problems down the road! Use this checklist *along with the Roadmap to Reentry Guide*. It can help you understand in what **areas you are already well prepared**, and in what **areas you would like to focus on more**. For more information on how to answer a checklist item, see the chapter indicated. Every person's circumstances and needs are different, so use this checklist **however it works best for you**. If you are NOT incarcerated, but have a criminal record, parts of the checklist may still be a helpful tool!

The Building Blocks of Reentry: *Obtaining Identification (ID) and Key Documents, Voting & Civic Participation* (CHAPTER 1):

- ❑ CAL-ID Program ("state prisons" only): Am I eligible? Y / N .
  - ❑ Not sure
  - ❑ If yes, when? _____
- ❑ When I am released, I will have access to (circle if the ID is valid or expired):
  - ❑ Birth certificate
  - ❑ State ID (valid / expired)
  - ❑ Municipal ID (valid / expired) (Note: You can cross off if this is not something that you would need because you already can get a CA State ID or Driver License.)
  - ❑ Driver License (valid / expired / suspended or revoked)
  - ❑ Social Security card (or number)
  - ❑ U.S. passport (valid / expired)
  - ❑ Library card
  - ❑ I'm not sure
- ❑ Based on the Guide, I think my voting rights will be restored when: _____ (what event or date) OR I'm not sure.
- *For more information/help, I can contact:* Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Parole & Probation (CHAPTER 2):

- ❑ My expected release date is _____.
- ❑ Based on the Guide, I think my supervision *type* will be _____. OR
  - ❑ I'm not sure what my supervision will be.
- ❑ Based on the Guide, I think the length of time I will be on supervision is_____.
- ❑ Based on the Guide, I think the the date I can try to get off of supervision early (if at all) is _____.
- ❑ My expected county or district of supervision will be _____.
  - I'm not sure where my supervision will be. (Circle if this is the case).
- ❑ I have "special" or "discretionary" conditions I have to follow: Yes / No .
  If yes, I think they are the following:
  - ❑ _____
  - ❑ _____
  - ❑ _____
  - ❑ Any registration requirements? _____
- *For more information/help, I can contact:* Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Housing (CHAPTER 3):

- Previously, I have lived _____
- In the short-term, I will look for _____

- In the long-term, I'd like to live in/with _____
- My record may affect where I can live in the following ways:
    - _____
    - _____
    - I'm not sure. (Circle if this applies to you.) For more info, I can: _____.
- *For more information/help, I can contact:* Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Public Benefits (CHAPTER 4):

- ❑ I have received _____ benefits in the past.
- ❑ While incarcerated, I can begin to apply for (but not yet receive):
    - ❑ Social Security retirement benefits
    - ❑ Supplemental Social Income (SSI)
    - ❑ Social Security Disability Income (SSDI)
    - ❑ Veteran's benefits
    - ❑ Medi-Cal
    - ❑ Medicare
    - ❑ I'm not sure. For more info, I can: _____.
- ❑ When I'm released, I can also apply for any of the above, plus:
    - ❑ CalWORKs
    - ❑ CalFresh (food stamps)
    - ❑ Covered California
    - ❑ California LifeLine (free phone)
    - ❑ I'm not sure. For more info I can: _____.
- *For more information/help, I can contact:* Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Employment (CHAPTER 5):

- ❑ Previously, I have worked: _____.
    - ❑ I have applied to transitional employment / workforce development programs: _____
- ❑ My long-term goal is to work as a _____.
    - ❑ Will my future career require a professional license or certificate? Y / N / I don't know (Circle one.)
    - ❑ For more info, I can: _____.
- ❑ My record may affect where I can work in the following ways:
    - _____.
    - _____.
    - I'm not sure. (Circle if this applies to you.)
- *For more information, I can contact:* Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Court-Ordered Debt (CHAPTER 6):

I owe…

- ❑ Victim's Restitution — I pay it to: _____
- ❑ Restitution to the State — I pay it to: _____
- ❑ Revocation Restitution — I pay it to: _____
- ❑ Court Fines and Penalties — I pay it to: _____
- ❑ Court Administrative Fees — I pay it to: _____
- ❑ Traffic Fines — I pay it to: _____

- ❑ Not sure. → Circle one: *I can get more information now* OR *I can get more information once I'm released.*

I will talk to the following people/programs about reducing my debt:

- ❑ Probation/parole officer
- ❑ Traffic court
- ❑ The court that convicted/sentenced me

- *For more information/help, I can contact:* Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Family & Children (CHAPTER 7):

- ❑ I have children (names, ages): _____
- ❑ I am hoping to reunify with my children: Yes / No .
- ❑ There are orders against me…
  - ❑ Criminal court order _____
    - ❑ Who? _____ When? _____
  - ❑ Civil restraining order _____
    - ❑ Who? _____ When? _____
  - ❑ Condition of my supervision (parole/probation) _____
    - ❑ Who? _____ When? _____
  - ❑ Custody/visitation order in place _____
    - ❑ The rules of the custody/ visitation order: _____
  - ❑ Not sure
- ❑ My child(ren) is/are currently living… (with whom, and where):
  _____
- ❑ There are court cases involving my child(ren)…
  - ❑ CPS?
    - ❑ Child in foster care?
    - ❑ Child placed with a long-term guardian?
    - ❑ Child adopted out to someone else?
  - ❑ Probate guardianship?
  - ❑ Family court case?
  - ❑ Custody/Visitation Orders?
  - ❑ I don't know
- ❑ Paternity Issues
  - ❑ I want to fight paternity
  - ❑ I want to establish paternity
  - ❑ This doesn't apply to me
- ❑ I owe child support: Yes / No . I pay it to: _____ (It could be owed to the other parent OR a local child support agency.)
  - ❑ My Driver's License is on hold because of back-owed, unpaid child support debt: Yes / No .

- *For more information/help, I can contact:*
  - Family Law Self-Help Facilitator at the local family court after I get out, AND
  - Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Education (CHAPTER 8):

- ❑ Which level of education have I completed?
  - ❑ High school diploma / GED
  - ❑ Associate's degree / Trade certificate
  - ❑ Bachelor's degree _____ (degree, major)
  - ❑ Graduate degree _____ (degree, field)
- ❑ After release, I want to pursue:

- ❑ GED / Adult Basic Education
- ❑ Associate's degree / Trade certificate
- ❑ Bachelor's degree _____ (degree, major)
- ❑ Graduate degree _____ (degree, field)

❑ (Males only) I have registered for the Selective Service OR requested and received a Status Information Letter so I qualify for federal financial aid.

❑ I plan to apply for the following types of financial aid and scholarships: _____

❑ If I am going to school to enter a specific job field or get a specific type of job training/certificate, I have researched any potential job or licensure barriers I might face because of my criminal record. YES / NO .

- ❑ I learned the following in my research: _____
  _____

- For more information/help, I can contact: Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

Understanding & Cleaning Up Your Criminal Records (CHAPTER 9):

*> **Understanding My Record & Fixing Errors** — NOTE: You can do this early in reentry!*

❑ I know what shows up on:
- ❑ My RAP sheet (county v. state v. federal)
- ❑ Private/commercial background check
- ❑ In-house background check
- ❑ Court records
- ❑ Information on the Internet or social media

❑ To fix errors, I can contact the source of the incorrect information by contacting:
- the background check company,
- the CA Department of Justice, OR
- the courts or agencies that gave information to the FBI for my RAP sheet.

*> **Cleaning My Record** — NOTE: Next to any of the record-cleaning options you believe you will be eligible for one day, write down when you think you can get this remedy.*

- ❑ Record-sealing (*some* juvenile records and arrests can be sealed)
- ❑ Expungement (a CA "dismissal")
- ❑ Reducing a CA felony "wobbler" to a misdemeanor
- ❑ Prop. 47: Reducing certain eligible CA felonies to misdemeanors
- ❑ CA Certificate of Rehabilitation
- ❑ CA Governor's Pardon
- ❑ Federal Expungement *(federal)*
- ❑ Presidential Pardon *(federal)*
- ❑ I'm not sure.
- ❑ I need to look into out-of-state remedies for my out-of-state convictions.

- *For more information/help, I can contact:*
  - Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)
  - My county public defender's office for more information

Tribal Support (CHAPTER 10):

❑ I am enrolled in the following tribe: _____.

❑ I can get tribal benefits such as: _____.

- For more information/help, I can contract: Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST) and/or my tribe's court.

Immigration (CHAPTER 11):

❑ (Circle one) I know my immigration status. OR I don't know my immigration status.

❑ I was NOT advised of the immigration consequences in making a plea in my criminal court case.

❑ From the Guide, I believe I can get the following record-cleaning remedies that would help with my immigration concerns: _____.

- For more information/help, I can contact: Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST)

ROOT & REBOUND SURVEY

Root & Rebound is a reentry advocacy center in Oakland, CA. *We produce reentry legal resources to educate, empower, and support people who are in reentry or preparing for release, and those who support them. By filling out this survey and providing us with feedback, you are helping us to improve the Roadmap to Reentry. Thank you for your time!*

PRIVACY OF INFORMATION: This is a voluntary and anonymous survey. Your feedback is very important to us, as is confidentiality and privacy. If you choose to send us your feedback, we will keep all your information anonymous. Your feedback will help us to improve the manual and to raise awareness about the needs of people in reentry.

INSTRUCTIONS: *If you are willing, please answer all of the questions in this survey. Some questions ask you to circle the answer, while others ask you to fill in the blank.*

QUESTIONS ABOUT THE GUIDE:

1. **How CLOSELY did you read each section of the "Roadmap to Reentry"?** *Please circle the option that best describes how closely you read each section.*

ID & VOTING ……	Read closely	Skimmed	Did NOT read
PAROLE & PROBATION ……	Read closely	Skimmed	Did NOT read
HOUSING ……	Read closely	Skimmed	Did NOT read
PUBLIC BENEFITS ……	Read closely	Skimmed	Did NOT read
EMPLOYMENT ……	Read closely	Skimmed	Did NOT read
COURT-ORDERED DEBT ……	Read closely	Skimmed	Did NOT read
FAMILY & CHILDREN ……	Read closely	Skimmed	Did NOT read
EDUCATION ……	Read closely	Skimmed	Did NOT read
CLEANING UP YOUR RECORD …	Read closely	Skimmed	Did NOT read
TRIBAL ISSUES……	Read closely	Skimmed	Did NOT read
IMMIGRATION……	Read closely	Skimmed	Did NOT read

2. **How HELPFUL was each section?** *Please circle the option that best describes how helpful each section was.*

ID & VOTING ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
PAROLE & PROBATION ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
HOUSING ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
PUBLIC BENEFITS ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
EMPLOYMENT ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
COURT-ORDERED DEBT ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
FAMILY & CHILDREN ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
EDUCATION ……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
CLEANING UP YOUR RECORD…	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
TRIBAL ISSUES……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful
IMMIGRATION……	Very helpful	Somewhat helpful	Neutral	Somewhat unhelpful	Very unhelpful

3. **How easy was it FOR YOU to understand the material in the "Roadmap to Reentry" Guide?**
Please circle the ONE answer that best describes your experience.

VERY DIFFICULT (I *did not* understand almost anything.)
DIFFICULT (I only understood *a few things.*)
OK (I understood *about half.*)
EASY (I understood *almost everything.*)
VERY EASY (I understood *everything.*)
Please explain: _____
_____

4. **AFTER you have read any part of the "Roadmap to Reentry," which of the following statements are true for you?** *Please circle any and all that apply to you.*

   - I better understand what a person's rights are in reentry.
   - I feel more confident about my ability to overcome (or help someone else overcome) challenges in reentry.
   - Because of this Legal Guide, I have access to information I never otherwise would have had in reentry.
   - I have issues right now that this Legal Guide has helped me to resolve.

   Please explain: _____

   _____

QUESTIONS ABOUT YOU:

5. **Which of these best describes you?** *Please circle ALL that apply.*

   - ➢ Currently incarcerated person
   - ➢ Formerly incarcerated person
   - ➢ Community/social service provider
   - ➢ Attorney/legal services provider
   - ➢ Community supervision agent/officer
   - ➢ Court/government agency representative
   - ➢ Family or friend of person in reentry

6. **Is English your first language?** *Please circle the answer that best describes you.*

   YES NO If not, what is your first or preferred language?_____

7. **Which of these best describes your highest completed level of education?** *Please circle the ONE answer that best describes you.*

   Elementary school Middle school High school / GED
   Vocational / certificate program Some college Completed college
   Graduate degree

8. **What is your racial background?** *Please choose ALL that apply.*

   African American/Black Asian/Asian American Latino/Hispanic Native
   Hawaiian/Pacific Islander White/European American Middle Eastern/North African
   Native American/American Indian/Alaska Native
   Biracial/Multiracial: _____
   Other: _____
   Prefer not to answer

9. **What is your sex/gender identity?** *Please circle the ONE answer that best describes you.*

   Male Female Trans* Intersex Other:_____ Prefer not to answer

10. **How old are you?** *Please circle the ONE answer that best describes you.*

    Under 20 20-29 30-39 40-49 50-59 60-69 Over 70 Prefer not to answer

11. **What is the size of your family? Please include yourself in the total number. (Here, "family" refers to anyone who supports you financially and/or emotionally, or people you may live with in the future if you are currently in prison or jail.)** *Please circle the ONE answer that best describes you.*

    Just 1 2-4 5-7 More than 8 Prefer not to answer

12. What is the average annual income of your family? (If you are currently in prison or jail, please answer for any family back home.) *Please circle the ONE answer that best describes you.*

Under 10k	10k-20k	21k-30k	31k-40k
41k-50k	51k-60k	Over 61k	Prefer not to answer

13. What is your current ZIP code? *If you are currently in prison or jail, please write the ZIP code of the facility where you are located.* _____

CONNECTING WITH ROOT & REBOUND:

14. How did you hear about Root & Rebound? *Please circle ALL that apply.*

> Through a personal referral from a:

Currently incarcerated person Formerly incarcerated person Family or friend of person in reentry

Other: _____

> Through an organizational referral from a:

Community-based organization or social service provider Lawyer/legal services provider

Community supervision agent/officer Court/government agency representative

Other: _____

> From the Root & Rebound website

> From a Flyer

> From a Training or Event

15. Would you recommend the "Roadmap to Reentry" Guide to others? *Please circle the ONE answer that BEST describes you.*

YES NO MAYBE *Please explain why or why not:* _____

16. Root & Rebound offers follow-up support through a phone hotline one day every week, an online portal on its website, e-mail, and mail. Are you likely to use these services for follow-up support from Root & Rebound? *Please circle the ONE answer that BEST describes you.*

YES NO MAYBE *Please explain why or why not:* _____

ANY OTHER COMMENTS/FEEDBACK:

Please tell us what you liked or did not like, and how we can improve the *Roadmap to Reentry!*

_____

_____

FOLLOW-UP SURVEY CONTACT INFORMATION:

This survey is ANONYMOUS, but we would really appreciate your feedback on how to make the "Roadmap to Reentry" even better! If you would like to be contacted for a follow-up survey, please list any contact information that will help us reach you. If you are unable to provide contact information for yourself, please list the contact information of someone who will know where to reach you.

Name: _____ Email: _____

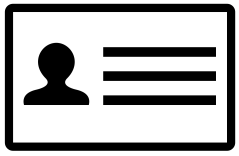
Phone: _____ Mailing Address:_____

THE BUILDING BLOCKS OF REENTRY:

Getting ID & Other Key Documents, Voting & Civic Participation

"When I got my Driver's License after getting out of prison, I cried. I felt like a person again, with my own identity — not just a number being yelled out in prison. It was one of the best moments of my reentry."

- Formerly incarcerated woman, after spending 3 years incarcerated



The BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER explains how to access key building blocks of reentry including: how to get identification (ID) and other key documents, voting rights, and Selective Service registration. ID is proof of who you are — your identity. Government agencies, workplaces, service providers, schools, and other institutions issue ID cards for people who are members. You will want ID and other key documents so that you can participate in all the services that your community has to offer, so that you can legally drive, and so that you can prove who you are. Voting is another building block of reentry, allowing people to participate in government elections and decisions. Finally, Selective Service registration for the military is required of most men in the U.S., and is critical for going back to school in reentry.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.

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WHAT WILL I LEARN IN THE ID & VOTING CHAPTER?

- **The difference between various types of ID and other key documents, including: birth certificates; Social Security cards and numbers; California State IDs and California Driver Licenses; U.S. Passports; tribal ID cards; and library cards**
- **Which forms of ID are most important**
- **When and how to get ID (and which ones to get first!)**
- **How to get certain types of ID while you're still incarcerated**
- **Some options if you are an undocumented person and need ID**
- **Your voting rights and how to register to vote**
- **Selective Service registration requirements**

GENERAL TIPS FOR GETTING ID

- Start as early as you can. You can start gathering some documents while you're incarcerated.
- Start by getting your birth certificate (or naturalization certificate if you were born outside the U.S. and later became a citizen). A certified copy of your birth certificate or naturalization certificate is necessary to get all other forms of ID. See PG. 31 (birth certificate) or PG. 37 (naturalization certificate).
- Stick to using your legal name as it appears on your birth certificate. Even if you have used other names in the past, stick with your legal name. It is your only legal identity.
- Keep photocopies of all your important forms as you go.
- Before you pay a fee for anything, find out if you can get a "reduced fee" or "fee waiver" based on your income or public benefits. Many forms of ID require that you pay a fee before they are issued, but some of these fees can be reduced or excused for people with limited income. Learn more on PG. 47, and *always* check for yourself![2]
- Learn about special, limited forms of ID for undocumented people and noncitizens living in California on PG. 1109.

[2] Adapted from John Jay College of Criminal Justice, Back to School: A Guide to Continuing Your Education after Prison, 20 (July 2010), available at http://www.jjay.cuny.edu/backtoschoolsummer2010revision.pdf.

I. INTRODUCTION

WHAT ARE IDENTIFICATION DOCUMENTS (ID), AND WHY ARE THEY IMPORTANT?

Identification ("ID") is proof of who you are —your *identity*. Government agencies, workplaces, service providers, schools, and other institutions issue ID cards for people who are members. Many forms of ID include a photo and important information about you, such as your address or physical characteristics. Having an ID is important because, when you apply for school or work, or sign up for various programs, licenses, and services, you'll have to show an ID to prove that you are who you say you are, and to show that you qualify for whatever you're signing up for.

WHY DO I NEED IDENTIFICATION DOCUMENTS (ID)?

You need specific forms of ID to apply for many important resources and services, including housing, employment, education, medical care, public benefits, transportation, driving privileges, voting, banking, and licenses that allow you to work in certain types of jobs.

I HAVE A PRISON OR JAIL ID. IS THAT ENOUGH TO IDENTIFY MYSELF?

You may already have a prison or jail ID card, but these generally are not enough to help you prove who you are in *all the places* where you will need an official ID. In the early days of your reentry, though, a prison or jail ID card may help you get other forms of ID.

WHAT ARE THE MOST IMPORTANT FORMS OF ID TO HAVE?

As you rebuild your life in the community, there are 3 KEY DOCUMENTS for you to have: (1) your **birth certificate**; (2) your **Social Security card (or number)**; and (3) a **state ID or driver license** (you don't need both, just one).

Once you have your birth certificate and Social Security number (SSN), you will be able to get a California state ID card or a driver license, the most commonly used forms of ID for everyday purposes. Once in a while, you will need to show a copy of your Social Security card for certain services, just knowing your Social Security number (SSN) is enough (without presenting the actual card).

NATURALIZED U.S. CITIZEN?

If you were born outside the U.S. and then became a citizen through the naturalization process, instead of a birth certificate, you need your **naturalization certificate**. For details, go to PG. 37.

I DON'T HAVE ANY ID. WHERE AND WHEN CAN I START?

Where do I to start?

If you do not have any of the 3 most important forms of ID — your birth certificate, a Social Security card (or number), OR a state ID or driver license — you will have trouble proving your identity.

For most, it is best to *get your birth certificate first, then your Social Security card, and lastly your state ID or driver license*. To learn more about these 3 key documents:

- See PG. 31 for birth certificate
- See PG. 38 for Social Security card / SSN
- See PG. 43 for California state ID and driver license

When can I start? Can I start if I am currently incarcerated?

It is never too early to start gathering official ID. It helps to begin while you are still incarcerated as part of your preparation for release.

IMPORTANT INFORMATION IF YOU ARE INCARCERATED IN A CDCR STATE PRISON: If you are incarcerated in a California state prison, state law requires the California Department of Corrections and Rehabilitation (CDCR) and the California Department of Motor Vehicles (DMV) to make sure all qualifying individuals receive a California state ID at the time of release.[3] CDCR is carrying out this law through its "CAL-ID" program. If you qualify, you should get a state ID *for free* at the time of release. See PG. 44 for more information on the program and who is eligible.

I HAVE USED DIFFERENT NAMES ("ALIASES"). WHAT NAME IS BEST TO USE ON MY ID?

Your ID documents must be in your "legal" name. This will be *the name that appears on your birth certificate*, unless you have *legally* changed it. Changes in your legal name are done through marriage or by court order.[4]

[3] Cal. Penal Code § 3007.05.
[4] See CAL. CIV. PROC. CODE §§ 1275-1279.5; see also Change an Adult's Name, CAL. SUPERIOR COURTS, http://www.courts.ca.gov/1051.htm.

IMPORTANT: Using a false name or presenting false documents to get ID is a FEDERAL offense. Don't do it.

CAN I LEGALLY CHANGE MY NAME?

Maybe. The California Courts website gives step-by-step instructions for changing your name online: http://www.courts.ca.gov/selfhelp-namechange.htm. The website has specific information for people who are divorcing, getting married, changing their legal gender, and other requests.

A judge must approve legal name changes. In all cases, you will need to prove that your name change doesn't pose any security risk to the community.[5] A judge may find that you *cannot* legally change your name if:

- The judge finds that you are changing your name to commit fraud; OR
- The judge finds that you are changing your name to hide from the police or law enforcement or for some other illegal reason; OR
- You are currently on probation or parole — UNLESS your probation or parole officer is aware of your legal name change AND gives you written approval; OR
- If you are incarcerated in prison.
  - If you are incarcerated in a California state prison, you need permission from the *Secretary of the California Department of Corrections and Rehabilitation (CDCR)* to change your name.
  - If you are incarcerated in federal prison, you need permission from the Director of the Federal Bureau of Prisons (BOP) to change your name.[6]

I AM AN UNDOCUMENTED PERSON? CAN I GET OFFICIAL ID?

No, you *cannot* get official ID that works for all government purposes if you are an undocumented immigrant living in California, BUT you may be able to get special types of ID that can be used in limited circumstances.

Learn more about the following types of ID for undocumented people in Chapter 11, PG. 1105:

1. **California AB 60 "Undocumented Person" driver licenses**, which allow some undocumented individuals to drive legally in California (and California only!);
2. **Consular Identification Cards**; and
3. **Municipal ID Cards** (created by some cities for their local residents).

I AM A TRIBAL MEMBER. CAN I GET A TRIBAL ID CARD?

You will need to check with your tribe to see what their process is for getting a tribal ID card. See PG. 1093 for more information.

I BELIEVE MY IDENTITY WAS STOLEN WHILE I WAS INCARCERATED. WHAT CAN I DO?

If you believe your identity was stolen while you were incarcerated and you are a resident of California, you can file an **Identity Theft Affidavit** by mail to the California Franchise Tax Board or call their ID Theft experts at 916-485-7088.[7] **If you are still incarcerated**, you will likely need the help of a friend or loved one outside the prison to make calls and advocate on your behalf. **If you are not incarcerated**, you can access the Federal Trade Commission's free manual, *Identity Theft: A Recovery Plan*, which contains a step-by-step procedure to handling identity theft, available online at http://IdentityTheft.gov.[8]

To file an **Identity Theft Affidavit**, you will need identifying documentation, such as a driver's license (learn how to get one on PG. 46) or U.S. Passport (learn how to get one on PG. 60). You can find a copy of the Identity Theft Affidavit in the Appendix section of the IDENTIFICATION & VOTING RIGHTS CHAPTER on [page #].

You can also call the three major credit bureaus, listed below, to request a 90-day block that will stop anyone from opening an account in your name. The block will expire automatically after 90 days.[9] You will not need to provide a copy of your driver's license to have a 90-day block put on, but you will need your Social Security Number. For information on obtaining your Social Security Number, go to PG. 40.

Below are the three major credit bureaus:

- Equifax, P.O Box 740241, Atlanta, GA 30374-024. Phone number: 1-800-525-6285
- Experian, P.O. Box 9532, Allen, TX 75013. Phone number: 1-888-397-3742
- TransUnion, P.O. Box 6790, Fullerton, CA 92834. Phone number: 1-800-680-7289

[5] See Cal. Civ. Proc. Code § 1279.5.
[6] See "Name Changes," The Law Office of Natalia Malyshkina, http://www.immigration-business-law.com/name-changes.html.
[7] California Franchise Tax Board, Report Scams, Identity Theft & Tax Fraud, https://www.ftb.ca.gov/online/fraud_referral/index.shtml
[8] Federal Trade Commission, Identity Theft: A Recovery Plan, https://www.bulkorder.ftc.gov/sites/bulkorder.ftc.gov/files/styles/publications_node/public/images/501a_pdf-0009-identity-theft-a-recovery-plan.png?itok=GoUAJ6rr
[9] State of California Department of Justice, Identity Theft Victim Checklist, https://oag.ca.gov/idtheft/facts/victim-checklist



THIS CHART SUMMARIZES HOW & WHY EACH ID IS IMPORTANT, AND THE APPROXIMATE COST OF EACH TYPE.

SUMMARY OF KEY DOCUMENTS

KEY ID DOCUMENT	COST	WHY IT'S IMPORTANT
AUTHORIZED U.S. BIRTH CERTIFICATE	About $25 (varies by county)	This proves your age and legal presence in the United States. It is necessary in order to get most other forms of identification, including your California state ID or driver license.
NATURALIZATION CERTIFICATE	$345 (may be free if you show financial hardship)	If you are a naturalized citizen, meaning you were born outside of the United States and became a citizen later, you will not have a U.S. birth certificate. Instead, you should use your naturalization certificate.
SOCIAL SECURITY NUMBER/CARD	Free	Your Social Security number (SSN) is required to apply for jobs, education programs, financial aid, and government services. You need it to obtain other forms of ID, such as a state ID or driver license.
CALIFORNIA STATE ID and/or DRIVER LICENSE	$28 for a new state ID (but $8 reduced fee if you receive public benefits, and free for seniors and homeless people). If you are currently incarcerated — **free** state id may be available through cal-id program (learn more on pg. 44). $33 for a new CA Driver License.	Both a California State ID and Driver License prove your age and identity, and they may prove your legal presence in the United States. Either one can be used as an official photo ID. You will likely need one of these in order to open a bank account, to register to vote, and to apply for jobs, housing, or public benefits. State IDs and driver licenses are generally considered the most common accepted forms of identification. A California Driver License is different from a state ID in that it gives you driving privileges if you can meet all the state requirements.
U.S. PASSPORT	$135 for a new passport; $110 for a renewal	This is necessary for traveling abroad and coming back to the United States. It is also considered an official photo ID.
TRIBAL ID CARD	It depends on the tribe.	A tribal ID proves your enrollment in a particular Indian (Native American or Alaska Native) tribe, and can be used as official photo ID for some places (like federal buildings, airports, and banks), certain services (like the federal Indian Health Service), but not for other purposes (for example, it won't work for notary services in California).
RAP SHEET	Approx. $50 ($25 with a fee waiver)	Your RAP sheet is a chronological listing of your entire criminal history. You want to know what shows up on your RAP sheet because employers, Public Housing Authorities, schools, government agencies, and others may use your criminal history to decide if you are eligible for their services. (Go to the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931)
VOTER REGISTRATION	Free	When you register to vote, you will be sent a voter registration card in the mail to let you know that you've registered successfully. However, you do not need it to actually vote, as long as you're registered.
SELECTIVE SERVICE REGISTRATION	Free	All male U.S. citizens, and all males living in the United States (except those present on student or visitor visas) *must register* for the Selective Service if they are aged 18-25. Failure to do so can result in disqualification from, or loss of, certain federal and state benefits. In California, if you do not register, you will not be eligible for state student financial aid. Selective Service used to be called "the Draft."
LIBRARY CARD (OPTIONAL)	Free	A library card gives you access to free resources from your local public library, such as books, movies, and advice from librarians. It also allows you to use the library's computers and access the Internet.

II. BIRTH CERTIFICATE

WHAT WILL I LEARN?

- **How to get a copy of your birth certificate in the following situations: 1) you were born in California; 2) you were born in another state; 3) you were born in another country; 4) you were adopted and don't know where you were born; 5) you are not a U.S. citizen; or 6) you are a naturalized U.S. citizen**
- **How to request your birth certificate**
- **How to get a document notarized, whether you are currently or formerly incarcerated**
- **Your options if there is no record of your birth**

IMPORTANT: For most, a birth certificate is the most critical ID you will need and the easiest one to get while still incarcerated. START THE PROCESS AS SOON AS POSSIBLE!

WHAT IS A BIRTH CERTIFICATE, AND WHY WOULD I NEED IT?

Your birth certificate is important because it proves your legal name, age, birthdate, and birthplace. If you were born in the United States, it also proves your U.S. citizenship. Having a copy of your birth certificate is necessary to get other key forms of ID.

WHAT IS THE GENERAL PROCESS FOR GETTING A COPY OF MY BIRTH CERTIFICATE?

It depends on what STATE you were born in. Each U.S. state maintains its own birth records.[10] The federal government does not keep records or issue copies of birth certificates.[11] Thus, the requirements and procedures for getting official copies of birth certificates vary from state to state.[12]

If you were born in the U.S., here is the general process:[13]

- For the state where you were born, find out which government agency in that state manages birth records;
- Get a request form from that government agency, fill it out, and send it in; OR write a request letter to the agency;
- Have the form or letter *notarized*[14] (if requesting by mail) (learn how to notarize a document in on PG. 32);
- Present a photo ID or swear an oath (if requesting in person);
- Pay the fee.

See PG. 33 for more information on each step.

WHAT IF I WAS BORN IN ANOTHER COUNTRY?

Whether or not you are a U.S. Citizen, if you were born outside the United States, you must check with the country in which you were born for the procedures to get your birth certificate (see PG. 36 for more information).

If you were born out of the United States, but you are a U.S. citizen because one or both of your parents was a U.S. citizen, see PG. 36 on how to obtain your birth certificate.

[10] See CAL. HEALTH & SAFETY CODE § 102230.
[11] See CAL. HEALTH & SAFETY CODE § 102230.
[12] See CAL. HEALTH & SAFETY CODE §§ 102200, 102205.
[13] See CAL. HEALTH & SAFETY CODE §§ 103525, 103526.
[14] See the complete state rules for notarization procedures in CAL. HEALTH & SAFETY CODE § 1185 et seq.



HELPFUL HINT

HOW DO I GET A DOCUMENT "NOTARIZED"?

WHAT IS NOTARIZATION?

Notarization is when a government-approved person (called a "notary public" or just a "notary") validates an important document. The notary must witness signatures to that document.

WHAT DO I BRING?

1. **The document you need notarized. IMPORTANT: Don't sign it before you go—the notary needs to witness your signature.**
2. **Proof of who you are (usually photo ID).**
   The notary can verify who you are by one of 3 ways:

1) Photo ID issued within the last 5 years. This can be: a state ID or a driver license from any U.S. state, a passport from any country, a U.S. Military ID, a Canadian or Mexican driver license, or a California government employee ID card. *IF YOU ARE CURRENTLY INCARCERATED: You can use your prison ID card while you are still incarcerated, but not after you get out. This is why it is so important to get your birth certificate before you are released, if possible.*

2) One witness whom the *notary knows* and who *knows you*. This witness will need to show one of the forms of acceptable ID listed above, and verify under oath who you are. —OR—

3) Two witnesses who *know you* (but the notary does *not* need to know them). Both witnesses will also be required to show one of the forms of acceptable ID listed above, and verify who you are under oath.

WHERE DO I FIND A NOTARY?

Try your local bank, credit union, public library, City Hall, courthouse, Post Office, FedEx or UPS store, senior center, or public school. *Always call the location and check its website to make sure a notary exists, what times it is available, and the cost. IF YOU ARE CURRENTLY INCARCERATED:* State prisons must provide notary services.[15] Contact your corrections counselor to make an appointment, as the services may only be available on certain days and times.

HOW MUCH WILL A NOTARY COST?

In California, the most a notary can charge is $10.00 per signature. However, mobile notary services that come to you are allowed to charge more.[16]

IF YOU ARE CURRENTLY INCARCERATED: There is an administrative fee, which varies by facility, and is taken out of your inmate trust account. If you would rather use a mobile notary, you'll need to find one in your area that does jail/prison visits. You may need to ask a family member or friend to help arrange the visit.

WHY DO I WANT AN "AUTHORIZED, CERTIFIED" COPY?

It is best to get an ***authorized certified*** copy of your birth certificate. Only an ***authorized certified*** copy of your birth certificate can be used as proof of your identity. An informational copy is not accepted as a government-issued ID and, therefore, you cannot use it to obtain other forms of official ID.[17]

CERTIFIED COPY — A "certified" copy of your birth certificate is any official copy of your birth certificate issued by the Office of the County Recorder in the county where you were born, or from your state's Office of Vital Records.[18] These offices issue two types of certified copies — "authorized" and "informational."

- ***Authorized* Certified Copy —** An "authorized" certified birth certificate bears the stamp or seal of the office that issued it.[19] It is called *authorized* because only certain individuals, such as you and your immediate family members, are allowed to get it.[20] Access to authorized birth certificates is restricted because they are considered a valid form of government-issued ID, and can be used to get other forms of ID. This is the type of copy you need to prove your identity.
- ***Informational* Certified Copy —** An "informational" certified birth certificate contains the same information as an authorized copy, but it is not considered an official record of your identity. It does not bear the stamp or seal of the office that issued it, and it must contain the disclaimer statement: "INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY."[21] Anyone can order an informational copy of your birth certificate. This is not the type of copy you want to get to prove your identity.

[15] See CDCR DOM § 14010.22
[16] CAL. GOV'T CODE § 8211.
[17] CAL. HEALTH & SAFETY CODE § 103526.
[18] CAL. HEALTH & SAFETY CODE §§ 103525,103526.
[19] CAL. HEALTH & SAFETY CODE §§ 103525, 103526.
[20] CAL. HEALTH & SAFETY CODE § 103526 (full list of everyone authorized to get a birth certificate).
[21] CAL. HEALTH & SAFETY CODE § 103526(b).

IF YOU WERE BORN IN THE U.S.—DIFFERENT SITUATIONS:

(1) IF YOU WERE BORN IN CALIFORNIA:

NOT BORN IN CALIFORNIA?

- If you were born in a state outside of California, go to PG. 35.
- If you were born outside of the United States, go to PG. 36.
- If you were adopted and don't know where you were born, go to PG. 36.

I WAS BORN IN CALIFORNIA. HOW DO I GET AN AUTHORIZED COPY OF MY BIRTH CERTIFICATE?

You must go through one of two sources to get your California birth certificate: (1) the California Department of Public Health (CDPH), or (2) the County Recorder's Office of the county where you were born. Generally, it is easier to go through the County Recorder's Office, but there are pros and cons to each. See the chart on PG. 33 to learn details about the pros and cons.

THIS CHART EXPLAINS THE PROS & CONS OF REQUESTING YOUR BIRTH CERTIFICATE FROM THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (CDPH) VS. THE COUNTY RECORDER'S OFFICE.

WHERE TO GET YOUR BIRTH CERTIFICATE:
CDPH or County Recorder's Office?

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (CDPH)	COUNTY RECORDER'S OFFICE
TIME: Takes longer to process (4-6 weeks).	TIME: Takes less time to process (same day, in person).
REQUEST METHOD: Must be done by mail.	REQUEST METHOD: May be done by mail OR in person.
FEE: Standard fee (currently $25, but subject to change).	FEE: Fees vary by county. It may be more or less than what the CDPH charges.
STATEWIDE REACH: CDPH is a good option if you don't know what county you were born in. It covers all counties in California, and the CDPH can help you locate your birth county.	COUNTY REACH ONLY: The County Recorder's Officer can issue birth certificates only for births within that county, *not statewide*. So it's good if you know exactly which county you were born in.
APPLICATION FORMS: Accepts standard state form only (see the next question which explains how to get a copy)	APPLICATION FORMS: Accepts state and county forms (see the question on PG. 34 which explains how to get a copy)

➢ CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (CDPH):

I WANT TO GET MY BIRTH CERTIFICATE FROM THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (CDPH). WHAT IS THE PROCESS?

The CDPH *only accepts requests by mail*. The process is as follows:

STEP 1: **Obtain and fill out an "Application for Certified Copy of Birth Record" (Form VS 111).**

You can request this form by mail from the CDPH by writing to: California Department of Public Health, Vital Records — MS 5103, P.O. Box 997410, Sacramento, CA 95899-7410.

This form is also available to download from the CDPH website at: http://www.cdph.ca.gov.[22] A sample application is provided in Appendix A, PG. 78, but check the website for the most up-to-date form. To fill out the form, you will generally need to know your birth name, your birth date, the city where you were born, and your parents' names, including your mother's maiden name. If you do not know all of this information, fill in as much as you can.

[22] The direct online link to the application Form VS 111 is http://www.cdph.ca.gov/pubsforms/forms/CtrldForms/VS111.pdf

STEP 2: **Sign your application & get your Sworn Statement notarized.**

The Sworn Statement is on *page 3* of the application form (Form VS 111), and is required to verify the information on your application.[23] By signing the Sworn Statement, you are declaring "under penalty of perjury" that you are entitled by law to receive an *authorized copy* of the birth certificate.

You must then get the statement *notarized*. See the box on PG. 32 for an explanation of how to get a document notarized.

STEP 3: **Prepare the fee payment.**

This must be a *check* or *money order* made payable to "CDPH Vital Records."[24] Do not send cash. At the time of writing this manual, the CDPH fee is $25, but it could change. *The current fee amount will be on the CDPH application form*.

STEP 4: **Mail your request.**

Your final packet should include: (1) your application form, including the *notarized* Sworn Statement, and (2) your fee payment (check or money order).[25] At the time of writing this Guide, application packets should be mailed to: **California Department of Public Health, Vital Records — MS 5103, P.O. Box 997410, Sacramento, CA 95899-7410.**

➢ COUNTY RECORDER'S OFFICE:

I WAS BORN IN CALIFORNIA AND KNOW MY COUNTY OF BIRTH. HOW DO I GET MY BIRTH CERTIFICATE DIRECTLY FROM THE COUNTY I WAS BORN IN?

If you know what county you were born in, we recommend going directly through your County Recorder's Office. Because the CDPH handles requests for the entire state, it often takes longer than if you go directly to the County Recorder's Office, where it will be a much faster process (sometimes even the same day).[26] The County Recorder's Office is also more convenient because you can make your request *in person* as well as by mail.

HOW DO I LOCATE THE COUNTY RECORDER'S OFFICE?

Whether you plan to make your request in person or by mail, you first need to locate the Recorder's Office in the county in which you were born. The CDPH provides a statewide directory of County Recorder's Offices (addresses, phone numbers, and websites). To get the address and phone number for the County Recorder's Office, call CDPH Customer Service at 1-916-445-2684 or visit the website at: http://www.cdph.ca.gov/ and search for "birth certificates."[27] You can also use Directory Assistance to locate the address by dialing 4-1-1 from any phone, but this service charges a fee (as much as $1.99 per 4-1-1 call).[28]

IF I USE THE COUNTY RECORDER'S OFFICE, IS IT BEST TO REQUEST MY BIRTH CERTIFICATE BY MAIL OR IN PERSON?

Once you have located the Recorder's Office in the county where you were born, you will need to decide if you want to request your birth certificate in person or by mail. In most counties, if you request the document in person at the Recorder's Office, this is the best option because the clerk can tell you almost immediately whether or not there is a record of your birth on file, and you can ask the clerk questions if there is trouble locating the correct record. Also, you might even be able to get the *certified copy* that same day. However, this may not be the right option for you if you are unable to travel to your birth county because of parole or other travel restrictions.

REQUESTS TO RECORDER'S OFFICE BY MAIL:

After you have located the Recorder's Office in the county where you were born, you will need to get a copy of that county's specific application form. You can request the form by phone or by mail, or you can download it from the County Recorder Office's website. Once you have the form, the process for requesting your birth certificate by mail is the same as the process for requesting it by mail from the CDPH (see those instructions on PG. 33). Remember to:

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[23] Sworn Statement, CAL. DEP'T OF PUBLIC HEALTH, http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/SwornStatement.aspx.
[24] Fees, CAL. DEP'T OF PUBLIC HEALTH, http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/Fees.aspx.
[25] Fees, CAL. DEP'T OF PUBLIC HEALTH, http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/Fees.aspx.
[26] Obtaining Certified Copies of Birth & Death Records, CAL. DEP'T OF PUBLIC HEALTH, http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/CertifiedCopiesofBirthDeathRecords.aspx.
[27] As of last revision, the direct link to the CDPH listing of county recorder's offices is http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/CountyRecorderOffice.aspx.
[28] See VERIZON WIRELESS, http://www.verizonwireless.com/support/faqs/FeaturesandOptionalServices/faq_411_connect.html; AT&T, http://www.att.com/esupport/article.jsp?sid=53418&cv=820#fbid=dwcrbDNNoOg.

- Complete the form to the best of your ability;
- Sign and have your Sworn Statement *notarized* (notarization explained in the box on PG. 32);
- Prepare the fee payment (varies by county);
- Mail your request packet (including your application form, Sworn Statement, and fee payment) to the County Recorder's Office.

REQUESTS TO RECORDER'S OFFICE IN PERSON:

If you plan on making your request in person, you can either get an application ahead of time by mail or online, or you can pick one up in person. The process for getting a birth certificate in person is slightly different than by mail. However, the information you will need to show is the same.

STEP 1: **Go to the County Recorder's Office and identify yourself.**

The biggest difference between requesting your birth certificate by mail and requesting it in person is that the office may ask you for a photo ID if you make your request in person. Don't worry if you do not have a valid form of ID—there is usually a way around this! Every office will have different policies and requirements, so make sure you call ahead and ask so that you can be prepared for how they will allow you to identify yourself. Below are some alternatives to presenting a photo ID:

- In some counties, such as Alameda County, you simply have to sign the application under penalty of perjury in front of the clerk-recorder. You do not need to have the form notarized, and you do not need to show a photo ID;[29]
- Show your CDCR prisoner ID card;
- Bring witnesses who have their own valid photo ID and can identify you;
- Bring a notarized declaration of your identity;
- Ask a person with his/her own valid photo ID to get a copy of your birth certificate for you—so long as that person is authorized. This includes your spouse or domestic partner, parents or legal guardians, children, grandparents, grandchildren, or siblings;
- Ask your attorney to request your birth certificate for you;
- Ask your probation/parole officer to provide a certification of your name, age, birth date, address, and parents' legal names. Present that statement at the County Recorder's Office and explain your situation.

STEP 2: **Fill out and submit the application.**

You will need to know your birth name, your birth date, the city you were born in, and your parents' names, including your mother's maiden name.

STEP 3: **Pay the fee. You can usually pay with cash, credit card, debit card, check, or money order.**

(2) IF YOU WERE BORN IN THE U.S.A. OUTSIDE OF CALIFORNIA:

I WAS BORN IN A STATE OTHER THAN CALIFORNIA. HOW DO I GET AN AUTHORIZED COPY OF MY BIRTH CERTIFICATE?

The federal government does not keep a centralized database of birth records. Each state maintains its own. Each state has its own procedures for requesting an authorized certified copy of your birth certificate for identification purposes, and the fees vary. You will need to find out the procedures for your birth state:

STEP 1: **Find the Vital Statistics Office in your birth state.**

Each state has a Vital Statistics Office, sometimes called a Vital Records Office, that is in charge of birth records for that state. The Centers for Disease Control and Prevention (CDC) has a list of the address and phone number for each state's Vital Statistics Office, as well as basic information about each state's procedures. You can find this information on the CDC website at: http://www.cdc.gov/nchs/w2w.htm. You can also contact the CDC by phone at 1-800-CDC-INFO (1-800-232-4636), or write to:

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027.[30]

We have included a listing of Vital Statistics Office phone numbers and addresses for each state in Appendix B, PG. 82. Because this could change, you should check with the CDC for the most up-to-date information.

STEP 2: **Call or write the Vital Statistics Office in the state where you were born and ask what they need from you to send you an authorized certified copy of your birth certificate.**

[29] Telephone call with Elsie, clerk-recorder, Alameda County Clerk-Recorder's Office (July 11, 2014).
[30] CENTERS FOR DISEASE CONTROL AND PREVENTION, http://www.cdc.gov/.

(3) IF YOU WERE BORN IN THE U.S., BUT NO RECORD OF YOUR BIRTH WAS FOUND:

WHAT IF I WAS BORN IN THE U.S.A., BUT THERE IS NO RECORD OF MY BIRTH?

If you request a copy of your birth certificate from the state or county where you were born, but you receive a notice that there is no record available, you will have to locate a secondary record of your birth to serve the same identifying purpose as a birth certificate does. Secondary records are not considered as reliable as authorized certified birth certificates, but they can still help you prove your identity to obtain other forms of ID. Secondary records include:

- Hospital records;
- Census record;
- Religious records confirming your birth date (such as a baptism certificate or family bible record);
- Statement from the midwife who delivered you;
- Early school records; and
- Records of immunization.[31]

IF YOU WERE ADOPTED AND DON'T KNOW WHERE YOU WERE BORN:

I AM ADOPTED AND I DON'T KNOW WHERE I WAS BORN. WHAT CAN I DO?

If you are adopted, you must request an application for a *certified copy of your birth certificate* in the state where you were adopted, using your adoptive name.[32] If you were born outside the United States and adopted in California, there is a place to indicate this on the birth certificate form (and this might be the case in other states).[33]

IF YOU WERE BORN OUTSIDE OF THE U.S.A. — DIFFERENT SITUATIONS:

(1) IF YOU ARE A U.S. CITIZEN BORN TO U.S. CITIZEN PARENT(S) IN ANOTHER COUNTRY

I WAS BORN OUTSIDE OF THE U.S., BUT I AM A U.S. CITIZEN BECAUSE ONE OR BOTH OF MY PARENTS WAS A U.S. CITIZEN. HOW DO I GET CERTIFICATION OF MY BIRTH AND CITIZENSHIP?

If you are a U.S. citizen who was born abroad to U.S. citizen parent(s), your parent(s) should have reported your birth to the nearest U.S. Consulate or Embassy as soon as possible after you were born.[34] Under federal law, they should have applied in your name for a "Consular Report of Birth Abroad of a Citizen of the United States of America" (also called "CRBA," or Form FS-240).[35]

If your parents *did* register your birth with a U.S. Consulate or Embassy, the U.S. Department of State should have given them a CRBA in your name. Like a U.S. birth certificate, your CRBA is proof of your U.S. citizenship, and you can use it as official ID to get other key forms of ID, including a U.S. passport.[36]

The only people who can legally request a copy of your CRBA are: (1) you, (2) an authorized government agent, and (3) a person with written authorization. To request a copy of your CRBA, follow these steps:

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[31] Secondary Evidence of U.S. Citizenship, U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, http://travel.state.gov/content/passports/english/passports/information/secondary-evidence.html.

[32] When you were adopted in the Unites States, your birth certificate was changed to reflect your adoptive information—whether you were born in the U.S. or not—and your original birth information was sealed. Therefore, the existing birth record will have your adoptive information.

[33] CAL. DEP'T OF PUBLIC HEALTH, APPLICATION FOR CERTIFIED COPY OF BIRTH RECORD (FORM VS 111) (Jan. 2014), http://www.cdph.ca.gov/pubsforms/forms/CtrldForms/VS111.pdf.

[34] Where to Write for Vital Records, CDC, NAT'L CTR. FOR HEALTH STATISTICS, DIVISION OF VITAL STATISTICS, OFFICE OF INFORMATION SERVICES (July 2014), http://stacks.cdc.gov/view/cdc/22310.

[35] Where to Write for Vital Records, CDC, NAT'L CTR. FOR HEALTH STATISTICS, DIVISION OF VITAL STATISTICS, OFFICE OF INFORMATION SERVICES (July 2014), http://stacks.cdc.gov/view/cdc/22310.

[36] Note: Until January 3, 2011, the document issued for this purpose was "Certificate of Report of Birth Abroad," or "Form DS-1350,"also called "CRBA." The Department of State no longer issues Form DS-1350 for new births. However, if this was the document issued when your parents registered your birth, it is still valid for the same purposes as a Form FS-240, and you can still request a copy by taking the same steps you would to request a Form FS-240. See Foreign Birth and Death Certificates, CDC, http://www.cdc.gov/nchs/w2w/foreign.htm; Birth of U.S. Citizens Abroad, U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, http://travel.state.gov/content/passports/english/abroad/events-and-records/birth.html.

STEP 1: **Prepare a written (or typed) request.** Include all of the following:

1. Your full name at birth, and any adoptive names you had.
2. Your birth date and birthplace.
3. Your parents' full names.
4. The serial number of your Consular Report of Birth Abroad (also called Form FS-240), if you know it.
5. Any available passport information.
6. Your mailing address and phone number.
7. Your signature. (Leave space for this, but don't actually sign until Step 3, when you're with a Notary Public.)

STEP 2: **Get your request notarized by a Notary Public.**

See the box on PG. 32 to learn how to get a document *notarized*.

STEP 3: **Prepare a check or money order for $50 (no cash).** Make it payable to "Department of State."

STEP 4: **Mail your request and fee.** Address the envelope to:
Department of State, Passport Vital Records Sections
1150 Passport Services Pl, 6th Floor
Dulles, VA 20189-1150.[37]

WHO CAN I CALL FOR HELP?

For more information, call the Bureau of Consular Affairs at 1-877-487-2778 (TDD/TTY: 1-888-874-7793).

(2) IF YOU WERE BORN IN ANOTHER COUNTRY AND YOU ARE NOT A U.S. CITIZEN

I AM NOT A U.S. CITIZEN. HOW DO I GET MY BIRTH CERTIFICATE FROM A FOREIGN COUNTRY?

Most, but not all, foreign countries record births and will provide certifications of births occurring within their boundaries. You should contact your birth country's nearest Embassy or Consulate in the United States. Addresses and telephone numbers for these offices are listed in the U.S. Department of State Publication 7846, Foreign Consular Offices in the United States, which is available in many local libraries. Copies of this publication may also be purchased from the U.S. Government Printing Office, Washington, DC 20402.

If the Embassy or Consulate is unable to provide assistance, U.S. citizens may obtain assistance by writing to the Office of Overseas Citizens Services, U.S. Department of State, Washington, DC 20520-4818. Noncitizens residing in the United States may be able to obtain assistance through the Embassy or Consulate of their country of nationality.

(3) IF YOU ARE A NATURALIZED CITIZEN

I AM A NATURALIZED CITIZEN. DO I NEED MY BIRTH CERTIFICATE?

If you were not born in the United States, but immigrated here and became a U.S. citizen at some point in your life, you are a naturalized citizen. You should have been issued a *Certificate of Naturalization* at the time you became a citizen. This is essentially the same as a birth certificate for purposes of obtaining other ID documents.[38] If your Certificate of Naturalization was lost or destroyed, you can apply for a new one. You will need to fill out an "Application for Replacement Naturalization/Citizenship Document" (Form N-565). You can call the Department of Homeland Security, Citizenship and Immigration Services, National Customer Services Center hotline at 1-800-375-5283 to have the form mailed to you. The form is also available online at http://www.uscis.gov/n-565.[39] A copy of the most up-to-date form as of the time of this Guide's first printing (2015) is at Appendix C, PG. 91.

[37] See Foreign Birth and Death Certificates, CDC, http://www.cdc.gov/nchs/w2w/foreign.htm; Replace or Amend a Consular Report of Birth Abroad (CRBA), U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, http://travel.state.gov/content/passports/english/abroad/events-and-records/birth/replace-or-amend-consular-report-of-birth-abroad.html.
[38] 8 C.F.R. § 301.
[39] Application for Replacement Naturalization/Citizenship Document, U.S. Citizenship and Immigration Services, http://www.U.S.C.is.gov/n-565.

III. SOCIAL SECURITY NUMBER & CARD

WHAT WILL I LEARN ABOUT SOCIAL SECURITY NUMBERS AND CARDS?

- **The difference between a Social Security number (SSN) and Social Security card, and when you'll need them**
- **How to find out your SSN if you don't know it**
- **How to apply for an original Social Security card if you've never received a SSN**
- **How to apply for a replacement Social Security card if you don't have the original**
- **How to get a Social Security card even if you don't have a U.S. Passport, State ID, or Driver License**

WHAT IS A SOCIAL SECURITY NUMBER (SSN) AND WHAT IS A SOCIAL SECURITY CARD? WHAT IS THE DIFFERENCE AND DO I NEED BOTH?

If you were born in the U.S., and your birth was reported, the government assigned you a ***Social Security number (SSN)***. Your SSN is a 9-digit number that is unique to you. The government uses it primarily to identify you, but also to track your income for tax purposes and to calculate any Social Security benefits you accrue as you work. Also, other institutions—like banks, hospitals, schools, and businesses—will use your SSN as a way to identify you.[40]

A ***Social Security card*** is a paper card that provides a record of your name and SSN. Social Security cards are issued only by the Social Security Administration of the federal government. Social Security cards are always free.[41]

While there are many circumstances in which you will need to provide your **SSN**, you will only need to show the actual Social Security card in a few limited situations—most commonly, when filling out employment paperwork. *For this reason, it is a good idea to memorize your SSN, but store your Social Security card in a safe place and only carry it with you when you know you'll need it.*

WHY DO I NEED TO KNOW MY SSN?

Like your birth certificate, your SSN proves who you are. You'll need to provide your 9-digit SSN to access government services and to apply for jobs, public benefits, housing, a driver license, health care, education programs, and financial aid.[42]

I HAVE A SSN, BUT I FORGOT IT OR NEVER KNEW IT. HOW DO I FIND OUT WHAT IT IS?[43]

If you were assigned a SSN at some point in your life, but you don't know it now, you need to request a *replacement card*. This is the only way to get your number because the Social Security Administration (SSA) does not give out Social Security numbers any other way. You can apply for a replacement card by mail or in person at a local SSA Field Office. For more information on getting a replacement card, see PG. 39 if you're incarcerated, or PG. 40 if you're out.

I DON'T THINK I EVER GOT A SSN. CAN I GET ONE NOW?

Yes. If you were never assigned a SSN, you will need to apply for an *original card*.[44] See PG. 42 for more information on getting an original card.

PRE-RELEASE PLANNING — GETTING A SOCIAL SECURITY CARD WHILE INCARCERATED:

CAN I GET A SOCIAL SECURITY CARD WHILE I AM STILL INCARCERATED?

Maybe. If you never had a SSN, the Social Security Administration (SSA) will not assign you a new SSN or issue you an "original" Social Security card while you are incarcerated. You will have to wait until you get out.

However, if you were given a SSN at some point in the past, the SSA may issue you a replacement card with your original number on it while you are incarcerated—under limited circumstances.[45] See the next question (PG. 39) to learn how to get a replacement card while incarcerated.

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[40] New or Replacement Social Security Number Card, Soc. Sec. Admin., http://www.ssa.gov/ssnumber/.
[41] New or Replacement Social Security Number Card, Soc. Sec. Admin., http://www.ssa.gov/ssnumber/.
[42] New or Replacement Social Security Number Card, Soc. Sec. Admin., http://www.ssa.gov/ssnumber/.
[43] How do I apply for a new or replacement Social Security card?, Soc. Sec. Admin., https://faq.ssa.gov/ics/support/kbanswer.asp?QuestionID=3755.
[44] New or replacement Social Security Number Card, Soc. Sec. Admin., http://www.ssa.gov/ssnumber/.

HOW DO I GET A REPLACEMENT CARD WHILE I AM INCARCERATED?

The steps for requesting a replacement card while you are incarcerated is fairly straightforward. However, due to conflicting rules and practices within the Social Security Administration (SSA), it's hard to say whether your request will succeed. You should try anyway. *Here are key factors that may affect your chances of success:*

- ***The facility you are in:*** **Where you are incarcerated may affect your ability to get a Social Security card while you are incarcerated.**
  - ***MOUs:*** According to the SSA's official policy, before the SSA will accept "certification" (proof) of your identity from a correctional facility, that facility must enter a special agreement with the SSA called a Memorandum of Understanding (MOU). The MOU's purpose is to ensure that corrections officials follow the same rules as SSA officials do when verifying people's identities. If your facility has a MOU with the SSA, the SSA will accept the facility's certification of your identity as proof that you are who you say you are. However, if your facility does not have a MOU with the SSA, the SSA Field Office reviewer that evaluates your application can choose to deny a certification from the facility as definitive proof of your identity. In other words, your facility's certification carries less weight without an MOU with the SSA, and your application for a replacement Social Security card is more likely to get denied.
- ***Your local Field Office and application reviewer:*** **The practices of your local Field Office in reviewing applications from incarcerated people will affect your ability to get a Social Security Card while you are incarcerated.**
  - If your facility does *not* have a MOU with the SSA, the local Field Office should still evaluate your application as it would any other application.[46] This means that your reviewer can *consider* your correctional facility's certification, even if he or she can't *rely* on it 100%. How much weight your reviewer gives to the certification will depend on that particular Field Office's practices. Some Field Offices accept certifications without a hassle; others do not. It's always worth a try!

HOW DO I FIND OUT IF MY CORRECTIONAL FACILITY HAS A MEMORANDUM OF UNDERSTANDING (MOU) AGREEMENT WITH THE SOCIAL SECURITY ADMINISTRATION (SSA)?

Unfortunately, this information is not readily available. It may be best to just apply for a replacement Social Security card and see if it works!

HOW DO I APPLY FOR MY REPLACEMENT CARD FROM INSIDE?

The process for requesting a replacement Social Security card while you are incarcerated is the same whether your facility has a MOU with the SSA or not. Follow these steps:

STEP 1: **Get and fill out the application for a Social Security card (Form SS-5).**

The recommended way to get this form is by calling the Social Security Administration (SSA) at 1-800-772-1213 and asking to have the form mailed to you. You may also be able to get the form by writing to your local Field Office or the closest Social Security Administration Regional Office. The Regional Office that serves California is:

SSA
Regional Public Affairs Office
P.O. Box 4201
Richmond, CA 94804

Keep in mind that this office also serves Arizona, Nevada, Hawaii, Guam, American Samoa, and the Commonwealth of the Mariana Islands, so it may take some time to process your request. You might also try asking your correctional counselor or other prison services staff if they have the form on hand. (For reference, we have included a sample Form SS-5 in Appendix D, PG. 94).

STEP 2: **Gather the documents you will need.**

You will need to submit two documents with your application:

- Certification of Inmate Identity: If your facility has a MOU agreement with the SSA, a designated prison official should verify your identity through prison records and issue a certification to the SSA (explanation of MOUs on PG. 39 above).[47] If your facility does not have a MOU agreement with the SSA, you should still

[45] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10225.125 Replacement SSN Cards for Prison Inmates Covered by a Memorandum of Understanding (February 27, 2014).
[46] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10225.145 Processing SS-5 (Social Security Card Application for Prisoners Under Terms of a Memorandum of Understanding (MOU) (March 3, 2011).
[47] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10225.125 Replacement SSN Cards for Prison Inmates Covered by a Memorandum of Understanding (February 27, 2014), RM 10225.130 Negotiating a Memorandum of Understanding (MOU) to Process Replacement SSN

ask for a certification. Talk to your correctional counselor; he or she should know who is the best person at the prison to give you a certification.

- Information Release — You need to sign an information release form, giving the SSA permission to send your Social Security card to your facility. Ask your correctional counselor for this form.

HELPFUL HINT

Whether or not your institution has a MOU agreement with the SSA, you should include the prison staff's certification of your identity, as well as a copy of your prison ID card, if possible. In fact, you should include any and all documents related to your identity, because the SSA must consider everything. Start gathering documents while you're incarcerated. If you don't have primary forms of ID, you can use these types of proof after you get released, as well. Along with your birth certificate, these documents will probably be enough. For more information on "other proof of identity," see PG. 41.

POST-RELEASE — GETTING A SOCIAL SECURITY CARD AFTER YOU'RE OUT:

I AM FORMERLY INCARCERATED, AND I USED TO HAVE A SSN. HOW DO I GET A REPLACEMENT SOCIAL SECURITY CARD?

You can apply to your local SSA office in person or make the request by mail. We strongly recommend applying IN PERSON for 3 reasons:

- **REASON 1:** First, if you go in person, the SSA agent can actually see that you are a real person. This helps verify your identify, especially if you are coming out of prison or jail without any other official ID documents.
- **REASON 2:** Second, it will be less of a hassle for you to go in person. If you request a replacement card by mail, you must submit your *original* ID documents with your application. *This means that while your application is being processed, you won't have these ID documents for other purposes.*
- **REASON 3:** Lastly, the in-person process is much faster than the by-mail process. If the SSA accepts your application in person, you can leave with your new Social Security number the same day (and they will mail you the card)! In contrast, applications by mail can take days or weeks to process.

In case you still decide to make your request by mail, we explain both application processes below: *application in person* (PG. 40) and *application by mail* (PG. 41).

NEVER HAD A SSN? NEED AN ORIGINAL CARD?

You can only get an original SSN and card after you're released. Go to PG. 42 to learn how.

NOT SURE IF YOU EVER HAD A SSN?

If you're not sure if you've ever had a SSN, unfortunately there's no easy way to check. There are services that you can pay to check, but it's unclear if they are trustworthy. For this situation, we suggest trying to get a replacement card, and seeing if the SSA tells you that there was no original card to replace.

GETTING A SOCIAL SECURITY CARD IN PERSON

I WANT TO GET A REPLACEMENT SOCIAL SECURITY CARD IN PERSON (WHICH IS RECOMMENDED). HOW DO I DO THAT?

STEP 1: **Gather the documents you need to prove your identity.**

Proof of identity must show 3 key facts about you (which you may be able to pull off with just one document):[48]

- Proof of your age;
- Proof of your citizenship or legal presence in the United States;
- Proof that you are still alive.

You may need to show only one "primary" ID document,[49] if that one document shows all 3 key facts about you by itself. Primary ID documents that are accepted as proof of identity for a replacement Social Security card are:

- U.S. state-issued driver license;
- U.S. state-issued ID card;
- U.S. passport.[50]

Cards for Prison Inmates (Oct. 27, 2009), RM 10225.135 Elements of Prisoner Replacement Card Memorandum of Understanding (MOU) (Oct. 27, 2009).

[48] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10210.405 Evidence of Identity for an SSN Card (March 20, 2013).

[49] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10210.020 Policy for Number of Documents Required for an SSN Card (March 20, 2014).

[50] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10210.405 Evidence of Identity for an SSN Card (March 20, 2013); RM 10210.420 Priority List of Acceptable Evidence of Identity Documents (Nov. 17, 2014).

The documents you submit must show your **legal name** AND provide **biographical information** (date of birth, age, or parents' names) as well as **physical information** (a photograph or physical description – height, eye and hair color, etc.). Generally, ID without an expiration date are acceptable if they were issued in the past 2 years.[51] If you don't have these documents, find the information you need in this chapter's Table of Contents on PG. 23.

STEP 2: **Find your local Social Security Administration (SSA) Field Office or Card Center.**

Search online at http://www.socialsecurity.gov or call the SSA at 1-800-772-1213.

STEP 3: **Go to your local SSA Field Office or Card Center and fill out the application.**

STEP 4: **Meet with an SSA employee to verify your identity.**

Remember, the SSA agent will evaluate the evidence you bring in and make a judgment call as to who you are. If you are there in person with as much identifying documentation as possible, hopefully all of your documents combined will be enough to prove your identity (even if each of your documents, considered separately, might not be enough).

IMPORTANT: HOW TO GET A SOCIAL SECURITY CARD WHEN YOU DON'T HAVE PRIMARY ID:

If you have been incarcerated since you were young and/or for a long time, you may never have had primary ID documents, or they may have been lost or destroyed. Unfortunately, the SSA's rules are not written with your situation in mind.

Fortunately, even if you do not have primary ID, you may be able to get a replacement Social Security card. Gather as much identifying information and documentation as you can, and include it with your application. Then, on a case-by-case basis, the SSA will decide whether or not you have presented enough proof of who you are.

IF YOU DO NOT HAVE PRIMARY ID, USE AS MANY OF THE FOLLOWING AS YOU CAN:

- **Authorized Birth Certificate – Without a primary ID document, your birth certificate will be the most important document you submit. But the birth certificate alone is not enough to prove your identity. The SSA still needs proof that the person named on the birth certificate is alive and that you are that person!**
- **Other proof of identity – The more evidence of your identity you provide, the better. Any ID with your photo and name on it, even if it is not government-issued, will make it easier to prove who you are to the SSA. Other proof that can help: an employee ID; a school ID; a library card; a prison ID card, a U.S. Military ID; a health insurance or Medicaid/Medi-Cal card (not Medicare); or a certified copy of your medical record from a health clinic, doctor, or hospital that treated you.[52] SSA employees are required to consider each applicant's situation and evidence on a case-by-case basis.**

GETTING A SOCIAL SECURITY CARD BY MAIL

HOW DO I GET A REPLACEMENT SOCIAL SECURITY CARD BY MAIL?

STEP 1: **Obtain and fill out the application for a replacement card, Form SS-5.**

You can get this form from your local Social Security Administration (SSA) Field Office, download it from the SSA's website at http://www.socialsecurity.gov/forms/ss-5.pdf, or call the SSA at 1-800-772-1213 and ask to have the form mailed to you. If you decide to call the SSA, be patient. You will likely not speak to a live person, but will have to navigate through several voice prompts before getting to the right function. (See a sample Form SS-5 in Appendix D, PG. 94).

STEP 2: **Gather the documents you will need to prove your identity**

See STEP 1 on PG. 40 – the same types of proof apply by mail.[53]

STEP 3: **Mail your application and supporting documentation to any SSA Field Office.**

To get the address of your local Field Office, call 1-800-772-1213, or visit the SSA's website at: https://secure.ssa.gov/ICON/main.jsp and enter your ZIP code.[54]

REMEMBER TO MAKE COPIES BEFORE MAILING!

If you are sending your application by mail, you must send the originals of all your ID documents, so you won't have those original documents until your claim has been processed and the IDs have been mailed back to you. Make copies of every document before you send it in!

[51] See Application for a Social Security Card (Form SS-5), Soc. Sec. Admin. (Aug. 2011).
[52] Soc. Sec. Admin., Program Operations Manual System, RM 10210.405 Evidence of Identity for an SSN Card (March 20, 2013); RM 10210.420 Priority List of Acceptable Evidence of Identity Documents (Nov. 17, 2014); RM 10210.430 What Documents Are Not Evidence of Identity for an SSN Card (March 20, 2013).
[53] Soc. Sec. Admin., Program Operations Manual System, RM 10210.405 Evidence of Identity for an SSN Card (March 20, 2013).



I AM FORMERLY INCARCERATED, AND I'VE NEVER HAD A SOCIAL SECURITY NUMBER (SSN). HOW DO I GET AN ORIGINAL SSN AND CARD?

If you have never had a Social Security number (SSN)—meaning you were never assigned one at any point in your life—you need to apply for an original number. The process is similar to the process for getting a replacement card, but *it must be done in person*, and *the ID requirement is stricter*.

STEP 1: **Gather the identifying documents you will need.**

To get your SSN, you must prove your identity (a process called "enumeration") with proof of: (1) your age; (2) your U.S. citizenship or legal presence; and (3) your identity.[55]

For an ***original SSN***, you *must* bring more than one document to prove this information (not just one primary ID document). However, the types of ID documents you can use as proof are the same as for getting a replacement card (see PG. 40).[56] Some documents carry more weight than others: an authorized certified birth certificate (or proof of naturalization, hospital record, or religious record) will be the most important. Remember, the SSA Field Office reviewer has to decide that you are who you claim to be. Give him or her every reason to believe so, and bring as much proof as possible.

STEP 2: **Find your local Social Security Administration Field Office or Card Center.**

Go to the website https://secure.ssa.gov/ICON/main.jsp to locate a local SSA Field Office.

STEP 3: **Go to your local SSA Field Office or Card Center and fill out the application (Form SS-5).**

STEP 4: **Meet with an SSA employee to verify your identity.**

Bring with you everything that could help prove who you are — even family members who can vouch for you (they must bring valid ID for themselves)! An SSA Field Office reviewer will interview you and review all the documents you bring. Depending on what you provide, the reviewer may ask for additional evidence of your age, citizenship/legal presence, or identity.[57] The reviewer will enter all of your documentation into the SSA's electronic application system.[58] Generally, if the reviewer believes your documents are authentic and that you are who you say you are, your completed electronic application will be sent to a central office, and you'll be issued a Social Security card within about 2 weeks. If your information needs to be verified, the process can take several weeks or months.[59]

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[54] Learn What Documents You Need to Get a Social Security Card, SOC. SEC. ADMIN., http://www.socialsecurity.gov/ssnumber/ss5doc.htm.
[55] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10210.020 Policy for Number of Documents Required for an SSN Card (Sept. 30 2013).
[56] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10210.405 Evidence of Identity for an SSN Card (March 20, 2013); RM 10210.420 Priority List of Acceptable Evidence of Identity Documents (Nov. 17, 2014); RM 10210.430 What Documents Are Not Evidence of Identity for an SSN Card (March 20, 2013).
[57] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10210.210 Reviewing Age, Identity, Citizenship and Lawful Alien Status Evidence for an SSN Card; RM 10210.410 How Do you Examine, Evaluate, and Assess Documents Submitted as Evidence of Identity (March 20, 2013).
[58] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 102201.025 Enumeration Process: SSA Component Responsibilities (Feb. 27, 2014).
[59] SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10205.100 How Long Does it Take to Get an SSN Card? (March 3, 2013).

IV. CALIFORNIA STATE ID, DRIVER LICENSE & MUNICIPAL ID

WHAT WILL I LEARN?

- **The difference between a State ID and Driver License, and how to decide which will be most useful to you**
- **How to apply for a State ID if you: have never been issued a California ID; have an expired California ID; or are currently incarcerated**
- **How to apply for a duplicate card if you know you have a non-expired California ID but misplaced the original card**
- **How to get the DMV to reduce your application fee for a California ID, if you are eligible**
- **How to get a valid ID or Driver License if you are undocumented**
- **How to get a new California Driver License**
- **What to do if you have an expired California Driver License**
- **What to do if you have a Driver License from another state**
- **What you can do if your California Driver License has been suspended or revoked**
- **What happens when you have an outstanding traffic ticket in another state**

A *state ID card* and a *Driver License* are the most commonly used forms of identification for most people in their daily lives. In California, the Department of Motor Vehicles (DMV) issues both of these documents. The major difference between these two forms of ID is that a California state ID card can be used *only* for *identification* purposes, but does not permit you to drive a car. A California driver license can be used for *identification* AND permits you to *drive* a car.[60]

Once you have an authorized copy of your birth certificate (PG. 31) and know your Social Security number (SSN) (PG. 38), you have what you need to apply for a California state ID card or a California driver license.

WHICH ONE IS RIGHT FOR ME — A STATE ID CARD OR A DRIVER LICENSE? WHAT'S THE DIFFERENCE?

ARE YOU UNDOCUMENTED?
See PG. 1109.

Both a California state ID and a California driver license serve as an official government-issued, photo identification that can be used to prove your identity, age, and legal presence in the United States (unless you have an "undocumented person" California driver license). Either one will allow you to prove your identity, for example, when you open a bank account, register to vote, or apply for jobs, housing, or public benefits.

If you eventually want to *drive*, you will need to get a driver license, but because that process requires testing, we recommend that you get a California state ID first, since ID is needed right away after release. Once you get a state ID, you can go back later for a driver license.

THIS CHART COMPARES TWO TYPES OF IDENTIFICATION: CALIFORNIA STATE ID VS. DRIVER LICENSE.

CALIFORNIA STATE ID vs. DRIVER LICENSE	
CALIFORNIA STATE ID	**CALIFORNIA DRIVER LICENSE**
Government-issued ID; can be used to prove age, identity, and legal presence.	Government-issued ID; can be used to prove age, identity, and legal presence.***
Some people can obtain while incarcerated through CAL-ID program.	Cannot apply while incarcerated; you must apply in person upon release.
Requires only birth certificate and SSN.	Requires birth certificate and SSN; plus, you must take and pass a written test and a road test.
Does not authorize you to drive a car.	Authorizes you to drive a car.
There are ***no*** restrictions in getting a CA state ID based on your criminal history.	There *could be* some restrictions in getting a CA Driver License, depending on your criminal history.

[60] Driver License and Identification Card Information, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#idcard.

***** A NOTE IF YOU ARE UNDOCUMENTED:**

As of January 1, 2015, if you cannot provide proof of legal presence in the United States, but otherwise qualify for a California driver license, you can apply for a "non-ID" driver license. If you hold this license, you can legally drive a motor vehicle in California; but it does not prove legal presence in the United States for any purpose.[61] Read more about other forms of ID in California for undocumented people on PG. 1109.

PRE-RELEASE PLANNING — GETTING A CALIFORNIA STATE ID OR DRIVER LICENSE WHILE INCARCERATED

I AM CURRENTLY INCARCERATED. CAN I APPLY FOR A CALIFORNIA STATE ID OR A CALIFORNIA DRIVER LICENSE?

You cannot apply for a driver license from prison or jail. This must be done in person.

But you *might* be able to apply for a California state ID if your prison has a ***California Identification Card ("CAL-ID") program*** and you have a release date. Find more information on the CAL-ID program below on PG. 44.

WHAT IS THE CAL-ID PROGRAM?

The CAL-ID program provides certain state prisoners with a valid California state ID card — FOR FREE — *at the time they are released*.[62] This means *all eligible prisoners* in a California state prison have the right to receive a California state ID when they leave prison. ***In the past***, the CAL-ID program was available only at prisons designated as "reentry hubs." But starting January 1, 2015, a new state law requires that the CAL-ID program expand to ALL adult state prisons in California.[63]

IN WHAT FACILITIES IS THE CAL-ID PROGRAM AVAILABLE?

As of July 2015, the CAL-ID program has been expanded to all 36 state prisons in California. HOWEVER, the CAL-ID Program is NOT available at CDCR's contracted facilities (also called "community correctional facilities") or CDCR's conservation camps (also called "fire camps"). This is because CDCR and the DMV do *not* consider contracted facilities or fire camps to be "state prisons" under the law.[64] This interpretation has not been challenged.

Thus, the CAL-ID program is not available at fire camps OR contracted facilities, which include:

- Golden State Modified Community Correctional Facility (GSMCCF),
- Desert View Modified Community Correctional Facility (DVMCCF),
- Central Valley Modified Community Correctional Facility (CVMCCF),
- Shafter Modified Community Correctional Facility (SMCCF),
- Taft Modified Community Correctional Facility (TMCCF),
- Delano Modified Community Correctional Facility (DMCCF),
- Female Community Reentry Facility (FCRF).

If your facility is a community correctional facility or a fire camp, then unfortunately you cannot apply for a state ID card through the CAL-ID program while you are incarcerated. You will have to wait to apply for a state ID card after release.

WHO IS ELIGIBLE FOR THE CAL-ID PROGRAM?

Under the expanded CAL-ID program, you are eligible for a California state ID if:

- You have a set release date, AND that date is 120-210 days (approximately 4-7 months) away;
- You previously had a California state ID *or* California driver license;
- Your previous California state ID or driver license was *issued in the past 10 years*;
- You *don't owe any DMV fees* for your previous California state ID or driver license;
- You have a *photo* on file with the DMV that is *no more than 10 years old*;
- You *don't* have any *active felony holds, warrants, or detainers* that could cause you to go back to prison or jail after your release;

ARE LIFERS ELIGIBLE?

No. Currently, lifers are NOT eligible to get the Cal-ID, even at facilities that sponsor them.

[61] CAL. VEH. CODE §§ 12800-12801, 12801.9.
[62] CAL. PENAL CODE § 3007.05 (2015); California Identification (CAL-ID) Card Program, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/rehabilitation/cal-id.html.
[63] CAL. PENAL CODE § 3007.05 (2015).
[64] See CAL. PENAL CODE § 3007.05 ("CDCR and DMV shall ensure that all eligible inmates released from state prisons have valid identification cards").

- You *don't* have an *active Immigration and Customs Enforcement (ICE) hold* that would cause you to be deported after your release;
- You can provide an *address* where you will live after your release (note: this is the address that will be printed on the California state ID card, not your prison address); AND
- You provide the following information, and the DMV can make sure it's true:
  - True full name;
  - Date of birth;
  - Valid Social Security Number (SSN);
  - Legal presence (legal immigration status) in the United States
  - *Note: In case you don't know some of this information, CDCR should have it on file.*[65]

REMEMBER: Even if you are not eligible for the CAL-ID program, you can still apply for a California state ID through the normal process after you are released. Below, learn how to apply for a California state ID once you're out.

OPTIONAL STEPS TO SAVE YOU TIME!

(1) Schedule an appointment. To avoid waiting in long DMV lines, call (1-800-777-0133) or go online (http://www.dmv.ca.gov) ahead of time and request an appointment time. Some offices have a back-log of appointments and you might not be able to get one for several weeks. In that case, going in person might be better!

(2) Request an application by mail and fill it out before you go. You can call the DMV at 1-800-777-0133 to request that the California Driver License or ID card application (Form DL 44) be mailed to you so you can fill it out at home. Remember, you must still go to the DMV office to submit the application in person (you can't submit it by mail).

I THINK I AM ELIGIBLE FOR THE CAL-ID PROGRAM. HOW DO I APPLY?

If you want to apply for a California state ID card through the CAL-ID program, talk to your correctional counselor (also called a "CC I") at the prison. [66]

CDCR has informed us that the screening process takes place during the Release Program Study (RPS), which is usually performed 120-240 days prior to the prisoner's release (read more about the RPS on PG. 148). CDCR has also informed us that a Parole Services Associate (PSA) collects the CAL-ID applications, sends them to CDCR headquarters, and monitors each prisoner's progress in the CAL-ID program using an electronic tracking log.

As your release date approaches, you should be meeting with your counselor to develop a reentry plan. If you're eligible for the CAL-ID program, your counselor should help you fill out the application for a California state ID. (If your counselor has not mentioned the program, and you think you are eligible, you should bring it to your counselor's attention.) Next, the prison staff should check that all of your information is accurate, and then send your application to the CAL-ID Coordinator's office at CDCR, which then shares it with the DMV. NOTE: If you aren't sure where you'll be living, you can fill out the CAL-ID application using the address of a parole office in your county of release. Once you get out, you are responsible for going to the DMV to update your address.

If the DMV finds you eligible, it will send your new California state ID directly to the prison. The prison will hold the ID in your file and give it to you at the time you are released. NOTE: It's possible that your California state ID card won't arrive in time for your release (for example, if your release date is recalculated so that you get out earlier than expected). If this is the case, once your California state ID card is ready, the prison should send it to your address in the community, or (if you're on parole) send it to your parole officer to give it to you.

HELPFUL HINT
FOR ADDITIONAL QUESTIONS ABOUT THE CAL-ID PROGRAM

If you have questions about the CAL-ID program, call Nikita Singh, CAL-ID Coordinator, In-Prison Unit, Division of Rehabilitative Programs, California Department of Corrections and Rehabilitation (CDCR), at the following phone number: (916) 327-3352, and/or talk to your correctional counselor.

If you have Internet access, you can also view CDCR's Fact Sheet on the CAL-ID program online: http://www.cdcr.ca.gov/Rehabilitation/docs/Factsheets/Info_CALID_June2016.pdf

[65] CAL. PENAL CODE § 3007.05; California Identification (CAL-ID) Card Program, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/rehabilitation/cal-id.html; Telephone call with Kris Applegate, CDCR Div. of Rehabilitative Programs (Jan. 7, 2015) (confirming that expanded Cal-ID program does not change eligibility or operational criteria, but simply expands programs to additional facilities and codifies current DMV eligibility practices); Telephone call with Nikita Singh, CDCR Div. of Rehabilitative Programs (Jan. 7, 2015)

[66] Telephone call with Kris Applegate, CDCR Div. of Rehabilitative Programs (Jan. 7, 2015).

POST-RELEASE — GETTING A CALIFORNIA STATE ID OR DRIVER LICENSE AFTER YOU'RE OUT

I AM FORMERLY INCARCERATED AND WANT TO GET A CA STATE ID. HOW DO I APPLY?

There are 2 types of California state ID cards: (1) ***regular state ID cards***, which are good for 6 years, and (2) ***senior state ID cards***, for people 62 years and older, which are good for 10 years.

- If you have never had a California state ID card, you will need to apply for a *new card*.
- If you had a California ID state ID card in the past, but it expired, you will need to apply for a *new card*.
- If you had a California state ID card in the past and it has *not* expired (it's still good), you will need to apply for a *duplicate card*.

The process and the application form are the same for all 3 situations. Follow the steps below!

STEP 1: **Find a DMV office near you. You must apply for a state ID in person at the DMV.**

There are 179 local DMV field offices throughout the state.[67] You can find the office closest to you by calling the DMV directly at: 1-800-777-0133, or by looking up field offices on the DMV's website at: http://apps.dmv.ca.gov/fo/fotoc.htm. The DMV website offers both a city-by-city directory[68] and a "regional map"[69] where you can search for a field office by your home address.

STEP 2: **Prepare the required information and documents you need to bring to the DMV office. You will need:**

- **Your Social Security Number (SSN)**[70] — You *must* provide a 9-digit SSN to the DMV (with one small exception explained below). You do not need to show your actual Social Security card; you just need to know your number.[71] (*If you don't have or don't know your SSN, go to PG. 38 to learn how to get one and start that process first.)*

  ONE SMALL EXCEPTION: If you are a ***noncitizen***, you *don't need to bring a SSN to the DMV* if you are ***legally present***[72] in the United States (meaning living in the United States under lawful status), and you don't have a SSN because you aren't authorized to work.[73] If this is your situation, you can still apply for a California state ID as long as you prove your birth date and legal presence, as described below.[74]

- **Proof of your birth date and legal presence**[75]

Whether you have a SSN or not, you must prove your *birth date* and *legal presence* in the United States to get a state ID. The DMV accepts many kinds of documents for this purpose, depending on your situation. Examples include:

  - *If you are a U.S. citizen:* An authorized U.S. birth certificate, U.S. military ID, certificate of U.S. naturalization or citizenship,[76] or ***certification from CDCR or Parole***.[77]
  - *If you are NOT a U.S. citizen:* A valid foreign passport with valid I-94;[78] permanent resident alien card ("green card"); U.S. border crossing card with valid I-94;[79] refugee travel document; or judge's order granting you asylum.[80]
  - *Here is complete list of documents the DMV accepts to prove legal presence:* U.S. birth certificate; U.S. passport; U.S. Armed Forces ID card; Certificate of Naturalization; Permanent Resident card; *or* foreign passport with a valid I-94 (the

HOW DO I GET CDCR CERTIFICATION?

To get certification from CDCR, send a letter requesting a Legal Status Summary from: CDCR Archives Unit 2015 Aerojet Rd., Suite D Rancho Cordova, 95742. In your letter, say you are requesting a Legal Status Summary to prove your birth date and legal presence to the DMV. You must include your *name*, *CDCR number*, *phone number*, *signature*, and a *reliable address* where the Archives Unit can mail you back the certification. No requests by phone or fax.

You may also ask your parole agent for a certification letter—be sure that the photo they print out is in color.

[67] DMV Public Offices by Location, CAL. DMV, http://apps.dmv.ca.gov/fo/offices/toc_fo.htm.
[68] See DMV Public Offices by Location, CAL. DMV, http://apps.dmv.ca.gov/fo/offices/toc_fo.htm.
[69] See DMV Regional Maps, CAL. DMV, http://apps.dmv.ca.gov/web/fomap.html.
[70] 13 CAL. CODE REGS. § 15.04; CAL. VEH. CODE §§ 1653.5(a)(b), 12800(a), 12801.
[71] CAL. VEH. CODE § 12801(2).
[72] For the California DMV's full definition of "legal presence," see Limited Term for Legal Presence Driver License and Identification Card Applications, CAL. DMV, https://www.dmv.ca.gov/portal/dmv/?1dmy&urile=wcm:path:/dmv_content_en/dmv/pubs/brochures/fast_facts/ffdl32.
[73] 13 CAL. CODE REGS. § 15.04(c); see also Social Security Numbers for Noncitizens (Publication No. 05-10096), SOC. SEC. ADMIN. (Aug. 2013).
[74] 13 CAL. CODE REGS. § 15.04(c). Note: The DMV will take your information and double-check your status, then complete your application. See https://www.dmv.ca.gov/pubs/brochures/fast_facts/ffd108.htm.
[75] Driver License and Identification Card Information, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#BDLP.
[76] 13 CAL. CODE REGS. § 15.00(a).
[77] 13 CAL. CODE REGS. § 15.00(e); see also CAL. DMV, http://www.dmv.ca.gov. The information about requesting certification from CDCR is based on a telephone call with Rhonda Johnson, Supervisor at the CDCR Archives Unit (Jan. 21, 2015).
[78] 13 CAL. CODE REGS. § 15.00(d).
[79] 13 CAL. CODE REGS. § 15.00(b).
[80] 13 CAL. CODE REGS. § 15.00(e).

I-94 expiration date must be at least 2 months past the driver license/ID card application date). See Appendix H, PG. 103 for a full list of acceptable documents.

STEP 3: **Go to your local DMV office to submit your application and pay the fee.**

- Have your information and documents ready, and complete the Application Form (Form DL 44) if you have not already. Make sure you provide a reliable and accurate mailing address that will be good for at least 60 days where you can receive your California state ID.[81]
- At the DMV, you will be asked to give your thumbprint and have your photo taken.[82]

FEE PAYMENT: Unless you qualify for a fee waiver, pay $28 by cash, check, money order, or debit card (not credit card). **FEE WAIVERS ARE AVAILABLE IN THE FOLLOWING SITUATIONS:** (1) If you bring proof that you receive public assistance, you can get a **Reduced Fee ID** for **$8** (see PG. 47);[83] (2) If you are **over age 62**, you can get a **Senior ID** for **FREE**; and (3) If you are homeless, you can get a few ID. Read more in the box below!

IMPORTANT INFORMATION REGARDING FEE WAIVERS:

To get a REDUCED-FEE STATE ID (which is $8), you must bring proof to the DMV that you receive public benefits. First, have someone who can verify that you receive benefits fill out DMV Form DL 937 and then bring it to the DMV.

If you receive public benefits such as CalWORKs, CalFresh, or General Assistance/General Relief ("GA/GR"), you may qualify for the reduced fee state ID.[84] Go to the county office that manages your public benefits, and ask for someone there to fill out and sign the DMV form called "Verification for Reduced Fee Identification Card" (DMV Form DL 937)—read more in **Appendix F**, PG. 99). Bring the completed and signed form with you to the DMV.[85] Alternatively, if you receive services from a nonprofit organization in California that helps people apply for public benefits — like a health clinic, legal services provider, etc. — you can ask if a staff person at the nonprofit is able to fill out and sign DMV Form 937. *If you qualify, you will pay $8 instead of the standard $28 fee for your state ID!*[86]

To get a FREE ID, you must have an attorney or a non-profit or government homeless services provider fill out DMV Form DL 933 showing that you are homeless, and then bring this form to the DMV.

If you are homeless you should be able to get a free California ID card.[87] **Please note that the definition of homeless is very broad**—it can include people who are about to lose their homes; don't have a stable place to stay; or have to leave where they live do to a life-threatening situation.[88] You will need a "homeless services provider" (usually a non-profit or government agency) or a lawyer fill out the "No Fee Identification Card Eligibility Verification" (DMV Form DL 933), and bring that form to the DMV with you—read more in **Appendix F**, PG. 99).

STEP 4: **Receive your temporary ID, and wait for your official state ID card to come by mail.**

After you have submitted your application and paid the fee, DMV staff will print a *temporary paper ID* for you. You can use this temporary paper ID until your official California state ID card arrives in the mail. HOWEVER, your temporary ID will not have your photo on it, so it usually won't be accepted as proof of your identity. Your California state ID will be valid *for 6 years*.[89]

***** A NOTE IF YOU ARE UNDOCUMENTED:**

As of January 1, 2015, if you cannot provide proof of legal presence in the United States, but otherwise qualify for a California driver license, you can apply for a "non-ID" driver license. If you hold this license, you can legally drive a motor vehicle in California; but it does not prove legal presence in the United States for any purpose.[90] Read more about other forms of ID in California for undocumented people on PG. 1109.

[81] How to apply for or renew an identification (ID) card, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#idrenew. If you are homeless or in transition, provide the address of a shelter, transitional housing, P.O. box, family, or trusted friend where you can securely receive mail.
[82] How to apply for or renew an identification (ID) card, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#idrenew.
[83] Reduced fee ID card, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#idcard_reducedfee, Driver License/Identification Card Application Fees, CAL. DMV, http://www.dmv.ca.gov/dl/fees/driverlicense_fees.htm.
[84] 13 Cal. Code Regs. § 15.07.
[85] 13 Cal. Code Regs. § 15.07.
[86] Reduced fee ID card, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#idcard_reducedfee.
[87] Cal.Vehicle Code § 14902;13 CCR § 15.08.
[88] 13 CCR § 15.08; McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.)
[89] It expires on the sixth birthday you have after it is issued. CAL. VEH. CODE § 13002.
[90] CAL. VEH. CODE §§ 12800-12801, 12801.9.

I AM FORMERLY INCARCERATED AND WANT TO GET A CA DRIVER LICENSE. HOW DO I APPLY?

Below are 3 charts that explain detailed steps for getting your California driver license after your release. Go to the chart appropriate for your situation: **(A) "I've never had a driver license, but I want one;" (B) "I used to have a driver license, but it expired;" or (C) "I used to have a driver license, but it's from another state.**

I NEED A DRIVER LICENSE

(A) I'VE NEVER HAD A DRIVER LICENSE . . .

…BUT I WANT ONE	WHAT DO I HAVE TO DO TO DRIVE LEGALLY?
New driver	1) Find a DMV office near you. (Go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one.) a) Prepare the information and documents you need to bring to the DMV. For U.S. citizens and those legally present in the U.S. this information is: (1) your 9-digit SSN. (If you don't have/don't know it, follow the instructions on PG. 38 first), and (2) proof of birth date and legal presence. (See PG. 46 to find out how) 2) Submit Driver License Application to DMV. a) Present the documents and information listed above, along with an accurate mailing address that will be good for at least 60 days. b) Give a thumbprint; get your photo taken; pass a vision test. c) PAY THE FEE OF $33. You may pay by cash, check, money order, or debit card — but not credit card. You can't reduce this fee. 3) Prepare for the written (or audio) traffic test. a) Review the California Driver Handbook, which is available for free at any DMV office, or online at https://apps.dmv.ca.gov/pubs/dl600.pdf. The Handbook is available in print and audio forms, and has been translated into several different languages.[91] b) Take a free optional driving knowledge tutorial at www.dmv.ca.gov/pubs/interactive/tdrive/flash/flash_intro.htm. c) Take a sample test. You can ask for a free sample test at your DMV office, or can find one online at www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.[92] 4) Make an appointment to take the written (or audio) traffic test a) By phone at 1-800-777-0133, or online (http://www.dmv.ca.gov). b) The DMV doesn't give tests after 4:30 p.m., so be sure to schedule an appointment early enough to give you time to wait in line, fill out papers, and take the test.[93] c) If you want to take an audio version of the test or have an examiner read the questions to you, the DMV should accommodate this request. The written version is offered in 32 languages. The audio version is offered in 12 languages.[94] 5) Pass written/audio traffic test. a) If you don't pass: you must wait until the next day to retake it. Over the next 12 months, you can take it again for free up to 2 more times. After that, you must pay to take it again.[95] b) If you pass: the DMV will issue you a permit that you must have on when you practice driving with a licensed driver. 6) Prepare for the behind-the-wheel road test. a) Have a licensed adult driver in the car with you while you practice driving. You'll want to practice starting the vehicle, moving forward, stopping, turning, backing up, changing lanes, driving on the freeway, parking, and using defensive driving techniques.[96] b) NOTE: Until you pass your road test, it's illegal for you to drive without a licensed driver in the vehicle with you. 7) Book an appointment to take the behind-the-wheel road test. a) By phone (1-800-777-0133), or online (http://www.dmv.ca.gov/foa/welcome.do?localeName=en). b) The DMV does not have cars for you to drive — you must bring one that is safe to drive and has a valid registration card. If you plan on driving to your appointment, remember to go with an adult licensed driver. c) Bring proof of insurance to the DMV for the car you plan to drive.[97] You must have proof the car is properly insured.[98] 8) Take the behind-the-wheel road test a) IF YOU PASS: you'll get a temporary California driver license to use until your official photo license arrives by mail. The temporary license is valid for 60 days. If your photo license doesn't arrive within 60 days, call 1-800-777-0133 to check the status of your license. When you call, have your temporary license available to provide information. b) IF YOU DON'T PASS: keep practicing and make an appointment to take another driving test. Within 12 months after getting your permit, you can take the test up to 2 more times for $6 each time. After that, you must restart all the steps, including submitting a new application form, taking the written (or audio) test and the road test.[99]

[91] Publications, DMV, https://www.dmv.ca.gov/pubs/pubs.htm.
[92] These are available in English and American Sign Language, for both online and paper versions. Samples of Driver License Written Tests, DMV, www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.
[93] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm - two500.
[94] The DMV offers the audio traffic test in Armenian, Chinese/Mandarin, Hindi, Hmong, Japanese, Korean, Portuguese, Punjabi, Russian, Spanish, and Vietnamese. What other languages is the written or audio test available in?, DMV, http://www.dmv.ca.gov/dl/dl_info.htm#languages.
[95] How to apply for a permit if you are under 18, DMV, http://www.dmv.ca.gov/teenweb/permit_btn1/apply.htm.
[96] To learn more about what the test involves and how to prepare for it, visit https://www.dmv.ca.gov/pubs/cdl_htm/sec13.htm or http://www.dmv.ca.gov/pubs/brochures/fast_facts/ffdl22.htm.
[97] If you're borrowing this car from a friend or family member, make sure that either (1) the car's insurance policy has you listed as a regular driver, or (2) the insurance policy allows for "permissive users." (Most car insurance policies allow for permissive users, which means that if the car owner gives you permission to drive the car, the insurance company will cover any damage to the car.)
[98] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500.

I NEED A DRIVER LICENSE

(B) I USED TO HAVE A DRIVER LICENSE, BUT IT EXPIRED.

TIME SINCE D.L. EXPIRED	WHAT DO I HAVE TO DO TO DRIVE LEGALLY?
I used to have a driver license, and it expired less than 6 months ago.	1) Find a DMV office near you (go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one) 2) Prepare the information and documents you need to bring to the DMV. For U.S. citizens and those legally present in the U.S. this information is: a) Your 9-digit SSN.[100] (If you don't have/don't know it, follow the instructions on PG. 38) b) Proof of birth date and legal presence. (See PG. 46 to find out how) 3) Submit Driver License Application to DMV. a) Present the documents and information listed above, along with an accurate mailing address that will be good for at least 60 days. b) Give a thumbprint; get your photo taken; pass a vision test.[101] c) PAY THE FEE OF $33. You may pay by cash, check, money order, or debit card — but not credit card.[102] There is no option to reduce this fee.
I used to have a driver license, and it expired more than 6 months ago, but less than 4 years ago.	1) Find a DMV office near you. (Go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one) 2) Prepare the information and documents you need to bring to the DMV. For U.S. citizens and those legally present in the U.S. this information is: a) Your 9-digit SSN.[103] (If you don't have/don't know it, follow the instructions on PG. 38) b) Proof of birth date and legal presence. (See PG. 46 to find out how) 3) Submit Driver License Application to DMV. a) Present the documents and information listed above, along with an accurate mailing address that will be good for at least 60 days. b) Give a thumbprint; get your photo taken; pass a vision test.[104] c) PAY THE FEE OF $33. You may pay by cash, check, money order, or debit card—but not credit card.[105] There is no option to reduce this fee. 4) Prepare for the written (or audio) traffic test. a) Review the California Driver Handbook, which is available for free at any DMV office, or online at https://apps.dmv.ca.gov/pubs/dl600.pdf. The Handbook is available in print and audio forms, and has been translated into several different languages.[106] b) Take a free optional driving knowledge tutorial at www.dmv.ca.gov/pubs/interactive/tdrive/flash/flash_intro.htm. c) Take a sample test. You can ask for a free sample test at your DMV office, or can find one online at www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.[107] 5) Make an appointment to take the written (or audio) traffic test a) By phone at 1-800-777-0133, or online (http://www.dmv.ca.gov). b) The DMV doesn't give test after 4:30 PM, so be sure to schedule an appointment early enough to give you time to wait in line, fill out papers, and take the test.[108] c) If you want to take an audio version of the test or have an examiner read the questions to you, the DMV should accommodate this. The written version is offered in 32 languages.[109] The audio version is offered in 12 languages.[110] 6) Pass written/audio traffic test. 7) If you don't pass: you must wait until the next day to retake it. Over the next 12 months, you can take it again for free up to 2 more times. After that, you must pay to take it again.[111]

[99] CAL. VEH. CODE § 12506, How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500.
[100] CAL. VEH. CODE § 12801(2).
[101] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500. If you don't pass, you may be referred to a vision specialist, who may then prescribe eyeglasses, or a stronger eyeglass prescription than you currently wear. Vision exam requirement, DMV, http://www.dmv.ca.gov/dl/dl_info.htm - VISION.
[102] Driver License/Identification Card Application Fees, CAL. DMV, http://www.dmv.ca.gov/dl/fees/driverlicense_fees.htm.
[103] CAL. VEH. CODE § 12801(2).
[104] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500. If you don't pass, you may be referred to a vision specialist, who may then prescribe eyeglasses, or a stronger eyeglass prescription than you currently wear. Vision exam requirement, DMV, http://www.dmv.ca.gov/dl/dl_info.htm - VISION
[105] Driver License/Identification Card Application Fees, CAL. DMV, http://www.dmv.ca.gov/dl/fees/driverlicense_fees.htm
[106] Publications, DMV, https://www.dmv.ca.gov/pubs/pubs.htm.
[107] These are available in English and American Sign Language, for both online and paper versions. Samples of Driver License Written Tests, DMV, www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.
[108] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm - two500
[109] The DMV offers the written traffic test in Amharic, Arabic, Armenian, Cambodian, Chinese, Croatian, French, German, Greek, Hebrew, Hindi, Hmong, Hungarian, Indonesian, Italian, Japanese, Korean, Laotian, Persian/Farsi, Polish, Portuguese, Punjabi, Romanian, Russian, Samoan, Spanish, Tagalog/Filipino, Thai, Tongan, Turkish, and Vietnamese, http://www.dmv.ca.gov/dl/dl_info.htm#languages.
[110] The DMV offers the audio traffic test in Armenian, Chinese/Mandarin, Hindi, Hmong, Japanese, Korean, Portuguese, Punjabi, Russian, Spanish, and Vietnamese. *See* http://www.dmv.ca.gov/dl/dl_info.htm#languages.

I used to have a driver license, and it expired more than 4 years ago.	1) Find a DMV office near you. (Go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one) 2) Prepare the information and documents you need to bring to the DMV. For U.S. Citizens and those legally present in the U.S. this information is: a) Your 9-digit SSN.[112] (If you don't have/don't know it, follow the instructions on PG. 38) b) Proof of Birth Date and Legal Presence. (See PG. 46 to find out how) 3) Submit Driver License Application to DMV. a) Present the documents and information listed above, along with an accurate mailing address that will be good for at least 60 days. b) Give a thumbprint; get your photo taken; pass a vision test.[113] c) PAY THE FEE OF $33. You may pay by cash, check, money order, or debit card—but not credit card.[114] There is no option to reduce this fee. 4) Prepare for the written (or audio) traffic test. a) Review the California Driver Handbook, which is available for free at any DMV office, or online at https://apps.dmv.ca.gov/pubs/dl600.pdf. The Handbook is available in print and audio forms, and has been translated into several different languages.[115] b) Take a free optional driving knowledge tutorial at www.dmv.ca.gov/pubs/interactive/tdrive/flash/flash_intro.htm. c) Take a sample test. You can ask for a free sample test at your DMV office, or can find one online at www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.[116] 5) Make an appointment to take the written (or audio) traffic test. a) By phone at 1-800-777-0133, or online (http://www.dmv.ca.gov). b) The DMV doesn't give test after 4:30 PM, so be sure to schedule an appointment early enough to give you time to wait in line, fill out papers, and take the test.[117] c) If you want to take an audio version of the test or have an examiner read the questions to you, the DMV should accommodate this request. The written version is offered in 32 languages. The audio version is offered in 12 languages.[118] 6) Pass written/audio traffic test. a) If you don't pass: you must wait until the next day to retake it. Over the next 12 months, you can take it again for free up to 2 more times. After that, you must pay to take it again.[119] b) If you pass: the DMV will issue you a permit that you must have on when you practice driving with a licensed driver. 7) Prepare for the behind-the-wheel road test. 8) Have a licensed adult driver in the car with you while you practice driving. You'll want to practice starting the vehicle, moving forward, stopping, turning, backing up, changing lanes, driving on the freeway, parking, and using defensive driving techniques.[120] 9) NOTE: Until you pass your road test, it's illegal for you to drive without a licensed driver in the vehicle with you. 10) Book an appointment to take the behind-the-wheel road test. a) By phone (1-800-777-0133), or online (http://www.dmv.ca.gov/foa/welcome.do?localeName=en). b) The DMV does not have cars for you to drive—you must bring one that is safe to drive and has a valid registration card. If you plan on driving to your appointment, remember to go with an adult licensed driver. c) *Arrange to bring proof of insurance* to the DMV for the car you plan on driving.[121] You must have proof the car is properly insured.[122] 11) Take the behind-the-wheel road test. a) IF YOU PASS: you'll get a temporary California driver license to use until your official photo license arrives by mail. The temporary license is valid for 60 days. If your photo license doesn't arrive in the mail within 60 days, call 1-800-777-0133 to check the status of your license. When you call, have your temporary license available to provide information. IF YOU DON'T PASS: keep practicing and make an appointment to take another driving test. Within 12 months after getting your permit, you can take the test up to 2 more times for $6 each time. After that, you must restart all the steps, including submitting a new application form, taking the written (or audio) test, and then taking the road test.[123]

[111] How to apply for a permit if you are under 18, DMV, http://www.dmv.ca.gov/teenweb/permit_btn1/apply.htm
[112] CAL. VEH. CODE § 12801(2).
[113] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500. If you don't pass, you may be referred to a vision specialist, who may then prescribe eyeglasses, or a stronger eyeglass prescription than you currently wear http://www.dmv.ca.gov/dl/dl_info.htm#VISION.
[114] Driver License/Identification Card Application Fees, DMV, http://www.dmv.ca.gov/dl/fees/driverlicense_fees.htm
[115] Publications, DMV, https://www.dmv.ca.gov/pubs/pubs.htm.
[116] These are available in English and American Sign Language, for both online and paper versions. Samples of Driver License Written Tests, DMV, www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.
[117] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm - two500
[118] The DMV offers the audio traffic test in Armenian, Chinese/Mandarin, Hindi, Hmong, Japanese, Korean, Portuguese, Punjabi, Russian, Spanish, and Vietnamese. What other languages is the written or audio test available in?, DMV, http://www.dmv.ca.gov/dl/dl_info.htm#languages
[119] How to apply for a permit if you are under 18, DMV, http://www.dmv.ca.gov/teenweb/permit_btn1/apply.htm
[120] To learn more about what the test involves and how to prepare for it, visit https://www.dmv.ca.gov/pubs/cdl_htm/sec13.htm or http://www.dmv.ca.gov/pubs/brochures/fast_facts/ffdl22.htm
[121] If you're borrowing this car from a friend or family member, make sure that either (1) the car's insurance policy has you listed as a regular driver, or (2) the insurance policy allows for "permissive users." (Most car insurance policies allow for permissive users, which means that if the car owner gives you permission to drive the car, the insurance company will cover any damage to the car.)
[122] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500
[123] CAL. VEH. CODE § 12506; How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500.

I NEED A DRIVER LICENSE

(C) I USED TO HAVE A DRIVER LICENSE, BUT IT'S FROM ANOTHER STATE

TIME SINCE D.L. EXPIRED	WHAT DO I HAVE TO DO TO DRIVE LEGALLY?
Hasn't expired — still valid	1) Find a DMV office near you. (Go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one) 2) Prepare the information and documents you need to bring to the DMV. For U.S. citizens and those legally present in the U.S. this information is: a) Your 9-digit SSN.[124] (If you don't have/don't know it, follow the instructions on PG. 38) b) Proof of birth date and legal presence. (See PG. 46 to find out how) 3) Submit Driver License Application to DMV. 4) Present the documents and information listed above, along with an accurate mailing address that will be good for at least 60 days. 5) Give a thumbprint; get your photo taken; pass a vision test.[125] 6) PAY THE FEE OF $33. You may pay by cash, check, money order, or debit card—but not credit card.[126] There is no option to reduce this fee.
Expired more than 6 months ago, but less than 4 years ago	1) Find a DMV office near you. (Go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one) 2) Prepare the information and documents you need to bring to the DMV. For U.S. citizens and those legally present in the U.S. this information is: a) Your 9-digit Social Security number.[127] (If you don't have/don't know it, follow the instructions on PG. 38 first) b) Proof of birth date and legal presence. (See PG. 46 to find out how) 3) Submit Driver License Application to DMV. a) Present the documents and information listed above, along with an accurate mailing address that will be good for at least 60 days. b) Give a thumbprint; get your photo taken; pass a vision test.[128] c) PAY THE FEE OF $33. You may pay by cash, check, money order, or debit card—but not credit card.[129] There is no option to reduce this fee. 4) Prepare for the written (or audio) traffic test. a) Review the California Driver Handbook, which is available for free at any DMV office, or online at https://apps.dmv.ca.gov/pubs/dl600.pdf. The Handbook is available in print and audio forms, and has been translated into several different languages.[130] b) Take a free optional driving knowledge tutorial at www.dmv.ca.gov/pubs/interactive/tdrive/flash/flash_intro.htm. c) Take a sample test. You can ask for a free sample test at your DMV office, or can find one online at www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.[131] 5) Make an appointment to take the written (or audio) traffic test: a) By phone at 1-800-777-0133, or online (http://www.dmv.ca.gov). b) The DMV doesn't give test after 4:30 PM, so be sure to schedule an appointment early enough to give you time to wait in line, fill out papers, and take the test.[132] c) If you want to take an audio version of the test or have an examiner read the questions to you, the DMV should accommodate this request. The written version is offered in 32 languages.[133]The audio version is offered in 12 languages.[134] 6) Pass written/audio traffic test. a) If you don't pass: you must wait until the next day to retake it. Over the next 12 months, you can take it again for free up to 2 more times. After that, you must pay to take it again.[135]

[124] CAL. VEH. CODE § 12801(2).
[125] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500. If you don't pass, you may be referred to a vision specialist, who may then prescribe eyeglasses, or a stronger eyeglass prescription than you currently wear http://www.dmv.ca.gov/dl/dl_info.htm - VISION.
[126] Driver License/Identification Card Application Fees, DMV, http://www.dmv.ca.gov/dl/fees/driverlicense_fees.htm.
[127] CAL. VEH. CODE § 12801(2).
[128] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500. If you don't pass, you may be referred to a vision specialist, who may then prescribe eyeglasses, or a stronger eyeglass prescription than you currently wear http://www.dmv.ca.gov/dl/dl_info.htm#VISION
[129] Driver License/Identification Card Application Fees, DMV, http://www.dmv.ca.gov/dl/fees/driverlicense_fees.htm.
[130] Publications, DMV, https://www.dmv.ca.gov/pubs/pubs.htm.
[131] These are available in English and American Sign Language, for both online and paper versions. Samples of Driver License Written Tests, DMV, www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.
[132] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm - two500.
[133] The DMV offers the written traffic test in Amharic, Arabic, Armenian, Cambodian, Chinese, Croatian, French, German, Greek, Hebrew, Hindi, Hmong, Hungarian, Indonesian, Italian, Japanese, Korean, Laotian, Persian/Farsi, Polish, Portuguese, Punjabi, Romanian, Russian, Samoan, Spanish, Tagalog/Filipino, Thai, Tongan, Turkish, and Vietnamese. What other languages is the written or audio test available in?, DMV, http://www.dmv.ca.gov/dl/dl_info.htm#languages
[134] The DMV offers the audio traffic test in Armenian, Chinese/Mandarin, Hindi, Hmong, Japanese, Korean, Portuguese, Punjabi, Russian, Spanish, and Vietnamese. What other languages is the written or audio test available in?, DMV, http://www.dmv.ca.gov/dl/dl_info.htm#languages .
[135] How to apply for a permit if you are under 18, DMV, http://www.dmv.ca.gov/teenweb/permit_btn1/apply.htm.

Expired more than 4 years ago	1) Find a DMV office near you. (Go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one) 2) Prepare the information and documents you need to bring to the DMV. For U.S. citizens and those legally present in the U.S. this information is: a) Your 9-digit SSN.[136] (If you don't have/don't know it, follow the instructions on PG. 38 first) b) Proof of birth date and legal presence. (See PG. 46 to find out how) 3) Submit Driver License Application to DMV. a) Present the documents and information listed above, along with an accurate mailing address that will be good for at least 60 days. b) Give a thumbprint; get your photo taken; pass a vision test.[137] c) PAY THE FEE OF $33. You may pay by cash, check, money order, or debit card—but not credit card.[138] There is no option to reduce this fee. 4) Prepare for the written (or audio) traffic test. a) Review the California Driver Handbook, which is available for free at any DMV office, or online at https://apps.dmv.ca.gov/pubs/dl600.pdf. The Handbook is available in print and audio forms, and has been translated into several different languages.[139] b) Take a free optional driving knowledge tutorial at www.dmv.ca.gov/pubs/interactive/tdrive/flash/flash_intro.htm. c) Take a sample test. You can ask for a free sample test at your DMV office, or can find one online at www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.[140] 5) Make an appointment to take the written (or audio) traffic test a) By phone at 1-800-777-0133, or online (http://www.dmv.ca.gov). b) The DMV doesn't give test after 4:30 PM, so be sure to schedule an appointment early enough to give you time to wait in line, fill out papers, and take the test.[141] c) If you want to take an audio version of the test or have an examiner read the questions to you, the DMV should accommodate your request. The written version is offered in 32 languages.[142] The audio version is offered in 12 languages.[143] 6) Pass written/audio traffic test. a) If you don't pass: you must wait until the next day to retake it. Over the next 12 months, you can take it again for free up to 2 more times. After that, you must pay to take it again.[144] b) If you pass: the DMV will issue a permit that you must have when you practice driving with a licensed driver. 7) Prepare for the behind-the-wheel road test. a) Have a licensed adult driver in the car with you while you practice driving. You'll want to practice starting the vehicle, moving forward, stopping, turning, backing up, changing lanes, driving on the freeway, parking, and using defensive driving techniques.[145] b) NOTE: Until you pass the road test, it's illegal for you to drive without a licensed driver with you.[146] 8) Book an appointment to take the behind-the-wheel road test. 9) By phone (1-800-777-0133), or online (http://www.dmv.ca.gov/foa/welcome.do?localeName=en). 10) The DMV does not have cars for you to drive — you must bring one that is safe to drive and has a valid registration card. If you plan on driving to your appointment, remember to go with an adult licensed driver. 11) *You must bring proof of proper insurance* to the DMV for the car you plan on driving.[147] 12) Take the behind-the-wheel road test a) IF YOU PASS: You'll get a temporary driver license to use until your official photo license arrives by mail. The temporary license is valid for 60 days.[148] If your photo license doesn't arrive in the mail within 60 days, call 1-800-777-0133 to check the status. When you call, have your temporary license available. b) IF YOU DON'T PASS: Keep practicing and make an appointment to take another driving test. Within 12 months after getting your permit, you can take the test up to 2 more times ($6 each time). After that, you must restart all the steps: submitting a new application, taking a written (or audio) test, and taking a road test.[149]

[136] CAL. VEH. CODE § 12801(2).
[137] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500. If you don't pass, you may be referred to a vision specialist, who may then prescribe eyeglasses, or a stronger eyeglass prescription.
[138] Driver License/Identification Card Application Fees, DMV, http://www.dmv.ca.gov/dl/fees/driverlicense_fees.htm
[139] Publications, DMV, https://www.dmv.ca.gov/pubs/pubs.htm.
[140] These are available in English and American Sign Language, for both online and paper versions. Samples of Driver License Written Tests, DMV, www.dmv.ca.gov/pubs/interactive/tdrive/exam.htm.
[141] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm - two500.
[142] The DMV offers the written traffic test in Amharic, Arabic, Armenian, Cambodian, Chinese, Croatian, French, German, Greek, Hebrew, Hindi, Hmong, Hungarian, Indonesian, Italian, Japanese, Korean, Laotian, Persian/Farsi, Polish, Portuguese, Punjabi, Romanian, Russian, Samoan, Spanish, Tagalog/Filipino, Thai, Tongan, Turkish, and Vietnamese. What other languages is the written or audio test available in?, DMV, http://www.dmv.ca.gov/dl/dl_info.htm#languages.
[143] The DMV offers the audio traffic test in Armenian, Chinese/Mandarin, Hindi, Hmong, Japanese, Korean, Portuguese, Punjabi, Russian, Spanish, and Vietnamese. What other languages is the written or audio test available in?, DMV, http://www.dmv.ca.gov/dl/dl_info.htm#languages
[144] How to apply for a permit if you are under 18, DMV, http://www.dmv.ca.gov/teenweb/permit_btn1/apply.htm
[145] To learn more about what the test involves and how to prepare for it, visit https://www.dmv.ca.gov/pubs/cdl_htm/sec13.htm or http://www.dmv.ca.gov/pubs/brochures/fast_facts/ffdl22.htm
[146] http://apps.dmv.ca.gov/pubs/hdbk/adults.htm#adult_permit
[147] If you're borrowing this car from a friend or family member, make sure that either (1) the car's insurance policy has you listed as a regular driver, or (2) the insurance policy allows for "permissive users." (Most car insurance policies allow for permissive users, which means that if the car owner gives you permission to drive the car, the insurance company will cover any damage to the car.) Cal. Ins. Code § 11580.1.
[148] Cal. Veh. Code § 12506.

DRIVER LICENSE SUSPENSIONS & REVOCATIONS

MY DRIVER LICENSE HAS BEEN SUSPENDED OR REVOKED. WHAT DOES THIS MEAN?

If your driver license was *suspended* or *revoked*, this means you lost your right to drive as a penalty for a violation, a criminal conviction, and/or an unpaid debt. Here are specific examples of issues that can cause your license to be suspended or revoked:

- **Driving violations:** Driving under the influence, hit-and-run, fleeing a law enforcement officer, driving without proof of car insurance, too many accidents in a short time, too many "negative points" on your driving record, or reckless driving (road rage, speeding, racing, etc.).[150]
- **Other violations:** Truancy, vandalism (including graffiti), fleeing a police officer, failing to appear in court, or failing to report an accident.
- **Unpaid debts:** Failing to pay child support; or failing to pay other debts (such as loans, credit card payments, medical bills, car payments, payday loans, landlord dues, or utility bills) if the person to whom you owe money gets a judgment against you in court.[151]
    - CHILD SUPPORT DEBT → To learn more about a suspended driver license due to unpaid child support, see the text box on PG. 55. To learn general information about *child support*, go to the FAMILY & CHILDREN CHAPTER, beginning on PG. 714, with specific information on child support starting on PG. 778.[152]

IMPORTANT: BEGINNING JUNE 27, 2017, THE DMV CAN NO LONGER SUSPEND DRIVER LICENSES DUE TO UNPAID FINES:

As of the passage of AB 103 on June 27, 2017, the DMV can no longer suspend your driver license due to unpaid fines.[153] This new law became effective on June 27, 2017, which means it will NOT apply to you if your license was suspended BEFORE that date. Additionally, under AB 103, a court *can no longer* report a failure to pay fines or failure to pay bail to the DMV, no matter the reasons![154]

If your license was *suspended BEFORE June 27, 2017 due to failure to pay*, you may still be able to have your traffic debt forgiven and have your license reinstated if…

1) *You are serving a state prison sentence or a Realignment sentence in county jail, AND your ticket was "pending" when you were incarcerated:* You will have to proactively request dismissal from the DMV under Vehicle Code 41500. If you are sending it while currently incarcerated, it will need to be on CDCR letterhead and be signed by an Authorized Representative. Your request should be sent to: Department of Motor Vehicles, Division of Drivers Safety and Licensing, P.O. Box 9412890, Sacramento, CA 94290.

2) *Your license was suspended for a Failure-to-Pay, Failure-to-Appear or other failure-to-comply that is more than 5 years old:* You can call the DMV Mandatory Actions line at (916) 657-6525 to see if your license qualifies.

3) *Your local county court has a process for waiving fees:* For information on local court practices, the legal nonprofit EBCLC has created the following website where you can search for more information by county: http://ebclc.org/reentry-legal-services/.

WHAT HAPPENS IF MY LICENSE IS SUSPENDED?

If your Driver License is suspended, that means you *temporarily* lose your driving privileges, but not forever. You will not be able to drive for a period of time, anywhere from 30 days to a few years.[155] After your period of suspension has passed, your license should be automatically reinstated.

However, if your license is suspended because of a physical or mental condition or disorder that affects your ability to drive, the suspension will be permanent if that condition becomes permanent.[156]

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[149] How to apply for a driver license if you are over 18, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#two500.
[150] CAL. VEH. CODE §§ 13200-13201.5.
[151] CAL. VEH. CODE § 16370.
[152] CAL. WELF. & INST. CODE § 11350.6.
[153] Assembly Bill 103 (Stats. 2017, Ch. 17, Secs. 51-54), codified at CAL. VEH. CODE §§ 13365, 40509 and 40509.5.
[154] Learn more at DMV, "Failure to Pay Frequently Asked Questions," https://www.dmv.ca.gov/portal/dmv/detail/faq/ftpfaq.
[155] CAL. VEH. CODE § 13100 et seq.
[156] CAL. VEH. CODE § 13102, 13556.



A *restricted license* allows you to drive during a period of suspension, but only for specific purposes that a judge has permitted, such as to attend work, school, or a court-ordered program (for example, a DUI class).[157]

WHAT HAPPENS IF MY DRIVER LICENSE IS REVOKED?

If your Driver License is revoked, your driving privileges are "terminated" (ended). You may be able to get a Driver License again, but you likely will have to wait several years. In extreme cases,[158] you may be legally forbidden from ever driving again.[159] If you become eligible for a Driver License again, you will have to apply for a new license.

IF MY LICENSE WAS SUSPENDED OR REVOKED, COULD I GET MY DRIVING PRIVILEGES BACK?

Maybe. Unless your license was *permanently* revoked, you should be able to regain your driving privileges if (1) the required time period of your suspension or revocation has passed, AND (2) you've fulfilled any conditions of your suspension or revocation.[160] Depending on the reason why your license was suspended, the length of suspension will vary, and the steps you must take to get your license back will also vary.[161] If your Driver License was suspended or revoked and you want to regain your driving privileges, here are some steps you can take:[162]

STEP 1: **Know the details of your situation.**[163]

The requirements to reinstate your license will depend on exactly why it was suspended or revoked. Call the DMV at 1-800-777-0133, ask them to look up your case, and find out what you need to do. When you call, be prepared with your old Driver License number and any information the DMV has sent to you.[164]

- Unless your Driver License was permanently revoked, you'll probably find out that you need to fulfill specific conditions (see **STEP 2** below) and submit to the DMV "proof of completion" of those conditions to reinstate your license.[165]
- If you have a Failure to Appear (FTA), Failure to Pay (FTP), or other failure to comply on your DMV record (which may be the reason your Driver License was suspended and/or make it difficult to renew your license), and the charge is *more than 5 years old*, you may be able to get the charge erased from your DMV record and reinstate your license by calling the DMV Mandatory Actions Line at 916-657-6525.[166]

STEP 2: **Make sure that you fulfill the conditions of your suspension or revocation.**

- You may be required to complete traffic school, DUI treatment, or jail time, and to provide documents proving that you did so. You may also be required to pay fees and fines, including court-related fees and additional penalties imposed by the DMV. See the chart on PG. 54 for examples of requirements and steps to get your license back.
- Keep all documents proving that you've fulfilled these conditions, such as certificates and pay stubs, and be prepared to submit them as required.
- You will also need to submit proof of "financial responsibility." Most of the time, this means proof of car insurance.[167]

STEP 3: **Prepare all required documents and payments.**

Make copies of all your important documents, and keep careful records of all payments.

STEP 4: **Submit all required documents and payments to the DMV.**

Confirm that you're eligible to reinstate your license, and get proof from the DMV.

Once you've completed these 4 steps, you may be able to reinstate your driver license (if it was *suspended*) or apply for a renewal driver license (if it was *revoked*). In some cases, if you've completed some or most of the

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[157] CAL. VEH. CODE §§ 13200 et seq.
[158] For example, if you were convicted of a felony where you used a vehicle as a deadly weapon. CAL. VEH. CODE § 13351.5.
[159] CAL. VEH. CODE §§ 13101, 13351.5.
[160] CAL. VEH. CODE § 13100 et seq.
[161] CAL. VEH. CODE § 13100 et seq.
[162] For more information, see Reinstate Your CA Suspended Driver's License, DMV.ORG, http://www.dmv.org/ca-california/suspended-license.php#Reinstate-Your-CA-Suspended-Drivers-License.
[163] There is a proposed law in California, SB 405, that would restore Driver Licenses suspended due to a Failure to Appear in court or Failure to Pay a fine, if the suspension happened between January 1, 2013, and December 31, 2015 (inclusive), and the person agrees to a payment plan to pay off their fines and penalties. Access to Justice Act, S.B. 405, 2015 Cal. Leg., as amended July 7, 2015. (Updated July 2015).
[164] What is a suspended driver license?, DMV, http://www.dmv.ca.gov/dl/dl_info.htm#sdl.
[165] CAL. VEH. CODE § 13352.
[166] CAL. VEH. CODE § 12808(c). Exception: If the Failure to Appear was for a DUI (under Vehicle Code Sections 23152 or 23153) or vehicular manslaughter (under Penal Code Sections 191.5 or 192.5(a)), the charge may be purged after 10 years.
[167] Cal. Veh. Code § 34630.

requirements, you may be able to get a *restricted license* if your suspension or revocation period hasn't ended yet.[168]

NOTE: If your license was suspended due to court-ordered debt, and these debts have been referred to the California Franchise Tax Board (FTB) for collection, there is a special payment process to speed up the return of your driver license. For instructions, go online to https://www.ftb.ca.gov/online/Court_Ordered_Debt/payment.shtml, and see Appendix G, PG. 102.

*** HELPFUL HINT**

What are my options if my driver license was suspended because of unpaid child support?

If your driver license was suspended due to unpaid child support and you cannot pay the amount required, you can ask a judge to reinstate your license temporarily. To do so, you can file a Notice of Motion for Judicial Review of License Denial (Form FL-670) with the court that issued your child support order.[169] This form asks the judge of that court to consider giving you back your driver license so that you can continue to go to work and earn money to pay the child support. The judge, not the local child support agency (LCSA), will make the final decision.[170] For more information about child support, see PG. 778 of the FAMILY & CHILDREN CHAPTER.

[168] See CAL. VEH. CODE § 13352.5.
[169] The forms to request your license back in a child support case are available at http://www.courts.ca.gov/1199.htm#id11393.
[170] CAL. WELF. & INST. CODE § 11350.6; see also Child Support FAQs, JUDICIAL COUNSEL OF CALIFORNIA, http://www.courts.ca.gov/1200.htm.

THIS CHART EXPLAINS DIFFERENT REQUIREMENTS TO REGAIN DRIVING PRIVILEGES AFTER A DRIVER LICENSE SUSPENSION[171]

EXAMPLES OF CALIFORNIA REQUIREMENTS TO REGAIN DRIVER LICENSE AFTER SUSPENSION	
REASON FOR SUSPENSION	**STEPS TO GET YOUR LICENSE BACK**
Negligent operator	• Pay a reissue fee to DMV. • Pay fines to the court. • File Proof of Financial Responsibility (California Insurance Proof Certificate: SR 22). This is a certificate proving that you have valid car insurance. • Complete Negligent Operator probation, while staying free of traffic violations and avoidable accidents.
Driving under the influence of alcohol and/or drugs (DUI)	• Complete a mandatory (required) suspension period. (This means no matter how quickly you meet all the other requirements below, you must wait a certain period before you can get your driver license back.) • Pay a reissue fee to DMV. • File Proof of Financial Responsibility (California Insurance Proof Certificate: Form SR 22). This is a certificate proving that you have valid car insurance. • Complete a DUI Treatment Program — file Notice of Completion Certificate (Form DL 101). • Pay fines to the court. • In some cases: Complete a term of imprisonment. NOTE: If you meet some or all of these requirements before your mandatory suspension period ends, you might be able to get a *restricted license*.
Having a physical/mental condition or disorder	Show that the condition no longer prevents you from driving safely by providing medical information and/or a satisfactory Driver Medical Evaluation (Form DS 326).
Being involved in a car accident and not having proof of car insurance ("financial responsibility")	• Complete a mandatory (required) 1-year suspension period. • Pay a reissue fee to DMV. • File proof of financial responsibility (California Insurance Proof Certificate: Form SR 22) proving that you have valid car insurance.
Failing to appear in court on a traffic citation (FTA)	• Contact the court where your traffic violation was filed to ask about any programs that help clear up old traffic court debt. • If the FTA is more than 5 years old, you may be able to get the charge erased from your DMV record and reinstate your license by calling the DMV Mandatory Actions Line at 916-657-6525.[172] • Pay your citations (tickets) or appear in court. The court will give you a paper saying you fulfilled this requirement. • Pay a reissue fee to DMV.
Failing to pay child support	• Call your local child support agency to discuss a possible license release. You can find contact information for your local child support agency at http://www.childsup.ca.gov/county_locations.asp or by calling: (866) 901-3212. [173] • Pay a reissue fee to the DMV.[174] • If you feel your license was suspended in error, you can file a Notice of Motion for Judicial Review of License Denial (Form FL-670) with the court. Go to Appendix J, PG. 110 for a sample of the form.

MY LICENSE WAS SUSPENDED IN ANOTHER STATE. WILL I BE ABLE TO GET A CALIFORNIA DRIVER LICENSE?

Unfortunately, if your driver license was suspended or revoked in another state, you cannot get a California driver license until:

- You fix the violation and complete all the requirements to get your license reinstated in the state where the suspension or revocation happened; and/or
- The period of suspension or revocation is over, or more than 1 year has passed since the revocation.[175]

To figure out your situation and what steps you need to take, it's best to contact the DMV agency in the state where your license was suspended or revoked. If you do not know which state this happened in, call the National Driver Register to find out (see next question).

[171] What is a suspended driver license?, CAL. DMV, http://www.dmv.ca.gov/dl/dl_info.htm#sdl.
[172] CAL. VEH. CODE § 12808(c). Exception: If the Failure to Appear was for a DUI (under Vehicle Code Sections 23152 or 23153) or vehicular manslaughter (under Penal Code Sections 191.5 or 192.5(a)), the charge may be purged after 10 years.
[173] Driver License Release Opportunity, Cal. Dept. of Child Support Services, http://www.childsup.ca.gov/home/childsupportawarenessmonth2012/driverlicensereleaseopportunity.aspx
[174] Reissue fees, CAL. DMV, https://www.dmv.ca.gov/portal/dmv/detail/online/refund/refundreissuefee
[175] CAL. VEH. CODE §§ 12805(g)-(h), 15024. In limited situations (i.e., if your suspension or revocation occurred in certain states), you may be eligible for a license before the suspension or revocation period has expired if the DMV finds you to be a safe driver.

WHAT LAWS COULD NEGATIVELY AFFECT ME IF I AM TRYING TO GET (OR KEEP) A CALIFORNIA DRIVER LICENSE?

Several laws and policies, explained below, may affect your ability to get or keep a California driver license.

National Driver Register (NDR)[176]

When you apply for a California driver license, the DMV will check to see whether your name is listed in the NDR's Problem Driver Pointer System.[177] The NDR database contains information about all drivers who have had their licenses denied, revoked, or suspended, or who have been convicted of serious traffic violations such as driving under the influence of alcohol or drugs.[178] The NDR has information on drivers from *all 50 states*.

If your name appears in the NDR database, the DMV will investigate the reason and decide whether or not to issue you a California driver license. If your license was suspended or revoked in another state, the DMV will not issue you a California driver license until you fulfill the conditions of suspension or revocation in the other state (including paying all fines and reinstatement fees).[179]

How do I find out if my name is in the NDR database?

You can find out if your name is in the NDR database and check your driver status *for free* by sending a request letter to the NDR.[180] Although the database does not contain details about your driving record (i.e., it will not tell you *why* your license was suspended), it will tell you the status of your driver license and the state where any problem occurred (called the "State-of-Record").[181] If you already know the state in which your offense occurred, it may be faster and easier to contact that state's DMV agency directly for information.

To check your NDR status, write and send a notarized letter (also called a "privacy act request") to the NDR, stating that you would like a NDR file check. Be sure to include your full legal name, date of birth, gender, height, weight, eye color, and your previous driver license number and state (if you know them); your Social Security Number is optional.[182] If your name is in the NDR database, your driver license may have been suspended, cancelled, revoked, or denied because of a serious traffic violation.[183]

What can I do if my name is in the NDR database?

Once you know where the problem occurred in, you must contact that state's DMV agency directly to find out how to fix the issue and reinstate your license.[184] You may need to request a copy of your driving record from that state to learn why your license was suspended or revoked.[185] If you think the NDR database is incorrect, you still need to contact the state DMV agency where the problem supposedly occurred. You need to resolve the error directly with that agency before the NDR can correct or delete your record.[186]

Driver License Compact (DLC)

The DLC is an agreement among most states, including California, to share driver records and information about traffic violations.[187] When you apply for a California driver license, the DMV will check to see if you ever

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[176] 49 U.S.C. § 30301 et seq.; 23 C.F.R. § 1327.1 et seq.
[177] 49 U.S.C. § 30305(a).
[178] 49 U.S.C. §§ 30302(a), 30304; NATIONAL DRIVER REGISTER (NDR), http://www.nhtsa.gov/Data/National+Driver+Register+(NDR). All state DMV agencies are required to provide NDR with the names of individuals who have lost their privileges or who have been convicted of a serious traffic violation.
[179] NATIONAL DRIVER REGISTER (NDR), http://www.nhtsa.gov/Data/National+Driver+Register+(NDR).
[180] 49 U.S.C. § 30305(b)(11); NATIONAL DRIVER REGISTER (NDR), http://www.nhtsa.gov/Data/National+Driver+Register+(NDR).
[181] NATIONAL DRIVER REGISTER (NDR), http://www.nhtsa.gov/Data/National+Driver+Register+(NDR).
[182] Under the Privacy Act, you are entitled to request a file search to see if your name is listed (i.e., if have a record) in the NDR database. To do so, you must send a notarized letter (also called a "privacy act request") to the NDR stating that you would like an NDR file check. Mail your request to the National Driver Register, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. In your request, make sure to include your full legal name, DOB, State and Driver License Number, Sex, Height, Weight, and Eye Color (your social security number is optional). There is no charge for this service. 23 C.F.R. § 1327.7; NATIONAL DRIVER REGISTER (NDR), http://www.nhtsa.gov/Data/National+Driver+Register+(NDR). You can also request your status online, by visiting the NDR website at http://www.nationaldriverregister-forms.org/national_driver_register_file_check_forms.html (note: the link for Individual File Check Forms was broken as of Dec. 1, 2014). It may take the NDR 45 days or more to respond to your request.
[183] Your NDR driver license status may be any of the following:
No Match: The individual does not have record a on the NDR.
Licensed (LIC): Licensed means the individual holds a license in that State and the privilege to drive is valid.
Eligible (ELG): The individual privilege to drive or apply for a license in a State(s) is valid.
Not: The individual privilege to drive in a State(s) is invalid.
NEN: The individual privilege to drive in a State(s) is invalid due to a non-moving violation.
NDR, http://www.nhtsa.gov/Data/National+Driver+Register+(NDR).
[184] NDR, http://www.nhtsa.gov/Data/National+Driver+Register+(NDR). You should also contact the state DMV agency if you think that the NDR database is incorrect.
[185] The NDR provides online driver record request forms for each state on its website for a fee of $15. NDR, http://www.nationaldriverregister-forms.org/ndr/state_forms/national_driver_register_-_state_driver_record_request_forms.html.
[186] NDR, http://www.nationaldriverregister-forms.org/ndr/state_forms/national_driver_register_-_state_driver_record_request_forms.html.
[187] CAL. VEH. CODE §§ 15000, 15020 et seq.



had a driver license in another state.[188] If your license from another state was *suspended*, the DMV will not issue a new license to you until the suspension period is over.[189] If your license from another state was *revoked*, the DMV will not issue a new license to you until the revocation period is over or one year has passed since the revocation (whichever comes first).[190]

In addition, the DLC requires each state to enforce any traffic convictions that happened in other states — including by suspending or revoking your license for serious violations. For example, if you have a California driver license, but you were convicted of a DUI in another state, the state where your DUI occurred will report the conviction to the California DMV. The California DMV will then penalize you for the violation — possibly by suspending or revoking your California driver license — as if the violation had occurred locally.[191] The conviction will also appear on your California driving record.[192]

If you want to appeal your license suspension for an out-of-state traffic conviction, you must follow California's appeal procedures.[193] In general, you have to show that the other state's DUI conviction is not the same as California's DUI laws, or that the conviction was invalid for some other reason.[194]

Nonresident Violator Compact (NRVC)[195] (not yet in CA)

The NRVC is an agreement among most U.S. states to enforce out-of-state traffic violations. If you get an out-of-state ticket and then fail to pay the fine or fail to appear in court, the state where you got the ticket will tell your home state (where your driver license is from). Your home state can then suspend your license based on your failure to comply with the out-of-state ticket.

Currently, California is ***not*** part of the NRVC, so failing to comply with an out-of-state ticket may not affect your California driver license.[196] (The California DMV can still penalize you for the traffic violation that caused your out-of-state ticket — just not for your failure to pay the ticket or appear in court.) On the other hand, if your driver license is from another state, but you receive a ticket in California, you may have to pay the traffic fine or post bail immediately (or risk arrest if you cannot pay right away), and/or you may lose the right to drive in California.[197]

If your right to drive in California has been suspended or revoked, but your driver license is from another state, you can use Form DL 300, "California Proof Requirements for Non-Residents," to prove that you have the ability to pay and/or car insurance (called "financial responsibility"), and you can request that your California driving privileges be restored. The form is available online at http://apps.dmv.ca.gov/forms/dl/dl300.pdf.

Driver License Agreement[198] (not yet in CA)

The Driver License Agreement combines the DLC and NRVC into a single agreement, and increases enforcement of out-of-state traffic violations, making the rules stricter and more severe.[199] However, this agreement is still very new and doesn't apply in most states (including California).[200]

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[188] CAL. VEH. CODE § 15024. There are a few states that have not agreed to the Driver License Compact (e.g., Georgia, Wisconsin, Michigan). If your license was suspended or revoked in one of these states, the California DMV may issue you a license if it finds that you are a safe driver. CAL. VEH. CODE § 12805(g)-(h).
[189] CAL. VEH. CODE §§ 12805(g); 15024(1).
[190] CAL. VEH. CODE §§ 12805(h); 15024(2).
[191] CAL. VEH. CODE § 15023; see also CAL. VEH. CODE §§ 13353.5; 13363. Note: There must be a "substantially similar" offense in California laws in order for California to penalize you for an out-of-state violation. If California does not have an equivalent offense, then California cannot penalize you for an out-of-state violation.
[192] Out-of-State Convictions, CAL. DMV, https://www.dmv.ca.gov/portal/dmv/detail/dl/driversafety/neg_operator
[193] CAL. VEH. CODE § 13558.
[194] See, e.g., Moles v. Gourley, 112 Cal. App. 4th 1049 (2003) (upholding suspension of appellant's California driver license for Virginia DUI conviction, based on court's finding that California's and Virginia's DUI laws are substantially similar, as required for California DMV to enforce Virginia conviction).
[195] Nonresident Violator Compact, COUNCIL OF STATE GOV'TS (2011), http://apps.csg.org/ncic/PDF/Nonresident%20Violator%20Compact.pdf; The Nonresident Violator Compact—Administrative Procedures Manual, NHSTA (rev'd Apr. 1994), http://www.aamva.org/uploadedFiles/MainSite/Content/DriverLicensingIdentification/DL_ID_Compacts/NRVC%20Procedures%20Manual.pdf.
[196] Nonresident Violator Compact, Nat'l Ctr. for Interstate Compacts, http://apps.csg.org/ncic/Compact.aspx?id=142.
[197] See, e.g., CAL. VEH. CODE §§ 13205, 13552-53, 40305-05.5, 16376; cf. Chicago Police Dept., Special Order S06-13-01, Bond Procedures—Nonresident Violator Compact § II.B (effective March 7, 2008).
[198] Driver License Agreement (July 2004).
[199] For example, the Driver License Agreement expands enforcement of out-of-state violations to include equipment, registration, and parking violations (which are not currently covered by the NRVC); requires drivers who receive out-of-state tickets to comply with all court orders (e.g., fixing equipment, completing community service, etc.), in addition to paying fines; and requires enforcement of out-of-state violations even if the law is different in the driver's home state (i.e., if you receive a ticket for doing something that is legal in your home state, but illegal in the state where you received a ticket, your home state must still enforce the violation) or if the violation occurred in a non-member state.
[200] To date, only Connecticut, Arkansas, and Massachusetts have adopted the Driver License Agreement.



DOES GETTING MY CRIMINAL CONVICTION EXPUNGED HELP ME GET MY SUSPENDED OR REVOKED DRIVER LICENSE BACK?

No. Unfortunately, an "expungement" (a dismissal) won't get your California driver license back if the DMV suspended or revoked it.[201] The only way to get your license back is to satisfy the requirements of the DMV.

[201] CAL. VEH. CODE § 13555.

V. U.S. PASSPORT

WHAT WILL I LEARN ABOUT U.S. PASSPORTS?

- **What a U.S. passport is and why it's useful**
- **Whether you are eligible to apply for a U.S. passport**
- **How to apply for a U.S. passport if you are on probation, parole, or other supervision**
- **Whether you must apply for a passport in person or can apply by mail**
- **How to find your local Passport Office or Acceptance Facility and apply for a U.S. passport in person**
- **How to apply for a U.S. passport by mail**
- **What documents and information you will need to apply for a U.S. passport**
- **How long it takes to get your passport after you have applied**
- **How to get your passport quickly when you have an emergency**

WHY WOULD A U.S. PASSPORT BE USEFUL? WHY MIGHT I NEED ONE?

If you have a U.S. passport, you can lawfully travel outside the United States and return home by air, sea, or land. A passport can be useful if you need to visit family abroad, especially in case of an emergency like illness or death.[202] A passport also counts as a government-issued photo ID for all purposes. For these reasons, if you are eligible OR when you become eligible for a U.S. passport, it is a good idea to get one!

WHO IS ELIGIBLE FOR A U.S. PASSPORT?

To be eligible for a U.S. passport, you must:[203]

- Be a U.S. citizen or U.S. national;
- Provide a Social Security Number, proof of citizenship, and proof of identity;
- NOT be currently "under sentence" (incarcerated, on probation, or on parole) for any federal or state drug felony committed *while using a passport* or *crossing international borders (drug trafficking)*;[204]
- NOT have a conviction for sex trafficking;[205]
- NOT be under a court order or sentence condition forbidding you from leaving the country — for example, if your conditions of parole, probation, or some other type of supervision *forbid you* from leaving the U.S.,[206] you need to ask your supervising officer or the court for permission to get a U.S. passport or to change the conditions;
- Get permission from your supervising officer if you are under any form of supervision but are allowed to leave the country (see the IMPORTANT NOTE below about getting permission from a supervising officer);
- NOT have any state or federal warrants out for your arrest;[207]
- NOT owe $2,500 or more in child support.[208] For more information about paying off your child support debt, go to the COURT-ORDERED DEBT CHAPTER, beginning on PG. 654.

IMPORTANT! GET PERMISSION FROM YOUR PAROLE OR PROBATION OFFICER TO APPLY FOR A PASSPORT OR TRAVEL: If you are on supervision (like parole or probation), you MUST get permission from your parole or probation officer if you want to apply for a Passport (even if you are legally allowed to leave the country).[209] The officer can write a letter on your behalf giving the passport agency permission to issue you a U.S. Passport. You must submit this letter with your passport application. This is required even if you only want to use the Passport as photo ID, and don't plan to travel outside of the country. If you submit an application for a U.S. Passport without first getting written approval from your supervising officer, you could face legal consequences, including your probation being revoked or a warrant being issued for your arrest.[210]

[202] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/FAQs.html.
[203] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/apply.html.
[204] 22 U.S.C. § 2714; see also 22 C.F.R. § 51.61. There are also a few misdemeanor offenses, such as federal and state drug offenses, that would make someone ineligible for a U.S. passport. See 22 U.S.C. § 2714.
[205] 22 U.S.C. § 212a.
[206] 22 C.F.R. § 51.70(a)(2).
[207] 22 C.F.R. § 51.60.
[208] 42 U.S.C. § 652(k).
[209] E-mail from National Passport Information Center Agent 2019 (Jan. 21, 2015, 0:15 p.m.) (on file with author).
[210] Telephone call with agent at the U.S. Department of State Office of Legal Affairs (Jan. 21, 2015).

HOW DO I APPLY FOR A U.S. PASSPORT—IN PERSON OR BY MAIL?

It depends on your situation. Some people can apply *by mail*. Others must apply *in person*.

You can apply for a U.S. passport BY MAIL if you:

- Currently have a U.S. passport;
- Your U.S. passport is undamaged;
- Your U.S. passport can be sent in with your application;
- Your U.S. passport was issued when you were age 16 or older;
- Your U.S. passport was issued less than 15 years ago; AND
- Your U.S. passport was issued in your current name.[211]
- If ALL of the above requirements are true for you, then you can simply apply *by mail* to renew your U.S. passport. Go to PG. 63 below to learn how.

You must apply IN PERSON if:

- You have never had a passport before; OR
- Your previous U.S. passport was lost, stolen, or damaged; OR
- Your previous U.S. passport was issued when you were age 15 or younger; OR
- Your previous U.S. passport was issued more than 15 years ago; OR
- Your name has legally changed since your U.S. passport was issued, and you don't have official documents proving your legal name change (like government-issued papers showing your legal name change or an original or certified copy of your marriage certificate, if you changed it for marriage.)[212]
- If you are required to apply in person, you will need to find a local Passport Office. You can also apply at any Passport Acceptance Facility, which is a broad category of places that includes post offices, court clerk's offices, public libraries, and any other government office that accepts passport applications.[213] To find passport offices or Passport Acceptance Facilities near you, you can check your local yellow pages, call "Information" at 4-1-1, or check the Internet for these online guides:
- For a directory of Passport Offices in California, listed by county, visit: www.uspassporthelPGuide.com/passport/california/
- For a directory of Passport Acceptance Facilities in California, listed by city, visit: www.us-passport-service-guide.com/california-passport-office.html
- To search for any Passport Acceptance Facility near you, based on your ZIP code and city, visit: http://iafdb.travel.state.gov/

HOW DO I APPLY IN PERSON FOR A NEW U.S. PASSPORT?

STEP 1: **Put together the required information and documents.**

To apply for a U.S. passport, you will need ALL of the following types of documents: (1) Social Security Number, (2) proof of citizenship or naturalization, (3) photo ID, and (4) proof that you are off probation or parole. Here are more details about each of these 4 documents:[214]

1. ***Social Security Number (SSN)*** — You must provide your 9-digit SSN, if you have one (but you don't need to show your actual Social Security card).[215] (See PG. 38 for information on how to request an original SSN or a replacement Social Security card).[216] If you don't have a SSN, you might still be able to get a U.S. passport. You have the option of entering zeros on the application instead, but this will delay the processing of your application and may be used as a reason to deny it.
2. ***Proof of U.S. Citizenship or Naturalization*** — You can use any ONE of the following documents as *primary evidence* of citizenship:
   - An authorized birth certificate (see PG. 31 for how to get one);
   - A previous U.S. passport (can be expired, but must be undamaged);
   - A Consular Report of Birth Abroad (see PG. 36 for how to get one); OR
   - A Certificate of Naturalization or Citizenship (see PG. 37 for how to get one).[217]

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[211] Exception to this last condition: If you legally changed your name since your most recent passport, you can still apply by mail if you provide official documents proving your name change. Acceptable documents include: an original or certified copy of your marriage certificate, or government-issued papers showing your legal name change. U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/renew.html.
[212] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/new.html
[213] U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, http://iafdb.travel.state.gov/.
[214] NOTE: If your name or gender is different on your evidence of citizenship and/or ID, you may need to submit additional documentation. For more details, see U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/gender.html.
[215] If you don't, your application may be significantly delayed and/or denied. 26 U.S.C. 6039E; *see also* U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/new.html.
[216] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/FAQs.html.
[217] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/apply.html.



If you don't have any of the above, you must provide *secondary evidence* of citizenship[218] such as:

- A delayed birth certificate (one that was filed more than 1 year after birth);
- A combination of early public records (any records showing your name, birthdate, and birthplace, preferably created in the first 5 years of your life, for example, hospital/doctor records, early school records, religious records, or census records).[219]

For this category ("Proof of U.S. Citizenship or Naturalization"), you will have to submit the *ORIGINAL* documents with your application. They will all be mailed back to you.

3. ***Photo ID —*** You can use any ONE of these documents as a *primary* ID:

   - Valid, current driver license from the state where you now live;
   - U.S. passport (must be undamaged, and must have been issued less than 15 years ago);
   - Certificate of Naturalization;
   - Valid city, state, or federal government ID (such as a California state ID; see PG. 43 for how to get one); OR
   - Valid military ID.[220]

   If you don't have any of the above, you must provide a **COMBINATION** of *secondary* ID documents that have your name, photo, and signature. Bring all the documents you have. Examples of *secondary* ID documents include:

   - Expired driver license;
   - Driver license from a state where you no longer live;
   - Expired state ID card;
   - Student ID card; and
   - Employee ID card from your workplace.[221]

   The original ID documents in this category don't need to be sent in with your application, but copies do. *Bring the original ID document(s)* to show in person when you apply, *plus a copy of each ID document* to submit with your form.

4. ***Proof that you're no longer on probation, parole, or any other community supervision (for people with certain drug trafficking[222] or sex trafficking convictions[223]), OR a letter from your supervising officer to the passport agency allowing you to apply for a U.S. passport.***

- **IF YOU'RE NO LONGER UNDER COMMUNITY SUPERVISION SUCH AS PROBATION OR PAROLE**, you may apply for a U.S. passport so long as you meet all other eligibility requirements (see the full list of eligibility requirements on PG. 60 above)
- **IF YOU'RE STILL UNDER COMMUNITY SUPERVISION SUCH AS PROBATION OR PAROLE — *and you are allowed to leave the country*** — the passport agency may allow you to get a U.S. passport if you provide a letter from your supervising officer supporting your application (for more information about getting permission from your supervising officer, see the pop-out box on PG. 60 above).

A NOTE ABOUT EMERGENCIES:

In certain situations, you can request to get your U.S. passport much faster — but you'll need to meet special requirements, and you'll have to pay extra. If you have an emergency that requires you to get a passport quickly, visit the website: http://travel.state.gov/content/passports/english/passports/services/expedited.html to learn what to do. From the U.S., you can also call 1-877-487-2778 (TDD/TTY: 1-888-874-7793), and speak with a representative during normal business hours, which are Monday-Friday, 8 a.m. to 10 p.m. (excluding federal holidays). If it's a life-or-death emergency and you need to call outside of normal business hours, please call: 1-202-647-4000.

STEP 2: **Obtain and Complete the Application (Form DS-11).**

This form is available at any Passport Office, and also may be available from some Passport Acceptance Facilities. You can go on the Internet from any computer and download the form on one of these websites: http://www.state.gov/documents/organization/212239.pdf or https://pptform.state.gov. You may also contact the Department of State and have the form mailed to you (although this takes the longest). You can call the Department of State at 1-212-647-4000, or write to:

U.S. Department of State
2201 C Street NW
Washington, DC 20520.

[218] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/apply.html.
[219] Other forms of "secondary evidence" of citizenship: (3) a state-issued Letter of No Record; (4) a notarized Birth Affidavit: Form DS-10. For more details on these forms of evidence, see U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/secondary-evidence.html.
[220] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/apply.html.
[221] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/apply.html.
[222] 22 U.S.C. § 2714.
[223] 22 U.S.C. § 212a.

IMPORTANT: Do not sign the form at home. You must sign it in front of a passport agent. If you fill out the form at home, wait until the agent asks you to sign it at the passport office.

STEP 3: **Get a passport photo taken and pay for 2 copies.**[224]

You must provide 2 passport photos with your application. Passport photos must meet strict requirements, so be sure to have the photo taken by a professional who is familiar with these requirements (most pharmacies have photo centers where you can get passport photos taken). Do not attach your photos to the application form, but bring them with you.

STEP 4: **Go to your local Passport Office or Passport Acceptance Facility with all your documents (see PG. 61 to learn how to find a location near you), submit your application, and pay the fees.**

You must pay $110 for your new passport, and $25 for processing ("execution fee") — that's $135 total.[225] You can pay using cash, check, credit card, or money order.[226] If paying by check, make it payable to "U.S. Department of State," and make sure that your full name and birthdate are typed or printed on the front (use the "Memo" or "For" line). Ask the passport agent if you have any questions!

STEP 5: **Receive your passport in 4-6 weeks, and make a reminder about when it needs to be renewed.**[227]

After you submit your passport application, it may take about 4-6 weeks to receive your U.S. passport in the mail. If you were age 16 or older when your U.S. passport was issued, it will be valid for *10 years*. If you were age 15 or younger when your U.S. passport was issued, it will be valid for *5 years*.[228] (Note: If possible, it's best to renew your passport about 9 months before it expires. Some countries require that your passport be valid at least six months *beyond the dates of your trip*. Some airlines will not allow you to board if this requirement is not met.)

If you have Internet access, you can track the status of your passport application online: go to http://travel.state.gov/content/passports/english.html, and click "Check Your Application Status."

HOW DO I APPLY BY MAIL FOR A RENEWAL OF MY U.S. PASSPORT?

STEP 1: **Make sure you're eligible and prepared to renew your passport. This means:**

You have a previously issued U.S. passport, and ALL of the following is true about it:

- It is undamaged, and it can be sent in with your renewal application;
- It was issued when you were age 16 or older;
- It was issued less than 15 years ago;
- It was issued in your current name;[229] AND
- Lastly, depending on what convictions are on your record, and depending on the conditions of your supervision, you may need to be off parole, probation, and any other type of community supervision; or you may need to have permission from your supervising officer. See PG. 60 above for details.[230]

STEP 2: **Put together the required documents.**

If your legal name *hasn't changed*, you just need to provide your previously issued passport — nothing more.

If your legal name *has changed*, you need to provide two additional items: (1) your previously issued U.S. passport, and (2) official documents showing your legal name change, such as a certified copy of your marriage certificate or a court order.

NOTE: You need to submit the *original* documents. They will all be mailed back to you.

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[224] You can use a photo you take yourself. However, to ensure your photo is acceptable, it may be a good idea to have a professional passport photo service take your photo for about $12. You can find these services at many post offices, print shops, grocery stores, and drug stores.

[225] But you can pay an extra $60 fee for "Expedited Service"—quicker processing and delivery of your new passport. U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/new.html, U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/costs.html.

[226] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/costs.html.

[227] If you're paying an extra $60 fee for Expedited Service, it should take 3 weeks. U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/processing-times.html.

[228] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/processing-times.html.

[229] Exception to this last condition: If you legally changed your name since your most recent passport, you can still apply by mail if you provide official documents proving your name change. Acceptable documents include: an original or certified copy of your marriage certificate, or government-issued papers showing your legal name change. U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/renew.html.

[230] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/renew.html.

STEP 3: **Complete and sign the application form (DS-82).**[231]

This form is available at any Passport Office, and may be available from some Passport Acceptance Facilities as well (see above on PG. 61 for how to locate these offices). The form is available online at: http://www.state.gov/documents/organization/212241.pdf, and a copy is available in Appendix K PG. 113.

STEP 4: **Get 2 passport photos taken.**[232]

You must provide 2 passport photos with your application. Passport photos must meet strict requirements, so be sure to have the photo taken by a professional who is familiar with these requirements (most pharmacies have photo centers where you can get these photos taken). Do *not* attach your photo to the application form.

STEP 5: **Pay the fee.**

The fee for a renewal passport is $110. There is no additional processing fee.[233] You must pay using a personal check or money order — not cash. If paying by check, make it payable to "U.S. Department of State," and make sure your full name and birthdate are typed or printed on the front (use the "Memo" or "For" line).[234] Ask the passport agent if you have any questions.

STEP 6: **Mail your renewal application materials.**

Make sure you include ALL of the following:

- Your completed DS-82 with photo attached,
- Your previous passport,
- Your fee payment of $110, AND
- Official documents showing your legal name change (if necessary).

Address the envelope to:

National Passport Processing Center
P.O. Box 90155
Philadelphia, PA 19190-0155

STEP 7: **Receive your passport in 4-6 weeks, and set up a reminder to yourself about when it needs to be renewed.**[235]

After you submit your application, it may take about 4-6 weeks to receive your U.S. passport in the mail. If you are age 16 or older when your U.S. passport is issued, it will be valid for *10 years*. If you are age 15 or younger when your U.S. passport is issued, it will be valid for *5 years*.[236] (Note: If possible, it's best to renew your passport about 9 months before it expires. Some countries require that your passport be valid at least six months *beyond the dates of your trip*. Some airlines will not allow you to board if this requirement is not met.)

If you have Internet access, you can track the status of your passport application online: go to http://travel.state.gov/content/passports/english.html, and click "Check Your Application Status."

[231] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/renew.html.
[232] You can use a photo you take yourself. However, to ensure your photo is acceptable, it may be a good idea to have a professional passport photo service take your photo for about $12. You can find these services at many post offices, print shops, grocery stores, and drug stores.
[233] But you can pay an extra $60 fee for "Expedited Service" — quicker processing and delivery of your new passport. U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/renew.html; http://travel.state.gov/content/passports/english/passports/information/costs.html.
[234] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/renew.html.
[235] If you're paying an extra $60 fee for Expedited Service, it should take 3 weeks. U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/processing-times.html.
[236] U.S. PASSPORTS & INT'L TRAVEL, U.S. DEP'T OF STATE, http://travel.state.gov/content/passports/english/passports/information/processing-times.html.

VI. LIBRARY CARD

WHAT WILL I LEARN ABOUT LIBRARY CARDS?

- **Why a library card is useful, and how to make the most of resources at the library**
- **How to find your local public library**
- **What to bring to the library when you go to apply for a library card**
- **What to do if you want a library card but don't have photo ID**
- **How to submit your application for a library card**

WHY WOULD I GET A LIBRARY CARD, AND WHAT ARE THE BENEFITS?

Although anyone can go to the public library, you need a library card to borrow books and other materials (to use them outside of the building). Also, some libraries require you to get a library card before you can use the computers or Internet there. Plus, a library card is FREE!

Benefits of a library card include:

- Free access to books and media materials. Public libraries contain all kinds of books, movies, music, newspapers, magazines, and more. Anyone can visit a public library and use these materials on-site.
- Free access to helpful librarians. Public libraries have librarians on staff who are trained to help with all kinds of research questions. Anyone can walk in and get free research help from a librarian.
- Free access to computers and the Internet. Most public libraries have computer labs where anyone can go online for FREE. You can use email, search for information, and visit websites. This can make it much easier to contact people, find jobs and services, do research for school, and look up news and information.
- Free access to classes, programs, and events. Many public libraries provide free trainings, computer services, and educational programs and events for community members of all ages.

HOW DO I GET A LIBRARY CARD?

Below are some basic steps. You might do them in a slightly different order, depending on your situation.

STEP 1: **Find a public library near you.**

Your local public library will be listed in the yellow pages, or you can call 411 ("Information") to get the address. You might also try asking at a local community center. A list of public libraries in California, listed by city with addresses and phone numbers, is available online at: http://www.publiclibraries.com/california.htm. A list of public libraries in California, listed in alphabetical order by library name, with web links, is available at: http://www.lib-web.org/united-states/public-libraries/california/.

STEP 2: **Bring a photo ID and proof of your current address.**

- *If you have a California state ID or driver license*, you can use it as both your photo ID and proof of address.
- *If you don't have a California state ID or driver license, use any 2 of the following* (1 must be a photo ID, and 1 must have your current address): U.S. passport, school ID, any government-issued ID, employee ID, a personal check, credit card statement, rental or property tax receipt, utility bill, or postmarked business mail sent to you at your home address.
- *If you don't have a photo ID:* California law says that everyone in the state should have access to public libraries.[237] For this reason, many libraries will make an exception to the photo ID rule. Depending on where you live, your local library may accept a prison ID card, or some other official document with your name and address on it.[238] To find out if the public library in your area accepts other types of identification, call or visit the library and explain your situation.

STEP 3: **Fill out a library card application form.**

Ask a librarian for the form, fill it out, and turn it in. The librarian will check your ID and proof of address, process your application, and give you your new library card. The card and processing should be FREE.

HELPFUL HINTS FOR USING YOUR LOCAL LIBRARY

- Keep an open mind and enjoy yourself!
- Don't be afraid to ask for help from librarians — they are there to help you find books and resources, and use the computers.

[237] Cal. Veh. Code § 18701.
[238] E-mail from David Cismowski, Chief, State Library Services (Jan. 15, 2015, 04:48 PST) (on file with author).



- Take care of any materials you borrow, and keep track of due dates — to be respectful, and to avoid being fined (libraries charge late fees if you return materials past their due date).
- If you're using library computers, give yourself extra time in case you have to wait for an open one.
- Many libraries offer free classes and programs like literacy programs, computer skills classes, etc. Ask a librarian for a list!

VII. VOTING RIGHTS & VOTER REGISTRATION

WHAT WILL I LEARN ABOUT VOTING RIGHTS & REGISTRATION?

- **Why voting is important**
- **Whether your supervision or custody status affects your right to vote**
- **How to get your voting rights back**
- **How to register to vote, either online or by mail, and when to register**
- **How to vote if you don't have a photo ID or are homeless**
- **How to get time off work to vote**
- **How to vote by mail or in person at a polling place**
- **How to vote in person if you have a disability; vote in a language other than English; and/or get help reading or filling out a voting ballot**
- **Who to call if you have any questions about voting**

WHY REGISTER TO VOTE?

Voting is a way to participate in *choosing the laws and the decision-makers* in your community. Voting can be a meaningful way to *exercise your rights* as a citizen, and an opportunity to *express your political wishes* for your city, county, state, and country.

Each state has the power to restrict *or* restore the voting rights of people with criminal records.[239] Because of recent advances in state law, *very few people in California permanently lose their right to vote due to a criminal record.* Continue reading to learn more!

WHO CAN REGISTER TO VOTE IN CALIFORNIA?

Generally, to register to vote in the next election, you must be a U.S. citizen, a California resident, and at least age 18 years old by election day. But even if you meet those requirements, you may lose your right to vote depending on your custody or supervision status. See the next question.

I HAVE A CRIMINAL RECORD. CAN I REGISTER TO VOTE IN CALIFORNIA?

Maybe. Recent changes in state law mean many people with records can vote in California![240]

In California, you lose your right to vote if you are: 1) *currently incarcerated* in state or federal *prison* (or in county jail awaiting transfer to state prison), 2) actively on state parole, OR 3) *currently involuntarily committed* because a judge found you mentally ill.[241] You ***automatically*** regain your right to vote after any of those circumstances ends—after you are no longer in prison, off state parole, *and/or* no longer involuntarily committed.

Unless you fall into one of these three categories, you have the right to vote! That means if you are on probation, PRCS, mandatory supervision, or any form of federal supervision (supervised release, probation, or parole) in California, you can vote (so long as you meet the other voter requirements like age and citizenship). ***You can also see the chart on PG. 68 to understand how your criminal record and supervision status will affect your voting rights.***

[239] U.S. CONST. AMEND. 14, §2; Richardson v.Ramirez, 418 U.S. 24, 56 (1974).
[240] See CAL. ELEC. CODE § 2101 (as modified by AB 2466, effective January 1, 2017); Cal. Secretary of State, *Voting Rights for Californians with Criminor Records or Detained in Jail or Prison*, http://www.sos.ca.gov/elections/voting-resources/voting-california/who-can-vote-california/voting-rights-californians/.
[241] CAL. ELEC. CODE §§ 2101 and 2211(a)(3).



THE CHART BELOW EXPLAINS IF YOU CAN VOTE IN CALIFORNIA BASED ON YOUR SUPERVISION AND CUSTODY STATUS. IF YOU FALL UNDER MORE THAN ONE CATEGORY, AND THE ANSWER IS "NO" FOR EITHER ONE, THEN YOU CANNOT VOTE.

VOTING RIGHTS WITH A CRIMINAL RECORD IN CALIFORNIA

People with *State* Convictions

CUSTODY OR SUPERVISION STATUS	CAN I VOTE? *(Note: You must also be age 18 or older by the next election day, a U.S. citizen, and a California resident)*
Currently incarcerated in state prison	NO
On state parole	NO
On probation (informal or formal)	YES
On post-release community supervision (PRCS)	YES
On mandatory supervision	YES
Currently incarcerated in county jail	IT DEPENDS – • Because jail time is a condition of your probation: YES • Because you were sentenced to serve time in jail: YES • Because of a felony "split sentence" that combines jail and probation time on Mandatory Supervision: YES • Because of an "AB 109" felony conviction with PRCS supervision to follow: YES • Because of a parole violation: NO • Because you have been convicted and sentenced of a felony and are waiting to be transferred to federal or state prison: NO
Pending felony charge(s) (meaning you are charged, but not yet convicted)	YES
Have a juvenile adjudication on my record	YES. A juvenile adjudication is NOT considered a conviction and thus does not affect a person's eligibility to vote when they reach the age of majority.

People with *Federal* Convictions

CUSTODY OR SUPERVISION STATUS	CAN I VOTE? *(Note: You must also be age 18 or older by the next election day, a U.S. citizen, and a California resident)*
Currently incarcerated in federal prison	NO
On federal probation	YES
On federal supervised release	YES
On federal parole (applies to very few people)	YES

I LOST MY VOTING RIGHTS WHILE IN PRISON/ON STATE PAROLE. HOW DO I REGAIN MY ABILITY TO VOTE?

You *automatically* regain your right to vote after you our no longer in prison and get off state parole (and for those who were involuntarily committed due to mental illness, after you are no longer involuntarily committed). All you have to do is register (or re-register) to vote before the next election (learn how on PG. 69).[242]

[242] *See* Voting Rights for Californians with Criminor Records or Detained in Jail or Prison, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/voting-resources/voting-california/who-can-vote-california/voting-rights-californians/. *See also* Let Me Vote CA, https://www.letmevoteca.org/.

I DON'T KNOW MY SUPERVISION STATUS. HOW DO I FIND OUT?

If you are unaware or unsure of your supervision status, talk to your supervising officer or your public defender/defense attorney and ask what type it is. Tell them you are trying to determine if you can vote. Feel free to bring this chart with you.

WHAT COULD HAPPEN IF I VOTED IN AN ELECTION THAT I WAS NOT LEGALLY ALLOWED TO VOTE IN?

It depends. If you ACCIDENTALLY voted in an election when you weren't legally allowed to, you will probably not be in trouble with the law. Voter fraud requires "specific intent."[243] This means that when you voted, you knew that you were illegally voting, and voted with the purpose of breaking the law. If you PURPOSEFULLY voted in an election when you had no legal right to do so, you could be found guilty of voter fraud.[244] The punishment can be up to five years in prison and a $10,000 fine. That said, voter fraud is usually only prosecuted when large numbers of people have committed the crime in a way that affects an election's outcome.[245]

REGISTERING TO VOTE IN CALIFORNIA:

I WANT TO VOTE IN THE NEXT ELECTION. WHEN IS THE LAST DAY I CAN REGISTER TO VOTE IN CALIFORNIA?

The deadline to register is 15 days *before* the next local, state, or federal election. You must submit the voter registration application form before midnight on the deadline.

- If you register using the online form, the timestamp must be before midnight on the deadline date (by 11:59 p.m.).
- If you register using a paper form, it must be postmarked or hand-delivered to your county elections office at least 15 days before the election. (See PG. 70 to learn how to find your county elections office).[246]

I DON'T HAVE OFFICIAL PHOTO ID. CAN I STILL REGISTER TO VOTE?

Yes. However, if you register to vote without a driver license number, state ID number, or Social Security Number, then when you later go to vote in person, you might have to show documents with your name and address. Examples of documents you could show at the voting poll are a: military ID, student ID, ***prison ID***, utility bill, and/or public benefits check.[247]

You only have to show these documents at the voting poll if ALL of the following is true:

1. You registered online or by mail;
2. You registered without including any driver license, state ID, or SSN information on your form; AND
3. You've NEVER voted before.[248]

CAN I USE MY PRISON ID TO VOTE?

Although a prison ID isn't explicitly listed as acceptable ID, the law does allow a "document issued by a government agency" to prove who you are. (CAL. CODE REGS. tit. 2, § 20107(d)(2)(E).) Your prison ID was issued by a government agency (either CDCR or the Bureau of Prisons), so it *should* be accepted as ID. However, since volunteers who work at polling stations on election day are not legal experts, you might have difficulties getting your prison ID accepted and may need to speak with a few different people. Remember: you won't need your prison ID card at all if you provided a SSN, driver license number, or state ID number when you registered.

I'M HOMELESS. CAN I STILL REGISTER TO VOTE IN CALIFORNIA?

Yes. You don't need a home address to register. Using the map on the bottom of the voter registration form, you can identify two cross-streets where you usually stay. If you are registering online, you can check the box that says, "I do not have a street address" in the address section.[249]

SINCE THE LAST TIME I REGISTERED TO VOTE, MY ADDRESS, NAME, POLITICAL PARTY OR SUPERVISION STATUS HAS CHANGED. DO I HAVE TO RE-REGISTER?

Probably. You need to re-register if any one of the following is true:

- You've changed your permanent address, legal name, or political party;
- You've completed a felony prison sentence *AND* you're no longer on state parole; OR

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[243] 81 Ops. Cal. Atty. Gen. 321 (1998).
[244] Cal. Elec. Code § 18560.
[245] 22 U.S.C. § 1973gg-10.
[246] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_faq.htm.
[247] 2 CAL. CODE REGS. 20107. For a full list of documents that are acceptable for this purpose, contact your county elections office, or visit the website at http://elections.cdn.sos.ca.gov/regulations/hava_id_regs_from_barclays_3_3_06.pdf.
[248] http://www.sos.ca.gov/elections/voting-resources/voting-california/what-bring/
[249] Voter Registration Application, CAL. SEC'Y OF STATE, http://registertovote.ca.gov/.

- You've completed any type of felony sentence that prevented you from voting.[250]

I HAVE OTHER QUESTIONS ABOUT REGISTERING TO VOTE IN CALIFORNIA. WHO CAN I ASK FOR HELP?

- **Call the California Secretary of State's toll-free voter hotline** at 1-800-345-VOTE (English), 1-800-232-VOTA (Spanish), 1-800-339-2857 (Chinese), or 1-800-833-8683 (TTY/TDD);[251] OR
- **Contact your county elections office.** This office maintains your voter registration record (if you have one).[252] To locate your local county elections office, visit the California Secretary of State's website at: http://www.sos.ca.gov/elections/voting-resources/find-your-polling-place/. There you will see an alphabetical directory of county elections offices. If you don't know your county, you can call the voter hotline numbers above, or look it up online by typing in your ZIP code at http://quickfacts.census.gov/cgi-bin/qfd/lookup.

LEARN HOW TO FIND YOUR COUNTY ELECTIONS OFFICE HERE!

HOW DO I REGISTER TO VOTE IN CALIFORNIA? WHAT IS THE APPLICATION PROCESS?

To register to vote, you need to fill out a voter registration form and submit it to your county elections office (learn how to find your county elections office directly above). You can do this by (1) filling out an online form (if you have access to a computer that's connected to Internet and a printer) or (2) filling out a paper form.[253] Both methods are completely acceptable, so do what is best and easiest for you! Read on for details.

IMPORTANT: If you want to vote in the next election, you must register at least 15 days before that election. Once you're registered, you can vote in all state and local elections.[254]

➢ REGISTERING THROUGH THE ONLINE FORM:

Choose this option only if you have access to a computer that's connected to the Internet and a printer.

STEP 1: **Go to the online form.**

Visit http://registertovote.ca.gov/.[255] Click "Register to Vote Now," and the online form will open.

STEP 2: **Complete the online form.**

Click through the pages and enter your information in the boxes. Be sure to answer all questions that are marked by a star (*). **NOTE:** The form asks for your California driver license or state ID number, birthdate, and the last 4 digits of your Social Security Number (SSN). Enter this if you can, but know that you may still be able to vote even if some information is missing. Your county elections official may assign you a special number to vote.[256]

STEP 3: **Submit the online form.**

What happens next depends on whether you have a signature on file with the DMV.

- *If you do have a valid California driver license or state ID:* You probably have a signature on file with the DMV. Click "Submit" when you finish the form, and the website will most likely find your signature in the DMV database and send your information to your county elections office.
- *If you don't have a valid California driver license or state ID:* You probably don't have a signature on file with DMV. Click "Print" when you finish the form, sign the printed form, and submit the printed form to your county elections office — either by mail or in person.

STEP 4: **Wait to hear from for your county elections office.**

Your county elections office will contact you if it approves your voter registration, or if it needs more information to confirm that you can vote.[257]

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[250] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_faq.htm; http://www.sos.ca.gov/elections/elections_vr.htm.
[251] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_faq.htm; http://www.sos.ca.gov/elections/elections_vr.htm.
[252] For a directory of California County Elections Offices, including location, office hours, and contact information, visit Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_d.htm.
[253] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/new-voter/registering-vote.htm.
[254] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/new-voter/registering-vote.htm.
[255] The form is available in English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai, and Vietnamese. Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_faq.htm.
[256] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/new-voter/registering-vote.htm.
[257] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_faq.htm.

➢ REGISTERING WITH THE PAPER FORM:

STEP 1: **Get the paper form.** There are a few different ways to get it:

- Pick up a paper form at any county elections office (see PG. 70 for how to find one),[258] public library (see PG. 65 for how to find one), DMV office (go to http://apps.dmv.ca.gov/fo/offices/locator/locator.htm to locate one), or U.S. post office;
- Call 1-800-345-VOTE (toll-free voter hotline) and ask to get a paper form mailed to you;
- Download the form at www.sos.ca.gov/nvrc/fedform/ and print it;[259] OR
- Contact the California Secretary of State's Office, and ask that a paper form be mailed to you. You can ask by sending a letter, calling, or emailing the office:

  California Secretary of State's Office, Elections Division
  1500 11th Street, 5th Floor; Sacramento, CA 95814
  Phone: (916) 657-2166
  Email: elections@sos.ca.gov

STEP 2: **Complete the paper form.**

Fill in as much information as possible. Note that the form asks for your California driver license or state ID number, birthdate, and last 4 digits of your Social Secutiy Number. Enter everything you can. *You may still be able to vote even if some information is missing.* Your county elections official may assign you a special voter ID number.[260] When you go to vote on election day, you may have to show documents with your name and address such as a military or student ID, a utility bill, or a public benefits check.

STEP 3: **Submit the paper form. Mail it to your county elections office, or drop it off in person.**

STEP 4: **Wait to hear from for your county elections office.** It will contact you if it approves your voter registration, or if it needs more information to confirm that you can vote.[261]

IMPORTANT TIP
Filling out the Voter Registration Form

The voter registration form asks: *"Have you ever been convicted of a felony?"* By law, you must this question truthfully.[262] Even if you have fully served your sentence and your voting rights have been restored, you must check the "yes" box. If you lie, you could be found guilty of perjury.

VOTING ON ELECTION DAY

I AM REGISTERED TO VOTE. WHERE, WHEN, AND HOW DO I VOTE IN THE NEXT ELECTION?

In California, you can vote in two ways: (1) by mail ballot, or (2) in person at your polling place.

Voting by Mail — Once you are registered to vote at your current home address, contact your county elections office to request a vote-by-mail ballot application form (see PG. 70 to learn how to find the nearest county elections office).[263] Once you get this form in the mail, complete and return it to the county elections office at least 7 days before the election.

Voting in Person — Once you are registered, you will receive a sample ballot in the mail (you do not have to fill it out; it is intended to help you prepare for election day). Your voting location (called a "polling place") is listed on this ballot. You can also call your county elections office to ask about your voting location.[264] On election day, go to this location to vote. California polls are open 7 a.m. to 8 p.m.

WHEN IS ELECTION DAY?

The General Election is on the first Tuesday of November.[265]

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[258] For a directory of California County Elections Offices, including location, office hours, and contact information, visit http://www.sos.ca.gov/elections/elections_d.htm.
[259] The form is available in English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai, and Vietnamese. Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_faq.htm.
[260] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/new-voter/registering-vote.htm.
[261] Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_faq.htm.
[262] Cal. Pen. Code § 118; People v. Darcy, 59 Cal. App. 2d 342, 348 (1943) (The court held that "to sustain a perjury charge it is not necessary that the false statement be made for the purpose of injuring another . . .. Whether a false statement has been made willfully or as the result of an honest mistake is a question of fact solely for the jury to decide.").
[263] For a directory of California County Elections Offices, including location, office hours, and contact information, visit http://www.sos.ca.gov/elections/elections_d.htm or see PG. 68.
[264] For a directory of California County Elections Offices, including location, office hours, and contact information, visit http://www.sos.ca.gov/elections/elections_d.htm or see PG. 68.
[265] See Election and Voter Information, CAL. SEC'Y OF STATE, http://www.sos.ca.gov/elections/elections_cand.htm; http://www.sos.ca.gov/elections/statewide-elections/2014-general/2014-key-dates-deadlines.htm.



CAN I GET TIME OFF FROM WORK TO VOTE IN CALIFORNIA?

Yes. If you don't have enough time outside of work to vote, you have to right to take time off from work to vote — up to 2 hours, which must be paid time off. You need to tell your employer at least 2 working days in advance, and you can only take the time off at the start or end of your workday, unless you have made a different agreement with your boss.[266] If you are a *part-time* or *temporary employee*, then these rules still apply to you so long as you are hire to work for more than 52 hours over the course of 90 days.[267] If you are an *independent contractor*, you are not considered an employee by law, so these rules do NOT apply to you — you do NOT have the right to paid time off to vote.[268] However, even if you aren't entitled to paid time off, you are still entitled to take a reasonable time off to vote, because federal law prohibits interfering with citizens' right to vote.[269]

I HAVE A PHYSICAL DISABILITY. CAN I GET HELP ACCESSING MY VOTING LOCATION?

Yes. Follow these two steps:

STEP 1: First, contact your county elections office to find out if your voting location ("polling place") is accessible to you, given your disability.

STEP 2: Second, if your voting location isn't accessible to you, curbside voting should be available. With curbside voting, you will be asked to get as close to the voting area as you can, and elections officials will bring you a sign-in sheet, ballot, and any other voting materials you need.

ENGLISH ISN'T MY FIRST LANGUAGE. CAN I GET A BALLOT IN MY NATIVE LANGUAGE?

Maybe. Call your county elections office to find out in what languages your county has the ballot available.[270] If your county doesn't have ballots in your native language, you can bring an interpreter with you to vote (but this person can't be your employer or labor union officer).[271]

I CAN'T READ, AND/OR I PHYSICALLY CAN'T VOTE BY MYSELF. CAN I GET HELP IN THE VOTING BOOTH?

Yes. If you can't mark a ballot because you can't read, and/or because you have a disability, tell a poll worker when you get to your voting location ("polling place").

- You have the right to use a voting machine that is accessible to you. Poll workers should explain how to use the voting equipment before you go into the booth, and should also provide further help if you need it after you go into the booth. They are legally required to do so.[272]
- You also have the right to select up to 2 people (including a poll worker) to help you in the booth, as long as these people aren't your employer, agents of your employer, or officers/agents of your labor union.[273]

[266] CAL. ELEC. CODE § 14000.
[267] Cal. Lab. Code § 3352.
[268] Cal. Lab. Code § 3353.
[269] Voting Rights Act of 1965, Pub. L. 89-110 (1965).
[270] For a directory of California County Elections Offices, including location, office hours, and contact information, visit http://www.sos.ca.gov/elections/elections_d.htm.
[271] Know Your Voting Rights: California — Text Only, ACLU, https://www.aclu.org/voting-rights/know-your-voting-rights-california-text-only.
[272] CAL. ELEC. CODE § 14272.
[273] CAL. ELEC. CODE § 14282.

VIII. SELECTIVE SERVICE REGISTRATION

WHAT IS THE SELECTIVE SERVICE SYSTEM, AND WHY IS IT IMPORTANT?

The Selective Service System is a federal agency that keeps a list of all adult males in the U.S. In case of a military emergency, the federal government uses the Selective Service registration list to draft men for military service[274] — and to provide public service work assignments for men who are morally opposed to military service.[275] If you're a male between ages 18 and 25 and you live in the United States, and you don't fall under one of the legal exceptions, you *must* register with the Selective Service *before you turn 26*.[276] To learn about the legal exceptions to registration, see the question below: "WHO IS NOT REQUIRED TO REGISTER…?".

If you do not register in time, there could be negative consequences. Failing to register is a federal felony punishable by a fine of up to $250,000 or a prison term of five years. You can also be denied certain government benefits — such as student financial aid, citizenship, federal job training, or federal jobs.[277] Read on for more information.

WHO IS REQUIRED TO REGISTER WITH THE SELECTIVE SERVICE?

Selective Service registration is required for nearly ALL men ages 18 to 25 (before their 26th birthday) who live in the United States. There are a few exceptions, listed in the next question.[278]

WHO IS NOT REQUIRED TO REGISTER WITH SELECTIVE SERVICE?

You are NOT required to register with the Selective Service if you fall into a category below:[279]

(1) Certain people who are confined:

- *People who are incarcerated in jail or prison* — You DO NOT have to register for the Selective Service *while incarcerated,* even if you are a male between ages 18 and 25. But if you are age 25 or younger *at the time of your release*, you must register within 30 days of getting out.
- People who are being kept in a hospital or institution for medical reasons.

(2) Certain people who have disabilities:

- People with a mental or physical disability that prevents them from functioning in public, with or without assistance.
- People who have been confined continuously to a residence, hospital, or institution from age 18 to age 25.

(3) Certain noncitizens:

- Lawful non-immigrants holding visas in the United States.
- Seasonal agricultural workers holding visas (H-2A).[280]

(4) Certain military members:

- Members of the U.S. Armed Forces on active duty.
- Cadets or midshipmen in a U.S. Service Academy or Coast Guard Academy.
- Students in Officer Procurement Programs at certain U.S. military colleges.

(5) Certain people who have had sex reassignment:

- People who were born female (assigned female at birth) and have had a sex reassignment *are not required* to register with the Selective Service. However, people who were born male (assigned male at birth) and have had a sex reassignment *are required* to register.

WHEN DO I REGISTER WITH THE SELECTIVE SERVICE?

You must register within 30 days of your 18th birthday. The Selective Service will accept your late registration through age 25 (up until the last day *before* you turn 26, but *not after*).[281]

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[274] *See* 50 U.S.C. App. 451 et seq.; Agency Mission, SELECTIVE SERV. SYS., https://www.sss.gov/.
[275] See 32 C.F.R. § 1656.1.
[276] 50 U.S.C. App. 453.
[277] Benefits and Penalties, SELECTIVE SERV. SYS., https://www.sss.gov/Registration/Why-Register/Benefits-and-Penalties.
[278] 50 U.S.C. App. 456; *see also* Back to School: A Guide to Continuing Your Education after Prison, PRISONER REENTRY INSTITUTE, JOHN JAY COLLEGE OF CRIMINAL JUSTICE (July 2010), 24.
[279] 50 U.S.C. App. 456.
[280] NOTE: Most other categories of noncitizens are required to register. These include legal permanent residents ("green card" holders), undocumented immigrants, refugees, and asylum grantees. *See* https://www.sss.gov/Portals/0/PDFs/WhoMustRegisterChart.pdf
[281] Men Cannot Register after Reaching Age 26, SELECTIVE SERV. SYS., http://www.sss.gov/FSmen.htm.

HOW DO I REGISTER WITH THE SELECTIVE SERVICE?

You can register in 3 ways, and all are equally acceptable. You can register (1) online, (2) by filling out a paper registration form and mailing it to the Selective Service System, OR (3) by checking the "Register Me" option on the Federal Student Financial Aid Application (called the "FAFSA").

(1) Registering online:
If you have access to a computer with Internet access, this is the fastest and easiest way to register. (Most public libraries have free computer access; see PG. 65 for more information on public library access.)

- Go to https://www.sss.gov/RegVer/wfRegistration.aspx.
- Fill out the online form and then click "Submit Registration."

(2) Registering by mail:
You can find the Selective Service registration form at any U.S. post office and at many high schools. If you want to find it online and print it out to send in by mail, you can go to https://www.sss.gov/PDFs/Regform_copyINT.pdf.[282] Fill out the form and mail it to: Selective Service System, P.O. Box 94638, Palatine, IL 60094-4638.

DO I NEED A SOCIAL SECURITY NUMBER (SSN) TO REGISTER WITH THE SELECTIVE SERVICE?

No. If you have a SSN, you must provide it when registering; but if you don't have one, it's not required.

(3) Registering through FAFSA (Free Application for Federal Student Aid):
If you are a student applying for federal student financial aid using the FAFSA, you can register simply by checking "Register Me" on Box #22 of that application form. The U.S. DEPARTMENT OF EDUCATION will send your information to the Selective Service, and you are done!

ISSUES WITH SELECTIVE SERVICE REGISTRATION

I REGISTERED WITH THE SELECTIVE SERVICE, BUT I LOST MY REGISTRATION NUMBER AND MY PROOF OF REGISTRATION. HOW CAN I GET THESE?

Contact the Selective Service to request your number and get new proof of registration. Be ready to provide your *name, birthdate, Social Security Number,* AND *current mailing address.* **TO CONTACT:**

- *By phone:* Call 1-847-688-6888.
- *By mail:* Mail a request to Selective Service System; P.O. Box 94638; Palatine, IL 60094-4638.
- *Online:* Visit http://www.sss.gov and click "Check Registration." You'll need to enter your SSN.

IT'S BEEN MORE THAN 30 DAYS SINCE I TURNED 18, AND I HAVEN'T REGISTERED WITH THE SELECTIVE SERVICE. CAN I STILL REGISTER?

- IF YOU ARE AGE 25 OR YOUNGER, then YES, you can still register. You should do so immediately![283] To register, follow the steps listed above on PG. 74.
- IF YOU ARE AGE 26 OR OLDER, it's probably too late to register. HOWEVER, if you have *good reasons* for not registering earlier — such as being incarcerated continuously between the ages of 18 and 25 — then you might be able to get an official "Status Information Letter" from the Selective Service stating that you were not required to register.[284] To learn how to request a Status Information Letter, go to PG. 75.

I AM 26 OR OLDER AND NEVER REGISTERED WITH THE SELECTIVE SERVICE — AND I DON'T FALL INTO ANY OF THE LEGAL EXCEPTIONS. WHAT ARE SOME POSSIBLE CONSEQUENCES?

If you are age 26 or older, failed to register with the Selective Service, and don't fall into any of the legal exceptions to the registration requirement — then, by law, you could face a fine of up to $250,000 and/or a prison term of up to 5 years.[285] Even if you don't face charges, you may be disqualified from certain government programs and benefits — including *federal student financial aid, naturalized citizenship, federal job training, and federal jobs*.[286] In California, failure to register with the Selective Service also means you *can't get STATE-funded student financial aid*.[287] In some cases, if you can prove that your failure to register was *unintentional*, you might still be eligible for certain government benefits and programs. See the next question and the chart on PG. 74 to learn more.

[282] How to Register, SELECTIVE SERV. SYS., http://www.sss.gov/FSregist.htm.
[283] Who Must Register, SELECTIVE SERV. SYS., http://www.sss.gov/FSwho.htm.
[284] Benefits and Programs Linked to Registration, SELECTIVE SERV. SYS., http://www.sss.gov/FSbenefits.htm; http://www.sss.gov/QA.HTM.
[285] Benefits and Programs Linked to Registration, SELECTIVE SERV. SYS., https://www.sss.gov/FSbenefits.htm.
[286] See Benefits and Penalties, SELECTIVE SERV. SYS., https://www.sss.gov/Registration/Why-Register/Benefits-and-Penalties.
[287] 34 C.F.R. § 668.37(d)(2)(i), (e).

I AM 26 OR OLDER AND NOW I'M DISQUALIFIED FROM CERTAIN GOVERNMENT BENEFITS AND PROGRAMS BECAUSE I NEVER REGISTERED WITH THE SELECTIVE SERVICE. WHAT CAN I DO?

It depends on 2 factors — (1) whether you had good reason for not registering, and (2) what program or benefit you are applying for.

HOW FAILURE TO REGISTER WITH THE SELECTIVE SERVICE MAY IMPACT YOUR ABILITY TO RECEIVE PUBLIC BENEFITS	
YOUR REASON FOR NOT REGISTERING	**IMPACT ON YOUR ABILITY TO GET PUBLIC BENEFITS**
. . . You were incarcerated between the ages of 18 and 26.	You may be able to prove that you should qualify for the benefits or programs you are trying to get. To do this, you must fill out a form requesting a "Status Information Letter" from the Selective Service System. (See Appendix L, PG. 120.) You will have to list the dates during which you were incarcerated, and attach any documents that show when and where you were incarcerated. If you can prove that you were incarcerated during the relevant time, the Selective Service System will send you an official letter stating that you *were not required to register*. If you show this letter to the benefit-issuing agency to which you are applying, it can't legally deny you benefits because of your Selective Service status.
. . . You didn't know about the registration requirement, OR mistakenly believed it didn't apply to you **OR** **. . . You thought you were already registered, but the Selective Service has no record of your registration**	You may still be eligible for government benefits if you can prove to the benefit-issuing agency that you did not "*knowingly or willfully*" fail to register.[288] The agency handling your case — NOT the Selective Service System — is in charge of deciding whether you have provided enough proof.[289] You must send the benefit-issuing agency certain documents as proof. • First, you must request a "Status Information Letter" (see PG. 75) from the Selective Service System, which summarizes your status with the Selective Service.[290] • Second, send this letter along with a detailed "explanation letter" stating in your own words why you didn't register.[291] This letter should include any information that might be relevant to the agency's decision — such as where you were living between the ages of 18 and 25, if you you wrongly believed you had already registered, and/or why you didn't know about the registration requirement.[292] • **To present the most persuasive case, you should provide any documentation you have that supports your story.**

HOW DO I GET A SELECTIVE SERVICE "STATUS INFORMATION LETTER"?

You can request a Status Information Letter from the Selective Service by (1) calling, OR (2) sending a written request. If you want to show that you were incarcerated, institutionalized, and/or hospitalized between the ages of 18 and 25, be prepared to describe ALL the circumstances that prevented you from registering during that time, and have copies of documents showing all the dates you were confined.[293]

If you are requesting a Status Information Letter because you failed to register for other reasons, you must summarize these reasons on the request form. Note: You do not have to send a separate "explanation letter" to the Selective Service System — that's only for the agency that denied you the benefits.

TO REQUEST:

- *By phone:* Call 1-847-688-6888 and connect to an operator. Ask for a Status Information Letter.
- *By mail:* Get a copy of the "Request for Status Information Letter" form. Use the form in Appendix L, PG. 120, or visit http://www.sss.gov/PDFs/status.pdf, and print it from a computer. Fill out the form, sign it, and attach copies of documents to prove the information you write in the form. Mail the form, along with your documents, to: Selective Service System, P.O. Box 94638, Palatine, Illinois, 60094-4638.

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[288] See Men Cannot Register after Reaching Age 26, SELECTIVE SERV. SYS., http://www.sss.gov/FSmen.htm. For information about student financial aid, see 34 C.F.R. § 668.37(d)(2)(i); 34 C.F.R. § 668.37(e); U.S. DEP'T OF EDUC. & FED. STUDENT AID, 2014-2015 FEDERAL STUDENT AID HANDBOOK.

[289] See Men Cannot Register after Reaching Age 26, SELECTIVE SERV. SYS., http://www.sss.gov/FSmen.htm; see also Men 26 and Older, SELECTIVE SERV. SYS., http://www.sss.gov/Status.html.

[290] The Status Information Letter will include a code that summarizes the Selective Serving's findings in your case. Different codes correspond to different categories. For example, the Selective Service might include a code indicating that you were sent a letter to inform you of the registration requirement, but that it was returned by the post office as undeliverable. See U.S. DEP'T OF EDUC. & FED. STUDENT AID, 2014-2015 FEDERAL STUDENT AID HANDBOOK.

[291] See Request for Status Information Letter, SELECTIVE SERV. SYS., http://www.sss.gov/PDFs/PrinterFriendly/status.pdf.

[292] See U.S. Dep't of Educ. & Fed. Student Aid, 2014-2015 Federal Student Aid Handbook.

[293] See Men 26 and Older, SELECTIVE SERV. SYS., https://www.sss.gov/Status.html.

HOW SELECTIVE SERVICE REGISTRATION AFFECTS ACCESS TO SCHOOL

I'VE HEARD THAT IF I DIDN'T REGISTER WITH THE SELECTIVE SERVICE WHEN I WAS YOUNGER, I MAY NOT BE ABLE TO GET FINANCIAL AID FOR SCHOOL. IS THAT TRUE? WHAT CAN I DO?

It's true. If you failed to register with the Selective Service between the ages of 18 and 25 (*before* your 26th birthday), you are not eligible for state or federal financial aid — unless you fall into an exception, or you had a really good reason for not registering, such as being incarcerated during the relevant time period.

However, even if you weren't incarcerated and don't have a good reason for not registering, you still may be able to get student financial aid, if you can prove that your failure to register was *unintentional*. In other words, you have to prove that even though you knew you were supposed to register, you weren't avoiding it on purpose.[294]

To prove this, you will have to request a Status Information Letter from the Selective Service System (See Appendix L, on PG. 120), then send that letter to the relevant department at your school, along with a letter explaining why you didn't register. Generally, an employee of your school will be the one who decides whether you have provided enough proof to qualify for financial aid.[295] Learn more about this topic in the EDUCATION CHAPTER, beginning on PG. 832.

HELPFUL HINT

Explaining a Failure to Register with the Selective Service to your School

The school employee in charge of your case is required to consider ALL information related to your situation — not just the Letter from the Selective Serve System says happened — so provide as much detail as possible to make your case stronger. This may include information about where you were living between the ages of 18 and 25, whether you thought you were already registered, and/or why you weren't aware of the registration requirement.[296]

IX. CONCLUSION

If you are in reentry, you have quickly realized how important these various forms of identification ("ID"), key documents, and civic building blocks are to rebuilding your life, your identity, and your sense of self. To review, the BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER covered the following topics:

1) Birth certificate
2) Social Security Number (SSN) and card
3) California state ID, driver license, and municipal ID
4) ID options for undocumented people
5) U.S. passport
6) Tribal enrollment and Tribal ID card
7) Library card
8) Voter registration and voting rights
9) Selective Service registration

We hope this chapter has empowered you to gather the important documents and ID you need to start over strong — and to understand the different steps and issues that might come up, so you can plan ahead.

Another important set of documents — not covered in this chapter — are copies of your criminal record. It is important to know what could show up from your criminal record as you apply for public benefits, programs, housing, and jobs; how to spot and fix errors; and how to get help with making your record less visible and less powerful by "cleaning" it up. Criminal record issues are so important in reentry that we have dedicated an entire chapter of this guide just to these issues. Go to the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931, to learn more.

Congratulations on all you have accomplished! If you require further assistance, feel free to call Root & Rebound's weekly Reentry Legal Hotline at 510-279-3662, any Friday from 9 a.m. – 5 p.m. PST (except holiday closures), and our legal team will do its best to provide you with information about reentry and you rights with a record. You can also email questions to Root & Rebound at roadmap@rootandrebound.org, or write a confidential, legal letter to: Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612.

[294] Time to Register, SELECTIVE SERV. SYS., https://www.sss.gov/sssyou/sssyou.htm.
[295] See U.S. Dep't of Educ. & Fed. Student Aid, 2014-2015 Federal Student Aid Handbook 1-71.
[296] See U.S. Dep't of Educ. & Fed. Student Aid, 2014-2015 Federal Student Aid Handbook.

ID & VOTING APPENDIX

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APPENDIX A

CDPH Application for Certified Copy of Birth Record

See next page.

APPLICATION FOR CERTIFIED COPY OF BIRTH RECORD

PLEASE READ THE INSTRUCTIONS ON PAGE 2 BEFORE COMPLETING THIS APPLICATION

As part of statewide efforts to prevent identity theft, California law (Health and Safety Code Section 103526) permits only authorized individuals as listed on the application to receive certified copies of birth records. All others will be issued **Certified Informational Copies** marked with the legend, **"Informational, Not A Valid Document to Establish Identity."**

Please indicate the type of certified copy you are requesting:

☐ I would like a **Certified Copy.** This copy will establish the identity of the registrant. (To receive a Certified Copy you **MUST INDICATE YOUR RELATIONSHIP TO THE REGISTRANT** by selecting from the list below **AND COMPLETE THE ATTACHED SWORN STATEMENT** declaring that you are eligible to receive the Certified Copy. The Sworn Statement **MUST BE NOTARIZED** if the application is submitted by mail **unless you are a law enforcement or local or state governmental agency**.)

☐ I would like a **Certified Informational Copy.** This document will be printed with a legend on the face of the document that states**,** "**INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY**."

(A Sworn Statement does not need to be provided.)

NOTE: Both documents are certified copies of the original document on file with our office. With the exception of the legend and redaction of signatures and Social Security Number, the documents contain the same information.

Fee: **$25 per copy** (payable to CDPH Vital Records). **PLEASE SUBMIT CHECK OR MONEY ORDER – DO NOT SEND CASH**
(CDPH cannot be held responsible for fees paid in cash that are lost, misdirected, or undelivered).

PLEASE ATTACH CHECK HERE

To receive a **Certified Copy** I am:

☐ The registrant (person listed on the certificate) or a parent or legal guardian of the registrant. **(Legal guardian must provide documentation.)**

☐ A party entitled to receive the record as a result of a court order or an attorney or a licensed adoption agency seeking the birth record in order to comply with the requirements of Section 3140 or 7603 of the Family Code. **(Please include a copy of the court order.)**

☐ A member of a law enforcement agency or a representative of another governmental agency, as provided by law, who is conducting official business. **(Companies representing a government agency must provide authorization from the government agency.)**

☐ A child, grandparent, grandchild, brother or sister, spouse, or domestic partner of the registrant.

☐ An attorney representing the registrant or the registrant's estate, or any person or agency empowered by statute or appointed by a court to act on behalf of the registrant or the registrant's estate.

☐ Appointed rights in a power of attorney, or an executor of the registrant's estate. **(Please include a copy of the power of attorney, or supporting documentation identifying you as executor.)**

APPLICANT INFORMATION (PLEASE PRINT OR TYPE) Today's Date:

Agency Name (If Applicable)	Agency Case Number	Inmate ID Number
Print Name of Applicant	Signature of Applicant	Purpose of Request
Mailing Address – Number, Street	Amount Enclosed – **DO NOT SEND CASH** $ _____ Check $ _____ Money Order	Number of Copies
City	Name of Person Receiving Copies, if Different from Applicant	
State/Province / ZIP Code	Mailing Address for Copies, if Different from Applicant	
Daytime Telephone (include area code) ( ) / Country	City / State / ZIP Code	

BIRTH RECORD INFORMATION (PLEASE PRINT OR TYPE) Adopted: ☐ No ☐ Yes (If Yes, see #4 on Page 2)

Complete the information below as shown on the birth record, to the best of your knowledge.

FIRST Name	**MIDDLE** Name	**LAST** Name
City of Birth (must be in California)		County of Birth
Date of Birth – MM/DD/CCYY (If unknown, enter approximate date of birth)		Sex ☐ Female ☐ Male
Father/Parent FIRST Name	**MIDDLE** Name	**LAST** Name (Before Marriage/Domestic Partnership)
Mother/Parent FIRST Name	**MIDDLE** Name	**LAST** Name (Before Marriage/Domestic Partnership)

INFORMATION:

Birth records have been maintained in the California Department of Public Health Vital Records since July 1, 1905.
The name required on Vital Records (see Items 1C, 6C, 7C, 9C, and 12C) is the name given at birth, or a name received through adoption, court-ordered name change, or naturalization. AKAs (Also Known As) and assumed names cannot be entered as the legal name on the birth record.

INSTRUCTIONS:

1. **ONLY** individuals who are authorized by Health and Safety Code Section 103526 can obtain a Certified Copy of a birth record to establish identity of the registrant (person listed on the certificate). (Page 1 identifies the individuals who are authorized to make the request.) All others may receive a Certified Informational Copy which will be marked, "Informational, Not a Valid Document to Establish Identity."

   Confidential Information on Birth Record: some individuals have special needs for a birth certificate that contains the confidential information provided at the time the birth record was prepared. This confidential information may be used to establish ethnicity, to provide health background, or for other personal reasons. For information on how to obtain a birth certificate containing the confidential information, please refer to the **Birth Record** section of our website at: www.cdph.ca.gov. Only specific individuals may obtain confidential copies.

2. Complete a separate application for each birth record requested.

3. Complete the **Applicant Information** section on Page 1 and provide your signature where indicated. In the **Birth Record Information** section, provide all the information you have available to identify the birth record. If the information you furnish is incomplete or inaccurate, we may not be able to locate the record.

4. **If the registrant has been adopted**, make the request in the **adopted** name. If the registrant was born outside the United States and re-adopted in California, mark the "Yes" box and complete the application with the adopted information. (If you are requesting a copy of the **original** birth certificate, you **must** provide a court order releasing the original sealed record.)

5. **SWORN STATEMENT:**

   - The authorized individual requesting the certified copy must sign the attached Sworn Statement, declaring under penalty of perjury that they are eligible to receive the certified copy of the birth record and identify their relationship to the registrant – the relationship must be one of those identified on Page 1.
   - If the application is being submitted by mail, the Sworn Statement **must be** notarized by a Notary Public. (To find a Notary Public, see your local yellow pages or call your banking institution.) **Law enforcement and local and state governmental agencies are exempt from the notary requirement**.
   - You do not have to provide a Sworn Statement if you are requesting a Certified Informational Copy of the birth record.

6. Submit $25 for **each** copy requested. If no birth record is found, the fee will be retained for searching for the record (as required by law) and a "Certificate of No Public Record" will be issued to the applicant. Indicate the number of copies you want and include the correct fee(s) in the form of a personal check or postal or bank money order (International Money Order for out-of-country requests) made payable to **CDPH Vital Records**. **PLEASE SUBMIT CHECK OR MONEY ORDER – DO NOT SEND CASH** (CDPH cannot be held responsible for fees paid in cash that are lost, misdirected, or undelivered).

7. Mail completed applications with the fee(s) to:

California Department of Public Health
Vital Records – MS 5103
P.O. Box 997410
Sacramento, CA 95899-7410
(916) 445-2684

SWORN STATEMENT

I, _____, declare under penalty of perjury under the laws of the State of California,
(**Applicant's** Printed Name)

that I am an authorized person, as defined in California Health and Safety Code Section 103526 (c), and am eligible to receive a certified copy of the birth, death, or marriage certificate of the following individual(s):

Name of Person Listed on Certificate	Applicant's Relationship to Person Listed on Certificate (Must Be a Relationship Listed on Page 1 of Application)

(*The remaining information must be completed in the presence of a Notary Public or CDPH Vital Records staff.)*

Subscribed to this _____ day of _____, 20___, at _____, _____.
(Day) (Month) (City) (State)

_____
(**Applicant's** Signature)

Note: If submitting your order by mail, you must have your Sworn Statement notarized using the Certificate of Acknowledgment below. The Certificate of Acknowledgment must be completed by a Notary Public. (Law enforcement and local and state governmental agencies are exempt from the notary requirement.)

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)

County of _____)

On _____before me, _____, personally appeared _____,
(insert name and title of the officer)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.
(SEAL)

_____
SIGNATURE OF NOTARY PUBLIC

APPENDIX B

A Listing of Vital Statistics Office Phone Numbers for Each State

For people born outside of California in the U.S., this Appendix provides a chart that contact information for the Vital Statistics Office (also called Vital Records Office) in each state. However, because these addresses and phone numbers are subject to change, you should check with the CDC for the most up-to-date information. You can:

- Visit the CDC website at http://www.cdc.gov/nchs/w2w.htm
- Call the CDC directly by phone at 1-800-CDC-INFO (1-800-232-4636)

OR

- Write to the CDC at:

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Once you locate the Vital Statistics Office in the state where you were born, let them know that you are trying to get an *authorized certified copy* of your birth certificate. Ask (1) what their procedures are; (2) what you need to send the Vital Statistics Office; and (3) the cost.

IMPORTANT NOTE IF YOU ONLY HAVE A PRISON/JAIL ID CARD:

If the only identification (ID) that you currently have is a valid prison ID card, it may be enough in some states to request your birth certificate. First, call the state where you were born, follow the instructions to be connected to an operator, and confirm what document you need to provide to get your *certified birth certificate*.

If you only have a prison ID card, here are a few examples of what states will ask you to provide in addition to that card:

- **Idaho and Delaware accept a current prison ID card (no older than the current year), with a photo on it, to be copied and sent with your application and payment for a birth certificate.**
- **Arizona, on the other hand, needs only a notarized signature along with full payment, and does not require a copy of your prison/jail ID card.[297]**
- **Oregon has a long list of acceptable forms of ID. If you do not have one of the primary forms of ID (such as a driver's license or passport) you may need to include as many as three documents to prove your identity. These can include parole papers showing date of birth and identity, your prison/jail ID card, vehicle registration or title, hospital card, and utility bills, among other possibilities.[298]**

The point is, it's best to call ahead and ask!

[297] Arizona Dep't of Hhttp://www.azdhs.gov/documents/licensing/vital-records/application-certificate-birth.pdf.
[298] https://public.health.oregon.gov/BirthDeathCertificates/GetVitalRecords/Pages/recordinformation.aspx



CONTACT INFORMATION OF VITAL STATISTICS OFFICES IN EVERY STATE

STATE	MAILING ADDRESS	PHONE	*COST* FOR A COPY OF BIRTH CERTIFICATE, AND WHO TO ADDRESS THE CHECK TO
Alabama	Alabama Vital Records P.O. Box 5625 Montgomery, AL 36103-5625	(334) 206-5418	• $15.00 (Additional copies $6.00 each, and to expedite a request is an additional $15.00) • Check or money order should be made payable to "State Board of Health"
Alaska	Dept. of Health and Social Services Bureau of Vital Statistics 5441 Commercial Blvd. Juneau, AK 99801	(907) 465-3391	• $30.00 (Additional copies are $25.00 each) • Personal check or money order should be made payable to "Bureau of Vital Statistics" • SPECIAL NOTES: 1. You must include a copy of government-issued picture ID with your application (e.g., Identification Card, Drivers License, a Prison/Jail ID Card, etc.) 2. While copying/scanning picture ID, enlarge the copy and lighten the picture on the computer or printer as much as possible to be sure that it is clear and readable when sent to Alaska's Bureau of Vital Statistics. 3. REQUIRED: After copying your picture ID, you must sign the paper you submit along with the application itself.
American Samoa	American Samoa Government Dept. of Homeland Security Office of Vital Statistics P.O. Box 6894 Pago Pago, AS 96799	(684) 633-1405/1406. For Health Information Office, Health and Vital Statistics call (684) 633-4606/2262	• $5.00 • Money order should be made payable to "The Office of Vital Statistics/ASG." Personal checks are not accepted.
Arizona	Office of Vital Records Arizona Dept. of Health Services P.O. Box 3887 Phoenix, AZ 85030-3887	(602) 364-1300	• $20.00 • Cashier's checks and money orders must be for the exact amount and made payable to "Office of Vital Records" • SPECIAL NOTES: Acceptable payment methods are cashier's check, money order, Visa or MasterCard. If you pay by credit/debit card, you must include the full number and expiration date on your application.
Arkansas	Arkansas Dept. of Health 4815 West Markham St. Little Rock, AR 72205	(501) 661-2336	• $12.00 ($10.00 for each additional copy) • Personal check or money order should be made payable to "Arkansas Dept. of Health"
California	CA Dept. of Public Health—Vital Records MS: 5103 P.O. Box 997410 Sacramento, CA 95899-7410	(916) 445-2684	• $25.00 • A personal check or money order should be made payable to "CDPH Vital Records"
Canal Zone	Vital Records Section Passport Services U.S. Dept. of State 1111 19th St. NW, Suite 510 Washington, DC 20522-1705	(202) 955-0307	• $30.00 (Additional copies of the same record requested at the same time are $20.00 each. • Personal check or money order must be signed, dated and made payable to "U.S. Dept. of State"



Colorado	Vital Records Section CO Dept. of Public Health and Environment 4300 Cherry Creek Drive South HSVRD-VS-A1 Denver, CO 80246-1530	(303) 692- 2200	• $17.75 (Additional copies of the same birth record ordered at the same time are $10.00 each.) • Personal check or money order should be made payable to "Vital Records Section"
Connecticut	CT Dept. of Public Health 410 Capitol Ave., MS #11 VRS Hartford, CT 06134	(860) 509-7897	• $30.00 • Requests sent to the State Vital Records Office require a postal money order made payable to the "Treasurer, State of Connecticut"
Delaware	Office of Vital Statistics Division of Public Health 417 Federal St. Dover, DE 19901	(302) 744-4549	• $25.00 • Personal check or money order should be made payable to "Office of Vital Statistics"
District of Colombia	Vital Records Division 899 North Capitol St. NE, First Floor Washington, DC 20002	(202) 671- 5000	• $23.0 • Personal check or money order should be made payable to "DC Treasurer"
Florida	Dept. of Health Bureau of Vital Statistics P.O. Box 210 1217 Pearl St. (Zip 32202) Jacksonville, FL 32231-0042	(904) 359-6900	• $9.00 • Personal check or money order should be made payable to "Bureau of Vital Statistics"
Georgia	MAIL-IN REQUEST: State Vital Records Office 2600 Skyland Dr., NE Atlanta, GA 30319 IN-PERSON REQUEST: There are 159 counties in Georgia. You can go to the office in the county where you were born. If you aren't sure, call the phone number listed to the right.	(404) 679-4702 Call this phone number if you need the mailing address or telephone of a specific county's Vital Records office in Georgia.	• $25.00 (Additional copies of the same record ordered at the same time are $5.00.) • A certified check or money order should be made payable to "Vital Records Services" • SPECIAL NOTES: All requests for vital records include the signature and photocopy picture ID of the requestor and the proper fee.
Guam	Office of Vital Statistics P.O. Box 2816 Hagatna, Guam 96932	(671) 735-7292	• $5.00 • Money order should be made payable to "Treasurer of Guam"
Hawaii	State Dept. of Health Office of Health Status Monitoring Issuance/Vital Statistics Section P.O. Box 3378 Honolulu, HI 96801	(808) 586-4533	• $10.00 (Additional copies ordered at the same time are $4.00 each.) • Cashiers check, certified check, or money order should be made payable to "State Dept. of Health"
Idaho	Vital Records Unit Bureau of Vital Records and Health Statistics P.O. Box 83720 Boise, ID 83720-0036	(208) 334- 5988	• $13.00 • Personal check or money order should be made payable to "Idaho Vital Records"
Illinois	Division of Vital Records Illinois Dept. of Public Health 925 E Ridgely Ave. Springfield, IL 62702	(217) 782-6553	• $15.00 (Additional certifications of the same record ordered at the same time are $2.00 each.) • Money orders, certified checks, or personal checks should be made payable to "Illinois Dept. of Public Health"

Indiana	Vital Records Indiana State Dept. of Health P.O. Box 7125 Indianapolis, IN 46206-7125	(317) 233-2700	• $10.00(Additional copies of the same birth record ordered at the same time are $4.00 each.) • Personal check or money order should be made payable to "Indiana State Dept. of Health"
Iowa	Iowa Dept. of Public Health Bureau of Vital Records Lucas Office Building 1st Floor 321 East 12th St. Des Moines, IA 50319-0075	(515) 281-4944	• $15.00 • Personal check or money order should be made payable to "Iowa Dept. of Public Health"
Kansas	Office of Vital Statistics, Curtis State Office Building 1000 SW Jackson St., Suite 120 Topeka, Kansas 66612-2221	(785) 296-1400	• $15.00(Additional copies of the same record ordered at the same time are $15.00 each.) • Personal check or money order should be made payable to "Vital Statistics"
Kentucky	Office of Vital Statistics Dept. for Public Health, Cabinet for Health and Family Services 275 East Main St. 1E-A Frankfort, KY 40621-0001	(502) 564- 4212	• $10.00 • Personal check or money order should be made payable to "Kentucky State Treasurer"
Louisiana	Office of Public Health Vital Records Registry P.O. Box 60630 New Orleans, LA 70160	(504) 593-5100 Fax: (504) 568-8716	**Louisiana (LA) Birth Certificate Types:** Birth Long: (SUGGESTED, CERTIFIED) A certified birth certificate that can typically be used for travel, passport, proof of citizenship, social security, driver's license, school registration, personal identification and other legal purposes. Birth Certificates are available for events that occurred in the State of Louisiana within the last 100 years. **First Long Copy: $15.00; Additional Copies: $15.00** Birth Short—Card: The Birth Short—Card is a wallet size version of the Birth Certificate that can be used for INFORMATIONAL PURPOSES ONLY. THIS CANNOT BE USED TO OBTAIN A PASSPORT, DRIVER'S LICENSE OR TRAVEL. **First Copy: $9.00; Additional Copies: $9.00** • Checks made payable to "Louisiana Vital Records" • SPECIAL NOTES: Walk-in services only accept cash, check, or money order payment (no credit/debit cards).
Maine	Maine Center for Disease Control and Prevention 11 State House Station 220 Capitol St. Augusta, Maine 04333-0011	(207) 287-3181, or toll-free at 1-888-664-949	• Certified $15.00. Non-Certified $10.00. • (Additional copies of same record ordered at same time are $6.00 each.) • Personal check or money order should be made payable to "Treasurer, State of Maine"
Maryland	Division of Vital Records Dept. of Health and Mental Hygiene 6550 Reisterstown Road P.O. Box 68760 Baltimore, MD 21215-0036	(410) 260-6400	• $24.00 • Personal check or money order should be made payable to "Division of Vital Records"



Massachusetts	Registry of Vital Records and Statistics 150 Mount Vernon St., 1st Floor Dorchester, MA 02125-3105	If your birth certificate is from *the year 1920 or earlier*, CALL (617) 727-2816 If your birth certificate is from the year *1921 or later*, CALL (617) 740-2600	• $20.00 (In-person Request) • $32.00 (Mail-In request) • *Additional $3.00 for Birth Certificated from year 1920 or earlier* • Personal check or money order should be made payable to "Commonwealth of Massachusetts" • SPECIAL NOTES: State office has no records previous to 1921. For earlier records, write to The Massachusetts Archives at Columbia Point, 220 Morrissey Blvd., Boston, MA 02125 (617) 727-2816.
Michigan	Vital Records Request P.O. Box 30721 Lansing, MI 48909	To request an application, call the recorded message at (517) 335-8656 to leave your name and mailing address with type of application needed. To speak to a customer service representative call (517)- 335-8666 and press option #4	• $34.00 (Only $14.00 for Senior Citizens age 65+ if requesting their own birth record.) • Rush fee additional $12.00. • Additional copies of any record ordered at the same time are $16.00 each.) • Personal check or money order should be made payable to "State of Michigan"
Minnesota	Minnesota Dept. of Health Central Cashiering – Vital Records P.O. Box 64499 St. Paul, MN 55164	(651) 201-5970	• $26.00 (Additional copies of the birth record when ordered at the same time are $19.00.) • Personal check or money order should be made payable to Minnesota Dept. of Health.
Mississippi	Mississippi Vital Records State Dept. of Health P.O. Box 1700 Jackson, MS 39215-1700	To verify current fees, the telephone number is (601) 576-7981. A recorded message may be reached on (601) 576-7450	• $15.00 (Additional copies of same record ordered at the same time are $5.00 each.) • Personal check, bank or postal money order or bank cashier's check are accepted and should be made payable to "Mississippi State Dept. of Health"
Missouri	Missouri Dept. of Health and Senior Services Bureau of Vital Records 930 Wildwood P.O. Box 570 Jefferson City, MO 65102-0570	(573) 751-6387	• $15.00(Copies of these records are $15.00 each) • Personal check or money order should be made payable to "Missouri Dept. of Health and Senior Services" • SPECIAL NOTES: Please include a legal size self-addressed stamped envelope.
Montana	Office of Vital Statistics, MT Dept. of Public Health and Human Services 111 N Sanders, Rm. 6 P.O. Box 4210 Helena, MT 59604	(406) 444- 2685	• $12.00 • (Additional copies of the same record requested at the same time are $5.00.) • Personal check or money order should be made payable to "Montana Vital Records"
Nebraska	Nebraska Vital Records P.O. Box 95065 Lincoln, NE 68509-5065	(402) 471- 2871	• $17.00 • Personal check or money order should be made payable to "Nebraska Vital Records"
Nevada	Office of Vital Records 4150 Technology Way, Suite 104 Carson City, NV 89706	(775) 684- 4242	• $20.00 • Personal check or money order should be made payable to "Office of Vital Records"

New Hampshire	Division of Vital Records Administration— Archives Building 71 South Fruit St. Concord, NH 03301-2410	(603) 271-4651	• $15.00 • Personal check or money should be made payable to “Treasurer, State of New Hampshire”
New Jersey	New Jersey Dept. of Health Office of Vital Statistics and Registry P.O. Box 370 Trenton, NJ 08625-0370	TOLL FREE (866) 649-8726 (OR visit online at http://www.state.nj.us/health/vital for up-to-date information on ordering)	• $25.00 (Additional copies of the same record ordered at the same time are $2.00 each.) • SPECIAL NOTES: For information on Express Mail or In persons order visit http://www.state.nj.us/health/vital/contact.shtml
New Mexico	NM Vital Records P.O. Box 25767 Albuquerque, NM 87125	TOLL FREE (866) 534-0051	• $10.00 • Personal check or money order should be made payable to “NM Vital Records”
New York	Certification Unit Vital Records Section, 2nd Floor 800 North Pearl St. Menands, NY 12204	1-855-322-1022	• $30.00 • Personal check or money order should be made payable to “New York State Dept. of Health”
New York City	NYC Health Department Office of Vital Records 125 Worth St., CN4, Rm. 133 New York, NY 10013	(212) 639-9675	• $15.00 (Additional Copies $15.00) SPECIAL NOTES: • The office has birth records for people who were born and/or died in the five boroughs of New York City: Brooklyn, the Bronx, Manhattan, Queens, or Staten Island. • Birth records issued before 1910 and death records issued before 1949 must be ordered through the Municipal Archives. • For more information please visit: http://www.nyc.gov/html/doh/html/services/vr-order-other.shtml or write to Dept. of Records and Information Services, 31 Chambers St., New York, NY 10007.
North Carolina	NC Vital Records 1903 Mail Service Center Raleigh, NC 27699-1903	(919) 733- 3000	• $24.00 • Business or certified check or money order should be made payable to “NC Vital Records”
North Dakota	ND Dept. of Health Division of Vital Records 600 East Blvd. Ave., Dept. 301 Bismarck, ND 58505-0200	(701) 328- 2360	• $7.00(Additional copies of birth records are $4.00) • Personal check or money order should be made payable to “ND Dept. of Health”
North Mariana Islands	Commonwealth Healthcare Corporation Vital Statistics Office P.O. Box 500409 Saipan, MP 96950	(670) 236-8717 or (670) 236-8702	• $20.00 • Money order or bank cashiers check should be made payable to “Commonwealth Healthcare Corporation”
Ohio	Vital Statistics Ohio Dept. of Health P.O. Box 15098 Columbus, OH 43215-0098	(614) 466- 2531	• $21.50 • Personal check or money order should be made payable to “Treasury, State of Ohio”



Oklahoma	Vital Records Service Oklahoma State Dept. of Health P.O. Box 53551 Oklahoma City, OK 73152	(405) 271-4040	• $15.00(Additional Copies $ 15.00 each) • Personal check or money order should be made payable to "OSDH"
Oregon	Oregon Vital Records P.O. Box 14050 Portland, OR 97293-0050	(971) 673-1190	• $20.00(Additional copies of the same record ordered at the same time are $15.00 each.) • Personal check or money order should be made payable to "OHA/Vital Records"
Pennsylvania	Division of Vital Records ATTN: Birth Unit 101 South Mercer St., Room 401 P.O. Box 1528 New Castle, PA 16103	(724) 656-3100	• $20.00 • Personal check or money order should be made payable to "Vital Records"
Puerto Rico	Dept. of Health Demographic Registry P.O. Box 11854 Fernández Juncos Station San Juan, PR 00910	(787) 765-2929 Ext. 6131	• $5.00 ($4.00 each additional copy requested on the same application. Registrants over 60 years of age and Veterans of the United States Armed Forces can obtain copies of their birth records free of charge.) • Payment method via money orders, which should be made payable to the "Secretary of Treasury" • SPECIAL NOTES: Maximum three (3) copies per registrant per year. Beneficiaries of a Veteran of the United States Armed Forces can obtain copies of their death records free of charge (widow or children under 21 years of age).
Rhode Island	RI Dept. of Health Office of Vital Records, Room 101 3 Capitol Hill Providence, RI 02908-5097	To verify current fees after office hours, the telephone number is (401) 222-2811. To verify current fees and general information during office hours, please call the Health Hot Line at (401) 222-5960	• $20.00(Additional copies of the same record ordered at the same time are $15.00 each.) • Personal check or money order should be made payable to "Rhode Island General Treasurer"
South Carolina	Office of Vital Records, SCDHEC 2600 Bull St. Columbia, SC 29201	(803) 898-3630	• $12.00(Additional copies of the same birth records ordered at the same time of certification are $3.00 each.) • Acceptable method of payment is a money order or cashiers check made payable to "SCDHEC-Vital Records."
South Dakota	Vital Records, State Dept. of Health 207 E Missouri Ave, Suite 1-A Pierre, SD 57501	(605) 773-4961	• $15.00 • Personal check or money order should be made payable to "South Dakota Dept. of Health."
Tennessee	Tennessee Vital Records Central Services Building 4215th Ave. North Nashville, TN 37243	(615) 741- 1763	• Long term- $15.00 • Short term- $ 8.00 • (Additional copies of the same birth, marriage, or divorce record requested at the same time are $5.00 each.) • Personal check or money order should be made payable to "Tennessee Vital Records"

Texas	Texas Vital Records Dept. of State Health Services P.O. Box 12040 Austin, TX 78711-2040	(512) 776- 7111	• $22.00 (Additional copies of the birth record ordered at same time are $22.00 each. • Mail-in requests must be made by personal check or money order made payable to DSHS.
Utah	Certification Unit Office of Vital Records P.O. Box 141012 Salt Lake City, UT 84114-1012	(801) 538-6105	• $20.00 (Additional copies, when requested at the same time, are $8.00 each.) • Personal check or money order should be made payable to "Vital Records" SPECIAL NOTES: • ID is now required to purchase a Utah Birth Certificate. • Mailed request must include an enlarged and easily identifiable photocopy of the front and back of your ID. If no proofs are enclosed, your application will be returned.
Vermont	VT Dept. of Health Vital Records Section P.O. Box 70 108 Cherry St. Burlington, VT 05402-0070	(802) 863-7275	• $10.00. • Personal check or money order should be made payable to "Vermont Dept. of Health"
Virginia	Division of Vital Records P.O. Box 1000 Richmond, VA 23218-1000	(804) 662-6200	• $12.00 • Personal check or money order should be made payable to " State Health Department" • SPECIAL NOTES: Must submit a photocopy of their ID.
Virgin Islands	Dept. of Health Vital Statistics, Charles Harwood Memorial Hospital St. Croix, VI 00820	(340) 774-9000 ext. 4685 or 4686	• $15.00 (mail requests). $12.00 (in person). • Money order for birth records should be made payable to "Department of Health" • SPECIAL NOTES: Personal checks are not accepted
Washington	Center for Health Statistics Department of Health P.O. Box 9709 Olympia, WA 98504-7814	(360) 236- 4300	• $20.00(For Expedited Delivery must add Express Mail, an additional $18.30) • Personal check or money order should be made payable to "Department of Health"
West Virginia	Vital Registration Office, Room 165 350 Capitol St. Charleston, WV 25301-3701	(304) 558-2931 VitalChek Phone: (877) 448-3953 Fax: (866) 870-8723	• $12.00(By Mail or In Person) • $30.50 + shipping (By Phone, Internet, or Fax) (Non-Rush Fee Charged by VitalChek) • $35.50 + shipping (Rush Fee Charged by VitalChek) • SPECIAL NOTES: Can order in person, by mail, by phone, Internet or fax (Credit Card/ Debit Card Only). Personal check or money order should be made payable to "Vital Registration"



Wisconsin	WI Vital Records Office 1 West Wilson St. P.O. Box 309 Madison, WI 53701-0309	For 24/7 automated assistance, call (608) 266-1371. If you want to talk to a live person, call the service counter 8:00 A.M. to 4:15 P.M. (Central Time), Monday through Friday at (608) 266-1373	• $20.00 (Additional copies of the same record ordered at the same time are $3.00 each.) • Personal check or money order should be made payable to “State of Wisconsin Vital Records” • SPECIAL NOTES: A stamped, self addressed business size (#10) envelope should be include with the request. A copy of valid photo ID and a signature is required of the applicant.
Wyoming	Vital Statistics Services Hathaway Building 2300 Capitol Avenue Cheyenne, WY 82002	(307) 777-7591	• $13.00 • Personal check or money order should be made payable to “Vital Statistics Services" • SPECIAL NOTES: Please enclose a self-addressed, stamped envelope with the request. All personal checks are only accepted when: (1) the requestor is entitled to the record and the check in personalized and on the account of the person making the request; (2) third party or non-bank checks will not be processed.

APPENDIX C

Application for Replacement Naturalization/Citizenship Document, Form N-565

See next page.

OMB No. 1615-0091; Expires 02/28/2015

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form N-565, Application for Replacement Naturalization/Citizenship Document

START HERE - Please type or print in black ink

Part 1. Information about you.

Family Name	Given Name	Middle Name

Address - In care of:

Street Number and Name	Apt. Number

City or Town	State or Province

Country	Zip or Postal Code

Date of Birth *(mm/dd/yyyy)*	Country of Birth

Certificate Number	A-Number

Telephone Number *(with area/country codes)*	E-Mail Address *(if any)*

Part 2. Type of application

1. I hereby apply for: ***(check one)***

a. ☐ New Certificate of Citizenship
b. ☐ New Certificate of Naturalization
c. ☐ New Certificate of Repatriation
d. ☐ New Declaration of Intention
e. ☐ Special Certificate of Naturalization to obtain recognition of my U.S. citizenship by a foreign country. *(Skip Number 2 and go to Part 3)*

2. Basis for application: *(Refer to the instructions for additional information.)*

a. ☐ My certificate is/was lost, stolen or destroyed *(attach a copy of the certificate if you have one)*. Explain when, where and how.

b. ☐ My certificate is mutilated *(attach the certificate)*.
c. ☐ My name has been changed *(attach the certificate)*.
d. ☐ My certificate or declaration is incorrect *(attach the document(s))*.

Part 3. Processing information

Gender	Height	Marital Status		
☐ Male ☐ Female			☐ Single ☐ Married	☐ Widowed ☐ Divorced

My last certificate or Declaration of Intention was issued to me by:

USCIS Office or Name of Court:	Date *(mm/dd/yyyy):*

Name in which the document was issued:

Other names I have used *(if none, so indicate)*:

Since becoming a citizen, have you lost your citizenship in any manner?

☐ No ☐ Yes *(attach an explanation)*

Part 4. Complete if applying for a new document because of a name change

Name changed to present name by: (check one)

☐ Marriage or divorce on *(mm/dd/yyyy)* _____
(Attach a copy of marriage or divorce certificate)

☐ Court Decree *(mm/dd/yyyy)* _____
(Attach a copy of the court decree)

For USCIS Use Only

Returned	Receipt

Resubmitted

Reloc Sent

Reloc Rec'd

☐ Applicant Interviewed

☐ Declaration of Intention verified by

☐ Citizenship verified by

Remarks

Action Block

To Be Completed by *Attorney or Representative*, if any.

☐ Fill in box if Form G-28 is attached to represent the applicant.

VOLAG No.

ATTY State License Number

Part 5. Complete if applying to correct your document

If you are applying for a new certificate or Declaration of Intention because your current one is incorrect, explain why it is incorrect and attach copies of the documents supporting your request.

Part 6. Complete if applying for a special certificate of recognition as a citizen of the U.S. by the government of a foreign country

Name of Foreign Country

Information about official of the country who has requested this certificate *(if known)*

Name | Official Title

Government Agency:

Address**:** Street Number and Name | Suite Number

City | State/Province

Country | Zip or Postal Code

Part 7. Signature

Read the information on penalties in the instructions before completing this part. If you are going to file this application at a USCIS office in the United States sign below. If you are going to file this application at a USCIS office abroad, sign it in front of a USCIS or Consular Official.

I certify, or if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records which U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature | **Date** *(mm/dd/yyyy)*

Signature of USCIS or Consular Official | Print Your Name | Date *(mm/dd/yyyy)*

NOTE: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for a certificate and this application may be denied.*

Part 8. Signature of person preparing form, if other than the applicant

I declare that I prepared this application at the request of the applicant and it is based on all information of which I have knowledge.

Signature | **Print Your Name** | **Date** *(mm/dd/yyyy)*

Firm Name and Address | Telephone Number *(with area code)*

E-Mail Address *(if any)*



APPENDIX D

Application for a Social Security Card, Form SS-5

See next page.

SOCIAL SECURITY ADMINISTRATION
Application for a Social Security Card

Form Approved
OMB No. 0960-0066

1 NAME TO BE SHOWN ON CARD — First | Full Middle Name | Last

FULL NAME AT BIRTH IF OTHER THAN ABOVE — First | Full Middle Name | Last

OTHER NAMES USED

2 Social Security number previously assigned to the person listed in item 1 — ___-___-____

3 PLACE OF BIRTH (Do Not Abbreviate) City _____ State or Foreign Country

Office Use Only — FCI

4 DATE OF BIRTH _____ MM/DD/YYYY

5 CITIZENSHIP (Check One)
☐ U.S. Citizen ☐ Legal Alien Allowed To Work ☐ Legal Alien **Not** Allowed To Work(See Instructions On Page 3) ☐ Other (See Instructions On Page 3)

6 ETHNICITY
Are You Hispanic or Latino? (Your Response is Voluntary)
☐ Yes ☐ No

7 RACE
Select One or More (Your Response is Voluntary)
☐ Native Hawaiian ☐ American Indian ☐ Other Pacific Islander
☐ Alaska Native ☐ Black/African American ☐ White
☐ Asian

8 SEX ☐ Male ☐ Female

9 A. PARENT/ MOTHER'S NAME AT HER BIRTH First | Full Middle Name | Last

B. PARENT/ MOTHER'S SOCIAL SECURITY NUMBER (See instructions for 9 B on Page 3) ___-___-____ ☐ Unknown

10 A. PARENT/ FATHER'S NAME First | Full Middle Name | Last

B. PARENT/ FATHER'S SOCIAL SECURITY NUMBER (See instructions for 10B on Page 3) ___-___-____ ☐ Unknown

11 Has the person listed in item 1 or anyone acting on his/her behalf ever filed for or received a Social Security number card before?
☐ Yes (If "yes" answer questions 12-13) ☐ No ☐ Don't Know (If "don't know," skip to question 14.)

12 Name shown on the most recent Social Security card issued for the person listed in item 1 — First | Full Middle Name | Last

13 Enter any different date of birth if used on an earlier application for a card _____ MM/DD/YYYY

14 TODAY'S DATE _____ MM/DD/YYYY

15 DAYTIME PHONE NUMBER Area Code _____ Number _____

16 MAILING ADDRESS (Do Not Abbreviate)
Street Address, Apt. No., PO Box, Rural Route No. _____
City _____ State/Foreign Country _____ ZIP Code _____

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best to my knowledge.

17 YOUR SIGNATURE

18 YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS:
☐ Self ☐ Natural Or Adoptive Parent ☐ Legal Guardian ☐ Other Specify _____

DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)

NPN	DOC	NTI	CAN	ITV
PBC	EVI	EVA	EVC	PRA

NWR	DNR	UNIT

EVIDENCE SUBMITTED

SIGNATURE AND TITLE OF EMPLOYEE(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW
_____ DATE
_____ DCL DATE

APPENDIX E

Franchise Tax Board, Identity Theft Affidavit

See next page.

STATE OF CALIFORNIA
FILING COMPLIANCE BUREAU MS F151
FRANCHISE TAX BOARD
PO BOX 1468
SACRAMENTO CA 95812-1468

Identity Theft Affidavit

Complete and submit this form if you are an actual or potential victim of identity theft and would like the Franchise Tax Board (FTB) to update your account status to identify questionable activity.

Check **one of the following boxes**:

☐ I am a **victim of identity theft,** and I believe this incident **is affecting** my tax account. Provide a short explanation of the tax impact:

_____

_____

_____

_____

_____

_____

☐ I am a **victim of identity theft**, and I believe I may be at risk for **future impact** to my tax account.

☐ I am a **potential victim** of identity theft, and I believe I may be at risk for **future impact** to my tax account. (Check "potential victim" if you have not experienced identity theft but are at risk due to a lost/stolen purse or wallet, questionable credit card or credit report activity, etc.)

Tax Year(s) Impacted (if applicable or known):	Date the Incident Occurred (if applicable or known):	Last Tax Return Filed (Year) (Enter **NRF** if Not Required to File.):	Provide the last 4 digits of your Social Security Number **or** your **complete** Individual Taxpayer Identification Number:

Last Name:	First Name:	Middle Initial:

Current Mailing Address:

City:	State:	ZIP Code:

Address on Last Tax Return Filed (Check Here If You Are Not Required to File a Tax Return.): ☐

City:	State:	ZIP Code:

Telephone Number: ☐ Home ☐ Work ☐ Cell	Best Time (s) to Call:	Primary Language: ☐ English ☐ Spanish ☐ Other Specify:

Under penalty of perjury, I declare that, to the best of my knowledge and belief, the information entered in this form is true, correct, complete, and made in good faith. I hereby agree and consent that the facsimile/fax signature of this affidavit shall be considered as valid as the original.

Taxpayer Signature	Date Signed (mm/dd/yyyy)

Submit this completed form and a copy of at least one of the following documents to verify your identity.

(Check the box next to the document you are submitting.)

☐ a) Passport

☐ b) Driver license or Department of Motor Vehicles identification card

If available, include a copy of:

☐ c) Social security card

☐ d) Police report

☐ e) Internal Revenue Service letter of determination

Submit the copies required above with this form using one of the options described on PAGE 2 of this form.

355200081371

Submit the copies required above with this form using one of the options described on PAGE 2 of this form.

By Mail:	By Fax:
If you received a notice from FTB, return this form **with a copy of the notice** to the address contained in the notice. If you have **not received an FTB notice** and are self-reporting potential risk for **future impact** to your tax account, mail this form to: FILING COMPLIANCE BUREAU MS F151 **FRANCHISE TAX BOARD** PO BOX 1468 SACRAMENTO CA 95812-1468	**If you received a notice in the mail from FTB** and a fax number is shown, fax this completed form **with a copy of the notice** to that number. Include a cover sheet marked "Confidential." If no fax number is shown, follow the mailing instructions. **FTB does not initiate contact with taxpayers by email or fax.** If you have **not received an FTB notice** and are self-reporting potential risk for **future impact** to your tax account, fax this form to: 916.843.0561

Go to **oag.ca.gov** and search for **identity theft** for additional resources and information regarding identity theft.

For privacy information, go to **ftb.ca.gov** and search for **privacy notice**. To request this notice by mail, call 800.338.0505 and enter form code **948** when instructed.

Connect With Us

Web: ftb.ca.gov

Phone:	916.845.7088	7 a.m. to 5 p.m. weekdays, except state holidays
	916.845.6500	from outside the United States
TTY/TDD:	800.822.6268	for persons with hearing or speech impairments

APPENDIX F

Verification for Reduced Fee Identification Card, Form DL 932

See next page for DMV Form DL-932, which a **service provider must request from the DMC** to get the appropriate DMV fee waiver verification forms to distribute to the people they serve.

PLEASE NOTE: You cannot access Forms DL 933 or 937 directly, which are the fee waiver forms that get turned into the DMV, but instead you must ask a nonprofit, social services or legal services agency to give you Form DL 933 or 937 filled out by their staff to take to the DMV.

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
A Public Service Agency

ORDER REQUEST
REDUCED FEE/NO FEE
IDENTIFICATION CARD VERIFICATION FORMS

SECTION 1 — ENTITY INFORMATION

ENTITY NAME

DAYTIME TELEPHONE NUMBER
( )

PHYSICAL ADDRESS	CITY	STATE	ZIP CODE
SHIP TO ADDRESS (*IF DIFFERENT FROM PHYSICAL ADDRESS*)	CITY	STATE	ZIP CODE

SECTION 2 — ENTITY REPRESENTATIVE INFORMATION

PRINTED NAME OF ENTITY REPRESENTATIVE	TITLE
SIGNATURE OF ENTITY REPRESENTATIVE **X**	DATE

SECTION 3 — PRODUCT INFORMATION

Stock Number/Item Description	Quantity
DL 937 Reduced Fee Identification Card Eligibility Verification	☐ 100 ☐ 200 ☐ 300
DL 933 No Fee Identification Card Eligibility Verification	☐ 100 ☐ 200 ☐ 300
FFDL 6 Requirements for a California Identification Card	☐ 100 ☐ 200 ☐ 300

INSTRUCTIONS: Mail this original and completed order request to:

DMV Materials Management Section
4201 Sierra Point Drive, Suite #112
Sacramento, CA 95834

dmvasdpublicforms@dmv.ca.gov

Reduced Fee Identification Card Eligibility Verification Form Issuance Requirements

A *Reduced Fee Identification Card Eligibility Verification* (DL 937) can only be issued to an applicant for an identification card (ID) by a qualified verifier of income. A qualified verifier of income is an employee or volunteer of a governmental entity or an organization registered with the Internal Revenue Service as a non-profit organization that has a physical location within California who regularly assists members of the public with applications for benefits under the programs listed below as defined in *California Vehicle Code* (CVC) §14902(c):

- California Work Opportunity and Responsibility to Kids Act (CalWORKs) (*Welfare and Institutions Code* (WIC) §11200);
- Burton-Moscone-Bagley Citizens' Income Security Act for Aged, Blind, and Disabled Californians (WIC §12000);
- County or city general assistance programs (WIC §17000);
- Supplemental Nutrition Assistance Program (Cal Fresh) (WIC §18900);
- Food Assistance Program for Legal Immigrants and/or California Food Assistance Program (CFAP) (WIC §18930);
- Cash Assistance Program for Aged, Blind and Disabled Legal Immigrants and/or Cash Assistance Program for Immigrants (CAPI) (WIC §18937)

A person whose income meets the eligibility requirements of, or is receiving public benefits under, any of the above mentioned programs is eligible to receive a DL 937.

No Fee Identification Card Program Participation Requirements

A No Fee Identification Card Eligibility Verification (DL 933) can only be authorized for issuance to an applicant for an ID card by a qualified verifier of homelessness status which is a person who regularly verifies housing status for eligibility for homeless services in California and either works for, is one of, or volunteers for one of the entities listed below as set forth in CVC §14902 (f):

- Non-profit entity or organization that meets all of the following:
  - physically located in California;
  - registered with the Internal Revenue Service as a non-profit entity; and
  - either receives federal, state, county or municipal funding to provide services to the homeless or is otherwise sanctioned to provide those services by a local continuum of care organization.
- Government agency;
- One of the following:
  - Educational liaison;
  - Public social services provider funded by the State of California;
  - Human services provider funded by the State of California;
  - An attorney licensed to practice in California;
  - A law enforcement officer.

Eligibility for a no fee ID, as defined in CVC §14902(f), is a homeless person or homeless child or youth as defined by the federal *McKinney-Vento Homeless Assistance Act* (42 U.S.C. §11301 et seq.).

APPENDIX G

Court-Ordered Debt Payment Instructions

Western Union is the only payment option to pay your court-ordered debt (COD) to the California Franchise Tax Board (FTB) offers to expedite the release of your driver license. If you have any other referring court-ordered liabilities, they must also be paid. To expedite (speed up) the release of your license:

- Call the referring office that placed the hold on your driver license and ask: "Does your office accept Western Union payment in full through the California Franchise Tax Board's COD account to expedite the release of my license?"
- If the answer is yes, then pay your COD account in full through Western Union and provide COD with the Western Union Money Transfer Control Number (MTCN).
- If the answer is no, ask the referring office if they accept other payment options to expedite the release.

WESTERN UNION
This service charges a fee.

- Go to Western Union—Send Money to pay online, in person, or by phone.
  - Check *Pay A Bill* box
  - Provide *one* of the following:
    - *Company name*: CA Franchise Tax Board
    - *City code* (no spaces): FranchiseTaxBoard
  - *Account number*: Enter account number
  - *Attention*: Court-Ordered Debt
  - *Amount*: Enter payment amount
  - *Speed*: Check *Urgent* box
- Once payment is complete, Western Union will give you a Money Transfer Control Number (MTCN).
- Call COD at 916.845.4064 and provide your MTCN to verify payment.

WEB PAY
Login to My COD Account online (https://www.ftb.ca.gov/online/Court_Ordered_Debt/index.asp) and go to "Pay Now." Have the following information ready:

- Your COD account number
- Billing number on your COD notice
- Bank account holder last name
- Checking or savings account number and routing number

CREDIT CARD
***This service charges a fee*. Have the following information ready:**

- Jurisdiction Code: 1584
- Payment type: Court-Ordered Debt Payment
- Your COD account number
- Billing number on your COD notice
- *Pay online*: Go to Official Payments—Make a Payment and select State Payments.
- *Pay by phone*: Call 800.272.9829 and select option 2 State Payments.

CHECK, MONEY ORDER, OR CASHIER'S CHECK

- Pay to Court-Ordered Debt Collections.
- Write your full name, account number, and billing number on your payment.
- Mail your payment and the top portion of your notice to: Court-Ordered Debt Collections, Franchise Tax Board, PO Box 1328, Rancho Cordova, CA 95741-1328

APPENDIX H

A Full List of Acceptable Identity & Residency Verification Documents for AB 60 "Undocumented Person" California Driver License

See next page.

AB 60 – Document Options for a California Driver License

Customers applying for a driver license must provide **Proof of Identity** and **California Residency** if they do not have satisfactory proof of legal presence. Use the following guideline to help you determine the documents that are needed when applying for a driver license.

PROOF OF IDENTITY:

ONE (1) OF THE FOLLOWING DOCUMENTS

California Driver License or California Identification Card:

- California Driver License (issued 10/2000 or later)
- California Identification Card (issued 10/2000 or later)

Foreign Document that is valid, approved by the Department of Motor Vehicles (DMV) and electronically verified by DMV with the country of origin:

- Mexican Federal Electoral Card (Instituto Federal Electoral (IFE) Credencial para Votar – 2013 version)
- Mexican Passport (issued in 2008 or later)
- Mexican Consular Card (Matricula Consular - 2006 and 2014 versions)

Foreign Passport that is valid and approved by DMV (see page 4 & 5 for list of DMV approved passports). The customer must also provide his/her social security number that is electronically verifiable with the Social Security Administration.

-----OR------

TWO (2) DOCUMENTS FROM TABLE A
--OR--
ONE (1) DOCUMENT FROM TABLE A AND ONE (1) DOCUMENT FROM TABLE B

Table A	Table B
Foreign Document that is valid and approved by DMV: • Argentinian Identification Card (Documento Nacional de Identidad (DNI) – 2012 version) • Chilean Identification Card (Cedula de Identidad – 2013 version) • El Salvadorian Identification Card (Documento Unico de Identidad (DUI) – 2010 version) • Peruvian Identification Card (Documento Nacional de Identidad (DNI) – 2010 version) • Guatemalan National Identification Card (Documento Personal de Identificacion (DPI) – 2012 version) • Guatemalan Consular Card (Tarjeta de Identificacion Consular– 2002 version) • Brazilian Consular Card (Carteira de Matricula Consular – 2010 version) • Foreign Passports (see pages 4 & 5 for list of DMV approved passports)	• Foreign Birth Certificate that is a certified copy issued by a national civil registry within six (6) months of the application date (for a CA driver license) that contains an embedded photo of the applicant; **OR** • Foreign Birth Certificate that is accompanied by an Apostille authentication and translated.

Revised December 11, 2014

AB 60 – Document Options for a California Driver License

Customers applying for a driver license must provide **Proof of Identity** and **California Residency** if they do not have satisfactory proof of legal presence. Use the following guideline to help you determine the documents that are needed when applying for a driver license.

-----OR------

SECONDARY REVIEW

AS MANY AS POSSIBLE OF THE FOLLOWING DOCUMENTS

The applicant shall submit as many as possible of the following documents that will be reviewed by DMV to verify the applicant's identity.

- School documents, including any document issued by a public or private primary, secondary, or post-secondary institution, college, or university that either includes the applicant's date of birth, or if a foreign school document, is sealed by the school and includes a photograph of the applicant at the age the record was issued.
- Documents issued by or filed with a government within the United States (U.S.) or the U.S. government, including:
  1. U.S. Department of Homeland Security (DHS) Form I-589, (Application for Asylum and for Withholding of Removal).
  2. U.S. DHS Form I-20 (Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students or Certificate of Eligibility for Nonimmigrant (M-1) Student Status – For Vocational Students).
  3. U.S. DHS Form DS-2019 (Certificate of Eligibility for Exchange Visitor (J-1) Status).
  4. Court documents where the applicant is named as a party to the court proceeding.
  5. Income tax returns.
  6. Driver's license.
- Documents pertaining to civil marital status or civil unity, including marriage licenses or domestic partner registrations. If the language on the marriage license is in a language other than English, the marriage license shall be accompanied by a certified translation or an affidavit of translation into English.
- Divorce decrees. If the language on the decree is in a language other than English, the decree shall be accompanied by a certified translation or an affidavit of translation into English.
- Foreign passport, consular identification card, foreign national identification card, or a foreign driver's license. If the foreign driver's license is in a language other than English, it shall be accompanied by a certified translation or an affidavit of translation into English.
- Identification cards that contain a photograph of the applicant issued by a government within the U.S. or the U.S. government.
- Birth documents including a birth certificate or adoption records.
- Any of the above documents that list the applicant's spouse, domestic partner, child, parent, or legal guardian provided the applicant also provides a birth certificate, adoption records, marriage license, or domestic partner registration to trace the relationship.

AB 60 – Document Options for a California Driver License

Customers applying for a driver license must provide **Proof of Identity** and **California Residency** if they do not have satisfactory proof of legal presence. Use the following guideline to help you determine the documents that are needed when applying for a driver license.

----AND----

PROOF OF CALIFORNIA RESIDENCY

ONE (1) OF THE FOLLOWING DOCUMENTS

All residency documents must list the applicant's first and last name, and California residence address with the exception of the last three (3) items below.

- Rental or lease agreements with the signatures of the owner/landlord and the tenant/resident.
- Deeds or titles to residential real property.
- Mortgage bills.
- Home utility bills including cellular phone bills.
- School documents.
- Medical documents.
- Employment documents.
- Faith based documents.
- Insurance documents, including medical, dental, vision, life, home, rental, and vehicle.
- Internal Revenue Service or California Franchise Tax Board tax returns.
- California Certificates of Vehicle or Vessel Titles or registrations.
- California driver's licenses or identification cards.
- Change of Address Confirmations by the U.S. Postal Service (Form CNL 107).
- Federal government-issued documents.
- A property tax bill or statement.
- Records of a financial institution.

The following documents do not need to have the customer's California residence address:

- Court documents that list the applicant as a resident of California.
- A letter, on letterhead from a homeless shelter, a shelter for abused women, a nonprofit entity, a faith based organization, an employer, or a government within the U.S. attesting that the applicant resides in California.
- A parent, legal guardian, or child may use a birth certificate and a spouse or domestic partner may use a marriage license or domestic partner registration certificate to trace his or her relationship to the individual to whom one of the above residency documents has been addressed.

Approved Foreign Passports

Country Name	Issued In/After
Afghanistan	2011
Albania	2009
Argentina	2009
Armenia	2001
Australia	2005
Austria	2006
Azerbaijan	2013
Bahamas	2010
Bahrain	2011
Bangladesh	2010
Belarus	2006
Belgium	2006
Belize	2005
Bolivia	2010
Bosnia and Herzegovina	2009
Botswana	2010
Brazil	2006
Brunei	2008
Bulgaria	2010
Burkina Faso	2008
Cabo Verde	2005
Cambodia	2005
Canada	2010
Cayman Islands	2008
Chile	2013
China	2007
Colombia	10/2009
Comoros	2008
Congo	2008
Congo, Democratic Republic of the	2009
Costa Rica	2006
Cote D'Ivoire	2008
Croatia	2009
Cyprus	2010
Czech Republic	2005
Denmark	2012
Dominican Republic	2006
Ecuador	2013
Egypt	2008
El Salvador	2009
Equatorial Guinea	2011
Eritrea	2010

Country Name	Issued In/After
Estonia	2005
Fiji Islands	2012
Finland	2006
France	2006
Gabon	2009
Georgia	2005
Germany	2007
Ghana	2010
Greece	2006
Guatemala	2011
Guinea-Bissau	2008
Honduras	2005
Hong Kong	2006
Hungary	2006
Iceland	2006
India	2008
Indonesia	2006
Indonesia	2008
Interpol	2009
Iran	2011
Iraq	2009
Ireland	2006
Israel	2011
Italy	2006
Jamaica	2009
Japan	2006
Kazakhstan	2009
Kenya	2008
Kosovo	2008
Latvia	2007
Libya	2009
Lithuania	2006
Luxembourg	2006
Macao	2009
Macedonia, FYR	2008
Madagascar	2007
Malaysia	2010
Malaysia	2013
Malta	2008
Mexico	2008
Mongolia	2011
Montenegro	2008

Approved Foreign Passports

Country Name	Issued In/After
Morocco	2009
Mozambique	2010
Myanmar	2010
Nepal	2010
Netherlands	2006
New Zealand	2009
Nicaragua	2010
Nigeria	2007
Norway	2005
Palau	2008
Palestinian Territory, Occupied	2008
Panama	2010
Paraguay	2012
Peru	2010
Philippines	2010
Poland	2006
Portugal	2006
Qatar	2008
Romania	2008
Russia	2010
Saint Helena	2012
Saint Kitts and Nevis	2010
San Marino	2009
Sao Tome and Principe	2008

Country Name	Issued In/After
Senegal	2008
Serbia	2008
Sierra Leone	2010
Slovakia	2005
Slovenia	2006
Somalia	2007
South Africa	2009
South Korea	2008
South Sudan	2012
Spain	2006
Sweden	2005
Switzerland	2006
Taiwan	12/28/2009
Tajikistan	2010
Thailand	2009
Turkey	2010
Turkmenistan	2008
Ukraine	2007
United Arab Emirates	2011
United Kingdom	2006
Uruguay	2009
Vanuatu	2010
Vatican City	2008
Virgin Islands (British)	2007
Zambia	2008

****Please note this document is subject to change**

APPENDIX I

A Full List of Countries that Issue Consular Identification Cards (CIDs)

ARGENTINA: Matrícula Consular Argentina; Website: www.embassyofargentina.us/espanol/consuladosargentinoseneeuu/consuladosargentinoseneeuu.htm; Embassy Phone Number: (202) 238-6401
BRAZIL: Matrícula de Cidadão Brasileiro; Website: www.brasilemb.org/consulado/consular_jurisdictions.shtml; Embassy Phone Number: (202) 238-2828
COLOMBIA: Tarjeta de Registro Consular ; website: http://www.colombiaemb.org/opencms/opencms/consulates/consulates.html; Embassy Phone Number: (202) 387-8338
GUATEMALA: Tarjeta de Identificación Consular; Website: http://www.guatemala-embassy.org/main.php?parent_id=7&id_area=109; Embassy Phone Number: (202) 745-4952
GUINEA: Website: http://www.guineaembassy.com; Embassy Phone Number: (202) 986-4300
MALI: Carte d'Identité Consulaire; Website: http://www.maliembassy.us; Embassy Phone Number: (202) 332-2249; Consulate General of Mali in NY: (212) 737-4150
MEXICO: Mexican Matrícula Consular de Alta Seguridad; To find your consulate, visit http://www.embassyofmexico.org or http://directorio.gob.mx and click on Relaciones Exteriores, Embajadas y Consulados, Consulados de México en el extranjero. Embassy Phone Number: (202) 728-1600
SENEGAL: Carte Consulaire; Website: http://www.senegalembassy-us.org/enOurReps.htm; Embassy Phone Number: (202) 234-0540 or (202) 234-0541
DOMINICAN REPUBLIC: To find your local consulate, visit: http://www.domrep.org; Embassy Phone Number: (202) 332-6280
ECUADOR: Website: http://www.ecuador.us/info/consulate.htm; Embassy Phone Number: (202) 234-7200 ext. 224
EL SALVADOR: Website: http://www.elsalvador.org/home.nsf/infoconsular
Embassy Phone Number: (202) 265-9671
HONDURAS: Website: http://www.hondurasemb.org; Embassy Phone Number: (202) 737-2972
NIGERIA: *Atlanta's Nigeria Consulate Website*: http://www.nigeria-consulate-atl.org; Phone Number: (770) 394-6261. *New York's Consulate Website*: http://www.nigeria-consulate-ny.org; Phone Number (212) 850-2200; Embassy Phone Number: (202) 986-8400
PAKISTAN: Consulate General of Pakistan; Website: http://www.pakistanconsulateny.org; Embassy Phone Number: (212) 879-5800
PERU: Documento Nacional de Identificación, Peruvian consulates do not offer consular ID cards. However, their national ID may be accepted as form of ID by some institutions or companies. Website: http://www.consuladoperu.com/archivos/ jurisdicciones.com; Information Hotline: (800) 535-3953; Embassy Phone Number: (202) 833-9860/69

APPENDIX J

Notice of Motion for Judicial Review of License Denial, Form FL-670

See next page.

ATTORNEY OR PARTY WITHOUT ATTORNEY OR GOVERNMENTAL AGENCY (under Family Code §§ 17400, 17406) *(Name and Address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
NOTICE OF MOTION FOR JUDICIAL REVIEW OF LICENSE DENIAL	CASE NUMBER:

See reverse for instructions.

1. On *(date):* the local child support agency of *(specify county):* denied a release form that would enable me to obtain the following license *(specify):*

   Name and address of licensing agency:

2. I seek a judicial review of the local child support agency's denial on the following grounds *(check all that apply):*
   a. ☐ There is no order for me to pay child support in this action.

   b. ☐ I am not the person ordered to pay child support in this action.

   c. ☐ I am in compliance with the order to pay child support in this action.

   d. ☐ I am in compliance with payments on the schedule for payment of arrearages or reimbursement.

   e. ☐ Other *(specify):*

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

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

3. A hearing on this motion will be held as follows:

Date:	Time:	Room:
Address:		

Form Adopted for Mandatory Use
Judicial Council of California
FL-670 [Rev. January 1, 2003]

NOTICE OF MOTION FOR JUDICIAL REVIEW OF LICENSE DENIAL (Governmental)

Family Code, § 17520
www.courtinfo.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:

This motion should be filed with a hearing scheduled *as soon as possible* after your local child support agency review.

INSTRUCTIONS

1. Complete the application on the reverse. Contact the clerk of the court for a hearing date, time, and place. Insert the information in box 3 on the reverse.

2. File the original *Notice of Motion for Judicial Review of License Denial* (form FL-670) with the court and keep two copies, because you will need them later.

3. Serve a copy of this form on the local child support agency which has certified your name for nonpayment of child support not later than seven days after the filing in court. Service of the papers may be made by (a) personal delivery OR (b) mailing the papers by first-class mail, postage prepaid, to the last known address of the other party. Anyone at least 18 years of age EXCEPT A PARTY may personally serve or mail the papers. Be sure whoever serves the papers fills out and signs the proof of service below.

PROOF OF SERVICE

4. At the time of service I was at least 18 years of age and not a party to this legal proceeding.

5. I served a copy of the *Notice of Motion for Judicial Review of License Denial* (form FL-670) in the manner shown below.

6. Manner of service on **LOCAL CHILD SUPPORT AGENCY**
   a. ☐ **Personal service.** I personally delivered these papers to the local child support agency as follows:
      (1) Local child support agency *(name):*
      (2) Address where served:

      (3) Date delivered: (4) Time delivered:

   b. ☐ **First-class mail.** I deposited these papers with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident of or employed in the county where the notice was mailed. The envelope was addressed and mailed as follows:
      (1) Local child support agency *(name):*
      (2) Address on envelope:

      (3) Date mailed: (4) Place of mailing *(city, state):*

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PERSON WHO SERVED THE NOTICE)

APPENDIX K

U.S. Passport Renewal Application, Form DS-82

See next page.

U.S. PASSPORT RENEWAL APPLICATION FOR ELIGIBLE INDIVIDUALS

PLEASE DETACH AND RETAIN THIS INSTRUCTION SHEET FOR YOUR RECORDS

Date of Application:_____

CAN I USE THIS FORM?

Complete the checklist to determine your eligibility to use this form

I can submit my most recent U.S. passport book and/or U.S. passport card with this application.	☐ Yes	☐ No
I was at least 16 years old when my most recent U.S. passport book and/or passport card was issued.	☐ Yes	☐ No
I was issued my most recent U.S. passport book and/or passport card less than 15 years ago.	☐ Yes	☐ No
My most recent U.S. passport book and/or U.S. passport card that I am renewing has not been lost, stolen, mutilated, or damaged.	☐ Yes	☐ No
My U.S. passport has not been limited from the normal ten year validity period due to passport damage/mutilation, multiple passport thefts/losses, or non-compliance with 22 C.F.R. 51.41. (Please refer to the back pages of your U.S. passport book for endorsement information.)	☐ Yes	☐ No
I use the same name as on my recent U.S. passport book and/or U.S. passport card. **--OR--** I have had my name changed by marriage or court order and can submit proper documentation to reflect my name change.	☐ Yes	☐ No

If you answered NO to any of the statements above,
STOP - You cannot use this form!

You must apply on application form DS-11 by making a personal appearance before an acceptance agent authorized to accept passport applications. Visit **travel.state.gov** to find your nearest acceptance facility.

U.S. PASSPORTS, EITHER IN BOOK OR CARD FORMAT, ARE ISSUED ONLY TO U.S. CITIZENS OR NON-CITIZEN NATIONALS. EACH PERSON MUST OBTAIN HIS OR HER OWN U.S. PASSPORT BOOK OR PASSPORT CARD. THE PASSPORT CARD IS A U.S. PASSPORT ISSUED IN CARD FORMAT. LIKE THE TRADITIONAL PASSPORT BOOK, IT REFLECTS THE BEARER'S ORIGIN, IDENTITY, AND NATIONALITY AND IS SUBJECT TO EXISTING PASSPORT LAWS AND REGULATIONS. UNLIKE THE PASSPORT BOOK, THE PASSPORT CARD IS VALID ONLY FOR ENTRY TO THE UNITED STATES AT LAND BORDER CROSSINGS AND SEA PORTS OF ENTRY WHEN TRAVELING FROM CANADA, MEXICO, THE CARIBBEAN, AND BERMUDA. THE U.S. PASSPORT CARD IS NOT VALID FOR INTERNATIONAL AIR TRAVEL.
PLEASE NOTE: YOUR NEW PASSPORT WILL HAVE A DIFFERENT PASSPORT NUMBER THAN YOUR PREVIOUS PASSPORT.

INFORMATION, QUESTIONS, AND INQUIRIES

Please visit our website at **travel.state.gov**. In addition, you may contact the National Passport Information Center (NPIC) toll-free at 1-877-487-2778 (TDD: 1-888-874-7793) or by email at **NPIC@state.gov**. Customer Service Representatives are available Monday-Friday 8:00a.m.-10:00p.m. Eastern Time (excluding federal holidays.) Automated information is available 24 hours a day, 7 days a week.

FAILURE TO PROVIDE INFORMATION REQUESTED ON THIS FORM, INCLUDING YOUR SOCIAL SECURITY NUMBER, MAY RESULT IN SIGNIFICANT PROCESSING DELAYS AND/OR THE DENIAL OF YOUR APPLICATION.

NOTICE TO APPLICANTS RESIDING ABROAD

United States citizens residing abroad CANNOT submit this form to the domestic address listed on the Instruction Page 2. Such applicants should contact the nearest U.S. Embassy or Consulate for procedures to be followed when applying overseas.

WARNING: False statements made knowingly and willfully in passport applications, including affidavits or other documents submitted to support this application, are punishable by fine and/or imprisonment under U.S. law, including the provisions of 18 U.S.C. 1001, 18 U.S.C. 1542, and/or 18 U.S.C. 1621. Alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under the provisions of 18 U.S.C. 1543. The use of a passport in violation of the restrictions contained therein or of the passport regulations is punishable by fine and/or imprisonment under 18 U.S.C. 1544. All statements and documents are subject to verification.

See page 2 of the instructions for detailed information on the completion and submission of this form.

WHAT DO I SEND WITH THIS APPLICATION FORM?

- **Your most recent U.S. passport book and/or card;**
- **A certified copy of your marriage certificate or court order if your name has changed;**
- **Fees; and**
- **A recent color photograph.**

See below for more detailed information.

1. YOUR MOST RECENTLY ISSUED U.S. PASSPORT (BOOK AND/OR CARD FORMAT).

- Submit your **most recently issued** U.S. passport book and/or card. When submitting a U.S. passport book and/or card with this form, please verify that the document was issued at age 16 or older in your current name (or see item #2 below) and issued within the past 15 years. You are also eligible to use this form if you currently have a U.S. passport book and/or card that complies with the previously listed criteria, and would like to obtain a alternative product (U.S. passport book and/or card) for the first time. However, you must submit the product you currently have (U.S. passport book and/or card) with this application. If your U.S. passport book and/or card has been lost, stolen, damaged, or mutilated, you must apply on the DS-11 application form as specified below.

2. A CERTIFIED MARRIAGE CERTIFICATE OR COURT ORDER. (PHOTOCOPIES ARE NOT ACCEPTED)

- If the name you are currently using differs from the name on your most recent U.S. passport, you must submit a certified copy of your marriage certificate or court order showing the change of name. All documents will be returned to you by mail. If you are unable to document your name change in this manner, you must apply on the DS-11 application form by making a personal appearance at (1) a passport agency; (2) U.S. Embassy or Consulate, if abroad; (3) any federal or state court of record or any probate court accepting passport applications; (4) a designated municipal or county official; or (5) a post office, which has been selected to accept passport applications.

3. THE CURRENT PASSPORT FEE.

- Enclose the fee in the form of a personal check or money order. **MAKE CHECKS PAYABLE TO "U.S. DEPARTMENT OF STATE." THE FULL NAME AND DATE OF BIRTH OF THE APPLICANT MUST BE TYPED OR PRINTED ON THE FRONT OF THE CHECK. DO NOT SEND CASH.** Passport Services cannot be responsible for cash sent through the mail. By law, the fees are non-refundable. Please visit our website at **travel.state.gov** for detailed information regarding current fees.

OVERNIGHT DELIVERY SERVICE: If you desire overnight delivery service for the return of your U.S. passport, please include the appropriate fee with your payment.
FASTER PROCESSING: For an additional fee, you may request expedited service. Please include this fee in your payment and submit the application to the appropriate address. **Please write "Expedite" on the outer envelope when mailing. Also, TO ENSURE MINIMAL PROCESSING TIME for expedited passport book applications, Passport Services recommends using overnight delivery when submitting the application AND including the appropriate postage fee for return overnight delivery for the newly issued passport book.** Expedited service is available only in the United States. Overnight return delivery is only available for passport books. Please visit **travel.state.gov** for updated information regarding fees, processing times, or to check the status of your passport application online.

4. A RECENT COLOR PHOTOGRAPH.

- Submit a color photograph of you alone, sufficiently recent to be a good likeness of you **(taken within the last six months)**, and 2x2 inches in size. The image size measured from the bottom of your chin to the top of your head (including hair) should not be less than 1 inch, and not more than 1 3/8 inches. The photograph must be color, clear, with a full front view of your face, and printed on thin paper with plain light (white or off-white) background. The photograph must be taken in normal street attire, without a hat, head covering, or dark glasses unless a signed statement is submitted by the applicant verifying the item is worn daily for religious purposes or a signed doctor's statement is submitted verifying the item is used daily for medical purposes. Headphones, "bluetooth", or similar devices must **not** be worn in the passport photograph. Any photograph retouched so that your appearance is changed is unacceptable. A snapshot, most vending machine prints, and magazine or full-length photographs are unacceptable. A digital photo must meet the previously stated qualifications, and will be accepted for use at the discretion of Passport Services. Please visit our website at **travel.state.gov** for details and information.

WHERE DO I MAIL THIS APPLICATION?

FOR ROUTINE SERVICE:
National Passport Processing Center
Post Office Box 90155
Philadelphia, PA 19190-0155

FOR EXPEDITED SERVICE (Additional Fee):
National Passport Processing Center
Post Office Box 90955
Philadelphia, PA 19190-0955

Due to the sensitivity of the enclosed documents, Passport Services recommends using trackable mailing service when submitting your application.

NOTE REGARDING MAILING ADDRESSES: Passport Services will not mail a passport to a private address outside the United States. If you do not live at the address listed in the "mailing address", then you must put the name of the person and mark it as "In Care Of." If your mailing address changes prior to receipt of your new passport, please contact the National Passport Information Center (NPIC) at 1-877-487-2778 or visit **travel.state.gov**.

NOTE: You may receive your newly issued document and your returned citizenship evidence in separate mailings. If you are applying for both a passport book and/or card, you may receive **three separate mailings**; one with your returned citizenship evidence; one with your newly issued passport book, and one with your newly printed passport card.

If you choose to provide your email address in Item #6 on this application, Passport Services may use that address to contact you in the event there is a problem with your application or if additional information is required.

FEDERAL TAX LAW

Section 6039E of the Internal Revenue Code (26 USC 6039E) requires you to provide your Social Security number (SSN), if you have one, when you apply for a U.S. passport or renewal of a U.S. passport. If you have not been issued a SSN, enter zeros in box #5 of this form. If you are residing abroad, you must also provide the name of the foreign country in which you are residing. The U.S. Department of State must provide your SSN and foreign residence information to the U.S. Department of Treasury. If you fail to provide the information, you are subject to a $500 penalty enforced by the IRS. All questions on this matter should be directed to the nearest IRS office.

NOTICE TO CUSTOMERS APPLYING OUTSIDE A STATE DEPARTMENT FACILITY

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times, and we will charge you a one-time fee of $25, which we will also collect by EFT.

REMITTANCE OF FEES

Passport service fees are established by law and regulation (see 22 U.S.C. 214, 22 C.F.R. 22.1, and 22 C.F.R. 51.50-56), and are collected at the time you apply for the passport service. If the Department fails to receive full payment of the applicable fees because, for example, your check is returned for any reason or you dispute a passport fee charge to your credit card, the U.S. Department of State will take action to collect the delinquent fees from you under 22 C.F.R. Part 34, and the Federal Claims Collection Standards (see 31 C.F.R. Parts 900-904). In accordance with the Debt Collection Improvement Act (Pub.L. 104-134), if the fees remain unpaid after 180 days and no repayment arrangements have been made, the Department will refer the debt to the U.S. Department of Treasury for collection. Debt collection procedures used by the U.S. Department of Treasury may include referral of the debt to private collection agencies, reporting of the debt to credit bureaus, garnishment of private wages and administrative offset of the debt by reducing, or withholding eligible federal payments (e.g., tax refunds, social security payments, federal retirement, etc.) by the amount of your debt, including any interest penalties or other costs incurred. In addition, non-payment of passport fees may result in the invalidation of your U.S. passport book and/or card. An invalidated passport card cannot be used for travel.

OTHER USES OF SOCIAL SECURITY NUMBER

Your Social Security number will be provided to the U.S. Department of Treasury, used in connection with debt collection and checked against lists of persons ineligible or potentially ineligible to receive a U.S. passport book and/or card, among other authorized uses.

NOTICE TO APPLICANTS FOR OFFICIAL, DIPLOMATIC, OR NO-FEE PASSPORTS

You may use this application if you meet all of the provisions listed on Instruction Page 2, however, you must CONSULT YOUR SPONSORING AGENCY FOR INSTRUCTIONS ON PROPER ROUTING PROCEDURES BEFORE FORWARDING THIS APPLICATION. Your completed passport will be released to your sponsoring agency for forwarding to you.

IMPORTANT NOTICE TO APPLICANTS WHO HAVE LOST OR HAD A PREVIOUS U.S. PASSPORT BOOK AND/OR PASSPORT CARD STOLEN

A United States citizen may not normally bear more than one valid or potentially valid U.S. passport book or more than one valid or potentially valid U.S. passport card at a time. Therefore, when a valid or potentially valid U.S. passport book or U.S passport card cannot be presented with a new application, it is necessary to submit a Form DS-64, Statement Regarding a Lost or Stolen U.S. Passport. Your statement must detail why the previous U.S. passport book or U.S. passport card cannot be presented.

The information you provide regarding your lost or stolen U.S. passport book or passport card will be placed into our Consular Lost or Stolen Passport System. This system is designed to prevent the misuse of your lost or stolen U.S. passport book or passport card. Anyone using the passport book or passport card reported as lost or stolen may be detained upon entry into the United States. Should you locate the U.S. passport book or passport card reported lost or stolen at a later time, report it as found, and submit it for cancellation. It has been invalidated. You may not use that passport book or passport card for travel.

PROTECT YOURSELF AGAINST IDENTITY THEFT! REPORT YOUR LOST OR STOLEN U.S. PASSPORT BOOK OR PASSPORT CARD!

For more information or to report your lost or stolen U.S. passport book or passport card by phone, call NPIC at:

1-877-487-2778 or visit our website at **travel.state.gov**.

SPECIAL NOTICE TO U.S. PASSPORT CARD APPLICANTS ONLY

The maximum number of letters provided for your given name (first and middle) on the U.S. passport card is 24 characters. The 24 characters may be shortened due to printing restrictions. If both your given names are more than 24 characters, you must shorten one of your given names you list on item 1 of this form.

ACTS OR CONDITIONS

If any of the below-mentioned acts or conditions have been performed by or apply to the applicant, the portion which applies should be lined out, and a supplementary explanatory statement under oath (or affirmation) by the applicant should be attached and made a part of this application.

I have not, since acquiring United States citizenship/nationality, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; made a formal renunciation of nationality either in the United States, or before a diplomatic or consular officer of the United States in a foreign state; or been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against the United States, or conspiring to overthrow, put down, or to destroy by force, the government of the United States.

Furthermore, I have not been convicted of a federal or state drug offense or convicted for "sex tourism" crimes statute, and I am not the subject of an outstanding federal, state, or local warrant of arrest for a felony; a criminal court order forbidding my departure from the United States; a subpoena received from the United States in a matter involving federal prosecution for, or grand jury investigation of, a felony.

PRIVACY ACT STATEMENT

AUTHORITIES: Collection of this information is authorized by 22 U.S.C. 211a et seq.; 8 U.S.C. 1104; 26 U.S.C. 6039E; Executive Order 11295 (August 5, 1966); and 22 C.F.R. parts 50 and 51.

PURPOSE: We are requesting this information in order to determine your eligibility to be issued a U.S. passport.

Your Social Security number is requested in order to verify your identity. Failure to provide your Social Security number on this form may delay processing of your application.

ROUTINE USES: This information may be disclosed to another domestic government agency, a private contractor, a foreign government agency, or to a private person or private employer in accordance with certain approved routine uses. These routine uses include, but are not limited to, law enforcement activities, employment verification, fraud prevention, border security, counterterrorism, litigation activities, and activities that meet the Secretary of State's responsibility to protect U.S. citizens and non-citizen nationals abroad.

More information on the Routine Uses for the system can be found in System of Records Notices State-05, Overseas Citizen Services Records and State-26, Passport Records.

DISCLOSURE: Providing your Social Security number and the other information on this form is voluntary, but failure to provide the information on this form may, given the form's purpose of verification of identity and entitlement to a U.S. passport, result in processing delays or denial of the passport application.

Failure to provide your Social Security number may also subject you to a penalty enforced by the Internal Revenue Service, as described in the Federal Tax Law section of the instructions to this form. Your Social Security number will be provided to the Department of the Treasury and may be used in connection with debt collection, among other purposes as authorized and generally described in this section. Providing your Social Security number and other information requested on this form is otherwise voluntary.

ELECTRONIC PASSPORT STATEMENT

The U.S. Department of State now issues an "Electronic Passport" book, which contains an embedded electronic chip. The electronic passport book continues to be proof of the bearer's United States citizenship/nationality and identity, and looks and functions in the same way as a passport without a chip. The addition of an electronic chip in the back cover enables the passport book to carry a duplicate electronic copy of all information from the data page. The electronic passport book is usable at all ports-of-entry, including those that do not yet have electronic chip readers.

Use of the electronic format provides the traveler the additional security protections inherent in chip technology. Moreover, when used at ports-of-entry equipped with electronic chip readers, the electronic passport book provides for faster clearance through some of the port-of-entry processes.

The electronic passport book does not require special handling or treatment, but like previous versions should be protected from extreme heat, bending, and from immersion in water. The electronic chip must be read using specially formatted readers, which protects the data on the chip from unauthorized reading.

The cover of the electronic passport book is printed with a special symbol representing the embedded chip. The symbol  will appear in port-of-entry areas where the electronic passport book can be read.

PAPERWORK REDUCTION ACT STATEMENT

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time required for searching existing data sources, gathering the necessary data, providing the information and/or documentation required, and reviewing the final collection. You do not have to supply this information unless this collection displays a currently valid OMB control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 2201 C Street NW, Washington, D.C. 20520.

U.S. PASSPORT RENEWAL APPLICATION FOR ELIGIBLE INDIVIDUALS

OMB CONTROL NO. 1405-0020
OMB EXPIRATION DATE: 12-31-2016
ESTIMATED BURDEN: 40 MIN

Please Print Legibly Using Black Ink Only

Attention: Read WARNING on page 1 of instructions

Please select the document(s) for which you are applying:

☐ U.S. Passport Book ☐ U.S. Passport Card ☐ Both

The U.S. passport card is **not** valid for international air travel. For more information see page 1 of instructions.

☐ 28 Page Book (Standard) ☐ 52 Page Book (Non-Standard)

Note: The 52 page option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.

☐ D ☐ O ☐ DP **DOTS Code** _____

End. # _____ **Exp.** _____

1. Name Last

First Middle

2. Date of Birth *(mm/dd/yyyy)*

3. Sex M F

4. Place of Birth *(City & State if in the U.S., or City & Country as it is presently known.)*

5. Social Security Number

6. Email Address *(e.g., my_email@domain.com)*

@

7. Primary Contact Phone Number

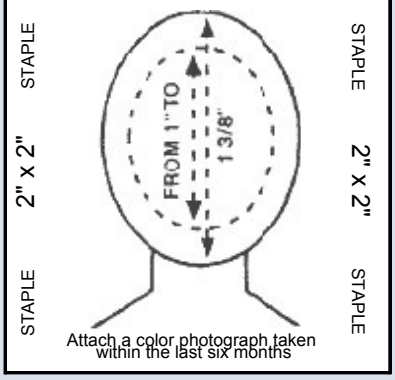
8. Mailing Address: Line 1: Street/RFD#, P.O. Box, or URB.

Address Line 2: **Clearly label** Apartment, Company, Suite, Unit, Building, Floor, In Care Of or Attention if applicable. (*e.g., In Care Of - Jane Doe, Apt # 100*)

City **State** **Zip Code** **Country**, if outside the United States

9. List all other names you have used. *(Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)*

A. B.



Attach a color photograph taken within the last six months

10. Passport Book and/or Passport Card Information

Your name as printed on your most recent U.S. passport book and/or passport card

Most recent passport book number — Issue date *(mm/dd/yyyy)*

Most recent passport card number — Issue date *(mm/dd/yyyy)*

11. Name Change Information *Complete if name is different than last U.S. passport book or passport card*

☐ Changed by Marriage ☐ Changed by Court Order

Place of Name Change *(City/State)* — Date *(mm/dd/yyyy)*

Please submit a certified copy. **(Photocopies are not accepted!)**

CONTINUE TO PAGE 2

YOU MUST SIGN AND DATE THE APPLICATION IN THE DESIGNATED AREA BELOW

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph submitted with this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.

x _____ **Applicant's Legal Signature** — _____ **Date**

FOR ISSUING OFFICE ONLY ☐ PPT BK C/R ☐ PPT BK S/R ☐ PPT CD C/R ☐ PPT CD S/R

☐ Marriage Certificate Date of Marriage/Place Issued:

☐ Court Order Date Filed/Court:

From _____

To: _____

☐ Other:

☐ Attached:

For Issuing Office Only → Bk Fee_____ Cd Fee_____ EF_____ Postage_____ Other_____

* DS 82 C 08 2013 1 *

Name of Applicant *(Last, First & Middle)*

Date of Birth *(mm/dd/yyyy)*

12. Height | **13. Hair Color** | **14. Eye Color** | **15. Occupation** | **16. Employer or School** *(if applicable)*

17. Additional Contact Phone Numbers

☐ Home ☐ Cell ☐ Work ☐ _____

☐ Home ☐ Cell ☐ Work ☐ _____

18. Permanent Address: *If P.O. Box is listed under Mailing Address* ***or*** *if residence is different from Mailing Address.*

Street/RFD # or URB (***No P.O. Box***)

Apartment/Unit

City

State

Zip Code

19. Emergency Contact - *Provide the information of a person not traveling with you to be contacted in the event of an emergency.*

Name

Address: Street/RFD # or P.O. Box

Apartment/Unit

City

State

Zip Code

Phone Number

Relationship

20. Travel Plans

Departure Date *(mm/dd/yyyy)*

Return Date *(mm/dd/yyyy)*

Countries to be visited

STOP! YOU HAVE COMPLETED YOUR APPLICATION
BE SURE TO SIGN AND DATE PAGE ONE

* DS 82 C 08 2013 2 *

APPENDIX L

Status Information Letter for Selective Service System

See next page.

Request for Status Information Letter

I am requesting a Status Information Letter. I am a male who is not registered with Selective Service. **I am now 26 years old or older**, and was born after December 31, 1959.

Section 1:

Name _____
First Middle Last

List any other names used _____
Include any multiple last names

Current Mailing Address _____
Street Address

_____
City State Zip Code

Social Security Number _____

Date of Birth _____
Month / Day / Year

Daytime Telephone Number _____

E-mail Address _____

Section 2:

MILITARY:

List dates of active duty service: _____ to _____
List dates of reserve duty service: _____ to _____
List dates of military school service: _____ to _____
Military school attended: _____
Attach copy of DD214 (or DD Form 4 if still on active duty)

INCARCERATED, INSTITUTIONALIZED, HOSPITALIZED, OR CONFINED TO HOME:

List dates during which you were (circle appropriate situation) incarcerated, institutionalized, hospitalized, or confined to home. For multiple dates, list all.

_____ to _____ , _____ to _____ , _____ to _____
Attach proof of each instance

NON CITIZEN / UNDOCUMENTED IMMIGRANT

Date you entered the United States for the first time: _____
Month / Day / Year

USCIS (Formerly INS) status at time of entry: _____
List all alien status(es) held since entering the country, and give dates:
(**Attach separate sheet if necessary**)

_____ to _____ USCIS Status: _____
_____ to _____ USCIS Status: _____
_____ to _____ USCIS Status: _____
_____ to _____ USCIS Status: _____

Attach copies of supporting documentation (see following information sheet for detailed instructions regarding this)

TRANSSEXUAL:

At birth my gender was: _____
Attach copy of birth certificate

REASON WHY YOU FAILED TO REGISTER WITH SELECTIVE SERVICE UPON REACHING AGE 18 AND BEFORE REACHING AGE 26:

_____
_____
_____
_____

Section 3:

Print, sign and date, then send this letter, **together with ALL copies of required documents and any other supporting information you may wish to include to:**

Selective Service System
ATTN: SIL
PO Box 94638
Palatine, IL 60094-4638

_____ _____
Signature Date

No action can be taken until we receive ALL of the information/documentation needed. You should retain a copy of all documents and correspondence submitted to us.

INSTRUCTIONS

For filling out the "Request for Status Information Letter"

SECTION 1:

- Name: you must provide your complete name, and any other names you have ever used. If you have more than one last name, you must provide both names.
- Address: you must include your complete mailing address. Forms received without a mailing address will not be processed.
- Social Security Number: If you have a Social Security Number, you must provide it. Also, if you have ever used a different Social Security Account Number, provide that as well.
- Date of Birth: This form is only for men born after December 31, 1959, who are 26 years old or older. You must provide your complete date of birth.
- Daytime Telephone Number: If possible, provide a telephone number where you can be reached during the day, in case we need to contact you.
- E-mail Address: If possible, provide your e-mail address in case we need to contact you.

SECTION 2:

This section is for explaining and documenting why you did not register with Selective Service. This section consists of five different parts. You must complete and submit documentation for any and all parts that apply to you.

Military:

To obtain proof of military service (DD-214, Official Military Personnel File) write to: National Personnel Records Center, GSA, Military Personnel Records Center, 9700 Page Blvd., St. Louis, MO, 63132. Or visit http://www.archives.gov/veterans/military-service-records

Incarcerated, institutionalized, hospitalized, or confined to home:

For each instance, provide type of confinement, dates of confinement, and supporting documentation.

Non Citizen / Undocumented Immigrants:

If you entered the United States for the first time after your 26th birthday, you must provide documentation to support your claim. Valid documentation includes: entry stamp in your passport, I-94 with entry stamp on it. If you entered the United States illegally after your 26th birthday, you must provide proof that you were not living in the United States from age 18 to age 26. Please note: your Resident Alien Card (Green Card) is not valid as proof of entry to the United States.

If you entered the United States as a valid non-immigrant alien, and remained in that status to your 26th birthday, you must provide documentation to support your claim. For example, if you entered the United States as an F-1 Student, and remained in that status until your 26th birthday, you would need to provide documentation indicating that you were admitted on an F-1 visa and attended school full-time as required. (Acceptable documents for this situation include copies of your I-20s or a letter from the school you attended indicating your full time attendance as a non-immigrant alien). The same thing applies for all non-immigrant statuses. You must explain, if at any point, you violated the terms of your visa, or overstayed your visa and became an undocumented alien.

You should provide as much information as possible. We will use the information you provide to determine your registration status.

Transsexual:

For individuals who have had a sex change. You must indicate what gender you were born as, and attach documentation which indicates this as well.

Reason why you failed to register with Selective Service upon reaching age 18 and before reaching age 26:

Provide a written explanation for not registering with Selective Service.

(continued on next page)

SECTION 3:

Sign and date the letter. Return this letter to the address listed with copies of supporting documents, showing proof and anything else you may wish to include. Do not send original documents, as they will not be returned. You should retain a copy of all documents and correspondence submitted.

HELPFUL INFORMATION

- This form is designed to be printed for use, and cannot be completed online. After printing, complete the form, attach **ALL** supporting documentation, and mail to: Selective Service System, ATTN: SIL, PO Box 94638, Palatine, IL 60094-4638.
- This form is for use only by men born after December 31, 1959, who are not registered and are now 26 years old or older.
- This form is not a registration form, and by submitting it, you will not be registered.
- If you feel that you have already registered, verify your registration on our website (**www.sss.gov**), or call our Registration Information Office at (847) 688-6888 to obtain your Selective Service number.
- We will issue a Status Information Letter based on the information you provide. This letter will clarify your status with Selective Service.
- If you are being denied a right, benefit, or privilege because you are not registered, submit a **copy** of your status information letter and an explanation letter for your failure to register, to the Agency administering the right, benefit, or privilege. That Agency will make the final determination regarding your eligibility. The Selective Service System does not determine your eligibility for any right, benefit, or privilege.

Community Supervision:

PAROLE & PROBATION



Being under some type of correctional community supervision is usually required to be released from prison or jail, and can sometimes be offered by a criminal court judge in place of incarceration. In the PAROLE & PROBATION CHAPTER, you will learn that there are *many* types of supervision in California — state parole, county probation, mandatory supervision, PRCS, federal probation, federal supervised release, and federal parole. This chapter will help you understand what it means to be on community supervision, what rules you have to follow, and all the rights you have as a person in reentry.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.



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WHAT WILL I LEARN IN THE PAROLE & PROBATION CHAPTER?

- **The different types of supervision in California, and the basics about each type.**

For each type of supervision, you will learn:

- **What to do when you first get out — a step-by-step guide**
- **General and special rules: What general rules (conditions) you have to follow, what special rules (extra conditions) might be added on, and how to appeal (challenge) the special conditions**
- **Length of supervision: How the length of supervision is calculated, and how to get off early, if possible**
- **Transferring supervision to a different location: What the procedures are for transferring your supervision to a different county or state**
- **Disability rights: How to navigate parole and probation if you have a disability and need help or accommodations**
- **Violations and revocations: What your rights are if you're accused of violating the conditions of your supervision, and how the revocation process works**



I. INTRODUCTION

WHAT IS COMMUNITY SUPERVISION?

Community supervision is a requirement that may apply to you — either as part of a sentence that you serve *after release* from incarceration, OR as a sentence that you serve *instead of* incarceration. If you are under community supervision, this means you are monitored by a correctional officer while living in the community, and you are subject to certain rules — like where you can live and work, who you can contact, and people or places where you must regularly report.

WHY IS IT IMPORTANT TO KNOW WHAT TYPE OF SUPERVISION I AM ON, AND THE RULES I MUST FOLLOW?

It is important to know what kind of supervision you are on, and what rules of supervision apply to you, because these rules impact every part of your life: where you can travel, where and how often you have to report to a supervising officer, the steps you should take if you are having a problem with the rules ("conditions") of your supervision, the amount of time you'll be under supervision in the community, the types of record-cleaning and record-improving remedies available to you, the type of contact you may have with certain people or family members, your ability to vote and serve on a jury, and MORE. This chapter will help to explain the rights and responsibilities you may have under each specific type of supervision — state parole; county probation, mandatory supervision, or PRCS; federal probation, supervised release, or federal parole.

WHAT ARE THE MAIN TYPES OF SUPERVISION IN CALIFORNIA?

There are 4 main categories of supervision in California. They are:

1) **STATE PAROLE:** In California, parole is a condition of release for many people coming out of prison.[299] It only applies in felony cases when a person is sentenced to state prison. It also only takes effect after release from prison.
   - **People sentenced to serve *determinate sentences*** — such as an exact term of "seven years" — serve the specified amount of time in prison ordered by the judge. Once their sentence is over, they are released.
   - **People sentenced to serve indeterminate terms**, such as "25 to life with the possibility of parole," are released only after a Board of Parole Hearings (BPH) determines that they are ready to re-enter society.[300]
   - **Most people released from California state prison are required to serve a period of parole after they are released.** People on parole — called "parolees" — remain under the control of the California Department of Corrections and Rehabilitation's (CDCR) Division of Adult Parole Operations (DAPO). People on parole are supervised by parole agents, and must follow certain requirements or "conditions" of parole.[301]

2) **COUNTY PROBATION & NEW FORMS OF COUNTY-LEVEL SUPERVISION:** Probation is a type of supervision that a judge orders at trial as *part of the original sentence*, either as an alternative to incarceration OR in addition to incarceration.[302] California probation reduces or eliminates the time that a person must spend in custody in jail or prison.[303] People on probation must report to their county probation office (for more about formal probation, go to PG. 200) or to local superior court (for more about informal probation, go to PG. 196), and must meet certain requirements or "conditions" of probation. Depending on the circumstances, either the court or a probation officer monitors the person's compliance with his or her probation terms. Informal probation, formal probation, mandatory supervision, and post-release community supervision (PRCS) are all types of community supervision that fall under the responsibility of California's county probation departments. Unlike state parole offices, which are all operated by CDCR and DAPO, county probation departments have a lot more independence and differences between them. Here is a quick overview of the different types of county probation:
   - **INFORMAL PROBATION:** Informal probation is a type of supervision for some misdemeanor convictions in which you are supervised by the court, not by a probation officer.It is also called "court," "summary," and "misdemeanor" probation.[304]
   - **FORMAL PROBATION:** Formal probation is a type of supervision for felony and some misdemeanor convictions in which you are supervised by a probation officer [305]

[299] See 15 CAL. CODE REGS. § 2355.
[300] Lifer Parole Process, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/BOPH/lifer_parole_process.html.
[301] Lifer Parole Process, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/BOPH/lifer_parole_process.html.
[302] See Cal. Penal Code § 1203.
[303] See CAL. PENAL CODE § 1203.
[304] Cal. Penal Code § 1203(d).



- **POST-RELEASE COMMUNITY SUPERVISION (PRCS):** If you are released from state prison after incarceration for a non-violent, non-serious, non-sexual crime, you are placed under supervision by county probation officers, instead of being placed on state parole.[306] This is called post-release community supervision (PRCS). PRCS can last up to 3 years, but it can end earlier if you do not violate any conditions of your PRCS.[307]
- **MANDATORY SUPERVISION:** In California, through a process called "split sentencing," a judge can split the time of a sentence between a jail term and a period of supervision by a county probation officer. This type of supervision is called mandatory supervision.

3) **FEDERAL PROBATION**: People convicted of certain federal offenses may be sentenced to federal probation or supervised release. The U.S. Probation and Pretrial Services System oversees federal probation.[308]
   - **FEDERAL PROBATION:** After you are convicted of a federal crime, federal probation is used as an alternative sentence *to prison time*.[309] This means federal probation is a type of sentence in itself. If you are on federal probation, you must report to your assigned probation office *and* comply with the conditions of your federal probation.[310]
   - **SUPERVISED RELEASE:** Supervised release is overseen by federal district courts with the help of federal probation officers.[311] The judge can sentence you to a term of supervised release *after your release from federal prison*.[312] In other words, a term of supervised release does not *replace* any part of your prison term; rather, a judge orders supervised release *in addition to* any prison term you may serve.[313] In some cases, the judge who sentences you is actually *required by law* to impose a term of supervised release in addition to a prison term.[314] It's common for a federal sentence to include a prison term, followed by a period of supervised release.

4) **FEDERAL PAROLE:** Although federal parole was officially eliminated in 1984, certain categories of people may still be on federal parole. These categories include: (1) people who were sentenced in federal court before November 1, 1987; (2) people who violate criminal laws in Washington, DC (the nation's capital); (3) people convicted of crimes within the U.S. military's criminal justice system; and (4) people convicted in certain foreign transfer treaty cases. People who are on federal parole are supervised by federal probation officers.[315]

WHAT IS THE DIFFERENCE BETWEEN THE STATE AND FEDERAL SYSTEMS?

Federal and state correctional systems operate separately from each other. The system that convicted you — either federal or state — determines *where you* will serve time and also *what type of supervision* you will be on after your release.

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[305] See CAL. PENAL CODE § 1203(b–d).
[306] Cal. Penal Code § 3450; 15 Cal. Code Regs. §§ 3079-79.1.
[307] See CAL. PENAL CODE § 3451 (a) ("[A]ll persons . . . shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to community supervision provided by a county agency.").
[308] 18 U.S.C. § 3153. See also Probation Pretrial Services, US Courts, http://www.U.S.C.ourts.gov/FederalCourts/ProbationPretrialServices.aspx.
[309] A defendant may receive a sentence of probation unless he or she is convicted of a Class A or B felony; probation is prohibited by statute of conviction; or the defendant is sentenced at the same time to imprisonment. 18 U.S.C. § 3561(a). A court's authority to impose probation is based solely on statute. See Affronti v. U.S., 350 U.S. 79, 83 (1955). The authorized length of probation is between one and five years for a felony; not more than five years for a misdemeanor; and not more than one year for an infraction. 18 U.S.C. § 3561(c).
[310] 18 U.S.C. § 3563(b)(15). Ever since 1984 (the time when the "Sentencing Reform Act" went into effect), federal criminal courts have recognized federal probation as a sentence in itself. 18 U.S.C. § 3561; http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2012/manual-pdf/Chapter_7.pdf p. 477. Although it is statutorily permissible to receive a sentence of unsupervised or "summary" probation in federal court, it is not the norm – even in misdemeanor cases.
[311] United States Sentencing Commission, Federal Offenders Sentenced to Supervised Release, July 2010 10, p. 1. http://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2012/2_Federal_Offenders_Sentenced_to_Supervised_Release.pdf.
[312] 18 U.S.C. § 3583.
[313] http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2012/manual-pdf/Chapter_7.pdf p. 477
[314] See, e.g., 21 U.S.C. § 841(b)(1)(A) (mandating a lifetime term of supervised release for those convicted of certain drug offenses).
[315] Parole in the Federal Probation System, US Courts, http://www.U.S.C.ourts.gov/News/TheThirdBranch/11-05-01/Parole_in_the_Federal_Probation_System.aspx.

BELOW IS A CHART THAT SUMMARIZES SOME KEY DIFFERENCES BETWEEN THE STATE AND FEDERAL SYSTEMS.

OVERVIEW: FEDERAL vs. STATE CRIMINAL JUSTICE SYSTEMS			
	TYPES OF OFFENSES *(These are for example only. It is NOT a complete list.)*	**TYPES OF INSTITUTIONS WHERE INCARCERATION TIME IS SERVED**	**TYPES OF COMMUNITY SUPERVISION** *(Supervision could follow or replace incarceration time.)*
FEDERAL SYSTEM	• Drug trafficking • Human trafficking • Immigration crimes • National security crimes • Computer fraud • Corporate "white-collar" crimes • Certain drug crimes	• Typically held in county jail while waiting for trial or sentencing • Sentenced to federal prison	• Federal probation • Supervised release • Federal parole
STATE SYSTEM	The vast majority of crimes are defined and enforced by the state criminal justice system.	• Typically held in county jail while waiting for trial or sentencing. • Sentenced to county jail OR • Sentenced to a California state prison OR sentenced directly to supervision (see column to right).	• State parole • Probation (run by counties) • Mandatory supervision • PRCS

I'M NOT SURE WHAT TYPE OF SUPERVISION I AM ON. HOW DO I FIND OUT?

You may not know what type of supervision you are under. It's possible that you could be under more than one type of supervision, or under different types back-to-back. If you don't know, and *you are still incarcerated*, you should ask a correctional counselor in your institution. If you don't know, and *you are out*, you should ask the case manager or supervising officer you report to.

Once you know what type of supervision applies to you, you can skip to the section in this chapter that is relevant to your situation.

- If you are (or will be) on state parole, go to PG. 143.
- If you are (or will be) on county probation, or some other county-level supervision (like "mandatory supervision" or "PRCS"), go to PG. 202.
- If you are (or will be) on federal probation, go to PG. 219.
- If you are (or will be) on federal supervised release, go to PG. 229.
- If you are (or will be) on federal parole, go to PG. 241.

A Note About the Terms Used in the Parole & Probation Chapter:

In this Chapter, when we refer to people returning from the community from prison and jail, we often use official terms and phrases that are used by the California Department of Corrections (CDCR) and other correctional agencies. We don't always agree with this official language, and we believe it can be dehumanizing; but at times we use it in order to explain the official rules clearly to our readers. Meanwhile, we support efforts to use humanizing language when talking about currently or formerly incarcerated people. To learn more about such efforts, led by formerly incarcerated advocates, visit Root & Rebound's blog post summarizing an open letter by Eddie Ellis: https://rootrebound.wordpress.com/2014/01/29/discourse-can-de-humanize-open-letter-on-language-from-cnus/.

KEY TERMS IN THE PAROLE & PROBATION CHAPTER

Before you continue reading, it is helpful to get a sense of some of the key terms we use. Although they are each explained in the chapter, we list them here for your convenience:

- **Conditions** — Written rules that you are required to follow while on parole or probation.
- **General conditions** — Basic rules that apply to all people under supervision.
- **Special conditions** — Extra rules that apply to you specifically, in addition to the basic rules that apply to all people under supervision.
- **Commitment offense** — The offense for which you were sentenced to prison or jail.
- **Discharge date** — The date you are released from supervision .
- **Parole period** or **parole term length**— The period of time you have to spend on parole.



- **Residence** — The address where you live.
- **Board of Parole Hearings (BPH)** — A group of 12 commissioners, chosen by the California governor, who conduct hearings where they decide if a person is suitable to get released from prison onto parole.
- **CDCR** — The abbreviation for the "California Department of Corrections and Rehabilitation," which is a state government agency that runs the criminal justice system in California.
- **California Penal Code** — The collection of state laws that define all criminal offenses, procedures, and sentences in California.

A BRIEF INTRODUCTION TO THE FIRST HALF OF THIS CHAPTER:
STATE COMMUNITY SUPERVISION

Every state in the U.S. runs its own criminal justice system. In the next two sections of the PAROLE & PROBATION CHAPTER, you will learn about the types of correctional supervision in the community that are run by the state of California:

- Section II covers STATE PAROLE, which is overseen by the California Department of Corrections (CDCR) and the Division for Adult Parole Operations (DAPO).
- Section III covers COUNTY PROBATION & NEW FORMS OF COUNTY-LEVEL SUPERVISION, which are overseen locally by county probation offices and officers that report back to the state of California.

II. STATE PAROLE

WHAT WILL I LEARN ABOUT STATE PAROLE?

- **The basics of state parole**
- **After release — what to expect in your first days out on state parole**
- **The length of state parole — including (a) what to do if you believe your parole term length is miscalculated, and (b) how to get off parole early**
- **The general conditions of state parole**
- **The extra ("special") conditions of state parole, and the legal requirements for imposing these**
- **The process for challenging conditions of state parole**
- **Your rights as a parolee with a disability**
- **Procedures for state parole violations and revocations**

BASICS OF STATE PAROLE

WHAT IS CALIFORNIA STATE PAROLE?

In California, parole is a condition of release for a person coming out of prison.[316] It applies only to people convicted of a state felony and sentenced to state prison. State parole takes effect only after you are released from prison.

People on parole — sometimes called "parolees" — remain under the control of CDCR. Within CDCR, parolees are more specifically under the control of the Division of Adult Parole Operations (DAPO), a division of CDCR. As a parolee, you are supervised by CDCR parole agents, and you must satisfy certain rules or "conditions" of parole.[317]

I AM INCARCERATED IN A CALIFORNIA STATE PRISON AND PREPARING FOR RELEASE. WILL I BE REQUIRED TO SERVE A PAROLE TERM AFTER MY RELEASE?

Possibly, depending on your specific situation and the type of offense you committed. If you are incarcerated in a California state prison, you must serve a parole term after release if any of the following apply:

- Your current prison term is for a *serious felony* as defined in CAL. PENAL CODE § 1192.7(c);
- Your current prison term is for a *violent felony* as defined in CAL. PENAL CODE § 667.5(c);
- You were sentenced as a *"three-striker"* under CAL. PENAL CODE §§ 667(b)-(i) or 1170.12(c)(2);
- You are classified by CDCR as a *"high-risk sex offender,"* regardless of your commitment offense; OR
- You are found to be a *"mentally disordered offender" (MDO)* under CAL. PENAL CODE § 2962.2.

IMPORTANT: If you don't fall into any of these categories, you are likely on a new form of supervision called post-release community supervision (PRCS). To learn more about PRCS, go to PG. 202. If you think you will be on state parole, not on PRCS, see the earlier section on state parole, on PG. 143.

[316] 15 Cal. Code Regs. § 2355.
[317] People who are sentenced to state prison for potential life sentences (for example, "25 years to life") are only eligible for parole after they serve the determinate part of their sentence, and only after the Bd. of Parole Hearings (BPH, commonly called the "parole board") determines that you are ready to re-enter society. That determination takes place during a California Bd. of Parole Hearings suitability hearing (also known as a "Lifer hearing"). Some people released from California state prison are required to serve a period of parole after they are released. Lifer Parole Process, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/BOPH/lifer_parole_process.html.



WHEN IS THE POST-RELEASE COMMUNITY SUPERVISION (PRCS) VS. PAROLE ASSESSMENT DONE?

Before you are released from prison, a correctional counselor will screen your case and decide whether to refer you to state parole or to PRCS.[318] The correctional counselor should start this screening process at least 180 days prior to your calculated release date.[319] The CDCR Form 611, "Release Program Study," (see Appendix S, PG. 297) is used to determine whether you will be eligible for PRCS after release.[320]

BEFORE RELEASE: COMMON QUESTIONS ON PREPARING FOR PAROLE BOARD HEARINGS AND ON NEW LAWS AFFECTING SENTENCING AND RELEASE DATES

While Root & Rebound (the nonprofit reentry legal resource center that writes, updates, and publishes this guidebook) focuses on helping people prepare for and navigate **legal barriers in reentry** related to having a criminal record and/or being formerly incarcerated, we receive many questions through letters and our weekly Reentry Legal Hotline from people currently incarcerated in state prison, asking about new laws and policies affecting parole eligibility, release date calculations, and parole consideration hearings for lifers.

While Root & Rebound's legal team does not have expertise on parole eligibility, release date calculations, and parole consideration hearings, we know it can be very difficult to get up-to-date and useful information while incarcerated about new laws impacting your life and future release.

To address this huge need, we have included new information and resources here and in the PAROLE & PROBATION CHAPTER'S Appendix on the following issues:

- Preparing for parole consideration hearings before the California Board of Parole Hearings (BPH)
- SB 260 and SB 261
- SB 394
- The Elderly Parole Program
- Proposition 57
- SB 620 & SB 180

PREPARING FOR PAROLE CONSIDERATION HEARINGS BEFORE THE BOARD OF PAROLE HEARINGS (BPH)

WHO HAS TO GO BEFORE THE BOARD OF PAROLE HEARINGS TO BE RELEASED FROM CALIFORNIA STATE PRISON?

If you are serving on an indeterminate sentence (for example, "15 years to life"), you will go before the board 13 months before your minimum eligible parole date (MEPD) for a hearing to decide whether you should be released on parole.

There are also special early parole processes for certain populations, including youth offender parole (SB 260/SB 261), the elderly parole program, nonviolent offender parole review (Prop 57), and compassionate release. Some of these programs involve a full hearing and others are just a "paper process" with no hearing.

You can write us or call our Reentry Hotline (any Friday, 9AM – 5PM, at phone number 510-279-4662) if you would like additional information on any of these special paroles processes!

WHO CAN HELP ME PREPARE FOR THE BOARD OF PAROLE HEARINGS?

If you are serving on a life sentence, you have the right to be represented by an attorney at your parole suitability hearing. If you qualify as "indigent," an attorney will be provided at the state's expense. You can also hire an attorney to represent you.

See **Appendix LL** for a list of attorneys and organizations that provide representation at parole board hearings at reasonable rates.

[318] Cal. Penal Code § 3451(a).
[319] http://www.cdcr.ca.gov/realignment/docs/PRCS-County.pdf.
[320] http://www.cpoc.org/assets/Realignment/whatcountiesneedtoknow.pptx.



SB 260 AND SB 261

WHAT ARE SENATE BILL 260 (SB 260) AND SENATE BILL 261 (SB 261)?

SB 260 and SB 261 refer to two California Senate bills that created a youth offender parole process for individuals who were convicted before they turned 23 years old and have already served 15, 20 or 25 years. As of January 18, 2017, the maximum age for youth offenders has increased from 23 to 25 years old.[321]

HOW CAN SENATE BILL 260 (SB 260) AND SENATE BILL 261 (SB 261) HELP ME?

If you are eligible under SB 260 or SB 261, your hearing will *automatically* be scheduled. See **Appendix MM** for an excerpt from the Human Rights Watch "Youth Offender Parole" guide. The excerpt provides a checklist for helping you determine if you are eligible for a youth offender parole hearing.[322]

If you believe that you are eligible but have been told that you are not, you can file a 602 appeal or fill out a special form from the Board of Parole Hearings (see **Appendix NN** for this "Form to Contest Disqualification by BPH as a 'Youth Offender'").

SB 394: YOUTH OFFENDER PAROLE HEARINGS FOR PEOPLE SENTENCED TO "LWOP" (LIFE WITHOUT THE POSSIBILITY OF PAROLE)

WHAT IS SENATE BILL 394 (SB 394)?

Starting in 2018, the Board of Parole Hearings will begin holding youth offender parole hearings for individuals who received an LWOP (life without the possibility of parole) sentence for an offense committed before they turned 18 AND who have served at least 25 years of their sentence.[323]

HOW CAN SENATE BILL 394 (SB 394) HELP ME?

SB 394 makes parole a possibility for many individuals who previously had no hope for release. If you are eligible under SB 394, your hearing will *automatically* be scheduled. The hearing process will be similar to that of SB 260 and 261 hearings. For more information, see **Appendix MM**.

ELDERLY PAROLE PROGRAM

WHAT IS THE ELDERLY PAROLE PROGRAM?

In 2013, as part of the *Plata* decision, a three-judge panel ordered CDCR to create a procedure enabling elderly individuals to face the Board of Parole Hearings before their minimum eligible parole date.[324] On January 1, 2018, the Legislature amended the Penal Code to include a provision on the Elderly Parole Program, changing it from a CDCR policy into state law.[325]

HOW CAN THE ELDERLY PAROLE PROGRAM HELP ME?

If you are at least 60 years old and have served at least 25 years of your sentence, you may be eligible for early parole consideration under the Elderly Parole Program.[326] Among standard determinations about your risk for future violence, the Board will place special emphasis on your age, the length of time served, and whether your physical condition has diminished since you committed your crime.[327] People sentenced to death or life without the possibility of parole (LWOP) are excluded from the program, as are individuals serving a sentence for killing a police officer.[328]

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[321] Legislative Counsel's Digest for AB 1308, published on Oct. 12, 2017, available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1308.
[322] You can write or call us to request a complete copy of Human Rights Watch's "Youth Offender Parole" guide.
[323] Legislative Counsel's Digest for SB 394 (Oct. 11, 2017), available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB394.
[324] Board of Parole Hearings Memorandum, "Elderly Parole Program" (June 16, 2014), available at https://www.cdcr.ca.gov/BOPH/docs/Policy/Elderly_Parole_Program_Overview.pdf.
[325] Legislative Counsel's Digest for AB 1448, published on Oct. 10, 2017, available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1448.
[326] CAL. PEN. CODE § 3055(a).
[327] CAL. PEN. CODE § 3055(c).
[328] CAL. PEN. CODE § 3055(g) and (h).



PROPOSITION 57 ("PROP. 57")

WHAT IS PROP. 57?

Prop. 57 was passed by California voters in November 2016. It has three main parts:

1. Prosecutors can no longer direct file on minors (youth under age 18) in adult court—these cases now have to start in juvenile court for a transfer hearing where a judge uses specific factors to decide whether it would be appropriate/lawful to transfer the case to an adult criminal court;
2. CDCR was required to create a new parole process for individuals serving sentences for nonviolent offenses; and
3. CDCR was required to change its credit-earning system for people incarcerated in state prison, to reward efforts at rehabilitation.

The first part of Prop. 57 related to juveniles went into effect immediately, but does not apply retroactively to cases that were *pending on appeal* before Prop. 57 passed.[329] As of the publication date of this guidebook, CDCR's *draft* rules for Parts 2 & 3 are currently in effect. The proposed final regulations are still pending.

HOW CAN PROP. 57 HELP ME?

If you were convicted of a nonviolent offense, you may be eligible for early parole consideration after completing the base term for your primary offense. Most currently incarcerated people will also get to take advantage of changes to the credit-earning system. There are more details about Prop 57 below.

WHAT IS THE PROPOSITION 57 EARLY PAROLE PROCESS?

Proposition 57 (Prop 57) created an early parole process for people in state prison who are serving determinate sentences for commitment offenses that are considered "non-violent" under the California Penal Code. A "non-violent" offense is any crime that is NOT listed in California Penal Code Section 667.5(c).[330] If you were sentenced to death or life without parole, then you are not eligible to participate in this process. Similarly, if you will have a 290 sex offender registration requirement upon release, either because of your current conviction offense or because of a prior offense, you are currently excluded, but a new case challenging this rule will change the regulations so that some 290 registrants will be able to participate in the early parole process.[331] You must also be more than 180 days away from your Earliest Possible Release Date (EPRD).

AM I ELIGIBLE FOR THE PROPOSITION 57 EARLY PAROLE PROCESS IF I AM A NONVIOLENT THIRD STRIKER?

Unfortunately, nonviolent third strikers are currently excluded from the Prop 57 parole process. However, the Three Strikes Project at Stanford is litigating a class action challenging the Prop 57 regulations. The "class" includes all third strikers whose current offense is a nonviolent felony so if that applies to you, then you are already covered by that lawsuit, and it may be in your best interest to allow it to make its way through the courts, rather than challenging the regulations yourself.

HOW DOES A PROPOSITION 57 PAROLE HEARING WORK?

The new parole process for nonviolent offenders is done by paper-review, which means a hearing officer of the Parole Board will review your information to determine if you qualify for parole. There is no formal, in-person hearing. The standard used by BPH is whether the "inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity." This is called the "public safety screen." The parole officer makes this determination based on the information in your central file and RAP sheets, your behavior in prison, and any statements written on your behalf by friends and family. Letters of support should be sent to:

Board of Parole Hearings
PO Box 4036
Sacramento, CA 95812-4036

Please make sure the letter-writers know to include your CDCR number clearly on the letter so that it gets sent to the right file. BPH confirmed to us that a copy of every support letter that comes in will get routed to your C-file. The prosecutor and victim(s) are also notified of your hearing date and have 30 days to provide written statements to be considered by the hearing officer.

[329] People v. Marquez (2017) 28 Cal.App.4th 1315.
[330] 15 CCR § 3490.
[331] The Alliance for Constitutional Sex Offense Laws successfully challenged the Prop 57 regulations' exclusion of all individual with 290 registration requirements. CDCR will need to revise the Prop 57 definition of "nonviolent" in light of the court's opinion.

HOW WILL THE BOARD OF PAROLE HEARINGS DECIDE WHETHER I PASS THE PUBLIC SAFETY SCREEN?

The regulations include a new Section to Title 15 entitled: "Factors to Consider During a Review on the Merits."[332] This section describes all of the factors that will be weighed in favor and against parole release when the hearing officer conducts the review. These factors include aspects of an individual's current commitment offense, prior criminal history, and behavior record while in prison.

WHAT CHANGES DID PROPOSITION 57 MAKE TO CREDIT EARNING?

Prop. 57 increases opportunities for currently incarcerated people to earn credit for good conduct and completing educational and rehabilitative activities. These credits will advance your release date and/or initial parole hearing dates, depending on if you have a set-length or indeterminate sentence. CDCR now recognizes the following categories of credits:

- **Good Conduct Credits** are awarded if you comply with prison rules and regulations and perform duties assigned by your institution.
- **Extraordinary Conduct Credits** are awarded at the discretion of the Director of the Division of Adult Institutions if you perform a heroic act in a life-threatening situation or provide exceptional assistance in maintaining the safety and security of the prison.
- **Milestone Completion Credits** are awarded if you complete specific rehabilitative and educational programs.
- **Rehabilitative Achievement Credits** are awarded if you participate in institution-approved activities which promote educational, behavioral, or rehabilitative development.
- **Educational Merit Credits** are awarded for your educational achievements while in CDCR custody, including a high school diploma or equivalent, a collegiate degree at the associate, bachelor, or post-graduate level, or a professional certificate as an Alcohol and Drug Counselor.

All people who are currently incarcerated will qualify for credits except those sentenced to death or life without the possibility of parole. However, please note that the rate of receiving Good Conduct Credits varies based on your conviction offense.

HOW CAN I LEARN MORE ABOUT PROPOSITION 57?

For more information on Proposition 57, you can **write us** at Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA, or **call our Reentry Hotline** (any Friday, 9AM – 5PM, at phone number 510-279-4662).

SB 620: UNWARRANTED FIREARM ENHANCEMENTS

WHAT IS SENATE BILL 620 (SB 620)?

SB 620 amended existing California law related to mandatory firearm enhancements, allowing judges to strike, dismiss, or tailor the duration of a firearm enhancement depending on each individual's circumstances.[333] Before this change, judges were required to impose specific firearm enhancements every time a gun was used in the commission of a felony.[334]

HOW CAN SENATE BILL 620 (SB 620) HELP ME?

SB 620 is NOT retroactive, which means it will not apply to criminal cases that are already final — unless you are being resentenced pursuant to another law.[335] If you are convicted of a felony that involved a firearm but have not been sentenced, the judge has the option to dismiss your firearm enhancement entirely "in the interest of justice," or reduce the time added on to your sentence.[336]

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[332] 15 CCR § 2449.5.
[333] Cal. State Senator Steven Bradford, "Governor Signs SB 620 Allowing Judges to Strike Unwarranted Sentence Enhancements" (Oct. 11, 2017), available at http://sd35.senate.ca.gov/news/2017-10-11-governor-signs-sb-620-allowing-judges-strike-unwarranted-sentence-enhancements.
[334] Legislative Counsel's Digest, Senate Bill No. 620 (Oct. 10, 2017), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB620.
[335] CAL. PEN. CODE § 12022.5(c);
[336] CAL. PEN. CODE § 12022.5(c);



SB 180: DRUG SENTENCING REFORM

WHAT IS SENATE BILL 180 (SB 180)?

SB 180 amended existing California law imposing mandatory sentencing enhancements on individuals convicted of drug-related offenses that had prior convictions involving controlled substances.[337] Starting January 1, 2018, courts will only impose sentencing enhancements for prior felony convictions involving specific controlled substances and committed with the help of a minor.[338]

HOW CAN SENATE BIILL 180 (SB 180) HELP ME?

SB 180 is NOT retroactive, which means it will not apply to criminal cases that are already final.[339] However, if you have a drug prior and pick up a new case, the court will no longer be required to impose a three-year sentencing enhancement if you are convicted, unless your case involves a minor.

AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON STATE PAROLE

WHAT ARE SOME OF MY RESPONSIBILITIES WHEN I FIRST GET OUT OF STATE PRISON UNDER STATE PAROLE SUPERVISION?

There are several responsibilities to be aware when you first get out of state prison and are living in the community on parole:

1. **FIRST, MAKE CONTACT WITH YOUR PAROLE AGENT AND VISIT YOUR ASSIGNED PAROLE OFFICE.**

CDCR makes it clear that "it is up to you to get yourself to your parole office" upon release, so do your best to make contact with your parole agent right away, and visit the office as soon as you can, if you don't have a set appointment time.[340]

You should call your parole agent when you first get out. The agent's name, address, and telephone number should be on CDCR Form 611, "Release Program Study" (RPS). You should have received a copy of the RPS at least 45 days before your release date — or, if less than 45 days remain because your legal status changed in prison, then as soon as possible before your release to parole.[341] (To see an example RPS, go to Appendix S, PG. 297.) If you cannot reach your parole agent, or if you do not know who that person is, try going to the closest parole office you can find and ask for help. The parole office can call your parole agent and let him or her know you are coming and when you will be there. For a phone directory of California state parole offices, visit: http://www.cdcr.ca.gov/Parole/Public_Officers_and_Regional_Offices/.

If you were given a date, time, and place to report to your parole agent (see your Form 611, Release Program Study (RPS)), you should report to him or her at that time in that location.[342] If you get out on a weekday and can visit the office that day, we recommend that you do so. If you get out on a weekend or national holiday when the parole office is closed, it is recommended that you visit the office the very next day it is open.

If you get stuck out of town, get lost, or cannot get to where you have to go, contact your parole agent by calling collect. If you cannot contact your parole agent, call the Parole Headquarters for your region, and ask for the Officer of the Day. (For the Northern Region Headquarters, call 1-916-255-2758; for the Southern Region Headquarters, call 1-909-468-2300). If you don't know which region you're in, call the Division of Adult Parole Operation's Headquarters at (916) 445-6200.[343]

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[337] Legislative Counsel's Digest, Senate Bill No. 180 (Oct. 11, 2017), available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB180; CAL. HEALTH & SAF. CODE § 11370.2.
[338] CAL. HEALTH & SAF. CODE § 11380.
[339] Prison Law Office, "New Laws on Gun and Drug Enhancements" (Oct. 2017), available at http://prisonlaw.com/wp-content/uploads/2017/10/Gun-and-Drug-Enhancements-SB-620-SB-180-Oct-2017.pdf.
[340] CDCR Parolee Information Handbook, 4.
[341] 15 CAL. CODE REGS. § 3075.2(b)(2); See CDCR, Notice and Conditions of Parole, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-03/CDCR%201515.pdf; DAPO's timelines for completing Form 611. Department Operations Manual (hereinafter "DOM") § 81010.5), http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202015/DOM%202015.pdf (updated Jan. 2015) ("The Parole Agent shall investigate all proposed programs. If a proposed program is determined by a Parole Agent not to be suitable for a parolee, efforts shall be made by the Parole Agent to develop an appropriate alternate program in the county of commitment. [DAPO] staff shall return the completed RPS Form, CDC Form 611, and Conditions of Parole to the institution housing the inmate 60 days before the inmate's EPRD. However, if the RPS, CDC Form 611, is not received by the parole unit at least 75 days before the EPRD, the preparole investigation shall be returned within 15 days of receipt.").
[342] CDCR, Parolee Information Handbook at 4.
[343] See Parole, Public Officers and Regional Offices, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/Parole/Public_Officers_and_Regional_Offices/.

2. **IF ANY CRIMES ARE COMMITTED AGAINST YOU AFTER YOUR RELEASE, TELL YOUR PAROLE AGENT.**[344]
3. **IF YOU ARE STOPPED BY THE POLICE FOR ANY REASON, TELL YOUR PAROLE AGENT.**[345]
4. **REGISTER WITH THE LOCAL POLICE OR SHERIFF, IF NECESSARY.**

This requirement does not apply to all people on parole. It may apply to you if you went to prison for a sex, drug, gang, or arson case.[346] Before you get out of prison, you should be told whether you have to register with the local police or sheriff as a condition of parole. Specifically, your correctional counselor at the prison should check a box on your CDCR Form 611, "Release Program Study" (RPS), indicating your registration requirements; and this form must be given to you at least 45 days before your expected release date.[347] (See an example of the RPS form in Appendix S, PG. 297). You will then have to sign a form that tells you when and how you must register. (See the chart below.)[348] If you have questions, talk with your correctional counselor in the prison, or with your parole agent once you are out.[349] Upon release, you should then register with the police or sheriff as soon as possible. *Please refer to the chart on the next page for a summary of registration requirements.*

THE CHART BELOW SUMMARIZES THE LAWS THAT REQUIRE PEOPLE TO REGISTER.

SUMMARY OF SPECIAL LEGAL REQUIREMENT TO REGISTER WITH POLICE OR SHERIFF

TYPE OF CONVICTION REQUIRING REGISTRATION	LEGAL AUTHORITY	FORM YOU MUST SIGN BEFORE RELEASE TO SHOW YOU RECEIVED NOTICE OF YOUR DUTY TO REGISTER
CRIMINAL STREET GANG-RELATED[350]	CAL. PEN CODE § 186.30	Each county creates its own forms. Contact your local police or sheriff department to ask what you need to do to register for a gang-related conviction. The local police or sheriff's office may require you to fill out certain forms, and some first require an appointment.[351]
SEX OFFENDER	CAL. PEN CODE § 290 *et seq.*	DOJ Form SS 8047, "Notification of Sex Offender Registration"
ARSON	CAL. PEN CODE § 457.1	DOJ Form SS 8049, "Notice of Arson Offender Registration Requirement"
CONTROLLED SUBSTANCE OFFENDER	CAL. HEALTH & SAFETY CODE § 11590	DOJ Form SS 8048, "Notice of Narcotic Offender Registration"

WHAT COUNTY WILL I BE PAROLED TO, AND WHO DECIDES?

You will most likely be paroled from prison to the county where you last lived (called your "last legal residence").[352]

However, CDCR will place you on parole in a *different county* if it would be "in the best interests of the public."[353] This exception may apply to you if you were convicted of *certain violent felonies* (including murder, voluntary manslaughter, mayhem, rape, sodomy by force, oral copulation, lewd acts on a child under 14, or any felony punishable by death), or a crime involving *stalking* or a *great bodily injury* enhancement. In any of these cases, you will not be paroled to a county where you would be within 35 miles of the residence of a *victim* or *witness* if: (1) the victim or witness has requested additional distance, and/or (2) the BPH or CDCR finds that there is a need to protect the victim or witness.[354] If the BPH or CDCR decides to send you to another county for parole, the deciding agency must provide a written statement of the reasons for its decision.[355]

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[344] CDCR, Parolee Information Handbook at 4.
[345] CDCR, Parolee Information Handbook at 4.
[346] CDCR, Parolee Information Handbook at 5.
[347] See 15 CAL. CODE REGS. §§ 3650; 3075.2(b).
[348] CDCR Parolee Information Handbook at 5; see 15 CAL. CODE REGS. § 3075.2(b).
[349] CDCR Parolee Information Handbook at 5.
[350] There has been significant case law on what information the police or sheriff can require from you. See, e.g., People v. Sanchez, 105 Cal. App. 4th 1240 (2003); People v. Bailey, 101 Cal. App. 4th 238 (2002).
[351] Telephone call with Gang Task Force police officer in Watsonville, CA. If you are required to register for a gang-related offense, the local police/ sheriff's office may ask for relevant information from you like the name of the gang, size of the gang, where the gang tends to congregate, and/or where gang members live. Usually a parole officer will tell someone of this registration requirement in the first days after release from prison, and may give the parolee instructions for when and how to make an appointment to register with the local police or sheriff's office.
[352] See CAL. PENAL CODE § 3003(a).
[353] CAL. PENAL CODE § 3003(b). A county that wants a parolee to be sent somewhere else must show that the parole authorities have abused their discretion when choosing the county of parole. McCarthy v. Superior Court, 191 Cal. App. 3d 1023, 1027 (1987); City of Susanville v. CDCR, 204 Cal. App. 4th 377 (2012).
[354] CAL. PENAL CODE § 3003(f) and (h). This provision does not apply to the victim's next of kin. In re David, 202 Cal. App. 4th 675 (2012).
[355] Cal. Penal Code § 3003(b).

Can I transfer my parole to a different county?

For information on how to request a transfer of your parole location from one county to a different county, see PG. 185, or from one state to a different state, see PG. 217.

DO I GET ANY FINANCIAL ASSISTANCE OR "GATE MONEY" FROM PAROLE WHEN I FIRST GET OUT?

Yes, but it is *very limited* and for a very small amount. You are entitled to the money in your trust account and to gate money. You may be able to get other emergency funds by requesting them through your parole agent. Read more about trust accounts and gate money below.

(1) TRUST ACCOUNTS:

Money that you brought to prison, earned in prison, or received in prison is kept in an interest-bearing trust account. The "interest" is paid to the trust account on a monthly basis, minus "operational expenses" (fees charged for operating the account). Any money in your trust account, including any interest earned, must be given to you at your release.[356]

WHAT IS "INTEREST"?

Interest is a small percentage of your money that is held in your account. Periodically, interest gets added to your account, due to the fact that someone else (the prison) is holding your money.

(2) GATE MONEY (a.k.a. "RELEASE ALLOWANCE"):

YOU GET $200 GATE MONEY IF:

If you are leaving a California state prison and you are (1) paroled, (2) placed on post-release community supervision (PRCS), or (3) discharged from a CDCR institution or reentry facility, you are entitled to $200 in state funds upon release.[357] These funds are known as "gate money" or "release allowance."

Even though your parole agent is responsible for giving you these funds, the agent is not required to give you the entire amount immediately. Instead, your parole agent may distribute the $200 in separate, smaller amounts over a period of 60 days following your release.[358] By the end of those 60 days, you should have received the entire $200. If you need to buy clothes or a bus ticket at the time of your release, you must pay for it; CDCR does not provide extra gate money for clothing or transportation. If you ask CDCR to help cover these costs, it will deduct the amount from your $200 gate money.[359]

BUT NOTE: If you were returned to prison or jail on a **parole violation** — and you were incarcerated **for less than 6 months** — you should receive $1.10 for each day you were held, up to a maximum of $200.[360]

IMPORTANT: You also have the right to the $200 gate money in the following cases:

- **If you were sent to a local jail for civil commitment proceedings or evaluation as a "sexually violent predator" (SVP).**[361]
- **If you are a "lifer parolee" who returned to prison on a parole violation, and you are being re-released to parole.**[362]
- **If you served 6 straight months or more, either on a sentence OR on a return-to-custody for a parole violation (these 6 months could be time in jail or in prison).**[363]

If you do not receive your gate money in one of these situations (which is common), file an administrative appeal. Ask your jail or parole agent for the proper forms (see PG. 178 for a detailed discussion of the 602 appeals process).

YOU GET $100 GATE MONEY IF YOU RECEIVED A $100 ADVANCE:

If you are released from prison into a Community Correctional Reentry Facility[364] or Alternative Custody Program (ACP),[365] you may be given an advance of up to $100 of your gate money at that time.[366] Once you are

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[356] CAL. PENAL CODE § 2085; 15 CAL. CODE REGS. § 3099.
[357] The rules for gate money are in CAL. PENAL CODE § 2713.1, 15 CAL. CODE REGS. § 3075.2(d), and DOM §§ 74070.23, 74070.23.5, 81010.6.1, 81010.6.2.
[358] Most people receive at least $50-$100 of their "gate money" immediately upon release from prison, and many receive the entire $200. 15 CAL. CODE REGS. § 3075.2(d)(8). See also Prison Law Office, The Parolee Rights Manual at 22, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).
[359] The rules for gate money are in CAL. PENAL CODE § 2713.1, 15; CAL. CODE REGS. § 3075.2(d); and DOM §§ 74070.23, 74070.23.5, 81010.6.1, 81010.6.2.
[360] *See* 15 CAL. CODE REGS. § 3075.2(d)(4).
[361] Sabatasso v. Superior Court, 167 Cal. App. 4th 791 (2008) (holding contrary portion of 15 CAL. CODE REGS. § 3075.2(d)(2) invalid).
[362] 15 CAL. CODE REGS. § 3075.2(d)(4); see also Prison Law Office, The Parolee Rights Manual at 22, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013)
[363] 15 CAL. CODE REGS. § 3075.2(d).
[364] CDCR operates fourteen "reentry hubs" in California. Programs typically last up to four years, and include classes in Substance Abuse, Criminal Thinking, Anger Management, and Family Relationships. They are available to people who have been released from prison within the past four years, and are designed specifically "for inmates who have a moderate-to-high risk to reoffend, as assessed by the

released from the reentry facility or ACP, you may receive only what is left of the $200 — for most, this will be $100 that has not yet been given to you.[367]

YOU WILL *NOT* RECEIVE YOUR GATE MONEY IF YOU ARE RELEASED FROM PRISON INTO THE CUSTODY OF ANOTHER AGENCY THAT IS DETAINING YOU:

If you are released from a state prison into the custody of another state prison, a federal prison, or a county jail, you will not get gate money until you are released from that custody.[368] (This might happen if you face charges or have been convicted in another state or in the federal system.) Similarly, if you are released from prison into the custody of the U.S. Immigration and Naturalization Service (INS) and are waiting for a deportation hearing date, you will not get gate money.[369]

YOU LOSE YOUR RIGHT TO GATE MONEY IN THE FOLLOWING SITUATION:

If you "abscond" from parole before receiving all of your gate money, you give up your right to the gate money. This means if you flee, go missing, fail to report to your parole agent, or fail to let your parole agent know where you are, you lose your right to the $200 gate money.[370] If you abscond from parole, you also risk: 1) getting your parole revoked and going back to prison; 2) being held on parole for a longer time period than originally required; 3) being forced to wear a GPS tracking advice while on parole (see PG. 161).

YOU HAVE NO LEGAL RIGHT TO GATE MONEY IN THE FOLLOWING SITUATION:

If you are released after being put in jail for parole revocation proceedings, you do not receive gate money upon release.[371]

WHAT CAN I DO IF I DON'T GET MY GATE MONEY?

Your parole officer should give you gate money at your release. If, however, your officer does not have the money or does not know where to send it, you should file an administrative appeal (CDCR Form 602 and CDCR Form 22) and start the grievance process. We recommend keeping copies and dates of any appeals or grievance forms you submit.[372] If you are in special proceedings — like MDO (mentally disordered offender) or SVP (sexually violent predator) hearings — getting gate money may be more complicated. If that is the case, you can call Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST) for assistance. You may have to file an administrataive appeal (learn how on PG. 178.); or you could ask your public defender or defense attorney to file a motion on your behalf with the court to recover your gate money.

(3) EMERGENCY FUNDS:

There are 2 types of emergency funds[373] that you can request through your parole agent: (1) cash assistance loans (also called "financial assistance funds")[374] and (2) funds for services (also called "bank drafts").[375] Unfortunately, since budgets are tight, these funds are extremely limited.

These funds are *discretionary*. This means that your parole agent and his or her supervisor decide whether to give you a cash assistance loan or funds for services. Their decision will depend on the following factors:

- Whether there is money available;[376]
- The circumstances, including your history and needs;[377] AND
- Whether you are a citizen (as there are legal limits on the financial assistance that California State Parole can provide to certain parolees who are *not* U.S. citizens).[378]

California Static Risk Assessment (CSRA), and who have an assessed criminogenic need, as identified by the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) and/or other assessment(s) identified by CDCR." CDCR, Fact Sheet: Reentry Hubs, http://www.cdcr.ca.gov/rehabilitation/docs/Factsheets/OS-IP-Factsheet-ReentryHubs-Mar2014.pdf.

[365] Alternative Custody Program (ACP) means a voluntary program developed for female inmates whose current commitment offense is neither violent nor serious and whose prior or current commitment offense is not a registerable sex offense pursuant to PC section 1170.05 that allows eligible inmates committed to state prison to serve their sentence in the community in lieu of confinement in state prison. Provisions for ACP are located in Title 15, Division 3, Chapter 1, Article 6.8 starting with section 3078. 15 CAL. CODE REGS. § 3000.

[366] 15 CAL. CODE REGS. § 3075.2(d)(8)(A).

[367] 15 CAL. CODE REGS. § 3075.2(d)(8)(B).

[368] 15 CAL. CODE REGS. § 3075.2(d)(1).

[369] 15 CAL. CODE REGS. § 3075.2(d)(2).

[370] CAL. PENAL CODE § 2713.1; see also Prison Law Office, The Parolee Rights Manual at 22, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).

[371] CAL. PENAL CODE § 2713.1; see also Prison Law Office, The Parolee Rights Manual at 22, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).

[372] Communications with Heather MacKay.

[373] The rules for these funds are in 15 CAL. CODE REGS. § 3605 and DOM § 81070.1 et seq.

[374] 15 CAL. CODE REGS. § 3605; DOM § 81070.1 et seq. (outlining Parole's cash assistance loan procedures).

[375] See 15 CAL. CODE REGS. § 3605.

[376] CAL. PENAL CODE § 2713.1; see also Prison Law Office, The Parolee Rights Manual at 22, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).

[377] See DOM § 81070.1 ("A determination of how much money is needed is a matter of judgment, and circumstances will generally differ from case to case.").



(1) FIRST TYPE OF EMERGENCY FUND: Cash Assistance Loans:

Cash assistance loans (a.k.a. "financial assistance funds") are loans that you may request from your parole agent. CDCR expects you to pay back these loans as soon as possible (for example, once employment or other financial circumstances allow you to do so). These loans are only granted when there is a critical need and assistance is not available from any other source.[379] The loans are usually for amounts under $50. The parole agent's supervisor must approve any loan over $50 or any series of loans totaling more than $150 in a 30-day period.[380]

(2) SECOND TYPE OF EMERGENCY FUND: Funds for Services

Your parole agent is also authorized to distribute funds for services (a.k.a. "bank drafts"), including for housing, food, and clothing. Your parole agent may authorize a loan of up to $500 for you to make over-the-counter purchases. The check may be written either directly to you or to the vendor who is selling the item you are purchasing. Once again, the loans are granted on an emergency basis, and you must pay the money back as soon as you can.[381]

LENGTH OF STATE PAROLE

HOW DO I KNOW THE LENGTH OF MY PAROLE?

Your parole date will be listed on your CDCR Form 1515, "Notice and Conditions of Parole" (see example in Appendix G, PG. 268). The Division of Adult Parole Operations (DAPO) is responsible for calculating these dates based on state law, and your parole agent must tell you what they are.

IF I AM ON STATE PAROLE, WHAT LAW SETS THE LENGTH OF MY PAROLE?

If you are on state parole, the length of your parole period is set by state law[382] and is based on your *commitment offense* (the crime you are or were incarcerated for), and *the date when the commitment offense occurred* (NOT the date you were sentenced or released).[383]

In most cases, there is a minimum parole period that can be increased up to a maximum parole period if you commit parole violations.[384] Because state laws set the minimum and maximum parole term lengths, the date that a person actually gets off parole will be determined by a number of factors. See PG. 153 for more information.

There are three discharge dates to know — your *controlling*, *maximum*, and *presumptive* discharge date — that all affect when you can get off parole. And there are a number of factors that interact with those three dates to determine whether you can get off parole earlier or later than expected. See the chart on PG. 153 below for details about these three discharge dates.

You can find the parole term lengths in California Penal Code § 3000(b) (for set-length parole terms) and § 3000.1 (for life-long parole terms). For your reference, we have included copies of the current versions of these laws in Appendix F, PG. 265. (The California Penal Code is a body of laws that apply to crimes, parole, and other criminal justice system-related laws in California). To look up the discharge dates that apply to you, see Appendix C, PG. 261 of this chapter.

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[378] 15 CAL. CODE REGS. § 3630 ("Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA) (8 U.S.C. Section 1621), and notwithstanding any other provision of Title 15, Division 3 of the California Code of Regulations, aliens who are not "qualified aliens" or "nonimmigrant aliens," as defined by federal law, or who are paroled into the United States for less than one year, are ineligible to receive or participate in the following parole services: (1) Food coupons, (2) Bus passes, (3) Job placement services, (4) Short-term cash assistance.")
[379] 15 CAL. CODE REGS. § 3605; DOM § 81070.1.
[380] DOM § 81070.1 et seq.
[381] DOM § 81070.2; DOM § 81070.7; see also Prison Law Office, The Parolee Rights Manual at 23, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).
[382] See generally CAL. PENAL CODE §§ 3000(b); 3000.1.
[383] See In re Thomson, 104 Cal. App. 3d 950 (1980); In re Bray, 97 Cal. App. 3d 506 (1979).
[384] See generally CAL. PENAL CODE §§ 3000(b); 3000.1.



WHAT STOPS THE CLOCK FOR MY LENGTH OF TIME ON PAROLE?

The clock for your parole period is paused if:

(1) YOU GO MISSING: Any time you "abscond" from parole (go missing or fail to report to your parole agent), and any time you are not available for parole supervision, this "stops the clock" and does not count toward the parole period.

(2) YOU HAVE TO GO THROUGH SEXUALLY VIOLENT PREDATOR (SVP) PROCEEDINGS: The parole term is "tolled" (paused) until the SVP proceedings are dismissed or you are discharged from the Department of State Hospitals (DSH).

(3) YOU ARE SENT TO COUNTY JAIL (NOT PRISON) FOR A NEW FELONY CONVICTION. If you are sentenced to a county jail term for a new felony conviction, you will stay on parole while serving your jail sentence, but the clock will pause on your parole term. If the jail sentence ends before your controlling discharge date (CDD) (see the chart below), you must report to your parole officer upon release and finish serving your original parole term. But if you are sentenced for a new felony conviction, your parole will just be forgotten about — it isn't paused, but it no longer matters.

THE 3 DISCHARGE DATES TO KNOW TO FIGURE OUT WHEN YOU GET OFF STATE PAROLE

CONTROLLING DISCHARGE DATE (CDD)	MAXIMUM DISCHARGE DATE (MDD)	PRESUMPTIVE DISCHARGE DATE (PDD)
THE CDD IS YOUR BASE PAROLE PERIOD. For example, if someone is on parole for 5 years with a maximum of 7 years, then the Controlling Discharge Date (CDD) is 5 years from the day of release from state prison.[385]	THE MDD IS THE MAXIMUM TIME YOU CAN BE HELD ON PAROLE. For example, if someone is on parole for 5 years with a maximum of 7 years, then the Maximum Discharge Date (MDD) is 7 years from the day of release from state prison.[386]	THIS IS THE DATE YOU ARE ELIGIBLE TO GET OFF PAROLE EARLY. The PDD is the date you can be discharged from parole, and the date that you should be discharged if the BPH does not find "good cause" (a good reason) to retain you.[387] This date is always before your CDD (base term). You can only get off on your PDD if you have served parole continuously without disruptions, meaning no violation time, suspensions, or "dead time" for absconding (going missing or failing to report to your parole agent). For example, someone might have a 5-year parole length with a Presumptive Discharge Date (PDD) of 3 years. This means that the person is eligible to be discharged after 3 continuous years on parole. IMPORTANT! Some people do not have a PDD—meaning certain individuals do not have a date on which they are eligible to get off parole early.[388]

HELPFUL HINT

In addition to these three very important dates, you can ask your parole agent to recommend that you get off parole even earlier than your presumptive discharge date (PDD) — but this is very hard to achieve. For you to get off parole earlier than your PDD, every level of authority has to agree: the parole agent and his or her supervisor, the Regional Administrator for your parole region, and, the Board of Parole Hearings (BPH) must each approve your early release from parole.

To determine your CDD, MDD, and PDD, see Appendix B, PG. 259. For a sample worksheet to calculate your own parole discharge date, see Appendix C, PG. 261.

WHAT CAN I DO IF I THINK MY PAROLE TERM HAS BEEN MISCALCULATED?

If you believe the length of your parole term has been miscalculated, you can appeal (challenge) your parole term length with CDCR. You must exhaust the administrative appeal process before you can go to court. Learn more about filing an administrative appeal (using CDCR Forms 22 and 602) on PG. 178.

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[385] Time during which a parolee absconds or is unavailable for supervision does not count toward either the CDD. There is no limit on how long the CDD can be extended due to absconding or unavailability. CAL. PENAL CODE § 3000(b)(6)(B). Time served in custody for parole revocation terms will extend the CDD, but only until the MDD is reached. The CDD comes from state law: CAL. GOV'T CODE § 3000(b) (set-length parole terms) and § 3000.1 (life-long parole terms).

[386] The MDD also comes from state law: CAL. GOV'T CODE § 3000(b) (set-length parole terms) and § 3000.1 (life-long parole terms). There is no limit on how long the CDD can be extended due to absconding or unavailability. CAL. PENAL CODE § 3000(b)(7). See also CAL. PENAL CODE § 3000(b)(6). Time served in custody for a parole revocation will extend the CDD, but only until the MDD is reached.

[387] Note that a provision for early "earned discharge" for some parolees (former 15 CAL. CODE REGS. § 3075.4) has been repealed.

[388] There is no presumptive discharge date from state parole for any person serving a life-long parole period following an indeterminate life term for a sex offense under CAL. GOV'T CODE §§ 269, 288.7(c), 667.51, 667.61(j), (l), or (m), or 667.71 [if a victim was a child under age 14]. There is also no presumptive early discharge for parolees who were sentenced to prison for offenses committed between July 1, 1977, and December 31, 1978. 15 CAL. CODE REGS. § 2535(b)(5). See In re Miller, 2006 WL 1980385 (Cal. Ct. App. July 17, 2006) at n.2 (discussing CAL. PENAL CODE § 3000(b), Stats. 1977, chs.2, p.165, as it was prior to 1979).



GETTING OFF STATE PAROLE

CAN I GET OFF STATE PAROLE EARLY?

It depends. This is usually a possibility, but Parole has "discretion" — meaning, power to decide as it sees fit — with some legal limits on how it makes this decision. Most people have the legal right to a "presumption" — or assumption — that they should get off parole early. Based on this, most people have a "presumptive discharge date" or PDD. Learn more about PDDs on PG. 153.

Some people do not have a PDD because of the nature of their commitment offense and when it occurred. See Appendix B, PG. 259, for a list of people who do not have PDDs.

If you have a PDD, then by law, the exact timing of your PDD depends on your underlying commitment offense and when it occurred. The PDD periods can be found in California Penal Code Sections 3000, 3000.1, 3001.[389] If you fit into more than one category, the longer period applies. See Appendix B, PG. 259 for a list of PDDs.

WHAT SHOULD HAPPEN WHEN I REACH MY PRESUMPTIVE DISCHARGE DATE (PDD)?

If you are entitled to a PDD by law, then the Board of Parole Hearings (BPH) *must* conduct a discharge review hearing within *30 days* of your PDD.[390] At this hearing, BPH must decide whether to let you off early based on your parole agent's report (submitted to the BPH on CDCR Form 1502).[391] In this report, your parole agent will make a recommendation either for or against letting you off parole early,[392] considering factors like:

- **(1) Commitment Offense:** Whether the original offense involved weapons or great bodily harm; was part of large-scale criminal activity; or caused considerable concern in the local community.
- **(2) Institutional Adjustment:** Whether you were involved in serious gang activities or acts of violence in prison.
- **(3) Parole adjustment:** Whether you have followed your parole conditions, or were involved in any criminal behavior or activities (including using drugs or involvement in gang activities).
- **(4) Placement Returns:** Whether you were returned to custody for controlled substance or psychiatric treatment.
- **(5) Supervision Needed:** Continued supervision needed for your safety or the safety of the public.[393]

What if CDCR or Parole staff makes a mistake in the report?

If your parole agent (or another CDCR or Parole staff) makes a **"mistake of fact"** in the report to the BPH recommending to keep you on parole, you can file a "CDCR Form 602" administrative appeal challenging the mistake.[394] The steps for filing an administrative appeal are described on PG. 178.

If the reviewers of your 602 appeal find that there was a significant mistake in your parole agent's report to the BPH, and that this mistake led to you being kept on parole past your PDD, they can change the recommendation and ask the BPH to reconsider its decision so that you will be discharged from parole.[395] Alternatively, if there is no mistake in the parole agent's report, but you believe that the BPH has decided to keep you on parole without **"good cause"** (a good reason), you may want to challenge the BPH decision directly; in that case, you do not need to file a 602 appeal.[396] For information about how to challenge a BPH action directly, go to PG. 155.

WHAT IS A "MISTAKE OF FACT"?

A "mistake of fact" is a legal term used to describe an error that someone makes because he or she doesn't know the facts of what really happened.

WHAT IS "GOOD CAUSE"?

"Good cause" basically means "good reason." According to CDCR, to find good cause for a decision is to find it more likely than not — by a "preponderance of the evidence" — that the decision is based on true facts and solid reasons. (15 CAL. CODE REGS. § 2000(b)(50)).

WHAT ARE MY RIGHTS DURING THE PRESUMPTIVE DISCHARGE DATE (PDD) REVIEW PROCESS?

You have the right to see a written record of the BPH's decision about whether to keep you on parole. The BPH is required to make a written record of its decision, and to send a copy of that decision to you.[397] If it is more than 30 days past your PDD and you did not receive

[389] CAL. PENAL CODE §§ 3000, 3000.1, and 3001. See also Prison Law Office, The Parolee Rights Manual, at 30, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).
[390] CAL. PENAL CODE § 3001. See also Prison Law Office, The Parolee Rights Manual, at 30, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).
[391] 15 CAL. CODE REGS. § 3721.1.
[392] 15 CAL. CODE REGS. §§ 3721-3723.
[393] 15 CAL. CODE REGS. § 2535.
[394] 15 CAL. CODE REGS. §§ 3721-3723.
[395] 15 Cal. Code Regs. § 3723.
[396] See Cal. Penal Code §§ 290, 457.1, 186.30; Cal. Health & Safety Code § 11590.

written notice of the BPH's decision, you may be entitled to IMMEDIATE DISCHARGE FROM PAROLE if the BPH failed to make a decision in your case. See PG. 156 for more information.

DO I HAVE A RIGHT TO APPEAR AT THE DISCHARGE REVIEW HEARING BEFORE THE BOARD OF PAROLE HEARINGS (BPH)?

No. You do not have a right to appear in person at the BPH review hearing.[398] But, if CDCR staff makes a "mistake of fact"[399] in the report that goes to BPH (see definition above on PG. 154), then you can file a CDCR Form 602 administrative appeal asking for reconsideration, and clarifying the mistake that has been made.[400] See the steps for filing a 602 appeal on PG. 178.

ON WHAT BASIS CAN THE BPH DECIDE TO KEEP ME ON PAROLE PAST MY PDD INSTEAD OF LETTING ME OFF EARLY?

The BPH must have **"good cause"** to keep you on parole past your presumptive discharge date (PDD), if you are entitled to one.[401] The law sets out broad factors that may count as "good cause" to keep you on parole — such as your original crime, in-prison behavior, and parole adjustment (defined on PG. 154 above).[402] At this time, there are no published court cases challenging a BPH finding of good cause for keeping someone on parole, so unfortunately there isn't much legal guidance. If you are trying to challenge a finding of good cause, it may help for you to show the BPH as much evidence as possible that you have adjusted well to parole, followed all your parole conditions, made efforts to pay off your restitution, complied with any registration requirements, and made significant efforts to turn your life around (both in prison and after release) since your commitment offense. Include documentation of any employment, education or training, as well as certificates for completing programs that helped you improve yourself or learn new skills.

WHAT HAPPENS IF THE BPH DECIDES TO CONTINUE MY PAROLE?

If the BPH decides to continue your parole past your PDD, you should be reviewed for possible discharge each year until your maximum discharge date (MDD) is reached.[403] At these annual review dates, you will remain on parole unless the BPH takes action to discharge you.[404]

CAN I APPEAL THE BPH'S DECISION TO KEEP ME ON PAROLE PAST MY PDD?

Yes. Since you are challenging a decision by the BPH, not a decision by Parole, you do NOT need to file a 602 appeal. You can challenge the BPH decision directly in state court.[405]

If there was not a mistake in Parole's report/recommendations to the BPH, but you still want to challenge the BPH's decision to keep you on parole past your PDD because you don't think they had good cause, then there is no administrative appeals process.[406] Instead, you will go straight to filing a **writ of habeas corpus** in the state superior court where your parole is located to challenge the BPH's decision.

REMINDER! YOU CAN CHALLENGE FACTUAL MISTAKES IN YOUR PAROLE AGENT'S DISCHARGE REVIEW REPORT

If your parole agent or parole staff makes a FACTUAL MISTAKE in a recommendation to the BPH about whether or not you should be discharged early, you can challenge that mistake through a 602 appeal (see PG. 178 for that process). (15 CAL. CODE REGS. § 3723).

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[397] Cal. Penal Code § 3001(b).
[398] 15 Cal. Code Regs. 2535(c).
[399] A mistake of fact is an error caused someone's unawareness or ignorance of the circumstances of an event.
[400] 15 CAL. CODE REGS. §§ 3721-3723.
[401] 15 CAL. CODE REGS. § 2535(d).
[402] 15 CAL. CODE REGS. §§ 2535(d) and 3722(c); DOM §§ 81080.1-81080.1.1.
[403] Cal. Penal Code § 3001(d); 15 Cal. Code Regs. § 2535(c).
[404] In re Carr, 38 Cal. App. 4th 209 (1995).
[405] See Prison Law Office, The Parolee Rights Manual at 34; see also CDCR, Armstrong Remedial Plan, amended Dec. 1, 2010, at 93; DOM § 54100.5.
[406] This is because the BPH abolished its administrative appeal procedure beginning May 2004. See 15 CAL. CODE REGS. Art. VI.

WHAT HAPPENS IF I DON'T GET NOTICE OF A BPH DECISION WITHIN 30 DAYS AFTER MY PDD?

It depends on *why* you didn't get the notice. *There are two possibilities:*

IT HAS BEEN MORE THAN 30 DAYS SINCE MY PRESUMPTIVE DISCHARGE DATE (PDD), AND NO RESPONSE FROM BPH ABOUT WHETHER I AM DISCHARGED FROM PAROLE. WHAT NEXT?	
POSSIBILITY #1: ***You never received a decision because the BPH did not hold a hearing within the 30 days following your PDD.***	**POSSIBILITY #2:** ***The BPH held a hearing and decided to retain you on parole, but never told you its decision.***
If your situation falls under this first possibility, then you should be automatically discharged.[407] The law states that unless the BPH acts to retain a person on parole after PDD, the parolee "shall" be discharged from parole.[408] This means that parole ends automatically if the BPH fails to take action to retain the person on parole.[409] So, if there is no decision to retain you within 30 days after your PDD, you should be discharged from parole immediately. If it's more than 30 days past your PDD, file a CDCR Form 22 with your parole agent and a CDCR Form 602 appeal with your parole region's Appeals Coordinator to resolve this. For the steps on how to file these forms and start the appeals process, see the steps on PG. 178.	If this is your situation, the BPH's decision to retain you on parole is still valid by law, even though BPH didn't properly notify you within the 30-day time limit set by law[410] This means you are still on parole. However, you can appeal the BPH's decision.[411] You can file a state petition for a writ of habeas corpus (see details in Appendix K, PG. 280). The court may then order BPH to provide you with a copy of its decision, which you can use to challenge BPH's finding of good cause[412] by filing another petition for a writ of habeas corpus (see PG. 280).

CONDITIONS OF STATE PAROLE

GENERAL CONDITIONS FOR EVERY PERSON ON STATE PAROLE

WHY IS IT IMPORTANT TO KNOW AND UNDERSTAND THE CONDITIONS OF MY PAROLE?

It is important to know and understand these conditions because if you violate any of them, you may be arrested, incarcerated in a county jail, or returned to state prison, even if you are not convicted of a new crime. (*See* CAL. PENAL CODE § 3000.08(c).)

The general conditions (rules) that apply to you and ALL people on state parole are the following:[413]

- Unless other arrangements are approved in writing, you should report to your parole agent on the first working day following your release.
- You must inform your parole agent of your residence, employment, education, and/or training.
- You must report any change or anticipated change to your residence (the address where you live) before the change.
- You must inform your parole agent within 72 hours (3 days) of any change to your employment — including a change in job location, a change in your employer, or getting terminated/fired/laid off from your job.
- You must comply with all of your parole agent's instructions.
- You cannot travel more than 50 miles from your residence without your parole agent's prior approval. If you're homeless, your residence is any location at which you regularly reside, regardless of how many days or nights you stay there. This means all structures with an identifiable street address, including homeless shelters, vehicles, and motels.[414]

[407] DOM § 81080.1.1 ("By law, a parolee, unless committed to prison for a "violent felony" under PC 667.5(c), is discharged if the BPH does not order the parolee retained on parole by the 30th day after completion of one, two, three, five, or seven years of continuous parole as appropriate to the commitment category.").
[408] Cal. Penal Code § 3001.
[409] In re Torres, 111 Cal. Rptr. 3d 919 (App. 2 Dist. 2010); In re Nesper, 217 Cal. App. 3d 872(1990).
[410] See DOM § 81080.1.1.
[411] In re Stone, 197 Cal. App. 4th 746 (2011); see also People v. Jack, 60 Cal. App. 4th 1129 (1997); In re Ruzicka, 230 Cal. App. 3d 595 (1991); In re Roa, 1 Cal. App. 4th 724 (1991).
[412] See In re Stone, 197 Cal. App. 4th at 754 (2011) (proper remedy for lack of notice is "ordering the Board 'to transmit to appellant a copy of the written parole retention record so that he may have the opportunity to pursue his right of appeal'") (quoting People v. Jack, 60 Cal. App.4th at 1134). See also In re Ruzicka, 230 Cal. App. 3d at 604 (1991) ("[D]enial of Ruzicka's due process rights [due to lack of notice] can be remedied by an order directing the DoC to transmit a copy of the written determination record to Ruzicka and afford him an opportunity to pursue his right of appeal.").
[413] CDCR, Notice and Conditions of Parole, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-03/CDCR%201515.pdf.
[414] 15 CCR § 3000



- You cannot leave your county of residence for more than 48 hours at a time.
- You cannot leave California without prior written approval of your parole agent.
- You cannot engage in any illegal activities (which includes any activities that would violate any state, federal, county, or municipal law). If you engage in illegal activity, even if you are not convicted of a crime, your parole may be revoked.
- If you are arrested for any felony or misdemeanor crime, you must inform your parole agent as soon as possible.
- You cannot own, use, possess, or have access to:
  - Any type of gun or ammunition[415]
  - Any weapon;[416]
  - Any knife with a blade longer than two inches, except kitchen knives (which must be kept only in the kitchen of your home) and knives related to your employment (which may be used and carried only in connection with your employment); or
  - A crossbow of any kind.
- Because you cannot own or have access to or control of any of these weapons/instruments, if you live with someone who has a gun, weapon, knife, or crossbow in your residence, you must make sure that the other person removes those items from the residence, or at least keeps the items locked in a place to which you don't have access.
- You must waive extradition to the State of California from any other state or the District of Columbia (Washington, D.C.). This means that you must give up the right to a formal procedure for returning you to California should you leave the state and get arrested or taken into custody. In other words, you cannot challenge any effort by California to return you to the state.[417]
- If another jurisdiction (other state) has lodged a **"detainer"** against you (meaning the other state has ordered that you be held there), you may be released to the custody of that state, which means that California will let that other state take control of your supervision and detention temporarily.[418] However, if you are released from the other state's custody before your California state parole would have ended, or if the other state decides not to hold you, you must immediately contact the nearest California state parole office for instructions on reporting to a parole agent.[419]
- You have almost no rights against searches or seizures by a probation officer, a CDCR agent or officer, or any law enforcement/police officer. *See the next question* (PG. 158) for *more detailed information about searches and seizures while you're on parole.*

ALL PEOPLE ON PAROLE: LITTLE PROTECTION AGAINST SEARCHES & SEIZURES

One of the general conditions of parole is that lose most rights against searches and seizures by parole and law enforcement—but you do have some rights. Since this is a very important issue in daily life, this section explains in detail what privacy rights you do and do not have against parole and police searches.

WHAT ARE MY RIGHTS TO PRIVACY OF PERSON, RESIDENCE, OR PROPERTY WHILE ON PAROLE?

You lose most of your constitutional rights against searches and seizures while you're on parole. When you are OFF PAROLE, the government and law enforcement cannot unreasonably search you or your property or take things from you; and if they search you illegally, they can't use what they find as evidence against you in court.[420] But when you are ON PAROLE, you have very few rights when it comes to searches of yourself, your property, or your residence. If you are on parole:

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[415] This includes "any device which a reasonable person would believe to be capable of being used as a gun, or any ammunition which could be used in a gun." In addition to CDCR Regulations that govern gun and weapon ownership while on parole, it is important for you to know that California law makes it a felony for any ex-felon to own, possess, or have custody or control of any firearm—so this applies even once you are off parole. Federal law also makes it a crime for an ex-felon to possess a firearm or ammunition that has been shipped or transported through interstate or foreign commerce. A certificate of rehabilitation (see PG. 153) does not restore the right to possess a firearm. In some cases, but not all, the right can be restored by a full pardon.

[416] You may not own, use, posses, or have access to a weapon as defined in state or federal laws, or any device, which a reasonable person would believe to be capable of being used as a weapon.

[417] CDCR, Notice and Conditions of Parole, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-03/CDCR 1515.pdf.

[418] Cal. Penal Code § 1389.

[419] CDCR, Notice and Conditions of Parole, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-03/CDCR 1515.pdf.

[420] Silverthrone Lumber Co. v. U.S., 251 U.S. 385 (1920).

- You, your residence, and any of your property can be searched or seized (taken) by a probation officer, a CDCR agent or officer, or any other peace/police officer, at any time (day or night), with or without a warrant, with or without cause[421] — even if non-parolees live with you.[422]
- Officers can also search the passenger compartment of any car while you are a passenger, even if you are not the driver or owner of the car.[423]
- If you are placed in custody pending parole revocation proceedings, parole agents and other law enforcement officers may search your property.[424]

The U.S. Supreme Court has upheld these conditions for people on parole even though the same conditions would violate the constitutional rights of someone who is not on parole or not in custody.[425]

If a law enforcement or parole officer *knows* you're on parole, then the officer is allowed to assume you can be searched without a warrant, without consent, and without reasonable suspicion or "probable cause" — since this is a general condition that applies to all people on parole.[426] HOWEVER, if officers *do not* know that you are on parole,[427] or if they *do not* have "probable cause" to believe that you live in the residence they want to search,[428] then they CANNOT search you, your residence, or your property in ways that go beyond normal rules that protect all citizens

WHAT IS "PROBABLE CAUSE"?

An officer has "probable cause" to search someone on parole, his/her residence, or his/her property when the officer has *heightened knowledge* that they are at the address where the parolee or the subject of an arrest warrant lives.

Motley v. Parks, 432 F.3d 1072, 1079 (9th Cir. 2005) *overruled in part by United States v. King*, 687 F.3d 1189 (9th Cir. 2012).

ARE THERE ANY OTHER LIMITATIONS ON PAROLE SEARCHES?

Yes. When the officer knows or has *probable cause* to believe you are on parole, there is just one rule limiting his or her power to search you. The rule is that "*searches must be no more intrusive than necessary for a legitimate interest in parole supervision.*"[429]

Courts have understood this to mean that parole searches must be "reasonable" — meaning they cannot take place too often, be at unreasonable times of day or night, be unreasonably long, or be conducted in an "arbitrary or capricious" (random or reckless) manner.[430] Searches cannot be motivated by the officer's dislike of you, nor can they be used in ways that don't serve legitimate law enforcement purposes (for example, they can't be used to harass or embarrass you).[431]

When conducting a parole search of your house, law enforcement officers must give you notice of their authority and purpose for the search *before* they enter your house.[432]

WHAT IF A PAROLE OR LAW ENFORCEMENT OFFICER CONDUCTS A SEARCH THAT I BELIEVE IS UNLAWFUL? WHAT ACTION CAN I TAKE?

When law enforcement officers conduct an unlawful search, a person on parole has very few legal remedies. First off, it is very rare for a court to find that a parole search was "unreasonable." Note that even if a court finds that a parole search was "unreasonable" and therefore unlawful, evidence found through that search can still be used against you at a parole revocation hearing.[433]

If you believe that officers unlawfully searched you or your property, you should tell the attorney who is representing you. At a parole revocation hearing, you and your attorney should be notified of evidence used against you (see PG. 188 for information on parole revocation hearings).

[421] CDCR, Notice and Conditions of Parole, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-03/CDCR 1515.pdf.
[422] See Samson v. California, 547 U.S. 843 (2006); U.S. v. Lopez (9th Cir. 2007) 474 F.3d 1208.
[423] People v. Schmitz, 55 Cal. 4th 909 (2012).
[424] People v. Hunter, 140 Cal. App. 4th 1147, 1152-53 (2006).
[425] See U.S. v. Grandberry, 730 F. 3d 968, 975 (9th Cir. 2013); Samson v. California, 547 U.S. 843 (2006).
[426] People v. Middleton, 131 Cal. App. 4th 732, 738-39 (2005).
[427] People v. Sanders, 31 Cal. 4th 318 (2003).
[428] Motley v. Parks, 432 F.3d 1072, 1080 (9th Cir. 2005).
[429] CAL. PENAL CODE § 3067(d); People v. Williams, 3 Cal. App. 4th 1100 (1992); see also U.S. v. King, 687 F.3d 1189 (2012).
[430] People v. Reyes, 19 Cal. 4th 743, 753-754 (1998).
[431] People v. Clower, 16 Cal. App. 4th 1737, 1741 (1993); see also U.S. v. Follette, 282 F. Supp. 10, 13 (S.D.N.Y. 1968).
[432] People v. Constancio, 42 Cal. App. 3d 533 (1974); see also Parsley v. Superior Court, 9 Cal. 3d 934, 938.
[433] Pennsylvania Board of Prob. & Parole v. Scott, 524 U.S. 357, 363-364 (1998).

SUMMARY—WHILE YOU ARE ON PAROLE, OFFICERS CAN SEARCH YOU OR YOUR PROPERTY:

- WITHOUT your consent (your permission);
- WITHOUT a search warrant;
- WITHOUT "probable cause" or even reasonable suspicion that you violated parole.[434]

BUT… In order to search you or your property, an officer must know or have a reason to know that you are on parole or some other type of supervision. Courts have said that a search may be illegal if the parole officer didn't know, or didn't have reason to know, that the person being searched was on parole. However, any items that are taken (seized) during the search may still be used as evidence against you in a later court proceeding or in a revocation hearing. Still, a search or seizure cannot be more intrusive than *reasonably necessary*. If you believe you were illegal searched —tell your lawyer, contact a public defender's office, or call Root & Rebound's Reentry Legal Hotline at 510-279-4662 (Fridays, 9 am – 5 pm PST).

ADDITIONAL LAWS THAT APPLY TO ALL PEOPLE ON STATE PAROLE

In addition to general conditions, there are other laws that impact the civil rights of all people on state parole. These won't be listed on your CDCR Form 1515: Notice and Conditions of Parole (the form your parole agent gives you upon release), but they are just as important.

WHAT OTHER LAWS & RESTRICTIONS APPLY TO ALL PEOPLE ON STATE PAROLE?

Additional laws and restrictions that apply to you and all people on state parole are:

1. **YOU CANNOT VOTE WHILE ON STATE PAROLE** — In California, people who are on state parole (or currently incarcerated in state or federal prison) cannot vote in any elections.[435] Outside of California, people with felony convictions may vote in some elections but not others. Voting laws vary by state, so if you ever move to a new state, you should look into that state's voting requirements. (To learn more about voting rights, see PG. 68 in the ID & VOTING CHAPTER.)
2. **YOU CANNOT SERVE ON A JURY WHILE ON STATE PAROLE** — In California, people with felony convictions cannot serve on juries, even after they have been discharged from parole.[436] This means you may not be able to serve on a jury for the rest of your life (unless the law changes).

   Is there any way to get back my right to serve on a jury?

   Possibly. Depending on your situation, you might be able to:

   - Have your felony reduced to a misdemeanor (misdemeanors don't prevent you from serving on a jury in California); or
   - Apply for a Certificate of Rehabilitation (COR), which automatically includes an application for a Governor's Pardon. A COR won't restore your right to serve on a jury, but a Pardon will.
   - Apply directly for a Governor's Pardon, which will restore your right to serve on a jury.[437]
   - (For more information on all three of these possible remedies, see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.)
3. **YOU CANNOT BE ON PRISON GROUNDS WITHOUT APPROVAL WHILE ON STATE PAROLE** — In California, it is a crime for a former prisoner to be on prison grounds for any reason without the warden's prior approval.[438] To obtain permission to visit, you must get written approval from your parole agent and send it to the warden, along with a letter requesting the warden's permission and a completed visiting questionnaire (CDCR Form 106, see Appendix O, PG. 287).[439]

IMPORTANT VOTING RIGHTS UPDATE!

While you still cannot vote in state prison or on state parole, a new law allows many more people to vote in California with criminal records— learn more on PG. 68 of the ID & VOTING CHAPTER.

[434] Samson v. California, 547 U.S. 843 (2006); U.S. v. Lopez, 474 F.3d 1208 (9th Cir. 2007); People v. Reyes, 19 Cal. 4th 743 (1998); see also CAL. PENAL CODE § 3067(b)(3).
[435] Cal. Const. art. II, § 4; CAL. ELEC. CODE § 2150.
[436] CAL. CODE CIV. PROC. § 203(a)(5). The California Supreme Court has upheld this restriction. See Rubio v. Superior Court, 24 Cal. 3d 93 (1979) (holding that there is no fundamental right to serve on a jury and that excluding ex-felons from juries does not violate the Equal Protection Clause because the prohibition is rationally related to the state goal of assuring impartial verdicts).
[437] See CAL. PENAL CODE § 4853; Cal. Code Civ. Proc. § 203(a)(5).
[438] Cal. Penal Code § 4571.
[439] 15 CAL. CODE REGS. §§ 3172(d), 3172.1(b)(4)-(5).



HELPFUL HINT: GENERAL VS. SPECIAL CONDITIONS

What conditions beyond "general conditions" could be imposed on me?

There are both *discretionary* special conditions that your parole agent can impose on you as long as these conditions meet certain legal standards (see PG. 257), and also *mandatory* special conditions that are imposed on certain categories of individuals, as required by state law. Keep reading to learn about special conditions.

SPECIAL CONDITIONS OF STATE PAROLE: CONDITIONS THAT APPLY ONLY TO CERTAIN PEOPLE ON PAROLE

Sometimes, the Board of Parole Hearings (BPH) or a parole agent may impose special parole conditions that add EXTRA limitations to a person's life. This section explains when special conditions may be applied, and what rights you have against these conditions.

WHO SETS SPECIAL PAROLE CONDITIONS, AND HOW DO THEY DECIDE?

CDCR and individual parole agents can require you to follow certain *special conditions*, which are *special rules* you must follow while on parole.[440]

If you are a "lifer" in California, or if you were released onto parole before July 1, 2013, or if you were charged with a parole violation before July 1, 2013,[441] then the BPH can require you to follow certain special parole conditions.[442]

If you are not a "lifer," county Superior Court judges are now in charge of handling your parole conditions and revocations of your parole.[443] Superior Court judges may impose special parole conditions, but these special conditions must be "reasonably related" to your commitment offense (the offense for which you spent time in prison), your "criminogenic needs" (issues that affect your risk of recidivism, such as substance abuse, family ties, and social relationships), and your criminal history.[444]

Special conditions required by CDCR and/or your parole agent will depend on your individual circumstances, including your commitment offense, your criminogenic needs, your criminal history,[445] specific conditions required by law (called *mandatory* special condititions), and more. Your *special conditions* will be part of your parole plan, and they can change depending on how well you do on parole.[446] (See the next question to learn about what your parole plan is.)

WHAT IS MY PAROLE PLAN?

Your parole plan is an individualized plan to guide your supervision, which DAPO staff will prepare before your release, based on an individual evaluation of your strengths, needs, risk factors, and overall risk of reoffending. Your parole plan will include information identified in your evaluation —your strengths, needs, risk factors, and overall risk of reoffending — as well as goals for your successful reentry; "triggers" that may lead to negative behavior; strategies for avoiding "triggers"; special parole conditions; and your supervision category.[447] Your supervision category is based on DAPO's initial evaluation of your risk of reoffending, as well as your progress while on parole.[448]

DO YOU THINK THAT A SPECIAL PAROLE CONDITION IS VIOLATING YOUR LEGAL RIGHTS?

Go to PG. 178 to learn how to challenge a parole condition.

CAN I ASK FOR MY SUPERVISION LEVEL TO BE REVIEWED OR REDUCED?

Yes. Most parolees who complete 180 days of satisfactory parole will automatically be assigned to the "minimum supervision" category — EXCEPT for people whose commitment offense is legally classified as "violent" (*see* CAL. PENAL CODE § 667.5); 290 registrants (*see* CAL. PENAL CODE § 290); people with cases that received a lot of media or public attention, and certain gang members (as documented on CDCR Form 812-A). Even if you are not automatically assigned to "minimum supervision" after 180 days of completing satisfactory parole, you can ask the unit supervisor to reduce your supervision level, and he or she will make a decision on your case. (CAL. PENAL CODE § 3504.)

[440] See CDCR Form 1515, http://www.cdcr.ca.gov/BOPH/docs/CDCR1515_7-8-2010.pdf.
[441] CAL. PENAL CODE § 3053 et seq.
[442] CAL. PENAL CODE § 3000(b)(7).
[443] Cal. Penal Code § 3454-55.
[444] Cal. Penal Code § 3454(b).
[445] See, e.g., Int'l Community Corrections Assoc., Evidence Based Decision Making From Principle to Practice, ICCA Conference presentation, Sept. 2013, http://www.iccalive.org/icca/images/2013Presentations/2013%20national%20institute%20of%20corrections%20evidence%20based%20decision%20making%20panel.pdf.
[446] The Parole Reform Task Force, CDCR, Parole Reform in California: An Evidence-Based & Best Practices Approach (California Parole Reintegration Supervision Model Manual), 16, Jan. 15, 2010, http://www.cdcr.ca.gov/Parole/Road_Map/docs/CA_Parole_Reintegration_Supervision_Model_Manual.pdf.
[447] The Parole Reform Task Force, CDCR, Parole Reform in California: An Evidence-Based & Best Practices Approach (California Parole Reintegration Supervision Model Manual), 17, 20, 54, Jan. 15, 2010, http://www.cdcr.ca.gov/Parole/Road_Map/docs/CA_Parole_Reintegration_Supervision_Model_Manual.pdf

You should receive a copy of your parole plan *before you are released*. While on parole, you should be meeting regularly with your parole agent to review your parole plan, progress with specific goals and strategies, and other issues. Your parole agent will adjust your parole plan based on your progress and other changes in your situation.[449] S/he should also review your supervision category periodically to see if ti should be changed.[450]

IMPORTANT: Victims and witnesses of your crime can ask for special parole conditions to be added to your parole, including no-contact provisions and/or requirements that you are not paroled to the county where they live (learn more on PG. 185).[451] BPH and CDCR also commonly impose special no-contact provisions for crime partners, which would prevent you from contacting/seeing anyone who was your co-defendant in your criminal case. Lastly, state law requires special conditions for certain categories of people — these are called *mandatory* special conditions.[452] Specifically, there are *mandatory* special conditions for "sex offenders" (see PG. 163) and for "mentally disordered offenders" (see PG. 176).

WHAT ARE COMMON EXAMPLES OF SPECIAL PAROLE CONDITIONS?

The most common special conditions for a person on state parole are:

1. You cannot drink alcohol;
2. You must submit to drug testing;
3. You must participate in mental health treatment.[453]
4. You must wear a **GPS devilce** — *Note that some people on parole will be required to wear GPS tracking devices (usually ankle monitors). It is the CDCR's policy to require GPS monitoring for:*

- Any parolee validated as a member or associate of a prison gang, street gang, or "disruptive group";
- Any parolee placed on "high control" supervision;
- Any parolee with a history of being unavailable for supervision, absconding (going missing), escalating parole violations, or other such factors indicating the parolee is likely to commit another crime; and
- Any parolee required by the BPH to have a GPS monitoring condition.[454] Failure to wear the GPS device or to keep it charged is a violation of parole.[455] Parolees can be required to pay for the cost of the GPS if they are able to do so.[456]

WHEN WILL I FIND OUT THE CONDITIONS OF MY PAROLE, INCLUDING ANY SPECIAL CONDITIONS THAT APPLY TO ME?

- **WHILE INCARCERATED:**

Your correctional counselor should inform you of your parole conditions *at least 45 days* before your release, using a CDCR Form 1515: "Notice and Conditions of Parole."[457] You will be asked to sign the Form 1515.[458] You will also be given a copy of the Form 1515 for you to keep upon your release. Even if you *disagree* with a special condition listed in the Form 1515, it is usually best to sign the Form 1515 and comply with the conditions while at the same time taking steps to challenge any disputed condition through the appeals process (see PG. 178). If you don't sign the form, you might not get out of prison until the matter is resolved.[459]

WARNING

Your parole may be revoked for 6 months if you (1) refuse to give any required DNA sample prior to release, or (2) refuse to sign any documents acknowledging a duty to register as a sex offender. (*See* CAL. PENAL CODE § 3060.5).

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[448] The various supervision categories are:Transition Phase: All individual immediately after release onto parole; Category A: Reserved primarily for individuals evaluated as High Drug, High Property and High Violence risk levels (California Static Risk Assessment values of 3, 4 and 5); Category B: Reserved primarily for individuals evaluated as Moderate Risk (CSRA values of 2); Category C: Reserved primarily for individuals evaluated as Low Risk (CSRA values of 1); Category D: Reserved primarily for individuals on parole who are in custody, in jail-based Custody Drug Treatment Program (ICDTP), Civil Addicts pending court discharge, gravely ill, or other situations.
The Parole Reform Task Force, CDCR, Parole Reform in California: An Evidence-Based & Best Practices Approach (California Parole Reintegration Supervision Model Manual), 26-30, 32, 46, Jan. 15, 2010, http://www.cdcr.ca.gov/Parole/Road_Map/docs/CA_Parole_Reintegration_Supervision_Model_Manual.pdf.

[449] The Parole Reform Task Force, CDCR, Parole Reform in California: An Evidence-Based & Best Practices Approach (California Parole Reintegration Supervision Model Manual), 16, 18, 20, Jan. 15, 2010, http://www.cdcr.ca.gov/Parole/Road_Map/docs/CA_Parole_Reintegration_Supervision_Model_Manual.pdf.

[450] 15 CAL. CODE REGS. § 3504. 29-30, 49

[451] CAL. PENAL CODE § 3053 et seq.

[452] See CAL. PENAL CODE § 3053 et seq. For example, any parolee convicted of a sex offense while intoxicated or addicted to alcohol is barred from using alcohol. CAL. PENAL CODE § 3053.5. A parolee convicted of domestic violence must participate in counseling. CAL. PENAL CODE § 3053.2(e)-(i).

[453] See 15 CAL. CODE REGS. § 2513.

[454] CAL. PENAL CODE §§ 3004(a), 3010-3010.7; 15 CAL. CODE REGS. § 3561.

[455] 15 Cal. Code Regs. § 3562.

[456] CAL. PENAL CODE §§ 3004(c); 3000.07; 3010.8; 15 CAL. CODE REGS. § 3563.

[457] 15 CAL. CODE REGS. § 3075.2(b)(2)(A).

[458] 15 CAL. CODE REGS. §§ 3075.2, 3502. CDCR Form 611 is used for the Release Program Study and CDCR Form 1515 is used to notify parolees of their conditions of parole.



- **ONCE YOU'RE RELEASED:**

When you are out and you first meet with your parole agent, he or she should give you a copy of your Form 1515 to keep, and he or she should explain ALL the general and special conditions of your parole.[460] It is important that you fully understand your parole conditions. If you do not understand some or all of them, ask your parole agent to clear up your questions or concerns.

If your parole agent doesn't present you with the Form 1515 in your first meeting, you should ask him or her to do so. Again, it is very important that your parole agent explains to you all your conditions of parole — and if he or she does not do so, you should ask.

WHAT MAKES A SPECIAL CONDITION OF PAROLE UNLAWFUL OR INVALID?

Yes. A parole condition is invalid if it **fails** any one of the following four legal tests:

TEST 1: A parole condition is invalid if:

1. It has no relation to the commitment offense; **AND**
2. It bars conduct that is not in itself criminal; **AND**
3. It requires or forbids conduct that is not reasonably related to future criminal conduct or activities.[461]

For this test, you must show that the condition is invalid based on *all three* of these factors.

For example: Courts have held that if a parolee has no history of alcohol abuse or committing crimes while intoxicated, alcohol testing cannot be imposed as a condition of parole because using alcohol (1) is unrelated to the parolee's past criminal conduct, (2) is not illegal in itself, and (3) is not reasonably related to the parolee's risk of future criminality.[462]

TEST 2: A parole condition is invalid if:

1. It infringes on (violates) a constitutional right, **AND**
2. It is broader than necessary to promote public safety or rehabilitation.[463]

TEST 3: A parole condition may be invalid if it is excessively broad or so vague that you cannot understand or follow it.[464]

For example: If a parole condition prohibits you from associating with members of a certain group, then to be valid, it must include a requirement that you actually know (or should know) whether the people you're associating with are members of the prohibited group.[465]

TEST 4: A parole condition is invalid if it limits the type of employment you can have, and this limitation does not directly relate to your crime.[466]

For example: If you were previously convicted for bouncing a check, a parole condition that forbids you from becoming a salesperson would be invalid.[467]

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[459] Prison Law Office, The Parolee Rights Manual at 17, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf.
[459] 15 CAL. CODE REGS. 3075.2(b)(3)(B) ("A unit supervisor or higher level staff may place an inmate or parolee refusing to sign the CDC Form 1515 into custody pending a revocation hearing."). Although the BPH regulations still contain a rule that parolees must sign their conditions of parole, it is unclear whether this provision is still enforced in cases in which the BPH has parole authority.
[460] DOM § 81010.16; 15 CAL. CODE REGS. § 3075.2(b)(3)(A).
[461] People v. Lent, 15 Cal. 3d 481, 486 (1975); People v. Dominguez, 256 Cal. App. 2d 623, 627 (1967). Many of the relevant cases deal with probation conditions, to which courts usually apply the same analysis as to parole conditions. See also People v. Petty, 213 Cal. App. 4th 154 (2013) (condition requiring parolee to take psychiatric drugs invalid where no connection between mental health condition and criminality); People v. Brandao, 210 Cal. App. 4th 568 (2012) (prohibition on associating with gang members must have connection to parolee's criminality); People v. Olguin, 45 Cal. 4th 375 (2008) (condition requiring notification of all pets in home valid to protect supervising officer's safety during home visits).
[462] People v. Kidoo, 225 Cal. App. 3d 922 (1990), overruled on other grounds in People v. Welch, 5 Cal. 4th 228 (1993).
[463] People v. Smith, 152 Cal. App. 4th 1245, 1250 (2007).
[464] People v. Fritchey, 2 Cal. App. 4th 829, 838 (1992); U.S. v. Bonanno, 452 F. Supp. 743, 752 (N.D. Cal. 1978). See also People v. Bauer, 211 Cal. App. 3d 937 (1989) (condition not to become pregnant); People v. Pointer, 151 Cal. App. 3d 1128, 1139 (1984) (forbidding living with parents); People v. Beach, 147 Cal. App. 3d 612, 622-623 (1983) (banishing from home); In re Sheena K., 116 Cal. App. 4th 436 (2004) (not associating with anyone disapproved by officer); People v. O'Neil, 165 Cal. App. 4th 1351 (2008) (same); Hyland v. Procunier, 311 F. Supp. 749 (N.D. Cal. 1970) (condition to get permission before making speech); Arciniega v. Freeman, 404 U.S. 4, 92 S. Ct. 22 (1971) (not associating with ex-convicts at work); People v. Garcia, 19 Cal. App. 4th 97, 101-102 (1993) (not associating knowingly or unknowingly with ex-felons or drug users); In re Justin S., 93 Cal. App. 4th 811 (2001) (not associating with "any gang members"); In re Stevens, 119 Cal. App. 4th 1228 (2004) (prohibiting use of computers or Internet when neither used in committing crime); U.S. v. Williams, 356 F.3d 1045 (9th Cir. 2004) (requiring release to take medications); In re H.C., 175 Cal. App. 4th 1067 (2009) (not frequenting areas of gang activity); U.S. v. Soltero, 510 F.3d 858, 867 (9th Cir. 2007) (not associating with members of "disruptive groups"); U.S. v. Wolf Chold, 699 F.3d 1082 (9th Cir 2012) (condition not to live with or be in company of minor under 18 or socialize with minor children).
[465] People v. Turner, 155 Cal. App. 4th 1432 (2007).
[466] See People v. Burden, 205 Cal. App. 3d 1277 (1988); People v. Lewis., 77 Cal. App. 3d 455 (1978); People v. Keefer, 35 Cal. App. 156 (1972).
[467] See People v. Burden, 205 Cal. App. 3d 1277 (1988).

SPECIAL CONDITIONS OF STATE PAROLE AND OTHER LAWS THAT APPLY TO SEX OFFENDERS ("290 REGISTRANTS")

This section has important information about the legal requirements that apply to people who were convicted of sex offenses and must register as sex offenders under California Penal Code section 290 et seq. We refer to people who must register as sex offenders as "290 registrants" below. In California, some legal requirements apply to 290 registrants ***only while they are on state parole***, and other rules apply to 290 registrants ***for the rest of their life***, so please read carefully!

If you are a 290 registrant, there are five main types of special requirements that apply to you: (1) you must register with local law enforcement authorities, (2) you may be subject to GPS tracking while on parole (and possibly for life), (3) you may be restricted around where you can live ("residency requirements"), where you can go, and where you can be employed, (4) information about your identity, and in some cases where you live, may be disclosed to the public; and (5) the California Department of Corrections and Rehabilitation (CDCR) may place other special conditions of parole on you.[468]

IMPORTANT LEGAL UPDATE: TIERED REGISTRATION

In 2017, Governor Jerry Brown signed a law ending lifetime 290 registration for people convicted of low-level offenses. The new law splits the existing registry into three levels — or "tiers."[469] While those considered "high risk sex offenders" (see PG. 169 for definition) will still be required to register for life, registrants whose offense places them on the lower tiers may petition for removal after 10 or 20 years, asl long as they have not committed another registerable offense in that period. The court will have the discretion to grant or deny the petition, and will consider input from the District Attorney in making its decision. This law will not go into effect until 2021 and regulations still need to be written to give the details of these changes to the registry.

➢ REGISTRATION REQUIREMENTS

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IMPORTANT! If you are required to register as a sex offender, you have only 5 working days to register with the city police department (or sheriff's department if there is no city police department) after you are released from custody or placed on probation or parole.[470] Read more about registration requirements in this section.

WHO HAS TO REGISTER AS A SEX OFFENDER?

Here we discuss three situations in which you would be required to register as a sex offender in California:

SITUATION 1: You must register as a sex offender if you have ever been convicted of any crime listed in California Penal Code section 290(c). Cal. Penal Code section 290(c) includes a wide range of felony and misdemeanor offenses including forcible sex crimes against adults, most sex crimes involving children, prostitution and child pornography-related crimes, kidnap or assault for the purpose of committing a sex crime, soliciting another person to commit a sex offense, and attempt or conspiracy to commit any of the included crimes.[471]

SITUATION 2: You can also be required to register based on convictions for crimes that are not listed in § 290(c) if you committed the crime "as a result of sexual compulsion or for purposes of sexual gratification."[472] This determination is made by the judge when you are convicted or sentenced for the crime.[473]

SITUATION 3: Even if you were not convicted of a qualifying sex crime, you will be required to register if you meet any of the following criteria:

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[468] The information for 290 registrants was adapted from an informational letter from the Prison Law Office, Information Regarding California's Sex Offender Registration, Tracking, Residency And Public Notice Requirements (May 2015), available at http://prisonlaw.com/wp-content/uploads/2015/09/SexOffender-Prop83May2015.pdf.

[469] Los Angeles Times, "California will soon end lifetime registration of some sex offenders under bill signed by Gov. Jerry Brown" (Oct. 6, 2017), available at http://beta.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-bill-ending-lifetime-registry-of-sex-1507332406-htmlstory.html; California Legislative Information, SB 421 (Feb. 15, 2017), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB421.

[470] CAL. PENAL CODE §§ 290(b), 290.015.

[471] CAL. PENAL CODE §§ 290, 290.003.

[472] CAL. PENAL CODE §§ 290.006.

[473] Sectencing judges may make discretionary findings and orders requiring defendants to register as sex offenders without violating the constitutional Sixth Amendment right to a jury trial. People v. Mosley (2015) 60 Cal.4th 1044.



- You were adjudicated (found guilty) as a ward in juvenile court for certain sex offenses and committed to the CDCR Division of Juvenile Justice (DJJ) (formerly the California Youth Authority or CYA) or the equivalent agency in another state;[474]
- You have been found *not guilty by reason of insanity* of any offense listed in Cal. Penal Code § 290(c);[475]
- You have ever been found to be a Mentally Disordered Sex Offender (MDSO) or Sexually Violent Predator (SVP);[476]
- You have been convicted in another state or in a federal or military court of an offense that has the same elements as one of the offenses listed in Cal. Penal Code § 290(c).[477] Also, if you are required to register as a sex offender in another state, you are almost certainly required to register with California law enforcement when you are in California.[478]

WHEN SHOULD I LEARN ABOUT MY DUTY TO REGISTER AS A SEX OFFENDER?

When you are sentenced for a sex offense, the court should inform you of your duty to register.[479] If you pled guilty or no contest to a sex offense, you should also have been informed of any registration requirement before you entered your plea.[480] In addition, when you are released from incarceration, the custody or supervision agency (that is, the parole or probation department) should inform you of your registration requirements.[481] For example, if you are in state prison, your correctional counselor and parole officer should go over the registration requirement as part of informing you about your conditions of parole (see PG. 161). See PG. 173 for a discussion of the limited situations in which you might be able to challenge a registration requirement.

DO I HAVE TO REGISTER IN CALIFORNIA IF I LIVE IN A DIFFERENT STATE BUT SOMETIMES GO TO WORK OR SCHOOL IN CALIFORNIA?

If you live in another state, but you are employed in or doing business in California for more than **14 days in a row** or more than **30 days in a year**, OR if you are **attending school full-time or part-time in California**, you are required to register in California.[482]

DO I HAVE TO REGISTER IN CALIFORNIA IF I MOVE OUT OF STATE?

If you are moving out of state, you must tell the local California authorities in the city or county that you are leaving; and the notification must be given **in person** and **within 5 working days of your move**.[483] After that, you don't need to keep registering in California, so long as you do not spend much time in California (but see the previous question if you work or go to school here).[484]

However, you may need to register in your new state because the Federal Sex Offender Registration and Notification Act (SORNA) requires sex offenders to register with local authorities in each location in which they reside, are employed or are going to school. The SORNA registration requirements can last for between 10 years and life, depending on the nature of the sex crime and whether you have a clean record after being

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[474] CAL. PENAL CODE § 290.008. The list of juvenile offenses for which registration is required is shorter than that which applies to adults or juveniles tried as adults. Compare CAL. PENAL CODE § 290.008(c) with § 290(c) and § 290.006. See also In re Derrick B. (2006) 39 Cal.4th 535, 539- 540 (court does not have authority to require juvenile to register for offense not listed in registration statute applicable to juveniles, even if offense was committed for sexual gratification). Also, registration is not required if the juvenile was discharged from the CYA for the sex offense before January 1, 1986. CAL. PENAL CODE § 290.008(a).

[475] CAL. PENAL CODE § 290.004.

[476] CAL. PENAL CODE § 290.001, 290.004. Note: A person is designated as a SVP (sexually violent predator) through a *civil* commitment proceeding. Even though the SVP determination process is civil and not criminal, it still triggers a registration requirement under CAL. PENAL CODE § 290 et seq. *See* CAL. WEL. & INST. CODE § 6600. On the other hand, the MDSO designation allowed for people on state parole to be committed to state mental health institutions or outpatient programs. The MDSO law was repealed in 1982, but individuals who were in state hospitals and community programs at the date it was repealed are still subject to its provisions and are required to register under Section 290.) *See former* CAL. WEL. & INST. CODE §§ 6300-6330 (repealed in 1982).

[477] CAL. PENAL CODE § 290.005.

[478] CAL. PENAL CODE § 290.002, 290.005(c).

[479] CAL. PENAL CODE § 290.017; but see Maciel v. Cate (9th Cir. 2013) 731 F.3d 928 (sex offender subject to mandatory registration requirement even though sentencing judge failed to include it in the oral and written sentencing orders).

[480] See People v. McClellan (1993) 6 Cal.4th 367, 379-381 (defendant may be allowed to withdraw guilty plea if he was not advised of mandatory registration requirement and would not have entered the plea if he had known of it); People v. Zaidi (2007) 147 Cal.App.4th 1470 (same); see also People v. Olea (1977) 59 Cal.App.4th 1289, 1298-1299 (discretionary registration requirement may not be imposed after no contest or guilty plea unless the possibility of registration was included in the plea agreement). Any challenge to the plea should be filed as soon as the defendant becomes aware of the registration requirement; otherwise, the challenge may be deemed to be untimely. See In re Douglas (2011) 200 Cal.App.4th 236.

[481] CAL. PENAL CODE § 290.017; Lambert v. California (1957) 355 U.S. 225, 229-230 (registration provisions violate due process if person has no knowledge of duty to register).

[482] CAL. PENAL CODE § 290.002

[483] CAL. PENAL CODE § 290.013.

[484] CAL. PENAL CODE § 290.013; see People v. Wallace (2009)176 Cal.App.4th 1088 (overturning convictions for failure to update registration where defendant may have moved out of state, but upholding conviction for failure to provide notice of move).

released from custody.[485] It is a federal crime to live, work, or go to school in another state without complying with the SORNA requirements.[486]

I HAVE TO REGISTER AS A SEX OFFENDER IN CALIFORNIA. HOW AND WHEN DO I REGISTER?

If you are required to register as a sex offender, here are the basic steps for *how* to register—including important information on *when* you have to do it:

STEP 1: **Gather the information and documents you need to register.**

As soon as you can (perhaps a trusted loved one or advocate could even help while you are still incarcerated), you should gather all of the information and documents you will need to register. This includes:

- The address(es) of *all* of your current residence(s) *(see* **STEP 3** *for more information)*;[487]
- Proof of your residence location—such as an ID with your address, a recent rent or utility bill or receipt, or a bank or official document showing your address;[488]
- The name and address of your employer; and
- The license plate number of any car that you drive regularly.

STEP 2: **If possible, call ahead to the city police department (or sheriff's department if your city does not have a police department) to verify *where and when* you can register.**

Some city police departments (or sheriff's departments if your city has no police department) have special **locations and hours** when they register people. Calling ahead can help you avoid wasting time waiting around at the police station. If you cannot reach the city police by phone to verify hours and location, that is okay—just skip this step and go ***in person***.

STEP 3: **Within *5 days* of your release from custody or on to parole or probation, you must register in person with the city police department (or the sheriff's department if there is no city police department) in every place that you live. Bring the information and documents *(see Step 1)* you need with you!**

You have **5 working days** after you are released from custody (prison or jail) or placed on supervision (parole or probation) to register.[489] You must register **in person** with the **police department** in the city where you live, or with the **sheriff's department** if you live in an unincorporated area or in a city that has no police department.[490] If you live at more than one address, and your addresses are in different cities or counties, you must register with *multiple* police or sheriff's departments so that you are registered in *all* locations.[491]

PLEASE NOTE: The definition of "residence" here is broad and you can be "residing" at an address for registration purposes even if you are only spending the night there occasionally or staying there on a temporary basis.[492]

When you register, you will be required to provide *all* of your current residence addresses.[493] Your fingerprints will be taken. You must also provide the name and address of your employer, the license plate number of any car that you drive regularly, and proof of your residence location, such as an ID with your address, a recent rent or utility bill or receipt, or a bank or official document showing your address.[494]

IMPORTANT! Ask the police for proof of your registration. The police must provide you with a copy free of charge.

[485] 42 U.S.C. § 16901 et seq. (effective on July 27, 2006). SORNA has withstood most constitutional challenges. See e.g., United States v. Shoulder (9th Cir. 2013)738 F.3d 948 (SORNA does not violate ex post facto or due process clause, and is within the scope of Congress's authority); United States v. Elkins (9th Cir. 2012) 683 F.3d 1039 (SORNA does not violate ex post facto clause); United States v. Richardson (9th Cir. 2014) 754 F.3d 1143 (OK to delegate authority to Attorney General to determine extent of SORNA's retroactive applicability); United States v. Cabrera-Gutierrez (9th Cir. 2013) 756 F.3d 1125 (U.S. Congress has authority under Commerce Clause to enact SORNA); but see Reynolds v. United States (2012) __ U.S. __; 132 S. Ct. 975 (sex offenders whose crimes were committed prior to SORNA can't be punished for violations that occurred before U.S. Attorney General issued valid retroactivity rules) and United States v. Mattix (9th Cir. 2012) 694 F.3d 1082 (SORNA's effective date for people with pre-SORNA sex offenses is August 1, 2008).
[486] The criminal penalties for moving, working, or going to school out-of-state and knowingly failing to comply with SORNA are found in 18 U.S.C. § 2250.
[487] CAL. PENAL CODE § 290.010.
[488] CAL. PENAL CODE § 290.015.
[489] CAL. PENAL CODE §§ 290(b), 290.015.
[490] CAL. PENAL CODE § 290(b).
[491] CAL. PENAL CODE § 290.010.
[492] CAL. PENAL CODE § 290.011(g) ("Residence means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles."); see People v. Gonzales (2010) 183 Cal.App.4th 24 (upholding conviction for failing to register as a second "residence" a place where defendant visited about three times a week but did not spend the night); People v. Williams (2009) 171 Cal.App.4th 1667, 1672-1673 ("residence" need not be a place which has the potential of becoming a permanent home).
[493] CAL. PENAL CODE Code § 290.010.
[494] CAL. PENAL CODE § 290.015.



STEP 4: **If you are a college student, employed by a college, or living on a college campus, you must also register with the campus police.**[495]

STEP 5: **Update your registration every year within 5 working days of your birthday—and more often if you fall into one of the special categories listed below.****

Unless you fall into a special category listed below, you must ***re-register every year***, within ***5 business days of your birthday***, with the police department in the city where you live (or with the county sheriff's department if your city is unincorporated or has no police department).[496]

*****SPECIAL CATEGORIES*** – People who Must Register More Often than Once Every Year:***

In addition to registering every year within 5 working days of your birthday, you must register more often if you fall into one of the following categories . . .

- **If you are homeless** (called **"transient"** by parole and the relevant laws), you are required to register *within 5 working days of release* from prison or jail, *at least every 30 days* after that, *and within 5 working days of your birthday every year*.[497]
- **If you have a home but then *become homeless***, you must update your registration within 5 working days of losing your home.[498] When you register, you will have to provide information about where you sleep, eat, work, and spend time.[499] Note that if you spend the night at a shelter, that shelter qualifies as a "residence," and you will have to register the address of the shelter within 5 working days of going there.[500] If you then find a place to live, you must update your registration and tell the authorities your new address within 5 working days.[501]
- **If you have *ever* been found to be a Sexually Violent Predator (SVP),** you must update your registration every 90 days, *and* within 5 working days of your birthday every year.[502]
- **If you change your name**, you must notify the police or sheriff within 5 working days of your name change, *and* within 5 working days of your birthday every year.[503]
- **If you get sent to the CDCR or a state mental hospital**, officials at those institutions are supposed to inform the California Department of Justice (DOJ) of your confinement.[504] If you are incarcerated or civilly committed for *30 days or more*, you must *re-register* within 5 days of your release.[505] NOTE: You do *not* need to re-register if you are incarcerated or civilly committed for ***less than 30 days*** and you then return to your last registered address (unless your normal re-registration date came up while you were incarcerated—in which case you still need to re-register).[506]

STEP 6: **If you are on state parole, you must also provide your parole officer with proof of registration within 6 working days of your release from prison.**

If you are on parole, you must also provide your parole officer with proof of registration within 6 working days of your release from prison.[507] The police must provide you with a copy of your registration form free of charge. You must notify your parole officer of any updates or changes to your registration information within 5 working days of the update or change.[508]

DO I HAVE TO DISCLOSE ALL MY INTERNET ACCOUNTS AND EMAIL ADDRESSES?

In November 2012, California voters passed Proposition 35 (the CASE Act), which would require 290 registrants to turn over lists of all of their Internet identifiers and service providers to the law enforcement agencies with which they register (see definitions in footnote).[509] Registrants would also have to give written notification

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[495] CAL. PENAL CODE §§ 290(b), 290.009.
[496] CAL. PENAL CODE § 290.012(a).
[497] CAL. PENAL CODE § 290.011(a)-(b).
[498] CAL. PENAL CODE § 290.011(b).
[499] CAL. PENAL CODE § 290.011(d).
[500] CAL. PENAL CODE § 290.11(g); 15 CCR § 3652(c)(2); People v. Deluca (2014) 228 Cal.App.4th 1263 (National Guard Armory winter emergency shelter is a "residence").
[501] CAL. PENAL CODE § 290.011(b).
[502] CAL. PENAL CODE § 290.012(b); Litmon v. Harris (2014) 768 F.3d 127 (90-day verification requirement for SVPs does not violate due process or equal protection).
[503] CAL. PENAL CODE § 290.014; see People v. Vincelli (2005) 132 Cal.App.4th 646 (law requiring registration after name change not unconstitutionally vague).
[504] CAL. PENAL CODE § 290.013(d).
[505] CAL. PENAL CODE § 290.015(a) (referencing CAL. PENAL CODE § 290(b)).
[506] CAL. PENAL CODE § 290.015(a).
[507] CAL. PENAL CODE § 290.85(a).
[508] CAL. PENAL CODE § 290.85.
[509] CAL. PENAL CODE §§ 290.014(b), 290.015(a)(4)-(6). An "internet service provider" is "a business, organization, or other entity providing a computer and communications facility directly to consumers through which a person may obtain access to the Internet," but does not include "any system operated or services offered by a library or educational institution." CAL. PENAL CODE § 290.024(a). An "internet identifier" is "an electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum



within 24 hours of any change to their internet identifiers or service providers.[510] The internet information must be updated as part of the annual registration process, and the registrant must sign statement acknowledging the requirement.[511]

However, civil rights advocates (the ACLU and others) have filed a federal lawsuit arguing that Proposition 35 violates the U.S. Constitution's First Amendment rights to free speech and free association. In January 2013, the federal court granted a preliminary injunction, which has been upheld by the Ninth Circuit Court of Appeal.[512] This means that the state of California cannot enforce Proposition 35 unless and until a court rules that Proposition 35 does not violate the U.S. Constitution.

FOR HOW LONG DO I HAVE TO REGISTER AS A SEX OFFENDER?

If you have to register as a sex offender in California, then you must register *for the rest of your life*, so long as you live in the state.[513] It does not matter whether you are on or off parole, PCRS or probation, or whether you have otherwise completed your criminal sentence.

HOW MUCH TIME DO I HAVE TO REGISTER WITH THE CITY POLICE AFTER I AM RELEASED FROM PRISON OR JAIL, OR PLACED ON PAROLE OR PROBATION?

You have 5 working days to register after you are released from custody or placed on probation or parole.[514] When you register, you will be required to provide all of your current residence addresses.[515] Your fingerprints will be taken. You must also provide the name and address of your employer, the license plate number of any car that you drive regularly, and proof of your residence location, such as an ID with your address, a recent rent or utility bill or receipt, or a bank or official document showing your address.[516]

I AM A 290 REGISTRANT ATTENDING CLASSES OR EMPLOYED AT A COLLEGE. DO I HAVE TO REGISTER WITH THE SCHOOL?

Yes. If you are a college student, employed by a college, or living on a college campus, you must also register with the campus police.[517]

WHAT HAPPENS IF I FAIL TO REGISTER AS A SEX OFFENDER?

Failure to register is a crime. If your underlying sex offense was a misdemeanor conviction or juvenile adjudication, then failure to register is usually a misdemeanor for the first offense, and a felony for any further violations. If your underlying sex offense conviction was a felony conviction, failure to register is usually a felony.[518]

There is no end to when you can be charged for failure to register since California courts consider it to be a continuing offense (in other words, there is no statute of limitations to charging someone with this as a crime).[519] If you fail to register after moving to a new state, you could *also* be convicted of violating ***federal*** registration laws.[520]

You can be convicted of a separate offense for each requirement you violate. For example, you can be convicted of two crimes for failing to update your registration annually and failing to inform authorities of a change of address, even if both offenses happened during the same time period.[521] However, there are rules that prevent California courts from imposing sentences for two or more registration crimes that stem from one single act. For example, if you move to a new county and do not notify the police or appropriate authorities in

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discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication." CAL. PENAL CODE § 290.024(b).
[510] CAL. PENAL CODE § 290.014(b).
[511] CAL. PENAL CODE § 290.012(a); CAL. PENAL CODE § 290.015(a).
[512] Doe v. Harris (N.D. Cal.) No. CV12-5713; Doe v. Harris (9th Cir. 2014) 772 F.3d 536.
[513] CAL. PENAL CODE §§ 290(b), 290.005.
[514] CAL. PENAL CODE §§ 290(b), 290.015.
[515] CAL. PENAL CODE § 290.010.
[516] CAL. PENAL CODE § 290.015.
[517] CAL. PENAL CODE §§ 290(b), 290.009.
[518] CAL. PENAL CODE § 290.018.
[519] People v. Fioretti (1997) 54 Cal.App.4th 1209, 1217. Even if your sex offense conviction is later reversed or vacated by a court, the State can prosecute and convict you for a registration violation that occurred before the reversal of the sex offense conviction. In re Watford (2010) 186 Cal.App.4th 684, 687.
[520] 42 U.S.C. § 16901 et seq.; People v. Davis (2011) 202 Cal. App. 4th 429 (federal prosecution for failing to register under SORNA did not bar state court action).
[521] CAL. PENAL CODE § 290.018(i).



either the county you are leaving OR the county you are entering, you can be convicted of two crimes but can be punished for only one.[522]

The punishment for failure to register can be severe. Many of the crimes that require registration are violent or serious offenses, so a person who fails to register may face a doubled sentence under California's "two strikes law" or even a life sentence under California's "three strikes law."[523] Courts have upheld some third strike sentences for failure to register despite claims that those sentences were cruel and unusual punishment in violation of the U.S. Constitution's Eighth Amendment.[524] In a few cases, courts have overturned life sentences where the failure to register was a technical violation, such as not registering annually though staying at the same address.[525]

WHAT HAPPENS IF MY FAILURE TO REGISTER WAS BY ACCIDENT OR I JUST FORGOT TO REGISTER?

To be considered a crime, your failure to register must be "willful."[526] If you can show that you did not know you had to register or that you were unable to register ***due to circumstances beyond your control***, then you may be able to avoid a conviction for violating the registration law.[527]

HOWEVER, it is *very difficult* to show that you did not know you had to register unless you were ***never notified*** of your duty to register.[528] Simply forgetting to register is not a defense to this crime, even if your memory lapse was related to depression.[529] But if you had a severe, involuntary (uncontrollable) physical or mental condition that caused you not to have actual knowledge of the duty to register, then you should be able to avoid a conviction.[530]

DO I HAVE SPECIAL REGISTRATION REQUIREMENTS AS A TRIBAL MEMBER?

Each tribe may have its own registration requirements see the TRIBAL ISSUES CHAPTER at PG. 1093 for more information.

➢ GPS TRACKING

I AM A 290 REGISTRANT. DO I HAVE TO WEAR A GPS TRACKER? FOR HOW LONG?

Under Proposition 83, which became effective on November 8, 2006, if you: (1) have been convicted of a felony that requires you to register as a sex offender, **AND** (2) were sentenced to prison, then the law says that you must wear a GPS tracking device (usually an ankle bracelet) during your parole, and for the rest of your life.[531]

The GPS requirement does ***not*** apply to persons who were convicted AND already paroled, given probation, or otherwise released from custody BEFORE November 8, 2006.[532]

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[522] People v. Britt (2004) 32 Cal.4th 944, 953-954; People v. Meeks (2004) 123 Cal.App.4th 695, 703; People v. Villegas (2012) 205 Cal. App. 4th 642 (failure to report move, and failure to report new address upon learning of it, were separate violations which allowed for multiple convictions, but multiple punishments were prohibited).

[523] See CAL. PENAL CODE §§ 667(b)-(i), 667.5(c), 1192.7(c). Although Proposition 36, which passed on November 7, 2012, reduces the scope of California's "Three Strikes" law, a person who has two prior "strikes" and is convicted of failing to register can still get a life sentence in some circumstances.

[524] See, e.g., In re Coley (2012) 55 Cal.4th 524 (not cruel and unusual punishment to sentence defendant to 25 years to life for failing to update registration where refusal to register was intentional and prior criminal history heinous); Crosby v. Schwartz (9th Cir. 2012) 678 F.3d 784 (26 years to life was not cruel and unusual punishment for a registration violation where defendant had lied about his identity in an attempt to deceive); see also People v. Nichols (2009) 176 Cal.App.4th 428, 435-436; People v. Haller (2009) 174 Cal.App.4th 1080; People v. Poslof (2005) 126 Cal.App.4th 92, 108-109; People v. Meeks (2004) 123 Cal.App.4th 695, 703.

[525] People v. Carmony (2005) 127 Cal. App. 4th 1066 ("Because a 25-year recidivist sentence imposed solely for failure to provide duplicate registration information is grossly disproportionate to the offense, shocks the conscience of the court and offends notions of human dignity, it constitutes cruel and unusual punishment under both the state and federal Constitutions. We shall remand the matter to the trial court for resentencing."). *See also* Gonzalez v. Duncan (9th Cir. 2008) 551 F.3d 875, 877 (citing analogous facts to *Carmony* and remanding with instructions to resentence.)

[526] CAL. PENAL CODE § 290.018(a)-(b); People v. Garcia (2001) 25 Cal.4th 744, 754.

[527] Bartlett v. Alameida (9th Cir. 2004) 366 F.3d 1020, 1024 (although there was evidence that petitioner was given written notice of duty to register, petitioner was entitled to present evidence that he did not read the forms, did not comprehend them, or misinterpreted the requirements); People v. Edgar (2002) 104 Cal.App.4th 210, 221 (conviction reversed where defendant was transient, documents did not provide clear notice of requirements, and prosecutor failed to show defendant knew he was required to register additional addresses); People v. Aragon (2012) 207 Cal. App. 4th 504 (no willful violation of where defendant, who lived in a mobile trailer but continued to register as a transient, did not know that trailer was a residence).

[528] People v. Garcia (2001) 25 Cal.4th 744, 754-755; People v. Vigil (2001) 94 Cal.App.4th 485, 501-502.

[529] People v. Barker (2004) 34 Cal.4th 345, 356-357; People v. Sorden (2005) 36 Cal.4th 65, 72; People v. Bejarano (2009) 180 Cal.App.4th 583.

[530] People v. Sorden (2005) 36 Cal.4th 65, 72.

[531] Penal Code § 3004(b); see also Penal Code § 3000.07(a). Also, please note that it is unclear whether the lifetime GPS rule is being enforced (it appears that it is not); and in an interesting development, the U.S. Supreme Court held that forcing a person to wear a GPS device for life constitutes a "search" under the U.S. Constitution's Fourth Amendment. The Court sent the case back to the state courts to rule on whether such a requirement is unreasonable. Grady v. North Carolina (2015) __ U.S.__; 135 S.Ct.1368.

[532] Doe v. Schwarzenegger (E.D.Cal. 2007) 476 F.Supp.2d 1178.



However, there are other laws that allow parole authorities, the court, and the Board of Parole Hearings to require parolees to wear GPS tracking devices.[533]

WHEN AND WHERE DO I GET MY GPS TRACKER?

You must report to your parole officer within ***1 working day after release*** from custody (unless instructed otherwise) to get your GPS device.[534]

DO I HAVE TO PAY FOR MY GPS TRACKER?

It's possible. CDCR can require you to pay to cover the cost of the GPS monitoring.[535] But the CDCR can also waive (cancel) these fees if you are unable to pay, and ***must*** consider whether you owe any court-ordered fines, restitution, or other payments.[536] If the GPS cost is unaffordable for you, ask for a waiver.

WHAT HAPPENS IF I DON'T WEAR OR DISABLE MY GPS TRACKER?

If you are on parole and do not comply with a GPS requirement, your parole can be revoked. If you do not report on time to get your GPS device, your revocation term will be 180 days unless the court decides that such a term is not appropriate; and if you disable or remove your GPS device, your revocation term will be 180 days.[537] After you are off parole, the law does not specify any punishment if you do not comply with the purportedly "life-long" GPS requirement.[538]

RESIDENCY, MOVEMENT & EMPLOYMENT RESTRICTIONS

I AM A 290 REGISTRANT. ARE THERE RESTRICTIONS ON WHERE I CAN LIVE?

! **IMPORTANT: There are many rules affecting where 290 registrants can live, move, and work, and extra rules if you are a 290 registrant currently on state parole. Please read carefully to know what applies in your situation!**

IMPORTANT LEGAL DEFINITION: "Distance" is measured by a straight line between the main entrance of your residence and the boundary of the nearest park or school — not by driving or walking distance.[539]

RULE 1: If you are a **290 registrant AND currently on state parole AND you were convicted of specific sex acts involving children (specifically any offenses listed under California Penal Code sections 288 or 288.5), AND CDCR determines you to be a "high-risk" parolee**, then the law says you cannot live with half a mile (or 2,640 feet) from any K-12 school or park where children regularly gather.[540]

RULE 2: If you are a **290 registrant on parole**, are not allowed to live in a single-family house with another 290 registrant, *unless* they are *legally* related by birth, marriage, or adoption.[541]

RULE 3: If you are **required to register as a sex offender due to a crime against a minor**, you cannot reside (except as a client) in a *child day care facility* or *residential facility* or *a foster family home*. Violation of the law is a misdemeanor.[542]

RULE 4: Much stricter and broader residency restrictions were enacted on November 8, 2006 by Proposition 83, which banned registered sex offender from living ***within 2,000 feet of a school or park where children regularly gather***.[543] **HOWEVER, in March 2015, the California Supreme Court held that the Proposition 83 residency restrictions were unconstitutional as applied in San Diego County in the case *In re Taylor*.**[544]

DEFINING "HIGH RISK"

When a 290 registrant is released into the community, DAPO conducts a risk assessment to determine their likelihood of returning to prison.The most common risk assessment tool is the **Static-99R**, which scores each person based on factors such as their age, existing priors, and the gender of the alleged victim. If a person gets a score of 4 or higher, DAPO designates them as a High Risk Sex Offender (HRSO).

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[533] CAL. PENAL CODE § 3004(a), 3010-3010.7.
[534] CAL. PENAL CODE § 3010.10(a).
[535] CAL. PENAL CODE § 3000.07(b).
[536] CAL. PENAL CODE § 3000.07(b).
[537] CAL. PENAL CODE § 3010.10(d)-(e).
[538] In an interesting development, the U.S. Supreme Court held that forcing a person to wear a GPS device for life constitutes a "search" under the U.S. Constitution's Fourth Amendment. The Court sent the case back to the state courts to rule on whether such a requirement is unreasonable. Grady v. North Carolina (2015) __ U.S.__; 135 S.Ct.1368.
[539] 15 CAL. CODE REGS. § 3571(e)(4). If you are required to register as a sex offender, you cannot reside within 2,000 feet of any school or park where children regularly gather.[539] In certain cases, CDCR may also impose other residency restrictions as special parole conditions on individuals.[539]
[540] CAL. PENAL CODE § 3003(g); 15 C
[541] CAL. PENAL CODE § 3003.5(a).
[542] CAL. PENAL CODE § 3003.6.



The Court found that Proposition 83 severely restricted parolees' ability to find housing, greatly increased homelessness, and hindered access to medical and mental health treatment, drug and alcohol programs, and other rehabilitation services. Instead of promoting public safety, the residence restrictions actually hurt the efforts of parole and law enforcement authorities to supervise and assist sex offender parolees. The court thus concluded that the infringement on parolees' liberty and privacy interests had no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and violated the parolees' constitutional Fourteenth Amendment due process right to be free of unreasonable, arbitrary and oppressive official action. Following this decision, judges in other counties began to grant "temporary relief" to many more individual parolees —excusing them from having to follow the residency restrictions under Jessica's Law.[545]

In the *In re Taylor* case, the California Supreme Court stated that the CDCR still has authority to impose special conditions of parole on a case-by-case basis, including residency restrictions that may be more or less restrictive than those in Proposition 83.[546]



CDCR is now reviewing all 290 registrants on a case-by-case basis—and may impose restrictions less than or greater than 2,000 feet depending on the individual parolee's circumstances.[547] If you are subject to residency restrictions, you may still be able to work in the restricted area - BUT only if you have permission from your parole agent.[548]

CDCR will automatically apply residency restrictions barring 290 registrants from living within 2,000 feet of a school or park apply to individuals convicted as adults of certain offenses involving children[549]—namely Lewd Acts with a Child Under 14,[550] and Continuous Sexual Abuse of a Child.[551] Residency restrictions for all other 290 registrants are determined on a case-by-case basis, based on criminal history and other relevant information.[552] If you are required to register as a sex offender on parole, you can contact your local county public defender's office for more information.

What if I want to live in a nursing home?

If you are applying to a longterm care facility for seniors and are still incarcerated or on community supervision, the CDCR is required by law to disclose your status as a 290 registrant.[553] Whether the facility can deny you on this basis depends on what type of facility it is.

Skilled nursing facilities, defined as healthcare institutions featuring around-the-clock medical support and meeting federal criteria for Medicaid and Medicare reimbursement, may not be able to deny you based on your registrant status IF your doctor recommends your placement there.[554] Assisted-living facilities, on the other hand, usually don't involve doctors' recommendations, as their residents typically need assistance with some day-to-day activities but may not need constant medical care.[555] These facilities can deny or expel you for a variety of reasons, including your 290 status.

Am I allowed to move to another state while I am on parole?

290 registrants can submit a formal application for transfer of supervision to another state, which then has the choice to accept or deny the proposed move. DAPO will send the new state a variety of information to aid it in reaching its decision. This includes your risk assessment scores, a summary of your criminal sexual behavior, a police report, and details about the alleged victim.[556]

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[543] CAL. PENAL CODE § 3003.5(b). The State has taken the position that Proposition 83 residency restriction applies only while sex offenders are on parole. People v. Mosley (2015) 60 Cal.4th 1044; In re E.J. (2010) 47 Cal.4th 1258, 1271, fn. 5. See also Doe v. Schwarzenegger (E.D. Cal. 2007) 476 F.Supp.2d 1178 (Prop. 83 residency provision did not apply to people who were convicted prior to November 8, 2006 and paroled prior to that date); In re E.J. (2010) 47 Cal.4th 1258, 1272-1273 (Prop. 83 residency restrictions applied to all people released on parole on or after November 8, 2006).
[544] In re Taylor, 60 Cal.4th 1019 (2015).
[545] The counties that granted temporary relief to individual parolees include San Diego, Los Angeles, Sacramento, San Francisco, Contra Costa, & San Bernardino.
[546] *In Re Taylor*, 60 Cal.4th 1019 (2015).
[547] CDCR, Laws Related to Sex Offender Parolees, http://www.cdcr.ca.gov/parole/Sex_Offender_Facts/sex-offender-laws.html
[548] 15 CAL. CODE REGS § 3590.1(b).
[549] 15 CCR 3582(b); CAL. PENAL CODE § 288(a).
[550] CAL. PENAL CODE § 288(a).
[551] CAL. PENAL CODE § 288.5.
[552] CDCR, Laws Related to Sex Offender Parolees, http://www.cdcr.ca.gov/parole/Sex_Offender_Facts/sex-offender-laws.html
[553] CAL. HEALTH & SAF. CODE § 1312.
[554] Merriam-Webster.com, Medical Dictionary, "Skllled Nursing Facility" definition, available at https://www.merriam-webster.com/medical/skilled%20nursing%20facility.
[555] Merriam-Webster.com, Medical Dictionary, "Assisted Living" definition, available at https://www.merriam-webster.com/dictionary/assisted%20living.
[556] Interstate Commission for Adult Offender Supervision (ICAOS) Rule 3.101-3.



If the receiving state approves your application, you are required to report your sex offender registrant status.[557]

Are there any exceptions to these residency restrictions for registered sex offenders?

Yes. There are two types of exceptions:

1. Your parole agent should make exceptions to these conditions if (a) you are mentally ill, *and* (b) you are either living in a licensed mental health facility or need medical care in such a facility.[558]
2. If you are homeless, you may stay at locations such as bridges, encampments, and bus stops that are closer than 2,000 feet to a school or park, but you must keep your parole agent informed of where you are.[559] Also, if you are homeless, you may stay temporarily at an address without establishing "residency" if the stay is for approved work, receiving medical services, or conducting legitimate business (for example: if you are working or completing a task at a licensed business, professional, or government building).[560]

What happens if I don't comply with these residency restrictions?

If you are on parole and you do not comply with the residence restrictions, you may be arrested on a parole violation charge, referred for a revocation hearing, and possibly returned to jail for up to 180 days.[561]

I AM A 290 REGISTRANT. ARE THERE CERTAIN PLACES I'M NOT ALLOWED TO GO?

Maybe. Some cities, towns, and counties have enacted local ordinances that prohibit or restrict sex offenders from going to places where children may be present (schools, libraries, museums, parks, bus stops close to parks). However, there have been a lot of recent legal challenges to these types of restrictions.

For example, in 2014, California's Fourth District Court of Appeal struck down a city ordinance in Irvine that barred sex offenders from entering city parks or recreation facilities without written permission from the police chief.[562] The court held that sex offender registration is governed by state law, and that local governments cannot impose additional or different types of registration requirements. Other cases raising such challenges are still in process. Alliance for Constitutional Sex Offense Laws, a California-based nonprofit organization, provides updates about recent legal developments on its website at www.californiarsol.org.

I AM A 290 REGISTRANT. ARE THERE PLACES I'M NOT ALLOWED TO WORK?

Maybe. If your registerable offense involved a minor, there are restrictions on your ability to work with young people. For example, you cannot work or volunteer in a child day care facility, residential facility, or a foster family home.[563] If your crime involved a minor under the age of 16, you cannot work or volunteer directly with minors in a setting that would leave you unaccompanied on more than an incidental or occasional basis, nor can you have supervisory or disciplinary power over a child.[564]

Even if your crime was not against a minor under age 16, if you want to work or volunteer in a setting where you will touch minors or will be around minors regularly without other people present, then you must notify the employer or volunteer organization that you are a sex offender registrant when you apply for or accept the position.[565] Failure to comply with ANY of the above laws is a misdemeanor.[566]

If you want to obtain a license for some type of business or profession, your criminal history including your sex offense may affect whether you will be granted a license. (See PG. 601 for more information.) You should check with the agency responsible for issuing licenses for information on its policies and application procedures. Also, prospective employers generally can ask you at some point in the process about your criminal conviction history before deciding whether or not to hire you. See PG. **Error! Bookmark not defined.** for more information.)

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[557] Interstate Commission for Adult Offender Supervision (ICAOS) Rule 3.101-3(c).
[558] 15 CAL. CODE REGS § 3590.1(d).
[559] 15 CAL. CODE REGS §§ 3590.2(a) and 3590.3(b)
[560] 15 CAL. CODE REGS § 3590.
[561] See CAL. PENAL CODE § 3000.08.
[562] People v. Nguyen, 222 Cal. App. 4th 1168 (2014).
[563] CAL. PENAL CODE § 3003.6.
[564] CAL. PENAL CODE § 290.95(c).
[565] CAL. PENAL CODE § 290.95(a) and (b).
[566] CAL. PENAL CODE § 3003.6(b); CAL. PENAL CODE § 290.95(e).



➢ PUBLIC NOTIFICATION

I AM A 290 REGISTRANT. CAN THE GOVERNMENT RELEASE INFORMATION ABOUT ME TO THE PUBLIC?

Probably. Unless you fall under certain exceptions or your sex offense was handled in juvenile court, the state can publish your name, photograph, physical description, date of birth, and zip code on the internet.[567] This information is published on what is sometimes called the "Megan's Law" website, after a public notification law passed in 2004.[568] The government can't publish certain Information about you; this means the Megan's Law website should not include the name of your employer or any criminal history not related to your registration requirement.[569]

In addition to the Megan's Law website, state and local law enforcement agencies can release information about 290 registrants by other means when necessary to protect the public.[570]



WARNING: It is a misdemeanor for a 290 registrant to look at the Megan's Law website.[571] However, according to the Alliance for Constitutional Sex Offense Laws, it is not illegal to ask a non-290 registrant to obtain that information, then print or email it to you.[572]

I THINK I AM BEING DISCRIMINATED AGAINST OR TARGETED BECAUSE OF PUBLIC INFORMATION ABOUT MY SEX OFFENSE. IS THIS LEGAL?

The information on the Megan's Law website should only be used for protection of the public. If it is used to commit a crime against you, the person who committed the crime may be punished and can also be liable in a civil suit.[573]

You cannot be excluded from a public business establishment because of your registration status. In addition, the information should not be used to deny you health insurance, credit, educational funds, housing, or (with certain exceptions) a job.[574]

CAN I GET MY INFORMATION REMOVED FROM THE MEGAN'S LAW WEBSITE?

You can apply to be taken off the Megan's Law website if you have *never* been found to be a Sexually Violent Predator (SVP) AND your only registerable sex offenses fall into any of the following categories:

1. A violation of Penal Code section 243.4(a) (sexual battery);
2. A misdemeanor violation of Penal Code section 647.6 (child molestation) or former section 647(a) (Lewd conduct in public);
3. An offense that did not involve oral copulation or penetration of any type where the victim was your child, stepchild, grandchild or sibling AND for which you successfully completed or are successfully serving probation; or
4. A violation of Penal Code sections 311.1; 311.2(b), (c), or (d); 311.3; 311.4; 311.10 or 311.1 (offenses related to child pornography), if the minor was 16 years or older.

➢ OTHER SPECIAL CONDITIONS OF PAROLE THAT APPLY TO 290 REGISTRANTS

I AM A 290 REGISTRANT, AND I AM ON STATE PAROLE. WHAT OTHER SPECIAL CONDITIONS OF PAROLE COULD APPLY TO ME?

Parole officials may impose other special conditions on parolees who were convicted of sex offenses. Some of these are **required by state law** and others can be imposed **at the discretion of parole officials**.

Mandatory special conditions of parole—meaning they are *required* by state law—include the following:

- Attendance at group therapy for at least one year;
- Waiver (giving up) of the privilege against self-incrimination;
- Waiver the right not to participate in polygraph examination;

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[567] CAL. PENAL CODE § 290.46.
[568] These public notification rules apply even to a person who entered a plea bargain to a sex offense prior to the adoption of Megan's Law on September 24, 2004, unless there was a specific agreement that future retroactive changes to the registration laws wouldn't apply. See Doe v. Harris, 57 Cal.4th 64. (2013).
[569] CAL. PENAL CODE § 290.46(a)(1).
[570] CAL. PENAL CODE § 290.45.
[571] CAL. PENAL CODE § 290.46(k).
[572] FAQ, Alliance for Constitutional Sex Offense Laws, http://all4consolaws.org/faq/.
[573] CAL. PENAL CODE § 290.46(j) and (l).
[574] CAL. PENAL CODE § 290.46(l)(2).



- Waiver of psychotherapist-patient privilege during conversations with state-funded therapists. This means that any information you share in a therapy session could be used against you in the future if you ever face new criminal charges or Sexually Violent Predatory (SVP) proceedings.[575]

Discretionary special conditions of parole—meaning the parole officer gets to decide based on individual factors whether or not to impose these—include the following possibilities:

- Limitations or prohibitions on accessing computers, the Internet, or certain publications.[576]
- Prohibitions on living with minors, including your own children, step-children, nieces, nephews, or siblings.[577]

NOTE: In the *Packingham v. North Carolina* case, decided in 2017, the U.S. Supreme Court invavlidated a North Carolina law prohibiting sex offender registrants from accessing social media websites.[578] Though California does not have a similar law, the *Packingham* case could be useful to refer to when challenging parole conditions related to social media or Internet usage.

WHAT HAPPENS IF I DON'T COMPLY WITH ONE OF THESE CONDITIONS?

Violating a condition of parole can subject you to a parole revocation term of up to 180 days in jail.[579] If the violation is a crime, you could also face new criminal charges. Moreover, re-incarceration on a parole violation or a new criminal term could potentially trigger a Sexually Violent Predator (SVP) evaluation and SVP commitment proceedings.

I THINK MY PAROLE CONDITIONS ARE UNFAIR OR ILLEGAL. WHAT CAN I DO?

Generally, a parole condition is valid unless you can show that the condition (1) has no relation to the crime of which you have been convicted; (2) relates to conduct which is not in itself criminal; and (3) requires or forbids conduct that is not reasonably related to future criminality.[580]

You can also convince a court to hold a parole condition invalid if the condition infringes upon a constitutional right and is not reasonably related to a compelling state interest.[581] Conditions that affect constitutional rights may also be invalid if they are broader than necessary to promote public safety or rehabilitation or if they are so vague that they cannot be understood and followed.[582] Also, conditions of parole that limit employment must directly relate to your crime.[583]

If you think your parole conditions are illegal under the above standards, you may be able to challenge them using the legal procedures described in the next section.

➢ CHALLENGING 290 REGISTRATION & RESTRICTIONS

HOW DO I CHALLENGE MY 290 SEX OFFENDER REGISTRATION REQUIREMENT, RESIDENCY RESTRICTIONS, OR OTHER CONDITIONS OF PAROLE?

You may think you have good legal grounds to challenge a 290 registration requirement, other statutory requirement (such as GPS tracking, or a restriction on where you can live or go or a public notification provision), or parole condition. The procedures you can use to fight the restriction or requirement will depend on which part of the state government set the rule, the point in time at which you are filing your case, whether

[575] People v. Gonzales (2013) 56 Cal.4th 353 (holding that, in an SVP proceeding that took place prior to enactment of waiver requirement, admission of parolee's statements to therapist did not violate his constitutional right to privacy; although admission of the statements violated California privilege statutes, the error was deemed harmless.)
[576] Courts have found some of these conditions to be invalid. See e.g., In re Stevens 119 Cal.App.4th 1228 (2004) (unreasonable to prohibit use of computers Internet when neither used in committing crime); United States v. Gnirke 775 F.3d 1155 (2015) (special condition of supervision barring possession of any materials that depicted "sexually explicit conduct" involving either children or adults, and forbidding registrant from patronizing any place where such materials or entertainment were available was overbroad).
[577] Whether such conditions are lawful depends on case-by-case factors, such as the scope of the condition, your type and number of sex offenses, the findings of any risk assessment evaluation, the sex and age of the minor child, and the closeness of the family relationship. See e.g., United States v. Wolf Child (9th Cir 2012) 699 F.3d 1082 (unreasonable and overbroad to prohibit registrant from living with or being in company of any minor under 18 or socializing with anyone with minor children, resulting in registrant being unable to live with or see his own (non-victim) daughters or socialize with his fiancée).
[578] *Packingham v. N.C.*, 137 S.Ct. 1730 (2017).
[579] CAL. PENAL CODE § 3000.08.
[580] People v. Dominguez, 256 Cal.App.2d 623, 627 (1967); People v. Lent, 15 Cal.3d 481, 486 (1975). Although Dominguez and Lent concern probation conditions, courts apply the same legal analysis to conditions of parole. In re Corona, 160 Cal.App.4th 315 (2008) ; In re Stevens,119 Cal.App.4th 1228, 1234 (2004).
[581] See e.g., In re Babak S., 18 Cal.App.4th 1077, 1084-1085 (1993) In re Stevens, 119 Cal.App.4th 1228 (2004); In re Daniel R., 144 Cal.App.4th 1 2006).
[582] People v. Smith, 152 Cal.App.4th 1245, 1250 2007) In re Stevens, 119 Cal.App.4th 1228 (2004); United States v. Wolf Child (9th Cir 2012) 699 F.3d 1082.
[583] See People v. Burden, 205 Cal.App.3d 1277 (1988).



or not you are still in custody or on some type of supervised release (parole, PRCS or probation), and whether the issue is a matter of state law or federal law. Sometimes you will have several different options. The following sub-sections very briefly and generally summarize the available legal procedures.

No matter what type of court action you file, can request that the court stay enforcement of the requirement or restriction while your case is going on. A court is more likely to grant your request if you can convince the court that your fundamental rights are being violated in a manner that will cause you irreparable harm and that you are likely to eventually win your case.[584] You should state on the cover page of your first petition or complaint that you are making a "Request for Stay," and then in the next few pages explain why the court should stay the requirement or restriction.

Upon request, the Prison Law Office can provide free, detailed information on each of these types of actions. Information manuals and forms are also available on the Resources page of the Prison Law Office website at www.prisonlaw.com. You can write them at:

Prison Law Office
General Delivery
San Quentin, CA 94964

Administrative Appeal

If you are challenging a condition of parole set by CDCR (and which is not a condition required by a state statute or court order), you almost always must file a CDCR Form 602 administrative appeal before you can file any type of court action in either state or federal court. If your administrative appeal is denied, you should keep re-filing it until you get responses at all three levels of review.

If you are challenging a requirement set by a state statute or a court order, then you do not need to go through the 602 administrative appeal process. The 602 appeals process is described in detail starting on PG. 178.

Direct Criminal Appeal

If you were very recently convicted of a sex crime and your sentencing included a registration order, or if you recently had your parole revoked or were otherwise subjected to a court order imposing a new condition of probation or parole, then you can challenge the court's order in a direct appeal. You can also file a direct appeal from a conviction for violating the registration laws. You must file a notice of direct appeal within 60 days after you are sentenced.

You can raise both state law and federal law issues in a direct appeal. However, if you pled guilty or no contest, the types of issues you can raise will be limited. If you do not have money to pay a lawyer, the court will appoint a lawyer to represent you in your direct appeal case.

State Habeas Corpus Petition

If you are in custody or on parole, probation, or PRCS, then you can file a state court petition for writ of habeas corpus challenging a sex offender requirement or restriction imposed by the court, state law, CDCR parole officials, or local probation officials. You can raise state and/or federal legal claims. Be aware that if you could have raised your issue on direct appeal, or if you delayed in filing your habeas petition, you may have to convince the court why your case should be allowed to proceed anyway. Otherwise, state habeas procedures are relatively simple and speedy.

If the court allows the case to proceed, it must appoint an attorney for you if you want and can't afford one. If a local superior court denies your petition, you can re-file it, first in the Court of Appeal, then in the California Supreme Court.

State Petition for Writ of Mandate

If you are NOT either incarcerated or under parole, probation or PRCS supervision, then you CANNOT file a state habeas petition. Instead, you can challenge your sex offender registration or other requirement by filing a petition for writ of mandate.[585] Mandate procedures are somewhat similar to habeas corpus procedures. If your petition for writ of mandate is denied, you can re-file your case to the court of appeal and then to the California Supreme Court. The court has discretion to appoint an attorney to represent you, but there appears to be no requirement that it do so.

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[584] See, e.g., In re E.J., 47 Cal.4th 1258 (2010) (staying enforcement of residence restriction pending determination of petitions for writ of habeas corpus); see also In re Alcala, 222 Cal.App.3d 345, 352 & n.4 (1990) (noting that temporary restraining order had been issued pursuant to habeas petition, enjoining enforcement of prison restrictions on clothing); Faucette v. Dunbar, 253 Cal.App.2d 338, 340, 346 (1967) (affirming preliminary injunction enjoining revocation of petitioner's parole); Diamontiney v. Borg, 918 F.2d 793 (9th Cir. 1990); Taylor v. Honig, 910 F.2d 62 (9th Cir. 1990).

[585] People v. Picklesimer, 48 Cal.4th 330 (2010) ; In re Stier, 152 Cal.App.4th 63 (2007).



Federal Habeas Corpus Petition

If you are in custody or on parole, probation, or PRCS for your sex offense, you can file a federal habeas corpus petition challenging your sex offender requirements or restrictions.[586] However you must first have presented your issues to the California Supreme Court, either through a direct appeal or a state habeas corpus petition.

Federal habeas involves very strict timelines and procedural requirements, and the federal courts have limited authority to overturn state court decisions. Also, you can only raise federal law claims. The court has discretion to appoint an attorney to represent you, but there is no requirement that it do so in most cases. If your petition is denied, you may be able to appeal to the Ninth Circuit Court of Appeals.

Federal Civil Rights (§ 1983) Lawsuit

If you are either in OR out of custody, you can challenge a sex offender requirement or restriction by filing a federal civil rights (§ 1983) lawsuit. However, your lawsuit must not attack the validity of your criminal conviction or sentence OR seek a speedier release from parole.[587] You can generally raise only federal law issues (although there may be circumstances in which you can also include closely related state law claims). You may be able to ask for injunctive relief (an order that the state do or stop doing something) and/or money damages.

Unfortunately, federal civil rights lawsuits can involve complicated and slow procedures. Also, the court can ask an attorney to represent you only in exceptional circumstances. If you lose your case, you may be able to appeal to the Ninth Circuit Court of Appeals.[588]

SPECIAL CONDITIONS OF PAROLE FOR MENTALLY DISORDERED OFFENDERS (MDO)

WHAT DOES IT MEAN TO BE A "MENTALLY DISORDERED OFFENDER" (MDO) — AND WHAT MANDATORY SPECIAL CONDITIONS APPLY TO MDOS ON PAROLE?

Under state law, you may be classified as a "mentally disordered offender" (MDO) on parole only if:

1. You have been diagnosed with a serious mental illness that causes you to pose a substantial danger of physical harm to others, AND
2. You have been sentenced to prison for an offense involving violence.[589]

According to the CDCR, if you are a MDO, must receive inpatient treatment from the Department of State Hospitals (DSH)[590] as a mandatory condition of parole.

WHO DECIDES WHETHER I'M A MDO? WHEN DOES THIS HAPPEN?

There are several steps to the MDO determination process:

STEP 1: **First, while you are in prison, CDCR mental health staff and a DSH psychologist or psychiatrist must screen you for classification as a MDO.**[591]

STEP 2: **If both agree that you qualify as a MDO, the CDCR should send certification papers to the Board of Parole Hearings (BPH) stating that you have been found to be a MDO.**[592]

STEP 3: **The BPH must notify you that you'll have to undergo DSH inpatient treatment as a parole condition.**[593] **The BPH must also notify you of your right to challenge the MDO finding.**[594]

I THINK I'VE BEEN WRONGLY CLASSIFIED AS A MDO. WHAT CAN I DO?

You can challenge the CDCR's finding that you are a MDO, which means requesting a hearing before the BPH. If you challenge the finding, the BPH must do the following:

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[586] Bagley v. Harvey (9th Cir.1983) 718 F.2d 921, 922-23 (state parolee may challenge parole conditions through a federal habeas petition).
[587] Thornton v. Brown (9th Cir. 2013) 757 F.3d 834; Shoemaker v. Harris (2013) 214 Cal.App.4th 1210.
[588] The information in this section on sex offender registration and residency requirements/Proposition 83 is largely adapted from an informational letter from the Prison Law Office, Information Regarding California's Sex Offender Registration, Tracking, Residency And Public Notice Requirements, http://prisonlaw.com/wp-content/uploads/2015/09/SexOffender-Prop83May2015.pdf (updated May 2015).
[589] CAL. PENAL CODE § 2962. The definition of a crime involving violence under CAL. PENAL CODE § 2062(e) is broader than the definition of violent felonies in CAL. PENAL CODE § 667.5(c).
[590] The DSH was formerly known as the Department of Mental Health (DMH).
[591] CAL. PENAL CODE § 2962(d)(1).
[592] CAL. PENAL CODE § 2962(d)(1).
[593] 15 CAL. CODE REGS. § 2573(c).
[594] CAL. PENAL CODE §§ 2966 and 2978; 15 CAL. CODE REGS. §§ 2573-2574.



1. Have you evaluated by two independent mental health professionals, AND
2. Hold a hearing before a BPH commissioner.

At the hearing, the state will be required to prove "by a preponderance of evidence" (that it's more likely than not) that you're a MDO — specifically, that (1) you've been diagnosed with a serious mental illness that causes you to pose a substantial danger of physical harm to others, AND (2) you were sentenced to prison for a violent offense.[595] If you want a lawyer at the hearing, the state must provide one for free.[596]

What if, at this hearing, the BPH commissioner decides to agree with the CDCR's finding that you are a MDO? You can challenge that decision by filing a petition in the local county superior court to demand a jury trial. If you request a trial, the BPH must provide you with (1) a petition form and (2) instructions for filing the petition. At trial, the state must prove "beyond a reasonable doubt" that you met the criteria of being classified as a MDO.[597] If you want a lawyer at trial, the state must provide one for free.

WHAT IS THE DEPARTMENT OF STATE HOSPITALS (DSH)?

The DSH was created in 2012 to take over the functions of the now-defunct Department of Mental Health (DMH). DSH oversees inpatient mental health treatment facilities in California.

I HAVE BEEN FOUND TO BE A MDO. CAN I ASK TO BE TREATED AS AN OUTPATIENT?

It might be possible. The normal rule is that if you are a MDO on parole, you must be placed in *inpatient treatment* (confined to a state hospital where you will live and receive mental health treatment) — unless the Department of State Hospitals (DSH) finds that you can be treated safely as an outpatient.[598]

After 60 days in DSH custody, you can request a hearing before a BPH commissioner to ask for *outpatient status* as a MDO (this means you would live in the community but go to a mental health hospital for treatment).[599] At the hearing, the DSH must show by "a preponderance of the evidence" (that it is more likely than not) that you require inpatient treatment.[600] Once you request this hearing, you have the right to a free appointed attorney (called a "panel attorney")[601] and the appointment of two independent evaluators. If you disagree with the BPH commissioner's decision, you may appeal it in county superior court (see below for more information).[602]

ONCE I HAVE BEEN FOUND TO BE A MDO, WHEN AND HOW OFTEN WILL MY MDO STATUS BE REVIEWED?

The BPH must review your status as a MDO when you reach your presumptive discharge date (PDD: the date when you should be discharged early from parole, unless the BPH finds a good reason to keep you; see PG. 153). At that date, the BPH must decide to recommend either that you continue in your MDO inpatient placement, or that you be discharged.[603] If the BPH recommends that you continue in your MDO placement, it MUST hold ***re-commitment*** proceedings, which are similar to the original MDO commitment procedures (see PG. 176 for information about the initial MDO classification process that happens in prison).[604] Before you are re-committed, you should receive written notice of the decision.[605] If you are re-committed multiple times as a MDO, you could end up serving your entire parole term in a DSH hospital.[606]

WHAT IS "RE-COMMITMENT"?

Re-commitment is the process by which DSH decides that a person is still a MDO and must be confined in a DSH facility for another year.

CAN THE DEPARTMENT OF STATE HOSPITALS (DSH) HOLD ME BEYOND MY MAXIMUM DISCHARGE DATE (MDD)?

Possibly. If you are classified as a MDO and you reach your maximum discharge date (your maximum parole term under state law, after which you must be discharged; see PG. 153), the DSH can seek to continue your mental health commitment. This means you would have to stay in inpatient treatment for one more year.[607]

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[595] CAL. PENAL CODE § 2966(a); 15 Cal. Code Regs. § 2576(b).
[596] 15 CAL. CODE REGS. § 2576(b)(4).
[597] CAL. PENAL CODE § 2966(a)-(b).
[598] Cal. Penal Code § § 2964.
[599] Cal. Penal Code § § 2964(b).
[600] CAL. PENAL CODE § § 2964; 15 Cal. Code Regs. § 2578.
[601] For more information on Panel Attorneys, see CDCR Panel Attorney Program Guide, http://www.cdcr.ca.gov/BOPH/docs/Attorney_Orientation/Panel_Attorney_Program_Guide.pdf.
[602] CAL. PENAL CODE § 2964(a) and (b); 15 CAL. CODE REGS. §§ 2576, 2578. Your email must be made within sixty days of the BPH's determination that your are an MDO.
[603] 15 CAL. CODE REGS. §§ 2535 and 2580.
[604] 15 CAL. CODE REGS. § 2580(b)-(c).
[605] Cal. Penal Code § 2972.1.
[606] Cal. Penal Code § 2970(e).
[607] Cal. Penal Code § 2970(a).



If your MDO commitment is continued,the DSH can continue to seek re-commitment every year.[608] If the DSH seeks to continue your MDO commitment, you'll be appointed an attorney and a jury trial in the county Superior Court. The district attorney will represent the DSH. At trial, the DSH must prove that you still meet MDO criteria — that you are (1) diagnosed with a serious mental illness that causes you to pose a substantial danger of physical harm to others, AND (2) were sentenced to prison for an offense involving violence.[609]

[608] Cal. Penal Code § 2970.
[609] The burden of proof in an MDO hearing is "beyond a reasonable doubt"—this means that in order for your to be re-committed, the district attorney must prove, beyond a reasonable doubt, that you are still both: (1) diagnosed with a serious mental illness that causes you to pose a substantial danger of physical harm to others AND (2) were sentenced to prison for an offense involving violence. CAL. PENAL CODE § 2970.

HOW TO CHALLENGE STATE PAROLE CONDITIONS

HELPFUL HINT

It's suggested that you sign the Form 1515, and then challenge the condition later. Don't refuse to sign!

First, while you can and should challenge a parole condition that you believe is unlawful, it is usually best for you to sign the CDCR Form 1515: "Notice and Conditions of Parole," and to follow all the conditions *while* you are taking steps to challenge the problematic condition. Otherwise, you may end up having to spend additional time in custody while the matter is being resolved. (For an example Form 1515, see Appendix G, PG. 268)

HOW CAN I CHALLENGE A PAROLE CONDITION THAT I BELIEVE IS UNLAWFUL?

IF THE CONDITION WAS IMPOSED BY THE BPH:

To challenge a BPH decision or a parole condition set by the BPH, you do not need to file an administrative appeal — **UNLESS the issue involves a disability**. Since the BPH has no administrative appeal process, you can immediately file a state petition for writ of habeas corpus with the superior court in the county of your parole. See Appendix K, PG. 280, at the end of this chapter, to learn about the process.

IF THE CONDITION WAS IMPOSED BY PAROLE:

To challenge a parole condition imposed by the Department of Adult Parole Operations (DAPO or "Parole"), you will have to file an administrative appeal, known as a 602 appeal. Keep in mind there are ***very strict time limits*** to this entire process, and there are ***three levels to the appeals process before going to court***!

You can challenge your parole conditions by following these steps:

STEP 1: **Begin your administrative appeal by filing CDCR Forms 22 and 602—and include no more than one issue per form. In general, you have 30 calendar days to submit the appeal after the problem occurs**

Submit these two forms ***at the same time***: (1) a CDCR Form 22 to your parole agent, requesting an interview to discuss the issue; and (2) a CDCR Form 602 appeal to the Regional Appeals Coordinator.

Attach a copy of your Form 22 request to your Form 602 appeal; and, vice versa, attach a copy of your Form 602 to your Form 22 request.[610]

- SUBMIT FORM 22: File a CDCR Form 22, "Request for Interview, Item or Service" with your parole agent.[611] You can get this form from any parole field office.[612] There is an example of Form 22 in Appendix I, PG. 275, but always ask for the most current version. Once you have filled out the Form 22, you can deliver it by mail or in person to your parole agent at your parole office. To find your local parole office's address, visit the following online directory and click on your region: http://www.cdcr.ca.gov/Parole/Public_Officers_and_Regional_Offices/.
  - From the time your parole agent receives your Form 22 request, he or she has *3 working days* to return the form you submitted with the agent's response on it, along with a copy of the response. Specifically, your parole agent must: (1) note his or her decision on the original form, (2) sign and date the original form, and (3) retain a copy for his or her records.[613]
- SUBMIT FORM 602: At the same time, submit a formal administrative appeal using CDCR Form 602 to your Regional Appeals Coordinator.[614] There is an example Form 602 in Appendix J, PG. 277, but always ask your parole agent for the most current version. Along with filling out the Form 602, compile all **supporting documents** listed on the form. You MUST also include both a copy of your CDCR Form 1515 AND a copy of your Form 22 as supporting documents. Enclose all these documents along with your Form 602, and send it to your Regional Appeals Coordinator. Ask your agent or see Appendix D on PG. 263 for a list of Regional Appeals Coordinators.

WARNING: If you send a CDCR Form 602 appeal to the DAPO Regional Appeals Coordinator before filing a CDCR Form 22 with your parole agent, the Appeals Coordinator may screen out and reject your 602 appeal because Parole wants parolees to try and solve issues informally with their agents before a formal appeal is processed. As long as you file the Form 22 and Form 602 at the same time (and attach a copy of each one to the other one), your 602 appeal should be reviewed. Note that the timeline for your agent to respond to your Form 22 request is much shorter than the timeline the Appeals Coordinator has to respond to your Form 602 appeal.

[610] 15 CAL. CODE REGS. § 3084.6(e)(2).
[611] CDCR Form 22, "Request for Interview, Item or Service" is not available online. You should request the most current version from your parole agent. A version is included in Appendix I, PG. 280, for your reference or use.
[612] 15 CAL. CODE REGS. § 3086(c)(4).
[613] 15 CAL. CODE REGS. § 3086(f)(4).
[614] 15 CAL. CODE REGS. §§ 3084.2; 3084.3

IMPORTANT NOTE ABOUT GATHERING SUPPORTING DOCUMENTS: Time limits are not suspended just because you are attempting to get supporting documents; you should go ahead and file your appeal and explain why you are unable to get the documents.[615] If you do that, the Appeals Coordinator might grant you additional time to get the documents.[616] Failure to meet the timelines may cause you to lose the opportunity to exhaust administrative remedies; thus, you should always file your appeal as soon as possible after the incident or decision that is the subject of your grievance.[617]

STEP 2: **CDCR has 30 *working* days to respond to your 602 administrative appeal (this is called the "first level" of the appeal process).**

You should receive a response to your 602 within 30 working days (so don't count state holidays or weekends). In most cases, if CDCR *denies* your 602 appeal at the first level of review, you must continue your challenge through all three levels of the administrative appeals process *before* you can start a case in court.[618]

There are special rules for processing 602 appeals concerning miscalculated parole discharge dates. First level review is done by the records office staff.[619] If your appeal is denied at the first level, you can request second level review, which consists of a "computation review hearing." Unless you waive (give up) these rights, you should be notified at least 24 hours before the date and time of the hearing.[620] At the end of the hearing, you should get a copy of the hearing decision on a CDCR Form 1033.[621] If your appeal is denied at this second level, and/or if you are dissatisfied with the hearing decision, you can submit your appeal to the CDCR Appeals Chief for third level review.

If CDCR denies your 602 administrative appeal at the *first* level of review, you have **30 calendar days** to submit a second level appeal.

STEP 3: **If CDCR denies your 602 administrative appeal at the *second* level of review, you have 30 *calendar* days to submit a second level appeal.[622]**

STEP 4: **Finally, if you exhaust (complete) *all three levels* of the 602 administrative appeals process, you can continue to challenge the calculation of your parole length (or any other parole condition) by filing *a state petition for a writ of habeas corpus* in the superior court of the county of your parole. To learn how, see the next question, and Appendix K, PG. 280!**

WHAT IS THE LEGAL TEST FOR FINDING SPECIAL CONDITIONS OF PAROLE UNLAWFUL?

This is a review from PG. 162! Courts have held that parole conditions are invalid if they don't pass the following 4 tests:

TEST 1: A parole condition is invalid if it: (1) has no relation to the commitment offense; (2) bars conduct that is not in itself criminal; AND (3) requires or forbids conduct that is not reasonably related to future criminal conduct or activities. ***You must show that the parole condition is invalid based on all 3 factors*** *(just one or two is not enough).*

TEST 2: A parole condition is invalid if it infringes on (violates) a constitutional right AND is broader than necessary to promote public safety or rehabilitation.

TEST 3: A parole condition may be invalid if it is excessively broad or so vague that your cannot understand or follow it.

TEST 4: A parole condition is invalid if it limits the type of employment you can have, but does not directly relate to your crime.

You will need to explain how the parole condition you are challenging is invalid under one of these legal tests.

IMPORTANT NOTE: If you are challenging the *length of your parole term*, you do not need to use these legal tests, but instead you would explain why the parole term length is incorrect based on the California Penal Code and Title 15 regulations. You would still use the same 602 appeals process described above. To learn more about parole term lengths, see PG. 152.

[615] 15 CAL. CODE REGS. § 3084.3(b).
[616] 15 CAL. CODE REGS. § 3084.3(d).
[617] *See* Ngo v. Woodford (9th Cir. 2008) 539 F.3d 1108; Harvey v. Jordan (9th Cir. 2010) 605 F.3d 681.
[618] 15 CAL. CODE REGS. § 3084.7.
[619] 15 CAL. CODE REGS. § 3084.9(d).
[620] 15 CAL. CODE REGS. § 3084.9(d)(2).
[621] 15 CAL. CODE REGS. § 3084.9(d)(3).
[622] 15 CAL. CODE REGS § 3084.8(b).



WHAT TIMELINES MUST I FOLLOW IN SUBMITTING AN ADMINISTRATIVE APPEAL?

To submit an initial 602 administrative appeal, you have **30 days** after the problem, event or decision occurs, or after having first knowledge about the action or decision being appealed. If Parole's response doesn't satisfy you at the first- or second-level of the appeals process, you have **30 days** to submit a **higher-level appeal**.[623]

Time limits don't stop while you are trying to get supporting documents, so you should file your appeal and explain why you are unable to get the documents on time.[624] The Appeals Coordinator might grant you additional time to get the documents.[625] Failure to meet the timelines could lead to your appeal being rejected and being unable to go to court—so file your appeal as soon as possible after the problem or incident occurs.[626]

PLEASE NOTE: There are special timelines and procedures for submitting (1) emergency appeals (see PG. 180), (2) appeals of involuntary psychiatric transfer, and (3) disability-related appeals (see PG. 183).[627]

WHEN AND HOW DO I FILE AN APPEAL OF AN INVOLUNTARY PSYCHIATRIC TRANSFER?

You must appeal file an appeal of an involuntary psychiatric transfer **within 30 calendar days** of receiving the hearing decision. This appeal must be sent directly to the CDCR Appeals Chief in Sacramento for review. If possible, attach a copy of the hearing decision to your appeal.[628]

WHEN AND HOW DO I FILE AN EMERGENCY APPEAL?

If waiting for answers to an appeal under the normal time limits would cause you serious risk of injury or harm, you may file an emergency appeal and ask for more speedy processing.[629] Circumstances in which an emergency appeal can be filed include when you need protective custody or when you are being transferred to a prison where you have an enemy. If you want to file an emergency appeal, write "Emergency Appeal" on the top of the 602 form and submit it to the Appeals Coordinator. You should explain on the form why the appeal should be treated as an emergency. You may also ask that an action (such as a transfer) be delayed until after the appeal is completed. Intentional misuse of the emergency appeal process may qualify as "abuse" as discussed above.[630] If emergency processing is refused, you will be notified of that; the appeal will either be accepted by the Appeals Coordinator for regular processing or returned with a notice that the appeal is being rejected for some reason.[631] If emergency processing is granted, the first level review is waived or bypassed and the appeal will be sent to the second level. Second level review should be completed within five working days.[632] If you do not agree with the second level decision, you may send the appeal back to the Appeals Coordinator, who will send it electronically to the CDCR Appeals Chief for third level review. The third level decision must be completed within five working days.[633]

WHAT TIMELINES MUST CDCR/PAROLE FOLLOW IN RESPONDING TO MY 602 APPEAL?

CDCR/Parole must respond to your 602 appeals within the following time limits:

- Parole has 30 working days (from date of receipt by Appeals Coordinator) to complete and return to you a first level response to your 602 appeal.[634]
- Parole has 30 working days (from date of receipt by Appeals Coordinator) to complete and return to you a second level response to your 602 appeal.[635]
- Parole has 60 working days (from date of receipt by Appeals Chief) to complete and return to you a third level response to your 602 appeal.[636]

IMPORTANT EXCEPTIONS:

- CDCR/Parole is allowed to exceed the above time limits only in certain situations:
- The parolee, staff, or witnesses are unavailable;
- The complexity of the decision, action, or policy requires additional research;
- It's necessary to involve other agencies or jurisdictions in the appeal; or
- A state of emergency requires CDCR/Parole to postpone "nonessential administrative decisions and actions, including normal time requirements for such decisions and actions."

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[623] 15 CAL. CODE REGS. § 3084.8(b).
[624] 15 CAL. CODE REGS. § 3084.3(b).
[625] 15 CAL. CODE REGS. § 3084.3(d).
[626] See Ngo v. Woodford (9th Cir. 2008) 539 F.3d 1108; Harvey v. Jordan (9th Cir. 2010) 605 F.3d 681.
[627] 15 CAL. CODE REGS. § 3084.5(b)(2) and § 3084.9(a)(3).
[628] 15 CAL. CODE REGS. § 3084.8(g).
[629] 15 CAL. CODE REGS. § 3084.9(a).
[630] 15 CAL. CODE REGS. § 3084.9(a)(2).
[631] 15 CAL. CODE REGS. § 3084.5(b)(2) and § 3084.9(a)(3).
[632] 15 CAL. CODE REGS. § 3084.9(a)(4).
[633] 15 CAL. CODE REGS. § 3084.2(e).
[634] 15 CAL. CODE REGS. § 3084.8(c)(1).
[635] 15 CAL. CODE REGS. § 3084.8(c)(2).
[636] 15 CAL. CODE REGS. § 3084.8(c)(3).)



IMPORTANT!

WHAT CAN I DO IS CDCR/PAROLE IS VIOLATING THE LEGAL TIME LIMITS FOR RESPONDING TO MY 602 ADMINISTRATIVE APPEAL?

Except for the Third Level of a 602 appeal, CDCR/Parole must provide you *in writing* with (1) an explanation of the reasons for delay, and (2) an estimated completion date. This information must be given to you within the time limits listed on PG. 180.[637]

Unfortunately, it is likely that the CDCR Regional Appeals Coordinator office will not provide a formal written response to your 602 appeal within the timelines required by law. Be sure to ask your parole agent and parole agent's supervisor for the formal response to your 602 appeal at **any and all of the three levels of review**. If you have asked for a formal written response, and you do not receive one in person or by mail within a reasonable time, you can:

(1) File another 602 appeal, noting CDCR and Parole's failure to give you a formal response to your 602 appeal within the timelines required by law.
(2) File a state petition for a writ for habeas corpus in your local superior court. State in the petition that because CDCR and Parole didn't send you a formal response to your 602 appeal within the legal timelines, you've *exhausted* (completed) the only administrative appeals process available to you.
(3) Take informal actions to help create a record of what is happening with your original 602, such as:

→ Calling the Regional Appeals Coordinator office requesting a formal response to your 602 be sent to you (document each phone call); AND

→ Writing and send a dated and signed letter to the Regional Appeals Coordinator where you sent the original 602, noting CDCR and Parole's failure to return a formal response to your 602 appeal within the timelines required by law; AND

→ Writing and sending a dated and signed letter directly to the parole field office where you report, with attention to your agent AND your agent's supervisor, noting CDCR's failure to return a formal response to your 602 appeal within the timelines required by law. In the letter you should include:

- Your full name;
- Your CDCR number;
- A brief explanation of the issue(s) that your original 602 appeal(s) was about (include the date that the formal response was due back to you, and how much time has passed since then; what level you are at in the appeals process; and any other facts about the 602 appeal that you believe are relevant); AND
- A copy of your original 602 appeal, if you have one, as evidence of your appeal.

Why are these actions suggested? In the appeals process, it is best to have any problems PUT INTO WRITING in a formal letter to the parole office. This is more helpful than just having informal conversations, which don't leave any documentary evidence..

Where do I send my letters?

1. Send the first letter directly to the parole office where you report, with attendtion to your parole agent AND your agent's supervisor. Visit Parole's website at http://www.cdcr.ca.gov/Parole/Public_Officers_and_Regional_Offices/ to find the address of your parole office. (Click on your region for a full list of offices and addresses.)
2. Send the second letter to the **Regional Appeals Coordinator** for your region (the same office address where you sent your original 602 appeal). There are now two regions of parole; their addresses are below:

Northern Region Parole, Appeals Coordinator, 9825 Goethe Road, Ste. 200, Sacramento, CA 95827-2572
Southern Region Parole, Appeals, 21015 Pathfinder Road Ste. 200, Diamond Bar, CA 91765

CAN MY ADMINISTRATIVE APPEAL BE REJECTED?

An appeal may be rejected by the Appeals Coordinator. There are many reasons why an appeal might be rejected, including not having used and received a response to a Form 22 request.[638] An appeal can also be rejected for filing more than the allowable number of appeals, failing to fill out the form properly, failing to attach supporting documents, trying to address multiple unrelated issues, or submitting an appeal that is too lengthy or too vague.[639] If an appeal is rejected, you should get a notice that tells you why and what you can

[637] 15 CAL. CODE REGS. § 3084.8(e).
[638] 15 CAL. CODE REGS. § 3086(e)(2).
[639] 15 CAL. CODE REGS. § 3084.6(b).



do to correct the problem and get the appeal processed.[640] If an appeal is rejected because of a correctable problem, you should try to correct the problem and resubmit the appeal within 30 calendar days of the rejection.[641] If the problem cannot be corrected and/or you think the rejection decision is incorrect, you can send the appeal back to the Appeals Coordinator with an explanation and/or evidence as to why the appeal should be accepted.[642] Following up on improperly rejected appeals through the highest level is important if you want to preserve your right to file a legal action regarding the original problem, because a rejected appeal may not satisfy the exhaustion of administrative remedies requirement for a lawsuit.[643]

CAN MY APPEAL BE CANCELLED?

An appeal may be cancelled by the Appeals Coordinator if the time limits were exceeded and you could have submitted the appeal within the time limits. An appeal may also be cancelled for other reasons, such as if the issue is not within the CDCR's jurisdiction, if the appeal is a duplicate, if you re-submit a rejected appeal without correcting the defect or explaining why the Prison Law Office Administrative Appeals Letter (October 2015) page 6 correction was not made, or if you refuse to be interviewed or cooperate with the reviewer.[644] If an appeal is cancelled, you should get a notice that tells you why.[645] If you think the cancellation was made in error, and you can provide more information showing that your appeal should not have been cancelled or that there are exceptional reasons why the appeal should be processed; you should send the appeal back to the Appeals Coordinator (or the CDCR third level Appeals Chief if the cancellation was at that level) and ask him or her to exercise discretion to process the appeal.[646] You also can file a new appeal challenging improper application of the cancellation rules; if the appeal was cancelled at the third level, you should send your new appeal directly to the third level Appeals Chief.[647] Again, it is important to follow up on improperly cancelled appeals if you want to preserve your right to bring a legal action about the original problem.

WHAT DOES IT MEAN TO "ABUSE" THE 602 ADMINISTRATIVE APPEAL PROCESS?

In addition to having appeals rejected or cancelled, a prisoner who "abuses" the appeal process may be subjected to other restrictions. Abuse of the appeal process includes submitting more than one non-emergency appeal within a period of 14 calendar days, repeatedly re-submitting appeals that have been cancelled, or submitting an appeal that contains false, obscene, or slanderous, statements, purposely exceeding the space provided on the 602 form, or misusing the emergency appeals process.[648] The first abusive appeal will be processed routinely, but the Appeals Coordinator will begin screening future non-emergency appeals for abuse. If you persistently submit abusive appeals, the Appeals Coordinator will send you a warning letter.[649] If the abuse continues, the Appeals Coordinator will meet with you, and can then suspend processing of your non-emergency appeals and refer the matter to the third level Appeals Chief.[650] The Appeals Chief can decide to restrict you to one non-emergency appeal every 30 calendar days for a period of one year; any further appeal abuse can result in an extension of your restriction period.[651]

I FILED A 602 ADMINISTRATIVE APPEAL AND COMPLETED ALL LEVELS OF THE PROCESS, OR NEVER HEARD BACK. CAN I NOW TAKE MY APPEAL TO COURT?

Yes. If your 602 appeal was denied at all three levels of administrative review, OR if you never received a formal response from CDCR/Parole after an unreasonable delay, you have completed the administrative appeals process (in legal language, we say you have "exhausted" your administrative appeals). If you want to continue challenging the condition of parole (or parole term length), you can now file a state petition for a writ of habeas corpus in the county of your parole.[652]

Through a habeas corpus proceeding, an incarcerated person or someone on parole can ask a court for "injunctive relief." This means you ask a judge to order that prison or parole officials DO something or STOP DOING something. For example, a court could order parole officials to drop an illegal parole condition OR to fix a parole term length miscalculation. For details on filing a habeas corpus petition, see Appendix K, PG. 280.

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[640] 15 CAL. CODE REGS. §§ 3084.5(b)(3) and 3084.6(a)(1).
[641] 15 CAL. CODE REGS. § 3084.6(a)(2).
[642] 15 CAL. CODE REGS. § 3084.6(a)(4).
[643] See Woodford v. Ngo (2006) 548 U.S. 81 [126 S.Ct. 2378; 165 L.Ed.2d 368].
[644] 15 CAL. CODE REGS. § 3084.6(c).
[645] 15 CAL. CODE REGS. § 3084.5(b)(3).
[646] 15 CAL. CODE REGS. § 3084.6(a)(3) and (4).
[647] 15 CAL. CODE REGS. § 3084.6(e).
[648] 15 CAL. CODE REGS. § 3084.4(a) and § 3084.9(a)(2).
[649] 15 CAL. CODE REGS. § 3084.4(b) and (c).
[650] 15 CAL. CODE REGS. § 3084.4(d)-(f).
[651] 15 CAL. CODE REGS. § 3084.4(g) and (h).
[652] Prison Law Office, The Parolee Rights Manual, at 34, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).

HELPFUL HINT
Real-Life Practice Tips for 602 Adminsitrative Appeals

In real life, what often happens is that the Division of Adult Parole Operations (DAPO) Regional Appeals Coordinator sends a formal written response to a 602 appeal, but it never gets delivered to the parolee who filed it. Sometimes the formal response is sent to a parole agent, who fails to deliver it. If something like this happens in your case, and you have not physically received a formal written response to your 602 appeal, then CDCR/DAPO has *not* provided you with a formal written response as required by law.

After 30 working days have passed, you can try asking your parole agent where the formal response to your 602 is and request a copy be sent to you immediately. But if an unreasonable amount of time passes, and you still don't get a formal response, then you have exhausted (completed) the administrative appeals process and can file a state petition for a writ of habeas corpus (or file a second 602 appeal about the delay). If you do not hear back within the time limits set by law, read more about your different options on PG. 181.

Please note: A short delay probably won't be seen as "unreasonable" or count as "exhausting" the administrative appeals process. For example, if the formal response to your appeal was a week late; or if it was filed away by mistake, but your parole agent immedieately fixed the mistake by handing you a copy when you requested it, this may not be see as unreasonable. But if a month or more has passed since your formal response was due and you have asked but not received it, this looks more like an unreasonable delay and an exhaustion of the administrative appeals process, allowing you to bring the case to state court, if you wish.

Remember: The DAPO Regional Appeals Coordinator's response to your 602 appeal, discussed in this box, is different and separate than the parole agent's written response to your Form 22 request.

I FILED A 602 APPEAL CHALLENGING A PAROLE CONDITION. WHAT HAPPENS TO A PENDING 602 APPEAL IF I VIOLATE PAROLE?

It depends. If the parole violation is currently under review and you have not had a new prison or jail term set, it will not have an affect on your pending CDCR Form 602 administrative appeal. However, if you receive a new sentencing term related to your parole violation, the 602 appeal is invalidated. You will have to file a new Form 1515 and Form 602 to restart the process.

HOW CAN I CHALLENGE A PAROLE CONDITION THAT I CANNOT FOLLOW BECAUSE OF A DISABILITY I HAVE?

! **LEARN ABOUT YOUR RIGHTS AS A PERSON ON PAROLE WITH A DISABILITY ON PG. 186! You have rights to be accommodated for physical disabilities, learning disasbilities, and developmental disabilities while on parole.**

If you cannot satisfy a parole condition because of a disability you have, or if the parole condition is unfair to you because of your disability, the steps to challenge that condition are different than the appeals process discussed on PG. 178. First, figure out which agency put the condition on you — Parole or the BPH — and then follow the proper steps described below:

IF THE CONDITION WAS IMPOSED BY PAROLE: Fill out and file a **CDCR Form 1824** "Request for Reasonable Modification or Accommodation" (see a sample Form 1824 in Appendix Q, PG. 291). To learn more about this procedure, read the section on "YOUR RIGHTS ON PAROLE WITH A DISABILITY" at PG. 186.

IF THE CONDITION WAS IMPOSED BY THE BPH: Fill out **BPH Form 1074** "Request for Reasonable Accommodation" (see a sample Form 1074 in Appendix R, PG. 294), and send it to: **BPH ADA COORDINATOR, 1515 K Street, Suite 600, Sacramento, CA 95814**.

If the BPH does not respond in a way that solves the issue, you can submit an appeal to the second and third levels of review (learn more about the different levels of appeal and timelines on PG. 178). (Note: You don't need to file an appeal to challenge most conditions imposed by the BPH, but you do if the condition relates to your disability.)

Find the forms you need online here: http://www.cdcr.ca.gov/BOPH/Inmates_w_Disabilities_Resource.html

IF YOU ARE UNSURE WHETHER PAROLE OR THE BPH IMPOSED THE CONDITION ON YOU: Ask your parole agent if it was Parole or the BPH.

ADDITIONAL RESOURCE

The Prison Law Office (PLO), a nonprofit organization that works on prisoners' rights, has published a detailed information letter describing the rules, timelines, and procedures for administrative appeals. You can obtain this letter for free by writing to the PLO at: **Prison Law Office, General Delivery, San Quentin, CA 94964**. OR visit the Prison Law Office's online Resources page at: www.prisonlaw.com.



A NOTE IF YOU ARE CURRENTLY INCARERATED: For the most part, the 602 administrative appeal process is the same or similar for people currently incarcerated as it is for people released on parole. However, there are some key differences, like the process for challenging health care issues while incarcerated. ***Challenging prison conditions is outside the scope of this guidebook***, which focuses on reentry and the impact of a criminal record on your rights after release. For more information on challenging prison conditions, you can write a confidential, legal letter to Prison Law Office (mailing address and website above).

TRANSFER LOCATIONS ON STATE PAROLE

In this section, you will learn how to request that your parole be transferred: from one county to another county, or from California to a different state.

I WANT TO TRANSFER MY PAROLE TO ANOTHER COUNTY IN CALIFORNIA. HOW CAN I DO THAT?

You can make this request either while you are still incarcerated (recommended!) or after you have been released into the community. If your transfer request is denied, you may challenge the denial by filing a 602 appeal (see above PG. 178).

A NOTE ABOUT INTERSTATE TRANSFERS:

The Interstate Compact for Adult Offender Supervision also governs the rules for all interstate transfers of state probation, including PRCS and mandatory supervision.

How to request a transfer while you're incarcerated:

You can ask your correctional counselor for a Transfer Investigation Request form (TIR)

and to submit it on your behalf.

In filling out your TIR, explain the reasons why being in your requested county will help you be more successful in rehabilitation and reentry. You should also provide supporting documents that back up these reasons, such as letters from supportive family members, from your doctor, and/or from a potential employer..Submit these supporting documents along with your Transfer Investigation Request (TIR).[653]

HELPFUL TIP—REQUEST TRANSFER WHILE INCARCERATED:

If possible, you should make the request for transfer while you are still in prison — when your CDCR Form 611: Release Program Study is being prepared. For more information about Form 611, see Appendix S, PG. 297.

If you are a "lifer" (a person serving a life sentence), your correctional counselor should submit your TIR to the Board of Parole Hearings (BPH). Most likely, the BPH will discuss your request with the district attorney who is responsible for your case before making a decision. *The BPH could deny your transfer request if:*

1. It believes denying your request will better protect the safety of the victim;
2. It believes denying your request will better protect the public's safety;
3. You don't have proof of a work or educational program in your requested county;
4. You don't have family or any other support system in your requested county.[654]

If you are not a lifer, the correctional counselor should submit your TIR to the Division of Adult Parole Operations (DAPO), which will make the final decision about your transfer.[655] DAPO should consider the following in making a decision about the transfer request:

- Any need to protect the safety of the parolee, a victim, a witness, or other person;
- Any public concern that would reduce the chance that parole would be successfully completed;
- A confirmed work offer or an educational or vocational program;
- The existence of family members who have strong ties with you and will support your efforts to complete parole successfully; and
- The presence or lack of any needed mental health treatment programs.[656]

DAPO may deny your request to transfer counties if there are concerns about any of the above. Note: The transfer request process also tends to be slower and more difficult if you have to register under Cal. Penal Code section 290.

How to request a transfer after you are released:

Once you are released from prison, you do not need a special form to request a county transfer; you can and should ask your parole agent directly, in a dated letter and/or in person. We highly recommend that you put your request in writing, make a copy of your request before giving it to your parole agent, and keep your copy in a safe place — just in case you don't receive a response and need to follow up with proof of your original request.

In your request to your parole agent, explain the reasons why being in your requested county will help you be more successful in rehabilitation and reentry. You should also provide supporting documents that back up these reasons, such as letters from supportive family members, from your doctor, and/or from a potential employer.[657]

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[653] CAL. PENAL CODE § 3003(b)(3)-(4).
[654] CAL. PENAL CODE § 3003(b). If you receive treatment pursuant to Penal Code section 2960—BPH may also deny your transfer request if your requested county doesn't have the necessary outpatient treatment programs.
[655] See CAL. PENAL CODE § 3003(b); DOM § 81010.2 et seq. (describes CDCR's parole placement and transfer policy and considerations). See also DOM 81010.11 et seq. (described DAPO's internal procedures forhandling transfer requests); 15 CCR § 3523 (describes direct placement of parolees into DAPO programs in conjunction with a county transfer).
[656] CAL. PENAL CODE § 3003(b).
[657] CAL. PENAL CODE § 3003(b)(3)-(4).

After receiving your transfer request, your parole agent should prepare a Transfer Investigation Request form (TIR) and submit it to the parole unit supervisor. The supervisor should then consider the following factors:

- Any need to protect the safety of the parolee, a victim, a witness, or other person;
- Any public concern that would reduce the chance that parole would be successfully completed;
- A confirmed work offer or an educational or vocational program;
- The existence of family members who have strong ties with you and will support your efforts to complete parole successfully; and
- The presence or lack of any needed mental health treatment programs.[658]

The Division of Adult Parole Operations (DAPO) may deny your request to transfer counties if there are concerns about any of the above. Note: The transfer request process also tends to be slower and more difficult if you have to register under Cal. Penal Code section 290.

HELPFUL HINT

Parole will allow only a limited number of transfers to each county. For this reason, even if all of the factors listed above are in your favor, your transfer request may still be denied. With this in mind, when submitting your request, you should put together the strongest application possible. Gather as much support as you can, especially from your parole agent, correctional counselor, and any other government officials you know — such as judges, district attorneys, and public defenders. It would also be great to get the support of leaders from the community you want to transfer to

I AM ON STATE PAROLE, AND I WANT TO TRANSFER TO ANOTHER STATE. WHEN AND HOW CAN I DO THAT?

IMPORTANT: The same rules for transferring states apply to people on ANY type of state or county supervision. That means if you are on state parole, probation, PRCS, OR mandatory supervision—the process and rules to transfer your supervision to another state are the same. To read about interstate transfer, see PG. 217.

YOUR RIGHTS AS A PAROLEE WITH A DISABILITY

I HAVE A DISABILITY. DO I HAVE THE RIGHT TO GET ACCOMMODATIONS FOR MY DISABILITY WHILE I AM ON PAROLE?

Yes. The Americans with Disabilities Act (ADA) and California state law[659] protect you from discrimination due to your disabilities.[660] There are specific rules and procedures that govern your rights while you are in prison or on parole in California:

- The rules for individuals with *physical disabilities* (such as mobility, hearing, and vision disabilities) and learning disabilities are in the Armstrong Remedial Plan (January 3, 2001, amended December 1, 2010), § IV.S.
- The rules for individuals with *developmental disabilities* are in the Clark Remedial Plan (March 1, 2002), § VIII.

HOW WILL MY PAROLE AGENT KNOW ABOUT MY DISABILITY AND MY RELATED SPECIAL NEEDS?

Your correctional counselor in the prison is required to notify your parole agent about your disability and related special needs. Your correctional counselor should do this by providing information on CDCR Form 611, "Release Program Study" (RPS) (see a copy of this form in Appendix S, PG. 294) and additional specific forms that explain the accommodations you need. If you have a physical disability, your correctional counselor should use CDCR Form 1845 (see example in Appendix T, PG. 300); and if you have a developmental disability, your correctional counselor should use CDCR Form 128C-2 (see example in Appendix U, PG. 303). If you see that the information about your disability is not on your Form 611 RPS, tell your correctional counselor (if you're still incarcerated) or your parole agent (if you're out). If, after you talk to your correctional counselor or parole agent, your disability is still not being recorded or accommodated, file an appeal. The appeal process is explained on PG. 187.

PRACTICAL TIP IF YOU ARE CURRENTLY INCARCERATED, PREPARING FOR RELEASE, AND REQUIRE A DEVICE FOR YOUR DISABILITY:

The prison staff may fail to give you the device you need for your disability when you are released. If this happens to you, inform your parole agent immediately and file a disability-related appeal on CDCR Form 1824 (read more about this special appeals process on PG. 187).

[658] CAL. PENAL CODE § 3003(b).
[659] CAL. GOV'T CODE § 11135 (2011).
[660] 42 U.S.C. § 12131 et seq.



IN GENERAL, WHAT ACCOMMODATIONS MUST PAROLE MAKE FOR PEOPLE WITH DISABILITIES?

If you are a person with a disability, parole staff must make the following accommodations:

1. First, parole staff must make sure that you receive "effective communication" during all orientations, interviews, and supervision meetings, and when you are notified of conditions of parole and registration requirements. This means parole staff must provide any help necessary for you to understand the information being communicated. Examples include: [661]
   - Assistance by a sign language interpreter for a hearing- impaired person;
   - Reading aloud of written materials for a vision-impaired person; or
   - Simplifying information for a developmentally disabled person.
2. Second, parole staff must make reasonable changes to procedures so that you can receive services in a location that is accessible to you. For example:
   - If a disability makes it difficult for you to get to the parole office, the parole agent should meet you somewhere else, such as at your home.
   - If the parole agent refers you to community service such as a drug treatment center, a job center, or a literacy center, the parole staff should make sure that you can actually get to the programs and services offered.
   - If you are required to attend a program at the parole office (such as an outpatient clinic), that program must be accessible considering your special needs.
3. Third, if, while you are in prison, you are using a wheelchair or other healthcare appliance (such as a cane, prosthesis, eyeglasses, or prosthetic eyes), you have the legal right to keep the device when you leave prison, even if the state provided you with the device.
4. Fourth, if parole staff is transporting you somewhere, parole staff must consider all of your disability needs in deciding what mode of transportation to use.
5. Lastly, if parole staff arrests you while you are on parole, they must take your disability into account in deciding whether or how to put physical restraints on you. For example:
   - If you need to use a cane, the parole agent should not cuff you behind your back.

PAROLE IS NOT ACCOMMODATING MY DISABILITY, AND I AM NOT GETTING FAIR TREATMENT OR EQUAL ACCESS TO PAROLE SERVICES OR PROGRAMS. WHAT CAN I DO?

If you are a person with a disability asking for fair treatment or asking for access to parole services or programs, there is a special CDCR appeals process for you. Follow these steps:[662]

STEP 1: Fill out CDCR Form 1824, "Request for Modification or Reasonable Accommodation" (a yellow form, see Appendix Q, PG. 291). If you cannot fill out the form due to your disability, seek help from your parole agent, an advocate, or a friend or family member. All parole offices should have this form. You do ***not*** need to request an informal review through Form 22 (like you do with the regular 602 appeals process), and you do ***not*** need to fill our Form 602, before filing a Form 1824.

STEP 2: If you get a first level response from Parole denying your request, you can appeal to the second level by attaching the original CDCR Form 1824 (find a sample copy in Appendix Q, PG. 291) to a regular CDCR Form 602 administrative appeal (find a sample copy in Appendix J, PG. 277), with Section F of CDCR Form 602 filled out. Send both forms to the Regional Parole Administrator (see Appendix D, PG. 277 for the contact information).

STEP 3: If you get a second level response denying your request, you can send the appeal to the third level for review.

STEP 4: If you get a third level response denying your request, that means you have "exhausted" (completed) *all three levels* of the 1824 disability appeals process, and you can bring the issue to court by filing a *state petition for a writ of habeas corpus* in the superior court of the county of your parole. See Appendix K, PG. 280 to learn how. Find the forms online at: http://www.cdcr.ca.gov/BOPH/Inmates_w_Disabilities_Resource.html

DURING A PAROLE REVOCATION HEARING, DO I HAVE RIGHTS TO ACCOMMODATIONS FOR MY DISABILITY?

Yes. Under the Americans with Disabilities Act (ADA), you have a right to reasonable accommodations for your disability during parole violation/revocation proceedings.[663] For example, parole staff must:

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[661] Armstrong v. Brown Remedial Plan at 4, Bd. of Parole Hearings, CAL. DEP'T OF CORR. & REH.
[662] Armstrong v. Brown Remedial Plan at 4, Bd. of Parole Hearings, CAL. DEP'T OF CORR. & REH.
[663] 42 U.S.C. § 12131 et seq.



- Ensure access to the hearing room if you are a parolee with mobility impairments;
- Provide Braille, taped documents, or reading assistance if you are a vision-impaired parolee;
- Provide assistance in communicating if you are a developmentally disabled parolee;
- Provide sign language interpretation if you are a hearing-impaired parolee.[664]

In addition, parole staff must always use "effective communication" and provide reasonable accommodations when interacting with you — even when they are:

1. Arresting you;
2. Modifying your parole conditions; or
3. Imposing sanctions like flash incarceration.[665]

When revocation proceedings begin, parole staff should alert jail staff and the attorney appointed to you about your special needs.[666] In the courtroom, your attorney and the court should be responsible for ensuring your needs are met throughout the court process.[667]

KEEP IN MIND: If you have a disability and are on parole, and you are having problems receiving help from parole staff, you can submit a CDCR Form 1824, "Request for Modification or Reasonable Accommodation," (read more on PG. 187).

STATE PAROLE VIOLATIONS & REVOCATIONS

Under AB 109, California's "Realignment" law, there were major changes to the procedures required for California state parole revocations. These changes took effect on July 1, 2013.[668] The new rules for revocation hearings laws are explained in this section.

HOW DID REALIGNMENT CHANGE THE WAY PAROLE REVOCATION HEARINGS WORK (AS OF JULY 1, 2013)?

1. ***CHANGE TO WHO HEARS THE CASE***

The biggest change is that local county superior courts will now hear most parole revocation cases.[669] Before July 1, 2013, the Board of Parole Hearings (BPH) was responsible for hearing all parole revocation cases, and now that responsibility has mostly shifted to the courts.[670] Superior court judges will hear these cases in state court.[671] One idea behind this change was to create more transparency and fairness by having independent, unbiased judges hear the cases and weigh the evidence.

NOTE FOR FORMER "LIFERS":

This change in the law means that if you were a "lifer" in prison, your parole revocation hearing will be before the BPH, not the local county superior court.

However, the BPH will continue to hear certain cases — specifically:

- Parole consideration for lifers (also called "parole suitability hearings");
- Medical parole hearings;
- Cases regarding mentally disordered offenders (MDOs); and
- Cases regarding "sexually violent predators."

2. ***CHANGE TO WHERE YOU SERVE A SENTENCE FOR A PAROLE VIOLATION***

- If your parole is revoked for a violation that occurred *on or after July 1, 2013*, you will be sentenced to COUNTY JAIL, not state prison.
- If your parole is revoked for a violation that occurred *before July 1, 2013*, you would have been sent back to STATE PRISON. so this is a big change in the law.
- EXCEPTION: This change does not apply to a parolee who is classified as a "serious offender" — meaning a parolee who was a life-term prisoner under California Penal Code § 3000.1, or one who was convicted of certain sex offenses under California Penal Code § 3000(a)(4)). If you fall under this classification, you will still be sent back to state prison to serve time for a parole revocation. The BPH retains control of your case, and will later decide whether to release you back onto parole.[672]

3. ***CHANGE TO THE AMOUNT OF TIME YOU SERVE***

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[664] See Prison Law Office, The Parolee Rights Manu (updated Aug. 2013) at 43, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf
[665] See Armstrong Remedial Plan (Jan. 3, 2001), § IV.S; Clark Remedial Plan (Mar. 1, 2002), § VIII.
[666] See Armstrong Remedial Plan (Jan. 3, 2001), § IV.S; Clark Remedial Plan (Mar. 1, 2002), § VIII.
[667] See Armstrong Remedial Plan (Jan. 3, 2001), § IV.S; Clark Remedial Plan (Mar. 1, 2002), § VIII.
[668] See CAL. DEP'T OF CORR. & REH., Fact Sheet: 2011 Public Safety Realignment, http://www.cdcr.ca.gov/realignment/docs/realignment-fact-sheet.pdf.
[669] CAL. PENAL CODE § 3000.08(a).
[670] CAL. PENAL CODE § 3000.08(j).
[671] CAL. PENAL CODE §§ 1203.2(b)(1) and (f).
[672] CAL. PENAL CODE § 3000.08(f)(1).



If you serve your parole violation (revocation) term in county jail, you will serve a maximum of **180 days**.[673] Most people serve their parole revocation terms in county jails.

But if you are a former lifer, you may serve a maximum of **12 months** in prison for a parole violation.[674] If your maximum parole period is life-long (this may be true if your commitment offense was murder or a sex offense), you may be sentenced to up to a year in prison for a revocation — and, at some point during that year, the BPH may determine that you should be incarcerated longer.[675]

IF I AM SUSPECTED OF A PAROLE VIOLATION, WHO HAS AUTHORITY TO ARREST ME? DO THEY NEED A WARRANT?

A parole agent or police officer can arrest you if he or she has *probable cause* to believe you violated a parole condition. (By law, a belief supported by "probable cause" is defined as the reasonable belief of a reasonable person looking at the specific facts of the situation.)[676] BUT the arresting agent/officer *does not need a warrant*. A judge COULD issue a warrant for your arrest, but does not have to. (CAL. PENAL CODE § 3000.08(c)). If the parole agent suspects that you have violated a parole condition, you can be arrested by a parole agent or peace office at any time until the judge makes a "final disposition" (a final decision about your guilt or innocence in the case).[677]

WHAT HAPPENS IF I AM ARRESTED FOR AN ALLEGED PAROLE VIOLATION?

Here is what you can expect if you are arrested for an alleged parole violation:

1. After an arrest, a CDCR parole agent can place you on "hold" — meaning he or she can place you in jail until further proceedings take place.[678]
2. Once you are on "hold," parole staff decides if there is "good cause" to believe that you violated a law or parole condition. The staff does not have to hold a hearing or give you a chance to provide more information, but they have to make this decision among themselves.[679]
3. What happens next? It depends on whether CDCR staff finds probable cause to believe you committed the alleged violation.

- If CDCR staff does not find probable cause, you will be re-released on parole.[680]
- If CDCR staff does find probable cause, they must decide whether "intermediate sanctions" can address the violation, or whether a formal revocation proceeding needs to happen. Intermediate sanctions might include:
- New parole conditions;
- Sending you to a special reentry court;
- Requiring your participation in treatment or rehabilitation programs; or
- "Flash incarceration," which is detention in the county jail for up to 10 consecutive days.[681]

4. If CDCR staff decides that intermediate sanctions are not enough, they will file a formal parole revocation petition in the local superior court.[682]

- The CDCR's petition should describe:
  - The relevant conditions of parole;
  - The circumstances of the violation;
  - The history and background of the parolee (you); and
  - Parole staff's recommendations for disposition (meaning: their recommendations as to what the outcome of the parole revocation petition should be).
- At this point, CDCR staff should tell you your rights, including: (1) the right to consult with a lawyer, and (2) if you can't afford to hire a lawyer, the right to have the court appoint you a lawyer for free (the public defender). We recommend that you consult with an attorney or public defender before waiving (giving up) any rights.

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[673] CAL. PENAL CODE § 3000.08.
[673] CAL. PENAL CODE § 3056(a).
[674] CAL. PENAL CODE § 3057(e).
[675] CAL. PENAL CODE § 3000.1(d).
[676] *See* Brinegar v. United States, 338 U.S. 160, 175 (1949).
[677] CAL. PENAL CODE § 3000.08(c).
[678] CAL. PENAL CODE §§ 1203.2(a), 3000.08(c), and 3056; People v. Woodall, 216 Cal. App. 4th 1221 (2013).
[679] CAL. PENAL CODE § 3000.08(d).
[680] CAL. PENAL CODE § 3000.08(c).
[681] CAL. PENAL CODE §§ 3000.08(d)-(f). Please note that the PRCS 1515 form includes a flash incarceration waiver, http://www.cdcr.ca.gov/realignment/regionaltrainingdocs/Tanya/CDCRFORM1515-CSPRCS(07-11).pdf.
[682] CAL. PENAL CODE § 3000.08(f).





IMPORANT: The CDCR may inform you that you have the right to waive both your right to an attorney and your right to a hearing, admit the parole violation, and accept the CDCR's proposed revocation term (sometimes called a "screening offer"). The waiver of an attorney or hearing must be in writing.[683] Again, before you waive any rights, WE RECOMMEND THAT YOU ASK TO SPEAK TO AN ATTORNEY, AND IF YOU CANNOT AFFORD ONE, THAT YOU WAIT FOR YOUR FREE ATTORNEY TO MEET WITH YOU. Please note: There is currently no timeline required for these steps to happen, which is concerning.

Currently, the law does not set any timelines for parole revocation steps.[684] CDCR staff are supposed to make a probable cause determination within 2 business days after a hold is placed on you, notify you of your charges and rights within 3 business days after the hold, and either file a revocation petition with the court or release you within 7 business days after the hold. But these timelines are not formal regulations, and the CDCR is not obligated to enforce them.

SUMMARY

If I have been arrested for an alleged parole violation, what three types of actions can parole staff decide to take against me?

1. Intermediate sanctions: new parole conditions, reentry court, and treatment or rehabilitation programs.
2. Flash incarceration for up to 10 days. No court involvement required.[685]
3. Petition the local superior court for a formal revocation under California Penal Code § 1203.2.[686]

WHERE CAN I FIND THE LEGAL RULES THAT APPLY TO PAROLE REVOCATION HEARINGS?

California Penal Code Section 1203.2.

WHO REPRESENTS THE CDCR'S PAROLE DEPARTMENT IN THE HEARING?

The district attorney.

WHO REPRESENTS ME IF I CANNOT AFFORD AN ATTORNEY?

The public defender.

WHAT IS THE LEGAL STANDARD FOR FINDING ME GUILTY OF A PAROLE VIOLATION?

At the parole revocation hearing, the judge must decide whether a "preponderance of the evidence" (meaning more than half of the evidence) supports the charges. In other words, the district attorney must prove that it is *more likely than not* that you violated parole.

IF I GO TO JAIL ON A PAROLE VIOLATION, AM I ENTITLED TO BAIL?

No.[687] You have no right to bail on a pending parole violation charge.[688] However, a court could still grant it. Once a court has "jurisdiction" (legal authority) over a petition to revoke your parole, the court can set bail and release you "on your own recognizance" (leaving it up to you to return for the revocation hearing).[689] If you are not released on bail, your revocation hearing should be held within 90 days.[690]

WHAT RIGHTS DO I HAVE DURING A PAROLE REVOCATION HEARING?

The superior court judge cannot suspend or revoke your parole unless there is "good cause" (a good reason) to believe that you have violated your parole conditions.[691]

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[683] CAL. PENAL CODE § 3000.08(f).
[684] The Valdivia Injunction, which previously set timeliness requirements on the parole revocation process, is no longer in effect. Because of the major changes in parole laws, the court overseeing Valdivia decided that the case is "moot" (meaning no longer applicable) and that any problems with the new parole revocation procedures will have to be raised in new cases. Thus, advocates for people on parole have expressed concerns that there could be long delays between the placement of parole holds in jail and CDCR's filing of revocation petitions. Advocates are also concerned that parolees may be pressured into giving up their rights and taking "screening offers" (like a parole revocation plea bargain) without having an opportunity to consult with an attorney. See also Prison Law Office, The Parolee Rights Manual at 43, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf.
[685] Cal. Penal Code § 3000.08.
[686] Cal. Penal Code § 1203.2.
[687] Cal. Penal Code § 3056.
[688] In re Law, 10 Cal.3d 21, 26. (1973) (no due process right to bail while parole violation proceedings are pending).
[689] CAL. PENAL CODE § 3056.
[690] CAL. PENAL CODE § 1381.5; Gonzalez v. Superior Court, 166 Cal. App. 4th 922 (2008).
[691] CAL. PENAL CODE § 3063. Note: In Morrissey v. Brewer, the U.S. Supreme Court established the minimum due process requirements for parole revocation proceedings under the Fourteenth Amendment to the U.S. Constitution. Cases since Morrissey have reaffirmed those rights and described them with greater detail.



As a parolee, you have the following rights:

1. The right to receive written notice of the alleged violation (the rule or law that Parole claims you have broken) and possible consequences, with enough information to allow you to prepare a defense and obtain evidence that can help explain or justify your actions.[692]
2. The right to have Parole disclose any evidence against you (just like at trial).[693]
3. The right to timely hearing of the charges — including a probable cause hearing and a formal revocation hearing (within 90 days if you were not granted bail).[694]
4. The right to present witnesses and documentary evidence.[695]
5. The right to confront and cross-examine witnesses who speak against your interest[696] You have a conditional right under the U.S. and California constitutions to cross-examine people whose statements are used against you in a parole violation proceeding.[697] BUT SEE NOTE BELOW!
6. The right to a "neutral and detached hearing body" (meaning a fair and unbiased judge).[698]
7. The right to receive a written statement of the decision, the evidence relied on, and the reasons for revoking parole.[699]



IMPORTANT! You may waive (give up) your right to a revocation hearing by admitting that you violated parole.[700] If you believe your rights are violated during the process or in a hearing, say something and tell your lawyer. If you are unsure if your rights have been violated, or if you don't understand your rights, ask your lawyer or public defender. If you do not have a lawyer or public defender, call your local public defender's office.

WHEN CAN WITNESSES BE EXCUSED FROM APPEARING AT MY PAROLE REVOCATION HEARING?

Witnesses may not be required to testify in front of you at your parole revocation hearing if they are considered to be *fearful* or *confidential*.[701] Before your hearing, talk with your lawyer about all potential witnesses — those for you *and* those against you.

- **"Fearful witnesses"** are witnesses whose identity is known to you but who: (1) have indicated that they are at a risk of harm if they testify in your presence; or (2) have requested that their contact information be withheld from you. Testimony of a fearful witness can be taken outside the parolee's presence, but your attorney must be present.
- **"Confidential witnesses"** are witnesses, whose identity is not known to you, and who would be at a risk of harm if their identity were disclosed.[702] However, if confidential information is used as part of the evidence that you violated parole, you can ask the District Attorney (prosecutor) to show you this information. If the District Attorney refuses to show you this information, then he or she must prove that showing you this information would create a risk of harm to the informant.

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[692] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972); Vanes v. U. S. Parole Comm'n, 741 F.2d 1197 (9th Cir. 1984) (due process violated by lack of notice of basis for parole violation charge); Rizzo v. Armstrong, 921 F.2d 855, 858 (9th Cir. 1990) (failure to give notice of consequences if parole revoked at hearing).

[693] Morrissey v. Brewer, 408 U.S. 471, 498, 92 S. Ct. 2593 (1972) ("As we said in another connection in Greene v. McElroy, 360 U.S. 474, 496–97 ("Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."). See also People v. Moore, 34 Cal. 3d 215 (1983) (state has duty to preserve and disclose material physical evidence).

[694] Morrissey v. Brewer, 408 U.S. 471, 485 (1972); People v. Woodall, 216 Cal. App. 4th 1221 (2013) (probation revocation procedures that fail to provide probable cause hearing do not violate due process rights if full hearing occurs relatively soon or if preliminary hearing on any new criminal charges is conducted). See also CAL. PENAL CODE § 1381.5; Gonzalez v. Superior Court, 166 Cal. App. 4th 922 (2008).

[695] See Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972). You can subpoena and present witnesses and documentary evidence to the same extent that the State can (In re Carroll, 80 Cal. App.3d 22, 34 (1978)).

[696] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972); Valdivia v Schwarzenegger, 599 F.3d 984, 989 (9th Cir. 2010).

[697] U.S. CONST. amend. VI; CAL. CONST. art. I, § 15. Thus, upon your request, the people who gave the information that proves the parole violation charge should be made available for you to question them at the hearing, unless the judge determines that requiring the witness to appear would create a risk of harm. If the state has "good cause" (a good explanation or reason) for failing to present a witness and that good cause outweighs your right to confront the witness, the witness's prior statements may be presented at the hearing, even if those statements were made outside of court. The more important the witness's testimony is to the case, the stronger your right to confront and cross-examine that witness is. Courts may overturn a parole revocation if the hearing officer relies on unsworn hearsay (out of court statements) without determining the unavailability of the declarant or the reliability of the hearsay, or without considering the parolee's interests prior to admitting the evidence. See, e.g., In re Miller, 145 Cal. App. 4th 1228 (2006).

[698] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972).

[699] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972).

[700] In re La Croix, 12 Cal. 3d 146, 153 (1974).

[701] Morrissey v. Brewer, 408 U.S. 471, 487 (1972).

[702] See U.S. v. Comito, 177 F.3d 1166 (9th Cir. 1999); In re Melendez, 37 Cal. App. 3d 967, 973 (1974); In re Prewitt, 8 Cal. 3d 470, 477-78 (1972); In re Love, 11 Cal. 3d 179 (1974) (due process violation in failure to disclose contents of "confidential" report where disclosure would not endanger any informant).



WHAT HAPPENS IF AN IMPORTANT STATE WITNESS DOESN'T SHOW UP TO MY PAROLE REVOCATION HEARING?

If a "material" (essential) state witness fails to attend your parole revocation hearing and the hearing cannot fairly proceed without the witness, the court can postpone the hearing or dismiss the case against you.

To decide whether the witness's testimony would be "material," the court should balance the importance of the witness's expected testimony against the availability and reliability of another source of the same information. Also, if the state's material witnesses fail to appear, but *your witnesses* are present, you and your attorney may want to ask that the judge take the testimony of your witnesses before postponing the rest of the hearing.

AT MY PAROLE REVOCATION HEARING, CAN THE DISTRICT ATTORNEY BRING EVIDENCE THAT WAS FOUND IN AN UNLAWFUL SEARCH OR SEIZURE?

Yes. Unfortunately, the "exclusionary rule," which applies in criminal cases, does not apply in parole revocation hearings. This means that unlawfully obtained evidence may be used against you in your parole revocation hearing — even if it would be excluded from a criminal court trial, and even if actually was excluded from a criminal court trial related to the same issue.[703]

SUMMARY OF SENTENCING

The court's 3 options for sentencing/punishing you if it finds that you violated parole are:

1. Return you to parole supervision with changes (called "modifications") to your conditions of parole, including possible time in county jail;
2. Refer you to a Reentry Court or other Evidence-Based Practice program; or
3. Revoke your parole and order confinement.[704]

IF THE JUDGE REVOKES MY PAROLE AND ORDERS ME BACK INTO CUSTODY, WHERE WILL I SERVE AND FOR HOW LONG?

It depends on your conviction history.

(1) MOST PEOPLE – Almost everyone who has his or her parole revoked will serve the parole revocation sentence in county jail.[705] You will most likely get 180 days in county jail, even if there were multiple grounds for the revocation.[706]

You can earn "half-time" credit on parole revocation sentences (meaning 2 days "good conduct credit" for every 2 days actually served in custody), regardless of the nature of the commitment offense or parole violation. If you are serving a parole revocation sentence and you violate jail rules or refuse to do assigned work, then you may lose some or all of your good conduct credits.[707]

(2) FORMER "LIFER" –There are different rules if you are on parole after serving an indeterminate prison term of "life with the possibility of parole." If you are a former lifer:

- You can get a parole revocation sentence term of up to 12 months;
- You are not entitled to earn good conduct credits; and
- Your revocation sentence could be extended if you violate rules while you are in custody.[708]

(3) CERTAIN SEX OR MURDER CONVICTIONS – There are also different rules for people convicted of certain sex offenses or certain murder convictions:[709]

- If you have life-long parole (some people convicted of sex offenses or murder) and it gets revoked, you'll be sent back to prison, not county jail.[710]
- Within 1 year of being returned to prison, a two-member BPH panel will hold a hearing. The panel must release you within 1 year of the date of the revocation—unless it determines the seriousness of the parole

[703] See Penn. Bd. of Prob. & Parole v. Scott, 524 U.S. 35 (1998) (exclusion of evidence at parole hearing would hinder functioning of parole system); In re Martinez, 1 Cal. 3d 641, 649-52 (1970), disapproved on other grounds in In re Tyrell J., 8 Cal. 4th 68 (1994); In re Love, 11 Cal. 3d 179, 190 (1974).
[704] CAL. PENAL CODE §§ 3000.08(f)-(g), 3004(a), 3056(a).
[705] CAL. PENAL CODE § 3056(a).
[706] CAL. PENAL CODE § 3056(a). A parolee may not be kept in custody beyond the maximum parole discharge date (see Section 16.C, above). You are no longer subject to extensions of your revocation sentence for in-custody misconduct (meaning bad behavior while you are in jail/custody). See CAL. PENAL CODE § 3057(e).
[707] CAL. PENAL CODE § 4019.
[708] CAL. PENAL CODE § 3057(e).
[709] CAL. PENAL CODE § 3000.1(d).
[710] CAL. PENAL CODE §§ 3000.08(h), 3056(b).

violation requires longer incarceration for public safety. If the two-member BPH panel keeps you in prison longer than 1 year, you have the legal right to a parole consideration hearing every year afterwards.[711]

WHAT RIGHTS DO I HAVE IF I AM A PERSON WITH A DISABILITY GOING THROUGH PAROLE REVOCATION PROCEEDINGS?

Under a federal law called the Americans with Disabilities Act (ADA), you have the legal right to reasonable accommodations during parole violation/revocation proceedings.[712] Examples of accommodations could include:

- Ensuring access to the hearing room for a parolee with mobility impairments;
- Providing Braille, taped documents, or reading assistance for a vision-impaired parolee;
- Providing assistance in communicating for a developmentally disabled parolee; OR
- Providing sign language interpretation for a hearing-impaired parolee.[713]

Just like all other aspects of parole, the CDCR's parole staff must use "effective communication" and provide reasonable accommodations when interacting with you. That means that they must use effective communication and provide reasonable accommodations when:

1. Arresting you;
2. Modifying your conditions of parole; or
3. Imposing sanctions like flash incarceration.[714]

KEEP IN MIND: If you are on parole and have disabilities, and you are having problems receiving help from parole staff, you can submit a CDCR Form 1824, "Request for Modification or Reasonable Accommodation," (learn more on PG. 187). CDCR parole staff should also alert jail staff and the lawyer appointed to represent you about what your needs are when revocation proceedings begin.[715]

HOW DO I CHALLENGE (APPEAL) A PAROLE REVOCATION DECISION OR ACTION MADE BY THE COUNTY SUPERIOR COURT?

If you are challenging a decision made by the county superior court, you should be able to file a direct appeal under the statute that allows an appeal "from any order made after judgment, affecting the substantial rights of the party."[716] Follow these steps:

STEP 1: **To appeal, the parolee must file a Notice of Appeal in the Superior Court within 60 calendar days after the original court's decision.**[717]

STEP 2: **When a timely Notice of Appeal is filed, the Superior Court will prepare a record of the parole revocation proceedings consisting of all the documents filed in the original court and transcripts of the hearings, and will then provide these documents to the Court of Appeal, the State, and you (the parolee). In a direct appeal, the Court of Appeal must appoint a free attorney to represent you if you do not have enough money to pay for a private attorney.**[718]

IMPORTANT: If you do not file a timely Notice of Appeal, or if the issue involves information outside the court record, then you may be able to raise the issues in a state court petition for a writ of habeas corpus.

WHAT TYPES OF ISSUES COULD I BRING UP IN A CHALLENGE TO PAROLE REVOCATION PROCEEDINGS, DECISIONS, OR ACTIONS?

There are many types of issues that you can raise in a challenge to a revocation proceeding or decision. For this reason, we recommend that you speak with your attorney if you believe that your rights have been violated! Your claim could be based on violations of state or federal constitutional due process rights, California or federal statutes, or California administrative rules. For example, you could argue that:

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[711] CAL. PENAL CODE § 3000.1(d).
[712] 42 U.S.C. § 12131 et seq.
[713] See Prison Law Office, The Parolee Rights Manu (updated Aug. 2013) at 43, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf.
[714] See Armstrong Remedial Plan (Jan. 3, 2001), § IV.S; Clark Remedial Plan (Mar. 1, 2002), § VIII.
[715] See Armstrong Remedial Plan (Jan. 3, 2001), § IV.S; Clark Remedial Plan (Mar. 1, 2002), § VIII.
[716] CAL. PENAL CODE § 1237(b).
[717] CAL. RULES OF COURT, rule 8.308.
[718] CAL. RULES OF COURT, rule 8.300.



- The revocation hearing is being unreasonably delayed;
- You were denied the right to cross-examine witnesses at the parole revocation hearing; or
- The evidence did not support the revocation decision.

UNFORTUNATELY—in most cases, the process for raising such challenges will be too slow to provide you any relief before you have served the entire parole revocation sentence term. BUT You may still benefit by:

- Getting your parole revocation cases re-heard;
- Getting their revocations vacated; and/or
- Getting the time served for the revocation deducted from the controlling parole discharge date.

WHAT IS THE PROCESS FOR APPEALING A DECISON MADE BY CDCR?

You can challenge a CDCR action or lack of action in these stages by filling out a CDCR Form 602 administrative appeal (see Appendix J, PG. 277 for copy of form) and submitting it to the CDCR's parole agent.

Possible uses for a 602 appeal include challenging the CDCR's decision to place a parole hold or find probable cause for a violation, asking for an attorney for the early stage of the revocation process, or challenging a delay by CDCR in filing a formal petition.[719]

There are two reasons for filing a CDCR Form 602 administrative appeal and re-filing it to the highest level necessary:

1. First reason—It might solve the problem.
2. Second reason—Courts usually require you to "exhaust administrative remedies," meaning you filed an appeal and completed all three levels of review before filing a case in court.[720]

After completing any required administrative remedies, you can challenge a CDCR or BPH action or decision by filing a state court petition for a writ of habeas corpus. If the judge issues an "order to show cause," it must appoint a free lawyer to represent you if you request one and show that you do not have enough money to pay for a private lawyer.[721] See Appendix K, PG. 280 for information on when and how to file a state court petition for a writ of habeas corpus.

[719] Prison Law Office, The Parolee Rights Manual, at 34, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (Aug. 2013).
[720] See In re Dexter, 25 Cal.3d 921, 925 (1979).
[721] Prison Law Office, The Parolee Rights Manual, at 34, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf (updated Aug. 2013).



III. COUNTY-LEVEL COMMUNITY SUPERVISION: PROBATION, PRCS, AND MANDATORY SUPERVISION

WHAT WILL I LEARN ABOUT COUNTY PROBATION, PRCS, AND MANDATORY SUPERVISION?

- **How California's "Realignment" law changed county-level probation and supervision**
- **The different types of county-run supervision: informal probation, formal probation, post-release community supervision, and mandatory supervision**
- **Terms and conditions of probation and supervision**
- **How to request a change to your probation or supervision conditions**
- **How to request a transfer to a different county**
- **What to do if your probation or supervision is revoked**
- **What happens at a probation revocation hearing**
- **How to challenge probation conditions**
- **How to challenge probation revocation**

For certain state convictions, the judge may sentence you to a form of county-level supervision as part (or all) of your sentence. This can happen in a few different ways:

1. You may be sentenced to serve some time in county jail, followed by a term on county probation or on California's new Mandatory Supervision; OR
2. You may be sentenced to serve time in state prison, followed by a term on California's new Post-Release Community Supervision; OR
3. You may be sentenced directly to a term of probation (without any time served in jail).

Continue reading to learn more!

WHAT IS COUNTY PROBATION?

Probation is a suspended state prison or county jail sentence.[722] In other words, instead of doing the full amount of time in custody (in prison or jail), you can stay in the community under supervision and be required to follow certain rules and conditions.[723] The primary purpose of probation is rehabilitation.[724]

All probation sentences are different. However, there are some *standard conditions* that apply to most, if not all, people on county-level probation in California. If you have a disability, you should get certain accommodations on probation, so make sure you see PG. 186 to learn about requesting the accommodation(s) you need. Each county is responsible for running its own probation department, and each of these departments has its own specific rules.

HOW DID CALIFORNIA'S "REALIGNMENT" LAW CHANGE CALIFORNIA'S COUNTY-RUN PROBATION SYSTEM?

The Realignment law ("AB 109") fundamentally changed *sentencing law* and created new forms of community supervision in California. Because of prison overcrowding, the U.S. Supreme Court ordered California to reduce the number of people it was holding in state prisons. To do this, California decided to keep only people convicted of certain serious felonies in prison. For people convicted of felonies that are "non-serious" and "non-violent," California transferred responsibility from the state prisons and parole board to the county jails and probation departments. This means that:

- If you were convicted after October 1, 2011, of a felony that falls within the Realignment definition of non-serious, non-violent, and non-sexual (the 3 "nons" or "non-non-non"), you will serve your time in county jail instead of state prison. (You also must not have any prior serious, violent or sexual felony convictions.) Under Realignment, you may also be allowed to serve some of your sentence on community supervision, instead of spending the full term in custody.

[722] CAL. PENAL CODE § 1203.1(a).
[723] Cal. Penal Code § 1203(a).
[724] People v. Scroggins, 191 Cal. App. 3d 502, 505 (1987).



- If you were convicted of a "non-non-non" with no priors before October 11, 2011, and you are serving your sentence in prison, you will be put on county-level supervision (PRCS) instead of state parole when you are released.

Here are the 4 types of community supervision after Realignment: (1) **informal probation** (also known as "summary" or "court" probation); (2) **formal probation**; (3) **post-release community supervision (PRCS)** (new after Realignment) and (4) **mandatory supervision** (new after Realignment).

WHAT TYPES OF SUPERVISION NOW FALL UNDER THE CONTROL OF COUNTY PROBATION AFTER REALIGNMENT?

Here is a quick overview of the different types of supervision that are now under the control of county probation departments in California after Realignment:

1. **Informal Probation** (also called summary or court probation): Informal probation is a type of supervision in which you are supervised by the court, not by a probation officer. A judge may order informal probation for misdemeanor convictions, but not for felony convictions at the time you're sentenced; however, if you receive formal probation for a felony conviction, your supervision level may be later reduced to informal probation.[725] To learn more, go to PG. 196.
2. **Formal Probation**: Formal probation is a type of supervision in which you are supervised by a probation officer. It's the minimum supervision that a judge can order for a felony conviction, and it can also be given out for some more serious misdemeanor convictions and people who have prior convictions.[726] To learn more, go to PG. 200.
   (Note: Depending on the type of felony, you may not be on probation, but rather on state parole, which is covered separately, beginning on PG. 143.)
3. **Post-Release Community Supervision (PRCS)**: PRCS is a new type of supervision created by Realignment. Now, people who are released from state prison after serving a sentence for a non-violent, non-serious, non-sexual crime will be supervised by local county probation officers instead of state parole officers. PRCS can last up to 3 years, but will end after 1 year if you do not violate any of your PRCS conditions.[727] To learn more, go to PG. 202.
4. **Mandatory Supervision:** Mandatory supervision is also a new type of supervision created by Realignment. If you were convicted of a "non-non-non" felony, judges in California state courts can now use a tool called "split sentencing," which splits the time of your sentence between time in jail and a period of supervision by a county probation officer. This period of supervision after the jail term is called mandatory supervision.[728] To learn more, go to PG. 208.

INFORMAL PROBATION (A.K.A. SUMMARY PROBATION OR COURT PROBATION)

BASICS OF INFORMAL PROBATION

WHAT IS INFORMAL PROBATION (A.K.A. SUMMARY PROBATION OR COURT PROBATION)?

Informal probation (also known as "summary" probation or "court" probation) is a type of supervision in which you are supervised by the court, and not by a probation officer. If you are convicted of a misdemeanor in California, you *may* be placed on informal probation.[729] Note: You may also end up on informal probation if, after you have spent a certain amount of time on formal probation, probation decides to lower your supervision level.

WHO WILL MONITOR ME UNDER INFORMAL PROBATION?

The County Superior Court.

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[725] See CAL. PENAL CODE § 1203(a). Informal probation is known under the penal code as a "conditional sentence."
[726] See CAL. PENAL CODE § 1203(a-d).
[727] See CAL. DEP'T OF CORR. & REH., Post-Release Community Supervision, http://www.cdcr.ca.gov/realignment/Post-Release-Community-Supervision.html.
[728] For more information on split sentences, see University of California Berkeley: The Chief Justice Earl Warren Institute on Law and Social Policy, Thinking Critically About Realignment in California, https://www.law.berkeley.edu/files/bccj/Thinking_Critically_3-14-2012.pdf.
[729] Cal. Penal Code § 1203(d).



AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON INFORMAL PROBATION

WHAT ARE SOME GOOD FIRST STEPS TO TAKE WHEN I AM FIRST PLACED ON INFORMAL PROBATION?

Instructions for what to do when you first start your probation term will be different depending on what county you are being supervised in. The best thing to do when you are first placed on informal probation (whether you were in jail or not), is to call or visit your county probation department immediately to find out what requirements and instructions apply to you.

LENGTH OF INFORMAL PROBATION

HOW LONG IS INFORMAL PROBATION?

The length of your informal probation depends on what the court ordered, which usually depends on what county you are being supervised in. Under state law, your period of informal probation may last up to five years, but it is often less, depending on the county you were convicted in.[730] Each county sets its own mandatory minimum probation term (which can be as low as one year). Remember, every county in California operates differently.[731]

GETTING OFF INFORMAL PROBATION

CAN I GET OFF INFORMAL PROBATION EARLY?

Possibly. California law allows you to ask the court to be released early from your informal probation term.[732] Some people are able to satisfy all of the conditions of their probation (all of the things the court orders you to do, such as attend counseling or pay restitution) before their probation term is up. For this reason, judges are often willing to release people from probation early.[733] The process is the same for asking a court to terminate your informal probation, formal probation, or mandatory supervision early. If the judge grants your request (called a "motion") to end your informal probation early, then you might also be able to ask for certain convictions to be dismissed from your record! For more information on how to file a Motion for Early Termination of Probation, and how to request a dismissal of your eligible convictions, please see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

CONDITIONS OF INFORMAL PROBATION

I AM ON INFORMAL PROBATION. WHAT CONDITIONS WILL THE COURT IMPOSE ON ME?

Once informal probation is ordered, the court will decide what conditions of probation to impose on you. Below is some general information to know about your conditions of probation.

Conditions set by the Criminal Court Judge:

The judge in the criminal court has a lot of freedom in determining the conditions of your informal probation, and can impose any *reasonable* conditions for the purposes of rehabilitation or to protect the community.[734] However, the court cannot impose a condition that is unreasonable or that does not properly take into consideration the circumstances of your case.[735] Informal probation conditions differ from offense to offense.

Some common examples of informal probation conditions are:

- **"Violate no laws" –** This is a general condition for everyone on informal probation, that means you cannot break any laws while you are on informal probation (minor traffic offenses do NOT count);
- **No-contact (stay-away) orders –** These prevent you from being around or communicating with certain individuals;

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[730] CAL. PENAL CODE § 1203.1(a).
[731] For example, in Alameda County, informal probation is almost always 3 years.
[732] CAL. PENAL CODE § 1203.3(a). "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."
[733] Information/advice taken from: http://californiaexpungementhelp.com/early-termination-of-probation/
[734] CAL. PENAL CODE § 1203.1(j). See also People v. Carbajal, 10 Cal.4th 1114, 1120 (1995).
[735] People v. Carbajal, 10 Cal.4th 1114, 1121 (1995).



- **Restitution payments OR community service –** Courts are required to order restitution payments, either to the victim or to the state, as a condition of probation.[736] *Read more about restitution payments in the COURT-ORDERED DEBT CHAPTER, beginning on PG. 654.*
- **Up to 1 year in county jail**;[737]
- **Anger management courses**;
- **Substance abuse treatment programs**;
- **Restrictions on your ability to have access to or carry weapons**;[738]
- **Fines of up to $1,000**;[739]
- **Minimum fine or jail sentence sometimes required by law –** For some misdemeanor convictions, the court must impose a minimum fine or jail sentence as a condition of your probation.[740]

WHEN WOULD A COURT ORDER COMMUNITY SERVICE INSTEAD OF RESITITUTION?

For example, if you are unemployed due to a disability, and unable to make restitution payments to the state, the court may order you to instead complete community service (CAL. PENAL CODE § 1202.4(n)). But if your probation is revoked, the court must impose restitution instead (CAL. PEN. CODE § 1202.4(n)).

I AM ON INFORMAL PROBATION. WILL I HAVE TO REPORT TO A PROBATION OFFICER?

No. If you're on informal probation, you'll report to the County Superior Court.[741] The judge gets to decide how you will report and how often you will have to report. In some cases, the judge may ask you to appear in court for "progress reports" to make sure you are following the conditions of your probation.[742] In most cases, however, you will not actually have to appear in court; the court will monitor your progress through your attendance in required courses or treatment programs. But if you fail to attend these courses or programs, you may have to go to court to explain to the judge why. Make sure you contact the probation department in your county for a list of courses or treatment programs that the court recognizes and accepts.

WHAT WILL THE JUDGE LOOK FOR IF I HAVE TO GO TO COURT FOR "PROGRESS REPORTS?"

When you go to court for a "progress report," the judge will be checking to see if you are following the conditions of your probation. The judge will also ask you about your participation in any programs (e.g. AA meetings, anger management classes) that you were assigned as part of your probation.

It is important that you BRING DOCUMENTATION of any progress or positive steps that you've made toward fulfilling your probation conditions. For example, you should bring written proof of your attendance in court-ordered treatment programs, or of the number of hours of community service or public works service you have completed.

HOW DO I CHANGE A CONDITION OF MY INFORMAL PROBATION?

Under state law, you can ask the judge to modify (change) your probation terms AT ANY TIME.[743] This does not mean the judge will do so, but you can always ask!

To ask the judge to change a condition of your probation, you have to file a motion with the court that is monitoring your probation, asking that your probation conditions be modified. You must show why there is a good reason ("**good cause**") for the judge to modify your conditions. Remember to bring all documentation of your progress with you to court (such as reports and attendance sheets from any courses you were required to take as part of your misdemeanor probation).

WHAT IS "GOOD CAUSE"?

"Good cause" means a reason that is persuasive enough to convince a judge that s/he should make an order.

There is no standardized statewide form for requesting a modification of probation conditions, but some counties may have local forms for this purpose. You can contact the county Superior Court clerk's office to find out if there is a local form for requesting a change. If not, you and

[736] CAL. PENAL CODE § 1202.4(a). However, if the court finds "compelling and extraordinary reasons for not imposing restitution," it must order community service as a condition of probation instead, unless it also finds "compelling and extraordinary reasons" for not requiring community service. CAL. PENAL CODE § 1202.4(n).
[737] CAL. PENAL CODE § 1203.1(a).
[738] See First District Appellate Project, Probation Conditions: Adults and Juveniles—What Types of Conditions are Unreasonable and Unconstitutional, http://www.fdap.org/downloads/articles_and_outlines/Seminar2011-ProbationConditions.pdf.
[739] CAL. PENAL CODE § 1203.1(a)(1). See also http://www.scscourt.org/self_help/criminal/misdemeanors.shtml.
[740] For example, if you are convicted of driving on a suspended license and this offense occurred within 5 years of a prior offense for driving on a suspended license, the court must impose a minimum 10-day jail sentence as a condition of probation (see CAL. VEH. CODE § 14601(c) (West 2014)). The CAL. GOV'T CODE also has special mandatory probationary terms for specific offenses, such as completion of a domestic violence rehabilitation program (DVRP) for those convicted of a crime of domestic violence (see CAL. PENAL CODE § 1203.097(a)(6) (West 2014)).
[741] Cal. Penal Code § 1203(a).
[742] For example, if the court ordered you to go to substance abuse treatment, then when you appear for your "progress report," the court will ask for written reports or attendance sheets from your treatment program.
[743] CAL. PENAL CODE § 1203.3(a).



your attorney will have to draft a motion. If you had a public defender assigned to your case, you can ask him or her to file a motion to modify your probation terms for you. If you had a private attorney but can no longer afford one, you may call the public defender's office and ask if they will represent you in your attempt to change your probation conditions.

Before the judge can modify your conditions, the court must notify the prosecutor (the district attorney) in your case, and hold a hearing in which the prosecutor will have a chance to speak.[744] If the judge decides to change your conditions, he or she must state the reasons for doing so.[745]

For more information on the process for filing a motion to modify the conditions of your probation, see Appendix Y, PG. 311.

IF YOU ARE ASKING FOR THE CHANGE BECAUSE OF A DISABILITY:

If you are asking to change a condition because of a disability, you should explain why your disability makes it difficult for you to comply with your current probation conditions, and what changes (in conditions) or assistance (from the probation department or other services) you need to successfully complete your probation. For example, if you were ordered to perform *public works* service (like highway cleanup), but your disability prevents you from doing so, you may ask the judge at the local county superior court for a *modification* that allows you to do *community* service (like volunteering at the local public library) instead.

When you go to court, remember to BRING DOCUMENTATION OF YOUR DISABILITY and explain the reasons why your disability makes it difficult for you to follow the current conditions and rules of your probation.

TRANSFERRING LOCATIONS ON INFORMAL PROBATION

HOW DO I TRANSFER MY INFORMAL PROBATION TO A DIFFERENT COUNTY?

The California Superior Court of the county in which you were convicted of a crime has jurisdiction (decision-making power) over your county-to-county probation transfer.[746]

A judge will decide whether your transfer is appropriate, and will look at:

1. Permanency of your residence (whether you actually live in the transfer county permanently);
2. Local programs available for you in the transfer county; and
3. Restitution orders and victim issues.[747]

Below is the process for one county's probation department to submit a "notice of motion for transfer" in order to send your supervision to a different county's probation department. [748] *(Note, this process also applies to transferring Mandatory Supervision from one county to another.)*

1. First, when you are released on probation, the court in the county where you were convicted must transfer the case to the superior court in the county where you plan to live permanently (or for the rest of your probation), *unless* the court determines that the transfer would be inappropriate.
2. Next, the proposed receiving county may provide comments on the record about the proposed transfer.
3. The transferring court and the transferring probation department must investigate your transfer and must make a speedy decision.
4. If victim restitution was ordered as a condition of your probation, the transferring court determines the amount of restitution before the transfer, unless that court can't make that decision within a reasonable period of time from when the transfer was requested. If a case is transferred without the amount of restitution being decided, the transferring court must make a determination about the restitution amount as quickly as possible.
5. For every other determination related to probation (besides the amount of victim restitution), the receiving county will have the power to make those decisions, and must agree to do so.
6. The transfer order must require you to be in the care and custody of the probation officer of the receiving county.
7. If it applies, the transfer order must also include an order for reimbursement of reasonable costs for processing the transfer to be paid to the transferring county.
8. The transferring county must send copies of any orders and any probation reports to the court and the probation officer in the receiving county within 2 weeks of finding that you permanently reside in or have permanently moved to the receiving county.

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[744] CAL. PENAL CODE § 1203.3(b)(1).
[745] CAL. PENAL CODE § 1203.3(b)(2).
[746] Governed by CAL. PENAL CODE § 1203.9- the Court has jurisdiction over transfers.
[747] CAL. PENAL CODE § 1203.9(a)(2).
[748] The court must follow the Judicial Council's procedures and court rules set out in CAL. PENAL CODE § 1203.9(d).

9. The receiving county may also follow these rules and procedures to again transfer your probation supervision to another county later on.

HOW DO I TRANSFER MY INFORMAL PROBATION TO A DIFFERENT STATE?

IMPORTANT: The same rules for transferring states apply to people on ANY type of state or county supervision. That means if you are on state parole, probation, PRCS, OR mandatory supervision—the process and rules to transfer your supervision to another state are the same. To read about interstate transfer, see PG. 217.

VIOLATIONS & REVOCATIONS ON INFORMAL PROBATION

WHAT ARE THE RULES FOR VIOLATIONS & REVOCATIONS OF INFORMAL PROBATION?

The rules and procedures for informal probation violations and revocation proceedings are the same as for formal probation. For more information, read more in the formal probation section on PG. 211.

FORMAL PROBATION

BASICS OF FORMAL PROBATION

WHAT IS FORMAL PROBATION?

Formal probation is a type of community supervision that is part of the original sentence handed down by a judge at trial, as an alternative to or in addition to incarceration, for most felonies (those that did not lead to prison time or supervision under PRCS or Mandatory Supervision) and some misdemeanor convictions.[749]

Formal probation reduces or eliminates the time you must spend in custody, and allows you to either remain in or return sooner to the community, so long as you follow your probation conditions.[750]

This means that some people never serve time in custody for their conviction, but instead are sentenced to formal supervision in the community, while other people are sentenced to some time in custody, plus formal supervision in the community afterward.

WHAT'S THE MAIN DIFFERENCE BETWEEN FORMAL AND INFORMAL PROBATION?

The main difference between formal and informal probation is that, unlike with informal probation, if you are on formal probation, you are assigned a probation officer.

WHO WILL MONITOR ME ON FORMAL PROBATION?

Depending on the circumstances, either the court (and the judge of that court) or a probation officer will monitor you to make sure you follow your probation conditions.[751] Generally, you must report to the probation officer once a month, although the judge could require you to report more or less often than that.[752] It is very important to remain in contact with your probation officer, or it could trigger a probation violation hearing. In some counties, your probation officer may allow you to report to them through a kiosk at a local probation office. [753]

IMPORTANT! How formal probation operates, and what services are available, varies from county to county. Ask your probation officer what is available to you in your county.

AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON FORMAL PROBATION

WHAT ARE SOME OF MY RESPONSIBILITIES WHEN I FIRST GET RELEASED ONTO FORMAL PROBATION?

Instructions for what to do when you first start your probation term will be different depending on what county you are being supervised in. When you first get out, call or visit your county probation department immediately to find out what requirements and instructions apply to you.

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[749] CAL. PENAL CODE § 1203(a-d).
[750] CAL. PENAL CODE § 1203(a).
[751] CAL. PENAL CODE § 1203(a).
[752] CAL. PENAL CODE § 1203.1.
[753] Counties with Kiosk reporting include Alameda, Los Angeles, Orange, and Riverside.

LENGTH OF FORMAL PROBATION

HOW LONG WILL I BE ON FORMAL PROBATION?

Formal probation is typically imposed for a term of 3-5 years.[754] The length of your probation depends on what the court ordered, and that usually depends on what county you are being supervised in (since each county has some discretion to set the minimum length of formal probation within this range).[755]

CAN I GET OFF FORMAL PROBATION EARLY?

Possibly. California law allows you to ask the court to be released early from your probation.[756] If you have completed all of the conditions of your probation (for example, paid all fines/fees, completed all counseling) and you are at least halfway through your probation term (for example, 1½ years through a 3-year probation term), you may be a good candidate to have your probation ended early. The process for terminating (ending) formal probation early is the same as the process for ending informal probation or Mandatory Supervision early. If your request (called a "Motion") to end your formal probation early is granted by the judge, then you might also be able to ask for certain convictions to be dismissed from your record! For more information on how to file a Motion to Terminate Probation early, and also how to request dismissals of eligible convictions, please see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

CONDITIONS OF FORMAL PROBATION

IMPORTANT: It is important to know the conditions of your probation because, if you do not follow the terms and conditions of your formal probation, your probation could be revoked and you could:

- **Be sent to jail, or go to prison (where the court had earlier suspended a prison sentence by granting you formal probation);**[757]
- **Be sentenced to the maximum sentence authorized for the crime you were convicted of;**
- **Have additional terms, such as public works service ("PWS" or "volunteer works") or community service added to your probation;**[758]
- **Have your probation revoked, and reinstated, for a new period of three-five years**[759] **(see PG. 211 on probation revocation proceedings).**

WHAT ARE COMMON CONDITIONS OF FORMAL PROBATION?

There are some general/standard rules and conditions that apply to most (if not all) people on formal probation, BUT REMEMBER, EVERY COUNTY WILL HAVE DIFFERENT RULES AND CONDITIONS.

Formal probation will often include some of the following rules/ conditions:[760]

1. Meeting with your probation officer as often as required, generally once a month;
2. Payment of restitution, fines, and fees;761
3. Participation in individual or group therapy;
4. Mandatory drug testing, if you were convicted of certain drug-related crimes;
5. Community service;

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[754] CAL. PENAL CODE § 1203.1(a) provides: "The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years."

[755] Each county sets its own mandatory minimum. Alameda County, Alpine County, Inyo County, Placer County, Plumas County, Sacramento County, San Joaquin County, & Tuolumne County require a minimum of 5 years on formal probation, while most counties in California only require a minimum of 3 years on formal probation.

[756] CAL. PENAL CODE § 1203.3(a). "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."

[757] CAL. PENAL CODE § 1203.1(a).

[758] CAL. PENAL CODE § 1203.1(c).

[759] CAL. PENAL CODE § 1203.1(a).

[760] See First District Appellate Project, Probation Conditions: Adults and Juveniles—What Types of Conditions are Unreasonable and Unconstitutional, http://www.fdap.org/downloads/articles_and_outlines/Seminar2011-ProbationConditions.pdf.

[761] Cal. Penal Code § 1202.4.



6. An agreement to submit to law enforcement searches of your person, residence, or property with or without a warrant (sometimes called a "search condition" or a "4th Waiver");
7. No contact with victim(s) and following any stay away orders not to harass victim(s);
8. Not associating with people who you know are gang members;[762]
9. Agreement not to violate any laws.

To challenge or try to change the conditions of probation, see the next question and answer.

HOW DO I CHANGE A CONDITION OF MY FORMAL PROBATION?

Follow the outlined steps below to request a change (called a "modification") in your probation terms: Start by contacting the Court Clerk at your local county superior court where you were convicted to ask if there is a local form. If not, you and your attorney will have to draft a motion. See Appendix Y, PG. 311 for more information. (Note: The process for requesting a change to informal probation conditions is the same as the process for requesting a change to formal probation conditions.)

TRANSFERRING LOCATIONS ON FORMAL PROBATION

I WANT TO TRANSFER MY FORMAL PROBATION TO ANOTHER COUNTY. CAN I DO THAT?

It's possible. The California Superior Court of the county that you were convicted of a crime in has jurisdiction (decision-making power) over county-to-county transfers for probation.[763]

When deciding whether transfer is appropriate, the judge will look at:

1. Permanency of your residence (whether you actually live in the transfer county permanently);
2. Local programs available for you in the transfer county; and
3. Restitution orders and victim issues.[764]

I AM ON FORMAL PROBATION AND WANT TO TRANSFER TO ANOTHER COUNTY. HOW CAN I DO THAT?

The rules and process for transferring your formal probation to another county are the same as the rules that apply to informal probation.[765] For more information on this process, see PG. 199.

I AM ON FORMAL PROBATION AND WANT TO TRANSFER TO ANOTHER STATE. HOW CAN I DO THAT?



IMPORTANT: The same rules for transferring states apply to people on ANY type of state or county supervision. That means if you are on state parole, probation, PRCS, OR mandatory supervision—the process and rules to transfer your supervision to another state are the same. To read about interstate transfer, see PG. 217.

VIOLATIONS & REVOCATIONS OF FORMAL PROBATION

WHAT ARE THE RULES FOR VIOLATIONS & REVOCATIONS OF FORMAL PROBATION?

See PG. 211 for the rules and procedures. Probation revocation proceedings are the same for informal probation (PG. 196), formal probation (PG. 200), and a newer form of supervision called "Mandatory Supervision" (PG. 208).

POST-RELEASE COMMUNITY SUPERVISION (PRCS)

PRCS is run by your local county probation office and the rules vary from county to county across California. We have tried to provide information here that will be helpful to all as general rules and guidelines, but we encourage you to ask people in your particular county probation office about how PRCS operates locally, and what services or programs are available to you there.

[762] CAL. PENAL CODE § 186.22(a) makes it illegal to participate in a gang.
[763] Governed by CAL. PENAL CODE § 1203.9- the Court has jurisdiction over transfers.
[764] CAL. PENAL CODE § 1203.9(a)(2).
[765] See CAL. RULES OF COURT, Rule 4.530.

BASICS OF PRCS

WHAT IS POST-RELEASE COMMUNITY SUPERVISION (PRCS)?

In 2011, California's "Realignment" Law (A.B. 109) created a new form of community supervision under which certain people leaving state prison are monitored by the probation departments of each county, instead of by state parole. This new form of supervision is called Post-Release Community Supervision (PRCS).

As of October 1, 2011, people who are released from state prisons for crimes that are non-violent, non-serious, AND non-sexual are placed on PRCS under the supervision of county probation officers.[766]

WHO WILL BE RELEASED FROM STATE PRISON TO COUNTY SUPERVISION ON PRCS?

The following people will be released from state prison onto PRCS supervision:

- Individuals currently serving terms for non-violent, non-serious commitment offenses;
- Some sex offenders; AND
- Individuals who, prior to October 1, 2011, would have been placed on non-revocable parole (NRP).[767]

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IMPORTANT NOTE: If you were paroled from state prison before October 1, 2011, you will stay on parole, and not be placed on PRCS. However, if you are returned to the custody of state prison due to a parole revocation case, the CDCR will screen your case beginning at least 180 days before your calculated release date (see the next question about this timeline) to decide if you should be (1) returned to state parole or (2) placed on PRCS after serving the revocation term.[768]

WHO WILL NOT BE RELEASED FROM STATE PRISON TO COUNTY SUPERVISION ON PRCS?

The 3 nons—anyone convicted of the following offenses will be released onto state PAROLE, not PRCS:

1. A "serious" felony (as described in Cal. Pen. Code § 1192.7(c));
2. A "violent" felony (as described in Cal. Pen. Code § 667.5(c));
3. Individuals with an indeterminate life-term, including third-strikers, who were sentenced pursuant to Cal. Pen. Code § 667(e)(2) or § 1170.12(c)(2);
4. Any crime for which the person is classified as a high-risk sex offender (as defined by CDCR);
5. Any crime for which the person is required, as a condition of parole, to undergo treatment by the State Department of State Hospitals (DSH) as a mentally disordered offender pursuant to Cal. Pen. Code § 2962.[769]
6. If you think you will be on parole, not PRCS, see earlier section on state parole, PG. 143).

WHEN IS THE PRCS VS. PAROLE ASSESSMENT DONE?

Before you are released from prison, a correctional counselor will screen your case and decide whether to refer you to state parole or PRCS.[770] The correctional officer should start this screening process at least 180 days prior to your calculated release date.[771] The CDCR Form 611, "Release Program Study" (RPS) (see example in Appendix S, PG. 297) is used to determine if you will be eligible for PRCS after release.[772]

AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON PRCS

WHAT MUST I DO WHEN I FIRST GET OUT ON PRCS?

You must report to your County Probation Department for PRCS supervision within 2 working days after your release from state prison, court, or county jail.[773] Instructions for what to do when you first get out on PRCS vary from county to county. Please see Appendix Z on PG. 313 for some examples of the PRCS release process in a few California counties.

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[766] CAL. PENAL CODE §§ 3450–3465.
[767] CAL. PENAL CODE § 3450 et seq; 15 CAL. CODE REGS. § 3079 et seq.
[768] CAL. PENAL CODE § 3000.09(c).
[769] CAL. PENAL CODE § 3451(b).
[770] CAL. PENAL CODE § 3451(a).
[771] CDCR, http://www.cdcr.ca.gov/realignment/Post-Release-Community-Supervision.html.
[772] CPOC, http://www.cpoc.org/assets/Realignment/whatcountiesneedtoknow.pptx.
[773] See L.A. CNTY. PROB. DEP'T, Just Released, http://probation.lacounty.gov/wps/portal/probation/!ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOLdDAwM3P2dgo38g12MDTzd3J2cDf1NDI3MjPQLsh0VATnS4xE!/.



WHERE WILL I BE RELEASED TO ON PRCS?

In most cases, you will be sent to the county of your last legal residence before you were incarcerated.[774] However, CDCR can send you to PRCS in a different county for various reasons, including victim safety concerns, to help you maintain family ties, or so you can benefit from work or educational programs.[775]

Please keep reading for more information on how to make a request to be sent to a different county other than the one you last legally lived in.

CAN I REQUEST THAT CDCR SEND ME TO PRCS IN A DIFFERENT COUNTY THAN WHERE THEY WANT TO SEND ME?

Yes. While you are in prison, you can request to be released on to PRCS in a different county than where CDCR has assigned you—which is typically the county of last legal residence. Please read the section on how to request a PRCS County Transfer, beginning on PG. 206.

LENGTH OF PRCS

HOW LONG DOES PRCS SUPERVISION LAST?

PRCS can last a minimum of six months, and a maximum of 3 years.[776] Remember PRCS can end earlier if you do not violate any conditions of your PRCS.[777]

If at any time you abscond (go missing) or are otherwise unavailable for supervision, that amount of time will not count toward the total PRCS period.[778]

CAN I GET OFF PRCS EARLY?

It's possible. If you have no violations of your PRCS, the county probation department that supervises you *may* discharge you after 6 consecutive months of no violations.[779] But early release from PRCS is discretionary—it's up to the supervising agency to decide. Most individuals discharge from PRCS within 30 days after serving a continuous year without violations.[780]

A NOTE ABOUT ADDING EXTRA (SPECIAL) CONDITIONS OF PRCS:

The county probation office may send special conditions to CDCR prior to release, but they must be related to your offense. So CDCR can make the PRCS conditions, and then the local county probation office can add to those conditions, if the new conditions are lawful.

CONDITIONS OF PRCS

WHAT CONDITIONS MUST I FOLLOW IF I AM ON PRCS?

You must comply with all of your conditions on PRCS.[781] The standard conditions include:

1) A waiver of your Fourth Amendment Rights—agreeing to be searched by law enforcement without probable cause;
2) Informing the Probation Department of your home and work addresses; and
3) Never possessing or having access to weapons.[782]

IS THERE A DOCUMENT WHERE I CAN FIND ALL MY PRCS CONDITIONS?

Yes—you should refer to your signed CDCR Form 1515, "Notice and Conditions of Parole" (see Appendix G, PG. 268 for an example of this form).[783]

If you do not sign the conditions while you are still incarcerated, the prison/jail staff will notify the county of your supervision, and you can be held in custody until you sign Form 1515 or until your credits expire.[784]

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[774] CAL. PENAL CODE § 3003.
[775] CAL. PENAL CODE § 3003(a)-(c).
[776] CAL. PENAL CODE § 3451(a).
[777] CAL. PENAL CODE § 3451(a).
[778] CAL. PENAL CODE § 3451(b).
[779] CAL. PENAL CODE § 3451(a)(1).
[780] CAL. PENAL CODE § 3456(a).
[781] CAL. PENAL CODE § 3452.
[782] CAL. PENAL CODE §§ 3067(a); 3453.
[783] See CAL. DEP'T OF CORR. & REH., Form 1515.
[784] See CAL. DEP'T OF CORR. & REH., Form 1515.



CAN I CHALLENGE A PRCS CONDITION?

Yes. The legal standards for determining whether a PRCS condition is unlawful are generally the same as for parole conditions.[785] Please refer to, PG. 178 to understand what makes a PRCS or state parole condition lawful or unlawful.

HOW DO I CHALLENGE A PRCS CONDITION?

The procedure will depend on whether the supervising agency (the county probation department) or the court made the decision, and when the challenge is being raised.

IF THE CONDITION WAS SET BY THE PROBATION OFFICER SUPERVISING YOUR PRCS: then you should complete any administrative appeal or grievance process that is available through Probation. If there is no administrative appeal process or the administrative appeal is unsuccessful, then you can file a state petition for a writ of habeas corpus in the local superior court.[786] See Appendix K PG. 280 to learn how to file a state petition for a writ of habeas corpus.

IF THE CONDITION WAS SET BY THE COURT JUDGE OR A COURT-APPOINTED HEARING OFFICER: then you should be able to proceed with a court challenge. It appears likely that a direct appeal can be filed under the statute that allows an appeal to be filed "from any order made after judgment, affecting the substantial rights of the party." To appeal, you must file a notice of appeal in the superior court within 60 calendar days after the court's decision.

When a timely notice of appeal is filed, the Superior Court will prepare a record of the parole revocation proceedings with all the documents filed in the court AND transcripts of the hearings, and will provide these documents to the Court of Appeal, the State, and to you (the parolee).

- In a direct appeal, an attorney will be appointed by the Court of Appeal at state's expense, if the parolee does not have enough money to pay for one.
- If you wish to have a court-appointed attorney, you must file your notice of appeal within 60 calendar days after the court's decision.

If the notice of appeal is not timely filed or if the issue involves information that is not in the court record, it might be possible to raise the issues in a state court habeas corpus petition.

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IMPORTANT: Whether or not issues from your case can be raised on a habeas appeal can be a difficult subject to determine. For this reason, it is recommended that you seek help from a court-appointed attorney, if possible. Again, remember that if you wish to have a court-appointed attorney, you must file your notice of appeal within 60 calendar days after the court's decision.

Please refer to Appendix K, on PG. 280 for more information on direct appeals and state habeas corpus petitions, including sample forms.

WHAT COULD HAPPEN IF I DO NOT FOLLOW THE CONDITIONS OF MY PRCS?

There are different types of consequences for not following (violating) the terms and conditions of your post-release community supervision (PRCS). These include:

- **INTERMEDIATE SANCTIONS:** PRCS agencies are supposed to develop and use "intermediate sanctions" for minor violations of PRCS conditions. Intermediate sanctions could include programs like drug treatment, mental health counseling, and job assistance.[787]
- **FLASH INCARCERATION:** Another type of punishment for violating a PRCS condition is "flash incarceration." Flash incarceration is an immediate return to jail for a period of up to 10 days.[788] One of the conditions for being placed on PRCS is that you give up the right to demand a court hearing before being subject to flash incarceration.[789]
- **COURT PETITION TO MODIFY/REVOKE/TERMINATE PRCS:** If county probation decides that more serious punishment is appropriate for the violation, the agency will file a petition to modify, revoke, or terminate PRCS through the County Superior Court. Probation's petition will be filed with a hearing officer appointed by the local Superior Court. Either the supervising agency (probation department) or the hearing officer can decide to keep a person in custody (in jail) while the petition is pending.[790]

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[785] See Prison Law Office, The Parolee Rights Manual at 34, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf
[786] See Prison Law Office, The Parolee Rights Manual at 34, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf
[787] CAL. PENAL CODE § 3450(b)(8).
[788] CAL. PENAL CODE § 3450(b)(8)(A).
[789] CAL. PENAL CODE §§ 3453(q) and 3454(c). People earn credit toward their PRCS terms for actual time spent in flash incarceration, but do not earn any good conduct credits for such incarceration. CAL. PENAL CODE §§ 4019(i), 3450(b)(8)(A).
[790] CAL. PENAL CODE § 3455(a)-(c).



TRANSFERRING LOCATIONS ON PRCS

HOW DO I TRANSFER MY PRCS TO ANOTHER COUNTY IN CALIFORNIA?

California state law governs the process for transferring a person's PRCS between counties.[791] Unlike with transfers of informal probation, PG. 196, formal probation, PG. 200, and Mandatory Supervision, PG. 208,[792] the Court does NOT have the authority to transfer a person's PRCS. Instead, the PRCS transfer process is administrative, and happens directly from one county to another.[793] The internal policy of probation departments is to accept post-release transfers only, so once you are released, the process for transferring counties on PRCS is as follows:

STEP 1: **Write a letter to your probation officer formally stating your intention to live in another county.**

STEP 2: **The probation department must find that transfer is appropriate under the circumstances. In addition to considering factors such as the victim's safety, the probation officer must determine that:**

- You have proof of permanent residence in another county (see box), AND
- Your change of residence was either approved by probation OR didn't violate the terms and conditions of your PRCS.[794]

STEP 3: **The supervising agency (the county probation department) then has two weeks to send any information it received from CDCR before you were released to the probation department in your new county of permanent residence.**[795]

STEP 4: **Once the new county's probation department has verified your permanent residency in its county, the agency must accept you on PRCS there.**[796]

IMPORTANT NOTE: Your supervising agency (the county probation department) is not required to transfer your PRCS to another county unless you have shown your ability to establish *permanent residence* within another county without violating the terms and conditions of your PRCS.

How do I prove I have a permanent residence to transfer my PRCS to a new county?

To verify that you live in the requested county, the county probation department will need proof of permanent residence. This may include:

- A face-to-face visit from a probation officer at your new home
- A California driver's license with your new address
- Voter registration documents
- A copy of a rental agreement
- A form from a friend or family member verifying that you will live with them
- Credit card or utility bills
- Car registration or insurance documents

Living somewhere only for employment or school, or living in a transitional housing or residential treatment facility, will not be considered a "permanent residence" for the purpose of transferring your PRCS to another county.[797]

HOW DO I TRANSFER MY PRCS TO ANOTHER STATE?

IMPORTANT: The same rules for transferring states apply to people on ANY type of state or county supervision. That means if you are on state parole, probation, PRCS, OR mandatory supervision—the process and rules to transfer your supervision to another state are the same. To read about interstate transfer, see PG. 217.

[791] See Cal. Penal Code § 3460.
[792] See CAL. PENAL CODE § 1203.9.
[793] Chief Probation Officers of California, PRCS Transfer Protocol, http://www.cpoc.org/assets/Realignment/transfers of prcs offender protocol.pdf.
[794] Cal. Penal Code § 3460(a).
[795] Cal. Penal Code § 3460(a).
[796] Cal. Penal Code § 3460(b).
[797] See Cal Pen. Code § 3460(c); Chief Probation Officers of California, Protocol for Transfers of Postrelease Community Supervision Offenders (rev'd Dec. 10, 2015), http://www.cpoc.org/assets/Realignment/prcs%20transfer%20protocols%20rev%2012102015%20final.docx.

VIOLATIONS & REVOCATIONS OF PRCS

IF THE PROBATION DEPARTMENT PURSUES THE CASE IN COURT, DO I HAVE THE RIGHT TO A HEARING FOR A PRCS VIOLATION PETITION?

Yes. If you must respond to a PRCS violation petition, you have the right to a hearing in County Superior Court.[798]

DO I HAVE THE RIGHT TO A FREE ATTORNEY IF I CAN'T AFFORD ONE AT A PRCS VIOLATION HEARING?

Yes, at least in some cases—you have the right to a free court-appointed attorney if you cannot afford your own.[799] You can give up the right to an attorney and a hearing, admit the violation, and accept the proposed punishment,[800] but it's suggested that you ALWAYS ask for an attorney and hearing.

IF THE JUDGE FINDS THAT I HAVE VIOLATED THE TERMS OR CONDITIONS OF MY PRCS, WHAT ARE POSSIBLE PUNISHMENTS?

If you are found to have violated the terms or conditions of your PRCS at a hearing, the judge, magistrate, or hearing officer can:

- Return you to PRCS supervision with modified (changed or new) conditions;
- Refer you to a special program or to a special "reentry court" for assessment for a special program;[801] OR
- Revoke (take away) your PRCS and order you to county jail for a maximum term of 180 days.[802]

NOTE: If you are ordered to serve county jail time for a PRCS violation, you can earn 2 days of good conduct credits for every 2 days you actually serve.[803]

HOW CAN I CHALLENGE A COURT DECISION REVOKING MY PRCS, OR A DECISION BY THE HEARING OFFICER AFTER A PRCS VIOLATION HEARING?

You can almost always challenge the judgment of a PRCS revocation hearing.[804] To appeal, you must file a notice of appeal in the county Superior Court within ***60 calendar days*** after the court's decision.[805]

After a timely notice of appeal is filed, the Superior Court will prepare a record of the PRCS revocation proceedings that includes all the documents filed in the court and transcripts of the hearings. The Superior Court must then provide these documents to (1) the Court of Appeal, (2) the State/ District Attorney (representing the Probation Department), and (3) you. In a direct appeal, the court of appeal must appoint an attorney to represent you for free if you don't have enough money to pay for one.[806] In order to have a court-appointed attorney, you must file your notice of appeal within 60 calendar days after the court's decision.

HELPFUL HINT

If you or your lawyer did not file a "notice of appeal" on time:

If the "notice of appeal" is not filed on time, or if the issue involves information that isn't in the court record, then it might be possible to raise the issues in a state court habeas corpus petition (see Appendix K, PG. 280 to learn about the general process for filing one). This is not recommended unless (1) your notice of appeal wasn't filed in time, or (2) the appeal involves information that the court has no record of.

[798] CAL. PENAL CODE § 3455(a).
[799] CAL. PENAL CODE § 3455(a).
[800] CAL. PENAL CODE § 3455(a).
[801] Re-entry Court procedures are discussed at CAL. PENAL CODE § 3015.
[802] CAL. PENAL CODE § 3455(a) and (d).
[803] CAL. PENAL CODE § 3455(a) and (d).
[804] CAL. PENAL CODE § 1237(b)
[805] CAL. PENAL CODE § 1237(b)
[806] Cal. Rules of Court, Rule 8.308.



MANDATORY SUPERVISION

BASICS OF MANDATORY SUPERVISION

WHAT IS MANDATORY SUPERVISION?

If you receive a split sentence (jail and community supervision time), you could be placed on Mandatory Supervision after your release from county jail. California's 2011 Realignment law (AB 109) has given criminal courts in California a legal tool called "split sentencing."[807] Split sentencing allows a judge to split the time of a person's sentence between a jail term and a period of supervision by a probation officer.

While Mandatory Supervision is *not technically* probation by law, it will feel the same—you will be supervised by a county probation officer, and it will feel a lot like probation in how the supervision functions.[808]

Please note: Mandatory Supervision is run by the counties and rules vary from county to county across California. We have tried to provide information here that will be helpful to all, but we encourage you to find out information from your particular county probation office about how Mandatory Supervision operates, and what services or programs are available to you there.

WHO CAN BE RELEASED ONTO MANDATORY SUPERVISION?

You are eligible for a "split sentence" and Mandatory Supervision if your felony conviction is for a non-violent, non-serious, non-sex offense (the "3 nons") by law.[809]

You CANNOT get a "split sentence" if:

1. You have a prior or current felony conviction for a serious felony described in Cal. Pen. Code § 1192.7(c);
2. You have a prior or current conviction for a violent felony described in Cal. Pen. Code § 667.5(c);
3. You have a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious or violent felony discussed directly above;
4. You are required to register as a sex offender pursuant to Cal. Pen. Code § 290 et seq.; OR
5. Your conviction included a sentence enhancement pursuant to Cal. Pen. Code § 186.11.
6. These 5 categories of individuals will still have to serve their sentence in state prison.[810]

AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON MANDATORY SUPERVISION

WHAT MUST I DO AFTER I GET RELEASED ONTO MANDATORY SUPERVISION?

You must report to your County Probation Department for Mandatory Supervision within 2 working days after your release from state prison, court, or county jail.[811]

Other instructions for what to do when you first get out on Mandatory Supervision vary from county to county, and you should check with your local county's probation office for a list of all the requirements.

LENGTH OF MANDATORY SUPERVISION

HOW LONG WILL I BE ON MANDATORY SUPERVISION?

It depends. The judge in the court that convicted you sets the term and length of mandatory supervision, and it is different for every person depending on what your conviction is for. BUT there are limitations. Split sentences cannot be longer than the maximum sentence possible for the conviction—meaning the total time you serve in custody (in jail) and supervision time (time on Mandatory Supervision) cannot be more than the maximum original sentence.

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[807] See CAL. PENAL CODE § 1170(h)(5).
[808] Mandatory supervision is similar to probation, though mandatory may also include extra monitoring conditions, such as GPS monitoring or home detention. Fore more information about mandatory supervision and split sentences, see Rebecca Sullivan Silbert, Thinking Critically About Realignment in California, https://www.law.berkeley.edu/files/bccj/Thinking_Critically_3-14-2012.pdf.
[809] See CAL. PENAL CODE § 1170(h)(5).
[810] See CAL. PENAL CODE § 1170(a)(3).
[811] See L.A. Cnty. Prob. Dep't, Just Released, http://probation.lacounty.gov/wps/portal/probation/!ut/p/b1/04_Sj9Q1MjA1tzS0NDcw04_Qj8pLLMtMTyzJzM9LzAHxo8zi3QwMDNz9nYKN_INdjA083dydnA39TQyNgo2ACiKRFRg4u1saeDqZuFt4mYUYOvuZE9Ifrh-FT0mwoTG6AixWgBUY4ACOBgSs8DLR9_PIz03Vz43KsfTMDEgHAB9RScE!/dl4/d5/L2dJQSEvUU.



CAN I GET OFF MANDATORY SUPERVISION EARLY?

Possibly. California law allows you to ask the court to be released early from mandatory supervision.[812] It is entirely up to the judge to decide whether to terminate your mandatory supervision early. Since they are given so much discretion, some judges (and even some whole counties) are unwilling to let people off of mandatory supervision early, regardless of the person's progress. Many judges see mandatory supervision as an alternative to incarcerating you for the whole time (that's why it's called "split sentencing" because the judge split your sentence between incarceration and being on mandatory supervision in the community), so for the most part they are less likely to end your mandatory supervision early as compared with probation.

We recommend that you speak with an attorney BEFORE filing a "Motion to Terminate Mandatory Supervision" early. If you go ahead with asking a judge to end your mandatory supervision early (such a request is called a "Motion") and it is granted, then you might also be able to ask for certain convictions to be dismissed from your record! For more information on how to file a Motion to Terminate Probation early, and also how to request dismissals of eligible convictions, please see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931.

CONDITIONS OF MANDATORY SUPERVISION

WHAT ARE THE CONDITIONS OF MANDATORY SUPERVISION?

State law requires Mandatory Supervision to be supervised by a county probation officer with the same "terms, conditions, and procedures that apply to people on probation (such as submitting to drug testing)."[813]

Generally speaking, Probation Officers use routine office appointments, employment services and treatment program partnerships to ensure compliance with terms and conditions of probation.

CAN I EARN GOOD TIME CREDITS ON MANDATORY SUPERVISION?

No. There are no good time credits for the supervision portion of Mandatory Supervision.[814]

TRANSFERRING LOCATIONS ON MANDATORY SUPERVISION

HOW DO I TRANSFER COUNTIES ON MANDATORY SUPERVISION?

The rules and process for transferring your Mandatory Supervision to another county are the same as the rules that apply to informal and formal probation.[815] For more information on this process, see PG. 199.

HOW DO I TRANSFER STATES ON MANDATORY SUPERVISION?

! **IMPORTANT: The same rules for transferring states apply to people on ANY type of state or county supervision. That means if you are on state parole, probation, PRCS, OR mandatory supervision—the process and rules to transfer your supervision to another state are the same. To read about interstate transfer, see PG. 217.**

VIOLATIONS & REVOCATIONS OF MANDATORY SUPERVISION

WHAT IS THE PROBATION VIOLATION AND REVOCATION PROCESS ON MANDATORY SUPERVISION, AND WHAT ARE MY RIGHTS IN THAT PROCESS?

Go to PG. 211 to learn about your rights during the probation violation and revocation process.

WHAT HAPPENS IF I AM UNABLE TO ABIDE BY THE CONDITIONS OF MY MANDATORY SUPERVISION?

If you're on Mandatory Supervision, the violation and revocation process works the same way as it does for informal probation and formal probation.[816] Please read the violation and revocations information on PG. 211, for a description of the law and how the process works.

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[812] CAL. PENAL CODE § 1203.3(a). "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."
[813] CAL. PENAL CODE § 1170(h)(5)(B)(i).
[814] CAL. PENAL CODE § 1170(h)(5)(B).
[815] See CAL. RULES OF COURT, Rule 4.530.
[816] CAL. PENAL CODE § 1203.2(a)(2).



YOUR RIGHTS AS A PERSON WITH A DISABILITY ON MANDATORY SUPERVISION

I HAVE A DISABILITY. WHAT RIGHTS DO I HAVE REGARDING ACCOMMODATIONS FOR MY DISABILITY?

The federal Americans with Disabilities Act (ADA) and California state law protect you against discrimination based on your disability, and protect your rights to equal treatment and reasonable accommodations.

If you are on probation (informal or formal), PRCS, or Mandatory Supervision[817], you have the right to:

1. Reasonable accommodations and changes in procedures so that you can participate in probation services, programs, and activities, and can successfully complete the terms of your supervision.[818] EXAMPLES INCLUDE:
   - If you are in a wheelchair, probation staff should make sure that any programs, meetings, and services are in wheelchair-accessible buildings.
   - If your probation officer refers you to community service (such as a drug treatment center, job center, or literacy center), or requires you to complete a program, the probation staff should make sure that you can actually get to the services and participate in the programs.
   - If you are required to complete a work program, probation staff should make sure that you are given a (alternative) job that you are able to do with your disability.
2. Effective communication so that you can fully understand and participate in probation programs, services, activities, and proceedings.[819] This includes communication during orientations, interviews, and supervision meetings; when you are notified of conditions of probation and registration requirements; and during grievance and revocation proceedings. EXAMPLES include:
   - Assistance by a sign language interpreter for a hearing- impaired person;
   - Reading aloud of written materials for a vision-impaired person; or
   - Simplifying information for a developmentally disabled person.
3. Additional assistance (including services) and aids (like healthcare devices) to accommodate your disability and ensure that you can fully and successfully participate in programs, activities, and services. EXAMPLES include:
   - Providing sign language interpretation if you are hearing impaired or
   - Wheelchair assistance if you have difficulty walking and cannot access a building.[820]
4. Information about your right to receive accommodations and equal treatment, and how this affects your probation programming and requirements.[821]

HOW CAN I REQUEST AN ACCOMMODATION OR FILE A COMPLAINT IF I FEEL THAT PROBATION IS NOT ACCOMMODATING MY DISABILITY, OR IF I AM NOT GETTING ACCESS TO PROBATION SERVICES OR PROGRAMS?[822]

Unlike for state parole, there are no formal probation policies or procedures to request accommodations or file a complaint related to your disability. Each county does things differently, and many counties have no formal procedures. You can first talk to your probation officer and explain the situation to him/her OR you may ask a judge to modify your probation to accommodate your disability by filing a motion requesting a change. Please Appendix AA, on PG. 314, for detailed steps on the process.

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[817] Title II of ADA, § 202 (codified at 42 U.S.C. § 12132); Cal Gov't Code § 11135; CAL. CIV. CODE §§ 54 et seq. See also 28 C.F.R. Part 35 (implementing the ADA). In addition to federal and state law, some cities or counties may provide additional protections for individuals with disabilities, which protect your rights while you are on supervision in that county. Telephone call with Jennifer Scaife, Reentry Division Director, San Francisco Adult Probation Dept., Nov. 6, 2014.
[818] 28 C.F.R. § 35.130.
[819] 28 C.F.R. § 35.160(a).
[820] 28 C.F.R. § 35.160(b).
[821] 28 C.F.R. § 35.106.
[822] The information in this section is based on our staff's conversation with probation staff in Alameda, Contra Costa, and Yolo Counties, and our law clerk's conversation with probation staff in Sacramento. If your county Probation Department employs more than 50 people (including POs and other staff), the department is required by law to provide a formal complaint (grievance) process. 28 C.F.R. § 35.107(b). However, most Probation Departments do not have formal grievance procedures to request accommodations or complain about discrimination based on disability.



VIOLATIONS & REVOCATIONS OF FORMAL PROBATION, INFORMAL PROBATION, & MANDATORY SUPERVISION

The following questions and answers apply to most forms of county-level community supervision in California, including informal probation, formal probation, and Mandatory Supervision, *but NOT Post-Release Community Supervision (PRCS)*.

PRE-HEARING

WHAT IS THE PROBATION REVOCATION PROCESS IN CALIFORNIA?

The following probation revocation process applies to: (1) informal probation, (2) formal probation, and (3) Mandatory Supervision.[823]

WHAT COULD HAPPEN IF I DON'T FOLLOW THE CONDITIONS OF MY PROBATION?

If any probation officer, parole officer, or police officer has probable cause to believe that you are violating any term or condition of your supervision, the officer may re-arrest you (even without a warrant) and bring you before the court.[824]

This is the case so long as you are on probation—at any point until the time your probation terminates or your case is dismissed. Alternatively, the court may, in its own discretion, issue a warrant for your re-arrest.[825]

If you willfully miss a scheduled court date ("progress report"), this is considered a probation violation and the court will issue a bench warrant for your arrest.[826]

CAN I BE REVOKED FOR NOT PAYING RESTITUTION?

Yes, BUT not if you cannot afford to pay. If you do not pay restitution, your probation can be revoked.[827] But your probation will not be revoked due to a failure to pay restitution unless the court determines that: 1) you have the ability to pay, and 2) you willfully failed to pay.[828]

CAN FLASH INCARCERATION BE USED AS AN INTERMEDIATE SANCTION?

If you are on informal probation, formal probation, or Mandatory Supervision flash incarceration CANNOT be used as an intermediate sanction. Flash incarceration can ONLY be used for people on parole or PRCS.[829]

AM I ENTITLED TO BAIL?

It depends. Bail amounts for probation violations vary from county to county. Bail amounts for probation violations may also depend on the type of offense you were convicted of, and whether you are on informal or formal probation.[830] If you have internet access, you can usually find standard felony and misdemeanor bail amounts for probation violations (also referred to as "bail schedules") on your county Superior Court's website, or call your county public defenders office to ask them about bail amounts for probation violations.[831]

WHAT DOES THE COURT HAVE THE POWER TO DO TO MY PROBATION STATUS?

The court can:

1. Reinstate your probation with the same probation terms and conditions;
2. Reinstate and modify (meaning change the terms or conditions of your probation),
3. Revoke and terminate (meaning take away your probation and sentence you to jail or prison time). The court can modify, revoke, or terminate probation's supervision of you on its own motion or upon the petition (a formal, legal request through the court) of you, the probation or parole officer, or the District Attorney. This applies to informal probation, formal probation, and Mandatory Supervision.[832]

For full details on the court procedure and sentencing in probation revocation proceeding, please see PG. 211.

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[823] CAL. PENAL CODE § 1203.2(a).
[824] CAL. PENAL CODE § 1203.2(a).
[825] CAL. PENAL CODE § 1203.2(a).
[826] CAL. PENAL CODE § 1203.2(a).
[827] CAL. PENAL CODE § 1203.2. See also Bearden v. Georgia, 461 U.S. 660.
[828] CAL. PENAL CODE § 1203.2. See also, People v. Self, 233 Cal. App. 3d 212 ("Probation shall not be revoked for failure of a person to make restitution . . . as a condition of probation unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay.").
[829] CAL. PENAL CODE §§ 1203.2(g); 3450(b)(8)(A) (allowing short-term "flash incarceration" for people supervised on parole and PRCS).
[830] CAL. PENAL CODE § 1268 et. seq.
[831] For example, you can find Riverside County's bail schedule at: http://www.riverside.courts.ca.gov/bailschedule.pdf. In Riverside County, the standard bail amount for a violation of informal probation is $5,000, and $50,000 for a violation of formal probation.
[832] CAL. PENAL CODE § 1203.2(a).



THE HEARING

WHAT COURT WILL HEAR MY CASE?

The court in the county in which you are supervised has "jurisdiction" (the legal authority) to hear the motion or petition to modify, revoke, or terminate you probation.[833]

For those on probation, it will be either the court in the county in which you are supervised or the court in the county in which the alleged violation of supervision occurred.[834]

WHO HEARS THE CASES?

Judges, magistrates, or court-appointed hearing officers hear probation revocation cases.[835]

WHO REPRESENTS THE INTEREST OF PROBATION IN THE HEARING?

The District Attorney (DA), on behalf of the state of California.[836]

WHAT DOES THE PROSECUTOR (D.A.) NEED TO PROVE?

The prosecutor, also known as the District Attorney (DA), must prove that is more likely than not that you violated probation.[837]

Unlike a criminal trial where the DA must prove the case "beyond a reasonable doubt," the DA in a probation revocation hearing only needs to prove by a **"preponderance of the evidence"** that you violated probation.[838]

WHAT DOES "PREPONDERANCE OF THE EVIDENCE" MEAN?

Requires the court to find that more than half of the evidence at least 51% of it supports the charges or alleged probation violation.

DO I HAVE A RIGHT TO NOTICE OF THE PROBATION REVOCATION HEARING?

Yes, unless you waive the notice requirement in writing.[839]

You must be given notice before your first court appearance in the probation revocation proceedings, unless you agreed in writing to a modification (a change) or termination (an end) of a specific term of your supervision.[840]

If you agreed in writing to a modification or termination of a specific term of your supervision, you also do not have to make an in-person appearance in court for the hearing.[841] We suggest that you speak with an attorney or public defender prior to waiving your right to a revocation hearing.

DO I HAVE THE RIGHT TO AN ATTORNEY AT THE HEARING?

Yes.[842] Before you waive the requirement to personally appear at the hearing or before you accept an offer of modification of your probation conditions, you should be informed that you have the right to an attorney, and if you cannot afford one, you have the right to a free attorney provided by the court.[843]

If you waive the right to an attorney, this waiver must be in writing.[844] Again, we suggest that you speak with an attorney or public defender prior to waiving your right to a revocation hearing.

WHAT RIGHTS DO I HAVE DURING A PROBATION REVOCATION HEARING?

There are minimal due process requirements for probation revocation proceedings.[845] This means that you don't have all of the same rights that you have at trial.[846]

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[833] CAL. PENAL CODE § 1203.2(b).
[834] CAL. PENAL CODE § 1203.2 (b)(1).
[835] CAL. PENAL CODE § 1203.2(b)(1) and (f).
[836] Cal. Penal Code § 1203.2.
[837] People v. Rodriguez, 51 Cal.3d 437, 441 (1990). ("Considerations of both law and policy dictate that the facts in a probation revocation hearing be provable by a preponderance of the evidence. First, constitutional principles permit the revocation of probation when the facts supporting it are proven by a preponderance of the evidence. While no constitutional provision declares a standard of proof for probation revocation hearings, the United States Supreme Court has indicated that due process requires no stricter standard of proof in probation revocation hearings than a preponderance of the evidence.")
[838] People v. Rodriguez, 51 Cal.3d 437, 441 (1990).
[839] CAL. PENAL CODE § 1203.2 (b)(2).
[840] CAL. PENAL CODE § 1203.2 (b)(2).
[841] CAL. PENAL CODE § 1203.2 (b)(2).
[842] People v. Vickers, 8 Cal. 3d 451, 461 ("[T]he efficient administration of justice requires that the defendant be assisted by retained or appointed counsel at all revocation proceedings other than at summary proceedings had while the probationer remains at liberty after absconding."). See also, Gagnon v. Scarpelli, 411 U.S. 778.
[843] Pursuant to CAL. PENAL CODE § 1203.2(b)(2)
[844] CAL. PENAL CODE § 1203.2(b)(2).
[845] In Morrissey v. Brewer, the U.S. Supreme Court established minimal due process requirements for parole revocation proceedings under the Fourteenth Amendment to the U.S. Constitution. 408 U.S. 471, 488-89 (1972). With regard to the revocation of probation, the Court subsequently held that "a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the



You have the following rights:

1. Written notice of the alleged violations and the possible consequences, with enough information to allow you to prepare a defense and obtain mitigating evidence (meaning evidence that would lessen the perceived severity of the violation or help justify it);[847]
2. Disclosure of the evidence against you;[848]
3. Timely hearing of the charges at a probable cause hearing and a formal revocation hearing;[849]
4. The right to present witnesses and evidence.[850] You can subpoena and present witnesses and evidence.[851] A person served with a subpoena for a parole revocation hearing is required to appear at the hearing unless the hearing is held at a place outside the county of his or her residence and more than 75 miles from his or her residence;[852]
5. The right to confront and cross-examine adverse witnesses.[853] You have a conditional right under the U.S. and California constitutions to confront witnesses whose statements are used against you in a probation violation hearing.[854] This means that you or your attorney may cross-examine any people who gave information or testified that you violated your probation.[855]
6. A fair and unbiased hearing body;[856] and
7. A written statement of the decision, the evidence relied on, and the reasons for revoking parole.[857]



IMPORTANT: You may waive (give up) your rights, either expressly—by saying you give up the right, or by implication—by failing to assert the right.858 Therefore, it is important that you take advantage of your rights and complain if a right is violated.

AT MY PROBATION REVOCATION HEARING, CAN THE PROSECUTOR (D.A.) INTRODUCE EVIDENCE OBTAINED THROUGH AN UNLAWFUL SEARCH OR SEIZURE?

Yes.[859] You should note that the "exclusionary rule" that usually applies in a criminal court trial—a rule that bars evidence obtained in violation of the Fourth Amendment to the U.S. Constitution—does NOT apply in probation revocation hearings. This means that even if evidence was suppressed in an earlier criminal trial, it can still most likely be brought in to a later parole revocation hearing.[860]

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conditions specified in Morrissey." Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973). Thus, the State "must provide the same process [found in Morrissey] when terminating a probationer from probation." State v. Rogers, 144 Idaho 738, 742–43 (2007); State v. Scraggins, 153 Idaho 867, 871 (2012). While Morrissey and Gagnon holdings make clear that probationers do not retain the full constitutional protections afforded criminal defendants, a probationer has a protected liberty interest in continued probation, and is therefore entitled to due process before probation may be revoked. Morrissey and Gagnon set forth those minimum due process requirements. See State v. Scraggins, 153 Idaho 867, 871 (2012). Cases since Morrissey have reaffirmed those rights and described them more specifically. See People v. Vickers, 8 Cal. 3d 451 (1979) ("[T]he efficient administration of justice requires that the defendant be assisted by retained or appointed counsel at all revocation proceedings other than at summary proceedings had while the probationer remains at liberty after absconding."); see also, Gagnon V. Scarpelli, 411 U.S. 778 (1973).

[846] See Gagnon V. Scarpelli 411 U.S. 778 (1973).

[847] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972); Vanes v. U.S. Parole Commission, 741 F.2d 1197 (9th Cir. 1984) (due process violated by lack of notice of basis for parole violation charge); Rizzo v. Armstrong, 921 F.2d 855, 858 (9th Cir. 1990) (failure to give notice of consequences if parole revoked at hearing).

[848] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972); People v. Moore, 34 Cal.3d 215 (1983) (state has duty to preserve and disclose material physical evidence).

[849] Morrissey v. Brewer, 408 U.S. 471, 485 (1972); People v. Woodall, 216 Cal. App. 4th 1221 (2013) (probation revocation procedures that fail to provide probable cause hearing do not violate due process rights if full hearing occurs relatively soon or if preliminary hearing on any new criminal charges is conducted).

[850] Morrissey v. Brewer, 408 U.S. 471, 488-489 (1972).

[851] In re Carroll, 80 Cal. App. 3d 22, 34 (1978).

[852] Cal. Gov't Code § 11185(a).

[853] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972); Valdivia v Schwarzenegger, 599 F.3d 984, 989 (9th Cir. 2010).

[854] See Gagnon V. Scarpelli 411 U.S. 778 (1973).

[855] You keep this right to cross-examine a witness unless: a.) the hearing officer (i.e. the judge) determines that there is "good cause" that the witness does not have to testify, and b.) that the "good cause" outweighs (exceeds) your right to confront that particular witness.[855] If the hearing officer determines that there is "good cause" that a witness does not have to testify, then the hearing officer may take into consideration that witness's past out-of-court statements, even though the witness will not be in court you to confront. For example, if a judge determines that there is "good cause" that a witness's safety will be in danger if he or she testifies at your probation revocation hearing, then the witness's past statements are admissible at your hearing. But remember—the more important the witness's testimony is to the case, the stronger your right to confront and question that witness is (see U.S. v. Comito, 177 F.3d 1166 (9th Cir. 1999); Valdivia v Schwarzenegger, 599 F.3d 984, 989 (9th Cir. 2010); People v. Arreola, 7 Cal.4th 1144, 1154 (1994). See also Gagnon V. Scarpelli 411 U.S. 778 (1973) ("[T]he minimum requirements of due process include . . . "the right to cross-examine adverse witnesses . . . unless the hearing officer specifically finds good cause for not allowing confrontation.").

[856] Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972) .

[857] See People v. Hawkins, 44 Cal. App. 3d 958 (1975); see also, Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972).

[858] In re La Croix (1974) 12 Cal.3d 146, 153.

[859] See U.S. v. Vandemark, 522 F.2d 1019, 1020 ("This accords with the almost unanimous view that the exclusionary rile does not usually apply in probation revocation settings."). See also, People v. Harrison, 199 Cal. App. 3d 803, 808 (1988).("We believe that federal [and state] law does [sic] not require application of the exclusionary rule to probation revocation hearings").

[860] Pennsylvania Board of Probation & Parole v. Scott, 524 U.S. 357 (1998) (exclusion of evidence at parole hearing would hinder functioning of parole system); In re Martinez, 1 Cal.3d 641, 649-652 (1970), disapproved on other grounds in In re Tyrell J., 8 Cal.4th 68



CAN A WITNESS BE EXCUSED FROM TESTIFYING IN FRONT OF ME AT A PROBATION REVOCATION HEARING?

Witnesses may not be required to testify in front of you if they are deemed *fearful* or *confidential*.[861]

- "Fearful witnesses" are witnesses whose identity is known to you but who: (1) have indicated that they are at a risk of harm if they testify in your presence; or (2) have requested that their contact information be withheld from you. Testimony of a fearful witness can be taken outside the parolee's presence, but the parolee's attorney must be present.
- "Confidential witnesses" are witnesses whose identity you are unaware of and who would be at a risk of harm if their identity were disclosed.[862] However, if confidential information is used as part of the reason you're charged with violating probation, you can request that the prosecutor disclose (reveal) this information or prove that revealing this information would create a risk of harm to the confidential witness.[863]

WHAT HAPPENS IF A VERY IMPORTANT WITNESS DOESN'T SHOW UP TO THE PROBATION REVOCATION HEARING, EVEN THOUGH HE/SHE WAS REQUIRED TO ATTEND?

If a very important (called "material") state witness fails to attend a parole revocation hearing, and the hearing cannot fairly proceed without the witness, the court can postpone the hearing or dismiss the case.[864]

SENTENCING

HOW LONG CAN I BE SENTENCED TO JAIL TIME FOR A PROBATION REVOCATION?

It depends on what your original conviction was for. When your probation is revoked and terminated, the court may—if the original sentence was suspended—now sentence you to jail for the longest period (the maximum sentence) that you could have originally been sentenced for the specific crime you were convicted of committing.[865]

COULD I BE SENTENCED TO PRISON INSTEAD OF JAIL FOR A PROBATION REVOCATION?

It's possible. You could be sentenced to prison time instead of jail time if the crime that you were originally convicted of is one that would have allowed a judge to sentence you to prison.[866] On the other hand, if the crime you were originally convicted of would *not* have allowed a judge to sentence you to prison time, then your probation revocation time cannot be sentenced to prison either.

SUMMARY: POSSIBLE SENTENCES FOR A PROBATION REVOCATION

What are the options the court has for sentencing/ punishment if they revoke probation? The judge could:

1) Reinstate your probation on the same terms and conditions;
2) Reinstated and modify (change) the terms of your probation to make them more difficult, (including adding fines, community service, or public works service); OR
3) Revoke and terminate your probation—and send you to jail or prison, depending on the commitment offense.[867]

(1994); In re Love, 11 Cal.3d 179, 190 (1974); see also, People v. Rackling, 195 C.A. 4th 872, 874 (2011) (finding that the Miranda exclusionary rule does not apply in probation revocation proceedings).

[861] The hearing officer may exempt a confidential informant from "confrontation and cross-examination." Morrissey, 408 U.S. 471, 487 (1972) (stating that, "[h]owever, if the hearing officer determines that an informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination").

[862] See United States v. Comito (9th Cir. 1999) 177 F.3d 1166; In re Melendez (1974) 37 Cal. App. 3d 967, 973; In re Prewitt (1972) 8 Cal.3d 470, 477-78. But see People v. Stanphill (2009) 170 Cal. App. 4th 61 (no need for balancing test where statement meets hearsay exception as "spontaneous statement").

[863] See In re Prewitt, 8 Cal.3d 470, 478 (1972); In re Love, 11 Cal.3d 179 (1974) (due process violation in failure to disclose contents of "confidential" report where disclosure would not endanger any informant).

[864] To decide whether the witness's testimony would be "material," the court will weight the importance of the witness's expected testimony against the availability and reliability of any alternative source of the same information. Also, if the state's material witnesses fail to appear, but your witnesses are present, you and your attorney may want to ask that the court to take the testimony of your witnesses before postponing the rest of the hearing.
See CAL. PENAL CODE § 1050(e).

[865] CAL. PENAL CODE § 1203.2 (c).

[866] CAL. PENAL CODE § 1203.2 (d). The statute reads: "In any case of revocation and termination of probation, including, but not limited to, cases in which the judgment has been pronounced and the execution thereof has been suspended, upon the revocation and termination, the court may, in lieu of any other sentence, commit the person to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities if he or she is otherwise eligible for such commitment." CAL. PENAL CODE § 1203.2 (d).

[867] CAL. PENAL CODE § 1203.1(j).

IF MY PROBATION IS REVOKED AND TERMINATED, HOW LONG WILL I BE SENT TO PRISON OR JAIL?

It depends. The length of time that you will be sentenced depends on what the judge ordered at the time you were sentenced. When you were initially sentenced to probation, the sentencing judge had the option of either ordering that the Execution of Sentence be Suspended (ESS) or ordering that the Imposition of Sentence be Suspended (ISS). Trying to figure out if the judge imposed ESS or ISS can be tricky. This is a complex area of law, so ask your lawyer if the judge ordered ESS or ISS. Here are the basics:

- ESS means that the sentence is only executed (meaning, you serve the sentence) if your probation is revoked because you violated your probation conditions.
- ISS means that your sentence has not yet been determined at the time the judge sentences you to probation. But, if you have ISS and you violate the terms of your probation, and you probation is revoked, then the court, at time that the court finds you in violation of your probation, will sentence you to whatever length sentence (up to the maximum for your specified offense) it deems appropriate.[868]

CHALLENGING A REVOCATION DECISION

WHAT RIGHTS DO I HAVE IF I AM A PERSON WITH A DISABILITY GOING THROUGH PROBATION REVOCATION PROCEEDINGS?

The ADA and California state law protect your rights during probation revocation proceedings.[869] In addition, you have a constitutional right to Due Process during a revocation hearing,[870] this means that the court must give you notice of and ensure that you can participate effectively in the hearing. (See PG. 212 above for more information on your Due Process rights during a probation revocation hearing).

If you have a disability, you have the following rights during probation revocation proceedings:

- Reasonable accommodations from Probation staff[871] Examples of accommodations include: Ensuring access to the hearing room for a person with mobility impairments; providing Braille or taped documents or reading assistance for a vision-impaired person; providing assistance in communicating for a developmentally disabled person; or providing sign language interpretation for a hearing-impaired person.
- Probation staff must use effective communication and provide accommodations when interacting with people on probation with disabilities.[872] That means that they must use effective communication and provide accommodation when arresting parolees or modifying conditions of probation.[873]
- In the courtroom, attorney and court are responsible for meeting your needs during the court processes.[874]
- Additional assistance to accommodate your disability so that ensure that you can fully and successfully participate in the revocation proceeding.[875]
- Information about your right to receive accommodations and equal treatment, and how this affects your probation programming and requirements.[876]

IMPORTANT TIPS IN COURT:

- **Tell the judge about your disability and how it affects your probation**: Remember, the judge has much more power than your probation officer in deciding whether or not to revoke your probation. So if your disability is making it difficult for you to comply with your probation conditions (and if this is the reason for your revocation), you should try to explain this to the judge. Remember to bring documentation (i.e. letters from doctors, medical reports) of your disability to court with you.
- **Tell the Judge what assistance you need from the Probation Department to accommodate your disability**: You should also explain if you need any additional assistance from the Probation Department.[877]
- **Bring Witnesses:** Finally, you can also bring any witnesses (for example, a doctor, therapist, or other service provider) and evidence (such as a letter from your doctor or prescription for medication) to show how your disability affects you.

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[868] If you plead guilty and have ISS, then whether or not your sentence will be imposed in front of the same judge who accepted your guilty plea depends on whether or not you signed an Arbuckle waiver. An Arbuckle waiver occurs when a defendant waives his right to be sentenced by the same judge who presided over his/her trial/accepted the change of plea. Without an Arbuckle waiver, any sentencing imposed by another judge is unlawful.
[869] Cal. Gov't Code § 11135(a).
[870] U.S. CONST. amend. 14; CAL. CONST. art. 7; see also CAL. PENAL CODE § 1203.2; People v. Vickers, 8 Cal. 3d 451 (1972).
[871] See 42 U.S.C. § 12101 et seq. Fore more information about reasonable accommodations, and about the rights of disabled persons who are on parole or probation, please see: Prison Law Office Parolee Handbook (Aug. 2013), 43.
[872] Prison Law Office Parolee Handbook (Aug. 2013), 43
[873] See Armstrong Remedial Plan (Jan. 3, 2001), § IV.S; Clark Remedial Plan (Mar. 1, 2002), § VIII.
[874] See CAL. RULES OF COURT, Rule 1.100(b). See also, CAL. CIV. CODE § 51 et seq.
[875] 28 C.F.R. § 35.106.
[876] 28 C.F.R. § 35.106.
[877] Telephone conversation with Tony Crear, Alameda County Probation Department



CAN I CHALLENGE A DECISION/ACTION BY THE COUNTY SUPERIOR COURT?

Yes. If you are on probation and would like to challenge a court's revocation decision or related action, you can file a **direct appeal** on "any order made after judgment, affecting the substantial rights of the party."[878]

STEP 1: To file an appeal, you must file a notice of appeal in the superior court within 60 calendar days after the court's decision.[879]

STEP 2: When you file a timely notice of appeal, the County Superior Court will prepare a record of the probation revocation proceedings consisting of all the documents filed in the court and transcripts of the hearings and provide these documents to you, the court, the state (the prosecutor). In a direct appeal, the court must appoint an attorney to represent you for free if you do not have enough money to pay for one. If you wish to have a court-appointed attorney, you must file a timely notice of appeal within 60 calendar days after the court's decision. For a list of County Superior Courts, visit: http://www.courts.ca.gov/find-my-court.htm.

STEP 3: If you do not file a timely notice of appeal or if your case involves information outside the court record, then you may be able to raise the issues in a state court petition for a writ of habeas corpus (see explanation in Appendix K, on PG. 280).

There are many issues that you can raise in a challenge to a revocation proceeding or decision. Claims can be based on violations of state or federal constitutional due process rights, California or federal statutes, or California administrative rules. For example, a person could argue that the revocation hearing is being unreasonably delayed, that he or she was denied the right to cross-examine witnesses at the hearing, or that the revocation decision was not supported by the evidence. Unfortunately, in most cases, the process for raising such challenges will be too slow to provide any relief before you serve the entire revocation term. However, you may still benefit by getting your revocation case re-heard, getting revocations vacated, and/or getting the parole department to subtract the time served for the revocation from your parole "controlling discharge date" (CDD).

[878] Cal. Penal Code § 1237(b).
[879] Cal. Rules of Court, rule 8.308.

IV. TRANSFERRING STATES WHILE UNDER COMMUNITY SUPERVISION

HOW DO I TRANSFER STATES WHILE I AM UNDER COMMUNITY SUPERVISION—SUCH AS STATE PAROLE, PROBATION, PRCS, OR MANDATORY SUPERVISION?

First, some background: The rules for transferring from one state to another when on state- or county-level supervision (such as parole, PRCS, mandatory supervision, or county probation) are are set by a legal agreement called *the **Interstate Compact for Adult Offender Supervision***.[880] The Compact applies in all 50 states, Puerto Rico, and the U.S. Virgin Islands.[881] If you are classfied as a sex offender requesting transfer to a different state, special additional rules apply to you (see PG. 218).

If you are currently incarcerated:

At the earliest, California can send an interstate transfer request for you 120 days before your expected release date (ERD).[882] The receiving state should respond within 45 days of receiving the transfer request.[883] The process can be sped up in an emergency.[884]

If you are formerly incarcerated:

If you are living in the community, you may request to transfer your parole to a new state if you meet basic eligibility requirements (listed below under Step 1).

STEP 1: **Confirm that you meet the basic eligibility requirements to request an interstate parole transfer. The basic requirements are:**

- As of the time your application is submitted to your requested state, you have 90 days (3 months) or more, or an undecided amount of time, left to serve on parole;
- You have a valid supervision plan;
- You have not had parole revoked and have no pending parole revocation charges; AND
- *EITHER* of the following is true:
  - You are a resident of the receiving state *OR* You have family that lives in the state and is willing and able to assist you (regardless of whether you decide to live with them), and you can obtain employment or have another means of supporting yourself;[885] AND
  - You have paid off your restitution orders in California, unless a judge finds that releasing you to transfer parole to another state would be "in the interests of justice."[886]

IMPORTANT NOTE: Even if you do not meet these requirements, California and the receiving state (the state you wish to transfer to) may agree to grant your request if they find "good cause" (a very good reason) to do so.[887]

STEP 2: **If you meet the eligibility requirements, communicate your transfer request to your parole agent. It's best to make this request in writing so that you have a paper trail, and keep a copy of it in a safe place.**

STEP 3: **Your parole agent should confirm that you meet the eligibility requirements. He or she must then submit a transfer request to the CDCR's Interstate Compact Unit in Sacramento, CA.**

STEP 4: **If the CDCR approves, it should send the transfer request to the receiving state. The receiving state should then decide whether to approve your transfer request.[888]**

STEP 5: **If the receiving state approves your request, you should then be transferred.[889]**

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[880] CAL. PENAL CODE §§ 11180, 11181.
[881] An Interstate Commission has developed rules for transfer eligibility and supervision. The Interstate Commission's rules have the same effect as statutory law and are mandatory in the states that adopted them. All state officials and state courts must carry out the terms of the Compact and comply with these rules. To the extent that state statutes, rules, or policies conflict with the terms of the Compact or rules created by the Commission to carry out the Compact, then such statutes, rules, or policies are superseded by the Commission's rules to the extent of any conflict. More Information on the Compact and rules made by the Interstate Commission for Adult Supervision and California State Council can be found at www.interstatecompact.org.
[882] Rules Adopted by the Interstate Commission for Adult Supervision (hereinafter ICAOS), Rules 3.101 and 3.105
[883] ICAOS Rule 3.104.
[884] ICAOS Rule 3.1046.
[885] ICAOS Rule 3.101.
[886] Cal. Penal Code § 11177.2.
[887] ICAOS Rule 3.101-2.
[888] ICAOS Rule 3.101.



WARNING: Special rules apply in a couple of situations: (1) if you must register as a sex offender (see next question), or (2) you are on state parole and still owe victim's restitution. If you owe victim's restitution, you are barred under *California state law* from transferring your parole to a different state[890]

I AM A 290 SEX OFFENDER REGISTRANT UNDER COMMUNITY SUPERVISION, AND I WANT TO TRANSFER TO ANOTHER STATE. ARE THERE SPECIAL RULES THAT APPLY TO MY TRANSFER REQUEST?

Yes. If you are registered as a sex offender and want to transfer your state or county supervision (meaning state parole, PRCS, or county probation) to a different state, then In addition to the steps and rules listed in the previous question, **the following special rules also apply to your transfer request**:

1. You must meet the eligibility requirements listed in the question above (see PG. 217)—it is up to the receiving state whether or not you have met these requirements.
2. You are not allowed to leave the sending state until the sending state's request for transfer of supervision has been approved, or reporting instructions have been issued, by the receiving state.
3. In addition to the information normally required in an application for transfer, the sending state must provide the following information in a request to transfer the supervision of a registered sex offender (if available):
   - assessment information, including sex offender specific assessments;
   - social history;
   - any information relevant to the sex offender's criminal sexual behavior;
   - a law enforcement report that provides specific details of sex offense;
   - victim information, including: (1) the victim's name, sex, age and relationship to you and (2) the statement of the victim or victim's representative;
   - and the sending state's current or recommended supervision and treatment plan.
4. The receiving has 5 business days to review your proposed residence to make sure it will comply with local policies and laws before issuing you reporting instructions. If the proposed residence violates state law or policy, the receiving state may deny reporting instructions.
5. You are not allowed to receive a travel permit by your sending state until reporting instructions are issued by the receiving state (with very few exceptions). Talk to the California Interstate Compact Office or contact a lawyer if you need advice—since the rules are complex.[891]

[889] See DOM § 81060.1 et seq. for details on CDCR's procedure for handling applications from parolees for out-of-state transfers. See ICAOS Rules 102-3.109.
[890] ICAOS Rule 3.101-2.
[891] For additional rules applying to interstate transfer of your parole, PRCS, mandatory supervision, or county probation as a sex offender, see ICAOS Rule 3.101-3.



A BRIEF INTRODUCTION TO THE SECOND HALF OF THIS CHAPTER:
FEDERAL COMMUNITY SUPERVISION

We mentioned earlier that each state in the U.S. runs its own criminal justice system—including deciding criminal laws, methods of incarceration, and community supervision. In addition to each state running its own system, the federal government (which oversees all the states) has a separate system to prosecute federal offenses (including things like drug trafficking, human trafficking, immigration, national security, computer fraud, corporate "white-collar" crimes.) In the next two sections of the PAROLE & PROBATION CHAPTER, you will learn about the types of correctional supervision in the community that are RUN BY THE U.S. FEDERAL GOVERNMENT:

- Part V covers FEDERAL PROBATION
- Part VI covers FEDERAL SUPERVISED RELEASE
- Part VII covers FEDERAL PAROLE

V. FEDERAL COMMUNITY SUPERVISION: FEDERAL PROBATION

WHAT WILL I LEARN?

- **Important basic information about Federal Probation**
- **What to expect in your first days out on Federal Probation**
- **The general conditions of Federal Probation**
- **What extra (special) conditions of Federal Probation can be added**
- **How to challenge the conditions of Federal Probation**
- **How to transfer locations while on Federal Probation**
- **The process of violations & revocations on Federal Probation**
- **Your rights as a person with a disability on Federal Probation**

BASICS OF FEDERAL PROBATION

WHAT IS FEDERAL PROBATION?

After you are convicted of a federal crime, federal probation is often used as an alternative sentence *to prison time*.[892] That means that federal "probation" is considered a sentence in itself. For the most part, if you are placed on federal probation, you must report to your assigned probation office *and* comply with all the terms and conditions (rules) of your federal probation.[893]

WHO IS SUPERVISED BY FEDERAL PROBATION?

1. People who are on "federal probation"
2. People who are on something called "supervised release"
3. People who would have, in the past (and today in Washington, D.C. only) be put on federal parole

AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON FEDERAL PROBATION

WHEN MUST I REPORT TO MY PROBATION OFFICER?

You must report to your probation officer within 72 hours (3 days), or sooner if a judge or U.S. Probation Officer orders you to do so.[894]

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[892] A defendant may receive a sentence of probation unless he or she is convicted of a Class A or B felony; probation is prohibited by statute of conviction; or the defendant is sentenced at the same time to imprisonment. 18 U.S.C. § 3561(a). A court's authority to impose probation is based solely on statute. See Affronti v. U.S., 350 U.S. 79, 83 (1955). The authorized length of probation is between one and five years for a felony; not more than five years for a misdemeanor; and not more than one year for an infraction. 18 U.S.C. § 3561(c).

[893] 18 U.S.C. § 3563(b)(15). Ever since 1984 (the time when the "Sentencing Reform Act" went into effect), federal criminal courts; see also United States Sentencing Commission, Guidelines Manual, http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2012/manual-pdf/Chapter_7.pdf.

[894] See United States Probation Office, Central District of California, Frequently Asked Questions, http://www.cacp.U.S.C.ourts.gov/faq.



Read the written statement given to you by U.S. Probation for information on where, when, and to whom you should report.[895] If you cannot remember where you were supposed to report or have lost your written statement, you should report to the nearest U.S. Probation office and they will be able to help you.[896] To find the U.S. Probation office closest to you:

1. Go to the U.S. Courts' website here: http://www.uscourts.gov/Court_Locator/CourtLocatorSearch.aspx
2. Fill in your city, state, and zip code.
3. Under the "Court Type" drop-down menu, choose "Probation Offices"
4. A list of offices nearest you will appear. If you click the link for "Details" on any one of those listings, it will take you to a new web page with the street address, phone number for the U.S. Probation office, and an interactive map of the location.

Sometimes the Federal Bureau of Prisons (BOP)—which oversees the federal prison system across the country—will release you to a transitional house (a "halfway house"), before you've reached your actual release date—usually 6 months ahead of time.

Before you leave federal prison, the prison staff will give you a "Notice of Release and Arrival" (Form BP-S714.056), which will clearly state the exact amount of time you are allowed for transportation from the prison to the transitional house. Once at the transitional house, you might be subject to a lockdown period (for example, a 72-hour lockdown period)—meaning you cannot leave for those days.

After being released from a transitional house, Federal Probation staff will give you another *Notice of Release and Arrival* (Form BP-S714.056). For some people on federal probation, that is the moment that the 72-hour clock for checking in with your Probation Officer begins. That form will also clearly state your home confinement date. The transitional house you are leasing in may have requirements you first have to meet to their satisfaction before you will be released to home confinement—usually on an ankle monitor until the 6 months are up.



IMPORTANT: If you were released from federal prison before October 26, 2016, and were given a Bureau of Prisons pre-paid debit card issued by Chase, you may be eligible for payment under a class action settlement.[897] To find out more information about the lawsuit, and determine whether you are owed money as a member of the class action, contact the Settlement Administrator at 1-888-280-6496.

LENGTH OF FEDERAL PROBATION

HOW LONG IS MY SUPERVISION UNDER FEDERAL PROBATION?

The maximum term of probation that can be imposed depends on the type of conviction offense:[898]

1. FELONY CONVICTION: Minimum 1 year to maximum 5 years; *or*
2. MISDEMEANOR CONVICTION: Maximum 5 years.
3. INFRACTION: Maximum 1 year.[899]

Therefore, to know the range of time you could be sentenced to federal probation, you will need to know if you were convicted of a felony, misdemeanor, or infraction. If you aren't sure, ask your federal public defender or your probation officer.

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[895] 18 U.S.C. § 3564(d).
[896] Telephone call with Duty Officer at the San Francisco United States Probation Office on March 19, 2015.
[897] JPMorgan Chase Bureau of Prisons Debit Card Fees Settlement, Top Class Actions (Dec. 27, 2016), https://topclassactions.com/lawsuit-settlements/consumer-products/360589-jpmorgan-chase-bureau-prisons-debit-card-fees-settlement/.
[898] There are three types of crimes in the federal criminal justice system: Felonies, Misdemeanors, and Infractions. Felonies are offenses for which a term of imprisonment of more than one year is possible. Misdemeanors are offenses for which a term of imprisonment no greater than one year may be imposed. Finally, Infractions are offenses for which the term of imprisonment may be no longer than five days. See 18 U.S.C. § 3559.
[899] 18 U.S.C. § 3561(c)(1)(3). The United States Sentencing Guidelines provide a recommendation to sentencing judges based on a number of factors, including the seriousness of the instant offense and the defendant's prior criminal record. Ultimately, this recommendation is reflected in a Guideline Sentencing Range sitting at the intersection of the applicable Offense Level and Criminal History Category. See United States Sentencing Guidelines 2014 Sentencing Table, http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2014/2014sentencing_table.pdf; U.S.S.G. § 1B1.1 General Application Principles, http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2014/GLMFull.pdf. The Sentencing Guidelines recommend that probation be imposed for at least one year, but no longer than five years, if the Guideline Offense Level is 6 or greater. When the Guideline Offense Level is less than 6, the Guidelines recommend probation be imposed for no greater than three years. See U.S.S.G. § 5B1.2(a), Term of Probation, http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2013/manual-pdf/2013_Guidelines_Manual_Full.pdf.



CAN I GET OFF OF FEDERAL PROBATION EARLY?

Possibly. You can ask for early release from federal probation from the judge who originally sentenced you.

- For a *misdemeanor conviction* or an *infraction*, you can file a petition and ask the judge to terminate your federal probation at any time.
- For a *felony conviction*, you can file a petition and ask the judge to terminate your federal probation after one year.[900] Talk to your U.S. Probation Officer about this request first, because he or she can help you ask the judge for this.

The court has the power to decide whether or not to let you off probation early. In most cases, judges will deny requests to be let off probation early. But that doesn't mean that you shouldn't try, especially if you've done really well on your probation. And remember, it is really helpful if your Probation Officer supports your request.

You have the best shot of being let off of federal probation EARLY if:

- You have completed 2/3 of your probation term (or at the very least, you are ½ way through),
- You have had no violations,
- You have complied with all the terms of your probation,
- You have paid all restitution and fines, and
- Your probation officer agrees that you should be let off early[901]

What factors might the judge consider in my request?

It depends on the judge. Ultimately, the decision to end your federal probation early is up to the judge who originally sentenced you. To get off of federal probation early, you must show the judge that you have earned it through good conduct, and it must be in the interest of justice.[902] See Appendix EE, PG. 320 for more information.

Here is the full list of factors that the judge *may* consider in deciding whether to let you off probation early:

- Whether or not your Probation Officer or the Prosecutor support your request;
- The nature and seriousness of the crime you were convicted of;
- Your criminal history and/or mental illness history;
- Whether the judge believes you are a threat to the public;
- Whether the judge believes you have been sufficiently punished;
- Whether you have completed any substance abuse treatment or rehabilitation programs;
- How your sentence compares to the federal sentencing guidelines recommended sentence;
- U.S. Sentencing Commission policy statements;[903]
- Whether you've paid restitution to the victims.[904]

COULD MY TIME ON FEDERAL PROBATION BE EXTENDED BEYOND THE ORIGINAL SENTENCE?

Yes, but only if you were not originally given the maximum term on federal probation that would be allowed by law. The judge may extend your probation at any time before the end of your sentence, but must give you a hearing before doing so. At that court hearing, the judge can make your probation term longer if he or she did not originally give you the maximum authorized term.[905]

A judge may extend your time on federal probation instead of sending you to jail if he or she finds you violated your conditions of probation (see PG. 222 which discusses conditions of federal probation). The maximum amount of time you'll spend on federal probation supervision depends on whether you were convicted of a felony, misdemeanor, or infraction. Look at PG. 220 to figure out the maximum amount of time you could spend on federal probation.

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[900] 18 U.S.C. § 3564(c).
[901] See Federal Defenders of New York, Supervised Release, http://federaldefendersny.org/information-for-client-and-families/supervised-release.html.
[902] 18 U.S.C. § 3564(c).
[903] In 2011, the Sentencing Commission issued a policy statement informing judges that they may let former narcotics abusers from supervised release early, if that person has successfully completed a treatment program. See United States Sentencing Commission, 2013 Guidelines Manual, http://www.ussc.gov/guidelines-manual/2013/2013-5d12. See 18 U.S.C. § 3583(e)(1)-(2).
[904] See 18 U.S.C. § 3553(a)(1)-(7).
[905] 18 U.S.C. § 3564(d).



CONDITIONS OF FEDERAL PROBATION

WHAT ARE CONDITIONS OF FEDERAL PROBATION, AND WHY ARE THEY IMPORTANT?

Your conditions of federal probation are the rules set by the judge that you must follow if you want to remain in the community under supervision, and not be sent back to prison. These are called "release conditions"—they tell you what you can and can't do in the community. These conditions are broken down into two types: (1) mandatory conditions and (2) discretionary conditions.

Examples include:

- Not being able to own/store guns or other weapons;
- No contact with victims or witnesses; restrict your association with certain people or groups;
- Restricted travel;
- Curfews;
- Community service;
- Electronic monitoring;
- Employment requirements;
- Mental health treatment;
- Substance abuse treatment.

It is important for you to know what conditions *you must follow* on federal probation so that you don't get into trouble or sent to prison for violating those rules.

Also: be sure to talk to your U.S. Probation Officer about how to get connected to any needed services or resources offered in your community.[906]

WHERE CAN I FIND A WRITTEN STATEMENT OF MY CONDITIONS OF FEDERAL PROBATION?

The judge must direct the probation officer to provide you with a written statement that explains all the conditions you must follow, and is clear and specific enough to guide your conduct under supervision.[907]

The conditions of supervision are also listed on the "Judgment in a Criminal Case" produced by the court after your sentencing hearing. Ask your attorney or the Clerk of the Court where you were sentenced for a copy of this document so that you can be sure of your obligations to the Court. Most judges will not excuse your failure to comply with the conditions of supervision simply because you did not receive a copy of the conditions.[908]

HOW OFTEN DO I HAVE TO SEE MY PROBATION OFFICER IF I AM ON FEDERAL PROBATION?

It depends. How often you must report to your probation officer varies widely based on the individual "supervision plan" developed for you by your probation officer.[909]

Some supervision plans require weekly meetings and even more frequent phone contact; for others, occasional or monthly contact is sufficient. Meetings may take place at the probation office, your home, or your workplace.[910] Probation officers sometimes make "surprise" visits. For this reason, it is important that you always inform your probation officer of any changes to your work schedule.

WHAT IS THE DIFFERENCE BETWEEN MANDATORY & DISCRETIONARY CONDITIONS?

Federal law governs the mandatory conditions of federal probation (the law breaks it down into a list of mandatory conditions (required) and discretionary conditions (not required).[911]

1. Mandatory conditions are the rules that judges *must* impose.
2. Discretionary conditions are the rules that judges *can, but do not have to,* impose.

If a judge wants to impose a discretionary condition, he or she MUST find that the condition *reasonably relates* to sentencing factors,[912] and is *reasonably necess*ary for the purposes of supervision.[913]

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[906] Reentry Council, Getting Out Staying Out: A Guide to San Francisco Resources for People Leaving Jails and Prisons, 30, http://sfreentry.com/wp-content/uploads/2013/07/1213-2nd-printing-GOSO.pdf.
[907] 18 U.S.C. §§ 3563, 3583.
[908] This is because the Judge also reads all of the conditions to you at your sentencing hearing.
[909] See 18 U.S.C. § 3563(b)(15) (permitting the Court to order a defendant to report to a probation officer as directed by probation)
[910] See Federal Judicial Center, Who Does What?, http://www.fjc.gov/federal/courts.nsf/autoframe!openform&nav=menu1&page=/federal/courts.nsf/page/360.
[911] 18 U.S.C. § 3563.
[912] See 18 U.S.C. § 3553(a) (listing the sentencing factors Judges must consider when imposing sentence).
[913] 18 U.S.C. §§ 3563(b); 3583(d), 3583.



The only difference to note is that intermittent confinement may be imposed as a condition of probation during the first year of federal probation. Intermittent confinement means temporarily going into Bureau of Prisons (BOP) custody for a night, a weekend, or possibly for a longer period of time.[914]

WHAT ARE THE MANDATORY CONDITIONS ON FEDERAL PROBATION?

The following conditions are mandatory and apply to EVERYONE on Federal Probation. (Note: These also apply to everyone on Supervised Release, see PG. 229.)

1. You cannot commit another federal, state, or local crime during the entire length of your federal probation. The court must make this condition known and clear to you.
2. You cannot unlawfully use a controlled substance.
3. You must submit to one drug test within 15 days of release and at least 2 periodic drug tests thereafter (as determined by the court).
    a. Consequences for a confirmed positive drug test include:
    b. Possible prison time, and
    c. Court-ordered participation in a substance abuse treatment program (unless your current or past participation in such a program warrants an exception)[915]
4. You must cooperate in the collection of a DNA sample.[916] You may be placed in prison for up to one year or fined up to $100,000 if you fail to cooperate with a DNA sample.
5. You must notify your U.S. probation officer if there is any significant change in your income or economic circumstances, which would impact how much you can pay towards any unpaid restitution, fines, or special assessments.[917] Even those receiving SSI/SSDI "Disability" benefits will be asked to pay. If you are low-income, you should communicate with your probation officer about how you might be able to arrange payments you can afford.

POSSIBLE EXCEPTION TO THE BAN ON SUBSTANCE USE

The Court can completely remove or suspend this condition if your pre-sentence report (or other reliable sentencing information) indicated a low risk of future substance abuse.

! **IMPORTANT NOTE: other *mandatory conditions* may apply depending on your commitment offense! See the next question.**

WHAT ARE ADDITIONAL MANDATORY CONDITIONS THAT ONLY CERTAIN PEOPLE ON FEDERAL PROBATION HAVE TO FOLLOW?

The following are mandatory conditions that apply to ONLY CERTAIN people on Federal Probation, depending on your commitment offense.

> MANDATORY CONDITIONS if you were convicted of a felony:

You must also follow at least one of the following two conditions, as ordered by the judge:

- Pay restitution to a victim of the offense,[918] OR
- Perform community service.[919]

EXCEPTIONS: You do not have to obey one of these two additional conditions if one of the following applies to you:

- The judge imposed a fine that removed this requirement; OR
- The judge finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which case the judge must impose one or more of the other discretionary conditions.[920]

> MANDATORY CONDITION if you are required to register as a sex offender:[921]

You must comply with all the requirements of the Sex Offender Registration & Notification Act.[922]

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[914] 18 U.S.C. § 3563(b)(10).
[915] 18 U.S.C. §§ 3563, 3583.
[916] 18 U.S.C. § 3563. For people on supervised release, DNA samples are usually taken prior to your release (especially if you were convicted of murder, voluntary manslaughter, enslavement, kidnapping, robbery, burglary incest, or arson). But if your DNA sample was not taken prior to your release, some Districts contract with companies who will take your DNA sample after your release. See United States Courts, Judiciary Begins Sample Collection for DNA Testing, http://www.U.S.C.ourts.gov/News/TheThirdBranch/02-02-01/Judiciary_Begins_Sample_Collection_for_DNA_Testing.aspx.
[917] 18 U.S.C. § 3563.
[918] 18 U.S.C. § 3563(b)(2) (You must make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A))).
[919] 18 U.S.C. § 3563(b)(12).
[920] 18 U.S.C. § 3563(a)(2).
[921] 42 U.S.C. § 16911, et seq.
[922] 18 U.S.C. § 2250.



WHAT DISCRETIONARY CONDITIONS WILL I HAVE TO FOLLOW ON FEDERAL PROBATION?

For a discretionary condition to be lawful, the following must be true:

1) It must be "reasonably related" to the nature and circumstances of the offense, your personal history and characteristics, the need to protect the public from you committing future crimes, and the need to provide you educational or vocational training, medical care, or other correctional treatment; AND
2) It cannot deprive you of liberty (meaning, your ability to live your life freely without excessive restrictions) any more than "reasonably necessary" to deter future crimes, protect the public, and for the purpose of providing you with training and treatment.[923]

A judge may order discretionary conditions on your federal probation—but only if it meets this two-part legal standard.

Furthermore, *discretionary conditions* of federal probation can be thought of in two categories—(1) "standard conditions," which are imposed in almost every person's case (see note directly below), and (2) other discretionary conditions that may be added to you in particular (see the next question).

AN IMPORTANT NOTE ABOUT STANDARD CONDITIONS

The list of "Standard Conditions" below—while technically discretionary (not required)— will be added by the judge in *almost every case* of federal probation (the same is true for Supervised Release, see PG. 229). These "standard conditions" will be IN ADDITION TO the general conditions of federal probation discussed on PG. 223 above.[924] For a full list, please see PG. 317. If you are on federal probation that means you will likely have to follow all of these rules.

WHAT RULES MUST THE JUDGE FOLLOW WHEN ORDERING DISCRETIONARY CONDITIONS ON MY FEDERAL PROBATION?

To add a discretionary condition to your federal probation, the judge must find that that the conditions are reasonably related to the following factors:

- The nature and circumstances of the offense;
- Your personal history and characteristics;
- Reflecting the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense;
- Adequately deterring future criminal conduct;
- Protecting the public from further crimes committed by you; and/or
- Providing you with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[925]
- Furthermore, if the additional discretionary conditions *deprive you of liberty or property*, the judge must find that the conditions are reasonably necessary to:
  - Reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - Adequately deter future criminal conduct;
  - Protect the public from further crimes committed by you; and/or
  - Provide you with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[926]

CAN I ASK THAT MY CONDITIONS OF FEDERAL PROBATION BE CHANGED?

Yes. The judge may change, reduce, or increase the conditions of a sentence of federal probation at any time before your probation term ends.[927] The judge may change or increase the conditions of your probation if you violate a condition of probation. In the best-case scenario—if you have not had any violations and you have fulfilled all probation requirements—the judge may end your probation early.[928] In the worst-case scenario, the judge may revoke your probation and sentence you to time in prison.

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[923] 18 U.S.C. § 3583(d).
[924] See 18 U.S.C. § 3583; U.S.S.G. § 5D1.3(b)-(d) (standard conditions" are set forth in U.S.S.G. § 5D1.3(c)).
[925] See 18 U.S.C. § 3563(b) (referring to 18 U.S.C. §§ 3553(a)(1), (a)(2)).
[926] See 18 U.S.C. § 3563(b) (referring to 18 U.S.C. § 3553(a)(2)).
[927] 18 U.S.C. §§ 3563, 3583; see also FED. R. CRIM. PRO. 32.1 (describing the procedures required for the probation officer to petition the Court for a modification or revocation of probation or supervised release, and for the Court in adjudicating a potential revocation or modification). The Court can also modify or revoke your Federal Probation or Supervised Release after the official end of the term (i.e., a specific number of years after your release from custody) so long as the violation and Probation Officer's Petition to Modify or Revoke was filed with the Court before the official end of the term of supervision. This means that the Probation Office can obtain an arrest warrant years after an event occurred.
[928] 18 U.S.C. § 3563(c); see also FED. R. CRIM. PRO. 32.1.

CAN I CHALLENGE UNLAWFUL DISCRETIONARY CONDITIONS THAT WERE ADDED ON TO MY FEDERAL PROBATION?

YES. If you think that a discretionary condition is illegal, then you can appeal the condition. For a federal probation condition to be ***lawful***:

1. It must be "reasonably related" to the nature and circumstances of the offense, your personal history and characteristics, any concerns of public safety, and the need to provide you educational or job training, medical care, or correctional treatment; AND
2. Cannot deprive you of liberty (meaning, your ability to live your life freely without excessive restrictions) any more than "reasonably necessary" to deter future crimes, protect the public, and provide you with training and treatment.[929]

Courts have emphasized that BOTH of these requirements must be met to impose a DISCRETIONARY CONDITION on you.[930] If you object to a special condition, it is the government's responsibility (NOT yours) to show that the condition is legally justified.[931] We suggest that you speak with an attorney if you think a condition of your probation is illegal.

HOW CAN I CHALLENGE UNLAWFUL DISCRETIONARY CONDITIONS THAT WERE ADDED ON TO MY FEDERAL PROBATION?

Within 14 days of your sentencing hearing, you must file a Notice of Appeal with the Clerk of the Court where you were convicted.[932] Once this occurs, you should contact the Federal Public Defender's Office in your federal judicial district. For a list of Federal Public Defender's Offices in California, visit: http://www.fd.org/docs/defender-contacts/federal-public-and-community-defender-directory.pdf?sfvrsn=9.

NOTE: The same rules and processes apply for challenging discretionary conditions of Supervised Release as for federal probation (refer back to PG. 106 for challenging conditions of federal probation.)

VIOLATIONS & REVOCATIONS—FOR BOTH FEDERAL PROBATION AND SUPERVISED RELEASE

The same rules and processes for violations and revocations apply to both federal probation and Supervised Release.[933] Please jump to PG. 236 to learn more about violations and revocations.

DISABILITIES & FEDERAL PROBATION

If you have a disability and are under federal community supervision of any kind (federal probation, supervised release, or federal parole), go to PG. 252 below to learn about your rights.

TRANSFER LOCATIONS ON FEDERAL PROBATION, FEDERAL SUPERVISED RELEASE, OR FEDERAL PAROLE

! **IMPORTANT: This section on transfers applies to anyone who is on federal community supervision, such as federal probation, supervised release, or federal parole.**

HOW CAN I MOVE IF I AM ON FEDERAL SUPERVISION (LIKE FEDERAL PROBATION, FEDERAL SUPERVISED RELEASE, OR FEDERAL PAROLE)?

If you are currently incarcerated and preparing for your release:

You may be able to request a transfer to another district. The request must be submitted to your Case Manager with the Bureau of Prisons since you will not yet have a Probation Officer.

If you are formerly incarcerated and already release and living in the community:

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[929] 18 U.S.C. § 3583(d).
[930] See, e.g., U.S. v. Bender, 566 F.3d 78 (8th Cir. 2009); U.S. v. Perazza-Mercado, 553 F.3d 65 (1st Cir. 2009); U.S. v. Pruden, 398 F.3d 241, 249 (3d Cir. 2005).
[931] U.S. v. Weber, 451 F.3d 553 (9th Cir. 2006) ("We have long held that a term of supervised release is part of a defendant's sentence . . . and, like imprisonment, restricts a defendant's liberty and fundamental rights . . .. As a result, when the government seeks to restrict a defendant's liberty through a term of supervised release, it shoulders the burden of proving that a particular condition of supervised release involves no greater deprivation of liberty than is reasonably necessary to serve the goals of supervised release.").
[932] Fed. R. App. Pro. 4(b)(1)(A).
[933] To read more about federal probation and supervised release violations and revocation, and the legal distinctions between the two of them and the codes that govern them, see Administrative Office of the United States Court, Revocation of Probation and Supervised Release, http://www.fd.org/docs/select-topics---probation/revocation-of-prob-and-sup-release.pdf.



The process depends on whether you are asking to move to a new residence *within the same district* OR to a new residence *in a different district*. Because federal supervision is based on districts, it is not a question of whether you are asking to move across state lines but, instead, whether you are asking to move into a different district. The Interstate Compact on Adult Offender Supervision (ICAOS) does not apply to federal supervision. In a nutshell, it's easier to move within the same district than to move to a new one. The steps below outline both possibilities:

POSSIBILITY #1: ***If you are moving to a new residence within your current district, it's suggested that you follow these steps:***

STEP 1: **Notify your Probation Officer that you want to change your address, and submit that address and the contact information for anyone else living at that address. You must get permission from your Probation Officer to move within your current U.S. Probation District—even if it's across the street.**

STEP 2: **Your Probation Officer will investigate the new address—so long as it is located in the same U.S. Probation District. As part of that investigation, your Probation Officer will:**

1. Make sure the new address actually exists;
2. Make sure that other people living at the new address are willing and able to have you in their home;
3. Run a background check on everyone living at the new address;
4. PLEASE NOTE: Since it is a standard condition for all people on federal supervision to avoid associating with anyone else who has a felony conviction, your request to move/transfer to live with someone who has been convicted of a felony will likely be denied.
5. Make sure that everyone at the new address knows about and agrees to the "Search Condition" of your supervision.[934]
6. Make sure there are no weapons at the new address.

IMPROVING YOUR CHANCES OF HAVING A TRANSFER REQUEST APPROVED

Your request is much more likely to be approved if you have a good track record – clean drug tests, always going to your meetings with your Probation Officer, staying out of trouble with law enforcement.

POSSIBILITY #2: ***If you are moving to a new residence outside of your current U.S. Probation District, it's suggested that you follow these steps:***

STEP 1: **Before you ask for a formal transfer to a new district—which can be a longer, more challenging process—ask your probation officer for what is called "courtesy supervision" by another district.**

This technically keeps your case in the original district, but allows you to live in and travel to the district of your choice. Your probation officer AND the probation officer of the other district have to agree. After doing this, it is much easier to transfer to the courtesy district than to just transfer from one district to another without "courtesy supervision" being set up first.

STEP 2: **If "courtesy supervision" is denied or doesn't work out, you can still request a formal transfer.**

Tell your Probation Officer that you want to change your address, and submit that address and the contact information for anyone else living at that address. You must get permission from your Probation Officer to move to a new address in a different U.S. Probation District.

STEP 3: **Your Probation Officer must submit a "Transfer Investigation" to the new district.**

The Transfer Investigation generally takes 30 days or longer, since both your current district and the new district must investigate your new proposed address and approve the transfer. As part of the "Transfer Investigation," a Probation Officer in the receiving District will:

1. Make sure the new address actually exists;
2. Make sure that other people living at the new address are willing and able to have you in their home;
3. Run a background check on everyone living at the new address;
4. PLEASE NOTE: Since it is a standard condition for all people on federal supervision to avoid associating with anyone else who has a felony conviction, your request to move/transfer to live with someone who has been convicted of a felony will likely be denied.
5. Make sure that everyone at the new address knows about and agrees to the "Search Condition" of your supervision.
6. Make sure there are no weapons at the new address.

[934] The Search Condition might read something like "The defendant is prohibited from possessing controlled substances. To ensure that the defendant is in compliance, the defendant will submit to search of his person, home, or vehicle at any time of the day or night by any law enforcement or probation officer without cause." This means your friends may get searched if at your home (or vice versa). If either of you have any contraband, there is a good chance both of you will be getting in trouble.

STEP 4: **The receiving District must approve or deny the transfer after conducting the "Transfer Investigation."**

The receiving district can deny your request to transfer/move for any reason. The sending district where you are currently supervised must wait for a response before it can act to transfer your supervision.[935]

IMPORTANT: Some districts have hard and fast rules about certain offenses—for example, that they won't accept people with sex offenses, or the receiving district will require a more intense investigation of that person.

WHAT FACTORS COULD HELP MY REQUEST TO MOVE/TRANSFER BE APPROVED?

Most U.S. Probation Districts have some internal criteria for analyzing requests to transfer into their District. The following are factors that will likely work in your favor if you can show these to your Probation Officer:

1. Reliable job offer in new area;
2. Proven family and community ties;
3. Other positive connections to the new area;
4. Reasonable plan for living in the new area (e.g., income, social and family support, etc.);
5. The new address was your legal residence prior to incarceration, and had nothing to do with your criminal offense;
6. You have nowhere else to go and would be homeless if you don't move; and
7. The move appears to be in your best interest for other reasons not listed above.

WHAT FACTORS COULD HURT MY REQUEST TO MOVE/TRANSFER FROM BEING APPROVED?

Most U.S. Probation Districts have some internal criteria for analyzing requests to transfer into their District. The following are factors that will make it less likely that your request to move or transfer districts is approved:

1. No job offer in new area;
2. No or weak family and community ties in the new area;
3. Weak social connections to the new area, or connections that could be a bad influence on you;
4. Unreasonable plan for moving (e.g., no income, no social or family connections, etc.);
5. You are unable to provide contact information for the people you are connected to or the people you will be living with at the new address;
6. You appear to be trying to escape a possible violation of your Federal Probation or Supervised Release conditions in your current District;
7. The new address where you want to move is unsafe;
8. Someone with a felony or someone who is currently on community supervision for a criminal conviction lives at the new address; and
9. The residence is connected to a previous criminal offense committed by you or by someone who you would be living with.

I AM ON FEDERAL PROBATION, FEDERAL SUPERVISED RELEASE, OR FEDERAL PAROLE. IS IT POSSIBLE TO MOVE WHILE A TRANSFER INVESTIGATION IS STILL PENDING?

Maybe. Sometimes a U.S. Probation Officer will give someone permission to move while an investigation is pending.

For example, you may be allowed to move before an official approval of your transfer request if:

1. An eviction is forcing you out of your home and you have nowhere else to live but at the new address in your current district or a different district;
2. You have a job offer that requires you to start on a specific date;
3. Another emergency reason that requires you to move.

IF YOUR NEED TO MOVE IS URGENT:

You should inform your Probation Officer and request a travel permit while the "Transfer Investigation" and approval are still pending. But please be aware, if the new district completes its "Transfer Investigation" and denies the transfer request *for any reason*, you would be required to move back to the original sending district.[936] If you do not move back, you will be violating the Court's Order to follow the directions of the Probation Officer. If the court finds you were not following the directions of your Probation Officer, it can revoke your supervision and send you to prison.

[935] Phone Call with Amy Rizor, Supervisory Probation Officer, U.S. Probation (Oakland, CA office).
[936] Phone Call with Amy Rizor, Supervisory Probation Officer, U.S. Probation, N.D. Cal. (Oakland office).



CAN I CHALLENGE A DENIAL OF MY TRANSFER REQUEST?

Yes. If your request to move/transfer has been denied by your current probation officer, you can ask to speak with a Supervising U.S. Probation Officer. However, it is often the case that the request has already gone through a supervisor, and has been denied with the supervisor's approval. Other times, a request to move/transfer will be conditionally denied, meaning you could get your request approved later on if you do the things asked of you, like finding a safer home to move to, securing a firmer job offer, finding a different family member to connect with in the new place, etc.[937]

I AM ON FEDERAL SUPERVISION. CAN I MOVE IN WITH SOMEONE WHO LIVES IN GOVERNMENT-ASSISTED HOUSING (LIKE PUBLIC HOUSING, SECTION 8, OR A VOUCHER PROGRAM)?

It depends. If the family member or person you want to move in with lives in subsidized housing, there might be federal, state, or local laws that restrict someone on federal probation or Supervised Release from moving into the residence. It may depend on what your conviction was for. To avoid putting that person's government-assisted housing subsidy at risk, refer to the HOUSING CHAPTER, beginning on PG. 332, to learn more about how your criminal record or supervision status might affect where you can live.

[937] Phone Call with Amy Rizor, Supervisory Probation Officer, U.S. Probation, N.D. Cal. (Oakland office).

VI. FEDERAL COMMUNITY SUPERVISION: SUPERVISED RELEASE

SENTENCING REFORM ACT

Some historical background: In 1984, as part of the Sentencing Reform Act ("SRA") that created the federal sentencing guidelines system, Congress got rid of federal parole and created Supervised Release.

BASICS OF SUPERVISED RELEASE

WHAT IS SUPERVISED RELEASE?

Supervised release is overseen by Federal District Courts with the assistance of federal probation officers.[938] The judge can sentence you to a term of supervised release *in addition to a prison sentence*.[939] In other words, a term of supervised release does not replace any time you are sentenced to prison; rather, a judge orders supervised release in addition to any term in prison you may serve.[940] In some cases, the judge that sentences you is actually *required by law* to impose a term of supervised release in addition to a prison term.[941] It's common today for a federal sentence to include a period of time in prison, followed by a period of time in the community on supervised release.

HELPFUL HINT

What's the difference between Supervised Release and Federal Probation?

Federal Probation: Federal probation is a substitute for incarceration, meaning that probation is ordered *instead of* incarceration.

Supervised release: Supervised release is ordered *in addition to* incarceration. This means that after you are released from prison, you may be placed on supervised release.

Note that people on federal probation and supervised release usually have to follow the same or similar rules.

AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON SUPERVISED RELEASE

Generally, you must report to your probation officer within 72 hours (3 days) of release, or sooner if a judge or a U.S. Probation Officer orders you to do so.[942] It is very important to read the written statement given to you by U.S. Probation for information on where, when, and to whom you should report.[943]

LENGTH OF SUPERVISED RELEASE

HOW LONG IS MY SUPERVISION UNDER SUPERVISED RELEASE?

Supervised Release can be up to 5 years, with a few exceptions discussed below.[944] The length is determined by the "Class" of crime for which you were convicted.[945] Find out which "Class" of crime you were convicted of (for example, a Class A Felony, Class B Felony, Class A Misdemeanor, etc.), and see the chart in the Appendix HH, PG. 325, for more information on calculating the length of your time on Supervised Release.

IMPORTANT EXCEPTIONS:

Despite the lengths of Supervised Release listed above, the term length may be up to life if you committed:

- An offense listed in 18 U.S.C. § 2332b(g)(5)(B), which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; OR
- A sex offense— for these commitment offenses, the maximum term of supervised release as allowed by statute is recommended.

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[938] United States Sentencing Commission, "Federal Offenders Sentenced to Supervised Release," July 2010 10, p. 1. http://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2012/2_Federal_Offenders_Sentenced_to_Supervised_Release.pdf.
[939] 18 U.S.C. § 3583.
[940] See Unites States Sentencing Commission, Sentencing Guidelines, p. 477, http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2012/manual-pdf/Chapter_7.pdf.
[941] See, e.g., 21 U.S.C. § 841(b)(1)(A) (mandating a lifetime term of supervised release for those convicted of certain drug offenses).
[942] See United States Probation Office for the Central district of California, Frequently Asked Questions, http://www.cacp.U.S.C.ourts.gov/faq.
[943] 18 U.S.C. § 3564(d).
[944] See Federal Judicial Center, Who Does What?, http://www.fjc.gov/federal/courts.nsf/autoframe!openform&nav=menu1&page=/federal/courts.nsf/page/360.
[945] See 18 U.S.C. § 3583(c). The types of "classes" of crimes can be found in 18 U.S.C. § 3559.



CAN I GET OFF SUPERVISED RELEASE EARLY?

Possibly. You can ask for an early termination of supervised release from the judge who originally sentenced you. You are eligible to be released early after one year of supervised release.[946] Talk to your U.S. Probation Officer about this request first, because he or she can help you ask the judge for this.

The court has the power to decide whether or not to let you off supervised release early. In most cases, judges will deny requests to be let off supervised release early. But that doesn't mean that you shouldn't try, especially if you've done really well on your supervised release. And remember, it is really helpful if your Probation Officer supports your request.

HELPFUL HINT

You have the best shot of being let of supervised release early if:

- You have completed 2/3 of your supervised release term (or at the very least ½ way through),
- You have had no violations,
- You have complied with all the terms of your supervised release,
- You have paid all restitution and fines, and
- Your probation officer agrees that you should be let off early[947]

WHAT FACTORS CAN THE JUDGE CONSIDER?

It depends on the judge. Ultimately, the decision to end your supervised release early is up to the judge who originally sentenced you. To get off of supervised release early, you must show the judge that you have earned it through good conduct, and it must be in the interests of justice.[948]

Here is the full list of factors that the judge *may* consider when deciding whether to let you off supervised release early:

- Whether or not your Probation Officer or the Prosecutor support your request;
- The nature and seriousness of the crime you were convicted of;
- Your criminal history and/or mental illness history;
- Whether the judge believes you are a threat to the public;
- Whether the judge believes you have been sufficiently punished;
- Whether you have completed any substance abuse treatment or rehabilitation programs;
- How your sentence compares to the federal sentencing guidelines recommended sentence;
- U.S. Sentencing Commission policy statements;[949]
- Whether you've paid restitution to the victims.[950]

CONDITIONS OF SUPERVISED RELEASE

WHAT ARE CONDITIONS OF SUPERVISED RELEASE, AND WHY ARE THEY IMPORTANT?

Your conditions of Supervised Release are rules set by the judge that you must follow if you want to remain in the community under supervision and not end up back in prison. These are called "release conditions"—and tell you what you can and can't do in the community.

EXAMPLE of release conditions include:

- Not having guns or other weapons;
- No contact with victims or witnesses;
- Restrictions on your association with certain people or groups;
- Restrictions on your travel; or
- A curfew;
- Community service;
- Electronic monitoring;
- Employment requirements;
- Mental health treatment, or
- Substance abuse treatment.

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[946] 18 U.S.C. § 3683(e)(1).
[947] See Federal Defenders of New York, Supervised Release, http/::federaldefendersny.org:information-for-client-and-families:supervised-release.html.
[948] 18 U.S.C. § 3683(e)(1).
[949] In 2011, the Sentencing Commission issued a policy statement informing judges that they may let former narcotics abusers from supervised release early, if that person has successfully completed a treatment program. See United States Sentencing Commission, 2013 Guidelines Manual, http://www.ussc.gov/guidelines-manual/2013/2013-5d12. See also 18 U.S.C. § 3583(e)(1)-(2).
[950] 18 U.S.C. § 3553(a)(1)-(7).



It is important for you to know what conditions *you must follow* on Supervised Release so that you don't get into trouble or sent back to prison for violating those rules. Also, be sure to talk to your U.S. Probation Officer about how to get connected to any needed services or resources offered in your community.[951]

WHAT IS THE DIFFERENCE BETWEEN MANDATORY & DISCRETIONARY CONDITIONS OF SUPERVISED RELEASE?

Federal law governs the mandatory conditions of Supervised Release (the law breaks it down by a list of mandatory conditions (required) and discretionary conditions (not required).[952]

WHERE CAN I FIND A WRITTEN STATEMENT OF MY CONDITIONS OF SUPERVISED RELEASE?

The court must direct the probation officer to provide you with a written statement that explains all the conditions you must follow, and is clear and specific enough to guide your conduct under supervision.[953]

The conditions of supervision are also listed on the Judgment in a Criminal Case produced by the Court after your sentencing hearing. Ask your attorney or the Clerk of the Court for a copy of this document so that you can be sure of your obligations to the Court. Most Judges will not excuse your failure to comply with the conditions of supervision simply because you did not receive a copy of the conditions.[954]

HOW OFTEN DO I HAVE TO SEE MY PROBATION OFFICER IF I AM ON SUPERVISED RELEASE?

It depends. How often you must report to your probation officer varies widely based on the individual "supervision plan" developed for you by your probation officer.[955]

Some supervision plans require weekly meetings and even more frequent phone contact; for others, occasional or monthly contact is sufficient. Meetings may take place at the probation office, your home, or your workplace.[956] Probation officers sometimes make "surprise" visits. For this reason, it is important that you always inform your probation officer of any changes to your work schedule.

WHAT ARE THE MANDATORY CONDITIONS THAT APPLY TO ME AND EVERYONE ELSE ON SUPERVISED RELEASE?

The following conditions are mandatory and apply to EVERYONE on Supervised Release.[957] (Note: These also apply to everyone on Federal Probation, see PG. 223).

1. You cannot commit another federal, state, or local crime during the entire length of your Supervised Release. The court must make this condition known and clear to you.
2. You cannot unlawfully use a controlled substance.
3. You must submit to one drug test within 15 days of release and at least 2 periodic drug tests thereafter (as determined by the court).
4. Consequences for a confirmed positive drug test include:
5. Possible prison time, and
6. Court-ordered participation in a substance abuse treatment program (unless your current or past participation in such a program warrants an exception)[958]
7. You must cooperate in the collection of a DNA sample.[959] You may be placed in prison for up to one year or fined up to $100,000 if you fail to cooperate with a DNA sample.
8. You must notify your U.S. probation officer if there is any significant change in your income or economic circumstances, which would impact how much you can pay towards any unpaid restitution, fines, or special assessments.[960]Even those receiving SSI/SSDI "Disability" benefits will be asked to pay. If you are low-income, you should communicate with your probation officer about how you might be able to arrange payments you can afford.

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[951] Reentry Council, Getting Out Staying Out, http://sfreentry.com/wp-content/uploads/2013/07/1213-2nd-printing-GOSO.pdf.
[952] 18 U.S.C. § 3583.
[953] 18 U.S.C. §§ 3563; 3583.
[954] This is because the Judge also reads all of the conditions to you at your sentencing hearing.
[955] See 18 U.S.C. § 3563(b)(15) (permitting the Court to order a defendant to report to a probation officer as directed by probation)
[956] See Federal Judicial Center, Who Does What?, http://www.fjc.gov/federal/courts.nsf/autoframe!openform&nav=menu1&page=/federal/courts.nsf/page/360.
[957] See 18 U.S.C. §§ 3563, 3583.
[958] 18 U.S.C. §§ 3563; 3583.
[959] 18 U.S.C. § 3563. DNA samples are usually taken prior to your release (especially if you were convicted of murder, voluntary manslaughter, enslavement, kidnapping, robbery, burglary incest, or arson). But if your DNA sample was not taken prior to your release, some Districts contract with companies who will take your DNA sample after your release. See United States Courts, Judiciary Begins Sample Collection for DNA Testing, http://www.U.S.C.ourts.gov/News/TheThirdBranch/02-02-01/Judiciary_Begins_Sample_Collection_for_DNA_Testing.aspx.
[960] 18 U.S.C. § 3563.





IMPORTANT NOTE: Other mandatory conditions may apply depending on your commitment offense!!! See below:

WHAT ARE ADDITIONAL MANDATORY CONDITIONS THAT ONLY CERTAIN PEOPLE ON SUPERVISED RELEASE HAVE TO FOLLOW?

The following are mandatory conditions that apply to ONLY CERTAIN people on Supervised Release, depending on your commitment offense.

> MANDATORY CONDITIONS if you were convicted of a felony:

You must also follow at least one of the following two conditions, as ordered by the judge:

1. Pay restitution to a victim of the offense,[961] OR
2. Perform community service.[962]

EXCEPTIONS: You do not have to obey one of these two additional conditions if one of the following applies to you:

- The judge imposed a fine that removed this requirement; OR
- The judge finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which case the judge must impose one or more of the other discretionary conditions (listed below, PG. 230).[963]

> MANDATORY CONDITION if you are required to register as a sex offender:[964]

You must comply with all the requirements of the Sex Offender Registration & Notification Act.[965]

> MANDATORY CONDITION if you were convicted of a domestic violence crime for the FIRST time:[966]

You must attend an offender rehabilitation program that has been approved by the court—in consultation with a State Coalition Against Domestic Violence or other appropriate experts—so long as an approved program is readily available within a 50-mile radius of your legal residence.[967]

ARE THERE ANY ADDITIONAL CONDITIONS I WILL HAVE TO FOLLOW ON SUPERVISED RELEASE?

Most likely, yes. The U.S. Sentencing Commission recommends that the "Standard Conditions" be applied to everyone on Supervised Release (this is the same as for Federal Probation conditions, discussed earlier on PG. 223),[968] See the question "WHAT DISCRETIONARY CONDITIONS WILL I HAVE TO FOLLOW ON SUPERVISED RELEASE?" on PG. 233 for more information.

WHAT RULES MUST THE JUDGE FOLLOW WHEN ORDERING DISCRETIONARY CONDITIONS ON MY SUPERVISED RELEASE?

To add a discretionary condition to your Supervised Release, the judge must find that that the conditions are reasonably related to the following factors:

- The nature and circumstances of the offense;
- Your personal history and characteristics;
- Reflecting the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense;
- Adequately deterring future criminal conduct;
- Protecting the public from further crimes committed by you; and/or
- Providing you with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[969]

Furthermore, if the additional discretionary conditions *deprive you of liberty or property*, the judge must find that the conditions are reasonably necessary to:

- Reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- Adequately deter future criminal conduct;

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[961] 18 U.S.C. § 3563(b)(2) (2008) (You must make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A))).
[962] 18 U.S.C. § 3563(b)(12) (2008).
[963] 18 U.S.C. § 3563(a)(2) (2008).
[964] 42 U.S.C. § 16911, et seq.
[965] 18 U.S.C. § 2250.
[966] This applies to domestic violence crimes listed in 18 U.S.C. § 3561(b).
[967] See 18 U.S.C. § 3583 et seq.
[968] United States Sentencing Commission, U.S.S.G. § 5D1.3.
[969] See 18 U.S.C. § 3563(b) (referring to 18 U.S.C. §§ 3553(a)(1), (a)(2)).



- Protect the public from further crimes committed by you; and/or
- Provide you with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[970]

If a judge is going to impose a special condition, then both of the following requirements must be met:

1. The condition must have a reasonable relationship to the factors listed above on PG. 230 AND
2. The condition must be reasonably necessary to achieve the purposes listed above on PG. 230.

If you object to the discretionary condition, it is the federal government's burden to show that the discretionary condition is justified.[971]

These are the same legal standards and rules that applied to setting discretionary conditions for people on federal probation (see below for information about discretionary conditions).

WHAT DISCRETIONARY CONDITIONS WILL I HAVE TO FOLLOW ON SUPERVISED RELEASE?

If the above legal standards are met (refer to the last two questions), the judge may order discretionary conditions on your Supervised Release. These can be thought of in two categories—*standard conditions*, which are imposed in almost every case (see Appendix CC, PG. 317), and other *discretionary conditions* that may be added (see Appendix DD, PG. 230).

STANDARD CONDITIONS— The list of "Standard Conditions"—while technically discretionary (not required)— are added by the judge in almost every case of Supervised Release (and federal probation), as recommended by the U.S. Sentencing Commission, the agency that oversees federal sentencing guidelines.[972]

You will likely be ordered to follow most if not all of the following rules (conditions):[973]

- You cannot leave the limits of your judicial district (meaning the area that the court has jurisdiction—i.e. the "Southern District of California") without written permission from the court or your probation officer.
- You must file a written report with your probation officer within the first 5 days of each month, or as directed by your probation officer.
- You must truthfully answer any questions and follow any instructions that your probation officer asks of you.
- You must meet your family responsibilities, primarily paying any court-ordered child support or support for the parent with whom your child is living.
- You must work regularly at a lawful occupation, unless your U.S. probation officer excuses you for school, training, or other reasons the officer finds acceptable.
- You must notify your probation officer at least 10 days before you change your address (some officers will require more or less notice, so check your conditions).
- You cannot drink alcoholic beverages to excess. You cannot use or distribute illegal drugs, or frequent places where others use or distribute drugs.
- You cannot associate with people engaged in criminal activity. (This means you cannot hang out with or spend time with people who are committing crimes.)
- You cannot associate with anyone convicted of a felony unless your U.S. probation officer gives you permission to do so. (Again, this means that unless your probation officer says differently, you are not allowed to hang out with or spend time with someone who has been convicted of a felony. Just spending time with someone who has been convicted of a felony can be considered a violation of your probation, even if you were not doing anything else wrong.)
- You must let your probation officer to visit you any time at home or elsewhere.
- You must let your probation officer to take any contraband that he or she finds in plain view around you.
- You must get in touch with your U.S. probation officer within 3 days (72 hours) if you're arrested or questioned by law enforcement (again, some officers will require you to report faster, so check your conditions).
- You cannot serve as an informant to law enforcement without court permission.
- As directed by your U.S. probation officer, you must notify other people about any risks that your criminal record, personal history or characteristics might pose; and you must allow your U.S. probation officer to notify people of any risks posed by your criminal record, personal history or characteristics.

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[970] See 18 U.S.C. § 3563(b) (referring to 18 U.S.C. § 3553(a)(2)).
[971] U.S. v. Weber, 451 F.3d 553 (9th Cir. 2006) ("We have long held that a term of supervised release is part of a defendant's sentence . . . and, like imprisonment, restricts a defendant's liberty and fundamental rights . . .. As a result, when the government seeks to restrict a defendant's liberty through a term of supervised release, it shoulders the burden of proving that a particular condition of supervised release involves no greater deprivation of liberty than is reasonably necessary to serve the goals of supervised release.").
[972] See 18 U.S.C. § 3583; U.S.S.G. § 5D1.3(b)-(d) (Standard conditions" are set forth in U.S.S.G. § 5D1.3(c)).
[973] 18 U.S.C. § 3563(b).



- You must pay any court-ordered "special assessment" and fines, and follow any court-ordered payment plan set up for you.
- You must notify your U.S. probation officer if there is any significant change in your income or economic circumstances which would impact how much you can pay towards any unpaid restitution, fines, or special assessments (NOTE: this is a mandatory condition for people on federal probation, and a recommended "standard condition" for people on Supervised Release).

WHAT ADDITIONAL DISCRETIONARY CONDITIONS MAY I HAVE TO FOLLOW ON SUPERVISED RELEASE?

If the above legal standards are met (refer to PG. 225), the judge may order additional discretionary conditions on your Supervised Release. As discussed, the Standard Conditions listed on PG. 317 above are almost always added. For a full list of discretionary conditions that may be added see Appendix DD, PG. 318):

CAN MY CONDITIONS OF SUPERVISED RELEASE BE CHANGED?

Yes. A judge may change, reduce, or increase your conditions before your Supervised Release term ends.[974] A probation officer can also change your conditions of Supervised Release.

Changes in conditions (called "modifications") usually happen because you got in trouble with your probation officer (for example, you tested dirty on a drug test), or you didn't follow a condition of your Supervised Release. In this type of situation, the probation officer will usually ask a judge to change your conditions, often with the consent of your attorney, to get an order for you to do something (for example, to get an order that you go into in-patient, residential substance abuse treatment).

PRACTICE TIP—AN ATTORNEY CAN HELP YOU: It's been suggested that it is sometimes easier to work out any changes to your conditions of supervised release directly with your probation officer, rather than go before a judge. To protect yourself in this type of situation, it is best to "invoke your right to counsel"—meaning ask for an attorney to represent you—and then you can communicate with your attorney who will work something out with the probation officer or represent you before the judge if the issue ends up going back to court.[975]



WARNING: Sometimes a U.S. probation officer will ask you to waive (give up) your right to an attorney and submit to a change of your conditions of Supervised Release (called a "modification").[976] You may be asked (directly or indirectly) to give up your right to an attorney. You should NOT give up this right. You should "invoke your right to counsel instead," and ask for an attorney. If you do not agree to changes in the conditions of your Supervised Release, then any changes will require the same justification as conditions imposed during the original sentencing hearing.[977]

HOW DO I CHALLENGE UNLAWFUL DISCRETIONARY CONDITIONS THAT WERE ADDED ON TO MY SUPERVISED RELEASE?

Within 14 days of your sentencing hearing, you must file a Notice of Appeal with the Clerk of the Court where you were convicted.[978] Once this occurs, you should contact the Federal Public Defender's Office in your federal judicial district. . For a list of Federal Public Defender's Offices in California, visit: http://www.fd.org/docs/defender-contacts/federal-public-and-community-defender-directory.pdf?sfvrsn=9.

A discretionary condition on your Supervised Release may be imposed only if it:

1. Is "reasonably related" certain statutory (meaning, included in the law) sentencing factors,[979] which include the nature and circumstances of the offense, the history and characteristics of the defendant, the need to protect the public from further crimes of the defendant, and the need to provide needed educational or vocational training, medial care, or other correctional treatment; AND

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[974] 18 U.S.C. §§ 3563, 3583; see also FED. R. CRIM. PRO. 32.1 (describing the procedures required for the probation officer to petition the Court for a modification or revocation of probation or supervised release, and for the Court in adjudicating a potential revocation or modification). The Court can also modify or revoke your Federal Probation or Supervised Release after the official end of the term (i.e., a specific number of years after your release from custody) so long as the violation and Probation Officer's Petition to Modify or Revoke was filed with the Court before the official end of the term of supervision. This means that the Probation Office can obtain an arrest warrant years after an event occurred.
[975] Telephone call with David Wasserman, Deputy Federal Public Defender, Federal Public Defender for the Central District of California,
[976] See, e.g., U.S. v. Begay, 631 F.3d 1168 (10th Cir. 2011); U.S. v. Emerson, 231 F.3d. 349 (5th Cir. 2007).
[977] See also Defender Services Office, The Fine Print: Strategies for Avoiding Restrictive Conditions of Supervised Release, http://www.fd.org/docs/select-topics---common-offenses/fine_print.pdf.
[978] Fed. R. App. Pro. 4(b)(1)(A).
[979] See 18 U.S.C. §§ 3553(a)(1), 3553(a)(2)(B) - (D).



2. Involves "no greater deprivation of liberty than is reasonably necessary" to serve the purposes of deterrence, protection of the public, and training and treatment.[980]

Courts have emphasized that BOTH of these requirements must be satisfied in order to impose a special condition.[981] Moreover, in the event of an objection, it is the government's burden to show that the condition is justified.[982]

NOTE: The rules and processes for challenging discretionary conditions of Supervised Release are the same as those that apply to that apply to Federal Probation (refer back to PG. 225 for information on challenging discretionary conditions of federal probation.)

TRANSFER LOCATIONS ON SUPERVISED RELEASE

The same rules and procedures for transferring and moving residences apply to all forms of federal supervision. See the full discussion above on PG. 225.

[980] 18 U.S.C. § 3583(d).
[981] See, e.g., U.S. v. Bender, 566 F.3d 78 (8th Cir. 2009); U.S. v. Perazza-Mercado, 553 F.3d 65 (1st Cir. 2009); U.S. v. Pruden, 398 F.3d 241, 249 (3d Cir. 2005).
[982] U.S. v. Weber, 451 F.3d 553 (9th Cir. 2006) ("We have long held that a term of supervised release is part of a defendant's sentence . . . and, like imprisonment, restricts a defendant's liberty and fundamental rights . . .. As a result, when the government seeks to restrict a defendant's liberty through a term of supervised release, it shoulders the burden of proving that a particular condition of supervised release involves no greater deprivation of liberty than is reasonably necessary to serve the goals of supervised release.")



VIOLATIONS AND REVOCATIONS — FOR BOTH FEDERAL PROBATION AND SUPERVISED RELEASE

The same rules and processes for violations and revocations apply to both federal probation and Supervised Release.[983] *Read this section if you are on either of these two types of federal supervision and have questions about violations and revocations.*

WHAT IS A VIOLATION OF MY FEDERAL PROBATION OR SUPERVISED RELEASE?

It is a violation of your Federal Probation or Supervised Release (SR) if you break any law or disobey any condition of your post-release supervision. Read about conditions of Federal Probation (PG. 222) and Supervised Release (PG. 230) above.

If your probation officer thinks you have broken one of your conditions of supervision, you may be charged with a violation.[984]

1. If the judge finds that you have violated one of your conditions of supervision, you could go to prison.[985]
2. If you are having trouble with your Probation officer, or if you think you are in danger of being violated, you should call your attorney. If you have retained a private attorney, you should call him or her. If you don't have a private attorney, you should call the Federal Public Defender in you District. Often an attorney can help you resolve a supervision problem before there is a formal violation charge.[986]

CAN MY U.S. PROBATION OFFICER SEND ME BACK TO PRISON?

No, your probation officer cannot send you back to prison, but it is part of the officer's job to tell the court about a violation of your conditions. The judge at court, however, usually CAN send you back to prison.

- **MINOR VIOLATIONS:** Typically, if your probation officer learns of a minor violation of a condition, or believes that a violation is likely to happen, the officer will discuss with you how to avoid a more serious problem. Alternatively, the probation officer might ask the judge to modify your conditions of Federal Probation or Supervised Release.
- **SERIOUS or REPEATED VIOLATIONS:** After a serious violation or repeated violations, your probation officer may tell a judge about these violations and request revocation of your Federal Probation/Supervised Release. If this happens, you have the right to a revocation hearing, at which the judge may decide to revoke your Federal Probation/Supervised Release and send you back to prison.[987]

WHAT COULD THE COURT DO IF IT FINDS THAT I VIOLATED MY FEDERAL PROBATION OR SUPERVISED RELEASE?

FOR A FEDERAL PROBATION VIOLATION: If the judge finds that you violated a condition of Federal Probation, it may:

1. Continue you on federal probation, with or without lengthening your term, or changing/increasing the conditions you must follow; OR
2. Revoke your federal probation and resentence you.[988]

FOR A SUPERVISED RELEASE VIOLATION: If the judge finds that you violated a condition of Supervised Release, it may:

1. Continue you on supervised release, with or without lengthening the term, or changing/ increasing the conditions you must follow; OR
2. Revoke your Supervised Release and send you back to prison.[989] For certain violations, the court is required to do this by law (it's mandatory).[990]

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[983] To read more about federal probation and supervised release violations and revocation, and the legal distinctions between the two of them and the codes that govern them, see Administrative Office of the United States Court, Revocation of Probation and Supervised Release, http://www.fd.org/docs/select-topics---probation/revocation-of-prob-and-sup-release.pdf.
[984] 18 U.S.C. § 3565 (a).
[985] 18 U.S.C. § 3565 (a)(2).
[986] See Federal Defenders of San Diego, Violations of Probation or Supervised Release, http://www.fdsdi.com/pdf/Client_Violations.pdf.
[987] See Federal Judicial Council, Who Does What?, http://www.fjc.gov/federal/courts.nsf/autoframe!openform&nav=menu1&page=/federal/courts.nsf/page/360.
[988] 18 U.S.C. § 3565 (a).
[989] 18 U.S.C. § 3583(e)(3).
[990] U.S. Sentencing Commission, Sentencing Guidelines, http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2012/manual-pdf/Chapter_7.pdf.



WHEN IS REVOCATION OF FEDERAL PROBATION OR SUPERVISED RELEASE MANDATORY?

For both Federal Probation and Supervised Release, revocation and additional time sentenced to prison are mandatory if the violation is one of the following:

1. Possession of controlled substance (in violation of the condition set forth in section 18 U.S. C. 3563(a)(3));
2. You possess a firearm[991] (in violation of Federal law or a condition of probation);
3. You refuse to comply with drug testing;[992] or
4. You test positive for illegal controlled substances more than 3 times over the course of 1 year.[993]

If one of the above situations occurs, then your probation officer or the prosecutor will have to file a violation notice, telling the judge that they think you have violated.[994]

WHAT WILL HAPPEN IF MY VIOLATION WAS ALSO A NEW CRIMINAL OFFENSE?

All violations of the law are also violations of your conditions of supervision.[995] Essentially, the law treats a new criminal conviction as two wrongs: (1) Disobeying the federal court by violating a condition of your supervision, AND (2) Whatever you did to break the law.[996] If you get arrested on state or federal charges while on federal probation or Supervised Release, you will probably be violated in federal court.

A NOTE ABOUT SENTENCING WHEN THERE IS ANOTHER PENDING CRIMINAL CASE AGAINST YOU FOR THE SAME OFFENSE: Your sentence for the violation of your federal probation or Supervised Release will be SEPARATE from whatever sentence you might get in the other criminal case, and will probably FOLLOW your sentence for the new criminal conviction (in other words, these sentences will follow one after the other).

WHAT ARE POSSIBLE SANCTIONS FOR AN ALLEGED VIOLATION OF FEDERAL PROBATION OR SUPERVISED RELEASE?

YOUR RIGHT TO COUNSEL

If you had an Assistant Federal Defender before, that same attorney will probably represent you in the revocation process. In some cases you may get a different attorney from the same office. If you had a private lawyer but can no longer afford to pay, the court must appoint a lawyer for you.

When there's an allegation that you violated your federal probation or Supervised Release, revocation proceedings will usually begin. The law and rules that govern these revocation hearings can be found in the Federal Rules of Criminal Procedure, Section 32.1.[997] There will be a series of steps that you will follow in a revocation hearing, from appearing in front of a Magistrate Judge, to attending a Probable Cause Hearing, and finally attending a Revocation Hearing. The steps below are a general outline of the revocation process, and possible outcomes:

STEP 1: Initial Appearance

Whenever someone is first taken into federal custody or has been cited/summoned to federal court, he or she has an initial appearance before a Magistrate Judge. This appearance allows the Court to advise you of the charges, set a preliminary hearing date (unless waived or you are out of custody) and direct you to the District Judge presiding over your case.

NOTE: If you are arrested outside of the federal district that has jurisdiction over your case (usually the place where you are being officially supervised), then you have additional rights at this Initial Appearance stage. First, you have the right to an "Identity Hearing," where the government must show only that you are the person named in the warrant for arrest, not that you actually committed the crime. Second, you have the right to receive a reliable certified electronic COPY of the original revocation petition that was filed (this right to receive a copy of the revocation petition is called "Arrival of Process").[998]

STEP 2: Probable Cause Hearing

Know Your Rights! If you are held in custody for an alleged violation of your federal probation or Supervised Release, then you have the following rights:

1. You must receive a prompt hearing to determine if there is "probable cause" to hold you for a revocation hearing (a.k.a. the "probable cause hearing").[999] *If you are in custody*, you only receive what is called a

[991] The definition for firearm in 18 U.S.C § 921.
[992] 18 U.S.C. § 3563(a)(4).
[993] 18 U.S.C. §§ 3565(b), 3583 (g)
[994] See Federal Defenders of San Diego, Violations of Probation or Supervised Release, http://www.fdsdi.com/pdf/Client_Violations.pdf.
[995] 18 U.S.C. § 3565 (a).
[996] See Federal Defenders of San Diego, Violations of Probation or Supervised Release, http://www.fdsdi.com/pdf/Client_Violations.pdf.
[997] See Fed. Rules Crim. P. § 32.1.
[998] An Identity Hearing usually consists of a law enforcement officer testifying about what information they received from the charging district in order to determine that you were the person who was named in the arrest warrant. Arrival of Process is usually satisfied by an email copy of the certified petition.
[999] See FED. R. CRIM. P. § 32.1(a)(1).



"probable cause hearing." This will usually happen within one week, but "prompt" does not have a specific timeframe, so it could be longer.[1000]

2. You must be given notice of the hearing.[1001]
3. You must be given an opportunity to appear and present evidence, an opportunity to question opposing witnesses (if requested), and be told of your right to an attorney.[1002]
4. The Rules of Evidence are more relaxed; hearsay is allowed. This means that the judge can consider evidence (testimony, photographs, etc.) that he would not be able to consider in a full criminal trial.
5. You will usually appear before the same judge who sentenced you. The judge will explain your rights and make sure you have a lawyer.
6. If you are not held to answer (i.e., probable cause is not found), then the allegations will be dismissed. If you are held to answer (i.e., probable cause is found), then you will be directed to a District Judge to enter an admission or denial to the allegations.[1003] If you admit the allegations, the Judge will either set a future date for sentencing or sentence you right then and there. However, if you deny the allegations, then you go to a revocation hearing.

IMPORTANT NOTE ABOUT PENDING CRIMINAL CHARGES AGAINST YOU & THE REVOCATION PROCESS: Unless your lawyer advises you otherwise, do not admit a violation that's based on pending criminal charges until the pending charges are resolved. Admitting to criminal conduct during the revocation hearing in federal court could then be used against you in your pending criminal case. It's best to consult with your attorney to figure out what to do in your situation.

STEP 3: **Revocation Hearing**

You have the right to a revocation hearing before a District Judge within a reasonable time in the district that has decision-making power (called "jurisdiction") over your case[1004]

KNOW YOUR RIGHTS IN THE REVOCATION PROCESS

- You must be given notice of the hearing.[1005]
- You must be given written notice of the charges against you (i.e., the alleged violation of your supervision).[1006]
- You must receive notice of your right to an attorney. If you can't afford an attorney, you will be appointed a Federal Public Defender in your District, or another court-appointed defender.
- You must have the opportunity to appear at the revocation hearing.[1007]
- You must have an opportunity to see the evidence against you, as well as the opportunity to present your own evidence;[1008]
- The Rules of Evidence are more relaxed; hearsay is allowed. This means that the judge can consider evidence (testimony, photographs, etc.) that he would not be able to consider in a full criminal trial.
- Additional constitutional rights described in http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf (pp. 6-7).

WHAT LAWS GUIDE THE COURT IN SENTENCING ME FOR MY REVOCATION OF FEDERAL PROBATION OR SUPERVISED RELEASE?



IMPORTANT NOTE: The laws about revocation sentencing are confusing and difficult to figure out on your own! You have the right to lawyer if you can't afford one, and it's best to ask your attorney to walk through your specific situation and help you understand what the judge can sentence you to if your federal probation or Supervised Release is revoked.

The chart shown below on PG. 239 is important because this period determines the maximum amount of time you can be sent to prison for violating the terms and conditions of your Supervised Release.

[1000] For example, if you are in custody doing time on a state charge, and that state charge serves as the violation of your SR, the PO can wait until your state sentence is over before bringing you to have your PC hearing even though the PO may have filed the violation petition and the warrant issued at the start of the client's sentence in state prison. A state defendant could be serving a 15-year state sentence such that his 5-year term of SR would have expired by the time he is done with his state time. However, so long as the petition was filed within the supervised release period, then there is an argument to be made that he can still be sent to prison on a federal violation. Perhaps most judges would not do this, but it is a possibility.

[1001] See FED. R. CRIM. P. § 32.1(a)(1); http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf, p. 3.

[1002] See FED. R. CRIM. P. 32.1(a)(1); http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf, Page 3.

[1003] Fed. R. Crim. P. 32.1(a)(2).

[1004] Fed. R. Crim. P. 32.1(a)(2)

[1005] FED. R. CRIM. P. 32.1(b)(1)(B).

[1006] FED. R. CRIM. P. 32.1(b)(2)(A).

[1007] See U.S. v. Pelensky, 129 F.3d 63 (2d Cir. 1997); U.S. v. LeBlanc, 175 F.3d 511 (7th Cir. 1999); U.S. v. Stocks, 104 F.3d 308 (9th Cir. 1997).

[1008] Fed. R. Crim. P. 32.1.



For example, assume you have been convicted of a Class A felony and receive 5 years of Supervised Release. Then, let's say, you violate the terms and conditions of your supervision. The judge may, but is not required to, sentence you to four years in prison.[1009] If the judge were to do that, you could only be placed on supervision for one additional year. However, if you were to violate your supervision again, the judge could sentence you up to the maximum available term of imprisonment (which is 5 years), but could not impose any additional supervision.[1010] This could result in you serving nine years in prison on revocations when the original term of supervision was only 5 years.



EXCEPTIONS: Offenses committed on or before April 30, 2003:

There are special rules, however, if you committed the offense of conviction on or before April 30, 2003. Assume the same situation as described above: you're convicted of a Class A felony, sentenced to prison with five years of Supervised Release. Upon your first revocation, you are sentenced four years in prison and one year of Supervised Release. If you violated your Supervised Release again, you can only be sentenced to one year in prison (meaning that the difference between the total term of Supervised Release available by statute for that offense minus the amount of prison imposed during any previous revocation(s)). This is different than the first scenario when the judge could impose a five-year term on a second revocation after imposing a four-year term on the first revocation.

REVOCATION SENTENCING GUIDELINES:

In addition to the statute governing the maximum terms of supervision, judges must consider the United States Sentencing Guidelines in determining your sentence upon revocation.[1011] The recommended sentence is based on (1) the Grade of Violation, (2) your Criminal History Category at the time of your original conviction, and (3) the Class of your original conviction.

This chart outlines Congress' recommended terms of imprisonment upon revocation:

REVOCATION TABLE
(IN MONTHS OF IMPRISONMENT)

Grade of Violation	Criminal History Category*					
	I	II	III	IV	V	VI
Grade C	3-9	4-10	5-11	6-12	7-13	8-14
Grade B	4-10	6-12	8-14	12-18	18-24	21-27
Grade A	12-18	15-21	18-24	24-30	30-37	33-41

However, if you were on probation or supervised release as a result of a sentence for a Class A felony, the Congress' recommendation looks like this:

Grade of Violation	Criminal History Category*					
	I	II	III	IV	V	VI
Grade A	24-30	27-33	30-37	37-46	46-57	51-63

Although these are only recommendations for the judge, the judge must consider them first when rendering a decision.

CAN I APPEAL THE COURT'S REVOCATION DECISION/ACTION? WHAT COURT HAS JURISDICTION?

It depends. The appellate court (which is the court above the district court) that made the decision will have the authority to hear the case, unless you have already completed your time on supervision. In that case,

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[1009] 18 U.S.C. § 3583(e)(3) (outlining maximum terms of imprisonment available upon Supervised Release).
[1010] 18 U.S.C. § 3583(h) (explaining that the length of any term of supervised release imposed upon revocation shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release); see also U.S. v. Knight, 580 F.3d 933 (9th Cir. 2009).
[1011] The United States Code and the Federal Rules of Criminal Procedure provide guidance for revocation of federal probation and Supervised Release. In addition, Chapter 7 of the U.S. Sentencing Guidelines addresses revocation of probation and supervised release. Every circuit has held that because the Sentencing Commission intended the policy statements of Chapter 7 to be recommendations, and not binding. But they must be considered. See United States Sentencing Commission, Revocation of Parole and Supervised Release, http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf.



appellate courts have held that they don't have authority to hear the case, because your have already completed your sentence, and have no "injury" that the court can fix.[1012]

WHAT WILL THE JUDGE LOOK FOR WHEN REVIEWING MY APPEAL?

The judge who is reviewing your revocation case will look at different aspects using different legal standards.

Unless a violation is for drug or firearm possession, which *requires revocation*, a district court judge's decision to revoke your federal probation or Supervised Release will be reviewed by the higher-up appellate judge for "abuse of discretion."[1013] This means, the judge reviewing your case will only grant you an appeal if they found that the district court judge below them actually mishandled your case—by acting unreasonably or incorrectly applying the law.

The higher-up appellate judge who is reviewing your case can also review the LAW that was applied by the district court judge below as if the questions were being asked for the first time. In other words, the reviewing judge can freshly make his or her own judgment about whether the lower court correctly applied the law (this is called a "de novo" review).[1014]

If there were any FACTUAL ERRORS made in your case, the appellate judge will view those for "clear error."[1015] This means that the court will not find a factual error unless all the evidence together shows a mistake was made.[1016] However, if you fail to object to an argument or a fact, then the judge in the appeals court may review the case under the "plain error" standard—a harder burden for you to meet (this means that the appeals court has to find that the error is extremely unjust or unfair).

Again, the SENTENCE that you received at the revocation hearing will be reviewed for reasonableness, which means that the higher-up appellate judge looks to see if the judge at the district court below abused his or her discretion in making a decision in the case, by mishandling the case (acting unreasonably or incorrectly applying the law) .[1017]

DISABILITIES & SUPERVISED RELEASE

If you have a disability and are under federal community supervision of any kind (including federal probation, supervised release, or federal parole), please go to PG. 252 to learn about your rights.

[1012] See Office of Defender Services Training Branch, Revocation of Probation and Supervised Release, http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf.
[1013] See Office of Defender Services Training Branch, Revocation of Probation and Supervised Release, http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf.
[1014] See Office of Defender Services Training Branch, Revocation of Probation and Supervised Release, http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf.
[1015] See Office of Defender Services Training Branch, Revocation of Probation and Supervised Release, http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf.
[1016] See U.S. v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948) ("A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."). This standard is highly deferential, meaning most of the time the appeals court will agree with the district court.
[1017] See Office of Defender Services Training Branch, Revocation of Probation and Supervised Release, http://www.ussc.gov/sites/default/files/pdf/training/online-learning-center/supporting-materials/Revocation-of-Probation-and-Supervised-Released.pdf.

VII. FEDERAL COMMUNITY SUPERVISION: FEDERAL PAROLE

The Sentencing Reform Act of 1984 eliminated federal parole for most people convicted of a federal crime. Now, instead of defendant's serving an indeterminate sentence (i.e., one where a parole board determines how much of the Judge's sentence you serve), all federal defendants serve 85% of his or her sentence. This is much like "mandatory release" discussed below. *See* the information on "RELEASE PLANNING" at Appendix II, PG. 326. In light of the Sentencing Reform Act, only a few groups of individuals are serving a federal parole sentences.

BASICS OF FEDERAL PAROLE

WHO IS RELEASED ONTO FEDERAL PAROLE?

Federal parole now applies only to individuals who were:

- Sentenced for a federal offense *before November 1, 1987*;
- Convicted of violating the laws of the District of Columbia in D.C. Superior Court *before August 5, 2000*;
- Convicted of crimes within the military criminal justice system;
- Convicted in certain foreign transfer treaty cases.[1018]

IF I AM ON FEDERAL PAROLE, WHY DO I REPORT TO A U.S. PROBATION OFFICER?

Federal U.S. Probation offices and officers are responsible for overseeing and administering federal parole.[1019] U.S. Probation Officers provide parole services as request of the USPC. Thus, U.S. probation officers function as parole officers and supervise people on federal parole and mandatory release.[1020]

BEFORE RELEASE: WHAT TO KNOW ABOUT GETTING RELEASED ONTO FEDERAL PAROLE

I AM STILL INCARCERATED. WHAT IS THE LEGAL PROCESS FOR GETTING RELEASED FROM FEDERAL PRISON ONTO FEDERAL PAROLE?

There are several steps you will follow in planning for your release from federal prison onto federal parole. These will include creating a release plan, creating a plan for payment of restitution and fines, investigation of your plan, and release. Please see the Appendix II, PG. 326 to find out more.

STEP 1: **Release Plan**

Once you have a release date from the U.S. Parole Commission (USPC), you must complete a satisfactory plan for parole supervision to actually get released. If the release plan is NOT approved, your release may be delayed regardless of the date the USPC had set when it first granted your parole.

The Regional Commissioner of the USPC may change your date of release (earlier or later) onto parole to allow more time for release planning. At most, the Regional Commissioner can delay your release onto parole for 120 days; otherwise, you have the right to a hearing if the Regional Commissioner wants to push back your release date more than 120 days.[1021]

Generally, you are required to have the following included in your release plan:

1. Availability of legitimate employment;
2. An approved residence for the prospective parolee; and
3. Availability of necessary aftercare if you are ill or will require special care.[1022]

[1018] Federal parole in the United States was a system that existed prior to the Sentencing Reform Act of 1984. Parole of federal prisoners began after enactment of legislation on June 25, 1910.[1] Under parole, prisoners were eligible for release before their sentences were complete. Parole boards under the United States Parole Commission determined whether a prisoner should be released and whether or not a parolee who violated parole should be sent back to prison. The U.S. Parole Comm'n (USPC, or "Parole Commission") was just reauthorized for 5 more years, effective beginning November 1, 2013. Despite the abolishment of federal parole in 1987, the USPC currently has jurisdiction over more than 17,800 individuals convicted of felonies under the D.C. Penal Code, and 3500 individuals convicted of the other kinds of eligible federal offenses discussed above.

[1019] See United States Courts, Probation and Pretrial Services-Mission, http://www.U.S.C.ourts.gov/FederalCourts/ProbationPretrialServices/Mission.aspx.

[1020] 28 C.F.R. § 2.38; 8 U.S.C. §§ 3655; 4203(b)(4).

[1021] 28 C.F.R. § 2.28.

[1022] 28 C.F.R. § 2.33(a)(2).



STEP 2: **Unpaid Fines & Restitution**

Your release onto parole might also be delayed if you still owe court-ordered fines or restitution.[1023] When you still have fines or restitution to pay, a reasonable plan for payment, or a performance of services, if ordered by the court, will be included in your parole release plan, where feasible.[1024]

STEP 3: **Investigation Phase**

Your U.S. Probation Officer will do an investigation to make sure that the person's release plan is appropriate. This investigation will start with the probation officer asking you questions about your release plan. The probation officer will then follow up and verify your answers. For example, if you told the probation officer that your approved residence did not have any persons with a felony record, the probation officer will follow-up to make sure this is true.

STEP 4: **Release**

After the Parole Commission approves your release plan, and a U.S. Probation Officer completes an investigation, you will be released on the date set by the Parole Commission (unless there is misconduct or some other reason leading to a change in the date).

WHAT COULD HAPPEN IF I REFUSE TO SIGN THE CERTIFICATE OF RELEASE?

If you don't sign the certificate of release, one of the two following things could happen:

1) If you have been granted a parole date and you refuse to sign the certificate of release (or any other document necessary to fulfill a condition of release), the USPC will treat your refusal as a withdrawal of your application for parole, effective on the date of your refusal. You will not be released on parole and you will have to reapply for parole consideration.
2) If you are scheduled for release to supervision through good-time deduction and you refuse to sign the certificate of release, you will be released but you still must follow the conditions listed on the certificate of release, or risk violation and revocation (see Appendix GG, PG. 322).[1025]

DO I HAVE TO RETURN TO THE SAME COMMUNITY THAT I CAME FROM FOR MY FEDERAL PAROLE?

Usually, yes. In most instances, you will be released to parole in the U.S. Judicial District of your legal residence, or in the U.S. Judicial District where you were convicted of the federal offense.[1026]

THERE IS ONE EXCEPTION: if the U.S. Parole Commission decides that your chances of success on parole will be better in another community, or believes it would serve "the public interest," it can order you be paroled to a different District.[1027]

WHAT IS THE DIFFERENCE BETWEEN FEDERAL PAROLE AND "MANDATORY RELEASE"?

If you are never granted parole during your prison sentence, you will be released through "Mandatory Release" (unless you have forfeited all your statutory "good time credits"). The institution's officials set your Mandatory Release date by calculating how much statutory "good time" credit you have a legal right to, and how much extra "good time" is earned.

The law states that if you are entitled to Mandatory Release, you must "be treated as if released on parole" and are "subject to all provisions of the law relating to the parole of United States prisoners until the expiration of the maximum term or terms for which [you were] sentenced, less 180 days." What this really means is that you should have a release plan (see question above) as if you were going out on parole. You will also be supervised by a U.S. Probation Officer as if on federal parole until *180 days before the end date of your sentence*—so long as you don't violate the conditions of your mandatory release, in which case the U.S. Parole Commission (USPC) can hold you under supervision until the original full term date of the sentence.

IS IT POSSIBLE THAT I BE RELEASED FROM FEDERAL PRISON AND NOT BE ON ANY TYPE OF COMMUNITY SUPERVISION?

Yes, it is possible, but rare. If you are NOT paroled and have less than 180 days left on your original sentence when you are released, you will be released *without supervision*. However, if a "special parole term" is being served, supervision will end at the full term date, and this 180-day date does not apply.

[1023] 28 C.F.R. § 2.7.
[1024] 28 C.F.R. § 2.33.
[1025] 28 C.F.R. § 2.40(a)(2).
[1026] 28 C.F.R. § 2.33(b); see U.S. Parole Comm'n, Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html#q29.
[1027] 28 C.F.R. § 2.33(b).

AFTER RELEASE: WHAT TO EXPECT IN YOUR FIRST DAYS OUT ON FEDERAL PAROLE

AFTER I AM RELEASED TO FEDERAL PAROLE, WHEN AND TO WHOM MUST I REPORT?

US. Probation Officers function as parole officers and provide supervision to persons released on parole or on mandatory release.[1028]

- You will go to *an approved residence*[1029] and report *within 3 days* (72 hours) to the United States Probation Office shown on your *certificate of release*.[1030]
- You must continue to report to a U.S. Probation Officer in-person as instructed by your officer once released.
- In addition, you must submit a monthly written report, and follow all the conditions of your release.[1031]
- U.S. Probation Officers must also provide you with parole services at the request of the U.S. Parole Commission (USPC).[1032]

LENGTH OF FEDERAL PAROLE

HOW LONG WILL I BE ON FEDERAL PAROLE?

You will be on parole and under the supervision of a U.S. Probation Officer until the maximum expiration date of the sentence (for offenses *committed before* April 11, 1987), unless the Commission ends your supervision earlier.

IMPORTANT NOTE: Your time on federal parole runs at the same time as any other Federal, State, or local sentence to supervision.1033

- IF YOUR SUPERVISION IS ENDED EARLY: You will be given a Certificate of Early Termination, which may also be provided to other supervising agencies.[1034]
- IF YOU ARE NOT RELEASED TO PAROLE, AND INSTEAD YOU ARE MANDATORILY RELEASED: Your supervision by a U.S. Probation Officer automatically ends 180 days before the maximum expiration date, unless the USPC ends supervision earlier. If your supervision is ended early, you will be given a Certificate of Early Termination.[1035] You have been mandatorily released if you reached the end of the sentence imposed by the court minus any "good time" deductions you earned during the time of your confinement.[1036]

CAN I GET OFF FEDERAL PAROLE EARLY?

Possibly. Read about when and how you can ask to be released from federal parole early.

- Every year, your U.S. Probation Officer submits a report to the Parole Commission about your adjustment in the community. After reviewing the report and any recommendations it contains, the Parole Commission may decide to end your parole supervision early.[1037]
- At any point in time, you may request, or the Parole Commission on its own motion may decide, to end your parole supervision early.[1038]
- After you've completed 2 years on federal parole (again: not counting any time you spend on parole before the most recent release, and not counting any time you spent in confinement on another sentence[1039]), the Parole Commission must consider terminating your federal parole, and again must consider early termination at a minimum every year thereafter.[1040]
- After you've completed 5 years on federal parole (again: not counting any time spend on parole before the most recent release, and not counting any time you

WHAT IS A "GOOD RISK DETERMINATION"?

It is VERY difficult to have a "very good risk" determination for the SFS. This is because the score sheet is written to be nearly impossible for someone to every have that good of a score. To have a VG (Very Good) you have to have 10 -8 SFS, which is very hard given that you lose a point just for being on parole. The scorecard is very "stacked" against the parolee. not.

[1028] 28 C.F.R. § 2.38.
[1029] Unless you are released on a detainer.
[1030] 28 C.F.R. § 2.40(a)(1) ("Your certificate of release informs you of these conditions and special conditions that we have imposed for your supervision.").
[1031] See U.S. Parole Comm'n, Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1032] See 18 U.S.C. §§ 3655, 4203(b)(4).
[1033] 28 C.F.R. § 2.39.
[1034] 28 C.F.R. § 2.39.
[1035] See U.S. Parole Comm'n, Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1036] 28 C.F.R. § 2.35.
[1037] See U.S. Parole Comm'n, Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1038] 28 C.F.R. §§ 2.43(a)(1), 2.95(a)(1).
[1039] 28 C.F.R. §§ 2.43(d), 2.95(d).
[1040] 28 C.F.R. §§ 2.95(b), 2.43(b) ("In calculating the two-year and five-year period . . . , the Commission shall not include any period of parole before the most recent release, or any period served in confinement on any other sentence.") See U.S. Parole Comm'n, Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.



spent in confinement on another sentence), by law, the Parole Commission must end your supervision UNLESS it finds—after conducting a hearing with you present—that you are likely to engage in future conduct violating criminal law. You have the right to a personal hearing before the Parole Commission can make such a finding to keep you on federal parole past 5 years.[1041] You should not waive your right to this hearing.

HOW DOES THE U.S. PAROLE COMMISSION DECIDE WHETHER TO LET ME OFF FEDERAL PAROLE EARLY?

The Parole Commission must consider the following guidelines, which indicate that your federal parole should be ended early:

1. You received a "salient factor score" (SFS) in the "very good risk category" AND you have completed 2 continuous years of supervision free from an incident of new criminal behavior or serious parole violation (which includes a new arrest or report of a parole violation if supported by substantial evidence of guilt, even if no conviction or parole revocation results);[1042] OR
2. You received a "salient factor score" in a risk category other than very good AND you have completed 3 continuous years of supervision free from an incident of new criminal behavior or serious parole violation (which includes a new arrest or report of a parole violation if supported by substantial evidence of guilt, even if no conviction or parole revocation results).[1043]

However, the USPC may disregard the outcome indicated by the 2 guidelines above based on case-specific factors, including:

1. Your current behavior;
2. Your background; and
3. Your criminal history.[1044]

IF I AM DENIED EARLY TERMINATION OF MY FEDERAL PAROLE, CAN I CHALLENGE THE U.S. PAROLE COMMISSION'S DECISION?

Yes.[1045] You can appeal to the National Appeals Board.[1046] However, the National Appeals Board does not often reverse the decision of the Parole Commission, unless an error was made. There are several steps to challenge the Parole Commission's decision not to let you off federal parole early. Please see the Appendix JJ, PG. 327 for full details on each step.

STEP 1: **You may send a written appeal to the National Appeals Board challenging any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole.**

NOTE: If you want to appeal a decision denying your parole on the date of parole eligibility, you instead need to submit a "petition of reconsideration" to the USPC.[1047]

STEP 2: **Use the proper form (Parole Form I-22)[1048] and file your written appeal *within 30 days from the date of entry of the decision* that you are appealing. If you don't file within 30 days of the decision, you lose your right to challenge/appeal it.**

OTHER REQUIREMENTS OF YOUR APPEAL:

1. The appeal must include an *opening paragraph* that briefly summarizes the legal grounds for the appeal.
2. You should then list each ground separately and clearly explain the reasons or facts that support each ground.

If you're appeal doesn't meet these requirements, the USPC may return it to you, in which case have *30 additional days from the date the appeal is returned* to submit an appeal that meets the above requirements.

LEGAL GROUNDS FOR YOUR APPEAL CAN INCLUDE:

1. That the guidelines were wrongly applied in your:
   - Severity rating;

[1041] 28 C.F.R. §§ 2.43, 2.95. See also U.S. Parole Comm'n, Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1042] The Parole Commission cannot terminate your federal parole supervision until it determines the disposition of a pending criminal charge. 28 C.F.R. §§ 2.43(g)(1)(i), 2.95(e)(1)(i).
[1043] The Parole Commission cannot terminate your federal parole supervision until it determines the disposition of a pending criminal charge. 28 C.F.R. §§ 2.43(g)(1)(ii), 2.95(e)(1)(ii).
[1044] 28 C.F.R. §§ 2.43(h), 2.95(e)(3).
[1045] 28 C.F.R. § 2.43(e); see also 28 C.F.R. §§ 2.17; 2.26; 2.43.
[1046] 28 C.F.R. § 2.26.
[1047] See 28 C.F.R. §§ 2.17; 2.27.
[1048] Parole Form I-22, available at http://www.justice.gov/sites/default/files/uspc/legacy/2013/02/26/formi22.pdf.



- Salient factor score;
- Time in custody;

2. That a decision outside the guidelines was not supported by the reasons or facts as stated;
3. That especially mitigating circumstances (for example, facts relating to the severity of the offense or your probability of success on parole) justify a different decision;
4. That a decision was based on wrong information, and the correct facts justify a different decision;
5. That the USPC did not follow correct procedure in deciding the case, and a different decision would have resulted if it would have followed the right procedure;
6. There was important information that you did not know at the time of the hearing;
7. There are compelling reasons why a more lenient decision should be given on grounds of compassion
8. The Attorney General (AG) may file an appeal by making a written request to have the Regional Commissioner's regarding decision regarding an individual's federal parole. The request by the AG must be within 30 days of the Commissioner's decision. The National Board of Appeals will have 60 days, after receiving the AG's request, to reaffirm, modify or reverse the Commissioners decision. The Board of Appeals decision has to be provided in writing to both the AG and prisoner the appeal relates to.[1049]

How can I strengthen my appeal?

You can provide additional information for the USPC to consider in an addendum to your original appeal. An addendum is when you have new or additional information you would like to give to USPC, but you have already turned in your application. You can send the new information to USPC with a note that you would like to attach the new information as an "addendum." You can attach exhibits (photos, documents that help your case, etc.) to your appeal, but the exhibits shouldn't be copies of documents that the USPC already has.

STEP 3: **The National Appeals Board may affirm, modify, or reverse the decision of the Parole Commissioner(s) below.**

STEP 4: **You receive the National Appeals Board's decision. The National Appeals Board must act within 60 days of receiving your papers to affirm, modify, or reverse the decision below. The decision of the National Appeals Board is final.**[1050]

CONDITIONS OF FEDERAL PAROLE

WHAT CONDITIONS MUST I FOLLOW ON FEDERAL PAROLE?

There are a lot of general and additional conditions that it is important to follow! Here is an overview of all the general conditions, and you should also be aware of any special conditions that might apply to you.[1051]

GENERAL CONDITIONS OF FEDERAL PAROLE

1. Go directly to your ***approved residence*** in the district named in your Certificate of Release (unless you are released to a "**detaine"r**, which means another jurisdiction has a legal "hold" keeping you from leaving);
2. Report in-person within **3 days (72 hours)** to the U.S. Probation Office named on your Certificate of Release. If because of an emergency you are unable to appear in person within 3 days (72 hours) after your release, you should report to the nearest U.S. Probation Office and obey any instructions that the "duty officer" gives you.
    a. If you were released to another authority (not U.S. Probation), then you should follow these first 2 steps as soon as you are released from the custody of the other authority.
3. Cooperate with your Probation Officer, and provide any information requested to your Probation Officer. You must answer completely and truthfully when the Probation Officer asks you for information.

[1049] 28 C.F.R. § 2.26.(f)
[1050] 28 C.F.R. § 2.26.
[1051] See 28 C.F.R. § 2.40(a)(1) ("All persons on supervision must follow the conditions of release described in § 2.204(a)(3) through (6). These conditions are necessary to satisfy the purposes of release conditions stated in 18 U.S.C. 4209. Your certificate of release informs you of these conditions and other special conditions that we have imposed for your supervision."); 28 C.F.R. 2.85(a)(1) (D.C. federal parole) ("General conditions of release and notice by certificate of release. All persons on supervision must follow the conditions of release described in § 2.204(a)(3) through (6). Your certificate of release informs you of these conditions and other special conditions that we have imposed for your supervision.").



4. Between the first and third day of each month, you must make a written report to the supervision officer on a form provided to you. The written report will look different depending where you are. It will most likely look like a worksheet where you will fill out your address, job information, and answer other questions about your life, or a form that you will fill out and submit on line at the probation office's website. Your Probation Officer will show you how to fill this out and give it to you at your check-in.
5. Report to your Probation Officer as that officer directs.
6. Tell your Probation Officer if you are arrested or questioned by law enforcement/police within 2 days of the contact with law enforcement.
7. Tell your Probation Officer if you change your job or address within 2 days of the change.
8. You must let the Probation Officer to visit your home and workplace.
9. You must let the Probation Officer take any item that the officer reasonably believes you are not allowed to have (for example, an illegal drug or a weapon), and that is in plain view in your possession (meaning they can see it without having to open drawers or dig through compartments), including in your home, workplace, or vehicle.
10. You must take a drug or alcohol test whenever your Probation Officer orders you to take the test.[1052]

TALKING TO OUR P.O. ABOUT AN ARREST

Under the federal law that governs federal parole, if you end up being arrested for an incident that police questioned you about (or any other incident), you must tell your probation officer. It could help to show the USPC that you are being honest with your P.O. and trying hard to comply.

Additional Conditions that Prohibit Certain Conduct:

1. You cannot violate any law and must not associate with any person who is violating any law.
2. You cannot possess a firearm, any other dangerous weapon, or ammunition.
3. You cannot *illegally possess or use* a controlled substance.
4. You cannot drink alcoholic beverages to excess.
5. Stay away from a place where a controlled substance is illegally sold, used, or given away.
6. You cannot leave your district of supervision without permission. (See PG. 248 for instructions on how to get permission to leave your district of permission.)
7. You cannot associate with a person who has a criminal record without the permission of your Probation Officer.
8. You cannot act as an informant (meaning someone who gives information to law enforcement/police about secret or criminal activities) for any law enforcement officer without the prior approval of the U.S. Parole Commission.[1053]

Additional Conditions You Must Follow:

1. You must make a good faith effort to work regularly, unless excused by your Probation Officer.
2. You must support your children and any legal dependents.
3. You must participate in an employment-readiness program if your supervision officer tells you to do so.
4. You must make a good faith effort to pay any fine, restitution order, court costs or assessment or court-ordered child support or alimony payment. If asked by your Probation Officer, you must provide your financial information. You must cooperate with your Probation Officer in setting up an installment plan to pay these debts and obligations.
5. If your underlying conviction was for a domestic violence crime, and it was your first conviction for domestic violence, you must attend an approved offender-rehabilitation program for the prevention of domestic violence (if such a program is readily available within 50 miles of your home).
6. If required by law, you must register with any applicable special offender registration law, for example, a law that requires you to register as a "sex offender" or a "gun offender."
7. If directed by your Probation Officer AND if authorized by the DNA Analysis Backlog Elimination Act of 2000, you must provide a DNA sample.
8. You must inform a person about your criminal record or personal history if your supervision officer determines that your relationship or contact with this person may pose a risk of harm to this person. The Probation Officer may direct you to do this and then ask for some form of confirmation or proof that you followed the direction. The Probation Officer may also speak directly with that person.[1054]

I AM ON FEDERAL PAROLE. CAN I TRAVEL OUTSIDE MY FEDERAL PAROLE DISTRICT?

Yes, if you get permission from your Probation Officer and/or the Parole Commission first.[1055]

[1052] 28 C.F.R. § 2.204.
[1053] 28 C.F.R. § 2.204(5).
[1054] 28 C.F.R. § 2.204(6).
[1055] See 28 C.F.R. § 2.41.



1. Your Probation Officer may give you permission to travel outside your federal parole district without approval of the U.S. Parole Commission in the following situations:

- Vacation trips for 30 days or less.
- Trips to look into certain employment possibilities for 30 days or less.
- Repeated travel across a district boundary, no more than 50 miles outside the district, for a job, shopping, or recreation.[1056]

2. For the following types of travel, you must (1) get the Parole Commission's advance permission *in writing*, *and* (2) show a substantial need for such travel:

- All foreign travel;
- A job that requires you to repeatedly travel more than 50 miles outside your federal parole district (except offshore job locations); and
- Vacation travel outside the district for more than 30 days.[1057]

3. A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any of the above general rules.[1058] This means that if you have a special condition that prohibits certain travel then you will not be able to travel even if you meet the conditions above.

SPECIAL CONDITIONS OF FEDERAL PAROLE

WHAT SPECIAL CONDITIONS COULD APPLY TO ME ON FEDERAL PAROLE?

If the U.S. Parole Commission determines that it is necessary *to protect the public from further crimes and to provide adequate supervision over you*, it may impose a special condition other than one of the general conditions above. Examples of special conditions of release that the Commission might require of you are found at 28 C.F.R. § 2.204(b)(2), and include the following possible requirements:

1. *If the Parole Commission requires you to participate in a drug-treatment program*, you must submit to a drug test before release and to at least two other drug tests, as determined by your Probation Officer. *However*, a decision not to impose this special condition, because available information indicates that you have a low risk of future substance abuse, constitutes *good cause* (a good reason under the law) for suspending the drug testing requirements of 18 U.S.C. 4209(a).[1059] Furthermore, a grant of parole or re-parole depends on your passing all pre-release drug tests administered by the Federal Bureau of Prisons (BOP).[1060]
2. You must live in or participate in a program at a community corrections center, or both, for all or part of your period of supervision;
3. You must participate in a drug-or alcohol-treatment program, and abstain from all use of alcohol and other intoxicants;
4. As an alternative to incarceration, you may be put on house arrest (home confinement), meaning you remain at home during nonworking hours, and your compliance is monitored by telephone or electronic signaling devices;
5. You must allow a supervising off it a time of their choosing, to conduct a search of your person, or of any building, vehicle, or other area under your control, and to seize contraband found.

CAN FEDERAL PAROLE REQUIRE ME TO GO TO A HALFWAY HOUSE OR REQUIRE ME TO UNDERGO DRUG OR ALCOHOL TREATMENT WHILE I'M UNDER SUPERVISION?

Yes.[1061] Federal law allows the U.S. Parole Commission to require you to go into a halfway house or undergo treatment for drug or alcohol for all or part of the time under supervision. In most cases, you will be notified in advance and may submit comments about that proposal to the Parole Commission *before* the final decision is made.[1062]

[1056] 28 C.F.R. § 2.41(a)(3).
[1057] 28 C.F.R. § 2.41(b)
[1058] 28 C.F.R. § 2.41(c).
[1059] 28 C.F.R. § 2.204.
[1060] See 28 C.F.R. § 2.40.
[1061] 18 U.S.C. § 3563(b)(9); see also, 2011 Federal Sentencing Guidelines Manual § 5B1.3(e)(1).
[1062] 18 U.S.C. § 3563(b)(9).



IF I'M ON PAROLE, MAY I OWN, USE OR POSSESS FIREARMS AFTER THEY ARE RELEASED?

No—almost never. Except in very rare situations, federal law forbids anyone who has ever been convicted of a felony from possessing firearms or ammunition. Generally, you will not be permitted to own or possess a firearm or ammunition.[1063]

CAN THE PAROLE COMMISSION CHANGE ANY OF MY CONDITIONS OF RELEASE?

Yes. If you believe the conditions on your Certificate of Release are unfair, you may ask the Case Manager for an appeal form and submit it to the Regional Commissioner within 30 days after your release. The U.S. Parole Commission will consider the appeal and you will be notified of the decision within 21 days after you file your appeal. While the appeal is pending, the parolee must continue to abide by the conditions imposed.[1064]

AFTER A PAROLEE IS RELEASED, MAY ANY OF THE CONDITIONS BE CHANGED? CAN ADDITIONAL ONES BE IMPOSED?

Yes. The Probation Officer or the U.S. Parole Commission may propose changing or adding to your conditions of federal parole. You will be notified of any such proposal and be given up to 10 days to make any written comments to the U.S. Parole Commission. You will be notified within 21 days after you provide written comments.[1065]

STEP 1: Ask your U.S. Probation Officer for a form to make comments.

STEP 2: You may write directly to the Commission (with a copy to your Probation Officer) if you want to have any of the conditions changed or deleted.[1066]

TRANSFERRING FEDERAL PAROLE

The same rules and procedures for transferring and moving residences apply to all forms of federal supervision. See the full discussion above on PG. 225.

VIOLATIONS & REVOCATION OF FEDERAL PAROLE

WHAT COULD HAPPEN IF I VIOLATE THE CONDITIONS OF MY FEDERAL PAROLE (OR MANDATORY RELEASE)?

STEP 1: **First, a U.S. Probation Officer will likely report the violation to the U.S. Parole Commission. While your Probation Officer is *required* to report any and all violations to the U.S. Parole Commission (USPC), the officer may recommend that you be continued under supervision without sanctions.**

STEP 2: **Second, a Parole Commissioner determines the appropriate punishment (called "sanctions"), which could include:**

- Issuance of an arrest warrant, *or*
- A summons for you to appear at a hearing.

The Probation Officer's recommendation is one of the factors considered by the Commission in its decision.[1067]

At this stage of the process, there are two reasons why the USPC might wait to issue an arrest warrant or a hearing summons:

- It may wait until, in the opinion of the Commission, the *frequency or seriousness of violations* requires it to issue a warrant or summons;
- You (the parolee) have been charged with a new criminal offense and are awaiting disposition of the charge, so the Commission may decide to (1) withhold the summons, (2) issue and hold the warrant in abeyance, or (2) issue a warrant and place a detainer on you.[1068]

[1063] 18 U.S.C. § 3563.
[1064] 28 C.F.R. §§ 2.40(d), 2.204(c)-(d).
[1065] 28 C.F.R. §§ 2.40(d), 2.204(c)-(d).
[1066] 28 C.F.R. §§ 2.40(d), 2.204(c)-(d).
[1067] United States Department of Justice, U.S. Parole Comm'n—Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1068] 28 C.F.R. § 2.44(a).



STEP 3: **Third, the warrant will be "executed," which means that you will be taken into custody or asked to come to a hearing. What happens next will depend on your personal circumstances, but the different possibilities are described in the next two questions.**

WHO ISSUES AN ARREST WARRANT OR SUMMONS TO APPEAR AT A HEARING IF I VIOLATE FEDERAL PAROLE OR MANDATORY RELEASE?

Only a Parole Commissioner may issue a warrant or a summons for a violation of the conditions of your release on federal parole.[1069]

Any officer of any Federal correctional institution or any Federal officer authorized to execute the warrant will do so by returning you to the custody of the Attorney General.[1070]

You must be served with a summons to appear at a preliminary interview or revocation hearing by a Federal officer who is authorized to serve you, and proof of such service shall be returned to the appropriate regional office of the USPC.[1071]

AFTER A WARRANT OR SUMMONS IS ISSUED, WHAT HAPPENS?

This is the general process of what happens:

- You will be either taken into custody, usually in the nearest government-approved jail or detention center, *or* summoned to appear at a hearing.[1072]
- If you have been convicted of a new offense, a Probation Officer will personally advise you of your legal rights and conduct a preliminary interview.[1073]
- The Regional Commissioner will pick an official to conduct a preliminary interview with you —this official could be a U.S. Probation Officer in the district where you are confined, so long as it is not the same U.S. Probation Officer who recommended that you be arrested.[1074]
- You'll go through a preliminary interview (sometimes called a probable cause hearing) by the official, which will be used to help the U.S. Parole Commission determine if there is probable cause to believe you actually violated your parole conditions. If the Parole Commission finds probable cause, then it must decide whether to conduct a final revocation hearing.[1075]

YOU HAVE RIGHTS AT THE PRELIMINATY INTERVIEW OR HEARING:

1. YOU HAVE THE RIGHT TO ASK FOR AN ATTORNEY & INVITE WITNESSES TO THE PRELIMINARY HEARING![1076]

At the beginning of the preliminary interview, the interviewing officer *must*:

- Verify that you received the Warrant Application (as required by § 2.46(b));[1077]
- Advise you of your right to have the preliminary interview postponed so that you have time to get an attorney to represent you *or* to arrange for witnesses to attend on your behalf;[1078]
- Tell you that if you cannot afford an attorney, you can apply to a U.S. District Court for appointment of counsel to represent you at the preliminary interview and the revocation hearing (pursuant to 18 U.S.C. 3006A). You do not have a constitutional right to have an attorney at your revocation hearing, but you can request an attorney and may have one appointed to you. You will most likely qualify for an attorney if you cannot afford one.[1079]

2. YOU HAVE THE RIGHT TO ASK THE PAROLE COMMISSION TO MAKE WITNESSES WHO PROVIDED INFORMATION LEADING TO YOUR REVOCATION CHARGE APPEAR AT THE PRELIMINARY INTERVIEW—

- You should request that the Commission bring in anyone who has given information that it will use in its decision to revoke or reinstate your parole. Such adverse witnesses shall be requested to attend the preliminary interview unless (1) you admit a violation; or (2) have been convicted of a new offense while on supervision; or (3) the interviewing officer finds good cause for their absence.[1080] The Parole Commission may *subpoena* (meaning order through the court) witnesses who are against your interest (adverse) and the production of documents.[1081]

[1069] 28 C.F.R. § 2.44.
[1070] 28 C.F.R. § 2.46(a).
[1071] 28 C.F.R. § 2.46(d)
[1072] 28 C.F.R. § 2.48(g)
[1073] 28 C.F.R. § 2.48(c).
[1074] 28 C.F.R. § 2.48(a).
[1075] 28 C.F.R. § 2.48.
[1076] 28 C.F.R. § 2.48(b).
[1077] 28 C.F.R. § 2.48(b).
[1078] 28 C.F.R. § 2.48(b).
[1079] 18 U.S.C. 3006A(a)(1)(E).
[1080] 28 C.F.R. § 2.48 (b).
[1081] 28 C.F.R. §§ 2.48; 2.51.



3. AT THE PRELIMINARY INTERVIEW, THE INTERVIEWING OFFICER *MUST*:

- Review the violation charges with you;
- Tell you about the evidence which has been presented to the Parole Commission;[1082]
- Take statements of witnesses and documentary evidence on your behalf; and
- Allow cross-examination of those witnesses in attendance.

4. AT THE CONCLUSION OF THE PRELIMINARY INTERVIEW, THE INTERVIEWING OFFICER *MUST*:

- Tell you his or her recommended decision as to whether there is probable cause to believe that you violated the conditions of your parole.
- Tell you recommendation and the basis for it.
- Submit to the Parole Commission a summary of the preliminary interview along with the officer's recommended decision.[1083] In this report, the interviewing officer will recommend (1) whether there is "probable cause" to believe that a violation has occurred AND (2) whether you should be held in custody pending a revocation hearing *or* be reinstated to your parole supervision.

NOTE: A FINDING OF PROBABLE CAUSE IS NOT A REVOCATION.

Just because an interviewing officer finds "probable cause" to believe you violated your parole, does not mean that your parole has been revoked. It just means that there is reason to believe you did what the warrant says you did—you will still have a chance to be reinstated at your Final Revocation Hearing. "Probable cause" is a very low standard, meaning an interviewing officer will most likely find "probable cause," but you can still be reinstated at your Final Revocation Hearing.

- After the interviewing officer's report is received, the Parole Commission will either order you reinstated to supervision *or* order that a Hearing Examiner hold you in custody for a revocation hearing.
- Even if the Commission finds probable cause to believe you have violated the conditions of your parole, it may still order you reinstated back to parole supervision *or* release you pending further proceedings *if:*
  - Continued revocation proceedings are *not warranted*; OR
  - Keeping you in jail is *not necessary* because you have not violated multiple times or the charge you are facing is not serious, and you are likely to appear for further proceedings, and don't constitute a danger to yourself or others.[1084]
- If you are convicted of a new offense, you do NOT have the right to a preliminary interview because the conviction is sufficient evidence (probable cause is automatically shown) that you violated your conditions of parole. In that case, you may be immediately taken to a federal institution for a revocation hearing.[1085]

MAY A FEDERAL PAROLEE HAVE AN ATTORNEY AT A PRELIMINARY INTERVIEW AND REVOCATION HEARING?

Yes. You have the right to an attorney of your choice, or you may request to have the court appoint you an attorney if you can't afford your own.[1086]

You do not have a constitutional right to have an attorney at your parole revocation hearing, but you will most likely qualify for an attorney if you cannot afford one.[1087] You should apply for an attorney with the District Court in your judicial district. It is your responsibility to tell your lawyer the time and place of the hearing.[1088]

WILL I BE IN PRISON PENDING HEARING?

It depends. If you were picked up on an arrest warrant issued by the USPC, you will be held in custody until a final decision about your revocation or release.

The only exception is if the Regional Commissioner orders otherwise, but this is not likely. If you received a summons to a revocation hearing (under 28 C.F.R. § 2.44), you will remain on supervision pending the decision of the Commission.[1089]

WHERE ARE THE REVOCATION HEARINGS HELD?

The revocation hearing will be either (1) an institutional hearing OR (2) a local hearing.

[1082] Disclosure of the evidence presented to the U.S. Parole Comm'n must be made pursuant to 28 C.F.R. § 2.50(d). See also 28 C.F.R. § 2.48(c).
[1083] 28 C.F.R. § 2.48.
[1084] 28 C.F.R. § 2.48(e)(2).
[1085] 28 C.F.R. § 2.48(f).
[1086] 28 C.F.R. § 2.48(b).
[1087] 18 U.S.C. § 3006A(a)(1)(E).
[1088] 28 C.F.R. § 2.48(b).
[1089] 28 C.F.R. § 2.49(e).



1. **INSTITUTIONAL HEARINGS:** Generally, revocation hearings are held after you are returned to a federal institution. An institutional hearing is held within 90 days from time you were taken into custody on the U.S. Parole Commission's warrant. **OR**
2. **LOCAL HEARINGS:** If there are sufficient reasons to do so, the U.S. Parole Commission may order your revocation hearing held in your own community or in the community where you were arrested. *You only have the right to a local hearing if:* (1) You deny violating the conditions of your release, AND (2) You were NOT convicted of a new crime.

If a local revocation hearing is requested, you must complete a request form. There is a penalty for false answers on this form. Local revocation hearings are generally held within 60 days from the date the Regional Commissioner finds "probable cause" that parole or mandatory release was violated.[1090] If granted, your local revocation hearing will be scheduled to happen reasonably near the place of the alleged violation(s) or arrest.

A NOTE ABOUT GETTING SUPPORT FROM A LAWYER: At a local revocation hearing, you are more likely to have a lawyer and you can request that all adverse witnesses be called so you can confront and cross-examine them. In order to get a local revocation hearing, you and your attorney must (1) deny all the charges and (2) request a local revocation hearing.

WHAT IS THE TIMELINE OF THE HEARING?

A local revocation hearing must be within 60 days of the probable cause determination. Institutional revocation must be held within 90 days of the date the warrant was executed, when you were taken into custody. However, you can request postponement or consent to a postponed revocation proceeding.[1091]

IF MY HEARING IS HELD IN A FEDERAL INSTITUTION RATHER THAN LOCALLY, AM I ENTITLED TO AN ATTORNEY AND MAY I PRESENT WITNESSES ON MY BEHALF?

You do not have the right to appointed counsel, but may secure an attorney at your own expense. NOTE: The attorney can act only in the capacity of a representative.[1092]

WHAT IS THE HEARING PROCEDURE?

The purpose is to determine whether you have violated the conditions of your release and, if so, whether your parole or mandatory release should be (1) revoked (taken away) or (2) reinstated (where you continue on parole as you were).[1093] To get more information about how to prepare for the hearing, please see the Appendix KK, PG. 328

WHEN IS REVOCATION MANDATORY?

If the USPC finds after a revocation hearing that you:

1. Possessed a controlled substance,
2. Refused to comply with drug testing,
3. Possessed a firearm, or
4. Tested positive for illegal controlled substances more than 3 times over the course of 1 year, the USPC *must revoke* your term of supervision and impose a term of prison.[1094] If you fail a drug test, the USPC must consider appropriate alternatives to revocation.[1095]

HOW COULD I BE SENTENCED FOR A REVOCATION OF FEDERAL PAROLE?

If the Parole Commission finds by a "preponderance of the evidence," (that it is more likely than not) that you violated a condition of the parole, the Commission may take any of the following actions:

1. **Continue your supervision on federal parole, which can include:**

- Reprimanding you;
- Modifying (changing) your conditions of release;
- Referring you to a community corrections center for all or part of the remainder of your original sentence;

OR

2. **Revoke your parole, and send you back to prison.**[1096]

[1090] United States Department of Justice, U.S. Parole Comm'n—Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1091] 28 C.F.R. § 2.49.
[1092] United States Department of Justice, U.S. Parole Comm'n—Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1093] 28 C.F.R. § 2.55.
[1094] See 28 C.F.R. § 2.218.
[1095] 28 C.F.R. § 2.204.
[1096] 28 C.F.R. § 2.52.



In determining whether to revoke parole for not paying a fine, restitution, court costs or assessment, and/or court-ordered child support or alimony payment that was a condition of your release on supervision, the U.S. Parole Commission *must consider* your *employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter*. Revocation shall not be ordered unless you are found to be deliberately evading or refusing compliance.[1097] (Learn more about court-ordered debt in the COURT-ORDERED DEBT CHAPTER, beginning on PG. 654).

IF THE COMMISSION REVOKES PAROLE OR MANDATORY RELEASE, DOES A PAROLEE GET ANY CREDIT ON THE SENTENCE FOR THE TIME SPENT UNDER SUPERVISION?

Generally, if you are convicted of a *new law violation*, you are entitled to credit for any of the time spent under supervision unless serving a Youth Corrections Act (YCA) or Narcotics Addiction Rehabilitation Act (NARA) commitment.

Also, there is no credit given for any time a parolee intentionally failed to respond or report to a Probation Officer or after a parolee has absconded from his or her area and the Probation Officer did not know where he or she was living. For violation of any of the other noncriminal conditions, a parolee generally will be credited for all of the time spent under supervision in the community.[1098]

IF I GET MY FEDERAL PAROLE REVOKED, HOW LONG MUST I SERVE BEFORE THE PAROLE COMMISSION REVIEWS MY CASE AGAIN?

The U.S. Parole Commission uses its own guidelines to determine the length of time you should serve in prison for the revocation. The guidelines are the same ones used for inmates who apply for their initial parole hearings. Decisions, of course, can be made above or below the guidelines for good cause (a good reason).[1099]

CAN I APPEAL THE REVOCATION DECISION BY THE U.S. PAROLE COMMISSION?

Yes. It's the same process discussed above (PG. 244) for appealing a denial of early release from parole to the National Appeals Board.[1100] The U.S. Attorney General can also appeal a Regional Parole Commissioner's decision.

The Attorney General, within 30 days after entry of a Regional Commissioner's decision, may send a *written request* to the National Appeals Board to review the decision. Within 60 days of the receipt of the request the National Appeals Board must affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level, and send a written decision to the Attorney General and to you.[1101]

If the Commission finds out you were convicted of a new crime after your revocation hearing for something you did while you were on parole, the Regional Commissioner may reopen your case pursuant to § 2.52(c)(2) for a special reconsideration hearing on the next regularly scheduled docket to consider whether you should give up your time spent on parole or any other consequence that he may think is appropriate. If he decides to change something, this new ruling will replace the ruling you got at your hearing.[1102]

DISABILITY RIGHTS FOR PEOPLE ON ALL TYPES OF FEDERAL SUPERVISION

I HAVE A DISABILITY. WHAT RIGHTS DO I HAVE ON FEDERAL PROBATION OR PAROLE TO HAVE ACCOMMODATIONS FOR MY DISABILITY?

Section 504 of the Rehabilitation Act of 1973 protects individuals on federal probation/federal parole from discrimination due to their disabilities.[1103]

The Rehabilitation Act provides essentially the same protections as the Americans with Disabilities Act (ADA), including the right to *reasonable changes* in policies, rules, and conditions; *equal opportunity to participate* in

[1097] 28 C.F.R. § 2.52.
[1098] United States Department of Justice, U.S. Parole Comm'n—Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1099] United States Department of Justice, U.S. Parole Comm'n—Frequently Asked Questions, http://www.justice.gov/uspc/faqs.html.
[1100] 28 C.F.R. § 2.26.
[1101] 28 C.F.R. §§ 2.26; 2.54.
[1102] 28 C.F.R. § 2.28.
[1103] Codified at 29 U.S.C. § 794 (2014). The Rehabilitation Act also applies to any program or activity that receives federal funding or other assistance. Note, however that the ADA does NOT cover federal agencies or programs; it only applies to state and local programs.



programs, services, and benefits; and *additional assistance* (services or devices) so that you can participate in programs and activities related to your supervision.[1104]

Thus, federal probation staff must offer you the same types of accommodations and services discussed for state parole under "State Parole: Disabilities and the ADA," see PG. 186.

HOW CAN I FILE A COMPLAINT IF I FEEL THAT MY FEDERAL PROBATION OFFICER IS NOT ACCOMMODATING MY DISABILITY, OR FEEL THAT I AM NOT GETTING ACCESS TO PAROLE SERVICES OR PROGRAMS?

Unfortunately, there are no special procedures or forms to seek accommodations for your disability, or to complain about overly restrictive conditions under federal supervision. There are several steps you can take to try and rectify the situation.

STEP 1: If your disability makes it difficult to comply with your federal probation or parole conditions, or your conditions are overly strict and cause you harm due to your disability, the first thing to do is talk with your U.S. probation officer.[1105] You should explain:

1. Your disability;
2. Which condition of supervision is causing you problems due to your disability (e.g., drug testing conditions that prevent you from taking necessary medication) or how you are being treated differently due to your disability (e.g., you are stopped from participating in certain programs due to your disability or related medical treatment) or why you need additional help to participate in activities or follow the rules of supervision; and
3. What accommodations (like changes in rules, policies, or procedures), services, or other assistance you need for your disability.[1106]
4. If you have any other documents—such as a letter from your doctor or prescription for medication—you should show that to your probation officer. You can also remind your probation officer that federal law requires him or her to provide "reasonable accommodations" for your disability. Your probation officer, along with the judge and any medical providers who help you with your disability, will consider your situation and make a case-by-case decision about whether and how to accommodate your disability.

STEP 2: If you are unhappy with your probation officer's decision, you can ask a supervisor for assistance. If the probation department does not provide the assistance you need, you can go to court to request a change in your supervision conditions or other accommodations.[1107]

STEP 3: You have the right to file an administrative complaint with the Department of Justice, which will investigate and attempt to resolve cases of discrimination based on disability, including a hearing and appeal process.[1108] Note, however that this process can take a long time to complete, so it's best as a last resort.

VIII. CONCLUSION

Being under some type of supervision is usually required for you to be released from prison or jail. In California, there are many types of supervision—state parole, county probation, Mandatory Supervision, PRCS, federal probation, Supervised, and federal parole. Hopefully now that you've read this Chapter, you better understand what it means to be under supervision, what special rules you have to follow, and all of the rights you have as a person in reentry.

[1104] 28 C.F.R § 39.130.
[1105] Telephone conversation with Deputy Chief Noel Belton, U.S. Probation Office, Northern District of California, Nov. 5, 2014. Telephone conversation with Day Officer Nisha Modica and Supervision Supervisor Jeff Oestreicher, U.S. Probation Office, Eastern District of California, Nov. 5, 2014. If you know before sentencing that one (or more) of the recommended conditions of probation (described in the pre-sentence report) will cause problems due to your disability, you can ask the judge to change them at sentencing.
[1106] See Colum. Hum. Rts. L. Rev., A Jailhouse Lawyer's Manual: Rights of Prisoners with Disabilities (9th ed.), 2011.
[1107] You can also file a new complaint (start a new case) to allege disability discrimination under Section 504. "Your Section 504 complaint must say that: (1) You are an individual with a disability; (2) You are "otherwise qualified" for the program, activity, or service from which you were excluded; (3) You were denied benefits or discriminated against solely because of your disability; and (4) The program, activity, prison, or jail receives federal financial assistance. . .. But your complaint should also include other information, both to make your situation clear and to get the judge to sympathize with the problems you face in prison. You should (1) discuss your disability in detail, (2) explain the accommodations you need, and (3) describe the discrimination you have experienced. You should also mention any other facts you think are relevant and will make your argument stronger." Colum. Hum. Rts. L. Rev., A Jailhouse Lawyer's Manual at 726.
[1108] 28 C.F.R. § 39.170.



LET'S REVIEW!

In the PAROLE & PROBATION CHAPTER, you learned about:

- Different types of supervision in California, including the state and federal systems for supervision
- Who gets put onto what type of supervision, and the reasons why
- What to expect and know about when you first get released onto community supervision
- The General vs. Special/ Discretionary Conditions of Supervision: What general rules (conditions) you have to follow, what special/ discretionary (extra conditions) might be added on, and how to challenge special/ discretionary conditions
- The Length of Supervision: How it is is calculated, and how to get off early, if possible
- Transferring Supervision to a Different Location: What the procedures are for transferring your supervision to a different county or state
- Disability Rights: How to navigate parole and/or probation if you have a disability and need help or accommodations
- Violations: What your rights are if you're accused of violating the conditions of your supervision, and how the "revocation" (violations) process works for the different types of supervision

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APPENDIX A

General and Discretionary Conditions of California State Parole[1109]

General Conditions of State Parole:

- The release date and how long the parolee may be on parole.
- Advisement that the parolee, their residence, and possessions can be searched at any time of the day or night, with or without a warrant, and with or without a reason. This can be done by a parole agent or police officer.
- By signing the parole conditions, the parolee waives extradition if they are found out of state.
- The parolee's obligation to always tell their parole agent where they live and work.
- The parolee's obligation to report upon release from prison or jail.
- The parolee's obligation to tell their parole agent about a new address before they move.
- The parolee's obligation to tell their parole agent, within three days, if they get a new job.
- The parolee's obligation to report to their parole agent when told to report or a warrant can be issued for their arrest.
- The parolee's obligation to follow their parole agent's instructions.
- The parolee's obligation to ask their parole agent if it is OK to travel more 50 miles from their residence, and receive approval before they travel.
- The parolee's obligations to receive a travel pass before they leave the county for more than two days.
- The parolee's obligations to receive a travel pass before they can leave the State.
- The parolee's obligation to obey ALL laws.
- The parolee's obligation to tell their parole agent immediately if they get arrested or get a ticket.
- An advisement that if a parolee breaks the law, they can be sent back to prison even if they do not have any new criminal charges.
- The parolee's obligation to not be around guns, or things that look like a real gun, bullets, or any other weapons.
- The parolee's obligation to not have a knife with a blade longer than two inches except a kitchen knife. Kitchen knives must be kept in your kitchen.
- Knives you use for work are also allowed if approved by the parole agent tells, but they can only be carried while at work or going to and from work. The parolee must possess a note from the parole agent approving this, and it must be carried at all times.
- The parolee's obligation to not own, use, or have access to a weapon listed in Penal Code Section 12020.
- The parolee's obligation to sign their conditions of parole. Failure to sign them can result in a return to prison.

Discretionary Conditions of State Parole:

- Require you to support your dependents and meet other family responsibilities;
- Require that you make restitution to a victim of the offense under section 3556;
- Require that you give notice (ordered pursuant to the provisions of section 3555) to the victims of the offense;
- Require that you be employed or be pursuing educational/vocational training to prepare you for suitable employment;
- Prevent you altogether from working in a specified occupation, business, or profession with a reasonably direct relationship to the conduct underlying your commitment offense (OR prevent you from working in a specified occupation, business, or profession only to a certain degree/under stated circumstances);
- Forbid you from going to specified kinds of places;
- Forbid you from associating with specified persons;
- Forbid you from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;
- Forbid you from possessing a firearm, destructive device, or other dangerous weapon;
- Require that you get medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency (as specified by the court)
- Require that you live in a specified institution for medical, psychiatric, or psychological treatment
- Require that you remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation or supervised release (this is known as intermittent confinement);

[1109] Parole Conditions, CAL. DEP'T OF CORR. & REH., http://www.cdcr.ca.gov/Parole/Parolee_Conditions/.



- Require you to live at a community corrections facility (including somewhere maintained by or contracted with the Bureau of Prisons), or attend a program at such a community corrections facility, for all or part of the term of probation;
- Require you to work in community service as directed by the court;
- Require you to live in a specified place or area, or prevent you from living in a specified place or area;
- Require you to remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- Require you report to a probation officer as directed by the court or the probation officer;
- Allow a probation officer to visit you at your home or elsewhere as specified by the court;
- Require you to quickly notify your probation officer, or answer your P.O.'s questions, about any change in address or employment;
- Require you to quickly notify your probation officer if you are arrested or questioned by a law enforcement officer;
- Require you to stay at home/where you live during non-working hours (this is known as home confinement or house arrest), and require you to be monitored by telephonic or electronic signaling devices to track you and make sure you are at home during these times. This condition can only be used as an alternative to incarceration.
- Require that you obey any court order or other government administrative order that requires you to pay for support/maintenance of a child or to both the child and parent with whom the child is living;
- Deport you if you are "deportable" by law;
- Satisfy any other court-imposed conditions; and
- If you are required to register under the Sex Offender Registration and Notification Act: The judge may order a search at any time, with or without a warrant, of your person, any property, your house/residence, vehicle, papers, computer, or other electronic/data devices or media, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct, and by any probation officer lawfully carrying out his/her function of supervision.
- Intermittent confinement. Intermittent confinement can only be used if you violate a condition of probation.[1110]

[1110] 18 U.S.C. § 3583(b), (d).

APPENDIX B

California State Parole Term Lengths

I. CONTROLLING DISCHARGE DATE (CDD) & MAXIMUM DISCHARGE DATE (MDD):

Three-year base period, maximum period of four years:

- People who were sentenced to a determinate (set-length) prison term, and who do not fall into any of the other categories listed below. Longer parole periods apply to people convicted of serious sex crimes or sentenced to life with the possibility of parole.
- People sentenced to life with the possibility of parole for offenses committed before January 1, 1979.[1111]

Five-year base period, maximum period of seven years:

- People convicted of a violent sex crime listed in CAL. PENAL CODE § 667.5(c)(3)-(6), (16), or (18) committed between July 19, 2000, and September 19, 2006, or between November 7, 2006, and September 9, 2010. This provision also applies to people convicted of a violent sex crime listed in Penal Code § 667.5(c)(11) committed between January 1, 2003, and September 19, 2006, or between November 7, 2006, and September 9, 2010.[1112]
- People sentenced for a sex crime under CAL. PENAL CODE § 661.61 (the "one strike" law) committed between July 19, 2000, and September 19, 2006 (note that the base term can be extended for an additional five years if the prisoner is deemed to pose a danger to society; as of January 1, 2002, either the original or extended parole period can be increased to a maximum of seven years). This also applies to people sentenced under Penal Code § 667.71 (recidivist sex offenders) for offenses committed from January 1, 2003, through September 19, 2006.[1113]
- Life prisoners who committed their offenses on or after January 1, 1979, and who do not fall into some other category.[1114]

Ten-year base period, maximum period of fifteen years:

- People convicted of a violent sex crime listed in Penal Code § 667.5 (c)(3)-(6), (11), (15), (16), or (18) committed between September 20, 2006, and November 6, 2006. This provision also applies to people convicted of a violent sex crime listed in CAL. PENAL CODE § 667.5 (c)(3)-(6), (11), or (18) committed on or after September 9, 2010, and who do not fall into some other category.
- People sentenced to life with the possibility of parole for a sex offense under CAL. PENAL CODE §§ 209(b) [with intent to commit a sex offense], 269, 288.7, or 667.51 committed between September 20, 2006, and November 6, 2006.[1115]
- People sentenced to life with the possibility of parole for a sex offense under CAL. PENAL CODE §§ 667.61 or 667.71 committed on or after September 20, 2006, and who do not fall into some other category.

Twenty-year and six month base period with a maximum life-long parole:

- People convicted of a sex offense under CAL. PENAL CODE §§ 261, 262, 264.1, 286, 288a, 288(b)(1), 288, 288.5, or 289 if the victim was under 14 years of age and the offense was committed on or after September 9, 2010. These parolees can be kept on parole longer, even without parole violations, upon a finding of good cause.[1116]

Life-long parole period:

- People sentenced to life with the possibility of parole for first- or second-degree murder committed on or after January 1, 1983 (BUT NOT CONSPIRACY TO COMMIT ANY DEGREE OF MURDER).[1117]
- People sentenced to life with the possibility of parole under Penal Code § 209(b) [with intent to commit a sex offense] committed on or after September 9, 2010.[1118]
- Prisoners sentenced to life with the possibility of parole for sex offenses under CAL. PENAL CODE §§ 269, 288.7(c), 667.51, 667.61(j), (l), or (m), or 667.71 [if victim under age 14] committed on or after September 9, 2010.[1119]

[1111] CAL. PENAL CODE § 3000(b); 15 CAL. CODE REGS. § 2515(e); In re Wilson, 30 Cal.3d 438, 440-41 (1981) .
[1112] Cal. Penal Code § 661.61.
[1113] Cal. Penal Code § 661.61.
[1114] Cal. Penal Code § 3000(b)(1); 15 Cal. Code Regs. § 2515(d).
[1115] This provision also purports to apply to people sentenced to life with the possibility of parole under CAL. PENAL CODE § 209 [with intent to commit a sex offense] or § 667.51 committed on or after September 9, 2010. However, such offenses appear to be covered by the life-long parole provision in CAL. PENAL CODE § 3000.1.
[1116] CAL. PENAL CODE § 667.61(e).
[1117] Cal. Penal Code § 3000.1; 15 Cal. Code Regs. § 2515(f).
[1118] CAL. PENAL CODE §§ 3000(b)(3) and 3000.1(a)(2). There is a discrepancy between the statutory language and the stated legislative intent to require life-long parole for "habitual sex offenders [and] persons convicted of kidnapping a child under 14 years of age with the intent to commit a specified sex offense." Legis. Couns. Dig. Assem. Bill No. 1844, Ch. 219. Thus, there is potentially an argument that prisoners convicted under § 209(b) should be subject to only a 10-year parole term if the victim is over 14 years old.
[1119] CAL. PENAL CODE § 667.61(e).



II. PRESUMPTIVE DISCHARGE DATE (PDD):

Most parolees can be discharged from parole early if they successfully complete a certain amount of parole time and the BPH does not find good cause to retain them on parole.[1120] This is called the "presumptive discharge date" (PDD). If a parolee fits into more than one category, the longer period applies.

- Six months: Any person with a determinate sentence for non-violent, non-serious, non-sex offenses, provided the offense took place before June 27, 2012.
- One year: Any person who has a three-year parole term following a determinate sentence for a serious felony listed in Penal Code §§ 1192.7 or 1192.8(a) or for an offense requiring registration as a sex offender.
- Two years: Any person who has a three-year parole term following a determinate sentence for a violent felony listed in Penal Code § 667.5(c), provided the offense took place before June 27, 2012.
- Three years: Any person who has a five-year parole term following a determinate sentence for a violent felony listed in Penal Code § 667.5(c) provided the offense took place before June 27, 2012 or following an indeterminate life sentence for a crime other than murder.
- Five years: Any person sentenced to an indeterminate life sentence for second- degree murder.
- Six years and six months: Any person with a ten-year parole term following an indeterminate life sentence under Penal Code §§ 209(b) [with intent to commit a sex offense], 667.51, 667.61, or 667.71.
- Seven years: Any person sentenced to an indeterminate life term for first-degree murder.
- No presumptive discharge date: Any person serving a life-long parole period following an indeterminate life term for a sex offense under Penal Code §§ 269, 288.7(c), 667.51, 667.61(j), (l), or (m), or 667.71 [if a victim was a child under age 14]. There is also no presumptive early discharge for parolees who were sentenced to prison for offenses committed between July 1, 1977, and December 31, 1978.[1121]

[1120] CAL. PENAL CODE §§ 3000, 3000.1, 3001.
[1121] 15 CAL. CODE REGS. § 2535(b)(5).

APPENDIX C

Learn How To Calculate Your State Parole Discharge Date

(Excerpted with slight modifications from Prison Law Office, The Parolee Rights Handbook, August 2013, available for download on their website at: http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf)

FOR PEOPLE ON STATE PAROLE:
How Is the Parole Discharge Date Calculated?

A parolee who is not serving life-long parole and who is retained past the "presumptive discharge date" can calculate when he or she must be discharged from parole. There are two important dates: the "controlling discharge date" (CDD) and the "maximum discharge date" (MDD). The CDD is the date that a parolee is currently set to be discharged from parole if nothing changes. The MDD is the maximum parole term as set by statute, after which the parolee must be discharged.

Two types of events may change the CDD and MDD:

- Time during which a parolee absconds or is unavailable for supervision does not count toward either the CDD or MDD. There is no limit on how long the CDD and MDD can be extended due to absconding or unavailability.
- Time served in custody for parole revocation terms will extend the CDD, but only until the MDD is reached.

The pieces of information a parolee needs to figure out his or her CDD and MDD are: (1) the initial parole date; (2) the base and maximum parole terms that apply to his or her case (see Section 16.A, above); (3) how much time he or she has been unavailable for supervision, if any; and (4) the amount of time he or she has served in custody on parole violations.

Here is a calculation worksheet that can be used by any parolee, with an example of a calculation for a parolee named Joe who is serving a three-year parole term with a maximum term of four years following a determinate sentence for a non-serious, non-violent, non-sex offense.

Worksheet

1)	Start with the date the parolee was first paroled. For our example, Joe paroled on January 1, 2013.	1/1/2013
2)	Add the amount of time the parolee must serve before a presumptive discharge review. Joe has a presumptive discharge date of six months plus 30 days, and was eligible for early discharge on July 1, 2013.	7/1/2013
3)	However, the BPH acted to retain Joe on parole, so his CDD will be set by his full statutory base parole period. Joe has a three-year base parole period, so his CDD is January 1, 2016. Joe has a statutory maximum parole term of four years, so his MDD is January 1, 2017.	1/1/2016 (CDD) 1/1/2017 (MDD)
4)	Joe absconded from parole, and the "clock" on his parole term stopped running during that time. This extends both the CDD and the MDD. Joe absconded for three months, so his CDD is now April 1, 2016, and his MDD is now April 1, 2017.	4/1/2016 (CDD) 4/1/2017 (MDD)
5)	Joe also violated parole and served a parole revocation term in custody. This extends the CDD but only until the MDD is reached. Joe's revocation term was 180 days, but he only served 90 days in jail because he behaved well and got good conduct credits. Thus, 90 days is added to his CDD, which is now July 1, 2016. The revocation time does not affect Joe's MDD, which is still April 1, 2017.	7/1/2016 (CDD) 4/1/2017 (MDD)



6) Joe violated parole two more times and got two more 180-day revocation terms (360 days total); while he was in jail, Joe got into fights and refused to work, so he did not get any good conduct credits. The time Joe spends in jail extends his CDD but does not affect his MDD. Also, since a CDD cannot be further in the future than an MDD, Joe has "maxed out" and will be discharged on April 1, 2017.

4/1/2017 (CDD)

4/1/2017 (MDD)



IMPORTANT: if your parole length seems wrong, you can challenge it (it's a similar process to challenging a parole condition). See PG. 178 above for more information.

APPENDIX D

State Parole (DAPO) Regional Appeals Coordinators Addresses & Phone Numbers

Based on which parole (DAPO) region your parole office is located, you should send any appeals (602s, etc.) to that parole region's Regional Appeals Coordinator. There are now only two parole regions in California.

NORTHERN REGION PAROLE:

Laurie Harikian, Region I Appeals Coordinator
Region I Headquarters
9825 Goethe Road, Ste. 200
Sacramento, CA 95827-2572

Phone: 916-255-2758

SOUTHERN REGION PAROLE:

Christopher Hernandez, Southern Region Appeals Coordinator
Southern Region Parole Headquarters
21015 Pathfinder Road Ste. 200
Diamond Bar, CA 91765

Phone: 909-468-2300

APPENDIX E

Notice Of Arson Offender Registration Requirement

State of California
NOTICE OF ARSON OFFENDER REGISTRATION REQUIREMENT – 457.1 P.C.
FORM SS-8049 (Rev. 1/04)

Department of Justice

Recommended additional data elements: E7, E8, E9, E10, N130

Sex Offender Tracking Program
P.O. Box 903387, Sacramento, CA 94203-3870

NOTICE OF ARSON OFFENDER REGISTRATION REQUIREMENT – 457.1 P.C.

Please type or print required information *(This is not the Registration form)*

PERSONAL HISTORY INFORMATION

FULL NAME OF PERSON NOTIFIED: N125 (Last / First / Middle)

DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR	SOCIAL SECURITY NUMBER
N126			N128				N181

DRIVER'S LICENSE NUMBER	CII NUMBER (SID)	FBI NUMBER	INSTITUTION NUMBER
284	E-04	E-05	N116

CONVICTION INFORMATION

ARRESTING AGENCY	DATE OF ARREST	PROSECUTING AGENCY	PROSECUTION AGENCY & CASE NUMBER
24	18	N130	E16 COURT 206

REGISTRABLE CONVICTION	MISD	FEL	DATE OF CONVICTION	DATE OF SCHEDULED DISCHARGE OR RELEASE	DATE PAROLE OR PROBATION EXPIRES
95, 102	E1	E1	E2	N122	N131 399

RELEASE INFORMATION

ADDRESS WHERE PERSON NOTIFIED EXPECTS TO RESIDE UPON DISCHARGE, PAROLE, OR RELEASE (Full street address, city, and zip code): N132

NAME OF AGENCY SUPERVISING PAROLE OR PROBATION: N133 N134

NAME OF SUPERVISING PAROLE OR PROBATION OFFICER: N136 N135

ADDRESS: N137 N138

TELEPHONE NUMBER: ( ) N139 N140

NOTIFICATION STATEMENT

ARSON OFFENDER NOTIFICATION (457.1 P.C.)

I have been notified of my duty to register as a convicted arson offender pursuant to section 457.1 of the California Penal Code. I understand my requirement to register pursuant to section 457.1 which includes, but is not limited to, the following statements:

- My responsibility to register as an adult arson offender is a lifetime requirement; as a juvenile, until age 25.
- I must register within 14 days of coming into any city, county, or city and county in which I am located or reside with the law enforcement agency having jurisdiction over my location or place of residence.
- I must upon changing my location or place of residence, inform in writing within 10 days the law enforcement agency with which I last registered.

N141 — SIGNATURE OF PERSON NOTIFIED

N142 — DATE

Right Thumbprint of Person Notified – If unavailable, give reason: N143

STATEMENT OF NOTIFYING OFFICER

NOTIFYING AGENCY: N144 ADDRESS: N145 TELEPHONE NUMBER: ( ) N146

I certify that I notified the individual described above of his or her duty to register under provisions of the applicable statute.

N149 — SIGNATURE OF NOTIFYING OFFICER

N150 — DATE OF NOTIFICATION

N147 — NAME AND TITLE OF NOTIFYING OFFICER (PLEASE TYPE OR PRINT)

DISTRIBUTION: Original to DOJ; Copy to Law Enforcement Agency having jurisdiction over address; Copy to Notifying Officer; Copy to Person Notified (registrant); Copy to Prosecuting Agency

SS8049 3/26/05

APPENDIX F

California Penal Code Sections 3000(b) & 3000.1

Text of California Penal Code section 3000(b):

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply to any inmate subject to Section 3000.08:

(1) In the case of any inmate sentenced under Section 1168 for a crime committed prior to July 1, 2013, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the Board of Parole Hearings for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2. In the case of any inmate sentenced under Section 1168 for a crime committed on or after July 1, 2013, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the department for good cause waives parole and discharges the inmate from custody of the department.

(2)

(A) For a crime committed prior to July 1, 2013, at the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6),(11), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding 10 years, unless a longer period of parole is specified in Section 3000.1.

(B) For a crime committed on or after July 1, 2013, at the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period of three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period of 10 years, unless a longer period of parole is specified in Section 3000.1.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to subdivision (b) of Section 209, with the intent to commit a specified sex offense, or Section 667.51, 667.61, or 667.71, the period of parole shall be 10 years, unless a longer period of parole is specified in Section 3000.1.

(4)

(A) Notwithstanding paragraphs (1) to (3), inclusive, in the case of a person convicted of and required to register as a sex offender for the commission of an offense specified inspection 261, 262, 264.1, 286, 288a, paragraph (1) of subdivision (b) of Section 288,Section 288.5, or 289, in which one or more of the victims of the offense was a child under 14 years of age, the period of parole shall be 20 years and six months unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of this determination and transmit a copy of it to the parolee.

(B) In the event of a retention on parole, the parolee shall be entitled to a review by the board each year thereafter.

(C) There shall be a board hearing consistent with the procedures set forth in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (3) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a lengthier period of incarceration or unless there is a new prison commitment following a conviction.

(D) The provisions of Section 3042 shall not apply to any hearing held pursuant to this subdivision.

(5)



(A) The Board of Parole Hearings shall consider the request of any inmate whose commitment offense occurred prior to July 1, 2013, regarding the length of his or her parole and the conditions thereof.

(B) For an inmate whose commitment offense occurred on or after July 1, 2013, except for those inmates described in Section 3000.1, the department shall consider the request of the inmate regarding the length of his or her parole and the conditions thereof. For those inmates described in Section 3000.1, the Board of Parole Hearings shall consider the request of the inmate regarding the length of his or her parole and the conditions thereof.

(6) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), (3), or (4), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), (3), and (4) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, the period of parole is subject to the following:

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(7) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority or the department, whichever is applicable, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the department or the parole authority, whichever is applicable. The Department of Corrections and Rehabilitation or the board may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(8) For purposes of this chapter, and except as otherwise described in this section, the board shall be considered the parole authority.

(9)

(A) On and after July 1, 2013, the sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the court pursuant to Section 1203.2, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 5054.1 shall apply.

(B) Notwithstanding subparagraph (A), any warrant issued by the Board of Parole Hearings prior to July 1, 2013, shall remain in full force and effect until the warrant is served or it is recalled by the board. All prisoners on parole arrested pursuant to a warrant issued by the board shall be subject to a review by the board prior to the department filing a petition with the court to revoke the parole of the petitioner.

(10) It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

Text of California Penal Code section 3000.1:

(a)

(1) In the case of any inmate sentenced under Section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(2) Notwithstanding any other law, in the case of any inmate sentenced to a life term under subdivision (b) of Section 209, if that offense was committed with the intent to commit a specified sexual offense, Section 269 or 288.7, subdivision (c) of Section 667.51, Section 667.71 in which one or more of the victims of the offense was a child under 14 years of age, or subdivision (j), (l), or (m) of Section 667.61, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(b) Notwithstanding any other law, when any person referred to in paragraph (1) of subdivision (a) has been released on parole from the state prison, and has been on parole continuously for seven years in the case of any person imprisoned for first degree murder, and five years in the case of any person imprisoned for second degree murder, since release from confinement, the board shall, within 30 days, discharge that person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and transmit a copy of it to the parolee.

(c) In the event of a retention on parole pursuant to subdivision (b), the parolee shall be entitled to a review by the board each year thereafter.

(d) There shall be a hearing as provided in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole of a person referred to in subdivision (a) to consider the release of the inmate on parole and, notwithstanding paragraph (3) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(e) The provisions of Section 3042 shall not apply to any hearing held pursuant to this section.

APPENDIX G

California CDCR Form 1515

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION
NOTICE AND CONDITIONS OF PAROLE (Page 1)
CDCR 1515 (REV. 07/10)

When released from custody, you will be on parole for a period of _____ years. You must obey these conditions of parole. If you do not, you may be arrested, returned to prison and have to serve more time on parole.

GENERAL CONDITIONS OF PAROLE

1. Criminal Conduct
- You must obey all laws. The board may find that you have violated parole, even if you are not convicted in court and even if you are not charged with a crime.
- If you are arrested or cited by any peace officer for any misdemeanor or felony, you must tell your parole agent right away. You must do this even if you are released.

2. Instructions
- You must report to your parole agent the first working day after your release unless you have written permission to report later.
- You must do what your parole agent tells you to do.
- If another agency has placed a hold on you, you may be released to their custody. If you are released from their custody before the end of your parole period, you must contact the nearest California parole office immediately. They will tell you what to do.

3. Searches
- Any parole agent or peace officer can search and seize you, your property, and any property under your control at any time of the day or night with or without cause.
- They can also search your residence of record and where you live.

4. Travel
- You cannot go more than 50 miles from your home unless you have written permission from your parole agent.
- You cannot leave the county where you live for more than 2 days (48 hours) without written approval from your parole agent.
- You cannot leave California without written approval from your parole agent.
- If you are arrested in another state, you agree to give up your right to a hearing on whether you can be brought back to California.

5. Residence and Employment
- You must tell your parole agent where you are living and where you are working.
- You must tell your parole agent before you change where you live.
- You must tell your parole agent within 3 days if you lose, quit, or change your job.
- You must tell your parole agent within 3 days if your work address changes.

6. Weapons

You shall not own, use, have access to, or have under your control:
- Any kind of gun.
- Anything a reasonable person would think looks like a gun.
- Any ammunition that could be used in a gun.
- Any weapon not allowed by State or Federal law.
- Anything a reasonable person would think could be used as a weapon.
- Any knife with a blade longer than 2 inches.
  - You can have kitchen knives, but they must be kept at your house in the kitchen.
  - You can have knives you need for work, but they can only be used and carried during normal work hours for your job with your parole agent's approval.
- A crossbow of any kind.

7. Failure to Sign Conditions of Parole
- You shall sign these conditions of parole and any special conditions imposed by your correctional counselor, parole agent, or the board. Failure to sign any conditions of parole will result in your being returned to custody.

CDC Number:	Inmate/Parolee Printed Name (Last, First, MI):	Inmate/Parolee Signature:	Date Signed:

DISTRIBUTION: White: C-File
Yellow: Field File
Pink: Inmate/Parolee

DRAFT

SPECIAL CONDITIONS OF PAROLE

Gang Restriction

☐ You are a gang member or associate. You cannot be around known gang members. You cannot wear or carry gang colors, clothing, or items. You cannot be involved in any gang activity.

Mentally Disordered Offender

☐ You will be confined in a state hospital and may be placed in a Conditional Release Program (CONREP) community outpatient mental health treatment pursuant to Penal Code (PC) Section 2962 (MDO).

Contact with Victim(s) or Victim(s) Family

☐ You have committed a crime against a person. You may not contact the victim(s) or anyone in their family unless your parole agent gives you written permission. There cannot be contact of any kind. No visiting, calling, or writing to that person. You cannot ask another person to call, visit, or write that person for you. You cannot go by where that person lives.

☐ You have committed a crime against a person under the age of 18. You cannot have contact with ANY person under the age of 18 without permission from your parole agent. No contact of any kind. This means no visiting, calling, or writing. If you have accidental contact with a person under the age of 18, you must tell your agent immediately.

MANDATORY SPECIAL CONDITIONS OF PAROLE

☐ You are required to register under PC Section 290. Because of this, you cannot live with another person who is also required to register under PC Section 290 unless you are related by blood, marriage, or adoption.

☐ You are required to register under PC Section 290. Because of PC Section 3003.5, you cannot live within 2000 feet of any public or private school or any park where children regularly get together. This applies even if you finish parole.

☐ You have a current or prior conviction for violating PC Section 288 and/or PC Section 288.5. You are also a High Risk Sex Offender. Because of PC Section 3003(g), you cannot live within one-half mile of any public or private school. This applies as long as you are on parole.

☐ You were convicted of a sex offense while under the influence of alcohol. Because of this, you cannot drink or have alcoholic beverages.

☐ A judge has issued a protective order that says you cannot contact your victim. You must comply with this order.

You have the right to appeal special conditions of parole imposed by filing a CDC Form 602, Inmate/Parolee Appeal. Special conditions imposed by the board may be appealed through the court by filing a petition for writ of habeas corpus. You can request reasonable accommodation on a CDCR Form 1824. You can also appeal a denial of a reasonable accommodation on a reasonable accommodation on a CDCR Form 1824.

STAFF ISSUANCE/OBSERVATION

☐ I have reviewed the Disability and Effective Communication System (DECS) and the Field File (Parole Staff) or C-File (Institution Staff) for disability and effective communication source documents.

I have informed this inmate/parolee of this notice and have determined that he/she:

☐ Appears to understand. ☐ Appears to have difficulty understanding.

Effective Communication Method Used: (please circle)

Foreign Language Interpreter Sign Language Interpreter Read/Spoke Slowly Assistive Device (specify) _____

Other (please write): _____

After providing assistance, inmate/parolee:

☐ Explained the conditions in his/her own words. ☐ Does not appear to understand.

Comments: _____

CDC Number:	Inmate/Parolee Printed Name (Last, First, MI):	Inmate/Parolee Signature:	Date Signed:
Staff Printed Name / Title / Badge #:	Staff Signature:		Date Signed:

DISTRIBUTION: White: C-File
Yellow: Field File
Pink: Inmate/Parolee

DRAFT

INSTRUCTIONS FOR ISSUANCE AND COMPLETION BY STAFF

COMPLETING THE FORM

The staff person will complete the CDCR Form 1515, Notice and Conditions of Parole, in conjunction with the CDCR Form 611, Release Program Study. The staff person will utilize the documentation on the CDCR Form 611 and from the DECS review to determine what accommodations may be needed to effectively communicate the CDCR Form 1515 information to the inmate/parolee. The staff person will initiate the form by clearly printing the inmate's/parolee's CDC Number and Name in the appropriate boxes.

DOCUMENTING PAROLE PERIOD

The staff person will write in the appropriate number of years for the inmate's/parolee's parole period as indicated on the CDC Form 188, Legal Status Summary (LSS).

SPECIAL CONDITIONS OF PAROLE

The staff person will review the Central File (C-File) to determine whether or not these special conditions apply to the inmate/parolee.

Gang Restriction - Review the CDC Form 812 and/or 812-A. If the inmate/parolee is a member or associate of any street gang or prison gang, check the box.

Mentally Disordered Offender - Check box if the inmate/parolee has been certified by the BPH as a MDO pursuant to PC Section 2962.

Contact with Victim(s) or Victim(s) Family - Review the LSS, POR, CI&I, or Confidential Folder to determine whether there is a specific crime victim. If there is, check the first box. (This does not include personal or public property crimes.) If the crime was committed against a person under the age of 18, check the second box.

MANDATORY SPECIAL CONDITIONS OF PAROLE

Review the C-File to determine whether or not these mandatory special conditions of parole apply to the inmate/parolee.
Box #1 - Review the LSS, 112, CI&I to determine whether or not the inmate/parolee is required to register pursuant to PC Section 290. If he/she is required to register, check this box.
Box #2 - Review the LSS, 112, CI&I to determine whether or not the inmate/parolee is required to register pursuant to PC Section 290. If he/she is required to register, check this box.
Box #3 - Review LSS and CI&I Rap Sheet to determine whether or not the inmate/parolee has a current or prior conviction for violating PC Section 288 or 288.5. If he/she was previously convicted, or is currently committed for these offenses and is designated a High Risk Sex Offender per PC Section 3003(g), check the box.
Box #4 - Review the LSS and POR to determine whether the inmate's/parolee's current commitment includes a sex offense that was committed while the inmate/parolee was under the influence of alcohol. If he/she was, check this box.
Box #5 - Review the confidential folder to determine whether the inmate/parolee has a restraining order. If he/she does, check this box.

INSTRUCTIONS FOR NOTICING THE INMATE/PAROLEE

Prior to noticing the inmate/parolee of his/her conditions of parole, the staff person will ensure that any necessary accommodations identified through the DECS/File review process are available and utilized, if necessary, when noticing the inmate/parolee of his/her conditions of parole.

The staff person will advise the inmate/parolee of the required length of his/her parole period and then review the conditions of parole with the inmate/parolee as follows:

Reviewing General Conditions of Parole

The staff person will advise the inmate/parolee that the General Conditions apply to every person on parole.

The staff person will either read to or have the inmate/parolee read each condition. After each condition is read, the staff person will ask the inmate/parolee what he/she understands about the condition to ensure it was effectively communicated.

(Continued on back of Page 2)

DISTRIBUTION: White: C-File
Yellow: Field File
Pink: Inmate/Parolee

DRAFT

INSTRUCTIONS FOR NOTICING THE INMATE/PAROLEE

(CONTINUED FROM BACK OF CDCR FORM 1515, PAGE 1)

Reviewing the Special Conditions of Parole

The staff person will advise the inmate/parolee that based upon his/her specific case factors; they must comply with these special conditions.

The staff person will either read to or have the inmate/parolee read each applicable special condition which is identified by a check mark in the corresponding box. After each condition is read, the staff person will ask the inmate/parolee what he/she understands about the condition to ensure effective communication.

Reviewing the Mandatory Special Conditions of Parole

The staff person will advise the inmate/parolee that based upon his/her specific case factors; they must comply with these conditions of parole which are mandated by law.

The staff person will either read to or have the inmate/parolee read each applicable special condition which is identified by a check mark in the corresponding box. After each condition is read, the staff person will ask the inmate/parolee what he/she understands about the condition to ensure effective communication.

Documenting Observations

After reviewing the conditions of parole with the inmate/parolee, the staff person will instruct the inmate/parolee to sign and date Page 1 and Page 2 in the appropriate boxes.

Note: If the inmate/parolee refuses to sign the form, the staff person shall remind the inmate/parolee that Condition #7 on Page 1 stated that failure to sign the form will result in his/her being retained in custody. If the inmate/parolee still refuses to sign the form, after completing the form, the staff person shall write a Rules Violation Report for Failure to Sign Conditions of Parole.

The staff person will check the box indicating they have reviewed the DECS and the Field File (Parole Staff) or C-File (Institutional Staff) for disability and effective communication needs. This review is mandatory.

Based upon the staff person's observations during the issuance of the conditions of parole, the staff person will check the appropriate box indicating whether the inmate/parolee appeared to understand or appeared to have difficulty understanding.

If the staff person had to provide assistance with effective communication, he/she shall check the box "Does not appear to understand (assistance provided)" and then circle what assistance was provided. The staff person shall then check the appropriate box indicating whether after assistance was provided, the inmate/parolee was (1) able to explain in his/her own words, or (2) still did not appear to understand.

The staff person shall then legibly print their name and title, and sign and date the form.

(Continued on back of Page 3)

DRAFT

INSTRUCTIONS FOR REAFFIRMATION OF CONDITIONS OF PAROLE

(CONTINUED FROM BACK OF CDCR FORM 1515, PAGE 3)

The following are instructions for the staff person who reaffirms the conditions of parole with the inmate/parolee. This form can be utilized for up to three subsequent releases. This form shall be used when the previous conditions of parole have not been modified, added, or deleted.

Upon each release from custody, the staff member shall reaffirm the conditions of parole with the inmate/parolee, and shall sign in the reaffirmation section.

STAFF ISSUANCE/OBSERVATION

The staff person shall enter the date signed from page 3 into the Reaffirm Conditions of Parole dated box.

The staff person shall enter the CDC number and print the inmate's/parolee's name in the appropriate box.

The staff person shall have the inmate/parolee sign and date the conditions in the appropriate section.

The staff person will check the box indicating a review of the DECS and the Field File (Parole Staff) or C-File (Institutional Staff) for disabilities and effective communication source documents. This review is mandatory.

The staff person shall check the appropriate box regarding his/her observation of the understanding of the conditions by the inmate/parolee. If assistance was provided, the staff person will check the appropriate box and circle what assistance was provided or enter under "Other" what assistance was provided.

The staff person shall print their name, sign and date where indicated, and record this task in the inmate's/parolee's record of supervision.

A copy of the conditions shall be given to the inmate/parolee.

DRAFT

DISTRIBUTION: White: C-File
Yellow: Field File
Pink: Inmate/Parolee

APPENDIX H

California CDCR Form: Written Consent For Minor Visitation

See next page

WRITTEN CONSENT FOR MINOR VISITATION

AUTHORIZATION FORM

I, _____ give permission for:
(Parent/Legal Guardian)

NAME: _____ AGE: _____ DOB: _____

NAME: _____ AGE: _____ DOB: _____

NAME: _____ AGE: _____ DOB: _____

NAME: _____ AGE: _____ DOB: _____

To visit Inmate _____ at a California State Prison or institution
(Inmate Name and CDCR Number)

with _____ for one year. I understand this Authorization is to be updated
(Name of Accompanying Adult)

annually and that the minor Birth Certificate, or a Certified copy of the Birth Certificate, from the County Recorders Office is required. Satisfactory Evidence of Proof of legal guardianship to said minor(s) is required as an attachment to this authorization form. I understand that this authorization can only be revoked IN WRITING, and will remain in effect for one (1) year, or until written notice of revocations is issued by the California Department of Corrections and Rehabilitation.

_____ _____
(Signature of Parent/Legal Guardian) (Date)

CERTIFICATE OF ACKNOWLEDGMENT

State of California County of _____)

On _____ before me, _____ personally appeared
(Here Insert Name and Title of the Officer)

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature_____ (SEAL)

APPENDIX I

California CDCR Form 22

See next page.

: OF CALIFORNIA
.TE/PAROLEE REQUEST FOR INTERVIEW, ITEM OR SERVICE
: 22 (10/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

ECTION A: INMATE/PAROLEE REQUEST

ME (Print): (LAST NAME) (FIRST NAME)		CDC NUMBER:	SIGNATURE:
USING/BED NUMBER:	ASSIGNMENT:	HOURS FROM_____ TO_____	TOPIC (I.E. MAIL, CONDITION OF CONFINEMENT/PAROLE, ETC.):

EARLY STATE THE SERVICE OR ITEM REQUESTED OR REASON FOR INTERVIEW:

ETHOD OF DELIVERY (CHECK APPROPRIATE BOX) **NO RECEIPT WILL BE PROVIDED IF REQUEST IS MAILED **

SENT THROUGH MAIL: ADDRESSED TO:_____ DATE MAILED: ____/____/____

DELIVERED TO STAFF (STAFF TO COMPLETE BOX BELOW AND GIVE GOLDENROD COPY TO INMATE/PAROLEE):

CEIVED BY: PRINT STAFF NAME:	DATE:	SIGNATURE:	FORWARDED TO ANOTHER STAFF? (CIRCLE ONE) YES NO
FORWARDED – TO WHOM:		DATE DELIVERED/MAILED:	METHOD OF DELIVERY: (CIRCLE ONE) IN PERSON BY US MAIL

ECTION B: STAFF RESPONSE

SPONDING STAFF NAME:	DATE:	SIGNATURE:	DATE RETURNED:

ECTION C: REQUEST FOR SUPERVISOR REVIEW

OVIDE REASON WHY YOU DISAGREE WITH STAFF RESPONSE AND FORWARD TO RESPONDENT'S SUPERVISOR IN PERSON OR BY US MAIL. KEEP FINAL CANARY)PY.

NATURE:	DATE SUBMITTED:

ECTION D: SUPERVISOR'S REVIEW

CEIVED BY SUPERVISOR (NAME):	DATE:	SIGNATURE:	DATE RETURNED:

Distribution: Original - Return to Inmate/Parolee; Canary - Inmate/Parolee's 2nd Copy; Pink - Staff Members Copy; Goldenrod - Inmate/Parolee's 1st Copy.

APPENDIX J

California CDCR Form 602

See next page.

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL
CDCR 602 (REV. 08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY	Institution/Parole Region: _____ Log #: _____ Category: _____ *FOR STAFF USE ONLY*

You may appeal any California Department of Corrections and Rehabilitation (CDCR) decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations, Title 15, Section (CCR) 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that lead to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded. **WRITE, PRINT, or TYPE CLEARLY in black or blue ink.**

Name (Last, First):	CDC Number:	Unit/Cell Number:	Assignment:

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A): _____

_____

_____

_____

B. Action requested (If you need more space, use Section B of the CDCR 602-A): _____

_____

_____

_____

Supporting Documents: Refer to CCR 3084.3.

☐ Yes, I have attached supporting documents.

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory; CDC 128-G, Classification Chrono):

_____ _____

_____ _____

☐ No, I have not attached any supporting documents. Reason : _____

_____

_____

_____

Inmate/Parolee Signature: _____ **Date Submitted:** _____

☐ **By placing my initials in this box, I waive my right to receive an interview.**

STAFF USE ONLY

C. First Level - Staff Use Only **Staff – Check One: Is CDCR 602-A Attached?** ☐ **Yes** ☐ **No**

This appeal has been:

☐ Bypassed at the First Level of Review. Go to Section E.

☐ Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____

☐ Cancelled (See attached letter) Date: _____

☐ Accepted at the First Level of Review.

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

First Level Responder: Complete a First Level response. Include Interviewer's name, title, interview date, location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: ☐ Granted ☐ Granted in Part ☐ Denied ☐ Other: _____

See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: _____ (Print Name) Title: _____ Signature: _____ Date completed: _____

Reviewer: _____ (Print Name) Title: _____ Signature: _____

Date received by AC: _____

AC Use Only
Date mailed/delivered to appellant ____ / ____ / ____

D. If you are dissatisfied with the First Level response, explain the reason below, attach supporting documents and submit to the Appeals Coordinator for processing within 30 calendar days of receipt of response. If you need more space, use Section D of the CDCR 602-A.

_____

_____

_____

_____

_____

_____

Inmate/Parolee Signature: _____ **Date Submitted :**_____

E. Second Level - Staff Use Only **Staff – Check One: Is CDCR 602-A Attached?** ☐ **Yes** ☐ **No**

This appeal has been:

☐ By-passed at Second Level of Review. Go to Section G.
☐ Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____
☐ Cancelled (See attached letter)
☐ Accepted at the Second Level of Review

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

Second Level Responder: Complete a Second Level response. If an interview at the Second Level is necessary, include interviewer's name and title, interview date and location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: ☐ Granted ☐ Granted in Part ☐ Denied ☐ Other: _____

See attached letter. If dissatisfied with Second Level response, complete Section F below.

Interviewer: _____ (Print Name) Title: _____ Signature: _____ Date completed :_____

Reviewer: _____ (Print Name) Title: _____ Signature: _____

Date received by AC: _____

AC Use Only
Date mailed/delivered to appellant ____ /____ /____

F. If you are dissatisfied with the Second Level response, explain reason below; attach supporting documents and submit by mail for Third Level Review. It must be received within 30 calendar days of receipt of prior response. Mail to: Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001. If you need more space, use Section F of the CDCR 602-A.

_____

_____

_____

_____

_____

Inmate/Parolee Signature: _____ **Date Submitted:** _____

G. Third Level - Staff Use Only

This appeal has been:

☐ Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____ Date: _____
☐ Cancelled (See attached letter) Date: _____
☐ Accepted at the Third Level of Review. Your appeal issue is ☐ Granted ☐ Granted in Part ☐ Denied ☐ Other: _____

See attached Third Level response.

Third Level Use Only
Date mailed/delivered to appellant ____ /____ /____

Request to Withdraw Appeal: I request that this appeal be withdrawn from further review because; State reason. (If withdrawal is conditional, list conditions.)

_____

_____

_____

_____

_____ Inmate/Parolee Signature: _____ Date:_____

Print Staff Name: _____Title: _____ Signature:_____ Date:_____

APPENDIX K

How To File A State Writ Habeas Corpus Petition

WHAT IS A HABEAS CORPUS PETITION?

Once you have gone through the entire 602 appeal process by filing your grievance with the appropriate agency OR if you've exhausted administrative remedies because CDCR/Parole didn't get back to you on an appeal within the legal timeline require by law, you may then file a state-level petition for a writ of habeas corpus. A habeas corpus petition can be based on any rights guaranteed by the federal or state constitutions, statutes, or regulations.

Through a habeas corpus petition, a state parolee (just like a state prisoner challenging conditions of his/her confinement) can ask a court to order "injunctive relief," meaning that the court will order prison or parole officials to do something or to stop doing something. For example, a court could order parole officials to drop an invalid parole condition or fix a parole term length miscalculation.

WHAT DEADLINES SHOULD I BE AWARE OF IF I WANT TO FILE A WRIT HABEAS CORPUS IN STATE COURT?

There is no deadline or time limit on when you can file a habeas petition. But keep in mind that, the longer you wait, the more you should be prepared to explain in detail, to the court, why you didn't file the petition sooner.[1122] You can only file a habeas petition if you have "exhausted" (meaning that you completed or gone through) all other administrative remedies. You exhaust the administrative remedies by completing the three levels of the appeals process discussed on PG. 178.

You must file your habeas petition while you are still under some form of custody or parole. At the time you file your habeas petition, you must currently be affected by the condition that you are appealing. If you are no longer suffering from the condition that you are appealing, the court will likely dismiss your habeas petition.[1123]

HOW DO I FILE A WRIT OF HABEAS CORPUS IN STATE COURT?

Here are the steps you should take to prepare your habeas petition:

1. Your petition should include a Judicial Council MC-275 form. You can access this form at: http://www.courts.ca.gov/documents/mc275.pdf.
2. In addition to the MC-275 form, you must include the following information in your habeas petition:
    a. Identify the type of custody you are under (i.e. you are on parole) and the person who supervises you (your parole office and CDCR)
    b. Name a "respondent" (meaning the opposing party) in your case. If you are on parole, the respondent is the Director of CDCR.
    c. Describe why your current parole conditions are illegal (i.e. your parole term length has been miscalculated)
    d. State whether you have filed any previous court actions about the illegal condition
    e. Verify (swear that you are telling the truth) the statements you've made in your petition
    f. Include any supporting documents, such as sworn declarations by witnesses with your petition

3. If you want to ask the court to appoint an attorney to your case, you should file a "Declaration of Indigence" and "Request for Appointment of Counsel."
    - For a sample habeas petition, please visit: http://www.prisonlaw.com/pdfs/STATEHABEAS2008.pdf

[1122] In re Sanders, 20 Cal. 4th 1083 (1999) ; In re Clark, 5 Cal.4th 750 (1993) ; In re Swain, 34 Cal.2d 300 (1949); In re Moss 175 Cal. App. 3d 913 (1985).

[1123] If you are no longer suffering from the condition that you are filing a habeas appeal about, then your case is said to be "moot" (meaning not currently at issue; not currently debatable/arguable). There are special circumstances where a court can hear a "moot" case (i.e. the issue you are appealing is one that is likely to come up frequently in other cases). See In re Gardia, 767 Cal. App. 4th 841 (1998).



HOW AND WHERE DO I FILE A WRIT OF HABEAS CORPUS?

Usually, you should file your habeas petition with the Superior Court of the county that you are on parole in.[1124] You can file your petition by mailing it to the Superior Court clerk. Remember: any time you file documents with the superior court clerk, you should include an extra copy of the cover page along with a self-addressed stamped envelope so that the clerk can send you a copy with the date of filing and your case number.

If the court determines that you case should proceed, you will have to "serve" the opposing party. Serving the opposing party means that you will have to send CDCR a copy of your petition along with a "Proof of Service" form that verifies that you have served the document.

HOW CAN I HAVE AN ATTORNEY APPOINTED TO MY CASE?

You can request an attorney by filing a "Declaration of Indigency" and "Request for Appointment of Counsel."

WHEN WILL I HEAR BACK FROM THE COURT ABOUT MY PETITION?

The judge must act within 60 days from the day you file your petition.[1125] Note: Unless the court orders an Order to Show Cause (OSC), you do not have the right to an attorney. But if the court does issue an OSC, it must appoint an attorney to your case if you cannot afford one. See below for more information on OSCs.

WHAT CAN THE COURT DO WITH MY PETITION?

The judge at the state court may take the following actions in response to your petition:

1. Deny your petition: If the court denies your petition, it must explain the reasons why it is denying your petition
2. Request an informal response from the respondent (the opposing party): If the court thinks your case may have merit, but the court still wants more information prior to taking any actions, the court can ask both parties to submit informal briefings. Your reply can be as simple as a letter back to the court (you must also serve the opposing party with a copy of your response). Your response will be due 15 days after the date that the court requested an informal response (unless the court specifies another due date).[1126]
3. Issue an "Order to Show Cause": This will require the opposing party (called the "respondent") to file an explanation why the court should not grant your petition.

If the court decides that your case has merit (meaning the court decides your case can go forward because you have a valid argument), then the court will issue an OSC. An OSC directs the respondent (opposing party) to state any legal or factual reasons why the petitioner (you) should not be granted his or her request.

WHAT HAPPENS ONCE THE COURT ORDERS AN ORDER TO SHOW CAUSE (OSC)?

The respondent (opposing party) must file a response, called a "return," explaining reasons why your petition should not be granted. The respondent usually has 30 days to file a return.[1127]

IS THERE ANYTHING THAT I HAVE TO DO ONCE THE RESPONDENT FILES A "RETURN?"

Once the respondent files their "return," you should file a "Denial and Exception to the Return." In your Denial (also called a "traverse"), you should deny any and all false allegations made by the respondent in the return. You usually have 30 days to file your Denial with the court and serve the opposing party.

WHAT HAPPENS AFTER "RETURNS" AND "DENIALS" ARE FILED—THE HEARING?

After the respondent files a "Return" and you file your "Denial," the court has 30 days to decide whether or not to order an evidentiary hearing. The court only has to grant a hearing if it thinks there is a reasonable likelihood that you may be entitled to relief. If you are granted a hearing, both you and the opposing party will have the opportunity to present evidence.

WHEN HAPPENS AFTER THE HEARING?

At the end of the hearing, the court will decide whether or not to grant you the request made in your habeas petition.

[1124] Griggs v. Superior Court, 16 Cal.3d 341 (1976). The petition can also be filed initially with the Court of Appeal or even the California Supreme Court, if there are special reasons why those courts should hear it at once. CAL. CONST. art. VI, § 10.
[1125] CAL. RULES OF COURT, rule 4.551(a)(3)(A).
[1126] Cal. Rules of Court, rule 4.551(b).
[1127] Cal. Rules of Court, rule 4.551(d).



WHAT IF THE COURT DOES NOT GRANT A HEARING?

If the court decides not to grant an evidentiary hearing, then the court will decide whether or not to grant your habeas appeal based off: your petition, the respondent's Return, and your Denial. If the court did not order a hearing, then it has 30 days after you filed your Denial to decide whether or not to grant your petition.

WHAT HAPPENS IF MY PETITION IS GRANTED?

If the court grants your petition, the respondent has the right to appeal within 60 days of the court's ruling. If the respondent does appeal , he or she can request that the court's order be "stayed"—meaning that it does not take effect while the appeal is pending. If the respondent does appeal, your case will next be heard by the Court of Appeal.

WHAT HAPPENS IF MY PETITION IS DENIED?

If the Superior Court denies your appeal, you to not have the right to appeal. But, you can, however, file a new appeal with the Court of Appeal, following the same process as discussed above.

WHAT HAPPENS IF THE COURT OF APPEAL DENIES MY PETITION?

If the Court of Appeal denies your petition, you can ask the California Supreme Court to her your case. You can do this by filing a petition for review with the California Supreme Court. If you file a petition for review, the entire record from your appeal in the Court of Appeal will be send to the Supreme Court. You also have the option of filing a new petition for a writ of habeas corpus with the Supreme Court—filing a new petition will start the process over again, and the record from your appeal at the Court of Appeal will not be included in your petition.

If the California Supreme Court denies your petition, and your case involves any federal legal issues, you can file a new petition with the United States Supreme Court.

For more information on how to file and appeal habeas petitions, please visit:
http://www.prisonlaw.com/pdfs/STATEHABEAS2008.pdf.

APPENDIX L

California CDCR Form 1502

Attachment 2

STATE OF CALIFORNIA
ACTIVITY REPORT
CDCR 1502 (Rev. 10/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

CHECK BOX

☐ SUPPLEMENTAL TO: ☐ ACTIVITY REPORT ☐ CASE REVIEW ☐ CIVIL ADDICT Suspend/Reinstate ☐ DISCHARGE REVIEW - FELON / NON-FELON

CDC NUMBER	NAME	SUPERVISION CATEGORY	REGION	PAROLE UNIT

COMMITMENT OFFENSE	IS COMMITMENT OFFENSE SUBJECT TO 667.5 (C) P.C. (WHETHER OR NOT COMMITMENT WAS ENHANCED)? ☐ YES ☐ NO

* DISCHARGE REVIEW DATE	* CONTROLLING DISCHARGE DATE	IMMINENT DISCHARGE ☐

IF ARRESTED, COMPLETE THE FOLLOWING ARREST DATA

ARREST DATE	HOLD DATE	HOLD REMOVED DATE	ARRESTING AGENCY	BOOKING NUMBER AND / OR LOCATION

LOCAL NUMBER	REPORT NUMBER	NAME BOOKED AS

CIRCUMSTANCES OR CHARGES

SAMPLE

☐ CONTINUED ON SECOND PAGE

PAROLE AGENT'S RECOMMENDATION:

PAROLE AGENT'S SIGNATURE	BADGE #	DATE SIGNED

UNIT SUPERVISOR'S ACTION:

☐ DECISION ☐ REVIEW ☐ RETAIN HOLD ☐ RELEASE HOLD AS OF (DATE): ☐ CANCEL WARRANTS – WANTS

☐ CONTINUE ON PAROLE ☐ CONTINUE IN OUT PATIENT STATUS ☐ * DISCHARGE EFFECTIVE (DATE): ☐ RETAIN ON PAROLE

☐ REINSTATE ON PAROLE AS OF (DATE): ☐ TIME LOSS ☐ NO TIME LOSS ☐ SUSPEND / REINSTATE IN OPS/CAP AS OF (DATE): ☐ REFER TO BPH ☐ INVESTIGATE, SUBMIT APPROPRIATE REPORT BY (DATE):

☐ SPECIAL CONDITION(S): ☐ ADD ☐ DELETE

UNIT SUPERVISOR'S COMMENTS / RECOMMENDATION:

☐ REFER TO DISTRICT ADMINISTRATOR	UNIT SUPERVISOR'S SIGNATURE	BADGE #	DATE SIGNED

DISTRICT ADMINISTRATOR'S COMMENTS / DECISION:

☐ REFER TO BPH	☐ * DISCHARGE EFFECTIVE (DATE):	DISTRICT ADMINISTRATOR'S SIGNATURE	BADGE #	DATE SIGNED

PAROLEE / RELEASEE COPY PROVIDED (DATE): ☐ MAILED ☐ DELIVERED BY:

1 of 2

INSTRUCTIONS FOR COMPLETING CDCR 1502, ACTIVITY REPORT

ACTIVITY REPORT:

In the "Circumstances or Charges" section of the Activity Report, include narrative summary of the activity that needs documentation: Parole Agent instructions; case review; unsubstantiated allegations of parole violations; the addition or removal of a special condition of parole; reinstatement of a suspended parolee. Distribution: For reinstatement of a suspended parolee, send the original to Case Records and retain a copy for the field file. For other reports, send the original to the field file, a copy to the parolee, and a copy to POC if applicable.

DISCHARGE REVIEW - FELON:

In "Circumstances or Charges" summarize parole adjustment, including residence, employment, arrests, violations, etc., and special conditions. Parole Agent will recommend "Retain on Parole," "Discharge"or "Discharge and Cancel Want." Attach a CI&I report, BPH 1130 and Legal Status Sheet. Distribution: Original to Case Records, one copy to the field file, and one copy to the parolee.

DISCHARGE REVIEW - NON-FELON:

In "Circumstances or Charges" summarize parole adjustment, including residence, employment, violations, and date of last two negative weekly tests. Parole Agent will recommend "Discharge." Attach a current CI&I report. Distribution: Original to Case Records, one copy to the field file, and one copy to the parolee.

CIVIL ADDICT REPORT - SUSPEND / REINSTATE:

In "Circumstances or Charges" summarize parole adjustment, including residence and employment. Include reason(s) for report, present location, type of drug used, dates used, amount and frequency used. Parole Agent will recommend "Suspend / Reinstate," giving date of first clean test, or "Continue in Out Patient or Civil Addict Parole Status." Distribution: Original to Case Records, one copy to the field file, and one copy to the releasee.

SAMPLE

APPENDIX M

Transferring To Another State As a Person Required to Register as a Sex Offender

I AM CLASSIFIED AS A SEX OFFENDER AND WANT TO TRANSFER TO ANOTHER STATE. HOW CAN I DO THAT?

You must meet the four basic eligibility requirements to transfer to another state that apply to all people, AND you must meet additional requirements that are specific to people classified as sex offenders.[1128]

The four basic eligibility requirements for anyone to transfer their supervision to another state are:

1. You have 90 days (3 months) or more, or an undecided amount of time, left to serve on community supervision at the time your application is submitted to the state you wish to transfer to;
2. You have a valid supervision plan;
3. You have not had your parole revoked and have no pending parole revocation charges; AND
4. You are a resident of the receiving state, *OR* you have family that lives in the state who are willing and able to assist you, and you can find employment or another means of supporting yourself.[1129]

IMPORTANT NOTE: You cannot leave until the state receiving your application has approved the transfer request or issued reporting instructions.

Follow these steps to request the transfer to a new state:

STEP 1: Discuss your desire to transfer to a different state with your parole or probation officer.

STEP 2: Satisfy the four basic eligibility criteria listed above. It's up to the sending state to decide if you are eligible and can be approved for a transfer request.

STEP 3: Complete an Application for Transfer.

STEP 4: The sending state must send the state receiving your application the following:

- assessment information, including sex offender specific assessments;
- social history;
- information relevant to criminal sexual behavior;
- law enforcement report that provides the specific details of the sex offense;
- victim information: including the name, gender, age and relationship to the offender, and the statement of the victim or victim's representative;
- the sending state's current or recommended supervision and treatment plan.[1130]

STEP 5: The state receiving the application has 5 business days to review the proposed residence. If the proposed residence is not acceptable due to existing state law or policy, the receiving state may deny the application. No travel permit can be granted by the sending state until the receiving state says it can.[1131]

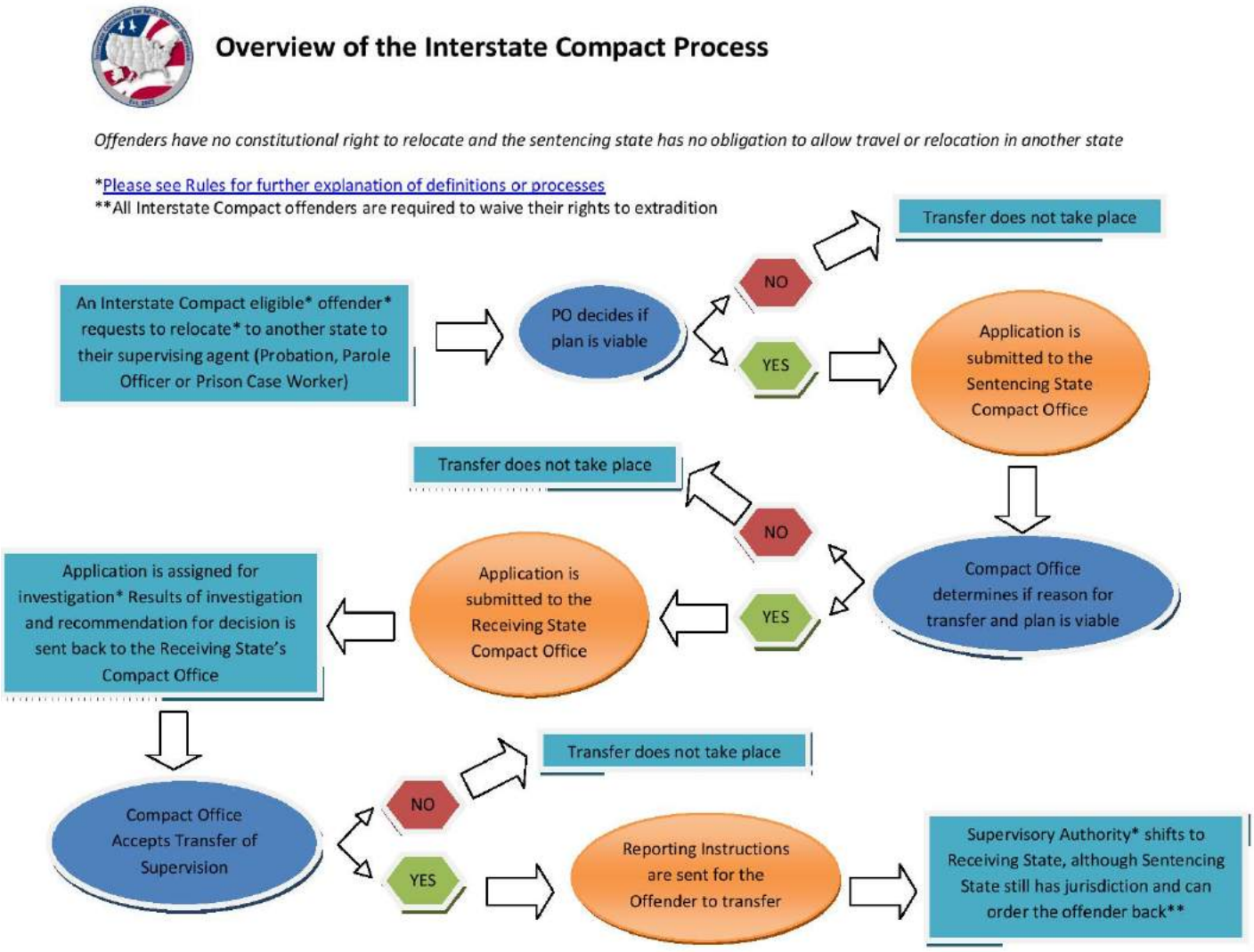
STEP 6: A travel permit will be given to you by your parole or probation officer if the receiving state has approved the new residence. Travel permits are issued by the local probation or parole office, so each office uses a different form. Your parole or probation should give you this form once you have been approved by the Interstate Commission for Adult Offender Supervision (ICAOS).[1132]

[1128] For additional rules, see ICAOS Rule 3.101-3.
[1129] ICAOS Rule 3.101.
[1130] ICAOS Rule 3.101-3(b).
[1131] ICAOS Rule 3.101-3(c).
[1132] Email conversation with Harry Hageman, Executive Director, Interstate Commission for Adult Supervision on Feb. 26, 2015.

APPENDIX N

Interstate Compact Process Flowchart

* Chart comes from the Interstate Commission for Adult Offender Supervision,



http://www.interstatecompact.org/Portals/0/library/legal/ICAOS_ProcessOverview.pdf

APPENDIX O

California CDCR Form 106

See next page.

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS

VISITING QUESTIONNAIRE

CDC 106 (Rev. 01/03)

READ CAREFULLY. Please **PRINT** or **TYPE**. The information requested will be used by officials of the California Department of Corrections (CDC) to determine whether your questionnaire will be approved or disapproved. The information provided will be maintained in a file pertaining to the inmate.

In accordance with the Privacy Act of 1974 (PL93-579), providing your Social Security number is optional. However, any omission or falsification on this questionnaire may be cause for denial of visiting. Please mail this form directly to the visiting office of the institution where the inmate is confined.

1. NAME OF INMATE YOU WANT TO VISIT (LAST FIRST MIDDLE)			INMATE'S CDC NUMBER
2. YOUR NAME *(Print your name exactly as indicated on the photo identification you will be using)*		SUFFIX (Jr., Sr., etc.)	HOME TELEPHONE NUMBER ( )
3. MAIDEN NAME (If applicable)	HAVE YOU EVER USED ANOTHER NAME? IF SO, PLEASE LIST		RELATIONSHIP TO INMATE: (Spouse, Son/Daughter, other)
4. DATE OF BIRTH (Mo/Day/Yr)	AGE	GENDER (Check one) ☐ MALE ☐ FEMALE	BIRTHPLACE (City County State Country)
5. ID NUMBER	ID TYPE (Check one) ☐ DRIVER'S LICENSE ☐ STATE ID ☐ MILITARY ID ☐ USINS CARD ☐ MCAS ☐ PASSPORT		
OFFICIAL USE ONLY EXPIRATION DATE:	ISSUED BY (County State Country)		6. SOCIAL SECURITY NUMBER

7. CURRENT RESIDENCE ADDRESS: STREET ADDRESS Apt. # (If Aplicable)	CITY	STATE	ZIP CODE
8. MAILING ADDRESS: (If different from Residence Address)	CITY	STATE	ZIP CODE
9. PREVIOUS ADDRESS WITHIN PAST TWO YEARS: Apt. # (If Applicable)	CITY	STATE	ZIP CODE

10. ACCOMPANYING MINOR(S) (If Any): NAME, DOB, RELATIONSHIP TO INMATE

1. 2. 3.

10. *Continued*

4. 5. 6.

11. HAVE YOU EVER VISITED ANOTHER INMATE(S) IN A CALIFORNIA PRISON? (Check one) ☐ YES ☐ NO If YES, complete Item 11A. Attach additional sheet(s) if more than two inmates.

11A. INMATE NAME	CDC NUMBER	INSTITUTION WHERE YOU VISIT INMATE	RELATIONSHIP TO INMATE
1.			
2.			

12. HAVE YOU EVER BEEN DETAINED, ARRESTED, OR CONVICTED OF A CRIME? (Check one) ☐ YES ☐ NO If YES, complete Item 12A. List all detentions, arrest and/or convictions. Failure to list all requested information may result in denial of visiting. Attach additional sheet(s) if necessary.

12A. OFFENSE	APPROX. DATE	DISPOSITION: (Dismissed, Probation, Jail, Prison)	COUNTY	STATE

13. ARE YOU ON PROBATION? (Check one) ☐ YES ☐ NO If YES, answer 13A.	ARE YOU ON PAROLE OR CIVIL ADDICT OUTPATIENT STATUS? (Check one) ☐ YES ☐ NO If YES, answer 13A.	HAVE YOU BEEN INCARCERATED IN A STATE ADULT/JUVENILE CORRECTIONAL FACILITY? (Check one) ☐ YES ☐ NO If YES, read 13B	14. ARE YOU CURRENTLY UNDER ANY TYPE OF COURT IMPOSED PROGRAM? (Check one) ☐ YES ☐ NO If YES, please explain on additional sheet and attach to this form.

13A. TYPE: (Court, Formal, Informal, etc.)	SUPERVISING AGENCY	NAME, ADDRESS, AND TELEPHONE NUMBER OF YOUR PROBATION/PAROLE OFFICER:	COUNTY	STATE

13B. If you were discharged from an institution or discharged from parole or outpatient status within the last twelve (12) months, you must have prior written approval of the Warden before visiting will be permitted. You will also need to provide a copy of your discharge paperwork.

CONTINUED ON BACK PAGE

APPENDIX P

California CDCR Form 106-A

See next page

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

CONFIDENTIAL PHONE CALL REQUEST

CDCR 106-A (02/08)

READ CAREFULLY. Please **PRINT** or **TYPE**. The information requested will be used by officials of the California Department of Corrections and Rehabilitation (CDCR) to determine whether your questionnaire will be approved or disapproved. The information provided will be maintained in a file pertaining to the inmate.

In accordance with the Privacy Act of 1974 (PL93-579), providing your Social Security number is optional. However, any omission or falsification on this questionnaire may be cause for denial of the confidential phone call. Please mail this form directly to the Litigation Coordinator's office of the institution where the inmate is confined.

1. NAME OF INMATE YOU WANT TO CALL (LAST, FIRST, MIDDLE)			INMATE'S CDC NUMBER
2. YOUR NAME *(Print your name exactly as indicated on the photo identification you will be using)*		SUFFIX (Jr., Sr., etc.)	OFFICE TELEPHONE NUMBER ( )
3. MAIDEN NAME (If applicable)	HAVE YOU EVER USED ANOTHER NAME? IF SO, PLEASE LIST		FAX NUMBER ( )
4. DATE OF BIRTH (Mo/Day/Yr)	AGE	GENDER (Check one) MALE ☐ FEMALE ☐	BIRTHPLACE (City County State Country)
5. ID NUMBER	ID TYPE ☐ DRIVER'S LICENSE	BAR / P. I . NUMBER	BAR STANDING (Check one) ☐ Verified ☐ Unverified
OFFICIAL USE ONLY EXPIRATION DATE:	ISSUED BY: (County State Country)		6. SOCIAL SECURITY NUMBER (Optional)
7. CURRENT MAILING ADDRESS: STREET ADDRESS Apt. # (If Applicable)	CITY	STATE	ZIP CODE
8. HAVE YOU EVER BEEN CONVICTED OF A FELONY? ☐ Yes ☐ No	If YES, complete Item 9A. List all detentions, arrest and convictions. Failure to list all requested information may result in denial of your confidential phone call. Attach additional sheet(s) if necessary.		

9. OFFENSE (Check one)	APPROX. DATE	DISPOSITION: (Dismissed, Probation, Jail, Prison)	COUNTY	STATE

Attorney or Attorney's representative must provide a written request, on official letterhead, indicating the purpose for the confidential phone call.

_____ ***Signature of Requestor*** ***Date***	_____ ***Signature of CLETS Operator*** ***Date***
APPROVED ☐ DISAPPROVED ☐	_____ ***Signature of Litigation Coordinator*** ***Date***

OFFICAL USE ONLY – TO BE COMPLETED BY INSTITUTION STAFF

APPROVED ☐ DISAPPROVED ☐ (If DISAPPROVED, the applicant is to be informed in writing of the disapproval.)

REASON FOR DISAPPROVAL:

PRINT NAME	SIGNATURE	TITLE	INSTITUTION	DATE

APPENDIX Q

California CDCR Form 1824

See next page.

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

REASONABLE MODIFICATION OR ACCOMMODATION REQUEST

CDCR 1824 (Rev. 10/06)

INSTITUTION/PAROLE REGION:	LOG NUMBER:	CATEGORY: 18. ADA

NOTE: **THIS FORM IS TO BE USED ONLY BY INMATES/PAROLEES WITH DISABILITIES**

In processing this request, it will be verified that the inmate/parolee has a disability which is covered under the Americans With Disabilities Act.

INMATE/PAROLEE'S NAME(PRINT)	CDC NUMBER	ASSIGNMENT	HOURS/WATCH	HOUSING

In accordance with the provisions of the Americans With Disabilities Act (ADA), no qualified individuals with a disibility shall, on the basis of disability, be excluded from participation in, or be denied the benefits of the services, activities, or programs of a public entity, or be subjected to discrimination.

You may use this form to request specific reasonable modification or accommodation which, if granted, would enable you to participate in a service, activity or program offered by the Department/institution/facility, for which you are otherwise qualified/eligible to participate.

Submit this completed form to the institution or facility's Appeals Coordinator's Office. A decision will be rendered within 15 working days of receipt at the Appeals Coordinator's Office and the completed form will be returned to you. If you do not agree with the decision on this form, you may pursue further review. The decision rendered on this form constitutes a decision at the FIRST LEVEL of review.

To proceed to SECOND LEVEL, attach this form to an Inmate/Parolee Appeal Form (CDC 602) and complete section "F" of the appeal form.

Submit the appeal with attachment to the Appeals Coordinator's Office within 15 days of your receipt of the decision rendered on this request form.

If you are not satisfied with the SECOND LEVEL review decision, you may request THIRD LEVEL review as instructed on the CDC 602.

MODIFICATION OR ACCOMMODATION REQUESTED

DESCRIPTION OF DISABILITY:

WHAT VERIFICATION DO YOU HAVE OF YOUR DISABILITY?

DESCRIBE THE PROBLEM:

WHAT SPECIFIC MODIFICATION OR ACCOMMODATION IS REQUESTED?

_____ INMATE/PAROLEE'S SIGNATURE

_____ DATE SIGNED

REVIEWER'S ACTION

DATE ASSIGNED TO REVIEWER:
DATE DUE:

TYPE OF ADA ISSUE

☐ PROGRAM, SERVICE, OR ACTIVITY ACCESS (Not requiring structural modification)

- ☐ Auxiliary Aid or Device Requested
- ☐ Other_____

☐ PHYSICAL ACCESS (requiring structural modification)

DISCUSSION OF FINDINGS: _____

_____ _____
DATE INMATE/PAROLEE WAS INTERVIEWED PERSON WHO CONDUCTED INTERVIEW

DISPOSITION

☐ GRANTED ☐ DENIED ☐ PARTIALLY GRANTED

BASIS OF DECISION: _____

NOTE: *If disposition is based upon information provided by other staff or other resources, specify the resource and the information provided. If the request is granted, specify the process by which the modification or accommodation will be provided, with time frames if appropriate.*

DISPOSITION RENDERED BY (NAME)	TITLE	INSTITUTION/FACILITY

APPROVAL

ASSOCIATE WARDEN'S SIGNATURE	DATE SIGNED

DATE RETURNED TO INMATE/PAROLEE

APPENDIX R

California BPH Form 1074

See next page.

BOARD OF PAROLE HEARINGS STATE OF CALIFORNIA

REQUEST FOR REASONABLE ACCOMMODATION - GRIEVANCE PROCESS

BPH 1074 Log Number: _____

A. INMATE OR PAROLEE TO COMPLETE BEFORE THE HEARING

You have been given a state attorney to help you in preparation for and during your hearing. Fill out this form only if you did not get the other kinds of help for your disability that you asked for on your BPH Form 1073 or if new problems came up. You can ask your attorney or staff for help in filling out this form. If you need more space attach another sheet of paper.

1. Your complaint: _____

_____

_____

_____

2. What you want done: _____

_____

_____

_____

Before the hearing, you should send this form as soon as possible to the BPH ADA Coordinator at 1515 K Street, Suite 600, Sacramento CA 95814, or give this form to a staff person, or your Attorney to send to the BPH ADA Coordinator. The decision will be sent to you within five (5) days from the date it was received by the ADA Coordinator, or before your parole proceeding (which ever comes first).

X_____ _____ _____ _____

(Print name) (Inmate or parolee sign here) CDCR Number Date

B. RESPONSE TO A GRIEVANCE FILED BEFORE THE HEARING

Date received by BPH: _____

Decision

☐ **Granted** ☐ **Granted with Changes** ☐ **Denied** ☐ **No Action Required**

DISCUSSION OF FINDINGS: _____

_____

_____

_____

BASIS FOR DECISION: _____

_____

_____

_____

_____ _____

BPH ADA Coordinator/Designee Signature Date Completed

INSTRUCTIONS TO INMATE OR PAROLEE

Distribution: White – C-file, Canary – ADA Coordinator, Pink – BPH ADACU, Goldenrod – Inmate/Parolee

C. INMATE OR PAROLEE TO COMPLETE AFTER THE HEARING

☐ I did not get all the help with my disability that I needed during the hearing. Earlier, I requested that help on the BPH Form 1073, or a new disability problem came up at the hearing. I need a new hearing with more help, because: _____

_____

_____

_____

_____ _____ _____ _____
Inmate/Parolee Print Name Inmate/Parolee Sign Here CDCR Number Date

D. RESPONSE TO A GRIEVANCE FILED AFTER THE HEARING

Date Received by Quality Control Unit: _____ **Type of Parole Proceeding:** _____

Decision

☐ **Granted** ☐ **Granted with Changes** ☐ **Denied** ☐ **Dismissed**

_____

_____

_____

_____

_____ _____
Chief Deputy Commissioner/Designee Signature Date Completed

E. TO INMATE OR PAROLEE

1. After the hearing the inmate, parolee, or their attorney may file the grievance, concerning denial of disability accommodations at the hearing, by mailing this form to:

   Board of Parole Hearings
   Quality Control Unit
   1515 K Street, Suite 600
   Sacramento, CA 95814

2. All ADA grievances related to parole revocations shall be answered within 10 days from the time they were received at BPH.

3. All ADA grievances for life prisoners shall be answered within 30 days from the time they were received at BPH.

NAME CDC NUMBER TYPE OF PROCEEDING DATE OF PROCEEDING LOCATION

Distribution: White – C-file, Canary – ADA Coordinator, Pink – BPH ADACU, Goldenrod – Inmate/Parolee

APPENDIX S

California CDCR Form 611

See next page.

STATE OF CALIFORNIA
RELEASE PROGRAM STUDY
CDCR 611 (Rev. 08/11)

DEPARTMENT OF CORRECTIONS AND REHABILITATION
DIVISION OF ADULT PAROLE OPERATIONS

I. CASE FACTORS

CDC NUMBER	NAME (LAST, FIRST, MI)		COUNTY OF COMMITMENT	COUNTY OF LAST LEGAL RESIDENCE
☐ NEW FELON ☐ PVWNT	CI&I #:	PLACEMENT SCORE	INSTITUTION	SCHEDULED RELEASE DATE
US ICE HOLDS PLACED ☐ YES ☐ NO	IF YES, INDICATE US ICE "A" NUMBER	ILLEGAL ALIEN: ☐ ACTUAL ☐ POTENTIAL ☐ PREVIOUSLY DEPORTED		
OTHER HOLD(S) ☐ YES ☐ NO	IF YES, INDICATE AGENCY AND HOLD NUMBER	REFERRED TO DMH PURSUANT TO: ☐ 2962 PC ☐ 6601 W&IC STATUS:		

II. NOTIFICATION AND REGISTRATION REQUIREMENTS / SPECIAL INTEREST

NOTIFICATION:
☐ 3058.6 PC ☐ 3058.8 PC ☐ 3058.9 PC
☐ 11150 PC ☐ NONE

REGISTRATION:
☐ 11590 H&S ☐ 290 PC ☐ 457.1 PC ☐ 186.30 PC
☐ SVP SCREENING FORM COMPLETED ☐ NONE
☐ REQUESTS OUT OF COUNTY TRANSFER ☐ REQUESTS OUT-OF-STATE PAROLE

SPECIAL INTEREST:
☐ PUBLIC INTEREST CASE ☐ SUBSTANCE ABUSE PROGRAM ☐ SECURITY HOUSING UNIT

OTHER REQUIREMENTS:
☐ SUBJECT TO 645 PC ☐ SUBJECT TO PC 11177.2 RESTITUTION
☐ SUBJECT TO 296 PC ☐ SUBJECT TO 3053.2 PC
HAVE YOU SERVED IN ANY BRANCH OF THE US MILITARY? ☐ YES ☐ NO

RESIDENCE PLANS	WITH WHOM	RELATIONSHIP	PHONE NUMBER
	STREET ADDRESS	CITY	COUNTY (STATE, IF INTERSTATE)
ALTERNATE CONTACT	WHOM	RELATIONSHIP	PHONE NUMBER
	STREET ADDRESS	CITY	COUNTY (STATE, IF INTERSTATE)
EMPLOYMENT PLANS	PRIMARY SOURCE OF INCOME	PERSON TO CONTACT	CONTACT TELEPHONE NUMBER
	SECONDARY SOURCE OF INCOME	PERSON TO CONTACT	CONTACT TELEPHONE NUMBER

III. SUPERVISION DETERMINATION BY CORRECTIONAL COUNSELOR

a. Check ALL that apply on the CURRENT TERM only:	b.	c.	d. DIVISION OF ADULT PAROLE OPERATIONS	e.
☐ PC 667.5(c) ☐ PC 1192.7(c) ☐ LIFE SENTENCE If any box is marked above, inmate MUST be supervised by DAPO	☐ PC 3000 exclusion If this box is marked, DAPO supervision only	☐ HRSO SCORE ___ ☐ Not applicable	SEND TO PAROLE REGION: ☐ I ☐ II ☐ III ☐ IV	☐ ELIGIBLE FOR COUNTY SUPERVISION

CORRECTIONAL COUNSELOR NAME (PRINT)	CORRECTIONAL COUNSELOR SIGNATURE	PHONE NUMBER AND EXTENSION	DATE SIGNED

IV. SUPERVISOR REVIEW AND APPROVAL OF SCREENING DETERMINATION

☐ I HAVE REVIEWED AND APPROVE THIS SUPERVISION DETERMINATION

CORRECTIONAL COUNSELOR SUPERVISOR NAME (PRINT)	CORRECTIONAL COUNSELOR SUPERVISOR SIGNATURE	DATE SIGNED

V. COUNTY AGENCY REPORTING INSTRUCTIONS

ASSIGNED COUNTY UNIT	SCREENER'S NAME (PRINT)	SCREENER'S SIGNATURE	PHONE NUMBER AND EXTENSION

☐ REPORT TO SUPERVISING COUNTY AGENCY:

COUNTY OFFICE:		PHONE NUMBER AND EXTENSION:
ADDRESS:	CITY:	STATE:
COUNTY REPRESENTATIVE (Print Last Name, First Name)	SIGNATURE	DATE SIGNED

VI. CDCR PAROLE REPORTING INSTRUCTIONS

ASSIGNED PAROLE UNIT	RE-ENTRY SCREENER'S NAME (PRINT)	RE-ENTRY SCREENER'S SIGNATURE	PHONE NUMBER AND EXTENSION

COUNTY OF RESIDENCE _____ STATE _____

☐ RELEASE WITH FULL FUNDS ☐ RELEASE WITH $_____ (BALANCE TO PAROLE UNIT)

☐ REPORT TO PAROLE AGENT: _____

PAROLE OFFICE _____ PHONE: _____

STREET _____

CITY _____ STATE _____

☐ **CDCR SUPERVISION LEVEL: _____**

☐ Release Per PC 3060.7 Guidelines

☐ COMPAS Case Plan Approved

☐ Report As Follows (include date and time)

PAROLE AGENT NAME (PRINT)	BADGE #	DATE SIGNED	SUPERVISOR SIGNATURE	BADGE #	DATE SIGNED

STATE OF CALIFORNIA
RELEASE PROGRAM STUDY
CDCR 611 (Rev. 08/11)

DEPARTMENT OF CORRECTIONS AND REHABILITATION
DIVISION OF ADULT PAROLE OPERATIONS

CDCR NUMBER	INMATE/PAROLEE NAME	DATE OF STUDY

VII. CASEWORKER EVALUATION

LIST WORK SKILLS, GANG AND ENEMY INFORMATION, AND KNOWN FAMILY PROBLEMS:

☐ VOCATIONAL PROGRAM: ☐ PIA: ☐ JOINT VENTURE PROGRAM: GRADE POINT LEVEL

	NOTED	CLEAR
812	☐	☐
812A	☐	☐
812B	☐	☐
812C	☐	☐

VIII. SERIOUS DISCIPLINARIES

LIST CURRENT TERM RULES VIOLATION REPORTS FOR BATTERY ON STAFF OR INMATE, DISTRIBUTION OF DRUGS, POSSESSION OF A WEAPON, INCITING A DISTURBANCE, ARSON, ETC. IF SECURITY HOUSING UNIT BOX IS CHECKED IN SECTION II., SPECIAL INTEREST, THIS SECTION MUST BE COMPLETED:

IX. MEDICAL/PSYCHIATRIC

☐ NO DISABILITY ☐ DPP (Attach CDCR 1845) ☐ DD_____ (Attach CDCR 128C-2) ☐ EOP ☐ CCCMS ☐ KEYHEA

LIST SPECIFIC MEDICAL/MENTAL HEALTH, OUTPATIENT CLINIC NEEDS, AND MEDICAL CONCERNS/DISABILITIES :

TB CODE	PER CDCR 128C DATED	CASEWORKER SIGNATURE AND DATE	PRINT LAST NAME	PHONE NUMBER AND EXTENSION

APPENDIX T

California CDCR Form 1845

See next page.

STATE OF CALIFORNIA

DISABILITY PLACEMENT PROGRAM VERIFICATION (DPPV)
CDC 1845 (Rev. 01/04)

DEPARTMENT OF CORRECTIONS

CHECK ALL APPLICABLE BOXES

THIS FORM ONLY VERIFIES OR DISCONFIRMS CLAIMED PHYSICAL DISABILITIES LISTED IN SECTION B

INMATE NAME:	CDC NUMBER:	INSTITUTION:	HOUSING ASSIGNMENT:	DATE FORM INITIATED:

Sections A - B to be completed by licensed medical staff.

SECTION A: REASON FOR INITIATION OF FORM

- ☐ Inmate self-identifies to staff
- ☐ Third party evaluation request
- ☐ Observation by staff
- ☐ Medical documentation or Central File information

SECTION B: DISABILITY BEING EVALUATED

- ☐ Blind/Vision Impaired
- ☐ Speech Impaired
- ☐ Deaf/Hearing Impaired
- ☐ Mobility Impaired

Sections C - G to be completed by a physician only.

SECTION C: PERMANENT DISABILITIES IMPACTING PLACEMENT

1. ☐ FULL TIME WHEELCHAIR USER - **DPW**
   Requires wheelchair accessible housing and path of travel.
2. ☐ INTERMITTENT WHEELCHAIR USER - **DPO**
   Requires lower bunk, wheelchair accessible path of travel and ***does not require*** wheelchair accessible cell.
3. ☐ MOBILITY IMPAIRMENT - With or Without Assistive Device (Wheelchairs shall not be prescribed) - **DPM**
   Orthopedic, neurological or medical condition that substantially limits ambulation (cannot walk 100 yards on a level surface without pause). Requires lower bunk, no triple bunk, and no stairs in path of travel.
4. ☐ DEAF/HEARING IMPAIRMENT - **DPH**
   Must rely on written communication, lip reading or signing as residual hearing, with assistive devices, will not enable them to hear, understand or localize emergency warnings or public address announcements.
5. ☐ BLIND/VISION IMPAIRMENT - **DPV**
   Not correctable to central vision acuity of better than 20/200 with corrective lenses in at least one eye (See HOUSING RESTRICTIONS IN SECTION E).
6. ☐ SPEECH IMPAIRMENT - **DPS**
   Does not communicate effectively speaking or in writing.

SECTION D: PERMANENT DISABILITIES *NOT* IMPACTING PLACEMENT

1. NO CORRESPONDING CATEGORY
2. NO CORRESPONDING CATEGORY
3. ☐ MOBILITY IMPAIRMENT (Lower Extremities) - **DNM**
   Walks 100 yards without pause with or without assistive devices.
   - ☐ No Housing Restrictions
   - ☐ See HOUSING RESTRICTIONS in Section E
   - ☐ Requires relatively level terrain and no obstructions in path of travel. **Do not place at:** CCI, CMC-E, CRC, CTF-C, FSP, SAC, SCC I or II, SOL, or SQ. (CDC 128-C:_____)
4. ☐ HEARING IMPAIRMENT - **DNH**
   With residual hearing at a functional level with hearing aid(s).
5. NO CORRESPONDING CATEGORY
6. ☐ SPEECH IMPAIRMENT - **DNS**
   Does not communicate effectively speaking, but does when writing.

SECTION E: ADDITIONAL MEDICAL INFORMATION

CSR ALERT:

- ☐ Requires relatively level terrain and no obstructions in path of travel
- ☐ Complex medical needs affecting placement ☐ CDC 128-C _____

HEALTH CARE APPLIANCE / IDENTIFICATION VEST:

- ☐ Cane ☐ Crutch ☐ Walker ☐ Leg/Arm prosthesis ☐ Vest
- ☐ Other: _____ ☐ CDC 128-C(s) dated: _____

ASSISTANCE NEEDED WITH ACTIVITIES OF DAILY LIVING:

- ☐ Feeding or Eating ☐ Bathing ☐ Grooming ☐ W/C transferring
- ☐ Toileting ☐ Other: _____ ☐ CDC 128-C(s) dated:_____

OTHER DPP DESIGNATIONS:

☐ **NONE** _____ _____; _____ _____
CODE DATED CODE DATED

HOUSING RESTRICTIONS: ☐ Lower bunk ☐ No stairs ☐ No triple bunk. CDC 128-C(s) dated: _____

SECTION F: EXCLUSIONS

- ☐ VERIFICATION OF CLAIMED DISABILITY NOT CONFIRMED: My physical examination or other objective data DOES NOT SUPPORT ***claimed*** disability. (Explain in Comments Section and CDC 128-C dated _____).
- ☐ REMOVAL FROM A DPP CODE: Removal from previous DPP code: _____. (Explain in Comments Section and CDC 128-C dated: _____.)
- ☐ REMOVAL FROM ENTIRE PROGRAM: Removal from DPP code(s): _____. (Explain in Comments Section and CDC 128-C dated: _____.)

SECTION G: EFFECTIVE COMMUNICATION FACTORS

- ☐ Uses Sign Language Interpreter (SLI) ☐ Reads Braille ☐ Communicates with written notes ☐ Requires large print or magnifier
- ☐ Reads lips ☐ NO "EFFECTIVE COMMUNICATION" ISSUES OBSERVED OR DOCUMENTED IN THE UNIT HEALTH RECORD

PHYSICIAN'S COMMENTS: *(Focus on affected systems and functional limitations. No specific diagnosis or other confidential medical information)*

PHYSICIAN'S NAME (Print)	PHYSICIAN'S SIGNATURE	DATE SIGNED
HEALTH CARE MANAGER'S / DESIGNEE'S NAME (Print)	HEALTH CARE MANAGER'S / DESIGNEE'S SIGNATURE	DATE SIGNED

NOTE: After review by the Health Care Manager or Chief Physician & Surgeon, health care staff shall retain green copy for the UHR, send the inmate copy via institutional mail, and route the original and remaining copies to the C&PR/RC CC-III for tracking and further distribution according to the instructions below.

DISTRIBUTION: **Original** - Top General Chrono Section of C-File; **Green** - Chrono Section, Unit Health Record **Canary** - C&PR/CC-III; **Pink**-CC-I; **Gold**-Inmate

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS

DISABILITY PLACEMENT PROGRAM VERFICATION (DPPV)

CDC 1845 (Rev. 01/04)

GENERAL INSTRUCTIONS

This process does not require nor is it to result in the automatic screening of all inmates to identify disabilities. This process ensures standardization of CDC policy and procedures dealing with the verification of a disability, the refuting of a disability claimed by an inmate if necessary, and placement of inmates with disabilities listed in Section B of this form. The use of this form will be initiated only in response to one or more of the following actions as noted in Section A:

a) The inmate self-identifies or claims to have one of the disabilities listed in Section B;
b) Staff observes that the inmate may have one of the disabilities listed in Section B;
c) The health or central file record contains documentation regarding one of the disabilities listed in Section B; or
d) A third party (such as a family member) requests an evaluation of the inmate for a disability listed in Section B.

Identification of inmates who may meet the Disability Placement Program (DPP) parameters, will usually occur during reception center (RC) processing, but if an inmate appears to meet disability criteria indicated on the form, all of the institutions/facilities will use the DPPV. Any staff member can initiate a referral for verification by directing a CDC 128-B to the institution's/facility's health care services department.

Responsibility for verification of the disability through completion of the DPPV rests with the health care service physicians. The verifying physician shall follow the "Protocols for Verifying Disabilities" in Exhibit B of the Armstrong Remedial Plan or other official CDC document that includes protocols. Upon completing the DPPV, the physician shall sign in the signature block. Health care staff shall forward the completed DPPV to the Classification and Parole Representative (C&PR) or RC Correctional Counselor (CC)-III for tracking.

COMPLETION OF THE FORM: Enter identifying information about the inmate and the date the DPPV was initiated.

SECTION A: Check the appropriate box to indicate the reason for initiating the form. Any licensed medical staff may complete sections A and B.

SECTION B: The licensed medical staff *shall* mark the category of disability being evaluated *every* time a CDC 1845 is completed.

SECTION C: A mark made in any of these boxes, indicates a need for special housing or programming and will result in placement in one of the designated institutions or facilities. **NOTE:** The word *permanent* is defined as a condition not expected to improve within six months. Check all boxes that apply using the definitions below:

--IF THE INMATE:

1. Uses a wheelchair full time due to a **permanent** condition and requires use of the wheelchair, both within and outside the assigned cell/housing unit, check box1.
2. Has a permanent disability that requires the use of a wheelchair outside a cell (does not require use of a wheelchair inside a cell), requires lower bunk, wheelchair accessible path of travel and ***does not*** require wheelchair accessible housing, check box 2.
3. Due to orthopedic, neurological, or medical condition that substantially limits ambulation (cannot walk 100 yards on a level surface without pausing) and ***does not*** require a wheelchair, check box 3. This condition requires lower bunk, no triple bunk, and no stairs in path of travel.
4. Must rely on written communication, lip reading, or signing, because his/her residual hearing, even when augmented by aids, will not enable him/her to hear, understand, or localize an emergency warning or public address announcement, check box 4.
5. Is permanently blind or has a vision impairment not correctable to central vision acuity of better than 20/200 **with** corrective lenses, check box 5 and note any housing restrictions in Section E.
6. Has a permanent speech impairment resulting in indiscernible speech or NO speech and does not communicate effectively in writing, check box 6.

SECTION D: A mark made in any of these boxes will not necessarily result in the placement of the inmate in one of the designated institutions/facilities. The exception to this is if a disability in Section C exists. Check all boxes that apply using the definitions below: (Please note numbers 1, 2, and 5 indicate there are no corresponding categories, i.e., there are no DNW, DNO, or DNV categories.)

--IF THE INMATE:

1. Has a lower extremity ambulatory impairment but can walk 100 yards on a level surface without pausing with or without aids, check box number 3. If there are no housing restrictions, check the *"No housing restrictions"* box. If the condition requires a lower bunk, no triple bunk, or no stairs, check the "*See HOUSING RESTRICTIONS"* box and all applicable boxes in Section E *"HOUSING RESTRICTIONS."* If it is determined the inmate requires level terrain and no obstructions in the path of travel, check the corresponding box in Section D.3.
2. Has a hearing loss but follows conversation at normal speaking levels and can hear an emergency warning using a hearing aid(s), check box 2.
3. Has indiscernible or no speech but communicates effectively in writing, check box 4.

SECTION E: The physician shall complete this section based on Unit Health Record (UHR) review, observation of, and interaction with the inmate. Check all boxes that apply using the definitions below:

***--IF THE PHYSICIAN*:**

--Finds the inmate is designated as DNM and requires placement in an institution with level terrain with no obstruction in the path of travel, the physician shall check the *"Requires relatively level terrain and no obstructions in path of travel"* box and complete a CDC 128-C. If the physician finds the inmate has a complex medical need that is better facilitated by placement in a more centralized institution to facilitate outside medical treatment, check the *"Complex medical needs affecting placement"* box and complete a CDC 128-C explaining the reason for this recommended placement.

--Finds the inmate needs assistance with activities of daily living, appropriate boxes are to be checked.

--Determines there are housing restrictions in conjunction with disabilities verified in Sections C or D, number 3, check the box listing the appropriate restriction.

--Prescribes an assistive device such as a cane, crutch, walker, etc., check the applicable box, enter the date of the supporting CDC 128-C(s) related to that prescription.

--Finds other valid CDC 1845's in the UHR indicating a disability other than the current review, enter the corresponding DPP code and date of the CDC 1845.

SECTION F: The physician is to check the appropriate box specifically to the stated check box as follows:

--IF THE PHYSICIAN:

--Cannot verify a claimed disability through an examination or objective clinical data in the UHR, check the category of disability box being evaluated in Section B and the first box in Section F. The physician shall not check this box for cases pending outside consultation.

--Finds inmate no longer qualifies for a previously verified disability (e.g., cataract surgery restores sight) but has another verified disability that keeps him/her in the DPP, check the second box in Section F and enter the DPP code from which the inmate is being removed on the line provided. Explain the reason for removal in the Comments Section and complete a CDC 128-C.

--Finds the inmate no longer has a previously verified disability or any other CDC 1845 disability and is to be removed from the DPP, check the third box in Section F, enter the DPP code(s) on the line provided, explain in the Comments section, complete a CDC 128-C explaining reasons for removal from the program, and enter the date of the CDC 128-C on the line provided.

SECTION G: If during the initial or subsequent examination(s), the physician discovers the need for a sign language interpreter or if an alternate form of communication is required, the physician shall check all applicable box(es). The physician might have to query the inmate for this information. If none of these factors exist, **and** there are no additional factors or information, mark the *"NO EFFECTIVE COMMUNICATION ISSUES OBSERVED OR DOCUMENTED IN THE UHR"* box. The physician shall print, sign, and date the form in the appropriate boxes.

COMMENTS SECTION: This section is to reflect notes, references, explanation of disabilities and any information not listed elsewhere on the DPPV. The physician is to reserve his/her comments focusing on affected systems and functional limitations. No specific diagnosis, impairments, or other confidential medical information is to be entered on this document.

DISTRIBUTION: The Health Care Manager or Chief Physician & Surgeon shall review the completed form before distribution. Health care staff shall place the green copy in the chrono section of the UHR, send gold copy to inmate via institution mail, and send original and remaining copies to C&PR/CC-III. The original shall be placed on top of the "General Chrono" section of the central file. The C&PR/CC-III shall retain the canary copy and forward the pink copy to the assigned CC-I.

APPENDIX U

California CDCR Form 128C-2

See next page.

CDC 128C-2 DEVELOPMENTAL DISABILITY PROGRAM SCREENING RESULTS

Excluded from DDP after Phase # _____

[ ] **NCF** Received passing score on cognitive test: (circle one) Quick TONI-3 GAMA Wechsler

[ ] **NDD** No substantial adaptive support needs from cognitive deficit. No reevaluation without referral.

Included in DDP after C.A.S.E. in Phase # _____

Must have a Staff Assistant in disciplinary hearings, classification committee hearings, investigative employee interviews, and in all contacts involving the use of a CDC Form 114-D (administrative segregation reviews and hearings).

[ ] **DD1** Does not usually require prompts to initiate/complete activities of daily living (ADLs). Inmate may need adaptive supports when under unusual stress or in new situations.

[ ] **DD2*** Requires occasional prompts to initiate/complete ADLs. And/or has **Victimization Concerns: requires housing in a designated DDP building/unit/wing, consistent with case factors.**

[ ] **DD3*** Requires frequent prompts to initiate/complete activities of daily living. * **Victimization Concerns.**

Adaptive Support Needs of DD1, DD2 or DD3 Inmate:

Possible developmental disability before age 18? [ ] Yes/Unknown [ ] No

HOUSING UNIT PHOTO

For DD1, DD2, and DD3 only

Clinician/Test administrator (print or stamp) Licensed Clinician (if preceding is unlicensed)

Signature Signature

Test Date:	***Institution:***	CDC NUMBER, NAME (LAST, FIRST, MI), AND DATE OF BIRTH

DISTRIBUTION: ORIGINAL PINK: CENTRAL FILE

BLUE COPY: UHR/Mental Health
ASSIGNED CC-1
C&PR or CC-III
HOUSING UNIT
EDUCATION FILE
I/M ASSIGNMENT OFFICE
WORK SUPERVISOR
INMATE

DEFINITIONS

NCF Scored ***above*** 80 on Quick Test or TONI-3, or ***above*** 75 on GAMA or a Wechsler test.

NDD Phase III or Phase IV CASE identified no substantial deficits in self-care, ADL, social skills, or self-advocacy due to cognitive disability.

Inmates classified with designations listed below require adaptive support services to function in institution settings.

The Clark Remedial Plan requires the assignment of a Staff Assistant in all disciplinary hearings, classification committee hearings, investigative employee interviews, and in all contacts involving use of a CDC From 114-D (administrative segregation reviews and hearings).

DD1

SELF-CARE: Does not usually require prompts to initiate/complete self-care and ADL.
DAILY LIVING SKILLS: May occasionally need prompts to initiate cell cleaning, laundry, etc. May need additional time to be oriented/trained in new situations and jobs.
SOCIAL SKILLS: Appears to interact appropriately with other inmates and staff. May need adaptive supports or additional supervision when under unusual stress or in new situations.
SELF-ADVOCACY: With staff assistance, inmate demonstrates understanding of relevant issues in a hearing process. May require help in reading, writing, and preparing documentation.

DD2*

SELF-CARE: Requires occasional prompts to initiate/complete self-care and ADL.
DAILY LIVING SKILLS: Usually needs prompts to initiate cell cleaning, laundry, etc. Needs additional time to be oriented/trained in new situations and jobs.
SOCIAL SKILLS: May need adaptive supports and additional supervision for appropriate interaction with others, following rules, and avoiding social isolation.
SELF-ADVOCACY: With staff assistance, may demonstrate poor understanding of relevant issues in a hearing process. Likely to require help in reading, writing, and preparing documentation.
And/or Victimization Concerns: *See below.*

DD3*

SELF-CARE: Usually requires prompts to initiate/complete self-care and ADL.
DAILY LIVING SKILLS: Usually needs prompts to initiate cell cleaning, laundry, etc. Needs additional time to be oriented/trained in new situations and jobs.
SOCIAL SKILLS: Needs adaptive supports and additional supervision for appropriate interaction with others, following rules, and avoiding social isolation.
SELF-ADVOCACY: With staff assistance, unlikely to demonstrate understanding of relevant issues in a hearing process. Requires help in reading, writing, and preparing documentation.
Victimization Concerns: *See below.*

***Victimization Concerns (DD2, and DD3): Requires housing in a designated DDP building/unit/wing, consistent with other case factors.** These inmates may be easily influenced by others to give up personal property or engage in illegal or inappropriate behaviors. Also may be at risk for physical, emotional, or sexual abuse.

APPENDIX V

California CDCR Form 1707

REQUEST FOR VICTIM SERVICES
CDCR 1707 (Rev. 10/11) (Back)

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION

INSTRUCTIONS

Read the following instructions carefully to fill out the front side of the form so that it can be processed correctly. Sections A, E, and F must be completed. Complete all other sections, based on your needs. All information will remain confidential.

Check one of the two boxes at the top of the CDCR 1707 form to indicate if this is a **new/revised request** or a **change of address/phone/e-mail only**. If you check "Change of address/phone/e-mail only," complete sections A, E, and F only.

SECTION A. APPLICANT INFORMATION

This section must be completed. Check the box that most accurately describes your relationship to the offender: **victim, witness,** or **family member of victim** (next of kin) and your relationship to the victim.

Circle the appropriate title: ***Mr., Mrs.,*** *or* ***Ms.*** Clearly print your name, home address, mailing address *(if different)*, your daytime, evening, cell phone numbers and e-mail address *(if you have one)*.

NOTE: *It is your responsibility to keep the OVSRS informed of any changes to your personal information.*

SECTION B. NOTIFICATION OF OFFENDER STATUS IN PRISON

Complete this section if you choose to request notification services. Check the most appropriate box(es).

You have one of three choices to receive notice of an offender's **release, escape, or death**. Check **Box 1a** to register to receive notification by mail. Check **Box 1b** to indicate you would like OVSRS to register you through VINE to receive phone and/or e-mail notification instead of notification by mail. Check **Box 1c** to let OVSRS know that you already registered through VINE by phone at 1-877-411-5588 or online at www.VINELink.com to receive phone and/or e-mail notification and do not need notification by mail.

Check **Box 2** to allow the OVSRS to share your information with the California Attorney General's Office to notify you of the status and outcome of any **criminal appeal** filed by the offender in this case.

In the area marked **FOR VICTIMS/VICTIMS' FAMILY MEMBERS (NEXT OF KIN) ONLY,** if you are the victim or the family member of a victim, check **Box 1a** to register to receive notification by mail of the date of an offender's **parole hearing** only if the offender has been sentenced to **life imprisonment.** Check **Box 1b** to ask the OVSRS to register you to receive notification by phone and/or e-mail instead of notification by mail. *In addition,* **check yes** to allow the OVSRS to share your information with the district attorney's office where the trial was held. The district attorney's office may be in contact with you if there is a parole hearing for an offender with a life sentence. Check **no** if you do not want the OVSRS to share your information. Check **Box 2** to request to receive notification of the **scheduled execution** of an offender sentenced to death.

SECTION C. CONDITIONS OF PAROLE/COMMUNITY SUPERVISION

Complete this section if you choose to request special conditions of parole/community supervision. Such conditions are not guaranteed but you may check all that you wish to request or are eligible to receive.

Check **Box 1** to request that the offender have **no contact** with you while he/she is on parole/community supervision.

Check **Box 2** to request that the offender **not be allowed to live in the same county** that you live in.

The third box applies to **victims and witnesses only**.
Check **Box 3** to request that the offender **not be allowed to live within 35 miles of your *home address.*** *Per Penal Code Section 3003, available only for the following crimes: murder or voluntary manslaughter, mayhem, rape, sodomy by force, oral copulation, lewd acts on a child under 14, any felony punishable by death, stalking, and assault with a great bodily injury enhancement.*

SECTION D. RESTITUTION

Complete this section if you have a court order requiring the offender to pay you restitution and would like to provide the OVSRS with information to verify that our restitution records are complete. If your court order for restitution states "TBD" for the dollar amount, contact the district attorney's office to request that a motion be filed to determine the restitution amount.

SECTION E. OFFENDER IDENTIFICATION

Provide as much information as you can in this section so we can be sure that we have the correct offender involved in your case. If you need help completing this section, you may contact the district attorney's office in the county where the trial was held.

SECTION F. APPLICANT SIGNATURE

Sign and date the completed form.

PROVIDING INFORMATION: The information requested is necessary to process your request for victim services and is voluntary. Failure to provide any of the information requested may prevent the OVSRS from processing your request. **All information will remain confidential.**

SUBMIT COMPLETED FORM BY MAIL, FAX OR E-MAIL (SCANNED COPY) TO:

California Department of Corrections and Rehabilitation
Office of Victim and Survivor Rights and Services
P.O. Box 942883
Sacramento, CA 94283-0001
Fax: (916) 445-3737 / E-mail: ovssinet@cdcr.ca.gov

AGENCY PRIVACY STATEMENT: The California Department of Corrections and Rehabilitation (CDCR), Request for Victim Services, CDCR 1707. **OFFICE RESPONSIBLE FOR FORM:** Office of Victim and Survivor Rights and Services, P.O. Box 942883, Sacramento, CA 94283-0001. The telephone number is 1-877-256-6877. **AUTHORITY:** Penal Code Section 679.03, 2085.5, and 3058.8.

California Department of Corrections and Rehabilitation (CDCR)
Office of Victim and Survivor Rights and Services (OVSRS)
P.O. Box 942883, Sacramento, CA 94283-0001
Toll Free Number: 1-877-256-6877 Fax Number: (916) 445-3737
http://www.cdcr.ca.gov/victims
DO NOT MAIL THE COMPLETED FORM TO A PRISON. ALL INFORMATION WILL REMAIN CONFIDENTIAL.

Check one: ☐ New/Revised Request for Victim Services ☐ Change of address/phone/e-mail only (complete sections A, E, and F)

SECTION A. APPLICANT INFORMATION (Must be completed.)

Check one: ☐ Victim of crime(s) committed by offender ☐ Witness who testified against the offender
☐ Family member of victim (next of kin), indicate relationship: _____

Print Applicant Name: *Circle Mr./Mrs./Ms.* _____
(FIRST) (MIDDLE) (LAST)

Home Address: _____
(STREET) (CITY) (COUNTY) (STATE) (ZIP CODE)

Mailing Address: _____
(IF DIFFERENT) (STREET) (CITY) (COUNTY) (STATE) (ZIP CODE)

Telephone: _____
(DAYTIME) (EVENING) (CELL) (E-MAIL)

NOTE: ***It is your responsibility to keep the OVSRS informed of any changes to your personal information.***

SECTION B. NOTIFICATION OF OFFENDER STATUS IN STATE PRISON (Complete if you want to request notification.)

1. To be notified of the **release, escape, or death** of an offender, check one of the boxes (a, b, or c) below:
   a. ☐ Send me notification by mail; **or**
   b. ☐ Register me through VINE to receive *(check one or both)*: ☐ phone and/or ☐ e-mail notification instead of notification by mail, **or**
   c. ☐ I registered through VINE at 1-877-411-5588 or online at www.VINELink.com to receive phone and/or e-mail notification and do not need notification by mail.
2. ☐ Notify me of the offender's **criminal appeal.** (Note: *Checking this box means your information will be shared with the California Attorney General's Office to notify you of the offender's criminal appeal.)*

***** FOR VICTIMS/VICTIMS' FAMILY MEMBERS (NEXT OF KIN) ONLY *****

1. To be notified of **parole hearing** date(s) for an offender sentenced to life imprisonment, check one of the boxes below:
   a. ☐ Send me notification by mail; **or**
   b. ☐ Register me for *(check one or both)*: ☐ phone and/or ☐ e-mail notification instead of notification by mail.
   Note: *May we share your contact information with the district attorney's office where the trial was held?* ☐ *Yes* ☐ *No*
2. To be notified of the **scheduled execution** of an offender sentenced to death, check this box. ☐

SECTION C. CONDITIONS OF PAROLE/COMMUNITY SUPERVISION (Complete if you want to request special conditions.)

Requests for special conditions of parole/community supervision are considered but not guaranteed.

I request the following conditions when the offender is released on parole/community supervision:

1. ☐ Offender not be allowed to contact me while he/she is on parole/community supervision
2. ☐ Offender not be allowed to live in the same county that I live in

For victims/witnesses only:

3. ☐ Offender not be allowed to live within 35 miles of my home address (available only for specific types of crimes, see reverse)

NOTE: *If you would like to provide additional information explaining your request, attach a separate sheet of paper.*

SECTION D. RESTITUTION (Complete if you have a court order to receive restitution.)

There is a restitution court order in the amount of $_____ payable to *(name):* _____

NOTE: *To be determined (TBD) orders must be finalized by the county before CDCR can collect restitution.*

SECTION E. OFFENDER IDENTIFICATION (Complete as much information as possible.)

Offender's Full Name *(Print):* _____ Date of Birth: _____
(FIRST) (MIDDLE) (LAST) MO / DAY / YEAR

CDCR Number *(Prison Number):* _____ Date Sentenced to State Prison: _____
MO / DAY / YEAR

Court Case Number: _____ County of Commitment: _____

SECTION F. APPLICANT SIGNATURE (Sign and date the completed form.)

Signature of Applicant: _____ Date: _____

APPENDIX W

Selected California Formal Probation Instructions (County Specific)

Formal Probation Instructions by County in CA (for those publicly available)—limited list.

WARNING: It is very important to understand that there are many different types of formal probation programs that vary from county to county in California.[1133]

1) Fresno County:

- The Fresno County Probation Department has many types of formal probation programs to monitor your conduct. For example, if you have a drug problem, you could be referred to Drug Court, the PC1000 program, or the Probationers in Recovery program. Whatever the program or type of supervision, you are expected to obey the conditions of probation that were set by the Court.
- The frequency and method of contact with your Probation Officer depends on the seriousness of your commitment offense(s).
- In addition to special supervision programs, there are special programs—these are conditions of probation offered such as Work Furlough and Work Project. These special programs allow for consequences other than custody in jail for a felony or misdemeanor conviction.[1134]

2) Butte County:

In Butte County, there are different types of formal probation supervision units. Examples:

- Adult Supervision Unit—Supervising low to moderate risk offenders, Probation Officers utilize monthly mail-in forms, office appointments, and program referrals to ensure compliance with terms and conditions of probation.
- Field Supervision Unit—Supervising high risk offenders—namely domestic violence, gang, and sex crimes—Probation Officers utilize routine office appointments and searches, drug testing, and treatment program partnership to ensure compliance with terms and conditions of probation.
- Adult Treatment Unit—The Proposition 36 and Drug Court programs supervise offenders with substance abuse issues. Probation Officers utilize routine drug and alcohol tests, office appointments, and treatment program partnership to ensure compliance with terms and conditions of probation.[1135]

[1134] See Fresno County Adult Probation Department, Frequently Asked Questions, http://www.co.fresno.ca.us/DepartmentPage.aspx?id=12773.
[1135] Butte County Probation Department, Formal Adult Probation Caseloads, http://www.buttecounty.net/probation/AdultProbation/TypesofAdultSupervision.aspx.

APPENDIX X

Sample Instructions for County Probation From Different Counties in California

WARNING: There are some standard conditions that apply to most (if not all) individuals placed on probation,[1136] but instructions for what to do when you first start your probation term will vary depending on what county you are being supervised in. You should call or visit your county probation department immediately to find out what the requirements and instructions apply to you.

For example only, below you can find a few county probation offices' reporting instructions:

San Francisco County's Instructions:[1137]
STEP 1: You need to contact the Probation Department as soon as you are released from custody. If you are released after 5:00pm, please contact the Department the next day. We open our offices at 8:00am and close at 5:00pm. Main phone number is: (415) 553-1706.
STEP 2: When you contact the Department you will need to provide our support staff with your full name and date of birth. If you have your court number, please provide it too. Our support staff will be able to give you the name and phone number of your assigned probation officer.
STEP 3: Your probation officer will schedule an appointment to meet with you. Please, make sure to keep your appointment and be on time. If you cannot make your appointment, you must call the day before to re-schedule.
STEP 4: Most likely than not the Court would have ordered for you to attend a counseling or rehabilitation program. You along with your officer will choose which programs better meet your needs. It is important that you contact the program and arrange for an intake session.
STEP 5: Stay out of trouble! We know you're facing a lot of challenges and difficulties getting your life back together, but if you need help or support, call your officer before you do something that put you back in jail.

Los Angeles County's Instructions:[1138]
STEP 1: If you were just released from county jail or the court, following your sentencing, and you were ordered by the Court to report to the Probation Department for supervision, you need to report within 48 hours or within the time frame ordered by the court.
STEP 2: When you report to the Probation office, tell the receptionist that you were just recently released from jail, or referred from Court, and you need your orientation instructions.[1139]

Here is a list of important documents to bring to your probation orientation in L.A. County:

1. Valid identification (driver's license, California I.D., any identification with your name, picture, or signature.
2. Verification of residence (this can be a letter or other mailing with your name and the address where you live, a copy of a rental agreement, or a signed letter from your landlord verifying that the address presented is your residence).
3. A copy of any and all documents that the sentencing court (meaning the court that actually gave you your criminal sentence) gave to you. This may include:

- A copy of the sentencing minute ordered;
- A referral card with your next court appointment;
- A referral for registration due to your conviction that is related to drugs, gang affiliation, arson, or certain sex offenses or proof of registration of any one of these requirements, if so ordered by the court.

Ventura County's Instructions:[1140]

STEP 1: Upon being placed on formal probation (and immediately upon release from custody when on probation), you must immediately report to 800 South Victoria Avenue, Ventura, California, at the Pre-Trial Detention Facility (Sheriff's Building), Room A, second floor. Bring to probation your current address, phone numbers, and all relevant contact information

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[1136] See City and County of San Francisco Adult Probation Department, On Probation, http://sfGov'torg/adultprobation/probation.
[1137] See City and County of San Francisco Adult Probation Department, On Probation, http://sfGov'torg/adultprobation/probation.
[1138] See L.A. Cnty. Prob. Dep't, Just Released, http://probation.lacounty.gov/wps/portal/probation/!ut/p/b1/04_Sj9Q1MjA1tzS0NDcw04_Qj8pLLMtMTyzJzM9LzAHxo8zi3QwMDNz9nYKN_INdjA083dydnA39TQyNgo2ACiKRFRg4u1saeDqZuFt4mYUYOvuZE9Ifrh-FT0mwoTG6AixWgBUY4ACOBgSs8DLR9_PIz03Vz43KsfTMDEgHAB9RScE!/dl4/d5/L2dJQSEvUU.
[1139] See L.A. Cnty. Prob. Dep't, Just Released, http://probation.lacounty.gov/wps/portal/probation/!ut/p/b1/04_Sj9Q1MjA1tzS0NDcw04_Qj8pLLMtMTyzJzM9LzAHxo8zi3QwMDNz9nYKN_INdjA083dydnA39TQyNgo2ACiKRFRg4u1saeDqZuFt4mYUYOvuZE9Ifrh-FT0mwoTG6AixWgBUY4ACOBgSs8DLR9_PIz03Vz43KsfTMDEgHAB9RScE!/dl4/d5/L2dJQSEvUU.
[1140] See Ventura County Probation Department, FAQs, http://public.venturaprobation.org/index.php/about-us/faqs?catid=1.



STEP 2: Your assigned probation officer will contact you via mail or phone within 30 days of the date you were granted probation to set up your first appointment/intake meeting.

If you have not heard from your probation officer within a 30-day period:

- Have your case number, date of birth, and Social Security number (SSN) available and call the Ventura County Probation Agency at one of the locations nearest your residence. Tell the receptionist your case number and any relevant identifying information. You will then be connected to your assigned probation officer or the Officer-of-the-Day (OD) at your local probation office.

APPENDIX Y

Changing Conditions of Informal or Formal Probation

For those supervised by county-level probation, below are the steps for requesting a change to your conditions of formal or informal probation.

STEP 1: **Draft the Motion and Supporting Documents:**

- There is no official court form for this motion. You may contact the Court Clerk in the local county superior court where you were convicted to ask if there is a local form for this purpose. Most likely there is not, so you or your attorney will have to draft an original motion. Your motion should consist of the following parts:[1141]

  (1) **Notice of Motion**: This tells the court what you want it to do. In other words, it notifies the court that you want it to modify your probation conditions.[1142]
  (2) **Memorandum of Points and Authorities**: This section explains the law or authority that you are relying on for your request, as well as the facts supporting your request under that law or authority.[1143]
  In the case of a disability, you should include the following: Americans with Disabilities Act (ADA),[1144] California Government Code § 11135, Civil Code §§ 54 et seq., California Penal Code § 1203.3 and the specific facts of your disability, how it affects you on probation, and what changes or additional assistance you need.
  (3) **Declaration**: This is your signed, sworn statement of the facts used in your memorandum. It must include all of the facts used to support your motion.[1145]
  (4) **Any Supporting Documentation**: If you have any documentation, such as a doctor's letter or prescription for medication, you should include these.
  (5) **Proposed Order**: This is the document the judge signs to grant your motion and officially allow your probation to be terminated.
  (6) **Proof of Service**: Include the Proof of Service form with your motion. This document must be included with all your court papers to prove that you gave a copy of the court papers to every person who is required by law to get them.

Need help with your court forms? Ask the attorney/ Public Defender from your case, the court's Self-Help Center, or your local law library for assistance with your motion.

! **IMPORTANT: If you had public defender for your case, many Public Defender offices will write, file, and argue motions to modify probation on your behalf. Call you public defender to find out whether they are able to assist you in filing and arguing your motion.**

STEP 2: **File the Motion**

- Once your motion is drafted, you should make at least 4 copies—an original copy for the court, one copy for the District Attorney, one for the Probation Department, and one for you to keep. The court clerk will keep the original copy for the court's file.
- Bring the original motion and all copies to the clerk who will stamp all the documents with the date you are filing these documents. The clerk will give you back your copy, plus any copies that need to be served on the other parties. Remember to make sure that the clerk stamps each of these copies!
- Be sure to confirm with the clerk if the clerk's office will serve the District Attorney and the Probation Department, or if you are responsible for doing that. If the clerk gives you back more than just your own copy, it most likely means that you are responsible for service! (See STEP 3 below).
- FEES/ COST: Be aware that there are always fees associated with filing documents with the court. These fees will vary by county, and you can request a fee waiver if

TIP:

Try and get to the Clerk's office early, because there may be long lines. Make sure to bring lots of copies and a friend to help if you can.

IF YOU ARE REQUESTING A CHANGE IN YOUR PROBATION CONDITIONS DUE TO A DISABILITY:

During the hearing, you (or your attorney, if you have one) will explain to the judge why your disability makes it difficult for you to comply with your current conditions, what changes you need in your probation conditions, and if you need any other assistance from the probation department to successfully complete your probation. You can also ask the court to order the probation department to provide certain assistance or other accommodations. The prosecutor will also have a chance to speak, including a chance to oppose your request for modification. For more information on disabilities, please see PG. 252.

[1141] Cal. Rules of Court, Rule 3.1112.
[1142] Cal. Rules of Court, Rule 3.1112.
[1143] Cal. Rules of Court, Rule 3.1113.
[1144] This law protects people with disabilities against discrimination and requires public entities to provide reasonable accommodations. The law applies to all public entities, including local courts and probation departments. http://www.ada.gov/pubs/adastatute08.pdf.
[1145] Cal. Rules of Court, Rule 3.1112.



you qualify. Check with the clerk for your county's fee schedule and waiver request process. Note: if you had a public defender on your case, you also may be eligible to receive a fee waiver for court filing fees.

After your motion has been filed, the clerk will give you a court date to have your motion heard by the judge.

STEP 3: **Serve the Motion on the Other Parties**

- If the clerk indicates that you are responsible for "service," this means that you must make sure that all necessary people (called necessary "parties") get a copy of the motion in the proper manner.
- The law requires that you give the District Attorney at least 2 days' notice of your motion (or 5 days if your case involves domestic violence).[1146] This means that the DA must have a copy of your motion at 2 two days before the date of your hearing. It is best to serve the motion on all necessary people (parties) right after you file it. Be sure to have the DA's office stamp the copy of your motion that you are keeping for yourself too—this serves as your proof that you served the DA with your motion.

STEP 4: **The Hearing**

- When you file your motion, the clerk will give you a court date for your motion to be heard by a judge. You will have to attend the hearing if you are not being represented by an attorney. In most cases, even if you are being represented by an attorney, you will want to be present to show your respect to the judge and the court process. The judge is unlikely to modify your probation unless it thinks that you are taking your probation seriously—and going to your court date shows the judge that you care about your case![1147]
- If the judge grants your motion or modifies your probation conditions in any other way, he or she must state the reasons for doing so on the record.[1148]

[1146] CAL. PENAL CODE § 1203.3(b)(1).
[1147] If you are requesting a change in your probation conditions due to a disability: During the hearing, you (or your attorney, if you have one) will explain to the judge why your disability makes it difficult for you to comply with your current conditions, what changes you need in your probation conditions, and if you need any other assistance from the probation department to successfully complete your probation. You can also ask the court to order the probation department to provide certain assistance or other accommodations. The prosecutor will also have a chance to speak, including a chance to oppose your request for modification.
[1148] CAL. PENAL CODE § 1203.3(b)(1)(A).

APPENDIX Z

Sample Instructions for PRCS from Different Counties in California

WARNING: You must report to your County Probation Department for PRCS supervision within 2 working days after your release from state prison, court, or county jail. Instructions for what to do when you first get out on PRCS vary from one county probation department to the next. For example only, here are the instructions for people on PRCS in a couple of California counties:

If you are on PRCS under the L.A. County Probation Department:[1149]

- You must report within 2 working days of your release.
- You should bring the following important documents to your probation "H.U.B." orientation:
  - Valid identification: Driver's license, California State I.D., or any identification with your name, picture, or signature). [NOTE: Please go to the BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER, beginning on PG. 22 if you need to get this type of document/ID.]
  - Verification of residence: this can be a letter or other correspondence with your name and the address where you reside, a copy of a rental agreement, or a signed letter from your landlord verifying that the address presented is your residence.
  - A copy of any and all document you were given by the sentencing court or the Corrections Counselor regarding your release.
- Once the HUB orientation is complete, you will be given:
  - A copy of your signed permanent probation instructions or the court-ordered conditions of supervision,
  - All signed financial documents, and
  - A referral to your probation officer or the probation office closest to your residence.
- Lastly, you will be instructed when and where to report to your local county probation office within 48 hours. Once you report to the local county probation office for supervision, you will be assigned a supervision probation officer, who will explain the specific requirements of supervision and reporting requirements to you.

If you are on PRCS under the Butte County Probation Department:[1150]

- You must report within 2 working days of your release.
- The Butte County Probation Department's supervision of people on PRCS includes: office visits, home visits, searches, urine testing, and enforcement.
- Probation will complete an evidence-based "Offender Needs Guide" to identify and target your needs. This is Probation's tool to identify your specific risk and protective factors to improve case management and reduce the risk of re-offending.
- Based on the "Offender Needs Guide," your Probation Officer will make referrals for services to the appropriate agencies.

[1149] See L.A. Cnty. Prob. Dep't, Just Released, http://probation.lacounty.gov/wps/portal/probation/!ut/p/b1/04_Sj9Q1MjA1tzS0NDcw04_Qj8pLLMtMTyzJzM9LzAHxo8zi3QwMDNz9nYKN_INdjA083dydnA39TQyNgo2ACiKRFRg4u1saeDqZuFt4mYUYOvuZE9Ifrh-FT0mwoTG6AixWgBUY4ACOBgSs8DLR9_PIz03Vz43KsfTMDEgHAB9RScE!/dl4/d5/L2dJQSEvUU.

[1150] See Butte County Probation, AB 109, http://www.buttecounty.net/probation/AdultProbation/AB109.aspx.

APPENDIX AA

Requesting an Accommodation for Your Disability on County-Level Probation

HOW CAN I REQUEST AN ACCOMMODATION OR FILE A COMPLAINT IF I FEEL THAT COUNTY PROBATION IS NOT ACCOMMODATING MY DISABILITY, OR IF MY DISABILITY IS PREVENTING ME FROM ACCESSING PROBATION SERVICES OR PROGRAMS?

Unlike for state parole, there are no formal probation policies or procedures to request accommodations or file a complaint related to your disability. Each county does things differently, and many counties have no formal procedures. You can first talk to your probation officer and explain the situation to him/her OR you may ask a judge to modify your probation to accommodate your disability by filing a motion requesting a change.

STEP 1: **Start by talking with your probation officer and explain to him/her:**

1. What your disability is;
2. Why it is difficult for you to participate in programs or supervision requirements; and
3. What assistance, accommodations or changes you need.
4. If you have to do any evaluations with other agencies or service providers (for example, if the Probation Department does a risk- or needs-assessment for you, or you have a work placement evaluation by the Sheriff's department), you should also explain to them why your disability makes it difficult for you to participate or meet other requirements.
5. *If you were sentenced under Realignment and are on Mandatory Supervision or PRCS,* you may be entitled to participate in special programs or other services for your disability.[1151]

STEP 2: **If that didn't fix the problem, you can ask the judge to modify your probation to accommodate your disability by filing a motion requesting a change (called a "modification").**

If after talking to your probation officer or their supervisor, you still need help because (1) you did not get the assistance you require for your disability, (2) you are unable to participate in the programs which you are being offered or required to participate in, or (3) the terms of your supervision are difficult for you due to your disability, then you can go back to court to request help from the judge.

In order to ask the judge to modify your probation, you must FILE A MOTION requesting that the judge modify probation to accommodate your disability. Once you file your motion, you will have a hearing. The motion would likely mention the following laws:

- The Americans with Disability Act (ADA)—The ADA protects people with disabilities against discrimination and it requires public entities to provide reasonable accommodations. The ADA applies to all public entities, including local courts and probation departments.[1152]
- California Government Code § 11135 and Civil Code §§ 54 et seq.,[1153] which provide similar state protections as the federal ADA.
- California Penal Code § 1203.3, which gives the court authority to change your probation conditions.[1154]
- The specific facts of your disability, how it affects you on probation, and what changes or additional assistance you need.

STEP 3: **The Hearing**

During the hearing, you (or your attorney, if you have one) will explain to the judge why your disability makes it difficult for you to comply with your current conditions, what changes you need in your probation conditions, and if you need any other assistance from the probation department will help you to successfully complete your probation. You can also ask the court to order the probation department to provide certain assistance or other accommodations. The prosecutor will also have a chance to speak at your hearing—this includes a chance to oppose your request for modification. Because the judge has much more control over the Probation Department and the terms of your supervision, the Judge can order Probation to provide you with assistance, and can decide any other accommodations necessary for you to successfully complete your supervision.[1155]

[1151] Telephone calls with the following county probation departments, Nov. 6, 2014:
Tony Crear, Community Network Coordinator, Alameda Cnty. Probation Dept.
Robin Nicole Livingston, AB 109 Probation Officer, Contra Costa Cnty. Probation Dept.
Jim Metzen, Probation Consultant, Yolo Cnty. Probation Dept.
Alan Seeber, Sacramento Cnty. Probation Dept.
Whitnee Reynolds, Administrative Assistant / Training Coordinator, Chief Probation Officers of Cal.
[1152] The ADA is available at http://www.ada.gov/pubs/adastatute08.pdf.
[1153] Cal. Gov't Code § 11135.
[1154] Cal. Gov't Code § 1203.3.
[1155] Telephone call with Tony Crear, Alameda County. Probation Dept.

APPENDIX BB

U.S. Department Of Justice, Federal Bureau Of Prisons (BOP) Form BP-A714.056,
"Notice Of Release And Arrival"

See next page.

BP-A714.056
APR 03

NOTICE OF RELEASE AND ARRIVAL

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

Inmate Name	Reg No. : _____ FBI No. : _____ _____ : _____ (Misc No.)	Institution/Address
Release Date	Release Method	
Public Law Days	Supervision to follow release: (if yes, advise inmate of Obligation to Report for Supervision) _____ Yes (_____ Years _____ Months) _____ No	

RELEASED TO: (Check one)

_____ Community

Transportation arranged to : _____
(City and State)

Method of transportation : _____
(Name of common carrier or other)

Date of expected arrival at residence : _____

_____ Detainer

Detaining Agency : _____

Agency Address: _____

SUPERVISION JURISDICTION(S)

Sentencing District

Chief/Director : _____
Supervision Agency : _____
District : _____
Address : _____
_____
Phone : ( ) _____

District of Residence (for relocation cases)

Chief/Director : _____
Supervision Agency : _____
District : _____
Address : _____
_____
Phone : ( ) _____

Address of proposed residence:
_____
_____
_____

DNA STATUS

DNA sample required:	If YES date sample taken	DNA Number
_____ Yes _____ No		

Obligation to Report for Supervision: If you were sentenced to, or otherwise required to serve, a term of supervision, this term begins immediately upon your discharge from imprisonment, and you are directed to report for supervision within 72 hours. If you are released from a detaining authority, you shall report for supervision within 72 hours after your release by the detaining authority. If you can not report for supervision in the district of your approved residence within 72 hours, you must report to the nearest U.S. Probation Office for instruction. Failure to obey the reporting requirements described above will constitute a violation of release conditions.

Inmate's Signature (file copy only)

Distribution: Inmate Central File (Section 5), Inmate, Chief Supervision Officer in Sentencing District, Chief Supervision Officer in District of Residence, and U.S. Parole Commission (if applicable)

(This form may be replicated via WP)

This form replaces BP-S714 dtd FEB 02

APPENDIX CC

Federal Probation/Supervised Release: Standard Conditions

STANDARD CONDITIONS— The list of "Standard Conditions" below—while technically discretionary (not required)— are added by the judge in almost every case of Supervised Release, as recommended by the U.S. Sentencing Commission, the agency that oversees federal sentencing guidelines.[1156]

You will likely be ordered to follow most if not all of the following rules (conditions), or something very similar to these:

1. You cannot leave the limits of your judicial district (meaning the area that the court has jurisdiction—i.e. the "Southern District o California") without written permission from the court or your probation officer.
2. You must file a written report with your probation officer within the first 5 days of each month, or as directed by your probation officer.
3. You must truthfully answer any questions and follow any instructions that your probation officer asks of you.
4. You must meet your family responsibilities, primarily paying any court-ordered child support or support for the parent with whom your child is living.
5. You must work regularly at a lawful occupation, unless your U.S. probation officer excuses you for school, training, or other reasons the officer finds acceptable.
6. You must notify your probation officer at least 10 days before you change your address (some officers will require more or less notice, so check your conditions).
7. You cannot drink alcoholic beverages to excess. You cannot use or distribute illegal drugs, or frequent places where others use or distribute drugs.
8. You cannot associate with people engaged in criminal activity. (This means you cannot hang out with or spend time with people who are committing crimes.)
9. You cannot associate with anyone convicted of a felony unless your U.S. probation officer gives you permission to do so. (Again, this means that unless your probation officer says differently, you are not allowed to hang out with or spend time with someone who has been convicted of a felony. Just spending time with someone who has been convicted of a felony can be considered a violation of your probation, even if you were not doing anything else wrong.)
10. You must let your probation officer to visit you any time at home or elsewhere.
11. You must let your probation officer to take any contraband that he or she finds in plain view around you.
12. You must get in touch with your U.S. probation officer within 3 days (72 hours) if you're arrested or questioned by law enforcement (again, some officers will require you to report faster, so check your conditions).
13. You cannot serve as an informant to law enforcement without court permission.
14. As directed by your U.S. probation officer, you must notify other people about any risks that your criminal record, personal history or characteristics might pose; and you must allow your U.S. probation officer to notify people of any risks posed by your criminal record, personal history or characteristics.
15. You must pay any court-ordered "special assessment" and fines, and follow any court-ordered payment plan set up for you.
16. You must notify your U.S. probation officer if there is any significant change in your income or economic circumstances which would impact how much you can pay towards any unpaid restitution, fines, or special assessments (NOTE: this is a mandatory condition for people on federal probation, and a recommended "standard condition" for people on Supervised Release).

[1156] See 18 U.S.C. § 3583; U.S.S.G. § 5D1.3(b)-(d) (Standard conditions" are set forth in U.S.S.G. § 5D1.3(c)).

APPENDIX DD

Federal Probation/Supervised Release: Discretionary Conditions

WHAT ADDITIONAL DISCRETIONARY CONDITIONS MAY I HAVE TO FOLLOW ON SUPERVISED RELEASE?

If the legal standards are met (refer to PG. 225), the judge may order additional discretionary conditions on your Supervised Release.

As discussed, the Standard Conditions listed on PG. 223 above are almost always added.

The following discretionary conditions may also be added (all but one of these is the same as those listed under federal probation, PG. 230):

1. Require you to support your dependents and meet other family responsibilities;
2. Require that you make restitution to a victim of the offense under section 3556
3. Require that you give notice (ordered pursuant to the provisions of section 3555) to the victims of the offense;
4. Require that you be employed or be pursuing educational/vocational training to prepare you for suitable employment;
5. Prevent you altogether from working in a specified occupation, business, or profession with a reasonably direct relationship to the conduct underlying your commitment offense (OR prevent you from working in a specified occupation, business, or profession only to a certain degree/under stated circumstances);
6. Forbid you from going to specified kinds of places;
7. Forbid you from associating with specified persons;
8. Forbid you from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;
9. Forbid you from possessing a firearm, destructive device, or other dangerous weapon;
10. Require that you get medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency (as specified by the court
11. Require that you live in a specified institution foe medical, psychiatric, or psychological treatment[1157]
12. Require that you remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense,[1158] during the first year of the term of probation or supervised release (this is known as intermittent confinement);[1159]
13. Require you to live at a community corrections facility (including somewhere maintained by or contracted with the Bureau of Prisons), or attend a program at such a community corrections facility, for all or part of the term of probation;
14. Require you to work in community service as directed by the court;
15. Require you to live in a specified place or area, or prevent you from living in a specified place or area;
16. Require you to remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
17. Require you report to a probation officer as directed by the court or the probation officer;
18. Allow a probation officer to visit you at your home or elsewhere as specified by the court;
19. Require you to quickly notify your probation officer, or answer your P.O.'s questions, about any change in address or employment;
20. Require you to quickly notify your probation officer if you are arrested or questioned by a law enforcement officer;
21. Require you to stay at home/where you live during non-working hours, and require you to be monitored by telephonic or electronic signaling devices to track you and make sure you are at home during these times.[1160] However, if you were sentenced to a term of incarceration, this condition cannot be imposed on you.[1161] This condition can only be used as an alternative to incarceration.[1162]

[1157] 18 U.S.C. § 3563(b).
[1158] 18 U.S.C. § 3583(d); U.S.S.G. § 5F1.8.
[1159] 18 U.S.C. § 3563(b)(10) (known as "intermittent confinement"). See also U.S.S.G. § 5F1.8, which states that intermittent confinement may be imposed as a condition of probation during the first year of federal probation. See 18 U.S.C. § 3563(b)(10). It may be imposed as a condition of supervised release during the first year of supervised release, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. § 3583(e)(2) and only when facilities are available. See 18 U.S.C. § 3583(d).
[1160] 18 U.S.C. § 3563(b).
[1161] This is not true of Supervised Release. That is, you can be convicted of a crime, sentenced to a term of imprisonment, and be ordered to serve an additional period of time on house arrest as a condition of Supervised Release.



22. Require that you obey any court order or other government administrative order that requires you to pay for support/maintenance of a child or to both the child and parent with whom the child is living;
23. Deport you if you are "deportable" by law;
24. Satisfy any other court-imposed conditions;[1163] and
25. Finally, there are additional "special conditions" that are discretionary for particular kinds of cases under Supervised Release:

a) If you are a noncitizen subject to deportation by law:
   i) The court may order you deported and that you remain outside the U.S. as a condition of your Supervised Release, and may order that you are handed over to an authorized immigration official for such deportation.

b) If you are required to register as a Sex Offender:
   i. If your conviction is for a sex offense, the judge will consider imposing the following special conditions:
      1. A search at any time, with or without a warrant, of your person, any property, your house/residence, vehicle, papers, computer, or other electronic/data devices or media, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct, and by any probation officer lawfully carrying out his/her function of supervision.[1164]
      2. Require you to participate in a program for the treatment and monitoring of sex offenders;[1165]
      3. Limit your use of a computer if one was used as part of your commitment offense;
      4. Require you to submit to random, warrantless searches of your person, residence, and computers;[1166]
      5. Residency Restrictions (meaning there will be certain places you cannot live);
      6. Contact Restrictions (meaning there will be certain people you cannot have contact with);
      7. Movement Restrictions (meaning there will be certain places you will not be able to go);
      8. Employment/Occupational Restrictions (meaning there will be certain types of jobs you cannot have);[1167]
      9. Polygraph and/or Penile Plethysmograph Testing;[1168]
      10. Tracking Conditions; *and*
      11. Restrictions on the Possession of Certain Materials (meaning there will be certain things you cannot have on your person or in your home)[1169]
   ii. If you were convicted of a sex offense, you should ask about any special conditions that apply to you as they differ slightly among jurisdictions and judges. If you were convicted of a federal sex offense, you most likely will have to follow some version of the above conditions.

[1162] 18 U.S.C. § 3563(b)(19) (2008). This is because if you are sentenced to a term of incarceration, you cannot receive a sentence of probation. Rather, you would receive a term of supervised release following imprisonment as part of your sentence.
[1163] 18 U.S.C. § 3563(b).
[1164] 18 U.S.C. § 3583(d).
[1165] See U.S.S.G. § 5D1.3(d); Jennifer Gilg, The Fine Print: Strategies for Avoiding Restrictive Conditions of Supervised Release, http://www.fd.org/docs/select-topics---common-offenses/fine_print.pdf.
[1166] See U.S.S.G. § 5D1.3(d); Jennifer Gilg, The Fine Print: Strategies for Avoiding Restrictive Conditions of Supervised Release, http://www.fd.org/docs/select-topics---common-offenses/fine_print.pdf.
[1167] See also Defender Services Office, The Fine Print: Strategies for Avoiding Restrictive Conditions of Supervised Release, http://www.fd.org/docs/select-topics---common-offenses/fine_print.pdf, pp. 3-6.
[1168] See D. Richard Laws, Penile Plethysmography: Will We Ever Get It Right? in Sexual Deviance: Issues and Controversies 82, 85 (Tony Ward, D. Richard Laws & Stephen M. Hudson eds., Sage Publications, Inc. 2003). Penile Plethysmograph Testing (PPG) is a procedure that uses a gauge to measure the change in a man's penis size. Courts sometimes proscribe PPG. as a condition of sex offender treatment. See also Defender Services Office, The Fine Print: Strategies for Avoiding Restrictive Conditions of Supervised Release, http://www.fd.org/docs/select-topics---common-offenses/fine_print.pdf, pp. 3-6;
[1169] See also Defender Services Office, The Fine Print: Strategies for Avoiding Restrictive Conditions of Supervised Release, http://www.fd.org/docs/select-topics---common-offenses/fine_print.pdf, pp. 3-6.

APPENDIX EE

List Of Factors Federal Judges Consider When Determining Whether To Let Someone Off Probation Early

Here is the full list of factors that the judge may consider when deciding whether to let you off probation early:

- Whether or not your Probation Officer or the Prosecutor support your request;
- The nature and seriousness of the crime you were convicted of;
- Your criminal history and/or mental illness history;
- Whether the judge believes you are a threat to the public;
- Whether the judge believes you have been sufficiently punished;
- Whether you have completed any substance abuse treatment or rehabilitation programs;
- How your sentence compares to the federal sentencing guidelines recommended sentence;
- U.S. Sentencing Commission policy statements;[1170]
- Whether you've paid restitution to the victims.[1171]

[1170] In 2011, the Sentencing Commission issued a policy statement informing judges that they may let former narcotics abusers from supervised release early, if that person has successfully completed a treatment program. See United States Sentencing Commission, 2013 Guidelines Manual, http://www.ussc.gov/guidelines-manual/2013/2013-5d12. See also 18 U.S.C. § 3583(e)(1)-(2).
[1171] See 18 U.S.C. § 3553(a)(1)-(7).

APPENDIX FF

Federal Crime Classes

Per 18 U.S. Code § 3559:

An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is:

(1) Life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) Twenty-five years or more, as a Class B felony;

(3) Less than twenty-five years but ten or more years, as a Class C felony;

(4) Less than ten years but five or more years, as a Class D felony;

(5) Less than five years but more than one year, as a Class E felony;

(6) One year or less but more than six months, as a Class A misdemeanor;

(7) Six months or less but more than thirty days, as a Class B misdemeanor;

(8) Thirty days or less but more than five days, as a Class C misdemeanor; or

(9) Five days or less, or if no imprisonment is authorized, as an infraction.

APPENDIX GG

Sample Certificate Of Supervised Release[1172]

U.S. Department of Justice
United States Parole Commission

CERTIFICATE OF SUPERVISED RELEASE

District of Columbia Offender

Having determined that [redacted], Register No. [redacted], (DCDC No. [redacted]), is to be released to supervised release for a term of **36 months** upon release from imprisonment, the United States Parole Commission (the "Commission") ORDERS that the conditions listed in this certificate apply during that term of supervised release.

Given under the hand and the seal of the Commission on August 28, 2013.

UNITED STATES PAROLE COMMISSION
Aug 28 2013 1:42 PM

X April Brown
April Brown

By: Brown, April (USPC), Parole Action Review Specialist

ACKNOWLEDGMENT OF CONDITIONS

I have read, or had read to me, the conditions that are listed on this CERTIFICATE OF SUPERVISED RELEASE. I have received a copy of this CERTIFICATE OF SUPERVISED RELEASE. I fully understand the conditions that have been imposed upon me and know that if I violate any of those conditions I may be sent back to prison.

CONSENT TO DISCLOSURE OF DRUG/ALCOHOL TREATMENT INFORMATION

By signing this CERTIFICATE OF SUPERVISED RELEASE, I consent to unrestricted communication between any facility administering a drug or alcohol treatment program in which I am or will be participating, on the one hand, and the Commission and the office responsible for supervising me, on the other hand. I consent to disclosure by such facility to the Commission and the office responsible for supervising me of any information requested related to my supervision, and the disclosure by the Commission and the office supervising me to any agency that requires such information for the performance of an official duty. This consent is irrevocable until the end of the term of supervised release.

Name Reg. No.

Witnessed: Name and Title Date

[redacted] -3- Clerk: AB/OPER

[1172] Courtesy of the Public Defender Service for the District of Columbia.

GENERAL CONDITIONS

1. A. You must go directly to Washington, D.C. and appear in person at the Intake Office of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA), 300 Indiana Avenue, N.W., Washington, D.C. 20001. If you are unable to appear in person at that office within three days of release, you must appear in person at the United States Probation Office nearest to you and follow the instructions of the duty officer.
   B. If you are not released to the community after your parole, you must follow the instructions in 1.A. above when you are released to the community.
2. You must not leave the Washington, D.C. metropolitan area without the written permission of the officer supervising you. The Washington, D.C. metropolitan area consists of the District of Columbia, Prince Georges and Montgomery Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the Cities of Alexandria, Fairfax, and Falls Church in Virginia. For the purpose of applying all conditions of release, "the officer supervising you" includes any supervision officer assisting, substituting for, or acting on behalf of the officer assigned to your supervision.
3. You must, between the first and third day of each month, make a written report to the officer supervising you. In addition, you must meet with the officer supervising you at such times and in such a manner as that officer directs, and provide such information as that officer requests. All information that you provide to the officer supervising you must be complete and truthful.
4. You must notify the officer supervising you within two days of (A) an arrest or questioning by a law-enforcement officer, (B) a change in your residence, or (C) a change in your employment.
5. You must permit the officer supervising you to visit your place of residence and your place of business or employment.
6. You must permit the officer supervising you to confiscate any material that officer believes may be contraband and that is in plain view in your possession, including in your residence, place of business or employment, and vehicle.
7. You must submit to a drug or alcohol test whenever ordered to do so by the officer supervising you.
8. You must not violate any law and must not associate with someone else who is violating any law.
9. You must not possess a dangerous weapon, which includes ammunition.
10. You must not drink alcohol to excess and must not illegally use or possess a controlled substance. You must not frequent a place where you know a controlled substance is illegally used or distributed.
11. You must not associate with a person who has a criminal record without permission from the officer supervising you.
12. You must not enter into an agreement to act as an informant or undercover agent for a law-enforcement agency without permission from the Commission.
13. You must make a diligent effort to work regularly, unless excused by the officer supervising you, and to support any legal dependent.
14. You must make a diligent effort to satisfy any fine, restitution order, court costs or assessment, or child-support or alimony payment to which you are subject. You must provide financial information relevant to the payment of such a financial obligation that is requested by the officer supervising you. If you are unable to pay such a financial obligation in one sum, you must cooperate with the officer supervising you to establish an installment-payment schedule.
15. If your term of supervised release was imposed because of a conviction for a domestic-violence crime, and that conviction is your first conviction for such a crime, you must, as directed by the officer supervising you, attend an approved offender-rehabilitation program if such a program is readily available within a 50-mile radius of your residence.
16. You must comply with any applicable offender registration law, such as sex-offender or gun-offender registration laws.
17. You must provide a DNA sample if the officer supervising you determines that collection of such sample is required by law.
18. You must participate in an Employment Readiness Program if so directed by the officer supervising you.
19. If you are being supervised by CSOSA, you must submit to the sanctions imposed by the officer supervising you within the limits established by an approved schedule of graduated sanctions.
20. If so directed by the officer supervising you, you must notify a person of your criminal history or characteristics to inform that person of a risk of harm.



SPECIAL CONDITIONS

You shall be subject to the Special Drug Aftercare Condition that requires that you participate, as instructed by your Supervision Officer, in an approved inpatient or outpatient program for the treatment of narcotic addiction or drug dependency. The treatment program may include testing and examination to determine if you have reverted to the use of drugs. You shall abstain from the use of alcohol and all other intoxicants during and after the course of treatment. If so instructed by a Bureau of Prisons institutional employee or your Supervision Officer, you shall reside in, and participate in a program of, the Re-Entry and Sanctions Center until discharged by the Center Director.

In addition, you shall participate in and complete anger management counseling as directed by your Supervision Officer.



APPENDIX HH

Federal Supervised Release: Term Length Chart

Class of Offense (Sentence Length)	Length of Time on Supervised Release
Class A Felony (life imprisonment or death)	2 (minimum)—5 (maximum) years
Class B Felony (25 years or more)	2 (minimum)—5 (maximum) years
Class C Felony (10 up to 25 years)	1 (minimum)—3 (maximum) years
Class D Felony (5 up to 10 years)	1 (minimum)—3 (maximum) years
Class E Felony (1 year up to 5 years)	1 year maximum
Class A Misdemeanor (6 months up to 1 year)	1 year maximum
Class B Misdemeanor (30 days—6 months)	1 year maximum
Class C Misdemeanor (6—29 days)	1 year maximum
Infraction (5 days or less, or no prison time authorized)	(S/R cannot be imposed; Probation can be imposed for up to one year)

You have the best shot of being let of supervised release early if:

- You have completed 2/3 of your supervised release term (or at the very least ½ way through),
- You have had no violations,
- You have complied with all the terms of your supervised release,
- You have paid all restitution and fines, and
- Your probation officer agrees that you should be let off early[1173]

[1173] See Federal Defenders of New York, Supervised Release, http://federaldefendersny.org/information-for-client-and-families/supervised-release.html.



APPENDIX II

Federal Supervision: Release Plans

Release plan, creating a plan for payment of restitution and fines, investigation of your plan and release.

STEP 1: **Release Plan**

Once you have a release date from the Parole Commission (USPC), you must complete a satisfactory plan for parole supervision to actually get released. The Regional Commissioner may change your date of release (earlier or later) onto parole to allow more time for release planning. At most, the Regional Commissioner can delay your release onto parole for 120 days; otherwise, you have the right to a hearing if the Regional Commissioner wants to push back your release date more than 120 days.[1174]

Generally, you are required to have included in your release plan:

1. Availability of legitimate employment;
2. An approved residence for the prospective parolee; and
3. Availability of necessary aftercare if you are ill or will require special care.[1175]

STEP 2: **Unpaid Fines & Restitution**

Your release onto parole might also be delayed if you still owe court-ordered fines or restitution.[1176] When you still have fines or restitution to pay, a reasonable plan for payment, or a performance of services if ordered by the court, will be included in your parole release plan, where feasible.[1177]

STEP 3: **Investigation Phase**

Your U.S. Probation Officer will do an investigation to make sure that the person's release plan is appropriate. This investigation will start with the probation officer asking you questions about your release plan. The probation officer will then follow up and verify your answers. For example, if you told the probation officer that your approved residence did not have any persons with a felony record, the probation officer will follow-up to make sure this is true.

STEP 4: **Release**

After the Parole Commission approves your release plan, and a U.S. Probation Officer completes an investigation, you will be released on the date set by the Parole Commission (unless there is misconduct or some other reason leading to a change in the date).

[1174] 28 C.F.R. § 2.28.
[1175] 28 C.F.R. § 2.33(a).
[1176] 28 C.F.R. § 2.7.
[1177] 28 C.F.R. § 2.33.

APPENDIX JJ

Appeals to the National Appeals Board

Below is the process for filing an appeal with the National Appeals Board to challenge and decision to grant, rescind, deny or revoke federal parole:

STEP 1: You may send a written appeal to the National Appeals Board challenging any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole.

- NOTE: If you want to appeal a decision denying your parole on the date of parole eligibility, you instead need to submit a "petition of reconsideration" to the USPC.[1178]

STEP 2: Use the proper form (Parole Form I-22)[1179] and file your written appeal within 30 days from the date of entry of the decision that you are appealing. If you don't file within 30 days of the decision, you lose your right to challenge/appeal it.

OTHER REQUIREMENTS OF YOUR APPEAL:

1. The appeal must include an opening paragraph that briefly summarizes the legal grounds for the appeal.
2. **You should then list each ground separately and clearly explain the reasons or facts that support each ground.**

If you're appeal doesn't meet these requirements, the USPC may return it to you, in which case have 30 additional days from the date the appeal is returned to submit an appeal that meets the above requirements.

LEGAL GROUNDS FOR YOUR APPEAL CAN INCLUDE:

1) That the guidelines were wrongly applied in your:
   a) Severity rating;
   b) Salient factor score;
   c) Time in custody;
2) That a decision outside the guidelines was not supported by the reasons or facts as stated;
3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or your probability of success on parole) justify a different decision;
4) That a decision was based on wrong information, and the correct facts justify a different decision;
5) That the USPC did not follow correct procedure in deciding the case, and a different decision would have resulted if it would have followed the right procedure;
6) There was important information that you did not know at the time of the hearing;
7) There are compelling reasons why a more lenient decision should be given on grounds of compassion.[1180]

[1178] See 28 C.F.R. §§ 2.17; 2.27
[1179] Parole Form I-22, available at http://www.justice.gov/sites/default/files/uspc/legacy/2013/02/26/formi22.pdf.
[1180] 28 C.F.R. § 2.26.

APPENDIX KK

Federal Parole: Revocation Hearings

YOUR RIGHTS DURING A FEDERAL PAROLE REVOCATION HEARING

The purpose is to determine whether you have violated the conditions of your release and, if so, whether your parole or mandatory release should be (1) revoked (taken away) or (2) reinstated (where you continue on parole as you were).[1181]

Know Your Rights!

1) Present Evidence: You may present evidence at the hearing. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitive statements or evidence.
    a) The hearing officer or examiner must disclose all evidence being used to make the revocation decision before or during the revocation hearing. The Hearing Officer will let you examine the document during the hearing, or where appropriate, read and summarize the document for you.
2) Present Witnesses: You may present witnesses at the revocation hearing. At a local revocation hearing only, the USPC may upon your request or on its own motion, ask people to attend who can give statements that will help inform the decision of whether or not to revoke your federal parole.[1182]
    a) You have the right to question and cross-examine those witnesses, and be present for this, unless the presiding hearing officer or examiner panel finds good cause for you to not be there.
3) Ask for an attorney: You have the right to an attorney. You do not have a constitutional right to have an attorney at your parole revocation hearing, but you will most likely qualify for an attorney if you cannot afford one.[1183]
4) Appeals: You may appeal a revocation decision.[1184]

If you agree to the decision, the Commission may make a revocation decision without a hearing if:

1) The alleged violation would be graded no higher than Category Two under the guidelines at § 2.20;
2) The alleged violation is in any category under the guidelines at § 2.20 and the decision imposes the maximum sanction authorized by law; OR
3) You have already served sufficient time in custody for the violation, but that forfeiture of time on parole is necessary to provide an adequate period of supervision.[1185]

[1181] 28 C.F.R. § 2.55.
[1182] 28 C.F.R. § 2.51.
[1183] 18 U.S.C. § 3006(a)(1)(E).
[1184] 28 C.F.R. § 2.50; see also 28 C.F.R. §§ 2.26; 2.27.
[1185] 28 C.F.R. § 2.66.

APPENDIX LL

Referrals for Parole Consideration Hearings before the BPH

- UnCommon Law is a nonprofit in Oakland that offers sliding-scale representation for parole board hearings. Here is their contact information:

  Keith Wattley, Managing Attorney
  UnCommon Law
  220 4th Street, Suite 103
  Oakland, CA 94607

  Keith Wattley is also the director of the Berkeley Law Post-Conviction Advocacy Project (P-CAP), which trains law students to assist with parole hearings for individuals serving life sentences.

- Tracy Lum provides parole hearing assistance at a reasonable rate. Here is her contact information:

  Tracy Renee Lum
  46 S. Del Puerto Avenue, Suite B #106
  Patterson, CA 95363
  (209) 894-7794
  trlum@hotmail.com

- If you are incarcerated near the San Francisco Bay Area , Rashida Harmon is an attorney who provides parole representation at a reasonable cost. Here is her contact information:

  Rashida Harmon
  Harmon Legal
  2323 Broadway Street
  Oakland, CA 94612

  (510) 326-4993
  rashida@harmon.legal

- Bay Area Legal Incubator (BALI), is a collaboration between the Alameda County Bar Association and five Bay Area law schools. It's an accelerator to help new attorneys get up and running with legal practices in which they are committed to providing affordable legal services. They practice in a wide range of areas including post-conviction relief and parole hearings. Many of them are willing to take cases throughout the state.

  The best way to submit an inquiry is via their website: **https://www.bayarealegalincubator.org/**

  If you are currently incarcerated, you can have a loved one reach out on your behalf. Just make sure that they make it clear in the website form that they are submitting the inquiry for you and include a note about how best to follow up with you.

APPENDIX MM

Excerpt from Human Rights Watch's "Youth Offender Parole Guide"— Checklist to Determine Who is Eligible for a Youth Offender Parole Hearing under SB 260 & SB 261

WHO is eligible for a Youth Offender Parole Hearing?

If you can check each of these boxes as true for you, you are eligible. PC 3051(h)

☐ I was under 26 (meaning, age 25 or younger) at the time my crime occurred.
- ➢ It doesn't matter when you were arrested, convicted, or came to prison.
- ➢ What matters is whether you were under 26, when the crime happened.
- ➢ You must have been **UNDER** the age of 26 – if you were 26 when the crime occurred, you are not eligible.

☐ I do NOT have an LWOP (life <u>without</u> parole) sentence for a crime committed when I was age 18 or older. (PC 190.5).
- ➢ If you had LWOP, but were resentenced under another law, you are eligible.
- ➢ If you were under age 18 (meaning, age 17 or younger) at the time of the crime and got LWOP, you are eligible for a youth offender parole hearing during your 25th year of incarceration.

☐ I do NOT have a "One Strike" life sentence for certain sex offenses (PC 667.61).

☐ I do NOT have a "second-strike" sentence or a "third-strike" sentence based on a prior serious or violent felony. (PC 667(b-i) or 1170.12).
- ➢ You are disqualified ONLY IF you were specifically sentenced under PC 667 (b-i) or PC 1170.12. If you have prior felonies that were eligible for strikes, but you were not sentenced under 667(b-i) or 1170.12, you are still eligible.
- ➢ If you had a sentence under PC 667 (b-i) or PC 1170.12, but then you were resentenced to something different, you are eligible.
- ➢ You should talk to an attorney if you are disqualified for this reason.

☐ AFTER I turned 26, I did NOT commit a crime for which I was **<u>convicted</u>** for which I got a life sentence ("L").
- ➢ *A 115 or other CDCR write-up is not a conviction. You are disqualified for this reason only if you went to court and were <u>convicted and sentenced</u> to a life sentence.*

☐ AFTER I turned 26, I did NOT commit a crime for which I was **<u>convicted</u>** that has "malice aforethought" as a necessary element. This includes, but is not limited to, the following crimes:
- Murder in the first degree or second degree (PC 187)
- Attempted murder (PC 664/187), conspiracy to commit murder (PC 182/187), solicitation to commit murder (PC 653f(b))
- Assault with a deadly weapon or assault that is likely to produce great bodily injury committed while you are serving a life sentence (PC 4500)

➢ *A 115 or other CDCR write-up is not a conviction. You are disqualified for this reason only if you went to court and were <u>convicted for one of these crimes.</u>*

IMPORTANT: If you were age 25 or younger at the time of the crime, but have a sentence or new crime that disqualifies you, the Youth Offender Parole law will not change the date of your parole hearing. PC 3051(h). However, when you do have a parole hearing, the Board should give "great weight" to your youthfulness at the time of the crime. PC 4801. You should talk to your attorney about this before your hearing.

APPENDIX NN

Form to Contest Disqualification by BPH as a "Youth Offender" under California Penal Code section 3051

Form to contest disqualification by BPH as a "youth offender" under California Penal Code section 3051.

TO CONTEST A PC § 3051 YOUTH OFFENDER DISQUALIFICATION, PLEASE COMPLETE THE FORM BELOW AND MAIL IT TO: **BOARD OF PAROLE HEARINGS, P.O. BOX 4036, SACRAMENTO, CA 95812**

PART ONE: What is the inmate's date of birth? _____

PART TWO:

1. For what **crime** did the inmate receive the longest single sentence (not including any enhancements)? _____
   What was the length of the sentence for only that **crime**? _____
2. For what **single enhancement** did the inmate receive the longest single sentence? _____
   What was the length of the sentence for only that **enhancement**? _____

If the sentence length in #1 is longer, then the CRIME listed in #1 is the "controlling offense."
If the sentence length in #2 is longer, then the ENHANCEMENT listed in #2 is the "controlling offense."

PART THREE:	**CIRCLE YOUR ANSWER**:	
Did the inmate commit the "controlling offense" after turning 23 years old?	**NO** (If **NO**, continue to Part Four)	**YES** (**NOTE**: if you circled "YES," the inmate does not qualify as a "youth offender")

PART FOUR:	**CIRCLE YOUR ANSWER**:	
Was the inmate sentenced for the "controlling offense" under three strikes?	**NO** (If **NO**, continue to Part Five)	**YES** (**NOTE**: if you circled "YES," the inmate does not qualify as a "youth offender")

PART FIVE:	**CIRCLE YOUR ANSWER**:	
Did the inmate commit any crimes after turning 23 for which a court sentenced him/her to a life term?	**NO** (If **NO**, continue to Part Six)	**YES** (**NOTE**: if you circled "YES," the inmate does not qualify as a "youth offender")

PART SIX:	**CIRCLE YOUR ANSWER**:	
Did the inmate commit any of the crimes after turning 23 for which "malice aforethought" is a necessary element of the crime, as defined in the penal code?	**NO** (If **NO**, please submit this completed form to the Board of Parole Hearings for reconsideration, which may or may not result in a different determination.)	**YES** (**NOTE**: if you circled "YES," the inmate does not qualify as a "youth offender")

INMATE'S NAME: _____ **CDCR #**: _____ **DATE**: _____

PERSON COMPLETING FORM: _____ **SIGNATURE**: _____
(Print name of Inmate or Legal Representative)

HOUSING



Housing is one of the most immediate and important parts of a strong reentry. In the HOUSING CHAPTER, you will learn more about your housing options and legal rights; what kind of housing you can and cannot get into because of your criminal record; and things you can do if your legal rights are violated.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information because we know that people who are currently or formerly incarcerated often have difficulty getting legal information, and we cannot provide specific advice to every person who requests it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure whether the law has changed and applies to your situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.

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WHAT WILL I LEARN IN THE HOUSING CHAPTER?

- **Your housing options in reentry—both in the short-term and long-term**
- **The different between private and government-assisted housing, and how this affects your rights**
- **What kind of housing you can and cannot get because of your criminal record**
- **How to put your best foot forward in applying for housing**
- **Options for what you can do if you believe you were *illegally denied* housing**



I. INTRODUCTION

This Chapter explains common housing issues and questions for people with criminal records and the friends and family who live with them. This section will give you information about:

1. Your housing options in reentry;
2. What kind of housing you can and cannot live in based on your criminal record;
3. How to put your best foot forward in applying for housing; and
4. What you can do if you believe you were illegally denied housing.

KEY TERMS IN THE HOUSING CHAPTER

Public Housing Authority (PHA)—a government organization that assists with the development and/or operation of housing for low-income individuals and families. There is a PHA in most counties across California.

Private Owner/Landlord—is the owner of a house or apartment that is rented or leased.

Owner of Government-Assisted Housing—is a private owner/landlord who receives some form of government assistance to make housing more affordable for certain categories of people.

Lease/Rental Agreement—is a legal document that explains the terms under which you are renting your housing.

Background Checks ("Tenant Reports")— is the process of looking up and compiling criminal, commercial, and financial records of an individual.

Credit Report—is a detailed report of your credit history prepared by a credit bureau and used by a lender or homeowner to determine your creditworthiness; it includes your personal data (current and previous addresses, social security number, employment history), detailed account information (current balances, payment amounts, payment history), inquiries into your credit history, etc.

Eviction ("Unlawful Detainer")—action by a landlord that forces you to leave the premises through a legal process, as for non-payment of rent.

II. LOOKING FOR & IDENTIFYING GOOD HOUSING OPTIONS

WHAT WILL I LEARN?

- **Some short-term options for housing**
- **Some long-term options for housing**
- **The difference between *privately run* & *government-assisted* housing**
- **Recommendations for finding government-assisted housing**
- **Recommendations for finding housing for people with special needs, such as women and children, domestic violence survivors, seniors, veterans, people recovering from addiction, and 290 sex offender registrants**
- **Your rights—and how they are different—if you are applying to privately run vs. government-assisted housing**
- **Your rights if you want to move in with friends and family**
- **How conditions of parole, probation, or other forms of supervision can affect where you can live and who you can live with after release**
- **How to challenge denials from housing—whether it's private or government-assisted—based on your criminal record**

WHAT ARE THE FIRST STEPS I SHOULD TAKE IN MY HOUSING SEARCH?

Here are the main types of housing you may consider after getting out of prison or jail:

1. Short-term housing (staying short-term with a family member or friend, staying in transitional housing, staying in a shelter or other emergency housing)
2. Long-term permanent housing (finding an apartment, moving in with family or friends permanently)
3. Special needs housing (which could be short- or long-term)
4. Government-assisted housing
5. Below we walk through some steps to help you figure out your housing plans.

STEP 1: **SET UP SHORT-TERM HOUSING PLANS.**

First, you should figure out what type of housing is right for you in the short term, and where you will be allowed to live by probation or parole (or which ever type of supervision you are on) when you first get out. See the PAROLE & PROBATION CHAPTER, beginning on PG. 125 to learn about how your rules (called "conditions") of supervision affect where you can live after release. There is more information about different types of short-term housing beginning on PG. 343.

STEP 2: **GET YOUR ID.**

Most housing programs will require proof of who you are, your age, and any income you receive. (Go to the BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER, beginning on PG. 22, to learn how to get various forms of identification documents.)

STEP 3: **SET UP LONG-TERM HOUSING PLANS.**

Later on, you can figure out what type of housing is right for you permanently—we call this "long-term housing." You need to find housing that you can *afford*, that you *are eligible for* (meaning you meet the requirements to be accepted), and that *meets your personal needs*.

Long-term, permanent housing might mean living with family or friends; living in an affordable apartment or housing unit run by a Public Housing Authority (PHA) or a private landlord; or living in an assisted-living facility for people with special needs (like seniors, veterans, women and children, people with disabilities, or people escaping domestic violence, 290 sex offender registrants). There is more information about different types of short-term housing beginning on PG. 343. For more information For more information on housing for special needs, see PG. 346.

HELPFUL TIPS AS YOU LOOK FOR HOUSING

- KNOW YOUR RIGHTS as a person with a criminal record *before* you apply for housing! Depending on who owns and runs the housing (private vs. government-assisted—see PG. 353), you will have different rights in the process.
- IT'S ALWAYS A GOOD IDEA TO FIND HELP, if you can. Find an attorney, advocate, case manager, friend or family member, or probation/parole officer who can help you find housing. It is very important to have support in this process and throughout reentry. There is a list of helpful community resources in the back of this guide on PG. 1137 if you want ideas about where to look for help.
- FINDING HOUSING IS TOUGH BUT NOT IMPOSSIBLE—be patient and keep looking!
- SOME OF YOUR OPTIONS. Depending on whether you are currently incarcerated or already out, affordability, eligibility, and whether you are looking for short-term or long-term housing, you will have different types of housing options available to you. As you move further into your reentry, these options are likely to change over time.

CAN I FIND HOUSING WHILE I AM STILL INCARCERATED?

Yes, it is possible. First, you may want to think about (1) what you need in the short-term vs. long-term; (2) how your parole or probation (or other type of supervision) affects where you can live; and (3) whether you want to look for private housing, government-assisted housing, or both. To help with this process, read about *your housing options*, starting on PG. 341.

There are additional considerations if you plan to move in with family or friends. You will want to ask them to find out everything possible about the guest policies where they live, and/or about adding someone to their apartment lease. If the housing your family or friend lives in receives *any form of government assistance*, they may also need to contact their local Public Housing Authority (PHA) to let them know they would like to add you to the household. A list of PHAs in California and their contact information can be found here: Appendix A, PG. 403 or online here: http://www.hud.gov/offices/pih/pha/contacts/states/ca.cfm. Learn more about moving in with family and friends beginning on PG. 385.

If you want to find transitional or emergency housing, generally you or a family member, friend or advocate will have to directly write or call the housing facility to ask about what the requirements are. For a list of transitional housing programs that may accept you while you are still incarcerated, see Appendix B, PG. 409.

STAY POSITIVE!

Finding housing can be an exhausting process, but don't give up. Reach out for help. There are resources listed throughout this chapter, and also a list of legal services providers on PG. 1127. You can call Root & Rebound (510-279-4662) if you have an emergency, and we may be able to refer you someone to help.

WHAT ARE SOME STEPS I CAN TAKE IF I AM WORRIED ABOUT BECOMING HOMELESS?

An important step to avoid becoming homeless is to begin planning and identifying housing options *while you're still incarcerated* (see question above addressing this topic, PG. 342).

There are also agencies and nonprofits in the community working to help people find permanent housing and avoid/get out of homelessness. Here are some organizations that may be able to help:

- *The Public Housing Authority (PHA) in your area:* PHAs sometimes give preference to admitting homeless individuals into the Public Housing program or "Section 8" Housing Choice Vouchers. Visit the U.S. Department of Housing and Urban Development (HUD) website to find public housing authorities in your area: http://www.hud.gov/offices/pih/pha/contacts/index.cfm
- *Emergency shelters and assistance:* HUD maintains a list of organizations throughout the country that provide emergency shelter and assistance to homeless individuals (visit the following website: http://nhl.gov/homeless/hmlsagen.cfm) .
- *The National Coalition for Homeless Veterans* has an online list of organizations throughout the country that will assist homeless veterans on a variety of issues including housing (visit the following website: http://www.nchv.org/network.cfm).
- *The National Coalition for the Homeless* has links to databases related to for local service organizations, educating homeless children, transitional housing, drug and alcohol rehabilitation centers, and day shelters (visit the following website: http://www.nationalhomeless.org/resources/index.html).

WILL MY PAROLE OR PROBATION OFFICER HELP ME FIND SOMEWHERE TO LIVE?

It depends, but usually not. But it's always worth asking your supervising officer if they know of any housing resources!

If you are on California state parole:

There is very little help for housing. In some counties, some parole officers may work with local boarding houses, hotels, or motels to find you a temporary place to stay.[1186] Additionally, there could be funding from the California Department of Corrections & Rehabilitation (CDCR) for you to stay a short amount of time in transitional housing (most of those programs are run by the CDCR's Division of Rehabilitative Programs, which you can read more online at: http://www.cdcr.ca.gov/rehabilitation/what-we-do.html).

You can also ask your correctional counselor (if you're incarcerated) or your parole officer (if you are living in the community) about what types of funding exists for transitional housing while you are on state parole. If your parole officer is unable to help you find short-term, transitional or emergency housing, you may try going to an emergency shelter (see PG. 342.)

As a last resort, you may have to use your Gate Money (read more about Gate Money in the PAROLE & PROBATION CHAPTER on PG. 150) to pay for a hotel or motel, until you find a more permanent living situation.

If you are on California county-level supervision like probation, PRCS, or mandatory supervision:

Ask your probation/supervising officer about what local programs are available. Ask if they can make referrals to affordable housing agencies or nonprofits that advocate for low-income people to find housing.

If you are on federal probation, supervised release, or federal parole:

Ask your federal Probation Officer for a list of affordable housing options in the area. Federal probation officers will not normally release you from a transitional ("halfway") house unless you have a plan for permanent housing. Also, read about some of your options for long-term housing on PG. 346 of this chapter.

WHAT ARE MY HOUSING OPTIONS AFTER RELEASE?

Again, there are many different housing options out there—transitional housing programs, emergency shelters, special needs housing, assisted-living housing, living with family or friends, private apartments and houses, and apartments and houses that get government money to make them more affordable for their residents. To make it easier to plan and prepare, we suggest thinking about your housing options in two categories: (1) short-term housing and (2) long-term/ permanent housing. Also, consider whether government-assisted housing makes sense in your situation.

WHY WOULD I APPLY TO GOVERNMENT-ASSISTED HOUSING?

See PG. 354 to learn more about government assisted housing and the different rules that apply for them.

SHORT-TERM HOUSING OVERVIEW

When you are preparing for release or first get out of prison or jail, most of your housing options will be focused on short-term and transitional housing. Examples of short-term housing include: staying with a family member; staying with a friend; staying in a shelter (shelters usually offer a bed and shower for one or more nights, and sometimes offer other free services); and living in a transitional housing program.

STAYING WITH FAMILY OR FRIENDS

Here are some pros and cons to consider if you want to move in with family or friends.

PROS	CONS
If you have friends or family in the area, staying short-term with them can be an option for immediate housing. Friends and family can be supportive and useful in helping you successfully reenter the community. A few days or weeks on someone's couch or in their spare bedroom can give you enough time to go to get social services, start looking for jobs, and arrange for longer term housing. You will likely have greater independence in your life. It will be free or at a lower cost because you are splitting the rent.	If you are under supervision after your release, your housing will need to be approved by your probation/parole officer or supervising agency. Home visits by parole/probation officers, search conditions, and other restrictions don't just affect you; they also affect your host and other household members. (SEE CHAPTER ON PAROLE & PROBATION, PG. 157). If you are a guest in someone's home or apartment, your stay could cause the family living there to violate the property's guest policy if you stay beyond the time limit allowed for guests and/or you violate some other rule in the property's guest policy (see more on PG. 388).

[1186] See CAL. DEP'T OF CORR. & REHAB., Parolee Information Handbook at 6.

SHELTERS

Most shelters are free, and usually offer a bed and shower for one night or multiple nights, and sometimes services such as counseling and job-search assistance. While transitional and permanent housing options can take time to arrange, you can usually access a shelter immediately. Here are some of the main types of shelters that exist:

- **24-hour Shelters**—24-hour shelters let you to stay at night and during the day and participate in the services the shelter offers (for example: meals, counseling, and job training, just to name a few). Don't let the name mislead you—a 24-hour shelter doesn't necessarily mean you have to leave after 24 hours: in the Bay Area, for example, many 24-hour shelters have beds available for up to 30-90 days; and other shelters reserve beds for people who are participating in special programs, like a required work-program. The key is that 24-hour shelters are open day and night. Ask the specific shelter you're interested in about any other requirements or restrictions it has.
- **12-hour Shelters**—12-hour shelters let you stay for a 12-hour period overnight (usually 7:00 p.m. to 7:00 a.m.), but require you to leave in the morning.
- **Day Shelters** let you come and take advantage of their services during the day, but you can't stay overnight. Services at day shelters may include showers, meals, computer access, and optional programs like case management/support services and counseling sessions.
- **Family Shelters** have places to stay for you and the rest of your family. They tend to be 24-hour shelters (see the first type of shelter listed above).
- **Domestic Violence Shelters** take women (usually not men) who are trying to find safety from someone who is abusive. They usually have confidential addresses for the safety of the residents. Many domestic violence shelters also allow women to bring their children with them.

TRANSITIONAL HOUSING PROGRAMS

Transitional housing programs are temporary programs that offer housing and services. Keep in mind they usually have requirements you have to meet before you can move in, and there are usually waitlists.

Examples of transitional housing programs include: shared or private apartments, residential programs that allow for temporary stays (from 3 months to 2 years) at no cost or at a low cost, and sober living environments (SLE) (read more about SLEs on PG. 351). Some transitional housing programs also have services like job training, counseling, general education development ("GED") programs, and computer classes. Some transitional housing programs are for people with specific needs such as mental health support, addiction treatment and recovery (see PG. 351), or safety from domestic violence (see PG. 348).

CAN I GET INTO A TRANSITIONAL HOUSING PROGRAM IF I AM STILL INCARCERATED?

It depends on the program. Unfortunately, most post-release transitional housing programs will not let you fill out an application or get on the waitlist before your release. A few let you apply from inside prison or jail, but may have other requirements or restrictions. Go to Appendix B on PG. 409 for a partial list of transitional housing options in California that *may* accept residents who write to them from inside prison or jail.

BUT NOTE: In recent years, the CDCR has introduced several pre-release transitional housing programs designed to let people to carry out the last part of their sentence in a controlled community setting.These are *alternatives* to traditional incarceration that typically provide for greater freedom. Participants remain under the CDCR's jurisdiction and control and are NOT on parole or other post-release supervision. In that sense, these programs are very different from the posts-release housing options discussed here. For more information on CDCR-sponsored pre-release programs see PG. 345.

WHAT MAY I NEED TO GET TO BE ACCEPTED INTO TRANSITIONAL HOUSING?

It depends—each program has different requirements. You might need: identification (learn how to get different types of identification in the BUILDING BLOCKS OF REENTRY: ID & VOTING, beginning on PG. 22); proof of homelessness; proof of any income; proof of your sobriety; police clearance; to get through the waitlist; to have an interview; etc. It's best to CALL (or if you're currently incarcerated, ask a family member or friend to call, or WRITE the program a letter with your request) to find out well in advance of when you want to move exactly what you need to do and what the requirements are!

HOW CAN I SHOW PROOF OF HOMELESSNESS

For proof of homelessness, most housing providers will just need a signed statement. If the housing provider asks for further documentation, you may need to show eviction papers, a letter from a social worker, etc. Some organizations will also issue certificates of homelessness, for example:

Coalition on Homelessness
488 Turk Street
San Francisco, CA 94102
Phone: (415) 346-3740
Certificates of Homelessness are issued Mondays and Wednesdays 10 a.m.-12 p.m.

SPECIAL NEEDS HOUSING—SHORT- OR LONG-TERM

There are also housing programs for people with specific needs such as sober living environments that offer addiction treatment and recovery, safety from domestic violence, assisted living for people with disabilities, housing programs for women with children, veterans, and 290 sex offender registrants. These are often transitional housing programs that are for a short term only; others are intended to be long-term/permanent housing for people with special needs. For more information on special needs housing, see PG. 346.

PRE-RELEASE TRANSITIONAL HOUSING PROGRAMS

The term "pre-release transitional housing" refers to a group of CDCR-sponsored programs that allow certain individuals to carry out the last part of their sentence living in a regulated community environment controlled by corrections. Such programs generally provide for greater freedom than is allowed in institutional settings. Individuals living in CDCR's pre-release transitional housing are no longer incarcerated in the traditional sense, but remain under CDCR's jurisdiction and control.

Each program has a different duration, application process, and set of eligibility criteria. However, all are voluntary – meaning you must submit an application to CDCR staff if you are interested in participating –and require that you have anywhere from a month to several years left in your sentence. Thus, if you're currently incarcerated, you may wish to speak to a correctional counselor as soon as possible to find out which programs may be available to you.

WHAT TYPES OF PRE-RELEASE TRANSITIONAL HOUSING PROGRAMS DOES CDCR OFFER?

CDCR currently offers five pre-release housing programs:

1. The Male Community Reentry Program (MCRP)
2. The Custody to Community Transitional Reentry Program (CCTRP)
3. The Community Prison Mothers Program (CPMP)
4. The Female Community Reentry Facility (FCRF)
5. The Community Alternative Custody Program (ACP)

The details of each of these programs are summarized in Appendix C on PG. 411.

WHAT HAPPENS TO MY GOOD TIME CREDITS IF I SERVE THE LAST PART OF MY SENTENCE IN A TRANSITIONAL HOUSE PROGRAM?

In January 2010, California Governor Jerry Brown signed a law (SB X3-18) authorizing CDCR to reduce people's length of incarceration if they reach certain rehabilitative program milestones—a reward known as "**good time credits**". Because a person is still under CDCR custody at a pre-release transitional housing placement, any good time credits already earned should not change. In addition to applying the good time credits you have already earned toward a shorter sentence, you can continue earning credits while participating in CDCR's pre-release transitional housing programs as well.

I'M A LIFER. CAN I PARTICIPATE IN CDCR'S PRE-RELEASE TRANSITIONAL HOUSING PROGRAMS?

Lifers are **not able** to participate in pre-release transitional housing programs right now. This is because placement in these programs requires a firm sense of your release date, and the current parole system makes it difficult to know a lifer's release date in advance. The CDCR plans to roll out lifer-only transitional programs in 2017 that would closely mirror the programs described here.

ARE THERE WAITLISTS TO GET INTO THESE PROGRAMS?

As of the most recent publication of this resource, there are no waitlists to get into any pre-release transitional housing programs. However, this could change as these programs become more popular.

I HAVE CHILDREN. IF I PARTICIPATE IN THESE PROGRAMS, CAN THEY LIVE WITH ME?

The Community Prisoner Mother Program and Female Community Reentry Facility both allow children to live on site with their mothers. The Alternative Custody Program is individually tailored, but may allow children to live on site with their mothers OR fathers, or else facilitate regular visitation between parent and child. For more information, see the summaries in Appendix C **on PG.** 411.

SOME OF THESE PROGRAMS ARE GENDER-SPECIFIC. WHAT IF I IDENTIFY AS TRANSGENDER OR GENDER-VARIANT?

The CDCR has outlined its protocol for housing people who identify as trans* in Department Operations Manual (DOM) section 62080.14. If you feel your housing assignment does not match your gender identity, you must go through a diagnostic process with a doctor, then provide documentation of your diagnosis on CDCR Form 128-

C3. After you take these steps, a CDCR classification committee will review your case to determine the most appropriate institutional placement and housing assignment under the circumstances. You may also have to file a 602 grievance if you feel your housing needs are not being met. For more information on the 602 grievance process, see PG. 178.

Although the Department Operations Manual does not specifically address transitional housing placement for trans* and gender-variant people, a representative from TGI Justice Project, which advocates for currently and formerly incarcerated people who identify as transgender, gender variant, or intersex, noted that many reentry programs are not trans-friendly. If you are interested in joining a transitional housing program but have questions or concerns based on your gender identity, please contact the free Root & Rebound Reentry Legal Hotline at 510-279-4662, which operates every Friday from 9:00 a.m. to 5:00 p.m.

You can also contact the following trans* advocacy organizations. They may have more information about other potential solutions:

TJI Justice Project
370 Turk Street, #370
San Francisco, CA 94102

Trangender Law Center
P.O. Box 70976
Oakland, CA 94612-0976
Collect line: 510-380-8229

LONG-TERM HOUSING OVERVIEW

Later in your reentry, often after your stay at a short-term or transitional housing program is coming to a close, you will need to figure out what type of housing is right for you permanently. As you consider long-term and permanent housing options, you need to find housing that you can *afford*, that you *are eligible for*, and that *meets your needs*.

PERMANENT HOUSING

Permanent housing is a place that you can live in for multiple years. Examples of permanent housing include: apartments and homes that get money/assistance the federal government—though these often have long waitlists and require you to have somewhere else to live first; single-room occupancy (SRO) units where you usually have a private bedroom and bathroom, but a shared kitchen and living space; affordable apartments; and living permanently with family, friends, or other people who support you. For general tips for renters, see PG. 396 of this chapter.

SPECIAL NEEDS HOUSING—SHORT- OR LONG-TERM

Again, as mentioned under short-term housing options, there are special housing programs and units for people with specific needs such as addiction treatment and recovery, safety from domestic violence, assisted living for people with disabilities or mental health needs, housing programs for women with children, veterans, and 290 sex offender registrants These are often transitional housing programs that are for a short term only; but others are intended to be a long-term, permanent housing solution for people with special needs. See below for more details.

HOUSING FOR SPECIAL NEEDS & POPULATIONS

This section provides a brief overview of housing resources for people in reentry with special needs and who might qualify for special programs, including:

1. Women & Children (PG. 347)
2. Domestic Violence Survivors (PG. 348)
3. Seniors/ Elders (PG. 350)
4. Veterans (PG. 350)
5. People Recovering from Substance Abuse/ Addiction (PG. 351)
6. 290 Sex Offender Registrants (PG. 352)

WOMEN & CHILDREN

There are some special housing programs available only for women and their children. These programs may have other requirements (for example, that you are currently on supervision, participating in a substance abuse recovery program, etc.), and they may require a referral from CDCR or another agency.

Since there are very few of these programs and they have limited in space, you should contact the program and/or talk to your correctional counselor as soon as possible about contacting the housing program, finding out if you meet the eligibility requirements to participate, and how to get added to the waitlist if there is one.

Below are a few programs in different areas of California for reentering women and children. Please Note: This is not a complete list.

DID YOU KNOW?

70-80% of women incarcerated in California prisons are mothers, and the majority were the primary caretakers of their children before going to prison. *See* Barbara Bloom, *The Impact of California's Parole Policies on Women, Testimony Before the Little Hoover Commission* (April 22, 2004).

- Centerforce MOMS Program at Santa Rita Jail (in Alameda County, CA):
  Website: http://www.centerforce.org/programs/moms-maximizing-opportunities-for-mothers-to-succeed/
  Address: PO Box 415, San Quentin, CA 94964
  Phone: (415) 456-9980

The MOMS program is located inside Alameda County's Santa Rita County Jail. It includes an 8-week, in-custody parenting program AND a post-release case management for up to one year, including services, alumni groups, and some limited transitional housing. The program supports mothers in Santa Rita Jail during and after their incarceration. Mothers incarcerated in Santa Rita Jail who have not been convicted of violent offenses or sex offense may participate in the MOMS program.

- CAMEO House (San Francisco, CA):
  Website: http://www.cjcj.org/Direct-services/Cameo-House.html
  Address: 424 Guerro St., San Francisco, CA 94110
  Phone:(415) 703-0600

CAMEO House provides transitional housing in San Francisco for formerly incarcerated mothers with children. In addition to housing, the program provides supportive services to address a range of issues, including substance abuse, unemployment, mental health as well as help with family reunification. CJCJ's staff helps residents obtain stable housing and gainful employment within six months of their placement, although residents may remain for up to two years. The transitional housing unit includes access to communal living areas, fully equipped kitchens, bathroom facilities, and an enclosed yard area. CJCJ staffs the residence 24 hours a day, 7 days a week. CJCJ provides help to women with substance abuse issues, women with histories of domestic violence, women who have been clean for at least 6 months, women with children up to age 6, women who are pregnant at least 6 months, women who have been previously incarcerated in jail or prison, women who are homeless with some criminal justice involvement, women on parole, women on probation, women referred by Child Protective Services and women referred by the court.

- Providence Place (San Diego, CA):
  Website: https://nicic.gov/wodp/program/80-providence-place
  Address: 4890 67th St., San Diego, CA 92115
  Phone: (619) 667-5287

Providence Place is a residential substance abuse treatment program that serves women on parole or community supervision and their dependent children. In addition to housing, Providence Place provides substance abuse treatment; comprehensive case management and family reunification services; a parenting center focused on child development, parenting skills and family therapy; specialized support groups to address grief and loss, self esteem, trauma, and other needs; and employment development services. The program is available to women on active parole/post release community supervision and their minor children (typically up to the age of 12). All participants receive referrals, authorization and funding through CDCR.

- Free At Last (East Palo Alto, CA):
  Website: http://www.freeatlast.org/services.html
  Address: 1796 Bay Road, East Palo Alto, CA 94303
  Phone: (650) 462-6999

Free At Last offers several housing options for women with children, including:

- The *Residential Treatment Program for Women and Women with Children* provides 7-9 months of residential treatment for women and women with children. To graduate, clients must complete treatment goals, secure housing and have a job or be enrolled in job training.
- The *Transitional Clean and Sober Living* program provides shared supportive housing for men, women, and women with children.

DOMESTIC VIOLENCE SURVIVORS

If your conviction was related to the domestic violence that you experienced, this is *mitigating evidence* that helps to explain your criminal record. IF YOU FEEL SAFE DOING SO, you may want to explain the violent situation you were in at the time of your criminal conduct to a housing provider who is considering your criminal record, so that you are not penalized in your application.[1187]

Below are a few resources that may help you to find housing:

➢ DOMESTIC VIOLENCE SHELTERS & TRANSITIONAL HOUSING

There are more than 100 shelter-based domestic violence programs throughout California. Many of these programs offer both:

1. Emergency shelters (typical stay = 30-60 days), AND
2. Transitional housing programs (typical stay = 6-18 months)

In addition to providing shelter to survivors, both types of programs often provide services such as 24-hour hotlines, legal assistance with restraining orders and child-custody disputes, advocates who can go to court appearances to support you, counseling for you and your children, and referrals to other social services.

Most emergency and homeless shelters for survivors do not conduct criminal background checks (although they are permitted to do so, as long as they follow all of the background check rules on PG. 377). In addition, most shelters are aware that survivors often face criminal charges and/or arrest warrants in connection with the violence that they've experienced. Many shelters have relationships with local law enforcement, and can accommodate survivors who are under supervision (like probation, parole, etc.).

STARTING IN A SHELTER

Starting off in an emergency shelter may help you to find transitional or permanent housing and/or access other services afterward. While some run background checks and have record-related restrictions, if you are living at a domestic violence shelter, the staff may be able to write a letter or provide a referral to a transitional housing program, which can help explain your situation and get around their restrictions.

HELPFUL HINTS & RESOURCES

You should keep in mind that each shelter is different, so the rules and opportunities may not be the same everywhere. There may also be some variation from county to county.[1188]

To find a domestic violence shelter or transitional housing program in your area, contact the **National Domestic Violence Hotline** at 1-800-799-SAFE (7233) or call 211. You will have to contact each shelter or program separately to find out if you met their specific criteria.

A list of resources by county in CA for people experiencing DV is also available online at:

- California Dept. of Public Health: http://www.cdph.ca.gov/HealthInfo/injviosaf/Documents/_California.pdf
- California Partnership to End Domestic Violence: http://www.cpedv.org/Resources%20A%20K

➢ GOVERNMENT-ASSISTED HOUSING FOR DOMESTIC VIOLENCE SURVIVORS

Read an overview of government-assisted housing and why it could be right for you on PG. 354; read details about bans on people with certain convictions and criminal histories on PG. 360.

First, the following federal government-assisted housing programs *do not* have any *mandatory* criminal record restrictions, and may be available to survivors of domestic violence:

- Supportive Housing Program for the Homeless
- Shelter Plus Care (for homeless people with disabilities)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Low-Income Housing Tax Credit (LIHTC)[1189]

WHO DOES THE GOVERNMENT CONSIDER TO BE "HOMELESS"?

The federal government's definition of "homeless" includes people who are escaping situations of domestic violence and have no other housing or resources available. If you are escaping domestic violence, you may be eligible for a government-assisted housing program for "homeless" people.

[1187] Nat'l Housing Law Project, Housing Access for Domestic Violence Survivors with Criminal Records, Sept. 7, 2011, http://nhlp.org/files/DV%20and%20Criminal%20Records%20Materials.pdf.
[1188] Helping Families Save Their Homes Act of 2009, Pub. L. No.: 111-22, tit. VII, § 1003.
[1189] Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, tit. VII, § 1003.

Second, for other government-assisted housing programs that *do* have restrictions based on criminal records, domestic violence survivors are entitled to certain additional protections. The Violence Against Women Act (VAWA) states that Public Housing Authorities (PHAs) *cannot deny or end your housing* because of the domestic violence that you experienced or because of a criminal conviction that is directly related to the domestic violence you experienced.[1190] This means if a PHA denies your housing application based on conduct or a past conviction related to the domestic violence you've experienced, you should immediately challenge the denial and ask the PHA for an informal review hearing. At that hearing, you can explain how the conduct or conviction is related to your experience of domestic violence.[1191] Go to PG. 364 to learn how to challenging denials to government-assisted housing.

➢ CALWORKS

If you are eligible for CalWORKS and you are homeless, you can apply to the Homeless Assistance Program (HAP) through your local county social service agency.[1192] Your family could receive temporary shelter in a hotel or motel for up to 16 consecutive days, financial help to move into permanent housing (such as last month's rent, security and utility deposits, etc.), and 2 months of back-owed rent to prevent an eviction. Additional services such as counseling referrals are available for domestic violence survivors. For more information on CalWORKS eligibility, go to the PUBLIC BENEFITS CHAPTER, PG. 449.

➢ CA'S VICTIM COMPENSATION PROGRAM RELOCATION ASSISTANCE

The California Victim Compensation Program (VCP) can provide victims of violent crime—including domestic violence survivors—up to $2,000 per household for relocation expenses, such as first and last month's rent, security and utility deposits, temporary housing, moving vans, and emergency food and clothing.[1193]

Please note that the expenses must be determined *necessary for your personal safety or emotional wellbeing*, by a law enforcement officer or licensed mental health provider. You will need to provide verification (a signed letter or other documentation from a law enforcement agent or mental health provider). You may also have to agree to other restrictions, such as not telling the person who committed the violence near your new location, not allowing him/her on the property, and seeking a restraining order against him/her.

VERY IMPORTANT: The VCP also has certain restrictions on people with criminal records. You may not be eligible if any of the following apply to you:[1194]

- You committed the crime;
- You *knowingly and willingly* participated in or were involved in the events leading to the crime, though some exceptions may be considered.
- You did not cooperate reasonably with law enforcement in apprehending and convicting the person who committed the crime, though some exceptions may be considered.
- ALSO: If you have been convicted of a *felony*, you cannot get compensation until you have been released from custody, discharged from probation or parole, and 3 years have passed since the crime occurred. However, *you may be able to get your felony reduced to a misdemeanor*, which could lessen these restrictions. For more information, see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

[1190] Violence Against Women Act of 2013, 42 U.S.C. § 41411(b) (2013); 24 C.F.R §§ 982.553(e), 5.2005(c), 5.2001 et seq. Under VAWA, a public or subsidized housing provider can only evict you based on the domestic violence you've experienced if it proves that your tenancy creates an "actual and imminent threat" to other residents or staff. VAWA's protections apply to public housing, Section 8 vouchers and project-based assistance, Section 202, and Section 811 housing.

[1191] NHLP, Housing Access for Domestic Violence Survivors with Criminal Records.

[1192] Homeless Assistance Program Fact Sheet, CNTY. OF LA DEP'T OF PUB. SOC. SERVS., http://www.ladpss.org/dpss/hcm/pdfs/factsheets/HA_Fact_Sheet.pdf.

[1193] The California Victim Compensation Program, http://vcgcb.ca.gov/victims/

[1194] The California Victim Compensation Program, FAQ—Eligibility, http://www.vcgcb.ca.gov/victims/faq/eligibility.aspx#Not. The exceptions (for participation or involvement in the events leading to the crime, and cooperation with law enforcement) are especially important for survivors of domestic violence, since many survivors may have criminal records related to the violence they've experienced, or may be afraid to cooperate with law enforcement out of fear of further violence or to protect an abusive partner from conviction, incarceration, deportation, etc.

SENIORS/ELDERS

Although there are very few housing programs created just for senior citizens in reentry, you may be eligible for housing based on you disability (see PG. 419), your low income (see PG. 354), or qualify for different types of transitional housing (see PG. 344).

One program for seniors in reentry is the Senior Ex-Offender Program (SEOP) at the Bayview-Hunters Point Senior Center in San Francisco, CA. It currently provides temporary and transitional housing and is developing a permanent housing facility for the future.[1195] Other transitional housing programs for seniors—particularly low-income housing, homelessness prevention, and sober or residential treatment programs for seniors—may be more likely to admit seniors with criminal records because the conviction was long ago or you have physical or health needs that give you priority for the housing (it may help to mention these factors if the housing provider raises your record as an issue).

A NOTE ABOUT REQUESTING REASONABLE ACCOMMODATIONS IF YOU HAVE A DISABILITY:

If you have a *mental, physical, or developmental disability*, and you must follow *parole, probation, or community supervision conditions* that restrict where you can live, you have the right to receive reasonable accommodations for your disability at your residence. To learn how to request an accommodation for your disability from your supervision, go to the PAROLE & PROBATION CHAPTER of this guide, PG. 125. For help, you may also want to contact a legal aid provider for people with disabilities, listed on PG. 1127, or call Root & Rebound (510-279-4662) for a referral or further assistance.

VETERANS

The U.S. Department of Veteran Affairs (VA) offers various housing programs for veterans. **If you are currently incarcerated**—whether in a state or federal facility—a "VA Reentry Specialist" is supposed to arrange a meeting with you about your goals to determine the resources available to best meet your needs after release.

What is a VA Reentry Specialist and how can I contact one to help me find housing?

Every region of the U.S. has a VA Reentry Specialist who can help determine your eligibility for VA benefits, help you enroll in the VA, and connect you with local housing and services. VA Reentry Specialists have relationships with both state and federal correctional facilities to help incarcerated veterans plan and prepare for release.[1196]

If you already met with the VA Reentry Specialist and received instructions for housing, you should continue with those arrangements. If you are starting from scratch, the VA's Health Care for Homeless Veteran program can help you find housing in your area. You should visit your local VA, if possible, or call the National Call Center for Homeless Veterans hotline available 24/7 at 1-877-4-AID-VET (424-3838). There you will find a VA counselor available to help you.

➢ YOUR VA HOUSING OPTIONS INCLUDE THE FOLLOWING PROGRAMS:

HELPFUL RESOURCES

- To learn more about preparing for release as a veteran, go to the VA website: http://www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf.
- AFTER YOU ARE RELEASE, you can visit this website to find your local VA: http://www.cacvso.org/county-contacts/.

HEALTH CARE FOR HOMELESS VETERANS CONTRACTS (HCHV) -

The HCHV program provides emergency housing, shelters, and treatment to veterans enrolled in VA Healthcare, through local community organizations and service providers. These local community organizations and service providers may offer outreach, exams, treatment, referrals, and case management to veterans who are homeless and dealing with mental health issues.[1197]

- For information about the HCHV program, please visit: http://www.va.gov/homeless/hchv.asp
- For list of HCHV coordinators in California, please visit: http://www.va.gov/HOMELESS/docs/HCHV_Sites_ByState.pdf

[1195] Bay view Hunter Point Multipurpose Senior Services Inc., http://bhpmss.org/senior_ex-offender_program.
[1196] See Dep't of Veterans Affairs, Guidebook for California Incarcerated, http://www.va.gov/HOMELESS/docs/ Reentry/09_ca.pdf.
[1197] See Dep't of Veterans Affairs, Health Care for Homeless Veterans (HCHV) Program, http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=3006.

SUPPORTIVE SERVICES FOR VETERAN FAMILIES GRANTS (SSVF) –

Local non-profit organizations receive funding from the VA to assist low-income veterans (and their families) who are homeless or at risk of homelessness. SSVF programs can help you transition to permanent housing, along with case management and assistance with getting other benefits and services.[1198]

For a list of current SSVF providers, please visit the following website: http://www.va.gov/homeless/ssvf.asp

HELPFUL HINT

Connecting with legal services providers through an SSVF program:

Participating SSVF programs may provide or may contract with local legal aid organizations to provide Veterans with legal services. *(Veterans ineligible for VA Enrollment may be eligible to receive SSVF assistance if available. Inquire at your VA if this option is an option for you).*

VA SUPPORTIVE HOUSING (HUD-VASH) PROGRAM –

HUD-VASH is a joint effort between HUD (US Department of Housing and Urban Development) and VA to move veterans and their families out of homelessness and into permanent housing. HUD provides Section 8 vouchers to eligible veterans, and the VA offers eligible homeless veterans clinical and supportive services through its health care system.

Veterans applying for Section 8 Housing Vouchers through the HUD-VASH program are subject to most Section 8 Housing eligibility rules (for example, your income).[1199]

THERE IS AN IMPORTANT EXCEPTION TO CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING FOR VETERANS:

HUD-VASH applicants *are not subject to most Section 8 regulations regarding criminal and/or drug-related history*. This means that Public Housing Authorities (PHAs) cannot deny Section 8 housing to HUD-VASH applicants based off the applicant's prior drug activity or criminal record (unless you or someone in your household is subject to a lifetime sex offender registration—know as "290 registration" in California—in which case the PHA can still deny you and your household from Section 8 housing programs).[1200]

MENTAL HEALTH RESIDENTIAL REHABILITATION AND TREATMENT (MH RRTP) PROGRAMS—

MH RRTP provide residential rehabilitation and treatment services for veterans with multiple and severe medical conditions, mental illness, addiction, or psychosocial deficits.[1201] MH RRTP programs promote rehabilitation, recovery, health maintenance, improved quality of life, and community integration, in addition to treatment of medical conditions, mental illnesses, addictive disorders, and homelessness. The residential program helps veterans to develop a lifestyle self-care, personal responsibility, and medical health.[1202]

- For more information about MH RRTP and other residential VA programs, please visit the following website: https://www.calvet.ca.gov/VetHomes
- Please note: VA Housing providers are required to verify you are free of Tuberculosis (Tb). If you have had a Tb test within the past year, you should request a copy of the results before your release from incarceration. If you do not have a recent Tb clearance, request the test so you can have this document available.

SUBSTANCE ABUSE TREATMENT & RECOVERY HOUSING (ALSO CALLED "SOBER LIVING ENVIRONMENTS")

If you suffer from past addiction or alcoholism, you may be eligible for special housing and/or funding programs that provide residential treatment for substance abuse. These are also called "Sober Living Environments" (SLEs). More information about funding and these residential facilities can be found on CDCR's website here: http://www.cdcr.ca.gov/rehabilitation/substance-abuse-services-coordination-agencies.html.

[1198] See Supportive Services for Veteran Families Program, U.S. DEP'T OF VETERANS AFFAIRS, http://www.va.gov/homeless/ssvf.asp.
[1199] For information about the HUD-VASH program, see Section 8 Housing Choice Vouchers: Implementation of the HUD-VA Supportive Housing Program, 73 Fed. Reg. 25026 (May 6, 2008).
[1200] DEP'T OF VETERANS AFFAIRS, Guidebook for California Incarcerated Veterans (4th ed. 2009).
[1201] DEP'T OF VETERANS AFFAIRS, Guidebook for California Incarcerated Veterans (4th ed. 2009), http://www1.va.govHOMELESS/docs/Reentry/09_ca.pdf.
[1202] DEP'T OF VETERANS AFFAIRS, Guidebook for California Incarcerated Veterans (4th ed. 2009), http://www1.va.gov/HOMELESS/docs/Reentry/09_ca.pdf.

- *FUNDING:* If you are on state parole, you may be eligible for temporary funding through CDCR's Substance Abuse Service Coordination Agencies (SASCA) funding or another source.[1203] SASCA funding is generally limited to 6 months of assistance. Ask your state parole officer for more information.
- *SPECIAL HOUSING:* There are transitional housing programs that focus on substance abuse treatment and/or sober living conditions for people with former addictions. They may also take SASCA funding. Be aware that many of these programs are only available for short- or medium-term stays.

My conviction was for past drug or alcohol use. Is past addiction considered a legally protected disability?

Yes. Past (BUT NOT CURRENT) drug addiction and alcoholism are considered disabilities under state and federal law. This means you may have the right to request *reasonable accommodations* for your disability.[1204] Reasonable accommodations might include an extended curfew so that you can attend treatment or AA/NA programs, permission to take methadone if prescribed by your doctor, or access to special rehabilitative services. Moreover, a landlord may not deny you housing or discriminate against you based on your past addiction or alcoholism.

For more information on housing protections for people with addiction-based disabilities, including what information a landlord CAN and CANNOT ask or consider, the following guide may be helpful: *Fair Housing for People with Disabilities*, by Mental Health Advocacy Services, Inc., pages 18-20, available online at: http://www.mhas-la.org/FH%20Manual%20rev.4-07.pdf.

For more information on asking for reasonable accommodations—where you could ask a landlord to make an exception to their policy banning former addicts from housing (since past addiction is a protected disability), go to Appendix E, PG. 419.

290 SEX OFFENDER REGISTRANTS & RESIDENCY RESTRICTIONS

IMPORTANT: In the PAROLE & PROBATION CHAPTER of this guide, there is *much more information* about residency restrictions and other location-based restrictions for people required to register for sex offenses under California Penal Code section 290. Go to PG. 163 to learn more.

AS A BRIEF SUMMARY: In 2015, there were important changes in the law governing residency restriction for 290 registrants. Up until March 2015, as a result of Proposition 83 ("Jessica's Law"), there were strict residency restrictions on people on parole who were required to register as sex offenders. If this law applied to you, you could not reside *within 2,000 feet* of any school or park where children regularly gather.[1205]

In March 2015, the California Supreme Court declared that the blanket residency restriction for all sex offenders required to register under California Penal Code section 290 is illegal. Now CDCR can place special restrictions on 290 registrants in the form of discretionary (decided specifically for you) parole conditions. These conditions can require more or less than Jessica's law, but they must be based on facts surrounding each individual parolee's case.[1206] The CDCR may also be able to impose other residency restrictions as special conditions of parole in individual cases based on specific case factors.[1207]

IMPORTANT DEFINITIONS TO KNOW FOR PEOPLE CONVICTED OF SEX OFFENSES:

"DISTANCE" is measured by a straight line between the main entrance of the residence and the boundary of the nearest park or school, not the driving or walking distance. 15 CAL. CODE REGS. § 3571(e)(4).

"RESIDENCE" is any place where:
- You spend 1 day or night at the same address every week for multiple consecutive weeks;
- You spend 2 or more days or nights in a row living at the same address;
- You have a key to the address "and there is a pattern of residency"; or

The parole agent finds evidence of your residency such your clothes or toiletries. 15 CAL. CODE REGS. § 3590(a).

[1203] OFFICE OF OFFENDERS SERVICES—COMMUNITY AND REENTRY SERVICES, FACT SHEET (Feb. 2014), http://www.cdcr.ca.gov/rehabilitation/docs/Factsheets/OS-CRS-Factsheet-SASCA-Feb2014.pdf; SUBSTANCE ABUSE SERVICES COORDINATION AGENCY (SASCA), CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/rehabilitation/substance-abuse-services-coordination-agencies.html.

[1204] Americans with Disabilities Act, 42 U.S.C. §§ 126, 12112(b)(5)(A); 29 C.F.R. §§ 1630.9, 1630.10, 1630.15(b), (c). However, current illegal drug use is not considered a disability and does not provide any legal protection against discrimination. A landlord may deny or terminate your housing based on current drug use, even if you are also previously or currently addicted.

[1205] CAL. PENAL CODE § 3003.5(b). This rule applied to any sex offender released on parole on or after November 8, 2006, even if the most recent term was for a non-sex offense or the parolee was initially released before November 8, 2006, and later re-released after a parole revocation. In re E.J., 47 Cal.4th 1258 (2010). However, the residency restrictions could not be applied to people who were both convicted and released from custody prior to November 8, 2006. Doe v. Schwarzenegger, 476 F. Supp. 2d 1178 (E.D. Cal. 2007).

[1206] In re Taylor, 60 Cal.4th 1019, 1042 (2015).

[1207] For example, parolees convicted of violating Penal Code Sections 288 or 288.5 cannot live within one half-mile (2,640 feet) of a K-12 school if they are deemed "high risk" by CDCR. CAL. PENAL CODE § 3003(g). Also, a sex offender parolee cannot live in a single family

PRIVATE VS. GOVERNMENT-ASSISTED HOUSING: AN OVERVIEW

It is very important that you understand the difference between private and government-assisted housing, because depending on what type of housing you live in will affect your rights. There are very specific legal requirements for how a government-assisted housing provider can access, look at, and consider your criminal record, and different requirements for what a private landlord can access, look at, and consider.

IMPORTANT NOTE ABOUT THE TERMS USED IN THE HOUSING CHAPTER: We use the term "government-assisted" housing throughout this Chapter to refer to housing programs and owners of housing that receive money from the federal government. We do not use "public housing" to talk about any and all housing that gets government money because there is actually a specific program run by the government called the "Public Housing" program. So when we use the term "Public Housing," we are referring to the specific Public Housing program, NOT all housing that receives government support.

HOW CAN I FIGURE OUT IF I AM APPLYING TO/LIVING IN PRIVATE OR GOVERNMENT-ASSISTED HOUSING?

- **Did you apply for the housing through a PHA?** *If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.*
- **Do you have a "Section 8" Housing Choice Voucher?** *If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.*
- **Look up the property online at: http://www.hud.gov/apps/section8/index.cfm.** *If you still don't know, ask the OWNER of the property.*

Sometimes it's clear that you live in government-assisted housing because you had to apply for the housing unit or program through a local Public Housing Authority (PHA) or your landlord *is the PHA itself*. Other times, it's unclear that you live in government-assisted housing because the owner gets a special benefit directly from the government, and you didn't know it. The hints above will help you figure out if you are living in government-assisted housing, but you can also ask the owner (the landlord) of the property.

PRIVATE HOUSING: THE BASICS

This is a large category of housing that is owned and run by private landlords (NOT the government). Private housing could be an apartment, house, shelter, month-to-month lease, or year-to-year lease. It could be owned by a single owner or by a large property management company where you only interact with the housing managers and not the owner(s) themselves.

WHY WOULD I BE INTERESTED IN LIVING IN PRIVATE HOUSING?

Private housing tends to have fewer legal barriers for people with records—instead, the landlord (owner) has more discretion and decision-making power about their background screening policies (learn more about illegal discrimination in housing on the basis of criminal records on PG. 357).

HOW CAN I FIND PRIVATE HOUSING?

There are many different ways to find private housing, like an apartment owned by a private landlord. But it is no easy task, especially when your housing needs to be approved by parole or probation, you have special rules to follow in reentry, there is a lack of affordable housing, and discrimination you might be up against. It is important to find support in the housing search!

Websites like craigslist.com are good places to start—you can search by location, type of housing or apartment, and budget. You can also ask for suggestions from family, friends, or other formerly incarcerated people and mentors who have figured out long-term housing options. Finally, there are some transitional housing programs and reentry programs that provide housing to people with records. You can also search on Google.com for "reentry housing in California" – we found some helpful tips at the following website: https://www.jobsforfelonshub.com/housing-for-felons/california/.

WHO IS MY LANDLORD IF I LIVE IN PRIVATE HOUSING?

Your landlord whoever *owns* the property. The owner could be a single person, a small group of people, or a large management company with many owner or shareholders. If you are renting a private apartment, look at your **lease** to find the name and contact information for the property's owner.

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house with another person who is also a sex offender, unless they are related by blood, marriage, or adoption. CAL. PENAL CODE § 3003.5(a).



…VERSUS…

GOVERNMENT-ASSISTED HOUSING: THE BASICS

If you are a low-income person or household and you are looking for affordable rental housing in your area, you may want to apply for government-assisted housing. The federal government funds most government-assisted housing programs. They have many rules about who can and can't live there, including a lot of rules about how a criminal record affects your ability to live there (read about those rules and exclusions on PG. 357). Government-assisted housing is designed for low-income people.

For some government-assisted housing programs, the government runs the housing facilities and EVERYTHING about the housing application process. For other federally assisted housing programs, the government works with private companies or private owners/landlords who run their own facilities and have their own separate application process from the government.

Government-assisted housing could be short-term, long-term, an apartment, a house, a shelter, or a transitional housing program with services.

WHY WOULD I BE INTERESTED IN LIVING IN GOVERNMENT-ASSISTED HOUSING?

Government-assisted housing is a great option for many low-income people and households. While they have many rules about who can and cannot live there, it provides you with an opportunity to have affordable rental housing in your area. See PG. 354 below for the resources that can help you find government-assisted housing in your area. One major down-side is that government-assisted housing programs tend to have very long wait-lists, so it is good to sign up early and check back often.

HOW CAN I FIND GOVERNMENT-ASSISTED HOUSING?

Try the following resources to find government-assisted housing:

1. YOUR LOCAL PUBLIC HOUSING AUTHORITY (PHA), which runs some of the biggest government-assisted housing programs, including the Public Housing program and the Housing Choice Voucher program (commonly known as "Section 8" or the voucher program).
2. SEARCH ONLINE: To find your local PHA on the web, visit the U.S. Department of Housing and Urban Development's (HUD) website at: http://www.hud.gov/offices/pih/pha/contacts/index.cfm. Once at the website, select your state, then, look for your local PHA by the name of your city or county.
3. SEARCH IN THE PHONE BOOK: If you don't have a regular access to a computer, look in your phone book in the government or business sections for your local Public Housing Authority (PHA). Some areas have both city and county PHAs; others just have a city PHA. In the government section of the phone book, first look for the city, then look for "housing authority" or "housing department" (for example, the San Francisco Housing Authority, or the Oakland Housing Authority). Sometimes, the local PHA will be listed under the city's housing department.
4. OTHER GOVERNMENT-ASSISTED HOUSING, NOT THROUGH YOUR LOCAL PUBLIC HOUSING AUTHORITY (PHA):
   a. PRIVATE AND NONPROFIT LANDLORDS operate other forms of government-assisted rental housing programs. The U.S. Department of Housing and Urban Development (HUD) maintains a searchable list of these programs online here: http://www.hud.gov/apps/section8/index.cfm
   b. LOW INCOME TAX CREDIT HOUSING is an affordable rental housing developed through the Internal Revenue Services' (IRS) Low Income Housing Tax Credit program (LIHTC). Typically, this housing does not serve extremely low-income households, but it is less expensive than similar private housing in the community. LIHTC housing is owned and operated by private owners and nonprofit agencies and is monitored in each state by a state agency. Frequently, but not always, that agency is the state housing finance agency. Some of these agencies may have lists of persons and organizations that operate LIHTC housing in your state. In CA, it's the California Tax Credit Allocation Committee that oversees LIHTC. Read more about these types of property at: http://www.treasurer.ca.gov/ctcac/tax.asp
   c. RURAL HOUSING: The U.S. Department of Agriculture (USDA) also funds government-assisted rental housing in rural areas throughout the United States and maintains a website that allows you to search for rural government-assisted rental housing here: http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp

WHO IS MY LANDLORD IF I LIVE IN GOVERNMENT-ASSISTED HOUSING?

It depends. If you live in PUBLIC HOUSING, the local Public Housing Authority (PHA)—run by your city or county—owns your entire building and is your landlord. In rare cases, a private company may manage the building for the PHA or may be part of the ownership, but the building is still controlled by the PHA. PHAs operate in almost every city and county in California.

If you live in OTHER TYPES OF FEDERAL GOVERNMENT-ASSISTED HOUSING, the PHA is *not* your landlord. This includes all of the other types of government-assisted housing discussed on PG. 353 above. Even if you applied through the PHA, it will not be your landlord. Instead, your landlord will be a private owner who receives financial assistance from the federal government in exchange for renting to low-income people, or a private owner that accepts vouchers from low-income people who went through a PHA to get a reduction on their rent. Owners of government-assisted housing could be individual landlords, for-profit companies, or nonprofit organizations. You can get this type of government-assisted housing through VOUCHERS, where you get the assistance from a PHA and then have to find rental housing on the private market that will accept your voucher. OR you can get this type of government-assisted housing through "multifamily" properties where the owner gets the assistance and it stays with the property to keep it affordable for low-income tenants.

III. APPLYING FOR & GETTING INTO HOUSING

WHAT WILL I LEARN?

- **What it means to be eligible or ineligible for housing**
- **How your record might ban you from private housing**
- **How your record might ban you from government-assisted housing**
- **What types of bans are illegal and when**
- **When a landlord is allowed to deny you housing but does not have to**

UNDERSTANDING HOUSING ELIGIBILITY

WHAT DOES IT MEAN TO BE "ELIGIBLE" FOR HOUSING?

To be eligible for housing means you meet specific criteria so that it is *possible* for you to be accepted into that housing if you apply. On the other hand, being *ineligible* for certain types of housing means there is something about you or your situation that automatically disqualifies you and prevents you from being accepted because of housing agency's rules.

WHY IS IT IMPORTANT TO UNDERSTAND THE ELIGIBILITY RULES OF DIFFERENT TYPES OF HOUSING?

Knowing the rules and policies that different types of housing have for who can and cannot live there is important for you to understand whether or not you will want to apply, and what your chances are of being accepted. If you are *eligible*, that means you *could* be accepted into the housing; but if you are *ineligible*, something about you or your situation automatically disqualifies you from being accepted because of the rules of that housing agency or because of some law that bans you from living there. Keep in mind: it's possible for your situation to change in a way that could also change your eligibility. Continue reading to learn more.

WHAT ARE SOME OF THE REASONS I COULD BE ELIGIBLE OR INELIGIBLE FOR A HOUSING PROGRAM?

You could be *eligible* or *ineligible* because of (1) your income, (2) your criminal record, and/or (3) some other specific factor.

(1) INCOME: How much money you make will be an important factor for certain types of housing. If you are low-income, it will help you in certain contexts. For example, housing that is subsidized (paid for partially or fully) by the government, you must be low-income—earning less than a certain amount of money per month—to be eligible. The income cutoff is different for different programs (read more below). But for most private housing, you must be earning more than a certain amount of money per month to be eligible. Landlords want proof of your income being a certain amount so they know you are able to pay rent.

(2) CRIMINAL RECORD: For almost all kinds of housing, specific kinds of criminal convictions may disqualify you from applying, or at least make it harder for you to get accepted as a tenant.

(3) OTHER SPECIFIC FACTORS: Some housing programs—especially those fully or partially funded by the government—are designed for certain specific groups of people. Your age, income level, disability status, veteran status, homeless status, gender, and whether you have children are just some of the factors that could make you eligible for certain specific housing programs.

I WAS RECEIVING SECTION 8 HOUSING AND WAS THEN INCARCERATED. DO I NEED TO REAPPLY?

Yes. If you were the sole recipient of Section 8 vouchers and are absent for a prolonged period of time due to incarceration, you may be in violation of your local Public Housing Authority's local policies and/or the terms of your housing contract.[1208] If that is the case, your public housing assistance benefits are likely to be terminated.[1209] Federal law allows individuals to be absent from Section 8 housing for a maximum of 180 consecutive days, but the maximum set by your city or county's Public Housing Authority may be shorter.[1210] To see contact information for local Public Housing Authority branches, go to Appendix A on PG. 403 or call HUD Customer's Service at 1-202-708-1112. Note that you may have to wait six months after your Section 8 benefits were terminated before reapplying.

[1208] 24 C.F.R. 982.312.
[1209] 24 C.F.R. 982.312(b).
[1210] 24 C.F.R. 982.312(a).

HOW WILL MY CRIMINAL RECORD AFFECT MY ELIGIBILITY AND APPLICATION TO DIFFERENT TYPES OF HOUSING?

Whether you are looking at short-term/transitional or long-term housing, the impact of your criminal record on your application depends on whether that housing is *PRIVATE* or *GOVERNMENT-ASSISTED*. In this Chapter, when we talking about government-assisted housing, we are talking about housing that gets money from the federal government to make it more affordable for low-income people. The federal government has created many laws that control government-assisted housing, including who is allowed to live there.

In this Chapter, we will explain how your CRIMINAL RECORD affects your application to both private housing and government-assisted housing; whether or not a Public Housing Authority (PHA) or owner can refuse to rent to you, what you can do to strengthen your application, and how you can challenge a denial that you believe is illegal.

HOW CAN I FIGURE OUT IF I AM APPLYING TO/LIVING IN PRIVATE OR GOVERNMENT-ASSISTED HOUSING?

- **Did you apply for the housing through a PHA?**
- **If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.**
- **Do you have a "Section 8" Housing Choice Voucher?**
- **If yes, the rules and criminal record exclusions that apply to federal government-assisted housing apply to you.**
- **Look up the property online at:** http://www.hud.gov/apps/section8/index.cfm
- **If you still don't know, ask the OWNER of the property.**

Sometimes it's clear that you live in government-assisted housing because you had to apply for the housing unit or program through a local Public Housing Authority (PHA) or your landlord *is the PHA itself*. Other times, it's unclear that you live in government-assisted housing because the owner gets a special benefit directly from the government, and you didn't know it. The hints above will help you figure out if you are living in government-assisted housing, but you can also ask the owner (the landlord) of the property.

CRIMINAL RECORD BANS TO BE AWARE OF BEFORE YOU APPLY TO HOUSING

1. CRIMINAL RECORD BANS IN PRIVATE HOUSING

HOW CAN MY CRIMINAL RECORD AFFECT MY CHANCES OF GETTING PRIVATE HOUSING?

Most private landlords will run a background check on you, and have a broad discretion to deny you based on past criminal involvement. However, the landlord cannot have a blanket ban on ALL people with criminal records and must treat your criminal record the same as it treats other applicants'. Keep reading this section to learn what landlords can and can't do when getting and considering your criminal history information.

CAN A PRIVATE LANDLORD REFUSE TO RENT TO ME JUST BECAUSE OF MY CRIMINAL RECORD?

Most of the time, yes. Unfortunately, the law does not protect you from housing discrimination based on your criminal record alone. Although federal and state laws make it illegal for private landlords to discriminate against you because of your *race, color, national origin, ancestry, sex, gender, gender identity, gender expression, sexual orientation, religion, disability, marital status, family status, genetic information, and source of income* in California, they do not provide any specific or direct protection based on having a criminal record.[1211] Landlords have the power to choose their tenants, and judges often side with landlords who claim that banning people with criminal records is necessary to protect other residents and property.[1212]

[1211] See Fair Housing Act, 42 U.S.C. § 3601 et seq.; Fair Employment & Housing Act, CAL. GOV'T CODE § 12955 et seq.; Unruh Civil Rights Act, CAL. CIV. CODE § 51. The Unruh Act is incorporated into FEHA for purposes of housing discrimination (Gov't Code § 12955(d)), but it is best to bring separate claims under each law because the remedies are different.

[1212] 42 U.S.C. § 3604(f)(9) (Fair Housing Act does not protect "individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others"); Evans v. UDR, Inc., 644 F. Supp. 2d 675 (E.D.N.C. 2009) (holding that the Fair Housing Act (FHA) does not prohibit landlords from denying a disabled tenant's rental application based on her criminal record; relaxation of landlord's "no criminal history" policy was not required as a reasonable accommodation for mentally disabled tenant, even where tenant's disability was an underlying cause of her conviction).



However, there are some cases where you might be protected if a private landlord rejects you because of your criminal record.

1. The Department of Housing and Urban Development (HUD)'s official stance is that landlords cannot refuse to rent to any person with criminal convictions on that basis alone. Read more about this type of discrimination (called a "blanket ban") below.
2. Additionally, if your CONVICTION is for substance/drug abuse, your *past* substance abuse is considered a disability under state and federal law. People with disabilities enjoy greater protection against discrimination (read more about asking for a reasonable accommodation for a disability in Appendix E, PG. 419).
3. Finally, you are protected by state and federal law that limits what a private landlord can learn about you from a BACKGROUND CHECK (often called a "tenant report" when it's for a landlord who is screening you for their housing). A landlord has to tell you about the background check, give you a chance to fix mistakes, and certain information *isn't legally supposed to come up* in the background check (read more on PG. 377).

CAN A PRIVATE LANDLORD REFUSE TO RENT TO ME BECAUSE MY CRIMINAL RECORD WOULD INCREASE THEIR HOMEOWNER'S INSURANCE RATES?

Maybe. Insurance companies, including those that protect homeowners, generally have broad discretion in setting their rates and premiums.[1213] At the same time, under the Federal Housing Act, homeowner's insurance companies cannot price their policies in a way that discriminates on the basis of race, gender, or other protected characteristics (see list on PG. 357).[1214] Although having a criminal record is not specifically listed as one of these characteristics, one can make a credible argument that the same logic should apply.

Continue reading for more information.

WHEN MIGHT I BE LEGALLY PROTECTED FROM A PRIVATE LANDLORD DISCRIMINATING AGAINST ME DUE TO MY CRIMINAL RECORD?

Below are some situations where you might be legally protected if a private landlord is discriminating on the basis of your criminal record:

1) Blanket Bans:

In 2016, the federal Department of Housing and Urban Development (HUD) issued guidelines on how housing discrimination laws apply to people with criminal records.[1215] In HUD's view, it is a violation of federal law to refuse to rent or sell to any person with any criminal conviction on that basis.[1216] The specific arguments for why blanket bans violate the law are covered in #2-4 below.

If you think one of these arguments applies to your situation, it may be a good idea to consult an attorney.[1217] See the list of legal aid providers on PG. 1127 of this guide.

WHAT IS A "BLANKET BAN" IN HOUSING?

Here, a "blanket ban" means there is a policy that COMPLETELY bans or disqualifies someone—with no exceptions for any reason—from housing.

2) Arbitrary Discrimination:

According to HUD, more focused policies, such as bans on people with specific types of criminal convictions, may violate federal law if they don't serve a legitimate purpose (or, in legal terms, "a substantial, legitimate, and nondiscriminatory interest"). Any policy that doesn't take into consideration how much time has passed since the conviction(s), or the nature or seriousness of the crime, is unlikely to meet this standard. On the other hand, policies aimed at preventing harm to residents' safety and/or property may be sufficient.[1218]

California state law also prohibits "arbitrary discrimination," (meaning *unreasonable* discrimination), so if a landlord has a blanket ban against anyone with criminal records—without consideration of your individual

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[1213] *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824.
[1214] *Ojo v. Farmers Group, Inc.* (2010) 600 F.3d 1205, 1208, holding that the FHA prohibits racial discrimination in both the denial and pricing of homeowner's insurance; see also 24 C.F.R. § 100.70; 42 U.S.C. § 12201(c)(1), prohibiting an insurer from administering a plan or classifying risks in a manner that is inconsistent with State law.
[1215] U.S. Dept. of Housing and Urban Dev., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (April 4, 2016), https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf
[1216] Id. at p. 6.
[1217] See Fair Housing Act, 42 U.S.C. § 3601 et seq.; Fair Employment & Housing Act, CAL. GOV'T CODE § 12955 et seq.; Unruh Civil Rights Act, CAL. CIV. CODE § 51; Fortune Soc'y, Inc. v. Sandcastle Towers Housing Devel. Fund Corp., No. 1:14-cv-6410 (filed Oct. 30, 2014, E.D.N.Y.). The Unruh Act is incorporated into FEHA for purposes of housing discrimination. CAL. GOV'T CODE § 12955(d), but it is best to bring separate claims under each law because the remedies are different.
[1218] Ibid.

situation and ability to be a good tenant—it may be considered unreasonable, arbitrary discrimination, which is illegal.[1219]

If you come across a blanket ban, or discrimination that seems completely arbitrary, you should contact a lawyer. See the list of legal aid providers on PG. 1127 of this guide.

3) Unfair Treatment (also called "discriminatory treatment"):

Even though a private landlord is legally allowed to consider your criminal record, the landlord must apply the *same standards* for screening applicants equally. For example, a landlord can't reject an African-American applicant based on his/her criminal record, but then accept a white applicant with a similar criminal record.

Another example is that if a private landlord conducts a background check on you, the landlord must also conduct the same background check on all other applicants.

If you come across a private landlord who you believe is treating your criminal record differently from other similar applicants, this may violate your right to equal treatment under federal and state law. You should contact a lawyer. See the list of legal aid providers on PG. 1127 of this guide.

4) Unfair Impact (also called "disparate impact" or "discriminatory effect") & Blanket Bans:

As a group, people with criminal convictions are not directly protected by the Fair Housing Act – the federal law prohibiting housing discrimination based on things like race, gender, and sexual orientation. However, in 2015, the United States Supreme Court held that a housing policy that affects people of color more than others may violate the Fair Housing Act if it isn't supported by a legally sufficient justification.[1220] Thus, because African-Americans, Latinos, and other people of color are overrepresented in our criminal justice system, there is a strong argument that banning tenants with criminal records from private housing violates the law as well.

In addition, California's fair housing laws may give you slightly stronger protection in this situation, because a blanket ban against all tenants with any criminal records—regardless of the type of conviction, when it occurred, whether it affects your ability to be a good tenant (like pay rent; respect your neighbors and property; etc.), and evidence of your rehabilitation & mitigating circumstances (see PG. 371 for details on evidence of rehabilitation and mitigating circumstances)—has a discriminatory effect and may not be "necessary" to protect other tenants and property.[1221]

5) Past Drug or Alcohol Addiction (A Protected Disability)

It is illegal for a landlord to deny you housing based on a *past* drug or alcohol addiction, as this is a protected disability status. Past addiction, as well as current alcoholism,[1222] are considered disabilities under both federal and state law, so landlords cannot deny you housing for this reason or even ask about past drug or alcohol abuse. Landlords must also provide you with reasonable accommodations if necessary.[1223]

However, a landlord may deny you housing if you are *currently using or selling* illegal drugs (this is the same rule that applies to current drug use in government-assisted housing properties.

If a landlord denies you housing due to *past* drug or alcohol abuse, you should request reasonable accommodations and/or challenge the denial. *It is suggested that you try and contact an attorney to help, since every individual's circumstances and case are different. See the list of legal aid providers on PG. 1127 of this guide for places that may be able to assist you.*

[1219] Marina Point, Ltd. v. Wolfson, 30 Cal.3d 721 (1982) (holding that Unruh Civil Rights Act prohibits all "arbitrary" discrimination, regardless of protected class status; landlord's blanket exclusion of an entire class of people (children) based on a generalized prediction that the class, "as a whole," is more likely to commit misconduct than some other classes of public" violates the Act.); see also Regional Human Rights/Fair Housing Commission, Fair Housing Handbook, 18 (11th ed., 2012).
[1220] See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc. (2015) 135 S. Ct. 2507.
[1221] CAL. GOV'T CODE § 12955.8(b) (violation of FEHA for practices having discriminatory effect; business necessity as defense); see also Cal. Apt. Assoc., Question & Answer Sheet: Criminal Background Checks at 3 (Jan. 2005), http://www.hiresafe.com/CA_TENNANT_background_screening_law.pdf; Jayne Thompson, Can You Deny a Tenant for a Criminal Record in California?, SFGATE.COM, http://homeguides.sfgate.com/can-deny-tenant-criminal-record-california-93578.html; cf. Regional Human Rights/Fair Housing Commission, Fair Housing Handbook at 18 (11th ed., 2012).
[1222] Americans with Disabiltities Act, Questions and Answers, U.S. DEP'T OF JUSTICE, http://www.ada.gov/employmt.htm.
[1223] Fair Housing Act, 42 U.S.C. 3604; see also Mental Health Advocacy Svcs., Inc., Fair Housing for People with Disabilities at 18-20 (Feb. 2007).

2. CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING

HOW CAN MY CRIMINAL RECORD AFFECT MY CHANCES OF GETTING ACCEPTED INTO GOVERNMENT-ASSISTED HOUSING?

When you apply to government-assisted housing through a Public Housing Authority (PHA) (see definition on PG. 340), the PHA runs a criminal background check on:

- You;
- Everyone currently living with you;
- Everyone 16 or older who might live with you;
- Any biological parent of any children who will be living in the household, even parents who do not plan to live with you and are not part of the application to the PHA.

The rules governing who may be denied are very broad. The PHA tries to exclude people it believes will "risk the health and safety of other tenants." On the other hand, the PHA may choose to overlook your criminal convictions and accept your application, especially if they see evidence that you have changed since the time of your conviction.[1224]

Some cities in California are making an effort to make affordable housing more inclusive to people with criminal records. For example, in 2016, the city of Richmond approved a city ordinance to protect the housing rights of people in reentry.[1225] The "Fair Chance Access to Affordable Housing" ordinance will be added to the Richmond Municipal Code as Chapter 7.110 in 2017.[1226] San Francisco adopted a similar ordinance in 2014.[1227] For more information about San Francisco's Fair Chance ordinance, see Appendix H on PG. 427.

IMPORTANT! ***There are a lot of rules about who can and cannot live in government-assisted housing.*** **Every program has its own set of rules that you should be aware of** ***BEFORE you apply.*** **You want to know what laws or program policies might prevent you from living there because of a criminal conviction or other criminal history information, even if your family already lives there. Some bans are required by law, while others are allowed, but not required. These types of bans are up to the discretion and policies of the PHA and/or the owner of the government-assisted housing. You should look at the policies BEFORE YOU APPLY.**

CAN A PUBLIC HOUSING AUTHORITY (PHA) REFUSE TO RENT TO ME JUST BECAUSE OF MY CRIMINAL RECORD?

Yes, it's possible. Rules for government-assisted housing can be VERY STRICT. Your local Public Housing Authority (PHA), which runs a lot of the government-assisted housing programs like Section 8 Housing Choice Vouchers and the Public Housing program, and works with private owners that accept government assistance to keep their buildings more affordable, may reject you and your household because of certain criminal convictions.

There are two reasons that a PHA or owner of government-assisted housing will reject you—the first is when it's legally required (meaning the PHA and/or the owner of government-assisted housing don't have a choice and *must* deny you), and the second is when it's allowed but not required (meaning the PHA and/or the owner of government-assisted housing has a choice to deny you, but doesn't *have* to). It is important for you to understand both situations, and your options to challenge the bans that are allowed, but not required, or spot situations where a PHA or owner of government-assisted housing tells you that the ban is legally required, but there is a legal loophole. Keep reading to learn more.

OVERVIEW
REQUIRED VS. ALLOWED BANS IN GOVERNMENT-ASSISTED HOUSING

(1) BANS THAT ARE REQUIRED: Sometimes, a government-assisted housing provider MUST deny certain applicants because they have a specific type of conviction on their record. Because the law says that the rejection is required ("mandatory"), PHAs and owners of government-assisted housing do not have a choice in the matter. They must deny you if you have one of the convictions listed in the law. For all conviction-based bans that are legally required, see the chart PG. 361, and the questions on PG. 364.

[1224] See Know Your Rights: Housing and Arrests or Criminal Convictions, THE BRONX DEFENDERS (Oct. 2, 2010), http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/.
[1225] See Richmond City Council Adopts Fair Chance Housing Ordinance Press Release, Bay AreaLegal Aid (Dec. 21, 2016), https://baylegal.org/wp-content/uploads/2016/12/Press_Release_Fair-Chance-Housing-Ordinance.pdf
[1226] See Special meeting of the Richmond Housing Authority, Richmond City Council (Dec. 20, 2016), http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/7683.
[1227] SF Human Rights Commission Fair Chance Ordinance, http://sf-hrc.org/fair-chance-ordinance.

(2) BANS THAT ARE ALLOWED, BUT NOT REQUIRED ("CATCH-ALL" BANS): More commonly, you will likely fall into a "catch-all" ban on people with any criminal activity (which includes both arrests and convictions, even if they have been dismissed) that *threaten the health, safety, or right of peaceful enjoyment to the government-assisted property by the other residents, the property owner, or the PHA's staff or agents/contractors*. This includes *drug-related criminal activity* and *violent criminal activity* (again, both arrests and convictions, even if dismissed, can be considered). Here, the law doesn't require that you get denied from the housing program, but it allows PHAs and owners of government-assisted housing to deny you on this basis.

- See the chart summarizing these bans on PG. 361, and the questions on PG. 364.
- See Appendix E, PG. 419, for an even more detailed chart explaining which specific criminal convictions make denial mandatory (required by law) and which make denial permissive (allowed, but not required by law), including citations to the specific laws.[1228]

WHERE DO I FIND A PHA'S RULES & POLICIES ABOUT CRIMINAL RECORDS?

The rules for criminal records are different for every government-assisted housing program and are determined locally. Even an owner of government-assisted housing CAN HAVE DIFFERENT RULES than the Public Housing Authority (PHA) that oversees the government-assisted housing programs. You should be able to find these rules FOR YOUR PROGRAM. You can look in the following places:

- The PHA's Annual Plan
- The PHA's Admission and Occupancy Plan (ACOP)
- The lease for public housing
- The Administrative Plan for the Section 8 Voucher program
- The lease and/or house rules for all other government-assisted programs[1229]
- The PHA's website for these plans
- By Asking PHA and/or owner for a copy as well.

CHART SUMMARIZING CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING

BELOW IS A CHART THAT SUMMARIZES THE CRIMINAL RECORD-RELATED BANS IN GOVERNMENT-ASSISTED HOUSING.
(You can also find an overview on PG. 360 and detailed explanations beginning on PG. 364).

SUMMARY OF REQUIRED VS. ALLOWED CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING					
TYPE OF BAN (Required vs. Allowed)	**CONVICTION OFFENSE**	**LENGTH OF BAN**	**WHICH GOVERNMENT-ASSISTED HOUSING PROGRAMS THIS BAN APPLIES TO**	**WHO IT WILL AFFECT**	**HOW TO CHALLENGE THE BAN *(if it's appropriate--consult a lawyer for legal advice!)***
REQUIRED ("mandatory")	Methamphetamine Production on Federally-Assisted Property	BANNED FOR LIFE	Federal government-assisted housing programs run by PHAs (public housing, voucher program, Section 8 moderate rehabilitation program)	Anyone living in the government-assisted household	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong. If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show mitigating circumstances & rehabilitation.

[1228] An Affordable Home on Re-entry: Federally Assisted Housing and Previously Incarcerated Individuals, NHLP (2008).
[1229] This includes HUD-assisted housing, Rural Development (RD) project-based programs, and Low Income Housing Tax Credit (LIHTC) properties.



REQUIRED ("mandatory")	Sex Offense Convictions requiring LIFETIME Registration	BANNED FOR LIFE	Most federal government-assisted housing programs (doesn't apply to LIHTC and RD)	Anyone living in the government-assisted household	If you're not required to register, tell the PHA/owner and explain that their information is wrong. If you are required to register: Ask for a review hearing and contact a housing attorney for help ASAP.* Show: 1. You're not required to register for life, just a limited period of time, so ban does not apply. 2. Ban does not apply to LIHTC or RD housing.
REQUIRED ("mandatory")	Past eviction from federally-assisted property due to drug-related criminal activity	BANNED FOR 3 OR MORE YEARS (from date of eviction) *unless person engaged in drug-related criminal activity successfully completes a supervised drug rehabilitation program OR circumstances leading to the eviction no longer exist*.	Federal government-assisted housing programs run by PHAs (public housing, voucher program, Section 8 moderate rehabilitation program)	Anyone living in the government-assisted household (unless person who was engaged in drug-related activity completes a supervised drug rehabilitation program)	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong. If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* 1. If the ban is more than 3 years, show it is unreasonably long b/c of mitigating circumstances & rehabilitation. 2. Ban does not apply to LIHTC or RD housing. Show mitigating circumstances & rehabilitation.
REQUIRED ("mandatory")	Current illegal drug use	While it's current * BUT if the person stops using drugs, the PHA/owner could still reject you for a reasonable time after the illegal drug use—see permissive bans below.	ALL federal government-assisted housing	Anyone living in the government-assisted household	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong. If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* If person illegally using drugs is kicked out/incarcerated/ getting treatment, show mitigating circumstances & rehabilitation.

ALLOWED, BUT NOT REQUIRED *("permissive")*	Criminal activity that would harm the health, safety, or right of peaceful enjoyment to the government-assisted property by other residents, the property owner, or PHA staff or agents/contractors. *This applies to both convictions AND arrests that did not result in a conviction*	The criminal activity must be "reasonably recent"	ALL federal government-assisted housing	Check the PHA policy	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong. If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show: 1. Significant time has passed (not reasonably recent). 2. Does not pose a risk to other residents; doesn't fall within the ban.
ALLOWED, BUT NOT REQUIRED *("permissive")*	Other drug-related criminal activity	The criminal activity must be "reasonably recent"	ALL federal government-assisted housing	Check the PHA policy	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong. If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show: 1. Significant time has passed (not reasonably recent). If the past drug crime is related to a past addiction, it may qualify for a disability and you should ask for a reasonable accommodation (see Appendix E, PG. 419.
ALLOWED, BUT NOT REQUIRED *("permissive")*	Violent criminal activity	The criminal activity must be "reasonably recent"	ALL federal government-assisted housing	Check the PHA policy	If it's a mistake, bring it to the PHA/owner's attention and explain why the information is wrong. If it's not a mistake, ask for a review hearing and contact a housing attorney for help ASAP.* Show: 1. Significant time has passed (not reasonably recent). 2. Mitigating circumstances & rehabilitation.

WARNING: READ CAREFULLY

In the chart above, we summarize four situations where a Public Housing Authority (PHA) and the owners of federal government-assisted housing MUST reject you under law based on particular types of convictions. BUT PLEASE NOTE: These required ("mandatory") bans apply only to SOME types of federal government-assisted housing, but not ALL types. **There are SOME government-assisted housing programs where these "required" bans *do not apply***. Also, some of these required bans will last for the rest of your life, but **others are only temporary bans**. ***SO READ CAREFULLY!*** Don't assume the ban applies to you. Try to match your exact situation and conviction/criminal record with this chart to see how your criminal record will impact your ability to get into federal government-assisted housing. Refer back to PG. 360 for an overview of required vs. allowed bans.

DETAILED QUESTIONS & ANSWERS ABOUT CRIMINAL RECORD BANS IN GOVERNMENT-ASSISTED HOUSING

DO YOU NEED LEGAL HELP?

If you have legal questions, we suggest calling a housing legal aid provider from the list of legal aid providers on PG. 1127, or contact Root & Rebound at 510-279-4662 for further guidance or a referral.

Here we explain the information from the chart above in a question & answer format in much more detail. You will learn about the specifics of each of these criminal record bans in government-assisted housing. Later we explain how to challenge denials due to your criminal record, beginning on PG. 391.

WHAT BANS ARE *REQUIRED* IN GOVERNMENT-ASSISTED HOUSING—FOR SPECIFIC TYPES OF CONVICTIONS AND SPECIFIC HOUSING PROGRAMS?

Here we explain the four bans that are required ("mandatory") for SOME types of federal government-assisted housing programs, but not ALL. There might be government-assisted programs where these bans DO NOT APPLY. *So please read carefully!*

➢ BAN 1: METHAMPHETAMINE PRODUCTION ON FEDERAL GOVERNMENT-ASSISTED PROPERTY → LIFETIME BAN FROM 3 FEDERAL HOUSING PROGRAMS

Under federal law, PHAs and owners of government-assisted housing MUST PERMANENTLY DENY admission to an entire household to three of the federal government-assisted housing programs—*(1) Public Housing, (2) the "Section 8" Housing Choice Voucher program, and (3) the Section 8 Moderate Rehabilitation program*—if ANY MEMBER of the household has ever been convicted for the manufacture or production of methamphetamine ON THE PREMISES of any type of federal government-assisted housing.[1230] Because this rule is so specific, the lifetime ban applies to only a *very small number of housing applicants.*

Let's break it down further. As you apply to a PHA for government-assisted housing, this lifetime ban only applies to you if someone in your household was:

1. Convicted (meaning found guilty in a court of law),
2. Of the manufacture or production of Methamphetamine, AND
3. The criminal activity took place on the premises (on the property) of any type of federal government-assisted housing.
4. Lastly, if you are applying to a government-assisted housing program that is *not* one of the 3 programs that PHAs run (again, those are Public Housing, the "Section 8" Housing Choice Voucher program, and the Section 8 Moderate Rehabilitation program), then this mandatory lifetime ban does NOT apply to you or your household.[1231] Instead, read about the catch-all ban on PG. 360 that is allowed, but not required.

I was denied by the PHA or the owner of government-assisted housing, but based on the information in this legal guide, I think it was a mistake or the required ban doesn't apply to me. How do I challenge the denial?

If another assisted housing program—not one of the three listed above—tries to impose a lifetime ban on you due to your conviction for the manufacture of production of methamphetamine on the premises of federal government-assisted property, you can challenge the lifetime ban and present mitigating information (meaning facts that are specific to your case and circumstances showing you should not be denied the housing—see PG. 358).

- Go to PG. 393 to learn how to challenge a denial by asking the PHA for an informal review hearing.
- Go to PG. 371 to learn about what kinds of mitigating information you should include with your application, and as proof of mitigating circumstances & rehabilitation with any challenges you bring.
- If there was a mistake in the information the PHA or owner of the government-assisted property relied upon, you should immediately bring it to their attention.

Mistakes could include:

- Errors in your criminal records (see UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931)
- Even though you were on the premises of the federal government-assisted housing, you did not actually manufacture the drugs, but you were automatically denied housing anyway; OR
- Even though you were involved in the manufacturing of the methamphetamines, you were a victim of domestic violence that led to your involvement, and you shouldn't be punished by the PHA.

[1230] 42 U.S.C. § 1437n(f)(1); 24 C.F.R. §§ 882.518(a)(1)(ii) (Section 8 moderate rehabilitation), 960.204(a)(3) (public housing), 982.553(a)(1)(ii)(c) (Section 8 voucher).

[1231] When applying for admission. If an owner, who is not required by statute to impose a lifetime ban, seeks to impose one, an applicant may object to the policy as contrary to congressional intent as it goes beyond the statutory limits. C.F.R. § 3560.154(j). If an owner rejects such an applicant, the applicant should challenge the lifetime ban and present information regarding mitigating circumstances or rehabilitation. Mitigating circumstances might include the fact that the applicant was on the premises but did not manufacture the drugs, or was involved in the manufacturing but was a victim of domestic violence. It may also include the fact that there has been a significant lapse of time between the offense and the application for admission with no other intervening criminal activity.

➢ BAN 2: Sex offense convictions requiring lifetime registration → Lifetime ban for almost all federal government-assisted housing programs

Under federal law, PHAs and owners of government-assisted housing MUST PERMANENTLY DENY admission to an entire household—to almost all federal government-assisted housing programs—if ANY MEMBER of the applicant household is required to be *lifetime registered* under any state's sex offender registration program.[1232]

THIS REQUIRED BAN DOES NOT APPLY TO YOU if you are required to register as a sex offender for a temporary or limited amount of time. Again, the ban only applies if you are required to register as a sex offender in any state for the *rest of your life*. Unfortunately, PHAs and owners of government-assisted property will often mistakenly apply the ban to anyone registered as a sex offender.

EXCEPTION FOR CERTAIN TYPES OF GOVERNMENT-ASSISTED HOUSING PROGRAMS (NO REQUIRED BAN): The other exception is that owners of two government-assisted housing programs—Low-Income Housing Tax Credit (LIHTC) properties and Rural Development (RD) housing—are NOT REQUIRED to deny admission to a lifetime registered sex offender; they have discretion.[1233]

I was denied by the PHA or the owner of government-assisted housing because I am a registered sex offender, but based on the information in this legal guide, I think it was a mistake or the required ban doesn't apply to me. How do I challenge the denial?

Some PHAs or owners misinterpret the rules that apply to sex offender registrants, and some apply their own criteria—which in the real world means that the PHA or owner will end up automatically banning a person who *shouldn't be automatically banned* (an example of this would be if a PHA had a policy that permanently bans all people required to register on a state's Sex Offender Registry list, even people who don't have to register for their entire lifetime). If this is your situation, you can challenge the denial by asking the PHA for an informal review hearing (see PG. 393).

Only if you meet the *legal definition* of a lifetime registered sex offender can you be permanently denied federal government-assisted housing without any other consideration of your individual circumstances. Thus, if you do not have a lifetime sex offender registration requirement, the PHA should analyze the *time, nature and circumstances* of the offense, as appropriate for any other criminal activity (see PG. 352).[1234] As an applicant, you should also be allowed to show mitigating information and/or proof of your rehabilitation (see PG. 371 for explanations of what counts as mitigating information and proof of rehabilitation). For example, if you do not have to register as a sex offender for the rest of your lifetime, you should be able to establish that the criminal conduct was not violent, did not involve children, happened a long time ago, and that there have been no problems since the conviction.[1235]

- Go to PG. 393 to learn how to challenge a denial by asking the PHA for a review hearing.
- Go to PG. 371 to learn about what kinds of mitigating information and proof of rehabilitation you should include with your application, and/or with any challenges you bring.
- If there was a MISTAKE in the information the PHA or owner of the government-assisted housing relied upon, you should immediately bring it to their attention. Mistakes could include errors in your criminal records (see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931, which discusses how to fix errors in your record).

[1232] 42 U.S.C. § 13663(a); 24 C.F.R. §§ 5.100 (definition of federally assisted housing), 5.856 (federally assisted housing in general), 882.518(a)(2) (Section 8 moderate rehabilitation), 960.204(a)(4) (public housing), 982.553(a)(2)(I) (voucher) (2007); Screening and Eviction for Drug Abuse and Other Criminal Activity-Final Rule, H 2002-22 (Oct. 29, 2002), ¶ VI.

[1233] See 7 C.F.R. § 3560.154(j) (2007) (RD housing). There are no regulations for LIHTC properties requiring the denial of admission of a registered sex offender.

[1234] One could argue that the federal statute barring lifetime registered sex offenders preempts an expansion of that bar to other sex offenders. There are three general types of situations in which preemption may be established. One of the situations is that preemption may be in inferred where the scheme of the federal legislation is so comprehensive that it creates the inference that Congress "left no room" for local regulation in that area. Cal. Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 281 (1987). Applying that standard, the area in question is eligibility for federally assisted housing and Congress has fully defined eligibility for federally assisted housing. Imposing an absolute lifetime bar when none is required is determining eligibility in an area that Congress has not left any room for local regulation. Success on such a claim may be complicated as the party seeking preemption has the burden of proof and the presumption is against preemption. Cipollone v. Ligget Group, 505 U.S. 504, 518 (1992).

[1235] Corinne A. Carey, No Second Chance: People with Criminal Records Denied Access to Public Housing, 36 U. TOL. REV. 545, 579 (2005) (article also lists reasons why an individual might be on a lifetime registration list, including consensual relationship with partners who are a few years younger, indecent exposure or lewd displays often related to substance abuse, mental health diagnosis, homelessness, and women who are convicted of conspiracy to commit sexual abuse for failing to protect a child from such abuse); see also Housing Rights Watch, No Easy Answers: Sex Offender Laws In The US (2007).

IMPORTANT: There are other restrictions on where people who must register as sex offenders can live under California state law. It is VERY IMPORTANT to check your state and local laws regarding these requirements to know if they apply to you, and how it will affect where you can live. See PG. 352 of this HOUSING CHAPTER and PG. 163 of the PAROLE & PROBATION CHAPTER to understand additional restrictions on where 290 registrants can live in California.

➢ BAN 3: PAST EVICTION FOR DRUG-RELATED ACTIVITY ON FEDERAL GOVERNMENT-ASSISTED PROPERTY → MINIMUM 3-YEAR BAN FOR THREE FEDERAL GOVERNMENT-ASSISTED HOUSING PROGRAMS

Under federal law, PHAs and owners of government-assisted housing MUST DENY admission to an entire household to three of the government-assisted housing programs—*(1) Public Housing, (2) the "Section 8" Housing Choice Voucher program, and (3) the Section 8 Moderate Rehabilitation program*—if ANY MEMBER of the household has ever been EVICTED from *any federal government-assisted housing program or property* because of drug-related criminal activity.[1236] This ban must last for a minimum of 3 years, starting from the date of eviction, but PHAs and owners can choose to extend it.[1237]

PLEASE NOTE: This ban only applies to the three types of federal government-assisted housing mentioned above. It does NOT apply to the following types of government-assisted housing programs:

- Low-Income Housing Tax Credit (LIHTC) properties and Rural Development (RD) housing;[1238]
- Housing applicants who were evicted for drug-related activity from any other type of housing or program that *does not receive federal government money*.[1239]

IMPORTANT EXCEPTION: PHA or owner *may* admit your household if the person whose drug-related criminal activity led to the eviction *later goes on to complete an approved, supervised drug rehabilitation program*, OR if your circumstances have changed.[1240] This is an important exception, because it gives you the power to change your situation!

By taking and completing an approved drug rehabilitation program, you could become eligible for housing again, or *if your circumstances have changed*. "Changed circumstances" could mean:

- **The household member with the drug-related conviction has died or is in prison, and won't return to the household.**
- **The applicant household has had no contact for a period of time and does not know the whereabouts of the former household member who was evicted for the drug-related activity.**
- **There could be other reasons the family should be allowed back into the housing if the person with the conviction is no longer in the picture or has been rehabilitated.[1241]**

[1236] 42 U.S.C. § 13661(a).

[1237] 4 C.F.R. §§ 5.852(d) (federally assisted housing), 960.203(c)(3)(ii), 966.4(1)(5)(vii)(E) (public housing). HUD apparently believes that the statute sets a floor of three years, and that PHAs and owners are not violating the statute if they expand the time period. The HUD explanation in the regulations is that "[s]ince the intent of the statute was to strengthen protections against admitting persons whose presence in assisted housing might be deleterious, HUD does not interpret this new provision as a constraint on the screening authority that owners and PHAs already had." Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001).

[1238] 4 C.F.R. §§ 5.850(a) (excludes rural development housing), 5.854(a) (federally assisted housing in general), 882.518(a)(1)(I) (Section 8 moderate rehabilitation), 960.204(a)(1) (public housing), 982.553(a)(1)(I) (voucher); Screening and Eviction for Drug Abuse and Other Criminal Activity–Final Rule, H 2002-22 (Oct. 29, 2002) ¶ VI (HUD Notice applicable to HUD-assisted project-based housing, excluding Section 8 moderate rehabilitation housing and project-based vouchers or certificates). The rule is also not applicable to housing assisted with S+C, SHP or HOPWA funding.

[1239] 4 C.F.R. §§ 5.850(a) (excludes rural development housing), 5.854(a) (federally assisted housing in general), 882.518(a)(1)(I) (Section 8 moderate rehabilitation), 960.204(a)(1) (public housing), 982.553(a)(1)(I) (voucher); Screening and Eviction for Drug Abuse and Other Criminal Activity–Final Rule, H 2002-22 (Oct. 29, 2002) ¶ VI (HUD Notice applicable to HUD-assisted project-based housing, excluding Section 8 moderate rehabilitation housing and project-based vouchers or certificates). The rule is also not applicable to housing assisted with S+C, SHP, or HOPWA funding.

[1240] 2 U.S.C. § 13661(a); 24 C.F.R. § 5.854(a)(2). The rehabilitation should not be limited to supervised rehabilitation programs but also ought to recognize self-help programs such as Alcoholics Anonymous. See, e.g., Rules & Regulations, Dep't of Hous. & Urban Dev., 66 Fed. Reg. 28,776, 28,785 (May 24, 2001) (codified at 24 C.F.R. § 5.852(c)(1)).

[1241] 1842 U.S.C. § 13661(a); 24 C.F.R. § 5.854(a)(2). The rehabilitation should not be limited to supervised rehabilitation programs but also ought to recognize self-help programs such as Alcoholics Anonymous. See, e.g., Rules & Regulations, Dep't of Hous. & Urban Dev., 66 Fed. Reg. 28,776, 28,785 (May 24, 2001) (codified at 24 C.F.R. § 5.852(c)(1)).

My application was denied by the PHA or the owner of government-assisted housing because of a past eviction from federal government-assisted property for drug-related criminal activity, but I think it was a mistake or that the ban is unreasonably long (more than 3 years). How do I challenge the denial?

- You can challenge a denial because the ban is unreasonably long or because there was a mistake in the information the PHA or owner of the government-assisted property relied on. Go to PG. 393 to learn how to challenge a denial by asking the PHA for an informal review hearing.
- Go to PG. 371 to learn about what kinds of mitigating information you should include with your application, and as proof of mitigating circumstances & rehabilitation with any challenges you bring.
- If there was a mistake in the information the PHA or owner of the government-assisted property relied upon, you should immediately bring it to their attention. Mistakes could include errors in your criminal records (see CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931).

HELPFUL HINT

Challenging Long Bans For Past Drug Activity on Government Housing Property:

- If you were convicted of a less serious drug-related crime, such as mere possession, OR you have been rehabilitated (and can show you have changed, done classes, or improved yourself), these are all good reasons to challenge a ban that is significantly longer than 3 years. If you can, talk to a lawyer or advocate![1242] See General Guide Appendix A, on PG. 1127 of this guide for a list of legal aid providers in California. A lawyer can explain how to gather proof that shows the housing ban shouldn't apply to you for more than 3 years. Again, go to PG. 364 to learn about the procedure for challenging a denial, and asking the PHA for an informal review hearing.

➢ BAN 4: CURRENT ILLEGAL DRUG USE → REQUIRED BAN WHILE ILLEGAL DRUG USE IS "CURRENT"

PHAs and owners of government-assisted housing **must deny** admission to an entire household if ANY MEMBER of the household is *currently* using illegal drugs.[1243]

QUESTIONS RELATED TO CURRENT DRUG USE:

When does drug use or alcohol abuse disqualify me from getting into federal government-assisted housing?

Current drug use on or near the property by any tenant, household member, person under the tenant's control, or guest will disqualify you.[1244] "Current" means you used illegal drugs "recently enough to justify a reasonable belief" that you're still using. In their written policies, PHAs and owners should spell out what they define as "recent," and must abide by that policy. Read more about "recentness" requirements on PG. 420. To learn about how your past addiction could be a protected disability which allows you to ask for a "reasonable accommodation"—which means you can ask the PHA or owner of government-assisted housing to lift or relax this ban (see Appendix E, PG. 419).

How would PHA or owner find out about my alcohol or drug use?

A PHA or owner could learn about your drug or alcohol use directly from you (in your application) or from access to records about your criminal history or drug treatment. To learn more about how a PHA or owner accesses records related to your alcohol or drug use, read Access to Your Drug/ Alcohol Records for Government-Assisted Housing on PG. 379.

Should I try to hide my current illegal drug use from the PHA or owner of the government-assisted housing?

No, you should be honest on the application. You can be denied the government-assisted housing—or later evicted (kicked out/terminated from the program)—for intentionally lying during the application process.

[1242] Preemption may be in inferred where the scheme of the federal legislation is so comprehensive that it creates the inference that Congress "left no room" for local regulation in that area. Cal. Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 281 (1987). Applying that standard, Congress has fully defined eligibility for federally assisted housing. Imposing an absolute lifetime bar when none is required is determining eligibility in an area that Congress has not left any room for local regulation. Cipollone v. Ligget Group, 505 U.S. 504, 518 (1992).

[1243] 24 C.F.R. § 960.204.

[1244] 24 C.F.R. § 960.204.



Do PHAs or owners of government-assisted housing consider whether I have participated in or completed a drug or alcohol rehabilitation program to let me into a housing program?

Generally, they don't have to, but PHAs and owners may consider that you have participated in or have completed a drug rehabilitation program, and may ask you for documentation that you are not currently using illegal drugs.[1245] Specifically, you may have to provide documentation of your drug rehabilitation with your application if you want to avoid or reduce the 3+ year ban on admitting people who were previously evicted from federally-assisted housing due to a drug-related crime.[1246]

Can PHAs or owners of government-assisted housing screen me by using or requiring a medical exam or drug test?

No. PHAs and owners may not require you to undergo any type of physical exam or medical testing in order to admit you to a housing program. This includes testing for HIV/AIDS, Tuberculosis (Tb), pregnancy, and, presumably, drug/alcohol screening.[1247]



WARNING: if applying to government-assisted housing, it is very important for anyone with a criminal record to read the following section!

WHAT BANS ARE ALLOWED, BUT NOT LEGALLY REQUIRED IN GOVERNMENT-ASSISTED HOUSING—THE "CATCH-ALL" CATEGORY OF BANS THAT APPLY TO *ALL PEOPLE WITH CRIMINAL RECORDS*?

For the many of you who do not fall into one of the required ("mandatory") bans discussed above, it's more likely you could get denied government-assisted housing because the Public Housing Authority (PHA) or the owner of the government-assisted housing has decided based on your criminal record that you *currently* "pose a risk to the health, safety, or right to peaceful enjoyment of the property by other residents, the owner, or the PHA staff or agents/contractors."[1248]

This is a "catch-all" category and allows the PHA or owner of government-assisted property to deny applicants with criminal histories more generally. They are allowed to consider a lot of information, including past convictions (even convictions you had expunged); arrests (even those that never led to a conviction); and in some cases your drug treatment records. See PG. 379 for detailed information about what criminal records a Public Housing Authority (PHA) or owner of government-assisted property can access about you.

HOW CAN I FIND OUT THE CRIMINAL RECORD POLICIES OF MY LOCAL PUBLIC HOUSING AUTHORITY (PHA) OR OF THE OWNER OF GOVERNMENT-ASSISTED HOUSING?

REMEMBER THAT THESE "CATCH-ALL" BANS ARE NOT REQUIRED: This "catch-all" category is NOT a required ban. The PHA or owner is allowed to exclude you only if they can show that your criminal history poses a current threat to the health, safety, or peace of other residents, the owner, or PHA staff or agents/contractors. It's recommended that they consider mitigating information and proof of your rehabilitation—and in the case of the Public Housing program, the PHA *must* consider this extra information!

Each local PHA and owner of government-assisted housing will have different rules about what criminal history information they will ignore and what they will consider. By law, the PHAs and owners of government-assisted housing MUST put their policies *in writing* and make them available to applicants.[1249]

The rules and policies of each local PHA and owner of government-assisted housing MUST not violate the legal protections discussed on PG. 379. Furthermore, the PHA must follow its own rules and policies.

You may want to consider talking to an advocate/lawyer about whether or not a particular PHA's policies to exclude people with certain criminal records could be violating the law. (See PG. 1127 for a list of legal aid providers across California).

[1245] 24 C.F.R. § 982.553

[1246] See PG. 374 for information about federally-assisted housing programs that have a 3-year ban on someone who was evicted from housing for a drug-related offense. In sum: For certain federally-assisted housing programs, including (1) public housing, (2) the voucher program, and (3) project-based Section 8 housing, there is a mandatory 3-year ban on admission for families, if any member of the applicant's household has ever been evicted from "federally assisted housing" for drug-related criminal activity. 42 U.S.C. § 13661(a). However, this ban does not apply to LIHTC and RD housing. See PG. 374. This rule also does not apply to applicants who were evicted for drug-related activity from non-federally assisted housing. See PG. 374.

[1247] See HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-8(B)(1) (rev. November 2013) (Prohibited Screening Criteria). Typically this provision is used to prohibit owners from inquiring into an applicant's medical/physical condition, such as pregnancy, AIDS or TB. But it also could be used to argue that an owner may not request drug testing.

[1248] 24 C.F.R. § 982.553

[1249] 24 C.F.R. § 960.202.

IMPORTANT: Want to learn how to challenge a denial from a PHA or owner of government-assisted housing? Go to PG. 364 to learn more!

UNDER THE "CATCH-ALL" BAN, CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING DENY ME FOR A CONVICTION THAT I HAD "EXPUNGED"?

Yes.[1250] A PHA or owner of government-assisted housing may consider expunged convictions in deciding whether to admit you into a government-assisted housing program or unit.[1251]

This also means that, for this application, when you are asked about any past convictions, you should list even those that have been *expunged*.[1252] If you lie or don't include them, the PHA or owner can reject you during the housing application process *just for lying* OR the PHA or owner could evict you later if it finds out that you intentionally lied during the application.[1253]

Remember, The PHA's or owner's right to reject you based on your criminal record (including expunged convictions) is limited by federal[1254] and state law.[1255] Go to PG. 364 to learn more about these protections and limitations on the kinds of denials that PHAs and owners can make.

For more information on getting a conviction expunged, see the CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931.

UNDER THE "CATCH-ALL" BAN, CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER DENY ME FROM GOVERNMENT-ASSISTED HOUSING FOR ARRESTS THAT DID NOT RESULT IN A CONVICTION?

No.[1256] A PHA or owner of government-assisted housing CANNOT deny, end assistance, or evict you based on *arrest records* alone.[1257] Some PHAs or owners of government-assisted housing might ask about arrests, and some might not. But whatever the policy, the PHA or owner MUST be able to show that's it is more probable than not that the *conduct underlying the arrest* occurred and that such conduct could *threaten the health, safety, or right to peaceful enjoyment of the building by other residents, the owner, or PHA staff or its agents/contractors*. This means the PHA or owner of government-assisted housing will need other forms of proof (beyond just the arrest record) that the conduct underlying the arrest occurred, because of course, an arrest is NOT legal proof that you actually committed a crime (unlike a conviction, which shows guilt).[1258]

If you were denied government-assisted housing based on arrest records alone (without more proof), you can challenge the denial, as this practice likely violates fair housing and anti-discrimination laws and/or your right to due process.[1259] We suggest that you contact a housing attorney or legal aid organization that can help you (see the list of legal aid providers on PG. 1127). Whether or not you can find a lawyer to help you, you should try to get familiar with the procedure for challenging a PHA's or government-assisted owner's decision to deny you. For details on this process, see PG. 364.

[1250] 24 C.F.R. § 982.553. This statute is section 8 specific, says generally, can deny admission for other criminal activity that "may threaten the health, safety, or peaceful enjoyment."
[1251] 24 C.F.R. § 960.203; 42 U.S.C. § 13661; 24 C.F.R. § 5.903 (authorizing PHA to obtain law enforcement criminal records for use in applicant screening, lease enforcement, and evictions. Owners are not authorized to review records, but can request a determination by PHA as to whether record can be basis for applicant screening, lease enforcement, or eviction.)
[1252] "Expungement" is a way to clean up your record so that your convictions have less of a negative impact on your life. When a conviction is expunged, the judge reopens your case and changes your "guilty" plea or verdict to "not guilty," and then dismisses the case. The case does not disappear from your record, but it shows up as a dismissal instead of a conviction. Only certain convictions qualify for expungement. CAL. PENAL CODE §§ 1203.4, 1203.4a, 1203.41.
[1253] National Housing Law Project, How Does a Criminal Record Affect Your Housing Rights? http://www.nhlp.org/files/Fact sheet for potential tenants - AC%28final%29.pdf.
[1254] 42 U.S.C. § 13661(a).
[1255] Fair Employment & Housing Act, CAL. GOV'T CODE § 12955 et seq.; Unruh Civil Rights Act, CAL. CIV. CODE § 51. Marina Point, Ltd. v. Wolfson, 30 Cal.3d 721 (1982) (Unruh Civil Rights Act prohibits all "arbitrary" discrimination, regardless of protected class status; landlord's blanket exclusion of an entire class of people (children) based on a generalized prediction that the class, "as a whole," is more likely to commit misconduct than some other classes of public" violates the Act.)
[1256] 42 U.S.C. § 13661(c); Fair Employment & Housing Act, CAL. GOV'T CODE § 12955 et seq.; Unruh Civil Rights Act, CAL. CIV. CODE § 51; Marina Point, Ltd. v. Wolfson, 30 Cal.3d 721 (1982) (Unruh Civil Rights Act prohibits all "arbitrary" discrimination, regardless of protected class status; landlord's blanket exclusion of an entire class of people (children) based on a generalized prediction that the class, "as a whole," is more likely to commit misconduct than some other classes of public" violates the Act.)
[1257] U.S. DEP'T HOUS. & URBAN DEV., PIH 2015-19, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (2015). See also Landers v. Chicago Hous. Auth., 404 Ill. App. 3d 568 (2010).
[1258] HUD, Notice PIH 2015-19, "Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (2015); Landers v. Chicago Hous. Auth., 404 Ill. App. 3d 568 (2010).
[1259] See HUD, Notice PIH 2015-19, "Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (2015); Landers v. Chicago Hous. Auth., 404 Ill. App. 3d 568 (2010).

UNDER THE "CATCH-ALL" BAN, WILL MY PARTICIPATION IN A PRE-TRIAL INTERVENTION OR DIVERSION PROGRAM MATTER?

If the program shows up on your background check as a conviction, then the PHA or owner of the government-assisted housing can consider it, and possibly deny you.[1260] *SO it depends on how it comes up on your background check.*

- If you are placed into a pre-trial intervention program and *you do NOT have to plead guilty in order to participate*, then a background check report will probably show the filing of a case, but no conviction while you are participating in the program.[1261] If you successfully complete the program, then your case will be dismissed without a conviction ever having been recorded. Therefore, it CANNOT show up as a conviction in a background check, because it never was one.[1262] If there are errors in your background check, the PHA or owner must give you an opportunity to correct them.[1263]
- If instead you are placed in a pre-trial intervention program that *requires you to plead guilty*, then this guilty plea will probably appear as a conviction on a background check report while you are still participating in the program. If you successfully complete the program, your guilty plea should be automatically withdrawn and those records sealed, after which a private background check company CANNOT report this as a conviction.[1264] If there are errors in your background check, the PHA or owner must give you an opportunity to correct them.[1265]

To learn more about how private background checks work, see PG. 377.

UNDER THE "CATCH-ALL" BAN, CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING DENY MY APPLICATION BECAUSE OF THE CONVICTIONS OF FAMILY MEMBERS WHO LIVE WITH ME?

Yes. You can be excluded from federal government-assisted housing for the convictions of family members *who are part of the current household.*[1266]

If the person no longer lives with you, you should NOT be denied because of their convictions, but you may have to prove that he or she is not part of the household anymore.[1267]

YOUR RIGHTS AGAINST ILLEGAL DENIALS FROM GOVERNMENT-ASSISTED HOUSING BECAUSE OF YOUR CRIMINAL RECORD

HOW DOES THE LAW PROTECT ME FROM BEING DENIED GOVERNMENT-ASSISTED HOUSING BECAUSE OF MY CRIMINAL RECORD?

The Public Housing Authority (PHA) or owner of government-assisted housing must follow certain laws and rules when considering your past convictions and criminal history information. They may only reject you for criminal activity that *threatens the health, safety, or peace of other residents or staff AND the criminal activity must be "reasonably recent."*

1. **PHAs and owners of government-assisted housing may only reject you for *certain kinds of criminal activity*—not everything.**

A PHA or owner may only reject you for criminal activity that is:[1268]

- ***Currently posing a threat*** to the health, safety or peace of other residents;
- ***Currently posing a threat*** to the health, safety or peace of the owner or local PHA staff or agents/contractors;
- Drug-related;[1269] OR
- Violent.[1270]

WHAT DOES "CURRENTLY POSING A THREAT" MEAN?

If you are denied government-assisted housing by a PHA or owner because of criminal activity that DOES NOT threaten anyone's health, safety, peace, or property, then you have a strong argument to challenge the denial. Go to PG. 364 of this chapter to learn how. Many advocates argue that certain crimes—like prostitution, DUIs, & shoplifting—should not disqualify you because they do not pose any threat to others. The PHA or owner must base his/her decision to deny you on a "reasonable belief" that the criminal activity would *threaten the health, safety, or right to peaceful enjoyment* of others.

[1260] 42 U.C.S. § 13661(c); 24 C.F.R. § 5.903.
[1261] CAL. PENAL CODE § 1000.5.
[1262] CAL. PENAL CODE § 1000.4.
[1263] 24 C.F.R. §§ 5.903, 960.204.
[1264] CAL. CIV. CODE § 1786.18.
[1265] 24 C.F.R. §§ 5.903, 960.204.
[1266] 24 C.F.R. § 960.203.
[1267] 24 C.F.R. §§ 982.553, § 5.854.
[1268] 42 U.S.C § 13661(c); 24 C.F.R. §§ 5.855(a), 882.518(b), 982.553(a)(2)(ii).
[1269] See 42 U.S.C. § 1437a(b)(9) (definition of drug-related criminal activity); 24 C.F.R. § 5.100.

2. **PHAs and owners of government-assisted housing may only reject you for criminal activity that is *reasonably recent*.**

A PHA or owner of federal government-assisted housing can only reject you due to criminal activity that is CURRENT or is "**reasonably recent.**"[1271] The length of any ban based on criminal records cannot be "unconscionable"—meaning unreasonable and excessive, drastic beyond what's really needed, or extremely unfair.[1272]

What is considered a "reasonably recent period"?

The U.S. Department of Housing and Urban Development (HUD), which oversees most federally-funded housing programs (such as Public Housing, the "Section 8" Housing Choice Voucher program, and others), suggests that "5 years may be reasonable for serious offenses" (like making or dealing drugs)[1273] and suggests that PHAs and owners should set reasonable time periods for different types of criminal activity in their WRITTEN POLICIES.[1274] HUD has also suggested that a conviction for illegal drug use that happened 1 year ago could still be considered "recent."[1275]

3. **If your criminal conviction was the result of a disability (like past substance abuse or mental illness), you can ask for an exception to the criminal record policy (called a "reasonable accommodation").**

If you can prove that your conviction was the result of a disability (which includes past drug addiction and mental illness), then you can ask the PHA or owner of government-assisted housing for an exception from their ban as a "reasonable accommodation" to accommodate your disability and give you equal opportunity to access the housing.[1276] Read more about how to do this in Appendix E, PG. 419.

WARNING ABOUT WHAT INFORMATION YOU SHARE WITH LANDLORDS:

If you are applying to private housing, be careful not to share any more information than necessary—see PG. 377 to understand what criminal record information a private landlord can access, and see PG. 364 to learn ways you can identify illegal discrimination by private landlords (which has a different legal standard than discrimination by Public Housing Authorities (PHA) and government-assisted owners.

IMPROVING YOUR CHANCES OF GETTING INTO GOVERNMENT-ASSISTED HOUSING—OFFERING PROOF OF REHABILITATION & MITIGATING FACTORS

This section explains the types of information and evidence that you can show to strengthen your application to a PHA or government-assisted housing. You can also provide this type of information and evidence to challenge a denial from government-assisted housing. (Learn more about challenging denials from government-assisted housing beginning on PG. 391.)

WHAT IS "PROOF OF MITIGATING FACTORS?"

"Proof of mitigating factors" is extra information and evidence that explains that the PHA or landlord should not view the offense or conduct as negatively as it might otherwise. You can submit things like:

- A period of time has passed since your conviction or criminal activity (the crime was not very recent);
- You were convicted at a young age;
- The nature and extent of your conduct are less involved (like showing you were not as involved in the offense/ conduct as one might think);

[1270] The regulations define "violent criminal activity" as "any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage." 24 C.F.R. § 5.100.
[1271] See Madison, Wis. Code Of Ordinances Ch. 39.03(1) and (4) (Renumbered by Ord. 12,039, Adopted 2-17-98) (ordinance prohibiting discrimination against individuals with a criminal record is applicable for most offenses two years after the individual has completed or complied with the penalty).
[1272] Thomas v. Hous. Auth. of Little Rock, 282 F. Supp. 575, 580 (E.D. Ark 1967) (unwed mother admission policy is drastic beyond reasonable necessity); see also United States v. Robinson, 721 F. Supp. 1541, 1544-45 (forfeiture of tenant's apartment and her federal housing assistance payments, which were the only means by which the defendant could provide shelter for her children, was disproportionately severe to the offense of knowingly and intentionally distributing a mixture containing cocaine base); In the Matter of Elaine Sicardo v. Peter Smith, etc. No. 2007-03609, Index No. 219067/06 (N.Y. App. Div. Second Jud. Dept., March 18, 2008) (penalty in termination case so disproportionate to the offense as to be shocking to one's sense of fairness).
[1273] HUD, Public Housing Occupancy Guidebook, ¶ 4.6, (June 2003); see also 24 C.F.R. § 982.552(c)(1)(ii) (five-year ban on admission to voucher program for eviction from federally assisted housing).
[1274] Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 66 Fed. Reg. 28,776, 28,779 (May 24, 2001).
[1275] HUD, Voucher Program Guidebook, Housing Choice, 7420.10G, ¶ 5.7, p. 5–37 (Apr. 2001). But see Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 60 Fed. Reg. 34,660, 34,688 (July 3, 1995) (codified at 24 C.F.R. § 982.553(b)) (HUD regulations formerly stated that to deny admission, drug use or possession should have occurred within prior year).
[1276] 42 U.S.C. § 3604(f)(3)(B); Joint Statement of the Dep't of Hous. & Urban Dev. and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act, 6 (May 17, 2004).



- Physical or emotional abuse, coercion, or untreated abuse or mental illness that led to the conviction (and any of these factors might have led to the crime/offense);
- Disabilities that you or a family member has that might have led to the conviction; and
- Any additional context for the conviction (other factors that would help explain the circumstances you were in when the offense occurred and why it should be viewed with more leniency).

WHAT IS "PROOF OF REHABILITATION?"

Proof of rehabilitation is information and evidence that you have changed and improved since the time of your criminal offense or conduct. You can submit things like:

- Certificates or letters from supervising officers, or court documents showing completion of parole, probation, or other supervision;
- Letters of support/ recommendations from employers or others (see a list of suggestions for letters of support on PG. 373);
- Certificates or diplomas for education or training you've received;
- Letters or certificates for completing alcohol/drug treatment programs; and
- Letters or certificates for completion of rehabilitation programs.

DO GOVERNMENT-ASSISTED HOUSING PROGRAMS HAVE TO CONSIDER MITIGATING CIRCUMSTANCES & EVIDENCE OF REHABILITATION?

Generally, programs are not required to consider mitigating circumstances and evidence of rehabilitation,[1277] but they are encouraged to do so.[1278] Only the Public Housing program—run by your local Public Housing Authority (PHA)—MUST consider mitigating circumstances (that is in cases where the PHA has a criminal record ban in place that is not required by law—see PG. 360 for more information on such bans that are *allowed*, but not required).[1279]

Good news! THIS GIVES YOU AN OPPORTUNITY TO EXPLAIN THE SITUATION AND PRESENT FACTS IN A WAY THAT WILL PUT YOUR RECORD IN THE BEST POSSIBLE LIGHT—WHICH WILL IMPROVE YOUR CHANCES OF GETTING ACCEPTED.

All PHAs and owners of government-assisted housing are ENCOURAGED to look at the following (and for the Public Housing program, PHAs *must* look at the following):[1280]

1. Every application for housing on a case-by-case basis;
2. The seriousness of the offense;
3. The time that has passed since the offense;
4. The effect that denial of admission would have on the rest of your family;
5. The effect that denial of admission would have on the community;
6. The extent to which you have taken responsibility for your actions and taken steps to prevent or mitigate bad conduct in the future;
7. Evidence of rehabilitation;
8. Mitigating circumstances relating to your disability or the disability of any family member; *and*
9. Evidence of your family's participation or willingness to participate in social services, reentry support, or counseling programs.[1281]

[1277] 24 C.F.R. § 960.203(d); HUD, Public Housing Occupancy Guidebook, ¶¶ 4.6, 4.8, 4.10 (rev. November 2013); see also Lancaster v. Scranton Hous. Auth., 479 F. Supp. 134, 138 (M.D. Pa. 1979), aff'd mem., 620 F.2d 288 (3d Cir. 1980) (applicant has burden of putting forth such evidence).In court cases involving eviction or termination of benefits through the government-assisted housing program, courts have sent cases back for review because of the PHA or landlord's failure to consider mitigating circumstances. See Hicks v. Dakota Cnty. Comm. Dev. Agency, No. A06-1302, 2007 WL2416872 (Minn. App., Aug. 28, 2007) ("The permissive nature of the [voucher] regulation does not preclude a determination that mitigating circumstances are an important factor that must be considered in a particular case."); Oakwood Plaza Apartments v. Smith, 352 N.J. Super. 467 (2002) (remanding project-based Section 8 eviction case to trial court for a determination of whether landlord properly exercised discretion and considered relevant factors prior to deciding to evict).

[1278] 24 C.F.R. § 982.553.

[1279] 24 C.F.R. § 960.203(d); HUD, Public Housing Occupancy Guidebook, ¶¶ 4.6, 4.8, 4.10 (June 2003); see also Lancaster v. Scranton Hous. Auth., 479 F. Supp. 134, 138 (M.D. Pa. 1979), aff'd mem., 620 F.2d 288 (3d Cir. 1980) (applicant has burden of putting forth such evidence).

[1280] 24 C.F.R. §§ 982.552(c)(2), 5.852; HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-7(C)(4) (Rev. November 2013); HUD, Public Housing Occupancy Guidebook, ¶¶ 4.6, 4.8, 4.10 (June 2003); see also One Strike and You're Out" Screening and Eviction Guidelines for Public Housing Authorities (HAs), PIH 96-16 (HA) (Apr. 12, 1996) 5-6; see also Letter from Mel Martinez, Secretary of HUD, to Public Housing Directors (Apr. 16, 2002), and letter from Michael Liu, Assistant Secretary of HUD to Public Housing Directors (June 9, 2002), both letters are available at http://www.nhlp.org/html/ new/index.htm (in the eviction context HUD has urged PHAs to be guided by "compassion and common sense").

[1281] 24 C.F.R. § 960.203(d)(ii). This last factor is listed in the context of public housing but could be considered with respect to applications for other federally assisted housing.

WHEN COULD I SHOW PROOF OF MITIGATING CIRCUMSTANCES AND REHABILITATION TO THE PHA OR OWNER OF GOVERNMENT-ASSISTED HOUSING?

IF YOU PROVIDE THIS INFORMATION UPFRONT, you will likely have a better shot of getting into the government-assisted housing program. Many government-assisted housing programs that are not legally required to ask you for mitigating or rehabilitative evidence won't… so be proactive!

Similarly, if you are TRYING TO REJOIN a government-assisted housing unit, be prepared to explain why you should be accepted, despite your record. Because the PHA or owner of the government-assisted housing is likely to run a background check on you, you should be prepared—*if asked*—to honestly disclose your criminal record *AND* to demonstrate mitigating circumstances and evidence of your rehabilitation (see PG. 371).

Consider giving the PHA or owner additional information about *all the benefits* of having you join your family and how your joining may *positively* affect the stability of the entire housing development. *These benefits depend on the facts of your specific situation.* For example, you might include information about your relationship with the family members currently living in the household, especially a positive relationship with any children or a supportive relationship between you and your spouse. Another example is your potential to increase the income of the family unit already living there, so that you will stabilize the rent paid to the PHA or owner of the government-assisted housing. To learn more about joining family and friends—in either private or government-assisted housing—see PG. 385.

Continue reading to learn about specific types of evidence that show proof of mitigating circumstances and rehabilitation that strengthen your application to government-assisted housing!

SPECIFIC EXAMPLES OF EVIDENCE THAT CAN STRENGTHEN YOUR APPLICATION TO GOVERNMENT-ASSISTED HOUSING

! **IMPORTANT TIP AS YOU GATHER HELPFUL EVIDENCE OF YOUR REHABILITATION & MITIGATING CIRCUMSTANCES: Try to get *at least* one item from the following list, and as many of these forms of proof as you are able. If you cannot do so, you will have to work very hard—and creatively—at getting other evidence to overcome a criminal record ban or challenge a denial to government-assisted housing.**

WHAT SPECIFIC TYPES OF EVIDENCE WILL STRENGTHEN MY HOUSING APPLICATION TO GOVERNMENT-ASSISTED HOUSING?

Provide proof of your rehabilitation and mitigating factors as explained above! Letters of support and certificates of successful completion of programs that improved your life are one of the key ways can help strengthen your application to government-assisted housing! Make sure that the letters you get are detailed and very positive about you! A weak, impersonal letter is almost as useless as no letter at all.

Below are some places you should consider getting letters of support or other documents proving your participation.

➢ EVIDENCE FROM SCHOOL:

Show that you stayed in school for at least 6 months and have a positive school record.

- Proof could be in a transcript with good grades, or a letter from a teacher or school administrator.
- Suggestion: If school administrators or teachers can say the following things truthfully, these letters should say that you:
  - Were in school for at least six months;
  - Had great attendance and punctuality;
  - Had excellent grades; and
  - Are motivated to learn and get ahead in life.

➢ EVIDENCE FROM JOB TRAINING PROGRAMS

Show that you stayed in a job-training program for at least 6 months and have a positive record.

- Proof could be through a letter from a program supervisor or administrator.
- Suggestion: If true, ask your teacher or the program administrator to say that you:
  - Participated for at least six months;
  - Had great attendance and punctuality;
  - Are motivated to learn and get ahead in life;
  - Have learned useful skills to apply to a job; and
  - Get along well with others.



➢ EVIDENCE OF EMPLOYMENT

Show that you kept a job for at least 6 months and had a positive work record:

- Proof could be a letter from a supervisor or other person at the job.
- Suggestion: These letters should not just state how long you have worked. If possible, they should also say:
  - How well you have performed your job;
  - Whether you have been promoted;
  - That you have an excellent attendance record and come to work on time; and
  - That you are motivated, responsible, and get along well with others.
- If you worked while you were incarcerated and can get a good letter from a supervisor, do it! This can be useful, especially if you went above and beyond what was required by the job.

➢ EVIDENCE OF YOUR PARTICIPATION IN COUNSELING OR SOCIAL SERVICE PROGRAMS

Show that you spent at least 6 months in counseling or another social service program to deal with the problem that led you into criminal behavior. If you were in drug treatment or had a drug problem, you might be required to provide a clean drug test. You also have to show that you have done well in the program.

- Proof could be a letter from your counselor, therapist, or doctor.
- Suggestion: These letters should do a lot more than simply state the dates you were in treatment and the fact that you completed treatment. If your counselors in social service, mental health, and/or alcohol and drug programs can say the following things truthfully, then they should also say that you:
  - Had great attendance;
  - Had clear drug tests for at least 12 months (and provide the test results);
  - Showed excellent motivation and desire to change;
  - Participated fully in programs;
  - Got along well with others;
  - Understand the causes of your past behaviors and are committed to positive growth;
  - Are not a risk to the safety of others; and
  - No longer hang out with the same peers that got you into trouble.

➢ PROOF OF A DISABILITY

If you have any type of disability that prevents you from going to school or working, then it can help to show any programs you have participated in to get support for your disability. If the disability is a past drug addiction (NOT a current one), alcoholism, or a mental health issue, it could be helpful to show at least six months of counseling, such as mental health treatment or drug or alcohol treatment.

Proof of this can be your counselor's letter explaining that you are unable to work (see above). You can also try to get any other proof of your disability, such as a letter from your doctor, saying that you cannot work or go to school because of your disability. If you are on SSI or SSDI public benefits, you can also provide proof (learn more about SSI on PG. 486, and more about SSDI on PG. 482 in the PUBLIC BENEFITS CHAPTER). If you cannot show at least six months of counseling, work, school, or job training, then you will have a much harder time convincing the PHA to find you eligible. However, if your disability is so severe that you cannot participate in ANY of these activities (for example, you are homebound), a letter explaining this can be helpful.

➢ PROOF OF EXPUNGEMENT, DISMISSAL, PARDON, OR CERTIFICATE OF REHABILITATION FOR A PAST CONVICTION

For more information about whether you qualify for some form of expungement (like a dismissal, pardon, or Certificate of Rehabilitation), and how to get these, go to the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

➢ OTHER HELPFUL EVIDENCE

While PHAs and owners of government-assisted housing are not as persuaded by the following types of evidence, they can still be helpful if the support letters are very detailed, very positive, and make you look like you are doing ALL YOU CAN DO to move your life in a positive direction and be a productive member of society. Consider the following other forms of helpful evidence to include in your application to government-assisted housing (OR at a hearing challenging a denial):

- **Certificates from programs in or after prison**, like anger management and drug or alcohol treatment. Remember that any programs in prison count!

- **Letter from your Parole or Probation Officer**: Our suggestion—If your Probation or Parole Officer can say the following things truthfully, ask him/her to comment on your:
  - Positive drug tests for at least 12 months;
  - Positive outlook;
  - Compliance with all the requirements of parole or probation; and
  - Exceptional motivation.
- **Letters from clergy**: Our suggestion—These letters are most helpful if they show that you volunteer and play a leadership role in your community.
- **Letters from landlords or building superintendents**. Our suggestion—Ask them to say that you:
  - Always paid your rent on time;
  - Respected your neighbors; and
  - Treated the property well.
- **Letters from neighbors**: Our suggestion—They should discuss what a good neighbor you are—for example, that you are quiet, respectful, and/or helpful to the building or community.
- **Letters from your volunteer work**: Our suggestion—Have you helped out at your children's school? At their daycare center? Have you been a mentor to a child? Helped a senior citizen? Volunteered in any other way? Get a letter saying that you:
  - Are responsible;
  - Have made a major contribution; and/or
  - Are dedicated to your volunteer work.
  - Also get a letter from anyone you have helped. Have them say what an important role you played for them. Ask the person to be specific!
- **Letters from people you have helped**: Our suggestion—It can be very moving to read a letter from someone whose life you have touched in a positive way. Have you helped someone through your church? In your neighborhood? Through work?
- **Proof about your children's successes**: Our suggestion—If your children have done impressive things, highlight that your parenting had something to do with it. Examples of what you might give are:
  - Letter from your child's teacher about his/her great work or good grades, emphasizing your role in encouraging your child to do his/her best, making sure your child does his/her homework, etc.
  - Letter from your child's coach in sports—similar to the letter from a teacher.

What about getting support letters from family?

While it is always nice to have support from your family, these letters are not as helpful because the PHA and/or owner of government-assisted housing assumes that your family members would write anything to help you get the housing. You can certainly include such letters if you like, but letters from people outside your family will have a bigger impact.

IF I CAN SHOW THE PUBLIC HOUSING AUTHORITY (PHA) THAT I REALLY NEED THE HOUSING, WILL THAT HELP MY APPLICATION?

If you need the housing badly due to a *disability* or because you are *homeless*, you should let the PHA know, as those needs might help your application to be processed faster.

Beyond these situations, however, information about how you really need the housing or the fact that you can't afford other housing in the area won't hurt or help you because it's usually not enough of a reason to overcome your criminal record. If you're not sure, you can go ahead and mention the need in the application.

SPECIAL NOTE FOR PEOPLE WITH DISABILITIES & SPECIAL NEEDS:

If the housing unit has unique characteristics that you need, you should request that the unit be kept open while your application is being reviewed, especially if you are challenging a denial of your application. This means that the PHA or owner agrees not to rent the unit to someone else until your application is decided. You wouldn't want to win the right to live in the unit, just to have it lost to another renter while you challenge the unlawful denial. A PHA or owner will balance such a request with the need to rent vacant units. Go to PG. 351 to learn more about getting into housing if the crime you committed was caused by a disability (like mental illness or past addiction).

IV. ACCESS TO YOUR CRIMINAL RECORDS AS YOU APPLY FOR HOUSING

AN OVERVIEW OF THE TYPES OF CRIMINAL RECORDS THAT COULD SHOW UP AS YOU APPLY FOR HOUSING

WHAT WILL I LEARN?

- **What could show up on a background check (also called a "tenant report") for housing**
- **What private landlords can and cannot see and consider from a background check/ tenant report**
- **What Public Housing Authorities (PHAs) and owners of government-assisted housing can and cannot see and consider from a background check/ tenant report**

WHAT CRIMINAL RECORDS COULD SHOW UP AS I APPLY FOR ANY TYPE OF HOUSING?

Here are three major categories of records that might tell a private landlord, Public Housing Authority (PHA), or owner of government-assisted housing something about your criminal history:

1) CRIMINAL HISTORY RECORDS:

These include: government-produced criminal records; publicly available court records of cases involving you; police and law enforcement records including arrest records; reports produced by private background check and tenant-screening companies (see #2: "BACKGROUND CHECKS/TENANT REPORTS" below); Internet research; the newspaper; and/or information received directly from you—through an application form or by asking you. Learn more about where your criminal records come from in the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

LEARN ABOUT WHEN YOUR CRIMINAL RECORDS CAN BE ACCESSED

We go into the rules about when these records can be accessed, and what can be considered, beginning on PG. 377.

2) BACKGROUND CHECKS/"TENANT REPORTS":

A private landlord, PHA, or government-assisted owner will MOST LIKELY get a copy of your background check from a private company—and when it's for a housing provider, the background check report is often called a "tenant report." Tenant reports show *credit information, employment history, certain criminal history information, entries in sex offender registries or other public databases, driving records, interviews with people who know you, and more*. These reports are created and provided by private background check companies and/or credit bureaus. (See PG. 377 to better understand the rules about getting background checks, and what information can be considered for housing.)

3) DRUG OR ALCOHOL TREATMENT RECORDS:

These are documents that show your enrollment in, participation in, and completion of any drug or alcohol treatment programs. In some cases, a PHA or owner of government-assisted housing, *may* be able to get records about your past drug or alcohol treatment, BUT A REGULAR PRIVATE LANDLORD CANNOT GET THESE RECORDS.[1282]

DOES THIS CHAPTER COVER WHAT CAN AND CANNOT SHOW UP IN MY CREDIT REPORT?

No, not really. As a general note, whenever you apply to ANY type of housing—whether you're applying to private housing (run by a private landlord) OR to government-assisted housing (through a Public Housing Authority (PHA) or directly to an owner of government-assisted housing)—all of these people and agencies CAN access your *credit report*, which is *different* from your criminal records, but might be combined in a "tenant report" (which is just a background for housing).

Credit reports include information about your past finances and credit history, such as whether you have a history of paying bills on time. Credit reports also show whether past credit problems have ended in a bankruptcy or a court proceeding for failing to pay your rent on time (called an "eviction" or an "unlawful detainer"). A credit report shows ONLY credit information, NOT criminal history information. *We included some very general rules about credit reports in* Appendix G, *PG. 426 of this chapter, but these rules are only a summary. This Chapter focuses on how criminal records come up as you apply for housing, not past credit issues.*

[1282] For more reading on this topic, see Sharon M Dietrich, When "Your Permanent Record" is a Permanent Barrier: Helping Legal Aid Clients Reduce the Stigma of Criminal Records, 41 CLEARINGHOUSE REV. 139, 141 (July-Aug. 2007), discussing what applicants can do to improve or challenge the criminal record.

CAN A PRIVATE LANDLORD, PUBLIC HOUSING AUTHORITY (PHA), OR OWNER OF GOVERNMENT-ASSISTED HOUSING CHARGE ME A FEE FOR RUNNING A BACKGROUND CHECK/ TENANT REPORT ON ME?

It depends on who is running the background check. Neither PHAs nor owners of federal government-assisted housing can charge you any fees for criminal background checks.[1283] The rule is different if you are applying for private housing from a private landlord—private landlords *can* charge you a fee. See more on PG. 398.[1284]

ACCESS TO YOUR CRIMINAL RECORDS AS YOU APPLY FOR PRIVATE HOUSING

HOW PRIVATE LANDLORDS LEARN ABOUT YOUR CRIMINAL RECORD

HOW DO PRIVATE LANDLORDS LEARN ABOUT MY CRIMINAL RECORD?

A private landlord can learn about your criminal record from any of the following sources:

- Private background checks (also called "tenant reports") (*see the next question for more information*);
- Publicly available court records of cases involving you;
- Internet research;
- The newspaper; and/or
- Information received directly from you—through an application form or by asking you.

See also the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931, for a detailed explanation of the many public places that your criminal history information is stored, and how to correct mistakes.

YOUR RIGHTS WHEN A PRIVATE LANDLORD RUNS A CRIMINAL BACKGROUND CHECK

As an applicant to private housing, you have legal rights related to the information that comes up in a private background check, and how a private landlord may use it. The law protects you by making it illegal for certain types of information to be included in a criminal background check (also called a "tenant report," or in California, a "consumer report") on you. But there are a lot of laws that limit what a private background check company creating a tenant report for a landlord can share with them.

WHAT MUST A PRIVATE LANDLORD DO IF THEY WANT TO GET A BACKGROUND CHECK/TENANT REPORT ON ME?

Under state and federal law, you have the right to the following protections if a private landlord runs a background check on you:

1. The Landlord Must Give You "Notice" & Get Written Permission to Run a Background Check: This means that you must receive a written document ("notice") from the landlord saying that s/he wishes to conduct a background check on you. The landlord must get your written permission before getting the background check.[1285]
2. Give the Applicant a Copy of the Background Check: Within 3 days of receiving the background check report, the landlord must provide you with a copy.[1286] In California, you also have the right to request a copy of your report for at least 2 years after the background check company provides your report to the landlord (or anyone else who requests the report).[1287]

WHAT INFORMATION CANNOT BE INCLUDED IN A PRIVATE BACKGROUND CHECK/TENANT REPORT IN CALIFORNIA?

The following information cannot show up in a private background check report in California:

- Lawsuits or judgments from more than 7 years ago;[1288]

[1283] 24 C.F.R. §§ 5.903(d)(4); 5.905(b)(5); HUD Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-7(E)(2) (rev. November 2013); Screening and Eviction for Drug Abuse and Other Criminal Activity—Final Rule, H 2002-22 (HUD) (Oct. 29, 2002) ¶ X, p. 9, ¶ XIII, p. 11; see also 24 C.F.R. § 5.100 (definition of federally assisted housing).
[1284] CAL. CIV. CODE § 1950.6.
[1285] 15 U.S.C. § 1681b(b)(2)(A); CAL. CIV. CODE § 1786.16(a)(2).
[1286] CAL. CIV. CODE § 1786.16.
[1287] CAL. CIV. CODE § 1786.11.
[1288] Unless governed by a longer statute of limitations, which extends the time in which a suit, judgment, or arrest remains effective.



- Criminal convictions from more than 7 years ago;
- Any information about arrests or formal charges from more than 7 years ago;
- Criminal convictions that have been fully pardoned, dismissed, expunged, eradicated, or sealed under court order;
- Any information about arrests or formal charges that did not result in conviction, no matter how recent (unless your judgment is still pending);[1289]
- Any information about referrals to, or participation in, any pre-trial or post-trial diversion programs (court-mandated programs which function as a form of alternative sentencing);
- Paid tax liens from more than 7 years ago;[1290]
- Accounts placed in collections from more than 7 years ago;
- Bankruptcies from more than 10 years ago;
- Evictions actions ("unlawful detainers') that you won or resolved with a settlement agreement;
- Any other negative information like repossessions, foreclosures, check verification reports, motor vehicle reports, or drug test results[1291] from more than 7 years ago.[1292]

DO PRIVATE BACKGROUND CHECK COMPANIES HAVE TO MAKE SURE THE INFORMATION THEY REPORT TO A LANDLORD IN A TENANT REPORT IS TRUE AND ACCURATE?

Yes. Private background check companies (called "Credit Reporting Agencies" in California) CANNOT include "public record" information unless it has been double-checked for accuracy in the past 30 days. Public record information includes arrests, convictions, civil actions, tax liens, and outstanding judgments.

DOES A PRIVATE LANDLORD HAVE TO TELL ME THAT THE CRIMINAL RECORD INFORMATION THAT SHOWED UP IN A PRIVATE BACKGROUND CHECK/TENANT REPORT IS THE REASON I AM NOT GETTING THE APARTMENT?

Yes! The landlord has to tell you if your criminal history is the reason you are not getting the apartment. If there is a negative action taken—like not renting you the apartment—because of a background report, the landlord must follow this 2-step procedure:

STEP 1: The landlord must provide you with a copy of the report and a copy of the *Federal Trade Commission Summary of Rights* before the negative action is taken—giving you an opportunity to clear up any inaccuracies in the report.

STEP 2: If the landlord goes forward with the negative action, it must provide you notice about the adverse decision, the contact information of the reporting agency, a statement that the landlord (and not the screening company) made the adverse decision; and your right to dispute the accuracy or completeness of the report.[1293]

YOUR RIGHTS WHEN A PRIVATE LANDLORD DIRECTLY ASKS YOU ABOUT YOUR CRIMINAL RECORD

CAN A PRIVATE LANDLORD ASK ME ABOUT CONVICTIONS OR ARRESTS OLDER THAN 7 YEARS?

Generally, yes.* A private landlord can ask you—in writing in an apartment application OR directly in conversation—about past criminal convictions, arrests, and other criminal activity, and you should answer honestly. BUT if the landlord is asking you about past convictions, criminal conduct or activity, he or she must be *asking everyone equally*.[1294]

*** SPECIAL "BAN THE BOX" PROTECTION IN SAN FRANCISCO, CA:**

In San Francisco, CA, there are special protections if you apply to *city-funded affordable housing* in San Francisco—which includes private "Below Market Rate" (BMR) apartments that are often in new buildings. See Appendix H, PG. 427 to learn more about this new law called the "San Francisco Fair Chance Ordinance," which prevents some housing providers from asking you about your criminal record on the initial application.

[1289] EXCEPTIONS: An agency can report these kinds of arrests or charges if judgment is still pending.
[1290] When a tax debt is not timely paid, the government's legal claim against your property is considered a "tax lien." http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Understanding-a-Federal-Tax-Lien.
[1291] Consumer Data Industry Association, http://www.cdiaonline.org/HTC/htc.cfm?ItemNumber=1080
[1292] CAL. CIV. CODE § 1786.18.
[1293] 15 U.S.C. §§ 1681b(b)(3), 1681m(a); CAL. CIV. CODE § 1786.40.
[1294] See also Fair Housing Act, 42 U.S.C. § 3601 et seq.; Fair Employment & Housing Act, CAL. GOV'T CODE § 12955 et seq.; Unruh Civil Rights Act, CAL. CIV. CODE § 51.

YOUR RIGHTS TO CONFIDENTIALITY WHEN A PRIVATE LANDLORD GATHERS CRIMINAL RECORD INFORMATION ON YOU

DOES THE LANDLORD HAVE TO PROTECT AND KEEP CONFIDENTIAL MY CRIMINAL RECORD AND OTHER PERSONAL INFORMATION?

Yes. When a landlord collects information in the background check process—like credit reports and criminal background checks/ tenant screening reports, the landlord CANNOT use those reports for any other purpose than the one they originally asked for. Also, when a landlord is done using the information, federal law requires that he/she get rid of it (whether in paper or electronic form).[1295]

ACCESS TO YOUR CRIMINAL RECORDS AS YOU APPLY FOR GOVERNMENT-ASSISTED HOUSING:

When you apply to PHAs and/or owners of government-assisted housing, they can research you to decide whether you should be accepted or rejected. To do this research, they are allowed to access different kinds of records. There are rules for how they can access and use these records, described below, so keep reading!

PLEASE NOTE: There are different rules for how PHAs and owners of federal government-assisted housing can access and use your criminal history records. In sum, the PHA can get more information about your criminal history than an owner of government-assisted housing. We will explain how each gets access to your criminal history information below.

YOUR RIGHTS WHEN A GOVERNMENT-ASSISTED HOUSING PROVIDER RUNS A CRIMINAL BACKGROUND CHECK

➢ (1) PUBLIC HOUSING AUTHORITIES' (PHAS) ACCESS TO YOUR CRIMINAL & DRUG TREATMENT RECORDS:

WHAT CRIMINAL RECORDS CAN A PUBLIC HOUSING AUTHORITY (PHA) ACCESS, AND WHO GIVES THE PHA MY CONVICTION RECORDS?

Most PHAs get criminal history information about you from **private background check companies** that gather lots of criminal history information from different public sources and put them in one report to the PHA (see more on PG. 377).

PHAs can also get your criminal history information directly from ALL OF THE PUBLIC SOURCES listed on PG. 377, such as Internet searches and adult criminal court records!

If you apply to a PHA for one of the three major federal government-assisted-housing programs (Public Housing, "Section 8" Housing Choice Vouchers, and project-based Section 8 Housing), PHAs can ask for criminal records on you from the National Crime Information Center, state and local police departments, and other law enforcement agencies, and it's required to give them to the PHA.[1296]

! **REMEMBER: There is a DIFFERENT RULE FOR OWNERS OF GOVERNMENT-ASSISTED HOUSING. Owners of federal government-assisted housing CANNOT get your conviction records directly from the National Crime Information Center or law enforcement agencies—but the PHA might share some of this information with them. See the next question below.**

CAN A PUBLIC HOUSING AUTHORITY (PHA) REQUIRE ME TO SIGN A RELEASE TO GET MY CRIMINAL HISTORY INFORMATION?

Yes. PHAs can legally require you to SIGN A RELEASE FORM so that they can get this criminal history information for these housing programs.[1297]

[1295] 15 U.S.C. § 1681w (a)(1).
[1296] 42 U.S.C. § 1437d.
[1297] 42 U.S.C. § 1437d(q)(1)(A).



IF I AM MOVING INTO GOVERNMENT-ASSISTED HOUSING IN A DIFFERENT CITY OR COUNTY, CAN MY CURRENT PUBLIC HOUSING AUTHORITY (PHA) SHARE MY CRIMINAL HISTORY RECORDS WITH THE NEW PHA WHERE I AM APPLYING?

Most likely, yes. Your current PHA is encouraged (but not required) to send criminal background check information about you to the new PHA.[1298]

CAN A PUBLIC HOUSING AUTHORITY (PHA) ACCESS MY DRUG TREATMENT RECORDS, AND IF SO, UNDER WHAT CIRCUMSTANCES?

The law is still unclear for most government-assisted housing programs. The short answer is that a PHA can get limited access to your drug/alcohol treatment records if you are applying to or currently living as a tenant in the Public Housing program (which is a specific type of government-assisted housing program). There are no similar rules for the other government-assisted housing programs (like "Section 8" Housing Choice Vouchers or the Section 8 Moderate Rehabilitation Program).[1299] Therefore, unless you are applying to the Public Housing program, it is still unclear if PHAs can legally request or obtain information about you from drug/alcohol treatment facilities. This rule is further explained below.

I am an applicant or tenant for the Public Housing program. *What information can a Public Housing Authority (PHA) get about me from a drug/alcohol treatment facility?*

If you are applying to the Public Housing program, the local PHA is allowed to request and get information about you from drug treatment facilities,[1300] but the PHA is limited to asking only one question relating to your eligibility for the housing, which is:

"Does the drug abuse treatment facility have reasonable cause to believe that the household member is currently engaging in illegal drug use?"[1301]

That is the only question that can be asked and the PHA cannot seek any additional information from the drug treatment facility!

What is the process that a Public Housing Authority (PHA) must follow when requesting information about me from a drug treatment facility?

When requesting information from a drug treatment facility about an applicant or tenant for the public housing program, The PHA *must:*

- Get your signature on a release form (also called a written consent form) before asking the drug treatment facility about you.[1302] The release automatically expires right after the PHA makes a final decision to approve or deny your application to the government-assisted housing program.[1303]
    - Have a system to protect your confidentiality (your privacy).[1304] When a PHA or landlord collects information in credit and tenant screening reports, it cannot use the information it collects for any purpose other than to decide whether or not to admit you into the housing unit. The PHA and owner must keep this information confidential, even when throwing it out.[1305]
    - Have and follow a nondiscriminatory policy (a document that outlines a policy in regards to discrimination and management practices) that applies equally to anyone applying to

[1298] HUD, Voucher Program Guidebook, Housing Choice, HUD Handbook 7420.10G, ¶ 13.4 (Apr. 2001).
[1299] The argument against such adoption of those rules (for other federally-assisted housing programs, not including public housing, which already has these rules in place) is that Congress intentionally limited the applicability of the statutory provision to public housing and did not extend it to the other programs. However, if a PHA, for the voucher program, or an owner, for other programs, adopts a policy that seeks to obtain records from drug treatment facilities, it should also be argued that the public housing statutory protections or their equivalent must be incorporated, as the statute is designed to avoid a violation of fair housing laws and claims of discrimination based upon disability.
[1300] 42 U.S.C. § 1437d(t); 24 C.F.R. § 960.205.
[1301] 42 U.S.C. § 1437d(t); 24 C.F.R. § 960.205; cf. Campbell v. Minneapolis Pub. Hous. Auth., 175 F.R.D. 531 (D. Minn. 1997), vacated and remanded, 168 F.3d 1069 (8th Cir. 1999). Campbell involved an interpretation of 42 U.S.C. §§ 1437n(e)(1), (2), which have been repealed. The court allowed the PHA to seek information regarding drug use and rehabilitation efforts from drug treatment facility, but remanded the case to the PHA to determine eligibility because the administrative record was incomplete. The PHA conceded that it would have to change its policy based upon the repeal and amendments to the statute.
[1302] 42 U.S.C. § 1437d(t)(2); 24 C.F.R. § 960.205(c)(1); cf. Campbell v. Minneapolis Pub. Hous. Auth., 175 F.R.D. 531 (D. Minn. 1997), vacated and remanded, 168 F.3d 1069 (8th Cir. 1999).
[1303] 42 U.S.C. § 1437d(t)(2)(C); 24 C.F.R. § 960.205(c)(2).
[1304] 42 U.S.C. § 1437d(t)(2)(B); 24 C.F.R. § 960.205(f).
[1305] 15 U.S.C. § 1681 et seq.

public housing.[1306] This policy must be written down in the PHA's official plans and policies.

WHAT CAN I DO IF A PUBLIC HOUSING AUTHORITY (PHA) VIOLATES MY RIGHTS IN ACCESSING AND USING MY DRUG TREATMENT INFORMATION?

If you believe you were denied housing because of illegal access to your records, or because of incorrect or illegal information, you should IMMEDIATELY ask for a review hearing! A review hearing is an informal procedure in which you can present corrections to your record, evidence of rehabilitation, and other mitigating information (see PG. 371) to challenge a denial to government-assisted housing. Go to PG. 364 of this HOUSING CHAPTER to learn about the procedure for challenging denials and how to request an informal review hearing.

➢ (2) GOVERNMENT-ASSISTED OWNERS' ACCESS TO RECORDS:

WHAT CAN OWNERS OF FEDERAL GOVERNMENT-ASSISTED HOUSING SEE? HOW DO THEY GET MY CRIMINAL RECORDS?

Most owners of government-assisted housing—just like most private landlords—get your criminal records from background check reports (a.k.a. "tenant reports") run by private background check companies (a.k.a. "tenant screening" companies), public records and Internet searches, or by asking you directly in your application or interview.

- Unlike PHAs, owners of government-assisted housing CANNOT get records about you directly from the National Crime Information Center, state and local police departments, or other law enforcement agencies.
- Also, owners of government-assisted housing CANNOT get your criminal records directly from the PHA. In fact, PHAs are not allowed to disclose information about your criminal conviction history to owners of government-assisted housing. If an owner wants details about your record, s/he must do his/her own research to get them (with one exception, see side box).[1307]

*** THERE IS ONE EXCEPTION TO THIS RULE:** Owners of Project-Based Section 8 housing (which is a government-assisted program where the financial subsidy for the housing *stays with the unit*, as opposed to the traditional Section 8 voucher that moves around with the person) can ask the PHA about your criminal history information BUT *cannot* get copies of the actual records from the PHA.[1308] The PHA may disclose information to the owner only to the extent necessary to help him/her decide whether you can be denied or evicted from the assisted housing unit.[1309] Lastly, if the PHA is screening your criminal history information for an owner of Project-Based Section 8 housing, the PHA must apply the property owner's own policy, not the PHA's policy, in making that determination.[1310] So if the owner doesn't or can't consider something, the PHA cannot either. *In practice*, Most owners of project-based Section 8 housing units are *not* using PHAs to obtain criminal history information; instead, these owners are using private background check companies to get information on applicants (see PG. 377 for more info on the rules governing tenant reports in California).[1311]

➢ (3) LIMITS ON BOTH PUBLIC HOUSING AUTHORITIES (PHAS) AND OWNERS OF GOVERNMENT-ASSISTED HOUSING:

CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING GET RECORDS OF MY ARRESTS THAT DIDN'T LEAD TO CONVICTIONS?

No. Under California state law, police and law enforcement agencies, and private background check companies cannot share information about arrests that did not lead to a conviction—unless the charges are still pending. They CAN ONLY report arrests that are *pending* AND/OR *led to a conviction*.[1312]

Unfortunately, private companies hired to do background checks *often* report arrests anyway—which is against the law. Because this is such a big problem, there are lawyers working to sue reporting agencies that are

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[1306] 24 C.F.R. § 960.205(e).
[1307] 24 C.F.R. § 5.903(d); 42 U.S.C. § 1437d(q).
[1308] 42 U.S.C. § 1437d(q)(1)(B); 24 C.F.R. § 5.903(d); HUD Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-27(E)(4)(a); see also 42 U.S.C. § 13,663(b); 24 C.F.R. § 5.905 (2007) (sex offender registration information).
[1309] 24 C.F.R. §§ 5.903(e)(2)(i)(b), 5.905(b)(5).
[1310] 42 U.S.C. § 1437d(q)(1)(B); 24 C.F.R. § 5.903(d), (e), 5.905(b)(2)(ii); see also Screening and Eviction for Drug Abuse and Other Criminal Activity—Final Rule, H 2002-22 (HUD) (Oct. 29, 2002).
[1311] See HUD Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4- 27(E)(4)(b) (rev. Nov. 2013) (referencing other types of screening services or sources of information that an owner may use); Screening and Eviction for Drug Abuse and Other Criminal Activity—Final Rule, H 2002-22 (HUD) (Oct. 29, 2002) (same).
[1312] CAL. PENAL CODE § 11105.03(b)(2); CAL. CIV. CODE § 1786.18(a)(7).

illegally reporting arrest records.[1313] When you get a copy of your report, check to make sure there are no arrests on it that did not lead to a conviction. If you see any, you can contact the company and demand that it remove that information immediately! See the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931, for more information about clearing up errors in your record and taking legal action with private companies that break the law.

CAN A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING GET MY JUVENILE RECORDS?

No.[1314] It's against the law for police and law enforcement agencies and private background check companies to share your juvenile record with PHAs.

YOUR RIGHTS WHEN A GOVERNMENT-ASSISTED HOUSING PROVIDER RUNS A CRIMINAL BACKGROUND CHECK—THE RULES THEY MUST FOLLOW

IMPORTANT: The most common way that most PHAs AND owners of government-assisted housing (as well as private owners) access your criminal history information is by ordering private background check companies to run "tenant screening reports".

WHAT ARE TENANT SCREENING REPORTS?

As discussed on PG. 377, a tenant screening report is a background check done by a private company or credit bureau on a housing applicant. It reports credit information, employment history, certain criminal history information, entries on sex offender registers and/or other public databases, driving records, and more. A tenant report may also include information gathered from personal interviews with your neighbors, former landlords, or coworkers.

WHO CONDUCTS TENANT SCREENING CHECKS & PROVIDES TENANT REPORTS TO PUBLIC HOUSING AUTHORITIES (PHAS) & OWNERS OF GOVERNMENT-ASSISTED HOUSING?

Many private background check companies provide tenant screening reports, including the 3 national credit bureaus, Experian, TransUnion, and Equifax.

DO YOU HAVE TO PAY FOR A SCREENING REPORT? IF SO, HOW MUCH DOES A REPORT COST?

No, not if you are applying to government-assisted housing—neither a PHA nor an owner can charge you to run a criminal background check or "tenant report."

WHAT MUST A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING PROVIDE ME WITH IF IT ORDERS A BACKGROUND CHECK/TENANT REPORT FROM A PRIVATE BACKGROUND CHECK COMPANY?

California state law requires that you receive information about the background check company *within 3 days* of when the landlord orders your report.[1315]

You also have the right to request a copy of the report from the PHA or landlord for at least 2 years after the report is done.[1316]

[1313] See CAL. CIV. CODE § 1786.20(a), 1786.50. The California anti-SLAPP statute could pose a barrier to enforcement of these restrictions. In Mendoza v. ADP Screening and Selection Services, Inc., 107 Cal. Rptr. 3d 294 (Cal. Ct. App. 2010), the defendant credit reporting agency (CRA) disclosed information from the state's sex offender website to a prospective employer. The plaintiff filed suit under a section of the penal code that prohibits the use of information from the website for purposes of employment, and the CRA filed a motion to strike under the anti-SLAPP statute, claiming a constitutional right to provide information from the website to its clients. The court granted the motion, calling the CRA's conduct protected speech under the First Amendment. The court noted that to fall outside of the anti-SLAPP statute, the defendant's conduct must be criminal in nature. See also NHLP, California Law Limits Housing Authority Access to Arrest Records, http://nhlp.org/files/California%20Law%20Limits%20Housing%20Authority%20Access%20to%20Arrest%20Records-2.pdf.

[1314] 42 U.S.C. 1437d(q)(1)(c); CAL. WELF. & INST. CODE § 827; see also Rivers v. Housing Auth. of Contra Costa Cnty., No. CO5-04291 PJH (N.D. Cal., complaint filed Oct. 21, 2005) (illegal release of juvenile record);

[1315] Cal. Civ. Code § 1786.16.

[1316] Cal. Civ. Code § 1786.11.

DO I HAVE ANY RIGHTS IF A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING REJECTS MY RENTAL APPLICATION BECAUSE OF A BACKGROUND CHECK/ TENANT REPORT?

Yes. The PHA or landlord must give you an "adverse action" notice letting you know it plans to take an action that could harm you based on information that showed up in your tenant report/background check.[1317] The notice must include the following information:

- The name and contact for the company that supplied the report;
- A statement that the landlord, not the screening company, made the adverse decision; *and*
- Notice of your right to dispute the accuracy of the report and to receive a free copy of your report within 60 days.[1318]

EXTRA PROTECTIONS FOR THE PUBLIC HOUSING PROGRAM AND THE "SECTION 8" HOUSING CHOICE VOUCHER PROGRAM *ONLY*:

ONLY for these two government-assisted programs, PHAs must follow certain extra rules (set forth below).

- **The PHA must make sure the criminal records are true and accurate.** After the PHA has you sign a *release* of criminal records information and submits that release to the law enforcement agency that holds the criminal records, it may receive a response that there is a match based on your name, date of birth, and social security number. The PHA cannot deny admission based on this information alone; the PHA must verify the match with a positive fingerprint comparison.[1319]
- **The PHA must give you notice of any proposed action that could harm you.** A PHA must notify the household of any proposed action that could harm you (called an "adverse action" notice). The PHA must also provide a copy of the criminal record information to the person who was the subject of the record—as well as to the applicant, if that's a different person.[1320]
- **The PHA must give you an opportunity to challenge the criminal record information.** The person whose information was relied on must be given an opportunity to dispute the proposed negative action.[1321] NOTE: Even if you don't have an automatic legal right to a review hearing, you can always ask for one! To learn more about challenging a denial to government-assisted housing, please go to PG. 364.
- **The PHA Must Protect the Confidentiality of Your Records:**[1322] Under federal law, PHAs must have a system to: (1) Protect the confidentiality of applicants' criminal records; (2) Guard against improper sharing of those records; AND (3) Destroy the records once their purpose has been achieved.[1323]

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NEW POLICY FOR LOS ANGELES RESIDENTS: As of 2018, if you live in the City of Los Angeles and are applying to the Section 8 voucher program, the local Housing Authority will no longer consider elibility criteria related to your criminal background (except where mandated by the federal government).[1324]

[1317] CAL. CIV. CODE § 1786.40; 42 U.S.C. § 1437d(q)(2).
[1318] 42 U.S.C. § 1437d(q)(2).
[1319] Instructions for Obtaining Federal Bureau of Investigation Criminal History Information, PIH 2003-11(HA) (Apr. 11, 2003) ¶ 7.
[1320] 42 U.S.C. § 1437d(q)(2). There are conflicting interests involved in providing the criminal record to both the applicant and the member of the family subject to the criminal record. The FBI "commented that dissemination of criminal records is limited to those with authorization (such as the PHA) and the person who is the 'subject' of the record, not to other persons in the household." 66 Fed. Reg. 28,776, 28,789 (May 24, 2001). HUD disagreed, contending that under its statutory authority, it is required to provide the information to the applicant or tenant so that the applicant or tenant may dispute the determination.
[1321] 42 U.S.C. § 1437d(q)(2); 24 C.F.R. § 5.903(f); see also 42 U.S.C. §§ 960.204(c), 966.4(l)(5)(iv) (public housing) and 982.553(d) (voucher). The notice and opportunity to contest must also be provided in the case of an eviction or lease enforcement action.
[1322] Special Note for Advocates: The statutory language shows a policy concern that PHAs maintain the confidentiality of criminal records obtained through the federally authorized process. However, the regulation states that it is not applicable to public information or to criminal records information obtained from law enforcement agencies if the information was not sought pursuant to the regulations. 24 C.F.R. §§ 5.901(c), 5.905(c)(2). This exemption may be too broad. The meaning and full effect of the exclusion and its consistency with the statute has not been tested. The concern is that this may mean that if a PHA obtains information from a private consumer reports agency, it may not have to abide by the confidentiality provisions of the statute. 15 U.S.C. §§ 1681-1681u. Additionally, the confidentiality provisions of the statute most likely do not cover information the PHA or owner obtains from other sources, such as police blotters and newspaper reports. Nevertheless, advocates should argue that any information obtained from law enforcement agencies that is not otherwise publicly available should be subject to the statutory protections. 24 C.F.R. § 5.901(c). With respect to the management of the records, the statute references "any criminal records received," whereas other provisions of the statute are limited to information received under the subsection. 42 U.S.C. § 1437d(q), § 13663(f); see also 24 C.F.R. § 982.307(b)(2) (PHA may provide voucher landlords information in PHA files).
[1323] 42 U.S.C. § 1437d(q)(4), (6); 24 C.F.R. § 5.903(h).
[1324] Housing Authority of Los Angeles, 2018 Administrative Plan, Response to Comments, p. 9, available at http://home.hacla.org/publicdocs.



➢ YOUR RIGHTS AGAINST ILLEGAL ACCESS OF YOUR CRIMINAL RECORDS AS YOU APPLY FOR GOVERNMENT-ASSISTED HOUSING:

WHAT ARE MY LEGAL RIGHTS IF A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING ILLEGALLY ACCESSES OR USES MY CRIMINAL RECORD INFORMATION?

The General Rule: In general, if you believe you were denied housing because of illegal access to your records, or because of incorrect or illegal information, you should IMMEDIATELY ask for a review hearing! A review hearing is an informal procedure in which you can present corrections to your record, evidence of rehabilitation, and other mitigating information (see PG. 371) to challenge a denial to government-assisted housing. Go to PG. 364 of this Chapter to learn about the procedure for challenging denials and how to request an informal review hearing.

Special Rule for the Public Housing & "Section 8" Housing Choice Voucher Programs: If you applied through a PHA for Public Housing or "Section 8" Housing Choice Vouchers, there is a special rule that says PHAs and owners of the government-assisted housing cannot take any "negligent or knowing action that is inconsistent with" the laws and regulations governing access to your criminal records.[1325] A negligent action is one where the PHA or owner of the government-assisted housing knew or should have known that their access to your records violated the law. A knowing action is one where the PHA or owner of the government-assisted housing *actually knew* that its access to your records violated the law.

A PHA or owner MAY BE LIABLE for negligence if they do any of the following:[1326]

- Improperly disclose a criminal record;
- Improperly use a consent form (a.k.a. a "release" form);
- Fail to *notify you* of the criminal history information collected;
- Fail to *provide you* with a copy of the information collected (whether you are an applicant or a current tenant); *and/or*
- Fail to *allow you the right to dispute* the information.

In this situation, it's best to talk to a lawyer! You could recover attorney's fees and other litigation costs as part of the relief you get in court.[1327] See the list of legal aid providers on PG. 1127 to contact an organization that may be able to provide you legal assistance.

ERRORS IN YOUR BACKGROUND CHECK REPORT & HOW TO CORRECT THEM—AN OVERVIEW

COULD THERE BE ERRORS IN THE BACKGROUND CHECK/ TENANT REPORT THAT A HOUSING PROVIDER RUNS ON ME?

Likely, yes. Unfortunately, errors in background check reports are an incredibly common problem.

HOW CAN I CORRECT ERRORS IN MY BACKGROUND CHECK/ TENANT REPORT?

The law that covers background checks and background check companies is very specific about how you can challenge mistaken, incomplete, or missing information in your background check report/tenant report. If you think there is something wrong, you can tell the landlord, call the background check company that ran the report, and try to get it fixed. For more details on how to correct mistakes in your background check report, see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

[1325] 42 U.S.C. § 1437d(q)(7).
[1326] The broad scope of the PHA's or owner's liability may provide leverage for an applicant harmed by the negligence. The threat of litigation costs and attorney's fees may encourage settlement and the admission of the applicant.
[1327] 42 U.S.C. § 1437d(q)(7); see also Rivers v. Housing Auth. of Contra Costa Cnty., No. CO5-04291 PJH (N.D. Cal., complaint filed Oct. 21, 2005) (illegal release of juvenile record); There is no equivalent language regarding fees and costs regarding negligent actions with respect to registered sex offenders.

V. JOINING FAMILY & FRIENDS IN HOUSING

WHAT WILL I LEARN?

- **Important tips if you are looking to move in with family or friends in their housing**
- **Suggestions and considerations if you want to move in with family or friends into their private housing**
- **Suggestions and considerations if you want to move in with family or friends into the government-assisted housing**
- **Rules and policies if you are a guest in a family member or friend's government-assisted housing**
- **Rules and policies if you are a live-in aide to someone with special needs or disabilities in government-assisted housing**

This section will discuss tips and important steps you should take if you want to join a family or friend's household after your release. In addition to these considerations, you always need to think about any restrictions based on your supervision status (probation, parole, etc.)—learn more about the rules and conditions you must follow for your type of community supervision in the PAROLE & PROBATION CHAPTER, beginning on PG. 125.

JOINING FAMILY OR FRIENDS IN PRIVATE HOUSING

Here are some general tips if you want to join someone in private housing (meaning neither the family or friends living there nor the landlord who owns the housing receive any government money):

1. You can look at the lease/rental agreement and see what it says about the maximum number of occupants/residents and any guest policies (these will usually be in the written lease);
2. You can ask the landlord about guest policies and for permission to add a new person to the lease if that is what you would like to do (sometimes a landlord will say it's allowed but may be able to increase the rent[1328]);
3. If the person you are living with OWNS their housing, you don't have to worry about landlord policies, but you may still want to consider the pros & cons of living with family and friends on PG. 343 above.

JOINING FAMILY OR FRIENDS IN GOVERNMENT-ASSISTED HOUSING

I HAVE A CRIMINAL RECORD AND WANT TO JOIN A HOUSEHOLD LIVING IN FEDERAL GOVERNMENT-ASSISTED HOUSING. CAN I?

It depends on your conviction and the requirements of the government-assisted housing program.

There is a good chance you will want to join or rejoin a family living in a government-assisted housing unit.[1329] Unfortunately, the laws and policies for adding an individual with a criminal record to an existing household can be complex, and sometimes the interests of other family members who are living in the government-assisted housing unit will conflict with your interests in joining them.

Here are some COMMON QUESTIONS that often come up, which we will address in this section.

1. May I join my family members in their government-assisted housing unit? (PG. 385)
2. Does my family have to tell the PHA or owner that I am joining their assisted household? How do they do that? (PG. 386)
3. Can we challenge a denial if the PHA or owner rejects my application to join the household? How do we do that? (PG. 364)
4. Do I have any rights if I am rejoining my household in government-assisted housing? (PG. 386)
5. What are the rules if I just want to be a guest of someone living in government-assisted housing and I have a record? (PG. 388)
6. What are the rules if I am a live-in aide for someone living in government-assisted housing and I have a record? (PG. 390)

[1328] Rent Increases: Basic Information for Tenants, CAL. DEP'T OF CONSUMER AFFAIRS (May 2012), http://www.dca.ca.gov/publications/legal_guides/lt-2.shtml.

[1329] Studies have shown that a substantial number of public housing residents have family members or significant others with recent criminal history. See CATRINA GOUVIS ROMAN, TAKING STOCK: HOUSING, HOMELESSNESS, AND PRISON REENTRY 24 (2004). It's likely that members of other federally assisted housing programs are similar.

I WANT TO JOIN SOMEONE GOVERNMENT-ASSISTED HOUSING. CAN I?

It depends on your background and on the policies of the PHA or owner. The same eligibility and exclusion rules apply if you want to *join a family living in government-assisted housing* as those that would apply if you were applying on your own—see PG. 357. As with new applicants there are a few limited situations in which a PHA or owner *must* reject the new family member[1330] (see PG. 361 for bans based on your criminal record). But in the vast majority of situations, the PHA or owner has *BROAD DISCRETION* to accept or reject you as an additional household member, just like for new applicants.

The rules for adding family members to an assisted household are different for every assisted housing program and are determined locally. You should be able to find these rules FOR YOUR PROGRAM. You can look in the following places:

- The PHA's Annual Plan
- The PHA's Admission and Occupancy Plan (ACOP)
- The lease for public housing
- The Administrative Plan for the Section 8 Voucher program
- The lease and/or house rules for all other government-assisted programs[1331]
- The PHA's website for these plans
- By asking the PHA and/or owner for a copy.

FIRST, LEARN ABOUT THE CRIMINAL BANS IN GOVERNMENT-ASSISTED HOUSING.

Return to the section above about bans to understand when there are *required bans* vs. when the PHA or owner of government-assisted housing *has discretion* (meaning is allowed, but not required) to ban you from a government-assisted household. You can also learn how to challenge a denial on PG. 364 of this Chapter.

IMPORTANT: Depending on the type of criminal activity and whether or not if happened on the government-assisted property, it could disqualify not just you, but your entire family from meeting the eligibility requirements of the assisted housing program! (Again, read PG. 356 to better understand eligibility requirements.)

Does the family in that household have to report the addition to the home?

Yes. In general, if a family is adding an adult member to the household, they must (1) tell the PHA and landlord AND (2) in most cases, receive the PHA's and owner's approval to add someone new.[1332] Ask the PHA and owner what the rules are for reporting a new household member, and ask when you have to report the change. Follow the rules so your family member doesn't risk losing their housing!

I WANT TO GO BACK TO MY GOVERNMENT-ASSISTED HOUSING UNIT AFTER A BRIEF PERIOD IN JAIL OR PRISON. CAN I DO THAT?

It depends on the program. And it depends on the criminal activity.

As always, anyone joining or returning to government-assisted housing MUST meet ALL of the eligibility requirements for that housing program, for that PHA, and for the owner (if there is one).

For exclusions (bans) based on your criminal record, read PG. 361 of this chapter to understand when there are *required bans* vs. when the PHA or owner of government-assisted housing *has discretion* (meaning is allowed, but not required) to ban you from a government-assisted household. You can also learn how to challenge a denial on PG. 364 of this Chapter.

For most federal government-assisted housing programs, the local PHA and owner of the government-assisted housing may develop rules and policies regarding temporary absences, and many do have such policies. You need to check with the PHA and owner that oversee the housing unit you want to join about their policies.[1333]

SPECIAL RULE FOR SECTION 8 VOUCHERS:

The PHA is actually required to have a written policy in its "Administrative Plan" about temporary absences for anyone in the "Section 8" Housing Choice Voucher program, so if you are in that program, there will definitely be a local policy!
24 C.F.R. § 982.54(d)(10). The Voucher program's temporary absence policy must state whether or when the family may be absent—including for imprisonment; the amount of time you are allowed to be absent for; and how to resume your housing assistance. 24 C.F.R. § 982.312(e).

[1330] See PG. 391 for a discussion of the screening criteria relating to individuals with criminal histories.
[1331] This includes HUD-assisted housing, Rural Development (RD) project-based programs, and Low Income Housing Tax Credit (LIHTC) properties.
[1332] 24 C.F.R. §§ 966.4(a)(1)(v), 982.516(c), 982.551(h)(2). Because tenants generally are not aware of the rules set forth in HUD Handbooks, and the lease does not require interim reporting, tenants without notice of the obligation to report should not be penalized for failing to report interim changes in family composition. Compare HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 7-10(A)(2) (rev. November 2013) (requiring that all tenants notify the owner when a family member proposes to move a new member into the unit), with HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs, App. 4-A the model lease, ¶ 16a (does not require interim reporting of changes in family composition).

IMPORTANT: Since your return could harm the entire family's ability to stay in government-assisted housing, it's a good idea for the family to discuss these issues with the PHA and/or owner of the government-assisted housing BEFORE you return from your brief absence. If that is not possible, there are legal defenses to an eviction action if it is brought against the entire family in court. This HOUSING CHAPTER does not cover eviction law and all of its defenses, so if this is your issue, you will need to contact a legal aid organization that specializes in eviction defense. Go to PG. 1127 for a list of legal aid organizations that may be able to help.

IF I AM JOINING A HOUSEHOLD, WILL THE PHA OR OWNER OF THE GOVERNMENT-ASSISTED HOUSING RUN A CRIMINAL BACKGROUND CHECK ON ME?

Most likely, yes. Most government-assisted housing programs, will check the members of a family every year, and some programs will require mid-year reporting as well. This process is called *recertification*. When the recertification process is happening, the PHA or owner will be checking all new household members to make sure they meet *all of the eligibility criteria for move-in!* Most PHAs and owners will check the criminal background of any NEW family members at this time. *They could* re-check the criminal background of current tenants at this time, but it's unlikely.[1334] The criminal background check on any tenant could lead to the PHA or owner threatening to evict or end the assistance to an entire household.[1335] Again, this HOUSING CHAPTER does not go into eviction defense, but see PG. 1127 for a list of legal aid organizations that may be able to help you if you are facing an eviction.

WHY DO THESE RULES ABOUT JOINING HOUSEHOLDS EXIST?

These policies exist because PHAs and owners have an interest in knowing who is living in their units. They may want to review current information to assess how you may act as a tenant, whether you will obey the lease, and whether you pose a threat to other residents, the housing development, or their staff. The PHA or owner may also need to know who is residing in the unit to calculate the amount of rent owed and/or to determine the correct family size for the specific unit.

BE PREPARED TO EXPLAIN WHY YOU SHOULD BE ACCEPTED INTO HOUSING, DESPITE YOUR RECORD.

Because the PHA or owner is likely to run a criminal background check on you, you should be prepared—*if asked*—to honestly disclose your criminal record *and* to demonstrate mitigating circumstances and evidence of your rehabilitation (see PG. 371). Consider giving the PHA or owner additional information about *all the benefits* of having you join the family and how your joining may *positively* affect the stability of the entire housing development. *These benefits depend on the facts of your specific situation.* For example, you might include information about your relationship with the family members currently living in the household, especially a positive relationship with any children or a supportive relationship between you and your spouse. Another example is your potential for increasing the income of the family members that are already living in the assisted housing unit, and therefore stabilizing the rent paid to the PHA or owner.

IF I AM BEING INCARCERATED FOR A NEW OFFENSE, DOES MY FAMILY HAVE TO REPORT THAT I MOVED OUT?

Generally, yes. PHAs and owners of government-assisted housing usually have policies that require family members to report when a family member moves out.[1336] The family's duty to report an absence generally depends on whether your absence is temporary, and whether you intend to continue to reside in the unit after your return. Whether or not you have to re-apply will depend on how long you are gone. Many PHAs consider you to have *permanently moved out* if you're absent from the rental unit for *30 or more consecutive days*.[1337] Keep in mind that depending on the terms of your lease/rental agreement, the PHA may be able to evict your family for failing to report any changes in the number of people living there (called "occupants").

[1333] In the RD programs, the owner must include a number of policies in the lease with the tenant, which must be approved by the agency. RD regulations require that the lease include information regarding the tenant's duty to notify the owner of an extended absence. 7 C.F.R. § 3560.156(c)(18)(xiii).

[1334] HUD, Public Housing Occupancy Guidebook, ¶ 12.2 (June 2003) (PHA may conduct criminal background check of current residents at the annual review "although this is not a HUD requirement"); cf. HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs, ¶¶ 7-4 (A)(7) (rev. November 2013) (owners may conduct criminal background checks at annual recertification). If the owner does require a background check on current tenants at recertification, the HUD rules for project-based HUD-assisted housing state that the owner must conduct the background check on all tenants. See HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 7-4(A)(7); cf. HUD, Public Housing Occupancy Guidebook, ¶ 12.2 (June 2003) (PHA may conduct criminal background check at the annual review "although this is not a HUD requirement").

[1335] Defending a family from eviction is beyond the scope of this Guide. For more information regarding defending such evictions, see NHLP, HUD Housing Programs Tenants' Rights, Chapter 14 (3d ed., 2004 and 2006-2007 Supp.); Lawrence R. McDonough & Mac McCreight, Wait a Minute: Slowing Down Criminal-Activity Eviction Cases to Find the Truth, 41 CLEARINGHOUSE REV. 55 (May-June 2007).

[1336] 24 C.F.R. §§ 966.4(c)(2), 982.516(c), 982.551(h)(3); see also HUD form 50075, PHA Plans (exp. 08/31/2009), ¶ 4A1f (PHA Annual Plan requires, for public housing, PHAs to state how frequently a tenant must report changes in family composition).

[1337] See Sacramento Housing and Redevelopment Agency, 2014 Admissions and continued Occupancy Policy 11-5.

Therefore, even if your absence is temporary (for example, less than 30 days), your family should *still report* that you've temporarily moved out to the PHA and owner of the government-assisted housing unit, to avoid breaking any rules in the lease. There is a chance that if it's just a short, temporary absence, it won't change your family's ability to stay in the government-assisted housing unit. BUT if know you are going to be absent from the unit for 30 or more days, then your family should declare you permanently absent, meaning that you have permanently moved out.[1338] If, after your incarceration, you intend to return to the unit, you will have to re-apply and meet ALL of the eligibility requirements (see PG. 357 to understand how your criminal record could affect your being re-admitted to federal government-assisted housing).

GUEST POLICIES IN GOVERNMENT-ASSISTED HOUSING:

I HAVE A RECORD AND WANT TO TEMPORARILY VISIT OR STAY OVERNIGHT AS A GUEST WITH MY FAMILY IN THEIR GOVERNMENT-ASSISTED HOUSING UNIT. WILL MY VISIT IN ANY WAY RISK MY FAMILY'S GOVERNMENT ASSISTANCE?

Unfortunately, it could—depending on the policies of the PHA or owner. Below we explain the general rules for staying with family or friends as a guest in their government-assisted housing, and suggested steps to avoid putting their housing assistance at risk.

I HAVE A RECORD AND WANT TO TEMPORARILY VISIT OR STAY OVERNIGHT AS A GUEST WITH MY FAMILY IN THEIR GOVERNMENT-ASSISTED HOUSING UNIT. WHAT ARE SOME SUGGESTED STEPS I CAN TAKE TO AVOID PUTTING MY FAMILY OR FRIEND'S HOUSING ASSISTANCE AT RISK?

(1) If you are planning to stay for only 1 night as a guest:

People living in government-assisted housing *are usually allowed* to have overnight guests. For federal government-assisted housing, federal regulations define the term "guest" as "a person temporarily staying in the unit with the consent of a tenant."[1339] The person living in the government-assisted housing unit should not be required to register or seek prior approval for an overnight guest (unless that guest is otherwise banned from being there). The owner of the government-assisted housing should allow the tenant to host guests for a "reasonable" amount of time,[1340] which is usually 14 to 30 days, depending on the PHA or owner's policy.[1341]

WARNING: Sometimes an individual CANNOT stay as a guest or visit government-assisted property AT ALL. For example, if someone committed a criminal offense on the property, the PHA and owner of the housing may be legally allowed to ban that person from ever returning. Someone could also have a parole or probation condition that forbids them from being on the property. For this reason, you want to be careful to know the rules of that PHA or owner AND know your rules of probation or parole.

(2) If you are planning to stay for longer than 1 night as a guest:

You want to be careful to know the rules of that PHA or owner about "Unauthorized Occupants." There are situations where, instead of being seen as a "guest"—even if that's what you and your family consider you to truly be—the PHA or owner might classify you as an "unauthorized occupant," a resident living in that housing unit without permission of the PHA or owner and against the rules. Being seen as an unauthorized occupant is a big problem for many reasons:

[1338] See Sacramento Housing and Redevelopment Agency, 2014 Admissions and continued Occupancy Policy 11-6.

[1339] 24 Hous. & Urban Dev. § 5.100.

[1340] See, e.g., McKenna v. Peekskill Hous. Auth., 647 F.2d 332 (2d Cir. 1981) (a PHA's two-week visitation rule was reasonable); Lancor v. Lebanon Hous. Auth., 760 F.2d 361 (1st Cir. 1985); see also 42 U.S.C. § 1437d(l)(2) (PHAs "must utilize leases that do not contain unreasonable terms and conditions"); Ritter v. Cecil County Office of Hous. & Comm. Dev., 33 F.3d 323 (4th Cir. 1994) (upholding, against First Amendment association and privacy claims, PHA's two-week visitation rule for Section 8 tenant-based recipients as reasonable under HUD regulations prohibiting residency by nonfamily members); 42 U.S.C. § 1715z—1b(b)(3). Some state courts have also invalidated unreasonable guest policies imposed by subsidized owners. See Messiah Baptist Hous. Dev. Fund Co. v. Rosser, 92 Misc. 2d 383 (1977) (occasional overnight visitor does not violate subsidized housing lease provisions requiring reporting of changes in income and family composition and prohibiting accommodations for boarders); Ashley Ct. Enters. v. Whittaker, 249 N.J. Super. 552 (App. Div. 1991) (refusing eviction of tenant-based Section 8 recipient because lease provision barring recurring visits was unreasonable and so vague as to be unenforceable); cf. New Boston Kiwanis Hous. Dev. Corp. v. Sparks, No. 1957, 1992 WL 79561 (Ohio Ct. App. Apr. 14, 1992) (lease provision requiring tenant to report changes in family composition does not constitute unlawful attempt to legislate morality; if guest stays long enough to become household member, tenant can be evicted for failing to report).

[1341] See, e.g., Ritter v. Cecil County Office of Hous. & Cmty. Dev., 33 F.3d 323 (4th Cir. 1994) (Section 8 tenant-based recipient violated two-week guest rule and had notice that violation could result in termination); Zajac v. Altoona Hous. Auth., 156 Pa. Commw. 209 (1993), appeal denied, 537 Pa. 627 (PHA policy provided that no one other than a resident could reside in the unit other than on a temporary basis not to exceed 30 days).

- Your income and/or assets (for example, any savings or major property you own) could affect the amount of rental assistance that your family receives. The total income might be too high for the family to qualify for any assistance at all. This could lead to your family being evicted from the unit or losing its financial assistance for the housing unit.
- Just by being in the apartment, you might be violating the lease or the owner's or PHA's guest policies and subject your family to eviction.

If you want to stay as a guest for a longer period, you need to know the PHA or owner's time limit on the number of back-to-back days OR number of total days in a year that a guest may stay in the government-assisted housing unit and still be considered a "guest."

IMPORTANT! Again, find out the PHA's and owner's rules and do not break them. Check the lease and the PHA's and owner's policies. There is usually a period of time stated in the lease and/or in the PHA's or owner's policies that defines when a guest becomes an "unauthorized occupant."

Special Guest Policy Rules for Specific Government-Assisted Housing Programs: Section 8 Vouchers and Rural Development Housing

Section 8 Vouchers programs: Some PHAs have established guest policies for Section 8 voucher participants, limiting the time period that persons not listed as household members can stay with a tenant.[1342] PHAs should inform participants of these policies and give them an opportunity to request that anyone living there for a longer period be added to the household.

Rural Development (RD) programs: Federal regulations require that all RD leases "include provisions that establish when a guest will be considered a member of the household and be required to be added to the tenant certification."[1343] Also, the owner of the property must post this same information in its occupancy rules.[1344] That means that although there is no standard amount of time required by law, the owner still *must include* its guest policies in the agency-approved lease used with tenants. As with the other programs, preapproval and registration of guests should not be required and the amount of time that a tenant may have a guest should be a reasonable period. However, if the guest was a former tenant who committed a drug violation and was evicted, then the owner may require that the tenant obtain approval before the guest may visit.[1345]

IF I AM PLANNING TO STAY AS A GUEST WITH FAMILY OR FRIENDS UNTIL I AM ADDED TO THEIR HOUSING LEASE, WHAT ARE SOME SUGGESTED STEPS I CAN TAKE TO MAKE SURE WE ARE FOLLOWING ALL THE GUEST POLICIES?

Yes, you can try to negotiate with the PHA or owner of the government-assisted property.

For example, if your family is seeking to add you to the lease—but the screening process to add you to the lease *TAKES LONGER* than the amount of time the family is allowed to have you as a guest—your family, or an advocate working on your behalf, may be able to negotiate with the housing provider at the start to extend the period of time that you are allowed to stay as a guest in that government-assisted household.[1346] If your family can negotiate a policy that allows you to stay longer as their guest, this helps avoid problems later on if the PHA or owner of the government-assisted housing accuses your family of exceeding the time limits for guests, in violation of their lease agreement.

IF A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING DENIES MY REQUEST TO BE ADDED TO MY FAMILY OR FRIEND'S LEASE, WHO CAN CHALLENGE THE DENIAL AND HOW?

Your family member (whomever is listed on the lease) can request a REVIEW HEARING (sometimes call a grievance hearing, informal review, informal hearing, or conference)! Go to PG. 364 to learn about how to challenge a denial to government-assisted housing and request a review hearing.

[1342] See, e.g., Ritter v. Cecil County Office of Hous. & Cmty. Dev., 33 F.3d 323 (4th Cir. 1994) (Section 8 tenant-based recipient violated two-week guest rule and had notice that violation could result in termination); Zajac v. Altoona Hous. Auth., 156 Pa. Commw. 209 (1993), appeal denied, 537 Pa. 627 (PHA policy provided that no one other than a resident could reside in the unit other than on a temporary basis not to exceed 30 days).
[1343] 7 C.F.R. § 3560.156(c)(8).
[1344] 7 C.F.R. § 3560.157(b)(10).
[1345] 7 C.F.R. § 3560.156(c)(15).
[1346] The Somerville (Massachusetts) Housing Authority, Policies and Procedures, http://sha-web.org/policies.aspx..

POLICIES FOR LIVE-IN AIDES IN GOVERNMENT-ASSISTED HOUSING

WHAT IS A "LIVE-IN AIDE?"

A live-in aide is a person who *resides with* one or more elderly, near elderly, or disabled persons, and who is *essential to the care* and well-being of that individual. The live-in aide is not obligated to support the person and would not be living in the unit except to provide the required services.[1347]

A live-in aide is NOT a household member. If you are a live-in aide, your income will be *excluded* from calculating the rent for the assisted unit. However, the family that lives in the unit could request an extra bedroom for the live-in aide and then be required to pay the standard amount for the larger bedroom size.

CAN I BE SOMEONE'S LIVE-IN AIDE IN GOVERNMENT-ASSISTED HOUSING IF I HAVE CRIMINAL RECORD?

Maybe. If you have a criminal record, you may be able to reside in a government-assisted housing unit as a ***live-in aide***, but you will need to be screened (see next question).

Depending on the policies of the PHA or owner, the criminal background check conducted for a live-in aide may be less strict than the one used for admitting a new tenant because a live-in aide is *not* considered a true household member.

WILL THE PHA OR OWNER SCREEN ME FOR MY CRIMINAL BACKGROUND IF I AM SOMEONE'S LIVE-IN AIDE?

Yes. The PHA and owner can screen you for issues related to your being present in the assisted unit. Most PHAs and owners will screen live-in aides for their criminal background *using the same or similar criteria* as they use for admissions (read PG. 361 for the criminal record-related bans in federal government-housing, including which ones are *required* versus which ones are *allowed*).[1348]

WILL THE PHA OR OWNER SCREEN ME FOR MY CREDIT HISTORY IF I AM SOMEONE'S LIVE-IN AIDE?

No. The *PHA or owner should not screen you for your credit history if you are a live-in aide*. Your credit history has nothing to do with the family's ability to pay for the unit—so you should not be screened for credit.[1349]

I WAS EXCLUDED FROM BEING SOMEONE'S LIVE-IN AIDE BASED ON MY CRIMINAL RECORD. WHAT CAN I DO?

*The **person requiring aide*** should ask for a ***review hearing***. Go to PG. 364 to learn how (s)he can challenge this denial of you as his/her live-in aide. There may be situations in which the disabled or elderly resident needing the care has great difficulty finding a live-in aide, or that you meet some unique need of that individual requiring care. In such situations, the disabled/elderly individual needing the live-in aide may request a *reasonable accommodation* for a disability by asking the PHA or owner *to waive its strict screening criteria, and allow the person with the criminal record to reside in the unit as a live-in aide due to the special function he or she plays in the tenant's life*.

WHAT MAKES A REQUEST FOR A REASONABLE ACCOMMODATION SUCCESSFUL?

Whether the request for reasonable accommodation is successful will depend upon the facts and an interpretation of reasonable accommodation rules, discussed in Appendix E, PG. 419.

I AM A LIVE-IN AIDE IN A GOVERNMENT-ASSISTED UNIT, BUT THE PERSON WHO I WAS CARING FOR HAS LEFT THE UNIT. DO I HAVE A RIGHT TO STAY?

No. If you are a live-in aide, you have NO RIGHT to continue living in the assisted unit if the tenant needing the assistance leaves.[1350]

[1347] 24 C.F.R. § 5.403.
[1348] HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶¶ 4-7(B)(6); 7-10 (rev. November 2013) (stating that owner must apply screening criteria for criminal activity to persons added to the lease, including a live-in aide).
[1349] Cal. Fair Credit Reporting Act, CAL. CIV. CODE §§ 1785.1-1785.6.
[1350] Cal. Fair Credit Reporting Act, CAL. CIV. CODE §§ 1785.1-1785.6.

VI. CHALLENGING DENIALS FROM HOUSING

WHAT WILL I LEARN?

- **Tips and guidance for challenging an illegal denial to private housing**
- **Tips and guidance for challenging an illegal or unfair denial to government-assisted housing (either through a Public Housing Authority (PHA) or an owner of government-assisted housing units)**

CHALLENGING DENIALS TO PRIVATE HOUSING:

If you believe you have been illegally discriminated against in applying for private housing from a private landlord, you can challenge that discriminatory denial. Read about the bases that you can challenge an illegal discriminatory denial below, and which government agencies you should contact.

WHAT ARE MY MAIN OPTIONS FOR CHALLENGING A DENIAL TO PRIVATE HOUSING?

- Blanket bans against all people with criminal records
- Treating your criminal record differently than others (arbitrary discrimination)
- Landlord violated your right to notice of a background check, and your right to fix errors (go to PG. 377)

Go to Appendix I, PG. 430 to learn about how to file a discrimination complaint with a government agency. Try to get a lawyer to help if you can. See PG. 1127 of this guide for a list of legal aid providers across California.

As a summary, your main options for challenging an illegal denial from private housing are the following:

1. You could file an administrative complaint with California's DFEH (the state housing protection agency);
2. You could file an administrative complaint with HUD (the federal housing protection agency);
3. You could file a civil lawsuit in state or federal court; OR
4. You could allow HUD (the federal housing agency) or California's DFEH (the state housing agency) to file a lawsuit on your behalf.

HOW DO I FIGURE OUT WHICH OPTION TO CHOOSE IF I WANT TO CHALLENGE A DENIAL FROM PRIVATE HOUSING?

Talk to a lawyer or an advocate at a nonprofit legal services organization if possible—they can help advise you! Also, you can always file a complaint with *both* HUD & DFEH, but talking to a lawyer is important. More on each of these 3 options below.

For general instructions on how to file a complaint against a private landlord, go to Appendix I, PG. 430.

CHALLENGING DENIALS TO GOVERNMENT-ASSISTED HOUSING

This section will help you understand how to challenge a denial from a federal government-assisted housing program, and what to expect in the process.

If you are denied government-assisted housing, you have the right to receive notice of the denial with the SPECIFIC REASONS for the denial—including anything that came up in your criminal records (see PG. 56 for what PHAs and government-assisted owners can access). You also have the right to a review of the denial—which could be a very informal meeting or hearing (see PG. 78 about what those look like) and the right to receive information on how to prepare for that informal hearing/review. You also have rights during the review hearing process AND the right to challenge the decision if you still disagree. Continue reading to learn more.

WHEN WOULD I CHALLENGE A DENIAL FROM A PUBLIC HOUSING AUTHORITY (PHA) OR OWNER OF GOVERNMENT-ASSISTED HOUSING?

RECALL—*Important Information about the "Catch-All" Ban:* Under the "CATCH-ALL" ban (described in detail on PG. 361), there are many situations in which a PHA and/or owner of government-assisted housing is allowed BUT NOT REQUIRED to deny you. In fact, the law limits the ways that PHAs and owners of government-assisted housing can exclude you passed on your past criminal history.

If the PHA or owner of the government-assisted housing discriminated against you in a way that was illegal, or abused their discretion in denying you the housing—either for something in your criminal record, a disability, OR because they relied on mistaken information—then you will want to challenge that denial by asking for a review of the decision. YOU WILL ALSO WANT TO GATHER AS MUCH INFORMATION AS POSSIBLE (see PG. 371 about mitigating circumstances and proof of your rehabilitation) to prove that you should not have been denied.

The PHA or owner of government-assisted housing must follow certain laws and rules when considering your past convictions and criminal history information. They may only reject you for criminal activity that *threatens the health, safety, or peace of other residents or staff AND the criminal activity must be "reasonably recent." For more information on these protections, go to* *PG. 357*.

IF I WAS DENIED GOVERNMENT-ASSISTED HOUSING, HOW WILL I KNOW THE REASON WHY?

If you were denied housing due to *information that showed up in your criminal record*, then the PHA also MUST give you a copy of the criminal record it used. This will help you to understand why you were denied.[1351]

Furthermore, if you are denied admission to federal government-assisted housing, you have the right to WRITTEN *detailed notice of the denial*—THIS SHOULD EXPLAIN THE SPECIFIC REASON(S) YOU WERE DENIED![1352] Sometimes, PHAs and owners will give you a general notice just telling you that you were denied, but not the specific conduct or offense that was the basis for the decision. If you get a general notice without the important details, you should ask for the detailed notice—which you have the right to! The PHA or owner of government-assisted housing MUST provide you with a detailed notice by law.[1353]

HELPFUL HINT:

Language of Notice: If there are a lot of non-English speakers served by the PHA or owner, the notice may have to be written in the language used by the applicant. If you need the notice to be translated, ask the PHA or owner for a copy in your native language.

WHAT IS THE TIMELINE FOR CHALLENGING A DENIAL TO GOVERNMENT-ASSISTED HOUSING?

In terms of timing, if you want to challenge a denial, you should request a "review hearing" *in writing* as soon as you receive notice of the denial. There are strict time deadlines for requesting a review hearing, and they are different for every housing program. You must stick to the deadline, so READ THE NOTICE of denial! You may have *as little as 1 week* (7 days) to request a review hearing! If you miss the deadline, you will not only lose the housing unit, but will also be taken off the waitlist and have to reapply. If you request a review hearing on time, the housing unit will be held for you until there is a final decision!

HELPFUL HINT:

Challenging the rejection may give you the necessary time to improve or gather information to clarify your criminal history. If you haven't already done so, you should request a copy of your criminal record (RAP sheet) and try to correct any mistakes. See more in the UNDERSTANDING & CLEANING UP CRIMINAL RECORDS CHAPTER on PG. 939 You should also gather evidence of rehabilitation and mitigating evidence.

WILL I DEFINITELY GET INTO GOVERNMENT-ASSISTED HOUSING IF I AM SUCCESSFUL IN CHALLENGING THE INITIAL DENIAL?

No, not necessarily. If you are successful, you could get admitted into housing, but you might just get another review of the facts or another hearing—which could help you get in, or could still result in denial.[1354] What you will get, if successful, is a fairer hearing.

HOW CAN I FIGURE OUT THE SPECIFIC PROCEDURES FOR CHALLENGING A DENIAL TO GOVERNMENT-ASSISTED HOUSING?

The notice will tell you the specific procedure for challenging the denial for that particular housing program. The first step in challenging any denial, however, is always to submit a WRITTEN request for a review hearing, where you can fight the denial. By law, you *almost always* have the right to a review of denial from government-assisted housing.[1355]

[1351] Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.

[1352] 42 U.S.C. § 1437d(c)(4) (public housing); 24 C.F.R. §§ 880.603(b)(2) (Section 8 new construction), 882.514(f) (Section 8 moderate rehabilitation), 960.208(a) (public housing), 982.201(f)(1) and 982.554(a) (voucher); HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-9(C)(1) (rev. November 2013); HUD, Public Housing Occupancy Guidebook, ¶ 4.9 and App. III (June 2003) (sample ACOP) (the ACOP and Notices are models; nevertheless, they should be persuasive); HUD, Voucher Program Guidebook, Housing Choice, 7420.10G, ¶ 5.7 (Apr. 2001) (voucher); Holmes v. N.Y. City Hous. Auth., 398 F.2d 262 (2d Cir. 1968) (PHA's failure to inform applicants of denial or reasons violated due process); 7 C.F.R. §§ 3560.160(e), 3560.154(h) (RD Section 515 Rental Housing) (applied to Section 514 and 516 farmworker housing through §§ 3560.551, 3560.601), 3560.255(b) (comparable notice requirements in the USDA Rural Development housing program).

[1353] See, e.g., 7 C.F.R. § 3560.154(h) (requiring that the credit report relied upon to deny admission to an applicant under the USDA Rural Development housing programs be attached to Notices of Ineligibility or Rejection in accordance with the Fair Reporting Credit Act); HUD, Public Housing Occupancy Guidebook, ¶ 4.9 (June 2003); see also Edgecomb v. Hous. Auth. of Vernon, 824 F. Supp. 312 (D. Conn. 1993) (termination of subsidy); Driver v. Hous. Auth. of Racine, 713 N.W.2d 670 (Wis. Ct. App. 2006) (sustaining tenants' § 1983 claim challenging adequacy of notice and hearing decision in a termination case as a matter of both due process, per Goldberg v. Kelly, 397 U.S. 254 (1970) and Edgecomb, and public policy.

[1354] Special Note for Advocates: This section cites cases involving denial or termination from federally assisted housing. Note: There may be cases from other social welfare programs that also may be used to build an applicant's case. Such cases are not included in this discussion, as they are beyond the scope of this manual.

[1355] See, e.g., 42 U.S.C. § 1437d(c)(4) (public housing); 24 C.F.R. §§ 882.514(f) (Section 8 moderate rehabilitation), 960.208(a) (public housing), 982.554 (voucher) 880.603(b)(2) (Section 8 new construction); 7 C.F.R. § 3560.160(f)-(g) (rural development pro- gram); HUD, Public Housing Occupancy Guidebook, ¶ 4-9) (June 2003) (informal hearing is distinct from a public housing grievance hearing); see also Ressler v. Pierce, 692 F.2d 1212, 1215 (9th Cir. 1982) (applicants for project-based Section 8 had a sufficient property interest to give rise to due process procedural safeguards); Holmes, 398 F.2d at 265 (due process requires ascertainable standards for admission); Eidson

The notice of denial will tell you who to send the written request for a review hearing to AND when you need to do it (the timing deadline by which you have to challenge the denial).[1356] The time frames must be "reasonable"—which usually means within 10-30 days.[1357] Follow the deadlines that you are given!

In sum, if you were denied from housing because of your record and you want to fight it, your first step will be to request a review hearing in writing, and you always should. *ALWAYS ASK FOR A HEARING WITHIN THE DEADLINE LISTED ON YOUR DENIAL NOTICE—and follow all of the procedures the notice gives you!*

Although not required, the denial letter (rejection notice) should also state the *legal services offices nearest to you*. If its does, call that office for extra help!

IMPORTANT! ASK YOUR SUPPORTERS TO COME TO THE HEARING WITH YOU! If there are individuals who are willing to accompany you to your hearing and testify (talk about how your circumstances have changed and to support your housing application), their attendance can help!

REVIEW HEARINGS: THE WAY TO CHALLENGE A DENIAL TO GOVERNMENT-ASSISTED HOUSING

Requesting a review hearing is one of the most important avenues for challenging a denial to most types of government-assisted housing (whether it was a denial by the Public Housing Authority (PHA) or an owner of government-assisted housing).

Of course, if you can, it's best to find a lawyer or advocate who can help you through this process. It's tough to find lawyers who do this, but it's worth a try. See PG 1127 for a list of legal aid organizations that may be able to help advise you as you challenge your denial from government-assisted housing. If you cannot find a lawyer to help you, do not despair! It's possible to do this on your own!

WHAT CAN I EXPECT AT THE REVIEW HEARING? AND HOW CAN I PREPARE?

THE HEARING:

After you have sent in a written request for a review hearing, it is important to prepare. At the informal hearing or review, it is important to show the PHA or owner of the government-assisted housing that they should not have denied you the housing because of mitigating circumstances and.or proof of rehabilitation (see PG. 371), a disability that requires a reasonable accommodation (see Appendix E, PG. 419), or a mistake in the criminal records that the PHA or owner used (see CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 939). Before the informal hearing/review, you should:

1. Ask the PHA or owner for *all* documents and information regarding the denial of your housing application, including a copy of the criminal records it relied upon to deny you.[1358]
2. Get a copy of your criminal record yourself to make sure it is correct. (For information on how to do this, see CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 950).
    - *Compare* your criminal record with the information the PHA or owner used to deny you.
    - At the same time, you will want to work on fixing any mistakes in the records used by the PHA or owner—or showing documentation of the errors. Records often have mistakes and you shouldn't be

v. Pierce, 745 F.2d 453 (7th Cir. 1984) (applicants for Section 8 new construction projects lack sufficient property interest for due process protections).

[1356] Holmes v. N.Y. City Hous. Auth., 398 F.2d 262, 264 (2nd Cir. 1968); Billington v. Underwood, 613 F.2d 91 (5th Cir. 1980), and subsequent opinion, Billington v. Underwood, No. 81-7978, 707 F.2d 522 (11th Cir. May 23, 1983); see also Vance v. Hous. Opportunities Comm'n, 332 F. Supp. 2d 832 (D. Md. 2004) (mentally disabled tenant challenged a termination from Supportive Housing program and denial of reinstatement based on various procedural deficiencies; court preliminarily ordered reconsideration of reinstatement request and new hearing on termination with other procedural protections).

[1357] See, e.g., 24 C.F.R. § 5.514(e)(1) (applicants for federally assisted housing rejected because of rules regarding immigration statutes have 30 days from notice to request grievance hearing); 7 C.F.R. § 3560.154(e) (Rural Development housing notice must be delivered by certified mail return receipt requested or hand-delivered letter with signed receipt by applicant and inform denied applicant of the right to respond within 10 calendar days after date of notice and right to hearing available upon request), whereas, 7 C.F.R. 3560.160(h) states notice must be given of the right to respond within 10 days after receipt of notice (emphasis added); HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-9(C)(2)(b) (rev. November 2013) (notice must inform applicant of right to respond in writing or to request a meeting within 14 days of rejection); HUD, Public Housing Occupancy Guidebook, App. VIII (Applicant Notice of Rejection) (June 2003) (request informal hearing within 10 days); see also Samuels v. District of Columbia, 669 F. Supp. 1133, 1140 (D.D.C. 1987) (10-day period for a tenant to seek grievance hearing is unreasonably short).

[1358] For the USDA rural housing programs, applicants who have been denied housing and choose to file grievances are entitled to examine the records that a borrower plans to rely upon to defend the admission decision. 7 C.F.R. § 3560.160(g)(4) (Rural Development housing); see also, HUD, Public Housing Occupancy Guidebook, App. VIII (sample Applicant Notice of Rejection) (June 2003) (offers applicant the opportunity to review applicant file); See Chapter 3 for a discussion of special federal rules regarding access to criminal records by PHAs and owners. In the event that the denial is based upon criminal record information obtained by a PHA (including lifetime sex offender registration) in accordance with the federal statute, the PHA has an obligation to provide the applicant a copy of that record.

denied housing for an error.[1359] (See CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 944.) This can take time, so you should act fast, and ask the PHA and/or owner of the government-assisted housing to hold the unit while you collect the documents you need.

3. Review your application & be prepared to talk about important differences.
    - Make sure you know what you wrote on your application about your criminal record, illegal drug use, or whatever it was that made you get denied for the housing. For example, what did you say in response to the question about your convictions? What did you say about your illegal drug use? Whom did you say would live in your household? If the answer you gave on your application is not exactly the same as the answer you would give today, you must be able to explain why. If you didn't include certain information about your criminal record in your application to the PHA or owner, you will have to explain why it was left out. Or if you said that a certain relative would be living with you who is not, you need to explain what has changed.

IMPORTANT: If you were denied under a ban that is allowed but not required, you will want to prove to the PHA or owner that there are mitigating circumstances or evidence that you have changed and rehabilitated since the time of your offense.

If you were denied because of your criminal history, you should present evidence of rehabilitation to show the PHA you are *not* a threat to the health or safety of other residents, PHA staff or contractors. This includes all the letters and documents you can think of that will show how you have changed and grown since your negative conduct. You should get any of the following: letters of support.[1360] Ask people who have supported you through reentry—like your current employer, a teacher, probation officer, social worker, neighbors, current or prior landlords, and community leaders-- to write a letter of support on your behalf. The letters should emphasize:

- How your circumstances have changed since the negative conduct/ offense,
- That you are a good person who gets along well with others,
- That you are motivated to improve your life, *and*
- Your good performance or attendance record if you are in school or working.

IMPORTANT!

You have the opportunity to tell the hearing officer why the decision he/she made is wrong

TIPS:

- Try to explain clearly what they missed, made mistake on, or why their decision was wrong.
- Be as composed and clear as possible.
- Bring a friend, witness, and/or lawyer or advocate if you can.

WHAT CAN I EXPECT FROM THE REVIEW HEARING?[1361] WHAT IS IT LIKE?

Every hearing is different, *but generally,* the hearing is likely to be very informal (more details about these informal hearings below). It is *very different* from a court proceeding, and formal evidence rules do NOT apply. For example, the PHA or owner may introduce newspaper reports, police blotters, declarations or criminal records, with no one to authenticate or testify about the records.[1362] You are also allowed to bring in any evidence showing why your criminal record should not bar you from getting into the housing program.

You are allowed, *and it's recommended,* that you bring a friend or family member who can be supportive and can also be a witness to what is happening and what is said at the hearing.

[1359] Sharon M. Dietrich, When "Your Permanent Record" Is a Permanent Barrier: Helping Legal Aid Clients Reduce the Stigma of Criminal Records, 41 CLEARINGHOUSE REV. 139 (July-Aug 2007).
[1360] See Legal Action Center, How to Get Section 8 or Public Housing Even with a Criminal Record: A Guide for New York City Housing Authority Applicants and their Advocates, App. H (no date), http://lac.org/index.php/lac/130 (provides examples of letters of recommendation); New York City Housing Authority, Division of Applicant Appeals, Public Housing Hearing, Report of Informal Hearing, August 7, 2007, No. 113-52-7732.
[1361] See Jaimes v. Toledo Metro. Hous. Auth., 758 F.2d 1086 (6th Cir. 1985); Billington v. Underwood, 613 F.2d 91, 93 (5th Cir. 1980); Neddo v. Hous. Auth. of Milwaukee, 335 F. Supp. 1397 (E.D. Wis. 1971); cf. Spady v. Mount Vernon Hous. Auth., 341 N.Y.S.2d 552 (N.Y. App. Div. 1973), aff'd mem., 310 N.E.2d 542 (N.Y. 1974), cert. denied, 419 U.S. 983 (1974) (Douglas, J., dissenting); Sumpter v. White Plains Hous. Auth., 278 N.E.2d 892 (N.Y. 1972), cert. denied, 406 U.S. 928 (1972) (distinguishing evidentiary hearing required before termination of benefits from procedures required before denials of eligibility). See also S. K. Morris, Note, The New Leased Housing Program: How Tenantable a Proposition? 26 HASTINGS L.J. 1145, 1201 (1975).
[1362] See Billington v. Underwood, No. 81-7978, 1983 WL 855694 (11th Cir. May 23, 1983) (discussion of the burden of proof and use of hearsay in hearing for denial of admission). The following cases set aside hearing decisions based solely on hearsay in the context of subsidy terminations or proposed evictions: Basco v. Machin, 2008 WL 182249 (11th Cir.); Edgecomb v. Hous. Auth. of Vernon, 824 F. Supp. 312 (D. Conn. 1993) (in decision involving termination of tenant- based assistance, court held that conclusory statement was insufficient); Kurdi v. Du Page County Hous. Auth., 161 Ill. App. 3d 988 (1987); Carter v. Olmsted County Hous. & Redev. Auth., 574 N.W.2d 725 (Minn. Ct. App. 1998); Chase v. Binghamton Hous. Auth., 91 A.D.2d 1147, 1147-48 (N.Y. App. Div. 1983). Hearsay rules, if used, will likely apply to all parties. Therefore, an applicant should be prepared to have whatever hearsay rules are adopted apply to the evidence that he or she presents. Broughton v. Hous. Auth. of Pittsburgh, 755 A.2d 105 (Pa. Commw. Ct. 2000) (tenant's hearsay evidence excluded in judicial setting).

WHAT RIGHTS DO I HAVE IN A REVIEW HEARING?

1. **You have the right to a hearing before an impartial, unbiased hearing officer.**[1363] That means that hearing officer should be independent, with no stake in the outcome of the hearing, and ready to hear both sides. He/she *should not* be the same person who made the original decision to deny you, or anyone *who works for* the person who made the original decision to deny you.[1364]
2. **You have the right to an opportunity to make an argument (called a "rebuttal") to challenge the information the PHA or owner relied upon in denying you**.[1365]
3. **You should be allowed to explain why you pled guilty to a past conviction**.[1366] The hearing's decision maker may find your explanation important and relevant.
4. **You should ask for a written transcript and an audio recording of the review hearing (the "record")**. If the hearing officer won't provide you this, you can ask to bring in your own recording device (many cell phones have this function).
5. **Question witnesses, and to ask that they testify under oath**.[1367]
6. **The right to a written decision after the review hearing (for most government-assisted housing programs).**[1368] The written decision must be given to you within a *reasonable period of time* (usually 10-30 days), state the *reasons* for the decision, and state the *evidence* the hearing officer relied upon in making a decision.[1369]
7. **Extra Rights for Public Housing & Voucher housing programs**: In addition to the requirements above, for public housing and the voucher program ONLY, there is the additional protection that the subject of the hearing can *only go into the issues that were presented in the rejection notice*.[1370] At the hearing, no information should be presented if it was not the basis for the rejection, because otherwise you don't have an opportunity to investigate ahead of time and challenge that new information at the hearing.
8. **The rules for Rural Development (RD) hearings are different**. Read more in APPENDIX J, PG. 435.

WHAT CAN I DO IF I AM UNHAPPY WITH THE WRITTEN DECISION BY THE REVIEW HEARING?

If you are unhappy with the decision made at the review hearing, and want to challenge it, ask your lawyer and/or the hearing officer how to challenge. Usually, if you lose your informal hearing, you cannot continue to challenge the denial of government housing at the Public Housing Authority (PHA) level. Most likely, the only way for you to continue to challenge the denial after losing your informal review hearing is to sue the Public Housing Authority in court.[1371] This is a complex decision—contact a lawyer for help (see a list of legal aid offices that may be able to assist on PG. 1127.

[1363] Billington v. Underwood, 613 F.2d 91, 95 (5th Cir. 1980); see also Piretti v. Hyman, No. 79-622-K, slip op. (D. Mass. July 23, 1979), vacated as moot without opinion, 618 F.2d 94 (1st Cir. 1980) (in a case regarding termination of tenant-based assistance, decision-maker not impartial when the attorney presenting the PHA's case also advised the hearing officer).

[1364] See 24 C.F.R. § 982.554(b)(1); HUD, Public Housing Occupancy Guidebook, § 4.9 and App. VIII (Applicant Notice of Rejection) (June 2003); HUD, Voucher Program Guidebook, Housing Choice, 7420.10G, ¶ 16.5 (Apr. 2001) (voucher program); HUD, Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-9(D)(1) (requiring that any meeting with the applicant to discuss the applicant's rejection must be conducted by a member of the owner's staff who was not involved in the initial decision to deny admission or assistance); see also Davis v. Mansfield Metro. Hous. Auth., 751 F.2d 180, 185 (6th Cir. 1984); Billington v. Underwood, 613 F.2d 91, 95 (5th Cir. 1980).

[1365] Billington v. Underwood, 613 F.2d 91, 95 (5th Cir. 1980); see also Edgecomb v. Hous. Auth. of Town of Vernon, 824 F. Supp. 312, 314-16 (D. Conn. 1993) (in a termination of benefits case, the hearing decision could not be based wholly on hearsay; hearing decision inadequate because no reasons given; participant was entitled to cross-examine witness); Kurdi v. Du Page County Hous. Auth., 514 N.E.2d 802, 806 (Ill. App. Ct. 1987) (setting aside a termination decision based wholly on hearsay); see also 7 C.F.R. § 3560.160(h) (2007) (rural development housing).

[1366] Gibson v. Gibson, 15 Cal. App. 3d 945 (1971); see also Costa v. Fall River Hous. Auth., 71 Mass. App. Ct. 269, 283 (2008).

[1367] Neddo v. Hous. Auth. of City of Milwaukee, 335 F. Supp. 1397, 1400 (E.D. Wisc. 1971); see also 7 C.F.R. § 3560.160(h) (2007) (RD housing).

[1368] See, e.g., New York City Housing Authority, Division of Applicant Appeals, Public Housing Hearings, Report of Informal Hearing, August 6, 2007, No. 113-52-7732 copy available as Exhibit 3 of this Chapter (applicant with felony convictions found to have made significant positive changes and improved since the offenses).

[1369] 4 C.F.R. §§ 882.514(f) (Section 8 Moderate Rehabilitation) and 982.552(b)(3) (voucher program) (2007); HUD, Public Housing Occupancy Guidebook, ¶ 4.9 (public housing); HUD Handbook 4350.3, REV-1, CHG-2, ch. 4-9D (June 2007) (final decision must be given to applicant within five business days of meeting); Neddo v. Hous. Auth. of City of Milwaukee, 335 F. Supp. 1397 (E.D. Wisc. 1971); see also Edgecomb v. Hous. Auth. of Town of Vernon, 824 F. Supp. 312 (D. Conn. 1993) (in a termination of benefits case, hearing decision could not be based wholly on hearsay; hearing officer decision inadequate because no reasons given; participant entitled to cross-examine witness); Powell v. D.C. Hous. Auth., 818 A.2d 188 (D.C. 2003) (reversing PHA's termination decision for alleged fraudulent underreporting of income because hearing officer failed to make findings with respect to each contested material allegation of fact as required by due process and applicable local Administrative Procedure Act (APA); see also Hicks v. Dakota County Cmty Dev. Agency, No. A06-1302, 2007 WL2416872 (Minn. App., Aug. 28, 2007) (the record must be sufficient to facilitate meaningful review and where there are no findings or credibility determinations, the court could not conduct a meaningful review); see, e.g., New York City Housing Authority, Division of Applicant Appeals, Public Housing Hearing, Report of Informal Hearing, August 6, 2007, No. 113-52-7732 (copy available as Exhibit 3 to this Chapter). For Rural Development housing, the notice must be served within ten days of the hearing. 7 C.F.R. § 3560.160(i)((2) (2007). As noted above, the decision also should not be based wholly upon uncorroborated hearsay.

[1370] See Wolff v. McDonnell, 418 U.S. 539, 564 (1974); Billington v. Underwood, 613 F.2d 91, 93-95 (5th Cir. 1980); Singleton v. Drew, 485 F. Supp. 1020, 1024 (E.D. Wisc. 1980); McNair v. N.Y. City Hous. Auth., 613 F. Supp. 910, 914-15 (1985).

[1371] You could bring an action for federal civil rights violations under 42 U.S.C. § 1983, which has a three-year statute of limitations, to challenge a decision on fair housing or due process grounds, and also sometimes on the grounds that the decision is contrary to

VII. MAINTAINING MY HOUSING

WHAT WILL I LEARN?

- **General tips for renters**
- **Your rights and responsibilities as a renter**
- **Tips and guidance about your options if you are facing an eviction**

GENERAL TIPS FOR RENTERS

I AM PLANNING TO RENT AN APARTMENT (PRIVATE OR GOVERNMENT-ASSISTED). WHAT ARE SOME GENERAL TIPS FOR RENTERS?

These tips can help you prepare for the process of renting an apartment, and avoid problems related to background checks!

ORDER YOUR FREE CREDIT REPORT BEFORE YOU APPLY FOR AN APARTMENT.

The landlord will almost certainly order your credit report before letting you live as a tenant in his/her unit. Even though this Chapter does not go into all of the rules and laws that govern credit check, it's still important to understand that this is part of what most landlords will be looking at. Before you apply to ANY type of housing, you can order your own credit report to make sure that all the information is accurate and up-to-date. You can order your credit reports free once every 12 months from each of the three national credit bureaus: (1) Experian, (2) TransUnion, and (3) Equifax. To learn more, see the Federal Trade Commission's information on Free Annual Credit Reports on its website: http://www.ftc.gov/bcp/edu/microsites/freereports/index.shtml (Note: this is a trusted government website about credit reports).

LEARN ABOUT BACKGROUND CHECKS/ TENANT REPORTS.

Most landlords use "tenant reports" (these are background checks specifically for the purposes of housing and renting apartments) to screen housing applicants. As discussed on PG. 377, these reports can include both credit history and non-credit information such as your criminal record; court cases related to past evictions; references from former landlords; information from local, state and national databases (such as Sex Offender registries); and more. If you learn you that the landlord is going to order a background check/tenant report on you, you could save yourself a lot of time and trouble by simply asking the landlord the name and contact information for the screening company, so that you find the tenant report yourself and make sure the information is accurate and up-to-date.

UNDERSTAND YOUR RIGHTS & RESPONSIBILITIES AS A RENTER.

If you live in government-assisted housing, a good place to start is the U.S. Department of Housing and Urban Development's (HUD website about renting in California: http://portal.hud.gov/hudportal/HUD?src=/states/california/renting.

Carefully review any lease or rental agreement before you sign it. Be sure that any WRITTEN agreements include VERBAL conversations you had with the landlord or property management company—so that those agreements will be legally enforceable later on. As well as general rules about rent payments, utilities, and the time period covered, a lease or rental agreement should cover anything you have discussed together: things like pets, visitors, roommates, or subletting.[1372] If you know there is something in the lease or agreement that limits your basic legal rights, bring that up with the landlord. In California, the Department of Consumer Affairs has published a great guidebook on tenants' rights available online at: http://www.dca.ca.gov/publications/landlordbook/catenant.pdf.

WHAT ARE SOME OF MY GENERAL RIGHTS AS A RENTER IN CALIFORNIA?

GENERALLY, YOUR BASIC RIGHTS AS A TENANT IN CALIFORNIA (NO MATTER WHAT THE LEASE OR RENTAL AGREEMENTS SAYS) INCLUDE THE FOLLOWING:

- Limits on the amount of the security deposit that the landlord can require you to pay.
- Limits on the landlord's right to enter the rental unit.

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applicable federal law. This is a field of law that is very complicated. It is unclear whether you can use § 1983 to make a challenge that a decision lacks substantial evidence, or that the officer did not exercise discretion properly. The state certiorari statute is necessary, especially if your challenge focuses on the failure of the housing program to comply with agency procedures and policies.

[1372] See, e.g., CAL. CIV. CODE § 1961–2.

- The right to a refund of the security deposit, or a written accounting of how it was used, after you move.
- The right to sue the landlord for violations of the law or your rental agreement or lease.
- The right to repair serious defects in the rental unit and to deduct certain repair costs from the rent, under appropriate circumstances.
- The right to withhold rent under appropriate circumstances.
- Rights under the warranty of habitability.
- Protection against retaliatory eviction.
- These and other rights will be discussed throughout the rest of this booklet.

KEEP RECORDS OF YOUR LEASE & OTHER DOCUMENTS RELATED TO YOUR APARTMENT.

Keep a file with your signed lease or rental agreement and any other important documents. The file should include notes of any conversations you have with your landlord or apartment manager regarding repairs, disturbances, disputes, or any other event or incident that may affect your rights as a tenant. It should also include any mail, emails, repair orders, and even notes left on your door. Keep and maintain a separate file for each rental unit you live in. **Note:** Under California law, a tenant can ask their landlord for a copy of their lease once every calendar year. The landlord must then provide it within 15 days.[1373]

AVOID SCAMS.

Avoid rental scams by recognizing warning signs. Online resources such as Craigslist (www.craigslist.com) are a popular way to search for available rental units. However, scammers also use these sites to place phony rental listings or to hijack a valid listing to attempt to steal your money or identity. If you are asked to wire money—it's probably a scam! If you are asked to pay a security deposit or an advance on your rent *before signing a rental agreement*, that is a red flag too. You should also be aware of *foreclosure scams* targeting unsuspecting renters and upset homeowners. To learn how to spot and avoid foreclosure scams, check out the following website:
http://www.freddiemac.com/news/blog/joan_ferenczy/20121008_fraudsters_falsely_advertising_reo_as_rentals.html.

REVIEW ALL NOTICES YOU RECEIVE FROM YOUR LANDLORD OR RENTAL AGENCY.

Small problems can become big problems if you ignore them. A landlord's notice to evict you may give you only a certain number of days to respond. If you do not respond within the given time, the landlord may seek a court order to evict you. Notice of court actions give only a certain number of days to respond! If you have questions about what a notice means, see the list of housing legal aid providers on PG. 1127 to try and speak to a lawyer who may be able to help you.

KNOW WHERE TO COMPLAIN OR SEEK HELP IF PROBLEMS COME UP.

Understand that no single law covers all rental situations. And no single federal, state, or local government agency has the ability or authority to investigate every type of problem you might encounter. This guide suggests ways you might make a complaint or challenge a discriminatory act based on your criminal record. But also know that sometimes, private landlords *are allowed* to make decisions on the basis of your criminal conviction history. Learn more on PG. 358.

PREPARE THE INFORMATION YOU WILL NEED FOR A RENTAL APPLICATION:

A rental application may require you to provide any of the following information:

- Current and past addresses of where you have lived, your employers, your personal references, and your previous/current landlords.
- Your Social Security Number (SSN) and driver license or state ID number. [Go to the BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER for more information: getting a SSN covered on PG. 38; getting a California driver license or state ID covered beginning on PG. 43.]
- The number of people expected to live in the unit.
- Bank account and credit account numbers. Questions about how much you earn and where your income comes from will almost certainly be on the rental application.

SPECIAL NOTE ABOUT ILLEGAL DISCRIMINATION BECAUSE OF THE SOURCE OF YOUR INCOME:

You may be asked about your source of income. In California, all legitimate and lawful sources of income must be considered the same by a housing provider—they can't discriminate. CAL. GOV'T CODE § 12955(p)(2).

For example, your Social Security disability income (SSI/SSDI) should have the same weight in evaluating your income than wages from an office job—a landlord must treat these the same.

[1373] Civil Code Section 1962(a)(4).

BE PREPARED TO PAY MOVE-IN COSTS.

You will likely have to pay for a screening fee when you apply for a place to live from a private landlord. California law allows a landlord to charge you out-of-pocket expenses, and the cost changes yearly.[1374] It costs approximately $50 for a landlord's screening of you. You will also likely have to pay a security deposit and 1-2 months' worth of rent after you sign the lease agreement. This can be expensive—be prepared!!

PROTECTIONS FOR ACTIVE MILITARY MEMBERS:

If you are in the military, the Service Members Civil Relief Act gives active duty members the right to terminate a lease when they are ordered to a new permanent location or any change of location that amounts to more than 90 days.[1375]

EVICTIONS: *JUST THE BASICS*

The HOUSING CHAPTER does NOT go into the specifics of eviction law—but we realize it is an issue you may come across and need help with. Below we include some very basic know-your-rights information if you are facing an eviction or received what is called a "3-Day Notice" from your landlord to do something (like pay rent). It is also important to know that if you engage in any "new criminal activity," like committing a new crime, you and your entire household could face eviction.[1376]

GET HELP!

If you need a lawyer to help with defending against an eviction, please see the list of housing legal aid providers on PG. 1127, who may be able to assist you. If you are facing eviction, it's important to ACT FAST to respond to the notice of eviction, so get in touch with a housing lawyer as soon as possible.

WHAT IS AN EVICTION?

Eviction is a process that a landlord can use to remove a tenant from a rental unit. The fancy legal term for an eviction lawsuit is an "unlawful detainer" action. It is called "unlawful detainer" because the landlord is accusing the tenant of staying in a rental unit when he or she does not have a legal right to do so, therefore, the rental unit is unlawfully detained. To "be evicted" means (1) you were the defendant (the renter who is being accused of unlawfully staying in the rental unit) in this type of lawsuit, (2) you lost the lawsuit, and (3) the court then ordered you to move out of the apartment or rental unit. If you leave a rental unit because the landlord asks you to do so, but you are never served with "unlawful detainer" eviction court papers, then you have not been evicted in the legal sense of the word.[1377]

I AM FACING AN EVICTION. WHAT ARE MY OPTIONS?

Since responding to an eviction notice can be VERY time-sensitive, it's important to respond and act fast! Keep reading this section to learn more. It can also be VERY HELPFUL to have a lawyer assist you. *If you need a lawyer to help with defending against an eviction, see the list of housing legal aid providers on PG. 1127 for organizations that may be able to assist you.*

I RECEIVED A 3-DAY NOTICE TO DO SOMETHING FROM MY LANDLORD. WILL I BE EVICTED?

There are different kinds of "3-Day" notices. Most 3-Day notices can be corrected without having to actually move out of your apartment or home. The most common is the 3-Day notice "to pay rent or quit."[1378] A landlord can give other kinds of 3-Day notices, as well. Another common one is the notice that says the tenant (the person living in the apartment who is on the lease) has created a nuisance or has done something which is not allowed under the rules of the lease agreement. All of these notices must be *in writing*.

THE 3-DAY NOTICE TO "PAY RENT OR QUIT"

If your rent is late or not paid in full, the landlord may give you a notice called a "Three-Day Notice to Pay Rent or Quit." The landlord cannot give you this notice until the rent is late. This notice must be in writing.

[1374] Cal. Civ. Code § 1950.6
[1375] Servicemembers Civil Relief Act, 50 U.S.C. App. § 517.
[1376] 24 C.F.R. § 982.310.
[1377] LSNC, Self-Advocacy Fact Sheet: Eviction at 1, http://www.lsnc.net/dera_files/eviction_factsheet.pdf.
[1378] The information in this section has been substantially adopted from Legal Services of Northern Cal., 3-Day Notices—Frequently Asked Questions & Answers (rev'd Apr. 2015), courtesy of Sarah Steinheimer and Amy Williams.

WHAT MUST A "3-DAY NOTICE TO PAY RENT OR QUIT" SAY?

By law, the notice must state:

1. The exact amount of rent you owe (generally, this may NOT include late charges or other fees, although some courts have allowed late charges to be included);
2. That you have a choice of paying the rent or MOVING OUT ("Quit" is the legal term for moving out);
3. Your correct address;
4. The name, address and telephone number of the person you are supposed to pay the rent to; AND
5. If you are allowed to pay rent in person, the usual days and hours the person receiving the rent will be available. *Note:* If there is some other way you are supposed to pay rent, the landlord may have to explain that to you.

WHAT ARE MY OPTIONS IF I GET A "3-DAY NOTICE TO PAY RENT OR QUIT"?

To figure out when the third day is, start counting with the day after you received the notice. If the third day falls on a Saturday, Sunday or a holiday, you then have until the next business day to pay or move.

(1) **One choice** is that you can move out during the 3 days. If you move out at this time, technically, the landlord CANNOT file a court eviction against you. However, some landlords try to do so anyway. If this happens, you should call a legal aid office immediately; see a list of legal aid providers across California on PG. 1127 that may be able to assist you. Also, even if you move out within the 3 days, the landlord can later sue you for past rent due. Most landlords will not bother with this.

(2) **Another choice** is to pay the rent. If you decide to pay, you should pay the ENTIRE AMOUNT that the notice asks for, before the three days are up. Make sure that you get a receipt. If you cannot pay the full amount, you may be better off not paying anything —unless you can agree on a payment schedule with the landlord. If you reach such an agreement, make sure it is in writing and keep a copy of the agreement.

If you offer the full amount asked for within the 3 days, the landlord MUST ACCEPT the money from you. If you think the landlord might refuse your money, take along a friend to be a witness just in case. After the 3 days, the landlord does not have to accept any money from you. If you decide to try to pay the landlord even though the 3 days are up, you should get a RECEIPT and ask the landlord to agree IN WRITING not to evict you. If the landlord refuses to agree to that, the landlord may still try to evict you.

WHAT COULD HAPPEN IF I DO NOT PAY MY RENT OR DO NOT MOVE WITHIN THE 3 DAYS?

The landlord must go to court to evict you.

After the 3 days are over, the landlord cannot simply put you out in the street, change the locks, or have the police or sheriff evict you without going to court first. The 3-Day notice is only the *first step* in the eviction process. The landlord must go to court and get a judge's order to get the rent and the house or apartment back. For a short explanation of the eviction process, see PG. 398.

THE 3-DAY NOTICE TO PERFORM COVENANT(S) OR QUIT

Sometimes this kind of notice is called "3-Day Notice to Perform or Quit."

The landlord will give you this notice if s/he believes that you did something OR failed to do something that violated your lease or rental agreement. Some examples include, if you did not pick up trash around your place, if you took in pets when they are not allowed, or if you left a junk car in the parking lot. This notice must be IN WRITING.

After you get this notice, you have 3 days to fix the problem or move out.

To figure out when the last day to fix the problem or move out is, start counting with the day after you received the notice. If the third day falls on a Saturday, Sunday or a holiday, you then have until the next business day to correct the problem. If you do not fix the problem and if you do not move out by the third day, your landlord may start the court process to evict you. However, after the three days are over, the landlord cannot simply put you out in the street, change the locks, or have the police or sheriff evict you without going to court first. The landlord must file court papers and get a judge's order to get the rent and the house or apartment back. For a short explanation of the eviction process, see PG. 398.

If you feel that you are being wrongly accused of breaking the lease, you should write to your landlord explaining your side of the story. Make sure to date and sign the letter and get it to the landlord as soon as possible. Make a copy of it to keep for your records.

If you already have broken the lease or rental agreement but now you agree to obey it, you should write a letter to the landlord. Tell him or her that you have done what the notice requested and that you will obey the lease agreement from now on. Sign and date the letter and get it to the landlord as soon as possible. Keep a copy for your records.



THE 3-DAY NOTICE TO QUIT

This kind of notice orders you to move because you have done something that the landlord believes cannot be corrected. This is the most serious notice your landlord can give you. For example, you may get this kind of notice if you have done illegal things (such as using or dealing drugs) on the property. This notice does not give you the chance to correct what was done. This notice means your landlord just wants you to move out. This notice must be in writing.

If you feel that you are being wrongly accused of doing something that you did not do, you should write to your landlord immediately and state that you did not do what you are accused of doing. Make sure you date and sign the letter and get it to the landlord as soon as possible. You must also keep a copy of the letter for your records.

If you do not move out by the third day, your landlord may start the court process to evict you. However, as with other eviction notices, after the 3 days are over, the landlord cannot simply kick you out without a court order.

SERVICE OF THE 3-DAY NOTICE

The law states that you must be given a 3-Day Notice in writing. The courts are not always strict about how the landlord gives the 3-Day Notice to you. However, the law says that the landlord must give the notice to in one of the following ways:

1. **Personal Service** — by handing you a copy.
2. **Substituted Service** — if you are not home or at your usual workplace, a copy can be left at either place with a person who is old enough to understand the importance of the 3-Day Notice. A copy of the notice must also be mailed to you. Keep the envelope in which the notice was mailed.
3. **"Nail and Mail"** — if the landlord cannot do either of the above, a copy of the 3-Day Notice can be posted on your property in a place that you will find it. A copy of the notice must also be mailed to you.

WHAT COULD HAPPEN IF MY LANDLORD TAKES ME TO COURT TO EVICT ME?

If the landlord takes you to court to evict you, you will get legal papers called a "Summons" and a "Complaint." Make a note of what day you receive these papers. You have 5 days from the day you receive the Summons and Complaint to respond to the court. To count the 5 days: start counting with the day after you received the papers. You must count Saturdays and Sundays, but do not count court holidays. If the 5th day falls on a Saturday, Sunday or holiday, you will have until the end of the next court business day to "answer" these papers.

Example: Jane gets the Summons and Complaint papers on a Monday. Tuesday is the first day of the 5 days. The 5th day would be a Saturday. Jane has until the next business day, Monday, to file her papers. If Monday is a holiday, Jane has until Tuesday.

If you want to fight the eviction, you should contact a legal aid lawyer immediately. Do NOT wait until the fifth day to call!! If you wait until the last minute, they may not be able to help you.

Within those 5 days, you can file a written response to the landlord's summons and complaint. You must use the right legal form and file it in the same court where the "Complaint" was filed. This form is called an "Answer." If you are low-income and file a separate form called an "Application for Waiver of Court Fees and Costs," you will probably not need to pay the court filing fees. You can get both the Answer and the Fee Waiver forms at the court clerk's office.

When you fill out the Answer, you will need to list any legal defenses to the eviction. After you file the Answer, you will receive a "Memorandum to Set Case for Trial" and a notice of the trial date by mail. Generally, the trial must be within 20 days of when the landlord files the "Memorandum to Set Case for Trial." The court clerk must mail you the notice telling you when the trial will be at least ten days before the trial. When your court date comes up, plan to arrive early at the courthouse so that you can find parking, get through the security check, and find the courtroom. If you are late and the judge has already called your case, you will lose your case.

WHAT COULD HAPPEN IF I IGNORE THE SUMMONS AND COMPLAINT AND DO NOTHING?

After the five days are up, if you have not filed an Answer to challenge the eviction, the landlord can ask the court clerk for a "default judgment." If this happens, you will NOT go before a judge. This means that the landlord automatically wins the case and gets the property back from you.

Sometimes the court will allow you to "re-open" the case after entering a "default judgment" if you have a good reason for not filing the Answer on time. If this happens to you, contact a legal aid organization and ask for assistance with a default eviction.

NOTE: You should not assume that the court will allow you to "re-open" your case. In many cases, the tenant's request is denied. Therefore, you must try to file your Answer within the 5 days so that you do not lose your case by missing a legal deadline.

WHAT COULD HAPPEN IF I LOSE IN COURT OR AFTER A JUDGMENT AGAINST ME?

If the landlord wins or gets a default judgment against you, the landlord will get a form called a "Writ of Possession." The landlord takes this writ to the Sheriff's Department who will then bring you (or post on your door) a "Notice to Vacate." The notice will give you at least 5 days before the officer will come back to evict you. The Notice to Vacate will tell you exactly by what date and time you must be out of the house or apartment. Even if you are not completely moved out, the sheriff can prevent you from re-entering the house to get your stuff after the time and date listed on the notice. If you cannot get all of your belongings out in time, at least remove your important papers, medications, valuables, and clothing. If you leave things behind, you can claim them within 15 days of the eviction, but you will have to pay the storage and removal costs. However, the landlord cannot require you to pay back rent, attorney's fees or court costs in order to get your belongings back.

HOW LONG DOES THE EVICTION PROCESS TAKE?

If you do not file an "Answer" to the eviction notice, the sheriff may be out to evict you as soon as 11 days after you receive the *Summons* and *Complaint*. If you file an Answer to the lawsuit, the process will take a little longer. Do not expect the entire process to take more than 1 month—it could take even less than 1 month. Contrary to some popular belief, you can be evicted if even if you are pregnant, have small children, have an unexpected financial hardship (like losing your job), if you've never been late with the rent before or if you have nowhere else to move.

I LIVE IN TRANSITIONAL HOUSING, AND THE HOUSING PROVIDER (OR PAROLE) IS TRYING TO EVICT ME WITH VERY LITTLE NOTICE & WITHOUT GOING TO COURT. IS THIS LEGAL & WHAT ARE MY OPTIONS?

In most cases, a transitional housing provider MUST follow all of the normal rules and laws to evict you. That means they must follow all of the rules for giving you proper notice and taking you to court if they want to evict you.[1379]

** There is one *VERY SMALL EXCEPTION* that could allow a transitional housing provider to evict you more quickly than the standard court process. However, for this exception to apply, it must be *explicitly* written in the contract you signed with the transitional housing provider. There are other requirements beyond that, but at a minimum, if it's not in your contract with the transitional housing provider, then the transitional housing provider can't evict you overnight, with little notice, or without first going to court.

If this issue is a condition of your supervision (a requirement of parole or probation), see the PAROLE & PROBATION CHAPTER, beginning on PG. 125, to learn more about rules (called "conditions") of different types of supervision in California, and how to challenge them.

VIII. CONCLUSION

Where you live is critical to your well-being. Unfortunately, it can also be one of the most challenging aspects of reentry. Hopefully, this Chapter has helped you understand your housing options, and given you the tools to help you to find appropriate housing and recognize illegal discrimination when it occurs.

[1379] Transitional Housing Participant Misconduct Act, CAL. HEALTH & SAFETY CODE §§ 50580-50582.



HOUSING APPENDIX

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APPENDIX A

A List of PHAs in California and their Contact Information

PHA NAME, PHONE & FAX NUMBER	ADDRESS	TYPE *(Section 8, low-rent, or both)*
Alameda City **Phone:** (510) 747-4300 **Fax:** (510) 522-7848	701 Atlantic Ave. **Alameda** CA 94501	Both
Los Angeles County (HACOLA) **Phone:** (323) 890-7400 **Fax:** (323) 890-8582	700 W Main St. **Alhambra** CA 91801	Both
Anaheim Housing Authority **Phone:** (714) 765-4320 **Fax:** (714) 765-4654	201 S Anaheim Blvd #200 **Anaheim** CA 92805	Section 8
Placer County Housing Authority **Phone:** (530) 889-7692 **Fax:** (530) 889-6826	11552 B Ave. **Auburn** CA 95603	Section 8
Kern County **Phone:** (661) 631-8500 **Fax:** (661) 631-9500	601 - 24th St. **Bakersfield** CA 93301	Both
Baldwin Park **Phone:** (626) 960-4011 **Fax:** (626) 337-2965	14403 Pacific Ave. **Baldwin Park** CA 91706	Both
San Mateo County **Phone:** (650) 802-3300 **Fax:** (650) 802-3373	264 Harbor Boulevard Bldn. A **Belmont** CA 94002	Both
Benicia **Phone:** (707) 745-2071 **Fax:** (707) 745-8076	28 Riverhill Drive **Benicia** CA 94510	Both
Berkeley **Phone:** (510) 981-5470 **Fax:** (510) 981-5480	1901 Fairview St. **Berkeley** CA 94703	Both
Imperial Valley Housing Authority **Phone:** (760) 351-7000 **Fax:** (760) 344-9712	1401 D St. **Brawley** CA 92227	Both
Burbank **Phone:** (818) 238-5160 **Fax:** (818) 238-5159	150 N. Third St 2nd Floor **Burbank** CA 91502	Section 8
Calexico City **Phone:** (760) 357-3013 **Fax:** (760) 357-3084	1006 E 5th St. **Calexico** CA 92231	Both
Carlsbad Housing Agency **Phone:** (760) 434-2810 **Fax:** (760) 720-2037	2965 Roosevelt St Ste B **Carlsbad** CA 92008	Section 8
Butte **Phone:** (530) 895-4474 **Fax:** (530) 895-4459	2039 Forest Ave S. #10 **Chico** CA 95928	Both
Compton **Phone:** (310) 605-3080 **Fax:** (310) 605-3096	600 North Alameda Room 163 **Compton** CA 90220	Section 8
Crescent City **Phone:** (707) 464-9216 **Fax:** (707) 464-2692	235 H St. **Crescent City** CA 95531	Section 8
Culver City **Phone:** (310) 202-5764 **Fax:** (310) 253-5785	9770 Culver Boulevard **Culver City** CA 90232	Section 8
Dublin **Phone:** (925) 828-3132 **Fax:** (925) 828-5450	6700 Dougherty Road apt. 151 **Dublin** CA 94568	Low-Rent
Encinitas **Phone:** (760) 633-2723 **Fax:** (760) 633-2818	505 South Vulcan Ave. **Encinitas** CA 92024	Section 8



Humboldt **Phone:** (707) 443-4583 **Fax:** (707) 443-2150	735 West Everding St. **Eureka** CA 95503	Section 8
Eureka **Phone:** (707) 443-4583 **Fax:** (707) 443-2150	735 W Everding St. **Eureka** CA 95503	Both
Fairfield **Phone:** (707) 428-7392 **Fax:** (707) 425-0512	823b Jefferson St **Fairfield** CA 94533	Section 8
Fresno County Housing Authority **Phone:** (559) 443-8400 **Fax:** (559) 445-8922	1331 Fulton Mall **Fresno** CA 93721	Both
Garden Grove **Phone:** (714) 741-5150 **Fax:** (714) 741-5197	11277 Garden Grove Blvd S. 101-C **Garden Grove** CA 92843	Section 8
Glendale **Phone:** (818) 548-3936 **Fax:** (818) 548-3724	141 North Glendale Ave. #202 **Glendale** CA 91206	Section 8
Kings County Housing Auth **Phone:** (559) 582-2806 **Fax:** (559)583-6964	680 N Douty St. **Hanford** CA 93230	Both
Hawaiian Gardens **Phone:** (562) 420-2641 **Fax:** (562) 496-3708	21815 Pioneer Boulevard **Hawaiian Gardens** CA 90716	Section 8
Hawthorne Housing **Phone:** (310) 349-1603 **Fax:** (310) 978-9864	4455 West 126th St. **Hawthorne** CA 90250	Section 8
Alameda County Housing Authority **Phone:** (510) 538-8876 **Fax:** (510) 727-8554	22941 Atherton St. **Hayward** CA 94541	Both
Inglewood **Phone:** (310) 412-5221 **Fax:** (310) 412-5188	1 Manchester Blvd. S. 750 **Inglewood** CA 90301	Section 8
Livermore **Phone:** (925) 447-3600 **Fax:** (925) 447-0942	3203 Leahy Way **Livermore** CA 94550	Both
Santa Barbara County **Phone:** (805) 736-3423 **Fax:** (805) 735-7672	815 W Ocean Ave. **Lompoc** CA 93436	Both
Long Beach **Phone:** (562) 570-6985 **Fax:** (562) 499-1022	521 East 4th St. **Long Beach** CA 90802	Section 8
Los Angeles City (HACLA) **Phone:** (213) 252-2500 **Fax:** (213) 234-8946	2600 Wilshire Blvd **Los Angeles** CA 90057	Both
Lake County Housing Commission **Phone:** (707) 995-4200 **Fax:** (707) 995-4253	15975 Anderson Ranch Pkwy **Lower Lake** CA 95457	Section 8
Madera **Phone:** (559) 674-5695 **Fax:** (559) 674-5701	205 N. G St. **Madera** CA 93637	Both
Mariposa County Housing Authority **Phone:** (209) 966-3609 **Fax:** (209) 966-3519	5174 Highway 49 North **Mariposa** CA 95338	Section 8
Contra Costa County **Phone:** (925) 957-8045 **Fax:** (925) 372-0236	3133 Estudillo St. **Martinez** CA 94553	Both
Yuba County Housing Authority **Phone:** (530) 749-5460 **Fax:** (530) 749-5464	915 8th St., S. 130 **Marysville** CA 95901	Section 8
Merced **Phone:** (209) 386-4139 **Fax:** (209) 722-0106	405 U St. **Merced** CA 95341	Both

Stanislaus **Phone:** (209) 557-2000 **Fax:** (209) 557-2011	1701 Robertson Rd **Modesto** CA 95351	Both
Napa Housing Authority **Phone:** (707) 257-9543 **Fax:** (707) 257-9239	1115 Seminary St. PO Box 660 **Napa** CA 94559	Section 8
National City **Phone:** (619) 336-4254 **Fax:** (619) 477-3747	140 E 12th St., Ste. B **National City** CA 91950	Section 8
Needles **Phone:** (760) 326-3222 **Fax:** (760) 326-2741	908 Sycamore Drive **Needles** CA 92363	Both
Nevada County Housing Authority **Phone:** (530) 265-1340 **Fax:** (530) 265-9860	950 Maidu Ave PO Box 1210 **Nevada City** CA 95959	Section 8
Ventura County **Phone:** (805) 480-9991 **Fax:** (805) 480-1021	1400 W Hillcrest Drive **Newbury Park** CA 91320	Both
Norwalk **Phone:** (562) 929-5588 **Fax:** (562) 929-5537	12035 Firestone Bl. **Norwalk** CA 90650	Section 8
Oakland HA **Public Housing:** (510) 874-1500 **Section 8:** (510) 587-2100 **Fax:** (510) 587-2132	1619 Harrison St. **Oakland** CA 94612	Both
Oceanside **Phone:** (760) 435-3360 **Fax:** (760) 757-9076	321 North Nevada St. **Oceanside** CA 92054	Section 8
Oxnard Housing Authority **Phone:** (805) 385-8096 **Fax:** (805) 385-7969	435 South D St. **Oxnard** CA 93030	Both
Pasadena **Phone:** (626) 744-8300 **Fax:** (626) 744-8330	649 N. Fair Oaks Ave, S.202 **Pasadena** CA 91103	Section 8
Paso Robles **Phone:** (805) 238-4015 **Fax:** (805) 238-4036	3201 Pine St. **Paso Robles** CA 93446	Low-Rent
Pico Rivera **Phone:** (562) 801-4347 **Fax:** (562) 949-7506	6615 Passons Boulevard **Pico Rivera** CA 90660	Section 8
Pittsburg **Phone:** (925) 252-4113 **Fax:** (925) 427-2715	916 Cumberland St. **Pittsburg** CA 94565	Section 8
El Dorado County PHA **Phone:** (530) 621-6300 **Fax:** (530) 295-2598	937 Spring St. **Placerville** CA 95667	Section 8
Pleasanton **Phone:** (925) 484-8008 **Fax:** (925) 484-8234	123 Main St. **Pleasanton** CA 94566	Low-Rent
Pomona Housing Authority **Phone:** (909) 620-2368 **Fax:** (909) 620-4567	505 S. Garey Ave., Box 660 **Pomona** CA 91769	Section 8
Port Hueneme Housing Authority **Phone:** (805) 986-6522 **Fax:** (805) 986-6562	250 N Ventura Road **Port Hueneme** CA 93041	Both
Plumas **Phone:** (530) 283-2466 **Fax:** (530) 283-2478	183 W Main St. **Quincy** CA 95971	Both
Tehama **Phone:** (530) 527-6159 **Fax:** (530) 527-4365	310 So. Main St. **Red Bluff** CA 96080	Section 8



Redding Housing Authority **Phone:** (530) 225-4048 **Fax:** (530) 225-4126	777 Cypress Ave. **Redding** CA 96001	Section 8
Shasta County Housing Authority **Phone:** (530) 225-5160 **Fax:** (530) 225-5178	1450 Court St., S. 108 **Redding** CA 96001	Section 8
Redondo Beach **Phone:** (310) 318-0635	1922 Artesia Blvd **Redondo Beach** CA 90278	Section 8
Richmond Housing Authority **Phone:** (510) 621-1310 **Fax:** (510) 237-5230	330 24th St. **Richmond** CA 94804	Both
Riverbank **Phone:** (209) 869-4501 **Fax:** (209) 869-6814	Stanislaus **Riverbank** CA 95367	Low-Rent
Riverside County **Phone:** (951) 351-0700 **Fax:** (951) 688-6873	5555 Arlington Ave. **Riverside** CA 92504	Both
Roseville Housing Authority **Phone:** (916) 774-5270 **Fax:** (916) 746-1295	311 Vernon St. **Roseville** CA 95678	Section 8
Sacramento City **& County** **Phone:** (916) 440-1319 **Fax:** (916) 442-3718	801 12th St. **Sacramento** CA 95814	Both
California Dept of Housing & Community Development **Phone:** (916) 324-7696 **Fax:** (916) 323-6016	PO Box 952054 1800 3rd St. 390-4 **Sacramento** CA 94252	Section 8
Monterey **Phone:** (831) 775-5000 **Fax:** (831) 424-9153	123 Rico St. **Salinas** CA 93907	Both
San Bernardino County **Phone:** (909) 890-0644 **Fax:** (909) 890-4618	715 E. Brier Dr **San Bernardino** CA 92408	Both
San Diego Housing Commission **Phone:** (619) 231-9400 **Fax:** (619) 578-7375	1122 Broadway S. 300 **San Diego** CA 92101	Both
San Diego County **Phone:** (858) 694-4801 **Fax:** (858) 694-4871	3989 Ruffin Road **San Diego** CA 92123	Both
San Francisco Housing Authority **Phone:** (415) 554-1200 **Fax:** (415) 241-1024	1815 Egbert Ave. **San Francisco** CA 94124	Both
San Jose City Housing Authority **Phone:** (408) 275-8770 **Fax:** (408) 280-0358	505 West Julian St. **San Jose** CA 95110	Section 8
Santa Clara **Phone:** (408) 275-8770 **Fax:** (408) 280-0358	505 W Julian St. **San Jose** CA 95110	Both
San Luis Obispo **Phone:** (805) 543-4478 **Fax:** (805) 543-4992	487 Leff St. **San Luis Obispo** CA 93401	Both
Marin Housing **Phone:** (415) 491-2525 **Fax:** (415) 479-3305	4020 Civic Center Drive **San Rafael** CA 94903	Both
Orange County **Phone:** (714) 480-2700 **Fax:** (714) 480-2945	1770 North Broadway **Santa Ana** CA 92706	Section 8
Santa Ana Housing Authority **Phone:** (714) 667-2200 **Fax:** (714) 547-5411	20 Civic Center Plaza 2nd Fl, M-27 **Santa Ana** CA 92701	Section 8
Santa Barbara City **Phone:** (805) 965-1071 **Fax:** (805) 564-7041	808 Laguna St. **Santa Barbara** CA 93101	Both

Santa Cruz County Housing Authority **Phone:** (831) 454-9455 **Fax:** (831) 469-3712	2931 Mission St. **Santa Cruz** CA 95060	Both
San Juan Bautista **Phone:** (831) 454-9455 **Fax:** (831) 469-3712	2931 Mission St. **Santa Cruz** CA 95060	Section 8
Hollister **Phone:** (831) 454-9455 **Fax:** (831) 469-3712	2931 Mission St. **Santa Cruz** CA 95060	Section 8
Lakewood **Phone:** (562) 347-4830 **Fax:** (562) 944-2732	12131 Telegraph Road **Santa Fe Springs** CA 90670	Section 8
Paramount **Phone:** (562) 347-4830 **Fax:** (562) 944-2732	12131 Telegraph Road **Santa Fe Springs** CA 90670	Section 8
Lawndale **Phone:** (562) 347-4830 **Fax:** (562) 944-2732	12131 Telegraph Road **Santa Fe Springs** CA 90670	Section 8
Santa Fe Springs **Phone:** (562) 347-4830 **Fax:** (562) 944-2732	12131 Telegraph Road **Santa Fe Springs** CA 90670	Section 8
Lomita **Phone:** (562) 347-4830 **Fax:** (562) 944-2732	12131 Telegraph Road **Santa Fe Springs** CA 90670	Both
Santa Monica Housing Authority **Phone:** (310) 458-8743 **Fax:** (310) 264-7757	1901 Main St., Ste. A **Santa Monica** CA 90405	Section 8
Santa Paula **Phone:** (805) 535-3339 **Fax:** (805) 525-3887	15500 W. Telegraph Rd, B-11 **Santa Paula** CA 93060	Section 8
Sonoma **Phone:** (707) 565-7500 **Fax:** (707) 565-7583	1440 Guerneville Road **Santa Rosa** CA 95403	Section 8
Santa Rosa Housing Authority **Phone:** (707) 543-3300 **Fax:** (707) 543-3317	90 Santa Rosa Ave. **Santa Rosa** CA 95402	Section 8
Soledad **Phone:** (831) 678-3686 **Fax:** (408) 678-2471	121 Alder St. **Soledad** CA 93960	Low-Rent
South Gate **Phone:** (323) 563-9585 **Fax:** (323) 567-0725	8650 California Ave. **South Gate** CA 90280	Section 8
S. San Francisco **Phone:** (650) 583-7631 **Fax:** (650) 583-5932	350 C St. **South San Francisco** CA 94080	Low-Rent
San Joaquin **Phone:** (209) 460-5069 **Fax:** (209) 460-5165	448 S Center St. **Stockton** CA 95203	Both
Suisun City Housing Authority **Phone:** (707) 421-7330 **Fax:** (707) 429-3758	701 Civic Center Blvd. **Suisun City** CA 94585	Section 8
Lassen County **Phone:** (530)251-8346	2545 Main St. **Susanville** CA 96130	Section 8
Torrance **Phone:** (310) 618-5840 **Fax:** (310) 618-2429	3031 Torrance Boulevard **Torrance** CA 90503	Section 8
Mendocino County **Phone:** (707) 463-5462 **Fax:** (707) 463-4188	1076 N State St. **Ukiah** CA 95482	Both
Upland Housing Authority **Phone:** (909) 982-2649 **Fax:** (909) 982-0237	1200 North Campus Ave. **Upland** CA 91786	Both



Vacaville **Phone:** (707) 449-5675 **Fax:** (707) 449-6242	40 Eldridge Ave. #2 **Vacaville** CA 95688	Section 8
Solano **Phone:** (707) 449-5675 **Fax:** (707) 449-6242	40 Eldridge Ave. S. 2 **Vacaville** CA 95688	Section 8
Vallejo **Phone:** (707) 648-4507 **Fax:** (707) 648-5249	200 Georgia St. **Vallejo** CA 94590	Section 8
San Buenaventura City **Phone:** (805) 648-5008 **Fax:** (805) 643-7984	995 Riverside St. **Ventura** CA 93001	Both
Tulare County Housing Authority **Phone:** (559) 627-3700 **Fax:** (559) 733-0169	5140 W Cypress Ave. **Visalia** CA 93277	Both
Wasco Apts. **Phone:** (661) 758-6406 **Fax:** (661) 758-0765	750 H St. **Wasco** CA 93280	Low-Rent
West Hollywood **Phone:** (562) 347-4830 **Fax:** (562) 944-2732	8300 W. Santa Monica Blvd **West Hollywood** CA 90069	Section 8
Yolo County Housing **Phone:** (530) 662-5428 **Fax:** (530) 662-5429	147 West Main St. **Woodland** CA 95695	Both
Regional Hsg Authority of Sutter & Nevada **Phone:** (530) 671-0220 **Fax:** (530) 673-0775	1455 Butte House Rd **Yuba City** CA 95993	Both

APPENDIX B

A list of transitional housing that may accept your application while you are still incarcerated

The following chart is a list of transitional housing options for individuals who are currently incarcerated and are being proactive about lining up housing for post release or are looking to provide documentation to the parole board that they have transitional housing that will accept them if they receive a parole date.[1380]

For more information on the different programs, you can write the address listed or call the phone number.

Please note that this chart is not comprehensive – there may be places that accept applications from people currently incarcerated who are not on this list.

(Adapted from information shared by Uncommon Law, http://uncommonlaw.org/.)

Name	Address	City	Phone	Other/Notes
Re-Entry Inc.	P.O. Box 6804	Auburn, CA 95604	(530) 885-4509	www.re-entryprogram.com
Hope Help Healing	11960 Heritage Oak Place	Auburn, CA 95603	(530) 885-4249	
Isaiah's Recovery Services	1904 Clarendon St.	Bakersfield, CA 93307	(661) 633-9702	
Human Potential Consultants, LLC	550 E. Carson Plaza Dr., Suit 127	Carson, CA 90746	(310) 756-1560	
Crossroads, Inc.	P.O. Box 15	Claremont, CA 91711	(909) 626-7847	Women only http://www.crossroadswomen.org
Seventh Step Foundation	475 Medford Ave.	Hayward, CA 94541	(510) 278-0230	
Victory Outreach	4160 Eagle Rock Blvd.	Los Angeles, CA 90065	(323) 258-7878	
Holy Spirit Investments	6111 S. Verdun Ave.	Los Angeles, CA 90043	(323) 292-9971	
Union Rescue Mission	545 S. San Pedro St.	Los Angeles, CA 90013	(213) 347-6300	
A New Way of Life Re-Entry Project	P.O. Box 875288	Los Angeles, CA 90087	(323) 563-3575	www.anewwayoflife.org
*health*RIGHT360	2307 West 6th St.	Los Angeles, CA 90057	(415) 762-3700	Also has services in San Francisco. http://www.healthright360.org/services-offered/substance-use-disorder-treatment
The Francisco Homes	P.O. Box 7190	Los Angeles, CA 90007	(323) 293-1111	Multiple housing locations in LA.
Women in Transition Re-entry Project Inc.	P.O Box 59621	Los Angeles CA 90059	(310) 706-5580	Women only.
Love Lifted Me Recovery	P.O. Box 10966	Marina Del Ray, CA 90295	(310) 821-8677	
Homeless Veteran's Emergency Housing Facility	795 Willow Rd., Bldg. 323 B	Menlo Park, CA 94025	(650) 324-2881	For ex-veterans only.
Men of Valor Academy	6118 International Blvd.	Oakland, CA 94621	(510) 567-1308	

[1380] Adapted from information shared by Uncommon Law, http://uncommonlaw.org/.



Shirley Lamarr/The Centre	1447 El Camino Real	Redwood City, CA 94063	(650) 366-7225 (main line) (650) 218-8256 (cell)	Housing available for people who are currently incarcerated; Provides job training; Provides GED help.
Restoration House	4141 Soledad Ave.	Sacramento, CA 95820	(916) 454-2068	
Men's Overcomers Discipleship Ministry	2733 Branch St., S. 1	Sacramento, CA 95815	(916) 920-3082	
Delancey St.	600 Embarcadero	San Francisco, CA 94107	(415) 957-9800	2-year commitment. (Also has L.A. location)
Catholic Rainbow Outreach	11419 Carmeneta Rd.	Whittier, CA 90605	(562) 944-2283	
Recovery Zone	8035 Oakdale Ave.	Winnetka, CA 91306	N/A	

APPENDIX C

Fact Sheet on CDCR-Funded Pre-Release Transitional Housing

1. Male Community Reentry Program (MCRP)

Summary: Enables men to complete their sentences in a residential setting, with greater freedom and privileges. Programming is particularly (though not exclusively) geared towards people with both mental health and substance abuse issues.

Program Timeframe: Participants must have **30 to 180 days** left in their sentences at the time of placement. This means you should begin asking your counselor about the program as you approach your final 180 days. One day in the program is equivalent to one day of incarceration.

Supervision: On-site correctional staff and employees from the contracted facilities (listed below) supervise program participants 24 hours a day. Participants must also wear ankle monitors.

Locations: Oroville (Butte County), Bakersfield (Kern County), and Los Angeles, CA (Los Angeles County).

Contacts:

Butte County:	Jody Alsdurf, (530) 533-5272 Tri County Treatment 2740 Oro Dam Blvd Oroville, CA 95966
Kern County:	Jaime Contreras, (661) 861-6111, ex. 43 Turning Point of Central California 1100 Union Ave. Bakersfield, CA 93307
Los Angeles County:	Michael Brenner, (213) 251-2830 HealthRight360 2307 West 6th Street Los Angeles, CA 90057

Am I eligible for the Male Community Reentry Program (MCRP)?

The MCRP accepts people with all levels of offenses from any institution in the state, so long as you have approximately **30 to 180 days** left in your sentence at the time of placement in the program. To qualify for the program, your **county of last legal residence** must have been Butte County, Kern County, Los Angeles County, or San Diego County. If your county of last legal residence is elsewhere, you may still be able to participate in the MCRP if you **transfer supervision** to one of the four counties listed.

Certain people are ***automatically* ineligible** for the MCRP. If you meet any of the following criteria, you will not be considered for the program:

- You are listed on the sex offender registry pursuant to Penal Code section 290, are classified with an R-suffix denoting a past sexual offense, or have been convicted of a sexually violent offense as defined in Health and Safety Code section 6600.
- You have a Static Risk Assessment score of five or higher, which means the CDCR has predicted that you are likely to commit a violent offense upon release. This is calculated based on your age, gender, prior convictions, and rules violations.
- You have attempted to escape in the past five years
- You have active or potential felony holds, warrants, or detainers
- You have spent time in the Security Housing Unit or Psychiatric Security Unit within the last year
- You are classified as part of Security Threat Group I
- You have engaged in A through C-class misconduct within the last year of being in custody. In general, this includes acts that are especially violent (murder, batter, assault), dangerous (arson, damage to valuable property), or dishonest (bribery, forgery of important records, attempts to escape). Notably, while it would typically be considered a class B or C offense, possession of alcohol/drugs may not necessarily disqualify you from the MCRP.

How do I apply for the MCRP?

The MCRP is a **voluntary** program, so you must initiate the application process yourself by letting your counselor know you are interested. The application process has three components, all of which your counselor will provide: the application itself, a contract agreeing to certain terms, and mandatory assessments. The assessments use information about your personal background to determine which programs and services will



best aid your reentry to society. This includes your history of substance abuse, medical and mental health, education, family background, criminal history, and social functioning.

Once you have completed these requirements, your application will go through a rigorous screening process lasting anywhere from 30 to 60 days. Medical staff, the warden, and a classification committee will all review your application and provide their input. If you are eligible, the committee may endorse you for placement. The committee makes decisions about placement on a case-by-case basis.

2. Custody to Community Transitional Reentry Program (CCTRP)**

**Sometimes referred to as the "Enhanced Alternative to Custody Program"

Summary: Enables **women** to complete their sentences in a residential setting. Services are designed to prevent recidivism by addressing unique challenges women face upon reentry, such as gender-based trauma and mother-child relationships. From early morning until evening, participants partake in special activities and workshops, with some free time available. They may seek outside employment upon approval from the CCTRP staff, but a portion of earnings are held by the program until release.

Program Timeframe: Participants must have **45 days to two years** left in their sentences at the time of placement. This means you should start asking your counselors about the program as you approach the last two years of your sentence. One day in the program is equivalent to one day of incarceration.

Supervision: On-site correctional staff and contracted employees from the WestCare Foundation supervise program participants 24 hours a day. Participants must also wear ankle monitors.

Locations: San Diego (San Diego County), Santa Fe Springs (Los Angeles County), Bakersfield (Kern County), Stockton (San Joaquin County).

Contact:

San Diego:	(619) 359-8266 Westcare 3050 Armstrong Street San Diego, CA 92117
Santa Fe Springs:	(562) 236-9390 Los Angeles Centers for Alcohol and Drug Abuse 11121 Bloomfield Ave. Santa Fe Springs, CA 90670
Bakersfield:	(661) 447-4666 Casa Aurora 1932 Jessie Street Bakersfield, CA 93305
Stockton:	(209) 642-8488 Westcare 1609 N. Wilson Way Stockton, CA 95205

Am I eligible for the Custody to Community Transitional Reentry Program (CCTRP)?

In order to qualify for the program, you must be housed at a women's prison. In addition, the program requires that you have (1) a conviction for a serious or violent crime AND (2) 45 days to two years left in your sentence at the time of placement in the program.

How do I apply for the CCTRP?

To apply, you must volunteer to join the program. Your counselor can provide you with an application once you express interest. CDCR staff has the discretion to accept or deny applicants as it sees fit. In making this determination, CDCR staff will consider your institutional history and behavior. In particular, they will look into whether you have taken advantage of institutional program and shown a strong commitment to self-improvement.

3. Community Prisoner Mother Program (CPMP)

Summary: Residential program in Pomona for mothers with up to two children under the age of six who were convicted of non-serious, nonviolent offenses. Children are invited to live at the 24-bed facility. Participants develop individual treatment plans for themselves and their children, with an emphasis on substance abuse recovery. Program workshops and activities emphasize substance abuse prevention, healthy parenting, and education.

Program Timeframe: Participants can serve up to six years of their sentence at the CPMP. This means interested individuals should start asking their counselors about the program as they approach the last two years of their sentences. Participants must also have more than 90 days to parole or release at the time of placement.

Locations: Pomona (Los Angeles County).

Contact: Regina Dotson, 909-624-1233 x2160

Am I eligible for the Community Prisoner Mother Program?

In order to qualify for the program, you must meet a strict set of criteria, which is organized below by topic.

Housing and sentence criteria:

- You are eligible for placement in a Minimum Support Facility
- You have no immigration or felony holds
- You have up to six years remaining in your sentence after reduction for work-time credits
- You have more than 90 days left before you are scheduled to be paroled or released
- You are not currently committed as an active Civil Addict

Criteria related to children:

- You are pregnant OR mother to a child who is six years old or younger
- You have legal custody of the child
- You have not demonstrated predatory sexual behavior toward children
- If your child is a dependent of the Juvenile Court, you received permission from the Juvenile Court for your child's placement
- You were the child's primary caregiver prior to incarceration
- Child Protective Services has not challenged your child's placement in CPMP
- The person currently caring for the child has not challenged your child's placement in CPMP
- A court has not declared you an unfit parent
- You and your child do not have current medical or psychiatric problems requiring ongoing medical treatment not offered at a CPMP facility

Disqualifying convictions:

- Arson under Penal Code sections 450 through 455
- Assault where you personally fired a gun or caused serious injury to the victim
- Any crime that requires registration under Penal Code section 290
- Any crime that received extreme public attention such that you would draw negative attention to the program
- A violent offense as defined by Penal Code section 667.5(c) (a long list that includes homicide, certain sex crimes, and robbery). However, property crimes, robbery, first-degree burglary, and drug offenses do not automatically eliminate you from acceptance into the program, but are reviewed on a case-by-case basis. Similarly, if you were convicted of manslaughter or of a homicide crime committed in response to a physically abusive male partner/associate AND have no prior felony convictions or prior history of violence, you may still be eligible.
- Kidnapping under Penal Code 207
- Robbery where you personally fired a gun or caused serious injury to the victim
- Weapons manufacture, sale or possession (includes enhancements to a conviction for another offense)

Disqualifying conduct while incarcerated:

- Attempts to escape or actual escape a penal institution
- Documented "walk-away" from a non-secure institution in the last 10 years
- Time in the Security Housing Unit (SHU) in the past year
- Pending Rules Violation Report (CDC Form 115)
- Finding of guilty of a serious rule violation during your current term of incarceration that resulted in a single credit loss of 91 days or more, or multiple credit losses of 31 days or more



- Documentation of prison-gang membership or affiliation, or enemies that could jeopardize the security of the community or facility
- History of adverse behavior in a community program that has led to your removal
- Documented evidence of drug use in the last six months of incarceration

How do I apply to the CPMP?

CPMP is a voluntary program. A CPMP Coordinator facilitates the application procedure at each of the women's prisons, and should provide you with an application form, which you must fill out and submit to CDCR staff. The CDCR staff then determines eligibility by looking at the nature of your crime, whether you have a history of violence, and your physical, mental, and dental health. According to a 2010 investigation by Legal Services for Prisoners with Children, this process takes anywhere from a few months to over a year

4. Female Community Reentry Facility (FCRF)

Summary: Pre-release program for women within three years of release. A 300-bed, dormitory style facility, it offers programming on subjects such as substance abuse, anger management, family relationships, and professional development. Also includes a supervised participant-operated hair salon.

Program Timeframe: Participants must have **three years** left in their sentences. This means interested individuals should start asking their counselors about the program as they approach the last three years of their sentences. One day in the program is equivalent to one day of incarceration.

Supervision: On-site correctional staff and contracted employees from the GEO Group supervise program participants 24 hours a day. Participants must also wear ankle monitors.

Locations: McFarland, CA (Kern County)

Contact: Captain Patrick Kehoe, 661-792-1078

Am I eligible for the FCRF?

In order to qualify for the program, you must have three years left in your sentence at the time of placement in the program. CDCR staff has the discretion to accept or deny applicants as it sees fit.

How do I apply for the FCRF?

To apply, you must volunteer to join the program by submitting an application. A CDCR staff member will be able to answer your questions regarding eligibility and application procedures.

5. Alternative Custody Program (ACP)

Summary: Individually tailored program for men and women, each of whom must create a rehabilitation plan outlining their goals. Participants are placed in transitional homes or residential drug treatment centers, based on their employment plans, transportation needs, and the need for focused services such as substance abuse treatment or parenting classes.

Program Timeframe: Participants must have **45 days to two years** left in their sentences. This means interested individuals should start asking their counselors about the program as they approach the last two years of their sentences. One day in the program is equivalent to one day of incarceration.

Supervision: Level of supervision is determined on a case-by-case basis, as determined by a special parole agent, whose job is to monitor participants' progress. Supervision may include electronic monitoring, mandatory drug tests, and face-to-face meetings with Division of Adult Parole Operations staff.

Locations: Depends on facility. At publication, there is no list of approved facilities.

Contact: Rosalyn Livingston, CDCR Contract Beds Unit, 916-464-5692

Am I eligible for the Alternative Custody Program (ACP)?

In order to qualify for the program, you must have 45 days to two years left in your sentence at the time of placement in the program. CDCR staff has the discretion to accept or deny applicants as it sees fit. Certain people are **automatically ineligible** for the ACP. If you meet any of the following criteria, you will not be considered for the program:

- You were convicted of a violent felony as defined in Penal Code section 667.5(c) (includes homicide, certain sex crimes, and any robbery).
- You were convicted of a serious felony as defined in Penal Code section 1192.7. (includes homicide, certain sex crimes, kidnapping, and certain assault crimes).
- You are listed on the sex offender registry pursuant to Penal Code section 290 or have been convicted of a sexually violent offense as defined in Health and Safety Code section 6600.
- You have a Static Risk Assessment score of five or higher, which means the CDCR has predicted you are likely to commit a violent offense upon release. This is calculated based on your age, gender, prior convictions, and rules violations.
- You have attempted to escape a penal institution in the past five years.
- You have active or potential felony holds, warrants, or detainers.
- Someone has filed an active restraining order against you.
- You have spent time in the Security Housing Unit or Psychiatric Security Unit within the last year.
- You have a history of associated with gangs while in custody.
- The Board of Parole Hearings has found that you violated a condition of parole by committing a serious or violent offense or absconding within the past two years.
- You have engaged in A through C-class misconduct within the last year of being in custody. In general, this includes acts that are especially violent (murder, battery, assault), dangerous (arson, damage to valuable property), or dishonest (bribery, forgery of important records, attempts to escape). Notably, while it would typically be considered a class B or C offense, possession of alcohol/drugs may not necessarily disqualify you from the MCRP.
- You meet other, undefined exclusionary criteria, which potentially includes a current medical or psychiatric diagnosis, a history of perpetrating child abuse, and the inability to find an appropriate placement site. In such cases, CDCR staff will decide to exclude on a case-by-case basis.

How do I apply for the ACP?

First, you need to obtain an acceptance letter from an existing transitional housing facility. Once you have received this letter, you may ask your counselor for an ACP application. When you fill out this application, list the facility that has accepted you as your chosen site. The CDCR must approve of the site.

Once you are determined to be eligible for the ACP, a CDCR staff member will respond within two weeks to notify you that your eligibility has been approved. Staff will then help you develop an individualized treatment and rehabilitation plan, to be used if you are accepted into the program.

Lastly, you will receive a written notice explaining whether your application was accepted or denied. If your application is accepted, you will be released no later than seven business days after receiving written notice. If there are no free beds at your requested facility, you will be released the first day a bed becomes available.

If your application is denied, the written notice will explain the reasons for denial. You may appeal the denial through normal grievance procedures, or can reapply 30 days after receiving written notice.

APPENDIX D

NHLP Chart—Federally Assisted Housing Programs: Admissions For Applicants With Certain Criminal Backgrounds

See next page.

Federally Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds*

	Convicted of producing meth at federally-assisted housing^	Lifetime registered sex offender	Prior eviction from federally-assisted housing^ for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
Public Housing	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 960.204(a)(3).	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 960.204(a)(4).	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661(a) and 13664; 24 C.F.R. § 960.204(a)(1).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 960.204(a)(2) .
Voucher Program	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 982.553.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 982.553.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C.A. § 13661(c); 24 C.F.R. § 982.553.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 982.553.
Section 8 Mod Rehab	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 882.518.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 882.518.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 882.518.
Section 8 SRO Mod. Rehab. for homeless	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may require a ban. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2); *see also* provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may require a ban. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); *see also* provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may require a ban. 24 C.F.R. §§ 882.805 (c); *see also* provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2), *see also* provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2), *see also* provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2), *see also* provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. § 11401. Regulations may deny admission. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); *see also* provisions cited above under Section 8 Mod. Rehab.
Project-based Section 8	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R § 5.854

*** There are no federal requirements regarding admission of individuals with criminal background to Low-Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities for Persons with AIDS (HOPWA) (see generally 24 C.F.R. § 574.603). Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.**

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Federally Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds*

	Convicted of producing meth at federally-assisted housing^	**Lifetime registered sex offender**	**Prior eviction from federally-assisted housing^ for drug-related activity**	**History of drug-related criminal activity**	**History of violent criminal activity**	**History of crimes that threaten health, safety, or peaceful enjoyment**	**Current user of illegal substances**
Sections 202, 811, 221(d)(3), 236	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R § 5.854.
USDA Housing	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; *but see* 42 U.S.C. §§ 13663 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; *but see* 42 U.S.C. §§ 13661 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; *see also* 42 U.S.C. § 13661(b) and 24 C.F.R. § 5.850(c).
HOME	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).

*** There are no federal requirements regarding admission of individuals with criminal background to Low-Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities for Persons with AIDS (HOPWA) (see generally 24 C.F.R. § 574.603). Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.**

APPENDIX E

Disabilities & Requesting Reasonable Accommodations on Any Housing Application

AS SOMEONE APPLYING FOR HOUSING (PRIVATE OR GOVERNMENT-ASSISTED), WHAT DO MY DISABILITIES HAVE TO DO WITH MY CRIMINAL RECORD?

If you can prove that your criminal conviction was *the result of a disability*—for example, due to mental illness and/or past drug addiction you may be able to get a "reasonable accommodation" when applying for ANY type of housing. However, a PHA, owner, or other housing provider is not required to grant a reasonable accommodation to an individual with a disability *if that person would be a "direct threat" to the health, safety or property of others*, unless the requested reasonable accommodations can actually *eliminate or significantly reduce such a threat*.

Under the law, housing providers cannot treat persons with disabilities exactly the same as other housing applicants or residents if doing so denies people with disabilities an equal opportunity to use and enjoy a dwelling.[1381] Therefore, by law, a PHA or owner *must* make reasonable accommodations to its *rules, policies, practices, or services* when it may be necessary to provide applicants with disabilities an equal opportunity to use and enjoy a living space[1382]—*even if* that accommodation results in a preference for disabled individuals over similar, non-disabled individuals.[1383] This rule applies to ALL types of housing—public and private.

WARNING: Just because you committed a criminal offense as a result of a disability does not mean you automatically have the right to a reasonable accommodation for housing. It can be very difficult to prove that your disability CAUSED your criminal offense, AND that the disability is the type that qualifies you for a reasonable accommodation

IF MY CRIMINAL CONVICTION WAS THE RESULT OF A DISABILITY, WHAT IS A REASONABLE ACCOMMODATION THAT I CAN ASK FOR?

A "reasonable accommodation" is a *change, exception, or adjustment* to a rule, policy, practice, or service that may be necessary to give an applicant with a disability an *equal opportunity to use and enjoy a living space*.[1384] There is no limit or restriction to the type of accommodation that you can request, as long as the accommodation is *reasonable*. As a general rule, an accommodation will be considered *reasonable* so long as it does NOT:

1. Pose an undue financial burden on the PHA or owner, and/or
2. Require the PHA or owner to fundamentally change its housing program[1385]

It's recommended that you ask a Public Housing Authority (PHA), owner, or housing provider to look at your criminal record using a different standard, or to make an exception to its criminal history policy altogether as a reasonable accommodation. Keep reading to learn about approaches for asking your PHA or landlord for a reasonable accommodation.

WHAT IS CONSIDERED A DISABILITY IN CALIFORNIA?

California law defines a disability as any *physical* or *mental* impairment that limits one or more of your *major life activities*.[1386]

> What is a ***physical disability*** under California state law?

A physical impairment is any disease, physical disorder, physical condition, or disfigurement that:

- Affects one or more of your body systems (i.e. your heart, your eyes) or functions (i.e. breathing, speaking), and
- Limits a *major life activity*.[1387]

> What is considered a ***mental impairment*** under California state law?

A mental impairment is any mental or psychological condition that limits a *major life activity*. Common examples of mental impairments are: intellectual disabilities; brain disease; emotional or mental illnesses;

[1381] CAL. CIV. CODE §§ 54-55.32; 42 U.S.C. § 3604(f)(3)(B); see also Joint Statement of HUD and U.S. DOJ, Reasonable Accommodations Under the Fair Housing Act, 6 (May 17, 2004).
[1382] 42 U.S.C. § 3604(f)(3)(B).
[1383] See U.S. Airways v. Barnett, 535 U.S. 391, 397 (2002).
[1384] 42 U.S.C. § 3604(f)(3)(B).
[1385] CAL. GOV'T CODE §§ 12925-12928; see also Joint Statement of the Dep't of Hous. & Urban Dev. and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act, question 7 (May 17, 2004); 24 C.F.R. § 8.33 (2007); See Southeastern Cmty. Coll. v. Davis, 442 U.S. 397, 410, 412 (1979).
[1386] CAL. GOV'T CODE §§ 12925-12928.
[1387] CAL. GOV'T CODE §§ 12925-12928.

learning disabilities; and any other mental or psychological condition that requires special attention or services[1388]

WHAT IS NOT CONSIDERED A DISABILITY IN CALIFORNIA?

It is not a protected disability if you are:

- Currently engaged in illegal drug use;
- Currently abusing alcohol in a way that interferes with others' health, safety, or peaceful enjoyment of the property;
- People who pose a substantial threat to others, that cannot be controlled by a reasonable accommodation (see below for more information on reasonable accommodations)[1389]

DOES DRUG ADDICTION QUALIFY AS A DISABILITY?

Technically, yes, if it is *PAST* drug use and you have permanently stopped using illegal drugs, it does qualify as a disability under both federal and state law. BUT If you are *currently using illegal drugs, then you are not considered disabled*.[1390] See the next question for what is considered a disability in California.

IMPORTANT! There are no reported California cases where a rehabilitated applicant with a history of substance abuse, or an applicant with mental impairment, and a history of criminal acts arising from the substance abuse or mental illness has been granted a reasonable accommodation from a PHA's criminal activity restrictions. Courts have generally been unreceptive to these arguments. Specifically, courts have been hesitant to accept arguments that a housing applicant's criminal convictions were the result of mental illness and/or past substance abuse. Again, since it may be difficult to prove that your criminal conviction was the result of your mental illness and/or drug addiction, it is important that you offer as much evidence as possible.

HOW CAN I PROVE MY PAST DRUG USE QUALIFIES AS A DISABILITY?

Under this rule, it can be tricky to prove that you are not a current illegal drug user, especially if there was drug use or convictions for drug use in your recent past. The law doesn't clearly define what counts as "current" illegal drug use, and there are no reported California court decisions defining "current" illegal drug use.[1391] Some courts outside of California have said a person is NOT a current illegal drug user if that person has *permanently stopped using illegal drugs* for periods of time ranging from a few months to a year.[1392] Outside of California, courts have said that someone is still a "current" user if they have stopped using for only a few weeks.[1393]

REMEMBER:

It may be difficult to prove that your criminal conviction was the result of your mental illness and/or drug addiction. It is important that you submit as much evidence as possible!

Based on the different ways courts are treating this issue, we recommend that you *provide evidence* that you are *not a current user* by showing any proof that:

- You have successfully completed a supervised substance abuse/drug rehabilitation program;
- You are not currently using illegal drugs (meaning any proof that you have permanently stopped using illegal drugs); and/or
- You are currently participating in a supervised substance abuse/drug rehabilitation, treatment, or self-help program[1394]

[1388] CAL. GOV'T CODE §§ 12925-12928.
[1389] CAL. GOV'T CODE §§ 12925-12928; see also, San Francisco Housing Authority, Housing Choice Voucher Program Administrative Plan, http://www.sfha.org/SFHA_Proposed_Admin_Plan-FINAL_12172014.pdf.
[1390] 42 U.S.C. § 3602(h); 24 C.F.R. § 9.103. Federal HUD regulations define "handicap" to include drug addiction. Similarly, the ADA states that a person with a disability includes "someone who has successfully completed a drug rehabilitation program, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use."
[1391] 42 U.S.C. § 3602(h); CAL. GOV'T CODE §§ 12925-12928.
[1392] United States v. S. Mgmt. Corp., 955 F.2d 914 (4th Cir. 1992) (holding that one-year period of abstinence could not constitute current use); Herman v. City of Allentown, 985 F. Supp. 569, 578-79 (E.D. Pa. 1997) (holding that nine-month period of abstinence could not constitute current use); Baustian v. Louisiana, 910 F. Supp. 274, 276; McDaniel v. Miss. Baptist Med. Ctr., 877 F. Supp. 321, 327-28 (finding that "seven weeks simply does not satisfy the [ADA's] requirement of long term abstinence from illegal drug use").
[1393] See Zenor v. El Paso Healthcare Sys., 176 F.3d 847, 857 (5th Cir. 1999) (finding five-week period of abstinence insufficient); Shafer v. Preston Memorial Hosp. Corp., 107 F.3d 274, 278 (4th Cir.1997) (finding periodic use of drugs during weeks and months prior to termination from employment as current use); Collings v. Longview Fibre Co., 63 F.3d 828, 833 (9th Cir. 1995) (same); Baustian v. Louisiana, 910 F. Supp. 274, 277 (E.D. La. 1996) (finding seven-week period of abstinence insufficient); McDaniel v. Mississippi Baptist Med. Ctr, 877 F. Supp. 321, 328 (S.D. Miss. 1995) (finding six-week period of abstinence insufficient).
[1394] 29 U.S.C § 705.

IF I CAN SHOW THAT I'M DISABLED, HOW CAN I REQUEST A REASONABLE ACCOMMODATION AS I APPLY FOR HOUSING?

Send a *written letter* requesting a reasonable accommodation to the PHA, housing provider, or owner (the one making the decision) that clearly explains *ALL* of the following:

1. That you have a disability, and what that disability is.
2. That the disability caused the offense. Attach as much documentation as you can. For example:

- Letters from service providers showing that you experienced a mental illness and/or a drug addiction at the time of the offense; or even better, a letter from a doctor confirming the existence of your disability;[1395]
- If it is addiction, explain that you no longer suffer from addiction. Attach any documentation you have, such as letters from service providers showing successful completion of a rehabilitation program or effective or ongoing treatment for your addiction; and/or letters from service providers that show you are no longer using substances.

3. What your requested accommodation is, clearly stated:

- Ask for what you want directly!! You could ask a PHA, owner, or housing provider to look at your criminal record using a different standard, or to make an exception to its criminal history policy altogether.

4. Why the accommodation you are requesting is NECESSARY and REASONABLE.:

- Here, you should say that *an exception* from criminal history policy is NECESSARY to give you an *equal opportunity to access the housing*.
  - Explain how your criminal conduct *was the result* of the disability —showing the *relationship* (also called a "nexus") between your disability and your requested accommodation.[1396]
  - It is more persuasive if you have a doctor or service provider submit a letter explaining why your disability requires a reasonable accommodation.
- You must also show that the requested accommodation is REASONABLE. A requested accommodation may be found reasonable if:
  - It's necessary for you to have an equal opportunity to enjoy the living space.
  - It's not too expensive for the landlord.
  - The administrative burden is not too great.
  - It doesn't fundamentally change the PHA's, housing provider's, or owner/landlord's operations.
  - A landlord or PHA accommodation that gives you "preference" over similar non-disabled people *may be reasonable under the circumstances*.[1397]

EXAMPLES OF REASONABLE ACCOMMODATIONS INCLUDE:

- An exception ("a waiver") to a PHA, owner, or housing provider's policy that bars housing to applicants with criminal records, if your criminal conviction was caused by your disability;
- An owner or housing provider agreeing to admit a tenant with a mental illness that causes the tenant to sometimes become loud or confrontational, so long as the tenant agrees to seek treatment for his or her mental illness;
- An owner or housing provider allowing a tenant suffering from mental illness to have a live-in aid; or
- A PHA, owner, or housing provider accepting a reference from an applicant's social worker or service provider if an applicant has no recent rental history.

"THE DIRECT THREAT EXCEPTION:" Remember that the law *does not require* that reasonable accommodations be granted to an individual with a disability if that person would be a "direct threat" to the health or safety of other individuals or if that person's residency would result in substantial physical damage to the property of others *UNLESS* the reasonable accommodations requested can actually *eliminate or significantly reduce such a threat*.[1398] This is known as the "direct threat" exception. **You have some protections if the PHA, housing provider, or landlord is arguing you are a "direct threat":**

- First, a PHA or owner MUST PERFORM an *individualized assessment* of you.
- Second, if a reasonable accommodation can significantly reduce the "direct threat" posed by a recognized disability, then the PHA, housing provider, or owner *must* make it.
- Third, if the PHA, housing provider, or owner finds that you pose a direct threat to other tenants or property, this should be based o*nly* on actual examples of you causing harm or other factual, objective evidence—not their own fears or assumptions about what *could* happen.
- Fourth, a finding of a direct threat cannot be based on assumptions, stereotypes, or fears about mental illness, drug addiction, or other disabilities.[1399]

[1395] The Housing Center, Obtaining and Maintaining House: Fair Housing for People with Mental Health Disabilities. For more information about obtaining a reasonable accommodation, visit: http://www.fhrc.org/HRAC_Brochure.pdf.
[1396] Joint Statement of the Dep't of Hous. & Urban Dev. and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act, 6 (May 17, 2004).
[1397] See U.S. Airways v. Barnett, 535 U.S. 391, 397.
[1398] Joint Statement of the Dep't of Hous. & Urban Dev. and the Dep''t of Justice, Reasonable Accommodations Under the Fair Housing Act (May 17, 2004).
[1399] See National Housing Law Project, Reasonable Accommodation in Federally Assisted Housing, http://nhlp.org/files/Reasonable%20Accommodation%20Outline%20Current%2010-2012.pdf; see also Jennifer L. Dolak, Note, The FHAA's



ONCE I HAVE SENT MY REQUEST FOR A REASONABLE ACCOMMODATION, WHAT HAPPENS?

There are several phases of a reasonable accommodation request:[1400]

1. **Initial request** (see PG. 421). This is when you first send your letter informing the PHA, owner, or housing provider that you have a disability and are requesting a reasonable accommodation[1401]
2. **Verification**: Once you make your initial request for a reasonable accommodation, the PHA, owner, or housing provider will want to verify that you are indeed disabled.
   - If your disability is obvious or known, and the need for a reasonable accommodation is known, then the housing provider should not ask you for any more information
   - If your disability is known and obvious, but your need for the accommodation is not well-known or obvious, then the housing provider should ask only for information necessary to verify the need for a reasonable accommodation—for example, notes explaining your need from a doctor or clinician.
   - If your disability or need for an accommodation is unknown or not obvious, the housing provider may ask for verification of both your disability and your need for a reasonable accommodation.[1402]
3. **The Decision**. After reviewing your request, the PHA, owner, or housing provider will decide whether or not to grant your reasonable accommodation request.
4. **The "Interactive" process**:
   - If the PHA, owner, or housing provider refuses to grant you a reasonable accommodation, you should try to engage them in an informal "interactive process" in which you discuss alternative solutions that might meet both of your needs. HUD guidelines encourage you to try this informal route first, before starting the formal grievance procedure, because it is more flexible and often leads to quicker resolutions.[1403]
   - If after the "interactive process," the PHA, owner, or housing provider still refuses to grant you a reasonable accommodation, you may have to file a formal complaint with HUD or DFEH.[1404]

HOW CAN I CHALLENGE MY DENIAL FOR A REASONABLE ACCOMMODATION?

OPTION 1: YOU CAN FILE A COMPLAINT. If you believe that a PHA, owner, or housing provider denied your request for a reasonable accommodation due to your disability and/or your past drug use, you may file a complaint with HUD (federal housing protection agency) or with California's DFEH (the state housing protection agency).[1405] After you file a complaint, if HUD or DFEH determines that you were discriminated against (they find your complaint has "merit"), then HUD or DFEH will file a civil lawsuit against the PHA, owner, or housing provider on your behalf. Go to Appendix I on PG. 430 to learn how to file a complaint with HUD or DFEH.

OPTION 2: YOU CAN TRY TO SUE IN COURT. To sue a housing provider under the federal Fair Housing Act (FHA), California's Fair Housing and Employment Act (FEHA), or other state anti-discrimination laws (such as California's Unruh Civil Rights Act),[1406] you must show that your status as an individual with a disability or drug history was a *motivating factor* in the owner's or PHA's decision to deny your reasonable accommodation request.[1407] You must also provide sufficient evidence that the requested accommodation is reasonable, and

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Reasonable Accommodation & Direct Threat Provisions as Applied to Disabled Individuals Who Become Disruptive, Abusive, or Destructive in Their Housing Environment, 36 Ind. L. Rev. 759, 762–67 (2003).

[1400] See National Housing Law Project, Reasonable Accommodation in Federally Assisted Housing, http://nhlp.org/files/Reasonable%20Accommodation%20Outline%20Current%2010-2012.pdf.

[1401] DEP'T OF HOUS. & URBAN DEV., Handbook 4350.3: Occupancy Requirements Of Subsidized Multifamily Housing Programs, REV-1, CHG-3, 2-39; see also National Housing Law Project, Reasonable Accommodation in Federally Assisted Housing, http://nhlp.org/files/Reasonable%20Accommodation%20Outline%20Current%2010-2012.pdf.

[1402] DEP'T OF HOUS. & URBAN DEV., Handbook 4350.3: Occupancy Requirements Of Subsidized Multifamily Housing Programs, REV-1, CHG-3, 2-39; see also National Housing Law Project, Reasonable Accommodation in Federally Assisted Housing, http://nhlp.org/files/Reasonable%20Accommodation%20Outline%20Current%2010-2012.pdf.

[1403] DEP'T OF HOUS. & URBAN DEV., Handbook 4350.3: Occupancy Requirements Of Subsidized Multifamily Housing Programs, REV-1, CHG-3, 2-39; see also National Housing Law Project, Reasonable Accommodation in Federally Assisted Housing, http://nhlp.org/files/Reasonable%20Accommodation%20Outline%20Current%2010-2012.pdf.

[1404] Reasonable Accommodations under the Fair Housing Act, U.S. Dep't of Just., http://www.justice.gov/crt/about/hce/jointstatement_ra.php.

[1405] CAL. GOV'T CODE § 12981(a); 2 CAL. CODE REGS. § 10063. In general, DFEH must file the lawsuit within 100 days after receiving your formal complaint. Before filing the lawsuit, DFEH will first require you and the landlord to attempt mediation.

[1406] Unruh Civil Rights Act, CAL. CIV. CODE § 51 et seq.

[1407] See Head v. Glacier Northwest Inc., 413 F.3d 1053 (2005) (holding that the ADA outlaws adverse employment decisions motivated, even in part, by animus based on a plaintiff's disability or request for an accommodation); Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977); see also United States v. S. Mgmt. Corp., 955 F.2d 914, 916 (4th Cir. 1992) (finding a private apartment complex to have violated the FHA by refusing to rent units to a community drug and alcohol rehabilitation board for its participants who had remained drug-free for one year); Campbell v. Minneapolis Pub. Hous. Auth., 168 F.3d 1069 (8th Cir. 1999) (remanding a matter in which the local PHA had rejected a former substance abuser's application to public housing because of insufficient evidence). Campbell demonstrates the importance of housing applicants providing documentation that he or she is a recovering substance user, not a current substance user.

that you are a former/ recovering substance user (and not a current substance user), or that you are receiving treatment for your mental illness.[1408]

WHAT IS THE PHA, OWNER, OR LANDLORD LIKELY TO ARGUE TO DEFEND ITS DECISION TO DENY MY REASONABLE ACCOMDATION?

The PHA or owner will likely argue that you do not have a protected disability.

They might argue that, you are a "current user" of illegal drugs or substances, and therefore, you are not disabled under the law, OR that you have not sought adequate treatment for your mental illness, and therefore are not disabled under the law.[1409]

If you go to court, you can attempt to disprove these arguments by providing *treatment records* establishing that you have not used illegal substances for the relevant period of time, or that you receive treatment for your mental illness.[1410] Your argument will be even stronger if you can provide *e*vidence of your participation in or completion of a drug/substance abuse treatment program, or proof that you receive treatment for your mental illness. Go to PG. 364 to learn more about challenging a denial from federal government-assisted housing, or go to PG. 391 to learn more about challenging a denial from private housing.

[1408] 42 U.S.C. § 3602(h)(3).
[1409] See Campbell v. Minneapolis Pub. Hous. Auth., 168 F.3d 1069 (8th Cir. 1999) ("The MPHA indicated it was denying [Campbell's] application for the following reasons: . . . you have recently used illicit drugs and have a problem with alcohol.").
[1410] See United States v. S. Mgmt. Corp., 955 F.2d 914, 916 (4th Cir. 1992) (finding a private apartment complex to have violated the FHA by refusing to rent units to a community drug and alcohol rehabilitation board for its participants who had remained drug-free for one year).

APPENDIX F

Sample Consent Form that Your Drug or Alcohol Treatment Program Could Use to Disclose Information About Your Treatment

See next page.

State of California — Health and Human Services Agency

Department of Health Care Services
Licensing and Certification Division
MS 2600
PO Box 997413
Sacramento, CA 95899-7413

CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

I, _____, authorize
(Name of client, complainant, patient)

_____
(Name or general designation of alcohol/drug program permitted to make the disclosure)

to disclose to _____the
(Name of person or organization to which the disclosure is to be made)

following information:_____
(Nature and amount of information to be disclosed, as limited as possible)
_____

The purpose of the disclosure authorized in this consent is to:

_____
(Purpose of disclosure, as specific as possible)

_____

I understand that my alcohol and/or drug treatment records are protected under the Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. Pts. 160 & 164, and cannot be disclosed without my written consent unless otherwise provided for by the regulations. I also understand that I may revoke this consent, in writing, at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

_____
(Specification of the date, event, or condition upon which the consent expires)
_____

I understand that I might be denied services if I refuse to consent to a disclosure for purposes of treatment, payment, or health care operations, if permitted by State law. I will not be denied services if I refuse to consent to a disclosure for other purposes.

I have been provided a copy of this form.

Date: _____ _____
Signature of client, complainant, patient (or if minor, of individual authorized to give consent)

Describe authority to sign on behalf of client, complainant, patient _____
_____

APPENDIX G

Housing Owners'/Landlords' Access to Credit Reports

WHAT IS A CREDIT REPORT?

Your *credit report* includes information about creditworthiness, such as your record of paying bills on time. A credit report will show information dating back 7 years (or 10 years in the case of a bankruptcy), including the following

- history of paying bills and loans on time or record of late payments;
- open accounts and level of indebtedness;
- collection actions;
- bankruptcies or tax liens; and
- civil court judgments, including housing-related court actions filed by a previous landlord that may or may not have led to a past eviction.

HOWEVER, a credit report does NOT include criminal history information like a tenant report would.

WHO CAN ACCESS MY CREDIT REPORT?

Anyone who is evaluating your ability to pay for housing can order your credit report in California. That means that private owners, PHAs, AND owners of government-assisted housing can order a credit report to see if you have good credit and will be a reliable tenant.

HELPFUL HINT:

If you are looking for a rental, it is best to check your credit reports before the PHA or owner does—so you know what they will find. You can go online and order FREE credit reports from the three national credit bureaus: Experian, TransUnion, and Equifax. If there's an error, it's a good idea to file a dispute with the bureau rather than try to explain it at the last minute.

DOES MY CONSISTENTLY PAYING RENT ON TIME IN THE PAST HELP MY CREDIT STANDING?

Maybe, but most likely not. The companies that collect information about your credit standing are only just beginning to collect this information in a systematized way.

A credit report will show whether or not you've ever been evicted, your ability to pay credit card bills, utility bills, and other bills on time, and any success you've had paying back loans.[1411]

CAN SOMEONE FIND OUT ABOUT PAST LATE PAYMENTS ON RENT FROM A CREDIT REPORT?

Maybe. Generally, late rent payments are not a part of your credit history unless the landlord or management company is reporting them. If the matter was referred to a collection agency or a civil court (like eviction case started against you), it is possible it would show up on your credit report.

[1411] Consumer Financial Protection Bureau, What is a Credit Report?, http://www.consumerfinance.gov/askcfpb/309/what-is-a-credit-report.html.

APPENDIX H

San Francisco Fair Chance Ordinance

WHAT IS THE SAN FRANCISCO FAIR CHANCE ORDINANCE (SF FCO)?

The *San Francisco Fair Chance Ordinance* (SF FCO)is a new law that offers special protections for people with criminal records who apply to certain types of affordable housing in San Francisco.[1412] (If you are interested in the parts of this new law that apply to employment, go the EMPLOYMENT CHAPTER, Appendix G, on PG. 627.)

LOOKING FOR MORE INFORMATION ONLINE?

Check out the San Francisco Human Rights Commission's website about how the SF FCO applies to affordable housing providers: http://sf-hrc.org/sites/sf-hrc.org/files/Fair%20Chance%20Housing%20Notice%20FINAL.pdf.

WHAT KINDS OF HOUSING DOES THE SAN FRANCISCO FAIR CHANCE ORDINANCE PROTECT?

It protects applicants and tenants in *city-funded affordable housing* in San Francisco, California. It does NOT apply to federally subsidized housing (unless the property is receiving multiple subsidies including city-funded subsidies to keep it affordable).

DOES THE SAN FRANCISCO FAIR CHANCE ORDINANCE APPLY TO FEDERAL GOVERNMENT-ASSISTED HOUSING?

No. These new legal protections apply only to *city government-funded affordable housing* in San Francisco, CA.

WHAT KIND OF PROTECTIONS DOES THIS LAW GIVE ME IF I'M APPLYING TO CITY-FUNDED AFFORDABLE HOUSING IN SAN FRANCISCO AND HAVE A CRIMINAL RECORD?

We break down what rights the SF FCO gives you in each step of your application to affordable housing in San Francisco:

STEP 1: **Know your rights when applying for affordable housing in San Francisco.**

When you are APPLYING, Affordable housing providers in San Francisco:

- MUST NOT have a question about past convictions on the initial application. *Before* an affordable housing provider asks about your convictions or looks at a background check report on you, it *must*:[1413]
  - Determine that you are (1) legally eligible to rent the housing unit *and* (2) qualified to rent the housing unit under the affordable housing provider's criteria for evaluating rental history and credit history;
  - Provide notice about the San Francisco Fair Chance Ordinance;[1414] *and*
  - Provide notice about state and federal laws about background checks.[1415]
- MUST NOT have blanket bans like "No Felons Apply."
- In ads, they MUST state that they will consider qualified applicants with criminal histories.
- They MUST have a notice posted about the San Francisco Fair Chance Ordinance.[1416] *Here is an electronic copy of the notice that affordable housing providers must post:* http://sf-hrc.org/sites/sf-hrc.org/files/Fair%20Chance%20Housing%20Notice%20FINAL.pdfn. You can also see a copy on Appendix H, PG. 427.

STEP 2: **Know you rights when *asked* about your criminal background.**

What can city-funded affordable housing providers in San Francisco ask me about my criminal record after they find I am qualified for the housing in every other way?

After you're found qualified, an affordable housing provider in San Francisco can ask about: pending (open) arrests, and convictions that are 0-7 years old (based on the date of sentencing).[1417] BUT even though they can ask about this information, there are limits on how the affordable housing provider can use it—see **Step 3** below.

IMPORTANT DEFINITION:

Under the San Francisco Fair Chance ordinance, **"affordable housing"** is defined as "any residential building in the City that has received funding from the City, connected in whole or in part to restricting rents, the funding being provided either directly or indirectly through funding to another entity that owns, master leases, or develops the building. Affordable Housing also includes 'affordable units' in the City as that term is defined in Article 4 of the Planning Code."

The term **"housing provider"** is broad, and includes any entity that owns, master leases, or develops affordable housing, and any agent, such as a property management company, that makes tenancy decisions on behalf if these entities.

[1412] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.
[1413] A housing provider may run a criminal history/background check report at the same time as it runs a rental or credit history check, BUT it may not look at the report before determining if the applicant is qualified to live in the housing unit.
[1414] S.F. POLICE CODE, Art. 49, § 4907(b).
[1415] S.F. POLICE CODE, Art. 49, § 4907(c).
[1416] S.F. POLICE CODE, Art. 49, §§ 4906, 4907.
[1417] S.F. POLICE CODE, Art. 49, § 4903.

What can city-funded affordable housing providers in San Francisco NEVER ask me about my criminal record?

City-funded housing providers in San Francisco can never ask about:

- Arrests that didn't lead to a conviction;
- Diversion or deferral programs;
- Dismissed convictions (which means any conviction that has been dismissed, expunged, voided, invalidated, or made inoperative by the Court);
- Juvenile convictions;
- Convictions older than 7 years (based on the date of sentencing);
- Infractions (meaning anything that is not a misdemeanor or felony).
- Affordable housing providers cannot ask about these 6 types of cases and can never use them against you at any stage!

STEP 3: **Know you rights when being considered for affordable housing in San Francisco.**

An affordable housing provider in San Francisco that is considering your conviction history *must:*

- Conduct an individualized assessment—meaning look at all of the circumstances of the person applying to housing and information available about their criminal record, including mitigating circumstances;
- Consider only "directly-related" convictions – which means that the underlying conduct "has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing;"[1418]
- Consider the time that has passed since your conviction(s); *and*
- Consider any evidence of rehabilitation or mitigating information you share, such as:
  - Completion of parole or probation;
  - Letters of recommendation from employers or others;
  - Education or training you've received;
  - Participation in an alcohol/drug treatment program;
  - Completion of rehabilitation programs; *and*
  - Any additional context for the conviction—including your age when you were convicted, or mitigating factors like physical or emotional abuse, coercion, untreated abuse/mental illness that led to the conviction.

STEP 4: **Know you rights if you are denied affordable housing in San Francisco because of your criminal record.**

If an affordable housing provider in SF wants to deny you because of your record, THEY MUST abide by the following rules:

- They cannot deny you because of a conviction more than 7 years old (based on the date of sentencing)
- They cannot deny you because of arrests that never led to convictions;
- They must provide you a copy of your background report;
- They must tell you why you were denied—what the issue was in your conviction history; *and*
- Give you *14 days* to provide information about your rehabilitation or any errors in the background check report.

IF YOU ARE DENIED, YOU HAVE THE RIGHT TO RESPOND!!

You have only *14 days* to respond. SO ACT FAST! You can respond IN WRITING or VERBALLY by:

- Pointing out any inaccuracies in the background check report, AND
- Providing evidence of your rehabilitation or mitigating information. See the list of examples of evidence of your rehabilitation or mitigating information under Step 3 above.

STEP 5: **Know your rights to receive a final decision after you respond AND have to bring your case to another level of appeal.**

Must I get notice of the housing provider's final decision?

Yes. An affordable housing provider in SF who makes a final decision to deny you must give you a final notice. If a final negative decision is made based on your criminal record, you should consider challenging the decision to the San Francisco Human Rights Commission. *HOW?* See STEP 6 below.

[1418] S.F. POLICE CODE, Art. 49, § 4903.

STEP 6: **Report clear violations to the San Francisco Human Rights Commission within 60 days.**

If you believe that there has been a violation of the rules above, you should report it to the SF Human Rights Commission. This must be done within 60 days of the violation (when you get your final decision).[1419]

You can begin the process of reporting a violation by following these 3 steps:

- ***Step 1:*** Fill out a complaint form online here: http://hrc.sfintranet.firmstep.com/achieveforms-node/discrimination-public-form, and submit. Give as many details about the discrimination as possible! You can submit the complaint form online, by mail, or in person.
- ***Step 2:*** Call (415) 252-2500 to schedule an intake interview. If you submitted the intake questionnaire online, HRC will contact you to set up an intake interview appointment.
- ***Step 3:*** After intake, the HRC will try to mediate between you and the housing provide; investigate the alleged violation; and make a finding about whether or not the housing provider broke the law. The HRC's process for responding to these complaints looks like this:

CLEAR VIOLATIONS INCLUDE:

- Asks about your criminal record on an initial housing application;
- Has a blanket ban like "We don't accept felons," or didn't consider your criminal record on a case-by-case basis;
- Didn't give you notice of your rights;
- Denied you because of a conviction that was *older* than 7 years.



NOTE: HRC's Discrimination Complaints Investigation and Mediation Division investigates and mediates complaints of discrimination and non-compliance in employment, housing, and public accommodation.[1420]

REMEMBER—YOU ARE AN AGENT OF CHANGE!

WHY IS IT IMPORTANT TO REPORT VIOLATIONS OF THE SAN FRANCISCO FAIR CHANCE ORDINANCE TO THE SAN FRANCISCO HRC?

It's important to report violations because:

- You are helping to enforce this important law that adds protection for people with criminal records applying for affordable housing in San Francisco;
- Helping others in your community;
- The Human Rights Commission (HRC) can find out more information than you can;
- You could get relief—for example, be admitted into the affordable housing.
- The affordable housing provider could be penalized by the city—and hopefully won't do it again![1421]

[1419] S.F., Cal., Police Code, Art. 49, § 4911(a).
[1420] How to File a Discrimination Complaint in Employment, Housing or Public Accommodation, CITY AND CNTY. OF SAN FRANCISCO, HUMAN RIGHTS COMMISSION, http://sf-hrc.org/how-file-discrimination-complaint-employment-housing-or-public-accommodation.
[1421] S.F., Cal., Police Code, Art. 49, § 4909(a).

APPENDIX I

Filing a Complaint for Illegal Discrimination in Private Housing

If you believe you have been illegally discriminated against in applying for *private housing* from a *private landlord* (meaning neither the owner, you nor the property receive federal government money to assist in making the housing more affordable), you can challenge that discriminatory denial. Read about how to challenge an illegal discriminatory denial below, and which government agencies you should contact.

WHAT GOVERNMENT AGENCIES ARE IN CHARGE OF INVESTIGATING HOUSING DISCRIMINATION COMPLAINTS?

FEDERAL HOUSING AGENCY:

The U.S. Department of Housing and Urban Development (HUD) is a *federal agency* that enforces the federal Fair Housing Act (FHA).[1422] HUD has to refer the complaints of housing discrimination it receives to the fair housing enforcement agency in the state where the discrimination occurred *if* that state's fair housing agency is certified by HUD as having mostly the same laws, procedures, remedies, and judicial review.[1423]

AND

STATE HOUSING AGENCY:

In California, our state fair housing enforcement agency is the Department of Fair Employment and Housing (DFEH), and it is *certified by HUD* to enforce, investigate, conciliate, and litigate discriminatory housing practices in California.

I BELIEVE A PRIVATE LANDLORD ILLEGALLY DISCRIMINATED AGAINST ME DUE TO MY CRIMINAL RECORD. WHAT ARE MY OPTIONS?

Your main options are:

1. You could file an administrative complaint with California's DFEH (the state housing protection agency);
2. You could file an administrative complaint with HUD (the federal housing protection agency);
3. You could file a civil lawsuit in state or federal court; OR
4. You could allow HUD (the federal housing agency) or California's DFEH (the state housing agency) to file a lawsuit on your behalf.

> HOW CAN I FIGURE OUT WHICH OPTION TO CHOOSE?

Talk to a lawyer or an advocate at a nonprofit legal services organization if possible—they can help advise you! Also, you can always file a complaint with *both* HUD & DFEH. More on each of these 3 options below.

You can file an administrative complaint with California's DFEH or the federal agency HUD, or both. This may lead to a lawsuit in civil court (possible with both DFEH or HUD) or an administrative hearing (HUD only). Read about how to file a state administrative complaint and a federal administrative complaint below.

OPTION 1: FILING A STATE ADMINISTRATIVE COMPLAINT WITH CALIFORNIA'S DFEH.[1424]

You can file an administrative complaint with California's DFEH *within 1 year* of the discriminatory act.[1425] To begin the process, you must contact DFEH in writing, online, or by phone, with basic information about the discrimination (what happened to you, when, where, etc.).[1426] The DFEH will conduct an intake interview to learn more about your situation, and to determine whether you can file a formal ("*verified*") complaint.[1427] See PG. 430 for a step-by-step explanation of the DFEH's state complaint process.

Under what circumstances will California's DFEH accept my complaint?

DFEH is supposed to be very generous in accepting your complaint. However, in some cases, the DFEH may decide that you cannot file a complaint—for example, if the landlord's conduct is legal, happened more than a

[1422] 42 U.S.C. § 3601-3619.
[1423] 42 U.S.C. § 3610(f).
[1424] Please note that the DFEH complaint process was changed starting in 2013. Previously, the Department would issue an accusation after determining that the landlord discriminated against you. You then had the right to choose between an administrative hearing before an administrative law judge, or a civil lawsuit in court. Starting in 2013, the accusation and administrative hearing option were eliminated, so DFEH must automatically file a civil lawsuit if it finds that you were discriminated against. CAL. GOV'T. CODE § 12981 (effective Jan. 1, 2004-Dec. 31, 2012), repealed by 2012 Cal. Legis. Ch. 46 § 56 (S.B. 1038) (effective Jan. 1, 2013). For more information on these changes, see Phyllis W. Cheng, Transformative Year for Civil Rights in CA, LOS ANGELES DAILY JOURNAL, Aug. 2, 2012.
[1425] CAL. GOV'T CODE § 12980(a).
[1426] 2 CAL. CODE REGS. §§ 10035, 10037.
[1427] 2 Cal. Code Regs. §§ 10038.

year ago, or is outside of DFEH's legal control, or if you already filed a complaint with DFEH or HUD regarding the same discrimination.[1428]

How much time does the DFEH have to respond and investigate?

Once the DFEH accepts your complaint, it must follow certain time limits. The DFEH has *10 days* to inform you of your procedural rights and obligations.[1429] The landlord then has *20 days* to respond to the complaint.[1430] Within *30 days*, DFEH must begin to investigate your complaint, and it must finish the investigation within *100 days*.[1431]

Will I have to do anything else while I wait for a response from the DFEH?

Maybe. At some point (before, during, or after the investigation), the DFEH may also require you and the landlord to go through mediation (meaning an alternative dispute resolution or a settlement negotiation) to see whether you can resolve the problem cooperatively.[1432]

HERE IS A STEP-BY-STEP OVERVIEW OF THE FEHA HOUSING COMPLAINT PROCESS IN CALIFORNIA:[1433]

STEP 1: **File a Pre-Complaint Questionnaire.**

First, you need to file a Pre-Complaint Questionnaire, Form DFEH-700-01 (English) or Form DFEH-700-01S (Spanish). A Pre-Complaint Questionnaire can be filed by you, the Director of DFEH, or a community organization. You can do this *online, by phone, or by mail*.

NOTE: It is very important that you provide an up-to-date phone number where you can be reached!

- *Online:* Go to http://esq5.houdiniesq.com/dfeh/intake/, create an account, log in, and fill out the Pre-Complaint Questionnaire. Alternatively, you can email your Pre-Complaint Questionnaire to contact.center@dfeh.ca.gov.
- *By Phone:* Call the DFEH's Communication Center at (800) 884-1684. If you have a hearing impairment, please call 800-884-1684 or TTY at (800) 700-2320 for service.
- *By mail:* Request a printed copy of the form through the DFEH website (http://www.dfeh.ca.gov/contact.htm). After you carefully fill out the questionnaire, you can send it to the DFEH office nearest you (see the list below for office locations):
  - DFEH—Elk Grove Office
    2218 Kausen Drive, S. 100
    Elk Grove, CA 95758
  - DFEH—Bay Area Regional Office
    39141 Civic Center Drive, S. 250
    Fremont, CA 94538
  - DFEH—Fresno Office
    1277 E. Alluvial Avenue, S. 101
    Fresno, CA 93720
  - DFEH—Bakersfield Office
    4800 Stockdale Highway, S. 215
    Bakersfield, CA 93309
  - DFEH—Los Angeles Office
    320 West 4th St., 10th Floor
    Los Angeles, CA 90013

STEP 2: **Intake.**

Within *10 days* of receiving your Pre-Complaint Questionnaire, an investigator from the DFEH will contact you by telephone to conduct an intake interview. The investigator will ask you questions to collect facts about the possible discrimination.

STEP 3: **File the Formal Complaint.**

If your complaint is accepted for investigation, the DFEH investigator will draft the complaint and ask for you or your representative to sign the complaint. This formal complaint is then served on the "Respondent" (the person or entity that who you have made the allegation against). The Respondent is required to answer the

[1428] 2 CAL. CODE REGS. §§ 10036; 10038(f), (g), (i). If the Department decides not to accept your complaint, you can still file a lawsuit on your own in court.
[1429] 2 Cal. Code Regs. § 10053.
[1430] 2 CAL. CODE REGS. § 10055. The landlord can wait to respond if you begin mediation to resolve the complaint.
[1431] CAL. GOV'T CODE § 12980(e), (f).
[1432] 2 Cal. Code Regs. § 10056-57.
[1433] See Housing Complaint Process, CAL. DEP'T OF FAIR EMPL. & HOUS., http://www.dfeh.ca.gov/Complaints_hCompProc.htm.



complaint and is given the opportunity to voluntarily resolve it. A no-fault resolution can be negotiated at any time during the complaint process.

If there is also federal law that would protect you, then the formal complaint is also filed with the United States Department of Housing and Urban Development (HUD). Note: HUD usually accepts DFEH's findings with respect to the alleged discrimination.

STEP 4: **Investigation Period.**

DFEH must investigate every case in a standard, timely manner.

DFEH has the authority to take depositions, issue subpoenas and interrogatories and seek Temporary Restraining Orders when appropriate.

If the investigative findings do not show a violation of the law, the DFEH will close the case. If the DFEH finds a violation, continue to STEP 5.

STEP 5: **Mediation (a.k.a. "Conciliation")**

If the DFEH's investigation shows that there was a violation of fair housing law, then it will schedule formal mediation/ conciliation conferences between the DFEH's representatives, you, and the responding landlord.

During the mediation/conciliation conference, the DFEH presents information supporting its belief that there has been a violation and explores options to resolve the complaint.

If formal mediation/conciliation fails, the DFEH will then have to decide whether or not to file a civil lawsuit.

- Possible Outcome #1: If the DFEH determines that you have been discriminated against (that your complaint has "merit"), and that the discrimination cannot be resolved through mediation, the DEFEH will file a civil lawsuit against the landlord on your behalf. (Continue to STEP 6 below).
- Possible Outcome #2: If the DFEH decides not to file a lawsuit (or takes longer than *100 days* to file the lawsuit), the DFEH *must give you a written notice* with the following information: (1) DFEH's decision regarding your complaint, (2) the reasons for the DFEH's decision; (3) your right to sue the landlord directly in court (see PG. 434 below on how to file a civil lawsuit in court); and (3) a list resources for filing a civil lawsuit.[1434]

STEP 6: **Litigation**

If the DFEH decides to litigate the case, it will be heard in civil court.

STEP 7: **Court Remedies & Possible Outcomes.**

If the lawsuit is successful (meaning the court finds that the landlord discriminated against you), you may be awarded some or all of the following remedies:

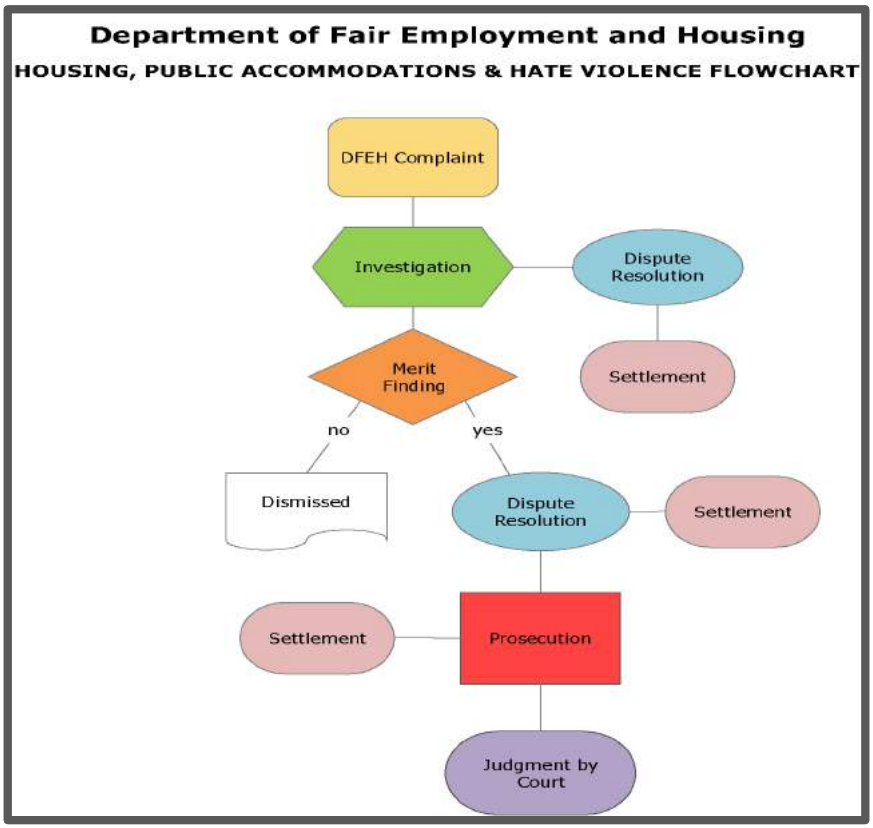
1. *actual money damages* (to compensate you for your losses);
2. *punitive damages* (to punish the landlord for committing illegal discrimination);
3. *injunctive relief* (ordering the landlord to stop discriminating or take some other action, such as changing its screening procedures or providing you with housing); AND/OR
4. *attorneys fees and costs* (to reimburse the DFEH or a private attorney for the costs of the lawsuit).[1435]

Below is a flowchart showing what happens when you file a DFEH complaint.[1436] Remember: if HUD (the federal fair housing agency, see PG. 433) also has jurisdiction (legal authority) over your housing complaint, then the DFEH will also file your complaint with HUD at the same time.

[1434] CAL. GOV'T CODE § 12980(h); 2 CAL. CODE REGS. § 10064. DFEH must give you this notice within 30 days after (1) deciding not to file a lawsuit, or (2) 100 days passes, whichever comes first. When deciding whether to file a civil lawsuit, the Department will consider the following factors: (1) whether there is strong evidence of discrimination; (2) whether a lawsuit is likely to be successful; (3) whether the discrimination involves an important legal issue for establishing new caselaw; (4) whether the lawsuit and its impact on civil rights are consistent with DFEH's mission; and/or (5) whether landlord offered to resolve the issue directly and you refused. 2 CAL. CODE REGS. § 10063(c).

[1435] Cal. Gov't. Code § 12989.2.

[1436] Cal. Dept. of Fair Employment & Housing, Housing, Public Accommodations & Hate Violence Flowchart (Dec. 1, 2014), http://www.dfeh.ca.gov/Complaints_HousFlowChart.htm.



OPTION 2: FILING A FEDERAL ADMINISTRATIVE COMPLAINT WITH HUD.

The procedures and potential relief of filing an administrative complaint with HUD are basically the same as filing an administrative complaint with California's DFEH (see PG. 430 on how to file state housing discrimination complaint with the DFEH).

How much time do I have to file a complaint after the discriminatory act occurs?

You have *1 year* after the discriminatory practice occurs to file your complaint with HUD.[1437]

How long does HUD have to respond and investigate?

HUD has *100 days* to determine if there is "reasonable cause" to believe the discrimination occurred.[1438] Within these 100 days, HUD *must try to facilitate a conciliation agreement* (meaning an agreement that solves the problem) between you and the landlord who discriminated.[1439]

Will HUD ever give special treatment to my housing discrimination complaint over other ones?

HUD gives special treatment in 2 types of cases:

- ***Special Case #1:*** If HUD decides that a court must act quickly, it can refer your case to the U.S. Department of Justice (U.S. DOJ), which must then file a civil enforcement action for temporary or permanent injunctive relief pending a final disposition on the case.[1440] This civil action doesn't stop the administrative proceedings; it just tries to create a solution more quickly when it's deemed necessary.
- ***Special Case #2:*** If your complaint has to do with the legality or illegality of any *zoning or other land use law*, then HUD must refer it to the U.S. DOJ for civil prosecution.[1441] HUD must then file either a charge against the respondent, or dismiss the complaint.[1442]

[1437] 42 U.S.C. § 3610(a)(1)(A)(i).
[1438] 42 U.S.C. § 3610(a)(1)(B)(iv), (g)(1).
[1439] 42 U.S.C. § 3610(b).
[1440] 42 U.S.C. § 3610(e).
[1441] 42 U.S.C. § 3610(g)(2)(C).
[1442] 42 U.S.C. § 3610(g)(3).

OPTION 3: YOU CAN FILE A CIVIL LAWSUIT DIRECTLY IN STATE OR FEDERAL COURT—DEPENDING ON WHAT KINDS OF LEGAL VIOLATIONS YOU ARE ALLEGING.

You may file a civil state or federal lawsuit under *either* or *both* federal law (e.g., the FHA) and state law (e.g., the FEHA, the Unruh Act, or other laws).

1. Under federal Law: FHA and FEHA, you must file your lawsuit within 2 years of the discriminatory act itself OR within 2 years of the landlord violating a mediation/conciliation agreement that HUD or DFEH had facilitated for you (refer back to STEP 5 on PG. 432 above).[1443]
2. Under state law: California's Unruh Act, there is not a clear deadline by when you must file the lawsuit, but it could be as short of a timeline as 1 year![1444] If you are able to do so, talk to an attorney about your options and timelines as soon as possible after the discrimination occurs (see a list of housing legal aid providers across California on PG. 1127).

What remedies are available to me in a state or federal lawsuit?

If the lawsuit is successful (meaning the judge finds that the landlord discriminated against you), you may be awarded some or all of the following remedies:

- *actual money damages* (to compensate you for your losses);
- *punitive damages* (to punish the landlord for committing illegal discrimination);
- *injunctive relief* (ordering the landlord to stop discriminating or take some other action, such as changing its screening procedures or providing you with housing); AND/OR
- *attorney's fees and costs* (to reimburse the DFEH or a private attorney for the costs of the lawsuit).[1445]

OPTION 4: The U.S. Department of Justice (U.S. DOJ) or the California Department of Justice (CA DOJ) may also file a complaint—on the behalf of their government agencies OR on your behalf.

The U.S. DOJ may file a civil lawsuit in federal court if there is reasonable cause to believe that:
1. any person or group is engaged in a pattern or practice of unlawful acts,
2. *or* (2) the denial of federal or state housing rights is an issue of "general public importance."[1446]

The California Attorney General, who leads the CA DOJ, may also file a civil lawsuit in state court under the same standard.[1447] In such a case, the California Attorney General and the DFEH (California Department of Fair Employment and Housing) *must comply* with the California State Bar's Rules of Professional Conduct in representing your interests, establish an attorney-client relationship, and zealously represent your interests.[1448]

This type of lawsuit is called a "state enforcement action," and the U.S. DOJ or CA DOJ must file the lawsuit *within 18 months* (1.5 years) after the discriminatory act.[1449]

DOES MY CITY HAVE ADDITIONAL LOCAL PROTECTIONS?

It may! If your city or county has *special protections* against housing discrimination of people with records, *or has local agencies* in charge of enforcing fair housing laws, then you may also want to bring your housing discrimination complaint to the city agency responsible for fair housing where you live. If you aren't sure, you can always ask someone at the DFEH, or ask a local nonprofit housing attorney (see a list of legal aid organizations that may be able to assist you on PG. 1127). For example, the city of San Francisco, CA has a new law called the "Fair Chance Ordinance" that adds additional protections for people with criminal records who apply to live in *city-funded affordable housing* (which includes Below Market Rate or "BMR" units in private buildings in SF). Go to Appendix H, PG. 427 for information on the San Francisco law and the process of filing a complaint against a landlord or housing provider who has violated the law in San Francisco.

[1443] 42 U.S.C § 3613(a); CAL. GOV'T CODE § 1289.1.
[1444] See CAL. CIV. PROC. CODE § 338(a). DFEH states that the Unruh Act has a three-year limitation period if filed as a private lawsuit ("Highlights of Differences Between State and Federal Housing Laws," May 20, 1993), but see Mitchell v. Yu Sung, 816 F. Supp. 597 (1993) (court applied a one-year limitation period).
[1445] 42 U.S.C. § 3613(c); CAL. GOV'T CODE § 12989.2.
[1446] 42 U.S.C. § 3614(a).
[1447] Cal. Gov't Code § 12989.3.
[1448] CAL. GOV'T CODE § 12989(c). California Government Code Section 12981.1 permits DFEH to dismiss a complaint only if "no reasonable cause exists to believe that an unlawful housing practice" has occurred. California Government Code Sections 12980(d) and 12981(g) ensure that complainants are notified of the limited availability of damages in administrative proceedings.
[1449] Cal. Gov't Code § 12989.3.

APPENDIX J

Rural development (RD) grievance procedures

The grievance procedures for Rural Development (RD) housing are different from most other government-assisted housing programs. Here is an overview of how it works if you live in RD housing:

- When a grievance is filed, regulations require the owner of the multifamily property (or owner's representative) to offer to meet informally with the denied applicant within 10 calendar days to resolve the grievance.
- If the informal meeting fails to resolve the issue, the owner must file a report summarizing the problem to USDA (DEFINE THIS) and the applicant.
- The applicant (you) may submit a summary of the problem to USDA.
- After you get a summary of the problem, you must file a written request for an informal review hearing within 10 calendar days.
- After you request the informal review hearing, a hearing panel will be selected.
- You and the owner of the multifamily property may agree on a hearing officer, *or* you may each appoint one member of a 3-person panel, and those two hearing officers choose the third officer. If you and the owner *cannot agree within 30 days* on the two hearing officers, USDA will give you notice and appoint a person to act as the sole hearing officer.
- A USDA-approved 'Standing Hearing Panel' can also hear all grievances related to a particular development, where at least one member of the standing hearing panel must be selected by the residents at a formal resident meeting called to select hearing panel members.
- After the hearing panel is selected, the hearing will be scheduled within 15 days.

APPENDIX K

Transitional Housing Participant Misconduct Act (THPMA)

It's very common to live in transitional housing after release from prison or jail. As described on PG. 344, transitional housing programs are *temporary* programs that offer *temporary* housing and services. They usually have requirements you have to meet before you can move in, and there are usually waitlists. Some transitional housing programs offer services like job training, counseling, GED programs, and computer classes. Some transitional housing programs are intended for people with specific needs such as mental illness, addiction treatment and recovery (see PG. 351), disabilities (PG. 419), or domestic violence support (see PG. 348).

In this section, we explain a special law called the Transitional Housing Participant Misconduct Act (THPMA). Just because you live in transitional housing does NOT mean that the THPMA applies to you, ***so read carefully***!

HOW CAN A TRANSITIONAL HOUSING PROVIDER REMOVE ME FROM MY HOUSING?

AS A GENERAL RULE:

If a resident and a transitional housing provider have an agreement for that person to live in the housing unit, the transitional housing provider MUST follow California's formal eviction process in civil court (these cases are called "unlawful detainer" actions under the law). If a transitional housing provider removes you *without going through the formal court process*, that housing provider could be subject to legal liability. If possible, talk to an lawyer or advocate at a legal aid organization about your rights (see a list of legal aid organizations across California, beginning on PG. 1127).

THE THPMA IS THE EXCEPTION TO THE GENERAL RULE:

The THPMA is a California state law and says owners of transitional housing can evict you more quickly than a normal eviction procedure ONLY IF the following 3 requirements are met:

- You committed "participant misconduct or abuse";
- You have lived in the transitional housing program for less than 6 months; AND
- You signed a WRITTEN CONTRACT with the transitional housing provider when entering the program that explicitly stated that the THPMA applied, with information about your rights and the procedure for using the THPMA to kick someone out more quickly.

ALL of these factors need to be true, and most of the time, they are not, so REMEMBER—generally you have the same rights as a *tenant* facing eviction, which means usually a transitional housing provider has to go through the court process to evict (remove) you.

WHAT IS A *TENANT*?

A tenant is a person who lives on land or in a property that is rented from a landlord.

WHAT IS CONSIDERED A "*TRANSITIONAL HOUSING PROGRAM*" UNDER THE THPMA?

Under the THPMA, a transitional housing program is *any* program designed to assist homeless persons to live independently in permanent housing with *all* the following components:

1. Residency requirements from 30 days to 24 months.
2. Provides comprehensive social service programs incl. individualized case mgt. and may include other services such as alcohol/substance abuse counseling, self-improvement training, employment and training, and living skills.
3. Provides temporary housing with structured setting and rules participants need to comply with to remain in program.

KEY DEFINITION: "Homeless person" = This law defines a homeless person as an individual or family who lacks a fixed, regular, and adequate place to sleep at night, *or* lived in any temporary housing, shelter, or institution, which includes sites not ordinarily used or designed for regular sleeping. This definition also covers *any person living with* the transitional housing program participant.

WHEN MAY A TRANSITIONAL HOUSING PROGRAM OPERATOR USE THE THPMA PROCESS AND EVICT ME MORE QUICKLY THAN THE NORMAL EVICTION PROCESS?

An operator may use the faster, expedited THPMA restraining order/injunction process only for (1) program misconduct, or (2) abuse, defined below.

1. Program misconduct—is an *intentional* violation of the transitional housing program's rules and regulations. The intentional violation *must* "substantially interfere with the orderly operation of the program," *and* involve one of the following acts:
    - Drunkenness on site;
    - Unlawful use or sale of drugs;
    - Theft;

- Arson;
- Destruction of property (against the operator, other program participants, employees, or people living within 100 feet of the program site); or
- Violence or threat of violence and harassment (against the operator, other program participants, employees, or people living within 100 feet of the program site).

OR

2. Abuse—is *intentionally or recklessly causing, or attempting to cause*, bodily injury or sexual assault; *or* placing someone else in reasonable fear of "imminent serious bodily injury" (against yourself, the operator, other program participants, employees, or people living within 100 feet of the program site).

Even in these situations, the transitional housing provider may NOT use the expedited THPMA removal process against a participant in the program *for 6 months or more, UNLESS* a restraining order (permanent injunction) or temporary restraining order (TRO) is already pending or in force against you. If the operator hasn't started a THPMA action within 6 months of your participation in the program, then the operator must either (1) go through the form eviction ("unlawful detainer") court process, and/or (2) use a traditional civil harassment restraining order process to remove you.[1450]

HOW COULD A TRANSITIONAL HOUSING PROGRAM OPERATOR USE THE THPMA PROCESS?

If the above requirements are all met, a transitional housing program operator may:

1. Use the formal eviction/"unlawful detainer" court process (see the GENERAL RULE on PG. 436—the THPMA gives the transitional housing owner two options for evicting someone); *OR*
2. If program misconduct or abuse: Use the Temporary Restraining Order (TRO)/injunction process under the THPMA.

WHAT IS THE TRO PROCESS?

The TRO process is a 2-step process:

STEP 1: The transitional housing program operator must file an application for an *immediate temporary restraining order* (TRO) until a hearing can take place. This immediate TRO may include orders that you (the program participant) refrain from misconduct, *or* it may exclude you from participating and living at the transitional housing program site, and stay at least 200 feet away from the site of *abuse* (defined above, PG. 437) was alleged.

STEP 2: There is a *hearing on permanent injunction*—usually within in 5 days of the program operator filing the TRO. For the judge to issue a permanent injunction (permanent restraining order) at the hearing, there must be *clear and convincing evidence* of program misconduct or abuse by the participant.

WHAT ARE "STAY AWAY" AND "EXCLUSION" ORDERS, AND WHEN CAN A PROGRAM OPERATOR GET ONE AGAINST ME?

These types of orders are defined below:

- **Exclusion Order:** An *exclusion order* says that you are not allowed to participate or live at the program site.
- **Stay Away Order:** A stay away order says that you cannot be within 200 feet of the transitional housing program site or other program sites that it runs.

A transitional housing program operator may only ask for exclusion and stay away orders for "abuse," NOT for "program misconduct" (defined above on PG. 437). These orders can last for up to *1 year after the hearing*, and the operator can ask the court to renew the restraining order after that (*NOTE:* the operator must ask for an extension of the exclusion or stay away order at least 3 months before the original one expires).

The program operator may also be able to get an *immediate* exclusion or stay away order from the court in a temporary restraining order (TRO) hearing—but only if it's an *emergency*. It can only be considered an emergency if it's *necessary to protect* another participant, employee, or person living within 100 feet of the program site from "imminent serious bodily injury."

[1450] See Cal. Civ. Proc. Code § 527.6.



WHAT COULD HAPPEN IF THE TRANSITIONAL HOUSING PROGRAM OPERATOR GETS AN EXCLUSION OR "STAY AWAY" ORDER?

Before the hearing, through a TRO, the transitional housing program operator may have you immediately removed from the unit.

After the hearing, the transitional housing program operator may take immediate possession of the unit and consider it "abandoned." If there are other people living in the unit (for example, your family members), but those other people were not named in the restraining order petition, then the program operator may *only remove you, and anyone actually named in the petition.* A copy of the order will also be given to the local police.

WHAT COULD HAPPEN IF THE TRANSITIONAL HOUSING PROGRAM OPERATOR *DOESN'T* GET AN EXCLUSION OR STAY AWAY ORDER?

If you violate the conditions of the restraining order (also called a permanent injunction), the transitional housing program operator may:

1. Serve you with a 3-day "notice to quit"—meaning you have 3 days to get you and your belongings out of the transitional housing program; and after the 3 days are up, the operator can start a formal eviction process in court (an "unlawful detainer' action – learn more about these eviction lawsuits on PG. 398 above).
2. File a "contempt" action in court along with a request (called a "petition") to modify the exiting restraining order to *include an exclusion order* (EVEN IF the original action was based only on "program misconduct"),
3. Finally, if you "willfully disobey" the court's restraining order, you could be charged and possibly convicted of a criminal misdemeanor.
4. Below, we have copied the instructions from the California Courts for someone who is participating in a transitional housing program covered by the THPMA and who receives restraining order papers.

You can download all forms related to the THPMA on the California Superior Court's website at http://www.courts.ca.gov/forms.htm?filter=TH.

WHAT STEPS DOES THE CALIFORNIA COURT SUGGEST I TAKE IF YOU I'M BEING KICKED OUT OF TRANSITIONAL HOUSING UNDER THE TRANSITIONAL HOUSING PARTICIPANT MISCONDUCT ACT (THPMA)?

The California Courts have published instructions for people who are facing removal from transitional housing under the THMPA. Those instructions are available on court form TH-210, available online at http://www.courts.ca.gov/documents/th210.pdf, and also copied below for your reference.

1. **Legal advice.** If you are served with an Order to Show Cause and Temporary Restraining Order ["OSC/TRO"] and a Petition, you should seek legal advice right away. The OSC/TRO should list the name, address, and phone number of the Legal Services Office in the county where the petition is filed. You may be able to get legal services by contacting this office. If you do not have an attorney, you can also call the attorney's referral service of your local bar association for help.

2. **Read the Instructions.** Whether or not you choose to talk to an attorney, you should read all of these instructions and the other papers you have received.

3. **Obey the Order.** Read the papers served on you very carefully. The Petition tells you what orders the program opera- tor is asking the court to make. The OSC/TRO tells you when to appear in court and may contain a temporary order telling you that you cannot do certain things. YOU HAVE TO OBEY THE ORDER. IF YOU DO NOT OBEY THE COURT'S ORDERS, CRIMINAL CHARGES MAY BE FILED AGAINST YOU. IF YOU ARE FOUND IN CONTEMPT OF COURT FOR NOT FOLLOWING THE COURT'S ORDERS, THE COURT CAN CHANGE THE ORDERS TO FORCE YOU TO MOVE OUT OF THE PROGRAM'S HOUSING.

4. **Review the facts.** Read the description of the facts on the Petition very carefully. This is where the program operator tells the judge what he or she thinks happened. If you do not agree with the facts on the petition or you think it would not be fair for the court to grant orders against you, GO TO THE HEARING. The place and time of the hearing are on the first page of the form named "Order to Show Cause and Temporary Restraining Order."

5. **Respond to the court.** If you want to fight the petition you should file a Participant's Response. YOU DO NOT HAVE TO PAY A FEE TO FILE THIS FORM. A blank copy of the Response should have been given to you with the OSC/TRO. You can also file and serve statements signed by people who have personal knowledge of the facts. These are called "declarations." You can type these declarations on form MC-031 and attach them to your Response. If you do not know how to prepare a declaration, you should see an attorney.

6. **Serve a copy on program operator.** After you have filed the Participant's Response with the superior court clerk, a copy must be delivered personally or by mail to the program operator or the program operator's attorney.

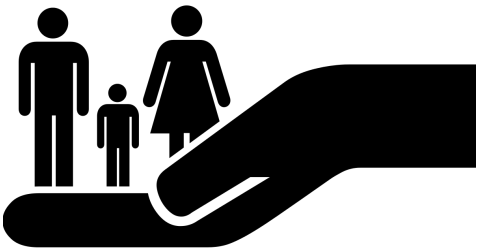
You cannot serve the program operator yourself. Service may be made by a licensed process server, the sheriff's department, or any person 18 years of age or older, other than you. The person should complete and sign a Proof of Personal Service form. (A blank copy should have been given to you with the OSC/TRO.) You should take the completed form back to the court clerk or bring it with you to the hearing.

7. **Extensions.** If you need more time to find an attorney or to prepare your Response, you must ask the judge for a continuance (extension) by the hearing date shown on the OSC/TRO.

8. **Opposing the Petition.** If you wish to fight the lawsuit, you should file a Participant's Response and also go to the hearing. If you have any witnesses, they also must be present. If you do not attend the hearing, the court may make "permanent" orders against you that will last up to one year. If you can't file and serve a Response (or find an attorney who will), SHOW UP AT THE HEARING ANYWAY. At the hearing, explain your difficulties to the judge, and ask to be allowed to tell your side of the case.



PUBLIC BENEFITS



This PUBLIC BENEFITS CHAPTER will give you an overview of the public benefits (government assistance) available to you in reentry, including how a criminal record affects your application. This chapter explains the most common public benefits programs that can help provide things like: cash assistance, health care, or food in your transition.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.



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- **Who is eligible for each type of public benefits**
- **What you get if you are eligible for public benefits**
- **How your criminal record could affect your ability to get public benefits**
- **Which public benefits you can apply for while incarcerated**
- **How and where to apply for public benefits**
- **What happens once you're enrolled in public benefits**
- **What to do if your public benefits are denied or ended**



I. INTRODUCTION

WHAT ARE PUBLIC BENEFITS?

"Public benefits" are government-funded programs that help people get basic life necessities. Public benefits are sometimes referred to as "welfare." There are public benefits programs to help people get food, shelter, healthcare, childcare, cash for daily expenses, and support in emergencies. Each program has different procedures, rules, and requirements that you have to meet to qualify. Depending on your situation, you may qualify for several of the public benefits programs, just one, or none. This section explains what the major public benefits programs offer, which ones you may qualify for, and how to get them.[1451]

WHAT SHOULD I KNOW ABOUT FEDERAL, STATE, AND COUNTY BENEFITS?

The federal (national) government is in charge of certain public benefits programs that operate across the country; and the state and county governments are in charge of others that are specific to their own residents:

- For some benefits programs, such as Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), the federal government sets all the rules about who can receive benefits and how they get issued, requiring agencies in every state and county to follow those rules when distributing those benefits. For example: If you are a person with a disability and no income, and you want to apply for SSI benefits, you have to follow the same rules and meet the same requirements no matter what state or county you live in.
- For other benefits programs, such as cash assistance, the federal government sets only very general rules, allowing state and county governments to set up their own systems for distributing those benefits to their residents. For example, if you're a California resident struggling to cover your living costs and want to apply for cash aid through the General Assistance or General Relief (GA/GR) programs, the rules are set by California and your specific county.[1452]
- For other benefits programs, such as healthcare, the federal government sets up a general system for low-income people (Medicaid) and requires agencies in every state and county to follow those national rules—but also allows states and counties to set more specific rules for their residents and run their own benefits programs for residents who don't qualify under the federal rules.[1453]

It is important to know what government agency runs your public benefits—who sets the program rules, as well as which agency you apply and report to.

THIS CHART DESCRIBES THE MOST COMMON TYPES OF PUBLIC BENEFITS PROGRAMS, AND WHAT THEY CAN PROVIDE TO PEOPLE WHO QUALIFY. WHETHER YOU QUALIFY DEPENDS ON MANY INDIVIDUAL FACTORS.

SUMMARY OF THE MAJOR PUBLIC BENEFITS PROGRAMS IN CALIFORNIA	
TYPE OF PUBLIC BENEFIT	**DESCRIPTION**
Basic Needs Cash Benefits	Basic Needs Cash Benefits programs called General Assistance/General Relief (GA/GR) and CalWORKS provide temporary and/or long-term financial (cash) aid to low income people and families
Food Benefits	California provides food benefits through a program called CalFresh (food stamps). CalFresh provides money to low-income people and families to purchase food. Pregnant women, infants and children may potentially be eligible for WIC, a program that provides food for pregnant women or mothers of young children. There are also hundreds of free food banks throughout California.
Health Care Benefits	California provides free health insurance and coverage to low income people and families through a program called Medi-Cal. People who do not qualify for Medi-Cal may sign up for health care through the State's healthcare marketplace, Covered California.
Work Services Benefits	People enrolled in CalWORKS are eligible for Welfare-To-Work, a program that helps people to train for and find employment.
Social Security Benefits	Social Security Benefits are for retired people, disabled people, and their families. Through Retirement Benefits, Disability Benefits (SSDI), and Supplemental Security Income (SSI/SSP), qualifying people may receive monthly cash assistance.
Veterans Benefits	The federal Department of Veterans Affairs (VA) provides benefits to former U.S. military service members, such as health care, transitional assistance, and employment-related services.

[1451] See Online Resource for California Benefits, http://www.benefitscal.org/.
[1452] See CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG132.htm.
[1453] See Cal. Medicaid-Marketplace Overview, MEDICAID.GOV, http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-State/california.html.



CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET PUBLIC BENEFITS?

It depends. With some benefits programs, there are no rules or requirements related to criminal histories, so you can and should apply to these programs. You can even apply for certain benefits while you are still in prison or jail. But with other benefits programs, there are rules that may disqualify you based on your criminal history. Some programs may limit or deny your access to benefits if you have a certain kind of criminal conviction (a criminal offense you were found guilty of); a parole/probation violation; certain kinds of unpaid fines, fees or debts; or an outstanding warrant. Different programs will have different rules and requirements about these issues. Some programs also impose different restrictions based on what your conviction or violation was, how long ago it was, and how many other convictions or violations you have had.

CAN I APPLY FOR PUBLIC BENEFITS WHILE I'M INCARCERATED?

It depends. For some benefits, *yes*, you can and should! Depending on where you're incarcerated, there may be special staff or programs in your facility to help you apply for health care, disability support, and other benefits. Often, you can't start receiving the benefits while you're still incarcerated—but by signing up before your release, you can ensure you'll have access to those benefits soon after you get out. This manual will provide information about the programs where this is possible.

II. BASIC NEEDS CASH BENEFITS

WHAT WILL I LEARN?

- **What "basic needs cash benefits" are (GA/GR and CalWORKS)**
- **How your criminal record could affect your ability to apply for & get cash benefits (GA/GR and CalWORKS)**
- **How to apply for cash benefits**
- **Whether you can apply for cash benefits while incarcerated**
- **How cash benefits are distributed and how to stay in the program after you're enrolled**
- **What to do if you think your application for cash benefits was wrongly denied**

LEARN MORE LOCALLY!

Learn more about which benefits are available to you and how to apply by looking up your county welfare agency. This can be found online at: http://www.cwda.org/links/chsa.php

GENERAL ASSISTANCE/GENERAL RELIEF (GA/GR)

General Assistance and General Relief (GA/GR) provide cash assistance to adults who have little money, no sources of support, and who are not currently receiving any other public benefits. Every county in California runs its own GA or GR program, referred to in some counties (mostly in Northern California) as General Assistance (GA) and in other counties (mostly in Southern California) as General Relief (GR).

HELPFUL HINT

What's the difference between General Assistance (GA)/General Relief (GR) & CalWORKS?

General Assistance/General Relief is designed to assist needy single adults. The typical General Assistance/General Relief recipient is a low-income single person who has limited resources and does not receive any other Public Benefits. The typical CalWORKS recipients are low-income families with minor children who may also receive other Public Benefits.

AM I ELIGIBLE FOR GA/GR?

In general, to be able to get General Assistance/General Relief, you must:

- Be at least age 18 (unless you are an emancipated foster child denied aid through CalWORKs);
- Be a resident of the county where you're applying;
- Be a U.S. citizen, a legal permanent resident, or an immigrant with satisfactory status;
- Have a Social Security Number (a card is not necessary); and
- Have limited income and property.

Every county has its own rules, including specific limits on the income and property you can have. Contact your county welfare agency for more details. For a list of county welfare agencies, see Appendix A on PG. 505.[1454]

When applying for GA/GR, you should bring whatever form of identification you have. If you do not have any ID, the social worker at the county welfare agency should be able to help you in proving your identity. Some counties also require a fingerprint be taken before benefits can be distributed. For information about applying for a California state ID card for free or reduced price, see the BUILDING BLOCKS IN REENTRY: ID & VOTING CHAPTER, on PG. 43. If you have more questions about applying for GA/GR, you may call the following nonprofit organizations: Public Interest Law Project (PILP) at (510) 891-9794 or the Western Center on Law and Poverty (WCLP) at (213) 487-7211, for advice.

SPECIAL RULES & RESTRICTIONS

Some counties may have special rules and restrictions for people with drug-related convictions or other violations, or people who are suspected of having a warrant, being in violation of parole or probation, or fleeing to avoid prosecution.

For example, in Los Angeles County, you are ineligible for GA/GR if you are on house arrest. Other counties, such as San Francisco, make eligibility determinations on a case-by-case basis.

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET GA/GR?

Maybe. Some counties have special rules and restrictions for people with drug-related criminal convictions or other violations, or for people who are suspected of having a warrant, being in violation of parole or probation, or fleeing to avoid prosecution for a crime. Contact your county welfare agency to ask about its local policy. For a directory of county welfare agencies, see Appendix A, PG. 505.[1455] If you believe that your county welfare agency is wrongly or unlawfully denying GA/GR benefits to you, you may call the following nonprofit organizations: Public Interest Law Project (PILP) at (510) 891-9794 or the Western Center on Law and Poverty (WCLP) at (213) 487-7211, for advice.

[1454] See County Human Services Agencies, CNTY. WELFARE DIR'S. ASS'N OF CAL., http://www.cwda.org/links/chsa.php.
[1455] See County Human Services Agencies, CNTY. WELFARE DIR'S. ASS'N OF CAL., http://www.cwda.org/links/chsa.php.



WHAT BENEFITS AND SERVICES CAN I GET THROUGH GA/GR?

It depends on your county. Every county offers different benefits and services through GA/GR, and every county sets its own specific rules. Generally, every county's GA/GR program provides a monthly cash amount. But remember that the rules vary by county:

- Each county has its own rules for calculating a person's monthly GA/GR amount—typically based on factors like whether you're married, your housing situation, disabilities, ability to work, and ability to apply for other public benefits programs.
- Some counties' GA/GR programs provide help with:
  - Transportation costs;
  - Health care and nutrition needs;
  - Substance abuse treatment referrals;
  - Emergency food and housing;
  - Housing repairs; and/or
  - Personal hygiene products.



IMPORTANT INFORMATION FOR GA/GR: The difference between a *grant* and a *loan:* Some counties provide GA/GR cash as a "grant" (a gift), with no strings attached; other counties provide GA/GR as a "loan." If your county treats GA/GR as a loan, you will have to pay it back if you have enough income to do so. Several counties require anyone who receives GA/GR, but is then later approved for Social Security Benefits, to repay GA/GR benefits. For more information on Social Security Benefits, see PG. 478. Also, many counties have rules that limit the number of months that you can get GA/GR benefits throughout the year.

MORE INFORMATION ON "UNEMPLOYABLE APPLICANTS"

You may be considered unemployable if you are: older than 70 years old; responsible for the substantial and continuous care of a family member; or you are disabled.

- Unemployable GA/GR recipients who are applying for Social Security or SSI can also receive representation or assistance in their applications.
- Contact your county welfare agency if you need to find out exactly what benefits and services it offers and which rules apply for General Assistance/General Relief.

HOW DO I APPLY FOR GA/GR?

You must apply for General Assistance/General Relief in person. If you have a disability that stops you from going into the county welfare office, you can request help. Contact your county welfare agency for details about the application process in your county. For a directory of county welfare agencies, see Appendix A, PG. 505. Note that some counties accept GA/GR applications only at specific offices, so if you are unsure about which office to go to, you should call the main county welfare office and ask.

Note that you can apply for General Assistance/General Relief at the same time you apply for CalFresh ("food stamps") and/or Medi-Cal (health insurance for low-income Californians), and it is usually a good idea to do so. Some counties may allow you to apply for General Assistance/General Relief upon release or at a community re-entry center. See more information about CalFresh on PG. 454 and Medi-Cal on PG. 466.

CAN I APPLY FOR GA/GR WHILE INCARCERATED?

No. You are not eligible to apply for GA/GR while in jail or prison. But remember that you may be eligible to apply once you are released.[1456] If you are on house arrest, contact your county welfare agency to ask if you are eligible for GA/GR.[1457]

ONCE I'M ENROLLED IN GA/GR, WHAT RULES MUST I FOLLOW TO STAY IN THE PROGRAM?

It depends on your county. Every county sets its own General Assistance/ General Relief rules. Here are some of the rules to know about:

- Generally, you must fall under the income and property limits to be eligible.
- All counties require you to immediately report *any* changes to your address, income, or property. Failure to report such changes can result in your losing the GA/GR benefits, even if the change would not otherwise disqualify you.
- Some counties may limit how long you can receive GA/GR if you able to work, or require that you apply for Social Security and/ or Supplemental Security Income (SSI) if you are *not* able to work.
- Some counties treat GA/GR as a "loan," and will make you pay back the GA/GR money you received if you have enough income, get a job, or get approved for SSDI or SSI disability benefits.
- Some counties also provide you and/or require you to use employment services to help you find, get, and keep a job. But you can't be required to join and use employment services if you are "unemployable." You may be considered unemployable if you are: older than 70 years old; responsible for the substantial

[1456] See County Human Services Agencies, CNTY. WELFARE DIRS. ASS'N OF CAL., http://www.cwda.org/links/chsa.php.
[1457] See General Relief Policy, CNTY. OF LOS ANGELES, http://dpss.lacounty.gov/dpss/gr/pdf/general_relief_policy.pdf.



and continuous care of a family member; or you are disabled. If you have not been screened by the county welfare agency to determine if you are employable, or you believe the county has made a mistake in determining that you are "employable," and you have been required to participate in an employment program or denied GA/GR assistance, you should consider appealing. It's best to contact your local legal aid provider to help with filing your appeal (you can visit the website http://lawhelpca.org/find-legal-help to browse legal aid providers, and see list of legal aid providers at the back of this guide on PG. 1127).[1458]

I BELIEVE MY APPLICATION FOR GENERAL ASSISTANCE/GENERAL RELIEF BENEFITS WAS WRONGLY DENIED OR STOPPED. HOW CAN I APPEAL?

If you are denied or lose General Assistance/General Relief benefits, you can request a hearing at any time. The back of any county notice about General Assistance/General Relief eligibility should contain a form that explains how to request a hearing. You may also request a hearing by calling your county welfare agency. We recommend requesting a hearing in writing, so that there is a record of your compliant.

- General Assistance/General Relief is a county program, so hearings are held by the county, and can only be requested by contacting the county social services agency. Each county has its own specific procedures regarding appeals hearings.
- For help filing an appeal, it's best to find a local legal aid provider. You can search for one by visiting the website http://lawhelpca.org/find-legal-help, and see the list of legal aid providers on PG. 1127.

CAN I GET MY MEDI-CAL HEALTH INSURANCE TO COVER A MEDICAL BILL I GOT AFTER MY RELEASE BUT BEFORE I HAD SIGNED UP FOR MEDI-CAL?

Yes. You can retroctively get reimbursed for eligible medical expenses incurred up to three months before you applied for Medi-Cal.[1459] You must submit a form MC210a (Supplement to Statement of Facts for Retroactive Coverage, available in Appendix E on PG. 514), along with any relevant receipts and unpaid bills, within one year of incurring the expenses.[1460] NOTE: you may be eligible for retroactive coverage even if you did not apply or were found ineligible for ongoing coverage.

CALWORKS

CalWORKs provides monthly cash aid, access to food and health care benefits, and other services for families with children.[1461] The State of California runs CalWORKs as part of the federal government's Temporary Assistance for Needy Families (TANF) program.[1462] Both the federal and California governments set the major rules for this program, but each county runs their own program, and each county may have slightly different rules for how to apply and available services.[1463]

AM I ELIGIBLE FOR CALWORKS?

CalWORKs is for families with children who need support because at least one parent is unemployed (defined as working less than 100 hours per month), disabled, absent, in jail or prison, or dead, and for needy caretakers of foster child(ren).[1464]

If you're a parent or caretaker with at least one child in your home, you may be able to get CalWORKs if all of the following requirements are met:

- You, the parent or caretaker, must (1) be a California resident and (2) be legally present in the U.S. (either a citizen or legal permanent resident).[1465]
- At least one child in your home must (1) be under age 18,[1466] and (2) need support because at least one parent is unemployed, disabled, absent, in jail or prison, or dead.[1467]
- Your family's resources must be no greater than the CalWORKs resource limit.

A CHILD OVER 18?

There is an exception for age limit of a child. If there is a child over 18 that is living at home but is expected to complete high school before his/her 19th birthday, you may be eligible for CalWORKs.

[1458] See Find a Lawyer or Court Program, LAWHELPCA.ORG, http://lawhelpca.org/find-legal-help.
[1459] 22 CCR § 50197(a)(2).
[1460] 22 CCR § 50148; 22 CCR § 50161.
[1461] See California Work Opportunity and Responsibility to Kids (CalWORKs), CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/calworks/.
[1462] See Office of Family Assistance. Temporary Assistance for Needy Families (TANF) program, http://www.acf.hhs.gov/programs/ofa/programs/tanf/about.
[1463] See CAL. WELF. & INST. CODE § 11000. The California Department of Social Services interprets these laws through All County Letters and its Manual of Policy and Procedures, Divisions 40-45, and 80-82.
[1464] See California Work Opportunity and Responsibility to Kids (CalWORKs), CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/calworks/; see also CAL. WELF. & INST. CODE § 112201.
[1465] See CAL. WELF. & INST. CODE § 11104; see also SHD Paraphrased Regulations: Citizenship-Aliens-Residency, http://www.dss.cahwnet.gov/shd/res/pdf/ParaRegs-CalWORKs-Citizenship-Aliens-Residency.pdf.
[1466] CAL. WELF. & INST. CODE § 11250.
[1467] CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://101.org/ca/programs/income_support/calworks/program2.htm.



- For CalWORKs, resources include cash or property that you own, can convert to cash, or can use to support yourself. Some examples are savings accounts, stocks, and bonds. The resource limit is slightly higher for families that include a senior citizen (age 60 or over).
- For CalWORKs, certain things that do NOT count as resources are: your home, household goods (like furniture or appliances), some types of trusts, and your car if it's worth $4,650 or less. For more information, please visit CalWORKs resource income glossary at http://ca.db101.org/glossary_item.aspx?item-id=1388.

- Your family's income must be no greater than the CalWORKs income limit.[1468]
  - For CalWORKs eligibility, your family's income includes (1) earned income, or money you earn by working, plus (2) unearned income, or money you receive from sources other than work.[1469] For example, unearned income includes: public benefits, interest from a trust or investment, or spousal support. For CalWORKs eligibility, income does not include SSI, loans and grants, Earned Income Tax Credit (EITC), Federal Relocation/Disaster benefits, and certain other items, family size, and where you live.



IMPORTANT: Counting your income to see if you're eligible for CalWORKs works differently than counting your income to calculate your benefit amount. Read more online at: http://ca.db101.org/ca/programs/income_support/calworks/program2.htm

HELPFUL HINT:
CALWORKS COMBINED WITH OTHER BENEFITS PROGRAMS:

- **If you receive SSI disability benefits, you do not qualify for CalWORKs.** However, other people in your family may still qualify, and you can apply for them. Your income will not be counted.[1470] This means when CalWORKs staff determines your family's eligibility and cash aid amount, they won't count you as a family member, and they won't count your SSI benefits as part of your family's income. For more information about SSI benefits see PG. 486.
- **If you receive SSDI benefits, you may still qualify for CalWORKs.** However, part of your SSDI benefits will count as income when CalWORKs determines your eligibility and calculates your monthly cash aid.[1471] For more information about SSDI benefits, see PG. 482.
- If you're approved to get CalWORKs, you may be automatically eligible for CalFresh ("food stamps") and Medi-Cal.[1472] If your household is receiving cash aid through CalWORKs, you are "categorically eligible" for CalFresh. **This means the CalFresh Program accepts the CalWORKs worker's determination of your eligibility based on information you gave when applying for CalWORKs.** For more information on CalFresh, see PG. 454. For more information on Med-Cal, see PG. 466.

Learn how to apply for CalWORKs on PG. 452. You may also visit the following website for tips on applying to CalWORKs: http://lsnc.net/calworks-tips-and-fact-sheets/.



IMPORTANT INFORMATION ABOUT HOUSEHOLD SIZE: In calculating your benefits, CalWORKs may not count some people in your home as part of your family. Ask your county CalWORKs office for details on who will be included in the "household size." Examples of people who may not count, even if they live with you, are anyone who: is receiving SSI benefits; is a noncitizen or does not have permanent legal presence in the U.S.; foster children receiving foster care payments; sponsored noncitizens who receive support from sponsors; any anyone who was sanctioned by the CalWORKs program.

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET CALWORKS?

Maybe. If any of the following statements apply to you, you might not be eligible for CalWORKs:

- You are in violation of a condition of probation or parole, as found by a court or administrative judge.[1473]

[1468] See Glossary: Minimum Basic Standards of Adequate Care, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/glossary_item.aspx?item-id=1372 (This limit is also called a "needs standard" or "Minimum Basic Standard of Adequate Care").
[1469] See CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/glossary_item.aspx?item-id=763.
[1470] CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/faqs.htm#_q1404.
[1471] CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/faqs.htm#_q1404.
[1472] How to Apply for CalFresh Benefits, Formerly Known as Food Stamps, CAL. DEP'T OF SOC. SERVS., http://www.dss.cahwnet.gov/foodstamps/PG847.htm.
[1473] 42 U.S.C. § 608(a)(9)(A).



- You have been found guilty of an Intentional Program Violation (IPV) involving fraud or misuse of public benefits.[1474] Depending on how many IPVs you have, and what they were for, you may be disqualified from CalWORKS (and CalFresh) for varying periods of time—anywhere between 12 months to life.[1475]
- You are a **"fleeing felon."** In other words, if you are hiding or running away to avoid felony charges, and/or to avoid being incarcerated for a felony conviction you will not be eligible for CalWORKs.[1476] But other people in your household may be and you will be required to be listed on the application and/or report forms and your income will be counted when anyone in your family applies for or gets CalWORKs.[1477]

Am I ineligible for CalWORKs because of a past felony drug conviction?

No, not anymore. California's law changed! Read more in the important update box below.

IMPORTANT UPDATE!

CalWORKs and CalFresh Rules Changed in 2015, Opening Up Eligibility to People with Prior Drug Felony Convictions

GREAT NEWS! California eliminated the ban on aid for people with past drug-related felony convictions. Starting April 1, 2015, you could no longer be disqualified from CalWORKs or CalFresh because of a prior drug-related felony conviction and no longer have to report a prior drug felony on any CalWORKs or CalFresh application or report (see more on CalFresh "food stamps" beginning on PG. 454). If you applied for CalWORKs or CalFresh before April 1, 2015, and were denied due to a drug conviction, it's recommended that you *reapply* under the newer rules.

If you are on parole, probation, or another form of community supervision, it's important that you follow the rules of your supervision to remain in the CalWORKs and/or CalFresh program(s). If you violate the terms of your supervision, you will lose your CalFresh and CalWORKs.[1478]

If anyone in your family was already receiving CalWORKs aid, your benefits should have been automatically added to your family's April 2015 Grant. Once you are added to CalWORKs, you are also required to participate in the Welfare-to-Work program requirement (see PG. 476). If you were already meeting Welfare-to-Work requirements, you became newly eligible for transportation costs, subsidized child care, and other work supports. Contact your family's CalWORKs caseworker if you do not receive a letter from the county about these new benefits and rules by March 1, 2015.

WHAT BENEFITS AND SERVICES CAN I GET THROUGH CALWORKS?

You can get cash assistance, employment services, and other benefits.

Cash assistance: CalWORKs provides monthly cash aid to help pay for basic needs such as housing, food, utilities, clothing, and medical care. Your monthly aid ("grant level") is based on two factors:

1. *Your family size:* Generally, if you have a larger family, you'll qualify for more cash aid; and if you have a smaller family, you'll qualify for less.
2. *Where you live:* Generally, if you live in an urban county ("Region I") where living costs are higher, you'll qualify for more cash aid; and if you live in a rural county ("Region II"), you'll qualify for less.[1479]

Generally, parents or caretakers can get CalWORKs cash aid for up to 48 months. But in many cases, a child in the family can keep getting cash aid after the 48 months are up.[1480]

ABOUT THE 48-MONTH LIMIT

This 48-month limit is a lifetime limit. In special situations, you can keep getting cash aid for longer. Contact your county CalWORKs office for details.

Employment services: CalWORKs provides job training and job counseling services through a program called Welfare-to-Work (WTW).[1481] For more information about Welfare-to-Work, see PG. 476.

[1474] See CalWORKS Handbook: Intentional Program Violations, CNTY. OF SANTA CLARA, http://www.sccgov.org/ssa/afdc/afchap53.pdf.
[1475] See CalWORKS Handbook: Intentional Program Violations, CNTY. OF SANTA CLARA, http://www.sccgov.org/ssa/afdc/afchap53.pdf.
[1476] See Cal. DSS ACL No. 13-70, available at http://www.dss.cahwnet.gov/lettersnotices/EntRes/getinfo/acl/2013/13-70.pdf; California Work Opportunity and Responsibility to Kids (CalWORKs), CAL. DEP'T OF SOC. SERVS., California DHSS ACL No. 14-78, http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2014/14-78.pdf; see also The Consequences of Criminal Proceedings, BRONX DEFENDERS, http://www.reentry.net/ny/library/attachment.256160.
[1477] California Work Opportunity and Responsibility to Kids (CalWORKs), CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2014/14-78.pdf ("Fleeing felon" is a legal term for someone "fleeing to avoid prosecution, or custody or confinement after conviction" for a felony offense); see also 42 U.S.C.§ 1382(e)(4); 42 U.S.C. § 402(x)(I)(A); The Consequences of Criminal Proceedings, BRONX DEFENDERS, http://www.reentry.net/ny/library/attachment.256160.
[1478] *See* Cal. Welf. & Inst. Code §§ 11251.3, 17012.50.
[1479] CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/glossary_item.aspx?item-id=6521.
[1480] CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/faqs.htm#_q1395.

Other benefits: Depending on your situation and what your county provides, you may qualify for other benefits through CalWORKs, such as:

- CalFresh (also called "food stamps," see PG. 454 for more information)
- Medi-Cal (see PG. 466 for more information)
- Child care services
- Family planning services
- Child health and disability prevention (CHDP) services
- Homeless and housing assistance
- Emergency cash aid
- Child support enforcement.[1482]

HOW DO I APPLY FOR CALWORKS?

Contact your local county welfare agency to get an application form and start the application process. For a directory of county welfare agencies in California, see Appendix A, PG. 505 or visit the website: www.cwda.org/links/chsa.php.

If you have Internet access, you can also visit MyBenefits CalWIN at https://www.mybenefitscalwin.org/ to learn more about CalWORKs, check if you are eligible, and apply online.

CAN I APPLY FOR CALWORKS WHILE INCARCERATED?

No. You can only apply for CalWORKs once you have been released from prison or jail, and you have active custody of a child as a parent or caretaker.[1483] But if you're currently incarcerated, you can and should look at the eligibility requirements so you are more aware of your options upon release.

You need to regain custody before you can apply for CalWORKs; and you can only have physical custody after you have been released. (To learn about how you can seek custody after release, go to the FAMILY LAW CHAPTER, PG. 714).

HOW DO I RECEIVE MY CALWORKS BENEFITS?

If you are eligible for CalWORKs benefits, you will be issued your benefits on an Electronic Benefits Transfer (EBT) card unless you request that your benefits are directly deposited into your personal bank account. You will need to set up a PIN number for the card to use it, and can then use the card at most grocery stores and ATMs.[1484]

EBT CARD LOST OR STOLEN?

If your EBT card is lost or stolen, or if you need to change your PIN, call (877) 328-9677

To avoid unnecessary fees and surcharges when withdrawing your CalWORKs cash, you should only use the card at ATMs with the "MoneyPass" symbol, or the same "Quest Mark" symbol that appears on the card-sleeve. To find free ATM locations, look for the appropriate symbol, ask your county worker, or visit the following website: http://www.ebtproject.ca.gov/Library/Cash_Access.pdf.

This "MoneyPass" symbol means it's FREE to use your EBT card at that ATM location.

The "Quest Mark" symbol is on storefronts, checkout lanes, ATMs, and credit card machines to tell you that your EBT card can be used there.

- If the "Quest Mark" looks like this: . . . it's only for cash benefits.
- If the "Quest Mark" looks like this: . . . it's only for CalFresh (food stamps) benefits.
- If the "Quest Mark" looks like this: . . . it can be used for BOTH CalFresh and cash benefits.

ONCE I'M ENROLLED IN CALWORKS, WHAT RULES MUST I FOLLOW?

To keep getting CalWORKs benefits, you and your family must stay within income and resource limits.[1485] In addition, you and all of the adults in your family must follow

TYPES OF CHANGES TO REPORT WITHIN 10 DAYS:

- moving to a new address;
- having someone join or leave your household;
- adding to your household a new member who has a drug-related felony, is in violation of a probation or parole condition, or has a warrant out for their arrest.

[1481] California Work Opportunity and Responsibility to Kids (CalWORKs), CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG141.htm; see also CAL. WELF. & INST. CODE § 11320.1.
[1482] California Work Opportunity and Responsibility to Kids (CalWORKs), CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG78.htm, http://www.dss.cahwnet.gov/shd/res/pdf/paraRegs-CalWORKs-Special-Programs.pdf; CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/program2b.htm; CalWORKs, ALAMEDA SOC. SERVS., http://www.alamedasocialservices.org/public/services/financial_assistance/calWorks_eligibility.cfm.
[1483] 42 U.S.C. § 608(a)(1).
[1484] California Electronic Benefit (EBT) Card, STATE OF CAL. HEALTH AND HUMAN SERVS. AGENCY, http://www.cdss.ca.gov/cdssweb/entres/forms/English/Pub387.pdf.



requirements related to Welfare-to-Work activities, reporting changes, and maintaining children's access to health care and school.

- ***Welfare-to-Work:*** Generally, you and any other adults in your family must participate in welfare-to-work activities for a certain number of hours per week. The hours and activities required of you will depend partly on your family situation, and partly on what county you live in (see PG. 476). In special cases, adults may be "exempt" (excused) from welfare-to-work requirements. You may be exempt if you are: disabled for 30+ days; under age 19 and attending school full-time; over age 60; caring for a relative's child who is at risk of being put in foster care; OR caring for a sick or disabled person.[1486]
- ***Reporting:*** You must regularly report changes to your income and living situation.[1487] If both you and your child are on CalWORKs, you must report once every 6 months via a Semi-Annual Income Eligibility Report known as "SAR 7." If only your child gets CalWORKs, you must report once a year. In addition, you must immediately report certain changes within 10 days.
- ***Children:*** If your child is under age 6, he or she must have all standard immunizations. If your child is of school age and under age 16, he or she must be attending school regularly.[1488]

I BELIEVE MY CALWORKS WAS WRONGLY DENIED OR STOPPED. HOW DO I APPEAL?

If the county decides to deny your application, it must mail you a "Notice of Action" explaining why you were denied. It must do so within 30 days of receiving your application. If you disagree, you have the right to ask for a State Hearing to appeal (challenge) the denial. You must request a hearing within 90 days of the county's decision.[1489]

Ways you can request a State Hearing:

- ***By phone.*** Call the California Department of Social Services (CDSS) at 1-800-952-5253 (TDD: 1-800-952-8349).
- ***By mail.*** Write your request on the back of the Notice of Action, or write a letter. Then mail your request to the county welfare agency's address, which is on your Notice, or mail it to: CDSS Office of Hearings and Appeals; 744 P Street, M.S. 19-36; Sacramento, CA 95814.
- ***By fax.*** Fax request to the CDSS State Hearings Division at 916-651-5210.[1490]

Tips to remember when requesting a State Hearing:

- It's recommended that you request a hearing *in writing*, so that there is a record of it. Keep a copy of your written request.
- In your request, clearly state that you want a hearing, and briefly state your reason.
- If you have a disability, note this in your request and specify any accommodations you will need. For example, if you need a large print of any official documents or a wheelchair-accessible room, write this in your request.[1491]

Rights you have when requesting a State Hearing:

- You have a right to have the county welfare agency's help, if you ask for it, with understanding how to appeal a decision about your case and what your next steps should be.
- You have a right to a free interpreter who will explain all procedures and also interpret for you at the hearing in your preferred language. If you want an interpreter, state this in your request, and specify your language.
- You have a right to choose a representative (such as a friend, family member, lawyer, or advocate) who will ask for a hearing on your behalf. You also have a right to bring anyone to your hearing if you do not want to go alone.[1492]

[1485] CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/program2.htm.
[1486] CalWORKs: The Details, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/program2c.htm; see also CalWORKs: FAQs, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/faqs.htm#_q1404.
[1487] Reporting Changes for CalWORKs and CALFRESH, STATE OF CAL. HEALTH & HUMAN SERVS., http://www.cdss.ca.gov/cdssweb/entres/forms/English/AR2.pdf; To view a copy of the SAR 7 form, please visit: http://www.ladpss.org/dpss/forms_library/form.cfm?id=2265&file=CWCF SAR Flyer ENG (ag 051513).pdf.
[1488] CalWORKs: The Details, DISABILITY BENEFITS 101: WORKING WITH A DISABILITY IN CALIFORNIA, http://ca.db101.org/ca/programs/income_support/calworks/program2.htm.
[1489] Application for CALFRESH BENEFITS, STATE OF CAL. HEALTH AND HUMAN SERVS. AGENCY, http://www.cdss.ca.gov/cdssweb/entres/forms/English/CF285.pdf; 7 C.F.R. § 273.15(h); M.P.P. § 22-004.1, 63-804.3.
[1490] Application for CALFRESH BENEFITS, STATE OF CAL. HEALTH AND HUMAN SERVS. AGENCY, http://www.cdss.ca.gov/cdssweb/entres/forms/English/CF285.pdf; see also Appeals/Fair Hearings, ALAMEDA SOC. SERVS., http://www.alamedasocialservices.org/public/services/appeals/index.cfm.
[1491] Requesting a Fair Hearing, CAL. GUIDE TO FOOD BENEFITS, http://foodstamPGuide.org/requesting-a-fair-hearing/.
[1492] 7 C.F.R. § 273.15(i)(1); M.P.P. § 22-004.211; Requesting a Fair Hearing, CAL. GUIDE TO FOOD BENEFITS, http://www.cdss.ca.gov/cdssweb/entres/forms/English/CF285.pdf.



III. FOOD BENEFITS

WHAT WILL I LEARN?

- **About the different types of food benefits that you may qualify for—CalFresh (food stamps), EFAP, and WIC**
- **Who is eligible to receive food benefits**
- **How to receive food benefits**
- **How your criminal record could affect your ability to get food benefits**
- **If you can apply for food benefits while incarcerated**
- **How and where to apply for food benefits**
- **What to do if you were wrongly denied food benefits**
- **Where to find food (contact information for local food banks)**

CALFRESH (FOOD STAMPS)

CalFresh is California's "food stamps" program, providing money for low-income adults and their families to buy food. This program is part of the federal program called Supplemental Nutrition Assistance Program (SNAP).[1493] Each county runs its own CalFresh program and issues food benefits (food stamps) in the form of a plastic Electronic Benefit Transfer (EBT) card, which looks and feels like a credit card. CalFresh includes the California Food Assistance Program (CFAP), which provides the same benefits as CalFresh but to *noncitizen legal permanent residents* (see PG. 454 for CFAP's requirements).

AM I ELIGIBLE FOR CALFRESH?

There are many factors that are considered to determine whether you are eligible for CalFresh. Most are related to residency, citizenship/immigration status, and income. In some cases, certain people in a household may qualify for CalFresh while others do not, even though they live in the same house (see PG. 454 for the definition of a "household").

HELPFUL HINT
CalFresh "Households"

For CalFresh, a "household" can be one person, or it can be any group of people who live together, buy food, and make meals together. This means if you live with other people, but you buy and prepare food separately from them, you can apply for food benefits as part of a separate household.[1494] Spouses and parents and their children under age 22 who live together must apply as a single "household."[1495]

To be eligible for CalFresh (food stamps), you must:

- Be a resident of the county where you are applying.[1496]
- Be a U.S. citizen or a "qualifying noncitizen." You're a "qualifying noncitizen" if you: (1) Are a lawful permanent resident ("LPR" or "Green Card Holder") and (2) you meet all other CalFresh eligibility requirements[1497]
- Have a monthly total income that is no greater than the CalFresh income limit.[1498] The maximum total income you can have will depend on your household size, and the maximum limits change every year. Contact your local CalFresh office or call the toll free number below to learn what the limit is for your household when you're ready to apply. You can also use this online tool to calculate how much CalFresh money you can get per month: http://lsnc.net/calculator/FFY2014_Food_Stamp_Calculator_Final_PlusNovemberCut.xls.
- Call toll-free English: 1-877-847-3663 Spanish: 1-888-926-6432
- You can also look online at http://www.cdss.ca.gov/foodstamps/PG3628.htm

CALIFORNIA FOOD ASSISTANCE PROGRAM (CFAP)

LPRs (Green Card holders) who have not lived in the U.S. for 5 years technically receive CalFresh benefits through CFAP, which is a program within CalFresh. Counties treat and administer CFAP benefits the same as CalFresh benefits. CFAP beneficiaries are treated the same and use their benefits the exact same way that CalFresh beneficiaries do. When you apply for CalFresh, the county automatically determines your CFAP eligibility too.

For more information, see the CalFresh handbook at http://www.sccgov.org/ssa/foods/fschap31.pdf.

[1493] See Supplemental Nutrition Assistance Program (SNAP), U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap.
[1494] See Food Stamps Regulation Eligibility Standards, CAL. DEP'T OF SOC. SERVS., http://www.calfresh.ca.gov/entres/getinfo/pdf/fsman4a.pdf.
[1495] M.P.P. § 63-402.1; 7 C.F.R. § 273.1(a)(3).
[1496] See Eligibility and Issuance Requirements, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/foodstamps/PG841.
[1497] See Eligibility and Issuance Requirements, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/foodstamps/PG841.
[1498] See Supplemental Nutrition Assistance Program (SNAP), U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., http://www.fns.usda.gov/snap/fact-sheet-resources-income-and-benefits.



- Keep in mind that the maximum gross income limits do not always apply to households with mixed immigration status and/or people who are seniors or disabled.
- If you have less than $200 in liquid resources, you may be entitled to expedited benefits, and receive your benefits within three working days. For CalFresh purposes, "liquid resources" include all funds readily available to your household, such as; cash on hand, money in bank accounts, trust deeds, stocks, bonds, or individual retirement account (IRA) funds.
- You can still qualify for CalFresh if you own the home you live in, own a car, have a job, and/or do not have children.

HELPFUL HINT

How Other Public Benefits Programs Combine With CalFresh

- Individuals who receive SSI/SSP benefits are currently not eligible for CalFresh, but other people in the household may still qualify. SSI benefits, for example, already include the value of CalFresh benefits, through a process known as "cash out." For more information, please visit http://cfpa.net/CalFresh/CFPAPublications/CalFresh-Cashout101-2013.pdf.
- If you or your household is receiving cash aid—such as CalWORKs or GA/GR, you are "categorically eligible" for CalFresh (food stamps). However, you can still qualify CalFresh without receiving cash aid like CalWORKs or GA/GR, and in fact, most CalFresh recipients do not receive cash assistance.[1499]

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET CALFRESH?

Maybe. But even if you are not eligible, others in your household may be. You might be disqualified if:

1. You are a "fleeing felon"—meaning you are hiding or running away to avoid felony charges or to avoid being incarcerated for a felony conviction.[1500]
2. You are in violation of a condition of your probation or parole, as found by a court or administrative judge.[1501]
3. You have been found guilty of an Intentional Program Violation (IPV) involving fraud or misuse of public benefits.[1502] Depending on how many IPVs you have, and what they were for, you may be disqualified from CalFresh and CalWORKs for varying periods of time—anywhere between 12 months to life.[1503]

What does it mean to be "found guilty of an Intentional Program Violation(IPV)"?

If a county welfare agency thinks you violated its rules when applying for or getting benefits, it may investigate and hold an administrative hearing to determine if you are guilty. It may also ask you to admit guilt by signing a Disqualification Consent Agreement (DCA). When you apply for CalWORKs, any prior IPV counts against you if you were found guilty at a hearing, or you admitted guilt by signing a DCA (even if you did not have a hearing).

IMPORTANT UPDATE!

CalWORKs and CalFresh Now Open to People with Prior Drug Felony Convictions

GREAT NEWS! California eliminated the ban on aid for people with past drug-related felony convictions. Starting April 1, 2015, you could no longer be disqualified from CalWORKs or CalFresh because of a prior drug-related felony conviction and no longer have to report a prior drug felony on any CalWORKs or CalFresh application or report (see more on CalFresh "food stamps" beginning on PG. 454). If you applied for CalWORKs or CalFresh before April 1 2015, and were denied due to a drug conviction, you can *reapply* under the newer rules. **NOTE: If you are on parole, probation, or another form of community supervision,** it's important that you follow the rules of your supervision to remain in the CalWORKs and/or CalFresh program(s). If you violate the terms of your supervision, you will lose CalFresh and CalWORKs.[1504]

If anyone in your family was already receiving CalWORKs aid, your benefits should have been automatically added to your family's April 2015 Grant. Once you are added to CalWORKs, you are also required to participate in the Welfare-to-Work program requirement (see PG. 476). If you were already meeting Welfare-to-Work requirements, you became newly eligible for transportation costs, subsidized child care, and other work supports. Contact your family's CalWORKs caseworker if you do not receive a letter from the county about these new benefits and rules by March 1, 2015.

[1499] Overview of the Application Process: CalFresh Handbook, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/calfreshoutreach/res/Toolkit/Handbook-GeneralMarket/GeneralMarketHandbook_CH5_OverviewoftheApplicationProcess.pdf.

[1500] "Fleeing felon" is a legal term for someone "fleeing to avoid prosecution, or custody or confinement after conviction" for a felony offense. See 42 U.S.C. §§ 1382(e)(4), 402(x)(I)(A); see also Bronx Defenders, The Consequences of Criminal Proceedings, http://www.reentry.net/ny/library/attachment.256160.

[1501] 42 U.S.C. § 608(a)(9)(A).

[1502] 7 C.F.R. § 273.16(b)

[1503] Application for CalFresh Benefits, STATE OF CAL., HEALTH AND HUMAN SERVS. AGENCY, http://www.cdss.ca.gov/cdssweb/entres/forms/English/CF285.pdf.

[1504] *See* Cal. Welf. & Inst. Code §§ 11251.3, 17012.50.



HOW DO I APPLY FOR CALFRESH?

The process may vary by county. Generally, it involves filling out a form, providing documents, and having an interview. For details about how to apply in your county, contact the CalFresh office in your area. For a directory of county CalFresh offices, see Appendix A, on PG. 505.[1505] For information on how to apply for CalFresh benefits in your county, please call 1-877-847-3663. You can also apply online at http://benefitscal.org.

CAN I APPLY FOR CALFRESH WHILE INCARCERATED?

Yes! You can't receive CalFresh benefits until you're out, but, under some circumstances, you can apply while in prison or jail.[1506] Although you may apply for CalFresh while incarcerated, you should not do so unless you are less than 30 days from your release date. (If you apply for CalFresh more than 30 days before your release date, the county social services agency will probably deny your application because they will find that you are not eligible for the program yet – but you can re-apply again once you're within 30 days of release or after you get out.[1507]) If you apply for CalFresh benefits while incarcerated, you will generally need to provide proof of your release date and a local address within the county.[1508] You must also complete and sign the application and designate an ***Authorized Representative*** (see Helpful Hint Box for more information.)[1509] If you are approved for CalFresh benefits, you will not begin receiving these benefits until after you get out.[1510]

HOW DO I RECEIVE MY CALFRESH BENEFITS?

If you are approved for CalFresh benefits, they will be issued on an Electronic Benefits Transfer Card (EBT). You will need to set up a PIN number for the card to use it, and can then use the card at most grocery stores.

In some counties, people who are homeless, elderly or disabled can also use their benefits at certain restaurants through the CalFresh Restaurant Meal Program. Visit http://www.ebtproject.ca.gov/clientinformation/calfreshrmp.shtml to see which counties participate in the CalFresh Restaurant Meal Program and to locate participating restaurants.

HELPFUL HINT

CalFresh for People Living in Drug & Alcohol Treatment Centers and Other Licensed Residential Facilities:

If you are required to live in a residential facility (for example, a drug/alcohol treatment center) after getting out of prison or jail, then special CalFresh rules apply to you:

- If you live in a treatment/residential facility that does NOT provide a majority of your meals, then you may apply as a one-person CalFresh "household."
- However, if you live in a treatment/residential facility that provides the majority of your meals, then you are only eligible for benefits that the facility applies for, and you MUST be certified for CalFresh through an Authorized Representative (AR). Either you or your AR may sign the application forms. The AR is designated in writing by the head of the household. The AR must sign the form "Electronic Benefit Transfer (EBT) Request for Designated Alternate Cardholder/Authorized Representative" (CSF 64 form) and the benefits will be assigned to the facility, not to the resident (see sample CSF 64 form in Appendix B, PG. 507).[1511]

[1505] County Welfare Department List, CAL. DEP'T OF SOC. SERVS., http://www.calfresh.ca.gov/PG839.htm.
[1506] Food Stamps (now called Supplemental Nutrition Assistance Program), JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, http://www.bazelon.org.
[1507] When the county social services department receives your application, it must make a decision about your eligibility within 30 days of receiving your application. 7 C.F.R. § 273.2. If your release date is more than 30 days away, the social services department will not be able to verify your eligibility in time, so it will deny your application. Telephone call with Danielle Llewellyn, CalFresh Specialist, Alameda County Social Services Agency, Apr. 20, 2015.
[1508] Telephone call with Danielle Llewellyn, CalFresh Specialist, Alameda County Social Services Agency, Apr. 20, 2015.
[1509] Application for CalFRESH, Cash Aid, and/or Medi-Cal/Health Programs, STATE OF CAL. HEALTH & HUMAN SERVS., CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/entres/forms/English/SAWS2PLUS.pdf.
[1510] See Eligibility and Issuance Requirements, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/foodstamps/PG841.htm. As always, contact your county CalFresh office or an advocate should you have any questions regarding CalFresh benefits. Many thanks to Liz Gomez, CalFresh Outreach Manager at the Alameda County Community Food Bank, for her advice and feedback regarding the CalFresh application process.
[1511] Common-Place Handbook, CAL. DEP'T OF SOC. SERVS., http://www.sccgov.org/ssa/cp/cpchap16.pdf.



ONCE I'M ENROLLED IN CALFRESH, WHAT RULES MUST I FOLLOW TO STAY ELIGIBLE?

Purchase requirements: You can only use CalFresh benefits to buy food. You can't use CalFresh benefits to buy any non-food items such as alcoholic beverages, tobacco, household cleaning supplies, toiletries, or cosmetics, and you can't exchange CalFresh benefits for money. If you sell your CalFresh benefits or use them for non-food items, you can be charged with fraud and you could be banned from receiving CalFresh and other food benefits for life.

Time Limits: Typically, every able-bodied adult (ages 18-49) without dependents in your household is limited to 3 months of aid in a 36-month period unless you are working at least 20 hours per week; participating in an approved work activity; OR doing workfare.[1512] But California HAS WAIVED this requirement through September 30, 2015, due to California's high unemployment rate.[1513]

Work Requirements: As a CalFresh recipient, your county may require you to participate in an Employment and Training program, unless your county is listed as a "Labor Surplus Area" (LSA). An LSA is a county that, during the last two years, has had an unemployment rate of 20% or more above the national average. Right now, all counties are expected to be listed as LSAs until December 2016. Additionally, if you are employed, but choose to leave your job, and apply for or receive CalFresh benefits, you can't get CalFresh for 3 months.

EXCEPTIONS TO WORK REQUIREMENT

Certain people are exempt (excused) from these work requirements.

You may be exempt if you are:

- physically or mentally unfit to be working
- already engaged in the CalWORKs work program
- receiving unemployment insurance benefits
- participating in a drug or alcohol addiction treatment program
- enrolled in school on at least a half-time basis
- an honorably discharged veteran of the U.S. military.

Contact your county CalFresh office for details.

Report Requirements: Most CalFresh households must submit a report, called a Semi-Annual Income Eligibility Report (SAR 7) every six months.[1514] Additionally, they must immediately report a change in address, any changes in employment, changes in people who live with the family, and anytime their income goes over the Interim Report Threshold. Failure to report within the time limits could result in an Intentional Program Violation (IPV) (IPVs explained on PG. 455).

Recertification requirements: When you first enroll in CalFresh, your enrollment will only last for a limited time called a "certification period." This is usually one year, but in some cases it's only a few months. If you want to get CalFresh for longer than that, then before this period ends, you must apply for recertification—that is, prove that you're still eligible for CalFresh. Before the first day of the last month of your certification period, the county should send you a "Notice of Expiration" (NOE) that says when, where, and how to apply for recertification. If your certification period is 1-2 months, the county must give you a NOE at the start of your certification period.[1515]

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IMPORTANT: To keep getting CalFresh without interruption, apply for recertification on or before the 15th day of the last month of your certification period; For example, if your 1-year certification period runs April 1, 2014 to March 31, 2015, you must recertify BEFORE March 15, 2015. Please note: If your certification period has expired and your recertification application has been delayed, and your household has very little income, check to see if you qualify for "expedited services" (ES) CalFresh (read more on PG. 454). If so, you may be able to get recertified for CalFresh benefits in just 3 days.

I BELIEVE MY CALFRESH WAS WRONGLY DENIED OR STOPPED. HOW DO I APPEAL?

If the county denies your CalFresh application, it must mail you a Notice of Action explaining why. It must do so within 30 days of getting your application. If you disagree, you have a right to ask for a State hearing to appeal (challenge) the denial. You must request a hearing within 90 days of the county's decision.[1516] In order to continue receiving benefits during your appeal, with assistance being paid while your appeal is pending, you must request a hearing within 10 days.

[1512] Exceptions: M.P.P. § 63-407.21(b)-(f); 63-406.1; see Eligibility and Issuance Requirements, CAL. DEP'T OF SOC. SERVS., http://www.calfresh.ca.gov/PG841.htm, http://foodstamPGuide.org/work-requirements-overview/.
[1513] Eligibility and Issuance Requirements, CAL. DEP'T OF SOC. SERVS., http://www.calfresh.ca.gov/PG841.htm.
[1514] To view a copy of the SAR 7 form, please visit: http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/SAR7.pdf.
[1515] 7 C.F.R. 273.14(b); M.P.P. § 63-504.61(a); Overview of the Application Process: CalFresh Handbook, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/calfreshoutreach/res/Toolkit/Handbook-GeneralMarket/GeneralMarketHandbook_CH5_OverviewoftheApplicationProcess.pdf.
[1516] 7 C.F.R. § 273.15(h); MPP §§ 22-004.1, 63-804.3.Overview of the Application Process: CalFresh Handbook, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/calfreshoutreach/res/Toolkit/Handbook-GeneralMarket/GeneralMarketHandbook_CH5_OverviewoftheApplicationProcess.pdf.



Ways you can request a State Hearing:

- *By phone.* Call California Department of Social Services (CDSS) at 1-800-952-5253 (TDD 1-800-952-8349).[1517]
- *By mail.* Write your request on the back of your Notice, or write a letter. Then mail your request to the county welfare agency's address, which is on your Notice—OR mail it to: CDSS Office of Hearings and Appeals; 744 P Street, M.S. 19-36; Sacramento, CA 95814.
- *By fax.* Fax your request to: CDSS State Hearings Division at 916-651-5210.[1518]

Tips to remember when requesting a State Hearing:

- It is best to request a hearing in writing, so that there is a record of it. Keep a copy of your request.
- In your request, clearly state that you want a hearing, and briefly state your reason for wanting one.
- If you have a disability, note this in your request and specify any accommodations you will need—such as a need for documents to be in a larger font, or in a room with wheelchair accommodations.[1519]

Rights you have when requesting a State Hearing:

- You have a right to have the county welfare agency's help, if you ask for it, with understanding how to appeal a decision about your case and what your next steps should be.
- You have a right to a free interpreter who will explain all procedures and also interpret for you at the hearing in your preferred language. If you want an interpreter, state this in your request, and specify your language.
- You have a right to choose a representative (such as a friend, family member, or advocate) who will ask for a hearing on your behalf. You also have a right to bring someone to your hearing (such as a friend, family member, or advocate) if you do not want to go alone.[1520]

FOOD BANKS

WHAT IS A FOOD BANK?

A food bank is a nonprofit organization that asks for, stores, and gives out food. They sometimes give the food to a variety of smaller organizations (churches, non-profits, community centers, libraries) that also serve people in need.

WHERE CAN I FIND FOOD?

To find a food bank or organization that donates food near you, visit the following website: http://www.cafoodbanks.org/Hunger-in-CA **OR** call the Association of California Food Banks at 1-866-321-4435. You do NOT need to enroll in any public benefits programs to visit a food bank. However, you may wish to apply to the Emergency Food Assistance Program (see more in the next question), if you are eligible, as it is a government-assisted program that provides emergency food for low-income people and families.

WHAT IS THE EMERGENCY FOOD ASSISTANCE PROGRAM (EFAP)?

The Emergency Food Assistance Program (EFAP) is a federal government program that sends food to county food banks. The food banks then distribute this free food to eligible individuals and households.[1521] See the next question to learn how to find an EFAP-supported food bank.

To be eligible for EFAP benefits at a county food bank, your household must (1) live within the region that the food bank serves, and (2) self-certify that they meet the income requirements. To see if your household meets income requirements, call the California Department of Social Services' Emergency Food Assistance Program office at 916-229-3344.[1522]

[1517] Overview of the Application Process: CalFresh Handbook, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/calfreshoutreach/res/Toolkit/Handbook-GeneralMarket/GeneralMarketHandbook_CH5_OverviewoftheApplicationProcess.pdf.
[1518] Requesting a Fair Hearing, CAL. GUIDE TO FOOD BENEFITS, http://foodstamPGuide.org/requesting-a-fair-hearing/.
[1519] Requesting a Fair Hearing, CAL. GUIDE TO FOOD BENEFITS, http://foodstamPGuide.org/requesting-a-fair-hearing/.
[1520] 7 C.F.R. § 273.15(i)(1); MPP § 22-004.211; Requesting a Fair Hearing, CAL. GUIDE TO FOOD BENEFITS, http://foodstamPGuide.org/requesting-a-fair-hearing.
[1521] Emergency Food Assistance Program (EFAP), CAL. DEP'T OF SOC. SERVS. HEALTH & HUMAN SERVS. AGENCY, http://www.dss.cahwnet.gov/efap/, http://www.fns.usda.gov/tefap/emergency-food-assistance-program-tefap. The laws governing EFAP in California are: 7 C.F.R. 250, 7 C.F.R. 251. You can find links to these laws and to the EFAP Policy & Procedures at: http://www.dss.cahwnet.gov/efap/PG1905.htm.
[1522] Emergency Food Assistance Program (EFAP) 2014 Income Guidelines, CAL. DEP'T OF SOC. SERVS. HEALTH & HUMAN SERVS. AGENCY, http://www.cdss.ca.gov/cdssweb/entres/forms/English/EFA14.pdf; See also Emergency Food Assistance Program (EFAP) Procedure Manual, CAL. DEP'T OF SOC. SERVS. HEALTH & HUMAN SERVS. AGENCY, http://www.dss.cahwnet.gov/efap/res/pdf/ProcedureManual.pdf



If you do not have a place to prepare food, you should ask the food bank to give you a list of soup kitchens, which also receive food through the state's Emergency Food Assistance Program.

WHERE CAN I FIND A FOOD BANK TO GET EFAP BENEFITS?

Steps to finding food banks/partner agencies:

1. You should try to go to an Emergency Food Assistance Program food bank near your house. Try looking online at http://www.cafoodbanks.org/Hunger-in-CA or call the Association of California Food Banks at 1-866-321-4435.
2. If there are no Emergency Food Assistance Program food banks near your house, then you should try to go to an Emergency Food Assistance Program food bank nearby. You might still be able to get food there if you show that you live in an area that's within the same county. But be aware that—you might be turned away and told to try and find a food bank that serves the area you live in.
3. If you are turned away, remember you can always try and find a non- Emergency Food Assistance Program food bank or partner agency that does not use Emergency Food Assistance Program restrictions.

Here are some numbers you can call to find food banks in your local area:

- California hotline for food aid information: 1-877-847-FOOD
- Local information and referral hotline: 2-1-1 (not available in every county)

If you have Internet access, here are some websites you can visit:

- List of food banks across California: http://www.dss.cahwnet.gov/efap/PG1910.htm
- Tool to find food aid near your ZIP code: http://www.cafoodbanks.org/?q=find-food-assistance

WHAT DOCUMENTS MIGHT I NEED TO GET EFAP BENEFITS?

When you go to a county food bank seeking Emergency Food Assistance Program benefits, you may be asked to show *proof that you live in the service area*, such as a government-issued I.D. card with your address (for example, a driver license, library card, or voter registration card). But even if you don't have proof of residency, you should not be denied food as long as you agree to sign an "Emergency Food Assistance Program Certification of Eligibility Form" (Form EFA-7) (see example form in Appendix C, PG. 509).

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET EFAP?

No. You will be able to get EFAP food benefits no matter your criminal history. Only two factors matter—where you live and how much income you have. Even if your address falls outside of an EFAP food bank's service area, you might still be able to get food there, if you can prove that you live in the same county. But there is also the possibility that the food bank turns you away and asks that you go to the food bank that serves the area where you live.

CAN I APPLY FOR EFAP BENEFITS WHILE INCARCERATED?

No. You can only get EFAP food benefits by showing up at a county food bank that serves the area where you live. But remember, once you are released you can find donated food at a local food bank or partner agency!

MORE INFO ON THE WIC INTAKE PROESS

During the WIC intake process, a county health professional will determine if you or your child are "at nutritional risk" (meaning your child is over/underweight or not eating enough fruits or vegetables), and may make a referral to a doctor if any health conditions (for example, anemia) are suspected.

WOMEN, INFANTS & CHILDREN PROGRAM (WIC)

WIC is a program for low-income women, women who are pregnant, postpartum, or breastfeeding, infants, and children under age 5. WIC provides nutritious food, nutrition education, breastfeeding support, and health service referrals. With WIC benefits you get coupons for things like milk, cheese and eggs, bread, cereal, juice, peanut butter, fruits and vegetables, infant food, and much more.[1523]

AM I ELIGIBLE FOR WIC?

To receive WIC benefits, you must: (1) be a resident of California; (2) be a woman who is pregnant, postpartum, breastfeeding and/or the parent/guardian of a child up to age 5; and (3) have less than the maximum yearly income allowed for your household size. Please note: If you or your children receive CalFresh (food stamps), Medi-Cal, or CalWORKs, you automatically meet the income requirement for WIC. If you have Internet access, you can use these online tools to see if you're likely to qualify for WIC:[1524]

[1523] Women, Infants, and Children, CAL. DEP'T OF PUBLIC HEALTH, http://www.cdph.ca.gov/programs/wicworks/Pages/AboutWICandHowtoApply.aspx.
[1524] Women, Infants, and Children, CAL. DEP'T OF PUBLIC HEALTH, http://www.cdph.ca.gov/programs/wicworks/Pages/AboutWICandHowtoApply.aspx.



- USDA's Prescreening Tool: http://wic.fns.usda.gov/wps/pages/start.jsf
- California's Eligibility Assessment: www.cdph.ca.gov/programs/wicworks/Pages/WICEligibilityAssessment01.aspx

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET WIC?

No! Your criminal history does not affect your ability to get WIC benefits.

HOW DO I APPLY FOR WIC?

Contact your local WIC office and make an appointment. To find a WIC office near you, call 1-800-852-5770 or 1-888-WIC-WORKS (1-888-942-9675). Both numbers are toll-free. If you have Internet access, you can also use this online search tool: http://www.apps.cdph.ca.gov/wic/resources/laSearch/search.asp

CAN I APPLY FOR WIC WHILE INCARCERATED?

No. You can only apply for WIC after you are released because eligibility can only be determined after an in-person appointment with a county health professional who will assess you and your child for nutritional risk. Additionally, WIC benefits can only be used in-person at certain locations (such as grocery stores) certified to participate in the program. But remember: you can call the WIC office to help you review your eligibility before your release. To find contact information for your county WIC office, call the following toll free number: 1-800-852-5770.

IV. HEALTH CARE BENEFITS

WHAT WILL I LEARN ABOUT HEALTH CARE BENEFITS?

- **An overview of different types of health care coverage in California (including Covered California, Medi-Cal, & Medicare)**
- **How to figure out which health care plan is best for you**
- **What benefits you get from the different health care plans**
- **How to apply for health care**
- **Whether you can receive or apply for health care while incarcerated**
- **How your criminal history could affect your ability to get health care coverage**
- **What to do if you are wrongly denied health care**

WHY SHOULD I GET HEALTH CARE COVERAGE (HEALTH INSURANCE)?

First, everyone needs health care at some point in life. If you have health care coverage, you can access hospitals and medical services when you need them. Most health insurance will cover mental health and substance abuse treatment too.[1525] Second, for almost everyone living in the U.S., it's now required by law that you have adequate health care coverage. (There are exceptions, explained on PG. 463).[1526]

While you're incarcerated, the jail or prison is responsible for providing you with essential health care, including mental health services. You have a constitutional right to treatment while in jail or prison.[1527] Once you have a release date, you should ensure that you have health care coverage in place for when you get out.

SUMMARY OF THE MAJOR GOVERNMENT-RUN HEALTH CARE PROGRAMS IN CALIFORNIA

Health Care Plan:	Brief Breakdown of Plan:	Who Qualifies:
Covered California	Covered California is the state's marketplace to sign up for affordable health care	CA residents or LPRs who are 18 or older, and are not currently incarcerated (see more on PG. 461)
Medi-Cal	Medi-Cal offers free or low-cost health care for people who have limited income	CA residents or LPRs who have limited income (at or below 138% of FPL (see more on PG. 466)
Medicare	Medicare provides health care for elderly or disabled people. Medicare has 4 parts (A-D).	U.S. citizens or Legal Permanent Residents (LPRs) who are 65 or older, or have a disability, or have permanent kidney failure (see more on PG. 471)

COVERED CALIFORNIA

WHAT IS COVERED CALIFORNIA?

Covered California is an online health care marketplace where you can sign up for health care coverage online, by phone, by mail, or in person. This online marketplace is a website where you can "shop" by choosing a health care plan and compare various plans' prices and benefits. Each health care plan must cover essential health benefits, such as doctor visits, hospitalization, emergency care, maternity leave, pediatric care for children, and prescriptions. Through the Covered California application process, you can find out if you're eligible to get federal tax credits to reduce your health care costs, or if you're eligible for free or low-cost health care coverage through Medi-Cal (see PG. 466 for more information on Medi-Cal).[1528]

[1525] Mental Health & Substance Abuse Coverage, HEALTHCARE.GOV, https://www.healthcare.gov/coverage/mental-health-substance-abuse-coverage/.
[1526] Affordable Care Act, http://www.hhs.gov/healthcare/rights/law/index.html. Read information about the ACA: http://files.medi-cal.ca.gov/pubsdoco/aca/aca_home.asp. See also https://www.blueshieldca.com/bsca/documents/about-blue-shield/health-reform/COVEREDCA_FAQs_092413.pdf.
[1527] Estelle v. Gamble, 429 U.S. 97, 103 (1976); Brown v. Plata, 131 S. Ct. 1910, 1928 (2011) ("Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment . . . A prison that deprives prisoners basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society."); see also Know Your Rights: Medical, Dental, and Mental Healthcare, ACLU NATIONAL PRISON PROJECT, https://www.aclu.org/files/assets/know_your_rights_--_medical_mental_health_and_dental_july_2012.pdf.
[1528] Frequently Asked Questions, COVERED CALIFORNIA, https://www.coveredca.com/faqs/Medi-Cal/.



AM I ELIGIBLE TO ENROLL IN HEALTH CARE COVERAGE THROUGH COVERED CALIFORNIA?

To get health care through Covered California, you must be:

1. A California resident;
2. Lawfully present in the United States;[1529]
3. Age 18 or older, and
4. Not currently incarcerated.[1530]

Based on your household size and income, your family may qualify for financial assistance to help you afford health care. By submitting a Covered California application, you'll find out exactly what kinds of assistance you can get, and how much.

IMPORTANT NOTE ABOUT IMMIGRATION STATUS: If you have one of these statuses, you may qualify for health coverage through Covered California: lawful permanent resident ("Green Card holder"); lawful temporary resident ("LTR"); asylee or applicant for asylum; refugee; Cuban/Haitian entrant; paroled into the U.S.; conditional entrant granted before 1980; battered spouse, child or parent; victim of trafficking or that person's spouse, child, sibling, or parent; individual with non-immigrant status (including worker or student visa holders); Temporary Protected Status ("TPS") or applicant for TPS; Deferred Enforced Departure ("DED"); deferred action status; individual granted withholding of deportation/removal; applicant for withholding of deportation/removal; applicant for special immigrant juvenile status; applicant for adjustment to LPR status, with approved visa petition; registry applicant with Employment Authorization Document (EAD); applicant for cancellation of removal or suspension of deportation. Even if your immigration status is not listed above, you may still qualify for health insurance and should still apply! See the Immigration Chapter, PG. 1105, for more information.

WHAT BENEFITS AND SERVICES CAN I GET THROUGH COVERED CALIFORNIA?

As required by law, all Covered California plans must cover a set of essential health benefits, including:

- Hospital care and emergency services;
- Medical services;
- Prescription drugs;
- Mental health and substance abuse treatment (potentially including treatment that is a condition of probation or parole);
- Maternity and pediatric care;
- Rehabilitation services;
- Preventative care and chronic disease management; and
- Some dental care.[1531]

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET HEALTH CARE USING COVERED CALIFORNIA?

No. There is no law or policy that limits your access to Covered California based on your criminal history. You have the right to apply for health care coverage, and you should.

AM I LEGALLY REQUIRED TO ENROLL IN HEALTH CARE COVERAGE?

If you live in the U.S., and you're *not currently incarcerated*, the answer is probably *yes*. Certain people in special situations (explained below) are excused from this requirement. Unless you have one of these situations, you MUST enroll in health care coverage, or else you must pay a penalty fee when you file taxes.[1532] This legal requirement is called the "individual mandate," and the tax penalty is called the "shared responsibility fee."[1533]

SHARED RESPONSIBILITY FEES

For 2015, the "shared responsibility fee" is the higher of one of the following two amounts:
- 2% of your yearly household income or
- $325 per person for the year.

[1529] How to Apply, Covered California, http://www.coveredca.com/apply/; see also How the Affordable Care Act Impacts Immigrant and Migrant Populations in California, American Civil Liberties Union, https://www.aclusandiego.org/wp-content/uploads/2014/05/ACAs-Impact-on-Immigrants-CA-final-5-12-14.pdf.

[1530] At the time of production of this Manual, California Centers for Medicare & Medicaid Services (CMS), was engaged in the process of drafting new rules that would allow for applications prior to some "qualifying life events," including release from incarceration. But this proposed rule is not currently in effect.

[1531] Check Medical Eligibility, CalQuality.org, http://www.calqualitycare.org/learn/nursing-homes/pay/medical.

[1532] The fee is either a flat dollar amount or a percent of your household income—whichever is greater. The fee is set to increase each year from 2014 to 2016. The fee amount you must pay is based on how many months you go without health care during the year. For every month you aren't enrolled in health care, you owe 1/12th of the annual penalty fee. But note: As explained below, the law gives



Exemptions to the Individual Mandate: If you qualify for an exemption, you don't have to pay a penalty even if you don't have health care coverage. You may qualify for an exemption if one of the following situations applies to you:[1534]

- **Currently incarcerated:** You're currently in jail or prison serving a sentence for a conviction. This doesn't include being held for a case that's still pending—for example, you've been charged but not yet convicted.
- **Short coverage gap:** Your uninsured period is shorter than 3 months (back-to-back) during the year.
- **Not lawfully present:** You don't have citizenship or lawful immigrant status in the U.S.[1535]
- **Not required to file taxes:** You're not legally required to file a tax return because your income is too low.[1536]
- **Unable to afford coverage:** You can't afford the cheapest coverage available to you, because it would cost more than 8% of your household income.
- **Indian tribe:** You belong to a federally recognized Indian tribe, or you're eligible for services through an Indian Health Services provider.[1537]
- **Sharing ministry:** You're a member of a recognized health care sharing ministry.
- **Religious conscience:** You're a member of a recognized religious sect with religious objections to insurance, including Social Security and Medicare.
- **Hardship:** You've had financial or domestic difficulties that kept you from enrolling in health care, such as homelessness, a death in the family, bankruptcy, a medical emergency, or a natural disaster. Filing for a hardship requires you to fill out special forms.

For most of these situations, you must apply to get an exemption. The process varies by situation.

If you have questions about the forms you need, or if you aren't sure how to get an exemption for your situation, call Covered California at 1-800-300-1506 (TTY 1-888-889-4500) or the federal government's Health Insurance Marketplace at 1-800-318-2596 (TTY 1-855-889-4325). Or you may try calling Health Consumer Alliance (HCA), a non-profit organization dedicated to providing information about and helping Californians to get health care. For a list of local HCA call centers, please visit: http://healthconsumer.org/index.php?id=partners.

YOU DON'T NEED TO APPLY FOR AN EXEMPTION IF…

- You have a short coverage gap;
- If you are not required to file taxes because your income is too low;
- If you are not lawfully present;
- You are currently incarcerated (But note: Once you're released, the individual mandate will apply to you, so you'll need to get health coverage at that time. See PG. 462 for more information.)

A NOTE ABOUT INDIVIDUAL MANDATE EXEMPTIONS

Even if you qualify for an exemption, you still can apply and get health care coverage to help pay for medical expenses. An exemption just means that you don't have to pay the penalty fee—called the "shared responsibility fee"—if you one of the exemption situations applies to you, and you don't get health care coverage.

WHEN CAN I APPLY FOR HEALTH CARE THROUGH COVERED CALIFORNIA?

It depends. If you're planning to buy a *private health care plan* from the Covered California marketplace, you must enroll during the "Open Enrollment period" to get coverage for the following year (unless you qualify for a Special Enrollment period, see PG. 464). The Open Enrollment period typically runs from fall to spring. If you

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you a free pass for periods that are shorter than 3 months back-to-back. COVERED CALIFORNIA, https://www.coveredca.com/faqs/Tax-Penalty/#102.

[1533] Frequently Asked Questions, COVERED CALIFORNIA, https://www.coveredca.com/faqs/Tax-Penalty/#102. Only the amount of income above the tax filing threshold—about $10,000 for an individual—is used to calculate this penalty. For more information, please visit: https://www.healthcare.gov/fees-exemptions/fee-for-not-being-covered/. The amount for child under 18 is $4,750. The maximum penalty per family is $285. For more information, please visit: https://www.healthcare.gov/fees-exemptions/fee-for-not-being-covered/. The amount per child under 18 is $162.50. The maximum penalty per family is $975. After 2015, the shared responsibility fee will increase to 2.5% of income of $695 per person in 2016. Only the amount of income above the tax-filing threshold, about $10,000 for an individual, is used to calculate this penalty. For more information please visit: https://www.healthcare.gov/fees-exemptions/fee-for-not-being-covered/.

[1534] Frequently Asked Questions, COVERED CALIFORNIA, https://www.coveredca.com/faqs/Tax-Penalty/#102, www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/.

[1535] COVERED CALIFORNIA, https://www.coveredca.com/faqs/Tax-Penalty/#102, www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/. For detailed lists of noncitizen categories who are "qualified" to get health care through Covered California, see: http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/. If you are not a citizen and you are not on these lists, you qualify for an exemption.

[1536] For details about the filing requirement, see: http://www.irs.gov/pub/irs-pdf/p501.pdf.

[1537] Tax Penalty, Covered California, https://www.coveredca.com/faqs/Tax-Penalty/#102, www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/. A federally recognized tribe is "any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Department of the Interior acknowledges to exist as an Indian tribe." https://www.healthcare.gov/glossary/federally-recognized-tribe. For a current list of recognized tribes, see: http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/.



don't enroll during this period, you may not be able to find a private plan that can cover you (and you may have to pay the Shared Responsibility Fee, discussed above on PG. 462).[1538] To get the specific start and end dates for the next Open Enrollment period, call Covered California at 1-800-300-1506 (TTY 1-888-889-4500) or the federal government's Health Insurance Marketplace at 1-800-318-2596 (TTY 1-855-889-4325). You can also check online at www.CoveredCA.com and www.healthcare.gov.

But, if you're eligible for Medi-Cal based off your income—your income must be at or below 138% of the federal poverty level[1539]—you can apply to Medi-Cal at any time, even if it's not currently Open Enrollment period. If you qualify for Medi-Cal, you can enroll right away.[1540] To learn more, go to PG. 466.



IMPORTANT: Remember, if you qualify, for Medi-Cal, then you are NOT eligible for private health care plans through Covered California.[1541]

Exceptions to the Open Enrollment requirement: Certain people with special situations may enroll in private health care through Covered California during a Special Enrollment Period ("SEP").[1542] This is a 60-day period outside of the Open Enrollment period , typically starting from the day that the special situation started for a person.[1543]

Two types of situations may allow you to enroll in private health insurance through Covered California during a Special Enrollment Period:[1544]

5. A "qualifying" life event suddenly creates a greater need for health coverage. For example: getting married or divorced, having a baby, losing a job, moving, losing your health coverage,[1545] or *getting released from incarceration.*[1546] Go to PG. 466. to learn more about Special Enrollment Periods.
6. A complex problem that prevented you from enrolling successfully. For example: a major accident, a natural disaster, misconduct by someone who helped with your health care application, or an error by Covered California or an insurance company in processing your application.[1547]

If one of these situations comes up for you, you have 60 days to notify Covered California, get approved for a SEP, submit (or re-submit) an application, and enroll in a health care plan. If you don't complete this process in 60 days, you may have to pay the Shared Responsibility Fee (a tax penalty, discussed above on PG. 462) for not having health care coverage.



IMPORTANT: You will not qualify for a Special Enrollment Period (SEP) if you voluntarily ended health care or lost health care coverage that didn't provide the minimum essential benefits now required to avoid paying the Shared Responsibility Fee. For more information on SEPs and how to appeal if you were denied a SEP, please visit: https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period/, or call Covered California at 1-800-300-1506 (TTY 1-888-889-4500) or the federal government's Health Insurance Marketplace at 1-800-318-2596 (TTY 1-855-889-4325).

HOW DO I ENROLL IN HEALTH CARE THROUGH COVERED CALIFORNIA?

You can apply for Covered California through several methods: online, by phone, in person, by mail, or by fax. You can get the paper application at your local county social services office, or online at https://www.coveredca.com/PDFs/paper_application/CA-SingleStreamApp_92MAX.pdf. The introductory pages of the application (but not the full application) can be found here in Appendix D, PG. 511.

- *Online:* Go to www.CoveredCA.com. Set up an account with a username and password. Once you log in, you can browse different health plans and start the application process.
- *By phone:* Call Covered California at 1-800-300-1506 (TTY: 1-888-889-4500). A staff person will walk you through the application process.

[1538] If you don't enroll during this period, you may not be able to find a private plan that can cover you (and you may have to pay the shared responsibility fee).
[1539] For more information and a chart detailing Medi-Cal income guidelines, please visit: COVERED CALIFORNIA, https://www.coveredca.com/ShopAndCompare/2015/—incomeGuidelines.
[1540] COVERED CALIFORNIA, https://www.coveredca.com/faqs/special-enrollment/, https://www.healthcare.gov/coverage-outside-open-enrollment/your-options/.
[1541] Medi-Cal, COVERED CALIFORNIA, http://www.coveredca.com/medi-cal/.
[1542] About Us, COVERED CALIFORNIA, https://www.coveredca.com/about/.
[1543] BLUE SHIELD CALIFORNIA, https://www.blueshieldca.com/bsca/documents/about-blue-shield/health-reform/COVEREDCA_FAQs_092413.pdf, https://www.healthcare.gov/glossary/special-enrollment-period/
[1544] Special Enrollment Period, HEALTHCARE.GOV, https://www.healthcare.gov/sep-list/
[1545] COVERED CALIFORNIA, http://www.coveredca.com/individuals-and-families/getting-covered/special-enrollment/qualifying-life-events/.
[1546] For more information on qualifying life events for special enrollment available at, Special Enrollment Period, HEALTHCARE.GOV, https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period/.
[1547] Special Enrollment Period, HEALTHCARE.GOV, https://www.healthcare.gov/sep-list/.



- *In person:* Visit your county social services office. (For a statewide directory, see Appendix A, on PG. 505)[1548] At the office, you can pick up the application form, get help filling it out, and submit it.
- *By mail:* Send your completed application form to: Covered California; P.O. Box 989725; West Sacramento, CA 95798-9725.[1549].
- *By fax:* Fax your completed application form to: 1-888-329-3700.

If you want free help with your Covered California application:

- Call Covered California at 1-800-300-1506 (TTY: 1-888-889-4500). The line is open Monday to Friday, 8 a.m. to 8 p.m.; and Saturday, 8 a.m. to 6 p.m.[1550]
- Get in-person help at a local county social services office (for a statewide list of offices, see Appendix A, PG. 505, or visit http://www.coveredca.com/faqs/).[1551]
- Local community-based organizations and community clinics provide free assistance. You can identify which organizations help with enrollment by calling Covered California or using the "Find Local Help" tool on the Covered California website at http://www.coveredca.com/get-help/local/.
- If you use the online application at www.CoveredCA.com, you can get help through the "online chat" feature.[1552]
- If you have difficulty working with Covered California or your health insurance company, call the Health Consumer Alliance (HCA) at 1-888-804-3536. The HCA provides free local assistance.[1553]

HELPFUL HINT

Tax Credits to Reduce Cost of Private Health Care

If you're planning to buy a private health care plan, and you want tax credits to help reduce your costs, have the following information ready when you apply:[1554]

- Birthdates and Social Security Numbers (SSNs) of all household members. For Covered California, a "family" is defined as the person who files taxes as head of household, plus all dependents claimed on those taxes.
- Current income and latest tax return information for your household. You may be asked to follow up with documents proving your income. If you earn wages, acceptable proof may include: your most recent W-2, a recent pay stub, a letter from your employer on official office letterhead, or a copy of a check paid to you as wages.[1555]
- Information about any health insurance that you or any household member receives through a job.[1556]

[1548] A list of county offices is available here: http://www.dhcs.ca.gov/services/medi-cal/Pages/CountyOffices.aspx.
[1549] How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/.
[1550] Frequently Asked Questions, COVERED CALIFORNIA, https://www.coveredca.com/faqs/about/.
[1551] Frequently Asked Questions, COVERED CALIFORNIA https://www.coveredca.com/faqs/about/.
[1552] Applying for Coverage, AFFORDABLE HEALTH CARE, http://affordablehealthca.com/applying-for-coverage/.
[1553] Frequently Asked Questions, COVERED CALIFORNIA, http://www.coveredca.com/faqs/special-enrollment/, www.healthconsumer.org.
[1554] How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/. If you want to buy a health plan without trying to get tax credits, you just need to provide SSNs for all family member. Enrollment and Eligibility, COVERED CALIFORNIA, https://www.coveredca.com/faqs/Enrollment-and-Eligibility/.
[1555] For a full list of documents you can use to verify your income, See Accepted Income Documents, COVERED CALIFORNIA http://www.coveredca.com/PDFs/Accepted-Income-Documents.pdf Note: Even if you don't file taxes, you can still qualify for free or low-cost health insurance through Medi-Cal. To learn about signing up for Medi-Cal, go to PG. 496. http://www.coveredca.com/apply/.
[1556] How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/.



CAN I GET HEALTH CARE THROUGH COVERED CALIFORNIA WHILE I'M INCARCERATED?

No. You cannot get health care through Covered California while you are incarcerated, but you may apply for Medi-Cal once you are nearing your release date (more information on Medi-Cal starting on PG. 466). Or if you prefer to have private health care through Covered California, you may apply once you are released (see below for more details).

HELPFUL HINT

If you're currently serving a sentence in jail or prison, special rules apply to you for applying for health insurance:[1557]

While you're incarcerated:

- You *are eligible* to enroll in Medi-Cal while incarcerated. You may apply on your own, or through any enrollment program available at your facility.[1558] You can't start using a Medi-Cal health care plan while you're incarcerated; but if you enroll before your release, you may be able to get health care more quickly once you're out.[1559] To learn more about Medi-Cal and how to enroll while incarcerated, go to PG. 466.
- You *are not eligible* to buy a private health care plan through Covered California, and the Individual Mandate (see PG. 462) doesn't apply to you as long as you're incarcerated following a criminal conviction. This means you don't have to worry about paying a penalty, or applying for an exemption from the penalty, during your incarceration.[1560]

Once you're released:

You may be eligible to enroll in health care through Covered California; and the Individual Mandate (see PG. 462) may now apply to you. This means you may now be legally required to have health care, or pay a tax penalty—unless you get an exemption (read more about exemptions on PG. 463).

- If you want to enroll in Medi-Cal, and you didn't already enroll while incarcerated, you can apply at any time after your release. For details about Medi-Cal, go to PG. 466.
- If you want to buy a private health care plan (and also get tax credits to help pay for it), you have 60 days after your release to notify Covered California, get approved for a Special Enrollment Period (see PG. 464), submit a Covered California application, and enroll in a health care plan. If you don't complete this process in 60 days, you must wait for the next Open Enrollment period (see PG. 463), and you may have to pay a penalty.[1561]

MEDI-CAL

WHAT IS MEDI-CAL?

Medi-Cal is California's Medicaid program, offering free or low-cost health care coverage for low-income California residents.[1562] You can apply as an individual or as a family. Due to recent changes in the law, California has expanded the Medi-Cal program. Thus, if you applied for Medi-Cal prior to January 1, 2014 and were denied, you may still be eligible under the new rules.[1563]

AM I ELIGIBLE FOR MEDI-CAL?

If you live in California, you can qualify for full Medi-Cal coverage in a few different ways:

***First:* You may be eligible for Medi-Cal if:**

1. You're a California resident or you're lawfully present in the U.S.,[1564] and
2. You have limited income.[1565]

[1557] Note: These special rules do not apply to you if you are on probation, parole, or home confinement; or if you are being "detained pre-trial"—in other words, being held in jail or prison but have not yet been convicted of a crime. Incarcerated People, HEALTHCARE.GOV, https://www.healthcare.gov/incarcerated-people/, http://www.safeandjust.org/resources/HealthEnrollmentToolkit. Also, please note that at the time of production of the "Roadmap to Reentry: A California Legal Guide," the California Centers for Medicare & Medicaid Services (CMS) was drafting new rules that would allow for applications prior to some "qualifying life events," including release from incarceration. But this proposed rule is not currently in effect.

[1558] Incarcerated People, HEALTHCARE.GOV, https://www.healthcare.gov/incarcerated-people/.

[1559] Exception: You may use health care while incarcerated for the purpose of paying for medical expenses occurred during an inpatient stay in a non-correctional health facility (such as a hospital), if that stay lasts longer than 24 hours. For more information, please visit: http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/MC Inmate Eligibility Program.pdf.

[1560] Note: You are not considered "incarcerated," if you are on probation, parole, on home confinement; or if you are being detained while you await trial.[1560] See Incarcerated People, HEALTHCARE.GOV, https://www.healthcare.gov/incarcerated-people/.

[1561] Incarcerated People, HEALTHCARE.GOV, https://www.healthcare.gov/incarcerated-people/.

[1562] What is Medi-Cal, CAL. DEP'T OF HEALTH SERVS., http://www.dhcs.ca.gov/Services/medi-cal/pages/whatismedi-cal.aspx.

[1563] Many thanks to Kellen Russoniello of the ACLU of San Diego and Imperial Counties, California for his feedback and contributions do this manual.

[1564] If you're a legally present noncitizen ("lawful permanent resident," "green card holder") with limited income, you may qualify for partial or full Medi-Cal coverage—depending on the details of your status and your exact income. If you're not lawfully present (i.e. undocumented), you may be able to get Medi-Cal coverage for emergencies or pregnancies, but not full Medi-Cal coverage. Medi-Cal: The Details, DISABILITY BENEFITS 101, http://ca.db101.org/ca/programs/health_coverage/medi_cal/program2.htm.



HELPFUL HINT
How does Medi-Cal define "limited income"?

The limit is defined as 138% of the Federal Poverty Level (FPL). The FPL varies based on family size, and it changes from year to year. Because the income limit changes, each year, ask your county welfare agency for exact numbers when you're ready to apply.

- To determine whether you qualify for Medi-Cal benefits, based on your income, visit: http://www.dhcs.ca.gov/services/medi-cal/Pages/DoYouQualifyForMedi-Cal.aspx
- To download and print the income limit, visit: https://www.coveredca.com/PDFs/paper_application/CA-SingleStreamApp_92MAX.pdf

Second: **You may be automatically eligible for Medi-Cal if you (1) meet the income requirements, and (2) fall into one of these special categories:**

- Adults age 65 and older
- Blind or disabled individuals
- Children under age 21
- Pregnant women
- Women diagnosed with breast and/or cervical cancer
- Parents or caretakers of disadvantaged children under 21
- Residents in skilled nursing or intermediate care homes
- Individuals enrolled in certain other public benefits programs, including CalWORKs, SSI/SSP, Refugee Assistance Program, In-Home Supportive Services (IHSS), Foster Care or Adoption Assistance Program.[1566]

To find out if you're eligible for full or partial health care coverage through Medi-Cal, contact your county welfare agency. For a statewide directory of county welfare agencies, see Appendix A, on PG. 505. You may also seek to apply using a paper application.[1567]

HELPFUL HINT
Qualifying for Medi-Cal Because of a Disability:

If you think you qualify for Medi-Cal based on a disability, contact your county Medi-Cal office before you apply. Also, if you are homebound or living in an assisted care facility, you can ask to have a Medi-Cal representative visit you and help complete your application in person. For a statewide directory of county social services offices, see Appendix A, PG. 505.[1568]

WHAT BENEFITS AND SERVICES CAN I GET THROUGH MEDI-CAL?

As required by law, Medi-Cal covers a set of "essential health benefits," including: hospital care and emergency services; medical services; prescription drugs; mental health and substance abuse treatment (potentially including treatment that is a condition of probation or parole); maternity and pediatric care; rehabilitation services; preventive care and chronic disease management; and some dental care.[1569]

HELPFUL HINT
Retroactive Medi-Cal Coverage

When applying for Medi-Cal benefits, you may request retroactive Medi-Cal coverage for medical services you received during any of the three calendar months immediately before the month that you applied to Medi-Cal, so long as the services would have qualified for coverage had you been enrolled in Medi-Cal at the time. If you do apply for retroactive benefits, you must complete a supplemental request form. You may request retroactive coverage when you apply for Medi-Cal or within one year of the last month for which retroactive coverage is sought.[1570]

[1565] Do You Qualify for Medi-Cal, STATE OF CAL. HEALTH & HUMAN SERVS. DEP'T OF HEALTHCARE SERVS. http://www.dhcs.ca.gov/services/medi-cal/Pages/DoYouQualifyForMedi-Cal.aspx.
[1566] Check Medi-Cal Eligibility, CALQUALITYCARE.ORG, http://www.calqualitycare.org/learn/nursing-homes/pay/medical.
[1567] Or, if you have Internet access and a printer, download and print it at How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/.
[1568] Check Medi-Cal Eligibility, CALQUALITYCARE.ORG, http://www.calqualitycare.org/learn/nursing-homes/pay/medical. Online listing available here: http://www.dhcs.ca.gov/services/medi-cal/Pages/CountyOffices.aspx.
[1569] Check Medi-Cal Eligibility, CALQUALITYCARE.ORG, http://www.calqualitycare.org/learn/nursing-homes/pay/medical.
[1570] 22 C.C.R. § 50148(b).



CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET MEDI-CAL BENEFITS?

No! There are no restrictions on Medi-Cal eligibility based on past convictions or violations. You are eligible to receive Medi-Cal benefits while on probation or parole. You have the right to apply for health care using Medi-Cal, and you should!

HOW DO I APPLY FOR MEDI-CAL?

You can apply for Medi-Cal by submitting a Covered California application through several methods: online, by phone, in person, by mail, or by fax.[1571] You can get the paper application at your local county social services office, or online at https://www.coveredca.com/PDFs/paper_application/CA-SingleStreamApp_92MAX.pdf. The introductory pages of the application (but not the full application) can be found here in Appendix D, PG. 511.

- *Online:* Go to www.CoveredCA.com. Set up an account with a username and password. Once you log in, you can apply for Medi-Cal.[1572] Or you may use BenefitsCal by visiting http://www.benefitscal.org, where you can apply for several California benefits programs in addition to Medi-Cal all at once. We suggest contacting your county Medi-Cal office prior to applying online, because some counties prefer that you apply in person.
- *By phone:* Call your county social services office to apply by phone. You can contact Covered California to ask for the number of your county social services office by calling Covered California at 1-800-300-1506 (TTY: 1-888-889-4500), or by visiting its website: http://www.coveredca.com/contact/.
- *In person:* Visit your county social services office. (For a statewide directory, see Appendix A, PG. 505,.)[1573] At the office, you can pick up the application form, get help filling it out, and submit it.
- *By mail:* Send your completed application form to: Covered California; P.O. Box 989725; West Sacramento, CA 95798-9725.[1574]
- *By fax:* Fax your completed form to: 1-888-329-3700.

If you want free help with your application:

- Call Covered California at 1-800-300-1506 (TTY: 1-888-889-4500) to speak with a Certified Enrollment Counselor. The line is open Monday to Friday, 8 AM to 8 PM; and Saturday, 8 AM to 6 PM.[1575]
- Get in-person help at a local county social services office (for a statewide list of offices, see Appendix A, PG. 505, or visit http://www.dhcs.ca.gov/services/medi-cal/Pages/CountyOffices.aspx.[1576]
- Local community-based organizations and community clinics provide free assistance. You can identify which organizations help with enrollment by calling Covered California or using the "Find Local Help" tool on the Covered California website at http://www.coveredca.com/get-help/local/.
- If you use the online application at www.CoveredCA.com, you can get help through the "online chat" feature.[1577]
- You can find a listing of Medi-Cal approved certified enrollers at: http://www.coveredca.com/get-help/local/#null. Certified enrollers are community-based organizations that have Covered California and Medi-Cal approval to help applicants apply for health care.[1578]

CAN I APPLY FOR MEDI-CAL WHILE INCARCERATED?

Yes![1579] If you were on Medi-Cal before you were incarcerated, there's a good chance you're eligible to reapply as your release date approaches. If you were also on SSI disability benefits before your incarceration, you may need to contact the Social Security Administration to restart your SSI checks before Medi-Cal accepts you (see PG. 489 for details on what happens to your SSI while incarcerated).

[1571] You can get the paper application at your local county social services office, or online at How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/.
[1572] The online application requires moving through about 70 web pages. Covered California has said that applying online takes about 30 minutes, but the total time will depend on how many household members you're applying for. Applying for ObamaCare, AFFORDABLE HEALTH CALIFORNIA, http://affordablehealthca.com/applying-for-coverage/.
[1573] A list of county offices is available here: http://www.dhcs.ca.gov/services/medi-cal/Pages/CountyOffices.aspx.
[1574] How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/.
[1575] Frequently Asked Questions, COVERED CALIFORNIA, https://www.coveredca.com/faqs/about/; How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/.
[1576] Frequently Asked Questions, COVERED CALIFORNIA, https://www.coveredca.com/faqs/about/; How to Apply, COVERED CALIFORNIA, http://www.coveredca.com/apply/.
[1577] Applying for ObamaCare, AFFORDABLE HEALTH CALIFORNIA, http://affordablehealthca.com/applying-for-coverage/
[1578] For more information, please visit: http://www.coveredca.com/get-help/local/—null.
[1579] ACWDL 13-18: Medi-Cal & Related Programs for State & County Inmates, CAL. HEALTH & HUMAN SERVS. AGENCY DEP'T OF HEALTH CARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/13-18.pdf; ACWDL 14-24: State Inmate Pre-Release Medi-Cal Application Process, http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-24.pdf; ACWDL 14-26: Implementation of AB 720—Suspension of Medi-Cal Benefits for all Inmates & Other Requirements, STATE OF CAL. HEALTH & HUMAN SERVS. DEP'T OF HEALTHCARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-26.pdf.



If you are incarcerated in a state prison: If you're approaching your release date and likely to qualify for Medi-Cal, pre-release staff at your correctional facility should offer to help you apply about two months before your release.[1580] If you agree to authorize correctional staff as your "Authorized Representative" using form MC 306 (see sample form in Appendix G of the Public Benefits chapter, PG. 518), that staff person must ensure that your application is complete 60-90 days before your release, and send it to the Medi-Cal office in the county where you'll be living Ideally, the office will establish your eligibility before your release and send you a Benefits Identification Card so that you can access health care when you get out. In some cases, there may be a delay if the Medi-Cal office needs more information from you.[1581] Speak to the prison's pre-release staff to find out about Medi-Cal enrollment pre-release.

If you are incarcerated in a county jail: The kind of help you can get with applying for Medi-Cal will depend on what county you're in. Most jails in California now provide some form of information and help with Medi-Cal enrollment for people nearing release. And in some jails you can even get help connecting with community health services covered by Medi-Cal.[1582] Speak to the jail's pre-release staff to find out about Medi-Cal enrollment pre-release.

I HAD MEDI-CAL WHEN I ENTERED PRISON OR JAIL. WHAT HAPPENS TO IT WHILE I'M INCARCERATED?

It depends on how long your incarceration lasts. In California, as soon as you go to prison or jail, your Medi-Cal gets suspended, meaning paused.

- ***If you're incarcerated for less than 1 year:*** you can reactivate your enrollment by working with staff at your correctional facility before you get out, or by notifying the Medi-Cal office as soon as you're out.
- ***If you're incarcerated for 1 year or more:*** your Medi-Cal gets ended, and you need to file a new application. See the next question for more details.[1583]

HELPFUL HINT
The Medi-Cal Inmate Eligibility Program (MCIEP)

If you are pregnant, disabled, blind, or aged, MCIEP allows Medi-Cal to cover expenses for inpatient (over 24 hours) medical care in non-correctional healthcare facilities (such as hospitals) to individuals who are otherwise eligible for Medi-Cal. Individuals can obtain MCIEP benefits as long as they are remain eligible for Medi-Cal due to pregnancy, disability, blindness, or old age.[1584] If you were receiving MCIEP benefits while incarcerated, upon your release from jail or prison, you will be able to switch back to receiving regular Medi-Cal.

MY MEDI-CAL STOPPED WHILE I WAS INCARCERATED. HOW DO I RESTART IT?

It depends on when you first became incarcerated, and when your release date is/was. California law on this has recently changed, and different rules started to apply on January 1, 2014.[1585]

The old rule: **If you were incarcerated before January 1, 2014:** If you were on Medi-Cal prior to your incarceration, then your Medi-Cal was ended on the day that you entered jail or prison. This means if you wanted to get Medi-Cal again, you had to reapply, get approved, and wait until your release before you could receive health care coverage through Medi-Cal.

[1580] Medi-Cal Eligibility, STATE OF CAL. HEALTH & HUMAN SERVS. DEP'T OF HEALTHCARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/c09-16.pdf.
[1581] State Inmate Pre-Release Medi-Cal Application Process, STATE OF CAL. HEALTH & HUMAN SERVS. DEP'T OF HEALTHCARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-24.pdf.
[1582] Health Coverage Enrollment of California's Local Criminal Justice Population, SAFEANDJUST.ORG, http://libcloud.s3.amazonaws.com/211/ac/6/484/CountyEnrollmentSurvey_singles.pdf, Medi-Cal Enrollment of County Jail and Probation Populations, Dep't of Health Care Servs., Sept. 10, 2014, http://www.counties.org/sites/main/files/file-attachments/0910_medical_enrollment_webinar_slides_0.pdf.
[1583] AB 720; ACWDL 13-18: Medi-Cal & Related Programs for State & County Inmates, http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/13-18.pdf; ACWDL 14-26: Implementation of AB 720—Suspension of Medi-Cal Benefits for all Inmates & Other Requirements, STATE OF CAL. HEALTH & HUMAN SERVS. DEP'T OF HEALTHCARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-26.pdf; Public Policy Institute of California, Health Care for California's Jail Population (June 2014), http://www.ppic.org/content/pubs/report/R_614MBR.pdf.
[1584] See All Counties Letter 11-27, dated June 24, 2011, STATE OF CAL. HEALTH & HUMAN SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/c11-27.pdf.
[1585] AB 720, Statutes of 2013, Chapter 646; Penal Code § 4011.11; CAL. WELF. & INST. CODE § 14011.10; see also ACWDL 13-18: Medi-Cal and Related Programs for State & County Inmates, CAL. HEALTH & HUMAN SERVS. AGENCY DEP'T OF HEALTH CARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/13-18.pdf; ACWDL 14-24: State Inmate Pre-Release Medi-Cal Application Process, http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-24.pdf; ACWDL 14-26: Implementation of AB 720—Suspension of Medi-Cal Benefits for all Inmates & Other Requirements, CAL. HEALTH & HUMAN SERVS. AGENCY DEP'T OF HEALTH CARE SERVS. http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-26.pdf.



The new rule: **If you were incarcerated anytime after January 1, 2014:** If you were on Medi-Cal prior to your incarceration, then your Medi-Cal got automatically suspended (paused) on the day that you entered jail or prison. The suspension period is set to last 1 year. This means that:

- If you're released before 1 year passes, AND you continue to meet all other eligibility requirements, your Medi-Cal should automatically restart on the day of your release (and you don't need to reapply).[1586]
- If you're still incarcerated after 1 year passes, then your Medi-Cal coverage will end—and if you want to get Medi-Cal again, you'll need to reapply to restart your coverage after your release.[1587]

If you qualified for Medi-Cal through SSI, you may need to restart your SSI benefits (see PG. 489) before you can get your Medi-Cal coverage back.[1588]

I BELIEVE MY MEDI-CAL WAS WRONGLY DENIED OR STOPPED. HOW DO I APPEAL?

If and when the Medi-Cal office decides to suspend or end your Medi-Cal coverage, it must send you a "Notice of Action" explaining this decision.[1589] If you disagree with the decision and want to appeal (challenge) it, read the back of the Notice for instructions about how to request a hearing.

In general, you'll need to contact the California Department of Social Services (CDSS) State Hearings Division:

- *By phone:* 1-855-795-0634
- *By fax:* 1-916-651-2789
- *By email:* shdacabureau@dss.ca.gov
- *By mail:* P.O. Box 944243, Mail Station 9-17-37; Sacramento, California 94244-2430.

Or you may try calling Health Consumer Alliance (HCA), a non-profit organization dedicated to providing information about and helping Californians to get health care. For a list of local HCA call centers, please visit http://healthconsumer.org/index.php?id=partners.

[1586] But if you become ineligible for some reason before 1 year passes (for example: your income increases beyond the limit allowed for Medi-Cal), your Medi-Cal may be terminated (ended) while you're incarcerated.
[1587] AB 720, Statutes of 2013, Chapter 646; CAL. PENAL CODE § 4011.11; CAL. WELF. & INST. CODE § 14011.10; see also: ACWDL 13-18: Medi-Cal & Related Programs for State & County Inmates, CAL. HEALTH & HUMAN SERVS. AGENCY DEP'T OF HEALTH CARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/13-18.pdf; ACWDL 14-24: State Inmate Pre-Release Medi-Cal Application Process, CAL. HEALTH & HUMAN SERVS. AGENCY DEP'T OF HEALTH CARE SERVS., http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-24.pdf; ACWDL 14-26: Implementation of AB 720—Suspension of Medi-Cal Benefits for all Inmates & Other Requirements, CAL. HEALTH & HUMAN SERVS. AGENCY DEP'T OF HEALTH CARE SERVS. http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2014/14-26.pdf.
[1588] A Manual on SSI/SSDI for Prisoners & Their Advocates (2004), LEGAL SERVS. FOR PRISONERS WITH CHILDREN, www.prisonlegalnews.org/media/publications/manual_on_social_security_beneits_for_prisoners.pdf;
[1589] CAL. WELF. & INST. CODE §§ 14011.10, 14005.37, 14053.7, 14053.8; 22 C.C.R. § 50179.

MEDICARE

WHAT IS MEDICARE?

Medicare is a federal health care program for people who are elderly and people who have disabilities. Medicare benefits are grouped into four parts: Part A covers hospital care; Part B covers outpatient services; Part C covers services offered by private insurance plans; and Part D covers prescription drugs. There are two main ways to get your Medicare coverage: (1) Original Medicare (Part A and Part B) OR (2) a Part C Medicare Advantage Plan. Some people get extra coverage, such as optional prescription drug coverage through Part D.

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET MEDICARE?

No! There are no eligibility restrictions based on past convictions or violations.

APPLY TO MEDICARE BEFORE YOU TURN 65!

You can start getting Medicare when you turn 65. However, you can enroll up to 3 months before you turn 65. To confirm whether you qualify and to learn which Parts/Plans are right for you, call the SSA at 1-800-772-1213.

AM I ELIGIBLE FOR MEDICARE?

When you apply for Medicare, you have to consider whether you will eligible to enroll in each part Parts A and B (and possibly D) or Part C (and possibly D). This is because each Part has difference requirements and rules, and your incarceration affects each Part differently.[1590] If you're a citizen of the U.S., or you've been a legal resident for 5+ years, you may qualify for Medicare if:

- You're age 65 or older, and you or your spouse has worked and paid into Medicare for 10+ years; or
- You have a disability that qualifies you for Social Security Disability benefits (no matter how old you are); or
- You have permanent kidney failure requiring dialysis or a kidney transplant.[1591]

WHAT BENEFITS AND SERVICES CAN I GET THROUGH MEDICARE?

Medicare covers services and supplies that are medically necessary to treat a disease or condition.[1592]

ORIGINAL MEDICARE (Part A and Part B): Part A covers hospital insurance,[1593] and Part B covers medical insurance.[1594] Part A Hospital Insurance covers: Hospital care; Nursing care; Nursing home care; Hospice; and Home health services.[1595] Part B Medical Insurance covers: Medically necessary services (services that are needed to diagnose or treat a medical condition); and Preventative services (heath care to detect or prevent illness).[1596]

You have your choice of doctors, hospitals, and other providers that accept Medicare. You pay a monthly premium for Part B, and you may pay no or very low premiums for Part A (depending on your employment history).[1597] Note: Part B is optional. When you enroll in Part A, you can choose whether to get Part B. If you're on Social Security benefits, Part B premiums will get deducted from your Social Security checks; otherwise, you'll get billed for Part B premiums.[1598]

MEDICARE ADVANTAGE PLAN (Part C): Part C plans include hospital and medical insurance (Parts A and B). Private insurance companies, approved by Medicare, provide this coverage. You choose a Part C plan, and then you must use doctors, hospitals or other providers listed in that plan (or else pay higher costs). You pay an

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[1590] Medicare, JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, http://www.bazelon.org/Where-We-Stand/Access-to-Services/Medicare.aspx.
[1591] Medicare, LEGAL SERVICES OF NORTHERN CALIFORNIA, http://health.lsnc.net/medicare/.
[1592] Some services may only be covered in certain places, or for patients with certain conditions. What Medicare Covers, MEDICARE.GOV, http://www.medicare.gov/what-medicare-covers/.
[1593] This includes hospital care, skilled nursing facility care, nursing home care, hospice care, and home health services. What Part A Covers, MEDICARE.GOV, http://www.medicare.gov/what-medicare-covers/part-a/what-part-a-covers.html, Medicare Part A, CAL. HEALTH ADVOCATES http://www.cahealthadvocates.org/basics/partA.html
[1594] Part B covers 2 types of services: medically necessary services that are needed to diagnose or treat a medical condition, and preventive services that help detect and prevent illnesses. This includes doctors' visits, lab tests, ambulance services, mental health care, and certain medical supplies. Medicare Part B http://www.medicare.gov/what-medicare-covers/part-b/what-medicare-part-b-covers.html, http://www.cahealthadvocates.org/basics/partB.html.
[1595] Medicare Part A, MEDICARE.GOV, http://www.medicare.gov/what-medicare-covers/part-a/what-part-a-covers.html
[1596] Medicare Part B, MEDICARE.GOV ,http://www.medicare.gov/what-medicare-covers/part-b/what-medicare-part-b-covers.html.
[1597] Part A costs vary based on how many years you (or your spouse) have paid into the Social Security system. If you have 10+ years of Social Security credit, you can get Part A without paying premiums. http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/your-medicare-coverage-choices.html#collapse-3135.; Benefits Summary, CAL. HEALTH ADVOCATES, http://www.cahealthadvocates.org/basics/benefits-summary.html
[1598] Medicare Part B, CAL. HEALTH ADVOCATES, http://www.cahealthadvocates.org/basics/partB.html.



extra premium for getting Part C, in addition to whatever it would cost you to be enrolled in Parts A and B (through Original Medicare).[1599]

MEDICARE PRESCRIPTION DRUG PLAN (Part D): Part D provides prescription drug insurance for anyone enrolled in Medicare. You choose a Part D plan, and it works as an addition to your Original Medicare (Parts A and B)—or your Medicare Advantage Plan (Part C). PLEASE NOTE: Part D is optional. When you enroll in Medicare, you can choose whether to get Part D. If you have low income, you can get extra help paying for Part D.[1600]

BELOW IS A SUMMARY OF ELIGIBILITY FOR SPECIFIC TYPES OF MEDICARE COVERAGE.[1601]

MEDICARE PART (DESCRIPTION):	YOU'RE ELIGIBLE TO ENROLL IF:
Medicare Part A (hospital insurance): covers inpatient hospital stays, care in a skilled nursing facility, hospice care, and some home health care.	• You're at least 64 years and 9 months old*; or • You have a qualifying disability; or • You have permanent kidney failure. *Note:* If you're already getting Social Security benefits (see PG. 478), then when you turn 65 you'll automatically get enrolled in Medicare Part A.
Medicare Part B (medical insurance): covers certain doctors' services, outpatient care, medical supplies, and preventive services	• You're at least 64 years and 9 months old*; or • You have a qualifying disability; or • You have permanent kidney failure. *Note:* Part B is optional. When you first enroll in Part A, you can choose whether to enroll in Part B.
Medicare Part C (Medicare Advantage plans): are health plan offered by private companies that contract with Medicare to provide Part A and B benefits to you	• You're enrolled in both Part A and Part B; and • You don't have permanent kidney failure.
Medicare Part D (prescription drug plan): adds prescription drug coverage to Part A, Part B, and some Part C plans. Part D plans are offered by private companies approved by Medicare.	• You're enrolled in Medicare. • You're not enrolled in a Part C plan that already includes prescription drug coverage. *Note:* Part D is optional. When you first enroll in Medicare, you can choose whether to enroll in Part D.

HOW DO I APPLY FOR MEDICARE?

If you're currently incarcerated: Skip to the next question.

If you are <u>not</u> incarcerated and have never been enrolled in Medicare: Read on for details. How to apply depends on your individual situation.

- **If you're approaching age 65:**

…AND already getting Social Security benefits: you'll automatically get Parts A and B when you turn 65. About 3 months before you turn 65, you'll get your Medicare card by mail. If you want Part D as well, you must sign up for that separately by calling 1-800-MEDICARE.[1602]

…And NOT getting Social Security benefits (see PG. 478): you should apply for Medicare by contacting the Social Security Administration at 1-800-772-1213 (TTY 1-800-325-0778).[1603]

- **If you're under 65 and have a disability:**

…And you're <u>already</u> getting disability benefits from Social Security; you'll automatically get Parts A and B after 24 months of disability benefits.[1604] In the 25th month, you'll get your Medicare card by mail. If you want Part D as well, you must sign up separately by calling 1-800-MEDICARE.[1605]

…And you're <u>not</u> getting disability benefits from Social Security, you should apply for SSDI (see PG. 483).

[1599] The details of MA plans available to you through Part C depend on where you live. Some cover prescription drugs; some don't. http://www.cahealthadvocates.org/advantage/overview.html.
[1600] Extra Help with Part D Costs for People with Low Income, CAL. HEALTH ADVOCATES, http://www.cahealthadvocates.org/drugs/extra-help.html.
[1601] Medicare Eligibility: Who is Eligible for Medicare? KAISER PERMANENTE, https://medicare.kaiserpermanente.org/wps/portal/medicare/plans/learn/eligibility
[1602] You can also enroll online using the Medicare Plan Finder: https://www.medicare.gov/find-a-plan/questions/home.aspx.
[1603] You can also enroll online using the official Social Security website: http://www.socialsecurity.gov/medicare/apply.html.
[1604] If you have permanent kidney failure, you can get Medicare earlier during your first 3 months of dialysis treatment; and other special rules apply to you. If you have Amyotrophic Lateral Sclerosis ("ALS," or Lou Gehrig's disease), you'll be automatically enrolled in Medicare when you start getting SSDI. Contact the SOC. SEC. ADMIN. at 1-800-722-1213 or visit www.ssa.gov for details about these special kinds of cases.
[1605] You can also enroll online using the Medicare Plan Finder: https://www.medicare.gov/find-a-plan/questions/home.aspx.



CAN I APPLY FOR MEDICARE WHILE INCARCERATED?

Yes! If you turn 65 and become eligible for Medicare while incarcerated, you should contact the Social Security Administration (SSA) to enroll in Parts A and B. Unlike people who are not in custody, you will NOT be automatically enrolled—so you need to take action. Although Medicare won't start paying for your health care until you're released, it's important to get enrolled as soon as you can. This way, you avoid getting charged penalties for late enrollment, and you also ensure that your Medicare is ready as soon as you're out.

- **When:** Contact the SSA to get enrolled during the 7-month period surrounding your 65th birthday—the month of your birthday, plus 3 months before, and 3 months following. This is called your Initial Enrollment Period ("IEP"). Supposing that you turn 65 on April 10, 2015, your Initial Enrollment Period would run from January 1, 2015 through July 31, 2015. If you don't enroll during your Initial Enrollment Period, you may not have access to health care for months after you're released; and you may get charged penalties if you try to enroll in Medicare later.
- **How:** Send a signed and dated letter to the Social Security Administration. The letter should include your full name, Social Security Number, a clear statement that you want to enroll in Medicare Parts A and B, and the date that your coverage should be effective. Make sure you sign the letter. Keep a copy of your letter and a copy of the envelope—and, if possible, send the letter by certified mail with return receipt.[1606]

I HAD MEDICARE WHEN I ENTERED PRISON OR JAIL. WHAT HAPPENS TO IT WHILE I'M INCARCERATED?

All your Medicare benefits get suspended (paused) while you're incarcerated. The rules for staying enrolled and restarting your benefits upon release are different for each Part of Medicare.[1607]

> Your Part A (hospital insurance) enrollment stays in place. Although you won't get Part A benefits while incarcerated, you don't have to do anything to stay enrolled. When you're released, your access to Part A benefits should be automatically restored.[1608]

> Your Part B (medical insurance) is more complicated, since you can only stay enrolled by paying premiums.[1609]

- If you keep paying premiums, you'll stay enrolled, although you won't get Medicare benefits while incarcerated.
- If you stop paying premiums, your coverage will be ended; and for every 12 months that pass before you re-enroll, your premium amount will be higher by 10%.[1610] Also, you can re-enroll in Part B only during the General Enrollment Period ("GEP"), which runs January through March, and coverage starts July 1 of the year that you enroll. Depending on your release date, this may cause a gap in your medical coverage.[1611]

These rules create a dilemma if you're someone who can't afford to keep paying Part B premiums while incarcerated, and won't be able to afford higher premiums upon release. If you were on Medicare and SSDI before incarceration, you may be able to address this dilemma by applying for SSDI while incarcerated (see PG. 491).

> Your Part C (Medicare Advantage plan) and Part D (prescription drug plan) will end when you're incarcerated. You're no longer eligible to be enrolled in these plans while the prison or jail is providing your health care. If you want Part C and/or Part D after release, you'll have to re-enroll (for details, see PG. 474).[1612]

ENROLL FOR PART B PREMIMUMS AFTER INCARCERATION!

If you've been getting Social Security or SSDI, these benefits have been paying for your Part B premiums. Once you've been incarcerated for 30 days, these benefits get suspended; so you must call 1-800-MEDICARE within that 30-day window and set up direct payment if you want to keep Part B.

[1606] If You Become Eligible for Medicare While Incarcerated,MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1783.
[1607] If You Already Have Medicare When You are Incarcerated, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1782.
[1608] If You Become Eligible for Medicare While Incarcerated, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1783.
[1609] If You Already Have Medicare When You are Incarcerated, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1782.
[1610] Medicare Part B Late Enrollment Penalty, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=316, http://www.bazelon.org/LinkClick.aspx?fileticket=1OxXzw1kOBc%3d&tabid=353.
[1611] If You Become Eligible for Medicare While Incarcerated, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1783, http://www.bazelon.org/LinkClick.aspx?fileticket=1OxXzw1kOBc%3d&tabid=353.
[1612] http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1784.



MY MEDICARE STOPPED WHILE I WAS INCARCERATED. HOW DO I RESTART IT?

If you had Part A (hospital insurance) before you were incarcerated, you don't have to do anything to restart it. Your enrollment should still be in place, and you should have access to Part A coverage as soon as you're released.[1613]

If you had Part B (medical insurance) before you were incarcerated, your next steps depend on your situation:

- **If you kept paying premiums and stayed enrolled in Part B while incarcerated:** you don't have to do anything to restart it. Your enrollment is in place, and you should have access to Part B coverage once you're released.[1614]
- **If you stopped paying premiums and your Medicare enrollment was ended while incarcerated:** you can re-enroll during General Enrollment Period ("GEP"), which runs January to March.
  - Your Part B coverage will start on July 1 of that year.
  - You'll have a higher premium based on how many months passed since your Medicare enrollment ended.
  - If you're under 65 and previously qualified for Medicare due to a disability, you must restart your SSDI before you can get Part B again. Once you know your release date, contact Social Security to do this (see PG. 479).[1615]
- **If you had Part C (Medicare Advantage) and Part D (prescription drug plan) before you were incarcerated,** these forms of coverage ended during your incarceration. If you want Part C and/or D after release, you must enroll again during your Special Enrollment Period ("SEP"). Your SEP starts the month before your release date and ends two months after that date. If you miss your SEP, you'll be charged a penalty when you try to enroll later.[1616]



IMPORTANT: If you qualified for Medicare through SSDI, you must restart your SSDI before you can get Medicare coverage back. Even if you contact Social Security before your release, you won't start getting SSDI again until a month after release. One possible way to avoid a gap in health care coverage is to apply for SSI before your release, if you qualify. If your SSI application is approved, you'll be automatically enrolled in both SSI and Medi-Cal after release. You'll only be on SSI for one month until your SSDI kicks in, and then your Medi-Cal will link to your SSDI again.[1617]

I BELIEVE MY MEDICARE WAS WRONGLY DENIED OR STOPPED. HOW DO I APPEAL?

The steps to take depend on what Medicare coverage you have, what decision you want to challenge, and what your situation is. Call 1-800-MEDICARE to learn what you can do in your situation.[1618] If you need help filing an appeal, contact the California Department of Aging's Health Insurance Counseling and Advocacy Program (HICAP) at 1-800-434-0222.[1619]

You can also appoint a representative to act on your behalf. This can be a family member, friend, advocate, attorney, doctor, or anyone else you choose. You can appoint a representative in 2 ways:[1620]

- Fill out and submit an "Appointment of Representative" form (see Appendix G, PG. 523).[1621]
- Along with your appeal, submit a written request that includes:
  - Your name, address, phone number, and Medicare number;
  - Your representative's name, address, phone number, professional status, and relationship to you;
  - A statement that clearly (1) appoints your representative, (2) authorizes release of your personal and health information to your representative, and (3) explains why you're being represented; and
  - Your signature and the date you signed; your representative's signature and the date they signed.[1622]

[1613] If You Become Eligible for Medicare While Incarcerated, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1783 http://www.bazelon.org/LinkClick.aspx?fileticket=1OxXzw1kOBc%3d&tabid=353

[1614] If You Already Have Medicare When You are Incarcerated, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1782http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1782

[1615] If You Already Have Medicare When You are Incarcerated, MEDICAREINTERACTIVE.ORG, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1782http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1782

[1616] If you have a Medicare Advantage plan or a Part D plan before your incarceration, MEDICARE.GOV, http://www.medicareinteractive.org/page2.php?topic=counselor&page=script&script_id=1784

[1617] A Manual on SSI/SSDI for Prisoners & Their Advocates (2004), LEGAL SERVICES FOR PRISONERS WITH CHILDREN, www.prisonlegalnews.org/media/publications/manual_on_social_security_beneits_for_prisoners.pdf; Your Right to Representation to the Community (2009).

[1618] How Do I File An Appeal?, MEDICARE.GOV, http://www.medicare.gov/claims-and-appeals/file-an-appeal/appeals.html

[1619] https://www.aging.ca.gov/hicap/

[1620] http://www.medicare.gov/claims-and-appeals/file-an-appeal/appointing-a-representative/get-help-filing-an-appeal.html

[1621] Available online: http://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms1696.pdf



HELPFUL HINT

If you are eligible for both, Medicare and Medi-Cal ("Dual Eligibility")

Those Eligible for Both Medicare and Medi-Cal: People who qualify for both Medicare and Medi-Cal are known as "dual eligibles" or "Medi-Medis."[1623] People typically become "dual eligible" by first being enrolled in one program and later becoming eligible for the other program. For example, someone may already meet Medi-Cal's income requirements, and then age into Medicare when he or she turns 65. Dual eligibles do not necessarily receive the same benefits from Medicare and Medi-Cal.[1624] The majority of dual eligibles receive full Medi-Cal benefits and assistance with Medicare premiums and cost-sharing.[1625]

For counseling on dual eligibility, go to Health Consumer Alliance's (HCA) website and view their list of local HCA call centers at http://healthconsumer.org/index.php?id=partners, or visit Cal MediConnect's website at www.calduals.org.

[1622] Can Someone File an Appeal for Me? MEDICARE.GOV, http://www.medicare.gov/claims-and-appeals/file-an-appeal/appointing-a-representative/get-help-filing-an-appeal.html
[1623] Check Medi-Cal Eligibility, CALQUALITY.ORG, http://www.calqualitycare.org/learn/nursing-homes/pay/medical
[1624] Dual Eligibles Fast Facts, CALDUALS, http://www.calduals.org/background/fast_facts/
[1625] Fore more information about dual eligibility, please visit: https://kaiserfamilyfoundation.files.wordpress.com/2013/01/4091-08.pdf



V. WORK SERVICES BENEFITS

WHAT WILL I LEARN ABOUT WORK SERVICES BENEFITS?

- **An overview of work services offered through public benefits programs**
- **What benefits you get work services programs**
- **How your criminal history could affect your ability to participate in work services offered through public benefits programs**
- **How to enroll in work services programs through public benefits if you are eligible**

CALFRESH EMPLOYMENT & TRAINING (E&T) PROGRAM

This program offers employment and job training support for people who are getting CalFresh benefits and are NOT getting CalWORKs cash aid.[1626] Currently, only 21 counties have an E&T and, in all counties that have an E&T program, participation is voluntary.[1627]

AM I ELIGIBLE FOR CALFRESH E&T?

It depends. This program is available in some California counties but not others, and it operates differently in each county. *These programs are usually only offered to recipients of General Assistance/General Relief (GA/GR)*. If your county has an E&T program, you may be able to participate if:

- You are currently getting food stamps through CalFresh; and
- You are not currently getting cash aid through CalWORKs.

In some counties, you may be able to enroll in this program even if you aren't getting GA/GR. Contact your local county welfare office to find out if it has an E&T program, what services it offers through this program, and if you qualify. For a statewide list of county welfare agencies, see Appendix A, on PG. 505.

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET CALFRESH E&T?

Maybe. As explained in the section on CalFresh food stamps, you may be disqualified from CalFresh depending on the details of your history and when you apply. For details, see PG. 454.

WHAT BENEFITS AND SERVICES CAN I GET THROUGH CALFRESH E&T?

It depends. E&T programs work differently in each county, so it's best to contact your county welfare office for all the details. Services may include:

- Workfare
- Job search activities
- Job club activities (i.e., job readiness training and counseling)
- Educational programs (such as adult basic education, basic literacy, ESL, and GED preparation)
- Referrals to vocational training
- Case management and supportive services to ensure job retention
- Mental health and/or addiction recovery counseling.[1628]

HOW DO I ENROLL IN CALFRESH E&T?

CalFresh E&T operates differently in each county. Call your local county welfare office to find out if your county has a CalFresh E&T program, and if so, how enrollment works. For a list of county welfare agencies, see Appendix A, on PG. 505.

CALWORKS WELFARE-TO-WORK

CalWORKs Welfare-To-Work (WTW) is a mandatory CalWORKs program designed to help adults find or get ready for employment.[1629] All 58 counties in California have Welfare-To-Work programs, which is operated locally by each county welfare department or its contractors.[1630] If you receive CalWORKs, you must participate in Welfare-To-Work, unless you have an exemption.

[1626] For federal law governing this program, see Food and Nutrition Act of 2008, § 6(d); C.F.R. § 273.7. For state regulations governing this program, see the Manual of Policies and Procedures (MPP), CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG128.htm
[1627] http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_43_bill_20111006_chaptered.html
[1628] LOS ANGELES DEP'T OF SOC. SERVS.,http://www.ladpss.org/dpss/WAC/pdf/factsheets/CalFresh%20Fact%20Sheet.pdf.
[1629] Welfare-To-Work, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG141.htm, http://www.hud.gov/offices/pih/programs/hcv/wtw/ta/sfCalWORKSFactSheet.pdf
[1630] Welfare-To-Work, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG141.htm



ONCE I'M ENROLLED IN CALWORKS WELFARE-TO-WORK, WHAT RULES MUST I FOLLOW TO STAY ELIGIBLE?

Unless you have an exemption, all adult CalWORKs recipients are required to participate in Welfare-To-Work (see the Helpful Hint Box on PG. 477 to learn more about exemptions). You have 24 months to complete your Welfare-To-Work requirements.[1631] The CalWORKs Welfare-to-Work requirements include the following:

- You must complete the Welfare-To-Work program within 24 months (unless you have an exemption).
- After receiving aid for up to a maximum of 24 months, you must work in unsubsidized employment[1632] or participate in community services activities for the minimum number of hours listed below[1633]:
  - Adults in one-parent families with a child under the age of six must spend at least 20 hours per week in Welfare-To-Work activities.[1634]
  - Adults in one-parent families with a child over the age of six must spend at least 30 hours per week in Welfare-To-Work activities.[1635]
  - The minimum participation requirement for two-parent families is 35 hours per week.[1636]

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO PARTICIPATE IN CALWORKS WELFARE-TO-WORK?

Maybe. Refer back to the explanation of how a conviction can impact eligibility for CalWORKs on PG. 449.

WHAT BENEFITS AND SERVICES CAN I GET THROUGH CALWORKS WELFARE-TO-WORK?

You can get help with childcare, transportation, and work- or training-related expenses. Even when you're no longer eligible for CalWORKs cash aid, you may continue to receive help with child care expenses.[1637] All WTW participants will:

- Attend a group orientation that explains the cash benefit and WTW rules.[1638]
- Meet with a county welfare worker who will look at your work history and skills, and connect you to other services you may need in order to work.[1639]
- Participate in a 4-week job search program. If you haven't found a job after the 4 weeks, you will meet with an employment counselor who will help you plan steps toward employment.[1640] You may be assigned to an unpaid work experience/preparation; vocational training placements; or an adult education or community college programs.[1641]

HELPFUL HINT

Exemptions from CalWORKs Welfare-to-Work Requirement

All adults who apply get CalWORKs must participate in the Welfare-to-Work (WTW) program, unless they have an exemption from the WTW requirement. Adults are exempt from WTW if you are:

- Age 60 or older;
- Disabled;
- Caring for an ill or incapacitated member of your household;
- The parent of a child age 0-23 months;
- Having a pregnancy that impairs your ability to be regularly employed;
- A fulltime member in VISTA (Volunteers in Service to America); OR
- A past or present victim of domestic abuse (or have a family member who is) and the county determines that your condition or situation prevents or impairs your ability to be employed.

If you believe that any of these exemptions apply to you, contact your county CalWORKs office. You may request an exemption verbally or in writing using the "CalWORKs Exemption Request Form" (Form CW 2186 A). To view a copy of the form, visit: http://www.cdss.ca.gov/cdssweb/entres/forms/English/CW2186A.pdf.

[1631] See ACL 12-67 available at http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2012/12-67.pdf.
[1632] Unsubsidized employers do not receive government subsidies (funding) to create an employment position.
[1633] http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1041, see also http://www.sccgov.org/ssa/cwes/cwchap01.pdf
[1634] Work-To-Work 24 Month Time Limit, CALWORK EMPLOYEE SERVICES HANDBOOK, http://www.sccgov.org/ssa/cwes/cwchap01.pdf
[1635] Welfare-To-Work, CAL. DEP'T OF SOC. SERVS. http://www.cdss.ca.gov/cdssweb/PG141.htm
[1636] Welfare-To-Work, CAL. DEP'T OF SOC. SERVS. http://www.cdss.ca.gov/cdssweb/PG141.htm
[1637] Welfare-To-Work, CAL. DEP'T OF SOC. SERVS. http://www.cdss.ca.gov/cdssweb/PG141.htm
[1638] Welfare-To-Work, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG141.htm
[1639] CalWORKs: The Details, Disability Benefits 101, http://ca.db101.org/ca/programs/income_support/calworks/program2c.htm
[1640] CalWORKs: The Details, Disability Benefits 101, http://ca.db101.org/ca/programs/income_support/calworks/program2c.htm
[1641] Welfare-To-Work, CAL. DEP'T OF SOC. SERVS., http://www.cdss.ca.gov/cdssweb/PG141.htm



VI. SOCIAL SECURITY BENEFITS

WHAT WILL I LEARN?

- **What Social Security is and how it works**
- **Who is eligible to receive Social Security benefits**
- **About the different types of Social Security benefits (retirement benefits, SSDI, SSI/SSP)**
- **How to apply for Social Security benefits**
- **How your criminal record affects your ability to get Social Security benefits**
- **What happens to Social Security benefits when you are incarcerated**
- **How to restart your Social Security benefits if they've been suspended (paused)**
- **What to do if your Social Security benefits have been wrongly ended or suspended**

Social Security is a federal benefits program that provides cash benefits to retired people, disabled people, and their dependents. Social security is a "pay-as-you-go" program, meaning that workers pay Social Security taxes, and these taxes are used to provide benefits to Social Security beneficiaries (retired people, disabled people, and their dependents).

For starters, there are four ways to qualify for federal Social Security benefits:

1. As a retired individual;
2. As a disabled individual;
3. As the spouse or dependent of an eligible individual; or
4. As the survivor of an eligible individual.

SOCIAL SECURITY RETIREMENT BENEFITS

WHAT ARE SOCIAL SECURITY RETIREMENT BENEFITS?

Social Security retirement benefits are paid out of money collected from Social Security taxes on individual paychecks to working taxpayers.[1642] For each year you work and pay Social Security taxes to the government, you earn "credits"—up to 4 per year. Generally, you need 40 credits (10 years of working and paying Social Security taxes) to qualify for retirement benefits.[1643]

AM I ELIGIBLE FOR SOCIAL SECURITY RETIREMENT BENEFITS?

To get Social Security retirement benefits, you must

1. Be at least 62 years old; and
2. Have earned 40 Social Security credits (by working and paying Social Security taxes to the U.S. government for 10 full years).

You can start getting retirement benefits as early as age 62. But depending on your situation, you may want to wait so you can get a higher monthly benefit.[1644] This age may be 65, 66, or 67, depending on what year you were born.[1645]

HOW TO CHECK FOR SOCIAL SECURITY CREDITS

If you're not sure how many Social Security credits you have, you can call the SSA (1-800-772-1213), have a Form SSA-7004, "Request for Social Security Statement" sent to you, and submit the form. If you have Internet access, you can also use the Online Retirement Estimator on the SSA's website by visiting www.ssa.gov.

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET RETIREMENT BENEFITS?

Possibly—but it might be just temporary.

You can't receive Social Security benefits for any month that you:

1. Are confined in a correctional facility for a period of 30+ days in a row due to a conviction;[1646]

[1642] Also called "FICA" taxes. https://faq.ssa.gov/link/portal/34011/34019/Article/3815/What-are-FICA-and-SECA-taxes.
[1643] Your Right to Representation (2011) PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf.
[1644] When to Start Receiving Retirement Benefits, SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-10147.pdf.
[1645] To find out the full retirement age for your birth year, call the SSA at 1-800-772-1213 or visit the SSA website to See a chart: http://www.socialsecurity.gov/retire2/retirechart.htm. If you decide to start getting retirement benefits earlier, Social Security will reduce the benefit amount you get per month. If you delay getting retirement benefits until age 70 or later, you get a special credit for each month after age 70 that you're not getting retirement benefits. Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1646] 42 U.S.C. § 402(x)(1)(A)(i), as amended by Public Law 106-170; ,Benefits After Incarceration, SOC. SEC. ADMIN. http://www.ssa.gov/reentry/; Your Right to Representation to the Community (2009), BAZELON CENTER, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber; Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf. "Correctional facility" would include a prison, a jail, or a halfway house controlled by your state's Department of Corrections. http://www.ssa.gov/reentry/.



2. Are confined to an institution by court order because you've been found "guilty" but insane, "not guilty" due to insanity or mental illness, or "incompetent to stand trial";[1647]
3. Have an outstanding arrest warrant because you're avoiding prosecution or confinement for a felony; or[1648]
4. Have been determined by a judge to be violating a condition of probation or parole.[1649]

    - *Here is an example of how this works:* If you were convicted and confined on March 29, 2014 and you stayed in jail until May 2, 2014, you weren't entitled to any benefits for the months of March, April, or May since you were being confined for 35 days in a row.[1650] This means you cannot collect back payments for any benefits you otherwise would have received if you never had a conviction, warrant, or violation as described in the four situations above.[1651] Additionally, if you were in prison or jail over 30 days, you may have accrued an overpayment, which may be withheld from future Social Security benefits once you are released and your benefits are reinstated.[1652]

Once you qualify for Social Security retirement benefits, you stay enrolled in the program as long as you're eligible. Although your benefits get suspended (paused) during incarceration, they don't get terminated (permanently ended) due to your incarceration, no matter how long your incarceration lasts.[1653]

If you're currently being incarcerated for 30 or more days, and you were already getting retirement benefits when you were arrested, those benefits were paused on your 31st day of incarceration.[1654] But you can apply to restart them once you have documents showing your release date (see PG. 481). If you weren't already getting retirement benefits when you were arrested, and being incarcerated is the only factor disqualifying you now, you can start a new Social Security application before your release (see PG. 478).[1655]

HOW DO I APPLY FOR RETIREMENT BENEFITS?

You can apply online, by phone, or in person:[1656]

- ***Online:*** Visit SSA's website (www.ssa.gov) and start a new application at https://secure.ssa.gov/iClaim/rib.[1657]
- ***By phone:*** Call the SSA at 1-800-772-1213 (TTY: 1-800-325-0778). A representative will set an appointment for you to do your application by phone. This toll-free line is open Monday through Friday, 7 AM to 7 PM. For each time you call, record the date of your call and the name of the person who assists you.[1658]
- ***In person:*** First, call the SSA to find a local office near you; or, if you have Internet access, use the office locator at https://secure.ssa.gov/ICON/main.jsp. Then call the local office to make an appointment.

TIPS:

- Before you start, you may want to look over the Social Security's application checklist (see Appendix H, on PG. 523).[1659] to gather the information you need.
- If you need help with the application, call the Social Security Administration or visit a local Social Security office. You have a right to assistance from Social Security representatives if you need help due to a disability.[1660]

[1647] 42 U.S.C. § 402(x)(1)(A)(ii), as amended by Public Law 106-170; Benefits After Incarceration, Soc. Sec. Admin., "http://www.ssa.gov/reentry/; Your Right to Representation to the Community (2009), Bazelon Center, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber.

[1648] 42 U.S.C. § 1382; Your Right to Representation (2011), Prison Law Office, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.

[1649] 42 U.S.C. § 1382. See Your Right to Representation (2011), Prison Law Office, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; What Prisoners Need to Know, Soc. Sec. Admin. http://www.ssa.gov/pubs/EN-05-10133.pdf.

[1650] Benefits After Incarceration: What You Need to Know, Soc. Sec. Admin. http://www.ssa.gov/reentry/.

[1651] 42 U.S.C. § 1382; Your Right to Representation (2011), Prison Law Office, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.

[1652] For example, if you were convicted and incarcerated starting on the fifth of the month, the following month's check, if cashed would be an overpayment. The best way to handle an overpayment is to return the check to SSA. http://www.socialsecurity.gov/pubs/EN-05-10098.pdf. See also, Your Right to Representation to the Community (2009), Bazelon Center, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber.

[1653] Your Right to Representation to the Community (2009), Bazelon Center, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber.

[1654] Arrested? What Happens to Your Benefits?, Bazelon Center, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf.

[1655] Benefits After Incarceration: What You Need to Know, Soc. Sec. Admin., http://www.ssa.gov/reentry/; What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf.

[1656] Other Ways to Apply for Benefits, Soc. Sec. Admin., http://www.socialsecurity.gov/info/isba/otherways.htm

[1657] See How to Apply Online for Retirement Benefits, Soc. Sec. Admin., http://www.socialsecurity.gov/pubs/EN-05-10523.pdf.

[1658] If you complete your application within 60 days of your first call to request materials, the SSA will treat that call as the date of your application. Your Right to Representation (2011), Prison Law Office, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.

[1659] Checklist For Online Medicare, Retirement, and Spouses Applications, Soc. Sec. Admin., http://www.socialsecurity.gov/hlp/isba/10/isba-checklist.pdf



- You have a right to appoint any individual—such as a friend, family member, attorney, social worker, or other trusted advocate—to act as your representative in the application process. To do so, use the form in Appendix G, PG. 523.[1661]
- If you need benefits right away due to a financial emergency, ask if you can get "expedited" benefits.[1662]

CAN I APPLY FOR RETIREMENT BENEFITS WHILE INCARCERATED?

Yes! You can't receive Social Security benefits while incarcerated[1663]—but if you haven't applied before, and you think you may qualify, you can start the application process as early as several months before your release date.

Some prisons and jails have a pre-release agreement with local Social Security offices. Ask the pre-release staff if your facility has a pre-release agreement with a local Social Security Office.

- If your facility has a pre-release agreement:
  - Speak to the pre-release staff. They should be available to help you complete and submit your application before your release.
  - Pre-release staff should also notify the Social Security office about your release date.
  - Ideally, if a pre-release agreement is in place, staff should start working with you several months before your release, and Social Security should then process your application promptly so that your benefits will start shortly after you get out.[1664]
- If your facility doesn't offer pre-release assistance—and/or you have trouble working with correctional staff:
  - Call Social Security to have application materials mailed to you and get help with them. Be prepared to give your Social Security number and release date. If Social Security's automated phone system doesn't accept your call, you should ask a non-incarcerated family member to call as an Authorized Representative ("AR") on your behalf (use the form in Appendix G, PG. 523to appoint a family member as an AR).
  - An SSA representative will set a post-release appointment for you at a local Social Security office, ask you to bring your official release documents, and tell you what else you need to do.[1665]

WHAT TO DO IF YOU KNOW YOU WILL BE INCARCERATED 30 DAYS OR MORE:

As soon as you know that you will be incarcerated for 30 or more days, you should report this fact to Social Security so that your benefits get suspended in a timely way. If you get any Social Security checks for any months during which you're incarcerated, these will be treated as overpayments and you'll have to repay them later. The amounts might get deducted from your future Social Security benefits, when you're later released from incarceration.

I WAS RECEIVING RETIREMENT BENEFITS WHEN I ENTERED PRISON OR JAIL. WHAT HAPPENS TO THEM WHILE I'M INCARCERATED?

If you were convicted and incarcerated for 30 or more days in a row, your Social Security benefits got suspended on the 31st day.[1666] You can't get these benefits while incarcerated, but you'll stay enrolled in the program. This means if your spouse or children have been getting benefits based on your Social Security eligibility, they'll keep getting them while you're incarcerated (even if your benefits were suspended), so long as they're eligible.[1667] This also means that once you have official documents proving your release date, you can apply to restart your retirement benefits (see PG. 481).[1668]

Please note that BEFORE you are actually convicted—even if you are incarcerated while awaiting trial—you will continue to receive Social Security benefits until you are convicted AND incarcerated for 30 days or more in a row.[1669]

[1660] Section 504 of the Rehabilitation Act; Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1661] Your Right to Representation, SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-10075.pdf.
[1662] PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1663] 20 C.F.R. § 404.468(a)
[1664] Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf; What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf.
[1665] Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf. What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf.
[1666] So, for example, if you were convicted and went to prison or jail on March 3, your benefits would stop on April 2. Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf.
[1667] 20 C.F.R. § 404.468(a); Benefits After Incarceration: What You Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/; Your Right to Representation to the Community (2009), BAZELON CENTER, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber.
[1668] What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf.
[1669] What Prisoners Need to Know, BAZELON CENTER, http://www.ssa.gov/pubs/EN-05-10133.pdf. See also Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf.



IMPORTANT EXCEPTIONS

Exceptions for People Incarcerated Before April 1, 2000—
What happened to your Social Security Benefits during incarceration:

- If you were incarcerated before February 1, 1995: Your benefits get suspended after your 31st day of incarceration only if you were convicted of a felony.
- If you were incarcerated between February 1, 1995 and March 31, 2000: You're not entitled to benefits for any month in which you were incarcerated following conviction for a crime that can be given a one-year or longer sentence by law (regardless of the actual sentence the court imposed).
- If you were incarcerated before April 1, 2000: Your benefits don't get suspended if you're confined by court order because you're found "not guilty" due to insanity, "guilty" but insane, or "incompetent to stand trial."[1670]

MY RETIREMENT BENEFITS STOPPED WHILE I WAS INCARCERATED. HOW DO I RESTART THEM?

Before release:

- Once you know your release date, notify your correctional counselor (or another staff member at your facility) that you want to restart your Social Security benefits. It's best to start this process at least 3 months before your release date.[1671]
  - If your facility has a pre-release agreement:
    - should be available to help you complete and submit the necessary paperwork in a timely way.[1672]
  - If your facility doesn't offer pre-release assistance—and or you have trouble working with staff:
    - Call 1-800-772-1213 (TTY: 1-800-325-0778) to notify Social Security that you were getting retirement benefits before you got incarcerated, and you want your benefits to restart as soon as possible after your release. The toll-free line is open Monday to Friday, 7 a.m. to 7 p.m. Be prepared to provide your Social Security number and release date. A representative will set a post-release appointment for you at a local Social Security office, ask you to provide official release documents, and tell you what else you need to do.[1673]
- If Social Security's automated phone system doesn't accept your call, you should ask a non-incarcerated family member to call as an Authorized Representative ("AR") on your behalf (use the form in Appendix G PG. 518 to appoint a family member as an AR).
- You can also ask a friend, family member, or trusted advocate to communicate with Social Security about your benefits on your behalf. Remember that you have a right to appoint any individual—such as a friend, family member, attorney, or social worker—to act as your representative in the application process. To do so, use the form in Appendix G on PG. 523.[1674]

After release:

- Call 1-800-772-1213 (TTY: 1-800-325-0778) to notify Social Security that you were released from prison and want to restart your retirement benefits. Be prepared to provide your Social Security number. A representative will set an appointment for you at a local Social Security office, ask you to bring your official release documents, and tell you what else you need to do.[1675]

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IMPORTANT: You can't get back-payments of Social Security for the months you spent in prison or jail.[1676] In other words, you can never collect retirement checks you otherwise would have gotten if you weren't incarcerated. However, you should be able to collect back-payments dating back to the month following the month of your release. For example, if you were released on October 10, 2014, you can start receiving retirement benefits again starting November 2014. Since monthly Social Security benefits are paid 1 month after they're due, you can collect your November retirement check in December 2014.[1677]

[1670] 42 U.S.C. § 402(x)(1)(A)(i); Your Right to Representation to the Community (2009), BAZELON CENTER, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber.
[1671] See Benefits After Incarceration, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf.
[1672] What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf.
[1673] Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf. What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf
[1674] Your Right to Representation, SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-10075.pdf
[1675] Benefits After Incarceration, SOC. SEC. ADMIN. http://www.ssa.gov/reentry/; What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf
[1676] 42 U.S.C. § 1382
[1677] What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf



SOCIAL SECURITY DISABILITY INSURANCE (SSDI)

WHAT IS SOCIAL SECURITY DISABILITY INSURANCE (SSDI)?

Social Security Disability Insurance (SSDI) benefits are paid out of money collected from Social Security taxes on individual worker's paychecks.[1678] SSDI is for U.S. citizens and lawfully present noncitizens (legal permanent residents or LPRs) who have earned a certain amount of Social Security credits by working and paying Social Security taxes, but who can no longer work due to a disability.[1679]

AM I ELIGIBLE FOR SSDI?

To get SSDI, you must:

1. Have a disability.
   - A disability is a severe medical condition that prevents you from being able to work.[1680]
   - Once you apply for SSDI, California Department of Social Services (CDSS) will collect medical records to decide if you have a disability.[1681]
   - Note: Being unemployed, incarcerated, on parole, or currently addicted to substances do not qualify as disabilities for SSDI.[1682] **AND**
2. Have a recent and long enough work history to meet SSDI requirements.[1683]
   - What counts as recent and lengthy enough work history for SSDI depends on the age when you became disabled. Generally, the older you were when you became disabled, the more recent and lengthy your work must be.[1684]

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET SSDI?

Possibly—but this could be just temporary. You can't get Social Security benefits for any month that you:[1685]

1. Are confined in a correctional facility for a period of 30+ days in a row due to a conviction;[1686]
2. Are confined to an institution by court order because you've been found "guilty" but insane, "not guilty" due to insanity or mental illness, or "incompetent to stand trial";[1687]
3. Have an open arrest warrant because you're avoiding prosecution or confinement for a felony; or
4. Are found to be violating a condition of probation or parole.[1688]

NOTES RELATED TO ELIGIBILITY FOR OTHER BENEFITS:

If you get SSDI, after your 24th month of benefits you'll be automatically enrolled in Medicare (see PG. 471).

If you get SSDI, benefits may also be available to certain family members, including: (1) your spouse, if he/she is age 62 or older, or caring for your child who is under 16 and has a disability; and (2) your unmarried child, if he/she is under age 18, or age 18 or older and has a disability that started before age 22 (see PG. 482).

Depending on your work history, you may also be eligible for Social Security retirement benefits (see PG. 478).

Depending on how much income and resources you have, you may also be eligible for SSI (see PG. 486).

[1678] Also called "FICA" taxes. What are FICA and SECA taxes? SOC. SEC. ADMIN., https://faq.ssa.gov/link/portal/34011/34019/Article/3815/What-are-FICA-and-SECA-taxes

[1679] Your Right to Representation (2011), PRISON LAW OFFICE http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Disability Benefits, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10029.pdf.

[1680] The law defines "disability" as the inability to do any "substantial gainful activity" due to a "medically determinable physical or mental impairment" that can be expected to result in death or that has lasted (or can be expected to last) for at least 12 months in a row. 20 C.F.R. § 416.905(a); Your Right to Representation (2011), PRISON LAW OFFICE http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf

[1681] Disability Benefits, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10029.pdf. If you're blind or have low vision, special rules govern your eligibility and benefits. 20 C.F.R. § 416.905(b); see 20 C.F.R. §§ 416.981-416.985; Disability Planner, SOC. SEC. ADMIN., http://www.ssa.gov/dibplan/dqualify8.htm; Your Right to Representation (2011), PRISON LAW OFFICE http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf

[1682] 20 C.F.R. § 416.905(a). What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Your Right to Representation (2011), PRISON LAW OFFICE http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf

[1683] Disability Planner, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10029.pdf

[1684] To see detailed work requirements for people who became disabled at different ages, see Disability Planner, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10029.pdf;

[1685] What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf;

[1686] 42 U.S.C. § 402(x)(1)(A)(i), as amended by Pub. L. 106-170; see Benefits After Incarceration, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/; Your Right to Representation to the Community (2009), BAZELON CENTER, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber; Your Right to Representation (2011), PRISON LAW OFFICE http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf "Correctional facility" would include a prison, a jail, or a halfway house controlled by your state's Department of Corrections. Benefits After Incarceration, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/.

[1687] 42 U.S.C. § 402(x)(1)(A)(ii), as amended by Pub. L. 106-170; see Benefits After Incarceration, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/; Your Right to Representation to the Community (2009), BAZELON CENTER, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber

[1688] 42 U.S.C. § 1382; Your Right to Representation (2011), PRISON LAW OFFICE http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf



Here is an example of how this works: If you were convicted and confined on March 29, 2014 and stayed in jail until May 2, 2014, you weren't entitled to benefits for the months of March, April, or May since you were being confined for 35 days in a row.[1689] This means you can't collect back payments for any SSDI benefits you otherwise would have received if you never had a conviction, warrant, violation, and/or period of confinement as described above.[1690]

Also note that you CAN'T apply for any Social Security benefits based on a disability that is related to a felony offense. For example, if you fell while committing a felony and lost your ability to walk, that disability won't qualify you for SSDI.[1691] But you can apply for SSDI for disabilities that are not related to the offense.

Once you qualify for SSDI, you stay enrolled as long as you still have a qualifying disability. Although your benefits get suspended (paused) during incarceration, they won't get terminated (permanently ended) due to your incarceration.[1692] This means that if your spouse or children have been getting benefits as your dependents based on your SSDI eligibility, they'll keep getting these benefits while you're incarcerated, as long as they stay eligible.[1693]

If you're currently incarcerated for 30 or more days, and you were already getting SSDI when you were arrested, then your SSDI was suspended on your 31st day of incarceration.[1694] But you can apply to restart your SSDI benefits once you have documents showing your release date (see PG. 485). If you weren't on SSDI when you were arrested, and being incarcerated is the only factor disqualifying you now, you can start a new application for SSDI before your release (see PG. 483).[1695]

IMPORTANT EXCEPTIONS

Exceptions for People Incarcerated Before April 1, 2000—What happened to your SSDI during incarceration:

- If you were incarcerated between February 1, 1995 and March 31, 2000: You're not entitled to SSDI benefits for any month in which you were incarcerated following conviction of a crime punishable by more than a one-year statutory sentence, regardless of the actual sentence imposed by the court.
- If you were incarcerated before February 1, 1995: Your SSDI benefits get suspended after your 31st day of incarceration only if you were convicted of a felony.
- If you were incarcerated before April 1, 2000: Your SSDI benefits didn't get suspended if you were confined by court order because you were found to be "not guilty" due to insanity, "guilty" but insane, or "incompetent to stand trial.[1696]

HOW DO I APPLY FOR SSDI?

You can apply online, by phone, or in person.[1697]

- ***Online:*** Visit SSA's website (www.ssa.gov) and start a new application at https://secure.ssa.gov/iClaim/dib.[1698]
- ***By phone:*** Call the SSA at 1-800-772-1213 (TTY: 1-800-325-0778). A representative will set up an appointment for you to do your application by phone. This toll-free line is open Monday through Friday, 7 a.m. to 7 p.m. For each time you call, record the date of your call and the name of the person who helps you.[1699]
- ***In person:*** First, call the SSA to find the office nearest you; or, if you have Internet access, use the office locator at https://secure.ssa.gov/ICON/main.jsp. Then call to make an appointment.

[1689] Benefits After Incarceration: What You Need to Know Soc. Sec. Admin., http://www.ssa.gov/reentry/
[1690] 42 U.S.C. § 1382; Your Right to Representation (2011), Prison Law Office http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1691] 42 U.S.C. § 423(d)(6)(A).
[1692] Your Right to Representation to the Community (2009), Bazelon Center, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber
[1693] 20 C.F.R. § 404.468(a); Benefits After Incarceration: What You Need to Know, Soc. Sec. Admin., http://www.ssa.gov/reentry/; Your Right to Representation to the Community (2009), Bazelon Center, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber
[1694] Arrested? What Happens to Your Benefits?, Bazelon Center, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf
[1695] Benefits After Incarceration: What You Need to Know Soc. Sec. Admin., http://www.ssa.gov/reentry/; What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf;
[1696] 42 U.S.C. § 402(x)(1)(A)(i); Finding the Key to Successful Transition from Jail or Prison to the Community, Bazelon Center (2009), http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber
[1697] Other Ways to Apply to Benefits, Soc. Sec. Admin., http://www.socialsecurity.gov/info/isba/otherways.htm
[1698] See Apply Online for Disability Benefits, Soc. Sec. Admin. http://www.ssa.gov/pubs/EN-05-10550.pdf
[1699] If you complete your application within 60 days of your first phone call to request information or materials, the SSA will treat that call as the date of your application. Your Right to Representation, Prison Law Office (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf



TIPS FOR APPLYING TO SSDI:

- Apply as soon as possible when you become disabled. The application review process can take 3-5 months.[1700]
- Before you start, you may want to look over the Social Security Administration's disability application checklist (see Appendix H, PG. 529) to gather the information you need. [1701]
- If you need help with the application, call the Social Security Administration or visit a local Social Security office. You have a right to assistance from Social Security representatives if you need help due to a disability.[1702]
- You have a right to appoint any individual—such as a friend, family member, attorney, social worker, or other trusted advocate—to act as your representative in the application process. To do so, use the "Appointment of Representative" form (a copy of form in Appendix F, PG. 518).[1703]
- If you need benefits right away due to a financial emergency, ask if you can get "expedited" benefits.[1704]

CAN I APPLY FOR SSDI WHILE INCARCERATED?

Yes! You can't receive Social Security benefits while incarcerated[1705]—but if you haven't applied for SSDI before, and you think you may qualify, you can start the application process as early as several months before your release date. Keep in mind that review of an SSDI application can take 3-5 months.[1706] Some prisons and jails have a **pre-release agreement** with local Social Security offices to make this process easier.

IF THIS IS YOUR SITUATION:	THIS IS WHAT YOU SHOULD DO
If your facility has a pre-release agreement	• Speak to correctional staff. They may be available to help you complete and submit your SSDI application before your release. • Correctional staff should also notify the Social Security office about your release date. • If a pre-release agreement is in place, staff should start working with you several months before your release, and Social Security should then process your application promptly so that your benefits will start shortly after you get out.[1707]
If your facility doesn't offer pre-release assistance—and/or you have trouble working with correctional staff	• Call Social Security at 1-800-772-1213 (TTY: 1-800-325-0778) to have application materials mailed to you and get help with them. Be prepared to give your Social Security number and release date. • If Social Security's automated phone system doesn't accept your call, you should ask a non-incarcerated family member to call as an Authorized Representative ("AR") on your behalf (use the form in Appendix F, PG. 518 to appoint a family member as an AR). • An SSA representative will set a post-release appointment for you at a local Social Security office, ask you to bring your official release documents, and tell you what else you need to do.[1708]

PLEASE NOTE: If you become disabled while you are incarcerated, you can't start getting benefits until (1) you've been disabled for 5 full calendar months OR (2) one full calendar month has passed after your release date—whichever is later.[1709]

[1700] Disability Benefits, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10029.pdf
[1701] Disability Planner: How You Apply, Soc. Sec. Admin., http://www.ssa.gov/dibplan/dapply.htm; Checklist for Online Adult Disability Application, Soc. Sec. Admin., http://www.ssa.gov/hlp/radr/10/ovw001-checklist.pdf
[1702] Section 504 of the Rehabilitation Act; Your Right to Representation (2011), Prison Law Office, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1703] Your Right to Representation, Soc. Sec. Admin., http://www.socialsecurity.gov/pubs/EN-05-10075.pdf
[1704] Benefits Available to Paroling & Discharging Inmates (2011), Prison Law Office, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1705] 20 C.F.R. § 404.468(a)
[1706] Finding the Key to Successful Transition from Jail or Prison to the Community (2009), Bazelon Center, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber
[1707] Entering the Community After Incarceration—How We Can Help, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10504.pdf; What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf;Arrested? What Happens to Your Benefits?, Bazelon Center, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf
[1708] Benefits Available to Paroling & Discharging Inmates (2011), Prison Law Office, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf;http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10504.pdf; Arrested? What Happens to Your Benefits?, Bazelon Center, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf



I WAS RECEIVING SSDI WHEN I GOT ARRESTED. WHAT HAPPENS TO IT WHILE I'M INCARCERATED?

If you were convicted and incarcerated for 30 or more days in a row, your SSDI benefits got suspended on the 31st day.[1710] You can't receive SSDI benefits while incarcerated, but you'll stay enrolled in the program. This means that if your spouse or children have been getting benefits as your dependents based on your SSDI eligibility, they'll keep getting these benefits while you're incarcerated, as long as they stay eligible.[1711] This also means that once you have official documents proving your release from incarceration, you can apply to restart your SSDI benefits (see PG. 485).[1712]

WHAT TO DO IF YOU KNOW YOU WILL BE INCARCERATED 30 DAYS OR MORE:

As soon as you know that you will be incarcerated for 30 or more days, you should report this fact to Social Security so that your benefits get suspended in a timely way. If you get any Social Security checks for any months during which you're incarcerated, these will be treated as overpayments and you'll have to repay them later. The amounts might get deducted from your future Social Security benefits, when you're later released from incarceration.

MY SSDI STOPPED WHILE I WAS INCARCERATED. HOW DO I RESTART IT?

BEFORE RELEASE:	AFTER RELEASE:
• Once you know your release date, notify your correctional counselor (or another staff member at your facility) that you want to restart your SSDI benefits. It's best to start this process at least 3 months before your release date.[1713] • If your facility has a pre-release agreement with Social Security: • Staff should be available to help you complete and submit the necessary paperwork in a timely way.[1714] • If your facility doesn't offer pre-release assistance—and/or you have trouble working with correctional staff: • Call 1-800-772-1213 (TTY: 1-800-325-0778) to notify Social Security that you were getting SSDI before incarceration, and you want your benefits to restart as soon as possible after your release. The toll-free line is open Monday to Friday, 7 a.m. to 7 p.m. • Be prepared to provide your Social Security number and release date. • If Social Security's automated phone system doesn't accept your call, you should ask a non-incarcerated family member to call as an Authorized Representative ("AR") on your behalf (use the form in Appendix F, PG. 518 to appoint a family member as an AR). • A representative will set a post-release appointment for you at a local Social Security office, ask you to provide official release documents, and tell you what else you need to do.[1715] • You can also ask a friend, family member, or trusted advocate to communicate with Social Security about your benefits on your behalf. You have a right to appoint any individual—such as a friend, family member, attorney, or social worker—to act as your representative in the application process. To do so, use the form located in Appendix G, PG. 523.[1716]	• If you weren't able to do so while incarcerated, call Social Security to report that you were released from prison and want to restart your SSDI benefits. A representative will set an appointment for you at a local Social Security office, ask you to bring your official release documents, and tell you what else you need to do.[1717] • If your SSDI has only been suspended (paused)—which is what normally happens—it may take only a month to restart it. If you were incarcerated for 12 months or more, then your SSDI benefits would have been terminated, and you have to file a new application to reestablish your eligibility.[1718]

[1709] Disability Benefits, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10029.pdf; Jail and Social Security Disability Payments, Disability Advisor, http://www.disabilityadvisor.com/jail-and-social-security-disability-payments/

[1710] So, for example, if you were convicted and went to prison or jail on March 3, your benefits would stop on April 2. *Arrested? What Happens to Your Benefits?*, Bazelon Center, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf.

[1711] 20 C.F.R. § 404.468(a); Benefits After Incarceration: What You Need to Know, Soc. Sec. Admin., http://www.ssa.gov/reentry/;, Finding the Key to Successful Transition from Jail or Prison (2009), Bazelon Center, www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber

[1712] What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf;

[1713] See Benefits After Incarceration, Soc. Sec. Admin., http://www.ssa.gov/reentry/; Entering the Community After Incarceration—How We Can Help, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10504.pdf; Arrested? What Happens to Your Benefits?, Bazelon Center, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf

[1714] What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10504.pdf; Arrested? What Happens to Your Benefits?, Bazelon Center, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf

[1715] Benefits Available to Paroling & Discharging Inmates, Prison Law Office (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10504.pdf

[1716] Your Right to Representation, Soc. Sec. Admin., http://www.socialsecurity.gov/pubs/EN-05-10075.pdf

[1717] Be prepared to provide your Social Security number. See Benefits After Incarceration, Soc. Sec. Admin., http://www.ssa.gov/reentry/; What Prisoners Need to Know, Soc. Sec. Admin., http://www.ssa.gov/pubs/EN-05-10133.pdf;



I BELIEVE MY SSDI WAS WRONGLY DENIED OR STOPPED. HOW DO I APPEAL?

Many people who apply for SSDI are denied at first, but then get benefits once they appeal. Considering the small odds of getting approved on the first try, be prepared to get denied and to go through the appeals process.[1719] If Social Security decides to deny your SSDI application, it must mail you a notice of this decision.

- **You have a right to appeal.** To do so, you must file a "Request for Reconsideration" within 60 days after the date you received the notice.[1720] You can send it by mail, but it's best to file it in person at a local Social Security office. This way you get a copy with a time-and-date stamp, which proves that you appealed on time.[1721]
- You can also appeal online at: https://secure.ssa.gov/apps6z/iAppeals/ap001.jsp
- If you miss the 60-day deadline due to factors beyond your control, like illness or hospitalization, file a request for a "good cause exception" to the deadline along with your "Request for Reconsideration."[1722]

If Social Security then decides to deny your Request for Reconsideration, it must mail you a notice of this decision.

- Again, you have a right to appeal. To do so, you must file a "Request for an Administrative Law Judge Hearing" within **60 days** after the date you got the notice.[1723]

If you can't afford a lawyer to help with your appeal, you may be able to find free help by contacting a local legal aid office, a local bar association referral services, or another local nonprofit organization that helps with Social Security issues.[1724]

HELPFUL HINTS

SSDI Back-payments:

You can't get back-payments of SSDI for the months you spent in prison or jail. In other words, you can never collect SSDI checks you otherwise would have gotten if you weren't incarcerated. However, you should be able to collect back-payments of SSDI dating back to the month following the month of your release.

Getting SSDI on the Day You Apply:

In SPECIAL EMERGENCY CASES, you may be able to get benefits on the day you walk into the local Social Security office to complete your SSDI paperwork. This may be possible if:

(1) your SSDI was only suspended and not terminated during your incarceration, *or* you've already filed a new SSDI application before your release;
(2) you can show proof of a financial emergency; and
(3) you haven't already received benefits for the month.

SUPPLEMENTAL SECURITY INCOME (SSI)

Supplemental Security Income (SSI) provides financial support for low-income people who are 65 years old or older and/or have a disability—regardless of work history. The federal government provides certain amounts of aid for people who qualify, and California adds to the federal amounts in certain cases. SSI benefits are meant to cover basic necessities like food, clothing and shelter.[1725]

AM I ELIGIBLE FOR SSI?

To be able to get SSI, you must:

1. Be at least age 65, or blind, or disabled;

[1718] Thanks you to Steve Weiss, Regional Social Security & SSI Advocacy Coordinator at Bay Area Legal Aid, for his feedback and commentary on this portion of the Manual. See What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.3ssa.gov/pubs/EN-05-10504.pdf; Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf
[1719] Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1720] 20 C.F.R. § 416.1409
[1721] Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1722] 20 C.F.R. §§ 404.911(a), 416.1411(a)
[1723] 20 C.F.R. § 416.1433
[1724] Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf
[1725] Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.



- For SSI purposes, a disability is a severe medical condition that prevents you from being able to work.[1726] This is the same definition used for SSDI, and the same process is used to decide whether you have a qualifying disability.[1727]

2. Have very little or no income;
   - The income limit varies by where you live and may change from year to year.[1728]
3. Own limited resources;[1729]
   - The resource limit means that the value of things you own (besides your home and your car) must be below a certain amount, which is set by law and differs for singled and married people.[1730]
4. You must be living in the U.S. as a citizen or a lawfully present noncitizen (LPR);[1731]
   - If you are ineligible for SSI due to residency status, but you are legally present, you may be eligible for the Cash Assistance Program for Immigrants (CAPI).[1732] For information about this program, see the Helpful Hint box below.
5. You must apply for any other cash benefits you might be eligible for; **AND**[1733]
6. You must not be currently incarcerated (details below).[1734]

HOW SSI AFFECTS YOUR ABILITY TO GET OTHER PUBLIC BENEFITS:

- If you get SSI, you can't also get CalFresh, since SSI is supposed to cover food expenses.[1735] However, other people in your household may be eligible and your income will not count in determining their eligibility.
- If you get SSI, you'll be automatically enrolled in Medi-Cal (see PG. 466) and may qualify for extra help with paying for Medicare (see PG. 471).
- SSI recipients who do not have access to a kitchen or have a kitchen but no stove or refrigerator are eligible for additional food benefits through SSI. You are not considered as having access to a kitchen unless you have a working refrigerator or icebox and a stove with at least two working burners.[1736]
- Depending on your work history, you may be eligible to get retirement benefits (see PG. 478) and/or SSDI (see PG. 482) in addition to SSI.[1737]

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET SSI?

Possibly—but IT could be just temporary. You can't get SSI for any month that you:[1738]

1. Are confined in a correctional facility for that full calendar month;
2. Have an outstanding arrest warrant because you're avoiding prosecution or confinement for a felony; or
3. Are found to be violating a condition of probation or parole.[1739]

- ***Here is an example of how this works:*** If you went to jail on October 30, 2014 until November 2, 2014, you weren't entitled to SSI benefits for the months of October or November.[1740] This means you can't

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[1726] The law defines "disability" as the inability to do any "substantial gainful activity" due to a "medically determinable physical or mental impairment" that can be expected to result in death or that has lasted (or can be expected to last) for at least 12 months in a row. 20 C.F.R. § 416.905(a); Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1727] Disability Benefits, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10029.pdf
[1728] You can call Social Security to find out what current income limits apply to you. See Supplemental Security Income (SSI), SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-11000.pdf
[1729] Supplemental Security Income (SSI), SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-11000.pdf
[1730] 42 U.S.C. § 1382b; Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1731] If you're a noncitizen, you may be able to get SSI if you meet specific requirements; the rules on this are complex. Resources are available from California Immigrant Policy Center (www.caimmigrant.org) and National Immigration Law Center (www.nilc.org). You should also ask your county social services office for information about benefits programs for noncitizens, such as CAPI (See Helpful Hint box above). Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1732] For more information on how to apply, visit http://www.cdss.ca.gov/cdssweb/entres/getinfo/pdf/eas16.PDF.
[1733] 7 C.F.R. § 273.20(a); Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1734] Supplemental Security Income (SSI), SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-11000.pdf
[1735] 7 C.F.R. § 273.20(a); CDSS, MPP § 63-402.226; Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1736] Description of Supplements, SOC. SEC. ADMIN., https://secure.ssa.gov/poms.nsf/lnx/0501415044#b
[1737] Supplemental Security Income (SSI) Benefits, SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-11000.pdf
[1738] What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf
[1739] 42 U.S.C. § 1382; Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; see also What You Need to Know When You Get Supplemental Security Income (SSI), SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-11011.pdf
[1740] Benefits After Incarceration: What You Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/



collect "back payments" for SSI benefits that you would have received if you never had a violation, warrant, and/or period of confinement as described in the three situations above.[1741] Additionally, your benefits will be paused for up to one year. After that, they will be ended and you will need to re-apply (see PG. 489 below).

- **You also can't apply for any Social Security benefits based on a disability that is related to a felony you committed.** For example, if you fell while committing a felony and lost your ability to walk as a result, that disability won't qualify you for SSI.[1742] But you could still apply for SSI based on a disability that has no connection to your felony.

HOW DO I APPLY FOR SSI?

You can apply by phone or in person:[1743]

- *By phone:* Call Social Security at 1-800-772-1213 (TTY: 1-800-325-0778). A representative will set an appointment for you to do your application by phone. This toll-free line is open Monday through Friday, 7 AM to 7 PM. For each time you call, record the date of your call and the name of the person who assists you. If you complete your application within 60 days of your first call to request information or materials, the SSA will treat that call as the date of your application.[1744]
- *In person:* First, call Social Security to find a local office near you; or, if you have Internet access, use the office locator at https://secure.ssa.gov/ICON/main.jsp. Then call the local office to make an appointment. Unfortunately, you cannot apply for SSI online.

TIPS FOR APPLYING FOR SSI:

- If you're applying based on a disability, apply as soon as possible when you become disabled. The application review process can take 3-5 months.[1745]
- Before you start, you may want to look over the Social Security Administration's SSI brochure (available online at http://www.socialsecurity.gov/pubs/EN-05-11000.pdf) and/or disability application checklist (see Appendix H, PG. 529)[1746] to know what you'll need.
- If you need help with the application, call the Social Security Administration or visit a local Social Security office. You have a right to assistance from Social Security representatives if you need help due to a disability.[1747]
- You have a right to appoint any individual—such as a friend, family member, attorney, social worker, or other trusted advocate—to act as your representative in the application process. To do so, use the "Appointment of Representative" form in Appendix G, PG. 523.[1748]
- Some counties offer assistance with representation or referral to legal services programs for representation.
- If you need benefits right away due to a financial emergency, ask if you can get "expedited" benefits.[1749]

CAN I APPLY FOR SSI WHILE INCARCERATED?

Yes! You can't receive SSI benefits while incarcerated[1750]—but if you haven't applied for SSI before, and you think you may qualify, you can start the application process as early as 90 days before your release date. Keep in mind that review of an SSI application can take 3-5 months.[1751]

Some prisons and jails have a pre-release agreement with local Social Security offices.

- *If your facility has a pre-release agreement:* Speak to correctional staff. They may be available to help you complete and submit your SSI application before your release.
  - Correctional staff should also notify the Social Security office about your release date.

[1741] 42 U.S.C. § 1382; Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf.
[1742] 42 U.S.C. § 423(d)(6)(A).
[1743] See Supplemental Security Income (SSI) Benefits, SOC. SEC. ADMIN., http://www.ssa.gov/disabilityssi/ssi.html
[1744] Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1745] Disability Benefits, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10029.pdf
[1746] Disability Planner: How You Apply, SOC. SEC. ADMIN., http://www.ssa.gov/dibplan/dapply.htm; Checklist for Online Adult Disability Application, SOC. SEC. ADMIN., http://www.ssa.gov/hlp/radr/10/ovw001-checklist.pdf
[1747] Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1748] Your Right to Representation, SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-10075.pdf
[1749] Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1750] 20 C.F.R. § 404.468(a).
[1751] Finding the Key to Successful Transition from Jail or Prison to the Community, BAZELON CENTER (2009), http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber



  - Ideally, if a pre-release agreement is in place, staff should start working with you several months before your release, and the Social Security office should then process your application promptly so that your benefits will start shortly after you get out.
- *If your facility doesn't offer pre-release assistance—and/or you have trouble working with correctional staff:* Call Social Security at 1-800-772-1213 (TTY: 1-800-325-0778) to have application materials mailed to you and get help with them. Be prepared to give your release date.
  - If Social Security's automated phone system doesn't accept your call, you should ask a non-incarcerated family member to call as an Authorized Representative ("AR") on your behalf (use the form in Appendix G, PG. 523 to appoint a family member as an AR).
  - An SSA representative will set a post-release appointment for you at a local Social Security office, ask you to bring your official release documents, and tell you what else you need to do.[1752]

I WAS RECEIVING SSI WHEN I ENTERED PRISON OR JAIL. WHAT HAPPENS TO IT WHILE I'M INCARCERATED?

It depends on how long your incarceration period lasts—and, specifically, how many full *calendar* months you spend in prison or jail:[1753]

- If your incarceration doesn't last a full calendar month: Your SSI benefits generally continue without interruption. Once you've spent a full calendar month in prison or jail, your SSI benefits get suspended (put on pause).
- If your incarceration lasts for less than 12 calendar months in a row: Your SSI benefits stay suspended, but you remain enrolled in SSI. This means once you're released, Social Security can promptly restart your SSI benefits if it has proof that you've been released and proof that you still qualify based on income and resources. You won't be required to show new proof of your disability—although you should promptly report any changes to your disabled condition. (For details on how to restart your SSI after release from incarceration, see PG. 491.)
- If your incarceration lasts 1 year or more, and your SSI has been suspended for 12 calendar months in a row: Your SSI gets terminated (officially ended). This means you're no longer enrolled in SSI. If you want to get SSI after your release, you must file a brand new SSI application, including proof of your income and resources and proof of your disability. Processing your new SSI application may take 12-18 months. (For general information on how to start a new SSI application, see PG. 488. For details on how to apply for SSI while incarcerated, see PG. 491).

[1752] Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; What Prisoners Need to Know, SOC. SEC. ADMIN. http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN, http://www.ssa.gov/pubs/EN-05-10504.pdf; Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf

[1753] See Finding the Key to Successful Transition from Jail or Prison to the Community (2009), BAZELON CENTER, http://www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber; Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf; Benefits Available to Paroling & Discharging Inmates, PRISON LAW OFFICE (2011), www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; A Manual on SSI/SSDI for Prisoners & Their Advocates (2004), LEGAL SERVICES FOR PRISONERS WITH CHILDREN, www.prisonlegalnews.org/media/publications/manual_on_social_security_beneits_for_prisoners.pdf; What You Need to Know When You Get Supplemental Security Income (SSI), SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-11011.pdf



BELOW IS A CHART THAT SUMMARIZES HOW THE TIMING OF YOUR INCARCERATION AND RELEASE WILL AFFECT YOUR SSI ELIGIBILITY.[1754]

IF THIS IS YOUR SITUATION:	THIS IS WHAT WILL HAPPEN TO YOUR ELIGIBILITY FOR SSI:	FOR EXAMPLE:
Incarcerated for less than one full calendar month:	You stay enrolled in SSI. You stay eligible to receive SSI benefits. • Your benefits are not suspended. • You continue to get full benefits.	Suppose you went to prison on February 10, 2014 and got out March 30, 2014: • You weren't in prison for a full calendar month—only part of February and part of March. So there are no changes to your eligibility, and you should have received all your benefits as usual.
Incarcerated for one full calendar month:	You stay enrolled in SSI. Your ability to receive SSI benefits is put on pause. • After a full calendar month, benefits are suspended, but not terminated. • You lose full benefits for that full calendar month. • Your benefits can restart post-release.	Suppose you went to prison on February 10, 2014 and got out on April 1, 2014: • You lost your March benefits, since you were in prison for that full calendar month. • You can keep your February benefits, since you were in prison for just part of that month. • You should get your full April benefit—but it may be delayed unless you promptly notify Social Security of your release.
Incarcerated for at least one full calendar month, then released after the 1st of another month:	You stay enrolled in SSI. Your ability to receive SSI benefits is put on pause. • After a full calendar month, benefits are suspended, but not terminated. • If you notify SSA of your release date in advance, your benefits can restart promptly upon release. • You can get partial payment for the calendar month of your release date. • You can get full benefits for the following calendar month after release.	Suppose you went to prison on February 10, 2014 and got out on May 15, 2014: • After you've been incarcerated • You lost your March and April benefits, since you were in prison for those full calendar months. • You lost half your May benefit, since you were in prison for half that calendar month; but you're entitled to the other half. You should also get your full June benefit. • If you notify SSA in advance, your benefits may be available as early as your release date.
Incarcerated for 12+ full calendar months in a row, then released:	You do not stay enrolled in SSI. You must reapply to get SSI benefits again. • After a full calendar month, your benefits are suspended. • After 12 calendar months of being suspended, benefits are terminated. • You must file a new SSI application, including proof of disability, which can take 12-18 months to process. You can start your application process before release.	Suppose you went to prison on January 20, 2012 and got out February 10, 2013: • After you've been incarcerated for the full calendar month of February 2012, your benefits are suspended starting March 1, 2012. • After your benefits have been suspended from March 2012 through February 2013 (12 calendar months), they are terminated on March 1, 2013. • If you want to get back on SSI after release, you must file a new SSI application, which you can start before your release date. BUT Suppose you went to prison on January 20, 2012 and got out January 20, 2013: • After you've been incarcerated for the full month of February 2012, your benefits are suspended starting March 1, 2012. • You lost benefits for March through December (10 months), since you were in prison for those full calendar months. • Your benefits were suspended for 10 calendar months: not long enough to get terminated. So if you notify SSA in advance, your benefits may be available as early as your release date.

[1754] Your Right to Representation (2009), BAZELON CENTER, www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber; A Manual on SSI/SSDI for Prisoners & Their Advocates (2004), LEGAL SERVICES FOR PRISONERS WITH CHILDREN, www.prisonlegalnews.org/media/publications/manual_on_social_security_beneits_for_prisoners.pdf



MY SSI BENEFITS STOPPED WHILE I WAS INCARCERATED. HOW DO I RESTART THEM?

Follow the instructions in the chart below based on your situation.

BEFORE RELEASE:	AFTER RELEASE:
Once you know your release date, notify your correctional counselor (or another staff member at your facility) that you want to restart your SSI benefits. It's best to start this process at least 3 months before your release.[1755] • *If your facility has a pre-release agreement with Social Security*, staff should be available to help you complete and submit the necessary paperwork in a timely way.[1756] • *If your facility doesn't offer pre-release assistance—and/or you have trouble working with correctional staff*—call Social Security at 1-800-772-1213 (TTY: 1-800-325-0778) to notify Social Security that you were getting SSI before incarceration, and you want your benefits to restart as soon as possible after your release. The toll-free line is open Monday to Friday, 7AM to 7PM. Be prepared to provide your Social Security number and release date. A representative will set a post-release appointment for you at a local Social Security office, ask you to provide official release documents, and tell you what else you need to do.[1757] You can also ask a friend, family member, or trusted advocate to communicate with Social Security about your benefits on your behalf. See Appendix G, PG. 523 for paperwork to complete.[1758]	If you weren't able to do this while incarcerated, call Social Security to report that you were released from prison and want to restart your SSI benefits. A representative will set an appointment for you at a local Social Security office, ask you to bring your official release documents, and tell you what else you need to do. You will also need your social security number.[1759] • If your SSI has only been suspended and not terminated, it may take only a month to restart your benefits. If your SSI has been terminated, you may have to file a new application and wait 12-18 months.[1760] • In special cases, you may be able to get benefits on the day you walk into the local Social Security office to complete your SSI paperwork. This is possible if (1) your SSI was only suspended and not terminated during incarceration, or you filed a new SSI application while incarcerated and it was approved before your release; and (2) you can show proof of a financial emergency; and (3) you haven't already received benefits for the month.[1761]

HELPFUL HINT
SSI Backpayments

You can't get back-payments of SSI for any months you spent incarcerated.[1762] In other words, you can never collect checks you otherwise would have gotten if you weren't incarcerated. But you should be able to collect benefits dating back to your release. *So, for example, if you were incarcerated on June 7, 2014 and released on September 7, 2014, your SSI can be restarted as of September 7. You'll be eligible for a partial SSI payment for September and full benefits for October.*[1763] If your SSI application is approved pre-release, SSI benefits should be paid to you immediately upon release. If your SSI application is approved post-release, SSI benefits should be paid to you immediately upon approval; and you should get backpayment to the date of your release.[1764]

[1755] See Benefits After Incarceration, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf; Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf.
[1756] What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf; Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf.
[1757] Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10504.pdf.
[1758] See Your Right to Representation, SOC. SEC. ADMIN., http://www.socialsecurity.gov/pubs/EN-05-10075.pdf.
[1759] Benefits After Incarceration, SOC. SEC. ADMIN., http://www.ssa.gov/reentry/; What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf.
[1760] What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf; Entering the Community After Incarceration—How We Can Help, SOC. SEC. ADMIN., http://www.3ssa.gov/pubs/EN-05-10504.pdf; Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf.
[1761] Your Right to Representation (2009), BAZELON CENTER, www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber.
[1762] 42 U.S.C. § 1382
[1763] 20 C.F.R. § 416.211; Your Right to Representation (2009), BAZELON CENTER, www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber. See also What Prisoners Need to Know, SOC. SEC. ADMIN., http://www.ssa.gov/pubs/EN-05-10133.pdf
[1764] Your Right to Representation (2009), BAZELON CENTER, www.bazelon.org/News-Publications/Publications/List/1/CategoryID/7/Level/a/ProductID/17.aspx?SortField=ProductNumber%2CProductNumber



I BELIEVE MY SSI WAS WRONGLY DENIED OR STOPPED. HOW DO I APPEAL?

Many people who apply for SSI are denied at first, but then get benefits once they appeal. Considering the small odds of getting approved on the first try, be prepared to get denied and to go through the appeals process.[1765] NOTE: The rules and procedures for appealing SSI decisions are the same as for SSDI (described on PG. 486).

If Social Security decides to deny your SSI application, it must mail you a notice of this decision.

- You have a right to appeal. To do so, you must file a Request for Reconsideration within 60 days after the date you got the notice.[1766] You can send it by mail, but it's best to file it in person at a local Social Security office. This way you get a copy with a time-and-date stamp, which proves that you appealed on time.[1767]
- If you miss the 60-day deadline due to factors beyond your control, like illness or hospitalization, file a request for a "good cause exception" to the deadline along with your Request for Reconsideration.[1768]

If Social Security then decides to deny your Request for Reconsideration, it must mail you a notice of this decision.

- Again, you have a right to appeal. To do so, you must file a Request for an Administrative Law Judge Hearing within 60 days after the date you got the notice.[1769]

If you can't afford a lawyer to help with your appeal, you may be able to find free help by contacting a local legal services program, a local bar association referral services, or a local Protection & Advocacy organization.[1770]

TRIBAL INCOME AND SSI

Learn more about tribal income and SSI in the new *Roadmap to Reentry* guide chapter on Tribal Issues, beginning on PG. 1088.

[1765] Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1766] 20 C.F.R. § 416.1409
[1767] Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf
[1768] 20 C.F.R. §§ 404.911(a), 416.1411(a)
[1769] 20 C.F.R. § 416.1433
[1770] Arrested? What Happens to Your Benefits?, BAZELON CENTER, http://www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf

VII. VETERANS' BENEFITS

WHAT WILL I LEARN?

- **What benefits are available to veterans**
- **Who is eligible to receive veterans benefits**
- **What effect your criminal history has on your ability to receive veterans benefits**
- **Whether you can apply for veterans benefits while incarcerated**
- **The effects of incarceration, if you were already receiving veterans benefits**
- **What to did if your veterans benefits are reduced or stopped**
- **What to do if you're disqualified from VA benefits due to your discharge status**

The federal Department of Veterans Affairs (VA) provides various benefits to U.S. military veterans, including: disability compensation, pensions, education benefits, vocational and employment services, healthcare benefits, insurance benefits, and survivors' and dependents' benefits.[1771] Here you will learn about how your criminal record and incarceration may affect your access to these benefits. For more detailed and comprehensive information, you should read:

1. The California Veterans Resource Book,[1772] an overview of veterans' resources across the state; and
2. The Guidebook for California Incarcerated Veterans,[1773] a practical resource for pre- and post-release planning. You can also call the VA at 1-800-827-1000 (TDD 1-800-829-4833) with questions and to obtain copies of all these resources.[1774] If you have Internet access, visit www.benefits.va.gov/benefits for further details and downloadable forms; and visit www.ebenefits.va.gov to view your status, access your documents, and apply for VA benefits.

VETERAN SERVICE ADVOCATE

In 2014, a new law requires some correctional facilities to refer veterans to a veteran service advocate to help them with reentrt community from certain correctional facilities prior to release and a referral to the county Veteran Services Office (VSO) with can assist veterans after release.

AM I ELIGIBLE FOR VETERANS' (VA) BENEFITS?

Generally, to be eligible for most VA benefits:

- You must have been discharged from active military service,[1775] and
- You must have served the minimum time in service;[1776] and
- Your character of discharge must not be dishonorable or based on bad conduct;[1777] and
- You must not be statutorily barred from all VA benefits because of your reason for discharge
- You must not currently be wanted for an open felony warrant.[1778]

Your basic eligibility for different benefits will also depend on the type of military service you performed, how long you served, and other specific needs or issues you may have.[1779] For more details about benefits you may qualify for, visit a VA regional office, call 1-800-825-1000, visit www.va.gov/benefits, or create an account at www.ebenefits.va.gov.[1780]

[1771] See U.S.C. Title 38; Federal Benefits for Veterans Dependents and Survivors (2014), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/opa/publications/benefits_book.asp; Your Right to Representation (2011), PRISON LAW OFFICE, http://www.prisonlaw.com/pdfs/BenefitsLetter,Aug2011.pdf; Summary of VA Benefits, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/benefits-summary/SummaryofVABenefitsFlyer.pdf

[1772] California Veterans Resource Book (2014), CALIFORNIA DEP'T OF VETERANS AFFAIRS, www.calvet.ca.gov/VetServices/Documents/Veteran_%20Resource_%20book_2014.pdf

[1773] Guidebook for California Incarcerated Veterans, 4th ed. (2013), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf

[1774] Federal Benefits for Veterans Dependents & Survivors (2014), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/opa/publications/benefits_book.asp

[1775] Active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard; or as a commissioned officer of the Public Health Service, Environmental Science Services Administration or National Oceanic and Atmospheric Administration, or the Coast and Geodetic Survey. U.S.C. Title 38; Federal Benefits for Veterans Dependents & Survivors (2014), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/opa/publications/benefits_book.asp

[1776] A person who originally enlists after September 7, 1980 must complete either twenty-four months of continuous active duty or the full period for which the person was called or ordered to active duty. 38 C.F.R. § 3.12a. Persons who enlisted prior to September 7, 1980 or persons with a compensable service-connected disability are not subject to the minimum time in service requirement. 38 C.F.R. § 3.12(a).

[1777] U.S.C. Title 38; Federal Benefits for Veterans Dependents & Survivors (2014), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/opa/publications/benefits_book.asp. For education benefits, the requirement is stricter: your character of discharge or service must be honorable. See Applying for Benefits & Your Character of Discharge, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/benefits/character_of_discharge.asp

[1778] Federal Benefits for Veterans Dependents & Survivors (2014), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/opa/publications/benefits_book.asp

[1779] Claims for VA Benefits & Character of Discharge, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf



INFORMATION ABOUT DISHONORABLE DISCHARGES

Certain dishonorable discharges may bar you from all VA benefits (see PG. 494).[1781] But for some dishonorable discharges, including most situations involving a felony conviction, you might still qualify for benefits if the VA reviews your case and decides your discharge *wasn't* under dishonorable conditions (see PG. 494) through a "discharge uPGrade."[1782]

More specifically, if you have a discharge status of *honorable* or *general under honorable conditions*, you are automatically eligible to apply for most VA Benefits including VA health care, VA Compensation, and VA Pension.[1783] If you have a discharge status of *dishonorable* or *bad conduct (by general court martial)* you are likely barred from all VA benefits.[1784] If you have a discharge status of *other than honorable (OTH), bad conduct (special court martial), or uncharacterized, the* VA is required to make an individual determination as to whether you were discharged or released under conditions other than dishonorable (see PG. 494).[1785] This determination is based solely on your period of service in the military, not conduct or convictions post-service.[1786]

DISHONORABLE CONDITIONS

Under VA regulations, your discharge was issued "under dishonorable conditions" if you were released under any of the following circumstances:

- "acceptance of an undesirable discharge to escape trial by general court-martial"
- "mutiny or spying"
- "an offense involving moral turpitude (generally including conviction of a felony)";
- "willful and persistent misconduct"; or
- "homosexual acts involving aggravated circumstances or factors affecting the performance of duty."

CAN MY CRIMINAL HISTORY LIMIT MY ABILITY TO GET VA BENEFITS?

Yes. You're *not* eligible for VA compensation, pension, or death benefits if:

- You're currently wanted for an open warrant on a felony charge;
- You're violating a probation or parole condition for a felony sentence;[1787] or
- You have a felony conviction that led to your discharge[1788]—unless and until the VA reviews your case and determines that the circumstances leading to your discharge may have been "other than dishonorable."[1789]

In addition, for certain VA benefits, your benefit amounts will be restricted or discontinued if you've been incarcerated for 60 or more days for a felony conviction.

IMPORTANT: INFORMATION ABOUT MILITARY SERVICE & DISCHARGE CONDITIONS:

If you served more than one term of active military service, and your discharge for one of the terms was under dishonorable conditions, you may not be eligible for VA benefits based on that term—however, if your discharge for a *different* term of service ended under honorable conditions, you can still be eligible for VA benefits based on this separate term.[1790]

[1780] Summary of VA Benefits, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/benefits-summary/SummaryofVABenefitsFlyer.pdf

[1781] Unless it's determined that you were insane at the time you committed the offense, you're barred from benefits if you were released or discharged for any of the following: sentence of a general court-martial; being a conscientious objector; desertion; resignation by an officer for the good of the service; absence without official leave (AWOL) for a continuous period of 180+ days, without compelling circumstances warranting the unauthorized absence; requesting release from service as an alien during a period of hostilities. 38 U.S.C. § 5303; Claims for VA Benefits & Character of Discharge: General Information, U.S. DEP'T OF VETERANS AFFAIRS, http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.

[1782] 38 C.F.R. § 3.12(d); Claims for VA Benefits & Character of Discharge: General Information, U.S. DEP'T OF VETERANS AFFAIRS, http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf

[1783] A discharge under honorable conditions is binding on the Department of Veterans Affairs as to character of discharge. 38 C.F.R. § 3.12(a).

[1784] 38 C.F.R. § 3.12(a).

[1785] M21-1manual rewrite (MR), Part III, Subpart v, Chapter 1, Section B; Beyond "T.B.D." Understanding VA's Evaluation of a Former Servicemember's benefits eligibility following involuntary or punitive discharge from the armed services, 214 MIL. L. REV. WINTER 2012; the term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." 38 U.S.C. § 101(2).

[1786] M21-1manual rewrite (MR), Part III, Subpart v, Chapter 1, Section B; Beyond "T.B.D." Understanding VA's Evaluation of a Former Servicemember's benefits eligibility following involuntary or punitive discharge from the armed services, 214 MIL. L. REV. WINTER 2012.

[1787] 38 U.S.C. § 5313B; C.F.R. 38 §§ 3.665(n), 3.666(e); Federal Benefits for Veterans Dependents & Survivors (2014), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/opa/publications/benefits_book.asp. If the VA believes that you are in violation of probation or parole you must be provided notice by the VA and an opportunity to present evidence, such as evidence that you are not in violation of probation or parole. See VBA Letter 20-14-09 (June 23, 2014). If the VA determines based upon the warrant and evidence that you submitted that you are fleeing from justice or violated a condition of your probation or parole, your benefits will be terminated. See VBA Letter 20-14-09 (June 23, 2014).

[1788] That is, if you were released because of an "offense involving moral turpitude." 38 C.F.R. § 3.12(d); Claims for VA Benefits & Character of Discharge, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.

[1789] Claims for VA Benefits & Character of Discharge, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.

[1790] Claims for VA Benefits & Character of Discharge, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.



Also, if you completed a full term of enlistment, and it didn't end with a formal discharge because you later reenlisted, you can still be eligible for VA benefits based on completion of that first term.[1791]

If you have disabilities that are service-connected, and your discharge was under dishonorable conditions, you may not be eligible for VA disability compensation due to your discharge status. However, as long as your discharge isn't related to a situation that would absolutely disqualify you from VA benefits by law (see PG. 494) you may still be eligible for VA health care benefits (e.g., treatment at a VA medical facility) for those disabilities.[1792]**.**

HOW DO I APPLY FOR VA BENEFITS?

The required forms and steps vary for different types of VA benefits. For most VA benefits, you can submit your application online, by mail, or in person at a Regional Benefit Office.

You can get more details about different VA benefits online, by phone, by mail, or in person:

- *Online:* Visit the Veterans Benefits Administration website for a list of benefit types, along with links to forms and instructions on how to apply: www.benefits.va.gov/BENEFITS/Applying.asp.
- *By phone:* Call 1-800-827-1000 for questions about benefits; 1-877-222-8387 for questions about health care.
- *By mail:* Send a written request to one of the Regional Benefit Offices listed below.
  - Los Angeles Regional Benefit Office: 11000 Wilshire Blvd., Los Angeles, CA 90024
  - San Diego Regional Benefit Office: 8810 Rio San Diego Drive, San Diego, CA 92108
  - Oakland Regional Benefit Office: 1301 Clay St., North Tower, Oakland, CA 94612
- *In person:* Visit a Regional Benefit Office listed above, or visit any Intake Site. To find an Intake Site near you, ask a Regional Benefit Office or search the online directory at www.va.gov/directory/guide/home.asp.

CAN I APPLY FOR VA BENEFITS WHILE INCARCERATED?

Yes. Although your eligibility for VA benefits may be limited or cut off during incarceration, there are various VA benefits you can apply for while incarcerated. There are certain benefits you can apply for and receive in full while incarcerated; and there are certain other benefits you should start applying for while incarcerated so that you can access them immediately upon your release. Information about some of these benefits is provided below. Contact the VA at 1-800-827-1000 (TDD 1-800-829-4833) for further details.

Overview of VA benefits You Can (& Can't) Apply for While Incarcerated:

VA Benefits You CAN Apply for:	VA Benefits You CAN'T Apply For:

• Service-related disability compensation, disability pensions, dependency benefits, and death benefits[1793]
• Apportionment of benefits if incarcerated for a non-felony. This means you can ask the VA to pay your dependent(s) some or all of the benefits that you can't receive while incarcerated.[1794] You or your dependent(s) must complete VA Form 21-0788 (see Appendix K, on PG. 542)[1795] and submit it to a VA Regional Office.[1796]
• You CAN apply for education benefits while incarcerated:
  ○ For a non-felony, you can get full monthly education benefits.[1797]
  ○ For a felony, you can get benefits to cover the costs of your tuition, fees, and necessary books
	• You can't apply for or receive any non-service-related pension benefits while incarcerated for a felony.

[1791] For example, if an individual enlisted for three years, completed the three years and reenlisted for two more years, then received a discharge under other than honorable conditions during the second enlistment, VA benefits may be provided based on the first period of service, even if it is determined that the character of discharge of the second period of service is a bar to benefits. See Claims for VA Benefits & Character of Discharge, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf

[1792] Claims for VA Benefits & Character of Discharge: General Information, U.S. DEP'T OF VETERANS AFFAIRS, http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.

[1793] The law restricts the amounts you receive while incarcerated (see PG. 536). See 38 U.S.C. § 5313(a), 38 C.F.R. § 3.665(a), (d); Federal Veterans Benefit: Incarceration Information, WASH. STATE DEP'T OF CORR., www.doc.wa.gov/family/docs/VAFederalBenefits.pdf.

[1794] If you're incarcerated for 60+ days, on the 61st day the VA will reduce any disability compensation and pension payments you were getting (see PG. 536). 38 U.S.C. § 5313(a), 38 C.F.R. § 3.665(a), (d); Federal Veterans Benefit: Incarceration Information ,WASH. STATE DEP'T OF CORR., www.doc.wa.gov/family/docs/VAFederalBenefits.pdf.

[1795] Information Regarding Apportionment Form 21-0788, U.S. DEP'T OF VETERANS AFFAIRS, www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf.

[1796] In deciding whether and how much apportionment to award your family member(s), the VA will consider various factors including their income, living expenses, and any special needs. 38 U.S.C. § 5313(a), 38 C.F.R. § 3.665(a), (d); Federal Veterans Benefit: Incarceration Information, WASH. STATE DEP'T OF CORR., www.doc.wa.gov/family/docs/VAFederalBenefits.pdf.

[1797] Incarcerated Veterans: How Incarceration Affects Eligibility for VA benefits, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/persona/veteran-incarcerated.asp.



COMPENSATION AND PENSION EXAMINATION?

Even if you are incarcerated, the VA is obligated to provide you with a compensation and pension examination when one is required (see VA Fast Letter 11-22, Examinations for Incarcerated Veterans and Veterans Health Administration (Sept. 8, 2011)). You have the right to have a medical professional perform the examination at the facility where you are incarcerated (see Bolton v. Brown, 8 Vet. App. 185 (1995).

and supplies—if no other government program is covering these costs.[1798]

Pre-release steps for securing VA health care (& other benefits):

- *Meet with your region's Re-entry Specialist.* Every region of the U.S. has a VA Re-entry Specialist who can help determine your eligibility for VA benefits. He/she can also help you enroll, restart disability benefits, getting your DD-214 (explained below), and connecting you with services. Your region's Re-entry Specialist should be scheduled to visit your facility at least yearly.
- *Enroll with the VA.* Do this by visiting with a Re-entry Specialist, OR by submitting a VA Form 10-10EZ by mail (see copy of form in Appendix L, PG. 542). If your release date is within 6 months and you haven't seen a Re-entry Specialist, enroll by mail to ensure timely access to services. To request a form, write to a VA Enrollment Office near your place of release (directory online at http://www.va.gov/directory/guide), and mail back your completed form with "VA Enrollment" written on the envelope.
- *Get a copy of your "DD-214: Report of Separation."* Have this ready before release. This is your proof of military service, and it's a key to your access to job opportunities, community resources, and health care. To request your DD-214, write to: National Personnel Records Center; 1 Archives Drive; St. Louis, MO 63136.
- *File for service-related disability compensation or disability pension, if that applies to you.*[1799]

[1798] If another government program is covering part of these costs, you can apply for VA benefits to cover the rest. See Health Care for Re-entry Veterans Services & Resources, U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/homeless/reentry.asp; Guidebook for California Incarcerated Veterans, 4th ed. (July 2013), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf.

[1799] Guidebook for California Incarcerated Veterans, 4th ed. (July 2013), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf



VA programs that can help you plan & navigate reentry:

- **Health Care for Re-entry Veterans** offers outreach, support, and information to veterans in state or federal prison who are at risk of homelessness upon release. To reach an HCRV Specialist near you, call VA's health care line (1-877-222-8387); or check the directory on HCRV's online page.[1800]
- **Veterans Justice Outreach** offers outreach, support, and information to veterans who are under arrest, under supervision of treatment courts, or in county jail and at risk of homelessness upon release. To reach a VJO Specialist near you, call VA's health care line (1-877-222-8387); or check the directory on VJO's online page.[1801]
- **Homeless Veterans Outreach** (HVO) offers outreach, support, and information to veterans who are involved in the criminal justice system. HVO can help you apply for benefits and refer you to services that meet your needs. To reach an HVO Coordinator near you, call the VA's National Call Center for Homeless Veterans at 1-877-424-3838.[1802]

NOT INCARCERATED?

If you're participating in a work-release program, living in a halfway house, or under community supervision as part of your felony sentence, the VA considers you NOT incarcerated.

I WAS RECEIVING VA BENEFITS BEFORE I GOT ARRESTED. WHAT HAPPENS TO THEM WHILE I'M INCARCERATED?

It depends. Until you're convicted, there's no problem: if you're in jail awaiting trial, you're presumed innocent, and still entitled to VA benefits.[1803] Once convicted, your ability to get VA benefits depends on your conviction and the length of your incarceration.[1804]

For non-service-related pensions:

- If you're incarcerated for a felony or misdemeanor, you should keep getting regular pension payments for the first 60 days of incarceration. If you're released on or before the 60th day, your payments should continue without interruption. But starting on the 61st day of incarceration, payments get cut off. After release, you may be able to restart your payments if you're eligible at that time (details on PG. 498).[1805]

For health care benefits:

- If you're incarcerated for any conviction, you don't lose eligibility for VA health care; but the VA won't provide this care while you're incarcerated, since the correctional facility has the duty to provide care to you.[1806] After release, you should be able to apply for and receive VA health care benefits again (details on PG. 498).[1807]

For service-related disability compensation:

- If you're incarcerated for a misdemeanor, you should keep getting your regular disability payments.
- If you're incarcerated for a felony, you should keep getting regular disability payments for the first 60 days of incarceration. If you're released on or before the 60th day, your payments should continue without interruption. But starting on the 61st day of incarceration, payments get reduced: if your disability rating was 20% or higher before incarceration, it should drop to 10%; if it was 10% before, it should be cut in half. *After release*, you may be able to restore your payments based on how severe your disability is at that time (see details on PG. 498).[1808]

Apportionment of benefits while incarcerated:

[1800] Health Care for Re-entry Veterans Services & Resources, U.S. DEP'T OF VETERANS AFFAIRS, http://www.va.gov/homeless/reentry.asp
[1801] Veterans Justice Outreach, U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/homeless/vjo.asp
[1802] Incarcerated Veterans, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/persona/veteran-incarcerated.asp
[1803] Information for Incarcerated Veterans, SWORDS TO PLOWSHARES, www.swords-to-plowshares.org/wp-content/uploads/Information-For-Incarcerated-Veterans.pdf
[1804] Fact Sheet: Incarcerated Veterans (Aug 2012), U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf; Incarcerated Veterans: How Incarceration Affects Eligibility for VA benefits, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/persona/veteran-incarcerated.asp.
[1805] Fact Sheet: Incarcerated Veterans (Aug 2012), U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf; Incarcerated Veterans: How Incarceration Affects Eligibility for VA benefits, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/persona/veteran-incarcerated.asp
[1806] Fact Sheet: Incarcerated Veterans (Aug 2012), U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf
[1807] Guidebook for California Incarcerated Veterans, 4th ed. (July 2013), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf.
[1808] Fact Sheet: Incarcerated Veterans (Aug 2012), U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf; Incarcerated Veterans: How Incarceration Affects Eligibility for VA benefits, U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/persona/veteran-incarcerated.asp



Even though you only receive a portion of your service-related benefit while incarcerated, the balance, or full amount, of the benefit may be "apportioned" to your family member during the period of incarceration.[1809] For example, if you are 50% service-connected, you would only be entitled to receive 10% while incarcerated. However, your family may be apportioned the remaining 40% of the benefit.

Either you or your family member may apply for apportionment using VA Form 21-0788. The amount apportioned will be determined based on need. In determining need, the VA considers factors such as the appointee's income, living expenses and any other relevant factors. Apportionment may not be granted retroactively.



IMPORTANT: Notifying the VA about Your Incarceration and Release:

- **You are required to notify the VA when you go to jail or prison. The VA needs to know whether and when to reduce or stop your benefits. If you receive larger or more VA payments than you're legally entitled to receive while incarcerated, the VA will require that you eventually repay the total amount that you should not have received—your "overpayment." Basically, after you're released from incarceration and once again eligible for benefits, the VA will withhold all your benefits until the overpayment is paid off.1810**
- **You should notify the VA within a year after your release—in advance, if possible. The VA will assume that you remain incarcerated until you submit proof of your release date. The VA needs this proof before it can restore or restart your benefits.1811**
- **The VA periodically identifies people receiving VA benefits who are incarcerated or in violation of parole or probation via listings that it receives from the U. S. Bureau of Prisons (BOP), the Social Security Administration (SSA), and other sources. However, these listings may have errors regarding your dates of incarceration, so it is helpful for you to be in direct contact with the VA to correct any inaccurate information.**
- **Note, you can use VA Form 21-4193 to notify the VA of your incarceration and release dates. (See copy of form in Appendix M, PG. 547.) If you're incarcerated, you can get this form from a correctional counselor. If you have Internet access, download the form at www.reginfo.gov/public/do/DownloadDocument?documentID=203887&version=1. You can also call the VA at 1-800-827-1000 and ask that the form be mailed to you. The form must be signed by a correctional official.**

MY VA BENEFITS WERE REDUCED OR STOPPED WHILE I WAS INCARCERATED. HOW DO I RESTORE OR RESTART MY VA BENEFITS?

For disability compensation or pension benefits:

- The VA will not automatically resume paying benefits at the full amount once you are released. Once you have a release date, contact the VA as early as 30 days before that date. Provide official proof of your release date, such as VA Form 21-4193 (see Appendix M, PG. 547) or your parole papers.[1812] As long as you notify the VA within one year following your release, you'll receive benefits dating back to your release date.[1813]
- The VA will backdate your benefits to the date of release if you provide the VA with proof of your release within one year of your release. If you do not provide notification of your release within one year, your benefits will only be retroactive to the date of the notification.[1814]
- You can use VA Form 21-4193 to notify the VA of your incarceration and/or release. (See Appendix M, PG. 547.) If you're incarcerated, you can get this form from a correctional counselor. If you have Internet access, download the form at www.reginfo.gov/public/do/DownloadDocument?documentID=203887&version=1. You can also call 1-800-

[1809] U.S. DEP'T OF VETERANS AFFAIRS, GUIDEBOOK FOR CALIFORNIA INCARCERATED VETERANS, 4th ed. (July 2013), http://www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf
[1810] Information for Incarcerated Veterans, SWORDS TO PLOWSHARES, www.swords-to-plowshares.org/wp-content/uploads/Information-For-Incarcerated-Veterans.pdf; Can the VA Stop or Lower My Disability Benefits If I Go to Jail?, NOLO: LAW FOR ALL, www.nolo.com/legal-encyclopedia/can-the-va-stop-lower-my-disability-benefits-if-i-go-to-jail.html
[1811] Information for Incarcerated Veterans, SWORDS TO PLOWSHARES, www.swords-to-plowshares.org/wp-content/uploads/Information-For-Incarcerated-Veterans.pdf.
[1812] For the VA, being "released from incarceration" includes being on parole, participating in a work release program, or living in a halfway house. See Fact Sheet: Incarcerated Veterans (Aug 2012), U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf
[1813] Depending on the type of disability, the VA may also schedule you for a medical examination to see if your disability has improved. See Fact Sheet: Incarcerated Veterans (Aug 2012), U.S. DEP'T OF VETERANS AFFAIRS, www.benefits.va.gov/BENEFITS/factsheets/misc/incarcerated.pdf
[1814] Veterans Benefits Manual, § 9.2.2 (2014); 76 Fed. Reg. 2,766 (Jan. 14, 2011) (proposed rule).

827-1000 and ask that the form be mailed to you. The form must be signed by a correctional official to be valid as proof.

For health care benefits:

- If you don't have your Veteran Identification Card, and/or if you plan to access services at a VA health care facility you haven't visited before, complete VA Form 10-10EZ (see Appendix L, PG. 542) and send it to that facility. Doing this at least 6 months before your release can help ensure you'll have access to health care when you get out.[1815] You can request this form by calling or writing to any VA health care facility, or by calling 1-877-222-8387.[1816]
- If you have your Veteran Identification Card, and if you plan to access services at a VA health care facility you've visited before, you should be able to access services there without submitting any forms.[1817]

Debts owed to the VA caused by incarceration:

- If you were paid VA benefits after your 61st day of incarceration you may have an overpayment. An overpayment may prevent you from receiving the full benefit amount to which you are entitled after you are released.
- Whenever an overpayment is established in any program under the jurisdiction of the Veterans Benefits Administration, the Debt Management Center (DMC) at the St. Paul, Minnesota, VA Regional Office assumes responsibility over your debt. The VA DMC may be contacted by mail[1818] or by calling 1-800-827-0648.[1819]
- You may request a waiver of your debt.[1820] The VA does not require the use of a specific form to request a waiver.[1821] The time limit for requesting waiver of an overpayment is 180 days from the date you are first advised of the existence of the overpayment and the notification specifies the amount of the debt. A request for waiver should be submitted to the DMC with a completed financial status report using VA Form 20-5655.
- If the VA incorrectly calculated your dates of incarceration, you may challenge the validity of the debt or the effective date of the debt.[1822] There is no official form for disputing the validity of the debt.

I'M DISQUALIFIED FROM VA BENEFITS BECAUSE OF MY NEGATIVE DISCHARGE STATUS. HOW CAN I HAVE MY DISCHARGE STATUS REVIEWED FOR AN UPGRADE?

These requests are rarely granted, so you may want to get help.

If you left the military *less than 15 years ago*, apply for a "Review of Discharge or Dismissal" using Department of Defense's DD Form 293 (see copy of form in Appendix N, PG. 549.[1823] You can also have the form mailed to you by calling the VA at 1-703-607-1600; or by sending a written request to: Army Review Boards Agency; ATTN: Client Information and Quality Assurance; Arlington, VA 22202-4508. Alternatively, obtain DD Form 293 from a VA regional office, or online at http://www.usapa.army.mil.

- The Review Board will grant your uPGrade request only if your discharge reason was "inequitable" (not consistent with the policies and traditions of the service) or "improper" (based on error, or violating a law or regulation). With your application form, include written statements and records that help prove this.[1824]

If you left the military *more than 15 years ago*, apply for a Correction of Military Records using DD Form 149 (see copy of form in Appendix O, PG. 554).[1825]You can also have the form mailed to you by calling the VA at 1-703-607-1600; or by sending a written request to: Army Review Boards Agency; ATTN: Client Information and

[1815] Guidebook for California Incarcerated Veterans, 4th ed. (July 2013), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf
[1816] Once you have Internet access, you can find the form at www.va.gov/1010ez.htm or by visiting Appendix L. See also Arrested? What Happens to Your Federal Benefits?" (2006), BAZELON CENTER, www.kitsaPGov.com/pubdef/Forms/LinkClick.Benefits.pdf
[1817] However, if you aren't receiving service-related disability benefits, the VA may ask for information about your income for the prior year. Guidebook for California Incarcerated Veterans, 4th ed. (July 2013), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/HOMELESS/docs/Reentry/09_ca.pdf
[1818] The DMC mailing address is P.O. Box 11930 St. Paul, MN 55111-0930
[1819] Debt Management Center, U.S. DEP'T OF VETERANS AFFAIRS, http://www.va.gov/debtman/.
[1820] 38 C.F.R. § 1.911(c)(2) (2014). A waiver will not be granted by the VA unless you request a waiver.
[1821] Veterans Benefits Manual, 2014 Edition, sections 9.4-9.4.8.
[1822] 38 C.F.R. § 1.911(c)(1).
[1823] DD Form 293 is available at www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0293.pdf; National Archives, VETERANS SERVICE RECORDS, www.archives.gov/veterans/military-service-records/correct-service-records.html.
[1824] What You Should Know About How to UpGrade Your Military Discharge, U.S. ARMY TRIAL DEFENSE SERVICE, REGION V, FORT LEWIS FIELD OFFICE, http://www.monterey.army.mil/legal/trial_defense/how_to_uPGrade_your_discharge.pdf
[1825] DD Form 149 is available at www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0149.pdf; National Archives, VETERANS SERVICE RECORDS, www.archives.gov/veterans/military-service-records/correct-service-records.html.



Quality Assurance; Arlington, VA 22202-4508. Alternatively, obtain DD Form 149 from a VA regional office, or online at www.usapa.army.mil.

- Generally, you must request a correction within 3 years of discovering an "error" or "injustice" in your record. However, if the Board for Correction finds it is "in the interest of justice" to excuse a late request, it may do so. If your request is late, you must explain why your application was delayed, and why it's in the interest of justice for the Board to consider it despite the delay. To show it is in the "interest of justice," explain why it would be unfair for the Board to not consider your request.
- The Board for Correction will grant your request if you show that something in the record is inaccurate or unjust. With your application form, include ALL available evidence that helps to prove this, such as signed witness statements, personnel records, or a brief of arguments supporting the correction.[1826]

Because these applications are rarely granted, consider the following options to get help:

1. Contact a local veteran service organization to see if any staff can help you complete the forms and/or represent you.
2. Find a legal aid lawyer who specializes in discharge reviews.
3. Using the contact information provided on the form (see DD 293 or DD 149, whichever applied to you), contact the Review Board to discuss your case and ask questions.[1827]



IMPORTANT: If you have an undesirable, other than honorable (OTH), or a bad conduct discharge, you may be eligible for VA benefits if the VA determines that your service was "other than dishonorable" through the Character of Discharge administrative process.[1828] You may apply for a Character of Discharge determination by applying for any VA benefit.

- **The VA will only consider your time in service in making the determination.[1829]**
- **You cannot get a favorable determination if you are statutorily barred from benefits.[1830]**
- **The VA may consider any number of factors in deciding whether to grant a favorable decision, including, your length of service, whether you deployed to a combat zone, whether you were diagnosed with a medical condition prior to or shortly after discharge, and any other relevant factors.[1831]**

[1826] Federal Benefits for Veterans, Dependents & Survivors (2014), U.S. DEP'T OF VETERANS AFFAIRS, www.va.gov/opa/publications/benefits_book/benefits_chap15.asp

[1827] What You Should Know About How to UpGrade Your Military Discharge, U.S. ARMY TRIAL DEFENSE SERVICE, REGION V, FORT LEWIS FIELD OFFICE, http://www.monterey.army.mil/legal/trial_defense/how_to_uPGrade_your_discharge.pdf

[1828] M21-1manual rewrite (MR), Part III, Subpart v, Chapter 1, Section B

[1829] See Beyond "T.B.D." Understanding VA's Evaluation of a Former Servicemember's benefits eligibility following involuntary or punitive discharge from the armed services, 214 MIL. LAW REV. WINTER 2012.

[1830] Unless it's determined that you were insane at the time you committed the offense, you're barred from benefits if you were released or discharged for any of the following: sentence of a general court-martial; being a conscientious objector; desertion; resignation by an officer for the good of the service; absence without official leave (AWOL) for a continuous period of 180+ days, without compelling circumstances warranting the unauthorized absence; requesting release from service as an alien during a period of hostilities. 38 U.S.C. § 5303; Claims for VA Benefits & Character of Discharge: General Information ,U.S. DEP'T OF VETERANS AFFAIRS, http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf.

[1831] See Beyond "T.B.D." Understanding VA's Evaluation of a Former Servicemember's Benefits Eligibility following Involuntary or Punitive Discharge from the Armed Services, 214 MIL. LAW REV. WINTER 2012.

VIII. LIFELINE CELL PHONE & LANDLINE BENEFITS

WHAT IS THE LIFELINE PHONE PROGRAM?

The LifeLine phone program is a government-funded program that provides free monthly telephone service (cell or landline) to eligible California residents – those for whom California is their permanent home.[1832]

Both the state government and federal government offer LifeLine programs, and if you qualify, you have your choice of participating in either.[1833] In this guide, we discuss only the *California LifeLine program*, since this guide is a California legal guide.

The California Public Utilities Commission (CPUC) sponsors the California LifeLine program by proving affordable local home telephone service to qualifying low-income persons.[1834]

WHAT BENEFITS WILL THE CALIFORNIA LIFELINE PROGRAM PROVIDE?

If you qualify for the California LifeLine program, you will receive a phone (either a landline or cell phone—your decision) and a service plan with a set amount of minutes; for cell phones, you will also receive a set amount of text messages you can send each month for free.[1835]

You can pay an additional discounted monthly rate if you would like to get extra minutes, texts, or data added to your plan (NOTE: data can be used to access the Internet and e-mail on your cell phone). The cost depends on the carrier company and the amount of extra services you request. Different phone service companies will offer competing plans, and it is up to you to select the provider that best suits your needs.[1836]

A list of California LifeLine providers can be found online at: https://www.californialifeline.com/en/provider_search, OR you can call the California LifeLine Call Center for general information about the program at the applicable phone number below. The call center is open from 7 a.m. to 7 p.m. (Pacific Time), Monday through Friday (closed on federal holidays & weekends).

English*	1-866-272-0349
Spanish	1-866-272-0350
Laotian/Hmong	1-866-272-0351
Cambodian	1-866-272-0352
Tagalog	1-866-272-0353
Korean	1-866-272-0354
Vietnamese	1-866-272-0355
Chinese (Mandarin/Cantonese)	1-866-272-0356
Japanese	1-866-296-0860
TTY	1-866-272-0358

** NOTE: If you want in-language help for a language not listed above, call the English toll-free number and ask for interpretation services.*

A California LifeLine phone can help you stay connected to family members, schools, child care providers, talk with potential employers, and have a means of communication in case of an emergency.

AM I ELIGIBLE FOR THE CALIFORNIA LIFELINE PROGRAM?

Eligibility for the California Lifeline phone program can be based on one of two different factors: (1) the low-income assistance programs (called program-based eligibility), OR (2) by meeting certain total household income limit requirements (called income-based eligibility). Go to http://www.cpuc.ca.gov/General.aspx?id=2752#qualify for a list of federal and state assistance (public benefits) programs that meet the *program-based eligibility requirements,* and for a chart that explains how much you can make to meet *income-based eligibility requirements*.

[1832] CAL. PUBLIC UTILITIES CODE § 871.7.
[1833] See California LifeLine, https://www.californialifeline.com/en/eligibility_requirements.
[1834] See CAL. PUBLIC UTILITIES CODE §§ 871-884.5. The Federal Communications Commission (FCC) sponsors the Federal Lifeline program, which is an alternative program offering slightly fewer but similar benefits on a national scale.
[1835] See California LifeLine, http://cssrc.us/content/briefing-report-california-lifeline-program.
[1836] See California LifeLine, http://cssrc.us/content/briefing-report-california-lifeline-program.



Only one LifeLine telephone line is allowed per "household." For this program, a "household" member is defined as any adult (over 18 years old or an emancipated minor) living with you and sharing income and household expenses. Go to https://www.californialifeline.com/pdf/household_worksheets/st_en_10_hh.pdf to view a sample worksheet to help you figure out if you qualify as one "household."

To view a sample of the *California Lifeline Eligibility Guidelines* form, see https://www.californialifeline.com/pdf/new/applications/st_en_10_app_eg_0615.pdf.

HOW DO I APPLY FOR THE CALIFORNIA LIFELINE PROGRAM?

STEP 1: **First select a participating telephone company. If you already use a specific phone company, it may already participate in the LifeLine program (you can call the company and ask), or you may select a *new* telephone company that serves your area by searching online at: https://www.californialifeline.com/en/provider_search.**

- Remember, different phone companies provide different service plans, so you might want to shop around!

STEP 2: **The telephone company will give you a Lifeline application form, with an Enrollment Code and/or a Personal Identification Number (PIN) in a pink envelope. To view a copy of a sample California LifeLife application form, go to https://www.californialifeline.com/pdf/new/applications/st_en_10_app_0114.pdf.**

STEP 3: **In order to receive the California LifeLine benefits, you must complete this form, sign it, and send it to the California LifeLine Administrator along with any required documents by the due date listed on the form. You may also apply online at https://www.californialifeline.com/en/login**

STEP 4: **Next, the telephone company will confirm your identity and whether you meet the one phone per household requirement, and then process your application.**

- If you have any additional questions about your application, status, or due dates, please call the California LifeLine Administrator's hotline at 1-866-272-0349.

WHAT DOCUMENTS DO I NEED TO BE FOUND ELIGIBLE?

First, you will need documents that prove who you are (your identity) to the phone company. You may need to show your Social Security card, birth certificate, and/or unexpired driver license. For a complete list of acceptable ID, see www.californialifeline.com, or call 1-877-858-7463. Find a "Sample ID Authentication Form" at https://www.californialifeline.com/pdf/identity/st_en_10_nc_id_0915.pdf.[1837]

Second, you will need to prove that you require financial assistance. One way to prove this is to show that you receive public benefits from a qualifying state or federal assistance program. You may need to show a copy of your benefits program agreement or benefit card.[1838]

Finally, if you want to prove your eligibility based on your income, you must provide an official document proving your income—for example, an income statement from an employer, a prior year's tax return, a Social Security income statement, a Veterans Administration income statement, and/or a document proving you receive unemployment or some other public benefits. See https://www.californialifeline.com/pdf/new/applications/st_en_10_app_eg_0615.pdf for a complete list.

CAN MY CRIMINAL BACKGROUND LIMIT MY ABILITY TO GET A CALIFORNIA LIFELINE PHONE?

No. Having a criminal record does not affect your eligibility for the California LifeLine phone program.

SPECIAL POLICY NOTE FOR PEOPLE UNDER FEDERAL SUPERVISION (for example, federal probation, supervised release, or federal parole): On September 9, 2014, former U.S. Attorney General Eric Holder announced that all federal halfway houses are required to allow their residents to have cell phones, so that people in reentry can pursue job opportunities and connect with family.[1839] If you are on federal supervision, you must still meet the same standard eligibility requirements for the California LifeLine phone program, just like anyone else.

[1837] See CPUC, LifeLine, http://www.cpuc.ca.gov/General.aspx?id=2752#qualify.
[1838] See California LifeLine, https://www.californialifeline.com/en/eligibility_requirements#important_information_cell.
[1839] *See* U.S. DOJ Press Release at https://www.justice.gov/opa/pr/new-step-fight-recidivism-attorney-general-holder-announces-justice-department-require (March 24, 2014).



CAN I APPLY FOR A CALIFORNIA LIFELINE PHONE WHILE INCARCERATED?

No. You are required to provide a *residential address* (the location where you a living) to apply for the California LifeLine program. Giving just a "P.O. Box" address is insufficient.[1840]

HOW DO I RECEIVE MY PHONE AND LIFELINE BENEFITS?

After you are enrolled in the California LifeLine program, your specific phone carrier will supply you with a phone and instructions on how to activate it. Your benefits will start as soon as you activate your phone.

ONCE ENROLLED, WHAT RULES MUST I FOLLOW TO REMAIN ELIGIBLE?

Aside from meeting the *program-based* or *income-based* guidelines, you cannot apply for more than one Lifeline phone per household, as previously discussed.

If you do not follow this rule, you will lose your Lifeline phone and benefits, and you may be prosecuted by the federal government. This also means that you cannot be claimed as a dependent on anybody else's income tax return, and that you may not transfer your Lifeline discount to anyone else.[1841]

Also, you must recertify yourself as eligible once each year. This can be done either online at www.californialifeline.com using your PIN, or by letter to: California LifeLine Administrator, P.O. Box 8417, Westminster, CA 92684.

See a sample California LifeLine program renewal form at https://www.californialifeline.com/pdf/new/renewals/st_en_10_ren_0114.pdf.

I BELIEVE MY LIFELINE PHONE WAS WRONGLY DENIED OR WRONGLY STOPPED SERVICE. HOW DO I APPEAL?

You can appeal (challenge) a denial or disqualification (when LifeLine stops your phone service) by calling the California Public Utility Commission's (CPUC) Consumer Affairs Branch at phone number 1-800-649-7570.

WHAT IF I HAVE ADDITIONAL QUESTIONS OR PROBLEMS?

If you have additional questions, you can contact the California LifeLine Call Center for general information about the program at the applicable phone number below. The call center is open from 7 a.m. to 7 p.m. (Pacific Time), Monday through Friday (closed on federal holidays & weekends).

English*	1-866-272-0349
Spanish	1-866-272-0350
Laotian/Hmong	1-866-272-0351
Cambodian	1-866-272-0352
Tagalog	1-866-272-0353
Korean	1-866-272-0354
Vietnamese	1-866-272-0355
Chinese (Mandarin/Cantonese)	1-866-272-0356
Japanese	1-866-296-0860
TTY	1-866-272-0358

** NOTE: If you want in-language help for a language not listed above, call the English toll-free number and ask for interpretation services.*

[1840] *See* Free Government Cell Phones, http://www.freegovernmentcellphones.net/.
[1841] See California LifeLine, https://www.californialifeline.com/pdf/new/applications/st_en_10_app_eg_0615.pdf



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APPENDIX A

List of County Welfare Departments in California

This list was adapted from the following CalFresh website: http://www.calfresh.ca.gov/PG839.htm

Alameda County Social Services Agency 1-888-999-4772	**Alpine County** Health & Human Services (530) 694-2235
Amador County Department of Social Services (209) 223-6550	**Butte County** Department of Employment & Social Services North County: (530) 879-3845 South County: (530) 538-7711
Calaveras County Calaveras Works & Human Services Agency (209) 754-6448	**Colusa County** Department of Health & Human Services (530) 458-0250
Contra Costa County Social Services Department District Offices: Richmond: (510) 412-3280, (510) 231-8114 Hercules: (510) 262-7709 Antioch: (925) 706-4560 Pleasant Hill: (925) 602-9379 If calling from within Contra Costa County, for general food information dial 2-1-1	**Del Norte County** Department of Health & Social Services (707) 464-3191
El Dorado County Health and Human Services Agency (530) 642-7300	**Fresno County** Department of Social Services 1-877-600-1377
Glenn County Human Resource Agency (530) 934-6514	**Humboldt County** Department of Health & Human Services 1-877-410-8809 (CalFresh) (707) 476-4700 (All programs)
Imperial County Department of Social Services (760) 337-6800	**Inyo County** Department of Health & Human Services (760) 872-1394
Kern County Department of Human Services (661) 631-6000, 1-877-410-8812	**Kings County** Human Services Agency (559) 582-3241
Lake County Department of Social Services (707) 995-4200	**Lassen County** Department of Health & Human Services (530) 251-8152
Los Angeles County Department of Public Social Services 626-569-4298, 1-877-597-4777	**Madera County** Department of Social Services (559) 675-2300
Marin County Department of Health & Human Services (415) 473-3400	**Mariposa County** Department of Human Services (209) 966-2000
Mendocino County Department of Social Services (707) 463-7700	**Merced County** Human Services Agency (209) 385-3000
Modoc County Department of Social Services (530) 233-6501	**Mono County** Department of Social Services (760) 924-1770
Monterey County Department of Social Services (831) 755-4400	**Napa County** Health & Human Services (707) 253-4511



Nevada County Department of Social and Child Support Services (530) 265-1340	Orange County Social Services Agency (714) 541-4895
Placer County Health & Human Services (916) 784-6000, (530) 889-7610	Plumas County Department of Social Services (530) 283-6350
Riverside County Department of Public Social Services (951) 358-3000	Sacramento County Department of Human Assistance (916) 874-3100
San Benito County Health & Human Services (831) 636-4180	San Bernardino County Human Services System Transitional Assistance Department (909) 388-0245; (877) 410-8829
San Diego County Health & Human Services Agency 1-866-262-9881 If calling from within San Diego County, for general food information dial 2-1-1	San Francisco County Food Assistance Center (415) 558-1001 (877) 366-3076
San Joaquin County Human Services Agency (209) 468-1000	San Luis Obispo County Department of Social Services (805) 781-1600
San Mateo County Human Services Agency 1-800-223-8383	Santa Barbara County Department of Social Services, District Offices Lompoc: (805) 737-7080 Santa Maria: (805) 346-7135 Santa Barbara: (805) 681-4401
Santa Clara County Social Services Agency 1-877-962-3633	Santa Cruz County Human Services Department 1-888-421-8080
Shasta County Health and Human Services Center (530) 225-5767 (530) 225-5777 recorded message	Sierra County Human Services Department (530) 993-6722
Siskiyou County Welfare Department 1-800-662-7031	Solano County Health & Social Services Department 1-800-400-6001
Sonoma County Human Services Department (707) 565-2715, 1-877-699-6868	Stanislaus County Community Services Agency 1-877-652-0734
Sutter County Department of Human Services; Welfare & Social Services Division: 1-877-652-0735	Tehama County Department of Social Services (530) 527-1911
Trinity County Department of Health & Human Services (530) 623-1265, 1-800-851-5658	Tulare County Health and Human Services Agency 1-800-540-6880
Tuolumne County Department of Social Services (209) 533-5711	Ventura County Human Services Agency 805-477-5100; 866-904-9362
Yolo County Department of Employment & Social Services (530) 661-2750	Yuba County Health & Human Services Department (530) 749-6311

APPENDIX B

Cash Aid/CalFresh (Food Stamp) CSF 64 Form

See the next page for a copy of form CSF 64.

CASH AID/FOOD STAMP ELECTRONIC BENEFIT TRANSFER - EBT
REQUEST FOR A DESIGNATED ALTERNATE CARD HOLDER/AUTHORIZED REPRESENTATIVE

CASE NAME:	WORKER NAME
CASE NUMBER:	DATE:

INSTRUCTIONS:

A Designated Alternate Card Holder/Authorized Representative is a responsible person that you trust. A Designated Alternate Card Holder/Authorized Representative will have an EBT card issued in their name and the card holder/authorized representative, you choose will have access to all your cash aid or food stamp EBT.

- Tell us the name and birthdate of the person you want to be a Designated Alternate Card Holder/Authorized Representative
- Sign and complete this form
- Send or bring in the form to your County Office

☐ Designated Alternate Card Holder ☐ Authorized Representative

☐ New ☐ Change ☐ Remove

NAME OF REQUESTED DESIGNATED ALTERNATE CARDHOLDER/AUTHORIZED REPRESENTATIVE	BIRTHDATE

CERTIFICATION:

I understand the person I make Designated Alternate Card Holder/Authorized Representative will have access to ALL of my cash aid and/or food stamp EBT. The County is not responsible for lost or stolen benefits. I can change who can access my cash aid or food stamps by calling my County Worker.

SIGNATURE	PHONE	DATE

To be signed by Designated Alternate Card Holder/Authorized Representative

I agree to be a Designated Alternate Card Holder/Authorized Representative. By using this card, I agree to the terms of the cash aid/food stamp Electronic Benefit Transfer - EBT program.

DESIGNATED ALTERNATE CARD HOLDER/AUTHORIZED REPRESENTATIVE SIGNATURE	DATE

Report lost or stolen card IMMEDIATELY by calling toll free 1-877-328-9677.

REMINDER

It is **YOUR** responsibility to call the toll-free customer service telephone number (1-877-328-9677) to terminate another household member's, Designated Alternate Cardholder's, or Authorized Representative's access to your EBT account.

APPENDIX C

Emergency Food Assistance Program (EFAP) Certification of Eligibility – EFA-7A Form

See the next page for a copy of form EFA-7A.

EMERGENCY FOOD ASSISTANCE PROGRAM (EFAP) CERTIFICATION OF ELIGIBILITY

CERTIFICACIÓN DE ELEGIBILIDAD PARA EL PROGRAMA DE ASISTENCIA PARA RECIBIR ALIMENTOS EN CASO DE EMERGENCIA (EFAP)

FOOD DISTRIBUTION AGENCY NAME/*NOMBRE DE LA OFICINA/AGENCIA DE DISTRIBUCIÓN DE ALIMENTOS:*	DISTRIBUTION DATE & TIME/*FECHA Y HORA DE DISTRIBUCIÓN:*	Page/*Página*_____ of/*de* _____
DISTRIBUTION SITE ADDRESS/*DIRECCIÓN DEL LUGAR DE DISTRIBUCIÓN:*	CONTACT NAME/*NOMBRE DEL CONTACTO:*	CONTACT PHONE/*TELÉFONO DEL CONTACTO:* ( )

CERTIFICATION

I certify under penalty of perjury that my household income for the past 30 days does not exceed the Emergency Food Assistance Program's (EFAP) posted monthly guidelines, or for the past twelve months does not exceed the annual guidelines and that the number listed for my household size is true and correct. Commodities are for my personal home use, not to be sold, traded, or given away.

CERTIFICACIÓN

Certifico bajo pena de perjurio que durante los últimos 30 días, los ingresos de mi hogar no excedieron las normas mensuales del Programa de EFAP, las cuales están colocadas en un lugar visible, y tampoco excedieron las normas anuales durante los últimos 12 meses. También certifico que el número de personas en mi hogar, como yo lo indico en este formulario, es verdadero y correcto. Los alimentos/productos que yo reciba son para uso personal en mi hogar y no se deben vender, cambiar, ni regalar.

SIGNATURE ***FIRMA***	**ADDRESS** ***DIRECCIÓN***	**ZIP CODE** ***CÓDIGO POSTAL***	**Number of people in household** ***Número de personas en el hogar***	**Is this your first visit this month?** ***¿Es ésta su primera visita del mes?***	
1.				Yes/*Sí*	No
2.				Yes/*Sí*	No
3.				Yes/*Sí*	No
4.				Yes/*Sí*	No
5.				Yes/*Sí*	No
6.				Yes/*Sí*	No
7.				Yes/*Sí*	No
8.				Yes/*Sí*	No
9.				Yes/*Sí*	No
10.				Yes/*Sí*	No
11.				Yes/*Sí*	No
12.				Yes/*Sí*	No
13.				Yes/*Sí*	No
14.				Yes/*Sí*	No
15.				Yes/*Sí*	No
16.				Yes/*Sí*	No
17.				Yes/*Sí*	No
18.				Yes/*Sí*	No
19.				Yes/*Sí*	No
20.				Yes/*Sí*	No
21.				Yes/*Sí*	No
22.				Yes/*Sí*	No
23.				Yes/*Sí*	No
24.				Yes/*Sí*	No
25.				Yes/*Sí*	No
		TOTALS: ***TOTALES:***			

APPENDIX D

Covered California – Application for Health Insurance Instructions

NOTE: For the full Covered California/ Medi-Cal application, please go to your local county social services office, or find the full application online at:

https://www.coveredca.com/PDFs/paper-application/CA-SingleStreamApp_92MAX.pdf

See the next page for Instructions on how to apply to Covered California/Medi-Cal.

Application for Health Insurance

COVERED CALIFORNIA

Your destination for affordable health insurance, including Medi-Cal



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Covered California is the place where individuals and families can get affordable health insurance. With just one application, you'll find out if you qualify for free or low-cost health insurance, including Medi-Cal.

The state of California created Covered California™ to help you and your family get health insurance.

Having health insurance can give you peace of mind and help make it possible for you to stay healthy. With insurance, you'll know you and your family can get health care when you need it.

Use this application to see what insurance choices you qualify for:

- Free or low-cost insurance from Medi-Cal
- Low-cost insurance for pregnant women through Access for Infants and Mothers (AIM)
- Affordable private health insurance plans
- Help paying for your health insurance

➡ You may qualify for a free or low-cost program even if you earn as much as $94,000 a year for a family of 4.

➡ You can use this application to apply for anyone in your family, even if they already have insurance now.

Apply faster through Covered California at CoveredCA.com

Or call: 1-800-300-1506 (TTY: 1-888-889-4500)
You can call Monday to Friday, 8 a.m. to 8 p.m., and Saturday, 8 a.m. to 6 p.m.

You can get this application in other languages

Español	1-800-300-0213
繁體字	1-800-300-1533
Tiếng Việt	1-800-652-9528
한국어	1-800-738-9116
Tagalog	1-800-983-8816
Русский	1-800-778-7695
Հայերեն	1-800-996-1009
فارسی	1-800-921-8879
ភាសាខ្មែរ	1-800-906-8528
Hmoob	1-800-771-2156
العربية	1-800-826-6317

Call 1-800-300-1506 to get this application in other formats, such as large print.

Things to know

What you need to know when you apply

- Social Security numbers for applicants who are U.S. citizens, or document information for immigrants with satisfactory status who need insurance. Proof of citizenship or immigration status is required only for applicants.
- Employer and income information for everyone in your family.
- Your federal tax information. For example, the person who files taxes as head of household and the dependents claimed on your taxes.
- Information about health insurance that you or any family member gets through a job.

➡ We ask about income and other information to make sure you and your family get the most benefits possible.

➡ **We keep your information private and secure, as required by law.** We'll use your information only to see if you qualify for health insurance.

➡ Families that include immigrants can apply. You can apply for your child even if you aren't eligible for coverage. Applying for your eligible child won't affect your immigration status or chances of becoming a permanent resident or citizen.

➡ If you don't file taxes, you can still qualify for free or low-cost insurance through Medi-Cal.

➡ If you are a federally recognized American Indian or Alaska Native who is getting services from the Indian Health Services, tribal health programs, or urban Indian health programs, you may still qualify for health insurance through Covered California.

Apply faster online

Apply online at **CoveredCA.com**. It's safe, secure, and fast – and you will get results sooner!

When you're done

Send your completed and signed application to:

Covered California
P.O. Box 989725
West Sacramento, CA 95798-9725

➡ **If you don't have all the information we ask for, sign and send in your application anyway.** We can call you to help you finish your application.

➡ **Do not send your health insurance plan enrollment payment with this application.** Your plan will send you an invoice for the amount you owe.

Get help with this application

We're here to help you! You can get help at no cost.

- **Online: CoveredCA.com**
- **Phone:** Call our Customer Service Center at **1-800-300-1506** (TTY: 1-888-889-4500). The call is free. You can call Monday to Friday, 8 a.m. to 8 p.m., and Saturday, 8 a.m. to 6 p.m.
- **In person:** We have trained Certified Enrollment Counselors and Certified Insurance Agents who can help you. For a list of Certified Enrollment Counselors and Certified Insurance Agents near where you live or work, or a list of county social services offices near you, visit **CoveredCA.com** or call **1-800-300-1506** (TTY: 1-888-889-4500). This help is free!
- If you have a disability or other need, we can provide assistance with completing this application at no cost to you. You can go to your local county social services office in person or call our Customer Service Center at **1-800-300-1506** (TTY: 1-888-889-4500).

Need help? Call Covered California at **1-800-300-1506** (TTY: 1-888-889-4500). The call is free. You can call Monday to Friday, 8 a.m. to 8 p.m., and Saturday, 8 a.m. to 6 p.m. Or visit **CoveredCA.com**.

APPENDIX E

Medi-Cal Form 210a: "Supplement to Statement of Facts for Retroactive Coverage/Restoration"

See the next page for a copy of MC Form 210a.

Case Name _____ Case Number _____

SUPPLEMENT TO STATEMENT OF FACTS FOR RETROACTIVE COVERAGE/RESTORATION

My present circumstances, as listed on the Statement of Facts which I signed on _____, are true and correct statements,
(Date)

to the best of my knowledge, for the month(s) of _____ except as specified below.
(for restorations, this should be the month in which the request is made)

Circumstances that are/were different: (If no change, write in "No change.") Documentation is needed to verify all sources of income and to support any difference in property, residence, etc.

Circumstances	Month:	Month:	Month:
Number of persons living in your home			
Income— Specify any differences in: Amount of income Kind of income Work expenses Education expenses Child care			
All Personal Property including motor vehicles, boats, bank accounts, etc. (Lowest bank account balances should be listed for each month unless they were exactly the same as the balance listed on the Statement of Facts. List differences or state "No change."	Checking: Savings:	Checking: Savings:	Checking: Savings:
Real Property (list differences only or state " No change.")			
California Resident	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
Other Insurance Coverage Change	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
Other (List differences only or state "No change.")			

I understand that I may not retroactively spend my property down in order to reduce its amount and thereby qualify for Medi-Cal.

I understand that I may be asked to prove my statements but that the county is required by law to keep them confidential, and that if dissatisfied, I have a right to a fair hearing. I understand that if I deliberately make false statements or withhold information, I can be prosecuted for fraud.

Signature	Date
Signature of person acting for applicant and relationship (guardian, conservator, etc.)	Date
Signature of witness (required if applicant signed by mark)	Date

The following person helped me to fill out this form:

Name and relationship to applicant	Address	Date

State of California—Health and Human Services Agency
Department of Health Care Services

SANDRA SHEWRY
Director

ARNOLD SCHWARZENEGGER
Governor

IF YOU WERE ELIGIBLE FOR MEDI-CAL ANYTIME SINCE JUNE 27, 1997, OR ARE ELIGIBLE NOW,

MEDI-CAL MAY REIMBURSE YOU FOR MEDICAL OR DENTAL BILLS YOU PAID

Conlan v. Bontá; Conlan v. Shewry

As the result of two court decisions, you may be able to be repaid for some medical expenses you paid. The Department of Health Care Services (DHCS) will assist you in getting your money back if all criteria below are met:

1. You received a medically necessary medical or dental service during one or all of these time periods:
   - ✓ The 3-month period prior to the month you applied for the Medi-Cal program,
   - ✓ From the date you applied for the Medi-Cal program until the date your Medi-Cal card was issued,
   - ✓ After your Medi-Cal card was issued (includes excess co-payment and excess share of cost charges).
2. You paid for your medical or dental service; or another person paid for your medical or dental service on your behalf. You will be asked to provide proof that the medical or dental service was paid for by you or the other person.
3. You received the medical or dental service from a Medi-Cal enrolled provider (note: you do not need to have received the service from a Medi-Cal enrolled provider if you received the medical or dental service during the 3-month period prior to applying to Medi-Cal, or you received the services on or after June 27, 1997 but before February 2, 2006 and you had applied for Medi-Cal but not yet received a Medi-Cal card).
4. For those Medi-Cal services that were provided and would have required Medi-Cal authorization, you have documentation from the medical or dental provider that shows medical necessity for the service.
5. You were Medi-Cal eligible to receive that specific medical or dental service.
6. The medical or dental service was a benefit under the Medi-Cal program.
7. The medical or dental service was provided on or after June 27, 1997.
8. After you received your Medi-Cal card, you contacted your provider and showed your provider your Medi-Cal card and the provider would not give you your money back.

Important dates and time frames:

- For services received June 27, 1997, through November 16, 2006, you must submit your claim by November 16, 2007, or within 90 days after issuance of the Medi-Cal card, which ever is longer.
- For services received on or after November 16, 2006, you must submit your claim within one year of receipt of services, or within 90 days after issuance of the Medi-Cal card, which ever is longer.

For more information or to file a claim, you MUST call or write to Medi-Cal at:

For Medical, Mental Health, Drug and Alcohol, and In-Home Support Services Claims:	For Dental Claims:
Department of Health Care Services **Beneficiary Services** **P.O. Box 138008** **Sacramento, CA 95813-8008** **(916) 403-2007 TDD: (916) 635-6491**	**Denti-Cal** **Beneficiary Services** **P.O. Box 526026** **Sacramento, CA 95852-6026** **(916) 403-2007 TDD: (916) 635-6491**

--DON'T FORGET TO KEEP ALL RECEIPTS FOR THE MEDICAL AND DENTAL CARE YOU RECEIVE --

Medi-Cal will review your claim for repayment and send you a letter with a check or a denial letter that tells you the reason for denial. If Medi-Cal denies your request for payment, you may ask for a state hearing. The denial letter will tell you how to ask for a state hearing.

Medicare/Medi-Cal Coverage: Starting January 1, 2006, medications covered under Medicare Part D will not be a covered benefit under the Medi-Cal Program and are not eligible for reimbursement. For questions regarding Medicare Part D contact 1-800-Medicare.

PRIVACY STATEMENT

- **Medi-Cal Confidentiality Notice:** The information given in this application is private and confidential under Welfare and Institutions Code, Section 14100.2. This information will be disclosed only in accordance with those laws.

- **Medi-Cal Privacy Notice:** This information may be shared with federal, state, and local agencies for purposes of verifying eligibility and for other purposes related to the administration of the Medi-Cal program, including confirmation with the INS of the immigration status of only those persons seeking full scope Medi-Cal benefits. (Federal law says the INS cannot use the information for anything else except cases of fraud.)

APPENDIX F

Medicare Form: “Appointment of Representative” – CMS Form 1696 (English)/
“Nombramiento de un Representante” – CMS Form 1969 (español)

See the next page for a copy of CMS Form 1696 in English and español.

Department of Health and Human Services
Centers for Medicare & Medicaid Services

Form Approved OMB
No. 0938-0950

Appointment of Representative

Name of Party	Medicare or National Provider Identifier Number

Section 1: Appointment of Representative

To be completed by the party seeking representation (i.e., the Medicare beneficiary, the provider or the supplier):

I appoint this individual, _____ to act as my representative in connection with my claim or asserted right under title XVIII of the Social Security Act (the "Act") and related provisions of title XI of the Act. I authorize this individual to make any request; to present or to elicit evidence; to obtain appeals information; and to receive any notice in connection with my appeal, wholly in my stead. I understand that personal medical information related to my appeal may be disclosed to the representative indicated below.

Signature of Party Seeking Representation		Date
Street Address		Phone Number (with Area Code)
City	State	Zip Code

Section 2: Acceptance of Appointment

To be completed by the representative:

I, _____, hereby accept the above appointment. I certify that I have not been disqualified, suspended, or prohibited from practice before the department of Health and Human Services; that I am not, as a current or former employee of the United States, disqualified from acting as the party's representative; and that I recognize that any fee may be subject to review and approval by the Secretary.

I am a / an _____

(Professional status or relationship to the party, e.g. attorney, relative, etc.)

Signature of Representative		Date
Street Address		Phone Number (with Area Code)
City	State	Zip Code

Section 3: Waiver of Fee for Representation

Instructions: This section must be completed if the representative is required to, or chooses to waive their fee for representation. (Note that providers or suppliers that are representing a beneficiary and furnished the items or services may not charge a fee for representation and **must** complete this section.)

I waive my right to charge and collect a fee for representing _____ before the Secretary of the Department of Health and Human Services.

Signature	Date

Section 4: Waiver of Payment for Items or Services at Issue

Instructions: Providers or suppliers serving as a representative for a beneficiary to whom they provided items or services must complete this section if the appeal involves a question of liability under section 1879(a)(2) of the Act. (Section 1879(a)(2) generally addresses whether a provider/supplier or beneficiary did not know, or could not reasonably be expected to know, that the items or services at issue would not be covered by Medicare.)

I waive my right to collect payment from the beneficiary for the items or services at issue in this appeal if a determination of liability under §1879(a)(2) of the Act is at issue.

Signature	Date

Charging of Fees for Representing Beneficiaries Before the Secretary of the Department of Health and Human Services

An attorney, or other representative for a beneficiary, who wishes to charge a fee for services rendered in connection with an appeal before the Secretary of the Department of Health and Human Services (DHHS) (i.e., an Administrative Law Judge (ALJ) hearing, Medicare Appeals Council review, or a proceeding before an ALJ or the Medicare Appeals Council as a result of a remand from federal district court) is required to obtain approval of the fee in accordance with 42 CFR §405.910(f).
The form, "Petition to Obtain Representative Fee" elicits the information required for a fee petition. It should be completed by the representative and filed with the request for ALJ hearing or request for Medicare Appeals Council review. Approval of a representative's fee is not required if: (1) the appellant being represented is a provider or supplier; (2) the fee is for services rendered in an official capacity such as that of legal guardian, committee, or similar court appointed representative and the court has approved the fee in question; (3) the fee is for representation of a beneficiary in a proceeding in federal district court; or (4) the fee is for representation of a beneficiary in a redetermination or reconsideration. If the representative wishes to waive a fee, he or she may do so. Section III on the front of this form can be used for that purpose. In some instances, as indicated on the form, the fee must be waived for representation

Authorization of Fee

The requirement for the approval of fees ensures that a representative will receive fair value for the services performed before DHHS on behalf of a beneficiary, and provides the beneficiary with a measure of security that the fees are determined to be reasonable. In approving a requested fee, the ALJ or Medicare Appeals Council will consider the nature and type of services rendered, the complexity of the case, the level of skill and competence required in rendition of the services, the amount of time spent on the case, the results achieved, the level of administrative review to which the representative carried the appeal and the amount of the fee requested by the representative.

Conflict of Interest

Sections 203, 205 and 207 of title XVIII of the United States Code make it a criminal offense for certain officers, employees and former officers and employees of the United States to render certain services in matters affecting the Government or to aid or assist in the prosecution of claims against the United States. Individuals with a conflict of interest are excluded from being representatives of beneficiaries before DHHS.

Where to Send This Form

Send this form to the same location where you are sending (or have already sent): (1) your appeal if you are filing an appeal, (2) grievance if you are filing a grievance, or (3) initial determination or decision if you are requesting an initial determination or decision.

If additional help is needed, contact your Medicare plan or 1-800-MEDICARE (1-800-633-4227).

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0950. The time required to prepare and distribute this collection is 15 minutes per notice, including the time to select the preprinted form, complete it and deliver it to the beneficiary. If you have comments concerning the accuracy of the time estimates or suggestions for improving this form, please write to CMS, PRA Clearance Officer, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Formulario Aprobado
No. OMB 0938-0950

Nombramiento de un Representante

Nombre del Participante	Numero de Medicare o identificador Nacional del Proveedor

Sección 1: Nombramiento de un Representante

Para ser completado por el participante que busca representación (por ejemplo, el beneficiario de Medicare, el proveedor o suplidor):

Yo nombro a _____ para actuar como representante en relación con mi reclamación o derecho en virtud del título XVIII de la Ley del Seguro Social (la "Ley") y sus disposiciones relacionadas al título XI de la Ley. Autorizo a este individuo a realizar cualquier solicitud; presentar u obtener información sobre apelaciones conseguir pruebas; obtener información sobre apelaciones y recibir toda notificación sobre mi apelación, en mi representación. Entiendo que podría divulgarse al representante indicado a continuación, la información médica personal sobre mi apelación.

Firma del que designa a su representante		Fecha
Dirección:		Numero de teléfono (con código de área)
Ciudad	Estado	Código Postal

Sección 2: Aceptación del Nombramiento

Para ser completado por el representante:

Yo, _____, acepto por la presente el nombramiento antes mencionado. Certifico que no se ha descalificado, suspendido o prohibido mi desempeño profesional ante el Departamento de Salud y Servicios Humanos; que no estoy en calidad de empleado actual o pasado de los Estados Unidos, descalificado para actuar como representante del participante; y que reconozco que todo honorario podría estar sujeto a revisión y aprobación de la Secretaría.

Me desempeño como _____
(Situación profesional o relación con el participante, por ejemplo: abogado, pariente, etc.)

Firma del representante		Fecha
Dirección:		Numero de teléfono (con código de área)
Ciudad	Estado	Código Postal

Sección 3: Renuncia al Cobro de Honorarios por Representación

Instrucciones: El representante debe completar esta sección si se lo requieren o si renuncia al cobro de honorarios por representación. (Los proveedores o suplidores que representen a un beneficiario y le hayan brindado artículos o servicios no pueden cobrar honorarios por representación y deben completar esta sección).

Renuncio a mi derecho de cobrar un honorario por representar a _____ ante el Secretario(a) del Departamento de Salud y Servicios Humanos.

Firma	Fecha

Sección 4: Renuncia al Pago por Artículoso Servicios en Cuestión

Instrucciones: Los proveedores o suplidores que actúan como representantes de beneficiarios a los que les brindaron artículos o servicios deben completar esta sección si la apelación es por un tema de responsabilidad en virtud de la sección 1879(a)(2) de la Ley. (En la sección 1879(a)(2) en general se aborda si un proveedor, abastecedor o beneficiario no tenía conocimiento o no se podía esperar que supiera que los artículos o servicios en cuestión no estarían cubiertos por Medicare).

Renuncio a mi derecho de cobrar al beneficiario un honorario por los artículos o servicios en cuestión en esta apelación si está pendiente una determinación de responsabilidad bajo la sección 1879(a)(2) de la Ley.

Firma	Fecha

Cobro de Honorarios por Representación de Beneficiarios ante el Secretatio(a) del Departamento de Salud y Servicios Humanos

Un abogado u otro representante de un beneficiario, que desee cobrar un honorario por los servicios prestados en relación con una apelación ante el Secretario(a) del Departamento de Salud y Servicios Humanos (DHHS en inglés) (por ejemplo, una audiencia con un Juez de Derecho Administrativo (ALJ en inglés), una revisión con el Consejo de Apelaciones de Medicare o un proceso ante un ALJ o el Consejo de Apelaciones de Medicare como resultado de una orden de remisión del la Corte de Distrito Federal) debe, por ley obtener aprobación para recibir un honorario de acuerdo con 42 CFR §405.910(f).
Mediante este formulario, "Solicitud para obtener un honorario por concepto de representación" se recaba la información necesaria para solicitar el pago de honorario. Debe ser completado por el representante y presentado con la solicitud para audiencia con el ALJ o revisión del Consejo de Apelaciones de Medicare.
La aprobación de honorarios para el representante no es necesaria si: (1) el apelante es representado por un proveedor o suplidor; (2) prestados en calidad oficial como un tutor legal, comité o cargo similar representante designado por el tribunal y con la aprobación del tribunal del honorario en cuestión; (3) el honorario es por representación del beneficiario ante la corte de distrito federal; o (4) el honorario es por representación del beneficiario en una redeterminación o reconsideración. Si el representante desea renunciar al cobro de un honorario, puede hacerlo. La sección 3 en la primera página de este formulario puede usarse para ese propósito. En algunas instancias, según se indica en el formulario, no se cobrará el honorario por concepto de representación.

Autorización de Honorarios

El requisito para la aprobación de honorarios garantiza que el representante recibirá una remuneración justa por los servicios prestados ante DHHS en nombre de un beneficiario y brinda al beneficiario la seguridad de que los honorarios sean razonables. Para la aprobación de un honorario solicitado, el ALJ o el Consejo de Apelaciones de Medicare considera la naturaleza y el tipo de servicios prestados, la complejidad del caso, el nivel de pericia y capacidad necesaria para la prestación de servicios, la cantidad de tiempo dedicado al caso, los resultados alcanzados, el nivel de revisión administrativa al cual el representante llevó la apelación y el monto del honorario solicitado por el representante.

Conflicto de Interés

Las secciones 203, 205 y 207 del título XVIII del Código de Estados Unidos consideran como un delito penal cuando ciertos funcionarios, empleados y antiguos funcionarios y empleados de los Estados Unidos prestan ciertos servicios en temas que afectan al Gobierno, ayudan o asisten en el procesamiento de reclamaciones contra los Estados Unidos. Los individuos con un conflicto de interés quedarán excluidos de ser representantes de los beneficiarios ante DHHS.

Dónde Enviar este Formulario

Envíe este formulario al mismo lugar que está enviando (o ha enviado) su: (1) apelación si está solicitándola, (2) queja, (3) determinación o decisión inicial si está solicitando una determinación inicial o decisión. Si necesita ayuda, comuníquese con su plan de Medicare o llame al 1-800-MEDICARE (1-800-633-4227).

De acuerdo con la Ley de Reducción de Papeleo de 1995, no se le requiere a ninguna persona responder a una recopilación de información a menos de que presente un número de control válido OMB. El número de OMB para esta recopilación es 0938-0950. El tiempo requerido para completar este formulario es de 15 minutos por notificación, incluyendo el tiempo necesario para seleccionar el formulario pre-impreso, completar y entregárselo al beneficiario. Si tiene comentarios sobre el tiempo estimado para completarlo o sugerencias para mejorar este formulario, favor de escribir a: CMS, PRA Clearance Officer, 7500 Security Boulevard, Baltimore, MD 21244-1850.

APPENDIX G

Social Security Administration "Appointment of Authorized Representative" – Form SSA-1696-U4

See the next page for a copy of Form SSA-1696-U4.

Social Security Administration
Please read the instructions before completing this form.

Form Approved
OMB No. 0960-0527

Name (Claimant) (Print or Type)	Social Security Number
Wage Earner (If Different)	Social Security Number

Part I CLAIMANT'S APPOINTMENT OF REPRESENTATIVE

I appoint this individual, _____
(Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

☐ Title II (RSDI) ☐ Title XVI (SSI) ☐ Title XVIII (Medicare) ☐ Title VIII (SVB)

This individual may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

☐ I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.

☐ I appoint, or I now have, more than one representative. My principal representative is:

_____
(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part II REPRESENTATIVE'S ACCEPTANCE OF APPOINTMENT

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

Check one: ☐ I am an attorney. ☐ I am a non-attorney eligible for direct payment under SSA law.

☐ I am a non-attorney not eligible for direct payment.

I am now or have previously been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ YES ☐ NO

I am now or have previously been disqualified from participating in or appearing before a Federal program or agency. ☐ YES ☐ NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part III FEE ARRANGEMENT

(Select an option, sign and date this section.)

☐ **I am charging a fee and requesting direct payment** of the fee from withheld past-due benefits. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am charging a fee but waiving direct payment** of the fee from withheld past-due benefits --I do not qualify for or do not request direct payment. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am waiving fees and expenses from the claimant and any auxiliary beneficiaries** --By checking this block I certify that my fee will be paid by a third-party entity or government agency, and that the claimant and any auxiliary beneficiaries are free of all liability, directly or indirectly, in whole or in part, to pay any fee or expenses to me or anyone as a result of their claim(s) or asserted right(s). *(SSA does not need to authorize the fee if a third-party entity or a government agency will pay from its funds the fee and any expenses for this appointment. Do not check this block if a third-party individual will pay the fee.)*

☐ **I am waiving fees from any source** --I am waiving my right to charge and collect any fee, under sections 206 and 1631 (d)(2) of the Social Security Act. I release my client and any auxiliary beneficiaries from any obligations, contractual or otherwise, which may be owed to me for services provided in connection with their claim(s) or asserted right(s).

Signature (Representative)	Date

Social Security Administration
Please read the instructions before completing this form.

Form Approved
OMB No. 0960-0527

Name (Claimant) (Print or Type)	Social Security Number
Wage Earner (If Different)	Social Security Number

Part I

CLAIMANT'S APPOINTMENT OF REPRESENTATIVE

I appoint this individual, _____
(Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

☐ Title II(RSDI) ☐ Title XVI (SSI) ☐ Title XVIII (Medicare) ☐ Title VIII (SVB)

This individual may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

☐ I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.

☐ I appoint, or I now have, more than one representative. My principal representative is:

_____
(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part II

REPRESENTATIVE'S ACCEPTANCE OF APPOINTMENT

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

Check one: ☐ I am an attorney. ☐ I am a non-attorney eligible for direct payment under SSA law.

☐ I am a non-attorney not eligible for direct payment.

I am now or have previously been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ YES ☐ NO

I am now or have previously been disqualified from participating in or appearing before a Federal program or agency. ☐ YES ☐ NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part III

FEE ARRANGEMENT

(Select an option, sign and date this section.)

☐ **I am charging a fee and requesting direct payment** of the fee from withheld past-due benefits. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am charging a fee but waiving direct payment** of the fee from withheld past-due benefits —I do not qualify for or do not request direct payment. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am waiving fees and expenses from the claimant and any auxiliary beneficiaries** —By checking this block I certify that my fee will be paid by a third-party entity or government agency, and that the claimant and any auxiliary beneficiaries are free of all liability, directly or indirectly, in whole or in part, to pay any fee or expenses to me or anyone as a result of their claim(s) or asserted right(s). *(SSA does not need to authorize the fee if a third-party entity or a government agency will pay from its funds the fee and any expenses for this appointment. Do not check this block if a third-party individual will pay the fee.)*

☐ **I am waiving fees from any source** —I am waiving my right to charge and collect any fee, under sections 206 and 1631 (d)(2) of the Social Security Act. I release my client and any auxiliary beneficiaries from any obligations, contractual or otherwise, which may be owed to me for services provided in connection with their claim(s) or asserted right(s).

Signature (Representative)	Date

INFORMATION FOR CLAIMANTS

What Your Representative(s) May Do

We will work directly with your appointed representative unless he or she asks us to work directly with you. Your representative may:

- get information from your claim(s) file;
- with your permission, designate associates who perform administrative duties (e.g. clerks), partners and/or parties under contractual arrangements (e.g., copying services) to receive information from us on his or her behalf (by checking the appropriate block and signing this form, you are providing your permission for your representative to designate such associates, partners, and/or contractual parties);
- give us evidence or information to support your claim;
- come with you, or for you, to any interview, conference, or hearing you have with us;
- request a reconsideration, a hearing, or Appeals Council review; and
- help you and your witnesses prepare for a hearing and question any witnesses.

Also, your representative will receive a copy of the decision(s) we make on your claim(s). We will rely on your representative to tell you about the status of your claim(s), but you still may call or visit us for information.

You and your representative(s) are responsible for giving Social Security accurate information. It is wrong to knowingly and willingly furnish false information. Doing so may result in criminal prosecution.

We usually continue to work with your representative until (1) you notify us in writing that he or she no longer represents you; or (2) your representative tells us that he or she is withdrawing or indicates that his or her services have ended (for example, by filing a fee petition or not pursuing an appeal). We do not continue to work with someone who is suspended or disqualified from representing claimants. We will inform you if we suspend your representative.

What Your Representative(s) May Charge

Each representative you appoint can ask for a fee. To charge you a fee for services, your representative must get our authorization if you or another individual will pay the fee. However, as described in "Completing this form to appoint a representative, Part III Fee Arrangement" section of this form, under certain circumstances, we do not have to authorize the representative's fee. To request a fee, your representative must file a fee agreement or a fee petition. In either case, your representative cannot charge you more than the fee amount we authorize. If he or she does, promptly report this to your Social Security office.

Filing A Fee Petition

Your representative may file a fee petition when his or her work on your claim(s) is complete. This written request describes in detail the amount of time your representative spent on each service he or she provided you. The request also gives the amount of the fee the representative wants to charge for these services. Your representative must give you a copy of the fee petition and each attachment. If you disagree with the information shown in the fee petition, contact your Social Security office. Please do this within 20 days of receiving your copy of the petition.

We will review the petition and consider the reasonable value of the services provided. Then we will tell you in writing the amount of the fee we authorize.

Filing A Fee Agreement

If you and your representative have a written fee agreement, one of you must give it to us before we decide your claim(s). We usually will approve the agreement if:

- you both signed it;
- the fee you agreed on is no more than 25 percent of past-due benefits, or $6,000 (or a higher amount we set and announced in the Federal Register), whichever is less;
- we approve your claim(s); and
- your claim results in past-due benefits.

We will tell you in writing the amount of the fee your representative can charge based on the agreement.

If we do not approve the fee agreement, we will tell you and your representative in writing. If your representative wishes to charge and collect a fee, he or she must file a fee petition.

After we tell you the amount of the fee your representative can charge, you or your representative can ask us to look at it again if either or both of you disagree with the amount. If we approved a fee agreement, the person who decided your claim(s) also may ask us to lower the amount. Someone who did not decide the amount of the fee the first time will review and finally decide the amount of the fee.

How Much You Pay

You never owe more than the fee we authorize, except for:

- any fee a Federal court allows for your representative's services before it; and
- out-of-pocket expenses your representative incurs or expects to incur, for example, the cost of getting your doctor's or hospital's records. Our authorization is not needed for such expenses.

Your representative may accept money in advance as long as he or she holds it in a trust or escrow account. We usually withhold 25 percent of your past-due benefits to pay toward the fee for you if:

- your retirement, survivors, disability insurance, and/or supplemental security income claim(s) results in past-due benefits;
- your representative is an attorney or a non-attorney whom we have determined to be eligible to receive direct payment of fees; and
- your representative registers with us for direct payment before we effectuate a favorable decision on your claim.

You must pay your representative directly:

- **the rest of the fee you owe,** if the amount of the authorized fee is more than the money we withheld and paid to your representative for you plus any amount your representative held for you in a trust or escrow account.
- **all of the fee you owe,** if we did not withhold past-due benefits, (for example, because there are no past-due benefits; your representative waived direct payment, did not register for direct payment, you discharged the representative, or he or she withdrew from representing you, before we issued a favorable decision); or we withheld an amount from your past-due benefits, but your representative did not ask us to authorize a fee or tell us that he or she planned to ask for a fee within 60 days after the date of your notice of award and we released the withheld amount to you.

Social Security Administration
Please read the instructions before completing this form.

Form Approved
OMB No. 0960-0527

Name (Claimant) (Print or Type)	Social Security Number
Wage Earner (If Different)	Social Security Number

Part I

CLAIMANT'S APPOINTMENT OF REPRESENTATIVE

I appoint this individual, _____
(Name and Address)
to act as my representative in connection with my claim(s) or asserted right(s) under:

☐ Title II (RSDI) ☐ Title XVI (SSI) ☐ Title XVIII (Medicare) ☐ Title VIII (SVB)

This individual may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

☐ I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.

☐ I appoint, or I now have, more than one representative. My principal representative is:

_____
(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part II

REPRESENTATIVE'S ACCEPTANCE OF APPOINTMENT

I, _____ , hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

Check one: ☐ I am an attorney. ☐ I am a non-attorney eligible for direct payment under SSA law.
☐ I am a non-attorney not eligible for direct payment.

I am now or have previously been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ YES ☐ NO

I am now or have previously been disqualified from participating in or appearing before a Federal program or agency. ☐ YES ☐ NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part III

FEE ARRANGEMENT

(Select an option, sign and date this section.)

☐ **I am charging a fee and requesting direct payment** of the fee from withheld past-due benefits. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am charging a fee but waiving direct payment** of the fee from withheld past-due benefits —I do not qualify for or do not request direct payment. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am waiving fees and expenses from the claimant and any auxiliary beneficiaries** —By checking this block I certify that my fee will be paid by a third-party entity or government agency, and that the claimant and any auxiliary beneficiaries are free of all liability, directly or indirectly, in whole or in part, to pay any fee or expenses to me or anyone as a result of their claim(s) or asserted right(s). *(SSA does not need to authorize the fee if a third-party entity or a government agency will pay from its funds the fee and any expenses for this appointment. Do not check this block if a third-party individual will pay the fee.)*

☐ **I am waiving fees from any source** —I am waiving my right to charge and collect any fee, under sections 206 and 1631 (d)(2) of the Social Security Act. I release my client and any auxiliary beneficiaries from any obligations, contractual or otherwise, which may be owed to me for services provided in connection with their claim(s) or asserted right(s).

Signature (Representative)	Date

Social Security Administration
Please read the instructions before completing this form.

Form Approved
OMB No. 0960-0527

Name (Claimant) (Print or Type)	Social Security Number
Wage Earner (If Different)	Social Security Number

Part I

CLAIMANT'S APPOINTMENT OF REPRESENTATIVE

I appoint this individual, _____
(Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

☐ Title II (RSDI) ☐ Title XVI (SSI) ☐ Title XVIII (Medicare) ☐ Title VIII (SVB)

This individual may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

☐ I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.

☐ I appoint, or I now have, more than one representative. My principal representative is:

_____
(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part II

REPRESENTATIVE'S ACCEPTANCE OF APPOINTMENT

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

Check one: ☐ I am an attorney. ☐ I am a non-attorney eligible for direct payment under SSA law.

☐ I am a non-attorney not eligible for direct payment.

I am now or have previously been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ YES ☐ NO

I am now or have previously been disqualified from participating in or appearing before a Federal program or agency. ☐ YES ☐ NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part III

FEE ARRANGEMENT

(Select an option, sign and date this section.)

☐ **I am charging a fee and requesting direct payment** of the fee from withheld past-due benefits. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am charging a fee but waiving direct payment** of the fee from withheld past-due benefits —I do not qualify for or do not request direct payment. *(SSA must authorize the fee unless a regulatory exception applies.)*

☐ **I am waiving fees and expenses from the claimant and any auxiliary beneficiaries** —By checking this block I certify that my fee will be paid by a third-party entity or government agency, and that the claimant and any auxiliary beneficiaries are free of all liability, directly or indirectly, in whole or in part, to pay any fee or expenses to me or anyone as a result of their claim(s) or asserted right(s). *(SSA does not need to authorize the fee if a third-party entity or a government agency will pay from its funds the fee and any expenses for this appointment. Do not check this block if a third-party individual will pay the fee.)*

☐ **I am waiving fees from any source** —I am waiving my right to charge and collect any fee, under sections 206 and 1631 (d)(2) of the Social Security Act. I release my client and any auxiliary beneficiaries from any obligations, contractual or otherwise, which may be owed to me for services provided in connection with their claim(s) or asserted right(s).

Signature (Representative)	Date

APPENDIX H

Authorization to Disclose Information to the Social Security Administration - Form SSA-827

See the next page for a copy of Form SSA-827.

Form Approved
OMB No. 0960-0623

WHOSE *Records to be Disclosed*

NAME *(First, Middle, Last, Suffix)*

SSN - -

Birthday *(mm/dd/yy)*

AUTHORIZATION TO DISCLOSE INFORMATION TO THE SOCIAL SECURITY ADMINISTRATION (SSA)

**** PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW ****

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):
OF WHAT *All my medical records;* also education records and other information related to my ability to perform tasks. This includes specific permission to release:

1. **All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) *including* , and not limited to :**
   - Psychological, psychiatric or other mental impairment(s) (excludes "psychotherapy notes" as defined in 45 CFR 164.501)
   - Drug abuse, alcoholism, or other substance abuse
   - Sickle cell anemia
   - Records which may indicate the presence of a communicable or noncommunicable disease; and tests for or records of HIV/AIDS
   - Gene-related impairments (including genetic test results)
2. **Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.**
3. **Copies of educational tests or evaluations, including Individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.**
4. **Information created within 12 months after the date this authorization is signed, as well as past information.**

FROM WHOM

- **All medical sources** (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SSA
- Employers, insurance companies, workers' compensation programs
- Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY SSA/DDS (as needed) Additional information to identify the subject (e.g., other names used), the specific source, or the material to be disclosed:

TO WHOM **The Social Security Administration and to the State agency authorized to process my case** (usually called "disability determination services"), **including contract copy services, and doctors or other professionals consulted during the process.** [Also, for international claims, to the U.S. Department of State Foreign Service Post.]

PURPOSE Determining my **eligibility for benefits**, including looking at the combined effect of any impairments that by themselves would not meet SSA's definition of disability; and whether I can manage such benefits.

☐ Determining whether I am **capable of managing benefits ONLY** (check only if this applies)

EXPIRES WHEN This authorization is good for 12 months from the date signed (below my signature).

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances in which this information may be redisclosed to other parties (see page 2 for details).
- I may write to SSA and my sources to revoke this authorization at any time (see page 2 for details).
- SSA will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of material to be disclosed.
- **I have read both pages of this form and agree to the disclosures above from the types of sources listed.**

PLEASE SIGN USING BLUE OR BLACK INK ONLY

INDIVIDUAL authorizing disclosure

SIGN ▶

IF not signed by subject of disclosure, specify basis for authority to sign

☐ **Parent of minor** ☐ **Guardian** ☐ **Other personal representative (explain)**

(Parent/guardian/personal representative sign here if two signatures required by State law) ▶

Date Signed	Street Address		
Phone Number (with area code)	City	State	ZIP -

WITNESS *I know the person signing this form or am satisfied of this person's identity:*

SIGN ▶	**IF** needed, second witness sign here (e.g., if signed with "X" above) **SIGN ▶**
Phone Number (or Address)	Phone Number (or Address)

This general and special authorization to disclose was developed to comply with the provisions regarding disclosure of medical, educational, and other information under P.L. 104-191 ("HIPAA"); 45 CFR parts 160 and 164; 42 U.S. Code section 290dd-2; 42 CFR part 2; 38 U.S. Code section 7332; 38 CFR 1.475; 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 99 and 300; and State law.

Explanation of Form SSA-827,
"Authorization to Disclose Information to the Social Security Administration (SSA)"

We need your written authorization to help get the information required to process your claim, and to determine your capability of managing benefits. Laws and regulations require that sources of personal information have a signed authorization before releasing it to us. Also, laws require specific authorization for the release of information about certain conditions and from educational sources.

You can provide this authorization by signing a form SSA-827. Federal law permits sources with information about you to release that information if you sign a single authorization to release all your information from all your possible sources. We will make copies of it for each source. A covered entity (that is, a source of medical information about you) may not condition treatment, payment, enrollment, or eligibility for benefits on whether you sign this authorization form. A few States, and some individual sources of information, require that the authorization specifically name the source that you authorize to release personal information. In those cases, we may ask you to sign one authorization for each source and we may contact you again if we need you to sign more authorizations.

You have the right to revoke this authorization at any time, except to the extent a source of information has already relied on it to take an action. To revoke, send a written statement to any Social Security Office. If you do, also send a copy directly to any of your sources that you no longer wish to disclose information about you; SSA can tell you if we identified any sources you didn't tell us about. SSA may use information disclosed prior to revocation to decide your claim.

It is SSA's policy to provide service to people with limited English proficiency in their native language or preferred mode of communication consistent with Executive Order 13166 (August 11, 2000) and the Individuals with Disabilities Education Act. SSA makes every reasonable effort to ensure that the information in the SSA-827 is provided to you in your native or preferred language.

Privacy Act Statement
Collection and Use of Personal Information

Sections 205(a), 233(d)(5)(A), 1614(a)(3)(H)(i), 1631(d)(l) and 1631(e)(l)(A) of the Social Security Act as amended, [42 U.S.C. 405(a), 433(d)(5)(A), 1382c(a)(3)(H)(i), 1383(d)(l) and 1383(e)(l)(A)] authorize us to collect this information. We will use the information you provide to help us determine your eligibility, or continuing eligibility for benefits, and your ability to manage any benefits received. The information you provide is voluntary. However, failure to provide the requested information may prevent us from making an accurate and timely decision on your claim, and could result in denial or loss of benefits.

We rarely use the information you provide on this form for any purpose other than for the reasons explained above. However, we may use it for the administration and integrity of Social Security programs. We may also disclose information to another person or to another agency in accordance with approved routine uses, including but not limited to the following:

1. To enable a third party or an agency to assist us in establishing rights to Social Security benefits and/or coverage;

2. To comply with Federal laws requiring the release of information from our records (e.g., to the Government Accountability Office, General Services Administration, National Archives Records Administration, and the Department of Veterans Affairs);

3. To make determinations for eligibility in similar health and income maintenance programs at the Federal, State, and local level; and

4. To facilitate statistical research, audit, or investigative activities necessary to assure the integrity and improvement of our programs (e.g., to the U.S. Census Bureau and to private entities under contract with us).

We may also use the information you provide in computer matching programs. Matching programs compare our records with records kept by other Federal, State, or local government agencies. We use the information from these programs to establish or verify a person's eligibility for Federally funded or administered benefit programs and for repayment of incorrect payments or delinquent debts under these programs.

A complete list of routine uses of the information you gave us is available in our Privacy Act Systems of Records Notices entitled, Claims Folder System, 60-0089; Master Beneficiary Record, 60-0090; Supplemental Security Income record and Special Veterans benefits, 60-0103; and Electronic Disability (eDIB) Claims File, 60-0340. The notices, additional information regarding this form, and information regarding our systems and programs, are available on-line at www.socialsecurity.gov or at any Social Security office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 10 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE.** You can find your local Social Security office through SSA's website at www.socialsecurity.gov. Offices are also listed under U.S. Government agencies in your telephone directory **or you may call Social Security at 1-800-772-1213 (TTY 1-800-325-0778).** *You may send comments on our time estimate above to: SSA, 6401 Security Blvd, Baltimore, MD 21235-6401.* ***Send only comments relating to our time estimate to this address, not the completed form.***

APPENDIX I

Social Security Administration's Checklist for Online Adult Disability Application

Social Security Administration

Checklist For Online Adult Disability Application

This checklist will help you gather the information you may need to complete the online adult Disability application process. We recommend you print this page to use while you gather your information. We hope you find our online application easy and convenient.

<table>
<tr><td colspan="2">Birth and Citizenship Information
If you were born outside the United States or its territories:
• Name of your birth country at the time of your birth (it may have a different name now)
• Permanent Resident Card number (if you are not a U.S. Citizen)</td></tr>
<tr><td colspan="2">Marriage and Divorce
• Name of current spouse and prior spouse (if the marriage lasted more than 10 years or ended in death)
• Spouse(s) date of birth and SSN (optional)
• Beginning and ending dates of marriage(s)
• Place of marriage(s) (city, state or country, if married outside the U.S.)</td></tr>
<tr><td colspan="2">Names and Birth Dates of Children Who
• Became disabled prior to age 22, or
• Are under age 18 and are unmarried, or
• Are aged 18 to 19 and still attending secondary school full time</td></tr>
<tr><td colspan="2">U.S. Military Service
• Type of duty and branch
• Service period dates</td></tr>
<tr><td colspan="2">Employer Details for Current Year and Prior 2 Years (not self-employment)
• View your Social Security Statement online at: www.ssa.gov/myaccount
• Employer name
• Employment start and end dates
• Total earnings (wages, tips, etc.)</td></tr>
<tr><td colspan="2">Self-Employment Details for Current Year and Prior 2 Years
• View your Social Security Statement online at: www.ssa.gov/myaccount
• Business type and total net income</td></tr>
<tr><td>Direct Deposit

Domestic bank (USA)
• Account type and number
• Bank routing number</td><td>International Bank (Non-USA)
• International Direct Deposit (IDD) bank country
• Bank name, bank code, and currency
• Account type and number
• Branch/transit number</td></tr>
<tr><td colspan="2">Name, address and phone number of someone we can contact who knows about your medical condition(s) and can help you with your claim</td></tr>
<tr><td colspan="2">List of your medical conditions</td></tr>
<tr><td colspan="2">Information about Doctors, Healthcare Professionals, Hospitals and Clinics
• Names, addresses, phone numbers, patient ID numbers, and dates of examinations and treatments
• Names and dates of medical tests you have had and who sent you for them
• Names of medications (prescriptions and non-prescriptions), reason for medication and who prescribed them</td></tr>
<tr><td colspan="2">Information about other medical records that may be available from vocational rehabilitation services, workers compensation, public welfare, prison or jail, an attorney or lawyer, or another place</td></tr>
<tr><td colspan="2">Job History
• Date your medical condition began to affect your ability to work
• Type of jobs (up to 5) that you had in the 15 years before you became unable to work because of your medical condition
• Dates you worked at those jobs, if available
• Type of duties you did on the longest job you had</td></tr>
<tr><td colspan="2">Education and Training
• Highest grade in school completed and date you completed it
• Name of special job training, trade school or vocational school and date completed
• Special education school name, city and state, and date completed</td></tr>
</table>

We may contact you for additional information after you submit your online application.

APPENDIX J

Where to Send Your SSI Application When in Custody

Where to Send Your SSI Application
(revised April 28, 2016)

You may call the Social Security Administration (SSA) toll-free to identify the office nearest you: 1-800-772-1213. The TTY phone number is 1-800-325-0778. This is also the TTY phone number for the offices listed below unless otherwise noted. Alternately, you may visit the SSA website at http//:www.ssa.gov.

If you are in custody, the following is an address list for SSA Offices near CDCR institutions:

Atascadero State Hospital	SOCIAL SECURITY 3240 S HIGUERA ST SAN LUIS OBISPO, CA 93401 Phone: 1-855-207-4865
Avenal State Prison	SOCIAL SECURITY SUITE 101 330 NORTH HARRIS ST HANFORD, CA 93230 Phone: 1-855-207-4866
California City Correctional Center	SOCIAL SECURITY 2603 RIVERSIDE DR SUSANVILLE, CA 96130 Phone: 1-855-420-8563
California Correctional Center	SOCIAL SECURITY 2603 RIVERSIDE DR SUSANVILLE, CA 96130 Phone: 1-855-420-8563
California Correctional Institution	SOCIAL SECURITY 2575 HALEY STREET BAKERSFIELD, CA 93305 Phone: 1-866-366-9558
California Health Care Facility	SOCIAL SECURITY 4747 FEATHER RIVER DR STOCKTON, CA 95219 Phone: 1-877-803-6314
California Institution for Men	SOCIAL SECURITY 1100 E HOLT BLVD ONTARIO, CA 91761 Phone: 1-800-772-1213

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California Institution for Women	SOCIAL SECURITY 7880 MISSION GROVE PARKWAY SOUTH RIVERSIDE, CA 92508 Phone: 1-800-772-1213
California Medical Facility	SOCIAL SECURITY SUITE 220 700 MAIN STREET SUISUN CITY, CA 94585 Phone: 1-800-772-1213
California Men's Colony	SOCIAL SECURITY 3240 S HIGUERA ST SAN LUIS OBISPO, CA 93401 Phone: 1-855-207-4865
California Rehabilitation Center	SOCIAL SECURITY 7880 MISSION GROVE PARKWAY SOUTH RIVERSIDE, CA 92508 Phone: 1-800-772-1213
California State Prison, Corcoran	SOCIAL SECURITY SUITE 101 330 NORTH HARRIS ST HANFORD, CA 93230 Phone: 1-855-207-4866
California State Prison, Los Angeles County	SOCIAL SECURITY 44451 20TH STREET W LANCASTER, CA 93534 Phone: 1-866-964-1725
California State Prison, Sacramento	SOCIAL SECURITY 910 CIRBY WAY ROSEVILLE, CA 95661 Phone: 1-866-348-7830
California State Prison, Solano	SOCIAL SECURITY SUITE 220 700 MAIN STREET SUISUN CITY, CA 94585 Phone: 1-800-772-1213

[310782-1]

California Substance Abuse Treatment Facility	SOCIAL SECURITY SUITE 101 330 NORTH HARRIS ST HANFORD, CA 93230 Phone: 1-855-207-4866
Calipatria State Prison	SOCIAL SECURITY 3007 N IMPERIAL AVE EL CENTRO, CA 92243 Phone: 1-800-772-1213
Centinela State Prison	SOCIAL SECURITY 3007 N IMPERIAL AVE EL CENTRO, CA 92243 Phone: 1-800-772-1213
Central California Women's Facility	SOCIAL SECURITY 348 E YOSEMITE AVE MADERA, CA 93638 Phone: 1-877-405-1453
Central Valley Modified CCF	SOCIAL SECURITY BUILDING C 2234 GIRARD STREET DELANO, CA 93215 Phone: 1-866-635-0287
Chuckawalla Valley State Prison	SOCIAL SECURITY 1287 W HOBSON WAY BLYTHE, CA 92225 Phone: 1-800-772-1213
Coalinga State Hospital	SOCIAL SECURITY 865 FULTON MALL FRESNO, CA 93721 Phone: 1-877-311-2640
Correctional Training Facility	SOCIAL SECURITY SUITE 155 928 EAST BLANCO RD SALINAS, CA 93901 Phone: 1-877-600-2857

[319782-1]



Desert View Modified CCF	SOCIAL SECURITY 13955 PARK AVE VICTORVILLE, CA 92392 Phone: 1-800-772-1213
Deuel Vocational Institution	SOCIAL SECURITY 510 COMMERCE CT MANTECA, CA 95336 Phone: 1-866-320-2587
Folsom State Prison	SOCIAL SECURITY 910 CIRBY WAY ROSEVILLE, CA 95661 Phone: 1-866-348-7830
Folsom Women's Facility	SOCIAL SECURITY 910 CIRBY WAY ROSEVILLE, CA 95661 Phone: 1-866-348-7830
Golden State Modified CCF	SOCIAL SECURITY BUILDING C 2234 GIRARD STREET DELANO, CA 93215 Phone: 1-866-635-0287
High Desert State Prison	SOCIAL SECURITY 2603 RIVERSIDE DR SUSANVILLE, CA 96130 Phone: 1-855-420-8563
Ironwood State Prison	SOCIAL SECURITY 1287 W HOBSON WAY BLYTHE, CA 92225 Phone: 1-800-772-1213
Kern Valley State Prison	SOCIAL SECURITY BUILDING C 2234 GIRARD STREET DELANO, CA 93215 Phone: 1-866-635-0287
Leo Chesney CCF	SOCIAL SECURITY 355 PERCY AVENUE YUBA CITY, CA 95991 Phone: 1-866-331-5449

[310782-1]

McFarland CCF	SOCIAL SECURITY BUILDING C 2234 GIRARD STREET DELANO, CA 93215 Phone: 1-866-635-0287
Mesa Verde CCF	SOCIAL SECURITY 5300 OFFICE PARK DRIVE BAKERSFIELD, CA 93309 Phone: 1-866-476-1489
Mule Creek State Prison	SOCIAL SECURITY SUITE A 3916 MISSOURI FLAT RD PLACERVILLE, CA 95667 Phone: 1-877-545-5497
North Kern State Prison	SOCIAL SECURITY BUILDING C 2234 GIRARD STREET DELANO, CA 93215 Phone: 1-866-635-0287
Northern California Women's Facility	SOCIAL SECURITY 4747 FEATHER RIVER DR STOCKTON, CA 95219 Phone: 1-877-803-6314
Patton State Hospital	SOCIAL SECURITY SUITE 101 605 N ARROWHEAD AVE SAN BERNARDINO, CA 92401 Phone: 1-800-772-1213
Pelican Bay State Prison	SOCIAL SECURITY 560 E HOOVER AVE CRESCENT CITY, CA 95531 Phone: 1-855-727-3600
Pleasant Valley State Prison	SOCIAL SECURITY 865 FULTON MALL FRESNO, CA 93721 Phone: 1-877-311-2640

[319782-1]



R.J. Donovan Correctional Facility	SOCIAL SECURITY 626 L STREET CHULA VISTA, CA 91911 Phone: 1-800-772-1213
Salinas Valley State Prison	SOCIAL SECURITY SUITE 155 928 EAST BLANCO RD SALINAS, CA 93901 Phone: 1-877-600-2857
San Quentin State Prison	SOCIAL SECURITY 3RD FLOOR 1001 LOOTENS PLACE SAN RAFAEL, CA 94901 Phone: 1-800-772-1213
Shafter CCF	SOCIAL SECURITY 5300 OFFICE PARK DRIVE BAKERSFIELD, CA 93309 Phone: 1-866-476-1489 TTY: 1-661-861-4343
Sierra Conservation Center	SOCIAL SECURITY 745 MORNING STAR DRIVE SONORA, CA 95370 Phone: 1-888-397-4125
Valley State Prison	SOCIAL SECURITY 348 E YOSEMITE AVE MADERA, CA 93638 Phone: 1-877-405-1453
Wasco State Prison	SOCIAL SECURITY BUILDING C 2234 GIRARD STREET DELANO, CA 93215 Phone: 1-866-635-0287

[319782-1]

APPENDIX K

Department of Veterans Affairs "Information Regarding Apportionment Of Beneficiary's Award" – VA Form 21-0788

See the next page for a copy of VA Form 21-0788.

This form is also available at:

http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf

OMB Approved No. 2900-0666
Respondent Burden: 30 minutes
Expiration Date: 9/30/2014

Department of Veterans Affairs

INFORMATION REGARDING APPORTIONMENT OF BENEFICIARY'S AWARD

(DO NOT WRITE IN THIS SPACE)
(VA DATE STAMP)

INSTRUCTIONS: All or part of a veteran's disability award may be apportioned (paid) to the veteran's spouse, child, or dependent parent. A surviving spouse's award may also be apportioned for the veteran's child or children. Print all answers clearly. If an answer is "none" or "0," write that or line through the space provided. For additional space, attach a separate sheet, indicating the item number to which the answers apply. Make sure to write the veteran's name and VA claim number on any attachments to the form.

IMPORTANT: If you are certifying that you are married for the purpose of VA benefits, your marriage must be recognized by the place where you and/or your spouse resided at the time of marriage, or where you and/or your spouse resided when you filed your claim (or a later date when you became eligible for benefits) (38 U.S.C. § 103(c)). Additional guidance on when VA recognizes marriages is available at http://www.va.gov/opa/marriage/.

1. FIRST, MIDDLE, LAST NAME OF VETERAN	2. VA FILE NUMBER C/CSS-
3A. FIRST, MIDDLE, LAST NAME OF PERSON COMPLETING THIS FORM *(If other than veteran)*	3B. MAILING ADDRESS *(Number and street or rural route, city or P.O., State and ZIP Code)*
3C. TELEPHONE NUMBER *(Include Area Code)* Daytime / Evening	3D. E-MAIL ADDRESS *(If applicable)*
4A. WHO ARE YOU REQUESTING AN APPORTIONMENT FOR? *(List first, middle, and last names)*	4B. WHAT IS HIS/HER RELATIONSHIP TO THE VETERAN?
5A. HOW MUCH IS THE VETERAN OR VETERAN'S SURVIVING SPOUSE CONTRIBUTING TO THE PERSON(S) FOR WHOM AN APPORTIONMENT IS BEING CLAIMED? $	5B. HOW OFTEN ARE THE CONTRIBUTIONS MADE?
6. IF THE SPOUSE IS CLAIMING AN APPORTIONMENT, IS HE/SHE LIVING WITH ANOTHER PERSON AND HOLDING HIMSELF/HERSELF OUT OPENLY TO THE PUBLIC AS THE SPOUSE OF THE OTHER PERSON? ☐ YES ☐ NO *(If "Yes," provide an explanation)* _____	7. HAS THE VETERAN'S CHILD(REN) BEEN LEGALLY ADOPTED BY ANOTHER PERSON? ☐ YES ☐ NO

PART I - INCOME AND NET WORTH

Report all income and net worth. Report the gross amounts before you take out deductions for taxes, insurance, etc. If you do not receive income or net worth from a particular source, write "0" or "none" in the space provided. **Do not leave the space blank.** ***Note:*** If you are the veteran or surviving spouse, report only your income and net worth. If you are the claimant or are filing on behalf of the claimant(s), report all income and net worth for all persons for whom an apportionment is being claimed. If you are claiming an apportionment as the custodian of the veteran's child or children, report your income and net worth and the income and net worth of the child(ren).

MONTHLY INCOME

SOURCE	VETERAN OR SURVIVING SPOUSE	CUSTODIAN	PERSON APPORTIONMENT IS CLAIMED FOR	PERSON APPORTIONMENT IS CLAIMED FOR
1A. GROSS WAGES FROM ALL EMPLOYMENT	$	$	$	$
1B. SOCIAL SECURITY				
1C. RETIREMENT OR ANNUITIES				
1D. SUPPLEMENTAL SECURITY INCOME (SSI) / PUBLIC ASSISTANCE				
1E. OTHER INCOME *(Show source)*				
1F. OTHER INCOME *(Show source)*				

NET WORTH

SOURCE	VETERAN OR SURVIVING SPOUSE	CUSTODIAN	PERSON APPORTIONMENT IS CLAIMED FOR	PERSON APPORTIONMENT IS CLAIMED FOR
2A. CASH/NON-INTEREST-BEARING BANK ACCOUNTS	$	$	$	$
2B. INTEREST-BEARING BANK ACCOUNTS				
2C. IRAS, KEOGH PLANS, ETC.				
2D. STOCKS, BONDS, MUTUAL FUNDS, ETC.				
2E. REAL PROPERTY *(Not your home)*				
2F. ALL OTHER PROPERTY AND ASSETS				

PART II - MONTHLY LIVING EXPENSES

Show your monthly living expenses, including any monthly installment payments. If you do not have expenses from a particular source, write "0" or "none" in the space provided. Do not leave the space blank.

Note: If you are the veteran or surviving spouse, report only your expenses. If you are the claimant or are filing on behalf of the claimant(s), report expenses for all persons for whom an apportionment is being claimed. If you are claiming an apportionment as the custodian of the veteran's child or children, report your expenses and the expenses of the child(ren).

SOURCE	VETERAN OR SURVIVING SPOUSE	CUSTODIAN	PERSON APPORTIONMENT IS CLAIMED FOR	PERSON APPORTIONMENT IS CLAIMED FOR
1A. RENT OR HOUSE PAYMENT	$	$	$	$
1B. FOOD				
1C. UTILITIES *(Water, gas, electricity)*				
1D. TELEPHONE				
1E. CLOTHING				
1F. MEDICAL EXPENSES				
1G. SCHOOL EXPENSES				
1H. OTHER EXPENSES *(Show source)*				
1I. OTHER EXPENSES *(Show source)*				

PART III - CERTIFICATION AND SIGNATURE

I CERTIFY THAT the foregoing statements are true and correct to the best of my knowledge and belief.

1. SIGNATURE OF VETERAN OR CLAIMANT	2. DATE SIGNED

PENALTY - The law provides severe penalties which include fine or imprisonment or both, for the willful submission of anystatement or evidence of a material fact, knowing it is false, or fraudulent acceptance of any payment to which you are not entitled.

PRIVACY ACT INFORMATION - The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA 21/22/28, Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register.Your obligation to respond is required to obtain or retain benefits. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN - We need this information to determine whether an apportionment of VA disability or death benefits may be made (38 U.S.C. 5307). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 30 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

APPENDIX L

Department of Veterans Affairs "Application for Health Benefits" – VA Form 10-10EZ

See next page.

This form is also available at:

http://www.va.gov/vaforms/medical/pdf/vha-1010EZ-fill.pdf

Department of Veterans Affairs

INSTRUCTIONS FOR COMPLETING ENROLLMENT APPLICATION FOR HEALTH BENEFITS

Please Read Before You Start . . . What is VA Form 10-10EZ used for?

For Veterans to apply for enrollment in the VA health care system. The information provided on this form will be used by VA to determine your eligibility for medical benefits and on average will take 30 minutes to complete. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

Where can I get help filling out the form and if I have questions?

You may use ANY of the following to request assistance:

- Ask VA to help you fill out the form by calling us at 1-877-222-VETS (8387).
- Access VA's website at http://www.va.gov and select "Contact the VA."
- Contact the Enrollment Coordinator at your local VA health care facility.
- Contact a National or State Veterans Service Organization.

Definitions of terms used on this form:

SERVICE-CONNECTED (SC): A VA determination that an illness or injury was incurred or aggravated in the line of duty, in the active military, naval or air service.

COMPENSABLE: A VA determination that a service-connected disability is severe enough to warrant monetary compensation.

NONCOMPENSABLE: A VA determination that a service-connected disability is not severe enough to warrant monetary compensation.

NONSERVICE-CONNECTED (NSC): A Veteran who does not have a VA determined service-related condition.

Getting Started:

ALL VETERANS MUST COMPLETE SECTIONS I - III.

Directions for Sections I - III:

Section I - General Information: Answer all questions.

Section II - Military Service Information: If you are not currently receiving benefits from VA, you may attach a copy of your discharge or separation papers from the military (such as DD-214 or, for WWII Veterans, a "WD" Form), with your signed application to expedite processing of your application. If you are currently receiving benefits from VA, we will cross-reference your information with VA data.

Section III - Insurance Information: Include information for all health insurance companies that cover you, this includes coverage provided through a spouse or significant other. Bring your insurance cards, Medicare and/or Medicaid card with you to each health care appointment.

Directions for Sections IV-VI:

Financial Disclosure: ONLY NSC AND 0% NONCOMPENSABLE SC VETERANS MUST COMPLETE THIS SECTION TO DETERMINE ELIGIBILITY AND COPAY RESPONSIBILITY FOR VA HEALTH CARE ENROLLMENT AND/OR CARE OR SERVICES.

Financial Disclosure Requirements Do Not Apply To:

- a former Prisoner of War; or
- those in receipt of a Purple Heart; or
- a recently discharged Combat Veteran; or
- those discharged for a disability incurred or aggravated in the line of duty; or
- those receiving VA SC disability compensation; or
- those receiving VA pension; or
- those in receipt of Medicaid benefits; or
- those who served in Vietnam between January 9, 1962 and May 7, 1975; or
- those who served in SW Asia during the Gulf War between August 2, 1990 and November 11, 1998; or
- those who served at least 30 days at Camp Lejeune between August 1, 1953 and December 31, 1987.

You are not required to disclose your financial information; however, VA is not currently enrolling new applicants who decline to provide their financial information unless they have other qualifying eligibility factors. If a financial assessment is not used to determine your priority for enrollment you may choose not to disclose your information. However, if a financial assessment is used to determine your eligibility for cost-free medication, travel assistance or waiver of the travel deductible, and you do not disclose your financial information, you will not be eligible for these benefits.

Continued ...

Section IV - Dependent Information: Include the following:

- Your spouse even if you did not live together, as long as you contributed support last calendar year.
- Your biological children, adopted children, and stepchildren who are unmarried and under the age of 18, or at least 18 but under 23 and attending high school, college or vocational school (full or part-time), or became permanently unable to support themselves before age 18.
- Child support contributions. Contributions can include tuition or clothing payments or payments of medical bills.

Section V - Previous Calendar Year Gross Annual Income of Veteran, Spouse and Dependent Children.

Report:

- Gross annual income from employment, except for income from your farm, ranch, property or business. Include your wages, bonuses, tips, severance pay and other accrued benefits and your child's income information if it could have been used to pay your household expenses.
- Net income from your farm, ranch, property, or business.
- Other income amounts, including retirement and pension income, Social Security Retirement and Social Security Disability income, compensation benefits such as VA disability, unemployment, Workers and black lung, cash gifts, interest and dividends, including tax exempt earnings and distributions from Individual Retirement Accounts (IRAs) or annuities.

Do Not Report:

Donations from public or private relief, welfare or charitable organizations; Supplemental Security Income (SSI)and need-based payments from a government agency; profit from the occasional sale of property; income tax refunds, reinvested interest on Individual Retirement Accounts (IRAs); scholarships and grants for school attendance; disaster relief payments; reimbursement for casualty loss; loans; Radiation Compensation Exposure Act payments; Agent Orange settlement payments; Alaska Native Claims Settlement Acts Income, payments to foster parent; amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner; Japanese ancestry restitution under Public Law 100-383; cash surrender value of life insurance; lump-sum proceeds of life insurance policy on a Veteran; and payments received under the Medicare transitional assistance program.

Section VI - Previous Calendar Year Deductible Expenses.

Report non-reimbursed medical expenses paid by you or your spouse. Include expenses for medical and dental care, drugs, eyeglasses, Medicare, medical insurance premiums and other health care expenses paid by you for dependents and persons for whom you have a legal or moral obligation to support. Do not list expenses if you expect to receive reimbursement from insurance or other sources. Report last illness and burial expenses, e.g., prepaid burial, paid by the Veteran for spouse or dependent(s).

Section VII - Submitting your application.

1. Read Paperwork Reduction and Privacy Act Information, Section VIII Consent to Copays and Assignment of Benefits.
2. In Section VIII, you or an individual to whom you have delegated your Power of Attorney must sign and date the form. If you sign with an "X", 2 people you know must witness you as you sign. They must sign the form and print their names. If the form is not signed and dated appropriately, VA will return it for you to complete.
3. Attach any continuation sheets, a copy of supporting materials and your Power of Attorney documents to your application.

Where do I send my application?

Mail the original application and supporting materials to the Health Eligibility Center, 2957 Clairmont Road, Suite 200 Atlanta, GA 30329.

PAPERWORK REDUCTION ACT AND PRIVACY ACT INFORMATION

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

Privacy Act Information: VA is asking you to provide the information on this form under 38 U.S.C. Sections 1705,1710, 1712, and 1722 in order for VA to determine your eligibility for medical benefits. Information you supply may be verified from initial submission forward through a computer-matching program. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices and in accordance with the VHA Notice of Privacy Practices. Providing the requested information is voluntary, but if any or all of the requested information is not provided, it may delay or result in denial of your request for health care benefits. Failure to furnish the information will not have any effect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify Veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

OMB Approved No. 2900-0091
Estimated Burden Avg. 30 min.

Department of Veterans Affairs — APPLICATION FOR HEALTH BENEFITS

SECTION I - GENERAL INFORMATION

Federal law provides criminal penalties, including a fine and/or imprisonment for up to 5 years, for concealing a material fact or making a materially false statement. (See 18 U.S.C. 1001)

1. VETERAN'S NAME *(Last, First, Middle Name)*	2. MOTHER'S MAIDEN NAME	3. GENDER ☐ MALE ☐ FEMALE

4. ARE YOU SPANISH, HISPANIC, OR LATINO? ☐ YES ☐ NO	5. WHAT IS YOUR RACE? *(You may check more than one. Information is required for statistical purposes only.)* ☐ AMERICAN INDIAN OR ALASKA NATIVE ☐ BLACK OR AFRICAN AMERICAN ☐ ASIAN ☐ WHITE ☐ NATIVE AMERICAN OR OTHER PACIFIC ISLANDER

6. SOCIAL SECURITY NUMBER	7. DATE OF BIRTH *(mm/dd/yyyy)*	7A. PLACE OF BIRTH *(City and State)*

8. PERMANENT ADDRESS *(Street)*	8A. CITY	8B. STATE	8C. ZIP CODE

8D. COUNTY	8E. HOME TELEPHONE NUMBER *(Include area code)*	8F. MOBILE TELEPHONE NUMBER *(Include area code)*

8G. E-MAIL ADDRESS	9. CURRENT MARTIAL STATUS ☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED

10. I AM ENROLLING TO OBTAIN MINIMUM ESSENTIAL COVERAGE UNDER THE AFFORDABLE CARE ACT ☐ YES ☐ NO	11. WHICH VA MEDICAL CENTER OR OUTPATIENT CLINIC DO YOU PREFER? *(for listing of facilities visit www.va.gov/directory)*	12. WOULD YOU LIKE FOR VA TO CONTACT YOU TO SCHEDULE YOUR FIRST APPOINTMENT? ☐ YES ☐ NO

SECTION II - MILITARY SERVICE INFORMATION

1. LAST BRANCH OF SERVICE	1A. LAST ENTRY DATE	1B. LAST DISCHARGE DATE	1C. DISCHARGE TYPE

2. MILITARY HISTORY *(Check yes or no)*	YES	NO		YES	NO
A. ARE YOU A PURPLE HEART AWARD RECIPIENT?	☐	☐	E. DID YOU SERVE IN SW ASIA DURING THE GULF WAR BETWEEN AUGUST 2, 1990 AND NOVEMBER 11, 1998?	☐	☐
B. ARE YOU A FORMER PRISONER OF WAR?	☐	☐	F. DID YOU SERVE IN VIETNAM BETWEEN JANUARY 9, 1962 AND MAY 7, 1975?	☐	☐
C. DID YOU SERVE IN A COMBAT THEATER OF OPERATIONS AFTER 11/11/1998?	☐	☐	G. WERE YOU EXPOSED TO RADIATION WHILE IN THE MILITARY?	☐	☐
D. WERE YOU DISCHARGED OR RETIRED FROM MILITARY FOR A DISABILITY INCURRED IN THE LINE OF DUTY?	☐	☐	H. DID YOU RECEIVE NOSE AND THROAT RADIUM TREATMENTS WHILE IN THE MILITARY?	☐	☐
			I. DID YOU SERVE ON ACTIVE DUTY AT LEAST 30 DAYS AT CAMP LEJEUNE FROM AUGUST 1, 1953 THROUGH DECEMBER 31, 1987?	☐	☐

SECTION III - INSURANCE INFORMATION *(Use a separate sheet for additional information)*

1. ENTER YOUR HEALTH INSURANCE COMPANY NAME, ADDRESS AND TELEPHONE NUMBER *(include coverage through spouse or other person)*				
2. NAME OF POLICY HOLDER	3. POLICY NUMBER	4. GROUP CODE	5. ARE YOU ELIGIBLE FOR MEDICAID? ☐ YES ☐ NO	6. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A? ☐ YES ☐ NO 6A. EFFECTIVE DATE *(mm/dd/yyyy)*

APPLICATION FOR HEALTH BENEFITS, Continued

VETERAN'S NAME *(Last, First, Middle)*

SOCIAL SECURITY NUMBER

SECTION IV - DEPENDENT INFORMATION *(Use a separate sheet for additional dependents)*

1. SPOUSE'S NAME *(Last, First, Middle Name)*

1A. SPOUSE'S SOCIAL SECURITY NUMBER

1B. SPOUSE'S DATE OF BIRTH *(mm/dd/yyyy)*

1C. DATE OF MARRIAGE *(mm/dd/yyyy)*

1D. SPOUSE'S ADDRESS AND TELEPHONE NUMBER *(Street, City, State, ZIP - if different from Veteran's)*

3. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR, DID YOU PROVIDE SUPPORT?

☐ YES ☐ NO

2. CHILD'S NAME *(Last, First, Middle Name)*

2A. CHILD'S DATE OF BIRTH *(mm/dd/yyyy)*

2B. CHILD'S SOCIAL SECURITY NUMBER

2C. DATE CHILD BECAME YOUR DEPENDENT *(mm/dd/yyyy)*

2D. CHILD'S RELATIONSHIP TO YOU *(Check one)*

☐ SON ☐ DAUGHTER ☐ STEPSON ☐ STEPDAUGHTER

2E. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18?

☐ YES ☐ NO

2F. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR?

☐ YES ☐ NO

2G. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING *(e.g., tuition, books, materials)*

SECTION V - PREVIOUS CALENDAR YEAR GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN *(Use a separate sheet for additional dependents)*

	VETERAN	SPOUSE	CHILD 1
1. GROSS ANNUAL INCOME FROM EMPLOYMENT *(wages, bonuses, tips, etc.)* EXCLUDING INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	$	$	$
2. NET INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	$	$	$
3. LIST OTHER INCOME AMOUNTS *(e.g., Social Security, compensation, pension interest, dividends)* EXCLUDING WELFARE.	$	$	$

SECTION VI - PREVIOUS CALENDAR YEAR DEDUCTIBLE EXPENSES

1. TOTAL NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE *(e.g., payments for doctors, dentists, medications, Medicare, health insurance, hospital and nursing home) VA will calculate a deductible and the net medical expenses you may claim.* $

2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES (INCLUDING PREPAID BURIAL EXPENSES) FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD *(Also enter spouse or child's information in Section VI.)* $

3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES *(e.g., tuition, books, fees, materials) DO NOT LIST YOUR DEPENDENTS' EDUCATIONAL EXPENSES.* $

SECTION VII - CONSENT TO COPAYS AND TO RECEIVE COMMUNICATIONS

By submitting this application you are agreeing to pay the applicable VA copays for treatment or services of your NSC conditions as required by law. You also agree to receive communications from VA to your supplied email or mobile number.

ASSIGNMENT OF BENEFITS

I understand that pursuant to 38 U.S.C. Section 1729 and 42 U.S.C. 2651, the Department of Veterans Affairs (VA) is authorized to recover or collect from my health plan (HP) or any other legally responsible third party for the reasonable charges of nonservice-connected VA medical care or services furnished or provided to me. I hereby authorize payment directly to VA from any HP under which I am covered (including coverage provided under my spouse's HP) that is responsible for payment of the charges for my medical care, including benefits otherwise payable to me or my spouse. Furthermore, I hereby assign to the VA any claim I may have against any person or entity who is or may be legally responsible for the payment of the cost of medical services provided to me by the VA. I understand that this assignment shall not limit or prejudice my right to recover for my own benefit any amount in excess of the cost of medical services provided to me by the VA or any other amount to which I may be entitled. I hereby appoint the Attorney General of the United States and the Secretary of Veterans' Affairs and their designees as my Attorneys-in-fact to take all necessary and appropriate actions in order to recover and receive all or part of the amount herein assigned. I hereby authorize the VA to disclose, to my attorney and to any third party or administrative agency who may be responsible for payment of the cost of medical services provided to me, information from my medical records as necessary to verify my claim. Further, I hereby authorize any such third party or administrative agency to disclose to the VA any information regarding my claim.

ALL APPLICANTS MUST SIGN AND DATE THIS FORM. REFER TO INSTRUCTIONS WHICH DEFINE WHO CAN SIGN ON BEHALF OF THE VETERAN.

SIGNATURE OF APPLICANT _____ DATE _____

APPENDIX M

Department of Veterans Affairs "Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution" – VA Form 21-4193

See the next page for a copy of VA Form 21-4193. *This form is also available at:*
http://www.reginfo.gov/public/do/DownloadDocument?documentID=203887&version=1

OMB Approved No. 2900-0116
Respondent Burden: 15 minutes

Department of Veterans Affairs

NOTICE TO DEPARTMENT OF VETERANS AFFAIRS OF VETERAN OR BENEFICIARY INCARCERATED IN PENAL INSTITUTION

1. VA FILE NUMBER *(If known)*

NOTE: Pursuant to Title 38, U.S.C., 1505, 3482, 3680 and 5313, awards of Department of Veterans Affairs benefits for veterans and beneficiaries are subject to adjustment or discontinuance while such persons are incarcerated.

TO	ADDRESS OF VA REGIONAL OFFICE	FROM	NAME AND ADDRESS OF INSTITUTION

PRIVACY ACT INFORMATION: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28, Compensation Pension, Education, and Vocational Rehabilitation and Employment Records - VA, and published in the Federal Register. Your obligation to respond is voluntary. Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to determine the adjustment or discontinuance of VA benefits for veterans and beneficiaries who are incarcerated. Title 38, United States Code 1505, 3482, 3680, and 5313, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at http:www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

2. FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN

3A. SERVICE NUMBER	3B. SOCIAL SECURITY NO.	3C. DATE OF BIRTH

4. NAME OF PERSON INCARCERATED, IF OTHER THAN VETERAN	5. RELATIONSHIP TO VETERAN

6. DATE OFFENSE WAS COMMITTED	7. TYPE OF OFFENSE FOR WHICH COMMITTED	8. DATE OF CONFINEMENT FOLLOWING CONVICTION
	☐ FELONY ☐ MISDEMEANOR	

9. LENGTH OF SENTENCE	10. SCHEDULED RELEASE DATE	11A. IS INDIVIDUAL IN A WORK RELEASE OR HALFWAY HOUSE PROGRAM?
		☐ YES ☐ NO

11B. DATE ENTERED PROGRAM	12. INSTITUTIONAL TELEPHONE NUMBER *(Including Area Code)*

13. REMARKS

14. DATE SIGNED	15. NAME AND TITLE OF INSTITUTIONAL OFFICIAL	16. SIGNATURE OF INSTITUTIONAL OFFICIAL

APPENDIX N

Department of Defense "Review of Discharge or Dismissal" – DD Form 293

See next page for a copy of DD Form 293.

This form is also available at: http://www.dtic.mil/whs/directives/forms/eforms/dd0293.pdf

APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.
PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.
ROUTINE USE(S): None.
DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA *(The person whose discharge is to be reviewed)*. **PLEASE PRINT OR TYPE INFORMATION.**

a. BRANCH OF SERVICE *(X one)*	☐ ARMY	☐ MARINE CORPS	☐ NAVY	☐ AIR FORCE	☐ COAST GUARD

b. NAME *(Last, First, Middle Initial)*	c. GRADE/RANK AT DISCHARGE	d. SOCIAL SECURITY NUMBER

2. DATE OF DISCHARGE OR SEPARATION *(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)*

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION

4. DISCHARGE CHARACTERIZATION RECEIVED *(X one)*

- ☐ HONORABLE
- ☐ GENERAL/UNDER HONORABLE CONDITIONS
- ☐ UNDER OTHER THAN HONORABLE CONDITIONS
- ☐ BAD CONDUCT *(Special court-martial only)*
- ☐ UNCHARACTERIZED
- ☐ OTHER *(Explain)*

5. BOARD ACTION REQUESTED *(X one)*

- ☐ CHANGE TO HONORABLE
- ☐ CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
- ☐ CHANGE TO UNCHARACTERIZED *(Not applicable for Air Force)*
- ☐ CHANGE NARRATIVE REASON FOR SEPARATION TO:

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST *(Continue in Item 14. See instructions on Page 3.)*

☐ **7.** *(X if applicable)* **AN APPLICATION WAS PREVIOUSLY SUBMITTED ON** *(YYYYMMDD)* _____
AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: *(Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)*

9. TYPE OF REVIEW REQUESTED *(X one)*

- ☐ **CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR** *(counsel/representative)* **WILL NOT APPEAR BEFORE THE BOARD.**
- ☐ **I AND/OR** *(counsel/representative)* **WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.**
- ☐ **I AND/OR** *(counsel/representative)* **WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO** *(enter city and state)* _____ *(NOTE: The Navy Discharge Review Board does not have a traveling panel.)*

10.a. COUNSEL/REPRESENTATIVE *(If any)* **NAME** *(Last, First, Middle Initial)* **AND ADDRESS** *(See Item 10 of the instructions about counsel/representative.)*	**b. TELEPHONE NUMBER** *(Include Area Code)*
	c. E-MAIL
	d. FAX NUMBER *(Include Area Code)*

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name *(print)* _____ **and relationship by marking a box below.**

☐ **SPOUSE** ☐ **WIDOW** ☐ **WIDOWER** ☐ **NEXT OF KIN** ☐ **LEGAL REPRESENTATIVE** ☐ **OTHER** *(Specify)*

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE *(Forward notification of any change in address.)*	**b. TELEPHONE NUMBER** *(Include Area Code)*
	c. E-MAIL
	d. FAX NUMBER *(Include Area Code)*

13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)*

a. SIGNATURE - REQUIRED *(Applicant or person in Item 11 above)*	**b. DATE SIGNED - REQUIRED** *(YYYYMMDD)*	**CASE NUMBER** *(Do not write in this space.)*

14. CONTINUATION OF ITEM 6, ISSUES *(If applicable)*

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS *(If applicable)*

16. REMARKS *(If applicable)*

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY	NAVY AND MARINE CORPS
Army Review Boards Agency Support Division, St. Louis 9700 Page Avenue St. Louis, MO 63132-5200 (See http://arba.army.pentagon.mil)	Naval Council of Personnel Boards 720 Kennon Street, S.E. Room 309 (NDRB) Washington Navy Yard, DC 20374-5023
AIR FORCE	**COAST GUARD**
Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	U.S. Coast Guard Commandant (G-WPM) 2100 Second Street, S.W. Room 5500 Washington, DC 20593

INSTRUCTIONS FOR COMPLETION OF DD FORM 293

REQUESTING COPIES OF YOUR OFFICIAL MILITARY PERSONNEL FILE

Information on how to obtain military or health records is available at the National Personnel Records Center website at www.nara.gov/regional/mpr.html or at your local Veterans Administration office.

Applicants are strongly encouraged to submit any request for their military records prior to applying for a discharge review rather than after submitting a DD Form 293 in order to avoid substantial delays in processing of the application and scheduling of review. Applicants and their counsel may also examine their military personnel records at the site of their scheduled review prior to the review. The Board shall notify applicants of the date of availability of the records for examination in their standard scheduling information.

Submission of a request for an applicant's military records (including a request pursuant to the Freedom of Information Act or Privacy Act) after the DD Form 293 has been submitted will automatically result in the suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the possession of the headquarters of the Discharge Review Board. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable.

DD FORM 293 - PLEASE PRINT OR TYPE INFORMATION. (Items on the form are self-explanatory unless otherwise noted below.)

ITEM 1b. Use the name which you served under while in the Armed Forces. If your name has since changed, then also include your current name after adding the abbreviation "AKA". If the former member is deceased or incompetent, see Item 11.

ITEM 2. If you received more than one discharge, the information in this item should refer to the discharge that you want changed. **Discharge Review Boards cannot consider any type of discharge resulting from a sentence given by a general court-martial.**

ITEM 3. If the discharge you want reviewed was issued over 15 years ago, instead of applying on a DD Form 293, you must petition the appropriate Board for Correction of Military Record using DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552.*

ITEM 5. If you request a change of narrative reason for separation, you must list the specific reason for discharge that you believe to be appropriate, otherwise the Board will presume that you do not want a change in reason for discharge. If you do not request a change of discharge characterization in this item, the Board will presume you want to change discharge to Honorable.

If you were separated on or after 1 October 1982 while in an entry level status with an under other than honorable conditions discharge and less than 180 days of active service, you can request a change of discharge characterization to "Uncharacterized" and discharge reason to "Entry Level Separation".

ITEM 6. "Issues" are the reasons why you think your discharge should be changed. You are not required to submit any issues with your application. However, if you want the Board to respond in writing to the issues of concern, you must list your specific issues in accordance with those instructions and regulations governing the Board. Issues must be stated clearly and specifically. Your issues should address the reasons why you believe that the discharge received was improper or inequitable. It is important to focus on matters that occurred while you served in the Armed Forces.

The following examples demonstrate one way in which issues may be stated (the example issues do not indicate, in any way, the only type of issues that should be submitted to the Board):

Example 1. My discharge was inequitable because it was based on one isolated incident in 28 months of service with no other adverse action.

Example 2. The discharge is improper because the applicant's pre-service civilian conviction, properly listed on his enlistment documents, was used in the discharge proceedings.

In Item 6 list each of your issues that you want the Board to address. There is no limit to the number of issues that you may submit. If you need additional space, continue in Item 14 or on a plain sheet of paper and attach it to this application.

NOTE: If an issue is not listed in Item 6, it may result in the Board not addressing the issue even if the issue is discussed in a legal brief or other written submissions or at the hearing. Changes or additions to the list may be made on the DD Form 293 anytime before the Discharge Review Board closes the review process for deliberation. Please be sure that your issues are consistent with the Board Action Requested (Item 5). If there is a conflict between what you say in your issues and what you requested in Item 5, the Board will respond to your issue in the context of the action requested in Item 5. For example, if you request a General Discharge in Item 5 but your issue in Item 6 indicated you want an Honorable Discharge, the Board will respond to the issue in terms of your request for a General Discharge. Therefore, if you are submitting issues for the purpose of obtaining an Honorable Discharge, be sure to mark the box for an Honorable Discharge in Item 5.

Incorporation by Reference. Issues that are listed on a legal brief or other written submissions may be incorporated by reference in Item 6. The reference must be specific enough for the Board to clearly identify the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Example: Issue 1. Brief, page 2, paragraph 1, sentences one and two.

Applicants should be as specific as possible with all references so the Board can clearly distinguish the scope of the issue. Because it is to your benefit to bring such issues to the Board's attention as early as possible in the review, if you submit a brief, you are strongly urged to set forth all such issues as a separate item at the beginning of the brief.

INSTRUCTIONS FOR COMPLETION OF DD FORM 293 *(Continued)*

ITEM 8. Evidence not in your official records should be submitted to the Board before the review date. It is to your advantage to submit such documentation with this application. This also applies to legal briefs or counsel submissions. However, you have the right to submit evidence until the time the Discharge Review Board closes the review process for deliberation. Documents that are of the most benefit are those which substantiate or relate directly to your issues in Item 6. Other documents that may be helpful are character references, educational achievements, exemplary post-service conduct, and medical reports. You should add your name and Social Security Number to each document submitted. The Board will consider all documents submitted in your behalf, but will respond in writing only to those issues set forth in Item 6.

ITEM 9. TYPE OF REVIEW REQUESTED

A Discharge Review is conducted in two basic ways: (1) Records Review or (2) Hearing.

1. Records Review. You may have the Board conduct a discharge review based solely on military records and any additional documentation that you provide. This review is conducted without personal appearance by you and/or your counsel appearing.

2. Hearing. You may appear personally (alone or assisted by a representative/counsel) before the Board in the Washington, D.C. Metro Area or before a Traveling Panel of the Board in selected locations throughout the U.S., if appropriate. The Department of Defense is not responsible for, nor will it pay for, any costs incurred by the applicant or representative/counsel for appearance or providing testimony or documentation. Detailed notification and/or scheduling information for all personal appearances will be provided after the application has been processed. In addition, without appearing yourself, you may have your case presented by a representative/counsel of your choice.

Applicants participating in a personal appearance or hearing examination may make sworn or unsworn state- ments, introduce witnesses, documents, or other information on their behalf. Applicants may make oral or written arguments personally and/or through representative/ counsel. Applicants and witnesses who present sworn or unsworn statements may be questioned by the Board.

FAILURE TO APPEAR AT A HEARING OR RESPOND TO A SCHEDULING NOTICE. If you do not appear at a scheduled hearing or respond as required to a scheduling notice, and you did not make a prior, timely request for a continuance, postponement, or withdrawal of the application, you will forfeit the right to a personal appearance and the Board shall complete its review of the discharge based upon the evidence of record.

ITEM 10.a - d. Omit if you do not have a representative/ counsel. If you later obtain the services of either, inform the Board immediately.

The military services do not provide counsel representation or evidence for you, nor do they pay the cost of such representation under any circumstance. The following organizations regularly furnish representation at no charge to you. Representatives may or may not be lawyers.

1. American Legion
2. Disabled American Veterans
3. Veterans of Foreign Wars
4. State or Regional Veterans Offices

In addition, there are other organizations willing to assist you in completing this application and to provide representation at no cost. It is to your advantage to coordinate with your counsel prior to submitting this application. This will insure that your counsel is able to appear at the location you listed in Item 9. Please note that some of the organizations listed above only represent applicants who appear before the Board in the Washington, D.C. Metro Area. Contact your local veterans affairs office, Veterans Administration Office or veterans service organization for further information.

ITEM 11. If the former member is deceased or incompetent, the application may be submitted by the next of kin, a surviving spouse or a legal representative. Legal proof of death or incompetency and satisfactory evidence of the relationship to the former member must accompany this application.

ITEM 12.a. Indicate the address to be used for all future correspondence regarding this application. If you change this address while this application is pending, you must notify the Discharge Review Board immediately. Failure to attend a hearing as a result of an unreported change in address may result in a waiver of your right to a hearing.

ITEM 13.a. and b. A signature and date entered by the applicant or person identified in Item 11 are required.

APPENDIX O

Department of Defense "Application for Correction of Military Record" – DD Form 149

See the next page for a copy of DD Form 149.
This form is also available at:
http://www.public.navy.mil/asnmra/corb/NDRB/Documents/dd0149.pdf

APPLICATION FOR CORRECTION OF MILITARY RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SECTION 1552

(Please read instructions on reverse side BEFORE completing this application.)

OMB No. 0704-0003
OMB approval expires Oct 31, 2014

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services Directorate, Information Management Division, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350-3100 (0704-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON THE BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1552, and E.O. 9397, as amended (SSN).
PRINCIPAL PURPOSE(S): To initiate an application for correction of military record. The form is used by Board members for review of pertinent information in making a determination of relief through correction of a military record. Completed forms are covered by correction of military records SORNs maintained by each of the Services or the Defense Finance and Accounting Service.
ROUTINE USE(S): The DoD Blanket Routine Uses found at: http://privacy.defense.gov/blanket_uses.shtml apply to this collection.
DISCLOSURE: Voluntary; however, failure to provide requested information may result in a denial of your application. An applicant's SSN is used to retrieve these records and links to the member's official military personnel file and pay record.

1. APPLICANT DATA *(The person whose record you are requesting to be corrected.)*

a. BRANCH OF SERVICE *(X one)*	ARMY	NAVY	AIR FORCE	MARINE CORPS	COAST GUARD

b. NAME *(Print - Last, First, Middle Initial)*	c. PRESENT OR LAST PAY GRADE	d. SERVICE NUMBER *(If applicable)*	e. SSN

2. PRESENT STATUS WITH RESPECT TO THE ARMED SERVICES *(Active Duty, Reserve, National Guard, Retired, Discharged,* ***Deceased)***	3. TYPE OF DISCHARGE *(If by court-martial, state the type of court.)*	4. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY *(YYYYMMDD)*

5. I REQUEST THE FOLLOWING ERROR OR INJUSTICE IN THE RECORD BE CORRECTED: *(Entry required)*

6. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST FOR THE FOLLOWING REASONS: *(Entry required)*

7. ORGANIZATION AND APPROXIMATE DATE *(YYYYMMDD)* **AT THE TIME THE ALLEGED ERROR OR INJUSTICE IN THE RECORD OCCURRED** *(Entry required)*

8. DISCOVERY OF ALLEGED ERROR OR INJUSTICE

a. DATE OF DISCOVERY *(YYYYMMDD)*	b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THE APPLICATION.

9. IN SUPPORT OF THIS APPLICATION, I SUBMIT AS EVIDENCE THE FOLLOWING ATTACHED DOCUMENTS: *(If military documents or medical records are pertinent to your case, please send copies. If Veterans Affairs records are pertinent, give regional office location and claim number.)*

10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. *(At no expense to the Government) (X one)*	YES. THE BOARD WILL DETERMINE IF WARRANTED.	NO. CONSIDER MY APPLICATION BASED ON RECORDS AND EVIDENCE.

11.a. COUNSEL *(If any)* NAME *(Last, First, Middle Initial)* and ADDRESS *(Include ZIP Code)*	b. TELEPHONE *(Include Area Code)*
	c. E-MAIL ADDRESS
	d. FAX NUMBER *(Include Area Code)*

12. APPLICANT MUST SIGN IN ITEM 15 BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name *(print)* _____ **and relationship by marking one box below.**

SPOUSE	WIDOW	WIDOWER	NEXT OF KIN	LEGAL REPRESENTATIVE	OTHER *(Specify)*

13.a. COMPLETE CURRENT ADDRESS *(Include ZIP Code)* OF APPLICANT OR PERSON IN ITEM 12 ABOVE *(Forward notification of all changes of address.)*	b. TELEPHONE *(Include Area Code)*
	c. E-MAIL ADDRESS
	d. FAX NUMBER *(Include Area Code)*

14. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)*

CASE NUMBER *(Do not write in this space.)*

15. SIGNATURE *(Applicant must sign here.)*	16. DATE SIGNED *(YYYYMMDD)*

INSTRUCTIONS

Under Title 10 United States Code Section 1552, Active Duty and Reserve Component Service members, Coast Guard, former Service members, their lawful or legal representatives, spouses of former Service members on issues of Survivor Benefit Program (SBP) benefits, and civilian employees with respect to military records other than those related to civilian employment, who feel that they have suffered an injustice as a result of error or injustice in military records may apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records. These Boards are the highest level appellate review authority in the military. The information collected is needed to provide the Boards the basic data needed to process and act on the request.

1. All information should be typed or printed. Complete all applicable items. If the item is not applicable, enter "None."

2. If space is insufficient on the front of the form, use the "Remarks" box below for additional information or attach an additional sheet.

3. List all attachments and enclosures in item 9. Do not send original documents. Send clear, legible copies. Send copies of military documents and orders related to your request, if you have them available. Do not assume that they are all in your military record.

4. The applicant must exhaust all administrative remedies, such as corrective procedures and appeals provided in regulations, before applying to the Board of Corrections.

5. ITEM 5. State the specific correction of record desired. If possible, identify exactly what document or information in your record you believe to be erroneous or unjust and indicate what correction you want made to the document or information.

6. ITEM 6. In order to justify correction of a military record, it is necessary for you to show to the satisfaction of the Board by the evidence that you supply, or it must otherwise satisfactorily appear in the record, that the alleged entry or omission in the record was in error or unjust. Evidence, in addition to documents, may include affidavits or signed testimony of witnesses, executed under oath, and a brief of arguments supporting the application. All evidence not already included in your record must be submitted by you. The responsibility of securing evidence rests with you.

7. ITEM 8. U.S. Code, Title 10, Section 1552b, provides that no correction may be made unless a request is made within three years after the discovery of the error or injustice, but that the Board may excuse failure to file within three years after discovery if it finds it to be in the interest of justice.

8. ITEM 10. Personal appearance before the Board by you and your witnesses or representation by counsel is not required to ensure full and impartial consideration of your application. If the Board determines that a personal appearance is warranted and grants approval, appearance and representation are permitted before the Board at no expense to the government.

9. ITEM 11. Various veterans and service organizations furnish counsel without charge. These organizations prefer that arrangements for representation be made through local posts or chapters.

10. ITEM 12. The person whose record correction is being requested must sign the application. If that person is deceased or incompetent to sign, the application may be signed by a spouse, widow, widower, next of kin (son, daughter, mother, father, brother, or sister), or a legal representative that has been given power of attorney. Other persons may be authorized to sign for the applicant. Proof of death, incompetency, or power of attorney must accompany the application. Former spouses may apply in cases of Survivor Benefit Plan (SBP) issues.

11. For detailed information on application and Board procedures, see: Army Regulation 15-185 and www.arba.army.pentagon.mil; Navy - SECNAVINST.5420.193 and www.hq.navy.mil/bcnr/bcnr.htm; Air Force Instruction 36-2603, Air Force Pamphlet 36-2607, and www.afpc.randolph.af.mil/safmrbr; Coast Guard - Code of Federal Regulations, Title 33, Part 52.

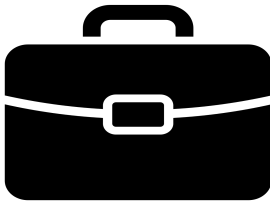
MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

ARMY	NAVY AND MARINE CORPS
Army Review Boards Agency Army Board for Correction of Military Records 1901 South Bell Street, 2nd Floor Arlington, VA 22202-4508	Board for Correction of Naval Records 2 Navy Annex Washington, DC 20370-5100
AIR FORCE	**COAST GUARD**
Board for Correction of Air Force Records SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Department of Homeland Security Office of the General Counsel Board for Correction of Military Records 245 Murray Lane, Stop 0485 Washington, DC 20528-0485

17. REMARKS

Reset

EMPLOYMENT



The EMPLOYMENT CHAPTER will help you prepare to reenter the workforce and will guide you throughout the job application process. You will learn about your rights when an employer runs a background check on you, how and when an employer may consider your criminal record, and how to protect your rights in these situations. This Chapter will also help you if you want to apply for a professional or occupational license, start your own small business, or consider other alternatives to traditional employment. Finally, this Chapter will explain your rights in the workplace if your incarceration was the result of a disability, and how to protect yourself against illegal discrimination.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.



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WHAT WILL I LEARN?

In this chapter, you will learn about:

- **Your rights throughout the job search process**
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- **How to make the best impression on employers**
- **What to do if an employer or background check company violates your rights**
- **How to maximize your opportunities of finding the right job for you**

I. INTRODUCTION: LOOKING FOR WORK

WHAT WILL I LEARN?

- **What to expect as a job applicant with a criminal record**
- **How your criminal history will affect your job search**
- **The basic documents you need before applying for jobs**
- **How to prepare for questions about your criminal record**
- **Key terms to know and understand when reading this chapter**
- **How to improve your resume**
- **Basic information on cleaning up your record**
- **How to target your job search to find the right job for you, and what types of jobs may not be available based on your record**
- **Options for work beyond traditional employment**
- **Important information about filling out job applications**
- **How to succeed in job interviews and present your best self to employers**
- **Special benefits that are available to employers who hire people with criminal records**

People with criminal convictions can and do get jobs—it happens every day! They are employed in the workforce at all levels, from entry-level jobs to executive positions. You may (or may not) have to work a little harder to get a job, but it can and will happen. Remember the 3 "P"s—be Persistent, be Professional, and keep a Positive attitude.

PREPARING TO ENTER THE JOB MARKET

Before talking about your employment rights, let's review some basics. This section goes over what you can realistically expect from today's job market, and the things you need to do and get before you can hold any job.

FIND A TRUSTED PERSON

Find a trusted person and/or other local resources to help you prepare for the job search, navigate any record-related barriers, and find the right job for you!

WHAT CAN I EXPECT AS A JOB APPLICANT WITH A CRIMINAL RECORD?

The job market is a competitive place for anyone looking for a job. Although it may be a tough process, finding a job is possible if you give it time and effort! It is important to get organized and learn about your options. This section will help you understand the unique rights that you have as a job applicant with a criminal record and how to exercise those rights during your job search.

HOW WILL MY CRIMINAL RECORD AFFECT MY JOB PROSPECTS?

Unfortunately, if you have a criminal record, it may be harder to get hired, paid, and promoted fairly. But you are not alone—one in four adults in the U.S. has a criminal record,[1842] and having a record does not mean you are unqualified for the job. If you take steps to understand your rights, responsibilities, and limitations, you can arm yourself with the knowledge necessary to secure the right job.

Employers often conduct background checks on job applicants and current employees. In order to be prepared, you must be highly proactive about:

1. Learning strategies for how to present your skills, credentials, and personal background (for more information, see PG. 564);
2. Understanding and cleaning up your criminal record (some record-cleaning can only happen later-on in reentry—for more information, see PG. 571); and
3. Knowing and protecting your rights (for more information, see PG. 609).

WHAT DOCUMENTS DO I NEED BEFORE I APPLY FOR ANY JOB?

You should get: (1) official ID and (2) copies of your criminal records to review.

[1842] See National Employment Law Project, 65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment (2011).

OFFICIAL FORMS OF IDENTIFICATION:

Before you apply for any job, you should begin the process of applying for basic government-issued IDs. (*To learn more about different forms of official ID, see the BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER, beginning on PG. 22.)* In most cases, you will need at least:

1. A government-issued ID (such as a driver license / state ID, PG. 43, or passport, PG. 60), AND
2. EITHER your Social Security Number (SSN) (PG. 38) OR your Birth Certificate (PG. 31).

You will need these ID documents when you apply for a job and complete the U.S. Citizenship and Immigration Services (USCIS) Form I-9, which all employees in the United States must fill out. Form I-9 proves you are legally allowed to work in the country. Your employer should give you this form to fill out. See Appendix A, PG. 615, for more information about Form I-9.

Please note that the employer cannot keep your documents, but may make a photocopy of them for your employment file.[1843]

COPIES OF YOUR CRIMINAL RECORDS:

You should get copies of your criminal records JUST FOR YOUR OWN REVIEW—so that you know what employers are likely to find out if/when they run a background check. This will help you prepare to answer questions about your history and to address any concerns an employer may have. It's also good to get a copy of your *official* criminal record (called a "RAP Sheet") just for you, to make sure that all the information is accurate, and to correct errors if you find them. See UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931, for information about how to get a copy of your RAP sheet. See PG. 571, below, to learn more about background checks and what information your employer can see.[1844]

With a copy of your record in hand, it will also be very helpful to schedule an appointment with a reentry legal clinic or "clean slate" clinic hosted by a public defender's office or nonprofit like Root & Rebound in your area! You can also call Root & Rebound on our weekly Reentry Legal Hotline any Friday at 510-279-4662 for advice about what an employer will see from your record (most cannot see everything).

HOW CAN I PREPARE FOR EMPLOYERS' QUESTIONS ABOUT MY CRIMINAL RECORD?

1. ***Know everything about your official criminal record.***

Knowing absolutely everything about your criminal record means that you know not only what is in your record, but also what is NOT in your record. You should be aware of all arrests, convictions, dismissals, and sentences that are currently part of your record, but you should also know about any information that has been dismissed, expunged, sealed, removed, or corrected. When you know what your record should look like, you will have a better understanding of how it will affect your job search, and you can make informed decisions about what steps you should take to improve your chances of getting hired.[1845]

2. ***Know what employers might find out about you.***

To know what information an employer might find out about you, you will need to do research on yourself. Doing research on yourself is how you will see what information exists out there about you—not just what is in your official criminal record, but also anything public, especially on the Internet (for example, on Facebook, Twitter, or Instagram). If you know what employers are going to see, you can be prepared to answer their questions about your history and address any of their concerns. You can also correct any mistakes, and ensure that agencies aren't illegally providing information that they shouldn't be reporting.

Here are some suggestions for how to conduct research on yourself:

- *Look online* - The best place to start is online. (If you don't feel comfortable using a computer or the Internet, ask a trusted person—like a case manager, counselor, or friend—to help you.) Search for your name on www.google.com to see what shows up. If there is negative or untrue information, you (or a trusted person) can send an email to the person who posted the information or the website owner and politely ask them to remove it. Unfortunately, there is no guarantee that they will do so, and it could require a lawsuit to get the information down. If the person running the website won't remove the information, you may want to get the advice of a lawyer (see list of legal aid providers on PG. 1127).

IMPORTANT PROTECTIONS FOR YOU & YOUR RECORD

Some of the information you will find on yourself will be things that employers CANNOT SEE, ASK ABOUT, or CONSIDER when you apply for a job. But it is good to know what information is out there, just to be aware of what employers might find and to know how to respond if illegal information shows up in a background check. For complete details on what criminal record information an employer can and cannot see, ask about, or consider, see PG. Error! Bookmark not defined.. For a brief summary of this information, read the Know Your Rights Box on

[1843] Adapted from Texas Community Building with Attorney Resources, Locked Out: A Texas Legal Guide to Reentry (2012).
[1844] Adapted from Texas Community Building with Attorney Resources, Locked Out: A Texas Legal Guide to Reentry (2012).
[1845] Adapted from http://www.careerbuilder.com/article/cb-3033-job-search-strategies-how-to-conduct-a-job-search-with-a-criminal-record/.

- *Call your references* – When you apply for a job, the new employer and/or background check company may contact your past employer(s), people you list as references, and/or other people who know you (like a landlord, neighbor, or teacher) to find out about your work history or other information. An important way to research yourself is to call some of these people (or have a trusted person call for you) to find out what they will say about you. This way you know beforehand if someone is likely to say something negative about you, and you can be sure NOT to list them as a reference on the job application. For more information on listing references, see PG. 567.
- *Get copies of your criminal records* – To learn how to get copies of your official and unofficial criminal records, see the UNDERSTANDING & CLEANING UP YOUR RECORD CHAPTER, beginning on PG. 931.

3. ***Know what employers CAN & CAN'T consider about your criminal record.***

Knowing your employment rights means knowing what employers can and can't do when it comes to reviewing and using your criminal history when deciding whether to hire you. It also means knowing how to prevent employers from violating your rights by not hiring you, and what actions you can take if your rights are violated. See PG. 587 to learn more about these rights and how to protect them. In the meantime, below is a summary of what employers CAN and CAN'T consider about your criminal record.[1846]

4. ***Present yourself in the best way possible.***

Presenting yourself in the best way possible means doing what you can to reduce any negative impressions that your criminal record may cause. This might include addressing your past during job interviews and talking about your rehabilitation efforts and all the changes you have gone through; obtaining proof of rehabilitation, where possible (see Appendix C, PG. 621); making thoughtful decisions about what jobs you apply for (see PG. 566); and cleaning up your record, where it is possible (see PG. 566).[1847]

KNOW YOUR RIGHTS
A Summary of What Employers CAN & CAN'T Find Out About Your Criminal Record

Most Employers CAN:

- Run a background check on you BUT ONLY after they have given you a conditional offer of employment
- Once they have given you a conditional offer of employment, they CAN consider certain criminal history information when deciding whether to hire you; however, when considering your criminal history, they are required to assess whether your conviction is directly related to and could interfere with job duties.

Most Employers CANNOT:

- See or ask about: arrests that did not lead to conviction, including pending arrests;[1848] convictions that have been dismissed/expunged/sealed; participation in court diversion programs; and certain minor marijuana convictions.
- See or ask for: Your RAP sheet (your complete, official criminal record); or your credit report.

Note: Local "Ban the Box" laws may give you even more rights and protections in certain cities and counties.

HOW TO PRESENT YOUR BEST SELF

HOW DO I PRESENT MY BEST SELF TO AN EMPLOYER?

While you can't control everything about the job search, there are MANY steps you can and should take to improve your chances of being hired for the job you want—whether that means cleaning up your record, finishing school, or learning new skills and getting more experience. This section will explain what you can do *before* you begin applying for jobs, *throughout* your job search, and *during* your application process, to help improve your chances of being hired.

- BEFORE YOU APPLY: 1) Beef up your resume before any new job application, and 2) Clean up your record.
- THROUGHOUT THE JOB SEARCH: Target your job search for jobs that are an appropriate fit for you.
- WHILE APPLYING FOR JOBS:
  - Ace the job application,
  - Interview well, and
  - Understand and explain the benefits to the employer.

[1846] Adapted from http://www.careerbuilder.com/article/cb-3033-job-search-strategies-how-to-conduct-a-job-search-with-a-criminal-record/.
[1847] Adapted from http://www.careerbuilder.com/article/cb-3033-job-search-strategies-how-to-conduct-a-job-search-with-a-criminal-record/.
[1848] CAL. GOV. CODE § 12952(f)(2)(B).

TATTOO REMOVAL:

My visible tattoos are preventing me from obtaining employment and moving on with my life after incarceration. I'd like them removed. Is there anyone who can help?

Yes. If you are interested in removing your tattoos, there are several organizations in California that offer free or low-cost tattoo removal for people who are having trouble obtaining employment due to visible tattoos, particularly if they are gang-related tattoos. **Homeboy Industries** in Los Angeles, for example, offers free tattoo removal and a number of other useful services for formerly incarcerated people. Upon your release, you can search for more organizations that provide these services on Jails to Jobs' website at: http://jailstojobs.org/wordpress/tattoo-removal. For information about employment discrimination due to your tattoos, see PG. 593.

BEEF UP YOUR RESUME

HOW CAN I BUILD UP MY RESUME?

1. Explore volunteer opportunities. Volunteering is a great way to learn new skills, gain solid references, find out about local job opportunities, and show potential employers that you are dedicated and responsible. Although it is usually unpaid, it strengthens your application and offers experiences you can talk about in your job search.

2. Go back to school. Going back to school to get your GED or advanced college or professional degree shows that you are responsible, focused and driven—all qualities that employers look for when hiring. As a practical matter, going back to school can offer you training to expand your skillset and qualify you for more jobs.

3. Participate in a reentry program. Employers will be impressed if you are proactive and take steps to grow and learn from challenging past situations. Reentry programs in your local area may be able to help you in your job search, and support you in your transition. To find out about reentry programs or other employment opportunities, we recommend that you attend local reentry fairs and/or talk to people (in prison or jail or outside) who might know about these programs. Ask your counselor or case manager, parole or probation officer, mentor or sponsor, or others for recommendations.

4. Participate in workforce development (job readiness) programs. Many organizations have workforce development or job readiness programs for people with criminal records or other employment barriers. These programs help you to search for jobs, improve your job skills, and prepare for job applications and interviews. They provide services like job counseling, job training, resume writing, interview coaching, and sometimes job placement and referrals.

Even if there are no job readiness programs for people in reentry in your area, look for similar services. Sometimes the only workforce development program near you will be an America's Job Center, which is run by the government. If the America's Job Center is your only option, take advantage of the case managers and other programs there. If there are other workforce programs available in your area, try those first, as they often provide more individual attention and help. For a list of workforce development programs around the state, see Appendix B, PG. 619, or call 2-1-1 for local referrals.

VOLUNTEERING

Consider volunteering with local religious or community organizations, and plan to stick around for at least 6 months. The length of time you remain dedicated to the organization is more important than the amount of time you spend volunteering during a particular day or week. Your volunteer work can help to calm an employer's concerns about your past, and strong references can go a very long way in helping to secure a future paying position.

TALK TO YOUR TRUSTED PERSON

Talk to your trusted person or someone at a workforce development program to see what school, work, and volunteer opportunities are available in your area, and for other ideas about how to build your resume and gain new skills.

HELPFUL HINT

What are America's Job Centers of California?

America's Job Centers of California (once called One-Stop Career Centers) are job readiness centers run by the state through the California Employment Development Department (EDD), a state agency that assists workers and employers. America's Job Centers provide FREE services and resources to people looking for work, including: job counseling to figure out what jobs are right for you; free access to phones, fax machines, computers, and Internet; job search and résumé writing workshops; community resources and referrals for training; and job fairs. To find an America's Job Center near you, go to www.americasjobcenter.ca.gov. To find job fairs and workshops, go to www.edd.ca.gov/Jobs_and_Training/Job_Fairs_and_Events.htm and follow the links to find events in your region.

CLEAN UP YOUR RECORD

CAN I CLEAN UP MY RECORD?

Maybe. Your record is not necessarily permanent for the purpose of getting a job. You may be able to clean up or lessen the impact of your criminal record, since, by law, most employers cannot inquire about convictions that have been expunged at ANY time in the hiring process.[1849] For more information about the different ways to clean up your record, see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

Different organizations may offer "clean slate" services in your area, such as: Public Defenders offices; "Reentry," "Clean Slate," "Expungement," or "Second Chance" clinics; and some civil legal aid organizations. For more information about finding expungement services and programs in your area, see the list of legal aid providers on PG 1127, or call Root & Rebound's Reentry Legal Hotline any Friday at 510-279-4662 for referrals. To learn more ways to show employers proof of your rehabilitation, see Appendix C, PG. 621.

TARGET YOUR JOB SEARCH

HOW DO I TARGET MY JOB SEARCH AND FIND THE BEST FIT?

1. Consider the type of job you're applying for.

Employers will be more concerned if the job position you are applying for requires you to do work that directly relates to your past convictions. For example, if you've been convicted of theft, this may concern an employer who is looking to hire someone to become a manager or cashier at a store. If you can proactively point out that the circumstances of your crime—including the seriousness of the offense and the length of time since it occurred—won't affect your ability to do the job, an employer is more likely to feel you will be an honest and truthful worker. Also, there may be some types of jobs or occupational licenses that you can't hold by law, based on your conviction offense. See PG. 600 for more information about legal restrictions for certain types of jobs.

2. Consider the type of employer you're applying to.

Consider the type, size, and management style of the company to which you are applying. As of January 1, 2018, employers with five or more employees cannot ask whether or not you have been convicted of a crime until AFTER they have extended a conditional offer of employment.[1850] If you reach this point in the hiring process, you may have more success with a small business than a larger corporation, since you will have a greater opportunity to speak directly with the owner and explain what happened. Still, remember that even big corporate employers are legally required to do an individualized assessment of how your conviction relates to the position.[1851]

WHAT ABOUT STARTING YOUR OWN BUSINESS

Some people find it more fulfilling to be their own boss. Self-employment can give you more control over the type of work you do, flexibility to make your own decisions, and greater responsibility.

Think about your skills, interests, and previous work experience or vocational training. If you think that self-employment may be a good option for you, read the section on "Alternatives to Traditional Employment," starting on PG. 606 for more information and helpful resources on starting your own business.

ARE THERE CERTAIN TYPES OF JOBS I CAN'T HAVE BECAUSE OF MY CRIMINAL RECORD?

It's possible. Before applying for work, you should know that certain jobs have legal restrictions that disqualify people with certain past convictions from working in that position. Also, certain types of jobs require you to have a professional or occupational license from the state, and such licenses have their own legal restrictions and can be difficult to get depending on what's in your record. For more information on legal restrictions and professional licenses—and how you can become re-eligible to work in some cases—see "Jobs & Professions Your Record Might Exclude You From," starting on PG. 600.

Examples of jobs with legal restrictions for certain types of convictions: Airport security screeners; Law enforcement officers; Bank employees; Childcare workers in federal facilities or agencies; Port workers. *Examples of jobs that require a professional or occupational license:* Barber; Beautician/Cosmetologist; Pharmacist; Nurse; Cemetery / funeral home worker; Real estate agent.

IMPORTANT: Most jobs do NOT have legal restrictions. The information here isn't intended to discourage you, but to help you understand your options and find the job that's right for

[1849] CAL. GOV. CODE § 12952(a)(3)(C).
[1850] CAL. GOV. CODE § 12952(a)(2).
[1851] CAL. GOV. CODE § 12952(c)(1)(A).

you. Also, even if an employer cannot hire you for one type of job based on your record, they may have other types of jobs available that may be a better fit.

HELPFUL HINT
Consider All Your Job Options

As you're thinking about jobs or looking for work, it can be helpful to think about other work options—alternatives to traditional employment—like starting your own business, joining a worker-run cooperative business, or going through a temp agency. You may decide that one of these alternatives is more exciting, more convenient for your schedule and needs, or just a good way to get your foot in the door with an employer.

Here are some other ways of working and earning an income that are different from traditional employment:

- Consider self-employment or become an independent contractor
- Start your own business
- Join a worker-run cooperative business
- Apply through a temp agency
- Take short-term jobs or temporary positions to get your foot in the door.

For more information on each of these options, read section on Alternatives to Traditional Employment, starting on PG. 606 below.

ACE THE JOB APPLICATION

HOW CAN I HAVE A SUCCESSFUL JOB APPLICATION?

In the past, applying for a job meant filling out a paper application and handing or mailing it to the employer. Now, any information that you give about yourself may become part of your job application that the employer considers. This includes information you share with the employer or other employees at the company, with a temp agency, at a job fair, at a workforce development center, or with other people or organizations that are involved in your job search process. It can include paperwork you fill out or sign, a questionnaire you complete, information you type in online, documents you hand in, or answers/information that you say in person.

A NOTE ABOUT BAD REFERENCES

Under state law, former employers and other references ARE allowed to say negative things about you as part of a job reference.*So you should always ask your reference if they are willing to be listed, and you can ask what they will say about you before you list them.*

HELPFUL HINTS

1. Listing Previous Work Experience

If an application asks about your previous work experience, MAKE SURE you accurately write the dates of your previous employment and how much you were paid! The new employer will probably contact your former employers to check your references and ask about this information.

If you list incorrect information about the dates you were employed or your wages at your past job (even by mistake!), the new employer may think you're intentionally lying and may reject your application for that reason. If you can't remember the exact dates you worked or your wages, write down that you are guessing or estimating this information, and that you are NOT certain. This will show the employer that you're trying to be honest and are not intentionally giving wrong information.

2. Listing personal and professional references

When you apply for a job, you will probably have to give a list of references—people who know you and can talk about whether you're a good worker. Most likely this will be an old employer, but it could also be a teacher from a vocational training or certification program, or even someone from your church or other community organization that you're involved in. The new employer will contact these people to ask about your previous work history, personality, whether you were a good employee, and other information to help decide if they should hire you.

Be careful about whom you list as a reference and what they will say about you! BEFORE you list someone as a reference, it is best to call the person (or have a trusted person call for you) to ask what they will say about you. If it turns out they say something negative, you'll know not to list them after all.

Keep in mind that even if you don't list someone as a reference, an employer or background check company may still contact them as part of their own background check process.

3. Ask your trusted person!

If you're filling out a paper or online application, ask your trusted person, or someone from a local reentry or workforce development program, to look over your completed application before you send it to the employer.

INTERVIEW WELL

HOW CAN I SUCCEED IN AN INTERVIEW?

Here is a list of the essential steps to prepare for and succeed in an interview with a potential employer. For more detailed information about each of these steps, please see the Appendix D, PG. 622.

STEP 1: **Thoughtfully answer each interview question.**

STEP 2: **Ask your own questions.**

STEP 3: **Practice beforehand!**

If possible, you should try to do a practice ("mock") interview before the real thing with your case manager, social worker, counselor, or even family or friends. Remember, even if you have your answers prepared on paper or in your head, things will sound different when you try to say them out loud!

STEP 4: **Be polite and confident during the interview.**

STEP 5: **Follow-up after the interview.**

ADDITIONAL JOB INTERVIEW RESOURCES:

Here are some resources that can help you prepare for a job interview:

- Tips for the Ex-Offender (Wisconsin Job Center)—http://www.wisconsinjobcenter.org/exo/eo_criminal_background.pdf
- Interview Tips (Jobs Not Jails)—http://jailstojobs.org/html/interview_tips.html
- 10 Job-Search Tips for Reentry (EASTBAY Works)—https://www.eastbayworks.com/alamedacounty/admin/gsipub/htmlarea/uploads/000311-Reentry_Employment_Resource_Lists_(Complete)_072908.doc
- Connect with a workforce development program that can help counsel and coach you through the job application and interview process. For a list of these workforce development programs, see Appendix B, PG. 619 on PG. 619. You can also ask a case manager, local reentry program counselor, or workforce development staff person for other suggestions in your area, or call 2-1-1 to ask about other programs in your area.
- For more information about how to talk about your conviction record with an employer, see PG. Error! Bookmark not defined..

➢ UNDERSTAND & EXPLAIN THE BENEFITS OF HIRING PEOPLE WITH RECORDS TO THE POTENTIAL EMPLOYER

Learn here about two government programs that are meant to encourage employers to hire people with criminal records: (1) the Federal Bonding Program and (2) the Work Opportunity Tax Credit (WOTC).

BONDING INSURANCE: WHAT IS IT & HOW CAN IT ENCOURAGE EMPLOYERS TO HIRE ME?

Some employers require their employees to be covered under fidelity bonding insurance, which is a special type of insurance that protects the employer from money or property loss caused by employee dishonesty. If your employer requires fidelity bonding insurance, there are two options: (1) private fidelity bonding insurance, and (2) the Federal Bonding Program.

(1) Private Bonding Insurance—Many private insurance companies sell fidelity bonding insurance that employers can buy. The insurance will reimburse employers for losses due to things like forgery, theft of money or valuables, or fraud by a company employee. An employer can buy insurance coverage for ALL employees, or for only a few, specific employees.[1852] However, if you already have a criminal conviction record, your employer may not be able to get private bonding insurance for you.[1853] In this case, the employer may be able to get bonding insurance through a special federal government program (see immediately below).

(2) Federal Bonding Program—If you already have a criminal conviction record, your employer may not be able to get private bonding insurance for you. If you are applying for a job with an employer who requires

[1852] Here are some insurance companies that offer private fidelity bonding insurance for employers:
Cal-Nevada Insurance Agency—http://www.cal-nevada.com/business-insurance/fidelity-bonds/
State Farm Insurance—https://www.statefarm.com/small-business-solutions/insurance/surety-fidelity-bonds
Nationwide Insurance—http://www.nationwide.com/crime-insurance.jsp.

[1853] See U.S. DEP'T OF LABOR, The Federal Bonding Program: Program Background, http://www.bonds4jobs.com/program-background.html.

employees to be covered by fidelity bonding insurance, the federal government has a special program to provide FREE fidelity bonding insurance for 6 months to cover individuals who are eligible for the program.[1854] In California, the California Employment Development Department (EDD)—the same state agency that runs America's Job Centers of California—runs the Federal Bonding Program. For more information and instructions on how to apply for the Federal Bonding Program, see Appendix E, PG. 624.

Am I eligible for the Federal Bonding Program?

If you meet the following requirements, you may be eligible for the Federal Bonding Program:

- You have a firm job offer (or are already employed) at a job that is likely to be long-term or permanent.
- The job requires you to be bonded, and you cannot get private bonding insurance due to your arrest or conviction record, history of drug or alcohol abuse, poor credit or employment history, dishonorable discharge from the military, or other "risk" factors.
- The employer is ready to hire you (or keep you on the job) once you have insurance, so the only thing stopping you from working there is the lack of insurance.
- You are 18 or older and legally eligible to work in the U.S.

For a complete list of eligibility requirements, see Appendix E, PG. 624.

IMPORTANT: Your employer can only get free insurance coverage for the first 6 months that you work there; after that they will have to purchase insurance directly. If you switch to another job that also requires bonding, you will have to reapply to the EDD, and they will decide on a case-by-case basis whether you can get new insurance coverage at the new employer. If you left your previous job on good terms, you will have a better chance of getting bonding insurance for your next job, but it is not guaranteed.[1855] For this reason, it's recommended that you only use the bonding program for jobs that are likely to be long-term or permanent—NOT for temporary positions.[1856]

WORK OPPORTUNITY TAX CREDITS: WHAT ARE THEY & HOW CAN THEY ENCOURAGE EMPLOYERS TO HIRE ME?

Suggest that your employer look into the federal Work Opportunity Tax Credit (WOTC). The WOTC is a federal tax credit historically available to employers for hiring job applicants who face significant barriers to employment, including people with felony convictions who are hired within 1 year after their conviction or release from prison, veterans, and recipients of certain public benefits.[1857] (For this reason, be sure to answer truthfully if an employer or job application asks whether you receive public benefits!) The WOTC ranges from $1,200 to $9,600, depending on your hours and pay during your first year as an employee, and on the maximum allowed credit.[1858] For more information about the WOTC in California, contact the WOTC Coordinator at (916) 227-5163, or visit the Employment Development Department's (EDD) website about the WOTC at: http://www.edd.ca.gov/jobs_and_training/Work_Opportunity_Tax_Credit.htm.

IMPORTANT: Although the legal authority for the WOTC expired on December 31, 2013, tell your employer that he/she should continue to submit WOTC applications to the EDD. In the past, when the WOTC expired, Congress eventually reauthorized the tax credit and applied it retroactively; so it's recommended that employers continue to submit applications while reauthorization is pending.[1859]

[1854] See U.S. DEP'T OF LABOR, The Federal Bonding Program: Program Background, http://www.bonds4jobs.com/program-background.html.
[1855] Telephone call with Gil Barkley, State Bonding Coordinator, California Employment Development Department (Feb. 17, 2015). The EDD will also want to make sure that the employer is not simply exploiting you for free insurance coverage and then getting rid of you after the first 6 months of free coverage is over.
[1856] Telephone call with Maria Alexander and Mary Weaver, Friends Outside in Los Angeles County (Jan. 21, 2015).
[1857] 26 U.S.C. § 51.
[1858] See 26 U.S.C. § 51; see also U.S. DEP'T OF LABOR, WOTC Tax Credit Amounts, http://Www.Doleta.Gov/Business/Incentives/Opptax/Benefits.Cfm. Employers may use the "WOTC Calculator" tool available online at: http://www.doleta.gov/business/incentives/opptax/wotcEmployers.cfm.
[1859] See 26 U.S.C. § 51(d)(13)(A)(ii)(II); see also U.S. DEP'T OF LABOR, Training and Employment Guidance Letter No. 8-13. In the past, Congress has waived the 28-day timeliness rule for applications that were eligible during the program's lapse period, but there is no guarantee; see IRS, Work Opportunity Tax Credit Extended, http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Expanded-Work-Opportunity-Tax-Credit-Available-for-Hiring-Qualified-Veterans. To avoid a denial based on timeliness issues, employers should continue to follow the 28-day rule. California's WOTC Authorization Center is continuing to process all applications, and expects reauthorization. For more information, see CAL. EMP'T DEV'T DEP'T, Employer Guide, http://www.edd.ca.gov/jobs_and_training/WOTC_Employer_Guide.htm.

KEY TERMS IN THE EMPLOYMENT CHAPTER

Before we discuss the laws that will affect you as you reenter the job market, let's review a few key terms. (For more detailed definitions and explanations of these terms, see UNDERSTANDING & CLEANING UP YOUR RECORD CHAPTER, PG. 931).

Criminal Record: This is the general term we use for all of the information about your criminal history. Your "criminal record" includes arrests, charges against you, convictions, pleas, acquittals, dismissals, sentences, and any other time your contact with law enforcement was documented.

RAP Sheet: A RAP sheet (Record of Arrest and Prosecution) is the government's official version of your criminal record. It lists every contact you've had with the criminal justice system, including arrests, convictions, acquittals, dismissals, and sentences.[1860] If you've been arrested or convicted of a crime in California, you could have 3 different RAP sheets:

- **County RAP sheet**—all of your criminal justice contact in a single county (so if you have arrests or convictions in more than one county, you will have a separate RAP sheet for each county);
- **California DOJ RAP sheet**—all of your contact with the criminal justice system across the state of California;[1861]
- **FBI RAP sheet**—all of your contact with the criminal justice system from anywhere in the U.S. (so if you have arrests or convictions in more than one state, all of these should show up on your FBI RAP sheet).[1862]

Background Check: This is the process of looking up information about someone's past activities—their criminal records, finances and credit, or other personal information—through public records, Internet searches, or interviewing people you know. When you apply for a job, the employer is allowed to pay an outside company to run a background check on you — but only AFTER they have extended a conditional offer of employment.[1863]

IMPORTANT: You have legal rights when someone runs a background check on you! The law limits what information can be included in your background check, what information employers, landlords, and others can use, and when employers can use this information. You are allowed to challenge mistakes and violations related to your background check.

Consumer Report—This is the technical, legal name of the document that that is produced when an employer (or anyone else) runs a background check on you (produced by private companies called "Consumer Reporting Agencies"—see next definition). Since "consumer report" is the technical term, but not used by most, this Chapter uses the layperson term "background check reports."

Reporting Agency—This is a company that investigates and produces background check reports.[1864] They're also called Consumer Reporting Agencies (federal law) and Investigative Consumer Reporting Agencies (state law), but this Chapter uses the layperson term "background check companies."

GET A COPY OF YOUR RAP SHEET

You can request a copy of your RAP sheet from the California Department of Justice (DOJ) by filling out an application, getting fingerprinted, and sending everything to the DOJ. It can take a couple weeks for the DOJ to process your request and send you an official RAP sheet. For more information on getting a copy of your RAP sheet, see the UNDERSTANDING & CLEANING UP YOUR RECORD CHAPTER, PG. 931.

If you don't want to wait for your RAP sheet, you can also get a copy of your court records directly from the courthouse where you were convicted. If you go to the court in person, you can often get a copy of your records the very same day. Some courts will also let you request your records online, without having to go in person (although you will have to wait longer for the court to mail you the paper copies). To get your court records, you will need to have (or look up) your case number, and you will probably have to pay a fee for photocopying (usually around 50 cents/page).

[1860] U.S. Dep't Justice v. Reporters Comm., 489 U.S. 749, 749 (1989).
[1861] See CAL. PENAL CODE § 11105.
[1862] 28 C.F.R. § 16.31.
[1863] CAL. GOV. CODE § 12952(a)(2).
[1864] 15 U.S.C. § 1681a(p).

II. KNOW YOUR RIGHTS ON EMPLOYMENT BACKGROUND CHECKS

WHAT WILL I LEARN?

- **The 3 ways employers can learn about your past, and what kinds of information employers CAN and CAN'T consider about you at different points in the hiring process**
- **All about an the Fair Chance Act, an important new law that restricts when most employers can learn about your criminal record**
- **What kinds of information employers CAN directly ask you about your criminal record**
- **What information employers CAN'T ask you about your criminal record**
- **What your rights are if an employer runs a background check on you through a private background check company**
- **What your rights are if an employer decides not to hire you based on the results of a private background check**
- **What your rights are if an employer runs an "in-house" background check on you**
- **How to correct errors in your "in-house" background check**

This section explains the laws and your rights when an employer runs a background check on you for a job. It will explain what information an employer CAN and CANNOT see, ask about, and consider about your criminal record; and what information background check companies CAN and CANNOT report about you. It also explains how to correct background check errors, and what you can do if an employer or background check company violates the law.

!

IMPORTANT NEW LAW IN 2018: On January 1, 2018, the Fair Chance Act (also called "Ban the Box") became the law statewide in California. It greatly restricts the ways in which most public and private employers can consider your criminal record when you apply for a job. Read on to learn more!

KNOW YOUR RIGHTS OVERVIEW

Your rights against employers with five or more employees

- PUBLIC and PRIVATE employers CAN run a background check on you and CAN consider certain parts of your criminal history when deciding whether to hire you — but most can only do this AFTER they have given you a conditional offer of employment.
- Most PUBLIC and PRIVATE employers CANNOT at any time ask about: arrests that did not lead to conviction; convictions that have been dismissed/expunged/sealed; participation in court diversion programs; and certain minor marijuana convictions; your RAP sheet; your credit report.
- Employers MUST notify you if your conviction history has caused them to withdraw (or "rescind") their conditional offer of employment; in this notice, they MUST provide you with a copy of the background check report or any public records used to disqualify you from the position.
- Employers MUST give you the right to respond to their withdrawal of your job offer due to your criminal record.

Your rights against background check companies

- Background check companies CAN report information about convictions; lawsuits and civil (money) judgments against you; evictions; DMV driving records; and other personal information from within the past 7 years.
- Background check companies CANNOT report information about convictions; lawsuits; unpaid judgments; tax liens; or any other negative information that is more than 7 years old.
- Background check companies MUST check that information from public records is accurate and up-to-date.

YOUR RIGHTS AGAINST EMPLOYERS RELATED TO CRIMINAL BACKGROUND CHECKS

This section will explain your rights when an employer runs a background check on you or asks you about your criminal record, and what you can do if the employer violates your rights.

The next section will explain your rights when a background check company produces a report on you, and what you can do if the background check company violates your rights (see PG. 584).

HOW COMMON ARE BACKGROUND CHECKS?

About 69% of employers run criminal history background checks on all job applicants. About 86% of employers conduct background checks on at least some applicants. Larger companies tend to run routine background on everyone as part of their regular job application process, while smaller companies might not.

HOW CAN EMPLOYERS LEARN ABOUT MY CRIMINAL RECORD?

There are three main ways an employer can access information about your criminal history:

1. *The employer can ask you about it after they have extended a conditional offer of employment.* Some employers will ask you directly if you have a criminal record. For this reason, it is important that you know your rights about what can be asked and what you have to answer. See PG. **Error! Bookmark not defined.** to learn more.
2. *The employer can pay a private background check company to run a background check report on you.* Background check companies are private companies that create background check reports for employers. This is the most common way for an employer to find out information about your past because it is easy, fast, and usually done online. See PG. 584 to learn more.
3. *The employer can conduct an "in house" background check.* Some employers will do their own background check and look up your public records, research you online, and call your friends, family members, and former employers to ask about you.[1865] See PG. 579 to learn more.

WHEN CAN (AND CAN'T) EMPLOYERS ASK ABOUT MY CRIMINAL RECORD UNDER THE NEW FAIR CHANCE ACT (AB 1008)?

With the passage of AB 1008 (The Fair Chance Act), which went into effect on January 1, 2018, almost ANY employer with five or more employees, whether public or private, has to wait to ask about your criminal record until AFTER they have given you a conditional offer of employment — meaning an offer they can still withdraw.[1866] This means that they CANNOT ask about your record on the job application or during the initial interview(s). They must also wait to run a background check. **If an employer asks about your criminal record prior to offering you a conditional position, they are not complying with California law.** If you believe your rights have been violated, you can file a complaint with the California Department of Fair Employment and Housing. You can learn more and file a complaint online at **dfeh.ca.gov/complaint-process/file-a-complaint**.

Exceptions: California law recognizes that a job applicant's criminal history is relevant to certain positions. As a result, a small number of employers are required to ask about your criminal history up front, such as law enforcement agencies and health facilities.[1867]

MY CITY OR COUNTY ALREADY HAS A BAN THE BOX POLICY. WILL THE FAIR CHANCE ACT REPLACE THAT POLICY?

Several cities and counties in California have spearheaded fair hiring initiatives (see Appendix F on PG. 626, Appendix G on PG. 627, and Appendix H on PG. 630). If you live in a city or county with a local ordinance that provides additional legal protections for job applicants with conviction histories, these additional rights are still in effect. For instance, the Los Angeles City ordinance requires that employers make a written record of their individualized assessment about an applicant's conviction history in writing.[1868]

IS THERE ANYTHING AN EMPLOYER CAN'T ASK ABOUT MY CRIMINAL RECORD?

Yes! There are certain parts of your criminal record that employers CANNOT legally ask you about at any time. Under state law, an employer (including ones with fewer than 5 employees) cannot ask you about:

1. ***Convictions that have been sealed, dismissed, expunged, or statutorily eradicated.***[1869] An employer cannot ask a question like, "Have you ever been convicted of any crimes that were dismissed?" If they do ask about these convictions, you don't have to report ones that were expunged/dismissed.
2. ***Arrests that did not lead to a conviction.*** An employer with five or more employees CANNOT ask about past arrests where you were not convicted of the alleged crime. This includes arrests where the charges against you were never brought, charges were dismissed, and cases where you were found not guilty. THERE ARE 3 EXCEPTIONS TO THIS RULE YOU SHOULD KNOW: [1870]
    - First, private and public employers can still ask about recent arrests that are pending or unresolved but ONLY after they have extended a conditional offer of employment.[1871] For example, if you were

[1865] See CAL. CIV. CODE §§ 1785 et. al., 1786 et al.
[1866] CAL. GOV. CODE § 12952(a)(2).
[1867] CAL. GOV. CODE § 12952(e)(2)(A); CAL. GOV. CODE § 12952(d)(2); see generally CAL. GOV. CODE § 12952(d).
[1868] Los Angeles Municipal Code Section 189.02.
[1869] 2 CAL. CODE REGS. § 7287.4(d)(1)(B); CAL. LAB. CODE § 432.7(a).
[1870] CAL. LAB. CODE § 432.7; see offenses listed under CAL. HEALTH & SAFETY CODE § 11590 (drug offenses); CAL. PENAL CODE § 290 (sexual offenses).
[1871] CAL. GOV. CODE § 12952(a)(2).

arrested, posted bail money, and are awaiting trial, the arrest is still considered pending, and employers can learn and ask about those once they have conditionally offered you a job.
- Second, law enforcement employers can ask about and consider all arrests.
- Third, health care facilities and pharmacy employers can ask about and consider CERTAIN arrests (for drug and/or sexual offenses) if you are applying for a job with regular access to drugs or medications (for drug arrests), or to patients (for sexual offense arrests).

3. *Arrests that led to the completion of a court diversion program.* A court diversion program (such as a drug rehabilitation program) helps a person charged with certain crimes avoid criminal charges—and therefore avoid a criminal record. By law, employers are NOT allowed to ask for any information about your participation in a court diversion program.[1872]

REMEMBER: In general, if an employer asks you if you were ever arrested, you SHOULD NOT answer that question, and you DO NOT have to. Politely remind the employer that this question does not comply with current California law.

IF THE EMPLOYER USES A PRIVATE COMPANY TO RUN A BACKGROUND CHECK ON YOU

ARE EMPLOYERS LEGALLY ALLOWED TO RUN A BACKGROUND CHECK ON ME?

Yes, although they are restricted in doing so in the hiring process. Employers are allowed to use background checks when deciding whether to finalize an offer of employment, promote, reassign, or keep you on as an employee. Private background check companies are allowed to provide background checks (also called consumer reports) to anyone the agency reasonably believes will use the information "for employment purposes."[1873]

CAN AN EMPLOYER CONSIDER MY CREDIT HISTORY?

Generally, no. Employers CANNOT look at your credit report unless you are applying for certain high level or sensitive job positions, such as a manager or supervisor within a company, a law enforcement officer, or a position with access to large amounts of cash and/or sensitive financial information.[1874] If you have further questions about your credit history, contact a local legal service organization or call 2-1-1.

KNOW YOUR RIGHTS
Your Rights If An Employer Runs A Background Check

- Most employers with five or more employees MUST wait to run a background check until they have extended a conditional offer of employment.
- Employers MUST NOTIFY you and get your PERMISSION BEFORE running a background check on you through a private background check company.
- Employers MUST offer you a copy of the background check report. ALWAYS request a copy of the background check report.
- Employers CAN see: convictions and pending (unresolved) arrests, charges, or cases; other personal information about you. But they CANNOT see convictions and other negative information that is more than 7 years old.
- In general, employers CANNOT see: arrests that did not lead to conviction; convictions that have been dismissed/expunged/sealed; participation in court diversion programs; and certain minor marijuana convictions; your RAP sheet; your credit report.
- If an employer decides not to hire you because of information in your background check report, the employer MUST NOTIFY you beforehand; give you a COPY of the background check report; and give you a chance to CORRECT any errors in your background check report and/or OFFER proof of rehabilitation or other relevant evidence.

KNOW YOUR RIGHTS:
CONVICTIONS MORE THAN 7 YEARS OLD

There is a weird gap in the law that you should know about. While employers CAN ask about and consider convictions older than 7 years old (but only after they have extended a conditional offer of employment), private background check companies CANNOT report information about convictions more than 7 years old on your background check report. This CANNOT come up in a background check.

ARE EMPLOYERS LEGALLY REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECKS?

Generally, no. Most of the time, the employer is not legally required to run a background check, though many choose to.[1875] The only **exception** to this rule is if the job involves **unsupervised access to sensitive**

[1872] CAL. LAB. CODE § 432.7(a).
[1873] See 15 U.S.C. § 1681b; CAL. CIV. CODE § 1786.2(f).
[1874] CAL. LAB. CODE § 1024.5, et seq.
[1875] 42 U.S.C. § 2000e-2; see also, NELP, Top Ten Best Practices for Fair Chance Policies, at 1-2, http://www.nelp.org/page/-/SCLP/2014/Guides/NELP_Best_Practices_and_Model_Policies.pdf?nocdn=1.

populations or the handling of sensitive information (like law enforcement officers,[1876] airport security screeners,[1877] security guard positions,[1878] bank employees,[1879] port workers,[1880] childcare workers in federal facilities or agencies,[1881] certain insurance personnel,[1882] any personnel involved in administration of an employee benefits plan,[1883] defense contractors,[1884] and prisoner transportation personnel).[1885] For these specialized jobs, a background check is mandatory.

SINCE EMPLOYERS ARE ALLOWED TO RUN BACKGROUND CHECKS ON ME, DO I HAVE ANY LEGAL RIGHTS IN THE PROCESS?

Yes—you have a number of important legal rights THROUGHOUT the hiring process in how the employer can run and use a background check. See PG. 572 for information on *when* in the application process an employer can run a background check. The following rules protect your rights when you are applying for a job and the employer runs a background check on you through a private background check company. (Note: There are different rules if the employer runs a background check on a current employee because it suspects the person of misconduct or wrongdoing.)[1886]

Before an employer runs a background check on you using a private background check company, the employer must do ALL of the following: give you notice, get your written permission (consent) to run the check, inform you of your rights, and offer you a copy of the report, once it is done.[1887] Here are the 4 steps below in more detail:

STEP 1: Give you ADVANCED, WRITTEN NOTICE

An employer must provide you with written notice if it intends to hire a background check company and use information in your background check to make decisions related to your employment. This notice must be in a separate document from other information from the employer—it can't just be mentioned on the job application or buried among other papers—SO that it is clear that the employer is running a background check done on you.[1888]

The NOTICE must include the following INFORMATION:[1889]

- Explain the purpose of the background check.
- Explain that the background check may include information on your "character, general reputation, personal characteristics, and mode of living"—meaning certain personal information about you and your past.[1890]
- Give the name, address, phone number, and website of the private background check company that will conduct the background check. There are many background check companies out there, and you are entitled to know exactly which one is providing a report on you.
- Explain your right to review the background check company's files along with all the information the agency used when conducting your background check and preparing your background check report for the employer.[1891] If the report will include information from interviews with your neighbors, friends, or associates, you must be given special notice.[1892]

[1876] 5 U.S.C. § 7371(b).
[1877] 49 U.S.C § 44935(e)(2)(B).
[1878] CAL. BUS. & PROF. CODE § 7583.9; see also CALIF. DEP'T OF CONSUMER AFFAIRS, Security Guard Fact Sheet (July 2012).
[1879] 12 U.S.C. § 1829.
[1880] 46 U.S.C. § 70105(c).
[1881] 42 U.S.C. § 13041(a).
[1882] 18 U.S.C. § 1033(e).
[1883] 29 U.S.C. § 1111(a).
[1884] 10 U.S.C. § 2408(a).
[1885] 42 U.S.C. § 13726b(b)(1).
[1886] CAL. CIV. CODE §§ 1786.16, 1786.16(c).
[1887] CAL. CIV. CODE § 1786.16(a)(2)(A). California law is stricter than federal law about what an employer must do when notifying a job applicant about the requested consumer report. See generally California Investigative Consumer Background check companies Act (ICRAA) at CAL. CIV. CODE § 1786 et seq.
[1888] 15 U.S.C. § 1681b(b)(2)(A)(i); CAL. CIV. CODE § 1786.16(a)(2)(B).
[1889] CAL. CIV. CODE § 1786.16(a)(2)(b). The Background check company's website must explain its policy about transferring personal information transferred to third parties outside the United States, and must give you a way to contact an agency representative with further questions. If the agency doesn't have a website, you may request that a copy of the privacy policy be mailed to you.
[1890] There are strict limits on what information can be included in your background check report. For example, the Background check company generally CANNOT include information about arrests or convictions that are more than 7 years old, bankruptcies that took place more than 10 years ago, or debts that are more than 7 years old. CAL. CIV. CODE § 1786.18.
[1891] CAL. CIV. CODE §§ 1786.16(a)(2)(B)(v), 1786.22, 1786.10.
[1892] If interviews are involved, the report is defined as an "investigative consumer report" under the FCRA.

STEP 2: **Get WRITTEN PERMISSION from YOU before they run the check:**

After the employer gives you notice, the employer must ask and get your permission in writing—before conducting a background check.[1893] Usually, there will be a box to check on the job application, asking you for your permission for the employer to do a background check.

IMPORTANT: If AN EMPLOYER WANTS TO RUN AN ADDITIONAL BACKGROUND CHECK LATER ON: Employers must give you NOTICE and get your PERMISSION EVERY TIME they run a background check. If the employer wants to do another background check later, or wants to get continuous, updated background checks on you during your employment, they must give you a NEW NOTICE AND get NEW written PERMISSION from you each and every time they do a background check (except in cases of suspected misconduct).[1894]

STEP 3: **Inform you of YOUR RIGHT TO SEE THE INFORMATION in your background check:**

The employer must inform you of your right to see the information used by the Background check company when conducting your background check.[1895]

STEP 4: **Offer you a COPY of your background check report:**

The employer must give you a chance to request a copy of the background check report they got. There should be a box you can check to request copy of your report—usually it will be on the same form you sign to give permission for the background check.[1896] Always check YES to get a copy of the report so you can see what the employer sees! If you check the box to request a copy of your background check report, the employer must send you a copy of the report within 3 business days from the time when the employer receives it.[1897]

IMPORTANT: ALWAYS request a copy of the background check report

You have a legal right to receive a copy of the background check report used by the employer, and it is recommended that you always request a copy of the report. Always check the box to request a copy of the background check report.WHAT TO LOOK FOR:

- **The box to request a copy of the background check report will probably say something like this:**
- **"Check this box if you would like to receive a free copy of any consumer report or investigative consumer report obtained on you," or**
- **"I am a California resident and I would like a free copy of my background check report."**[1898]
- **Make sure you CHECK THIS BOX to request a copy of your background check report.**

CAN AN EMPLOYER DECIDE NOT TO HIRE ME BASED ON MY RECORD?

Yes, BUT ONLY if they follow the law. The law sets certain rules that the employer must follow in the hiring process and in deciding whether to hire someone with a record. The employer must follow additional legal rules both before AND after taking any adverse action against you.[1899]

WHAT RULES MUST AN EMPLOYER FOLLOW IF THEY DECIDE NOT TO HIRE ME BASED ON MY RECORD?

Under, federal law (FCRA) the employer must notify you both before AND after taking any adverse (negative) action against you based on the results of your background check.[1900]

BEFORE ADVERSE ACTION:

[1893] 15 U.S.C. § 1681b(b)(2)(A); CAL. CIV. CODE § 1786.16(a)(2)(C).
[1894] CAL. CIV. CODE § 1786.16(a)(2) requires employers to provide notice and get permission "at any time" they want to run a background check.
[1895] CAL. CIV. CODE § 1786.16(a)(2)(B)(v); see also CAL. CIV. CODE § 1786.22.
[1896] CAL. CIV. CODE § 1786.16(b)(1).
[1897] CAL. CIV. CODE § 1786.16(b)(1). You may receive a copy of the report from the employer or from the screening company. The report's cover page must (1) include a notice in at least 12-point boldface type saying that the report does not guarantee the accuracy or truthfulness of the information, but was simply copied from public records; (2) include a warning that negative information could be the result of identity theft; and (3) give notice in English and Spanish of your rights. Business days" only include weekdays (Mon-Fri). CAL. CIV. CODE § 1786.29.
[1898] See Net Check Investigations (Cal. P.I. License 21529), Americheck—Authorization to Release Information, http://americhek.com/resources/pdf/Authorization_Release_2011-12.pdf; Mission Network, Disclosure Regarding Background Investigation, https://www.missionnetwork.com/sites/missionnetwork.com/files/nodes/1540/Background%20Check%20Authorization%20(New%202014).pdf; William Jessup Univ., Authorization for Background Checks (v1112), http://www.jessup.edu/wp-content/uploads/2013/09/investigative_report_authorization.pdf.
[1899] 15 U.S.C. § 1681b(b)(3)(A); CAL. CIV. CODE § 1786.40(a).
[1900] 15 U.S.C. § 1681b(b)(3)(A).

Before an employer takes any adverse action against you based on the results of your background check, the employer must give you a "Pre-Adverse Action" letter to notify you that it is planning to take the adverse action.[1901]

Under federal law, the Pre-Adverse Action letter must:

1. NOTIFY you that the employer plans to take adverse action against you based on information from your background check report;
2. Include a COPY of your background check report that the employer used to make its decision,[1902] and
3. Include the DOCUMENT, "A Summary of Your Rights Under FCRA"[1903] (see Appendix I, PG. 632)

After you receive this letter, you must be given a reasonable opportunity (about 5 days)[1904] to review your report, respond to it, and correct any errors.

IMPORTANT: If you receive a "Pre-Adverse Action" letter, it is recommended that you:

- **Review your background check report immediately to make sure it does not contain any incomplete, inaccurate or outdated information—such as convictions that are more than 7 years old; convictions that were dismissed/expunged/sealed; and/or arrests that did not lead to a conviction (as long as the charges are not still pending);**
- **Tell the employer immediately if there is any incomplete, inaccurate, or outdated information in the report;**
- **Offer proof of errors in your background check report, such as court records showing the final disposition (outcome) of the case;**
- **Offer proof of your rehabilitation efforts, including certifications or documents that show completion of programs, school transcripts, letters of support from past employer or other community members (not family or friends).**

If the employer does not give you enough time to review the report and correct any errors—for example, if the employer gives you the "Pre-Adverse Action" letter and then rejects your job application on the same day—you may have a legal claim against the employer for violating your right to receive notice before the adverse action.[1905]

Although the purpose of the Pre-Adverse Action law is to allow you to correct errors in your background check report, the law is NOT clear about whether the employer is required to reconsider your application if you correct the error and provide proof. If this happens to you, you should talk to an attorney about whether the employer may have violated your rights.[1906]

AFTER ADVERSE ACTION

After an employer takes any adverse action against you, such as rejecting your job application or firing you, the employer must give you an "Adverse Action Notice" to notify you that an adverse action was taken against you based on information from your background check. The employer can give you this notice orally, in writing, or electronically, but it must be within 3 business days of the employer's final decision.

Under federal law, the Adverse Action Notice must include:

1. The name, address, and phone number of the background check company that supplied the report to the employer;
2. A statement that the background check company that supplied the report is not responsible for the adverse action and cannot explain the specific reasons for the action; and

[1901] 15 U.S.C. § 1681b(b)(3)(A); see also Russ Dempsey, Adverse Action in Employment, http://www.backgroundbureau.com/web/Articles/FCRA.shtml.
[1902] Note: This means that the employer must give you a copy of your background check report, even if you did not check the box to request a copy of the report when giving permission to run the background check.
[1903] 15 U.S.C. § 1681b(b)(3)(A). A copy of "A Summary of Your Rights Under FCRA" can be found in Appendix I, PG. 684, or online at www.ftc.gov/credit.
[1904] Although the law does not provide exactly how much time an employer must wait after sending a "Pre-Adverse Action" letter to take the adverse action, guidance from Congress suggests that 5 business days is a reasonable amount of time. See H.R. Rep. No. 103-486, at 30 (1994).
[1905] See, e.g., Beverly v. Wal-Mart Stores, Inc., No. CIV. A. 3:07CV469, 2008 WL 149032, at *3 (2008); Williams v. Telespectrum, Inc., No. 3:05CV853, 2006 WL 7067107, at *4 (2006) (unreported); but see Johnson v. ADP Screening & Selection Svcs., Inc., 768 F. Supp. 2d 979, 983-84 (2011) (FRCA does not impose waiting period on employer nor require employer to hold position open for applicant during period between Pre-Adverse Action letter and adverse action).
[1906] Compare, e.g., Beverly v. Wal-Mart Stores, Inc., No. CIV.A. 3:07CV469, 2008 WL 149032, at *3 (2008) ("The statutory purpose is to enable employee or applicant to correct any of inaccurate information in background report before any adverse decision or action is taken."); with Johnson v. ADP Screening & Selection Servs., Inc., 768 F. Supp. 2d 979, 984 (2011) ("Nothing in the FCRA requires an employer to consider any correction that a Background check company might make.")

3. A statement of your rights to:
4. Dispute (challenge) the accuracy or completeness of any information the background check company provided; and
5. Get an additional free report from the company within 60 days, if you ask for one.[1907]

The Adverse Action Notice is important so that you know why the employer made the adverse decision against you and what information the employer considered. This way you can challenge or correct any information that is incorrect, incomplete, or illegal. And if the employer or background check company has NOT followed any of the laws described here—or if the employer does NOT give you an Adverse Action Notice—you may have a legal claim against them.

IMPORTANT INFORMATION ABOUT ADVERSE ACTION NOTICES: If an employer takes an adverse action against you (such as not hiring you) based on information in your background check report, they must give you BOTH a Pre-Adverse Action AND Adverse Action Notice.

If the employer does not give you these documents, you may have a legal claim against them for violating your rights under background check laws. However, you will need to show that they employer's decision was actually based on information in your background check report (such as your criminal record) and NOT for other reasons. See the text box on PG. 577 for how to do this.

For more information on what you can do if an employer does NOT give you an Adverse Action Notice or does NOT follow any of the other laws described here, see PG. 576.

For more information on how to challenge or correct information in your background check report, see information below, or see the UNDERSTANDING & CLEANING UP YOUR RECORD CHAPTER, PG. 931.

HELPFUL HINT

If I did not receive a Pre-Adverse Action or Adverse Action Notice, how can I show that the employer rejected me based on my background check and NOT other reasons?

Here are 2 strategies that have been used for showing that the employer may have rejected you based on your background check, even if they did NOT give you a Pre-Adverse Action or Adverse Action Notice:

1. Did the employer give you a Notice saying they would run a background check, or have you sign a document giving them permission to run a background check? Did the employer give you a Pre-Adverse Action Notice but NOT Adverse Action Notice (or the opposite—an Adverse Action Notice but NOT Pre-Adverse Action Notice)? Did the employer say anything about your record, or about (not) hiring people with criminal records? Is the information in your criminal record completely unrelated to the duties of the position? Any of these can help show the employer may have illegally rejected your application based on information in your background check.
2. If you feel comfortable, you can try talking to the employer directly. You can explain that you are trying to improve your application for the future, and then ask why the employer did not select your application and what you can do to improve your chances in the future.
   - In some cases, the employer may say something that reveals he/she made a decision based on your record or other information in your background check—for example, a negative comment about your being trustworthy, creating a risk to others, or about people with criminal records, in general. If this happens, make sure that you write down afterward exactly what the employer said!
   - In other cases, the employer may actually give you a helpful explanation that really can help you to improve your job applications in the future. This may show that the employer really did have some other reason for not hiring you, or at the very least can give you help you to be more successful for future jobs.
   - Finally, the employer may not give you any explanation for their decision, or may simply say that other people were more qualified or applied before you. In this case, it may be difficult to show that the employer actually rejected you based on your background check report.

WHAT CAN I DO IF THERE IS INACCURATE, INCOMPLETE, OR ILLEGAL INFORMATION IN MY BACKGROUND CHECK REPORT?

You have the right to dispute (challenge) any inaccurate, incomplete, or illegally included information in your background check report.

If there is inaccurate, incomplete, or illegal information in your background check report, you have the right to dispute (challenge) this information with the background check company that prepared the report. The background check company must investigate the error, delete or correct any improper information, and send a

[1907] 15 U.S.C. § 1681m(b)(1); CAL. CIV. CODE § 1786.40.

notice and a statement of correction to ANY employer who received a copy of your background check in the past 2 years (or anyone else who received a copy of your background check in the past year) if you ask.[1908]

For more information on how to dispute inaccurate, incomplete, or illegally included information in your background check report, see information below, or see the UNDERSTANDING & CLEANING UP YOUR RECORD CHAPTER, PG. 931.

IF I AM HIRED, CAN MY EMPLOYER RUN BACKGROUND CHECKS ON ME IN THE FUTURE WITHOUT MY PERMISSION?

No. Under California state law, an employer must follow the legal procedure of giving you notice, getting permission, etc., every time it wants to run a background check on you.[1909] In addition, an employer CANNOT ask you to waive (give up) your right to receive notice, give permission, etc., before running a background check.[1910]

EXCEPTION: If an employer suspects you of wrongdoing or misconduct, it can run a background check without giving you notice or asking for your permission. This exception applies if the employer is conducting a background check because they suspect you of misconduct on the job, including violating any written polices of the employer, or violating any federal, state, or local laws or regulations.[1911]

WHAT CAN I DO IF THE EMPLOYER HAS ALREADY RECEIVED INFORMATION FROM A BACKGROUND CHECK REPORT THAT IT SHOULDN'T HAVE RECEIVED BY LAW?

Unfortunately, employers sometimes get information that should NOT have been included in your background check report. Here are some suggested steps if this happens to you:

STEP 1: The first recommended step is that you get a copy of the background check report, so that you know what information the employer is seeing. For this reason, it's important to always check the box to request a copy of the report when you give permission to an employer to run a background check on you.

If you didn't check the box before, you can still get a copy of the report in 2 ways:

1. If the employer decides take an adverse (negative) action against you—such as rejecting your job application—they must give you a copy of the background check report before taking the action.[1912]
2. The background check company is required to give you a copy of the same report sent to the employer, if you ask for it within (at least) 2 years.[1913]

STEP 2: If there are errors or inaccurate information on the background check report, it's recommended that you point this out to the employer right away. If possible, you may also want to show the employer any proof of the correct information—for example, court papers showing that your conviction has been expunged, or that charges against you were dismissed.

You also have the right to make the background check company correct the information, and send the employer a notice and statement of the correction. For more information on correcting information with the background check company and notifying the employer of the correction, see PG. 582 below.

STEP 3: If the employer asks you about things that should NOT have been in your background check report—such as convictions that are more than 7 years old—it's recommended you answer the question directly and honestly, but briefly:

- You can take responsibility for your actions. State the facts, but express regret for what happened. Don't get defensive. Be honest, but don't go into details.
- You don't need to go into details. Keep your answer short. Be honest, but only talk about necessary information based on the questions you are asked.
- You can tell the employer how you have changed. Emphasize that the incident happened long ago and that you are a different person now. Explain what you learned while you were in prison/jail, and what you are doing differently now. Paint a picture of the person you are now.
- You can emphasize your qualifications. Describe the things that will make you a good employee—such as previous work experience, job training programs, or classes that you've done—and any letters of

[1908] 15 U.S.C. § 1681i; CAL. CIV. CODE § 1786.24.
[1909] CAL. CIV. CODE § 1786.24(b).
[1910] CAL. CIV. CODE § 1786.57.
[1911] Both California and federal law have exceptions to the notice and permission requirements if an employer does a background check because they suspect you of "wrongdoing or misconduct," and uses a private Background check company to conduct the background check. CAL. CIV. CODE § 1786.16(a)(2), (c); 15 U.S.C. § 1681a(y)(1). In this case, the employer is NOT required to notify you or get your permission before conducting the background check. If the employer later decides to take adverse action based on the results of the background check, they are only required to give you a summary of the background check report (not the sources of information nor full report itself), and only after the adverse action is taken (not before the adverse action). 15 U.S.C. § 1681a(y)(2).
[1912] 15 U.S.C. § 1681b(b)(3)(A)(i).
[1913] Cal. Civ. Code § 1786.11.

recommendation that you have. Show the employer why you are qualified for the position and will be a benefit to the company.

- You can describe your hopes and dreams. Show the employer than you are in control of your life and have short-term and long-term goals. Highlight any services that you're getting to help you move on and achieve your goals. Emphasize that you would be very appreciative of the opportunity to work for them, and you will be the hardest worker they will ever have.[1914]

STEP 4: If the employer asks you (or makes comments) about incorrect or improper information in your background check report, you may want to write down anything the employer says and anything you say to the employer, so that you have a record to protect your rights later.

IF THE EMPLOYER CONDUCTS AN "IN-HOUSE" BACKGROUND CHECK

➢ WHAT AN EMPLOYER CAN FIND OUT AND CONSIDER THROUGH THEIR OWN BACKGROUND CHECK INVESTIGATION…AND THE RULES THAT LIMIT THESE SEARCHES.

KNOW YOUR RIGHTS
General Overview of the Law & your Rights

- Instead of hiring a background check company, employers can also directly access your criminal record and other public records by conducting their own "in-house" background check on you.
- Employers are NOT required to get your permission before running an in-house background check.
- You have the RIGHT to receive a COPY of any public information an employer is viewing. It is recommended that you NEVER give up this right!
- Your RAP sheet is generally confidential and NOT accessible by employers.
- Your RAP sheet is not the only place to find your criminal records, because most criminal records are public records.
- If an employer decides not to hire you based on information in a public record (including criminal court records), the employer MUST give you a COPY of the public records.
- An employer is NOT required to give you copies of any NON-public information used (such as information from talking to people who know you).

Most employers hire an outside private background check company to gather public record information on job applicants and produce a background check report (this method of running a background check is covered in the previous section, starting on PG. 564).

However, instead of hiring an outside background check company, an employer can conduct its own "in-house" (internal) background check on you. The employer can look at your public records directly, as well as interview your friends, family members, and former employers or co-workers. This "in-house" type of background check is a less common practice, but it is important for you to understand that if an employer chooses this route, there are different legal protections than when a private company runs the background check.

HOW DOES AN IN-HOUSE BACKGROUND CHECK WORK?

An in-house background check is very similar to a third-party background check by an outside background check company, except the employer alone is responsible for conducting the research, without any outside assistance.

Any employer may conduct an in-house background search in the following ways:[1915]

- Looking at public records, such as criminal convictions and civil judgments. You have a right to see any public records that the employer looked at; see PG. 579 below for more information.
- Talking to friends, neighbors, former employers, or colleagues about your character, reputation, or living situation. The questions should be related to job skills, ability to work with others, attendance, attitude, and ability to follow instructions and receive criticism.
- Verifying school records—your attendance and any degrees you earned. However, employers cannot see your transcripts (courses and grades) or other school records (e.g., disciplinary records) unless you give written consent.[1916]

[1914] Electronic communication from Mary Weaver, Executive Director, Friends Outside in Los Angeles County (Jan. 29, 2015); electronic communication from Mario Rodriguez, South Bay Workforce Investment Board (Jan. 29, 2015).
[1915] See Law Office of Melissa C. Marsh, How To Perform Employee Background Check In California, http://www.yourlegalcorner.com/articles.asp?id=51&cat=emp.

- Online searches—like searching for your name on Google, looking at your Facebook page, checking other social networking sites (Twitter, MySpace, etc.), and checking websites that post mug shots.[1917] Note: An employer cannot ask you for your social networking username or password or make you show them your online profile.[1918]

WHAT RULES GOVERN CALIFORNIA EMPLOYERS WHO RUN IN-HOUSE CHECKS?

As of January 1, 2018, most employers are not supposed to run any kind of background check until after they have extended a conditional offer of employment. However, once they do, the law is more relaxed about in-house background checks than it is about using background check companies. This means you have fewer rights when it comes to being notified, giving permission, and challenging the results of in-house background checks.However, if an employer is running his/her own in-house background check on you, they still must follow certain rules. Here is what the employer is and isn't legally required to do:

- The employer may request your permission, but it's not required. Look carefully at the job application form—the employer might ask to run an in-house background check right on the application form itself.
- The employer must give you a copy of public records used in the report—unless you check the box to waive (give up) this right. Be careful—the job application or other forms MAY have a box that you can check to give up your right to see the public records, and it's recommended that you do not check that box![1919]

KNOW YOUR RIGHTS: You have a legal right to get a copy of the public records used by the employer—don't give it up! It's recommended that you always indicate that you DO want to see the public records report, and make sure you DON'T check a box waiving (giving up) your right on the application. What to look out for:

- **The box to waive your rights will probably say something like this: "I further understand that the Company may obtain Public Records about me as part of an internal background investigation and that I may waive my right to receive a copy of such Public Records by checking the box to the right."[1920] It's recommended that you DON'T CHECK THIS BOX!**
- **This can be confusing because it is the opposite of what happens when the employer hires a private company to do the background check (in which case *it is recommended* that you check the box to request a copy of the *background check report*).[1921]**

- If you don't waive your right to view the public records gathered about you, the employer must give you a copy of the public records within 7 days after it receives them.[1922]
  - EXCEPTION: In California, if your existing or future employer wants to run an in-house background check because it suspects you of misconduct or wrongdoing, the employer is not required to reveal its findings until after the investigation is over. However, upon completion of the investigation, the employer must give you a copy of the public records unless you waived (gave up) your rights (so again, its recommended that you don't give up your right to a copy of those public records!).[1923]
- If the employer takes any adverse (negative) action against you—such as deciding not to hire you—because of information in the public records, the employer must give you a copy of the public records even if you checked the box that waived your right to see the records.[1924]
  The employer is not required to give you information it gets from *non-public* sources, such as checking your references with past employers, verifying your education records, or talking to people who know you.[1925]

[1916] 20 U.S.C. § 1232g(b)(1).
[1917] California law prohibits regular employers from using information taken from Megan's Law websites (which list people required to register under Penal Code 290) when deciding whether to hire you or when making any other employment decisions. CAL. PENAL CODE § 290.46(l). However, employers can use the same information if taken directly from public records (like court records), rather than from online websites. (In general, the only employers who can use Megan's Law website are the same employers who can see your RAP sheet.)
[1918] Cal. Lab. Code § 980.
[1919] Cal. Civ. Code § 1786.53.
[1920] See, e.g., TheBestIRS.com, Application for Employment, at 4, http://www.thebestirs.com/repository/application_2014.pdf; Living Spaces Furniture, Form 10000: Application for Employment, at 4, https://www.livingspaces.com/_Content/Ads/job_app.pdf.
[1921] CAL. CIV. CODE § 1786.16(b)(1).
[1922] CAL. CIV. CODE § 1786.53(b)(1).
[1923] CAL. CIV. CODE § 1786.53(b)(3).
[1924] CAL. CIV. CODE § 1786.53(b)(4).
[1925] CAL. CIV. CODE § 1786.53(b).

HELPFUL HINT

Important things to know about listing references and previous jobs

When you apply for a job, the new employer will often contact your former employers and other people you list as references, in order to find out if you were a good employee and to decide if they should hire you. Keep in mind that a former employer CAN say negative things about you as part of a job reference even suspected criminal activity, regardless of whether you were convicted of anything—so long as they reasonably believe the information is true and they are not simply acting out of meanness towards you.

Also, the new employer is NOT required to tell you what these people said about you, and they can say positive or negative things. It's recommended that you check in with your references BEFORE listing them, so that you know what they will say about you. (You can also ask someone you trust—a case manager, social worker, legal aid attorney, or friend—to call for you.)

Finally, the new employer will also check the dates when you worked at your previous jobs and how much you earned—so make sure you know the EXACT dates and amount you earned, or it could seem like you are being dishonest in a new job application. For more information about listing references and previous jobs on a job application, see PG. 567.

ERRORS IN EMPLOYERS' IN-HOUSE BACKGROUND CHECKS:

HOW CAN I FIND OUT IF AN EMPLOYER RELIED ON INCORRECT PUBLIC RECORDS ABOUT ME?

As noted above, if an employer runs its own background check—instead of hiring an agency to do a consumer report—it must disclose to you any public records it relies on. Specifically, the employer is required to ask you whether you want copies of these public records. If you checked "yes" when asked whether you want a copy (which it is recommended that you do), by law the employer must send you the public records in the mail and give you the opportunity to examine them thoroughly. If you find incorrect or misleading information, you can inform your employer about the false information, so he or she does not rely on it as accurate. Then you can attempt to get the errors fixed.

IF AN EMPLOYER RELIED ON INACCURATE PUBLIC RECORDS, WHAT CAN I DO?

If an employer ran his/her own background check and relied on inaccurate public records, you can:

1. Contact your employer as soon as possible, to prevent any confusion.
2. Send a written letter or e-mail ("written notice") to the employer, pointing out the incorrect or incomplete records, and request that the employer re-investigate the records.
3. Provide the employer with proof, including copies of any official documents to show why the information is incorrect, outdated, or incomplete. (For example: you could give the employer court papers showing that your convictions have been dismissed or "expunged" in some way.)[1926]
4. You can fix the errors in your public records by contacting the agency that produced the incorrect record. For example, if you need to fix incorrect information about a tax lien, contact the IRS; if you need to fix the record of a legal matter (civil or criminal case), contact the clerk at the courthouse that processed your legal case.

It is important to remember that you only have the legal right to know about public records that an employer uses. If an employer chooses to investigate your past on its own, they do NOT need to disclose any information learned through in-person interviews with your former bosses or family and friends.[1927]

CAN AN EMPLOYER ASK ME FOR OR CONSIDER MY RAP SHEET?

Usually, no. Most employers are not allowed to see or ask for your RAP sheet. Your RAP sheet is the government's official record of all your arrests, convictions, and other criminal justice contact. (Your RAP sheet is a confidential document, meaning most people and most employers are not allowed to see it or ask about it! Still, there are many other ways for employers to see your criminal record without ever looking at your official government RAP sheet—such as checking court and public records (see PG. 579) or hiring a private Background check company to do a background check (see PG. 584).

WHICH EMPLOYERS CAN SEE MY RAP SHEET?

Under California law, only certain people are allowed to see your RAP sheet for employment purposes:[1928]

[1926] See Privacy Rights Clearinghouse, Fact Sheet 16a: Employment Background Checks in California: A Focus on Accuracy, https://www.privacyrights.org/employment-background-checks-california-focus-accuracy#4.

[1927] CAL. CIV. CODE § 1786.10(b)(1).

[1928] CAL. PENAL CODE § 11105 et seq. In addition, federal law requires background checks for the following jobs, which mean that these employers will be able to see your RAP sheet: Airport security screeners; federal law enforcement officers; defense contractor; prisoner

- Most public employers can see your RAP sheet. These include all federal, state and local government agencies—including police and fire departments, the California Department of Corrections (CDCR), local Boards of Education, and the U.S. Postal Service.[1929]
- Certain private employers can see your RAP sheet if you are applying for a job that involves access to sensitive information (e.g., nuclear power plants, public utilities, private security companies, and financial institutions like banks) OR you will be working with children, elderly, disabled, or other vulnerable people.[1930]
- State occupational licensing agencies[1931] can see your RAP sheet if you apply for a professional license. For more information on licensing restrictions based on a criminal record, see PG. 600.
- Law enforcement & criminal justice agencies[1932] have full access to your RAP sheet, including juvenile cases, expunged/dismissed cases, and sometimes even sealed records!

In order to get a copy of your RAP sheet, these employers are allowed to ask for your fingerprints, including making you do Live Scan (electronic) fingerprinting.[1933]

It is illegal for a regular employer (i.e., NOT an employer listed above) to do any of the following:

- Ask you for a copy of your RAP sheet;
- Get a copy of your RAP sheet through any other means; or
- Make you prove that you do NOT have a record—for example, by requiring you to get fingerprinted, or asking you for a "notice of no record".[1934]

CAN I SEE MY OWN RAP SHEET?

Yes. You have the right to get a copy of your own RAP sheet, and to correct any errors or inaccurate information in it.[1935] To request a copy of your RAP sheet, you will need to fill out an application from the California Department of Justice (DOJ) and get fingerprinted, and then send your application and fingerprints to DOJ.[1936] You will also have to pay a fee of no more than $25.[1937] For information on how to request a copy of your RAP sheet, see the Key Terms section on PG. 570.

To correct an error in your RAP sheet, you will need to send a written letter to the DOJ to explain what the error is, and where to find evidence or proof of the correct information.[1938] For example, if your RAP sheet says that you were charged with a certain crime, but you actually plead guilty to a lesser offense, you can tell the DOJ to contact the court clerk to prove the final disposition (outcome) of your case.

Important: Even though you are allowed to get a copy of your own RAP sheet, it is illegal for you to give a copy of your RAP sheet to an employer (unless it's an employer who is already allowed to see your RAP sheet, as listed on PG. 581 above).[1939]

WHAT CAN I DO IF THE EMPLOYER DOES NOT FOLLOW ANY OF THESE RULES ON BACKGROUND CHECKS?

Employers that do not follow federal and state laws for conducting background checks on you may be liable to you and to the government for their illegal actions.

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transportation; port workers; childcare workers in federal facilities or agencies; bank employees; insurance personnel; and any personnel involved in the administration of an employee benefits plan. See 49 U.S.C § 44935(e)(2)(B); 5 U.S.C. § 7371(b); 10 U.S.C. § 2408(a); 42 U.S.C. § 13726b(b)(1); 46 U.S.C. § 70105(c); 42 U.S.C. § 13041(a); 12 U.S.C. § 1829; 18 U.S.C. § 1033(e); 29 U.S.C. § 1111(a). Note: Other people and agencies (not listed here) may be able see your RAP sheet for non-employment services—for example, public housing authorities, court investigators if you are applying to be the guardian of a child, and certain medical officials.

[1929] CAL. PENAL CODE § 11105(b).

[1930] These employers include: nuclear power plants; public utilities; agencies directly responsible for the care of children, the elderly, or the mentally or physically disabled; youth organizations; in-home supportive care agencies; security organizations; financial institutions; private schools. See CAL. PENAL CODE §§ 11105(c)(1); 11105.3, 11105.4; Cal. Fin. Code § 777.5; CAL. HEALTH & SAFETY CODE § 1596.871; CAL. VEH. CODE § 44237. However, private employers must still get authorization from the DOJ in order to view RAP sheets.

[1931] Occupational licenses are required for: accounting, acupuncture, architects, automotive repairs, barbering and cosmetology, cemetery and funeral services, contractors, court reporters, dental services, electronic and appliance repair, occupational therapy, physical therapy, real estate, security and investigative positions, structural pest control, vocational and registered nursing. For a list of the 200+ occupational licenses available in California, see http://www.labormarketinfo.edd.ca.gov/occguides/.

[1932] This includes police and sheriff departments, courts, district attorney and public defender offices, parole and probation departments, and corrections agencies.

[1933] CAL. PENAL CODE § 11105(i).

[1934] CAL. PENAL CODE §§ 11125, 11143.

[1935] CAL. PENAL CODE §§ 11105(b)(12), 11121.

[1936] CAL. PENAL CODE §§ 11122-23.

[1937] If you cannot afford the fee, you can request a fee waiver (i.e., a request to be excused from paying the fee) with your application, and provide proof of your financial situation. See CAL. PENAL CODE § 11123.

[1938] CAL. PENAL CODE § 11126.

[1939] CAL. PENAL CODE § 11142.

KNOW YOUR RIGHTS

Some ways an employer can violate background check laws:

- Ordering a background check without your permission;
- Failing to inform you of your rights in a timely way;
- Not giving you notice of an adverse action (i.e. deciding not to hire you) BEFORE taking the action against you
- Not providing you with a copy of your background check report:
  - if you requested a copy of the report when giving permission to run the background check, and/or
  - if before taking any adverse action against you.
- Asking you for a copy of your RAP sheet OR making you get fingerprinted (including Live Scan)—except in a few limited situations (e.g., public employers; occupational licensing agencies; and certain private employers if the job involves working with children, elderly, or disabled, or gives you access to sensitive information). To learn which employers can access your RAP sheet or fingerprints, see PG. 581.
- Making YOU prove that you do NOT have a record.

WHAT ARE MY OPTIONS IF I BELIEVE AN EMPLOYER HAS VIOLATED ONE OR MORE LAWS?

If you believe that an employer has violated the law for any reason, you may want to take the following steps, if possible:

- **Talk to the employer.** The first thing you can do is try to talk to the employer directly. Simply bringing the matter to the employer's attention may be all that it takes to solve the problem, especially if the employer just didn't know it was violating the law.[1940] Explain the law and give the employer the chance to change his/her behavior.
- **Report the employer to the Attorney General**. If talking to the employer directly does not work, you can report the employer to the California Attorney General. The Attorney General will then investigate your claim and try to resolve it. You can report your claim by calling the Attorney General's Office of Public Inquiry Unit at (916) 322-3360 or toll free at 1-800-952-5225. You can also send a written complaint to:

  Attorney General's Office
  California Department of Justice
  Attn: Public Inquiry Unit
  P.O. Box 944255
  Sacramento, CA 94244-2550

- **Report violations of the new Fair Chance Act to DFEH and the EEOC.** If you believe an employer has violated California's new Fair Chance Act, you can file a complaint with the *California* Department of Fair Employment and Housing (DFEH) at their website: dfeh.ca.gov. You may also file a complaint with the *federal* Equal Employment Opportunity Commission **(EEOC)** at their website: https://www.eeoc.gov/employees/charge.cfm.
- **Report the employer to the FTC.** If the employer has violated *federal* background check laws, you can report the employer directly to the Federal Trade Commission (FTC). The FTC has the authority to force employers to comply with background check laws[1941] by requesting a court order to stop the employer from violating the law, or by filing a lawsuit against the employer. To file a complaint with the FTC, call the agency directly at 1-877-382-4357.[1942]
- **Sue the employer in state or federal court.** You can file a lawsuit against an employer in either state or federal court for violating background check laws. You may be able to get a court to order the employer to stop violating the law and/or pay you money. For more information about suing the employer, talk to a lawyer first!

HELPFUL HINT:

If you want to sue the employer—BEWARE!

(1) It's expensive. Suing an employer will likely cost a LOT of time and money, and your recovery options are limited.

(2) No frivolous lawsuits are allowed. The Federal Credit Reporting Act (FCRA) includes a penalty for filing a lawsuit or related court papers that are filed in "bad faith or for purposes of harassment." You may have to pay the other side's attorney's fees, along with your own, if you file a lawsuit to harass an employer and lose.

[1940] See FED. TRADE COMM'N, Employment Background Checks, http://www.consumer.ftc.gov/articles/0269-what-know-when-you-look-job.
[1941] 15 U.S.C. § 1681s-2.
[1942] See FED. TRADE COMM'N, Employment Background Checks, http://www.consumer.ftc.gov/articles/0269-what-know-when-you-look-job.

III. YOUR RIGHTS AGAINST BACKGROUND CHECK COMPANIES

WHAT WILL I LEARN?

- **How private background check companies learn information about you**
- **What information private background check companies CAN report about you**
- **What information private background check companies CAN'T report about you**
- **What you can do if your background check report has incorrect or incomplete information**
- **What you can do if a private background check company violates your legal rights**

This section will explain your rights against private background check companies that conduct background checks for employers and report information about you to them. For information on how to get a FREE copy of your background check report, see the UNDERSTANDING & CLEANING UP YOUR RECORD CHAPTER, PG. 931.

BACKGROUND CHECK COMPANIES' ACCESS TO YOUR CRIMINAL RECORDS

HOW DO BACKGROUND CHECK COMPANIES GET INFORMATION ON ME FOR THEIR BACKGROUND CHECK REPORTS?

Background check companies will use any available source to dig up information on you.[1943] They may look at:

- Court records (any criminal or civil case you've been involved with);
- Police, correctional facility, and CDCR records (including mug shots);[1944]
- DMV driving records;
- Other public records (eviction records; tax records; property records; birth certificates; marriage and divorce records; etc.);
- Internet searches, including on Google and social networking sites (Facebook, MySpace, Twitter, etc.); other websites (including websites that post mug shot photos),[1945]
- Your previous school and work history, AND
- Talk with people who know you or have information about you (friends, neighbors, co-workers, landlords, etc.)[1946]

If the background check includes any information from public records (such as court records), the background check company must state in the background check report:

1. Where it got the information (including which court), AND
2. When the information was reported (i.e., made public).[1947]

See PG. 581 about the rules around accessing RAP sheets, which are confidential to most (not all) employers.

WHAT CAN A BACKGROUND CHECK COMPANY REPORT ABOUT ME TO AN EMPLOYER?

Unless a legal exception exists, the only information about your criminal history that background check companies are allowed to include in a background check is

- Information on convictions that are less than 7 years old, and

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[1943] There are also rules that Background check companies must follow to verify the information reported to an employer in a background check report. See 15 U.S.C. §§ 1681d, 1681g.

[1944] Police records—such as arrests and logs—are considered public records, subject to certain exemptions. See CAL. GOV'T CODE §§ 6250 et seq., 6254(f). Law enforcement agencies are permitted to provide copies of mug shots to the general public. See 86 Cal. Op. Att'y Gen. 132 (2003).

[1945] California law prohibits most employers from using information taken from Megan's Law websites (which list people required to register under Penal Code 290) when deciding whether to hire you or making other employment decisions. CAL. PENAL CODE § 290.46(l). However, private Background check companies ARE allowed to publish information from Megan's Law websites in your background check report. Mendoza v. ADP Screening & Selection Svcs., Inc., 182 Cal. App. 4th 1644, 1650-59 (2010) (holding that private Background check company did not violate statute by publishing information from Megan's Law website, because Background check company did not "use" information for employment purposes, but rather compiled and republished information for employer to "use" in employment decisions). In addition, employers can use the same information if taken directly from public records (like court records), rather than from online websites.

[1946] There are special rules that apply to background check information obtained through personal interviews. Both California and federal laws require Background check companies that get negative background check information through personal interviews to (1) reasonably verify that the information is accurate, or (2) only interview people who are "the best possible source of the information." CAL. CIV. CODE § 1786.18(d); 15 U.S.C. § 1681d(d)(4). Federal law also has additional notice requirements for background check reports that include information from personal interviews. 15 U.S.C. § 1681d(a).

[1947] CAL. CIV. CODE § 1786.28(a).

- Arrests and formal charges filed against you if a judgment is still pending.[1948]

For further information on what can be included in your background check, see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931.

WHAT CAN A BACKGROUND CHECK COMPANY *NOT* REPORT ABOUT ME TO AN EMPLOYER?

Although some background check companies brag that they can "find out anything about anyone," both federal and California laws impose restrictions on what information they are allowed to put in your background check, especially when it relates to your criminal history.

For example, Background check companies are NOT allowed to include information about criminal convictions that are more than seven years old,[1949] convictions that were pardoned, dismissed or sealed, arrest records, or referrals to diversion programs.

KNOW YOUR RIGHTS: Background check companies MUST verify certain information to make sure it is accurate! If a Background check company includes information that is a matter of public record in your background check (such as information about your convictions), it must have verified the information within the previous 30 days before issuing its report. Additionally, a Background check company cannot include negative information about you that it got from talking to a person who knows you (for example, a former employer or a neighbor) UNLESS it has tried to confirm that information from another source, or has determined that that person is the best (or only) source of the information.[1950]

WHAT CAN I DO IF I THINK MY BACKGROUND CHECK REPORT IS INCOMPLETE OR INCORRECT?

You can challenge it! If you dispute Information in your background check, a background check company must investigate your claim.

If you notify a background check company in writing that information contained in your background check is incomplete, incorrect, or illegally included, the agency must investigate your claim.[1951] The agency has 30 days from the day it receives your challenge to begin its investigation. Once the investigation is complete, the agency must notify you of the results within 5 days.

If the agency finds that the original information was inaccurate, incomplete, or illegally included, it MUST delete or correct the information AND notify you of the correction.[1952]

IMPORTANT: The background check company MUST send the employer a NOTICE OF the CORRECTION if you ask. If there was inaccurate, incomplete, or illegal information in your background check report, you have the right to make the background check company send a notice and statement of correction to ANY employer who received a copy of your background check in the past 2 years (or anyone else who received a copy of your background check in the past year).

For more information and instructions on how to dispute or correct information in your background check, go to the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

WHEN HAS A BACKGROUND CHECK COMPANY VIOLATED THE LAW?

If a private background check company does any of the following actions, it has broken the law and violated your legal rights:

- Reporting information that is not legally allowed to show up in your background check report;[1953]
- Reporting inaccurate or out-of-date information, without first verifying that the information is correct and up-to-date beforehand;[1954]
- Failing to report the final disposition of arrests or charges that did not result in a conviction (e.g., you were never charged, or the charges were dismissed); convictions that have been dismissed under Cal. Penal Code § 1203.4; or charges where you plead guilty to a lesser

HELPFUL HINT:

If you believe that a background check company violated your rights, talk to a trusted person or lawyer who can help you protect your rights! Here are some good people to ask and/or good places to start:

- A case manager at a local reentry program;
- A counselor or case manager at a local workforce development center;
- A social worker;
- A case manager or counselor at your transitional housing program;
- A legal aid attorney (to find a local legal aid attorney, you can call 2-1-1, contact the local bar association, or look on the State Bar website at http://lawhelpca.org/find-legal-help); or
- Your probation officer or parole agent (if you have a good relationship).

[1948] CAL. CIV. CODE § 1786.18.
[1949] CAL. CIV. CODE § 1786.18.
[1950] CAL. CIV. CODE § 1786.18.
[1951] CAL. CIV. CODE § 1786.24. (Unless your claim does not include enough information to allow the agency to properly identify and investigate the information in dispute); see 50 U.S.C. § 1681i.
[1952] CAL. CIV. CODE § 1786.24.
[1953] CAL. CIV. CODE §§ 1786.12(f), 1786.18; see also § 1786.20.
[1954] CAL. CIV. CODE §§ 1786.18(c), 1786.28, 1786.30.



offense;[1955]

- Giving a copy of your background check report to someone who is not authorized to receive a copy—including an employer who has not promised to comply with legal requirements of notice and permission;[1956]
- Refusing to investigate or correct mistakes in your background check;[1957]
- Refusing to give you a copy of the report provided to your employer;[1958]
- Refusing to let you see the information that the Background check company used to conduct your background check; report;[1959]
- Reporting information on someone who has a similar name.[1960]

WHAT CAN I DO IF A BACKGROUND CHECK COMPANY HAS BROKEN THE LAW?

Generally, if you believe that a background check company has violated the law in conducting a background check on you, you can take the following actions:

Contact the background check company[1961]—First, you can contact the background check company directly to demand that it complies with the law. This is especially important because most violations by background check companies involve the nature of the information that the agency has provided. Contacting the agency directly is the quickest and most efficient way to clear harmful information from your background check.

Report the background check company to the Attorney General—If contacting the background check company directly does not solve the problem, you can report the agency to the California Attorney General. The Attorney General will investigate your claim and try to resolve it. You can report your claim by calling the Attorney General's Office of Public Inquiry Unit at (916) 322-3360 or toll free at 1-800-952-5225. You can also send a written complaint to: Attorney General's Office, California Department of Justice, Attn: Public Inquiry Unit, P.O. Box 944255, Sacramento, CA 94244-2550

Report the background check company to the FTC—If the background check company has violated federal background check laws, you can report the background check company directly to the Federal Trade Commission (FTC). The FTC has the authority to force background check companies to comply with background check laws[1962] by requesting a court order to stop the agency from violating the law, or by filing a lawsuit against the agency. To file a complaint with the FTC, call the agency directly at 1-877-382-4357.[1963]

Sue the background check company in state or federal court[1964]—You can file a lawsuit against the background check company in either state or federal court for violating background check laws. You may be able to get a court to order the background check company to stop violating the law and/or pay you money.

KNOW YOUR RIGHTS

Summary of your rights against private background check companies

- Background check companies CAN report information about convictions; pending arrests or criminal charges; lawsuits and civil (money) judgments against you; evictions; DMV driving records; and other personal information from within the past 7 years.
- Background check companies CANNOT report information about convictions; lawsuits; unpaid judgments; tax liens; or any other negative information that is more than 7 years old.
- Background check companies MUST check that information from public records is accurate and up-to-date.
- Background check companies MUST check that information they get from other people is accurate or from the best possible source.
- Background check companies MUST allow you to see the information they collect about you when conducting your background check.

[1955] Cal. Civ. Code § 1786.28.
[1956] CAL. CIV. CODE §§ 1786.12, 1786.16(a)(4).
[1957] Cal. Civ. Code § 1786.24.
[1958] Cal. Civ. Code § 1786.11.
[1959] CAL. CIV. CODE §§ 1786.10, 1786.22.
[1960] See, e.g., Jones v. Halstead Mgmt. Co., No. 14-CV-3125 (VEC) (order denying motion to dismiss, Jan. 27, 2015) (SDNY).
[1961] See FED. TRADE COMM'N, Consumer Reports: What Information Furnishers Need To Know (2013), https://www.ftc.gov/system/files/documents/plain-language/bus33-consumer-reports-what-information-furnishers-need-know_0.pdf
[1962] 15 U.S.C. § 1681s-2.
[1963] FED. TRADE COMM'N, Employment Background Checks, http://www.consumer.ftc.gov/articles/0157-employment-background-checks
[1964] FED. TRADE COMM'N, Employment Background Checks, http://www.consumer.ftc.gov/articles/0157-employment-background-checks.

IV. HOW EMPLOYERS CAN (& CAN'T) USE YOUR CRIMINAL HISTORY

WHAT WILL I LEARN?

- **How employers CAN and CAN'T discriminate against you based on your criminal record**
- **What employers CAN, CAN'T, and SHOULD consider about your criminal record**
- **What laws protect people with criminal records against discrimination**
- **Different types of illegal discrimination related to your criminal record**
- **What you can do if an employer illegally discriminates against you, and how to file a discrimination complaint**
- **The different government civil rights agencies that protect your rights against illegal discrimination**
- **What kind of remedies you may be able to get if an employer illegally discriminates against you**
- **How to locate an attorney, government civil agency, or non-profit organization to help you if you think an employer illegally discriminated against you**

This section will explain the laws on how employers can (and can't) use your criminal history to make employment decisions, and what you can do if you think an employer has illegally discriminated against you.

In general, the law says that employers should only consider your criminal history if it directly relates to your ability to do the job, and cannot use your criminal record to discriminate based on your race, color, religion, sex, or national origin. However, there is often a gap between what the law says on paper—about your rights as a job applicant or employee, and about the employer's duties to treat you fairly—and how employers act in real life. It can also be difficult to *prove* that an employer has illegally discriminated against you, which can make it difficult to enforce your rights. But it is IMPORTANT for you to know what your rights are on paper, and know how to spot illegal discrimination and protect yourself from illegal practices as much as possible.

LEGAL AND ILLEGAL EMPLOYMENT DISCRIMINATION

KNOW YOUR RIGHTS:
General overview of the law & your rights against illegal discrimination.

- An employer CAN run a background check on you.
- An employer CAN consider some parts of your criminal history and use it to deny you a job—so long as the denial would be allowed under the law.
- An employer CANNOT weigh your conviction history more heavily than another candidate's similar conviction history because of your race, color, religion, sex, or national origin.
- An employer CANNOT deny employment to everyone with a criminal history.
- An employer, however, CAN justify a hiring policy against people with criminal histories if it shows the policy is "job related" and "consistent with business necessity."[1965]
- An employer SHOULD evaluate your individual circumstances and consider:
- Facts and circumstances surrounding your offense;
- The number of convictions in your history;
- Your age at the time of conviction / release;
- If you have held the same type of job, post-conviction, without incidents;
- Your employment history before and after conviction;
- Your rehabilitation efforts;
- Employment or character references and any other information pointing to your fitness for the position; and
- Whether you are bonded.[1966]

[1965] Hiring policies excluding people based on criminal history must consider at least three factors in order to be "job related" and "consistent with business necessity:" (1) the nature and gravity of the offense; (2) how much time has passed; and (3) the nature of the job sought. See Green v. Missouri Pac. R.R., 549 F.2d 1158 (8th Cir. 1977).
[1966] 42 U.S.C. § 2000e et seq. See also EEOC, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 No. 915.002 (Apr. 25, 2012) (herein EEOC Enforcement Guidance).

- An employer SHOULD give you notice that you were denied employment because of your criminal history, and also give you a chance to show that it should make an exception for you based on your individual circumstances.

CAN EMPLOYERS LEGALLY DISCRIMINATE AGAINST ME (SUCH AS NOT HIRING OR FIRING ME) JUST BECAUSE OF MY CRIMINAL RECORD?

In a few situations, yes, but usually, NO. There are some laws that protect applicants from this type of employment discrimination. While employers can legally consider convictions that might impact your ability to do the duties of the job safely and adequately, there are civil rights laws that make it illegal for employers to treat you differently from other applicants or employees based on your race, sex, religion, national origin, and other protected characteristics (called "protected classes").

While it is sometimes legal for an employer to not hire or fire you because of your criminal record, an employer's hiring policy is more likely to be illegal if they have a **complete ban (called a "blanket ban")** on job applicants with records. By law, the correct and legal practice is for the employer to consider **the individual circumstances of the person applying for the job** and **the job itself**.[1967]

In most cases, it is illegal for an employer to have a complete or "blanket" ban on applicants with criminal records because these kinds of bans cause greater harm to Black and Latino applicants ("protected classes") under a federal civil rights law known as "Title VII" (this law is explained in more detail in Appendix J, PG. 635)[1968] Because Blacks and Latinos are incarcerated at dramatically higher rates than people of other races in the United States,[1969] excluding applicants with criminal records is likely to have a greater impact on these protected classes. By law then, a **"blanket ban"** is only legal if the employer can show that the ban is **"job related"** and **"consistent with business necessity"**—meaning that your conviction affects your ability to do specific duties of the job, and the ban is necessary for the good of the business.[1970]

If an employer chooses not to hire individuals based solely on their records, the employer must be able to show that that this is necessary to ensure safe and efficient job performance for the position in question.[1971] In doing so, and employer must show that they evaluated the applicant's ability to perform the duties of the job and whether any past conviction(s) would pose an unreasonable risk of harm, based on the specific requirements and responsibilities of the position.[1972] Of course, these laws still give the employer a lot of discretion and room to discriminate, but they require the employer to do individualized analysis of each job applicant.

HELPFUL HINT
What does a complete ban look like?

Sometimes the employer's job posting, employment application, written policy, or some other part of the application process will show that the employer does not hire or employ people with criminal records. The policy may apply to all convictions, certain types of convictions (e.g., all felonies, or all theft offenses), and/or for convictions that occurred during a certain period of time (e.g., within the past 7 years). Or the policy may not be written down anywhere, but the employer says that they do not hire people with (certain) criminal records, or the employer's hiring practices over time show that they always reject applicants with (certain) conviction records. These are all examples of complete bans—and are likely illegal because of their effect on minority, protected groups.

[1967] EEOC Enforcement Guidance at § V(B)(9). Note: Employers are not necessarily required to give individualized consideration in all circumstances, but doing so will allow them to consider more complete information about the applicant, and will help them to show that the hiring policy—including the rejections of specific job applicants—is "job related and consistent with business necessity."
[1968] Green v. Missouri Pac. R.R., 523 F.2d 1290, 1298 (8th Cir. 1975).
[1969] EEOC Enforcement Guidance at § V(A)(2).
[1970] EEOC Enforcement Guidance at § V(B); see, e.g., El v. Se. Penn. Transp. Auth. (SEPTA), 479 F.3d 232, 238 (3d Cir. 2007); Green v. Missouri Pac. R.R., 523 F.2d 1290, 1295-99 (8th Cir. 1975).
[1971] Dothard v. Rawlinson, 433 U.S. 321, 331 n.14 (1977).
[1972] El v. Se. Penn. Transp. Auth. (SEPTA), 479 F.3d 232, 244-48 (3d Cir. 2007).

IMPORTANT: IF YOU SEE SOMETHING, YOU CAN SAY SOMETHING!

This section explains the civil rights laws that protect people with criminal records against discrimination by employers. However, there is often a gap between what the law says employers SHOULD do, and what employers ACTUALLY do. The courts are still figuring out how civil rights laws protect people with criminal records in different situations, because many of the cases on this subject are new. For this reason, it's important that you talk to a lawyer and/or contact the appropriate government-run civil rights protection agency if you think an employer has violated your rights. You won't just be protecting your own rights—you'll be standing up for the rights of all people with criminal records to be free from employment discrimination!

WHAT LAWS PROTECT APPLICANTS FROM DISCRIMINATION BASED ON THEIR CRIMINAL RECORD?

The laws that give applicants with records some protection are (1) the federal civil rights law called "Title VII," (2) the federal Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance on Title VII,[1973] and (3) California state laws that are very similar to these federal laws.[1974] Learn more about these laws in the Appendix J, PG. 635 and Appendix K, PG. 636.

Under these civil rights laws, an employer CANNOT have a **"blanket ban"** policy that permanently excludes anyone and everyone with a criminal record. Instead, the employer's hiring policy should only exclude convictions that are "job related for the position" and "consistent with business necessity." This means that the employer should look at a number of factors when considering the convictions, such as:

1. **The nature and seriousness of the conviction, AND**
2. **How much time has passed since the conviction, conduct, or completion of the sentence, AND**
3. **The nature of the job you're seeking—including the specific duties and responsibilities of the job.**[1975]

For a more detailed description of how employers should look at these factors, keep reading the rules on the next page.

[1973] See EEOC Guidance. See also EEOC, Questions and Answers About Race and Color Discrimination in Employment, (EEOC Guidance May 16, 2006).
[1974] See CAL. GOV'T CODE § 12900 et seq.
[1975] EEOC Enforcement Guidance at § V(B)(6)-(8). The employer should develop a targeted screening process that considers at least the following 3 factors: the nature and seriousness of the crime; time elapsed since the crime; and the nature of the job sought (nature of the duties and essential functions, circumstances under which the job is performed such as level of supervision and amount of authority, and the environment in which the job is performed considering location and context).

KNOW YOUR RIGHTS:
What is a protected class?

"Protected classes" are groups of people that have historically experienced discrimination, and therefore are specifically protected by civil rights and anti-discrimination laws—for example, African Americans, women, immigrants, LGBTQI individuals, and people with disabilities. The specific characteristic that makes someone part of a protected class—for example, their race, sex, national origin, sexual orientation or gender identity, and/or disability status.

Under the law, it is illegal to discriminate against someone based on a protected characteristic. However, it is generally NOT illegal to discriminate against someone for some other reason that is NOT protected (for example, the color of their shirt).

IMPORTANT: Having a criminal record is NOT considered a protected class under the law. However, discriminating against people with criminal records can still be illegal in many situations because it has a much greater effect on Blacks and Latinos. Also, it is illegal for an employer to treat people with similar records in a different manner, based on any protected characteristics. For more information about different kinds of discrimination based on criminal record, see PG. 592 below.

What groups are "protected classes" under the law? Under federal law, it is illegal to discriminate against someone for any of the following reasons:

- Race
- Color
- National origin
- Religion
- Age (40 and over)
- Sex
- Pregnancy
- Disability
- Genetic information

Under California law, it is illegal to discriminate against someone for any of the following reasons:

- Race
- Color
- National origin or ancestry*
- Religion
- Sex
- Pregnancy
- Family or marital status*
- Sexual orientation*
- Gender identity*
- Disability or medical condition*
- Genetic information
- Military or veteran status*
- Age (40 and over)

In other words, California law protects all of the same characteristics as federal law, plus additional characteristics (marked with a *star*) that are NOT protected by federal law.

CAN AN EMPLOYER HAVE A POLICY THAT EXCLUDES APPLICANTS WHO COMMITTED CERTAIN SPECIFIC CRIMES?

Maybe. If an employment policy excludes ALL applicants who committed a certain crime (for example, theft), the employer must show that anyone who committed that crime can't do the job properly or creates too much risk of harm in the position.[1976]

WHAT CAN AN EMPLOYER CONSIDER ABOUT MY CRIMINAL HISTORY?

Under the law, an employer SHOULD evaluate you as an individual, and should consider the circumstances of your criminal history, as well as any progress that you have made since the offense.

To conduct an individual assessment of you as a job applicant/ employee, the employer should abide by these rules: [1977]

1. ***Never make a permanent exclusion or "blanket ban" of people with criminal records***. See PG. 589 above for more information on blanket bans.

[1976] The employer should validate the exclusion for the position in light of the Uniform Guidelines on Employee Selection Procedures. In other words, it should show data or analysis about criminal conduct as related to subsequent work performance or behaviors that supports the exclusion. EEOC Enforcement Guidance at § V(B)(5); see also El v. Se. Penn. Transp. Auth. (SEPTA), 479 F.3d 232, 244-48 (3d Cir. 2007) (stating that employer's hiring policy for applicants with criminal convictions must "accurately distinguish between applicants that pose an unacceptable level of risk and those that do not").

[1977] 42 U.S.C. § 2000e-2; EEOC Guidance at 15; see also Green v. Missouri Pac. R.R., 549 F.2d 1158 (8th Cir. 1975). The employer should develop a targeted screening process that considers at least the following 3 factors: the nature and seriousness of the crime; time elapsed since the crime; and the nature of the job sought (nature of the duties and essential functions, circumstances under which the job is performed such as level of supervision and amount of authority, and the environment in which the job is performed considering location and context).

2. ***Consider the following 3 factors to determine whether a specific conviction may be relevant to the job:***

- **The nature and seriousness of the conviction.**
  - The "nature" of the crime includes things like: the harm caused by the crime, and the legal elements of a crime—such as violence, theft, or fraud. The "seriousness" of the crime would include, for example, consideration that misdemeanors may be less severe than felonies.
- **How much time has passed since the conviction, conduct, or completion of the sentence.**
  - Again, there should be no permanent exclusions of people with criminal records.
  - The employer should understand that the risk of recidivism decreases over time.
- **The nature of the job that you are seeking—including the specific duties and responsibilities of the job.**
  - The job title and nature of duties (e.g., data entry, lifting boxes);
  - The job's essential or most important functions;
  - The circumstances under which the job is performed (e.g., the level of supervision, oversight, and the amount of agency the employee has);
  - The environment in which the job's duties are performed (e.g., outside, in a warehouse, or in a private home).

3. ***Look at individual factors like:***

- The total number of convictions on your record;
- Your age at the time of conviction or release from prison;
- Evidence that you did the same type of work after your conviction (with the same or a different employer) with no known incidents of criminal conduct;
- The length and consistency of your employment history before and after the offense or conduct;
- Evidence of your rehabilitation and efforts to change—for example, education/training;
- Mistakes in your criminal record;
- Mitigating facts or circumstances surrounding the offense or conduct (mitigating facts are things that show your crime should be considered in a less harsh light; for example, if you were the victim of abuse or coercion at the time of the offense);
- Personal and professional references who can talk about your employment record and character, and any other information regarding your fitness for a particular job; and
- Whether you are bonded under a federal, state, or local bonding program.[1978]

HOW CAN I IMPROVE MY CHANCES OF GETTING HIRED IF THE EMPLOYER SEES MY CRIMINAL RECORD?

When applying for jobs, keep these individual factors in mind. Highlight the positive elements in your application and history so that employers are more likely to consider and weigh them favorably. Don't lie about your background, but you can explain how it has made you a better person and worker. For more information about how to talk about your record, see Appendix D, PG. 622, "How to Present your Best Self: Tips for Success in Job Interview."

WHAT CAN I DO IF I BELIEVE THAT AN EMPLOYER HAS A COMPLETE BAN ON HIRING PEOPLE WITH RECORDS?

If you believe that there is an illegal ban in place, it is important for you to gather all of your job application materials and other (detailed) evidence that supports your claim. You can also contact an employment attorney or agency that protects employees from discrimination. See the "Helpful Hint" box on PG. 599 above for how to contact one. The following evidence can help you to show that the employer has a policy of rejecting applicants with (certain) criminal records:

- A job posting that says the employer will not hire people with (certain) criminal records;
- A copy of the job application that says the employer will not hire people with (certain) criminal records;
- A copy of the employer's written policy, employee handbook, or other document saying the employer will not hire people with (certain) criminal records;
- Information about other applicants whom the employer has hired or rejected for having a criminal record;
- If the employer has a reputation in the community for not hiring people with (certain) criminal records; and/or

[1978] EEOC Enforcement Guidance at § V(B)(9).

- Comments or statements by the employer at any time about not hiring people with (certain) criminal records—make sure you write those down! Try to write down exactly what the employer said, when, to whom the employer was speaking to, what the circumstances were, and who else was there.[1979]

REAL-LIFE SITUATIONS—EXAMPLES OF DISCRIMINATION BECAUSE OF CRIMINAL RECORD & RACE (OR OTHER PROTECTED CHARACTERISTIC)

IMPORTANT: In real life, discrimination based on your criminal record doesn't always happen alone—it may also happen in combination with racial discrimination or other illegal discrimination based on your protected class. For example, if an employer decides not to hire you due to your criminal record AND your race, this would be ILLEGAL racial discrimination.

CAN AN EMPLOYER DISCRIMINATE AGAINST ME BECAUSE OF MY RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, OR NATIONAL ORIGIN?

No. Sometimes there is racism (or other discrimination against a protected class) in addition to discrimination based on criminal history. This happens when an employer weighs your criminal history more heavily or negatively *because* of your race, color, religion, sex, sexual orientation, national origin, or other protected class. This is absolutely illegal, but needs to be proven. The next question will explain what to do and how you may be able to prove that an employer used your criminal record to discriminate against you based on your race, color, religion, sex, sexual orientation, national origin, or other protected class.

Remember: Race, color, religion, sex, sexual orientation, and national origin are all protected classes—meaning they are illegal reasons to discriminate against someone. For more information, and a complete list of all protected classes, see PG. 590 above.

WHAT CAN I DO IF I THINK AN EMPLOYER HAS TREATED MY CRIMINAL HISTORY MORE HARSHLY THAN OTHER JOB APPLICANTS BECAUSE OF MY RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, OR NATIONAL ORIGIN?

If you believe that your criminal history was treated more harshly than someone else's similar criminal history because of your race, color, religion, sex, sexual orientation, nation origin, etc., it is important for you to gather all the evidence that supports your claim, especially any information showing that the employer treated you differently than someone else with a similar record.

You can also contact an employment attorney or organization that specializes in protecting employees from discrimination. See PG. 599 for how to contact someone.

The following evidence helps show an employer discriminated against you by treating your criminal record differently because of your race, sex, religion, national origin, or other protected characteristic:

- The employer hired other job applicants or employees with similar criminal records and similar job qualifications;
- The employer did not require background checks for other job applicants for the same position;
- The employer gave other job applicants a chance to explain their criminal record;
- The employer made comments showing bias or stereotypes about you, based on your race, sex, religion, or national origin, including group stereotypes about crime; or
- The only major difference between you and other applicants or employees who were treated more favorably than you (such as job applicants chosen over you, former employees, and employees in positions similar to the position you applied for), is your race, sex, religion, national origin, or other protected characteristic;
- Information about the employer's overall workforce (i.e., other employees), job applicants, application procedures, and background check data, shows that the employer treated your criminal history more negatively than other applicants/employees of other races, sex, religions, or national origin; and/or
- Any other information showing that the employer treated you differently than other job applicants with similar qualifications and a similar record, because of your race, sex, religion, or national origin.[1980]

[1979] EEOC Enforcement Guidance at § V(A).
[1980] EEOC Enforcement Guidance at § IV.

I WAS FIRED OR DENIED EMPLOYMENT BECAUSE OF MY VISIBLE TATTOOS. DO I HAVE ANY LEGAL PROTECTIONS AGAINST DISCRIMINATION?

Most likely, no. There are no legal protections from employment discrimination based on an employee's visible tattoos. Both California state and federal employment discrimination laws specify certain "protected classes" such as gender, religion, race, and sexual orientation. Neither California nor federal law, however, protect against discrimination based on an applicant's visible tattoos. Therefore, employers can legally deny you employment based on your tattoos.

HOWEVER, there have been cases of people bringing employment discrimination claims involving tattoos, when they are protected by one of the specified classes. For example, courts have found protections for religious tattoos, as "religion" is a protected class.[1981] Plaintiffs have also been successful bringing claims based on gender discrimination, when employers take adverse action against men with tattoos, but not women.[1982]

A SUMMARY OF YOUR RIGHTS

- An employer CANNOT discriminate against you based on your race, color, religion, sex, national origin, or any other protected characteristic.
- An employer CANNOT weigh your criminal history more heavily than another applicant's similar criminal history because of your race, color, religion, sex, national origin, or any other protected characteristic.
- An employer CANNOT deny employment to everyone with a criminal history.
- An employer, however, CAN justify a hiring policy against people with criminal histories if it shows the policy is "job related" and "consistent with business necessity."[1983]
- An employer SHOULD evaluate your individual circumstances and consider:
    - Facts and circumstances surrounding your offense;
    - The number of convictions in your history;
    - Your age at the time of conviction / release;
    - If you have held the same type of job, post-conviction, without incidents;
    - Your employment history before and after conviction;
    - Your rehabilitation efforts;
    - Employment or character references; and
    - Whether you are bonded.[1984]
- An employer SHOULD give you notice that you were denied employment because of your criminal history, and give you a chance to show that it should make an exception for you based on your individual circumstances.

WHAT CAN I DO IF I FEEL I WAS ILLEGALLY DISCRIMINATED AGAINST BY AN EMPLOYER?

If you think that an employer has illegally discriminated against you either because of a complete ban against people with criminal records or by treating your record negatively because of your race, sex, religion, or national origin, etc., you can report the employer to the EEOC or DFEH. (The EEOC and DFEH are the government agencies responsible for enforcing certain civil rights and anti-discrimination laws.)

You may want to talk to a legal aid lawyer or plaintiff's-side employment layer about your situation. You have to file a complaint with the EEOC or DFEH before you are allowed to file a lawsuit in court against the employer, and a lawyer can help you with this process. It is recommended you contact the EEOC or DFEH immediately, and reach out to lawyers who can advise you. For more information about finding a lawyer, see PG. 599. For more information about filing a lawsuit, see PG. 594.

HOW MUCH TIME DO I HAVE TO FILE A DISCRIMINATION COMPLAINT AGAINST AN EMPLOYER?

In California, you only have 300 days (10 months) to report employment discrimination to the EEOC, or 1 year to report discrimination to the DFEH.[1985]

[1981] See EEOC v. Red Robin Gourmet Burgers, Inc. (W.D. Wash. Aug 29, 2005)
[1982] See Hub Folding Box Co. v. Mass. Comm'n Against Discrim., 52 Mass. App. Ct. 1104 (2001).
[1983] Hiring policies excluding people based on criminal history must consider at least three factors in order to be "job related" and "consistent with business necessity:" (1) the nature and gravity of the offense; (2) how much time has passed; and (3) the nature of the job sought. Green v. Missouri Pac. R.R., 549 F.2d 1158 (8th Cir. 1977).
[1984] 42 U.S.C. § 2000e et seq; see also EEOC, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 No. 915.002) (Apr. 25, 2012) (herein EEOC Enforcement Guidance).
[1985] The EEOC usually requires discrimination complaints to be filed within 180 days from when the discrimination occurred. However, in California, you may have up to 300 days to file an EEOC complaint, because California law also covers the same types of discrimination. 42 U.S.C. § 2000e-5 (general time limits on filing), 2000e-5(e) (time limits on filing where complainant has initially instituted proceedings with authorized state or local agency); see also Green v. Los Angeles Cnty. Superintendent of Sch., 883 F.2d 1472, 1473 (9th Cir. 1989); Saulsbury v. Wismer & Becker, Inc., 644 F.2d 1251 (9th Cir. 1980). You must file a DFEH complaint within 1 year from when the discrimination occurred. CAL. GOV'T CODE § 12960.

How to File a Complaint with the federal EEOC:

If you decide to file a claim, you can contact the EEOC in person or by mail to report the employment discrimination and file a complaint.

- **In person:** The EEOC has local offices in the following California cities: Los Angeles, Fresno, San Diego, San Francisco, Oakland, and San Jose. Contact the local EEOC office near you to report discrimination and file a complaint. (See Appendix L, PG. 637 for local EEOC office addresses and phone numbers.) You can also call 1-800-669-4000 to give basic information about your situation, and then a local office will follow up with you about filing a complaint. (Important: You cannot actually file an EEOC complaint by phone, but you can get the process started.)
- **By Mail:** You can mail a written complaint to any local EEOC office. For instructions on how to write a complaint, see PG. 594, below. For a list of local EEOC offices and addresses, see Appendix L, PG. 637.

How to File a Complaint with the California DFEH:

You can contact the DFEH by mail, by phone, or online to report the discrimination and file a "Pre-Complaint Inquiry":

- **By Mail:** Fill out the Pre-Complaint Inquiry form and mail it to any local DFEH office. For a list of local DFEH offices and addresses, see Appendix M, PG. 638. To learn how to obtain the Pre-Complaint Inquiry form, see Appendix N, PG. 639.[1986]
- **By Phone:** Call the DFEH Communication Center at (800) 884-1684. If you have a hearing impairment, please call 800-884-1684 or TTY at (800) 700-2320 for service.
- **Online:** Use the DFEH's online system, available at http://esq5.houdiniesq.com/dfeh/intake/, or email the Pre-Complaint Inquiry form to contact.center@dfeh.ca.gov.

Once you file a complaint with the EEOC and/or the DFEH, you have two options:

1. You can ask the EEOC or DFEH to investigate and resolve the discrimination claim, including filing a lawsuit in court on your behalf; OR
2. You can file a lawsuit directly in court on your own, but you must ask the EEOC or DFEH to give you a "Right to Sue" letter. (Note: You cannot go directly to court—the law requires you to go through the DFEH or EEOC first.)[1987]

For more information on how to file a complaint with the EEOC or the DFEH and a summary of the complaint process, see PG. 594 below. For a complete description of the EEOC and DFEH complaint processes, see Appendix O, PG. 640 (EEOC Complaint Process), and Appendix P, PG. 642 (DFEH Complaint Process). For more information about the process of filing a lawsuit in court, see PG. 598.

WHAT RELIEF COULD I GET IF AN EMPLOYER ILLEGALLY DISCRIMINATED AGAINST ME?

The types of remedies that might be available to you will depend upon what the employer did (the "discriminatory action") and how it affected you. For example, if an employer refused to hire you for an illegally discriminatory reason, the remedy may include hiring you for the job or giving you any back pay or benefits that you would have received if you had been hired. If you filed a lawsuit in court, you may also get back any money you spent on attorney's fees, expert witness fees, and court costs.[1988]

You also may be awarded "compensatory" or "punitive damages." For intentional cases of discrimination based on a person's race, color, national origin, sex (including pregnancy), religion, disability, or genetic information, compensatory and punitive damages may be awarded. Note: punitive and compensatory damages are rare, and should never be expected.

- Compensatory damages repay victims for out-of-pocket expenses caused by the discrimination (such as costs of continuing with a job search) and compensate them for any emotional harm suffered because of the discrimination.
- Punitive damages may be awarded to punish an employer who has committed an especially hateful or careless act of discrimination.

In addition, the employer may be required to stop any discriminatory practices immediately and take steps to make sure not to discriminate again in the future. For

LIMITS ON COMPENSATORY & PUNITIVE DAMAGES:

There are limits on the amount of compensatory and punitive damages a person can recover. These limits depend on the size of the employer:

- For employers with 15-100 employees, the limit is $50,000.
- For employers with 101-200 employees, the limit is $100,000.
- For employers with 201-500 employees, the limit is $200,000.
- For employers with more than 500 employees, the limit is $300,000.

42 U.S.C. § 1981a(b)(3)

[1986] The form is also available online at http://www.dfeh.ca.gov/res/docs/PCI/Pre Complaint Inquiry—Employment.pdf.
[1987] Cal. Gov't Code § 12965(b).
[1988] See EEOC, Remedies for Employment Discrimination, http://www.eeoc.gov/employees/remedies.cfm.

example, if the employer had a blanket ban on hiring people with criminal records, they would have to change this policy and remove any language on the job application that says people with convictions will not be hired.

WHAT IS THE DIFFERENCE BETWEEN FILING AN EMPLOYMENT DISCRIMINATION COMPLAINT WITH THE EEOC AND DFEH?

The EEOC is the federal civil rights agency that enforces federal civil rights law. The DFEH is the state civil rights agency that enforces California civil rights law.

Federal and state civil rights laws are very similar. This means that in most cases, you can file a discrimination complaint with either the EEOC or the DFEH. Once you file a complaint with one agency, that agency will investigate your complaint and will ALSO send a copy of your complaint to the other agency.[1989]

This is called "dual filing," but it is NOT something that you need to worry or about. Once you file a complaint with either the EEOC or DFEH, the agencies will take care of filing it with the other agency on its own, and you will not need to do anything else. However, there are certain situations where it is better to file with one agency than the other.

[1989] EEOC, Fair Employment Practices Agencies (FEPAs) and Dual Filing, http://www.eeoc.gov/employees/fepa.cfm; see also DFEH, Employment Complaint Process, http://www.dfeh.ca.gov/Complaints_eCompProc.htm.

THIS CHART EXPLAINS SOME SITUATIONS WHERE IT IS BE BETTER TO FILE WITH ONE AGENCY (USUALLY THE DFEH).[1990]

SITUATION	EXPLANATION	BETTER AGENCY
How many employees work for the employer?	EEOC only accepts complaints if the employer has 15 or more employees.[1991] DFEH accepts complaints if the employer has 5 or more employees.[1992]	If the employer has 15 or more employees, you can file with either EEOC or DFEH. If employer has fewer than 15 (but at least 5) employees, you should file with the DFEH.
How long ago did the discrimination occur?	You have 300 days (approximately 10 months) to file a complaint with EEOC.[1993] You have 1 year to file a complaint with DFEH.[1994]	If it has been less than 300 days since the discrimination occurred, you can file with either EEOC or DFEH. If it has been more than 300 days (but less than 1 year) since the discrimination occurred, you should file with the DFEH.
What type of discrimination occurred?	In most cases, EEOC and DFEH cover the same types of discrimination. However, in a few cases, DFEH covers more types of discrimination—such as sexual orientation or gender identity, marital status, medical condition, military/veteran status, victims of domestic violence, political affiliation, etc.[1995]	If the type of discrimination you suffered is covered by both agencies, you can file with either. However, if you were discriminated against based on a characteristic only covered by DFEH, then you should file with DFEH.
What kinds of remedies can I get?	In general, the remedies are similar between the EEOC and DFEH.[1996]	In general, you can get the same types of remedies whether you file with EEOC or DFEH. In some cases, the amount of damages you can get, or what you have to prove, may be slightly different. However, this is very complicated, so you should talk to a lawyer or a representative from the EEOC or DFEH if you are concerned about these differences.

HOW DO I FILE A DISCRIMINATION COMPLAINT WITH THE EEOC?

In Person:

Contact the local EEOC office near you to report the discrimination and make an appointment. Some EEOC offices may also have walk-in times when you can file a complaint without an appointment. Check with the local office to find out if this is available. (For a list of local EEOC offices and contact information, see Appendix L, PG. 637.)

When you go to the EEOC office, bring any information or papers that are related to your situation. For example, you might bring a copy of the job posting or application, any letters or documents you received from the employer, notes that you took about discriminatory statements made by the employer, or a list of other people who know about what happened. You can also bring anyone you want to come with you, such as a friend, translator, or anyone else to provide assistance or support.

At the EEOC office, you will meet with an EEOC representative and complete a questionnaire to provide information about the job discrimination you experienced. The representative will ask you for details about your experience, the employer, and when and where the discrimination occurred, and will decide whether Title VII

WHAT IF THE EEOC DISMISSES MY COMPLAINT RIGHT AWAY?

If your complaint was not filed within the time limit, or if the EEOC decides that your situation is not covered by Title VII, the EEOC will dismiss your complaint (close your case) right away. The EEOC may also dismiss your complaint right away if it decides that it probably will not be able to prove discrimination. If your charge is dismissed, you will be notified.

Important: Even if the EEOC dismisses your complaint, you may still be able to file a complaint with the DFEH for the same discrimination.

[1990] Telephone call with EEOC, reference #150204-000301 (Feb. 3, 2015).
[1991] 42 U.S.C. § 2000e(b).
[1992] Cal. Gov't Code § 12926(d).
[1993] 42 U.S.C. 2000e-5(e).
[1994] Cal. Gov't Code § 12960.
[1995] Cal. Gov't Code § 12940(a).
[1996] 42 U.S.C. § 2000e-5; CAL. GOV'T CODE § 12965(c).



covers your situation. If so, the EEOC representative will explain the process for filing a formal complaint, called a "Charge of Discrimination," and will help you to write up and file the complaint if you want to go forward. (If Title VII does not cover your situation, the EEOC will give you information about where you can go for help, but you will not be able to file an EEOC complaint.)[1997]

By Mail:

You can file a complaint by writing a letter to the EEOC that includes the following information:

- Your name, address, and telephone number;
- The name, address and telephone number of the employer whom you want to file your charge against;
- How many employees work there (if you know this information);
- A description of the actions that you believe were discriminatory (for example, you were fired, demoted, harassed, or not hired);
- Why you believe you were discriminated against (for example, the employer hired other people with a similar criminal history, or did not require background checks for other applicants, or gave other applicants a chance to explain their conviction record; or the employer made biased comments);
- When the events took place; and
- Your signature (Important: The EEOC cannot investigate your complaint unless you sign the letter!).[1998]
- You can also include additional information or documents, such as copies of the job posting or application or names and contact information of other people who know what happened or have information.[1999] (Important: If you are sending documents, make sure you make a copy first—keep the original for yourself and send the copy to the EEOC.)

You can mail your letter or deliver it in person to the nearest EEOC office. The EEOC will contact you if they need more information about your situation and may send you a questionnaire to fill out and return. Afterward, they will put all your information into an official EEOC complaint ("charge") form, and will contact you so that you can sign the form.[2000]

Note: You can also call the EEOC at 1-800-669-4000 to start the process, but you will still have to go through the steps above to file a formal written complaint.[2001]

WHAT HAPPENS AFTER I FILE A COMPLAINT WITH THE EEOC?

This is a brief summary of what happens after you file a complaint. For a complete description of each step, see Appendix O, PG. 640.

HOW DOES THE INVESTIGATION PROCESS WORK?

STEP 1: **Filing a Complaint (see above).**

STEP 2: **Notifying the Employer.**

Within 10 days, the EEOC will send a notice and a copy of the charge to the employer. The EEOC may ask both you and the employer to agree to participate in mediation, which is an informal way of trying to resolve the problem instead of filing a lawsuit.

STEP 3: **Employer's Response.**

If your case is not sent to mediation, or if mediation doesn't resolve the problem, the EEOC will ask the employer to respond (submit a written answer) to the charges, and answer any questions that the EEOC has about your complaint. Then your complaint will be given to an EEOC investigator for investigation.[2002]

STEP 4: **Investigation.**

How the EEOC investigates a complaint depends on the specific facts of your case and the kinds of information that will be helpful. In some cases, an EEOC representative may visit the employer, interview other employees or witnesses, and gather documents. The EEOC may also interview you again, or ask you for more documents or information. It's very important to cooperate and keep in touch with the EEOC!

STEP 5: **Decision.**

After the investigation is completed, the EEOC will issue a decision to let you and the employer know the results. The decision will say either:

[1997] EEOC, How to File a Charge of Employment Discrimination, http://www.eeoc.gov/employees/howtofile.cfm; see also Oakland Local Office of EEOC, Filing a Charge with this Office, http://www.eeoc.gov/field/oakland/charge.cfm.
[1998] EEOC, How to File a Charge of Employment Discrimination, http://www.eeoc.gov/employees/howtofile.cfm.
[1999] Oakland Local Office, EEOC, Filing a Charge with this Office, http://www.eeoc.gov/field/oakland/charge.cfm/.
[2000] EEOC, How to File a Charge of Employment Discrimination, http://www.eeoc.gov/employees/howtofile.cfm.
[2001] EEOC, How to File a Charge of Employment Discrimination, http://www.eeoc.gov/employees/howtofile.cfm.
[2002] EEOC, The Charge Handling Process, http://www.eeoc.gov/employees/process.cfm.

- NO CAUSE—meaning the EEOC did NOT find any evidence that the employer illegally discriminated against you; or
- REASONABLE CAUSE—meaning the EEOC thinks the employer DID illegally discriminate against you.

STEP 6: **Your Options After the EEOC Decision.**

Depending on what the EEOC decision says, these are your options:

- If "NO CAUSE" found—The EEOC will send you a Right-to-Sue notice, which allows you to file a lawsuit in court against the employer on your own. You must file a lawsuit within 90 days (approximately 3 months) after receiving the Right-to-Sue Notice; otherwise it will be too late.
- If "REASONABLE CAUSE" found—The EEOC will try to reach a voluntary settlement (called "conciliation") with the employer. Conciliation is usually a request for the employer to pay you to cover harm caused by the discrimination.
- If the EEOC can't reach a settlement with the employer, the EEOC may decide to file a lawsuit against the employer on your behalf.
- If the EEOC decides not to file a lawsuit, it will give you a Right-to-Sue notice, which allows you to file a lawsuit against the employer on your own. You must file a lawsuit within 90 days (approximately 3 months) of receiving the Right-to-Sue Notice; otherwise it will be too late.[2003]

For more information about each of these steps, see Appendix O, PG. 640.

HOW DO I FILE A COMPLAINT WITH THE DFEH?

The process for filing a complaint with the DFEH is almost the same as filing a complaint with the EEOC. For a complete description of how to file a complaint with the DFEH, and what happens after you do, see Appendix P, PG. 642.

HELPFUL HINT:

Even though you can't go straight to court, you can still talk to a legal aid or employment attorney, or non-profit employment advocacy organization to get advice about your situation. When doing so, you should ALSO contact the EEOC or DFEH right away, so that you can get your complaint filed on time (and then request a Right-to-Sue if you still want to go to court).

WHAT IF I WANT TO GO STRAIGHT TO COURT AND FILE A LAWSUIT ON MY OWN?

Federal and state law both require you to file an employment discrimination complaint with the EEOC or DFEH first. This is called "exhausting your administrative remedies." However, once you file your complaint, you can choose to file a lawsuit against the employer instead of asking the EEOC (or DFEH) to investigate and resolve your complaint.[2004]

If you want to file a lawsuit right away, you must ask the EEOC for a Right-to-Sue notice, which is a legal document that allows you to file a lawsuit in court on your own. However, you generally have to give the EEOC 180 days to investigate your complaint first.

- If it has been more than 180 days (6 months) since you filed your complaint, the EEOC is required to give you a Right-to-Sue notice.
- If it has been less than 180 days, the EEOC will give you a Right-to-Sue notice only if its own investigation will take longer than 6 months.[2005]

To request a Right-to-Sue notice, send a written letter to the local EEOC office that is handling your complaint. Once you get the Right-to-Sue notice, you only have 90 days to file your lawsuit in court.

IMPORTANT: Once you get the Right-to-Sue notice, the EEOC will dismiss your complaint and will not do anything more to investigate or resolve your case. So if you want the EEOC to continue to help with your case, DON'T request a Right-to-Sue notice.[2006]

The process for requesting a DFEH Right-to-Sue notice is very similar. For more information on how to request a Right-to-Sue from the DFEH, see http://www.dfeh.ca.gov/res/docs/Complaints/Right%20to%20Sue%20form%20(3%20pages).pdf.

WHO CAN REPRESENT ME IF I BELIEVE I HAVE BEEN ILLEGALLY DISCRIMINATED AGAINST FOR A JOB BECAUSE OF MY RECORD?

In July 2017, California issued a regulation acknowledging that, since some communities are disproportionately represented in the criminal justice system, basing important employment decisions on a person's record may violate the federal Civil Rights Act, which protects people of color and other marginalized groups.[2007] If you believe you have been illegally discriminated against in an employment or hiring decision due to your criminal record (or

For more information about finding a legal aid or employment attorney, or non-profit advocacy organization, see PG. 599. For more information about filing a lawsuit, see PG. 598.

[2003] EEOC, The Charge Handling Process, http://www.eeoc.gov/employees/process.cfm.
[2004] EEOC, Filing a Lawsuit, http://www.eeoc.gov/employees/lawsuit.cfm.
[2005] EEOC, Filing a Lawsuit, http://www.eeoc.gov/employees/lawsuit.cfm.
[2006] EEOC, Filing a Lawsuit, http://www.eeoc.gov/employees/lawsuit.cfm.
[2007] 2 C.C.R. § 11017.1(d).

because of your race, gender, religion, disability, etc.), there may be legal help for you. On PG. 599, read the "Helpful Hint" box to learn about legal aid and employment attorneys; government-run civil rights agencies; and non-profit organizations that may be able to provide you with legal information or representation on your employment discrimination claim.

HELPFUL HINT:
Find an attorney or government civil rights agency to help you!

If you think an employer has illegally discriminated against you the law, you may want to contact an attorney who can help you decide what to do next. There are 3 types of people who may be able help you:

1. Legal aid or employment attorney

Legal aid attorneys provide FREE legal assistance to people who cannot afford to hire a lawyer (like a public defender, but for lawsuits and other civil legal cases). Many private employment attorneys only charge fees if you win or settle a case, so you may not have to pay anything out-of-pocket UNLESS you win money from the employer. To find a local legal aid attorney or employment attorney in your area:

- Call 211;
- Contact the local county bar association, or look on the State Bar website at http://lawhelpca.org/find-legal-help; or
- To find a list of employment attorneys in your area, visit the California Employment Lawyers Association website at http://www.cela.org/?page=4;
- For a list of legal aid offices throughout California, see PG. 1127 at the back of this guide.

2. Government civil rights agencies

There are 2 government agencies responsible for enforcing your rights against illegal discrimination by employers. Because federal and state law are very similar, you can generally ask either agency to enforce your rights if you think an employer has illegally discriminated against you. For more information about how to report discrimination and file a complaint with the EEOC and DFEH, read the next section, starting on PG. 599.

- The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces federal civil rights laws; and
- The Department of Fair Employment & Housing (DFEH) is the California state agency that enforces your rights under state law.

3. Non-profit organizations

You can also contact a non-profit organization that helps people who have been discriminated against by employers based on their criminal record:

- National Employment Law Project (NELP)—(510) 409-2427
  http://www.nelp.org/index.php/content/content_issues/category/criminal_records_and_employment/
- Lawyers' Committee for Civil Rights (LCCR—San Francisco)—(415) 814-7610
  http://www.lccr.com/programs/racial-justice/direct-services/second-chance-legal-clinic/
- Or other local organizations or clinics in your area—see PG. 1127 for more information on reentry legal aid services available in your area.

V. JOBS & PROFESSIONS YOUR RECORD MIGHT EXCLUDE YOU FROM

WHAT WILL I LEARN?

- **What types of jobs you may be disqualified from getting, based on your criminal record**
- **When and how you may become eligible for these jobs in the future**

LEGAL RESTRICTIONS ON CERTAIN JOBS

ARE THERE CERTAIN TYPES OF JOBS I CAN'T HAVE BECAUSE OF MY CRIMINAL RECORD?

Sometimes. There are certain situations when having certain types of convictions on your record could or will disqualify you from getting certain types of jobs. It is important that you know about these situations beforehand, so that you can realistically set your sights on jobs that you can have.

Although this list is incomplete, below are some examples of jobs that have legal restrictions for people with certain convictions. In general, these are jobs where you would have access to private or sensitive information (like financial records); vulnerable people (like children or the elderly), or high-security places, where there might be a greater risk of harm to the public.

- Airport security screeners (or anyone with unsupervised access to secure airport areas);[2008]
- Federal law enforcement officers;[2009]
- Defense contractors;[2010]
- Prisoner transportation personnel;[2011]
- Port workers;[2012]
- Bank employees;[2013]
- Insurance personnel;[2014]
- Jobs that administer employee benefits plan;[2015]
- Childcare workers in federal facilities or agencies;[2016]
- Working for a school district in a position that requires certification or a supervisory capacity (if you have been convicted of a felony defined as serious or violent);[2017]

NOTE: Most of the time, if an employer cannot hire a person with a record for certain types of job positions, the employer may still be able to hire that person for other positions. If an employer says that they cannot hire you for a job based on your criminal record, you should ask whether there are any other positions available that you could take instead.

CAN I EVER BECOME ELIGIBLE AGAIN TO GET THESE JOBS?

It depends. Each of these jobs has very specific rules about what convictions will disqualify you, and whether and how you can become eligible for them again. It will depend on the specific laws, regulations, and other rules that apply to that type of work.[2018] It is recommended that you ask a lawyer to review your RAP sheet and explain how your convictions may affect your ability to get the job you want. See PG. 599 for information on how to contact a lawyer.

- For some jobs, you are only disqualified for a certain period of time, and then you will become eligible after that time has passed.
- For many jobs, you can become eligible if your conviction is expunged, or if you get a Certificate of Rehabilitation or a pardon for the conviction.
- For some jobs, you can request a waiver or exemption for your conviction, which means asking the government to make an exception to the law based on your individual circumstances. You may need to

[2008] 49 U.S.C § 44935(e)(2)(B).
[2009] 5 U.S.C. § 7371(b).
[2010] 10 U.S.C. § 2408(a).
[2011] 42 U.S.C. § 13726b(b)(1).
[2012] 46 U.S.C. § 70105(c).
[2013] 12 U.S.C. § 1829.
[2014] 18 U.S.C. § 1033(e).
[2015] 29 U.S.C. § 1111(a).
[2016] 42 U.S.C. § 13041(a).
[2017] CAL. LAB. CODE § 432.9(3).
[2018] See TSA, Transportation Worker Identification Credential—Frequently Asked Questions (Disqualifications, Waivers, and Appeals), http://www.tsa.gov/stakeholders/frequently-asked-questions-0—disqualification.

present evidence of rehabilitation and other factors showing that your conviction does not pose a risk of harm and therefore you should not be disqualified because of it.

- If you think you were disqualified based on incorrect information in your record, you may be able to appeal the disqualification and show that you should NOT be disqualified according to the law. For example, if you were not actually convicted of the offense that caused you to be disqualified for the job (e.g., the charges were dismissed, or you pleaded guilty to a lesser offense that does NOT disqualify you), you can appeal and present court records showing that you were not convicted of that offense.

LEGAL RESTRICTIONS ON PROFESSIONAL LICENSES

WHAT WILL I LEARN?

- **What professional and occupational licenses are and what they require**
- **How your criminal record may affect your ability to get a professional or occupational license**
- **What information a licensing board can consider about your criminal record**
- **When a licensing board can deny you a license based on your criminal record**
- **What to do if a licensing board denies your application for a license because of your criminal record**
- **What to do if you used to have a professional or occupational license, but lost it due to a criminal conviction**
- **Other groups you can contact for assistance or additional information about professional and occupational licenses**

Many people with criminal records CAN and DO get professional and occupational licenses to work in the jobs of their choice. If you want to work in a job that requires a license, don't be discouraged! Although it can be harder to get a license with a criminal record, this section will help you to understand your rights and how to increase your chances of getting the license you want!

WHAT ARE PROFESSIONAL AND OCCUPATIONAL LICENSES AND WHAT DO THEY REQUIRE?

In California, people who work in certain jobs are required to get a ***license*** from the state to do so. There are over 200 professions in California that require a professional or occupational license—ranging from barbers and cosmetologists, to security guards, contractors, teachers, nurses, doctors and lawyers. Professional and occupational licenses are granted and regulated by different ***licensing boards, agencies, and bureaus*** (over 40 in total, each for a different industry), all under the control of the California Department of Consumer Affairs (DCA).[2019]

Applying for a professional or occupational license generally requires submitting fingerprints, paying application fees, and proving that you meet certain educational and/or work experience requirements, which are set by the particular licensing board to which you're applying.[2020]

HELPFUL HINT FOR OCCUPATIONAL LICENSES:

If you are thinking of applying for a professional/occupational license, you should talk to an attorney or reentry program counselor for advice and assistance. They can help you to better understand the specific barriers and opportunities you may have, depending on your record and the type of license you want.

WHAT KINDS OF JOBS REQUIRE A PROFESSIONAL OR OCCUPATIONAL LICENSE?

There are over 200 kinds of jobs in California that require a professional or occupational license. Here is a list of just a few of the most common ones:

- Barber
- Cosmetologist
- Security guard
- Teacher
- Contractor
- Real estate agent
- Child care worker or Family child care home provider
- Nurse or Certified Nursing Assistant (CNA)
- Home Health Aide (HHA) or Personal Care Aide (PCA)
- Dentist, Dental assistant, or Registered dental hygienist
- Physical therapist or Physical therapist assistant
- Emergency Medical Technician (EMT) or Paramedic
- Pharmacist or Pharmacy technician

To find out whether the specific job you want requires a professional or occupational license, contact the Department of Consumer Affairs (DCA) at (800) 952-5210. You can also ask the DCA for information on how to

[2019] The Reason Foundation, Occupational Licensing in California, http://reason.org/news/show/1013473.html.
[2020] CAL. BUS. & PROF. CODE §§ 475-499. See also The Reason Foundation, Occupational Licensing in California, http://reason.org/news/show/1013473.html.

contact the specific licensing board that oversees that profession. To learn more about specific licensing requirements for the job you want, you will need to contact the licensing board that oversees that profession.

- For a list of licensing boards and their contact information, go to http://www.dca.ca.gov/publications/dca_booklet.pdf.
- For links to each of the licensing boards, go to http://www.dca.ca.gov/about_dca/entities.shtml.

CAN I GET A PROFESSIONAL OR OCCUPATIONAL LICENSE WITH A RECORD?

It depends on what type of license you are trying to get, what conviction(s) you have on your record, and what rehabilitation efforts you have participated in.

Some professional/occupational licenses have extremely strict rules about criminal records, while other types of licenses are more lenient. It is best to check with the licensing board for the profession you want to enter to find out its current criteria.

HELPFUL HINT: YOU CAN APPEAL A LICENSE DENIAL

Professional and occupational licenses are often denied due to past convictions, but don't be discouraged! You can appeal a denial and advocate for yourself on appeal. There are also legal aid and reentry attorneys who may be able to help you appeal!

WHAT CRIMINAL HISTORY INFORMATION CAN A LICENSING BOARD CONSIDER ABOUT ME?

When you apply for a professional license, the licensing board can see your entire record—including convictions that have been "expunged." (Note: Regular employers generally CANNOT see expunged convictions—but licensing boards are different.) However, the board cannot deny your licenses based ONLY on the fact that you have a conviction.[2021]

Beyond criminal history information, licensing boards MUST also consider *mitigating and rehabilitative evidence*. *Mitigating evidence* is information that would make the board judge a conviction less harshly, and could be information like youth, drug addiction, duress, or other factors that were going on at the time of the offense. *Rehabilitative evidence* is proof of your efforts to change and improve yourself, demonstrating that you are no longer at risk of the conduct or circumstances that led to your past system involvement. You can submit this evidence at the time of your application, and on appeal.

HELPFUL HINT:

Submit a Pre-Approval Application When Possible

The Board of Barbering & Cosmetology has a special early application process for people with criminal convictions who want to apply for a license. You can submit an initial application and find out ahead of time whether you will be able to get a license, before you go through any training or pay any fees.

Note: You will still have to complete all of the training and examination requirements, in order to get your actual license.

CAN A LICENSING BOARD DENY ME A LICENSE BASED ON MY RECORD?

The licensing board can deny your application for a license based on a criminal conviction, but ONLY if your conviction is **"substantially related to the qualifications, functions, or duties of the business or profession."**[2022] This legal standard means that the type of conduct you were convicted for—for example, theft, selling drugs, violence, or fraud—creates a high risk of harm, or otherwise prevents you from safely completing the specific tasks and responsibilities of the job that you want a license for. For example, a conviction for drug distribution might be considered "substantially related" to a pharmacist license, since pharmacists have access to lots of drugs and are responsibility for safely providing drugs to other people.[2023]

PLEASE NOTE: Some crimes, such as those involving physical violence or fraud, dishonesty and deceit, are *presumed* to be "substantially related" to any profession regulated by the California Business & Profession Code (including medical, law, construction, and real estate licenses).[2024]

In addition to actual convictions, a licensing board is also allowed to consider **"any act involving dishonesty, fraud, or deceit" that you have done "with the intent to substantially benefit" yourself or someone else, or "substantially injure another."** However, as with convictions, the act must also be "substantially related" to the qualifications, functions, or duties of the job.[2025]

[2021] Cal. Bus. & Prof. Code § 480(a)(1).
[2022] CAL. BUS. & PROF. CODE § 480; see also Hughes v. Bd. of Architectural Examiners, 17 Cal.4th 763, 788 (1998) ("It is axiomatic that the right of an individual to engage in any of the common occupations of life is among the several fundamental liberties protected by the due process and equal protection clauses of the Fourteenth Amendment. Therefore, for example, a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice that profession.").
[2023] Cal. Bus. & Prof. Code §§ 4301, 4311.
[2024] 16 CCR § 868.
[2025] Cal. Bus. & Prof. Code § 480(a).

➢ MITIGATING & REHABILITATIVE EVIDENCE FOR LICENSING BOARDS:

Even if the licensing board determines that your conviction is "substantially related" to the qualifications of your chosen profession, California law *requires* that the board also consider any **evidence of rehabilitation or other positive factors** that you present. Each licensing board **must** create its own criteria to evaluate your rehabilitation efforts.[2026]

Although each board is different, most focus on the following rehabilitative factors: the amount of time that has passed since your conviction; whether you successfully completed parole or probation; whether you have shown remorse; your change in attitude; alcohol or drug counseling;your pursuit of education or vocational training;the stability of your family life; and your community involvement.[2027]

In addition:

- If the state of California has given you a **Certificate of Rehabilitation** (see more on PG. 980), then a licensing board CANNOT deny you a professional license based solely on your conviction.
- For professions governed by the California Business & Professions Code, a licensing board also CANNOT deny you for (1) having a misdemeanor if you have met all of the board's rehabilitative critera, or (2) for a felony that has been dismissed ("expunged").[2028] (Many of the individual board's rehabilitative criteria can be found in the California Code of Regulations.)

KNOW YOUR RIGHTS
If you prepared for your license while incarcerated…

Many people are able to learn new job skills or complete professional license requirements while incarcerated. In the past, licensing boards were allowed to delay or deny your license application just because you had completed the licensing requirements while incarcerated. But now, a new California law makes it **illegal** for a licensing board to delay or deny your license based solely on the fact that you completed some or all of the licensure requirements while incarcerated.[2029] If you otherwise qualify for the license, it no longer matters that you were incarcerated when you prepared for it.

IMPORTANT: The new law does NOT change any other rules about whether you can get a license. A licensing board CAN still deny you a license based on your conviction, if they determine that the conviction is "substantially related" to the qualifications and duties of the job. Also, the law does NOT change any rules about *when* you can apply and whether you can apply while you're still incarcerated.

CAN I APPLY FOR A LICENSE WHILE I'M STILL INCARCERATED?

It depends. Each licensing board has different rules. Some require you to wait a certain amount of time after your conviction or release before you can be eligible.[2030] Most boards will also consider the amount of time that has passed since your conviction, and may give more weight to time after you were released or once you were off supervision.[2031] For this reason, even if you are not required to wait, you may be more successful after release.'

HELPFUL HINT
Special program for getting your cosmetology license while incarcerated

If you are incarcerated at Valley State Prison, California Women's Institute, or Central California Women's Facility (Chowchilla), there is a special program that can help you to get your cosmetology license while you're incarcerated. You can complete your training school AND take the licensing examination in these facilities—meaning it is possible to already have your license in hand by the time you're released.

IMPORTANT: This program does NOT stop the licensing board from considering your criminal conviction, and does NOT change any of the other qualifications to get your license. In other words, the licensing board can still deny you a license if the board decides that your conviction is substantially related to the duties and responsibilities of a cosmetologist.

[2026] Cal. Bus. & Prof. Code § 482.
[2027] See 10 CAL. CODE REGS. § 2911.
[2028] Cal. Bus. & Prof § 480(3)(b) and Cal. Bus & Prof § 480(3)(c).
[2029] CAL. BUS. & PROF. CODE § 480.5. Important exception: This new law does NOT cover chiropractic licenses, so if you apply for a chiropractic license and completed some of the requirements while incarcerated, the Board of Chiropractic Examiners CAN delay or deny your application for this reason.
[2030] See, e.g., 10 CAL. CODE REGS. § 2911(a) (Department of Real Estate rehabilitation criteria requires "[t]he passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.).
[2031] See Donley v. Davis, 180 Cal. App. 4th 447, 467, 469 (2009) (upholding licensing board determination that there was "not sufficient evidence of rehabilitation" where the applicant's conviction was "relatively recent and he [had] just finished probation").



CAN I APPLY FOR A PROBATIONARY LICENSE BEFORE I GET A FULL LICENSE?

Possibly—it depends on which licensing board you apply to. Some boards are allowed to issue "probationary licenses"—which are licenses with certain restrictions or conditions—to people with criminal records who might not be approved for a full license.[2032]

WHAT CAN I DO IF THE BOARD DENIES MY APPLICATION FOR A LICENSE?

You can appeal your denial! Many applications are denied because of past convictions , but are successful on appeal. There are also some legal aid attorneys and clinics that may be able to help you appeal (see a list of legal aid organizaitons on PG. 1127). Generally, you have the right to appeal the board's denial and have an administrative hearing before a *neutral administrative law judge*.[2033] At the hearing, you have the right to present evidence of your rehabilitation and argue your case for why you deserve a license.[2034] For a general overview of what the appeals process is like, see Appendix Q, PG. 644.

WHAT CAN I DO IF I USED TO HAVE A LICENSE, BUT LOST IT DUE TO A CRIMINAL CONVICTION?

If you previously had a professional license, your license may have been revoked (permanently taken away) or suspended (temporarily taken away) because of your criminal conviction.[2035] In this case, you generally have the right to ask the licensing board to reinstate (re-issue) your license to you, or to reduce your penalty and return your license sooner.[2036] To do this, you must first wait at least 1 year from the date your license was taken away, and then submit special forms (a petition) and other documents to the licensing board.[2037] Each licensing board may also have different or additional requirements, such as completing your term of probation or parole first, before you can ask for your license to be returned.[2038] (Note: Although you can apply to have your license reinstated while you are still incarcerated, you are unlikely to be successful if you apply while you're still inside.)[2039]

The licensing board will give you a chance to present your reasons for why your license should be returned or reissued. This may be during a hearing, or by sending in a written statement. The Attorney General will also have a chance to argue for why your license should not be returned.[2040]

In order to get your license back, you will generally need to prove that you have been rehabilitated since your offense[2041]—particularly since you were released from prison or jail.[2042] This means showing that you have changed your life for the better, taken steps to improve yourself and correct previous bad habits, and successfully completed the requirements of your sentence. The board may also consider the nature and severity of the offense, how much time has passed since the conviction, whether the conviction has been dismissed, any other convictions on your record, and letters of recommendation or good character from people who know you.[2043]

WHO CAN HELP ME IF MY LICENSE HAS BEEN DENIED OR TAKEN AWAY DUE TO A CRIMINAL CONVICTION?

There are some non-profit organizations that may be able to help if your license has been denied or taken away due to a criminal conviction. These are just a few examples of organizations that can help, but there may be others in your area:

- Lawyers' Committee for Civil Rights (LCCR)—San Francisco (Phone: (415) 814-7610; Website: http://www.lccr.com/programs/racial-justice/direct-services/second-chance-legal-clinic/)
- East Bay Community Law Center (EBCLC)—Alameda County (Phone: (510) 548-4040, Website: http://ebclc.org/documents/Clean_Slate_Flyer.2015.pdf)

[2032] See, e.g., 16 CAL. CODE REGS. § 325 (probationary licenses for chiropractors).
[2033] CAL. BUS. & PROF. CODE §§ 485, 487. Important exception: The California Department of Insurance has the power to deny or revoke an insurance broker license without any hearing, if you have been convicted of a felony or any Insurance Code misdemeanor, or if you have had any professional license denied, revoked or suspended within the past 5 years. Cal. Ins. Code § 1669.
[2034] CAL. BUS. & PROF. CODE § 482; see also Arneson v. Fox, 28 Cal.3d 440, 449 (1980).
[2035] CAL. BUS. & PROF. CODE § 490.
[2036] CAL. GOV'T CODE § 11522.
[2037] See, e.g., 16 CAL. CODE REGS. § 1445.1 (petition for reinstatement of registered nursing license).
[2038] See, e.g., CAL. BUS. & PROF. CODE § 2661.7 (petition for reinstatement of physical therapy license); see also, e.g., 16 CAL. CODE REGS. § 1399.372.5 (mandatory completion of law and professional ethics course prior to petition for reinstatement of respiratory care license).
[2039] Cf. CAL. BUS. & PROF. CODE § 480.5; In re Gossage, 23 Cal. 4th 1080, 1099 (2000) (in reinstatement proceeding, relevant time frame for assessing petitioner's rehabilitation begins upon completion of parole; "little weight" should be given to petitioner's good conduct while incarcerated).
[2040] CAL. GOV'T CODE § 11522.
[2041] See, e.g., 16 CAL. CODE REGS. § 1445.1(b) (petitioner bears burden of proving rehabilitation, according to specified criteria).
[2042] In re Gossage, 23 Cal. 4th 1080, 1099 (2000).
[2043] See, e.g., 16 CAL. CODE REGS. §§ 1445 (criteria for rehabilitation for registered nursing license), 1399.372 (criteria for rehabilitation of respiratory care license).

- A New Way of Life (ANWOL) Reentry Project—Los Angeles (Phone: (323) 563-3575; Website: http://www.anewwayoflife.org/clean-slate/)
- For more information about finding a legal aid or employment attorney, or a non-profit advocacy organization, see PG. 599.

WHERE CAN I GO TO LEARN MORE ABOUT PROFESSIONAL LICENSES?

The California Department of Consumer Affairs (DCA) oversees all of the licensing boards and bureaus in California. For a list of licensing boards and links to more information about each one—including requirements and disciplinary rules for each—visit the DCA's website at http://www.dca.ca.gov/about_dca/entities.shtml. For a list of licensing boards and their contact information, go to http://www.dca.ca.gov/publications/dca_booklet.pdf. For links to each of the licensing boards, go to http://www.dca.ca.gov/about_dca/entities.shtml.

VI. ALTERNATIVES TO TRADITIONAL EMPLOYMENT

WHAT WILL I LEARN?

- **Other ways of working and earning an income that are different from traditional employment, including:**
  - **Self-employment or starting your own business**
  - **What an independent contractor is and how to become one**
  - **Joining a worker-run cooperative business**
  - **Applying through a temp agency**
  - **Taking short-term or temporary positions to get your foot in the door**
- **Where to look for more information about each of these options**

Throughout your job search, keep in mind that traditional employment is NOT your only option. There are many other ways of working and earning legitimate income—like starting your own business, joining a worker-run cooperative business, or going through a temp agency—and you may decide that one of these is better for you.

This section will explain some of the alternatives to traditional employment that you may want to consider:

- Self-employment
- Starting your own business
- Becoming an independent contractor
- Joining a worker-run cooperative
- Applying through a temp agency
- Taking short-term jobs or temporary positions to get your foot in the door

HELPFUL HINT:

Talk to a trusted person, or someone from a local reentry or workforce development program, for other ideas about alternative work opportunities that may be available.

CONSIDER SELF-EMPLOYMENT OR START YOUR OWN BUSINESS

Some people find it more fulfilling and empowering to be their own boss. Self-employment can give you more control over the type of work you do, freedom and flexibility to make your own decisions, and greater responsibility within the workplace. It also gives you more legal and business responsibilities, such as managing money and product, paying taxes, marketing your business and supervising employees.

There are many resources available for people who want to start a business—good places to start are your local library, the Internet, or classes at a local community college or adult school. Also, many non-profit organizations and government agencies now offer this support. If you think that self-employment may be a good option for you, you can find a list of organizations and resources for starting your own business in Appendix R, PG. 646. **IMPORTANT NOTE: if you are currently incarcerated, you need permission from the warden to operate a business.**[2044]

BECOME AN INDEPENDENT CONTRACTOR

Being an independent contractor is a form of self-employment somewhere between being an employee and running your own business. Employers usually hire independent contractors to do specific tasks or short-term jobs—like painting a house, installing plumbing, or doing landscaping work. The job usually ends automatically once the task is finished, although the employer can always hire the independent contractor again for another task.

The BIG difference between independent contractors and employees is that, under the law, independent contractors are considered to be self-employed. This means that independent contractors have more control over the work they choose to do. They also have legal responsibilities—like filing self-employment taxes and reporting certain business information to the government—and fewer legal rights in the workplace. On the other hand, employees have more legal rights and protections in the workplace, but the employer gets to control the work they do.

[2044] 15 CCR § 3024.

KNOW YOUR RIGHTS: ***Am I an independent contractor or employee?***

In some cases, an employer may call you an independent contractor, even though you are ACTUALLY an employee. The difference between an employee and an independent contractor is important, because you have more rights (and the employer has more responsibilities) if you are an employee; and you have fewer rights (and the employer has fewer responsibilities) if you are an independent contractor.

Sometimes an employer will get this wrong by accident, but other times an employer may misclassify you on purpose in order to avoid fulfilling their legal duties. According to the law, whether you are an employee or an independent contractor depends on the specific details of your work situation—NOT on what the employer calls you. For this reason, it's important that you know the difference so that you don't get taken advantage of! For more information on the difference between independent contractors and employees, and your rights and responsibilities in each situation, see the Appendix S, **PG. 647****.**

KNOW YOUR RIGHTS

What can I do if I think an employer has wrongly classified me as an independent contractor OR violated my rights as an employee?

The California Division of Labor Standards Enforcement (DLSE) is the state agency responsible for enforcing your rights in the workplace. If you think an employer has violated your rights as an employee, wrongly classified you as an independent contractor, and/or for more information, you can contact your local DLSE office and speak with Deputy Labor Commissioner. To find a local DLSE office near you, go to http://www.dir.ca.gov/dlse/DistrictOffices.htm or call 1-844-LABOR-DIR (1-844-522-6734) for assistance.

For more information about your rights in the workplace, contact The Legal Aid Society—Employment Law Center's Workers Rights Clinic at 415-864-8208 (San Francisco Bay Area) or 866-864-8208 (toll free in CA). Or contact a local legal aid attorney in your area.

For additional information on employees and independent contractors, here are some helpful resources:

- Independent Contractor or Employee? How You Should Be Classified (The Legal Aid Society—Employment Law Center)—http://www.law.berkeley.edu/files/FAQ-IndepContractorsvsEmployees.pdf
- FAQs—Independent Contractor (Cal. Division of Labor Standards Enforcement)—http://www.dir.ca.gov/dlse/faq_independentcontractor.htm
- Employment Determination Guide (Cal. Employment Development Department) http://www.edd.ca.gov/pdf_pub_ctr/de38.pdf

JOIN A WORKER-RUN COOPERATIVE BUSINESS

A worker cooperative is a business that is owned and controlled by its workers. In other words, the workers are both the employees AND the employer. Usually, workers run the day-to-day operations of the business—such as making business decisions, assigning tasks to each person, etc., as well as the business's finances. Although each person has a different level of responsibility, all workers are considered to be equal members and have equal power within the business.

Any business can be a worker-owned and controlled cooperative. Worker co-ops have been successful in many different industries. Some examples are:

- Service—housecleaning, day labor, restaurants, taxis, childcare
- Farming and food production—urban or community farms, community-supported agriculture programs, bakeries, restaurants
- Retail—grocery stores, bookstores, bike shops
- Health care—nursing, home health care, clinics, bodywork
- Skilled trades—printing, plumbing, woodworking, contracting
- Manufacturing and engineering—machine parts, fabricating
- Technology—web hosting, networking, voice and data systems
- Education—charter schools, teacher/student/parent-run schools
- Media and the arts—designers, galleries, performers, publishers

For more information about worker cooperatives and how to join or start a cooperative near you, here are some helpful resources:

- U.S. Federation of Worker Cooperatives—Democracy at Work Institute: http://institute.usworker.coop/
- Sustainable Economies Law Center: http://www.theselc.org/cooperatives
- Examples of existing worker cooperatives: http://institute.usworker.coop/examples-worker-cooperatives

APPLY TO WORK THROUGH A TEMP AGENCY

Temp agencies (also called staffing agencies) help match people who are looking for work with employers who want to hire them. Temp agencies can often help you to find a short-term job or part-time job quickly, which, in some cases, can get your foot in the door for a permanent position in the future. In addition, some temp agencies specifically focus on helping people with criminal records get jobs, and they work with employers who are open to hiring applicants with criminal records.

HELPFUL HINT:

Talk to someone from a local reentry or workforce development program for advice about finding a good temp agency and what to expect.

Another benefit of going through to a temp agency is that once you apply to the agency, they can place you in jobs with many different employers who want to hire. Applying to a temp agency is similar to applying for a job directly with the employer—it will likely include an interview, checking your references, and possibly even doing a background check. The temp agency may also have you take an assessment test to evaluate your work strengths and skills. It still can be easier to apply through a temp agency rather than an employer, because most agencies always want to increase their pool of employees to choose from, and employers often prefer to hire temp workers because it's cheaper.

If you're interested in applying to a temp agency, here are some things to keep in mind:

- Not all temp agencies are the same! Just like employers, some temp agencies are better to work for than others. Ask around to find a temp agency that treats employees well and has a good record of placing people in jobs. Some things to ask about are: how long people usually have to wait before getting placed with an employer; how long most jobs last; what employers the temp agency works with; whether the agency places many people with criminal records; and how the agency treats people.
- Different temp agencies may focus on different types of jobs or different industries. Each temp agency is different, so the application requirements and process may be different from one agency to another. If there are several different temp agencies available in your area, do your homework to find out which one is right for you.
- When you apply through a temp agency, you will have to sign a contract with the agency that makes you an employee. Any offers of work that you get, either temporary or permanent, must go through the agency. The contract may even prohibit you from looking for work on the side, outside of the agency. If you want to look for other work on your own, you may need to ask the agency to release you from your contract. Before you sign up with a temp agency, it is recommended that you read all the fine print and ask questions about anything you don't fully understand!
- The temp agency is responsible for paying the employees who they send to work for an employer. The employer will pay the temp agency—NOT the employee—for the work, and then the agency takes a cut of the money and gives the rest to the employee. For example, if the employer pays the temp agency $20/hour for each employee, the agency may keep $5/hour of pay and then pay the employee $15/hour.
- Beware of any temp agency that charges you a fee for job placement! Most agencies collect their fees from the employer—NOT from the job applicant or employee.

For more information about applying for jobs through a temp agency, here are some resources:

- How Temp Agencies Work—http://money.howstuffworks.com/business/getting-a-job/temp-agencies.htm
- Working for Temp Agencies—Pros & Cons of Temping—http://www.moneycrashers.com/working-temp-agencies-temping/
- How Do Temp Agencies Work? 9 Tips You Can't Afford to Miss—http://www.jobunlocker.com/blog/how-do-temp-agencies-work-9-tips-you-cant-afford-to-miss/

GET YOUR FOOT IN THE DOOR THROUGH TEMPORARY POSITIONS

Some employers will give you the opportunity to prove yourself by starting work in a short-term, part-time, or temporary position, or for a test period. This gives you a chance to show the employer that you are a hard worker, and that you can work safely and responsibly. It may help get your foot in the door for a more permanent job afterward. If you do well during the testing period, you can ask the employer to consider hiring you for a permanent or full-time job, or to keep you in mind if a permanent job opens up in the future.

If you're participating in a workforce development program or have enrolled at an America's Job Center, you can also ask whether they have any special programs that let you get paid for doing on-the-job training or getting work experience with an employer. These programs are great because they help you to develop your job skills, get training, and practice working for an employer—and get paid at the same time! In addition, these programs can sometimes turn into longer-term employment afterward, because an employer may be more willing to hire you once you prove yourself in training.[2045]

[2045] Telephone call with Mary Weaver, Executive Director, Friends Outside in LA County (March 23, 2015).

VII. HOW TO PROTECT YOUR RIGHTS IF YOU HAVE A DISABILITY

WHAT WILL I LEARN?

- **What is considered a disability under the law**
- **How your disability might affect your job search**
- **What a "reasonable accommodation" is, and what kinds of accommodations you can request**
- **How to request a "reasonable accommodation," and what you will need to show**
- **When an employer is NOT required to provide a "reasonable accommodation" for your disability**
- **What to do if an employer refuses to provide a "reasonable accommodation"**
- **How to learn more about your employment rights and your disability**

DISABILITY & REASONABLE ACCOMMODATIONS IN EMPLOYMENT

FOR INDIVIDUALS WITH DISABILITIES: KNOW YOUR RIGHTS

- Under state and federal law, past drug addiction, alcoholism, and mental illness are considered disabilities.
- Current drug use OR using drugs or alcohol at work are NOT considered disabilities.
- An employer CANNOT discriminate against you based on a disability.
- An employer MUST provide you with "reasonable accommodations" for your disability (with 3 exceptions).
- If your conviction was CAUSED by your disability, an employer MUST make a "reasonable accommodation" for your criminal record (with 3 exceptions).
- The federal EEOC and state DFEH are the government civil rights agencies that enforce your rights against discrimination based on your disability

This section will explain the laws that protect workers (including job applicants and employees) with disabilities against employment discrimination. It will explain what types of disabilities are protected against discrimination, what your rights are if you have a disability, and what you can do if an employer violates your rights or discriminates against you based on your disability.

EMPLOYMENT DISCRIMINATION RESOURCES
Find an attorney or civil rights agency to help you

If you think an employer has illegally discriminated against you based on your disability, a lawyer could help you decide what your legal options are. There are 3 types of resources that may be able help you:

(1) Legal aid or employment attorney:

Legal aid attorneys provide FREE legal assistance to people who cannot afford to hire a lawyer (like a public defender, but for lawsuits and other civil legal cases). Many private employment attorneys only charge fees if you win or settle a case, so you may not have to pay anything out-of-pocket UNLESS you win money from the employer. To find a local legal aid attorney or employment attorney in your area:

- Call 211;
- Contact the local county bar association, or look on the State Bar website at http://lawhelpca.org/find-legal-help; or
- Visit the California Employment Lawyers Association website at http://www.cela.org/?page=4;
- For a list of legal aid offices throughout California, see PG. 1127.

You can also contact a non-profit organization that helps people who have been discriminated against by employers based on their disability:

1. Disability Rights California—Website: http://www.disabilityrightsca.org/. Offices in Oakland, Fresno, Los Angeles, Sacramento, San Diego—see PG. 1127 for local office contact information.
2. Disability Rights Legal Center—Website: http://www.disabilityrightslegalcenter.org/. Phone: (213) 736-1334 or (866) 999-DRLC (3752).
3. Disability Rights Education & Defense Fund— Website: http://dredf.org/. Phone:(510) 644-2555.
4. Legal Aid at Work—Website: legalaidatwork.org. Find your local clinics and helplines here: http://legalaidatwork.org/clinics-and-helplines/
5. For other local organizations or clinics in your area—see PG. 1127.

Resource list continues on next page.

(2) Government civil rights agencies

There are 2 government agencies responsible for enforcing your rights against illegal discrimination by employers. Because federal and state law are very similar, you can generally ask either agency to enforce your rights if you think an employer has illegally discriminated against you. For more information about how to report discrimination and file a complaint with the EEOC and DFEH, see PG. 612.

1. The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces federal civil rights laws; and
2. The Department of Fair Employment & Housing (DFEH) is the California state agency that enforces your rights under state law.
3. Non-profit organizations

WHAT IS A DISABILITY UNDER THE LAW?

California law defines a disability as any physical or mental impairment that limits one or more of your major life activities (such as walking, talking, working, or taking care of yourself).[2046]

What counts as a physical disability in California?

A physical impairment is any disease, physical disorder, physical condition, or disfigurement that:

- Affects one or more of your body systems (i.e. your heart, your eyes) or functions (i.e. breathing, speaking); AND
- Limits a major life activity.[2047]

What counts as a mental impairment?

A mental impairment is any mental or psychological condition that limits a major life activity. Examples of mental impairments are:

- Intellectual disabilities
- Brain disease
- Emotional or mental illnesses (such as schizophrenia, bipolar disorder, or clinical depression)
- Learning disabilities
- Any other mental or psychological condition that requires special attention or services (such as autism, obsessive compulsive disorder, or PTSD).[2048]

WHAT IS A MAJOR LIFE ACTIVITY

Under California law, "major life activity" means those activities that are of central importance to daily life. Under California law, major life activities include any physical, mental, and social activities, and working. Examples of these activities include taking care of yourself, performing manual tasks, seeing, hearing, walking, learning, and working.

EXAMPLES OF PHYSICAL DISABILITIES:

- Deafness, blindness, missing limbs (leg, arm, finger, foot, etc.), using a wheelchair, and any bodily condition that limits your ability to see, hear, walk, talk, move around, work, or take care of yourself.
- Diseases like HIV/AIDS, epilepsy, diabetes, heart disease, cancer, or other medical conditions that limit your ability to see, hear, walk, talk, move around, work, or take care of vourself.

IMPORTANT: Disabilities based on substance abuse

Under state and federal law, the following conditions are considered disabilities that are protected against discrimination:

- **PAST drug addiction (NOT current drug use)2049**
- **Alcoholism (past or present)**[2050]

If you were or currently are affected by either of these conditions, you are protected against discrimination based on your condition, and employers are required to make "reasonable accommodations" for your condition.

- **BUT it will NOT count as a protected disability IF:**
- **You are currently using illegal drugs; OR**
- **You use drugs or alcohol at work in violation of the employer's rules or policies.**[2051]

[2046] CAL. GOV'T CODE §§ 12925-12928.
[2047] CAL. GOV'T CODE §§ 12925-12928.
[2048] CAL. GOV'T CODE §§ 12925-12928.
[2049] 42 U.S.C. §§ 12114(a)-(b), 12210; CAL. GOV'T CODE § 12926; 2 CAL. CODE REGS. § 7293.6.
[2050] Crewe v. U.S. Office of Personnel Mgmt, 834 F. 2d 140 (8th Cir. 1987).
[2051] 42 U.S.C. § 12114(a),(c); 2 CAL. CODE REGS. § 7294.2(d)(2).

IF I HAVE A DISABILITY, HOW MIGHT THIS AFFECT MY JOB SEARCH?

State and federal laws provide special protections for job applicants and employees with disabilities. These laws require employers to make "reasonable accommodations" that allow someone with a disability to apply for and work in a job just like anyone else.

And remember, physical disabilities are not the only disabilities that are recognized. California mployers are required to make "reasonable accommodations" for you if you have any of the following recognized disabilities: ***past* drug addiction** (NOT current drug use);[2052] **alcoholism** (past or present),[2053] or **mental illness**.

WHAT DO I NEED TO KNOW ABOUT THE RELATIONSHIP BETWEEN MY DISABILITIES AND MY CRIMINAL RECORD?

If you can show that your disability caused your conviction, you may be able to ask an employer to make "reasonable accommodations" for your situation—for example, by making an exception to a policy against hiring people with your type of conviction, or by considering your criminal record under an easier standard. At least 2 federal courts have agreed that employers can be required to provide reasonably accommodations for employees whose workplace violations were caused by prior substance abuse, after the employees had later completed rehab programs. See more examples of reasonable accommodations during the job search, and when you apply, on PG. 611.

If you have suffered from one of the conditions listed above, it is possible that your criminal conviction(s) may have been the result of your disability—in other words, you committed the offense because of your mental illness or past drug or alcohol addiction.

WHAT KINDS OF ACCOMMODATIONS CAN I REQUEST?

You can request any accommodation that is reasonable and necessary so that you can be considered for the job like any other applicant or perform the job like any other employee. Each situation is different, so the type of accommodation you request will depend on your particular circumstances and the type of work or employer involved. These are just a few examples of accommodations you may request:

- Making an exception to a hiring or employment policy that restricts applicants/employees with certain types of convictions;
- Disregarding a conviction caused by your disability;
- Considering your conviction under an easier standard;
- Giving you an opportunity to explain your conviction and provide additional (medical) evidence of your disability and rehabilitation;
- Giving you time off to attend treatment programs;
- Disregarding workplace violations caused by your disability.

The employer is not necessarily required to provide the exact accommodation that you ask for—but MUST provide an accommodation that has the same effect.[2054] For example, the employer might be allowed to rearrange your work schedule—rather than give you time off—so that you can attend treatment programs.

HELPFUL HINT:

You can also have someone else talk to the employer for you, to ask for the accommodation you need. In this case, you may want to ask your case manager, social worker, legal aid attorney, or another trusted person who is helping you with your job search, to speak with the employer on your behalf.

EXCEPTIONS: There are 3 situations where an employer is NOT required to provide a reasonable accommodation for your disability: 1) where the accommodation will cause the employer "Undue Hardship," 2) where the reasonable accommodation would present a "Direct Threat" to the safety of others or property, or 3) where the employer shows that you CANNOT safely perform essential job functions. For more information about these exceptions, see Appendix U, PG. 651

After you request a reasonable accommodation, the employer has to genuinely consider your request, and talk to you about what types of accommodations could help your situation. The employer can also ask you for more information about your disability to help with the decision. An employer CANNOT simply ignore your request OR wait an unreasonable amount of time to respond, hoping that you give up.[2055]

[2052] 42 U.S.C. §§ 12114(a)-(b), 12210 (Americans with Disabilities Act); CAL. GOV'T CODE § 12926; 2 CAL. CODE REGS. § 7293.6.
[2053] Crewe v. U.S. Office of Personnel Mgmt., 834 F. 2d 140 (8th Cir. 1987).
[2054] For example, an employer could choose to provide a different type of accommodation that is less expensive or less burdensome, so long as the different accommodation is effective at removing the particular employment barriers you face. EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002 (Oct. 17, 2002).
[2055] EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002 (Oct. 17, 2002).

If an employer decides NOT to hire you based on you disability, the employer MUST give you a chance to get a medical opinion about your condition from an independent doctor. If the employer refuses to let you get an independent opinion, it may be violating the law.[2056]

WHAT WILL I NEED TO SHOW TO GET A REASONABLE ACCOMMODATION?

To get a reasonable accommodation for your conviction, you must show two things:

1. Your conviction was caused by your disability. This means

a. Explaining to the employer that you have a disability and what the disability is; AND
b. Providing any documents you have regarding your disability and treatment, including:
   - Letters from doctors or service providers (a) saying that you experienced drug or alcohol addiction, mental illness, and/or some other disability at the time of the offense, and (b) describing how your disability affected you;
   - Letters from doctors or service providers showing that you successful completed a rehabilitation program or are participating in effective ongoing treatment of your mental illness or other disability;
   - Letters from doctors or service providers that show you are no longer using substances and/or you are receiving appropriate treatment to control the symptoms of your mental illness or other disability.

REMEMBER: It may be difficult to prove that your criminal conviction was caused by your drug or alcohol addiction, mental illness, or other disability. It is important that you submit as much evidence as possible! It's best if you can have a doctor submit a letter confirming that you have a disability and how it affects you.

2. The accommodation that you're asking for is "reasonable" and "necessary." This means showing that—

a. The change is necessary for you to apply for or work at the job on an equal basis with other applicants or employees—for example, if the employer does not make an accommodation, your application would be rejected due to your conviction history;
b. It's not too expensive or burdensome for the employer to make the change;
c. It doesn't fundamentally change the employer's business operations; AND
d. There is a relationship between your disability and the change you arA=e requesting—in other words, you are only asking for an exception for the specific convictions that were caused by your disability, NOT other, unrelated convictions that you might have. [2057]

For more information about requesting a reasonable accommodation, see Appendix U, PG. 651. To see a sample letter requesting a reasonable accommodation, see Appendix V, PG. 652.

BUT REMEMBER: Just because you committed a criminal offense when you were suffering from a mental illness or a past drug addiction does not mean you automatically have the right to a reasonable accommodation on your job application today. It can be very difficult to prove that your disability caused your criminal offense, AND that the disability is the type that qualifies you for a reasonable accommodation. Although these reasonable accommodation requests can be difficult, it can be worth asking for them!

Remember, just like with other discrimination complaints, you only have 300 days to file a complaint with the EEOC, or 1 year to file a complaint with the DFEH! For more information about finding a legal aid or employment attorney or non-profit organization, see PG. 599 above. For more information about filing a lawsuit, see PG. 613 below.

WHAT CAN I DO IF THE EMPLOYER REFUSES TO MAKE A REASONABLE ACCOMMODATION FOR ME? HOW CAN I CHALLENGE THE DECISION?

If you believe that an employer denied your request for a reasonable accommodation due to your disability and/or your past drug use, you can file a complaint with the Equal Employment Opportunity Commission (federal employment protection agency) or with California's Department of Fair Employment and Housing (the state employment protection agency).[2058]

The complaint process is the SAME for disability discrimination (an employer's refusal to provide reasonable accommodations) as for other types of illegal discrimination based on your criminal record (e.g., discrimination based on your race, religion, sex, national origin, etc.). See PG. 594 for more information on filing a discrimination complaint with the EEOC or the DFEH and what to expect.

Even if you want to want to file a lawsuit against the employer, you will still have to file a complaint with the EEOC or DFEH first. (This is just like suing an employer for discrimination based on your criminal record—see PG. 598 above for more information.)

[2056] See Cal. Dep't of Fair Emp't & Hous., Fair Employment and Housing Act.
[2057] See U.S. Airways v. Barnett, 535 U.S. 391, 397 (2002).
[2058] Cal. Gov't Code § 12981(a); 2 Cal. Code Regs. § 10063.

HELPFUL HINT:
Should I also talk to a lawyer?

You may also want to talk to a legal aid or plaintiff's side employment lawyer to get advice about your situation. You will still have to file a complaint with the EEOC or DFEH first, before you are allowed to file a lawsuit in court against the employer. For this reason, it's important that you contact the EEOC or DFEH immediately, and then you can also talk to a lawyer to help you.

IF I TRY TO SUE THE EMPLOYER IN COURT, WHAT MUST I PROVE?

To sue an employer under the federal ADA (FHA), California's Fair Housing and Employment Act (FEHA), or other state anti-discrimination laws (such as California's Unruh Civil Rights Act),[2059] you must show that your status as an individual with a disability was a motivating factor in the employer's decision to deny your reasonable accommodation request.[2060] You must also provide evidence that your disability substantially limited your ability to live a normal life,[2061] that the requested accommodation is reasonable and necessary, and (for a disability related to substance abuse) that you are not currently using illegal drugs. [2062]

Remember, you CANNOT sue an employer in court until AFTER you've filed a complaint with the EEOC or DFEH and received a Right-to-Sue notice.

BE PREPARED: You should be prepared for the employer to argue that you do NOT have a protected disability because you are a "current user" of illegal drugs, or that you are not being treated for your mental illness.[2063] You can support your request by providing treatment records showing that you have not used drugs for a significant period of time, or that you are receiving treatment for your mental illness.[2064] You should also provide evidence of your participation in or completion of a drug abuse treatment program, or proof that you receive treatment for your mental illness.

WHERE CAN I GO TO LEARN MORE ABOUT HOW MY DISABILITY AFFECTS MY EMPLOYMENT RIGHTS?

These resource guides provide helpful information about the rights of people suffering from disabilities caused by past drug abuse, alcoholism, mental illness, or other reasons:

- Reasonable accommodations in the Workplace Fact Sheet (Disability Rights California)
  - http://www.disabilityrightsca.org/pubs/F06701.html
- Know Your Rights: Are You In Recovery From Alcohol or Drug Problems? (U.S. Dept. of Health & Human Services:
  - https://store.samhsa.gov/shin/content/PHD1091/PHD1091.pdf
- Know Your Rights: Employment Discrimination Against People with Alcohol/Drug Histories (Legal Action Center & Partners for Recovery):
  - http://lac.org/wp-content/uploads/2014/12/Q_and_A-Employment_Discrimination.pdf
- Employment Discrimination Based on Disability (Cal. Dept. of Fair Employment & Housing):
  - http://www.dfeh.ca.gov/res/docs/Publications/Brochures/2015/DFEH-184.pdf
- Disability Under the Fair Employment & Housing Act: What You Should Know About the Law (Cal. Dept. of Fair Employment & Housing):
  - http://www.dfeh.ca.gov/res/docs/Publications/Brochures/2015/DFEH- 208DH.pdf

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[2059] Unruh Civil Rights Act, CAL. CIV. CODE § 51 et seq.
[2060] See Head v. Glacier Nw. Inc., 413 F.3d 1053 (2005) (holding that the ADA outlaws adverse employment decisions motivated, even in part, by animus based on a plaintiff's disability or request for an accommodation).
[2061] 42 U.S.C. § 12102(2)(A) (defining disability as "a physical or mental impairment that substantially limits one or more . . . major life activities"). There are many ways to prove that alcohol/drug addiction substantially limited one or more major life activities. For example, you could testify (speak in court) or write an affidavit (legal letter) about how your own addiction, at one time, made you unable to care for yourself or your family, or substantially limited one or more major body functions. You could also provide affidavits or testimony of family members or others. It is not necessary to provide evidence from a treatment program, though that certainly can be helpful.
[2062] CAL. GOV'T CODE § 12926(l)(S)(iii)(6).
[2063] See Campbell v. Minneapolis Pub. Housing Auth., 168 F.3d 1069 (8th Cir. 1999) ("The MPHA indicated it was denying [Campbell's] application for the following reasons: . . . you have recently used illicit drugs and have a problem with alcohol.").
[2064] See United States v. S. Mgmt. Corp., 955 F.2d 914, 916 (4th Cir. 1992) (finding a private apartment complex to have violated the FHA by refusing to rent units to a community drug and alcohol rehabilitation board for its participants who had remained drug-free for one year).

EMPLOYMENT APPENDIX

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APPENDIX A

Form I-9 (Employment Eligibility Verification)

See next page.

Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 03/31/2016

►START HERE. Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)*

Last Name (*Family Name*)	First Name *(Given Name)*	Middle Initial	Other Names Used *(if any)*

Address (*Street Number and Name*)	Apt. Number	City or Town	State	Zip Code

Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	E-mail Address	Telephone Number
	___ - __ - ____		

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

☐ A citizen of the United States

☐ A noncitizen national of the United States *(See instructions)*

☐ A lawful permanent resident (Alien Registration Number/USCIS Number): _____

☐ An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____ . Some aliens may write "N/A" in this field. *(See instructions)*

*For aliens authorized to work, provide your Alien Registration Number/USCIS Number **OR** Form I-94 Admission Number:*

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (*See instructions*)

3-D Barcode
Do Not Write in This Space

Signature of Employee:	Date *(mm/dd/yyyy):*

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.)*

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator:			Date *(mm/dd/yyyy):*
Last Name *(Family Name)*	First Name *(Given Name)*		
Address *(Street Number and Name)*	City or Town	State	Zip Code

STOP ***Employer Completes Next Page*** STOP

Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

Employee Last Name, First Name and Middle Initial from Section 1:

List A Identity and Employment Authorization	**OR**	**List B** Identity	**AND**	**List C** Employment Authorization
Document Title:		Document Title:		Document Title:
Issuing Authority:		Issuing Authority:		Issuing Authority:
Document Number:		Document Number:		Document Number:
Expiration Date *(if any)(mm/dd/yyyy)*:		Expiration Date *(if any)(mm/dd/yyyy)*:		Expiration Date *(if any)(mm/dd/yyyy)*:
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date *(if any)(mm/dd/yyyy)*:				
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date *(if any)(mm/dd/yyyy)*:				

3-D Barcode
Do Not Write in This Space

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: _____ **(*See instructions for exemptions*.)**

Signature of Employer or Authorized Representative	Date *(mm/dd/yyyy)*	Title of Employer or Authorized Representative
Last Name *(Family Name)* First Name *(Given Name)*		Employer's Business or Organization Name
Employer's Business or Organization Address *(Street Number and Name)*	City or Town	State / Zip Code

Section 3. Reverification and Rehires *(To be completed and signed by employer or authorized representative.)*

A. New Name *(if applicable)* Last Name *(Family Name)* First Name *(Given Name)* Middle Initial	**B.** Date of Rehire *(if applicable) (mm/dd/yyyy):*

C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.

Document Title:	Document Number:	Expiration Date *(if any)(mm/dd/yyyy)*:

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative:	Date *(mm/dd/yyyy):*	Print Name of Employer or Authorized Representative:

LISTS OF ACCEPTABLE DOCUMENTS
All documents must be UNEXPIRED

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		**1.** Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		**1.** A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		**2.** ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		**2.** Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		**3.** School ID card with a photograph		**3.** Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)		**4.** Voter's registration card		**4.** Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: **a.** Foreign passport; and **b.** Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		**5.** U.S. Military card or draft record		**5.** Native American tribal document
		6. Military dependent's ID card		**6.** U.S. Citizen ID Card (Form I-197)
		7. U.S. Coast Guard Merchant Mariner Card		**7.** Identification Card for Use of Resident Citizen in the United States (Form I-179)
		8. Native American tribal document		**8.** Employment authorization document issued by the Department of Homeland Security
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to Section 2 of the instructions, titled "Employer or Authorized Representative Review and Verification," for more information about acceptable receipts.

APPENDIX B

List of Workforce Development Programs in California

There are many workforce development programs around California. These are just some of the programs available—there may be others in your area!

- **Center for Living & Learning**—Apprenticeship and job search preparation
  - 14549 Archwood Street #221, Van Nuys, CA 91405
    - Telephone: 818-781-1073
    - Email: rhonda@center4living.org
    - Online: http://www.center4living.lle.org/apprenticeships.shtml
- **BOSS Partners in Employment Reentry Program (PREP)**
  - 1433 Webster St., Ste. 100, Oakland, CA 94612
    - Telephone: (510) 891-8773
    - Email: dmccray@self-sufficiency.org
    - Online: https://self-sufficiency.org/?programs=partners-reentry-program-prep
- **Rubicon Programs** (multiple locations)
  - 101 Broadway, Richmond, CA 94804
    - Telephone: (510) 412-1725
  - 1918 Bonita Avenue, Berkeley, CA 94704
    - Telephone: (510) 549-8820
  - 418 West 4th Street, Antioch, CA 94509
    - Telephone: (925) 399-8990
  - Online: http://www.rubiconprograms.org/economicempowerment.html
- **Dress for Success** (multiple locations)
  - 1416 17th Street, Bakersfield, CA 93301
    - Monday—Friday: 12 PM—5 PM
    - Telephone: (661) 748-1809
    - Online: https://bakersfield.dressforsuccess.org/
  - 11801 Pierce Street, Suite 200, Riverside, CA 92505
    - Monday—Friday: 8 AM—5 PM
    - Online: https://riverside.dressforsuccess.org/
  - 770 L Street, Suite 950, Sacramento, CA 95814
    - Telephone: (916) 285-0103
    - Online: https://sacramento.dressforsuccess.org/
  - 1122 Broadway, Suite 200, San Diego, CA 92101
    - Monday—Friday, 9 AM—5 PM
    - Telephone: (619) 533-6014
    - Online: https://sandiego.dressforsuccess.org/
  - 500 Sutter Street, Suite 218, San Francisco, CA 94102
    - Monday—Friday, 8:30 AM—5 PM
    - Telephone: (415) 362-0034
    - Online: https://sanfrancisco.dressforsuccess.org/
  - 560 Valley Way, 2nd Floor—Bldg. 4, Milpitas, CA 95035
    - Monday—Friday 9 AM—5 PM
    - Telephone: (408) 935-8299
    - Online: https://sanjose.dressforsuccess.org/
  - 2100 S. Hill Street, Los Angeles, CA 90007
    - Monday—Friday: 9 AM—5 PM
    - Telephone: (323) 461-1021
    - Online: https://worldwidewest.dressforsuccess.org/
- **Wardrobe for Opportunity**
  - Oakland for Opportunity Boutique & Training Center
    - 570 14th Street, Suite 5, Oakland, CA 94612
    - Telephone: (510) 463-4100
    - Fax: (510) 452-4502
- **Center for Employment Opportunities (CEO)**
  - 464 7th Street, Oakland, CA 94607
    - Telephone: 510-251-2240
    - Online: http://ceoworks.org/our-offices/oakland/
  - 448 South Hill Street, Suite 915, Los Angeles, CA 90013
    - Telephone: 213-219-7873



        - Online: https://ceoworks.org/los-angeles/
    - 1630 South E Street, Suite A, San Bernardino, CA 92408
        - Telephone: 909-380-8822
        - Online: http://ceoworks.org/our-offices/san-bernardino/
    - 450 A Street, Suite 300, San Diego, CA 92101
        - Telephone: 619-684-4810
        - Online: http://ceoworks.org/our-offices/san-diego/
    - 1435 Koll Circle, Suite 104, San Jose, CA 95112
        - Telephone: 408-684-6298
        - Online: https://ceoworks.org/our-offices/san-jose/
- **Concord Boutique & Training Center**
    - 1850 Gateway Blvd, Suite 170, Concord, CA 94520
        - Telephone: (510) 463-4100
        - Online: https://www.wardrobe.org/
- **California Employment Development Department (EDD)**
    - America's Job Centers of California (formerly One-Stop Career Centers) - over 200 locations throughout California: http://www.americasjobcenter.ca.gov/
    - Job fairs and workshops: http://www.edd.ca.gov/Jobs_and_Training/Job_Fairs_and_Events.htm
    - Online: http://www.edd.ca.gov/Jobs_and_Training/More_Job_Seeker_Information.htm

To find additional employment programs and resources, check out the following links:

- Building Opportunities for Self-Sufficiency: https://self-sufficiency.org/?page_id=944
- Alameda Point Collaborative: http://apcollaborative.org/workforce-development/
- Center for Independent Living, Inc. (Berkeley): http://www.cilberkeley.org/programs/employment/employment-services/
- Goodwill Industries of the Greater East Bay: http://eastbaygoodwill.org/programs/
- SparkPoint Centers: http://sparkpointcenters.org/financial-services/get-a-job
- 70 Million Jobs: 70MillionJobs.com

APPENDIX C

How to Present Your Best Self: Proof of Rehabilitation

*EXPUNGEMENTS, PARDONS, AND CERTIFICATES OF REHABILITATION**

If you have had your conviction expunged or pardoned, or you received a Certificate of Rehabilitation, give the employer a copy! Give them to the employer along with your completed job application or during your interview. (Important: Make sure you only give the employer a photocopy and keep the original documents for yourself.)

OTHER REHABILITATION DOCUMENTS

These include any certificates, diplomas, letters of recommendation, or other documents that show your accomplishments since your conviction, and that you have turned your life around for the better. Here are just some examples of things you can bring:

- Certificates or diplomas for any programs that you completed while inside or after your release—e.g., vocational training and job skills, anger management, substance abuse, GED classes, etc.;
- Letters of support from people who know you and can speak to your good character or work ethic—e.g., a former employer, pastor at your church, case manager or social worker, volunteer coordinator, or personal friend.
- Certificates from any professional training or school courses you've completed;
- Proof of other jobs or volunteer work that you've done since your conviction; and/or
- Discharge papers from a rehabilitation facility.
- For more suggestions about how to get evidence of rehabilitation, this guide can help you: *How to Gather Evidence of Rehabilitation* (Legal Action Center), available online at: http://lac.org/wp-content/uploads/2014/12/How_to_Gather_Evidence_of_Rehabilitation_2013.pdf

APPENDIX D

How to Present Your Best Self:
Tips for Success in Job Interviews

These tips can help you succeed in job interviews, especially if you have to answer any difficult questions about your criminal record. Here are some suggested steps and tips:

STEP 1: **Thoughtfully answer each interview question.**

Here are some tips for addressing your criminal record and answering other tough questions during a job interview:

- Own it! Take responsibility for your actions. State the facts, but express regret for what happened. Don't get defensive.
- Don't go into details. Keep your answers short. Be honest, but only talk about necessary information based on the questions you are asked.
- Tell the employer how you have changed. Emphasize that the incident happened long ago and that you are a different person now. Explain what you learned while you were in prison/jail, and what you are doing differently now. Highlight any services that you're getting to help you move on. Paint a picture of the person you are now.
- Emphasize your qualifications. Describe the things that will make you a good employee—such as previous work experience, job training programs, or classes that you've taken. Show the employer why you are qualified for the position and will be a benefit to the company.
- Describe your hopes and dreams. Show the employer than you are in control of your life and have short-term and long-term goals. Highlight any programs or services that you're participating in to help you move on and achieve your goals. Emphasize that you would be very appreciative of the opportunity to work for them, and you will be the hardest worker they will ever have.[2065]
- DON'T LIE! If the employer finds out the truth (though a background check, or later on after you've been hired), they can reject or fire you for lying—regardless of your record and qualifications for the job!

The most important question of all is "Why Should I Hire You?" Remember, the most important thing to show is that you are qualified for the position and that you will benefit the employer's company if they hire you. You should also be ready to explain why you are interested in the job. Be sure you have all of these answers prepared and practice them beforehand.

IMPORTANT: What if the employer asks an illegal question or asks about something that should not have been included in your background check? See PG. **Error! Bookmark not defined.** for more information about what you can do in this situation.

STEP 2: **Ask your own questions.**

Often, employers will give you a chance to ask them questions at the end of an interview, so it's best to have several questions prepared beforehand. Here are some sample questions you can ask that demonstrate your interest in the position and the company—the answers will make you look better!

- What is most important for you (my boss) to be happy with me if I get this job?
- What would you like me to accomplish in the first couple of weeks on the job?
- Why did the person who had this job before leave?[2066]
- Any other questions showing that you've done your homework to research and learn about the company.
- DON'T just ask about wages, hours, or benefits!

STEP 3: **Practice beforehand!**

If possible, you should try to do a practice ("mock") interview before the real thing with your case manager, social worker, counselor, or family or friends. Have the other person pretend they're the employer and ask you interview questions, so that you can practice giving your answers. Remember, even if you have your answers prepared on paper or in your head, things will sound different when you try to say them out loud!

STEP 4: **Be polite and confident during the interview.**

Here are some things to keep in mind when it's time for the interview:

- Dress up! Show the employer that you take yourself—and the job—seriously by presenting your most professional self. Dress like you were going to court, to church, or to some other important event.

[2065] Electronic communication from Mary Weaver, Executive Director, Friends Outside in Los Angeles County, Jan. 29, 2015; electronic communication from Mario Rodriguez, South Bay Workforce Investment Board, Jan. 29, 2015.
[2066] Jails to Jobs, Interview Tips, http://jailstojobs.org/html/interview_tips.html.

- Be polite! Make sure to thank the employer for giving you the chance to interview for the job, and shake the interviewer's hand. Do this BEFORE and AFTER the interview.
- Be positive and confident! Smile, make eye contact with the interviewer, and show that you are confident in your abilities to be a good employee. Go in with the mindset that you are the best applicant for the job and you will get hired.
- Take notes! Bring a pencil and paper so that you can write down any important information or questions during the interview. Always start by writing down the interviewer's name so that you can follow up afterward!

STEP 5: **Follow-up after the interview.**

After the interview, it's important to follow up—this will help to make sure the employer doesn't forget about you and shows you're still interested in the job.

- Send a thank you note. A thank-you note will help you stand out from other job applicants. It shows how professional and polite you are, and it gives you another opportunity to sell yourself or re-answer a question that you didn't handle very well during the interview. Address the note to the person who interviewed you (this is why it's important to write down their name during the interview).
- If you don't get the job, you might consider calling the hiring manager to ask for feedback. You could say something along the lines of: "I know you decided to hire someone else, but I just wanted to find out why I didn't get the job. I'd appreciate knowing the reason, because your feedback will help me in my job search." You may get feedback that could actually influence the employer to reconsider your application. If not, you'll at least receive some useful information that will help with future interviews.[2067]

[2067] Jails to Jobs, After the Interview, http://jailstojobs.org/html/after_interview.html.

APPENDIX E

Benefits for Employers:
Federal Bonding Program

This section explains all the eligibility requirements of the Federal Bonding Program and how to apply for the program.

WHO IS ELIGIBLE FOR THE FEDERAL BONDING PROGRAM?

In order to be eligible for the federal bonding program, you must meet the following requirements:

1. Have a firm job offer (or be already employed) at a job that is likely to be long-term or permanent. The EDD staff will need to verify that the employer is ready to hire you (or keep you on the job) once you have bonding insurance.
2. Be qualified for the job position being offered. In other words, the only thing preventing you from getting the job is the lack of insurance.
3. The position that you are being hired for requires you to be bonded, or you are required to be bonded to remain on the job.
4. You are not commercially bondable, or could be denied commercial bonding coverage because of an arrest record or imprisonment, history of drug or alcohol abuse, poor credit history, lack of employment history, dishonorable discharge from the military, or other "risk" factors.
5. You are 18 or older and legally eligible to work in the U.S. You will have to provide proof of your legal status or documentation for authorization to work in the United States.
6. Are not self-employed or an owner/operator.[2068]

HOW DO I APPLY FOR THE FEDERAL BONDING PROGRAM?

STEP 1: Visit your local EDD Workforce Services location or America's Job Center of California (formerly One-Stop Career Center). The only document you need to bring is proof of legal status or eligibility to work in the U.S. (see list of employment verification documents, Appendix A, PG. 615)[2069]—you do NOT need to bring any other paperwork. The EDD staff will contact the employer and/or do other research to make sure that you meet all the other eligibility requirements;

STEP 2: The EDD staff person certifies (approves) the bond; and

STEP 3: Your insurance coverage will begin as soon as you begin work.[2070]

Two important things about bonding:

- Your employer can only get free insurance coverage for the first 6 months that you work there; after that they will have to purchase insurance directly. If you lose your job after 6 months and you suspect that your employer dumped you so that it would not have to pay insurance, you may want to contact the EDD.
- If you switch to another job that also requires bonding, there is no guarantee that you will be able to get insurance with the new employer. The EDD will decide on a case-by-case basis whether or not to issue you another round of bonding.[2071] For this reason, we recommend that you only use the bonding program for jobs that are likely to be long-term or permanent—NOT for temporary positions.[2072]

[2068] CALIF. EMPLOYER ADVISORY COUNCIL, EDD Fidelity Bonding Program—An Employment Incentive, http://ceac.org/employers/ask_the_edd_expert/edd_fidelity_bonding_program/.
[2069] See Cal. Employment Development Department, Attention All Job Seekers (2013), http://www.edd.ca.gov/pdf_pub_ctr/de8401.pdf for a complete listing of acceptable documents.
[2070] There is an EDD office locator available online. CALIF. EMPLOYMENT DEVELOPMENT DEP'T, Office Locator, http://www.edd.ca.gov/office_locator/.
[2071] Telephone call with Gil Barkley, (backup) State Bonding Coordinator, EDD, Feb. 17, 2015. The EDD will also want to make sure that the employer is not simply exploiting you for free insurance coverage and then getting rid of you after the first 6 months of free coverage is over.
[2072] Telephone call with Maria Alexander and Mary Weaver, Friends Outside in Los Angeles County, Jan. 21, 2015.

The EDD is here to help you! The EDD wants to make sure that all bonding program participants are successful in their work and are treated equally by employers. If you have any questions or problems about getting bonded, contact the EDD State Bonding Coordinator at 916-654-9309.[2073]

For more information on the government bonding program:

- Visit any EDD America's Job Center of California or Workforce Services location[2074]
- Read the EDD's online brochure at http://www.edd.ca.gov/pdf_pub_ctr/de8714ff.pdf
- Contact the EDD State Bonding Coordinator:

  Telephone: 916-654-9309
  Mailing Address:
  Workforce Services Branch—California EDD
  P.O. Box 826880, MIC 50
  Sacramento, CA 94280-0001

[2073] Telephone call with Gil Barkley, (backup) State Bonding Coordinator, EDD, Feb. 17, 2015.
[2074] To find offices in your area, visit the EDD website at http://www.edd.ca.gov/Office_Locator/ and select "America's Job Center of California (formerly known as One-Stop Career Centers)."

APPENDIX F

LA Fair Chance Initiative for Hiring

If you are applying to a job with a company located or doing business in the City of Los Angeles, or with a company that contracts with the City of Los Angeles, read this section!

WHAT IS THE LA FAIR CHANCE INITIATIVE?

It is a new "Ban the Box" law that passed in Los Angeles in December 2016.[2075]

WHAT DOES THE ORDINANCE REQUIRE/PROHIBIT?

Starting January 22, 2017, most private sector employers that are doing business in the City of Los Angeles and that employ 10 or more people cannot ask about an applicant's criminal history until they have already made a conditional offer of employment [2076] Los Angeles also has separate regulations that apply to *private contractors and subcontractors* doing business with the City of Los Angeles.[2077] The new rules for contractors and subcontractors are generally the same as the ones for private employers.

SO AN EMPLOYER IN LOS ANGELES CAN NEVER ASK ABOUT MY CONVICTION HISTORY AT THE BEGINNING OF THE JOB APPLICATION PROCESS?

Although that is generally true, there are few exceptions. An employer *is* allowed to ask about your conviction history at the start of the application process in the following circumstances:

1. when the employer is required by law to obtain information regarding an applicant's criminal convictions;
2. when the applicant will be required to possess or use a firearm in the course of his/her employment;
3. when the applicant is prohibited by law from holding the position sought due to a conviction, regardless of whether the conviction has been expunged, sealed, eradicated, or dismissed; or
4. when the employer is prohibited by law from hiring an applicant who has been convicted of a crime.[2078]

WHEN CAN AN EMPLOYER ASK ABOUT MY CONVICTION HISTORY?

Unless one of the above exceptions applies, the employer can only conduct a background check after deciding you are otherwise qualified for the position AND after extending a conditional offer of employment to you.

HOW CAN AN EMPLOYER CONSIDER MY CONVICTION HISTORY?

An employer can only consider convictions that are "substantially job-related," and must conduct an individualized assessment, considering: the amount of time that has elapsed since the conviction; and any evidence of rehabilitation or other mitigating circumstances.

WHAT IF THE EMPLOYER DENIES ME A JOB BECAUSE OF MY CONVICTION HISTORY?

If an employer denies you the job, they must: give you a written notice of rejection that includes an individualized assessment of how the conviction is related to the job and give you copies of any documentation they used in making the decision. You then have the right to a "Fair Chance Process." The employer must hold the job open for at least five days from the date they rescinded the offer to give you a chance to submit documentation regarding the accuracy of your criminal history and any evidence of mitigating factors. The employer is required to review any documentation you provide and reassess their decision.[2079]

WHAT CAN I DO IF AN EMPLOYER HAS VIOLATED THE LOS ANGELES FAIR CHANCE INITIATIVE?

You can submit a complaint form to the LA Office of Wage Standards (OWS) to start an investigation.[2080]

WHAT HAPPENS TO AN EMPLOYER WHO VIOLATES THE FAIR CHANCE INITIATIVE?

Prior to July 1, 2017, employers who violate the Fair Chance Initiative will receive a written warning. Starting July 1,2017, the employers can be assessed fines that start at $500 for the first offense, up to $2000 for the third and subsequent violations.[2081] The Fair Chance Initiative also allows applicants/employees to bring civil actions against employers.[2082]

[2075].Los Angeles Municipal Code, Article 9 § 189.
[2076].Los Angeles Municipal Code, Article 9 § 189.02.
[2077] Los Angeles Municipal Code, Article 22 § 10.48.
[2078] Los Angeles Municipal Code, Article 9 § 189.07.
[2079] Los Angeles Municipal Code, Article 9 § 189.03(B).
[2080] See http://bca.lacity.org/for more information and to download a copy of the complaint form.
[2081] Los Angeles Municipal Code, Article 9 § 189.10.
[2082] Los Angeles Municipal Code, Article 9 § 189.08.

APPENDIX G

San Francisco Fair Chance Ordinance

If you are applying for a job with a company located in or doing business in the City or County of San Francisco, read this Appendix!

WHAT IS SAN FRANCISCO'S LOCAL "BAN THE BOX" LAW CALLED?

It is called San Francisco's Fair Chance Ordinance (SFFCO). It went into effect on August 13, 2014.[2083]

WHO DOES SFFCO APPLY TO?

SFFCO applies to private employers with 20 or more employees[2084] and city contractors and subcontractors[2085] located or doing business in the City and County of San Francisco. It does not matter where the *employees* are physically located, as long as the *employer* is located in or doing business in San Francisco.

CAN PRIVATE EMPLOYERS IN SAN FRANCISCO HAVE "BLANKET BANS" AGAINST CRIMINAL RECORDS IN A JOB AD OR SOLICITATION?

No. Employers cannot put "blanket bans" (like "no felons" or "no convictions") in any job ad or solicitation. Ads cannot directly or indirectly express that individuals with a conviction history will not be considered for employment or cannot apply for a position with that employer. The employer MUST:

- State in any job ads or solicitations that it will consider applicants with criminal histories;
- Post in any workplace a notice of your rights as a job applicant or employee under the SFFCO. (This notice must be in the language(s) that the majority of the employees speak.)

WHAT CAN'T A PRIVATE EMPLOYER IN SAN FRANCISCO ASK ME ABOUT MY CRIMINAL RECORD UNDER SFFCO?

A private employer in San Francisco may never ask about or consider:

1. An arrest not leading to a conviction (except arrests that are still pending or unresolved).
2. Participation in a diversion or deferral of judgment program. A diversion program (such as a drug rehabilitation program) helps a person charged with certain crimes avoid criminal charges—and therefore a criminal record.
3. A conviction that has been sealed, dismissed, expunged, or made inoperative.
4. Juvenile records.*
5. A conviction more than 7 years old (based on the date of sentencing).*
6. A criminal offense other than a felony/misdemeanor (for example, an infraction, which is a petty offense that usually comes with a ticket and small fine).[2086] *

NOTE: All records marked with a * indicate additions to the California state law protections described on PG. 564.

WHAT CAN A PRIVATE EMPLOYER IN SAN FRANCISCO ASK ME ABOUT MY CRIMINAL RECORD?

AFTER you are found to be qualified for the job, a live interview has been conducted, or a "conditional offer" of employment has been made, only then can a private employer in San Francisco ask about and consider information from your criminal record—it can only consider the following:

1. Your conviction history from the last 0-7 years (based on date of sentencing)—so long as it is not one of the 6 things a private employer in San Francisco can NEVER ask about (listed above) and is directly related to your ability to do the job.
2. Your pending or unresolved arrests—if directly related to your ability to do the job.[2087]

ADDITIONAL REQUIREMENT: If a private employer in San Francisco decides to ask about and consider your conviction history from 0-7 years ago or any pending/unresolved arrests, then the employer must also consider:

1. Only "directly-related convictions"—those that directly and negatively relate to your ability to perform duties essential to the job. For example: Will the job give you an opportunity to commit the same crime?

[2083] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.
[2084] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.
[2085] S.F. Admin. Code § 12T.
[2086] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.
[2087] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.



Are the factors that led to your crime likely to recur at this particular job? If not, then the employer cannot consider those convictions;
2. The time that has passed since your conviction; AND
3. Any evidence of errors in your record, your rehabilitation efforts, or other helpful information you offer. This would include things like:
   a) Completion of parole or probation;
   b) Recommendations from employers;
   c) Education or vocational training;
   d) Completion or active participation in rehabilitation programs;
   e) Letters of recommendation from organizations or individuals who have interacted with you since your conviction.

WHEN CAN A PRIVATE EMPLOYER IN SAN FRANCISCO ASK ABOUT MY CRIMINAL RECORD? WHAT DOES THE PROCESS LOOK LIKE?

PHASE 1: At the beginning of the hiring process, a private employer located or doing business in San Francisco cannot ask about:

1. Your conviction history — meaning the employer cannot ask about your criminal convictions on a job application form, during a job screening, in an informal conversation, or otherwise.
2. Your pending or unresolved arrests, whether in a job application form, during a job screening, in an informal conversation, or otherwise.[2088]

PHASE 2: The employer must decide that you meet the minimum qualifications for the job, conduct a live interview, or make a conditional offer of employment before asking about or considering certain information in your criminal record.

PHASE 3: Before a private employer in San Francisco can about your convictions from 0-7 years ago or any unresolved arrests that directly relate to your ability to do the job, it must:

1. Give you notice of the Fair Chance Ordinance; and
2. Give you notice that follows the requirements of California state and U.S. federal laws governing employment background checks.

PHASE 4: Only AFTER a private employer in San Francisco has conducted a live interview or made a conditional offer of employment AND has given you all the required notice under federal law, state law, and the SFFCO law, can the employer use information in a background check report, ask about, and consider:

1. Your conviction history from the last 0-7 years, if it is outside of the 6 things you can never ask about (discussed above) AND if it directly relates to your ability to do the job.
2. Your pending or unresolved arrests, if they directly relate to your ability to do the job.[2089]

PHASE 5: Before a private employer in San Francisco fires, refuses to hire, chooses not to promote, or takes other action that harms you based on a conviction history from 0-7 years ago or an unresolved arrest, the employer must give you an opportunity to present evidence that:

- The information is inaccurate;
- You have been rehabilitated, including letters of support and other evidence that you have:
  - Satisfied and completed the terms of parole/probation;
  - Received education and/or training;
  - Participated in alcohol or drug treatment programs;
  - Letters of recommendation;
  - Been free of criminal behavior for a sufficient time period to have changed, based on your age at the time of the conviction; and
- All other mitigating factors that led to the conviction and explain or reduce the severity of your criminal behavior, including evidence of:
  - Coercion (you were forced or threatened into doing the illegal act);
  - Physical or emotional abuse (you were experiencing physical or emotional violence that led him/her to do the illegal act); and/or
  - Untreated substance abuse/mental illness that contributed to the conviction (you were addicted to drugs or alcohol, or had a serious mental health issue, and had not received specialized health care treatment for one of those issues). [2090]

[2088] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.
[2089] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.
[2090] S.F. POLICE CODE, Art. 49, San Francisco's Fair Chance Ordinance.

WHAT IF THE EMPLOYER STILL DECIDES TO NOT HIRE OR PROMOTE ME, FIRES ME, OR TAKES SOME OTHER NEGATIVE EMPLOYMENT ACTION AGAINST ME?

Before the employer makes a final decision about any negative action against you, it must:

1. Give you with a copy of the background check report that it based its decision on;
2. Notify you that it intends to take negative action against you;
3. Tell you why you were denied (what the exact issue was in your conviction history); and
4. Give you 7 days to provide information about any errors in you report or your rehabilitation efforts.

WHAT HAPPENS AFTER THE 7 DAYS?

The employer may take a reasonable amount of time to reconsider your application in light of any additional information you have offered. It is recommended that you use that one-week period to be very proactive in clearing up information in your record, providing evidence of errors or rehabilitation, etc. If the employer still decides not to hire you based on your conviction history and all the information you have provided, it must give you *final notice* of its decision.

WHAT YOU CAN DO IF AN EMPLOYER VIOLATED THE SAN FRANCISCO FAIR CHANCE ORDINANCE (SFFCO):

WHAT CAN I DO IF I THINK A SAN FRANCISCO EMPLOYER HAS VIOLATED THE SFFCO?

You can report the violation to San Francisco's Office of Labor Standards Enforcement (OSLE), and you have 60 days to do so. Call the OSLE office at (415) 554-5192. You can also email the office at fce@sfgov.org (see the OLSE website at: www.sfgov.org/olse/fco for more information).

NOTE: GOOD FAITH MISTAKES ARE OKAY.

There is no punishment for mistakenly accusing an employer of violating the SFFCO, so long as the mistake was in good faith (meaning you weren't being malicious or trying to abuse or harass the employer).

CAN THE EMPLOYER RETALIATE AGAINST ME FOR REPORTING A VIOLATION TO THE OSLE?

No. An employer may not retaliate against you for exercising your legal rights or for cooperating with the Office of Labor Standards Enforcement (OSLE).

WHAT HAPPENS WHEN I REPORT A VIOLATION?

First, San Francisco's OLSE will investigate the employer. Second, if the OLSE finds a violation, it may "order any appropriate relief." This usually means that the OLSE will give a warning or fine the employer:

- If it is the employer's first violation, or if it occurs before August 13, 2015 (any time in the first year that the SFFCO law is in effect), the OLSE will issue a warning and give the employer a chance to change its policies.
- If there are additional violations after the first warning, the OLSE will begin fining the employer for each violation.
- If the employer refuses to comply in a timely manner, OLSE may refer the case to the City Attorney to file a civil action against the employer for relief.

CAN OLSE FORCE THE EMPLOYER TO GIVE ME THE JOB?

Probably not. In general, OLSE will NOT force an employer to hire someone, even if the employer violated the law by rejecting you for the job. However, OLSE has been very successful at resolving violations informally, simply by talking with the employer and applicant. For example, OLSE might ask the employer to reconsider your application, give you the opportunity to apply for another job, or let you submit a new application without prejudice.[2091]

[2091] Telephone call with Donna Mandel, Compliance Officer, SF Office of Labor Standards (Feb. 20, 2015). In addition, the law has an unfortunate loophole that allows employers to lawfully reject an applicant if the conviction is "directly-related" the position, and OLSE has NO authority to judge or enforce what qualifies as a "directly-related conviction." S.F. POLICE CODE §§ 4904(f), 4909(a)(1) (San Francisco's Fair Chance Ordinance, effective Aug. 13, 2014).

APPENDIX H

City of Richmond, CA:
"Ban the Box" Ordinance

If you are applying to a job with a company located or doing business in the City of Richmond, read this!

WHAT IS THE CITY OF RICHMOND'S LOCAL "BAN THE BOX" ORDINANCE?

It is a law (a city ordinance) that prevents certain types of employers—all contractors and subcontractors getting money from the City of Richmond, with at 10 or more full-time employees—from asking about criminal convictions in the initial job application.[2092]

WHAT DOES THE ORDINANCE REQUIRE/PROHIBIT?

The Richmond "Ban the Box" law prohibits these types of employers (city-paid contractors and subcontractors) from asking any questions regarding prior criminal convictions on any printed or online employment application forms. The ordinance prohibits employers from making "any inquiry into an applicant's conviction history."[2093]

SO AN EMPLOYER IN RICHMOND CAN NEVER ASK ABOUT MY CONVICTION HISTORY?

Not exactly. There are exceptions:

Exception 1: The Richmond ordinance does not prohibit employers who are required by state or federal law to conduct background checks from looking into your conviction history.[2094]

Exception 2: The ordinance does not prohibit employers looking to fill "Sensitive Positions" from considering your conviction history. A "Sensitive" position is a position that has one or more of the following job characteristics:

- Regular unsupervised handling of large amounts of cash;
- Regular unsupervised handling of other people's private, personal, and confidential information
- Regular unsupervised contact with children under 16;
- Regular unsupervised contact with the elderly or disabled;
- Regular unsupervised responsibility for operating a bus, taxi, or limousine used to transport the general public;
- Any position in a business that requires regular unsupervised entry into private premises;
- Any position in a business that involves unsupervised handling of hazardous substances.

WHEN CAN AN EMPLOYER ASK ABOUT MY CONVICTION HISTORY?

If the employer falls under one of the exceptions, the employer can only conduct a background check after determining you are otherwise qualified for the position AND after extending a conditional offer of employment to you.

HOW CAN AN EMPLOYER CONSIDER MY CONVICTION HISTORY?

An employer can only consider convictions that are "substantially job-related," and must conduct an individualized assessment, considering: the amount of time that has elapsed since the conviction; and any evidence of rehabilitation or other mitigating circumstances.

WHAT IF THE EMPLOYER DENIES ME A JOB BECAUSE OF MY CONVICTION HISTORY?

If an employer denies you a job because of a substantially job-related conviction, it must: give you a written notice of rejection, including how the conviction is related to the job; and give you the opportunity to correct any mistakes in your record and offer evidence of rehabilitation or other mitigating circumstances.

WHAT CAN I DO IF AN EMPLOYER HAS VIOLATED THE RICHMOND ORDINANCE?

The most obvious violation of the ordinance is failure to remove all questions regarding criminal history on the initial job application. Although all employers must file a copy of their standard application with the city as part of the formal bidding process, mistakes can happen. If you think a covered employer in Richmond has violated the ordinance, contact the City Manager (Bill Lindsay at the time of publication):

[2092] Municipal Code of the City of Richmond, Article II, Chapter 2.65.010.
[2093] Municipal Code of the City of Richmond, Article II, Chapter 2.65.040.
[2094] Municipal Code of the City of Richmond, Article II, Chapter 2.65.

450 Civic Center Plaza, Suite 300
Richmond, CA 94804
Phone: (510) 620-6512
Fax: (510) 620-6542

WHAT HAPPENS TO AN EMPLOYER WHO VIOLATES THE RICHMOND ORDINANCE?

Employers have 30 days from receiving the notice of a violation to comply with the ordinance. The Richmond City Manager also has the legal authority to fine employers, to suspend or terminate their lease or contract with the city, to deny future leases or contracts, or to order any other legal remedy available.

APPENDIX I

A Summary of Your Rights Under the Fair Credit Reporting Act (FCRA)

Employers must give you this document with the Pre-Adverse Action letter *before* taking any adverse action against you based on the results of your background check.

See next page.

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identify theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.



- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Consumer Help (FRCH) P O Box 1200 Minneapolis, MN 55480 Telephone: 888-851-1920 Website Address: www.federalreserveconsumerhelp.gov Email Address: ConsumerHelp@FederalReserve.gov
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation , Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture

APPENDIX J

Civil Rights Law that Governs Employers' Hiring Decisions: Title VII

This section will explain Title VII, which is the federal civil rights law that governs employers' hiring and employment decisions related to your criminal record.

WHAT IS TITLE VII?

Title VII of the Civil Rights Act of 1964 is a federal law that prohibits discrimination in employment on the basis of a person's race, color, religion, sex, or national origin.[2095] Title VII protects the rights of employees AND job applicants against discrimination by employers.

WHAT EMPLOYERS HAVE TO FOLLOW TITLE VII RULES?

Title VII applies to all private and public employers with 15 or more employees. This includes federal, state, and local governments; private and public colleges and universities; employment agencies; and labor organizations (unions).[2096]

WHAT IS CONSIDERED A VIOLATION OF TITLE VII?

Title VII violations can occur in two situations: where there is disparate treatment (unequal treatment) OR where there is disparate impact (unequal impact).

Disparate Treatment Discrimination (Unequal Treatment):

An employer might be engaging in *disparate treatment discrimination* if they treat you and your criminal history differently than they treat other applicants with similar criminal records, because of your race, color, religion, sex, or national origin. For example, if an employer rejects a Black applicant based on his/her criminal record, but then hires a White applicant with similar qualifications and a similar criminal record, the employer is likely violating Title VII by illegally treating one person's criminal history more negatively because of his/her race. Similarly, an employer may be violating Title VII if they only do background checks for Black or Latino applicants, but do not run background checks on White applicants for the same position.

Disparate Impact Discrimination (Unequal Impact):

An employer might be engaging in *disparate impact discrimination* if they have a policy of not hiring people with certain kinds of criminal histories, and that policy is more harmful to people of a certain race, color, religion, sex, or national origin.[2097] For example, employers who have a "blanket ban" policy that excludes all applicants with criminal records would cause greater harm to Black and Latino applicants, who are incarcerated at dramatically higher rates than people of other races in the United States. [2098] However, an employer may legally exclude certain job applicants based on their criminal history if the employer shows that doing so is necessary for the specific position and business.

[2095] 42 U.S.C. § 2000e-2.
[2096] 42 U.S.C. § 2000e-2.
[2097] 2 C.C.R. § 11017.1(d).
[2098] EEOC, Enforcement Guidance at § V(A)(2). See also Green v. Missouri Pac. R. Co., 523 F.2d 1290, 1298 (8th Cir. 1975).

APPENDIX K

Civil Rights Law that Governs Employers' Hiring Decisions: EEOC Enforcement Guidance

This section will explain the Equal Employment Opportunity Commission (EEOC) and the EEOC Enforcement Guidance. The EEOC is the federal government agency responsible for enforcing the civil rights of job applicants and employees. The EEOC Enforcement Guidance is a report that explains how and when employers can consider your criminal record when deciding whether to hire or fire you.

WHAT IS THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)?

The EEOC is a government agency that enforces Title VII and other civil rights laws that prohibit illegal discrimination against job applicants and employees. These laws protect you against unfair treatment based on your race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information.[2099] California law requires employers to fully follow all federal laws regarding how employers can consider your criminal history when hiring. This means that all employers must follow the EEOC guidelines, or else they have broken both federal and state law.[2100]

WHAT IS EEOC ENFORCEMENT GUIDANCE?

The EEOC investigates claims of discrimination by employers, and also issues special guidelines and "enforcement guidance" reports for employers to help them follow Title VII and other civil rights laws.[2101] The EEOC's Enforcement Guidance is a report that describes how and when employers can use your criminal record to make employment decisions. The Enforcement Guidance says that—before making any negative decision based on your record, such as rejecting your job application—an employer must consider the nature of your conviction, the type of job you've applied for, and how much time has passed since the conviction.[2102] The employer should also consider your individual situation and give you a chance to explain yourself, including the circumstances of your conviction and why you would still be a good employee.[2103] However, the Enforcement Guidance does NOT have the same power as an actual law—it is basically a set of recommended rules for how employers *should* act and how courts *should* enforce the law. Courts should consider the Enforcement Guidance and may be persuaded to follow the EEOC's recommendations, but they are not required to follow these rules.

To read the complete EEOC Enforcement Guidance, see http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf.

For more information about the EEOC Enforcement Guidance, see the following resources:

- What You Should Know About the EEOC and Arrest and Conviction Records— http://www.eeoc.gov/eeoc/newsroom/wysk/arrest_conviction_records.cfm
- Questions and Answers About the EEOC Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII— http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm

Note: The EEOC is a federal government agency and enforces federal civil rights laws. California also has a state agency, called the Department of Fair Employment and Housing (DFEH) that enforces state civil rights laws against discrimination. For more information on how to enforce your rights through the EEOC, see Appendix O, PG. 640. For more information on **how to enforce** your rights through California's Department of Fair Employment and Housing (DFEH), see Appendix P, PG. 642.

[2099] 42 U.S.C. § 2000e-4.
[2100] CAL. GOV'T CODE § 12940 et seq. See also, e.g., Rodriguez v. Airborne Express, 265 F.3d 890, 902 n.4 (9th Cir. 2001) ("[Courts] may look to federal authority regarding Title VII and similar civil rights statutes when interpreting analogous statutory provisions of [California's Fair Employment & Housing Act].").
[2101] 42 U.S.C. § 2000e-4.
[2102] EEOC Enforcement Guidance at § V(B)(6).
[2103] EEOC Enforcement Guidance at § V(B)(9).

APPENDIX L

List of Equal Employment Opportunity Commission (EEOC) Offices in California

You can contact any EEOC office to file a discrimination complaint or get additional information about your situation.

CONTACT INFORMATION FOR EEOC OFFICES IN CALIFORNIA		
EEOC OFFICE	**TELEPHONE/FAX**	**ADDRESS & HOURS**
Fresno Local Office	Phone: 1-800-669-4000 Fax: 559-487-5053 TTY: 1-800-669-6820	2300 Tulare Street, Suite 215, Fresno, CA 93721 Office Hours: Monday to Friday from 8:30 a.m. to 5:00 p.m. Call first for information or to schedule an appointment with the Intake Officer.
Los Angeles District Office	Phone: 1-800-669-4000 Fax: 213-894-1118 TTY: 1-800-669-6820	Royal Federal Building—255 East Temple St., 4th Floor, Los Angeles, CA 90012 Office Hours: Monday-Friday from 8:00 a.m. to 4:30 p.m. You can speak to an intake person on a first come-first served basis. You may also call to request a pre-complaint questionnaire. The pre-complaint questionnaire will be mailed and a phone interview will be scheduled upon return of the completed questionnaire.
Oakland Local Office	Phone: 1-800-669-4000 Fax: 510-637-3235 TTY: 1-800-669-6820	1301 Clay Street, Suite 1170-N, Oakland, CA 94612-5217 Office Hours: Monday—Friday from 8:00 a.m. to 4:30 p.m. Call first for information or schedule an appointment. Walk-in services are available on a first come, first served basis on Tuesdays and Thursdays.
San Diego Local Office	Phone: 1-800-669-4000 Fax: 619-557-7274 TTY: 1-800-669-6820	555 West Beech Street, Suite 504, San Diego, CA 92101 Office Hours: Monday—Friday from 8:30am to 5:00pm. Call first for information or to schedule an appointment with the Intake Officer.
San Francisco District Office	Phone: 1-800-669-4000 Fax: 415-522-3415 VP: 510-735-8909 (Deaf/HoH callers only)	450 Golden Gate Avenue, 5 West, P.O Box 36025, San Francisco, CA 94102-3661 Office Hours: Monday—Friday from 8:00 a.m. to 4:30 p.m. walk-in services available on Tuesdays and Thursdays from 8:30-3 p.m. Call first for information. The office sees the public on a walk-in basis and no appointment is necessary.
San Jose Local Office	Phone: 1-800-669-4000 Fax: 408-291-4539 TTY: 1-800-669-6820	96 N. Third St., Suite 250, San Jose, CA 95112 Office Hours: Monday—Friday from 8:00 a.m. to 4:00 p.m. Call first for information or to schedule an appointment.

APPENDIX M

List of Dept. of Fair Employment & Housing (DFEH) Offices in California

General DFEH Contact Information:

- By telephone—call the DFEH Communication Center at (800) 884-1684
- Online—http://www.dfeh.ca.gov/Contact.htm
- By email— send you inquiry to: contact.center@dfeh.ca.gov

See Appendix P, PG. 642, for a complete explanation of the DFEH complaint process.

CONTACT INFORMATION FOR DFEH OFFICES IN CALIFORNIA	
DFEH OFFICE	**ADDRESS**
Bakersfield	4800 Stockdale Highway, Suite 215 Bakersfield, CA 93309
Los Angeles	320 West 4th Street, 10th Floor Los Angeles, CA 90013
Bay Area Regional Office	39141 Civic Center Drive, Suite 250 Fremont, CA 94538
Fresno	1277 E. Alluvial Avenue, Suite 101 Fresno, CA 93720
Elk Grove	2218 Kausen Drive, Suite 100 Elk Grove, CA 95758

APPENDIX N

California Department of Fair Employment and Housing (DFEH): "Pre-Complaint Inquiry" Form

To begin the process of filing a discrimination complaint with the California Department of Fair Employment & Housing (DFEH), you must fill out and return the DFEH "Pre-Complaint Inquiry" form to any DFEH office.

Get a copy of the "Pre-Complaint Inquiry" form in one of the following ways:

- By Telephone: Call the DFEH Communication Center at (800) 884-1684
- Online—http://houdiniesq.net/dfeh/intake/
- By Email—Email your Pre-Complaint Inquiry form to contact.center@dfeh.ca.gov.

Then send the completed "Pre-Complaint Inquiry" form to a DFEH office. There is a full list of DFEH offices in California in Appendix M, PG. 638.

NOTE: Please see Appendix P, *PG. 642* *for a complete explanation of the DFEH complaint process.*

APPENDIX O

Equal Employment Opportunity Commission (EEOC) Complaint Process

This section will explain the process for filing a discrimination complaint with the federal EEOC (Equal Employment Opportunity Commission).

STEP 1: **Filing a Complaint.**

The process begins when you contact the EEOC and file a formal complaint, called a "Charge of Discrimination," following the steps described in the previous question. When you file your complaint, the EEOC will give you a copy of the complaint, along with your charge number (which is the number used to identify your case).

STEP 2: **Notice to the Employer & Mediation.**

Within 10 days, the EEOC will also send a notice and a copy of the charge to the employer. The EEOC may ask both you and the employer to agree to participate in mediation, which is an informal way of trying to resolve the problem instead of filing a lawsuit.

What happens in mediation? Mediation is an informal way for people to resolve problems with the help of a neutral person (a mediator) who is trained to help people discuss their differences. If you and the employer agree to mediation, the mediator will try to help you both reach a voluntary resolution (settlement agreement). The mediator does not decide who is right or wrong or make a decision about your complaint. Instead, the mediator helps you and the employer work out your own solution to the problem.

Everything that happens in mediation is confidential and free. Mediation can also be a faster way of resolving the dispute, since it usually takes less than 3 months to settle a complaint through mediation. If you and the employer cannot reach an agreement, the EEOC will continue to investigate your case just like any other.[2104]

STEP 3: **Employer's Response.**

If your case is not sent to mediation, or if mediation doesn't resolve the problem, the EEOC will ask the employer to respond (submit a written answer) to your complaint, and answer any questions that the EEOC has about your complaint. Then your complaint will be given to an EEOC investigator for investigation.[2105]

STEP 4: **Investigation.**

How the EEOC investigates a complaint depends on the specific facts of your case and the kinds of information that will be helpful. In some cases, an EEOC representative may visit the employer, interview other employees or witnesses, gather documents, and/or take other steps to find out whether the employer committed illegal discrimination. The EEOC may also interview you again, or ask you for other documents or information—so it's very important to cooperate and keep in touch!

How long will the investigation take? How long the investigation takes depends on a lot of different things, including the amount of information that the EEOC needs to get and evaluate. It may take up to 6 months or longer to investigate a charge.[2106]

What if the employer refuses to cooperate with the investigation? If an employer refuses to cooperate with an EEOC investigation, the EEOC can issue a subpoena (legal order) that requires the employer to turn over documents and information and/or answer legal questions, and allows the EEOC to enter the employer's facilities.

STEP 5: **Decision.**

After the investigation is completed, the EEOC will issue a decision, and let you and the employer know the results. The decision will say either:

- NO CAUSE—meaning the EEOC did NOT find any evidence that the employer illegally discriminated against you; or
- REASONABLE CAUSE—meaning the EEOC thinks the employer DID illegally discriminate against you.

STEP 6: **Your Options After the EEOC Decision.**

Depending on what the EEOC decision says, these are your options:

- NO CAUSE decision—If the EEOC does NOT find that the employer illegally discriminated against you, it will send you a Right-to-Sue notice. This notice allows you to file a lawsuit in court against the employer on your own. (However, it may be difficult to win in court without the EEOC's support.) You must file a

[2104] EEOC, Mediation, http://www.eeoc.gov/employees/mediation.cfm.
[2105] EEOC, The Charge Handling Process, http://www.eeoc.gov/employees/process.cfm.
[2106] EEOC, The Charge Handling Process, http://www.eeoc.gov/employees/process.cfm.

lawsuit within 90 days (approximately 3 months) of receiving the Right-to-Sue Notice; otherwise it will be too late.

- REASONABLE CAUSE decision—If the EEOC finds that the employer DID illegally discriminate against you, it will first try to reach a voluntary settlement (called "conciliation") with the employer. Conciliation usually means that the employer agrees to pay you to cover the harm from the discrimination.
- If the EEOC can't reach a settlement with the employer, the EEOC's lawyers may decide to file a lawsuit against the employer on your behalf. If the EEOC decides not to file a lawsuit, it will give you a Right-to-Sue notice, which allows you to file a lawsuit against the employer on your own. You must file a lawsuit within 90 days (approximately 3 months) of receiving the Right-to-Sue Notice; otherwise it will be too late.[2107]

THIS CHART SUMMARIZES WHAT HAPPENS AT THE END OF AN EEOC INVESTIGATION:

EEOC Decision	What it means	What happens next	What your options are
No cause	EEOC does NOT think that the employer illegally discriminated against you	EEOC gives you Right-to-Sue notice	You can file a lawsuit against the employer, but you only have 90 days
Reasonable cause	EEOC thinks the employer DID illegally discriminate against you	1) EEOC tries to settle with employer. 2) If they can't settle: > EEOC files lawsuit against employer; OR > EEOC gives you Right-to-Sue notice	If EEOC does NOT settle and does NOT file a lawsuit, you can file a lawsuit against the employer. You must file the lawsuit within 90 days of receiving the Right-to-Sue notice.

[2107] EEOC, The Charge Handling Process, http://www.eeoc.gov/employees/process.cfm.

APPENDIX P

California Department of Fair Employment and Housing (DFEH) Complaint Process

This section will explain the process for filing a discrimination complaint with the California DFEH (Department of Fair Employment & Housing).[2108] The DFEH complaint process is very similar to the EEOC process, and can even happen at the same time.

STEP 1: **Report Discrimination.**

The DFEH process begins when you contact the DFEH to report the discrimination and file a "Pre-Complaint Inquiry." You can do this by mail, by phone, or online:

- **Mail:** Fill out a Pre-Complaint Inquiry form and mail it to any local DFEH office. A listing of local DFEH offices can be found in Appendix M, PG. 638.[2109]
- **Phone:** Call the DFEH Communication Center at (800) 884-1684. If you have a hearing impairment, call 800-884-1684 or TTY at (800) 700-2320 for service.
- **Online:** Use the DFEH's online system (available at http://esq5.houdiniesq.com/dfeh/intake/), or email the Pre-Complaint Inquiry form to contact.center@dfeh.ca.gov.

STEP 2: **Filing an Official Complaint.**

Within 10 days, a DFEH investigator will contact you to conduct an intake interview, in order to learn more about your situation and the possible discrimination. The investigator will decide whether state and federal civil rights laws cover your situation.

If the DFEH accepts your complaint, the investigator will type up an official complaint for you to sign. If the DFEH does NOT accept your complaint, it does not mean that you weren't treated unfairly—only that your situation is not covered by the civil rights laws that the DFEH enforces.

Can I go straight to court and file a lawsuit on my own?

Under California law (just like Title VII), you must first file a complaint with DFEH before you can go to court (this is called "exhausting your administrative remedies").[2110] However, once you file your complaint, you can ask the DFEH for a Right-to-Sue notice right away, which allows you to file a lawsuit in court on your own. Once you receive a Right-to-Sue notice, you have only 1 year to file your lawsuit in court.[2111]

IMPORTANT: If you request a Right-to-Sue notice, the DFEH will close your case and will NOT investigate further (even if you later decide not to file a lawsuit). Therefore, it is recommended that you only request a Right-to-Sue notice if you have a lawyer to represent you in court.[2112]

STEP 3: **Employer's Response.**

The DFEH will give a copy of your complaint to the employer. The employer must respond to the complaint, and has the opportunity to voluntarily resolve the problem now or at any time during the rest of the case. The DFEH will also file a copy of your complaint with the EEOC if it looks like Title VII covers your complaint.[2113]

STEP 4: **Investigation.**

The DFEH will investigate your complaint. The investigation may include conducting interviews with people and gathering documents or other information. The DFEH must complete its investigation within 1 year from the date when you filed your official complaint. Before the DFEH notifies you of the results of the investigation, it will give you and the employer the chance to voluntarily resolve the problem by reaching an agreement through informal negotiations ("mediation" or "conciliation").

[2108] CAL. GOV'T CODE § 12960 et seq. See also DFEH, Complaint Process, http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm; DFEH, Employment Complaint Process, http://www.dfeh.ca.gov/Complaints_eCompProc.htm.
[2109] The form is also available at http://www.dfeh.ca.gov/res/docs/PCI/Pre Complaint Inquiry—Employment.pdf.
[2110] Cal. Gov't Code § 12965(b).
[2111] You must file the lawsuit within one year from the date on the Right-to-Sue notice, NOT from when you actually receive the notice. See Hall v Goodwill Industries of Southern Cal., 193 Cal. App. 4th 718 (2011).
[2112] DFEH, Instructions to Obtain a Right-to-Sue Notice, http://www.dfeh.ca.gov/res/docs/Complaints/Right to Sue form (3 pages).pdf.
[2113] In most cases, state and federal civil rights laws are very similar, so any discrimination would violate both California state law and federal Title VII. In these situations, the DFEH will also file your complaint with the EEOC. However, there are some situations where California law provides MORE protection than federal law, so certain behavior by an employer would only violate state law but NOT Title VII. In these situations, the DFEH will investigate your complaint on its own, but will not file a copy of the complaint with the EEOC.

STEP 5: **After the Investigation.**

Depending on what the DFEH finds during its investigation, this is what will happen next:

- If the investigation shows that the employer DID violate the law, the DFEH will try to resolve the complaint through "conciliation" (voluntary agreement) with the employer (see Step 6).
- If the investigation shows that the employer did NOT violate the law, the DFEH will close your case and give you a Right-to-Sue notice. The Right-to-Sue notice allows you to file a lawsuit in court against the employer on your own.

STEP 6: **Conciliation.**

During conciliation, the DFEH will attempt to resolve your complaint by reaching a voluntary settlement agreement with the employer. (This is just like what happens in the EEOC complaint process, after the EEOC makes a Reasonable Cause decision.)

STEP 7: **Possible Litigation.**

If the DFEH cannot reach an agreement with the employer, it may decide to file a lawsuit against the employer on your behalf. If the DFEH does not file a lawsuit against the employer, it will give you a Right-to-Sue notice that allows you to file a lawsuit in court on your own.[2114]

[2114] Cal. Gov't Code § 12965(b).

APPENDIX Q

Professional/Occupational Licensing—Appeals Process

This section will give you an overview of the appeals process if the licensing board denies your application for a professional or occupational license.

> Note: Each licensing agency is different! This is just a general overview to prepare you for what the process is like, but it will be slightly different in every situation.

STEP 1: **Notice.**

If a licensing board decides to deny your license, it must notify you in one of the following ways:[2115]

- **Statement of Issues:** The board files and serves you with a formal written statement of the board's decision to deny you a license. It must specify any rules or statutes that you are not in compliance with, and the facts that authorize the denial. The statement of issues initiates a formal hearing on the matter;[2116] or
- **Informal notice of denial:** The board serves you with a written notice of denial, but does not file the notice with the court. The notice must state: the reason for the denial and your right to request a hearing on the denial.[2117]

STEP 2: **Notice of Defense or Request for a Hearing**

- **Notice of Defense:** If the board files and serves you with a formal statement of issues, you have 15 days to file what is called a "Notice of Defense" with the board, which means you want a formal hearing on the matter. If you do not file a Notice of Defense (or file it late, past the 15 days allowed), you will give up your right to a hearing (called a "default"). The licensing board can take whatever action it pleases, which is usually the harshest, i.e. denial of your license, and you can't challenge it. (Note: a licensing board has discretion to allow/honor late notices and to grant a hearing after a default, but chances are slim.) Typically a generic notice of default "postcard" is included with the statement. This is the easiest way to preserve your right. The notice of defense need only contain your address and signature to be sufficient.[2118]
- **Written Request for a Hearing:** If the board does not file a formal statement of issues, but instead sends you an informal notice of denial, you have 60 days to file a written request for a hearing with the board.

STEP 3: **Stipulated Settlement.**

In many cases, you can resolve your case before by agreeing to a voluntary settlement (called a "stipulated settlement") with the licensing board. A stipulated settlement is sort of like a plea bargain—you admit to doing something wrong, and you agree to accept a certain amount of punishment from the board. Often this means that you will get your license on a conditional basis for a certain amount of time (a "probation" period).

You will have to meet certain requirements—such as participating in counseling or other behavioral programs, taking specific classes or exams, having your work monitored by a supervisor, getting drug tested, completing community service, and/or temporary suspension—during the probation period.[2119] If you complete all the requirements, you can get your full license back. If you do NOT complete the requirements, the board can revoke your license.[2120]

A stipulated settlement can be complicated, so it is recommended to have a lawyer represent you. You may be able to negotiate certain parts of the settlement agreement—such as what wrongdoing you will admit to; what conditions you will have to complete during the probation period; and how much you will have to pay in recovery costs to get your license. If you reach this point, you should think about what issues are most important to you—for example, whether you want the shortest possible probation, or to pay the smallest amount, or to avoid admitting certain wrongdoing.[2121]

[2115] Cal. Bus. & Prof. Code § 485(a).
[2116] Cal. Gov't Code § 11504.
[2117] Cal. Bus. & Prof. Code § 485(b).
[2118] Cal. Gov't Code § 11506(d).
[2119] See, e.g., In the Matter of the Accusation Against: Bertha Sandoval Arroyo, Case No. DBC 2008-85, available at http://www.dbc.ca.gov/public/rda54530_20090827_stip.pdf; In the Matter of: Robert Sal Buchberger, Case No. 2000-151, available at http://rn.ca.gov/public/rn471462.pdf; In the Matter of the Accusation Against: Elizabeth Oberholtzer, Case No. 1D 2009 67851, available at http://www.ptbc.ca.gov/consumers/enforcement/oberholtzer_stip.pdf; In the Matter of the Accusation Against: Kenneth E. Roberson, Ph.D., Case No. 1F-2007-182250, available at http://www.psychboard.ca.gov/public/psy11958_2010_07_27_dec.pdf.pdf.
[2120] You will have the right to notice and a hearing before the board revokes your license.
[2121] See Suzanne Taylor, Cal. Dept. of Consumer Affairs—Board of Psychology, What Are Stipulated Settlements, http://www.psychology.ca.gov/consumers/settlements.shtml. Frederick M. Ray, The Stipulated Settlement, California License Law Blog, http://www.californialicenselawblog.com/tags/stipulated-settlement/.

STEP 4: **The Formal Hearing.**

If you don't reach a stipulated settlement with the licensing board, you will have a formal administrative hearing. An administrative hearing is somewhat like a trial. There will be a judge and a court reporter. The board will be represented either by in-house counsel (its own attorney) or the California Attorney General (like a prosecutor for the entire state). You are allowed to have an attorney also, but you are not entitled to one, so you will have to pay for your attorney yourself. Both sides will present evidence, put on witnesses (if necessary), and make arguments. [2122]

STEP 5: **The Decision.**

After the case is presented, the administrative law judge (ALJ) will issue an advisory decision within about 30 days.[2123]

[2122] CAL. GOV'T CODE § 11500 et seq.
[2123] See Frederick M. Ray, FAQs about California Licensing Matters, http://www.calicenselaw.com/Frequently-Asked-Questions.aspx.

APPENDIX R

Alternatives to Traditional Employment: Self-Employment & Starting Your Own Business

Many non-profit organizations and government agencies now offer assistance to individuals who want to start their own business. Some of these organizations specifically focus on helping people with criminal records to start their own businesses.

Here are just a few examples—you can also contact the U.S. Small Business Administration to ask about other resources in your area:

- **Project ReMADE—Stanford Law School
  - Email: team@ProjectReMADE.org
  - Online: http://projectremade.org/
- **Ready, Willing & Able
  - 345 E 102nd St #305
    New York NY 10028
  - Online: http://www.doe.org/programs/ready-willing-able
- Legal Services for Entrepreneurs—Lawyers Committee for Civil Rights
  - Clinics in San Francisco, Oakland, and the Bay Area
  - Telephone: (415) 543-9444 extension 217
  - Email: lse@lccr.com
  - Online: http://www.lccr.com/get-help/economic-justice-legal-services-for-entrepreneurs-lse/
- Renaissance Entrepreneurship Center
  - Locations in San Francisco, Richmond, East Palo Alto, and San Rafael
  - Telephone: 415-541-8580
  - Email: info@rencenter.org
  - Online: http://www.rencenter.org/
- SCORE (English and Spanish services available)
  - Locations and workshops throughout California, as well as personal mentoring and online resources:
    - Locations—https://www.score.org/chapter-list
    - Events—https://www.score.org/localworkshops?loclatlong=California%2C+USA&lt=0&ln=0
    - Mentoring—https://www.score.org/mentors
  - Online: https://www.score.org/
- U.S. Small Business Administration (SBA)—Small Business Development Centers
  a. Locations and events throughout California: https://www.sba.gov/tools/local-assistance/map/filter/789c2b2e492c49b57276b4b2323736b500002434042b

** (special programs for people with criminal records)

HELPFUL HINT
Getting Funding for a Small Business

Some organizations and government agencies provide money to small businesses and people trying to start their own business. Sometimes the funding is through grants—money that you do NOT have to repay, but generally must use in a certain way related to the business. More often, the funding is through loans—money that you DO have to repay (usually with interest) in the future.

Unfortunately, it can be difficult to get loans depending on your conviction record. One place to start is the U.S. Small Business Administration, which is planning to change its policy to allow people on probation or parole to be eligible for microloans of up to $50,000.[2124] However, you may still be denied if you've been convicted of a felony "crime of moral turpitude" (i.e., involving violence or dishonesty).[2125] For this reason, it may be helpful to contact one of the entrepreneurship programs listed to see if they have suggestions or resources to find funding.

[2124] 79 C.F.R. § 14617.
[2125] 13 C.F.R. § 120.110(n).

APPENDIX S

Alternatives to Traditional Employment: Becoming an Independent Contractor

If you're considering working as an independent contractor, or if you want to know more about the difference between an independent contractor and a traditional employee, you should read this section to understand your rights and responsibilities!

EMPLOYEES VS. INDEPENDENT CONTRACTORS—WHAT'S THE DIFFERENCE?

In some cases, an employer may claim that they are hiring you as an independent contractor—NOT as a regular employee. Employers like to do this this because it means they have fewer responsibilities, and you have fewer rights, if you are an independent contractor—and often they will misclassify you in order to avoid following the law! For this reason, it's important that you know the difference so that you don't get exploited!

In general, you are an employee (NOT an independent contractor) if the following are true:

- The employer decides what tasks and assignments you do and directs your work;
- The employer controls how, where, and when you do your work;
- The employer supervises your work, and you're required to follow their instructions;
- The employer trains you in how to do your work;
- The employer provides you with any necessary equipment, tools, and other materials;
- The work you do is a regular and necessary part of the employer's business—not just a side activity;
- The employer sets your hours and pays you a set wage or salary;
- The employer has the right to fire you—and you have the right to quit—at any time.[2126]

In addition, the law generally presumes that you are an employee—and NOT an independent contractor—unless specific factors show otherwise.[2127]

IMPORTANT: Whether you are an employee or an independent contractor depends on the specific details of your work situation and your relationship with the employer—NOT on what the employer calls you!

WHAT ARE MY RIGHTS AS AN EMPLOYEE (VS. AN INDEPENDENT CONTRACTOR)?

As an employee, you have the right to be paid minimum wage and overtime, receive meal periods and rest breaks, and get reimbursed by the employer for any work-related expenses (such as purchasing a required uniform). You also have the right to receive workers compensation insurance, unemployment insurance, disability insurance, and social security, and the employer is required withhold payroll taxes (which are taken out of your paycheck) and send these payments to the government.

WHAT ARE MY RESPONSIBILITIES AS AN INDEPENDENT CONTRACTOR (VS. AN EMPLOYEE)?

On the other hand, if you are an independent contractor, you are NOT protected by minimum wage, overtime, and other labor laws. In addition, you have certain responsibilities—like filing self-employment taxes and reporting certain business information to the government—that you must follow. For more information about the legal responsibilities of an independent contractor, visit the EDD website on independent contractor reporting at http://www.edd.ca.gov/payroll_taxes/faq_-_california_independent_contractor_reporting.htm#Whohastoreport.

WHAT CAN I DO IF I THINK AN EMPLOYER HAS VIOLATED MY RIGHTS AS AN EMPLOYEE OR WRONGLY CLASSIFIED ME AS AN INDEPENDENT CONTRACTOR?

The California Division of Labor Standards Enforcement (DLSE) is the state agency responsible for enforcing your rights in the workplace. If you think an employer has violated your rights as an employee, wrongly classified you as an independent contractor, and/or for more information, you can contact your local DLSE office and speak with Deputy Labor Commissioner. To find a local DLSE office near you, go to http://www.dir.ca.gov/dlse/DistrictOffices.htm or call 1-844-LABOR-DIR (1-844-522-6734) for assistance.

For more information about your rights in the workplace, contact The Legal Aid Society—Employment Law Center's Workers Rights Clinic at 415-864-8208 (San Francisco Bay Area) or 866-864-8208 (toll free in CA). Or contact a local legal aid or employment attorney in your area.

[2126] CAL. LAB. CODE §§ 3351-53.
[2127] Cal. Lab. Code § 3357.



HELPFUL RESOURCES

For more information on employees and independent contracts, try these helpful resources:

- Independent Contractor or Employee? How You Should Be Classified (The Legal Aid Society—Employment Law Center)—http://www.law.berkeley.edu/files/FAQ-IndepContractorsvsEmployees.pdf
- FAQs—Independent Contractor (Cal. Division of Labor Standards Enforcement)—http://www.dir.ca.gov/dlse/faq_independentcontractor.htm
- Employment Determination Guide (Cal. Employment Development Department)—http://www.edd.ca.gov/pdf_pub_ctr/de38.pdf

APPENDIX T

Employment Rights for People with Disabilities: Exceptions Where an Employer Does Not Have to Provide a Reasonable Accommodation to an Employee

There are 3 situations where an employer is NOT required to provide a reasonable accommodation for your disability: the "*Undue Hardship*" exception, the "*Direct Threat*" exception, and the exception for when the employer shows you *CANNOT safely perform essential job functions*. This section explains each exception.

(1) UNDUE HARDSHIP

An employer does NOT have to provide a reasonable accommodation that would cause an "undue hardship" to the employer. There is no single definition of "undue hardship"—it is a case-by-case question that depends on the type of accommodation you're requesting and the employer's particular situation—e.g., what type of business it is, how many employees, the employer's financial situation, etc. In general, however, an undue hardship means that the accommodation you want would be too expensive or difficult for the employer make, or would have a significant impact on the employer's business, or would be too disruptive to the business or to the work of other employees.

However, an employer CANNOT claim undue hardship based on employees' (or customers') fears or prejudices about your disability (e.g., fears or prejudices about people with past addictions or mental health issues). Also, an employer CANNOT claim that other employees would be upset about giving you an accommodation. Finally, an employer CANNOT claim that making an accommodation—for example, hiring someone with a criminal conviction—would cause their insurance premiums to go up.[2128]

Important: Even if an employer can show that the particular accommodation you asked for would cause undue hardship, the employer may still have to provide a different accommodation if there is some other type of accommodation that would also be effective and would NOT cause a hardship.[2129]

(2) DIRECT THREAT

The law does not require that an employer give you reasonable accommodations for your disability if you would pose a significant danger to the health or safety of yourself or others AND there is NO possible reasonable accommodation that would remove or reduce the risk of harm.[2130]

There are some protections for you if an employer is arguing that you would be a direct threat to other employees, customers or property:

- First, an employer must first make an individualized assessment of you and whether you can safely perform the essential functions of the job.[2131]
- Second, an employer can only reject you if you pose a significant risk of harm to others and there is a high likelihood that you will harm someone due to your condition.[2132]
- Third, in deciding whether your conditions creates a significant risk of harm, the employer must consider your individual situation and history of substance/alcohol abuse—for example, whether you have a history of harmful behavior due to your addiction—and CANNOT simply go on assumptions or statistics about people who suffer from substance/alcohol addiction and their likelihood of relapse.[2133]
- Fourth, the employer's evaluation must rely on the most current medical knowledge and the best available objective evidence—NOT simply stereotypes, fears, or assumptions about people with mental illness, addiction, or other disabilities.[2134]

[2128] See Cal. Dep't of Fair Employment and Housing, Employment Discrimination Based on Disability, http://www.dfeh.ca.gov/res/docs/Publications/Brochures/2015/DFEH-184.pdf.
[2129] EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002 (Oct. 17, 2002).
[2130] 42 U.S.C. § 12111(3). See also Cal. Dep't of Fair Employment and Housing, Employment Discrimination Based on Disability, http://www.dfeh.ca.gov/res/docs/Publications/Brochures/2015/DFEH-184.pdf. The ADA permits employers to require, as a job qualification, that an individual not "pose a direct threat to the health or safety of other individuals in the workplace." Moreover, an employer may impose such a requirement even if an employer's reliance on such a qualification might "screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability." 42 U.S.C. § 12113(a)-(b).
[2131] 29 C.F.R. § 1630.2(r). The employer must consider factors including: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm.
[2132] 29 C.F.R. § 1630.2(r). See also EEOC, EEOC Technical Assistance Manual on the ADA, § 8.7. An employer may not deny employment to someone with a disability "merely because of a slightly increased risk. The risk can only be considered when it poses a significant risk, i.e., high probability of substantial harm; a speculative or remote risk is insufficient."
[2133] See EEOC, EEOC Technical Assistance Manual on the ADA, § 8.7. "An employer cannot prove a 'high probability' of substantial harm simply by referring to statistics indicating the likelihood that addicts or alcoholics in general have a specific probability of suffering a relapse. A showing of 'significant risk of substantial harm' must be based upon an assessment of the particular individual and his/her history of substance abuse and the specific nature of the job to be performed."
[2134] 29 C.F.R. § 1630.2(r).



(3) CANNOT SAFELY PERFORM ESSENTIAL JOB FUNCTIONS.

Finally, an employer is NOT required to provide reasonable accommodations if they can show that you are unable to safely perform essential job functions—in other words, you are not qualified for the job—even with a reasonable accommodation.[2135] However, an employer can only make this argument based on the specific requirements of the job position you are seeking (not general requirements for other types of jobs), and if there are NO reasonable accommodations that could enable you to do the work.[2136]

[2135] CAL. GOV'T CODE § 12940(a)(1)-(2).
[2136] See Cal. Dep't of Fair Employment and Housing, Disability Discrimination and Reasonable Accommodation, http://www.dfeh.ca.gov/res/docs/ppt/Disability%20Discrimination%20and%20Reasonable%20Accommodation%20pc%202-5-13.ppt.

APPENDIX U

Employment Rights for People with Disabilities: Requesting a Reasonable Accommodation for Your Disability

If an employer's hiring/employment policy causes your job application to be rejected (or causes other adverse action against you) based on a conviction that was caused by your disability, you have the right to request a "reasonable accommodation" so that you can be considered for the job just like other applicants.

To request an accommodation, the law only requires you to tell the employer that you need an accommodation for a reason related to a medical condition. You do NOT have to put your request in writing, and you do NOT have to use any special legal language—you can explain your request in normal words. You can request an accommodation at any time during the job application process or after you begin working.[2137]

HOWEVER, because it is generally believed that employers are less likely to be sympathetic and less willing to change policies regarding criminal convictions (even where the conviction was caused by your disability), it is recommended that you give the employer a WRITTEN LETTER requesting the reasonable accommodation. (Be sure to make a photocopy for yourself before sending the letter). This will make it more difficult for the employer to ignore your request, and you will have documentation in case the employer denies it.

HELPFUL HINT:

You can also have someone else talk to the employer for you, to ask for the accommodation you need. In this case, you may want to ask your case manager, social worker, legal aid attorney, or another trusted person who is helping you with your job search, to speak with the employer on your behalf.

It's recommended that your letter clearly include ALL of the following:

1. Explain that you have a disability, and what that disability is.
2. Include any documentation of your disability and treatment.
3. Clearly state the accommodation you are requesting (for example, that you are asking the employer to make an exception to the hiring policy that would exclude you due to a criminal conviction that was caused by your disability, or you are asking for time off to attend treatment).
4. Explain the reason that you are requesting the accommodation:
   a. Here, you could say that an exception from criminal history policy is NECESSARY to give you an equal opportunity to participate in the job.
   b. Explain the connection (meaning the relationship or "nexus") between the requested accommodation and your disability.
   c. Explain how your criminal conduct was the result of the mental illness and/or past substance abuse (for example, state that you were convicted of drug possession because you were addicted to drugs, but you have successfully completed rehab).
   d. It is helpful and more persuasive if you have a doctor or service provider submit a letter explaining why your disability requires a reasonable accommodation.

For a sample letter requesting reasonable accommodation for a disability, see Appendix U, PG. 652.

[2137] EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002, Oct. 17, 2002.

APPENDIX V

Employment Rights for People with Disabilities: Sample Letter Requesting Reasonable Accommodation

Here is a sample letter to request a reasonable accommodation for your disability. This particular letter shows an example of how to request a change in policy (for example, asking the employer to make an exception to their hiring policy regarding prior criminal convictions), for a job applicant whose conviction was caused by his/her disability (i.e., prior substance abuse that led to a drug conviction).

For sample letters to request other types of reasonable accommodations (including changes in work schedule, equipment and physical spaces, and time off from work), visit Legal Aid Society Employment Law Center at https://las-elc.org/sample-letters-and-forms.

TO: *[Name of Human Resources director, supervisor, or manager]*

FROM: *[Your name]*

RE: Request for Reasonable Accommodation

DATE: *[Today's date]*

Dear *[Name]*:

This is a request for reasonable accommodation under the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter on to the person who handles requests for reasonable accommodation.

I am a person with a "disability" under state and federal laws. My condition is: *[state the name or a description of your condition using language you feel comfortable with—see below for additional information]*. Due to my disability, I am requesting the following modification of workplace policy: *[describe what change in workplace policy or rule you want and how it relates to your disability—see examples below]*.

According to the ADA and the federal Equal Employment Opportunity Commission (EEOC), modified policies are a form of reasonable accommodation. See 42 U.S.C. § 12111(9)(B) and the section entitled "Modified Workplace Policies" in *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*, both available at www.eeoc.gov.

Please let me know if you require reasonable medical documentation of my condition, or if you wish to propose alternative accommodations to those I have requested. I am ready and willing to engage in the interactive process with you so that I may continue in my employment.

Thank you.

Sincerely

[Your signature]

[Your name]

ADDITIONAL INFORMATION ABOUT DESCRIBING YOUR DISABILITY:

If your disability is prior substance abuse, you should make clear that you are *no longer using illegal drugs*, and explain what *rehabilitation or treatment* you have received for your disability.

EXAMPLES OF CHANGES IN WORKPLACE POLICIES OR RULES, AND HOW THEY MAY RELATE TO A DISABILITY:

- "I am requesting an exception to your policy against hiring people with certain types of criminal convictions. Due to my prior drug addiction, I was convicted of drug possession several years ago. However, I have successfully completed rehabilitation and stayed clean and sober for 3 years."
- "Due to my rehabilitation treatments, I need to constantly drink water. I would like to carry water on the floor."
- "I would like to use a stool while working the checkout station because of my knee and ankle injury."
- "Because of my disability, I have difficulty concentrating and can get startled by noises around me. I would like to listen to music on headphones at work."
- "Because of my diabetes, I sometimes need to eat immediately. I would like to keep food at my desk."
- "Because of my disability, I need unscheduled bathroom breaks—I cannot wait for my scheduled break."
- "I need an extension of leave beyond what is provided in our employee handbook."



COURT-ORDERED DEBT



The COURT-ORDERED DEBT CHAPTER gives a basic overview of court-ordered debt to help you understand the money you may owe because of your past court involvement. You will learn the different kinds of court-ordered debt, what happens to these debts while you are incarcerated, and how these debts can affect you when you return to the community.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.



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I. INTRODUCTION

Many people coming home from prison or jail are surprised to find that they owe lots of money to various courts, agencies, and people. The money you owe related to your court case (or old cases) can make it very hard to get back on your feet, which can leave you feeling frustrated and discouraged.

While this Chapter includes some *bad news* about court-ordered debt that can never go away, it also includes some *good news* about changing laws. Reentry advocates—and even some politicians—realize that much of our justice system's fines and fees don't bring in very much money to the government and end up causing more harm to poor and systems-impacted communities.

This Chapter will give you some important information to help you better understand your rights, responsibilities, and opportunities when it comes to managing money that you owe due to your past court involvement (referred to in the rest of the Chapter as "court-ordered debt"). If you have questions, call Root & Rebound's reentry legal hotline any Friday at (510) 279-4662.

WHAT IS COURT-ORDERED DEBT, AND WHY DO I NEED TO KNOW ABOUT IT?

Court-ordered debt is money that you may owe because of some past involvement you had with the criminal justice system—whether you were convicted, acquitted, your charges were dismissed, or you were only ever arrested. You may owe this money to the *court* itself, to the *county* or other *government agency*, to a *victim* of your crime, or even to a *collection agency*.

If you were convicted of a crime, you most likely owe court-related costs, or owed them at one point. But *even if you were never convicted* of anything, the court can still make you pay other fees, such as jail booking fees, public defender fees, and fees associated with minor offenses called infractions. It is important that you know about and understand any court-ordered debt you owe, because this debt can make it difficult for you to move forward with your life in many different ways.

I HAVE NEVER RECEIVED ANYTHING TELLING ME THAT I OWE MONEY; SO I MUST NOT HAVE ANY COURT-ORDERED DEBT, RIGHT?

Absolutely not! People move; paperwork gets lost in the mail; and addresses get written down incorrectly all the time. Just because you haven't heard anything, doesn't mean that you're in the clear. Remember, if you have had any involvement with the criminal justice system, *especially if you have a conviction*, you were most likely ordered to pay money of some kind at some point. If you don't take steps to find out about and take care of your debt, there could be serious consequences.

Even if you are 100% positive that you have paid off your debt entirely, mistakes can be made. Your payments may not have been properly recorded, or your name could be attached to someone else's debt! It is better to check and be safe than to assume and be sorry.

WHAT ARE THE DIFFERENT TYPES OF COURT-ORDERED DEBT?

There are three main types of court-ordered debt: (1) restitution; (2) fines and penalties; and (3) administrative fees. (You may also have debt from unpaid traffic fines and tickets. These are discussed later in this Chapter, on PG. 666). It can be hard to keep track of the different types of debt; this chart gives an overview of the important information about each one.



TYPES OF COURT-ORDERED DEBT				
NAME OF COURT-ORDERED DEBT	**PURPOSE OF THE DEBT**	**CAN THE DEBT BE FORGIVEN OR REDUCED?**	**CAN THE DEBT BE A CONDITION OF MY SUPERVISION?**	**WHAT YOU MAY SEE ON YOUR BILL**
RESTITUTION: (1) VICTIM RESTITUTION (PG. 659)	TO REPAY THE VICTIM OF A CRIME FOR THE HARM HE OR SHE SUFFERED.	NO. CANNOT BE FORGIVEN OR REDUCED.[2138]	YES. MANDATORY.[2139]	Victim Restitution; Restitution Fine; Direct orders of Restitution
RESTITUTION: (2) RESTITUTION FINES (PG. 659)	TO REPAY YOUR DEBT TO SOCIETY	MAY BE FORGIVEN OR REDUCED IN EXCHANGE FOR COMMUNITY SERVICE.	YES.[2140]	Restitution Fine; Probation Revocation Restitution Fine; Hate Crime Restitution; Emergency Response Costs Restitution
COURT FINES & PENALTIES (PG. 660)	FINANCIAL PUNISHMENT FOR YOUR CRIMINAL CONVICTION	YES, BUT THE JUDGE GETS TO DECIDE BASED ON YOUR REHABILITATION EFFORTS.	YES, BUT THE JUDGE GETS TO DECIDE.[2141]	Domestic Violence Fund Payment; Alcohol Abuse Education & Prevention Penalty Assessment
ADMINISTRATIVE FEES (PG. 660)	TO PAY FOR THE COSTS OF RUNNING THE COURTS AND OTHER CRIMINAL JUSTICE AGENCIES	YES. USUALLY THE FIRST TYPE OF DEBT TO BE FORGIVEN OR REDUCED. SOME ARE BASED ONLY ON YOUR ABILITY TO PAY.	NO,[2142] WITH ONE EXCEPTION: CRIMINAL JUSTICE ADMINISTRATION FEE ("JAIL BOOKING" FEE).[2143]	Probation Supervision Costs; Administrative Screening Fee; Criminal Justice Administration Fee
TRAFFIC FINES & FEES (PG. 666)	SEE TRAFFIC FINES SECTION ON PG. 666			

! **IMPORTANT NOTE ABOUT THE NAMES & PURPOSES OF COURT-ORDERED DEBTS: The names for different types of court-ordered debt can be confusing. The chart above tries to explain the four basic types of court-ordered debt, but the names you see on your actual court paperwork or "sentencing order" may be different. For example, sometimes the same word (for example, "fee" or "assessment") is used to mean different things by different courts in different counties. If you have any questions about your court-ordered debts and what they mean, ask your public defender or the lawyer who represented you in your case. Because each type of court-ordered debt has a different purpose, you will probably owe different types of debt (restitution, fines, AND fees)—even if you have only one conviction. If you have more than one conviction, you will likely owe separate sets of court-ordered debt for each conviction.**

[2138] CAL. CONST., art. I, § 28(b)(13) (Marsy's Law).
[2139] CAL. PENAL CODE § 1202.4(m) (restitution payments are a mandatory condition of probation.)
[2140] See CAL. PENAL CODE §§ 422.85, 1203.1(e), 1214.5 (examples of restitution fines that may be ordered as conditions of probation).
[2141] CAL. PENAL CODE § 1203.097(a)(5)) (domestic violence fine); CAL. VEH. CODE § 23645 (DUI fines).
[2142] See People v. Pacheco, 187 Cal. App. 4th 1392, 1402-03 (2010) (collateral, non-punitive fines and fees are not permissible as conditions of probation; court security fee not permissible condition of probation); People v. Hart, 65 Cal. App. 4th 902, 906-07 (1998) (attorneys' fees and probation costs not permissible conditions of probation); People v. Flores, 169 Cal. App. 4th 568, 578 (2003) (costs of probation supervision, presentence investigation, and attorneys' fees not permissible conditions of probation).
[2143] CAL. GOV'T CODE §§ 29550(c), 29550.1, 29550.2.



II. A BASIC OVERVIEW OF COURT-ORDERED DEBT RESTITUTION

RESTITUTION

WHAT IS RESTITUTION?

Restitution is money that you are ordered to pay to *victims* and to the *state* if you are convicted of a crime. Restitution is intended to repay the victims for the harm they suffered, and to repay your debt to society. Judges are *required* to order restitution if you are convicted of a crime, regardless of whether you can afford to pay. Restitution is the most serious type of court-ordered debt and the hardest to get rid of.[2144]

THERE ARE 3 MAIN TYPES OF RESTITUTION:

To make things even more complicated, there are different types of restitution—each with a different purpose. The three main types of restitution are:

(1) VICTIM RESTITUTION (also called *Direct Orders of Restitution*): Victim restitution goes to the *victim(s)* of your crime to *repay any harm* caused *or losses* suffered because of your actions. If your crime involved injury to a *person*, *property damage*, or *economic loss*, you will have to pay victim restitution.[2145]

Usually the court orders victim restitution at the time of *sentencing*, however, the court can order it *at any time* afterward, if needed.[2146] This means that even if the judge did NOT order victim restitution when you were sentenced, he or she can still order it later—and you will still have to pay it!

(2) RESTITUTION FINES: Restitution fines go to *the state* to *repay your debt to society*. *Everyone* who is convicted of a crime MUST pay a restitution fine, so if you have a conviction—regardless of whether it was a misdemeanor or a felony—you have to pay a restitution fine.[2147]

In some situations, even if you were never convicted, you may still have to pay a restitution fine. For example, if your case was dismissed because you successfully completed a diversion program (i.e. drug treatment or anger management) or you received a deferred entry of judgment (DEJ), you will still be ordered to pay a restitution fine.[2148] Also, if some of your charges were dismissed as part of a plea bargain, you still may have to pay restitution on the dismissed charges![2149]

(3) REVOCATION RESTITUTION FINES: If you are sentenced to *any type of supervision* (parole, mandatory supervision, Post Release Community Supervision, or probation), the court will impose a revocation restitution fine. However, this fine is suspended unless you violate the conditions of your supervision and your supervision is revoked. This means you do not have to pay this fine unless your supervision is *revoked*.[2150]

!

IMPORTANT NOTE ABOUT VICTIM RESTITUTION: Victim restitution never goes away. It is not discharged in bankruptcy,[2151] and you will continue to owe any unpaid victim restitution even after you have completed your sentence and term of supervision. You must continue paying restitution when the victim dies, and must pay even if the victim never claimed restitution. The only way to get rid of victim restitution is to pay it off.[2152]

[2144] CAL. PENAL CODE § 1202.4(b)-(g).
[2145] CAL. PENAL CODE § 1202.4(a) & (f).
[2146] CAL. PENAL CODE §§ 1202.4(f), 1202.46 (The court may order victim restitution at a later time if the victim's losses are not yet determined at the time of sentencing).
[2147] CAL. PENAL CODE § 1202.4(b).
[2148] Cal. Penal Code § 1001.90.
[2149] CAL. PENAL CODE § 1192.3; People v. Harvey, 25 Cal.3d 754 (1979).
[2150] CAL. PENAL CODE §§ 1202.4, 1202.44, 1202.45.
[2151] 11 U.S.C. § 523(a)(7).
[2152] Prior to 2008, judges had statutory authority under Penal Code sections 1203.3(b)(4) and 1202.4 to waive restitution for any "extraordinary or compelling reason." California's adoption of Marsy's Law amended the state constitution to remove all language allowing the waiver of victim restitution, thereby "effectively negat[ing]" the above statutory provisions. See Cal. Judge's Benchguide § 83.77 (2014).



IS IT POSSIBLE TO OWE MORE THAN ONE TYPE OF RESTITUTION?

Yes. In fact, it is likely that you owe more than one type of restitution. Almost everyone with a conviction will owe victim restitution. Most people will owe BOTH victim restitution AND restitution fines.[2153] Anyone whose supervision was permanently revoked may owe all three types of restitution.

Also, if you have convictions from more than one case, the court can order all three types of restitution in each case.[2154]

WHO IS CONSIDERED A "VICTIM" TO RECOVER VICTIM RESTITUTION?

The law defines "victim" VERY broadly. Even if no one was physically hurt during the crime, the court can order you to pay for property damage or economic losses caused by the crime. You could be ordered to pay restitution to ANY of the following:

- A specific person (or people) who suffered physical or emotional harm, had property taken or damaged, or had to pay out-of-pocket expenses as a result of the crime;
- The family of the person harmed;
- The Victim Compensation & Government Claims Board (Restitution Fund);
- A business that was damaged or had money losses due the crime; and/or
- A government agency that was damaged or had money losses, suffered vandalism damage, or had to clean or repair graffiti caused by the crime.[2155]

COURT FINES AND PENALTIES

WHAT ARE COURT FINES AND PENALTIES?

Court fines and penalties are money you must pay as part of your *punishment* for your conviction, in addition to the rest of your sentence.[2156] The amount you have to pay will depend on the *specific offense(s)* you were convicted of, and the total amount you owe for *other fines*.

! **IMPORTANT: You may be charged multiple sets of fines and penalties for the same conviction, because the state and county can each fine you separately for the offense.2157**

WHAT SHOULD I KNOW ABOUT COURT FINES AND PENALTIES?

1. Some fines and penalties can be ordered as *conditions of your probation*.[2158] (See PG. 662 for fines and penalties that are conditions of your probation.)
2. Some fines and penalties are determined based on your *ability to pay*, which means the court must find that you can *afford to pay the fine* BEFORE imposing them.[2159] Others are imposed regardless of your ability to pay.[2160]

COURT ADMINISTRATIVE FEES

WHAT ARE COURT ADMINISTRATIVE FEES?

Administrative fees are money you pay to the courts, county, and other agencies to cover the day-to-day costs of running the courts and criminal justice system. Administrative fees are used to pay for things like court security, probation supervision, public defender fees, jail time, and debt collection.[2161] Some fees are imposed by the court; other fees are imposed by the county or by other agencies.

[2153] CAL. PENAL CODE 1202.4(a)(3).
[2154] CAL. DEP'T OF CORR. & REHAB., An Adult Offender's Guide to Restitution, http://www.cdcr.ca.gov/victim_services/docs/adult_offender_guide.pdf.
[2155] CAL. PENAL CODE § 1202.4(f).
[2156] CAL. PENAL CODE §§ 1202.4(a), 1464; CAL. GOV'T CODE § 76000; see also CAL. PENAL CODE § 672 (court has discretion to impose fines in addition to imprisonment, even where no fine is provided by the statute of conviction).
[2157] CAL. PENAL CODE §§ 1202.4(a), 1464; CAL. GOV'T CODE § 76000. The state can also charge additional fines for specific types of offenses. See CAL. HEALTH & SAFETY CODE § 11372.5(a) (drug offenses); CAL. PENAL CODE §§ 230.3 (sex offenses), 647.1 (prostitution and lewd conduct), 1202.5 (theft offenses); CAL. VEH. CODE § 23645 (DUI offenses).
[2158] CAL. PENAL CODE § 1203.1(a).
[2159] See CAL. VEH. CODE § 23645 (DUI offenses); CAL. PENAL CODE § 1202.5 (theft offenses).
[2160] CAL. PENAL CODE § 1202.4(c) (court not required to consider inability to pay restitution fine unless fine is greater than the statutory minimum); see also People v. Long, 164 Cal. App. 3d 820 (1985) (providing that the trial court did not err in imposing a criminal restitution fine without considering defendant's ability to pay).
[2161] See CAL. GOV'T CODE §§ 27712 (public defender fees), 29550, 29550.1, 29550.2 (jail booking fees); CAL. PENAL CODE §§ 987.5; 987.8 (presentence investigation costs and attorney fees), 1463.07 (administrative screening fee), 1465.8 (court security fee), 2085.5(e), (f), (i) (administrative fee for collection of restitution payments by CDCR and/or county jail).



WHAT SHOULD I KNOW ABOUT COURT ADMINISTRATIVE FEES?

1. Administrative fees generally CANNOT be conditions of probation, because they are NOT intended as punishment.[2162] One exception to this rule is the Criminal Justice Administration Fee (sometimes referred to as the jail booking fee), which CAN be a condition of probation.[2163]
2. Most administrative fees are imposed only if you are able to pay them.[2164] Often, these fees can be waived.[2165]

WHAT HAPPENS TO MY COURT-ORDERED DEBT WHILE I'M INCARCERATED?

Your debts CAN increase while you're inside—but WHETHER they do and by HOW MUCH will depend on different things, such as: how old the debt is, whether it has been sent to collections, the amount of victim restitution you owe, and whether you've been making restitution payments.

Some reasons your debt may increase while you're incarcerated are:

- You can be charged interest and administrative fees on your restitution debts.[2166]
  - NOTE: If you are paying restitution through your facility while incarcerated, you may be charged administrative fees for any payments you make. [2167] If CDCR or a county agency is automatically taking restitution payments directly from your prison or jail account, you may not even realize you're being charged extra. (See PG. 675 for more information about paying restitution while you're incarcerated.)
- If your debt is *delinquent*, you may be charged a $300 penalty (called a "civil assessment") for late payments or non-payment.
  - NOTE: If you were unable to pay the debt *because* you were incarcerated, you may be able to ask the court to forgive ("vacate") the penalty.[2168] (See PG. 677 for information on vacating civil assessment charges.)
- If your debt has been sent to "collections" (see explanation in side box) you may be charged an extra administrative fee to cover the costs of transferring your debt to the collection agency.[2169]
- You may be charged for failures to appear in court.[2170]
- You may be charged a fee if your driver license was suspended due to unpaid court debts.[2171]

WILL MY DEBTS BE SENT TO "COLLECTIONS"?

Maybe. The more *delinquent* your debt is, the more likely that it will be, or already has been, sent to collections.

Each court, county, and agency handles unpaid debts differently. The court may start by trying to collect the debt itself. Once the debt becomes overdue, courts often send unpaid

WHAT IS "DELINQUENT DEBT"?

If you have missed one or more payments, your debt is "overdue" or "delinquent." Usually, you will get a letter notifying you that your debt has become delinquent, and you will have a limited time to make a payment or reestablish an installment plan before extra punishments and fines are imposed.

WHAT ARE "COLLECTION AGENCIES"?

When courts (or anyone else) can't get a person to pay their debt on time, they often will hire a "collection agency" to try to get back the money owed. Collection agencies track down the person who owes (the "debtor"), and tries to get them to pay. If they are successful in collecting the debt, the collection agency receives a percentage of the payment.

[2162] People v. Pacheco, 187 Cal. App. 4th 1392, 1402-03 (2010) (collateral, non-punitive fines and fees are not permissible as conditions of probation; court security fee not permissible condition of probation); People v. Hart, 65 Cal. App. 4th 902, 906-07 (1998) (attorneys' fees and probation costs not permissible conditions of probation); People v. Flores, 169 Cal. App. 4th 568, 578 (2003) (costs of probation supervision, presentence investigation, and attorneys' fees not permissible conditions of probation).
[2163] CAL. GOV'T CODE §§ 29550(c), 29550.1, 29550.2.
[2164] See CAL. GOV'T CODE §§ 29550(c), (d)(2), 29550.2(a) (criminal justice administration fee requires determination that defendant has ability to pay); CAL. PENAL CODE §§ 987.8(b), (g)(2) (public defender fee), 1203.1b (probation supervision fee). In some cases, you have the right to a court hearing to determine whether you are able to pay the fee. See, e.g., CAL. PENAL CODE §§ 987.8 (cost of legal assistance), 1203.1b (cost of probation), 1203.1c (cost of incarceration in local jail), 1203.1e (cost of parole supervision), 1203.1m (cost of imprisonment); cf. Cal Penal Code § 1203.1f (consolidation of ability-to-pay hearings).
[2165] CAL. GOV'T CODE § 68631 et. seq.
[2166] CAL. PENAL CODE §§ 1202.4(f)(3)(G) (10% interest on victim restitution debt),1203.1(l) (15% administrative fee on victim restitution), 1202.4(l)) (10% administrative fee on restitution fine).
[2167] CAL. PENAL CODE § 2085.5 (e), (f), (i) (as amended by 2014 Cal. Legis. 513 (S.B. 419)).
[2168] CAL. PENAL CODE § 1214.1(a) (court will impose a penalty for failure to appear or failure to pay unless good cause is shown; incarceration is considered good cause).
[2169] Cal. Rev. & Tax Code § 19280(a)(2)(A).
[2170] CAL. VEH. CODE § 40508.5 (authorizing $15 assessment for failure to appear and/or other violation).
[2171] CAL. VEH. CODE § 40508.6 (authorizing $10 assessment for suspension of driver license due to unpaid debt).



debts to the county collection agency.[2172] If the debt remains unpaid, the court or county collection agency may then send your debt to a private collection agency or to the California Franchise Tax Board (FTB), which acts as a collections agency for the state and for CDCR.[2173]

- For more information on tracking down your debt, see PG. 673.
- For more information on what to do if your court-ordered debt HAS BEEN sent to collections, see PG. 673.

HOW CAN MY COURT-ORDERED DEBT AFFECT ME WHILE I AM ON A TERM OF SUPERVISION?



IMPORTANT!—IF YOU ARE ON SUPERVISION: *It is very important to know which debts are conditions of that supervision—and to pay them first, if possible*. In general, making *restitution* payments will ALWAYS be a condition of your supervision.[2174] *Other fines and fees* can also be ordered as conditions of supervision.[2175] You can find out exactly which payments the court considers conditions of your probation by asking your parole or probation officer for a copy of your supervision order. You (or your lawyer) can also go to the court and ask the clerk for a copy of the records (the "minutes") from your sentencing.

If you don't pay the debts that are conditions of your supervision: (1) the court can *extend* the term of your supervision to the maximum time allowed,[2176] or (2) the court may order you to do community service to satisfy your remaining fines and fees, or (3) the court may determine that you have violated your supervision and re-incarcerate you. If you are on probation and you complete your probation term, but you haven't paid off all the restitution and fines that are conditions of your probation, the court may find that you *did NOT successfully complete probation*. This can make it harder to get your conviction dismissed later under California's expungement statute.[2177] However, due to a recent court decision, you cannot be denied mandatory expungement because you still owe victim restitution. See PG. 962 for more information on mandatory and expungement and victim restitution.

Here are other ways that owing unpaid restitution and other fines can affect you while you are on supervision:

- It can be harder to transfer to another county, and you will NOT be allowed to transfer out of state.[2178]
- If you want to get discharged early, it is very important to make reasonable restitution payments.[2179]
- Even if you successfully complete your supervision and are discharged, you will continue to owe any unpaid restitution (and all other debts that the court does not discharge).[2180]

For more information on getting your conviction(s) expunged/ dismissed, see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

WHICH TYPES OF COURT-ORDERED DEBT ARE LIKELY TO BE CONDITIONS OF MY PROBATION?

Restitution—Making restitution payments will almost ALWAYS be a condition of your probation.[2181]

Other Fines & Penalties—Some other fines and penalties may also be conditions of your probation. However, each type of fine and fee is different, so you will need to check your specific sentencing order to see which payments are conditions of your probation.

Fines and fees that are always (or almost always) conditions of your probation:

- Victim restitution +10% interest;[2182]

[2172] Telephone interview with Bonnie Sloan, Division Manager, Court Collections, Yuba County Superior Court (Feb. 23, 2015); Telephone interview with Genevieve Harrington, Supervisor, Central Collections, Butte County Superior Court (Feb. 23, 2015); Telephone interview with David (no last name given), Collector, Fresno County Revenue Collections Unit, (Feb. 23, 2015). See also CAL. PENAL CODE § 1463.007 (authorizing collection of delinquent court-ordered debt by county).
[2173] CAL. REV. & TAX CODE § 19280 (court can refer unpaid debts to the FTB starting 90 days after the date when the debt was due).
[2174] CAL. PENAL CODE §§ 1202.4(m), 1203.1.
[2175] CAL. PENAL CODE § 273.5 (domestic violence fines); CAL. GOV'T CODE §§ 29550, 29550.1, 29550.2(a) (jail booking fees).
[2176] CAL. PENAL CODE § 1203.3(b)(4); People v. Cookson, 54 Cal.3d 1091 (1991); People v. Medeiros, 25 Cal. App. 4th 1260 (1994) (in extreme cases, the court can even revoke your probation if it determines that you are willfully not paying your debts); see also CDCR, Department Operations Manual §§ 81080.1 (early discharge from parole), 81080.1.1 (annual parole discharge review).
[2177] CAL. PENAL CODE § 1203.4; People v. Covington, 82 Cal. App. 4th 1263 (2000); People v. Chandler, 203 Cal. App. 3d 782 (1988). But see People v. Seymour, Case No. H040560 (Santa Clara County, Super. Ct. No. CC955665), it is unclear whether you can be denied mandatory expungement because of unpaid fines and reimbursements. However, you cannot be denied mandatory expungement because you still owe restitution. See PG. 1053.
[2178] CAL. PENAL CODE § 11177.2 (parolee or inmate not permitted to be released to another state if subject to an unsatisfied order of restitution); see generally CAL. PENAL CODE § 1203.9(a)(3);CAL. RULES OF COURT, Rule 4.530 (f)(3) (ability to pay restitution order a factor in determining whether an inter-county transfer is appropriate); see also CAL. DEP'T CORR. & REHAB., An Adult Offender's Guide to Restitution (2007).
[2179] 15 CAL. CODE REGS. §§ 3721(b)(2), 3730 (parole); CAL. PENAL CODE § 1203.3(b)(4) (probation).
[2180] People v. Guillen, 218 Cal. App. 4th 975, 985-90 (2013) (unpaid restitution fines—like victim restitution—survive after defendant's probation term has ended, regardless of whether defendant was discharged upon successful completion or had his/her probation revoked).
[2181] CAL. PENAL CODE § 1202.4(m), (n) (general restitution payments are a mandatory condition of probation).
[2182] Cal. Penal Code § 1214.5.



- Restitution fine +10% administrative fee;
- Fine and penalty assessment (amount based on your conviction offense);
- Criminal Justice Administration Fee (jail booking fee).[2183]

Fines that may be conditions of your probation, depending on your conviction offense:

- Domestic Violence Fund Payment;[2184]
- Alcohol Abuse Education & Prevention Penalty Assessment;[2185]
- Emergency Response Cost Restitution;[2186]
- Hate Crime Restitution;[2187]
- Abduction Restitution.[2188]

Administrative Fees—In general, administrative fees CANNOT be conditions of probation.[2189] This includes things like court security fees, probation supervision costs, and attorney fees.[2190] However, one exception to this rule is the Criminal Justice Administration Fee (sometimes referred to as the jail booking fee), which CAN be a condition of probation.[2191]

! **IMPORTANT: These are only examples. YOU SHOULD CHECK YOUR SENTENCING ORDER TO SEE WHICH FINES AND FEES ARE CONDITIONS OF YOUR PROBATION.**

WHAT HAPPENS IF I DON'T PAY OFF THESE DEBTS?

It depends. Different types of debts have different consequences if you don't pay them off. The consequences are also affected by the amount of debt you owe, how old the debt is, and which agency is trying to collect from you (for example, whether your debt is still with the court, with county collections, with a private collection agency, or with the Franchise Tax Board).

In the previous section we explained what can happen if you don't pay debts that are conditions of your supervision. This section will explain ***other consequences*** you may face if you don't pay off your court-ordered debts (whether you are on supervision or not).

DEBT COLLECTION:

If you owe unpaid restitution, fines, or court fees, the people or agencies that you owe (i.e. the victim, the victim's family, the Victim Compensation Board, the Franchise Tax Board, private collection agencies) can try to collect the unpaid debt in the following ways:[2192]

- *Wage garnishment*—If you are employed, a portion of your wages (up to 25%) can be automatically taken out (withheld) from your paycheck to pay your court-ordered debt. Money can continue to be taken from your paycheck until you have paid off the full amount you owe.[2193] (For more information about what to do if your wages are being garnished by the Franchise Tax Board, see PG. 676.)
- *Property lien*—If you own property (like a car or a house) a *lien* can be put on your property. A lien gives the person (or agency) that you owe the right to *claim your property* to satisfy the debt you owe them. If you have a lien on your property, you may not be able to sell that property until you have paid off the amount you owe. If you DO sell the property, you will have to give over the money from the sale to the person you owe.[2194]
- *Lien on your bank account*—If you have a bank account, a lien can be put on the account. You will not be able to access the money in your account, and any checks you write from the account will bounce until the lien is removed.[2195]

[2183] CAL. GOV'T. CODE §§ 29550(c), 29550.1, 29550.2.
[2184] CAL. PENAL CODE §§ 273.5, 1203.097.
[2185] Cal. Veh. Code § 23645.
[2186] CAL. PENAL CODE §§ 1203.1(e).
[2187] Cal. Penal Code § 422.85.
[2188] Cal. Penal Code § 278.6.
[2189] See People v. Pacheco, 187 Cal. App. 4th 1392, 1402-03 (2010) (collateral, non-punitive fines and fees are not permissible as conditions of probation; court security fee not permissible condition of probation); People v. Hart, 65 Cal. App. 4th 902, 906-07 (1998) (attorneys' fees and probation costs not permissible conditions of probation); People v. Flores, 169 Cal. App. 4th 568, 578 (2003) (costs of probation supervision, presentence investigation, and attorneys' fees not permissible conditions of probation).
[2190] CAL. PENAL CODE §§ 1465.8 (court security fee), 1203.1b (probation supervision fee, probation report costs), 987.8 (attorney fees and presentence investigation costs); see also CAL. PENAL CODE § 1463.07 (administrative screening fee); CAL. VEH. CODE § 23645 (alcohol abuse education fee).
[2191] CAL. GOV'T CODE §§ 29550(c), 29550.1, 29550.2.
[2192] CAL. PENAL CODE §§ 1214 (victim restitution and restitution fines enforceable and collectible as civil money judgments), 1202.42 (enforcement of victim restitution); CAL. REV. & TAX CODE § 19280 et seq. (collection of court-ordered debts by Franchise Tax Board); Cal. Code of Civ. Proc. § 680.010 et seq. (enforcement of civil judgments); see also Cal. Franchise Tax Board, Nontax Debt Collections, https://www.ftb.ca.gov/aboutFTB/ND_2011_12.pdf (rev'd Aug. 1, 2012).
[2193] CAL. PENAL CODE § 1214; Cal. Code of Civ. Proc. § 706.020 et seq.
[2194] Cal. Code of Civ. Proc. §§ 697.530, 697.620.
[2195] CAL. PENAL CODE § 1214; Cal. Code of Civ. Proc. §§ 695.010, 697.530.



All of these actions can lower your *credit score*, which can make it harder to get a loan, rent an apartment, or find a job.

NOTE: *Inheritance money*—If you receive an inheritance during or after your incarceration from a family member or loved one, the CDCR can take that money to satisfy your court-ordered debt. For more information, see Appendix A, PG. 684.

OTHER POSSIBLE CONSEQUENCES:

There are other possible consequences of unpaid or overdue debt, but everyone's situation will be different. Some other ways that you may be negatively impacted by unpaid court-ordered debt are:

- It can be harder to get a *professional or occupational license*, which is required for many types of jobs. For example, you need an occupational license to work as a barber, beautician, nurse, or contractor. (For more information on professional/occupational licenses, see the EMPLOYMENT CHAPTER, PG. 601.)
- The Franchise Tax Board can seize any *state tax refunds, lottery winnings, or other income* to pay off your restitution and fine obligations.[2196]
- If you are *ordered to appear* in court because you have not paid your court-ordered debt, and you do not go to court, you could be *arrested* and charged with a *misdemeanor*.[2197]
  - *Important*: If you have not made payments, you won't be arrested simply for not paying. However, if a judge has ordered you to come to court and explain why you are not paying, you can be arrested for not going to court.
  - If you receive an "order to appear," you MUST go to court on the day and time listed in the order. Even if you don't have any money to make the payments, it is very important that you attend this court hearing.
- Unpaid restitution and/or other fines can make it harder, to get your conviction dismissed under California's "expungement" statute.[2198] But, you cannot be denied a mandatory dismissal of your conviction just because you have unpaid victim restitution. (For more information, see PG 962 in the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORDS CHAPTER, beginning on PG 931).

IMPORTANT: NEW LAW REGARDING DRIVER LICENSE SUSPENSION:

California state law used to allow courts to suspend a person's driver's license if they failed to pay off their court-ordered debt. As of June 27, 2017 through passage of AB 103, the DMV and judges can no longer suspend your driver's license for a "failure to pay" (FTP).[2199] This new policy is not retroactive, meaning it will not apply to you if your license was suspended *before* June 27, 2017. Read more on PG. 53.

HELPFUL HINT

What is a "credit score," and why does it matter?

A credit score is a record of how you have borrowed and repaid money in the past, and is considered a predictor of whether you are likely to repay your debts in the future. Your credit score is a number—usually between 300 and 850. *The higher the number, the better your score.* Your credit score is based on things like current debts you owe (including court-ordered debts), whether you've paid off previous debts in a timely manner, your income, etc.[2200]

Creditors, landlords, and some employers may look at your credit score when deciding whether to give you a loan, rent an apartment to you, or hire you for a job. (*Note*: In California, only certain people can legally see your credit score. For more information about what employers and landlords can see about you, see the EMPLOYMENT CHAPTER (PG. 557) and HOUSING CHAPTER (PG. 332).

HELPFUL TIP:

For more information on your credit report and your credit score, see Appendix J , PG. 710, or contact the Consumer Financial Protection Bureau at (855) 411-2372, or online at: http://www.consumerfinance.gov/askcfpb/search/?selected_facets=category_exact:credit-reporting.

[2196] Cal. Rev. & Tax. Code §§ 19280, 18670; CAL. PENAL CODE § 3000.05; see also Cal. Franchise Tax Board, Court-Ordered Debt (COD)—Frequently Asked Questions (Debtor), https://www.ftb.ca.gov/online/Court_Ordered_Debt/faq_debtor.shtml#q3.
[2197] CAL. PEN.CODE §§ 853.7-53.8. You can also be charged extra fees for failing to appear and for the cost of issuing the arrest warrant. See CAL. PEN. CODE § 853.7a; CAL. VEH. CODE § 40508.5.
[2198] CAL. PEN. CODE § 1203.4 (mandatory dismissal under statute requires payment of all debt ordered as a condition of probation); People v. Covington, 82 Cal. App. 4th 1263 (2000) (defendant who owed outstanding restitution after probation terminated was not entitled to mandatory dismissal, despite having made all required payments during probation period); People v. Chandler, 203 Cal. App. 3d 782 (1988) (defendant who failed to pay off all restitution during term of probation was not entitled to mandatory dismissal).
[2199] Assembly Bill 103 (Stats. 2017, Ch. 17, Secs. 51-54), codified at CAL. VEH. CODE §§ 13365, 40509 and 40509.5.
[2200] Nat'l. Consumer Law Ctr., The Truth About Credit Reports & Credit Repair Companies, http://www.nclc.org/images/pdf/older_consumers/english_brochures/eng_truth_about_credit_reports.pdf.



If you want to know what your credit score is, you will probably have to pay to get it from a commercial credit reporting agency. However, you are entitled to a FREE COPY of your credit report, which will let you see the information that is used to calculate your credit score. You can request your free credit report by mail by submitting an Annual Credit Report Request Form.[2201] A sample form is included in Appendix A, PG. 684. For more information about getting your credit report, contact the Annual Credit Report Request Service at 1-877-322-8228.

DOES A CREDIT REPORT SHOW RESTITUTION AND COURT FINES?

If you have been making your payments regularly and on time, restitution and other court-ordered debt shouldn't show up on your credit report.[2202] However, once you begin ***missing payments***, the court can sell your debt to a collection agency that will likely report the debt to the credit bureau.[2203] Additionally, if you don't pay off your debt, a creditor or debt collector can sue you to collect. If they win, the court will attempt to enforce the debt as a civil judgment against you.[2204] Unlike criminal judgments, civil judgments (such as child support payments and money owed after losing a lawsuit) do show up on credit reports. Civil judgments are categorized in the public records section of a credit report, and are generally listed as "judgments."[2205] Thus, it is unlikely that anyone (such as a landlord) could use your credit report to see information about your criminal conviction. Still, it's a good idea to get a copy of your credit report to make sure. For more information about how to get your credit report, see page 731. For information on how to get and keep a good credit score, see Appendix J on PG. 710.

WHAT ARE MY OPTIONS IF MY WAGES ARE GARNISHED OR THERE IS A LIEN ON MY PROPERTY?

If your wages are being garnished or there is a lien on your bank account or property, you may be able to request an *exemption* for money or property that you need to live on (such as your car or house). An exemption means that the portion of your wages or property that you need in order to support yourself and your family CANNOT be taken.[2206]

- *For more information about requesting an exemption from wage garnishment*, talk to your employer. You should have received a notice regarding your wage garnishment (called an "Earnings Withholding Order," form WG-002) and instructions on how to request an exemption (Judicial Council form WG-003).[2207] These forms are available in Appendix C , PG. 688, and Appendix D , PG. 691. They are also available online at http://www.courts.ca.gov/documents/wg002.pdf and http://www.courts.ca.gov/documents/wg003.pdf.
- *To request an exemption from a property lien*, you will need to file a *Claim of Exemption (Judicial Council form EJ-160)*.[2208] This form is provided in Appendix E , PG. 694 and is also available online at http://www.courts.ca.gov/documents/ej160.pdf. For a list of the types of property that you can request an exemption for see Appendix F , PG. 696 (Judicial Council form EJ-155), or go to http://www.courts.ca.gov/documents/ej155.pdf.
- If your wages are being garnished by the CA Franchise Tax Board (FTB), you can claim a financial hardship and ask them to reduce the amount taken out of each paycheck.[2209] Call the FTB at (916) 845-4064 to ask for assistance. (*Note*: The Franchise Tax Board CANNOT change the total amount of debt you owe, only the amount being taken from each paycheck.)[2210]

[2201] Nat'l. Consumer Law Ctr., The Truth About Credit Reports & Credit Repair Companies, http://www.nclc.org/images/pdf/older_consumers/english_brochures/eng_truth_about_credit_reports.pdf.
[2202] Credit Karma, "Will Civil Judgments Be Reflected on my Credit Report?," https://www.creditkarma.com/article/civil-judgments-on-credit-report; Sup. Court of Santa Clara County, Santa Clara Civil Grand Jury Inquiry into the Collection of Adult Restitution (2003-2004), http://www.scscourt.org/court_divisions/civil/cgj/2004/CollectionofAdultRestitution.pdf.
[2203] [2203] Credit Karma, "Will Civil Judgments Be Reflected on my Credit Report?," https://www.creditkarma.com/article/civil-judgments-on-credit-report; see also CreditCards.com, "How a DUI can tank your credit," http://www.creditcards.com/credit-card-news/dui-drunk-driving-credit-score-impact-1267.php.
[2204] Cal. Penal Code § 1214.
[2205] [2205] Credit Karma, "Will Civil Judgments Be Reflected on my Credit Report?," https://www.creditkarma.com/article/civil-judgments-on-credit-report.

[2206] Cal. Code of Civ. Proc. §§ 704.010–.210, 706.050–.051.
[2207] Cal. Code of Civ. Proc. § 706.122; see also The Judicial Council of California, Paying the Judgment, http://www.courts.ca.gov/1319.htm.
[2208] Cal. Code of Civ. Proc. § 703.520; see also The Judicial Council of California, Paying the Judgment, http://www.courts.ca.gov/1319.htm.
[2209] Cal. Franchise Tax Board, Court-Ordered Debt (COD)—Frequently Asked Questions (Debtor), https://www.ftb.ca.gov/online/Court_Ordered_Debt/faq_debtor.shtml#q3; see also Cal. Franchise Tax Board, Nontax Debt Collections, https://www.ftb.ca.gov/aboutFTB/ND_2011_12.pdf (rev'd Aug. 1, 2012).
[2210] Cal. Franchise Tax Board, Court-Ordered Debt (COD)—Frequently Asked Questions (Debtor), https://www.ftb.ca.gov/online/Court_Ordered_Debt/faq_debtor.shtml#q3; see also Cal. Franchise Tax Board, Nontax Debt Collections, https://www.ftb.ca.gov/aboutFTB/ND_2011_12.pdf (rev'd Aug. 1, 2012).



Even if you don't have enough money to pay off your debts, it's important to show that you are making an effort and want to pay them off! The court and judge will often work with you if you can *show that you are trying to take responsibility for your debt to the best of your ability*. You can ask the judge to help you set up an *installment plan*, or request that he or she *waive* (forgive) some of fines and fees. Many courts will let you do *community service* to work off your debt—or you can even opt to spend time in *jail* to pay off or reduce what you owe.[2211]

If your debt has been sent to a private collection agency or the FTB, you can ask that agency to help you set up a *payment plan*. If the FTB is garnishing your wages, you can also ask them to change the amount that is being taken out of your paycheck (but they CANNOT change the total amount of debt you owe.) The FTB can be very helpful—so don't be afraid to contact them for assistance!

The bottom line: Court-ordered debt can be a scary thing to deal with. But even if you can't pay now, there are other things you can do to improve your situation. DON'T IGNORE YOUR DEBT or it will only get worse!

TRAFFIC FINES AND TICKETS

WHAT ARE TRAFFIC FINES AND TICKETS?

Traffic fines are penalties you are ordered to pay for driving-related or vehicle-related violations. Traffic tickets are the actual paper citations you get when you commit violations. There are three types of traffic tickets:

1. ***PARKING TICKETS—***Parking tickets are for violations while your vehicle is parked (for example, if you park your car where or when you're not allowed to, or don't pay the parking meter).[2212]
2. ***INFRACTION TICKETS—***Infraction tickets are for minor driving violations (such as running a stop sign or failing to use a turn signal), or often for mechanical problems with your car equipment (such as a broken tail-light), or for administrative violations related to your registration, insurance, or Drive License (for example, if one of these has expired).[2213]
3. ***MISDEMEANOR TICKETS—***Misdemeanor tickets are issued for more serious driving violations (like a DUI or driving on a suspended license—these are types of misdemeanor criminal convictions).

WHAT IS "TRAFFIC COURT"?

Where all traffic-related issues are heard and addressed. Some counties have special traffic courts that deal exclusively with traffic-related issues. In others, the "traffic court" may just be a separate counter or department within the main courthouse. Traffic courts deal only with traffic infractions.

NOTE: ANOTHER NAME FOR TRAFFIC FINES IS "BAIL"—Traffic fines are also called "*bail*." The traffic court may use this term when talking about your traffic fines and payments. Traffic "bail" is not the same thing as bail in a criminal case, but is sometimes used in a similar way. As of June 8, 2015, if you are required to appear in court for an *infraction* ticket, you no longer need to "post bail" (pay some or all of your traffic fine) beforehand, except in a few situations.[2214] If you are required to appear in court for a *misdemeanor* ticket, you may need to "post bail" (pay some or all of your traffic fine) BEFORE your court date. You will then get this money back if the court dismisses your ticket or finds you not guilty of the traffic violation. This Chapter will use the term "fines" instead of "bail" to describe the money you owe for a traffic ticket.

HOW DO I KNOW WHICH TYPE OF TICKET I HAVE?

If you park or leave your car somewhere and there is a ticket on the windshield when you get back, this is probably a parking ticket (although some agencies will issue "fix-it" tickets for parked cars with visible mechanical issues or expired registration tags). Parking tickets are the least serious type of ticket and do NOT involve the courts.

If you get pulled over and get a ticket <u>while driving</u>, it is an *infraction* or a *misdemeanor ticket*. Usually you get these tickets from a law enforcement officer who pulls you over on the road for a violation you committed while driving.

WHAT ARE "FIX-IT" TICKETS (CORRECTABLE VIOLATIONS)?

A correctible violation ("fix-it") ticket is a ticket for a problem with your car that you must fix (for example, a broken tail light, expired registration. After you fix the problem, and show the court proof, your ticket will be dismissed.

[2211] Cal. Penal Code § 1205.
[2212] CAL. VEH. CODE §§ 463, 40200.
[2213] Cal. Veh. Code § 40610.
[2214] CAL. RULES OF COURT § 4.105. There are three exceptions when the judge may or must require you to "post bail" for an infraction ticket before your court date: (1) The judge must require you to post bail if you choose to pay or challenge the ticket through certain legal procedures that require bail to be posted beforehand (for example, pleading guilty and paying the ticket without going to court, under CAL. VEH. CODE §§ 40510 or 40521; or challenging your ticket through a trial by written declaration, under CAL. VEH. CODE § 40902); (2) The judge may require you to "post bail" if you do not sign a written promise to appear in court; (3) The judge may require you to "post bail" if he or she finds that you are unlikely to appear for your court date without posting bail beforehand, and specifically states the reasons for his/her decision. CAL. RULES OF COURT § 4.105(c). This new rule only applies to infraction tickets, not to misdemeanor tickets.



- An ***infraction ticket*** will instruct you to either *pay a fine*, or *appear in court* on a particular date and time if you want to challenge the ticket or can't pay the fine.
- For a ***misdemeanor ticket***, you MUST *appear in court* on the date and time shown or a warrant will be issued for your arrest. (That's why the ticket is also called a "Notice to Appear").

NOTE: For some *misdemeanor violations* (for example, a DUI), the police may *arrest* you on the spot and take you into custody. You may need to *pay bail* and/or sign a *promise to appear in court* before the police let you go. Afterward, you MUST *appear in court* on the date and time assigned to you in the promise to appear.

Tickets related to your car equipment, registration, insurance, or driver license are usually ***infraction tickets***. Sometimes you can get the ticket dismissed if you correct the problem that you were cited for (also called a "fix-it" ticket or "correctable violation").

! **IMPORTANT: When you sign any ticket, you are making a promise to do something—pay the fine, appear in court, and/or correct the problem as required by the ticket.**

WHAT COULD HAPPEN IF I GET A NEW TICKET?

It depends on the type of ticket you get.

Parking tickets: If you get a parking ticket, you just have to pay a fine. The ticket will have information about how much the fine is, what agency you owe it to (usually to the local city government or parking authority), and how to pay (by mail, in person, by phone, or online). If you disagree with the ticket, you can contact the parking agency and ask how to challenge it.[2215] *If you don't pay the parking ticket on time*, the fines will increase. *Eventually*, if you haven't paid the fine, you will not be able to renew your car registration. Parking tickets will NOT affect your ability to get a state ID or driver license because parking tickets attach to a *vehicle*, NOT a person.[2216]

Infraction tickets: If you get an infraction ticket, read the ticket carefully to see what to do. You may just need to *pay a fine* or you may have to fix whatever problem the ticket was issued for and then bring proof to the issuing agency. However, you may be required to *appear in court* on a particular date and time. You must act BEFORE the deadline on your ticket. *Remember, by signing the ticket, you have promised to pay the fine, correct the problem, or appear in court*. **You may have to:**

1. *Pay the fine*, which means you plead guilty to the violation and the court will close the case. The infraction will appear as a conviction on your Department of Motor Vehicles (DMV) record, but it will not be considered a criminal conviction.[2217] It may add "points" to your driving record, which may have other consequences.[2218]
   - NOTE: You may be eligible to go to "traffic school," to keep the conviction points off your record.[2219] (For more information about traffic school, see PG. 680.)
2. *Go to court* on the day and time listed on the ticket. You can plead not guilty and ask for a trial to dispute the ticket, or plead guilty to the infraction and pay the fine.[2220]
3. *If you want to contest the ticket* (plead not guilty) but were NOT required to appear in court, you can request a *trial by written declaration*. This means that instead of going to court to fight your case, you and the police officer give the judge statements and evidence in writing.[2221]
4. *If you got a "fix-it" ticket*, you can have your case dismissed by fixing the problem, showing proof that you have made the correction, and paying a fee. To get a proof of correction, you must get an "authorized person" to sign the "Certificate of Correction" line on your ticket. An "authorized person" is:
   - A DMV or court clerk—for driver license and car registration violations;
   - A police officer—for equipment violations;
   - A court clerk—for proof of car insurance.[2222]

[2215] See CAL. VEH. CODE § 40215.
[2216] Cal. Veh. Code § 4760.
[2217] Cal. Penal Code § 19.6.
[2218] CAL. VEH. CODE §§ 1808(b), 12810 (most minor traffic offenses will remain on your record for 3 years from the violation date and count as 1 point on your driving record. More serious convictions will remain on your record for longer periods (7 or 10 years) and add more points to your record); see also Dep't of Motor Vehicles, Vehicle Code Violations used in Negligent Operator Counts, https://www.dmv.ca.gov/portal/dmv/detail/dl/vioptct.
[2219] CAL. VEH. CODE §§ 1803.5, 41501, 1808.7, 1808.10, 41501; 13 CAL. CODE REGS. § 345.00 et seq.; CAL. RULES OF COURT § 4.104 (2014); see also JUDICIAL COUNCIL OF CAL., Traffic School, http://www.courts.ca.gov/9410.htm.
[2220] CAL. VEH. CODE § 40901; see also JUDICIAL COUNCIL OF CAL., Cal. Courts, Traffic Trial, http://www.courts.ca.gov/8450.htm.
[2221] CAL. VEH. CODE § 40902-03; see also JUDICIAL COUNCIL OF CAL., Cal. Courts, Traffic Trial, http://www.courts.ca.gov/8450.htm#tab9275.
[2222] CAL. VEH. CODE §§ 40150-53, 40610-18, 40303.5, 40522; see also JUDICIAL COUNCIL OF CAL., Correctable Violations "Fix-It" Tickets, http://www.courts.ca.gov/9529.htm.



IMPORTANT: NEW LAW REGARDING PAYMENT PLANS: As of Fall 2017, low-income drivers who are unable to pay their parking tickets OR tickets related to public transportation (such as fare evasion) have a *legal right* to set up a payment plan with the court and/or have their fines or penalties reduced.[2223] In order to take advantage of this right, the court must formally declare you to be 'indigent' (meaning low-income).[2224] If you think you qualify, you can apply for an indigence determination within 60 days of receiving your ticket or infraction. Contact the criminal clerk in your county's superior court for more information about indigency determinations.

If you are on probation, parole, or community supervision: In most cases, an infraction ticket won't be considered a violation of your probation or parole because infractions are not criminal offenses. However, in some cases, an infraction ticket *could* be a violation of your supervision, depending on your underlying conviction, the specific conditions of your supervision, and the nature of the infraction. For example, if you are on probation for a DUI offense and have conditions related to alcohol and driving, a ticket for having an open container in your vehicle might be considered a violation of your supervision. If you have any questions or concerns about your terms of supervision, you should talk to your probation or parole officer (or better yet, a lawyer). (You can also find more information in the PAROLE & PROBATION CHAPTER, beginning on PG. 125.)

Misdemeanor tickets: For a misdemeanor ticket, you *must* go to court on the date shown on your ticket. If you want to dispute (deny) the charges, you can plead not guilty and ask for a trial. You are entitled to have a lawyer represent you throughout the process. If you cannot afford a lawyer, the court will appoint a public defender to represent you. You may have to pay a fine (bail) in advance, but you will get the money back if you are found not guilty.[2225] In some cases (for serious misdemeanors, like DUIs, or for repeat offenses), you may also face jail time and/or have your license suspended or revoked.

WARNING: *If you are on probation, parole, or community supervision*, a misdemeanor ticket could be a violation of your probation or parole conditions. You should contact a lawyer immediately, if you can. (For more information on how a new criminal offense may affect your community supervision, see the PAROLE & PROBATION CHAPTER, beginning on PG. 125.)

WHAT COULD HAPPEN IF I DON'T PAY MY TRAFFIC FINES OR IF I DON'T APPEAR FOR MY COURT DATE?

There are serious consequences if you don't pay your traffic fines, or if you don't show up for your court date:[2226]

FAILURE TO PAY YOUR FINES:

- The amount you owe in traffic fines can increase by A LOT. You may be charged interest and additional fees as penalties for paying late or not paying at all.[2227]
- If you agreed to make installment payments to the court for your traffic fines, and you do not make the required payments, the court can order you to pay a $300 civil assessment fine.[2228]
- Your debt could be referred to a collection agency, which can affect your credit score and, in turn, your ability to get a loan, rent an apartment, or qualify for some jobs. (See PG. 663 for more information on "collections").
- *For parking tickets*—You will not be allowed to renew your car registration if you owe unpaid parking fines for that car (and you may be charged an extra fee for having your registration suspended).[2229] Your car MUST be registered with the DMV in order for you or anyone else to drive it, but the DMV will NOT let you renew your registration until you pay off all fines and fees you owe. This means your car CANNOT legally be driven or sold during this time (and you can be charged with other offenses if you drive your car when

[2223] Cal. Pen. Code § 1463.007; 2017 CAL. LEGIS. SERV. CH. 17 (A.B. 103) (WEST); SB 640 (Public transportation agencies: administrative penalties), available at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB614.
[2224] Associated Press, "California no longer will suspend driver's licenses for traffic fines" (Jun. 29, 2017), available at http://www.latimes.com/local/lanow/la-me-ln-driver-license-fees-20170629-story.html.
[2225] JUDICIAL COUNCIL OF CAL., Traffic Trial, http://www.courts.ca.gov/8450.htm.
[2226] CAL. VEH. CODE §§ 40509 (failure to pay fines or appear in court), 12807-08.1 (denial of drivers' license for failure to pay fines or appear in court), 40616-18 (failure to correct violation or provide proof of correction), 40604 (issuance of warrant). See also A New Way of Life Reentry Project et al, Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California (2015), http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf.
[2227] See, e.g., CAL. VEH. CODE § 40310 (50% penalty for all traffic fines overdue by 20 days or more).
[2228] CAL. VEH. CODE §§ 40510.5, 40508; CAL. PENAL CODE § 1214.1.
[2229] CAL. VEH. CODE § 40508.6(b).



it's not registered).[2230] But remember, parking tickets attach to specific CARS—NOT people—so you CAN still drive other cars during this time.
- *If you have a correctable violation ("fix-it" ticket)* and do not make the corrections required by the ticket OR do not provide proof of correction, you can be charged with a misdemeanor.[2231]
- A Judge may order you to appear in court to explain why you have not paid your ticket.

FAILURE TO APPEAR IN COURT:

If a judge has ordered you to appear in court because of your unpaid ticket, you must appear. If you do not, the court can charge you with a misdemeanor for "failure to appear" or "contempt of court," and issue a warrant for your arrest.[2232] The court can also suspend your driver's license for failure to appear.[2233]

I THINK I HAD AN OLD TRAFFIC TICKET, BUT I CAN'T REMEMBER OR CAN'T FIND IT. WHAT ARE MY OPTIONS?

Old traffic tickets can be difficult to track down! This is because cities, counties, the state, and even some colleges have the power to issue traffic tickets—and each agency may handle overdue tickets differently. This can make it hard to know *whether* you owe unpaid traffic fines, *how much* you owe, *whom* you owe fines to, and *what to do* next. The first step is to find out where your ticket is.

FOR PARKING TICKETS:

- *If you CAN remember where you got the ticket*, you can contact the city where you got the ticket and ask how to resolve a parking ticket. If the city has a separate department or agency that handles traffic tickets, you will need to speak with someone from that office directly.
- *If you CAN'T remember where you got the ticket*, you can contact the DMV and ask whether there are any *holds* on your car registration. (A *hold* means that you are not allowed to renew your registration because you didn't pay a parking ticket.)[2234] The DMV will be able to tell you which county, city, or parking agency put the hold on your registration—this is where you owe one or more outstanding parking tickets.[2235]
- You will also find out about any unpaid parking tickets when it's time to renew your car registration (which you have to do every year). The DMV will send you an annual notice to renew your registration which will list any unpaid parking fines you owe and where you got each ticket.[2236] You will not be allowed to renew your registration until you pay all these fines and fees. [2237]

FOR INFRACTION AND MISDEMEANOR TICKETS:

- The easiest way to track down all of your old misdemeanor and infraction tickets is through the DMV. You can go to any DMV office and ask for a list of your *warrants*, which should be available for free.[2238] The list of warrants will show all outstanding traffic tickets where you failed to appear in court (FTAs) and/or failed to pay (FTPs), and will also show where you got the ticket.[2239]
- You can also ask the DMV whether there are any *holds* on your driver license due to outstanding traffic tickets.[2240] (A *hold* means that your license has been suspended and/or you cannot renew it because you didn't pay a traffic ticket or you failed to appear in court.) The DMV will be able to tell you which court put the hold on your license—this is where you owe outstanding traffic tickets.[2241]

WHAT ARE MY OPTIONS IF THE DMV TOLD ME I HAVE AN OUTSTANDING TRAFFIC TICKET?

FOR PARKING TICKETS:

- Once you know where you owe old parking tickets, you should contact the local parking authority directly to find out how much you owe and what to do next.

[2230] Cal. Veh. Code § 40001.
[2231] CAL. VEH. CODE § 40616 et seq.
[2232] CAL. VEH. CODE §§ 40508-8.5; CAL. PENAL CODE §§ 853.7-53.8.
[2233] CAL. PEN. CODE § 1463.007(c).
[2234] CAL. VEH. CODE § 4760(a)(1) (although the DMV does not issue tickets itself, it may put a hold on your Vehicle Registration if you have outstanding unpaid parking tickets). A Vehicle Registration hold prevents you from renewing your license until you resolve the underlying ticket and get the hold removed).
[2235] Cal. Veh. Code § 4761.
[2236] Cal. Veh. Code § 4761.
[2237] CAL. VEH. CODE §§ 4760, 4766.
[2238] Communication with Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, week of March 2-6, 2015.
[2239] Communication with Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, week of March 2-6, 2015.
[2240] CAL. VEH. CODE §§ 40508 (a), (b), (c), 40509.5. Although the DMV does not issue tickets itself, other courts and agencies can ask the DMV to put a hold on your Driver License if you failed to pay your traffic tickets or to appear in court when you were supposed to.
[2241] CAL. VEH. CODE §§ 40002, 40002.1.



- If the ticket is old enough, it may have been sent to collections. If this is the case, you will need to contact the collection agency (county collections, a private agency, or the California Franchise Tax Board) to find out how to pay off your debt. (For more information on finding the collection agency that has your parking ticket debt, see PG. 674.)
- If you have multiple tickets, there may be more than one hold on your vehicle registration. It's important to pay off any tickets with registration holds *first*, so that you can renew your registration!

FOR INFRACTION AND MISDEMEANOR TICKETS:

If you got an infraction or misdemeanor traffic ticket and you: (1) did not pay the ticket; (2) did not go to court on the date listed on the ticket; or (3) went to court and were ordered to pay a fine by the judge, but did not pay the fine, ask if your local court has any traffic amnesty programs.

!

IMPORTANT NOTE ABOUT ARREST WARRANTS: When you are charged with a "failure to appear" (FTA) or "failure to pay" (FTP), the traffic court judge may order a warrant for your arrest.[2242] *If there is any chance you have an arrest warrant* for one of these reasons, CONTACT A LAWYER AS SOON AS POSSIBLE. A lawyer may be able to get you a court date to try and fix the situation.[2243] It is very important to attend any court dates! Be aware that even if you go to court to get the warrant removed, you will likely still have to pay for the ticket and any additional fines and fees. Learn more about reducing traffic court debt on PG. 680.

I HAD A PENDING (UNRESOLVED) TRAFFIC TICKET WHEN I WAS INCARCERATED. WHAT HAPPENED TO IT?

If you were formerly incarcerated in a California state prison: Under state law, the DMV must dismiss most non-felony traffic tickets that were pending when you went to prison. A ticket is "pending" when the court has not yet made a decision in the case (meaning, never ordered you to pay the fine). Only tickets for misdemeanor traffic offenses and infractions can be dismissed under this law. Parking tickets CANNOT be dismissed this way.[2244] *PLEASE NOTE: this rule only applies to people who were incarcerated in state prisons!*

Additionally, your traffic ticket CANNOT be dismissed if:

- You got the ticket while you were on parole;[2245]
- The ticket is for an offense that would require the DMV to automatically revoke or suspend your driver license if you were convicted;[2246]
- You are serving your sentence in county jail under Realignment.[2247]

I BELIEVE I CAN GET MY TRAFFIC TICKETS DISMISSED UNDER VEHICLE CODE SECTION 41500. HOW DO I DO THAT?

You must proactively request dismissal from the DMV directly. The court will not automatically do this on your behalf. You will need to send a letter to the DMV on official California Department of Corrections & Rehabilitation letterhead, and get it signed by an "Authorized Representative."

- *If you're currently incarcerated*, you should ask your Correctional Counselor or other prison staff person to provide letterhead and sign off on your request.
- *If you're formerly incarcerated and on some form of community supervision like probation or parole*, you will have to ask your parole or probation officer to provide letterhead and sign off on your request.[2248]

The letter should say that you are requesting dismissal of your misdemeanor or infraction ticket under Vehicle Code Section 41500, and it must include the dates of your commitment and release (if you're out). Send your request to: Department of Motor Vehicles, Division of Drivers Safety and Licensing, P.O. Box 9412890, Sacramento, CA 94290. A DMV employee will then review your request to decide if your ticket qualifies for dismissal.

[2242] CAL. VEH. CODE § 40508 (a); see also Failure to Appear, SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE, http://www.occourts.org/directory/traffic/general-information/appearances/failure-to-appear.html.
[2243] Legal Aid Foundation of Los Angeles, California Driver's License Reinstatement Manual: A Legal Self-Help Guide at 5, http://lafla.org/pdf/DL_Manual_rev1-10.pdf.
[2244] CAL. VEH. CODE § 41500 (no prosecution for a non-felony violation of the Vehicle Code pending at the time of commitment to custody).
[2245] CAL. VEH. CODE § 41500(e).
[2246] See Joseph v. Sup. Ct., 9 Cal. App. 4th 498 (1992). Violations that require the immediate suspension or revocation of the offender's driver's license include first DUI convictions resulting in injury, third DUI in 7 years, hit and run, reckless driving causing bodily injury, reckless driving in evading a police officer, and vehicular manslaughter.
[2247] See People v. Lopez, 218 Cal. App. 4th Supp. 6 (2013).
[2248] E-mail from Ask Traffic, California Superior Court "Guidelines for Dismissal Pursuant to Vehicle Code 41500" (on file with author) (Mar. 19, 2015).



HELPFUL HINT

Here are 3 more options to look into if you are struggling to pay your traffic fines:

1. Payment Plans—If you owe unpaid traffic fines, you can contact the court, parking authority, or collection agency that you owe money to and ask about setting up a *payment or installment plan* (where you pay off a little every month instead of everything all at once).
2. Amnesty Programs—Some counties have traffic amnesty programs to help people reduce the amount of traffic debt owed and in some cases, reinstate a suspended driver license.[2249] Contact the traffic court in the county where you owe money for more information.
3. Specialty Courts—Some counties have special *homeless courts, DUI courts, or other community courts* that may be able to help you resolve your tickets and fines. Contact the local public defender in the county where you got the ticket to ask if there are any community courts available and whether you are eligible. What if I owe court-ordered debt for a federal offense?

I HAVE DEBT RELATED TO A FEDERAL COURT CASE. WHAT CAN I DO?

Up to this point, this Court-Ordered Debt Chapter has *only* covered debts that were ordered by a *California state court*, and NOT debts ordered by a federal court.

If you have debts that stem from a *federal* offense, your court-ordered debt will look different, because federal courts have their own rules for restitution, fines, and fees. However, these three general *types* of debt are the same in the federal system:

1. *Restitution*: *Repays any victims* (people, organizations, government agencies, etc.) that suffered harm, property damage, or monetary losses caused by your actions.[2250] This is like *victim restitution* in state court.
2. *Fines:* Serve as additional *punishment* for your offense and are part of your criminal sentence.[2251] The amount of the fine will depend on the crime for which you were convicted.[2252] These are like *fines and penalties* in state court.
3. *Special Assessments*: Fees assigned for each separate offense you were convicted of. The amount of the Assessment depends on the seriousness of the offense. *ALL of your federal Special Assessment debt will be forgiven 5 years after your conviction, after which you will no longer owe this debt.*[2253]

! **WARNING: Just like for state court debt, you may also owe additional interest or other penalties on your federal court-ordered debt (for example, if you don't make required payments on time).**

FOR MORE INFORMATION ON FEDERAL COURT-ORDERED DEBT

If you have questions about your federal court-ordered debt, you should contact your federal public defender or the federal public defender office in your area.

- To find out how much you owe, contact the federal district court where you were convicted. You will need to speak with the Finance Department to find out your balance.
- To find out if you owe additional interest or penalties, you will need to contact the U.S. Attorney's Financial Litigation (Collections) Unit to learn about these additional amounts.
- Your federal probation officer may also be able to answer questions about your court-ordered debt, such as how much you owe and/or how to make payments.

[2250] 18 U.S.C. §§ 3556, 3663, 3663A, 3664.
[2251] 18 U.S.C. § 3571.
[2252] 18 U.S.C. § 3571 et seq.
[2253] 18 U.S.C. § 3013.



III. TAKING CONTROL OF YOUR COURT-ORDERED DEBT

WHAT WILL I LEARN?

- **How to take control of your court-ordered debt, including:**
  - **How find out how much you owe;**
  - **How to get your debt reduced or forgiven; and**
  - **Strategies for managing and paying off your debt.**

Taking control of your court-ordered debt is done by knowing the type of debt you owe, the amount of debt you owe, and creating plan as to how to repay this debt based on how it will impact on your parole/probation term and employment. In Part III, we will answer the following questions for each type of debt:

- How do I find out how much I owe?
  - Restitution
  - Court fines & penalties and court administrative fees (generally handled the same way)
  - Traffic fines & fees
- How do I pay off or "satisfy" my court-ordered debt?
  - Restitution
  - Court fines & penalties and court administrative fees (generally handled the same way)
  - Traffic fines & fees
- Is there any way to reduce or forgive my court-ordered debt?
  - Restitution
  - Court fines & penalties and court administrative fees (generally handled the same way)
  - Traffic fines & fees

REQUESTING COPIES OF YOUR ORIGINAL SENTENCING ORDERS

If you want to see what amounts you were originally ordered to pay, you can request a copy of your sentencing order from the court that sentenced you.

HOWEVER, these amounts are the *original* amounts ordered by the court, and will NOT reflect any payments that you've made OR include any interest or fees that have been added since. The order also will NOT show the debts you owe from ANY other cases.

HOW DO I FIND OUT HOW MUCH COURT-ORDERED DEBT I OWE?

Since there are typically three types of debt: restitution, court fines and penalties, and court administrative fees, to find out how much you owe requires you to ask different questions to different people/agencies to make sure you know of all of your debt and to figure out how much you owe. Below three different debt types are discussed as well as debts you may owe if you received traffic tickets as part of your case or if you had tickets prior to being incarcerated.

STATE & FEDERAL RESTITUTION

If you are incarcerated in a state prison, you should be able to get a copy of your restitution balance sheet from your facility (either a CDCR facility or county jail). Ask your Correctional Counselor if you have any questions about your restitution.[2254]

If you have just been released from state prison, your facility (or the agency it has chosen) will either continue to collect your debt itself or refer your debt out to a private collection agency or the Franchise Tax Board.[2255] You should get a demand notice from whichever agency will continue collecting your restitution debt within 90 days of your release, although there is no set time for this.[2256]

If you are on state parole, probation, or community supervision, talk to your parole agent or probation officer.[2257] They can give you a copy of your balance sheet, which has information about how much you currently owe.

At any time, you can also find out how much you owe by contacting an Adult Restitution Agent at the CDCR Office of Victim & Survivor Rights & Services Restitution Unit at (877) 256-6877 (toll free). They will be able to

[2254] CAL. PENAL CODE § 2085.5; CAL. DEP'T CORR. & REHAB., An Adult Offender's Guide to Restitution (Apr. 2007), http://www.cdcr.ca.gov/victim_services/docs/Adult_Offender_Guide.pdf.
[2255] CAL. PENAL CODE § 2085.5; see also Office of Victim & Survivor Rights & Svcs., CAL. DEP'T OF CORR. & REHAB., Offender Restitution Information FAQ, http://www.cdcr.ca.gov/victim_services/restitution_offender.html.
[2256] Telephone Interview with Brandy (last name unknown), Agent, Office of Victim & Survivor Rights & Svcs., CAL. DEP'T OF CORR. & REHAB. (Feb. 10, 2015); see also CAL. REV. & TAX CODE § 19280.
[2257] Office of Victim & Survivor Rights & Svcs., CAL. DEP'T OF CORR. & REHAB., Parolee Restitution Payment Instructions, http://www.cdcr.ca.gov/victim_services/parolee_payment_instructions.html; Cal. Victim Comp. & Gov't Claims Board, Your Restitution Responsibilities: A Brochure for Adult & Juvenile Offenders at 5 (rev'd May 2009), http://www.victimsofcrime.org/docs/restitution-toolkit/c5_ca-restitution-brochure-for-offenders.pdf?sfvrsn=2.



tell you your restitution balance and can give you information about what to do while you wait for the collection agency to contact you.[2258]

If you were released from federal prison or are on federal supervision, you can find out how much federal restitution you owe by calling the District Court's Finance Unit at (415) 552-4621.[2259] The Finance Unit can also tell you the status of your payments and help you create a payment plan. Please note that if you previously failed to make payments on time, you may owe additional money on top of your restitution due to interest or penalty fees. To find out whether this is the case, call the District Court's Litigation Unit at (415) 436-6970.

I HAVEN'T EVER RECEIVED NOTICE THAT I OWE ANY MONEY FOR RESTITUTION, SO I PROBABLY DON'T, RIGHT?

Not necessarily. While you *should* receive notice of your debt, it is possible that you won't. As we said in the beginning of this Chapter, any number of things may have prevented the notice of your debt from getting to you. Even if you have received a demand notice, it is possible that the notice you received only covered *some*, but NOT *all* of your debts. Remember, your various debts may have been sent to different agencies. For this reason, it is possible that you owe money even if you did NOT receive a notice and it is possible that you owe more money than the notice stated. It is always better to check in order to be safe!

I KNOW HOW MUCH RESTITUTION I OWE. CAN A COURT ORDER MORE RESTITUTION AFTER I'VE ALREADY BEEN SENTENCED?

Generally, the trial court continues to have control over restitution issues throughout the period between sentencing and the completion of parole or probation.[2260] During that time, the court has the authority to add or modify a restitution order on a motion of the victim, defendant, or district attorney, or on the court's own motion.[2261] Once the period of parole or probation has expired, the court can no longer order you to pay additional restitution to a victim.[2262]

COURT FINES AND PENALTIES AND COURT ADMINISTRATIVE FEES

As discussed on PG. 660, court fines and penalties are debts you may get as punishment or consequences for the crime you were charged with. Court administrative fees are paid for the daily operation of the court. While these two debts are different, here these debts are discussed together because the court usually adds these fees together and requires you to pay them together and to one office.

HOW DO I FIND OUT IF I HAVE ANY COURT FINES AND FEES?

STEP 1: **Contact the court where you were convicted**

To find out how much you owe in court fines and fees, you should start by contacting the court in the county where you were convicted. You should try to provide your case number, however you may be able to locate your case using your name, birth date, and/or other personal information. If you have any court papers from your case, they will list your case number and the county you were convicted in. If you don't have any of your court papers, you may need to get a copy of your RAP sheet to figure out what court(s) you have convictions from.

STEP 2: **Find out where your debt is now**

When you contact the court, the clerk should be able to tell you what you were ordered to pay, whether your case has been sent to collections, and if so, which collection agency now has your debt. Remember, if you have convictions from multiple cases, even if they are all in the same county, you will need to ask about every case.

If you have convictions from different counties, you will need to contact the court in each county.

[2258] Telephone Interview with Brandy (last name unknown), Agent, Off. of Victim & Survivor Rights & Svcs., CAL. DEP'T OF CORR. & REHAB. (Feb. 10, 2015); see also Office of Victim & Survivor Rights & Svcs., CAL. DEP'T OF CORR. & REHAB., Offender Restitution Information FAQ, http://www.cdcr.ca.gov/victim_services/restitution_ftb.html.
[2259] United States District Court, Northern District of California, Finance Unit Frequently Asked Questions, available at http://www.cand.uscourts.gov/financefaq#crimbalance.
[2260] Cal. Judge's Benchguide § 83.87.
[2261] CAL. PENAL CODE § 1202.4(f)(1),
[2262] People v. Waters (2015) 241 Cal.App.4th 822.



Make sure to ask the court for the contact information for each and every agency that will be collecting your debt. If some or all of your debt is still with the court, ask the clerk how to contact the court's "collection" or "revenue" unit (the department that keeps track of court-ordered debts and payments). (For a list of California county court collection unit contact information, see Appendix H , PG. 703.)

STEP 3: **Contact the collection agency in charge of your debt**

Once you know which collection agency is collecting your debt, you can contact them directly to ask how much you owe and how to pay. Remember that your debts may be collected by several different collection agencies, so you may need to contact all the different agencies to find out how much you owe in total. You may get shuffled around to many different people, but this is important, so be patient!

TRAFFIC FINES & FEES

HOW DO I FIND OUT HOW MUCH I OWE IN TRAFFIC FINES?

FOR NEW TICKETS AND FINES:

- A **parking ticket** shows the amount you must pay on the ticket itself. The ticket will also say where to *send your payment* (usually to the local city government or parking agency), how to *pay in person*, and/or whether you can *pay online*. If you want to dispute the ticket itself or the amount that you owe, contact the parking agency on the ticket and ask the clerk what to do.[2263]
- An **infraction ticket** will show you either (1) the amount of the fine that you *have to pay*, or (2) when you have to *appear in court*. If you are required to go to court, the judge will tell you how much the fine is.[2264]
- For a **misdemeanor ticket**, you must *go to court* on the date stated on your ticket. The court will tell you how much you must pay if you are convicted. Your fines and fees may be as much as $5000, you may face jail time, and/or your driver license may be suspended.[2265]
- *If you* **have questions or disagreements about your infraction or misdemeanor ticket**, contact the court listed on your ticket. Contact information and/or links for all local traffic courts is also available online at http://www.ca.gov/Driving/LawsSafety/TrafficFines.html.

FOR OLD TICKETS AND FINES:

If you don't have the paper ticket anymore, but you know WHERE you got it…

- **For parking tickets**, contact the parking authority in the city where you got the ticket and tell them you need information about an old parking ticket. This may be the Department of Parking and Traffic, the county sheriff's department, or the local police department.
- **For infraction and misdemeanor tickets**, contact the traffic court in the county where the ticket was issued. The traffic court clerk will be able to tell you how much money you owe and explain the payment process.[2266] The clerk will be able to tell you if you have multiple tickets for traffic-related infractions or misdemeanors in that county, but will not have information about non-traffic related offenses. The clerk also will not be able to tell you if you have unpaid traffic tickets in other counties.

If you don't know WHERE you got the ticket or if the ticket is OUTSTANDING…

- See PG. 669 to find out how to find your old traffic tickets.
- Follow steps 1 and/or 2 above once you know where you have unpaid traffic tickets.

If your traffic fines have been referred to collections: You will need to contact the collection agency to find out how much you owe and how to pay off your fines. Ask the court or agency that issued the ticket *which* collection agency they send your debt to, and be sure to get the collection agency's phone number and contact information.

GENERAL INFORMATION ABOUT TRAFFIC FINES:

An important thing to know about traffic fines is that *there are lots of additional fees and penalties that can get added to your initial fine*. These extra fees and penalties are added *automatically*—regardless of whether it's a new or old ticket, and even if you pay everything on time! Your fines may also increase if you have prior traffic violations or points on your driving record. Depending on what your original ticket was for, the additional fees and penalties can sometimes add up to several hundred dollars for an infraction ticket (and much more for a misdemeanor ticket).[2267]

[2263] See CAL. VEH. CODE § 40200 et seq.
[2264] See CAL. VEH. CODE §§ 28001; 40000.7.
[2265] See CAL. VEH. CODE §§ 28001; 40000.7.
[2266] Telephone interview with Carrie (last name unknown), Traffic Court Clerk, Superior Court of the County of Alameda (Feb. 10, 2015).
[2267] JUDICIAL COUNCIL OF CAL., Uniform Bail & Penalty Schedules at (2014), http://www.courts.ca.gov/documents/2014-JC-BAIL.pdf.



IV. PAYING OFF OR "SATISFYING" MY COURT-ORDERED DEBT

How you pay your fines, fees, and restitution will vary, because each court and agency handles unpaid debts slightly differently. Depending on *where* you were convicted, the *type(s) of debt(s)* you owe, *how much* you owe, *how old* your debt is, and whether you are currently *incarcerated* or on *supervision*, your debt may be collected by any one of these departments or agencies:

- Court Collections
- CDCR
- Local jail or juvenile hall
- Parole officer
- Probation Department
- Victim Compensation & Government Claims Board
- Franchise Tax Board
- County collection agency
- Private collection agencies

RESTITUTION

HOW DO I PAY RESTITUTION WHILE INCARCERATED?

CDCR (or the county jail) will automatically deduct victim restitution, and, if possible, restitution fine payments from deposits in your trust account and any wages you earn.[2268] You can also make voluntary payments whenever you like.

If a friend or family member on the outside sends you money, the CDCR will automatically apply half of the sum to your restitution, with an additional 10% of that half going towards paying administrative costs.[2269] Friends and family on the outside can also send you money specifically for restitution, in which case the administrative costs are waived.[2270]

HOW DO I PAY RESTITUTION WHILE ON STATE PAROLE?

CDCR has most likely sent your victim restitution debt to the Franchise Tax Board for collection. The FTB will send you a demand notice with contact information and instructions on how to set up a payment plan. You can also contact the FTB directly to make payment arrangements. (See PG. 676 for FTB contact information.) If you also want to pay off your restitution fines (or parole revocation fines) voluntarily while you are on parole, you can send these payments directly to CDCR. Your parole agent can tell you how much you owe and/or answer other questions about your payments.[2271]

Make sure you include your name and CDCR number with your payment, and send to:
CDCR—Office of Trust Accounting, P.O. Box 276088, Sacramento, CA 95827

! **IMPORTANT: You must pay off your restitution in full to transfer your parole from California to another state, otherwise your transfer request will be denied.[2272] Once you pay off your restitution, your parole agent will request a receipt showing a zero balance to submit with your transfer request. Learn more about interstate transfer on PG. 217.**

[2268] CAL. PENAL CODE § 2085.5 (money collected will be used to pay off direct orders (victim restitution) first, and then restitution fines). The law also authorizes CDCR and/or the county collection agency to deduct a 10% administrative fee, in addition to the restitution payments collected.
[2269] Cal. Penal Code § 2085.5.
[2270] Per conversation with representative from CDCR Victim Services.
[2271] Office of Victim & Survivor Rights & Svcs., CAL. DEP'T OF CORR. & REHAB., Offender Restitution Information FAQ, http://www.cdcr.ca.gov/victim_services/restitution_offender.html; see also Office of Victim & Survivor Rights & Svcs., CAL. DEP'T OF CORR. & REHAB., Parolee Restitution Payment Instructions, http://www.cdcr.ca.gov/victim_services/parolee_payment_instructions.html. You can also send money electronically through Jpay (www.jpay.com) or Access Secure Deposits (www.inmatedeposits.com). You CANNOT send money to CDCR through Western Union.
[2272] CDCR Victim Services, Offender Restitution Information, Frequently Asked Questions, http://www.cdcr.ca.gov/victim_services/restitution_offender.html; CAL PENAL CODE CA Pen Code: § 11177.2.



HOW DO I PAY RESTITUTION WHILE ON PROBATION, PRCS, OR MANDATORY SUPERVISION IN CALIFORNIA?

You should ask your probation officer about making payments.[2273] You can also call the CDCR Office of Victim & Survivor Rights & Services Restitution Unit at (877) 256-6877 (toll free) to discuss your restitution balance and arrange your payments.

IMPORTANT: PAY OFF CONDITION-OF-PROBATION DEBTS FIRST! Always try to pay off debts that are *conditions of your probation* first, as these can affect the length of your probation.[2274] (Payments are supposed to go to these debts first automatically, but this doesn't always happen.)[2275]BUT NOTE: If you are entitled to a mandatory dismissal of a conviction under Cal. Penal Code § 1203.4 because your probation was terminated (ended) early, you cannot be denied the dismissal because you still owe victim restitution.[2276] This means that if you owe victim restitution, you still have the RIGHT to a mandatory dismissal of a qualifying conviction. See PG 962 in the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER for more information.

Make your payments in-person, online, or by mail:

- *If you make a payment in person*, ask the clerk (or collections representative) who receives your payment to put it toward your restitution and any other fines imposed as conditions of your probation first.
- *If you make payments online*, you can select which fines or fees your payment will go toward. Make sure you select the ones that are conditions of your probation first.
- *If send your payment by mail*, write on your check or money order in the memo line—or include a note—that indicates which fine or fee the payment is specifically meant for.

After you are off state parole, CDCR will refer the remainder of your debt (unpaid restitution fines, parole revocation restitution, court fines and fees, administrative fees) to the California Franchise Tax Board.[2277]

WHAT WILL HAPPEN IF I CAN'T PAY THE RESTITUTION?

It depends who you owe the restitution to.

If the California Franchise Tax Board (FTB) is in charge of collecting your restitution debt, here are some steps you can take to possibly make your financial situation easier:

1. Set Up a Payment Plan: Contact the FTB to discuss your options for paying your debt in installments instead of all at once;
2. Manage Your Payments Online: Set up an online account to instantly view your current balance, make payments, and keep records of the debt you have already paid.
3. Get Your Payments Reduced: If the FTB is taking too much money out of your paycheck (called "wage garnishment") and you don't have enough to live on, you can claim financial hardship and ask the FTB to reduce the amount being taken out of each paycheck. [2278] (Note: The FTB can only lower the amount taken from each payment, but cannot reduce the total amount of debt that you owe.) (See PG. 663 for more information on wage garnishment.)
4. Dispute the Amount You Owe: If you disagree with the AMOUNT of debt you owe, you will need to contact the local court or county collection agency listed on your demand notice (the document notifying you that you owe money) directly. The FTB can help you lower the amount you pay each month, but it CANNOT answer questions or make changes to your total debt orders.

The California FTB employs representatives to help you. You can call the FTB at (916) 845-4064 during normal weekday hours (Monday-Friday, 8 a.m. – 5 p.m.) or visit the FTB's website at: https://www.ftb.ca.gov/online/Court_Ordered_Debt/index.asp.

[2273] Cal. Victim Comp. & Gov't Claims Board, Your Restitution Responsibilities: A Brochure for Adult & Juvenile Offenders at 5 (rev'd May 2009), http://www.victimsofcrime.org/docs/restitution-toolkit/c5_ca-restitution-brochure-for-offenders.pdf?sfvrsn=2.
[2274] Cal. Penal Code §§ 1203.3, 1203.4, 1203.4(a)(1).
[2275] Cal. Const., art. I, § 28(b)(13)(C) (Marsy's Law); Cal. Penal Code §§ 1203.1d, 2085.5.
[2276] See People v. Seymour, Case No. H040560 (Santa Clara County, Super. Ct. No. CC955665).
[2277] Cal. Penal Code § 2085.5; Cal. Rev. & Tax Code § 19280; see also Office of Victim & Survivor Rights & Svcs., Cal. Dep't of Corr. & Rehab., Offender Restitution Information FAQ, http://www.cdcr.ca.gov/victim_services/restitution_offender.html.
[2278] Cal. Franchise Tax Board, Court-Ordered Debt (COD)—Frequently Asked Questions (Debtor), https://www.ftb.ca.gov/online/Court_Ordered_Debt/faq_debtor.shtml#q3; see also Cal. Franchise Tax Board, Nontax Debt Collections, https://www.ftb.ca.gov/aboutFTB/ND_2011_12.pdf (rev'd Aug. 1, 2012).



CAN MY PUBLIC BENEFIT PAYMENTS BE GARNISHED TO PAY OFF RESTITUTION?

Yes. At least when it comes to Social Security, the court is authorized to order garnishment of public benefits as a means of paying off victim restitution.[2279] The government agency that provides the public benefit can garnish a maximum of 25 percent of your monthly benefit amount.[2280]

IF I RECEIVE AN INHERITANCE, CAN IT BE TAKEN TO PAY OFF MY RESTITUTION?

Yes. Under California Probate Code Sections 216 and 9202, estate attorneys, beneficiaries, and personal representatives are required to inform the California Victim Compensation Board (VCB) when a deceased person has an heir who was or is currently incarcerated within 90 days of the person's death. To comply with these code sections, you must complete the Inmate Inheritance Notification Form (see Appendix A on PG. 684) and mail it to the address listed on the form. Once this form has been received by the VCB, the VCB has four months to pursue collection of any outstanding fines or orders.[2281]

THE VICTIM NEVER CLAIMED RESTITUTION. DO I STILL HAVE TO PAY?

Yes. The CDCR is in charge of managing restitution accounts for direct orders, even once you are released. Most of the time, the CDCR does not initially have an address for the victim to which they can direct payments. In such a case, depending on your custody status, either the CDCR or the Victim Compensation and Government Claims Board hangs onto the payments until the victim can be located. State law permits victims to come forward at any time to claim restitution collected on their behalf.[2282]

THE VICTIM WHO WAS RECEIVING MY RESTITUTION PAYMENTS JUST DIED. DO I STILL HAVE TO PAY?

Yes. If you were ordered to pay restitution directly to the victim of a crime ("direct order"), and that victim has died, the executor or administrator of the victim's estate will begin receiving restitution payments on his or her behalf.[2283] Of course, restitution can only be awarded for economic losses the victim incurred before he or she died, so any additional economic losses incurred after or as a result of the victim's death are not your responsibility.[2284]

GETTING RID OF CIVIL ASSESSMENT CHARGES

If you don't make payments on time or don't go to court when you're supposed to, the judge adds an extra fee of $300 to your debt. This is called a "civil assessment." If the reason you didn't pay or appear in court was because you were incarcerated, and you were charged with a civil assessment as a result, you should be able to get it waived by filing a "Petition to Vacate Civil Assessment." This form is available from the court clerk. A sample form is also available in Appendix I , PG. 708.

COURT FINES, PENALTIES & ADMINISTRATIVE FEES

HOW DO I PAY OFF THE COURT FINES, PENALTIES, AND ADMINISTRATIVE FEES?

As discussed on PG. 660, court fines and penalties are debts you may incur as punishment or consequences for the crime you were charged with. Court administrative fees are the fees that are paid for the daily operation of the court. While these two debts are different, here these debts are discussed together because they are usually grouped together (totaled) when discussing how much you owe the court and require you to pay both fees together and to pay these fees to one office.

The process for collecting court fines and fees is complicated and may be different from county to county. In general, you can follow these instructions:[2285]

STEP 1: **Contact the court(s) where you were convicted**

See PG. 673 (Step 1 on how to find out how much you owe in court fines and administrative fees) for instructions on how to identify and contact the court(s) where you were convicted.

STEP 2: **Find out who is in charge of collecting your debt and contact them**

Different counties have different methods for collecting court fines and fees. Depending on where you are located, collection may be handled by different agencies, including the court itself, a county agency, a private collection agency, or the Franchise Tax Board. See PG. 673 above (Steps 2-3 on how to find out how much you owe in court fines and administrative fees) for instructions on how to identify and contact the agency(ies) in charge of collecting your debt. Remember that your debts may be collected by several different collection agencies, so you may need to contact each of these different agencies about making payments.

[2279] SSN POMS GN 02410.223.
[2280] SSN POMS GN 02410.223.
[2281] CAL. PROB. CODE § 9202(b).
[2282] CDCR Victim Services, Collecting Restitution, http://www.cdcr.ca.gov/victim_services/unclaimed_restitution.html.
[2283] California Judges Benchguide 83: Restitution § 83.70; See also U.S. Dept. of Justice, Provisions Regarding Allowable restitution, https://www.justice.gov/usao-cdca/victimwitness/understanding-restitution.
[2284] People v Runyan (2012) 54 C4th 849, 856-859.
[2285] Telephone interview with Anita Lee, Legislative Analyst, Cal. Legislative Analyst Office (Feb. 12, 2015); see also Cal. Legislative Analyst Office, Restructuring the Court-Ordered Debt Process, 9 (Nov. 2014).



STEP 3: **Discuss your payment options.**

When you contact the collection agency or court that's in charge of your debt, a representative can help you design a payment plan that works best for your situation. The goal is to create a plan that will prevent you from facing extra fees or other penalties (like a hold on your DMV record) that can result from late or insufficient payments.

It is important to be open and honest about your current financial situation, including whether or not you have a job, pay child support, or owe any other debts or payments. Most of the time, the collection representative will take these things into account and work with you to create a plan that you can realistically stick to.

Depending on your individual situation and the amount of money you owe, the collection agency may ask you to pay everything off right away. In other situations, they may allow you to set up a payment plan so that you make smaller payments over time. Remember that the agency or court might charge a fee to cover the costs of managing your payment plan, and might charge additional fees for each payment you make.[2286] Collection agencies can also charge BIG penalty fees for any late payments (or even demand that you pay off the entire remaining amount due). *Make sure you ask about fees and penalties and/or read the fine print before you agree to a payment plan!*

!

IMPORTANT: USING COMMUNITY SERVICE TO PAY OFF FINES. In the past, every county's court system had different policies regarding the extent to which community service could reduce court-ordered debt. However, on January 1, 2017, the Penal Code was amended to include a provision expressly allowing community service to reduce fines associated with misdemeanor and felony convictions.[2287] Recent case law suggests that each day of community service completed will reduce such a fine by $125.[2288]

WHAT MIGHT HAPPEN IF I CAN'T PAY MY DEBT?

If you don't keep up with your payments, your debt becomes delinquent (overdue). The agency in charge of collecting your debt will send a notice letter to your last known address explaining that your payment is overdue.[2289] After 10 days, the court or agency may order you to pay extra fees on top of what you already owe, or they may put a hold on your DMV record.[2290] The amount of late fees you may owe will depend on many factors, including what county your debt is in, what agency is in charge of collection, and the amount of debt you owe. (For more information on fair debt collection practices, see Appendix G , PG. 699.)

- **If you are on parole**, talk to your parole agent and explain that you are having a hard time making payments. He or she may be able to work with you to help you manage this debt.[2291]
- **If you are on probation**, talk to your probation officer and explain that you are having a hard time making payments. The probation department or the court may do a financial evaluation (meaning a consideration of your income, other debts, etc.), and will decide whether to reduce your payment amounts based on your inability to pay.[2292] You also have the right to ask to court to reduce some or all of your fines and fees.[2293] Keep in mind, however, that the judge can also order you to look for work as a condition of your probation, and may require you to bring in proof that you're applying for jobs every week.[2294]

  IN GENERAL, YOUR INABILITY TO PAY WILL NOT BE CONSIDERED A VIOLATION IF IT IS DUE TO CIRCUMSTANCES BEYOND YOUR CONTROL. *However, in more serious cases, you could have your probation extended or even revoked if*:

  1. you're not paying debts that are a condition of your probation AND you are also violating other probation conditions (such as reporting requirements), OR
  2. the court thinks that you are willfully refusing to pay.

[2286] CAL. PENAL CODE § 1205(e) (mandating payment of administrative fees for court installment plans on fines and fees).
[2287] CAL. PENAL CODE §§ 1205, 2900.5.
[2288] *People v. Carranza* (2016) 6 Cal.Apppp.5th Supp. 17 , 29 (stating, "The clear purpose of the bill, as discerned from the text of the amendments enacted, was to increase the amount of credit from $30 to $125, and to concomitantly reduce the amount of time in custody, or—by application of section 1205.3—the community service days, required to satisfy a fine."
[2289] Cal. Veh. Code § 40509.5.
[2290] Cal. Penal Code § 1214.1; Cal. Veh. Code § 40509.5.
[2291] CAL. DEP'T OF CORR. & REHAB., Parolee Information Handbook, http://www.cdcr.ca.gov/parole/_pdf/paroleehandbook.pdf.
[2292] Cal. Penal Code § 1203(j); Cal. Gov't Code § 27755.
[2293] Cal. Gov't Code § 27755(d).
[2294] CAL. PENAL CODE § 1203.1(d).



For this reason, it is very important that you speak with your probation officer and make it clear that you are not avoiding payments on purpose. If you are able to make even very small payments, this will help show the court and your probation officer that you are making an effort.

- **If you are not on any form of supervision**, contact the agency in charge of collecting your debt and ask to set a new payment plan. (See PG. 673 for information on how to find and contact the agency in charge of your debt to set up a payment plan.)
- **If you are re-incarcerated**, the debt associated with your prior conviction will not go away. You will still be responsible for paying it off. However, you should not face any extra fees or interest charges for failing to pay while you are inside.[2295] If for some reason you are charged a fee for missing a payment while incarcerated, you should contact the court or collection agency when you are released and provide them with proof that you were incarcerated during that time period to have the fee waived.[2296]

TRAFFIC FINES AND FEES

HOW DO I PAY MY TRAFFIC FINES?

It depends on the type of traffic fine.

- **For parking tickets**, send your payment to the parking agency listed on the ticket.
- **For infraction tickets**: Read the ticket carefully—it will tell you whether to pay a fine or appear in court.
- **If you are paying a fine**, you will make payments to the court in the county where you received the ticket. Check the ticket for specific information about how and where to send your payment. You may also get a letter from the court—most counties will send you information about how to pay or contest (challenge) your ticket, and whether you have the option of attending traffic school instead. You can also contact the court right away to set up a payment plan.[2297]

The ticket will also indicate whether you have a "*correctable violation*." If so, you can have your ticket AND traffic fine *dismissed* by fixing the problem, showing proof that you have made the correction, and paying a dismissal fee.[2298] To get proof that you have corrected the problem, you must get an authorized person to sign the "*Certificate of Correction*" line on your ticket. Bring the *signed* ticket and your dismissal fee payment to the court clerk BEFORE the deadline on the ticket. (In some cases, you may also be able to send your proof of correction and payment by mail—check your ticket or contact the court to find out.) The court will then dismiss your case and it will not go on your record.

1. For driver license & car registration violations, get the DMV or a court clerk to sign your ticket.
2. For equipment violations, get your ticket signed by a police officer.
3. For proof of car insurance at the time of the citation, get your ticket signed by a court clerk.

TRAFFIC SCHOOL MIGHT BE AN OPTION:

In some cases, you may be able to attend *traffic school* for your ticket.[2299] Traffic school is a driver training class that you can take to make sure that your ticket does not show on your driving record. Tickets can impact your driving record by adding "points" to it. Points on your record can cause your insurance rate to increase and can even result in the suspension or revocation of your license.

You may get a letter from the court telling you if traffic school is an option, but you can also contact the court directly to ask. If the court lets you go to traffic school, you will need to complete the course by a specific deadline and provide a certificate of completion to prove that you have completed it.[2300] *Make sure you attend a traffic school that is approved by the court, otherwise you will not receive credit for completing the course.* The court can provide you with a list of approved schools.

If you successfully complete traffic school, your ticket will still go on your driving record, but it will be made *confidential* (hidden).[2301] Also, you will still have to pay all of your traffic fines, AND you will also have to pay

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[2295] Not paying a fee or missing a payment because you were incarcerated and receiving a Failure to Appear citation as a result, is considered a "valid excuse" meaning you do not have to pay this fee. See Superior Court of Cal., Frequently Asked Questions, https://www.saccourt.ca.gov/traffic/faq.aspx.
[2296] See Superior Court of Cal., Frequently Asked Questions, https://www.saccourt.ca.gov/traffic/faq.aspx.
[2297] CAL. VEH. CODE § 40510-10.5. See also JUDICIAL COUNCIL OF CAL. Traffic & Ticket Basics, http://www.courts.ca.gov/8452.htm.
[2298] CAL. VEH. CODE §§ 40150-53, 40610-18, 40303.5, 40522; JUDICIAL COUNCIL OF CAL., Correctable Violations ("Fix-It" Tickets), http://www.courts.ca.gov/9529.htm.
[2299] CAL. VEH. CODE §§ 41501, 42005.
[2300] CAL. VEH. CODE § 40512.6.
[2301] CAL. RULES OF COURT, Rule 4.104. Procedures and eligibility criteria for attending traffic violator school, http://www.courts.ca.gov/9410.htm.



additional enrollment fees to the court and to the traffic school.[2302] However, you will NOT get any points added to your driving record,[2303] which means your insurance rates won't go up and your license will not be in danger of suspension or revocation. So, even though traffic school can cost you MORE money in the SHORT term, it can SAVE you a lot of money and trouble in the LONG run. For more information on traffic school, ask the traffic court clerk or visit the Judicial Council website at http://www.courts.ca.gov/9410.htm.

CAN I GO TO TRAFFIC SCHOOL TO PAY OFF MY TRAFFIC TICKETS?

Generally, you can go to traffic school if:

- You have a valid, regular (not commercial) driver license,
- Your ticket is for a moving violation that is an infraction (not a misdemeanor), and
- You were driving a regular (non-commercial) vehicle when you got the ticket.

Some reasons why you may NOT be eligible for traffic school:

- You have a parking ticket or misdemeanor ticket;
- Your ticket was for a serious moving violation—including speeding more than 25mph over the speed limit;
- Your ticket was for a DUI or other drug/alcohol-related violation;
- You've gone to traffic school for another ticket within the past 18 months; or
- You were driving a commercial vehicle when you got the ticket.[2304]

For OLD infraction tickets, you will need to find out which court or agency is in charge of collecting your fines (see PG. 669) and how much you owe (see PG. 674). Then contact that agency to find out how to pay off your fines.

For misdemeanor tickets: You will need to go to court in the county where you got the ticket, on the day and time listed on your ticket. The court will tell you how much you owe, and you will make payments to the court.

For OLD misdemeanor tickets, you will need to find out which court or agency is in charge of collecting your fines (see PG. 669) and how much you owe (see PG. 674). Then contact that agency to find out how to pay off your fines.

IMPORTANT: Remember, you must pay your fines BEFORE the deadline listed on the ticket or given by the court. If you don't pay your fines on time, you can be charged *double* in penalties and your case may be referred to a collection agency. The DMV may also put a hold on your registration or driver license, until you pay your fines.[2305]

WHAT OPTIONS DO I HAVE IF I CANNOT PAY MY TRAFFIC FINES?

It depends on the type of traffic fine.

FOR PARKING TICKETS

Talk to the parking agency (or collection agency, if your parking fines were sent to collections) about setting up a *payment plan*. Keep in mind that the payment plan may charge additional fees, as well as big penalties for missed payments—*so make sure to ask about any fees and penalties before you sign up!*

FOR MISDEMEANOR AND INFRACTION TICKETS

Check with the local traffic court to ask about any programs that could help you deal with traffic debt related to a misdemeanor or infraction. If you have any open warrants (or are unsure), check first with your local public defender to see what your options are

***IMPORTANT WARNING FOR PEOPLE WITH OPEN WARRANTS:* if there's ANY possibility that you might have an outstanding warrant for your arrest—for ANY reason (including new charges against you or a failure to appear in court) from ANY county—it is recommended that you call the public defender or a private lawyer to check on your warrant status first, and to ask what your options are.**

REDUCING OR FORGIVING COURT-ORDERED DEBT

WHAT OPTIONS DO I HAVE TO REDUCE OR FORGIVE MY COURT-ORDERED DEBT?

It depends on the type of court-ordered debt.

[2302] CAL. VEH. CODE § 42007-07.1.
[2303] CAL. VEH. CODE § 1808.7; but see § 1808.10 (conviction not confidential for holder of commercial driver license).
[2304] Cal. Veh. Code § 42005; Cal. Rules of Court, Rule 4.104 (2015).
[2305] CAL. VEH. CODE § 40310 (50% penalty for all traffic fines overdue by 20 days or more).



RESTITUTION

As we have stated, restitution is mandatory and stays with you for life. However, a judge may order you to do community service instead of paying restitution if he or she finds "compelling and extraordinary reasons" for doing so. Again, your inability to pay is not a compelling or extraordinary reason.[2306]

COURT FINES & PENALTIES AND COURT ADMINISTRATIVE FEES:

It is often possible to get your fines and fees *reduced* or *forgiven* ("*vacated*") by the court. However, it depends heavily on what *county* your debt is from, and which *judge* is considering your case.

In general, judges are more likely to reduce or waive fines and fees if you can show that:

- *You're making an effort to pay your debts* (for example, you're paying restitution, even though you can't afford to pay the other fines and fees);
- *You're taking steps toward rehabilitation* (for example, you're in drug treatment or anger management counseling; you're enrolled in school; you've reunited with your family); and
- *You're following all other conditions of your supervision.*

Here are some ways that you may be able to reduce, forgive, or otherwise satisfy your fines and fees:

- Some courts may allow you to do *community service* instead of paying your fines and fees.[2307] However, there is a lot of variation from county to county, and many counties may not offer community service at all. If the judge did not give you the option of community service at sentencing, you should contact the court or local public defender to ask if the county runs a community service program.
- The court may allow you to *voluntarily* choose to do *jail time* instead of paying your court-ordered fines. You can get your debt reduced by $30/day spent in custody.[2308]
- You can go to the court directly and ask the judge to forgive ("vacate" or "dismiss") or reduce your debts.
- If you get your conviction dismissed, the court can forgive any remaining fines and fees you owe, including restitution *fines*[2309] (but the court CANNOT forgive your victim restitution).[2310]

IMPORTANT INFORMATION ABOUT PAYING YOUR COURT-ORDERED DEBT:[2311]

- ***If you owe payments on more than one case*, make sure you specify *which case* AND *which fine or fee within that case* your payment is for—otherwise the payments may automatically go to your oldest case first.**[2312] **Remember, you want to pay off the debts that are *conditions of probation*, BEFORE paying off any other debts.**
- ***Try to make small, consistent payments to the court*. This shows that you are aware of your debts and are doing your best to pay them off. It may also keep the court from sending your case to collections.**
- ***If you sign up for a payment plan*, make sure to ask about the *interest rate*, any *additional fees*, and penalties for missed payments. Collection agencies often add extra fees and interest, which could increase the total amount you have to pay.**
- **Keep a list of all payments you make, including the date and time, and who you gave the payment to (the court, county collection agency, FTB, or private collection agency). When you make a payment, always ask for a receipt for the current payment and a print-out of the amount you still owe.**

TRAFFIC FINES & FEES

Even if you do not have a car and/or you do not drive frequently, traffic fines and fees can have a significant impact on your parole or probation conditions and/or ability to find employment. Because of their impact, it can help to find out if you have any tickets and if you owe any fees and look for options to have them reduced or canceled. A few of those options are discussed below.

[2306] CAL. PENAL CODE § 1202.4(n); cf. 1202.4(c), (g).
[2307] Marcus Nieto, Cal. Research Bureau, Who Pays for Penalty Assessment Programs in California? 19-26 (Feb. 2006), http://www.library.ca.gov/crb/06/03/06-003.pdf (judges can impose community service in place of fines and fees); Brennan Center, Criminal Justice Debt: A Barrier to Reentry at 42 n.75 (describing county-level variations); Interview with Buffy Hutchinson, Criminal Defense Attorney, San Francisco, Dec. 18, 2014.
[2308] CAL. PENAL CODE §§ 1205(a), (b), 2900.5; People v. McGarry, 96 Cal. App. 4th 644, 652 (2002); see also Brennan Center for Justice, Criminal Justice Debt: A Barrier to Reentry at 50 n.138, n.142 (2010), http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf.
[2309] CAL. PENAL CODE §§ 1203.4, 1203.4a; People v. Holman, 214 Cal. App. 4th 1438 (2013); People v. Guillen, 218 Cal. App. 4th 975 (2013).
[2310] CAL. CONST., art. I, § 28(b)(13) (Marsy's Law); CAL. PENAL CODE §§ 1203.4, 1203.4a.
[2311] Interview with Michele Vela-Payne, Supervising Probation Officer, Sacramento Cnty. Prob. Dep't, Nov. 5, 2014.
[2312] CAL. PENAL CODE § 1203.1d (allocation of partial payments). The older case may not be the most important one to pay off; for example, if you owe administrative fees on the older case, but you owe restitution or other fines that are conditions of probation on a newer case, making payments on the newer case is more important.



> **If you had pending (unresolved) traffic tickets and fines when you were incarcerated,** you may qualify to have the fines cancelled under Vehicle Code Section 41500. See PG. 670 to learn more.

> **If unpaid traffic fines caused you to lose your driver's license, a new law passed in June 2017 may help.** As of the passage of AB 103 on June 27, 2017, your driver license can no longer be suspended for *unpaid fines*. However, it can still be suspended for a *failure to appear in court*. Additionally, a court *can no longer* report a failure to pay fines and/or bail to the DMV, no matter the reason(s)! Before June 27, 2017, the DMV would suspend licenses upon receiving these reports from courts, but under the new law, this practice should have ended statewide!

If your license was *suspended BEFORE June 27, 2017 due to failure to pay*, you may still be able to have your traffic debt forgiven and have your license reinstated if…

- **You are serving a state prison sentence *or* a Realignment sentence in county jail, AND your ticket was "pending" when you were incarcerated.** You will have to proactively request dismissal from the DMV under Vehicle Code 41500. If you are sending it while currently incarcerated, it will need to be on CDCR letterhead and be signed by an Authorized Representative. Your request should be sent to: Department of Motor Vehicles, Division of Drivers Safety and Licensing, P.O. Box 9412890, Sacramento, CA 94290.
- **Your license was suspended for a Failure-to-Pay, Failure-to-Appear or other failure-to-comply that is more than 5 years old.** You can call the DMV Mandatory Actions line at (916) 657-6525 to see if your license qualifies.
- **Your local county court has a process for waiving fees.** For information on local court practices, the legal nonprofit EBCLC has created the following website where you can search for more information by county: **http://ebclc.org/reentry-legal-services/**.

V. CONCLUSION

Many people struggle with different types of debt, but it can be particularly difficult if you are trying to rebuild your life after incarceration. If you have court-ordered debt, the bottom line is, you will likely have to figure out a way to pay it off at some point. Hopefully this Chapter gave you some useful information to help you not only minimize the debt itself, but also its impact on your life.



Court-Ordered Debt Appendix

APPENDIX A. Inmate Inheritance Notification Form – PG. 684
APPENDIX B. Annual Credit Report Request Form – PG. 686
APPENDIX C. Earnings Withholding Order (Judicial Council Form WG-002) – PG. 688
APPENDIX D. Employee Instructions (Wage Garnishment) (Judicial Council Form WG-003) – PG. 691
APPENDIX E. Claim of Exemption (Judicial Council Form EJ-160) – PG. 694
APPENDIX F. Exemptions from the Enforcement of Judgments (Judicial Council Form EJ-155) – PG. 696
APPENDIX G. Fair Debt Collection Practices & A Sample Letter to Debt Collection Agency – PG. 699
APPENDIX H. California County Court Collection Unit Contact Information – PG. 703
APPENDIX I. Sample Petition to Vacate Civil Assessment – PG. 708
APPENDIX J. Consumer Financial Protection Bureau: To Get and Keep a Good Credit Score – PG. 710
APPENDIX K. Consumer Debt and Tax Law Legal Referrals – PG. 713



APPENDIX A

Inmate Inheritance Notification Form

See the form on the next page.

Inmate Inheritance Notification Form

CALIFORNIA CalVCB VICTIM COMPENSATION BOARD

Probate Code §§ 216 & 9202: Inmate Inheritance

Effective January 1, 2015, Probate Codes §§ 216 & 9202 require estate attorneys, beneficiaries, and personal representatives to inform the California Victim Compensation Board when a deceased person has an heir who was or is currently incarcerated, no later than 90 days after the date of death.

To avoid delays in processing, please complete all sections of the form below and attach a copy of the decedent's death certificate. Documents may be submitted electronically to probate@victims.ca.gov, or by mail to:

California Victim Compensation Board, Revenue Recovery Branch
P.O. Box 1348, Sacramento, CA 95812-1348

PLEASE COMPLETE ALL SECTIONS		
NAME OF ESTATE:		
SUPERIOR COURT NAME:		
STREET ADDRESS OF SUPERIOR COURT:	CITY:	ZIP CODE:
PROBATE CASE NUMBER:		
ASSIGNED ATTORNEY/REPRESENTATIVE:	PHONE:	
STREET ADDRESS OF ASSIGNED ATTORNEY/REPRESENTATIVE:	CITY:	ZIP CODE:

NAME OF HEIR:	HEIR'S DATE OF BIRTH:
HEIR'S LOCATION OF INCARCERATION:	
HEIR'S CDCR NUMBER: *(If incarcerated in a California Department of Corrections and Rehabilitation facility)*	
HEIR'S X-REFERENCE NUMBER (X-REF #): *(if incarcerated in a county facility)*	
COMMENTS:	

For additional information or further questions, please call (916) 491-3766.

CalVCB-RRB-01 (08/16)



APPENDIX B

Annual Credit Report Request Form

See the form on the next page.

EQUIFAX Experian TransUnion

Annual Credit Report Request Form

You have the right to get a free copy of your credit file disclosure, commonly called a credit report, once every 12 months, from each of the nationwide consumer credit reporting companies, Equifax, Experian and TransUnion.

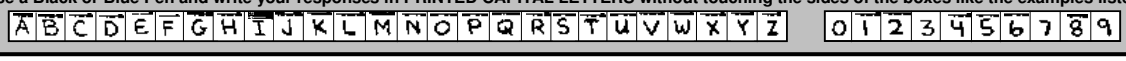
For instant access to your free credit report, visit www.annualcreditreport.com.

For more information on obtaining your free credit report, visit www.annualcreditreport.com or call 877-322-8228.

Use this form if you prefer to write to request your credit report from any, or all, of the nationwide consumer credit reporting companies. The following information is required to process your request. **Omission of any information may delay your request.**

Once complete, fold (do not staple or tape), place into a #10 envelope, affix required postage and mail to:
Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281.

Please use a Black or Blue Pen and write your responses in PRINTED CAPITAL LETTERS without touching the sides of the boxes like the examples listed below:



Social Security Number: ___ - ___ - ____

Date of Birth: ___ / ___ / ____
Month / Day / Year

Fold Here

First Name **M.I.**

Last Name **JR, SR, III, etc.**

Current Mailing Address:

House Number **Street Name**

Apartment Number / Private Mailbox **For Puerto Rico Only: Print Urbanization Name**

City **State** **ZipCode**

Previous Mailing Address (complete only if at current mailing address for less than two years):

House Number **Street Name**

Fold Here

Apartment Number / Private Mailbox **For Puerto Rico Only: Print Urbanization Name**

City **State** **ZipCode**

Shade Circle Like This → ●

Not Like This → ⊗ ✓

I want a credit report from (shade each that you would like to receive):

- ◯ **Equifax**
- ◯ **Experian**
- ◯ **TransUnion**

◯ **Shade here if, for security reasons, you want your credit report to include no more than the last four digits of your Social Security Number.**

If additional information is needed to process your request, the consumer credit reporting company will contact you by mail.

Your request will be processed within 15 days of receipt and then mailed to you.

31238

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APPENDIX C

Earnings Withholding Order
(Judicial Council Form WG-002)

See next page.

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, State Bar number, and address*):	LEVYING OFFICER (*Name and address*):
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	

EARNINGS WITHHOLDING ORDER (Wage Garnishment)	LEVYING OFFICER FILE NO.:	COURT CASE NO.:

EMPLOYEE: *KEEP YOUR COPY OF THIS LEGAL PAPER.* **EMPLEADO:** *GUARDE ESTE PAPEL OFICIAL.*

EMPLOYER: Enter the following date to assist your recordkeeping.
Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer	Name and address of employee

Social Security No. ☐ on form WG-035 ☐ unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (*see instructions on reverse of this form).* Pay the withheld sums to the **levying officer** *(name and address above*).

   If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions* (form WG-003)** within 10 days after receiving this order.

   Complete both copies of the form *Employer's Return* (form WG-005) and **mail them to the levying officer** within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: $

   Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the 10th day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that 10th day.

   Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on (*date):*

   The judgment creditor *(if different from the plaintiff)* is *(name):*

4. The *INSTRUCTIONS TO EMPLOYER* on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE)

☐ LEVYING OFFICER ☐ REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
WG-002 [Rev. July 1, 2014]

EARNINGS WITHHOLDING ORDER (Wage Garnishment)

Code of Civil Procedure, §§ 706.022, 706.108, 706.125
www.courts.ca.gov

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

WG-002

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period.*

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN)* is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form *(Employer's Return)* for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.*

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

THE CHART BELOW AND THESE INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

The chart below shows *HOW MUCH TO WITHHOLD* when the state minimum wage is $9.00 per hour, for different amounts of *disposable earnings* (as described in the Computation Instructions) and different pay periods. If the minimum wage changes in the future, the levying officer will provide a chart showing the new withholding rates.

COMPUTATION INSTRUCTIONS

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings.*

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of $1000 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or $250.

The chart below is based on the state minimum wage that is in effect on July 1, 2014. It will change when the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order,* an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.

   IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

   IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

MAXIMUM WITHHOLDING FROM DISPOSABLE EARNINGS BY PAY PERIOD

MINIMUM WAGE: $9.00 per hour **(Beginning July 1, 2014)**

Daily or Weekly	Every Two Weeks	Twice a Month	Monthly
$360.00 or less in workweek: No withholding	$720.00 or less: No withholding	$780.00 or less: No withholding	$1560.00 or less: No withholding
From $360.01 to $450.00: Amount above $360.00	From $720.01 to $900.00: Amount above $720.00	From $780.01 to $975.00: Amount above $780.00	From $1560.01 to $1950.00: Amount above $1560.00
$450.01 or more: 25% of disposable earnings	$900.01 or more: 25% of disposable earnings	$975.01 or more: 25% of disposable earnings	$1950.01 or more: 25% of disposable earnings



APPENDIX D

Employee Instructions
(Wage Garnishment)
(Judicial Council Form WG-003)

See next page.

EMPLOYEE INSTRUCTIONS

-NOTICE-

IMPORTANT LEGAL NOTICE TO EMPLOYEE
ABOUT EARNINGS WITHHOLDING ORDERS
(Wage Garnishment)

The **Earnings Withholding Order** requires your employer to pay part of your earnings to the sheriff or other levying officer. The levying officer will pay the money to a creditor who has a court judgment against you. The information below may help you protect the money you earn.

-NOTICIA-

NOTICIA LEGAL IMPORTANTE RESPECTO
A LAS ÓRDENES DE RETENCIÓN DE SUELDO

La **Orden de Retención de Sueldo** requiere que su empleador pague una parte de su sueldo a un oficial de embargo. El oficial le pagará el dinero retenido a su acreedor que ha conseguido una decisión judicial en contra de usted. Pida usted que un amigo o su abogado le lea este papel oficial. Esta información le puede ayudar a proteger su sueldo.

CAN YOU BE FIRED BECAUSE OF THIS?

NO. You cannot be fired unless your earnings have been withheld before for a different court judgment. If this is the first judgment for which your wages will be withheld and your employer fires you because of this, the California Labor Commissioner, listed in the phone book of larger cities, can help you get your job back.

HOW MUCH OF YOUR PAY WILL BE WITHHELD?

The reverse of the Earnings Withholding Order (abbreviated in this notice as EWO) that applies to you contains Employer Instructions. These explain how much of your earnings can be withheld. Generally, the amount is about 25% of your take home pay until the amount due has been withheld. The levying officer will notify the employee of an additional assessment charged for paying out money collected under this order and that amount will also be withheld.

If you have trouble figuring this out, ask your employer for help.

IS THERE ANYTHING YOU CAN DO?

YES. There are several possibilities.

1. See an attorney. If you do not know an attorney, check with the lawyer referral service or the legal aid office in your county (both are listed in the yellow pages under "Attorneys").

   An attorney may be able to help you make an agreement with your creditor, or may be able to help you stop your earnings from being withheld. You may wish to consider bankruptcy or asking the bankruptcy court to help you pay your creditors. These possibilities may stop your wages from being withheld.

   An attorney can help you decide what is best for you. Take your **EWO** to the attorney to help you get the best advice and the fastest help.

2. Try to work out an agreement yourself with your creditor. Call the creditor or the creditor's attorney, listed on the **EWO**. If you make an agreement, the withholding of your wages will stop or be changed to a smaller amount you agree on. *(See item 4 on the reverse for another way to make an offer to your creditor.)*

3. You can ask for an EXEMPTION. An exemption will protect more, or maybe even all of your earnings. You can get an exemption if you need your earnings to support yourself or your family, **but you cannot get an exemption if:**
   a. You use some of your earnings for luxuries and they aren't really necessary for support; ***OR***
   b. You owe money to an attorney because of a court order in a family law case; ***OR***
   c. You owe the debt for past due child support of spousal support (alimony); ***OR***
   d. You owe the debt to a former employee for wages.

HOW DO YOU ASK FOR AN EXEMPTION?

(See the other side of this form for instructions about claiming an exemption.)

Form Adopted for Mandatory Use
Judicial Council of California
WG-003 [Rev. January 2, 2012]

Code of Civil Procedure, § 706.122
www.courts.ca.gov

HOW DO YOU ASK FOR AN EXEMPTION?

1. Call or write the levying officer for three (3) copies each of the forms called "Claim of Exemption" and "Financial Statement." These forms are free. The name and address of the levying officer are in the big box on the right at the top of the **EWO**.

2. Fill out both forms. On the forms are some sentences or words which have boxes ☐ in front of them. The box means the words which follow may not apply to your case. If the words do apply, put a check in the box.

   Remember, it is ***your*** job to prove with the Financial Statement form that your earnings are needed for support. Write down the details about your needs.

3. For example, if your child has special medical expenses, tell which child, what illnesses, who the doctor is, how often the doctor must be visited, the cost per visit, and the costs of medicines. These details should be listed in item 6. If you need more space, put "See attachment 6" and attach a typed 8½ by 11 sheet of paper on which you have explained your expenses in detail.

4. You can use the Claim of Exemption form to make an offer to the judgment creditor to have a specified amount withheld each pay period. Complete item 3 on the form to indicate the amount you agree to have withheld **each pay day during the withholding period.** (Be sure it's less than the amount to be withheld otherwise.) If your creditor accepts your offer, he will not oppose your claim of exemption. (See (1) below.)

5. Sign the Claim of Exemption and Financial Statement forms. Be sure the Claim of Exemption form shows the address where you receive mail.

6. Mail or deliver two (2) copies of each of the two forms to the levying officer. Keep one copy for yourself in case a court hearing is necessary.

Do not use the Claim of Exemption and Financial Statement forms to seek a modification of child support or alimony payments. These payments can be modified only by the family law court that ordered them.

FILE YOUR CLAIM OF EXEMPTION AS SOON AS POSSIBLE FOR THE MOST PROTECTION.

ONE OF TWO THINGS WILL HAPPEN NEXT

(1) The judgment creditor will not oppose (object to) your claim of exemption. If this happens, after 10 days the levying officer will tell your employer to stop withholding or withhold less from your earnings. The part (or all) of your earnings needed for support will be paid to you or paid as you direct. And you will get back earnings the levying officer or your employer were holding when you asked for the exemption.

—OR—

(2) The creditor will oppose (object to) your claim of exemption. If this happens, you will receive a Notice of Opposition and Notice of Hearing on Claim of Exemption, in which the creditor states why your exemption should not be allowed. A box in the middle of the Notice of Hearing tells you the time and place of the court hearing which will be in about ten days. Be sure to go to the hearing if you can.

If the judgment creditor has checked the box in item 3 on the Notice of Hearing on Claim of Exemption, the creditor will not be in court. If you are willing to have the court make its decision based on your Financial Statement and the creditor's Notice of Opposition, you need not go to the hearing.

The Notice of Opposition to Claim of Exemption will tell you why the creditor thinks your claim should not be allowed. If you go to the hearing, take any bills, paycheck stubs, cancelled checks, or other evidence (including witnesses) that will help you prove your Claim of Exemption and Financial Statement are correct and your earnings are needed to support yourself or your family.

Perhaps you can even prove the Notice of Opposition is wrong. For example, perhaps the Notice of Opposition states that the judgment was for wages for a past employee.You may be able to provide evidence that the person was not an employee or that the debt was not for wages.

If the judge at the hearing agrees with you, your employer will be ordered to stop withholding your earnings or withhold less money. The judge can even order that the **EWO** end before the hearing (so you would get some earnings back).

If the judge does not agree with you, the withholding will continue unless you **appeal to** a higher court. The rules for appeals are complex so you should see an attorney if you want to appeal.

If you have one court hearing, you should not file another Claim of Exemption about the same **EWO** unless your finances have gotten worse in an important way.

If your **EWO** is to be changed or ended, the levying officer must sign the notice to your employer of the change. He may give you permission to deliver it to the employer, or it can be mailed.

WHAT HAPPENS TO YOUR EARNINGS IF YOU FILE A CLAIM OF EXEMPTION?

Your employer must continue to hold back part of your earnings for the **EWO** until he receives a notice signed by the levying officer to change the order or end it early.

The levying officer will keep your withheld earnings until your Claim of Exemption is denied or takes effect. At that time your earnings will be paid according to the law that applies to your case.

REGARDING CHILD SUPPORT

If you are obligated to make child support payments, the local child support agency may help you to have an Order Assigning Salary or Wages entered. This order has the top priority claim on your earnings. When it is in effect, little or no money may be available to be withheld for an **EWO**. And, if the local child support agency is involved in collecting this support from you, it may agree to accept less money if this special order is entered.

WHAT IF YOU STILL HAVE QUESTIONS?

If you cannot see an attorney, or don't want to see an attorney, you might be able to answer some of your questions by reading the law in a law library. Ask the law librarian to help you find sections 706.050 and 706.105 of the California Code of Civil Procedure. Other sections of the code, beginning with section 706.010 may also answer some of your questions.

Also, the office of the Wage and Hour Division of the U.S. Department of Labor may be able to answer some of your questions. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.



APPENDIX E

Claim of Exemption
(Judicial Council Form EJ-160)

See next page.

[NOT FOR WAGE GARNISHMENT]
RETURN TO LEVYING OFFICER, DO NOT FILE WITH COURT

EJ-160

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*

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

E-MAIL ADDRESS *(Optional):*

ATTORNEY FOR *(Name):*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR LEVYING OFFICER USE ONLY
(Levying Officer Name and Address)

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

LEVYING OFFICER FILE NUMBER:

CLAIM OF EXEMPTION
(Enforcement of Judgment)

FOR COURT USE ONLY

Copy all the information required above (except the top left space) from the* Notice of Levy*. The top left space is for your name or your attorney's name and address. The original and one copy of this form must be filed with the levying officer. DO NOT FILE WITH THE COURT.

1. My name is:
2. Papers should be sent to:
   - ☐ me.
   - ☐ my attorney (I have filed with the court and served on the judgment creditor a request that papers be sent to my attorney and my attorney has consented in writing on the request to receive these papers.)

   at the address ☐ shown above ☐ following *(specify):*

CASE NUMBER:

3. ☐ I am not the judgment debtor named in the notice of levy. The name and last known address of the judgment debtor *is (specify):*

4. The property I claim to be exempt is *(describe):*

5. The property is claimed to be exempt under the following code and section *(specify):*

6. The facts which support this claim are *(describe):*

7. ☐ The claim is made pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. **A Financial Statement form is attached to this claim.**
8. ☐ The property claimed to be exempt is
   - a. ☐ a motor vehicle, the proceeds of an execution sale of a motor vehicle, or the proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.
   - b. ☐ tools, implements, materials, uniforms, furnishings, books, equipment, a commercial motor vehicle, a vessel, or other personal property used in the trade, business or profession of the judgment debtor or spouse.
   - c. all other property of the same type owned by the judgment debtor, either alone or in combination with others, is *(describe):*
9. ☐ The property claimed to be exempt consists of the loan value of unmatured life insurance policies (including endowment and annuity policies) or benefits from matured life insurance policies (including endowment and annuity policies). All other property of the same type owned by the judgment debtor or the spouse of the judgment debtor, either alone or in combination with others, is *(describe):*

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

Date:

(TYPE OR PRINT NAME) *(SIGNATURE OF DECLARANT)*

Form Approved by the
Judicial Council of California
EJ-160 [Rev. January 1, 2009]

CLAIM OF EXEMPTION
(Enforcement of Judgment)

Code of Civil Procedure, § 703.520
www.courtinfo.ca.gov



APPENDIX F

Exemptions from the Enforcement of Judgments
(Judicial Council Form EJ-155)

See next page.

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

The following is a list of assets that may be exempt from levy on a judgment.

Exemptions are found in the United States Code **(USC)** and in the California codes, primarily the Code of Civil Procedure (**CCP**).

Because of periodic changes in the law, the list may not include all exemptions that apply in your case. The exemptions may not apply in full or under all circumstances. Some are not available after a certain period of time. You or your attorney should read the statutes.

If you believe the assets that are being levied on are exempt, file a claim of exemption form, which you can get from the levying officer.

AMOUNT OF EXEMPTIONS: A list of the amounts of exemptions from a judgment under CCP § 703.150 starting on April 1, 2004, is available from the clerk of the court and on the California Courts Web site at *www.courtinfo.ca.gov*. Except as otherwise provided, the dollar amounts of the exemptions will be adjusted thereafter at three-year intervals on April 1, and the adjusted amounts will become effective immediately on that date.

Type of Property	Code and Section
Accounts *(See Deposit Accounts)*	
Appliances	CCP § 704.020
Art and Heirlooms	CCP § 704.040
Automobiles	CCP § 704.010
BART District Benefits	CCP § 704.110 Pub Util C § 28896
Benefit Payments:	
BART District Benefits	CCP § 704.110 Pub Util C § 28896
Charity	CCP § 704.170
Civil Service Retirement Benefits (Federal)	5 USC § 8346
County Employees Retirement Benefits	CCP § 704.110 Govt C § 31452
Disability Insurance Benefits	CCP § 704.130
Fire Service Retirement Benefits	CCP § 704.110 Govt C § 32210
Fraternal Organization Funds Benefits	CCP § 704.130 CCP § 704.170
Health Insurance Benefits	CCP § 704.130
Irrigation System Retirement Benefits	CCP § 704.110
Judges Survivors Benefits (Federal)	28 USC § 376(n)
Legislators Retirement Benefits	CCP § 704.110 Govt C § 9359.3
Life Insurance Benefits:	
Group	CCP § 704. 100
Individual	CCP § 704. 100
Lighthouse Keepers Widows Benefits	33 USC § 775
Longshore & Harbor Workers Compensation or Benefits	33 USC § 916
Military Benefits:	
Retirement	10 USC § 1440
Survivors	10 USC § 1450
Municipal Utility District Retirement Benefits	CCP § 704.110 Pub Util C § 12337
Peace Officers Retirement Benefits	CCP § 704.110 Govt C § 31913
Pension Plans (and Death Benefits):	
Private	CCP § 704.115
Public	CCP § 704.110
Public Assistance	CCP § 704.170 Welf & I C § 17409

Type of Property	Code and Section
Benefit Payments *(cont.)*	
Relocation Benefits	CCP § 704.180
Retirement Benefits and Contributions:	
Private	CCP § 704.115
Public	CCP § 704.110
Segregated Benefit Funds	Ins C § 10498.5
Social Security Benefits	42 USC § 407
Strike Benefits	CCP § 704.120
Transit District Retirement Benefits (Alameda and Contra Costa Counties)	CCP § 704.110 Pub Util C § 25337
Unemployment Benefits and Contributions	CCP § 704.120
Veterans Benefits	38 USC § 3101
Veterans Medal of Honor Benefits	38 USC § 562
Welfare Payments	CCP § 704.170 Welf & I C § 17409
Workers Compensation	CCP § 704.160
Boats	CCP § 704.060 CCP § 704.710
Books	CCP § 704.060
Building Materials (Residential)	CCP § 704.030
Business:	
Licenses	CCP § 695.060 CCP § 699.720(a)(1)
Tools of Trade	CCP § 704.060
Cars and Trucks (including proceeds)	CCP § 704.010
Cash	CCP § 704.070
Cemeteries:	
Land Proceeds	Health & SC § 7925
Plots	CCP § 704.200
Charity	CCP § 704.170
Claims, Actions and Awards:	
Personal Injury	CCP § 704.140
Worker's Compensation	CCP § 704.160
Wrongful Death	CCP § 704.150
Clothing	CCP § 704.020
Condemnation Proceeds	CCP § 704.720(b)
County Employees Retirement Benefits	CCP § 704.110 Govt C § 31452
Damages (*See Personal Injury and Wrongful Death)*	
Deposit Accounts:	
Escrow or Trust Funds	Fin C § 17410
Social Security Direct Deposits	CCP § 704.080

Form Approved for Optional Use
Judicial Council of California
EJ-155 [Revised January 1, 2005]

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

Code of Civil Procedure,
§§ 681.030(c), 700.010
www.courtinfo.ca.gov

American LegalNet, Inc.
www.USCourtForms.com

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

(Continued)

Type of Property	Code and Section
Direct Deposit Account:	
Social Security	CCP § 704.080
Disability Insurance Benefits	CCP § 704.130
Dwelling House	CCP § 704.740
Earnings	CCP § 704.070 CCP § 706.050 15 USC § 1673(a)
Educational Grant	Ed C § 21116
Employment Bonds	Lab C § 404
Financial Assistance:	
Charity	CCP § 704.170
Public Assistance	CCP § 704.170 Welf & I C § 17409
Student Aid	CCP § 704.190
Welfare *(See Public Assistance)*	
Fire Service Retirement	CCP § 704.110 Govt C § 32210
Fraternal Organizations Funds and Benefits	CCP § 704.130 CCP § 704.170
Fuel for Residence	CCP § 704.020
Furniture	CCP § 704.020
General Assignment for Benefit of Creditors	CCP § 1801
Health Aids	CCP § 704.050
Health Insurance Benefits	CCP § 704.130
Home:	
Building Materials	CCP § 704.030
Dwelling House	CCP § 704.740
Homestead	CCP § 704.720 CCP § 704.730
Housetrailer	CCP § 704.710
Mobilehome	CCP § 704.710
Homestead	CCP § 704.720 CCP § 704.730
Household Furnishings	CCP § 704.020
Insurance:	
Disability Insurance	CCP § 704.130
Fraternal Benefit Society	CCP § 704.110
Group Life	CCP § 704.100
Health Insurance Benefits	CCP § 704.130
Individual	CCP § 704.100
Insurance Proceeds—Motor Vehicle	CCP § 704.010
Irrigation System Retirement Benefits	CCP § 704.040 CCP § 704.110
Jewelry	
Judges Survivors Benefits (Federal)	28 USC § 376(n)
Legislators Retirement Benefits	CCP § 704.110 Govt C § 9359.3
Licenses	CCP § 695.060 CCP § 720(a)(1)
Lighthouse Keepers Widows Benefits	33 USC § 775
Longshore and Harbor Workers Compensation or Benefits	33 USC § 916
Military Benefits:	
Retirement	10 USC § 1440
Survivors	10 USC § 1450
Military Personnel—Property	50 USC § 523(b)
Motor Vehicle (Including Proceeds)	CCP § 704.010 CCP § 704.060

Type of Property	Code and Section
Municipal Utility District Retirement Benefits	CCP § 704.110 Pub Util C § 12337
Peace Officers Retirement Benefits	CCP § 704.110 Govt C § 31913
Pension Plans:	
Private	CCP § 704.115
Public	CCP § 704.110
Personal Effects	CCP § 704.020
Personal Injury Actions or Damages	CCP § 704.140
Prisoner's Funds	CCP § 704.090
Property Not Subject to Enforcement of Money Judgments	CCP § 704.210
Prosthetic and Orthopedic Devices	CCP § 704.050
Provisions (for Residence)	CCP § 704.020
Public Assistance	CCP § 704.170 Welf & I C § 17409
Public Employees:	
Death Benefits	CCP § 704.110
Pension	CCP § 704.110
Retirement Benefits	CCP § 704.110
Vacation Credits	CCP § 704.113
Railroad Retirement Benefits	45 USC § 2281
Railroad Unemployment Insurance	45 USC § 352(e)
Relocation Benefits	CCP § 704.180
Retirement Benefits and Contributions:	
Private	CCP § 704.115
Public	CCP § 704.110 Ins C § 10498.5
Segregated Benefit Funds	Ins C § 10498.6
Servicemembers Property	50 USC § 523(b)
Social Security	42 USC § 407
Social Security Direct Deposit Account	CCP § 704.080
Strike Benefits	CCP § 704.120
Student Aid	CCP § 704.190
Tools of Trade	CCP § 704.060
Transit District Retirement Benefits (Alameda and Contra Costa Counties)	CCP § 704.110 Pub Util C § 25337
Travelers Check Sales Proceeds	Fin C § 1875
Unemployment Benefits and Contributions	CCP § 704.120
Uniforms	CCP § 704.060
Vacation Credits (Public Employees)	CCP § 704.113
Veterans Benefits	38 USC § 3101
Veterans Medal of Honor Benefits	38 USC § 562
Wages	CCP § 704.070 CCP § 706.050 CCP § 706.051
Welfare Payments	CCP § 704.170 Welf & I C § 17409
Workers Compensation Claims or Awards	CCP § 704.160
Wrongful Death Actions or Damages	CCP § 704.150



APPENDIX G

Fair Debt Collection Practices & A Sample Letter to Debt Collection Agency

The Fair Debt Collection Practices Act (FDCPA) is a federal law that prohibits debt collectors from using abusive, unfair, dishonest, or misleading practices to collect money from you. The Federal Trade Commission (FTC) is the federal government's agency that enforces your rights under the FDCPA.[2313]

Under the FDCPA, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy overdue debts and then try to collect them.

Here are some questions and answers about your rights under the Act.

CAN A DEBT COLLECTOR CONTACT ME ANY TIME OR ANY PLACE?

No. A debt collector may not contact you at inconvenient times or places, such as before 8 AM or after 9 PM, unless you agree to it. And collectors may not contact you at work if they're told (orally or in writing) that you're not allowed to get calls there.

HOW CAN I STOP A DEBT COLLECTOR FROM CONTACTING ME?

If a collector contacts you about a debt, you may want to talk to them at least once to see if you can resolve the matter – even if you don't think you owe the debt, can't repay it immediately, or think that the collector is contacting you by mistake. If you decide after contacting the debt collector that you don't want the collector to contact you again, tell the collector – in writing – to stop contacting you. Here's how to do that:

Write a letter to the debt collector and make a copy of the letter (see PG. 702 below for a sample letter). Send the original by certified mail, and pay for a "return receipt" so you'll be able to prove that the collector received the letter. Once the collector receives your letter, they may not contact you again, with two exceptions: A collector can contact you to (1) tell you there will be no further contact, or (2) let you know that they or the creditor intend to take a specific action, like filing a lawsuit. Sending such a letter to a debt collector to whom you owe money will NOT get rid of the debt, but it should stop the contact. The creditor or the debt collector still can sue you in court to collect the debt.

CAN A DEBT COLLECTOR CONTACT ANYONE ELSE ABOUT MY DEBT?

If an attorney is representing you about the debt, the debt collector must contact the attorney, rather than you. If you don't have an attorney, a collector may contact other people – but only to find out your address, your home phone number, and where you work. Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse, or your attorney.

WHAT DOES THE DEBT COLLECTOR HAVE TO TELL ME ABOUT THE DEBT?

Every collector must send you a written "validation notice" telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money.

CAN A DEBT COLLECTOR KEEP CONTACTING ME IF I DON'T THINK I OWE ANY MONEY?

If you send the debt collector a letter stating that you don't owe any or all of the money, or asking for verification (proof) of the debt, that collector must stop contacting you. You have to send that letter within 30 days after you receive the validation notice. But a collector can begin contacting you again if it sends you written proof of the debt, like a copy of a bill for the amount you owe.

WHAT PRACTICES ARE OFF LIMITS FOR DEBT COLLECTORS?

Harassment: Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, they may not:

- use threats of violence or harm;

[2313] Information adapted from Fed. Trade Comm'n, Debt Collection (Nov. 2013), http://www.consumer.ftc.gov/articles/0149-debt-collection.



- publish a list of names of people who refuse to pay their debts (but they can give this information to the credit reporting companies);
- use obscene or profane language; or
- repeatedly use the phone to annoy someone.

False statements: Debt collectors may not lie when they are trying to collect a debt. For example, they may not:

- falsely claim that they are attorneys or government representatives;
- falsely claim that you have committed a crime;
- falsely represent that they operate or work for a credit reporting company;
- misrepresent the amount you owe;
- indicate that papers they send you are legal forms if they aren't; or
- indicate that papers they send to you aren't legal forms if they are.

> Debt collectors also are prohibited from saying that:

- you will be arrested if you don't pay your debt;
- they'll seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.

> Debt collectors may not:

- give false credit information about you to anyone, including a credit reporting company;
- send you anything that looks like an official document from a court or government agency if it isn't; or
- use a false company name.

Unfair practices: Debt collectors may not engage in unfair practices when they try to collect a debt. For example, they may not:

- try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt – or your state law – allows the charge;
- deposit a post-dated check early;
- take or threaten to take your property unless it can be done legally; or
- contact you by postcard.

CAN I CONTROL WHICH DEBTS MY PAYMENTS APPLY TO?

Yes. If a debt collector is trying to collect more than one debt from you, the collector must apply any payment you make to the debt you select. Equally important, a debt collector may not apply a payment to a debt you don't think you owe.

CAN A DEBT COLLECTOR GARNISH MY BANK ACCOUNT OR MY WAGES?

If you don't pay a debt, a creditor or its debt collector generally can sue you to collect. If they win, the court will enter a judgment against you. The judgment states the amount of money you owe, and allows the creditor or collector to get a garnishment order against you, directing a third party, like your bank, to turn over funds from your account to pay the debt.

Wage garnishment happens when your employer withholds part of your compensation to pay your debts. Your wages usually can be garnished only as the result of a court order. Don't ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

CAN MY FEDERAL BENEFITS BE GARNISHED?

Many federal benefits are exempt from garnishment (meaning they cannot be taken to pay certain debts), including:

- Social Security Benefits
- Supplemental Security Income (SSI) Benefits
- Veterans' Benefits
- Civil Service and Federal Retirement and Disability Benefits
- Military Annuities and Survivors' Benefits
- Federal Emergency Management Agency Federal Disaster Assistance

BUT federal benefits may be garnished under certain circumstances, including to pay delinquent taxes, alimony, child support, or student loans.



WHAT ARE MY OPTIONS IF I THINK A DEBT COLLECTOR HAS VIOLATED THE LAW?

You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to $1,000, even if you can't prove that you suffered actual damages. You also can be reimbursed for your attorney's fees and court costs. A group of people also may sue a debt collector as part of a class action lawsuit and recover money for damages up to $500,000, or one percent of the collector's net worth, whichever amount is lower. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

WHAT SHOULD I DO IF A DEBT COLLECTOR SUES ME?

If a debt collector files a lawsuit against you to collect a debt, respond to the lawsuit, either personally or through your lawyer, by the date specified in the court papers to preserve your rights.

WHERE DO I REPORT A DEBT COLLECTOR FOR AN ALLEGED VIOLATION?

Report any problems you have with a debt collector to the California Attorney General's office, the Federal Trade Commission, and the Consumer Financial Protection Bureau. California has its own debt collection laws that may give you more rights and protections than the federal Fair Debt Collection Practices Act.

- California Attorney General – Public Inquiry Unity
  Telephone: (800) 322-3360
  Website: http://oag.ca.gov/contact/general-comment-question-or-complaint-form
- Federal Trade Commission – Consumer Response Center
  Telephone: (877) 382-4357
  Website: https://www.ftccomplaintassistant.gov/#crnt&panel1-8
- Consumer Financial Protection Bureau
  Telephone: (855) 411-2372
  Website: http://www.consumerfinance.gov/Complaint/#debt-collection



A Sample Letter to Debt Collection Agency:[2314]

[Your Name]
[Your Address]

[Date]

[Name of Collection Agency]
[Address of Collection Agency]

RE: Notice to Cease Contact: Case # _____
[Note: If the collection agency has sent written notice, your case number is likely in the letter. If you have not received a written notice from the collection agency, you can put other information to identify your case. For example, show the date you were contacted by the collection agency.]

To [*person whose name appears on agency's notice to you*]:

On [*date*], I was contacted by [*name of person who called you*] from your agency, who informed me that [*name of collection agency*] is attempting to collect [*amount of claimed debt*].

[OR]

On [*date*] I received a written notice of the claimed debt, a copy of which is attached.

This is to give you notice to cease all contact with me or anyone else except the creditor about this claimed debt. If you must contact me, please do so in writing and not by telephone. I look forward to your acknowledgement that you have received this notice by [*put date that is two weeks after the date of your letter*].

Sincerely,
[Your signature]
[Your name]

[2314] Privacy Rights Clearinghouse, Sample Letter – Stop Contact by Collection Agency (Sept. 15, 2009), https://www.privacyrights.org/Letters/debt2.htm.



APPENDIX H

California County Court Collection Unit Contact Information

County/Court	Hours (M-F, except holidays)	Phone Number
Alameda County Central Collections	8 a.m.–5 p.m.	510.208.9900
Alameda County Superior Court	8 a.m.–5 p.m.	877.541.8420
Amador Superior Court	9:30 a.m.–4 p.m.	209.257.2605
Butte County Treasurer–Tax Collector	8 a.m.–5 p.m.	530.538.7362
Calaveras County Superior Court	8 a.m.–4 p.m.	209.754.5970
California Department of Corrections & Rehabilitation	8 a.m.–5 p.m.	916.322.6676
California Victims Compensation & Government Claims Board	8 a.m.–5 p.m.	916.324.1933
Contra Costa Probation	8 a.m.–5 p.m.	925.313.4002
Contra Costa Superior Court	7:30 a.m.–5 p.m.	925.646.1952
Del Norte County Tax Collector	8 a.m.–5 p.m.	707.464.7283
El Dorado County Revenue Recovery	8 a.m.–5 p.m.	530.621.5780
Fresno County Revenue/ Reimbursement	8 a.m.–5 p.m.	559.600.3815
Fresno Superior Court	8 a.m.–4 p.m.	559.457.1700
Glenn County Superior Court	8:30 a.m.–5 p.m.	530.225.3662
Humboldt County Revenue Recovery	7:30 a.m.–4:30 p.m.	707.476.2398
Imperial County Superior Court	8 a.m.–4 p.m.	760.336.3510
Inyo Superior	8 a.m.–5 p.m.	760.872.3038
Kern County Probation Collection & Revenue	8 a.m.–5 p.m.	661.868.4255
Kern Superior Court – RRD	8 a.m.–5 p.m.	661.868.2619
Kern Superior Court – ATA Taft	8 a.m.–5 p.m.	661.763.8566
Kern Superior Court – AKR Lake Isabella	8 a.m.–5 p.m.	760.549.2000
Kern Superior Court – AMO Mojave	8 a.m.–5 p.m.	661.824.7100
Kern Superior Court – ASH Shafter	8 a.m.–5 p.m.	661.746.7500



Kern Superior Court – AWM Bakersfield	8 a.m.–5 p.m.	661.868.2382
Kern Superior Court – ALA Lamont	8 a.m.–5 p.m.	661.868.5800
Kern Superior Court – ARI Ridgecrest	8 a.m.–5 p.m.	760.384.5900
Kern Superior Court – ADE Delano	8 a.m.–5 p.m.	661.720.5800
Kings Superior	8 a.m.–5 p.m.	559.582.1010
Lake County Tax Collectors	9 a.m.–5 p.m.	707.263.2583
Lassen County Recovery and Reimbursement	8 a.m.–4 p.m.	530.251.8401
Lassen Superior Court	8 a.m.–5 p.m.	530.245.6739
Los Angeles Superior – Airport	8:30 a.m.–4:30 p.m.	310.727.6084
Los Angeles Superior – Alhambra	8:30 a.m.–4:30 p.m.	626.308.5309
Los Angeles Superior – Antelope Valley	8:30 a.m.–4:30 p.m.	661.974.7201
Los Angeles Superior – Bellflower	8:30 a.m.–4:30 p.m.	562.804.8162
Los Angeles Superior – Beverly Hills	8 a.m.–4:30 p.m.	310.288.1310
Los Angeles Superior – Burbank	8 a.m.–5 p.m.	818.557.3466
Los Angeles Superior – Clara S. Foltz	8:30 a.m.–4:30 p.m.	213.893.0751
Los Angeles Superior – Compton	8:30 a.m.–4:30 p.m.	310.603.7714
Los Angeles Superior – Downey	8 a.m.–5 p.m.	562.803.7043
Los Angeles Superior – East LA	2 p.m.–4 p.m.	323.780.2025
Los Angeles Superior – El Monte	8:30 a.m.–4:30 p.m.	626.459.8844
Los Angeles Superior – Glendale	8:30 a.m.–4:30 p.m.	818.500.3263
Los Angeles Superior – Hollywood	8:30 a.m.–4:30 p.m.	323.856.5770
Los Angeles Superior – Huntington Park	8 a.m.–5 p.m.	323.586.6363



Los Angeles Superior – Inglewood	8:30 a.m.–4:30 p.m.	310.419.5128
Los Angeles Superior – LA Central	8 a.m.–5:00 p.m.	213.974.7820
Los Angeles Superior – Long Beach	8:30 a.m.–4:30 p.m.	562.491.6573
Los Angeles Superior – Malibu	8:30 a.m.–4:30 p.m.	310.317.1335
Los Angeles Superior – Metro	8:30 a.m.–4:30 p.m.	213.744.4531
Los Angeles Superior – Pasadena	8:30 a.m.–4:30 p.m.	626.356.5695
Los Angeles Superior – Pomona	8:30 a.m.–4:30 p.m.	909.802.9944
Los Angeles Superior – San Fernando	8:30 a.m.–4:30 p.m.	818.898.2407
Los Angeles Superior – San Pedro	8:30 a.m.–4:30 p.m.	562.491.6229
Los Angeles Superior – Santa Clarita	8:30 a.m.–4:30 p.m.	661.253.7383
Los Angeles Superior – Torrance	8:15 a.m.–4:30 p.m.	310.222.6506
Los Angeles Superior – Van Nuys	8 a.m.–5 p.m.	818.374.2641
Los Angeles Superior – West Covina	8:30 a.m.–4:30 p.m.	626.813.3204
Los Angeles Superior – Whittier	8:30 a.m.–4:30 p.m.	562.907.3113
Madera County Revenue Services	8 a.m.–5 p.m.	559.675.7619
Madera Superior	8 a.m.–4 p.m.	559.675.7944
Marin County Central Collections	8 a.m.–4:30 p.m.	415.473.7555
Marin County Enhanced Court Collections	8 a.m.–4:30 p.m.	415.473.3150
Mariposa County Probation	8 a.m.–5 p.m.	209.966.3612
Mendocino County Court Collection Unit	8 a.m.–4 p.m.	707.463.7240
Merced County Revenue & Reimbursement	8 a.m.–5 p.m.	209.385.7413



Merced County Superior Court	7:30 a.m.–4 p.m.	209.725.4100
Modoc County Superior Court	8:30 a.m.–4 p.m.	530.233.6726
Mono County Superior Court	8:30 a.m.–4 p.m.	760.924.5444
Monterey County Revenue Division	8 a.m.–5 p.m.	831.755.5042
Napa County Superior Court	8 a.m.–5 p.m.	707.299.1160
Nevada County Collections	8 a.m.–5 p.m.	530.265.1266
Nevada Superior Court	8 a.m.–5 p.m.	530.265.1311
Nevada Superior Truckee	8 a.m.–5 p.m.	530.582.7835
Orange County Probation	8 a.m.–5 p.m.	714.935.7411
Orange County Superior – Central Justice Center	7:30 a.m.–4 p.m.	877.872.2122
Orange County Superior – Centralized Collections Irvine	8 a.m.–5 p.m.	877.872.2122
Orange County Superior–Newport Beach	8 a.m. – 4 p.m.	877.872.2122
Orange County Superior–Laguna Hills	8 a.m.–4 p.m.	877.872.2122
Orange Superior North Justice Center	8 a.m.–4 p.m.	877.872.2122
Orange County Superior West Justice Center	8 a.m.–4 p.m.	877.872.2122
Placer County Revenue Services	8 a.m.–5 p.m.	916.543.3900
Plumas County Treasurer & Tax Collector	8 a.m.–5 p.m.	530.283.6259
Riverside Superior Court	7:30 a.m.–4 p.m.	877.955.34630
Sacramento County Division of Revenue Recovery	7:30 a.m.–4:45 p.m.	916.875.7500
San Benito Superior	8 a.m.–4 p.m.	831.636.4057
San Bernardino County Central Collections	9 a.m.–4 p.m.	909.387.8303
San Bernardino Superior and all annexes	8 a.m.–4 p.m.	909.387.1470
San Diego Probation Revenue Recovery	8 a.m.–5 p.m.	619.515.6200
San Diego Superior Court/ Alliance One	8 a.m.–5 p.m.	877.541.8420
San Francisco County Superior Court	8:30 a.m.–4 p.m.	415.551.8550
San Joaquin County Office of Revenue/ Recovery	8 a.m.–5 p.m.	209.468.2100
San Luis Obispo County Probation Collection	8 a.m.–5 p.m.	805.781.4174



San Luis Obispo Superior Court	8:30 a.m.–4 p.m.	805.781.5675
San Mateo County Revenue Services	8 a.m.–5 p.m.	650.363.4155
Santa Barbara County Probation Collection	8 a.m.—5:30 p.m.	805.882.3741
Santa Barbara Superior N	7:30 a.m.–4:30 p.m.	805.882.4696
Santa Barbara Superior S	7:30 a.m.–4:30 p.m.	805.568.3203
Santa Clara County Department of Revenue	7:30 a.m.–6:45 p.m.	408.282.3290
Santa Clara Superior Court	8:30 a.m.–4 p.m.	877.541.8420
Santa Cruz County Treasurer/ Alliance One	8 a.m.–5 p.m.	877.541.8420
Shasta County Superior Court Collections	8:30 a.m.–4 p.m.	530.245.6789
Sierra County Superior Court	8 a.m.–5 p.m.	530.245.6339
Sonoma County Central Collections	8 a.m.–5 p.m.	707.565.2817
Sonoma Superior Court	8 a.m.–4:30 p.m.	707.521.6659
Stanislaus County Treasurer Tax Collector Revenue Recovery	8 a.m.–5 p.m.	209.525.4450
Stanislaus Superior	8 a.m.–2 p.m.	209.530.3115
Sutter County Office of Revenue Collection	8 a.m.–5 p.m.	530.822.7172
Sutter Superior	8 a.m.–5 p.m.	530.822.3301
Tehama County Superior Court	8 a.m.–5 p.m.	530.245.6339
Trinity Probation	8 a.m.–4 p.m.	530.623.1204
Tulare County Superior Court	8 a.m.–4 p.m.	559.730.5000
Tulare Probation Department	8 a.m.–5 p.m.	559.713.2786
Tuolumne County Revenue Recovery	8 a.m.–5 p.m.	209.533.5920
Ventura County Superior Court	8 a.m.–5 p.m.	805.639.5010
Yolo County Office of Revenue Recovery	8 a.m.–4 p.m.	530.666.8668
Yuba Superior	8 a.m.–5 p.m.	530.225.3772



APPENDIX I

Sample Petition to Vacate Civil Assessment

See next page.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

❑ Fremont Hall of Justice
Traffic Division - (510) 818-7502
39439 Paseo Padre Parkway
Fremont, CA 94538

❑ Gale/Schenone Hall of Justice
Traffic Division - (925) 227-6792
5672 Stoneridge Drive
Pleasanton, CA 94588

❑ George E. McDonald Hall of Justice
Traffic Division - (510) 263-4304
2233 Shoreline Drive
Alameda, CA 94501

❑ Hayward Hall of Justice
Traffic Division - (510) 690-2701
24405 Amador Street
Hayward, CA 94544

❑ Wiley W. Manuel Courthouse
Traffic Division - (510) 627-4701
661 Washington Street
Oakland, CA 94607

CIVIL ASSESSMENT PETITION AND ORDER

Defendant's Request and Declaration to Vacate Civil Assessment on TBDA Case

Defendant's Name: _____ **Case Number** _____
Citation Number:_____ **Citation Date:**_____

IMPORTANT: **WRITTEN** proof of any of the following **MUST** be attached and cover the time period in question.

☐ HOSPITALIZED ☐ OVERSEAS MILITARY DUTY ☐ INCARCERATED ☐ OTHER

The following is an explanation of my failure to pay: (Please print)

☐ I am providing proof of correction (attached) and requesting reduction of the fine.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and that written proof is attached to this form.

Executed at _____ on _____
(City and State) (Date)

Address: _____

Telephone: _____ Signature: _____
(Defendant)

ORDER RE CIVIL ASSESSMENT (COURT USE ONLY)

The Court having read and considered the Petition regarding vacating the Civil Assessment pursuant to PC 1214.1(B), hereby makes the following order:

Petition to vacate is: ☐ Denied ☐ Granted ☐ Granted on the following conditions:

_____

Signature: _____ Date: _____
(Presiding Judge)

- -

To: Defendant Date: _____

Your case has been referred to Alliance One for collection. The amount due on your case is now $_____. Please contact Alliance One within 10 days to make payment in full or to arrange monthly payments.

MAILING ADDRESS
AllianceOne Receivables Management
8589 Aero Drive
San Diego, CA 92123

Telephone: 1-877-541-8420
Online Payments: www.payaoi.com



APPENDIX J

Steps To Get & Keep a Good Credit Score (Consumer Financial Protection Bureau)

See next page.

Consumer Financial Protection Bureau

To get and keep a good credit score, pay attention to your credit report.

Your credit report shows information about how you have used credit, such as how much credit you have, how much of your available credit you are using, whether you have made your payments on time, and whether anyone has sent a loan you owe to a debt collector.

A credit score is a number that is used to predict how likely you are to pay back a loan. Your credit score starts with the information about you from your credit report. A mathematical prediction formula is applied to this information about you from your credit report. That prediction formula, which is called a scoring model, creates a number which is your credit score. You probably have numerous credit scores.

Credit scores are used by companies to make decisions such as whether to approve a mortgage at a certain rate or issue a credit card. Different lenders use different scoring formulas so your score can vary from lender to lender. Usually a higher score makes it easier to qualify for a loan and means a better rate of interest. Most scores range from 300-850, although there is one scoring method that uses a range from 501-990.

To get and keep a good credit score –

- Pay all your loans on time.
- Make sure information in your credit report is correct.
- Don't use too much of the credit that is available to you.

STEPS TO GET AND KEEP A GOOD CREDIT SCORE

PAY YOUR BILLS ON TIME

Pay your bills on time, every time. One way to make sure your payments are on time is to set up automatic payments at the creditor's website or from your bank's online site. But, you have to watch your bank balance to make sure you have enough money in your account to cover the payments. Also, don't just pay the minimum amount if you can afford to pay more, because it will take you much longer to pay off the debt if you only pay the minimum amount.

Tip: People with the best credit scores usually are those who pay off their credit cards in full every month.

DON'T GET CLOSE TO YOUR CREDIT LIMIT

Credit scoring models look at how close you are to being "maxed out," because the formulas predict that people who are using too much of their available credit may have future troubles with repayment. If you use too much of your total credit lines, you can hurt your credit score. Experts advise keeping your use of credit at no more than 30% or less of your total credit limit.

Tip: If you close some credit card accounts and put most or all of your credit card balances onto one card, it may hurt your credit score. That's because it will probably mean that you are using a high percentage of your total credit limit.

DON'T APPLY FOR A LOT OF NEW CREDIT IN A SHORT TIME, ESPECIALLY IF YOU ARE GETTING READY TO GET A MORTGAGE OR A CAR LOAN

Your credit score may decline if you have too many credit accounts, and if you apply for or open a lot of new accounts, such as several credit cards, in a short time. If you are planning to take out a big loan for a car or a house, be particularly careful not to apply for or open many new credit accounts within a short period before applying for the loan because doing so may affect your score. However when you request your own credit report, or when your creditors check your credit report, those requests to see your credit report should not hurt your score.

Tip: Opening new credit card accounts frequently to get the promotional rate or store discount will show up on your credit report as lots of new credit accounts, which is likely to hurt your credit score.

THE LONGER YOUR CREDIT HISTORY, THE BETTER

Credit scores are based on experience over time. The more experience you have with getting and paying for your credit, the more information there is to determine whether you are a good credit risk.

GET YOUR FREE CREDIT REPORT EVERY YEAR

Get free copies of your credit report from each of the big three consumer reporting agencies every year. If the information about you in the credit reports of the three large consumer reporting agencies is different, your credit score from each of the agencies will be different.

Online: You can order your credit report at www.annualcreditreport.com. Beware - some other sites that use the word "free" may charge you for another service in order to get your credit report. www.annualcreditreport.com really is free.

By phone: You can also order your free credit report by calling 877-322-8228.

By mail: To order free reports by mail, get the Annual Credit Report Request Form at www.ftc.gov/bcp/edu/resources/forms/requestformfinal.pdf and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

Tip: You don't have to buy your credit score. The information you receive from the agencies is adequate. If you do buy a score, it is likely that the score the lender buys will be different from the score that you buy.

READ YOUR CREDIT REPORT AND DISPUTE ANY ERRORS

If you find something wrong with your credit report, write to both the consumer reporting agency and the creditor that provided the information, if applicable, to tell them what you think is wrong and why. Include copies of any documents that support your position. When a consumer disputes credit report information, the agency and the creditor generally have to investigate the dispute and correct inaccurate information. For more information, please visit the FTC site www.ftc.gov/bcp/edu/pubs/consumer/credit/cre03.shtm.

AVOID PAYING UPFRONT FEES TO "REPAIR" YOUR NEGATIVE CREDIT HISTORY

There are a lot of places that promise to "repair" or "fix" your credit for an upfront fee but no one can remove negative information, such as late payments, from a credit report if it is accurate. You can only get your credit report fixed if it contains errors and you can do that on your own (see #6). According to the Federal Trade Commission, some companies who claim they can help you may get you in trouble by telling you to do something that could be illegal, such as setting up a false identity to hide your credit history from your creditors.

BE PROACTIVE IN DEALING WITH CREDIT

If you are having trouble paying creditors on time, the sooner you talk to your creditors the more likely it is you can work something out with them, such as a temporary payment plan. If you need help, look locally for a credit counselor but check to make sure they are trustworthy. If you are having trouble with your mortgage, there is help available through the government's Making Home Affordable program, www.mha.gov, or the HOPE Hotline – 888-995-HOPE. If you start to get debt collection mail or calls from someone you've never heard of, it could be that one of your debts was sold to a debt collector, or it could be a case of identity theft. Ignoring the problem usually makes it worse.

The Federal Trade Commission's "Building a Better Credit Report" (www.ftc.gov/bcp/edu/pubs/consumer/credit/cre03.shtm) has information on correcting errors in your report, tips on dealing with debt and avoiding scams—and more.

APPENDIX K

Consumer Debt and Tax Law Legal Referrals

Attorney Referrals

- **Bill Taggart**
  300 Frank H Ogawa Plz Ste 370
  Oakland, CA 94612
  Phone: (510) 893-9999
  Email:wetaggart@wtjrlaw.com
  Notes: Provides consumer debt and tax law services at reasonable rates; his services were recommended by a contact in the Tax Law group at Latham & Watkins.

- **Bay Area Legal Incubator (BALI)**
  BALI is a program that helps new attorneys get up and running with legal practices in which they are committed to providing affordable legal services. They practice in a range of areas, including consumer debt. Although they are based in Oakland, many of their attorneys are willing to take cases throughout the state. The best way to get in contact with them is by filling out an initial screening questionnaire on their website: https://www.bayarealegalincubator.org.

Low Income Taxpayer Clinic (LITC)

The Low Income Taxpayer Clinic (LITC) program is a matching grant program that provides federal funds to organizations so they in turn can provide LITC services to taxpayers who are low income or who speak English as a second language (ESL).

Clinics participating in the LITC program provide:

- **Representation** for individuals in disputes with the Internal Revenue Service (IRS), including audits, appeals, collection matters, and federal tax litigation. LITCs can also help taxpayers respond to IRS notices and correct account problems;
- **Education** about taxpayer rights and responsibilities; and
- **Advocacy** on behalf of low income and ESL taxpayers.

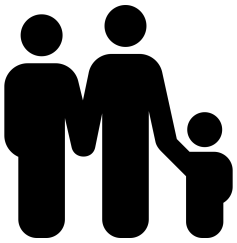
LITC services are free or low cost for eligible taxpayers. Although LITCs receive partial funding from the IRS, clinics, their employees, and their volunteers are completely independent of the IRS. Each clinic determines whether prospective clients meet income guidelines and other criteria before agreeing to represent them.

The one closest to us is the Tax Project at the Justice and Diversity Center: https://www.sfbar.org/jdc/legal-services/legalprojects/projects-tax.aspx

You can search for others here: **https://taxpayeradvocate.irs.gov/about/litc**

FAMILY & CHILDREN:

Reunification & Other Family-Related Issues



The FAMILY & CHILDREN CHAPTER will give you an overview of the issues that parents and caregivers experience when trying to reconnect with and care for their children, as well as legal issues that arise during incarceration related to children, spouses/partners, and other family-related issues. This Chapter will teach you how to establish or re-establish your rights, responsibilities, and relationship with your child(ren), and how to navigate the family court systems so that you can best handle any issues related to custody, guardianship, juvenile dependency/CPS cases, visitation, child support, spousal support, paternity, and ending marriages or domestic partnerships.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.



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WHAT WILL I LEARN IN THE FAMILY & CHILDREN CHAPTER?

- **Key terms and concepts that you will frequently come across when you are navigating family law issues.**
- **How to locate and reconnect with your child; how your incarceration, parole/probation, and any court orders (such as protective orders) could affect your rights and responsibilities as a parent.**
- **What the three different courts are that handle family law cases in California and how to best navigate each court system.**
- **What the rights and responsibilities of a parent or caregiver are to care for a child and to make decisions for him/her.**
- **What your rights are to see and spend time with your child.**
- **What happens when a judge appoints a legal guardian to care for a child, and what your rights and responsibilities are as a guardian or parent.**
- **Your options as a parent if CPS or a judge removes your child from your home, and how to become a guardian for a child in a dependency court case.**
- **How to get custody or visitation if your case involves your child's other parent.**
- **A basic overview of juvenile delinquency court and how your child's juvenile delinquency court case could affect your ability to reconnect with your child in reentry.**
- **Becoming an adoptive parent, reconnecting with a child who you gave birth to while incarcerated, establishing paternity/parentage, and other family issues in prison, jail, or reentry.**
- **How to end a marriage or domestic partnership while incarcerated or after your release, and what to do if your spouse wants a divorce while you are incarcerated.**
- **Child support payments and other child support issues, including what to do if you owe past, overdue child support payments when you return to the community from prison or jail.**
- **Domestic Violence-related restraining orders, options for getting a restraining order, and what to do if you have a restraining order against you.**



I. INTRODUCTION

IMPORTANT! Always follow the conditions of any Criminal Protective Orders, Personal Conduct No-Contact Orders, or Supervision Conditions against you. For more information, go to PG 737.

Family support is the biggest predictor of success in reentry.[2315] Yet family law can be confusing and few family law attorneys represent people in reentry for free. This Chapter aims to provide you with information and resources on how to navigate legal issues related to your family and children, so you will be better equipped upon release.

This Chapter will explain basic family law issues you may face during your reentry. These issues are:

- Reunification with children.
- Stay-away orders from family members, children and loved ones.
- Creating and ending partnerships and marriages.
- Court-ordered debts related to a family law case (including "child support" and "spousal support").

This Chapter will guide you through different legal questions that come up and different options you have as a parent, grandparent, spouse, or partner. It will also explain what your rights are as a parent or grandparent with a criminal record trying to reunify with your child or grandchild and/or gain greater legal rights.

We hope to provide you with the information you need to establish a positive relationship with your family and your community.

QUESTIONS? If you have questions after reading this Chapter, we recommend that you contact a lawyer, a case manager, or a trusted friend in the community to help you work through this material. You can also contact Root & Rebound and we will try to provide further assistance or referrals (call our Reentry Legal Hotline any Friday, 9 AM – 5 PM PST at phone number 510-279-4662, write to us at Root & Rebound, 1730 Franklin St., Suite 300, Oakland, CA 94612, or email us at roadmap@rootandrebound.org). You may also want to contact a local legal aid organization for help with your case. You can find a list of legal aid organizations across California on PG. 1127 at the back of guide.

KEY TERMS IN THE FAMILY & CHILDREN CHAPTER

If you are a parent or caregiver with a criminal record, and you have legal issues related to your family situation, it can help to know some basic legal concepts like: *What is a guardian? What are custody and visitation?* Here, we explain the definitions of some of the key terms that will appear again and again in this Chapter, so you can refer back.

Adoption: Adoption means giving complete parental rights and responsibilities to someone who is not the child's biological ("by blood") parent. Once the adoption is final, the adoptive parents are considered to be the child's new legal parents, and the child's birth parents no longer have any rights to the child. Adoption is permanent, meaning it generally can't be changed afterward. An adoptive parent can be a stepparent or domestic partner of one of the child's birth parents, a relative who has been caring for the child, or someone not related to the child by blood.

Arrears: Arrears are unpaid, overdue child support payments (child support debt). In other words, arrears are money you owe from past child support payments that you did not make. Arrears are different from *current* child support payments that you have to make now, which cover the cost of caring for your child today. Often, there are different rules for arrears (child support debt) and current child support payments (child support you owe now), so it's important to know the difference. In addition, the state will charge you interest (10%) on your arrears, so the debt amount you owe will continue to increase—even if you're actively paying your *current* child support payments.

"Best Interest of the Child": This is the legal standard in any legal case involving a child's care (like child custody and visitation cases) that the judge will use. The judge will ask what is in the "best interest of the child," looking at factors like: the parent or caregiver's criminal records and Child Protective Services (CPD) record, the child's health and safety, and whether the child will be raised in a stable and loving environment.

Case Plan: A case plan is created by Child Protective Services (CPS) when it gets involved in a case regarding your child. The case plan sets out the steps you must take to get your child back. For example, a case plan

[2315] Sandra Villalobos Agudelo, Vera Institute, The Impact of Family Visitation on Incarcerated Youth's Behavior and School Performance (2013), http://www.vera.org/sites/default/files/resources/downloads/impact-of-family-visitation-on-incarcerated-youth-brief.pdf ("Research shows that incarcerated adults who have strong relationships with loved ones do better in prison and pose less of a risk to public safety when they return to the community").



could require you to attend parenting or counseling classes, participate in substance abuse treatment, and/or visit with your child. If CPS has removed your child from your home, your CPS social worker or the juvenile dependency court judge should give you a copy of your case plan, and as part of the case plan, the county must offer you certain programs and services that you need to complete your case plan for a limited amount of time upon reentry (see the term for "Family Reunification Services" for more information below).

Caregiver: A caregiver is a person responsible for a child's care and supervision from day to day. The caregiver may or may not be the child's biological parent OR the child's legal guardian. In some cases, a caregiver who is a close blood relative of the child will have more legal rights in a given situation than a non-relative (meaning unrelated) caregiver.

Child Support Payment: A judge may order the parent who does *not* have custody (see definition below) of the child to pay child support to the parent who does have custody of the child. This "child support payment" is to help cover the cost of caring for the child.

Child Protective Services (CPS): CPS is the part of the California Department of Social Services (CDSS) that responds to reports of child abuse or neglect. Every county in California has a CPS office.

Court Order: A "court order" is a decision by a judge in court, usually in writing. A court order requires someone to do OR not do something. A court order might say whether you currently have custody and/or visitation with your child; who else has custody and/or visitation with your child; and which court is involved in your family's case. Court orders also require you to do things like attend a parenting class or prevent you from contacting someone. It is important to know about any court orders in your child's case, because a court order may restrict how and when you can contact your child OR your child's caregiver—and will help you understand what steps to take next.

WHO MIGHT BE A CAREIVER?

The person caring for your child may be the child's *other parent*, or may be a relative, family friend, foster parent, or someone else who has a relationship with your child. These are just some *examples* of people who might be caregivers – so your child's situation may be different!

Custodial Parent: The custodial parent is the parent who has *physical custody* of his or her child, meaning the child *lives with* this parent. *For comparison, see also definition for "non-custodial parent" below.*

Custody: Custody is the legal rights and responsibilities to live with and care for your child. While you were in prison/jail, you were unable to have custody of your child. Once you're released, if you want to communicate with, visit, or get custody of your child, you will need to find out who has custody of your child now.

- **Physical Custody:** The legal right to have your child live with you.
- **Legal Custody:** The legal right to make important decisions about your child's health, education, and well-being.

Declaration of Paternity: A "Declaration of Paternity" is a legal document that says who is the "natural father" (the biological father) of a child. It must be signed by *both* of the child's biological parents (father and mother).

Dependency Court: The court family cases are started in if a child's parent(s) are suspected of abuse or neglect and Child Protective Services (CPS) has become involved in the child's case.

Family Law Facilitator (sometimes called the Self-Help Facilitator): Every family court should have a "Family Law Facilitator," which is someone who can help you with court forms, answer questions, provide general information about family law issues, and walk you through some of the steps of your case if you do not have a lawyer. However, the Family Law Facilitator *cannot* give any legal advice or answer questions about a specific case. To find your local Family Law Facilitator, see Appendix A, PG. 797, or go to http://www.courts.ca.gov/selfhelp-facilitators.htm.

Family Reunification Services: These are services that Child Protective Services (CPS) must provide you with, with certain exceptions, if it is involved in a legal case regarding you and your child.[2316] Family reunification services are meant to help you complete your "case plan" (see definition above) and any other dependency court requirements to encourage reunification with your child.

Foster Care: Sometimes when a child is removed from his or her parents' home, the judge will send the child to live in a "foster care" placement. "Foster care" describes the placement of a child living with one or two "foster parents"—people who the State has licensed, trained and approved to care for children in their home. However, foster parents have fewer rights than legal guardians or biological parents, so the judge and Child Protective Services (CPS) will continue to be legally responsible for making decisions about the child.

[2316] For exception to family reunification services, see CAL. R. CT. 5.695(h)(6).



Guardian (or "Legal Guardian"): A guardian is an adult (not the child's parent), such as a relative or family friend, who has legal and physical custody (see definitions under "custody" above) of the child. A guardianship does *not* terminate the parental rights of the child's legal or biological parents; it only puts their parental rights on hold while the guardian has physical and legal custody.[2317] Learn more about guardians on PG. 748.

Lien: A lien is the right to take (and sell) property belonging to another person until that person pays off a debt s/he owes. For more information about liens, read the COURT-ORDERED DEBT CHAPTER, beginning on PG. 654.

Local Child Support Agency (LCSA): LCSAs are county-run offices that collect and enforce child support payments by making sure that custodial parents and guardians receive the payments from non-custodial parents.

Non-Custodial Parent: The non-custodial parent is the parent who does *not* have physical custody of his or her child. *For comparison, see also definition for "custodial parent" above.*

Notice: In any case involving you and your rights as a parent, you are legally required to receive "notice" of the case, which means you must be informed of the case. This "notice" could be a letter mailed to you, an announcement made by the judge in court, paperwork handed to you in person in court, at your home, or while you are incarcerated. Depending on your role in the case, you may have the right to get the "notice" papers handed to you IN PERSON—even while incarcerated. Often, a local law enforcement officer or Sheriff takes on the role of giving people "notice" papers inside prison or jail.

Parent: We use the term "parent" to describe the child's legal or biological mother or father, with the understanding that the child's parent(s) may or may not be caring for the child from day to day. *See also "caregiver" to understand how that person could be someone other than a child's "parent."*

Parental Rights: Parents (see definition above) have a lot of legal rights with respect to their minor children, including the right to live with, care for, and make decisions for their children under the age of 18. These rights are called "parental rights." In some situations, a parent's rights can be temporarily put on hold and/or given to someone else (such as a legal guardian). In extreme situations, a parent's rights may be taken away permanently (through the termination of parental rights and adoption of the child by another person or family). However, parents have the right to special legal protections before their legal rights can be changed or taken away without their permission.

Petition/Petitioner: A petition is a legal document that asks a judge to do or not do something. A petitioner is the person (or people) who asks the judge to do this, by filing the petition in court.

Restraining Order (Protective Order): A restraining order is a court order from a judge that can protect someone from being physically harmed, threatened, stalked, or harassed. The person who asks for and is protected by the restraining order is called the "protected person" (or protected party). The person whom the restraining order is against is called the "restrained person" (or restrained party). *There are several types of restraining orders:*

- **Domestic violence restraining order:** if someone is the victim of domestic violence, they can request a domestic violence restraining order.
- **Personal conduct order:** This type of order prohibits (stops) the restrained person from doing specific acts towards the protected person. For example, the order may prohibit the restrained person from contacting, stalking, sexually assaulting, or destroying property of the protected person.
- **Stay-away order**: This type of order requires the restrained person to stay a certain distance away from the protected person and/or from a specific place (such as the protected person's house or workplace).
- **Residence exclusion order**: This type of order requires the restrained person to move out from where the protected person lives, and to take only their own clothing or personal belongings until there is a court hearing.

[2317] By contrast, adoption does terminate the parental rights of the child's legal or biological parents, and also creates a permanent parent/child relationship between the child and his/her adoptive parent. See CAL. FAM. CODE § 7505(a) (cessation of parental authority upon appointment of guardian); CAL. PROB. CODE § 2351(a) (custody rights of guardian); CAL. WELF. & INST. CODE § 366.26 (distinguishing between termination of parental rights and guardianship proceedings; contrast adoption, which terminates parental rights, with guardianship, which does not); In re Guardianship of Ann S., 45 Cal. 4th 1110, 1124 (2009) (probate guardianship suspends parental rights).

Reunification: Reunification can mean 2 things: In the real world (i.e., outside of court), reunification can mean reuniting with your child and (re)developing a relationship with him/her. In court, reunification means getting back your legal right to care for your child, after s/he has been removed by CPS.

Removal: When CPS or a judge takes a child away from his/her parent's custody.

Visitation: Visitation is the legal right to spend time with your child.[2318] When a judge makes a custody order, he/she must give visitation rights to the parent who does not have custody of the child, unless granting visitation is not in the child's best interest.[2319]

Now that you've learned some of the basics, keep reading to learn more about the child custody, child visitation, the court system, guardianship, other legal issues related to families and partnerships, and child support.

THE IMPACT OF A CRIMINAL RECORD ON A LEGAL CASE ABOUT YOUR CHILD OR GRANDCHILD

WHAT IS A CRIMINAL RECORD?

Before we jump deep into family law issues, we think it's important to understand what a "criminal record" is. In the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 931, we go into more detail about what a criminal record is and who can access it. Here is a quick summary.

Your "criminal record" is the broad term used to describe *any contact* you have had with law enforcement, the courts, or another part of the criminal justice system that was written down (recorded). Your entire criminal record includes: arrests (whether or not they led to a conviction), any criminal charges filed against you, convictions (felonies or misdemeanors, even if they get "expunged"), pleas, acquittals ("not guilty" findings), dismissals, sentences, periods of incarceration in jail or prison, and any other contact with the criminal justice system. BUT—and this is an important but—not everyone can see this entire record because some criminal records are *protected under certain circumstances*.

To learn more about criminal records, go to the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER on PG. 654.

HOW WILL MY CRIMINAL RECORD IMPACT MY ABILITY TO RECONNECT WITH MY CHILD OR GRANDCHILD?

In any legal case involving children, a criminal record could, and often does, affect your ability to reconnect with a child or grandchild.

A judge making decisions about the care of a child will look at anything and everything about a child's and the parents' life that relates to the well-being of the child and who is best suited to care for and have a relationship with that child.[2320] This includes the judge looking at things like:

- Your FULL criminal record (including dismissed/expunged/sealed records);[2321]
- Your Child Protective Services (CPS) records;
- Current or past court orders;
- Current or past stay-away or protective orders against you (or that you took out against someone else); [2322]
- Social media like Facebook, Instagram accounts, etc. for any evidence about you as a person and parent;
- Your home and setup, in which Court investigators and sometimes attorneys and social workers will visit the place you live to assess you, your interactions with your child and other people in your home; and your overall living situation;[2323] and
- Your past and current contact with your child.

WHAT ARE EXAMPLES OF LEGAL CASES INVOLVING CHILDREN?

Examples of legal cases involving children include cases about: custody, visitation, ending a marriage, adoption, guardianship, CPS/dependency cases, and fostering a child. These cases may also involve questions about paternity/parentage, child support, spousal support, and/or protective orders.

[2318] See, e.g., In re Marriage of Gayden, 229 Cal. App. 3d 1510, 1517 (1991) (noting that visitation is a limited form of custody during the time visitation rights are being exercised).
[2319] CAL. FAM. CODE § 3100(a).
[2320] CAL. FAM. CODE § 3011 (A court will look at a parent's criminal record "among any other factors it finds relevant" when making a decision about who cares for a child.); CAL. PENAL CODE § 11105 (b)(1).
[2321] See CAL. FAM. CODE § 3040 et seq. Please note that your full criminal record includes arrests that did not lead to convictions. See the Understanding and Cleaning Up Your Criminal Record Chapter on PG. 1022 for more information.
[2322] CAL. PENAL CODE § 11105(a).
[2323] CAL. FAM. CODE § 3011 (In making a determination on what is the "best interests of a child," the court can consider any "relevant" factors. The court must looks to all the circumstances bearing on the best interests of the minor child.").



Even though your record will come up in court, it is often STILL POSSIBLE to reconnect with your child or grandchild.

ARE THERE ANY CONVICTIONS THAT WILL AUTOMATICALLY BAN ME FROM RECONNECTING WITH MY CHILD OR GRANDCHILD?

Yes. For some conviction offenses, the law will automatically ban you from reconnecting with a child/grandchild. And for some conviction offenses, a judge is unlikely to grant full custody or unsupervised visitation. See the chart that follows.

HOW DIFFERENT CONVICTIONS WILL AFFECT YOUR CUSTODY & VISITATION RIGHTS	
CONVICTION OFFENSE	**HOW WILL THIS AFFECT MY CHANCES OF GETTING CUSTODY OR VISITATION?**
Domestic Violence	Judges are hesitant to give custody to someone who has engaged in domestic violence, and will consider any history of domestic abuse against your child, the other parent, or a partner.[2324]
Rape	A judge will not allow someone who has been convicted of rape to have any custody or visitation with a child who was conceived from that rape.[2325]
Other Convictions	A judge usually will not grant custody or unsupervised visitation in the following circumstances, unless the s/he finds that there is no risk of harm to your child: • If you have a conviction for certain child abuse offenses;[2326] • If you have a conviction for first-degree murder of the child's other parent; and/or • If you are a 290-sex offender registrant for an offense where the victim was a minor (under 18), or if you live with someone else who is a 290-sex offender registrant for an offense where the victim was a minor (under 18).[2327]

For more information on how your criminal record will be a factor in a judge's decision regarding your custody/visitation rights, see PG. 735.

[2324] CAL. FAM. CODE §§ 3011(b), 3020(a), 3031, 3044. The judge will also consider any restraining or protective orders against you. Nonetheless, you may still be able to get custody by showing that you have completed all court-ordered treatment and/or behavioral programs (e.g., batterer's treatment program, parenting classes, anger management, drug or alcohol treatment, or conditions of probation or parole); complied with all parole/probation/supervision requirements; complied with any restraining or protective orders against you; have not committed any further domestic violence; and that custody would be in your child's best interest. CAL. FAM. CODE § 3044(b).
[2325] CAL. FAM. CODE § 3030(b). The law is very strict in this instance and does not permit even supervised or conditional visitation.
[2326] This applies to child abuse convictions under CAL. PENAL CODE §§ 273a, 273d, or 647.
[2327] CAL. FAM. CODE § 3030; see also CAL. PENAL CODE § 290. For child abuse convictions and registered sex offender registrants, the judge must find that there is "no significant risk to the child." § 3030(a). For first-degree murder of the other parent, the judge must find that there is "no risk to the child's health, safety and welfare." § 3030(c). In both cases, the judge must state his/her reasons in writing or on the record. However, the judge may still permit supervised visitation in these cases.

II. THE RIGHTS OF PARENTS & GRANDPARENTS

WHAT WILL I LEARN ABOUT PARENTS' & GRANDPARENTS' RIGHTS?

- Whether or not the law automatically gives you the right to care for your child.
- The difference between your rights as a parent to care for your child and your rights as a grandparent to care for your grandchild.
- How a grandparent can make informal or formal arrangements to care for a grandchild

ANY AUTOMATIC RIGHTS?

DO I AUTOMATICALLY HAVE A RIGHT TO CARE FOR MY CHILD OR GRANDCHILD?

Not necessarily. Although it may seem like parents and grandparents would have automatic rights to care for a child, being blood-related (biologically related) or married to someone who is blood-related to a child does not mean you automatically have the right to live with, see, or make decisions about your child or grandchild. It's also important to note that the legal rights of parents are MUCH stronger than those of grandparents. Below we discuss whether you have the legal right to care for a child as a parent and grandparent:

For Parents: The law assumes that a child's parents—biological or adopted—will make decisions in the "best interest of the child." so they usually have the automatic legal right to do so.[2328] Courts get involved when something goes wrong, and then the judge makes decisions based on what is in "the best interest of the child" (learn more on what factors a judge looks at in deciding what is in the "best interest of the child" on PG. 735).

- For women, if you give birth to a child, you are the child's biological parent and so under the law you have the automatic legal right to care for that child unless (1) you have chosen to give up your parental rights through adoption *OR* (2) the state limited or took away your parental rights for a certain reason.[2329]
- For men, if it is scientifically proven that you are the biological father of the child (this is called paternity) or you were married to or in a domestic partnership with the mother when the child was born, then you have the automatic legal right to care for that child unless (1) you have chosen to give up your parental rights through adoption *OR* (2) the state limited or took away your parental rights for a certain reason.[2330]

For Grandparents: Under the law, grandparents do NOT have any automatic legal rights to see or care for their grandchildren. In other words, just because your biological child has a child of his or her own does NOT mean you have any legal right to care for or make decisions about that grandchild.[2331] But a grandparent CAN make informal or formal arrangements to take care of or see their grandchildren.

- Informally, absent any legal restrictions due to your criminal background, you MAY be able to make arrangements with your grandchild's caregiver or parent(s) to spend time with your grandchild.
- If an informal arrangement isn't possible, then a grandparent could ask a judge in court for custody or visitation with their grandchildren.
  - In family court, a grandparent can join an ongoing case involving the grandchildren and ask for custody or visitation.[2332] For more information on Family Court, see PG. 744
  - In probate court, a grandparent can start a case or join on ongoing case and request permanent or temporary guardianship of their grandchildren is a parent is UNABLE to take care of the child. For more information on Probate Court, see PG 748.
  - In dependency court, a grandparent can ask the judge and the county's Child Protective Services (CPS) to take care of their grandchild(ren) when a child has been removed from their parents' care due to abuse or neglect allegations. For more information on Dependency Court, see PG. 755.

Again, whether or not a grandparent will be able to get legal custody of their grandchildren through a formal court case in family court, probate court or dependency court will all depend on what a judge decides is in the "best interest of the child"—learn more about this standard on PG. 735.

[2328] Parham v. J.R., 442 U.S. 584 (1979).
[2329] Judicial Council of Cal., Parentage/Paternity (2015), http://www.courts.ca.gov/selfhelp-parentage.htm.
[2330] Judicial Council of Cal., Parentage/Paternity (2015), http://www.courts.ca.gov/selfhelp-parentage.htm. ("The law will presume a person is a child's other parent under the following circumstances (unless proved otherwise to a court). For example, John will be presumed to be the child's other parent if: He was married to the child's mother when the child was conceived or born; He attempted to marry the mother (even if the marriage was not valid) and the child was conceived or born during the "marriage"; He married the mother after the birth and agreed either to have his name on the birth certificate or to support the child; or He welcomed the child into his home and openly acted as if the child was his own. This concept is called "parentage by estoppel" and means that the court can find that a man is the legal father, even if he is not the biological father, if he has always treated the child as his own. The presumptions that apply to married couples also apply to those who entered into a registered domestic partnership after January 2005.").
[2331] *See* CAL. FAM. CODE § 3102(a).
[2332] *See* CAL. FAM. CODE § 3103(a) ("Notwithstanding any other provision of law, in a proceeding described in Section 3021, the court may grant reasonable visitation to a grandparent of a minor child of a party to the proceeding if the court determines that visitation by the grandparent is in the best interest of the child.").

III. BASIC STEPS TO RECONNECT WITH YOUR CHILD OR GRANDCHILD

WHAT WILL I LEARN ABOUT RECONNECTING WITH CHILDREN?

- **Steps you can take to start the process of reconnecting with your child or grandchild.**
- **What a court order is and why it is important for understanding your rights and responsibilities when reconnecting with your child, and how to find out if there is a court order concerning your child.**
- **How conditions of parole or probation might impact your ability to reconnect with your child.**
- **Ideas for how to locate your child.**
- **How you can find out whether your child or grandchild has an open court case, and what to do if there is or is not an open court case involving your child or grandchild.**

Below are basic steps to reconnect with your child or grandchild in your reentry. The steps mostly focus on *parents* reconnecting with their child(ren), but we also make note of rules that specifically apply to grandparents.

For Parents: Everyone's relationship with their child is different and the ways in which a parent's incarceration will affect that relationship will be different too. But the law *assumes* that it is best for a child to have a relationship with both parents, unless there is a specific reason to believe that contact with one or both parents will *harm the child*.[2333] If you have been incarcerated but are *genuinely ready* to play a positive role in your child's life and *still maintain some or all of your parental rights*, then the law says your child should be able to reconnect with you so long as that is safe and health for him or her. In any legal case involving your child, the judge must decide what is the "best interest of your child."[2334] For more information on what factors a judge looks at in deciding the "best interest of the child," see PG. 735.

IMPORTANT! Always follow the conditions of any Criminal Protective Orders, Personal Conduct No-Contact Orders, or Supervision Conditions against you. For more information, go to PG. 737.

I AM IN REENTRY, AND I WANT TO RECONNECT WITH MY CHILD OR GRANDCHILD. WHERE CAN I START?

STEP 1: **Find out if there are any court orders that could limit or stop you from contacting your child and/or your child's caregiver.**

> What is a court order?

A court order is a legal decision by a judge requiring something. It could affect your ability to reconnect with your child, so it is very important to know about them. A court order could impact you in the following ways:

- *A court order could limit your custody or visitation rights.*
- *A court order could require you to DO or NOT DO something.*[2335]

EXAMPLES OF COURT ORDERS

Examples of court orders include Personal Conduct No-Contact Orders, Restraining Orders, and Criminal Protective Orders. For full definitions of each of these types of orders, see the "Key Terms" section of this Chapter, beginning on PG. 722.

> Why are court orders important to know about when I am trying to reconnect with my child?

Court orders are very important because they may explain your rights and responsibilities with your child—including when and how you are allowed to visit and contact the child. If you break a court order, then you could ruin your ability to reconnect with your child. Why? By violating the court order, you could face civil or criminal consequences that could prohibit you from contacting your child at all. Also, breaking a court order is a violation of the law as well as a violation of supervision. If you want to change a court order, you need to go to the court where the order is from and ask about the process to change it.

[2333] The judge must grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. CAL. FAM. CODE § 3100(a).
For more information on how your criminal record will be a factor in a judge's decision regarding your custody/visitation rights, see PG. 796.

[2334] CAL. FAM. CODE §§ 3040 – 3041.5.

[2335] Judicial Council of Cal., Restraining Orders, (2016) available at http://www.courts.ca.gov/1260.htm.

> How do I know if there is a court order affecting my rights with my child?

IF YOU WERE SERVED WITH COURT PAPERS (before, during, or after your incarceration), check the papers to see if they include court orders that limit your custody and/or visitation rights with your child OR limit your ability to contact your child and/or your child's other parent or current caregiver (*for grandparents*, the child's caregiver might be your child, your grandchild's other parent, or someone else).

IF YOU ARE NOT SURE IF THERE ARE ANY COURT ORDERS, you can find out by contacting the clerk in the local county court **where your child's case is going on**. You can usually call the clerk's office by phone or go in person when the clerk's office is open. Ask for copies of ALL the court orders in the case. Usually, a court order will say "court order" or "order" on the paperwork.

To figure out if there is a case in court that involves your child and more information on this question, see **Step 4** on PG. 729 below.

GET UP-TO-DATE COURT PAPERS!

Even if you were served with court papers while in prison/jail, it is best to get a new copy of the court order once you get out to make sure that you have all the most up-to-date papers.

STEP 2: **Find out if there are any CONDITIONS OF PAROLE, PROBATION, OR OTHER TYPE OF COMMUNITY SUPERVISION that could limit or stop you from contacting your child and/or your child's caregiver.**

If you are on parole, probation, or some other type of community supervision, you must get to know and follow ALL of the terms and conditions of your supervision. This includes any rules about whom you *can and cannot contact*, places where you *can and cannot travel, move, live, or visit*.

These conditions can impact your ability to see or visit your child(ren)—so be aware of them BEFORE you start contacting or visiting them.

If you want to change any conditions of supervision, read about the process for your type of community supervision in the PAROLE & PROBATION CHAPTER of this guide: see PG. 178 (state parole); 205 (PRCS); 198 (Mandatory Supervision), 198 (informal probation), 202 (formal probation), 219 (Federal Supervised Release or Federal Probation). **Until and unless a supervision condition is changed through the legal process, you should ALWAYS FOLLOW IT!**

You my also be able to request a **travel pass** from your parole or probation officer to travel beyond where you are normally allowed to go. You may need a travel pass to attend a court hearing or visit with family members or friends for your case. For more information about travel restrictions and other conditions of supervision, see PG. 125 in the PAROLE & PROBATION CHAPTER. For more information about protective, no-contact, and restraining orders, see also PG. 737.

STEP 3: **Locate your child.**

If you do not already know where you child is, the next step is to locate your child—so long as there are no court orders or conditions of your supervision that prevent you from contacting your child or child's caregiver.

You will need to know the location of your child and child's caregiver if you want to contact that child or "serve" the caregiver with any court papers, if you open a case. (To "serve" someone with court papers means to give proper legal documentation and notification about a court case to certain required people.)

HELPFUL HINT
General Tips for Locating Your Child

4. IF CHILD PROTECTIVE SERVICES (CPS) IS INVOLVED in your child's case, you can contact CPS to help you locate your child and current caregiver.
5. IF CPS IS NOT INVOLVED in your child's case, you could try to call family members, friends, the other parent, or the other parent's family or friends—so long as this contact would *not violate* any court orders, parole/probation conditions, personal conduct no-contact and/or protective orders!
6. IF YOU STILL CAN'T LOCATE YOUR CHILD, you could try social media (such as Facebook or Twitter) to ask if a friend or family member knows where your child is or who is taking care of him/her. Remember to always be safe and careful—only contact people you trust, and follow any orders or supervision conditions against you!

STEP 4: **Find out if there is a court case (an open case or a past case) involving your child(ren).**

Next, you will need to know if there's already a *court case* (open OR closed) involving your child(ren).

For Parents: By law, when a court case is filed about a child, both parents have the rights to (1) be notified of the case, (2) be sent copies of the court documents, and (3) have the chance to respond.

IF YOU WERE SERVED WITH COURT PAPERS ABOUT YOUR CHILD'S CASE WHILE YOU WERE INCARCERATED, those papers should tell you: (1) the case number, and (2) the exact court the case was in.



PLEASE NOTE: Mistakes often happen with the legal filing and mailing processes—so if you're a parent, there's a chance that you didn't receive the papers that you should have; let the judge know if this happened!

For Grandparents: You may be able to request court papers on open cases about your grandchild if you can show:

1) You have actual knowledge or belief that the court records exist AND
2) The papers are necessary for you to see.[2336]

HELPFUL HINT

General Tips for Figuring Out if there is a Court Case Involving Your Child or Grandchild

1. *ASK A CAREGIVER:* If you know your child's caregiver, you can ask him or her about any court case(s) involving your child. It can help to ask (1) *which court* the case is (or was) in; (2) the *case number* (if the caregiver can find it); (3) *copies of any court or legal papers* from your child's case; and (4) *any other information that you can find out*.
2. *CONTACT THE COURT:* If you don't know where or with whom your child is living (or if the caregiver won't give you any information), you could contact ALL THREE COURTS in the county where your child lives (or where your child was living when you last knew)—(1) family court, (2) probate court, and (3) dependency court. Be prepared to provide as much information as you can about your child and yourself.[2337]

STEP 5: **IF THERE IS A COURT CASE INVOLVING YOUR CHILD, it is best to next contact the court clerk to request a copy of any *court orders* and *other documents* about the court case, and ask to join the case.**

If there is a court case involving your child, you will most likely have to join that case, as opposed to starting a new one, to increase your custody or visitation rights.

FOR ANY CASE—WHETHER IT IS OPEN OR IN THE PAST—ALWAYS GET COPIES OF ANY COURT ORDERS! Getting copies of all court papers, including court orders, are an important part of the process of learning about or joining a case. **Court orders** can explain your current rights and responsibilities with your child—including when and how you are allowed to visit and contact the child OR limiting or preventing you from contacting the child. If you want more custody or visitation, you may need to ask the judge to change this court order.

IF CPS IS INVOLVED IN YOUR CHILD'S CASE, ask the clerk at the **dependency court** in the county where your child lives for any **court orders**.[2338] You can also ask your county social worker and/or the dependency court judge for:

- (1) A copy of your case plan, which explains what you need to do to get your child back (IF that is an option at this point in time); AND
- (2) Family reunification services, which are classes and programs to help you get your child back.
- Learn more about the Juvenile Dependency Court Process on PG. 755).

FOR MORE INFORMATION:

- For *probate court* rules and procedures, see PG. 748.
- For *juvenile dependency court* rules and procedures, see PG. 755.
- For *family court* rules and procedures, see PG. 744.
- For a SUMMARY of the three family-related courts listed here, see the chart on PG. 741.

STEP 6: **IF THERE IS NO COURT CASE INVOLVING YOUR CHILD and NO COURT ORDERS, you will likely need to open a new case to ask a judge for more rights and responsibilities as a parent.**

For Parents: If there is *no court case* involving your child OR no court order in your child's case, you will likely need to open a new case.

To start a new case, you may need to file a "petition" in court, which means you file specific paperwork to ask the judge for more rights and responsibilities as a parent (or caregiver). And depending on what rights you want

[2336] CAL. R. CT. rule 5.552(c); *see also* Charles S v Superior Court, 168 Cal. App. 3d 151 (1985) (A grandparent's interest in the child has been ruled to sufficiently strong to warrant involvement in court proceedings in the past.) (setting the precedence that any relative who is interested in the welfare of the child has standing to participate in juvenile court proceedings).

[2337] Helpful identifying information includes: your full name, your date of birth, your Social Security Number, your child's full name, your child's date of birth, your child's Social Security Number, etc. To find the phone numbers and addresses of these courts, check online (for example, through a Google.com search), the local Yellow Pages, or call 2-1-1 or 4-1-1 "Information" (note: 4-1-1 usually costs $1.99 per call). You can also find a list of all California courts for every county by visiting the following website: http://www.courts.ca.gov/find-my-court.htm (click on "Contact").

[2338] Usually if there is a CPS case, then your parental rights have been restricted or terminated. For more information on termination of parental rights, read the section on juvenile dependency court, starting on PG. 804 below.



to get (for example, custody, visitation, guardianship, etc.), you may need to go to one of the courts discussed on PG. 741).

- For *probate court* rules and procedures, see PG. 748.
- For *juvenile dependency court* rules and procedures, see PG. 755.
- For *family court* rules and procedures, see PG. 744.
- For a SUMMARY of the three family-related courts listed here, see the chart on PG. 741.

Once you file a petition in the proper court, you will have to prepare to go to court for a hearing or other procedures. Each of the three family-related courts in California has different powers, different rules, and different procedures that you need to be aware of before going to court.

Exactly how your record will impact your request for greater custody and visitation rights will depend on **the court your case is in** and **the exact conviction(s)** on your record. Some convictions will completely prevent you as a parent or a grandparent from getting custody or visitation of your child or grandchild. For more information on the impact of specific convictions, see PG. 726.

You may also consider asking a judge for VISITATION before you ask for full CUSTODY. Read the helpful hint box on PG. 731 for more information.

HELPFUL HINT

It's Easier to Get Visitation Rights than Custody

In general, if you are the child's parent, it is usually **easier to get visitation rights with your child at first, rather than full custody** after a period of incarceration. California has a strong public policy of supporting parent-child relationships and allowing visits unless they will be harmful to the child.[2339] Asking a judge for visitation rights with your child—and then allowing for some time to show that the visits are going well—can be a great first step to getting custody. Through visitation with your child, you can show a judge that you are responsible, have a good relationship with your child, and eventually request greater custody rights.

For Grandparents Who Want to Reunify with Grandchildren: If there is no existing court case regarding your grandchild, your options are limited because you can only start a new case in very limited circumstances. Read the section on "Grandparents Rights" on PG. 745 for more information on when a grandparent can start a new case.

Yes, a criminal record could, and often does, affect your ability to reconnect with your child or grandchild. But in many cases, it is STILL POSSIBLE to reconnect with your child or grandchild, even though your record will come up in court.

[2339] See, e.g., CAL. FAM. CODE §§ 3020(b), 3100(a); CAL. WELF. & INST. CODE § 362.1(a).

IV. DEFINING CUSTODY & VISITATION

WHAT WILL I LEARN ABOUT CUSTODY & VISITATION?

- What custody is and different types of custody.
- What legal and physical custody arrangements like in real life.
- What visitation is and how a judge can make different types of visitation orders depending on a parent's (or caregiver's) situation.
- What visitation plans could look like in real life.

WHAT DO CUSTODY AND VISITATION HAVE TO DO WITH MY REENTRY?

"Custody" and "visitation" are important legal concepts in reentry because you may not be able to see or care for your child or grandchild as soon as you get out of prison or jail. You might have to go to court to have visits or custody of the child(ren) you want to reconnect with, and your criminal record is likely to be a factor a judge looks at if you must go to court.

CUSTODY

WHAT DOES CUSTODY MEAN?

"Custody" is the legal right to care for and make decisions about a child.[2340] A judge will make an order deciding who has custody of a child, whether it is one parent, both parents, or in special circumstances, another caregiver.[2341] There are two types of custody that a judge can make decisions about: (1) *physical* custody and (2) *legal* custody.[2342] A parent or caregiver can have both physical custody AND legal custody (as parents often do), or just one of these forms of custody.[2343] Other terms like "joint custody" or "joint physical custody" mean that both parents share in their parenting responsibilities.[2344] When a parent has "sole legal custody" this means that only one parent has the ability to make decisions about a child.[2345]

THIS CHART EXPLAINS THE DIFFERENT TYPES OF CUSTODY ARRANGEMENTS THAT A PERSON CAN HAVE THROUGH A COURT:

TYPES AND MEANINGS OF CUSTODY	
PHYSICAL CUSTODY TYPES AND MEANING	**LEGAL CUSTODY TYPES AND MEANING**
SOLE PHYSICAL CUSTODY: Your child lives with you full time (although the other parent or caregiver may have *visitation rights*). You, and only you, are responsible for your child's daily care and supervision. *NOTE: It's very common for one parent/caregiver to have both sole physical custody and sole legal custody.*	**SOLE LEGAL CUSTODY:** You, and only you, are the person who can make important decisions about your child's health, education, and well being. *NOTE: It's very common for one parent/caregiver to have both sole physical custody and sole legal custody.*
JOINT PHYSICAL CUSTODY: Your child lives with you part of the time, and with the other parent (or caregiver) part of the time. You are responsible for your child's care and supervision when s/he is with you, and someone else is responsible for your child's care when the child is with him/her. Joint physical custody does not necessarily mean there is an equal 50/50 split in time between parents (or caregivers); it could be that the child spends more time with one parent than the other. This is still joint custody.	**JOINT LEGAL CUSTODY:** You and the other parent (or caregiver) share the right to make important decisions about your child. It is possible for the judge to give the parents joint legal custody, but still give one parent complete power to make certain types of decisions alone, and have both parents share responsibilities for other types of decisions. An important note: Even when both parents have the right to make decisions about the child, they do not have to agree on every decision. Either parent can make the decision alone, and they have an independent right to do so.[2346]

[2340] See Judicial Council of Cal., Basics of Custody & Visitation Orders, http://www.courts.ca.gov/17975.htm.
[2341] See Judicial Council of Cal., Basics of Custody & Visitation Orders, http://www.courts.ca.gov/17975.htm.
[2342] See Judicial Council of Cal., Basics of Custody & Visitation Orders, http://www.courts.ca.gov/17975.htm.
[2343] CAL. FAM. CODE § 3000 - 3007.
[2344] CAL. FAM. CODE § 3002 - 3003.
[2345] CAL. FAM. CODE § 3006.
[2346] CAL. FAM. CODE § 3083.

WHAT DO LEGAL AND PHYSICAL CUSTODY ARRANGEMENTS LOOK LIKE IN REAL LIFE?

There are so many different possible arrangements and combinations of legal and physical custody (sole and joint). Here are some *examples* that show these concepts in real life. Remember, these are just *examples*—no two situations are exactly the same. There is no such thing as a "normal custody arrangement," so it is okay if your situation is different than in these three stories.

COMMON EXAMPLES OF CUSTODY ARRANGEMENTS
STORY #1: Jessica is an 8-year-old girl. The judge gave her mother, Maria, sole physical custody, meaning that Jessica lives with Maria full time. Jessica's father, John, recently returned home from prison and asked the court for visitation. The court gave him weekly visitation with Jessica, but not any physical custody. However, the court gave both Maria and John joint legal custody over Jessica, which means they both get to make important decisions for her—like medical decisions and where to go to school, etc. But only Maria has physical custody, meaning that only Maria is responsible for Jessica's day-to-day care. To change this arrangement, John would need to go to court to ask for joint physical custody.
STORY #2: David's parents, Carlos and Rashida, are separated, but the judge gave them joint physical custody and joint legal custody of their son. David lives with Rashida during most of the week (Monday-Thursday), and with Carlos on weekends (Friday-Sunday). Rashida and Carlos live in the same school district, so David can attend school normally during the week. Rashida and Carlos also share joint legal custody, which means they both get to make important decisions for their child—like medical decisions, where to go to school, etc.
STORY #3: The judge appointed Kerry's grandmother, Mary, as her legal guardian, because both of Kerry's parents were unable to care for her due to their drug addiction. This means that Mary has both sole physical and legal custody of Kerry. Kerry lives with Mary (physical custody), and Mary gets to make all important decisions for Kerry (legal custody)—like medical decisions, where to go to school, etc. Kerry's parents do NOT have physical or legal custody of their child, but her father, Joseph, asked the judge and got supervised visitation with her. Kerry's mother, Janet, is currently incarcerated and does not have visitation (but she can ask the judge for visitation rights while she's in prison or after she gets out).

VISITATION

WHAT DOES VISITATION MEAN?

"Visitation" is the legal right to visit and spend time with a child. A judge can write an order describing when and how often the parent, grandparent, or other family member can visit the child. When a judge decides a person's parental rights are limited to seeing and spending time with a child rather than living with and making major decisions for the child, this means that person does NOT have "custody" of the child. Visits can be for the day or overnight, supervised, or unsupervised.

THIS CHART EXPLAINS THE 3 TYPES OF VISITATION PLANS A COURT COULD ORDER:

TYPES OF VISITATION PLANS
REASONABLE VISITATION—a flexible plan that allows the petitioning parent to work out the details of visits with the other parent (or caregiver)—such as when, where, how often, and for how long the visits will take place.
SCHEDULED VISITATION—a detailed plan with exact dates and times for the parent to visit the child.
SUPERVISED VISITATION—a plan that allows the petitioning parent to visit their child regularly but requires someone else to be present and supervising the visits, to make sure that the child is safe and that the parent and child get along well.[2347]
NO VISITATION—the judge may decide not to give the parent any visitation at all. This happens if the judge is concerned that a parent will harm a child and thinks it's best for the child not to have contact with the parent.

[2347] The judge may grant supervised visitation if s/he thinks that your child should see you regularly, but (1) has concerns about the child's safety, or (2) you haven't seen your child in a long time and need time to be (re)introduced. The judge's supervised visitation order will state when you can visit your child, and may also state where and who the supervisor will be. A non-professional supervisor can be a family member or friend who cares about the child and wants to help. A professional supervisor is someone trained and experienced in providing supervision services, and will likely charge a fee for the services. All supervisors are legally required to report suspected child abuse. CAL. FAM. CODE § 3200 et seq.; CAL. RULES OF COURT § 5.20.



WHAT DO VISITATION ARRANGEMENTS LOOK LIKE IN REAL LIFE?

Here are some common examples of visitation arrangements:

COMMON EXAMPLES OF VISITATION ARRANGEMENTS
STORY #1: Robin and Sally are married and have three children. After Robin was incarcerated, Sally filed for a separation from Robin and requested sole custody, both legal and physical, of all the children. The judge granted Sally's requests for both the separation and the custody of the children. Upon his release, Sally and Robin agreed on a reasonable visitation plan that allowed Robin and Sally to create their own visitation schedule without a judge. Every Sunday, Robin and Sally would meet at Sally's home to figure out when Robin could see the children and for how long. This is **reasonable visitation**.
STORY #2: Robin wanted more time with his children each week so he asked if they could agree on a different visitation schedule. Sally and Robin were not getting along well since Robin's reentry; Sally felt uncomfortable with giving Robin more time with the children so she said no. Robin went to court and asked a judge to grant more visitation with the children. Because Robin and Sally could not come to an agreement and the judge did not find any reason for denying Robin time with his children, the judge ordered a visitation schedule that provided the exact days and times Robin could spend time with this children. This is a **scheduled visitation**.
STORY #3: Sally asked the judge to deny Robin visitation with the children. Sally presented evidence about Robin's behavior and the judge decided that Robin could not spend time with the children without supervision. The judge ordered supervised visitation for Robin. He was able to see his children twice a week, but the visits took plan at a court ordered place with someone designated by the court to supervise. This is **supervised visitation**.

V. JUDGES, COURTS & THE "BEST INTEREST OF THE CHILD" LEGAL STANDARD

WHAT WILL I LEARN ABOUT JUDGES, COURTS & THE "BEST INTEREST OF THE CHILD" LEGAL STANDARD?

- **Why the court would be involved in your family matters.**
- **How judges use the "best interest of the child" legal standard to make decisions about who can care for or see your child or grandchild.**
- **Which factors a judge may consider when making decisions about custody and visitation with your child or grandchild.**
- **How past substance abuse could impact your ability to reconnect with your child or grandchild.**
- **How cleaning up your criminal record might help you gain custody or reunite with your child.**

WHY WOULD THE COURTS BE INVOLVED IN MY FAMILY MATTERS?

There are so many different reasons that courts get involved in family matters. Examples of when courts get involved include cases of divorce or legal separation; cases about paternity/parentage; disagreements about custody, visitation, or child support; when one or both parents are no longer able to care for a child because they are sick, disabled, incarcerated, or passed away; or the court is supervising a child's care due to allegations of abuse or neglect.

In most cases, incarceration will affect your relationship with your family, and the courts may end up getting involved to decide who should have the legal right to make decisions about your child or grandchild, and who should be able to visit or care for your child or grandchild. While you are/were incarcerated, it's possible that there were changes in your child's care that had nothing to do with your actual conviction, but the courts got involved either because there was already an open case about the child, someone asked the court to get involved, OR the county's Child Protective Services (CPS) deemed it necessary for the court to oversee the care of your child because of abuse or neglect allegations.

If a court case is opened about the care of your child, it is important to know that everything in your criminal record will be available to the judge in that case. But the judge doesn't look only at your criminal record; s/he looks at your record as one factor among MANY factors about whom is best suited to care for your child, and what is in the child's "best interest." To learn about the convictions that may ban you from reunifying with a child, see the chart on PG. 726. To learn more about the factors a judge looks at in making decisions about a child's care, see the next question!

WHAT FACTORS DOES A JUDGE LOOK AT WHEN MAKING A DECISION ABOUT CUSTODY AND VISITATION WITH MY CHILD/GRANDCHILD?

The Legal Standard: "Best interest of the child":

As we stated earlier, when deciding whether to let you *see, care for, or make decisions* for your child or grandchild, the judge must find that it would be in the **"best interest of the child"** to allow you the contact you desire.[2348] To make this decision, a judge looks at many parts of a child's life and relationship with you, as well as the other people in the child's life.[2349]

For the most part, there are no hard and fast rules about what is in a child's "best interest," in particular when it comes to considering a parent or caregiver's criminal record. Certain convictions may ban you from reunifying with your child, and you can learn about those in the chart on PG. 726. But in most cases, the judge will consider *many factors*.

Factors a judge will look at about THE CHILD include, but are not limited to, the child's:

- Age;
- Health;
- School needs;
- Relationship with each parent (or caregiver);
- Connections at home, school, and in the community;
- Each parent's (or caregiver's) ability to care for the child;
- Any history of family violence or substance abuse by either parent (or caregiver).

[2348] CAL. FAM. CODE § 3011.
[2349] JUD. COUNCIL OF CAL., BASICS OF CUSTODY & VISITATION ORDER, (2016) http://www.courts.ca.gov/17975.htm.



Factors a judge will look at about YOU include, but are not limited to:

- Whether you've had a smooth transition back to the community;
- Whether you've made reasonable efforts to stay in touch with your child;[2350]
- Your criminal record (to which convictions will make it more difficult or even impossible to reconnect with your child, see the chart on PG. 726);
- How much *contact* you currently have (and/or previously had) with your child;[2351]
- If you have the ability of parents to care for child (money, housing, job, stability, etc.);
- How much time you were away from your child while in prison or jail, especially if you were unable to stay in touch with him/her during this period;[2352]
- If you have a history of substance abuse (see the next question);

These factors will all go into the judge's decision about what is in the "best interest of the child," and your custody and visitation rights as a parent or caregiver.

I HAVE A HISTORY OF SUBSTANCE ABUSE. HOW WILL THIS IMPACT MY ABILITY TO RECONNECT WITH MY CHILD OR GRANDCHILD?

If you have struggled with addiction, drugs or alcohol (whether or not this is related to your system involvement or past convictions), the judge will consider this history when deciding whether custody or visitation with you is in your child's "best interest."[2353] The judge may require you to do drug or alcohol testing, or—if you are granted custody or visitation—may even order you to never use any drugs or alcohol.[2354] However, the judge *cannot* deny you custody based ONLY on the results of a positive drug test—a dirty test is only one factor when deciding whether custody would be in your child's best interest.[2355]

WOULD IT HELP MY FAMILY LAW CASE TO CLEAN UP MY RECORD?

It depends—but it can never hurt your case. We recommend cleaning up your criminal record in case there is any misinformation or mistakes that could unfavorable affect your case in family court. Also, there could be updates that would look more favorable in family court such as expungement and dismissals. For more information, see the UNDERSTANDING AND CLEANING UP YOUR CRIMINAL RECORD CHAPTER on PG. 931.

SHOW YOUR RECOVERY SUCCESS!

If you have a history of substance abuse, consider ways you can show that you are on the right path by:

(1) Keeping a record of rehab meetings you attend including date and time.

(2) Ask for letters of support from your drug counselor or sponsor.

(3) Prepare to discuss how you have avoided drugs and stayed clean. You may talk about where you live, whom you are friends with and how those changes have helped to keep you sober and clean.

HELPFUL HINT

Clean Up Your Criminal Record & Get Convictions Expunged

If possible, it is recommended that you get your conviction expunged ("dismissed") under California Penal Code Section 1203.4—or that you clean up your criminal record in other ways—*before* trying to get custody of a child in dependency court.[2356] Expungement does NOT remove the conviction from your criminal record, but it has many benefits. For example, cleaning up your record and getting convictions expunged can only help you in trying to get custody, guardianship, or reunite with your child, because it will show the judge that you are committed to making positive changes in your life and can take on greater caregiving responsibilities.[2357] Some judges (but not all) will even treat an expunged conviction *the same* as a criminal record exemption—meaning they'll excuse the conviction in deciding that child can live with you as a guardian through dependency court.[2358] For more information about expungement and other ways to clean up your criminal record, read the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931.

[2350] See CAL. FAM. CODE § 3040 et seq.
[2351] Cal. Fam. Code § 3011(c).
[2352] The judge will consider how long you were away, your child's age during this time, and how strong your relationship with your child is. Telephone call with Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, Jan. 6, 2015.
[2353] CAL. FAM. CODE § 3041.5.
[2354] CAL. FAM. CODE § 3041.5.
[2355] CAL. FAM. CODE § 3041.5. The results of the drug/alcohol test will only be used when considering whether custody or visitation is in your child's best interest), and cannot be used for any other purpose, such as criminal prosecution, parole violation, or civil penalties. Moreover, you may request a hearing to challenge the results of a positive test.
[2356] If you do this your criminal record will not be considered in guardianship proceedings at all. For more information on expunging your criminal record see Chapter 9
[2357] Telephone call with Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, Jan. 6, 2015.
[2358] Compare electronic communication from Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, Jan. 9, 2015 (dismissal as automatic exemption); with In re H.K., 217 Cal. App. 4th 1422 (App. 2 Dist. 2013) (court must still consider expunged conviction).

VI. PROTECTIVE COURT ORDERS & "NO-CONTACT" CONDITIONS

WHAT WILL I LEARN ABOUT PROTECTIVE ORDERS & "NO-CONTACT" CONDITIONS?

- What to do if you have a protective order or "no-contact" condition against you because of a court order or probation, parole, or other community supervision.
- What the consequences are for violating a protective order or "no-contact" condition.
- How to challenge a protective order that is a condition of parole, probation, or other community supervision.
- How to challenge a protective order that is part of a court order.
- How other conditions of probation or parole, such as travel restrictions, could impact your ability to reconnect with your child or grandchild.

I BELIEVE THERE IS A PROTECTIVE ORDER OR "NO-CONTACT" CONDITION AGAINST ME. WHAT CAN I DO?

There are two types of protective orders (also called "stay-away", "no-contact", and "restraining" orders) that could be in place against you:

1) A protective order could be a **condition of your supervision**, required by parole, probation, or some other type of community supervision) AND/OR
2) A protective order could be **required by a court** (put in place by a judge in a criminal court and/or civil court).[2359]

In either case, you MUST follow the protective order. **While following the protective order, you can still challenge, fight or appeal it!**[2360] **Read the question on PG. 738 to learn how.**

PLEASE NOTE: It's important to get to know the SPECIFICS of any orders preventing you from contacting another person. For example, a protective order/ "no-contact" condition may prevent you from contacting the caregiver or other parent of your child or grandchild; but this protective order may *not* apply to your child or grandchild, *unless it specifically says so*. This can create a situation where, for example, you *are* allowed to contact your child, but you *cannot* arrange for a visit with your child because you are *not* allowed to contact your child's caregiver or the other parent.

WHAT COULD HAPPEN IF I VIOLATE A COURT'S PROTECTIVE ORDER OR A "NO-CONTACT" CONDITION OF MY SUPERVISION?

If you violate a court's protective order or a "no-contact" condition of your supervision that forbids you from contacting another person, you could be fined and/or re-incarcerated for violating the court order or the conditions of your supervision.[2361] **While following the protective order, you can still challenge, fight or appeal it!** Read the next question on PG. 738 to learn how.

Again, it is important to get to know the SPECIFICS of any protective orders or "no-contact" conditions against you so that you do not violate them.

IMPORTANT: You might have protective and restraining orders against you from both *criminal* and *civil* courts, each with different conditions or requirements. So what rules should you follow? Answer: the criminal court order! A protective order from *criminal court* is stronger than a civil restraining order from family, probate, dependency, or any other civil court. If you have multiple orders against you from different courts, you MUST follow the criminal protective order.[2362]

It is also important to know about any conditions or orders against you, because if you go to court to ask for greater rights with your child (for example, increased custody or visitation), the judge will consider any protective or restraining orders against you.[2363]

[2359] CAL. PENAL CODE § 136.2.
[2360] How to File CDCR Administrative Appeal, Prison Law Office, http://prisonlaw.com/pdfs/AdministrativeAppeals,July2010.pdf.
[2361] Intentionally violating a protective order is a misdemeanor offense. CAL. PENAL CODE § 166(c).
[2362] CR-6000 Rev 1/29/15, available at http://www.scscourt.org/documents/CR-6000.pdf ("The new rules provide that if any CPO or Civil RO requires no contact, that no contact order will be enforced… First, CPOs have priority over Civil ROs.").
[2363] CAL. FAM. CODE § 3031; see also Form FL-105 (Declaration Under Uniform Child Custody Jurisdiction & Enforcement Act), at q.5, http://www.courts.ca.gov/documents/fl105.pdf.



IMPORTANT: If your criminal case involved domestic violence or child abuse, then it is possible that the judge gave your child a protective order against you. If your child has a protective order against you, do NOT contact your child.

HOW DO I CHALLENGE A PROTECTIVE ORDER OR "NO-CONTACT" CONDITION OF MY PAROLE OR PROBATION?

The process for challenging a protective order or "no-contact" condition depends on who put the order in place against you.=

(1) IF THE PROTECTIVE ORDER IS A CONDITION OF YOUR PAROLE, PROBATION, OR OTHER FORM OF COMMUNITY SUPERVISION: It may be possible to get the condition removed or changed IF you don't have a history of domestic violence or abuse.[2364]

- To challenge a condition of **state parole**, you will likely have to file a CDCR Form 602 administrative appeal and Form 22 with the Parole Department.[2365] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 178.
- To challenge a condition of **probation** or **Mandatory Supervision**, you must go back to the criminal court that sentenced you to probation or supervision, and ask the judge to remove or change the condition.[2366] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 198 (misdemeanor probation) and PG. 202 (felony probation).
- To challenge a condition of **Post-Release Community Supervision (PRCS)**, you will have to either file an administrative appeal through probation or go directly to Superior Court depending on whether the county probation department or the court put the condition on you[2367] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 205.
- To challenge a condition of **federal probation**, you will have to file a Notice of Appeal with the Clerk of the Court where you were convicted and contact the Federal Public Defender's Office. Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 219.
- To challenge a condition of **Supervised Release**, you will have to file a Notice of Appeal with the Clerk of the Court where you were convicted and contact the Federal Public Defender's Office. Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 219.
- To challenge a condition of **federal parole**, you will have to file a Notice of Appeal with the Clerk of the Court where you were convicted and contact the Federal Public Defender's Office.[2368] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 219.

(2) IF THE PROTECTIVE ORDER IS A COURT ORDER (from a criminal court or civil court) based on a history (or allegations) of domestic violence, neglect, abuse, stalking, or threats:[2369] You must go back to the same court and ask the judge to change or cancel the order.[2370]

- If you need assistance changing a **criminal court-ordered** protective order, contact a public defender or your lawyer from your criminal case.
- If you need assistance in changing a **civil court-ordered** protective order, you can ask the Family Law/Self-Help Facilitator at your local county court (see Appendix A on PG. 797 to find contact information for your local Family Law Facilitator).

ADDITIONAL RESTRICTIONS FROM PAROLE OR PROBATION & YOUR GENERAL RIGHTS

I AM ON PAROLE OR PROBATION. HOW COULD THIS IMPACT MY ABILITY TO RECONNECT WITH MY CHILD OR GRANDCHILD?

In addition to "no-contact" conditions (read more on PG. 737), you may have travel restrictions placed on you by parole or probation that limit your ability to reconnect with your child or grandchild.

[2364] But see, e.g., CAL. PENAL CODE § 1203.097(a)(2) (criminal court protective order is mandatory probation condition for domestic violence offenses).
[2365] How to File CDCR Administrative Appeal, Prison Law Office, http://prisonlaw.com/pdfs/AdministrativeAppeals,July2010.pdf.
[2366] CAL. PENAL CODE § 1203.3(a) ("The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence.).
[2367] See Prison Law Office, The Parolee Rights Manual at 34, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf
[2368] Fed. R. Crim. P. 32.1(c).
[2369] CAL. FAM. CODE §§ 6250 et seq. (emergency protective order), 6320-22 (protective orders); CAL. PENAL CODE § 136.2 (criminal protective order).
[2370] You can also try to appeal the order to a higher court.



Travel Restrictions could make it difficult for you to *visit* your child or grandchild, especially if he or she lives in another county. If you have limits on where or how far you can travel, you should talk to your parole agent or probation officer and request a ***travel pass***—and make sure you get **approval in writing**! Alternatively, you can arrange with family, friends, a case manager or mentor, parole officer, or through the court (by requesting a change in the conditions of your supervision) for your child or grandchild to come visit you. Always check with your parole agent or probation officer if you are unsure if you have any travel restrictions.

Transfer Restrictions: There may also be limitations on your ability to transfer your parole location to certain counties for a number of reasons—and you should get to know these limitations BEFORE you attempt to move, visit, or contact your child or grandchild. Again, it is always best to follow a condition while appealing it rather than violate that condition. Speak to your parole agent or probation officer about your conditions so that you are clear where you can go and where you cannot go.

- To challenge a condition of **state parole**, you will likely have to file a CDCR Form 602 administrative appeal and Form 22 with the Parole Department.[2371] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 178.
- To challenge a condition of **probation** or **Mandatory Supervision**, you must go back to the criminal court that sentenced you to probation or supervision, and ask the judge to remove or change the condition.[2372] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 198 (misdemeanor probation) and PG. 202 (felony probation).
- To challenge a condition of **Post-Release Community Supervision (PRCS)**, you will have to either file an administrative appeal through probation or go directly to Superior Court depending on whether the county probation department or the court put the condition on you[2373] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 205.
- To challenge a condition of **federal probation**, you will have to file a Notice of Appeal with the Clerk of the Court where you were convicted and contact the Federal Public Defender's Office. Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 219.
- To challenge a condition of **Supervised Release**, you will have to file a Notice of Appeal with the Clerk of the Court where you were convicted and contact the Federal Public Defender's Office. Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 219.
- To challenge a condition of **federal parole**, you will have to file a Notice of Appeal with the Clerk of the Court where you were convicted and contact the Federal Public Defender's Office.[2374] Read more about that process in the PAROLE & PROBATION CHAPTER at PG. 219.

[2371] How to File CDCR Administrative Appeal, Prison Law Office, http://prisonlaw.com/pdfs/AdministrativeAppeals,July2010.pdf.
[2372] CAL. PENAL CODE § 1203.3(a) ("The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence.).
[2373] See Prison Law Office, The Parolee Rights Manual at 34, http://www.prisonlaw.com/pdfs/ParoleeManual,Aug2013.pdf
[2374] Fed. R. Crim. P. 32.1(c).



VII. THE THREE COURTS THAT HANDLE FAMILY MATTERS & NAVIGATING THEM

WHAT WILL I LEARN ABOUT COURTS?

- **The three different courts that make decisions about family and children issues.**
- **Where you can locate court forms during reentry and while awaiting release.**
- **How to request transportation to court for cases about your parental rights while you are incarcerated.**
- **How to get visitation with your child while you are still incarcerated.**

INTRODUCTION TO THE THREE COURTS THAT HANDLE FAMILY & CHILDREN MATTERS

This section will explain the three courts in California that make legal decisions about family issues and the care of children. Just because your situation *seems to fit into the description of cases that happen in one type of court*…does not mean the case will definitely be heard and decided by a judge in that court.

Family law cases can be long, complicated, and difficult to navigate. Every case is different and every county handles cases dealing with family and children a little bit differently. It can even vary by *judge* within the *same* county!

But don't let this overwhelm you. There are people you can contact to get help with your family law situation so you do not have figure things out alone:

- First, there are **Family Law/Self-Help Centers** in every county that can help you decide which court to go to, where to file your forms, and what kinds of documents to show as evidence.
- Second, you can also read this Chapter and call **Root & Rebound's Reentry Hotline** (any Friday, 9AM – 5PM, at phone number 510-279-4662) for more information about *reunifying with your children* or working through a family law case when you have a criminal record. We accept Collect Calls.
- Third, for a list of **legal aid offices** in your region of California that may be able to help you, see PG. 1127.

WHAT ARE THE DIFFERENT COURTS IN CALIFORNIA THAT MAKE DECISIONS ABOUT FAMILY AND CHILDREN?

There are 3 different courts in California that make decisions about family matters and the care of children: **probate court**, **juvenile court**, and **family court**.

It is important to understand the basics of all three courts so you know the best place to go to restore or establish your rights as a parent, grandparent, caregiver, or guardian.

Here are the 3 courts and what you need to know:

(1) Family court handles cases about **divorce**, **child support**, **paternity/parentage**, and SOME **child custody and visitation** cases.

(2) Probate court handles "probate guardianship" cases. Individuals who want to become a child's legal guardian, such as relatives or family friends, may file guardianship petitions in this court for temporary or permanent guardianship. This does *not* end the parent's rights, but instead puts them on *pause*.

(3) Juvenile court includes two divisions: *dependency* and *delinquency*.

- **Dependency court** handles cases of child abuse and neglect, also called CPS cases. The government agency Child Protective Services (CPS) opens a case in dependency court if someone reports that a child may be at risk. (Note: CPS can have different names in each county of California; it is often called the Department of Child and Family Services). If a child is at risk at home, the dependency court may take over custody of the child. A child is sometimes called a "ward" of the dependency court.
- NOTE: **Delinquency court** makes decisions in cases where a child (under the age of 18) is arrested and charged with a crime. This court may send the young person to juvenile hall as a punishment for breaking the law. For more information on delinquency court, visit the California Courts' website at http://www.courts.ca.gov/selfhelp-delinquency.htm. We do not go into detail about delinquency court in this guide because the guide is focused on people in the adult criminal justice system and in reentry from prisons and jails.



If you know which court your family's or child's case is in:

This section gives background on all three courts—*probate, family, and dependency*. If you already know which court your case (or your child's case) is in, you can skip directly to the section of this Chapter that discusses that court.

If you do NOT know which court your family's or child's case is in:

If you do *not* know which court your case (or your child's case) is in, or if it's in any court at all, read the steps on PG. 728 to learn how to find out which court might be involved. You can also review the chart on the next page (PG. 741 to get a basic idea of what each of the three courts does.

THE CHART BELOW SUMMARIZES THE 3 MAIN COURTS THAT MAKE DECISIONS ABOUT FAMILY MATTERS AND CHILDREN'S CARE IN CALIFORNIA. EACH COURT HAS DIFFERENT RULES AND PROCEDURES. IF YOU'RE UNSURE ABOUT WHICH COURT YOUR CASE IS OR SHOULD BE IN, USE THE CHART AS A STARTING POINT AS YOU WORK TOWARDS REUNIFYING WITH YOUR CHILDREN OR GRANDCHILDREN.

SUMMARY OF CALIFORNIA COURTS THAT MAKE DECISIONS ABOUT FAMILY & CHILDREN

GENERAL QUESTIONS	FAMILY COURT	PROBATE COURT	DEPENDENCY COURT
WHEN WOULD MY CHILD OR I NEED TO GO TO THIS COURT?	You would want to go to Family Court to ask for custody or visitation if you are the child's parent and you have an issue with the other parent. The family court also hears cases that involve divorce, child support, and paternity cases.[2375]	You would need to go to Probate Court in two main situations: (1)The court has appointed (chosen) someone else (not the child's parent) to be the guardian for your child, and you want custody or visitation with your child. A guardian is an adult (not the child's parent), such as a relative or family friend, who has legal and physical custody of the child.[2376] Learn more on PG.) OR (2) You want to become the guardian for someone else's child.	You or your child might go to Juvenile Dependency Court if the child's parent(s) are suspected of abuse or neglect and Child Protective Services (CPS) has become involved in the child's case.
WHO STARTS THE CASE?	A *parent*	(1) A person who wants to become the guardian of someone else's child. (This could be a relative or family friend.) This person might be living with the child already, but want more rights and responsibilities; OR (2) A parent who is trying to *end a guardianship already in place through the probate court*, and get custody or visitation with their child back; OR (3) The guardian for a child such as a relative or family friend who wants to end an existing guardianship arrangement.	Child Protective Services (CPS) or the District Attorney
WHERE DO I FIND MORE INFORMATION ABOUT THE RULES & PROCEDURES OF THIS COURT?	See PG. 744.	See PG. 748.	See PG. 755.

[2375] Specifically: The family court hears those custody and visitation cases that don't involve child abuse or neglect, and that don't involve guardianships. This section will explain each of these issues and kinds of cases, one by one.

[2376] By contrast, adoption does terminate the parental rights of the child's legal or biological parents, and also creates a permanent parent/child relationship between the child and his/her adoptive parent. See CAL. FAM. CODE § 7505(a) (cessation of parental authority upon appointment of guardian); CAL. PROB. CODE § 2351(a) (custody rights of guardian); CAL. WELF. & INST. CODE § 366.26 (distinguishing between termination of parental rights and guardianship proceedings; contrast adoption, which terminates parental rights, with guardianship, which does not); In re Guardianship of Ann S., 45 Cal. 4th 1110, 1124 (2009) (probate guardianship suspends parental rights).



WHERE CAN I FIND THE COURT FORMS I NEED TO START A CASE IN ONE OF THE 3 FAMILY-RELATED COURTS?

Each of the three courts that handle family matters has LETTERS and NUMBERS to identify forms that are specific to their court:

- **Family court** forms start with FC.
- **Probate court** forms start with GC.
- **Dependency court** forms start with JV.
- **For all the courts**, fee waiver forms usually start with FW.

You can find California court forms on the following website: http://www.courts.ca.gov/forms.htm. Of course, because rules and procedures vary county by county, you ALWAYS want to check with your local court's rules and procedures to find out which court forms are preferred or required in your county.

Below we further explain how you can access various court forms for your family or child's case, depending on whether you are currently or formerly incarcerated.

If you are formerly incarcerated:

California court forms are available online from the California Courts' website at http://www.courts.ca.gov/forms/forms.htm. You can also ask the court's Family Law/Self-Help Facilitator (see Appendix A) to help you with the court forms you need. Finally, your local law library may also be able to help you with the court forms, legal research materials, and information about other legal resources you may need.

HELPFUL HINT

Family Law/Self-Help Facilitators are Available to Help

It can be very helpful to talk to a lawyer about your family law case. If you do not have a lawyer to represent you, your local family court's Family Law/ Self-Help Facilitator can help you with forms and procedures—but NOT legal advice (see Appendix A for listings of Family Law Facilitators across the state). You may also want to contact a local legal aid office and find out if someone can help you with your case (see a listing of legal aid offices at the back of this guide beginning on PG. 1127.

If you are currently incarcerated:

You have the right to petition to start a case while you are incarcerated, but there may be barriers that make it so you cannot be present at court or, because of your incarceration, cannot meet requirements needed for custody, since you cannot have physical custody of your child while you are incarcerated. Fore more information on custody see PG. 732. For more information on convictions that bar you from requesting custody or visitation, see PG.726. Before you start a case, make sure your incarceration or conviction is not an automatic bar from getting a favorable result in court. If you have access to the Internet, the California court forms are available online from the California Courts at: http://www.courts.ca.gov/forms/forms.htm.

You can also request the forms from Legal Services for Prisoners with Children (LSPC). You can call them at: (415) 255-7036, or write them at: Legal Services for Prisoners with Children, 1540 Market St., Suite 490, San Francisco, CA 94102

LSPC also has a 2012 manual that has the forms you may need. You can find this manual at: www.prisonerswithchildren.org/wp-content/uploads/2013/08/Incarcerated-parents-version-12.11.12.pdf

I AM CURRENTLY INCARCERATED. CAN I GO TO A COURT HEARING FOR A CASE INVOLVING MY CHILD?

Yes – for any court hearing involving your child, you can *ask* the judge to be transported and it is up to the judge whether or not to order your transportation for the hearing; and for certain types of cases, you have the *automatic right* to be transported. *As an incarcerated parent*, you have the **RIGHT TO REQUEST** transport to:

1. A court hearing in a dependency court case; and
2. Hearings in other courts (such as family court, probate court, and juvenile delinquency court) that could affect your parental rights (including cases about custody and visitation, divorce, paternity/parentage cases, guardianship, child support, etc.).[2377]

In these cases, the *judge* decides whether or not to grant your request.[2378]

[2377] CAL. PENAL CODE § 2625(e).
[2378] CAL. PENAL CODE § 2625(d). See also Manual on Transportation to Court for Hearings Affecting Prisoners' Parental Rights, available at http://www.prisonerswithchildren.org/wp-content/uploads/2013/07/Transportation-to-Court-2013.pdf.

As an incarcerated parent, you have **THE AUTOMATIC RIGHT to be present at the following hearings**:

1) **Jurisdictional and dispositional hearings in dependency court:**
   - Jurisdictional and Dispositional hearings are formal meetings in front of a judge once a case has begun in juvenile dependency court. At the jurisdiction hearing the judge will decide whether the allegations in the petition are true. If the judge decides the allegations are true, the court will take authority over your child. This is called jurisdiction in the law; that is why the hearing is called the jurisdiction hearing.
   - Disposition is the part of the case where the judge will decide what you should do to make things better for your family and your child. This is called the reunification plan.

2) **Hearings that seek to terminate their parental rights:**
   - Hearings that seek to terminate parental rights are formal meetings in front of a judge about ending the right a parent has to see and care for their child. If a parent's rights are terminated, that parent can no longer make legal, medical or general life decisions for the child. In the eyes of the law, the child is no longer that parent's child. Examples of the types of cases that could end a parent's right include: adoption, petition terminating the parental rights of alleged father, or a petition for emancipation.

Under state law, the judge should *automatically* make an order for you to be transported to these types of hearings. The court MUST send a copy of the "transport order" to the warden or sheriff of your facility at least 15 days before the date you need transportation. If you do not receive this order, or if you want to be transported to court for other dependency court hearings, you can write to the court to request such an order, or ask the attorney representing you to request one.[2379] The sheriff's department in the county in which hearing takes place is responsible for arranging your transportation, but you may have to be proactive and follow up with your institution to make sure you are transported on time.[2380]

WHAT DOES IT MEAN TO BE PRESENT AT A HEARING?

The right to be present means the right to be physically present in the courtroom while the hearing takes place. Even if you waive your physical presence, you may be able to participate in the hearing in other ways. Depending on the technology at your facility, you may be able to participate in the hearing via telephone or videoconference.

I AM CURRENTLY INCARCERATED. CAN I GET VISITATION ORDERED WITH MY CHILD?

Yes, you have *the right to request visitations* while you are incarcerated. However, we recommend trying to come to an informal agreement with the child's caregiver for visits to your facility. Filing a lawsuit is a timely and costly process that can cause confrontation in your family. If you have an informal visiting schedule then you are more likely to have an amicable relationship with the child's guardian. Once you have a successful visit or two, you can ask the caregiver for a *reasonable schedule for visits*.[2381]

IMPORTANT! Be sure to put your agreement in writing—It can be a simple letter from you stating what you have agreed. Keep a copy. Then keep written records of how your arrangement is working out over time.

If you cannot agree on an informal visitation plan with your child's caregiver, then you can request visitation through court. If that is your situation, you can follow the steps for starting or joining a case in any of the three family-related courts (see PG 742 or how to start or join a case).

Grandparents, because they do not have any automatic right to visitation, cannot ask the court for visitation with their grandchild while they are incarcerated, but may be able to set up an informal agreement with the child's parent or caregiver to come visit them.

[2379] CAL. PENAL CODE § 2625(d). See also Manual on Transportation to Court for Hearings Affecting Prisoners' Parental Rights, available at http://www.prisonerswithchildren.org/wp-content/uploads/2013/07/Transportation-to-Court-2013.pdf.
[2380] Manual on Transportation to Court for Hearings Affecting Prisoners' Parental Rights, available at http://www.prisonerswithchildren.org/wp-content/uploads/2013/07/Transportation-to-Court-2013.pdf.
[2381] Legal Services for Prisoners with Children, "Child Custody and Visitation Rights for Incarcerated Parents" (2012).



VIII. FAMILY COURT

WHAT WILL I LEARN ABOUT FAMILY COURT?

- **Why you would need to go to family court to reconnect with your child or grandchild.**
- **How a judge's decisions in family court can affect your rights as a parent or grandparent.**
- **How a judge will decide if you can have custody or visitation with your child or grandchild, and how the rights of parents are different from the rights of grandparents in family court.**
- **Which convictions may bar you from reconnecting with your child or grandchild in family court.**
- **How you can show a judge in family court that custody or visitation with you is in the "best interest of the child."**
- **How to show mitigating circumstances related to your criminal record.**
- **How to reconnect with your child or grandchild without going to family court.**

WHAT IS FAMILY COURT?

Family court is the court system that handles cases involving married couples or domestic partners and their children, if they have any. Please keep reading to learn more.

WHY WOULD I GO TO FAMILY COURT TO RECONNECT WITH MY CHILD OR GRANDCHILD?

You may go to family court cases about divorce or ***separation***; ***child support***; ***paternity/parentage questions***; ***and/or custody and visitation disagreements*** between parents or caregivers (so long as CPS is NOT involved).[2382] A family court judge may make decisions and orders related to any of these types of cases.

Additionally, in some ***probate court cases***, the judge making decisions about a ***probate guardianship*** will transfer a case **from *probate court* to *family court*** if a biological parent ACTIVELY OBJECTS to the guardianship placement. The probate court tends to see this type of a dispute as a custody disagreement better suited for family courts to handle. Read more about probate court guardianships beginning on PG. 748.

To learn about *alternatives* to going to family court, see PG. 747.

HOW CAN A JUDGE'S DECISION IN FAMILY COURT AFFECT MY RIGHTS AS A *PARENT*?

A judge in family court can make a decision (called a "court order") about what kind of custody or visitation arrangement you get to have with your child. Depending on the order, a judge could increase or decrease your parental rights to have custody of your child. For more information on the legal meanings of "custody" and "visitation" and examples of custody and visitation arrangements in real life, see PG 732.

Examples:

1) If the judge grants the other parent or caregiver full legal custody of your child, then you no longer get to live with or make important decisions about that child.
2) If the judge grants the other parent full physical custody but joint legal custody, then you cannot live with your child, but you still get to make decisions about his/her life.

HOW CAN A JUDGE'S DECISION IN FAMILY COURT AFFECT MY RIGHTS AS A *GRANDPARENT*?

As you may recall from the section on "grandparents' rights," beginning on PG 727, grandparents do *not* have an automatic legal right to custody of or visitation with their grandchild(ren).

But if you successful join an ONGOING family court case about your grandchild, the judge could:

- Grant you visitation rights if you meet the legal requirements (see PG 745), AND/OR
- Grant a parent or other caregiver custody of your grandchild, and *that parent or caregiver* then chooses whether or not to let you see the child.[2383]

HOW WILL A FAMILY COURT JUDGE DECIDE IF I GET CUSTODY OR VISITATION WITH MY CHILD OR GRANDCHILD?

A family court judge who is deciding whether or not to give you custody or visitation rights (meaning rights to *see, care for, and/or make decisions* for your child or grandchild) must find that it would be in the **"best**

[2382] CAL. FAM. CODE § 213.

[2383] In order to have a judge order visitation with a grandparent, the grandparent must join the case and prove a "strong bond" with his or her grandchild. A judge will probably deny a grandparent's request for visitation if the parents object or if the parents are still married and living together.

interest of the child" to do so. The factors a judge will look at in deciding what is in the "best interest of the child" are on PG. 735; your criminal record is *just one factor* the judge will consider.[2384]

For Parents: The law assumes that it is in the "best interest of the child" to have a stable, consistent relationship with both parents through custody and/or visitation. BUT if one or both parents can't provide the care and stability that your child needs—or if there is a specific reason to believe that having contact with the parent(s) would be harmful to your child—then the judge will consider other options or even limit or cut off contact between the parent(s) and their child.[2385]

For Grandparents: A Grandparent may request to become the child's primary caregiver, getting *custody* of the child, OR a judge might order *visitation rights* under certain circumstances.

- *If you are a grandparent seeking CUSTODY of your grandchild*: As a grandparent, you cannot ask for custody of your grandchild if both parents still have full rights to the child. However, if BOTH of your grandchild's PARENTS have lost or ended their parental rights, you can then ask for custody of your grandchild by asking to become the child's **legal guardian** in probate court (see PG. 748 OR in dependency court if CPS is involved in the child's case (see PG. 755 OR by adopting the child (see PG. 767).
- *If you are a grandparent seeking VISITATION with your grandchild*: Under state law, a grandparent *cannot* ask a judge in family court for visitation with a grandchild if the parents of the child are still married, *UNLESS* one of the following is true:
    1) The parents are living apart from each other;
    2) One parent's location has been unknown (for at least a month);
    3) One of the parents joins your "petition" (a request filed with the court) to ask for visitation—which means the parent with custody is supporting your request to the judge to have visits;
    4) The child doesn't live with either parent;
    5) The grandchild has been adopted by a stepparent.[2386]

If one or more of these factors are TRUE, you can ask a judge in family court for visitation with your grandchild. The judge will then balance *the following factors* to make a decision:

1. Whether you and your grandchild already have a **strong relationship ("a bond")**, so that visitation will be in your grandchild's "best interest;"[2387] AND
2. The rights of the child's parents to make decisions about what is in the best interest of their child.[2388]

Because parents are given priority in making decisions about their child's care, a family court judge will probably deny your request for visitation if:

1. Your grandchild's parents object to giving you visitation, AND/OR
2. The parents are still married and living together with your grandchild.[2389]
    a. **BUT THERE IS ONE IMPORTANT EXCEPTION!** If you were ever the **legal guardian of your grandchild**, that can help. You can tell the family court judge that since you previously served as the legal guardian of your grandchild, you have an important connection ("bond").[2390]
3. In addition to the above two situations, you will DEFINITELY be denied visitation if your grandchild has been adopted by a person other than a stepparent or another grandparent of the child.[2391] This means that if your grandchild was adopted by someone who is not a stepparent or grandparent, then your rights as a grandparents have been cut off (terminated), just like those of your grandchild's biological parents.

ARE THERE ANY CONVICTIONS THAT WILL AUTOMATICALLY BAN ME FROM RECONNECTING WITH MY CHILD OR GRANDCHILD IN FAMILY COURT?

Yes. As stated on PG. 726 your criminal record can be one of many factors a family court judge will consider in deciding what is in the "best interest of the child."

[2384] CAL. FAM. CODE § 3048.
[2385] See CAL. FAM. CODE §§ 3020(b), 3100(a) ("[T]he court shall grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child.") (emphasis added). See also, e.g., Punsly v. Ho, 87 Cal. App. 4th 1099, 1109 (2001) ("[In determining the child's best interest,] a presumption exists that fit parents act in the best interests of their children.").
[2386] CAL. FAM. CODE § 3104(b).
[2387] CAL. FAM. CODE § 3104(1)(a)
[2388] CAL. FAM. CODE § 3104(a)(2)
[2389] CAL. FAM. CODE § 3103-04.
[2390] CAL. FAM. CODE § 3105(b).
[2391] Cal. Fam. Code § 3102(c).



For some conviction offenses, the law will *automatically ban you* from reconnecting with a child or grandchild. For other convictions and criminal history that *do not completely prevent you* from having custody or visitation with your child, a family court judge will look at this history as one factor of many in deciding what custody and/or visitation plan is in the "best interest of the child." For example, if you have past convictions for child abuse, first-degree murder of the child's other parent, or being a 290-sex offender registrant where the victim was a minor, a judge is unlikely to grant full custody or unsupervised visitation. See the chart below, and learn more about how a criminal record will be a factor in a judge's decision regarding your custody/visitation rights, see PG. 725.

HOW DIFFERENT CONVICTIONS WILL AFFECT YOUR CUSTODY & VISITATION RIGHTS	
CONVICTION OFFENSE	**HOW WILL THIS AFFECT MY CHANCES OF GETTING CUSTODY OR VISITATION?**
Rape that led to Child's Conception	Judges will not allow someone who has been convicted of rape to have any custody or visitation with a child who was conceived from that rape.[2392]
Domestic Violence	Judges are hesitant to give custody to someone who has engaged in domestic violence, and will consider any history of domestic abuse against your child, the other parent, or a partner.[2393]
Other Convictions	Judges usually will not grant *custody* or *unsupervised visitation* in the following circumstances, *unless* the s/he finds that there is no risk of harm to your child: • If you have a conviction for certain child abuse offenses;[2394] • If you have a conviction for first-degree murder of the child's other parent; and/or • If you are a 290-sex offender registrant for an offense where the victim was a minor (under 18), or if you live with someone else who is a 290-sex offender registrant for an offense where the victim was a minor (under 18).[2395]

WHAT CAN I SHOW THE FAMILY COURT JUDGE THAT CUSTODY OR VISITATION WITH ME IS IN THE "BEST INTEREST OF THE CHILD"?

When making a *case plan* to present to the judge in family court to increase your custody or visitation rights, here are some suggestions of ways you can show the judge that custody or visitation are in the **"best interest of the child"** (note: learn more about the "best interest of the child" legal standard on PG. 735):

- **Write down ALL of your efforts to see your child or grandchild and keep the document in a safe place in case you go to court.** By recording the date and times you called can help show to the court that you have taken the process of connecting with your child/grandchild seriously. This may help you if the child's caregiver has been difficult in allowing you to visit.
- **Stay in contact with your child/grandchild.** Whether you are incarcerated or not, try to stay a parental figure as much as you can by remembering dates important to your child and asking your child's caregiver or others about the child.
- **Start slowly with visits.** If you and the other parent (or caregiver) feel better about your reconnecting with your child slowly, you might start with short visits in the other parent's (or caregiver's) home. Then over time, if you build a record of positive visits, you can discuss making your visits longer and more frequent.
- **You can make other requests of the other parent (or caregiver), in addition to visits.** You can ask to call and write to your child, to receive photos and report cards, to stay updated on school progress and health issues, and to be asked about important decisions.
- **Keep written records of everything.** Put any agreements in writing, and always keep an extra copy safe. As your visits continue, keep written records of how things are going.

[2392] CAL. FAM. CODE § 3030(b). The law is very strict in this instance and does not permit even supervised or conditional visitation.
[2393] CAL. FAM. CODE §§ 3011(b), 3020(a), 3031, 3044. The judge will also consider any restraining or protective orders against you. Nonetheless, you may still be able to get custody by showing that you have completed all court-ordered treatment and/or behavioral programs (e.g., batterer's treatment program, parenting classes, anger management, drug or alcohol treatment, or conditions of probation or parole); complied with all parole/probation/supervision requirements; complied with any restraining or protective orders against you; have not committed any further domestic violence; and that custody would be in your child's best interest. CAL. FAM. CODE § 3044(b).
[2394] This applies to child abuse convictions under CAL. PENAL CODE §§ 273a, 273d, or 647.
[2395] CAL. FAM. CODE § 3030; see also CAL. PENAL CODE § 290. For child abuse convictions and registered sex offender registrants, the judge must find that there is "no significant risk to the child." § 3030(a). For first-degree murder of the other parent, the judge must find that there is "no risk to the child's health, safety and welfare." § 3030(c). In both cases, the judge must state his/her reasons in writing or on the record. However, the judge may still permit supervised visitation in these cases.

NOTE: Child Protective Services (CPS) creates a **case plan** when it gets involved in a case regarding a child. The case plan sets out the steps you must take to get your child back. For example, a case plan could require you to attend parenting or counseling classes, participate in substance abuse treatment, and/or visit with your child.

WHAT CAN I DO TO SHOW MITIGATING CIRCUMSTANCES RELATED TO MY CRIMINAL RECORD?

You can show the judge anything that indicates that giving you custody or visitation will be in the best interests of your child. You can show the judge things like: certificates earned during incarceration, letters to and from your child, letters of support from family and friends, documents that show attendance in self-help groups, proof of employment.[2396]

WHAT ARE ALTERNATIVES TO RECONNECTING WITH MY CHILD/GRANDCHILD WITHOUT GOING TO FAMILY COURT?

Below we describe other ways you can reconnect with your child without going to family court:

- **Informal Custody or Visitation Plan:** Parents and caregivers can make their own arrangements for custody and visitation without going to court. But, if the parents or caregivers can no longer agree on an arrangement for the care of the child then one or both of the parents or caregivers will have to go to court to ask a judge for a formal custody or visitation plan. This formal plan will be binding and enforceable as a court order.[2397]
- **Mediation:** Before granting or changing custody or visitation for your child, the judge will hold a hearing. The judge may require you and the other parent to attend mediation.[2398] Mediation is an alternative dispute resolution (known as ADR) method to help people resolve their disputes without having to spend time and money going to court. In mediation, the parents or caregivers have the help of an expert (a mediator) in resolving these disagreements. The goals of mediation are to:
  - Help you make a parenting plan that is in the best interest of your children.
  - Help you make a parenting plan that lets your children spend time with both parents.
  - Help you learn ways to deal with anger or resentment.[2399]
  - Mediation can be voluntary (by choice) or ordered (required) by the court. For more information on mediation in family court, see Appendix B (and for more information, see Form FL-314-INFO, "Child Custody Information Sheet – Child Custody Mediation," available online at: http://www.courts.ca.gov/documents/fl314info.pdf).

FREE RESOURCES ON CUSTODY & VISITATION

For information on custody and visitation, check out the following resources:

- IMPORTANT! For ALL family-related legal issues, the Family Law/Self-Help Facilitator who works at your county's local family court can help you fill out and file your papers. See Appendix A, PG. 797, to find your local Family Law Facilitator.
- Custody & Parenting Time (Visitation), by the Judicial Council of California: http://www.courts.ca.gov/selfhelp-custody.htm
- Child Custody and Visiting Rights Manual for Incarcerated Parents, by Legal Services for Prisoners with Children (LSPC): http://www.prisonerswithchildren.org/wp-content/uploads/2013/08/Incarcerated-parents-version-12.11.12.pdf
- Incarcerated Parents Manual, by LSPC: http://www.prisonerswithchildren.org/wp-content/uploads/2015/03/IPM-final-2-12-2015.pdf
- Manual for Grandparent-Relative Caregivers and Their Advocates, by LSPC: http://www.prisonerswithchildren.org/wp-content/uploads/2013/01/Manual-for-Grandparent-Relative-Caregivers.pdf
- Bill of Rights for Incarcerated Parents, by LSPC: http://www.prisonerswithchildren.org/wp-content/uploads/2012/05/Incarcerated-Parents-Brochure-22.pdf
- Bill of Rights for Children of Incarcerated Parents, by the San Francisco Children of Incarcerated Parents Partnership—http://www.sfcipp.org/index.html

For grandparents, check out the following resources:

- Manual for Grandparent-Relative Caregivers and Their Advocates, Third Edition, Legal Services for Prisoners with Children, http://dredf.org/wp-content/uploads/2012/09/Manual-for-Grandparents-Caregivers_2002.pdf, by Ellen Barry, River Ginchild-Abeje, Cassie Pierson, Lucy Quacinella

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[2396] Legal Services for Prisoners with Children, Child Custody and Visitation Rights Manual For Recently Released Parents (Nov. 2012), available at http://www.prisonerswithchildren.org/wp-content/uploads/2012/12/Recently-released-parents version-12.11.12.pdf
[2397] See Judicial Council Of Cal., Basics of Custody and Visitation Orders, http://www.courts.ca.gov/17975.htm.
[2398] Child custody mediation gives parents a chance to resolve disagreements about care and custody for their children, with the help of an expert (a mediator). The goal of mediation is to develop a parenting plan that is in your child's best interest, and that allows your child to spend time with both parents (or caregivers). Child custody mediators are available for free through Family Court Services at most local courts. CAL. FAM. CODE § 3160 et seq.
[2399] Cal. Fam. Code § 3161.

- Handbook for Grandparents and Other Relatives Raising Children, http://dredf.org/wp-content/uploads/2012/09/Manual-for-Grandparents-Caregivers_2002.pdf

IMPORTANT REMINDER: If you have a restraining order or no-contact against you of any kind, make sure you follow the conditions of that order BEFORE you attempt to contact your child's caregiver or other parents to make sure you do not violate the order! If you are UNSURE if you have an order against you, see PG. 728 on how to find out if there is an order against you and what you can and cannot do.

IX. PROBATE COURT GUARDIANSHIPS

WHAT WILL I LEARN ABOUT PROBATE COURT?

- **What probate court is.**
- **Why you would need to go to probate court to reconnect with your child or grandchild, and why this is especially important for grandparents**
- **Your rights and responsibilities as a child's legal guardian.**
- **The difference between a guardianship, adoption, and foster care.**
- **How to end a guardianship to get your parental rights back in reentry.**
- **How a judge's decisions in probate court can affect your rights as a parent.**
- **Your rights as a parent if you have been incarcerated and someone else is the guardian of your child.**
- **How and why you would go to probate court to become the guardian of someone else's child, and how going to probate court could help you financially to take care of someone else's child.**
- **How a probate court judge will decide if you should be the guardian of someone else's child.**
- **How your criminal record may affect your chances of being appointed as the guardian for someone else's child.**
- **How your criminal record may affect your chances of being appointed as the guardian or conservator for an elderly or disabled person.**
- **How you can show a judge in probate court that you being appointed the guardian is in the "best interest of the child."**
- **Alternatives to becoming a guardian through the probate court.**

This section goes into TWO DIFFERENT SCENARIOS about probate guardianships:

1. If you were formerly incarcerated and now want to END a probate guardianship set up for your child *by someone else* while you were away.
2. If you were formerly incarcerated and want to BECOME the probate guardian of someone else's child, and have questions about how your record will impact your ability to do so.

Note: A parent would never become the guardian for his or her own child—only a non-parent becomes a "guardian" for someone else's child.[2400]

*If **Child Protective Service (CPS)** is involved in the child's case, you probably have to go to juvenile dependency court. See PG. 755 to learn more.*

WHAT IS PROBATE COURT?

Probate court makes decisions in *probate guardianship cases*. The probate court judge decides whether or not to appoint a non-parent as a child's guardian, and when (if ever) to end a guardianship.

WHY WOULD I HAVE TO GO TO PROBATE COURT TO RECONNECT WITH MY CHILD OR GRANDCHILD?

People go to probate court seeking to become a child's legal guardian and must file a "petition" (a legal request) to do so.

In reentry, you might become involved in a probate case to:

- Become a guardian (non-parents only);

[2400] CAL. PROB. CODE § 1514(b)(2).



- End a guardianship set up while you were incarcerated or away for other reasons (parents only, who are looking to get their parental rights *back*); OR
- Support someone else becoming a guardian for your child (parents only).

To *become a guardian*, you have to open a case in probate court. But to *end a guardianship or support someone else becoming your child's guardian*, you will have to JOIN his or her open probate court case.

A Special Note for Grandparents: This information is very important for grandparents because probate court will be the court you will want to file a "petition" if there is no ongoing case involving your grandchild and you want to become his or her guardian. Remember! Grandparents' don't have automatic rights to care for a grandchild (learn more about your rights on PG. 727.

CHART: HOW IS GUARDIANSHIP DIFFERENT THAN ADOPTION OR FOSTER CARE?

THE CHART BELOW EXPLAINS THE DIFFERENCES BETWEEN GUARDIANSHIP, ADOPTION, AND FOSTER CARE.

GUARDIANSHIP	ADOPTION	FOSTER CARE:
• A guardianship is awarded when: • Parents still have parental rights. They can ask for reasonable contact with the child. • The judge in court can end a guardianship if the parents become able to take care of the child. • Guardians can be supervised by the court.	• An adoption is awarded when: • The parents' rights are permanently ended. • The legal relationship with the adoptive parents is permanent and is exactly the same as a birth family. • An adopted child inherits from his or her adoptive parents, just as a birth child would. • Adoptive families are not supervised by the court.	• Foster case happens when: • The parents' rights are temporarily transferred to the state but parents may be able to see the child if CPS grants permission. • A judge can end a foster care placement if CPS determines that the parent(s) can take care of the child or a relative/caregiver gets guardianship or adopts the child. • Foster parents are completely supervised and licensed by the state.

SCENARIO 1: RECONNECTING WITH YOUR CHILD IN PROBATE COURT

WHY WOULD I GO TO PROBATE COURT TO END A GUARDIANSHIP?

You would go to probate court to end a guardianship if someone else (other than the child's parents) was given guardianship of your child while you were incarcerated. If a judge in probate court formally created the guardianship, then you have to go to probate court to end it.

IF I HAVE BEEN INCARCERATED AND SOMEONE ELSE IS THE GUARDIAN OF MY CHILD, WHAT ARE MY LEGAL RIGHTS AS A PARENT?

Guardianship does NOT end your parental rights; it puts them on hold while the guardian has the child.[2401] This allows the guardian(s) to make all the decisions about caring for the child that a parent would make, without permanently cutting off the parents' rights to ask for custody of their child back in the future.[2402]

Parent's Rights: The child's legal or biological parents still have certain *rights* for their child during the guardianship:

- The children in a guardianship are still considered legally and biologically "related" to their parents (the parents' rights are not terminated);
- The judge or the guardian of the child can allow the parents or other relatives to visit with the children in a guardianship;[2403]
- When the judge appoints a guardian to have custody of a child, the judge may also give visitation rights to the child's parent(s) and/or sibling(s) to visit the child.
  - If the judge orders visitation, the child's guardian must allow these visits to take place.

[2401] By contrast, adoption does terminate (end) the parental rights of the child's legal or biological parents, and also creates a permanent parent-child relationship between the child and his or her adoptive parent. See CAL. FAM. CODE § 7505(a) (cessation of parental authority upon appointment of guardian); CAL. PROB. CODE § 2351(a) (custody rights of guardian); CAL. WELF. & INST. CODE § 366.26 (distinguishing between termination of parental rights and guardianship proceedings; contrast adoption, which terminates parental rights, with guardianship, which does not); In re Guardianship of Ann S., 45 Cal. 4th 1110, 1124 (2009) (probate guardianship suspends parental rights).

[2402] CAL. PROB. CODE § 1500 et seq. The guardian is responsible for the child's care, including the child's: food, clothing and shelter; safety and protection; physical and emotional growth; medical and dental care; education and any special needs. The guardian is also be responsible for supervision of the child, and may be liable for any intentional damage the child may cause.

[2403] California Courts, Guardianship, http://www.courts.ca.gov/selfhelp-guardianship.htm.



- If there is no court order for visitation, the guardian has the right to decide whether the child may visit with his/her parent(s) or other relatives. So if you don't have a court order and the guardian is not letting you see your child, you might need to go to Probate Court to ask the judge for visitation.
- *Please Note:* You will need to ask for visitation from *the same probate court* that appointed your child's current guardian, which may be in a different county from where you live. You will also need to use that county's own specific probate court forms to request visitation.[2404]

Parent's Responsibilities:

The child's legal or biological parents also still have certain *responsibilities* for their child during the guardianship. Parents must continue to financially support their children in a guardianship (including paying child support if it's ordered – read more about child support on PG. 778. Also, children in a guardianship can inherit money or get Social Security benefits from their parents.[2405] If you are currently or about to become incarcerated and would like to learn how to pause your child support payments, see PG. 780 in the "Child Support" section.

HOW CAN A JUDGE'S DECISION IN PROBATE COURT AFFECT MY RIGHTS AS A PARENT?

If a judge in probate court decides not to end the guardianship then you will not be able to get legal custody of your child until the guardianship ends. If the judge in probate court does terminate the guardianship, you will have legal custody of your child.

HOW WILL A JUDGE IN PROBATE COURT DECIDE IF I GET CUSTODY OR VISITATION WITH MY CHILD?

The judge will make a decision based on what is in the best interest of the child. See PG. 735 for more information on what factors a judge will look at when deciding what is in the best interest of the child.

ARE THERE CONVICTIONS THAT WILL AUTOMATICALLY BAN ME FROM RECONNECTING WITH MY CHILD IN PROBATE COURT?

Yes, there are certain convictions that will automatically ban you from reconnecting with your child. See the chart on PG. 726 for more information.

WHAT CAN I DO TO SHOW THE PROBATE COURT JUDGE THAT CUSTODY OR VISITATION WITH ME IS IN THE "BEST INTEREST OF THE CHILD"?

It can help to clearly explain the things that make you a positive person in the child's life. You can emphasize your ability to care for the child, the strength of your relationship with the child, the stability you can bring to the child's life, and why it is best for the child to live or visit with you. If possible, you should also talk to a lawyer. To find a legal aid organization near you, see Appendix A, PG. 797, for places that may offer help.

WHAT CAN I DO TO REDUCE THE WEIGHT THE JUDGE GIVES MY CRIMINAL RECORD?

As stated in the family court section on PG. 747, You can show the judge anything that indicates that giving you custody or visitation will be in the best interests of your child. You can show the judge things like: certificates earned during incarceration, letters to and from your child, letters of support from family and friends, documents that show attendance in self-help groups, proof of employment.[2406] However, if you have a conviction that automatically bans you from getting custody or visitation with your child, then mitigating evidence will not be considered. See PG. 726 for a list of convictions that will automatically bar you from getting custody or visitation.

SCENARIO 2: BECOMING THE PROBATE GUARDIAN OF SOMEONE ELSE'S CHILD WHEN YOU HAVE A RECORD

WHAT IS A LEGAL GUARDIAN?

As a legal guardian, you are responsible for *caring for* and *making decisions* for the child, including:

1) Where the child lives;
2) Education;
3) Health care;
4) Social services;

[2404] CAL. FAM. CODE § 3100. See JUDICIAL COUNCIL OF CAL, Duties of a Guardian, http://www.courts.ca.gov/1211.htm (2016).
[2405] California Courts, Juvenile Court Guardianship, http://www.courts.ca.gov/1206.htm
[2406] Legal Services for Prisoners with Children, "Child Custody and Visitation Rights Manual For Recently Released Parents" (Nov. 2012), available at http://www.prisonerswithchildren.org/wp-content/uploads/2012/12/Recently-released-parents version-12.11.12.pdf

5) Financial support and/or public benefits;
6) Supervision and misconduct;
7) Driver license; military service; and marriage;
8) Any other responsibilities that the judge orders. [2407]

Guardianship may look different depending on what court you are in. This section focuses on guardianships through *probate court*. To learn what guardianship looks like through a *juvenile dependency court*, visit PG. 755.

WHY WOULD I GO TO PROBATE COURT TO BECOME THE GUARDIAN OF SOMEONE ELSE'S CHILD?

Sometimes a parent cannot take care of a child. Typical reasons include:

- Serious physical or mental illness;
- Military service and have to go overseas;
- In-patient rehabilitative treatment;
- Incarceration;
- Drug or alcohol abuse problem;
- History of being abusive; or
- Cannot take care of their child for some other reason.

A legal guardian can take care of a child when a parent is unable to until the parent is able to take care of the child again or a more permanent situation is made such as adoption.

WHO CAN BE A LEGAL GUARDIAN?

Anyone, so long as a judge in probate court approves them. You would go to probate court to become the guardian of someone else's child if you are a close friend or relative of the child and want to help take care of the child because the parent cannot. You can take care of the child until the parent is able to again or you can help arrange a more permanent situation such as adoption.[2408]

Remember – You would *not* go to probate court to BECOME a guardian if you are the child's parent. In general, the child's legal or biological parent *cannot* be appointed as the child's guardian – only someone who is *not* the parent can be appointed guardian. If you are the child's parent and want to get custody or visitation, you will generally need to go to family court (PG. 744) or juvenile dependency court if there is a CPS case involving your child.[2409]

To give you custody of someone else's child through a probate guardianship, a probate court judge will look at the following factors:

1) Whether the guardianship is in the "*best interest of the child*." In all child custody and visitation cases, including ones for probate guardianship, the judge will consider such factors as:
    a. The health and safety of the child,
    b. Any history of abuse by the parent or person seeking custody,
    c. Habitual or continued substance abuse by the parent,
    d. The criminal record of the non-parent petitioning for guardianship, AND
    e. Whether the child will be raised in stable and loving environment.[2410]
2) Whether giving custody to someone other than the child's parent(s) would *harm the child*.[2411] The goal is to make sure the child is raised in a safe, stable, and loving environment.[2412]

REMEMBER! Your criminal record is *one factor* in the judge's decision in allowing someone to be the guardian of a child. For more information on how your criminal record will impact your ability to reconnect with your child, see PG. 725 ("What does a judge look at when making a decision about . . . my child/grandchild?").

[2407] For more information about the duties of a guardian, read the Duties of Guardian form (GC-248), available on the California Court's website at http://www.courts.ca.gov/documents/gc248.pdf
[2408] See Judicial Council of Cal., Guardianship (2016), http://www.courts.ca.gov/selfhelp-guardianship.htm.
[2409] CAL. PROB. CODE § 1514(b)(2).
[2410] Cal. Fam. Code § 3041
[2411] Cal. Fam. Code § 3041
[2412] Cal. Prob. Code § 1514.

HOW CAN MY CRIMINAL RECORD AFFECT MY CHANCES OF BEING APPOINTED AS A GUARDIAN IN PROBATE COURT FOR SOMEONE ELSE'S CHILD?

There are many aspects of your record that could affect your ability to become the legal guardian of someone else's child in probate court. We explain what the judge will look at about your record, including what positives can help weigh against your criminal history. *In probate court, the judge will look at the following:*

- **PAST CONVICTIONS:** The judge can consider all of your convictions when deciding whether to appoint you as a guardian. But certain types of convictions are more likely than others to affect your chances of being appointed as a guardian.[2413] Although the judge will consider all of your past convictions, the convictions that are viewed most negatively are child abuse and/or domestic violence; registered sex offenses where the victim was a child; and rape or murder of the child's other parent.[2414]
- **RESTRAINING ORDERS:** The judge will also consider any restraining or protective orders against you.[2415]
- **CPS HISTORY:** The judge will look at any history with Child Protective Services (CPS).[2416]
- **DRUG OR ALCOHOL ABUSE:** Finally, a judge will consider any history of drug or alcohol abuse (whether or not you have any convictions that were related to that drug or alcohol abuse) to decide if it is in the child's best interest to make you his/her guardian.[2417] The judge may require you to do drug or alcohol tests, or make an order that requires you NOT to use any drugs or alcohol. However, the probate court judge cannot deny your guardianship petition based only on the results of a positive drug/alcohol test—a dirty test is only one factor of many when deciding whether the guardianship would be in the child's best interest.[2418]
- **NEW CONVICTIONS:** If you've been appointed the child's legal guardian, the judge can remove you as guardian (meaning, *end* your guardianship rights) if you are convicted of a felony, regardless of whether the underlying offense happened before or after you became the child's legal guardian in court.[2419]

YOU CAN ALSO PRESENT POSITIVES TO THE PROBATE COURT JUDGE—see the next question!

WHAT CAN I DO TO SHOW THE PROBATE COURT JUDGE THAT CUSTODY OR VISITATION WITH ME IS IN THE "BEST INTEREST OF THE CHILD"?

It can help to clearly explain the things that make you a positive person in the child's life. You can emphasize your ability to care for the child, the strength of your relationship with the child, the stability you can bring to the child's life, and why it is best for the child to live or visit with you. If possible, talk to a lawyer. To find a free legal aid organization in your area, see Appendix A, PG. 797, for places that may be able to help.

IMPORTANT! If you are looking for information on guardianship in juvenile dependency court cases, where Child Protective Services (CPS) is involved, go to PG. 762 These two courts (probate vs. dependency) have different rules for deciding who can become a guardian and how their judges will look at criminal records.

WHAT ARE SOME ALTERNATIVES TO BECOMING A GUARDIAN THROUGH THE PROBATE COURT?

A guardianship is not always necessary; there are alternatives to a legal guardianship that don't require going through the probate court! Here are some of your other options:

Option 1: Power of Attorney for a Minor Child:

- A caregiver can sign a Power of Attorney for a Minor Child in front of **a notary** that gives you physical "custody" of the child and lets you make decisions about the child's education and medical care. Learn more about notary services on PG. 32.

WHAT IS A NOTARY?

A notary is a person who can perform certain legal procedures or create documents that are recognized by the court. A notary will charge you for their services. To find affordable notary services, contact your local legal aid office to see if they have a notary on site and how much it would cost.

[2413] See Judicial Council of Cal., Alternatives to Guardianship, http://www.courts.ca.gov/1210.htm.
[2414] Guardianship cases in probate court are governed by the same rules as custody cases in Family Court. CAL. PROB. CODE § 1514(b) (appointment of guardian governed by standards of Family Code §§ 3020 et seq. and 3040 et seq.); CAL. FAM. CODE §§ 3044 (presumption against persons perpetrating domestic violence); 3030 (sexual offenses against a minor; rape from which child was conceived; first degree murder of child's other parent)
[2415] Cal. Fam. Code § 3031.
[2416] Cal. Fam. Code § 3041.5.
[2417] Cal. Fam. Code § 3041.5.
[2418] CAL. PROB. CODE § 1514(b); CAL. FAM. CODE § 3041.5. The results of the drug/alcohol test will only be used when considering whether you should be the child's guardian (i.e., whether the guardianship is in the child's best interest), and cannot be used for any other purpose, such as criminal prosecution, parole violation, or civil penalties. Moreover, you may request a hearing to challenge the results of a positive test.
[2419] Cal. Prob. Code § 2650(d).

- Make sure you have the child's health insurance information. If you want to add the child to *your* health insurance, you will likely need a court-ordered guardianship (called a "guardianship of the person"), since most insurance companies will require a court order.
- The parents can cancel the Power of Attorney at any time. [2420]

Option 2: Caregiver's Authorization Affidavit:

Get a Caregiver's Authorization Affidavit and instructions online at: http://www.courts.ca.gov/documents/caregiver.pdf.

- If the child will remain in California, the person taking care of the child can complete and sign a Caregiver's Authorization Affidavit.
- If you are a relative of the child, this document allows you to enroll the child in school and make decisions about the child's medical care. If you are not a relative, you will only be able to enroll the child in school and make medical decisions for the child that are *related to school* (like immunizations or physical exams required for school enrollment).
- The Caregiver's Authorization Affidavit is NOT an official court form.
- The parents do not have to sign the Caregiver's Authorization Affidavit.
- The parents can cancel the **Caregiver's Authorization Affidavit** at any time.
- If the child is no longer living with the caregiver, the affidavit is not valid. The caregiver must notify the school and health care provider if the child is no longer living with him or her.
- There are certain things that you will NOT be able to do or you will have a lot of difficulty even if you have this form and a notarized letter. For example, it may be hard for you to get medical insurance for the child unless you are the legal guardian. Most insurance companies will not allow you to add the minor to your insurance unless you have a court order making you the guardian.[2421]

Option 3: Private Agreement with Child's Parents:

This would be an agreement between you and the child's parents. In case you ever have to go to court over the agreement, it's best if a lawyer writes the agreement, and both you and the child's parents sign it.[2422]

HOW COULD THE PROBATE COURT HELP ME FINANCIALLY TAKE CARE OF SOMEONE ELSE'S CHILD?

If you are taking care of someone else's child and want support, you may be able to get financial help as a guardian through child support from the child's parents or government assistance (called "public benefits").[2423] For more information on how to request child support in family court, see PG. 744. There are also some key public benefits programs (run by the government) explained below:

- *CalWorks:* If you are related to the child, you can get CalWorks even if you do not need the money. You can also get CalWorks if you are not related to the child but you need financial help.
- *Foster care payments:* Some guardians can get this. The amount may be more than welfare.
- *Kin-GAP (Kinship Guardianship Assistance Payment Program):* This is for people who are related to a child in a juvenile dependency case. It pays the same amount as foster care payments.
- *SSI (Supplemental Security Income):* If the child has a disability, he/she may be able to get SSI or state disability benefits. You can use this money to take care of the child.
- *Medi-Cal:* Guardians can get this for the child and for themselves if they are financially needy and are related to the child.[2424]

Ask the social worker on your case about what help you can get.

FREE RESOURCES

For more information on probate guardianship, these guides explain the rights and responsibilities of a guardian, and how to petition for guardianship:

- *Guardianship Pamphlet*, by the Judicial Council of California - http://www.courts.ca.gov/documents/gc205.pdf
- *How to Become a Probate Guardian of a Child*,[2425] by the San Francisco Superior Court Probate Department -http://www.courts.ca.gov/partners/documents/Localize-Guardianship.pdf

[2420] Judicial Council of Cal., Juvenile Court Guardianship, http://www.courts.ca.gov/1206.htm#1.
[2421] See Judicial Council of Cal., Alternatives to Guardianship, http://www.courts.ca.gov/1210.htm.
[2422] See Judicial Council of Cal., Alternatives to Guardianship, http://www.courts.ca.gov/1210.htm
[2423] See Judicial Council of Cal., Duties of a Guardian (2016), http://www.courts.ca.gov/1211.htm.
[2424] For all examples of government assistance for guardians see Judicial Council of Cal., Juvenile Court Guardianship, http://www.courts.ca.gov/1206.htm#1.

- *Guardianship of the Person & the Pro Per Guardianship Clinic*, by Public Counsel— http://www.publiccounsel.org/tools/publications/files/0031.pdf
- Court forms for guardianship cases are available on the California Courts' website at http://www.courts.ca.gov/1214.htm
- Contra Costa County: Virtual Self-Help Law Center: http://guardianship.cc-courthelp.org/

CARING FOR ADULTS: BECOMING THE PROBATE CONSERVATOR FOR AN ELDERLY OR DISABLED PERSON WHEN YOU HAVE A RECORD

WHAT IS A CONSERVATORSHIP?

A conservatorship operates much like a legal guardianship (see PG. 750), but instead of being responsible for a child, you are responsible for an adult. The subject of a conservatorship (called the conservatee) is usually an adult who cannot take care of or manage their own affairs, whether due to their age or a mental or physical disability.[2426] Although responsibilities differ depending on the type of conservatorship, if you become the conservator for a loved one, you may be responsible for overseeing the conservatee's:

1) Daily care, including food, clothing, and shelter;
2) Finances, assets, and estate planning (such as drafting a will);
3) Medical care.

HOW DO I BECOME A LOVED ONE'S CONSERVATOR?

Establishing a conservatorship is complex and may require the help of a lawyer with expertise in family, probate, and/or estate law. To get a sense of how probate conservatorships operate in your area, visit the website of your county's Superior Court. It will have information about the procedures you must follow where you live.

CAN I BE A LOVED ONE'S CONSERVATOR IF I HAVE A CRIMINAL RECORD?

Though the law is silent on how a person's criminal record could affect their petition for conservatorship, the Probate Code gives the court discretion to remove an established conservator who has a felony conviction, regardless of whether the conviction occurred before or after their conservatorship began.[2427] The local court rules concerning conservators' criminal records are more restrictive in some areas than others.[2428] If you have been denied appointment or removed as a loved one's conservator due to your criminal record, call Root & Rebound's Reentry Legal Hotline to speak to a lawyer about your options.

FREE RESOURCE

The following guide contains more information on probate conservatorships:

- *Handbook for Conservators*, by the Judicial Council of California – http://www.courts.ca.gov/documents/handbook.pdf

[2425] If you live in San Francisco County, there is a specific local guide, available at http://www.sfsuperiorcourt.org/sites/default/files/pdfs/howtobecomeguardian.pdf.
[2426] Sup. Court of Cal., County of Santa Clara, "About Probate Conservatorships," available at http://www.scscourt.org/self_help/probate/conservatorship/conservatorship_overview.shtml#what.
[2427] CAL. PROB. CODE § 2650(d).
[2428] For example, see Central Cal. Local Court Rule 7.8.7, "Background check/electronic fingerprint scan," requiring local Sherriff's Department to obtain criminal record information for proposed conservators in Madera County. By contrast, Orange County court personnel do not order criminal background checks as part of their investigations of prospective conservators (see http://www.ocgrandjury.org/pdfs/GJProbateCons.pdf p. 2.)

X. JUVENILE DEPENDENCY COURT

WHAT WILL I LEARN ABOUT JUVENILE DEPENDENCY COURT?

- **What juvenile dependency court is.**
- **Why CPS would start a case in juvenile dependency court.**
- **How a judge in juvenile dependency court decides where to place a child.**
- **Why you would go through juvenile dependency court to reconnect with a child.**
- **How a juvenile dependency court judge's decisions could affect your rights as a parent.**
- **Which convictions may prevent you from reconnecting with your child in dependency court.**
- **What evidence you could show a dependency court judge that custody or visitation should be given to you.**
- **How to ask for greater custody or visitation rights.**
- **What foster care is and how your criminal record could affect your ability to become a foster parent.**
- **What you can do to reconnect with you child if they were placed in foster care while you were incarcerated.**
- **What a juvenile court guardianship is and how your criminal record could affect your ability to become a child's guardian through dependency court.**

WHAT IS JUVENILE DEPENDENCY COURT?

The local county Child Protective Services (CPS) opens a case in juvenile dependency court when a child's parent(s) or caregivers are suspected of *abuse* or *neglect*.[2429]

When would CPS get involved?

CPS gets involved in a child's life when a parent has been violent with, abused, or neglected a child, or if the child tests positive for drugs at birth.[2430] When CPS gets involved, they may open a case in juvenile dependency court.[2431] Whether or not they open a case in dependency court depends on if CPS removed the child from his or her home. Once CPS removes the child, a case is started in juvenile dependency court.[2432] In most cases, the parent(s) will have the opportunity to get their child back if they meet certain requirements.[2433]

What is considered child abuse?

Under the law, abuse may be physical harm, sexual abuse, cruel or unreasonable punishment, using drugs while pregnant, and/or neglect of a child.[2434]

HOW IS *JUVENILE DEPENDENCY COURT* DIFFERENT FROM *JUVENILE DELINQUENCY COURT*?

Juvenile delinquency courts are for cases where a child is charged with committing a crime. Juvenile dependency courts, on the other hand, are for cases where a parent or caregiver is suspected of abusing or neglecting a child. Sometimes, children are involved in both of these courts at the same time—if they are *both* being charge with a crime *and* there is a case of suspected child abuse or neglect by their parents. If your child is being charged with a crime, see the next section on juvenile delinquency on PG. 765.

Can CPS remove my child from my care just because I have a criminal record?

No. Just having a criminal record is not enough for Child Protective Services (CPS) or a judge to take your child away—there has to be some connection between your conviction and a risk of harm to your child. For example, a conviction for child abuse, certain violent felonies, or using drug or alcohol in a way that put your child at risk could cause CPS or the judge to remove your child from your care.[2435]

[2429] The law's definition of "abuse and neglect" includes physical abuse, sexual abuse, causing the child to have emotional distress, and leaving your child unattended. CAL. WELF. & INST. CODE § 300(a)-(j).
[2430] CAL. PENAL CODE § 11164-11174.3.
[2431] When someone makes a report about your child's safety to the police or welfare department, the police or a social worker must investigate to decide whether the dependency court should get involved to protect your child. This might happen because someone suspected that your child wasn't well taken care of, was abused or neglected, or was left with someone who didn't take good care of him/her. Under the law, "child abuse" includes: physical harm done on purpose to a child; sexual abuse of a child, including assault and exploitation; cruel or unreasonable punishment of a child; and/or neglect of a child—failure to provide necessary care, food, shelter, etc. CAL. WELF. & INST. CODE § 300 ("dependent child" defined).
[2432] Judicial Council of Cal., Guide to Dependency Court for Parents (2016), http://www.courts.ca.gov/1205.htm.
[2433] See Judicial Council of Cal., Guide to Dependency Court for Parents (2016), http://www.courts.ca.gov/1205.htm.
[2434] CAL. PENAL CODE §§ 11164-11174.3.
[2435] See, e.g., CAL. WELF. & INST. CODE § 366.21(e) (at status review hearing, court must consider parent's criminal record "to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and



WHY WOULD I GO TO JUVENILE DEPENDENCY COURT?

You would go to Juvenile Dependency Court because of one of the following situations:

- CPS is involved in investigating an allegation that your child was abused or neglected; or
- You are, or want to be, the child's foster parent.

SCENARIO 1: RECONNECTING WITH YOUR CHILD(REN) IN DEPENDENCY COURT

WHY WOULD I GO TO JUVENILE DEPENDENCY COURT TO RECONNECT WITH MY CHILD?

You would go to juvenile dependency court to reconnect with your child or grandchild if CPS is involved in investigating an allegation of child abuse or neglect. As a parent, that could mean your child was taken away from you or the child's caregiver. You would attend juvenile court proceedings to try and resolve the allegations of abuse and neglect.[2436]

A grandparent could be involved either because the grandparent is accused of abuse or neglect or the grandparent wants to become the child's guardian while the investigation by CPS continues.[2437]

HOW CAN A JUDGE'S DECISION IN JUVENILE DEPENDENCY COURT AFFECT MY RIGHTS AS A *PARENT*?

A judge's decision could either take away or limit your rights as a parent. Unless the case is dismissed, meaning the allegations of child abuse or neglect are found to be untrue, your parental rights will be affected in dependency court. Keep reading for more information on different kinds of judge's orders. If your child is part of a CPS case in juvenile dependency court, the judge could make orders that:

1. Place your child with relatives, foster parents, or a court-appointed legal guardian; and/or
2. Give you visitation rights; and/or
3. Give you a case plan that requires you to attending parenting classes, counseling, or other programs, and/or
4. End your parental rights if you are unable to successfully complete your case plan within 18 months.[2438]

Just like any court's decisions about the custody of a child, a dependency court judge must decide what is in the "best interest of the child." This means the judge will make decisions that affect your parental rights to care for, live with, see, and make decisions for your child—and can even reduce or take away some of these rights completely. Most of the time, you will have a year to complete your requirements if you keep making progress. But if your child is under three years old, you will have only six months to show that you are committed to finishing up everything.[2439]

Below we briefly describe some of the caregiving arrangements that a judge can order through a case in juvenile dependency court:

1) **Long-Term Guardianship:** This is where the court places the child with a relative if family reunification services are unsuccessful. The child will stay with the guardian until he or she is 18.[2440] See more on PG. 750. Guardianships can also be set up through probate court if CPS is *not* involved. See more on Guardianships on PG. 750.
2) **Foster case:** This is where a child is placed with one or two "foster parents"—people who the State has licensed, trained and approved to care for children in their home. However, foster parents have fewer rights than legal guardians or biological parents, so the judge and Child Protective Services (CPS) will continue to be legally responsible for making decisions about the child.
3) See more on PG. 761.
4) **De Facto Parent:** This is where a non-parent who has been taking care of a child can get parental legal rights IF ALL OF THE FOLLOWING ARE TRUE:
    a. The child is a "dependent" or "ward" of the juvenile dependency court (meaning the dependency court has an open case about that child); AND

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control regarding his or her child;" parent's participation in substance abuse treatment is not prima facie evidence of detriment to child). Cf. CAL. WELF. & INST. CODE § 361.5(b)-(c) (grounds for denial of reunification services).
[2436] See Judicial Council of Cal., Guide to Dependency Court for Parents, http://www.courts.ca.gov/1205.htm (2016).
[2437] See Judicial Council of Cal., Guide to Dependency Court for Caregivers, http://www.courts.ca.gov/29206.htm (2016).
[2438] California Courts, The Jurisdiction/Disposition Hearing, http://www.courts.ca.gov/1205.htm
[2439] See Judicial Council of Cal., Guide to Dependency Court for Parents, http://www.courts.ca.gov/1205.htm (2016).
[2440] See SUPERIOR COURT OF CAL., County of San Francisco, Guardianship of Children, http://www.sfsuperiorcourt.org/divisions/probate/guardianship-children, (2016).



b. You are currently or have been taking care of the child every day; AND
c. You have been acting as the child's parent; AND
d. You are meeting or have met the child's needs for food, shelter, clothing, as well as care and affection.[2441]

PLEASE NOTE: No law says exactly what a "de facto parent" needs to do for this arrangement to be approved by a judge in court. Judges make this decision based on other court cases and their own court rules![2442] For more information on "de facto parent" status, see Appendix D, PG. 802.

5) **Adoption:** This is where a non-parent adopts a child because the dependency court has ended the rights of the parents. This is different from a guardianship, which puts parental rights on hold. For more information on adoption, see PG. 767.

To learn more about how a judge makes this decision about where to place a child, see below on PG. 757. For more information on the difference between guardianship, adoption and foster care see PG. 749.

How will a dependency court judge decide where to place a child?

TO PLACE BACK WITH THE PARENT(S): The judge will decide whether or not to let the child return home with the parents if, given the situation presented to the judge by CPS and the parents, it is safe for the child to return home with the parents.[2443] This is a case-by-case analysis.

TO NOT PLACE WITH THE PARENT(S): If the child returning home with one or both parents is *not* an option, then the judge in dependency court will decide where to place a child based on what is in the best interest of that child (learn more about this legal standard "best interest of the child" on PG. 735).

The judge can place the child in a legal guardianship so long as:

1) The parent and child (if old enough to meaningfully comment) agree; AND
2) The judge finds that the guardianship is in the child's best interest; AND
3) The guardian meets the same basic requirements as a guardian has to meet in probate court (see PG. 750) for the requirements for guardians)[2444]—BUT! A guardian in dependency court has to go through criminal background checks as a foster parent.[2445]

However, if the judge decides not to place the child in a legal guardianship or there are no family or friends to ask the judge and CPS to care for the child, then the child will be considered a "dependent" or "ward" of the court and placed in foster care.[2446] Keep reading this section for more information on foster care.

HOW WILL A DEPENDENCY COURT JUDGE DECIDE IF I GET CUSTODY OR VISITATION WITH MY CHILD?

A judge makes a decision on whether or not you get custody or visitation based upon what is in the best interests of the child, including most importantly if permitting the child to live with our visit you will be safe for the child. Your criminal record could prevent you from reuniting with your child in juvenile dependency court if the judge finds that because of you are not able to provide for the child or that it is not in the child's best interest for you to provide for the child.[2447]

[2441] See CAL. RULES OF COURT, Rule 5.502(10); Judicial Council of Cal., Defacto Parents, http://www.courts.ca.gov/1207.htm (2015).
[2442] See CAL. RULES OF COURT, Rule 5.502(10); Judicial Council of Cal., Defacto Parents, http://www.courts.ca.gov/1207.htm (2015).
[2443] See Judicial Council of Cal., Guide to Dependency Court for Parents, http://www.courts.ca.gov/1205.htm (2016). See also CAL. WELF. & INST. Code § 300. (A child will be declared a dependency of the court if "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian.)
[2444] Cal. Welf. & Inst. Code § 360(a).
[2445] In re Summer H. (2006) 139 Cal. App. 4th 1315, 1333–1334 ("the inquiry under section 360 is "not whether the proposed guardian meets licensing requirements imposed on foster placements, but whether a plan for guardianship either developed or approved by the parent is in the child's best interest.").
[2446] "Preferential consideration must be given to a relative's request for placement, meaning that such placements shall be considered and investigated first. Only grandparents and adult aunts, uncles, and siblings are entitled to preferential consideration for placement. (§ 361.3(c).) The preference continues to apply any time the child needs to be again placed after disposition, so long as reunification services continue. (§§ 361.3(a) & (c); 366.26(k); see Cesar V. v. Superior Court (2001) 91 Cal.App.4th 1023.) Although they do not receive preference for placement, nonrelative extended family members are generally treated the same as relative caregivers under the statutes controlling placement. (§ 362.7.)" (Administration Office of the Courts, Center for Families, Children & the Courts, "A Dogbook for Attorneys Representing Children and Parents (2 ed.)" (2007, 2011) (pg. H-96) available at http://www.courts.ca.gov/documents/Dogbook_2Ed_online.pdf.
[2447] See CAL. WELF. & INST. Code § 300. (A child will be declared a dependency of the court if "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian.)



ARE THERE ANY CONVICTIONS THAT WILL AUTOMATICALLY BAN ME FROM RECONNECTING WITH MY CHILD IN DEPENDENCY COURT?

Yes, there are certain convictions that will automatically ban you from reconnecting with your child. See the chart on PG. 726 for more information.

MY PARENTAL RIGHTS WERE TERMINATED WHILE I WAS INCARCERATED. WHAT CAN I DO?

STEP 1: **Speak to an attorney about appealing.** If your parental rights were terminated recently, you may be able to appeal. For example, if you did not get advance notice of a hearing at which you had the right to be present, and the hearing resulted in an unfavorable decision, your absence at the hearing may be grounds for an appeal.[2448] You should speak to an attorney about your particular circumstances to see whether an appeal is an appropriate solution.

STEP 2: **If your child has not been adopted, he or she may be able to file a 388 petition to reinstate your parental rights.** This remedy may be available under two circumstances: if your child hasn't been adopted within three years of the termination of your parental rights, OR, regardless of how much time has passed, if both your child and the social service agency agree that adoption is unlikely. See **Appendix E** - PG. 803 for more information about 388 petitions.

MY CHILD WAS PLACED IN FOSTER CARE WHILE I WAS INCARCERATED. WHAT CAN I DO TO RECONNECT?

As we explained on PG. 761, a child is placed in foster care when Child Protective Services takes custody of a child due to a concern that the child's parents or caregivers are unable, unwilling or unfit to care for the child. The goal of foster care is to reunify with their parent(s) or guardian or find another suitable permanent living arrangement. CPS files a juvenile dependency petition in dependency court when the child is removed from his/her home and placed in a foster home.[2449] You can make sure you are involved in every step of the legal process as your child is placed in foster care.

STEP 3: **First, you should get in contact with Child Protective Services ("CPS") as soon as you are incarcerated and tell them where you are and that you want to be involved as soon as there is a case regarding your child.**

STEP 4: **Second, you have a right to be present and represented by a lawyer at all of the following hearings:**

- Detention Hearing
- Jurisdiction Hearing
- Disposition Hearing
- Status Review Hearing
- Permanent Plan Hearing

Remember! California Penal Code section 2625(d) gives incarcerated parents *the right* to be transported to court for jurisdictional and dispositional hearings in dependency court.[2450] This means you have the right to be physically present at all the hearings involving CPS and your child in dependency court. See PG. 742 for more information about asserting your right to be present at such hearings.

STEP 5: **Third, most important for you will be the disposition hearing, where the court will decide what you need to do to reunify with your child. CPS will write a *case plan* that you must follow if you want to reunify with your child upon your release.. At this hearing you can request that the court order several ways to keep in contact with your child including:**

- Collect phone calls between you and your child on a regular basis
- Visits with your child
- A plan to transport your child for visits
- Counseling for you
- Counseling for your child
- Other services for you or your child

[2448] Manual on Transportation to Court for Hearings Affecting Prisoners' Parental Righs, available at http://www.prisonerswithchildren.org/wp-content/uploads/2013/07/Transportation-to-Court-2013.pdf.
[2449] CAL. WELF. & INST. CODE § 300 (CPS will file a petition in juvenile dependency court if it believes that "there is a substantial risk that the child will suffer serious physical harm or illness by the inability of the parent or legal guardian to provide regular care for the child.").
[2450] CAL. PENAL CODE §2625(d). See also Manual on Transportation to Court for Hearings Affecting Prisoners' Parental Rights, available at http://www.prisonerswithchildren.org/wp-content/uploads/2013/07/Transportation-to-Court-2013.pdf.

- Services for extended family or Family Preservation Services. [2451]

STEP 6: **Finally, the court will be more likely to return your child to you during Status Review Hearings if you:**

- Follow the case plan (reunification requirements)
- Visit your child as often as possible
- Live in a safe place
- Get a job that you can support your family on
- Follow all probation or parole rules.

WHAT CAN I SHOW THE DEPENDENCY COURT JUDGE THAT CUSTODY OR VISITATION WITH ME IS IN THE "BEST INTEREST OF THE CHILD"?

If you are the child's parent and want to reunite with your child, AND your parental rights have NOT yet been ended ("terminated"), you generally have the right to reunite with your child *even if* you have a criminal record (so long as you don't have a conviction that automatically bans contact with your child, see PG. 726 and *even while* you are incarcerated.[2452]

Regardless of your criminal record, you will need to show that reuniting with your child will be ***in your child's best interest*** and ***will not put your child at risk of harm***.

It will help to show the dependency court judge proof of the following:

1) Rehabilitation: Showing evidence that you have treatment for drug or alcohol use or even parenting or counseling courses can help. Before your hearing, you should ask for any paperwork that shows the dates of your treatment or meetings you attended. You may also want to bring letters of support from your counselors.
2) Letters of Support: These can be from case managers, teachers, family, friends, and others who know both you and your child.
3) Proof of Housing and Income: By showing evidence of where you live and proof of where you work can also help. You may also consider showing the court a budget of how you plan to provide for both you and your child financially to show that you have thought and planned to be reunited with your child.
4) Proof that you are successfully complying with all conditions of your probation, parole, or community supervision.[2453]

Other things you can do to show the judge that you are serious about reuniting with your child and are ready to have increased caregiving responsibilities and rights include the following:

1) Visit your child as much as you can; and
2) Address the issues that caused Child Protective Services (CPS) and/or the court to get involved in the first place (for example, work on dealing with substance abuse, anger management, and other issues).

Finally, the judge is more likely to give you *visitation* rights sooner than full *custody* rights, regardless of your criminal record. Under state law, it is generally assumed that it's in a child's best interest to have visits with his/her parent(s); judges are encouraged to give visitation rights to the parent(s), so long as the visits will not be harmful to the child.[2454] To decide whether visitation is in your child's best interest, the judge will look at things like your relationship with your child, whether your child's other parent (or caregiver) is in favor of the visits, whether your child wants to visit with you (depending on the child's age), and how well you and your child get along during those visits—not just whether you have a criminal record.[2455]

IMPORTANT: Remember, you have a LIMITED PERIOD OF TIME to complete your dependency "case plan" requirements and reunite with your child. If your child's dependency court case started or was happening while you were incarcerated, the clock may have already started to run during your time inside. This means you will have to work extra hard to complete all of your case plan requirements and show the judge that you're ready to care for your child again once you get out (before your time runs out).[2456]

[2451] Cal. Welf. & Inst. Code § 361.5(e)(1)
[2452] If your child's juvenile dependency case is still going on, CPS is supposed to make "reasonable efforts" to reunite you with your child, and the judge must offer you reunification services. CAL. WELF. & INST. CODE §§ 361.5(a) (general right to reunification services), 361.5(e) (right to reasonable reunification services while incarcerated).
[2453] See, e.g., CAL. WELF. & INST. CODE 366.22(a) (return of child to parent or guardian at permanency review hearing).
[2454] CAL. WELF. & INST. CODE § 362.1. The judge may order you to have supervised visits if it has concerns about your child's wellbeing during the visits. See PG. 780 for more information about supervised visitation.
[2455] In re Emmanuel R., 94 Cal. App. 4th 452, 464-65 (2001) (upholding trial court's finding that dependent child's visitation with father was in child's best interest, notwithstanding father's "'extensive' criminal record).
[2456] Remember, you have the right to reasonable reunification services even while you are incarcerated (with certain exceptions). You should take advantage of any services and/or other programing that are available, and make every effort to stay in touch with your

WHAT CAN I DO TO SHOW MITIGATING CIRCUMSTANCES AND REHABILITATIVE EVIDENCE RELATED TO MY CRIMINAL RECORD?

As stated in the family court section on PG. 747, You can show the judge anything that indicates that giving you custody or visitation will be in the best interests of your child. You can show the judge things like: certificates earned during incarceration, letters to and from your child, letters of support from family and friends, documents that show attendance in self-help groups, proof of employment.[2457] However, if you have a conviction that automatically bans you from getting custody or visitation with your child, then mitigating evidence will not be considered. See PG. 726 for a list of convictions that will automatically bar you from getting custody or visitation.

REQUESTING A CHANGE TO A DEPENDENCY COURT ORDER

IF THERE IS *ALREADY* AN ORDER ABOUT MY CHILD FROM A JUDGE IN JUVENILE DEPENDENCY COURT, HOW DO I ASK FOR GREATER CUSTODY OR VISITATION RIGHTS?

As part of an earlier court order, a dependency court judge may have: (1) placed your child with relatives or foster parents;[2458] (2) given you visitation rights, and/or; (3) given you a case plan that requires you to attend parenting/counseling classes and do other things to reunify with your children.

If the dependency court judge has made an order giving your child's care to a foster parent or guardian, here are some things you can do to help your chances of getting your child back:

- Visit your child as much as you can, and
- Follow your case plan.

Doing these things will put you in a better position to ask for greater custody or visitation rights from the dependency court judge. If the court sees you have been making positive visits with your child and following your case plan, it may respond more favorably when you *file a **388 petition***—special legal paperwork to change a past dependency court order and ask for greater custody or visitation rights. *Learn more about filing a 388 petition in on Appendix E, PG. 804.*

WHAT IS A 388 PETITION?

Under Welfare and Institutions Code 388, any parent of a dependent child, a dependent child of the juvenile court (with the assistance of an appointed guardian), or other person having interest in a dependent child of the juvenile court may file a 388 petition when there is a change of circumstance or there is new evidence in their case. For more information on 388 petitions, see Appendix F on PG. 803.

➢ IF YOU HAVE A LAWYER:

If the dependency court is actively reviewing your child's case, you can ask a lawyer to help you write the 388 petition on Form JV-180, "Request to Change Court Order."

➢ IF YOU DON'T HAVE A LAWYER, USE FORM JV-180:

You can file a "388 petition" on your own by using Form JV-180. If you need more space to explain your answers, you can attach extra sheets of paper.

1) Fill out your petition and include supportive documents: If you need more space to explain your answers, you can attach extra sheets of paper to your petition. Attach any documents that may strengthen your request, such as: letters from your child asking to see you, copies of letters you sent to your child, a letters or declarations from relatives stating that your child wants to see you, certificates earned, character reference letters from people who support your request, and documentation about your current employment, schooling, or housing situation.
2) Deliver your petition to the court: You can hand-deliver or mail your petition papers to the court. First, make 2 copies of everything. Keep one copy for yourself. Then deliver the original and one copy to the court, or mail them with a self-addressed, stamped envelope enclosed.
3) Wait to see if the judge orders a hearing: Once you deliver the original and a copy of your petition, the court clerk will file the original, stamp the copy, and return the copy to you in person or by mail. Next, the judge will read your petition and decide either (1) to schedule a court hearing for your petition, or (2) deny your petition.

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child, during your sentence. CAL. WELF. & INST. CODE § 361.5(e); see also, e.g., V.C. v. Sup. Ct., 188 Cal. App. 4th 521 (2010) (holding that father's failure to participate in available reunification services while incarcerated justified trial court's decision to terminate reunification services and provided evidence that returning child to father's custody would be detrimental).

[2457] Legal Services for Prisoners with Children, "Child Custody and Visitation Rights Manual For Recently Released Parents" (Nov. 2012), available at http://www.prisonerswithchildren.org/wp-content/uploads/2012/12/Recently-released-parents version-12.11.12.pdf

[2458] Dependency and probate courts can both create guardianships. These are two different procedures. Dependency guardianship cases usually involve CPS, and dependency courts usually appoint attorneys for parents. Probate guardianship cases usually don't involve CPS, and probate courts usually don't appoint attorneys for parents.

4) Prepare for your court hearing: If the judge orders a hearing, read the entire dependency court section of this chapter to learn about how your record will come up and how you can prepare for your hearing.

SCENARIO 2: BECOMING A FOSTER CARE PARENT OR GUARDIAN OF SOMEONE ELSE'S CHILD THROUGH JUVENILE DEPENDENCY COURT

The second scenario we deal with in this section is answering questions for people with records who want to BECOME the foster care parent or guardian of a child who has an open CPS and dependency court case. The dependency court has its OWN RULES—different from probate court and family court—about the impact a criminal record will have on someone's request to become the legal caregiver of some else's child.

BECOMING A FOSTER CARE PARENT WITH A RECORD THROUGH JUVENILE DEPENDENCY COURT

WHAT IS FOSTER CARE?

Foster care is a system run by the California Department of Social Services (CDSS) that provides temporary homes for children who cannot live with family or a legal guardian. A child in foster care was removed from his or her home by Child Protective Services (CPS) because the child's parents were *unable, unwilling or unfit* to care for the child. The goal of foster care is to reunify the child with his or her parent(s) or guardian(s) OR find another suitable permanent living arrangement. This may include an adoptive home, long-term guardianship, or living with a relative.

- For more information on adoption, see PG. 767.
- For more information on guardianship, see PG. 750.

WHO CAN BE A CHILD'S FOSTER PARENT?

To become a foster parent in California, you need to get a *license* from the California Department of Social Services and pass a criminal background check.[2459]

HOW COULD MY CRIMINAL RECORD AFFECT MY ABILITY TO BECOME A FOSTER PARENT?

In October 2017, the Governor passed SB 213, a law loosening restrictions on which crimes automatically bar someone from becoming a foster parent and streamlining the process of reviewing the criminal records of people trying to become foster parents. Before this law, a person's criminal record impacted both: (1) their ability to get the required *state license* from the California Department of Social Services (CDSS) to be a foster parent AND (2) the dependency court's determination of whether allowing someone to become a foster parent is in the *"best interest of the child."*[2460] Applicants with criminal records underwent a lengthy exemption process, resulting in unnecessary delays in foster placements.[2461]

Now, although you will still undergo a background check as part of your application, the exemption process is simpler and less restrictive. As a result, your past conviction(s) may not prevent you from becoming a foster parent if the Department of Social determines you have good character and are rehabilitated. The following factors will be considered when making that determination:

1) The nature of the crime.
2) Period of time since the crime was committed and number of offenses.
3) Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely.
4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
5) Granting by the Governor of a full and unconditional pardon. For more information on a pardon from the Governor, see PG. 984 in the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER.
6) Character references.

[2459] *See* CAL. HEALTH & SAFETY CODE §1522. *See also* "HHS06 Foster Care Criminal Background Checks," California Performance Review (2007), *available at* http://cpr.ca.gov/cpr_report/Issues_and_Recommendations/Chapter_2_Health_and_Human_Services/HHS06.html ("Responses from the state must be received, identified criminal records cleared, and a Child Abuse Registry cleared before a license for the care of foster children can be issued.").

[2460] See CAL. HEALTH & SAFETY CODE §1522. *See also* CAL. FAM. CODE § 3041(a); Legislative Counsel's Digest, SB 213 (Oct. 12, 2017) available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB213.

[2461] Sen. Holly Mitchell, "Senate Bill No. 213: Expanding Foster Child Placements" fact sheet (Feb. 2, 2017) available at https://www.cwda.org/sites/main/files/file-attachments/sb_213_-_fact_sheet.pdf.



7) A certificate of rehabilitation from a superior court. For more information on how to get a certificate of rehabilitation and what it means, see PG 980 in the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER.

Unfortunately, people with certain convictions remain unable to become foster parents under SB 213. Convictions that will automatically ban you from becoming a foster parent include:

- Murder;
- Manslaughter;
- Voluntary manslaughter;
- Kidnapping;
- Rape;
- Sexual battery; and
- All crimes requiring registration as a sex offender.[2462]
- For a full list of the convictions that will automatically bar you from becoming a foster parent, see Appendix I, on PG. 819.

If you are unsure if your conviction will prevent you from becoming a foster parent, talk to a lawyer, Family Law/Self-Help Facilitator (see a list of local contact information in Appendix A, PG. 797), or your local county CPS agency.

WHAT IS THE BACKGROUND CHECK PROCESS FOR POTENTIAL FOSTER PARENTS?

In order to become a foster parent in California, you need to get a license from the California Department of Social Services (CDSS) and pass a criminal background check.[2463] Prospective foster parents, as well as anyone else who will have contact with the foster child, must provide *two sets of fingerprints* to the California Department of Justice (CA DOJ)—one set is to run a state record check and one set is to perform a Federal Bureau of Investigation (FBI) national check.[2464]

In addition to checking a person's criminal history, the CA DOJ checks the Child Abuse Registry and reports to the CDSS any previous complaints for the CDSS to further investigate.[2465]

PLEASE NOTE: The same background check rules and process apply to a person *living in a foster home* OR *providing childcare to a foster child*, even if that person is not the foster parent him/herself[2466]

BECOMING A GUARDIAN WITH A RECORD THROUGH DEPENDENCY COURT

WHAT IS A JUVENILE COURT GUARDIANSHIP?

Legal guardianship is a court order saying that a certain adult—someone who is not the child's parent—is in charge of taking care of the child.[2467] Guardians have many of the same legal rights and responsibilities as parents do while the guardianship is in place. They can make decisions about where the child lives, the child's health care, and where the child goes to school.[2468]

Remember! In California, there are *2 kinds of legal guardianships*: (1) *probate* guardianships and (2) *juvenile dependency* guardianships.

Many guardianships are set up through the probate court, not in juvenile dependency court. If your child is NOT a dependent of the juvenile court, you may want to read about probate guardianships on PG. 748. NOTE: A guardian who was appointed through dependency court has the *same responsibilities* as a guardian appointed

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[2462] *See* CAL. HEALTH & SAFETY CODE §1522(g)(1). For the full list of convictions that will bar you from becoming a foster parent, please see Appendix I, PG. 897 of this chapter. If you are unsure if your conviction falls under this law, please consult an attorney or your local foster care agency.

[2463] *See* CAL. HEALTH & SAFETY CODE §1522. *See also* "HHS06 Foster Care Criminal Background Checks," California Performance Review (2007), *available at* http://cpr.ca.gov/cpr_report/Issues_and_Recommendations/Chapter_2_Health_and_Human_Services/HHS06.html ("Responses from the state must be received, identified criminal records cleared, and a Child Abuse Registry cleared before a license for the care of foster children can be issued.").

[2464] *See* CAL. HEALTH & SAFETY CODE §1522(d)(4)(D) ("[A]n applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b) who is not exempt from fingerprinting, shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a).").

[2465] *See* CAL. HEALTH & SAFETY CODE §1522.1(a) ("(a) Prior to granting a license to, or otherwise approving, any individual to care for or reside with children, the department shall check the Child Abuse Central Index pursuant to paragraph (4) of subdivision (b) of Section 11170 of the Penal Code.").

[2466] *See* CAL. HEALTH & SAFETY CODE §1522(b)(1)(B) (This section applies to "Any person, other than a client, residing in the facility or certified family home.").

[2467] California Courts, Juvenile Court Guardianship http://www.courts.ca.gov/1206.htm

[2468] California Courts, Juvenile Court Guardianship http://www.courts.ca.gov/1206.htm

in probate court, although they do not have an automatic duty to provide status reports to the court at least once a year. Guardians through dependency court still have the following responsibilities.

A guardian through dependency court is responsible for the following for the dependent child:

- Health care: You can make medical decisions for the child. You can give permission for most medical and dental treatments, and for counseling or therapy.
- Education: You can choose the child's school and learning program. If he/she needs special education, you can work with the school to write an individualized education program ("IEP").
- Social services: You can get help for the child from programs such as Head Start, Regional Centers (for children with developmental disabilities), California Children's Services (for children with physical disabilities or certain medical conditions), and after-school programs.
- Residence: You can decide where the child lives.[2469]
- Financial support: You can choose to support the child by yourself; or, if you want help, you can ask for welfare, foster care payments, or other help.[2470]
- Marriage: You and the court must give permission for the child to get married if he/she wants to do so while under 18.
- Armed forces: You can give permission for the child to join the armed forces if he/she is under 18.
- Driver's License: You can give permission for the child to apply for a driver's license. You'll have to pay for any damage if he/she gets in an accident, and you must get insurance to cover the child. If you change your mind, you can sign a form at the Department of Motor Vehicles (DMV) to cancel the child's license.
- Misconduct: You can be sued for money damages if the child does something wrong.
- Other responsibilities: The judge can ask you to take on other responsibilities. For example, the judge can set up visits for the child with his/her parents or sisters/brothers.

WHO CAN BE A CHILD'S LEGAL GUARDIAN IN DEPENDENCY COURT?

Guardians can be grandparents, brothers or sisters, aunts or uncles, other relatives, foster parents, family friends, or others who know the child. A guardian doesn't have to be blood-related to the child.[2471]

HOW COULD MY CRIMINAL RECORD AFFECT MY ABILITY TO BE APPOINTED AS THE CHILD'S GUARDIAN IN DEPENDENCY COURT?

First, the bad news: If the child is NOT living with you right now, before the judge can make you the child's guardian and allow the child to live with you, the court staff (or a county social worker) must run a background check on you AND any other adults who live in your home or who will spend significant time with the child.[2472] If you (or any other adult who gets checked) have a criminal record, the judge will not allow the child to live with you UNLESS you get a "criminal record exemption" from the county social service agency.[2473] A criminal record exemption means you must get the county social service agency to excuse your conviction and not hold it against you in the process of becoming the child's guardian through dependency court.

What convictions can I NOT get an "exemption" for?

Unfortunately, many convictions are considered ***"non-exemptible,"*** which means if you or anyone in your home has a *non-exemptible conviction* on your criminal record, the judge will NOT allow the child to live with you, even if living with you would otherwise be good for the child.[2474]

Non-exemptible convictions include: A FELONY conviction for child abuse, child neglect, spousal abuse, other crimes against a child (including child pornography), or for a crime involving violence (including rape, sexual assault, and homicide), and a felony conviction *within the last 5 years* for physical assault, battery, or a drug- or alcohol-related offense.[2475]

[2469] But note: if you move to a different city in California, you have to tell the court in writing; and if you want to move out of California, you need the court's permission.
[2470] Your county may also try to get child support from the child's parents. In a guardianship, parents still have a legal duty to support their child financially.
[2471] California Courts, Juvenile Court Guardianship http://www.courts.ca.gov/1206.htm
[2472] CAL. WELF. & INST. CODE § 361.4. The background checks will include both criminal records and child abuse, and may also be conducted on any person over age 14 living in your home if the social worker believes that person may have a criminal record.
[2473] To get a criminal record exemption, you must show strong evidence of your good character, such that living with you will be in the child's best interest AND will not put the child at risk of harm. CAL. WELF. & INST. CODE § 361.4(d)(2).
[2474] CAL. WELF. & INST. CODE § 361.4(d)(2); Los Angeles Cnty. Dep't of Children & Fam. Svcs. v. Superior Court (Valerie A.), 7 Cal. App. 4th 1161, 1168 (2001), review denied. The complete list of non-exemptible offenses is contained in CAL. HEALTH & SAFETY CODE § 1522(g). However, certain offenses are "non-exemptible only under specified circumstances," and the Director of Social Services may have discretion to grant an exemption for an offense that otherwise would be non-exemptible. See In re Esperanza C., 165 Cal. App. 4th 1042, 1057 (2008). In addition, some counties may not have authority to issue an exemption, which means the judge cannot place a child in a home where any person has been convicted of a crime other than a minor traffic violation. CAL. WELF. & INST. CODE § 361.4(d)(6).
[2475] Cal. Health & Safety Code § 1522(g)(C).



IMPORTANT EXCEPTION: BUT—and this is a big BUT—if the child is *already* living in your home, the judge can allow the child to continue living with you, *even if* you or someone else in the home has a "non-exemptible" conviction, especially if the child is doing well there.[2476]

FREE RESOURCES

For more information on juvenile dependency court and dependency court guardianship, these guides explain how dependency court works, and explain your rights and responsibilities as a parent, caregiver, or guardian:

FOR PARENTS—

1. Information for Parents, by the Judicial Council of California—http://www.courts.ca.gov/documents/jv050.pdf
2. Guide to Dependency Court, by the Judicial Council of California—http://www.courts.ca.gov/1205.htm
3. My Life Chose Me: A Young Mother's Guide to Surviving the System, by the Center for Young Women's Development—http://www.f2f.ca.gov/res/pdf/ItsMyLife.pdf
4. Juvenile Dependency Court Orientation video, by the Judicial Council of California—https://www.youtube.com/watch?v=Y7Xz4QdNoEY

FOR CAREGIVERS & GUARDIANS—

1. Juvenile Court Guardianship, by the Judicial Council of California—http://www.courts.ca.gov/1206.htm
2. Guardianship Pamphlet, by the Judicial Council of California—http://www.courts.ca.gov/documents/jv350.pdf
3. Caregivers and the Courts: A Primer on Juvenile Dependency Proceedings for California Foster Parents and Relative Caregivers, by the Judicial Council of California—http://www.fosteryouthhelp.ca.gov/PDFs/Caregiver.pdf
4. De Facto Parent Pamphlet, by the Judicial Council of California—http://www.courts.ca.gov/documents/jv299.pdf

Court forms for juvenile dependency court are available on the California Courts' website at http://www.courts.ca.gov/1208.htm.

[2476] L.A. Cnty. Dep't of Children & Fam. Svcs. v. Sup. Ct. (Cheryl M.), 112 Cal. App. 4th 509, 520 (2003). Moreover, if the welfare agency was aware of the person's criminal record when it originally placed the child in the home, the agency may not argue later that the criminal record is a reason to remove the child. In re Miguel E., 120 Cal. App. 4th 521 (2004). However, if the child was allowed to live with relative as an emergency placement, the welfare agency can remove the child if it later finds that any adult living in the home has a criminal record. CAL. WELF. & INST. CODE § 361.45 (2010); In re M.L., 205 Cal. App. 4th 210 (2012), as modified on denial of reh'g (May 16, 2012).

XI. JUVENILE DELIQUENCY COURT: *JUST THE BASICS*

WHAT WILL I LEARN ABOUT JUVENILE DELINQUENCY COURT?

- **The types of cases that are in juvenile delinquency court.**
- **How a child's case in juvenile delinquency court could affect your parent rights and your ability to reconnect with your child in reentry.**
- **Whether your criminal record could affect your child's case in juvenile delinquency court.**

The following is a brief overview of juvenile *delinquency* court cases. Root & Rebound is focused on providing information to people who are in reentry from prison and jail, and people with *past* involvement with the justice system. In general, we do not focus on situations in which a person is actively defending a charge in adult criminal court or juvenile delinquency court. But because many people in reentry have children involved in the juvenile justice system, we are including a brief overview here. If you have a child involved in a juvenile delinquency case and have questions, we recommend you speak with your child's lawyer, or someone at the juvenile delinquency court that is handling your child's case.

WHAT IS JUVENILE DELINQUENCY COURT?

There are two types of cases that end up in juvenile delinquency court: they are called "601 petitions" and "602 petitions".[2477]

- **601 petitions:** The county's probation department files 601 petitions based on crimes that are only illegal when someone is a child under the age of 18. This includes things such as breaking curfew, skipping school, running away, or disobeying parents. If the court finds a child under the age of 18 guilty of one of these offenses, the child is called a "status offender."[2478]
- **602 petitions:** The District Attorney's office files 602 petitions based on crimes that would still be illegal even if the child were 18 years or older. These types of crimes include both felonies and misdemeanors. If the court finds the child guilty of these types of crimes, it is called an "adjudication" (instead of a "conviction," which is the term used to describe crimes that people are found guilty of in the adult criminal court system). A child who has an "adjudication" is called a "delinquent" to describe their legal status.[2479]

In juvenile delinquency court, they have hearings called "fitness" hearings (sometimes called "waiver" hearings), where the judge decides if the child is "unfit" for juvenile delinquency court. If the child is found "unfit" for juvenile court, the child's case will be held in adult criminal court, with adult punishments. Children can only be found "unfit" for juvenile delinquency court, and have their case sent to adult criminal court, if they were *14 or older* at the time of the alleged offense.

HOW COULD A CASE IN JUVENILE DELINQUENCY COURT AFFECT MY ABILITY TO RECONNECT WITH MY CHILD IN MY REENTRY?

It will be difficult to reconnect with your child if they are in the custody of the juvenile justice system (juvenile hall) or incarcerated in jail or prison as an adult. Please read the next question for more about how your child's delinquency case can affect your parental rights.

WHAT COULD HAPPEN TO MY PARENTAL RIGHTS IF MY CHILD HAS A CASE IN JUVENILE DELINQUENCY COURT?

You may not be able to take your child home with you. The juvenile court will hold a "detention hearing" where the judge decides whether or not you, as the parent, have the right to take your child home while the case is ongoing. The judge's decision on where to release the child is based what the judge determines is best for your child, including the following factors:

- (1) If the District Attorney has evidence to support the charges, AND
- (2) One of the following is true:
  - The child has violated a juvenile court order;
  - The child is a flight risk (meaning the child is likely to run away),;

[2477] See CAL. WELF. & INST. CODE § 600 et seq.; Guide to Juvenile Court, California Courts, http://www.courts.ca.gov/1216.htm.
[2478] See CAL. WELF. & INST. CODE § 600 et seq.; Guide to Juvenile Court, California Courts, http://www.courts.ca.gov/1216.htm.
[2479] See CAL. WELF. & INST. CODE § 600 et seq.; Guide to Juvenile Court, California Courts, http://www.courts.ca.gov/1216.htm.



- There is immediate and urgent necessity to detain (hold the child in custody) the child for the child's protection; or
- It is reasonably necessary for the protection of someone else or their
- property that the child be detained.[2480]

During this process, you, as the child's parent, have the RIGHT to:

- Get a copy of the 601 Petition and/or 602 Petition,[2481] which explain what your child is being accused of (in other words, these petitions are NOT findings of guilt).
- To be legally notified of the first hearing, called a "detention hearing."[2482]
- Be present at all your child's hearings and court dates (see PG. 742 for more information).[2483]
- Your child's juvenile delinquency court file, AND
- To ask that your child's court hearings to be kept confidential[2484].

COULD MY CRIMINAL RECORD AFFECT MY CHILD'S CASE IN JUVENILE DELINQUENCY COURT?

No. Your criminal record cannot affect your child's case in juvenile delinquency court.

For more information on Juvenile Delinquency Court, see Appendix G, PG. 813. There you can find more information on the following:

1) What juvenile delinquency court is;
2) What happens when your child is arrested and accused of breaking the law;
3) The rights you as a parent and your child have when your child is charged with a crime;
4) The type of hearings you and your child must attend;
5) The decisions the court can make about your child when your child has been charged with a crime; and
6) How your child's records can be sealed.[2485]

[2480] Judicial Council of Cal., Guide to Juvenile Court, California Courts, http://www.courts.ca.gov/1216.htm.
[2481] Judicial Council of Cal., Guide to Juvenile Court, California Courts, http://www.courts.ca.gov/1216.htm.
[2482] Judicial Council of Cal., California Courts, www.courts.ca.gov/1216htm.
[2483] Cal. Rules of Court 5.530.
[2484] Cal. Rules of Court 5.552 & 5.530.
[2485] See Judicial Council of Cal., Juvenile Delinquency, http://www.courts.ca.gov/selfhelp-delinquency.htm. Please note that juvenile records are confidential and not open to public view. However, it is up to the child to ask the juvenile court to have his or her record sealed. See WELF. & INST. CODE § 389 and 781.

XII. BECOMING AN ADOPTIVE PARENT WITH A RECORD

WHAT WILL I LEARN ABOUT ADOPTION?

- **Understand adoption.**
- **The background check process for potential adoptive parents.**
- **Whether you can adopt a child if you have a criminal record.**

This section is focused on people with criminal records who want to *BECOME adoptive parents*. If your child was adopted out while you were incarcerated or because of your conviction history, and you want to learn about your options, see PG. 755 about juvenile dependency court and CPS involvement instead.

WHAT IS ADOPTION?

Adoption is the *legal process* of forming a legally recognized parent-child relationship when you are *not* the child's biological or birth parent. Adoptive parents have ALL the same legal rights and responsibilities that a biological parent would have had. That adoptive parent-child relationship is permanent and is seen as exactly the same as that of a birth family under the law. An adoptive parent can be a stepparent or domestic partner of one of the birth parents, a relative of the child who has been caring for the child, or someone unrelated to the child by blood. For more information on adoption and how to adopt a child, visit the following website: http://www.childsworld.ca.gov/pg1302.htm.

WHAT IS THE BACKGROUND CHECK PROCESS FOR POTENTIAL ADOPTIVE PARENTS?

Anyone who applies to adopt a child will have to provide a lot of documentation, including a state criminal record and fingerprints that will be run though the California Department of Justice's (CA DOJ) state database and the FBI's federal database.[2486]

CAN I ADOPT A CHILD IF I HAVE A CRIMINAL RECORD?

It depends on your past conviction(s) and the past conviction(s) of anyone else living in the adoptive home.[2487] If your past conviction was related to the abuse or neglect of a child, or was for a violent offense, the judge may not allow you to adopt. If you were convicted of abuse or neglect or a violent offense, it you should talk to a lawyer about whether you will still be able to legally adopt a child.[2488] Because the judge is determining what is in the best interest of the child, convictions related to child abuse or neglect will likely bar you from adopting a child.[2489]

> Convictions that will *AUTOMATICALLY* Ban You from Adopting a Child:

Whether you are going through an adoption agency, family court, or juvenile dependency court, under state law you may *not* adopt a child if you have a felony conviction for child abuse or neglect, spousal abuse, any crimes against a child (including child pornography), or for a violent crime such as rape, sexual assault, or homicide).[2490] You also may not adopt a child if you have a felony conviction within the last 5 years for physical assault, battery, or a drug- or alcohol-related offense (in other words, you will have to wait 5 years *after* the date of your conviction to be able to adopt a child in California).[2491]

So regardless of whether it is a court or an adoption agency reviewing your record, you will not be approved as an adoptive parent if one of the above bans applies.

> Convictions that *MIGHT* Ban You from Adopting a Child:

The question above explained state law that *automatically* prevents people with certain convictions from adopting a child, no matter if it is a court or an adoption agency making the decision.

In addition to those convictions, a family court, dependency court, and/or an adoption agency will also screen and consider the following factors about you:

- How you've dealt with difficult or stressful life situations in the past;
- Relationships within your family;

[2486] CAL. FAM. CODE §§ 8712, 8730, 8811, 8908. See also Adoption Program Regulations 35087, at http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/adman3.pdf.
[2487] Cal. Fam. Code § 8712(c).
[2488] Cal. Fam. Code § 8712.
[2489] CAL. FAM. CODE § 8612. You may want to speak to a lawyer if there are compelling mitigating factors.
[2490] Under this law, "crimes involving violence" means those listed in CAL. HEALTH & SAFETY CODE 1522(i)(A) and (g)(B). CAL FAM. CODE § 8712(c)(1)(A).
[2491] CAL FAM. CODE § 8712(c)(B).



- Ability to take over the responsibility for the care, guidance, and protection of a child;
- Emotional flexibility and stability;
- Self-esteem;
- Coping ability;
- How you accept normal hazards and risks;
- Motivation for adoption;
- Your ability to have a parent-child relationship and to enjoy life with a child;
- Flexibility regarding your expectations of the child.[2492]
- Social background;
- Educational background;
- Financial stability;
- Work adjustment; and
- Adequacy of housing.[2493]

In sum, courts and adoption agencies review every adoption application individually. Your conviction history will be one factor, but depending on your current situation and efforts at rehabilitation, you may still be able to adopt (unless you have a conviction on the list of ones that *automatically* prevent you from adopting, on PG. 726).

I HAVE A FELONY CONVICTION THAT AUTOMATICALLY BANS ME FROM ADOPTING A CHILD. CAN RECORD CLEARING REMEDIES HELP ME ADOPT?

Maybe. If you successfully obtain a felony reduction under Penal Code section 17(b), your conviction must be treated as a misdemeanor for all purposes — including adoption.[2494] This means you can no longer be automatically banned on the basis of your felony conviction alone. Depending on the nature and circumstances of your crime, a family court, dependency court, and/or an adoption agency may still consider your reduced conviction as one factor among many indicating your fitness to adopt. (See previous question.) However, keep in mind that the act of seeking a felony reduction is evidence of your initiative and a desire to move forward with your life. Emphasize this and other factors showing proof of rehabilitation in your application.

MY CHILD WAS ADOPTED OUT WHILE I WAS INCARCERATED. WHAT CAN I DO TO RECONNECT?

If your child was adopted while you were incarcerated, you should have received notice (in writing, on official court papers) of this adoption. Although you are incarcerated, you had the right to be present at any hearing where your parental rights could be terminated.[2495] If you were not notified and your child was given up for adoption, talk to a lawyer IMMEDIATELY to discuss your rights and what can be done. If you *were* notified of the hearing but chose not to contest the adoption or appear at the hearing, your options are much more limited. Once parental rights have been terminated, you are no longer considered the parent of — or even related to — the child in question.[2496]

A lawyer may be able to help you draft an agreement with the adoptive parents so that you can continue to have contact with your child. This may be a formal agreement in writing and filed in court OR an informal agreement between you and the adoptive parents.[2497] A family lawyer can advise you on which is the better solution.

[2492] Adoption Program Regulations 35089 OBTAINING IDENTIFYING INFORMATION AND EVALUATING PETITIONERS DURING ASSESSMENT, http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/adman3.pdf
[2493] Adoption Program Regulations 35089 OBTAINING IDENTIFYING INFORMATION AND EVALUATING PETITIONERS DURING ASSESSMENT, http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/adman3.pdf
[2494] See Gebremicael v. California Com. on Teacher Credentialing (2004) 118 Cal. App. 4th 1477.
[2495] CAL PEN. CODE § 2625(d).
[2496] San Francisco Sup. Court, "A Parent's Guide to CPS and the Courts" (2005), available at https://sfsuperiorcourt.org/sites/default/files/pdfs/2669%20ParentsGuide.pdf.
[2497] Incarcerated Parents Manual, Legal Services for Prisoners with Children, available at http://www.prisonerswithchildren.org/wp-content/uploads/2015/03/IPM-final-2-12-2015.pdf.



XIII. FAMILY ISSUES INSIDE PRISON OR JAIL

WHAT WILL I LEARN ABOUT FAMILY ISSUES INSIDE PRISON OR JAIL?

- **How to connect with your child after your release if you gave birth while incarcerated.**
- **Ways you can show that you will be able to parent your child after your release.**
- **What paternity/parentage is and why it matter for reentry.**
- **What kinds of convictions will restrict your ability to have jail/prison visits with a child.**

PREGNANCY & MOTHERING WHILE INCARCERATED

For more information and specific questions about being pregnant and giving birth while incarcerated, see Appendix H, PG. 817.

I GAVE BIRTH WHILE INCARCERATED. HOW DO I CONNECT WITH MY CHILD AFTER I AM RELEASED?

If your release date or parole date falls within 6-8 weeks after you deliver your baby, you should be given **family planning services** while you are incarcerated.[2498] Family planning services include referrals to physicians or community agencies and encouragement to enroll in life education classes.[2499]

WHAT CAN I DO TO SHOW THAT I AM ABLE TO PARENT MY CHILD AFTER MY RELEASE?

Using a notebook, keep a record of all the things you did while incarcerated to prepare yourself to take care of your child in reentry. If you need to go to court after you are released, these types of records won't prove to a judge that you are immediately ready to take over parenting, but they will help to show the judge that you tried to stay involved with the events in your child's life, maintain a positive, loving relationship with your child, and work on improving yourself—all things that help your chances to reconnect with your child through the court system.

Keep track of the following:

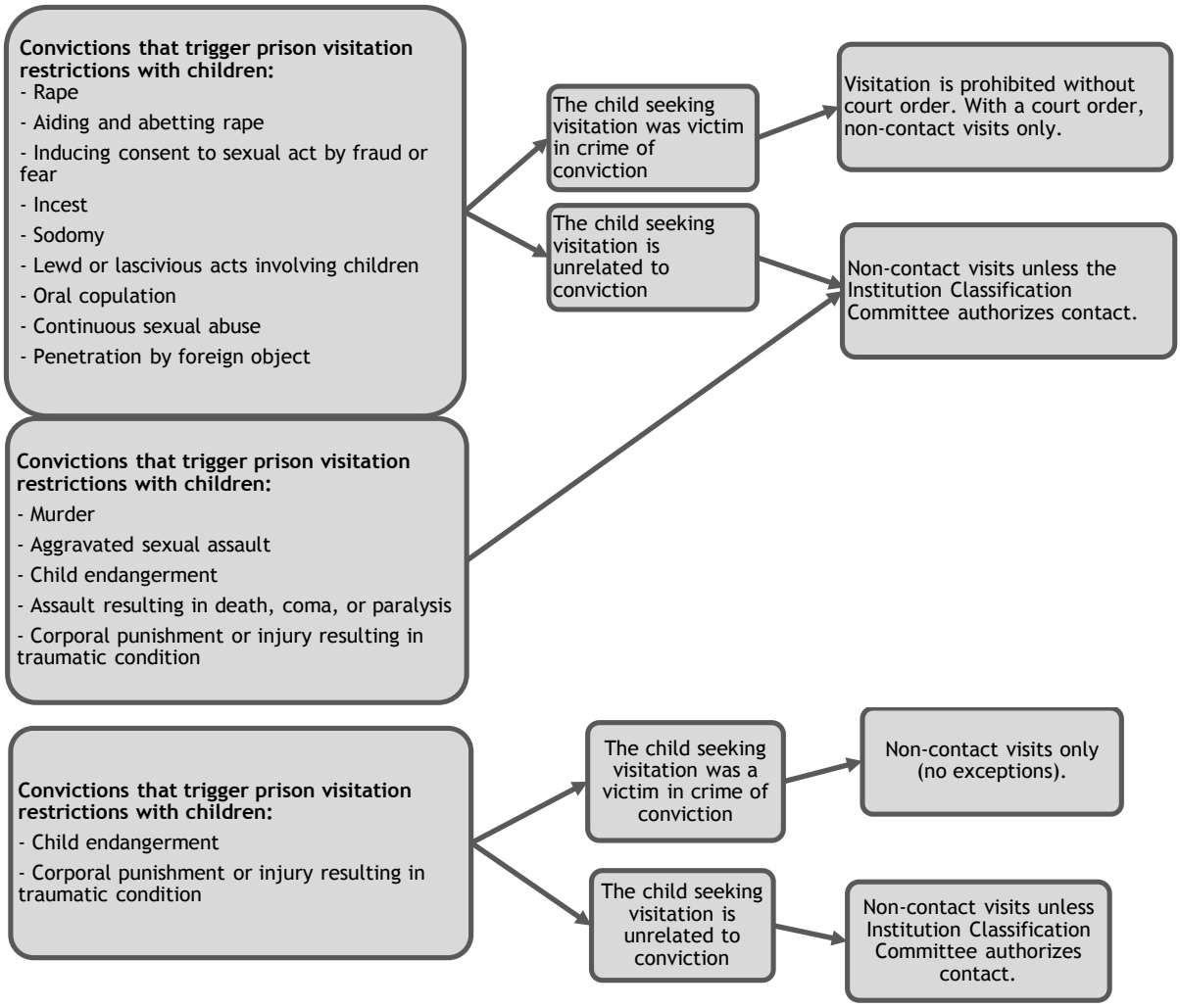
- All requests for visitation—even ones where your child's caregiver refused to allow the visit.
- Any educational programs you participate in, like parenting classes or vocational classes, and the dates for every class you attend. Try to collect any documents to show proof of attendance, certificates of completion, or awards you received. These will help to show a judge how hard you worked while incarcerated to be prepared as a parent after your release.
- A record of what you have done while incarcerated to keep track of your child and his/her development and well-being. For example, write down the dates and times you called your child and/or the child's caregiver, received a call, or visited with your child and/or your child's caregiver. Also keep track of the letters you sent—and ask for updates about your child, like his or her health, report card, physical, social and emotional development, and overall well-being.
- Save any letters or pictures you receive from your child's caregiver while you are incarcerated.

[2498] CAL PEN. CODE § 3409(c).
[2499] CAL. CODE REGS. tit. 15, § 4737.

RESTRICTIONS ON CHILDREN VISITING CURRENTLY INCARCERATED PARENTS

CAN MY CHILDREN VISIT ME IN STATE PRISON?

It depends. If you were convicted of certain crimes involving a child, CDCR may prohibit or restrict your child from visiting you while you are incarcerated.[2500] This flow chart summarizes the CDCR's visitation policies for people convicted of child-related offenses:



HOW DO I GET A COURT ORDER TO REINSTATE VISITATION WITH MY CHILD?

If you were convicted of certain offenses involving your own child, the CDCR may not allow your child to visit at all. To try to resintate visitation privileges, you can request a court hearing to determine whether visitation is in your child's best interests.[2501] If the court finds in your favor, you may be able to have non-contact visits with your child.[2502] The court in which you must file depends on the status of your parental rights, among other factors. Legal Services for Prisoners with Children's Child Custody and Visiting Rights Manual for Incarcerated Parents[2503] has more information about reinstating visitation. To request a free copy of the manual by mail, write to:

[2500] CAL. CODE REGS. tit. 15, § 3173.1 (visiting restrictions with minors). Convictions under the following Penal Code sections trigger visitation restrictions: 261, 264.1, 266c, 269, 285, 286, 288, 288a, 289, 273a, 273a, 273ab, 273d, 18z, 269.
[2501] Cal Wel. & Inst. Code § 362.6; Cal Pen. Code § 1202.05.
[2502] CAL. CODE REGS. tit. 15, § 3173.1
[2503] Legal Services for Prisoners with Children's Child Custody and Visiting Rights Manual for Incarcerated Parents, available at http://www.courts.ca.gov/documents/BTB_23_4K_3.pdf.



Legal Services for Prisoners with Children
1540 Market Street, Suite 490
San Francisco, CA 94102.

WHAT IS THE INSTITUTION CLASSIFICATION COMMITTEE, AND HOW DO I REQUEST CONTACT VISITS THROUGH IT?

The Institution Classification Committee is one of several "classification committees" that each institution must establish.[2504] The committee is composed of various members, including a chairperson (commonly the warden), an alternate chairperson (such as a correctional administrator), a psychiatrist or physician, and several other employees of the institution.[2505] The ICC's duties include recommending the transfer of inmates.[2506] Given the warden of your institution is likely the chairperson of the ICC, you should first direct any request regarding visitation to the warden's attention.

I WAS ARRESTED FOR A CHILD-RELATED OFFENSE, BUT NOT CONVICTED. CAN MY CHILD VISIT ME IN JAIL OR PRISON?

If you were arrested for one of the offenses listed in the flow charts above, your visiting status is unrestricted UNLESS the **classification committee** at your institution has determined that you could present a threat to minor visitors (visitors under the age of 18).[2507] The classification committee makes these decisions on a case-by-case basis, considering information from arrest reports, court transcripts, and other official documents.[2508] If the classification committee finds that such visits could be dangerous or harmful, you will be restricted to non-contact visits with your child.[2509] You can appeal the committee's decision by filing a grievance form (using a CDCR Form 602 in stateprison, or using your jail's grievance form).[2510]

For an informational letter from the Prison Law Office on challenging conditions of confinement (which could include your visitation rights), you may:

- Call Root & Rebound's Reentry Legal Hotline any Friday at 510-279-4662, from 9 a.m. – 5 p.m. PST;
- Write Root & Rebound a confidential, legal letter to the following address: Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612; or
- Write the Prison Law Office directly at: Prison Law Office, General Delivery, San Quentin, CA 94964.

[2504] CAL. CODE REGS. tit. 15, § 3376(b), (c)(2).
[2505] CAL. CODE REGS. tit. 15, § 3376(c)(2).
[2506] CAL. CODE REGS. tit. 15, § 3376(c)(3).
[2507] CAL. CODE REGS. tit. 15, § 3173.1(e)(1).
[2508] CAL. CODE REGS. tit. 15, § 3173.1(e)(2).
[2509] CAL. CODE REGS. tit. 15, § 3173.1(f).
[2510] CAL. CODE REGS. tit. 15, § 3173.1(g).



PATERNITY/PARENTAGE ISSUES

WHAT IS PATERNITY/PARENTAGE?

Under the law, there is a difference between being biologically related to a child and having the legal right to decide what is best for the child. "Paternity" or "parentage" is a *legal concept*—not a biological one! This means that you can be the child's biological parent but not the "legal parent," OR you can be the child's legal parent even if you are *not* the biological parent. There are specific legal rules for deciding whom the child's legal parents are—in other words, rules for establishing paternity/parentage (these legal rules are also called "presumptions").

When a child is born, the woman who gives birth to the child (the child's biological or "natural mother") is automatically the child's legal parent. But the child does not another legal parent until paternity/parentage is established according to these legal rules. Even if someone is the child's biological parent (and can prove it), if he was never married to the mother of the child, they are not considered the child's legal parent and do not have any legal rights or responsibilities for the child UNLESS paternity/parentage is legally established according to these presumptions.[2511] To learn more about how paternity/parentage is established, keep reading this section.

For same-sex couples, if a couple conceives through assisted reproduction (i.e. with a sperm or egg donor) than the non-biological parent is treated by law as if they were the legal parent of the child as long as there is consent in writing signed by both parents.[2512] The couple does not need to be married to meet this standard.[2513] Non-biological parents can also establish parentage if they received the child into their home and openly held them out to be their natural child, or were married at the time the child was born, but to establish legal parentage this way you would need to go to court.[2514]

WHY DOES LEGAL PATERNITY/PARENTAGE MATTER?

Establishing paternity/parentage gives you and your child many rights, including a right to child support, access to your child's medical records, public benefits for you and the child, and more. Once parentage is established, a family-related court (family court, probate court, or dependency court) can make orders for custody, visitation, child support, health insurance, name changes, and reimbursement of pregnancy and birth costs.[2515] Until parentage is established, the court can't make orders about these issues.

WHAT DOES PATERNITY HAVE TO DO WITH MY REENTRY?

There are two reasons why paternity/parentage can be important in reentry:

1) Only biological or adoptive parents have legal rights to care to for and making decisions about their child. You may have an informal agreement if you are not the biological parent, but you cannot go to court to ask a judge for (more) custody or visitation. However, if you are not the biological or adoptive parent of the child, you can seek custody or visitation by asking a judge in court to become a guardian or foster parent. For information on how to become a guardian, see PG. 750. For information on how to become a foster parent, see PG. 761.
2) If you are the biological or adoptive parent, you may have child support obligations. For more on child support obligations, see PG. 778.



IMPORTANT: If a person is established as a legal parent of a child, that person MUST financially support the child. It is a crime for a legal parent to fail to support his or her child.[2516] A legal parent also has the right to get custody or visitation rights related to the child. For more information on how financial support may occur, please see the section on Child Support section beginning on PG. 778. For more information on custody and visitation, please see the overview on custody and visitation on PG. 732.

CAN MY CRIMINAL RECORD AFFECT PATERNITY ISSUES AND RECONNECTING WITH MY CHILD?

Yes. After establishing paternity, a parent with a criminal record may be limited or completely denied some or all of the benefits of paternity at the time of the court hearing OR may have to establish a record of good behavior to do things like visit the child. This is a sad reality for many people in reentry trying to reconnect

[2511] See Judicial Council of Cal., Parentage/Paternity, http://www.courts.ca.gov/selfhelp-parentage.htm (2016).
[2512] Cal. Fam. Code § 7613.
[2513] Cal. Fam. Code § 7613.
[2514] Cal. Fam. Code § 7611.
[2515] Cal. Fam. Code § 7637.
[2516] Cal. Penal Code § 270.

with their children. However, to even begin the process and establish a record of good behavior, it's necessary to establish legal paternity/ parentage.

HOW DO I ESTABLISH PARENTAGE?

There are two main ways to establish paternity/parentage when the child's parents are not married:

1. Go to court and get a court order—either on your own or with the help of the Local Child Support Agency (LCSA). To begin, you should collect the forms you will need and file them in the county where your child lives (see http://www.courts.ca.gov/1201.htm for help on finding the right county.) Once you have found the right county, you can visit the steps below to guide you in filing your case.
    - For steps for filing a parentage case, go to: http://www.courts.ca.gov/11298.htm.
    - For instructions how to answer a request to establish parentage in court, go to: http://www.courts.ca.gov/11309.htm.
    - For forms and instruction to finish you parentage case go to: http://www.courts.ca.gov/11299.htm.
2. Both parents sign a voluntary "Declaration of Paternity." For more information on a Declaration of Paternity, see Appendix J, PG. 821.

CAN I ESTABLISH MY PARENTAGE IN COURT WHILE I AM INCARCERATED?

Yes, you can establish paternity/parentage while you are incarcerated, but it will be difficult.

If you establish paternity/parentage through a court order, you are required to file the correct forms and "serve" them – give them formal notice - on the other party in the suit. You also have to make arrangements to either attend court hearings in person or through a videoconference. You can do all these things while you are incarcerated but it may not be easy:

1. ***Forms:*** We recommend you obtain assistance from one or all of the following:
    - You can write to the Family Law Facilitator in the county where your child is currently living
    - Law clerks in the law library (if you have one in your institution)
    - Family and Friends – they can call the Family Law Facilitator for you or download the correct forms off the internet at http://www.courts.ca.gov/forms.htm and send them to you.
2. ***Filing fees:*** If you have limited funds, we recommend you try and obtain a file fee waiver from the court.
3. ***Attending court hearings:*** you can do one of the following:
    - Request to be transported to court for the hearings. For more information on your right to be transported to court see PG. 742.
    - An alternative to your physically appearing in court is appearing by telephone or videoconference. We recommend that you ask for one of these options if transportation to court is not possible or feasible for you.[2517]

If you establish paternity/parentage by signing a "Declaration of Paternity," it must be signed by both parents at the same time and notarized. If you are incarcerated, this may not be possible. Another challenge is that the form is in triplicate and is only available through government offices such as county Social Services, Registrars of Births and Deaths, and Family Law Facilitators.[2518]

[2517] Legal Services for Prisoners with Children, Child Custody and Visiting Rights Manual for Incarcerated Parents (2015). This is a detailed resource for all information related to filing a court case in family court in order to establish paternity.

[2518] If you have the cooperation of the mother, then she or you can contact the county offices for assistance in signing the form. You can also ask for assistance from the prison's litigation office, your counselor, or other institution staff. Perhaps the mother can go to your institution and you can both sign the same form there in front of a notary. Or, perhaps you can each sign separate forms that say the same thing and have them separately notarized." Legal Services for Prisoners with Children, Incarcerated Parents Manual, Rights and Responsibilities (2015).

XIV. ENDING A MARRIAGE OR DOMESTIC PARTNERSHIP (DIVORCE & SEPARATION)

WHAT WILL I LEARN ABOUT ENDING A MARRIAGE OR DOMESTIC PARTNERSHIP?

- **How to end a marriage or domestic partnership.**
- **How to end a marriage or domestic partnership while you are incarcerated.**
- **How to get a divorce if you have an order not to contact your spouse or if you cannot find your spouse after you are released.**
- **What will happen if your spouse wants a divorce while you are incarcerated.**

HOW CAN I END MY MARRIAGE OR DOMESTIC PARTNERSHIP?

A marriage or domestic partnership can end by the following legal cases: divorce, legal separation, annulment, or summary dissolution. The following chart defines each way to end a marriage or domestic partnership, how to get it, and how to respond to a request to end a marriage or domestic partnership.

THIS CHART PROVIDES MORE INFORMATION ON HOW TO END A LEGAL RELATIONSHIP:

ENDING A LEGAL RELATIONSHIP:
Comparing Divorce, Legal Separation, Annulment, and Summary Dissolution

General Questions About Each Type	Divorce[2519]	Legal Separation[2520]	Annulment[2521]	Summary Dissolution[2522]
WHAT IS IT?	A divorce ends your marriage or domestic partnership. There are several requirements: (1) You must be a resident of California for at least 6 months (2) You must be a resident of the county in California for at least 3 months[2523]	If you cannot or do not want a divorce, you can ask for a legal separation. By doing so, you can ask the court for orders about what to do with money you share, property, or parenting issues.	An annulment is when a court says your marriage or domestic partnership is not legally valid. Examples include: • Marriage of incest (where close blood relatives are married); • Bigamous (where a person is already married or in a domestic partnerships with another. • Other marriages that may be declared "void" may be based on: • Age at the time of the marriage (if a person was under 18 at the time) • Prior existing marriages. • A person was of "unsound mind". This means that a person was not able to understand the nature of the marriage and the requirements of being married. • Fraud. • Force.	This is a type of divorce that does not require you going to court It is not available to everyone so you should make sure you are eligible before you apply. You may not need to hire a lawyer either. BUT REMEMBER: It is in your best interest to see a lawyer about how to end your marriage or domestic partnership.

[2519] CAL. FAM. CODE §§ 2300 – 2452.
[2520] CAL. FAM. CODE §§ 2300 – 2452.
[2521] CAL. FAM. CODE §§ 2200-2255.
[2522] CAL. FAM. CODE §§ 2400 – 2406.
[2523] CAL. FAM. CODE §§ 2320-2322.

HOW DO I GET IT?	You will have to file several forms, serve the forms, Please see Appendix J for detailed information but here is a general overview of the steps: (1)Fill out court forms. To file for divorce or legal separation, you have to fill out the same forms. If you want specific legal advice about how to fill out your court forms, talk to a lawyer. (2) File court forms/ (3) Serve court forms on the other person ("party"). (4) Fill out and serve your financial disclosure forms.	You will have to file several forms. See Appendix K on PG. 822 for the exact steps on how to do this.	You will have to go in front of a judge and prove that one of the above reasons applies to you and your marriage or domestic partnership. Annulments are extremely rare! Be sure to talk to a lawyer BEFORE you go before a judge so you can talk to someone about whether this is best for you. For steps on getting an annulment, see Appendix K on PG. 822 for more information.	If you are MARRIED, you must qualify for a summary dissolution. To find out if you qualify and the steps you must take, see Appendix K on PG. 822. If you are in a DOMESTIC PARTNERSHIP or a SAME-SEX DOMESTIC PARTNERSHIP OR MARRIAGE, you can visit Appendix K on PG. 822 to see if you qualify and the steps you must take.
WHAT IS THE EFFECT OF GETTING ONE?	You will no longer be married so you may remarry, file your taxes differently.	You will not be able to marry someone else, BUT you will have court orders based on what you and your partner requested such as instructions on joint custody.	Since an annulment treats your relationship as having never been "valid" (lawful), your rights and obligations to your children, property, money that is owed may need to be established in court.	This has the same effect as divorce.
HOW DO I RESPOND?	First, read all the papers you receive: thee should include a petition (Form FL-100), and Summons (Form FL-110). READ THESE PAPERS CAREFULLY! If you agree with everything—including how to separate property and arrange for custody or visitation of your child(ren)—your situation is considered "uncontested." If you or your partner DO NOT agree with everything, your situation is considered "contested" and you may want to consider *mediation*. For more information on mediation, see PG. 798. In a contested matter, you can also ask for a separate trial to discuss the things you disagree about. Trials can be complicated; find more information in Appendix K on PG. 822.	If your partner filed first, you must make sure you read the Petition (Form FL-100) VERY CAREFULLY. This form, along with The Summons (Form FL 110), tells you your rights and what to do. It may also include information on restraining orders and what you can or cannot do without the court's consent.	Read all the papers you receive which should include a petition (Form FL-100), and Summons (Form FL-110) CAREFULLY. And most importantly, Talk to a lawyer IMMEDIATELY! The law that applies to getting an annulment is very complicated and no website can explain it fully.	If you and your partner are getting a summary dissolution, then both of you would know because one of the requirements is that both you AND your partner agree. If you cannot find your partner, or you or your partner do not want to get a divorce, you cannot get a summary dissolution. However you may be able to get a divorce. Follow the steps on how to get a divorce on Appendix K on PG. 822.
WHAT ELSE COULD HELP ME IN LEGALLY ENDING MY RELATIONSHIP?	Whether you are seeking a divorce, annulment, legal separation or summary dissolution, you may want to look into mediation to help you and your partner come to agreements in the process. For more information on mediation, see PG. 798.			



CAN I END A MARRIAGE OR DOMESTIC PARTNERSHIP WHILE I AM INCARCERATED?

You can end a marriage or domestic partnership while you are incarcerated in the same way you would if you were out of prison or jail. However, there are a few factors you should take into consideration when deciding whether or not to end your marriage or domestic partnership while you are incarcerated:

1) You may not be able to go to the court hearings.[2524]
2) You will not be able to get physical custody of any child(ren).
3) You are not guaranteed visitation rights with any child(ren).
4) It can be difficult to access information about your finances and property while you are incarcerated.

DIVORCE QUESTIONS WHILE INCARCERATED & AFTER RELEASE FROM PRISON OR JAIL

CAN I FILE FOR DIVORCE WHILE I AM INCARCERATED?

Yes you can. The same requirements apply as if you were not incarcerated. See Appendix K, PG. 822, for the steps. But there are some things you should consider:

1) You will not be able to present at the hearing unless it is ABSOLUTELY NECESSARY.[2525] It will be very hard for you to show that it is necessary for you to be present at court. To request to be present, you must file a motion with the court explaining your reasons for wanting to be at the hearing. You can also request that you be allowed to call in or participate by videoconference.
2) You won't be able to gain custody because you are incarcerated so that part of your divorce proceeding will not be handled. Instead, you will have to come back to court once you are released to discuss custody.
3) There is no guarantee that your child or children will visit you in jail and may be more difficult if you get a divorce while in jail.
4) Since you will not be present at the divorce, you may not be able to get information about property or financial interests that you may be entitled to from your spouse. If you get a divorce while incarcerated, you will not be able to go back to get these things.

I WAS INCARCERATED AND HAVE AN ORDER NOT TO CONTACT MY SPOUSE. HOW DO I GET A DIVORCE?

The process of divorce is the same, but you CANNOT make contact with your spouse or domestic partner. Instead, you will have to ask someone to file your forms for you.

To protect yourself and to make sure you do not violate the no-contact order, talk to your attorney who represented you at the time you received the protective order if you received the no-contact order as a result of a criminal investigation or criminal conviction. If the no-contact order was *condition of your parole*, you should contact the defense attorney/public defender who represented you and/or ask your parole officer for help. Both of these people can help you find resources so that you can begin the divorce process.

I WAS INCARCERATED, AND NOW I CANNOT FIND MY SPOUSE. HOW DO I GET A DIVORCE?

If you can no longer find your spouse, you must still file the paperwork and go through the steps of filing a divorce (see Appendix K on PG. 822 for those steps). When you appear in court, you will need to show that you tried your best to find your spouse. The judge may ask you questions about how you tried to find your spouse. If the judge feels like more should be done, s/he may require you to "notify" your spouse by "publication" (a newspaper posting) or by "posting" (putting the divorce notice on a bulletin board in the courthouse).[2526]

MY SPOUSE WANTS A DIVORCE AND I AM INCARCERATED. HOW WILL I BE NOTIFIED? WHAT SHOULD I DO?

You will likely receive paperwork through the mail, which will include the Summons, and Petition legal papers that were filed by your former spouse. You will also receive a form called the "Notice and Acknowledgment of Receipt" (FL-117). This form asks if you would like to "waive" (meaning give up) your right to be served with future papers. If you do not agree to give up this right, then your spouse seeking the divorce will have to

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[2524] See CAL. PENAL CODE § 2625. You have the right to be present at any court proceeding that may terminate your parental rights. But see Legal Services for Prisoners with Children, "Manual on Divorce Issues," (1993) available at http://www.prisonerswithchildren.org/wp-content/uploads/2013/01/Manual-on-Divorce-Issues.pdf ("

[2525] CAL. PENAL CODE § 2625. You have a right to be present at any court proceeding in an action that may terminate your parental rights or make a judgment about your child when your child is a dependent in court. But a divorce is different, since it is neither, you will likely not be able to attend unless as part of the divorce your parental rights could be (or if your spouse requested) terminated.

[2526] JUDICIAL COUNCIL OF CAL., Service by Publication or Posting - Family Law Cases, http://www.courts.ca.gov/20213.htm.



arrange for someone to serve future papers related to the divorce to you personally (usually someone you spouse hires or someone in law enforcement).

Once you have received this paperwork, you will have 30 days to respond.[2527] For steps on how to respond, please see Appendix K on PG. 822. Unfortunately, however, there is no law saying you have the right to be present at the court hearing—unless there will be a potential change in your rights as a parent).[2528] BUT you can still respond! You should still respond to the petition within 30 days if you disagree with something that is included in the paperwork filed by your spouse—for example, see Appendix K on PG. 822, for reasons why you could disagree with the petition.

[2527] Manual on Divorce Issues for People in California Prisons and Jails, Legal Services for Prisoners with Children, available at http://www.prisonerswithchildren.org/pubs/divorce.pdf.
[2528] Cal. Penal Code § 2625.

XV. MANAGING & NAVIGATING SPOUSAL & CHILD SUPPORT

WHAT WILL I LEARN ABOUT SPOUSAL & CHILD SUPPORT?

- **What family-related court-ordered debt is, including child support and spousal support, and how it can affect your reentry.**
- **How to manage child support payments and spousal support payments during and after incarceration, including changing the amount you owe.**
- **What the consequences for failing to pay child support or spousal support are.**
- **What to do if you owe past, overdue child support payments or spousal support payments when you return to the community from prison or jail.**
- **How to ask for spousal support and whether you can ask for spousal support while you are incarcerated.**

Many people coming home from prison or jail are surprised to find they owe lots of money to various courts, agencies, and people. The money you owe can make it very hard to get back on your feet, which can leave you feeling frustrated and discouraged. In this section, we will walk you through the different types of court ordered debts that a judge can order you to pay to support your children or spouse.

WHAT IS A FAMILY-RELATED COURT-ORDERED DEBT?

In the COURT-ORDERED DEBT CHAPTER, beginning on PG. 654, we explain the types of court-ordered debts you may owe because of criminal justice system involvement. Examples of these debts include: *restitution; court fines and penalties; administrative fees; and traffic fines and fees*.

There are a *other court-ordered debts* we do not cover in that chapter because these debts are specific to court orders involving your child(ren) or former spouse. Here we provide you with an overview of family-related court-ordered debts, specifically **child support** and **spousal support**.

HOW WILL OWING FAMILY-RELATED COURT-ORDERED DEBTS AFFECT MY REENTRY?

Family-related court-ordered debts are important to manage and navigate because if you are *unaware, unwilling, or unable to pay*, they can add up quickly and harm you as you try to rebuild stability in your reentry. If you owe money to help support your child or spouse, this may affect your wage earnings, credit score, ability to secure housing, bank accounts, and failure to pay could be a violation of your conditions of parole, probation, or other type of community supervision. Here, we describe each family-related court-ordered debt, how to find out if and how much you owe, how to request a change to the order, how to manage your payments, and the consequences for failure to pay.

CHILD SUPPORT DEBT

BASICS OF CHILD SUPPORT

WHAT IS CHILD SUPPORT?

Child support is a *monthly payment* that a judge can order a PARENT (including an adoptive parent) to make to another parent or caregiver to cover the child's care and living expenses. State law says that every parent must financially support his or her child.[2529] Usually, the parent who does *not* have custody of the child (or who has custody some of the time and earns more money) pays child support to the parent or caregiver who has custody of the child most or all of the time.[2530]

WHO HAS TO PAY CHILD SUPPORT?

A court can only order you to pay child support if you are legally considered to be the child's mother or father.[2531] You have to pay child support when a family court judge makes a *child support order*, which says how much each parent is required to pay. A family court judge can make a child support order in any of the

[2529] Cal. Fam. Code § 3900.
[2530] This is because CAL. FAM. CODE § 3900 et seq. says both parents are expected contribute equally to their child's financial needs.
[2531] Cal. Fam. Code § 7570 (a)

following cases (*please note: EITHER* parent can ask the judge for a child support order in any of the following cases):[2532]

1) **Divorce, legal separation, or annulment—**for parents who are married to each other and want to end their relationship;
2) **Paternity (parentage)—**for parents who are NOT married to each other;
3) **Petition for Custody and Support of Minor Children—**for parents who have signed a voluntary Declaration of Paternity, OR who are married and want to stay married;
4) **Domestic violence restraining order—**for married OR unmarried parents; OR
5) In some situations, the **Local Child Support Agency (LCSA***)* may also start a child support case in court against one or both parents/caregivers (see next question for more information about LCSA child support cases).[2533]

In general, you must continue to make child support payments until your child turns 18 years old,[2534] or until the judge or LCSA agrees to change the order. Child support also ends if your parental rights are terminated.[2535]

Do legal guardians have to pay child support?

No.[2536] Child support is a parental responsibility, not a legal guardian's responsibility, and therefore a judge cannot order a legal guardian to pay child support.[2537] But *adoptive parents* DO take on a legal financial responsibility to support their adoptive child(ren)—because they assume *all legal rights and responsibilities of biological parents* (unlike legal guardians).[2538]

WHO RECEIVES MY CHILD SUPPORT PAYMENTS?

In general, your child support payments go to the child's other parent or caregiver who has physical custody of the child, OR to the state of California if your child receives public benefits or if Child Protective Services (CPS) is involved.

Can you pay child support directly to the legal guardian of a child?

You can pay child support directly to the guardian in an informal capacity. If the guardian or the local child support agency (LCSA) has requested child support in court you will have to pay the state disbursement unit and they will provide support to your child's guardian.[2539]

HOW WILL OWING CHILD SUPPORT AFFECT MY REENTRY?

Owing child support can affect every area of your reentry from getting employment to occupational licenses to public benefits and even housing. If you do not make child support payments, you can face such serious consequences as the following:

1) If you are employed, your employer will automatically deduct (take away) a portion of your wages to pay your current and/or overdue child support obligations (called a *wage assignment* or *wage garnishment*);[2540]
2) Your child support payments can be automatically deducted (taken away) from other income and benefits you earn, including state or federal income tax refunds, workers' compensation benefits, unemployment and state disability benefits, retirement benefits, and lottery winnings;[2541]
3) Liens can be placed on your property and bank accounts to pay overdue child support (see PG. 724 for more information about liens;[2542]
4) Your driver's license, occupational license, and commercial or recreational licenses may be suspended, revoked, or denied;[2543]
5) Your passport may be revoked or denied;[2544]

[2532] Cal. Fam. Code § 4001.
[2533] Cal. Code Civ. Proc. § 685.050.
[2534] CAL. FAM. CODE § 3901(a). However, if your child is still in high school and lives with a parent, then child support continues until s/he graduates OR turns 19—whichever happens first. Alternatively, child support can end earlier if/when your child (1) gets married, (2) joins the military, (3) is emancipated, or (4) dies. Or child support may continue for longer if (1) the parents agree to a longer arrangement, or (2) the judge orders both parents to keep supporting a disabled adult child.
[2535] Cal. Fam. Code § 3901(b).
[2536] See CAL. FAM. CODE § 2351.
[2537] Cal. Fam. Code 4053.
[2538] California Courts, Guardianship, http://www.courts.ca.gov/selfhelp-guardianship.htm.
[2539] Cal. State Dep. of Soc. Serv., California State Disbursement Unit, https://www.childsup.ca.gov/payments/statedisbursementunit(sdu).aspx
[2540] Cal. Fam. Code § 5230
[2541] CAL. REV. & T. CODE § 19271(d)(2) (state income tax refund); 42 U.S.C. § 664 and 26 U.S.C. § 6402(c) (federal income tax refund); CAL. FAM. CODE §§ 17510 (workers' compensation), 17518 (unemployment benefits), 17528 (retirement)
[2542] Cal. Fam. Code § 17523
[2543] Cal. Fam. Code § 17520

6) Unpaid child support will be reported to credit bureaus, which can hurt your credit rating and make it harder to get a loan, rent an apartment, or find a job;[2545] AND/OR
7) The amount of interest that you owe will continue to increase.[2546]
8) *If you are unemployed and do not pay your child support obligations*, the judge may order you to get a job (or at least to try). For example, the judge may order you to apply for a certain number of jobs every week until you get hired, and may require you to bring in proof of every job application you do.[2547]
9) Finally, if the judge finds that you are *able* to make child support payments and are *willfully* failing to pay, the judge can find you "in contempt of court" and have you arrested or put in jail.[2548] However, the judge usually only does this as a last resort, if all other enforcement efforts have failed.

HOW DO I FIND OUT WHETHER I OWE CHILD SUPPORT AND HOW MUCH I OWE?

If you were ordered to pay child support, you should have received papers from the LCSA or the other parent.[2549] If you can't remember whether you received papers (or you don't have them anymore), you should contact the LCSA to find out how much you owe.[2550] To find the LCSA in your county, call 1-866-901-3212 or visit http://www.childsup.ca.gov/home/lcsaoffices.aspx. You can also contact the family court clerk to get a copy of your child support order and other court papers.

If you disagree with the amount of overdue child support you (or the other parent) owe, you can ask the LCSA for a review of your account, and/or you can ask the judge to determine how much money you owe (called a Judicial Determination of Arrears).[2551] If the overdue child support payments are from the period of time you were incarcerated, there is a special form to ask the judge how much you owe (Form FL-676: Request For Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization.)[2552]

IMPORTANT: If you *never received any papers or child support order*, but the LCSA now says that you owe child support, you may be able to have the judge *cancel* the child support order. But you must act *as soon as you find out* that there is an order for you to pay child support. If you do not act immediately, the judge may refuse to cancel the order.

MANAGING YOUR CHILD SUPPORT PAYMENTS

I AM CURRENTLY INCARCERATED. DO MY CHILD SUPPORT PAYMENTS AUTOMATICALLY STOP WHEN I AM IN PRISON OR JAIL?

It depends on the *date* when your most recent child support order was *issued* by the judge AND for *how long* you were incarcerated. For most people, though, the answer is NO—child support generally does NOT stop automatically while you're incarcerated.

[2544] 42 U.S.C. § 652(k)
[2545] Department of Child Supportive Services, Information for the noncustodial Parent, http://www.childsup.ca.gov/portals/0/resources/docs/pub247_english.pdf
[2546] Cal. Rev. & T. Code § 19271(c); Cal. C.C.P. § 685.010.
[2547] Telephone call with Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, Jan. 6, 2015.
[2548] California Courts, Falling Behind in Child Support Payments, http://www.courts.ca.gov/selfhelp-support.htm
[2549] JUDICIAL COUNCIL OF CAL., Child Support FAQs (Nov. 12, 2014), http://www.courts.ca.gov/1200.htm.
[2550] CAL. FAM. CODE § 17526(a) requires the LCSA to provide you with information about how much child support you owe. You can also ask the judge to determine exactly how much child support and interest you owe. § 17526(c).
[2551] Cal. Fam. Code § 17526.
[2552] Form FL-676 is also available online at http://www.courts.ca.gov/documents/fl676.pdf. For more information, read the accompanying information sheet, FL-676-INFO, http://www.courts.ca.gov/documents/fl676info.pdf.

WILL MY CHILD SUPPORT PAYMENTS STOP AUTOMATICALLY WHILE I'M INCARCERATED?	
NO, your payments WILL NOT stop automatically if your child support order was issued *before July 1, 2011*.	If your *current* child support order was issued *before July 1, 2011*, your child support payments will NOT stop automatically while you're incarcerated. You will continue to owe child support payments while you are incarcerated, unless you get the judge to change your child support order. To stop your child support payments while you are incarcerated, you will need to ask the judge to reduce your payments to $0 because you do not have any income (unless you have an outside source of income to make your payments). See PG. 782 to learn how to do this.
YES, your payments SHOULD stop automatically if your child support order was issued *on or after July 1, 2011*, AND you arcerated for *90 days or* more.	If your *current* child support order was issued *on or after July 1, 2011* AND you are incarcerated for *90 days* or more, your child support payments will be *automatically paused* (suspended) while you are incarcerated.[2553] This means that you will not owe any child support during the time you are incarcerated, and you will not have to do anything to make this to happen. But your child support payments will *automatically continue* again after you are released.[2554] This special law applies to child support orders issued (i.e., made and/or changed) *on or after July 1, 2011*, for parents who are incarcerated for *90 days* or more.[2555] However, it may *not* apply if you are incarcerated for domestic violence, harassment, or for violating a previous child support order, OR if you have outside income and can afford to make payments while you're incarcerated.[2556]

In summary: If your most recent child support order was issued by the judge (i.e., made or changed) *on or after July 1*, AND you are/were incarcerated *for 90 days* or more, your payments *should* automatically stop while you are incarcerated. If your child support order was NOT made on or after July 1, 2011, your payments will NOT automatically stop while you're incarcerated (but you can ask the judge to reduce your payments to $0 while you're incarcerated—see Appendix L, PG. 824.

WILL MY CHILD SUPPORT PAYMENTS AUTOMATICALLY BEGIN WHEN I AM RELEASED FROM PRISON OR JAIL?

If your child support order was made or modified on or after July 1, 2011 then your child support will automatically resume once you are released from jail.[2557]

If your child support order was made before July 1, 2011 then you should check the judge's order to see if there is an expiration on the modification. If not the order will stay at zero until the recipient of the child support decides to file for modification again.[2558]

HOW DO I MAKE CHILD SUPPORT PAYMENTS?

You can make payments by one of the following methods, depending on whether or not the Local Child Support Agency (LCSA) is involved:

1) <u>If the LCSA is involved (there is a formal arrangement for support payments between you and the other parent or caregiver:</u>

- When you pay your child support, you are making these payments to the California State Disbursement Unit (SDU).[2559] Under federal law, the California SDU is required to process 100% of child support payments (which used to be processed by the LCSA itself, but no longer).[2560]
- Mail your payment (check or money order) to the California SDU at the following address:[2561]
  California SDU, P.O. Box 989067, West Sacramento, CA 95798-9067
- Call to make payments: 1-866-901-3212 (option 1)

[2553] CAL. FAM. CODE § 4007.5(a)(1). The law applies to child support orders issued on or after July 1, 2011, and remains in effect until July 1, 2020. § 4007.5(g), (h). It is possible this law will be extended.
[2554] CAL. FAM. CODE § 4007.5(a)(2).
[2555] CAL. FAM. CODE § 4007.5(g), (i).
[2556] CAL. FAM. CODE § 4007.5(a)(1), (d).
[2557] CAL. FAM. CODE § 4007.5(a)(1). The law applies to child support orders issued on or after July 1, 2015, and remains in effect until July 1, 2020. § 4007.5(g), (h).
[2558] CAL. FAM. CODE § 4007.5(a)(2).
[2559] Telephone and online payments also require a debit card, credit card, or bank information. For both telephone and online payments, you can make a single (one-time) payment or set up an account to make ongoing payments.
[2560] Cal. Dep't of Child Support Svcs., California State Dispursement Unit, https://www.childsup.ca.gov/payments/statedisbursementunit(sdu).aspx.
[2561] For payments by mail, send a check or money order to the following address. The check or money order should be payable to the "California State Disbursement Unit" and include your name and case identification number. Note: This address is only for regular child support payments: CA State Disbursement Unit (SDU), PO Box 989067, West Sacramento, CA 95798-9067.

- Pay online: https://www.childsup.ca.gov/payments/statedisbursementunit(sdu).aspx.
- Pay in person at certain LCSA offices or any MoneyGram location.
  - To find an LCSA office that accepts payments, call 1-866-901-3212 or visit www.childsup.ca.gov/offices.
  - To find a MoneyGram location, call 1-800-926-9400 or visit www.MoneyGram.com/Locations. Use Receive Code 14630 to make a California child support payment. (Note: MoneyGram will charge an additional fee for making your payment.)
  - *Note:* You may need your child support *Participant ID* number and/or your social security number when you make a payment.

2) If the LCSA is not involved in your case, you must make payments directly to the other parent (or caregiver)—unless you are told otherwise.

HELPFUL HINT
Keep Records of Your Payments!

IMPORTANT! Whether you are making your payments to the California SDU or directly to the other parent, it's a good idea to *always keep a record of every payment you make*. You can keep a separate notebook where you write down the *date* and *amount* of each payment, or make notes on a calendar every time you make a payment (including the date and amount).

HELPFUL HINT
I lost my job or went to jail and cannot afford my child support payments!

IMPORTANT! If you cannot pay or are falling behind on your child support payments because you lost your job, went to jail, or some other important changes have happened, it's recommended that you *immediately* contact the LCSA and/or family court and ask to change your child support amount. Don't wait! You are responsible for paying the full amount of child support until the LSCA or judge changes the child support order. For more information about changing your child support order, see Appendix L, PG. 824.

WHAT CAN I DO IF MY MONEY IS BEING TAKEN OUT OF MY SALARY FOR OVERDUE CHILD SUPPORT PAYMENTS?

If you are employed, a portion of your wages will be automatically taken out to pay your current and/or overdue child support (called a *wage assignment* or *wage garnishment*).[2562] This will happen even if you only owe *current* child support payments, without any overdue payments or interest. If your child support payments are being taken directly from your wages, you should not need to make other payments.[2563]

If you are not employed, or if your child support is not being taken from your wages, you must make child support payments directly.

CAN I CHANGE OR ADJUST THE AMOUNT OF CHILD SUPPORT I OWE? …WHILE I AM INCARCERATED? …AFTER MY RELEASE?

IMPORTANT: The process for changing or lowering your CURRENT and FUTURE child support payments is different than the process for changing your PAST, OVERDUE child support debt. This question will explain how to change your *current* child support payments. To learn about changing your *past*, *overdue* child support debt, see PG. 785778.

First the bad news: In general, you CANNOT go back and change the amount of past, overdue child support payments and interest that you owe. (The only exception is for child support orders issued on or after July 1, 2011, or if you agree to settle your past debts owed the other parent or the state—see PG. 778 to learn more).[2564]

[2562] CAL. FAM. CODE §§ 17420 (earnings assignment order for current child support payments), 17522 (earnings withholding for delinquent child support); CAL. REV. & T. CODE § 19271(b)(1)(A) (delinquent child support); CAL. CODE CIV. PROC. § 706.030 (delinquent child support).
[2563] The judge is required to make an earning assignment order (also called income withholding or wage garnishment) any time there is an order to pay child support. CAL. FAM. CODE § 5230. If you want to make payments directly to the other parent (or caregiver) and NOT through wage assignment, you may be able to work out a different payment arrangement with him/her. If the LCSA is NOT involved in your case, you and the other parent (or caregiver) can agree to make child support payments in some other way, and can ask the judge to "stay" (put on hold) the wage assignment. In this situation, both parents (or caregiver) work out how child support will be paid and handle it between them. If the LCSA is involved in your case, the LCSA will have to agree to have the wage assignment put on hold. This may be difficult, however, because LCSAs usually prefer you to make child support payments through a wage assignment with your employer, and want all child support payments to go through the state payment system (called the State Disbursement Unit), NOT to the other parent directly. JUDICIAL COUNCIL OF CAL., Paying a Child Support Order, http://www.courts.ca.gov/1197.htm.
[2564] California Courts, Child Support. http://www.courts.ca.gov/selfhelp-support.htm



But you CAN ask the judge to change the amount of child support that you have to pay in the future, starting from the date when you file your court papers. You CAN also ask the judge to set up a monthly payment plan so you can repay what you owe in installments.[2565]

To ask for a change in your child support payments while incarcerated, fill out the "Incarcerated Parent's Request to Review Child Support" form and send it to your local child support agency (LCSA).[2566] You can ask the prison or jail for a copy of this form, or for a sample form. If the form is not available, you should contact the LCSA immediately by phone or letter, and explain that you are incarcerated and need to change your child support payments.[2567]

See Appendix A, PG. 797, to find contact information for a list of LCSAs by county in California.



IMPORTANT: In general, the judge can only change the amount of child support you owe for *future* payments (starting from the day you file papers asking for the change). The judge cannot reduce the amount of *past* child support that you owe. Therefore, you should contact the LCSA and/or file your court papers *as soon as you are incarcerated*, if possible, to request a change in your payments.

If you are served with new child support papers while in prison or jail, you should contact the LCSA listed on the paperwork right away. It is best to contact the LCSA *in writing*, by filling out and sending back the blank *Response* form that you receive with the court papers.[2568] You only have *30 days* (starting from the day you receive the papers) to respond to the LCSA and/or the court.[2569] You must notify the LCSA again once you are released.[2570]

To change the amount of your current and future child support payments, you must ask the judge or LCSA (if involved in your case) to change your child support order.

See the chart on the next page as a guide for how to request a change to current and future child support payments.

[2565] California Courts, Falling behind in Child Support. http://www.courts.ca.gov/selfhelp-support.htm
[2566] The form is also available online at http://acreentry.org/wp-content/uploads/2011/10/Child-Support-application-english-and-spanish.pdf.
[2567] Child Support Dirs. Assoc., Child Support Information for the Incarcerated Parent, https://csdaca.org/wp-content/uploads/resources/1/Outreach%20and%20Education/Fact%20Sheets/incarcerated%20parent.pdf; CAL. DEP'T OF CHILD SUPPORT SVCS., Pub. 248: Child Support Information for the Parent in Jail or Prison (Nov. 2012). If the LCSA does not respond, you must file court papers and request a hearing to change your support order. JUDICIAL COUNCIL OF CAL., The Basics of Child Support for Incarcerated Parents (Nov. 2011), http://www.courts.ca.gov/documents/incarceratedguide.pdf.
[2568] When you receive your court papers, they should include a blank Response form for you to complete and send back. This form may be called Form FL-685 (if the LCSA has started a child support case for your child), or Form FL-270 or Form FL-320 (if the other parent or caregiver is asking you to pay child support). You will also need to complete forms with your income and financial information. If the LCSA has asked the judge to establish paternity (i.e., find that you are the child's parent), you will need to return Form FL-610.
[2569] CAL. DEP'T OF CHILD SUPPORT SVCS., Pub. 248: Child Support Information for the Parent in Jail or Prison (Nov. 2012). If you don't think that you're the child's parent, you can have a parentage (paternity) test done while you're in prison or jail.
[2570] CAL. DEP'T OF CHILD SUPPORT SVCS., Pub. 248: Child Support Information for the Parent in Jail or Prison (Nov. 2012).



USE THE FOLLOWING CHART AS A GUIDE IF YOU WANT TO REQUEST A CHANGE IN YOUR CURRENT AND FUTURE CHILD SUPPORT PAYMENTS.

REQUESTING A CHANGE IN YOUR CURRENT & FUTURE CHILD SUPPORT PAYMENTS		
YOU WANT TO REQUEST A CHANGE FROM→	**The Court (the Judge)**	**The Local Child Support Agency (LCSA)**
What should I do?	File a Request for Order of Child Support Modification (FL-300) AND Income & Expense Declaration (FL-150) or Financial Statement (FL-155) in family court. See Appendix L on PG. 824 for sample court forms.[2571]	Contact your LCSA and tell them you want a "review and adjustment" of your child support order.
What are the steps I need to follow?	To request a change in court, you must: Fill out the FL-300 AND FL-150 or FL-155 (see box above), and get other documents to show your income (see last bullet); File your court forms and other documents with the family court clerk; Serve copies of all your papers on the other parent (and LCSA, if involved in your case); and Have a court hearing to decide how much child support you must pay (see box below). IMPORTANT: You will need to show the judge that your circumstances have changed and you cannot afford your current child support payments—for example, because you were incarcerated, lost your job, have other expenses, or for some other reason. Along with your court forms, you should include any pay stubs or proof of income and your latest federal and state tax returns—these will show the judge how much money you make and how much you can afford to pay in child support. Ask the Family Law Facilitator for help getting all of your papers together.[2572]	To request a change from the LCSA: Contact your LCSA and tell them you want a "review and adjustment" of the child support order.
What happens next?	After you file your court forms and other documents, you will have a hearing. At the hearing, the judge can change your child support payments starting from the date you first filed your court papers. For more information on asking the judge to change your child support payments, visit http://www.courts.ca.gov/1196.htm.	The LCSA will conduct a review and they may potentially reduce your child support payment amount. IMPORTANT: It can take up to 6 months for the LCSA to change your payments, and your child support obligations will continue to increase during this time—so don't stop making payments while you're waiting!

[2571] These forms are also available online at: FL-300—http://www.courts.ca.gov/documents/fl300.pdf; FL-150—http://www.courts.ca.gov/documents/fl150.pdf.FL-155—http://www.courts.ca.gov/documents/fl155.pdf.
[2572] JUDICIAL COUNCIL OF CAL., The Basics of Child Support for Incarcerated Parents (Nov. 2011), http://www.courts.ca.gov/documents/incarceratedguide.pdf; JUDICIAL COUNCIL OF CAL., Changing a Child Support Order, http://www.courts.ca.gov/1196.htm.

HELPFUL HINTS
What can I do if . . .?

- *If your driver's license has been suspended due to unpaid child support…* First, contact the LCSA to see if they can help make arrangements to have your license released. If you cannot pay the amount required by the LCSA, you can ask the judge to reinstate (give back) your license by filing a *Notice of Motion for Judicial Review of License Denial* (Form FL-670) with the family court that issued your child support order (see Appendix L on PG. 824, for sample form).[2573]
- *If there is a levy on your bank account…* Contact the LCSA or call 1-866-901-3212 for any questions.
- *If your passport has a hold on it…* Federal law requires that anyone who owes more than $2,500 in overdue child support cannot get a passport.[2574] In California, you must pay off ALL of your overdue child support or have your child support case closed in order to get your passport released. Contact your LCSA for questions or assistance.[2575]

I AM FORMERLY INCARCERATED AND OWE MONEY FOR PAST, OVERDUE CHILD SUPPORT PAYMENTS ("ARREARS"). HOW CAN I CHANGE THESE ARREARS?

It depends on the *date* when your most recent child support order was issued by the judge AND for *how long* you were incarcerated.

POSSIBILITY #1: If your current child support order was issued on or after July 1, 2011 AND you were incarcerated for 90 days or more:

Your payments *should have* automatically stopped while you are incarcerated (see Appendix L, PG. 824, for more information about automatically stopping your child support payments while incarcerated). After you are released, if you discover that your child support payments were *not* automatically stopped—i.e., if you find that you owe child support from while you were incarcerated—you can ask the judge to "adjust" your child support arrears (i.e., reduce your debt to $0) for the time you were incarcerated.

To do this, fill out the Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization (Form FL-676, available online at http://www.courts.ca.gov/documents/fl676.pdf or in Appendix L, PG. 824), and file it with the family court where your child support order is from. You will need to prove: (1) the dates when you were incarcerated, and (2) that you could not afford to pay child support while you were incarcerated (i.e., that you had no income or other money during that time.) However, if you were incarcerated for a domestic violence or harassment offense, or for violating a previous child support order, OR if you had outside income or assets and could afford to make child support payments while you were incarcerated, the judge may refuse to reduce your debt.[2576] BUT remember—this ONLY applies if your child support order was on or after July 1, 2011 AND you are incarcerated for 90 days or more.

POSSIBILITY #2: If your current child support order was NOT issued on or after July 1, 2011, or you were incarcerated for less than 90 days:

Your payments do NOT stop during your incarceration, so you will continue to owe child support payments for this time (unless you asked the LCSA or judge to change your payments while incarcerated—see the next question for more information about how to do this). Unfortunately, the judge *cannot* go back and change your overdue payments in this case, but you *can* ask the LCSA or other parent to forgive some of your overdue payments (see next question), and you *can* ask the judge to change your current child support payments going forward.

CAN I GET RID OF MY PAST, OVERDUE CHILD SUPPORT DEBT?

It depends, but probably not entirely.

IMPORTANT: The process for changing or lowering your PAST, OVERDUE child support debt ("arrears") is *different* than the process for changing your CURRENT child support payment amount. This question will explain how to change your *past*, *overdue* child support debt. To learn about changing your *current* child support payments, see PG. 782.

This question will explain how to change your *past*, *overdue* child support debt.

[2573] The form is available online at http://www.courts.ca.gov/documents/fl670.pdf. The judge will make the final decision about whether to give back your license. JUDICIAL COUNCIL OF CAL., Child Support FAQs, http://www.courts.ca.gov/1200.htm.
[2574] 22 C.F.R. § 51.60(a).
[2575] Cal. Fam. Code § 3048(f).
[2576] Cal. Fam. Code § 4007.5.



STEP 1: **First, figure out whether you owe overdue child support payments to the other parent (or caregiver) or to the state.**

To find out, you can contact the LCSA and ask for a breakdown (detailed list) of your arrears. This will show how much you owe to the other parent and/or to the state. The chart below can also help you figure out whom you owe child support to—but it's always best to get a breakdown from the LCSA to be sure!

STEP 2: **Once you know whom you owe money to, use the following chart to figure out your next steps:**

CHANGING OR LOWERING YOUR PAST, OVERDUE CHILD SUPPORT DEBT (ARREARS)		
TO WHOM DO YOU OWE CHILD SUPPORT MONEY?	**I OWE CHILD SUPPORT TO THE STATE (CALIFORNIA)**	**I OWE CHILD SUPPORT TO THE OTHER PARENT (OR CAREGIVER)**
How do I know whom I owe?	If the other parent (or caregiver) is receiving public benefits for your child, or if CPS has taken your child, you owe child support to the State of California.[2577]	If your child support order was part of a divorce or family law case, you will probably owe child support directly to the other parent.
What should I do?	Apply for the Compromise of Arrears Program (COAP) (see PG. 722 for more information).[2578] If you qualify, the COAP program will reduce (but not completely eliminate) the amount of child support debt that you owe to the State, so you will not have to pay as much.[2579]	Try to work out an agreement (called a "settlement") with the other parent (or caregiver). You may be able to work out an agreement to forgive some or all of the overdue child support, in exchange for your paying off the remaining amount right away. *For example*, you could offer to make—and the other parent (or caregiver) could agree to accept—a single lump sum payment all at once, rather than making many smaller payments over time and having the debt drag out.
Important Information to Know:	If you miss *any* of your current child support or COAP payments, your COAP agreement will be cancelled AND you will owe all the debt that was previously reduced. You may not receive a refund for any of the COAP payments that you've already made, and you will be unable to reapply to the COAP program for 2 years.[2580]	If you reach an agreement with the other parent, you should make sure to put it in writing for the LCSA and the judge.[2581]

CAN I DISCHARGE MY CHILD SUPPORT ARREARS BY FILING FOR BANKRUPTCY?

No. Filing for bankruptcy will not cancel debt related to child support.[2582] There is unfortunately no legal procedure that completely discharges child support debt. While you may be able to reduce any child support arrears you owe to the state (see chart above), you will continue to owe some amount of child support until it is paid off.

I RECEIVE PUBLIC BENEFITS. CAN A PORTION OF MY PUBLIC BENEFITS BE TAKEN TO PAY FOR CHILD SUPPORT?

Yes. If you owe *any* child support payments (current and/or past, overdue payments), a portion of your public benefits payments can be automatically taken out to pay off your child support obligations. Your child support payments can be taken out of *any* benefits you receive *except* for General Assistance/General Relief (GA/GR)

[2577] Electronic communication from Brittany Stringfellow Otey, Assistant Professor of Law / Directing Attorney, Pepperdine Legal Aid Clinic, Jan. 21, 2015 (1:22 PM).
[2578] Cal. Fam. Code § 17560.
[2579] This is child support debt you owe if your child received public assistance (welfare) or was in foster care at the time payments were due. The COAP program will NOT reduce child support debt you owe to the other parent. CAL. FAM. CODE § 17560(d).
[2580] CAL. DEP'T OF CHILD SUPPORT SVCS., Compromise of Arrears Program (COAP) (Nov. 13, 2014), http://www.childsup.ca.gov/payments/compromiseofarrearsprogram.aspx.
[2581] Electronic communication from Brittany Stringfellow Otey, Assistant Professor of Law / Directing Attorney, Pepperdine Legal Aid Clinic, Jan. 16, 2015.
[2582] Judicial Branch of California, Child Support FAQs, available at http://www.courts.ca.gov/1200.htm.

and SSI.[2583] That means your payments can be taken out of your unemployment, disability, workers compensation, veteran's benefits, or any other benefits you earn.

However, if you are already receiving public assistance, the judge *may* decide that your income is *too low* to owe *current* child support payments.[2584] BUT—this *only* applies to *current* payments. Even if the judge decides that your income is too low for *current* payments, you will still owe any *past, overdue* child support payments that were due in the past. You should ask the judge for a payment plan that lets you to make small payments over time.[2585] **Remember:** The only way you can avoid paying past, overdue child support payments is (1) if your child support order was issued on or after July 1, 2011, and the payments were due while you were incarcerated for 90 days or more; OR (2) if you get a settlement agreement with the COAP program or other parent.

For more information on paying child support, you can talk to the court Family Law Facilitator, contact the LCSA, or visit the California Courts' website on *Paying a Child Support Order* at http://www.courts.ca.gov/1197.htm.

CONSEQUENCES FOR FAILING TO PAY CHILD SUPPORT

CAN I BE IN VIOLATION OF MY SUPERVISION OR PAROLE IF I FAIL TO PAY CHILD SUPPORT?

Yes. Failure to pay child support can amount to a violation of supervision or parole if you are held in contempt of court for willfully withholding payment. This is because carrying out any criminal activity (which acting in contempt of court is) is a general violation of parole and supervision (for more information on parole and probation conditions, see the PAROLE & PROBATION CHAPTER, PG. 130).

CAN I GO TO JAIL FOR NOT PAYING CHILD SUPPORT?

Not paying child support can have very serious consequences. If a family court judge finds that you have the ability to pay support but are willfully not paying it, it can find you "in contempt of court." Being "in contempt of court" means you are not following an order from a judge and it could be punished with jail time. This enforcement tool is generally used only when all others have failed since it has such serious consequences.[2586] If you are being charged with contempt of court and could face criminal charges, you have the right to a lawyer. If you cannot afford a lawyer, ask the court to appoint one for you.[2587]

If you are able to show that you are not able to pay before the court, you will probably not be held in contempt (which can lead to jail time). However, this still may cause other problems. Although you may not go to jail for being in debt, your credit may affected if you do not pay the child support you have been ordered to pay.[2588] If your credit is affected because you have not paid child support, you may have difficulty in doing things that result in a credit check like renting an apartment or purchasing a car.

FREE RESOURCES

For more information on child support payments and child support debt, check out the following resources:

- Paying a Child Support Order is a helpful website that explains what your child support order means, how wage assignments work, and what to do about overdue child support, by the Judicial Council of California—http://www.courts.ca.gov/1197.htm
- The Basics of Child Support for Incarcerated Parents, by the Judicial Council of California – http://www.courts.ca.gov/documents/incarceratedguide.pdf
- Child Support Information for the Parent in Jail or Prison, by the Department of Child Support Services – www.childsup.ca.gov/portals/0/resources/docs/pub248_english.pdf
- Other resources from the Department of Child Support Services:
  - Information for the Noncustodial Parent – www.childsup.ca.gov/portals/0/resources/docs/pub247_english.pdf
  - Changing Your Child Support Amount – www.childsup.ca.gov/portals/0/resources/docs/pub252_english.pdf
  - Child Support Handbook—http://www.childsup.ca.gov/portals/0/resources/docs/pub160_english.pdf

[2583] Electronic communication from Brittany Stringfellow Otey, Assistant Professor of Law / Directing Attorney, Pepperdine Legal Aid Clinic, Jan. 21, 2015 (1:25 PM).
[2584] You will still have to follow all the steps discussed above for responding to a child support request and/or changing a child support order, so that the judge can determine your income and child support obligations.
[2585] Electronic communication from Brittany Stringfellow Otey, Assistant Professor of Law / Directing Attorney, Pepperdine Legal Aid Clinic, Jan. 21, 2015 (1:25 PM).
[2586] JUDICIAL COUNCIL OF CAL., "Paying a Child Support Order," http://www.courts.ca.gov/1197.htm.
[2587] http://www.courts.ca.gov/1253.htm
[2588] CAL. FAM. CODE 4700 – 4701.



- Court forms for child support are available on the California Courts' website at http://www.courts.ca.gov/1199.htm

Whether you are still incarcerated or back in the community, you know how important your children and your family are for rebuilding your life, your relationships, and your sense of self.

SPOUSAL SUPPORT DEBT

BASICS OF SPOUSAL SUPPORT DEBT

WHAT IS SPOUSAL SUPPORT?

When a couple legally separates or divorces, a judge in family court may order one spouse or domestic partner to pay the other a certain amount of money each month in order to help pay for the less earning spouse or partner's living expenses.[2589] This is called "spousal support" for married couples and "partner support" in domestic partnerships.[2590] It is sometimes also called "alimony."[2591] To understand more about divorce and legal separation, see the section beginning on PG. 774.

IMPORTANT! Spousal and partner support are difficult legal issues. See a lawyer or a family law facilitator in your court. The family law facilitator will help you for free to:

- **Understand spousal/partner support — how long the support may last and how it may affect your taxes;**
- **Help you calculate spousal or partner support; and**
- **Prepare court forms.**
- **To find a family law facilitator to help you understand spousal or partner support, see Appendix A, PG. 797 for resources.**

WHO HAS TO PAY SPOUSAL SUPPORT?

If you and your spouse or partner either get a court-order for spousal support or you agree to a payment plan on your own, the spouse or partner that is the higher wage earner will have to pay the lesser-earning spouse or partner an adequate amount of money to help pay for the less his/her basic living expenses.[2592]

HOW WILL OWING SPOUSAL SUPPORT AFFECT MY REENTRY?

Owing spousal support can affect your credit score, your ability to get some types of employment, your income, and more. For example:

- *Your Credit Score Can Be Affected:* If a Local Child Support Agency (LCSA) is involved they will report your support non-payment to credit rating agencies. They are also entitled to use all the enforcement mechanisms that they use for child support non-payments.
- *Your Employment and Income Can Be Affected:* If the person receiving spousal supports files for wage garnishment, your employer may be forced to withhold part of your wages to pay back your past due spousal support.

HOW DO I FIND OUT IF I OWE SPOUSAL SUPPORT AND HOW MUCH I OWE?

If the Local Child Support Agency (LCSA) is involved because you are paying your spousal support payment along with your child support payment, you should contact the LCSA directly to ask how much you owe. To find the LCSA in your county, call 1-866-901-3212, or visit http://www.childsup.ca.gov/home/lcsaoffices.aspx.

If LCSA is not involved you should get in contact with the person you are paying spousal support to and ask them how much you owe. If that is not possible you can also contact the family law facilitator in your county. To find the family law facilitator in your county visit: http://www.courts.ca.gov/selfhelp-facilitators.htm

MANAGING SPOUSAL SUPPORT PAYMENTS

I RECEIVED LEGAL PAPERS ABOUT SPOUSAL SUPPORT. WHAT CAN I DO?

If you have been "served" spousal support papers (meaning that someone has given you, or mailed you legal papers telling you that they have filed papers that ask the Family Court to issue an order about spousal or partner support), you should respond if you want to have input into the judge's final decision.

To respond, you must file a "*Responsive Declaration to Request for Order*" (Form FL-320) and your "*Income and Expense Declaration*" (Form FL-150). Once you have filled out the forms, you could ask your Family Law Facilitator to review them before filing with the court clerk.

[2589] CAL. FAM. CODE §§ 3600-3604.
[2590] CAL. FAM. CODE §§ 3600-3604.
[2591] CAL. FAM. CODE §§ 3600-3604.
[2592] CAL. FAM. CODE §§ 3600-3604.



After you have filed your forms, you must serve your spouse/partner with your response and your Form FL-320 at least 9 days before the hearing (which is scheduled at the time you file your response with the court clerk).

I AM CURRENTLY INCARCERATED. DO MY SPOUSAL SUPPORT PAYMENTS AUTOMATICALLY STOP WHILE I AM IN PRISON OR JAIL?

Your spousal support payments do not automatically stop while you are incarcerated, but you can request that your order be paused or reduced if you are not longer able to pay. For steps on how to change an order, see Appendix M, PG. 831.

If you do not ask the family court judge to reduce your spousal support order, then your missed payments plus interest will add up while you are incarcerated, and you must pay this after you are released.

To reduce or pause spousal/partner support payments, you should either (1) if no children are involved, contact your local Family Law/Self-Help Facilitator OR (2) if children are involved, contact your local child support agency (LCSA). For help to find either your family law/self-help facilitator or LSCA, see Appendix A, PG. 797.

DO MY SPOUSAL SUPPORT PAYMENTS AUTOMATICALLY BEGIN WHEN I AM RELEASED FROM PRISON?

Because your spousal support payments do not automatically stop while you are incarcerated, then your release will not cause the payments to automatically begin. Follow the court order for your spousal support payments for all relevant dates and amounts owed.

HOW ARE SPOUSAL SUPPORT PAYMENTS MADE?

Most spousal support is paid through "earning assignments," also known as "wage garnishments." This is a portion of money that is removed from your paycheck BEFORE you get paid. In the same way that many taxes are taken out, an "earning assignment" or wage garnishment is removed directly from your paycheck and is considered payment for your court spousal order (and/or child support order).[2593]

- If you also have a child support earnings assignment in place, child support will be taken from your check first. Then, if you also owe spousal or partner support that will be taken from your check.
- If the local child support agency (LCSA) is involved in your case, they will automatically issue the earnings assignment and begin collecting from your paycheck through your employer.
- If the LCSA is not involved in your case, your former spouse or domestic partner, or the court itself, will prepare an "earnings assignment" and send it to your employer.

HOW DO PAYMENTS MADE BY EARNINGS ASSIGNMENT WORK?

When the court orders "wage garnishments," your employer receives court papers that will tell him or her the amount of money that should be taken out (withheld) from your check each pay period. Once your employer receives this paperwork, he or she has just a few days to start taking the money out from your next paycheck.[2594]

Once this money is taken from your paycheck (or "withheld), your employer will send your money based on the type of order was issued. If your order was for:

- …spousal or partner support only, your employer will forward the payments to your spouse or partner directly.
- …child support AND the local child support agency (LCSA) is involved, your employer will take the amount that was court ordered and will send it directly to the LSCA.
- …child support and spousal support and the local child support agency (LCSA) is NOT involved, the money will be sent to the California State Disbursement Unit (SDU).[2595]

If you have any questions about the SDU, contact the SDU directly at 1-866-901-3212 or visit the California State Disbursement Unit's website listed on Appendix A, PG. 797.

CAN I CHANGE THE AMOUNT OF SPOUSAL SUPPORT I OWE (WHILE I AM INCARCERATED OR AFTER MY RELEASE)?

After a judge makes a spousal or partner support order, one or both spouses or domestic partners may need to change the order. This may happen because you or your former spouse's job changed, you or your former

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[2593] Cal. Civ. Proc. § 706.010.
[2594] JUDICIAL COUNCIL OF CAL., Paying a Spousal/Partner Support Order, http://www.courts.ca.gov/1251.htm.
[2595] JUDICIAL COUNCIL OF CAL., Paying a Spousal/Partner Support Order, http://www.courts.ca.gov/1251.htm.

spouse does not need support any more, or you would like to make changes because the spouse that is paying cannot afford to pay the ordered amount. When deciding whether to change the order, a judge will look to determine if there is are "changes in circumstances."

IMPORTANT! Unless the judge signs a new court order, the existing spousal or partner support amount and order will not be changed. So, to protect yourself, even if you have a verbal agreement with your spouse/domestic partner to change the spousal or partner support amount, put it in writing and have a judge sign it. That way you have a current spousal or partner support order that reflects the current amount.

IMMEDIATELY! It takes time for the courts to process paperwork and/or to schedule a hearing before a judge to change court orders and you do not want to get into trouble if your circumstances have changed and now it is difficult to pay. Remember, failure to pay because you do not want to pay may result in the court stating you are in "contempt of court" which may lead to jail time.

For steps on how to change your spousal support court order, see Appendix M, PG. 831.

I AM FORMERLY INCARCERATED AND OWE MONEY FOR PAST, OVERDUE SPOUSAL SUPPORT PAYMENTS ("ARREARS"). HOW CAN I CHANGE THESE ARREARS?

You cannot change these arrears.

CAN I GET RID OF MY PAST, OVER DUE SPOUSAL SUPPORT PAYMENTS?

Unfortunately, although it is possible to modify the amount of spousal support that you pay and end spousal support all together, these changes cannot be made retroactively. There is no way to get rid of past over due spousal support payments.

I RECEIVE PUBLIC BENEFITS. CAN A PORTION OF MY PUBLIC BENEFITS BE TAKEN TO PAY FOR SPOUSAL SUPPORT?

It depends on the type of benefits you are receiving. Federal benefits can be garnished to provide spousal support.[2596] Under California law, up to 25% of unemployment compensation benefits and state disability benefits can also be withheld to pay spousal or child support[2597]. Other state benefits such as welfare cannot be withheld. An application has to be made to the court giving you an opportunity to contest any such garnishments before they can take effect.

CONSEQUENCES FOR FAILING TO PAY SPOUSAL SUPPORT

CAN I BE IN VIOLATION OF MY SUPERVISION OR PAROLE IF I FAIL TO PAY SPOUSAL SUPPORT?

Every person on parole and supervision is subjected to a set of general conditions, one of which is the prohibition of carrying out any illegal activities (see the PAROLE & PROBATION CHAPTER, beginning on PG. 125, for more information about the conditions that apply to your specific type of supervision).

Although not paying your spousal support is not a crime in and of itself, if a judge determines that you have the resources to pay, but are willfully refusing to do so, you might be found in contempt of court. This is a criminal charge that would amount to a parole violation.

CAN I GO TO JAIL FOR NOT PAYING SPOUSAL SUPPORT?

Someone cannot be put in jail just because they owe money. But the person who owes support is ignoring a court order to pay support, so he or she can be prosecuted for being in contempt of court and could go to jail for that reason. This enforcement tool is generally used as a last resort when all other efforts to collect support have failed. If you are being charged with contempt of court and could face criminal charges, you have the right to a lawyer. If you cannot afford a lawyer, ask the court to appoint one for you.[2598]

If you are able to show that you are not able to pay before the court, you will probably not be held in contempt (which can lead to jail time). However, this still may cause other problems. Although you may not go to jail for being in debt, your credit may affected if you do not pay the spousal support you have been ordered to pay.[2599] If your credit is affected because you have not paid spousal support, you may have difficulty in doing things that result in a credit check like renting an apartment or purchasing a car.

[2596] 42 U.S.C. §§ 659, 666.
[2597] Cal. Fam. Code § 17518
[2598] JUDICIAL COUNCIL OF CAL., Spousal/Partner Support FAQs, http://www.courts.ca.gov/1253.htm
[2599] CAL. FAM. CODE 4700 – 4701.



REQUESTING SPOUSAL SUPPORT PAYMENTS

HOW DO I ASK THE COURT FOR A SPOUSAL SUPPORT ORDER?

Spousal support can be requested by you and ordered by a judge in a divorce, legal separation, annulment or domestic violence restraining order proceeding. You can also agree to spousal support with your spouse on your own, outside of court. The agreement about spousal support (sometimes called a stipulation) will have the full force of law once a judge signs it.[2600]

You can ask for a spousal support order once you file (start) your divorce, legal separation, annulment or domestic violence restraining order case.[2601] You can get temporary orders for spousal support while you are waiting for the final judgment in your case. For more information on the procedure for requesting a temporary spousal support order, see Appendix M, PG. 831.

To set up a spousal support order, you or your spouse must request an order from the judge. The procedure for requesting an order depends on:

1. Whether you already have a family court case that involves you and your spouse or domestic partner; or
2. Whether you are starting a case for the first time.

! IMPORTANT! We recommend you ask the family law facilitator in your court to help you fill out the forms in order to request spousal support. Additionally, the California Courts website has all the forms you may need in order to start or join a family court case (available at: http://www.courts.ca.gov/9050.htm).

CAN I ASK FOR SPOUSAL SUPPORT WHILE I AM INCARCERATED?

You can request spousal support while you are incarcerated but the judge will likely not grant it.[2602] The process is the same as it would be if you were not incarcerated. See the preceding question for information on how to request spousal support.

A judge, when ordering spousal support, looks at the receiving spouse's need for the money to meet basic expenses.[2603] It will be extremely hard for you to justify the need for financial support from your spouse while you are incarcerated because the federal, state or county institution where you are serving your sentence is already providing you with your basic necessities such as food, clothing and shelter and you do not have personal expenses during your incarceration.

Therefore, it is advised that you ask the judge to hold on making a determination as to spousal support until you are released.

[2600] JUDICIAL COUNCIL OF CAL., Asking for a Spousal/Partner Support Order, http://www.courts.ca.gov/9050.htm
[2601] CAL. FAM. CODE §§ 3600-3604.
[2602] See http://www.prisonerswithchildren.org/wp-content/uploads/2013/01/Manual-on-Divorce-Issues.pdf ("It is unlikely that the court will order your spouse to pay you spousal support (alimony)as long as you are incarcerated. When you are released this can change, so it is best to ask the court to put off any decision about spousal support until you are released. This way you can avoid going through the procedures for a change in support payments (which can be more time-consuming and difficult)."
[2603] John S. Yohanan, California Court: "It's Time" Not Enough to Justify Cutting of Spousal Support – In re Marriage of Navratil (June 30, 2015), http://www.bayareadivorceattorneyblog.com/2015/06/30/california-court-its-time-not-enough-to-justify-cutting-of-spousal-support-in-re-marriage-of-navratil/.

XVI. DOMESTIC VIOLENCE & RESTRAINING ORDERS

WHAT WILL I LEARN IN THE DOMESTIC VIOLENCE & RESTRAINING ORDERS CHAPTER?

- **What a domestic violence restraining order is and different types of domestic restraining orders.**
- **What a domestic violence order can and cannot do.**
- **What you must do if you have a restraining order against you, and what could happen if you violate a restraining order.**
- **What could happen if my partner who got the restraining order against me contacts or visits me.**

OVERVIEW OF DOMESTIC VIOLENCE RESTRAINING ORDERS & VIOLATIONS

WHAT IS DOMESTIC VIOLENCE?

Domestic violence is defined as abuse or threats of abuse between two people who are in or have been in an intimate relationship (married or domestic partners, dating or used to date, live or lived together, or have a child together), or when there is violence between two people closely related by blood or by marriage.

Domestic violence laws consider the following to be *abuse*:

1) Physically hurting or trying to hurt someone, intentionally or recklessly;
2) Sexual assault;
3) Making someone reasonably afraid that they or someone else are about to be seriously hurt (like threats or promises to harm someone); OR
4) Behavior like harassing, stalking, threatening, or hitting someone; disturbing someone's peace; or destroying someone's personal property.

IMPORTANT: If you were abused by your partner before you were incarcerated and/or are afraid of your partner, it may help you to talk to a domestic violence counselor, even if you do not want (or are not sure if you want) to ask for legal protection.

- For domestic violence resources in your county, see http://www.cdph.ca.gov/HealthInfo/injviosaf/Pages/ViolencePreventionResourceDirectory.aspx.
- For domestic violence resources in tribal communities, visit http://www.cdph.ca.gov/HealthInfo/injviosaf/Pages/ViolencePreventionResourceDirectory.aspx

REMEMBER!

A court order is a legally enforceable decision made by a judge.

WHAT IS A DOMESTIC VIOLENCE RESTRAINING ORDER?

A domestic violence restraining order is a court order that helps protect people from abuse or threats of abuse from someone they have a close relationship with.[2604]

[2604] CAL. FAM. CODE § 6220.



CHART: DIFFERENT TYPES OF DOMESTIC VIOLENCE RESTRAINING ORDERS

THERE ARE FOUR DIFFERENT TYPES OF DOMESTIC VIOLENCE RESTRAINING ORDERS.[2605] PLEASE SEE THE CHART BELOW FOR GENERAL INFORMATION ON ALL FOUR RESTRAINING ORDER TYPES.

TYPES OF RESTRAINING ORDERS & STAY-AWAY ORDERS					
	Emergency Protective Order	**Temporary Restraining Order**	**Permanent Restraining Order**	**Criminal Protective Order or "Stay-Away" Order**	**Parole and Probation**
Who can ask for it?	This is an order that only law enforcement can ask for by calling a judge. A judge can issue EPOs 24 hours a day. So, a police officer that answers a domestic violence call can ask a judge for an emergency protective order at any time of the day or night	You or your spouse. To get a temporary restraining order, paperwork must be completed and an explanation is given as to why an order is needed.	The person who asked for the temporary restraining order or the person who responded to the temporary restraining order.	Sometimes, when there is a domestic violence incident (or series of incidents), the district attorney will file criminal charges against the abuser. This starts a criminal court case going.	Sometimes your parole or probation conditions will include a special condition restricting contact with certain people.
How long does it last?	It can only last 7 days. It usually becomes a temporary restraining order.	This usually last between 20 and 25 days, until the court hearing date.	Usually lasts 3 years.	It depends on the outcome of the criminal case. If the accused person is found guilty or pleads guilty, it may last for 3 years.	The length of your parole or probation
What can a judge do with this type of order?	The judge can order the accused to leave the home.	The judge can order the accused to leave the home. If you violate the restraining order, you may go to jail, pay a fine, or both	At the end of those 3 years (or whenever your order runs out), a new restraining order can be requested so that the order continues.	The judge can order the accused to leave the home. If you violate the restraining order, you may go to jail, pay a fine, or both.	Depending on the type of order, should you breach the condition you would go through the parole or probation administrative appeal process.

WHAT CAN A RESTRAINING ORDER DO?

A restraining order is a court order made by a judge.[2606] It can require someone to:

1) Not contact or go near another person, their children, other relatives, or others who live with them;
2) Stay away from another person's home, work, or their children's schools;
3) Move out of another person's house (even if they live together);
4) Not have a gun;
5) Follow child custody and visitation orders;
6) Pay child support;
7) Pay spousal or partner support (if they are married or domestic partners);
8) Stay away from any of another person's pets;

[2605] Domestic Violence, CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, http://www.courts.ca.gov/selfhelp-domesticviolence.htm
[2606] CAL. FAM. CODE §§ 6300-6306.

9) Pay certain bills;
10) Not make any changes to insurance policies;
11) Not incur large expenses or do anything significant to affect someone or the other person's property if they are married or domestic partners; and
12) Release or return certain property.[2607]

WHAT CAN'T A DOMESTIC VIOLENCE RESTRAINING ORDER DO?

A restraining order cannot:[2608]

1) End your marriage or domestic partnership. It is NOT a divorce.
2) Establish parentage (paternity) of your children with the restrained person (if you are not married to, or in a domestic partnership with, him or her) UNLESS you and the restrained person agree to parentage of your child or children and agree to the court entering a judgment about parentage. You can read and use *Agreement and Judgment of Parentage* (Form DV-180) (see Appendix J, PG. 821 for the form) to do this.

I HAVE A RESTRAINING ORDER AGAINST ME. WHAT MUST I DO?

If you have a restraining order against you, there are things you may not be able to do, for example:[2609]

1) Go to certain places,
2) Do certain things,
3) Live in certain areas,
4) Visit or contact your children,
5) Visit or contact your current or former partner,
6) Own a gun or any other types of weapons
7) The restraining order may also affect your immigration status. If you are worried about this, talk to an immigration lawyer to find out if you will be affected.

What you can/can't do, and whom you can/can't see or visit, will be specifically outlined in the restraining order. Read it carefully!

WHAT COULD HAPPEN IF I VIOLATE A RESTRAINING ORDER AGAINST ME?

If you violate the restraining order, you may go to jail, pay a fine, or both.[2610] Make sure you review the order against you and know what you can and cannot do. A violation of a protective order can occur in many ways—for example, it could be a violation to contact the protected person through social media, even tagging the person in a picture or a comment. Violation of a protective order may also be leaving messages or being in the physical area of a protected person. A court may determine that you violated a protective order even if you respond to a message sent by the protected person. With all of these things in mind, the most simple instruction is to do not contact or respond to a person who has a restraining order against you in ANY manner.

WHAT COULD HAPPEN IF MY PARTNER—WHO GOT THE RESTRAINING ORDER AGAINST ME—CONTACTS OR VISITS ME?

You will likely STILL be in violation of the order. Restraining orders are not mutual, they are a one-way street.[2611] This means that only you as the "restrained person" can violate the order, the "protected person" cannot. It is your duty, as the restrained person under the protective order, to make sure that you quickly leave the area and do not try and communicate with your partner when you realized that your partner is in the same area.

NOTE: It is possible for both people to have ***mutual restraining orders*** against one another. To stay in compliance, you should follow any orders against you, even if you also have an order against the other person.

XVII. CONCLUSION

We hope the FAMILY & CHILDREN CHAPTER has empowered you to reconnect with your family, and to gain greater rights and responsibilities as a parent. Feel free to contact Root & Rebound by phone at 510-279-4662 or by writing to Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612, for further assistance or a referral.

[2607] CAL. FAM. CODE §§ 6300-6306.
[2608] See CAL. FAM. CODE §§ 6300-6306.
[2609] CAL. FAM. CODE § 6388. See also CAL. PENAL CODE § 273.6.
[2610] CAL. FAM. CODE § 6388. See also CAL. PENAL CODE § 273.6.
[2611] See http://www.joshwebblaw.com/restraining-orders/; see also http://www.shouselaw.com/violate-restraining-order.html#2.3.



FAMILY & CHILDREN APPENDIX

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APPENDIX A

Finding Help: Your Local Family Court, Family Law Facilitator, & Child Support Agencies

This chart gives websites and basic contact information for the following:

- Online listings for your *local family court*;
- Online listings for your *local Family Law Facilitator* (lawyers who can help you with court requirements, but cannot give individualized legal advice);
- Your county's Local Child Support Agency; and
- California's State Disbursement Unit.

I AM LOOKING FOR…	WEBSITE / CONTACT INFORMATION
Local Family Court	Find hours, locations, and contact information for your local family court online here: http://www.courts.ca.gov/find-my-court.htm.
Local Family Law Facilitator	Find hours, locations, and contact information for your local Family Law Facilitator online here: http://www.courts.ca.gov/selfhelp-facilitators.htm.
Local Child Support Agency ("LCSA") in my county	Find hours, locations, and contact information for your county's LCSA online here: http://www.childsup.ca.gov/home/lcsaoffices/tabid/301/default.aspx. You can also contact your LCSA by calling the statewide Customer Connect telephone line at 1-866-901-3212. Follow the telephone menu options.
California State Disbursement Unit (California "SDU")	Find contact information for the California SDU online here: http://www.childsup.ca.gov/Payments/StateDisbursementUnitSDU/tabid/85/Default.aspx.

APPENDIX B

Procedures for Family Court Mediation

This Appendix explains more about the rules and procedures for child custody *mediation*—which can help to resolve disagreements about the care of a child.

WHAT IS CHILD CUSTODY MEDIATION?

Child custody mediation is a meeting place through the court for parents and caregivers to handle disagreements about custody and visitation plans for their children.[2612] In mediation, there is another person, a third-party *mediator*, who helps parents or caregivers come to an agreement. After mediation, the judge must sign this agreement in court to make it official. In some cases, the judge will make changes that he or she believes are in the "best interest of the child."[2613]

IMPORTANT! Child custody mediation may not be appropriate in cases of domestic violence. A mediator's role is to help resolve issues between parents who disagree, not to address issues related to domestic violence.

WHAT HAPPENS IN CHILD CUSTODY MEDIATION?

The mediator will meet with you and the other parent (or caregiver), either together or separately with your attorneys. The mediator will first ask questions to understand your family history and will share information about what children generally need at different ages.[2614] The child(ren) may be interviewed to better understand the situation.[2615]

Appointments with your mediator may last only a short time or take several hours. You may also meet with the mediator more than once.

If the parents are able to agree, the mediator helps the parents write a custody and visitation plan. *If the custody and visitation plan is signed by the judge*, this plan becomes an official court order. But it's not official until signed by the judge.

In some counties in California, the mediator will make *recommendations*, as well, and may provide that written recommendation to the judge.

WHO IS THE MEDIATOR IN CHILD CUSTODY MEDIATION?

A mediator is a person who has been professionally trained (usually has a graduate degree) to help resolve disagreements between two people figuring out parenting plans, and knows a lot about the California family court system.

The mediator will not and *cannot* know you or the other parent/caregiver because he or she is supposed to listen to both of you *equally and fairly*.[2616] The mediator helps you decide when the children will be with each parent, how future decisions about your children will be made and will help you consider the best way to protect your children's safety and well-being.[2617]

The mediator may also have additional information about community services that may be helpful to you and your child(ren).

HOW DO I FIND A MEDIATOR?

You can find low-cost mediators on the following website: http://www.courts.ca.gov/selfhelp-familycourtservices.htm (organized by county).

I DO NOT SPEAK ENGLISH AND/OR ENGLISH IS NOT MY FIRST LANGUAGE. CAN I GET AN INTERPRETER FOR MY CHILD CUSTODY MEDIATION APPOINTMENT?

It depends on the court. If you need an interpreter, you can ask your mediator if he/she has any recommendations. Also be sure to ask if there will be a fee, and if there is a fee for an interpreter, whether or not it can be waived (removed).

[2612] CAL. FAM. CODE § 3160 – 3165.
[2613] Judicial Council of Cal., "Custody Mediation," (2015), http://www.courts.ca.gov/1189.htm.
[2614] Judicial Council of Cal., "Custody Mediation," (2015), http://www.courts.ca.gov/1189.htm.
[2615] Judicial Council of Cal., "Custody Mediation," (2015), http://www.courts.ca.gov/1189.htm.
[2616] Judicial Council of Cal., "Custody Mediation," (2015), http://www.courts.ca.gov/1189.htm.
[2617] Child Custody Mediation, California Courts: The Judicial Branch, http://www.courts.ca.gov/1189.htm.

CAN THE CHILD CUSTODY MEDIATORS MAKE RECOMMENDATIONS ABOUT WHO GETS CUSTODY AND VISITATION?

It depends on the court. In some local family courts, mediators make recommendations to the judge about child custody and visitation. In these courts, if you and the other parent cannot agree on a parenting plan through mediation, the mediator is asked to give the court a written recommendation. This recommendation will contain the mediator's opinion about what parenting arrangement will be in your children's best interest. Both you and the other parent (or caregiver) will also get a copy of the mediator's recommendation.

In other courts, mediation is confidential and the mediators do NOT make a recommendation to the court about child custody and visitation. If the parents agree on any issues, the mediator may provide the court with a written summary that summarizes the issues that the parents agree on.

Usually, mediators interview both sides together, but if there has been domestic violence or there is a restraining order between the parents or other concerns about meeting together, the parents may ask to meet with the mediator separately. Sometimes, even when there is no domestic violence, the mediator may decide it is more appropriate and helpful to meet separately with each parent. The special rules about mediation allow the mediator to do this.

IS CHILD CUSTODY MEDIATION CONFIDENTIAL?

It depends on the court. The things you tell your mediator, either alone and/or with your child's caregiver, may not be kept secret (confidential). Ask for information *in writing* as to whether your conversations will be kept secret or shared with others. You can also ask the Family Law Facilitator about confidentiality and mediation.

! **IMPORTANT: If a mediator suspects that there is child abuse or has concerns about the physical safety of the child(ren), he or she may need to report the case to the local child protective services (CPS) or the court.**

WILL WE BE FORCED TO MAKE AN AGREEMENT IN THE CHILD CUSTODY MEDIATION APPOINTMENT?

No. You will not be forced or required to make an agreement if you participate in child custody mediation. HOWEVER, before you enter into mediation, you should ask your mediator and/or the judge in family court what could happen if you do not reach an agreement with the other parent/caregiver.

If you and the other parent/caregiver reach an agreement on your parenting/caregiving plan:
The mediator will usually prepare a written agreement for both parents to sign. If neither parent has a lawyer, the mediator or the parents will give the agreement to the judge to approve and sign. When the judge signs it, it becomes an official court order. However, if you do have a lawyer, ask your lawyer any questions you have and ask your lawyer to review your written agreement BEFORE you sign it.

If you and the other parent/caregiver do NOT reach an agreement on your parenting/caregiving plan, the following may happen:

- There may be a court hearing or settlement conference with the judge to resolve issues.
- The judge may make decisions on a parenting plan for you.
- The judge may order a child custody evaluation by a mental health professional to get more information before making a decision. Keep reading for more information on child custody evaluations.
- In some courts, the judge may ask the mediator to make a recommendation, and will often approve and order that recommendation.

WHAT HAPPENS AFTER CHILD CUSTODY MEDIATION?

If you and the other parent/caregiver reach an agreement on your parenting/caregiving plan:
The mediator will write up a plan for both of you to sign. Once the judge approves and signs it, it becomes a court order.

If you and the other parent/caregiver do NOT reach an agreement on your parenting/caregiving plan:
What happens next depends on the court – so you should ask the mediator or Family Law Facilitator about how the process works in your local court. Here's what happens in many cases:

- Usually, there is a court hearing or settlement conference where everyone can decide on custody, visitation and child support. The judge may then decide on a parenting/caregiving plan and issue a custody and visitation order.
- Before issuing a custody and visitation order, the judge may require a custody evaluation by a mental health professional. The judge may also ask the mediator for a recommendation (in some courts).[2618]

[2618] Judicial Council of Cal., "Custody Mediation," (2015), http://www.courts.ca.gov/1189.htm.

APPENDIX C

Procedures to Begin or Join a Family Court Case about Custody and/or Visitation

If you are interested in getting custody of or visitation with your child, before reading this Appendix, we first recommend you read the following sections of this Chapter: STEPS FOR RECONNECTING (see PG. 728). ; BASICS ABOUT CUSTODY AND VISTATION (see PG. 732) These sections will help you understand the legal meaning of custody and visitation, what each looks like in real life, how your criminal record generally affects your rights to custody and/or visitation, and first steps to take if you are interested in reconnecting with a child in reentry. After reading these sections, if you would like to open a case in Family Court, the information below will help you understand how to begin or join a family court case.

STEP 1: **Get help.**

If you have any questions about starting a case and/or if you need help with deciding which form to pick and file, and/or what kind of case you should bring to family court, you can and should contact a lawyer, the Family Law Facilitator who works at your county family court (see Appendix A, PG. 797 to find your local Family Law Facilitator), and/or a legal aid provider.

STEP 2: **Decide what type of case you are opening in Family Court—and fill out all the necessary forms.**

- **Petition for divorce or legal separation (FL-100):** If you were married and now want to be divorced from the other parent who has custody of your child, you will file for divorce in family court. For more information of divorce or legal separation, see PG. 822.
- **Petition for Dissolution of civil partnership/legal separation (FL-103):** If you were in a domestic partnership (a same-sex relationship registered with the State of California) and now want to legally terminate that partnership from the other parent who has custody of your child, you would file for dissolution of domestic partnership in family court. Learn more about divorce/legal separation on PG. 822.
- **Petition for custody and support of minor children (FL-260):** If you were unmarried and the parentage of your child has already been officially established, then you can file a petition for custody and support of minor children in family court. [2619]
- **Petition to establish parental relationship (FL-200):** If you were unmarried and the parentage of your child has not been established in family court, you can file a petition to establish parental relationship.

HELPFUL HINTS
Assistance, Forms, & Fees in Family Court

- Family court forms for requesting custody and visitation are available on the California Courts' website at http://www.courts.ca.gov/1192.htm.
- If you have general questions or need assistance filling out your court forms, ask the court Family Law Facilitator to help you. If you have questions about your specific case or circumstances, you should talk to a lawyer.
- Filing the court papers to request custody or visitation can be very expensive ($400-$500). If you cannot afford to pay this, you can request a fee waiver from the court clerk when you file your papers.
- Once you file the forms by mailing them to the family court or bringing them to the court in person, you must wait and make sure the family court accepts your forms, that the documents were acceptable. Once you receive notice that the family court accepted the forms, you can move to STEP 4.

STEP 3: **File all of the necessary forms with the family court to join or start a new case. Depending on the court, you may have to file your court forms in person. Pay the filing fees, or if you are low-income or on public benefits, ask for a fee waiver.**

STEP 4: **Once you receive notice from the family court that your forms were acceptable, you must serve a copy of the forms you filed as well as a response form on the person you are bringing a court case against in family court, usually here it will be your child's other parent.**

When a case in family court is first filed, it must be personally served on the other party or parties. This means that you cannot mail the forms, but have to find someone to hand deliver the forms to whomever you are suing. This is called "service of process." Any adult over the age of 18 can do this for you.

STEP 5: **Once the family court accepts your forms and you serve the papers on the other party or parties in the case, the judge in family court will order one, two or all three of the following:**

- Schedule a hearing you must attend and/or
- Require you and the other parent to attend a mediation
- And/or order a custody evaluation.

[2619] CAL. FAM. CODE § 3020.

IMPORTANT!: Completing these steps means you are now involved in an active custody and/or visitation case involving your child. Family court cases, like all court cases, require a lot of paperwork, documents, and forms. Navigating all the court forms and processes can be, and often is, very confusing. We are trying to simplify this process for you by not bogging you down with details on each step mentioned above. As a result, we strongly recommend you get help from another person or legal aid organization that specializes in the family court process. They can and will help with all the specifics on forms, documents, paperwork, and processes. You should talk to a lawyer, the Family Law Facilitator who works at your county family court, and/or a legal aid provider. See referrals to legal aid organizations beginning on PG. 1127.

APPENDIX D

Additional Information about De Facto Parents Status

WHAT RIGHTS DO I HAVE AS A "DE FACTO PARENT"?

If a judge finds that you are a "de facto parent," you have the right to:[2620]

- Be present at dependency court hearings.
- Have a lawyer represent you, if you hire one. (In some cases, the court may appoint a lawyer at no cost to you, but only if the judge thinks it's *necessary*.)
- Present evidence and cross-examine witnesses.
- Participate in the child's case (including the right to attend and participate in hearings, present evidence to the judge, ask questions, and be represented by a lawyer), and
- To help the judge decide what is best for the child.[2621]

For more information on becoming a de facto parent, visit the Judicial Council website at http://www.courts.ca.gov/1207.htm. You may also want to attach support letters from others who know you and your child.

HOW DOES A JUDGE DECIDE IF I AM A "DE FACTO PARENT"?

The judge will make a decision by looking at past court decisions and will consider the care you gave the child, how long you provided the care, and if you were able to meet the child's needs.[2622] If you have harmed the child or put the child at risk, the judge will probably decide that you are *not* a "de facto parent."[2623]

I TOOK CARE OF A CHILD WHO IS NOW A "DEPENDENT" IN THE JUVENILE DEPENDENCY COURT, BUT I CANNOT BE A "DE FACTO PARENT". CAN I DO ANYTHING ELSE?

Even if you do *not* become a "de facto parent," you can also fill out a *"Caregiver Information Form"* to give the judge more information about the child and help the judge make decisions about what will be best for him or her.

If you want to become a "de facto parent," these forms can help you:

- De Facto Parent Request (JV-295)
  - Use this form if you would like to become a de facto parent for a child in a juvenile dependency case.
  - Form JV-295 is available at http://www.courts.ca.gov/documents/jv295.pdf.
- De Facto Parent Statement (JV-296)
  - Use this form to explain your relationship with the child and why you should the child's de facto parent.
  - Form JV-296 is available at http://www.courts.ca.gov/documents/jv296.pdf.
- Caregiver Information Form (JV-290)
  - Use this form to give the dependency court judge more information about the child. You can use this form even if you are not the child's de facto relative.
  - Form JV-290 is available at http://www.courts.ca.gov/documents/jv290.pdf.
  - Instruction Sheet for Caregiver Information Form (JV-290-INFO) – This explains how to fill out the Caregiver Information Form. The Instruction Sheet is available at http://www.courts.ca.gov/documents/jv290info.pdf.

Remember, a "de facto parent" is *not* a legal guardian and has *fewer* legal rights than a guardian. If you are unsure if being a "de facto parent" or guardian is best, please see PG. 748 for more information.

[2620] Learn more about these rights by reading Rule 5.534(e) of the California Rules of Court. NOTE: As a de facto parent, you do NOT have the right to attorney fees. But in some cases the judge may give you an attorney, and the court will pay the fees. Also, you do NOT have the right to a rehearing. But you have a right to an appeal

[2621] CAL. RULES OF COURT §§ 5.502(10), 5.534(e). Use these forms to request and explain why you want to participate as the child's de facto parent: Form JV-295 (De Facto Parent Request) and Form JV-296 (De Facto Parent Statement), available online at http://www.courts.ca.gov/documents/jv295.pdf and http://www.courts.ca.gov/documents/jv296.pdf.

[2622] Cal. Rules of Court § 5.502(10).

[2623] Judicial Council of Cal., "De Facto Parents," (2015), (http://www.courts.ca.gov/1207.htm).

APPENDIX E

Resources by Legal Services for Prisoners with Children (LSPC)

San Francisco, CA-based legal nonprofit Legal Services for Prisoners with Children (LSPC) has drafted several helpful resources for currently and formerly incarcerated parents. These resources, which focus on California law, are available on their website at http://www.prisonerswithchildren.org/resource-library/family-matters/. If you are currently incarcerated, you can write LSPC to request a copy of any of the resources listed below. Their address is

Legal Services for Prisoners with Children
1540 Market Street, Suite 490
San Francisco, CA 94102.

Currently, LSPC offers the following written materials:

- Bill of Rights for Incarcerated Parents
- Child Custody and Visiting Rights Manual for Recently Released Parents
- Incarcerated Parents Manual (available en español)
- Grandparent Relative Caregivers (available en español)
- Manual on Divorce Issues for People in California Prisons and Jails
- Pregnant Women in California Prisons and Jails: A Guide for Prisoners and Legal Advocates
- Transportation to Court
- What to Plan for When You Are Pregnant at California Institution for Women
- Manual on SSI & SSDI for Prisoners and Their Advocates
- Using Proposition 47 to Reduce Convictions and Restore Rights
- Prop. 47 Bay Area Guide
- Prop. 47 Sacramento Resource Guide
- Fighting for Our Rights: A Toolbox for Family Advocates of California Prisoners (available en español)
- Suing a Local Public Entity

APPENDIX F

388 Petitions: Basic Information

WHAT CAN I DO IF THE DEPENDENCY COURT JUDGE ENDED MY REUNIFICATION SERVICES, AND I WANT TO TRY AGAIN TO REUNITE WITH MY CHILD?

If the dependency court judge ended your reunification services with your child(ren), your ability to request a change to the judge's orders will depend on how much time has passed since the case was closed. You *may* be able to file what is called a 388 petition.

If the judge ended your reunification services (for example, because you did not meet the requirements of your case plan in time), and placed your child in long-term foster care or with a legal guardian, or closed your child's case, you may be able to file papers in dependency court (called a *388 petition*) asking the judge to change the current court order and give you visitation, custody, and/or end a legal guardianship of your child.[2624] ***BUT if several years have passed since your child's dependency case was closed***, it may be too late to go back to dependency court and ask to change the court order.[2625] Instead, you can file new papers in *family court* and ask to change the *dependency court* order. We briefly explain both processes below.

POSSIBILITY #1: If your reunification services ended recently (in approximately the past year):

You can file a *388 petition* in the same juvenile dependency court where your child's case took place. In your *388 petition*, you will need to explain AND prove to the judge (with documents, actions, and evidence) that:

1) There has been a *significant change in circumstances* (your life or how you live) or *new evidence* in your child's case since the judge made the current court order (see the Helpful Hint box below for more information and examples of significant changes in circumstances); AND
2) Giving you visitation, custody, or ending the guardianship is in your child's best interest.[2626]

HELPFUL HINT

Significant Change in Circumstances

The "change in circumstances" must generally be *major* and *long-term*. The judge wants to see that you are committed to the change and won't go back to your old situation—for example, that you successfully completed your prison or jail sentence; your parole, probation, or community supervision; and/or resolved whatever issues caused CPS and the court to get involved in the first place. Other examples might include: completing an anger management or domestic violence program and taking steps to fix any previous harm you caused; completing a drug rehabilitation program and staying sober for a year or more; and avoiding criminal activity or arrest for several years .[2627]

POSSIBILITY #2: If it has been several years since your reunification services ended:

You must go to family court and file papers asking to change the juvenile dependency court order. To be successful, you will have to show:

1) A *significant change in circumstances* (how your life is different and improved) since the juvenile dependency court judge made the current court order, AND
2) Giving you custody or visitation would be *in your child's best interest*.[2628]

[2624] CAL. WELF. & INST. CODE § 388; see also §§ 366.3(b), 778. To request a change in custody or visitation, use Form JV-180 available online at http://www.courts.ca.gov/documents/jv180.pdf.

[2625] See, e.g., In re A.S., 174 Cal. App. 4th 1511 (2009) (juvenile dependency court lacked jurisdiction to modify previous order 6 years after dependency jurisdiction had been terminated).

[2626] CAL. WELF. & INST. CODE §§ 388, 778; telephone call with Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, Jan. 6, 2015.

[2627] See, e.g., In re Ernesto R., 230 Cal. App. 4th 219 (2014), reh'g denied (Oct. 17, 2014) (mother's completion of drug treatment program did not establish sufficiently changed circumstances, and mother's recent sobriety reflected "changing"—not changed—circumstances, where mother had a history of drug relapses, was in the early stages of recovery, and was still addressing a chronic substance abuse problem); In re Marcelo B., 209 Cal. App. 4th 635 (2012) (father's participation in 12-step meetings, completion of substance abuse program, and attendance at parenting classes were not prima facie evidence of change in circumstances, where father had already received extensive treatment for his alcoholism before the relapse that led to the current dependency proceeding); In re C.J.W., 157 Cal. App. 4th 1075 (2007) (parents' rehabilitation efforts did not establish changed circumstances where both parent had extensive histories of drug use and years of failing to reunify with their other children, and where their efforts at rehabilitation were only three months old at time of petition); see also In re J.C., 226 Cal. App. 4th 503 (2014), review denied (Aug. 13, 2014) (although mother's long term sobriety and renewed interest in parenting classes showed changed circumstances, she did not establish that changing court order to give her custody of child would be in the child's best interests, where child had a loving and stable placement with her maternal aunt, who had cared for child since her birth. The aunt had assumed full parental responsibilities and care for child, and the mother failed to present any evidence that child's best interests in permanency and stability would be furthered by the proposed modification).

[2628] CAL. WELF. & INST. CODE § 302(d) (stating that a final custody or visitation order from juvenile dependency court may be modified in family court only if "the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child."). For example, if you have already tried to change custody or

NOTE: These are the *same* things you have to prove for a *388 petition* (described immediately above). For more information on Family Court, see PG. 744.

HELPFUL HINT
Writing a Dependency Court 388 Petition

You should ask the lawyer who represented you in dependency court (or someone else who is familiar with your case) to help you write the *388 petition*, since it must be very detailed.[2629] (The court's Family Law Facilitator may also help explain the 388 petition process.)

Beginning on the next page, you will find the court's instructions to how to file a 388 Petition and the two court forms you needed

visitation through a 388 petition in juvenile dependency court, and the judge denied your petition, then you may go to family court to request changes in custody or visitation.

[2629] Telephone call with Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, Jan. 6, 2015; electronic communication from Eleanor Miller, reentry attorney, Pepperdine Legal Aid Clinic, Jan. 9, 2015.

Do You Want to File a 388 Petition for Modification in Juvenile Dependency Court?

HOW TO:

File a 388 Petition to change custody and visitation orders in a juvenile dependency case.

WHEN TO USE:

- **You want to change a court order in a juvenile dependency court case (new or old).**
- **You are the parent of the child, the dependent child of the juvenile court (with a guardian) or other person having an interest in the child.**
- **Circumstances have changed since the last order was made or there is new evidence you want to present to the court.**
- **Note: If an attorney represented you in court, contact them first to see if they can help you.**

Superior Court, County of Santa Clara
99 Notre Dame Avenue
San Jose, CA 95113
408.882.2900 ext 6

Under Welfare and Institutions Code 388, any parent of a dependent child, a dependent child of the juvenile court (with the assistance of an appointed guardian), or other person having interest in a dependent child of the juvenile court may file a 388 petition when there is a change of circumstance or there is new evidence in their case. These instructions and samples show you how to petition the juvenile court to change any order of court previously made, or terminate the jurisdiction of the court. This is similar to the action in which the child was found to be a dependent of the juvenile court.

HOW TO FILE YOUR PAPERS:

Follow these easy steps in order from 1 to 3. All filing of papers and court appearances take place at Superior Court, 115 Terraine Street, San Jose, CA 95110 (see map), 408-299-8980.

1. Complete the attached Juvenile Dependency Petition (#JV-100) and the Modification Petition Attachment (#JV-180).

   Note: You must state your relationship to, or interest in, the child and include all supporting information regarding any change of circumstance or new evidence. This information is required in order to file a 388 petition.

2. Make one copy of each form. The original is for the court and the copy is for you.

3. Go to the Juvenile Dependency Clerk's Office to submit the forms. The clerk's office will "receive" stamp the original and return the copy to you. If you are unable to come to the clerk's office in person you may mail these forms to the address listed above.

WHAT'S NEXT: The original forms are sent up to the assigned Judge or Commissioner. He or she will either grant, deny or set the matter for hearing. You will be notified by mail about the Dependency Court's decision.

For more help, visit the Court's Self-Service Center or contact the Santa Clara County Bar Association's Lawyer Referral Service and Modest Means Panel (408-971-6822) for a $30/30 minute consultation with an attorney and representation in court for a fee based on your income.

JV-180 Request to Change Court Order

Clerk stamps date here when form is filed.

This form can be used to ask the court to change an order, to ask the court to dismiss your case, to ask the court to terminate reunification services, or to ask the court to recognize your relationship with your sister or brother. After filling out this form, take it to the clerk of the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Name of Child or Youth:

Clerk fills in case number when form is filed.

Case Number:

1 Your information:

a. I am the:
- ☐ child or youth ☐ mother ☐ father ☐ legal guardian
- ☐ foster parent ☐ sibling or other relative *(specify):* _____
- ☐ social worker ☐ probation officer ☐ attorney
- ☐ other _____

b. My name: _____

c. My address: _____

d. My city, state, zip code: _____

e. My telephone number: _____

f. *If you are an attorney:*
My client's name: _____
My client's address *(if confidential, see item 3):*
_____
My client's relationship to the child or youth: _____
My State Bar number: _____

2 Type of request *(check the appropriate box below and add specific details in items 6–9, as applicable):*

a. ☐ I am asking the court to change an order.
b. ☐ I am asking the court to terminate its jurisdiction.
c. ☐ I am asking the court to terminate reunification services.
d. ☐ I am asking the court to recognize my relationship with my brother or sister.
(1) I am related to him or her ☐ on our mother's side ☐ on our father's side.
(2) I am related to him or her ☐ by blood or adoption ☐ by marriage.

3 *If you want to keep your address or your client's address confidential, fill out* Confidential Information (Request to Change Court Order) *(form JV-182) and do not write the address on this form.*
☐ *Check here if form JV-182 is attached.*

4 Child's or youth's information:

a. Name: _____
b. Date of birth: _____
c. Attorney *(if known):* _____
d. The child or youth lives with or in a *(check all that apply):*
- ☐ parent ☐ legal guardian ☐ relative
- ☐ foster home ☐ group home ☐ I don't know

e. Name of the person the child or youth lives with or the place where he or she lives: _____
Address: _____
☐ *Check here if unknown.*

Name of child or youth: _____

Case Number:

5 Information about parents, legal guardians, and others:

a. Names of parents or legal guardians:

_____

☐ *Check here if unknown.)*

b. Address of parent/legal guardian: _____

☐ *Check here if unknown.)*

c. Address of parent/legal guardian: _____

☐ *Check here if unknown.)*

d. Indian tribe *(if applicable and known):* _____

e. CASA volunteer *(if applicable and known):* _____

f. Educational rights holder *(if applicable and known):* _____

g. Social worker or probation officer *(if applicable and known):* _____

If you are asking the court to recognize your relationship with your brother or sister but not asking the court to change an order, you may skip to item 8.

6 On *(date, if known):* _____ the judge made the following order that I think should be changed:

_____

_____

_____

_____

7 What has happened since that order that might change the judge's mind? *(Give new information that the judge did not have when the order was made):*

_____

_____

_____

_____

8 What new order or orders do you want the judge to make now?

_____

_____

_____

_____

9 Why would the requested order or action be better for the child or youth?

_____

_____

_____

_____

10 ☐ *Check here if you need more space for any of the answers. Attach a sheet of paper and write "JV-180" at the top of the page.* Number of pages attached: _____

Name of child or youth: _____

Case Number:

11 I have had a copy of my request sent to the people listed below, as applicable. I have checked the correct box to the right of each name to show whether, as far as I know, that person agrees with my request.

If you do not have an attorney, the clerk will send notice and copies of your request to all persons required to receive notice under Welfare and Institutions Code sections 297 and 386 and rules 5.524 and 5.570 of the California Rules of Court.

	Name	Agree	Disagree	Don't Know	Not Applicable
Child *(if 10 years old, or older)* or youth:		☐	☐	☐	☐
Child's or youth's attorney:		☐	☐	☐	☐
Parent:		☐	☐	☐	☐
Parent:		☐	☐	☐	☐
Legal guardian:		☐	☐	☐	☐
Legal guardian:		☐	☐	☐	☐
Social worker:		☐	☐	☐	☐
Probation officer:		☐	☐	☐	☐
Current caregiver/foster parent:		☐	☐	☐	☐
Preadoptive parent:		☐	☐	☐	☐
CASA volunteer:		☐	☐	☐	☐
Educational rights holder:		☐	☐	☐	☐
Indian tribe:		☐	☐	☐	☐
Indian custodian:		☐	☐	☐	☐
Sibling *(if petition filed & 10+ years old:)*		☐	☐	☐	☐
Sibling's caregiver:		☐	☐	☐	☐
Sibling's attorney:		☐	☐	☐	☐
Attorney for parent/legal guardian:		☐	☐	☐	☐
Attorney for parent/legal guardian:		☐	☐	☐	☐
County counsel:		☐	☐	☐	☐
District attorney:		☐	☐	☐	☐
Other:		☐	☐	☐	☐

12 You can ask the judge to make a decision without a court hearing if all the people named above agree with your request. *Check here* ☐ *if you want a decision without a hearing.*

13 If anyone disagrees with your request, please explain why *(if known):*

_____

_____

_____

_____

14 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct to the best of my knowledge.

Date:

_____ _____

Type or print name *Signature*

For your protection and privacy, please press the Clear This Form button after you have printed the form.

For counties filing a separate dependency petition for each child or for counties using *Additional Children Attachment* (form JV-101(A)) **JV-100**

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
JUVENILE DEPENDENCY PETITION (VERSION ONE) **(Welf. & Inst. Code, § 300 et seq.)** ☐ **§ 300—Original** ☐ **§ 342—Subsequent** ☐ **§ 387—Supplemental**	CASE NUMBER: RELATED CASES *(if any):*

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable boxes; see attachment 1a for concise statements of facts):*
☐ (a) ☐ (b) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g) ☐ (h) ☐ (i) ☐ (j)

b. Child's name:	c. Age:	d. Date of birth:	e. Sex:

f. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

g. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

h. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

i. Other *(state name, address, and relationship to child):*
☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

j. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

k. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*
☐ Relative ☐ Shelter/foster care ☐ Other

2. I have asked about Indian ancestry for this child and have completed and attached the required *Indian Child Inquiry Attachment,* form ICWA-010(A). *(If this is a subsequent filing and there is no new information, the ICWA-010(A) is not required.)*

(See important notice on page 2.)

Form Adopted for Alternative Mandatory Use
Instead of Form JV-110
Judicial Council of California
JV-100 [Rev. July 1, 2008]

Welfare and Institutions Code, § 300 et seq.;
Cal. Rules of Court, rule 5.504
www.courtinfo.ca.gov

CHILD'S NAME:	CASE NUMBER:

3. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

Address and telephone number *(if different person signing than listed in caption above):*

☐ Number of pages attached: _____ ☐ Other children are listed on *Additional Children Attachment* (form JV-101(A))

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

APPENDIX G

More Information On The Juvenile Delinquency Process

If your child is involved in a juvenile delinquency case that means he or she is accused of breaking the law. This section covers what happens after a minor is arrested, how the juvenile delinquency court process works, what your child's rights are, and what your rights and responsibilities are as the parent (or guardian).

WHAT HAPPENS WHEN MY CHILD IS ARRESTED?

If your child is arrested, the police can:

1. Make a record of the arrest and let your child go home.
2. Send your child to an agency that will shelter, care for, or counsel your child.
3. Make your child come back to the police station. This is called being "cited back."
4. Give you and your child a Notice to Appear. Read the notice and do what it says. It will give you a date and time you must appear in court. DO NOT FORGET THIS DATE! If you and your child do not appear, a warrant may issued for your child's arrest and could further complicate your child's case.
5. Put your child in juvenile hall (this is called "detention"). Your child can make at least 2 phone calls within 1 hour of being arrested. One call must be to a parent, guardian, relative, or boss. The other call must be to a lawyer. [2630]

RIGHT AFTER THE ARREST, WHAT ARE MY CHILD'S RIGHTS?

If the police want to talk with your child about what happened, they must first tell your child his/her legal rights (called "Miranda rights"). These are:

- The right to remain silent.
- The right to know that anything he/she says will be used against him/her in court.
- The right to a lawyer – and, if you or your child can't pay for a lawyer, the court will appoint one. [If your child doesn't have a lawyer, talk to the public defender for advice.] [2631]

As a parent, while you may not be arrested or under suspicion, anything you say to law enforcement about your child may also be used against your child. For that reason, it would be best to talk to an attorney.

IF MY CHILD IS ARRESTED, WHAT ARE MY RIGHTS AND RESPONSIBILITIES AS A PARENT OR GUARDIAN?

Your rights if your child is arrested:

- You have a right to have the police tell you as soon as this happens[2632]
- You have a right to know where your child is, and what rights he/she has[2633]
- Inspect the court file[2634]

Your responsibilities if your child is arrested:

- You have legal responsibilities as a parent (or guardian), including to:
  - Attend hearings
  - Follow court orders related to you and your child.[2635]
- You may have financial responsibilities to pay for damage or losses that your child caused. If the court orders restitution, you may have to pay the victim for the harm your child caused.[2636] This may include paying for property your child stole or damaged, medical bills, or lost wages.
- You may have financial responsibilities to pay for your child's fees. [2637] Unless you're the victim, you'll get a bill and must pay for your child's lawyer, juvenile hall services (like food and laundry), and fees to keep your child in institutions. Note: Tell the court if you are unable to pay for these fees and costs. You may make a request to the court to waive court costs and fees but some of these fees may be difficult or impossible to waiver, like home monitoring or "ankle bracelets." [2638]

[2630] CAL. WELF. & INST. Code § 627 et. seq.
[2631] CAL. PENAL CODE § 859.5(g)(1).
[2632] Cal. Welf & Inst. Code § 627.
[2633] Cal. Welf & Inst. Code § 627.5.
[2634] Cal. Rule of Court § 5.552.
[2635] Judicial Council of Cal. "Juvenile Deliquency" (2015), http://www.courts.ca.gov/selfhelp-delinquency.htm.
[2636] Judicial Council of Cal. "Restitution Basics for Victims of Offenses by Juveniles," (2012), http://www.courts.ca.gov/documents/restitution_basics_juvenile_web.pdf.
[2637] In re Jeffrey M., 141 Cal. App 4, 1018 section 730.7
[2638] Judicial Council of Cal. "Juvenile Deliquency FAQs" (2015), (http://www.courts.ca.gov/1218.htm).



WHAT TO DO IF MY CHILD GETS A NOTICE TO APPEAR?

Read the Notice to Appear carefully. It will probably tell you to go to the probation department to meet with a probation officer. Go to http://www.cdcr.ca.gov/ to find the local probation department.

Four things can happen at the meeting. The probation officer may:

1. Lecture your child and let him or her go home.
2. Let your child do a voluntary program instead of going to court. The program could be special classes, counseling, community service, or other activities. If your child finishes the program, he or she will not have to go to court. You may have to sign a contract that says what the child has to do. The contract can last 6 months.
3. Send your child home and send the case to the district attorney. The district attorney will decide to file a petition (papers that mean that your child will have to go to court) or not.
4. Keep your child locked up and send the case to the district attorney. The district attorney will then file a petition, usually within 2 days after the arrest. Your child will have a detention hearing on the next day the court is open. The court is closed on Saturdays, Sundays, and holidays. [2639]

If a petition is filed in court, your child's case will be filed in the juvenile delinquency court.

I GOT A NOTICE SAYING THAT MY CHILD HAS A "DETENTION HEARING" IN JUVENILE COURT. WHAT DOES THIS MEAN, AND WHAT HAPPENS NEXT?

Along with the notice about the hearing, you may receive a copy of a petition – either a 601 Petition or a 602 Petition – filed with the court about your child. The petition says what your child is accused of, and asks the court to handle your child's case. The notice tells you when and where to go for your child's first court hearing – the detention hearing.[2640] Read on for a bit more explanation:

WHAT SHOULD I KNOW ABOUT THE 601 AND 602 PETITIONS?

601 petitions are filed by the probation department and allege facts that are only illegal because the offender is a child. This includes things such as breaking curfew, skipping school, running away or disobeying parents. If the court finds a minor guilty of these offenses they will become what is known as a "status offender".[2641]

602 petitions are filed by the District Attorney's office and allege offenses that would be criminal if the minor were 18 years or older. This includes both felonies and misdemeanors. If the court finds the allegations to be true the child will become a "delinquent".[2642]

During what is known as the fitness or waiver hearing, the court will determined whether the child is "unfit" for juvenile court. If so, he or she will be tried in adult court. Children can only be deemed unfit if they were 14 or older at the time of the alleged offense.[2643]

AS A PARENT, WHAT ARE MY RIGHTS ABOUT RECEIVING NOTICE AND A PETITION?

As the parent, you have a right to get a copy of the petition about your child, along with notice about your child's first hearing – the detention hearing. (If your child is 8 or older, he/she should also get a notice.) If your child is locked up, you should get the notice at least 5 days before this hearing. If your child is not locked up, you should get the petition and a notice at least 10 days before the hearing. If the hearing is less than 5 days after the petition is filed, you should get the notice at least 24 hours before the hearing.[2644]

WHAT SHOULD I KNOW ABOUT MY CHILD'S DETENTION HEARING?

If your child is locked up for more than 2 days, he/she should have a detention hearing within 3 court days. At this hearing, the judge will decide if your child can go home before the next hearing.[2645]

MY CHILD'S CASE HAS BEEN SENT TO JUVENILE DELINQUENCY COURT. WHAT HAPPENS NEXT?

There are seven different types of hearings your child may have in juvenile court. You must go to these hearings.

[2639] Judicial Council of Cal. "Juvenile Deliquency" (2015), http://www.courts.ca.gov/selfhelp-delinquency.htm.
[2640] Judicial Council of Cal. "Guide to Juvenile Court" (2015), http://www.courts.ca.gov/1216.htm.
[2641] Guide to Juvenile Court, California Courts, http://www.courts.ca.gov/1216.htm
[2642] Guide to Juvenile Court, California Courts, http://www.courts.ca.gov/1216.htm
[2643] Judicial Council of Cal. "Guide to Juvenile Court" (2015), http://www.courts.ca.gov/1216.htm.
[2644] Judicial Council of Cal. "Juvenile Court Information for Parents, JV-060" (2006), http://www.courts.ca.gov/documents/jv060.pdf.
[2645] Judicial Council of Cal. "Juvenile Court Information for Parents, JV-060" (2006), http://www.courts.ca.gov/documents/jv060.pdf.



At these hearings, the judge will decide what's best for your child. The judge may ask you questions, or you may be a witness in the case. If you can prove that your child listens to you and follows your rules, the judge may let your child go home with you.

Your child will get a lawyer who speaks for his/her interests, and the district attorney will speak for the state. You can ask to talk to the judge, but the court probably won't appoint you a lawyer.

If your child speaks a language other than English, he/she has a right to an interpreter. You may be able to have one, too. If you need one, ask the court before the hearing date.

The court will consider how old your child is, how serious the crime is, and whether your child already has a criminal record. The court will then decide what should happen with your child. [2646]

WHAT KINDS OF HEARINGS MIGHT MY CHILD HAVE IN JUVENILE COURT?

There are 7 kinds of hearings your child may have in juvenile court. You must go to these hearings.

Here are 7 types of hearings your child may have in juvenile court:

1) Detention hearing: If your child is locked up for more than 2 days, he or she will have a detention hearing within 3 court days. (A court day is a day the court is open.) The judge will decide if your child can go home before the next hearing.
2) The pretrial or settlement conference: In many counties, there is a court date to try to solve the problem without a trial.
3) Hearings on motions: These are court dates to work out different things. Motion hearings can come up at any time during the case.
4) Fitness or waiver hearing: This is a hearing to decide if your child will be tried as an adult. If the judge decides that your child is "unfit" for juvenile court, he or she will be tried in adult court. This will not happen if your child is under 14 years old when he or she committed the crime.
5) Jurisdiction hearing: This is when the judge decides if your child committed the crime.
6) Disposition hearing: If the judge decides your child committed the crime, there will be a disposition hearing to decide how to punish your child. This can be on the same day as the jurisdiction hearing. If the judge says your child did not commit the crime, there will be no disposition hearing.
7) Review hearings: Sometimes there are hearings to see how your child is doing in his placement.[2647]

WHAT CAN THE COURT DECIDE ABOUT MY CHILD?

The juvenile delinquency court can make any of the following orders:

- That your child will live with you under court supervision.
- That your child must be put on probation, and must live in a relative's home, a foster home or a group home, or an institution.
- That your child must be put on probation, and must be sent to a probation camp or ranch.
- That your child must be sent to the Division of Juvenile Justice (DJJ) of the California Dept. of Corrections and Rehabilitation (CDCR).[2648] This means he/she will spend 30-90 days in a *reception center*, which will determine your child's education and treatment needs. Then he/she will be sent to a correctional facility or youth camp.

How will the court make its decisions? What can the court decide to do?

The court will consider how old your child is, how serious the crime is, and the child's criminal record if any. The court can order that:

- Your child live with you under court supervision.
- Your child be put on probation. He or she may have to live with a relative, in a foster home or group home, or in an institution.
- Your child be put on probation and sent to a probation camp or ranch.
- Your child can be sent to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (also called "DJJ"). If your child is tried in adult court, he or she will be sent to the Department of Corrections and Rehabilitation, Division of Adult Operations (also called "CDCR").[2649]

[2646] Judicial Council of Cal. "Guide to Juvenile Court" (2015), http://www.courts.ca.gov/1216.htm.
[2647] Judicial Council of Cal. "Guide to Juvenile Court" (2015), http://www.courts.ca.gov/1216.htm.
[2648] If your child is tried in adult court, he/she will be sent to the Division of Adult Operations of the CDCR.
[2649] Judicial Council of Cal. "Juvenile Deliquency" (2015), http://www.courts.ca.gov/selfhelp-delinquency.htm.



If your child is sent to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ), he or she will go to a "reception center" for the first 30 to 90 days. The center will find out what education and treatment your child needs. Then your child will go a correctional facility or youth camp.[2650]

Find the DJJ's reception centers online at the following website: http://www.cdcr.ca.gov/Juvenile_Justice/Facility_Locations/index.html.

MY CHILD'S CASE HAS BEEN SENT TO ADULT COURT. WHY DID THIS HAPPEN, AND WHAT HAPPENS NEXT?

Some children can legally be treated as adults in the criminal justice system.

If a child is 14 or older, *his/her case can be sent to adult court* for certain "serious" crimes, such as: Murder or attempted murder; Setting fire to a building with people in it; Robbery with a weapon; Rape; Kidnapping; Carjacking; Crimes with guns; Drug crimes; AND Escape from a juvenile detention facility.

If a child is tried in adult court, *he/she can be sentenced to adult prison* (CDCR).[2651] Depending on how old the child is when sentenced as an adult, and how long the sentence is, he/she may be allowed to stay at DJJ for certain parts of the prison sentence:

- If the child is *under 16 when sentenced* to adult prison, he/she will stay at the DJJ until he/she is at least 16.
- If the child is *at least 16 when sentenced* to adult prison, the judge can send him/her directly to adult prison. Or, if the child's sentence ends before he/she turns 21, the judge can let him/her stay at the DJJ the whole time. If the child's sentence ends after he/she turns 21, he/she will go to adult prison when he/she turns 18.

If your child's case might be going to adult court, talk to a lawyer about what can happen. [2652]

IS THERE A WAY TO MAKE MY CHILD'S JUVENILE RECORDS DISAPPEAR?

Maybe. Your child might be able to get some of his/her juvenile records "sealed": After your child turns 18, he/she can file a petition to have the records sealed. Or, 5-6 years after the case ends, you can file a petition to do this. If the court approves the petition, all records of the case and the arrest will be sealed.[2653]

For more information on sealing juvenile records, speak to your family law facilitator, a lawyer, or contact the clerk at the juvenile delinquency court where you child's case is being heard. For more general information on sealing juvenile records, see http://www.courts.ca.gov/28120.htm.

[2650] Judicial Council of Cal. "Juvenile Deliquency" (2015), http://www.courts.ca.gov/selfhelp-delinquency.htm.
[2651] Judicial Council of Cal. "Juvenile Deliquency" (2015), http://www.courts.ca.gov/selfhelp-delinquency.htm.
[2652] Judicial Council of Cal. "Sealing Juvenile Records" (2015), http://www.courts.ca.gov/28120.htm
[2653] Judicial Council of Cal. "Sealing Juvenile Records" (2015), http://www.courts.ca.gov/28120.htm

APPENDIX H

Mothering While You Are Incarcerated

The *Roadmap to Reentry* guide is focused on identifying and navigating barriers for people in reentry from prison or jail—*not* on issues faced during your incarceration. But because mothering and pregnancy while incarcerated are such important topics, and can later impact your rights as a parent in reentry, this chapter and appendix provide a brief overview of some key questions you may have if you give birth while you are incarcerated. If you need more information, we recommend checking out the free resources referenced at the end of this Appendix.

➢ BEING A NEW MOTHER WHILE INCARCERATED

IS THERE ANY WAY I CAN STAY WITH MY CHILD AFTER I GIVE BIRTH?

Yes, but that chance is very slim. California has six very small mother-infant prison facilities. There are three facilities known as "Family Foundations" and you can only go there if you are sent by your sentencing judge.[2654]

The other program is the Community Prison Mother Program. There are also three of these facilities are located in Oakland (Project Pride), Pomona (Prototypes), and Bakersfield (Turning Point).[2655] Women are transferred here after they have given birth, applied to the program, and were accepted.

MY SENTENCING JUDGE RECOMMENDED THE FAMILY FOUNDATIONS PROGRAM. WHAT IS IT? WHAT WILL HAPPEN?

The Family Foundations Program (FFP) is an alternative sentencing program. To begin the process, it is best if your attorney or the court contact the Women and Children's Services unit so that you may be prescreened for the program to determine if you are eligible and so you can be placed on the waiting list. At sentencing, the judge must recommend you for the program.[2656] If you meet the criteria for the program, you will go directly to the FFP location. If you aren't screened until after you are sentenced, you will go first to prison and then later be transported to a FFP location.[2657] If you have another child and or you give labor prior to going to FFP, your child must be brought to FFP in order for you to stay. If your child isn't brought to FFP, you will be sent back to state prison. While enrolled in the FFP, you will receive prenatal care, parenting classes and access to prenatal vitamins.[2658]

WHO IS ELIGIBLE TO GO TO FAMILY FOUNDATIONS PROGRAM?

To go to FFP, you must be[2659]

- A woman pregnant or have one or more children under age six at the time of entry,
- Be sentenced to 36 months state prison or less, and have an established history of substance abuse.

WHO IS NOT ELIGIBLE FOR FAMILY FOUNDATIONS PROGRAM?

By statute, you cannot go to FFP if you

- Have a prior prison term for, or a current conviction of, any of the so-called "serious" offenses listed in Penal Code section 1174.4(a)(2)
- If a woman's child is under the jurisdiction of the juvenile dependency court, and Child protective Services objects[2660]

Other CDCR publications include more requirements. For example, a mother must not have an immigration or "potential or active Felony hold", "must have primary custody of her child or children," and sets a two-child limit.[2661]

[2654] http://www.prisonerswithchildren.org/wp-content/uploads/2013/01/CA-Mother-Infant-Prison-Programs_report.pdf p.1
[2655] http://www.prisonerswithchildren.org/wp-content/uploads/2013/01/CA-Mother-Infant-Prison-Programs_report.pdf p.1
[2656] Cal. Penal Code §1174.
[2657] Cal. Penal Code §1174.
[2658] Cal. Penal Code §1174.
[2659] Statutory eligibility requirements for the Family Foundations Program are found in California Penal Code section 1174.4
[2660] CAL. PENAL CODE §1174.4(b)(4).
[2661] 8 Undated information sheet entitled "The Family Foundations Program, California Department of Corrections and Rehabilitation, A New Chance for Inmate Mothers".



HOW DO I GET INTO THE COMMUNITY PRISON MOTHER PROGRAM?

After you give birth, you will receive notice of and a written application for the Community Prison Mother Program (CPMP).[2662] If you arrive at state prison and you are already a mother, you should be informed of the CPMP.[2663] If you meet the requirements, your facility will declare you "eligible" to participate.[2664] To take part in the program, you must apply and this process can take anywhere from a few months to over a year. But applying DOES NOT mean that you will be accepted. If you are denied, you will receive notice that you were denied and instructions to appeal.[2665]

WHO IS ELIGIBLE FOR CPMP?

To be eligible for the Community Prison Mothering Program, a woman must

- have one or more biological children under age six when received by or committed to state prison;
- be the primary caretaker of the children before incarceration, AND
- not been found to be an unfit parent. Or she can be pregnant or have given birth while under CDCR jurisdiction. She must be sentenced to a maximum of six years (after deduction of goodtime credit).

WHAT CAN STOP ME FROM BEING ELIGIBLE FOR CPMP?

There are several things that can stop you from being eligible for CPMP.[2666] For example, if you were convicted or pled guilty to certain sex or drug offenses you will not be eligible for CPMP.[2667] You may also be excluded if you have an older child.[2668]

HOW DO I KNOW IF THE CPMP IS BEST FOR ME?

Deciding what is best for you and your unborn child is difficult challenge. The best way to decide if the CPMP is best or finding a guardian can only be done with research and asking questions.

I AM CURRENTLY PREGNANT AND IN JAIL. WILL MY CHILD BE TAKEN AWAY FROM ME?

Yes. Unfortunately, you cannot return to your facility (whether it is a state or federal run facility) with a baby. Instead, it is important to make a placement plan for your child to make sure that he or she is cared for and to reunify in the future.

WHAT RIGHTS DO I HAVE TO MAKE SURE THAT MY CHILD GOES TO A GOOD HOME WHILE I'M INCARCERATED?

As a mother, you have the right to make arrangements for the care of your child, and it is important that you do so before you give birth.[2669]

Here is a summary of 3 ways in which you can make arrangements for your child after birth:

1. You may release your child to a blood relative like or a blood relative's spouse even if the marriage ended by death or divorce;
2. You may place your child with a non-relative whom you consider an extended family member;
3. You may permanently release your child by giving up your parental rights.

WHAT IS THE PROCESS FOR CREATING A PLACEMENT PLAN? WILL MY FACILITY OR HOSPITAL HELP?

You should receive information from both your facility and the facility's medical staff regarding a placement plan for your child.

[2662] CAL. PENAL CODE §3417, 54045.20 Community Treatment Programs State of California Department of Corrections Operation Manual, Article 45 – Care, Treatment, & Security of Pregnant Offenders, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202015/DOM%202015.PDF

[2663] Cal. Penal Code §3412; See Cal. Penal Code §3417

[2664] 54045.20 Community Treatment Programs, State of California Department of Corrections Operation Manual, Article 45 – Care, Treatment, & Security of Pregnant Offenders, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202015/DOM%202015.PDF http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202015/DOM%202015.PDF

[2665] CAL. PENAL CODE §§ 3412-3424.

[2666] For the complete list of eligibility requirements, please visit http://www.cdcr.ca.gov/Adult_Operations/FOPS/docs/COMMUNITY%20PRISONER%20MOTHER%20PROGRAM%20CRITERIA%202012.pdf.

[2667] CAL. PENAL CODE § 3417 et seq. If you were convicted of certain sex or drug offenses, unless there were "mitigating circumstances", if you pose a "probability of absconding", "engaging in other conduct adverse to herself or to other participants", or "posing an unreasonable risk to the public." Other crimes that can make you ineligible for CPMP as defined under the California Penal Code include: murder, mayhem, aggravated mayhem, kidnapping, lewd acts on a child under the age of 14, any felony that inflicts great bodily injury on a person other than accomplices, forcible rape, sodomy, child abuse, oral copulation.

[2668] CAL. PENAL CODE § 3417 et seq.

[2669] Child Born to Mother Incarcerated/Hospitalized in a State Institution, CWDA Protocol, Revised by CWDA Children's Committee 2/2011, http://www.cwda.org/downloads/tools/cws/CWDA-Child-Born-to-Mother-Incarcerated-Hosptalized-in-a-State-Institution.pdf.

APPENDIX I

List Of Non-Exemptible Crimes For Foster Parent Applicants

Health and Safety Code Section 1522(g)(1) lists or refers to convictions for crimes for which no exemptions are allowed. These crimes are identified below:

1. California Penal Code Sections 186.22 and 136.1 – Gang related/Intimidation of witnesses or victims.
2. California Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
3. California Penal Code Section 203 – Any mayhem.
4. California Penal Code Section 206 – Felony torture.
5. California Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
6. California Penal Code Sections 211, 212, 212.5, 213, 214 – Any robbery.
7. California Penal Code Section 215 – Carjacking.
8. California Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
9. California Penal Code Section 243.4 – Sexual battery.
10. California Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
11. California Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
12. California Penal Code Section 264.1 – Rape in concert.
13. California Penal Code Section 266 – Enticing a minor into prostitution.
14. California Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
15. California Penal Code Section 266h(b) – Pimping a minor.
16. California Penal Code Section 266i(b) – Pandering a minor.
17. California Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
18. California Penal Code Section 267 – Abduction for prostitution.
19. California Penal Code Section 269 – Aggravated assault of a child.
20. California Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
21. California Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
22. California Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
23. California Penal Code Section 285 – Incest.
24. California Penal Code Section 286 – Sodomy.
25. California Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
26. California Penal Code Section 288a – Oral copulation.
27. California Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
28. California Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
29. California Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
30. California Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
31. California Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
32. California Penal Code Section 311.3 – Sexual exploitation of a child
33. California Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
34. California Penal Code Section 311.10 – Advertising or distributing child pornography.
35. California Penal Code Section 311.11 – Possessing child pornography.
36. California Penal Code Sections 314(1) or (2) – Lewd or obscene exposure of private parts.



37. California Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.

38. California Penal Code Section 368(b) or (c) if after January 1, 1999 – Elder or dependent adult abuse.

39. California Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.

40. California Penal Code Section 451(a) or (b) – Arson.

41. California Penal Code Section 460(a) – First degree burglary.

42. California Penal Code Sections 186.22 and 518 – Gang related/Extortion.

43. California Penal Code Section 647.6 or prior to 1987 former Section 647a – Annoy or molest a child under 18.

44. California Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.

45. California Penal Code Sections 664/187 – Any attempted murder.

46. California Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.

47. California Penal Code Section 667.5(c)(8) – Enhancement for any felony that inflicts great bodily injury.

48. California Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.

49. California Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

50. California Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm. 51. Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

APPENDIX J

Establishing Paternity

WHAT IS A DECLARATION OF PATERNITY?

A **Declaration of Paternity** is a form used in California that, when signed by both parents, establishes them as the legal parents of the child. It is used when parents of a child who are not married want to establish themselves as the child's legal parent. A properly signed Declaration of Paternity has the same effect as a court order from the judge. [2672]

DECLARATION OF PATERNITY: *A Snapshot*	
What is it?	A form that when you complete, has the same effect as a court order as it establishes who the legal parents are of a child.
What does it do?	Since it establishes who are the child's legal parents are, a parent can go to court and ask for orders to be made for the care of the child including but not limited to custody, visitation, and child support.
When is it signed?	• AT BIRTH: The parents can sign a declaration at the hospital when the child is born. If the parents sign at the hospital, the father's name will go on the child's birth certificate, and the mother does not need to go to court to prove who the father of the child is. OR, • LATER, AFTER BIRTH: The declaration can also be signed later. If the parents sign it after the child's birth certificate has been issued, a new birth certificate can be issued with the father's name. • Once the declaration is signed, the form must be filed with the California Department of Child Support Services Paternity Opportunity Program (POP) in order to be effective. After a signed Declaration of Paternity is filed with the court, the judge can make orders for custody, visitation, and support. [2670]
How do I Get A Copy?	If you filed a Declaration of Paternity and want a copy of it, you can either complete a **Request for a Filed Declaration of Paternity** (CS 918) or send a letter to the Department of Child Support Services-POP Unit. If *you use a letter for your request*, please include all the identifying information about the child and parents shown above. Also include your name, mailing address and signature since you are making the request. See Appendix J, PG. 821 for more information.
Can I cancel it?	Possibly, but it will depend on several factors. See Appendix J, PG. 821 for more information on cancelling your Declaration of Paternity.[2671]

WHERE CAN I GET HELP IN ESTABLISHING PARENTAGE?

Your Local Child Support Agency (LCSA) can bring an action to establish the paternity/ parentage of your child. As part of this action, they will ask the court for a child support order. This service is free and is available to both parents. To begin, call the LCSA and ask for an appointment to open a case for parentage and support. You can open a case during the pregnancy and a genetic test can be ordered (if the other person denies being the parent) after the child is born. Also, when one parent is on welfare for the children (for example, if they receive Cal-Works or Medi-Cal), the LCSA automatically gets involved and opens a case.[2673] You may also want to contact your local department of child support services, registrar of births, family law facilitator or welfare office.

! **IMPORTANT: The local child support agency (LCSA) can be a helpful resource but they are not your lawyers and the information you provide will not be kept secret (confidential). The LSCA can also share certain information to other agencies, the other parent or your employer. If you need more advice or privacy, it would be best to contact a lawyer and/or your local legal aid office.** [2674]

[2670] Legal Services for Prisoners with Children, "Incarcerated Parents Manual," pg. 22, (updated 2015), available at http://www.prisonerswithchildren.org/wp-content/uploads/2015/03/IPM-final-2-12-2015.pdf
[2671] Judicial Council Of Cal, "Establishing Parentage/Paternity," (2015), http://www.courts.ca.gov/1201.htm.
[2672] Cal. Fam. Code § 7573.
[2673] Judicial Council Of Cal., "Establishing Parentage/Paternity," (2015), http://www.courts.ca.gov/1201.htm.
[2674] Judicial Council Of Cal., "Establishing Parentage/Paternity," (2015), http://www.courts.ca.gov/1201.htm.

APPENDIX K

Divorce or Legal Separation: Filing, Responding & Completing

Basic steps to file for a divorce or legal separation:

1. Fill our your court forms (see the next section): To file for divorce or legal separation, you have to fill out the same forms. If you want specific legal advice about how to fill out your court forms, talk to a lawyer. What you write on your court papers can be very important and can affect the outcome of the case. It is very important to be accurate and complete, and a lawyer can help you figure out how to fill out the forms so that they accurately reflect your position. This is especially important if you think you and your spouse or domestic partner are likely to have disagreements about the issues that the court forms ask you about.
2. File your forms: Turn in your forms (the originals AND copies) to the court clerk. If there are no obvious errors, the clerk will take the original of each form and return the copies to you, stamped "Filed."

You will have to pay a filing fee. If you cannot afford the fee, you can ask for a fee waiver.

IMPORTANT NOTE: If you want the judge to make temporary orders for child or spousal support, bill payment, protection from domestic violence, or other issues, you must fill out and file other forms with the order form for a divorce or dissolution of marriage. Talk to your family law facilitator or self-help center to ask for help with temporary orders.

1. Serve your court papers: The law says your spouse or domestic partner must be told that you have started the legal process for a divorce, legal separation, or annulment. To do this, you must "serve" your spouse or domestic partner with copies of all your court papers. The judge CANNOT make any orders or judgments in your divorce or legal separation case until your spouse or domestic partner has been properly "served."
2. Fill out and serve your financial disclosure forms: You have filed your petition in your divorce or legal separation case. Now, you are ready to complete the financial disclosures needed to get divorced or legally separated. Keep in mind that you can provide your financial disclosures at the same time as your petition if you wish, but NO LATER than 60 days after filing your petition.
3. The next steps all depend on whether or not your spouse or domestic partner has responded to your service. Please see the Judicial Council of California's website here: for more information on what to do next, or speak to your court's family law facilitator or an attorney.

Basic Steps to Responding to a Divorce or Legal Separation:

1. Either spouse in a marriage or partner in a registered domestic partnership can ask the court to end their legal relationship.
2. If you have been served with a petition and summons for dissolution (divorce) or legal separation, your spouse or domestic partner is asking the court to end your relationship. In California, as long as 1 person wants to end the marriage or domestic partnership, the court can end it, even if the other spouse or domestic partner does not agree or want to get divorced or legally separated.
    a. You can either respond by contesting the divorce or dissolution or you can respond by not contesting it, meaning you agree and have no changes to make to the request.

THE FORMS

There are a lot of California forms that must be completed if you are filing, responding, or completing a divorce or legal separation. You may also have special forms that must be completed depending on the county you live in. To find your county, please see Appendix A on PG. X to find your county.

It is VERY important that all of you forms are completed and filed at the right time. To make sure you follow and complete all the steps, you can talk to a lawyer or a family law facilitator to help.

Below is a list of forms that you will have to complete whether you are filing or responding to a divorce.

- **Petition — Marriage/Domestic Partnership** (Form FL-100). On this form, you give the court some basic information about your marriage and/or domestic partnership, and you ask for the orders you want the court to make.
- **Summons (Family Law)** (Form FL-110). This form contains important information for you and for your spouse or domestic partner about the divorce or separation process. It contains some standard restraining orders limiting what you can do with your property, money, and other assets or debts. It also prohibits you or your spouse or domestic partner from moving out of state with your children from your marriage or partnership, and from applying for a new or replacement passport for any of your children together, without the prior written consent of the other or a court order. And it lets you know that if you or someone in your household need affordable health insurance, you can apply for Covered California. READ this form carefully!!

DECLARATION PAPERWORK

There may be things you must "declare" meaning you are to tell your spouse and/or the court what you have in order to get a divorce. Below are various forms you may also need to complete.

- **Property Declaration (Family Law)** (Form FL-160). Use this form if you need more space to list your property and debts.
- **Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** (Form FL-105/GC-120). Use this form if you have child under the age 18 with your spouse or domestic partner.
- **Child Custody and Visitation Application Attachment** (Form FL-311). Use this form if you want to ask the court to make orders about custody and visitation at the time of your divorce. It is an optional form (you do not have to use it).

SERVICE PAPERWORK

An important part of filing for divorce is "service" which is also considered notification or how the other spouse and, or the local child support agency is told that you want a divorce.

Below are forms that you may need:

- **Notice and Acknowledgment of Receipt (Family Law)** (Form FL-117). Use this form if you decide to do service by mail. This form shows the court that your spouse or domestic partner received your forms. If your spouse or domestic partner does not sign, date, and return this form, you will have to have him or her served again by personal service. Remember, you must have someone 18 years or older (NOT you) and not involved in the divorce (NOT a family, friend, or relative) do this for you.
- **Proof of Service by Mail to the Local Child Support Agency (Form FL-335).** This form is used when you must serve the LSCA because either you or your spouse receives money or help from the government for a child in your relationship or if you have a current custody case taking place with the LSCA.
- **Proof of Service of Summons** (Form FL-115). This form must be completed whether you decide to have someone hand deliver divorce papers or mail them for you. It is very important your server fills out the Proof of Service correctly. If possible, have your family law facilitator or self-help center review it to make sure it was filled out properly.

FINANCIAL DISCLOSURE FORMS

In California, you and your spouse must give each other written information on what property or money you have and what expenses you have. This must be done so the property between two people can be split up equally. It also gives you financial information in order to make decisions about child support. If financial disclosures are not exchanged or if the financial disclosures are not correct, the divorce can be cancelled and the court can make orders about the property

There are two times when a disclosure occurs: (1) At the time of filing (preliminary disclosure), and (2) at the end of the divorce (final disclosure).

Below is a list of official court forms and other things you may need.

- **Declaration of Disclosure.** (Form FL-140). This is the form that you will use to write down your expenses. It must be sent to your spouse within 60 days of filing for divorce. This form will not be filed with the court, only given to your spouse.
- **Schedule of Assets and Debts** (Form FL-142) or a **Property Declaration** (Form FL-160); This form will not be filed with the court, only given to your spouse.
- **Income and Expense Declaration** (Form FL-150). Use this form to include money you have earned as part of business or investment opportunities you have had.
- **Your Tax Returns for the last two years.** These forms will not be filed with the court, only given to your spouse.
- **Declaration Regarding Service of Declaration of Disclosure** (Form FL-141). This form tells the court that you have given your spouse or domestic partner the preliminary or final declaration of disclosure. This form will be filed with the court.

There are a lot of steps to completing a divorce or dissolution of marriage. Luckily, the Judicial Council of California has put together a website showing you each and every step, including links to all the forms you need. We recommend you check them out,

If you are FILING for divorce, please visit http://www.courts.ca.gov/1229.htm for the steps on how and when to file these forms.

If you are RESPONDING to your spouse request for a divorce, please visit http://www.courts.ca.gov/1235.htm.

If you are completing a divorce and responses have been received OR the required waiting time has passed, please visit http://www.courts.ca.gov/1035.htm.

APPENDIX L

Child Support Forms

Requesting and responding to child support requests can be complicated, so it is best to talk to a lawyer or Family Law Facilitator to discuss your situation first. Below is a chart on common support situations and the forms you would need. Please visit The Judicial Branch of California Courts at http://www.courts.ca.gov/1199.htm for detailed steps on how to fill out and file the right forms.

I WANT TO:	THE FORM I WILL NEED INCLUDE:
Respond to a request to pay child support.	• Responsive Declaration to Request for Order (Form FL-320); • Income and Expense Declaration (Form FL-150); and • Proof of Service.
Ask the judge to change the amount of child support I pay.	• Request for Order (FL-300): Use this form to ask the judge to change your child support order. You will make a "Request for Order of Child Support Modification" • Financial Statement (Simplified) (FL-155): In most cases, you can use this form to show the judge your income, expenses, and how much you can afford to pay in child support.
Ask the judge to review the denial of my driver license because of my child support debt.	• Notice of Motion for Judicial Review of License Denial (FL-670): If your driver license was revoked or suspended due to unpaid child support, use this form to ask the judge to return your license (FL-670 also available at http://www.courts.ca.gov/documents/fl670.pdf).
Pay less child support in the future.	• Request for Order (Form FL-300). ○ NOTE: You can also use the Information Sheet for Request for Order (Form FL-300-INFO) for information to fill out Form FL-300. (Ask your family law facilitator if you need to check the box for "Court Order" and item 4 on Form FL-300). You will make a "Request for Reducing Child Support Order" • Income and Expense Declaration (Form FL-150): On your Form FL-300, check the box at item 8 ("Other Relief") and write in "Set monthly liquidation payment of $ (write in a reasonable amount)." The "liquidation payment" is the payment that goes toward your back spousal or partner support. It is very important that you fill out Form FL-150 very carefully and completely. That form will show the court why you cannot afford the high rate of payments the earnings assignment is asking for to pay off your balance.

Stop having money removed from my paycheck/request a "Stay Earnings Assignment."	• Stay of Service of Earnings Assignment Order (Form FL-455): On this form, mark the box that explains you have an agreement with your former spouse or partner (AND the LCSA if they are involved in your case) for another payment arrangement.
	  ○ You will get a court hearing where you can ask the judge to stop service of the earnings assignment.
	  ○ If the judge agrees with your request, he or she will sign the stay. This stops the earnings assignment from taking effect because it will not be served on your employer.
	  ○ If you get a stay, it is very important you both keep good records of all the payments, in case there are any issues in the future.
	  ○ Read the Stay of Service of Earnings Assignment Order (Form FL-455) for more information on "staying" an earnings assignment. If the person ordered to pay support does not follow your arrangement, you can ask the court to end the stay on the earnings assignment.

Find out how much child support I owe, and request for it to be changed.	• Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization (Form FL-676): You can use this form to ask the judge how much child support you owe from when you were incarcerated. ○ NOTE: If your child support order was issued between July 1, 2011, and July 1, 2015, and your child support should have automatically stopped during this incarceration, you can use this form to ask the judge to change your child support debt (arrears) from the time while you were incarcerated (FL-676 also available at http://www.courts.ca.gov/documents/fl676.pdf). • Information Sheet for Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization (Form FL-676-INFO): This explains how to fill out the Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization form (FL-676-INFO also available at http://www.courts.ca.gov/documents/fl676info.pdf).
Incarcerated Parent's Request to Review Child Support (Child Support)	• Use this form to ask the LCSA to change (stop) your child support payments while you're incarcerated. Incarcerated Parent's Request to Review Child Support (DCSS 0018 Form): • Form DCSS 0018 is available at: https://csdaca.org/wp-content/uploads/resources/1/Education/Incarcerated%20Obligor/Incarcerated%20Parent%27s%20Request%20to%20Review%20Child%20Support.pdf.

STATE OF CALIFORNIA-HEALTH AND HUMAN SERVICES AGENCY

DEPARTMENT OF CHILD SUPPORT SERVICES

INCARCERATED PARENT'S REQUEST TO REVIEW CHILD SUPPORT

DCSS 0016 (11/12/10)

INSTRUCTIONS: Fill in the information below and mail this form to:

It will be submitted to the local child support agency that handles your child support case.

I am requesting a review of my child support order to see if it can be lowered or stopped while I am incarcerated. I understand this does not change what I currently owe in back child support (arrears).*

NAME (PLEASE PRINT) (LAST) (FIRST)

SOCIAL SECURITY NUMBER	DATE OF BIRTH
CURRENT ADDRESS/INSTITUTION	CDCR NUMBER/BOOKING NUMBER/JAIL NUMBER
DATE OF CURRENT INCARCERATION	EXPECTED DATE OF RELEASE

ADDRESS WHERE YOU WILL RECEIVE MAIL WHEN RELEASED (STREET OR P.O. BOX):

CITY	STATE	ZIP CODE

I am requesting a review of my child support order for the following child(ren).

CHILD'S NAME (First and Last Name)	CHILD'S AGE/ BIRTHDATE	COUNTY HANDLING THIS CHILD SUPPORT CASE	OTHER PARENTS

IF YOU NEED MORE SPACE, USE ADDITIONAL PAPER

OTHER QUESTIONS/CONCERNS:

☐ * Check here if you would like information regarding the Compromise of Arrears Program.

Privacy Statement

The Information Practices Act of 1977 (Civil Code Section 1798.17) and the Federal Privacy Act of 1974 (Public Law 93 579) requires that this notice be provided when collecting personal information from individuals. Information requested on this form, including your Social Security Number, is used by the Department of Child Support Services (DCSS) for purposes of identification and communication with you. The DCSS is required, under Section 466(a)(13) of the Social Security Act, to collect the Social Security Number of any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgement. Social Security Number information is mandatory and will be kept on file at the local child support agency to locate and identify individuals and assets for the purpose of establishing, modifying, and enforcing child support obligations. Enrolling a child in health insurance may require the release of the child's Social Security Number and mailing address to the other parent's employer or the release of the child's Social Security Number to the other parent. The information in your case may be discussed with or given to the State, other public agencies that can legally receive such information, and to the other parent or his/her attorney to the extent required by law.

I understand that if the order is changed while I am incarcerated the order may be changed again when I am released and that I should contact my local child support agency upon my release. I declare under penalty of perjury that I have no income or assets and have no way of paying child support.

SIGNATURE OF INMATE

DATE

ESTADO DE CALIFORNIA - AGENCIA DE SALUD Y SERVICIOS HUMANOS

DEPARTAMENTO DE SERVICIOS DE MANUTENCIÓN DE MENORES

SOLICITUD DE PADRES PRESOS PARA LA REVISIÓN DEL MANTENIMIENTO DE HIJOS

DCSS 0018 SPA (11/12/10)

INSTRUCCIONES: Escriba la información que se le pide a continuación y envíe este formulario por correo a:

El formulario se entregará a la agencia local de mantenimiento de hijos que se ocupa de su caso.

Yo, solicito una revisión de mi orden de mantenimiento de hijos para ver si se puede reducir o suspender mientras me encuentro preso/a. Tengo claro que eso no cambia lo que actualmente debo en pagos atrasados de mantenimiento de hijos (deudas atrasadas).*

NOMBRE (CON LETRA DE MOLDE) (APELLIDO)	(NOMBRE DE PILA)
NÚMERO DE SEGURO SOCIAL	FECHA DE NACIMIENTO
DOMICILIO/INSTITUCIÓN ACTUAL	NÚMERO DEL CDCR/NÚMERO DE REGISTRO/NÚMERO DE CÁRCEL
FECHA DEL ENCARCELAMIENTO ACTUAL	FECHA PREVISTA DE LIBERACIÓN

DOMICILIO DONDE RECIBIRÁ CORRESPONDENCIA CUANDO SEA LIBERADO/A (CALLE O APARTADO POSTAL):

CIUDAD	ESTADO	CÓDIGO POSTAL

Yo, solicito una revisión de mi orden de mantenimiento de hijos para el/la/los/las siguiente/s hijo/a/os/as.

NOMBRE DEL/DE LA HIJO/A (Nombre de pila y apellido)	EDAD DEL/DE LA HIJO/A /FECHA DE NACIMIENTO	EL CONDADO A CARGO DEL CASO DE MANTENIMIENTO DE HIJO	OTROS PADRES

SI NECESITA MÁS ESPACIO, USE UNA HOJA ADDICIONAL

OTRAS PREGUNTAS/ O PREOCUPACIÓNES:

☐ * Marque esta casilla si desea obtener más información acerca del Programa de Compromiso de Deudas Atrasadas.

Declaración de Privacidad

La Ley de las Prácticas de la Información (*Information Practices Act*) de 1977 (Sección 1798.17 del Código Civil) y la Ley Federal de Privacidad (*Federal Privacy Act*) de 1974 (Ley Pública 93 579) exigen que se dé a conocer este aviso cuando se reúna información personal de los individuos. La información que se pide en este formulario, incluido su Número del Seguro Social, es usada por el Departamento de Servicios de Manutención de Menores (*Department of Child Support Services*, DCSS) con el fin de identificarlo y poder comunicarse con usted. Según la Sección 466(a)(13) de la Ley del Seguro Social (*Social Security Act*), el DCSS debe obtener el Número del Seguro Social de todo individuo que se someta a una sentencia de divorcio, una orden de mantenimiento o la determinación o el reconocimiento de la paternidad. La información sobre el Número del Seguro Social es obligatoria y se guardará en un archivo en la agencia local de mantenimiento de hijos para localizar e identificar a los individuos y sus activos con el fin de establecer, modificar y hacer cumplir las obligaciones del mantenimiento de hijos. Para inscribir a un/a hijo/a en un seguro médico, es posible que sea necesario proporcionar el Número del Seguro Social del/de la niño/a y el domicilio al empleador del otro padre o proporcionar el Número del Seguro Social del/de la niño/a al otro padre. Es posible que la información de su caso se discuta o se proporcione al Estado, u otras agencias públicas con autorización legal para recibir dicha información, o al otro padre o su abogado/a según lo exija la ley.

Tengo claro que, si se cambia la orden mientras me encuentro en prisión, es posible que la orden se cambie de nuevo cuando me pongan en libertad y que debo ponerme en contacto con la agencia local de mantenimiento de hijos en cuando me pongan en libertad. Yo declaro bajo pena de perjurio que no tengo los ingresos ni las ventajas o manera de pagar mantenimiento de hijos.

FIRMA DEL PRESO

FECHA

INFORMATION SHEET FOR REQUEST FOR JUDICIAL DETERMINATION OF SUPPORT ARREARAGES OR ADJUSTMENT OF ARREARAGES DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION

Please follow these instructions to complete a *Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization* (form FL-676) if you do not have an attorney to represent you. If you have an attorney, he or she should complete form FL-676. If you need free help completing form FL-676, you can contact the Family Law Facilitator's Office in your county. For more information on finding a family law facilitator, see the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp.*

Form FL-676 should be used only if you disagree with the support arrearages that the local child support agency says that you owe or you need an adjustment due to incarceration or institutionalization and you cannot reach an agreement with the local child support agency. Form FL-676 cannot be used if you want to change your child support order.

When you have completed this form FL-676, file the original and attachments with the court clerk. The court clerk's address is listed in the telephone directory under "County Government Offices" or online at *www.courts.ca.gov/courts/find.htm*. **Keep three copies of the filed form and its attachments. Serve one copy on the local child support agency, one copy on the other parent, and keep the other for your records. (See *Information Sheet for Service of Process* (form FL-611).)**

INSTRUCTIONS FOR COMPLETING THE *REQUEST FOR JUDICIAL DETERMINATION OF SUPPORT ARREARAGES OR ADJUSTMENT OF ARREARAGES DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION* (FORM FL-676) (TYPE OR PRINT IN BLACK INK):

Front page, first box, top of form, left side: Print your name, address, and telephone number in this box if it is not already there.

Front page, second box, left side: Print your county's name and the court's address in the box. Use the same address for the court that is on your most recent support order or judgment. If you do not have a copy of your most recent support order or judgment, you can get one from either the court clerk or the local child support agency.

Front page, third box, left side: Print the names of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed in your most recent support order or judgment. If no name is listed for the Other Parent leave that line blank.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. This number is also listed on your most recent support order or judgment.

Front page, fourth box, left side: Check the box to indicate whether you are asking for a judicial determination of support arrearages or adjustment of arrearages due to incarceration or involuntary institutionalization. Check both boxes if you are asking for both a determination of arrears and an adjustment of arrears.

1.a.–b. You must contact the court clerk's office and ask that a hearing date be set for this motion. The court clerk will give you the information you need to complete this section.

2. This section states that the local child support agency is handling your support case.

3a. **This section requires you to attach the statement or other document from the local child support agency that tells the amount of your support arrearages.**

3b. **This section requires you to attach your own statement of the amount of your support arrearages.** Your statement must show a monthly breakdown of the amount of support ordered and the amount you paid each month. You may use *Declaration of Payment History* (form FL-420) and *Payment History Attachment* (form FL-421) to complete your statement of arrearages.

4. **Complete all that apply.** If you check the box in item 4a, attach or bring to the court hearing proof of the dates of incarceration or involuntary institutionalization. If you have any evidence or documentation that you had no income or assets, in addition to your sworn statement on the form, please bring that to court with you.

You must date the request, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Top of second page, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed on the front page.

Top of second page, box on right side: Print your case number in this box. Use the same number as the one on the front page. Instructions for how to complete the Proof of Service section of the *Request* form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the request and its attachments must fill out this section of the form. **You cannot serve your own request.**

Form Approved for Optional Use
Judicial Council of California
FL-676-INFO [New July 1, 2011]

INFORMATION SHEET FOR REQUEST FOR JUDICIAL DETERMINATION OF SUPPORT ARREARAGES OR ADJUSTMENT OF ARREARAGES DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION
(Governmental)

www.courts.ca.gov
CEB
www.ceb.com

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	***FOR COURT USE ONLY***
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST FOR JUDICIAL ☐ DETERMINATION OF SUPPORT ARREARAGES ☐ ADJUSTMENT OF ARREARAGES DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION	CASE NUMBER:

NOTICE OF HEARING

1. A hearing on this application will be held as follows *(see instructions on how to get a hearing date):*

a. Date: Time: ☐ Dept.: ☐ Div.: ☐ Room:

b. Address of court: ☐ same as noted above ☐ other *(specify):*

2. The local child support agency is providing support enforcement services in this case.

3. ☐ **DETERMINATION OF SUPPORT ARREARAGES**

   a. The local child support agency states that I owe support arrearages as shown in the attached document.

   b. I disagree with the local child support agency's statement, and I request the court to make a determination of arrearages. I am attaching my statement of the arrearages, which includes a monthly breakdown of amounts ordered and amounts paid.

4. ☐ **ADJUSTMENT OF ARREARAGES DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION**

   a. ☐ I was incarcerated or involuntarily institutionalized for the following periods of time for more than 90 days during which I did not have the means to pay support. *(Attach any proof of your incarceration or involuntary institutionalization):*

      (1) Date(s) of incarceration or involuntary institutionalization:

      (2) Date(s) of release:

   b. ☐ The reason for my incarceration or involuntary institutionalization was not a result of any offense constituting domestic violence as defined in Family Code section 6211 against the parent receiving support or supported child, or for an offense that could be enjoined by a protective order under Family Code section 6320, or as a result of my failure to comply with a court order to pay child support.

5. ☐ Other *(specify):*

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner's acting as a temporary judge. If you or the other party objects, the court commissioner may still hear your case to make findings and a recommended order to a judge. If you do not like the recommended order, you must object to it within **10 court days** in writing (use *Notice of Objection (Governmental)* (form FL-666)); otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

Form Adopted for Mandatory Use
Judicial Council of California
FL-676 [Rev. January 1, 2012]

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:

☐ Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.
Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

An adult *other than you* must complete the Proof of Service below.

PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. My residence or business address is *(specify):*

3. I served a copy of the foregoing *Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization* (form FL-676) and all attachments as follows *(check either a, b, or c for each party served):*
   a. ☐ **Personal delivery.** I personally delivered a copy and all attachments as follows:
      (1) ☐ Name of party or attorney served:
      (a) Address where delivered:
      (b) Date delivered:
      (c) Time delivered:
      (2) ☐ Name of local child support agency served:
      (a) Address where delivered:
      (b) Date delivered:
      (c) Time delivered:
   b. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred. I deposited this request with the U.S. Postal Service in a sealed envelope with postage fully prepaid. I used first-class mail. The envelope was addressed and mailed as follows:
      (1) ☐ Name of party or attorney served:
      (a) Address:
      (b) Date mailed:
      (c) Place of mailing *(city and state):*
      (2) ☐ Name of local child support agency served:
      (a) Address:
      (b) Date mailed:
      (c) Place of mailing *(city and state):*
      (3) I served this motion/request, which included an address verification declaration (*Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order* (form FL-334) may be used for this purpose).

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

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PERSON WHO SERVED REQUEST)

APPENDIX M

Requesting Spousal Support

Requesting support can be very complicated so it is best to talk to a lawyer or family law facilitator to discuss your situation firsthand. Below is a chart on common support situations and the forms you would need. Please visit The Judicial Branch of California Courts at http://www.courts.ca.gov/9143.htm for detailed steps on what to do with these forms and how to file them properly.

SITUATION	FORMS TO COMPLETE
How do I Ask for Temporary Partner or Spousal Support [2675]	• **Request for Order** (Form FL-300). You can use **the Information Sheet for Request for Order** (Form FL-300-INFO) to learn how. (Ask your family law facilitator if you need to check the box for "Court Order" and item 4 on Form FL-300); and • **Income and Expense Declaration** (Form FL-150).
What Should I do if I Received a Domestic Violence Restraining Order and a Spousal or Partner Support Order?	• **Response to Request for Domestic Violence Restraining Order** (Form DV-120); and • **Income and Expense Declaration** (Form FL-150). • **Proof of Service by Mail (DV-250)**
How can I Ask the Court to Calculate Spousal/Child Support?	• **Request for Order** (Form FL-300). You can use the **Information Sheet for Request for Order** (Form FL-300-INFO) to learn how. (Ask your family law facilitator if you need to check the box for "Court Order" and item 4 on Form FL-300) See Appendix L for the form), • **Application to Determine Arrearages** (Form FL-490), • **Declaration of Payment History** (Form FL-420), and • **Payment History Attachment** (Form FL-421) to show the overdue support amounts.
How do I Change a Spousal Support Order?	• **Request for Order** (Form FL-300). ○ You can use the **Information Sheet for Request for Order** (Form FL-300-INFO) for information to fill out the form ○ See Appendix L for the form. • **Income and Expense Declaration** (Form FL-150). • **Spousal or Partner Support Declaration Attachment** ○ This form may be needed if you are changing a spousal or partner support order made as part of your divorce or legal separation judgment, or after the judgment. • **Declaration** (Form MC-030) or an **Attached Declaration** (Form MC-031) ○ ***Use*** if you need more space to explain why you believe a change in spousal or partner support is needed.
How do I Write a Spousal Agreement [2676]	• **Spousal or Partner Support Declaration Attachment** (Form FL-157). **Spousal, Partner, or Family Support Order Attachment** (Form FL-343) ○ **Use** as an attachment to your agreement. This form includes a lot of details that you should include in your order. • **Earnings Assignment Order for Spousal or Partner Support** (Form FL-435) ○ Use if you are agreeing to have the spousal or partner support paid by wage garnishment.

[2675] Judicial Council of Cal., Asking for a Spousal/Partner Support Order, http://www.courts.ca.gov/9050.htm.
[2676] See Judicial Council of Cal., Asking for a Spousal/Partner Support Order, http://www.courts.ca.gov/9050.htm.

EDUCATION



This EDUCATION CHAPTER explains the different options available for pursuing your education whether you are currently incarcerated, preparing for your release or are formerly incarcerated. It also explains the options of student aid and funding in order to pursue your educational goals.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.

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WHAT WILL I LEARN IN THE EDUCATION CHAPTER?

- **The different educational options**
- **How to set up your educational goals**
- **How to assess your current educational level**
- **The different educational levels/programs and what you need to pursue them**
- **How your incarceration and criminal record might affect your educational goals**
- **Options to pay for your education**

IMPORTANT: Root & Rebound has created a new toolkit, "My Education, My Freedom," for currently or formerly incarcerated people and people with arrest and conviction histories who are *actively pursuing their education* (meaning you are either enrolling in school or already enrolled). To learn more and request a copy, please tell us more about your educational plans by writing us at Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612, calling us at 510-279-4662, or sending us an email at roadmap@rootandrebound.org.

I. INTRODUCTION

WHAT WILL I LEARN?

- **A basic overview of your educational options**
- **What you need to get started in pursuing your education**

Getting an education is one of the most important steps you can take in reentry if it feels right to you. Education can open up new opportunities and lead to a better career. This chapter can help you start (or continue) to plan for and reach your educational goals. It covers what programs, schools, and financial aid opportunities are available, and it takes you through the process of deciding what is right for you. The advice here is intended to be practical both for people who are currently incarcerated, as well as for people who were formerly incarcerated and have returned to the community.

A NOTE FOR READERS WHO ARE CURRENTLY INCARCERATED: Throughout this chapter, we will often suggest that you "call" the resource that you need. We understand that it might not be possible for you to make these phone calls yourself while you are incarcerated, however we offer it as general information for you, your family, and your advocates to use for your benefit.

DID YOU KNOW?

Studies show that formerly incarcerated people who receive general education or vocational training are much less likely to return to prison and much more likely to find employment after their release. In fact, people who participate in correctional education programs while incarcerated have a 43 percent *lower* chance of returning to prison, and a 13 percent *higher* chance of finding employment, than people who do not do educational programs while incarcerated.[2677]

QUESTIONS TO START WITH

Thinking through the following questions will help you set your educational goals and decide which path is best for you.

WHAT ARE MY EDUCATIONAL OPTIONS?

Your decision about which school or program you enroll in will depend on many factors: your personal and career goals, your finances, your educational background and current skills, and your ability to overcome any barriers that may arise because of your criminal history. Your decision may also depend on day-to-day needs—such as your health, family responsibilities, access to transportation, and parole or probation conditions.

To start, here is an overview of the educational options this Chapter will cover:

- **Adult Basic Education (ABE) classes** (PG. 856) improve your basic math, reading, writing, and life skills; and these classes can help you get ready for high school-level work.
- **High school credentials (diploma or GED)** (PG. 857) are a minimum requirement for many jobs, and are a necessary step before you can continue your education through a Career Technical Education program or a college or university degree. You can earn a high school credential by completing a high school diploma program or passing the GED test.
- **Career Technical Education (CTE) programs** (PG. 864) train you for specific kinds of jobs, and sometimes lead to certificates or professional/occupational licenses that you need for those jobs. Different programs take different lengths of time, but they're often designed so that you can complete them in 1 year.
- **College Degree:** Two-year and four-year colleges and universities award college degrees (also called academic degrees) for completing a program of academic study. College degree programs usually do not train you for a specific type of job, but give you a wide variety of general skills that are useful for many different professions. The different types of college (academic) degrees are: associate, and bachelor's.
    - **Two-year college (associate degree) programs** (PG. 868) allow you to earn an associate degree, which can be a stepping-stone to entry-level jobs or to a four-year college program. Note: Part-time students will take longer than 2 years.

[2677] Allie Bidwell, Report: Prison Education Programs Could Save Money, U.S. NEWS & WORLD REPORT (Aug. 22, 2013) http://www.usnews.com/news/articles/2013/08/22/report-prison-education-programs-could-save-money; see also CTR. FOR CMT'Y. ALT., The Use of Criminal History Records in College Admissions Reconsidered (2010) ("Post-secondary educational programs have been shown to reduce recidivism by approximately 40 percent. A research brief . . . reported on a Texas study in which participation in higher education lowered recidivism to 15 percent, 13 percent and under 1 percent for people who earned an associate's, bachelors, and master's degree, respectively. In contrast, the general recidivism rate hovers around 63 percent nationally. A study of recidivism rates among women showed that only 7.7 percent of those who took college courses in prison returned to prison after release, compared to 29.9 percent of those who did not participate in the college program. State-level studies in Texas, California, Alabama, and Maryland have, over the course of many years, shown significant reductions in recidivism associated with higher education in correctional settings." (internal quotation marks omitted)).



- **Four-year college and university programs** (PG. 867) allow you to earn a bachelor's degree, which can be a stepping-stone to higher-level jobs or to graduate or professional school. Note: Part-time students will take longer than 4 years.

- **Graduate or professional schools** allow you to earn advanced degrees after you've earned a bachelor's degree. Earning a professional degree allows you to become licensed to work in professions like law or medicine; the kinds of jobs it can lead to depends on your field of study.[2678] Earning a master's degree generally takes 2 years, and a doctorate degree can take 3 years or more.

WHAT EDUCATIONAL OPTIONS DO I HAVE WHILE I'M ON PROBATION OR PAROLE?

It depends. Once you are released, you will have access to free resources available in the community—including the Internet, public libraries, and community service organizations—that can help you do research, apply to schools and programs, and get financial assistance ("financial aid") to help pay for your education. You may also become eligible (qualify) for more types of financial aid once you are released, which can allow you to consider schools or programs that you otherwise might not be able to afford.

However, the educational options available to you ultimately depend on where you live (urban areas tend to have more options), your life circumstances (such as family responsibilities), and any probation or parole conditions that might affect your access to educational programs and services (such as travel restrictions).

NOTE: Your parole agent or probation officer should be supportive and encourage you to pursue your educational goals as part of your successful reintegration.[2679] If you find that s/he is not supportive, or that your conditions make it difficult or impossible for you to get an education, call Root & Rebound's reentry hotline by calling 510-279-4662, any Friday, 9 a.m. – 5 p.m. PST for strategies, information, and support.

A FEW GREAT RESOURCES:

Public Libraries

The local public library is an important gateway to other services and resources in your community. In addition to offering free access to computers and the Internet, libraries often have adult education classes, community calendars (support group meetings, free clinics, etc.), and some government forms that you might need. Librarians are also available to help you find whatever information you need. To find the public library closest to you:

- Check under "library" or "public library" in the city government section of your local phone book;
- Search the Internet for "library" or "public library" along with the name of your city or county; and/or
- You can also search the national database of public libraries provided by the Institute of Museum & Library Services at: http://www.imls.gov/research/public_libraries_in_the_united_states_survey.aspx.

America's Job Centers of California (formerly called EDD One-Stop Centers)

America's Job Centers of California offer many resources, all in one place, for people seeking a job or more education. Most services are free, but there may be a fee for some specialized education and training programs. Some of the services provided by America's Job Centers include:

- Skills assessment: Staff can help you identify the skills you have and the skills you need to be ready for education, training, and/or employment.
- Career counseling: Counselors can help you identify jobs and professions that you might be interested in based on your skills, interests, and experience. They also can tell you about the job market in your local area.
- Training or referrals to training programs: Staff may provide direct training or refer you to training programs that can help you prepare to continue your education or enter the workforce.
- Referrals to other resources or services. Staff can direct you to organizations that can help you with other needs, such as transportation, child care, welfare assistance, unemployment insurance, and veterans' services.

You can find an America's Job Center of California in your area by:
- Calling the CareerOneStop helpline at 1-877-348-0502 or the U.S. Department of Labor's National Helpline at: 1-877-872-5627; or by
- Searching the CareerOneStop Service Locator website at: http://www.servicelocator.org, or the America's Job Center of California website at: http://americasjobcenter.ca.gov/.

[2678] See Coll. Bd., Quick Guide: Your College Degree Options, www.bigfuture.collegeboard.org/find-colleges/college-101/quick-guide-your-college-degree-options; Nat'l Coll. Transition Network, Educational Planning, www.collegeforadults.org/career/ed.html.
[2679] See Cal. Dep't Corr. & Rehab., Operations Manual, 101010.1–101010.5.1 (2015).

- For more information about using America's Job Centers of California (EDD One-Stop Centers) to prepare for or find a job, see the EMPLOYMENT CHAPTER, beginning on PG. 557, with more details on America's Job Centers on PG. 565).

Community Organizations

Community organizations provide many kinds of services. Most are free, but some may charge a fee. These organizations can help with employment, education, health care, counseling, housing, substance abuse treatment, transportation, and childcare. They also can provide referrals to other agencies. There are different ways you can find community organizations:

- 2-1-1: A community information service that connects you to local agencies, services, and organizations that can help you with a variety of needs. To contact 2-1-1:
  - Call 2-1-1 from any phone (note: phone service may not be available in all communities yet);
  - Visit the 2-1-1 Information & Referral Search website at http://www.211.org; or
  - Some communities also publish a paper copy of the 2-1-1 guide.[2680] Check your local public library to see if the paper guide is available in your community.
- Local Public Library: Often there will be a community message board with contact information for local organizations, or you can ask the librarian to recommend local resources (see above).

TIP: Make a list ready of the resources that you want to research *before* you go to the library. This will save you a lot of time and help you better organize your search. This is especially important if you are under time limitations because of curfews or restrictions imposed by your parole agent or probation officer.

WHAT EDUCATIONAL OPTIONS DO I HAVE WHILE I'M INCARCERATED?

You have options, but unfortunately your options and the quality of the programs will depend on where you're incarcerated. The programs and resources available to you will be different based on whether you're incarcerated in a federal prison, state prison, or county jail. In addition, the availability of programs and resources will be different across different facilities.[2681]

In general, the following programs will be available to you:

- **If you're in a federal prison,** you should have free access to assessment testing, ABE classes (including literacy and ESL), GED programs,[2682] CTE and job readiness programs,[2683] as well as a College Coordinator who can help you enroll in and complete correspondence (mail) courses.[2684]
- **If you're in a California state prison,** CDCR provides free access to assessment testing, ABE classes (including literacy and ESL), GED programs, high school diploma programs, CTE and job readiness programs, occupational licensing, library services, and tutoring support programs.[2685]
- **If you're incarcerated in a California county jail,** California law gives individuals counties permission (and resources) to establish education programs in all adult county correctional facilities and to award diplomas and certificates for completion of study in these programs.[2686] However, the law does not require that the counties do so, or control how those programs are to be structured. Therefore, the availability and quality of educational programs varies from county to county.[2687] If you are incarcerated in county jail, you will need to check with your facility to see what programs are available to you.

Read more about the different programs that might be available while you are incarcerated in the section on Learning the Educational Landscape, starting on PG. 856. Even if you don't have access to programs or classes that are right for you while you're incarcerated, there are programs you can complete on your own through correspondence courses or self-study, and other practical steps you can take!

[2680] For example, in Alameda County, "The Big Blue Book" is a comprehensive guide to Alameda County health and human services agencies and organizations. Although the book is not free, it is sold to hundreds of non-profits, government agencies, faith-based organizations, and community organizations. To purchase, visit Big Blue Book, EDEN I&R INC., http://www.edenir.org/BigBlueBook.html.
[2681] Certain programs and resources must be available in correctional facilities according to federal or state law; others are provided according to institutional policies and regulations. See U.S. DEP'T JUSTICE, PROGRAM STATEMENT 1315.07 INMATE LEGAL ACTIVITIES (Nov. 5, 1999).
[2682] 18 U.S.C. § 3624(f)(4); 28 C.F.R. pt. 544 subpt. H; U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002); U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5350.24 English-as-a-Second-Language Program (July 24, 1997); U.S. Dep't Justice, Legal Resource Guide to the Federal Bureau of Prisons (2014) at 19-20.
[2683] 28 C.F.R. pt. 544, subpt. D; pt. 5553; U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002); U.S. Dep't Justice, Legal Resource Guide to the Federal Bureau of Prisons, 19-20 (2014).
[2684] Christopher Zoukis, Education in the Federal Bureau of Prisons, PRISON EDUCATION.COM (May 23, 2013), www.prisoneducation.com/prison-education-news/education-in-the-federal-bureau-of-prisons.html.
[2685] CAL. DEP'T CORR. & REHAB., Operations Manual, 101010.1-101010.5.1 (2015); Office of Correctional Education, Cal. Dep't of Corr. & Rehab., Div. of Rehabilitative Programs.
[2686] CAL. VEH. CODE § 1900 et seq.
[2687] CAL. VEH. CODE §§ 1900-1909.5.

- → For information about correspondence and self-study courses, see PG. 878.
- → For information on preparing for your post-release education while you are incarcerated, see PG. 849.

PRACTICAL TIPS FOR APPLYING TO SCHOOL

The process of pursuing your education—not to mention the larger process of transitioning back into your community—can be rewarding, but also challenging and stressful at times. You'll be dealing with a lot of forms, applications, and procedures, which can feel overwhelming. Here are some tips for staying on track:

- **Gather and organize all the documents you will need for applying to schools and programs, financial aid, and employment** (see list on PG. Error! Bookmark not defined.). Keep all your important documents together, and use a large envelope or folder to store them. Keeping these papers clean, safe, and organized will save you lots of time and frustration.[2688] Getting some of these documents may require lots of paperwork, a long application process, or lots of follow-up efforts, so if you are able to gather these documents as soon as possible, take advantage of this and gather them to save you time. (For details about these documents—what they are and how to get them—see the BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER, beginning on PG. 22.)
- **Take the time to make informed decisions.** Before committing to any school or program, get as much information as possible and consider your options carefully. Do background research at the library or on the Internet, ask questions to people who have been through the program or know of its reputation, beware of scams and bogus credentials, and investigate ways to save time and money.
- **Ask for help!** Get advice from the people who are there to help you. If you are currently incarcerated, talk to the education staff, counselors, and program directors at your facility. Ask friends and family members to do research and gather information for you. If you're in the community, visit your local public library and look for reentry programs, career centers, and community colleges in your area.

WHAT ARE "IMMUNIZATION/VACCINATION RECORDS" AND WHY DO I NEED THEM?

Your immunization record (also called your vaccination record) is a list of all the vaccines (medicines) you received as a child and as an adult that prevent common diseases like polio, chicken pox and tuberculosis. It is required to register for school, for certain jobs, and/or to travel abroad.

HOW TO LOCATE YOUR IMMUNIZATION/VACCINATION RECORDS

Unfortunately, there is no national database of immunization/vaccination records. The only records that exist are the documents you or your parents were given when you were vaccinated, and the medical records kept by the doctor or clinic where you were vaccinated.[2689] If you need official copies of your immunization/vaccination records, there are several places you can look:[2690]

- Ask a parent or guardian if they kept the records of your childhood immunizations/vaccinations;
- Check with your elementary school, high school and/or college for records of any immunizations (generally, records are kept only for 1-2 years after students leave the school system);
- Check with your correctional facility's health care services department to see if it has kept records of your immunizations/vaccinations;
- Check with previous employers (including the military) that may have required immunizations/vaccinations;
- Check with your doctor (immunization records are kept at doctors' offices for a limited number of years);
- Contact your state's health department. Some states have registries that include adult immunizations/vaccinations.

NOTE: California does have a registry, but it is relatively new (within the last 10 years only), and it is not used by all doctors' offices. For more information, visit: The California Department of Health at: http://www.cdph.ca.gov/programs/immunize/PG.s/FindingOldImmunizationRecords.aspx; or The California Immunization Registry at: http://www.ca-siis.org/.

[2688] See Anna Crayton & Nicole Lindahl, Back to School: A Guide to Continuing Your Education after Prison, Prisoner Reentry Institute, John Jay College of Criminal Justice (2010).
[2689] CTRS. FOR DISEASE CONTROL & PREVENTION, Vaccine Information for Adults: Keeping Your Vaccine Records Up to Date, http://www.cdc.gov/vaccines/adults/vaccination-records.html#record-vacc.
[2690] CTRS. FOR DISEASE CONTROL & PREVENTION, Vaccine Information for Adults: Keeping Your Vaccine Records Up to Date, http://www.cdc.gov/vaccines/adults/vaccination-records.html#record-vacc; see also CAL. DEP'T OF PUBLIC HEALTH PROGRAMS, Finding Old Immunization Records, http://www.cdph.ca.gov/programs/immunize/PG.s/FindingOldImmunizationRecords.aspx.

WHAT SHOULD I DO IF I CAN'T FIND MY IMMUNIZATION/VACCINATION RECORDS?

If you can't find your immunization/vaccination records, you may need to get vaccinated again. While this is not ideal, it is safe to repeat vaccines. Your doctor may also be able to do blood tests to see if you are already immune to certain diseases, so you do not have to repeat those vaccinations.[2691]

[2691] CTRS. FOR DISEASE CONTROL & PREVENTION, Vaccine Information for Adults: Keeping Your Vaccine Records Up to Date, http://www.cdc.gov/vaccines/adults/vaccination-records.html - record-vacc.

II. SETTING YOUR EDUCATIONAL GOALS

WHAT WILL I LEARN?

- **How to think about and decide what you want from your education**
- **How to research jobs and careers to help you choose your educational path**
- **What resources will help you make important decisions about your education**

Setting your educational goals involves asking yourself some important questions about your future. What purpose do you want your education to serve? Is it a way to achieve a specific goal – for example, a way to get a better job? Is it an opportunity for personal growth? Or both?

Going through some of the questions below may make it easier to make a decision and help you get a clear idea of the goals you want to reach. Often there are several answers to a question, so making lists can help you organize your thoughts and priorities.

CREATING A STRONG PLAN FOR YOUR PERSONAL EDUCATIONAL JOURNEY

A strong plan for going back to school will help you develop and stick to your goals, maintain focus, and spend your time and money wisely. Here are seven steps you can take towards setting your education goals:

STEP 1: ASSESS YOUR BACKGROUND, SKILLS AND TALENTS.

Start by taking some time for some big picture goal planning. Ask yourself key questions like:

- *Why do you want to go back to school? What motivates you?*
- *How does school fit into your vision for the future?*
- *What kind of career do you want?*
- *What barriers might you encounter in getting the career you want?*

STEP 2: DETERMINE WHICH CAREERS MATCH YOUR STRENGTHS AND GOALS

Come up with a list of jobs you may want. Think critically about your strengths and goals for the future. Key questions include:

- *Do you have experience from a previous job?*
- *Do you have a favorite hobby or pastime? For example, do you like connecting with other or do you prefer to be alone?*
- *Do you find yourself negotiating or debating issues with others?*
- *Do you prefer to be the team leader?*
- *Are you particularly neat or organized?*

STEP 3: RESEARCH THE QUALIFICATIONS, EDUCATION, LICENSES, AND/OR CERTIFICATES YOUR DESIRED FIELD REQUIRES

Before you jump into a career path, it is important to know the educational and training requirements, including any licenses or certificates you may need.

Here are some online and in-person resources that can help you:

- **My Next Move** is a national website (not specific to California) that can help you research the educational requirements and skills needed for almost any job or career. Visit: https://www.mynextmove.org/
- **Five Keys** is a free school that offers career planning and guidance in addition to free educational assessments, adult basic education (ABE), and high school diploma equivalency/GED testing, located in the Bay Area and LA area. Find contact information on page 17.
- **The Federal Bureau of Labor** has some helpful information about the types of jobs that require licenses and certificates here: https://www.bls.gov/careeroutlook/2016/ article/will-i-need-a-license-or-certification.htm.
- **The California Department of Consumer Affairs** lists the boards and agencies it governs, with links describing the license and certifications each one requires. You can learn more here: http://dca.ca.gov/about_dca/entities.shtml. If you are seeking a licensed profession that is not governed by the DCA, please call Root & Rebound's reentry legal hotline for more information.
- **CareerOneStop** (www.careeronestop.org) is a website with many tools to help you research the jobs you're interested in, such as:



  - "Explore Careers"—has descriptions of different careers, including what skills and training you need, what level of education most workers typically have, and the types of tasks and equipment for each job; and will let you to compare different occupations.[2692]
  - "License Finder"[2693]—allows you to look up state licensing requirements for any specific job, as well as the name and contact information of any state licensing board for that job.
  - "Certification Finder"[2694]—tells you if a job requires certification, as well as the steps to get certified and the names and websites of certifying organizations.
  - *"Job Search Help for Ex-Offenders"*[2695]—is a special section of the CareerOneStop website with information, advice, and tools tailored for people in reentry.
- **America's Service Locator** (www.servicelocator.org) helps you find employment and training centers near you where you can get free and low-cost employment services. Phone: 1-877-348-0502.
- **America's Job Center of California (AJCC)** (http://americasjobcenter.ca.gov/) California's one-stop access point to employment-related services, including skills assessment. The website offers a finder to locate the AJCC office nearest you and also has links to most of the websites and services listed above.
- **National College Transition Network** (www.collegeforadults.org) has an "Occupational Exploration" page with resources for adults pursuing new career paths and tips for people in reentry.
- **Local job postings** can help you see exactly what qualifications employers look for when hiring. Try checking the job board at your local public library or employment center. You can also search online job postings on websites such as Craigslist (http://www.craigslist.org/about/sites), Monster (www.monster.com), and indeed (www.indeed.com).
- **Industry magazines** can be a good source of information on current events, trends, and new developments in your field of interest.
- **People who have the job you want**, as well as employers in the field, can answer questions about what training or credentials are required to be successful in the field.
- **State licensing boards and professional associations** can give you a list of requirements for the particular job or career that they oversee.[2696] Their contact information is on the CareerOneStop website (see above) as well as from the California Department of Consumer Affairs (Phone: (800) 952-5210).[2697]
- Finally, you can call **Root & Rebound's reentry legal hotline**, any Friday, 9 a.m. - 5 p.m. PST, at 510-279-4662, to get *legal information and guidance* about how your criminal record impacts your ability to get a specific license or certificate in California.

STEP 4: RESEARCH ANY JOB BARRIERS YOU MAY FACE BECAUSE OF YOUR ARREST OR CONVICTION HISTORY

Some jobs are harder, or maybe even impossible, to get for individuals with certain arrests or convictions on their record. It is important to be hopeful, but also realistic, as you plan for your education and future career. Knowing potential barriers and how to overcome those barriers (if possible) is critical to achieving your goals.

Jobs that give employees access to private or sensitive information (like financial records), vulnerable people (like children, the elderly, patients, or incarcerated people), or high-security locations (like airports or federal buildings) tend to have more barriers for people with conviction histories. Jobs that require a state license or certification also tend to have more barriers for people with criminal records.

Jobs with Legal Restrictions for People with Criminal Records. Although this list is incomplete, below are some *examples* of jobs that have legal restrictions for people with certain criminal convictions. In general, these are jobs where employees have access to private or sensitive information (like financial records), vulnerable people (like children or the elderly), or high-security places (such as airports) where there is a greater risk of harm to the public.

- Airport security screeners (or anyone with unsupervised access to secure airport areas);[2698]
- Federal law enforcement officers;[2699]
- Defense contractors;[2700]
- Prisoner transportation workers;[2701]

[2692] Explore Careers: Career Profiles, U.S. DEP'T OF LABOR CAREERONESTOP, http://www.careeronestop.org/explorecareers/learn/career-profiles.aspx.
[2693] Explore Careers: License Finder, U.S. DEP'T OF LABOR CAREERONESTOP, http://www.careeronestop.org/explorecareers/find-licenses.aspx.
[2694] Explore Careers: Certification Finder, U.S. DEP'T OF LABOR CAREERONESTOP, www.careeronestop.org/Education Training/Find/certification-finder.aspx.
[2695] Job Search Help for Ex-Offenders, U.S. DEP'T OF LABOR CAREERONESTOP, www.careeronestop.org/ExOffender/index.aspx.
[2696] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly, 16, (Winter 2012-2013).
[2697] DCA Boards and Bureaus, CAL. DEP'T OF CONSUMER AFFAIRS, http://www.dca.ca.gov/about_dca/entities.shtml.
[2698] 49 U.S.C § 44935(e)(2)(B).
[2699] 5 U.S.C. § 7371(b).
[2700] 10 U.S.C. § 2408(a).
[2701] 42 U.S.C. § 13726b(b)(1).

- Port workers;[2702]
- Bank employees;[2703]
- Insurance employees;[2704]
- Jobs that manage employee benefits plan;[2705]
- Childcare workers in federal facilities or agencies;[2706]
- Working for a school district in a position that requires certification or in a supervisory capacity (if you have been convicted of a felony defined as serious or violent);[2707]

Occupational Licenses. In California, roughly 200 careers require a state license or certificate. There are 50+ licensing boards, agencies, and bureaus that oversee the license application process, and many licensing boards have restrictions about issuing licenses to people with certain convictions (see next question for more information). So even though this information can be difficult and frustrating to learn, it will help you to design the best path for yourself—one that you are passionate about but that is also realistic. Given the laws and barriers in place regarding certain professions and license, this information may be useful to consider when making decisions regarding your educational path. For more information about legal and professional/occupational licensing restrictions, see the EMPLOYMENT CHAPTER, PG. 601.

Applying for a professional/occupational license generally requires submitting your fingerprints, paying various application fees, and proving that you meet certain educational and/or work experience requirements, which are set by the particular licensing board that you're applying to.[2708]

There are over 200 jobs in California that require a professional/occupational license. Here is a list of a few of the most common jobs that require a license:

- Barber
- Cosmetologist
- Security guard
- Child care worker or Family child care provider
- Teacher
- Contractor
- Real estate agent
- Pharmacist or Pharmacy technician
- Nurse or Certified Nursing Assistant (CNA)
- Home health aid (HHA) or Personal care aid (PCA)
- Dentist, Dental assistant, or Registered dental hygienist
- Physical therapist or Physical therapist assistant
- Emergency Medical Technician (EMT) or Paramedic

To find out whether the specific job you want requires a professional/occupational license, contact the Department of Consumer Affairs at (800) 952-5210. You can also ask the DCA for information to contact the specific licensing board that oversees that type of work. To learn more about specific licensing requirements for the job you want, you will need to contact the specific licensing board that oversees that type of work.

- For a list of licensing boards and their contact information, go to http://www.dca.ca.gov/publications/dca_booklet.pdf.
- For links to each of the licensing boards, go to http://www.dca.ca.gov/about_dca/entities.shtml.

To learn more about legal restrictions and professional/occupational licensing restrictions for people with criminal records, and ways you may be able to get a license, see the EMPLOYMENT CHAPTER, PG. 600.

STEP 5: SET YOURSELF UP FOR STABILITY AND SUCCESS BY PLANNING FOR PRACTICAL NEEDS

Outside factors and life circumstances can have a huge impact on your educational goals. As an adult student, you may have work and family obligations to juggle. If you're incarcerated or on parole/probation, you may have to work around special restrictions in order to pursue your education.

In light of all this, you'll want to pick an education program that you can balance with your other responsibilities, and that fits your current situation and future goals. For example, you may ask yourself:

- *How much time do you have to devote to your education?*
- *Do you have a family to support and take care of?*
- *Will you need to work to support yourself while in school?*
- *Are your options limited because you are still incarcerated or on parole or probation? See PG. 847*

[2702] 46 U.S.C. § 70105(c).
[2703] 12 U.S.C. § 1829.
[2704] 18 U.S.C. § 1033(e).
[2705] 29 U.S.C. § 1111(a).
[2706] 42 U.S.C. § 13041(a).
[2707] CAL. VEH. CODE § 44830.1(a).
[2708] See, e.g., Cal. Bus. & Prof. Code § 478.

STEP 6: GET ASSESSED TO DETERMINE YOUR EDUCATIONAL AND LEARNING NEEDS

If you are not sure where to start in school, an "educational assessment" or "placement test" will help you figure this out. Also, if you have any special learning needs, differences, or disabilities, there are qualified professionals who can assess you and help you make an educational plan. See PG. 853 for more information on how to get an educational assessement.

STEP 7: COLLECT IDENTIFICATION DOCUMENTS AND OTHER RECORDS REQUIRED FOR ATTENDING SCHOOL

Getting identification documents (ID), transcripts, and other important records allows you to enroll in school and apply for jobs. Here are some key items to assemble as you start to plan to go back to school:

- **Birth Certificate (certified, authorized copy).** A birth certificate is often the first step to obtaining a number of important forms of ID. The fees for birth certificates are different in every county and state. See PG. 31.
- **Social Security Number/Card**. Your Social Security Number is the second critical form of ID to obtain, as it is required for many elements of schooling, financial aid, employment, and other social services. See PG. 38.
- **California State ID or Driver's License.** Your state ID card or driver's license is an important document because it is an official government-issued photo ID that proves your age and identity, and may prove your legal presence in the U.S. You usually need one of these to apply for jobs (and also to open a bank account and vote). See PG. 43.
- **Transcripts.** If you completed any college courses inside prison or jail, submit a request for that college to send your transcript to the school you would like to attend. Providing transcripts can help to ensure that you don't lose any college credits you already earned! Keep in mind, different schools have different rules about the schools and programs from which they accept transfer credits. If you have not taken college-level courses yet, you will still need transcripts from high school (if you completed your high school diploma) or your high school equivalency certificate (like the GED, HiSET, or TASC in California) to apply to and enter a college in California.
- **Immunization/Vaccination Records.** You will need your immunization/ vaccination records to register for school (and some jobs). These records prove that you received certain vaccines and medicines as a child for diseases like polio, chicken pox, tuberculosis, and MMR (measles, mumps, and rubella). See PG. 840
- **References and Letters of Recommendation.** Many school programs, colleges, and employers request ***references* with an application**. References should be employers, supervisors, teachers, or mentors who can describe your relevant attributes and characteristics in a positive manner. References should be people you know well, but should NOT be family members.
- **Selective Service Registration (MALES ONLY).** If you are a male between the ages of 18 and 25 and live in the U.S., you are required to register for the Selective Service before your 26th birthday. This program provides the Federal Government with a list of men to enlist for military service in the case of a national emergency. See PG. 73 for more information.
- **Criminal Record Information.** This is one final suggestion for preparing to go back to school... getting a copy of your criminal record and cleaning it up where possible. This can be an important first step to reduce the effect of your conviction history on your education and career goals. But you don't have to actually do this before you go back to school— you can do it any time! That said, we recommend looking into record-cleaning while you are in school and well before you apply for jobs, if possible! See the UNDERSTANDING AND CLEANING UP YOUR CRIMINAL RECORDS CHAPTER, starting on PG. 931, for more information.

HELPFUL RESOURCES

When you are exploring your job or career options, consider these resources.

- **Your correctional facility's library or your local public library**—Look for career planning guides and vocational handbooks.
- **California Career Planning Guide**—A career guide published by the California Career Resource Network (CalCRN). You can request the guide in writing from: CalCRN—Order Processing, 1430 N. Street, Suite 4503, Sacramento, CA 95814, or by calling (916) 323-6544. If you have Internet access, the guide is available to read or download for free online at: http://www.californiacareers.info/ccPG.aspx.
- **America's Job Centers of California** offer "interest inventory" tools that can help you explore what kinds of jobs might be right for you.
- **CareerOneStop website** (http://www.careerinfonet.org/)—Under the "Explore Careers" feature, you can take a self-assessment to learn more about your interests and jobs that might be a good fit. You also can browse jobs in different fields and find out what jobs are more available right now.
- **California Career Resource Network website** (http://www.californiacareers.info/index.aspx)—Provides links to several California-focused career-planning resources.

HELPFUL HINTS

Narrow your Career Interests

Once you have a list of potential jobs and careers that you are interested in, you will need to start narrowing it down. You should start by considering your lifestyle and identifying any factors or circumstances that might conflict with a job you are interested in. For example, criminal convictions, family responsibilities, and travel or mobility restrictions can affect whether a particular job or career is a good fit for you.

Research the Job Market

Know what the job market is like in your desired field, in the region where you live, and for workers with different skill levels and education levels.

Questions to ask:

- How hard is it to get a job in the field with or without an educational degree?
- What do employers look for when hiring?
- Are there many job openings in the field, or is it very difficult to get hired?[2709] Is the field growing and expanding?

Resources to use:

- Talk to people in your field of interest, and browse job-search and career guides such as the Occupational Outlook Handbook.[2710]
- Look online: The California Employment & Development Department (EDD) offers an interactive online job guide, which provides information on hundreds of jobs, available at http://www.labormarketinfo.edd.ca.gov/OccGuides/.
- You can also use the tools on the CareerOneStop website (see PG. 842 above), and contact professional associations in your fields of interest.[2711]

[2709] See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13), at 16-17.
[2710] The U.S. Bureau of Labor Statistics releases the Occupational Outlook Handbook and the Career Guide to Industries every two years. These resources offer information about the nature of work, working conditions, training and education, earnings, and job outlook for hundreds of different occupations.
[2711] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13), at. 16-17.

HOW YOUR CRIMINAL RECORD AND INCARCERATION MAY AFFECT YOUR EDUCATIONAL GOALS

IF I AM STILL INCARCERATED. WHAT BARRIERS MIGHT I FACE IN PURSUING MY EDUCATION?

Thankfully, the Federal Bureau of Prisons (BOP), the California Department of Corrections and Rehabilitation (CDCR), and the California Department of Education (California DOE) have all recognized that providing educational opportunities to people who are incarcerated is critical to rehabilitation and reducing recidivism.[2712] However, the systems are far from perfect, and it is important for you to be aware of the obstacles you may face when you are pursuing an education while incarcerated. Be patient! There is almost always a way to make it work if you are dedicated to reaching your educational goals.

Next, we go through common issues you may face when pursuing your education while incarcerated, followed by suggestions to help you achieve your goals in spite of these challenges.

The programs I need are just not available.

The quality and availability of programs for different educational needs varies greatly from facility to facility. Additionally, even if your facility offers the program you want, there are often long waitlists to get enrolled.

Suggestion: Try supplementing your coursework with a correspondence course or related self-study. If you are waiting to get into a class, find out what the students are learning about—maybe you can get a head start!

The prison mail system is getting in the way.

If you decide to take a correspondence course, or if you want to create your own self-study program, you may find that the prison mail system is frustrating your efforts. Materials and assignments may be slow in getting to you, and some items may not get to you at all because they are not allowed by your facility. All of this could mean significant delays in your studies or prevent you from completing them at all.

Suggestion: Be patient. There is no time limit on most correspondence courses—you can take as long as you need to complete the coursework. The goal is to learn the materials and pass the class, no matter how long it takes. Slow progress is still progress! If you find that your facility is overly restrictive in what materials it will allow in, try writing to the correspondence course administrator to explain your situation. See if he or she can put the materials into a format that your facility will be less likely to object to. (For a list of schools with a history of successfully offering correspondence courses to incarcerated people, see Appendix D, PG. 898.)

I can't afford the cost of programs and/or materials.

For any program or course that is not offered by the facility directly, you will be responsible for the cost of any necessary books, materials, or course fees. If you cannot afford these expenses, you may be prevented from participating in the program or taking the course.

Suggestion: Try to find someone else at your facility who is taking or has taken the course. See if that person is willing to share materials with you or donate them to you when he or she is done. Look into financial aid options to help with your costs. Some forms of financial aid are available while you are incarcerated, and there are even special scholarships to help incarcerated people afford textbooks and materials. (See *Paying for Your Education*, PG. 881 for more information about these programs.)

I have limited access to technologies.

Distance Education courses commonly require that you have access to certain technologies (audio/video equipment, computers, the Internet) in order to participate in the program (except for traditional mail-only correspondence courses). If you don't have a way to use the media that contains the course content, you won't be able to take the course.

Suggestion: Shop around for a course that doesn't require the use of equipment that you don't have. Try signing up for a program or activity in your facility that will give you access to the technology you need and will allow you to use it in your spare time (make sure you are authorized to do so!).

I am not eligible for financial aid.

Certain types of financial aid are not available to you while you are incarcerated, and other types are not available if you have certain types of convictions.

Suggestion: Apply for the types of financial aid that are available to you while you are incarcerated. Plus, while you are incarcerated, you can apply for financial aid that you will become eligible for once you are released, so the money will be ready for you when you get out. (For more information about financial aid, see *Paying for your Education*, PG. 881.)

[2712] CAL. DEP'T OF CORR. & REHAB. Div. of Rehabilitative Programs, http://www.cdcr.ca.gov/rehabilitation/oce.html; CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL, 101010.1–101010.4. (2015); CAL. VEH. CODE § 1900 et seq.

IF I AM UNDER FEDERAL, STATE, OR COUNTY SUPERVISION, WHAT BARRIERS MIGHT I FACE?

While you are under supervision, your parole or probation officer should fully support your efforts to pursue your education.[2713] However, sometimes even the normal conditions of supervision can get in the way, and make it difficult for you to reach your educational goals. Fortunately, there are ways to work around your restrictions and steps you can take to stay on track even while they are in place.

IMPORTANT: If you find that your parole or probation officer is not supportive of your efforts to get an education, or that the conditions of your supervision are so restrictive that they make it impossible for you to pursue your education, this might be a violation of your rights. You should contact an attorney who can advise you and look into getting your restrictive conditions lifted. (For more information, see the PAROLE & PROBATION CHAPTER, beginning on PG. 125.)

Here are some of the common barriers that you might face when trying to pursue your education while you are under supervision, followed by suggestions that can help you achieve your goals in spite of the challenges:

I can't get to school because I have travel limitations.

While you are on supervision you may have restrictions on how far you can travel, or you may not have reliable transportation, or you may have to rely on public transportation. All of these factors may limit where you can go to school.

Suggestion: Look into local schools and programs that are easily accessible for you and do not involve a long commute. You can also explore Distance Education and correspondence course options. You may even be able to use the computers at your local public library to take these courses. (For information on Distance Education see PG. 876 or for correspondence courses, see PG. 878. For information on resources at your local public library, see PG. 838.)

I can't go to the school I want because I can't move out of the area.

Similar to travel restrictions, while you are under supervision, you probably will not be allowed to move outside of the county or the state. If the school you want to go to is in another county or state, you may not be able to attend it.

Suggestion: Again, local schools and programs are your best bet. If you are located in a rural area where your options are severely limited, get started earning credits through Distance Education and correspondence courses. Once you've completed your term of supervision, you can transfer to the school you want to attend and bring your earned credits with you. (For information on Distance Education see PG. 876 or for correspondence courses, see PG. 878. For information on transferring credits, see PG. 875.)

I can't fit school into my schedule because of restrictions on my time ("passes," curfews, work requirements).

While you are under supervision, you may be restricted in the amount of time you can spend attending classes, or by the hours of the day that you are allowed to be away from home to attend. You may have a curfew imposed on you or you may be required to get a "pass" that is only good for a short period of time in order to leave your residence. You may also be required to work a certain number of hours a day, which leaves little time for school.

Suggestion: If you only have a limited amount of time to attend school each day, consider starting part time instead of full time. Take a class or two, and then build your schedule up when you are able. Also, Distance Education programs and correspondence courses are more flexible and can generally be worked around any schedule.

I AM REQUIRED TO REGISTER AS A SEX OFFENDER. HOW THIS WILL AFFECT GOING BACK TO SCHOOL?

If you are required to register as a sex offender, you should still be able to attend the school or program of your choice, but will face some extra requirements,.In addition to fulfilling your section 290 registration requirements, you must also register with the campus police department at your school within **five days** of enrolling in classes.[2714] If there is no police department at your school, you must register with the police department for the city in which the school is located, or if there is no city police department, the county sheriff.[2715] Depending on your underlying conviction, you may need to comply with sex-offender residency restrictions, which could prevent you from living on or near campus (learn more about residency restrictions in the PAROLE & PROBATION CHAPTER on PG 169). Similarly, your conditions of parole, probation or supervision

[2713] CAL. DEP'T CORR. & REHAB., Operations Manual, 101010.1–101010.4 (2015).
[2714] CAL. PENAL CODE § 290.01(a)
[2715] CAL. PENAL CODE § 290.01(b)

may affect your ability to attend classes. If this is the case, ask your attorney or parole or probation officer for help adding an exception for attending classes. Until an exception is made, you should comply with your conditions first.

Learn more about requirements for people required to register for sex offenses under California Penal Code section 290 (both if you are on parole or are not on parole) in the PAROLE & PROBATION CHAPTER on PG. 163.

IF I HAVE COMPLETED MY SENTENCE, AND I'M OFF SUPERVISION, WHAT BARRIERS MIGHT I STILL FACE?

Once you have completed your sentence, including any term of supervision, most of the barriers that we have discussed so far will no longer exist for you. Unfortunately, your criminal record may still inhibit or interfere with your educational plans. See PG. 851.

HOW TO CHOOSE THE EDUCATIONAL PATH THAT MEETS YOUR SPECIFIC EDUCATIONAL GOALS

ONCE EVERYTHING IS CONSIDERED, HOW DO I START FINDING THE EDUCATIONAL PROGRAM THAT IS RIGHT FOR ME?

Whatever education level you are currently at and whatever your future education plans are, the general steps you should follow when deciding on a program are the same. Use these steps to help guide you through your decision-making process. Along the way, you can talk to people around you who can help. Your Correctional Counselor, the staff in the Education Department, a school or career center counselor, and family and friends can provide advice and support throughout this process.

STEP 1: FIND PROGRAMS THAT FIT YOUR NEEDS

Obviously, you want to find a program that meets the interests that you identified in the very beginning of this chapter (see "Setting Your Educational Goals," PG. 842), but in order to find a program that truly fits your needs, must consider the practical factors that will impact your educational experience. You should think through the following questions to help you guide your decision:

- Do you want to study full or part-time?
- Is it more important for you to finish the program quickly or do you need to split your class time with other responsibilities?
- Would you prefer to go to a large school or a smaller school?
- Do you need to be in a classroom at all, or is distance learning a better option for you?
- Do you want to go to a public (state-funded) or private (privately owned) school?

LARGER SCHOOLS V. SMALLER SCHOOLS

Larger schools tend to have more diverse student populations, and a greater variety of extra-curricular activities and clubs. However, you may feel distracted and overwhelmed in this environment, and class size is larger which means less individual attention from the teacher.

STEP 2: RESEARCH SCHOOL/PROGRAM QUALITY

Evaluate the quality of each school or program by following these steps:[2716]

- **Check for "accreditation" and other approval**.
  - Find out if the school or program is accredited. Accredited schools have been reviewed by an accrediting organization recognized by the U.S. DEP'T OF EDUC. (USDE) and meet established USDE requirements.[2717]
  - If working in the field requires a license and certification, find out if the school or program is approved by the proper state licensing agency and the professional organization that grants certifications.[2718]
  - Search for a school in the Database of Accredited Postsecondary Institutions & Programs (www.ope.ed.gov/accreditation). If a school is accredited, it will show up in the database.

[2716] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly, 15 (Winter 2012-2013).
[2717] 34 C.F.R. § 600.2. U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).; *see also* Anna Crayton & Nicole Lindahl, Back to School: A Guide to Continuing Your Education after Prison, Prisoner Reentry Institute, John Jay College of Criminal Justice (2010). There are many accrediting agencies out there, but only some are nationally recognized as legitimate. See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly p. 15 (Winter 2012-2013). Current lists of nationally recognized accrediting agencies are posted online by the U.S. Dep't of Educ. and Council for Higher Education Accreditation. See Regional & National Institutional Accrediting Agencies, U.S. Dep't. of Educ., www2.ed.gov/admins/finaid/accred/accreditation_PG6.html; Recognized Accrediting Organizations, Council for Higher Educ. Accreditation (as of Jan. 2015), www.chea.org/pdf/CHEA_USDE_AllAccred.pdf; For more details on accreditation, see Diploma Mills & Accreditation—Accreditation, U.S. Dep't of Educ., www2.ed.gov/students/prep/college/diplomamills/accreditation.html.
[2718] See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly, Winter 2002-03.

- **Find data on how well the school's graduates are doing.** Find out if the school has a Gainful Employment Disclosure, which should provide information about overall costs for students, average debt, graduation and job placement rates, and which occupations students are prepared for..[2719]
- **Talk to people in the school or program.** Ask current students, alumni (former students), and teachers how well the school or program prepares students for their field, and whether it helps students find jobs.[2720]
- **Ask employers what they think of the program.** Find employers in the field that you would want to work for and ask them to rate the program.

WARNING: BE CAREFUL OF SCHOOLS OR PROGRAMS THAT ARE SCAMS:

- Beware of for-profit schools that are out to take your money -- not to give you a quality education. These schools spend lots of money on recruiting, and little on teaching or career services for students. They also tend to charge higher tuition than public community colleges and are likely to leave you with high debt, poor training, and slim chances of finding a job. Following the research steps above will help you avoid these schools.[2721]
- Similarly, beware of "schools" or "programs" that are fake or out to scam you! There are "diploma mills" – companies selling diplomas. These companies promise to give you a certificate, diploma, or degree for very little work in a very short time. The credentials they offer have little or no value in the job market.[2722]
- Here are some warning signs that a "school" or "program" may be a scam or a diploma mill:
- It is not accredited, or it is accredited by an agency that is not nationally recognized;
- It requires little or no academic work, and involves minimal interaction with teachers;
- It allows you to earn a certificate in an unusually short period of time;
- It requires that you pay a flat fee for the credential;
- Its mailing address is a post office box or suite number;
- Its website ends in ".com" instead of ".edu".[2723]

Why accreditation is important:

- Employers generally respect credentials from an accredited institution with a good reputation, and view job-seekers with such credentials more favorably.
- Credits from a non-accredited school, generally cannot be transferred to an accredited school.
- You must attend an accredited school to be eligible for government financial aid.

To learn more about accreditation and find out if the school or program you are interested in is accredited, check the following resources:

- U.S. DEP'T OF EDUC., Database of Accredited Postsecondary Institutions and Programs online at: http://ope.ed.gov/accreditation/ or by phone at: 1-888-247-8269.
- Council on Higher Education Accreditation online at: http://www.chea.org.
- Accrediting Commission for Schools, Western Association of Schools and Colleges (K-12 and non-degree granting postsecondary schools and programs) online at: http://www.acswasc.org/.
- Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges (associate degree-granting institutions) online at: http://www.accjc.org/.
- Western Association of Schools and Colleges, Senior College and University Commission (four-year colleges and universities) online at: http://www.wascsenior.org/.
- Distance Education Accrediting Commission (formerly Distance Education Training Council) at: http://www.deac.org/.

NOTE: All adult schools in CDCR facilities are fully accredited by the Western Association of Schools and Colleges (WASC), and many CTE programs offer industry-standard certification.[2724]

[2719] Schools are legally required to provide this document if they receive federal funding. See FED. BUREAU OF LABOR STATISTICS, CERTIFICATES: A FAST TRACK TO CAREER, OCCUPATIONAL OUTLOOK QUARTERLY, Winter 2012-13 at 15-16.
[2720] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly, Winter 2012-13 at 15-16 .
[2721] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly, Winter 2012-13 at 14; *see also* Tips for Students to Consider Before Enrolling at a Private Postsecondary School, Cal. Dept. of Consumer Affairs Bureau for Private Postsecondary Educ., www.bppe.ca.gov/students/tips.shtml.
[2722] FED. BUREAU OF LABOR STATISTICS, CERTIFICATES: A FAST TRACK TO CAREER, OCCUPATIONAL OUTLOOK, Winter 2012-13 at 14; see also Council for Degree Mills: An Old Problem and a New Threat, HIGHER EDUC. ACCREDITATION, www.chea.org/degreemills/frmPaper.htm; TAMI ABDOLLAH, California Lawmakers Target Diploma Mills, on SO. CAL. PUB. RADIO (May 10, 2012), www.scpr.org/blogs/education/2012/05/10/6063/california-lawmakers-target-diploma-mills.
[2723] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly, Winter 2012-13; see also Tami Abdollah, California Lawmakers Target Diploma Mills, on So. Cal. Pub. Radio (May 10, 2012), www.scpr.org/blogs/education/2012/05/10/6063/california-lawmakers-target-diploma-mills.
[2724] Office of Correctional Education, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/rehabilitation/oce.html.

STEP 3: **APPLY!**

CAN I BE DENIED ACCEPTANCE TO AN EDUCATIONAL PROGRAM OR INSTITUTION BECAUSE OF MY CRIMINAL HISTORY?

Sadly, yes. Over the last decade, more and more colleges and universities across the country have begun to look into applicants' criminal histories as part of the admissions process.[2725] In a recent study, two-thirds of the responding institutions reported collecting criminal history information on prospective students.[2726] Most commonly, institutions ask applicants to self-report their criminal history (answer "yes" and then explain). Some schools do conduct full criminal background checks on prospective students and then use the information to deny admission to people with criminal records, or give them conditional admission with added requirements and restrictions—kind of like "admission on probation."[2727]

Unfortunately, there is nothing illegal about what they're doing, and no real legal way to stop them from doing it. The best defense, however, is a good offense—in other words, be proactive! Take steps to clean up your criminal record, participate in rehabilitation programs, and be prepared with answers to questions about your criminal history. (See the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931 for information and details on how to "clean up" your record.)

The Good News…

Many colleges and universities will let you appeal a denial based on your criminal record, and will work with you to help you get in. Reach out to the Admissions Office staff and to school advisors to show them that you are serious and dedicated to your future. Take advantage of any opportunity to show that your criminal history is just that—history. You can use your personal essay (part of your application), in-person interview, letters of recommendation, and any other supporting documents to show the admissions committee that you are more than just your record.[2728]

Here are some other facts to keep in mind that work in your favor:

- There are no educational opportunities that you are legally banned from because of your criminal record—no matter what is in it;
- California public community colleges, state colleges, and state universities do not ask prospective students about their criminal history (as a policy);[2729]
- Educational institutions are not authorized under California law to request background checks on people,[2730] (however, there is nothing to stop them from asking self-reporting questions on applications).
- Distance Education programs are not likely to ask about your criminal history because they do not have to worry about campus safety (Although there is no evidence that a student with a criminal history poses an increased safety risk,[2731] this is the main reason schools care about your criminal history).
- Many schools will look at your criminal history only to flag you if you are applying to a program in a career field that you're not allowed to work in anyway because of your criminal history (common in medical schools).[2732] (For more information on licensing and employment restrictions, see EMPLOYMENT CHAPTER, PG. 601.)
- Some colleges collect criminal history information, but never actually use it.[2733]

[2725] Ctr for Cmty. Alts., Criminal History Screening in College Admissions: A Guide for Attorneys Representing College Applicants and Students During and After Criminal Proceedings (2013).
[2726] Almost 500 colleges and universities use the Common Application, which has a self-reporting question about criminal history. Many others that do not use the Common Application have similar questions on their own applications. CTR FOR CMTY. ALTS., The Use of Criminal History Records in College Admissions Reconsidered (2010). See also Benay Rubenstein, Overcoming Hurdles to Higher Education for Students With a Criminal Record, OPEN SOCIETY FOUNDATIONS (Sep. 12, 2011), http://www.opensocietyfoundations.org/voices/overcoming-hurdles-higher-education-students-criminal-record.
[2727] CTR FOR CMTY. ALTS. THE USE OF CRIMINAL HISTORY RECORDS IN COLLEGE ADMISSIONS RECONSIDERED (2010), http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf.
[2728] CTR FOR CMTY. ALTS. THE USE OF CRIMINAL HISTORY RECORDS IN COLLEGE ADMISSIONS RECONSIDERED (2010), http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf.
[2729] Ctr for Cmty. Alts. & Nat'l H.I.R.E. Network, Closing the Doors to Higher Education: Another Collateral Consequence of a Criminal Conviction (2008), www.communityalternatives.org/pdf/HigherEd.pdf; see also East Bay Comty Law Ctr: Starting Over Strong, Applying to College with a Juvenile Record, (2012), www.ebclc.org/documents/sos/Applying_to_College.pdf.
[2730] Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE §§ 1786.12, 1786.16(d).
[2731] M.J.V. Olszewska, Undergraduate Admission Application as a Campus Crime Mitigation Measure: Disclosure of Applicants' Disciplinary Background Information and Its Relationship to Campus Crime (2007) (unpublished Ph.D. dissertation, East Carolina University) (on file with author).
[2732] Ctr for Cmty. Alts., The Use of Criminal History Records in College Admissions Reconsidered (2010).
[2733] Ctr for Cmty. Alts., The Use of Criminal History Records in College Admissions Reconsidered (2010).



DO I NEED TO DISCLOSE MY JUVENILE RECORD WHEN APPLYING TO DIFFERENT EDUCATIONAL PROGRAMS?

Maybe. Technically, a juvenile "adjudication" is not a criminal conviction. If your case was heard in a juvenile court, and you received a juvenile adjudication, then you were not "convicted" of a crime. So, if the application asks if you were "convicted of a crime" or if you have any "criminal convictions," and you only have a juvenile adjudication, you can truthfully answer "no." You do not have to disclose your juvenile adjudication.[2734] However, some applications ask if you have ever been "arrested" or "adjudicated guilty,"[2735] in which case, your juvenile arrest and adjudication count, and need to be reported. *Remember*, if you were tried as an adult, even if you were under 18, and you pleaded or were found guilty, then you do have a criminal conviction.



IMPORTANT: Even if you are not directly asked to disclose your juvenile record on an application, you may want to anyway. There is always a chance that the admissions committee will find out about a juvenile arrest or adjudication somehow, and think you were being dishonest in not reporting it.[2736] HOWEVER, when you get your juvenile record sealed in California, *it's as if it never existed*.[2737] So, if you got your juvenile record sealed, you do not need to disclose anything in it. (For information on sealing your juvenile record, see the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, PG. 991.)

[2734] See also EAST BAY COMTY LAW CTR: STARTING OVER STRONG, APPLYING TO COLLEGE WITH A JUVENILE RECORD (2012), www.ebclc.org/documents/sos/Applying_to_College.pdf.
[2735] The Common Application specifically asks about adjudications. See CTR FOR CMTY. ALTS., Criminal History Screening in College Admissions: A Guide for Attorneys Representing College Applicants and Students During and After Criminal Proceedings (Jan. 2013).
[2736] See also EAST BAY COMTY LAW CTR: STARTING OVER STRONG, APPLYING TO COLLEGE WITH A JUVENILE RECORD (2012), www.ebclc.org/documents/sos/Applying_to_College.pdf.
[2737] Cal. Welf. & Inst. Code § 781.

III. FIGURING OUT YOUR CURRENT EDUCATIONAL LEVEL

WHAT WILL I LEARN?

- **What an educational assessment is and how to get one**
- **What learning challenges are and how to get tested for them**

WHAT IS AN "EDUCATIONAL ASSESSMENT"? WHY DO I NEED ONE?

If you're not sure how far you got in school, or it's been so long that you're not sure what your current education level is, your first step is to get an "educational assessment." An educational assessment is simply a way to find out what your current ability level is in English, reading, writing and math.

It is important to get an educational assessment before you start any educational program so that you don't waste time re-learning things you already know or taking classes for which you are not prepared.

WHAT DO TABE AND CASAS STAND FOR?

TABE: Test of Adult Basic Education

CASAS: Comprehensive Adult Student Assessment Systems

HOW DO I GET AN EDUCATIONAL ASSESSMENT?

The easiest way to assess your education level is to take an assessment test (also called a placement test). There are two assessment tests that are often used for adults who wish to continue their education: the TABE and the CASAS.[2738]

Don't worry, these are not the kind of tests you need to study for! These tests measure what academic skills you're already good at and which ones you need to work on. They help you determine what classes will be the right fit for your current education level.

WHERE DO I GO FOR A PLACEMENT TEST?

If you're currently incarcerated:

- **In a federal prison:** When you get to the federal facility, the staff will review the information from your county jail assessment to determine your needs. If you do not have an educational assessment on file and you have not earned a high school diploma or GED, the facility's education department should give you an assessment test.[2739] If you did not receive an educational assessment and you think you need one, or if you have any questions about the process, talk to your case manager or your facility's education department staff.
- **In a California state prison:** When you get to the state facility, CDCR staff will review your file from county jail to determine if you need an educational assessment. CDCR requires that you have a TABE score on file. If the county jail that did your assessment did not give you a TABE assessment, you will be required to do one when you get to a state facility (even if the jail gave you an assessment using a different test). If this doesn't happen, ask your correctional counselor to arrange for you to take the TABE, or submit a request to the Testing Coordinator in your facility's education department. Based on your TABE results, staff will recommend classes that are appropriate for you.[2740] If you already have a high school diploma or GED, CDCR will not do a TABE assessment for you.[2741]
- **In a California county jail**—Any county jail that offers educational programs will also offer educational assessments.[2742] If you feel that you need an educational assessment, or have questions about your education level, contact the facility's education staff.

[2738] TABE stands for Tests of Adult Basic Education; CASAS stands for Comprehensive Adult Student Assessment Systems. See U.S. DEP'T OF EDUC., OFFICE OF VOCATIONAL & ADULT EDUC., TAKE CHARGE OF YOUR FUTURE: GET THE EDUCATION AND TRAINING YOU NEED (2012).

[2739] 18 U.S.C. § 3624(f)(4); 28 C.F.R. pt. 544 subpt. H; U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002); U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5350.24 English-as-a-Second-Language Program (July 24, 1997); U.S. Dep't Justice, Legal Resource Guide to the Federal Bureau of Prisons (2014) at 19-20; see also Christopher Zoukis, Education in the Federal Bureau of Prisons, Prison Education.com (May 23, 2013), www.prisoneducation.com/prison-education-news/education-in-the-federal-bureau-of-prisons.html.

[2740] Frequently Asked Questions, CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, http://www.cdcr.ca.gov/rehabilitation/faqs.html - tabe.

[2741] General Education Development (GED), CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, http://www.cdcr.ca.gov/rehabilitation/general-education-development.html.

[2742] Telephone Interview with Fred Rutledge, Principal, Alameda County Educational Program (Apr. 2, 2015); see also CAL. VEH. CODE §§ 1900-1909.

NOTE: When you first got to county jail while your case was pending, you likely were given a comprehensive evaluation, which included an assessment of your physical and mental health, your drug history, and your education history.[2743] Based on your answers to questions about your education history, facility staff decided whether or not to do a full educational assessment on you. If you reported that you already have a high school diploma or GED, the staff may have decided not to give you a full educational assessment because you already meet the minimum education-level requirement.[2744] Information from your county jail assessment will be sent to any facility that you are transferred to in the future.

IMPORTANT: If you are about to be released, talk to your counselor to make sure that you get all of your educational assessment information and any other paperwork relating to any educational courses you completed while you were incarcerated.

If you're formerly incarcerated:

- If you have returned to the community after a period of incarceration, it's likely that you had an educational assessment done while you were inside (see above). If you CAN get this information from your facility, you will NOT need to get another assessment once you are out. Contact the last facility that you were in and ask to have all of your assessment and placement information sent to you.
- If you cannot get your assessment information from your facility, or if it has been a very long time since your last assessment or since you last attended school, you may want to get reassessed.
- Visit or contact your local public library or an adult education program or community college near you to get information about placement testing.[2745] Note: You may have to pay a fee for placement testing, although most schools and programs offer free assessments for students who enroll with them.
- If you have Internet access, check these websites for adult education programs near you that may offer testing:
  - America's Literacy Directory: www.literacydirectory.org
  - California Library Literacy Services: http://libraryliteracy.org/about/index.html
  - California Adult Schools: www.californiaadultschools.org/cas/
  - California Adult Education Provider Directory: www.otan.us/caaeproviders/
  - California Community College Finder: www.californiacommunitycolleges.cccco.edu/maps/map.asp
  - California Council for Adult Education: http://www.ccaestate.org/

LEARNING CHALLENGES AND SPECIAL NEEDS

WHAT DOES IT MEAN TO HAVE A LEARNING CHALLENGE OR SPECIAL NEED?

Each of us learns in our own way and at our own speed. However, for many people, their brains have particular trouble receiving, storing, processing, retrieving, or communicating information.[2746] The brain's trouble with these things is called a learning challenge (often called a "learning disability"). Unfortunately, many people have struggled in school their whole lives, but do not realize that their difficulties stem from learning challenges that can be overcome. Many people with learning challenges are able to prosper in school if they get the proper guidance, support, and instruction. The most common learning challenges are:

- Attention Deficit/Hyperactivity Disorder (ADHD)—inability to control behavior or pay attention, often accompanied by hyperactivity.
- Dyslexia—difficulty reading, understanding, and processing written words.
- Dyscalculia—difficulty with number values, calculations, and math concepts.

There are many other types of learning challenges, including those related to writing, processing visual or sound information, memory, organization, and attention to detail. If certain subjects—or school in general—always seemed difficult for you, you may suffer from a learning challenge that was not discovered. For more information about learning challenges, visit the Learning Disabilities Association of America at http://ldaamerica.org/adult-learning-disability-assessment-process/, or the National Association for Adults with Learning Disabilities at http://naasln.org/.

HOW DO I FIND OUT IF I HAVE A LEARNING CHALLENGE?

If you think you may have a learning challenge, the first step is to get a professional assessment. A qualified professional can determine the source of your difficulty, and work with you to figure out what special learning

[2743] Telephone Interview with Fred Rutledge, Principal, Alameda County Educational Program (Apr. 2, 2015).
[2744] Interview with Carmen Garcia, Legal Administrative Assistant, Root & Rebound (April 15, 2015).
[2745] See U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2746] Nat'l Ctr. for Learning Disabilities, The State of Learning Disabilities (3d ed. 2014).

tools may help you overcome it. Additionally, if you are diagnosed with a learning disability, schools and programs are required by law to give you special treatment to allow for your special learning needs. This is called giving you an "accommodation."

Accommodations can include:

- Giving you extra time to take tests;
- Letting you use a calculator; OR
- Providing you with reading or writing assistance.[2747]

If you are currently incarcerated:

- **In a federal prison:** Federal law requires that if you do not have a high school diploma or GED, you must try to get one while you are incarcerated. Federal facilities will test you for any learning disabilities that might affect your ability to successfully complete a high school degree program.[2748]
- **In a California state prison:** CDCR does not specifically test for learning disabilities. However, CDCR assumes that you have a learning disability if you get below a certain score on your TABE test (4.0 or below), or if you tell them that you have a learning disability.[2749]
- **In a California county jail:** Generally, if you get an educational assessment, your facility's staff will review your results and should be able to determine if you might need a learning disability assessment also.[2750]

If you are formerly incarcerated:

To find a qualified professional in your area who can assess you for a learning disability, check the following resources: [2751]

- *California's Department of Rehabilitation:* http://www.rehab.cahwnet.gov/
- *Learning Disabilities Association of California:* http://www.lda-ca.org/
- *Your local community mental health services office:* Find an office through the National Mental Health Locator: http://mentalhealth.samhsa.gov.
- *Your local community college's Student Services division:* A list of community colleges can be found through the American Association of Community Colleges (http://www.aacc.nche.edu)
- Adult literacy and/or education programs at your local public library
- A local private psychologist or psychology clinic
- Your local college or university's psychology department
- University hospitals and clinics
- For a list of additional community service organizations around California, see PG. 890.
- To learn about additional resources and some scholarships for students with disabilities pursuing college, see https://www.mastersdegree.net/students-with-disabilities/.

[2747] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2748] Telephone Interview with Roy (last name unknown), Fed. Bureau of Prisons, Industries, Educ., & Vocational Training Div. (Apr. 2, 2015).
[2749] CAL. DEP'T OF CORR. & REHAB., Board of Parole Hearings, ADA Overview—Inmates with Disabilities (Oct. 2013).
[2750] Telephone Interview with Fred Rutledge, Principal, Alameda County Educational Program (Apr. 2, 2015).
[2751] Adult Learning Disability Assessment Process, LEARNING DISABILITIES ASSOC. OF AMERICA, http://ldaamerica.org/adult-learning-disability-assessment-process/; see also ANNA CRAYTON & NICOLE LINDAHL, BACK TO SCHOOL: A GUIDE TO CONTINUING YOUR EDUCATION AFTER PRISON, PRISONER REENTRY INSTITUTE, JOHN JAY COLLEGE OF CRIMINAL JUSTICE (2010).

IV. LEARNING THE EDUCATIONAL LANDSCAPE

The results of your educational assessment will tell you what educational level you are currently at. Based on that information, you must choose what the right next step is for you. Depending on what your education level is, the next step may be clear, or you may have to decide between several different possible paths. Here are the different types of educational programs you may encounter.

ADULT BASIC EDUCATION (ABE)

If you never went to high school or took any high school-level classes, you will need to start with Adult Basic Education (ABE) classes.

WHAT IS ABE? HOW CAN IT HELP ME?

- Adult Basic Education (ABE) is for adults who want to gain the basic skills and knowledge needed for school, work, and everyday life. You can find free or low-cost ABE classes at adult schools (also called "adult education programs") across the country.[2752] ABE programs often offer the following kinds of classes:
  - Basic literacy classes help you learn to read and write for the first time.
  - Reading, writing, and math classes help you improve your English language skills and math skills.
  - Life skills classes build your skills in money management, communication, computer use, etc.
  - Pre-GED classes help you prepare to pass the General Education Development exam.
  - English as a Second Language (ESL) classes improve your fluency in English, if it isn't your native language.[2753]
- Your assessment test (see PG. 853) will tell you what skills you need to improve, and therefore which ABE classes are right for you.

HOW MUCH DO ABE CLASSES COST?

If you're currently incarcerated:

In a federal prison,[2754] a California state prison,[2755] or a California county jail,[2756] ABE classes (including necessary books and study materials) are offered at no cost to you.

If you're formerly incarcerated:

Free or low-cost ABE classes may be available in adult schools or community colleges near you. Many schools provide ABE classes for free, and provide books and materials for free too. Others may charge registration and tuition fees (up to $25-50 per semester or per class) and/or require you to buy your own books and materials. Some schools that charge fees may also offer financial aid to low-income students. You will need to check with the individual school or program about fees and financial aid.[2757]

HOW DO I GET INTO ABE CLASSES?

If you're currently incarcerated:

- **In a federal prison**: Soon after you enter prison, your unit team and education department staff should give you an assessment test and recommend classes for you. You should then have access to ABE classes. (In federal facilities, ABE is part of a broader program called Adult Continuing Education or ACE). If your assessment shows that you're not fluent in English, you must be enrolled in ESL, and if you don't have a high school degree, you must be enrolled in classes designed to lead to a GED or high school diploma.[2758] If

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[2752] Adult schools are funded by the state & federal governments. CAL. VEH. CODE §§ 52501- 52503; CAL. CODE REGS. tit. 5 § 10560; see also Workforce Investment Act of 1998, 20 U.S.C.§ 9201 (1998); CAL. DEP'T OF EDUC., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/.

[2753] CAL. DEP'T OF EDUC., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/.

[2754] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002); U.S. Dep't Justice Fed. Bureau of Prisons, A Directory of Bureau of Prisons' National Programs (May 2014); U.S. Dep't Justice Fed. Bureau of Prisons, Custody & Care: Education Programs, www.bop.gov/inmates/custody_&_care/education.jsp; U.S. Dep't Justice Fed. Bureau of Prisons, Inmate Information Handbook Federal Bureau of Prisons: Programs and Services—Education Programs (Nov. 2012) at 16.

[2755] CAL. DEP'T CORR. & REHAB., Operations Manual 101010.5.3 (2015).

[2756] CAL. VEH. CODE § 1900 et seq.; CAL. DEP'T OF EDUC., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/.

[2757] CAL. VEH. CODE § 52501- 52503; CAL. CODE REGS. tit. 5 § 10560; CAL. DEP'T OF EDUC., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/; CAL. ADULT SCHOOLS, Frequently Asked Questions, www.californiaadultschools.org/cas/news/45-school-stories/118-faq.

[2758] ESL students must reach an 8th grade level in listening and reading comprehension; pre-GED students must log 240 class hours of Adult Literacy or earn a GED, whichever comes first. See U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5350.24 English-as-a-Second-Language PROGRAM (July 24, 1997); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5350.28 LITERACY PROGRAM (GED STANDARD) (Feb. 1, 2003); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5300.21, EDUCATION TRAINING & LEISURE TIME PROGRAM



you're not enrolled in these classes for some reason, but you want to be, ask your education advisor about getting placed into these classes.[2759]

- **In a California state prison**: To enroll in any education program, you must have a TABE score on file. (To learn how to sign up for TABE, see PG. 853.) Once you've done the TABE assessment, you should be able to attend ABE classes that are right for your level.[2760] For example, if you're not fluent in English, you must be enrolled in ESL, and if you're reading below a 6th grade level, you must be enrolled in basic literacy classes.[2761] You may also be able to get extra tutoring support through the Voluntary Education Program (VEP).[2762] If you're not enrolled in these programs, but you want to be, ask your correctional counselor or education department staff.
- **In a California county jail**: Although educational programs vary by county, if your facility offers educational programming, Adult Basic Education will most likely be part of it.[2763]

If you're formerly incarcerated:

- Visit any public library or community bookstore to find free or low-cost ABE study materials, including books for the classroom and self-study books that you can work through on your own.
- Contact any public library, adult school, or community college to ask about ABE classes near you.[2764]
- You can also search the Internet for adult education programs near you:
  - America's Literacy Directory: www.literacydirectory.org
  - National Literacy Directory: www.nationalliteracydirectory.org/
  - California Adult Schools: www.californiaadultschools.org/cas/
  - California Adult Education Provider Directory: www.otan.us/caaeproviders/
  - California Community College Finder at www.californiacommunitycolleges.cccco.edu/maps/map.asp
  - ESL Directory: http://www.esldirectory.com/esl-program-search/usa/california
  - California Council for Adult Education: http://www.ccaestate.org/

GED VS. HIGH SCHOOL DIPLOMA

A GED is a high school proficiency test, which may allow you to earn a high school equivalency certificate in a more expedited manner or at your own pace. The test requires you to pass 4 parts in different subjects matters at your own pace. However, An adult high school diploma requires more coursework prior to obtaining your diploma. An Adult High School Diploma requires certain coursework to be completed at your own pace. After all the coursework is completed, you will be required to pass an exit exam called California High School Exit Examination. It is important to note that if you have already completed many high school courses required for a diploma program and have only a few left to take, a high school diploma program may be a faster route than a GED.

HIGH SCHOOL CREDENTIALS

If you are ready for (or already taking) high school-level classes, your next step is to earn your high school degree. As an adult student, your high school degree can be a stepping-stone to a "higher education" degree (see PG. 864) or a better job, or simply an important personal achievement. This chapter will explain how you can earn your high school degree.

I'M READY FOR HIGH SCHOOL-LEVEL WORK. WHAT ARE MY OPTIONS?

There are two ways you can earn your high school degree:

1. Take a General Educational Development test to get your GED, OR
2. Complete a high school diploma program.
   - If you have already completed several high school courses, you might want to earn the rest of the credits in a high school diploma program.
   - If you have not completed many (or any) high school courses, getting a GED may be an easier option.
   - NOTE: Both adult high school programs and GED classes are offered for free in federal prisons,[2765] California state prisons,[2766] and California county jails;[2767] and for low or cost free in adult school programs across the state.[2768] You will need to decide which pathway to a high school degree is best for you.

STANDARDS (Feb. 18, 2012); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, A Directory of Bureau of Prisons' National Programs (May 21, 2014) at 1-3; see also 18 U.S.C. § 3624.

[2759] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5350.24 English-as-a-Second-Language Program (July 24, 1997); U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5350.28 Literacy Program (GED Standard) (Dec. 1, 2003); U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002); U.S. Dep't Justice Fed. Bureau of Prisons, A Directory of Bureau of Prisons' National Programs (May 21, 2014) at 1-3.

[2760] CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL, 101010.3.4-101010.3.5, (2015); Frequently Asked Questions, CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, www.cdcr.ca.gov/rehabilitation/faqs.html#tabe.

[2761] CAL. DEP'T CORR. & REHAB., Operations Manual, 101010.1-101010.5.3 (2015).

[2762] CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, Voluntary Education Program, www.cdcr.ca.gov/rehabilitation/voluntary-education-program.html; see also CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL, 101010.3.4-101010.3.5 (2015).

[2763] CAL. VEH. CODE § 1900 et seq; Adult Education Program Overview, CAL. DEP'T OF EDUC., www.cde.ca.gov/sp/ae/po/.

[2764] See U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); CAL. VEH. CODE § 52501- 52503; CAL. CODE REGS. tit. 5 § 10560; Cal. Dep't of Educ., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/.

GENERAL EDUCATIONAL DEVELOPMENT (GED) TESTS

WHAT ARE GED TESTS? HOW CAN THEY HELP ME?

A General Educational Development (GED) test is a high school proficiency test for adults who never completed high school and want to earn a high school equivalency (GED) certificate.[2769]

These tests are administered nationally, but three have been specifically approved by the California Department of Education:

- GED® (GED Testing Service);
- HiSET® (ETS); AND
- TASC™ (CTB-McGraw-Hill).[2770]

If you pass a GED test in California, you'll receive a California High School Equivalency Certificate (CAHSEC) (this is the official name for a GED in California).[2771] This certificate is your official proof that you have high school level academic skills. Once you have this certificate, you can apply to colleges and jobs that require a high school credential.[2772] You will need to take and pass the test for several different subject matters (sometimes called "modules") in order to get your CAHSEC.

GED VS. CHSPE

The California High School Proficiency Examination is another high school proficiency test that is similar to the GED because it allows people to earn a high school proficiency certificate. However, the CHSPE is intended for minors (people under 18 years old) who are *still in high school* but wish to finish early in order to go to college or enter the workforce.

AM I ELIGIBLE TO TAKE A GED TEST TO EARN MY CALIFORNIA HIGH SCHOOL EQUIVALENCY CERTIFICATE (CAHSEC)?

In order to take a GED test to get your California High School Equivalency Certificate, you must:

- Not have completed high school;
- Be a resident of California; AND
- Be 18 years or older (or 17 in very special circumstances).[2773]

HOW LONG WILL IT TAKE TO EARN MY CAHSEC?

It depends. Specifically, it will depend on your current skills, pace of study, and individual circumstances. You may choose to study on your own, at your own pace; or you may take one or more GED test preparation classes, which may be designed to get you ready by a specific date.

Compared to a high school diploma program, which may require a longer list of classes, the GED can be a "fast track" to a high school credential (for more information on high school diploma programs, see PG. 861). However, this may or may not be the best fit for you, depending on your needs and learning preferences.[2774]

HOW MUCH WILL IT COST TO EARN MY CAHSEC?

If you're currently incarcerated

in a federal prison,[2775] a California state prison,[2776] or a California county jail,[2777] you should be able to register for a GED test, take GED preparation classes, and get your CAHSEC at no cost to you.

[2765] 28 C.F.R. §§ 544.70 (federal inmates who do not have a GED or high school diploma are required to take adult literacy classes), 544.81 (warden shall ensure every inmate with the need, capacity, and time has the opportunity to complete and adult literacy program leading toward a GED or high school diploma).
[2766] CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL §§ 101010.1–101010.3.1, 101010.5.1, 101010.5.4 (2015); see also Office of Correctional Education, CAL. DEP'T CORR. & REHAB., http://www.cdcr.ca.gov/Correctional_Education/index.html.
[2767] CAL. VEH. CODE §§ 1900-1909.5; CAL. DEP'T OF EDUC., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/.
[2768] CAL. VEH. CODE §§ 52501- 52503; CAL. CODE REGS. tit. 5 § 10560; CAL. DEP'T OF EDUC., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/.
[2769] 5 Cal. Code Regs. §§ 11530-11532.
[2770] CAL. DEP'T OF EDUC., http://www.cde.ca.gov/ta/tg/gd/.
[2771] GED Description—CalEdFacts, CAL. DEP'T OF EDUC., www.cde.ca.gov/ta/tg/gd/cefged.asp; 2014 California, GED TESTING SERVICE, www.gedtestingservice.com/testers/policy_ca.
[2772] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); Frequently Asked Questions, GED Testing Service, www.gedtestingservice.com/testers/mygedfaqs.
[2773] Cal. Veh. Code § 51420.
[2774] See CAL. ADULT SCHOOLS, Adult Education Programs, http://www.californiaadultschools.org/cas/programs#core6.
[2775] 28 C.F.R. §§ 544.70 (federal inmates who do not have a GED or high school diploma are required to take adult literacy classes), 544.81 (warden shall ensure every inmate with the need, capacity, and time has the opportunity to complete and adult literacy program leading toward a GED or high school diploma).
[2776] CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL, 101010.1–101010.5.4 (2015); see also Office of Correctional Education, CAL. DEP'T OF CORR. & REHAB., http://www.cdcr.ca.gov/Correctional_Education/index.html.
[2777] CAL. VEH. CODE §§ 1900-1909.5; see also Adult Education Program Overview, CAL. DEP'T OF EDUC., www.cde.ca.gov/sp/ae/po/.

NOTE: While GED programs and testing are generally offered at no cost, if you have a high balance in your trust account, your facility may decide to deduct some or all of the costs for certain programs or testing from your account.[2778]

If you're formerly incarcerated:

- When you sign up for a GED test, you must pay a $35 fee for each module (subject-matter tests) you're scheduling. That adds up to a $140 fee if you register for all 4 modules at once.[2779]
- When you pass the test (all 4 modules), you'll get your certificate and official test results by mail at no cost.[2780]
- Studying for the GED might require paying for classes and books, but this could cost little or nothing.

NOTE: Many adult schools and community colleges provide GED classes for free, and provide study materials for free as well. Others may charge registration and tuition fees (up to $25-50 per semester or class). Some schools that charge fees offer financial aid to low-income students. Check with each school about fees and financial aid.[2781]

HOW DO I PREPARE FOR THE GED TEST?

FIRST: Learn as much as you can about the GED test. You should know: What subjects and skills does the test cover? How long does the test take? What do the questions look like? You can get information by contacting the GED Testing Service (see PG. 860 for contact information), by asking teachers or tutors in a GED program, and by looking at GED practice tests and study materials (see below for tips on finding GED programs and study materials). Here is some general information to start with:

- The GED test has 4 modules (subject-matter tests): language arts, math, social studies, and science. You can take all 4 modules on the same day, which takes 7+ hours; or you can schedule them for separate dates.[2782]
- As of January 1, 2014, the GED test is computer-based; but if you're in a prison or jail that doesn't have computers set up, you might be taking the test with a pencil and paper.[2783] To find out which version of the test you'll take, ask your facility's education department staff.

SECOND: Learn as much as possible about your readiness for the test. You should know:

- Which subjects or skills do you feel confident about, and which ones should you focus on improving?
- How comfortable do you feel with the test format?
- Do you need to practice answering test questions more quickly?
- What study methods are best for your current skills and learning style?
- You can get a sense of how ready you are by taking practice GED tests on your own, and/or by working with teachers or tutors in a GED program who can give you feedback about your skills (see below for tips on finding GED programs and study materials, including practice tests).

THIRD: Make use of teaching, tutoring, and study materials that are available to you. Below is general information about potential resources that you may be able to use:

If you're currently incarcerated:

- **In a federal prison**: When you get to your federal facility, staff will review your county jail assessment information. If you don't have a high school degree, you will be enrolled in classes designed to lead up to a GED or a high school diploma (unless they decide that you must take Adult Basic Education classes first).[2784] Ask your education advisor if you have questions about enrollment.

[2778] Interview with Carmen Garcia, Legal Administrative Assistant, Root & Rebound (April 15, 2015).
[2779] You can get a fee discount when you register to retake parts of the GED test. You get up to 2 discounted retakes for each subject module. For details, visit GED Testing Serv., 2014 California, www.gedtestingservice.com/testers/policy_ca#price.
[2780] See Cal. Dep't of Educ., General Education Development Description—CalEdFacts, www.cde.ca.gov/ta/tg/gd/cefged.asp. However, you will have to pay for additional copies of your results (called GED transcripts). To find out more, GED Testing Serv., Request a Transcript, www.gedtestingservice.com/testers/gedrequest-a-transcript.
[2781] Cal. Veh. Code § 52501, 52502, 52503; Cal. Code Regs. tit. 5 § 10560 (year); Cal. Dep't of Educ., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/; Cal. Adult Schools., Frequently Asked Questions, www.californiaadultschools.org/cas/news/45-school-stories/118-faq.
[2782] Cal. Dep't of Educ., General Education Development Description—CalEdFacts, www.cde.ca.gov/ta/tg/gd/cefged.asp; GED Testing Serv., 2014 California, www.gedtestingservice.com/testers/policy_ca.
[2783] GED Testing Serv., 2014 California, www.gedtestingservice.com/testers/policy_ca.; Cal. Dep't of Educ., High School Equivalency Tests, www.cde.ca.gov/ta/tg/gd/; GED Testing Serv., Frequently Asked Questions, http://www.gedtestingservice.com/educators/2014-faqs#corr.
[2784] If you do not have a high school credential, you will be required enroll in adult literacy classes (up to 240 hours, or until you earn a GED, whichever comes first). See U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5350.28 Literacy Program (GED Standard) (Feb. 1, 2003); U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21 Education Training & Leisure Time (Feb. 18, 2001); U.S. Dep't Justice Fed. Bureau of Prisons, A Directory of Bureau of Prisons' National Programs (May 21, 2014) at 1-3.

- **In a California state prison**: If you don't have a high school credential, you can enroll in GED classes if your TABE scores qualify you.[2785] You may also be able to get extra tutoring support through the Voluntary Education Program (VEP).[2786] Ask your correctional counselor or education department staff about enrolling in GED classes or VEP. (Remember, before you enroll in GED or VEP, you must have a TABE score on file.[2787] See PG. 853 for information about the TABE and getting an educational assessment).
- **In a California county jail**: If your educational assessment scores qualify you for GED courses, your facility should enroll you if they offer these courses.[2788] If not, you can contact community service organizations to request materials. See Appendix B, PG. 891 for a list or organizations that provide GED materials.

IMPORTANT: If you are in county jail awaiting transfer to a federal or state facility, you will NOT be allowed to take anything with you, including any books or other materials related to your educational programming, when you are transferred. You will need to gather all of your materials ahead of time and mail them to someone on the outside before you are transferred. That person can then mail your materials back to you at your new facility.[2789]

NOTE: Even though most facilities in California at the federal, state, and county level offer GED classes, often there are long waiting lists to get in, or they are offered in "cycles" (which means that if you miss the beginning of the cycle, you cannot enroll until the next one). If you cannot enroll in a GED class for any reason, you should try to begin studying on your own. Check your facility's library for GED "prep" books and materials. These resources will walk you through lesson plans, and usually contain sample questions and practice tests.[2790] They can also be ordered through most book distributors. Check with your facility for a list of book distributors that are approved to send materials to inmates. There are also a number of community adult literacy programs and other service organizations that will send books and materials to incarcerated people for free. You can contact these organizations to request the study materials you need. For a list of organizations that provide books and materials to incarcerated people, visit Urbana Campaign to Prisoners at http://www.books2prisoners.org/partnerships.php or see Appendix B, PG. 891.

HELPFUL HINT

If Your Release Date Interferes with your GED Program in Prison or Jail:

If you are preparing for a GED test while incarcerated and find out that you will be released before you finish your class or program, ask your GED teacher for a "progress report." This report will show exactly where you are in the process, so that you can pick up your studies in the same place after your release.[2791]

If you're formerly incarcerated:

- Visit your local *America's Job Center of California* for information on GED programs in your area (see PG. 838 for information on finding your local America's Job Center of California).
- Contact your local public library, adult school, or community college to ask about free or low-cost GED classes near you.[2792]
- If you have Internet access, search online for GED programs near you. Try these resources to start:
  - California Adult Schools: www.californiaadultschools.org/cas/
  - California Adult Education Provider Directory: www.otan.us/caaeproviders/
  - California Community College Finder at www.californiacommunitycolleges.cccco.edu/maps/map.asp
- Contact the GED Testing Service for information and resources:
  - Call 1-800-626-9433 to get information about GED classes or test centers near you; or to request a practice test that you can score by yourself.
  - Call 1-877-392-6433 if you have specific questions about how the computer-based test works.[2793]
  - Visit http://www.gedtestingservice.com/ged-testing-service.
- Visit your local public library or bookstore to find free or low-cost GED study materials.

[2785] CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, General Education Development, www.cdcr.ca.gov/rehabilitation/general-education-development.html
[2786] CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, Voluntary Education Program, www.cdcr.ca.gov/rehabilitation/voluntary-education-program.html; CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL 101010.1 - 101010.5.4 (2015).
[2787] CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL 101010.1-101010.5.4 (2015); CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, Frequently Asked Questions, www.cdcr.ca.gov/rehabilitation/faqs.html#tabe.
[2788] CAL. VEH. CODE §§ 1900-1909.5; CAL. DEP'T OF EDUC., Adult Education Program Overview, www.cde.ca.gov/sp/ae/po/.
[2789] Interview with Carmen Garcia, Legal Administrative Assistant, Root & Rebound (April 15, 2015).
[2790] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2791] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2792] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); CAL. VEH. CODE §§ 52501- 52503; CAL. CODE REGS. tit. 5 § 10560; Cal. Dep't of Educ., Adult Program Overview, www.cde.ca.gov/sp/ae/po/.
[2793] GED TESTING SERV., Frequently Asked Questions, www.gedtestingservice.com/testers/faqs-test-taker; GED TESTING SERV., Prepare for the Test: Locate a Prep Center, www.gedtestingservice.com/testers/locate-a-prep-center.

I'M READY TO TAKE A GED TEST. HOW DO I SIGN UP?

If you're currently incarcerated:

- **In a federal prison**: Ask your education advisor to sign you up. You should be able to take the test if the education staff thinks you're ready based on your most recent assessment and/or your current work in class.[2794]
- **In a California state prison**: First, sign up with your facility's testing coordinator to take a GED predictor test. Depending on your score, you may be scheduled for the next available GED test date at your facility, *or* you may be enrolled in a GED preparation program for further study.[2795] Ask your correctional counselor or education department staff if you have questions about GED classes, VEP, or the GED predictor test.
- **In a California county jail:** Ask the education staff at your facility to sign you up to take the test the next time it is offered (if it is offered at your facility).

If you're formerly incarcerated:

- Create an online account at www.ged.com, and then sign up for a specific test date at a specific GED test center. To complete your registration, you must pay the fee ($35 per test module) using a credit card.
- To find out what GED test centers are near you, call the GED Testing Service at 1-800-626-9433.[2796] If you have Internet access, you can also use the search tool on the GED Testing Service website,[2797] or visit the GED test center directory on the California Department of Education website at http://www.cde.ca.gov/ta/tg/gd/gedtestcntrs.asp.[2798]

GENERAL TIPS

- You may want to register for just 1 or 2 test modules at a time if you can't afford the full fee or if you want to give yourself time off between studying for the different subjects.[2799]
- To take the test in California, you must provide state-issued ID[2800] and proof of California residency.[2801] Before registering, ensure that you will have these documents on your test date. (You do not have to be a U.S. citizen or have a SSN to take the GED.[2802])
- If you have more questions, contact the GED office at (916) 445-9438 or gedoffic@cde.ca.gov. If you have Internet access, you can also find information posted online by the California Department of Education[2803] and the GED Testing Service.[2804]

GED VS. HIGH SCHOOL DIPLOMA

Compared to a GED program, which may focus on preparing you to answer test questions quickly, a high school diploma program requires you to complete many classes that are part of a high school education. Required course subjects include: English (reading, writing, literature); math (algebra, geometry); natural science (biology, ecology, physics); social science (history, civics, economics); humanities (art, religion); and electives (health, media literacy).

ADULT HIGH SCHOOL DIPLOMA PROGRAMS

This section will help you decide whether an adult high school diploma program is a good option for you. You'll also learn how to locate and sign up for an adult high school diploma program that meets your needs.

[2794] If you don't have a high school credential, you must be enrolled in a literacy class; and you must participate until you've spent 240 hours in class or until you earn your GED, whichever comes first. 28 C.F.R. § 544.70-75; see U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5350.28 LITERACY PROGRAM (GED STANDARD) (Feb. 1, 2003); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5300.21 EDUCATION TRAINING & LEISURE TIME (Feb. 18, 2001); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, A DIRECTORY OF BUREAU OF PRISONS' NATIONAL PROGRAMS (May 21, 2014) at 1-3.

[2795] CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL 101010.5.4 (2015); General Education Development, CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, www.cdcr.ca.gov/rehabilitation/general-education-development.html. You may also be able to get extra tutoring support through the Voluntary Education Program (VEP). See Voluntary Education Program, CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, www.cdcr.ca.gov/rehabilitation/voluntary-education-program.html.

[2796] Test Taker Frequently Asked Questions, GED TESTING SERV., www.gedtestingservice.com/testers/faqs-test-taker; Locate a Prep Center, GED TESTING SERV., www.gedtestingservice.com/testers/locate-a-prep-center.

[2797] Locate a Prep Center, GED TESTING SERV., www.gedtestingservice.com/testers/locate-a-prep-center.

[2798] Local GED Test Centers by City, CAL. DEP'T OF EDUC., www.cde.ca.gov/ta/tg/gd/gedtestcntrs.asp; see also Local GED Test Centers by County, CAL. DEP'T OF EDUC., www.cde.ca.gov/ta/tg/gd/centercounty.asp.

[2799] Note: If you took any parts of the old paper-based GED before January 1, 2014, those scores no longer count. You must now take all four modules in the new computer-based format to earn your GED. See GED Testing Service: On the Record (June 25 - 26, 2012), www.ceanational.org/PDFs/QuestionsfromCorrectionsWebinarsFINAL.pdf.

[2800] Acceptable forms of ID include: California driver license or ID card, passport, employment or work visa, green card, military or other government ID card, college ID card. See GED Eligibility, CITY COLL. OF SAN FRANCISCO, www.ccsf.edu/en/student-services/matriculation_services/ged_center/ged_eligibility.html.

[2801] Acceptable forms of proof include: California driver license or ID card, birth certificate, tax returns, marriage license, car registration, utility bill, voter registration, bank statement, or apartment lease. 2014 California, GED TESTING SERV., www.gedtestingservice.com/testers/policy_ca

[2802] Frequently Asked Questions, GED ACADEMY, www.passged.com/faqs.php.

[2803] GED Test, CAL. DEP'T OF EDUC., www.cde.ca.gov/ta/tg/gd/gedtest.asp.

[2804] 2014 California, GED TESTING SERV., www.gedtestingservice.com/testers/policy_ca.

WHAT IS AN ADULT HIGH SCHOOL DIPLOMA PROGRAM? HOW CAN IT HELP ME?

These diploma programs are for adults who didn't finish high school, and who want to complete the courses normally required for high school graduation (instead of taking a GED or high school equivalency test).[2805] High school diploma programs are offered in most jails and prisons, and in adult schools and community colleges throughout California.[2806]

In most adult high school diploma programs, you can choose to enroll in traditional classes, or to complete courses at your own pace through individual study and regular check-ins with teachers.[2807] In addition, some programs also allow you to complete correspondence courses through mail or email with teachers (for details on distance learning, see PG. 876; for correspondence programs, see PG. 878). After completing all of the required courses, you will have to pass an "exit" exam, called the California High School Exit Examination (CAHSEE) to receive your high school diploma.[2808] All students in California public schools must pass the CAHSEE before they are awarded a high school diploma. This includes people who earn their diploma while incarcerated.

HOW MUCH TIME WILL IT TAKE TO EARN MY HIGH SCHOOL DIPLOMA?

It depends. Specifically, it will depend on your current skills, pace of study, life circumstances, and learning preferences. Depending on the program you enroll in, you might work toward your diploma individually, at your own pace; or you might work with a teacher who creates assignment deadlines and a long-term schedule for you.[2809]

GENERAL TIPS

If you've already completed many of the courses required for a diploma program and have only a few left to take, an adult high school diploma program is likely a faster route for you than the GED.

If you haven't completed many high school courses, the GED will probably be a faster path to your high school equivalency certificate.

But consider, if you have not taken many high school courses yet, and you have some time to spend on your high school education, you might prefer a diploma program because it can be an opportunity to explore new subjects and skills that you won't learn in a GED program.[2810]

WARNING: Watch out for scam programs, which will try to charge you money for a fake diploma. See PG. 863 for details.

HOW MUCH MONEY WILL IT COST TO EARN MY HIGH SCHOOL DIPLOMA THROUGH A PROGRAM?

If you're currently incarcerated:

- **In a federal prison**: As part of the Literacy Program, high school level classes should be available at no cost to you. However, not all facilities offer a high school diploma program; some offer GED study courses instead.[2811]
- **In a California state prison**: A high school diploma program should be available at no cost to you.[2812]
- **In a California county jail**: If your facility offers a high school diploma program, it should be available at no cost to you.[2813]

NOTE: While high school diploma programs are generally offered at no cost, if you have a high balance in your trust account, your facility may decide to deduct some or all of the cost for some programs from your account.[2814]

[2805] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2806] Adult schools are funded by the state and the national government. CAL. VEH. CODE §§ 52501-52503; CAL. CODE REGS. tit. 5 § 10560; Workforce Investment Act of 1998, 20 U.S.C.§ 9201 (1998); Adult Education Program Overview, CAL. DEP'T OF EDUC., www.cde.ca.gov/sp/ae/po/.
[2807] Adult Education Programs, CAL. ADULT SCHS., www.californiaadultschools.org/cas/programs#core5.
[2808] Earning Your California High School Diploma, EDUCATION PORTAL, www.education-portal.com/articles/Earning_Your_California_High_School_Diploma.html.
[2809] See Adult Education Programs, CAL. ADULT SCHS., www.californiaadultschools.org/cas/programs#core6; High School Diploma (HD) Program, CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, www.cdcr.ca.gov/rehabilitaiton/high-school-diploma.html; U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5350.28 LITERACY PROGRAM (GED STANDARD) (Feb. 1, 2003); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5300.21, EDUCATION, TRAINING, AND LEISURE TIME PROGRAM STANDARDS (Feb. 18, 2002).
[2810] See Adult Education Programs, CAL. ADULT SCHS., www.californiaadultschools.org/cas/programs#core6.
[2811] 28 C.F.R. §§ 544.70 (federal inmates who do not have a GED or high school diploma are required to take adult literacy classes), 544.81 (warden shall ensure every inmate with the need, capacity, and time has the opportunity to complete and adult literacy program leading toward a GED or high school diploma).
[2812] CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL, 101010.5.4 (2015); High School Diploma (HD) Program, CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, www.cdcr.ca.gov/rehabilitation/high-school-diploma.html/.
[2813] CAL. VEH. CODE § 1900 et seq; Adult Education Program Overview, CAL. DEP'T OF EDUC., http://www.cde.ca.gov/sp/ae/po/.
[2814] Interview with Carmen Garcia, Legal Administrative Assistant, Root & Rebound (April 15, 2015).

If you're formerly incarcerated:

Adult high school diploma programs may be available in adult schools or community colleges near you for free or at low cost. Many schools provide adult high school classes for free, and provide books and materials for free as well. Others may charge registration and tuition fees. (However, schools that charge fees may also offer financial aid to low-income students. Check with each school about fees and financial aid.)[2815] Also, community adult literacy programs may offer high school diploma courses and tutoring for free. (For a list of organizations that may offer this service, see Appendix A, PG. 890.)

If you choose a distance learning or *correspondence program*, regardless of whether you're incarcerated or in the community, you may need to pay program fees and buy your own materials (for details about distance learning programs in general, see PG. 876).

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WARNING: Be careful when choosing a high school diploma program. In recent years, the federal government has shut down several degree programs that were charging money for fake diplomas.[2816] These programs are scams. To avoid being scammed by a fake diploma program, watch out for the following clues[2817]:

- **If a program lets you get a diploma without taking classes or tests, it is probably fake.**
- **The program offers free tests or classes, but charges for the diploma itself. This is a dead giveaway that the program is illegitimate.**
- **The program claims to be affilitated with the federal government. The federal government does not offer high school diploma progams. Only the states approve such programs.**

HOW DO I FIND AND ENROLL IN A HIGH SCHOOL DIPLOMA PROGRAM?

If you're currently incarcerated:

- **In a federal prison**: Soon after you enter prison, your Unit Team or Education Staff should review your assessment (from county jail, see PG. 853) and recommend classes for you. If you don't have a high school credential, the facility will enroll you in literacy classes designed to lead up to a high school diploma (or a GED, if your facility offers a GED program).[2818] Ask your Education Advisor if you have questions about enrolling in classes.
- **In a California state prison**: If you've completed some high school in the past, and if your current skills are at a high school grade level (9-12), you should be enrolled in the high school diploma program at your facility. Education Department staff will review your high school transcript (if you have one) and TABE scores and decide whether you can enroll.[2819]
- **In a California county jail**: Check with your jail's education staff to find out whether high school diploma courses are offered and how to enroll.[2820]

If you're formerly incarcerated:

- Visit any public library or community bookstore to find free or low-cost high school level study materials, including books you may need for classes, as well as lessons you can work through on your own.
- Contact any public library, adult school, or community college to ask about free or low-cost adult high school diploma programs near you.[2821]

NOTE: If you are in a California state facility you may be able to get extra tutoring support through the Voluntary Education Program (VEP). Ask your Correctional Counselor or Education Department staff if you have questions about the diploma program or VEP. Remember, to enroll in any education program, you must have a TABE score on file (see PG. 853).

[2815] CAL. VEH. CODE §§ 52501-52503; CAL. CODE REGS. tit. 5 § 10560; Adult Education Program Overview, CAL. DEP'T OF EDUC., www.cde.ca.gov/sp/ae/po/; Frequently Asked Questions, CAL. ADULT SCHS., www.californiaadultschools.org/cas/news/45-school-stories/118-faq

[2816] FEDERAL TRADE COMMISSION, FTC Brings Two Actions Against Operators of Online 'High Schools' (Feb. 10, 2016), https://www.ftc.gov/news-events/press-releases/2016/02/ftc-brings-two-actions-against-operators-online-high-schools.

[2817] FEDERAL TRADE COMMISSION, CONSUMER INFORMATION, High School Diploma Scams, https://www.consumer.ftc.gov/articles/0539-high-school-diploma-scams.

[2818] If you're not fluent in English, you must be enrolled in ESL until you reach an 8th grade level in listening and reading comprehension. Also, if you don't have a high school credential, you must enroll in Adult Literacy classes until you log 240 hours of class time or until you earn a GED, whichever comes first. See U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5350.24 English-as-a-Second-Language PROGRAM (July 24, 1997); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5350.28 LITERACY PROGRAM (GED STANDARD) (Feb. 1, 2003); U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5300.21, EDUCATION, TRAINING, AND LEISURE TIME PROGRAM STANDARDS (Feb. 18, 2002); U.S. DEP'T JUSTICE, FED. BUREAU OF PRISONS, A DIRECTORY OF BUREAU OF PRISONS' NATIONAL PROGRAMS (May 21, 2014), pp. 1-3.

[2819] CAL. DEP'T CORR. & REHAB., OPERATIONS MANUAL 101010.3.4-101010.5.4 (2015); High School Diploma (HD) Program, CAL. DEP'T OF CORR. & REHAB. DIV. OF REHABILITATIVE PROGRAMS, www.cdcr.ca.gov/rehabilitaiton/high-school-diploma.html.

[2820] CAL. VEH. CODE § 1900 et seq; Adult Education Program Overview, CAL. DEP'T OF EDUC., www.cde.ca.gov/sp/ae/po/.

[2821] See U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); CAL. VEH. CODE §§ 52501- 52503; CAL. CODE REGS. tit. 5 § 10560; Adult Education Program Overview, Cal. Dep't of Educ., www.cde.ca.gov/sp/ae/po/.

- If you have Internet access, search online for high school diploma programs near you:
  - America's Literacy Directory: www.literacydirectory.org
  - National Literacy Directory: www.nationalliteracydirectory.org/
  - California Adult Schools: www.californiaadultschools.org/cas/
  - California Adult Education Provider Directory: www.otan.us/caaeproviders/
  - California Community College Finder: www.californiacommunitycolleges.cccco.edu/maps/map.asp

HELPFUL HINT

Finding a High School Diploma Program

- **TIP 1**: Many community colleges offer dual enrollment programs or continuing education programs, which allow you to earn an adult high school diploma or equivalency certificate AND get started on earning college credits at the same time.[2822]
- **TIP 2**: If you have meaningful school, work, or life experience, find out if you can make it count toward your diploma. Some adult schools or programs might give you credit for past high school work, job training, work experience, community service, military service, or self-study. Ask the individual school or program if it will do this.[2823]

HIGHER EDUCATION OVERVIEW

Once you've earned your high school credential, what's next? It's time to revisit your long-term educational and career goals. Do you need a certain skill-set or type of training for your desired career field? Do you have to earn a specific degree to practice in your chosen profession? If so, "higher education" might be right for you.

WHAT IS HIGHER EDUCATION?

"Higher education" refers to additional schooling that you take beyond the high school-level, that leads to a professional certification or academic degree, such as a Career and Technical Education (CTE) certificate, associate degree, bachelor's degree, or graduate or professional degree. If you plan on continuing your education beyond the high school-level, you will need to determine which higher education path fits your needs and goals.

CAREER & TECHNICAL EDUCATION (CTE) PROGRAMS

WHAT IS CAREER AND TECHNICAL EDUCATION?

If you want a skills-based job in a particular career field, you may want to enroll in a CTE program where you focus on learning to do a specific type of work in that field. CTE programs are also called "certificate" or "vocational training" programs.[2824] This chapter will help you think about whether a CTE program is a good choice for you; and, if so, what type of CTE program might be right for you.

TUTORING HELP

Most CTE programs lead to a *certificate*, but some lead to a *college degree*. This section focuses on CTE programs that lead to a *certificate*. If you're interested in enrolling in a CTE program that leads to a *college degree*, you will find more helpful information in the following section on college degrees (PG. 867).

WHAT TYPE OF VOCATIONAL PROGRAMS ARE AVAILABLE?

CTE programs commonly cover fields such as: agriculture and natural resources, arts and media, building and construction, education and child/family services, energy and utilities, fashion and design, finance and business, health science and medical technology, hospitality and tourism, information technology, manufacturing and product development, marketing and sales, public services, or transportation services.

HOW CAN A CTE PROGRAM HELP ME?

In California, CTE programs are offered at community colleges, technical colleges, trade schools, vocational schools, at some 4-year colleges—and in many CDCR facilities and county jails. A CTE certification program can be a good path for you if the occupation you want *requires* a certificate, or if you want to gain practical skills and get into the workforce more quickly. Most CTE certificate programs are designed to get you certified, licensed, and hired in your chosen field directly and efficiently. A certificate can also be a stepping-stone toward a college degree, as some colleges accept certificate program credits and count them as progress toward a college degree.[2825]

[2822] See GED Preparation, High School Diploma/Basic Skills, San Diego Continuing Educ., http://www.sdce.edu/classes/high-school-ged-basic-skills; General Education Development, Clackamas Cmt'y Coll., http://www.clackamas.edu/GED/.
[2823] See Rachel Aviv, Turning Experience Into College Credit, N.Y. Times (Oct. 30, 2008); Prior Learning Assessment Services, Council for Adult & Experiential Learning, Colls. & Univs., www.cael.org/whom-we-serve/colleges-and-universities/prior-learning-assessment-services.
[2824] See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13), at 15-17.
[2825] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13), at 15-16; CTE Disciplines, Univ. of Cal. www.ucop.edu/agguide/career-technical-education/disciplines/index.html; Cal. Dep't of Educ., CTE Framework for California Public Schools (2007); CTE Online, www.cteonline.org.

IMPORTANT: A certificate is NOT a degree. It's an award that shows you completed an educational or training program after high school. A certificate is also NOT an occupational license or certification, which you may need to do your job, depending on what your field is and where you live.

The cost of earning a certificate through a CTE program may not be worth it in certain fields where jobs are low-wage, unstable, and difficult to get. Also, if employers in your desired field don't always require a certificate, you might consider going straight into the workforce. If employers in your field like to see qualifications other than a certificate, such as hands-on experience or some kind of degree, you might want to pursue those qualifications instead.[2826] For more information on researching the job market in your career field, see EMPLOYMENT CHAPTER, beginning on PG. 832.

NOTE: Usually, community or technical colleges require that you have a high school credential before you begin a CTE program. However, even if you don't have one, you still may be able to enroll. Most community and technical colleges will have classes and support to help you earn your high school credential as well as your CTE certificate. If the CTE program you are interested in is offered at a four-year college or university, you will need to have a high school credential to apply.

HOW MUCH TIME WILL IT TAKE TO EARN A CTE CERTIFICATE?

Many certificate programs can take less than a year to complete, and most are designed to take less than 2 years. However, your total time in a program will depend on the specific program and school you choose and whether you enroll part-time or full time.

HELPFUL HINT
CERTIFICATES, LICENSES, AND CERTIFICATIONS

A certificate is not the same as an occupational license or a professional certification. A certificate shows that you have completed a course of study and training in a particular field. Certificates are awarded by CTE programs and many certificate programs can take less than a year to complete, and most are designed to take less than 2 years.[2827] However, your total time in a program will depend on the specific program and school you choose, and whether you enroll part-time or full time in school. After earning a certificate, you may also need to get a license from the state or a certification from the professional organization that regulates your job field.

A license shows that you have the government's permission to practice your occupation. State and local boards and agencies issue licenses.

A certification means that you have demonstrated that you're skilled enough to practice your occupation, usually by passing evaluations and/or documenting a certain amount of work experience. Professional or industry organizations issue certifications.[2828]

HOW MUCH MONEY WILL IT COST TO EARN A CTE CERTIFICATE?

If you're currently incarcerated:

In a federal prison,[2829] California state prison,[2830] or California county jail,[2831] any CTE programs available should be provided at no cost to you (including necessary materials and credentialing fees).

NOTE: While CTE programs are generally offered at no cost, if you have a high balance in your trust account, your facility may decide to deduct some or all of the cost of the program from your account.[2832]

If you're formerly incarcerated:

Your costs will vary based on your school, program, and course load. If you're a resident of the state where you enroll, the cheapest options will likely be programs offered at community colleges or technical colleges, which are public schools. Average tuition and fees per year are about $4,000 for in-state students at public 2-year

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[2826] See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13) at 12-13.
[2827] See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13) at 15-16. Some CTE programs are designed to take up to 2 years and lead to an associate's degree instead of a certificate. See U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2828] See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13), at 4.
[2829] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002); U.S. Dep't Justice Fed. Bureau of Prisons, A Directory of Bureau of Prisons' National Programs (May 2014); Education Programs, U.S. Dep't Justice Fed. Bureau of Prisons, Custody & Care: Education Programs, www.bop.gov/inmates/custody_and_care/education.jsp.
[2830] Cal. Dep't Corr. & Rehab., Operations Manual, 101010.1-101010.4 (2015); CTE Programs, Cal. Dep't of Corr. & Rehab.,Div. of Rehabilitative Programs, www.cdcr.ca.gov/rehabilitation/career-technical-education.html.
[2831] Cal. Veh. Code § 1900 et seq.; Adult Education Program Overview, Cal. Dep't of Educ., www.cde.ca.gov/sp/ae/po/.
[2832] Interview with Carmen Garcia, Legal Administrative Assistant, Root & Rebound (April 15, 2015).

colleges, compared to about $15,000 at private 2-year colleges.[2833] (See PG. 849 for tips on avoiding private schools that may be scams.)

NOTE: Some schools and programs offer financial aid for low-income students. Check with each school and program about overall costs, fee waivers, and financial aid.[2834] For more information on fee waivers and financial aid, see Paying for Your Education, starting on PG. 881.

HOW DO I FIND CTE PROGRAMS?

If you're currently incarcerated…

In a federal prison: Every federal prison offers a different range of Occupational Education (OE) programs, which may include certificate programs as well as programs leading to associate's degrees.[2835] Soon after you enter prison, your Unit Team and Education Staff should give you an assessment and recommend programs for you. If you have no stable work history or training record, you may be assigned to an OE program.[2836] If you haven't been assigned to an OE program and would like to be, ask your Unit Team to place you in one. Your Unit Team will decide what OE course(s) may be right for you.[2837]

Notes on eligibility & timing: Certain OE programs may be open to you only if you have a high school credential or are working toward one.[2838] Also, if you need job training but spaces are limited, you might not be placed in an OE program until the last several months of your sentence, to ensure that your training is current when you're released.[2839]

In a California state prison: Every CDCR facility provides a different range of CTE programs, all accredited by a nationally recognized agency. (For information on accreditation, see PG. 849.) Since these CTE programs are properly accredited, you should be able to transfer credits from these programs to a college degree program. (For information on transferring credits, see PG. 875.) There are no eligibility or testing requirements for CTE programs in CDCR facilities, but you will be limited by what programs your facility has available.[2840] Ask your Correctional Counselor about what CTE programs are offered and how you can sign up.

NOTE ON THE TRANSITIONS PROGRAM: Some CDCR facilities offer the Transitions Program, which is a 4-5 week program that provides job readiness and money management skills, information about community programs, and connections to social services in the county where you'll be living. If your facility has this program and you're eligible, you may be assigned to participate at some point during the last 6 months before your release.[2841]

In a California county jail: Because programs vary greatly across county facilities, you will need to check with your facility's education department to see if CTE programs are available.

If you're formerly incarcerated

CTE programs are offered at community and technical colleges as well as four-year colleges. To find CTE programs in your area:

[2833] See Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13) at 12-13.
[2834] Cal. Veh. Code §§ 52501- 52503; Cal. Code Regs. tit. 5 § 10560; Adult Education Program Overview, Cal. Dep't of Educ., www.cde.ca.gov/sp/ae/po/; Frequently Asked Questions, Cal. Adult Schools, www.californiaadultschools.org/cas/news/45-school-stories/118-faq.
[2835] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5353.01, OE Programs (Dec. 17, 2003) at 4. Note: All federal correctional facilities are mandated to offer OE training, with these exceptions: metropolitan correctional centers, metropolitan/federal detention centers, the Federal Transportation Center, satellite camps, and the administrative maximum facility. U.S. Dep't Justice Fed. Bureau of Prisons, A Directory of Bureau of Prisons' National Programs (May 2014) at 6.
[2836] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002). Otherwise, if you're able to work, you should be assigned to a paid institution job. See 28 C.F.R. pt. 545, subpt. C; U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5251.06, Inmate Work & Performance Pay, www.bop.gov/policy/progstat/5251_006.pdf; U.S. Dep't Justice Fed. Bureau of Prisons, Legal Resource Guide to the Federal Bureau of Prisons (2014) at 21.
[2837] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5353.01, OE Programs (Dec. 17, 2003) at 3.
[2838] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5300.21, Education, Training, and Leisure Time Program Standards (Feb. 18, 2002).
[2839] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5353.01, OE Programs (Dec. 17, 2003); U.S. Dep't Justice Fed. Bureau of Prisons, A Directory of Bureau of Prisons' National Programs (May 21, 2014) at 6.
[2840] CDCR CTE programs are accredited by the Western Association of Schools and Colleges (WASC). Programs focus on 6 career fields: building and construction; energy and utilities; finance and business; public service; manufacturing and product development; and transportation. Some facilities offer programs in basic employment skills, while others offer more advanced programs that can lead to a certificate, license, and/or certification. See Office of Correctional Education, Cal. Dep't of Corr. & Rehab. Div. of Rehabilitative Programs, www.cdcr.ca.gov/rehabilitation/oce.html; Cal. Dep't Corr. & Rehab., Operations Manual 101010.3.4-101010.5.4 (2015); CTE Programs, Cal. Dep't of Corr. & Rehab. Div. of Rehabilitative Programs, www.cdcr.ca.gov/rehabilitation/career-technical-education.html.
[2841] Facilities offering the Transitions Program include: Avenal State Prison, Central California Women's Facility, California Institution for Men, California Institution for Women, California Men's Colony, Correctional Training Facility, Chuckawalla Valley State Prison, Folsom Women's Facility, High Desert State Prison, Ironwood State Prison, California State Prison—Los Angeles County, Substance Abuse Treatment Facility, and Valley State Prison. For a current list of facilities that offer the Transition Program, see Transitions Programs, Cal. Dep't of Corr. & Rehab. Div. of Rehabilitative Programs, www.cdcr.ca.gov/rehabilitation/transitions-program.html.

- Check your local public library for information about CTE programs, adult schools, and colleges in your area.
- Search on the Internet for nearby schools and programs. The following websites are good starting points:
  - California Community College Finder: www.californiacommunitycolleges.cccco.edu/maps/map.asp;
  - California Adult Schools: www.californiaadultschools.org/cas/;
  - California Adult Education Provider Directory: www.otan.us/caaeproviders/.

HOW DO I CHOOSE A CTE PROGRAM?

If you want to make an informed decision, it's important to research the qualifications required for the jobs you want, the quality of the schools you're considering, and the current state of the job market.[2842] (For tips on researching the qualifications you need for the specific job(s) you want, see Setting Your Goals, PG. 842.) When you know what skills and training you need, you can begin evaluating individual CTE programs to find the one that is right for you. If you have decided that a CTE program is the best path for you, see Choosing Your Education Path, PG. 849, for tips on evaluating and choosing a program.

HOW DO I ENROLL IN A CTE PROGRAM?

Generally, to enroll in a CTE program at a community or technical college, you just need to fill out the paperwork and register for classes. Most programs have "open admissions," meaning that if you meet the educational requirements, you will be admitted automatically, if space is available. For programs that are very popular, you may have to submit an application and be accepted to the program before you can enroll (admission is not automatic). To learn more about program requirements and enrollment policies, you can call the admissions office of the school you are interested in. This information is also usually available on the school's website.

Four-year colleges generally require you to submit an application for admission and be accepted to the school before you can enroll and register for classes. Applications often are available online (and can be submitted online), or you can call the school's admissions office and ask them to send you an application by regular mail or email. There is usually a nonrefundable fee for applying, but you may be able to get the fee waived.

Other Options for Career and Technical Training:

- **Apprenticeships:** These are usually offered through trade unions that pay you a salary while you learn a specific trade or profession. Apprenticeships allow you to gain knowledge and hands-on experience in your chosen field, under the guidance of more experienced employees.[2843] Many federal and state facilities offer apprenticeships through contracts with colleges and technical schools, and many are registered through the Department of Labor's Office of Apprenticeship.[2844] For more information on apprenticeship programs, check these resources:
  - U.S. Department of Labor's Office of Apprenticeship at http://www.doleta.gov/oa/;
  - CareerOneStop at http://www.careeronestop.org.
- **Job Corps:** Job Corps offers young people aged 16–24 the chance to get a free education and skills training while being paid a monthly allowance. Usually Job Corps participants live at a Job Corps residence while getting their training. To learn more about Job Corps and find the Job Corps center near you, call 1 (800) 733-5627 or go to http://www.jobcorps.dol.gov.

COLLEGE & UNIVERSITY ACADEMIC DEGREES

If you have the desire, time, and financial resources to explore a wider range of academic subjects and skills, you may want to pursue a college degree. In college you can study a diverse range of topics, instead of focusing only on the skills you need for one type of job; and you can develop a broad foundation of writing and critical thinking skills to sharpen your mind and prepare you for a wide variety of careers.[2845] A college degree also may help you qualify for more secure, higher-status, and better-paying jobs.[2846]

[2842] Fed. Bureau of Labor Statistics, Certificates: A Fast Track to Career, Occupational Outlook Quarterly (Winter 2012-13).
[2843] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2844] U.S. Dep't Justice Fed. Bureau of Prisons, A Directory of Prisons' National Programs (May 21, 2012).
[2845] In addition, attending college can allow you develop social connections with peers and teachers, which can be personally enriching and professionally useful. See Why Go to College?, SCHOLARSHIPS.COM, www.scholarships.com/resources/college-prep/preparing-for-college/why-go-to-college/.
[2846] See FED. BUREAU OF LABOR STATISTICS, HIGH WAGES AFTER HIGH SCHOOL—WITHOUT A BACHELOR'S DEGREE, OCCUPATIONAL OUTLOOK QUARTERLY, Summer 2012, www.bls.gov/careeroutlook/2012/summer/art03.pdf; U.S BUREAU OF LABOR STATISTICS, THE 2004-14 JOB OUTLOOK FOR PEOPLE WHO DON'T HAVE A BACHELOR'S DEGREE, OCCUPATIONAL OUTLOOK QUARTERLY, Fall 2006; Adam Ozimek, Should Everyone Go to College? FORBES.COM (May 29, 2014), www.forbes.com/sites/modeledbehavior/2014/05/29/should-everyone-go-to-college/; but see Data on Display: Education Still Pays, FED. BUREAU OF LABOR STATISTICS, www.bls.gov/careeroutlook/2014/data-on-display/print/education-still-pays.htm.

If you're currently incarcerated:

You likely do not have access to in-person college programs, but you may be able to pursue a college degree through Distance Education. (See PG. 876 for information on Distance Education programs.)

If you're formerly incarcerated:

You can pursue a college degree at a community or junior college, a technical school, or 4-year college or university. While college can be expensive,[2847] there are ways to reduce and supplement the expense (see Paying for College, PG. 881).[2848]

IS GOING TO COLLEGE THE RIGHT CHOICE FOR ME?

PROS:	CONS:
• Can be a time to explore new and different areas of study. • Can help you build social and professional networks with classmates and instructors. • Can help you develop reading, writing, and analytical skills that are useful for many careers, and in daily life. • Can prepare and qualify you for better jobs, increase your chances of getting hired, and boost your wages in the long run.[2849] • Can prepare and qualify you for graduate or professional study, which may lead to even better jobs.	• Can be time consuming and may delay your entry into the workforce. • College campus life can be distracting and overwhelming. • Academic coursework may not give you the specialized technical skills and training you need for certain careers. • A college degree is not necessary or even helpful in some career fields. • Can be very expensive—if you take out loans to pay for school, you may end up with a lot of debt.

Depending on your career goals, your life situation, and your access to resources like financial aid, college may or may not be the best option for you now. The following sections of this chapter will provide details about the different types of college degree programs so that you can make an informed decision.

WHAT ARE THE DIFFERENT KINDS OF ACADEMIC DEGREES?

There are three main categories of college degrees:

- Associate degrees
- Bachelor's degrees
- Graduate Academic and Professional degrees.

Different degrees are awarded in different subject and career areas, and they all have different requirements. For some degrees you have to earn another degree first, before you can pursue them. The various degrees are discussed in detail below.

ASSOCIATE DEGREE PROGRAMS

WHAT IS AN ASSOCIATE DEGREE?

An associate degree (sometimes called a "two-year" degree) is an undergraduate college degree that is awarded by community and junior colleges (sometimes called "two-year colleges"), technical schools, and some four-year colleges and universities. Associate degree programs are designed to take two years of full-time study to complete (but part-time students may take longer), and generally require students to take various general education courses like English, math, and science. An associate degree can be a stepping-stone toward earning a bachelor's degree or can prepare you to enter the workforce directly.[2850]

[2847] See Dale J. Stephens, Do You Really Have to Go to College? NEW YORK TIMES (Mar. 7, 2013), www.thechoice.blogs.nytimes.com/2013/03/07/do-you-really-have-to-go-to-college/?_r=0; but see Why Students Don't Go to College, SCHOLARSHIPS.COM, www.scholarships.com/resources/college-prep/preparing-for-college/why-students-dont-go-to-college/.

[2848] See Fed. Bureau of Labor Statistics, Paying for College: Strategies to Afford Higher Education Today, Occupational Outlook Quarterly, Spring 2013, www.bls.gov/careeroutlook/2013/spring/art01.pdf.

[2849] See FED. STUDENT AID, FACT SHEET: WHY GO TO COLLEGE?, www.studentaid.ed.gov/sites/default/files/why-go-to-college.pdf (citing 2011 Current Population Survey, FED. BUREAU OF LABOR STATISTICS).

[2850] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012). See also Quick Guide: Your College Degree Options, College Board, www.bigfuture.collegeboard.org/find-colleges/college-101/quick-guide-your-college-degree-options.

WHAT ARE SOME OF THE ADVANTAGES OF PURSUING AN ASSOCIATE DEGREE?

An Associate Degree is a great option for many people because:

- It can be earned in only 2 years;
- It costs less than a 4-year degree;
- It gets you into the workforce faster;
- The programs are more flexible, and can be scheduled around work or other obligations;
- It can be a low-cost stepping stone to a 4-year college or university, if you transfer credits (see PG. 875 for more information on transferring credits).

WHAT TYPES OF ASSOCIATE DEGREES ARE THERE?

There are two categories of associate degrees:

- Associate of Arts (AA)/Associate of Science (AS)
- Associate of Applied Arts (AAA)/Associate of Applied Science (AAS).

AA and AS degree programs tend to be designed for students who eventually want to earn a bachelor's degree at a four-year college or university. Therefore, these programs focus more on preparing students for higher levels of academic study. The courses offered and credits earned in an AA or AS program are meant to be easily transferred to a four-year college. (See PG. 875 for information on transferring credits.)

The "Applied" degrees (AAA and AAS), on the other hand, are more geared toward preparing students for a particular career. Therefore, these programs emphasize more technical and vocational skills. AAAs and AASs are the college degree equivalent of CTE certificates.[2851]

HOW CAN I DECIDE IF AN ASSOCIATE DEGREE IS RIGHT FOR ME, AND WHICH TYPE I SHOULD GET?

An AA or AS degree may be a good choice if your main priority is not just to gain practical job skills, but also to sharpen your academic skills, explore diverse areas of study, and engage in critical analysis. They may also be a good choice if you intend to continue on to get your bachelor's degree, but you want to save on costs. When you transfer your AA or AS credits to a four-year college, you can get up to half of the required credits for your bachelor's degree at a fraction of the cost.[2852]

An AAA or AAS degree may be a good choice for you if you want to learn technical skills for a specific occupation, but you also want to have a college degree (not just a certificate). These degrees are also good for you if you want the technical, practical skills to work now, but you think that you might eventually want to get a higher college degree.[2853]

NOTE: In California, all public (state-funded) universities are required to guarantee a number of openings for students transferring from California Community Colleges (one transfer student for every two freshman admitted). This means that you have a good chance of getting into a California State University or a University of California school if you transfer in from a community college.[2854]

HOW MUCH WILL IT COST TO EARN AN ASSOCIATE DEGREE?

Comparing Types of Associate Degrees:

AA/AS may be right for you if…	AAA/AAS may be right for you if…
You want to go on to earn a bachelor's degree;	You want a college degree;
You want to transfer your credits to a 4-year college or university;	You want a college degree;
You want to sharpen your academic skills;	You want to get into the workforce sooner;
You want to get into the workforce sooner	You want to get into the workforce

The cost of earning an Associate degree varies greatly depending on the institution that you enroll in.

[2851] Olivia Crosby, Associate Degree: Two Years to a Career or a Jump Start to a Bachelor's Degree, OCCUPATIONAL OUTLOOK QUARTERLY, Winter 2002-03.
[2852] Olivia Crosby, Associate Degree: Two Years to a Career or a Jump Start to a Bachelor's Degree, OCCUPATIONAL OUTLOOK QUARTERLY, Winter 2002-03.
[2853] Olivia Crosby, Associate Degree: Two Years to a Career or a Jump Start to a Bachelor's Degree, OCCUPATIONAL OUTLOOK QUARTERLY, Winter 2002-03.
[2854] Stanford Criminal Justice Center/Chief Justice Earl Warren Institute on Law & Social Policy, Degrees of Freedom: Expanding Opportunities for Currently and Formerly Incarcerated Californians (Feb. 2015); see also U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).

- In California, public community colleges are among the most economical choices for earning a college degree. Technically, there is no tuition, however, there are enrollment fees that are charged per credit-unit that you take.
  - At the time of publication, the enrollment fee for California residents is $46 per credit-unit.[2855]
  - This per-unit enrollment fee is for California residents and is the same for all public community colleges across the state.
  - Full-time enrollment is generally 12 credit-units per week (1 credit-unit = 1hour of class time), but you can take more or less if you like. (You may be eligible for a waiver of this fee, see PG. 886 for information on waiving community college enrollment fees.)
- Private community colleges and four-year colleges are the most expensive options (costs vary greatly, but may be several thousands of dollars).

IMPORTANT: Tuition or per-unit fees do not include other costs associated with enrolling in a college program such as books, school supplies, and transportation.

HOW DO I FIND AN ASSOCIATE DEGREE PROGRAM?

If you're currently incarcerated:

In a federal prison: Federal correctional facilities offer Associate degrees through the Occupational Education Program.[2856] Programs vary by facility, so check your Unit Team to find out what Associate degree programs are available in your facility.[2857]

In a California state prison: Currently, San Quentin State Prison is the only CDCR facility that offers an in-facility Associate degree program.[2858] If you are housed in any other facility, your only options may be Distance Education (see PG. 876 for more information) or correspondence courses (see PG. 878 for more information).

In a California county jail: Education programs vary greatly across county facilities. You will need to check with your facility's education department to see if any Associate degree programs are offered. (Note: Because of the time commitment required by college degree programs, many county jail facilities, which generally house people only for limited periods of time, may not offer them. However, this may be changing as people who are sentenced under realignment find themselves serving more extended county jail sentences.)

If you're formerly incarcerated:

- Research schools and programs at your local public library
- Visit an America's Job Center of California (see PG. 838 for information on America's Job Centers).
- Search for your local community college on the Internet:
  - California Community Colleges Chancellor's Office at http://www.cccco.edu/.
  - American Association of Community Colleges at http://www.aacc.nche.edu.

BACHELOR'S DEGREE PROGRAMS

WHAT IS A BACHELOR'S DEGREE? HOW CAN IT HELP ME?

Bachelor's degrees are offered by four-year colleges and universities. Bachelor's degree programs are designed to take four years of full-time study to complete, however, many students choose to complete them in five years, and part-time students may take even longer. Students are required to take a variety of general education courses, plus several courses in a specific area of study called a major, that the student chooses. A bachelor's degree can be a stepping-stone toward earning a graduate or professional degree, and is required for many high-salary, high-status jobs.[2859]

[2855] See CAL. CMTY COLLS. CHANCELLOR'S OFFICE, http://www.cccco.edu/.
[2856] U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5353.01, OE PROGRAMS (Dec. 17, 2003) at 4, www.bop.gov/policy/progstat/5353_001.pdf. Note: All federal correctional facilities are mandated to offer OE training, with these exceptions: metropolitan correctional centers, metropolitan/federal detention centers, the Federal Transportation Center, satellite camps, and the administrative maximum facility. U.S. DEP'T JUSTICE FED. BUREAU OF PRISONS, A DIRECTORY OF BUREAU OF PRISONS' NATIONAL PROGRAMS (May 21, 2014) p.6.
[2857] U.S. Dep't Justice Fed. Bureau of Prisons, Program Statement 5353.01, OE Programs (Dec. 17, 2003).
[2858] About Us, PRISON UNIV. PROJECT, http://www.prisonuniversityproject.org/about-usPUP reference.
[2859] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012). See also Quick Guide: Your College Degree Options, College Board, www.bigfuture.collegeboard.org/find-colleges/college-101/quick-guide-your-college-degree-options.

PROS:	CONS:
• Qualifies you for jobs across more professional fields (for example, engineering, architecture, accounting)	• Generally no "open admissions"—requirements are extensive, and competition can be fierce
• May increase your competitiveness in the job market for higher-level, better-paying jobs	• Courses are academically rigorous, and may be difficult for people who have been out of school for a long time
• Qualifies you to pursue graduate academic and professional degrees	• Class schedules tend to be less flexible, making it harder to juggle other obligations
• Makes you eligible for more scholarships and grants	• Programs can be expensive—higher tuition and fees can lead to more student debt

WHAT TYPES OF BACHELOR'S DEGREES ARE THERE?

There are two main kinds of Bachelor's degrees: Bachelor of Arts (BA) degrees and Bachelor of Science (BS) degrees.[2860] BAs are awarded for programs of study that focus on areas within the liberal arts, humanities, or social studies (such as English, Psychology, or History). BSs are awarded for programs of study that focus on areas within the "hard" sciences, such as Math, Biology, Chemistry, or Physics.[2861]

HOW MUCH WILL IT COST TO EARN A BACHELOR'S DEGREE?

Bachelor's degrees from four-year colleges and universities are expensive. They can cost in the hundreds of thousands of dollars. Most people require financial assistance from federal or state student aid programs, or from private organizations to pay their tuition. (For information on Paying for College, see PG. 881.)

A NOTE ON PUBLIC VS. PRIVATE SCHOOLS

Both public and private colleges and universities offer Bachelor's degree programs. **Public schools** are partially funded by government taxes and usually charge lower tuition (especially for in-state residents). They tend to have a larger student population and larger class sizes. **Private schools** are generally more expensive, and tend to focus on keeping classes small and exposing students to many different subjects. [2862]

A NOTE ABOUT IN-STATE TUITION: Most schools require that you have lived in California for a certain period of time in order to get the discounted "resident" or "in-state" tuition rate. [2863] Some schools will consider time that you spent incarcerated in California towards this requirement. Check with your school's admissions and financial aid offices to find out if your period of incarceration qualifies you as a California resident under that school's policy.

HOW DO I FIND A BACHELOR'S DEGREE PROGRAM?

If you're currently incarcerated

- **Earn college credits.** Unfortunately, at the time of this publication, there currently are no four-year Bachelor's degree programs offered in federal, state, or county correctional facilities in California, and correspondence courses that advertise four-year degrees should not be trusted. However, you can earn college credits while you are incarcerated which can be applied toward a four-year degree after you are released. (For information on how to earn college credits while you are incarcerated, see Associate Degree Programs, PG. 868, and Distance Education, PG. 876. For information on how to transfer college credits that you earn while you are incarcerated, see PG. 875. For information on how to tell if a school or program is a scam, see PG. 849.)
- **Plan and Prepare.** There is plenty you can do to plan and prepare for your post-release education while you are still incarcerated. You can research schools (see PG. 864), complete applications (see PG. 856), take placement tests (see PG. 853), and apply for financial aid (see PG. 881)

[2860] Most Bachelor's degrees fall into one of these two categories, however there are a number of specialized Bachelor's degrees such as Bachelor's of Fine Arts and Bachelor's of Architecture.
[2861] U.S. Dep't of Educ. Office of Vocational & Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012). See also Quick Guide: Your College Degree Options, College Board, www.bigfuture.collegeboard.org/find-colleges/college-101/quick-guide-your-college-degree-options.
[2862] Public v. Private Colleges, MY COLLEGE OPTIONS, www.mycollegeoptions.org/Core/SiteContent/Students/Advice/College-Resource-Center/College-Search---Selection/College-Choices/Public-Vs-Private-Colleges.aspx; Erika Ward, Private v. Public College: Which is Best for Me?, CAMPUS EXPLORER, http://www.campusexplorer.com/college-advice-tips/C6F3EE61/Private-vs-Public-College-Which-is-Best-For-Me/.
[2863] CAL. VEH. CODE §§ 68000-68084, 68120-68134, 89705-89707.5; CAL. CODE REGS. tit. 5, §§ 41900-41916.

If you're formerly incarcerated

- Visit your public library and ask the librarian to show you to the section on college guides.
- Search colleges and universities on the Internet. You can search based on location, cost, program or degree options, or rankings.
  - The College Board: www.bigfuture.collegeboard.org/find-colleges; www.campusexplorer.com/4-year-colleges-and-universities;
  - The National Center for Education Statistics, College Navigator tool: http://nces.ed.gov/collegenavigator/;
  - The National Association of College Admission Counseling:
  - http://www.nacacnet.org/studentinfo/PG.s/Default.aspx

COLLEGE PROGRAMS FOR FORMERLY INCARCERATED STUDENTS

Project Rebound is an academic support program that helps currently and formerly incarcerated people enroll and stay in college. Originally founded at San Francisco State University, it has since expanded to eight California State University campuses.[2864] Project Rebound answers letters from people incarcerated across California and helps them apply to college before they're released. Once people enroll in college, Project Rebound connects them to supportive resources on campus and in the community.[2865]

- Project Rebound
  Associated Students Inc.; Cesar Chavez Student Center
  1650 Holloway Avenue, T-138; San Francisco, CA 94132-1722
  Phone: (415) 405-0954 / FAX: (415) 338-0522
  Email: projectrebound@asi.sfsu.edu
  Website: www.asi.sfsu.edu/asi/programs/proj_rebound/about.html

Underground Scholars Initiative (USI) is and academic support program at U.C. Berkeley aimed at connecting formerly incarcerated students with resources and information, including peer counseling, scholarship information, campus and community advocacy, and networking with other service organizations, to increase each student's prospects of success at U.C. Berkeley [2866]

- Underground Scholars Initiative
  2400 Bancroft Way, #7, Berkeley, CA 94704
  Phone: (510) 643-2226

The Street Scholars program at Merritt College in Oakland, California is a peer mentoring and training program focused on academic success for formerly incarcerated students enrolled in one of the four Peralta District Colleges (Merritt College, College of Alameda, Berkeley City College, Laney College). All Street Scholars programs and services are designed with the input of members who were formerly incarcerated. Formerly incarcerated students also direct and facilitate most of Street Scholars' programs to ensure that formerly incarcerated students are understood and supported throughout their reentry experience.

- Street Scholars at Merritt College
  Merritt College, Building P, Room 112
  12500 Campus Drive, Oakland, CA 94619
  Phone: (510) 436-2580
  Website: www.merritt.edu/wp/streetscholars/

NEW D.R.E.A.M at the College of Alameda is an academic support program for formerly incarcerated students who are on parole or probation. NEW D.R.E.A.M helps students with the transition into college. The program is tailored to meet the individual needs of each student.

- New D.R.E.A.M.
  55 Ralph Appezzato Memorial Pkwy.
  Alameda, CA 94501
  Website: http://alameda.peralta.edu/new-dream/

(List continues on next page.)

[2864] Los Angeles Times, "Project Rebound wants to make life after prison successful through education," (Nov. 11, 2016), http://www.latimes.com/socal/daily-pilot/entertainment/tn-wknd-et-1023-project-rebound-cal-state-fullerton-20161112-story.html.
[2865] Project Rebound, ASSOCIATED STUDENTS, INC. OF SF, http://asi.sfsu.edu/asi/programs/proj_rebound/about.html.
[2866] Underground Scholars Initiative, UNIV. CAL. BERKELEY, https://callink.berkeley.edu/organization/usi/about.

The Formerly Incarcerated Student Transition (F.I.S.T.) Program at El Camino College in Compton, California is a support program for formerly incarcerated students. F.I.S.T. holds regular support meetings and helps connect students with campus and community resources. Additionally, F.I.S.T. helps its students to develop professional and "soft" skills, learn to how to network, explore career options, and enter the professional world.

- F.I.S.T., El Camino College Compton Center
  1111 E. Artesia Boulevard, Compton, CA 90221
  Phone: (310)-900-1600
  Website: www.compton.edu

Restoring Our Communities Initiative (ROCI) at Laney College is a student-led program by and for formerly incarcerated students in Oakland, California. The goal of ROCI is to support and equip formerly incarcerated students to transcend reentry barriers, envision and implement their educational goals, make informed decisions, increase their self-determination and create positive life outcomes for themselves, their families and the broader community.

- Restoring Our Communities Initiative
  Laney College Tower Building, 602
  Phone: (510) 464-3176

The Green Workforce Development Initiative at Los Angeles Trade-Technical College (LATTC) is a program specifically designed for formerly incarcerated people and people coming from disadvantaged backgrounds. The Goal of the Green Initiative is to ensure that people from groups that have been historically disadvantaged or "left behind" in emerging economies (e.g., people of color, people living in poverty, people with criminal records) are at forefront and prepared to obtain the most promising occupations and careers in the new, emerging green economy. These fields include sustainable energy, sustainable architecture, alternative fuel, conditioning/HVAC, solar design, and more.

- Green Workforce Development Initiative
  Los Angeles Trade-Technical College
  400 West Washington Blvd. Los Angeles, CA 90015
  Phone: (213) 763-7000
  Website: http://college.lattc.edu/green/

Extended Opportunities Program and Services (EOPS) is a support program for low-income community colleges students. EOPS primary goal is to encourage the enrollment, retention and transfer of students disadvantaged by language, social, economic and educational circumstances, and to facilitate the successful completion of their goals and objectives in college. EOPS offers academic and support counseling, financial aid and other support services. Most community colleges throughout the State have an EOPS programs. Contact the California Community College's Chancellor's Office to ask for more information about EOPS and to find a community college with an EOPS program near you

- California Community College's Chancellor's Office/EOPS
  1102 Q Street, Suite 4550
  Sacramento, CA 95811
  Phone: 916-323-5956
  Website: http://extranet.cccco.edu/Divisions/StudentServices/EOPSCARE.aspx

APPLYING TO COLLEGE

If you have decided that you want to apply to a four-year college or university, there are several documents you will need to gather or prepare, as well as other tasks you will need to complete before you apply.[2867]

WHAT WILL I NEED TO APPLY FOR COLLEGE?

You will need the following important documents:

- The Application (see PG. 874)
- Fee Payment or Fee Waiver Form (see PG. 874)
- High School Credential (see PG. 857)
- Transcripts for any high school or college coursework you've done (see PG. 857)
- Letters of Recommendation and personal references (see PG. 875)
- College Admissions Test Scores (see PG. 874)
- Immunization/Vaccination Records (see PG. 840)

The Application:

Depending on the program and the school you are applying to, there may be a formal school-specific application you must complete or there may be a general application that is good for several schools. This will depend on the school you are applying to, so be sure to ask whether there is a specific application you must complete or if there is a general application available.

Fee Payment or Fee Waiver:

Almost all schools require a payment in order to process your application. This fee may range any where from $20—80. But don't be discouraged! Many schools also offer fee waivers. To see whether or not you qualify for a fee waiver, first look at the school's website and see if you can find information as to how to apply for a fee waiver. You may also call the school's admission office and ask for one directly. But be sure to do this EARLY as many schools may run out of the number of fee waivers they can provide to students. If you receive a fee waiver, you do not have to pay this application fee but instead will include proof of the waiver with your application.

College Admissions Tests:

SAT & ACT. The SAT and ACT are standardized college admissions tests. Almost everyone who applies to a four-year college or university must take one of these tests. Schools use applicants' scores on these exams to make admissions decisions. The SAT covers math, reading, and writing, and focuses more on vocabulary and how well you can reason. It's more popular with private schools, and with schools on the East and West coasts.[2868] The ACT covers math, English, science, and reading, and focuses more on how much you know about the subjects being tested. It's more popular with public schools, and with schools in the South and the Midwest. (See Appendix C, PG. 893, for more details on ACT policies.)[2869]

HOW MUCH DOES IT COST TO TAKE THESE TESTS?

The registration fee for the 2015-2016 SAT is $54.50 for the full test, and $43.00 if you do not take the essay portion.[2870] The registration fee for the ACT is $54.50 for the full test, and $38 if you do not take the writing portion.[2871] Before you sign up for either test, confirm which test the school your are applying to accepts, and whether it requires you to take the full test.

HOW DO I SIGN UP FOR THESE TESTS?

If you're currently incarcerated:

- The SAT has no established procedure for allowing people who are incarcerated to take the test. You should check with your facility's Education Department to see if you can arrange to take the SAT.[2872] On the other hand, the ACT specifically allows people who are incarcerated to register for and take the test. This is called "arranged testing." To ask for arranged testing, you will need to get and submit

WHAT IF I CAN'T TAKE IT BECAUSE I AM INCARCERATED?

If you are unable to take the SAT or ACT while you are incarcerated, you can still study and prepare for either test so that you are ready to be tested as soon as you are released.

[2867] Tips for Students to Consider Before Enrolling at a Private Postsecondary School, CAL. DEP'T OF CONSUMER AFFAIRS BUREAU FOR PRIVATE POSTSECONDARY EDUC., www.bppe.ca.gov/students/tips.shtml.
[2868] About the SAT, SAT, http://sat.collegeboard.org/about-tests/sat; ACT vs. SAT: Key Differences between the ACT and the SAT, STUDY POINTS, http://www.studypoint.com/ed/act-vs-sat/.
[2869] ACT vs. SAT: Key Differences between the ACT and the SAT, STUDY POINTS, http://www.studypoint.com/ed/act-vs-sat/.
[2870] SAT Fees for 2015-16, College Board, http://professionals.collegeboard.com/testing/sat-reasoning/register/fees.
[2871] Current ACT Fees and Services, THE ACT, http://www.actstudent.org/regist/actfees.html.
[2872] Interview with Belinda (last name unknown), supervisor, SAT Testing Services (December 2, 2014).

ACT's "Request for Arranged Testing" form. You can get a copy of this form by calling the ACT Arranged Testing Line at 319-337-1510 or by writing to: ACT Arranged Testing, 301 ACT Drive, P.O. Box 168, Iowa City, IA 52243-0168.

- This form is also available online at http://www.actstudent.org/faq/confined.html (if you have someone who can download it for you).[2873]

If you're formerly incarcerated:

- SAT—You can register online at http://sat.collegeboard.org/register/.[2874] You can also request a paper registration form by writing to: College Board SAT Program P.O. Box 025505 Miami, FL 33102, or by calling (866) 756-7346.[2875]
- ACT—You can register online at http://www.actstudent.org/regist/,[2876] You can also request a Register-By-Mail packet by writing to: ACT Student Services, 2727 Scott Blvd., minizip 46, P.O. Box 414, Iowa City, IA 52243-0414 or by calling (319) 337-1270 (See Appendix C, PG. 893, for more details on ACT policies.).

HOW DO I PREPARE FOR THE SAT OR THE ACT?

If you're currently incarcerated:

- Check your facility's library for SAT and ACT test preparation guides and materials.
- The College Board (the company that makes the SAT) offers free sample tests and questions for study preparation. You can request these materials by writing to: College Board SAT Program, P.O. Box 025505, Miami, FL 33102 or by calling SAT Program Customer Service at (866) 756-7346.
- ACT offers a free guide for preparing for the test. You can request a copy by writing to: ACT Student Services, 2727 Scott Blvd., minizip 46, P.O. Box 414, Iowa City, IA 52243-0414 or by calling ACT at (319) 337-1270.
- You can purchase test preparation guides and materials for both tests from approved online venders such as amazon.com and Barnes & Noble.

If you're formerly incarcerated:

- Check your local library for SAT and ACT test preparation guides and materials.
- You can also buy these guides at almost any bookstore and from online retailers such as amazon.com. You can also check used bookstores that may sell previous versions of these guides at a discount. (NOTE: These tests are constantly changed and updated. To make sure that you're studying the right material, do not buy guides that are more than a couple of years out of date.)
- Free SAT resources, including practice tests and questions, are available online at www.sat.collegeboard.org/practice/.
- ACT's free test preparation guide is available online **at** http://www.actstudent.org/testprep/.

LETTERS OF RECOMMENDATION

Letters of recommendation positively describe your character traits, accomplishments, and qualifications, and recommend that you be accepted to a program, school, or job. They can be written by past employers, case managers, supervisors, community leaders, or teachers (but not your family members). They should include each person's relationship to you, company name and job title, and contact information.[2877]

EARNING & TRANSFERRING COLLEGE CREDITS—GOOD OPTIONS IF YOU ARE INCARCERATED

If you completed any Career & Technical Education (CTE) or college-level courses, whether before, during or after your incarceration, you may be able to apply the credit you earned from those courses toward a CTE certificate or a college degree. This is called "transferring" credits.[2878] The new school you enroll in recognizes the work you did previously (either while incarcerated or at your previous school), and does not make you retake those classes in order to earn your degree.[2879]

[2873] Can homebound or confined students take the ACT? THE ACT, www.actstudent.org/faq/confined.html. Form available at Policies for the Arranged Testing 2014-2015, THE ACT, http://www.act.org/aap/pdf/arranged.pdf.
[2874] Register for the SAT, THE SAT, http://sat.collegeboard.org/register/.
[2875] Standing By, THE SAT, http://sat.collegeboard.org/contact.
[2876] How do I Sign Up for the ACT?, THE ACT, http://www.actstudent.org/regist/.
[2877] U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2878] U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); see also Transferring Colleges, My College Guide, http://mycollegeguide.org/guru/15/transferring-colleges.
[2879] U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); What is College Transfer, CollegeTransfer.net, http://www.collegetransfer.net/AskCT/WhatisCollegeTransfer/tabid/2320/default.aspx.

Generally, CTE programs and community colleges will accept credit from correspondence courses or other programs you completed while incarcerated. Four-year colleges and universities may accept some of these credits, depending on the program. Four-year colleges generally accept transfer credits earned at community colleges. Each school will have a different policy for applying transfer credits toward a certificate or degree program.

NOTE: Generally, you must have completed the course within the last 10 years and earned a C or better for a school to give you credit for it. Also, you cannot transfer credits from a non-accredited program to an accredited program. (See PG. 856 for information on "accreditation.")

HOW CAN I FIND OUT IF MY CREDITS WILL TRANSFER?

The best way to make sure that your credits will transfer to your new school is to call or write to the new school's Registrar Office directly and ask. There are also online resources that may help you find out if and where you can transfer your credits. These include:

- ASSIST (http://www.assist.org/)—shows how credits earned at one public California college can be applied when transferred to another.
- CollegeTransfer.net (https://www.collegetransfer.net/)—walks you through transfer options at all education levels.

HOW DO I TRANSFER MY CREDITS?

Once you make sure that your credits will transfer to the school you want to attend, the transfer process is simple. When you are applying to your new school, you will need to request your official transcripts from any college or program that you attended in the past, and have them sent to your new school.[2880] You must request your official transcripts—the official record of your grades from the school's administration records. To find out how to request your official transcripts, contact the admissions and records office of the school you attended.

NOTE: If you earned college credit while incarcerated, you will need to contact the school that provided the course or program to request a copy of your official transcripts. You do not get them from the facility where you were incarcerated.[2881]

DISTANCE EDUCATION

WHAT IS DISTANCE EDUCATION?

Distance Education (also called Distance Learning) is an education program that uses various technologies to deliver instruction to students who are separated from the teacher. It is a way for students to take a formal course of study (high school, vocational, or college-level) without having to travel to the classroom. Although the students and the teachers are separated, the hallmark of Distance Education is regular and substantial interaction between them.[2882] Distance Education courses usually incorporate multiple forms of media, including printed materials, CDs or DVDs, audio recordings, telephone communication, audio or video conferencing, email, and Web-casts and Internet streaming. There are two types of Distance Education interaction modes: "synchronous" and "asynchronous" instruction.[2883]

HOW DO THE TWO TYPES OF DISTANCE EDUCATION WORK?

Synchronous instruction means that all of the students and the instructor(s) participate in the class at the same time, even though they are not in the same place. This is usually done through "live" teleconferencing, video conferencing web conferencing, or Internet chats. The class is given at a set time, and everyone calls or logs in at that time to participate. Synchronous courses can offer a level of interactivity similar to that of a traditional face-to-face class.[2884]

Asynchronous instruction does not require that the student(s) and the instructor(s) participate at the same time. Students choose when they want to study the course materials or interact with the instructor(s). Asynchronous instruction is more flexible than synchronous instruction, but offers less interactivity because it is not "live." In asynchronous instruction, course materials and communications are often delivered via CDs or DVDs, by traditional mail correspondence, or through e-mails, listservs and Internet downloads.[2885]

[2880] U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); *see also* What is College Transfer, CollegeTransfer.net, http://mycollegeguide.org/guru/15/transferring-colleges.
[2881] Anna Crayton & Nicole Lindahl, Back to School: A Guide to Continuing Your Education after Prison, Prisoner Reentry Institute, John Jay College of Criminal Justice (2010).
[2882] 34 C.F.R. § 600.2. See also U.S. Dep't. of Educ. Fed. Student Aid, Federal Student Aid Handbook 2014-2015, vol. 2, ch. 2 at 12.
[2883] 34 C.F.R. § 600.2. See U.S. Dep't. of Educ. Fed. Student Aid, Federal Student Aid Handbook 2014-2015, vol. 2, ch. 2 at 12.
[2884] Cal. Cmty. Colls. Chancellor's Office, Distance Education Report (Aug. 2013); see also What is Distance Learning? California Distance Learning Project, http://www.cdlponline.org.
[2885] Cal. Cmty. Colls. Chancellor's Office, Distance Education Report (Aug. 2013).

ARE THERE BENEFITS TO DISTANCE EDUCATION?

PROS:	CONS:
• Classes and programs are available to students who cannot attend in person • Saves students time because they don't have to travel to classes • Often cheaper than location-based classes • Often offers more flexible scheduling • Less likely to be subject to class-size restrictions (i.e. classes available to more students)	• Less interactivity and support than traditional classroom learning • Students must be self-motivated and self-directed • Most programs require knowledge of and access to computers, Web browsers, email, and word-processing programs • Some programs require continuous access to the Internet • Students miss out on benefits of classroom attendance, such as getting to know the instructor/ other students, and group discussions of views and opinions[2886]

BEWARE: Distance Education programs can vary in quality and legitimacy (quality of instruction can be low, credits/degrees may not be recognized by other schools or programs). Some programs are outright scams. (For information on how to tell if a program is a scam, see *Choosing Your Educational Path*, PG. 849).

WHAT CREDENTIALS CAN I EARN THROUGH DISTANCE EDUCATION?

Thanks to the Internet, you can earn pretty much any credential through a Distance Education program that you can earn through a traditional educational program.[2887] This includes high school degrees and equivalency certificates, CTE certificates and degrees, associate and bachelor's degrees, and even graduate academic and professional degrees. Distance Education programs are offered in most major CTE and college degree program areas. Program quality does vary greatly, however.

!

WARNING: While many accredited, reputable schools offer credential programs through Distance education, there are also plenty of scam programs that will take your money and leave you with a useless piece of paper. (For more information on spotting Distance Education scam programs, see Choosing Your Educational Path, PG. 849.)

HOW DO I FIND AND ENROLL IN A DISTANCE EDUCATION PROGRAM?

If you're currently incarcerated:

- Ask your Correctional Counselor, or the staff of your facility's education department for information on available programs (Note: Because of the technology requirements of Distance Education programs, they may not be available at your facility);
- Request information on accredited Distance Education programs that may be available to people incarcerated in California facilities by writing to the California Department of Education, Adult Education Office, 1430 N Street, Suite 4202, Sacramento, CA 95814 or by calling (916) 322-2175.

If you're formerly incarcerated:

- Check your local public library for information on schools that offer Distance Education programs (these programs have become very popular and are offered to some extent at most schools).
- Check with local community colleges to see if they offer courses through Distance Education.
- Visit your local America's Job Centers of California for information on Distance Education programs and the institutions that offer them.
- Check these online resources:
  - California Virtual Campus (http://www.cvc.edu/students/)—offers a step-by-step guide to Distance Education in California;
  - California Department of Education, Adult Education (http://www.cde.ca.gov/sp/ae/)
  - The U.S. DEP'T OF EDUC., Database of Accredited Post-Secondary Institutions and Programs at: http://ope.ed.gov/accreditation/Search.aspx.
  - The Distance Education Accrediting Commission, Directory of Accredited Institutions at: www.deac.org.

[2886] U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).
[2887] See ONLINE COLLEGE EDUCATION NETWORK (OCEN), http://www.ocen.org/online-college-programs.html.

HELPFUL HINT
ACCREDITATION OF DISTANCE EDUCATION PROGRAMS

There are numerous commercial websites that advertise hundreds of Distance Education programs and schools in the U.S. and abroad. However, keep in mind that schools and programs pay to be listed on these websites. This means that when you search these sites, only those that have paid will come up—you will not see the rest of the schools and programs out there, so the results of your search will be limited. Also, many of these websites claim that they only list "accredited" schools and programs, however, you should always do your own research to make sure that a school or Distance Education program is 1) legitimate and 2) recognized by an approved accrediting agency.[2888] (For more information on accreditation and scam programs, see *Choosing Your Educational Path*, PG. 849.)

HOW MUCH DO DISTANCE EDUCATION PROGRAMS COST?

The cost of Distance Education programs varies based on the type of program, the delivery media, and the institution that it is offered through. Programs offered through four-year colleges and more prestigious schools will be more expensive than those offered through local community colleges.

TWO IMPORTANT THINGS TO NOTE ABOUT PAYING FOR DISTANCE EDUCATION:

1. Distance Education and Fee Waivers

Distance Education programs offered through California community colleges may qualify for an enrollment fee waiver through the California Community Colleges Board of Governor's Fee Waiver program. (For more information on this program and how to qualify, see *Paying For Your Education*, PG. 881.)

2. Distance Education and Financial Aid

You may be able to get financial aid to help you pay for your Distance Education courses. Only accredited Distance Education institutions are allowed to participate in federal financial aid programs. Even if a school or program is eligible to participate, it must choose to do so. To find out if financial aid is available for a particular school or program, check with that institution's financial aid office (For more information on financial aid, see *Paying For Your Education*, PG. 881).

CORRESPONDENCE COURSES

A correspondence course is a course offered by a school or program, where the student is separated from the teacher and course materials are provided through the mail or over the Internet. There is very little interaction between the student and the teacher, communication is usually initiated by the student (whenever the student wants), and students work at their own pace. Although there are some similarities, correspondence courses are not considered a type of distance education under federal law (see the table below for key differences).[2889]

THE DIFFERENCE BETWEEN DISTANCE EDUCATION AND CORRESPONDENCE COURSES

Although these two terms seem similar and are often confused, they refer to two different learning situations. Distance Education is generally an option that requires Internet access. Although Distance Education is one option to earn credit, due to the need of media/ Internet access, it may not be a possible option for an individual who is currently incarcerated.

Distance Education Courses	Correspondence Courses
• Uses multiple media to deliver content & feedback • Interaction can be synchronous or asynchronous • Interaction between student and teacher is regular and substantial • Courses and assignments follow a set schedule	• Instruction is usually through a single medium • Interaction is only asynchronous • Interaction between student and teacher is limited • Courses and assignments are "self-paced"

WHAT CREDENTIALS CAN I EARN THROUGH CORRESPONDENCE COURSES?

Like with Distance Education programs, you can earn pretty much any credential that you can earn through traditional schooling through a correspondence course. This includes high school degrees and equivalency

[2888] See DISTANCE LEARNING PORTAL, http://www.distancelearningportal.com; *see also* ONLINE DEGREES PROGRAM, http://www.onlinedegreeprograms.com, *see also* ALLONLINESCHOOLS, http://www.allonlineschools.com.
[2889] 34 C.F.R. § 600.2.

certificates, CTE certificates and degrees, associate and bachelor's degrees, and even graduate academic and professional degrees.

Program quality does vary greatly, however. While many accredited schools offer credential programs through correspondence courses, this is where you are most likely to see scam programs offering bogus higher education degrees. (For more information on spotting correspondence course scams, see *Choosing Your Educational Path*, PG. 849).

ARE CORRESPONDENCE COURSES RIGHT FOR ME?

PROS:	CONS:
• They are completely flexible and can be worked around any schedule • They are a great way to get a head start on a CTE or college degree by earning college course credits while you are incarcerated • They can be accessed from anywhere, Internet access is not necessary, so they allow you to be less dependent on what your facility offers	• You must be entirely self-motivated and self-directed, or you may find it difficult to keep up your momentum and finish the program • You miss out on the benefits of regular interaction with instructors and other students • There is limited support if you are having trouble with a course

HOW DO I FIND AND ENROLL IN A CORRESPONDENCE PROGRAM?

If you're currently incarcerated:

If you are interested in taking a correspondence course while you are incarcerated, your facility's education department should be able to provide information and guidance.[2890]

Two great resources for researching correspondence programs from inside are:

- *Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada* by Jon Marc Taylor. This is a comprehensive guide to correspondence courses available to incarcerated people, providing detailed program overviews and contact information. At the time of this publication, the handbook is in its 3rd edition, published in 2009 (ISBN: 978-0981938509). Check your facility's library or education department. It is also available from http://www.amazon.com and Barnes & Noble (both are CDCR approved vendors). You can also write to the publisher for information on ordering the book: Biddle Publishing Company and Audenreed Press, P.B.M. 103, Box 1305, Brunswick, ME 04011.
- *Prison Education Guide* by Christopher Zoukis and edited by Susan Schwartzkopf (through Prison Legal News Publishing). This is a comprehensive guide to correspondence programs for prisoners that It includes a detailed analysis of the quality, cost, and course offerings of all college correspondence programs available to prisoners. The publication costs $49.95, and will be available beginning March 1, 2016 (taking pre-orders now online at https://www.prisonlegalnews.org/store/products/prison-education-guide/). It is also available from http://www.amazon.com (a CDCR-approved vendor). You can also write to the publisher for information on ordering the book: Prison Legal news Publishing, P.O. Box 1151, 1013 Lucerne Ave., Lake Worth, FL 33460.
- Also, see Appendix D, PG. 898 for a list of schools that have a history of successfully offering correspondence courses to incarcerated individuals (working within correctional facility restrictions).

HELPFUL HINT
Student Responsibilities for Correspondence Courses

If you enroll in a correspondence course while you are incarcerated, you will be responsible for getting all of the required textbooks and materials yourself. You may also be responsible for finding a "proctor" at your institution to administer any midterm or final exams. A proctor is someone who watches over you while you take your exam to make sure that you are the one actually taking the exam, and that you do not cheat.

If you're formerly incarcerated:

- See Appendix D, PG. 898 for a list of schools known to offer correspondence courses;
- Check your local public library for information on schools that offer correspondence courses;
- Visit your local America's Job Centers of California and ask about correspondence programs.

[2890] U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012).

NOTE: Once you have returned to the community, you will have access to more resources, including the Internet, than when you were incarcerated. We recommend that you take advantage of interactive Distance Education programs or traditional face-to-face programs, as these tend to offer a richer and more integrated educational experience than correspondence courses.

HELPFUL HINT
Paying for Correspondence Course

You may be eligible to receive financial aid to pay for your correspondence study, but it depends on the school you are taking courses through. Because of federal regulations, schools that offer primarily correspondence courses are not eligible to participate in federal financial aid programs. If more than 50% of the courses the institution offers are correspondence courses, or more than 50% of the students enrolled are taking correspondence courses, then the school is not eligible for federal financial aid. Additionally, a school is not eligible if more than 25% of its students are incarcerated.[2891] (For more information on financial aid, see Paying For Your Education, PG. 881.)

GRADUATE ACADEMIC AND PROFESSIONAL DEGREE PROGRAMS

These degrees are offered at four-year colleges and universities and at graduate academic and professional schools. You must have a Bachelor's degree before you can move on to pursue a graduate academic or professional degree. Students studying to earn one of these degrees must take highly advanced and specialized courses in a specific academic or professional field. It generally takes two years of full-time study for a *master's degree*, and three to four years of full-time study for a *doctorate degree*.

- Graduate **academic** degree programs require advanced study in an academic field. They emphasize theory, as opposed to practical application, with the goal of contributing to the body of knowledge on a subject. Master of Arts (M.A.) and Doctor of Philosophy (Ph.D.) are examples of graduate academic degrees.
- Graduate **professional** degree programs require advanced study in a professional or vocational field. They emphasize the practical application of knowledge to a professional practice, and are usually required in order to get a license to work in that profession.[2892] Master of Engineering (M.E.) and Doctor of Medicine (M.D.) are examples of graduate professional degrees.

WHERE CAN I FIND INFORMATION ABOUT GRADUATE PROGRAMS?

Your local public library should have various books and guides about graduate academic and professional schools and the programs they offer. These are also available from most book-sellers. You can also contact the alumni services center of the college where you got your undergraduate degree for information and help on searching for and applying to graduate academic and professional schools.

[2891] 34 C.F.R. § 600.2.
[2892] U.S. Dep't of Educ. Office of Vocational and Adult Educ., Take Charge of Your Future: Get the Education and Training You Need (2012); *see also* Quick Guide: Your College Degree Options, College Board, www.bigfuture.collegeboard.org/find-colleges/college-101/quick-guide-your-college-degree-options.

V. PAYING FOR YOUR EDUCATION

HOW WILL I PAY FOR MY EDUCATION?

Here are some things to consider:

- How much money will it take to reach your goals?
- What are the various costs involved, and how can you reduce them?
- What extra challenges might you face because of your criminal history, and how can you address them?
- This chapter will help you think practically about these questions. As the following sections explain, even if you have limited resources, there are ways you can reduce your costs and get help covering your educational expenses.

WHAT IS FINANCIAL AID?

"Financial aid" is the general term for any type of funding intended to help students pay for educational expenses. This is the most common way that people fund their education.

WHAT KINDS OF FINANCIAL AID ARE THERE?

There are many different types of financial aid, available from different places. The basic categories are: [2893]

- **Borrowed aid**—federal government and private loans;
- **Gift aid**—federal and state grants, waivers and scholarships;
- **Self-help aid**—federal work study, earned service benefits, other work during school;
- **Specialty aid programs**—military & veteran programs, tax benefits, community service awards, foster care youth aid, etc.[2894]

WHERE DOES FINANCIAL AID COME FROM?

The federal government, state governments, organizations, businesses, and agencies offer financial aid of one or more types. Generally, financial aid providers fall into the following broad categories: [2895]

- **The Federal Government**—Grants, loans, work-study;
- **The State (California)**—Grants, loans and loan forgiveness for residents' in-state education expenses;
- **Individual Schools or Programs**—Grants, loans, & Scholarships from the educational institution itself;
- **Nonprofit or Private Organizations**—Scholarships & awards based on many factors, such as merit, achievements, or membership to the group or organization.

These categories of aid are discussed in detail below.

FEDERAL STUDENT AID

WHAT KINDS OF FEDERAL STUDENT AID MIGHT BE AVAILABLE TO ME?

Federal student aid is probably the most common type of financial aid that people rely on to help them pay for school. Most federal student aid is offered through the Department of Education.[2896] (For detailed information on federal student aid, visit the Federal Student Aid website at: https://studentaid.ed.gov/.) Federal student aid includes:

Federal Grants—Grants do not have to be repaid unless 1) you drop out of school, or 2) your GPA falls below a certain minimum (usually specified in the grant).

- **Federal Pell Grant**—This is the largest grant program available in the United States. Grants are awarded based on financial need.
- **Federal Supplemental Educational Opportunity Grant (FSEOG)**—This grant is a supplement to the Pell Grant. It is reserved only for those students who already received a Pell Grant, but need more aid. The government gives a set amount of money to the schools that want to participate in the program, and the schools then give this grant to the students who have the most financial need. You must have been offered a Pell Grant to be eligible for this grant.[2897]

Federal Loans—These are loans made to you by the federal government. They usually have lower interest rates and more flexible repayment options than regular loans. The amount you are allowed to borrow depends on the

[2893] Paying for College: Strategies to Afford Higher Education Today, OCCUPATIONAL OUTLOOK QUARTERLY, Spring 2013.
[2894] U.S. DEP'T OF EDUC. FEDERAL STUDENT AID, https://studentaid.ed.gov/.
[2895] U.S. DEP'T OF EDUC. FEDERAL STUDENT AID, https://studentaid.ed.gov/.
[2896] U.S. DEP'T OF EDUC., http://www.ed.gov/.
[2897] U.S. DEP'T OF EDUC. FEDERAL STUDENT AID, https://studentaid.ed.gov/.



cost of the school you want to go to, your financial need, and what other aid you get. Since these are loans, you will have to pay the money back!

- **Direct Loan**—The U.S. DEP'T OF EDUC. lends you the money directly.
- **Federal Perkins Loan**—A school-based loan program where the school lends you money if you show exceptional financial need.[2898]

Federal Work-Study—Work-study allows you to earn money through part-time employment (on or off campus) while you are in school. If you are awarded work-study aid, you are guaranteed to earn a certain amount of work-study funds as long as you have a work-study approved job (however, you cannot earn more than that amount).[2899]

Other federal student aid programs outside of the Department of Education include:

- Aid for serving in the military or for being the spouse or child of a veteran;
- Tax benefits for education;
- Education Award for community service with AmeriCorps;
- Education and Training Vouchers for current and former foster care youth;
- Scholarships and loan repayment through the Department of Health and Human Services;
- Indian Health Service;
- National Institutes of Health;
- National Health Services Corp.[2900]

WILL MY CRIMINAL HISTORY AFFECT MY ABILITY TO GET FEDERAL STUDENT AID?

Maybe. It depends on the circumstances of your offense, the type of aid you are applying for, and your incarceration status.[2901] The following is a summary of the possible implications of a criminal record on your federal student aid eligibility.

Drug Convictions:

If you were convicted of possession or sale of a controlled substance (felony or misdemeanor) while you were already receiving federal student aid, you will be ineligible to receive federal student aid funds for a specified period of time.[2902] The length of time you are ineligible depends on the type and number these convictions you have, and whether or not you have fulfilled any rehabilitation requirements.[2903] (For detailed information on federal student aid and drug convictions, see Appendix E, PG. 905.)

Sex Offense Convictions:

If you have been convicted of a forcible or non-forcible sex offense and you are subject to an involuntary civil commitment after your incarceration for that offense, you are ineligible to receive a Federal Pell Grant.[2904] However, you are still eligible for other types of federal student aid.

Currently Incarcerated:

Unfortunately, while you are incarcerated, you are directly prohibited from getting certain kinds of federal aid (by law), and indirectly banned from some of the others (by logistics). However, once you are released, most of these restrictions are lifted and you become eligible to receive all forms of federal aid. You can even apply before your release so that your aid will be ready by the time you start school.[2905]

Selective Service:

You are not eligible for federal or state financial aid if you did not register for the Selective Service, unless you fall into one of the exceptions.[2906] See Pg. 73 to figure out whether you are (or were) required to register; how to register now (if you are between 18 and 25 years old and required to register); and how to request an excuse (in a "Status Information Letter") for not having registered before (if you are 26 or older, never registered, and do not fall into one of the exceptions).

[2898] What Types of Federal Student Loans are Available?, U.S. DEP'T OF EDUC. FEDERAL STUDENT AID, https://studentaid.ed.gov/types/loans.
[2899] Types of Aid: Work-Study Jobs, U.S. DEP'T OF EDUC. FEDERAL STUDENT AID, https://studentaid.ed.gov/types/work-study - how-much-can-i.
[2900] U.S. DEP'T OF EDUC. FEDERAL STUDENT AID, https://studentaid.ed.gov/.
[2901] 20 U.S.C. § 1091(r)(1); see also Federal Student Aid; Students With Criminal Convictions, U.S. DEP'T OF EDUC. www.studentaid.ed.gov/eligibility/criminal-convictions.
[2902] 20 U.S.C. § 1091; see also Federal Student Aid; Students With Criminal Convictions, U.S. DEP'T OF EDUC., www.studentaid.ed.gov/eligibility/criminal-convictions.
[2903] 20 U.S.C. § 1091(r)(1); see also FAFSA Facts, U.S. DEP'T OF EDUC. OFFICE OF NAT'L DRUG CONTROL POLICY, http://www.whitehouse.gov/sites/default/files/ondcp/recovery/fafsa.pdf.
[2904] 20 U.S.C. § 1070a(b)(6); see also Federal Student Aid; Students With Criminal Convictions, U.S. DEP'T OF EDUC. www.studentaid.ed.gov/eligibility/criminal-convictions.
[2905] See 20 U.S.C. § 1070a(b)(6); 20 U.S.C. § 1 091(r); see also Federal Student Aid; Students With Criminal Convictions, U.S. DEP'T OF EDUC., www.studentaid.ed.gov/eligibility/criminal-convictions.
[2906] See Benefits and Penalties, SELECTIVE SERV. SYS., https://www.sss.gov/Registration/Why-Register/Benefits-and-Penalties.

IMPORTANT: If you're incarcerated, do not fill out the FAFSA unless you know you are going to be released in time to attend school *that same year*. FAFSA information is only good for one year. (Everyone who applies for federal student aid must complete a new FAFSA every year.)

On Parole or Probation

You are free to apply for all forms of federal student aid, including those you couldn't get while you were incarcerated. However, the drug and sex offense restrictions still apply (see above).[2907]

CAN I GET FEDERAL STUDENT AID WHILE I'M INCARCERATED?

It depends on what institution you are in, and what it offers,[2908] so keep reading this section to better understand your eligibility for federal grants and federal loans. Most of the educational programs available to you while you are incarcerated are either free or do not qualify for financial aid in the first place. But remember, while you cannot *receive* most financial aid while you are incarcerated, you can still *apply* for financial aid so that the money is waiting for you when you get out.[2909]

AM I ELIGIBLE FOR FEDERAL *GRANTS* WHILE I'M INCARCERATED?

Maybe, It depends on *where* you are confined.[2910] In 2015, the U.S. Department of Education (U.S. DOE) launched a new federal program called the "*Second Chance Pell Pilot Program,"* which allows some incarcerated people to receive federal Pell Grants to cover many of the costs of college (tuition, fees, books, and supplies) while incarcerated.[2911] Before this announcement, currently incarcerated people in state and federal facilities were NOT able to receive Federal Pell Grants.

The "Second Chance Pilot Pell Program" focuses on those who are eligible for release, especially students who are likely to be released within five years of getting their college education. The program is available only at certain state and federal correctional facilities that have applied to participate. More than 100 correctional facilities across the country are currently participating in the program, in partnership with 67 colleges and universities.[2912] As of the publishing of this guide, the following California institutions are participating: California State Prison, Los Angeles County; California Institution for Women; Sierra Conservation Camp; and Richard J. Donovan Correctional Facility.[2913] BUT NOTE: If you are committed to a juvenile detention facility, and you otherwise meet the requirements, you ARE eligible for a federal Pell Grant.

NOTE: In order to be eligible for the Federal Supplemental Educational Opportunity Grant (FSEOG) you must have already received a Pell Grant. Therefore, if your institution does not offer one of the "Second Chance Pilot Pell Grants" because you are incarcerated, then by default, you are also not eligible for a FSEOG.

AM I ELIGIBLE FOR FEDERAL *STUDENT LOANS* WHILE I AM INCARCERATED?

It depends where you are incarcerated. Anyone who is considered "incarcerated" in a federal or state facility cannot receive federal student loans.[2914]

Unfortunately, here, **you are considered "incarcerated"** if you are serving a sentence in a penitentiary, prison, jail, reformatory, work farm, or similar correctional institution, whether it is operated by the government or a private contractor. You are also considered to be incarcerated if you have been committed to a juvenile detention facility.

You are NOT considered incarcerated if you are in a halfway house, on home detention, sentenced to serve only on weekends, or if you are confined while your case is still pending (such as while you are awaiting trial).

[2907] Federal Student Aid; Students With Criminal Convictions, U.S. DEP'T OF EDUC. www.studentaid.ed.gov/eligibility/criminal-convictions.
[2908] U.S. Dep't of Educ. Fed. Student Aid Office, Federal Student Aid Eligibility for Students Confined in Adult Correctional and Juvenile Justice Facilities (Dec. 2014), https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf.
[2909] See 20 U.S.C. § 1070a(b)(6); 20 U.S.C. § 1091(r). See also Federal Student Aid; Students With Criminal Convictions, U.S. DEP'T OF EDUC., www.studentaid.ed.gov/eligibility/criminal-convictions.
[2910] U.S. Dep't of Educ. Fed. Student Aid Office, Federal Student Aid Eligibility for Students Confined in Adult Correctional and Juvenile Justice Facilities (Dec. 2014), https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf.
[2911] The Pell Grants can only be used to pay for tuition, fees, books and supplies required by education program. Incarcerated individuals will not be eligible to receive other types of Federal student aid under this pilot program. See U.S. DEPARTMENT OF EDUCATION, "U.S. Department of Education Launches Second Chance Pell Pilot Program for Incarcerated Individuals," (Jul. 31. 2015), http://www.ed.gov/news/press-releases/us-department-education-launches-second-chance-pell-pilot-program-incarcerated-individuals.
[2912] U.S. Dep't of Educ., 12,000 Incarcerated Students to Enroll in Post-Secondary Educational and Training Programs Through Education Department's New Second Chance Pell Pilot Program (Jun. 2016), https://www.ed.gov/news/press-releases/12000-incarcerated-students-enroll-postsecondary-educational-and-training-programs-through-education-departments-new-second-chance-pell-pilot-program.
[2913] U.S. Dep't of Educ., Institutions selected for participation in the Second Chance Pell experiment in the 2016-2017 award year, https://www2.ed.gov/documents/press-releases/second-chance-pell-institutions.pdf.
[2915] U.S. Dep't of Educ. Fed. Student Aid Office, Federal Student Aid Eligibility for Students Confined in Adult Correctional and Juvenile Justice Facilities (Dec. 2014), https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf.

THE FOLLOWING CHART SUMMARIZES WHETHER OR NOT YOU CAN RECEIVE FEDERAL STUDENT GRANTS AND/OR FEDERAL STUDENT LOANS WHILE YOU ARE INCARCERATED.

IF YOU ARE IN A FEDERAL OR STATE INSTITUTION:	• Generally speaking, you CANNOT get a Federal Pell Grant or federal student loans while incarcerated, unless your institution participates in the "Second Chance Pell Pilot Program" (see below). But it depends on *where* you are confined.[2915] ○ As of September 2015, under a new federal program by the U.S. Department of Education (U.S. DOE) called the "*Second Chance Pell Pilot Program,*" you MAY be able to receive federal Pell Grants to cover many of the costs of college (tuition, fees, books, and supplies) while incarcerated.[2916] Before this announcement, currently incarcerated people in state and federal facilities were NOT able to receive Federal Pell Grants. • You can get a Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS), but it is unlikely unless your institution is one of the state or federal facilities that is approved for the "Second Chance Pell Pilot Program." This is because priority for FSEOGs must be given to those students who also will receive a Federal Pell Grant (for which most incarcerated people still will not be eligible), and because the logistical difficulties of performing an FWS job while incarcerated would likely be too great for you to be awarded FWS funds.
IF YOU ARE IN AN INSTITUTION *OTHER THAN* A FEDERAL OR STATE ONE:	• You CANNOT get federal student loans. • You can get a Federal Pell Grant. • You can get FSEOG and FWS, but you probably won't because schools are limited in the amount of FSEOG funds available, and because the logistical difficulties of performing an FWS job while incarcerated would likely be too great for you to be awarded FWS funds.

Once you're released, most eligibility limitations will be removed. In fact, you may apply for aid before you're released so your aid is processed in time for you to start school. However, if your incarceration was for a drug-related offense or if you are subject to an involuntary civil commitment for a sexual offense, your eligibility may be limited.

REMEMBER: Even though you are not eligible to receive federal student loans while you are incarcerated, you can still apply for them so that your application can be processed and they will be available in time for you to start school once you are released.[2917] (For information on applying for federal student aid, see PG. 885. The application process is the same whether you are incarcerated or not.)

IMPORTANT: If you're incarcerated, you should not fill out the FAFSA unless you know you are going to be released in time to attend school *that year*. FAFSA information is only good for one year. Everyone who applies for federal student aid must complete a new FAFSA every year. This means that if you were receiving federal financial aid before you were incarcerated, you will likely need to reapply, unless you will be released before that school year ends.

AM I ELIGIBLE FOR FEDERAL *WORK-STUDY (FWS)* WHILE I AM INCARCERATED?

Technically, yes, but in reality, no. While you are technically eligible for FWS while you are incarcerated, logistics alone will likely prevent you from being awarded this type of aid. It is difficult, if not impossible, for you to perform a FWS job while incarcerated. [2918]

CAN I GET FEDERAL STUDENT AID WHILE I AM ON PAROLE OR PROBATION?

Once you are released, you become fully eligible for federal student aid again. Your status on parole, probation, or under any other type of supervision does not affect your eligibility. However, any general restrictions based on your conviction history (drug/sex offenses) still apply.[2919]

[2915] U.S. Dep't of Educ. Fed. Student Aid Office, Federal Student Aid Eligibility for Students Confined in Adult Correctional and Juvenile Justice Facilities (Dec. 2014), https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf.
[2916] The Pell Grants can only be used to pay for tuition, fees, books and supplies required by education program. Incarcerated individuals will not be eligible to receive other types of Federal student aid under this pilot program. See U.S. DEPARTMENT OF EDUCATION, "U.S. Department of Education Launches Second Chance Pell Pilot Program for Incarcerated Individuals," (Jul. 31. 2015), http://www.ed.gov/news/press-releases/us-department-education-launches-second-chance-pell-pilot-program-incarcerated-individuals.
[2917] U.S. Dep't of Educ. Fed. Student Aid Office, Federal Student Aid Eligibility for Students Confined in Adult Correctional and Juvenile Justice Facilities (Dec. 2014), https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf.
[2918] U.S. Dep't of Educ. Fed. Student Aid Office, Federal Student Aid Eligibility for Students Confined in Adult Correctional and Juvenile Justice Facilities (Dec. 2014), https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf.

CAN I GET FEDERAL STUDENT AID WHILE I LIVE IN SUBSIDIZED HOUSING?

Probably not. For one thing, the federal government limits ALL students' ability to receive section 8 housing unless they meet certain exceptions, such as having a disability or living with parents who are otherwise eligible for public housing. [2920] In addition, financial assistance — including federal student aid — that exceeds the cost of tuition is considered income for purposes of evaluating a person's eligibility for subsidized housing.[2921] The amount of aid you receive may place you outside of the income bracket necessary for section 8 homes.

HOW DO I APPLY FOR FEDERAL STUDENT AID?

Everyone who applies for federal student financial aid must start by filling out the Free Application for Student Aid (FAFSA). Not only does the FAFSA give you access to federal student aid (the largest source of financial aid), but most states and individual schools also use the FAFSA to determine what state or school-based financial aid you may be eligible for.

- If you have internet access, you can fill out the FAFSA online at: https://studentaid.ed.gov/;
- If you want to fill out the paper version, you can get the form from most local public libraries or from the financial aid office of the school you want to attend. (There is a sample version of the 2015-2016 FAFSA provided in Appendix F, PG. 906);
- You can also call the Federal Student Aid Information Center (FSAIC): 1 (800) 4-FED-AID (1-800-433-3243) to request a copy

WHAT INFORMATION WILL I NEED TO FILL OUT THE FAFSA?

The FAFSA asks you for personal information such as your name, date of birth, and address, as well as for information about your financial situation. Some of the information and documents you may need are:[2922]

- Your social security number;
- Your driver license number (if you have one);
- Your Alien Registration number if you are not a U.S. citizen (For a full list of eligible noncitizens, visit https://fafsa.ed.gov/help/fotw15a.htm, and learn more on PG. 1119);
- Federal tax information or tax returns including IRS W-2 information;
- Records of any untaxed income, such as child support received, interest income, and veterans non-education benefits that you received in the last year;
- Information on cash; savings and checking account balances; investments, including stocks and bonds and real estate (but not the home you live in); and business and farm assets.

WHEN SHOULD I APPLY FOR FEDERAL FINANCIAL AID?

The FAFSA must be filled out at the beginning of the year in which you intend to start school. It becomes available on January 1, and although technically there is no deadline, try to fill it out as soon as possible after that date. Each state and every individual school has its own deadline by which it must receive FAFSA information in order to include federal funds in the financial aid package that it offers you.

IMPORTANT: If you're incarcerated, you should not fill out the FAFSA unless you know you are going to be released in time to attend school *that year*. FAFSA information is only good for one year. (Everyone applying for federal student aid must complete a new FAFSA yearly.)

I ALREADY HAVE STUDENT LOANS, CAN MY STUDENT LOANS BE DEFERRED WHILE I AM INCARCERATED?

Yes, you can have your loans deferred, but you must apply for a deferment. Deferment is a process that permits your to temporarily put your loan payments on hold for up to three years, depending on your loan provider and circumstances.

- If you have: Federal Perkins Loans then contact the school that made your loan or the school's servicing agent.

WHAT IS THE DIFFERENCE BETWEEN FOREBEARANCE AND DEFERMENT?

A forebearance is a request to stop payments completely for a year. All people whose loan payments are equal to or greater than 20 percent of their monthly income qualify for a forebearance. This means incarcerated individuals would likely qualify automatically.

Deferment is similar to forebearance in that it stops payments for a year. Unlike forebearance, the loan continues to accrue interest during that period, which makes it more expensive in the longrun. Either option is better than defaulting.

[2919] U.S. DEP'T of Educ. Fed. Student Aid Office, Federal Student Aid Eligibility for Students Confined in Adult Correctional and Juvenile Justice Facilities (Dec. 2014), https://studentaid.ed.gov/sites/default/files/aid-info-for-incarcerated-individuals.pdf.
[2920] FR-5036-F-01, "Eligibility of Students for Assisted Housing under Section 8 of the U.S. Housing Act of 1934.
[2921] FR-5036-F-01, "Eligibility of Students for Assisted Housing under Section 8 of the U.S. Housing Act of 1934.
[2922] Filling Out the FAFSA, U.S. DEP'T OF EDUC. FEDERAL STUDENT AID, https://studentaid.ed.gov/fafsa/filling-out - documents.



- If you have: Direct Loans or Direct PLUS Loans then contact the Direct Loan Servicing Center at 1-800-848-0979 or online at www.dl.ed.gov.
- If you have FFEL Loans (includes FFEL PLUS Loans) then contact the lender or agency holding your loan. For the phone number of the agency in your state, contact FSAIC at 1-800-4-FED-AID.[2923]

If you cannot get in touch with your student loan provider, you can ask a trusted person on the outside to send you the necessary forms for deferment from your loan provider. Ask the prison staff for proof of your incarceration so you can provide that to the loan providers along with the other paperwork.

NOTE: If you took out student loans so that you could attend WyoTech, Everest College, or Heald College, you may be able to discharge any associated student loan debt. Following the closure of all 28 Heald, Everest, and WyoTech campuses in California, the Departent of Education created a expedited process for former students of these schools to discharge their debt based on defense to repayment. For more information, go to https://oag.ca.gov/corinthian.

I WAS RECEIVING FEDERAL FINANCIAL AID WHEN I WAS INCARCERATED, MY LOANS WENT INTO DEFAULT. WHAT CAN I DO?

Start by calling your federal loan provider. A representative may be able to talk through your options. Most likely, you will have to rehabilitate your loan, which requires you to make nine consecutive monthly payments.[2924] If you are currently incarcerated, that payment may be as low as $5.[2925]

Once you have successfully rehabilitated your loan, you can apply for an income-driven repayment plan, which lets you pay off your loans using a portion of your income. If you are currently incarcerated, you may not have any monthly payments at all.[2926]

CALIFORNIA STATE STUDENT AID

WHAT KINDS OF STATE-BASED STUDENT AID MIGHT BE AVAILABLE TO ME?

- **Cal Grant**—This is a group of several grants awarded by the California Student Aid Commission. They are based on financial need, GPA, and educational objectives. Cal Grants are the largest source of California state funded student financial aid.[2927]
- **California Community Colleges Board of Governor's Fee Waiver**—This program waives the $46-per-credit-unit enrollment fee that all California community colleges charge.
- **Chafee Grant**—This is a special financial aid grant for people who are or were in foster care. For more information on this grant, visit the California Student Aid Commission website at: https://www.chafee.csac.ca.gov/default.aspx.
- **California Dream Act**—This allows eligible undocumented and nonresident documented students apply for and receive private scholarships funded through public universities, state-administered financial aid, university grants, community college fee waivers, and Cal Grants. For more information, visit the California Student Aid Commission website at: http://www.csac.ca.gov/dream_act.asp.

CAL GRANTS

The Cal Grant program is the largest source of student financial aid in California. If you are a California graduating high school student, a recent graduate, or you just got your GED, and you meet academic, financial and eligibility requirements, then you may qualify for a Cal Grant for college or career/technical school.

AM I ELIGIBLE FOR A CAL GRANT?

There are several grants offered within the Cal Grant program, and each has its own specific requirements, but there are some general requirements that they all share. For example, you must:

- Submit the FAFSA or California Dream Act Application at http://www.csac.ca.gov/dream_act.asp and your current GPA;
- Be a U.S. citizen or eligible noncitizen or meet California Dream Act criteria;
- Be a California resident or meet California Dream Act criteria;

[2923] US Federal Student Aid Office, "Frequently Asked Questions ABOUT FEDERAL STUDENT AID from Incarcerated Individuals" (available at http://www.ceanational.org/PDFs/FAQ%20Incarcerated%20Individuals%20FINAL%2011.26.07.pdf).
[2924] Fed. Interagency Reetry Council, Reentry MythBuster on Repaying Federal Student Loans White Incarcerated, https://www2.ed.gov/students/prep/juvenile-justice-transition/repaying-loans-while-incarcerated.pdf.
[2925] 34 C.F.R. § 682.405.
[2926] 20 C.F.R. § 1098E.
[2927] CAL. STUDENT AID COMM'N, http://www.csac.ca.gov/.

- Attend a qualifying California college and be enrolled at least half time;
- Have financial need based on your income and college costs;
- Maintain a minimum GPA.[2928]

NOTE: If you don't have a GPA to submit, the California Student Aid Commission will use your GED, ACT or SAT test scores instead to determine if you qualify for a Cal Grant.[2929]

For more information on Cal Grants, visit the California Student Aid Commission's Cal Grants website at: www.calgrants.org, or Appendix G, PG. 917. You can also call the Commission at (888) 224-7268 or write to: California Student Aid Commission, Attn: Cal Grants, P.O. Box 419026, Rancho Cordova, CA 95741-9026.

CALIFORNIA COLLEGE PROMISE GRANT (FORMERLY THE BOARD OF GOVERNOR'S FEE WAIVER): FREE ENROLLMENT FOR LOW-INCOME STUDENTS TO CALIFORNIA COMMUNITY COLLEGES

The California College Promise Grant removes enrollment fees for qualified low-income students applying to California's Community Colleges. If you qualify for this grant, you can go to community college for free (NOTE: you will still have to pay for other education expenses, such as books and supplies). If you are taking a correspondence course through a California Community College while you are incarcerated, you may qualify for this grant—keep reading to learn more.

HOW DO I KNOW IF I QUALIFY FOR THE CALIFORNIA COLLEGE PROMISE GRANT?[2930]

First, to qualify for the the California College Promise Grant, you must be a California resident. If you are a CA resident, you must also qualify based on one of several other criteria, for example, if you receive government benefits or fall into an eligible income bracket. (For a full list of California College Promise Grant qualifications, see Appendix H, PG. 918; for a 2018-2019 California College Promise Grant Application, see Appendix I, PG. 919.)

WILL MY CRIMINAL HISTORY DISQUALIFY ME FROM STATE-BASED STUDENT AID?

Maybe. If you are still incarcerated, you are disqualified from receiving any type of Cal Grant financial aid.[2931] Additionally, certain drug convictions may make you ineligible for a California College Promise Grant (formerly known as the Board of Governors Fee Waiver[2932]).

HOW DO I APPLY FOR STATE-BASED STUDENT AID?

In order to apply for California-based financial aid, you will need to fill out either the FAFSA (see above) or the California Dream Act application, and submit your certified GPA to the Student Aid Commission. For detailed instructions on how to apply for state-based financial aid in California, visit the California Student Aid Commission website at: http://consumerfinance.gov/, or speak to a counselor in your school's financial aid office.

NOTE ABOUT CHANGE IN LAW FOR TANF/CALWORKS:

If you were qualified for TANF/Calworks but found ineligible because of a drug conviction, your criminal history would have previously disqualified you from the CA College Promis Grant program (see PUBLIC BENEFITS CHAPTER, PG. 449, for details about TANF/CalWORKS eligibility). However, this law changed on April 1, 2015. After that date, your conviction history no longer makes you ineligible for TANF/CalWORKS benefits, so you may be able to qualify for program now.

SCHOOL-BASED FINANCIAL AID

WHAT KINDS OF SCHOOL-BASED AID MIGHT BE AVAILABLE TO ME?

Many colleges and universities have their own financial aid programs and may offer scholarships, grants, loans, or work-study programs directly. Eligibility for school-based aid programs can be based on financial need, merit, or a variety of other qualifications. You should contact the financial aid offices of the schools you are interested in to find out what financial aid might be available from the individual schools. Some schools have more financial aid funding available and may be able to offer you a more substantial award. This may be an important factor in your decision about which school you want to attend.

[2928] CalGrants: Who Qualifies, CAL. STUDENT AID COMM'N, http://www.calgrants.org/index.cfm?navId=12.
[2929] CalGrants: Who Qualifies, CAL. STUDENT AID COMM'N, http://www.calgrants.org/index.cfm?navId=12.
[2930] CAL. CODE REGS. tit. 5, § 58620; see also Board of Governor's Fee Waiver, COAST COLLS., http://www.cccd.edu/students/financial-aid/PG.s/Board-of-Governors-Fee-Waiver-%28BOGFW%29.aspx.
[2931] Cal. Educ. Code § 69433.9.
[2932] Sept. 19, 2017 Cal Community Colleges press release announcing changes to the BOGFW program, including name change: http://www.californiacommunitycolleges.cccco.edu/Portals/0/DocDownloads/PressReleases/SEPT2017/PR-BOG-Fee-Waiver-Name-Change-09-19-2017.pdf

WILL MY CRIMINAL HISTORY DISQUALIFY ME FROM SCHOOL-BASED AID?

Again, policies for receiving school-based financial aid vary by school. Each school has its own requirements for the different types of aid it offers. Remember, even if your criminal history disqualifies you for some types of aid, you may still be eligible for others, so it is important to ask.

SCHOLARSHIPS

WHAT KINDS OF SCHOLARSHIPS MIGHT BE AVAILABLE TO ME?

Many private organizations offer scholarships, usually to students meeting certain qualifications or having certain characteristics. Such scholarships may be need-based or merit-based (e.g., requiring high GPA or test scores). They may also be based on cultural, religious, ethnic, racial, national identity, political, religious, or other beliefs, or based on your chosen academic or career field.

HOW DO I FIND AND APPLY FOR SCHOLARSHIPS?

The best place to start is the financial aid office at the school you plan on attending. The financial aid counselors on staff can help you search for scholarships that you may qualify for.

Other resources for information on scholarships include:

- Catalogs, such as Scholarships, Fellowships, and Loans and Peterson's Scholarships and Loans for Adult Learners, which can be found at your public library.
- The following websites offer information on many types of scholarships:
  - U.S. DEP'T OF EDUC.: https://studentaid.ed.gov
  - College Board: https://bigfuture.collegeboard.org
  - CollegeNet: http://www.collegenet.com
  - CollegeToolkit.com: http://www.collegetoolkit.com
  - Fastweb: http://www.fastweb.com
  - FinAid: http://www.finaid.org
  - Go College: http://www.gocollege.com
  - Sallie Mae Scholarship Service: http://www.salliemae.com
  - Scholarships.com: https://www.scholarships.com

NOTE ON SCHOLARSHIPS: Be creative when you search for scholarships. They are awarded for all kinds of reasons and can be based on almost any criteria. Often funders do not even advertise that they offer them. You may even find scholarships specifically targeted at helping currently and formerly incarcerated people pursue higher education![2933]

WILL MY CRIMINAL HISTORY DISQUALIFY ME FROM SCHOLARSHIPS?

Not necessarily. Most scholarship applications do not ask for criminal history information. So, as long as you qualify for the scholarship otherwise, your criminal record should not be a factor in whether or not you can get it. If a scholarship application does ask for your criminal history, there's usually no harm in applying anyway, and it won't affect any other scholarships you apply for

VI. CONCLUSION

Getting an education is probably the single-most important gift you can give yourself. It will open doors for you and help secure a future that is stable and rewarding—both financially and personally. In this chapter, we hope you learned practical steps that can help you along your educational path. We hope that we have inspired you to step onto that path with confidence and enthusiasm!

[2933] For example, an organization called the Transcending Through Education Foundation (TTF) in Rhode Island offers $1,000 scholarships for people who are currently incarcerated or recently released from Rhode Island DEP'T of Corrections facilities to pursue a higher education degree. See TRANSCENDING THROUGH EDUC., Incarcerated Students Encouraged to Apply for TTEF's College Scholarship, http://transcendingthrougheducation.wordpress.com.

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APPENDIX K. Ideas on Where to Go for Support from Root & Rebound's Toolkit: My Education, My Freedom– PG. 924

APPENDIX A

List of community service organizations offering programs to improve reading and writing skills around California

Alameda County Library Reading for Life / Jail Tutoring Program
2450 Stevenson Blvd.
Fremont, CA 94538
(510) 745-1486
https://jailtutoring.wordpress.com/volunteer/contact-us/

Inside Out Writers
1212 N. Vermont Avenue, 2nd Floor
Los Angeles, CA 90029
PHONE (323) 660-1866
http://www.insideoutwriters.org
* Writing program for youth and young adults during and following their incarceration.

Literacy Services, City of Woodland
2001 East Street
Woodland, CA 95776
530 661-2000
http://www.cityofwoodland.org/gov/depts/library/literacy/

Marin Literacy Program/ Inmate Literacy Services (ILS)
P.O. Box 151080
San Rafael, CA 94915-1080
(415) 537-0523

Model Local Program
Contra Costa County Office of Education
1000 Ward Street
Martinez, CA 94553
415-646-2201

Project Read, San Mateo County
1044 Middlefield Rd.
Redwood City, CA 94063
(650) 780-7077

READ/OC's Working for Inmate Literacy Now (WIN)
1501 E. St. Andrew Pl.
Santa Ana, CA 92705
(714) 566-3070
readoc@occr.ocgov.com

Service League of San Mateo County
727 Middlefield Road
Redwood City, CA 94063
Phone: (650)364-4664
http://www.serviceleague.org/home.html

Sonoma County Library
Adult Literacy Program
725 Third Street
Santa Rosa, CA 95404
(707) 544-2622

Write 2 Read: Youth Literacy at Juvenile Hall
Alameda County Library
Extension Services
2450 Stevenson Blvd.
Fremont, CA 94538-2326
acheney@aclibrary.org
510-557-0643
http://juviewrite2read.aclibrary.org/

APPENDIX B

List of Organizations that Provide GED Materials to Currently Incarcerated People

NOTE: Some facilities only accept brand new books by mail, sent directly from a bookstore or publisher. Because many of the organizations listed below send used books, you should double check your facility's policy before requesting GED materials.

Appalachian Prison Book Project
P.O. Box 601
Morgantown, WV 26507
http://aprisonbookproject.wordpress.com
Serving: KY, MD, OH, TN, VA, WV

Arizona Read Between the Bars
c/o Daily Planet Publishing
P.O. Box 1589
Tucson, AZ, 85702-1589
http://www.readbetweenthebars.org/index.php
Serving: AZ

Asheville Prison Book Program
67 N Lexington Ave
Asheville, NC 28801
http://www.main.nc.us/prisonbooks
Serving: NC, SC and TN

Books for Prisoners San Diego
c/o Groundwork Books
0323 Student Center La Jolla, CA 92037
http://booksforprisonersucsd.wordpress.com
Serving: All U.S. states

Books 2 Prisoners
1631 Elysian Fields #117
New Orleans, LA 70117
books2prisoners@riseup.net
Free books to prisoners in Southeast states.

Books Through Bars
4722 Baltimore Ave.
Philadelphia, PA 19143
215-727-8170
www.booksthroughbars.org
Sends progressive political and educational materials for free to jails in the mid-Atlantic region (PA, NJ, NY, DE, MD, VA, WV). Donates books directly to county jail libraries but does not accept individual requests. Request books by topic. No catalog. Donations including artwork and stamps greatly appreciated.

Books Through Bars - NYC
c/o Bluestockings
172 Allen St
New York, NY 10002
www.abcnorio.org/affiliated/btb.html
Ships to prisoners nationwide. Specializes in political and history books. Also sends literary fiction and other educational books. Does not send religious literature. Donations of stamps and cash are appreciated. Money orders should be made to the groups' fiscal sponsor, ABC No Rio.

Books Thru Bars Of Ithaca
C/o Autumn Leaves Used Books
115 The Commons
Ithaca, NY 14850
www.booksthrubars.org
Free books to inmates in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware and Maryland.

Books To Prisoners
C/o Left Bank Books
92 Pike St., Box A
Seattle, WA 98101
www.bookstoprisoners.net
The longest running project of its kind. Free books to prisoners Nationwide. Request by subject, no religious materials or legal materials. donations appreciated. Special Note - Does not ship to prisons that require all books sent to be new.

Chicago Books To Women In Prison
c/o RFUMC
4511 N. Hermitage Ave.
Chicago, IL 60640
www.chicagobwp.org
Free books to women prisoners in Arizona, California, Connecticut, Florida, Illinois, Indiana, Kentucky, Mississippi and Ohio.

Dc Prisons Book Project
P.O. Box 5243
Hyattsville, MD 20782
www.quixote.org/ej/bookstoprisons/
Free books to prisoners nationwide.

Gainesville Books For Prisoners
P.O. Box 12164
Gainesville, FL 32604

http://waywardcouncil.biz.ht
Covers prisoners nationwide. Accepts Requests by topic of interest only.

Inside Books Project
C/o 12th St. Books
827 West 12th Street
Austin, TX 78701
www.insidebooksproject.com
Sends free books and literature to prisoners in Texas only. Send a request for resource list and newsletter. Accepts artwork donations for their yearly prisoner art show.

Internationalist Prison Books Collective
Internationalist Books to Prisoners
405 W. Franklin Street
Chapel Hill, NC 27516
http://prisonbooks.info
Sends free books and literature to prisoners in North Carolina only.

Prison Book Project
C/o Food for Thought Books
P.O. Box 396
Amherst, MA 01004-0396
www.prisonbooks.org
Sends ONLY to prisoners in Texas, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Red Bird Books to Prisoners
PO Box 1291
Columbus, OH 43216
www.redbirdbookstoprisoners.com
Request topics or authors only, catalog of radical zines available upon request. No bibles. Serving: Ohio only with some exceptions.

Midwest Pages To Prisoners Project
C/o Boxcar Books
406 E. 6th St.
Bloomington, IN 47408
812-339-8710
www.boxcarbooks.org
midwestpagestoprisoners@yahoo.com
No Texas or Michigan prisoner requests.

PORTLAND BOOKS TO PRISONERS
6315 NE Rodney
Portland, OR 97211
portland.indymedia.org/en/2003/06/265772.shtml
Email: bookstooregonprisoners@gmail.com
Sends books to state and federal prisoners in all states except Oregon. Request by topic not author. No legal or religious requests.

Prison Book Program
1306 Hancock St. Suite 100
Quincy, MA 02169
617-423-3298 (NO collect calls)
www.prisonbookprogram.org/
Covers all states but CA, MA, MD, MI, PA, or TX (except Gatesville and Huntsville). Does not offer computer books, horror, romance, textbooks, true crime, or white supremacist materials. Publishes the National Prisoner Resource List free to prisoners nationwide on request.

Prison Book Project
C/o Food for Thought Books
P.O. Box 396
Amherst, MA 01004-0396
(413) 584-8975 ext. 208
www.prisonbooks.org
Serves prisoners in New England states (Maine, VT, NH, MA, CT, RI) and Texas only. Request books by topics of interest, not title. No mailing list or catalog. No hardback books.

Prison Literature Project
C/o Bound Together Bookstore
1369 Haight St.
San Francisco, CA 94117
plp.versuspress.com/plphome.htm
No Texas requests. Request types of books-not specific titles, Stamps or donations greatly appreciated.

The Prison Library Project
915-C West Foothill Blvd. PMB 128
Claremont, CA 91711
Free fiction and non-fiction books to state and federal prisoners nationwide. Priority to educational topics. Textbooks not available.
www.prisonlibraryproject.org

Women's Prison Book Project
C/o Arise Bookstore
2441 Lyndale Ave. S.
Minneapolis, MN 55405
www.prisonactivist.org/wpbp wpbp@prisonactivist.org
Ships to all states except OR, MI, CO, and WV. Free books to women prisoners only. No county jail requests. Does not ship hardback books. Free resource guide for women and transgender prisoners. Encourages women and transgender prisoners to write articles for their newsletter. Write for more details.

APPENDIX C

Policies for ACT Testing

See next page.

2016-2017 TERMS AND CONDITIONS: TESTING RULES AND POLICIES FOR THE ACT® TEST

These Terms and Conditions are an agreement between the person who will take the ACT® test ("you") and ACT, Inc. ("ACT"). They apply to every administration of the ACT test except where, and only to the extent that, you are provided with different terms or conditions by ACT, Inc. **Please read these Terms and Conditions carefully. By registering for and/or taking the ACT test, you are agreeing to these Terms and Conditions.**

By registering for and/or taking the ACT test, you represent and warrant the following to ACT: (1) the information you have provided to ACT is true; (2) you agree to be bound by, and will comply with, these Terms and Conditions and other ACT policies for the ACT test; (3) you will not engage in any prohibited behaviors; (4) you will cooperate with any test security investigation; and (5) you are not working for or on behalf of any test preparation provider(s).

Special instructions for the ACT test taken online: All references to answer sheets or answer documents in these Terms and Conditions refer to your responses on the ACT test taken online, and all references to test booklets and test-related documents include the ACT test taken online and all related test materials provided in paper or electronic form.

These Terms and Conditions do not create a third-party beneficiary relationship between ACT and any individual or entity other than you.

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Privacy Policy and Notice of Collection of Personally Identifying Information

ACT collects personally identifying information when you register for or take one of our tests. Our processing of such information, including collection, use, transfer and disclosure, is described in the ACT Privacy Policy (**www.act.org/privacy.html**).

By registering for or taking an ACT test, you provide personally identifying information to us, some of which is mandatory. If you do not provide mandatory personally identifying information, such as name, gender, address and date of birth, you may not be able to register for or take the ACT test.

We share personally identifiable information consistent with your choices. For example, we send score reports to the colleges you choose. Please note that when you send a report to a college that is part of a school system, the college may share your score with other colleges in that system. In addition, ACT provides your score report (including your photo) to your high school. In certain situations described in the Automatic Score Reporting for Scholarship Purposes section, ACT will also automatically report your scores for scholarship purposes.

When you register for or take an ACT test, you consent to the ACT Privacy Policy, which is incorporated into these *Terms and Conditions: Testing Rules and Policies for the ACT® Test* by reference, including consenting to the collection of personally identifying information and its use and disclosure as provided in the ACT Privacy Policy.

Notice to International Examinees: You are voluntarily providing personally identifying information to us. Your personally identifying information may be transferred outside of your home country to the United States to ACT or a third party service provider for processing and will be subject to use and disclosure under the laws of the United States. It may also be accessible to law enforcement and national security authorities in the United States.

Any questions about the ACT Privacy Policy or this notice should be directed to our Data Protection Official at **DPO@act.org**.

Automatic Score Reporting for Scholarship Purposes*

Some state/federal scholarship programs or education departments use ACT scores as one source of information to recognize student achievement. ACT reports test scores and other information about you for this purpose without requiring you to use one of your college choices, and at no cost to you. **If your mailing address or high school is in one of the states or other categories listed below, your test scores and other information about you will be reported automatically for consideration unless you specifically direct ACT, in writing, not to do so.**

To direct ACT **not** to automatically report your scores for scholarship purposes, send a letter postmarked by the Monday immediately after the applicable test date for which you do not want your scores reported. Address your letter to: ACT Customer Care, P.O. Box 168, Iowa City, IA 52243-0168.

NOTE: This will not affect any other uses of your scores, such as the reporting of scores to the colleges you listed or to your high school, or sending information about you to Educational Opportunity Service recipients if you opted in.

State scholarship programs**: Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Washington, West Virginia.

US Presidential Scholars Program: All states, District of Columbia, US territories, Puerto Rico, and US citizens abroad.

*This section does not apply to Residual testing.

**State scholarship program participants may change at any time, and these Terms and Conditions may not always reflect the most current information.

Photo Submission Requirement for Registration (National Testing Only)

During test registration, you must submit a photo to ACT that meets ACT photo requirements. Your photo will be used for test security purposes such as verifying your identity. ACT will place your photo on your registration ticket, provide it to test center staff, and include it on the score report that is automatically sent to your high school. You must have the right to submit the photo to ACT, either because you took it or because you have permission to submit it from the person who took it, and you agree that ACT may use your photo for all of the purposes listed in this paragraph and in ACT photo requirements. See the Photo Requirements (**www.act.org/the-act/photo-requirements.html**) page for information about providing your photo.

ACT may cancel your test registration and release your seat if you fail to provide a required photo by the deadline for that test date. If you fail to provide a required photo by the deadline, you will be subject to all test date change policies and fees. You must provide a photo by the photo deadline for the new test date. See Photo Upload Deadlines at (www.act.org/the-act/photo-requirements.html**). If you do not request a test date change, your original registration fee will not be refunded.**

NOTE: Examinees who are 12 years old or younger do not have to submit a photo for registration, but must bring acceptable identification to the test center.

Capturing Images or Voice Recordings at Test Centers

ACT may capture images and voice recordings of you at test centers. ACT may retain and analyze all such images and voice recordings for the purpose of protecting the integrity and security of the testing process.

Acceptable Identification

Unless otherwise stated in these Terms and Conditions, ACT generally requires that you show both (1) an admission ticket or a standby ticket, and (2) acceptable identification, to be admitted to a test center. You are responsible for understanding ACT requirements for **acceptable identification** (**www.act.org/the-act/taking-the-test-identification**) and having acceptable identification with you on test day. ACT policies are updated from time to time, so make sure that you check for any updates to our identification requirements before the day of testing. You should contact ACT Student Services (**www.act.org/the-act/help-contactus**) before the day of testing with any questions about acceptable identification. Test administration staff has sole discretion on test day for determining whether your identification is acceptable. If there is evidence, however, that another individual has taken the test for you, your score may be challenged and subsequently cancelled regardless of a staff decision to accept your identification and admit you to the test center.

Special Instructions for State and District testing, Special testing, Arranged testing, and Residual testing: ACT requires that you show acceptable identification on the test day, unless testing staff personally recognize you.

Test Security

In addition to any other remedies provided below or otherwise available to ACT, ACT may prohibit you from taking the ACT test, even if you have already registered, if ACT believes: (1) you may have engaged in prohibited behavior in connection with a prior administration of the ACT test, (2) you may intend to engage in prohibited behaviors in the future, (3) you may have provided false or misleading information to ACT, or (4) you may be working for test preparation providers.

A. Prohibited Behavior at the Test Center

The following behaviors are prohibited. You may be dismissed and/or your answer document may not be scored, at ACT's sole discretion, if you are found:

- Filling in or altering responses on your answer sheet or continuing to write the essay after time has been called on that test section. This means that you cannot make any changes to a test section outside of the designated time for that section, even to fix a stray mark or accidental keystroke.
- Looking back at a test section on which time has already been called.
- Looking ahead in the test booklet.
- Looking at another person's test booklet or answer document.
- Giving or receiving assistance by any means.
- Discussing or sharing test content, test form identification numbers, or answers during test administration, during breaks, or after the test.
- Using a **prohibited calculator** (**www.act.org/calculator-policy.html**).
- Using a calculator on any test section other than mathematics.
- Sharing a calculator with another person.
- Using a watch with recording, internet, or communication capabilities.
- Using any electronic device at any time during testing or during break other than an approved calculator or watch. **All** other electronic devices, including cell phones and wearable devices, must be turned off and placed out of reach from the time you are admitted to test until you are dismissed after testing concludes.
- Attempting to photograph, copy, or memorize test-related information or remove test materials, including questions or answers, from the test room in any way.
- Using highlight pens, colored pens or pencils, notes, dictionaries, or other aids.

- Using scratch paper (unless an exception applies).
    - Specific instructions will be provided on test day if ACT authorizes you to use scratch paper, including the section(s) on which ACT has authorized its use.
    - If you are permitted to use scratch paper, you may only use paper that ACT has authorized and/or provided to you.
- Not following instructions or abiding by the rules of the test center.
- Exhibiting confrontational, threatening, or unruly behavior; or violating any laws. If ACT suspects you are engaging in criminal activities, such activities will be reported to law enforcement agencies.
- Allowing an alarm to sound in the test room or creating any other disturbance.

All items brought into the test center, such as hats, purses, backpacks, cell phones, calculators, and other electronic devices may be searched at the discretion of ACT and its testing staff. ACT and its testing staff may confiscate and retain for a reasonable period of time any item suspected of having been used, or capable of being used, in violation of these prohibited behaviors. ACT may also provide such items to and permit searches by third parties in connection with an investigation conducted by ACT or others. ACT and its testing staff shall not be responsible for lost, stolen, or damaged items that you bring to a test center.

Consequences for Prohibited Behavior: ACT has sole authority for determining whether to take action regarding prohibited behavior observed or suspected on test day, and its decisions are final. **If ACT takes action due to prohibited behavior observed or suspected on test day, the individuals who engaged in the prohibited behavior will not have their answer documents scored; will forfeit their registration for that test date; and will have no right to refunds or appeals.**

B. Individual Score Reviews

If ACT discovers reason to believe your score may be invalid – such as evidence of unusual similarities in the answers of you and another examinee, evidence that you may have falsified your identity or impersonated someone else, evidence of possible advance access to test questions or answers, or other indicators the test scores may not accurately reflect your level of educational achievement – ACT may conduct an Individual Score Review. **ACT reserves the right to cancel test scores when there is reason to believe the scores are invalid**. **Proof of misconduct is not required to cancel scores.**

ACT will take steps to notify you if ACT decides to conduct an Individual Score Review. The notice includes information about why ACT has started the Individual Score Review and options available for resolving it. If the scores that are the subject of the Individual Score Review have not yet been reported by ACT, ACT reserves the right to hold those scores pending the outcome of the review process, including any appeal. More information regarding the review process will be provided to you if ACT opens an Individual Score Review regarding your score.

For Individual Score Reviews, the final and exclusive remedy available for you to appeal or otherwise challenge a decision by ACT to cancel your test score is binding arbitration. The arbitration will be conducted through written submissions to the American Arbitration Association ("AAA"), unless both you and ACT agree to submit the matter to an alternative arbitration forum. By agreeing to arbitration in accordance with these Terms and Conditions, you are waiving your right to have your dispute heard by a judge or jury. If you choose to appeal a decision by ACT to cancel your test scores by exercising your right to seek arbitration of that decision, you must pay a nonrefundable filing fee of $200 to the AAA (or alternate forum) as your share of the filing fee, and ACT will pay the remainder of the filing fee. Your share of the filing fee is payable in full when a request for arbitration is filed with the AAA, but will be reimbursed by ACT if you prevail in arbitration and your scores are not cancelled. The only issue for arbitration will be whether ACT acted reasonably and in good faith in deciding to cancel the scores. No damages may be awarded by the arbitrator and each party is responsible for its own fees and expenses, including attorneys' fees, except as otherwise expressly provided in these Terms and Conditions. No arbitration involving the outcome of an Individual Score Review may be maintained as a class action, and the arbitrator shall not have the authority to combine or aggregate the disputes of more than one individual, conduct any class proceeding, make any class award, or make an award to any person or entity not a party to the arbitration.

C. Compromises/Disruptions in the Testing Process– Limitation of Remedies

ACT takes steps that are intended to ensure that test registrations are correctly processed, tests are properly administered, tests and answer documents are properly handled and scored, and scores are properly reported. In the unlikely event there is an error or other occurrence that compromises or disrupts the testing process, ACT will examine the situation and determine whether it needs to take action, including not scoring answer documents or cancelling scores. Compromises or disruptions that could cause ACT to take action under this paragraph include, but are not limited to, errors in the registration process; errors in preparing, handling, shipping, processing, or scoring answer documents; errors in reporting scores; deviations from standard testing procedures such as events that cause testing at a test center to be cancelled or interrupted, or a mistiming on any part of the test; events or information that raise concerns about possible prohibited behavior, advance access to test content by anyone taking the test, or possible invalid scores; unusual data from a test center such as unusual similarities in the answers of people at the same test center; or any events that otherwise disrupt or compromise the testing process. If ACT determines that it needs to take action in response to any such error or disruption in the testing process, ACT will in its sole discretion (1) correct the error (if an error occurred and ACT believes correction is feasible), (2) not score answer documents or cancel scores and offer each affected person the option to retest at no additional fee (normally on a future National test date), or (3) not score answer documents or cancel scores and offer a refund. To take such action, ACT shall not be required to conduct an Individual Score Review or otherwise demonstrate that a compromise or disruption invalidated your specific score. Decisions made by ACT regarding such compromises or disruptions in the testing process are final. If ACT offers a retest and you select that option (or it is selected for you in State and District testing), you must retake all four multiple-choice tests to produce a valid Composite score. If you took the writing test on the original test date, you may also need to retake the writing test in addition to the four multiple-choice tests to produce a valid English Language Arts score.

For State and District testing: In the event of compromises/disruptions in the testing process, ACT may offer the option to retest at no additional fee or it may cancel the test event without an option for retest.

It is important that ACT ensure that reported scores are not affected by an irregularity, and that ACT inform anyone who has received a score report that the score may not accurately reflect a person's academic achievement and skills. You therefore agree that ACT may notify score recipients if there is an investigation into the validity of your reported test score and if your score is cancelled. You also agree that ACT may disclose details about a test security investigation to score recipients and to anyone who may be able to assist with an investigation conducted by ACT, such as law enforcement, state departments of education, and local school officials. You agree that ACT will have no liability for exercising any of these rights.

The remedies listed above are the exclusive remedies available for any examinee who experiences an irregularity in the testing process. In no event shall ACT be liable to an examinee for any special, indirect, consequential, exemplary, or punitive damages.

Arbitration of Disputes with ACT

All disputes – other than disputes involving "Individual Score Reviews" (described above) or infringement of ACT's intellectual property rights – that relate in any way to registering for or taking the ACT test, requesting or receiving accommodations on the ACT test, the reporting of ACT test scores or the use or disclosure of personal information by ACT, shall be resolved by a single arbitrator through binding arbitration administered by the American Arbitration Association ("AAA"), under the AAA Consumer Rules ("AAA Rules") in effect at the time a request for arbitration is filed with the AAA. Copies of the AAA Rules can be located at **www.adr.org**. No arbitration may be maintained as a class action, and the arbitrator shall not have the authority to combine or aggregate the disputes of more than one individual, conduct any class proceeding, make any class award, or make an award to any person or entity not a party to the arbitration. By agreeing to arbitration in accordance with these Terms and Conditions, you are waiving your right to have your dispute heard by a judge or jury.

Each party will be responsible for its own fees and expenses incurred in connection with the arbitration, regardless of the outcome of the arbitration, except as otherwise expressly provided in these Terms and Conditions. In no event shall ACT be liable to an examinee for any special, indirect, consequential, exemplary, or punitive damages.

NOTE: Separate procedures apply to arbitration proceedings involving Individual Score Reviews. Those procedures are discussed above, under the heading "Individual Score Reviews."

Retest Restriction

You may take the ACT no more than 12 times total. This restriction applies even if your scores from a test date are cancelled by you or by ACT.

ACT may cancel your registration, rescind your admission ticket, or take any other steps necessary to enforce this policy. If you violate this restriction, your scores will not be reported or will be cancelled and your fees will not be refunded.

In calculating the 12-test total, ACT makes exceptions for testing required by your district or your state's Department of Education and tests taken as part of an academic talent search. Other exceptions will be considered only if you submit a request via our online Retest Exception Request Form no later than the regular registration deadline for the test date you would like to be your 13th test date. Exceptions are within ACT's sole discretion.

ACT Intellectual Property Rights

All ACT tests, test-related documents and materials, and test preparation materials are copyrighted works owned by ACT and protected by the laws of the United States and other countries. Secure (*i.e.*, not made available by ACT to the general public) tests and test questions may not be copied or disclosed at any time. Test-related materials that ACT has made available to the general public, such as materials designated by ACT as sample tests, may not be copied, duplicated or used in any other works, in whole or in part, without the prior written approval of ACT. **ACT may pursue all available civil and criminal remedies if its intellectual property rights are violated, including seeking damages and injunctive relief in a court of law and referring such violations to law enforcement authorities for criminal prosecution.**

ACT owns all answers and answer sheets you submit, including all essay responses, as well as all score-related data maintained by ACT. The score reports from ACT are your property. However, score reports may not be altered by you or others so as to convey inaccurate or misleading information, and, if ACT cancels the scores reflected on such score reports, those scores may not be provided to third parties.

Changes to These Terms and Conditions

These Terms and Conditions are subject to change. ACT will provide notice of such changes by posting the revised Terms and Conditions on its website. The Terms and Conditions that are posted on ACT's website when you register to test will apply to you with respect to that test date, along with any changes that may be reflected in revised Terms and Conditions posted to ACT's website at least forty-eight hours prior to your testing date. The current version of these Terms and Conditions is available at **www.act.org/the-act/terms**, and you agree to check for revised Terms and Conditions prior to taking the ACT.

All ACT policies referenced in these Terms and Conditions, including the ACT Privacy Policy, are part of these Terms and Conditions and are binding on you, so you should review them carefully. Any questions should be directed to ACT Student Services (www.act.org/the-act/help-contactus**) in advance of registering for or taking the test.**

Accessibility of These Terms and Conditions to Disabled Individuals

If you have any difficulty accessing these Terms and Conditions because of an impairment, please contact ACT Student Services (**www.act.org/the-act/help-contactus**) in advance of registering for or taking the ACT test. ACT would be happy to provide these Terms and Conditions in an alternative format, or to assist you in some other manner as reasonably necessary to enable you to access these Terms and Conditions.

Additional Information for South Carolina Testing Program Participants Only

You are taking the ACT test as part of a contract between your state, school district, or school and ACT. To the extent there is any conflict between these Terms and Conditions or the ACT Privacy Policy and the express terms of the contract between your state, school district, or school, and ACT, the terms of that contract shall control.

APPENDIX D

Correspondence Courses Available to Incarcerated Individuals

Source: http://correctionstocollegeca.org/. If you are currently incarcerated, please contact your corrections counselor or someone in the education department for more information

Allan Hancock College (P)

Santa Maria, CA

Operating In

- Lompoc Federal Correctional Institution (federal prison)

Programs Offered

- AA in Liberal Arts (non-transfer Social and Behavioral Sciences)
- AA in Social Science
- AA in Psychology

Contacts

- Josie Cabanas
  jcabanas@hancockcollege.edu
  (805) 922-6966 ext.3266

Antelope Valley College (P)

Lancaster, CA

Operating In

- California State Prison, Los Angeles County (LAC)

Programs Offered

- AA in Business
- Certificate in "Work Keys"

Contacts

- Cathy Hart
  chart8@avc.edu

Bakersfield College - Delano Campus (P) (C)

Delano, CA

Operating In

- Kern Valley State Prison (KVSP)
- North Kern State Prison (NKSP)
- California State Prison, Corcoran (COR)
- California Substance Abuse Treatment Facility (SATF)
- Wasco State Prison (WSP)
- Delano MCCF (contract prison - City of Delano)
- Golden State MCCF (contract prison - GEO)
- McFarland Female Community Re-Entry Facility (contract prison - GEO)

Programs Offered

- IGETC General Education (except McFarland)
- Certificate of Achievement in Culinary Arts (McFarland)
- Fire Technology Courses to the Fire Brigade at Wasco State Prison
- Free on the Outside (FOTO) student club

Contacts

- Program Manager
  Chelsea Esquibias
  chelsea.esquibias@bakersfieldcollege.edu
- Faculty Member
  Bryan Hirayama
  bryan.hirayama@bakersfieldcollege.edu

Cal State LA (P) (C)

Los Angeles, CA

Operating In

- California State Prison, Los Angeles County (LAC)
- on campus

Programs Offered

- BA in Communication Studies (prison)
- Project Rebound (campus)
- Second Chance Pell Grant Site

Contacts

- Taffany Lim
  tlim@cslanet.calstatela.edu
- Kevin Gonzalez
  kgonzal9@calstatela.edu

Cerro Coso Community College (P)

Ridgecrest, CA

Operating In

- California City Correctional Facility (CAC)
- California Correctional Institution (CCI)

Programs Offered

- AA in Liberal Arts - Social & Behavioral Sciences (transferable)
- AA in Psychology (transferable)

Contacts

- Lisa Stephens
  lisa.stephens@cerrocoso.edu

Chaffey College (P) (C)

Rancho Cucamonga, CA

Operating In

- California Institution for Women (CIW)
- California Institution for Men (CIM)
- on campus

Programs Offered

- AS in General Business
- Certificate in Professional Office Skills
- Second Chance Pell Grant Site
- Pinto Club (campus)

Contacts

- Steve Lux (CIM)
  stephen.lux@chaffey.edu
- Rob Rundquist (CIW)
  robert.rundquist@chaffey.edu
- Roy Robles (Pinto Club)
  roblesroger32@yahoo.com

Coastline Community College (P) (J)

Fountain Valley, CA

Operating In

- 35 state prisons, several federal prisons, and some county jails

Programs Offered

- *Distance Correspondence:* AA's in American Studies, Arts & Humanities, Social & Behavioral Sciences, Science & Math, Business, Sociology; Certificate in Business

Contacts

- Bob Nash
  bnash@coastline.edu
  (714) 241-6223

College of the Redwoods (P) (J)

Eureka, CA

Operating In

- Pelican Bay State Prison (PBSP)
- Humboldt County Correctional Facility (jail)

Programs Offered

- ADT (prison)
- Non-credit courses in academic support, basic skills, and career readiness (jail)

Contacts

- Rory Johnson (PBSP)
  rory-johnson@redwoods.edu
- Tory Eagles (PBSP)
  tory-eagles@redwoods.edu

Columbia College (P) (C)

Sonora, CA

Operating In

- Sierra Conservation Center (SCC)
- on campus

Programs Offered

- AA in Human Services (SCC)
- CTE courses in Firefighting, Wastewater Treatment, Culinary Arts, Hospitality Management, and Business/Entrepreneurship (SCC)
- Second Chance Pell Grant Site (SCC)
- Making Alternative Transformations (campus)

Contacts

- Brandon Price (SCC) **priceb@yosemite.edu**
- Alicia Kolstad (campus) **kolstada@yosemite.edu**
- Max Burbey (campus) **Mburbey@student.yosemite.edu**

CSU Dominguez Hills (P)

Carson, CA

Operating In

- 8 state prisons, 1 federal prison

Programs Offered

- *Distance Correspondence:* Master of Arts in Humanities (HUX Program)

Contacts

- Matthew Luckett **mluckett@csudh.edu**

Cuesta College (P)

San Luis Obispo, CA

Operating In

- California Men's Colony (CMC)

Programs Offered

- ADT in Sociology
- CSU General Education
- Certificates in Addiction Studies and Customer Service Academy
- Second Chance Pell Grant Site

Contacts

- Matthew Green **mgreen@cuesta.edu**

Feather River College (P)

Quincy, CA

Operating In

- 28 state prisons (distance correspondence)
- Mule Creek State Prison (MCSP) (hybrid interactive correspondence)

Programs Offered

- *Distance Correspondence:* AA in Humanities (CSU transferable), AAT in Sociology, AA's (nontransferable) in Social and Behavioral Science and Humanities
- *Hybrid Interactive Correspondence:* Certificate in Entrepreneurial Business (MCSP)

Contacts

- Joan Parkin **jparkin@frc.edu**

Folsom Lake College (P) (C)

Folsom, CA

Operating In

- Folsom Women's Facility (FWF)
- Folsom State Prison (FSP)
- Mule Creek State Prison (MCSP)
- on campus

Programs Offered

- Stackable certificates to AA's in Business and Human Services (FWF, FSP, MCSP)
- Rev It Up (campus)

Contacts

- Barbara Fisher (campus)
  fisherb@flc.losrios.edu
  (916) 608-6905
- Revitup@flc.losrios.edu

Hartnell College (P)

Salinas, CA

Operating In

- Salinas Valley State Prison (SVSP)
- Correctional Training Facility (CTF)

Programs Offered

- AAT in Psychology/Sociology

Contacts

- Renata Funke
  rfunke@hartnell.edu

Imperial Valley College (P) (J) (C)

Imperial, CA

Operating In

- Calipatria State Prison (CAL)
- California State Prison, Centinela (CEN)
- Imperial County Jail
- on campus

Programs Offered

- Courses in Air Conditioning Technology, OSHA Safety and Standards 30-Hour Card (County Jail)
- Alcohol & Drug Studies Certificate (Jail – Inside/Out Program)
- Associate Degree for Transfer in Sociology (CAL), Associate Degree for Transfer in Psychology (CEN)
- FIRST (Formerly Incarcerated Resilient Students in Transition)

Contacts

- Prison Contact
  Eduardo Pesqueira
  eduardo.pesqueira@imperial.edu
- Jail Contact
  Gaylla Finnell
  gaylla.finnell@imperial.edu
- FIRST Contact
  Aruna Patel
  aruna.patel@imperial.edu

Lake Tahoe Community College (P) (J)

South Lake Tahoe, CA

Operating In

- Folsom State Prison (FSP)
- California State Prison, Sacramento (SAC)
- Folsom Women's Facility (FWF)
- High Desert State Prison (HDSP)

Programs Offered

- *Hybrid Interactive Correspondence:* AAT in Sociology ("Enhanced One-On-One" Model)

Contacts

- Shane Reynolds
  screynolds@ltcc.edu

Lassen College (P)
Susanville, CA

Operating In

- High Desert State Prison (HDSP)
- California Correctional Center (CCC)
- 30 state prisons, 3 federal prisons, and Lassen County Adult Detention Facility (distance correspondence)

Programs Offered

- AST in Business Administration
- Certificate in Entrepreneurship
- *Distance Correspondence:* AS in Social Science

Contacts

- Amy Langslet (in-person) **alangslet@lassencollege.edu**
- Dana Armeson (distance) **darmeson@lassencollege.edu**
- Barbra Theesfeld (distance) **btheesfeld@lassencollege.edu**

Merced College (P)
Merced, CA

Operating In

- Valley State Prison (VSP)
- Central California Women's Facility (CCWF)

Programs Offered

- AA (VSP)
- Credit and noncredit courses in English and Math (VSP)
- Credit courses in Humanities, Social and Behavioral Sciences, Counseling, Business, Management, and Kinesiology (VSP)
- Courses offered in Remedial English and Guidance (CCWF)

Contacts

- Shelly Conner **shelly.conner@mccd.edu**
- Vincent piro **piro.v@mccd.edu**

Palo Verde College (P)
Blythe, CA

Operating In

- Chuckawalla Valley State Prison (CVSP) (in-person)
- Ironwood State Prison (ISP) (in-person)
- 16 state prisons (distance)

Programs Offered

- Courses in American Sign Language and Concert Choir
- *Distance Correspondence:* AS in Business Management, five AA's, two Certificates of Achievement, eight Certificates of Career Preparation

Contacts

- Sean Hancock **sean.hancock@paloverde.edu** (in-person)
- Graciela Milke **graciela.milke@paloverde.edu** (Distance)

Pitzer College (P)
Claremont, CA

Operating In

- California Rehabilitation Center (CRC)

Programs Offered

- Credit courses in Cultural Studies, Sociology, History, Political Studies, and Psychology

Contacts

- Tessa Hicks **tessa_hicks@pitzer.edu**
- Nigel Boyle **nigel_boyle@pitzer.edu** (909) 607-3061

Prison University Project (in partnership with Patten University) (P)

San Quentin, CA

Operating In

- San Quentin State Prison (SQ)

Programs Offered

- AA in Liberal Arts
- transfer courses

Contacts

- info@prisonuniversityproject.org

Solano Community College (P)

Fairfield, CA

Operating In

- California State Prison, Solano (SOL)
- California Medical Facility (CMF)

Programs Offered

- ADT's & certificates in Business, Management, and University Studies: Social Sciences
- Certificate in Computer Science

Contacts

- Shirley Lewis
  shirley.lewis@solano.edu
  (707) 864-7122

Southwestern College (P) (J) (C)

Chula Vista, CA

Operating In

- Richard J. Donovan Correctional Facility (RJD)
- San Diego County Jail - East Mesa Reentry Facility
- on campus

Programs Offered

- ADT in Business Administration (prison)
- Personal Development, Reading, Communication, Financial Literacy, Keyboarding/Computer Skills (jail)
- Second Chance Pell Grant Site
- Urban Scholars Union (campus)

Contacts

- Patrice Milkovich
  pmilkovich@swccd.edu
- John Rieder@swccd.edu
  jrieder@swccd.edu
- urbanscholarsSWC.edu

Taft College (P)

Taft, CA

Operating In

- Taft MCCF (contract prison - City of Taft)
- Taft Correctional Facility (federal prison)

Programs Offered

- *Distance Correspondence:* AS in General Business and AA in Liberal Arts (Business and Technology)

Contacts

- Chris Flachmann
  cflachmann@taftcollege.edu

West Hills College Coalinga (P)

Coalinga, CA

Operating In

- Avenal State Prison (ASP)
- Pleasant Valley State Prison (PVSP)

Programs Offered

- ADT in Business
- Transfer-Level Courses

Contacts

- Robert Pimentel
  robertpimentel@whccd.edu

Cosumnes River College (P)
Sacramento, CA

Operating In
- Folsom Women's Facility (FWF)

Programs Offered
- Culinary Arts Program

Contacts
- Kim Harrell
  Kimberley.Harrell@crc.losrios.edu

Norco College (P)
Norco, CA

Operating In
- California Rehabilitation Center (CRC)

Programs Offered
- College courses in English and Communications

Contacts
- Jason Parks
  Jason.parks@norcocollege.edu
- Mark DeAsis
  Mark.DeAsis@norcocollege.edu

San Joaquin Delta College (P)
Stockton, CA

Operating In
- Deuel Vocational Institution (DVI)

Programs Offered
- Associates Degree for Transfer in Business

Contacts
- Martha Villarreal
  mvillarreal@deltacollege.edu

APPENDIX E

More Information about Eligibility for Federal Student Aid and Drug Convictions

If you were convicted of possession or sale of a controlled substance while you were already receiving federal student aid, you will be ineligible to receive federal student aid for a specified period of time.[2934] This is true whether your conviction was a felony or a misdemeanor. The length of time you are ineligible depends on the type and number of convictions you have had for these offenses committed while you were receiving aid. The law differentiates between "possession of illegal drugs" and "sale of illegal drugs." The table below lists the period of ineligibility by type of conviction, either possession or sale of a controlled substance and number of offenses:[2935]

OFFENSE	POSSESSION OF ILLEGAL DRUGS	SALE OF ILLEGAL DRUGS
FIRST	1 year of ineligibility from date of conviction	2 years of ineligibility from date of conviction
SECOND	2 years of ineligibility from date of conviction	Indefinite period of ineligibility *
THREE OR MORE	Indefinite period of ineligibility*	Indefinite period of ineligibility *

**** An indefinite period of ineligibility continues unless your conviction is overturned or otherwise rendered invalid, or you meet one of the two early reinstatement requirements (see below).***

YOU CAN SHORTEN YOUR PERIOD OF INELIGIBILITY BY:[2936]

- Successfully completing an approved drug rehabilitation program that includes passing two unannounced drug tests; or
- Passing two unannounced drug tests administered by an approved drug rehabilitation program; or
- Having the conviction expunged, reversed, set aside, or otherwise rendered invalid (learn more about expungement in the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, beginning on PG. 931).

HOW ELIGIBILITY IS DETERMINED:

The application for federal student aid asks whether you have been *convicted of possession or sale of a controlled substance* while receiving federal student aid.[2937] If you answer yes, *or leave this question blank*, you will be sent an additional worksheet that you must fill out.[2938] This worksheet will yield one of three results:

1. You are currently eligible for federal student aid;
3. You are not eligible for federal student aid for part of the current school year; OR
4. You are not eligible for federal student aid for the entire current school year.[2939]

REMEMBER: Even if you are not currently eligible for federal student aid (either for part or all of the current school year), you can become eligible if you complete an acceptable drug rehabilitation program OR pass two random (unannounced) drug tests administered by an authorized program.[2940]

[2934] 20 U.S.C. § 1091 (part of the Higher Education Opportunity Act reauthorized as amended, 2008). See also U.S. DEP'T OF EDUC., Federal Student Aid: Students With Criminal Convictions, www.studentaid.ed.gov/eligibility/criminal-convictions.
[2935] 20 U.S.C. § 1091(r)(1). (Higher Education Opportunity Act, reauthorized as amended, 2008). See also FAFSA Facts, Office of National Drug Control Policy, U.S. DEP'T OF EDUC., http://www.whitehouse.gov/sites/default/files/ondcp/recovery/fafsa.pdf.
[2936] 20 U.S.C. § 1091(r)(2). (Rehabilitation).
[2937] See Free Application for Federal Student Aid (FAFSA).
[2938] Student Aid Eligibility Worksheet for Question 23 (2014-2015), Federal Student Aid Office, U.S. DEP'T OF EDUC., https://studentaid.ed.gov/sites/default/files/2014-15-student-aid-eligibility-drug-worksheet.pdf.
[2939] Student Aid Eligibility Worksheet for Question 23 (2014-2015), Federal Student Aid Office, U.S. DEP'T OF EDUC., https://studentaid.ed.gov/sites/default/files/2014-15-student-aid-eligibility-drug-worksheet.pdf.
[2940] Student Aid Eligibility Worksheet for Question 23 (2014-2015), Federal Student Aid Office, U.S. DEP'T OF EDUC., https://studentaid.ed.gov/sites/default/files/2014-15-student-aid-eligibility-drug-worksheet.pdf.

APPENDIX F

Sample version of the 2015-2016
Free Application for Student Aid (FAFSA)

See next page.

FAFSA®

FREE APPLICATION *for* FEDERAL STUDENT AID

July 1, 2015 – June 30, 2016

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

PROUD SPONSOR of the AMERICAN MIND®

Use this form to apply free for federal and state student grants, work-study, and loans.

Or apply free online at www.fafsa.gov.

Applying by the Deadlines

For federal aid, submit your application as early as possible, but no earlier than January 1, 2015. We must receive your application no later than June 30, 2016. Your college must have your correct, complete information by your last day of enrollment in the 2015-2016 school year.

For state or college aid, the deadline may be as early as January 2015. See the table to the right for state deadlines. You may also need to complete additional forms.

Check with your high school guidance counselor or a financial aid administrator at your college about state and college sources of student aid and deadlines.

If you are filing close to one of these deadlines, we recommend you file online at **www.fafsa.gov**. This is the fastest and easiest way to apply for aid.

Using Your Tax Return

We recommend that you complete and submit your FAFSA as soon as possible on or after January 1, 2015. If you (or your parents) need to file a 2014 income tax return with the Internal Revenue Service (IRS), and have not done so yet, you can submit your FAFSA now using estimated tax information, and then you ***must correct*** that information ***after you file*** your return.

The easiest way to complete or correct your FAFSA with accurate tax information is by using the IRS Data Retrieval Tool through **www.fafsa.gov**. In a few simple steps, most students and parents who filed a 2014 tax return can view and transfer their tax return information directly into their FAFSA.

Note: Both parents or both the student and spouse may need to report income information on the FAFSA if they did not file a joint tax return for 2014. For assistance with answering the income information questions in this situation, call 1-800-4-FED-AID (1-800-433-3243).

Filling Out the FAFSA®

If you or your family experienced significant changes to your financial situation (such as loss of employment), complete this form to the extent you can and submit it as instructed. Consult with the financial aid office at the college(s) you applied to or plan to attend.

For help in filling out the FAFSA, go to **www.studentaid.gov/completefafsa** or call 1-800-433-3243. TTY users (for the hearing impaired) may call 1-800-730-8913.

Fill the answer fields directly on your screen or print the form and complete it by hand. Your answers will be read electronically; therefore if you complete the form by hand:

- **use black ink and fill in circles completely:** Correct ● Incorrect ⊗ ✓
- **print clearly in CAPITAL letters and skip a box between words:** 1 5 E L M S T
- **report dollar amounts (such as $12,356.41) like this:** $ 1 2 3 5 6 no cents

Yellow is for student information and purple is for parent information.

Mailing Your FAFSA®

After you complete this application, make a copy of pages 3 through 8 for your records. Then mail the original of pages 3 through 8 to:

Federal Student Aid Programs, P.O. Box 7002, Mt. Vernon, IL 62864-0072.

After your application is processed, you will receive a summary of your information in your *Student Aid Report* (SAR). If you provide an e-mail address, your SAR will be sent by e-mail within three to five days. If you do not provide an e-mail address, your SAR will be mailed to you within three weeks. If you would like to check the status of your FAFSA, go to **www.fafsa.gov** or call 1-800-433-3243.

Let's Get Started!

Now go to page 3 of the application form and begin filling it out. Refer to the notes as instructed.

STATE AID DEADLINES

APPLICATION DEADLINES

Federal Aid Deadline - June 30, 2016
State Aid Deadlines - See below.

Check with your financial aid administrator for these states and territories:
AL, AS *, AZ, CO, FM *, GA, GU *, HI *, MH *, MP *, NE, NH *, NM, NV *, OH *, PR, PW *, SD *, TX, UT, VA *, VI *, WI and WY *.

Pay attention to the symbols that may be listed after your state deadline.

AK	Alaska Performance Scholarship - June 30, 2015 Alaska Education Grant - As soon as possible after January 1, 2015. Awards made until funds are depleted.
AR	Academic Challenge - June 1, 2015 *(date received)* Workforce Grant - Contact the financial aid office. Higher Education Opportunity Grant - June 1, 2015 *(date received)*
CA	For many state financial aid programs - March 2, 2015 *(date postmarked)* + * For additional community college Cal Grants - September 2, 2015 *(date postmarked)* + * Contact the California Student Aid Commission or your financial aid administrator for more information.
CT	February 15, 2015 *(date received)* # *
DC	FAFSA completed by April 1, 2015 For DCTAG, complete the DC OneApp and submit supporting documents by April 30, 2015.
DE	April 15, 2015 *(date received)*
FL	May 15, 2015 *(date processed)*
IA	July 1, 2015 *(date received)* Earlier priority deadlines may exist for certain programs. *
ID	Opportunity Grant - March 1, 2015 *(date received)* # *
IL	As soon as possible after January 1, 2015. Awards made until funds are depleted.
IN	March 10, 2015 *(date received)*
KS	April 1, 2015 *(date received)* # *
KY	As soon as possible after January 1, 2015. Awards made until funds are depleted.
LA	June 30, 2016 (July 1, 2015 recommended)
MA	May 1, 2015 *(date received)* #
MD	March 1, 2015 *(date received)*
ME	May 1, 2015 *(date received)*
MI	March 1, 2015 *(date received)*
MN	30 days after term starts *(date received)*
MO	April 1, 2015 *(date received)*
MS	MTAG and MESG Grants - September 15, 2015 *(date received)* HELP Scholarship - March 31, 2015 *(date received)*
MT	March 1, 2015 *(date received)* #
NC	As soon as possible after January 1, 2015. Awards made until funds are depleted.
ND	April 15, 2015 *(date received)* # Earlier priority deadlines may exist for institutional programs.
NJ	2014-2015 Tuition Aid Grant recipients - June 1, 2015 *(date received)* All other applicants - October 1, 2015, fall & spring terms *(date received)* - March 1, 2016, spring term only *(date received)*
NY	June 30, 2016 *(date received)* *
OK	March 1, 2015 *(date received)* #
OR	OSAC Private Scholarships - March 1, 2015 Oregon Opportunity Grant - As soon as possible after January 1, 2015. Awards made until funds are depleted.
PA	All first-time applicants enrolled in a: community college; business/trade/technical school; hospital school of nursing; designated Pennsylvania Open-Admission institution; or non-transferable two-year program - August 1, 2015 *(date received)* All other applicants - May 1, 2015 *(date received)*
RI	March 1, 2015 *(date received)* #
SC	Tuition Grants - June 30, 2015 *(date received)* SC Commission on Higher Education Need-based Grants - As soon as possible after January 1, 2015. Awards made until funds are depleted.
TN	State Grant - Prior-year recipients receive award if eligible and apply by March 1, 2015. All other awards made to neediest applicants until funds are depleted. State Lottery - fall term, September 1, 2015 *(date received);* spring & summer terms, February 1, 2016 *(date received)*
VT	As soon as possible after January 1, 2015. Awards made until funds are depleted. *
WA	As soon as possible after January 1, 2015. Awards made until funds are depleted.
WV	PROMISE Scholarship - March 1, 2015. New applicants must submit additional application. Contact your financial aid administrator or your state agency. WV Higher Education Grant Program - April 15, 2015

For priority consideration, submit application by date specified.
+ Applicants encouraged to obtain proof of mailing.
* Additional form may be required.

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Notes for question 8 (page 3)

Enter your Social Security Number (SSN) as it appears on your Social Security card. If you are a resident of the Freely Associated States (i.e., the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia) and were issued an identification number beginning with "666" when submitting a FAFSA previously, enter that number here. If you are a first-time applicant from the Freely Associated States, enter "666" in the first three boxes of the SSN field and leave the remaining six positions blank and we will create an identification number to be used for federal student aid purposes.

Notes for questions 14 and 15 (page 3)

If you are an eligible noncitizen, write in your eight- or nine-digit Alien Registration Number. Generally, you are an eligible noncitizen if you are (1) a permanent U.S. resident with a Permanent Resident Card (I-551); (2) a conditional permanent resident with a Conditional Green Card (I-551C); (3) the holder of an Arrival-Departure Record (I-94) from the Department of Homeland Security showing any one of the following designations: "Refugee," "Asylum Granted," "Parolee" (I-94 confirms that you were paroled for a minimum of one year and status has not expired), T-Visa holder (T-1, T-2, T-3, etc.) or "Cuban-Haitian Entrant;" or (4) the holder of a valid certification or eligibility letter from the Department of Health and Human Services showing a designation of "Victim of human trafficking."

If you are in the U.S. and have been granted Deferred Action for Childhood Arrivals (DACA), an F1 or F2 student visa, a J1 or J2 exchange visitor visa, or a G series visa (pertaining to international organizations), select "No, I am not a citizen or eligible noncitizen." You will not be eligible for federal student aid. If you have a Social Security Number but are not a citizen or an eligible noncitizen, including if you have been granted DACA, you should still complete the FAFSA because you may be eligible for state or college aid.

Notes for questions 16 and 17 (page 3)

Report your marital status as of the date you sign your FAFSA. If your marital status changes after you sign your FAFSA, check with the **financial aid office at the college**. Consistent with the Supreme Court decision holding Section 3 of the Defense of Marriage Act (DOMA) unconstitutional, same-sex couples must report their marital status as married if they were legally married in a state or other jurisdiction (foreign country) that permits same-sex marriage, without regard to where the couple resides.

Notes for questions 21 and 22 (page 3)

To be eligible for federal student aid, male citizens and male immigrants residing in the U.S. aged 18 through 25 are required to register with the Selective Service System, with limited exceptions. This requirement applies to any person assigned the sex of male at birth. The Selective Service System and the registration requirement for males preserve America's ability to provide resources in an emergency to the U.S. Armed Forces (Army, Navy, Air Force, Marines, or Coast Guard). For more information about the Selective Service System, visit **www.sss.gov**. Forms are available at your local U.S. Post Office.

Notes for questions 33 (page 4) and 81 (page 6)

If you filed or will file a foreign tax return, a tax return with Puerto Rico, another U.S. territory (e.g., Guam, American Samoa, the U.S. Virgin Islands, Swain's Island or the Northern Marianas Islands) or one of the Freely Associated States, use the information from that return to fill out this form. If you filed a foreign return, convert all monetary units to U.S. dollars, using the exchange rate that is in effect today. To view the daily exchange rate, go to **www.federalreserve.gov/releases/h10/current**.

Notes for questions 35 (page 4) and 83 (page 6)

In general, a person is eligible to file a 1040A or 1040EZ if he or she makes less than $100,000, does not itemize deductions, does not receive income from his or her own business or farm and does not receive alimony. A person is not eligible to file a 1040A or 1040EZ if he or she makes $100,000 or more, itemizes deductions, receives income from his or her own business or farm, is self-employed, receives alimony or is required to file Schedule D for capital gains. If you filed a 1040 only to claim the American Opportunity Tax Credit or Lifetime Learning Tax Credit, and you would have otherwise been eligible to file a 1040A or 1040EZ, answer "**Yes**" to this question. If you filed a 1040 and were not required to file a tax return, answer "**Yes**" to this question.

Notes for questions 38 (page 4) and 87 (page 7) — Notes for those who filed a 1040EZ

On the 1040EZ, if a person didn't check either box on line 5, enter 01 if he or she is single or has never been married, or 02 if he or she is married. If a person checked either the "you" or "spouse" box on line 5, use 1040EZ worksheet line F to determine the number of exemptions ($3,950 equals one exemption).

Notes for questions 42 and 43 (page 4), 45j (page 5), and 91 and 92 (page 7)

Net worth means current value minus debt. If net worth is negative, enter 0.

Investments include real estate (do not include the home in which you live), rental property (includes a unit within a family home that has its own entrance, kitchen, and bath rented to someone other than a family member), trust funds, UGMA and UTMA accounts, money market funds, mutual funds, certificates of deposit, stocks, stock options, bonds, other securities, installment and land sale contracts (including mortgages held), commodities, etc.

Investments also include qualified educational benefits or education savings accounts (e.g., Coverdell savings accounts, 529 college savings plans and the refund value of 529 prepaid tuition plans). For a student who does not report parental information, the accounts owned by the student (and/or the student's spouse) are reported as student investments in question 42. For a student who must report parental information, the accounts are reported as parental investments in question 91, including all accounts owned by the student and all accounts owned by the parents for any member of the household.

Money received, or paid on your behalf, also includes distributions to you (the student beneficiary) from a 529 plan that is owned by someone other than you or your parents (such as your grandparents, aunts, uncles, and non-custodial parents). You must include these distribution amounts in question 45j.

Investments do not include the home you live in, the value of life insurance, retirement plans (401[k] plans, pension funds, annuities, non-education IRAs, Keogh plans, etc.) or cash, savings and checking accounts already reported in questions 41 and 90.

Investments also do not include UGMA and UTMA accounts for which you are the custodian, but not the owner.

Investment value means the current balance or market value of these investments as of today. Investment debt means only those debts that are related to the investments.

Business and/or investment farm value includes the market value of land, buildings, machinery, equipment, inventory, etc. Business and/or investment farm debt means only those debts for which the business or investment farm was used as collateral.

Business value does not include the value of a small business if your family owns and controls more than 50 percent of the business and the business has 100 or fewer full-time or full-time equivalent employees. For small business value, your family includes (1) persons directly related to you, such as a parent, sister or cousin, or (2) persons who are or were related to you by marriage, such as a spouse, stepparent or sister-in-law.

Investment farm value does not include the value of a family farm that you (your spouse and/or your parents) live on and operate.

Notes for question 49 (page 5)

Answer "**Yes**" if you are currently serving in the U.S. Armed Forces or are a National Guard or Reserves enlistee who is on active duty for other than state or training purposes.

Answer "**No**" if you are a National Guard or Reserves enlistee who is on active duty for state or training purposes.

Notes for question 50 (page 5)

Answer "**Yes**" (you are a veteran) if you (1) have engaged in active duty (including basic training) in the U.S. Armed Forces, or are a National Guard or Reserves enlistee who was called to active duty for other than state or training purposes, or were a cadet or midshipman at one of the service academies, **and** (2) were released under a condition other than dishonorable. Also answer "**Yes**" if you are not a veteran now but will be one by June 30, 2016.

Answer "**No**" (you are not a veteran) if you (1) have never engaged in active duty (including basic training) in the U.S. Armed Forces, (2) are currently an ROTC student or a cadet or midshipman at a service academy, (3) are a National Guard or Reserves enlistee activated only for state or training purposes, or (4) were engaged in active duty in the U.S. Armed Forces but released under dishonorable conditions.

Also answer "**No**" if you are currently serving in the U.S. Armed Forces and will continue to serve through June 30, 2016.

Notes continued on page 9.

Step One (Student): For questions 1-31, leave any questions that do not apply to you (the student) blank.

OMB # 1845-0001

Your full name (**exactly as it appears on your Social Security card**) If your name has a suffix, such as Jr. or III, include a space between your last name and suffix.

1. Last name
2. First name
3. Middle initial

Your permanent mailing address

4. Number and street (include apt. number)
5. City (and country if not U.S.)
6. State
7. ZIP code

8. Your Social Security Number **See Notes page 2.** – –
9. Your date of birth MONTH DAY YEAR
10. Your telephone number ( ) –

Your driver's license number and driver's license state (if you have one)

11. Driver's license number
12. Driver's license state

13. Your e-mail address. If you provide your e-mail address, we will communicate with you electronically. For example, when your FAFSA has been processed, you will be notified by e-mail. Your e-mail address will also be shared with your state and the colleges listed on your FAFSA to allow them to communicate with you. If you do not have an e-mail address, leave this field blank.

14. Are you a U.S. citizen? Mark only one. **See Notes page 2.**
- Yes, I am a U.S. citizen (U.S. national). **Skip to question 16.** 1
- No, but I am an eligible noncitizen. **Fill in question 15.** 2
- No, I am not a citizen or eligible noncitizen. **Skip to question 16.** 3

15. Alien Registration Number A

16. What is your marital status as of today? **See Notes page 2.**
- I am single 1
- I am married/remarried 2
- I am separated 3
- I am divorced or widowed 4

17. Month and year you were married, remarried, separated, divorced or widowed. **See Notes page 2.** MONTH YEAR

18. What is your state of legal residence? STATE

19. Did you become a legal resident of this state before January 1, 2010?
- Yes 1
- No 2

20. If the answer to question 19 is "No," give month and year you became a legal resident of that state. MONTH YEAR

21. Are you male or female? **See Notes page 2.**
- Male 1
- Female 2

22. **If female, skip to question 23.** Most male students must register with the Selective Service System to receive federal aid. If you are male, age 18-25 and not registered, fill in the circle and we will register you. **See Notes page 2.**
- Register me 1

23. Have you been convicted for the possession or sale of illegal drugs for an offense that occurred while you were receiving federal student aid (such as grants, loans or work-study)?
Answer "No" if you have never received federal student aid or if you have never had a drug conviction for an offense that occurred while receiving federal student aid. If you have a drug conviction for an offense that occurred while you were receiving federal student aid, answer "Yes," but complete and submit this application, and we will mail you a worksheet to help you determine if your conviction affects your eligibility for aid. If you are unsure how to answer this question, call 1-800-433-3243 for help.
- No 1
- Yes 3

Some states and colleges offer aid based on the level of schooling your parents completed.

24. Highest school completed by Parent 1
25. Highest school completed by Parent 2

Middle school/Jr. high 1 | High school 2 | College or beyond 3 | Other/unknown 4

26. When you begin college in the 2015-2016 school year, what will be your high school completion status?
- High school diploma. **Answer question 27.** 1
- General Educational Development (GED) certificate or state equivalent test. **Skip to question 28.** 2
- Homeschooled. **Skip to question 28.** 3
- None of the above. **Skip to question 28.** 4

27. What is the name of the high school where you received or will receive your high school diploma? Enter the complete high school name, and the city and state where the high school is located.

High School Name

High School City

STATE

28. Will you have your first bachelor's degree before July 1, 2015?

Yes 1 No 2

29. When you begin the 2015-2016 school year, what will be your grade level?

- Never attended college and 1st year undergraduate 0
- Attended college before and 1st year undergraduate 1
- 2nd year undergraduate/sophomore 2
- 3rd year undergraduate/junior 3
- 4th year undergraduate/senior 4
- 5th year/other undergraduate 5
- 1st year graduate/professional 6
- Continuing graduate/professional or beyond 7

30. When you begin the 2015-2016 school year, what degree or certificate will you be working on?

- 1st bachelor's degree 1
- 2nd bachelor's degree 2
- Associate degree (occupational or technical program) 3
- Associate degree (general education or transfer program) 4
- Certificate or diploma (occupational, technical or education program of less than two years) 5
- Certificate or diploma (occupational, technical or education program of two or more years) 6
- Teaching credential (nondegree program) 7
- Graduate or professional degree 8
- Other/undecided 9

31. Are you interested in being considered for work-study?

Yes 1 No 2 Don't know 3

Step Two (Student):

Answer questions 32–58 about yourself (the student). If you were never married or are separated, divorced or widowed, answer only about yourself. If you are married or remarried as of today, include information about your spouse.

32. For 2014, have you (the student) completed your IRS income tax return or another tax return listed in question 33?

- I have already completed my return 1
- I will file but have not yet completed my return 2
- I'm not going to file. **Skip to question 39**. 3

33. What income tax return did you file or will you file for 2014?

- IRS 1040 1
- IRS 1040A or 1040EZ 2
- A foreign tax return. **See Notes page 2**. 3
- A tax return with Puerto Rico, another U.S. territory, or Freely Associated State. **See Notes page 2**. 4

34. For 2014, what is or will be your tax filing status according to your tax return?

- Single 1
- Head of household 4
- Married—filed joint return 2
- Married—filed separate return 3
- Qualifying widow(er) 5
- Don't know 6

35. If you have filed or will file a 1040, were you eligible to file a 1040A or 1040EZ? **See Notes page 2.**

Yes 1 No 2 Don't know 3

For questions 36–45, if the answer is zero or the question does not apply to you, enter 0. Report whole dollar amounts with no cents.

36. What was your (and spouse's) adjusted gross income for 2014? Adjusted gross income is on IRS Form 1040—line 37; 1040A—line 21; or 1040EZ—line 4. $

37. Enter your (and spouse's) income tax for 2014. Income tax amount is on IRS Form 1040—line 56; 1040A—line 37; or 1040EZ—line 10. $

38. Enter your (and spouse's) exemptions for 2014. Exemptions are on IRS Form 1040—line 6d or Form 1040A—line 6d. For Form 1040EZ, **see Notes page 2.**

Questions 39 and 40 ask about earnings (wages, salaries, tips, etc.) in 2014. Answer the questions whether or not a tax return was filed. This information may be on the W-2 forms, or on IRS Form 1040—lines 7 + 12 + 18 + Box 14 (Code A) of IRS Schedule K-1 (Form 1065); on 1040A—line 7; or on 1040EZ—line 1. If any individual earning item is negative, do not include that item in your calculation.

39. How much did you earn from working in 2014? $

40. How much did your spouse earn from working in 2014? $

41. As of today, what is your (and spouse's) total current balance of cash, savings and checking accounts? **Don't include** student financial aid. $

42. As of today, what is the net worth of your (and spouse's) investments, including real estate? **Don't include** the home you live in. Net worth means current value minus debt. **See Notes page 2.** $

43. As of today, what is the net worth of your (and spouse's) current businesses and/or investment farms? **Don't include** a family farm or family business with 100 or fewer full-time or full-time equivalent employees. **See Notes page 2**. $

44. Student's 2014 Additional Financial Information (Enter the combined amounts for you and your spouse.)

a. Education credits (American Opportunity Tax Credit and Lifetime Learning Tax Credit) from IRS Form 1040—line 50 or 1040A—line 33. $

b. Child support paid because of divorce or separation or as a result of a legal requirement. **Don't include** support for children in your household, as reported in question 95. $

c. Taxable earnings from need-based employment programs, such as Federal Work-Study and need-based employment portions of fellowships and assistantships. $

d. Taxable student grant and scholarship aid **reported to the IRS in your adjusted gross income**. Includes AmeriCorps benefits (awards, living allowances and interest accrual payments), as well as grant and scholarship portions of fellowships and assistantships. $

e. Combat pay or special combat pay. Only enter the amount that was taxable and included in your adjusted gross income. **Don't include** untaxed combat pay. $

f. Earnings from work under a cooperative education program offered by a college. $

45. Student's 2014 Untaxed Income (Enter the combined amounts for you and your spouse.)

a. Payments to tax-deferred pension and retirement savings plans (paid directly or withheld from earnings), including, but not limited to, amounts reported on the W-2 forms in Boxes 12a through 12d, codes D, E, F, G, H and S. **Don't include** amounts reported in code DD (employer contributions toward employee health benefits). $

b. IRA deductions and payments to self-employed SEP, SIMPLE, Keogh and other qualified plans from IRS Form 1040—line 28 + line 32 or 1040A—line 17. $

c. Child support received for any of your children. **Don't include** foster care or adoption payments. $

d. Tax exempt interest income from IRS Form 1040—line 8b or 1040A—line 8b. $

e. Untaxed portions of IRA distributions from IRS Form 1040—lines (15a minus 15b) or 1040A—lines (11a minus 11b). Exclude rollovers. If negative, enter a zero here. $

f. Untaxed portions of pensions from IRS Form 1040—lines (16a minus 16b) or 1040A—lines (12a minus 12b). Exclude rollovers. If negative, enter a zero here. $

g. Housing, food and other living allowances paid to members of the military, clergy and others (including cash payments and cash value of benefits). **Don't include** the value of on-base military housing or the value of a basic military allowance for housing. $

h. Veterans noneducation benefits, such as Disability, Death Pension, or Dependency & Indemnity Compensation (DIC) and/or VA Educational Work-Study allowances. $

i. Other untaxed income not reported in items 45a through 45h, such as workers' compensation, disability, etc. Also include the untaxed portions of health savings accounts from IRS Form 1040—line 25. **Don't include** extended foster care benefits, student aid, earned income credit, additional child tax credit, welfare payments, untaxed Social Security benefits, Supplemental Security Income, Workforce Investment Act educational benefits, on-base military housing or a military housing allowance, combat pay, benefits from flexible spending arrangements (e.g., cafeteria plans), foreign income exclusion or credit for federal tax on special fuels. $

j. Money received, or paid on your behalf (e.g., bills), not reported elsewhere on this form. This includes money that you received from a parent whose financial information is not reported on this form and that is not part of a legal child support agreement. **See Notes page 2**. $

Step Three (Student):

Answer the questions in this step to determine if you will need to provide parental information. Once you answer **"Yes" to any** of the questions in this step, skip Step Four and go to Step Five on page 8.

46. Were you born before January 1, 1992? ..... Yes ◯ 1 No ◯ 2

47. As of today, are you married? (Also answer "Yes" if you are separated but not divorced.) ..... Yes ◯ 1 No ◯ 2

48. At the beginning of the 2015-2016 school year, will you be working on a master's or doctorate program (such as an MA, MBA, MD, JD, PhD, EdD, graduate certificate, etc.)? ..... Yes ◯ 1 No ◯ 2

49. Are you currently serving on active duty in the U.S. Armed Forces for purposes other than training? **See Notes page 2**. .... Yes ◯ 1 No ◯ 2

50. Are you a veteran of the U.S. Armed Forces? **See Notes page 2**..... Yes ◯ 1 No ◯ 2

51. Do you now have or will you have children who will receive more than half of their support from you between July 1, 2015 and June 30, 2016?..... Yes ◯ 1 No ◯ 2

52. Do you have dependents (other than your children or spouse) who live with you and who receive more than half of their support from you, now and through June 30, 2016? ..... Yes ◯ 1 No ◯ 2

53. At any time since you turned age 13, were both your parents deceased, were you in foster care or were you a dependent or ward of the court? **See Notes page 9**. ..... Yes ◯ 1 No ◯ 2

54. As determined by a court in your state of legal residence, are you or were you an emancipated minor? **See Notes page 9.** .... Yes ◯ 1 No ◯ 2

55. As determined by a court in your state of legal residence, are you or were you in legal guardianship? **See Notes page 9.** .... Yes ◯ 1 No ◯ 2

56. At any time on or after July 1, 2014, did your high school or school district homeless liaison determine that you were an unaccompanied youth who was homeless or were self-supporting and at risk of being homeless? **See Notes page 9**..... Yes ◯ 1 No ◯ 2

57. At any time on or after July 1, 2014, did the director of an emergency shelter or transitional housing program funded by the U.S. Department of Housing and Urban Development determine that you were an unaccompanied youth who was homeless or were self-supporting and at risk of being homeless? **See Notes page 9**. ..... Yes ◯ 1 No ◯ 2

58. At any time on or after July 1, 2014, did the director of a runaway or homeless youth basic center or transitional living program determine that you were an unaccompanied youth who was homeless or were self-supporting and at risk of being homeless? **See Notes page 9**. ..... Yes ◯ 1 No ◯ 2

If you (the student) answered "No" to every question in Step Three, go to Step Four.
If you answered "Yes" to any question in Step Three, skip Step Four and go to Step Five on page 8.
(Health professions students: Your college may require you to complete Step Four even if you answered "Yes" to any Step Three question.)
If you believe that you are unable to provide parental information, see Notes page 9.

Step Four (Parent): Complete this step if you (the student) answered "No" to all questions in Step Three.

Answer all the questions in Step Four even if you do not live with your legal parents (biological, adoptive, or as determined by the state [for example, if the parent is listed on the birth certificate]). Grandparents, foster parents, legal guardians, widowed stepparents, aunts and uncles are not considered parents on this form unless they have legally adopted you. If your legal parents are married to each other, or are not married to each other and **live together**, answer the questions about both of them. If your parent was never married or is remarried, divorced, separated or widowed, **see Notes page 9** for additional instructions.

59. As of today, what is the marital status of your legal parents?
- Never married ○ 2
- Married or remarried ○ 1
- Unmarried and both parents living together ○ 5
- Divorced or separated ○ 3
- Widowed ○ 4

60. Month and year they were married, remarried, separated, divorced or widowed. MONTH YEAR

What are the Social Security Numbers, names and dates of birth of the parents reporting information on this form?
If your parent does not have a Social Security Number, you must enter 000-00-0000. If the name includes a suffix, such as Jr. or III, include a space between the last name and suffix. Enter two digits for each day and month (e.g., for May 31, enter 05 31).

Questions 61-64 are for Parent 1 (father/mother/stepparent)

61. SOCIAL SECURITY NUMBER ___ – ___ – ____
62. LAST NAME, AND
63. FIRST INITIAL ,
64. DATE OF BIRTH ____ 19__

Questions 65-68 are for Parent 2 (father/mother/stepparent)

65. SOCIAL SECURITY NUMBER ___ – ___ – ____
66. LAST NAME, AND
67. FIRST INITIAL ,
68. DATE OF BIRTH ____ 19__

69. **Your parents' e-mail address.** If you provide your parents' e-mail address, we will let them know your FAFSA has been processed. This e-mail address will also be shared with your state and the colleges listed on your FAFSA to allow them to electronically communicate with your parents.

70. What is your parents' state of legal residence? STATE

71. Did your parents become legal residents of this state before January 1, 2010?
- Yes ○ 1
- No ○ 2

72. If the answer to question 71 is "No," give the month and year legal residency began for the parent who has lived in the state the longest. MONTH YEAR

73. How many people are in your parents' household?
Include:
- yourself, even if you don't live with your parents,
- your parents,
- your parents' other children if (a) your parents will provide more than half of their support between July 1, 2015 and June 30, 2016, or (b) the children could answer "No" to every question in Step Three on page 5 of this form, and
- other people if they now live with your parents, your parents provide more than half of their support and your parents will continue to provide more than half of their support between July 1, 2015 and June 30, 2016.

74. How many people in your parents' household (from question 73) will be college students between July 1, 2015 and June 30, 2016?
Always count yourself as a college student. Do not include your parents. Do not include siblings who are in U.S. military service academies. You may include others only if they will attend, at least half-time in 2015-2016, a program that leads to a college degree or certificate.

In 2013 or 2014, did you, your parents or anyone in your parents' household (from question 73) receive benefits from any of the federal programs listed?
Mark all that apply. Answering these questions will not reduce eligibility for student aid or these programs. TANF may have a different name in your parents' state. Call 1-800-433-3243 to find out the name of the state's program.

75. Supplemental Security Income (SSI) ○
76. Supplemental Nutrition Assistance Program (SNAP) ○
77. Free or Reduced Price Lunch ○
78. Temporary Assistance for Needy Families (TANF) ○
79. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) ○

If your answer to question 59 was "Unmarried and both parents living together," contact 1-800-433-3243 for assistance with answering questions 80-94.

80. For 2014, have your parents completed their IRS income tax return or another tax return listed in question 81?
- My parents have already completed their return. ○ 1
- My parents will file but have not yet completed their return ○ 2
- My parents are not going to file. **Skip to question 88.** ○ 3

81. What income tax return did your parents file or will they file for 2014?
- IRS 1040 ○ 1
- IRS 1040A or 1040EZ ○ 2
- A foreign tax return. **See Notes page 2.** ○ 3
- A tax return with Puerto Rico, another U.S. territory or Freely Associated State. **See Notes page 2.** ○ 4

82. For 2014, what is or will be your parents' tax filing status according to their tax return?
- Single ○ 1
- Head of household ○ 4
- Married—filed joint return ○ 2
- Married—filed separate return ○ 3
- Qualifying widow(er) ○ 5
- Don't know ○ 6

83. If your parents have filed or will file a 1040, were they eligible to file a 1040A or 1040EZ? **See Notes page 2.**
- Yes ○ 1
- No ○ 2
- Don't know ○ 3

84. As of today, is either of your parents a dislocated worker? **See Notes page 9.**
- Yes ○ 1
- No ○ 2
- Don't know ○ 3

For questions 85–94, if the answer is zero or the question does not apply, enter 0. Report whole dollar amounts with no cents.

85. What was your parents' adjusted gross income for 2014? Adjusted gross income is on IRS Form 1040—line 37; 1040A—line 21; or 1040EZ—line 4. $

86. Enter your parents' income tax for 2014. Income tax amount is on IRS Form 1040—line 56; 1040A—line 37; or 1040EZ—line 10. $

87. Enter your parents' exemptions for 2014. Exemptions are on IRS Form 1040—line 6d or on Form 1040A—line 6d. For Form 1040EZ, **see Notes page 2**.

Questions 88 and 89 ask about earnings (wages, salaries, tips, etc.) in 2014. Answer the questions whether or not a tax return was filed. This information may be on the W-2 forms, or on IRS Form 1040—lines 7 + 12 + 18 + Box 14 (Code A) of IRS Schedule K-1 (Form 1065); on 1040A—line 7; or on 1040EZ—line 1. If any individual earning item is negative, do not include that item in your calculation.

88. How much did Parent 1 (father/mother/stepparent) earn from working in 2014? $

89. How much did Parent 2 (father/mother/stepparent) earn from working in 2014? $

90. As of today, what is your parents' total current balance of cash, savings and checking accounts? $

91. As of today, what is the net worth of your parents' investments, including real estate? **Don't include** the home in which your parents live. Net worth means current value minus debt. **See Notes page 2.** $

92. As of today, what is the net worth of your parents' current businesses and/or investment farms? **Don't include** a family farm or family business with 100 or fewer full-time or full-time equivalent employees. **See Notes page 2**. $

93. Parents' 2014 Additional Financial Information (Enter the amounts for your parent[s].)

a. Education credits (American Opportunity Tax Credit and Lifetime Learning Tax Credit) from IRS Form 1040—line 50 or 1040A—line 33. $

b. Child support paid because of divorce or separation or as a result of a legal requirement. **Don't include** support for children in your parents' household, as reported in question 73. $

c. Your parents' taxable earnings from need-based employment programs, such as Federal Work-Study and need-based employment portions of fellowships and assistantships. $

d. Your parents' taxable student grant and scholarship aid **reported to the IRS in your parents' adjusted gross income**. Includes AmeriCorps benefits (awards, living allowances and interest accrual payments), as well as grant and scholarship portions of fellowships and assistantships. $

e. Combat pay or special combat pay. Only enter the amount that was taxable and included in your parents' adjusted gross income Do not enter untaxed combat pay. $

f. Earnings from work under a cooperative education program offered by a college. $

94. Parents' 2014 Untaxed Income (Enter the amounts for your parent[s].)

a. Payments to tax-deferred pension and retirement savings plans (paid directly or withheld from earnings), including, but not limited to, amounts reported on the W-2 forms in Boxes 12a through 12d, codes D, E, F, G, H and S. **Don't include** amounts reported in code DD (employer contributions toward employee health benefits). $

b. IRA deductions and payments to self-employed SEP, SIMPLE, Keogh and other qualified plans from IRS Form 1040—line 28 + line 32 or 1040A—line 17. $

c. Child support received for any of your parents' children. **Don't include** foster care or adoption payments. $

d. Tax exempt interest income from IRS Form 1040—line 8b or 1040A—line 8b. $

e. Untaxed portions of IRA distributions from IRS Form 1040—lines (15a minus 15b) or 1040A—lines (11a minus 11b). Exclude rollovers. If negative, enter a zero here. $

f. Untaxed portions of pensions from IRS Form 1040—lines (16a minus 16b) or 1040A—lines (12a minus 12b). Exclude rollovers. If negative, enter a zero here. $

g. Housing, food and other living allowances paid to members of the military, clergy and others (including cash payments and cash value of benefits). **Don't include** the value of on-base military housing or the value of a basic military allowance for housing. $

h. Veterans noneducation benefits, such as Disability, Death Pension, or Dependency & Indemnity Compensation (DIC) and/or VA Educational Work-Study allowances. $

i. Other untaxed income not reported in items 94a through 94h, such as workers' compensation, disability, etc. Also include the untaxed portions of health savings accounts from IRS Form 1040—line 25. **Don't include** extended foster care benefits, student aid, earned income credit, additional child tax credit, welfare payments, untaxed Social Security benefits, Supplemental Security Income, Workforce Investment Act educational benefits, on-base military housing or a military housing allowance, combat pay, benefits from flexible spending arrangements (e.g., cafeteria plans), foreign income exclusion or credit for federal tax on special fuels. $

Step Five (Student): Complete this step only if you (the student) answered "Yes" to any questions in Step Three.

95. How many people are in your household?
Include:
- yourself (and your spouse),
- your children, if you will provide more than half of their support between July 1, 2015 and June 30, 2016, and
- other people if they now live with you, you provide more than half of their support and you will continue to provide more than half of their support between July 1, 2015 and June 30, 2016.

96. How many people in your (and your spouse's) household (from question 95) will be college students between July 1, 2015 and June 30, 2016? Always count yourself as a college student. Include others only if they will attend, at least half-time in 2015-2016, a program that leads to a college degree or certificate.

In 2013 or 2014, did you (or your spouse) or anyone in your household (from question 95) receive benefits from any of the federal programs listed? Mark all that apply. Answering these questions will not reduce eligibility for student aid or these programs. TANF may have a different name in your state. Call 1-800-433-3243 to find out the name of the state's program.

97. Supplemental Security Income (SSI) ◯
98. Supplemental Nutrition Assistance Program (SNAP) ◯
99. Free or Reduced Price Lunch ◯
100. Temporary Assistance for Needy Families (TANF) ◯
101. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) ◯

102. As of today, are you (or your spouse) a dislocated worker? **See Notes page 9.** Yes ◯1 No ◯2 Don't know ◯3

Step Six (Student): Indicate which colleges you want to receive your FAFSA information.

Enter the six-digit federal school code and your housing plans. You can find the school codes at **www.fafsa.gov** or by calling 1-800-433-3243. If you cannot obtain the code, write in the complete name, address, city and state of the college. The information you report on the FAFSA is sent to each college listed, including the names of the other colleges listed. If you do not want this information sent to a particular college, do not list that school. For federal student aid purposes, it does not matter in what order you list your selected schools. For state aid, you may want to list your preferred college first. To find out how to have more colleges receive your FAFSA information, read ***What is the FAFSA?*** on page 10.

	1ST FEDERAL SCHOOL CODE	OR	NAME OF COLLEGE / ADDRESS AND CITY	STATE	HOUSING PLANS
103. a					103. b on campus ◯1 with parent ◯2 off campus ◯3
103. c	2ND FEDERAL SCHOOL CODE	OR	NAME OF COLLEGE / ADDRESS AND CITY	STATE	103. d on campus ◯1 with parent ◯2 off campus ◯3
103. e	3RD FEDERAL SCHOOL CODE	OR	NAME OF COLLEGE / ADDRESS AND CITY	STATE	103. f on campus ◯1 with parent ◯2 off campus ◯3
103. g	4TH FEDERAL SCHOOL CODE	OR	NAME OF COLLEGE / ADDRESS AND CITY	STATE	103. h on campus ◯1 with parent ◯2 off campus ◯3

Step Seven (Student and Parent): Read, sign and date.

If you are the student, by signing this application you certify that you (1) will use federal and/or state student financial aid only to pay the cost of attending an institution of higher education, (2) are not in default on a federal student loan or have made satisfactory arrangements to repay it, (3) do not owe money back on a federal student grant or have made satisfactory arrangements to repay it, (4) will notify your college if you default on a federal student loan and (5) will not receive a Federal Pell Grant from more than one college for the same period of time.

If you are the parent or the student, by signing this application you certify that all of the information you provided is true and complete to the best of your knowledge and you agree, if asked, to provide information that will verify the accuracy of your completed form. This information may include U.S. or state income tax forms that you filed or are required to file. Also, you certify that you understand that **the Secretary of Education has the authority to verify information reported on this application with the Internal Revenue Service and other federal agencies**. If you sign any document related to the federal student aid programs electronically using a personal identification number (PIN), username and password, and/or any other credential, you certify that you are the person identified by that PIN, username and password, and/or other credential, and have not disclosed that PIN, username and password, and/or other credential to anyone else. If you purposely give false or misleading information, you may be fined up to $20,000, sent to prison, or both.

104. Date this form was completed
MONTH DAY 2015 ◯ or 2016 ◯

105. Student (Sign below)
1

Parent (A parent from Step Four sign below.)
2

If you or your family paid a fee for someone to fill out this form or to advise you on how to fill it out, that person must complete this part.

Preparer's name, firm and address

106. Preparer's Social Security Number (or 107) ___ – ___ – ____

107. Employer ID number (or 106) ___ – _____

108. Preparer's signature and date
1

COLLEGE USE ONLY
D/O ◯1 Homeless Youth Determination ◯4
FEDERAL SCHOOL CODE
FAA Signature
1

DATA ENTRY USE ONLY: ◯ P ◯ * ◯ L ◯ E

Notes for question 53 (page 5)

Answer "**Yes**" if at any time since you turned age 13:

- You had no living parent, even if you are now adopted; or
- You were in foster care, even if you are no longer in foster care today; or
- You were a dependent or ward of the court, even if you are no longer a dependent or ward of the court today. For federal student aid purposes, someone who is incarcerated is not considered a ward of the court.

The financial aid administrator at your school may require you to provide proof that you were in foster care or a dependent or ward of the court.

Notes for questions 54 and 55 (page 5)

The definition of legal guardianship does not include your parents, even if they were appointed by a court to be your guardians. You are also not considered a legal guardian of yourself.

Answer "**Yes**" if you can provide a copy of a court's decision that as of today you are an emancipated minor or are in legal guardianship. Also answer "**Yes**" if you can provide a copy of a court's decision that you were an emancipated minor or were in legal guardianship immediately before you reached the age of being an adult in your state. The court must be located in your state of legal residence at the time the court's decision was issued.

Answer "**No**" if you are still a minor and the court decision is no longer in effect or the court decision was not in effect at the time you became an adult.

The financial aid administrator at your college may require you to provide proof that you were an emancipated minor or in legal guardianship.

Notes for questions 56–58 (page 5)

Answer "**Yes**" if you received a determination at any time on or after July 1, 2014, that you were an unaccompanied youth who was homeless or at risk of being homeless.

- "**Homeless**" means lacking fixed, regular and adequate housing. You may be homeless if you are living in shelters, parks, motels or cars, or are temporarily living with other people because you have nowhere else to go. Also, if you are living in any of these situations and fleeing an abusive parent you may be considered homeless even if your parent would provide support and a place to live.
- "**Unaccompanied**" means you are not living in the physical custody of your parent or guardian.
- "**Youth**" means you are 21 years of age or younger or you are still enrolled in high school as of the day you sign this application.

Answer "**No**" if you are not homeless or at risk of being homeless, or do not have a determination. You should contact your financial aid office for assistance if you do not have a determination but believe you are an unaccompanied youth who is homeless or are an unaccompanied youth providing for your own living expenses who is at risk of being homeless.

The financial aid administrator at your college may require you to provide a copy of the determination if you answered "**Yes**" to any of these questions.

Notes for students unable to provide parental information on pages 6 and 7

Under very limited circumstances (for example, your parents are incarcerated; you have left home due to an abusive family environment; or you do not know where your parents are and are unable to contact them), you may be able to submit your FAFSA without parental information. **If you are unable to provide parental information**, skip Steps Four and Five, and go to Step Six. Once you submit your FAFSA without parental data, **you must follow up with the financial aid office at the college you plan to attend**, in order to complete your FAFSA.

Notes for Step Four, questions 59–94 (pages 6 and 7)

Review all instructions below to determine who is considered a parent on this form:

- If your parent was never married and does not live with your other legal parent, or if your parent is widowed or not remarried, answer the questions about that parent.
- If your legal parents (biological, adoptive, or as determined by the state [for example, if the parent is listed on the birth certificate]) are not married to each other and **live together**, select "Unmarried and both parents living together" and provide information about both of them regardless of their gender. Do not include any person who is not married to your parent and who is not a legal or biological parent. Contact 1-800-433-3243 for assistance in completing questions 80-94.
- If your legal parents are married, select "Married or remarried." Consistent with the Supreme Court decision holding Section 3 of the Defense of Marriage Act (DOMA) unconstitutional, same-sex couples must be reported as married if they were legally married in a state or other jurisdiction (foreign country) that permits same-sex marriage, without regard to where the couple resides. If your legal parents are divorced but living together, select "Unmarried and both parents living together." If your legal parents are separated but living together, select "Married or remarried," not "Divorced or separated."
- If your parents are divorced or separated, answer the questions about the parent you lived with more during the past 12 months. (If you did not live with one parent more than the other, give answers about the parent who provided more financial support during the past 12 months or during the most recent year that you actually received support from a parent.) If this parent is remarried as of today, answer the questions about that parent and your stepparent.
- If your widowed parent is remarried as of today, answer the questions about that parent and your stepparent.

Notes for questions 84 (page 6) and 102 (page 8)

In general, a person may be considered a dislocated worker if he or she:

- is receiving unemployment benefits due to being laid off or losing a job and is unlikely to return to a previous occupation;
- has been laid off or received a lay-off notice from a job;
- was self-employed but is now unemployed due to economic conditions or natural disaster; or
- is the spouse of an active duty member of the Armed Forces and has experienced a loss of employment because of relocating due to permanent change in duty station; or
- is the spouse of an active duty member of the Armed Forces and is a displaced homemaker (as described below); or
- is a displaced homemaker. A displaced homemaker is generally a person who previously provided unpaid services to the family (e.g., a stay-at-home mom or dad), is no longer supported by the spouse, is unemployed or underemployed, and is having trouble finding or upgrading employment.

Except for the spouse of an active duty member of the Armed Forces, if a person quits work, generally he or she is not considered a dislocated worker even if, for example, the person is receiving unemployment benefits.

Answer "**Yes**" to question 84 if your parent is a dislocated worker. Answer "**Yes**" to question 102 if you or your spouse is a dislocated worker.

Answer "**No**" to question 84 if your parent is not a dislocated worker. Answer "**No**" to question 102 if neither you nor your spouse is a dislocated worker.

Answer "**Don't know**" to question 84 if you are not sure whether your parent is a dislocated worker. Answer "**Don't know**" to question 102 if you are not sure whether you or your spouse is a dislocated worker. You can contact your financial aid office for assistance in answering these questions.

The financial aid administrator at your college may require you to provide proof that your parent is a dislocated worker, if you answered "**Yes**" to question 84, or that you or your spouse is a dislocated worker, if you answered "**Yes**" to question 102.

What is the FAFSA®?

Why fill out a FAFSA?

The ***Free Application for Federal Student Aid*** (FAFSA) is the first step in the financial aid process. You use the FAFSA to apply for federal student aid, such as grants, work-study, and loans. In addition, most states and colleges use information from the FAFSA to award nonfederal aid.

Why all the questions?

The questions on the FAFSA are required to calculate your Expected Family Contribution (EFC). The EFC measures your family's financial strength and is used to determine your eligibility for federal student aid. Your state and the colleges you list may also use some of your responses. They will determine if you may be eligible for school or state aid, in addition to federal aid.

How do I find out what my Expected Family Contribution (EFC) is?

Your EFC will be listed on your *Student Aid Report* (SAR). Your SAR summarizes the information you submitted on your FAFSA. It is important to review your SAR to make sure all of your information is correct and complete. Make corrections or provide additional information, as necessary.

How much aid will I receive?

Using the information on your FAFSA and your EFC, the financial aid office at your college will determine the amount of aid you will receive. The college will use your EFC to prepare a financial aid package to help you meet your financial need. Financial need is the difference between your EFC and your college's cost of attendance (which can include living expenses), as determined by the college. If you or your family have unusual circumstances that should be taken into account, contact your college's financial aid office. Some examples of unusual circumstances are: unusual medical or dental expenses or a large change in income from last year to this year.

When will I receive the aid?

Any financial aid you are eligible to receive will be paid to you through your college. Typically, your college will first use the aid to pay tuition, fees and room and board (if provided by the college). Any remaining aid is paid to you for your other educational expenses. If you are eligible for a Federal Pell Grant, you may receive it from only one college for the same period of enrollment.

How can I have more colleges receive my FAFSA information?

If you are completing a paper FAFSA, you can only list four colleges in the school code step. You may add more colleges by doing one of the following:

1. After your FAFSA has been processed, go to *FAFSA on the Web* at **www.fafsa.gov**. Click the "Login" button on the home page to log in to *FAFSA on the Web*, then click "Make FAFSA Corrections."
2. Use the *Student Aid Report* (SAR), which you will receive after your FAFSA is processed. Your Data Release Number (DRN) verifies your identity and will be listed on the first page of your SAR. You can call 1-800-433-3243 and provide your DRN to a customer service representative, who will add more school codes for you.
3. Provide your DRN to the financial aid administrator at the college you want added, and he or she can add their school code to your FAFSA.

Note: Your FAFSA record can only list up to ten school codes. If there are ten school codes on your record, any new school codes that you add will replace one or more of the school codes listed.

Where can I receive more information on student aid?

The best place for information about student financial aid is the financial aid office at the college you plan to attend. The financial aid administrator can tell you about student aid available from your state, the college itself and other sources.

- You can also visit our web site **StudentAid.gov**.
- For information by phone you can call our Federal Student Aid Information Center at 1-800-433-3243. TTY users (for the hearing impaired) may call 1-800-730-8913.
- You can also check with your high school counselor, your state aid agency or your local library's reference section.

Information about other nonfederal assistance may be available from foundations, religious organizations, community organizations and civic groups, as well as organizations related to your field of interest, such as the American Medical Association or American Bar Association. Check with your parents' employers or unions to see if they award scholarships or have tuition payment plans.

Information on the Privacy Act and use of your Social Security Number

We use the information that you provide on this form to determine if you are eligible to receive federal student financial aid and the amount that you are eligible to receive. Sections 483 and 484 of the Higher Education Act of 1965, as amended, give us the authority to ask you and your parents these questions, and to collect the Social Security Numbers of you and your parents. We use your Social Security Number to verify your identity and retrieve your records, and we may request your Social Security Number again for those purposes.

State and institutional student financial aid programs may also use the information that you provide on this form to determine if you are eligible to receive state and institutional aid and the need that you have for such aid. Therefore, we will disclose the information that you provide on this form to each institution you list in questions 103a - 103h, state agencies in your state of legal residence and the state agencies of the states in which the colleges that you list in questions 103a - 103h are located.

If you are applying solely for federal aid, you must answer all of the following questions that apply to you: 1-9, 14-16, 18, 21-23, 26, 28-29, 32-37, 39-59, 61-68, 70, 73-86, 88-102, 104-105. If you do not answer these questions, you will not receive federal aid.

Without your consent, we may disclose information that you provide to entities under a published "routine use." Under such a routine use, we may disclose information to third parties that we have authorized to assist us in administering the above programs; to other federal agencies under computer matching programs, such as those with the Internal Revenue Service, Social Security Administration, Selective Service System, Department of Homeland Security, Department of Justice and Veterans Affairs; to your parents or spouse; and to members of Congress if you ask them to help you with student aid questions.

If the federal government, the U.S. Department of Education, or an employee of the U.S. Department of Education is involved in litigation, we may send information to the Department of Justice, or a court or adjudicative body, if the disclosure is related to financial aid and certain conditions are met. In addition, we may send your information to a foreign, federal, state, or local enforcement agency if the information that you submitted indicates a violation or potential violation of law, for which that agency has jurisdiction for investigation or prosecution. Finally, we may send information regarding a claim that is determined to be valid and overdue to a consumer reporting agency. This information includes identifiers from the record; the amount, status and history of the claim; and the program under which the claim arose.

State Certification

By submitting this application, you are giving your state financial aid agency permission to verify any statement on this form and to obtain income tax information for all persons required to report income on this form.

The Paperwork Reduction Act of 1995

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0001. Public reporting burden for this collection of information is estimated to average two hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is voluntary. If you have comments or concerns regarding the status of your individual submission of this form, please contact the Federal Student Aid Information Center, P.O. Box 84, Washington, D.C. 20044 directly. [Note: Please do not return the completed form to this address.]

We may request additional information from you to process your application more efficiently. We will collect this additional information only as needed and on a voluntary basis.

APPENDIX G

Cal Grant Eligibility (California Education Code section 69422.8 (Text)

An award under this chapter does not guarantee admission to an institution of higher education or admission to a specific campus or program. 69433.9. To be eligible to receive a Cal Grant award under this chapter, a student shall be all of the following:

(a) A citizen of the United States, or an eligible noncitizen, as defined for purposes of financial aid programs under Title IV of the federal Higher Education Act of 1965 (20 U.S.C. Secs. 1070 et seq., as from time to time amended).

(b) In compliance with all applicable Selective Service registration requirements.

(c) Not incarcerated.

(d) Not in default on any student loan within the meaning of Section 69507.5.

(e)

(1) For purposes of Article 2 (commencing with Section 69434), Article 3 (commencing with Section 69435), and Article 4 (commencing with Section 69436), except as provided in subdivision (d) of Section 69436, at the time of high school graduation or its equivalent, be a resident of California.

(2) A student who does not meet the requirements for a high school diploma or its equivalent in the academic year immediately preceding the award year, but who meets the requirements for a high school diploma or its equivalent by December 31 of the academic year immediately following the date of application, satisfies any requirement for obtaining high school graduation or its equivalent for the purposes of this chapter as of the first day of the academic term immediately following the term in which the requirements for the high school diploma or its equivalent are met.

(3) No student shall receive an award for a term that begins prior to satisfying any requirement for obtaining high school graduation or its equivalent.

APPENDIX H

Student Eligibility for the California College Promise Grant (formerly known as the Board of Governors Fee Waiver)

WHO QUALIFIES FOR THE CALIFORNIA COLLEGE PROMISE GRANT?

The California College Promise Grant waives your course enrollment fee if you are a California resident, and if one of the following conditions applies to you when you enroll:

- You are qualified for federal student financial aid during the same academic year for which you are seeking a California College Promise Grant and have a need of $1,104.
  OR
- You are receiving TANF/Cal WORKS benefits, SSI or General Assistance at the time that you apply for the Calfornia College Promise Grant OR you are a dependent student and your parent receives monthly cash assistance from one of these programs a a primary source of income. You will be required to provide documentation to show participation in one of these programs.
  OR
- You fall into the qualifying income bracket as determined by filling out a California College Promise Grant application. The Financial Aid Office will process your application and notify you if you qualify.
  OR
- You qualify according to one of these groups:
  - Certification from the CA Department of Veterans Affairs that you are eligible for a dependent's fee waiver?
  - Certification from the National Guard Assistant General that you are eligible for a dependent's fee waiver?
  - Certification from the Department of Veterans Affairs that you are eligible as a recipient of the Congressional Medal of Honor or as a child of a recipient?
  - Certification form the CA Victim Compensation and Government Claims Board that you are eligible as a dependent of a victim of the September 11, 2001, terrorist attack?
  - Certification from a public agency employer that you are eligible as a dependent of a deceased law enforcement/fire suppression personnel killed in the line of duty?

APPENDIX I

California College Promise Grant Application (formerly known as the Board of Governor's Fee Waiver)

See next page for a paper copy of the application.

Find the California College Promise Grant online application at icanaffordcollege.com.

California Community Colleges 2018-19 California College Promise Grant (Board of Governors Fee Waiver) Application

This is an application to have your ENROLLMENT FEES WAIVED. If you need money to help with books, supplies, food, rent, transportation and other costs, please complete a FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA) or the California Dream Application (for eligible AB 540 students) immediately. The FAFSA is available at www.fafsa.gov and the Dream Application is available at https://dream.csac.ca.gov. Contact the Financial Aid Office for more information.

IMPLEMENTATION OF Assembly Bill 1899: Victims of Trafficking, Domestic Violence and other Serious Crimes

AB 1899, chaptered in September of 2012, provides for a non-resident enrollment fee exemption for "Victims of trafficking, domestic violence and other serious crimes". In addition, the legislation allows these students to apply for and, if eligible, receive financial aid from programs administered by public postsecondary institutions or the state of California. Finally, the legislation provides that enrollment fees shall be waived for these students who apply for and are eligible to receive Board of Governor enrollment fee waivers.

*This **PROMISE GRANT** application is for California residents, students eligible under AB 540 and under AB 1899 as determined by the Admissions or Registrar's Office, and for homeless youth as determined by the Financial Aid Office. If you have not had your California residency or eligibility status determined by the Admissions or the Registrar or homeless status determined by the Financial Aid Office, see one of those offices to obtain the determination. Promise Grant eligibility cannot be determined until your status has been verified.*

Has the Admissions or Registrar's Office determined that you are a California resident? ☐ *Yes* ☐ *No*

If no, has the Admissions/Registrar's Office determined you are eligible for a non-resident tuition exemption as an AB 540 student? ☐ *Yes* ☐ *No*

If no, has the Admissions or Registrar's Office determined that you are eligible for a non-resident tuition exemption granted as a result of you residing in the United States with a "T" or "U" visa (immigration status under Section 1101(a)(15)(T)(i) or (ii), or Section1101 (a)(15)(U)(i) or (ii), of Title 8 of the United States Code)? ☐ *Yes* ☐ *No*

Has the Financial Aid Office verified that you have been without a residence in the last 24 months (homeless)?
If you have been homeless but not verified, check "Yes" and contact the Financial Aid Office. ☐ *Yes* ☐ *No*

*Name:*_____ *Student ID #* _____
Last First Middle Initial

*Email (if available):*_____ *Telephone Number: (_____)*_____

Home Address: _____ *Date of Birth:* _____/_____/_____
Street City Zip Code

IMPLEMENTATION OF THE CALIFORNIA DOMESTIC PARTNER RIGHTS AND RESPONSIBILITIES ACT

The California Domestic Partner Rights and Responsibilities Act extends rights, benefits, responsibilities and obligations to individuals in domestic partnerships registered with the California Secretary of State under Section 297 of the Family Code. If **you** are in a Registered Domestic Partnership (RDP), or legal same sex marriage, you will be treated as an Independent married student to determine Enrollment Fee Waiver eligibility and will need to provide income and household information for your domestic partner. If you are a dependent student and your parent is in a Registered Domestic Partnership, or legal same sex marriage, you will be treated the same as a student with married parents and income and household information will be required for the parent's domestic partner.

Note: These provisions apply to state student financial aid ONLY, and not to federal student financial aid.

*Are you or your parent in a Registered Domestic Partnership with the California Secretary of State under Section 297 of the Family Code? (Answer "Yes" if you or your parent are separated from a Registered Domestic Partner but have **NOT FILED** a Notice of Termination of Domestic Partnership with the California Secretary of State's Office.)* ☐ *Yes* ☐ *No*

If you answered "Yes" to the question above, treat the Registered Domestic Partner as a spouse. You are required to include your domestic partner's income and household information or your parent's domestic partner's income and household information in Questions 4, 11, 12, 13, 14, 15, 16, 17.

Student Marital Status

☐ *Single* ☐ *Married* ☐ *Divorced* ☐ *Separated* ☐ *Widowed* ☐ *Registered Domestic Partnership*

DEPENDENCY STATUS

*The questions below will determine whether you are considered a Dependent student or Independent student for fee waiver eligibility and whether parental information is needed. If you answer "Yes" to **ANY** of the questions 1-10 below, you will be considered an INDEPENDENT student. If you answer "No" to all questions, you will be considered a Dependent student thereby reporting parental information and should continue with Question 11.*

1. *Were you born before January 1, 1995?* ☐ Yes ☐ No
2. *As of today, are you married **or** in a Registered Domestic Partnership (RDP)? (Answer "Yes" if you are separated but not divorced or have not filed a termination notice to dissolve partnership.* ☐ Yes ☐ No
3. *Are you a veteran of the U.S. Armed Forces **or** currently serving on active duty for purposes other than training?* ☐ Yes ☐ No
4. *Do you have children who will receive more than half of their support from you between July 1, 2018- June 30, 2019, **or** other dependents who live with you (other than your children or spouse/RDP) who receive more than half of their support from you, now and through June 30, 2019* ☐ Yes ☐ No
5. *At any time since you turned age 13, were both your parents deceased, were you in foster care, or were you a dependent or ward of the court?* ☐ Yes ☐ No
6. *Are you or were you an emancipated minor as determined by a court in your state of legal residence?* ☐ Yes ☐ No
7. *Are you or were you in legal guardianship as determined by a court in your state of legal residence?* ☐ Yes ☐ No
8. *At any time on or after July 1, 2017, did your high school or school district homeless liaison determine that you were an unaccompanied youth who was homeless* ☐ Yes ☐ No
9. *At any time on or after July 1, 2017, did the director of an emergency shelter or transitional housing program funded by the U.S. Department of Housing and Urban Development determine that you were an unaccompanied youth who was homeless?* ☐ Yes ☐ No
10. *At any time on or after July 1, 2017, did the director of a runaway or homeless youth basic center or transitional living program determine that you were an unaccompanied youth who was homeless or were self-supporting and at risk of being homeless?* ☐ Yes ☐ No

- **If you answered "Yes" to any of the questions 1 - 10, you are considered an INDEPENDENT student for enrollment fee waiver purposes and must provide income and household information about yourself (and your spouse or RDP if applicable). Skip to Question #13.**

- **If you answered "No" to all questions 1 - 10, complete the following questions:**

11. *If your parent(s) or his/her RDP filed or will file a 2016 U.S. Income Tax Return, were you, or will you be claimed on their tax return as an exemption by either or both of your parents?* ☐ Will Not File ☐ Yes ☐ No
12. *Do you live with one or both of your parent(s) and/or his/her RDP?* ☐ Yes ☐ No

- **If you answered "No" to questions 1 - 10 and "Yes" to either question 11 or 12, you must provide income and household information about your PARENT(S)/RDP. Please answer questions for a DEPENDENT student in the sections that follow.**
- **If you answered "No" or "Parent(s) will not file" to question 11, and "No" to question 12, <u>you are a dependent student for all student aid except this enrollment fee waiver.</u> You may answer questions as an INDEPENDENT student on the rest of this application, but please try to get your PARENT information and file a FAFSA so you may be considered for other student aid. You cannot get other student aid without your parent(s') information.**

13. *Are you (the student **ONLY**) currently receiving monthly cash assistance for yourself or any dependents from:*

TANF/CalWORKs?	❑ *Yes*	❑ *No*
SSI/SSP (Supplemental Security Income/State Supplemental Program)?	❑ *Yes*	❑ *No*
General Assistance?	❑ *Yes*	❑ *No*

14. *If you are a dependent student, are your parent(s)/RDP receiving monthly cash assistance from TANF/CalWORKs or SSI/SSP as a primary source of income?* ❑ *Yes* ❑ *No*

If you answered "Yes" to question 13 or 14 you are eligible for a CALIFORNIA COLLEGE PROMISE GRANT. Sign the Certification at the end of this form. You are required to show current proof of benefits. Submit application and documentation to the financial aid office.

METHOD B PROMISE GRANT QUESTIONS

15. ***DEPENDENT STUDENT:*** *How many persons are in your parent(s)/RDP household? (Include yourself, your parent(s)/RDP, and anyone who lives with your parent(s)/RDP and receives more than 50% of their support from your parents/RDP, now and through June 30, 2019.)* _____

16. ***INDEPENDENT STUDENT:*** *How many persons are in your household? (Include yourself, your spouse/RDP, and anyone who lives with you and receives more than 50% of their support from you, now and through June 30, 2019.)* _____

17. ***2016 Income Information***

(Dependent students should not include their own Income information for Q 17, a and b below.)	**DEPENDENT STUDENT: PARENT(S)/RDP INCOME ONLY**	**INDEPENDENT STUDENT: STUDENT (& SPOUSE'S/ RDP) INCOME**
a. Adjusted Gross Income (If 2016 U.S. Income Tax Return was filed, enter the amount from Form 1040, line 37; 1040A, line 21; 1040EZ, line 4).	$_____	$_____
*b. All other income (Include **ALL money** received in 2016 that is not included in line (a) above (such as Disability, child support, military living allowance, Workman's Compensation, untaxed pensions.)*	$_____	$_____
TOTAL Income for 2016 (Sum of a + b)	$_____	$_____

The Financial Aid Office will review your income and let you know if you qualify for a CALIFORNIA PROMISE GRANT under Method B. Submit application and documentation to the financial aid office.

If you do not qualify using Method A or Method B, you should file a FAFSA (for U.S. citizens or eligible non-citizens) or the California Dream Application (for undocumented AB 540 students). ***The FAFSA is available at www.fafsa.gov and the Dream Application is available at https://dream.csac.ca.gov/.*** *Contact the Financial Aid Office for more information.*

SPECIAL CLASSIFICATIONS ENROLLMENT Fee Waivers

18. *Do you have certification from the CA Department of Veterans Affairs that you are eligible for a dependent's fee waiver? Submit certification.* ❑ *Yes* ❑ *No*
19. *Do you have certification from the National Guard Adjutant General that you are eligible for a dependent's fee waiver? Submit certification.* ❑ *Yes* ❑ *No*
20. *Are you eligible as a recipient of the Congressional Medal of Honor or as a child of a recipient? Submit documentation from the Department of Veterans Affairs.* ❑ *Yes* ❑ *No*
21. *Are you eligible as a dependent of a victim of the September 11, 2001, terrorist attack? Submit documentation from the CA Victim Compensation and Government Claims Board.* ❑ *Yes* ❑ *No*
22. *Are you eligible as a dependent of a deceased law enforcement/fire suppression personnel killed in the line of duty? Submit documentation from the public agency employer of record.* ❑ *Yes* ❑ *No*

- **If you answered "Yes" to any of the questions from 18-22, you are eligible for an ENROLLMENT FEE WAIVER and perhaps other fee waivers or adjustments. Sign the Certification below. Submit application and documentation to the financial aid office. Contact the Financial Aid Office if you have questions.**

CERTIFICATION FOR ALL APPLICANTS: READ THIS STATEMENT AND SIGN BELOW

I hereby swear or affirm, under penalty of perjury, that all information on this form is true and complete to the best of my knowledge. ***If asked by an authorized official, I agree to provide proof of this information, which may include a copy of my and my spouse/registered domestic partner and/or my parent's/registered domestic partner's 2016 U.S. Income Tax Return(s).*** *I also realize that any false statement or failure to give proof when asked may be cause for the denial, reduction, withdrawal, and/or repayment of my waiver. I authorize release of information regarding this application between the college, the college district, and the Chancellor's Office of the California Community Colleges.*

I understand the following information (please check each box):

- ❑ *Federal and state financial aid programs are available to help with college costs (including enrollment fees, books & supplies, transportation and room and board expenses). By completing the FAFSA or the California Dream Application, additional financial assistance may be available in the form of Cal Grants, Pell and other grants, work study and other aid.*
- ❑ *I may apply for and receive financial assistance if I am enrolled, either full time or part time, in an eligible program of study (certificate, associate degree or transfer).*
- ❑ *Financial aid program information and application assistance is available in the college financial aid office.*

_____ _____

Applicant's Signature *Date* *Parent Signature (Dependent Students Only)* *Date*

CALIFORNIA INFORMATION PRIVACY ACT

State and federal laws protect an individual's right to privacy regarding information pertaining to oneself. The California Information Practices Act of 1977 requires the following information be provided to financial aid applicants who are asked to supply information about themselves. The principal purpose for requesting information on this form is to determine your eligibility for financial aid. The Chancellor's Office policy and the policy of the community college to which you are applying for aid authorize maintenance of this information. Failure to provide such information will delay and may even prevent your receipt of financial assistance. This form's information may be transmitted to other state agencies and the federal government if required by law. Individuals have the right of access to records established from information furnished on this form as it pertains to them.

The officials responsible for maintaining the information contained on this form are the financial aid administrators at the institutions to which you are applying for financial aid. The SSN may be used to verify your identity under record keeping systems established prior to January 1, 1975. If your college requires you to provide an SSN and you have questions, you should ask the financial aid officer at your college for further information. The Chancellor's Office and the California community colleges, in compliance with federal and state laws, do not discriminate on the basis of race, religion, color, national origin, gender, age, disability, medical condition, sexual orientation, domestic partnership or any other legally protected basis. Inquiries regarding these policies may be directed to the financial aid office of the college to which you are applying.

FOR OFFICE USE ONLY

❑ CCPGT-A	❑ CCPG-B	❑Special Classification		RDP	❑ Student is not eligible
❑ TANF/CalWORKs	_____	❑ Veteran	❑ National Guard Dependent	❑ Student	
❑ GA				❑ Parent	
❑ SSI/SSP	❑ CCPG-C	❑ Medal of Honor	❑ 9/11 Dependent		
		❑ Dep. of deceased law enforcement/fire personnel			

Comments: _____

Certified by: _____ **Date:** _____

APPENDIX J

Vera Institute Fact Sheet on Building Effective Partnerships for High-Quality Postsecondary Education in Correctional Facilities

Building Effective Partnerships for High-Quality Postsecondary Education in Correctional Facilities

JANUARY 2016 FACT SHEET

In 2015, the United States Department of Education announced the Second Chance Pell Pilot Program, aimed at supporting postsecondary education programs for people in prison. The success of such programs and the students they serve depends on the quality of partnerships between colleges and corrections agencies. To support the implementation of new partnerships and strengthen existing ones, this fact sheet shares lessons learned from the development and implementation of Vera's Unlocking Potential: Pathways from Prison to Postsecondary Education demonstration project, launched in 2012.



Pell Grants for Incarcerated Students

Starting in 1972, the federal Pell Grant provided need-based grants to low-income undergraduate students, including students who were incarcerated. However, in the Violent Crime Control and Law Enforcement Act of 1994, eligibility for students incarcerated in state and federal prisons was revoked. Twenty years later, the Second Chance Pell Pilot Program aims to once again open Pell Grant eligibility to incarcerated students, making college a possibility for thousands of students in prisons across the country. To date, over 200 postsecondary institutions have applied to participate. In spring 2016, the Department of Education will select a limited number of postsecondary education institutions, in partnership with correctional facilities, to participate in this initiative. Students in local jails and juvenile facilities continue to be eligible for Pell Grants.

WHY POSTSECONDARY EDUCATION FOR INCARCERATED PEOPLE MATTERS

- **Incarcerated people need educational opportunities.** From 1972 to 2010, the number of people incarcerated in prison increased 700 percent, from 174,379 to 1,403,091. A significant proportion of this increase was concentrated among people with no college education[1]
- **Postsecondary education promotes safer communities.** Incarcerated people who participate in prison education programs are 43 percent less likely to recidivate than those who do not.[2]
- **Postsecondary education is cost-effective.** It offers a 400 percent return on investment over three years for taxpayers, or $5 saved for every $1 spent.[3]
- **Postsecondary education improves the quality of life for individuals, families, and communities.** Those who participate while in prison experience increased opportunities for employment and earnings, increased intergenerational educational achievement, and more frequent and meaningful civic engagement.[4]
- **Postsecondary education in prison improves safety.**[5] Facilities with college programs report fewer conduct issues and less violence, making the prison safer for staff and incarcerated people alike.

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CENTER ON SENTENCING AND CORRECTIONS
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DEVELOPING COLLEGE-CORRECTIONS PARTNERSHIPS

To ensure growth and success, partnerships between institutions of higher education and corrections agencies should have clear and purposeful guidelines in place. These partnerships should aim to:

- Develop a shared understanding of what is needed programmatically and logistically to support a high-quality postsecondary education program.
- Be clear, intentional, and honest about what can be done—don't overpromise or oversell deliverables.
- Develop and execute a written agreement that details shared goals, a commitment to partnering, and each institution's roles and responsibilities integral to the success of the program. This agreement should be reviewed and updated annually based on actual implementation experience.
- Develop and update policies, procedures, and processes that promote and strengthen the efficacy of the partnership in supporting postsecondary education programs. These policies should identify the specific needs of the correctional facility and participating college and corrections organizations. (See "Teaching in Prison.")
- Implement and maintain regularly scheduled meetings between college and corrections representatives to foster relationship- and trust-building, engage in ongoing planning, and troubleshoot emerging issues and challenges.
- Innovate, but learn from prior and existing efforts so as to avoid repeating unnecessary mistakes in implementation and execution.



Only 35 to 42 percent of state prison facilities report providing college courses to incarcerated individuals.[6]

Teaching in Prison

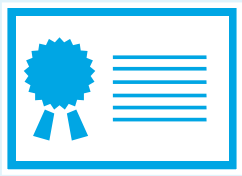
Teaching in prison can come with unexpected challenges. For example, faculty will need to get security clearance to enter the facility, which may take weeks and require corrections trainings. Once clearance is acquired, both students and faculty members may still require escorts from corrections officers to reach their classrooms. Because students in a classroom may not be allowed to wait unsupervised for the instructor to arrive, even slight delays in arriving at the facility can wreak havoc on corrections schedules. This may result in the facility cancelling the day's class, leading to frustration for all parties involved.

College program administrators should also take into account facility transfers. People in prison do not typically serve their full sentence in a single facility and transfers to other facilities can occur at any time during the academic year. Transfers to facilities without college programs or that inhibit instructors from reaching their students to complete coursework can stall or end academic progress, wasting program dollars or student financial aid. Pending transfers are often kept confidential for security reasons, even from facility staff. Those planning college programs should work with corrections partners to plan for the eventuality of facility transfers well in advance. Where feasible, transfer "holds" should be utilized for enrolled students.

In addition, classroom space is often at a premium in facilities, where many educational and therapeutic courses may be running at a given time. Scheduling class times can be challenging and should begin well in advance of the semester start. The development of course schedules should also consider students' work schedules, as their limited wages are necessary to purchase food and other supplies, as well as to save money in advance of release.

ENSURING QUALITY IN POSTSECONDARY EDUCATION PROGRAMS

To ensure that students are better able to seek admission to college programs post-release, transfer credits, or be competitive with college graduates in the community, the quality and content of college programming should be in all material ways equivalent to that offered to students on campuses in the community. Thus, college faculty must view the classroom in prison as an important space where students are challenged to think, question, learn, and grow, just as they would in a classroom on any college campus in the community. To achieve this, corrections and higher education partners should aim to:



In the academic year 2009 to 2010, fewer than 71,000 prisoners in 43 states participated in postsecondary education programs—just six percent of the total state prison population in the United States.[7]

- Incorporate the students' voices in program planning and as an important component of continuous program improvement. This can be accomplished, for example, through student advisory boards or councils.
- Offer only credit-bearing courses that are transferable to colleges in the communities to which incarcerated students return, and/or developmental courses (ideally accelerated) that directly prepare students for credit-bearing work. Moving students to credit-bearing coursework faster minimizes the risk of students giving up out of frustration or being removed from the program because of release or transfer prior to earning college credits. It also ensures that scarce program dollars go to transferable, credit-bearing coursework that can be used toward a degree or other credential.
- Establish clear articulation agreements ensuring credits can be transferred from in-prison courses to community-based postsecondary institutions.
- Plan courses that offer credits that build progressively (i.e., "stackable credentials") so that students may attain certificates and associate's and bachelor's degrees using placement tests and transcript reviews. For career and technical education, consider workforce demands in the localities to which students will return in determining course offerings.
- Recruit instructors with equivalent credentials and experience as those on campuses in the community. Whether adjunct or full-time, professors must have the experience and knowledge necessary to ensure students in prison have equitable opportunities for education.
- Develop a plan to provide academic support to students in prison, such as access to computers and Internet research technology, access to library and other research materials, tutoring, and dedicated times or places for study.
- Plan graduation and student achievement ceremonies well in advance, including a review of all relevant academic and prison policies and procedures. Discuss expectations regarding event procedures and requirements in detail.

SUPPORTING EDUCATION POST-RELEASE

Academic support is imperative for students to continue their college education after they are released from prison. Stressors related to transitioning from life in confinement to life in the community complicate the other barriers students face—such as academic preparedness, financial challenges, and a lack of social support. Corrections and higher education partners should aim to:

- Counsel students about enrolling in and transferring credits to postsecondary institutions following release from prison, including assistance in filing college admissions applications, financial aid forms, and links to post-release student support services on campus, such as tutoring and scholarship information.
- Connect students to post-release reentry or basic needs support, such as substance abuse treatment, health, housing, transitional jobs, etc. This should include identifying specific staff at colleges or reentry organizations that can ensure the continuity of transition support.

- Explain partnership goals to the relevant community-corrections staff, addressing curfews that interfere with evening class times, work requirements that supersede educational goals, supervision meetings that occur during class times, and other rules that can negatively impact academic persistence and success. (For example, rules that prohibit formerly incarcerated students from interacting with each other discount proven research that peer support is vital to adjusting to and successfully navigating the post-release college environment.)
- Explain partnership goals to the relevant community-based college staff and identify champions on campus who can mentor post-release students.
- Develop peer networks for formerly incarcerated students on college campuses to affirm identity and provide a means to connect with others who have faced similar challenges in returning home and continuing their education.

ENDNOTES

[1] Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Academies Press, 2014), 64-68; Pew Charitable Trusts, Prison Count 2010 (Washington, DC: Pew Charitable Trusts, 2010), 1.

[2] Lois Davis, Robert Bozick, Jennifer Steele, Jessica Saunders, and Jeremy Miles, *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults* (Santa Monica, CA: RAND Corporation, 2013), 32.

[3] Lois Davis et al., (2013), 36-40.

[4] Lois Davis et al., (2013), 41-47; NCHEMS Information Center for Higher Education Policymaking and Analysis, *"Wage and Earnings: Difference in Median Earnings between a High School Diploma and a Bachelors Degree";* Anthony Carnevale, Nicole Smith, and Jeff Strohl, *Help wanted: Projections of jobs and education requirements through 2018* (Washington, DC: Georgetown University Center on Education and the Workforce, 2010), 13; Le'Ann Duran, Martha Plotkin, Phoebe Potter, and Henry Rosen, *Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness* (New York, NY: The Council of State Governments Justice Center, 2013) 2; Wendy Erisman and Jeanne Contardo, *Learning to Reduce Recidivism: A 50-state Analysis of Postsecondary Correctional Educational Policy* (Washington, DC: The Institute for Higher Education Policy, 2005), 8-11.

[5] Laura Winterfield, Mark Coggeshall, Michelle Burke-Storer, Vanessa Correa, and Simon Tidd, *The Effects of Postsecondary Correctional Education* (Washington, DC: 2009), 9. Michelle Fine, Maria Elena Torre, Kathy Boudin, Iris Bowen, Judith Clark, Donna Hylton, Migdalia "Missy" Martinez, Rosemarie A. Roberts, Pamela Smart, Deobra Upegui, *Changing Minds: the Impact of College in a Maximum Security Prison* (New York, NY: Ronald Ridgeway Inc., 2001), 21-22; Correctional Association of New York, *Education from the Inside, Out: The Multiple Benefits of College Programs in Prison* (New York, NY: Correctional Association of New York, 2009), 8-9.

[6] Laura E. Gorgol and Brian A. Sponsler, *Unlocking Potential: Results of a National Survey of Postsecondary Education in State Prisons* (Washington, DC: Institute for Higher Education Policy, 2011), 3.

[7] Ibid.

For More Information

The Vera Institute of Justice is an independent nonprofit organization that combines research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

Through the Unlocking Potential: Pathways from Prison to Postsecondary Education Project, Vera is providing three competitively selected states—Michigan, New Jersey, and North Carolina—with incentive funding and technical assistance to expand access to higher education for people in prison and those recently released.

For all college programs and their corrections partners working with justice-involved communities, Vera provides an online resource center, available through the Expanding Access to Postsecondary Education Project. There, policymakers and practitioners interested in developing or enhancing high-quality postsecondary education programs in corrections facilities and in the community can access technical assistance tools, publications, and webinars. Find resources and more at www.vera.org/project/expanding-access-postsecondary-education.

This project is supported by Grant No. 2014-DP-BX K006, awarded by the Bureau of Justice Assistance. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

For more information about this and other Vera efforts to expand access to postsecondary education for incarcerated and formerly incarcerated people, contact Fred Patrick, director of Vera's Center on Sentencing and Corrections, at fpatrick@vera.org.

APPENDIX K

IDEAS ON WHERE TO GO FOR SUPPORT – FROM ROOT & REBOUND'S TOOLKIT: *MY EDUCATION, MY FREEDOM*

ONE OF THE COMMON CONCERNS that formerly incarcerated students raised in the creation of this Toolkit was the importance of finding social support on campus—people and groups who can relate to you and who you can trust for advice.

Below are groups and people that can support you on your educational journey.

Five Keys: Free school that offers educational assessments, adult basic education (ABE), and GED/High School Equivalency test preparation. Find out where they are located and contact information on page 17.

Campus Groups for Formerly Incarcerated Students: Many community colleges and an increasing number of four-year colleges and universities in California have formed groups specifically for system-impacted and formerly incarcerated students on campus. For a complete list of these programs, visit the website: www.correctionstocollegeca.org.

EOPS, EOP, and Puente: Offered on some California public college campuses, these programs provide students from disadvantaged backgrounds additional resources, mentorship, academic counseling, and sometimes financial assistance. While not everyone who applies can join these programs, their staff will likely have a lot of helpful information and advice for system-impacted and formerly incarcerated students.

College campus groups for first-generation students: If you are the first person in your family to attend college or graduate school, seek out any groups for first-generation students.

The **Way-Pass program** serves formerly incarcerated women attending City College of San Francisco. It serves as a bridge for women transitioning from incarceration to education and strives to increase retention and educational completion rates among formerly incarcerated women at CCSF. For more information please call 415-452-4889 or email waypass@gmail.com.

Project Rebound: Project Rebound is a special admissions program that helps formerly incarcerated individuals enter the California State University system. It is currently available at SFSU, San Bernardino, Bakersfield, Fullerton, Pomona, Sacramento, Fresno, and San Diego. The program offers special admissions for men and women who might not normally qualify for university acceptance because of application deadlines and minor academic deficiencies. This program is supported by the Associated Students and many other departments in the California state system.

PROJECT REBOUND CONTACTS

SFSU: (415) 405-0954

San Bernardino:
Annika Anderson
Office: FOB-242
5500 University Pkwy
San Bernardino, CA 92407
(909) 537-4351

Bakersfield:
Michael D. Dotson
9001 Stockdale Hwy.
Bakersfield, CA 93311-1022
(916) 278-6794

Fullerton:
Romarilyn Ralston
800 N. State College Boulevard
Fullerton, CA 92831
(657) 278-7859

Pomona:
Renford Reese
3801 W Temple Ave.
Pomona, CA 91768
(909) 869-4665

Sacramento:
Alton Williams
Mail Stop 6085 6000 "J" street
Alpine Hall Rm. #114
Sacramento, CA 95819
(916) 278-6794

Fresno:
Jennifer Leahy
2576 E. San Ramon Ave
M/S ST 104
Fresno, CA 93740
(559) 278-2313

San Diego:
Alan Mobley
5500 Campanile Drive
San Diego, CA 92182-4505
(619) 594-2596

Academic, financial aid, and career counselors: Most schools have academic, financial aid, and career counselors, who know the requirements to get through that specific school very well. Reach out to these advisors often. (One thing to keep in mind is that campus career counselors are not lawyers, so if you have a question specifically about how your conviction or arrest record will affect your ability to get a specific job or license/certificate, it is a good idea to talk to a reentry lawyer.)

Community-Based Organizations and Nonprofits: Look for organizations in your city or county that serve people in reentry and people impacted by the criminal justice system.

Root & Rebound: Root & Rebound provides free legal resources, education, and assistance to people with criminal records and those who support them. Call 510-279-4662 for more information.

211 for Referrals: You can call 211 in most counties to get a referral for any need that comes up for you while in school (for example, health care, public benefits, child care, food, legal services, reentry support, etc.) This map shows you which counties 211 operates in (in dark gray).



Updated February 2016

UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD



In the UNDERSTANDING & CLEANING UP YOUR CRIMINAL RECORD CHAPTER, you will first learn the importance of understanding your records—where that information exists in the world, and how to fix mistakes in your record early on in reentry.

In the second part of the Chapter, you will learn that you may be able to "clean up" your criminal record through different kinds of "expungement" in California. Expungement helps to protect your criminal history information and keep it out of sight for certain people. In most cases, "cleaning up" your criminal record WON'T completely erase it, but it CAN make past convictions and other criminal history less visible to many, which has many benefits in different areas of your life, including applying to housing, jobs, and more.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this informational material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure that the law has not changed and applies to your particular situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.



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I. INTRODUCTION

This UNDERSTANDING & CLEANING UP YOUR RECORD CHAPTER is broken up into the following subjects:

- **Key Concepts For Understanding Your Criminal Record & Fixing Errors** (PG. 937), which explains the different types of criminal records that you may have, what information can (and can't) be included in your criminal records and on background checks, and why it's important to review and understand your own criminal records.
- **Who Can See Your Criminal Record** (PG. 948), which gives you the different rules for who CAN and CAN'T see your criminal records and/or run a background check on you (like employers, law enforcement agencies, licensing agencies, and landlords), and how they can use the information they get about you.
- **How to Get Your Criminal Records** (PG. 950), which tells you how to get copies of the different types of criminal records you may have. You will need these in order to decide the best way to clean up your record.
- **How to Clean Up Your Record** (PG. 953), which explains the different options, or "remedies," available for cleaning up your record. It helps you figure out whether you and your offense are eligible for them, and walks you through how to do each one.

If you are recently released from prison or jail, or earlier in the reentry journey, the sections about key concepts in understanding you record and fixing errors, learning who can and cannot see your criminal record information, and how you can get copies are the most important early on.

If you are later in your reentry journey, cleaning up your record will become more important to you over time, as many of these "expungement" options are only available to people off supervision or those who are able by law to ask to get off supervision early.

II. KEY CONCEPTS FOR UNDERSTANDING YOUR CRIMINAL RECORD & FIXING ERRORS—EARLY IN REENTRY

This is one of the most important sections for people early in their reentry journey—to better understand your criminal record, learn how to fix errors, and be prepared for what others can and cannot find out about you and your record.

WHAT IS A CRIMINAL RECORD?

Your "criminal record" is the broad term we use to include ALL of the information created about any contact you've had with law enforcement, the courts, or another part of the criminal justice system. Your "criminal record" includes arrests, charges filed against you, convictions, pleas, acquittals, dismissals, sentences, and any other contact you have had with law enforcement and/or the criminal justice system that was *documented* (written down).

Here are some *examples* of how your contact with law enforcement or the criminal justice system can get documented. All of this information is considered part of your criminal record (but note that much of it may be PROTECTED from being seen):

- You were pulled over while driving and arrested for a DUI;
- You received a citation for public disorderliness or having an open container in public;
- You were arrested, and the police wrote up an arrest record;
- You were taken to jail, booked into the system, and fingerprinted;
- You were charged with a crime;
- You were arraigned (appeared before a judge) in court and pleaded guilty or not guilty;
- You were convicted of a crime and sentenced to prison or jail, and the judge wrote a sentencing order;
- You were acquitted of the charges after a trial;
- You agreed to a plea bargain with the prosecutor. In exchange, the prosecutor dismissed some of the charges against you;
- You violated your probation or parole and had your supervision revoked;
- You had your conviction dismissed or expunged

IMPORTANT PROTECTIONS TO KNOW ABOUT: A lot of this information CANNOT be included in a regular background check. For more information about what information can and can't be included in your background check, see PG. 943.



WHY IS IT IMPORTANT TO UNDERSTAND MY CRIMINAL RECORD?

It's important to know what will show up in your criminal records so that you can make sure it's accurate, that information that shouldn't be disclosed stays protected, and so that you can better prepare to deal with your record coming up when you're trying to get a job, find housing, reunite with your family, apply for public benefits, or go back to school. Furthermore, California has laws that allow you to "clean up "some of your record LATER in the reentry process.

TYPES OF CRIMINAL RECORDS

RAP SHEETS

WHAT IS A RAP SHEET AND WHY IS IT IMPORTANT?

A RAP sheet (Record of Arrest and Prosecution) is the government's official version of your criminal history, as recorded by local, state, and federal government agencies (such as courts, law enforcement, FBI, and other criminal justice agencies). It contains a list of every contact you have had with the criminal justice system, including: arrests, charges, convictions, acquittals, dismissals, pleas, sentences, and open warrants.

Your RAP sheet includes important information like the date of each arrest, which law enforcement agency arrested you, what offense(s) you were charged with, your case number (docket or indictment number), and—most important—the final outcome (disposition) of each case (for example, acquittal, conviction, plea bargain, sentence, or dismissal).[2941] It's also important to look out for errors (learn about common ones on PG. 939).

HOW MANY RAP SHEETS DO I HAVE?

If you've been arrested or convicted of a crime in California, you potentially have three different RAP sheets.[2942]

- Your county (local) RAP sheet lists your criminal history in that specific county *only*. If you have convictions in multiple counties, you will have a RAP sheet for each county.
- Your DOJ (state) RAP sheet lists your criminal history in all of California, but *only California*. This RAP sheet is kept by the California Department of Justice (DOJ).[2943] Unless you are 100% positive that *all* of your arrests and convictions were in just one county, it's a safer bet to get a copy of your DOJ (state) RAP sheet to make sure you know of everything about you in California.
- Your FBI (federal) RAP sheet lists any and all criminal justice involvement you've had in *any* state in the U.S., or with the federal government. This RAP sheet is produced by the Federal Bureau of Investigations (FBI).[2944] Your FBI (federal) RAP sheet is also called an *Identity History Summary*.

See APPENDIX CC, on PG. 1066 for a sample RAP sheet.

WHAT WILL MY RAP SHEET LOOK LIKE?

Looking at a RAP sheet can be confusing! RAP sheets have lots of numbers and abbreviations, so it's not always clear what information it actually contains or if it is correct. To learn how to read and understand the information in your California RAP sheet, and to see a sample California RAP sheet, see APPENDIX CC, on PG. 1066. You can also ask a lawyer or a public defender to help you read and understand your RAP sheet.

IMPORTANT: Your RAP sheet is confidential! *Unlike a background check*, your official government RAP sheets are *confidential*. This means that *most people—most* employers, private landlords, and average Joes—CANNOT see your RAP sheets. Only *certain people* under *certain circumstances* can see your RAP sheet—this includes *courts*, *law enforcement*, *government agencies*, and *special employers*.[2945] Of course, *YOU* always have a right to see your own RAP sheet. (For a complete list of who can see your RAP sheet, see PG. 948.)

BUT: Even though *RAP sheets* are confidential, *some of the information* in them will likely show up in background checks. That's why it's important to know what information is in your RAP sheet, and to correct any errors. For more information about correcting mistakes in your RAP sheet, see PG. 944. For more information on background checks and what information can and can't show up in them, see PG. 941.

[2941] CAL. PENAL CODE § 13125; Rap Sheets: Where They Begin and End, NATIONAL HELPING INDIVIDUALS WITH CRIMINAL RECORDS RE-ENTER THROUGH EMPLOYMENT (H.I.R.E.) NETWORK, http://www.hirenetwork.org/content/rap-sheets-where-they-begin-and-end.
[2942] Getting Out and Staying Out: A Guide to San Francisco Resources for People Leaving Jails and Prisons, SAN FRANCISCO REENTRY COUNCIL 45 (2012), http://sfgov2.org/ftp/_gfx/reentry/documents/Getting-Out-Staying-Out.pdf.
[2943] Cal. Penal Code § 11105.
[2944] 28 C.F.R. § 16.31.
[2945] Cal. Penal Code § 11105(b).

WHY IS IT HELPFUL FOR ME TO SEE MY RAP SHEET?

There are 4 main reasons why it's important to see your RAP sheet and know exactly what it says:

- *RAP sheets often contain mistakes*, such as incomplete or incorrect information. It's important to *find and correct any errors* BEFORE the wrong information has a chance to harm you.
- *You will have an accurate record of your criminal history*, so that you know what information certain employers, professional licensing agencies, landlords, banks, or others might see about you. To learn more about what information employers and licensing agencies CAN and CAN'T consider, see the EMPLOYMENT CHAPTER, beginning on PG. 557. To learn more about what information private landlords, Public Housing Authorities (PHAs) and owners of government-assisted housing CAN and CANNOT consider, see the HOUSING CHAPTER, beginning on PG. 332.
- *You will be better prepared to answer questions about your criminal history*. If you know what is in your record, you can plan ahead and figure out how to talk about it in a more positive light. For more information about how to talk about your criminal history in a job interview, see the EMPLOYMENT CHAPTER, beginning on PG. 557.
- *It's necessary for cleaning up your record*! Your RAP sheet will help you figure out which remedies you qualify for and which are the best options for you. In addition, you will need the details from your RAP sheet to fill out forms and complete the process of cleaning up your record.

For more information on how to get a copy of your RAP sheet, see PG. 950.

FIXING ERRORS IN RAP SHEETS

There are many different reasons why incorrect or incomplete information may show up in your government-produced RAP sheet. It's very important to get copies of your RAP sheet (and background check, discussed on PG. 944)—so that you can find and correct any errors BEFORE they cause problems for you!

WHAT ARE COMMON ERRORS IN RAP SHEETS?

- **Someone else's information**. Your RAP sheet may contain criminal history information about someone else with the same (or a similar) name as you.
- **Leaving out important information about a case**. Your RAP sheet may leave out important information about the final outcome of your case. For example, your RAP sheet may still say "case pending" even AFTER you were acquitted or the charges were dropped.
- **Including sealed information**. Your RAP may contain records that should have been destroyed or can only be released by special court order, such as sealed arrests or juvenile offenses.
- **Misleading information**. It is possible that a single charge may appear multiple times on your RAP, making it look like you have multiple offenses when you only have one.
- **Misclassifying your offense**. If a misdemeanor conviction shows up as a felony on your RAP sheet, this is a serious problem!

HOW COULD THESE MISTAKES END UP IN MY RAP SHEET?

- *Human error*. The people who manage the various records can make mistakes. They may confuse you with someone who has a similar name, enter your information wrong, or include information that should NOT be included (for example, a sealed juvenile offense).
- *Failure to confirm information*: Although government agencies are supposed to confirm that the information that they have about you is correct and up-to-date, a lot of times they don't. As a result, they may not report changes in the status of your case or the final outcome of the case, *even if you were acquitted or the case was dismissed!*
- *Identity theft*. Someone else may open an account using your personal information or commit a crime and pretend to be you by giving your name or identification. These activities may then go in your record as your actions!

WHEN CAN I FIX THE ERRORS?

You can start to fix the errors right away! If you find incorrect or missing information in your criminal records, you can follow these steps to fix the errors! Don't let errors stay on your record — they can hurt your chances of getting a job, a place to live, or government benefits, and they can disrupt many other areas of your life as well! And don't wait until the errors show up on a background check that is seen by an employer, private landlord, creditor, or government agency—it's much easier to clean up errors BEFORE they cause you any problems! Make sure your criminal record contains only *correct* and *up-to-date* information, so that wrong information does NOT get used against you.



HOW CAN I FIX ERRORS IN MY CALIFORNIA STATE (DOJ) RAP SHEET?

Even though your DOJ RAP sheet is supposed to be the official record of your criminal history from California law enforcement agencies and the courts, it is likely to still contain errors. If you think that **any** piece of information contained in your state RAP sheet is incorrect, you must submit a formal challenge to the Department of Justice in order to dispute the information. However, you can only submit this formal challenge **after** you have requested and received a copy of your RAP sheet from the DOJ.[2946] Once the DOJ receives your challenge, it will review your claim and decide whether or not to correct the information in your RAP sheet. It typically takes the DOJ an average of six months to review paperwork related to correcting RAP sheet errors. We recommend starting the process as soon as possible.

For detailed instructions on each step of the process for correcting errors in your DOJ RAP sheet, see APPENDIX F, on PG. 1010. If you have any other questions about getting or correcting your California RAP sheet, call the DOJ's *Record Review Unit* at (916) 227-3835. (NOTE: This is an automated phone system that lists many DOJ-related issues. Follow the prompts that ask if you if you want to "verify or challenge the accuracy of your criminal history.")

HOW CAN I FIX ERRORS IN MY FEDERAL (FBI) RAP SHEET?[2947]

Your FBI (federal) RAP sheet (also called your Identity History Summary) is the federal government's official record of all of your interactions with law enforcement and the criminal justice system from anywhere in the United States, including any federal cases or convictions. The FBI gets your fingerprints and criminal history information from other criminal justice organizations throughout the U.S. This includes local police, county sheriff, and state highway patrol departments, statewide criminal justice agencies (such as the California Department of Justice), federal law enforcement agencies (such as the Drug Enforcement Administration and the FBI itself), and state and federal courts. In general, when you have any interaction with one of these agencies, they send your information to the FBI's Criminal Justice Information Services (CJIS) Division.

The FBI can only change your information if the original agency or court (i.e., the one that sent the information to the FBI in the first place) tells the FBI to change it.[2948] If you think your FBI RAP sheet is inaccurate or incomplete, there are 2 ways to correct the information:

WHAT ARE "FEDERAL AGENCIES AND COURTS"?

If you had a case in FEDERAL court, or if you've had any interaction with FEDERAL law enforcement, it will show up on your FBI RAP sheet. You will need to contact the federal agency that sent your information to the FBI in order to correct it.

Examples of FEDERAL agencies and courts include: the FBI; the U.S. Attorney's Office (federal prosecutor); U.S. district courts; and U.S. Offices of Probation and Pretrial Services (federal probation department).

OPTION 1: Contact the court or agency that sent your information to the FBI.

NOTE: Each entry on your FBI RAP sheet should list the specific agency that provided the information. This is how you can tell which agency sent the FBI the incorrect or incomplete information on your FBI RAP sheet.

> IF THE INCORRECT OR MISSING INFORMATION IS FROM A CALIFORNIA STATE AGENCY OR COURT:

Contact the California DOJ's Bureau of Criminal Information and Analysis, and ask them to send the FBI corrected or updated information.[2949]

> IF THE INCORRECT OR MISSING INFORMATION IS FROM AN AGENCY OR COURT IN ANOTHER STATE:

Contact the state Identification Bureau of the state where the agency or court is located, and ask them to send the FBI corrected or updated information. Contact information for the Identification Bureau of every U.S. state is available on the FBI's website at: http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing.

[2946] CAL. PENAL CODE §§ 1120-1127.
[2947] Challenge of an Identity History Summary, FED. BUREAU INVESTIGATION, http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/challenge-of-an-identity-history-summary.
[2948] See Identity History Summary Checks, FED. BUREAU INVESTIGATION, http://www.fbi.gov/about-us/cjis/identity-history-summary.
[2949] State Identification Bureau Listings, FED. BUREAU INVESTIGATION, http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing.

> IF THE INCORRECT OR MISSING INFORMATION IS FROM A FEDERAL AGENCY OR COURT:

Contact the specific federal agency that sent your information to the FBI, and ask them to send corrected or updated information. See APPENDIX G, PG. 1012 for additional details about each of these steps.

OPTION 2: Go through the FBI directly.[2950]

If you don't know where the incomplete or incorrect information on your RAP sheet came from, you can contact the FBI directly to challenge it, and ask them to correct it. You will need to write a "challenge letter" explaining exactly what information is wrong and why, and send it to the FBI along with any proof you have to support your claim. (For a list of common RAP sheet errors, see PG. 939.)

The FBI will then investigate your claim. If the FBI decides that the information in your RAP sheet was wrong or incomplete, it will correct your RAP sheet and let you know. For a detailed explanation of both Option 1 and Option 2, see APPENDIX G, PG. 1012.

IMPORTANT: IT IS *EXTREMELY* IMPORTANT TO REVIEW YOUR RAP SHEETS — both State and Federal-level — to make sure that all the information contained in them is ACCURATE, COMPLETE, AND UP-TO-DATE. Any errors on your RAP sheet can cause you serious problems in the future when you apply for a job, a professional license, housing, or a loan, or if you try to reconnect with your family, or if you get arrested or charged with a crime in the future. (To find out how to get a copy of your RAP sheet, see PG. 950. For more information on what to do if there are errors in your RAP sheet, see PG. 939.)

REMINDER

A *background check* is the process of looking up information about your past—such as your criminal history, work experience, education, debts, and other personal facts. They are usually done by *private background check companies* which often get requests for them from employers and landlords. There are special laws that protect your rights when someone gets a background check on you. *Remember*, a background check does NOT include your RAP sheet or your credit report, and there are strict limits on what criminal history information they can include.

BACKGROUND CHECKS

WHAT IS A BACKGROUND CHECK?

You've probably heard of someone running a "background check" on someone else. A background check is the process of looking up non-confidential information about someone's past activities, including their criminal history, work experience, education, debts, etc. When someone runs a background check on you, they may research your history by looking up public records about you, running an internet search on you, and even interviewing people you know!

Most commonly, background checks are done by *private companies* that specialize in investigating people and compiling information about them. Employers, private landlords, creditors, and other people often hire these companies to run a background check on you when you apply for a job, rent an apartment, apply for a loan, or volunteer at your child's school! (For more information about background checks in these different situations, see the EMPLOYMENT CHAPTER (PG. 557), HOUSING CHAPTER (PG. 332), and FAMILY & CHILDREN CHAPTER (PG. 714).

DEFINITIONS
Background Check Reports & Background Check Companies

- A "background check report" is the document that an employer, landlord, or other person sees when he/she hires a private background check company to run a background check on you.
- A "background check company" is a private company that specialize in doing background checks (and selling the information they gather).

[2950] 28 C.F.R. § 16.34.





REMEMBER: Your RAP sheet itself is confidential and CANNOT be included in most background checks. BUT some of the information in your RAP sheet—like the record of certain criminal convictions—may be public information, so the information can show up on a regular background check. For example, court records are public information, so a background check company can go to the courthouse and look up your records to find out about convictions.

WHAT INFORMATION CANNOT SHOW UP IN A PRIVATE BACKGROUND CHECK?

Background check laws protect you by making it illegal for *private background check companies* to include certain types of information in your background check report, and by creating penalties if they do.

INFORMATION THAT *CANNOT* BE IN YOUR BACKGROUND CHECK REPORT IN CALIFORNIA:

- Criminal convictions that have been fully pardoned;
- Criminal convictions that have been expunged (for employment background checks);
- Criminal convictions from *more than 7 years ago* (except for certain, sensitive jobs where the law requires it);
- Any information about arrests or charges that *did not* result in a conviction*, no matter how recent* (unless your judgment is still pending);[2951]
- Any information about arrests or charges from *more than 7 years ago*;
- Any information about referrals to, or participation in, any pre-trial or post-trial diversion programs (usually drug treatment programs that you are ordered to do instead of going to jail);
- Lawsuits and judgments from *more than 7 years ago*;[2952]
- Paid tax liens from *more than 7 years ago*;[2953]
- Accounts placed in collections from *more than 7 years ago*;
- Bankruptcies from *more than 10 years ago*;
- Unlawful detainers (evictions) that you won or resolved with a settlement agreement;
- *Any other negative information* like repossessions, foreclosures, check verification reports, motor vehicle reports, or drug test results[2954] from *more than 7 years ago*;[2955]
- ***** ***Public information*** that hasn't been checked for accuracy in the past 30 days before the background check is issued.[2956] Read more about this law below.
- ****** ***Testimonial information*** that has another person who can verify it as true or false.[2957] Read more about this law below.

ADDITIONALLY,BACKGROUND CHECK COMPANIES *MUST* FOLLOW SPECIFIC RULES:

Background check companies must follow specific rules when they include ANY negative or harmful information—*including criminal history information*—in a background check on you. Harmful information includes anything that could hurt your chances of getting a job, housing, insurance, or public benefits; cause you to have to pay more for housing, insurance, or public benefits; have ANY other negative impact on you.[2958]

**** Confirming that public records are accurate:***

Background check companies *cannot* include any public information (for example, information about arrests, convictions, civil actions, tax liens, and outstanding judgments) unless the company has been double-checked it for accuracy in the past 30 days.[2959] This means the company should check with the court, police, or other agency to find out the *current status* of any arrests, charges, indictments, convictions, judgments, etc. For example, if you were arrested but never charged, if your charges were dismissed or reduced, if you were acquitted (or convicted), or if there were any other changes to your case, the company must report the *updated* information.[2960]

[2951] EXCEPTIONS: An agency can report these kinds of arrests or charges (1) if they are part of a case that hasn't yet gone to trial or been resolved, meaning a "judgment is pending," or (2) if you are applying to work at a health care facility and would have access to patients, drugs or medication.
[2952] Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.18(a).
[2953] When a tax debt is not timely paid, the government's legal claim against your property is considered a "tax lien." Understanding a Federal Tax Lien, INTERNAL REVENUE SERVICE, http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Understanding-a-Federal-Tax-Lien.
[2954] How to Comply with the Fair Credit and Reporting Act, CONSUMER DATA INDUSTRY ASSOCIATION, http://www.cdiaonline.org/HTC/htc.cfm?ItemNumber=1080.
[2955] Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.18(c).
[2956] Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.18(c).
[2957] CAL. CIV. CODE § 1786.18(d).
[2958] Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.18(d).
[2959] Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.18(c).
[2960] Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.18(c).



*** Confirming "testimonial information" when possible:*

A background check company CANNOT include negative information from personal interviews with people who know you—such as neighbors, landlords, employers, etc.—in your background check UNLESS the agency either confirms the information with another person (who would know whether the information is true or not) OR the person who gave negative information in the first place is the best (or only) possible source.[2961]

Read more about your rights regarding private background checks on PG. 571.

WHAT INFORMATION CAN SHOW UP IN A BACKGROUND CHECK?

In the age of the Internet, there is a lot of information that could show up in your background check report. For example, it may contain information about:

- Criminal convictions;
- Other court cases you were involved in (for example, lawsuits, small claims court cases, money judgments against you, etc.)
- Your driving record;
- Previous employment;
- Education records;
- Property ownership records;
- Bankruptcies and tax liens;
- Professional licensing records;
- Previous addresses;
- Past evictions; AND
- Personal references from people who know you (such as past employers, private landlords, neighbors, etc.).

Although anyone can look up public records or information on the Internet about you, there are special laws that limit WHO & WHEN someone can run a background check on you if they use a private ("commercial") background check company. In general, the people who can run a private background check on you include: employers, private landlords, insurance companies, professional licensing agencies, creditors, anyone with a court order or subpoena, and anyone seeking child support payments from you. (For a list of who can legally run a background check on you, see PG. 948.)

In addition, there are laws that protect you by *limiting* the information that can show up in a private background check report, and give you the chance to *correct* any errors that show up. For a list of what information CAN & CANNOT be included in your private background check, see PG. 942-943.

WHY IS IT HELPFUL FOR ME TO SEE WHAT'S IN MY BACKGROUND CHECK?

There are several reasons why it's important to find out what's likely to come up in your background check:

- **Background checks often contain mistakes—**such as incomplete, incorrect, or forbidden information. It's important to *find and correct any errors* BEFORE the information shows up in a background check and causes you problems.
  - **You will know what other people are likely to see about you**, in case your criminal history comes up on an application for employment, professional licensing, housing, or a loan, or in any other situation. To learn more about what information employers and licensing agencies CAN and CAN'T consider, see the EMPLOYMENT CHAPTER (PG. 557). For more information about what landlords and housing authorities can consider, see the HOUSING CHAPTER (PG. 332).
- **You will be better prepared to answer questions about your criminal history during job interviews, on job and housing applications, and in other situations.** For more information about what employers CAN and CAN'T *ask* you about or *see* in your record, see the EMPLOYMENT CHAPTER, (PG. 557).
- **You can protect your rights and maximize your chances of success!** Remember, there are laws that protect your rights when someone runs a background check on you. But you need to know what information will show up in your background check in order to protect those rights!

REMEMBER, cleaning up your criminal record will reduce the information that most people can see about you when they run a background check!

[2961] CAL. CIV. CODE § 1786.18(d).



WHAT'S THE DIFFERENCE BETWEEN A RAP SHEET AND A BACKGROUND CHECK?

RAP Sheet	Background Check
Based on official government records	Based on investigation by a private company
Lists every encounter with law enforcement, the courts, and the criminal justice system	Contains only limited criminal history information
Contains criminal history information only	Includes criminal history information as well as other information about you
Generally confidential (generally only law enforcement and courts)	Can be seen by a variety of people (like public and private landlords and employers, banks, etc.) for many reasons — but not everything from your past can be reported.

FIXING ERRORS IN BACKGROUND CHECKS

HOW CAN I FIX ERRORS IN MY BACKGROUND CHECK?

Even though background check companies are limited by law on what information they can report about you, and are ***required to confirm*** that the information is true and correct, it is still very common for background checks to contain errors.

WHAT ARE COMMON ERRORS IN A BACKGROUND CHECK?

- **Information that should *NOT be included*—**such as convictions *more than 7 years old*, arrests that *did not lead to a conviction* (unless charges are still pending), participation in *court-ordered drug treatment*, or convictions that have been *dismissed*;
- **Information that is *wrong*** (for example, reporting that you were convicted of robbery instead of petty theft);
- **Information that belongs to *someone else*** with the same (or a similar) name as you;
- **Report of an arrest or charges filed, but not the *final outcome of the case*** (for example, you were never charged, charges were dismissed, you were acquitted, or you plead guilty to a lesser offense);
- **Information from public records or personal interviews that *has not been confirmed***;
- **Any *negative information* about you that is more than 7 years old (or bankruptcies that are more than 10 years old).**

You have the *right* to challenge any information in your background check, and to view the background check company's files containing any information that was used to prepare your background check.

WHAT ARE SOME STEPS I CAN TAKE TO FIX ERRORS IN MY BACKGROUND CHECK?

- First, you can NOTIFY the background check company that the information is wrong and include proof (documents or evidence) of the correct information.
- Second, the background check company MUST INVESTIGATE the information that you challenged, and MUST inform you of the results within 30 days.
- Third, the background check company MUST REMOVE or CORRECT any information that is wrong, incomplete, or cannot be confirmed as true.
- Finally, if the background check company does not remove the information from your background check, you can add your own STATEMENT OF DISPUTE to the company's file stating that you disagree with the information.[2962].

For a step-by-step explanation of this process, see APPENDIX H, on PG. 1014.[2963]

HOW DO I KNOW WHICH BACKGROUND CHECK COMPANY DID MY BACKGROUND CHECK?

There are two ways to find out which background check company ran your report and how to contact them:

- BEFORE someone runs a background check on you (such as an employer, private landlord, or creditor), generally they must TELL YOU that they are going to get a background check on you and get your

[2962] CAL. CIV. CODE § 1786.26(c); CAL. CIV. CODE § 1786.24; Fair Credit Reporting Act § 611, 15 U.S.C. § 1681(i).
[2963] CAL. CIV. CODE § 1786.24; Fair Credit Reporting Act § 611, 15 U.S.C. § 1681(i).



PERMISSION. They must also give you the name, address, phone number, and website of the background check company that they are going to use.[2964]

- If someone takes a harmful action against you (such as refusing to hire you, rent you an apartment, or give you benefits) based on information in your background check, they must give you an "ADVERSE ACTION LETTER" with the name, address, and phone number of the company used.[2965]

You have the right to know what internal procedures the background company uses to investigate your claim. You can ask the company for this information and they MUST provide it to you.[2966]

A NOTE ABOUT CHALLENGING INFORMATION IN YOUR BACKGROUND CHECK REPORT: Under the law, you have the right to challenge any information in your background check, and there is a specific process for doing it. However, in practice, it might not be as easy or straightforward, especially if the background check company is uncooperative or unresponsive. If you have trouble getting the company to review or change the wrong information in your file, it is recommended that you contact a lawyer for help.

ARREST WARRANTS

WHAT IS AN ARREST WARRANT, AND WHY IS IT IMPORTANT?

An arrest warrant or simply a "warrant" is a legal order that gives police and law enforcement the authority to arrest you for various reasons: for example, because you missed a criminal court date or are suspected of a crime. If you have an outstanding warrant this means that the police can take you into custody at any time – including during a routine traffic stop, at your home, or when you appear in court for another reason. If you do not take care of the warrant, you may constantly worry about being unexpectedly arrested or taken to jail. This is why it is very important to figure out if you have any outstanding warrants before getting your criminal record expunged (learn more about expungements starting on PG. 950) An outstanding warrant could also impact other areas of your life, such as your ability to get public benefits, public housing, or a passport.

WHAT TYPE OF WARRANTS COULD BE ON MY RECORD?

Below is a brief overview of different types of warrants that could show up on a record:

Arrest Warrant: An **arrest warrant** is issued after a grand jury or law enforcement officials have probable cause to suspect that you have committed a crime. Probable cause requires the knowledge of facts that would lead to a reasonable belief or strong suspicion that you committed a crime.[2967] A judge will issue an arrest warrant for you if the judge determines a crime has been committed and that "there is reasonable ground to believe" that you committed the crime.[2968]

Bench Warrant: A **bench warrant** is issued for failing to obey a court order, such as failing to appear for a court hearing or failing to answer a subpoena. A bench warrant can be issued for the following reasons:

- Failure to pay a fine;
- Failure to appear after an indictment on criminal charges where the court has a fixed date and place for an appearance by the defendant;
- Failure to appear in court after an attorney and judge personally order the defendant to appear;
- Failure to appear in court and show proof of enrollment, progress or completion of community service or other alternative sentencing; and
- Failure to appear (FTA) in court after citation by police officer.

A bench warrant gives police the authority to arrest you at any time, but usually doesn't trigger immediate police action. When a bench warrant is issued against you, your name will go into a statewide computer system that is accessible to the entire law enforcement community. Please note that in serious criminal cases, a failure to appear will most likely cause the court to issue a "regular" arrest warrant; this means the police may immediately try to find and arrest you.

Parole Warrant: A parole warrant can be issued if you violate the terms of your parole, including failure to meet your parole agent. If a parole warrant has been issued against you and you're considered a potential threat to public safety, the California Parole Apprehension Team will be sent to find you.

Not all parole violations lead to revocation of parole. The California Department of Corrections and Rehabilitation has developed a Parole Violation Decision Making Instrument to help parole agents determine

[2964] CAL. CIV. CODE § 1786.16.
[2965] CAL. CIV. CODE § 1786.40.
[2966] CAL. CIV. CODE § 1786.24(g).
[2967] *People v. Hillery* (1967) 65 Cal.2d 795, 803.
[2968] CAL. PEN. CODE § 813(a)



whether parole should be revoked or not. If the agent recommends that your parole should be revoked, a parole warrant can be issued.

HOW DO I FIND OUT IF I HAVE AN OUTSTANDING WARRANT?

If you are unsure whether you have an outstanding warrant, check your county courthouse website to see if it has a searchable public records section with information about outstanding warrants. You can search your name to see if the website has any warrants listed under that name. Please note that this option of searching a courthouse database for warrants may not be available.

You can also call the clerk of the court in your county. When you call the clerk of the court, ask if there is an outstanding warrant for "Person X" (your name) in a criminal or civil case. Have your name, birth date, and if possible, your case number and Social Security number, in hand. Avoid identifying yourself as the person for whom a warrant could have been issued.

If you do not feel comfortable calling the clerk of the court, you may also try calling your local public defender's office to assist you.

HOW DO I FIND OUT IF I HAVE AN OUTSTANDING WARRANT IN A FEDERAL CASE?

If you want to know whether you have an outstanding warrant in a federal case, call the federal clerk of the court for your district. If you are uneasy about calling the clerk of the court yourself, you can have another person call for you.

Another option is to go to the courthouse and look up your name in its public records. If it's possible, have another person do this for you, as you risk being taken into custody if you have an outstanding warrant.

You may have multiple outstanding warrants out for your arrest in different federal circuits. The clerk of the court for one circuit may not be able to tell you whether you have a warrant in another circuit. Consider working with a bail bondsman or an attorney to determine if you have multiple warrants.

HOW DO I FIND OUT IF I HAVE A PAROLE WARRANT?

Maintaining a positive relationship with your parole agent is key to staying out of jail or prison. If you have missed a meeting, you should immediately call your parole office and ask your parole agent for instructions.

You can reach the office for California's Northern Region at 916-255-2758 and the Southern Region office at 909-468-2300. These offices can then give you the phone number for your local parole office.

If you think a parole warrant has been issued against you, you can call the California Department of Corrections and Rehabilitation at 916-445-6713.

I FOUND OUT I HAVE AN OUTSTANDING WARRANT. WHAT CAN I DO?

If you have an outstanding warrant, you have a few options. You can call the clerk of the court and find out whether you can take care of the warrant by simply paying a fine. Although you may also go to the court and take care of your warrant in person, contact a lawyer to determine whether you are at risk of being taken into custody when you identify yourself.

It may be best to have a lawyer take care of the warrant for you. The lawyer may be able to get your warrant "recalled" or "quashed," meaning the warrant would be deemed invalid. If you don't take care of your warrant, you risk being taken into custody the next time you come in contact with the police, even during a routine traffic stop. Call a lawyer to make sure this doesn't happen to you.

CREDIT REPORTS

WHAT IS A CREDIT REPORT? AND WHAT'S THE DIFFERENCE BETWEEN A RAP SHEET AND A CREDIT REPORT?

In California, a credit report is different from a background check and is covered by a different set of laws.[2969] A credit report contains information about your money and finances—including debts you owe (such as unpaid bills, loans, or leases), your payment history for past bills and debts, and the status of your credit accounts. Your credit report does NOT include your criminal history or other personal information about you. For this reason, this legal guide does not go into detail about the laws governing credit reports.

[2969] CAL. CIV. CODE §§ 1785.1-1785.36.



WILL MY CREDIT REPORT BE INCLUDED IN MY BACKGROUND CHECK?

Generally, no. Background check companies are NOT allowed to include your credit report in your regular background check, because not everyone who is allowed to see your background check is also allowed to see your credit report. When companies run your credit report, they must follow a separate set of rules that are specific to credit reports, which are not covered in this guide. The only time that your credit report and background check will be together is when someone who is ***ALLOWED to see both*** requests them together (for example, a landlord can request both at the same time, but most employers cannot see your *credit* report, just your criminal background check).[2970]

HOW DO I GET A COPY OF MY CREDIT REPORT WHILE I'M INCARCERATED?

You must mail in a request for your free credit report to the following address:

Annual Credit Report Request Service
PO Box 105281
Atlanta, GA 30348

Include your full name, date of birth, Social Security Number and any addresses used in the last two years in a letter stating that you are requesting a free credit report. To find out how to obtain your Social Security Number, see PG. 38.

NOTE: When this guide refers to background checks or background check reports, it means information about your *criminal history* (and certain other personal information)—but NOT your credit report. For more information about your rights related to credit reports, here are some additional resources:

- Federal Trade Commission, Your Equal Credit Opportunity Rights at: https://www.consumer.ftc.gov/articles/0347-your-equal-credit-opportunity-rights
- California Department of Justice, Office of the Attorney General, Repairing Your Credit at: http://oag.ca.gov/consumers/general/repair_credit10
- Privacy Rights Clearinghouse, Credit & Credit Reports at: https://www.privacyrights.org/how-private-my-credit-report

[2970] CAL. CIV. CODE § 1786.2(c).



III. WHO HAS ACCESS TO YOUR CRIMINAL RECORD & WHAT THEY CAN SEE

WHAT WILL I LEARN?

- **Who CAN and CAN'T see your RAP sheet;**
- **Who CAN and CAN'T run a background check on you;**
- **Other ways that people may see your criminal history.**

There are laws about who can and can't get your RAP sheet or run a background check on you. This section will explain the different rules for accessing each type of criminal record.

WHO IS LEGALLY ALLOWED TO SEE MY RAP SHEET?

MOST PEOPLE CANNOT SEE YOUR RAP SHEET. Your RAP sheet is protected and confidential because it is kept by law enforcement agencies. The only people who can see your RAP sheet are:

- **Criminal justice and law enforcement** agencies have full access to your RAP sheet, including juvenile adjudications, expunged/dismissed cases, and sometimes even sealed records![2971]
- **State occupational licensing agencies** can review your RAP when considering whether or not to issue you a professional license. Some may ban you from getting a license if you have a criminal record.[2972] (For more information see the EMPLOYMENT CHAPTER, on PG. 601)
- **State and local welfare agencies** including child welfare agencies, child support agencies, and humane societies can see your RAP sheet.[2973]
- **Most public employers** can see your RAP sheet when you apply for a job with them. These include all federal, state and local government agencies—including police and fire departments, the California Department of Corrections (CDCR), local Boards of Education, and the U.S. Postal Service.[2974]
- **Certain private employers** can see your RAP sheet if you are applying for a job that involves access to sensitive information (e.g., nuclear power plants, public utilities, private security companies, and financial institutions like banks) OR you will be working with children, elderly, disabled, or other vulnerable people.[2975]

WHO IS LEGALLY ALLOWED TO RUN A BACKGROUND CHECK ON ME?

Unlike a RAP sheet, many more people (for housing, employments, bank loans, public benefits, etc.) can run a private background check on you, but it is still protected from showing everything in most cases. In California, state and federal laws[2976] allow background check companies to run background checks and send the information…

- To anyone making decisions about you for: employment, renting a house/apartment, professional licensing, government benefits, credit obligations,[2977] court-ordered child support or alimony, or insurance;
- To establish child support requirements;
- In response to a court order or subpoena;
- To anyone with a legitimate business need for the report (for example, a bank, creditor, or someone you have a business relationship with);[2978]or
- To the Federal Deposit Insurance Corporation or National Credit Union Administration.

[2971] CAL. PENAL CODE § 11105 (police departments, courts, District Attorney and Public Defender offices, parole and probation departments, and corrections agencies can access RAP sheets).
[2972] CAL. BUS. & PROF. CODE § 475; CAL. PENAL CODE § 11105 (occupational licenses are required for MANY professions, including: accountants, taxi drivers, architects, automotive repair persons, barbers and cosmetologists, cemetery and funeral service workers, contractors, court reporters, dental service professionals, electronic and appliance repair persons, physical therapists, real estate agents, security guards and private investigators, and nurses). See also Occupational Guides, CAL. EMP'T DEV'T DEP'T, http://www.labormarketinfo.edd.ca.gov/occguides/ (listing 200+ professions that require occupational licenses in California).
[2973] CAL. PENAL CODE § 11105(b).
[2974] CAL. PENAL CODE § 11105(b).
[2975] These employers include: nuclear power plants; public utilities; agencies directly responsible for the care of children, the elderly, or the mentally or physically disabled; youth organizations; in-home supportive care agencies; security organizations; financial institutions; private schools. See CAL. PENAL CODE §§ 11105(c)(1); 11105.3, 11105.4; CAL. FIN. CODE § 777.5; CAL. HEALTH & SAFETY CODE § 1596.871; CAL. VEH. CODE § 44237. However, private employers must still get authorization from the DOJ in order to view RAP sheets.
[2976] FCRA, 15 U.S.C. § 1681b; Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.12.
[2977] FCRA, 15 U.S.C. § 1681b(a)(3)(E); Investigative Consumer Reporting Agencies Act, CAL. CIV. CODE § 1786.12.
[2978] FCRA, 15 U.S.C. § 1681b(a)(3)(F). A "legitimate business need" includes anything related to a business relationship you started, or a need to review an existing account or ensure that you meet the terms of the account.



Basically, the main people who can—and are likely to—run a background check on you are employers, private landlords, insurance companies, licensing boards and agencies, and financial institutions.

REMEMBER, there are LIMITS on what information can be included in your background check. In general, *cleaning up your record* means that the information may no longer show up in the background checks that *most* people—like ordinary employers and private landlords—can get.

IS THERE ANY OTHER WAY THAT SOMEONE CAN SEE MY CRIMINAL HISTORY?

Yes. Because most criminal records and criminal case information is technically public, people in the general public could access on their own most legal paperwork filed in court or with a government agency. For example, anyone can go to the local courthouse, look up your criminal case and make copies of the documents in the court file.

But it is very unlikely that most people would go down to the courthouse to look you up for an apartment or job! Keep in mind that the information is likely scattered across hundreds of locations, so someone would really have to know exactly what they are looking for to actually find it. That's why most people use professional background check companies to do the investigating for them—and that's why these companies and the background checks they create are regulated by state and federal laws to protect you!

IV. GETTING COPIES OF YOUR CRIMINAL RECORDS

WHAT WILL I LEARN?

- **Why it's important to get a copy of your RAP sheet and background check;**
- **How to get your state, federal, and county RAP sheets;**
- **How to get a copy of your background check.**

This section explains how you can get copies of your various types of criminal records. You will need the information from your criminal record(s) to figure out which options are best for cleaning them up, and to complete the steps to do so.

IMPORTANT: If there's ANY possibility that you might have an outstanding warrant for your arrest—for ANY reason (including new charges against you or a failure to appear in court) from ANY county—it is recommended that you call the public defender or a private lawyer to check on your warrant status first, before trying to get your RAP sheet.

HOW DO I GET MY CALIFORNIA STATE (DOJ) RAP SHEET?

If you have arrests or convictions in **California only**, this is the only RAP sheet you will need. In order for the DOJ to release your RAP sheet, you are required to submit your fingerprints. Your fingerprints must be taken by a company called "Live Scan" (which has been specially approved by the DOJ and has locations all around California). You will also need to pay a $25 processing fee to the DOJ.

For a step-by-step explanation of how to get your DOJ RAP sheet, see APPENDIX A, on PG. 1002.

Note: It can take up to 2 months (anywhere from 2 to 8 weeks) to get a copy of your DOJ RAP sheet, depending on how long your RAP sheet is (i.e., how much information it contains).[2979]

For more information, visit the *Frequently Asked Questions* section of the DOJ website at http://oag.ca.gov/fingerprints/security_faq.

REMINDER: WHY IS IT IMPORTANT TO GET MY RAP SHEET?

- To correct any errors, such as incomplete or incorrect information;
- To have an accurate record of your conviction history;
- To be better prepared to answer questions about your criminal history; AND
- You will need it to clean up your record!

HOW DO I GET MY DOJ RAP SHEET IF I AM INCARCERATED?[2980]

Ask your attorney. Contact the attorney who represented you in your criminal case. They may have a copy of your RAP sheet in their files or archives.

Review your C-file. If you are in state prison, your RAP sheet may be included in your C-file. You have the right to review the non-confidential portion of your C-file; the process of asserting that right is called an "Olsen review."[2981] Your Correctional Counselor will have more information on how to begin this process.

Contact the DOJ: In order to obtain your RAP sheet directly from the DOJ, you must follow these steps:

STEP 1: Write a letter to the DOJ requesting a Fingerprint Identification Card (sometimes called a Hard Card) and, if you are indigent, a Fee Waiver form. Explain that you are currently incarcerated and be sure to provide your CDCR number and correct return address (including, where appropriate, your housing unit). Send this letter to:

Bureau of Criminal Identification and Information
Attention: Record Review Unit
P.O. Box 903417
Sacramento, CA 94203-4170

[2979] Telephone Interview with clerk, Cal. Dep't of Justice Record Review Unit (Mar. 26, 2015).
[2980] This section is adapted from "Using Proposition 47 to Reduce Convictions and Restore Rights." Legal Services for Prisoners with Children (March 2016),pp. 4-6, available at http://www.prisonerswithchildren.org/wp-content/uploads/2016/04/Prop-47-Guide-Updated-March-2016-w-cr180-form.pdf.
[2981] 15 C.C.R. § 3375(h); DOM §§ 13030.14, 13030.16; *Olsen v. Pope* (1974) 37 Cal.App.3d 783.



STEP 2: Once the Hard Card arrives, fill out the information and get fingerprinted. You may need to find a prison staff member who is a certified fingerprint technician. Ask your Correctional Counselor for more information.

STEP 3: If you are indigent, fill out the Fee Waiver form. Provide proof of indigence, such as a commissary account record or other document. If not, provide payment of the $25 DOJ fee via check or money order, seeking help from an outside loved one if need be.

STEP 4: Mail all forms to the address listed in Step 1. You should receive your RAP sheet within one to eight weeks.

HOW DO I GET MY FEDERAL (FBI) RAP SHEET?

If you have ever been arrested or had a conviction in another state, or for a federal offense, you will want to get a copy of your FBI (federal) RAP sheet (also called your "Identity History Summary."

There are two ways to get a copy of your FBI RAP sheet:

- You can request your RAP sheet directly from the FBI; OR
- You can use a special private company, called a "Channeler," that has contracted with the FBI to perform this service.

NOTE: It is generally faster to go through an FBI Channeler, but it is likely to be more expensive because these companies usually charge extra fees.

Whether you request your RAP sheet directly from the FBI or go through a channeler, you will need to fill out the FBI's "Applicant Information Form" and get fingerprinted by a Live Scan service provider. For a step-by-step explanation of how to get your FBI RAP sheet, see APPENDIX D, on PG. 1008.

For more information about getting your RAP directly from the FBI, visit the FBI's website at: http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/faqs

For more information about getting your FBI RAP sheet through an FBI-approved channeler, see http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/fbi-approved-channelers

REMINDER: WHY IS IT IMPORTANT TO GET A COPY OF MY BACKGROUND CHECK?

- To correct any errors, such as incomplete or incorrect information;
- To find out what other people are likely to see about you (employers, private landlords, government agencies, etc.);
- To be better prepared to answer questions about your criminal history (on job and housing applications, in job interviews, etc.); AND
- To protect your rights and maximize your chances of success!

HOW DO I GET MY LOCAL (COUNTY) RAP SHEET AND CRIMINAL HISTORY INFORMATION?

The process for getting your local RAP sheet is different in each county. In some counties, you can get a complete RAP sheet that has ALL of your criminal history information from that county in one place, including all of your convictions, arrests, and any open warrants. In other counties, these records are kept separately (by different agencies), so you will need to go to several places and get separate records for all of your court cases (convictions), arrest records, and warrants.

You will need to contact the police department, sheriff's department, courthouse, or Public Defender's Office of the county where you were convicted for information on how to get your local RAP sheet.

Remember, your county RAP sheet and other records will ONLY show information for *that county*. If you've had any interaction with the police, courts, highway patrol, or any other law enforcement or criminal justice agencies in other counties, you should get your California (DOJ) RAP sheet to see all of your criminal history information.

HOW DO I GET A COPY OF MY BACKGROUND CHECK?

The best way to find out what information might show up in your background check is to get your own background check done *on yourself*.

There are 2 ways to do this:

OPTION 1: Pay a *reputable* background check company to run a report on you.

There are MANY private background check companies out there—you can search online for "background checks" or check your local Yellow Pages under "Investigators." Beware, however, some background check companies are scams. Look up or call a few different companies to see what they offer and how much they charge. Avoid companies that seem to charge much more or much less than others.

OPTION 2: Request a background check report.



Under federal and state law, you are entitled to get a FREE copy of your background check once every 12 months from any background check company.[2982] To get a copy of your background check for free, you must confirm *in writing* that *1 of the following* is true:

- You are unemployed and intend to look for work within the next 60 days;
- You receive public benefits (government assistance such as CalFresh or General Assistance); OR
- You believe there may be errors in your report because you have been the victim of fraud or identity theft.[2983]

Send a letter to whichever background check company you choose stating that you fall into one of the above categories (and list which category), and that you would like to request your free background check.

Legitimate agencies should not hesitate when you ask for your free report and should offer to run it right away.



REMEMBER, your background check is different from your credit report, but you are entitled to both for free once every 12 months.

[2982] Fair Credit Reporting Act § 612 (a)(1)(A), 15 U.S.C. § 1681; CAL. CIV. CODE § 1786.26(c); see also CAL. CIV. CODE §§ 1786.10, 1786.11 & 1786.22.
[2983] Fair Credit Reporting Act § 611, 15 U.S.C. § 1681i(a)(1)(A).

V. CLEANING UP YOUR CRIMINAL RECORD—LATER IN REENTRY

WHAT WILL I LEARN?

- **If/ when possible, the different ways to clean up your criminal record in California**
- **The rules and requirements for each remedy**
- **What effect each of these remedies has on your criminal record**
- **What effect each of these remedies has on your other legal rights**
- **When to apply for each of these remedies**
- **Which remedies you qualify for and which are best for you!**

There are MANY different ways to clean up your criminal record. This section will explain all of the different options in California, along with the rules and process for each one.

WHY COULD IT BE HELPFUL TO "CLEAN UP" MY CRIMINAL RECORD?

In general, *cleaning up your criminal record* can reduce many of the damaging effects associated with having a criminal history:

- Cleaning up your record can hide criminal records from certain people who run background checks on you—meaning most private employers, private landlords, and other private individuals or companies will NOT be able to see much of the information in your record.
- Cleaning up your record may allow you to say that you were never convicted of a particular offense; and/or may restore many of the rights that you lost because of a conviction (for example, voting rights, right to sit on a jury service, gun rights, etc.)
- Cleaning up your record can reduce or remove the legal restrictions that prevent you from getting certain jobs and professional licenses.

Cleaning up your record will make it easier to rebuild your life, move forward, and maximize your opportunities for success in the future. The first step toward cleaning up your criminal record is understanding the different types of records you may have and the information that may be in them.

IF I AM REQUIRED TO REGISTER WITH LOCAL LAW ENFORCEMENT BECAUSE OF A SEX, ARSON, OR DRUG CONVICTION, HOW WILL CLEANING UP MY RECORD AFFECT MY REGISTRATION REQUIREMENT?

Like most other questions about cleaning your record, this will depend on the specific details of your situation, including the type of registration requirement you have, your conviction offense, and which of these "remedies" you use to clean up your record. Certain remedies can remove your registration requirement, while others will NOT affect your registration requirement at all, so you will still have to register. For more information about which "cleaning remedies" DO and DON'T affect your registration requirements, see PG. 997.

California offers these remedies to help you clean up your record…

- You can correct errors, fill in incomplete information, or add missing information in your record (see PG. 939 to learn about fixing errors in your RAP sheet, and see PG. 944 to learn about fixing errors in a background check);
- You may be able to get your conviction(s) expunged (see PG. 957);
- You may be able to get your felony conviction reduced (see PG. 968), or reclassified or resentenced as a misdemeanor (see PG. 970);
- You may be eligible for a Certificate of Rehabilitation (see PG. 980);
- You may be able to get a pardon from the governor (see PG. 984);
- You may be able to get your adult arrest record(s) sealed (see PG. 989) or get your juvenile criminal records sealed (see PG. 991);
- You may be able to get your federal conviction expunged (see PG. 993) or get a Presidential Pardon (see PG. 996).



HERE IS A BASIC OVERVIEW OF THE DIFFERENT REMEDIES AVAILABLE FOR CLEANING UP YOUR RECORD, AND THE RULES FOR EACH TYPE OF REMEDY. FOR MORE INFORMATION ABOUT EACH OF THESE REMEDIES, TURN TO THE PAGE NUMBER LISTED IN THE CHART.

CLEANING UP YOUR RECORD—DIFFERENT REMEDIES			
"CLEANING" REMEDY	**AM I ELIGIBLE?**	**WHEN?**	**EFFECT**
Fixing errors in your criminal record (PG. 953)	YES! Anyone can fix errors in their record.	ANYTIME	Your criminal record will not contain wrong, incomplete, or missing information
California Expungement ("dismissal") (PG. 957)	*You may be eligible if:* You did NOT spend any time in prison for the offense; You are OFF probation, or other supervision; AND You are NOT currently charged with, serving a sentence for, or on probation/parole/ supervision for another offense.OK *Note: Certain convictions are NEVER eligible for expungement (technically called a "dismissal").*	> You must be OFF probation or other supervision > Certain convictions require you to wait 1 or 2 years before you can apply for an expungement *(Note: If you are still on probation, you may be able to get released early, so that you can apply for expungement — see PG. 966.)*	> Most private employers, private landlords, insurance companies, creditors, and other people will NOT be able to see an expunged conviction if they run a background check on you. > Most private employers CANNOT ask about or consider a conviction that has been expunged.
Reducing felony conviction to a misdemeanor under Cal. Penal Code § 17(b) (PG. 968)	*You may be eligible if:* Your conviction was for a felony "wobbler", AND You were NOT sentenced to state prison; You were NOT sentenced to county jail under CA's Realignment laws; AND You were sentenced to PROBATION.	You can apply anytime, but you will have a much better chance if you wait until you are half-way through or done with your probation term.	> You can say that you were never convicted of the felony > Restores your rights to vote and sit on a jury > May restore your gun rights > Removes many legal barriers to getting professional licenses and jobs
***Prop. 47:* Reclassifying and/or resentencing felony conviction to a misdemeanor (PG. 970)**	You are eligible if your conviction is for one of the covered offenses (see list PG. 971), AND you do NOT have a conviction for a "super strike" felony, and you are NOT required to register as a sex-offender.	ASAP!—You MUST apply before November 2022.	> Reduces your current sentence or term of supervision > Offers immediate release if you have already served your reduced sentence > Changes your conviction to a misdemeanor > Removes legal barriers and restores most rights lost due to felony conviction
***Prop. 64:* Reclassifying and/or resentencing certain felony marijuana convictions to misdemeanors, infractions or getting them dismissed (PG. 976)**	You are eligible if your conviction is for one of the covered offenses (see list PG. 976). Unlike Prop. 47, you are not automatically disqualified if you have a conviction for a "super strike" felony or are required to register as a sex-offender under Cal. Pen. Code section 290(c), but the trial court *may* impose higher punishment under those circumstances.	ANYTIME	> Legalizes certain marijuana offenses related to personal use where the individual is 21 or older > Reduces the penalties for certain marijuana offenses to wobblers, misdemeanors, or infractions > Restores all civil rights denied due to a felony conviction where sentence is recalled > May be relieved of duty to register



Certificate of Rehabilitation (PG. 980)	*You may be eligible if* > You were convicted of felony and you served a state prison sentence for it OR You were convicted of a felony or misdemeanor sex offense, AND your conviction was expunged, AND have not been incarcerated since then, AND are not on formal probation AND > Lived in California for last 5 years *Note: You are NOT eligible if you have a conviction for certain serious sex offenses; were sentenced to death penalty; have mandatory lifetime probation; are in the military; or no longer live in California.*	> You must be OFF probation, parole, or PRCS > You must complete 7-10 year waiting ("rehabilitation") period, based on conviction offense *[Note: You can request a COR before the end of your waiting period, but it must be "in the interests of justice" to grant it early.]*	> Serves as official proof of your rehabilitation > May remove sex offender registration requirement > Serves as an automatic application for governor's pardon
Governor's Pardon (PG. 984)	> You were convicted of felony or misdemeanor sex offense; AND > Your conviction is from California.	> If you get a COR, you are automatically applied for a pardon. > If no COR, 10-year waiting period for direct application. > May be recommended for pardon by BPH while incarcerated.	> May restore your gun rights. > Restores your right to vote and sit on a jury. > Removes sex offender registration requirement. > Allows you to work as parole agent or probation officer. > Restores your right to hold public office.
Sealing adult arrest records (PG. 989)	*You may be eligible if* > You were arrested as adult; > Your arrest did NOT lead to a conviction; > You have NO other convictions connected to the arrest; AND > You are found factually innocent of the charges.	You must apply within 2 years after you are arrest or charged. *[Note: You may apply later, but you must show good reason for not applying earlier.]*	> All records related to arrest and criminal proceedings are sealed and destroyed. > It's as if the arrest and prosecution never occurred.
Sealing juvenile records (PG. 991)	*You may be eligible if* > You are over 18, OR it has been 5 years since your last arrest or probation discharge; > No adult convictions for felony or misdemeanor of "moral turpitude"; > Case started and ended in juvenile court; AND > NO open civil lawsuit from juvenile offense. *[Note: You are NOT eligible if juvenile adjudication was for certain violent offenses AND you were over 14 at time of offense.]*	> As soon as you are over 18; OR >5 years after your last arrest or discharge from probation.	> All court, law enforcement, and other records are sealed and destroyed. > It's as if the juvenile case never occurred.
Federal expungement or dismissal (PG. 993)	*You may be eligible if* > You were convicted of "simple" possession of drugs under federal law; > You were in possession of a drug covered by the statute; > You were only convicted of one drug-related offense (state or federal); > You successfully completed probation with NO violations.	As soon as you complete probation.	> Under 21 at time of offense - ALL records of conviction, arrest, and criminal proceedings are destroyed as if it never happened; > Over 21 at time of offense – All records of conviction, arrest, and criminal proceedings are sealed (but not destroyed).
Presidential pardon (PG. 996)	>You were convicted of a federal offense; You have completed your sentence (including any parole or probation term).	5 years from the date of your release (or from the date of your conviction if you were never incarcerated).	> Restores any civil rights lost due to federal conviction, including gun rights; > Does not restore rights lost due to state convictions.

Be prepared to show support for your clean record!

For almost every type of "cleaning" remedy, you will need to convince a judge (or sometimes the Governor or President) of why you deserve the remedy you are asking for. When you ask to have your record cleaned up (usually by filing papers in court or with the government), you will want to make sure that the judge (or Governor) has *all possible materials that support your request*, such as letters of support, school transcripts, awards, certificates of achievement, and diplomas.



WHAT INFORMATION WILL I NEED TO CLEAN UP MY RECORD?

This is a *general* list of the information you will need to *have* for EVERY entry in your criminal record:[2984]

1. Your case number (sometimes called "docket number");
2. The dates associated with your offense, including the dates of arrest, conviction, sentencing, release, and completion of any term of supervision;
3. The name of the code (for example, Penal Code, Health & Safety Code, etc.) and section number of the code that you were accused or convicted of violating;
4. Whether you were ordered to serve time on probation (formal and informal probation are treated the same in your record);
   a. If so, for how long?
5. Whether you were ordered to pay any restitution, court fines or penalties, or administrative fees, and how much (learn more about these in the COURT-ORDERED DEBT CHAPTER, beginning on PG. 654); and
6. Whether you were sentenced to state prison.

WHY DO I NEED THIS INFORMATION FOR EXPUNGEMENT?

You will need this information for two reasons:

1. The information in your record will help you (and your lawyer, if you have one) *decide which remedies you are eligible for* (allowed to get), based on your criminal history (such as expungement, reclassification, dismissal, Certificate of Rehabilitation, or pardon); AND
2. To request the remedy you want, you (or your lawyer) will need to *fill out forms for the court or agency*. You will need *detailed information* from your criminal record in order to fill out these forms.[2985]

WHERE DO I GET THIS INFORMATION FOR EXPUNGEMENT?

The best way to get this information is from your RAP sheet. You will need the RAP sheet that has information on ALL of your convictions.

Choose the RAP sheet that has information on ALL of your cases:

- Your local (county) RAP sheet will list only your cases *in that county*, so only use this if ALL of your cases are from the SAME COUNTY (or if you only have 1 case). For information on getting your local county RAP sheet, see PG. 951.
- Your California (DOJ) RAP sheet will list all of your cases in *California*, so use this if ALL of your cases are from the state of CALIFORNIA only. For instructions on how to get your DOJ RAP sheet, see APPENDIX A, on PG. 1002.)
- Your FBI (federal) RAP sheet will list all of your cases from EVERY STATE as well as FEDERAL offenses. Use this if you have cases from more than one state or any federal convictions. For instructions on how to get your FBI RAP sheet, see APPENDIX D, on PG. 1008.

You may *also* be able to get information on a case from the following sources:

- *Your court papers from your case*.
  - BUT court papers will *only* contain information about *that particular case*. If you have multiple cases, especially if they are from different counties, it may be easier to get a copy of your full California RAP sheet (or FBI RAP sheet, if you also have federal or out-of-state cases).
- *Your lawyer, parole agent, probation officer, or other people at the courts or law enforcement agencies*.
  - BUT these people may only have *limited information* about your case, or may have information about *1 case but NOT others*, so it's better to go through the formal channels of getting your full RAP sheet.
- *The criminal court where your case was decided*.
  - BUT the court will *only* have information for *cases from that county* and NOT other counties. If you only have cases from 1 county, make sure you get copies of ALL of your court papers for ALL of your cases in that county.

Now that you have your criminal records and you know what's in them, you are ready to begin cleaning them up!

[2984] Cleaning Your Record, CALIFORNIA COURTS, http://www.courts.ca.gov/1070.htm.
[2985] Cleaning Your Record, CALIFORNIA COURTS, http://www.courts.ca.gov/1070.htm.

CALIFORNIA "EXPUNGEMENT" OF STATE CONVICTIONS

CA EXPUNGEMENT—A GENERAL OVERVIEW

An expungement of a state conviction (also called a "dismissal") is a way of *cleaning up your record* that *limits* the information that shows up in a *background check*[2986] and can relieve you of some of the consequences associated with your conviction.

WHAT EXPUNGEMENT DOES:

- Prohibits information about the conviction from being included in *some background checks*;
- Releases you from most of the "penalties and disabilities" resulting from the conviction;
- Changes your record to show that the conviction was dismissed (but does NOT remove the offense from your official criminal record (RAP) entirely).

WHAT CONVICTIONS CAN BE EXPUNGED?

- A conviction may qualify for expungement if:
- You did NOT spend any time in prison for the offense; AND
- You completed any term of supervision for the offense; AND
- You are NOT currently charged with, serving a sentence for, or on a term of supervision for another offense.
- *Note*: Certain convictions are NEVER eligible for expungement.

HOW DO I GET AN EXPUNGEMENT?

- You must file a petition with the court;
- You may have a hearing where you will have to persuade a judge that you deserve an expungement;
- You may have to give the court documents that support your request, such as letters of support, school transcripts, and diplomas or certificates.

WHAT IS "EXPUNGEMENT"(A DISMISSAL) IN CALIFORNIA?

Expungement (also called dismissal) is a way to *clean up your record*, by *limiting* the criminal history information that *certain* people can see in your *background check*[2987] and relieves you of some of the consequences associated with your conviction.

An expungement is also called a "dismissal" because your case is actually reopened by the court, the "finding of guilt" (your guilty or no contest plea, or guilty verdict) is withdrawn, and a plea of *not guilty* is entered. The court will then dismiss your case, and your record will be changed to show a dismissal (under Cal. Penal Code § 1203.4) rather than a conviction.

Getting your conviction expunged hides the conviction from certain people when they run a *background check* on you. For example, most private employers are NOT allowed to see a conviction that has been expunged.[2988] Additionally, most private employers CANNOT ask you about, or even consider, a conviction that has been expunged when you apply for a job.[2989] For information on how to get a conviction expunged, see PG. 965.

IMPORTANT: Expungement does NOT erase the offense from your criminal record or RAP sheet. But it DOES change your record to show the conviction was dismissed.2990

WHAT DOES EXPUNGEMENT DO?

- An expungement makes it so that *most* private employers CANNOT see the expunged conviction when they run a background check on you.
- On job applications for (most) *private* employers, if you are asked if you have any convictions, you can answer "No".[2991] **EXCEPTION**: On applications for certain jobs, you MUST report convictions even if they have been expunged. (For more information about who can still see or ask about expunged convictions, see PG. 958.)

[2986] Cal. Penal Code § 1203.4.
[2987] Cal. Penal Code § 1203.4.
[2988] Cal. Civ. Code § 1786.18.
[2989] Cal. Lab. Code § 432.7.
[2990] CAL. PENAL CODE § 1203.4; see Cleaning Your Record, CALIFORNIA COURTS, http://www.courts.ca.gov/1070.htm.
[2991] CAL. PENAL CODE § 1203.4(a) [by exclusion]; see also Dealing With Criminal Records in Alameda County Self-Help Manual, EAST BAY COMMUNITY LAW CENTER (2005), http://ebclc.org/documents/AlamedaCountyCriminalRecords-SelfHelpManual-SP2005.pdf.



IMPORTANT "BAN THE BOX" LAWS: Several California cities and counties have passed "Ban the Box" laws that bar employers from asking about convictions on a job application. If you apply for a job in a location with a "Ban the Box" law, the application should not ask about any convictions. For more information on Ban the Box laws, see the EMPLOYMENT CHAPTER, on PG. 571.

- Anyone else who does see the expungement will see it as a dismissal instead of a conviction, which is less alarming.
- If you apply for a professional or occupational license or certification, an expungement can help your chances because it is seen as *evidence of rehabilitation*.[2992] (Although the licensing board will still be able to see that there was a conviction that was dismissed.) For more information on licensing and certification, see the EMPLOYMENT CHAPTER, on PG. 571.
- An expungement may also be seen as evidence of rehabilitation when you apply for housing.[2993] Learn more in the HOUSING CHAPTER, PG. 371).
- If you were denied federal student loans because of a drug conviction, you will become eligible again after an expungement.[2994] For more information about regaining eligibility for federal aid after a drug conviction, see the EDUCATION CHAPTER, on PG. 882, and EDUCATION CHAPTER: Appendix B, on PG. 905).



IMPORTANT: If you are a noncitizen and were convicted of a DUI offense, getting your conviction expunged *might* have immigration benefits for you. It's recommended that you contact a lawyer immediately if you have a DUI and you are a noncitizen. See the new section on immigration consequences of criminal records starting on PG. 1105, which includes a list of legal aid resources.

WHAT DOES EXPUNGEMENT NOT DO?

- Expungement DOES NOT remove the offense from your criminal history—it will still show up on your RAP sheets, but it will show that the conviction was dismissed.[2995]
- Expungement DOES NOT seal the court file from public access, so someone can still see the conviction if they look up court records from your case.[2996]
- If you face criminal charges in the future, the expunged conviction still counts as a prior conviction;[2997]
- Under California's 3 Strikes law, the expunged conviction still counts as a "strike" if the underlying offense was a "strike." This means the expunged conviction can still count against you if you have a new criminal case under the 3 Strikes law.[2998]
- Expungement does NOT restore your right to possess a firearm if you lost this right due to your conviction. This means you can still be charged with "felon in possession" offenses if the conviction caused you to lose your gun rights.[2999]
- If your conviction required you to register as a sex offender, you will still have to register after the conviction is expunged.[3000]
- Expungement will NOT prevent the DMV from suspending or revoking your driver license based on the underlying offense.[3001]
- You will still have to disclose your conviction when applying for certain types of jobs, such a law enforcement or working with children, and employers in these areas can still consider your expunged

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[2992] CAL. BUS. & PROF. CODE § 480(b).
[2993] CAL. CIV. CODE § 1786.12; cf. 24 C.F.R. § 960.203 (for public housing, PHA must consider specific mitigating factors (time, nature, extent, seriousness of applicant's conduct) and may consider evidence of rehabilitation. Note: For government assisted programs, PHAs are only encouraged—but not required—to consider mitigating factors); cf. 24 C.F.R. § 982.553(d); 24 C.F.R. §§ 5.903(f), 5.905(d) (If PHA proposes to deny housing based on applicant's criminal record, it must first give applicant the opportunity to dispute accuracy and relevance of information); cf. 24 C.F.R. §§ 982.552(c)(2), 5.852 (suggested factors to be considered with criminal convictions. Note: This non-exhaustive list does NOT expressly include dismissal/expungement/record cleaning remedies; see also, Lawrence R. McDonough & Mac McCreight, Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth, 41 CLEARINGHOUSE REV. 55, 76 (May-June 2007).
[2994] Students with Drug Convictions Have Limited Eligibility for Federal Student Aid, FEDERAL STUDENT AID, https://studentaid.ed.gov/eligibility/criminal-convictions.
[2995] CAL. PENAL CODE § 1203.4.
[2996] See, e.g., People v. Sharman, 17 Cal. App. 3d 550 (Ct. App. 1971);
[2997] CAL. PENAL CODE § 1203.4(a)(1).
[2998] CAL. PENAL CODE § 1203.4(a)(1) ("However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed.")
[2999] CAL. PENAL CODE §§ 1203.4(a)(2), 29800 et seq.
[3000] CAL. PENAL CODE § 290.007 ("Any person required to register pursuant to any provision of the Act shall register in accordance with the Act, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5.").
[3001] CAL. PENAL CODE §§ 1203.4; Cal. Veh. Code § 13555.



conviction when deciding whether to hire you. (For more information, see the EMPLOYMENT CHAPTER, on PG. 571.)

- You will still have to disclose your conviction when applying for government-issued licenses (such as professional or occupational licenses or certificates), and licensing agencies can still consider an expunged conviction when deciding whether to issue you a license.[3002] However a professional or occupational licensing board CANNOT deny your license based *solely* on a conviction that was expunged.[3003] (For more information, see the EMPLOYMENT CHAPTER, on PG. 601.)
- Expungement does NOT restore your right to hold public office if you lost this right due to your conviction.[3004]
- Expungement does NOT remove the immigration consequences of your conviction, so Immigration & Customs Enforcement (ICE) can still use the expunged conviction for removal or exclusion.[3005] Talk to an immigration attorney for help if you have this issue!

WHO CAN SEE MY RECORD—EVEN IF IT IS EXPUNGED?

Anyone with access to your RAP sheet will still see your expunged convictions (see SIDE BOX). This *includes law enforcement agencies, courts, licensing boards*, and *certain employers*. You must disclose expunged convictions if you are applying for a *job* in certain fields such as *law enforcement*,[3006] *healthcare*,[3007] or *banking*,[3008] or if you want to apply for a *professional or occupational license* of any kind.[3009] *Public Housing Authorities (PHAs), which run many government-assisted housing programs* can also consider convictions that have been expunged.

2 THINGS TO KNOW:

- Certain employers and most licensing agencies are *required* to ask about expunged convictions—and you MUST disclose this information if they do. However, these groups will also understand what an expungement means—they will know that you are making an effort to clean up your record by having the original conviction expunged.
- Although it is *illegal* for most private employers to *ask about* or *consider* expunged convictions when making hiring decisions,[3010] be prepared for unethical or uninformed employers to access and use this information anyway. For more information about what to do in this situation, see the EMPLOYMENT CHAPTER, on PG. 571.

IF I SUCCESSFULLY OBTAINED A DISMISSAL UNDER PROP. 36 OR PENAL CODE SECTION 1000, DO I EVER HAVE TO DISCLOSE THE UNDERLYING CONVICTION?

In certain situations. In general, once you have a dismissal under Penal Code section 1000 or Prop 36, you are not required to disclose the underlying conviction. However, the Penal Code does list exceptions to this general rule. You are required to disclose that you were convicted of a crime (even after dismissal) under the following circumstances:

- When applying for a job in public office OR as a police officer;
- When applying for a professional license through a state or local agency;
- When contracting with the California Lottery;
- When you are impaneled to serve on a jury.[3011]

CAN A PRIVATE EMPLOYER FIND OUT ABOUT MY EXPUNGED CONVICTION?

Maybe. There are two ways that a private employer might find out about your expunged conviction:

- Even though background check companies are NOT allowed to report expunged convictions to employers, it is possible that a company might include this information in your background check anyway;
- If an employer does its own "in-house" background check on you, they may find the information in (public) court records about your case. Remember, expungement does NOT seal the court records from your case,

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[3002] CAL. PENAL CODE § 1203.4(a)(1).
[3003] Cal. Bus. & Prof. § 480(a)(1).
[3004] CAL. PENAL CODE § 1203.4(a)(3).
[3005] Frequently Asked Questions, LA COUNTY PUBLIC DEFENDER OFFICE, http://pd.co.la.ca.us/faqs_Expungement.html; Expungement (PC1203.4/1203.4a), OFFICE OF THE PUBLIC DEFENDER FOR SAN DIEGO COUNTY, http://www.sandiegocounty.gov/public_defender/expungement.html.
[3006] CAL. LAB. CODE § 432.7(b).
[3007] CAL. LAB. CODE § 432.7(f).
[3008] 12 U.S.C. § 1829.
[3009] CAL. PENAL CODE § 1203.4(a)(1).
[3010] CAL. CODE REGS. tit. 2, § 7287.4(d)(1)(B); CAL. LAB. CODE § 432.7(a).
[3011] CAL. PENAL CODE § 1000.4(b); CAL. PENAL CODE § 1210.1(e)(3).

so someone could still look up the original conviction in your files. However, it is still *illegal* for most private employers to consider an expunged conviction, even if they learn about it through public records.

WHAT TYPES OF CONVICTIONS CAN BE EXPUNGED?

Under the law, only *certain types of convictions* can be expunged. Generally, the following types of convictions qualify for expungement (a dismissal):

1. The CONVICTION is for: an Infraction; a misdemeanor, *or* a felony "wobbler" (with NO prison time);

AND

2. The SENTENCE imposed was: county jail time; probation; a fine; or a combination of these.[3012]

This means that as long as you were sentenced only to pay a fine, serve a term of probation, OR serve time in county jail—even for a felony "wobbler"—your conviction may be eligible for expungement.

IN ADDITION, you must meet the following requirements for your conviction to be eligible for expungement. In general, these requirements are:

1. You did NOT spend any time in prison for the offense; AND
2. You are OFF probation or other type of supervision; AND
3. You are NOT currently charged with, serving a sentence for, or on a term of supervision for another offense.

PLEASE NOTE: Certain convictions are NEVER eligible for expungement (see the next question). Also, if you are at least half-way through probation, you may be able to request to get off early. Learn more on PG. 201.

For information more information about the *types of California expungement*, see PG. 962.

IMPORTANT: You must be OFF PROBATION or any other form of supervision to be eligible for expungement![3013] If you are still on probation and want to get your conviction expunged, you must first ask a judge to grant you early release ("early discharge") from probation BEFORE requesting an expungement. For more information on requesting early release from probation, see PG. 966.

WHAT TYPES OF CONVICTIONS CAN'T BE EXPUNGED?

Some convictions are NEVER ELIGIBLE for expungement. They are:

- Any conviction where you SERVED a prison term (or any other facility run by CDCR, including prison camps and prison hospitals)—no matter what your conviction was for! **Exception**: if you served a prison term before 2011 for a crime that falls under realignment. See PG. 961.
- Violations of the following code sections:
  - Any infraction under California Vehicle Code section 42001 (violations of any local ordinance, minor traffic tickets, pedestrian and bicycle offenses);
  - Any misdemeanor under California Vehicle Code section 42002.1 (failing to stop and submit to vehicle inspection, refusing to comply with orders from law enforcement officer or firefighter, unsafe condition that endangers a person);
  - Any conviction (felony or misdemeanor) under California Penal Code sections 286(c), 288, 288a(c), 288.5, 289(j), 311.1, 311.2, 311.3, 311.11; or a felony conviction under California Penal Code sections 261.5(d).[3014]

BECAUSE I HAVE A FELONY CONVICTION, BUT NEVER WENT TO PRISON FOR IT, CAN I GET IT EXPUNGED?

Maybe. If you were convicted of a felony, but you were NOT sentenced to serve a state prison term, your offense is called a "wobbler." A wobbler is an offense that can be charged as *either* a misdemeanor or a felony, so the offense "wobbles" between the two offense categories. If you were convicted of a felony *wobbler* AND you were NOT sentenced to a state prison term, your offense is probably eligible for expungement.

"Wobblers" are eligible for expungement if:[3015]

- You were NOT sentenced to a state prison term for the offense;
- You were NOT sent to prison for a violation while on probation for the offense;

IS IT A "WOBBLER"?

You can find out if your conviction is a wobbler by checking the California Penal Code section reported on your RAP sheet. If the code states that the crime is punishable either a fine, time in the county jail, time in state prison, or any combination of these, your offense is considered a wobbler.

[3012] CAL. PENAL CODE §§ 1203.4, 1203.4a.
[3013] CAL. PENAL CODE §§ 1203.4(a)(1), 1203.4a.
[3014] Cal. Penal Code § 1203.4.
[3015] Cal. Penal Code § 1203.4.

- You were NOT convicted of an offense that is NEVER eligible for expungement (see PG. 960); AND
- You otherwise meet the requirements for expungement (for information on the two types of expungement and their requirements, see PG. 962).

If you meet the above requirements, your felony should be eligible for expungement.

BECAUSE I HAVE A FELONY CONVICTION THAT WAS SENTENCED TO COUNTY JAIL UNDER REALIGNMENT INSTEAD OF STATE PRISON, CAN I GET IT EXPUNGED?

Maybe. If you were convicted of a felony and sentenced to county jail instead of state prison (called a "*County Jail Felony*") under California's Realignment Act,[3016] you may be eligible for expungement under California's newest expungement law.[3017] This law is specifically intended for people who were sentenced under Realignment.

To be eligible for expungement of your Realignment felony, you must:

- Have served your entire sentence in county jail—NOT state prison (unless you meet the criteria for 1203.42, described below);
- Have completed your entire sentence—including any probation or community supervision;
- Paid all of your fines and fees; AND
- Not have any new charges pending, not be serving a sentence on a new case, and not be on probation for another case.

NEW LAW: If you served a prison term before 2011 for a felony that now falls under the Realignment Act, you may be eligible for dismissal under a new law. Penal Code section 1203.42, effective January 1, 2018, applies to you if you would have been sentenced to a County Jail Felony if Realignment had existed at the time of your conviction.[3018]

The dismissal will be granted at the discretion of the court "in the interest of justice." As with other dismissal remedies, in order to be eligible, you must not have any new charges pending, must not be serving a sentence on a new case, and must not be on probation for another case. In addition, at least two years must have passed since you finished your prison sentence.[3019] For more information on whether you qualify, call Root & Rebound's Reentry Legal Hotline.

WHAT IS A "SPLIT SENTENCE" VERSUS A "STRAIGHT SENTENCE"?

Under California's Realignment Act, people who are sentenced to county jail instead of prison for felony convictions, can be sentenced in two ways:

- **Straight sentence**—a person is sentenced to serve their entire sentence in custody. When they are released, they have completed their entire sentence and are not required to serve any term of supervision.
- **Split sentence**—a person is sentenced to spend a portion of their time in custody and the remainder under community supervision (mandatory supervision).

Additionally, BEFORE you can get your conviction expunged, you must wait a certain amount of time after completing your sentence:

- If you had a split sentence, you must wait 1 year after the completion of your sentence.
- If you had a straight sentence, you must wait 2 years after the completion of your sentence.[3020]

Finally, expungement under this statute is entirely discretionary, meaning it is *up to the judge to decide* whether or not your conviction should be expunged. For this reason, you should be prepared to bring any *evidence* you can to show the judge that *you deserve to have your conviction expunged*. (For more information on discretionary expungements, see PG. 963.)

IMPORTANT: What an expungement will NOT do. Even if you have your Realignment "AB 109" felony expunged:

- **It will still count as a "*prior*" conviction in a future criminal case;[3021]**

[3016] Cal. Penal Code § 1170(h).
[3017] Cal. Penal Code § 1203.41.
[3018] Assembly Bill No. 1115, Chapter 207, "Legislative Counsel's Digest" (Sept. 2, 2017), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1115.
[3019] CAL. PENAL CODE §§ 1203.42.
[3020] CAL. PENAL CODE § 1203.41(a)(2).
[3021] CAL. PENAL CODE § 1203.41(b)(1).



- **You still have to *report* it as a conviction to *occupational licensing agencies* and on applications for job positions in a government office;**[3022]
- **It does NOT restore your *gun rights*, so you can still be charged under "felon in possession" criminal laws;**[3023]
- **It does NOT restore your right to hold a job in *public (government) office* (if you lost this right due to your conviction).**[3024]

WHAT ARE THE DIFFERENT TYPES OF EXPUNGEMENT AND WHAT DO THEY REQUIRE?

There are 2 types of expungements: *Mandatory* and *Discretionary*.

- *Mandatory* expungement is automatic, meaning the judge MUST expunge your conviction if you meet all the requirements.
- *Discretionary* expungement means that it is up to the judge whether or not you deserve to have your conviction expunged. You still have to meet certain requirements, but you do NOT have to meet all of the requirements like you do for mandatory dismissal.

➢ MANDATORY EXPUNGEMENT

If your conviction is *eligible* for expungement AND you meet certain additional requirements, the law says that the judge MUST dismiss your conviction. There are two situations where you can get MANDATORY expungement of your conviction:[3025]

SITUATION #1 — If you received PROBATION:

Your conviction MUST be expunged if ALL 4 of the following apply to you:[3026]

- (1) Your conviction was for a misdemeanor or felony "wobbler";
- (2) You received probation as part of your sentence, and:
  - You successfully completed probation OR
  - You received early release from probation;[3027]
- (3) You are NOT currently serving another sentence or under supervision for another offense; AND
- (4) You are NOT currently charged with another offense.

!

IMPORTANT LEGAL UPDATE: Please note—it used to be unclear whether or not you were required to pay off victim restitution to get a mandatory expungement of an eligible conviction, but a recent California court case decided that a person who has the right to a mandatory expungement of a conviction under California Penal Code § 1203.4 CANNOT be denied the dismissal *just because* he or she still owes victim restitution.[3028] **This means that if you owe victim restitution, you would still have the RIGHT to a mandatory dismissal of the conviction if all of the other above requirements are met.**

SITUATION #2 — If you did NOT receive PROBATION:

Your conviction MUST be expunged if ALL of the following apply to you:[3029]

- Your conviction was for an infraction or misdemeanor; AND
- You did NOT receive probation as part of your sentence, AND
- You have fully complied with the requirements of your sentence (including paying fines and reimbursements that were part of your sentence[3030]); AND
- One year has passed since the date of your conviction; AND

[3022] CAL. PENAL CODE § 1203.41(b)(2). You must also report the conviction on applications for contracting with the California State Lottery Commission.
[3023] CAL. PENAL CODE § 1203.41(b)(3).
[3024] CAL. PENAL CODE § 1203.41(b)(4).
[3025] CAL. PENAL CODE § 1203.4(a) ("In any case in which the defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendre and enter a plea of not guilty.").
[3026] CAL. PENAL CODE § 1203.4(a).
[3027] People v. Butler, 105 Cal. App. 3d 585 (Ct. App. 1980) (defendant discharged early from probation was entitled to mandatory dismissal of conviction, despite owing unpaid restitution).
[3028] See People v. Seymour, Case No. H040560 (Santa Clara County, Super. Ct. No. CC955665).
[3029] CAL. PENAL CODE § 1203.4(a).
[3030] In light of the decision in People v. Seymour, Case No. H040560 (Santa Clara County, Super. Ct. No. CC955665), it is unclear whether you can be denied mandatory expungement because of unpaid fines and reimbursements. However, you cannot be denied mandatory expungement because you still owe victim restitution.

- You are NOT currently serving another sentence or under supervision for another offense; AND
- You are NOT currently charged with another offense.

If you meet the requirements for *either* of the two situations above, your conviction should be eligible for MANDATORY expungement.

➢ DISCRETIONARY EXPUNGEMENT

If your conviction is *eligible* for expungement, but you do NOT meet the requirements for a mandatory expungement, you may still get a DISCRETIONARY expungement for your conviction—but it will be up to the judge to decide whether or not to grant it.

The judge MAY expunge your conviction if your meet these 3 requirements:[3031]
(1) You were convicted of an infraction, misdemeanor, or felony "wobbler";
AND
(2) (2a or 2b or 2c must apply…)
(2a) You received probation, AND you did NOT complete all the conditions of probation (for example, if you violated conditions of your probation—though just not paying victim's restitution isn't enough to deny a mandatory expungement anymore[3032]); AND you did NOT get an early release from probation;[3033] ***OR***
(2b) You received probation for a conviction of any offense listed in California Vehicle Code sections 12810(a) to (e) (certain serious traffic violations)[3034]; ***OR***
(2c) You did NOT receive probation AND you did NOT complete all the requirements of your sentence; AND 1 year has passed since your conviction.[3035]
AND
(3) You are NOT currently charged with, under supervision for, or serving a sentence for any other offense.

IMPORTANT: Restitution Payments & Discretionary Expungement.

Although the judge *is allowed to* grant you a discretionary expungement if you still owe restitution, fines, or other payments ordered by the court,[3036] it can be *much more difficult* to get your conviction expunged if you have not made these payments (especially victim restitution). The judge will probably want to see that at least you have been *making efforts* to pay your debts, even if you still owe money. For more information on paying restitution, fines, and other fees, see the COURT-ORDERED DEBT CHAPTER, beginning on PG. 654. It's also good to contact lawyer to get advice on your individual case, since restitution is different for every case. See the list of legal aid providers to find a lawyer who may be able to help you on PG. 1127.

In order to grant a discretionary dismissal, the judge must find that is "*in the interests of justice*" to do so.[3037] This means you will need to show a *very convincing reason* why you deserve to have your conviction expunged. You should give the court as much helpful information as possible (including evidence of rehabilitation) to persuade the judge to decide in your favor!

AUTOMATIC "EXPUNGEMENTS"

In a handful of limited cases involving *certain* types of drug convictions, your record will be cleared *automatically*, and you will not have to go through any special court process to get an expungement. This happens in 2 situations:

- If the judge suspended your sentence (called *deferred entry of judgment*) and ordered you to do a drug-treatment program (*drug diversion*) instead, and you successfully completed the program.
- If you have a *minor marijuana conviction* for *simple possession*, and your conviction is *more than 2 years old*.

For more information about automatically cleaning your record in these 2 situations, see PG. 965.

[3031] CAL. PENAL CODE § 1203.4(a); see Dealing With Criminal Records in Alameda County Self-Help Manual, EAST BAY COMMUNITY LAW CENTER (2005), http://ebclc.org/documents/AlamedaCountyCriminalRecords-SelfHelpManual-SP2005.pdf.
[3032] See People v. Seymour, Case No. H040560 (Santa Clara County, Super. Ct. No. CC955665).
[3033] CAL. PENAL CODE § 1203.4(a).
[3034] CAL. PENAL CODE § 1203.4(c)(2).
[3035] CAL. PENAL CODE § 1203.4a(b).
[3036] See, e.g., People v. Holman, 214 Cal. App. 4th 1438 (2013); People v. Guillen, 218 Cal. App. 4th 975 (2013).
[3037] CAL. PENAL CODE § 1203.4(a); see also People v. McLernon, 174 Cal. App. 4th 569 (2009).



CHART: WHICH TYPE OF EXPUNGEMENT AM I ELIGIBLE FOR?

REMEMBER, YOU ARE NOT ELIGIBLE FOR EXPUNGEMENT IF YOU SPENT TIME IN STATE PRISON FOR YOUR CONVICTION, OR IF YOUR CONVICTION IS FOR ANY OF THE OFFENSES THAT ARE NEVER ELIGIBLE FOR EXPUNGEMENT (SEE PG. 960).

Requirement	MANDATORY (Situation 1—Probation)	MANDATORY (Situation 2—NO probation)	DISCRETIONARY	DISCRETIONARY (Realignment Felony)
Here is a list of requirements that you must meet for each type of expungement:				
What type of conviction did you have?	Misdemeanor or felony "wobbler" (But NOT for an offense that is never eligible)	Infraction or misdemeanor	Infraction, misdemeanor, or felony "wobbler"—including violations of Vehicle Code § 12810(a)-(e) (serious traffic violations) (But NOT for other offenses that are never eligible.)	Realignment felony (county jail felony)
Did your sentence include probation?	YES	NO	YES	(does not matter)
Did you successfully complete ALL probation and/or sentencing requirements (including fine payments)?[3038]	If you were discharged at end of your probation term (not early)—YES If you were discharged early from probation—NO	YES	NO (and you did NOT receive early discharge)	YES
NOT currently serving another sentence, on probation/parole, or charged with another offense	YES	YES	YES	YES
How much time has passed since your conviction?	(no waiting period)	1 year	(no waiting period)	* 1 year if split sentence * 2 years if straight sentence

[3038] See PG1053. In light of the decision in People v. Seymour, Case No. H040560 (Santa Clara County, Super. Ct. No. CC955665), it is unclear whether you can be denied mandatory expungement because of unpaid fines and reimbursements. However, you cannot be denied mandatory expungement because you still owe victim restitution.

GETTING YOUR CONVICTION "EXPUNGED"

The following information will guide you through the general process of requesting an expungement in California, but it is always a good idea to get a lawyer's help to make sure you get the best results. There are many expungement clinics across the state that offer free services and advice. For a list of expungement clinics and legal aid organizations that offer expungement services, see PG. 1127.

A NOTE ABOUT COURT FEES: Be aware that the court will charge you fees for filing documents with the court. The amount of the fees will vary by county. If you cannot afford to pay the fees, you can request a fee waiver (meaning you may not have to pay the fees). Ask the clerk how much the fees are and how to request a fee waiver.

I BELIEVE I AM ELIGIBLE FOR A MANDATORY OR DISCRETIONARY EXPUNGEMENT. HOW DO I GET ONE?

In most cases, you will need to file papers in court and ask a judge to expunge your conviction. This process is called filing a *Petition for Dismissal*, and is basically the same for both mandatory and discretionary expungements, with a few small differences. You will need to file the proper forms in the court where you were convicted, and you may have a hearing in front of a judge (especially if you are requesting a discretionary expungement). For a detailed explanation of each step, see APPENDIX K, on PG. 1018.

! **IMPORTANT: If you have convictions from multiple cases, you will need to file a separate petition for each *case*.**

IF MY CONVICTION IS ELIGIBLE TO BE EXPUNGED AUTOMATICALLY, HOW DOES THIS HAPPEN?

Under the law, certain drug convictions will be expunged from your record *automatically*, without you having to file a petition in court. This happens in the following 2 situations:

1) Successful completion of a drug diversion program:[3039]
   - In some cases, if you were charged with a drug offense, the judge will *suspend your sentence* so that you can complete *drug treatment* instead of going to jail.
   - If the judge suspended your sentence and ordered you to do a drug-treatment program (*drug diversion*), and you successfully completed the program, your records will be automatically expunged.
   - *NOTE: This remedy is available ONLY if you were given drug diversion by the court AND you successfully completed all court-ordered requirements. If you did NOT complete your requirements, or you were NOT actually given diversion by the court, then the conviction will still be on your record (even if you completed a drug treatment program on your own).*

2) Minor Marijuana Convictions:[3040]
   - If you have a minor marijuana conviction on your record, your record will be cleaned *automatically* if:
     - Your conviction was for "*simple possession*" of marijuana; AND
     - The conviction occurred *after January 1, 1976*; AND
     - The conviction is *more than 2 years old*.
   - After 2 years, all records relating to your arrest and conviction will be destroyed. You will be able to say that you have NO arrests or convictions for this case.
   - *NOTE: This automatic erasure of minor marijuana convictions is ONLY for convictions related to possession of less than 1 ounce (28.5 grams) of marijuana for personal use. If your conviction was for cultivation, sales, or transportation of marijuana, it will NOT be erased automatically.*

NOTE: As of January 1, 2011, simple possession of marijuana is no longer a misdemeanor offense; it is now only an infraction.[3041] Although minor marijuana infractions are supposed to be erased automatically just like other minor marijuana (misdemeanor) convictions, in practice, this doesn't always happen! If you find that your marijuana infraction has NOT been erased from your record, you will need to contact the court clerk at the court that handled your case and ask him or her to (1) correct your criminal record and (2) destroy all arrest and conviction records from your case.

[3039] CAL. PENAL CODE § 1000 et seq.
[3040] CAL. HEALTH & SAFETY CODE §§ 11361.5, 11361.7. Note: Even if the records are not physically destroyed, they will no longer have any legal effect after 2 years.
[3041] Cal. Health & Safety Code § 11357(b).



BECAUSE I AM STILL ON PROBATION AND NEED TO BE OFF TO HAVE MY CONVICTION EXPUNGED, IS THERE ANYTHING I CAN DO TO GET OFF EARLY?

Yes. Under California law, you can ask the judge to release you early from your probation term (called "*early discharge*").[3042] Although courts often sentence people to several years on probation (for example, 3-4 years for a misdemeanor), many people are able to complete all of their probation requirements (all of the things the court has ordered them to do—such as attend counseling or pay restitution) long before their time is up. For this reason, courts are often willing to release people early from their probation. For more information about probation terms and conditions, see the PAROLE & PROBATION CHAPTER, on PG. 125.

You can request early release from probation whether you are on *informal* probation (also called *court probation*), *formal* probation, or *mandatory supervision*. The process is the same for all three.[3043] However. early release from supervision in order to get your conviction expunged ONLY applies if you are on informal or formal PROBATION or Mandatory Supervision. It does NOT apply if you are on parole or PRCS. Although you CAN get off parole and PRCS early, you still CANNOT get your conviction expunged because you will have served a prison sentence for it.

For more information about the difference between formal and informal probation, PRCS, and parole, see the PAROLE & PROBATION CHAPTER, on PG. 125. For more information about getting released early from PRCS, see PG. 967, or see also the PAROLE & PROBATION CHAPTER, on PG. 125.

NEED HELP WITH YOUR COURT FORMS?

Remember, it is recommended that ask a lawyer to help you with your Motion for Early Termination forms. But if you cannot get a lawyer or want to do it on your own, you can find helpful information on the California Courts website:

- Cleaning up your record—http://www.courts.ca.gov/1070.htm
- Understanding the basics of court forms—http://www.courts.ca.gov/1078.htm.

WHAT IS THE PROCESS FOR REQUESTING AN EARLY RELEASE FROM PROBATION SO THAT I CAN PURSUE EXPUNGEMENT?

To request early release from probation, you will need to file a *Motion for Early Termination of Probation* in the court where you were convicted. Because this process requires drafting a formal court pleading with accompanying documents, we recommend that you ask a lawyer for help. Ideally, you should contact the lawyer who represented you when you were sentenced, but any private criminal defense lawyer or Public Defender should be able to help you.

Requesting an early release from probation will involve filing a Motion for Early Termination of Probation. You will have a hearing where you will need to convince the judge that you deserve to be discharged from your probation term early.

For complete details on each step of the process for requesting an early release from probation, see APPENDIX P, on PG. 1026.

YOU WILL HAVE THE BEST CHANCE OF GETTING RELEASED EARLY FROM PROBATION EARLY IF:

- You have not violated your probation in any way;[3044]
- You have completed the requirements of your probation (finished all classes, paid all restitution[3045] and fines, etc.);[3046] AND
- You are at least halfway through your probationary period (i.e. 1 ½ years of a 3-year probation).[3047]

For more information about probation conditions and requirements, see the PAROLE & PROBATION CHAPTER, on PG. 125. For more information about paying court-ordered restitution and fines, see the COURT-ORDERED DEBT CHAPTER, on PG. 654.

[3042] CAL. PENAL CODE § 1203.3(a) ("The court may at any time when the ends of justice will be served 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.").
[3043] CAL. PENAL CODE § 1203.3(a).
[3044] People v. Guillen, 218 Cal. App. 4th 975, 982-83 (2013); People v. Hawley, 228 Cal. App. 3d 247, 249 (Ct. App. 1991).
[3045] See PG. 1053. In light of the decision in People v. Seymour, Case No. H040560 (Santa Clara County, Super. Ct. No. CC955665), it is unclear whether you can be denied mandatory expungement because of unpaid fines and reimbursements. However, you cannot be denied mandatory expungement because you still owe victim restitution.
[3046] People v. Hawley, 228 Cal. App. 3d 247 (Ct. App. 1991); People v. Guillen, 218 Cal. App. 4th 975 (2013); People v. Holman, 214 Cal. App. 4th 1447-48 (2013).
[3047] People v. Hawley, 228 Cal. App. 3d 247 (Ct. App. 1991); People v. Guillen, 218 Cal. App. 4th 975 (2013). *See also* Early Termination of Probation in California, CALIFORNIA EXPUNGEMENT HELP, http://californiaexpungementhelp.com/early-termination-of-probation/.

COURTS ALSO OFTEN CONSIDER OTHER POSITIVE EFFORTS THAT YOU HAVE MADE IN YOUR LIFE, SUCH AS:[3048]

- Employment or efforts to find a job;[3049]
- Community service or volunteer work;[3050] and
- Educational pursuits and school accomplishments.[3051]

For this reason, you should make every effort to look for a job, volunteer, or go back to school, and you should emphasize these efforts and accomplishments in your *Motion for Early Termination*. For more information on finding work and getting a job, see the EMPLOYMENT CHAPTER, on PG. 557. For more information on educational opportunities, see the EDUCATION CHAPTER, on PG. 832.

FINALLY, THE JUDGE MAY CONSIDER:

1. The severity of your conviction and conduct;
2. Your complete criminal history (i.e., other convictions on your record);
3. The prosecutor's opinion; and
4. How much hardship it will cause you to remain on probation (for example, whether being on probation is making it difficult for you to find work, reconnect with your family, apply for loans, or go back to school).[3052]

BECAUSE I AM STILL ON POST-RELEASE COMMUNITY SUPERVISION (PRCS), AND NEED TO BE OFF TO HAVE MY CONVICTION EXPUNGED, IS THERE ANYTHING I CAN DO TO GET OFF EARLY?

Yes. Under the Realignment law, the maximum amount of time that you can be on Post-Release Community Supervision is 3 years (not including any time that your PRCS was revoked or suspended).[3053] However, you can be released early in 2 situations:

1. **Six months/No violations**—If you have been on PRCS for 6 straight months with no violations, you may ask for an early release.[3054] The process for requesting early release from PRCS is very similar to the process for requesting early release from regular probation (see APPENDIX P, on PG. 1026):[3055]
   a. You will need to write a *motion* requesting an early release from PRCS, and *file* it in court in the county where you are on PRCS.[3056] The main difference when you request an early release from PRCS is that the court will ask your probation officer for a probation report and use it to decide whether or not to release you early.[3057] If you have been on PRCS for less than one year, it is entirely up to the judge whether or not to release you early, based on your motion and on what is in your probation report.[3058]
2. **One year/No violations**—If you have been on PRCS continuously for 1 year with no violations, you will *automatically* be discharged early, within 30 days after your 1-year anniversary.[3059]
   a. the probation department does NOT discharge you automatically after If this time, you may need to file a motion in court asking the judge to discharge you. Ask a lawyer for help if you are in this situation. For a list of legal aid organizations that may be able to help, see PG. 1127.

HELPFUL HINT

A Note About Early Release From Probation & Getting a Conviction Expunged in Court at The Same Time:

Generally, *early release* from probation and *expungement* of the underlying conviction go hand in hand. In many counties, these two legal processes will happen at the *same court appearance*, one after the other. You or your lawyer will file *both* a *Motion for Early Termination of Probation* (see APPENDIX P, on PG. 1026) and a *Petition for Dismissal (*see APPENDIX K, on PG. 1018). If the judge grants your *Early Release from Probation* motion, he or she will probably grant your *Dismissal Petition* also (as long as you meet all the other expungement requirements), so you could be *off probation* AND have your conviction *expunged* by the end of the day!

[3048] Motion for Early Termination of Probation, AVVO, http://www.avvo.com/legal-guides/ugc/terminating-probation.
[3049] People v. Guillen, 218 Cal. App. 4th 975 (2013); People v. Holman, 214 Cal. App. 4th 1447-48 (2013).
[3050] People v. Guillen, 218 Cal. App. 4th 975 (2013).
[3051] People v. Holman, 214 Cal. App. 4th 1447-48 (2013).
[3052] People v. Guillen, 218 Cal. App. 4th 975 (2013). *See also* Motion for Early Termination of Probation, AVVO, http://www.avvo.com/legal-guides/ugc/terminating-probation.
[3053] CAL. PENAL CODE §§ 1203.2(b), 3455(c), 3456(a)(1).
[3054] CAL. PENAL CODE §§ 1203.2(b), 3456(a)(2).
[3055] CAL. PENAL CODE § 1203.2(b).
[3056] CAL. PENAL CODE §§ 1203.2(b), 3456(a)(2).
[3057] CAL. PENAL CODE § 1203.2(b).
[3058] CAL. PENAL CODE §§ 1203.2(b) & 3456(a)(2).
[3059] CAL. PENAL CODE § 3456(a)(3).



REDUCING FELONIES TO MISDEMEANORS

Certain felony convictions can be reduced to misdemeanors on your record. You can do this as part of getting the conviction expunged, or you may be able to do it separately, even if you DON'T get the conviction expunged.

Whether or not you get the conviction expunged, reducing your felony to a misdemeanor will help you to clean up your record, and has other benefits, including:

- making the conviction look less serious on your criminal record;
- allowing you to say that you've never been convicted of a felony on certain job, housing, and other applications; AND
- restoring some of the rights you may have lost due to your conviction—such as the right to possess a gun and the right to serve on a jury.

This section explains the benefits of having your felony conviction reduced to a misdemeanor, what penalties may still affect you afterward, and the steps for getting your felony conviction reduced to a misdemeanor.

WHICH FELONY CONVICTIONS CAN BE REDUCED TO MISDEMEANORS?

If you were convicted of a felony, your conviction can be reduced to a misdemeanor if ALL of the following apply:

1) You were NOT sentenced to state prison[3060] OR county jail instead of state prison under California's Realignment Act[3061] (in other words, your felony was a "wobbler" offense); AND
2) You were sentenced to PROBATION.[3062]

   NOTE THAT CERTAIN OFFENSES, referred to as "straight felonies," can NEVER be reduced to misdemeanors. These "straight felonies" can only ever be charged and sentenced as felonies.[3063]

WHAT IS A "WOBBLER" AND WHY IS IT IMPORTANT FOR EXPUNGEMENT?

If you were convicted of a felony, but were NOT sentenced to a state prison term (or county jail under California's Realignment Act), your offense is called a "wobbler." A wobbler is an offense that can be charged as *either* a misdemeanor or a felony, so the offense "wobbles" between the two offense categories. You can find out if your conviction is a wobbler by reading the California Penal Code section that is listed on your RAP sheet. If it says that the offense is punishable by a fine or time in the county jail (misdemeanor sentences) OR time in state prison or "imprisonment pursuant to subdivision (h) of Section 1170"[3064] (felony sentence), your offense is considered a wobbler.[3065]

Remember, felony "wobblers" are eligible for reduction and ultimately expungement if:[3066]

- You were NOT sentenced to prison time for the offense;
- You were NOT sentenced to county jail instead of prison under Realignment;
- You were NOT sent to prison for a violation while on probation for the offense;
- You were NOT convicted of an offense that is NEVER eligible for expungement (see PG. 960); AND
- You otherwise meet the requirements for expungement (for more information on these requirements, see PG. 960).

For more information on expunging a felony "wobbler" conviction, see PG. 960.

[3060] People v. Mauch, 163 Cal. App. 4th 669, 676 (Ct. App. 2008).
[3061] CAL. PENAL CODE § 1170(h); see Criminal Justice Realignment Frequently Asked Questions, CAL. JUDICIAL BRANCH, (rev. Apr. 2014), http://www.courts.ca.gov/partners/documents/cjr_faq.pdf. See Criminal justice Realignment Will Affect Felony Sentencing, County Jail Credit, Postrelease Supervision and Parole, CALIFORNIA CONTINUING EDUCATION OF THE BAR, http://ceb.com/lawalerts/Criminal-Justice-Realignment.asp.
[3062] Cal. Penal Code § 17(b)(3).
[3063] See People v. Mauch, 163 Cal. App. 4th 669, 676 (Ct. App. 2008).
[3064] California Realignment Act, CAL. PENAL CODE § 1170(h).
[3065] People v. Mauch, 163 Cal. App. 4th 669, 675 (Ct. App. 2008); (There are a small number of felonies where the legislature has prescribed a fine as an alternative to state prison. For these crimes, CAL. PENAL CODE section 18 permits the court to sentence a person to county jail, thus making the conviction a misdemeanor although the legislature in the original writing of the statute, did not permit this alternative. According to the court in People v. Mauch, "By providing for incarceration in the county jail instead of prison, section 18 authorizes a reduction to a misdemeanor for certain felonies even though the Legislature did not provide for misdemeanor treatment in the statutory provisions defining those particular crimes. Because the Legislature has not elsewhere expressly declared any of these particular felonies may qualify as misdemeanors, section 18 creates, to coin a phrase, "stealth wobblers." Section 18's misdemeanor option, however, is limited to felonies the Legislature has specified are punishable by imposition of a fine as an alternative to state prison. People v. Isaia (1989) 206 Cal. App. 3d 1558, 1564.
[3066] People v. Moomey, 194 Cal. App. 4th 850, 857 (Ct. App. 2011) (citing to authorities stating that "the commission of a wobbler is a felony at the time it is committed and remains a felony unless and until the principal is convicted and sentenced to something less than imprisonment in state prison (or the crime is otherwise characterized as a misdemeanor).

Although the law does not require you to be off probation, you will have a better chance of getting your conviction reduced if you have successfully completed probation first. For information on how to get off probation early, see PG. 966.

IMPORTANT: Felonies that CANNOT be reduced to misdemeanors. If you were sentenced to state prison OR sentenced to county jail for a straight felony under Realignment—even if the judge suspended your sentence so you never spent any time in custody—your conviction is NOT eligible to be reduced to a misdemeanor.[3067]

However, if you *never spent any time in prison* and you were not sentenced to county jail instead of prison because of Realignment, you may still qualify to have your felony conviction expunged (see PG. 960).[3068]

I WANT TO GET MY FELONY "WOBBLER" EXPUNGED. WHAT ARE THE STEPS TO GETTING IT REDUCED TO A MISDEAMEANOR SO THAT IT IS THEN ELIGIBLE FOR EXPUNGEMENT?

Having a felony conviction on your record (even after the conviction has been expunged) can be much more damaging than having only a misdemeanor. Reducing your felony "wobbler" conviction to a misdemeanor, whether or not you have it expunged, changes your criminal record so that—going forward—you no longer have a felony conviction on your record.[3069]

Here are the benefits of reducing your felony "wobbler" to a misdemeanor:

- You can say that you were never convicted of a felony when applying for most jobs, housing, public benefits, loans, etc.;[3070]
- You will no longer be disqualified from getting most professional and occupational licenses because of a felony conviction;[3071]
- You may get back your *state* gun rights back;[3072] AND
- You will get back your right to serve on a jury.[3073]

IMPORTANT: FELONY REDUCTIONS & IMMIGRATION ISSUES: As of January 1, 2015, the maximum jail time that a person can be sentenced to for a misdemeanor is 364 days—one day short of a full calendar year. This is important if you are at risk of being deported because of a felony conviction, and your conviction can be reclassified or resentenced as a misdemeanor under Prop. 47. When you get your felony conviction reclassified or resentenced, it is recommended that you ask the judge to say *on the record* that the maximum sentence for your conviction is now 364 days. This might help you avoid certain negative immigration consequences that are tied to a sentence of 365 days or more.[3074] **Learn more in the chapter on immigration issues starting on PG. 1105.**

ARE THERE PENALTIES THAT WILL STILL AFFECT ME EVEN IF MY FELONY IS REDUCED TO A MISDEMEANOR?

Yes. Unfortunately, reducing your felony conviction to a misdemeanor doesn't get you completely off the felony hook. Some penalties will carry over and continue to affect you, even after your felony conviction is reduced to a misdemeanor. These include:

[3067] CAL. PENAL CODE § 1170(h); see Criminal Justice Realignment Frequently Asked Questions, CAL. JUDICIAL BRANCH, (Rev. Apr. 2014), http://www.courts.ca.gov/partners/documents/cjr_faq.pdf.
[3068] See People v. Parker, 217 Cal. App. 4th 498 (2013).
[3069] People v. Gilbreth (2007) 156 Cal. App. 4th 53, 57. ("[O]nce a court has reduced a wobbler to a misdemeanor pursuant to . . . [CAL. PENAL CODE] section 17, the crime is thereafter regarded as a misdemeanor 'for all purposes.' This unambiguous language means what it says, and unless the Legislature states otherwise, a person such as [defendant] stands convicted of a misdemeanor, not a felony, for all purposes upon the court so declaring.")
[3070] A few licensing boards/agencies can still consider a conviction as a felony, even after the conviction has been reduced to misdemeanor under 17(b). For example: CAL. BUS. & PROF. CODE § 6102 (Cal. State Bar—licensing of attorneys) and CAL. GOV'T CODE § 1029(a)(3) (disqualification from employment as peace officer).
[3071] CAL. PENAL CODE § 1203.4; see, e.g., 10 CAL. CODE REGS. § 3723(a)(3) (discipline of real estate appraisers—criteria of rehabilitation includes "[j]udicial relief from the consequences of criminal conviction").
[3072] CAL. PENAL CODE § 29800 imposes a lifetime ban on owning or acquiring a firearm for individuals with felony convictions. It also imposes a 10-year firearm ban for certain misdemeanor convictions. If your conviction is reduced to a misdemeanor that does not carry the 10-year ban, your firearm ban will be automatically lifted. If your conviction is reduced to a misdemeanor that carries a 10-year ban, your prohibition will be lifted after the 10-year period. See People v. Gilbreth, 156 Cal. App. 4th 53, 57 (2007) (a reduction of a felony offense to a misdemeanor precludes its use as a predicate offense under the felon-in-possession statutes).
[3073] CAL. CIV. PROC. CODE § 203(a)(5).
[3074] Telephone interview with Rose Cahn, Project Leader, Immigrant Post-Conviction Relief Project, Lawyers' Committee for Civil Rights in the San Francisco Bay Area.



- If your conviction was for a serious or violent felony, it will still count as a prior "strike" under California's Three Strikes Law;[3075]
- If your conviction requires you to register as a sex offender under Penal Code section 290, you will still have to register after your felony is reduced;[3076]
- You may still be subject to federal firearms restrictions;[3077]
- Some state licensing agencies may still consider your conviction a felony.[3078]

Also, please note that getting your felony conviction reduced to a misdemeanor under Penal Code section 17(b) does NOT give you any legal rights to be compensated for any time that you served that is more than what you could have been sentenced to if you had been convicted of a misdemeanor originally.

WHAT IS THE PROCESS FOR GETTING A FELONY "WOBBLER" CONVICTION REDUCED TO A MISDEMEANOR, AND THEN EXPUNGED?

If you want to reduce your felony conviction to a misdemeanor AND get your conviction expunged, it is generally very easy to do both at the same time! In fact, the *Petition for Dismissal (Form CR—180)* that you must file to get your conviction expunged has a box that you can check to say that your conviction is also eligible to be reduced and to request it.

Then, when you have your court hearing for your expungement, the judge will consider both requests—first your request to reduce the conviction to a misdemeanor, and then your request to have it expunged. If you meet all the requirements, the judge usually will grant both of your requests together. (For a list of the requirements for reducing a felony to a misdemeanor, see PG. 968. For a list of requirements to get your conviction expunged, see PG. 960.) For more details on how to get your felony conviction reduced to a misdemeanor, see APPENDIX R, on PG. 1035.

If the judge does NOT reduce your felony to a misdemeanor, or if your felony is only eligible for reduction but not expungement, you may need to file a separate petition to get it reduced. It is recommended that you ask a lawyer to help you with this. For more information about filing a separate petition to ask for your felony conviction to be reduced, see APPENDIX R, on PG. 1035.

MY CONVICTION WAS FOR A FELONY AND I WAS SENTENCED TO STATE PRISON. WHAT, IF ANYTHING, COULD I DO TO GET IT EXPUNGED?

Unfortunately, if you were sentenced to state prison, or spent *any* time in a CDCR facility (including a prison camp or hospital) for your conviction (for *any* reason), your conviction does NOT qualify for expungement OR for reduction to a misdemeanor.[3079]

BUT, your conviction *may* still be eligible for Reclassification or Resentencing under Proposition 47, or you *may* be eligible for a Certificate of Rehabilitation and/or a Governor's Pardon. (For information on Reclassification and Resentencing under Proposition 47, see PG. 970. For information on Certificates of Rehabilitation, see PG. 980. For information on Governor's Pardons, see PG. 984.)

PROPOSITION 47: RECLASSIFICATION AND RESENTENCING UNDER THE NEW LAW

WHAT IS PROPOSITION 47, AND HOW COULD IT HELP ME?

Proposition 47 ("Prop. 47") was a law passed by California voters and became effective in November of 2014. Prop. 47 changed state law so that **certain *non-violent* offenses** that previously could be charged as felonies or "wobblers" (either a felony or misdemeanor) can now *only* be charged as straight **misdemeanors**. [3080] Prop. 47 is retroactive, which means it also applies to ***past convictions***, so you may be able to get your past felony

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[3075] Gebremicael v. Cal. Com'n on Teacher Credentialing (2004) 118 Cal. App. 4th 1477, 1486 ("Similarly, for purposes of the "Three Strikes law", the Legislature has declared a prior felony conviction proven by the prosecution as a prior strike retains its status as a felony even if it had been reduced after initial sentencing to a misdemeanor under Penal Code section 17. CAL. PENAL CODE, § 667, subd. (d)(1), 1170.12, subd. (b)(1)."). However, a reduced felony cannot act as a "prior" crime for a future offense that requires a predicate (that is, preexisting) felony conviction. See People v. Gilbreth 156 Cal. App. 4th 53, 57 (2007).

[3076] Cal. Penal Code § 17(e).

[3077] 18 U.S.C. 921-930. Under federal law, most domestic violence convictions trigger a lifetime firearms ban, regardless of what state you were convicted in. Most people convicted of a crime of domestic violence in California will never be able to own a gun legally anywhere in the United States.

[3078] See, for example, CAL. BUS. & PROF. CODE §§ 6100, 6102 (for purposes of attorney discipline or disbarment, a felony conviction remains a felony regardless of post-conviction proceedings under CAL. PENAL CODE § 17(b)).

[3079] CAL. PENAL CODE §§ 17(b), 1203.4; People v. Borja (1980) 110 Cal. App. 3d 378, 381-82; People v. Mendez, 234 Cal. App. 3d 1773, 1780 (1991); People v. Jones, 176 Cal. App. 3d 120, 130-31 (1985).

[3080] CAL. CONST., art. 2, § 10(a); CAL. PENAL CODE § 1170.18.

convictions changed to misdemeanors if they meet the legal requirements! If you are still serving a sentence for a conviction that qualifies for Prop. 47, you may be able to get your sentence reduced. Contact your public defender/defense attorney for assistance. Keep reading this section to learn more about the benefits and limitations of Prop. 47!

IMPORTANT UPDATE: The deadline to file Prop. 47 applications has been extended to November 4, 2022! Spread the word.

WHAT OFFENSES DOES PROP. 47 REDUCE?

So long as you were not convicted of an offense listed on PG. 971 (*see question:* "WHO CANNOT GET PROP. 47 RELIEF?"), Prop. 47 generally helps to reduce the following offenses (past, current, and future):

- **Second Degree Burglary**—Cal. Penal Code section 459 (***if*** underlying facts can meet the definition of shoplifting now listed in Cal. Penal Code section 459.5)—
- **Forgery**—Penal Code Sections 470, 475, 476
- **Forgery, writing bad checks**— Cal. Penal Code section 476a
- **Grand Theft**—Penal Code Section 487
- **Receiving Stolen Property**— Cal. Penal Code section 496(a)
- **Petty Theft with a Prior**— Cal. Penal Code section 666
- **Possession of Drugs for Personal Use**—Cal. Health & Safety Code Section 11350
- **Possession of Concentrated Cannabis**—Cal. Health & Safety Code Section 11357(a)
- **Possession of Meth**—Cal. Health & Safety Code Section 11377
- ***See PG. 973 for details about the circumstances in which Prop. 47 can change these offenses.***

If you were or are charged with one of these offenses on or after November 9, 2014, it can be charged only as a misdemeanor—NOT as a felony.

If were convicted of a felony for one of these offenses on or before November 8, 2014, you may be able to ask a superior court judge to reduce it to a misdemeanor under Prop. 47 (a process called "*reclassification*" where you must petition the superior court).

If you are currently serving a felony sentence in prison or jail, or are under supervision on probation, post-release community service (PRCS), or state parole for an offense that you were convicted of on or after November 9, 2014, you may be able to get your sentence reduced to a misdemeanor sentence (a process called "*resentencing*" where you must petition the superior court – see more on PG. 973).

WHO CAN GET PROP. 47 RELIEF?

You can petition a superior court for Prop. 47 relief if you were ever convicted of a felony for an offense listed in the previous question (*see question:* WHAT OFFENSES DOES PROP. 47 REDUCE?), **AND** you do not have a disqualifying offense listed below (*see question:* "WHO CANNOT GET PROP. 47 RELIEF?").

A California Court of Appeal also decided that Prop. 47 applies equally to juveniles with offenses covered by Prop. 47.[3081] This means that both juveniles AND adults can get qualifying felonies reduced under Prop. 47.

PLEASE NOTE: This information is meant to help you figure out whether you may qualify, but it is always better to have the help of a lawyer to make sure the entire Prop. 47 process is completed accurately, and so that you can be screened for any other possible options for reducing the severity or impact of your criminal record. You can call your local Public Defender's office for more information about the Prop. 47 process in your county!

IMPORTANT: Your conviction will NOT qualify for Prop. 47 if you also have a conviction for certain serious felony offenses. Below is a list of offenses that will disqualify you from using Prop. 47 to get your felony conviction reduced to a misdemeanor.

WHO CANNOT GET PROP. 47 RELIEF?

Unfortunately, you CANNOT use Prop. 47 to clean up your record if you have *also* been convicted of any of the following offenses:

- A "serious" or "violent" felony that qualifies as a "super strike" under California Penal Code section 667(e)(2)c(iv):
- A "sexually violent offense" under the Sexually Violent Predator Law;[3082]

[3081] Alejandro N. v. Superior Court of San Diego Cnty., 238 Cal. App. 4th 1209 (2015), review filed (Sept. 2, 2015) ("Thus, section 1170.18 concerns the very same offenses that are incorporated into the juvenile wardship proceedings via CAL. WELF. & INST. § 602, and it follows that § 1170.18's offense reclassification provisions are equally applicable to juvenile offenders."). The court further held that if the offense was reclassified as a misdemeanor under Proposition 47, then the superior court must also expunge any DNA it retained in the court bank, unless there is another basis to retain it apart from the reclassified misdemeanor offense. See id.



- Oral copulation,[3083] sodomy,[3084] or sexual penetration[3085] with a person under 14 and more than 10 years younger;
- A lewd or lascivious act involving a person under 14;[3086]
- Any homicide offense, including attempted homicide;[3087]
- Solicitation to commit murder;[3088]
- Assault with a machine gun on a peace officer or firefighter;[3089]
- Possession of a weapon of mass destruction;[3090]
- Any serious or violent felony punishable in California by life imprisonment or death;
- Any offense that requires you to register as a sex offender under California Penal Code section 290(c).

WHO CAN GET PROP. 47 REMEDIES?

Prop. 47 can reduce *prior* felony convictions to misdemeanors (*reclassification*) AND can reduce any felony sentence that you're *currently serving* to a misdemeanor sentence (*resentencing*).

If you were convicted of one of the offenses covered by Prop. 47 (see PG. 971), and you don't have any of the disqualifying convictions on your record, here's what the change in law could do for you:

- If you are *currently incarcerated* or *on parole*, you may be immediately *resentenced* to a misdemeanor sentence.
- If you are *incarcerated*, you could be immediately *released* based on time served;
- If you are *on parole or PRCS*, you could be immediately *discharged*, or your parole could be reduced to probation.[3091]
- If you have already completed your sentence and are off parole, you may be able to have your prior conviction *reclassified* as a misdemeanor.
- If you are currently on formal probation, you could have your probation reduced to informal probation, or terminated based on time served.



IMPORTANT: FELONY REDUCTIONS & IMMIGRATION ISSUES:

As of January 1, 2015, the maximum jail time that a person can be sentenced to for a misdemeanor is 364 days—one day short of a full calendar year. This is important if you are at risk of being deported because of a felony conviction, and your conviction can be reclassified or resentenced as a misdemeanor under Prop. 47. When you get your felony conviction reclassified or resentenced, it is recommended that you ask the judge to say *on the record* that the maximum sentence for your conviction is now 364 days. This might help you avoid certain negative immigration consequences that are tied to a sentence of 365 days or more.[3092] Learn more in the chapter on immigration issues starting on PG. 1105.

WHAT DOES PROP. 47 NOT DO?

Prop. 47 *does not* give you back your gun rights if you lost these rights due to your conviction.[3093] Prop. 47 also *does not* remove the conviction from your record; it simply reduces it to a lesser offense.

Also, please note that getting your felony conviction reclassified or resentenced as a misdemeanor under Prop. 47 does NOT give you any legal rights to be compensated for any time that you served that is more than what you could have been sentenced to if you had been convicted of a misdemeanor originally.

It used to be true that you could use excess custody credits to offset restitution fines, but the Legislature changed that section of the Penal Code in July 2013 to say that custody credits cannot be used to lower restitution fines.[3094]

[3082] A felony violation of CAL. PENAL CODE §§ 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289, or any felony violation of CAL. PENAL CODE §§ 207, 209, or 220, committed with the intent to commit a violation of CAL. PENAL CODE §§ 261, 262, 264.1, 286, 288, 288a, or 289. CAL. WELF. & INST. CODE § 6600(b).
[3083] As defined in CAL. PENAL CODE § 288a.
[3084] As defined in CAL. PENAL CODE § 286.
[3085] As defined in CAL. PENAL CODE § 289.
[3086] As defined in CAL. PENAL CODE § 288.
[3087] As defined in CAL. PENAL CODE §§ 187-191.5.
[3088] As defined in CAL. PENAL CODE § 653a.
[3089] As defined in CAL. PENAL CODE § 245(d)(3).
[3090] As defined in CAL. PENAL CODE § 11418(a)(1).
[3091] CAL. PENAL CODE § 1170.18(c).
[3092] Telephone interview with Rose Cahn, Project Leader, Immigrant Post-Conviction Relief Project, Lawyers' Committee for Civil Rights in the San Francisco Bay Area.
[3093] CAL. PENAL CODE § 1170.18(k).
[3094] People v. Morris, 242 Cal. App. 4th 94 (2015).



HOW DOES PROP. 47 CHANGE A CONVICTION ON MY CRIMINAL RECORD?

Prop. 47 affects eligible offenses in the following ways:

Shoplifting (Penal Code section 459.5)—Prop. 47 adds a new offense, misdemeanor shoplifting. If you enter a business, during regular business hours and steal something worth less than $950, it is now shoplifting instead of second-degree burglary. If you are charged with shoplifting, now you cannot also be charged with petty theft or burglary. If you have a conviction for felony second-degree burglary (California Penal Code section 459), you may be able to get it reduced to misdemeanor shoplifting.

Forgery (Penal Code sections 470, 471, 472, 475)—Prop. 47 changes the laws for several forgery offenses that previously could be charged as either misdemeanors or felonies. Now, all of these offenses are straight misdemeanors only. However, Prop. 47 does NOT apply if you are convicted of both forgery and identity theft (CAL. PENAL CODE section 530.5). If you have a felony conviction for an eligible forgery offense, you may be able to get it reduced to a misdemeanor.

Forgery/Writing Bad Checks (Penal Code section 476a)—Prop. 47 changes this offense from a "wobbler" to a straight misdemeanor if the amount of the check is less than $950. Beware, however, that Prop. 47 does not apply if you have three or more prior forgery convictions. If you have a felony conviction for writing a bad check, you may be able to get it reduced to a misdemeanor.

Theft (Penal Code section 490.2)—Before Prop. 47, an offense was classified as either GRAND THEFT (a felony) or PETTY THEFT (a misdemeanor) based on (1) the value of the property stolen, (2) the type of property stolen (i.e. guns or cars), OR (3) the manner in which the property was stolen (for example, from someone's immediate possession). After Prop. 47, the offense is classified based ONLY on whether the value of the property is more or less than $950. So, now if you steal something that is worth less than $950, you can only be charged with misdemeanor petty theft, regardless of what type of property you took or how you took it. If you have a felony grand theft conviction, you may be able to get it reduced to misdemeanor petty theft.

Receiving Stolen Property (Penal Code Section 496)—Prop. 47 changes this offense to a straight misdemeanor if the value of the stolen property is under $950. If you have a felony conviction for receiving stolen property, you may be able to get it reduced to a misdemeanor.

Petty Theft with a Prior (Penal Code Section 666)—Before Prop. 47, if you were charged with petty theft and had three or more previous theft convictions, you could have been charged with a felony. Now, for most people, you cannot be charged with a felony for petty theft, no matter how many prior petty theft convictions you have. The only way that you can be charged with *felony* petty theft under section 666 now is if you are already excluded from Prop. 47 (see above for convictions that can exclude you), and you also have a previous conviction for petty theft, grand theft, elder financial abuse, joyriding, burglary, carjacking, robbery or felony receiving stolen property,[3095] OR you are required to register as a sex offender. If you have a felony conviction for petty theft based on prior theft convictions, you may be able to get it reduced to a misdemeanor.

Simple Drug Possession (Health & Safety Code Sections 11350, 11357, & 11377)—Under Prop. 47, simple possession of pretty much any controlled substance is a straight misdemeanor.[3096] If you have a felony conviction for simple drug possession, you may be able to get it reduced to a misdemeanor.

CAN PROP. 47 CHANGE THE AMOUNT OF COURT-ORDERED FINES I OWE?

Maybe, but the change is not automatic and the courts have not yet said whether fine reductions should be allowed. Under the language of Prop. 47, a conviction that has been reduced to a misdemeanor should be considered a misdemeanor ***"for all purposes"***. Since the maximum fines for misdemeanors are usually lower than they are for felonies, it follows that the sentencing court may be willing to reduce your fines to reflect the change in your conviction. If you have completed your sentence and are looking to have one or more felonies reduced to misdemeanors under Prop. 47, you may want to request a hearing, even though one is not required, so you can ask the judge to reduce your fines.

HOW DO I GET MY CONVICTION REDUCED UNDER PROP. 47?

The process for getting a felony conviction reduced to a misdemeanor under Prop. 47 depends on whether you are currently still serving your sentence ("under sentence") for the conviction, or if you have already completed your sentence.

- *If you are currently still serving your sentence* (meaning you are *incarcerated* OR on *parole or PRCS* for the qualifying conviction—also called being "*under sentence*"),[3097] you must ask to be "resentenced." (See PG. 974 for information on resentencing.)

[3095] CAL. PENAL CODE § 667(e)(2)(C)(iv).
[3096] Cal. Penal Code § 1170.18.



- *If you have already completed your sentence*, you must ask to have your conviction "reclassified." (See PG. 974 for information on reclassification.)
- *If you are currently on formal probation* for the qualifying offense, you have the right to submit a petition for resentencing, which could result in being released from probation.[3098]

HELPFUL HINT—TALK TO A LAWYER! If you think you qualify for resentencing or reclassification, it is recommended that you talk to a lawyer for help. You can start with the lawyer who represented you in your case or your local Public Defender. See also the list of expungement legal aid providers on PG. 1127.



IMPORTANT: Petitions for resentencing and applications for reclassification must be filed on or before November 4, 2022. Petitions filed after that date will only be considered upon a showing of "good cause."[3099] Proposition 47 does not define what would qualify as "good cause."

RESENTENCING:

If you are currently serving your sentence ("under sentence") for an offense that qualifies under Prop. 47, and you are NOT excluded by one of the disqualifying convictions, you may be eligible for ***resentencing***.[3100]

You will need to fill out and file a Petition for Resentencing, and you may need to request a hearing to convince the judge that you qualify for resentencing under Prop. 47. If you qualify, the judge MUST resentence you unless s/he thinks you pose an "unreasonable risk to public safety." If you have already served the amount of time that you would have served if you were originally convicted of a misdemeanor, you will be released or discharged from supervision.

For information and instructions on how to petition for resentencing, including what "unreasonable risk to public safety" means, see APPENDIX T, on PG. 1043. Each local court has created its own version of this petition, so it's recommended that you go to the court where you were convicted to request one.

RECLASSIFICATION:

If you already completed your sentence (including any parole or probation term) for an offense that qualifies under Prop. 47, and you do NOT have one of the disqualifying convictions discussed above, you may be able to have your felony ***reclassified*** as a misdemeanor. Unfortunately, you cannot get back the time that you served for the felony, but you can change your criminal record to show a misdemeanor conviction instead of a felony. (For information on the benefits of reducing a felony conviction to a misdemeanor, see PG. 969.)

You will need to fill out and file a Petition for Reclassification (in most courts this is the same form used for resentencing people under Prop. 47). The judge will then review your petition to make sure that you qualify for ***reclassification***. Normally, you do not need to request a hearing for a reclassification; but in some circumstances, you may need to.

If you meet the requirements, the judge MUST reclassify your conviction as a misdemeanor.

For information and instructions on how to petition for reclassification, including when you might need to request a hearing, see APPENDIX T, on PG. 1043.

IF I GET MY FELONY REDUCED UNDER PROP. 47, CAN I ALSO GET IT EXPUNGED?

Possibly. Generally, if you served any time in state prison for a felony conviction, you cannot get your conviction expunged ("dismissed" is the legal term).[3101] However, many lawyers believe that this is an oversight by the drafters of Prop. 47, and feel that if your felony conviction is eligible to be reduced to a misdemeanor under Prop. 47, it should be eligible for expungement (like most misdemeanors) as well. Some lawyers have had success getting discretionary expungements for Prop. 47 convictions under California Penal Code section 1203.4a (which allows expungement of misdemeanor convictions with sentences *other than probation*).[3102]

[3097] CAL. PENAL CODE § 1170.18. See also J. Richard Couzens & Tricia Bigelow, Proposition 47, The Safe Neighborhoods and Schools Act, (Dec. 2014); Orange County Superior Court Form L-0929, Petition/Application to Have Felony Violation(s) Designated as Misdemeanor(s) and Resentencing, Information and Instructions, Nov. 5, 2014.
[3098] People v Garcia, 245 CA 4th 555 (2016).
[3099] AB 2765, Stats. 2016, ch. 767.
[3100] CAL. PENAL CODE § 1170.18. (a).
[3101] Cal. Penal Code § 1203.4.
[3102] Interview with Eleanor Miller, attorney, Pepperdine Legal Aid Clinic (Feb. 26, 2015); Email from Eliza Hersh, Attorney, Clean Slate Practice, East Bay Community Law Center, Berkeley, CA (Apr. 16, 2015).

IMPORTANT: PROP. 47 & FEDERAL SENTENCES:

Even though Prop. 47 only applies to state convictions, it may still help you if you are serving time for a *federal* conviction. If your federal sentence was *increased* because you had a prior *state* conviction, and that state conviction can be reduced to a misdemeanor under Prop. 47, that conviction should no longer have as much impact on your federal sentence, which may mean that your total federal sentence can be reduced.[3103]

If you are serving a federal sentence and you have prior state convictions, it is recommended that you contact the federal defense lawyer who represented you, the federal public defender, or the county public defender where you were convicted immediately.

FOR MORE INFORMATION ON PROP. 47:

The California Courts has added new information to its website[3104] *explaining* Proposition 47, including:

- A list of Frequently Asked Questions (FAQs) such as, "*What is the procedure for obtaining reclassification of a crime*?" http://www.courts.ca.gov/documents/Prop47FAQs.pdf
- Prop. 47 facts and information in English and Spanish, available here: http://myprop47.org/
- A clickable county map to easily locate contact information for your local county Public Defender's offices and county courthouses, available here: http://www.safeandjust.org/county-map/

[3103] Email from David Wasserman, Deputy Federal Public Defender, Federal Public Defender, Central Dist. of Cal. (Mar. 17, 2015).
[3104] See JUDICIAL COUNCIL OF CAL., "Proposition 47: The Safe Neighborhoods and Schools Act," http://www.courts.ca.gov/prop47.htm.

PROPOSITION 64: CALIFORNIA'S NEW "ADULT USE OF MARIJUANA" LAW

WHAT IS PROPOSITION 64?

California voters passed Proposition 64 ("Prop. 64") into law on November 8, 2016, and it went into effect on November 9, 2016. Prop. 64 ***legalizes*** the possession, transport, purchase, consumption and sharing of up to one ounce of marijuana and up to eight grams of marijuana concentrates for adults aged 21 and older.[3105] Adults may also grow up to six plants at home.[3106] Prop. 64 also provides for a strict governmental system to regulate and tax the nonmedical use of marijuana, which will not begin until 2018.

In additional to legalizing certain acts, Prop. 64 also ***reduces or eliminates criminal penalties for most marijuana offenses*** **for both adults AND juveniles.**[3107] Prop. 64 provides a way for people with prior marijuana convictions that qualify under the new law to petition a court to have their convictions reduced or dismissed.[3108]

Keep reading to learn more about Prop. 64 and the requirements and procedure for seeking relief! Although a lawyer is not required for reclassification, it is always useful to get help from a lawyer to make sure the Prop. 64 process is completed accurately. See a list of "clean slate" legal aid referrals on PG. 1133.

HOW COULD PROP. 64 HELP ME?

The changes in criminal penalties apply to *past* convictions, *current and pending* charges, and *future* charges.

If you are currently serving a sentence in prison or county jail, or are on probation, post-release community supervision (PRCS), or parole, you may apply for "*resentencing*" by petitioning the superior court.[3109] The judge must resentence you, unless they determine that you are "an unreasonable risk of danger to public safety."[3110] As used in Prop. 64, "unreasonable risk to public safety" has the same meaning as it does in Prop. 47 (see **APPENDIX T**, on PG. 1043), which this law was modeled after.[3111] In other words, a judge can only find you "an unreasonable risk of danger to public safety" if you are at risk of committing a "super strike" as defined in Penal Code § 667(e)(2)(C)(iv). If resentenced, the judge will order you to serve one year on parole or PRCS, unless the court, in its own discretion, removes this requirement.[3112]

If you have completed your sentence and are no longer in custody and are no longer under supervision, you may apply for "*reclassification*" by petitioning the superior court.[3113] Some courts also refer to this process as "*redesignation*." When evaluating petitions for reclassification/redesignation, the judge does not make any determination about whether you are a risk to public safety and does not have the option or discretion to deny resentencing. **So long as you were convicted of an offense changed by Prop. 64, the judge and court *must* reclassify the conviction.**

If you are serving a federal sentence for a marijuana-related federal offense, reducing or sealing your conviction might help reduce your sentence and any immigration consequences.

Also note: Resentencing, redesignation, or sealing a conviction under Prop. 64 could give you back your gun rights.[3114] Ask a criminal or clean slate lawyer for advice.

WHAT OFFENSES DOES PROP. 64 REDUCE OR ELIMINATE?

Prop. 64 reduces or eliminates certain offenses based on the amount of marijuana, the person's age, and the person's prior offenses. Whether Prop. 64 will help you depends on all these factors. Below is a general summary, and you can find a detailed chart in **APPENDIX U** on PG. 1045.

Prop. 64 changed the criminal penalties for the following four criminal offenses:

- **Possession of marijuana or concentrated marijuana (Cal. Health & Safety § 11357)**
- **Cultivation of marijuana (Cal. Health & Safety Code § 11358)**
- **Possession with intent to sell marijuana (Cal. Health & Safety Code § 11359)**
- **Sales or transport of marijuana (Cal. Health & Safety Code § 11360)**

[3105] CAL. HEALTH & SAF. CODE § 11362.1(a)(1)-(2).
[3106] CAL. HEALTH & SAF. CODE §§ 11362.1(a)(3), 11362.2.
[3107] See CAL. HEALTH & SAF. CODE § 11362.4.
[3108] CAL. HEALTH & SAF. CODE § 11361.8.
[3109] CAL. HEALTH & SAF. CODE § 11361.8.
[3110] CAL. HEALTH & SAF. CODE § 11361.8(b).
[3111] CAL. HEALTH & SAF. CODE § 11361.8(b)(2).
[3112] CAL. HEALTH & SAF. CODE § 11361.8(c).
[3113] CAL. HEALTH & SAF. CODE § 11361.8(e).
[3114] CAL. HEALTH & SAF. CODE § 11361.8(h) states that a conviction resentenced or redesignated under Prop. 64 "shall be considered a misdemeanor or infraction for all purposes" and does not make gun rights an exception like in Prop. 47 (CAL. PEN. CODE, § 1170.18(k)).

The new penalty (either a misdemeanor, infraction, or dismissal) depends on the specific offense. For example, some offenses became outright legal (such as possession of up to 28.5 grams of marijuana or up to 8 grams of concentrated marijuana) and some offenses were reduced to misdemeanors (such as sales of marijuana).

Again, find a detailed chart about how different penalties changed under Prop. 64 in **APPENDIX U** on PG. 1045.

WHO CAN GET PROP. 64 RELIEF?

You may apply for Prop. 64 "reclassification" if you were *ever convicted* of one of the four offenses listed above (again, those are: Cal. Health & Safety Code §§ 11357, 11358, 11359, and 11360).

You can apply for Prop. 64 regardless of what else is on your record, even a "super strike" will not disqualify you. In other words, as long as you: (1) were convicted of an offense listed above, (2) are serving or completed a sentence for one of those offenses, and (3) would have been guilty of a lesser offense under Prop. 64, you can apply. If the District Attorney objects to resentencing for any reason, they must *prove* that you are not eligible by "clear and convincing evidence."

NOTE: If you have a current or past juvenile offense (called a disposition or adjudication) for an offense Prop. 64 reduced, you can ask for a new disposition, redesignation, or sealing.[3115]

! **VERY IMPORTANT NOTE FOR NONCITIZENS: Immigration enforcement is run by the federal government, not California's state government. Federal immigration officials *still consider the possession of marijuana to be illegal*. Admitting the use or possession of marijuana is a danger for noncitizens. Immigration officers are increasingly asking noncitizens about their use of marijuana. If you say you have ever used marijuana, especially in states that have legalized marijuana. You should not admit using marijuana to any immigration official. In the resentencing process, you or your lawyer should try to get the judge to make an order that that says your previous marijuana-related conviction is reduced or dismissed because it is "legally invalid"—which is what the law requires under California Health & Safety Code § 11361.8. Since we do not know yet if immigration officials will accept Prop. 64 relief, you should consider other forms of post-conviction relief as well if you are a noncitizen. Learn more options to address the immigration consequences of your record starting on PG. 1105.**

WHICH MARIJUANA-RELATED OFFENSES DID NOT CHANGE UNDER PROP. 64?

- Marijuana offenses involving minors (such as hiring or using minors to sell or transport marijuana, and selling, giving, or offering to sell or give marijuana to minors)[3116]
- Manufacturing concentrate by chemical extraction or synthesis[3117]
- Providing a place for trafficking, processing, or distribution of controlled substances[3118]
- Driving under the influence of cannibinoids (marijuana)[3119]
- Driving with marijuana[3120]
- Marijuana offenses related to jails[3121]
- Also not: Medical marijuana protections are still in effect.[3122]

Please note that this list is an overview, and there may be other marijuana-related offenses that have not changed under Prop. 64.

WHAT NEW INFRACTIONS ARE CREATED UNDER PROP. 64?

The following crimes are now classified as infractions that are punishable by a fine:

- Growing marijuana at home in a space that is visible to the public[3123]
- Using marijuana in public[3124]
- Smoking marijuana in a place where smoking of any kind is prohibited[3125]
- Smoking marijuana within 1,000 feet of a school, daycare, or youth center[3126]
- Open container of marijuana in a vehicle[3127]

[3115] CAL. HEALTH & SAF. CODE § 11361.8(m)
[3116] CAL. HEALTH & SAF. CODE § 11361
[3117] CAL. HEALTH & SAF. CODE § 11379.6
[3118] CAL. HEALTH & SAF. CODE §§ 11366, 11366.5
[3119] CAL. VEH. CODE §§ 23512(3), 23153(f)
[3120] CAL. VEH. CODE §§ 23222(b)
[3121] CAL. PENAL CODE §§ 4573, 4573.6, 4573.8, 4373.9
[3122] CAL. HEALTH & SAF. CODE §§ 11362.45(i), 11362.5
[3123] CAL. HEALTH & SAF. CODE § 11362.2(a)
[3124] CAL. HEALTH & SAF. CODE § 11362.3(a)(1)
[3125] CAL. HEALTH & SAF. CODE § 11362.3(a)(2)
[3126] CAL. HEALTH & SAF. CODE § 11362.3(a)(3)



- Possession of marijuana on the grounds of a school, daycare, or youth center[3128]

RESENTENCING

CAN I BE RESENTENCED UNDER PROP. 64?

There are three requirements for resentencing. The court must resentence you unless the District Attorney (prosecution) proves that you do not meet the requirements by clear and convincing evidence.[3129]

Requirement 1: You are "currently serving a sentence."[3130] *(There is otherwise no time limit.)*
Although "currently serving a sentence" is not defined in Prop. 64, it likely includes you if you are:

- Serving time in prison, county jail, or a juvenile facility; OR
- On probation, post-release community service, mandatory supervision, or state parole.[3131]

Requirement 2: You would not have been guilty of an offense, or would have been guilty of a lesser offense under Prop. 64, had had it been in effect at the time of your offense.[3132]

Requirement 3: You do not pose an "unreasonable risk of danger to public safety."

- "Unreasonable risk of danger to public safety" for Prop. 64 means there is an unreasonable risk you will commit a new violent offense (among the ones listed in Cal. Penal Code section 667(e)(2)(C)(iv)).[3133]

! **IMPORTANT NOTE IF YOU HAVE A PENDING APPEAL: You may be able to argue you should be resentenced without the court first deciding if you pose an "unreasonable risk." The argument is that Prop. 64 applies retroactively to all cases pending on appeal because of a case called *In re Estrada*.[3134] Consult with your appellate attorney about this argument.**

HOW DO I GET RESENTENCED UNDER PROP. 64?

For resentencing, a "petition" to the sentencing court is required.[3135] For fixing your record, an "application" to the sentencing court is required.[3136] There is a form petition/application, available online at: http://www.courts.ca.gov/prop64.htm, and find sample forms in APPENDIX V, PG. 1050. Contact the attorney who represented you or the county public defender's office from where you were sentenced to file the petition or application for you. If you have an ongoing appeal, also talk to your appellate attorney.

Additionally, some records will be sealed automatically. State agencies must automatically destroy records of arrest and conviction from January 1, 1976 or later for possession of marijuana offenses under Health and Safety Code sections 11357 and 11360(b), plus juvenile adjudications for all marijuana-related offenses except those involving synthetic marijuana under Health and Safety Code section 11357.5. Agencies should destroy records two years after conviction or arrest if no conviction. Certain offenses including Health and Safety Code section 11357, subdivision (d) and other offenses on K-12 school grounds have special rules requiring destruction only upon a person turning 18.[3137] **If you have certain offenses from before 1976,** you can apply to destroy related records of arrests and convictions.[3138]

NOTE FOR SAN FRANCISCO RESIDENTS:

If you were convicted of a marijuana-related offense in San Francisco after 1975, your offense could be recalled, dismissed, or sealed without any action on your part. San Francisco District Attorney George Gascon has committed to reviewing and revising every eligible marijuana conviction in his district. For more information, visit sfdistrictattorney.org.

[3127] CAL. HEALTH & SAF. CODE § 11362.3(a)(4)
[3128] CAL. HEALTH & SAF. CODE § 11362.3(a)(5)
[3129] CAL. HEALTH & SAF. CODE § 11368.1(b), (f); see People v. Buford (2016) 4 Cal.App.5th 886, 888 [people bear burden of proof in Prop.36 "unreasonable risk" question
[3130] CAL. HEALTH & SAF. CODE §11361.8(a)
[3131] *See* People v. Davis (2016) 246 Cal. App. 4th 127, 138-142 ["currently serving a sentence" in Prop. 47 should be construed liberally and include probation]; People v. Garcia (2016) 245 Cal. App. 4th 555, 557-559 [same]
[3132] CAL. HEALTH & SAF. CODE § 11361.8(a)
[3133] CAL. HEALTH & SAF. CODE § 11362.1(b)(2), citing CAL. PENAL CODE § 1170.18(c).
[3134] *See* In re Estrada, 63 Cal.2d 740 (1965). The U.S. Supreme Court decided Estrada did not apply to Prop. 36 in People v. Conley (2016) 63 Cal.4th 646. Judges Couzens and Bigelow have opined that Conley should also mean that Estrada does not apply to Prop. 64: http://www.courts.ca.gov/documents/prop64-Memo-20161110.pdf (pgs. 5-7). However, Conley does not eliminate the question for Prop. 64. The Supreme Court in People v. DeHoyos, S228230, is set to decide if Prop. 47 can be distinguished from Conley based on a different legislative intent. The legislative intent of Prop. 64 is distinct from both Prop.36 and 47; it is more similar to Prop. 47.
[3135] CAL. HEALTH & SAF. CODE § 11361.8(a).
[3136] CAL. HEALTH & SAF. CODE § 11361.8(e).
[3137] CAL. HEALTH & SAF. CODE §§ 11361.5(a).
[3138] CAL. HEALTH & SAF. CODE §§ 11361.5(b).



RECLASSIFICATION (OR REDESIGNATION):

CAN I GET A PRIOR MARIJUANA CONVICTION REDUCED OR REMOVED UNDER PROP. 64?

Yes. If you already have finished your sentence or juvenile disposition (including any supervision), then you can change your record under Prop. 64. If they now would be misdemeanors or infractions, they can be "redesignated"—reduced to—misdemeanors or infractions. If they now would be considered legal activities, they can be "sealed" or destroyed.**The requirements for reclassification or dismissal and sealing are:**

- You have finished your sentence or disposition
- You "would not have been guilty of an offense, or [] would have been guilty of a lesser offense under the [Prop. 64] had the Act been in effect at the time of the offense . . . ."
- The law also lists convictions that may underlie a petition: Health and Safety Code sections 11357 (Possession), 11358 (Planting, harvesting, or processing), 11359 (possession for sale), or 11360 (Sale, transportation for sale, or gift).[3139] An argument may exist that other convictions not listed as eligible for reclassification and sealing, but which would not be illegal under current law, can be redesignated or sealed. [3140]
- There is no "unreasonable risk" exception. There is no time limit.

OTHER QUESTIONS ABOUT PROP. 64:

WHAT DOES PROP. 64 NOT DO?

Prop. 64 does not specify a legal right to seek compensation for time spent in custody you could not have spent under the current law.

IF I GET MY FELONY REDUCED UNDER PROP. 64, CAN I THEN GET IT EXPUNGED?

Generally, if you have served time in prison for a felony conviction, you do not qualify for expungement. However, the Prop. 64 law clearly says that offenses reduced to misdemeanors under Prop. 64 should be treated as misdemeanors "for all purposes."[3141] This language should mean (and courts hopefully will decide it does mean) they will be misdemeanors for purposes of expungement under Penal Code section 1203.4a. If you are in this situation, you should consult with an attorney for more information. You can contact the public defender's office in the county where you were sentenced. If you have already had your conviction expunged, you still should be eligible for Prop. 64 relief if you satisfy all the requirements.[3142]

IF I GET MY FELONY REDUCED UNDER PROP. 64, WILL IT RESTORE MY GUN RIGHTS?

Probably. Prop. 64 is similar to Penal Code section 17(b) in that successful reduction transforms that conviction into a misdemeanor for all purposes. California courts have explicitly stated that 17(b) restores a person's gun rights.[3143] Though it has not yet been litigated, there is nothing in the language of Prop. 64 that implies it should be treated differently than 17(b) in this sense.[3144] Still, because Prop. 64 is a relatively new law, it may take some time for the DOJ to devise policies around the restoration of gun rights under Prop. 64. If you are having a hard time, contact your attorney or call Root & Rebound's Reentry Legal Hotline.

WHAT IF I HAVE A GUN POSSESSION CONVICTION, OR OTHER OFFENSE/ENHANCEMENT THAT I WOULD NOT HAVE HAD WITHOUT MY FELONY MARIJUANA CONVICTION OR SENTENCE?

Depending on the circumstances, it might be possible to challenge other convictions, adjudications, ehanancements (e.g., Cal. Health & Safety Code § 11370.2), or sentences affected by a marijuana conviction that gets sealed or redesignated under Prop. 64. The California Supreme Court is currently considering a similar question of whether a prior prison term enhancement (that is, Cal. Pen. Code, § 667.5, subd. (b)) should be taken off where the underlying felony was changed to a misdemeanor under Prop. 47.[3145]

[3139] CAL. HEALTH & SAF. CODE §§11361.8(e), (f)

[3140] For example, an argument exists that violations of CAL. HEALTH & SAF. CODE §§ 11366 and 11366.5 (providing a place for manufacturing, distributing, or giving away of controlled substances) that were based on conduct that now would be legal should be sealed in accordance the intent of Prop. 64. However, CAL. HEALTH & SAF. CODE § 11361.8(e) expressly provides for redesignation and sealing only for CAL. HEALTH & SAF. CODE §§ 11357-11360. As subdivision (a) of the same section uses broader language, an equal protection argument may exist.

[3141] CAL. HEALTH & SAF. CODE § 11361.8(h).

[3142] See People v. Tidwell (2016) 246 Cal.App.4th 212 [Prop. 47].

[3143] See Gebremicael v. California Com. on Teacher Credentialing (2004) 117 Cal.App.4th 1477, 1485; People v. Culbert (2013) 218 Cal.App.4th 184; People v. Gilbreth (2007) 156 Cal.App.4th 53, 57; See People v. Lewis (2008) 164 Cal.App.4th 533

[3144] By contrast, the language of Penal Code section 1170.18(k), which codifies Prop. 47, explicitly states that gun rights cannot be restored under that section. Health & Safety Code section 11361.8. which codifies Prop. 64, contains no such provision.

[3145] People v. Valenzuela, review granted March 30, 2016, S232900.

DOES PROP. 64 IMPACT MY FEDERAL SENTENCE?

Maybe. Even though Prop. 64 only applies to state sentences, it still could help you if you are serving time for or at risk of deportation for a federal conviction. If your federal sentence was increased because you had a prior state conviction, sealing that conviction or reducing it to a misdemeanor could decrease the length of your sentence. If you are serving a federal sentence and have a prior state conviction possibly affected by Proposition 64, contact the federal lawyer who represented you, the federal public defender, and/or the county public defender where you were convicted immediately for assistance.

DOES PROP. 64 HELP WITH IMMIGRATION CONSEQUENCES?

Maybe. First, under Prop. 64, misdemeanor sentences cannot be longer than 364 days. So if you are at risk of being deported because of a felony conviction and Prop. 64 redesignates your conviction to a misdemeanor or infraction, this reclassification could have a significant impact for you. In your petition or in court (if you have a hearing), it may help you to ask the court to note on the record the new maximum sentence. Second, because Prop. 64 labels some relevant convictions "legally invalid," you may be able to argue these "legally invalid" convictions should not affect immigration because they were "legal defects."[3146] Contact a lawyer immediately for help with this situation. See PG. 1134 for a list of legal aid organizations that help with immigration issues.

CAN EMPLOYERS LOCATED IN CALIFORNIA STILL DRUG TEST ME EVEN THOUGH PROP. 64 PASSED? CAN EMPLOYERS REFUSE TO HIRE ME OR FIRE ME FOR USING MARIJUANA?

Yes. Even though Prop. 64 passed, California employers can still conduct drug tests during the application process, and even once someone has been hired. Employers can also refuse to hire you and can fire you for using marijuana. There are two reasons why employers are allowed to test, refuse to hire, and/or fire you for marijuana use. First, employers are allowed to create rules to maintain a drug-free workplace by making sure that employees don't come to work under the influence of marijuana or use marijuana at work.[3147] Second, marijuana possession and use is still illegal under federal law, and employers are allowed to create rules to ensure that their employees don't violate state or federals laws at the workplace or on employer property.[3148] Learn more about your employment rights with a criminal record in the EMPLOYMENT CHAPTER, beginning on PG. 557.

FOR MORE INFORMATION ON PROP 64:

The **California Courts'** website has added new information to its website, including:

- General information about Prop. 64 and sample Prop. 64 forms and petitions
- A detailed article entitled "PROPOSITION 64: 'Adult Use of Marijuana Act' Resentencing Procedures and Other Selected Provisions" by Judge J. Richard Couzens and Judge Tricia A. Bigelow: http://www.courts.ca.gov/prop64.htm

The **Drug Policy Alliance** has free information on Prop. 64, including A 6-step chart for people trying to change their record under Prop. 64. See: http://www.drugpolicy.org/my-prop-64

If you think you are eligible for resentencing under Prop. 64, ***contact the Public Defender's Office or the attorney who represented you during your original case***. A clickable map to easily locate contact information for your local county Public Defender's office and county courthouses is available here: http://www/safeandjust.org/county-map/

CERTIFICATES OF REHABILITATION

A Certificate of Rehabilitation (COR) is another way to clean up your criminal record. Although it does NOT remove anything from your record, it can restore certain rights that you may have lost, and can help improve your chances of success when you're applying for work, housing, and professional or occupational licenses.

IMPORTANT: If you have a felony or misdemeanor sex conviction that is eligible for expungement (meaning you were not sent to prison), by law you must expunge it first BEFORE you are elgibile for a COR.[3149]

AM I ELIGIBLE FOR A CERTIFICATE OF REHABILITATION IF I AM STILL ON PAROLE, PROBATION, OR PRCS?

NOT YET. BEFORE you can apply for a COR, you must have completed any term of probation, parole, or PRCS that was part of your sentence or a condition of your release.

You will also have to complete a waiting period (which begins when you are released from custody) BEFORE you can apply for a COR. However, any time that you spend on parole, probation, or PRCS will count toward this period. For more information on when you can get a COR, see PG. 982.

[3146] See Matter of Pickering (BIA 2003) 23 I & N Dec. 621, 624.
[3147] CAL. HEALTH & SAF. CODE § 11362.45(f).
[3148] CAL. HEALTH & SAF. CODE § 11362.45(f).
[3149] CAL. PENAL CODE § 4852.01(c).



WHAT IS A CERTIFICATE OF REHABILITATION AND HOW COULD IT HELP ME?

A Certificate of Rehabilitation (COR) is a court order saying that someone who was previously convicted of a crime is now officially *rehabilitated*.[3150] *A COR can restore some of the rights you lost as a result of your conviction.* A COR may help you in the following ways:

- When you apply for a job or housing, a COR serves as official proof of your rehabilitation;[3151]
- If you apply for a professional or occupational license, a COR improves your chances of getting approved;[3152]
- If you were required to register as a "sex offender" under California Penal Code section 290, a COR *may* eliminate your registration requirement;[3153]
- A COR serves as an automatic application and recommendation for a full pardon from the Governor.[3154]

However, there are many things that a COR does NOT do—for example, it does NOT erase or seal your conviction; it does NOT restore all of the rights you may have lost due to your conviction; and you will still have to disclose the conviction when you apply for jobs, housing, and professional licenses. (For more information on what a COR does NOT do, see PG. 982.)

WHO CAN GET A CERTIFICATE OF REHABILITATION?

You may be eligible to apply for a Certificate of Rehabilitation if you fall into one of the following two categories:[3155]

CATEGORY 1: Felony—You are Category 1 if the following are true:

a. You were convicted of a felony;
b. You served your sentence in a California state prison or county jail (or some other CDCR facility, such as a prison camp or hospital)[3156];
c. You completed your sentence and were released from prison *or* you were released on parole;
d. You have NOT been incarcerated in any California state prison (or other CDCR facility) since your release; AND
e. You have lived in California for the last 5 years.

CATEGORY 2: 1203.4 Dismissals—You are in **Category 2** if all of the following are true:

a. You were convicted of a felony OR convicted of a misdemeanor sex offense;[3157]
b. Your conviction was expunged under California Penal Code section 1203.4;
c. You have NOT been incarcerated ANYWHERE (in ANY prison, jail, or correctional institution) since getting your conviction expunged;
d. You are NOT on probation for any *other* felony; AND
e. You have lived in California for the last 5 years.

You will also need to complete a waiting period BEFORE you can apply for a COR, which will be based on your conviction offense. To figure out how long you must wait before applying for a Certificate of Rehabilitation, see APPENDIX W, on PG. 1056.

WHO CANNOT GET A CERTIFICATE OF REHABILITATION?

Unfortunately, people in certain *situations* and with certain *convictions* are NEVER eligible for a Certificate of Rehabilitation. You are *NEVER eligible* for a COR if:

- You were convicted of certain serious sex offenses (listed in California Penal Code sections 269, 286c, 288, 288ac, 288.5, 288.7, or 289(j));
- You are on mandatory lifetime parole (for more information on the length of state parole and who must serve mandatory lifetime parole, see the PAROLE & PROBATION CHAPTER, PG. 152);
- You have been sentenced to the death penalty (and your sentence has not been overturned);
- You are serving in the military; or
- You no longer live in California.[3158]

[3150] Cal. Penal Code § 4852.06.
[3151] CAL. LAB. CODE § 432.7. 24 C.F.R. §§ 982.552(c)(2), 5.852; HUD, C.F.R. Occupancy Requirements Of Subsidized Multifamily Housing Programs ¶ 4-7(C)(4) (Rev. November 2013).
[3152] Cal. Bus. & Prof. Code § 480(b).
[3153] Cal. Penal Code § 290.5.
[3154] Cal. Penal Code § 4852.16.
[3155] Cal. Penal Code § 4852.01.
[3156] CAL. PENAL CODE § 4852.01(a).
[3157] CAL. PENAL CODE § 290.
[3158] CAL. PENAL CODE § 4852.06; A Certificate of Rehabilitation is an official court order declaring that you have been rehabilitated. Cal. Pen. Code § 4852.13(a). See also State of Cal., Office of Governor, Office of Gov. Edmund G. Brown Junior, How to Apply for a Pardon at



IF YOU NO LONGER LIVE IN CALIFORNIA…

This manual focuses on how to clean up your criminal record if you live in *California*. If you have a California conviction but no longer live in California, you may be eligible for a Governor's Pardon (see PG. 984).

If your conviction is *from another state*, you will not be eligible to clean up your record using the California remedies described in this chapter. However, many other states provide similar remedies, so you should find out what "cleaning" remedies are available in the state where your conviction is from.

If you have a *federal* conviction, possible remedies for cleaning up federal criminal records start on PG. 993.

NOTE: If you ONLY have misdemeanor convictions on your criminal record, you are NOT eligible for a Certificate of Rehabilitation. Instead, it is recommended that you try to get your conviction(s) dismissed under California's expungement statute (see PG. 957).

BUT there is one *exception*—if you were convicted of a misdemeanor sex offense (listed in California Penal Code Section 290), then you *may* be eligible for a Certificate of Rehabilitation AFTER you get your conviction expunged. (You must also meet the expungement requirements to be eligible, see PG. 960.)

WHAT CAN'T A CERTIFICATE OF REHABILITATION DO FOR ME?

Although there are many benefits to obtaining a COR, it is a *limited* remedy. Here are some of the things that a COR does NOT do for you:

- It does NOT erase a felony conviction or seal your criminal record;[3159]
- It does NOT prevent your conviction from being considered a "prior" if you are later convicted of a new offense;[3160]
- It will NOT necessarily eliminate your registration requirement, if you are required to register as a "sex offender" under Cal. Penal Code § 290;[3161]
- It does NOT allow you to say that you've never been convicted of a felony—in other words, you must still disclose your conviction on job and professional licensing applications.[3162]

CERTIFICATES OF REHABILITATION & VOTING RIGHTS

A COR does NOT restore your right to vote if you lost this right due to your conviction. However, you will get your voting rights back *automatically* once you are out of prison and OFF parole, so you do *not* need a COR to get your voting rights back. (For more information about voting rights, see the BUILDING BLOCKS OF REENTRY: ID & VOTING CHAPTER, on PG. 67).

WHEN CAN I GET A CERTIFICATE OF REHABILITATION?

Before you can apply for a Certificate of Rehabilitation, you must complete a "*period of rehabilitation*"[3163] to show that you have improved your life and avoided involvement in any more criminal activity since your release from prison or jail. In general, you must wait a minimum of five years before you can apply for a COR, PLUS an additional number of years depending on what your conviction was for. You must also have completed your parole or probation term, but your period of rehabilitation starts running as soon as you are released from prison or jail and includes any time you spent on supervision.

CORS & PARDONS:

If the judge grants your COR, this will automatically send an application to the Governor for a pardon. You will not have to do anything more to apply for a pardon. (For more information about Governor's pardons, see PG. 984.)

IMPORTANT: Even if you have not completed your entire period of rehabilitation, you are allowed to request a COR early (as long as you are NOT required to register as a sex offender under California Penal Code Section 290). The judge may grant you a COR early, if s/he finds that it is "*in the interests of justice*" to do so.[3164] The judge will consider your good conduct, rehabilitation efforts, and how important getting a COR is to your success in the future.

The process for requesting a Certificate of Rehabilitation is the same, regardless of whether you are requesting it early or at the end of your period of rehabilitation.

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3 (rev'd Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf (certificate of rehabilitation "[s]erve[s] as an official document to demonstrate a felon's rehabilitation).

[3159] CAL. LABOR CODE § 26; How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (rev'd Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf; see also CAL. PENAL CODE § 4852.15, 11105. CAL. BUS. & PROF. CODE § 480(b).

[3160] CAL. PENAL CODE § 290.5; How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (rev'd Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.

[3161] Cal. Penal Code § 290.5.

[3162] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (rev'd Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf; see also CAL. BUS. & PROF. CODE § 480(b). CAL. PENAL CODE §§ 4852.15, 11105.

[3163] CAL. PENAL CODE § 4852.03.

[3164] CAL. PENAL CODE § 4852.22.



I'VE HAD A NEW CONVICTION SINCE MY ORIGINAL OFFENSE? CAN I STILL APPLY FOR A CERTIFICATE OF REHABILITATION FOR THE ORIGINAL OFFENSE?

You are *allowed to* apply for a COR if you have a new conviction during your period of rehabilitation, **BUT** the judge will likely use the new conviction as a reason to deny your COR, and can require you to complete a new period of rehabilitation (see APPENDIX W, on PG. 1056) starting *from the date your COR is denied* (*not* from the time of the offense that led to the denial).[3165] In addition, even if you get the new conviction expunged, the judge can still consider the *conduct* that led to the conviction when deciding whether to grant your COR.[3166]

The judge has discretion to consider *every interaction* with the law when determining whether to grant a COR.[3167] Evidence presented at a COR hearing includes records from parole and probation, which would include any violations of your conditions, as well as "written reports or records of any other law enforcement agency" about you.[3168]

HOW DO I GET A CERTIFICATE OF REHABILITATION?

If you meet all of the requirements for a COR (see PG. 981) *and* you have completed your required period of rehabilitation (or you want to request a COR early), you will need to file papers (called a *Petition for Certificate of Rehabilitation*) in the court in the county where you ***currently live***. Your petition will explain why you deserve a COR. It should include letters of support and proof of your accomplishments. The District Attorney will likely do an investigation and prepare a report about you. Then you will have a hearing where you will have to convince the judge that you are rehabilitated and ready to be a responsible member of society.

NOTE: You must request a COR from the court in the county *where you currently live*. This is different from most other remedies (such as expungement, reducing your felony to a misdemeanor, and Prop. 47), which require you to request them from the court *where you were convicted*. For complete information and instructions on how to request a Certificate of Rehabilitation, including a sample application, see APPENDIX X, on PG. 1057.

IMPORTANT: You have the *right* to a lawyer to help you with your request for a COR. You can hire a lawyer of your choice, or if you cannot afford a lawyer, the court must assign a public defender or another lawyer to help you.[3169] If you are just getting started and don't yet have a lawyer, you should start by contacting the Public Defender's Office *in the county where you live*, or look for a local expungement clinic in your area. You also have the right to get help with your request from the county probation department, state parole officers, the California Youth Authority (if you are under 30 years old), and any other rehabilitative agency.[3170]

FREE RAP SHEETS FOR PUBLIC DEFENDERS

If you are being represented by a public defender for a COR, make sure they know they can get your RAP sheet free of charge! To do so, they must send in a request citing Pen. Code § 11105(b)(9) and *People v. Webber* (1991) 228 Cal.App.3d 1146, 1167. They may also need to obtain a judge's signature and/or a Certification of Attorney of Record containing a court stamp or seal.

[3165] CAL. PENAL CODE § 4852.11; People v. Failla, 140 Cal. App. 4th 1514, (App. 4 Dist. 2006) (review denied).
[3166] People v. Zeigler, 211 Cal. App. 4th 638 (2012).
[3167] CAL. PENAL CODE § 4852.1.
[3168] People v. Zeigler, 211 Cal. App. 4th 638 (2012). In People v. Zeigler the court held that even though someone completed a Proposition 36 alternative sentence that released him "from all penalties and disabilities", the court was still allowed to consider the underlying conduct that led to the arrest when denying a certificate of rehabilitation
[3169] CAL. PENAL CODE § 4852.08.
[3170] CAL. PENAL CODE § 4852.04; cf. People v. Norton, 80 Cal. App. 3d Supp. 14 (App. Dep't Super Ct. 1978) (pardon does not obliterate record of conviction); People v. Mendez, 234 Cal. App. 3d 1773, 1784 (Ct. App. 1991), reh'g denied and opinion modified (Nov. 4, 1991) (same).



GOVERNOR'S PARDON

WHAT IS A GOVERNOR'S PARDON?

A governor's pardon is an official forgiveness for your conviction, granted by the Governor of California. A pardon restores all of the rights you lost due to your conviction—including your gun rights and your right to serve on a jury—and if you qualify, eliminates your requirement to register as a sex offender under California Penal Code section 290. It is the best thing you can do to reduce the impact of your criminal record on your life, but it is still not a complete remedy because it does completely erase the conviction from your record. (For more information on what a pardon does and does *not* do for you, see PG. 985.)

A California Governor's pardon is an honor granted only to individuals who have demonstrated exemplary behavior following conviction for a felony.[3171] It is official acknowledgement of your rehabilitation from the state's highest elected official. A pardon removes most of the consequences of a criminal conviction. Both the California Penal Code and the California Constitution give the Governor the authority to grant pardons, and that authority is entirely discretionary.[3172]

Unfortunately, Governor's pardons are difficult to get and are NOT granted very often, so you should try to clean up your record using other remedies first—such as an expungement or a Certificate of Rehabilitation.

Governor's Pardons vs. Felony Reductions, Reclassifications & Resentencing

In most cases, you are NOT eligible for a Governor's pardon if you ONLY have misdemeanor convictions on your criminal record. (In other words, you must have a felony conviction to get a pardon.) If you reduce your felony conviction to a misdemeanor under California Penal Code section 17(b) (see PG. 968), or have it reclassified or resentenced as a misdemeanor under Prop. 47 (see PG. 970), you could become ineligible for a Governor's pardon (unless you also have other felony convictions on your record).

HOWEVER, in most cases it's still better to have your felony conviction reduced to a misdemeanor—even if that makes you ineligible for a Governor's pardon—for these reasons:

- It is MUCH easier to get your felony conviction reduced to a misdemeanor than it is to get a Governor's pardon. Governor's pardons are very rare, and you should not count on getting one.
- Getting your felony conviction reduced to a misdemeanor removes the felony from your criminal record and allows you to say that you were never convicted of a felony for that offense. But a Governor's pardon does NOT remove, erase, or seal the conviction on your record, so you will still have to disclose that you have a felony conviction even if you have been pardoned.

IMPORTANT: If your conviction is eligible for a Certificate of Rehabilitation (COR), you should absolutely apply for a COR *first*, BEFORE seeking a pardon. Getting a COR improves chance of getting a pardon AND automatically sends in your application for a pardon (so you do not have to do anything else to apply!).

WHO CAN GET A GOVERNOR'S PARDON?

Anyone who has been convicted of a felony OR certain misdemeanor sex offenses is eligible for a pardon.[3173] Your conviction must be from California—you cannot get a Governor's pardon for a conviction from another state, or for a federal conviction.[3174]

WHO CANNOT GET A GOVERNOR'S PARDON?

You are NOT eligible for a pardon if you ONLY have *misdemeanor* convictions that are NOT sex offenses on your California criminal record. Note that if you have a felony conviction *from another state* or for a *federal* felony conviction, you still do NOT qualify for a California Governor's pardon. Your felony or misdemeanor sex offense conviction must be from California to qualify.

[3171] State of Cal., Office of Governor, Office of Gov. Edmund G. Brown Junior, How to Apply for a Pardon at 3 (rev'd Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3172] CAL. PENAL CODE § 4800; CAL. CONST., art. V, § 8; compare CAL. PENAL CODE § 4852.17 (governor's pardon based on certificate of rehabilitation does restore right to vote); How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (rev'd Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3173] CAL. PENAL CODE § 4852.01.
[3174] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR. (rev'd Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.

HOW COULD A GOVERNOR'S PARDON HELP ME?

A Governor's Pardon can restore many of the rights and benefits that you lost because of your conviction. A pardon MAY:

1. Restore your right to serve on a jury;[3175]
2. Restore your California gun rights (UNLESS you were convicted of a felony involving the use of a dangerous weapon);[3176]
3. Permit you to work as a county probation officer or state parole agent*;[3177]
4. Relieve certain people of their duty to register as "sex offenders," who would otherwise still be required to register after getting a Certificate of Rehabilitation (see PG. 982).[3178]

PARDONS & GUN RIGHTS

BEWARE: A pardon may restore your California gun rights, but it will not necessarily restore your federal gun rights (because federal gun laws are much stricter).

HOW CAN'T A GOVERNOR'S PARDON HELP ME?

Like a Certificate of Rehabilitation, a pardon is still a *limited* remedy. There are certain things that a pardon does NOT do for you:

- A pardon does NOT seal or erase the record of your conviction[3179] (*But you may still get the conviction dismissed, if you meet all the other requirements—see PG. 960*);
- A Pardon does NOT allow you to say that you've never been convicted of a felony on applications for employment, housing, or professional licenses— you must still disclose the conviction[3180] (*But you may still get the felony reduced to a misdemeanor or reclassified under Prop. 47, if you meet all the other requirements for these remedies—see PG. 970*);
- A Pardon does NOT prevent your conviction from being considered a "prior" if you are convicted of a new offense in the future;[3181]
- A Pardon does NOT restore your gun rights if you were convicted of a felony involving the use of a dangerous weapon;[3182]
- A Pardon is NOT a remedy for any convictions from another state or for federal convictions;[3183]
- A Pardon does NOT prevent you from being deported.[3184]

IF I AM ELIGIBLE, HOW COULD I GET A PARDON?

There are 3 different ways to get a pardon:

1. **Certificate of Rehabilitation (COR)**—If you apply for and receive a COR *first*, a request for your pardon is automatically sent to the Governor. The COR serves as the judge's official recommendation that the Governor should grant your pardon. If your conviction is eligible for a COR, this is the best way to get a pardon. Learn more about getting a COR on PG. 980.
2. **Direct Pardon (without COR)**—You can send a request for a pardon directly to the Governor (also called a traditional pardon). This is the best way to get a pardon if you are NOT eligible for a COR; it is also necessary if any of the following apply to you:
   - Your conviction is from California but you do NOT currently live in California;
   - You were released from prison or onto parole before May 13, 1943; OR
   - You are serving a life sentence without the possibility of parole, and you have more than 1 felony conviction.[3185]
3. **Board of Parole Hearings Recommendation**—The Board of Parole Hearings (BPH) can recommend you for a pardon while you are still in prison, based on your good conduct, unusual sentence, or other

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[3175] CAL. CIV. PROC. CODE § 203(a)(5).
[3176] CAL. PENAL CODE §§ 4852.17, 4854. A pardon by the Governor may restore your California firearm privileges, however, it will not necessarily restore your federal firearm privileges, which contain stricter prohibitions.
[3177] CAL. GOV'T CODE § 1203. However, you still will not be eligible for any other peace officer positions.
[3178] CAL. PENAL CODE § 290.5.
[3179] CAL. PENAL CODE § 4852.17; How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3180] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3181] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3182] CAL. PENAL CODE §§ 4852.17, 4854.
[3183] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR EDMUND G. BROWN, JR., (Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3184] 8 U.S.C. § 1227(a)(2)(A)(vi); How to Apply for a Pardon, State of California Office of Governor Edmund G. Brown, Jr., (Sep. 5, 2015), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3185] 15 Cal. Code Regs. § 2816.



strong reasons (for example, you committed your offense because you were a victim of domestic violence).[3186]

IF I AM ELIGIBLE, WHEN COULD I APPLY FOR A PARDON?

When you can or should apply for a pardon depends on the type of pardon you are seeking.

1. **Pardon with Certificate of Rehabilitation (COR):** If you are granted a COR by a judge, a request for a pardon will be automatically sent to the Governor—and you don't need to do anything else! If you do NOT have a Certificate of Rehabilitation yet, but your conviction is eligible for one, you can apply for a COR as soon as you've completed your time period of rehabilitation, which is set by law (it is a minimum 7 years after your release, and longer for certain offenses). Learn more about getting a COR on PG. 980.
2. **Direct Pardon (without Certificate of Rehabilitation):** You can apply for a pardon directly from the Governor after you have been *off probation or parole for 10 years, with NO criminal activity during that period*.[3187] The 10-year requirement will only be waived (excused) in *very* rare situations (under "extraordinary and compelling circumstances").
3. **BPH-Recommended Pardon:** The BPH can only recommend you for a pardon *while you are still incarcerated*. There is no specific time frame for when the BPH can recommend you for a pardon, but it would likely be *after* the BPH has a chance to consider information about your case (for example, after you've had at least one BPH hearing).

- If (or when) you have a BPH hearing, you can bring any evidence showing why you deserve to receive a pardon, based on your good conduct, accomplishments, the circumstances of your conviction, or your sentence.
- If you are no longer in prison, you are not eligible for a BPH recommendation for a pardon.

WHAT IS THE PROCESS FOR GETTING A PARDON?

How you go about getting a pardon depends on the type of pardon you are seeking.

1. **Pardon with Certificate of Rehabilitation:** You DO NOT have to do anything once you have your Certificate of Rehabilitation! When the judge grants your COR, he will also send a copy of your COR directly to the Governor's Office. This will serve as your automatic application for a pardon AND as an official recommendation from the judge that the Governor should grant your pardon. You will not need to do anything else to apply.[3188] Once the Governor receives a copy of your COR, s/he can do any of the following:

- Grant your pardon immediately (if you have no more than 1 felony conviction);[3189]
- Do an investigation and review your case to decide whether to grant your pardon; OR
- Ask the Board of Parole Hearings (BPH) to investigate your case and make a recommendation about whether you should receive a pardon (see below under "Traditional or Direct Pardon").[3190]

2. **Direct Pardon (without COR):** You need to complete a formal application for a pardon –called an "*Application for Gubernatorial Pardon*." If you are not eligible for a Certificate of Rehabilitation, or if any of the following apply to you, this is the only way to apply for a pardon from the Governor:

- Your conviction is from California but you do NOT currently live in California;
- You were released from prison or onto parole before May 13, 1943; OR
- You are serving a life sentencing without the possibility of parole, and you have 2 or more felony convictions.[3191]

For instructions on how to complete a formal application for a traditional or direct pardon, see APPENDIX Y, on PG. 1059.

3. **BPH-Recommended Pardon:** You cannot apply for a BPH-recommended pardon yourself—the BPH must recommend you to the Governor on its own.[3192] However, you may be able to show the BPH that you deserve to be recommended for a pardon. If you have a BPH hearing, it's recommended that you bring evidence (such as documents, certificates, or letters) showing:

- That you were a victim of domestic violence and it led to your offense;

[3186] Cal. Penal Code § 4801; 15 Cal. Code Regs. § 2830.
[3187] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR (Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3188] CAL. PENAL CODE § 4852.13(a).
[3189] Cal. Penal Code § 4852.16.
[3190] Cal. Penal Code § 4812.
[3191] 15 Cal. Code Regs. § 2816.
[3192] Cal. Penal Code § 4801(a).



- Your extraordinarily good conduct or amazing accomplishments while incarcerated; or
- Other special and unusual circumstances surrounding your conviction or sentence.

HOW DO I APPLY FOR A TRADITIONAL PARDON DIRECTLY FROM THE GOVERNOR (WITHOUT A CERTIFICATE OF REHABILITATION)?

Here is a *summary* of the steps to apply for a Traditional Pardon directly from the Governor. For a more detailed explanation of each step, see APPENDIX Y, PG. 1059.

STEP 1: The Application

You will need to fill out the "Application for Gubernatorial Pardon" with information about the conviction you want pardoned, any other convictions on your record, and why you deserve a pardon.

- You can get the application online at: http://gov.ca.gov/s_pardonsandcommutations.php, *or* request an application by mail from the Governor's office:
  Governor's Office
  State Capitol
  ATTN: Legal Affairs
  Sacramento, CA 95814

STEP 2: Notice to the District Attorney

- Before sending your application to the Governor, you must notify the District Attorney in the county *where your conviction is from* that you intend to request a pardon.[3193] There is a special form to use for this, which is included in the Application for Gubernatorial Pardon.
- You must deliver your notice for to the DA(s) at least 10 days before you submit your application to the Governor.[3194]

If you are requesting a pardon for multiple convictions from DIFFERENT counties, you must notify the DA in EVERY county where you have a conviction.

STEP 3: Submitting your Application to the Governor's Office

- At least 10 days after sending your notice to the DA(s), you can mail your completed Application for Gubernatorial Pardon to the Governor's Office:[3195]
  Governor's Office
  State Capitol
  ATTN: Legal Affairs
  Sacramento, CA 95814

ONCE I HAVE APPLIED FOR A PARDON, WHAT HAPPENS?

What happens next will be different, depending on how you applied for a Pardon:

1. **Pardon with Certificate of Rehabiliation (COR):** When the judge grants your COR, he will also send a copy of your COR directly to the Governor's Office.[3196] Once the Governor receives your COR, s/he can do any of the following:
   - Grant your pardon immediately (if you have only 1 felony conviction);[3197]
   - Do an investigation and review your case to decide whether to grant your pardon; OR
   - Ask the Board of Parole Hearings (BPH) to investigate your case and make a recommendation about whether you should receive a pardon (see below under "Traditional or Direct Pardon").[3198]
2. **Direct Pardon (without COR):** If you applied directly to the Governor for a Traditional Pardon, the Governor will review of your case to decide whether you deserve a pardon. The Governor may ask the judge of the court where you were convicted and the DA who prosecuted you for information about your case and recommendations about whether you should get a pardon.[3199]

[3193] CAL. PENAL CODE § 4802; 18 U.S.C. § 921 et seq.
[3194] Cal. Penal Code § 4802.
[3195] See How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR (Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3196] CAL. PENAL CODE § 4852.13(a).
[3197] CAL. PENAL CODE § 4852.16; CAL. PENAL CODE § 667(d); cf. CAL. PENAL CODE § 3045; cf. People v. Laino, 32 Cal. 4th 878, 895 (2004); see also How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR (Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3198] Cal. Penal Code § 4812.
[3199] Cal. Penal Code § 4803.



In most cases, the Governor will also send your application to the Board of Parole Hearings for its recommendation about whether you deserve a pardon.[3200] The BPH may investigate your application by looking at documents and transcripts from your case, talking to witnesses, or doing anything else to evaluate your application. The BPH will then make a recommendation to the Governor about whether you should get a pardon.[3201]

REMEMBER: If you were convicted of **2 or more felonies**, the Governor MUST send your application to the Board of Parole Hearings for review, AND also CANNOT grant your pardon without getting a recommendation from the California Supreme Court. (However, the Governor does not have to send your application to the Supreme Court for review in the first place.)[3202]

3. **BPH-Recommended Pardon:** If the BPH recommends you for a pardon, it will conduct its own investigation of your case first, before making its recommendation to the Governor. If the BPH investigates your case, but decides NOT to recommend you for a pardon, it must tell you its reasons for not recommending you.[3203]

IF YOU HAVE 2 OR MORE FELONY CONVICTIONS

If you were convicted of more than one felony, the Governor is *required* to have the Board of Parole Hearings review your case, regardless of whether you were issued a Certificate of Rehabilitation. Also, if you have two or more felony convictions, the Governor cannot grant you a pardon without a recommendation from the California Supreme Court, however, the Governor is not required to send your application to the Supreme Court for review.

WHAT HAPPENS IF MY PARDON IS GRANTED?

What happens when the Governor grants your pardon is *the same* regardless of whether you received the pardon based on your Certificate of Rehabilitation, applied for a Traditional Pardon directly from the Governor, or were recommended for a pardon by the BPH. Here is the process:

1. The Governor's Office will notify the CA Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) to update their records.
2. The Governor will file your pardon with the CA Secretary of State and report it to the CA State Legislature.
3. The pardon will become a public record, along with your Certificate of Rehabilitation (if you received one) or your direct Application for Gubernatorial Pardon. (However, any sensitive personal information will remain confidential and hidden from the public.)[3204]

WHAT CAN I DO IF MY PARDON IS DENIED?

If your pardon is denied, the only thing you can do is start over and file a new application. However, just as with a Certificate of Rehabilitation, you should not file a new application until AFTER you fix or improve whatever problems caused your first application to be denied.[3205]

[3200] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR (Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3201] Cal. Penal Code § 4812.
[3202] Cal. Penal Code § 4852.16.
[3203] 15 Cal. Code Regs. § 2818.
[3204] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR (Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3205] CAL. CODE REGS. tit. 15, § 2818.

SEALING CALIFORNIA STATE ADULT ARREST RECORDS

WHAT DOES IT MEAN TO HAVE AN ARREST RECORD "SEALED" IN CALIFORNIA?

California law changed in 2018 so that more people with arrest records (that did not lead to a conviction) can get them sealed. If it is possible for you to seal an arrest record, it is always a good idea. **"Sealing"** an arrest record means that *all* documents related to your arrest—including your fingerprints—are confidentially sealed for 3 years, and then destroyed.[3206]

The benefit of having your arrest record sealed is that it *deletes the information from your RAP sheet* (your official criminal record kept by the state), so even law enforcement officers will NOT be able to see the information in most cases. Once your arrest record is sealed, it is as if the arrest (and any related proceedings) never happened.[3207] (For more information on who can see your RAP sheet, see PG. 948.)

WHAT HAPPENS TO MY RAP SHEET IF MY ARREST RECORD IS SEALED?

If your arrest record is sealed, all information about the arrest is deleted from your RAP sheet, and a new RAP sheet is issued *without* any information about the arrest. ALL records from the arrest are destroyed, including your fingerprint card.

When your arrest record is sealed, the arrest (and anything associated with it) is considered NEVER to have happened.

WHICH ARREST RECORDS CAN BE SEALED BY THE COURT (UNDER SB 393)?

SB 393, a new law that went into effect on January 1, 2018, gives Californians **the right to have their arrest records sealed** if the arrest did not lead to a conviction.[3208] Although arrests for certain crimes may be excluded under the new law (see next question, below) SB 393 *requires* the court to seal old arrest records if there is no possibility that any further charges will be brought.[3209] Once the record is sealed, it is treated as if it never happened.[3210]

Before SB 393 was passed, people were required to prove that they were *factually innocent* of the offense for which they were arrested to get it sealed. **It is no longer necessary to prove factual innocence in most cases**. Rather, any arrest that did NOT lead to a conviction can be sealed (with a few exceptions – see the next question *"Which arrest records cannot be sealed?"*).

You can ask to have your arrest record sealed if you were arrested, but:

- The prosecutor/DA *never* filed charges against you in court;[3211] OR
- The prosecutor/DA offered you a diversion program instead of filing charges (and you successfully completed it);[3212] OR
- The prosecutor/DA filed charges against you, but the case was dismissed;[3213] OR
- The prosecutor/DA filed charges, but the judge sent you to a diversion program instead (and you successfully completed it);[3214] OR
- The prosecutor/DA filed charges against you, but you were acquitted at trial;[3215] OR
- The prosecutor/DA filed charges, you were *convicted* at trial, but the judge set aside your conviction.

WHICH ARREST RECORDS CANNOT BE SEALED (UNDER SB 393)?

You do NOT have **the right** to have your arrest record sealed if your record shows a pattern of arrests or convictions for the following crimes:[3216]

- Domestic violence
- Child abuse
- Elder abuse

A "pattern" is defined as two or more convictions, or five or more arrests, for separate offenses within a three-year period.[3217] In addition, if you were arrested for a crime with no statute of limitations (i.e. murder), you cannot have your arrest sealed under SB 393.[3218]

[3206] CAL. PENAL CODE § 851.8(a) & (b); People v. Christiansen, B252804, LA Superior Court No. SA 075027 (certified for publication).
[3207] CAL. PENAL CODE § 851.8(f). (Note: although sealed records are physically destroyed in most circumstances, the records remain in a confidential file in the DOJ computer and can be released under very limited circumstances.)
[3208] Senate Bill no. 393 (Oct. 23, 3027), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB393.
[3209] No further charges can be brought when the statute of limitations for that crime has expired. See CAL. PENAL CODE § 851.91(a)(1)(A).
[3210] CAL. PENAL CODE § 851.91(e)(2)(B).
[3211] CAL. PENAL CODE § 851.8(a).
[3212] CAL. PENAL CODE § 851.87.
[3213] CAL. PENAL CODE § 851.8(c) & (d).
[3214] CAL. PENAL CODE § 851.90.
[3215] CAL. PENAL CODE § 851.8(e).
[3216] CAL. PENAL CODE § 851.91(c)(2)(A)(i).
[3217] CAL. PENAL CODE § 851.91(c)(2)(A)(ii).



I WAS ARRESTED FOR A CRIME THAT CANNOT BE SEALED UNDER SB 393. CAN I STILL TRY TO GET MY ARREST RECORD SEALED?

Possibly. If you cannot get your arrest record sealed under SB 393, you can *still* get your arrest record sealed if one of the following situations applies to you:

- **1) You can prove that sealing your record would serve the interests of justice.** If you were arrested for domestic violence, child abuse, or elder abuse, you will have to convince a judge that your personal situation merits sealing.[3219]
  - The court will look at several factors related to your case, including:
    - The hardship caused by your arrest record;
    - Evidence of your good character;
    - Your account of the circumstances of the arrest; and
    - Whether you have any other arrests or convictions on your record.
- **2) You are found to be "Factually Innocent."**
  - If you were arrested *as an adult* for murder or any other crime that does not have a statute of limitations, you may have to prove you were factually innocent of the crime for which you were arrested.[3220]

WHEN COULD I GET MY ARREST RECORD SEALED?

Generally, you must file a request to have your arrest record sealed within 2 years after the date of your arrest OR the date that charges were filed against you (whichever is later). However, the judge can waive (excuse) the 2-year time limit if you can show "*good cause*"[3221]—meaning you can give the judge a really good reason why you *could not* or *did not* file your petition within the 2-year limit.

Since many people will be beyond the 2-year time limit, these are some examples of reasons that may qualify as "good cause:"

- If the charges are dismissed or you are acquitted more than 2 years after the date of your arrest or charging;
- If the DA waited more than 2 years after the arrest, and then decided not to file charges;
- In some cases, if you were trying to resolve your case informally, but were unsuccessful (but don't wait too long afterward!).[3222]

Keep in mind, however, that it will be up to the judge to decide whether your reason is good enough to waive the 2-year limit.

WHAT IS THE PROCESS FOR GETTING MY ARREST RECORD SEALED?

The process for getting your arrest record sealed varies slightly, depending on your situation:

1. If you were arrested but never charged, you will need to start with the law enforcement agency that arrested you, and ask to have your records sealed. If the law enforcement agency refuses to seal your records (or doesn't respond), you can file your request in court; OR
2. If you were arrested and charges were filed, you should take your request straight to the court first.

Either way, your claim will be reviewed, and you may have a hearing to convince the judge that you are factually innocent. If you are found factually innocent by either the law enforcement agency or the court, the records of your arrest will be sealed and eventually destroyed.

For information and instructions for each step of this process, see APPENDIX Z, on PG. 1061.

CAN I SEAL AN ARREST OR CONVICTION THAT HAPPENED WHILE I WAS A VICTIM OF HUMAN TRAFFICKING?

Yes—a new law has made this possible. In 2016, California added a new section to the Penal Code permitting special factual innocence petitions for victims of human trafficking.[3223] Section 236.14 provides relief for any person arrested for OR convicted of a *nonviolent* offense while a victim of human trafficking. The court will vacate the conviction or seal the arrest if it is satisfied that: (1) the person was a victim of human trafficking at

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[3218] CAL. PENAL CODE § 851.91(a)(2)(B).
[3219] CAL. PENAL CODE § 851.91(c)(2)(B)(1)(i) - (iv).
[3220] CAL. PENAL CODE § 851.91(a)(2)(B).
[3221] Cal. Penal Code § 851.8(l).
[3222] Cf. People v. Bermudez, 215 Cal. App. 3d 1226, 1230 (Ct. App. 1989), reh'g denied and opinion modified (Dec. 23, 1989).
[3223] "Protecting Victims from Wrongful Prosecution and Further Victimization" Fact Sheet, U.S. Dept. of State Office to Monitor and Combat Trafficking in Persons, http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/survivor-reentry-project.html.

the time they committed the offense; (2) the offense was committed as a direct result of being a victim of human trafficking; (3) the person has tried to distance him or herself from human trafficking; AND (4) granting the petition is in the best interests of justice and the person's best interests.[3224]

SEALING CALIFORNIA STATE JUVENILE RECORDS

It is a common misperception that juvenile criminal records are automatically sealed when you turn 18. Unfortunately, this is not the case. If you have a juvenile record in California, you must ask the court to have it sealed, otherwise this information may find its way into your background check.

NOTE: This section refers only to ***sealing juvenile records*** from California. Every state has different laws for handling juvenile records.[3225] If you have a juvenile record from another state, you will need to find out what relief is available in that state.[3226] Also, ***federal*** juvenile records can be sealed only under the very limited circumstances (the same as federal adult convictions—read more on PG. 993).[3227] If you have a federal juvenile record, it is recommended that you speak to a Federal Public Defender.

WHAT COULD SHOW UP IN MY JUVENILE RECORD?

Your juvenile record is made up of all documents, exhibits, judge's rulings, orders, and reports associated with any trouble you got into before you turned 18. These are mostly contained in your juvenile court file, but may also be kept by other agencies such as the Department of Justice (DOJ), the county Probation Department, police, sheriff, or other law enforcement agencies, and the District Attorney.[3228] Your record also includes any documents or records made by these other agencies.

WHO CAN SEE MY JUVENILE RECORD?

Under the law, juvenile court and police records are usually confidential and NOT visible to the public or other people, except in certain cases.[3229] Also, juvenile cases are considered "adjudications"—NOT "convictions"—so legally, you can say that you have NO convictions from your juvenile cases.[3230]

However, juvenile records sometimes DO show up on background checks, and certain employers such as law enforcement and health care agencies are allowed to ask about unsealed juvenile records.[3231] BUT once your juvenile record is sealed, NO one can see it. All juvenile records kept by the court, DOJ, probation department, and other law enforcement agencies are sealed, and it's as if your case never happened.[3232]

WHO CAN GET THEIR JUVENILE RECORDS SEALED?

Like everything else, it depends. You must meet 5 basic criteria to get your juvenile record sealed:[3233]

1. You are over 18 years old, OR it has been 5 years since you were last arrested or completed your juvenile probation (whichever is later);
2. You do NOT have any convictions *as an adult* for a felony OR for a misdemeanor involving "moral turpitude." ("Moral turpitude" means the offense involved *dishonest or immoral behavior*,[3234] such as *theft*, *fraud*, *certain sex* and *drug* offenses, and offenses causing *significant bodily injury*);
3. Your case *started* and *ended* in juvenile court (not in some other court, such as probate court or adult criminal court);
4. You can demonstrate (and convince the judge) that you have been rehabilitated; AND
5. There is NO open *civil* lawsuit based on your juvenile offense.

If you don't meet ALL of the above requirements, you cannot get your juvenile record sealed.

"CONVICTIONS AS AN ADULT":

A conviction as an adult means you were charged *as an adult* in criminal court (NOT in juvenile court) and convicted (either by plea bargain or trial).

[3224] Cal.Pen. Code § 236.14(g).
[3225] See Sealing Juvenile Court Records, NOLO, http://www.nolo.com/legal-encyclopedia/sealing-juvenile-court-records-32228.html.
[3226] See How can my federal juvenile records be used against me?, NOLO CRIMINAL DEFENSE LAWYER, http://www.criminaldefenselawyer.com/can-i-expunge-my-federal-juvenile-record.htm.
[3227] 18 U.S.C. § 3607; see also How can my federal juvenile records be used against me?, NOLO CRIMINAL DEFENSE LAWYER, http://www.criminaldefenselawyer.com/can-i-expunge-my-federal-juvenile-record.htm.
[3228] CAL. WELF. & INST. CODE § 781; see also Sealing Your Juvenile Records, PUBLIC COUNSEL (2013), http://www.publiccounsel.org/tools/publications/files/Sealing-your-Juvenile-Record.pdf.
[3229] CAL. WELF. & INST. CODE § 825 et seq; Cal. Rule of Court, Rule 5.552(b).
[3230] CAL. WELF. & INST. CODE § 203.
[3231] CAL. WELF. & INST. CODE § 432.7; CAL. PENAL CODE § 851.8(b), (c); People v. Adair, 29 Cal. 4th 895 (2003).
[3232] CAL. WELF. & INST. CODE § 781.
[3233] CAL. WELF. & INST. CODE § 781.
[3234] See Nunez v. Holder, 594 F.3d 1124, 1124 (2010) ("Once again we face the question of what is moral turpitude [for purposes of criminal immigration law]: a nebulous question that we are required to answer on the basis of judicially established categories of criminal conduct."); see also In re Craig, 12 Cal.2d 93, 97 (1938) ("Moral turpitude [a key concept in criminal immigration law] has been defined by many authorities as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.").



WHO CANNOT GET THEIR JUVENILE RECORD SEALED?

You CANNOT get your juvenile record sealed if you committed any of the following offenses AND you were 14 or older at the time:

- Murder, attempted murder, or voluntary manslaughter.
- Assault with a firearm, other weapons, or any means of force likely to produce great bodily injury.
- Rape, sodomy, or other sexual offenses, while using force, violence, or threat of great bodily harm.
- Using a firearm while committing a felony (or attempted felony)
- Arson.
- Robbery.
- Various kidnapping offenses.
- Any other serious or violent offense listed in California Welfare & Institutions Code section 707(b).[3235]

IMPORTANT EXCEPTION

What are my options if I committed a serious or violent offense?

If you were convicted of a serious or violent offense AND are otherwise eligible for sealing, you may still be able to get your juvenile record sealed if you do one of the following:

- Set aside the findings and dismiss the petition in the interest of justice under Welfare & Institutions Code section 782.
- Reduce the offense to a misdemeanor under Penal Code section 17(b). (Learn more on PG. 968.)

WHAT IS THE PROCESS FOR GETTING MY JUVENILE RECORD SEALED?

To get your juvenile record sealed, you will need to file a request (called a Petition to Seal Juvenile Records) in the juvenile court where your case was adjudicated. You will have a hearing where the judge will review your petition and ask for a recommendation from the probation department. You will need to answer any questions the judge has, and you can bring people to testify on your behalf. The judge will then decide whether or not to grant your request. If the judge decides to seal your record, s/he will also order all other agencies that have juvenile records on you to seal their records too. If the judge does not decide to seal your record, you are allowed to re-file your petition (the judge will tell you when). For more information and instructions on how to seal your juvenile record, see APPENDIX AA, on PG. 1063.)

For more information about sealing juvenile records in general, see Sealing Your Juvenile Records—a helpful guide from *Public Counsel*, available online at http://www.publiccounsel.org/tools/publications/files/Sealing-your-Juvenile-Record.pdf, and the new online screening tool sealitca.org (which screens you for eligibility and explains the juvenile record-sealing process in each county).



IMPORTANT: As of January 1, 2015, California Welfare & Institutions Code section 786 changed so that juveniles who successfully complete probation, and otherwise qualify to have their record sealed, will have their juvenile record *automatically* sealed by the judge, *without* having to file a petition in court or do anything else.[3236]

However, this DOES NOT apply to juveniles who completed their probation BEFORE January 1, 2015. If you completed your juvenile probation BEFORE January 1, 2015, you will still need to file a petition in court to have your juvenile record sealed.

[3235] CAL. WELF. & INST. CODE § 781; see also § 707(b) (Serious offenses include murder, arson, robbery, rape, and kidnapping, among others).
[3236] Cal. Welf. & Inst. Code § 786.

FEDERAL EXPUNGEMENTS & DISMISSALS

WHAT TYPES OF FEDERAL EXPUNGEMENT ARE AVAILABLE, AND HOW COULD THEY HELP ME?

Convictions for federal offenses (violations of U.S. law) often have consequences *beyond* California. Federal convictions cause you to lose your eligibility for government-assisted housing,[3237] federal student loans,[3238] and participating in foster care or adoption programs,[3239] so getting them expunged can benefit you in (re)applying to these programs.

Unfortunately, most federal convictions *cannot be expunged or dismissed*. Unlike in California (and most other states), there is NO general federal law that offers expungements for federal crimes. However, there are a few federal laws that offer expungements and dismissals in certain limited situations.

Here are the limited options that exist for "cleaning up" federal convictions on your record:

- If your federal conviction is for certain drug offenses and you were *UNDER* 21 when you committed the offense, you may be eligible for a federal expungement. *(See Situation 1, below.)*
- If your federal conviction is for certain drug offenses and you were *OVER* 21 when you committed the offense, you may be eligible for a federal *dismissal*, but not an expungement. *(See Situation 2, below).*
- It is *possible* but *very difficult* to get your conviction expunged by a federal judge (this is called a *judicial expungement*). *(See Situation 3, below).*

FEDERAL EXPUNGEMENT & DISMISSAL:

A **federal expungement** is different than an expungement under California law. Federal law allows for complete expungement of your conviction. The entire record of your conviction is completely erased along with any information associated with it. The offense is removed from your criminal record as if it never happened.

This only applies in very limited situations, but it is a true expungement (see Situation 1).

A **federal dismissal** is more like a California expungement, in that the conviction is NOT completely erased from your record, but it is still hidden from public view (see Situation 2).

WHO CAN GET A FEDERAL EXPUNGEMENT OR DISMISSAL?

If you have a federal drug conviction (see *Situation 1 or 2 in the next question*), you may qualify for an expungement or dismissal of your conviction if ALL of the following are true:

- **You were convicted of only one drug-related offense.**
  - You are NOT eligible if you have *any* other drug-related convictions (state or federal), OR if you have had any previous drug convictions expunged under the statute.[3240]
- **You were in possession of only *certain* types of drugs.**
  - The federal expungement statute ONLY covers convictions for marijuana, cocaine and cocaine-based substances, heroine, and methamphetamines (along with a few other less common drugs). To be eligible, your conviction must have involved one of these drugs (NOT any other drug).[3241]
- **You were convicted of "simple possession" only.**
  - You are NOT eligible if your conviction was for *any other offense* besides possession of a small amount of drugs consistent with personal use. This means no sales, transportation, or distribution offenses will qualify.[3242]
- **The judge "suspended" entry of judgment of conviction for the offense.**
  - This means that you were found guilty of the offense, but the judge basically put your conviction *on hold*, and did not enter it into the official record. (This is to give you a chance to complete probation or a treatment program instead of going to prison.);
  - The judge put you on probation for *no more than 1 year*; AND
  - You successfully completed probation with NO violations.

[3237] Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 135 (2002).
[3238] 20 U.S.C. § 1091(r).
[3239] 42 U.S.C. § 671(20)(a) (requiring states to comply with the requirements of the Adoption and Safe Families Act of 1997 (ASFA) in order to receive ASFA funding).
[3240] 18 U.S.C. § 3607.
[3241] These substances are listed in § 404 of the Controlled Substances Act. 18 U.S.C. § 3607; 21 U.S.C. §§ 841, 844.
[3242] 18 U.S.C. § 3607, 21 U.S.C. §§ 844, 844a.



I MEET ALL OF THE REQUIREMENTS FOR FEDERAL EXPUNGEMENT. WHAT ARE MY NEXT STEPS FOR PURSUING THE EXPUNGEMENT?

SITUATION 1: IF YOU WERE UNDER 21 AT THE TIME OF THE DRUG OFFENSE.

When your probation term ends, you can ask the judge to expunge your conviction. If you have successfully completed your probation with NO violations, and you meet all the other requirements, the judge is *required* to grant your expungement. This means that ALL *official records* of your conviction, all references to your *arrest*, and the results of any *criminal proceedings* against you will be destroyed. You will get back any rights that you lost because of your conviction, and you can say that you have never been arrested, prosecuted, or convicted of the offense.[3243]

SITUATION 2: IF YOU WERE OVER 21 AT THE TIME OF THE DRUG OFFENSE.

If you were *over* the age of 21 at the time of your offense, your conviction will not be completely expunged (i.e. erased). However, if you *successfully complete your probation* with NO violations, and you meet all the other requirements described above, the judge is *required* to dismiss your conviction at the end of your probation term. You can also ask the judge to dismiss your conviction and release you from probation early (before the end of your probation), but it will be up to the judge whether or not to grant this early.

Once your conviction is dismissed, the record will be sealed—meaning the record will still exist, but it will NOT be public, and it will NOT show on your criminal record that you were ever convicted of the offense. You will also get back any rights that you lost because of your conviction.[3244]

NOTE: If your conviction is expunged (Situation 1) or dismissed (Situation 2), the U.S. Department of Justice will keep a confidential, non-public record of your conviction in case you try to get another conviction expunged or dismissed in the future. Remember: You can only get a federal expungement *once in a lifetime!*[3245]

SITUATION 3: IS THERE ANY OTHER WAY TO GET MY FEDERAL CONVICTION EXPUNGED?

Maybe. It is sometimes possible to convince a federal judge to ORDER that your conviction be expunged. This is called a "judicial expungement." However, judicial expungements *are VERY, VERY rare—and some courts won't do them at all.*[3246] Many federal courts only grant judicial expungements when it is *necessary* to correct an error in a criminal case that amounts to a violation of your basic rights (i.e. a "*miscarriage of justice*"). In these courts your only chance of being granted a judicial expungement is if your conviction was the result of illegal or invalid conduct by the government, such as an unlawful arrest, an unconstitutional law, or a gross administrative error.[3247] The federal courts in California follow this rule—so if your federal conviction happened in *California*, you will need to show that your conviction was caused by a "*miscarriage of justice*," otherwise the judge will NOT grant you a judicial expungement.[3248]

Other federal courts will grant a judicial expungement only under specific and extraordinary circumstances, when they determine that it is necessary in all fairness.[3249] These courts balance the harm that you suffer because of your criminal record (for example, if you are denied public housing or benefits, you cannot be with your family, or you are disqualified from certain jobs), against the public's interest in preserving the record of your conviction.[3250] If your federal conviction is from a state where the federal courts allow the judge to

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[3243] 18 U.S.C. § 3607(c).
[3244] 18 U.S.C. § 3607(a)(b).
[3245] 18 U.S.C. § 3607 (b).
[3246] Federal courts are divided into thirteen "circuits" across the country, comprised of district trial courts and circuit courts of appeals. Each of these circuit courts decides how the law should be interpreted within that circuit, which the district courts below must follow. This means that there are often discrepancies in the law at the federal circuit level—in other words, the same law can mean different things depending on where you live. These differences persist until the Supreme Court rules on which interpretation is correct. This is the current state of federal expungement law. Several federal circuit courts have ruled that the courts should be allowed to order expungements based on their inherent equitable powers—their duty to make things fair. Others have decided that expungements are beyond the scope of the court's duties and that they infringe on the powers allocated to the other branches of government. The Supreme Court has not resolved the dispute. See U.S. v. Mitchell, 683 F. Supp. 2d 427 (2010).
[3247] Courts of Appeal in the First, Third, Sixth, Eighth, and Ninth Circuits, as well as some district courts in the Eleventh Circuit, do not allow expungements based on equitable grounds (i.e. to reward rehabilitation) and will not even hear these motions. See U.S. v. Meyer, 439 F.3d 855 (8th Cir. 2006), U.S. v. Coloian, 480 F.3d 47 (1st Cir. 2007); U.S. v. Sumner, 226 F.3d 1005 (9th Cir. 2000).
[3248] U.S. v. Sumner, 226 F.3d 1005 (9th Cir. 2000).
[3249] Federal U.S. courts in the Second, Fourth, Fifth, Seventh, Tenth, and D.C. Circuits allow judicial expungements for equitable purposes under extraordinary circumstances. See U.S. v. Flowers, 389 F.3d 737 (7th Cir. 2004), U.S. v. Schnitzer, 567 F.2d 536 (2nd Cir. 1977), Camfield v. City of Oklahoma City, 248 F.3d 1214 (10th Cir. 2001).
[3250] U.S. v. Flowers, 389 F.3d 737 (7th Cir. 2004).



balance the factors of your situation, you will still have to convince the judge that the expungement is *necessary to preserve your basic rights*.[3251]

CAN I GET A CERTIFICATE OF REHABILITATION FOR A FEDERAL CONVICTION?

Unfortunately, no. There is currently no law that allows federal judges to grant Certificates of Rehabilitation (COR). However, one judge in the Eastern District of New York issued a COR on his own.[3252] This certificate has not been challenged, but to the best of our knowledge no other federal judge has issued a certificate of rehabilitation or anything like it in any other case. However, a small number of other federal judges in the Eastern District of New York have made it clear that they are frustrated by the limitations on remedies for cleaning up federal records. Although CORs are not currently available under federal law, it is something we may see in the future.

THE BOTTOM LINE:

The only circumstances under which you are likely to get a judicial expungement of your federal conviction are:

- When your conviction is based on a law that was later found to be unconstitutional; *or*
- If a judge finds that your conviction was the result of police or government misconduct.
- If you want to request a judicial expungement of your federal conviction, it is recommended that you talk to a lawyer. You can contact the lawyer who represented you in your criminal case or a federal public defender.

[3251] Livingston v. U.S. Dep't of Justice, 759 F.2d 74, 78 (D.C. Cir. 1985).
[3252] Doe v. United States, No. 15-MC-1174 (E.D.N.Y., March 7, 2016.

U.S. PRESIDENTIAL PARDONS

WHO CAN GET A PRESIDENTIAL PARDON OF A FEDERAL CONVICTION?

It depends. Presidential pardons are *even more difficult* to get than federal judicial expungements (see PG. 994). U.S. Presidential Pardons are generally only given in high-profile, highly public cases—for example, to certain public figures or politicians, or to friends and relatives of the President.

Technically, any federal conviction is eligible for a presidential pardon, but you must first complete your sentence (including any parole or probation term) AND a 5-year waiting period before you can request a Pardon. The 5-year waiting period starts when you are released from custody, or from the date of your conviction if you were never incarcerated (whichever is later).[3253] During this time, you will need to show that you have led a responsible and productive life, made significant efforts toward rehabilitation, and taken responsibility for your offense.

In deciding whether to grant your pardon, the President will consider the following factors, so you should emphasize your efforts and accomplishments in these areas:

- Employment, including stable work and financial situation;
- Family responsibility;
- Community service, volunteer work, or other charitable activities;
- Reputation in the community;
- Military service (if applicable);
- Any other accomplishments; AND
- Your efforts to take responsibility for your offense and make restitution to any victims.[3254]

Here are some other things you should include or mention:

- Letters of support, reports, and recommendations—particularly official reports or recommendations from people involved in your criminal case, such as the judge, the prosecutor, or your federal probation officer.
- Any hardships caused by your conviction—for example, if your conviction is preventing you from getting certain jobs or professional licenses; or making it difficult for you to reunite with your children and family; or if you cannot get certain public benefits, public housing, loans, or other services because of your conviction.
- The amount of time that has passed since your conviction—The more serious your offense, the more time you will need to put between your conviction and your request in order to demonstrate your rehabilitation and convince the president that you deserve a pardon.[3255]

WHO GETS PRESIDENTIAL PARDONS?

Here are some *examples* of people who have received a Presidential Pardon:

- Former President Richard Nixon
- George Steinbrenner (former owner of the New York Yankees)
- Roger Clinton, Jr. (half-brother of former President Bill Clinton)
- Marc Richard (billionaire businessman)
- Jimmy Hoffa (former union leader)
- Patty Hearst

HOW DO I GO ABOUT APPLYING FOR A PRESIDENTIAL PARDON?

To apply for a presidential pardon, you must complete a "Petition for Executive Clemency" and file it with the Office of the Pardon Lawyer within the U.S. Department of Justice. Application forms and instructions can be found on the U.S. Department of Justice website at: http://www.justice.gov/pardon/.

For more information on requesting a Presidential Pardon, see http://www.justice.gov/pardon/rules-governing-petitions-executive-clemency.

REMEMBER:

You must complete your sentence (including any probation, parole, or supervision) AND a 5-year waiting period before you can request a pardon.

For most people, a presidential pardon is NOT a realistic solution for cleaning up your criminal record.

[3253] 28 C.F.R. § 1.2.
[3254] Standards for Consideration of Clemency Petitioners, U.S. DEP'T OF JUSTICE, § 1-2.113.
[3255] Standards for Consideration of Clemency Petitioners, U.S. DEP'T OF JUSTICE, § 1-2.113.

VI. REGISTRATION REQUIREMENTS—SEX, ARSON, & DRUG OFFENSES

HOW WILL CLEANING UP MY RECORD AFFECT MY REGISTRATION REQUIREMENT?

Like most questions about cleaning up your record, it depends on the type of registration requirement you have, your conviction offense, and which remedy(ies) you use to clean up your record. For specific answers, it is recommended that you discuss your situation with a lawyer.

SEX REGISTRATION

Registration as a sex offender under California Penal Code section 290 is the most severe and permanent type of registration. However, under limited circumstances, cleaning up your record can remove your registration requirement.

WILL THE REMEDY REMOVE MY REGISTRATION REQUIREMENT?

- **Expungement**—NO, an expungement alone does NOT remove your sex registration requirement.[3256]
  - However, if you also get a Certificate of Rehabilitation[3257] AND
  - You qualify for relief from registration under California Penal Code section 290.5 (which has additional requirements and restrictions),[3258] you may no longer have to register.
- **Certificate of Rehabilitation (COR)—**Maybe, but it will depend on what offense you were convicted of.
  - A COR WILL remove your sex registration requirement if you were not convicted of one of the disqualifying offenses under Penal Code section 290.5(2).[3259]
  - For the serious (felony) sex offenses listed in Penal Code section 290.5(2), a COR will NOT remove your sex registration requirement (unless you also get a pardon).[3260]
  - Remember, a COR is available for misdemeanor sex offense convictions that are expunged under California's expungement statute (Penal Code section 1203.4).[3261]
  - If your conviction was for certain sex offenses *involving children* (Cal. Penal § 288 or 288.5 ONLY), you received *probation*, AND you received a COR *before 1998*, a judge may remove your sex registration requirement after *10 years* with *no new felony convictions*.[3262]
- **Pardon**—YES, this will remove your sex registration requirement.
  - A full pardon from the governor will remove your sex registration requirement, BUT a pardon is VERY difficult to get and granted only in "extraordinary circumstances."[3263]

SEX REGISTRATION & MEGAN'S LAW

Under "Megan's Law," the California Department of Justice is required to keep a *public* website with personal and criminal history information about anyone who is required to register as a sex offender under California Penal Section 290. The website is available to the public, and includes information about your conviction offense, certain other information about your criminal history, a photograph and description of what you look like, and other personal information (name, date of birth, the community and zip code or county where you live, and in some cases even your address).[3264]

!

IMPORTANT: In some cases, you may be able to get your information removed from the Megan's Law website. If your conviction was for a less serious sex offense, AND you do NOT have any other convictions for more serious sex offenses, you can ask the DOJ to remove ("exclude") your information from the public website. If you meet all of the other requirements (listed in Cal. Penal 290.46(e)), the DOJ is required to remove your information.3265 BUT even if your information is removed from the DOJ website, you are still required to register under section 290 (unless you get your registration requirement legally lifted).

[3256] CAL. PENAL CODE § 290.007, 1203.4; see also CAL. PENAL CODE § 290.5.
[3257] Remember, misdemeanor sex offense convictions are eligible for Certificates of Rehabilitation. See CAL. PENAL CODE § 4852.01.
[3258] CAL. PENAL CODE § 290.007; see also CAL. PENAL CODE § 290.5.
[3259] Cal. Penal Code § 290.5(a).
[3260] Cal. Penal Code § 290.5(b).
[3261] Cal. Penal Code § 4852.01
[3262] CAL. PENAL CODE § 290.5(b)(3).
[3263] CAL. PENAL CODE § 4852.01(e).
[3264] CAL. PENAL CODE § § 290.46(a)-(d).
[3265] CAL. PENAL CODE § 290.46(e).



Learn more about restration requirements and other laws affecting people required to register for a sex offense in the PAROLE & PROBATION CHAPTER, on PG. 163.

ARSON REGISTRATION

WILL THE REMEDY REMOVE MY REGISTRATION REQUIREMENT?

- **Expungement**—YES, an expungement will remove your arson registration requirement if:
  - Your conviction was for a misdemeanor arson offense AND you get the conviction dismissed under California's expungement statute.[3266]
- **Certificate of Rehabilitation**—YES, this will remove your arson registration requirement, even if you had a lifetime registration requirement![3267]
- **Pardon**—YES, this will remove your arson registration requirement.[3268]
  - BUT remember, a pardon is very difficult to get and granted only in "extraordinary circumstances."

DRUG REGISTRATION

WILL THE REMEDY REMOVE MY REGISTRATION REQUIREMENT?

Your drug registration requirement will end *automatically* after 5 years.[3269] (The 5-year period starts when you are released from prison or jail, or when you are discharged from probation or parole.) In many cases, your registration requirement will end on its own, even *before* you clean up your record.

- **Expungement**—YES, this will remove your drug registration requirement.[3270]
  - Getting your conviction expunged under California's expungement statute will remove your requirement to register as a drug offender.
- **Certificate of Rehabilitation**—YES, this will remove your drug registration requirement.
  - If you get a Certificate of Rehabilitation, you no longer have to register as a drug offender.[3271] However, most people have to wait more than 5 years before applying for a COR. By this time you will no longer have to register anyway.
- **Pardon**—YES, this will remove your drug registration requirement.
  - BUT remember, a pardon is very difficult to get and granted only in "extraordinary circumstances." Most people have to wait more than 5 years before applying for a pardon, by which time you will no longer have to register anyway.[3272]

[3266] CAL. PENAL CODE § 457.1; see also CAL. PENAL CODE § 1203.4.
[3267] Cal. Penal Code § 457.1.
[3268] CAL. PENAL CODE §§ 457.1, 4852.01, 4853.
[3269] Cal. Health & Safety Code § 11594.
[3270] Cal. Health & Safety Code § 11594; see also Cal. Penal Code § 1203.4.
[3271] CAL. PENAL CODE §§ 4852.17, 4852.19.
[3272] CAL. PENAL CODE § 4853; see also How to Apply for a Pardon, STATE OF CALIFORNIA OFFICE OF GOVERNOR EDMUND G. BROWN, JR., http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.



VII. DNA EXPUNGEMENT

WHAT IS A DNA EXPUNGEMENT?

In California, anyone convicted of a felony, anyone convicted of a misdemeanor with a prior felony conviction, anyone on probation, parole, or supervision for a felony or with a prior felony conviction, and anyone required to register under California Penal Code sections 290 (sex offense) or 457.1 (arson), is required to give a DNA sample.[3273] Previously, DNA samples were also collected from anyone who was even arrested for certain felonies—but the California courts are still working out whether or not it is constitutional to take DNA samples from someone who has only been arrested and not convicted.[3274] These DNA samples are kept in a state and national database, and then used by law enforcement agencies to identify suspects involved in other crimes.

Usually when a sample of your DNA is taken, it will be kept in the California state database (CAL-DNA program), and the information may be shared with the national database (kept by the FBI), which can be searched by law enforcement agencies around the country.[3275]

If you had to give a DNA sample because of your arrest or conviction, you may want to consider getting your DNA expunged from the state and/or national databases. As long as your DNA remains in the database, law enforcement agencies can use your DNA to try to connect you (even incorrectly) to other crimes. Getting your DNA expunged from a database means that your DNA sample will be destroyed and all related information (your DNA profile) will be completely removed from that database.[3276]

CALIFORNIA DNA EXPUNGEMENT

WHO CAN GET THEIR DNA EXPUNGED FROM THE CALIFORNIA DATABASE?

You may qualify to have your DNA expunged from the California database if you meet the following requirements:

1. Your DNA was collected after you were arrested BUT NO charges were ever filed against you; OR
2. Your DNA was collected after you were arrested and charges were filed against you, but the charges were dismissed, or you were acquitted; OR
3. Your DNA was collected after you were arrested and criminal charges were filed against you, BUT your conviction was overturned;

AND

4. You have NO felony convictions (or juvenile felony adjudications) on your criminal record. (NOTE: Even if you get your felony conviction expunged or reduced to a misdemeanor, it will still count as a felony for purposes of DNA collection, so you will NOT qualify to have your DNA expunged from the database.);[3277]

AND

5. You are NOT required to register as a sex or arson offender.[3278]

If you meet all of the legal requirements, your DNA MUST be expunged from the database once you submit your request for expungement.

HOW CAN I GET MY DNA EXPUNGED FROM THE CALIFORNIA DATABASE?

You can request to have your DNA expunged from the California database directly from the DOJ, or you can file a petition in court asking for a court order to expunge it. It is easier and faster to request expungement directly from the DOJ because, if you meet the requirements, the DOJ is required to expunge your DNA records. If you are denied by the DOJ, and have to file in court, this generally means you do not meet one of the requirements. If you file in court, you will have to convince a judge to order expungement of your DNA.

For more details on both processes for requesting expungement of your DNA from the California database, APPENDIX BB, on PG. 1064.

For more information about DNA expungement in California in general, see Getting Expunged or Removed from the CAL-DNA Data Bank on the California DOJ's website at: https://oag.ca.gov/bfs/prop69/faqs.

[3273] CAL. PENAL CODE § 295 et seq.
[3274] People v. Buza, 342 P.3d 415 (Cal. 2015) (granting petition for review).
[3275] CAL. PENAL CODE §§ 297, 299.6.
[3276] Cal. Penal Code § 299.
[3277] Cal. Penal Code § 299(f).
[3278] Cal. Penal Code § 299.



FBI (NATIONAL) DNA EXPUNGEMENT

WHO CAN GET THEIR DNA EXPUNGED FROM THE NATIONAL DATABASE?

If your DNA sample was taken for a federal arrest or conviction, you may qualify to have your DNA expunged from the FBI's national database if:

1. Your federal arrest did NOT result in a conviction, because NO charges were filed against you, or the charges were dismissed, or you were acquitted; OR
2. Your federal conviction has been overturned.

To get your DNA expunged, you must provide an official court order showing the final outcome of your arrest, case, or overturned conviction.[3279] For details on how to get your DNA expunged from the federal database (also called "CODIS," which stands for Combined DNA Index System), see APPENDIX BB, on PG. 1064.

NOTE: If you want to get your California DNA sample expunged from the national database, you will need to contact the California DOJ and follow the instructions in APPENDIX BB, on PG. 1064.[3280]

For more information on expungement of DNA from the national database, visit the FBI's website on CODIS—Expungement Policy, available at http://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis_expungement.

VIII. CONCLUSION

Hopefully this Chapter has given you a better understanding of your criminal records, how to correct errors early in your reentry.

Later in reentry, if you become eligible, we hope this Chapter has also shown you the many options that are available to help you "clean up" your record and minimize its impact on your life.

[3279] 42 U.S.C. § 14132(d)(1).
[3280] CODIS—Expungement Policy, Expungement of DNA Records in Accordance with 42 U.S.C. 14132(d)(1)(A), THE FED. BUREAU INVESTIGATION.



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APPENDIX A

Getting Your California (DOJ) RAP Sheet

STEP 1: **Get and Fill out the "Request for Live Scan Service" (Form BCIA 8016).**

You may download this form from the DOJ website at: http://oag.ca.gov/fingerprints/security.[3281] It should also be available at any public Live Scan Site.[3282] For a listing of public Live Scan Sites throughout California, visit the DOJ's website at: https://oag.ca.gov/fingerprints/locations. (See APPENDIX B, on PG. 1002 for a sample Request for Live Scan Services form and instructions for filling it out.)

IMPORTANT INFORMATION ABOUT FILLING OUT THE REQUEST FOR LIVE SCAN SERVICES FORM:

- **The DOJ is very particular about how this form is filled out. When you're filling out the form, make sure you:**
- **Where the form says "Type of Application," check the box for "*Record Review*."**
- **Where the form says "Reason for Application," write "*Record Review*" on the line.**

STEP 2: **Find a Live Scan Site near you.**

Live Scan services are available at most local police departments and sheriff's offices.[3283] There are also hundreds of Public Live Scan sites around the state. To find a public Live Scan location near you, check your local yellow pages, or visit the DOJ website at: https://oag.ca.gov/fingerprints/locations. The fees and hours vary from site to site (and change often), and some sites require appointments whereas others allow walk-ins. For this reason, it is always recommended that you call the site you want to visit *beforehand* to make sure you they're open and know how much it costs. (*Note*: Most Live Scan sites charge between $20-40 for fingerprinting, but there is a lot of variation from one location to another.)

STEP 3: **Get Fingerprinted.**

Take your completed "Request for Live Scan Service" with you to the Live Scan site when you go to get fingerprinted.

STEP 4: **Mail your Live Scan fingerprints, along with a $25 fee, to:**

California Department of Justice: Record Review Unit
P.O. Box 903417
Sacramento, CA 94203-4170

FEE WAIVERS: WHAT TO DO IF YOU CANNOT AFFORD THE $25 FEE

If you cannot afford the $25 fee, you can request a "fee waiver"—meaning you will NOT have to pay to get your RAP sheet. To request a fee waiver, you can fill out an "Application for Record Review Processing Fee Waiver Claim and Proof of Indigence" form (see Appendix C, on PG. 1006). This form lets you choose from three reasons why you can't afford the fee— you receive public benefits (such as CalWORKS, CalFRESH (food stamps), MediCal, or unemployment insurance); you are currently incarcerated; or your income falls below 138 percent of the federal poverty guidelines. If possible, you may want to send copies (not the originals!) of your pay stubs, bank account records, or other documents showing your income and expenses. If you do not receive the request after 2 weeks, call the DOJ at (916) 227-3835 to make sure that your documents are being processed. Leave your full name and a telephone number in their voicemail so they can return your call

How long will I have to wait for my California RAP sheet?

Once you send in your forms, it can take up to 2 *months* (anywhere from 1—8 weeks) to get a copy of your California (DOJ) RAP sheet, depending on how long your RAP sheet is (i.e., how much information it contains). If your RAP sheet is fairly long (in other words, if you have had many encounters with law enforcement and/or the criminal justice system), it takes longer for the DOJ to process your request, because they have to research and verify all of the information.[3284]

[3281] Request for Live Scan Service, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, http://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/bcia_8016RR.pdf?.
[3282] Applicant Live Scan Fingerprint Services Location and Hours of Operation, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, https://oag.ca.gov/fingerprints/locations.
[3283] California Department of Justice, Office of the Attorney General, Criminal Records – Request Your Own, http://oag.ca.gov/fingerprints/security.
[3284] Telephone call with Department of Justice Record Review Unit, Mar. 26, 2015.

APPENDIX B

Request for Live Scan Service (form BCIA 8016) & Instructions

See next page

STATE OF CALIFORNIA
BCIA 8016RR
(orig. 04/2001; rev. 10/2014)

REQUEST FOR LIVE SCAN SERVICE
(Record Review or Foreign Adoption)

Applicant Submission

ORI (Code assigned by DOJ)

Type of Application (Check One Only) ☐ Record Review ☐ Foreign Adoption

Reason for Application

Contributing Agency Information:

Agency Authorized to Receive Criminal Record Information

Mail Code (five-digit code assigned by DOJ)

Street Address or P.O. Box

Contact Name (mandatory for all school submissions)

City State ZIP Code

Contact Telephone Number

Applicant Information:

Last Name First Name Middle Initial Suffix

Other Name (AKA or Alias) Last First Suffix

Date of Birth Sex ☐ Male ☐ Female

Driver's License Number

Height Weight Eye Color Hair Color

Misc. Number (Other Identification Number)

Place of Birth (State or Country) Social Security Number

Telephone Number

Street Address or P.O. Box

City State ZIP Code

Level of Service: ☐ DOJ Only

If re-submission, list original ATI number (Must provide proof of rejection):

Original ATI Number

☐ Foreign Government Embassy: (Mandatory for Foreign Adoption requests pursuant to Penal Code section 11105(c)(12))

☐ Designee -- Do not include Employer: (Optional for individual designated by applicant to Penal Code section 11124)

Designee or Embassy Name

Street Address or P.O. Box

City State Country ZIP Code Telephone Number

Live Scan Transaction Completed By:

Name of Operator Date

Transmitting Agency LSID ATI Number Amount Collected/Billed

REQUEST FOR LIVE SCAN SERVICE
(Record Review or Foreign Adoption)

Privacy Notice

Collection and Use of Personal Information. The Record Review Unit in the Department of Justice collects the information requested on this form as authorized by Penal Codes 11121 and 11105(C)(12). The Record Review Unit uses this information to process applications pertaining to Live Scan service for record review or foreign adoption. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at: **http://oag.ca.gov/privacy-policy**.

Providing Personal Information. All the personal information requested in the form must be provided.

Access to Your Information. You may review the records maintained by the Record Review Unit in the Department of Justice that contain your personal information, as permitted by the Information Practices Act. See below for contact information.

Possible Disclosure of Personal Information. In order to process applications pertaining to Live Scan service for record review or foreign adoption, we may need to share the information you give us with other government agencies.

The information you provide may also be disclosed in the following circumstances:

- In response to a Public Records Act request, as allowed by the Information Practices Act;
- To another government agency as required by state or federal law;
- In response to a court or administrative order, a subpoena, or a search warrant.

Contact Information. For questions about this notice or access to your records, you may contact the Record Review Unit via telephone at (916) 227-3835 or by mail at:

Department of Justice
Bureau of Criminal Information & Analysis
Record Review Unit
P.O. Box 903417
Sacramento, CA 94203-4170



APPENDIX C

Sample Letter and Declaration for Fee Waiver—California (DOJ) RAP Sheet

PLEASE NOTE: To request a fee waiver, send (1) a fax cover sheet (sample letter below for this purpose), (2) a fee waiver declaration form (see next page for a copy of this form), AND (3) proof of public benefits to the California Department of Justice by fax to 916-227-1964, or by mail to Bureau of Criminal Identification and Information, Attention: Record Review Unit, P.O. Box 903417, Sacramento, CA 94201-4170.

Bureau of Criminal Identification and Information
Attention: Record Review Unit
P.O. Box 903417
Sacramento, CA 94201-4170

Dear Record Review Unit,

Enclosed with this letter, please find a request for waiver of the fee for criminal history record and proof of public benefits. Please send the Request for Live Scan form to the following address:

[YOUR NAME]
[YOUR STREET ADDRESS]
[CITY, STATE, ZIP CODE]

Sincerely,
[SIGN NAME]

Edmund G. Brown Jr.
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF CRIMINAL IDENTIFICATION AND INFORMATION
P.O. BOX 903417
SACRAMENTO, CA 94203-4170

APPLICATION AND DECLARATION FOR WAIVER OF FEE FOR OBTAINING CRIMINAL HISTORY RECORD

I, the undersigned, declare that I am unable to pay the fee to obtain a copy of my criminal history record without impairing my obligation to meet the common necessities of life.

I declare under the penalty of perjury that the forgoing is true and correct and was signed at _____ , California, on _____, 20_____.

Attached is verification of proof of indigence as required by Penal Code Section 11123.

_____
DECLARANT

APPENDIX D

Getting Your FBI (Federal) RAP Sheet

There are two ways to get a copy of your FBI (federal) RAP sheet:

OPTION 1: Request your "Identity History Summary" (RAP sheet) from the FBI directly.

STEP 1: Fill out BOTH the FBI's "Applicant Information Form"[3285] (see APPENDIX DD, on PG. 1067) AND the "Request for Live Scan Service" (Form BCIA 8016RR) (See APPENDIX B, on PG. 1003).[3286]

- Print the forms and fill them out by hand, OR fill out the forms online and then print them.
- Where the form says: "Type of Application," check the box for "*Record Review*."
- Where the form says: "Reason for Application," write "*Record Review*" on the line.
- Review the *Identity History Summary* checklist (see APPENDIX E, on PG. 1002) to make sure you don't miss any of the steps.[3287]

STEP 2: Take the completed "Request for Live Service Scan" form to a Public Live Scan Site to get fingerprinted.

- Live Scan services are available at most local police departments and sheriff's offices.[3288] There are also hundreds of Public Live Scan sites around the state. To find a public Live Scan location near you, check your local yellow pages, or visit the DOJ website at: https://oag.ca.gov/fingerprints/locations.

STEP 3: Make your payment to the FBI.

- The charge is $18 per copy of your Identity History Summary.[3289]
- You can pay by credit card, money order, or certified check made out to the "Treasury of the United States."

STEP 4: Mail all forms and your $18 payment to: FBI CJIS Division—Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306

Note: It can take up to *3 months* (or more!) to get a copy of your FBI RAP sheet after sending in your forms and payment.[3290]

For more information, visit *Frequently Asked Questions* about *Identity History Summary* checks on the FBI's website at: http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/faqs.3291

OPTION 2: Ask an FBI-approved "Channeler" *(While this is a faster process, it may include extra fees!)*

An FBI-approved *"Channeler"* is a private business that has contracted with the FBI to be the "middle-man" when you request a copy of your FBI RAP sheet. The Channeler will collect your all of your fingerprints, personal data, and fee(s), and then send everything to the FBI for you. Afterward, the FBI will send your RAP sheet to the Channeler, and the Channeler will forward the RAP sheet to you. This is a *faster* process than requesting your RAP sheet from the FBI directly, but channelers generally charge extra fees. Contact each Channeler to learn more about their specific procedures and instructions, processing times, and costs.

STEP 1: Find an FBI-approved Channeler.

- A list of FBI-approved Channelers is provided in APPENDIX EE, on PG. 1069.
- This list is also available on the FBI's website at http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/list-of-fbi-approved-channelers.

STEP 2: Contact the Channeler directly for specific instructions, fees, and processing times.

- For more information about getting your FBI RAP sheet through an FBI-approved Channeler, see http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/fbi-approved-channelers.

[3285] Identity History Summary Checks, FED. BUREAU INVESTIGATION, https://forms.fbi.gov/identity-history-summary-checks-review/q384893984839334.pdf.
[3286] Request for Live Scan Service, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, http://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/bcia_8016RR.pdf?.
[3287] 42 U.S.C. § 14132(d)(1)(A). See also CODIS- Expungement Policy, FED. BUREAU INVESTIGATION, http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/identity-history-summary-request-checklist-1.
[3288] California Department of Justice, Office of the Attorney General, Criminal Records – Request Your Own, http://oag.ca.gov/fingerprints/security.
[3289] 28 C.F.R. § 16.33.
[3290] Identity History Summary Checks, FED. BUREAU INVESTIGATION, http://www.fbi.gov/about-us/cjis/identity-history-summary-checks.
[3291] 28 C.F.R. § 16.32.

APPENDIX E

FBI RAP Sheet Request Checklist

Please check the boxes below to ensure that you have included everything needed to process your request.

❏ Include a completed application form.

❏ *Sign your application. Note: If for a couple, family, etc., all must sign the application.*

❏ Include a completed fingerprint card. A completed fingerprint card includes the following:

- ❏ 1. Name
- ❏ 2. Date of Birth
- ❏ 3. Descriptive Data
- ❏ 4. All 10 rolled fingerprint impressions.
- ❏ 5. The plain impressions including thumbs of both hands.

❏ Include a credit card payment form, certified check*, or money order for $18.00 per request.

Note: This amount must be exact.

❏ If using a credit card, please ensure the credit card payment form is filled out completely.

Don't forget to include the expiration date of the credit card that you are using.

❏ If paying with a certified check or money order, make it payable to the Treasury of the United States.

CASH OR PERSONAL/BUSINESS CHECKS
ARE NOT AN ACCEPTED FORM OF PAYMENT.

❏ Include a form of contact information (i.e., e-mail, telephone number) in case we need to contact you.

**To issue a certified check, the bank verifies that sufficient funds exist in the requestor's account to cover the check and so certifies payment at the time the check is written. Those funds are then set aside in the bank's internal account until the check is cashed or returned to the payee.*

APPENDIX F

Fixing Errors in Your California (DOJ) RAP Sheet

HOW TO CONTACT THE DOJ RECORD REVIEW UNIT:

You can call the DOJ Record Review unit at (916) 227-3835 for the latest information on how to challenge what's in your RAP sheet or to check on the status of a challenge that you have filed. This is an automated system (a recording) that contains information on many DOJ-related issues. Follow the prompts that ask you if you want to "verify or challenge the accuracy of your criminal history" or "check the status of a previously submitted request." If you are asked to leave a message, make sure that your information is clear so that the right person can call you back.

STEP 1: **Get the form to request a RAP sheet correction.**

When you received your RAP sheet, you should have also received a form called a "*Claim of Alleged Inaccuracy or Incompleteness*" (DOJ form BCIA 8706). This is the form you must fill out to challenge information in your state RAP sheet. If you do not have this form for any reason, you must contact the Department of Justice to request another copy. This form is not available online, or from any source other than the DOJ. If you cannot get the form, you can send a letter to the DOJ instead.[3292]

STEP 2: **Fill out your claim.**

Fill out the "*Claim of Alleged Inaccuracy or Incompleteness*" form, or write your letter. Whether you are filling out the form or writing a letter, you need to explain, as specifically as possible, what the error is—*why* and *how* your record is inaccurate or incomplete. Examples of common errors include:[3293]

1. **Mismatched names**. If your RAP sheet contains arrests, convictions, or other information that is unrelated to your past, your name may have been confused with another person's name.
2. **Leaving out important information about a case**. Sometimes, even if a case against you has been resolved, your RAP sheet may not reflect the updated information. For example, if you were found innocent of the charges, but your RAP still says, "case pending."
3. **Revealing sealed information**. Your RAP may contain records that should have been destroyed or can only be released by special court order, such as sealed arrests or juvenile offenses.
4. **Providing misleading information**. It is possible that a single charge may appear multiple times on your RAP, making it look like you are a multiple offender.
5. **Misclassifying your offenses**. If a misdemeanor conviction shows up as a felony on your RAP sheet, this is a serious problem!

IMPORTANT! Make sure to fill out all of your personal information clearly and accurately, so the DOJ properly identifies you and investigates the right record!

STEP 3: **Include proof of your claim.**

You should give the DOJ any proof you have that the information in your RAP sheet is wrong, such as court records, transcripts, court orders, court minutes, a copy of the plea agreement, police records, or other paperwork or evidence that supports your claim.[3294]

IMPORTANT: Sending court records and documents. The Department of Justice does NOT have access to your court documents. If you need copies of court documents to give to the DOJ in order to prove your claim, you must get them from the court where your case was heard and send them to the DOJ yourself.

NOTE: The DOJ assumes that its records are correct. When the DOJ looks into a challenge like this, it often simply checks its version of your record against the copy of your RAP sheet that it sent you. If there is no difference between the two, the DOJ will assume that your RAP sheet is accurate. This is why you must provide proof that the DOJ's version of your record is wrong!

STEP 4: **Mail in your claim and proof.**

Send the following documents to the DOJ: Your completed "*Claim of Alleged Inaccuracy or Incompleteness*" form or letter; a *copy* of your RAP sheet (keep a copy for yourself!); and any documents or other evidence to prove your claim. You should use the address on the claim form, as it will be the most current address. As of publication of this manual, your claim and supporting documents should be sent to:

[3292] Recorded message, Cal. Dep't. of Justice, Records Review Unit (Apr. 9, 2015); see also Criminal Records—Request Your Own, CAL. DEP'T. OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, http://oag.ca.gov/fingerprints/security.
[3293] Broken Records, National Consumer Law Center, https://www.nclc.org/issues/broken-records.html.
[3294] CAL. PENAL CODE § 11126(a).

Department of Justice
Bureau of Criminal Investigation and Identification
Record Review Unit
P.O. Box 903417
Sacramento, CA 94203-4170

STEP 5: **Wait for the DOJ's Review.**

After the DOJ has received your paperwork, it will review your claim and decide whether it agrees that your RAP sheet is wrong. If the DOJ agrees that the information in your record is wrong, it will make the changes and send you a *new, corrected* copy of your RAP sheet.[3295] It can take 2-4 weeks (or sometimes longer) for the DOJ to review all of your paperwork and get back to you with its decision.

STEP 6: **Appeal the DOJ's Decision.**

If the DOJ does not agree that your record is wrong, you have the right to request an administrative hearing to challenge the decision.[3296] You should talk to a lawyer if you want to take the next step and request a hearing to challenge the DOJ.

If you have any additional questions about fixing errors in your RAP sheet, you can call the DOJ's Record Review Unit at (916) 227-3835.

[3295] CAL. PENAL CODE § 11126.
[3296] CAL. PENAL CODE § 11126(c); see also CAL. GOV'T CODE § 11500.

APPENDIX G

Fixing Errors in Your FBI (Federal) RAP Sheet

The FBI gets all of its criminal history information from *other* law enforcement and criminal justice agencies as well as courts throughout the U.S. The FBI can *only* change your information if the *original* agency or court (i.e., the one that sent the information to the FBI in the first place) *tells* the FBI to change it. If you think your FBI RAP sheet is inaccurate or incomplete, there are 2 ways to correct the information:

OPTION 1: Contact the court or agency that sent your information to the FBI

Note: Each entry on your FBI RAP sheet should list the specific agency that provided the information. This is how you can tell which agency sent the incorrect or incomplete information on your RAP sheet.

- ***If the incorrect or missing information is from a CALIFORNIA AGENCY OR COURT:***

  If the incorrect or missing information is from a CALIFORNIA law enforcement agency or court (for example, a local police department, county sheriff, *California* state agency, or California state court), contact the California Bureau of Criminal Information and Analysis, and ask them to send the FBI corrected or updated information for your *Identity History Summary*.

  How to contact the California Bureau of Criminal Information and Analysis:

  By mail:
  Bureau of Criminal History Information & Analysis
  California Department of Justice, Room G-118
  4949 Broadway
  Sacramento, CA 95820-1528

  By phone: (916) 227-3849

  By email: appagencyquestions@doj.ca.gov.[3297]

- ***If the incorrect or missing information is from an agency or court in ANOTHER STATE:***

  If the incorrect or missing information is from a law enforcement agency, court, or criminal justice agency in ANOTHER STATE (for example, a local police department, county sheriff, court, or state agency in *another state*), you will need to contact the state Identification Bureau for that state, and ask them to send the FBI corrected or updated information for your *Identity History Summary*.

  You can find contact information for the Identification Bureau in every U.S. state on the FBI's website at: http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing.

- ***If the incorrect or missing information is from a FEDERAL AGENCY OR COURT:***

  If the incorrect or missing information is from a FEDERAL law enforcement agency, court, or criminal justice agency, you will need to contact the specific agency that sent in your information—for example, the federal agency that arrested you, the federal prosecutor's office that charged you, or the federal court that processed your case—and ask them to send the FBI corrected or updated information for your *Identity History Summary*.

  The easiest way to find contact information for federal agencies and courts is to search on the Internet using search engines like Google.com or Yahoo.com.

OPTION 2: Go through the FBI directly.

If you don't know where the incomplete or incorrect information on your RAP sheet came from, you can contact the FBI directly to challenge it, and ask them to correct it.[3298]

STEP 1: **Write your challenge letter.**

In your letter, you should: (1) clearly state that you think there is *inaccurate or missing information* in your Identity History Summary; (2) clearly identify *what information* you think is wrong; and (3) clearly explain *why* the information is wrong. (For a list of common RAP sheet errors, see APPENDIX F, on PG. 1010.)

[3297] State Identification Bureau Listings, FEDERAL BUREAU OF INVESTIGATION, http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing.
28 C.F.R. § 16.34.



STEP 2: **Include proof of the correct information.**

You should also send the FBI any proof you have that the particular information in your RAP sheet is wrong—such as court records, transcripts, court orders, court minutes, copy of a plea agreement, police records, or other paperwork or evidence that support your claim. For example, if your RAP sheet is missing information about the final outcome of a case, you should send court documents showing the final disposition.

STEP 3: **Mail your written challenge request.**

Send your challenge letter and all your proof (supporting documents and evidence) to:

FBI Criminal Justice Information Services Division
Attention: Criminal History Analysis Tad
Clarksburg, WV 26306

STEP 4: **Wait for the FBI's review.**

The FBI will investigate whether the information in your RAP sheet is incomplete or incorrect by contacting the agencies that supplied it as well as other agencies that might have additional information about your case. If the FBI decides that your RAP sheet is wrong or incomplete, it will correct the mistake(s) and let you know.

APPENDIX H

Fixing Errors in Your Background Check

In California, if you want to challenge information found in your background check, these are the steps you will need to take:[3299]

STEP 1: **CHALLENGE the background check company's incorrect information.**

You must notify the background check company that ran your background check that there was a mistake in the information included in your background check report.

- Send the background check company a letter to notify them in writing that you are disputing (challenging) the information in your background check. (A *sample* challenge letter is included in APPENDIX I, on PG. 1016.)
- You should explain *why* the information is incorrect, and include any *proof* (documents, facts, and other evidence) to support your claim. Make *copies* of important documents and include them with your letter.
- You can find the name and address of the background check company in 2 places:
  - BEFORE someone runs a background check on you (such as an employer, private landlord, or creditor), they are supposed to tell you and get your PERMISSION. They must also give you the name, address, phone number, and website of the background check company that they are going to use.[3300]
  - If someone takes any *negative* action against you (such as refusing to hire you, rent an apartment to you, or give you benefits) based on information in your background check, they must give you an "ADVERSE ACTION LETTER" that also includes the name, address, and phone number of the background check company that did the background check.[3301]

STEP 2: **The background check company INVESTIGATES your claim.**

Once the company receives your letter, it MUST investigate your claim *free of charge*.[3302]

- During the investigation, the company MUST review ALL the evidence you sent in and consider any relevant information.
- The company must notify whoever provided the information that you are challenging it.[3303]
- Based on its investigation, the company MUST *update*, *confirm*, or *remove* the challenged *within 30 days* (see Step 3 for more information).[3304]

You have the right to know what internal procedures the background company uses to investigate your claim. You can ask the company for this information and they MUST provide it to you.

STEP 3: **AFTER the background check company finishes its investigation…**

The background check company will make a decision about the information you challenged, and must respond to you within 30 days. If you give the company more information that affects the investigation during the 30-day period, the agency can extend the investigation for an extra 15 days. Based on its investigation, the company MUST:

- Correct or remove any information that is inaccurate, incomplete, or can't be confirmed as true;
- Notify the person or agency that provided the information that it has been corrected or removed from your background check;
- Keep in any information that the company confirms is complete and accurate;
- End the investigation (without making any changes) if the company finds that your claim is "*frivolous*" or "*irrelevant*." This usually means that you have not provided enough information for the company to investigate your claim.
  - If the company ends the investigation, it must notify you, explain the reasons for its decision, AND tell you what information it needs in order to continue the investigation.[3305]
- Notify you when the investigation is complete, tell you the results of the investigation, AND send you a new copy of your background check.[3306]

[3299] CAL. CIV. CODE § 1786.24; Fair Credit Reporting Act § 611, 15 U.S.C. § 1681i.
[3300] CAL. CIV. CODE § 1786.16.
[3301] CAL. CIV. CODE § 1786.40.
[3302] CAL. CIV. CODE § 1786.24(a).
[3303] CAL. CIV. CODE § 1786.24, Fair Credit Reporting Act, § 611(a)(1)(A), 15 U.S.C. § 1681i. Within 5 days of receiving your notice, the agency must notify the person or government entity that provided the information that you claim is incorrect.
[3304] CAL. CIV. CODE § 1786.24, Fair Credit Reporting Act, § 611(a)(1)(A), 15 U.S.C. § 1681i. Before 30 days is up, if you give more information that affects the investigation, the agency can extend the investigation for 15 extra days.
[3305] CAL. CIV. CODE § 1786.24; Fair Credit Reporting Act, § 611(a)(1)(A), 15 U.S.C. § 1681i.
[3306] CAL. CIV. CODE § 1786.24(g).



STEP 4: **FOLLOW UP after the background check company's decision!**

- If the background check company DOESN'T remove the information, or if there is still information in your background check that you think is incorrect or incomplete, you can add a STATEMENT OF DISPUTE saying that you disagree with the information in your file.[3307] Mail this statement to the background check company, and tell them to include it in your file. (See APPENDIX J, on PG. 1017 for a *sample* statement of dispute.)
- The company MUST include your statement of dispute in any future background checks it runs AND clearly state that the information is "in dispute" (being challenged as incorrect).[3308]

STEP 5: **NOTIFY anyone who has received a copy of your background check.**

If the agency corrects or removes any information in your background check, or if you add a statement of dispute to your file, you should ask the background check company to send a notice of the change to ANYONE who received your background check in the last *2 years*.[3309]

If an employer, private landlord, government agency, or anyone else ran a background check on you within the past 2 years that contained information that you believe was wrong or incomplete, be sure sure to have the background check company notify them that the information is wrong or is in dispute.

STEP 6: **If the background check company later puts information BACK into your background check that it previously removed…**

If a background check company REMOVES challenged information from your background check, it can REINSERT (put back) the information if the company later finds that the information is true.

- If this happens, the background check company MUST:
  - Notify you the information has been put back in your file;
  - Give you the name, address, and phone number of anyone the company *talked to* when deciding to put the information back in; AND
  - Give you the phone number of the person or agency that *provided the information* that the company put back in.[3310]
- You also have the right to challenge any information the company puts back into your background check.
  - You have can ask the background check company to re-investigate any information that it has *put back* in your background check. The company must conduct *another* investigation of the information, tell you the results, make any corrections, and give you a new copy of your background check report (just like in STEPS 2-3).

Why would a background check company PUT BACK information that it previously removed?
Sometimes a background check company will REMOVE information from your background check—for example, because it could not confirm that the information was true—but later, the company will find out that the information was true and PUT IT BACK on your background check report to make the report complete.

[3307] Cal. Civ. Code § 1786.24.
[3308] CAL. CIV. CODE § 1786.24(j).
[3309] CAL. CIV. CODE § 1786.24(k).
[3310] CAL. CIV. CODE § 1786.24(f).



APPENDIX I

Sample Letter to Challenge Information in Your Background Check

REQUEST

[Date]

TO: *[Name of background check company]*
[Address of company]

Dear Sir or Madam,

I hereby request that you reinvestigate the following information contained in your files on me: *[description of information that is incorrect or incomplete].*

This information is disputed for the following reasons: *[describe why the information is wrong].*

Please advise me of the results of your reinvestigation.

If the reinvestigation does not resolve our differences concerning the foregoing, I shall provide you with a brief statement for inclusion in any subsequent investigative consumer report concerning me.
This request is made pursuant to Civ. Code, § 1786.24.

Very truly yours,

[Your signature]
[Your name]
[Your address]

APPENDIX J

Sample Statement of Dispute

STATEMENT OF DISPUTE

[Date]

I hereby dispute the following information in my files: *[description of information that is incorrect or incomplete].*

This information is disputed for the following reasons: *[describe why the information is wrong].*

This statement of dispute is made pursuant to Civ. Code, § 1786.24.

Signed,

[Your signature]
[Your name]
[Your address]

APPENDIX K

Petition for Dismissal (California Expungement)

In most cases, you will need to file papers in court and ask a judge to expunge your conviction. This process is called a *Petition for Dismissal*. The process is almost the same for requesting mandatory or discretionary dismissal, but there are a few small differences. Remember, it is always good to ask a lawyer for assistance, especially if you are requesting discretionary dismissal.

Find California Court Form CR-180 and CR-181 (Petition and Order for Dismissal)in Appendix KK, on PG. 1070.

THE COURT CLERK:

The court clerk is the person who oversees all of the court's records, legal documents, and administration. Some courts may have a separate clerk for each department of the court (e.g., criminal court, traffic court, probate court, etc.). If this is the case, you will need to get help from the *criminal* court clerk. Usually, the clerk will have a separate office, counter, or window at the courthouse. When you go to the courthouse, ask someone where the clerk's office is if you can't find it.

STEP 1: **Get the court forms you will need to request an expungement from the court: the Petition for Dismissal (form CR-180) and the Order for Dismissal (form CR-181)**

- The "*Petition for Dismissal*" (form CR-180) is the formal document you use to ask the court to expunge your conviction.
- If the judge approves your expungement, s/he will sign the "*Order for Dismissal*" (form CR-181) to make your expungement an *official* court order.
- You can get these forms from several places, including.
  - The Clerk of the court where you were convicted;
  - The California Courts' official website (http://www.courts.ca.gov/documents/cr180.pdf); or
  - From your lawyer.
  - A sample form CR-180 and form CR-181 are included in APPENDIX FF, on PG. 1070 for reference. BUT it is always better to *get the most current version from an official source*, in case there have been any recent changes to the form.

IMPORTANT: If you have convictions from multiple cases, you will need to file a separate petition for each *case*.

STEP 2: **Fill out your court forms (Petition AND Order)**[3311]

Here are some tips for filling out the forms:

- **Petition** —Fill in ALL the information that the forms ask for. You will need the information from your RAP sheet (or court records from all of your cases) in order to fill out the forms.
- **Petition question #1**—If you are filing a petition to have a felony "wobbler" expunged, you will need to mark "Yes" in the box that asks if the felony is eligible for reduction to a misdemeanor under Penal Code Section 17(b). (See PG. 970 for more information about expungement of felony "wobblers.")
- **Bottom of Petition** —If your sentence included probation, check the box for "1203.4." If your sentence did NOT include probation, check the box for "1203.4a." If you were convicted of a felony under California's Realignment Act, check the box for "1203.41." (See PG. 961 for more information about expungement of felonies that were sentenced under Realignment.)
- **Bottom of Petition**—Don't forget to sign the form and put the date!
- **Order**—Only fill out the top boxes (for "*Lawyer or Party Without Lawyer*," "*People of the State of California v. Defendant*," and "*Case Number*"), and leave the rest of the form blank (all of the numbered questions). Make sure the information is the same as the top boxes on the *Petition* form! The judge will fill in all the other information after deciding whether or not to grant your expungement.
- **Petition AND Order**—If you are filling out the forms for yourself, you are BOTH the "*petitioner*" AND the "*defendant*," so you should fill in your information wherever you see these terms.
- If your conviction qualifies for *mandatory* dismissal, you only need to fill out the Petition (CR-180) and Order (CR-181) forms. However, if your conviction only qualifies for *discretionary* dismissal, you will need to include a few more documents *in addition* to your petition. (See PG. 962 for more information on the difference between mandatory and discretionary expungement, and to figure out which type of expungement you qualify for.)

****FOR A **DISCRETIONARY DISMISSAL**, GO TO STEP 3. FOR **MANDATORY DISMISSAL**, SKIP TO STEP 4.****

[3311] See also Dealing With Criminal Records in Alameda County Self-Help Manual, EAST BAY COMMUNITY LAW CENTER (2005), http://ebclc.org/documents/AlamedaCountyCriminalRecords-SelfHelpManual-SP2005.pdf.



STEP 3: **(FOR DISCRETIONARY PETITIONS ONLY) Gather additional supporting documents to include with your Petition.**

If you are requesting a discretionary dismissal, you will also need to include the following documents. (*Note*: Make a photocopy of any documents you send with your petition, and keep the original for yourself!)

1. **A Declaration**. A declaration is a statement that you write under penalty of perjury, that explains why expungement of your conviction is "*in the interests of justice*." Your declaration should say why you deserve to get an expungement, and how it will help you succeed in the future:[3312]
   - How have you changed since your conviction? What was going on in your life at the time of the conviction? What has changed in your life since then?
   - What efforts have you made toward rehabilitation? What are you doing to improve yourself and your situation (such as treatment programs, work or school, connecting with family, finding religion)?
   - What are your goals for the future (for example, getting a job or promotion, getting your GED or a college degree, connecting with family, starting a business)?
   - How will getting an expungement help you to achieve your goals?
   - You can use the official Declaration form (MC-031) published by the Judicial Council of California which is available from the court clerk, or on the California Courts website at: http://www.courts.ca.gov/documents/mc031.pdf.
   - For tips for what to write in your Declaration, see APPENDIX L, on PG. 1022. For a *sample Declaration*, see APPENDIX M, on PG. 1023.
2. **Letters of Support**. Letters of support serve as character references and emphasize the positive impact that granting your dismissal will have. You should ask for letters from people who know you well, and who can talk about your positive qualities, your accomplishments, and your rehabilitation efforts. These can be from your rabbi, priest, or pastor; your employer (current or previous); your teachers; your sponsor or mentor; your counselor or case manager; community leaders and other members of community organizations that you are involved in; and your friends, family, and neighbors. When you ask someone for a letter of support, you can remind them of your accomplishments and explain what you would like them to write about (for example, how you have changed since your conviction, your efforts at rehabilitation, your good character, your efforts to improve yourself and help others around you, and why you deserve to have your conviction expunged). For more information on how to write a Letter of Support and tips for what to write, see APPENDIX N, on PG. 1024. A *sample Letter of Support* is included in APPENDIX O, on PG. 1025.
3. **Proof of Accomplishments**. If you have completed any classes or training programs since your conviction (such as vocational training or job readiness programs; GED classes, or other schooling; mentorship courses, reentry programs, restorative justice workshops, or any other treatment programs), or if you have earned any certificates, awards, or degrees, or if there are any other accomplishments that you're proud of, you should make sure to include this information with your petition! This can be anything you accomplished *while you were incarcerated* or *since you've been released*. (*Note*: Make a photocopy of any documents you send with your petition, and keep the originals for yourself!)
4. **Letter to Request a Hearing**. If you are asking for a discretionary expungement, you should ALWAYS ask for a *hearing* in front of a judge, so that you have the best chance to convince him/her to grant your request. To ask for a hearing, write a very brief letter saying that you would like to request a hearing on your Petition for Dismissal. Make sure to include your name and case number, and address your letter to "The Honorable Judge" (with the judge's name, if you know it). Turn in this letter with your *Petition* and other documents.
5. **Other Documents**: Each court may have local rules about what additional documents you can include with your petition and what documents you should bring to the hearing. Check with the court clerk about what to do with any other documents that you would like the judge to consider.

STEP 4: **Make copies of your petition and supporting documents.**

After you have filled out your petition and attached your supporting documents, you will need to make several copies of everything. Ask the court clerk how many copies are required by the court in your county. If you can't talk to the clerk, make at least five copies to be safe.

Often, the original petition goes in the court's file (the "docket"), one copy goes to the District Attorney, one copy goes to the probation department, and one "courtesy" copy is saved for the judge. But these procedures may vary by county, so it's important to ask the clerk how many copies you need to make.

[3312] See also Dealing With Criminal Records in Alameda County Self-Help Manual, EAST BAY COMMUNITY LAW CENTER (2005), http://ebclc.org/documents/AlamedaCountyCriminalRecords-SelfHelpManual-SP2005.pdf.



STEP 5: **"Serve" the Court Papers**

What is "service" and how do I do it?[3313] Service is the formal process of giving copies of the documents in a court case to the other people connected with the case. It is a very important step because it lets the other people know 1) that your court case exists, and 2) what actions have been taken in the case so far. A case CANNOT go forward until the court documents are properly served (delivered). The most common methods of service are in person or by mail, although in come situations, service can be by fax or email also.

In general, for an expungement petition, your papers have to be served on the *District Attorney* and the *county probation department*. Ask the court clerk whether there is *anyone else* who needs to get the papers also.

STEP 6: **File Your Petition and "Proof of Service" with the Court Clerk.**

After your papers have been "served" on all of the other parties, bring the following documents to the court clerk: Your *original Petition*; your additional supporting documents (if you are requesting a discretionary dismissal); one set of copies for your records; AND the Proof of Service for your Petition. The clerk will stamp your papers with the date and give you a stamped copy. Remember, the court clerk will usually have an office or counter at the courthouse, so that's where you will need to go to file your papers. The clerk may or may not give you a court date for a hearing before a judge.

- **FOR MANDATORY DISMISSALS:** In some counties, mandatory expungements are granted without any hearing on your Petition. Other counties require a formal hearing before an expungement is granted.
- **FOR DISCRETIONARY DISMISSALS:** If you are requesting a discretionary expungement, you should ALWAYS ask for a *hearing* before a judge, so that you have the best chance to convince him/her to grant your expungement. Tell the court clerk that you would like to request a hearing and show him/her your letter requesting a hearing, which you should include with your other documents.

STEP 7: **Go to Your Court Date/Hearing**

If you are given a hearing date, **you or your lawyer MUST go to court for the hearing!**

- **FOR MANDATORY DISMISSALS:** If you qualify for a mandatory dismissal, the judge will grant your petition, and dismiss your case. You shouldn't have to do anything if there is a hearing. You should receive something in the mail from the court within a few weeks confirming that your record has been officially changed.
- **FOR DISCRETIONARY DISMISSALS:** If you are requesting a discretionary dismissal, the hearing is your chance to explain your case to the judge and persuade him or her that dismissing your conviction is "in the interests of justice." You will need to show the judge why you deserve to have your conviction expunged, and how an expungement will help you succeed and achieve your goals.[3314] You should be prepared to explain the information in your Declaration and in any supporting documents that you included with your Petition. Make sure you bring extra copies of these documents to the hearing! In general, the judge will tell you *right there at the hearing* whether or not your expungement is granted.

STEP 8: **Follow up!**

After the judge grants your expungement and signs the Order making it official, the court will send the information to the Department of Justice and other law enforcement agencies. It may take a few months for these agencies to correct your official criminal record (RAP sheet) to show that your conviction was expunged. You should follow up with the Department of Justice in 3-4 months to confirm that the changes were made. Remember, expungement does NOT erase the conviction from your criminal record. Instead, your RAP sheet will state that your case has been "*dismissed [in] furtherance of justice (DISM, FURTH OF JUST)*" OR "*dismissed pursuant to PC 1203.4.*"

If the DOJ has NOT corrected your record after several months, you may need to ask them to do so by filing a "Claim of Alleged Inaccuracy or Incompleteness" (form BCIA 8706). The process for challenging and correcting information in your RAP sheet is detailed in APPENDIX F, on PG. 1010.

STEP 9: **If your petition is denied, re-file it**

If your petition for expungement is denied, you are allowed to file it again ("re-file"). At the end of your hearing, ask the judge to explain the reason why s/he did not grant your request for an expungement, so that you can take steps to fix the problem before you re-file your Petition. If you forget to ask or cannot get this

[3313] CAL. CIV. PROC. CODE §§ 414.10, 415.10-415.95, 417.10-417.40, 684.110-684.140, 684.210-684.220, 1010-1020; see also Personal Service: Deliver Court Papers to the Other Party, SACRAMENTO COUNTY PUBLIC LAW LIBRARY (Mar. 2014), http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf.

[3314] See also Dealing With Criminal Records in Alameda County Self-Help Manual, EAST BAY COMMUNITY LAW CENTER (2005), http://ebclc.org/documents/AlamedaCountyCriminalRecords-SelfHelpManual-SP2005.pdf.

information from the judge for some reason, try calling the court clerk to see if he or she can help you figure out what to do to make sure your Petition is granted the next time.[3315]

[3315] See Cleaning Your Record, California Courts, http://www.courts.ca.gov/1070.htm.

APPENDIX L

Tips for Writing a Declaration

The declaration is your chance to present evidence to convince the judge that you deserve an expungement. Here are some tips for writing your declaration:[3316]

1. First, explain the basic information about your conviction and sentence. Tell the judge why your conviction meets the requirements for discretionary expungement (see PG. 963 for a list of requirements).
2. Next, explain why granting your expungement would be "in the interest of justice"—meaning why you deserve to have your conviction expunged, and how the expungement will help you succeed in the future.
3. Here are some examples of things you may want to talk about (but only if they are true for your situation!):
   a. If there were circumstances that made your life especially difficult at time of your conviction;
   b. How you are turning your life around;
   c. Your work and/or school history (including any vocational training, GED or other classes, and other programs you've participated in);
   d. Current opportunities for work, school, and other activities to enrich your life, and how expungement will help you take advantage of these opportunities;
   e. Your family situation and needs, and how an expungement will help you reconnect with, support, or otherwise benefit your family; and
   f. Any problems you have had completing probation, and what you are doing to address those problems.
4. You should be specific and honest, and include as many details as possible to give the judge a concrete picture of what happened. But you should not include irrelevant or unnecessary information that might distract him/her.
5. Finally, it is recommended that you ask a lawyer to look over your declaration before you turn it in, if possible.

[3316] Adapted from Santa Clara Law Library, Expunging Adult Criminal Records in Santa Clara County, http://www.sccll.org/1070.pdf.

APPENDIX M

Sample Declaration

SAMPLE DECLARATION IN SUPPORT OF 1203.4 PETITION

NAME
ADDRESS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

PEOPLE OF THE STATE OF CALIFORNIA, Case No.:
Plaintiff DECLARATION IN SUPPORT OF
VS. PETITION UNDER P.C. 1203.4
NAME
Defendant

I, NAME, declare:

I believe the following facts justify my petition for expungement:

1. I was convicted of violating California Penal Code, (describe offense), committed on DATE. (Briefly describe circumstances of cases)
2. (Describe life circumstances at time of conviction, e.g.: In 1997, after this conviction for possession of methamphetamines, I was literally "scared straight. I realized that I needed to change my life entirely; I decided to get clean. Although it was difficult, I stopped doing drugs on my own.)
3. (Describe life circumstances since incident/conviction, e.g.: I have not had alcohol for over 10 years. I have not done any drugs for five years. Over the past year, I have participated in Alcoholics Anonymous to get support for staying "clean and sober," and in order to get my drivers license back to help with finding
and retaining a job. I am in the process of joining a labor union of cement masons in order to find work. I am living at a shelter until I can find employment.)
4. (Describe/explain any other contacts with law enforcement since the incident/conviction, e.g. since the 1997 convictions, I have had one contact with law enforcement. I was cited and released for driving on a suspended license. Currently, I am working with the DMV and the courts to get my drivers license
back and clear this violation from my record.)
5. (Describe why you need an expungement, e.g., my prior conviction is greatly limiting my job opportunities and an expungement would allow me to work and achieve my goal of self- sufficiency and continued sobriety. I respectfully request that the court use its discretion to expunge my misdemeanor conviction and grant me a second chance to work and support myself. I declare under penalty of perjury of the laws of the State of California that the above is true and correct to the best of my knowledge.

Executed on DATE, at CITY, California

APPENDIX N

Tips for Gathering Letters of Support

WHO SHOULD I ASK?

- Current and previous employer(s)
- Friends and family
- Mentors or sponsors
- Faith-based leaders
- Teachers
- Counselors
- Community leaders and members of community organizations
- Anyone else who can speak to your character and rehabilitation efforts, and will be seen as credible by the court

WHAT SHOULD MY REFERENCES WRITE IN THE LETTER?

- For a Character Letter from an Employer or Previous Employer the person should:
  - Define their relationship with you. Give specific details about who they are, how they know you, and how long they have known you.
  - Give the reader a reason to respect their letter of support (through their career, community involvement, education, etc.). They need to establish their own credibility.
  - Give specific information and details about your employment (wages, length of time employed, responsibilities, manner of performance, etc.).
  - Provide how they will continue or increase their support for you.
  - Thank the reader for consideration of their letter. They may also want to mention that they are available to provide further information, and provide their phone number or other contact information.
- For a Character Letter from anyone else they should:
  - Define their relationship with you. Give specific details about who they are, how they know you, and how long they have known you.
  - Give the reader a reason to respect their letter of support (through their career, community involvement, education, etc.). They need to establish their own credibility.
  - Give specific information and details about you, focusing on how they have experienced your positive personal assets.
  - Provide how they will continue or increase their support of you.
  - Thank the reader for consideration of their letter. They may also want to mention that they are available to provide further information, and provide their phone number or other contact information.

HERE ARE SOME GENERAL GUIDELINES ON ASKING FOR LETTERS OF SUPPORT.

General Reminders:

- **Make it as easy for people as possible!** People are busy and letters of support can take time to write. Some ways you can make it easier for the people you are asking to help you are:
  - **Give them plenty of time.** Don't ask them 2 days before you need to turn in the letter. Give them plenty of time to work on it so they don't feel rushed and can put thought into what they're writing.
  - **Give them plenty of information**. Make sure to remind them of things they can write about, such as your accomplishments or your positive impact on them.
  - **Give them friendly reminders**. If someone hasn't responded to you or hasn't given you a letter by the date you asked to have it done by, try writing them a quick email or calling them. Be polite and not demanding. Your message should be along the lines of "I know you are busy, but I was curious if you will have any time to work on that letter of support I asked you about?"
- **Have a variety of people write letters for you**. You should have letters from people who know as many different aspects of you as possible. Don't get all of your letters from people who all know you from the same activity or area of your life.
- **Keep it Short**. It is best to keep the letters short, about 1–2 pages. This will make them easier to read and also less time consuming to write.

APPENDIX O

Sample Letter of Support

Date

To Whom It May Concern:

Name has been a wonderful position or volunteer with name of organization or company since date. (Include a description of the organization or company and the work they do).

Name volunteers/works an average of # hours per week with varied duties. (Describe nature of work performed, e.g. filing and light clerical, coaching a boys' basketball team, or assisting with youth programming. Also include ways that the petitioner excels and other commentary on the petitioner's commitment to volunteering or working).

Name genuinely enjoys helping people, and she/he has actively sought out ways to get more involved with the work of name of organization or company. (Include any examples of ways the petitioner has gone the extra mile, e.g. available in a pinch, covers for others, represented the organization at an event).

(Closing remarks to reinforce the quality of the work/volunteer efforts of the petitioner, e.g., it has been a delight having X volunteer at our office; his/her assistance is truly appreciated.).

Sincerely,

Your name Title

APPENDIX P

Motion for Early Termination of Probation

To request early release from probation, you will need to file a *Motion for Early Termination of Probation* in the court where you were convicted. Because this process requires drafting a formal court pleading with accompanying documents, it is recommended that you ask a lawyer for help. Ideally, you should contact the lawyer who represented you when you were sentenced, but any private criminal defense lawyer or Public Defender should be able to help you.

The process for filing a *Motion for Early Termination of Probation* is as follows:

STEP 1: **Write your Motion and Supporting Documents.**

There is no official court form for this motion, so you or your lawyer will have to write your own motion. Your motion will consist of these 5 parts:[3317]

1. **Notice of Motion**—This tells the judge what you want to him or her to do. In other words, it tells the judge that you want to be released early from probation.
2. **Memorandum of Points and Authorities**—This section explains the law (California Penal Code section 1203.3(a)), the facts about your individual situation, and the evidence you have to justify your request for early release.
3. **Declaration**—This is your sworn statement that all the facts about your individual situation are true. Your *Declaration* must include ALL of the facts that you use to make your points in your *Memorandum* and all the information that you want to tell the judge to convince him or her to grant your request.
4. **Proposed Order**—This is the document the judge signs if s/he grants your early discharge and terminates your probation.
5. **Proof of Service**—You will need to give copies of your court papers to the other people involved in your case (generally the District Attorney and the probation department—ask the court clerk if there is anyone else). The Proof of Service proves that you gave copies to everyone who was supposed to get them.

STEP 2: **Make Copies & File your Motion**

1. Once your motion and other papers are all ready, make copies for everyone who will receive it. Check with the court clerk to see how many copies you will need. Generally, you will need one copy for the DA, one for the Probation Department, and one for your own records, but you should ask the clerk if there is anyone else. You may also want to make a courtesy copy for the judge.
2. Bring the original motion and all copies to file with the clerk in the court where you were convicted. The clerk will file your Motion, keep the original copy for the court file, and give you back the copies you need for yourself and the other parties (DA, probation department, etc.).
3. After you file your motion, the clerk will give you a court date for a hearing before a judge. Ask the clerk what room your hearing will be in.

STEP 3: **Serve your court papers on the other parties**

1. Service is the official process of giving copies of your court documents to other people connected with the case.
2. Ask the court clerk whether you are responsible for serving your court papers, or whether the clerk will do it directly. If the clerk gives you back more than 1 copy when you file your court papers (see Step 3), this most likely means that you are responsible for service!
3. If the clerk says that you are responsible for service, this means that you must make sure that all necessary parties (DA, probation department, and anyone else the clerk tells you) get a copy of your papers motion in the proper manner.
4. If you are responsible for service, make sure to have your papers served on (delivered to) the DA *at least 2 days before* the court date for your hearing! The law requires you to give the DA at least 2 days notice of your Motion so he or she can prepare for the hearing as well.[3318]

NEED HELP WITH YOUR COURT FORMS?

Remember, it is recommended that you ask a lawyer to help you with your *Motion for Early Termination of Probation*. But if you cannot get a lawyer or want to do it on your own, you can find helpful information on the California Courts website:

- Cleaning up your record http://www.courts.ca.gov/1070.htm
- Understanding the basics of court forms http://www.courts.ca.gov/1078.htm

COURT FEES:

Be aware that the clerk will charge you fees for filing documents with the court. The amount of the fees will vary by county. If you cannot afford to pay the fees, you can request a *fee waiver* (meaning you do not have to pay the fees). Ask the clerk how much the fees are and how to request a fee waiver.

[3317] CAL. R. OF COURT, Rule 3.1112.
[3318] CAL. PENAL CODE § 1203.3(b)(1).



STEP 4: **Attend The Hearing**

1. When you file your *Motion for Early Termination of Probation*, the clerk will give you a court date for your motion to be heard by a judge. You MUST go to court for the hearing on that date and time!
2. At the hearing, you will explain to the judge all the reasons why releasing you from probation early is "in the interests of justice"—in other words, why you deserve to be released early from probation, and why being off probation will help you to achieve your goals and avoid further hardships. You should talk about all of the factors discussed above, including (1) your successful fulfillment of your probation requirements and satisfaction of all conditions; (2) your good conduct, efforts at rehabilitation, and other accomplishments (work, school, volunteer efforts, family responsibilities, etc.); (3) what you have learned and how you have changed since your offense; and (4) why staying on probation will cause you hardship (for example, preventing you from finding work, attending school, traveling to see your family, etc.).[3319]
3. If the judge grants you early release from probation or changes your probation in any other way, he or she must explain the reasons for doing so. Also, before the judge signs the Order to officially end your probation, s/he must first notify your probation officer.[3320]

STEP 5: **Re-filing Your Motion**

1. Remember, a decision to terminate your probation early is entirely up to the judge to decide. However, if the judge denies your motion, you can re-file it. Make sure you find out why the judge denied your request so that you can fix the problem before you re-file. If there is something the judge wants you to *include* with your motion next time, make sure you include it. If there is something the judge wants you to *do* before he or she is willing to grant your request, make sure you do it!
2. Finally, although there is no limit to how often or how many times you can re-file, do not be a nuisance! The last thing you want to do it put the decision in the hands of an annoyed judge!

[3319] CAL. PENAL CODE § 1203.3(a).
[3320] CAL. PENAL CODE § 1203.3(b).



APPENDIX Q

Sample Motion for Early Termination of Probation

YOUR NAME
STREET ADDRESS
CITY, STATE, ZIP
PHONE NUMBER WITH AREA CODE

YOUR NAME, IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. YOUR NAME, Defendant	)	Case No.: INSERT CASE NUMBER C.I.I. No.: INSERT CRIMINAL IDENTIFICATION NUMBER NOTICE OF MOTION AND MOTION TO TERMINATE PROBATION Date: Time: Dept:

TO THE DISTRICT ATTORNEY OF SACRAMENTO COUNTY AND/OR HIS REPRESENTATIVE:

PLEASE TAKE NOTICE that on INSERT DATE, at INSERT TIME, or as soon thereafter as the matter may be heard, in the courtroom of Department INSERT DEPARTMENT NUMBER of the above-entitled court, the defendant will move for an order terminating the defendant's grant of probation and discharge the defendant.

This motion will be made on the ground that the ends of justice will be served thereby because the good conduct and reform of the defendant warrant it.

This motion will be based on this notice of motion, the attached



declaration and memorandum of points and authorities served and filed herewith, on such supplemental declarations, affidavits, memoranda of points and authorities as may hereafter be filed with the court, on all the papers and records on file in this action, and on such oral and documentary evidence as may presented at the hearing of the motion.

Pursuant to Local Rule 1.06 (A) the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: INSERT DATE

	YOUR NAME In Pro Per	



YOUR NAME
STREET ADDRESS
CITY, STATE, ZIP
PHONE NUMBER WITH AREA CODE

YOUR NAME, IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. YOUR NAME, Defendant	)))))))))	Case No.: INSERT CASE NUMBER C.I.I. No.: INSERT CRIMINAL IDENTIFICATION NUMBER POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TERMINATE PROBATION

Defendant submits the following points and authorities in support of the motion to terminate probation and discharge the defendant:

I.

THE APPLICABLE LAW

"The court shall have authority at any time during the term of probation ...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." Penal Code § 1203.3(a)



II.

THE DEFENDANT'S CONDUCT ON PROBATION AND

DEMONSTRATED REFORM MERIT TERMINATION

STATE THE FACTUAL BASIS WHICH JUSTIFY TERMINATING PROBATION EARLY

Dated: INSERT DATE

YOUR NAME In Pro Per



YOUR NAME
STREET ADDRESS
CITY, STATE, ZIP
PHONE NUMBER WITH AREA CODE

YOUR NAME, IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. YOUR NAME, Defendant	)))))))))	Case No.: INSERT CASE NUMBER C.I.I. No.: INSERT CRIMINAL IDENTIFICATION NUMBER DECLARATION IN SUPPORT OF MOTION TO TERMINATE PROBATION

I, INSERT YOUR NAME, declare:

I am the defendant in the above-entitled case, I was convicted of a violation of INSERT CODE NAME Code § INSERT SECTION NUMBER, a FELONY/ MISDEMEANOR on INSERT DATE OF CONVICTION.

Since my conviction, the following facts have arisen to justify my application for termination of probation: INSERT FACTS JUSTIFYING TERMINATION OF PROBATION, SUCH AS SUCCESSFUL COMPLETION OF PROBATION SO FAR, PROSPECTS OF BETTER EMPLOYMENT UPON TERMINATION OF PROBATION, AND OR OTHER FACTS CONSTITUTING GOOD CAUSE.



I declare under penalty of perjury that the forgoing is true and correct.

Executed on INSERT DATE, at INSERT CITY, California.

	YOUR NAME In Pro Per	



YOUR NAME
STREET ADDRESS
CITY, STATE, ZIP
PHONE NUMBER WITH AREA CODE

YOUR NAME, IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. YOUR NAME, Defendant	))))))))))	Case No.: INSERT CASE NUMBER C.I.I. No.:INSERT CRIMINAL IDENTIFICATION NUMBER ORDER TERMINATING PROBATION

GOOD CAUSE APPEARING THEREFORE,

IT IS HEREBY ORDERED that the probation imposed on the above-named defendant on INSERT DATE OF CONVICTION is hereby terminated.

Dated: _____

_____
Judge of the Superior Court

APPENDIX R

How to Reduce Your Felony Conviction to a Misdemeanor under 17(b)

As Part of Your Expungement Petition:

If you want to reduce your felony conviction to a misdemeanor AND get your conviction expunged, it is very easy to do both at the same time When you have your court hearing for your expungement, the judge will consider both requests—first your request to reduce the conviction to a misdemeanor, and then your request to have it expunged. If you meet all the requirements, usually the judge will grant both of your requests together. (For a list of the requirements for reducing a felony to a misdemeanor, see PG. 968. For expungement requirements, see PG. 960.)

There are two main steps to this process:

- File Your Petition for Dismissal:
  - The *Petition for Dismissal* (form CR-180) that you must file to get your conviction expunged has a box to check if your conviction is also eligible to be reduced. When you are filling out your *Petition for Dismissal*, mark the box on question # 1 to show that the conviction is eligible for reduction under California Penal Code section 17(b). (For more information on getting and filling out form CR-180, see APPENDIX K, on PG. 1018.)
  - File the petition in the county where you were convicted. The same petition now serves as both your request to have your conviction expunged AND your request to have it reduced to a misdemeanor. (For details on how to file a *Petition for Dismissal*, see APPENDIX K, on PG. 1018.)
- Go to Your Court Hearing: When you have your court hearing, the judge will usually consider both requests at the same hearing—first your request to reduce the conviction to a misdemeanor, and then your request to have it expunged. At the hearing, the judge will consider the following:
  - The nature of the offense;
  - The facts of the case;
  - Whether you fulfilled the conditions of your probation;
  - Your full criminal record and personal conduct record;
  - Any objections from the district attorney.

Again, usually the judge will make a decision on both of your requests together.

As a Separate Petition:

If the judge does NOT reduce your felony conviction to a misdemeanor, or if your felony is eligible for reduction but not expungement, you may need to file a separate petition to get it reduced. Your petition will need to show the judge that your felony conviction meets all the requirements to be reduced to a misdemeanor (see PG. 968 for a list of these requirements), and explain why you deserve to have your conviction reduced. It will be entirely up to the judge to decide whether your conviction should be reduced. PLEASE NOTE: This is a formal court document, not just a form you fill out, so it is recommended that you ask a lawyer to help you.

Your petition will have of 3 parts:

1. **The Petition**—This is your formal request to the court explaining that you are asking to have your felony conviction reduced to a misdemeanor.
2. **The Memorandum of Points and Authorities**—This is where you state that your felony conviction meets all the requirements to be reduced to a misdemeanor under the law (California Penal Code section 17(b)(3)), and explain why you deserve to have your conviction reduced to a misdemeanor (based on the factors that the judge will consider, listed below).
3. **The Declaration**—Here, you state all the important facts about your situation and swear that they are true. Your *Declaration* must include ANY and ALL of the facts that you have included in the *Petition* and *Memorandum* sections.

Factors the Judge May Consider:

When the judge decides whether or not to reduce your felony to a misdemeanor, here are some of the things s/he will consider. You should emphasize these in your petition:

- The nature and circumstances of your offense (for example, how old you were at the time; your role in the offense; the specific details of the offense);
- Whether you have taken responsibility for your conviction and learned from it;
- Your attitude in court;
- Your efforts at rehabilitation;
- Your ability to successfully complete your parole;



- Your individual situation—why you deserve to have your conviction reduced to a misdemeanor (for example, your work, school, and/or family situation; your accomplishments since your conviction; how you have changed since your conviction; and why reducing your felony to a misdemeanor is necessary in order for you to succeed).[3321]

As we said, you should ask a lawyer to help you prepare your petition, however, we have included an example in this appendix for your reference.

[3321] People v. Superior Court (Alvarez), 14 Cal. 4th 968 (1997).



APPENDIX S

Sample Petition to Reduce Felony Conviction to Misdemeanor

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

☐ **Berkeley Courthouse** 2120 Martin Luther King, Jr. Way, Berkeley, CA. 94704	☐ **Hayward Hall of Justice** 24405 Amador Street, Hayward, CA. 94544	☐ **Wiley W. Manuel Courthouse** 661 Washington Street, Oakland, CA. 94607
☐ **Fremont Hall of Justice** 39439 Paseo Padre Parkway, Fremont, CA. 94538	☐ **Gale/Schenone Hall of Justice** 5672 Stoneridge Dr., Pleasanton, CA. 94588	☐ **George E. McDonald Hall of Justice** 2230 Shoreline Drive, Alameda, CA. 94501
☐ **Rene C. Davidson Courthouse** 1225 Fallon Street, Oakland, CA. 94612	☐ **Allen E. Broussard Justice Center** 600 Washington Street, Oakland, CA 94607	

THE PEOPLE OF THE STATE OF CALIFORNIA

vs

_____
Petitioner

Case No._____
DOB_____
PFN No._____
CEN No._____
CII No._____

_____
Address of Petitioner City State Zip Phone # with area code

PETITION FOR
REDUCTION OF FELONY TO MISDEMEANOR
PURSUANT TO THE PROVISIONS OF PENAL CODE SECTION 17

I, the undersigned petitioner, am the defendant in the above-entitled action. I was convicted for violating Section(s) _____of the _____Code, on _____. The Court placed me on probation on the terms and conditions set forth in the docket of the above-named Court. I have fulfilled the terms and conditions of probation, except as may be testified by myself upon the hearing of this petition. Probation was granted for a period of _____ years and _____ months.

WHEREFORE, I request that the felony be reduced to a misdemeanor.

I declare under penalty of perjury that the foregoing is true and correct.

_____ _____
Date Signature of Petitioner

Petition set for hearing on_____at_____M. in Department No._____

District Attorney and/or Probation Office served endorsed copy of Petition_____
Date Clerk

Distribution: Original to Court file, 1 copy to Petitioner, 1 copy to District Attorney, and/or 1 copy to Probation Office
Revised 4/7/04

§39.6 Defense Motion to Reduce Felony to Misdemeanor After Probation Granted (Pen C §17(b)(3))

_ _[*Name of defense attorney; State Bar number*]_ _
_ _[*Address*]_ _
_ _[*City, State*]_ _
_ _[*Telephone number*]_ _
_ _[*Fax number (optional)*]_ _
_ _[*E-mail address (optional)*]_ _
_ _[*Attorney for* _ _[*name of defendant*]_ _]_ _

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _ _ _ _ _ _

PEOPLE OF THE STATE OF CALIFORNIA,	**Dept.** _ _[*number*]_ _
Plaintiff,	**No.** _ _[*case number*]_ _
vs.	**NOTICE OF MOTION TO DECLARE**
Defendant.	**OFFENSE TO BE MISDEMEANOR**
_____/	**(Pen C §17(b)(3))** _ _[*If desired, identify other attached papers*]_ _

TO THE ABOVE-ENTITLED COURT, AND TO THE DISTRICT ATTORNEY AND THE PROBATION OFFICER OF _ _ _ _ _ _ COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE, that on _ _[*date*]_ _**, in Department** _ _[*number*]_ _**, at** _ _[*time*]_ _**, or as soon thereafter as the matter may be heard, the defendant will move the Court to declare the offense in this case to be a misdemeanor.**

The ground for this motion is that declaring this offense to be a misdemeanor is in the interest of justice.

This motion is based on the attached declaration of defendant, all papers filed and records in this action, evidence taken at the hearing on this motion, and argument at that hearing.

WHEREFORE, the defendant respectfully requests this Court to grant this motion, and to notify the California Department of Justice, under Penal Code section 13151.

Date: _ _ _ _ _ _

Respectfully submitted,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _
_ _[*Title if in public defender office*]_ _
Attorney for _ _[*name of defendant*]_ _

[*Memorandums of points and authorities may start on a new page. No caption is needed if attached to papers with caption; see §24.2.*]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DECLARE THIS OFFENSE TO BE A MISDEMEANOR

AUTHORITY TO DECLARE AN OFFENSE TO BE A MISDEMEANOR

Penal Code section 17(b) provides:

> **When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:. . .**
>
> **(3) When the court grants probation to a defendant without imposition of sentence and . . . on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.**

The offense in this case, violation of __[*code section*]__, is an alternate felony/misdemeanor, so it fits within the ambit of Penal Code section 17(b).

In *People v Superior Court* (Alvarez) (1997) 14 C4th 968, 978, 60 CR2d 93, the California Supreme Court addressed the criteria to be applied in exercising discretion to grant a misdemeanor reduction under Penal Code section 17(b). Among relevant factors are the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, or his or her character traits as evidenced by trial behavior and demeanor. When it is appropriate, the court should consider general sentencing objectives, such as those set forth in Cal Rules of Ct 4.410.

The supreme court indicated that the trial court must focus on the individual defendant as well as the public interest:

(1) "[A] determination made outside the perimeters drawn by individualized consideration of the offense, the offender, and the public interest 'exceeds the bounds of reason.' " 14 C4th at 978.

(2) The court should weigh "the various sentencing considerations commensurate with the individual circumstances." 14 C4th at 979.

(3) "The record should reflect a thoughtful and conscientious assessment of all relevant factors including the defendant's criminal history." 14 C4th at 979.

(4) The sentencing court must focus "on considerations that are pertinent to the specific defendant being sentenced." 14 C4th at 980.

__[*Tell what facts concerning defendant's case fit within the above Standards, and argue in favor of reducing the offense to a misdemeanor.*]__

THE DEPARTMENT OF JUSTICE MUST BE NOTIFIED IF THIS MOTION IS GRANTED

Penal Code section 13151 states that, when the Court orders any action subsequent to the initial disposition of a case, the Court shall report this to the California Department of Justice. The report is necessary to ensure that defendant obtains full benefit if the Court grants this motion.

CONCLUSION

For the above reasons, defendant asks this Court to reduce __[*describe offense*]__ from a felony to a misdemeanor.

Date: _____

Respectfully submitted,

__[*Signature of attorney*]__
__[*Typed name*]__
__[*Title if in public defender office*]__
Attorney for __[*name of defendant*]__

[*Declarations usually start on a new page. No caption is needed if attached to papers with caption; see §24.3.*]

DECLARATION OF DEFENDANT IN SUPPORT OF MOTION TO DECLARE THIS OFFENSE TO BE A MISDEMEANOR

[*This declaration assumes defendant is seeking reduction under Pen C §17(b)(3).*]

I, _ _[*name*]_ _, declare:

1. I am the defendant in this action.

2. On _ _[*date*]_ _, I was convicted _ _[*by a plea of guilty or no contest/by a jury or court verdict after trial*]_ _ of violation of _ _[*specify code section and offense*]_ _.

3. On _ _[*date*]_ _ the Court suspended imposition of sentence and granted probation.

4. Probation expired on _ _[*date*]_ _. I have successfully completed all of the terms of probation. I am not now serving a sentence for, and am not on probation for, and am not charged with the commission of any other offense.

_ _[*5. If there are any particularly compelling reasons why this relief should be granted, they can be listed here. For example, if defendant wishes to join the military, or enroll in professional school, or was young and immature at the time of the offense, or has led a particularly upstanding life since conviction.*]_ _

[*Add if appropriate*]

I am not a party to any civil lawsuit, or facing deportation proceedings, or currently applying for any license. I am not making this motion to gain unfair advantage in any matter.

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

Date: _ _ _ _ _ _

__[*Signature of declarant*]__
_ _[*Typed name*]_ _

[*Begin the following on a new page.*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____

PEOPLE OF THE STATE OF CALIFORNIA,	**Dept. __[*number*]__**
Plaintiff,	**No. __[*case number*]__**
vs.	**ORDER DECLARING OFFENSE TO BE A MISDEMEANOR**
Defendant.	

_____/

This Court __[*held a hearing on this matter on __[date]__/has determined that no hearing on this motion is required*]__. The Court has also reviewed (1) defendant's motion to declare the offense in this case to be a misdemeanor, (2) the records on file in this case, and given the District Attorney and the probation department the opportunity to provide information to the Court.

The Court finds that the defendant is eligible for the relief sought, and that this relief is in the interest of justice.

The Court therefore declares __[*describe offense, e.g., violation of Pen C §487(1)(a)*]__ in this case to be a misdemeanor, under Penal Code section 17(b)(3).

The Court directs the clerk to notify the California Department of Justice of this action, under Penal Code section 13151.

Date: _____

__[*Signature of Judge*]__
__[*Typed name*]__
Judge of the Superior Court

PROOF OF SERVICE

The last part of the motion is the proof of service.
See instructions and sample forms in §§24.6–24.9.

PARTS OF MOTION

- Notice of motion, notice of motion and motion, or motion (see §24.1)
- Memorandum of points and authorities (see §24.2)
- Declaration of defendant (see §24.3)
- Proof of service

APPENDIX T

Resentencing & Reclassification Under Prop. 47

RESENTENCING UNDER PROP. 47:

If you are **currently serving your sentence ("under sentence")** for an offense that qualifies under Prop. 47, and you are NOT excluded by one of the disqualifying convictions, you may be eligible for RESENTENCING.[3322]

NOTE: There is no universal, statewide petition for resentencing and reclassification under Prop. 47. Each local court has created its own version of the petition, so you will have to get the local form from the clerk of the court where you were convicted. Most courts have created a single form that covers both resentencing and reclassification.

STEP 1: **Obtain and fill out a Prop. 47 petition**

You will need to get the court forms from the clerk at the court where you were convicted. These forms are straightforward and simple to fill out—you just need to fill in information about your conviction (date of conviction, penal code section, and sentence), and check the box indicating that you are currently "under sentence" and requesting to be *resentenced*. (Sample petitions from SF, LA, and Sacramento Counties are included in APPENDIX GG, on PG. 1074.)

STEP 2: **File your Petition and Serve your Court Papers**

You will need to file your petition with the court clerk of the court where you were convicted, and then serve (deliver) copies of your court papers on the District Attorney and any other people who are part of the case. (Ask the court clerk who you need to serve with your court papers).

STEP 3: **The Judge Reviews Your Petition to See if You are Eligible**

After you file your petition, a judge will review it to make sure you are eligible (qualify) for resentencing.[3323] Remember, in order to qualify for resentencing, you must meet all of the following requirements:

- Your conviction must be for one of the qualifying convictions under Prop. 47 (see PG. 971); AND
- You must NOT have any of the disqualifying convictions (see PG. 971);[3324] AND
- You are currently "under sentence" for the qualifying conviction (incarcerated OR on parole or PRCS).

STEP 4: **Qualification Hearing—if Requested**

1. When you petition for resentencing under Prop. 47, you do not automatically get a hearing in front of a judge, but you may request one. If your conviction was for *shoplifting, theft, receiving stolen property, or forgery/bad checks*, you may want to request a hearing so you can prove to the judge that the value of property involved in your crime was *under $950*—and therefore qualifies under Prop. 47.
2. The DA can also request a hearing to contest (challenge) your petition.
3. If there is a hearing on your petition, you should attend if you can. Whether or not you are able to attend, make sure that the judge has as much evidence as you can find to support your request for resentencing, including evidence of rehabilitation, proof of your accomplishments since your conviction, and letters of support. (See APPENDIX N, on PG. 1024 for tips on how to write a letter of support. See APPENDIX O, on PG. 1025 for a sample Letter of Support.)
4. If you meet all of the requirements for resentencing, you are entitled to be resentenced UNLESS the judge decides that you pose an "*unreasonable risk to public safety*." This means that the judge specifically thinks that if you are released, you will commit one of the *violent "super strike" felonies* listed in California Penal Code section 667(e)(2)c(iv)).[3325] In making this decision, the judge will consider:
   a. your complete conviction history including:[3326]
      i. the type of crime(s) you committed in the past;
      ii. the amount of injury to your victim(s);
      iii. the length of time you spent in prison in the past; AND
      iv. how long ago you committed the crime(s).
   b. your disciplinary record and record of rehabilitation while you were in prison;
   c. anything else the judge thinks is relevant.
   d. You should provide as much evidence as possible that you do not pose any risk to society.

[3322] CAL. PENAL CODE § 1170.18(a).
[3323] Cal. Penal Code § 1170.18.
[3324] Cal. Penal Code § 1170.18.
[3325] CAL. PENAL CODE § 1170.18(c).
[3326] CAL. PENAL CODE § 1170.18(b)(1).



STEP 5: **Resentencing**

If your conviction is eligible, your criminal history does not disqualify you, and the judge does not think you pose an unreasonable risk to public safety, you are entitled to be resentenced to a misdemeanor sentence. This means that your felony sentence will be reduced to a misdemeanor sentence instead! You will get credit for the time you've already served, so if you have already served the equivalent of a misdemeanor sentence, you can be released from custody right away.[3327]

- If you were still in prison at the time of resentencing, the judge will likely put you on parole for one year. However, depending on the facts of your situation, you may be able to convince the judge not to give you parole at all.[3328]
- If you were on parole or PRCS at the time of resentencing, you could be discharged right away (if you have already completed the equivalent of a misdemeanor sentence), or the judge may reduce your supervision to probation.

RECLASSIFICATION UNDER PROP. 47:

If you already completed your sentence (including any parole or probation term) for an offense that qualifies under Prop. 47, and you are NOT excluded by one of the disqualifying convictions, you may be eligible to have your felony RECLASSIFIED as a misdemeanor. Unfortunately, you cannot get back the time that you served for the felony, but you can change your criminal record to show a misdemeanor conviction instead of a felony conviction.

STEP 1: **Obtain and fill out your Petition for Reclassification**

Just as for resentencing, you will need to fill out and file a petition for reclassification. Most courts use a single form for resentencing and reclassification, which you should get from the clerk at the court where you were convicted. When you fill out the form, you will need to fill in basic information about your conviction (such as the date of conviction, penal code section, and your sentence), and then check the box indicating that you are requesting reclassification.

STEP 2: **File your petition and Serve your court papers**

File your petition with the clerk of the court where you were convicted, and then serve (deliver) copies of your court papers on the District Attorney and any other people who are part of the case. Ask the court clerk who else you need to serve with your court papers.

STEP 3: **Eligibility Determination**

Once your petition is filed, a judge will review it to make sure you qualify for reclassification.[3329] The judge will check to see whether your conviction offense qualifies under Prop. 47 (see PG. 971) and whether you have any prior convictions that disqualify you (see PG. 971).[3330] Generally, you will not need to request a hearing for reclassification, however, it is possible that you will need one if you have to prove the value of the property involved in your offense to make sure it qualifies.

If you meet the requirements, the judge MUST reclassify your conviction as a misdemeanor.

[3327] Cal. Penal Code § 1170.18.
[3328] CAL. PENAL CODE § 1170.18 (d) ("a person who is resentenced pursuant to subdivision (b)…shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole").
[3329] CAL. PENAL CODE § 1170.18.(f).
[3330] Cal. Penal Code § 1170.18.

APPENDIX U

Changes to Criminal Penalties for Adults & Juveniles under Proposition 64

PROPOSITION 64:
CHANGES TO CRIMINAL PENALTIES (ADULTS)

CRIMINAL OFFENSE[1]	PENALTY BEFORE PROP. 64[2]	CURRENT PENALTY (beginning 11/9/16)[2,3]
POSSESSION OF MARIJUANA OR CONCENTRATED MARIJUANA - H&S Code § 11357		
Possession of ≤ 28.5 g marijuana	Infraction (max $100 fine)	21 +: Legal
		18 to 20: Infraction (max $100 fine)
Possession of > 28.5 g marijuana	Misdemeanor (max 6 months jail and/or $500 fine)	Misdemeanor (max 6 months jail and/or $500 fine)
Possession of concentrated cannabis	Any amount = Misdemeanor (max 1 year jail and/or $500)	21 +: Up to 8 grams is legal; more than 8 grams is a misdemeanor (max 6 months jail and/or $500 fine)
		18 to 20: less than 4 grams is an infraction (max $100 fine); more than 4 grams is a misdemeanor (max 6 months jail and/or $500)
Possession of ≤ 28.5 g marijuana and/or ≤ 4g concentrates on school grounds	Misdemeanor (max 10 days jail and/or $500 fine)	*1st offense* : Misdemeanor (max. $250 fine)
		2nd + offense : Misdemeanor (max 10 days jail and/or $500 fine)
POSSESSION WITH INTENT TO SELL MARIJUANA - H&S Code § 11359		
Possession with intent to sell	Felony (16 months/2 years/3 years)	Misdemeanor (max 6 months jail and/or $500 fine) **If amount is less than 28.5 grams and intent is to share, not sell, it is legal per H&S Code § 11362.1*
		Wobbler if (1) prior super strike, (2) a registered sex offender, (3) two prior convictions under this subsection, (4) offense occurred in connection with knowing sale or attempted sale of marijuana to a person under 18, or (5) knowingly hired, employed, or used a persons under 21 in unlawfully cultivating, selling, etc. any marijuana

Notes:
1. Penalties refer to all adults 18 and older, unless noted otherwise.
2. Prop. 215 protections remain in effect.
3. Licensed activity in accordance with state law will not be subject to these penalties.

PROPOSITION 64:
CHANGES TO CRIMINAL PENALTIES (ADULTS)

CRIMINAL OFFENSE[1]	PENALTY BEFORE PROP. 64[2]	CURRENT PENALTY (beginning 11/9/16)[2,3]
SALES OF MARIJUANA - H&S Code § 11360		
Sales / giving away / transportation for sale of marijuana	Felony (2/3/4 years) **If amount is less than 28.5 g and it is given away (i.e. no sale), it is a misdemeanor (max fine of $100)*	Misdemeanor (max 6 months jail and/or $500 fine) **If amount is less than 28.5 grams and it is given away or transported (not for sale), it is legal for adults 21 and older. H&S Code § 11362.1. The same conduct is an infraction (max fine of $100) for adults aged 18 to 20. H&S Code § 11360(b)*
		Wobbler (2/3/4 yrs) if (1) prior super strike, (2) a registered sex offender, (3) two prior convictions under this subsection, (4) involved sale to person under 18, or (5) involved import into this state or transport out of this state of more than 28.5 grams
Sales / giving away marijuana to a MINOR (H&S Code § 11361)	Felony (3/5/7 years) for sales to a minor under 14 or (3/4/5 years) to a minor over 14	No change
MANUFACTURING: H&S Code § 11379.6		
Manufacturing concentrates by chemical synthesis	Felony (3/5/7 years)	No change
CULTIVATION OF MARIJUANA - H&S Code §11358		
Cultivation	Felony (16 months/2 years/3 years)	6 plants or less 21+: Legal 18 to 20: Infraction (max $100 fine)
		More than 6 plants (18 +) Misdemeanor (max 6 months jail and/or $500 fine) Wobbler if (1) prior super strike, (2) a registered sex offender, (3) two prior convictions under this subsection, or (4) offense resulted in intentional diversion of public waters, introduction of harmful chemical into waters or otherwise caused substantial environmental harm to public lands
Cultivation restrictions on growing at home	None, it was all illegal	Infraction (max $250 fine) if adult cultivates up to 6 plants but (1) plants are visible to public or (2) not kept in a locked space

Notes:
1. Penalties refer to all adults 18 and older, unless noted otherwise.
2. Prop. 215 protections remain in effect.
3. Licensed activity in accordance with state law will not be subject to these penalties.



PROPOSITION 64:
CHANGES TO CRIMINAL PENALTIES (ADULTS)

CRIMINAL OFFENSE[1]	PENALTY BEFORE PROP. 64[2]	CURRENT PENALTY (beginning 11/9/16)[2,3]
OTHER		
Opening or maintaining place for unlawfully selling, giving away or using drugs (§ 11366)	Wobbler	This conduct may be legal in some circumstances. For example, a person solely maintaining a place for the purpose of giving away or using legal amounts of marijuana by adults 21 and older may be operating in accordance with Prop. 64
Renting, leasing, or making building/ room/ space available for unlawful manufacturing or storing of drugs (§ 11366.5)	*1st offense* : Wobbler *2nd + offense:* Felony (2/3/4 years)	This conduct may be legal in some circumstances. For example, a person solely using a place for the purpose of storing legal amounts of marijuana by adults 21 and older may be operating in accordance with Prop. 64
PUBLIC USE INFRACTIONS CREATED BY PROP. 64: H&S Code § 11362.3		
Smoking or ingesting in public	No specific penalty for marijuana. Charged with possession or same as tobacco	Infraction (max fine of $100)
Smoking where tobacco prohibited	No specific penalty for marijuana. Charged with possession or same as tobacco	Infraction (max fine of $250)
Smoking within 1,000 feet of a school, day care or youth center while children are present	No specific penalty for marijuana. Charged with possession or same as tobacco	Infraction (max fine of $250)
Possess open container or package of marijuana while driving, operating, or riding in vehicle	No specific penalty. Charged with possession	Infraction (max fine of $250)

Notes:
1. Penalties refer to all adults 18 and older, unless noted otherwise.
2. Prop. 215 protections remain in effect.
3. Licensed activity in accordance with state law will not be subject to these penalties.

PROPOSITION 64:
CHANGES TO CRIMINAL PENALTIES (JUVENILES)

CRIMINAL OFFENSE[1]	PENALTY BEFORE PROP. 64 CURRENT LAW[2]	CURRENT PENALTY (beg. 11/9/16)[2, 3]
POSSESSION OF MARIJUANA OR CONCENTRATED MARIJUANA - H&S Code § 11357		
Possession of ≤ 28.5 g marijuana	Infraction (max $100 fine)	*1st offense* : 4 hours drug education + up to 10 hours community service
		2nd + offense : 6 hours drug education + up to 20 hours community service
Possession of > 28.5 g marijuana	Misdemeanor (max 6 months jail)	*1st offense* : 8 hours drug education + up to 40 hours community service
		2nd + offense : 10 hours drug education + up to 60 hours community service
Possession of concentrated cannabis	Misdemeanor (max 1 year jail and/or $500)	**≤ 4 grams**: *1st offense:* 4 hours drug education + up to 10 hours community service; *2nd + offense* : 6 hours drug education + up to 20 hours community service
		> 4 grams: *1st offense* : 8 hours drug education + up to 40 hours community service; *2nd + offense* : 10 hours drug education + up to 60 hours community service
Possession of ≤ 28.5 g marijuana and/or ≤ 4g concentrates on school grounds	*1st offense* : Misdemeanor (max $250 fine)	*1st offense* : 8 hours drug education + up to 40 hours community service
	2nd + offense : Misdemeanor with $500 fine and/or 10 days juvenile hall/camp/group home	*2nd + offense* : 10 hours drug education + up to 60 hours community service
POSSESSION WITH INTENT TO SELL MARIJUANA - H&S Code § 11359		
Possession with intent to sell	Felony (16 months/2 years/3 years)	*1st offense* : 8 hours drug education + up to 40 hours community service
		2nd + offense : 10 hours drug education + up to 60 hours community service
SALES OF MARIJUANA - H&S Code § 11360		
Sales / giving away of marijuana to adults	Felony (2/3/4 years) If amount is < 28.5 g and it is given away (i.e. no sale) = Misdemeanor with max fine of $100	*1st offense* : 8 hours drug education + up to 40 hours community service
		2nd + offense : 10 hours drug education + up to 60 hours community service

Notes:
1. Penalties refer to all juveniles under the age of 18.
2. Prop. 215 protections remain in effect.
3. All offenses that include drug education and community service are infractions.

PROPOSITION 64:
CHANGES TO CRIMINAL PENALTIES (JUVENILES)

CRIMINAL OFFENSE[1]	PENALTY BEFORE PROP. 64 CURRENT LAW[2]	CURRENT PENALTY (beg. 11/9/16)[2, 3]
CULTIVATION OF MARIJUANA - H&S Code §11358		
Cultivation	Felony (16 months/2 years/3years)	*1st offense* : 8 hours drug education + up to 40 hours community service *2nd + offense* : 10 hours drug education + up to 60 hours community service
NUISANCE PENALTIES		
Opening or maintaining place for unlawfully selling, giving away or using drugs (§ 11366)	For marijuana = wobbler	No change to current law
Renting, leasing, or making building/room/ space available for unlawful manufacturing or storing of drugs (§ 11366.5)	*1st offense* : wobbler *2nd + offense* : felony (2/3/4 years)	No change to current law
MANUFACTURING: H&S Code § 11379.6		
Manufacturing concentrates by chemical synthesis	Felony (3/5/7 years)	No change to current law
PUBLIC USE INFRACTIONS CREATED BY PROP. 64: H&S Code § 11362.3		
Smoking or ingesting in public	No specific penalty for marijuana. Charged with possession or same as tobacco	4 hours of drug education and up to 10 hours of community service
Smoking where tobacco prohibited	No specific penalty for marijuana. Charged with possession or same as tobacco	4 hours of drug education and up to 20 hours of community service
Smoking within 1,000 feet of a school, day care or youth center while children are present	No specific penalty for marijuana. Charged with possession or same as tobacco	4 hours of drug education and up to 20 hours of community service
Possess open container or package of marijuana while driving, operating, or riding in vehicle	No specific penalty for marijuana. Charged with possession	4 hours of drug education and up to 20 hours of community service

Notes:
1. Penalties refer to all juveniles under the age of 18.
2. Prop. 215 protections remain in effect.
3. All offenses that include drug education and community service are infractions.



APPENDIX V

Proposition 64 Court Forms for Adult and Juveniles

See next page.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
PETITION/APPLICATION (Health and Safety Code, § 11361.8) ADULT CRIME(S)	CASE NUMBER:
☐ **FOR RESENTENCING OR DISMISSAL (Health & Saf. Code, § 11361.8(b))** ☐ **REDESIGNATION OR DISMISSAL/SEALING (Health & Saf. Code, § 11361.8(f))**	***FOR COURT USE ONLY*** Date: Time: Department:

INSTRUCTIONS

- Before filing this form, petitioner/applicant should consult local court rules and court staff to determine if a formal hearing on the petition/application will be scheduled.
- If the petitioner is currently serving a sentence for a qualified crime, please fill out sections 1 and 2(a).
- If the applicant has completed the sentence for a qualified crime, please fill out sections 1 and 2(b).
- Complete sections 3 and 4 as necessary.
- Upon the filing of the petition/application, the petitioner/applicant is required to immediately serve the office of the prosecuting agency (the district attorney or city attorney, as appropriate) with a copy of the petition/application. It may be served personally or by mail; the signed Proof of Service, attached to this form, must be filed with the court.

1. **CONVICTION INFORMATION**

CONVICTION A:

On *(date):* _____, Petitioner/Applicant, the defendant in the above-entitled criminal action, was convicted of the following Health and Safety Code section ☐ 11357 ☐ 11358 ☐ 11359 ☐ 11360 which has been reclassified under Proposition 64.

Petitioner/Applicant further states that when committing the conduct resulting in the conviction he/she was:

☐ 18 to 20 years of age; ☐ 21 years old or older. Date of birth: _____

Petitioner/Applicant further states that the nature of the substance which resulted in the conviction was:

☐ marijuana not in the form of concentrated cannabis; ☐ concentrated cannabis; ☐ marijuana plants;

☐ Other:

Petitioner/Applicant further states that the quantity of the substance which resulted in the conviction was:

☐ not more than 28.5 grams of marijuana not in the form of concentrated cannabis; ☐ not more than 4 grams of marijuana in the form of concentrated cannabis; ☐ not more than 8 grams of marijuana in the form of concentrated cannabis; ☐ not more than 6 marijuana plants.

CONVICTION B:

On *(date):* _____, Petitioner/Applicant, the defendant in the above-entitled criminal action, was convicted of the following Health and Safety Code section ☐ 11357 ☐ 11358 ☐ 11359 ☐ 11360 which has been reclassified under Proposition 64.

Petitioner/Applicant further states that when committing the conduct resulting in the conviction he/she was:

☐ 18 to 20 years of age; ☐ 21 years old or older. Date of birth: _____

Petitioner/Applicant further states that the nature of the substance which resulted in the conviction was:

☐ marijuana not in the form of concentrated cannabis; ☐ concentrated cannabis; ☐ marijuana plants;

☐ Other:

Petitioner/Applicant further states that the quantity of the substance which resulted in the conviction was:

☐ not more than 28.5 grams of marijuana not in the form of concentrated cannabis; ☐ not more than 4 grams of marijuana in the form of concentrated cannabis; ☐ not more than 8 grams of marijuana in the form of concentrated cannabis; ☐ not more than 6 marijuana plants.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

2. **REQUEST FOR RELIEF**

a. ☐ **RESENTENCING/DISMISSAL**

Petitioner is currently serving the sentence for the crime noted above, and requests the sentence be recalled and that he/she be resentenced or the charge be dismissed as required by law.

☐ Other:

b. ☐ **REDESIGNATION/DISMISSAL/SEALING**

Applicant has completed the sentence for the crime noted above, and requests the sentence be recalled and the conviction be redesignated or dismissed. If the conviction is dismissed, applicant requests the court's record of conviction be sealed.

☐ Other:

3. **WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE**

☐ Petitioner/applicant waives the right to have this matter heard by the original sentencing judge. The presiding judge of the court may designate any judge to rule on this matter.

4. **WAIVER OF APPEARANCE**

☐ Petitioner/applicant understands there is a right to personally attend any hearing held in this matter. Petitioner/applicant gives up that right; the matter may be heard without his/her appearance.

Dated:

▶ _____

Signature of petitioner/applicant

PROSECUTING AGENCY RESPONSE

☐ The prosecuting agency has no objection to this petition/application. Petitioner/applicant is entitled to the requested relief without a hearing.

☐ The prosecuting agency requests a hearing and objects to the granting of the petition/application because:

☐ Petitioner/applicant was not convicted of an eligible offense.

☐ Other:

☐ Petitioner is eligible for relief, but relief should be denied because petitioner presents an unreasonable risk of danger to public safety if he/she is resentenced.

☐ The prosecuting agency does not object to the petitioner's/applicant's eligibility for relief, but requests a hearing on the issue of resentencing.

Dated:

▶ _____

Signature of prosecuting attorney

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
PROOF OF SERVICE Check Method of Service (only one): ☐ **By Personal Service** ☐ **By Mail**	CASE NUMBER: *FOR COURT USE ONLY* Date: Time: Department:

1. Person serving: I am over the age of 18 and not a party to this action.
   a. Name:
   b. Residence or Business Address:
   c. Telephone:
2. I served a copy of the Petition/Application for Resentencing or Reduction to Infraction on the person or persons listed below as follows:
   a. Name of person served:
   b. Address where served:
   c. Date Served:
   c. Time Served: ☐ AM ☐ PM
3. The documents were served by the following means *(specify)*:
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 2. Delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening.
   b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 2 and *(specify one)*:
      (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

      I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:

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

Date:

▶ _____
Signature of Declarant

_____
(Printed Name of Declarant)

PARTY WITHOUT AN ATTORNEY OR ATTORNEY: STATE BAR NO. (if applicable):	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
REQUEST TO REDUCE JUVENILE MARIJUANA OFFENSE **(Prop. 64–Health and Safety Code, § 11361.8(m))**	CASE NUMBER: Date: Time: Department:

INSTRUCTIONS

- Use this form if you went to court for a marijuana-related offense when you were under the age of 18 and you want your record changed. You need to use a different form if you were 18 or older at the time of the offense.
- You need to use a separate form for each juvenile marijuana offense on your record.
- If this form asks for information that you do not have, you can contact your attorney. If you don't have an attorney, the public defender's office or the court in the county where you went to court can probably help you get these records.
- How to fill out the form without an attorney:
  - A. Put your name and contact information in the box at the top of the form and in item 1 below.
  - B. Put the address of the court from your court papers here. This form must be filed in the county where you went to court for this offense.
  - C. Fill out number 2 about the marijuana offense.
  - D. If you are on probation now for the marijuana offense, also check number 3 to ask the judge to make new dispositional orders (a new sentence) based on the new law. The new orders cannot be more severe than your original sentence.
  - E. If you have completed probation for the marijuana offense, check number 4 to ask the judge to redesignate your offense to an infraction. So, if it was a misdemeanor or a felony, it will now be classified like a traffic ticket.
  - F. You can check number 5 if you are willing to have any available judge hear your request. If you check that box the presiding judge may have a different judge hear your request.
  - G. A hearing is not required unless you request it. You can check one of the boxes in number 6 if you want the court to set a hearing.
  - H. You can check number 7 if you do not want to come to court if there is a hearing.

For more information about Proposition 64 and filling out this form, go to *www.courts.ca.gov/prop64.htm.*

1. MY INFORMATION

My name is:

I was born on *(date)*:

2. OFFENSE INFORMATION

On (*date*): I was found to come within the jurisdiction of the court under Welfare and Institutions Code section 602 for a violation of Health and Safety Code section *(check one)*

- ☐ 11357—Possession of Marijuana
- ☐ 11358—Cultivation of Marijuana
- ☐ 11359—Possession of Marijuana for Sale
- ☐ 11360—Transportation, Distribution, or Importation of Marijuana

This offense has been reclassified as an infraction when committed by a person under the age of 18 under Proposition 64.
At the time of the offense, I was under the age of 18.

Form Approved for Optional Use
Judicial Council of California
JV-744 [New January 23, 2017]

Health and Safety Code, § 11361.8
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

3. REQUEST FOR A NEW DISPOSITIONAL ORDER (RESENTENCING)

☐ I am currently subject to a dispositional order (on probation) for the marijuana offense in number 2. I request that the order be recalled and relief be granted in accordance with Health and Safety Code section 11361.8(b) so that I will be resentenced.

4. REQUEST FOR REDESIGNATION

☐ I am no longer a ward of the court (probation completed) for the marijuana-related offense in number 2. I request the court's dispositional order be recalled and relief be granted in accordance with Health and Safety Code section 11361.8(f) so that the offense will be redesignated as an infraction.

5. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE

☐ I know that I have the right to have this matter heard by the judge who originally sentenced me. I am willing to have any available judge hear the case.

6. REQUEST FOR HEARING

☐ I request a hearing if the prosecuting agency opposes my application. I understand that by checking this box, the court will set a hearing only if it is opposed by the Prosecution/Prosecution Agency.

☐ I request that the court set a hearing even if my application is not opposed by the Prosecution/Prosecution Agency.

7. WAIVER OF APPEARANCE

☐ I understand that I have a right to personally attend any hearing held in this matter and argue on my behalf. I give up that right. The case may be heard without my appearance.

Date: _____

▶ _____
SIGNATURE OF PETITIONER

File this form with the court. The court will send a copy to the probation department and to the prosecuting agency to respond.

TO BE FILLED OUT BY THE PROSECUTING AGENCY

8. PROSECUTING AGENCY RESPONSE

☐ The prosecuting agency has no objection to this petition. Petitioner is entitled to the requested relief without a hearing.

☐ The prosecuting agency does not object to the petitioner's eligibility for relief, but requests a hearing on the issue of a new dispositional order.

☐ The prosecuting agency requests a hearing and objects to the granting of the petition because:

- ☐ The prosecuting agency does not agree that the petition should be granted because the offense for which petitioner was found to be within the jurisdiction of the court under Welfare and Institutions Code section 602 is not eligible for the requested relief under Health and Safety Code section 11361.8.
- ☐ Petitioner is eligible for relief, but relief should be denied because petitioner presents an unreasonable risk of danger to public safety if he/she is resentenced.
- ☐ Other: _____

Date: _____

_____
SIGNATURE OF PROSECUTING AGENCY



APPENDIX W

Certificates Of Rehabilitation—Period Of Rehabilitation

The period of rehabilitation is five years residence in California PLUS a period of time (for most, +2 years, but there are exceptions listed below). To figure out your period of rehabilitation, you add the base term of 5 years plus an additional amount of time based on your conviction offense:[3331]

- *Base 5 years* + 2 years = 7 years if your conviction was for:
  - California Penal Code sections 311.2(b), (c), or (d), 311.3, 311.10, or 314;
  - Any offense not listed here that does *NOT* carry a life sentence.
- *Base 5* years + 4 years = 9 years if your conviction was for:
  - California Penal Code sections 187, 209, 219, 4500, or 18755;
  - Military & Veterans Code section 1672(a); *or*
  - Any other offense that carries a life sentence;
- *Base 5* + 5 years = 10 years if your conviction was for:
  - Any offense that requires you to register as a Sex Offender under California Penal Code section 290 (including any conviction for an attempted offense);
  - Exception: If your conviction was for sections 311.2(b), (c), or (d), 311.3, 311.10, 314, you only need to wait 7 years (see above).

In addition to the above requirements, you must have completed any term of probation or parole that was part of your sentence or was a condition of your release. HOWEVER, the time you spend on probation or parole counts toward your total "period of rehabilitation."

NOTE: If you served *consecutive* prison terms, the judge may think that you should wait for a longer period of rehabilitation. If this happens, the judge will deny your COR the first time you apply, and will tell you how much additional time you must wait before you can re-apply.[3332]

NOTE: It is possible to apply for a Certificate of Rehabilitation before the end of your period of rehabilitation. You must convince the judge that granting your Certificate of Rehabilitation early serves the "interests of justice."[3333] In other words, you'd better have a really good reason why you should get a COR early. The judge may consider your good conduct, rehabilitation efforts, and how important getting a COR is to your success in the future. (This option is not available to you if you are required to register as a sex offender under California Penal Code section 290.)

[3331] CAL. PENAL CODE § 4852.03(a).
[3332] CAL. PENAL CODE § 4852.03(a)(4). See also People v. Blocker, 190 Cal. App. 4th 438 (2010) (Refusal to admit guilt of the underlying crime can be a reason for a court to deny a certificate of rehabilitation).
[3333] Cal. Penal Code § 4852.22.

APPENDIX X

Certificate Of Rehabilitation—Petition For Certificate Of Rehabilitation

If you meet all of the eligibility requirements for a Certificate of Rehabilitation (see PG. 981) AND you have completed the period of rehabilitation (see APPENDIX W, on PG. 1056) (or you want to request a COR early), you will need to file papers (called a *Petition for Certificate of Rehabilitation*) in the criminal court in the county where you *currently live*. Just like in your criminal case, you have the right to a lawyer to help you with the process of requesting a COR.

NOTE: You must request a Certificate of Rehabilitation from the court in the county *where you currently live*.

STEP 1: **Get and Fill out the Court forms**

- You will need to get and fill out 2 forms for your petition (together, they are called an *Application for Certificate of Rehabilitation & Pardon*):
  - *Notice of Filing for Certificate of Rehabilitation*; and
  - *Petition for Certificate of Rehabilitation*.
  - You will also need to get a *Proof of Service* form—but don't fill it out yet.
- You can get these forms (and instructions for how to fill them out) from:
  - The court clerk;
  - The county Probation Department, or
  - The Public Defender's Office.
  - You may also be able to download them from the website of your county court (or the court any other county, since the forms are the same statewide).

WHAT SHOULD I SAY IN MY PETITION?

The judge wants to know that you are truly rehabilitated. You will need to show that since your release from prison or jail:

1. You have lived "an honest and upright life,"
2. You have behaved with "sobriety and industry,"
3. You have shown "good moral character," AND
4. You have obeyed all laws.[3334]

The judge will consider all of these factors when deciding whether or not to grant your COR. Your petition should:

- Emphasize all of the positive things that you've done since your conviction (both while you were incarcerated and since your release), such as:
  - your efforts at rehabilitation (treatment or behavioral programs, period of sobriety, etc.)
  - what you've learned and how you've changed since your conviction;
  - successful completion of your sentencing and supervision (parole or probation) requirements; AND
  - any other accomplishments since your conviction, such as employment, school achievements (including any classes, GED, or degree that you've completed), volunteer work, community involvement (church, youth groups, mentoring), and family life.
- If you are requesting a COR to help improve your employment opportunities or for getting a professional or occupational license, make sure you say this in your petition!
- If you have had any new convictions or violations while on supervision, make sure you explain them—why the conviction happened, what you are doing differently now, and why you will not have the same problems again in the future.
- If you are currently required to register as a sex offender for your conviction, you must also convince the judge that you do not pose any threat of committing any sex offenses against children.[3335]
- You should include as many letters of support and proof of your accomplishments as possible. (See APPENDIX N, on PG. 1024 for tips on getting letters of support).

STEP 2: **File Your Petition with the Court clerk**

- Once you have filled out your court forms, make at least 5 copies and take everything to the court clerk to be filed. Remember, you will need to file your forms with the criminal court in the county *where you currently live*.

[3334] Cal. Penal Code § 4852.05.
[3335] Cal. Penal Code § 4852.13.



- When you file your forms, the clerk will stamp them, give you back the copies, and give you a court date for your hearing. Make sure the date is at least 30 days away.

STEP 3: **Serve your Papers on the other parties**

- You will need to serve your court papers on all of the following people:
  - The District Attorney in the county where you live;
  - The District Attorney(s) in every county(s) where you were convicted (if you have convictions in counties other than the one you live in now);
  - The Governor's Office.
- You can serve your papers in person or by mail.
- You must make sure that all of your papers are served on everyone at least 30 days before your hearing (or 35 days if you are sending them by mail). If you do not serve your papers in time, your petition will be dismissed.[3336]
- After you have served all your court papers, fill out the Proof of Service and file it with the court clerk in the county where you live (the same place you filed your Notice and Petition papers in Step 2).

STEP 4: **Investigation by DA**

- After you file your petition, the judge may ask the DA to do an investigation of your life, conduct, and rehabilitation since your release.
- As part of the investigation, the DA may contact you directly; may talk to your family, employer, and neighbors; and may also get any records or reports related to your conviction, including trial documents, prison records, and probation/parole reports.
- Afterward, the DA will prepare a report for the judge, which will help the judge decide whether to grant your COR.

STEP 5: **The Court Hearing**

- Make sure you attend your court hearing on the date and time the clerk gave you! Remember, the hearing is your chance to make a good impression on the judge!
- During the hearing, the judge will consider your criminal history, your behavior in custody, and your conduct since your release. The judge will look at any reports or records from the District Attorney's investigation, and may also ask you or other people to answer questions.[3337] You should be prepared to answer any questions from the judge about your conviction, your life and conduct since then, and any information in your petition. Just like in a criminal case, make sure to stay calm and respectful no matter what is said about you or your past.
- In order to grant your COR, the court must find that you are rehabilitated and ready to be a responsible member of society—in other words, that you are ready to have all the *civil and political rights of citizenship*. If you are required to register as a sex offender due to your conviction, the judge must also find that you do not pose any threat of committing any sex offenses against children.[3338]

STEP 6: **Success!**

If the judge grants your request for a Certificate of Rehabilitation, s/he will give you your certificate, and will also send a copy to the Governor's Office. The COR serves as an official recommendation from the judge that the Governor grant you a full pardon. The COR also automatically serves as your application to the Governor for a pardon, so you will not have to do anything more to apply for one.[3339] (For information about Governor's pardons, see PG. 984, and APPENDIX Y, on PG. 1059.)

STEP 7: **If Denied, The Appeal**

- If the judge decides not to grant your Certificate of Rehabilitation, you can re-apply for a COR any time in the future.[3340] However, pay attention to the judge's reasons for denying your request so that you can fix or improve them before you re-file. This will increase your chances of being granted a COR the next time.
- If the judge set a new period of rehabilitation for you (because you served consecutive prison terms, or you have a new conviction), you will need to wait out this additional period before you can re-apply for a COR.

[3336] Cal. Penal Code § 4852.07.
[3337] CAL. PENAL CODE § 4852.10; see also People v. Zeigler, 149 Cal. Rptr.3d (2012).
(court could consider facts of offense for which petitioner had received Proposition 36 drug treatment).
[3338] Cal. Penal Code § 4852.13.
[3339] Cal. Penal Code § 4852.13.
[3340] See People v. Lockwood, 66 Cal. App. 4th 222 (1998).

APPENDIX Y

Governor's Pardon—Application For Traditional Pardon Directly From Governor (Without Certificate Of Rehabilitation)

STEP 1: **The Application**

You will need to fill out the "Application for Gubernatorial Pardon" with information about the conviction you want pardoned, any other convictions on your record, and why you deserve a pardon.

You can get the application online at: http://gov.ca.gov/s_pardonsandcommutations.php, *or* request an application by mail by writing to the Governor's office at the address below:

Governor's Office
State Capitol
ATTN: Legal Affairs
Sacramento, CA 95814

(There is a *sample* application in included in APPENDIX HH, on PG. 1080, but you should get the most up-to-date version from the Governor's Office or online, in case there are recent changes).

To complete the application, you will need to the following information:

- Your personal information (name, date of birth, address, etc.);
- Information about all of your prior convictions, including those in other states/countries;
- The circumstances of the crime you are requesting a pardon for;
- Why you are requesting the pardon;
- Why you think you should be granted a pardon (such as your excellent conduct, accomplishments, responsibilities, and rehabilitation since your conviction);
- The names of anyone you paid or gave a gift to for helping you with the application.

IMPORTANT: If you are directly applying for a "Traditional Pardon," also called a "Direct Pardon," from the Governor, you may want to emphasize and explain the following:

- Your excellent conduct since your conviction;
- You have led an honest and upstanding life since your conviction;
- You have contributed to your community and been a responsible member of society;
- Your responsibilities and accomplishments, including work, school, volunteering, family situation, community involvement, and/or religion;
- You have avoided any further criminal activity.

STEP 2: **Notice to the District Attorney**

- After you fill out your application, you must notify the District Attorney in the county *where your conviction is from* that you intend to request a pardon. If you are requesting a pardon for several convictions, you must notify the DAs in *every* county where you have a conviction.[3341]
- You must use a special form to notify the DAs. The form is included in the Application for Gubernatorial Pardon, along with instructions on how to complete the form and deliver it to the DA(s).
- You must deliver your notice for to the DA(s) at least 10 days before you submit your application to the Governor.[3342]
- Once the DA has received your notice, he/she will complete the bottom section of the form to confirm that he/she received the notice, and then return it directly to the Governor's Office.

STEP 3: **Submitting your Application to the Governor's Office**

At least 10 days after you have sent your notice to the DA(s) in every county where you have convictions to be pardoned, you will mail your completed Application for Gubernatorial Pardon to the Governor's Office:[3343]

Governor's Office
State Capitol
ATTN: Legal Affairs
Sacramento, CA 95814

[3341] Cal. Penal Code § 4802.
[3342] Cal. Penal Code § 4802.
[3343] See How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR (Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.



STEP 4: **The Review**

After you have submitted your application, the Governor will begin a review of your case. S/he may request that the judge of the court in which you were convicted, or the DA who prosecuted you, provide a summary of the facts of your case as well as a recommendation on whether or not your pardon should be granted.[3344] The Governor will also typically forward your application to the Board of Parole Hearings for its opinion.[3345] The BPH may then investigate your application by reviewing transcripts and documents from your trial (or any other proceedings in our case), examining witnesses, taking testimony, or whatever else it finds necessary to evaluate your application. The BPH will then make a recommendation to the Governor.[3346] Remember, if you were convicted of more than one felony, the Governor MUST forward your application to the BPH for review.[3347]



IMPORTANT: If you were convicted of more than one felony, the Governor CANNOT grant your pardon without a recommendation from the California Supreme Court.[3348] However, the Governor does not *have* to send your application to the Supreme Court to get its recommendation in the first place!

[3344] Cal. Penal Code § 4803.
[3345] How to Apply for a Pardon, STATE OF CAL. OFFICE OF THE GOVERNOR (Sept. 5, 2013), http://gov.ca.gov/docs/How_To_Apply_for_a_Pardon.pdf.
[3346] Cal. Penal Code § 4812.
[3347] CAL. PENAL CODE §§ 4802, 4813.
[3348] Cal. Penal Code § 4852.16.

APPENDIX Z

How to Seal Your Adult Arrest Record (California State Records)

To get your arrest record sealed, you will need to go through the law enforcement agency and/or court in the county where you were arrested, depending on your situation.

STEP 1: **Get and Fill Out the Forms**

You will first need to get and fill a "*Petition and Order to Seal and Destroy Adult Arrest Records*." Some counties have their own local forms to use for this, but you can always use the standard Department of Justice form.[3349]

To find your county's local forms (if your county has them), you can check with the county court or on the court's website, or contact the law enforcement agency that arrested you.

You can find the standard Department of Justice form on the DOJ website at: http://ag.ca.gov/idtheft/forms/bcii_8270.pdf.

To complete the petition, you will need the following information:

- The exact date you were arrested;
- The name of the law enforcement agency that arrested you (for example, the city police department, county sheriff, California Highway Patrol, or other law enforcement agency);
- The case number or booking number that the arresting law enforcement agency assigned to your case;
- What offense or charges you were arrested for; AND
- The outcome (disposition) of those charges (i.e. what happened in your case).

You will also need to get copies of any documents or other evidence in support of your petition. This may include declarations, affidavits, police reports, or anything else that can be used to identify or describe the arrest. If you are petitioning to seal your record on the basis of factual innocence, you will need to find evidence supporting this claim. These documents will become part of your petition. Make extra copies of your Petition and all supporting documents (at least 4 copies). A sample petition is available in APPENDIX II, on PG. 1084.

STEP 2: **File the Petition and Order (plus Supporting Documents)**

After you have completed the forms, you will need to file your petition and any supporting documents, with the correct agency. Where you file your petition depends on your situation:

- **OPTION 1:** If NO charges (complaint) were ever filed against you—in other words, if you never had to appear in court after your arrest—you will give your petition directly to the law enforcement agency that arrested you.
  - You will also need to serve a copy of the petition on the District Attorney of the county in which you were arrested.
- **OPTION 2:** If charges (a complaint) were filed against you, and you appeared in court, you must file your petition with the clerk of the court where you appeared for the case. (If possible, it is recommended that you ask a lawyer to help you with your case.
  - When you file your petition with the court clerk, the clerk will set a hearing date for your petition.
  - You will also need to serve copies of your petition on the law enforcement agency that arrested you AND the District Attorney of the county in which you were arrested. You must serve your petition on the DA at least 10 days before your hearing date.[3350]

STEP 3: **Review/Court Hearing**

- **OPTION 1:** If you gave your petition directly to the law enforcement agency that arrested you, the law enforcement agency has 60 days to review and respond to your petition. If neither the law enforcement agency nor the District Attorney responds to your petition within the 60 days, the petition is considered denied.[3351]

[3349] CAL. PENAL CODE § 851.8(g); see Form BCII 8270, STATE OF CAL. DEP'T OF JUSTICE RECORD MANAGEMENT/RECORD SEALING UNIT, http://ag.ca.gov/idtheft/forms/bcii_8270.pdf.
[3350] Cal. Penal Code § 851.8(c).
[3351] CAL. PENAL CODE § 851.8. ("If…the law enforcement agency and prosecuting lawyer do not respond to the petition by accepting or denying the petition within 60 days of the running of the relevant statute of limitations or within 60 days after the receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied.").



- If your petition is denied—either because the law enforcement agency tells you they are denying your petition, OR because they failed to respond—you can then file your petition with the court and request that the court order your record sealed (follow steps for OPTION 2 above).
- NOTE: You MUST file your original petition with the court. This means that you will have to get your original petition back from the law enforcement agency that you gave it to, and then file it with the court.[3352]

- **OPTION 2:** If you filed your petition with the court (either first, or after it was denied by the law enforcement agency), there will be a hearing in front of a judge who will decide whether or not to grant your petition.[3353] At the hearing, you (or your lawyer) will present evidence of your factual innocence, and try to convince the court to grant your petition to have your arrest record sealed. The District Attorney may present evidence and argument against you.[3354]

STEP 4: **The Decision**

If the court finds that you are factually innocent, the judge will grant your petition and order that your arrest record and all related information be sealed for three years and then destroyed. If the judge does not find you factually innocent (denies your petition), you can appeal the decision.

[3352] Cal. Form BCII 8270, STATE OF CAL. DEP'T OF JUSTICE RECORD MANAGEMENT/RECORD SEALING UNIT, http://ag.ca.gov/idtheft/forms/bcii_8270.pdf.
[3353] Cal. Penal Code § 851.8(b).
[3354] CAL. PENAL CODE § 851.8(b).

APPENDIX AA

How to Seal Juvenile Records

STEP 1: **Get a copy of your Juvenile Records**

It is very important that you get a copy of your juvenile record and know exactly what is in it, because you will need this information to fill out your court forms properly. You can get a copy of your juvenile from the Clerk's Office of the Juvenile Court where your case was adjudicated.[3355] Make sure you bring a photo ID with you, or you will not be able to get your record.

STEP 2: **Get and Fill out a Petition to Seal Juvenile Records**

When you go to the clerk's office to get a copy of your juvenile record, you should also ask the clerk for a copy of the proper form, called a *Petition to Seal Juvenile Records*, and any instructions that go with it. Follow the instructions carefully, especially when you are asked to list the arrests or charges that you want sealed. ONLY THE ONES YOU LIST WILL BE SEALED! This is why it is important to have a copy of your juvenile record with you so you do not miss anything.[3356]

STEP 3: **File your Petition**

- Take your completed petition back to the Clerk's Office of the juvenile court you were adjudicated in and file it with the clerk.
- Ask the clerk if the petition needs to be served on any other parties (such as the District Attorney or the Probation Department). If it does, be sure to ask the clerk if the clerk's office will serve it, or if you have to serve the papers yourself.
- After you have filed your petition, you will get a court date for a hearing. The clerk may set the hearing date when you file your petition, or you may receive a Notice of Hearing in the mail (it can take several weeks to get your Notice of Hearing by mail).

STEP 4: **The Hearing**

- At the hearing, the judge will consider your petition AND get a recommendation from the probation department about whether your record should be sealed.
- You are not required to attend the hearing, but it is a good idea to go so that you can answer any questions that the judge might have. You are also allowed to bring witnesses to testify on your behalf (such as a pastor, teacher, employer, counselor, or other people who know you and can speak positively about you).
- After the hearing, the judge will rule on (decide) whether or not to seal your records. If the judge grants your petition and seals your records, s/he will also order all other agencies that have juvenile records on you (such as the police, probation department, DOJ, and DA) to seal their records also.

STEP 5: **Appeal**

If the judge denies your petition, ask the judge if and when you will be able to re-file your petition. You should also ask the judge for the reasons why s/he denied your petition, so that you can fix or address any problems before you re-file.

! **IMPORTANT: As of January 1, 2015, California Welfare & Institutions Code Section 786 changed so that juveniles who successfully complete probation, and otherwise qualify to have their record sealed, will have their juvenile record *automatically* sealed by the judge, *without* having to file a petition in court or do anything else.[3357] However, this DOES NOT apply to juveniles who completed their probation BEFORE January 1, 2015. If you completed your juvenile probation BEFORE January 1, 2015, you will still need to file a petition in court to have your juvenile record sealed.**

[3355] See Sealing Your Juvenile Records, PUBLIC COUNSEL (2013), http://www.publiccounsel.org/tools/publications/files/Sealing-your-Juvenile-Record.pdf.
[3356] See Sealing Your Juvenile Records, PUBLIC COUNSEL (2013), http://www.publiccounsel.org/tools/publications/files/Sealing-your-Juvenile-Record.pdf.
[3357] Cal. Welf. & Inst. Code § 786.

APPENDIX BB

How to Get DNA Expungement

➢ CALIFORNIA

STEP 1: **Request expungement directly from the California DOJ**

(Note: this is the fastest and easiest way to get your DNA expunged)

If you meet all of the requirements for California DNA expungement, you should:

- Get and fill out the California DOJ's Streamlined DNA Expungement Application form;
- Include the required documents to prove that you qualify for DNA expungement (the Application form will tell you which documents to include, since it will be different depending on your specific situation); AND
- Mail your completed Application form and all documents to the following address:

  California Department of Justice
  CAL-DNA Data Bank Program
  Attn: Expungement Requests
  1001 W. Cutting Blvd., Suite 110
  Richmond, CA 94804

The DOJ's *Streamlined DNA Expungement Application* form is available online at https://oag.ca.gov/sites/all/files/agweb/pdfs/bfs/expungement_app.pdf?

If you meet all of the requirements and have included all required documents, your DNA MUST be expunged from the California database.[3358] The process usually takes about 2-4 weeks for your DNA to be removed.[3359]

If your request for DNA expungement is denied, you can still file a new request for DNA expungement in court. (However, if your first request is denied, you may want to talk to a lawyer before filing a new request in court, since this may mean that you have another conviction on your record that disqualifies you from DNA expungement.)

STEP 2: **Requesting DNA expungement in court**

(Note: You can do this if your direct request to the DOJ was denied)

To request DNA expungement in court, you will need to:

- Get and complete the Petition for Expungement of DNA Samples & Profiles (form CR-185/JV-796);
  - The form is available online at http://www.courts.ca.gov/documents/cr185.pdf, or ask the court clerk for a copy (or where to get a copy) of the form.
- File your form with the court clerk in the county where you were arrested or where your case was held;
- Serve copies of your Petition on the DOJ's DNA Lab (CAL-DNA Program) and District Attorney in the county where you were arrested or where your case was held; AND
- Have a hearing before a judge. You will need to show that you meet all of the legal requirements for DNA expungement (described above), and it will be up to the judge to decide whether to grant your DNA expungement.[3360]

WHAT IS A "CERTIFIED COURT ORDER"?

You will need to get the court order from the federal court where your case was heard. The court order must be *certified* by the court clerk (meaning it is a true and accurate copy of the original court order), and must include enough personal information to identify you as the defendant in the case (including your full name, social security number, and/or date of birth). Both the judge and the clerk must sign and date the certified copy of the court order.

For more information about DNA expungement in California in general, see Getting Expunged or Removed from the CAL-DNA Data Bank on the California DOJ's website at: https://oag.ca.gov/bfs/prop69/faqs.

➢ FEDERAL

If you meet all of the requirements to expunge your DNA from a federal arrest or conviction (PG. 1000), you must:

- Get a **certified copy of the final court order** from your case, with the following information:

[3358] CAL. PENAL CODE § 299(c)(2).
[3359] BFS DNA Frequently Asked Questions, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, https://oag.ca.gov/bfs/prop69/faqs.
[3360] CAL. PENAL CODE § 299(c)(1).



  - If you were arrested—The court order must show that NO charges were filed against you, or the charges were dismissed, or you were acquitted of the charges.
  - If you were convicted—The court order must show that your conviction was overturned.
- Send a written letter to the FBI to ask that your DNA be expunged from the National DNA Index System.
  - Include all of your personal information (including your full name, social security number, and/or date of birth).
  - Include as much information as possible about your arrest or conviction (date or arrest or conviction; case or docket number; date of dismissal, acquittal, or overturning of conviction).
- Most importantly: Include the certified court order from Step 1!
- Mail your letter and the certified court order to:

  Federal Bureau of Investigation
  Laboratory Division
  2501 Investigation Parkway
  Quantico, VA 22135
  Attention: Federal Convicted Offender Program Manager

- The FBI is required to expunge your DNA from the national database if you meet all the requirements and include the proper court order.[3361]

For more information on expungement of DNA from the national database, visit the FBI's website on CODIS—Expungement Policy, available at http://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis_expungement.

[3361] 42 U.S.C. 14132(d)(1); CODIS—Expungement Policy, Expungement of DNA Records in Accordance with 42 U.S.C. 14132(d)(1)(A), THE FED. BUREAU INVESTIGATION, http://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis_expungement.

APPENDIX CC

Sample California RAP Sheet

Sample DOJ Rap Sheet

The following CII record, NUMBER 99 000 015, IS FOR OFFICIAL USE ONLY

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
8-9-82 (1)	PD LOS ANGELES (2) 388555t, 89894371	DOE, JOHN	489PC-GRAND THEFT 8-10-82 (3)	9-15-82, #31134000 (4), 489 PC, FELS, CONV, 36MOS PROB, 365 DS JL5-31-84, #3249604, 17(b)(3), 1203.4, DISM,FURTH OF JUST (5) 10-14-84, #A395487, CERT OF REHABILITATION (6)
10-21-86	PD WALNUT CREEK	DOE, JOHN	459PC-BURG	12-28-86, #52149801602(L) PC, MISD, CONV, 24 MOS PROB, 30 DS JL (7) 2-21-88, #223019821203.4, DISM, FURTH OF JUST
1-19-87	SO LOS ANGELES 2000000	DOE, JOHN	1135 & S-POSS NARC CONT SUB FOR SALE 496PC-REC STOL PROP	3-20-87 (9), #A-400000, 11350H...S, 496PC, FELS, (10) CONV (11), 36MOS PROB,180DS JL 8-16-87,PROB REV, SENT 1YR 4MOS ST PRIS (8)

Key To Sample DOJ Rap Sheet

This sample rap sheet contains information on 4 arrests.

1) Arrest date
2) Arresting agency
3) Arrest charges, including a description of each charge and its criminal code number
4) Index or docket number
5) The "DISM, FURTH OF JUST" notation indicates that DOJ has expunged the entry
6) Whether a Certificate of Rehabilitation has been issued and details
7) Corrections date, including parole and probation information
8) Sentence
9) Date of disposition
10) Offense convicted of
11) Disposition of case

1 Action Center, How to Get and Clean Up Your California RAP Sheet (2002).

APPENDIX DD

FBI Applicant Information Form – FBI RAP Sheet

See next page.

I-783 (Rev. 04-02-2014) **OMB-1110-0052**

PRIVACY ACT STATEMENT

The FBI's acquisition, retention, and sharing of information submitted on this form is generally authorized under 28 USC 534 and 28 CFR 16.30-16.34. The purpose for requesting this information from you is to provide the FBI with a minimum of identifying data to permit an accurate and timely search of identity history identification records. Providing this information (including your Social Security Account Number) is voluntary; however, failure to provide the information may affect the completion of your request. The information reported on this form may be disclosed pursuant to your consent, and may also be disclosed by the FBI without your consent pursuant to the Privacy Act of 1974 and all applicable routine uses. Under the Paperwork Reduction Act, you are not required to complete this form unless it contains a valid OMB control number. The form takes approximately 3 minutes to complete.

Applicant Information **** Denotes Required Fields***

*Last Name _____ *First Name _____
Middle Name 1 _____ Middle Name 2 _____

*Date of Birth: _____ *Place of Birth: _____ U.S. Citizen or Legal Permanent Resident: Yes ◯ No ◯

*Country of Citizenship: _____ Country of Residence: _____ Prisoner Number (if applicable): _____

*Last Four Digits of Social Security Number: _____

*Height: _____ *Weight: _____

*Hair *(please check appropriate box):*

☐ Bald ☐ Black ☐ Blonde/Strawberry ☐ Blue ☐ Brown ☐ Gray ☐ Green ☐ Orange ☐ Pink
☐ Purple ☐ Red/Auburn ☐ Sandy ☐ Unknown ☐ White

*Eyes (please check appropriate box):

☐ Black ☐ Blue ☐ Brown ☐ Gray ☐ Green ☐ Hazel ☐ Maroon ☐ Multicolored ☐ Pink ☐ Unknown

Applicant Home Address

*Address _____

*City _____ *State _____
*Postal (Zip) Code _____ *Country _____
Phone Number _____ E-Mail _____

Mail Results to Address

C/O _____ ATTN _____
Address _____
City _____ State _____
Postal (Zip) Code _____ Country _____
Phone Number (if different from above) _____

Payment Enclosed: *(please check appropriate box)*

☐ CERTIFIED CHECK ☐ MONEY ORDER ☐ CREDIT CARD FORM

Reason for Request:

☐ Personal review ☐ Challenge information on your record ☐ Adoption of a child in the U.S.
☐ International adoption ☐ Live, work, or travel in a foreign country ☐ Other

*** APPLICANT SIGNATURE** _____ **DATE** _____

Mail the signed applicant information form, fingerprint card, and payment of $18 U.S. dollars to the following address:

FBI CJIS Division – Summary Request
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

You may request a copy of your own Identity History Summary to review it or obtain a change, correction, or an update to the summary.

APPENDIX EE

FBI-Approved Channelers

3M Cogent Systems
www.cogentid.com
(614) 718-9691

Accurate Biometrics
www.accuratebiometrics.com
(773) 685-5699

Biometrics4All, Inc.
www.applicantservices.com
(714) 568-9888

Daon Trusted Identity Services, Inc.
www.daontis.com/fl/index.html
(703) 797-2562

Eid Passport, Inc.
www.eidpassport.com
(855) 531-5827

Fieldprint, Inc.
www.fieldprint.com/FBI
(877) 614-4364

Inquiries, Inc.
www.inquiriesinc.com
(866) 987-3767

MorphoTrust
www.IdentoGO.com/FBICheck
(877) 783-4187

National Background Check, Inc.
www.nationalbackgroundcheck.com
(877) 932-2435

National Credit Reporting
www.myFBIreport.com
(800) 441-1661

Telos Identity Management Solutions, LLC
https://enroll.idvetting.com
(800) 714-3557

TRP Associates, LLC dba ID Solutions
www.trpassociates.net
(877) 885-1511

VetConnex
www.vetconnex.com
(952) 224-865

APPENDIX FF

Petition for Dismissal (CR-180) & Order for Dismissal (CR-181)

See next page.

CR-180

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	***FOR COURT USE ONLY***
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
PETITION FOR DISMISSAL **(Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41)**	CASE NUMBER: ***FOR COURT USE ONLY*** Date: Time: Department:

1. On *(date):*_____, the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following:

Offense *(Specify each offense in the case noted above.)*	**Code**	**Section**	**Type of offense:** *(Felony; Misdemeanor; Infraction)*	**Eligible for reduction to misdemeanor under Penal Code § 17(b)** *(Yes or No)*

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. ☐ **Felony or misdemeanor with probation granted *(Pen. Code, § 1203.4)***

Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*):

a. ☐ has fulfilled the conditions of probation for the entire period thereof;

b. ☐ has been discharged from probation prior to the termination of the period thereof;

c. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

3. ☐ **Misdemeanor or infraction with sentence other than probation *(Pen. Code, § 1203.4a)***

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner *(check one)*:

a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; ***or***

b. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

4. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5)** ***(Pen. Code, § 1203.41)***
The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, and should be granted relief in the interests of justice, and *(check one:)*
   a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); ***or***
   b. ☐ more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

   (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b).

Petitioner requests that he/she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section ◯ 1203.4, ◯ 1203.4a, or ◯ 1203.41 of the Penal Code.

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

Executed on: _____ _____
(DATE) (SIGNATURE OF PETITIONER OR ATTORNEY)

_____ _____ _____ _____
(ADDRESS, PETITIONER) (CITY) (STATE) (ZIP CODE)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

6. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, or 1203.41, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

7. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 1203.4, 1203.4a, or 1203.41 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

FOR COURT USE ONLY

Date:

_____

(JUDICIAL OFFICER)

APPENDIX GG

Prop. 47 – Sample Petitions for San Fransisco, Sacramento, and Los Angeles

See the next five pages, and use **only the forms that are appropriate for *your county***.

SAN FRANCISCO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO	
Name: SBN: Address: Phone: Attorney for Petitioner	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA **PETITIONER**	Date: Time: Department:
PETITION FOR RESENTENCING OR RECLASSIFICATION (PENAL CODE §1170.18)	**SUPERIOR COURT CASE NUMBER** Court#

Petitioner in the above-entitled case hereby files a petition for:

☐ Resentencing

☐ Reclassification

of the felony count(s) of _____ pursuant to Penal Code §1170.18.

Petitioner:

☐ Has completed his/her sentence and petitions to have the felony count(s) designated as a misdemeanor(s).

☐ Has a pending case and/or is still serving a sentence on the felony count(s) and petitions for resentencing.

Executed on: _____

_____
Name
Attorney at Law

SAN FRANCISCO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO	
Name: SBN: Address: Phone: Attorney for Petitioner	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA **PETITIONER**	
ORDER **PENAL CODE §1170.18**	**SUPERIOR COURT CASE NUMBER** Court#

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner is eligible for the following requested relief:

☐ The court **denies** the petition.
☐ The court **grants** the petition. The court finds that the petitioner is eligible for the following relief:
☐ The court reduces count/s_____ a felony offense of _____ to a misdemeanor.
☐ Formal probation is converted to court probation, same terms and conditions.
☐ Formal probation is converted to court probation, modified as follows:_____
☐ Formal probation continues as ordered, same terms and conditions.
☐ Formal probation is modified as follows: _____
☐ Petitioner faces a maximum potential sentence of 364 days or less. ☐ Petitioner has completed a sentence of 364 days or less.
☐ Probation is hereby terminated ☐successful ☐unsuccessful.
☐ The restitution fine is reduced to $150.
☐ Other: _____
☐ Having been convicted of a misdemeanor, and having completed the sentence for this conviction, Petitioner is therefore not subject to supervision by the California Department of Corrections and Rehabilitation.

This Order shall be set aside upon request of Petitioner.

Any felony conviction that is recalled and resentenced under **§**1170.18 subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

Executed on: _____ _____
JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE

The foregoing document, consisting of _____ page(s), is a full, true and correct copy of the □ original □copy on file in this office.
Date:_____ Clerk of the Superior Court

By _____

SAN FRANCISCO

PROOF OF SERVICE

I, the undersigned, say:

I am over eighteen years of age and not a party to the above action. My business address is _____, California 94____

I personally served copies of the attached on the following:

San Francisco District Attorney, 3rd Floor
850 Bryant Street
San Francisco, CA 94103

Attn: _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ in San Francisco, California.

_____

Print Name

SACRAMENTO

Superior Court of California, County of Sacramento

Petition for Re-designation of Sentence (Proposition 47)

Case Number:				***For Court Use Only***
Attorney Name or Defendant Name without attorney:				
Address:				
City, State, Zip:				
Telephone Number:		Fax Number (Optional):		
Email Address (Optional):				
People of the State of California vs. Defendant:				*Case Number:*
Date of Birth:		Cross Reference Number:		*Court Date:*
Last four digits of SSN:		Driver's License Number:		*Court Time:*
CII Number:		CDC Number:		*Court Dept.:*

1. On _____, the defendant in the above entitled criminal case was convicted of
   (date)
   violation section _____ of the _____ code.**

   ** Describe details of theft charges here

2. ☐ I qualify for re-designation of this matter as a misdemeanor as there are no disqualifiers present under Penal Code section 1170.18(b)(1)-(3) and (i).
3. ☐ Because my application satisfies the criteria, I request that my felony offense be re-designated a misdemeanor. (Penal Code, § 1170.18 (f)-(g).)
4. Custody status on this case
   - ☐ Currently in custody in Sacramento County Main Jail / Rio Cosumnes Correctional Center.
   - ☐ Currently in custody in State Prison
   - ☐ Currently in custody in other location: _____.
   - ☐ Currently on (Post Release Community Supervision (PRCS) or Parole until _____.
   - ☐ I am not currently in custody on this case.
5. I request the following (check all that are applicable):
   - ☐ a. To have credit for time served applied to the re-designated charge.
   - ☐ b. To be terminated from Parole / Post Release Community Supervision / Mandatory Supervision.
   - ☐ c. To be placed on Informal Probation or ☐ My Probation be terminated.
   - ☐ d. To waive my personal appearance.
   - ☐ e. To request the Public Defender be appointed to me pursuant to standing order number SSC-14-6.
   - ☐ f. To agree to have a Judge designated by the Presiding Judge of this Court hear this matter.

Executed on: _____ ▶ _____
(Date) (Signature of Petitoner or Attorney)

LOS ANGELES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, State Bar Number and Address*)	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. (*Optional):* E-MAIL ADDRESS (*Optional*): ATTORNEY FOR (*Name):*	
PEOPLE OF THE STATE OF CALIFORNIA *vs.* DEFENDANT	CASE NUMBER:

APPLICATION/PETITION FOR RESENTENCING AND PEOPLE'S RESPONSE
(Penal Code § 1170.18, subsections (b) and (g))

DEFENDANT'S APPLICATION/PETITION

On _____, defendant was convicted in the above-captioned case of a felony violation of a crime that has now been made a misdemeanor pursuant to Proposition 47. He/she was convicted of the following felony: _____
code section(s), including subsection(s)

❑ **Defendant does not have any conviction for an offense listed in Penal Code § 667(e)(2)(C)(iv) or which requires registration as a sex offender pursuant to Penal Code § 290(c).**

For Penal Code convictions only:

❑ **The amount in question is not more than $950.**

For Penal Code § 666 convictions only:

❑ **Defendant is not required to register under any portion of the Sex Offender Registration Act** *(Penal Code §§ 290 through 290.024).*

Applications Only

❑ **Defendant has completed his/her sentence for the offense and requests that the felony conviction be designated a misdemeanor conviction pursuant to Penal Code § 1170.18(f)-(i).**

Petitions Only

❑ **Defendant requests that the felony sentence be recalled and that he/she be resentenced to a misdemeanor pursuant to Penal Code § 1170.18(a)-(e).**

❑ **Defendant is still on supervision even though he/she has completed the jail or prison term.**
❑ **Defendant requests that he/she be released from parole per Penal Code § 1170.18(d).**

OR

❑ **Defendant is currently serving a sentence for the offense in**
_____
(name of jail or prison)

❑ **Resentencing the defendant would not pose an unreasonable risk of danger to public safety, as defined in Penal Code § 1170.18(c).**

_____ _____
Date ***Defendant or Attorney for the Defendant***

DISTRICT ATTORNEY'S RESPONSE

❑ People do not oppose. Defendant has completed his/her sentence and is eligible to have the felony conviction designated as a misdemeanor conviction.

❑ People do not oppose. Defendant is still serving his/her sentence and is eligible and suitable for resentencing. The People recommend the following sentence: _____

❑ People waive presence at resentencing.

❑ People oppose. Defendant is ineligible for the relief requested:
- ❑ Defendant's current conviction for _____does not qualify for Proposition 47 relief.
- ❑ Defendant is required to register pursuant to Penal Code § 290(c), or pursuant to Penal Code §§ 290 to 290.024 if the conviction is for Penal Code § 666.
- ❑ Defendant has a prior conviction for an offense listed in Penal Code § 667(e)(2)(C)(iv): _____

❑ People oppose. Defendant is eligible, but unsuitable for resentencing because resentencing the defendant poses an unreasonable risk of danger to public safety pursuant to Penal Code § 1170.18(c). People request that a suitability hearing be set.

_____ _____
Date ***Deputy District Attorney***

APPENDIX HH

Application for a Direct Governor's Pardon

See next page.

Governor Edmund G. Brown Jr. · State Capitol · Sacramento, California 95814

APPLICATION FOR GUBERNATORIAL PARDON

Complete this application to request a pardon from the Governor. A pardon is the forgiveness of a crime. If you are eligible for a Certificate of Rehabilitation, do not complete this application; instead obtain a Certificate of Rehabilitation from the superior court in your county of residence. (See Penal Code, § 4852.01.) **If a pardon is granted, this application will become a public record, however specific personal information will be redacted (hidden) before it is made available to the public.**

APPLICANT INFORMATION

Name: _____ **Date of Birth:** _____ **E-mail Address:** _____

Address: _____ **Phone Number:** _____

1. Conviction Summary:

List all prior convictions, including any in other states or countries. Attach additional pages if necessary.			
Offense(s):	Date of offense(s):	County of conviction(s):	Sentence(s):

2. Briefly describe the circumstances of the crime(s) for which you are requesting a pardon (attach additional pages as necessary):

_____

_____

_____

_____

3. Explain why you are requesting a pardon (attach additional pages as necessary):

_____

_____

_____

_____

4. Provide a brief statement explaining why you should be granted a pardon (attach additional pages if necessary):

_____

_____

_____

5. If you have paid any money or given any gift to anyone to assist in the preparation of this application, list their name, address, and amount paid or given (required by Penal Code section 4807.2):

_____

STATEMENT OF NOTICE TO DISTRICT ATTORNEY AND DECLARATION UNDER PENALTY OF PERJURY

This application may be submitted to the Board of Parole Hearings for investigation and recommendation pursuant to Penal Code section 4812. This application may also be submitted to law enforcement or other agencies for investigation or recommendation.

Penal Code sections 4804 and 4805 require that you give the District Attorney in the county of conviction written notice of your intention to apply for a pardon. You must complete the Notice of Intent to Apply for Executive Clemency (attached) and mail it to the District Attorney before submitting this application to the Governor's Office. If you are requesting a pardon for more than one conviction involving more than one county, each District Attorney must be given notice.

I, _____, declare under penalty of perjury under the laws of the State of California that I
(Print Full Name)
have served the District Attorney of the County of _____ with notice of my intent to apply for a pardon.
(Name of County*)

I further declare under penalty of perjury under the laws of the State of California that the information I have provided on this application is true and correct. I understand that any omission or misstatement of facts may result in the denial of the application and the filing of perjury charges against me.

Applicant's Signature Date

*If Applicable, List Additional Counties Here (Send Notice of Intent to Apply for Executive Clemency to All Counties Listed)

NOTICE OF INTENT TO APPLY FOR EXECUTIVE CLEMENCY

This notice is required by Penal Code sections 4804 and 4805.

To the District Attorney of _____ County: Please take notice that I, _____ ,

was convicted of the crime of _____ ,

committed in _____ County, California, on the date of _____ .

I will submit this application to the Governor of the State of California.

_____

Applicant's Signature Date

DISTRICT ATTORNEY ACKNOWLEDGEMENT

This section to be completed by the District Attorney only.

I, _____ , District Attorney of the County of _____ ,

do hereby acknowledge receipt of notice from _____ ,

that he/she intends to apply to the Governor of the State of California for a pardon.

Signed _____

Date _____

District Attorney: Please Return this Notice to the Governor's Office, Attn: Legal Affairs, State Capitol, Sacramento, CA 95814.

APPENDIX II

Petition & Order to Seal and Destroy Adult Arrest Records

See next page.

State of California
Record Management/Record Sealing Unit
FORM BCII 8270 (Rev. 7/06)

Department of Justice

Record Sealing Unit
P.O. Box 903417, Sacramento, CA 94203-4170

PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS (Penal Code 851.8)

Print or Type required information

FULL NAME OF PETITIONER Last	First	Middle

ALIASES	Date of Birth	DRIVER LICENSE NUMBER	SOCIAL SECURITY (OPTIONAL)

STREET NUMBER	STREET NAME	APARTMENT OR UNIT NUMBER

CITY	COUNTY	STATE	ZIP CODE

DATE(s) OF ARREST	NAME OF ARRESTING AGENCY	AGENCY CASE NUMBER	CHARGE(S)	DISPOSITION

SIGNATURE OF PETITIONER _____ DATE _____

SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY/COURT WITH JURISDICTION FOR OFFENSE(S)

I have verified the above information to be accurate.

SIGNATURE OF AGENCY OR COURT OFFICER _____ DATE _____

NAME OF LAW ENFORCEMENT AGENCY OR COURT	LAW ENFORCEMENT AGENCY CASE NUMBER OF COURT CASE NUMBER
CII NUMBER OF PETITIONER	FBI NUMBER OF PETITIONER

SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY (851.8(a) PC)

☐ **PETITION GRANTED** ☐ **PETITION DENIED**

PRINT OR TYPE NAME OF AGENCY _____ DATE _____

SIGNATURE OF AGENCY _____ DATE _____

SECTION TO BE COMPLETED BY COURT OF JURISDICTION (851.8 (b), (c), or (d) PC)

☐ **PETITION GRANTED** ☐ **PETITION DENIED**

PRINT NAME OF JUDGE _____ DATE _____

SIGNATURE OF JUDGE _____

WAIVER: TIME RESTRICTION ON FILING WAIVED (851.8 (l) PC)

PRINT NAME OF AGENCY OFFICER OR JUDGE _____ DATE _____

SIGNATURE OF AGENCY OFFICER OR JUDGE _____

Distribution: Department of Justice, Record Sealing Unit, PO Box 903417, Sacramento, CA 94203-4170
District Attorney
Petitioner

(SEE REVERSE SIDE FOR MORE INFORMATION ON PENAL CODE § 851.8)



PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS – 851.8 PC

PETITIONER:

Penal Code section 851.8 PC provides that a person who has been arrested or detained and is determined to be factually innocent may petition the law enforcement agency or the court having jurisdiction over the matter to provide for the sealing and destruction of the record of that arrest. Petitions concerning arrests occurring on or after January 1, 1981, or accusatory pleadings filed on after January 1, 1981, may be filed for up to two years following the arrest filing date. Until January 1, 1983, petitions can be filed for arrests which occurred or accusatory pleadings which were filed up to five years prior to the statute's effective date of September 29, 1980.

PETITION THE ARRESTING AGENCY (851.8(a) PC

Penal Code section 851.81(a) PC provides in part: "In any case where a person has been arrested and no accusatory pleadings has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its record of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense."

PETITION DENIED OR NO RESPONSE TO PETITION (851.8(b) PC

Penal Code section 851.8(b) PC provides in part: "If, after receipt by both the law enforcement agency and the district of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal or justice court. A copy such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing." Note: the petitioner shall be responsible for obtaining the original petition from the law enforcement agency and submission to the court of jurisdiction.

PETITITON TO THE COURT OF JURISDICTION (851.8(C)

Penal Code section 851.8(c) provide in part: "In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant, may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence."

It is the responsibility of the petitioner to submit any declarations, affidavits, police reports or other evidence, which may exist to support the petition to appropriate the arresting agency or court and to serve a copy of the petition and supporting papers on the district attorney.

APPENDIX JJ

Immigrant Legal Resource Center - Warning for Immigrants about Medical & Legalized Marijuana

WARNING ABOUT MEDICAL AND LEGALIZED MARIJUANA

The Problem

- Because of Prop 64, California law provides that any person age 21 or over can legally possess and use marijuana. California also permits medical use of marijuana.
- Because of this, immigrants in California may think that using marijuana will not hurt their immigration status. Unfortunately, that's wrong!! It is still a federal offense to possess marijuana, and federal law controls for immigration.
- ***If a non-citizen admits to an immigration official that he or she has ever used marijuana,*** the person can face very serious immigration problems -- even if the person never was convicted of a crime, just used marijuana at home, and it was legal under state law.
- The person can face serious problems if he or she applies for a green card, applies for U.S. citizenship, travels outside the United States, or ICE just questions them on the street.
- More and more, immigration officers are asking noncitizens if they have ever used marijuana– *especially* in states that have legalized marijuana.

What to do: Legal Self-Defense for Noncitizens

- Don't use marijuana until you are a U.S. citizen. Don't work in a marijuana shop.
- If you have a real medical need and there is no good substitute for medical marijuana, get legal counsel.
- Never leave the house carrying marijuana, a medical marijuana card, paraphernalia (like a pipe), or accessories like marijuana T-shirts or stickers. Don't have photos or text about you and marijuana on your phone, Facebook, or anywhere else.
- Most important, ***never admit to any immigration or border official that you ever have used or possessed marijuana,*** unless you have expert legal advice that this is OK. If a federal official asks you about marijuana, say that you don't want to talk to them and you want to speak to a lawyer. You have the right to remain silent. Stay strong – once you admit it, you can't take it back. If you did admit this to a federal officer, get legal help quickly.

Immigrant Legal Resource Center www.ilrc.org
January 2017

TRIBAL ISSUES



This TRIBAL ISSUES CHAPTER covers special laws and programs that are available to or affect tribal members, including tribal enrollment and ID cards, housing programs, public benefits, and the Indian Child Welfare Act (ICWA).

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information because we know that people who are currently or formerly incarcerated often have difficulty getting legal information, and we cannot provide specific advice to every person who requests it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure whether the law has changed and applies to your situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.

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WHAT WILL I LEARN?

- **Requirements for tribal enrollment and basic application procedures.**
- **Process for obtaining a tribal ID.**
- **Requirements for registering as a sex offender with your tribe.**
- **Tribal housing options, eligibility factors, and how to apply.**
- **Specific tribal benefits programs: Eligibility and services provided under the Indian Health Service and Tribal TANF, and how Tribal income impacts eligibility for social security benefits.**
- **Indian Child Welfare Act: When it applies and what it requires.**

I. INTRODUCTION

There are over 570 federally-recognized tribes in the United States.[3362] Since the late 1980s the federal government has promoted self-determination and self-governance by tribes. In 1975, the U.S. passed the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), which allowed the federal government to contract with tribes for services.[3363] The goal of the ISDEAA is to "further[] the self-determination of Indian communities without terminating the special relationships between the Federal Government and the Indian people."[3364] Federally-recognized tribes now operate many of their own programs for their members, such as schools and health care systems. Because of this, as described below, there are special benefits and regulations related to returning to a tribal community, which are specific to your tribe.

Note that this Chapter is new to Root & Rebound's Roadmap to Reentry and was written in collaboration with the Yurok Tribe's Wellness Court. There is still limited literature on tribal reentry and not all tribes' specific procedures for the action steps described below are widely available, so some of the information below is based solely on anecdotal evidence and experience from the Yurok Tribe's Wellness Court. Please be sure to check with your specific Tribe regarding its rules and regulations.

WHAT IS A FEDERALLY-RECOGNIZED TRIBE?

"A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States."[3365] This designation comes with specific powers and responsibilities. All federally-recognized tribes are eligible for certain federal benefits, as well as funding and services from the U.S. Bureau of Indian Affairs. Most federally recognized tribes got their status through treaties, acts of Congress, administrative actions (e.g., presidential executive orders), or federal court decisions.[3366]

WHAT IS THE RELATIONSHIP BETWEEN TRIBES AND THE U.S. AND STATE GOVERNMENTS?

Federally-recognized tribes have tribal sovereignty, meaning they have the right to govern themselves. The U.S. government treats tribal governments as a separate government. Individual states have no authority over tribal governments, and federally-recognized tribes can regulate activities on their land independently of state control. However, states can have a government-to-government relationship with federally-recognized tribes and often collaborate with states.[3367]

WHAT IS THE BUREAU OF INDIAN AFFAIRS (BIA)?

The Bureau of Indian Affairs (BIA) is the federal agency that is responsible for maintaining the U.S. government's relationship with the federally recognized Indian tribes. The BIA oversees programs for and makes laws and policies related to American Indians and Alaska Natives.[3368]

II. TRIBAL ENROLLMENT & IDENTIFICATION

TRIBAL ENROLLMENT

WHAT IS TRIBAL ENROLLMENT?

The U.S. government has created tribal enrollment requirements "to preserve the unique character and traditions of each tribe."[3369] In order to do enroll, federally-recognized tribes generally require that individuals provide genealogical documentation of ancestry from a specific tribe or tribal community.[3370]

[3362] U.S. Department of the Interior, Indian Affairs, Frequently Asked Questions, https://www.bia.gov/frequently-asked-questions.
[3363] 25 U.S.C. 450 et seq.
[3364] American Presidency Project, Gerald Ford Statement on Signing the Indian Self-Determination and Education Assistance Act, Jan. 4 1975, http://www.presidency.ucsb.edu/ws/?pid=4739.
[3365] U.S. Department of the Interior, Indian Affairs, Frequently Asked Questions, https://www.bia.gov/frequently-asked-questions.
[3366] U.S. Department of the Interior, Indian Affairs, Frequently Asked Questions, https://www.bia.gov/frequently-asked-questions.
[3367] U.S. Department of the Interior, Indian Affairs, Frequently Asked Questions, https://www.bia.gov/frequently-asked-questions.
[3368] U.S. Department of the Interior, Indian Affairs, Frequently Asked Questions, https://www.bia.gov/frequently-asked-questions.
[3369] Tribal Enrollment Process, Tribes, Department of the Interior, https://www.doi.gov/tribes/enrollment.

WHAT ARE THE REQUIREMENTS FOR ENROLLMENT IN A FEDERALLY-RECOGNIZED TRIBE?

Tribal enrollment requirements vary by tribe because each tribe sets its own criteria for enrollment.[3371] Most commonly, individuals must be descended from someone on the tribe's base roll or have a relationship to a tribal member who is descended from someone named on the base roll.[3372] Second, most tribes have conditions such as how Native-American you are by blood, whether you have lived with the tribe or on the reservation, or whether you have continued contact with the tribe.[3373] A tribe's specific requirements are usually found in its Tribal constitution, articles of incorporation, and ordinances.[3374] Every tribe also has an enrollment officer or office that can provide information on enrollment requirements.

HOW DO I APPLY FOR ENROLLMENT IN MY ANCESTORS' TRIBE?

Each tribe has its own enrollment process and has the authority to determine whether an individual is eligible for enrollment.[3375] There are 109 federally-recognized tribes in California, and another 78 tribes currently petitioning for federal recognition.[3376] To get information about your eligibility for membership, you should contact the relevant tribe's enrollment department. You may be able to find the contact information for the enrollment office online and you can either call them directly or send them a letter asking to receive enrollment information. If you have relatives in the area close to your Tribe you can ask them to inquire for you and forward the information.

While you are waiting, you should work on preparing your family tree information, particularly as relating to your tribal relatives. This will help the enrollment department figure out your eligibility. Additionally, you will most likely need a certified copy of your original birth certificate. (See PG. 31 to learn how to get a certified copy of your birth certificate.) If you are a Native American adoptee, you can find information on how to obtain your birth records at California Indian Legal Services web site at www.calindian.org/selfhelppdfs/SelfHelpBirthRecords0409.pdf.

You can also contact out-of-state tribes about enrollment requirements by reaching out to specific tribal enrollment offices. Note, however, that several tribes have more than one location and/or tribal name (e.g., Cherokees of Oklahoma, Cherokees of North Carolina, etc.), so you may have to send letters to multiple offices. If you are specifically inquiring as to whether or not you are eligible to enroll, remember that the more family tree information you can send, the easier it will be for them to make that determination.

Once you are enrolled, you must continue to update your address with the enrollment office.

CAN I BE DISENROLLED OR PREVENTED FROM ENROLLING IN MY TRIBE BECAUSE OF MY CRIMINAL RECORD?

Usually not. While each tribe has its own policies and rules around tribal enrollment and disenrollment, having a criminal record is not usually a factor.

However, please note that some Tribes may dis-enroll and/or banish tribal members or expel non-tribal individuals from their reservation if convicted of a sex offense (e.g., this is true of the Hoopa Valley Tribe).[3377]

ONCE I AM OFFICIALLY ENROLLED, HOW DO I REGISTER TO VOTE IN TRIBAL ELECTIONS?

Each tribe creates its own voter registration requirements for tribal elections. The two primary requirements are (1) being an enrolled member of the tribe, and (2) meeting a specific age requirement (either 18 or 21 depending on the tribe). Many tribes do not require that you reside on your Tribe's reservation to vote in a tribal election. If you are currently incarcerated, you may still be able to vote in some tribal elections by mail.

Contact your tribe to get information on specific voter registration requirements and any voter registration forms.

[3370] A Guide to Tracing American Indian & Alaska Native Ancestry, Bureau of Indian Affairs, https://www.bia.gov/sites/bia_prod.opengov.ibmcloud.com/files/assets/public/pdf/Guide_to_Tracing_AI_and_AN_Ancestry.pdf.
[3371] Tribal Enrollment Process, Tribes, Department of the Interior, https://www.doi.gov/tribes/enrollment.
[3372] A base roll is the original list of members as designated in a tribal constitution or other document specifying enrollment criteria. Id.
[3373] Tribal Enrollment Process, Tribes, Department of the Interior, https://www.doi.gov/tribes/enrollment.
[3374] A Guide to Tracing American Indian & Alaska Native Ancestry, Bureau of Indian Affairs, https://www.bia.gov/sites/bia_prod.opengov.ibmcloud.com/files/assets/public/pdf/Guide_to_Tracing_AI_and_AN_Ancestry.pdf.
[3375] A Guide to Tracing American Indian & Alaska Native Ancestry, Bureau of Indian Affairs, https://www.bia.gov/sites/bia_prod.opengov.ibmcloud.com/files/assets/public/pdf/Guide_to_Tracing_AI_and_AN_Ancestry.pdf.
[3376] California Tribal Communities, California Courts, http://www.courts.ca.gov/3066.htm.
[3377] See Ordinance of the Hoopa Valley Tribe, Title 47 § 6, https://www.hoopa-nsn.gov/wp-content/uploads/2015/06/Title47-SexOffenderReg030598.pdf.

TRIBAL ID CARDS

WHAT IS A TRIBAL ID CARD, AND WHY WOULD I NEED IT?

Tribal identification (ID) cards are issued by tribes as proof of your enrollment and membership in the tribe.

A federally-recognized, tribal-issued ID card is also a valid form of government-issued photo identification in many places, though some places may be unaware of this. For example, a tribal ID card is valid at federal buildings, airports, and banks.[3378] It is also proof of eligibility for certain services such as the federal Indian Health Service; it allows you to opt out of Covered California (meaning, you can get an exemption from the tax penalty under "Obamacare");[3379] and it can be used to prove your identification for the California LifeLine cell phone program (learn more about the program on PG. 501).[3380]

Note, however, that a tribal ID card is *not* valid proof of identity for every purpose , so you may want to check before relying exclusively on a tribal ID for any purpose.

HOW DO I GET A TRIBAL ID CARD?

The process for obtaining a tribal ID card may be slightly different for each tribe, and may differ depending on whether you are already enrolled with the tribe.

PLEASE NOTE: Requests for tribal ID cards no longer go through the Bureau of Indian Affairs (BIA). All requests for tribal ID cards now go *directly to the tribe*.

Basic steps for getting a tribal ID card:

STEP 1: **Determine the name of the tribe.**

STEP 2: **Call or write your tribe's enrollment department, and ask if they have forms and instructions for enrollment and/or obtaining a tribal ID card.**

STEP 3: **Follow any instructions given to you by the tribe, including sending any forms and supporting documentation. If you are not currently enrolled, send the tribe *as many details as possible* about your family history and tribal ancestry (and if applicable, use the forms they sent you).**

You will need to give the tribe as many details about your ancestry as possible — not just your parents' information, but also information about your grandparents, great-grandparents, great-great grandparents, great-great-great grandparents, and so on. Include information about your family tree and history as far back as you can.

Note: **The process for obtaining a tribal ID card is much easier if you or one of your parents is enrolled in the tribe.**

IF I AM REGISTERED WITH A TRIBE, WILL THEY HAVE OTHER IDENTIFICATION DOCUMENTS ON FILE FOR ME OR MY FAMILY MEMBERS?

It depends on the tribe and whether you are enrolled. If you are already enrolled with a tribe and trying to recover old identification (ID) documents, you can contact your tribe directly and ask if they have any of those documents on file. There is no guarantee, but it is worth checking!

III. TRIBAL REGISTRATION FOR SEX OFFENSES

IF I AM A 290 REGISTRANT, DO I HAVE TO REGISTER WITH MY TRIBE?

Maybe. Each tribe has the authority to decide whether or not registration for sex offenses is required. Some federally-recognized tribes in California, such as the Yurok Tribe and Washoe Tribe, require registration for individuals who have been convicted of sex offenses under any state or federal law.[3381]

[3378] See e.g., Transportation Security Administration, Identification, https://www.tsa.gov/travel/security-screening/identification.
[3379] See Covered California, "Tax Penalty Details and Exemptions," http://www.coveredca.com/individuals-and-families/getting-covered/tax-penalty-details-and-exemptions/; Covered California for American Indians, http://hbex.coveredca.com/tribal-consultation/PDFs/Covered%20California%20for%20American%20Indians__PPT%20Final.pdf.
[3380] See California LifeLine Program, "Checking Your Identity," https://www.californialifeline.com/en/id_check.
[3381] See Washoe Tribe of Nevada & California, Law & Order Code, Title 31, Sex Offender Registration and Notification Ordinance; Yurok Tribal Code, Public Health and Safety, Sex Offender Registration Ordinance, Section 10320.

MY TRIBE REQUIRES REGISTRATION. WHEN DO I HAVE TO REGISTER?

When you are required to register generally depends on whether you were incarcerated for your registerable offense.

- *If you are currently incarcerated*, you are typically required to register before your release from imprisonment.
- *If you are not incarcerated*, you are typically required to register within three business days of sentencing for the registration offense.[3382]
- Remember that registration required by California law is done separately. See Section [173] for more information.

DO I HAVE TO APPEAR IN PERSON AFTER I REGISTER?

Tribes often require that you appear in person within a few business days of establishing a residence, entering, commencing employment, or becoming a student on lands subject to the jurisdiction of the tribe.[3383] Usually you will need to appear before the Tribal Police Department or Public Safety Office.

HOW LONG DO I HAVE TO REMAIN REGISTERED WITH MY TRIBE, AND HOW OFTEN DO I HAVE TO APPEAR IN PERSON?

Policies around length of registration and required in-person appearances differ depending on the tribe. For example, both the Yurok and Washoe Tribes have three tiers of registration. If a person is categorized in Tier One, they must appear in person once every year for 15 years; Tier two offenders are required to appear in person once every 180 days for 25 years; and Tier three offenders are required to appear in person once every 90 days for life.[3384] If your tribe does have an in-person appearance requirement, you should check with your tribe to see *where* you need to make and record that appearance.

By maintaining a clean record, some statutes/ordinances allow a reduction in registration time periods if certain requirements are met (e.g., complying with all registration, monitoring, and treatment requirements, and by passing a polygraph test). For example, in the Washoe Tribe, a Tier One offender may have his or her period of registration reduced by 5 years if they maintain a clear record for 10 consecutive years.[3385]

WHAT HAPPENS IF I FAIL TO REGISTER WITH MY TRIBE?

Each tribe sets its own penalties around failure to register, which will typically be outlined in each tribe's ordinance regarding registration for sex offenses. Generally, the tribal police department or public safety office with receive information regarding the failure to register.[3386] The penalty for failing to register can be as severe as permanent banishment or exclusion.

IV. HOUSING FOR TRIBAL MEMBERS

WHAT ARE TRIBAL HOUSING PROGRAMS?

Some tribes receive federal funding from the United States Department of Housing and Urban Development ("HUD") to provide their own housing programs. Each tribe designates an agency, often called a **tribal housing authority**, to oversee its housing programs. Any tribe receiving federal funds must follow HUD rules and regulations regarding housing eligibility rules.[3387] See PG. 364 to learn more about how a criminal record can impact your ability to live in federally funded housing.

WHAT TYPES OF TRIBAL HOUSING ARE AVAILABLE?

The types of tribal housing available vary by tribe, since each tribe administers its own tribal housing program.. Types of tribal housing can include:

[3382] See e.g., Washoe Tribe of Nevada & California, Law & Order Code, Title 31, Sex Offender Registration and Notification Ordinance; Yurok Proposed OR.
[3383] See e.g., Washoe Tribe of Nevada & California, Law & Order Code, Title 31, Sex Offender Registration and Notification Ordinance ("For foreign, federal, state, tribal, and military convictions, a sex offender must appear in person at the WTPD within three (3) business days of entering Washoe Country either after release from incarceration."), https://www.washoetribe.us/contents/images/documents/LawAndOrderCode/Title_31_SORNO.pdf.
[3384] See Washoe Tribe of Nevada & California, Law and Order Code, Title 31-50-040(1).
[3385] See Washoe Tribe of Nevada & California, Law and Order Code, Title 31-50-040(2).
[3386] See Washoe Tribe of Nevada & California, Law and Order Code, Title 31-50-060; Yurok Tribal Code, Public Health and Safety, Sex Offender Registration Ordinance, Section 10405.
[3387] Resources for Tribal Housing and TDHEs, https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/tribalhousing.

- Low-income rental units
- Home-ownership assistance
- Down payment assistance
- Student rental assistance
- Elder emergency assistance
- Foreclosure and debt relief assistance
- Housing rehabilitation and weatherization assistance[3388]

WHICH TRIBES IN CALIFORNIA OFFER SOME FORM OF TRIBAL HOUSING?

The following are some California tribes offering tribal housing through HUD. For the full list of tribes in California that receive HUD support, see https://www.hud.gov/sites/documents/DIRECTORYTRIBE_TDHE.PDF [3389]

- Yurok Indian Housing Authority
- North Fork Rancheria Indian Housing Authority
- Tuolumne Me-Wuk Housing Authority
- All Mission Indian Housing Authority
- Karuk Tribe Housing Authority
- Round Valley Indian Housing Authority
- Northern Circle Indian Housing Authority
- Enterprise Rancheria Indian Housing Authority
- Hoopa Valley Indian Housing Authority
- Modoc Lassen Indian Housing Authority
- Tule River Housing Authority
- Owens Valley Indian Housing Authority
- Chico Rancheria Housing Corporation
- Chukchansi Indian Housing Authority
- Pit River Tribal Housing Board
- Quechan Housing Authority
- Scotts Valley Housing Department
- Susanville Indian Rancheria Housing Authority

WHO CAN RENT UNITS THROUGH TRIBAL HOUSING PROGRAMS?

Each tribe establishes its own eligibility criteria for housing. However, in general applicants must (1) be under income limits as by HUD[3390] and (2) qualify as a member of a tribe.[3391]

HOW DO I APPLY FOR TRIBAL HOUSING?

Applications are typically submitted to the tribe's housing authority. Contact your tribe's housing authority for application instructions and more information.

CAN MY CRIMINAL RECORD AFFECT MY ABILITY TO GET TRIBAL HOUSING?

It depends. Indian tribes and tribally designated housing entities are granted access to criminal conviction records of adult tribal housing applicants and tenants, upon request. However, release of information about juvenile convictions is only permitted if authorized under state, tribal, and local law.[3392]

Tribes can only use criminal records to screen or evict applicants, or enforce leases, and the information cannot be released to anyone who is not an officer, employee, or authorized representative of the tribe or owner of the housing.[3393]

Once you are a resident, owners and managers of housing units can also evict a resident for any current criminal activity from the resident, a member of the household, or a guest of the resident.[3394]

[3388] See e.g., Housing programs, North Fork Rancheria of Mono Indians of California, http://northforkrancheria-nsn.gov/housing-authority/housing-programs; Resources for Tribal Housing and TDHEs, https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/tribalhousing; Programs, Yurok Housing, http://www.yurokhousing.com/Programsnew.html;
[3389] This list includes the 18 California tribally designated housing entities that were included in the Southwest region of the national directory of tribes and tribally designated housing entities. For a link to this list, see https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/map/nationalmap/.
[3390] Program Guidance, Office of Native American Programs, https://www.hud.gov/sites/documents/2017-04FY17ILG.pdf.
[3391] See Eligibility for Admission, Chapter 7, Housing Policies, Karuk Tribe Housing Authority, http://www.ktha.us/policies/default.asp; Rental Admissions, Yurok Indian Housing Authority, http://www.yurokhousing.com/documents/40-RentalAdmissionPolicy.pdf.
[3392] 25 U.S.C. § 4138..
[3393] 25 U.S.C. § 4138.
[3394] 25 U.S.C.A. § 4137.



Each tribe establishes its own policies on criminal records. For example, the Yurok Indian Housing Authority has a policy of denying housing for a period of at least 5 years from the date of any felony conviction and for lifetime registered sex offenders.[3395] The Karuk Tribe Housing Authority, by contrast, requires a 5 year waiting period from the date of a conviction, or 18 months from the date of release, for any drug-related crime or any form of assault/battery crime. However, if the applicant completes a drug rehabilitation program, the waiting period is reduced to 1 year. For misdemeanors, more than 1 conviction results in a 2-year waiting period, and more than 2 convictions results in a 5-year waiting period.[3396]

These are just two examples from some of the larger tribes in California. Because some tribes have more restrictive policies than others, you should contact your Tribe's housing authority to learn about their specific restrictions. Additionally, some tribes are exploring the possibility of opening reentry facilities for those returning from incarceration. Your Tribe's housing authority can provide information on any reentry housing programs.

WHAT CAN I DO IF I AM SERVED AN EVICTION NOTICE FROM TRIBAL HOUSING?

The grievance process for tribal housing issues must be done through your tribal housing authority. Each tribal housing authority rules that allow for grievance procedures, which can include administrative hearings and, where applicable, an appeal to Tribal Court.

If you are facing an eviction hearing it is best to be very well prepared. Gather any relevant documents to submit and prepare witnesses available to testify, where applicable. If compromise is possible, be prepared to offer suggestions that are doable for you (e.g., pay current rent and add on for over due rent a certain amount until the balance is paid; if an ineligible resident has occupied the home, evict that person and/or get a restraining order preventing them from occupying home).

V. TRIBAL PUBLIC BENEFITS & HEALTHCARE

INDIAN HEALTH SERVICE (IHS)

WHAT IS THE INDIAN HEALTH SERVICE (IHS)?

The Indian Health Services (IHS) is an agency within the Department of Health and Human Services that provides comprehensive health services to Native Americans. The IHS is the main federal health care provider for federally-recognized tribes.[3397] IHS is not a health insurance provider. IHS provides healthcare services through its hospitals, centers, and clinics.[3398] IHS services are typically only to eligible Alaska Native and American Indians, unless one of the limited exceptions for non-Indians (discussed below) applies.[3399]

WHAT SERVICES DOES THE INDIAN HEALTH SERVICE (IHS) OFFER?

IHS provides health services for Indian communities through HIS local facilities and contracted Purchased/Referred Care programs.[3400] These may include hospital and medical care, dental care, public health nursing and preventative care (including immunizations), and health examination of special groups such as school children.[3401] Importantly, they can screen for post incarceration placements or assist with placements to treatment facilities. Additionally, they can provide post incarceration mental health services.

AM I ELIGIBLE FOR INDIAN HEALTH SERVICE (IHS)?

The IHS health care system is available for federally-recognized American Indian and Alaska Natives in the United States. Members of 567 federally-recognized American Indian and Alaska Native Tribes and their descendants are eligible for services provided by IHS.[3402]

You are eligible for IHS if you are of American Indian descent and belong to an Indian community served by the IHS program.

[3395] Background Policy, Yurok Indian Housing Authority, http://yurokhousing.com/documents/BackgroundPolicy.PDF.
[3396] Criminal Record, Tenant Selection Criteria, Chapter 7, Housing Policies, Karuk Tribe Housing Authority, http://www.ktha.us/policies/default.asp.
[3397] https://www.ihs.gov/aboutihs/overview/
[3398] https://www.ihs.gov/findhealthcare/
[3399] Indian Health Manual, Ch. 1 Eligibility for Services, Section 2-1.2, https://www.ihs.gov/IHM/pc/part-2/p2c1/#2-1.2.
[3400] See Indian Health Services, IHS Profile, https://www.ihs.gov/newsroom/factsheets/ihsprofile; Indian Health Services, Purchased/Referred Care, https://www.ihs.gov/newsroom/factsheets/purchasedreferredcare.
[3401] See https://www.ihs.gov/forpatients/healthcare/
[3402] Indian Health Services, Quick Look, https://www.ihs.gov/newsroom/factsheets/quicklook.

Non-Indians may also be eligible in certain limited circumstances, including:

- Children (natural or adopted child, stepchild, foster child, legal ward, or orphan) of eligible persons under 19 years of age;
- Spouses of an eligible American Indian, including a same-sex spouse;
- Non-Indian women pregnant with an eligible person's child for the duration of her pregnancy and through post-partum (usually 6 weeks after delivery). A paternity acknowledgement is required if parents are not married;
- Non-Indian members of an eligible Indian's household IF the medical officer in charge determines that services are necessary to control a public health hazard or an acute infectious disease; and
- Others, such as non-Indian employees and veterans, whom may also be authorized for limited services.[3403]

CAN MY CRIMINAL RECORD PREVENT ME FROM RECEIVING INDIAN HEALTH SERVICE (IHS) BENEFITS?

No. IHS does not have any bans on people receiving health care benefits based on their criminal record.

HOW DO I ENROLL IN THE INDIAN HEALTH SERVICE (IHS)?

Once you know that you are eligible for IHS, contact the patient registration office ("PRO") at the facility that serves your area. The PRO will help you through the registration process, identify any additional documentation you need to establish your medical record, and then schedule a medical appointment. You should go to the PRO in person and be ready to provide proof of your enrollment as a member of a Federally recognized tribe.[3404]

You can find a local facility through this website: https://www.ihs.gov/findhealthcare.

ONCE I AM ENROLLED IN THE INDIAN HEALTH SERVICE (IHS), WHERE CAN I RECEIVE HEALTH CARE?

A member of a federally-recognized tribe may obtain care at any IHS hospital or clinic if the facility has the staff and capability to provide the medical care. A member of a federally-recognized tribe may not be able to receive services at contracted facilities if they do not meet certain residency requirements.

While residing on your home reservation, the IHS provides health care coverage for both (1) direct care services and 2) Purchased/Referred Care services. If you move away from your reservation or contract health service delivery area ("CHSDA"), the Purchased/Referred Care services coverage only extends for 180 days. On the 181st day, the eligibility for IHS direct care services is limited to the health care that continues at any IHS facility that you present yourself. However, PRC coverage continues if you establish residency on another reservation or contract health service delivery area. You can check with your home or local Service Unit about eligibility – they will be the ones making all determinations and paying bills for approved care.[3405]

WHERE ARE INDIAN HEALTH SERVICE (IHS) OFFICES LOCATED IN CALIFORNIA?

California has 31 tribal health programs, operating 57 clinics. Additionally, IHS funds eight urban health programs. Look online for the nearest IHS office or health care facility at http://www.ihs.gov/findhealthcare. For a list of California-specific health programs, see www.ihs.gov/california/index.cfm/health-programs/health-programs.

TRIBAL INCOME AND SSI ELIGIBILITY

I AM A TRIBAL MEMBER RECEIVING PER CAPITA PAYMENTS FROM GOVERNMENT SETTLEMENT FUNDS. WILL THIS IMPACT MY ELIGIBILITY FOR SSI?

No. Per capita payments paid to tribal members under settlement agreements are not taken into account for either SSI or Medicare part D purposes. So, for example, funds distributed per capita for members of the Hoopa Valley Indian Tribe and the Yurok Indian Tribe are excluded from income and resources for SSI eligibility.

[3403] Indian Health Service, Eligibility for Services, Section 2-1.2(B), https://www.ihs.gov/IHM/pc/part-2/p2c1/#2-1.2
[3404] Indian Health Service, Frequently Asked Questions, https://www.ihs.gov/forpatients/faq/#q4.
[3405] Indian Health Service, Frequently Asked Questions, https://www.ihs.gov/forpatients/faq/#q6.



However, even though these funds should not be counted as income or a resource, the funds must still be reported.[3406]

Please note: It is very important to keep updated addresses on file with your Tribal enrollment office for any issues that may arise with per capita distributions.

DO OTHER FORMS OF TRIBAL INCOME IMPACT MY ELIGIBILITY FOR SSI?

Maybe. Whether or not a source of tribal income is excluded depends on the type of payment. Only specific types of payments and resources are excluded from income.[3407] As discussed above, per capita payments from certain settlements may be excluded from income, and cash, stock, or land from an Alaska native corporation are also excluded.[3408] However, per capita payments from a tribe's commercial enterprises are not excluded. For example, if you are a member of a tribe, payments from your Tribe for distribution of Indian gaming profits do not qualify for income exclusion. These payments must be counted towards your annual income for SSI purposes. If you are uncertain you should contact your tribe who will be able to give you an answer as to the status of your payment. Additionally, if you are incarcerated and know you will be receiving payments of any type, make arrangements with your tribe to have them held, delivered to a reliable payee, or direct deposited in an existing account.

THE TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM

WHAT IS THE TRIBAL TANF PROGRAM?

Federally-recognized Indian tribes can receive funding to administer and operate their own Temporary Assistance for Needy Families ("TANF") programs. One of the core purposes of TANF is to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives. Tribal TANF gives federally-recognized Tribes the flexibility to design welfare programs that promote work, responsibility, and strengthen families. These programs provide time-limited assistance to eligible native families with cash aid and supportive services.[3409]

WHAT BENEFITS AND SERVICES CAN I GET THROUGH TRIBAL TANF?

Because each federally-recognized Indian tribe administers its own Tribal TANF program, the benefits and services will vary depending on each tribe's TANF program. Common benefits include cash assistance for basic living expenses, childcare assistance, job preparation and vocational training, assistance with unforeseeable emergencies, and work assistance.

AM I ELIGIBLE FOR TRIBAL TANF?

Tribal TANF is for low-income tribal families with children, where at least one parent is unemployed. Because each Tribe is in charge of its own TANF program, the exact eligibility requirements depend on which Tribe's service area you reside in. However, there are some general requirements that are fairly consistent across Tribes:

- You are unemployed or about to become unemployed;
- You or another member of your household is able to provide proof of enrollment in a federally-recognized American Indian Tribe or Alaska Native village;
- You live on or near a federally-recognized Indian reservation (many Tribal TANF offices offer services to individuals who reside in counties near their reservation); and
- You have at least one child 18 years old or under living in your home;
- You are low-income.[3410]

[3406] Social Security Program Operations Manual SI 00830.830, https://secure.ssa.gov/poms.nsf/lnx/0500830830.
[3407] See Program Operations Manual System, SI oo830.830, https://secure.ssa.gov/poms.nsf/lnx/0500830830.
[3408] See Program Operations Manual System, SI oo830.830, https://secure.ssa.gov/poms.nsf/lnx/0500830830.
[3409] Office of Family Assistance, Tribal TANF, https://www.acf.hhs.gov/ofa/programs/tribal/tribal-tanf.
[3410] Benefits.gov, Tribal Temporary Assistance for Needy Families, https://www.benefits.gov/benefits/benefit-details/627; Southern California Tribal Chairmen's Association, Tribal TANF, https://www.sctca.net/tribal-tanf.

NOTE: Even if you are enrolled in a federally-recognized Tribe, some Tribal TANF offices require that at least one child of the family also be able to prove tribal membership or that they are a descendant of a federally recognized Tribe.

Even if you do not meet the criteria listed above, you may still be eligible if:

- You are the third trimester of your pregnancy and are able to verify the child's native status;
- You are the guardian/caretaker of a needy Native American minor;
- You are related to a dependent child and have care and control of a dependent child, you may still be eligible.

WHO IS CONSIDERED "LOW-INCOME" FOR BEING ABLE TO RECEIVE TRIBAL TANF?

This varies by Tribe and by the type of TANF benefits you are seeking to receive. In order to receive Tribal TANF benefits, total household income must typically to be between 125-200% of the U.S. Federal Poverty Guidelines. For example, you can receive cash assistance under Tribal TANF in the Yurok Tribe if your family income is below 135% of the federal poverty line, but you can receive transitional benefits under Tribal TANF until your family reaches 200% of poverty.[3411]

The poverty guidelines are based on the number of individuals are in your family or household. If you do not have anyone in your household or family, the federal poverty line is $12,140. For each additional member of your family or household, the guideline increases by $4,320.[3412]

Additionally, there may also be a cap on the amount of resources you own. Resources include cash or property that you own, can convert to cash, or can use to support yourself. Some examples are savings accounts, stocks, and bonds. Some tribes require that your countable resources do not exceed $5,000.00, whereas others set the limit as low as $2,000.00.

ONCE I AM ENROLLED IN THE PROGRAM, FOR HOW LONG CAN I RECEIVE TRIBAL TANF BENEFITS?

Tribes must set time limits to the length of time you can receive Tribal TANF benefits. This can go up to 60 months.[3413] For example, the Yurok Tribe provides 60 months of available aid.[3414]

WILL MY CRIMINAL RECORD PREVENT ME FROM RECEIVING TRIBAL TANF BENEFITS?

Maybe. There are some convictions and criminal history information that may make you ineligible for Tribal TANF, depending on the particular Tribal TANF program. You can contact your local Tribal TANF office to learn more about their specific eligibility requirements.

The following may make you ineligible for Tribal TANF:

- You are fleeing to avoid prosecution, custody, or confinement for committing, or attempting to commit a felony.
- You have commtted fraud in order to receive cash assistance or support services in the last two years.
- You were convicted of a drug felony in the last two years, unless you have completed an approved drug rehabilitation program. **But note**: Even if a felony drug conviction makes you ineligible, your other family members may still be able to receive benefits based off your income. If, for instance, you failed a drug screening test, your child could still benefit from Tribal TANF cash assistance, but an alternate payee will be required until you become eligible to be included.
- You have been convicted of molesting a child.[3415]

Certain criminal convictions will cause you to be ineligible for Tribal TANF in *some* service areas, but not all. It is important to contact the Tribal TANF office to which you plan to apply for more information on eligibility requirements.

[3411] The Yurok Tribe Social Services, Temporary Assistants for Needy Families, http://www.yuroktribe.org/departments/socialservices/socialservicestanf1.htm.
[3412] Federal Register, Annual Update of the Federal Poverty Guidelines, https://www.federalregister.gov/documents/2018/01/18/2018-00814/annual-update-of-the-hhs-poverty-guidelines.
[3413] California Department of Social Services, Tribal TANF, http://www.cdss.ca.gov/inforesources/Tribal-TANF.
[3414] The Yurok Tribe Social Services, Temporary Assistants for Needy Families, http://www.yuroktribe.org/departments/socialservices/socialservicestanf1.htm.
[3415] See e.g., The Yurok Tribe Social Services, Temporary Assistants for Needy Families, http://www.yuroktribe.org/departments/socialservices/socialservicestanf1.htm.

HOW DO I APPLY FOR TRIBAL TANF BENEFITS?

Contact or walk into a Tribal TANF office and apply for services. There are currently 16 Tribal TANF programs within the state of California that serve different geographic areas. You should contact the Tribal TANF office whose service area you reside in or will reside in upon reentry. Each TANF office (tribal Council may set eligibility for certain programs e.g., treatment or re-entry programs may qualify you.)

For a directory of Tribal TANF offices, visit the website: http://www.cdss.ca.gov/inforesources/Tribal-TANF/Programs.

CAN I APPLY FOR TRIBAL TANF WHILE I AM INCARCERATED?

No. You must have a minor child in your home in order to be eligible for Tribal TANF, unless you are in a special eligible program (see above). But, if you are currently incarcerated, you can contact the Tribal TANF office you plan to apply through and become more aware of the specific eligibility requirements and application process so you are more aware of your options upon release.

I BELIEVE MY TRIBAL TANF WAS WRONGLY DENIED OR STOPPED. HOW DO I CHALLENGE THIS DECISION?

The appeals process to challenge a denial or stopping of your Tribal TANF benefits is different with each Tribal TANF office. Each tribe is required to develop a dispute resolution process to challenge the Tribe's decision to deny, suspend, reduce, or terminate assistance.[3416] Appeals are often required to be in writing within 10 business days of the denial.[3417] Contact your local Tribal TANF office to gain more information about its appeals process.

ONCE I AM RECEIVING TRIBAL TANF BENFITS, WHAT RULES MUST I FOLLOW?

To keep getting Tribal TANF benefits, you must meet the requirements set by your Tribal TANF office. General requirements include that your family income stay under the income limit, satisfaction of minimum work participation requirements, and reporting changes to your income and living situation.

Work participation hours may be met by doing a variety of activities authorized by your Tribal TANF office. These activities may include public or tribal employment, job skills training, community service, secondary and post-secondary education, and workshops. Tribes have the flexibility to establish their own allowable work activities, including culturally-relevant activities such as fishing, hunting, and beadwork. Additionally, you should inquire of TANF as to whether or not your tribe has any special job training funds that you can access, including educational funding.

VI. OVERVIEW OF THE INDIAN CHILD WELFARE ACT (ICWA)

WHAT IS THE INDIAN CHILD WELFARE ACT (ICWA)?

Congress passed the Indian Child Welfare Act (ICWA) in 1978 in response to a pattern of wholesale public and private removal of Native American children from their homes, undermining Native American families and threatening the survival of Native American tribes and tribal cultures.[3418] ICWA was designed to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families."[3419]

Under the ICWA, the presumption is that it is in the best interest of an Indian child and the Tribe for the child to maintain ties to the Tribe. The standards in a child custody proceeding involving an Indian child is generally the same as in a child custody proceeding that does not, except that under the ICWA you must also consider

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[3416] 45 CFR § 286.75(a)(7).
[3417] See e.g., The Washoe Tribe of Nevada and California, Native TANF Program, https://www.washoetribe.us/contents/images/documents/Tanf/Washoe_Tribal_Family_Assistance_Plan_Renewal_2015-2017.pdf; Yurok Tribal TANF Program, Request for Social Services, http://www.yuroktribe.org/departments/socialservices/documents/Request_for_Supportive_Services.pdf.
3418 Indian Child Welfare Program: Hearings Before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs (1974) 93rd Cong., 2d Sess. 3 (statement of William Byler) (http://narf.org/icwa/federal/lh/hear040874/, last visited May 15, 2012).
[3419] 25 U.S.C. § 1902.

the interests of the child's tribe. Under the ICWA, the tribe itself has protectable rights that are independent of the child and the child's parents.[3420]

In 2006, California's Legislature codified much of the ICWA into state law with Senate Bill 678. ICWA and California law mandate specific standards that must be met before an Indian child may be removed from his or her family or placed in an adoptive or foster care placement. All state courts must follow the standards below in child welfare and custody cases involving Indian children, including:

- notice to tribes of state child custody proceedings;
- active efforts to provide rehabilitative services to the birth family or Indian custodian;
- preferred placements of Indian children with their extended family or other Indian families;
- tribal right to intervene in state child custody proceedings; and
- transfer of jurisdiction to tribal courts.[3421]

WHAT CHILDREN DOES THE INDIAN CHILD WELFARE ACT (ICWA) APPLY TO?

An "Indian child" is defined as: An unmarried person who is under age eighteen and is either: (1) a member of an Indian tribe; or (2) eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.[3422]

WHAT TYPES OF CASES DOES THE INDIAN CHILD WELFARE ACT (ICWA) APPLY TO?

The ICWA applies whenever an Indian child is the subject of a state "child custody proceeding." Specifically, the ICWA provides that a "child custody proceeding" includes:

1. "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
2. "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
3. "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
4. "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.[3423]

This means that ICWA applies to:

1. cases where an Indian child is removed by a county child welfare system (foster care);
2. probate guardianship cases;
3. delinquency cases where the crime would not have been a crime if committed by an adult; and
4. family law cases where custody will be with a non-parent[3424] or that will result in termination of parental rights or adoption (step-parent adoptions).

ICWA does not apply to tribal proceedings or custody disputes between divorced or divorcing parties.[3425]

WHAT ARE THE EXTRA RESPONSIBILITIES REQUIRED UNDER THE INDIAN CHILD WELFARE ACT (ICWA)?

Notice: ICWA requires that notice must be sent to the parent or any Indian custodian and the child's tribe where there is reason to know the child may be an Indian child.[3426] Notice must be provided to incarcerated parents as well. To facilitate timely and effective notice of hearings to incarcerated parents, the social services agency must use the prisoner location system developed by the Department of Corrections and Rehabilitation.

[3420] Judicial Council of California, Bench Handbook: The Indian Child Welfare Act § 1.2, http://www.courts.ca.gov/documents/ICWAHandbook.pdf.
[3421] Judicial Council of California, Indian Child Welfare Act ("ICWA") Requirements, http://www.courts.ca.gov/documents/ICWARequirements.pdf.
[3422] 25 U.S.C. § 1903(4).
[3423] 25 U.S.C. § 1903(1).
[3424] CA Family Code § 3041.
[3425] U.S. Department of the Interior, Bureau of Indian Affairs, Guidelines for Implementing the Indian Child Welfare Act, https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf.
[3426] 25 U.S.C. § 1912(a).

For the jurisdictional hearing, a dispositional hearing, or a Welfare and Institutions Code § 366.26 permanency planning hearing, the notice must: (1) inform the incarcerated parent of his or her right to be physically present at the hearing and (2) explain how the parent may secure his or her presence or, if he or she waives the right to be physically present, appearance and participation. For a review hearing, or any other hearing in a dependency proceeding, the notice must inform the incarcerated parent of his or her options for requesting physical or telephonic appearance at and participation in the hearing.[3427]

Active efforts

"Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful."[3428]

This means the party seeking to remove a child (the social services agency, a person petitioning for guardianship, etc) must engage in active efforts to prevent removal of the child and keep the family intact, or if removal is necessary to provide active efforts reunification services. Examples of active efforts include:

1. Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal.
2. Identifying appropriate services and helping the parents overcome barriers, including actively assisting the parents in obtaining those services.
3. Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
4. Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents.
5. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe.
6. Taking steps to keep siblings together whenever possible.
7. Supporting regular visits with parents or Indian custodians in the most natural setting possible, as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child.
8. Identifying community resources including housing, financial assistance, transportation, mental health and substance abuse services, and peer support services, and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources.
9. Monitoring progress and participation in services.
10. Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available.
11. Providing post-reunification services and monitoring.[3429]

The above list of active efforts is not exhaustive, and is not a one-size fits all approach. What constitutes active efforts is made on a case-by-case basis and must include attempts to use the available resources of extended family members, the tribe, Indian social services agencies, and the individual Indian caregivers.[3430]

IMPORTANT NOTE: While active efforts services must be provided to incarcerated parents, the timelines of juvenile dependency cases are not altered due an incarcerated parent's involvement. Therefore, it is critical that incarcerated parents work closely with their attorney to understand what services are available to them and/or a potential family placement and what timelines apply.

Placement Preferences

When an Indian child requires out of home placement, the placement must be in the least restrictive environment that most closely approximates their family,[3431] within the following preference order (in descending order):

1. A member of the Indian child's extended family;

[3427] See Superior Court of California, Form JV-450 – Order for Prisoner's Appearance at Hearing Affecting Parental Rights, http://www.courts.ca.gov/documents/jv450.pdf.
[3428] 25 U.S.C. § 1912(d).
[3429] 2016 Bureau of Indian Affairs ICWA Regulations, Quick Reference Sheet on Active Efforts, https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-041405.pdf.
[3430] Welf & Inst. Code § 361.7(b).
[3431] 25 U.S.C. § 1915(b); Welf. & Inst. Code § 361.31(b).

2. A foster home licensed, approved, or specified by the Indian child's tribe;
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.[3432]

County social welfare agencies have an active efforts responsibility to place within this preference order. If placement within the preference order cannot be located or if the placing agency wishes to deviate from the preference order, a court order specifying good cause is required prior to the placement being made.[3433]

Criminal background checks are required for placement of dependent children with relatives or prospective guardians who are not licensed or certified foster parents. Placement might not be allowed if the proposed caregiver has a criminal record.[3434]Certain violent felonies are an absolute bar to placement. However, an exemption may be granted for other crimes, including violent misdemeanors, where there is reason to believe that the potential placement is of good character and would not pose a risk of harm to the child.[3435]

A party seeking placement of an Indian child must either: (a) request an exemption for a potential placement with a criminal record if that placement would satisfy the ICWA's preferences, or (b) "adequately support its reasons for not doing so if failure to request a waiver results in a placement that contravenes the ICWA preferences."[3436]

IMPORTANT NOTES:

1. If you/or your choice for placement have a criminal background and would like to be placement for an Indian child, speak with your attorney, the case social worker and/or the child's tribe to determine whether a criminal records exemption may be available.
2. The child's tribe has an absolute right to alter the placement preference order.[3437]

ARE THERE UNIQUE PERMANENCY OPTIONS FOR INDIAN CHILDREN?

Tribal Customary Adoption

Tribal customary adoption (TCA) is a unique permanency option in California that does not require termination of parental rights. It is a state court adoption that incorporates the customs, traditions, or laws of an Indian child's tribe, in that the tribe creates a Tribal Customary Adoption Order.[3438] The Tribal Customary Adoption Order dictates the terms of the adoption, including continued contact with biological family and the tribe.[3439]

Tribal customary adoption is only available where the tribe determines it is the most appropriate permanency option in a given case.[3440] This is a very important option for Tribal parents who realize at a certain specific time when faced with having to determine a permanent plan for their child that does NOT include them as a full time custodial parent they still have a responsibility to make the best plan for their child and protect their child's tribal and family ties. Ask your tribe, attorney and the social worker assigned to this case to explain and explore this option.

CAN AN INDIAN TRIBE INTERVENE AS A PARTY IN AN ICWA CASE?

The Indian child's tribe may intervene as a full party in any case where ICWA applies.[3441] The tribe is entitled to all rights afforded to any party in a proceeding, including the right to sit at the counsel table, the right to examine witnesses, and the right to be given copies of documents. The tribe has the right to intervene at any point in the proceedings, either orally or in writing.[3442]

[3432] 25 U.S.C. § 1915(a)-(b).

[3433] See Federal Register, Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, Section F, https://www.federalregister.gov/documents/2015/02/25/2015-03925/guidelines-for-state-courts-and-agencies-in-indian-child-custody-proceedings.

[3434] Welf. & Inst. Code § 361.4(d)(2); Health & Safety Code § 1522.

[3435] Welf. & Inst. Code § 361.4(d)(2); Health & Safety Code § 1522(g)(1).

[3436] In re Jullian B. (2000) 82 Cal. App. 4th 1337, 1347.

[3437] 25 U.S.C. § 1915(c).

[3438] Judicial Council of California, Tribal Customary Adoption FAQ, http://www.courts.ca.gov/12569.htm.

[3439] Welf. & Inst. Code §366.24(c)(10).

[3440] See CA Courts, Tribal Adoption FAQ, http://www.courts.ca.gov/documents/Tribal-AdoptionFAQ.pdf.

[3441] 25 U.S.C. § 1911(c); Welf. & Inst. Code § 224.4.

[3442] Judicial Council of California, ICWA Information Sheet: Tribal participation in State court proceedings governed by ICWA, http://www.courts.ca.gov/documents/icwa-Tribal-Participation-factsheet.pdf. http://www.courts.ca.gov/documents/icwa-Tribal-Participation-factsheet.pdf



HOW ARE CHILD CUSTODY (DEPENDENCY) CASES TRANSFERRED TO TRIBAL COURT?

In cases where ICWA applies, a parent or the Indian child's tribe may request (petition) to have the case transferred to tribal court. The state court must transfer the case, unless it finds good cause to deny the request. Good cause can exist where one of the child's parents objects to the transfer.[3443]

WHAT IS THE MOST IMPORTANT THING FOR A PARENT TO DO IN AN ICWA CASE?

Particularly in juvenile dependency proceedings, it is crucial for parents to fully participate and work with the county and tribal social workers assigned to your case. The timeframes involved in these cases are set by federal law and depending on the age of the child can be as short at 6 months. In order for timeframes to be extended, parents must fulfill the requirements of their court ordered case plan, which can include requirements to undergo assessments, participate in rehabilitative services and have regular visitation with your child. The need to participate in the process cannot be overstated, since courts are legally obligated to seek alternate permanency options for children where reunification efforts with parents are unsuccessful – this means you may forgo any possibility of reunifying with your child.

ICWA is intended to assist you in your efforts to reunify with your child and your child's tribe may also be able to assist. Where your child is eligible for membership in a tribe, but not yet a member it is highly recommended you work with the tribe to establish membership. This will ensure ICWA is applied to your case.

[3443] See 25 U.S.C. § 1911(b).

IMMIGRATION



No matter what your immigration status, as a noncitizen you could face a variety of unique challenges due to your criminal record. In this chapter, you will learn more about preparing to navigate through the reentry process in a way that can help protect you and your family from deportation and other immigration consequences.

DISCLAIMER – YOUR RESPONSIBILITY WHEN USING THIS GUIDE: When putting together the *Roadmap to Reentry: A California Legal Guide*, we did our best to give you useful and accurate information because we know that people who are currently or formerly incarcerated often have difficulty getting legal information, and we cannot provide specific advice to every person who requests it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use information from the *Roadmap to Reentry* legal guide, it is *your responsibility* to make sure whether the law has changed and applies to your situation. If you are incarcerated, most of the materials you need should be available in your institution's law library. The *Roadmap to Reentry* guide is not intending to give legal advice, but rather legal information. No attorney-client relationship is created by using any information in this guide. You should always consult your own attorney if you need legal advice specific to your situation.

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WHAT WILL I LEARN IN THE IMMIGRATION CHAPTER?

- **Important information about the relationship between having a criminal record and immigration concerns;**
- **Know your rights information for noncitizens on parole or probation;**
- **Information on accessing public benefits and education;**
- **Options for obtaining identification;**
- **How to create a family preparedness plan.**

I. INTRODUCTION

This Chapter explains special issues affecting noncitizens, regardless of your immigration status. While Root & Rebound does not specialize in immigration law, this chapter is designed to ensure that you have a basic understanding of the ways in which contact with the criminal justice system could impact your status in the U.S. This chapter does not contain information related to your rights in deportation or other immigration proceedings. If you need assistance with such matters, speak to an immigration attorney right away. For a list of referrals, see PG. 1134.

KEY TERMS IN THE IMMIGRATION CHAPTER

Noncitizen—someone without U.S. citizenship. In this chapter, we use "noncitizen" to cover a variety of immigration statuses, including Lawful Permanent Residents, visa holders, refugees, and undocumented persons. These terms, as well as other noncitizen status, are defined below.

Lawful Permanent Resident—also known as a "green card holder," a lawful permanent resident has permission from the federal government to live permanently in the U.S.[3444]

Visa—a government-issued endorsement allowing a citizen of a foreign country to enter, leave, or stay in the U.S.[3445] Visas are generally divided into two categories: immigrant visas are issued to people wishing to live permanently in the U.S., while nonimmigrant visas are issued to people wishing to come the U.S. temporarily for a particular purpose, such as tourism, business, or study.[3446]

Refugee—is a person granted protected status in the U.S. due to their membership in a group that is the subject of persecution in their home country. Unlike a person seeking asylum (see below), a refugee must seek referral for this status from outside the U.S.[3447]

Undocumented Person—sometimes called an "undocumented alien," this is someone who entered the U.S. without legal documents, or who entered the U.S. legally but violated the terms of their visa.[3448]

Deferred Action for Childhood Arrivals (DACA)—a program introduced in 2012 by President Barack Obama in order to prevent the deportation of people who were brought to the U.S. as children. DACA participants have permission to remain in the country and get work permits, despite not being citizens.[3449]

Temporary Protected Status (TPS)—a form of temporary protection available to people from certain countries (or parts of countries) who are unable to return due to extreme temporary instability in their countries of origin, including war, natural disasters, and epidemics. TPS beneficiaries are not removable from the U.S. while their home country remains unstable.[3450]

Naturalization—the process by which a person obtains U.S. citizenship.[3451]

Immigrations and Customs Enforcement (ICE)—the division of the U.S. Department of Homeland Security that has authority over criminal violations of U.S. laws related to travel and immigration.

[3444] U.S. Dept. of Homeland Security, "Lawful Permanent Residents" (Dec. 18, 2017), available at https://www.dhs.gov/immigration-statistics/lawful-permanent-residents.
[3445] U.S. Dept. of State, Bureau of Consular Affairs, "Glossary: Visa," available https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/glossary.html#V.
[3446] U.S. Dept. of Homeland Security, Customs and Border Protection, "What is the difference between an Immigrant Visa vs. a Nonimmigrant Visa?" (Mar. 9, 2017), available at https://help.cbp.gov/app/answers/detail/a_id/72/~/what-is-the-difference-between-an-immigrant-visa-vs.-nonimmigrant-visa-%3F.
[3447] U.S. Dept. of Homeland Security, U.S. Citizenship and Immigration Services, "Refugees & Asylum," available at https://www.uscis.gov/humanitarian/refugees-asylum. See also Immigration and Nationality Act § 101(a)15P(42)(A).
[3448] IRS, "Immigration Terms and Definitions Involving Aliens," available at https://www.irs.gov/individuals/international-taxpayers/immigration-terms-and-definitions-involving-aliens.
[3449] N.Y. Times, "What is DACA? Who Are the Dreamers? Here Are Some Answers" (Jan. 23, 2018), available at https://www.nytimes.com/2018/01/23/us/daca-dreamers-shutdown.html.
[3450] U.S. Dept. of Homeland Security, U.S. Citizenship and Immigration Services, "Temporary Protected Status," available at https://www.uscis.gov/humanitarian/temporary-protected-status.
[3451] U.S. Dept. of Homeland Security, U.S. Citizenship and Immigration Services, "Citizenship Through Naturalization," available at https://www.uscis.gov/us-citizenship/citizenship-through-naturalization.

Detainer—an order that a person in custody be held for a certain period of time after release so that another law enforcement agency can decide whether to pick them up to face pending charges.

Removal Proceedings—the legal process for deciding whether the government can remove someone from the U.S.

II. IDENTIFICATION & KEY DOCUMENTS FOR NONCITIZENS & UNDOCUMENTED PEOPLE

WHAT WILL I LEARN?

- **What forms of ID are and are not available for noncitizens with various immigration statuses**
- **Information about Social Security Numbers – who can get them and how**
- **Information about who can obtain a California state ID card**
- **Identification options for undocumented people in California**

I AM A NONCITIZEN. WHAT TYPES OF ID CAN I GET?

Your ability to get ID varies greatly depending on your immigration status and the type of document. While noncitizens cannot get items such as a U.S. Birth Certificate, Naturalization Certificate, or U.S. Passport, you may be able to get other key documents. In fact, you may be required to obtain some key documents in order to work, drive, or travel legally in the U.S. The following key documents may be available to some noncitizens.

SOCIAL SECURITY NUMBERS & CARDS FOR NONCITIZENS

WHAT TYPES OF NONCITIZENS CAN GET A SOCIAL SECURITY NUMBER AND CARD?

In general, only noncitizens authorized by the federal government to work in the U.S. can obtain a Social Security Number.[3452] **Lawful Permanent Residents (LPR), certain visa-holders, refugees/asylees, DACA recipients, and people with temporary protected status (TPS) are generally permitted to apply for and obtain a Social Security Number and card.**[3453] The application for noncitizens to get a Social Security Number and card requires different documentation depending on your specific immigration status.

If you are eligible, you can apply for a SSN at your local Social Security office. In most cases, you will be required to show proof of your ability to work in the U.S., as well as official documents from your country of origin that prove your identity and/or age (such as a Birth Certificate or Passport).

The document requirement is more relaxed for two classes of noncitizens:

- Refugees and asylees, many of whom may not have official documents from their country of origin. In this case, the Social Security Administration will accept evidence of refugee status instead.[3454]
- DACA participants who don't have birth certificates from the country in which they were born. In this case, the Social Security Administration may accept a state-issued ID or driver's license.[3455]

For more information on the eligibility and documentation requirements for Social Security Numbers and cards, see PG. 38.

HOW DO I OBTAIN A BIRTH CERTIFICATE FROM MY COUNTRY OF ORIGIN?

Most, but not all, foreign countries record births and will provide certifications of births occurring within their boundaries. You should contact your birth country's nearest Embassy or Consulate in the United States. Addresses and telephone numbers for these offices are listed in the U.S. Department of State Publication 7846, Foreign Consular Offices in the United States, which is available in many local libraries. Copies of this publication may also be purchased from the U.S. Government Printing Office, Washington, DC 20402.

If the Embassy or Consulate is unable to provide assistance, U.S. citizens may obtain assistance by writing to the Office of Overseas Citizens Services, U.S. Department of State, Washington, DC 20520-4818. Noncitizens

[3452] SSA, "Social Security Numbers for Noncitizens," available at https://www.ssa.gov/pubs/EN-05-10096.pdf.
[3453] SSA, "Social Security Numbers for Noncitizens," available at https://www.ssa.gov/pubs/EN-05-10096.pdf; "Social Security Number and card – DACA," available at https://www.ssa.gov/pubs/deferred_action.pdf; "Int'l Students and Social Security Numbers," available at https://www.ssa.gov/pubs/EN-05-10181.pdf. See also SSA POMS RM 10211.185.
[3454] SSA POMS RM 10211.185.
[3455] SSA, "Social Security Number and card – DACA," available at https://www.ssa.gov/pubs/deferred_action.pdf.

residing in the United States may be able to obtain assistance through the Embassy or Consulate of their country of nationality.

I AM AN UNDOCUMENTED PERSON. CAN I GET A SOCIAL SECURITY NUMBER OR CARD?

If you are undocumented, you cannot get a Social Security Number or card, which limits your ability to work legally in the U.S. and receive certain government benefits. However, it won't stop you from accessing many other services and benefits. For example, a SSN is NOT required to get a driver's license, register for school, get private health insurance, or apply to subsidized housing. Although many companies, such as banks or credit card corporations, may ask for your social security number, you aren't required to provide one if you don't have one. If you are concerned about how your immigration status is affecting your ability to find work, speak to an immigration attorney. See PG. 1134 for a list of referrals.

CALIFORNIA DRIVER LICENSES AND ID CARDS FOR NONCITIZENS

WHICH TYPES OF NONCITIZENS CAN GET A CALIFORNIA ID CARD?

Unfortunately, only California residents who are lawfully present in the U.S. can obtain an official state ID. This means you need federally issued documents proving your immigration status. The DMV will accept any of the following U.S. Citizenship and Immigration Services documents as proof:[3456]

- Permanent Resident/Resident Alien card.
- Temporary Resident ID card.
- Valid foreign passport with valid Record of Arrival/Departure (Form I-94).
- Employment Authorization Document (EAD) I-766 card.
- Valid foreign passport stamped "Processed for I-551."
- Permanent Resident Re-entry Permit.
- Refugee Travel Document.
- Immigration judge's order granting asylum
- Valid I-94 stamped "REFUGEE", "PAROLE" or "PAROLEE", "ASYLEE", "HP", "PIP", Section(s) 207, 208, 209, or 212d(2).
- Valid I-94 with attached photo stamped "Temporary evidence of lawful admission for permanent residence."

I AM AN UNDOCUMENTED PERSON. CAN I GET A CALIFORNIA ID CARD?

No, you *cannot* get official ID that works for all government purposes if you are an undocumented immigrant living in California, BUT you may be able to get special types of ID that can be used in limited circumstances. This includes:

3. California AB 60 "Undocumented Person" driver licenses, which allow some undocumented individuals to drive legally in California (and California only!);
4. Consular Identification Cards; and
5. Municipal ID Cards (created by some cities for their local residents).

WHAT IS AN "UNDOCUMENTED PERSON" CALIFORNIA DRIVER LICENSE?

If you are an undocumented immigrant, but otherwise meet the requirements to drive legally in California, you may be able to get an AB 60 "Undocumented Person" driver license. It is very important to know that the AB 60 driver license is NOT an official form of ID because it does *not* qualify you for employment, voter registration, or public benefits in the United States. HOWEVER, an AB 60 driver license *will* allow you to drive a car legally in California—and California only.[3457]

Proof of Residency: When applying for an AB 60 license, you will need to submit proof that you currently live in California. For a list of documents that meet this requirement, see Appendix H, PG. 103.

[3456] CA DMV, "FFDL 6 Requirements for a California Identification Card," available at https://www.dmv.ca.gov/portal/dmv/detail/pubs/brochures/fast_facts/ffdl06.
[3457] CAL. VEH. CODE §§ 12800-12801, 12801.9.

CAN THE POLICE REPORT ME TO U.S. IMMIGRATION OFFICIALS FOR USING AN AB 60 "UNDOCUMENTED PERSON" DRIVER LICENSE IN CALIFORNIA?

No. It is against state law for state police to discriminate against anyone driving with an AB 60 driver license in California, but ***federal agents in California and all law enforcement agencies outside of California*** are NOT required to honor your AB 60 driver license.

Depending on local laws and policies, you could face criminal or immigration consequences if you show your California "Undocumented Person" driver license to a police officer in another state—so use it *only in California*! And do NOT try to use it in federal facilities, like airport screenings or crossing through Customs and Border Patrols![3458] Airports and Customs are run by the federal government, and they do NOT recognize AB 60 licenses—in fact, they can use it against you.

WHAT ARE THE OTHER LIMITED FORMS OF ID FOR UNDOCUMENTED PEOPLE?

You may be able to get one of these limited forms of ID, which can be used for some but not all purposes:

Consular Identification Cards (CIDs): Some governments issue CID cards to identify their citizens who are living in foreign countries. CID cards can be issued to people who are undocumented or documented in the foreign county. See Appendix I, PG. 109, for a list of countries that issue CIDs. If you are a citizen of one of these countries, visit the nearest consulate to obtain your CID card. In the United States, CID cards can be a helpful ID document as you try to get a driver license, open a bank account, show proof of identity to police, and access other services. For example, in California, you can use a Mexican CID to get a driver license. However, CIDs do not grant you legal presence in the United States or other privileges.[3459]

Municipal IDs: A handful of California cities have begun issuing municipal ("city") ID cards for their residents. You can use these to get access to city services and benefits. More importantly, they are considered a form of identification by local officials and may provide evidence to get other forms of ID. Additionally, these forms of ID do not require proof of citizenship or legal presence of any kind.

- ***San Francisco City ID Card*** — Photo ID card for San Francisco residents to get access to city programs and connect to local businesses. It proves identity and city residency; and it can be used as a public library card and to access other city services. For more information, visit the San Francisco County Clerk's website at: http://www.sfgov2.org/index.aspx?page=110, or call 2-1-1 in the San Francisco Bay Area.
- ***Oakland City ID Prepaid Mastercard*** — Photo ID with an optional Prepaid Debit Card banking feature for Oakland residents. For Oakland residents who don't have bank accounts, it provides an affordable alternative. For more information, visit http://www.oaklandcityid.com/ or call 1-888-997-3522.
- ***Richmond City ID Card*** — Photo ID and prepaid debit card for Richmond residents. For more information, see http://www.richmondcityid.com/ or call 1-888-997-3522.

TRAVELING AS A NONCITIZEN

I AM A NONCITIZEN. AM I ALLOWED TO TRAVEL OUTSIDE OF CALIFORNIA?

It depends. If you are a Lawful Permanent Resident (LPR), you have many of the same rights as U.S. citizens, including the right to travel throughout the country and abroad. Bring your green card with you, if possible, and be wary of traveling outside of the U.S. for more than six months — this could be interpreted as moving to another country and could put your legal status in jeopardy.[3460]

IMPORTANT: If you are a Lawful Permanent Resident with a criminal record, consult with an attorney before leaving the country — especially if your arrest or conviction occurred after you obtained LPR status. See PG. 1134 for a list of people and organizations you can contact.

[3458] See CAL. VEH. CODE § 12801.9.
[3459] BORDER SECURITY: Consular Identification Cards Accepted within United States, but Consistent Federal Guidance Needed, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-040881. (Aug. 24, 2004).
[3460] Immigrant Legal Resource Center, "The Rights of Lawful Permanent Residents" (Mar. 2017).

III. PAROLE & PROBATION ISSUES AFFECTING NONCITIZENS

WHAT WILL I LEARN?

- **The relationship between the federal immigration enforcement agency and the CDCR**
- **What happens when you are released from CDCR custody with an outstanding detainer**
- **Information about the immigration consequences of sex offenses**
- **The limitations on receiving parole services as an undocumented person**

ICE DETAINERS

WHAT IS THE RELATIONSHIP BETWEEN THE CDCR AND IMMIGRATIONS & CUSTOMS ENFORCEMENT (ICE)?

When a noncitizen (or suspected noncitizen) is convicted of a crime, the California Department of Corrections and Rehabilitation (CDCR) reports that information to someone from U.S. Immigrations & Customs Enforcement (ICE).[3461] ICE then reviews every case to determine whether that person is removable from the country. If ICE officials determine that a noncitizen may be removable, they will place that person on an immigration hold (also called a "detainer," see below). The process of evaluating whether someone is removable takes place *after* they have served their entire prison term.[3462]

I AM A NONCITIZEN, AND I AM TOLD I HAVE AN OUTSTANDING DETAINER AGAINST ME. WHAT IS A DETAINER? WHAT COULD HAPPEN TO ME?

An ICE detainer is a written request by immigration officials to a local jail or other law enforcement agency that the agency detain an individual for an additional 48 hours (excluding weekends and holidays) after his or her release date so that ICE officials can decide whether to take the individual into federal custody and begin formal deportation proceedings.

A "detainer"—or "immigration hold"—is one of the key tools U.S. Immigration and Customs Enforcement (ICE) uses to apprehend individuals who come in contact with local and state law enforcement agencies and put them into the federal immigration, and often times, deportation system.

Even if you have a detainer against you, the USPC may still grant you release onto federal parole if you meet the other criteria in 28 C.F.R. § 2.18. The presence of a detainer is not in itself a valid reason for the denial of parole.[3463]

When a State or local detainer is outstanding against a prisoner whom the USPC wishes to parole, the Commission may order either of the following:

- In this event, you can only be released to agency that put the detainer on you. When such a detainer is removed, you can't be released unless the Commission makes a new order of parole; OR
- If you have an acceptable plan for community supervision, you can be released into the community if the detaining officials remove the detainer or don't pick you up[3464]

CONSTITUTIONAL CONCERNS ABOUT DETAINERS

State and local corrections officials frequently violate the 48-hour limitation by continuing to hold individuals beyond the period allowed by regulation, raising constitutional concerns. Detainers have resulted in the illegal imprisonment of many people—including U.S. citizens, lawful permanent residents, without any charges pending, sometimes for days or weeks after they should have been released from custody.

For more information on the immigration consequences of a criminal records and a discussion of record cleaning options see PG. 1122 later in this chapter.

[3461] Prison Law Office, Prisoner's Rights Handbook, Ch. 13, "Immigration Issues for Noncitizen Prisoners" at p. 533.
[3462] Prison Law Office, Prisoner's Rights Handbook, Ch. 13, "Immigration Issues for Noncitizen Prisoners" at p. 533.
[3463] 28 C.F.R. § 2.31.
[3464] 28 C.F.R. § 2.32.

NONCITIZENS ON STATE PAROLE

I AM A NONCITIZEN CONVICTED OF A SEX OFFENSE THAT REQUIRES ME TO REGISTER. WILL I FACE IMMIGRATION CONSEQUENCES IN ADDITION TO MY TIME SENTENCED TO JAIL OR PRISON?

The interaction between criminal and immigration law is very complex, and the answer to this question depends on what your specific conviction is, and/or what happened when you took a plea in your criminal case.

A conviction of an offense that involves sexual or lewd intent can have a range of immigration consequences. But in some cases where the offense is less serious, careful pleading and effective advocacy may help someone to avoid negative immigration consequences (like avoiding deportation). If you are unsure if your conviction will trigger immigration consequences, it is recommended that you reach out to your defense attorney/public defender's office immediately about these concerns.

IMPORTANT RESOURCE: For general information on the immigration consequences of a conviction that creates a 290 registration requirement, the Immigrant Legal Resource Center (ILRC) offers a detailed guide online at: https://www.ilrc.org/sites/default/files/resources/10_sex_offenses_2014_final.pdf.

I AM UNDOCUMENTED AND WAS JUST RELEASED ONTO STATE PAROLE. WILL MY UNDOCUMENTED IMMIGRATION STATUS PREVENT ME FROM GETTING SERVICES?

Probably yes. Federal law prohibits most undocumented people from receiving many state and local public benefits.[3465] In California, this includes parole services such as food and transportation vouchers, job placement services, and short-term cash loans.[3466] If you feel you have been incorrectly denied these services on the basis of your immigration status, you can file an administrative appeal using CDCR Form 602.[3467] See PG. 180 in the PAROLE &A PROBATION CHAPTER for more information on the 602 process.

NONCITIZENS ON FEDERAL PAROLE

I AM A NONCITIZEN AND WILL BE RELEASED ON FEDERAL PAROLE. COULD I FACE SPECIAL CONDITIONS RELATED TO MY IMMIGRATION STATUS?

Possibly. Even if you are not currently subject to an ICE detainer, the court has the discretion to order you to be deported and remain outside of the U.S. as part of your conditions of supervised release.[3468]

I WAS RELEASED ON FEDERAL PAROLE AND SUBSEQUENTLY DEPORTED. DOES MY DEPORTATION CANCEL OR END MY PAROLE TERM?

No. Federal courts have determined that in most cases, a person's federal parole term continues even if they have been deported to another country.[3469] While your term of supervision will continue to run while you're abroad, if you reenter the country illegally in that time period, you could face even greater consequences.[3470]

[3465] 8 U.S.C. § 1621.
[3466] 15 C.C.R. § 3630(a).
[3467] 15 C.C.R. § 3630(c).
[3468] 18 U.S.C. § 3583(d); see also U.S. Courts, Supervision, Ch. 3: "Immigration-Related Requirements (Probation and Supervised Release Conditions," available at http://www.uscourts.gov/services-forms/immigration-related-requirements-probation-supervised-release-conditions.
[3469] U.S. v. Brown (5th Cir. 1995) 54 F.3d 234; see also U.S. v. Ramirez-Sanchez (9th Cir 2003) 388 F.3d 977.
[3470] *Ibid.*

IV. HOUSING ISSUES AFFECTING NONCITIZENS

WHAT WILL I LEARN?

- **Information about the Immigration Tenant Protection Act, a new law protecting undocumented renters.**
- **What to do if ICE comes to your house or neighborhood.**

I AM UNDOCUMENTED. CAN MY LANDLORD REPORT ME (OR THREATEN TO REPORT ME) TO IMMIGRATION AUTHORITIES?

In general, no. In 2017, California passed the Immigrant Tenant Protection Act, a landmark bill preventing landlords from reporting — or threatening to report — their tenants' immigration status to authorities as either a means of harassment or to force an eviction.[3471] The Act, a response to an increase in ICE raids and evictions in immigrant communities under President Donald Trump's administration, provides undocumented renters with several important protections (see "Know Your Rights" box below).[3472] **But note:** the Act does not prevent landlords from reporting or using a tenant's immigration status when complying with specific federal housing programs that offer rental assistance to low-income tenants.[3473]

KNOW YOUR RIGHTS AS AN UNDOCUMENTED TENANT

- Landlords are NOT permitted to ask about your immigration status on a rental application;
- Landlords are NOT permitted to ask about your immigration status at any time in the rental process;
- You are NOT required to tell your landlord about your immigration status at any time in the rental process;
- Your landlord CANNOT threaten to tell authorities about your immigration status in order to force you out of your house, retaliate against you, or harass you.
- Your landlord CANNOT evict you for not having a valid Social Security Number or state-issued ID card;
- If your landlord discloses or threatens to disclose your immigration status, you have the right to sue for 6 to 12 times the monthly rent.[3474]

IMPORTANT: If you feel your landlord has violated your rights under the Immigrant Tenant Protection Act, contact a housing lawyer IMMEDIATELY. See Appendix A, PG. 1128 for a list of referrals.

WHAT IS AN "ICE RAID?"

U.S. Immigration and Customs Enforcement (ICE) is a federal law enforcement agency that has the authority to round up people suspected of violating federal immigration laws — particularly those with criminal records — without warning.[3475] During a raid, uniformed, armed ICE agents may surround a person's home and order occupants to open up or come outside for questioning. They can then arrest and potentially order the deportation of anyone they suspect of being in the country illegally. Under Donald Trump's presidency, ICE raids have become more common in many California neighborhoods.[3476]

HOW CAN I PREPARE FOR AN ICE RAID?[3477]

ICE raids are very serious and require assistance from experienced immigration attorneys. While the attorneys at Root & Rebound do NOT have expertise in this area, we offer the following tips from immigration advocates as a starting point to help you become more prepared. If you are worried about being the target of an ICE raid, we recommend speaking to an experienced immigration practitioner.

[3471] AB 291: Housing: Immigration (Oct. 5, 2017), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB291. See also Washington Post, "Calif. Lawmakers approve bill protecting undocumented immigrant tenants from landlord harassment" (Sept. 19, 2017), available at https://www.washingtonpost.com/news/where-we-live/wp/2017/09/19/calif-lawmakers-approve-bill-protecting-undocumented-immigrant-tenants-from-landlord-harassment/?utm_term=.a05b8270ea21.

[3472] Sacramento Bee, "Rent increases, evictions up in immigrant communities under Trump, housing lawyers say" (Jul. 10, 2017), available at http://www.sacbee.com/news/politics-government/capitol-alert/article160239609.html.

[3473] See CAL. CIV. CODE § 1942.(k); CAL. CODE OF CIV. PRO. § 1161.4(a) and (d).

[3474] CAL. CIV. CODE § 1940.35(b)(1).

[3475] ABC News, "An ICE Home Raid Explainer" (Apr. 10, 2013), available at http://abcnews.go.com/ABC_Univision/News/ice-home-raid/story?id=18896252.

[3476] San Jose Mercury News, "Bay Area immigrant families prepare for ICE raids with emergency plans" (Mar. 2, 2018), available at https://www.mercurynews.com/2018/03/01/immigrant-families-prepare-for-ice-raids-with-emergency-plans/.

[3477] These tips are adapted from Immigrant Legal Resource Center's info sheet "Immigrant Rights" (Apr. 24, 2017), available at https://www.ilrc.org/sites/default/files/resources/kyr_two_pager_v2.pdf.

STEP 1: Talk to an immigration lawyer. An immigration lawyer with experience working with clients in reentry can help you prepare for a raid, figure out your and your family's options, and determine if any expungement remedies could help you. They may also have advice on which documents you should and should not have on your person at all times. To find out more about expungement remedies, see PG. 1122. For a list of free or low-cost legal service providers, see PG. 1134.

STEP 2: Develop a family preparedness plan. You and your loved ones need to be prepared for an unexpected ICE raid. For more information on how to set up a family preparedness plan, including various childcare arrangements you can make for your children, see PG. 1120.

STEP 3: Know your rights! If ICE shows up at your house, make sure you, your loved ones, and neighbors know what ICE agents can and cannot do. *No matter what your immigration status*, remember the following:

1. **Remain calm and do not run away**. ICE and/or the police may find a way to use your actions against you.
2. **You have the right to remain silent**. You are not required to speak to an ICE agent. Do not answer any questions, especially about your birth place or immigration status. Tell them you will not answer their questions until you speak to a lawyer.
3. **You have the right to demand a warrant**. You do NOT have to open your door or let ICE in unless the ICE agent shows you a warrant. The warrant must be signed by a judge with your correct name and address on it.
4. **You have the right to speak to a lawyer**. Make sure you are prepared with the name and number of an attorney you can contact in the event of an immigration emergency.
5. **You have the right to refuse to sign or show any documents before speaking to a lawyer.** Do NOT sign anything. ICE agents come to raids equipped with forms that can eliminate your right to speak to a lawyer or have a hearing in front of an immigration judge. Don't sign away your rights!

HELPFUL HINT:

Many California nonprofits make location-specific "Red cards," summarizing your legal rights against ICE agents. Red cards are available in multiple languages.

It may be helpful for you to carry around a red card at all times so you know what to do if you are approached by immigration authorities.

To obtain a red card, go to https://www.ilrc.org/red-cards.

IMPORTANT: *If you witness an ICE Raid, you can call the "ICE out of CA Hotline,"* a phone line that connects with a confidential voicemail, which is monitored by immigrant lawyers and advocates.

Phone: 1-844-TRUST-01 (1-844-878-7801)

Website: www.iceoutofca.org

Many counties also have 24/7 hotlines available to help people report ICE raids and individuals taken into immigration custody. Some hotlines (e.g. Alameda County) provide follow-up and limited-scope legal support for local people

Alameda County: (510) 241-4011

San Francisco: (415) 200-1548

San Mateo County: (203) 666-4472

Santa Clara County: (408) 290-1144

Santa Cruz County: (831) 329-4289

Monterey County: (831) 643-5525

Sacramento County: (916) 245-6773

Fresno County: (559) 978-4797

V. PUBLIC BENEFITS FOR NONCITIZENS

WHAT WILL I LEARN?

- **Whether you are eligible for certain public benefits;**

I AM A NONCITIZEN. WHAT TYPES OF PUBLIC BENEFITS CAN I GET?

Your ability to get various public benefits varies greatly depending on your immigration status and the type of benefit. While many federally funded public benefits, including social security (SSI), are mostly limited to U.S. citizens[3478], certain noncitizens known as "qualified" immigrants[3479] can sign up for state-sponsored government programs that offer similar benefits.

Qualified immigrants include:

- Lawful Permanent Residents (also called "Green Card holders");
- Lawful Temporary Residents and visa holders;
- Asylees and refugees;
- People with Temporary Protected Status (TPS).

If you are not a "qualified" immigrant, your ability to get public benefits is much more limited. However, you may still have access to benefits such as healthcare.

CASH ASSISTANCE PROGRAM FOR IMMIGRANTS (CAPI)

WHAT IS CAPI? WHO IS ELIGIBLE?

CAPI is a state-funded program that provides monthly cash benefits (similar to SSI) for aged, blind, and disabled noncitizens who are ineligible for SSI/SSP solely due to their immigrant status. To be eligible for CAPI, you must: 1) Fill out an application in the county welfare office; 2) Be a *lawfully present noncitizen*; 3) Meet all other SSI/SSP eligibility requirements (except for immigration status); 4) Be ineligible for SSI/SSP solely due to immigration status.

For more information on CAPI, call your local SSA office (listing of SSA offices available at: https://secure.ssa.gov/ICON/main.jsp or visit: http://www.cdss.ca.gov/cdssweb/PG42.htm

FOOD STAMPS

I AM A NONCITIZEN. CAN I GET FOOD STAMPS?

It depends. There are two food stamp programs: a federal program called the Supplemental Nutrition Assistance Program (SNAP) and a state program, the California Food Assistance Program (CFAP). "Qualified" immigrants may be able to get federally funded food stamps — but only after they have lawfully lived in the U.S. for five years.[3480] The California Food Assistance Program does not have a similar waiting period. All "qualified" immigrants, as well as a small percentage of non-qualified immigrants, are permitted to apply for CFAP, regardless of how long they have held their immigration status.[3481] Undocumented people cannot get food stamps under either program.[3482]

I AM UNDOCUMENTED BUT MY CHILDREN ARE HERE LEGALLY. CAN I APPLY FOR FOOD STAMPS FOR THEM?

Yes. Even though your immigration status disqualifies you from federal and state food stamps, you can apply on behalf of your children if they are U.S. citizens or eligible noncitizens.[3483] If you are not seeking food stamps for

[3478] If you're a noncitizen, you may be able to get SSI if you meet specific requirements; the rules on this are complex. Resources are available from California Immigrant Policy Center (www.caimmigrant.org) and National Immigration Law Center (www.nilc.org).
[3479] 8 U.S.C. § 1641(b).
[3480] U.S.D.A. Food and Nutrition Service, "SNAP Policy on Non-Citizen Eligibility" (Mar. 24, 2017), available at https://www.fns.usda.gov/snap/snap-policy-non-citizen-eligibility.
[3481] California Immigrant Welfare Collaborative, "Immigrant Eligibility for Food Stamps in California" (Jan. 2006), available at https://www.nilc.org/wp-content/uploads/2015/11/imm_eligibility_food_stmps_CA_2006-1-11.pdf. Special populations of unqualified immigrants who are permitted to apply for CFAP include victims of sex trafficking and Hmong people who helped the U.S. during the Vietnam War.
[3482] Supplemental Nutrition Assistance Program, "Guidance on Non-Citizen Eligibility" (Dec. 19, 2009), available at https://fns-prod.azureedge.net/sites/default/files/snap/Non-Citizen_Guidance_063011.pdf; see also Calif. Dept. of Social Services, "CalFresh Regulation Quick Reference," available at http://www.cdss.ca.gov/calfreshoutreach/res/Toolkit/QuickReference/RegulationQuickReference_D_PeoplewithImmigrantRefugeeorAsyleeStatus.pdf.
[3483] California Immigrant Welfare Collaborative, "Immigrant Eligibility for Food Stamps in California" (Jan. 2006), available at https://www.nilc.org/wp-content/uploads/2015/11/imm_eligibility_food_stmps_CA_2006-1-11.pdf; The Guardian, "Undocumented



yourself, you are NOT required to give information about your immigration status, nor are you required to provide a Social Security Number. Although the food stamps office is only required to report you to ICE if it has tangible proof you are in the country illegally (such as a final order of deportation), it is still a good idea not to tell anyone you are undocumented. Rather, explain that you are applying for your children but are not yourself a qualified immigrant.[3484]

HEALTHCARE

I AM A NONCITIZEN. CAN I GET HEALTHCARE IN CALIFORNIA?

Yes. Lawfully present noncitizens and undocumented people can both apply for healthcare through Covered California, which also screens for Medi-Cal eligibility. Only lawfully present people can purchase coverage through Covered California, and applicants are required to show proof of lawful presence. While undocumented people cannot purchase healthcare through Covered California, they may still be eligible for healthcare through Medi-Cal.[3485] They may also be eligible for healthcare under a county program.

I AM UNDOCUMENTED BUT MY CHILDREN ARE HERE LEGALLY. CAN I APPLY FOR HEALTHCARE ON THEIR BEHALF?

Yes. Even if your immigration status disqualifies you from Covered California, you can apply on behalf of your children if they are U.S. citizens or eligible noncitizens.[3486] You do not have to disclose your immigration status when applying on behalf of another person.[3487]

WILL GETTING GOVERNMENT HEALTHCARE COVERAGE AFFECT MY IMMIGRATION STATUS?

No. In general, taking advantage of government health care programs — whether at the federal, state, or county level — should not impact your immigration status or your ability to apply for a green card.[3488] In addition, if you are undocumented and disclose your immigration status while applying for California health insurance, ICE cannot use that information against you or initiate deportation proceedings.[3489]

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immigrants avoid vital nutrition services for ear of deportation" (May 9, 2017), available at https://www.theguardian.com/us-news/2017/may/09/undocumented-immigrants-wic-nutrition-services-deportation.

[3484] Adapted from California Immigrant Welfare Collaborative, "Immigrant Eligibility for Food Stamps in California" (Jan. 2006), available at https://www.nilc.org/wp-content/uploads/2015/11/imm_eligibility_food_stmps_CA_2006-1-11.pdf.

[3485] Covered California, "Eligibility and Immigration," available at https://www.coveredca.com/individuals-and-families/getting-covered/immigrants/.

[3486] California Immigrant Welfare Collaborative, "Immigrant Eligibility for Food Stamps in California" (Jan. 2006), available at https://www.nilc.org/wp-content/uploads/2015/11/imm_eligibility_food_stmps_CA_2006-1-11.pdf; The Guardian, "Undocumented immigrants avoid vital nutrition services for ear of deportation" (May 9, 2017), available at https://www.theguardian.com/us-news/2017/may/09/undocumented-immigrants-wic-nutrition-services-deportation.

[3487] Covered California, "Eligibility and Immigration," available at https://www.coveredca.com/individuals-and-families/getting-covered/immigrants/.

[3488] Hispanas Organized for Political Equality, "California Health Care Resource Guide for Undocumented Immigrants," available at http://www.e4fc.org/images/HEALTHCARE_RESOURCE_GUIDE_HOPE-FINAL_OCTOBER_28.PDF.

[3489] U.S. Dept. of Homeland Security, "Clarification of Existing Practices Related to Certain Health Care Information" (Oc. 25, 2013), available at https://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf.

VI. EMPLOYMENT & EDUCATION ISSUES AFFECTING NONCITIZENS IN REENTRY

WHAT WILL I LEARN?

- **What your employer can and cannot ask you about your immigration status.**
- **Whether your employer can threaten to report you to ICE.**
- **What to do if ICE comes to your workplace.**
- **Information about attending college in California.**
- **Information about eligibility for federal and state financial aid for college.**

EMPLOYMENT

I AM UNDOCUMENTED. CAN MY EMPLOYER ASK ABOUT MY IMMIGRATION STATUS?

It depends. Federal law requires employers to verify the work eligibility of their employees at the time they are hired. Once you have filled out the required form (called an I-9) and presented supporting documentation, an employer should NOT inquire into or discuss your immigration status — except under specific circumstances required by federal law.[3490]

I AM UNDOCUMENTED. CAN MY EMPLOYER THREATEN TO REPORT ME TO ICE?

No. If your employer threatens to report your immigration status (or suspected immigration status) as a means of scaring you, this is considered criminal extortion.[3491] Contact an attorney with experience in immigration and/or employment law immediately. For a list of referrals see Appendix A, PG. 1134.

WHAT IS AN ICE WORKSITE RAID?

A worksite raid is the sudden entry of ICE agents into a place of business in order to detect and detain undocumented workers. Under Donald Trump's presidency, workplace raids have become more common. In response, in 2017 California passed the Immigrant Worker Protection Act, which is designed to protect undocumented workers from unplanned immigration enforcement. The Act limits employers' ability to let ICE officials into their place of business.[3492] See the Know Your Rights box below for more information.

WHAT SHOULD I DO IF ICE RAIDS MY WORKPLACE?

Under the Immigrant Worker Protection Act, your employer is supposed to prevent ICE from entering nonpublic places without consent or a warrant.[3493] Still, ICE raids can be stressful and may not go according to plan. Remember that all people in the U.S. — regardless of their immigration status — has certain legal rights, including the right to remain silent and the right to speak to an attorney before signing anything. If ICE detains you, you have the right to an immigration attorney. You should create a plan with your loved ones so you are prepared for contact with ICE. For more information on creating a family preparedness plan, see PG. 1120.

EDUCATION

I AM A NONCITIZEN. CAN I ATTEND COLLEGE IN CALIFORNIA?

Yes. In 2017, Governor Jerry Brown passed AB 699, which makes it mandatory for all public schools in California to be accessible to California residents regardless of their immigration status.[3494] In addition, the California Dream Act provides funds for noncitizen and undocumented students to cover tuition at public and private colleges.[3495]

[3490] 8 U.S.C. § 1324a; see also Immigrant Legal Resource Center "Know Your Rights: A Guide for California Employers" (Feb. 2018), available at https://www.ilrc.org/sites/default/files/resources/kyr_employer_guide-v4-20180307.pdf.
[3491] Immigrant Legal Resource Center "Know Your Rights: A Guide for California Employers" (Feb. 2018), available at https://www.ilrc.org/sites/default/files/resources/kyr_employer_guide-v4-20180307.pdf.
[3492] Cal. Dept. of Industrial Relations, "Immigrant Worker Protection Act FAQ," available at http://www.dir.ca.gov/dlse/AB_450_QA.pdf.
[3493] Cal. Dept. of Industrial Relations, "Immigrant Worker Protection Act FAQ," available at http://www.dir.ca.gov/dlse/AB_450_QA.pdf.
[3494] 8 U.S.C. § 1324a; see also Immigrant Legal Resource Center "Know Your Rights: A Guide for California Employers" (Feb. 2018), available at https://www.ilrc.org/sites/default/files/resources/kyr_employer_guide-v4-20180307.pdf.
[3495] Cal. Student Aid Commission, California Dream Act FAQ (Jul 2017), available at http://www.csac.ca.gov/pubs/forms/grnt_frm/california_dream_act_faq.pdf.

I AM A NONCITIZEN. CAN I APPLY FOR FEDERAL FINANCIAL AID?

It depends. Your ability to get financial aid depends on your immigration status and the type of government aid. Only "eligible noncitizens" can receive federal financial aid — not undocumented individuals. If you fall in one of the categories below, you are considered an "eligible noncitizen."

- **You are a:**
  - U.S. national (includes natives of American Samoa or Swains Island) or
  - U.S. permanent resident with a Form I-551, I-151, or I-551C (Permanent Resident Card, Resident Alien Card, or Alien Registration Receipt Card), also known as a green card;
- **You have an Arrival-Departure Record (I-94) from U.S. Citizen and Immigration Services (USCIS) showing:**
  - "Refugee,"
  - "Asylum Granted,"
  - "Cuban-Haitian Entrant (Status Pending),"
  - "Conditional Entrant" (valid only if issued before April 1, 1980), or
  - "Parolee" (you must be paroled for at least one year, and you must be able to provide evidence from the USCIS that you are not in the United States for a temporary purpose and that you intend to become a U.S. citizen or permanent resident);
- **You hold a T-visa (for victims of human trafficking) or your parent holds a T-1 visa. Your college or career school's *financial aid office* will ask to see your visa and/or certification letter from the U.S. Department of Health and Human Services;**
- **You are a "battered immigrant-qualified alien" who is a victim of abuse by your citizen or permanent resident spouse, or you are the child of a person designated as such under the Violence Against Women Act; *OR***
- **You are a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. If this is the case, you may be eligible for only certain types of federal aid.**
  - Citizens of the Republic of Palau are eligible for Federal Pell Grants, Federal Supplemental Educational Opportunity Grants, and Federal Work-Study.
  - Citizens of the Federal States of Micronesia and the Republic of the Marshall Islands are eligible for Federal Pell Grants only.

I AM A NONCITIZEN. CAN I APPLY FOR STATE FINANCIAL AID?

Yes. Unlike the federal government, California does not limit all aid to "eligible noncitizens" only — meaning you can apply for some forms of aid even if you are undocumented. This includes Cal Grants, the Chafee Foster Youth Grant, Middle Class Scholarships and institutional or private scholarships. Eligible undocumented students wishing to attend public schools like those in the University of California (UC) or California State University (CSU) systems may be eligible for the Dream Loan as well.[3496] In addition, under SB 68, a law passed in 2017, undocumented students are allowed to pay discounted resident tuition if they meet certain residency and educational requirements.[3497]

WHAT IS THE "DREAM ACT"?

The Dream Act is a set of California laws allowing some undocumented and nonresident documented students to receive state-based financial aid and institutional scholarships. For more information, including eligibility criteria, visit the California Student Aid Commission website at: http://www.csac.ca.gov/dream_act.asp.

WILL APPLYING FOR STATE FINANCIAL AID JEOPARDIZE MY IMMIGRATION STATUS?

No. Under AB 699, the government is prohibited from collecting information about students' citizenship or immigration status using their financial aid or institutional documents.[3498] In addition, California public colleges cannot disclose personal information — including immigration information — about its students except under limited circumstances.[3499]

[3496] Cal. Student Aid Commission, California Dream Act FAQ (Jul 2017), available at http://www.csac.ca.gov/pubs/forms/grnt_frm/california_dream_act_faq.pdf.
[3497] See CAL. EDU. CODE § 68130.5.
[3498] Cal. Student Aid Commission, California Dream Act FAQ (Jul 2017), available athttp://www.csac.ca.gov/pubs/forms/grnt_frm/california_dream_act_faq.pdf.
[3499] AB 21: Public postsecondary education (Oct. 5, 2017), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB21.

VII. PROTECTING YOUR FAMILY & CHILDREN FROM IMMIGRATION CONSEQUENCES

WHAT WILL I LEARN?

- **What a family preparedness plan is and how to create one.**
- **Various options for childcare arrangements in the event you are detained.**
- **How to deal with family issues while in ICE detention.**

WHAT IS A FAMILY PREPAREDNESS PLAN?

A family preparedness plan ensures you and your loved ones are prepared in the event ICE detains you or a member of your family. It is a good idea to plan for this in advance to ease the stress of ICE detention.

HOW DO I CREATE A FAMILY PREPAREDNESS PLAN?[3500]

The most important thing is to plan for childcare. Ensure that a responsible adult will be available to take care of your child or children if you are detained or deported. Write this plan down and make sure your friends and family are aware of it. Without worrying them, make sure your children understand that they will be taken care of in case of an immigration emergency.

When making your plan, you will have to decide what kind of childcare agreement you want to make with the adult you have chosen. You have several options, some more formal than others. Discuss your options, listed below, with your family and an attorney to determine which is the best fit for your situation.

- **INFORMAL AGREEMENT *without* LEGAL PAPERS or COURT** - Just as you can have your children stay with a baby sitter without signing any papers, you can choose to have your children live with someone for a longer period of time without signing any papers. You simply need to talk to the person and get his or her verbal agreement that they will care for your children. This type of arrangement may work well for you if you expect to be detained for only a short time. Make sure that the caregiver you choose does not need public benefits in order to care for your children (like Medicaid or food stamps). Be sure to **choose someone whom you trust**, and make sure that there is no reason why anyone would object to this choice of caregiver.
- **INFORMAL AGREEMENT *WITH* LEGAL PAPERS *without* COURT -** A **Caregiver's Authorization Affidavit** is a form to give to your child's school or health care provider so a non-parent relative can enroll your child in public school, make school-related medical decisions, and make other important decisions on your child's behalf if you are unable to. **It allows non-relatives to enroll your child in school and to receive school-related medical treatment** (though likely not the power to get public benefits such as Medicaid or food stamps for your children). **A Caregiver's Authorization Affidavit does not affect your rights as your child's parent - you still have custody and control of your child.**
- **FORMAL Arrangement— Family court-approved custody** - When you make court-approved arrangements, you may have two or three different options: 1) temporary custody (time-limited); 2) custody (also called conservatorship); or 3) guardianship. One option may provide greater parental rights than the other. These family court-approved custody arrangements provide greater stability for your children. They will give the caregiver the right to make decisions for your children, but be aware that they are more difficult to end.

For more information on how to create a family preparedness plan, including sample documents you and your loved ones can fill out, visit www.ilrc.org.

[3500] This section is adapted from Immigrant Legal Resource Center's info sheet "Family Preparedness Plan" (Mar. 2, 2017), available at https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan_v3-20170323.pdf.

STEPS TO TAKE TO CONNECT WITH YOUR CHILDREN IF YOU ARE PICKED UP BY ICE

FIRST STEPS: ***What to do as soon as possible after you are detained:***

- **Get your "A Number" (USCIS #).** "A numbers" consist of the letter "A" followed by eight or nine digits. This is the identification number for individual's immigration case and will follow the individual throughout the whole immigration process. It is very important to write down this number and provide to your children's designated caretaker, your relatives, and close friends so they can stay updated about your case.

- **Try to get released.** Tell the processing staff (who put your information into the computer) at the detention center that you have children, especially if you are the only person who cares for them. Ask ICE if you can be released so you can care for them. It may be helpful to mention the ICE directive, *"Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities,"* when making this request.

  Keep asking if you can be released to care for your children, even if ICE does not release you at first. If you ask to be released but ICE will not release you, keep asking, especially if there are any changes to your children's custody status or concern about their safety.

- **Try to get a phone call.** ICE is not required to give you a phone call but they may be willing to help if you explain that you have children and need to make sure they are okay and have someone to care for them.

- **Request a bond hearing.** You should also ask your Deportation Officer how to request release on **Humanitarian Parole, Release on Recognizance, Supervised Release or Alternatives to Detention** and how to request a bond hearing.

  Make sure your Deportation Officer (sometimes called a Case Officer) knows you have children, especially if you are a single parent or the main caregiver for your children. Ask him or her to exercise discretion in your case ("discretion" is a word that has a particular meaning for ICE, so use this word when asking).

ADDITIONAL STEPS: ***If ICE does not immediately release you, the next steps below may help:***

- **If you do not know where your children are, try to find out where they are as soon as you can.** Once you find out where your children are, ask relatives or friends outside to put money into your detainee account so you can call and talk to your children and the person taking care of them. If this is not possible, tell ICE you need to make arrangements for your children and ask if you can make free calls to deal with child custody issues.
- If you think your children are not with a friend or family member and that **they might be in the custody of a Child Family Service Agency (CFSA) (often called "CPS")**, you should talk to your Deportation Officer and ask to contact the CFSA right away. CFSA has a 24-hour, toll-free Hotline here: 202-671-7233.
- **Request a Family Court Lawyer** to represent you if your child is in CFSA custody or there is a Family Court case. Communicate with your child's lawyer or the Law Guardian.
- **Contact your country's nearest Consulate.** Register your children with the Consulate: Your U.S. citizen children will keep their U.S. citizenship even if you register them with the consulate of your home country. Apply for Passports for children - If you are deported and want to take your children with you, it will be much easier to do this if they have passports.
- **Maintain Contact with your Children.** You should stay as involved with your children as much as possible. You should write letters to them. You are allowed to receive letters and pictures from them even in detention. Take notes on everything you send to your children and receive from them, and save everything you receive. – **Maintaining contact and involvement in your child's care will be an important factor in any CFSA and/or Immigration case.**
- **Ask for Visitation.** ICE will also facilitate parent-child visitation, to the extent practicable, when required by a family or dependency court or a child welfare authority AND documentation is provided of this requirement, including but not limited to: a reunification plan; a scheduling letter; or other documentation issued stating the visitation requirement. It may be helpful to mention the ICE directive on "Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities" when making this request.
- **Participate in all hearings related to the custody of your children either in person, by video (if available) or by telephone.** It is also good to have a relative or friend attend hearings, especially if you cannot be there. Alert Family Court or CFSA that your **detention is CIVIL** and not a criminal matter. Provide A Number to CFSA/Family Court.

- **You have the right to an interpreter in family court proceedings.** ICE can also provide you with access to interpretation if you need help communicating with people in the immigration detention system. If you do not speak English or if you cannot read or write, do not be afraid to ask the family court, the child welfare caseworker, your lawyer(s) or ICE and detention center staff to provide you with an interpreter and/or other assistance.
- **Do not sign any documents related to your immigration or child welfare case if you don't understand what they say.**
- If your children are in the child welfare system, you may be assigned a **case plan (also called a service plan or a reunification plan).** Make sure you do what is asked of you in the case plan because this will impact the outcome of your case. If you cannot do certain things that the plan requires because you are detained or have been deported, make sure everyone involved in the child welfare case knows this. **Do your best to complete the services required by the case plan.**

VIII. UNDERSTANDING & REDUCING THE IMMIGRATION CONSEQUENCE OF CRIMINAL RECORDS

WHAT WILL I LEARN?

- **What a family preparedness plan is and how to create one.**
- **Various options for childcare arrangements in the event you are detained.**
- **How to deal with family issues while in ICE detention.**

The following information comes from a fact sheet that Root & Rebound prepared with the Immigrant Legal Resource Center (ILRC, www.ilrc.org). It explains the overlap between the criminal justice and immigration legal systems and describes ways you might be able to clean up your criminal record to help with immigration consequences. While these options will not be available to every immigrant with a record in California, we hope more people and families can advocate and stay together with this information and the resources that follow.

HOW MUCH HAVE DEPORTATIONS INCREASED UNDER PRESIDENT TRUMP?

Although the number of deportations began to drop in 2012 after a huge increase during President Barack Obama's first term, the Obama Administration increased the deportation of people with criminal records in recent years. 92% of people living in the U.S. who were deported in 2015 had a past criminal conviction, up from 75% in 2012.

Many different kinds of criminal convictions and other violations of the law can make a noncitizen deportable or unable to change their immigration status. The important thing to know is that contact with the criminal justice system can have a huge impact on someone's ability to stay in the U.S. and it is very important to talk to a lawyer before applying for an immigration status, traveling, or talking to law enforcement.

! **IMPORTANT WARNING: If you are contacted by ICE while detained/incarcerated, you have the right to call a lawyer or a loved one/family member, and you have the right to be visited by a lawyer. You have the right to have your attorney with you at a hearing before an immigration judge. You do not have a right to a state-appointed attorney, but it is suggested that your loved one/family member contact the organizations at the end of this fact sheet if you are unable to hire one. You must insist on using your rights and should contact an attorney or have one contacted by a loved one before signing anything with ICE - so you do not give up your rights to fight against deportation.**

HOW HAVE U.S. IMMIGRATION POLICIES CHANGED UNDER PRESIDENT TRUMP?

Former President Obama's immigration policy publicly focused on deporting people with violent and/or serious convictions; though in fact, most people deported from 2014-2016 under Obama's administration were convicted of *nonviolent or immigration-related offenses*.

President Trump has been even more outspoken about his plan to deport a wider range of individuals. This includes people arrested and charged with a crime but not actually convicted; suspected gang members; and people convicted of low-level misdemeanors.

On January 25, 2017, Trump released two Executive Orders (E.O.) describing his administration's immigration policy and how it connects to people in the criminal justice system. One E.O. said that the federal government,

through the Department of Homeland Security, will now be expanding deportation efforts to more heavily target the following groups: (1) any immigrants who have been ***convicted*** *of any crime*, (2) any immigrants who have been ***charged*** *with any crime* (but not yet convicted), and (3) any immigrants who have *committed acts that are a chargeable criminal offense* (which we take to mean that immigrants who are assumed to have committed a crime are at risk of deportation under Trump's policy).

IMPORTANT NOTE: Although current federal law already allows the government to deport immigrants based on certain criminal convictions, Trump's Executive Order goes far beyond the current law to include people convicted of any crime and even people who are suspected of committing a crime. It is still unknown how the Executive Order will be carried out, when federal law does not yet permit deportation of all of the groups of people being targeted. *While the Trump administration plans to expand the noncitizens they are targeting for deportation, it is crucial that you explore options to make your criminal record more "immigration-safe" – meaning less likely to trigger negative immigration consequences. Contact one of the organizations listed at the end of this fact sheet for legal support.*

On February 21, 2017, the Secretary of the Department of Homeland Security, John Kelly, who works for President Trump, released two memos with the federal government's plans to carry out the January 25th E.O.s – including plans to hire thousands more immigration enforcement agents; expand the group of immigrants who are being prioritized for removal (deportation); speed up deportation hearings; and work with local law enforcement to help them make immigration-related arrests. These memos are federal guidelines that give the U.S. Immigration and Customs Enforcement (ICE) federal agency the power to more aggressively arrest, detain and deport immigrants with criminal records and undocumented immigrants living in the U.S., or trying to enter at the borders.

GET HELP!

Trump's Executive Orders (EOs) and memos are very threatening to many people. If you are personally affected or know someone who might be, please take a look at the list of legal resources and organizations listed at the end of this fact sheet. These organizations are offering assistance to immigrants and fighting back during this time. They may also be able to advise you about how to make your record more "immigration-safe," meaning less likely to put you at risk of deportation.

WHAT PROTECTIONS ARE AVAILABLE UNDER CALIFORNIA'S STATE LAWS AND THE LOCAL PRACTICES OF "SANCTUARY" CITIES AND COUNTIES IN THE STATE?

"Sanctuary" defined: A "sanctuary" jurisdiction describes cities, counties, and states with policies designed to limit cooperation with or involvement in federal immigration enforcement actions.

California's Statewide Protections:

- In 2013, California Governor Jerry Brown signed the **Trust Act** into law. As a result, state police cannot detain someone with the goal of turning them over to federal immigration authorities *unless* the person has been charged with or convicted of a *serious crime*.
- Similarly, in 2016, Governor Brown signed the **Truth Act**, which created a number of protections for immigrants in California, including that if ICE places a detainer on someone in jail in California, *the jail staff must serve the person with a copy of that detainer*, which allows them more time to contact family and an attorney.
- In addition, California issues special AB 60 "Undocumented Person" Driver's Licenses to undocumented Californians, which allow undocumented people to legally drive in California without having their information sent to federal immigration agents. **However, these driver's licenses CANNOT be used out-of-state or in federal buildings like airports.**

Local "Sanctuary" Protections in California:

- In response to Trump's Executive Order, California "sanctuary" cities and counties are fighting back, providing even stronger protections than the state of California, with San Francisco leading the charge. To learn more about which cities and counties provide special protections for undocumented immigrants, view the "sanctuary" map here: www.ilrc.org/local-enforcement-map. Zoom into the map over your city, and if there is a colorful pin on the map, click it to learn more about local protections.

DO I HAVE ANY OPTIONS IF I PLED "GUILTY" OR "NO CONTEST" IN A CRIMINAL CASE IF I DIDN'T KNOW THE IMMIGRATION CONSEQUENCES OF THAT DECISION?

Maybe. Both state and federal law require criminal defense lawyers to advise their clients of, and defend against, the immigration consequences of a criminal conviction. This means you have *the right* to receive



adequate advice from your criminal defense lawyer about the immigration consequences of your criminal case. The law requires defense lawyers (including public defenders) to ask about their clients' citizenship status; investigate potential immigration consequences; advise their clients about those immigration consequences; and plea-bargain with an eye toward avoiding them. On the next page, you will find a chart that summarizes situations where immigrants have some options to challenge a plea agreement in their criminal case because you were not adequately advised on the immigration consequences.

"Vacated" - a legal term defined: "Vacate" means to erase, cancel or void. We use it in the chart, so refer back to this definition if you are unclear. But note that if your conviction has been *vacated*, the District Attorney may be able to prosecute you on the original criminal charges. For all of these, ask you attorney for advice about the best path in your case!

Because Trump is prioritizing the removal of people involved in the criminal justice system, any options for getting rid of convictions is especially critical at this point. **Consult with an attorney who specializes in criminal and immigration law to find out what makes sense under your particular circumstances.**

This chart summarizes different options for challenging your plea agreement if you did not know or understand the immigration consequences of your conviction. You can share this with your lawyer to help you decide which, if any, are the best options available to you.

METHOD for Challenging a Guilty or "No Contest" Plea	WHEN to Bring This Challenge	WHAT to Challenge in Your Criminal Case	TYPE OF RELIEF You Get if Challenge is Successful
Cal. Penal Code section 1018. An application/motion in the trial court.	Before judgment, or before 6 months after a judge's order granting probation (where the entry of judgment is suspended and has not been entered).	Criminal defense lawyer's failure to advise you of immigration consequences before entering your plea. (This claim is called "ineffective assistance of counsel," a violation of your Sixth Amendment right.)	You can withdraw your plea of guilty or "no contest," and change it to a plea of not guilty.
Petition for Writ of Habeas Corpus. A petition in one of the appellate district courts.	Any time following the judge's entry of judgment, where you are in custody (jail or prison) or on supervision (probation, parole, PRCS, etc.).	Criminal defense lawyer's failure to advise you of immigration consequences before entering your plea. (Again, this claim is called "ineffective assistance of counsel.")	Judge vacates the conviction. Note: You may open yourself up to re-prosecution on the original criminal charge(s).
Direct Appeal. An appeal in one of the appellate district courts.	A notice of appeal must be filed within 60 days after the judge's entry of judgment.	Talk to your appellate attorney if your criminal defense lawyer or the criminal trial court judge did not advise you about immigration consequences.	Judge vacates the conviction. Note: You may open yourself up to re-prosecution on the original criminal charge(s).).
Cal. Penal Code section 1016.5. A motion in the trial court.	Any time following the judge's entry of your guilty or no contest plea.	Where the criminal court judge failed to advise you of the immigration consequences before accepting a plea.	You can withdraw your plea OR the judge vacates the conviction. If your conviction is vacated, you may open yourself up to re-prosecution on the original criminal charge(s).
Cal. Penal Code section 1473.7. A motion in the trial court.	Any time after the criminal trial court judge enters a	Where an error hurt your ability to understand, defend against, or knowingly accept	Judge vacates the conviction. Note: You may open yourself up to

	judgment in your case.	the immigration consequences of a plea, or new evidence shows innocence.	re-prosecution on the original criminal charge(s).

ARE THERE ANY OTHER WAYS THAT I CAN CLEAN UP MY RECORD THAT MIGHT HELP ME FOR IMMIGRATION PURPOSES?

Maybe! Some of California's "record-cleaning" or "expungement" laws may help you **reduce certain felonies to misdemeanors, and/or dismiss certain convictions** – which in some cases can also help reduce your chances of being targeted for deportation and other negative immigration consequences. Below is a summary of California's record-cleaning laws that may help people with their immigration status.

To get help pursuing one of these "record-cleaning" options, contact your local public defender's office or call Root & Rebound's free and confidential Reentry Legal Hotline any Friday at (510) 279-4662 for a referral to a free expungement legal clinic.

Dismissals (also known as "expungements"):

When lawyers refer to "expungements" in California (which don't really exist here), they usually mean **"dismissals,"** which allow people to dismiss a felony or misdemeanor conviction after completing any time they were sentenced to jail, prison and/or probation. While dismissals can help with applying to some jobs and housing, they usually do not erase the conviction for immigration purposes. *However,* there is one important exception for certain first-time simple possession offenses that occurred ***before July 14, 2011***, where a dismissal may help with immigration consequences.

Reducing Felonies to Misdemeanors:

The following newer laws help people reduce felonies to misdemeanors for all purposes, including for immigration purposes.

- Under **Cal. Penal Code section 17(b)(3)**, the court can reduce felony "wobblers" – offenses that originally could have been charged as either felonies or misdemeanors – down to misdemeanors if you were not sentenced to state prison.
- Under California's **Proposition 47**, you can petition the court to reduce a felony conviction for simple drug possession or a lower-level theft offense to a misdemeanor (called "reclassification" or "redesignation").
- Under California's **Proposition 64**, you may be able to change your record (called "reclassification") if you have a conviction for a marijuana offense, which means you might be able to reduce or dismiss prior marijuana-related convictions.

A WARNING ABOUT "LEGALIZED MARIJUANA" UNDER PROP. 64 IN CALIFORNIA:

Although California state law permits some use and cultivation of marijuana, federal law does NOT allow this – and remember, immigration is run by the federal government! So please read and share the warnings below!

- Don't use marijuana until you are a U.S. citizen. Don't work in a marijuana shop.
- If you have a real medical need and there is no good substitute for medical marijuana, get legal counsel.
- Never leave the house carrying marijuana, a medical marijuana card, paraphernalia (like a pipe), or accessories like marijuana T-shirts or stickers. Don't have photos or text about you and marijuana on your phone, Facebook, or anywhere else.

Most importantly, ***never admit to any immigration or border official that you ever have used or possessed marijuana***, unless you have expert legal advice that this is OK. If a federal official asks you about marijuana, say that you don't want to talk to them and you want to speak to a lawyer. You have the right to remain silent. Stay strong – once you admit it, you can't take it back. If you did admit this to a federal officer, get legal help quickly. See Appendix JJ on PG. 1087 for more information.

SPECIAL NOTE: Cal. Penal Code section 18.5(b) (effective January 1, 2017) is a recent state law that reduces the *maximum possible sentence* for any California misdemeanor from 365 to 364 days retroactively. This is important because under federal law, certain offenses can lead to deportation if they carry even a potential sentence of one year or more. This new law is retroactive, meaning it applies to old misdemeanors as well those current and future cases. However, if you were convicted of a misdemeanor before January 1, 2015, and were sentenced to a term of one year, you must proactively ask ("petition") the criminal court that sentenced you to change your sentence under this law.

Completing a Drug Diversion Program:

In addition, under ***Cal. Penal Code Section 1203.43***, someone with a drug offense who received a "deferred entry of judgment" (DEJ) can get rid of the conviction for immigration purposes. You are considered to have a conviction for immigration purposes if you entered a plea of guilty even *if the charges were later dismissed through a diversion program*; so getting relief through Section 1203.43 gets rid of your guilty plea for immigration purposes as well. Upon completion of the court-ordered DEJ program, you must file papers with the court to ask the judge to withdraw the guilty plea and dismiss the charges once again under Section 1203.43.

If you have any questions, please see the list of additional resources and legal organizations listed below – many help people fight deportation. You can also call Root & Rebound's free and confidential Reentry Legal Hotline any Friday at (510) 279-4662 for a referral.

Guide Appendix A:

LEGAL AID PROVIDERS IN CALIFORNIA (By Issue & Region)



INTRODUCTION

This Appendix includes a list of **legal aid providers** across the state of California—and even a few national ones—that may be able to help you with your legal issues.

- The list is organized first **by reentry legal issue**.
- The list is further organized under each issue area **by region of California**, and what legal aid organizations work on that issue in a specific region.

1. **Getting Identification & Key Documents, Voting Rights**
2. **Parole & Probation**
3. **Housing**
4. **Public Benefits**
5. **Employment**
6. **Court-ordered Debt**
7. **Family & Children**
8. **Education**
9. **Expungement & Cleaning Up Your Record**
10. ***Prison Conditions*** [3501] *(See footnote.)*
11. ***Post-Conviction Immigration Consequences*** [3502] *(See footnote.)*

To find a legal aid organization near you, you can also try the following resources:

- Call 2-1-1, or visit www.211database.org;
- Contact the Local County Bar Association or Ethnic Bar Association in your areas, OR
- Look at the California State Bar legal aid listings: http://lawhelpca.org/find-legal-help.
- Bay Area Legal Incubator (BALI): New attorneys provide affordable and pro bono legal services across a variety of practice areas. To submit a request for services, you (or a family member on your behalf) can submit an intake form online at https://www.bayarealegalincubator.org/

[3501] Please note: This issue is not covered at length in the guide because it is outside of our scope of expertise, but is important to the reentry process of many readers, so we include resources on it here.
[3502] Please note: This issue is not covered at length in the guide because it is outside of our scope of expertise, but is important to the reentry process of many readers, so we include resources on it here.

Chapter 1 | LEGAL AID FOR GETTING ID & KEY DOCUMENTS, VOTING RIGHTS QUESTIONS

Northern California

- Legal Services of Northern California — License Suspension
  Locations and Phone: Eureka (707) 445-0866, Toll-Free: (800) 972-0002; Ukiah, CA (707) 462-1471, Toll-Free: (877) 529-7700
  Website: http://www.about.lsnc.net

Bay Area

- Lawyers Committee for Civil Rights: Second Chance Legal Clinic
  Location: San Francisco, CA
  Phone: (415) 814-7610
  Website: http://www.lccr.com
- Legal Services of Northern California — License Suspension
  Location: Vallejo, CA
  Phone: (707) 643-0054
  Website: http://www.about.lsnc.net
- Root & Rebound
  Location: Oakland, CA
  Phone: (510) 279-4662
  Website: http://www.rootandrebound.org

Central Valley & Central Coast

- Legal Services of Northern California — License Suspension
  Locations and Phone: Sacramento (916) 551-2150; Auburn (530) 823-7560; Chico (530) 345-9491, Toll-Free:(800) 345-9491; Redding (530) 241-3565, Toll-Free: (800) 822-9687; Woodland, CA (530) 662-1065
  Website: http://www.about.lsnc.net
- Voluntary Legal Services Program of Northern California — License Reinstatement Clinic
  Location: Sacramento, CA
  Phone: (916) 551-2102
  Website: http://www.vlsp.org

Southern California

- Pepperdine Legal Aid Clinic
  Location: Los Angeles, CA
  Phone: (213) 347-6300 ext. 4413
  Website: http://urm.org/services/clinics/#PepperdineLegal

VOTING RIGHTS:

Bay Area

- ACLU of Northern California
  Location: San Francisco, CA
  Phone: English Legal Assistance (415) 621-2488; Spanish Legal Assistance (415) 293-6356)
  Website: https://www.aclunc.org/vote
- East Bay Community Law Center
  Location: Berkeley, CA
  Phone: (510) 548-4040
  Website: http://www.ebclc.org

Chapter 2 | LEGAL AID FOR PAROLE & PROBATION ISSUES

PAROLE & PROBATION CONDITIONS, TRANSFERS & OTHERS ISSUES:

- Root & Rebound
  Location: Oakland, CA
  Phone: (510) 279-4662 (call the Reentry Hotline on Fridays, 9AM-5PM)
  Website: http://www.rootandrebound.org
- State and Federal Public Defenders Offices

PAROLE RELEASE:

Bay Area

- Uncommon Law
  Location: Oakland, CA
  Phone: (510) 271-0310
  Website: http://uncommonlaw.org

Chapter 3 | LEGAL AID FOR HOUSING ISSUES

Northern California

- Legal Services of Northern California
  Locations and Phone: Eureka (707) 445-0866, Toll-Free: (800) 972-0002; Ukiah, CA (707) 462-1471, Toll-Free: (877) 529-7700
  Website: http://www.about.lsnc.net

Bay Area

- Bay Area Legal Aid
  Locations & Phone: Toll-Free: (800) 551-5554; Alameda County (510) 250-5270; Contra Costa County West (510) 250-5270; Contra Costa County East (925) 219-3325; Marin County (415) 354-6360; Napa County (707) 320-6348; San Francisco (415) 354-6360; San Mateo County (650) 472-2666; Santa Clara County (408) 850-7066
  Website: http://www.baylegal.org
- California Rural Legal Assistance
  Locations & Phone: Gilroy (831) 724-2253, (831) 688-6535; Santa Rosa, CA (707) 528-9941
  Website: http://www.crla.org
- East Bay Community Law Center
  Location: Berkeley, CA
  Phone: (510) 548-4040
  Website: http://www.ebclc.org
- Law Foundation of Silicon Valley: Fair Housing Law Project
  Location: San Jose, CA
  Phone: (408) 293-4790
  Website: http://www.lawfoundation.org
- Lawyers Committee for Civil Rights: Second Chance Legal Clinic
  Location: San Francisco, CA
  Phone: (415) 814-7610
  Website: http://www.lccr.com
- Legal Services of Northern California
  Location: Vallejo, CA
  Phone: (707) 643-0054
  Website: http://www.about.lsnc.net

Central Valley & Central Coast

- California Rural Legal Assistance
  Locations & Phone: Main Office (415) 777-2752; Arvin (661) 854-3839; Coachella (760) 398-7261; Delano (661) 725-4350; Fresno (559) 441-8721; Hollister (831) 724-2253; Madera (559) 674-5671; Marysville (530) 742-5191; Modesto (209) 577-3811; Salinas (831) 757-5221; Seaside (intakes on Mondays only) (831) 757-5221; San Luis Obispo (805) 544-7997; Santa Cruz (831) 688-6535; Stockton (209) 946-0605; Watsonville, CA (831) 724-2253, (831) 688-6535
  Website: http://www.crla.org
- Central California Legal Services
  Locations & Phone: Fresno, (559) 570-1200, Merced (209) 723-5466; Visalia, CA (209) 723-5466
  Website: http://www.centralcallegal.org
- Legal Services of Northern California
  Locations and Phone: Sacramento (916) 551-2150; Auburn (530) 823-7560; Chico (530) 345-9491, Toll-Free:(800) 345-9491; Redding (530) 241-3565, Toll-Free: (800) 822-9687; Woodland, CA (530) 662-1065
  Website: http://www.about.lsnc.net

- Watsonville Law Center
  Location: Watsonville, CA
  Phone: (831) 722-2845
  Website: http://www.watsonvillelawcenter.org
- Greater Bakersfield Legal Assistance (GBLA)
  Location: Bakersfield, CA
  Phone: (661) 325-5943
  Website: http://gbla.org/

Southern California

- California Rural Legal Assistance
  Locations & Phone: Coachella (760) 398-7261; El Centro (760)-353-0220; Oxnard (805) 483-8083; Santa Barbara (805) 963-5982; Santa Maria (805) 922-4563; Vista, CA (760) 966-0511
  Website: http://www.crla.org
- Neighborhood Legal Services of Los Angeles County
  Locations: Glendale; Pacoima; El Monte, CA
  Phone: (800) 433-6251
  Website: http://www.nlsla.org
- Pepperdine Legal Aid Clinic
  Location: Los Angeles, CA
  Phone: (213) 347-6300 ext. 4413
  Website: http://urm.org/services/clinics/#PepperdineLegal



Chapter 4 | LEGAL AID FOR PUBLIC BENEFITS

Northern California

- Legal Services of Northern California
  Locations and Phone: Eureka (707) 445-0866, Toll-Free: (800) 972-0002; Ukiah, CA (707) 462-1471, Toll-Free: (877) 529-7700
  Website: http://www.about.lsnc.net

Bay Area

- Bay Area Legal Aid
  Locations & Phone: Toll-Free: (800) 551-5554; Alameda County (510) 250-5270; Contra Costa County West (510) 250-5270; Contra Costa County East (925) 219-3325; Marin County (415) 354-6360; Napa County (707) 320-6348; San Francisco (415) 354-6360; San Mateo County (650) 472-2666; Santa Clara County (408) 850-7066
  Website: http://www.baylegal.org
- California Rural Legal Assistance
  Locations & Phone: Gilroy (831) 724-2253, (831) 688-6535; Santa Rosa, CA (707) 528-9941
  Website: http://www.crla.org
- East Bay Community Law Center
  Location: Berkeley, CA



Phone: (510) 548-4040
Website: http://www.ebclc.org

- Homeless Action Center
  Locations & Phone: Oakland (510) 836-3260 ext. 301, Berkeley, CA (510) 540-0878
  Website: http://www.homelessactioncenter.org
- Law Foundation of Silicon Valley: Health Legal Services
  Location: San Jose, CA
  Phone: (408) 293-4790
  Website: http://www.lawfoundation.org
- Legal Aid Society of San Mateo
  Location: Redwood City, CA
  Phone: (650) 558-0915, Toll-Free (800) 381-8898
  Website: http://www.legalaidsmc.org
- Legal Assistance for Seniors
  Location: Oakland, CA
  Phone: (510) 832-3040
  Website: http://www.lashicap.org
- Legal Assistance to the Elderly
  Location: San Francisco, CA
  Phone: (415) 538-3333
  Website: http://www.laesf.org
- Legal Services of Northern California
  Location: Vallejo, CA
  Phone: (707) 643-0054
  Website: http://www.about.lsnc.net
- Positive Resource Center
  Location: San Francisco, CA
  Phone: (415) 777-0333
  Website: http://www.positiveresource.org
- Senior Adults Legal Assistance
  Location: San Jose, CA
  Phone: Main Office (408) 295-5991; North County Toll-Free (650) 969-8656; South County Toll-Free (408) 847-7252
  Website: http://www.s393914827.initial-website.com

Central Valley & Central Coast

- California Rural Legal Assistance
  Locations & Phone: Main Office (415) 777-2752; Arvin (661) 854-3839; Coachella (760) 398-7261; Delano (661) 725-4350; Fresno (559) 441-8721; Hollister (831) 724-2253; Madera (559) 674-5671; Marysville (530) 742-5191; Modesto (209) 577-3811; Salinas (831) 757-5221; Seaside (intakes on Mondays only) (831) 757-5221; San Luis Obispo (805) 544-7997; Santa Cruz (831) 688-6535; Stockton (209) 946-0605; Watsonville, CA (831) 724-2253, (831) 688-6535
  Website: http://www.crla.org
- Central California Legal Services
  Locations & Phone: Fresno, (559) 570-1200, Merced (209) 723-5466; Visalia, CA (209) 723-5466
  Website: http://www.centralcallegal.org
- Legal Services for Seniors
  Locations & Phone: Salinas (831) 442-770; Seaside, CA (831) 899-0492
  Website: http://www.legalservicesforseniors.org
- Legal Services of Northern California
  Locations and Phone: Sacramento (916) 551-2150; Auburn (530) 823-7560; Chico (530) 345-9491, Toll-Free:(800) 345-9491; Redding (530) 241-3565, Toll-Free: (800) 822-9687; Woodland, CA (530) 662-1065
  Website: http://www.about.lsnc.net
- Senior Citizens Legal Services
  Locations & Phone: Santa Cruz (831) 426-8824; Watsonville (831) 728-4711; Hollister, CA (831) 637-5458
  Website: http://www.seniorlegal.org
- Voluntary Legal Services Program of Northern California — License Reinstatement Clinic
  Location: Sacramento, CA
  Phone: (916) 551-2102
  Website: http://www.vlsp.org
- Greater Bakersfield Legal Assistance (GBLA)
  Location: Bakersfield, CA
  Phone: (661) 325-5943
  Website: http://gbla.org/

Southern California

- Bet Tzedek
  Location: Los Angeles, CA
  Phone: (323) 939-0506
  Website: http://www.bettzedek.org
- California Rural Legal Assistance
  Locations & Phone: Coachella (760) 398-7261; El Centro (760)-353-0220; Oxnard (805) 483-8083; Santa Barbara (805) 963-5982; Santa Maria (805) 922-4563; Vista, CA (760) 966-0511
  Website: http://www.crla.org
- Inner City Law Center
  Location: Los Angeles, CA
  Phone: (213) 891-2880
  Website: http://www.innercitylaw.org
- Legal Aid Foundation of Orange County & Community Legal Services of Southeast Los Angeles County
  Locations & Phone: Anaheim (714) 571-5200, Toll-Free: (800) 834-5001, Compton (310) 631-7382, Norwalk (562) 864-9935, Toll-Free: (800) 834-5001, Santa Ana, CA (714) 571-5200, Toll-Free: (800) 834-5001
  Website: http://www.legal-aid.com
- Legal Aid Foundation of Los Angeles
  Location: Los Angeles, CA
  Phone: (800) 399-4529
  Website: http://www.lafla.org
- Legal Aid Society of San Diego
  Location: San Diego, CA
  Phone: (877) 534-2524
  Website: http://www.lassd.org
- Mental Health Advocacy Services
  Location: Los Angeles, CA
  Phone: (213) 389-2077

Website: http://www.mhas-la.org

- Neighborhood Legal Services of Los Angeles County
  Locations: Glendale; Pacoima; El Monte, CA
  Phone: (800) 433-6251
  Website: http://www.nlsla.org
- Pepperdine Legal Aid Clinic
  Location: Los Angeles, CA
  Phone: (213) 347-6300 ext. 4413
  Website: http://urm.org/services/clinics/#PepperdineLegal



Chapter 5 | LEGAL AID FOR EMPLOYMENT ISSUES

Northern California

- Legal Services of Northern California
  Locations and Phone: Eureka (707) 445-0866, Toll-Free: (800) 972-0002; Ukiah, CA (707) 462-1471, Toll-Free: (877) 529-7700
  Website: http://www.about.lsnc.net

Bay Area

- Bay Area Legal Aid
  Locations and Phone: Toll-Free: (800) 551-5554; Alameda County (510) 250-5270; Contra Costa County West (510) 250-5270; Contra Costa County East (925) 219-3325; Marin County (415) 354-6360; Napa County (707) 320-6348; San Francisco (415) 354-6360; San Mateo County (650) 472-2666; Santa Clara County (408) 850-7066
  Website: http://www.baylegal.org
- California Rural Legal Assistance
  Locations & Phone: Gilroy (831) 724-2253, (831) 688-6535; Santa Rosa, CA (707) 528-9941
  Website: http://www.crla.org
- Lawyers Committee for Civil Rights of the San Francisco Bay Area
  Location: San Francisco, CA
  Phone: (415) 814-7610
  Website: http://www.lccr.com/
- Legal Aid Society — Employment Law Center
  Location: San Francisco, CA
  Phone: (415) 864-8208, Toll-Free (866) 864-8208
  Website: https://las-elc.org
- Legal Services of Northern California
  Location: Vallejo, CA
  Phone: (707) 643-0054
  Website: http://www.about.lsnc.net

Central Valley & Central Coast

- California Rural Legal Assistance
  Locations & Phone: Main Office (415) 777-2752; Arvin (661) 854-3839; Coachella (760) 398-7261; Delano (661) 725-4350; Fresno (559) 441-8721; Hollister (831) 724-2253; Madera (559) 674-5671; Marysville (530) 742-5191; Modesto (209) 577-3811; Salinas (831) 757-5221; Seaside (intakes on Mondays only) (831) 757-5221; San Luis Obispo (805) 544-7997; Santa Cruz (831) 688-6535; Stockton (209) 946-0605; Watsonville, CA (831) 724-2253, (831) 688-6535
  Website: http://www.crla.org
- Legal Services of Northern California
  Locations and Phone: Sacramento (916) 551-2150; Auburn (530) 823-7560; Chico (530) 345-9491, Toll-Free:(800) 345-9491; Redding (530) 241-3565, Toll-Free: (800) 822-9687; Woodland, CA (530) 662-1065
  Website: http://www.about.lsnc.net
- Watsonville Law Center
  Location: Watsonville, CA
  Phone: (831) 722-2845
  Website: http://www.watsonvillelawcenter.org

Southern California

- A New Way of Life Reentry Project
  Location: Los Angeles, CA
  Phone: (323) 563-3575
  Website: http://www.anewwayoflife.org
- California Rural Legal Assistance
  Locations & Phone: Coachella (760) 398-7261; El Centro (760)-353-0220; Oxnard (805) 483-8083; Santa Barbara (805) 963-5982; Santa Maria (805) 922-4563; Vista, CA (760) 966-0511
  Website: http://www.crla.org
- Neighborhood Legal Services of Los Angeles County
  Locations: Glendale; Pacoima; El Monte, CA
  Phone: (800) 433-6251
  Website: http://www.nlsla.org
- Urban League of San Diego County
  Locations: San Diego, CA
  Phone: (619) 266-6263
  Email: Jackie.reed@sdul.org



Chapter 6 | LEGAL AID FOR COURT-ORDERED DEBT

Northern California

- Legal Services of Northern California

Locations and Phone: Eureka (707) 445-0866, Toll-Free: (800) 972-0002; Ukiah, CA (707) 462-1471, Toll-Free: (877) 529-7700
Website: http://www.about.lsnc.net

Bay Area

- Bay Area Legal Aid
  Locations & Phone: Toll-Free: (800) 551-5554; Alameda County (510) 250-5270; Contra Costa County West (510) 250-5270; Contra Costa County East (925) 219-3325; Marin County (415) 354-6360; Napa County (707) 320-6348; San Francisco (415) 354-6360; San Mateo County (650) 472-2666; Santa Clara County (408) 850-7066
  Website: http://www.baylegal.org
- Legal Assistance to the Elderly
  Location: San Francisco, CA
  Phone: (415) 538-3333
  Website: http://www.laesf.org
- Legal Services of Northern California
  Location: Vallejo, CA
  Phone: (707) 643-0054

Central Valley & Central Coast

- Legal Services of Northern California
  Locations and Phone: Sacramento (916) 551-2150; Auburn (530) 823-7560; Chico (530) 345-9491, Toll-Free:(800) 345-9491; Redding (530) 241-3565, Toll-Free: (800) 822-9687; Woodland, CA (530) 662-1065
  Website: http://www.about.lsnc.net
- Watsonville Law Center
  Location: Watsonville, CA
  Phone: (831) 722-2845
  Website: http://www.watsonvillelawcenter.org

Website: http://www.about.lsnc.net
- Greater Bakersfield Legal Assistance (GBLA)
  Location: Bakersfield, CA
  Phone: (661) 325-5943
  Website: http://gbla.org/

Southern California

- Bet Tzedek
  Location: Los Angeles, CA
  Phone: (323) 939-0506
  Website: http://www.bettzedek.org
- Legal Aid Foundation of Los Angeles & Community Legal Services of Southeast Los Angeles County
  Locations & Phone: Anaheim (714) 571-5200, Toll-Free: (800) 834-5001, Compton (310) 631-7382, Norwalk (562) 864-9935, Toll-Free: (800) 834-5001, Santa Ana, CA (714) 571-5200, Toll-Free: (800) 834-5001
  Website: http://www.legal-aid.com
- Legal Aid Society of San Diego
  Location: San Diego, CA
  Phone: (877) 534-2524
  Website: http://www.lassd.org
- Neighborhood Legal Services of Los Angeles County
  Locations: Glendale; Pacoima; El Monte, CA
  Phone: (800) 433-6251
  Website: http://www.nlsla.org
- Pepperdine Legal Aid Clinic
  Location: Los Angeles, CA
  Phone: (213) 347-6300 ext. 4413
  Website: http://urm.org/services/clinics/#PepperdineLegal

Chapter 7 | LEGAL AID FOR FAMILY & CHILDREN ISSUES

Self-Help Family Law Resource You Will Find in Almost Every County in California:

- Family Law Facilitator in Your County! *NOTE:* Every family court should have a Family Law Facilitator, which is someone who can help you with court forms, answer questions, provide general information about family law issues, and walk you through the steps of your case if you do not have a lawyer. (To find your local Family Law Facilitator go to http://www.courts.ca.gov/selfhelp-facilitators.htm.

Northern California

- Legal Services of Northern California
  Locations and Phone: Eureka (707) 445-0866, Toll-Free: (800) 972-0002; Ukiah, CA (707) 462-1471, Toll-Free: (877) 529-7700
  Website: http://www.about.lsnc.net

Bay Area

- Legal Assistance for Seniors
  Location: Oakland, CA
  Phone: (510) 832-3040
  Website: http://www.lashicap.org
- Legal Services of Northern California
  Location: Vallejo, CA
  Phone: (707) 643-0054
  Website: http://www.about.lsnc.net
- Pro Bono Project
  Location: San Jose, CA
  Phone: (408) 998-5298
  Website: http://www.probonoproject.org

Central Valley & Central Coast

- Legal Services of Northern California
  Locations and Phone: Sacramento (916) 551-2150; Auburn (530) 823-7560; Chico (530) 345-9491, Toll-Free:(800) 345-9491; Redding (530) 241-3565, Toll-Free: (800) 822-9687; Woodland, CA (530) 662-1065
  Website: http://www.about.lsnc.net

- Greater Bakersfield Legal Assistance (GBLA)
  Location: Bakersfield, CA
  Phone: (661) 325-5943
  Website: http://gbla.org/

Southern California

- Harriet Buhai Center for Family Law
  Location: Los Angeles, CA
  Phone: (213) 388-7515
  Website: http://www.hbcfl.org
- Inland Empire Latino Lawyers Association Legal Aid (wage garnishment due to unpaid child support)
  Location: Riverside, CA
  Phone: (951) 369-3009
  Website: http://www.iella.org
- Pepperdine Legal Aid Clinic
  Location: Los Angeles, CA
  Phone: (213) 347-6300 ext. 4413
  Website: http://urm.org/services/clinics/ - PepperdineLegal
- San Diego Volunteer Lawyer Program
  Location: San Diego, CA
  Phone: (619) 235-5656
  Website: http://www.sdvip.org



Chapter 8 | LEGAL AID FOR EDUCATION

Northern California

- Legal Services of Northern California
  Locations and Phone: Eureka (707) 445-0866, Toll-Free: (800) 972-0002; Ukiah, CA (707) 462-1471, Toll-Free: (877) 529-7700
  Website: http://www.about.lsnc.net

Bay Area

- Bay Area Legal Aid – Federal student loan consolidation and disability discharge assistance
  Locations & Phone: Toll-Free: (800) 551-5554; Alameda County (510) 250-5270; Contra Costa County West (510) 250-5270; Contra Costa County East (925) 219-3325; Marin County (415) 354-6360; Napa County (707) 320-6348; San Francisco (415) 354-6360; San Mateo County (650) 472-2666; Santa Clara County (408) 850-7066
  Website: http://www.baylegal.org
- California Rural Legal Assistance
  Locations & Phone: Gilroy (831) 724-2253, (831) 688-6535; Santa Rosa, CA (707) 528-9941
  Website: http://www.crla.org

Central Valley & Central Coast

- California Rural Legal Assistance
  Locations & Phone: Main Office (415) 777-2752; Arvin (661) 854-3839; Coachella (760) 398-7261; Delano (661) 725-4350; Fresno (559) 441-8721; Hollister (831) 724-2253; Madera (559) 674-5671; Marysville (530) 742-5191; Modesto (209) 577-3811; Salinas (831) 757-5221; Seaside (intakes on Mondays only) (831) 757-5221; San Luis Obispo (805) 544-7997; Santa Cruz (831) 688-6535; Stockton (209) 946-0605; Watsonville, CA (831) 724-2253, (831) 688-6535
  Website: http://www.crla.org

Southern California

- California Rural Legal Assistance
  Locations & Phone: Coachella (760) 398-7261; El Centro (760)-353-0220; Oxnard (805) 483-8083; Santa Barbara (805) 963-5982; Santa Maria (805) 922-4563; Vista, CA (760) 966-0511
  Website: http://www.crla.org



Chapter 9 | LEGAL AID FOR EXPUNGEMENT & CLEANING UP YOUR CRIMINAL RECORD

Northern California

- Public Defender's Office, Yolo County
  Location: Woodland, CA
  Phone: (530) 666-8165
  Website: http://www.yolocounty.org/law-justice/public-defender

Bay Area

- East Bay Community Law Center: Clean Slate Practice
  Location: Berkeley, CA
  Phone: (510) 548-4040
  Website: http://www.ebclc.org
- Lawyers Committee for Civil Rights: Second Chance Legal Clinic
  Location: San Francisco, CA
  Phone: (415) 814-7610
  Website: http://www.lccr.com
- Public Defender's Office, Alameda County
  Locations & Phone: Main Office (510) 272-6600; Oakland (510) 268-7400; Hayward (510) 670-5000; Fremont (510) 795-2600; Pleasanton, CA (925) 551-6863
  Website: http://www.co.alameda.ca.us/defender
- Public Defender's Office, San Francisco City and County
  Location: San Francisco, CA
  Phone: (415) 553-1671
  Website: http://sfpublicdefender.org

- Record Clearance Project at San Jose State University
  Location: San Jose, CA
  Phone: (408) 924-2758
  Website: http://www.sjsu.edu/justicestudies/programs-events/rcp
- Rubicon — Rubicon legal services are provided to existing clients of their social services programs (career coaching, parenting classes, financial coaching)
  Location: Richmond, CA
  Phone: (510) 412-1725
  Website: http://www.rubiconprograms.org

Central Valley & Central Coast

- Voluntary Legal Services Program of Northern California
  Location: Sacramento, CA
  Phone: (916) 551-2102
  Website: http://www.vlsp.org
- Watsonville Law Center
  Location: Watsonville, CA
  Phone: (831) 722-2845
  Website: http://www.watsonvillelawcenter.org

Southern California

- A New Way of Life Reentry Project
  Location: Los Angeles, CA
  Phone: (323) 563-3575
  Website: http://www.anewwayoflife.org
- Inland Empire Latino Lawyers Association Legal Aid
  Location: Riverside, CA
  Phone: (951) 369-3009
  Website: http://www.iella.org
- Legal Aid Foundation of Santa Barbara County - Legal Resource Center
  Locations & Phone: Santa Barbara (805) 568-3303; Santa Maria (805) 349-1289; Lompoc, CA (805) 737-5452
  Website: http://www.lafsbc.org
- Neighborhood Legal Services of Los Angeles County
  Locations: Glendale; Pacoima; El Monte, CA
  Phone: (800) 433-6251
  Website: http://www.nlsla.org
- Pepperdine Legal Aid Clinic
  Location: Los Angeles, CA
  Phone: (213) 347-6300 ext. 4413
  Website: http://urm.org/services/clinics/#PepperdineLegal
- Public Defender's Office, Orange County
  Location: Santa Ana, CA
  Phone: (714) 834-2144
  Website: http://www.pubdef.ocgov.com/main.htm

CHAPTER 10 | LEGAL AID FOR IMMIGRANTS IN REENTRY:

CALIFORNIA RESOURCES:

- ***If you witness an ICE Raid in California:*** Call the **ICE out of CA Hotline**, which connects with a confidential voicemail that is monitored by immigrant lawyers and advocates.
  www.iceoutofca.org
  1-844-TRUST-01 (1-844-878-7801)
- **Immigrant Legal Resource Center**
  1663 Mission Street, Suite 602, San Francisco, CA 94103
  (415) 255-9792
  www.ilrc.org
  Expertise in immigration and criminal law overlap. Provides pro bono post-conviction relief services
- **Asian Americans Advancing Justice - Asian Law Caucus**
  Bay Area: 55 Columbus Avenue, San Francisco, CA 94111. Phone: (415) 896-1701
  Los Angeles: 1145 Wilshire Blvd, Los Angeles, CA 90017. Phone: 213) 977-7500
  www.advancingjustice-alc.org/
  Expertise in removal defense due to criminal convictions
- **Centro Legal de la Raza**
  3400 E. 12th Street, Oakland, CA 94601
  (510) 437-1554
  www.centrolegal.org
  Expertise in removal defense
- **Dolores Street Community Services**
  938 Valencia St., San Francisco, CA 94110
  (415) 282-6209
  www.dscs.org
  Expertise in removal defense
- **Pangea Legal Services**
  360 Sansome St., #650, San Francisco, CA 94104
  (415) 254-0475
  www.pangealegal.org
  Expertise in removal defense
- **Community Legal Services of East Palo Alto**
  1861 Bay Rd., East Palo Alto, CA 94303
  (650) 326-6440
  http://www.clsepa.org
  Expertise in removal defense
- **Social Justice Collaborative**
  420 3rd Street, Suite 130, Oakland, CA 94607
  (510) 992-3964
  http://socialjusticecollaborative.org
  Expertise in removal defense

- **Oakland Law Collaborative**
  1736 Franklin Street, Suite 400, Oakland, CA 94612
  (510) 891-1589 (Community Law Office)
  http://oaklaw.org
  Expertise in removal defense
- UC Davis, Immigration Law Clinic
  Location: Davis, CA
  Phone: (530) 752-6942
  Website: http://www.law.ucdavis.edu/clinics

NATIONAL RESOURCES:

- **Immigration Advocates Network National Immigration Legal Services Directory**
  www.immigrationadvocates.org/nonprofit/legaldirectory
- **Immigrant Defense Project**
  www.immdefense.org
- **National Lawyer's Guild – National Immigration Project**
  www.nationalimmigrationproject.org
- **Immigrant Legal Resource Center** (know-your-rights cards in case of contact with ICE!)
  www.ilrc.org/red-cards
- **American Immigration Lawyer Search**
  www.ailalawyer.org
- **iAmerica**
  www.iamerica.org
  Note: iAmerica's website also includes "KNOW YOUR RIGHTS" fact sheets (including how to handle encounters with immigration or police) and "RESOURCES." Their newest resource www.immi.org helps you screen yourself and your immigration options.

For more information on what it means to be an undocumented person in the United States, you can contact a referral and information hotline such as 1-888-6-CHIRLA (1-888-624-4752), provided in English and Spanish by the *Coalition for Humane Immigrant Rights of Los Angeles*. The hotline is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and can provide direct services or refer you to other organizations that can help you. It is safe for noncitizens and undocumented people to call this hotline.

You can also check out these free resources online:

- **Immigration Advocates Network (IAN):** IAN works to provide communication and cooperation between organizations working with immigrant communities. On IAN's website you can access a database with contact information for nearly 150 organizations helping immigrants in California. Website: http://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=CA
- **National Immigration Law Center (NILC):** NILC is a national organization that defends and advances the rights of low-income immigrants and their families. On NILC's website, you can find a list of additional California organizations that support immigrant families.
  Website: http://www.nilc.org/calres.html
- **National Network for Immigrant and Refugee Rights (NNIRR):** NNIRR defends and works to grow the rights for both documented and undocumented immigrants.
  Website: http://www.nnirr.org/drupal/about-us

Other Issues:
> LEGAL AID FOR PRISON CONDITIONS:

NOTE: Most of the organizations listed under this category of "Legal Aid for Prison Conditions" will do *statewide* work, even if their headquarters is located in a particular region of California, so you should contact any and all of these organizations with questions related to prison conditions.

Statewide

- Prison Law Office
  Location: San Quentin, CA; Berkeley, CA
  Phone: n/a (Note: Due to the high volume of inquiries they receive, the Prison Law Office requests that people get in touch with them by mail at: Prison Law Office General Delivery, San Quentin, CA 94964)
  Website: http://www.prisonlaw.com
- Center for Human Rights
  Location: Los Angeles, CA
  Phone: (213) 388-8693
  Website:
  http://www.centerforhumanrights.org

Central Valley & Central Coast

- UC Davis Law School, Prison Law Clinic
  Location: Davis, CA
  Phone: (530) 752-6942
  Website: http://www.law.ucdavis.edu/clinics
- University of the Pacific McGeorge School of Law, Prisoner Civil Rights Mediation Clinic
  Location: Sacramento, CA

Phone: Michael Colatrella, Clinical Professor – (916) 739-7303
Website: http://www.mcgeorge.edu/Students/Academics/Experiential_Learning/Legal_Clinics/Prisoner_Civil_Rights_Mediation_Clinic.htm

GUIDE APPENDIX B:

SOCIAL SERVICES IN CALIFORNIA

DEAR READERS:

Root & Rebound is a *reentry legal advocacy nonprofit*. Our approach is based on the idea that **attorneys and advocates** can transfer powerful legal knowledge and skills to those who are in reentry and otherwise impacted by the criminal justice system, as well as the families, agencies, and communities that support them. With such a severe "justice gap" in our country and only one legal aid attorney for every 8,000 indigent people in California, we aim to **create and share reentry legal information and resources** that empower people to know their rights and options in reentry, with an educational approach instead of the traditional 1-to-1 client-attorney relationship.

As part of our approach, we produce reentry resources like the *Roadmap to Reentry: A California Legal Guide*, and other accompanying toolkits; we train community members, currently and formerly incarcerated people, and professionals working with the reentry population on this information; we run our weekly **Reentry Legal Hotline** (every Friday, 9 a.m. – 5 p.m., at 510-279-4662—we accept Collect Calls); and we respond to prison mail from currently incarcerated people looking for information about their rights, options, and supportive services in reentry.

We realize that information about legal issues related to reentry are often accompanied by the need to meet other basic needs post-release as well, **things like food, housing, employment, health care and treatment**, and other forms of social services support. While Root & Rebound is NOT a social service agency—meaning we do *not* directly provide housing or jobs—we recognize the importance of making those connections with social services providers in the community and **do our absolute best to know which agencies across the state of California are providing supportive social services to people in reentry.**

We are constantly discovering new community resources in California, and they are always expanding, diversifying, closing or otherwise changing. Because of this, it was not practical to list every social service agency in our *Roadmap to Reentry* guide. Instead, we have created a series of **county-based template information letters** at our office. The information letters are collections of referral lists and flyers, guides produced by other organizations, and directories from county governments, as well as contact information for the organizations we have worked with or trained in the past. We add to these templates when we find new resources and try to check to make sure the contact information is current on a yearly basis—but we do not have the capacity as a legal office to make sure they are 100% up-to-date.

If you would like a social service referral in the community to which you are returning (for example, you are looking for food, housing, employment or workforce development services, public benefits enrollment, health care, reentry support, legal aid services, etc.), OR **believe you know of agencies and services that we don't**, please feel free to write Root & Rebound a letter at the following mailing address: 1730 Franklin St., Suite 300, Oakland, CA 94612, or call our Reentry Legal Hotline any Friday, from 9 a.m. – 5 p.m., at phone number (510) 279-4662 (we accept Collect Calls). You may ask for resources for all counties you are interested in, and we will send you the information that we have in our office. In addition to contacting our office, you can also try some of the following statewide resources listed below for referrals.

Finally, we have listed here some resources that are specific to certain populations, which may be helpful, and which you may write or call us to request.



FOR STATEWIDE SOCIAL SERVICE REFERRALS (CALIFORNIA):

- **211**
  Location: Referral service available in many counties all across California
  Phone: Call 2-1-1 (note: phone service may not be available in all communities yet)
  Website: http://www.211.org

ADDITIONAL ISSUE- & POPULATION-BASED RESOURCE GUIDES & INFORMATION

RESOURCES FOR 290 REGISTRANTS (PEOPLE REGISTERED AS SEX OFFENDERS):

- **California RSOL (Reform Sex Offender Laws)**
  Contact Person: Janice Bellucci
  Location: ACLU Building, 1313 W. 8th Street, Los Angeles, CA 90017
  Phone: (818) 305-5984
  California RSOL National Hotline (for further information and support): (800) 773-4319. *California RSOL Hotline open on the following days and times: Mondays 7:30am-11:30am; Tuesdays 4am-8am; Thursdays 12pm-6pm; Fridays 9am-3pm; Saturdays 6pm-11pm; Sundays: 10am-2pm (all times are PST).*
- **California Sex Offender Management Board**
  1515 S Street, 212-N
  Sacramento, CA 95811
  Phone: (916) 323-2660

RESOURCES FOR TRANSGENDER PEOPLE:

- **Transgender, Intersex and Gender Non-Conforming Justice Project**
  Physical Address: 1372 Mission St., San Francisco, CA 94103
  Mailing Address: 1230 Market Street, PMB 705, San Francisco, CA 94102
  You can request the following resources: "Still We Rise Prison Resource Guide" and the "Stiletto Newsletter"
- **Alameda County Department of Public Health Headquarters**
  Location: 1000 Broadway Suite 500, Oakland, CA 94607
  You can request the following resource: "State of California and National Transgender Resource Guide"
- **Transgender Law Center**
  Location—SF LGBT Center, 1800 Market St., San Francisco, CA 94102
  Location—National Headquarters: 1629 Telegraph Avenue, Suite 400, Oakland, CA 94612
  Phone: (415) 865-0176 (Dial extension 306)
  Collect phone line for inmates & detainees: (510) 380-8229
  Fax: (877)-847-1278

RESOURCES FOR INCARCERATED SEXUAL ASSAULT & RAPE SURVIVORS:

Sexual violence crisis hotlines provide crisis counseling, referrals, support and other services to survivors of sexual violence. The following hotlines accept collect calls, including from currently incarcerated people. Please note that phone calls are usually monitored from prisons and jails, so if you are concerned about privacy, you may choose to write these organizations by mail.

CENTER FOR HEALTH JUSTICE
Address: 900 Avila Street, Suite 102, Los Angeles, CA 90012
Office Phone: (213) 229-0985
Toll-free Hotline: (888) 372-0888
Inmate Health Hotline (accepts Collect Calls): (213) 229-0979
Hotline, referrals and advocacy in Los Angeles County.

COACHELLA VALLEY SEXUAL ASSAULT SERVICES
Address: 74333 Hwy 111, Suite 204
Palm Desert, CA 92260
Hotline (accepts Collect Calls): (760) 568-9071
Hotline, legal advocacy, counseling, and referrals in Coachella Valley.

JUSTICE NOW
Address: 1322 Webster Street, Suite 210
Oakland, CA 94612
Office Phone: (510) 839-7654 (accepts collect)
Advocacy for compassionate release for women.

NORTH COAST RAPE CRISIS TEAM
Address: P.O. Box 1082, Crescent City, CA 95531
Office Phone: (707) 465-6961
24-hour Hotline (accepts Collect Calls):
(707) 465-2851
Hotline, legal advocacy, and referrals in Humboldtand Del Norte Counties.

RESOURCE CENTER FOR SURVIVORS OF SEXUAL ASSAULT AND FAMILY VIOLENCE
Address: 259 N. Blackstone Avenue, Fresno, CA 93701
Office Phone: (559) 497-2900
24-hour hotline (accepts Collect calls during business hours): (559) 222-7273
Hotline, advocacy and referrals in Fresno County.

RISE
Address: 51 Zaca Lane, Suite 140, San Luis Obispo, CA 93401
Office Phone: (805) 545-8888
24-hour toll-free Hotline (accepts Collect calls): (800) 656-4673
Hotline, advocacy and referrals in San Luis Obispo County.

WOMEN'S CENTER OF SAN JOAQUIN
Address: 620 North San Joaquin Street, Stockton, CA 95202
Office Phone: (209) 941-2611
24-hour Hotline (accepts Collect Calls): (209) 465-4997
Hotline, referral and advocacy in San Joaquin County.

YWCA OF SILICON VALLEY
Address: 375 South Third St., San Jose, CA 95112:
Office Phone: (408) 295-4011
24-hour Hotline (accepts Collect Calls): (408) 287-3000 or (650) 493-7273
Hotline, referral and advocacy, serving from Palo Alto to San Jose.

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