

## Now some practice!

The following people come to you to ask which of their convictions *must* be dismissed and which *can* be dismissed.

Assume that

- Unless shown, the people are eligible to file for expungement (dismissal)
- They have no probation violations other than from new convictions shown on their records
- The last conviction shown is their last conviction

*Abbreviations used:*

Infrac = Infraction;

Misd = misdemeanor,

Fel = Felony

Mand = Mandatory dismissal

Disc = discretionary dismissal

Inelig = ineligible for dismissal

## Is dismissal of Mr. A's convictions Mandatory, Discretionary or Ineligible?

|          |      |                               | Sentence:    | Incarceration:<br>jail, prison<br>or none | Probation,<br>supervision,<br>parole, or none |      |      |  |
|----------|------|-------------------------------|--------------|-------------------------------------------|-----------------------------------------------|------|------|--|
| 1.1.2010 | Misd | petty theft                   | 1 day jail   | 1 year                                    | Mand                                          | Disc | Inel |  |
| 6.1.2013 | Inf  | resist arrest                 | no jail      | fine only                                 | Mand                                          | Disc | Inel |  |
| 6.7.2014 | Fel  | sale cont subs                | 30 days jail | 3 years                                   | Mand                                          | Disc | Inel |  |
| 1.1.2019 | Misd | give false name<br>to officer | 4 days jail  | 2 years                                   | Mand                                          | Disc | Inel |  |
| 2.2.2025 | Fel  | assault deadly<br>weapon      | 1 year jail  | 3 years                                   | Mand                                          | Disc | Inel |  |
| 6.5.2026 |      | Probation terminated early    |              |                                           |                                               |      |      |  |

### Is dismissal of Ms. B's convictions Mandatory, Discretionary or Ineligible?

|                      |      |                                         | Sentence: | Incarceration:<br>jail, prison<br>or none | Probation,<br>supervision,<br>parole, or none |      |      |  |
|----------------------|------|-----------------------------------------|-----------|-------------------------------------------|-----------------------------------------------|------|------|--|
| 1.1.2006             | Misd | resist arrest                           | 2 days    | 0                                         | Mand                                          | Disc | Inel |  |
| 3.1.2006             | Misd | resist arrest                           | 2 days    | 0                                         | Mand                                          | Disc | Inel |  |
| 1.1.2008             | Fel  | sales contrld subs<br>not marijuana     | 3 months  | 3 years                                   | Mand                                          | Disc | Inel |  |
| 1.1.2013<br>1.1.2016 | Fel  | child endangermt<br>probation violation | 6 months  | 5 years                                   | Mand                                          | Disc | Inel |  |
| 1.1.2018             | Fel  | domestic violence                       | 10 months | 3 years                                   | Mand                                          | Disc | Inel |  |

### Is dismissal of Mr. C's convictions Mandatory, Discretionary or Ineligible?

|                      |      |                                                | Sentence:         | Incarceration:<br>jail, prison<br>or none | Probation,<br>supervision,<br>parole, or none |      |        |  |
|----------------------|------|------------------------------------------------|-------------------|-------------------------------------------|-----------------------------------------------|------|--------|--|
| 1.1.2010             | Misd | resist arrest                                  | 2 days            | 1 year                                    | Mand                                          | Disc | Inelig |  |
| 3.1.2010             | Misd | domestic battery                               | 2 months          | 3 years                                   | Mand                                          | Disc | Inelig |  |
| 1.1.2014             | Fel  | sales contrld subs                             | 2 years<br>prison | 3 years<br>parole                         | Mand                                          | Disc | Inelig |  |
| 6.1.2020<br>6.1.2023 | Fel  | child endangermt<br>probation terminated early | 6 months          | 5 years                                   | Mand                                          | Disc | Inelig |  |

## Is dismissal of Ms. D's convictions Mandatory, Discretionary or Ineligible?

| Sentence: |     |                                                                  | Incarceration:<br>jail, prison<br>or none | Probation,<br>supervision,<br>parole, or none |      |      |        |
|-----------|-----|------------------------------------------------------------------|-------------------------------------------|-----------------------------------------------|------|------|--------|
| 1.2.2000  | Fel | identity theft                                                   | 2 months jail                             | 2 years                                       | Mand | Disc | Inelig |
| 1.2.2003  | Fel | sale of marijuana<br>(adults involved, not on school or daycare) | 6 months jail                             | 2 years                                       | Mand | Disc | Inelig |
| 9.9.2006  | Fel | own/rent drug<br>house                                           | 16 months jail<br>per 1170(h)             | --                                            | Mand | Disc | Inelig |
| 8.8.2008  | Fel | voluntary<br>manslaughter                                        | 12 yrs prison                             | 2 yrs parole                                  | Mand | Disc | Inelig |

## Is dismissal of Mr. E's convictions Mandatory, Discretionary or Ineligible?

| Sentence:            |     |                                                | Incarceration:<br>jail, prison<br>or none | Probation,<br>supervision,<br>parole, or none |      |      |      |
|----------------------|-----|------------------------------------------------|-------------------------------------------|-----------------------------------------------|------|------|------|
| 1.1.2014<br>1.1.2016 | Fel | child endangermt<br>probation terminated early | 6 months                                  | 5 years                                       | Mand | Disc | Inel |
| 1.1.2019             | Fel | poss contrld subs<br>not marijuana             | drug diversion                            |                                               | Mand | Disc | Inel |
| 3.1.2019             | Fel | assault w/ deadly<br>weapon                    | 8 months                                  | 3 years                                       | Mand | Disc | Inel |
| 1.1.2025             | Fel | grand theft                                    | 50 days                                   | 2 years                                       | Mand | Disc | Inel |

Still on probation!  
-> wait till 1.1.2027 or  
ask for early termination  
of probation

## Now some practice!

Following are some felony convictions.

Assume that all offenses involved people who were over the age of 21 and not on school grounds (matters for Prop 64)

Decide what law applies, if any:

17(b), Prop 47 or Prop 64

Then decide whether the conviction can be reduced, must be reduced or can't be reduced.

### Is reduction of Mr. A's convictions Mandatory, Discretionary or Ineligible?

|                                            | Incarceration: jail, 1170(h),<br>or prison | Law             | Can / Must / Can't<br>be reduced |
|--------------------------------------------|--------------------------------------------|-----------------|----------------------------------|
| Auto theft<br>VC 10851                     | jail                                       | 17(b) P 47 P 64 | Can Must Can't                   |
| Assault with<br>deadly weapon<br>PC 245(a) | jail                                       | 17(b) P 47 P 64 | Can Must Can't                   |
| Assault with<br>deadly weapon<br>PC 245(a) | prison                                     | 17(b) P 47 P 64 | Can Must Can't                   |

Is reduction of Ms. B's convictions  
Mandatory, Discretionary or Ineligible?

Incarceration: jail, 1170(h),                      Can / Must / Can't  
                                         or prison                      Law                      be reduced

Sale of                      prison    17(b)   P 47   P 64    Can   Must   Can't  
marijuana                      (adults involved, not at school or daycare)  
HS 11359

Grand                      jail                      17(b)    P 47   P 64    Can   Must   Can't  
theft                      (took computer worth \$1,145 from Costco)  
PC 487(a)



RCP website:  
[www.sjsu.edu/rcp](http://www.sjsu.edu/rcp)

Email the SJSU Record Clearance Project at  
**[expunge@sjsu.edu](mailto:expunge@sjsu.edu)**