

ASSEMBLY BILL

No. 2263

Introduced by Assembly Member Bradford

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2263, as introduced, Bradford. Probation: conditions.

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 make a technical, nonsubstantive change to that provision.

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:
- 3 1203.4. (a) (1) In any case in which a defendant has fulfilled
- 4 the conditions of probation for the entire period of probation, or
- 5 has been discharged prior to the termination of the period of
- 6 probation, or in any other case in which a court, in its discretion

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

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

34 (3) Dismissal of an accusation or information underlying a
35 conviction pursuant to this section does not permit a person
36 prohibited from holding public office as a result of that conviction
37 to hold public office.

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

1 (b) Subdivision (a) of this section does not apply to any
2 misdemeanor that is within the provisions of Section 42002.1 of
3 the Vehicle Code, to any violation of subdivision (c) of Section
4 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
5 or subdivision (j) of Section 289, any felony conviction pursuant
6 to subdivision (d) of Section 261.5, or to any infraction.

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

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

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

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

- 1 (2) It shall be presumed that the prosecuting attorney has
2 received notice if proof of service is filed with the court.
- 3 (f) If, after receiving notice pursuant to subdivision (e), the
4 prosecuting attorney fails to appear and object to a petition for
5 dismissal, the prosecuting attorney may not move to set aside or
6 otherwise appeal the grant of that petition.
- 7 (g) Notwithstanding the above provisions or any other provision
8 of law, the Governor shall have the right to pardon a person
9 convicted of a violation of subdivision (c) of Section 286, Section
10 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
11 (j) of Section 289, if there are extraordinary circumstances.