

Assembly Bill No. 1384

Passed the Assembly August 22, 2011

Chief Clerk of the Assembly

Passed the Senate August 18, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, 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 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, have the court set aside the verdict of guilty after one year from the date of judgment, provided he or she satisfies certain conditions. In either case, the court is required to dismiss the accusatory pleading against the defendant, as specified.

The bill would make this relief unavailable for misdemeanor 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, if a defendant does not satisfy all of the above requirements, 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. The bill would specify that the dismissal of an accusatory pleading pursuant to the above provisions does not permit a person to own, possess, or have a firearm, or to hold public office if the person is prohibited from holding public office as a result of the conviction. The bill would make a clarifying change to its provisions.

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

SECTION 1. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) 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, except as provided in Section 12021.1 of this code or Section 13555 of the Vehicle Code.

(b) If a defendant does not satisfy all the requirements of subdivision (a), after a lapse of one year from the date of pronouncement of judgment, a court, in its discretion and in the interests of justice, may grant the relief available pursuant to subdivision (a) to a defendant convicted of an infraction, or of a misdemeanor and not granted probation, or both, 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.

(c) (1) The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make an application and change of plea in person or by attorney, or by the probation officer authorized in writing, provided that, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

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

(3) Dismissal of an accusatory pleading underlying a conviction pursuant to this section does not permit a person prohibited from

holding public office as a result of that conviction to hold public office.

(d) This section applies to any conviction specified in subdivision (a) or (b) that occurred before, as well as those occurring after, the effective date of this section, except that this section does not apply to the following:

- (1) A misdemeanor violation of subdivision (c) of Section 288.
- (2) Any misdemeanor falling within the provisions of Section 42002.1 of the Vehicle Code.
- (3) Any infraction falling within the provisions of Section 42001 of the Vehicle Code.

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

(f) A petition for dismissal of an infraction pursuant to this section shall be by written declaration, except upon a showing of compelling need. Dismissal of an infraction shall not be granted under this section unless the prosecuting attorney has been given at least 15 days' notice of the petition for dismissal. It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

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

Approved _____, 2011

Governor