

AMENDED IN ASSEMBLY APRIL 29, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2068**

---

### Introduced by Assembly Member Hill

February 18, 2010

---

An act to amend Section 1203.4a of the Penal Code, relating to expungement standards.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2068, as amended, Hill. Expungement standards.

Existing law, subject to exceptions, provides that every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, as specified.

*The bill would make this relief unavailable for convictions of specified sex offenses that apply if the victim is a child 14 or 15 years of age or*

*a dependent person.* This bill would ~~also~~ authorize the court to afford a defendant that relief; *as to other charges to which these provisions apply* if, after a lapse of one year from the date of pronouncement of judgment, the court, in its discretion and in the interests of justice, determines that the defendant who is otherwise eligible for the relief, should be granted the relief ~~available under those provisions.~~

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

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

1 SECTION 1. Section 1203.4a of the Penal Code is amended  
2 to read:  
3 1203.4a. (a) Every defendant convicted of a misdemeanor and  
4 not granted probation shall, at any time after the lapse of one year  
5 from the date of pronouncement of judgment, if he or she has fully  
6 complied with and performed the sentence of the court, is not then  
7 serving a sentence for any offense and is not under charge of  
8 commission of any crime and has, since the pronouncement of  
9 judgment, lived an honest and upright life and has conformed to  
10 and obeyed the laws of the land, be permitted by the court to  
11 withdraw his or her plea of guilty or nolo contendere and enter a  
12 plea of not guilty; or if he or she has been convicted after a plea  
13 of not guilty, the court shall set aside the verdict of guilty; and in  
14 either case the court shall thereupon dismiss the accusatory  
15 pleading against the defendant, who shall thereafter be released  
16 from all penalties and disabilities resulting from the offense of  
17 which he or she has been convicted, except as provided in Section  
18 12021.1 of this code or Section 13555 of the Vehicle Code. After  
19 a lapse of one year from the date of pronouncement of judgment,  
20 a court, in its discretion and in the interests of justice, may  
21 determine that a defendant who is otherwise eligible for the relief  
22 available under this section, should be granted relief under this  
23 section. The defendant shall be informed of the provisions of this  
24 section, either orally or in writing, at the time he or she is  
25 sentenced. The defendant may make an application and change of  
26 plea in person or by attorney, or by the probation officer authorized  
27 in writing; provided, that in any subsequent prosecution of the  
28 defendant for any other offense, the prior conviction may be

1 pleaded and proved and shall have the same effect as if relief had  
2 not been granted pursuant to this section.

3 This subdivision applies to convictions which occurred before  
4 as well as those occurring after, the effective date of this section.

5 (b) Subdivision (a) does not apply to *a misdemeanor violation*  
6 *of subdivision (c) of Section 288, or to any misdemeanor falling*  
7 *within the provisions of subdivision (b) of Section 42001 of the*  
8 *Vehicle Code, or to any infraction.*

9 (c) A person who petitions for a dismissal of a charge under  
10 this section may be required to reimburse the county and the court  
11 for the cost of services rendered at a rate to be determined by the  
12 county board of supervisors for the county and by the court for the  
13 court, not to exceed sixty dollars (\$60), and to reimburse any city  
14 for the cost of services rendered at a rate to be determined by the  
15 city council not to exceed sixty dollars (\$60). Ability to make this  
16 reimbursement shall be determined by the court using the standards  
17 set forth in paragraph (2) of subdivision (g) of Section 987.8 and  
18 shall not be a prerequisite to a person's eligibility under this  
19 section. The court may order reimbursement in any case in which  
20 the petitioner appears to have the ability to pay, without undue  
21 hardship, all or any portion of the cost for services established  
22 pursuant to this subdivision.

23 (d) Any determination of amount made by a court under this  
24 section shall be valid only if either (1) made under procedures  
25 adopted by the Judicial Council or (2) approved by the Judicial  
26 Council.

O