

11-01-2011

DIGEST

Judicial Discretion for All Misdemeanor Expungements

RESOLUTIONS COMMITTEE RECOMMENDATION

TEXT OF RESOLUTION

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

§ 1203.4a

(a) 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, except as provided in Section 12021.1 of this code or Section 13555 of the Vehicle Code. ~~The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make an 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 the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.~~

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

(b) 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 an infraction, or of a misdemeanor and not granted probation, or both, 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.

(c) The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make an 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 the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

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

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

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

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

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS:

Existing Law: Provides for judicial dismissal of misdemeanor and infraction convictions after one year has lapsed since the date of judgment if the defendant has lived an honest and upright life and has conformed to and obeyed the laws of the land, during the one year period.

This Resolution: Asks the CCBA to support AB 1384 (Bradford), which was introduced on February 18, 2011. This resolution is similar to AB 2582 (Adams), which was sponsored by CCBA in 2010 legislative session. The original bill language included discretion for judges to grant petitions to judicially dismiss convictions. Similar amendments proposed in the 2010 legislative session, AB 2068 (Hill), were vetoed by Governor Schwarzenegger.

By amending Penal Code section 1203.4a to empower the courts to exercise their discretion “in the interests of justice,” AB 1384 will equalize the statutory scheme, with no additional cost to the judicial system. This resolution amends Penal Code section 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 section 1203.4a would mirror the language found in section 1203.4 and bring consistency and equity to the statutory scheme. AB 1384 will ensure that individuals whose good behavior and reformation are recognized by the court will receive the full benefit of the expungement remedies. Additionally, it is a safe, responsible, and practical policy amendment that enhances public safety.

The Problem: California’s expungement process is currently inconsistent. Penal Code section 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 section 1203.4a, which applies to misdemeanor cases where the judge did not order probation.

IMPACT STATEMENT

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

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