

ASSEMBLY BILL

No. 2396

Introduced by Assembly Member Bonta

February 21, 2014

An act to amend Section 1203.41 of the Penal Code, relating to expungement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as introduced, Bonta. Convictions: expungement.

Existing law authorizes a court to allow a defendant sentenced to a 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 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. Existing law releases the defendant from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as specified.

This bill would make a technical, nonsubstantive change to these provisions.

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 of the Penal Code is amended
- 2 to 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

1 and in the interests of justice, may order the following relief,
2 subject to the conditions of subdivision (b):

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

12 (2) The relief available under this section may be granted only
13 after the lapse of one year following the defendant's completion
14 of the sentence, if the sentence was imposed pursuant to
15 subparagraph (B) of paragraph (5) of subdivision (h) of Section
16 1170, or after the lapse of two years following the defendant's
17 completion of the sentence, if the sentence was imposed pursuant
18 to subparagraph (A) of paragraph (5) of subdivision (h) of Section
19 1170.

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

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

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

32 (b) Relief granted pursuant to subdivision (a) is subject to the
33 following conditions:

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

38 (2) The order shall state, and the defendant shall be informed,
39 that the order does not relieve him or her of the obligation to
40 disclose the conviction in response to any direct question contained

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

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

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

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

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

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

39 (2) It shall be presumed that the prosecuting attorney has
40 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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