

AMENDED IN SENATE APRIL 25, 2013

SENATE BILL

No. 384

Introduced by Senator Senators Gaines and DeSaulnier
(Coauthor: Assembly Member Bonilla)

February 20, 2013

An act to amend Section ~~1203.4~~ 70010.5 of the ~~Penal Education~~ Code, relating to ~~convictions~~: *scholarships, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 384, as amended, Gaines. ~~Convictions: expungement.~~ *California Memorial Scholarship Program.*

Existing law establishes the California Memorial Scholarship Program, administered by the Scholarshare Investment Board and funded by the California Memorial Scholarship Fund. Existing law states that the purpose of the program is to provide scholarships for surviving dependents of California residents killed as a result of injuries sustained during the terrorist attacks of September 11, 2001. Existing law further provides that these scholarships shall be used to defray the costs incurred by participants in the program at institutions of higher education.

Existing law requires the California Victim Compensation and Government Claims Board to identify all persons who are eligible for scholarships under the program and to notify them of their eligibility no later than July 1, 2003. Existing law requires eligible persons to inform the board in a timely manner of their decision on whether to participate in the program and requires eligible persons who are to become participants in the program to execute agreements no later than July 1, 2005.

This bill would instead require the board to identify all persons who are eligible for scholarships under the program and to notify them of their eligibility no later than July 1, 2014. The bill would also require that eligible persons who are to become participants in the program execute participation agreements no later than July 1, 2015.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law allows for the release from all penalties and disabilities resulting from an offense for which the person was convicted if specified criteria are met, including that all the conditions of probation have been fulfilled. Existing law excludes certain sex offenses from these provisions.~~

~~This bill would additionally exclude specified offenses relating to obscene matter involving minors from these provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 70010.5 of the Education Code is amended*
2 *to read:*

3 70010.5. (a) The California Victim Compensation and
4 Government Claims Board shall identify all persons who are
5 eligible for scholarships under the program. The California Victim
6 Compensation and Government Claims Board shall notify these
7 persons or, in the case of minors, the parents or guardians of these
8 persons, of their eligibility for scholarships under the program.
9 This notification shall be in writing, and shall be received by all
10 of the appropriate persons no later than July 1, ~~2003~~. 2014.

11 (b) Eligible persons, or in the case of minors, the parents or
12 guardians of these persons, shall inform the board of their decision
13 on whether to participate in the program in a timely manner.
14 Eligible persons, or in the case of minors, the parents or guardians
15 of these persons, who are to become participants in the program
16 shall execute agreements pursuant to Section 70011 no later than
17 July 1, ~~2005~~. 2015.

18 *SEC. 2. This act is an urgency statute necessary for the*
19 *immediate preservation of the public peace, health, or safety within*
20 *the meaning of Article IV of the Constitution and shall go into*
21 *immediate effect. The facts constituting the necessity are:*

1 *Because many eligible persons are not currently receiving*
2 *scholarships under the program, and because of the higher*
3 *education expenses, prospective or ongoing, of the dependents of*
4 *California residents who were killed as a result of injuries*
5 *sustained during the terrorist attacks of September 11, 2001, it is*
6 *necessary that this act take effect immediately.*

7 SECTION 1. ~~Section 1203.4 of the Penal Code is amended to~~
8 ~~read:~~

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

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

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

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

12 ~~(b) Subdivision (a) of this section does not apply to any~~
13 ~~misdemeanor that is within the provisions of Section 42002.1 of~~
14 ~~the Vehicle Code, to any violation of subdivision (c) of Section~~
15 ~~286, Section 288, subdivision (c) of Section 288a, Section 288.5,~~
16 ~~subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or~~
17 ~~311.11, or any felony conviction pursuant to subdivision (d) of~~
18 ~~Section 261.5, or to any infraction.~~

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

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

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

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

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

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