

AMENDED IN SENATE AUGUST 7, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2263

Introduced by Assembly Member Bradford

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2263, as amended, Bradford. Probation: conditions.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief.

This bill would authorize the court, in its discretion and in the interests of justice, to permit a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant ~~has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, if the defendant~~ was sentenced for a nonserious, nonviolent, or nonsexual offense to county jail ~~for his or her full sentence or sentenced to county jail for all but a concluding portion of his or her term during which time the defendant is subject to mandatory~~

~~supervision~~ and if the defendant is not under mandatory supervision and is not serving a sentence for, on probation for, or charged with the commission of, any offense.

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 pursuant to this section, the defendant
9 shall, at any time after the termination of the period of probation,
10 if he or she is not then serving a sentence for any offense, on
11 probation for any offense, or charged with the commission of any
12 offense, be permitted by the court to withdraw his or her plea of
13 guilty or plea of nolo contendere and enter a plea of not guilty; or,
14 if he or she has been convicted after a plea of not guilty, the court
15 shall set aside the verdict of guilty; and, in either case, the court
16 shall thereupon dismiss the accusations or information against the
17 defendant and except as noted below, he or she shall thereafter be
18 released from all penalties and disabilities resulting from the
19 offense of which he or she has been convicted, except as provided
20 in Section 13555 of the Vehicle Code. The probationer shall be
21 informed, in his or her probation papers, of this right and privilege
22 and his or her right, if any, to petition for a certificate of
23 rehabilitation and pardon. The probationer may make the
24 application and change of plea in person or by attorney, or by the
25 probation officer authorized in writing. However, in any subsequent
26 prosecution of the defendant for any other offense, the prior
27 conviction may be pleaded and proved and shall have the same
28 effect as if probation had not been granted or the accusation or
29 information dismissed. The order shall state, and the probationer
30 shall be informed, that the order does not relieve him or her of the
31 obligation to disclose the conviction in response to any direct
32 question contained in any questionnaire or application for public

1 office, for licensure by any state or local agency, or for contracting
2 with the California State Lottery Commission.

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

8 (3) Dismissal of an accusation or information underlying a
9 conviction pursuant to this section does not permit a person
10 prohibited from holding public office as a result of that conviction
11 to hold public office.

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

14 (b) Subdivision (a) of this section does not apply to any
15 misdemeanor that is within the provisions of Section 42002.1 of
16 the Vehicle Code, to any violation of subdivision (c) of Section
17 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
18 or subdivision (j) of Section 289, any felony conviction pursuant
19 to subdivision (d) of Section 261.5, or to any infraction.

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

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

29 (d) If a defendant is sentenced pursuant to paragraph (5) of
30 subdivision (h) of Section 1170 ~~and if the defendant meets the~~
31 ~~conditions of subdivision (a);~~ the court, in its discretion and in the
32 interests of justice, may order the relief provided pursuant to
33 subdivision (a) with regard to that ~~defendant.~~ *defendant if both of*
34 *the following conditions are met:*

35 (1) *The defendant is not under supervision pursuant to*
36 *subparagraph (B) of paragraph (5) of Section 1170.*

37 (2) *The defendant is not serving a sentence for, on probation*
38 *for, or charged with the commission of, any offense.*

39 (e) A person who petitions for a change of plea or setting aside
40 of a verdict under this section may be required to reimburse the

1 court for the actual costs of services rendered, whether or not the
 2 petition is granted and the records are sealed or expunged, at a rate
 3 to be determined by the court not to exceed one hundred fifty
 4 dollars (\$150), and to reimburse the county for the actual costs of
 5 services rendered, whether or not the petition is granted and the
 6 records are sealed or expunged, at a rate to be determined by the
 7 county board of supervisors not to exceed one hundred fifty dollars
 8 (\$150), and to reimburse any city for the actual costs of services
 9 rendered, whether or not the petition is granted and the records are
 10 sealed or expunged, at a rate to be determined by the city council
 11 not to exceed one hundred fifty dollars (\$150). Ability to make
 12 this reimbursement shall be determined by the court using the
 13 standards set forth in paragraph (2) of subdivision (g) of Section
 14 987.8 and shall not be a prerequisite to a person’s eligibility under
 15 this section. The court may order reimbursement in any case in
 16 which the petitioner appears to have the ability to pay, without
 17 undue hardship, all or any portion of the costs for services
 18 established pursuant to this subdivision.

19 (f) (1) Relief shall not be granted under this section unless the
 20 prosecuting attorney has been given 15 days’ notice of the petition
 21 for relief. The probation officer shall notify the prosecuting attorney
 22 when a petition is filed, pursuant to this section.

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

25 (g) If, after receiving notice pursuant to subdivision (f), the
 26 prosecuting attorney fails to appear and object to a petition for
 27 dismissal, the prosecuting attorney may not move to set aside or
 28 otherwise appeal the grant of that petition.

29 (h) Notwithstanding the above provisions or any other law, the
 30 Governor shall have the right to pardon a person convicted of a
 31 violation of subdivision (c) of Section 286, Section 288,
 32 subdivision (c) of Section 288a, Section 288.5, or subdivision (j)
 33 of Section 289, if there are extraordinary circumstances.

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