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SUPREME COURT
FILED

In the Supreme Court of the State of California

DEC 09 2019

Jorge Navarrete Clerk

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

MISAEL VENCES MAYA,

Defendant and Appellant.

Deputy

Case No. S255371

Second Appellate District, Division Six, Case No. B290589
Ventura County Superior Court, Case No. 201031209
The Honorable Bruce Young, Judge

UNOPPOSED MOTION FOR JUDICIAL NOTICE

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Respondent*

UNOPPOSED MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rules 8.252(a) and 8.520(g), the People of the State of California hereby move the Court to take judicial notice of the following documents:

1. The text of Assembly Bill 2242 and the marked up bill amended by the Assembly in May 1963. The bill ultimately became Penal Code section 1203.4a, subdivision (a), the statute that is at issue in this case. A true and correct copy of the bill and the marked up bill are attached as **Exhibit A**.

2. The text of Assembly Bill 1384 and the marked up bill amended by the Assembly in March 2011, which ultimately became Penal Code section 1203.4a, subdivision (b). A true and correct copy of the bill and the marked up bill are attached as **Exhibit B**.

3. Excerpts from committee reports considering Assembly Bill 1384. The excerpts include the committee reports from the Assembly Committee on Appropriations, the Department of Finance Bill Analysis, the Senate Committee on Public Safety, Senate Rule Committee, Senate Republican Fiscal Office Report, and the Assembly Third Reading. A true and correct copy of the reports are attached as **Exhibit C**.

Counsel for Maya, Wayne Tobin, has confirmed in a call on December 2, 2019 that he does not oppose this motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

The Court should take judicial notice of the above-listed matters pursuant to Evidence Code sections 452 and 459.

The legislative history for Penal Code section 1203.4a (Exhibits A—C) is judicially noticeable because it constitutes “resolutions and private acts” of the “Legislature of this state” (Evid. Code, § 452, subd. (a)), as well as “[o]fficial acts of the legislative ... department[]... of any state of the United States.” (*Id.*, § 452, subd. (c).) Further, this legislative history is also judicially noticeable because it constitutes “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (*Id.*, § 452, subd. (h).)

This Court has taken judicial notice of versions of a bill “that the Legislature considered as the bill made its progress through the Legislature.” (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 n. 5.) This Court has likewise taken judicial notice of legislative committee and commission reports. (*Hutnick v. U.S. Fid. & Guar. Co.* (1988) 47 Cal.3d 456, 465 n. 7 [“[I]t is well established that reports of legislative committees and commissions are part of a statute’s legislative history and may be considered when the meaning of a statute is uncertain.”].) This legislative history is relevant to a material issue in this case concerning the interpretation of the phrase “honest and upright life,” as that phrase is used in Penal Code section 1203.4a, subdivision (a). The matters to be judicially noticed were not presented to the trial court or Court of Appeal, nor do they relate to proceedings occurring after the judgment that is the subject of this appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

For the foregoing reasons, the People request that the Court grant the unopposed notice for judicial notice of Exhibits A, B and C.

Dated: December 9, 2019 Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
LANCE E. WINTERS
Chief Assistant Attorney General
JANILL L. RICHARDS
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/s/ Helen H. Hong

HELEN H. HONG
Deputy Solicitor General
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Attorneys for Plaintiff and Respondent

EXHIBIT A

ASSEMBLY BILL

No. 2242

Introduced by Messrs. Danielson, Warren, Song, Bagley, Beilenson,
Dannemeyer, Donovan, Ferrell, and Marks

April 3, 1963

REFERRED TO COMMITTEE ON CRIMINAL PROCEDURE

*An act to add Chapter 6 (commencing with Section 4925) to
Title 6 of Part 3 of the Penal Code, relating to rehabilita-
tion of misdemeanants.*

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

1 SECTION 1. Chapter 6 (commencing with Section 4925) is
2 added to Title 6 of Part 3 of the Penal Code, to read:

3

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CHAPTER 6. REHABILITATION OF MISDEMEANANTS

5

6 4925. Every defendant convicted of a misdemeanor and
7 not granted probation shall, at any time after the lapse of
8 one year from the date of the conviction, if he is not then
9 serving a sentence for any offense and is not under charge of
10 commission of any crime and has not, since such conviction,
11 been convicted of any crime other than an offense relating to
12 stopping, standing, or parking of a motor vehicle, be permitted

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2242, as introduced, Danielson (Crim. Pro.). Rehabilitation of misdemeanants.

Adds Ch. 6 (commencing with Sec. 4925), Title 6, Pt. 3, Pen.C.

Provides that every defendant convicted of a misdemeanor and not granted probation shall at any time after the lapse of one year from the date of the conviction, if he is not then serving a sentence for any offense and is not under charge of commission of any crime and has not, since such conviction, been convicted of any crime other than an offense relating to stopping, standing, or parking of a motor vehicle, be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted. The defendant shall be informed of the provisions of this section at the time he is sentenced. The defendant may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that in any subsequent prosecution of such defendant for any other offense, such prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

1 by the court to withdraw his plea of guilty and enter a plea
2 of not guilty; or if he has been convicted after a plea of not
3 guilty, the court shall set aside the verdict of guilty; and in
4 either case the court shall thereupon dismiss the accusatory
5 pleading against such defendant, who shall thereafter be re-
6 leased from all penalties and disabilities resulting from the
7 offense of which he has been convicted. The defendant shall
8 be informed of the provisions of this section at the time he
9 is sentenced. The defendant may make such application and
10 change of plea in person or by attorney, or by the probation
11 officer authorized in writing; provided, that in any subsequent
12 prosecution of such defendant for any other offense, such
13 prior conviction may be pleaded and proved and shall have
14 the same effect as if relief had not been granted pursuant
15 to this section.

AMENDED IN ASSEMBLY MAY 31, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2242

Introduced by Messrs. Danielson, Warren, Song, Bagley, Beilenson,
Dannemeyer, Donovan, Ferrell, and Marks

April 3, 1963

REFERRED TO COMMITTEE ON CRIMINAL PROCEDURE

*An act to add Chapter 6 (commencing with Section 4925) to
Title 6 of Part 3 of SECTION 1203.4a TO the Penal Code,
relating to rehabilitation of misdemeanants.*

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

1 SECTION 1. Chapter 6 (commencing with Section 4925) is
2 added to Title 6 of Part 3 of the Penal Code, to read:

3

4

CHAPTER 6. REHABILITATION OF MISDEMEANANTS

5

6

7

SECTION 1. Section 1203.4a is added to the Penal Code,
to read:

8

4925

9 1203.4a. Every defendant convicted of a misdemeanor and
10 not granted probation shall, at any time after the lapse of
11 one year from the date of the conviction pronouncement of
12 judgment, if he has fully complied with and performed the
13 sentence of the court, is not then serving a sentence for any
14 offense and is not under charge of commission of any crime and
15 has not, since such conviction, been convicted of any crime
16 other than an offense relating to stopping, standing, or parking
17 of a motor vehicle, be permitted, since such pronouncement of
18 judgment, lived an honest and upright life and has conformed
19 to and obeyed the laws of the land, be permitted by the court
20 to withdraw his plea of guilty and enter a plea of not guilty;
21 or if he has been convicted after a plea of not guilty, the
22 court shall set aside the verdict of guilty; and in either case
23 the court shall thereupon dismiss the accusatory pleading
24 against such defendant, who shall thereafter be released from
25 all penalties and disabilities resulting from the offense of which

1 he has been convicted. The defendant shall be informed of the
2 provisions of this section at the time he is sentenced. The de-
3 fendant may make such application and change of plea in per-
4 son or by attorney, or by the probation officer authorized in
5 writing; provided, that in any subsequent prosecution of such
6 defendant for any other offense, such prior conviction may be
7 pleaded and proved and shall have the same effect as if relief
8 had not been granted pursuant to this section.

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EXHIBIT B

ASSEMBLY BILL

No. 1384

Introduced by Assembly Member Bradford

February 18, 2011

An act to amend Section 1203.4a of the Penal Code, relating to expungement standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, as introduced, Bradford. Expungement standards.

Existing law, subject to exceptions, provides that every defendant convicted of a misdemeanor and not granted probation and every defendant convicted of an infraction shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, as specified.

The bill would make this relief unavailable for convictions of specified sex offenses that apply if the victim is a child 14 or 15 years of age or a dependent person. This bill would authorize the court, in its discretion and in the interests of justice, to afford a defendant that relief as to other charges to which these provisions apply if, after a lapse of one year

from the date of pronouncement of judgment, the defendant has fully complied with his or her sentence, is not currently serving a sentence for any offense, and is not under charge of commission of any crime.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1203.4a of the Penal Code is amended
2 to read:
3 1203.4a. (a) Every defendant convicted of a misdemeanor and
4 not granted probation, and every defendant convicted of an
5 infraction; shall, at any time after the lapse of one year from the
6 date of pronouncement of judgment, if he or she has fully complied
7 with and performed the sentence of the court, is not then serving
8 a sentence for any offense and is not under charge of commission
9 of any crime, and has, since the pronouncement of judgment, lived
10 an honest and upright life and has conformed to and obeyed the
11 laws of the land, be permitted by the court to withdraw his or her
12 plea of guilty or nolo contendere and enter a plea of not guilty; or
13 if he or she has been convicted after a plea of not guilty, the court
14 shall set aside the verdict of guilty; and in either case the court
15 shall thereupon dismiss the accusatory pleading against the
16 defendant, who shall thereafter be released from all penalties and
17 disabilities resulting from the offense of which he or she has been
18 convicted, except as provided in Section 12021.1 of this code or
19 Section 13555 of the Vehicle Code. ~~The defendant shall be~~
20 ~~informed of the provisions of this section, either orally or in~~
21 ~~writing, at the time he or she is sentenced. The defendant may~~
22 ~~make an application and change of plea in person or by attorney,~~
23 ~~or by the probation officer authorized in writing; provided, that in~~
24 ~~any subsequent prosecution of the defendant for any other offense,~~
25 ~~the prior conviction may be pleaded and proved and shall have the~~
26 ~~same effect as if relief had not been granted pursuant to this section.~~
27 (b) *After a lapse of one year from the date of pronouncement*
28 *of judgment, a court, in its discretion and in the interests of justice,*
29 *may grant the relief available pursuant to this section to a*
30 *defendant convicted of an infraction, or of a misdemeanor and not*
31 *granted probation, or both, if he or she has fully complied with*
32 *and performed the sentence of the court, is not then serving a*

1 sentence for any offense, and is not under charge of commission
2 of any crime.

3 (c) The defendant shall be informed of the provisions of this
4 section, either orally or in writing, at the time he or she is
5 sentenced. The defendant may make an application and change of
6 plea in person or by attorney, or by the probation officer authorized
7 in writing; provided, that in any subsequent prosecution of the
8 defendant for any other offense, the prior conviction may be
9 pleaded and proved and shall have the same effect as if relief had
10 not been granted pursuant to this section.

11 This subdivision applies to convictions which occurred before,
12 as well as those occurring after, the effective date of this section.

13 ~~(b)~~

14 (d) Subdivision (a) does not apply to a misdemeanor violation
15 of subdivision (c) of Section 288, or to any misdemeanor falling
16 within the provisions of Section 42002.1 of the Vehicle Code, or
17 to any infraction falling within the provisions of Section 42001 of
18 the Vehicle Code.

19 ~~(e)~~

20 (e) A person who petitions for a dismissal of a charge under
21 this section may be required to reimburse the county and the court
22 for the cost of services rendered at a rate to be determined by the
23 county board of supervisors for the county and by the court for the
24 court, not to exceed sixty dollars (\$60), and to reimburse any city
25 for the cost of services rendered at a rate to be determined by the
26 city council not to exceed sixty dollars (\$60). Ability to make this
27 reimbursement shall be determined by the court using the standards
28 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
29 shall not be a prerequisite to a person's eligibility under this
30 section. The court may order reimbursement in any case in which
31 the petitioner appears to have the ability to pay, without undue
32 hardship, all or any portion of the cost for services established
33 pursuant to this subdivision.

34 ~~(d)~~

35 (f) A petition for dismissal of an infraction pursuant to this
36 section shall be by written declaration, except upon a showing of
37 compelling need. Dismissal of an infraction shall not be granted
38 under this section unless the prosecuting attorney has been given
39 at least 15 days' notice of the petition for dismissal. It shall be

1 presumed that the prosecuting attorney has received notice if proof
2 of service is filed with the court.

3 ~~(e)~~

4 (g) Any determination of amount made by a court under this
5 section shall be valid only if either (1) made under procedures
6 adopted by the Judicial Council or (2) approved by the Judicial
7 Council.

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AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011-12 REGULAR SESSION

ASSEMBLY BILL

No. 1384

Introduced by Assembly Member Bradford

February 18, 2011

An act to amend Section 1203.4a of the Penal Code, relating to expungement standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, as amended, Bradford. Expungement standards.

Existing law, subject to exceptions, provides that every defendant convicted of a misdemeanor and not granted probation and every defendant convicted of an infraction shall, ~~at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land~~ *satisfies certain conditions*, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and in either case, the court ~~shall thereupon~~ *is required to* dismiss the accusatory pleading against the defendant, ~~who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted,~~ as specified.

The bill would make this relief unavailable for *misdemeanor* convictions of specified sex offenses that apply if the victim is a child 14 or 15 years of age or a dependent person. This bill would authorize

the court, in its discretion and in the interests of justice, to afford a defendant that relief as to other charges to which these provisions apply if, after a lapse of one year from the date of pronouncement of judgment, the defendant has fully complied with his or her sentence, is not currently serving a sentence for any offense, and is not under charge of commission of any crime. *The bill would make a clarifying change to its provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1203.4a of the Penal Code is amended
2 to read:

3 1203.4a. (a) Every defendant convicted of a misdemeanor and
4 not granted probation, and every defendant convicted of an
5 infraction shall, at any time after the lapse of one year from the
6 date of pronouncement of judgment, if he or she has fully complied
7 with and performed the sentence of the court, is not then serving
8 a sentence for any offense and is not under charge of commission
9 of any crime, and has, since the pronouncement of judgment, lived
10 an honest and upright life and has conformed to and obeyed the
11 laws of the land, be permitted by the court to withdraw his or her
12 plea of guilty or nolo contendere and enter a plea of not guilty; or
13 if he or she has been convicted after a plea of not guilty, the court
14 shall set aside the verdict of guilty; and in either case the court
15 shall thereupon dismiss the accusatory pleading against the
16 defendant, who shall thereafter be released from all penalties and
17 disabilities resulting from the offense of which he or she has been
18 convicted, except as provided in Section 12021.1 of this code or
19 Section 13555 of the Vehicle Code.

20 (b) After a lapse of one year from the date of pronouncement
21 of judgment, a court, in its discretion and in the interests of justice,
22 may grant the relief available pursuant to this section to a defendant
23 convicted of an infraction, or of a misdemeanor and not granted
24 probation, or both, if he or she has fully complied with and
25 performed the sentence of the court, is not then serving a sentence
26 for any offense, and is not under charge of commission of any
27 crime.

1 (c) The defendant shall be informed of the provisions of this
2 section, either orally or in writing, at the time he or she is
3 sentenced. The defendant may make an application and change of
4 plea in person or by attorney, or by the probation officer authorized
5 in writing; provided, that in any subsequent prosecution of the
6 defendant for any other offense, the prior conviction may be
7 pleaded and proved and shall have the same effect as if relief had
8 not been granted pursuant to this section.

9 ~~This subdivision applies to convictions which occurred before,~~
10 ~~as well as those occurring after, the effective date of this section.~~

11 ~~(d) Subdivision (a) does not apply to a misdemeanor violation~~
12 ~~of subdivision (c) of Section 288, or to any misdemeanor falling~~
13 ~~within the provisions of Section 42002.1 of the Vehicle Code, or~~
14 ~~to any infraction falling within the provisions of Section 42001 of~~
15 ~~the Vehicle Code.~~

16 *(d) This section applies to any conviction specified in*
17 *subdivision (a) or (b) that occurred before, as well as those*
18 *occurring after, the effective date of this section, except that this*
19 *section does not apply to the following:*

20 *(1) A misdemeanor violation of subdivision (c) of Section 288.*

21 *(2) Any misdemeanor falling within the provisions of Section*
22 *42002.1 of the Vehicle Code.*

23 *(3) Any infraction falling within the provisions of Section 42001*
24 *of the Vehicle Code.*

25 (e) A person who petitions for a dismissal of a charge under
26 this section may be required to reimburse the county and the court
27 for the cost of services rendered at a rate to be determined by the
28 county board of supervisors for the county and by the court for the
29 court, not to exceed sixty dollars (\$60), and to reimburse any city
30 for the cost of services rendered at a rate to be determined by the
31 city council not to exceed sixty dollars (\$60). Ability to make this
32 reimbursement shall be determined by the court using the standards
33 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
34 shall not be a prerequisite to a person's eligibility under this
35 section. The court may order reimbursement in any case in which
36 the petitioner appears to have the ability to pay, without undue
37 hardship, all or any portion of the cost for services established
38 pursuant to this subdivision.

39 (f) A petition for dismissal of an infraction pursuant to this
40 section shall be by written declaration, except upon a showing of

1 compelling need. Dismissal of an infraction shall not be granted
2 under this section unless the prosecuting attorney has been given
3 at least 15 days' notice of the petition for dismissal. It shall be
4 presumed that the prosecuting attorney has received notice if proof
5 of service is filed with the court.

6 (g) Any determination of amount made by a court under this
7 section shall be valid only if either (1) made under procedures
8 adopted by the Judicial Council or (2) approved by the Judicial
9 Council.

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AMENDED IN SENATE JUNE 2, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1384

**Introduced by Assembly Member Bradford
(Coauthor: Assembly Member Mitchell)**

February 18, 2011

An act to amend Section 1203.4a of the Penal Code, relating to expungement standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, as amended, Bradford. Expungement standards.

Existing law, subject to exceptions, provides that every defendant convicted of a misdemeanor and not granted probation and every defendant convicted of an infraction shall; *be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty or, if he or she has been convicted after a plea of not guilty, have the court set aside the verdict of guilty* after one year from the date of judgment, ~~if provided he or she satisfies certain conditions, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and in.~~ *In* either case, the court is required to dismiss the accusatory pleading against the defendant, as specified.

The bill would make this relief unavailable for misdemeanor convictions of specified sex offenses that apply if the victim is a child 14 or 15 years of age or a dependent person. This bill would authorize, *if a defendant does not satisfy all of the above requirements*, the court,

in its discretion and in the interests of justice, to afford a defendant that relief as to other charges to which these provisions apply if, after a lapse of one year from the date of pronouncement of judgment, the defendant has fully complied with his or her sentence, is not currently serving a sentence for any offense, and is not under charge of commission of any crime. The bill would make a clarifying change to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1203.4a of the Penal Code is amended
2 to read:

3 1203.4a. (a) Every defendant convicted of a misdemeanor and
4 not granted probation, and every defendant convicted of an
5 infraction shall, at any time after the lapse of one year from the
6 date of pronouncement of judgment, if he or she has fully complied
7 with and performed the sentence of the court, is not then serving
8 a sentence for any offense and is not under charge of commission
9 of any crime, and has, since the pronouncement of judgment, lived
10 an honest and upright life and has conformed to and obeyed the
11 laws of the land, be permitted by the court to withdraw his or her
12 plea of guilty or nolo contendere and enter a plea of not guilty; or
13 if he or she has been convicted after a plea of not guilty, the court
14 shall set aside the verdict of guilty; and in either case the court
15 shall thereupon dismiss the accusatory pleading against the
16 defendant, who shall thereafter be released from all penalties and
17 disabilities resulting from the offense of which he or she has been
18 convicted, except as provided in Section 12021.1 of this code or
19 Section 13555 of the Vehicle Code.

20 (b) ~~After~~ *If a defendant does not satisfy all the requirements of*
21 *subdivision (a), after a lapse of one year from the date of*
22 *pronouncement of judgment, a court, in its discretion and in the*
23 *interests of justice, may grant the relief available pursuant to this*
24 ~~section~~ *subdivision (a) to a defendant convicted of an infraction,*
25 *or of a misdemeanor and not granted probation, or both, if he or*
26 *she has fully complied with and performed the sentence of the*
27 *court, is not then serving a sentence for any offense, and is not*
28 *under charge of commission of any crime.*

1 (c) The defendant shall be informed of the provisions of this
2 section, either orally or in writing, at the time he or she is
3 sentenced. The defendant may make an application and change of
4 plea in person or by attorney, or by the probation officer authorized
5 in writing; ~~provided, that~~, *provided that*, in any subsequent
6 prosecution of the defendant for any other offense, the prior
7 conviction may be pleaded and proved and shall have the same
8 effect as if relief had not been granted pursuant to this section.

9 (d) This section applies to any conviction specified in
10 subdivision (a) or (b) that occurred before, as well as those
11 occurring after, the effective date of this section, except that this
12 section does not apply to the following:

13 (1) A misdemeanor violation of subdivision (c) of Section 288.

14 (2) Any misdemeanor falling within the provisions of Section
15 42002.1 of the Vehicle Code.

16 (3) Any infraction falling within the provisions of Section 42001
17 of the Vehicle Code.

18 (e) A person who petitions for a dismissal of a charge under
19 this section may be required to reimburse the county and the court
20 for the cost of services rendered at a rate to be determined by the
21 county board of supervisors for the county and by the court for the
22 court, not to exceed sixty dollars (\$60), and to reimburse any city
23 for the cost of services rendered at a rate to be determined by the
24 city council not to exceed sixty dollars (\$60). Ability to make this
25 reimbursement shall be determined by the court using the standards
26 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
27 shall not be a prerequisite to a person's eligibility under this
28 section. The court may order reimbursement in any case in which
29 the petitioner appears to have the ability to pay, without undue
30 hardship, all or any portion of the cost for services established
31 pursuant to this subdivision.

32 (f) A petition for dismissal of an infraction pursuant to this
33 section shall be by written declaration, except upon a showing of
34 compelling need. Dismissal of an infraction shall not be granted
35 under this section unless the prosecuting attorney has been given
36 at least 15 days' notice of the petition for dismissal. It shall be
37 presumed that the prosecuting attorney has received notice if proof
38 of service is filed with the court.

39 (g) Any determination of amount made by a court under this
40 section shall be valid only if either (1) made under procedures

- 1 adopted by the Judicial Council or (2) approved by the Judicial
- 2 Council.

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AMENDED IN SENATE JUNE 29, 2011

AMENDED IN SENATE JUNE 2, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011-12 REGULAR SESSION

ASSEMBLY BILL

No. 1384

**Introduced by Assembly Member Bradford
(Coauthor: Assembly Member Mitchell)**

February 18, 2011

An act to amend Section 1203.4a of the Penal Code, relating to expungement standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1384, as amended, Bradford. Expungement standards.

Existing law, subject to exceptions, provides that every defendant convicted of a misdemeanor and not granted probation and every defendant convicted of an infraction shall be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty or, if he or she has been convicted after a plea of not guilty, have the court set aside the verdict of guilty after one year from the date of judgment, provided he or she satisfies certain conditions. In either case, the court is required to dismiss the accusatory pleading against the defendant, as specified.

The bill would make this relief unavailable for misdemeanor convictions of specified sex offenses that apply if the victim is a child 14 or 15 years of age or a dependent person. This bill would authorize, if a defendant does not satisfy all of the above requirements, the court, in its discretion and in the interests of justice, to afford a defendant that relief as to other charges to which these provisions apply if, after a lapse

of one year from the date of pronouncement of judgment, the defendant has fully complied with his or her sentence, is not currently serving a sentence for any offense, and is not under charge of commission of any crime. *The bill would specify that the dismissal of an accusatory pleading pursuant to the above provisions does not permit a person to own, possess, or have a firearm, or to hold public office if the person is prohibited from holding public office as a result of the conviction.* The bill would make a clarifying change to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1203.4a of the Penal Code is amended
2 to read:

3 1203.4a. (a) Every defendant convicted of a misdemeanor and
4 not granted probation, and every defendant convicted of an
5 infraction shall, at any time after the lapse of one year from the
6 date of pronouncement of judgment, if he or she has fully complied
7 with and performed the sentence of the court, is not then serving
8 a sentence for any offense and is not under charge of commission
9 of any crime, and has, since the pronouncement of judgment, lived
10 an honest and upright life and has conformed to and obeyed the
11 laws of the land, be permitted by the court to withdraw his or her
12 plea of guilty or nolo contendere and enter a plea of not guilty; or
13 if he or she has been convicted after a plea of not guilty, the court
14 shall set aside the verdict of guilty; and in either case the court
15 shall thereupon dismiss the accusatory pleading against the
16 defendant, who shall thereafter be released from all penalties and
17 disabilities resulting from the offense of which he or she has been
18 convicted, except as provided in Section 12021.1 of this code or
19 Section 13555 of the Vehicle Code.

20 (b) If a defendant does not satisfy all the requirements of
21 subdivision (a), after a lapse of one year from the date of
22 pronouncement of judgment, a court, in its discretion and in the
23 interests of justice, may grant the relief available pursuant to
24 subdivision (a) to a defendant convicted of an infraction, or of a
25 misdemeanor and not granted probation, or both, if he or she has
26 fully complied with and performed the sentence of the court, is

1 not then serving a sentence for any offense, and is not under charge
2 of commission of any crime.

3 (c) (1) The defendant shall be informed of the provisions of
4 this section, either orally or in writing, at the time he or she is
5 sentenced. The defendant may make an application and change of
6 plea in person or by attorney, or by the probation officer authorized
7 in writing, provided that, in any subsequent prosecution of the
8 defendant for any other offense, the prior conviction may be
9 pleaded and proved and shall have the same effect as if relief had
10 not been granted pursuant to this section.

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

16 (3) *Dismissal of an accusatory pleading underlying a conviction*
17 *pursuant to this section does not permit a person prohibited from*
18 *holding public office as a result of that conviction to hold public*
19 *office.*

20 (d) This section applies to any conviction specified in
21 subdivision (a) or (b) that occurred before, as well as those
22 occurring after, the effective date of this section, except that this
23 section does not apply to the following:

24 (1) A misdemeanor violation of subdivision (c) of Section 288.

25 (2) Any misdemeanor falling within the provisions of Section
26 42002.1 of the Vehicle Code.

27 (3) Any infraction falling within the provisions of Section 42001
28 of the Vehicle Code.

29 (e) A person who petitions for a dismissal of a charge under
30 this section may be required to reimburse the county and the court
31 for the cost of services rendered at a rate to be determined by the
32 county board of supervisors for the county and by the court for the
33 court, not to exceed sixty dollars (\$60), and to reimburse any city
34 for the cost of services rendered at a rate to be determined by the
35 city council not to exceed sixty dollars (\$60). Ability to make this
36 reimbursement shall be determined by the court using the standards
37 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
38 shall not be a prerequisite to a person's eligibility under this
39 section. The court may order reimbursement in any case in which
40 the petitioner appears to have the ability to pay, without undue

1 hardship, all or any portion of the cost for services established
2 pursuant to this subdivision.

3 (f) A petition for dismissal of an infraction pursuant to this
4 section shall be by written declaration, except upon a showing of
5 compelling need. Dismissal of an infraction shall not be granted
6 under this section unless the prosecuting attorney has been given
7 at least 15 days' notice of the petition for dismissal. It shall be
8 presumed that the prosecuting attorney has received notice if proof
9 of service is filed with the court.

10 (g) Any determination of amount made by a court under this
11 section shall be valid only if either (1) made under procedures
12 adopted by the Judicial Council or (2) approved by the Judicial
13 Council.

EXHIBIT C

Date of Hearing: May 4, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 1384 (Bradford) – As Amended: March 21, 2011

Policy Committee: Public Safety.

Vote: 4-2

Urgency: No State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill authorizes the court, in the interest of justice, to expunge the record for a misdemeanor conviction – after one year - of a person who has not received probation. (This relief is similar to that provided to specified misdemeanants and felons who have received probation under current law, as well as to misdemeanants who have not received probation and withdraw their plea or have their plea set aside.)

FISCAL EFFECT

Minor absorbable trial court costs by extending judicial discretion for expungement to misdemeanants who have not been given a probation term.

COMMENTS

- 1) Rationale. The author and proponents note that while current law provides expungement relief for specified misdemeanants and felons who have received probation, there is no parallel provision for misdemeanants who have not received probation.

According to the author, "In today's climate, job seekers, who were suddenly laid off after years of working, find they are unable to find a new job because of a conviction that occurred many years ago. Some of those job seekers are unable to get low level misdemeanor convictions expunged from their records due to this inconsistency in the California expungement process.

"This bill can increase employment opportunities for people with past convictions and decrease the state's recidivism rate, which is the highest in the nation (70%). Reducing recidivism will enhance public safety and decrease the amount of money that the state spends on incarceration."

- 2) Support. According to the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, "Currently there is an inconsistency in the two dismissal statutes Penal Code section 1203.4, which applies to cases where probation is sentenced, empowers judges to exercise their discretion to dismiss a conviction 'in the interests of justice.' Penal Code section 1203.4a, which applies to misdemeanor and infraction cases where no probation is sentenced, does not contain a parallel 'interests of justice' provision. The differing treatment of misdemeanors under the two statutes is unwarranted, and prevents courts from granting dismissals in appropriate cases. AB 1384 will amend Penal Code section 1203.4a to give

judges discretion to expunge misdemeanor convictions in appropriate cases, regardless of whether or not the sentence included probation. The impact of AB 1384 is significant because it equalizes the way misdemeanors are treated for purposes of California expungement remedies."

- 3) Opposition. According to the California District Attorneys Association, "The proponents argue that current law is inconsistent and unfair given the disparate treatment of misdemeanants who are granted probation and those who are not. While the statutes are different, we would argue that it is not inappropriate to recognize the difference between those granted probation and those who are not.

"Additionally, criminal history can be an important factor in employment decisions, especially when they involve persons who will be working in sensitive positions (e.g. with and around children, handling financial or personal information, etc.). We are not convinced of the need to open the door to expungement to a class of offenders who were not granted probation and were otherwise unable to comply with the existing conditions that precede expungement."

- 4) Prior Legislation. AB 2068 (Hill), 2010 Legislative Session, was similar to this bill and was vetoed.

Analysis Prepared by: Geoff Long / APPR. / (916) 319-2081

DEPARTMENT OF FINANCE BILL ANALYSIS

Set for 7/11
File 288

AMENDMENT DATE: June 29, 2011
 POSITION: Neutral

BILL NUMBER: AB 1384
 AUTHOR: S. Bradford

BILL SUMMARY: Expungement Standards

This bill would provide that the court could not set aside a misdemeanor conviction of specified sex offenses if the victim is a child 14 or 15 years of age, as specified.

FISCAL SUMMARY

The Judicial Branch indicates that any increase in workload due to the provisions of this bill would be minor and absorbable.

COMMENTS

The Department of Finance is neutral on this bill.

Existing law provides that every defendant convicted of a misdemeanor and not granted probation and every defendant convicted of an infraction would be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty or, if he or she has been convicted after a plea of not guilty, have the court set aside the verdict of guilty after one year from the date of judgment, as specified. This bill would make this relief unavailable for misdemeanor convictions of specified sex offenses that apply if the victim is a child 14 or 15 years of age or a dependent person. This bill would also provide that the dismissal of an accusatory pleading pursuant to the provisions above does not permit a person to own, possess, or have a firearm, or to hold public office if the person is prohibited from holding public office as a result of the conviction.

| Code/Department Agency or Revenue Type | SO LA CO RV | PROP 98 | FC | (Fiscal Impact by Fiscal Year) | | | Fund Code |
|--|----------------------|------------|----|--------------------------------|-----------|-----------|--------------|
| | | | | 2011-2012 | 2012-2013 | 2013-2014 | |
| 0250/Jud Branch | SO | No | | No/Minor Fiscal Impact | | | 0001 |

MM
 Analyst/Principal (0211) *[Signature]* Date *7/1/11*
 Assistant Program Budget Manager *[Signature]* Date *7/1/11*

Department Deputy Director *[Signature]* Date JUL 05 2011

Governor's Office: By: *[Signature]* Date: *7-7-11* Position Approved Position Disapproved

BILL ANALYSIS 000026 Form DF-43 (Rev 03/95 Buff)

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2011-2012 Regular Session

A
B

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AB 1384 (Bradford)
As Amended June 2, 2011
Hearing date: June 21, 2011
Penal Code
SM:dl

EXPUNGEMENT OF RECORDS

HISTORY

Source: East Bay Community Law Center

Prior Legislation: AB 2068 (Hill) - (2010) Vetoed
AB 2582 (Adams) - Chap. 99, Stats. of 2010

Support: California Probation, Parole and Correction Association; California Attorneys For Criminal Justice; California Public Defenders Association; East Bay Community Law Center; Legal Services For Prisoners With Children; California Coalition For Women Prisoners; Conference of California Bar Associations; Lawyers' Committee For Civil Rights; Stanford Community Law Clinic; San Francisco Public Defender; American Federation of State, County and Municipal Employees (AFSCME); American Civil Liberties Union; Los Angeles County District Attorney's Office

Opposition: California District Attorneys Association

Assembly Floor Vote: Ayes 47 - Noes 25

KEY ISSUES

SHOULD A COURT BE PERMITTED, IN ITS DISCRETION AND IN THE INTEREST OF JUSTICE, TO DETERMINE THAT A DEFENDANT WHO HAS BEEN CONVICTED OF A MISDEMEANOR AND NOT GRANTED PROBATION OR AN INFRACTION, SHOULD BE GRANTED EXPUNGEMENT AFTER THE LAPSE OF ONE YEAR FROM THE DATE OF PRONOUNCEMENT OF THE JUDGMENT, AS SPECIFIED?

CONTINUED

(More)

SHOULD THESE EXPUNGEMENT PROVISIONS NOT APPLY TO A PERSON WHO IS CONVICTED OF A MISDEMEANOR LEWD AND LASCIVIOUS ACT ON A CHILD 14 OR 15 YEARS OLD WHEN THE PERPETRATOR WAS 10 OR MORE YEARS OLDER THAN THE VICTIM?

PURPOSE

The purpose of this bill is to (1) allow a court, in its discretion and in the interest of justice, to determine that a defendant, who has been convicted of a misdemeanor and not granted probation or an infraction, should be granted expungement relief after the lapse of one year from the date of pronouncement of the judgment; and (2) establish that these expungement provisions shall not apply to a person who is convicted of a misdemeanor lewd and lascivious act on a child 14 or 15 years old when the perpetrator was 10 or more years older than the victim.

Existing law provides that in any case where the defendant has fulfilled the conditions 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 expungement relief, and where the defendant is not serving a sentence for any offense, on probation for any offense or charged with any offense, the defendant shall at any time after the termination of the period of probation be allowed to withdraw his or her plea of guilty, or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case, the court shall dismiss the accusation against the defendant, and, except as noted, the defendant shall be released from all penalties and disabilities. (Penal Code § 1203.4(a).)

Existing law prohibits the expungement of the record of conviction for persons convicted of child molestation, continuous sexual abuse of a child, sodomy with a child under the age of 14, oral copulation with a child under the age of 14, and sexual penetration of a child under the age of 14. (Penal Code § 1203.4(b).)

Existing law states that dismissal of an accusation or information pursuant to Penal Code Section 1203.4 does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent him or her from being convicted of the offense of being an ex-felon in possession of a firearm. (Penal Code § 1203.4(a).)

Existing law states that an order of dismissal does not relieve him or her of the obligation to disclose the conviction in response to any questions contained in any questionnaire or application for public office, or for licensure for any state or local agency. (Penal Code § 1203.4(a).)

Existing law provides that, despite the accusatory pleading having been dismissed, in any other subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. (Penal Code § 1203.4(a).)

Existing law states that every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or *nolo contendere* and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted. (Penal Code § 1203.4a(a).)

This bill provides that a court, in its discretion and in the interest of justice, can determine that a defendant who has been convicted of a misdemeanor and not granted probation or an infraction should be granted expungement relief after the lapse of one year from the date of pronouncement of the judgment.

This bill provides that its expungement provisions shall not apply to a person who is convicted of a misdemeanor lewd and lascivious act on a child 14 or 15 years old when the perpetrator was 10 or more years older than the victim.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation. As these cases have progressed, prison conditions have continued to be assailed, and the scrutiny of the federal courts over California's prisons has intensified.

On June 30, 2005, in a class action lawsuit filed four years earlier, the United States District Court for the Northern District of California established a Receivership to take control of the delivery of medical services to all California state prisoners confined by the California Department of Corrections and Rehabilitation ("CDCR"). In December of 2006, plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a three-judge federal panel issued an order requiring California to reduce its inmate population to 137.5 percent of design capacity -- a reduction at that time of roughly 40,000 inmates -- within two years. The court stayed implementation of its ruling pending the state's appeal to the U.S. Supreme Court.

On May 23, 2011, the United States Supreme Court upheld the decision of the three-judge panel in its entirety, giving California two years from the date of its ruling to reduce its prison population to 137.5 percent of design capacity, subject to the right of the state to seek modifications in appropriate circumstances.

In response to the unresolved prison capacity crisis, in early 2007 the Senate Committee on Public Safety began holding legislative proposals which could further exacerbate prison overcrowding through new or expanded felony prosecutions.

This bill does not appear to aggravate the prison overcrowding crisis described above.

COMMENTS

1. Need for This Bill

According to the author:

Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In this tough economic downturn, organizations that serve clients with criminal records have experienced an increase in the number of people seeking to clean up their criminal records; as most job seekers find past convictions are a significant barrier to finding employment.

In today's climate, job seekers, who were suddenly laid off after years of working, find they are unable to find a new job because of a conviction that occurred many years ago. Some of those job seekers are unable to get low level misdemeanor convictions expunged from their records due to this inconsistency in the California expungement process.

This bill can increase employment opportunities for people with past convictions and decrease the state's recidivism rate, which is the highest in the nation (70%). Reducing recidivism will enhance public safety and decrease the amount of money that the state spends on incarceration.

2. Background: Current Expungement Procedures

Penal Code Section 1203.4 provides for the expungement of both misdemeanors and felonies at the judge's discretion in cases where probation has been granted if the defendant has fulfilled the terms of probation and has not been charged with another offense. Under Penal Code Section 1203.4 the defendant withdraws their earlier plea of guilty or their conviction is set aside and the court then dismisses the charges against the defendant.

However, a person convicted of a misdemeanor who is not granted probation, or of an infraction, falls under Penal Code Section 1203.4a. To be eligible for expungement under Penal Code Section 1203.4a, the person must have fully complied with and performed the sentence of the court, must not be serving a sentence, or charged with a crime, and must have, since judgment, "lived an honest and upright life," obeying the laws. If these conditions are met, the person must be permitted to withdraw his or her plea, and enter a not guilty plea. If the conviction resulted from a jury trial, the verdict must be set aside and the case dismissed. The person is thereafter "released from all penalties and disabilities resulting" from the conviction, except as specified.

At least one court has found that the language of section 1203.4a indicating that the defendant had to have obeyed the law since judgment must be read to mean, 'for a period of one year following judgment,' because that is the standard applicable to felons in section 1203.4. The Court referred to this discrepancy between the statutes as an "anomaly" and stated that to hold misdemeanants to a higher standard in this respect would raise, "serious and obvious equal protection of the law problems..." (*People v. Chandlee*, 90 Cal. App. 3d Supp. 13, 19 (1979).)

3. What This Bill Would Do

This bill addresses an inconsistency in what the Court in *Chandlee* referred to as the, "legislative crazy-quilt dealing with the sealing of records of criminal convictions[.]" (*Chandlee, supra*, at 18.) This bill would conform these two expungement statutes by amending section 1203.4a to allow the court to order a conviction for a misdemeanor or infraction expunged, "in its discretion and in the interest of justice," in cases where the defendant has fully complied with and performed the sentence of the court, is not then serving a sentence for any other offense, and is not charged with any crime. This is the same standard currently applied to people convicted of felonies or misdemeanors who were granted probation. In effect, the current law applies a harsher standard for expungement to persons convicted of misdemeanors or infractions who are not granted probation than to those convicted of felonies who were granted probation. That is because a person who was convicted of a new misdemeanor within one year after a felony conviction for which he or she successfully completed probation, would still be eligible for expungement of the felony, whereas a person convicted of two misdemeanors would not be eligible for expungement. This bill would eliminate that disparity.

This bill would also provide that expungement under section 1203.4a would not be available to a person convicted of a misdemeanor and not granted probation for committing a lewd and lascivious act on a child 14 or 15 years old when the perpetrator was 10 or more years older than the victim. (Penal Code § 288(c).)

4. Governor's Veto Message

In his veto message on AB 2068 (Hill) (2010), the Governor stated:

This bill would allow persons convicted of a misdemeanor and not granted probation to expunge the conviction at a future date for any reason so long as

a court finds that it is in the 'interest of justice.' Proponents of this measure argue that existing law is unfair because someone can petition a court for any reason, if granted probation, whereas if someone is not granted probation, it requires a person to live crime free for one year before being able to obtain relief. If expungement is an appropriate remedy for those who have truly rehabilitated themselves, then living an honest and upright life for one year should not present too high a bar. Consequently, I do not believe a change in law is warranted.

SHOULD THESE EXPUNGEMENT PROCEDURES BE RECONCILED?

Senate Committee on Public Safety
Room 2031 ~ State Capitol ~ 651-4118

Author: Bradford

Bill No. 1384

Background Information Form

Please complete this form and return it to the Senate Committee on Public Safety. *Please e-mail your author's statement* (or any other lengthy material that may be excerpted in our analysis) to one of our committee assistants, Mona Cano or Dina Lucero. **PLEASE NOTE THE FOLLOWING:**

- Call the Committee as soon as possible to set your bill.
- The Committee WILL NOT automatically set any bill.
- Your bill may not be set until this form is completed and returned to the Committee.
- This form is two pages. Please complete every question. Send a copy of this completed form and any attachments to the Committee's Minority Policy Consultant, Eric Csizmar (eric.csizmar@sen.ca.gov (651-1772)).

1. What is the name, phone number, and e-mail address of the person on your staff responsible for this measure?

Name: David Johnson Phone Number: 319-2748 email: david.johnson@asm.ca.gov

2. Which agency, organization or individual requested the introduction of this bill?

Name: East Bay Community Law Center Phone Number: 510-548-4040

Contact Person: Jessie Warner

3. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support? Please attach copies of letters. Support will not be noted in an analysis if the Committee has not received a letter of support in a timely manner.

California Probation, Parole and Correction Association; California Attorneys For Criminal Justice; California Public Defenders Association; Legal Services For Prisoners With Children; California Coalition For Women Prisoners; Conference of California Bar Association; Lawyers' Committee For Civil Rights; Stanford Community Law Clinic; San Francisco Public Defender; AFSCME; ACLU

4. Which agencies, organizations or individuals have expressed opposition? Please attach copies of letters.

California District Attorneys Association

5. If a similar bill has been introduced in this or any previous session, what was the number and year of its introduction?

AB 2068 (Hill, 2010) Vetoed by the Governor

6. What problem or deficiency under current law does the bill seek to remedy? Please be specific as possible, and include any legal or empirical information upon which the bill is based. **NOTE:** Some or all of this statement may be quoted verbatim in the Committee's analysis.

The Problem in Existing Law which this Bill will Remedy

California's expungement process is currently inconsistent. Penal Code § 1203.4, which applies to cases where the judge sentences someone to probation, allows the courts to exercise their discretion to dismiss a conviction "in the interests of justice." However, there is no parallel provision in Penal Code § 1203.4a, which applies to misdemeanor cases where the judge did not order probation.

This bill amends California Penal Code § 1203.4a to provide the courts with discretion to dismiss misdemeanor convictions where the person has not been sentenced to probation. The proposed amendment to Penal Code § 1203.4a would mirror the language found in § 1203.4, allowing the courts to exercise their discretion to dismiss a conviction "in the interests of justice."

Author's Statement

"Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In this tough economic downturn, organizations that serve clients with criminal records have experienced an increase in the number of people seeking to clean up their criminal records; as most job seekers find past convictions are a significant barrier to finding employment.

In today's climate, job seekers, who were suddenly laid off after years of working, find they are unable to find a new job because of a conviction that occurred many years ago. Some of those job seekers are unable to get low level misdemeanor convictions expunged from their records due to this inconsistency in the California expungement process.

This bill can increase employment opportunities for people with past convictions and decrease the state's recidivism rate, which is the highest in the nation (70%). Reducing recidivism will enhance public safety and decrease the amount of money that the state spends on incarceration."

The Legislative History of Penal Code § 1203.4a Supports the Conclusion that Penal Code § 1203.4a was intended to parity Penal Code § 1203.4

AB 2242 (Danielson, 1963) created Penal Code § 1203.4a. In a letter to Governor Brown, Sr., Assembly Member Danielson stated that AB 2242 was “intended to meet a deficiency in the present law, namely, the lack of a provision to permit the rehabilitation of the lowest grade of misdemeanor... [T]he one who is merely fined or who serves a jail sentence but is not required to serve a period of probation. AB 2242 proposes to supply this deficiency by providing a remedy comparable to that in Section 1203.4, Penal Code...I submit that this bill supplies a remedy which has long been needed in our Penal Code; a low grade misdemeanor should have at least the same rights of rehabilitation as those provided to high misdemeanants and felons[.]” When AB 2242 reached the Senate both the District Attorneys and the Peace Officers Associations supported the bill [AB 2242 was proposed by U.S. Court of Appeals Justice Arthur Alarcón, who at the time was Governor Brown’s Career Executive Secretary].

In 1971, Governor Ronald Regan signed SB 248 (Combs, 1970) into law, which amended Penal Code § 1203.4 to allow a court to dismiss a conviction “in the interest of justice.” “[T]he amendment was requested by the attorney for a defendant who, after a probation violation, completed his probation with no further violations, raised his child alone, and then went to college, worked without pay for the State Parole Board, and was trying to become a social worker.” (People v. McLernon, 174 Cal.App.4th 569 (2009)) (McLernon was prohibited from getting a job as a social worker due to his misdemeanor conviction). Thus, the 1971 amendment was designed to give someone a second chance at expungement relief.

However, SB 248 did not amend Penal Code § 1203.4a, even though § 1203.4a includes misdemeanor convictions of the lowest grade. Thus, the legislative intent of AB 2242, to create a comparable expungement remedy for those who committed a low level misdemeanor, was lost. This bill will restore the legislative intent of AB 2242 and ensure, once again, that the “lowest grade of misdemeanor” will have the same opportunity for rehabilitation under procedures similar to those available under Section 1203.4.

7. Are you planning any amendments to be offered before the Committee hearing? YES NO
If so, please describe the amendments. **NOTE: THE HEARING OF A BILL MAY BE DELAYED IF 1 SIGNED AND 6 UNSIGNED COPIES OF THE AMENDMENTS IN LEGISLATIVE COUNSEL FORM ARE NOT PROVIDED TO THE COMMITTEE IN A TIMELY MANNER.**
8. If you have any further background information or material relating to this measure (letters of support or opposition, reports, court cases, Legislative Counsel Opinions, citations, etc.), please attach copies or state where such information is available.

SENATE RULES COMMITTEE

AB 1384

Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1384
Author: Bradford (D), et al.
Amended: 6/29/11 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 6/21/11

AYES: Hancock, Calderon, Liu, Price, Steinberg

NOES: Anderson

NO VOTE RECORDED: Harman

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 47-25, 5/12/11 - See last page for vote

SUBJECT: Expungement standards

SOURCE: East Bay Community Law Center

DIGEST: This bill (1) allows a court, in its discretion and in the interest of justice, to determine that a defendant, who has been convicted of a misdemeanor and not granted probation or an infraction, should be granted expungement relief after the lapse of one year from the date of pronouncement of the judgment; and (2) establishes that these expungement provisions shall not apply to a person who is convicted of a misdemeanor lewd and lascivious act on a child 14 or 15 years old when the perpetrator was 10 or more years older than the victim.

ANALYSIS: Existing law provides that in any case where the defendant has fulfilled the conditions 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 expungement relief, and where the defendant is

not serving a sentence for any offense, on probation for any offense or charged with any offense, the defendant shall at any time after the termination of the period of probation be allowed to withdraw his/her plea of guilty, or if he/she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case, the court shall dismiss the accusation against the defendant, and, except as noted, the defendant shall be released from all penalties and disabilities. (Penal Code Section 1203.4(a).)

Existing law prohibits the expungement of the record of conviction for persons convicted of child molestation, continuous sexual abuse of a child, sodomy with a child under the age of 14, oral copulation with a child under the age of 14, and sexual penetration of a child under the age of 14. (Penal Code Section 1203.4(b).)

Existing law states that dismissal of an accusation or information pursuant to Penal Code Section 1203.4 does not permit a person to own, possess, or have in his/her custody or control any firearm or prevent him/her from being convicted of the offense of being an ex-felon in possession of a firearm. (Penal Code Section 1203.4(a).)

Existing law states that an order of dismissal does not relieve him/her of the obligation to disclose the conviction in response to any questions contained in any questionnaire or application for public office, or for licensure for any state or local agency. (Penal Code Section 1203.4(a).)

Existing law provides that, despite the accusatory pleading having been dismissed, in any other subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. (Penal Code Section 1203.4(a).)

Existing law states that every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he/she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his/her plea of guilty or nolo contendere and enter a plea of not guilty; or if he/she has been convicted after a plea of not guilty, the court

shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he/she has been convicted. (Penal Code Section 1203.4a(a).)

This bill provides that a court, in its discretion and in the interest of justice, can determine that a defendant who has been convicted of a misdemeanor and not granted probation or an infraction should be granted expungement relief after the lapse of one year from the date of pronouncement of the judgment.

This bill provides that its expungement provisions shall not apply to a person who is convicted of a misdemeanor lewd and lascivious act on a child 14 or 15 years old when the perpetrator was 10 or more years older than the victim.

This bill provides that dismissal of an accusatory pleading pursuant to this section does not permit a person to own, possess, or have in his/her custody or control any firearm or prevent his/her conviction.

This bill provides dismissal of an accusatory pleading underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

Prior Legislation

AB 2068 (Hill), 2009-10 Session, passed the Senate with a vote of 23-10 on August 19, 2010. This bill was subsequently vetoed by Governor Schwarzenegger. In his veto message the Governor stated:

This bill would allow persons convicted of a misdemeanor and not granted probation to expunge the conviction at a future date for any reason so long as a court finds that it is in the 'interest of justice.' Proponents of this measure argue that existing law is unfair because someone can petition a court for any reason, if granted probation, whereas if someone is not granted probation, it requires a person to live crime free for one year before being able to obtain relief. If expungement is an appropriate remedy for those who have truly rehabilitated themselves, then living an

honest and upright life for one year should not present too high a bar. Consequently, I do not believe a change in law is warranted.

AB 2582 (Adams) Chapter 99, Statutes of 2010

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 7/8/11)

East Bay Community Law Center (source)
American Civil Liberties Union
American Federation of State, County and Municipal Employees
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Probation, Parole and Correction Association
California Public Defenders Association
Conference of California Bar Associations
East Bay Community Law Center
Lawyers' Committee for Civil Rights
Legal Services for Prisoners With Children
Los Angeles County District Attorney's Office
San Francisco Public Defender
Stanford Community Law Clinic

ARGUMENTS IN SUPPORT: According to the author, "Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In this tough economic downturn, organizations that serve clients with criminal records have experienced an increase in the number of people seeking to clean up their criminal records; as most job seekers find past convictions are a significant barrier to finding employment.

"In today's climate, job seekers, who were suddenly laid off after years of working, find they are unable to find a new job because of a conviction that occurred many years ago. Some of those job seekers are unable to get low level misdemeanor convictions expunged from their records due to this inconsistency in the California expungement process.

"This bill can increase employment opportunities for people with past convictions and decrease the state's recidivism rate, which is the highest in the nation (70%). Reducing recidivism will enhance public safety and decrease the amount of money that the state spends on incarceration."

ASSEMBLY FLOOR:

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Galgiani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, V. Manuel Pérez, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Conway, Cook, Donnelly, Fletcher, Beth Gaines, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Olsen, Perea, Silva, Smyth, Valadao, Wagner

NO VOTE RECORDED: Achadjian, Bill Berryhill, Cedillo, Garrick, Gorell, Norby, Portantino, Torres

RJG:do 7/12/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

SENATE RULES COMMITTEE

AB 1384

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1384
Author: Bradford (D), et al.
Amended: 6/29/11 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 6/21/11

AYES: Hancock, Calderon, Liu, Price, Steinberg

NOES: Anderson

NO VOTE RECORDED: Harman

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 47-25, 5/12/11 - See last page for vote

SUBJECT: Expungement standards

SOURCE: East Bay Community Law Center

DIGEST: This bill ~~is to~~ (1) allows a court, in its discretion and in the interest of justice, to determine that a defendant, who has been convicted of a misdemeanor and not granted probation or an infraction, should be granted expungement relief after the lapse of one year from the date of pronouncement of the judgment; and (2) establishes that these expungement provisions shall not apply to a person who is convicted of a misdemeanor lewd and lascivious act on a child 14 or 15 years old when the perpetrator was 10 or more years older than the victim.

ANALYSIS: Existing law provides that in any case where the defendant has fulfilled the conditions 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 expungement relief, and where the defendant is

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CONTINUED

not serving a sentence for any offense, on probation for any offense or charged with any offense, the defendant shall at any time after the termination of the period of probation be allowed to withdraw his/her plea of guilty, or if he/she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case, the court shall dismiss the accusation against the defendant, and, except as noted, the defendant shall be released from all penalties and disabilities. (Penal Code Section 1203.4(a).)

Existing law prohibits the expungement of the record of conviction for persons convicted of child molestation, continuous sexual abuse of a child, sodomy with a child under the age of 14, oral copulation with a child under the age of 14, and sexual penetration of a child under the age of 14. (Penal Code Section 1203.4(b).)

Existing law states that dismissal of an accusation or information pursuant to Penal Code Section 1203.4 does not permit a person to own, possess, or have in his/her custody or control any firearm or prevent him/her from being convicted of the offense of being an ex-felon in possession of a firearm. (Penal Code Section 1203.4(a).)

Existing law states that an order of dismissal does not relieve him/her of the obligation to disclose the conviction in response to any questions contained in any questionnaire or application for public office, or for licensure for any state or local agency. (Penal Code Section 1203.4(a).)

Existing law provides that, despite the accusatory pleading having been dismissed, in any other subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. (Penal Code Section 1203.4(a).)

Existing law states that every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he/she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his/her plea of guilty or nolo contendere and enter a plea of not guilty; or if he/she has been convicted after a plea of not guilty, the court

shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he/she has been convicted. (Penal Code Section 1203.4a(a).)

This bill provides that a court, in its discretion and in the interest of justice, can determine that a defendant who has been convicted of a misdemeanor and not granted probation or an infraction should be granted expungement relief after the lapse of one year from the date of pronouncement of the judgment.

This bill provides that its expungement provisions shall not apply to a person who is convicted of a misdemeanor lewd and lascivious act on a child 14 or 15 years old when the perpetrator was 10 or more years older than the victim.

This bill provides that dismissal of an accusatory pleading pursuant to this section does not permit a person to own, possess, or have in his/her custody or control any firearm or prevent his/her conviction.

This bill provides dismissal of an accusatory pleading underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

Prior Legislation

AB 2068 (Hill), 2009-10 Session, passed the Senate with a vote of 23-10 on August 19, 2010. This bill was subsequently vetoed by Governor Schwarzenegger. In his veto message the Governor stated:

This bill would allow persons convicted of a misdemeanor and not granted probation to expunge the conviction at a future date for any reason so long as a court finds that it is in the 'interest of justice.' Proponents of this measure argue that existing law is unfair because someone can petition a court for any reason, if granted probation, whereas if someone is not granted probation, it requires a person to live crime free for one year before being able to obtain relief. If expungement is an appropriate remedy for those who have truly rehabilitated themselves, then living an

honest and upright life for one year should not present too high a bar. Consequently, I do not believe a change in law is warranted.

AB 2582 (Adams) Chapter 99, Statutes of 2010

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 7/8/11)

East Bay Community Law Center (source)
American Civil Liberties Union
American Federation of State, County and Municipal Employees
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
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Conference of California Bar Associations
East Bay Community Law Center
Lawyers' Committee for Civil Rights
Legal Services for Prisoners With Children
Los Angeles County District Attorney's Office
San Francisco Public Defender
Stanford Community Law Clinic

ARGUMENTS IN SUPPORT: According to the author, "Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In this tough economic downturn, organizations that serve clients with criminal records have experienced an increase in the number of people seeking to clean up their criminal records; as most job seekers find past convictions are a significant barrier to finding employment.

"In today's climate, job seekers, who were suddenly laid off after years of working, find they are unable to find a new job because of a conviction that occurred many years ago. Some of those job seekers are unable to get low level misdemeanor convictions expunged from their records due to this inconsistency in the California expungement process.

"This bill can increase employment opportunities for people with past convictions and decrease the state's recidivism rate, which is the highest in the nation (70%). Reducing recidivism will enhance public safety and decrease the amount of money that the state spends on incarceration."

ASSEMBLY FLOOR:

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Galgiani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, V. Manuel Pérez, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Conway, Cook, Donnelly, Fletcher, Beth Gaines, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestandé, Nielsen, Olsen, Perea, Silva, Smyth, Valadao, Wagner

NO VOTE RECORDED: Achadjian, Bill Berryhill, Cedillo, Garrick, Gorell, Norby, Portantino, Torres

RJG:do 7/11/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

**AB 1384 (Bradford)
Oppose**

Assembly Floor: 47-25 (05/12/11)

(NO: All Republicans except; ABS: Achadjian, Berryhill, Garrick, Gorell, Norby;)

Vote requirement: 21

Version Date: 06/29/2011

Quick Summary

Allows a judge to permit a person convicted of a misdemeanor who was not placed on formal probation, the ability to have his or her criminal conviction expunged after one year "in the interests of justice." Current law only permits this if the person has, for one year since the original criminal conviction "lived an honest and upright life and has conformed to and obeyed the laws of the land." Provides that persons who commit misdemeanor lewd and lascivious acts or specified vehicle code misdemeanors are not eligible for conviction expungement.

NOTE: A substantially similar bill, AB 2068 (Hill, 2010) passed the Senate 23-10 (NO: Dutton, Emmerson, Harman, Huff, Strickland, Wyland; ABS: Walters) and the Assembly 45-29 (NO: Anderson, Berryhill, Fuller, Gaines) but was vetoed by Governor Schwarzenegger (See other issues.)

Fiscal Effect

Mo 6/29/11

MINOR STATE COSTS

According to the Administrative Office of the Courts, any costs resulting from the need to process additional expungements resulting from this bill would be minor and absorbable.

Fiscal Consultant: *Matt Osterli*

Analysis

Arguments in Support:

- 1) The current statute for expungement has some minor issues. Basically an individual who does not remain crime free for one year after their conviction can never get an expungement. This bill would change that language so that individuals who have been productive citizens for decades can have their record expunged.
- 2) According to the American Civil Liberties Union, "California faces significant reentry challenges, with one in five adults showing a criminal record on a background check. Studies have shown that the economic support provided by expungement reduces the rate of recidivism. The dismissal remedy in California (also known as an 'expungement') applies to specific crimes and requires individuals to prove their rehabilitation to a judge. Evidence of

rehabilitation in the form of an expungement has the power to remove barriers in employment, licensing, and housing. AB 1384 takes a small step and cleans up an inconsistency in California's expungement statutes, codified at §§ 1203.4 and 1203.4a of the Penal Code. Penal Code § 1203.4a (which applies to felonies and misdemeanor cases where probation is sentenced) empowers judges to exercise their discretion to dismiss a conviction 'in the interests of justice.' There is no parallel provision in Penal Code § 1203.4a (which applies only to misdemeanor cases where no probation is sentenced). AB 1384 will give judges discretion, under Penal Code § 1203.4a, to expunge misdemeanor convictions regardless of whether or not probation is sentenced. By eliminating this inconsistency in the way misdemeanors are treated for purposes of California's expungement remedies, AB 1384 will ensure that individuals whose good behavior and rehabilitation are recognized by the court receive the benefit of the expungement remedies when they apply for employment and housing. The bill will not affect the convictions for law enforcement and criminal justice purposes."

Arguments in Opposition:

- 1) The author has identified what some may consider to be a minor "glitch" in the current expungement process. Basically an individual committed two minor crimes in a year and 30+ years later after living a law-abiding, productive life they cannot have their record expunged. However this bill addresses a population of individuals far more expansive than the intended targets. While the idea is well intended the sponsor and author have intentionally drafted it in a manner that is fundamentally flawed. Under existing law (Penal Code § 1203.4a), all that is required for expungement is for one year to pass and the person must have "lived an honest and upright life and has conformed to and obeyed the laws of the land." Basically the individual has to receive probation from the judge and last just one year without committing another crime. All this bill does is add language stating that the judge can expunge their record after one year regardless of whether they commit another crime or not. The only limitation is that they must have completed their sentence, not be serving a sentence for another crime or not be under charge for the commission of another crime at the time of expungement. A more common sense approach that would address the type of problem they identify is simply to place a longer "crime free" time period in statute. Honestly, is it really that unfair or burdensome to ask individuals to be crime free for 1 or 3 years before they have their criminal record expunged?
- 2) Criminal expungement should be limited. Criminal trials are public proceedings and members are considering hiding these convictions from potential employers and the public. It may seem minor but certain eligible offenses may be critical for an employer to know about such as statutory rape and sexual battery.
- 3) It is great that we are concerned about reformed criminals being able to get jobs and become productive members of society but this really isn't the correct answer to their problem. Those concerned about the impact of a criminal

conviction on their ability to obtain jobs, housing, or licenses have a simple remedy – don't commit crimes.

4) Contrary to the statements of the supporters, this section and Penal Code § 1203.4 (applicable to persons placed on formal probation) are not analogous. A person on formal probation is subject to numerous terms and conditions and typically must serve three years on probation. It is not unreasonable to have a more restrictive standard for persons not subject to these restrictions and who are eligible for expungement after only one year.

Other Issues:

Governor's Veto:

AB 2068 (Hill, 2010) was substantially similar to this measure. It was vetoed by Governor Schwarzenegger. In his veto message, the Governor wrote: "This bill would allow persons convicted of a misdemeanor and not granted probation to expunge the conviction at a future date for any reason so long as a court finds that it is in the "interest of justice." Proponents of this measure argue that existing law is unfair because someone can petition a court for any reason, if granted probation, whereas if someone is not granted probation, it requires a person to live crime free for one year before being able to obtain relief. If expungement is an appropriate remedy for those who have truly rehabilitated themselves, then living an honest and upright life for one year should not present too high a bar. Consequently, I do not believe a change in law is warranted."

Digest

Provides that a judge may expunge a conviction or plea guilty or no contest after a lapse of one year from the date of pronouncement of judgment, a court, in its discretion and in the interests of justice, may grant the relief available pursuant to this section to a defendant convicted of a misdemeanor and not granted probation if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense, and is not under charge of commission of any crime.

Provides that this provision does not apply to a misdemeanor violation of subdivision (c) of Section 288 (lewd and lascivious acts with a child) or to Vehicle Code Section 42002.1 (failure to stop and submit to inspection of equipment or for an unsafe condition endangering a person.)

Background

Existing law provides that every defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction, shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the

land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted. This authority does not relieve the person from provisions relating to the ability to own or possess firearms or specified provisions or the Vehicle Code relating to driver's license revocation or suspension. This authority does not apply to specified Vehicle Code misdemeanors, or to any Vehicle Code infraction. A person may be charged up to \$120 for court and local costs associated with processing the record expungement. Special procedures are specified in cases involving infractions. (Penal Code § 1203.4a)

Existing law provides that 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 the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery. Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm. This provision does not apply to certain misdemeanors such as those involving sexual offenses. (Penal Code § 1203.4)

What is expungement

Expungement is a statutory process whereby an individual convicted of a crime petitions the court to have his or her conviction set aside. In practice the original plea of "guilty" or "no contest" is being withdrawn and a plea of "not guilty" is being entered or the verdict of guilty is being set aside. The result is that the petitioner is released from all penalties and disabilities resulting from the offense of which he or she has been convicted with certain exceptions. One of the most significant benefits of this process appears to be that those individuals applying for a job and confronted with the question "have you ever been convicted of a crime?" may answer in the negative. Essentially once an order for relief pursuant to 1203.4 has been granted, the former-probationer can lawfully state that they have not been convicted of a crime when asked on a job application from a private employer. This does not apply to law enforcement, public office, licensure by any state or local agency or when contracting with the California State Lottery. Expungement also do not apply to DUI convictions, gun ownership, sex offender registration, nor does it stop the conviction from being recognized by the courts or law enforcement.

Examples from the author/sponsor:

According to the sponsor, the East Bay Community Law Center, "Client A struggled with substance abuse in his early years, and got started on the wrong path. While in his addiction, he was convicted on more than one occasion of misdemeanor petty theft in the '60s and '70s. In most instances, these misdemeanor convictions occurred very close in time and did not include probation as part of the sentence. This client's last conviction was in 1983, over 25 years ago. Despite compelling evidence of 25 years of rehabilitation, including demonstrated sobriety and the establishment of a successful business over 20 years ago, this client is unable to get these more than 40 year-old misdemeanor convictions expunged from his record without judicial discretion.

"Client B was young and rebellious in the '70s and early '80s. He picked up a misdemeanor conviction for contempt of court while appearing in traffic court for failing to obey a street sign. He was not sentenced to probation, but unfortunately a few months later he was convicted of providing false information to a police officer. Client B's last conviction, for disturbing the peace, occurred in 1983. Under current law, Client B's contempt of court conviction cannot be dismissed despite over 25 years of demonstrated rehabilitation. He is a licensed minister, has worked as a substance abuse counselor for ten years, has his own cable show, and has also self-published a book. Even after all these years, Client B's past convictions are now keeping him from working for the federal government unless they can be expunged."

Author's Statement:

According to the author, "Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In this tough economic downturn, organizations that serve clients with criminal records have

experienced an increase in the number of people seeking to clean up their criminal records; as most job seekers find past convictions are a significant barrier to finding employment.

In today's climate, job seekers, who were suddenly laid off after years of working, find they are unable to find a new job because of a conviction that occurred many years ago. Some of those job seekers are unable to get low level misdemeanor convictions expunged from their records due to this inconsistency in the California expungement process.

This bill can increase employment opportunities for people with past convictions and decrease the state's recidivism rate, which is the highest in the nation (70%). Reducing recidivism will enhance public safety and decrease the amount of money that the state spends on incarceration."

Related Legislation

AB 2582 (Adams) (Ch. 99, Stats. of 2010) added infractions to the expungement statutes.

AB 2068 (Hill, 2010) was substantially similar to this bill. It was vetoed by Governor Schwarzenegger.

Support & Opposition Received

Support: East Bay Community Law Center (sponsor); California Probation, Parole and Correction Association; California Attorneys For Criminal Justice; California Public Defenders Association; Legal Services For Prisoners With Children; California Coalition For Women Prisoners; Conference of California Bar Association; Lawyers' Committee For Civil Rights; Stanford Community Law Clinic; San Francisco Public Defender; AFSCME; ACLU

Opposition: California District Attorneys Association

Senate Republican Policy Office / *Eric Csizmar*

ASSEMBLY THIRD READING
 AB 1384 (Bradford)
 As Amended March 21, 2011
 Majority vote

PUBLIC SAFETY 4-2 APPROPRIATIONS 12-5

Ayes: Ammiano, Cedillo, Hill, Mitchell

Ayes: Fuentes, Blumenfield, Bradford,
 Charles Calderon, Campos, Davis,
 Gatto, Hall, Hill, Lara, Mitchell,
 Solorio

Nays: Knight, Hagman

Nays: Harkey, Donnelly, Nielsen, Norby,
 Wagner

SUMMARY: Amends existing provisions of law relating to expungement standards. Specifically, this bill:

- 1) Allows the court to grant expungement relief in the "interests of justice," as specified.
- 2) Makes expungement unavailable for misdemeanor convictions of lewd acts upon a child 15 years of age or younger when the perpetrator is 10 years older than the child.
- 3) Makes expungement unavailable for misdemeanor convictions of lewd acts upon a dependent person by a caretaker.

EXISTING LAW:

- 1) Provides a procedure for misdemeanants not granted probation and persons convicted of an infraction to obtain a dismissal (expungement) of the case. This includes those misdemeanants given "conditional sentences," including informal probation and court probation.
- 2) Provides that specified misdemeanors and infractions arising under the Vehicle Code are ineligible for expungement relief.
- 3) Provides a procedure for many felons and misdemeanants granted formal probation, with the exception of those convicted of certain crimes, to obtain expungement of the case. This includes those who successfully complete formal probation, as well as any other case in which a court, in its discretion and in the interests of justice, determines the relief is warranted.
- 4) Punishes the commission of a lewd act upon a child of 14 or 15 years by a person who is at least 10 years older than the child with a prison sentence of one, two, or three years, or with imprisonment in the county jail for up to one year.
- 5) Punishes the commission of a lewd act upon a dependent by a caretaker with a prison sentence of one, two, or three years, or with imprisonment in the county jail for up to one year.

FISCAL EFFECT: According to the Assembly Appropriations Committee, minor absorbable trial court costs by extending judicial discretion for expungement to misdemeanants who have not been given a probation term.

COMMENTS: According to the author, "Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In this tough economic downturn, organizations that serve clients with criminal records have experienced an increase in the number of people seeking to clean up their criminal records; as most job seekers find past convictions are a significant barrier to finding employment.

"In today's climate, job seekers, who were suddenly laid off after years of working, find they are unable to find a new job because of a conviction that occurred many years ago. Some of those job seekers are unable to get low level misdemeanor convictions expunged from their records due to this inconsistency in the California expungement process.

"This bill can increase employment opportunities for people with past convictions and decrease the state's recidivism rate, which is the highest in the nation (70%). Reducing recidivism will enhance public safety and decrease the amount of money that the state spends on incarceration"

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

FN: 0000525

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Misael Vences Maya**

Case No.: **S255371**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 9, 2019, I served the attached **UNOPPOSED MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Wayne C. Tobin
Attorney at Law
1560-1 Newbury Road, #346
Newbury Park, CA 91320

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 9, 2019, at San Francisco, California.

M. Campos
Declarant

M. Campos
Signature