

# LAFLA Volunteer Expungement Guide



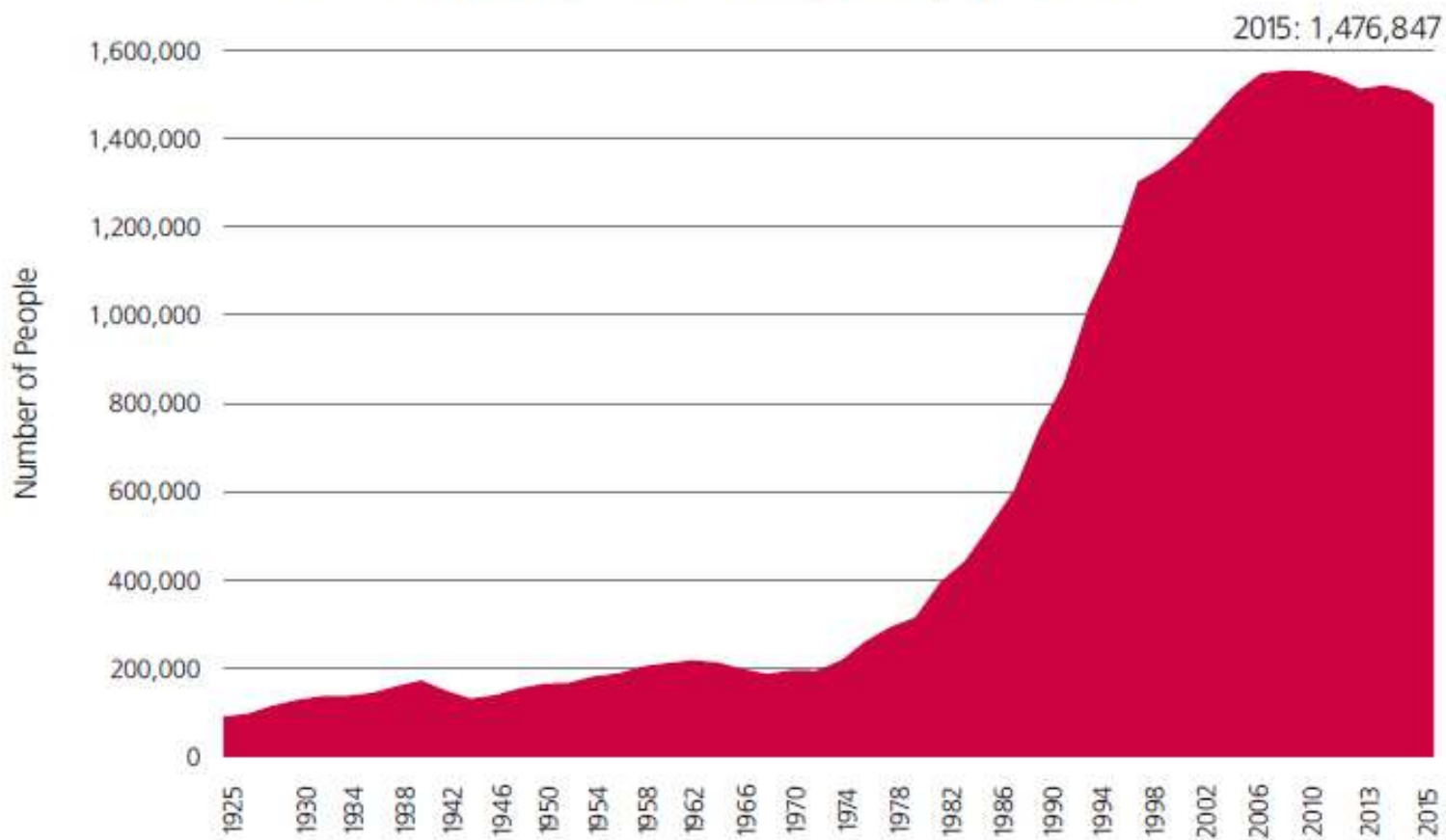
# Road Map

- (1) **Incarceration Rates, Criminal Records, and Employment**
- (2) **Expungement and Reduction:**  
Nature & Scope of Remedies
- (3) **Law Related to Expungements:**  
Pen. Code sections 1203.4, 4a, 41, and 42
- (4) **Law Related to Reductions:**  
P.C. §§ 17(b) and (d)(2); Prop. 47; Prop. 64
- (5) **How-To: The Expungement Process**  
Dockets, RAPs, Court Forms and Declarations

# **Re-Entry by the Numbers:**

Incarceration Rates,  
Criminal Records, and  
Employment

## U.S. State and Federal Prison Population, 1925-2015



Source: Bureau of Justice Statistics *Prisoners Series*.

# Racial and Gender Disparity

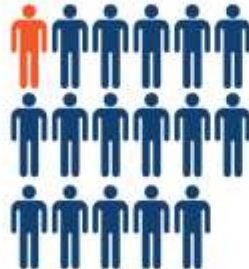
## Lifetime Likelihood of Imprisonment

All Men



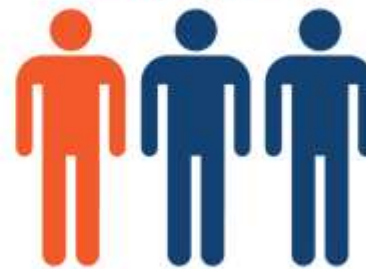
1 in 9

White Men



1 in 17

Black Men



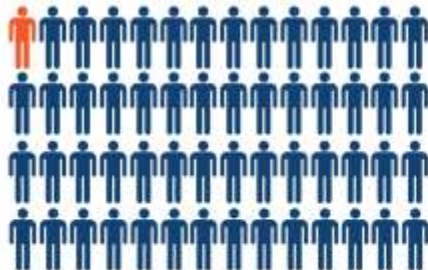
1 in 3

Latino Men



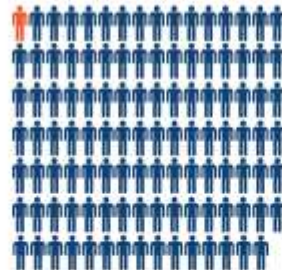
1 in 6

All Women



1 in 56

White Women



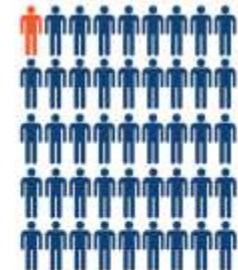
1 in 111

Black Women



1 in 18

Latina Women



1 in 45

Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, D.C.: Bureau of Justice Statistics

# What is Expungement?

## Scope of the Remedy

## **EXPUNGEMENT = DISMISSAL**

“Set aside the verdict;” “Dismiss the accusations or information”

## **RELIEF FROM ALL “PENALTIES AND DISABILITIES”**

Illegal for private companies to report; most fines & fees waived

## **EXCEPTIONS & LIMITATIONS**

- Modifies government record, but does not seal/purge/destroy
- Expungement a factor, but not dispositive, for certification, licensing, and government employment

# Legal Mechanics of Expungement



# Preliminary Issue: Eligibility

**Two Prongs:**

- a) Petitioner Must be Eligible for Expungement**
- b) Conviction Must be Eligible for Expungement**

# Eligible Petitioners

Petitioner may not be:

1. Serving a sentence for any offense;
2. Charged with the commission of any offense;
3. On probation for any offense

# Eligible Convictions

1. MISDEMEANORS AND INFRACTIONS
2. FELONIES WITH JAIL OR PROBATION
3. BIG RED FLAG:

**PRISON TIME**

# The Operative Law

Penal Code Sections 1203.4, 1203.4a, 1203.41, and 1203.42

CODE SECTIONS	SENTENCE / OFFENSE
SECTION 1203.4	<b><u>PROBATION</u></b> Felony, Misdemeanor
SECTION 1203.4a	<b><u>JAIL OR FINE</u></b> Misdemeanor, Infraction
SECTION 1203.41	<b><u>JAIL</u></b> Felony (Realignment)
SECTION 1203.42	<b><u>PRISON</u></b> Felony (Pre-2011, now realignment)

1203.49	Human trafficking
1203.43	Immigration

# Discretionary vs. Mandatory

# Mandatory Dismissal

<p><b>SECTION 1203.4</b></p>	<p><b>“Fulfilled the conditions of probation for the entire period of probation” – <i>including fines &amp; fees</i></b></p> <p><b>“Discharged prior to the termination of the period of probation”</b></p>
<p><b>SECTION 1203.4A</b></p>	<p><b>“Has, since the pronouncement of judgment, lived an honest and upright life and conformed to and obeyed the laws of the land”</b></p>

<p>Section 1203.43</p>	<p>Completion of DEJ</p>
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# Discretionary Dismissal

SECTION	CONDITIONS
SECTION 1203.4	Any revocation / violation of probation Any unpaid fines or fees
SECTION 1203.4a	Another offense within one year of sentence <i>Note: one year must have passed since sentence.</i>
SECTION 1203.41	If supervision: <u>one year</u> from end of supervision If not: <u>two years</u> from end of jail term
SECTION 1203.42	Conviction occurred prior to 2011 Conviction is now AB109 (PC 1170(h)) eligible

Section 1203.49	Clear and convincing evidence of trafficking
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# Writing Declarations

- (1) Circumstances of the offense
- (2) Improvements since the offense.
- (3) Current need for expungement

## Supporting Documents

Examples: sobriety certificates, diplomas, character references  
Clients are unlikely to have these with them at a clinic, but encourage them to bring the documents to a hearing and offer them to the judge.

# Complement to Expungement: Felony Reductions

P.C. 17(b), 17(d)(2), 1170.18 (Prop 47); H.S. <section> (Prop 64)

# Penal Code Section 17(b): Reduction of Wobblers

A **wobbler** is an offense that could be charged as either a misdemeanor or a felony.

Petitioners charged with a wobbler as a felony may ask the court to reduce it to a misdemeanor.

The court may do so, or not, **at its discretion.**

# Proposition 47:

Reclassification of Drug Possession & Petty Theft

Proposition 47, the “Safe Neighborhoods and Schools Act,” passed by voter initiative in 2014.

It reclassified certain theft and drug possession offenses to misdemeanors.

Those convicted of these offenses can now petition the court to have them reduced from felonies to misdemeanors.

# Eligible Prop. 47 Felonies: Two Groups

**Theft Crimes** for property valued at less than \$950.

Primarily targeted toward cases of forgery and shoplifting.

Does not apply to cases involving breaking/entering or violence.

## **Simple drug possession**

Primarily targeted toward crack cocaine and methamphetamine.

Does not apply to paraphernalia or possession for sale.

# Proposition 64:

The Adult Use of Marijuana Act

Proposition 64, the “Adult Use of Marijuana Act,” passed by voter initiative in 2016.

It reclassified certain marijuana-related felonies as misdemeanors and certain misdemeanors as infractions, and decriminalized certain infractions entirely.

Those convicted of these offenses can now petition the court to have their convictions reduced, or, in the case of decriminalized offenses, dismissed and sealed.



# Forms & Filing: The Expungement Process

# Fillable Petitions

- Judicial Council forms:
  - CR-180 – Petition for Dismissal
  - CR-181 – Order for Dismissal
  - Five (5) different fee waiver forms:
    - *Note: not filing fees, but reimbursement of court costs*
    - FW-001 and -003
    - CR-132 / 243 and CR-115
  - MC-031 (Declaration)
  - Proof of Service

# Prop. 47 Paperwork

- Los Angeles uses two forms
  - CRIM 235 → petition/application
  - CRIM 237 → proof of service
- Every county has its own Prop. 47 form

# Prop 64 Paperwork

- Los Angeles County uses CR-187 for petition/application and proof of service.

# Hypos

1. John was convicted of a felony for PC 459 and a misd for PC 459 on March 30, 2015. He was sentenced state prison for 16 months for the felony and 90 days in county jail for the misd, in addition to fines and restitution. John has paid all fees and fines and completed both prison/jail sentences.

- What forms of relief is John eligible for?
- What if he is still on probation?

2. John was convicted of a felony for PC 459 on March 30, 2016. He was sentenced to 2 yrs of probation, 180 in county jail, and 40 hours of CS. John has completed his jail sentence and CS. John is seeking employment as an armed security guard.

- What forms of relief is John eligible for?