

Assembly Bill No. 2582

CHAPTER 99

An act to amend Section 1203.4a of the Penal Code, relating to criminal procedure.

[Approved by Governor July 15, 2010. Filed with
Secretary of State July 15, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2582, Adams. Infractions: dismissal of charge.

Existing law provides that every defendant convicted of specified misdemeanors and not granted probation shall, under specified conditions, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty and the court shall dismiss the accusatory pleading against the defendant. Existing law also authorizes the court to set aside any guilty verdict after trial against the defendant, under those same conditions. In either case, existing law releases the defendant, except as specified, from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would change an obsolete cross reference that determines which misdemeanors are exempt from dismissal and relief pursuant to these provisions. It would provide that defendants convicted of infractions, except specified motor vehicle related infractions, shall be permitted to seek dismissal of charges and release from all penalties and disabilities resulting from those offenses, as specified. The bill would also provide that a petition for dismissal of an infraction shall generally be by written declaration, and that the dismissal of an infraction shall not be granted unless the prosecuting attorney receives prior notice of the petition for dismissal, as specified.

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

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

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) Subdivision (a) does not apply 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.

(c) 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) 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) 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.