

ASSEMBLY BILL

No. 1384

Introduced by Assembly Member Bradford

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, as introduced, Bradford. Expungement standards.

Existing law, subject to exceptions, provides that every defendant convicted of a misdemeanor and not granted probation and every defendant convicted of an infraction 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 authorize the court, in its discretion and in the interests of justice, 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 defendant has fully complied with his or her sentence, is not currently serving a sentence for any offense, and is not under charge of commission of any crime.

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, and every defendant convicted of an
 5 infraction; shall, at any time after the lapse of one year from the
 6 date of pronouncement of judgment, if he or she has fully complied
 7 with and performed the sentence of the court, is not then serving
 8 a sentence for any offense and is not under charge of commission
 9 of any crime, and has, since the pronouncement of judgment, lived
 10 an honest and upright life and has conformed to and obeyed the
 11 laws of the land, be permitted by the court to withdraw his or her
 12 plea of guilty or nolo contendere and enter a plea of not guilty; or
 13 if he or she has been convicted after a plea of not guilty, the court
 14 shall set aside the verdict of guilty; and in either case the court
 15 shall thereupon dismiss the accusatory pleading against the
 16 defendant, who shall thereafter be released from all penalties and
 17 disabilities resulting from the offense of which he or she has been
 18 convicted, except as provided in Section 12021.1 of this code or
 19 Section 13555 of the Vehicle Code. ~~The defendant shall be~~
 20 ~~informed of the provisions of this section, either orally or in~~
 21 ~~writing, at the time he or she is sentenced. The defendant may~~
 22 ~~make an application and change of plea in person or by attorney,~~
 23 ~~or by the probation officer authorized in writing; provided, that in~~
 24 ~~any subsequent prosecution of the defendant for any other offense,~~
 25 ~~the prior conviction may be pleaded and proved and shall have the~~
 26 ~~same effect as if relief had not been granted pursuant to this section.~~

27 (b) *After a lapse of one year from the date of pronouncement*
 28 *of judgment, a court, in its discretion and in the interests of justice,*
 29 *may grant the relief available pursuant to this section to a*
 30 *defendant convicted of an infraction, or of a misdemeanor and not*
 31 *granted probation, or both, if he or she has fully complied with*
 32 *and performed the sentence of the court, is not then serving a*

1 sentence for any offense, and is not under charge of commission
2 of any crime.

3 (c) The defendant shall be informed of the provisions of this
4 section, either orally or in writing, at the time he or she is
5 sentenced. The defendant may make an application and change of
6 plea in person or by attorney, or by the probation officer authorized
7 in writing; provided, that in any subsequent prosecution of the
8 defendant for any other offense, the prior conviction may be
9 pleaded and proved and shall have the same effect as if relief had
10 not been granted pursuant to this section.

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

13 ~~(b)~~

14 (d) Subdivision (a) does not apply to a misdemeanor violation
15 of subdivision (c) of Section 288, or to any misdemeanor falling
16 within the provisions of Section 42002.1 of the Vehicle Code, or
17 to any infraction falling within the provisions of Section 42001 of
18 the Vehicle Code.

19 ~~(e)~~

20 (e) A person who petitions for a dismissal of a charge under
21 this section may be required to reimburse the county and the court
22 for the cost of services rendered at a rate to be determined by the
23 county board of supervisors for the county and by the court for the
24 court, not to exceed sixty dollars (\$60), and to reimburse any city
25 for the cost of services rendered at a rate to be determined by the
26 city council not to exceed sixty dollars (\$60). Ability to make this
27 reimbursement shall be determined by the court using the standards
28 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
29 shall not be a prerequisite to a person's eligibility under this
30 section. The court may order reimbursement in any case in which
31 the petitioner appears to have the ability to pay, without undue
32 hardship, all or any portion of the cost for services established
33 pursuant to this subdivision.

34 ~~(d)~~

35 (f) A petition for dismissal of an infraction pursuant to this
36 section shall be by written declaration, except upon a showing of
37 compelling need. Dismissal of an infraction shall not be granted
38 under this section unless the prosecuting attorney has been given
39 at least 15 days' notice of the petition for dismissal. It shall be

1 presumed that the prosecuting attorney has received notice if proof
2 of service is filed with the court.

3 (e)

4 (g) Any determination of amount made by a court under this
5 section shall be valid only if either (1) made under procedures
6 adopted by the Judicial Council or (2) approved by the Judicial
7 Council.

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