

ASSEMBLY BILL

No. 651

Introduced by Assembly Member Bradford

February 21, 2013

An act to add Section 1203.41 to the Penal Code, relating to convictions.

LEGISLATIVE COUNSEL'S DIGEST

AB 651, as introduced, Bradford. Convictions: expungement.

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 a court to allow a defendant sentenced to county jail for a felony to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty, after the lapse of one year following the defendant's completion of the sentence, provided that the defendant is not under supervision as specified, and is not serving a sentence for, on probation for, or charged with the commission of any offense. The bill would provide that the defendant would be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except 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 1203.41 is added to the Penal Code, to
2 read:

3 1203.41. (a) If a defendant is sentenced pursuant to paragraph
4 (5) of subdivision (h) of Section 1170, the court, in its discretion
5 and in the interests of justice, may order the following relief,
6 subject to the conditions of subdivision (b):

7 (1) The court may permit the defendant to withdraw his or her
8 plea of guilty or plea of nolo contendere and enter a plea of not
9 guilty, or, if he or she has been convicted after a plea of not guilty,
10 the court shall set aside the verdict of guilty, and, in either case,
11 the court shall thereupon dismiss the accusations or information
12 against the defendant and he or she shall thereafter be released
13 from all penalties and disabilities resulting from the offense of
14 which he or she has been convicted, except as provided in Section
15 13555 of the Vehicle Code.

16 (2) The relief available under this section may be granted only
17 after the lapse of one year following defendant’s completion of
18 the sentence, provided that the defendant is not under supervision
19 pursuant to subparagraph (B) of paragraph (5) of Section 1170,
20 and is not serving a sentence for, on probation for, or charged with
21 the commission of any offense.

22 (3) The defendant shall be informed, either orally or in writing,
23 of the provisions of this section and of his or her right, if any, to
24 petition for a certificate of rehabilitation and pardon at the time he
25 or she is sentenced.

26 (4) The defendant may make the application and change of plea
27 in person or by attorney, or by a probation officer authorized in
28 writing.

29 (b) Relief granted pursuant to subdivision (a) is subject to the
30 following conditions:

31 (1) In any subsequent prosecution of the defendant for any other
32 offense, the prior conviction may be pleaded and proved and shall
33 have the same effect as if the accusation or information had not
34 been dismissed.

35 (2) The order shall state, and the defendant shall be informed,
36 that the order does not relieve him or her of the obligation to
37 disclose the conviction in response to any direct question contained
38 in any questionnaire or application for public office, for licensure

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

3 (3) 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 (4) 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 (c) This section applies to any conviction specified in
13 subdivision (a) that occurred before or after January 1, 2014.

14 (d) A person who petitions for a change of plea or setting aside
15 of a verdict under this section may be required to reimburse the
16 court for the actual costs of services rendered, whether or not the
17 petition is granted and the records are sealed or expunged, at a rate
18 to be determined by the court not to exceed one hundred fifty
19 dollars (\$150), and to reimburse the county for the actual costs of
20 services rendered, whether or not the petition is granted and the
21 records are sealed or expunged, at a rate to be determined by the
22 county board of supervisors not to exceed one hundred fifty dollars
23 (\$150), and to reimburse any city for the actual costs of services
24 rendered, whether or not the petition is granted and the records are
25 sealed or expunged, at a rate to be determined by the city council
26 not to exceed one hundred fifty dollars (\$150). Ability to make
27 this reimbursement shall be determined by the court using the
28 standards set forth in paragraph (2) of subdivision (g) of Section
29 987.8 and shall not be a prerequisite to a person's eligibility under
30 this section. The court may order reimbursement in any case in
31 which the petitioner appears to have the ability to pay, without
32 undue hardship, all or any portion of the costs for services
33 established pursuant to this subdivision.

34 (e) (1) Relief shall not be granted under this section unless the
35 prosecuting attorney has been given 15 days' notice of the petition
36 for relief. The probation officer shall notify the prosecuting attorney
37 when a petition is filed, pursuant to this section.

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

1 (f) If, after receiving notice pursuant to subdivision (e), the
2 prosecuting attorney fails to appear and object to a petition for
3 dismissal, the prosecuting attorney may not move to set aside or
4 otherwise appeal the grant of that petition.

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