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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 1115                      **Hearing Date:** June 13, 2017  
**Author:** Jones-Sawyer  
**Version:** February 17, 2017  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SJ

**Subject:** *Convictions: Expungement*

## HISTORY

**Source:** Californians for Safety and Justice

**Prior Legislation:** AB 1585 (Alejo) Ch. 708, Stats. of 2014  
AB 651 (Bradford) Ch. 787, Stats. of 2013  
AB 1384 (Bradford) Ch. 284, Stats. of 2011  
AB 1068 (Hill) Vetoed 2010  
AB 2582 (Adams) Ch. 99, Stats. of 2010

**Support:** American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Center on Juvenile and Criminal Justice; Contra Costa County Defenders Association; Further the Work; Human Impact Partners; Los Angeles Regional Reentry Partnership; Prison Law Office; Reentry Council of the City and County of San Francisco; Reentry Solutions Group; Rubicon Programs; Social Justice Learning Institute

**Opposition:** None known

**Assembly Floor Vote:** 41 - 28

## PURPOSE

*The purpose of this bill is to allow individuals sentenced to state prison for a felony, that if committed after enactment of the 2011 Realignment legislation would have been eligible for county jail sentencing, to obtain an expungement.*

*Existing law* authorizes a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code § 1203.4, subd. (a).)

*Existing law* authorizes a court to grant expungement relief, with specified exceptions, for a misdemeanor conviction for which the sentence did not include a period of probation, or for an infraction conviction, if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code § 1203.4a, subd. (a).)

*Existing law* allows the court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to Penal Code section 1170(h), criminal justice realignment, if specified conditions are satisfied. (Pen. Code § 1203.41.)

*Existing law* allows the court to grant expungement relief for a conviction of solicitation or prostitution, if the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. (Pen. Code § 1203.49.)

*This bill* makes convictions for realigned felony offenses, which were committed prior to the enactment of Realignment, eligible for expungement. In other words, this bill applies to petitioners seeking to dismiss a conviction for a nonserious, nonviolent, or nonsexual offense for which he or she would have been sentenced to county jail pursuant to criminal justice realignment, but was sentenced to state prison because he or she was sentenced before the implementation of realignment.

*This bill* provides that the court, in its discretion and in the interests of justice, may grant the expungement relief only after the lapse of two years following the petitioner's completion of the sentence, provided that the petitioner is not under supervised release, and is not serving a sentence for, on probation for, or charged with the commission of any offense.

*This bill* allows the petitioner to make the application and the change of plea in person, or through an attorney, or a probation officer authorized in writing.

*This bill* provides that in any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and has the same effect as if it had not been dismissed.

*This bill* provides that a conviction dismissed by the relief provided for by this bill does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for any state or local license, or for contracting with the California State Lottery Commission.

*This bill* provides that the expungement relief provided for by this bill does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for such ownership or possession.

*This bill* provides that the expungement relief provided for by this bill does not permit a person prohibited from holding public office as a result of the dismissed conviction to hold public office.

*This bill* allows the court to charge up to \$150 for a petition for expungement to cover actual costs of services rendered. However, the court is required to consider the petitioner's ability to pay.

*This bill* prohibits the court from granting the expungement relief unless the prosecuting attorney has been given 15 days' notice of the petition. The probation officer is required to notify the prosecuting attorney when a petition is filed.

*This bill* provides that if the prosecutor fails to appear and object to the petition for dismissal, then the prosecuting attorney may not move to set aside or otherwise appeal the granting of relief. It is presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

## COMMENTS

### 1. Need for This Bill

In 2011, Governor Jerry Brown signed Assembly Bill 109, also referred to as “Realignment.” Under Realignment, offenders are authorized to serve their sentences in county jails and/or under local community supervision rather than state prison if they meet certain criteria. AB 109 authorizes a court to allow a defendant sentenced to county jail for a felony to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty, after the lapse of one or 2 years following the defendant’s completion of the sentence. In 2013, AB 651 was signed into law authorizing a court, in its discretion and in the interests of justice, to grant expungement relief for individuals convicted of a Realignment offense. Existing law requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she was convicted, except as specified.

Currently, defendants sentenced to state prison for a Realignment offense committed before the 2011 Realignment Legislation are not eligible to obtain expungement relief. Consequently, these individuals are still subject to the penalties resulting from the offenses of which they were convicted. AB 1115 will address this concern by allowing a court to determine, in the interest of justice, whether an individual convicted of a Realignment offense prior to 2011 should be granted expungement relief. Where there are barriers to housing, employment, education and other opportunities for economic stability, the likelihood of recidivism increases. Ultimately, this bill will help further reduce recidivism, building upon statewide efforts to assist those who have served their time and proven their willingness to be productive, contributing, law-abiding members of society.

### 2. Expungement Relief Generally

Defendants who have successfully completed probation, including early discharge, can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Pen. Code § 1203.4.) Defendants who have successfully completed a conditional sentence are also eligible to petition the court for expungement relief under Penal Code section 1203.4. (*People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129.) In addition, Penal Code section 1203.4 provides that the court can, in the furtherance of justice, grant this relief if the defendant did not successfully complete probation. (Penal Code §1203.4; see *People v. McLernon* (2009) 174 Cal.App.4th 569, 577.)

When relief is granted under Penal Code section 1203.4, the conviction is set aside and the charging document is dismissed. However, this neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. (*People v. Field*

(1995) 31 Cal.App.4<sup>th</sup> 1778, 1787.) Expungement also does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. (See *People v. Diaz* (1996) 41 Cal.App.4<sup>th</sup> 1424.)

Expungement relief pursuant to Penal Code section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question in any questionnaire or application for public office or for licensure by any state or local agency. (See e.g., Bus. & Prof. Code §§ 475, 480, 490; Ed. Code § 44009; *People v. Vasquez* (2001) 25 Cal.4<sup>th</sup> 1225, 1230.) If the employer is an entity statutorily authorized to request criminal background checks for prospective employees, the background check would reveal the expunged conviction with an entry noting the dismissal on the record. On the other hand, except as specified, employers cannot consider a conviction dismissed under Penal Code section 1203.4 in hiring decisions. (Lab. Code § 432.7.)

Expungement relief is not available for convictions of certain offenses. These include most felony child molestation offenses, other specific sex offenses, and a few traffic offenses. (Pen. Code §§ 1203.4 and 1203.4a.)

Expungement was originally available only when a defendant was placed on probation. Expungement relief has since been extended to other categories of cases. First, the relief was extended to misdemeanants who were not granted probation. (Pen. Code § 1203.4a.) After the enactment of Realignment, expungement was extended to persons sentenced for a realigned felony who served their sentence in county jail. (Pen. Code § 1203.41.) This bill extends expungement relief to those persons who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment.

### **3. Criminal Justice Realignment**

Criminal justice realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison, thus requiring that more felons serve their sentences in county jails. The law applies to qualified defendants who commit qualifying offenses and who were sentenced on or after October 1, 2011. Specifically, sentences to state prison are now mainly limited to individuals required to register as a sex offender and individuals with a current or prior conviction for a serious or violent offense. In addition to the serious, violent, registerable offenses ineligible for incarceration in a county jail, there are approximately 70 felonies which have been specifically excluded from eligibility for local custody (i.e., the sentence for which must be served in state prison).

### **4. Arguments in Support**

The Center on Juvenile and Criminal Justice supports this bill stating:

For many individuals convicted of a crime, there are consequences that continue beyond their incarceration or probation. The permanency of a criminal record can make it difficult for rehabilitated individuals to obtain a decent paying job, qualify for secure and safe housing, or pursue their educational goals. This is because many employers, landlords, and other entities exclude individuals that have a prior criminal conviction. In California today, there are over 4,000 ways a

criminal record operates as a barrier for those who have had a felony conviction. These barriers have been shown to increase the likelihood of recidivism.

AB 1115 seeks to close a gap within Californian expungement law. While individuals convicted of an AB 109 offense after the passage of Realignment are eligible for expungement, those convicted of the same offenses prior to Realignment cannot currently receive that relief. AB 1115 will make Realignment convictions predating Realignment eligible for expungement under judicial discretion. Providing this remedy will increase opportunity for people with older criminal records.

California Attorneys for Criminal Justice writes:

AB 1115 closes a loophole in the law that will allow relief for those individuals who meet the criteria specified in the bill, including not being able to seek relief until after 2 years from the completion of one's sentence and only if the defendant is not under supervised release, is not serving a sentence, is not on probation and is not charged with the commission of any offense.

...AB 1115 promotes the successful reentry into society of those who have previously been incarcerated. This will have a particularly positive impact on individuals in our community who have suffered disproportionately under the criminal justice system's policies of mass incarceration. This bill simply removes barriers that have already been lifted for those similarly situated whose only difference is that their crimes were committed before the passage of AB 109. AB 1115 is grounded in fairness and equal protection for those similarly situated individuals.

The bill contains clear language that the relief granted under this provision is subject to several conditions that apply to other individuals who have this same opportunity under AB 109, including, but not limited to, that the prior conviction may be pled and proved in any subsequent prosecution of the individual, and that the individual may not possess a firearm.

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