

# NEW BEGINNINGS

**A CONGREGATIONAL GUIDE TO RESTORATIVE JUSTICE THROUGH EXPUNGEMENT**



Your congregation can help those with felony convictions expunge their records so they can rejoin the human community as full partners and participating citizens.



**RETRIBUTIVE JUSTICE VS. RESTORATIVE JUSTICE**

California is seeking to redress the harms that we have done over the past decades. We have come from a basis of fear, prejudice, self-righteousness in many of the votes we have made about how we handle criminal conduct. From “Three Strikes” to harsh sentences for comparatively low-level crimes, the state’s incarcerated populations swelled from 23,264 in 1980 to a high of 173,942 in 2006.

While California ranks 34th in numbers of incarcerated per 100,000 people, it had one of the more harsh records of post-incarceration barriers to employment, services, and access to civil rights such as voting. Some of that is beginning to change, but it won’t do so without our help.

We as a state and society are beginning to realize that the “lock them up and throw away the key” premise of “corrections” is not working. In 2012 California had one of the highest recidivism rates in the nation, with 65% of released felons returning in three years. Part of this was the cat-and-mouse policy of imprisoning felons for minor violations of parole as well as disparate sentencing for minor crimes within the “Three Strikes” provisions. Even misdemeanors could be the ‘third strike’ that put people in prison for life.

California also has a horrible track record of racial and ethnic disparities in sentencing. The fact that 1 out of 3 Black males will face jail or prison endangers entire communities and populations to enduring poverty and uncertain futures. This is unacceptable.

Recent reforms such as changes in the three strikes law and Proposition 47 that declassified some felonies to the status of misdemeanors has helped. But true restorative justice – of making the perpetrator, the victims, and society whole – cannot occur until people genuinely have a fresh start. By having to “check the box” saying they were convicted of a felony, released prisoners cannot work, cannot claim even food assistance, cannot be fully functional in society.

### **We can change that.**

First we as people of faith need to determine whether we truly believe in and will work for restorative justice or settle for the enduring harshness of retributive justice. *Who then, shall we be as people of faith?*

Retributive justice has Scriptural roots within the tribal history of the Old Testament. It also has deep roots in Western culture. It is the justification for torture, for back-breaking labor, for punishment without redemption – sinners and those violating secular law must ‘get what they deserve’. It is the ‘eye for an eye’ principle coupled with the exercise of power and dominance over others.

Restorative justice views the journey from Old Testament to New as growth of righteousness – of setting things in order again – over mere punishment. When this occurs, when offenders are restored, the larger society benefits from greater harmony among its members. It’s the manifestation of the Resurrection, of forgiveness and blessings that make things whole.



Restorative justice is a foundational principle for many mainline and liberal Protestant denominations as well as others. It is grounded in much of our nation's Constitution, in the Bill of Rights and the care taken to protect the rights of the accused, for creating a system that is balanced among parties.

Restorative justice is not 'bleeding heart softness. It does not let the offender walk away to reoffend. Restoration requires four serious obligations from offenders:

- **Remorse.** The need to acknowledge one's guilt, confess the sin or harm
- **Repentance.** Be determined to make amends.
- **Restitution.** To the best capacity, the criminal must restore what has been stolen from another or others plus additional compensation. Part of this is accepting incarceration as society deems fit.
- **Reconciliation.** Finding reconciliation with the injured parties comes in large part from Restitution. Society itself needs to focus on re-integrating criminals and sinners back into society as well.

When a particularly heinous crime has been committed, our society falls back on Retributive justice, often extending the desire for revenge to an entire body of people. But reasoning from the extremes to the whole creates its own injustices. We did that with the "Three Strikes" laws, with mandatory sentences for many crimes, with drug use and small sales treated as harshly as large-scale dealing. Petty crimes could count as the 'third strike'. These reactions ensnared the small-time offenders in the same system and with same penalties as the serious offenders. We believe, erroneously, that harsh sentences are deterrents. They have not proven to be so. They simply ruin lives and have swollen our prison and jail populations.

When convicted of a felony in California, those paroled from jail or prison must "check the box" on any and all applications for work, credit, school, social benefits such as food stamps, etc. This is required for the rest of their lives. Restitution cannot be made when reconciliation is prohibited. It is a rare employer who will risk hiring a felon. Omitting the 'check' risks being found to have lied and thus later being fired when the felony is discovered. For those who find a sympathetic employer, should that job terminate, the next potential employer may well disregard the good employment and focus on "the checked box".

This is our failure as a society. We have omitted the reconciliation step as part of justice and opted for dismissal of those who served their time, paid their fines, did their community service – and still cannot have a job, cannot rent housing, cannot care for their families, cannot even feed themselves. This is our failure to restore, to make whole, the people who have done what we asked of them. This is not forgiveness.

This punitive approach perpetuates the cycles of criminality. Faced with an inability to gain work, to become self-sufficient, offenders may have no recourse but to re-offend. By closing opportunities to those who have offended but

*“While it contains retributive components, God’s justice is fundamentally a restoring and renewing justice. Knowing this, the Church is obliged to practice restorative justice in its own ranks and to summon society to move in the same direction.”*

*- Divine Justice as Restorative Justice,  
Chris Marshall, Center for Christian Ethics,  
2002*



who have paid their dues, we offend against our own values as people of faith and a nation of laws.

California is, however, among several states that permit a second chance for those who have offended but who have completed all the steps to satisfy the justice system. Now we have a chance to show they satisfy us as compassionate people as well.

## Reclaiming Our Lives – A Second Chance



Expungement of felony records is available to most people who served their time in county jails. There are a few exceptions – traffic related felonies and sexually-based offenses cannot be expunged. Otherwise the process is useful to thousands of those convicted of felonies. Note that under California Penal Code §1203.4, expungement is mandatory in any case in which a person was granted and successfully completed probation, without violation, or was discharged from probation early. The court has discretion to discharge other probation cases but may refuse where the sentence was served in prison.

There is no expungement process per se that is open to those convicted of felonies who served time in state prisons. Proposition 47 qualifying offenses are the exception and can apply to those serving time in prison. Other offenders who have completed their sentences in full may be eligible for a Certificate of Rehabilitation and/or Pardon. This is a more complicated process, but we will also explain how it works.



### **Eligibility for Expungement is open to only those meeting the following criteria:**

- The conviction was over one year ago
- The candidate is finished with probation
- The candidate has paid 100% of court fines, fees, and restitution
- Candidate did not serve any time in state prison for the offense
- Candidate is not currently charged with an offense including Violation of Parole (VOP)
- Candidate is not currently on parole or Post Release Community Supervision (PRCS)
- Each felony offense must be cleared separately, using the same procedure for each one. None can be cleared unless they are all eligible to be and are successfully cleared.



## **Proposition 47 Sentencing Reductions.**

Offenders convicted of drug crimes and other offenses specified in Proposition 47 were offered a chance at sentence reduction through the passage of Proposition 47. This applies regardless of whether the sentence was served in county jail or in prison. This is a special body of law with its own process. Sentence reductions from felonies to misdemeanors is important since the latter does not require anyone to “check the box” once the sentence has been changed. Proposition 47 remediation is more complicated and is best handled through the county public defender’s office in the county of the offense. If there is more than one county for separate offenses, each has to be handled separately. It is important to note that petitions on past offenses must be submitted before November 4, 2022. Petitions for special relief may be applied if there are compelling reasons why this could not occur such as a serious illness. See the web site for Legal Services for Prisoners with Children for a PDF on this process: [www.prisonerswithchildren.org/.../Prop-47-Guide-Updated-March-2016-w-cr180-for...](http://www.prisonerswithchildren.org/.../Prop-47-Guide-Updated-March-2016-w-cr180-for...)

All applications for Proposition 47 relief had to be entered by November 2017. Thus standard expungement will apply to those serving time in county jail, but new petitions for those serving time in prison cannot be accepted. We can still help those who met the deadline but whose cases may not yet be completed.



## **How Congregations May Help General Expungement**

Why do we engage congregations in this restorative process? While the legal process works through county public defenders, government offices or their contracted private firms, many people are unclear how to begin. Congregations can be trusted allies in helping them walk through this process. Congregations are often the centers for even non-members who need services, succor, community. People seeking to expunge their records are often fearful of the legal system and need both emotional support and guidance while seeking their rights. Who better to provide information and kindness than we in their faith community?

### **Congregations may offer help with these steps:**

First, become familiar with your county’s office of the public defender. We have compiled a county by county list of contacts. Only one county has no observable resource – Sierra – requiring contact with the parole office or district attorney. All others have either resident public defenders or private law firms contracted to do this work. But the details can be tricky depending on your county, so an essential start is to discover your county’s process and resources.

Go to [this link](#) to find your county contacts. We have compiled the county defender web site or contact lists and have it posted on our California Council of Churches web site. It is accurate to late 2017. Some county web sites have detailed information on expungement. Some have nothing listed at all. Some counties list Proposition 47 information, others full expungement help. Where web sites don’t offer any information, we have provided phone numbers. We found the personnel very accommodating on how to proceed, so don’t be afraid to call.

### Next steps:

- Securing conviction records. This starts with a fingerprint check of the person for whom the record is being requested. Instructions on “live printing” scans are located at the California State Department of Justice Criminal Records Review site <https://oag.ca.gov/fingerprints/record-review> There is a \$25 fee that may be waived. This record is essential to beginning the expungement process. See <http://www.courts.ca.gov/1070.htm> for more information.
- Obtain case numbers for each and every conviction. This will provide the date of conviction, the Penal Code section that was violated, and the disposition of the case (guilty, plea agreement, nolo plea, etc.) as well as the terms of any incarceration and probation. Directions are on the web site.
- If there are multiple records from different counties, each one must be obtained individually.
- Determine eligibility once again by comparing the Penal Code sections under which the petitioner for expungement was convicted. Broadly, non-eligible convictions are traffic offenses and sexually based crimes.
- If the petitioner appears to be eligible, what is being sought is a ‘dismissal’ that expunges the record. Go to <http://www.courts.ca.gov/1070.htm> and click on “When are you eligible for a dismissal” to determine the standards for the petitioner’s specific situation.
- Find out on the web site “What a dismissal will do”. And also what it will not do.



The petitioner – with the moral support of the congregation, friends, family – must approach the Clerk of the Superior Court in the county where the conviction occurred. On the web site, <http://www.courts.ca.gov/1070.htm> click on the “File your petition with the court” for the steps. The petitioner will use “The Petition for Dismissal” (Form CR-180 plus CR-181) and follow the directions on this page of the web site. The forms are available from the public defender or are online at <http://www.courts.ca.gov/1330.htm>

A personal statement by the petitioner for why he or she deserves expungement also needs to accompany the request. It may be filed on Form MC-031 or as a letter, and it should be filed with the CR-180.

Many of these steps can also be assisted by the county’s office of the Public Defender. That is part of their legal obligation under law. Again, go to [this link](#) to get the list of public defender options in each county. There is great diversity among opportunities, and each county is different.

Thirteen California counties start their expungement process with a group known as “Clear My Record”. Many of these steps can be done through their web site: [clearmyrecord.codeforamerica.org](http://clearmyrecord.codeforamerica.org) On our [county defender list](#) these thirteen counties are listed as “CMR”.





Petitioners will have to write a statement of why he or she believes the record should be cleared, the conviction dismissed. This is a declaration of restorative justice – how have they turned their lives around, kept out of jail or prison, contributed to the community. A statement of need – inability to get or keep a good job or get advanced training for better skills – is equally important

### **Congregational commitments to petitioners**

Petitioners may not have good verbal and writing skills.. The person helping the petitioners fill out the form and understand the process can be of help.. Work with the petitioner, let him or her tell the story, and help them write the statement. It is usually one page, but clarity is important. On the personal statement, help the petitioner to put his/her story into a coherent statement.

Petitioners may not have the funds for the fingerprinting and may need assistance in obtaining waivers on filing fees. Your congregation may wish to make this a ministry with dedicated funding if you make a major commitment to many people. In all cases, someone needs to be willing to talk with the petitioner(s), give them their options, help them approach the public defender and the court clerk, then show up on time and in appropriate dress for the court hearing, This is being a mentor to the petitioner to help them overcome fears and negativity. We can do whatever it may take.

This is how we create restorative justice through our grace, patience, compassion, and love. We listen, we help, we embrace their reform, and we bring them back into the community we call our own.



Mobilizing California's prophetic spiritual activists for justice since 1913!

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