

Introduced by Senator Alquist

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1300, as introduced, Alquist. Crimes: dismissal after mandatory supervision.

Existing law authorizes a court that determines that a defendant who has fulfilled the conditions of probation, been dismissed prior to the completion of the period of probation, or who the court finds, in its discretion and the interests of justice, has fulfilled the prescribed requirements to dismiss the accusations against the defendant or reverse a verdict of guilty against that defendant. Under existing law, dismissal under these provisions does not exempt the person from having that offense used as a prior conviction in a later prosecution, from the restriction on ownership of a firearm, or other disabilities resulting from the offense.

This bill would authorize a court to dismiss the accusation against a person who has successfully completed a period of incarceration or mandatory supervision through the county for a felony charge, as specified.

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:

1 1203.4. (a) (1) In any case in which a defendant has fulfilled
2 the conditions of probation for the entire period of probation, or
3 has been discharged prior to the termination of the period of
4 probation, or in any other case in which a court, in its discretion
5 and the interests of justice, determines that a defendant should be
6 granted the relief available under this section, the defendant shall,
7 at any time after the termination of the period of probation, if he
8 or she is not then serving a sentence for ~~any~~ *an* offense, on
9 probation for ~~any~~ *an* offense, or charged with the commission of
10 ~~any~~ *an* offense, be permitted by the court to withdraw his or her
11 plea of guilty or plea of nolo contendere and enter a plea of not
12 guilty; ~~or, if. If~~ he or she has been convicted after a plea of not
13 guilty, the court shall set aside the verdict of guilty; ~~and, in. In~~
14 either case, the court shall thereupon dismiss the accusations or
15 information against the defendant and, except as noted below, he
16 or she shall thereafter be released from all penalties and disabilities
17 resulting from the offense of which he or she has been convicted,
18 except as provided in Section 13555 of the Vehicle Code. The
19 probationer shall be informed, in his or her probation papers, of
20 this right and privilege and his or her right, if any, to petition for
21 a certificate of rehabilitation and pardon. The probationer may
22 make the application and change of plea in person or by attorney,
23 or by the probation officer authorized in writing. However, in ~~any~~
24 *a* 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 probation had not been granted or the accusation
27 or information dismissed. The order shall state, and the probationer
28 shall be informed, that the order does not relieve him or her of the
29 obligation to disclose the conviction in response to ~~any~~ *a* direct
30 question contained in ~~any~~ *a* questionnaire or application for public
31 office, for licensure by ~~any~~ *a* state or local agency, or for
32 contracting with the California State Lottery Commission.

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

38 (3) Dismissal of an accusation or information underlying a
39 conviction pursuant to this section does not permit a person

1 prohibited from holding public office as a result of that conviction
2 to hold public office.

3 (4) This subdivision shall apply to all applications for relief
4 under this section ~~which~~ *that* are filed on or after November 23,
5 1970.

6 (b) Subdivision (a) of this section does not apply to ~~any a~~
7 misdemeanor that is within the provisions of Section 42002.1 of
8 the Vehicle Code, to ~~any a~~ violation of subdivision (c) of Section
9 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
10 or subdivision (j) of Section 289, ~~any a~~ felony conviction pursuant
11 to subdivision (d) of Section 261.5, or to ~~any an~~ infraction.

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

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

21 (d) *A court may, in its discretion and in the interests of justice,*
22 *order the relief provided in this section to a defendant who has*
23 *successfully completed his or her sentence in county jail or*
24 *mandatory supervision pursuant to paragraph (1), (2), or (5) of*
25 *subdivision (h) of Section 1170.*

26 ~~(d)~~

27 (e) A person who petitions for a change of plea or setting aside
28 of a verdict under this section may be required to reimburse the
29 court for the actual costs of services rendered, whether or not the
30 petition is granted and the records are sealed or expunged, at a rate
31 to be determined by the court not to exceed one hundred fifty
32 dollars (\$150), and to reimburse the county for the actual costs of
33 services rendered, whether or not the petition is granted and the
34 records are sealed or expunged, at a rate to be determined by the
35 county board of supervisors not to exceed one hundred fifty dollars
36 (\$150), and to reimburse ~~any the~~ city for the actual costs of services
37 rendered, whether or not the petition is granted and the records are
38 sealed or expunged, at a rate to be determined by the city council
39 not to exceed one hundred fifty dollars (\$150). Ability to make
40 this reimbursement shall be determined by the court using the

1 standards set forth in paragraph (2) of subdivision (g) of Section
2 987.8 and shall not be a prerequisite to a person’s eligibility under
3 this section. The court may order reimbursement in any case in
4 which the petitioner appears to have the ability to pay, without
5 undue hardship, all or any portion of the costs for services
6 established pursuant to this subdivision.

7 ~~(e)~~

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

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

14 ~~(f)~~

15 (g) If, after receiving notice pursuant to subdivision~~(e)~~ (f), the
16 prosecuting attorney fails to appear and object to a petition for
17 dismissal, the prosecuting attorney may not move to set aside or
18 otherwise appeal the grant of that petition.

19 ~~(g)~~

20 (h) Notwithstanding the above provisions or any other provision
21 of law, the Governor shall have the right to pardon a person
22 convicted of a violation of subdivision (c) of Section 286, Section
23 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
24 (j) of Section 289, if there are extraordinary circumstances.