



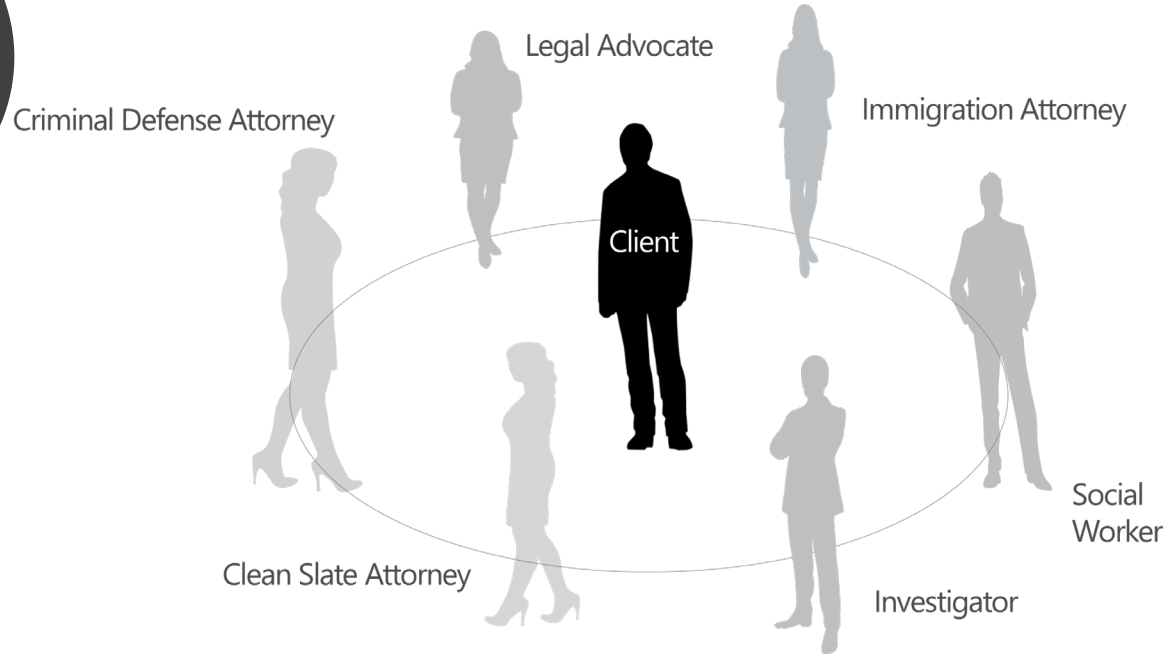
# THE CLEAN SLATE PROGRAM & RELATED OCCUPATIONAL LICENSING/EMPLOYMENT CONSIDERATIONS

November 15, 2023 – Presentation for ACWDB's Systems & Strategies Committee

Sadie Wathen, *Supervising Clean Slate Attorney*

*\*\*This training provides general overview information only. It does not constitute legal advice.\*\**

ACPDO:  
HOLISTIC  
DEFENSE



## WHY IS CLEAN SLATE WORK IMPORTANT TO LOCAL COMMUNITIES?



Clean Slate increases  
people's ability to get jobs

Employment reduces  
recidivism

Clean Slate increases  
public safety

## WHAT THE RESEARCH SHOWS

An estimated 1 in 3 American adults has a criminal record



A study of East Bay Community Law Center clients found that average employment rates grew after receiving record clearing services



In a study by the Safer Foundation, the recidivism rate for clients who achieved employment was 18%, compared to 52.3% for people released from prison statewide that year

# AC CLEAN SLATE PROGRAM: CRIMINAL RECORDS REMEDIES OVERVIEW

## Early Termination of AC Probation (PC 1203.3)



- Completed classes?
- When the ends of justice will be subserved & when good conduct & reform shall warrant
- Always discretionary

## Dismissals of AC Convictions (PC 1203.4 et seq.)



- Not serving a sentence or on probation (unless participated in CDCR fire camp and seeking PC 1203.4b)
- Not currently charged with the commission of any offense
- Can be mandatory or discretionary, some convictions are statutorily ineligible, there can be waiting periods & some dismissal relief is being automated
- Legal term is NOT “expungement”; doesn’t seal/erase

## AC Felony Reductions (PC 17(b))



- Applies to wobblers only, not all felonies
- Always discretionary
- Doesn’t apply to state or local prison cases

## Misc.



- Termination of probation per AB 1950; termination of sex offender registration per SB 384; Certificates of Rehabilitation
- Partial sealing of arrests not leading to conviction; vacatur of nonviolent arrests/convictions committed by survivors of human trafficking per PC 236.14
- Reclassification of certain felonies as misdemeanors per Prop 47 & Prop 64; reduction of eligible misdemeanors per PC 17(d)

# THE LIMITATIONS & IMPACT OF MOST DISMISSALS

## WHAT THEY DON'T DO

- Do NOT erase or seal conviction (for any purpose, including immigration; may still be used as a prior conviction)
- Do NOT end PC 290 (sex offender) registration requirement
- Do NOT reinstate firearm rights
- Do NOT erase victim restitution
- Do NOT impact any obligations folks have with the DMV

## WHAT THEY DO/MIGHT DO

- CA background checks for private employers should NOT report dismissed convictions
- With limited exceptions, courts SHALL NOT disclose information re: a conviction granted relief per PC 1203.425 and PC 1203.4 et seq.
- Notation re: dismissal added to RAP
- MIGHT help for purposes of public jobs, occupational licensing (see AB 2138), and immigration (in certain circumstances where an immigration judge can exercise discretion)
- For PC 1203.4b relief, may not be required to disclose the conviction on an application for licensure by any state/local agency (*but* see PC 1203.4b slide for EMT limitation)
- For PC 1203.4bs, may terminate parole, probation, and mandatory supervision early

# RECENT DISMISSAL STATUTE: PC 1203.4B

- **Applies if, while incarcerated, client successfully participated in a hand crew for the CDCR's CA Conservation Camp (fire camp) or similar county program or participated at an institutional firehouse**
- **Effective January 1, 2021**
- **Eligibility:**
  - Successful participation = person performed their duties w/out any conduct that warranted removal from the program
  - Out of custody
  - Not currently charged with the commission of any offense
  - Not required to be off probation, parole, or supervised release; if relief granted, court shall order early term if haven't violated any terms/conditions
  - Ineligible if client has been convicted of:
    - Murder; kidnapping; rape as defined in PC 261(a)(2) or (6) or PC 262(a)(1) or (4); lewd acts on a child under 14, as defined in PC 288; any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration pursuant to PC 290; escape from a secure perimeter w/in the previous 10 years; or arson
- **Always discretionary**
- **Result:** similar to result of PC 1203.4 but not required to disclose the conviction on an application for licensure by any state/local agency
- **PROBLEM:** This relief does not statutorily impact the EMT certification process, which is typically required in order to become a firefighter

# AB 1076: AUTOMATION OF CONVICTION RECORD RELIEF PER PC 1203.425

- Effective 7.1.2022 and **subject to an appropriation in the annual Budget Act, on a monthly basis** the DOJ shall review records to identify people eligible for **automatic record relief** for certain convictions that occurred on or after **1.1.1973**
- Note a new version of PC 1203.425 added by SB 731/AB 134 takes effect 7.1.2024
- **Convictions may be eligible if:**
  - (1) the person was sentenced to probation and completed without revocation; or
  - (2) the conviction was for a misdemeanor or infraction where there was no probation, the person completed the sentence, and at least 1 year has elapsed since judgment
- Certain cases are **ineligible**, including if:
  - The person is currently on local, state, or federal supervision per the Supervised Release File
  - The person is currently serving a sentence or has pending charges
  - The case resulted in a state prison sentence
  - The person is required to register pursuant to the Sex Offender Registration Act
- If granted, the relief releases the person from certain penalties and disabilities pertaining to that conviction, but has **limitations** similar to other dismissal statutes
  - The records can still be accessed by criminal justice agencies & some others
  - Does not restore firearm rights; must be disclosed for peace officer jobs, etc.
- As of 1.1.23, w/ limited exceptions, courts SHALL NOT disclose information re: a conviction granted relief per PC 1203.425 and PC 1203.4 et seq.
- DA/Probation can file a petition in opposition based on a showing that granting the relief would pose a substantial threat to public safety



# SB 731/AB 134: Expansion of PC 1203.41 Relief, Automation & More

- **Effective 1.1.23, SB 731 expanded PC 1203.41 relief to ALL FELONY convictions (including State Prison (SP) cases) except** those that resulted in SP sentence and a requirement to register per PC 290
- **SB 731 also added a new version of PC 1203.425, and AB 134 modified the effective date to 7.1.24**
  - **Subject to an appropriation in the annual Budget Act, on a monthly basis** the DOJ shall review records to identify people eligible for **automatic record relief** for certain convictions

# SB 73 I/AB 134: Expansion of PC 1203.41 Relief, Automation & More

- **Convictions may be eligible for automated relief if:**
  - Occurred on or after **1.1.73** and meet either of the following criteria
    - (1) the person was sentenced to probation and completed without revocation; or
    - (2) the conviction was for a misdemeanor or infraction where there was no probation, the person completed the sentence, and at least 1 year has elapsed since judgment
  - Occurred on or after **1.1.05** and
    - (1) the person was convicted of a felony (not serious/not violent/not PC 290), other than one for which the person completed probation without revocation; and
    - (2) has completed all terms of incarceration, probation, mandatory supervision, postrelease community supervision, and parole; and
    - (3) a period of 4 years has elapsed since the date on which the person completed probation/supervision for that conviction AND (4) during which the defendant was not convicted of a new felony

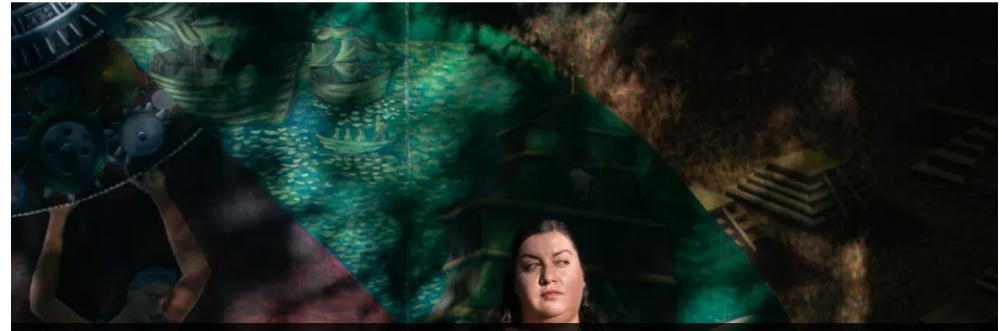
# SB 731/AB 134: Expansion of PC 1203.41 Relief, Automation & More

## PC 1203.425, effective 7.1.24 CONTINUED

- Certain cases are **ineligible**, including if:
  - The person is currently on local, state, or federal supervision per the Supervised Release File
  - The person is currently serving a sentence or has pending charges
  - The person is required to register pursuant to the Sex Offender Registration Act
  - The conviction was for a serious felony defined in PC 1192.7(c), and the person did not complete probation without revocation and/or went to state prison
  - The conviction was for a violent felony as defined in PC 667.5, and the person did not complete probation without revocation and/or went to state prison
  - The conviction was for a felony offense requiring registration per Ch. 5 (commencing with PC 290) of Title 9 of Part 1, and the person did not complete probation without revocation and/or went to state prison
- If granted, the relief releases the person from certain penalties and disabilities pertaining to that conviction but has **limitations** similar to other dismissal statutes.
  - The records can still be accessed by criminal justice agencies & some others
  - Does not restore firearm rights; must be disclosed for peace officer jobs, etc.
- With limited exceptions, courts SHALL NOT disclose information re: a conviction granted relief per PC 1203.425 and PC 1203.4 et seq.
- DA/Probation can file a petition in opposition based on a showing that granting the relief would pose a substantial threat to public safety

CALIFORNIA

# California was supposed to clear cannabis convictions. Tens of thousands are still languishing



<https://www.latimes.com/california/story/2022-01-13/california-was-supposed-to-clear-weed-convictions-tens-of-thousands-are-still-languishing>

Article by Kiera Feldman, 1.13.22

**AUTOMATION:**

**EFFECTUATION  
CONCERNS  
FOLLOWING  
PROBLEMS WITH  
PROP 64  
“AUTOMATION”**

ADULT SB 384  
CHANGES TO PC  
290/PC 290.5 (SEX  
OFFENDER  
REGISTRATION)

- SB 384 amended PC 290. Previously, every sex offense conviction required lifetime registration. Under the new law, a three-tier system is in place. Tiering is primarily based on the registerable offense.
- Tier One: 10-year registration
- Tier Two: Typically 20-year registration
- Tier Three: Typically Lifetime registration

## SB 384: CALCULATING REGISTRATION PERIODS/TOLLING

- The minimum registration period (“MRP”) will be extended based on new convictions/parole violations/probation violations:
  - Each day in custody on a new conviction, parole violation, or probation violation will add an additional day to the MRP.
  - A new registerable offense will restart the MRP
    - If multiple PC 290 convictions, highest tier governs MRP
  - Technical violations (e.g., convictions for failure to register):
    - Misdemeanor Technical Violations = One additional year to MRP
    - Felony Technical Violations = Three additional years to MRP

## PETITIONING FOR REMOVAL

- No automatic removal (i.e., must continue to register until a judge signs a court order granting termination of registration requirement)
- People who have met the MRP (and other requirements) can request to be removed from the registry
- Must file in the California county of registration
- Registration must be in compliance
- Not eligible if:
  - In custody
  - On probation, parole or other supervised release
  - Have pending charges which could extend MRP or change tier



# Penal Code § 290 Registration Relief

Petitions Can Be Filed Starting July 1, 2021

## AM I ELIGIBLE?

You may be eligible for relief if:

- You have registered for the Minimum Registration Period (MRP) for your Tier (including any extensions and tolling); AND
- Your registration is current.

You are not (yet) eligible if:

- You have not completed the MRP for your Tier (including any extensions and tolling); OR
- You are in custody; OR
- You are on parole, probation, or supervised release; OR
- You have pending charges which could extend your MRP or change your Tier.

## WHAT IS PC 290 (SEX REGISTRY) REGISTRATION RELIEF?

Starting in 2021, instead of across-the-board lifetime registration, California will have a tiered registration system. Depending primarily on the conviction for which a person was ordered to register, registrants will be placed into one of three Tiers. Generally, the Minimum Registration Period (MRP) for Tier 1 registrants is 10 years; the MRP for Tier 2 registrants is 20 years; and Tier 3 registrants must still register for life. People who must register because of a juvenile finding may have even shorter registration times.

## HOW DO I FIND OUT MY TIER?

You can ask the law enforcement agency where you register to provide you with a Tier Notification Letter. Once you get this letter, we encourage you to contact the Public Defender's Office or another lawyer to confirm that your Tier information is correct.

## HOW IS THE MRP CALCULATED?

Generally, the MRP begins when you are released from custody on the registerable case. If you are later convicted of failure to register, this will extend your MRP. With limited exceptions, any time you spent in jail or prison after you were ordered to register will not count toward the MRP ("tolling").

## CAN I STOP REGISTERING IF I MEET THE MRP?

**NO!** You must first file a petition and then have a judge grant your petition before you can stop. Until a judge tells you that you are no longer required to register, you must continue to register.

## WHAT SHOULD I DO NOW?

1. **Continue to register.**
2. **Ask the law enforcement agency where you register to provide you with a Tier Notification Letter.**
3. **If you think you may be eligible for registration relief, contact the Public Defender's Office (in the county where you register) or another lawyer for help. You should also ask the law enforcement agency where you register for proof of your current registration.**

**To seek registration relief help from the Alameda County Public Defender's Office, please go to [cleanslate.acgov.org](https://cleanslate.acgov.org) and apply.**

**Or, if you do not have access to a computer, please call (510) 268-7400 and ask for Clean Slate staff.**

## HOW DO I PETITION FOR PC 290 RELIEF?

You need to file a petition in court in the California county where you register with proof that you are currently registered. You must then serve a copy of the filed petition on the law enforcement agency and the District Attorney of both the county where you register and, if different, the county where the case for which you were ordered to register was prosecuted. **If you are eligible, you may file a petition on or after your next birthday following July 1, 2021.** You can file a petition without a lawyer, but we recommend that you contact the Public Defender's Office (in the county where you register) or another lawyer to help you.

## WHAT HAPPENS AFTER I FILE A PETITION?

The law enforcement agencies have 60 days to report to the court and the prosecution. The prosecution then has 60 more days to respond. The prosecution may challenge the petition if they believe you have not met the MRP or "community safety would be significantly enhanced by" your continued registration. If you have met your MRP and other eligibility requirements and the prosecution does not challenge your petition, the judge must grant relief. Otherwise, there will be a hearing where the judge will decide whether to grant relief. The process will take at least several months.

PC 290 FLYER AVAILABLE ON OUR WEBSITE



## COALITION/POLICY WORK: AB 2138

- Worked with EBCLC, LSPC, and others to draft and pass AB 2138
- Effective 7.1.2020 and applies to many occupational licensing boards, including the BSIS (guard cards) and the Board of Registered Nursing
- **Pre-AB 2138:** the relevant boards could deny licenses on the basis of convictions dismissed per PC 1203.4
- **Post-AB 2138:** among other things, the relevant boards **SHALL NOT DENY** a license on the basis of a conviction dismissed per PC 1203.4



## AB 2138 PROTECTIONS

- **Many** Boards cannot deny licensure on the basis of:
  - **Many** criminal convictions that are older than 7 years
  - Convictions that have been dismissed per PC 1203.4 or a comparable dismissal
  - Convictions for which the person has received a Certificate of Rehabilitation or a pardon
  - Arrests, diversions, deferred entry of judgement, infractions, citations, or juvenile adjudications
  - Formal discipline by a licensing board in or outside of CA that is older than 7 years or if a conviction was the basis for the disciplinary action, if the conviction has since been dismissed per PC 1203.4 or a comparable dismissal

# IMPORTANCE OF CRIMINAL RECORD REMEDIES

## Boards Governed by AB 2138

- Can consider **substantially related** convictions or professional misconduct within the last 7 years (note exceptions below)
- The following can be considered indefinitely:
  - Serious felonies under PC 1192.7(c)
  - Convictions requiring Tier 2 or 3 sex offender registration under PC 290
  - (Currently classified) **Felony** financial crimes if a person is seeking licensure from these 6 Boards:
    - 1) CA Board of Accountancy, 2) Contractors State License Board, 3) Professional Fiduciaries Bureau, 4) Investigators under the Bureau of Security and Investigative Services, 5) Cemetery and Funeral Bureau, and 6) Department of Real Estate
- **However:** a person shall not be denied a license on the basis of any conviction that has been dismissed per PC 1203.4, obtained a COR, or pardon

## Other Boards

- Legal service providers may be able to help people obtain criminal record cleaning before they apply for occupational licensure
- Legal service providers may be able to research occupational licensure and the person's specific criminal record to determine if they may be barred, etc. before they go to school or spend money on training for a license they cannot obtain

# MISC. OCCUPATIONAL LICENSURE INFORMATION

## AB 2138 Boards

- **Most** Boards cannot ask about criminal history on the license application but may ask for mitigating evidence
  - Exceptions: California Architects Board, Landscape Architects Technical Committee, Board of Barbering and Cosmetology, Bureau of Household Goods and Services, and Bureau of Automotive Repair **may ask** applicants about criminal history on the licensure application
- AB 2138 eliminated the candor trap as candidates should receive a copy of their background check before disclosing conviction information

## Other Boards

- Boards usually require applicants to disclose all convictions on application (even if the person obtained dismissals) and compare responses to the fingerprint background check creating a “candor trap”
- Typically no washout period like with AB 2138
- May be able to consider and use “acts” as grounds to deny licenses

Examples of Non-BP  
480/Non-AB 2138  
Licenses

- Department of Insurance
- Certified Nursing Assistant (CNA) /  
Home Health Aide (HHA)
- TWIC - Transportation Worker  
Identification Credential
- Department of Social Services  
Clearance/Criminal Record Exemption
- Teacher Credential
- Department of Motor Vehicles (DMV)
- Emergency Medical Services Authority  
(Paramedics)



Clean Slate Program  
Occupational Licensing Quick Guide

CA SECURITY GUARD LICENSING AND CONVICTIONS

**General Information**

A division of the California Department of Consumer Affairs, the Bureau of Security and Investigative Services (BSIS) issues security guard licenses ("guard cards"). Go to [bsis.ca.gov](https://www.bsis.ca.gov) for application requirements and contact information. Business and Professions Code Division 1.5: Denial, Suspension, and Revocation of Licenses (§ 475 et seq.) applies to many licenses in California. There are additional provisions that govern particular licenses (see § 7580 et seq. for security guard licenses). Unless otherwise noted, sections cited in this document refer to the Business and Professions Code or the California Code of Regulations.

**Interested in APPLYING for a Guard Card and Have a Criminal Record?**

It is recommended that people with convictions who are interested in getting a guard card **seek dismissals/other Clean Slate relief of any eligible and relevant convictions BEFORE applying for licensure.**

**\*\*To seek Clean Slate services in Alameda County, please apply online at [cleanslate.acgov.org](https://cleanslate.acgov.org)\*\***

**Under AB 2138/BP § 480, the BSIS CANNOT DENY a license on the basis of:**

- Many\* convictions that are 7 years or older or if the person was released from incarceration 7 or more years ago
- Convictions that have been dismissed per Penal Code §§ 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or a comparable dismissal
- Convictions for which the person has received a Certificate of Rehabilitation or a pardon
- Arrests, diversions, deferred entries of judgment, infractions, citations, or juvenile adjudications

**\*The 7-year rule does NOT apply to:**

- Serious felonies as defined in Penal Code § 1192.7(c)
- Convictions requiring Tier 2 or Tier 3 sex offender registration under Penal Code § 290

**Under AB 2138/BP § 480, the BSIS MAY DENY a license on the basis of a non-dismissed conviction if:**

- The date of the conviction occurred within the last 7 years, the person was released from incarceration in the last 7 years, or the conviction is an exception to the 7-year rule
  - The conviction must be **substantially related** to the qualifications, functions, or duties of the business or profession for which the application is made
    - For purposes of denial of a guard card, a crime **SHALL BE** considered **substantially related** to the qualifications, functions or duties of a licensee if "to a substantial degree it evidences present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare" (16 CCR § 602)
    - Non-exhaustive examples of convictions that are considered **substantially related** (16 CCR § 602/BP § 7561.1):
      - Assault
      - Battery
      - Kidnapping
      - Resisting arrest

## MISC. OCCUPATIONAL LICENSING INFORMATION CONTINUED

- If a person IS or WANTS TO BE a SECURITY GUARD, it is important to AVOID the following convictions:
  - Assault, battery, kidnapping, resisting, and illegally using/carrying/possessing a deadly weapon
- Convictions, such as DUIs, involving use of alcohol/drugs can be problematic for various types of licenses (e.g., RNs, MFTs)
- Certain convictions, even if dismissed, will prohibit a person from working at a job governed by the Department of Social Services (e.g., daycares, home care aides)
  - E.g., PC 211, PC 273a(a), and PC 368

**BAN THE  
BOX  
(CAL. GOV.  
CODE 12952)**



For most jobs in CA, employers are NOT allowed to ask about conviction history or run a background check UNTIL they make a conditional offer to an applicant.



If an employer does not want to hire an applicant because of their conviction history, the employer must tell the applicant in writing.



The applicant must be given at least 5 business days to challenge the decision.

Also – it is unlawful for most employers to consider a dismissed conviction or a conviction for which the person has received a COR or pardon.

# NON-EXHAUSTIVE LIST OF EMPLOYMENT SUPPORT SERVICES

## **Building Opportunities for Self-Sufficiency (BOSS)**

- 1918 University Ave, Suite 2A  
Berkeley, CA 94704 (510-649-1930)
- <https://www.self-sufficiency.org/ctec>
- Career & Computer Training, GED/ College Assistance,  
& More

## **Center for Employment Opportunities**

- 464 7<sup>th</sup> St, Oakland, CA 94607 (510-251-2240)
- [www.ceoworks.org](http://www.ceoworks.org)
- Transitional Work Program

## **Oakland Private Industry Council (PIC)**

- Multiple Locations (510-419-0392)
- [oaklandpic.org](http://oaklandpic.org)
- Job Fairs, Career Workshops, Vocational Assistance, Etc.

## **Success Centers**

- Multiple Locations (510-482-1738)
- <https://successcenters.org/>
- Employer-Job Seeker Connection

## **La Familia**

- 24301 Southland Drive, St. 300, Hayward, CA 94545  
(510-300-3500)
- <https://livelafamilia.org/>
- Career Counseling and Job Training

## **Rubicon Programs**

- Multiple Locations and Phone numbers throughout  
the East Bay
- <https://rubiconprograms.org/>
- Career Services & More



# HOW DO PEOPLE APPLY TO THE CLEAN SLATE PROGRAM?



**PRE-COVID:**

2 JOINT WEEKLY CLINICS



**NOW:**

JOINT WEEKLY CLINICS IN OAKLAND



## **JOINT WALK-IN CLINICS**

with Public Defender and EBCLC

**Wednesdays 9-11 am in Dublin**

Public Defender's Office  
5149 Gleason Drive, #C155,  
Dublin

**Thursdays 9-11am in Oakland**

Public Defender's Office  
545 4th St., Oakland

\*Please bring your statewide CA DOJ RAP sheet  
if you have it or we can give information at clinic\*

## **How to Apply for Clean Slate Services**

Please attend one of our walk-in clinics. Starting in November 2023, and until further notice, our walk-in clinics will be held from **9-11 AM each Thursday at 545 4<sup>th</sup> Street in Oakland, CA** with the exception of limited closures (e.g., we will NOT hold clinics on 11/23/23, 12/21/23, or 12/28/23).



## QUESTIONS?

**To reach Clean Slate staff:** call 510-268-7400 and ask to be connected to a Clean Slate staff member

## CLIENT STORY

BEFORE CS: Had previously been denied a job. When applied to CS, she was furloughed due to the pandemic and was collecting unemployment insurance.

WHAT CS DID: Helped her secure dismissal relief for her only conviction.

AFTER CS: She passed a background check for a position as a litigation paralegal. Her new position pays **\$62,500/annually** and comes with **401K and health benefits.**

FUTURE GOALS: She hopes to attend law school to become a public defender. She wants to pursue public defense, because when she was at a low point in her life, her public defender fought for her, and she wants to do that for others.