

Record Relief Primer

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There are many ways that a criminal record can negatively impact a person’s life, including restricting access to safety-net benefits and voting rights, and limiting housing and job opportunities. However, new laws and programs are addressing these challenges by automating criminal record relief. If a person meets certain eligibility criteria, their record is automatically “sealed,” meaning it is no longer accessible to third parties, like employers, housing providers, or safety-net programs. California currently has the broadest set of record relief policies nationally. All arrests that do not result in a conviction (non-convictions) can be automatically relieved, and many convictions are eligible for relief either automatically or by petition. This primer accompanies our in-depth report, [“Who Benefits from Automatic Record Relief in California?”](#)

Consequences of a criminal record

Historically, obtaining record relief was complex, burdensome, and often costly, as it was only available through a petition-based process, resulting in low take-up. Beginning in 2019, California joined a short list of states that enacted policies to automatically relieve eligible criminal records. California is also one of many states with Ban-the-Box laws, which prohibit employers from asking about criminal histories until a conditional offer of employment has been made. In California there are certain types of criminal records that employers are generally prohibited from requesting during the application process, such as:¹

- arrests without a conviction
- participation in a diversion program
- sealed records
- juvenile records
- convictions older than seven years

While it is illegal for employers to request this information, private background check companies may share information that is out-of-date and therefore inaccurate. For example, a record may have been sealed but still remains in the company’s data.²

Automatic Relief in California

Prior to the passage of broad automatic relief, anyone seeking to relieve their record had to go through a manual petition process. Individuals who were convicted of a felony and who served time in a California state prison were not eligible for any type of relief. People could, however, apply for a certification of rehabilitation to show the court that they followed the law and demonstrated “good moral character” (PC §§4852.01-4852.22) after completion of their sentence and any supervision terms. This petition would not erase a criminal record, but having certification could offer some help for people applying to jobs or professional licenses by showing employers they had not recently recidivated.

Due to a series of bills enacted since 2019, California has some of the strongest automatic relief laws in the country, making all arrests, most misdemeanor convictions, and many felony convictions eligible (Figure 1). The first two laws automated what was previously a petition-based process. More recent legislation expanded automatic relief to all arrests without a conviction, most non-serious, non-violent convictions, and expanded eligibility for petition-based relief. The California Department of Justice (CA DOJ) began automatically relieving eligible records on a monthly basis in July 2022, after delays due to the COVID-19 pandemic. In July 2023, CA DOJ released its first annual count of the number of records relieved.

Example 1: Eligible for a clean slate through automatic relief

If someone has a conviction for a shoplifting misdemeanor on their record, and nothing else — the record will be relieved automatically after one year has passed from the time they completed their sentence.

FIGURE 1: Timeline of Record Relief Policies in California

2019 - AB 1793

Requires the courts to automatically relieve eligible marijuana related convictions by recall, dismissal sealing, or redesignation pursuant to previous petition eligibility under the Adult Use of Marijuana Act.

2022 - SB 731

Broadens AB 1076 to include all arrests without a conviction, expands conviction relief for certain felonies, and allows petition-based relief for non-sex crime felony convictions.

2021 - AB 1076

Expands automatic relief to non-marijuana related offenses, including many arrests not resulting in a conviction, most infraction and misdemeanor convictions, and some less serious felony convictions.

2023

July 1, over 11 million records were automatically relieved by the DOJ.

Who is eligible for relief in California?

All misdemeanor and felony arrests that do not result in a conviction are eligible for automatic record relief though the waiting periods differ by the severity of the offense. Most misdemeanor and non-serious, non-violent, and non-registerable felony convictions are eligible for automatic record relief if the person has completed their sentence, is not facing new criminal charges or serving another sentence, and the specified waiting periods have elapsed.

People who have been convicted of a misdemeanor that requires registration under California's sex offender law, serious felonies, or violent felonies are not eligible for automatic relief, but they can petition the courts for relief and the judge has discretion to grant their petition. However, convictions for felonies that require registry on the sex offender list are not eligible for automatic or petition-based relief. All conviction histories — even after relief is granted — will still be disclosed to law enforcement, the Commission on Teacher Credentialing, school districts and other educational institutions, as well as anyone required to have a background check because of a contract with any of those entities. Additional details of each relief type are summarized below.

Example 2: Eligible for a clean slate through the petition process

If a person has a non-violent felony from after January 1, 2005 on their record, and nothing else, and they have served their time without having a new conviction, then they will be eligible to apply for a petition of relief after four years have passed. However, they are not eligible for automatic relief.

Automatic non-conviction relief (PC § 851.93)

Not all arrests lead to convictions. A prosecutor may decline to file charges following an arrest, charges could be dropped (for lack of evidence or another reason), or a person may be found not guilty at the end of the court process. These arrests that do not lead to conviction are automatically relieved after a specified waiting period, or immediately if the person was acquitted of all charges.

Misdemeanor — Individuals with a misdemeanor non-conviction at any time since 1973 are eligible for automatic relief one year after the date of the arrest.

Felony — The waiting period for relief depends on the severity of the felony non-conviction. Most people are eligible three years after their arrest. However, people with non-convictions for crimes that are punishable by imprisonment for eight or more years will not have their records relieved until six years after the arrest.

Misdemeanor or felony diversion — Individuals with arrests since 1973 that resulted in successful diversion are eligible for automatic relief after the successful completion of their diversion program.

Automatic conviction relief (PC § 1203.425)

Eligible convictions are automatically relieved if the person has completed their sentence, the designated waiting period has passed, and they are not under supervision or facing new criminal charges.

Misdemeanor — Individuals convicted of a misdemeanor since 1973 are eligible for automatic relief if their conviction does not require registration as a sex offender (per PC § 290) and all terms of their sentence have been completed. People who have been sentenced to probation and successfully complete their term are eligible for relief at the end of their probation period. If a person is sentenced to probation and it is revoked due to a misdemeanor conviction, then at least one year must pass before being eligible. If probation is revoked due to a felony conviction, a four-year waiting period must pass before the individual is eligible for relief. People who were not sentenced to probation must also wait one year after completing their sentence to receive automatic relief.

Example 3: Eligible for some relief through automatic relief:

If a person has a new misdemeanor on their record, and a prior conviction for a serious felony (such as first-degree burglary), the misdemeanor will be relieved automatically after one year, however the felony will remain unless the person petitions the court for relief and the judge approves.

Felony — Individuals are eligible for automatic relief if they are convicted of a felony that is non-serious and non-violent and does not require them to register as a sex offender (per PC § 290).

There are several avenues for relief under these initial criteria:

- Individuals convicted after 1973 and sentenced to probation are eligible for automatic relief after they have successfully completed probation without revocation.
- If an individual had a probation revocation but ultimately successfully completed their sentence, and if their conviction was after 2004, they are eligible for relief after completing their sentence and a four-year waiting period where they were not convicted of a new offense.
- Individuals that were convicted of a non-serious, non-violent, and non-registerable felony after 2004 and who did not receive a probation sentence, are eligible for relief four years after completing their sentence if they were not convicted of a new felony offense during that time.

Petition-based conviction relief

People can petition courts for relief of any felony conviction that is not eligible for automatic relief, does not require a person to register on the sex offender list, and is not considered an offense against a child. They must have completed the terms of their incarceration and supervision, cannot be currently serving a sentence or facing any charges, and need to complete a two-year waiting period in order to petition the courts. Courts ultimately have the discretion to approve or deny these requests.

Key Terms and Types of Relief

There are many different types of relief in California, these are the most common types:

Certificate of Rehabilitation (COR)	Certificate that individuals are able to apply for after serving a minimum period of time, remaining in state for five years, and demonstrating rehabilitation.
Clean Slate	The term for when all arrest or conviction records that an individual has are relieved.
Commutation	Granted by the Governor of California, it provides a reduction in sentencing for people currently incarcerated.
Expungement	The process an individual with a criminal conviction goes through to have a record sealed or destroyed.
Pardon	Granted by the Governor of California, it provides relief from punishment, a restoration of civic rights, the right to apply for a state professional license, improved employment opportunities, etc.
Record destruction	In certain cases, sealed records can be destroyed, and will no longer exist within a court, or a Department of Justice database. For example, all juvenile records can be destroyed after they have been sealed for five years. Adult records can be destroyed if the person is found to be factually innocent of the crime (Penal Code § 851.8).
Reduction and discharge of court fines and fees	Eligible individuals can apply for a reduction or discharge which typically applies to traffic tickets.
Sealing of arrest record	When a record is sealed, it is no longer accessible to a third party, however the record will still exist in the filing systems of the local courts, the district attorney's office, and the Department of Justice.

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Endnotes

- 1 <https://civillrights.ca.gov/fair-chance-act/employment-rights/>
- 2 Jeffrey Selbin, Justin McCrary, and Joshua Epstein, Unmarked? Criminal Record Clearing and Employment Outcomes, 108 J. Crim. L. & Criminology 1 (2018). <https://scholarlycommons.law.northwestern.edu/jclc/vol108/iss1/1>