

Introduced by Senator Gaines

February 20, 2013

An act to amend Section 1203.4 of the Penal Code, relating to convictions.

LEGISLATIVE COUNSEL'S DIGEST

SB 384, as introduced, Gaines. Convictions: expungement.

Existing law allows for the release from all penalties and disabilities resulting from an offense for which the person was convicted if specified criteria are met, including that all the conditions of probation have been fulfilled. Existing law excludes certain sex offenses from these provisions.

This bill would additionally exclude specified offenses relating to obscene matter involving minors from these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.4 of the Penal Code is amended to
2 read:
3 1203.4. (a) (1) In any case in which a defendant has fulfilled
4 the conditions of probation for the entire period of probation, or
5 has been discharged prior to the termination of the period of
6 probation, or in any other case in which a court, in its discretion
7 and the interests of justice, determines that a defendant should be
8 granted the relief available under this section, the defendant shall,
9 at any time after the termination of the period of probation, if he
10 or she is not then serving a sentence for any offense, on probation

1 for any offense, or charged with the commission of any offense,
2 be permitted by the court to withdraw his or her plea of guilty or
3 plea of nolo contendere and enter a plea of not guilty; or, if he or
4 she has been convicted after a plea of not guilty, the court shall
5 set aside the verdict of guilty; and, in either case, the court shall
6 thereupon dismiss the accusations or information against the
7 defendant and except as noted below, he or she shall thereafter be
8 released from all penalties and disabilities resulting from the
9 offense of which he or she has been convicted, except as provided
10 in Section 13555 of the Vehicle Code. The probationer shall be
11 informed, in his or her probation papers, of this right and privilege
12 and his or her right, if any, to petition for a certificate of
13 rehabilitation and pardon. The probationer may make the
14 application and change of plea in person or by attorney, or by the
15 probation officer authorized in writing. However, in any subsequent
16 prosecution of the defendant for any other offense, the prior
17 conviction may be pleaded and proved and shall have the same
18 effect as if probation had not been granted or the accusation or
19 information dismissed. The order shall state, and the probationer
20 shall be informed, that the order does not relieve him or her of the
21 obligation to disclose the conviction in response to any direct
22 question contained in any questionnaire or application for public
23 office, for licensure by any state or local agency, or for contracting
24 with the California State Lottery Commission.

25 (2) Dismissal of an accusation or information pursuant to this
26 section does not permit a person to own, possess, or have in his or
27 her custody or control any firearm or prevent his or her conviction
28 under Chapter 2 (commencing with Section 29800) of Division 9
29 of Title 4 of Part 6.

30 (3) Dismissal of an accusation or information underlying a
31 conviction pursuant to this section does not permit a person
32 prohibited from holding public office as a result of that conviction
33 to hold public office.

34 (4) This subdivision shall apply to all applications for relief
35 under this section which are filed on or after November 23, 1970.

36 (b) Subdivision (a) of this section does not apply to any
37 misdemeanor that is within the provisions of Section 42002.1 of
38 the Vehicle Code, to any violation of subdivision (c) of Section
39 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
40 ~~or~~ subdivision (j) of Section 289, *Section 311.1, 311.2, 311.3, or*

1 *311.11*, or any felony conviction pursuant to subdivision (d) of
2 Section 261.5, or to any infraction.

3 (c) (1) Except as provided in paragraph (2), subdivision (a)
4 does not apply to a person who receives a notice to appear or is
5 otherwise charged with a violation of an offense described in
6 subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle
7 Code.

8 (2) If a defendant who was convicted of a violation listed in
9 paragraph (1) petitions the court, the court in its discretion and in
10 the interests of justice, may order the relief provided pursuant to
11 subdivision (a) to that defendant.

12 (d) A person who petitions for a change of plea or setting aside
13 of a verdict under this section may be required to reimburse the
14 court for the actual costs of services rendered, whether or not the
15 petition is granted and the records are sealed or expunged, at a rate
16 to be determined by the court not to exceed one hundred fifty
17 dollars (\$150), and to reimburse the county for the actual costs of
18 services rendered, whether or not the petition is granted and the
19 records are sealed or expunged, at a rate to be determined by the
20 county board of supervisors not to exceed one hundred fifty dollars
21 (\$150), and to reimburse any city for the actual costs of services
22 rendered, whether or not the petition is granted and the records are
23 sealed or expunged, at a rate to be determined by the city council
24 not to exceed one hundred fifty dollars (\$150). Ability to make
25 this reimbursement shall be determined by the court using the
26 standards set forth in paragraph (2) of subdivision (g) of Section
27 987.8 and shall not be a prerequisite to a person's eligibility under
28 this section. The court may order reimbursement in any case in
29 which the petitioner appears to have the ability to pay, without
30 undue hardship, all or any portion of the costs for services
31 established pursuant to this subdivision.

32 (e) (1) Relief shall not be granted under this section unless the
33 prosecuting attorney has been given 15 days' notice of the petition
34 for relief. The probation officer shall notify the prosecuting attorney
35 when a petition is filed, pursuant to this section.

36 (2) It shall be presumed that the prosecuting attorney has
37 received notice if proof of service is filed with the court.

38 (f) If, after receiving notice pursuant to subdivision (e), the
39 prosecuting attorney fails to appear and object to a petition for

1 dismissal, the prosecuting attorney may not move to set aside or
2 otherwise appeal the grant of that petition.
3 (g) Notwithstanding the above provisions or any other provision
4 of law, the Governor shall have the right to pardon a person
5 convicted of a violation of subdivision (c) of Section 286, Section
6 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
7 (j) of Section 289, if there are extraordinary circumstances.

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