

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 877**

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**Introduced by Assembly Member Skinner**

February 17, 2011

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~~An act relating to expungement.~~ *An act to amend Section 41500 of, and to add Section 41500.5 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 877, as amended, Skinner. ~~Expungement.~~ *Vehicles: nonfelony offenses and infractions: removal of records.*

*Existing law requires that a person not be subject to prosecution for any nonfelony offense arising out of the operation of a motor vehicle, or a violation of the Vehicle Code as a pedestrian, that is pending against him or her at the time of his or her commitment to the custody of the Secretary of the Department of Corrections and Rehabilitation or the Division of Juvenile Facilities.*

*Existing law requires, notwithstanding any other law to the contrary, that a driver's license shall not be suspended or revoked or the issuance or renewal of that license be refused as a result of a pending nonfelony offense occurring prior to the time a person was committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or the Division of Juvenile Facilities or as a result of a notice received by the Department of Motor Vehicles from a court, a magistrate, or a clerk of that court if the offense that gave rise to the notice occurred prior to the time that the person was committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or the Division of Juvenile Facilities.*

*Existing law also requires the Department of Motor Vehicles to remove from its records any notice received by it from a court, a magistrate, or a clerk of that court upon receipt of satisfactory evidence that a person was committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or the Division of Juvenile Facilities after the offense that gave rise to the notice occurred.*

*This bill would also apply these provisions and the exemption from prosecution to (1) a person upon completion of his or her sentence of 6 months or longer in a county jail or a drug treatment center or other alternative to incarceration if the person's failure to complete the sentence would result in reincarceration and (2) a person who has been incarcerated for 90 or more days in any consecutive 12-month period subsequent to the date of the offense or violation.*

*The bill would provide that eligible incarcerated persons and persons previously incarcerated who are eligible under these provisions may request relief directly from the Department of Motor Vehicles or the court. The bill would require a court that receives a valid request to search its records for eligible pending matters and dispose of each eligible nonfelony offense pursuant to these provisions. The bill would also require the court, within 15 days of receipt of the request, to notify the department of the request and the department to remove from its records any notice received by it from any county in the state.*

*The bill would require the Judicial Council to adopt forms and instructions for use by persons eligible for relief under these provisions and would provide that the use of the forms is recommended, rather than mandatory.*

~~Existing law, if a defendant has fulfilled the conditions of probation for the entire period of probation, has been discharged prior to the termination of the period of probation, or if in the interest of justice, a defendant is authorized to petition the court to have his or her convictions dismissed, as specified, and be released from all penalties and disabilities resulting from the offense of which he or she been convicted, subject to certain exceptions:~~

~~This bill would state that it is the intent of the Legislature to streamline this procedure:~~

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

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

1     SECTION 1. Section 41500 of the Vehicle Code is amended to  
2 read:

3     41500. (a) ~~No~~A person shall *not* be subject to prosecution for  
4 any nonfelony offense arising out of the operation of a motor  
5 vehicle or a violation of this code as a pedestrian ~~which~~ *that* is  
6 pending against him or her at the time of his or her commitment  
7 to the custody of the ~~Director of Corrections or the Department of~~  
8 ~~the Youth Authority~~ *Secretary of the Department of Corrections*  
9 *and Rehabilitation or the Division of Juvenile Facilities, or upon*  
10 *completion of a sentence of six months or longer in a county jail*  
11 *or a drug treatment center or other alternative to incarceration if*  
12 *the person's failure to complete the sentence would result in*  
13 *reincarceration.*

14     (b) Notwithstanding any other ~~provisions~~ of law to the contrary,  
15 ~~no~~ a driver's license shall *not* be suspended or revoked, ~~nor shall~~  
16 ~~or~~ the issuance or renewal of ~~a~~ *that* license be refused as a result  
17 of a pending nonfelony offense occurring prior to the time a person  
18 was committed to the custody of the ~~Director of Corrections or~~  
19 ~~the Department of the Youth Authority~~ *Secretary of the Department*  
20 *of Corrections and Rehabilitation or the Division of Juvenile*  
21 *Facilities* or as a result of a notice received by the department  
22 pursuant to subdivision (a) of Section 40509 ~~when~~ *if* the offense  
23 ~~which~~ *that* gave rise to the notice occurred prior to the time ~~a~~ *the*  
24 person was committed to the custody of the ~~Director of Corrections~~  
25 ~~or the Department of the Youth Authority~~ *Secretary of the*  
26 *Department of Corrections and Rehabilitation or the Division of*  
27 *Juvenile Facilities.*

28     (c) The department shall remove from its records any notice  
29 received by it pursuant to subdivision (a) of Section 40509 upon  
30 receipt of satisfactory evidence that a person was committed to  
31 the custody of the ~~Director of Corrections or the Department of~~  
32 ~~the Youth Authority~~ *Secretary of the Department of Corrections*  
33 *and Rehabilitation or the Division of Juvenile Facilities* after the  
34 offense ~~which~~ *that* gave rise to the notice occurred.

35     (d) ~~The provisions of this~~ *This section shall* does not apply to  
36 ~~any~~ a nonfelony offense ~~wherein~~ *if* the department is required by  
37 this code to immediately revoke or suspend the privilege of ~~any~~ *a*  
38 person to drive a motor vehicle upon receipt of a duly certified

1 abstract of the record of ~~any~~ a court showing that the person has  
2 been convicted of that nonfelony offense.

3 ~~(e) The provisions of subdivisions~~ *Subdivision (a), (b), and or*  
4 ~~(c) do~~ *does not apply to any an offense committed by a person*  
5 *while he is temporarily released from custody pursuant to law or*  
6 *while he is on parole.*

7 ~~(f) The provisions of subdivisions~~ *Subdivision (a), (b), and or*  
8 ~~(c) do~~ *does not apply if the pending offense is a violation of Section*  
9 *23103, 23152, or 23153.*

10 *(g) Eligible incarcerated persons and persons previously*  
11 *incarcerated who are eligible under this section may request relief*  
12 *directly from the department or the court. A court that receives a*  
13 *valid request shall search its records for eligible pending matters*  
14 *and dispose of each eligible nonfelony offense pursuant to this*  
15 *section. The court shall, within 15 days of receipt of the request,*  
16 *notify the department of the request and the department shall*  
17 *remove from its records any notice received by it pursuant to*  
18 *subdivision (a) of Section 40509 from any county in the state.*

19 *(h) The Judicial Council shall adopt forms and instructions for*  
20 *use by persons eligible for relief under this section. Use of the*  
21 *forms is recommended, rather than mandatory.*

22 *SEC. 2. Section 41500.5 is added to the Vehicle Code, to read:*

23 *41500.5. (a) A person shall not be subject to prosecution for*  
24 *any nonfelony offense arising out of the operation of a motor*  
25 *vehicle or a violation of this code as a pedestrian that is pending*  
26 *against him or her once he or she has been incarcerated for 90 or*  
27 *more days in any consecutive 12-month period subsequent to the*  
28 *date of the offense or violation.*

29 *(b) Notwithstanding any other law to the contrary, a driver's*  
30 *license shall not be suspended or revoked or the issuance or*  
31 *renewal of that license be refused as a result of a pending*  
32 *infraction occurring prior to the 90 or more days in any*  
33 *consecutive 12-month period of incarceration or as a result of a*  
34 *notice received by the department pursuant to subdivision (a) of*  
35 *Section 40509 if the offense that gave rise to the notice occurred*  
36 *prior to the incarceration period of 90 or more days in any*  
37 *consecutive 12-month period.*

38 *(c) The department shall remove from its records any notice*  
39 *received by it pursuant to subdivision (a) of Section 40509 upon*  
40 *receipt of satisfactory evidence that a person was incarcerated in*

1 any correctional institution for a period of 90 or more days in a  
2 consecutive 12-month period.

3 (d) This section shall not apply to any nonfelony offense wherein  
4 the department is required by this code to immediately revoke or  
5 suspend the privilege of any person to drive a motor vehicle upon  
6 receipt of a duly certified abstract of the record of any court  
7 showing that the person has been convicted of that nonfelony  
8 offense.

9 (e) Eligible incarcerated persons and persons previously  
10 incarcerated who are eligible under this section may request relief  
11 directly from the department or the court. A court that receives a  
12 valid request shall search its records for eligible pending matters  
13 and dispose of each eligible nonfelony offense pursuant to this  
14 section. The court shall, within 15 days of receipt of the request,  
15 notify the department of the request and the department shall  
16 expunge from its records any notice received by it pursuant to  
17 subdivision (a) of Section 40509 from any county in the state.

18 (f) The Judicial Council shall adopt forms and instructions for  
19 use by persons eligible for relief under this section. Use of the  
20 forms is recommended, rather than mandatory.

21 ~~SECTION 1. It is the intent of the Legislature to streamline~~  
22 ~~the expungement process under which any defendant who~~  
23 ~~successfully fulfills the conditions of probation has a right to~~  
24 ~~petition for the dismissal of his or her conviction and to be released~~  
25 ~~from all penalties and disabilities resulting from that conviction.~~