

RESOLUTION 06-06-2009

Infractions and Record Clearances

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code Section 1203.4a to read as follows:

1 §1203.4a

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

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

23 (b) Subdivision (a) does not apply to any misdemeanor falling within the provisions
24 of subdivision (b) of Section 42001 of the Vehicle Code, ~~or to any infraction.~~

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

35 (d) Any determination of amount made by a court under this section shall be valid
36 only if either (1) made under procedures adopted by the Judicial Council or (2) approved by
37 the Judicial Council.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Santa Clara County Bar Association

STATEMENT OF REASONS:

Existing Law: Penal Code Section 1203.4 as it is currently written only applies to misdemeanor convictions.

This Resolution: The proposed amendment allows persons convicted of infractions to petition the court for relief under the record clearance section of the Penal Code.

The Problem: The way the law is currently written, the only defendants entitled to relief under Penal Code Section 1203.4a are those convicted of misdemeanor offenses. There is currently no remedy for those persons convicted of infractions to petition the court for relief under the record clearance section of the Penal Code.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

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