

AMENDED IN SENATE SEPTEMBER 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 651**

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**Introduced by Assembly Member Bradford**

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 651, as amended, 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~~ *or 2 years* following the defendant's completion of the sentence, *as specified*, 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 *the* defendant's completion  
18 of the sentence, ~~provided that if the sentence was imposed pursuant~~  
19 ~~to subparagraph (B) of paragraph (5) of subdivision (h) of Section~~  
20 ~~1170, or after the lapse of two years following the defendant's~~  
21 ~~completion of the sentence, if the sentence was imposed pursuant~~  
22 ~~to subparagraph (A) of paragraph (5) of subdivision (h) of Section~~  
23 ~~1170.~~

24 (3) *The relief available under this section may be granted only*  
25 *if the defendant is not under supervision pursuant to subparagraph*  
26 *(B) of paragraph (5) of subdivision (h) of Section 1170, and is not*  
27 *-serving a sentence for, on probation for, or charged with the*  
28 *commission of any offense.*

29 ~~(3)~~

30 (4) The defendant shall be informed, either orally or in writing,  
31 of the provisions of this section and of his or her right, if any, to  
32 petition for a certificate of rehabilitation and pardon at the time he  
33 or she is sentenced.

34 ~~(4)~~

35 (5) The defendant may make the application and change of plea  
36 in person or by attorney, or by a probation officer authorized in  
37 writing.

1 (b) Relief granted pursuant to subdivision (a) is subject to the  
2 following conditions:

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

7 (2) The order shall state, and the defendant shall be informed,  
8 that the order does not relieve him or her of the obligation to  
9 disclose the conviction in response to any direct question contained  
10 in any questionnaire or application for public office, for licensure  
11 by any state or local agency, or for contracting with the California  
12 State Lottery Commission.

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

18 (4) Dismissal of an accusation or information underlying a  
19 conviction pursuant to this section does not permit a person  
20 prohibited from holding public office as a result of that conviction  
21 to hold public office.

22 (c) This section applies to any conviction specified in  
23 subdivision (a) that occurred before, *on*, or after January 1, 2014.

24 (d) A person who petitions for a change of plea or setting aside  
25 of a verdict under this section may be required to reimburse the  
26 court for the actual costs of services rendered, whether or not the  
27 petition is granted and the records are sealed or expunged, at a rate  
28 to be determined by the court not to exceed one hundred fifty  
29 dollars (\$150), and to reimburse the county for the actual costs of  
30 services rendered, whether or not the petition is granted and the  
31 records are sealed or expunged, at a rate to be determined by the  
32 county board of supervisors not to exceed one hundred fifty dollars  
33 (\$150), and to reimburse any city for the actual costs of services  
34 rendered, whether or not the petition is granted and the records are  
35 sealed or expunged, at a rate to be determined by the city council  
36 not to exceed one hundred fifty dollars (\$150). Ability to make  
37 this reimbursement shall be determined by the court using the  
38 standards set forth in paragraph (2) of subdivision (g) of Section  
39 987.8 and shall not be a prerequisite to a person's eligibility under  
40 this section. The court may order reimbursement in any case in

1 which the petitioner appears to have the ability to pay, without  
2 undue hardship, all or any portion of the costs for services  
3 established pursuant to this subdivision.

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

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

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