



## CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

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**BILL NUMBER:** AB 2138                      **VERSION:** AMENDED APRIL 2, 2018

**AUTHOR:** CHIU AND LOW                      **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** LICENSING BOARDS: DENIAL OF APPLICATION: REVOCATION OR SUSPENSION OF  
LICENSURE: CRIMINAL CONVICTIONS

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**Overview:** This bill would make significant amendments to the Board's enforcement process, including limits on when a board can deny, revoke or suspend a license based on a conviction or other act and limits on the length of probation. It also limits the Board's timeframe to decide on a petition to modify probation to 90 days.

### **Existing Law:**

#### **Law Related to Denying a License:**

- 1) Allows a board under the Department of Consumer Affairs (DCA) to deny a license on grounds the applicant has one of the following (Business and Professions Code (BPC) §480(a)):
  - a. A criminal conviction. A conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
  - b. Committed a dishonest, fraudulent, or deceitful act with intent to substantially benefit his/herself, or with the intent to substantially injure someone else.
  - c. Committed an act that, if committed by a licensee, would be grounds to suspend or revoke the license.
- 2) Only allows a board to deny a license if the crime or act is substantially related to the qualifications, functions, or duties of the profession. (BPC §480(a))
- 3) Prohibits a board from denying an applicant a license solely because he or she was convicted of a felony, if the applicant has obtained a certificate of rehabilitation. (BPC §480(b))
- 4) Prohibits a board from denying an applicant a license solely because he or she was convicted of a misdemeanor, if the applicant has met all of the rehabilitation requirements developed by the Board. (BPC §480(b))

- 5) Prohibits the denial of a license solely based on a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. The applicant must provide proof of the dismissal. (BPC §480(c))
- 6) Permits a board to deny a license because the applicant knowingly made a false statement of a fact that is required to be revealed in the license application. (BPC §480(d))
- 7) Requires a board to develop criteria for use when considering a denial, suspension, or revocation, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the profession it regulates (BPC §481)
- 8) States that the Board shall consider a crime or act to be substantially related to the qualifications, functions, or duties of one of the Board's professions if it substantially evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with public health, safety, or welfare. (16 CCR §1812)
- 9) Requires the Board to develop criteria to evaluate a person's rehabilitation when considering the denial, suspension, or revocation of a license. (BPC §482)
- 10) Requires the Board of Behavioral Sciences to consider the following when evaluating the rehabilitation of an applicant and his or her present eligibility for a license or registration (16 CCR §1813):
  - a. The nature and severity of the act or crimes;
  - b. Evidence of committing any subsequent acts;
  - c. The time elapsed since the acts;
  - d. The applicant's compliance with his or her terms of probation, parole, restitution, or other sanctions; and
  - e. Any evidence of rehabilitation by the applicant.

**Law Related to Suspending or Revoking a License:**

- 1) Permits a board to suspend or revoke a license because the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the profession. (BPC §490)
- 2) Permits a board to suspend a license if a licensee is not in compliance with a child support order. (BPC §490.5)
- 3) Provides that successful completion of any Penal Code diversion program or successful completion of an alcohol and drug problem assessment program shall not prohibit a board from taking disciplinary action against a licensee or from denying a license for professional misconduct. (BPC §492)

- 4) Allows, in a board proceeding to deny, suspend, revoke, or discipline a license, the board to inquire about the circumstances surrounding a crime to determine the degree of discipline or to determine if the conviction is substantially related to the profession. (BPC §493)

#### **Law Related to Expungement:**

- 1) Allows a court to permit a defendant to withdraw a plea of guilty or nolo contendere and enter a not guilty plea, or allows a court to set aside a guilty verdict, if the defendant has fulfilled the conditions of probation, been discharged from probation, or otherwise been granted relief. The court must then dismiss the accusations and release the defendant from all penalties and disabilities. The defendant is still required to disclose the conviction in an application for state licensure. This provision of law does not apply to certain sex offenses. (Penal Code (PC) §1203.4)
- 2) Allows a court to permit a defendant who was convicted of a misdemeanor or infraction and not granted probation to, after one year, withdraw a plea of guilty or nolo contendere and enter a not guilty plea, or allows a court to set aside a guilty verdict, if the defendant has fully complied with and completed the court's sentence, is not serving a sentence for another offense, and is obeying all laws. The court must then dismiss the accusations and release the defendant from all penalties and disabilities. (PC §1203.4a)
- 3) Allows a court to permit defendants who were convicted of certain felonies punishable by imprisonment in county jail, to, after a specified period of time of time after completion of the sentence, withdraw a plea of guilty or nolo contendere and enter a not guilty plea, or allows a court to set aside a guilty verdict, if the defendant is not under supervision or serving or charged for another offense. The court must then release the defendant from all penalties and disabilities. The defendant is still required to disclose the conviction in an application for state licensure. (PC §§1203.41, 1170)

#### **Other Law:**

- 1) Defines a "violent felony" to include several types of crimes. (PC §667.5(c)) (**Attachment D**)

#### **This Bill:**

- 1) Amends the definition of a "conviction" to mean a judgement following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. A board may act following the conviction when the time for appeal has elapsed, the conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence. (BPC §7.5)

#### **Law Related to Denying a License:**

- 1) Only permits a board to deny a license (including denying an unrestricted license and then issuing a restricted or probationary license) on grounds the applicant has been convicted of a crime or subjected to formal discipline under the following circumstances (BPC §480):
  - a. The applicant is presently incarcerated for the conviction, or the conviction occurred within the past 5 years. (The 5-year limit does not apply to a violent felony as defined in PC §667.5 (**Attachment D**)). A board may only deny for these reasons if the crime is directly and adversely related to the qualifications, functions, or duties of the business or profession; or

- b. The applicant has been subject to formal discipline by a licensing board in the past 5 years based on professional misconduct that would have been cause for discipline by the board to which he/she is applying, and the misconduct is directly and adversely related to the qualifications, functions, or duties of the business or profession. However, disciplinary action within the past 5 years cannot be a basis for denial if the basis for the disciplinary action was a conviction that has been dismissed pursuant to PC §§1203.4, 1203.4a, or 1203.41.
- 2) Prohibits a board from denying a license on the basis that he or she was convicted of a crime, or on the basis of acts underlying a conviction of a crime if the applicant has obtained a certificate of rehabilitation under Chapter 3.5 of Title 6 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to BPC §482. (BPC §480(b))
- 3) Prohibits a board from denying a license based on any conviction, or on the basis of acts underlying a conviction, that has been dismissed pursuant to PC §§1203.4, 1203.4a, or 1203.41, or a comparable dismissal or expungement. (BPC §480(c))
- 4) Prohibits a board from denying a license based on an arrest that resulted in an outcome other than a conviction, such as an arrest that resulted in an infraction, citation, or juvenile adjudication. (BPC §480(d))
- 5) Prohibits a board from denying a license solely on the applicant's failure to disclose a fact that would not have been cause for denial of the license. (BPC §480(e))
- 6) When requesting or acting on an applicant's criminal history information, requires a board to do the following (BPC §480(f)):
  - a. The board is prohibited from requiring an applicant to disclose any information or documentation regarding criminal history.
  - b. If the board decides to deny an application based on an applicant's conviction history, it must notify the applicant of the denial, the procedure to challenge the decision or request reconsideration, the right to appeal, and the process for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record.
- 7) Requires a board to retain documents submitted by the applicant, notices provided to the applicant, all communications from and provided to the applicant, and criminal history reports, for at least 3 years. (BPC §480(g))
- 8) Requires a board to retain the following data and report it each year on its web site and to the Legislature (BPC §480(g)):
  - a. Number of applications received for each license type;
  - b. Number of applications requiring criminal history inquiries;
  - c. Number of applicants with a criminal record who were denied or disqualified from licensure;
  - d. Number of applicants with a criminal record who provided evidence of rehabilitation;

- e. Number of applicants with a criminal record who appealed a denial or disqualification from licensure; and
  - f. Final outcome and demographic information, including voluntarily provided information on race or gender, of any applicant described in items c, d, or e above.
- 9) Provides that the provisions described above override any contradictory provisions currently in any board's licensing act. (BPC §480(i))
- 10) Requires a board to develop criteria to utilize to determine for use when considering a denial, suspension, or revocation, to determine whether a crime is directly and adversely related to the qualifications, functions, or duties of the profession it regulates. The board must post a summary of this criteria on its website. The criteria must include the following (BPC §481):
- a. The nature and gravity of the offense;
  - b. Number of years since the offense;
  - c. The nature and duties of the profession;
- 11) Prohibits a board from denying a license based on a conviction without considering rehabilitation. (BPC §481)
- 12) Limits the amount of time a license may be placed on probation to two years or less. Additional conditions may be imposed only if a board determines there is clear and convincing evidence that additional conditions are necessary to address a risk. (BPC §481.5)
- 13) Requires each board to develop criteria to use when considering probation conditions to determine what conditions may be imposed to address a risk shown by clear and convincing evidence. (BPC §481.5)
- 14) Allows a probationer to petition the board for a modification or termination of probation after one year. The board would then have 90 days to make a decision. If the board does not deny the petition within 90 days, it is considered granted. (BPC §481.5)
- 15) Requires a board to find an applicant is rehabilitated if he or she meets any of the following:
- a. Completion of the criminal sentence without violating parole or probation;
  - b. Can document that he or she has worked in a related field continuously for at least one year or successfully completed training in a related field, as long as there are no public or official findings of professional misconduct; or
  - c. Has satisfied criteria for rehabilitation developed by the board.
- 16) If, after a hearing requested by an applicant to appeal a denial, a board decides to grant the license, revoke it, stay the revocation and impose probationary conditions, requires the board to also issue a public reproof. (BPC §488)

**Law Related to Suspending or Revoking a License:**

- 1) Permits the board to suspend or revoke a license on grounds the licensee has been convicted of a crime, only if the crime is directly and adversely related to the qualifications, functions, or duties of the profession, and if one of the following is met (BPC §490(a)):
  - a. The applicant is presently incarcerated; or
  - b. The conviction occurred within the past 5 years (except for a “violent felony;” see **Attachment D**)
- 2) Permits a board to discipline a licensee for a conviction of any other crime only if both of the following are met (BPC §490(b))
  - a. The crime is directly and adversely related to the qualification, functions, or duties of the profession; and
  - b. The licensee was convicted of the crime within the past 5 years or is presently incarcerated for it. (Does not apply to a violent felony; see **Attachment D.**)
- 3) Prohibits a board from suspending or revoking a license based on a conviction or its underlying acts, if the conviction has been dismissed pursuant to Penal Code Sections 1203.4, 1203.4a, 1203.41, or 1203.42. (BPC §490(c))
- 4) Prohibits a board from suspending or revoking a license based on an arrest that resulted in a disposition other than a conviction, such as an infraction, citation, or juvenile adjudication. (BPC §490(d))
- 5) Requires a board to do the following in requesting or acting on a licensee’s criminal history information (BPC §490(e)):
  - a. Not require a licensee to disclose any documentation or information about his or her criminal history;
  - b. If the Board chooses to file an accusation base on the licensee’s conviction history, it must notify him or her in writing of how to request his or her complete conviction history, and how to question its accuracy and completeness.
- 6) Requires a board to retain documents submitted by the licensee, notices provided to the licensee, all communications from and provided to the licensee, and criminal history reports, for at least 3 years. (BPC §490(f))
- 7) Requires a board to retain the following data and report it each year on its web site and to the Legislature (BPC §490(f)):
  - a. Number of licensees with a criminal record who received notice of potential revocation or suspension of their license or who had it suspended or revoked;
  - b. Number of licensees with a criminal record who provided evidence of rehabilitation;
  - c. Number of licensees with a criminal record who appealed a suspension or revocation of a license; and

- d. Final outcome and demographic information, including voluntarily provided information on race or gender, of any applicant described in items a, b, or c above.
- 8) Provides that the provisions described above override any contradictory provisions currently in any board's licensing act. (BPC §490(g))
- 9) States that this section does not prohibit a board from disciplining a licensee for professional misconduct that is based on evidence independent of an arrest. (BPC §490(g))
- 10) Deletes the provision in law allowing a board to suspend a license if the licensee is not in compliance with a child support order. (BPC §490.5)
- 11) Prohibits a board from taking disciplinary action against a licensee or from denying a license for professional misconduct if any of the following are met (BPC §492):
  - a. Successful completion of a diversion program;
  - b. A deferred entry of judgement; or
  - c. Successful completion of a specified alcohol and drug assessment program prescribed under the Vehicle Code.

However, a board is permitted to take disciplinary action against a licensee for professional misconduct that falls within the scope of the profession, based on evidence that is independent of an arrest.

- 12) Provides that in a proceeding to deny, suspend, revoke, or discipline a license, the record of a conviction shall be conclusive evidence of the fact the conviction occurred. Removes the board's ability to inquire into the circumstances surrounding the commission of the crime to determine discipline or to determine the conviction is substantially related to the qualification, functions, or duties of the licensee. (BPC §493)
- 13) Requires a board to use the following criteria to determine if a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession (BPC §493):
  - a. The nature and gravity of the offense;
  - b. The years elapsed since the offense;
  - c. The nature and duties of the profession;
  - d. The board may not bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

**Comment:**

- 1) **Author's Intent.** According to the author, approximately 1 in 3 adults in California have arrest or conviction records. They note that California has one of the highest re-offense rates in the country, with many committing new crimes within a year of release. A root cause of this is the inability of these individuals to gain employment after release from jail. However, nearly 30% of California jobs require licensure, and qualified individuals are often denied a license, or their license is revoked or suspended based on prior arrests or convictions, many of which are old, unrelated to the job, or dismissed.

Therefore, the author is seeking to remove barriers on these individuals' ability to gain employment.

**2) Board Denials Based on Convictions.** The Board compiled data on applications denied based on convictions for Fiscal Years 2015/2016 and 2016/2017 (**Attachment A**).

- For Fiscal Year 2015/2016, there were 28 application denials that were appealed. Of these denials, 20 (71%) were for non-violent convictions.
- For Fiscal Year 2016/2017, there were 17 applications denied that were appealed. Of these denials, 16 (94%) were for non-violent convictions.

It should be noted that the data only includes applications denied that were appealed, as this was the information readily available at the time of writing this analysis. Most application denials (approximately 95%) are appealed, with the remainder typically waiting a year or so to re-apply.

**3) Effect of This Bill.** If this bill were to become law, key changes to the Board's current enforcement process would be as follows:

- The Board would be prohibited from denying, revoking, or suspending a license on the grounds an applicant had been convicted of a crime unless the conviction occurred in the past 5 years (this does not apply to a violent felony) and has not been expunged. The crime must be directly and adversely related to the qualifications, functions, or duties of the profession.
- For dismissed or expunged convictions, prohibits the Board from acting based on the crime's underlying acts.
- Prohibits the Board from requiring a licensee or applicant to disclose or document information about his or her criminal history.
- Requires the Board to collect and compile data regarding the outcomes of applicants or licensees with a criminal history.
- Limits probation terms to two years or less, unless the Board can provide clear and convincing evidence that additional conditions are necessary.
- Requires a Board to decide on a petition for modification or termination or probation within 90 days.

**4) Definition of "Violent Felony."** This bill excludes violent felonies from the requirement that in order to deny or discipline a license, it must have occurred in the past 5 years. Section 667.5(c) of the Penal Code (**Attachment D**) provides a definition of a "violent felony" for the purposes of determining prison terms.

However, at times, the Board denies licenses for nonviolent convictions. Examples of nonviolent convictions that Board applicants sometimes have include convictions for petty theft, grand theft, drug use, driving under the influence, disturbing the peace, or fraud.

These convictions may be substantially related to the practice of the profession, and may be especially relevant if there are multiple convictions showing a pattern.

- 5) Effect on Penal Code 23 Revocations.** At times, when a Board licensee is charged with a serious crime, Penal Code §23 permits a state agency to appear in court to provide information or make recommendations to the court that the license be temporarily revoked.

It is unclear how or if this bill would inhibit the Board's ability to seek a PC §23 revocation.

- 6) Department of Justice Background Checks.** This bill prohibits the Board from requiring a licensee or applicant to self-disclose criminal history information. The rationale for this is that any criminal history will show up on the person's Department of Justice (DOJ) background check.

However, according to the Board's enforcement unit, there are times that some criminal history is left off a DOJ background check, especially for more recent crimes.

- 7) Effect on Probation Process.** This bill restricts most probation terms to two years or less. According to the Board's enforcement unit, current probation terms typically range between 3 and 5 years.

Current law allows a probationer to petition to modify probation after 2 years for a probation term of 3 years or more, or after 1 year for a probation of less than 3 years. Upon filing of the petition, the hearing must be held within 180 days (BPC §4990.30).

This bill allows a probationer to petition to modify probation after 1 year, and requires the Board to decide within 90 days of the petition's filing.

- 8) Fiscal Effect.** This bill would likely have a substantial fiscal impact on the Board due to two factors:

- It shortens the timeframe for a probation petition. Currently, a hearing must be held within 180 days, but under the bill, the Board must decide within 90 days. Therefore, the Board would need to meet more frequently to make these decisions. It would also likely need additional legal staff and enforcement staff to comply with the 90-day time limit.
- It requires extensive data collection on applicants and licensees who have a criminal record. The Board would need modifications to its Breeze database system to track the required information, and potentially an additional staff position to collect and compile the information.

- 9) Conflict with Current Board Law.** The provisions of this bill contradict and override several existing enforcement provisions in the Boards existing licensing laws. For example, the Board's unprofessional conduct sections state criteria for denying a license or registration, much of which would be overridden. If this bill passes, the Board will need to work with its legal counsel to determine which areas of its licensing laws are in conflict and need to be revised. The Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines would also need significant revisions.

## 10) Previous Legislation.

- **AB 2396 (Chapter 737, Statutes of 2014)** was signed by the Governor and became effective on January 1, 2015. This bill removed the Board's ability to deny a license under BPC §480 because the applicant had a conviction, if that conviction had been expunged under Penal Code Sections 1203.4, 1203.4a, and 1203.41.

Penal Code Sections 1203.4, 1203.4a, and 1203.41 allow for the expungement of certain convictions after a specified length of time and fulfillment of the court's punishment. Expungement is not available for certain sex offenses, or for individuals who were sentenced to prison.

If the Board receives a case with an expunged conviction and has public protection concerns, it would need to "prove up" the case to take disciplinary action. This means that the Board needs to conduct its own investigation to substantiate the cause of the violation of law. This might involve interviewing parties involved in the incident, such as the arresting officer. If the Board can substantiate the violation, it may then present this information at a hearing.

The Board had an "oppose" position on AB 2396. In its letter to the Governor, the Board stated that the criteria for rehabilitation for an expungement is not the same as the criteria for rehabilitation to be able to practice safely as a psychotherapist. The letter also noted that Board has seen cases of applicants having multiple DUI, theft, and assault charges which occurred over the past 5-10 years, all of which have been expunged. To ensure public protection, the Board must examine each case individually to determine whether these convictions remain relevant to the safe practice of psychotherapy.

- **AB 1351** (Eggman), vetoed, 2015-2016 Legislative Session. This bill would have changed the existing deferred entry of judgment program for specified offenses involving personal use or possession of controlled substances into a pretrial drug diversion program that allows for a not guilty plea to be entered.
- **AB 1352** (Eggman), Chapter 646, Statutes of 2016, requires a court to allow a defendant to withdraw his or her guilty or nolo contendere plea and thereafter dismiss the case upon a finding that the case was dismissed after the defendant completed deferred entry of judgement and that the plea may result in the denial or loss to the defendant, as specified.
- **AB 813** (Gonzales), Chapter 739, Statutes of 2014, created an avenue of post-conviction relief for a person to vacate a conviction or sentence based on error damaging the petitioner's ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction.

## 11) Support and Opposition.

*Support:*

- All of Us or None
- Anchor of Hope Ministries
- Anti-Recidivism Coalition
- Because Black is Still Beautiful
- Californians for Prop 57
- Californians for Safety and Justice

- Center for Employment Opportunities (CEO)
- Center for Living and Learning
- Checkr
- East Bay Community Law Center
- Legal Services for Prisoners with Children
- Los Angeles Regional Reentry Partnership (LARRP)
- National Association of Social Workers - California Chapter
- Prisoner Reentry Network
- Project Rebound: Expanded
- REDF (Roberts Enterprise Development Fund)
- Rise Together Bay Area
- Root & Rebound
- San Jose State University Record Clearance Project
- The Young Women's Freedom Center

*Opposition:*

- None at this time.

**12) History.**

**2018**

04/03/18 Re-referred to Com. on B. & P.

04/02/18 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.

02/26/18 Referred to Com. on B. & P.

02/13/18 From printer. May be heard in committee March 15.

02/12/18 Read first time. To print.

**4) Attachments.**

**Attachment A:** Applications Denied Based on Convictions (Fiscal Year 2015/2016 and 2016-2017)

**Attachment B:** Penal Code Sections 1203.4, 1203.4a, 1203.41, and 1170

**Attachment C:** Current Law: Business and Professions Code Sections 480 and 490

**Attachment D:** Penal Code Section 667.5(c): Definition of "Violent Felony"

**Attachment E:** Board of Behavioral Sciences Regulation Section 1813: Criteria for Rehabilitation – Denial of Licensure

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## Attachment A Applications Denied Based on Convictions

Applications Denied Based on Convictions - FY 2015/2016	Count
Battery and Assault – (Violent Crime)	5
Driving Under the Influence & Assault – (Violent Crime)	2
Driving Under the Influence of Alcohol/Drugs - (Non-Violent Crime)	12
Theft & Fraudulent Act (Non-Violent)	3
Possession of Controlled Substances (Non-Violent)	3
Sexual Battery & Lewd Act (Violent Crime)	1
Other Crimes – (Non-Violent)	2
<b>Total Denials Based on Convictions</b>	<b>28*</b>

Applications Denied Based on Convictions - FY 2016/2017	Count
Battery and Assault – (Violent Crime)	1
Driving Under the Influence & Assault – (Violent Crime)	0
Driving Under the Influence of Alcohol/Drugs - (Non-Violent Crime)	7
Theft & Fraudulent Act (Non-Violent)	8
Possession of Controlled Substances (Non-Violent)	1
Sexual Battery & Lewd Act (Violent Crime)	0
Other Crimes – (Non-Violent)	0
<b>Total Denials Based on Convictions</b>	<b>17*</b>

\*It should be noted that the above information only includes applications denied that were appealed and became final decisions. The majority of denied applicants (approximately 95%) appeal their denial. The above information does not include applications that were denied and no appeals were received; that information was not readily available.

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**Attachment B**  
**Penal Code Sections 1203.4, 1203.4a, 1203.41, and 1170**

**Penal Code (PC) §1203.4.**

(a) (1) 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, except as provided in Section 13555 of the Vehicle Code. 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 Commission.

(2) 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 or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation or information 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.

(4) This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or 311.11, or any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or

expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). 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 costs for services established pursuant to this subdivision.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

*(Amended by Stats. 2013, Ch. 143, Sec. 2. (AB 20) Effective January 1, 2014.)*

#### **PC§ 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 Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 13555 of the Vehicle Code.

(b) If a defendant does not satisfy all the requirements of subdivision (a), 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 subdivision (a) 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) (1) 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.

(2) Dismissal of an accusatory pleading pursuant to this section 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 under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) 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.

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

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

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

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

(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.

(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.

(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.

*(Amended by Stats. 2013, Ch. 76, Sec. 153.5. (AB 383) Effective January 1, 2014.)*

#### **PC §1203.41.**

(a) If a defendant is sentenced pursuant to paragraph (5) of subdivision (h) of Section 1170, the court, in its discretion and in the interests of justice, may order the following relief, subject to the conditions of subdivision (b):

(1) The court may permit the defendant 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 he or she 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 13555 of the Vehicle Code.

(2) The relief available under this section may be granted only after the lapse of one year following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, or after the lapse of two years following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170.

(3) The relief available under this section may be granted only if the defendant is not under supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, and is not serving a sentence for, on probation for, or charged with the commission of any offense.

(4) The defendant shall be informed, either orally or in writing, of the provisions of this section and of his or her right, if any, to petition for a certificate of rehabilitation and pardon at the time he or she is sentenced.

(5) The defendant may make the application and change of plea in person or by attorney, or by a probation officer authorized in writing.

(b) Relief granted pursuant to subdivision (a) is subject to the following conditions:

(1) 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 the accusation or information had not been dismissed.

(2) The order shall state, and the defendant 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 Commission.

(3) 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 or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(4) Dismissal of an accusation or information 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.

(c) This section applies to any conviction specified in subdivision (a) that occurred before, on, or after January 1, 2014.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). 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 costs for services established pursuant to this subdivision.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

*(Added by Stats. 2013, Ch. 787, Sec. 1. (AB 651) Effective January 1, 2014.)*

## **PC §1170.**

(a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the

opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison or a term pursuant to subdivision (h) of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in paragraph (2) of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other law is equal to or exceeds any sentence imposed pursuant to this chapter, except for the remaining portion of mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or to the custody of the county correctional administrator. The court shall advise the defendant that he or she shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision, and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation. In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall select the term which, in the court's discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, or the county correctional administrator in the case of county jail inmates, recall the

sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(2) (A) (i) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(ii) Notwithstanding clause (i), this paragraph shall not apply to defendants sentenced to life without parole for an offense where it was pled and proved that the defendant tortured, as described in Section 206, his or her victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(B) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(iii) The defendant committed the offense with at least one adult codefendant.

(iv) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(C) If any of the information required in subparagraph (B) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(D) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(E) If the court finds by a preponderance of the evidence that one or more of the statements specified in clauses (i) to (iv), inclusive, of subparagraph (B) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(F) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

- (ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.
- (iii) The defendant committed the offense with at least one adult codefendant.
- (iv) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.
- (v) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.
- (vi) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.
- (vii) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.
- (viii) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.
- (G) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in subparagraph (F). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.
- (H) If the sentence is not recalled or the defendant is resented to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resented to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.
- (I) In addition to the criteria in subparagraph (F), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.
- (J) This subdivision shall have retroactive application.
- (K) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.
- (e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.
- (2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:
  - (A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.
  - (B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentencing or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, "secretary" or "warden" shall mean the county correctional administrator and "chief medical officer" shall mean a physician designated by the county correctional administrator for this purpose.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) (A) Unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on or after January 1, 2015.

(i) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

*(Amended (as amended by Stats. 2016, Ch. 887, Sec. 5.3) by Stats. 2017, Ch. 287, Sec. 1. (SB 670) Effective January 1, 2018. Repealed as of January 1, 2022, by its own provisions. See later operative version, as amended by Sec. 2 of Stats. 2017, Ch. 287.)*

**Attachment C**  
**Business and Professions Code Sections 480 and 490**

**Business and Professions Code (BPC) §480**

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

**BPC §490**

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

## ATTACHMENT D



## PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680] ( Part 1 enacted 1872. )

TITLE 16. GENERAL PROVISIONS [654 - 678] ( Title 16 enacted 1872. )

667.5- Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended. A term imposed under the provisions of paragraph (5) of subdivision (h) of Section 1170, wherein a portion of the term is suspended by the court to allow mandatory supervision, shall qualify as a prior county jail term for the purposes of the one-year enhancement.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody, including any period of mandatory supervision, or until release on parole or postrelease community supervision, whichever first occurs, including any time during which the defendant remains subject to reimprisonment or custody in county jail for escape from custody or is reimprisoned on revocation of parole or postrelease community supervision. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison or in county jail under subdivision (h) of Section 1170.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison or in county jail under subdivision (h) of Section 1170 if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health, or its successor the State Department of State Hospitals, as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Secretary of the Department of Corrections and Rehabilitation is incarcerated at a facility operated by the Division of Juvenile Justice, that incarceration shall be deemed to be a term served in state prison.

(k) (1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

*(Amended by Stats. 2014, Ch. 442, Sec. 10. (SB 1465) Effective September 18, 2014. Note: This section was amended on March 7, 2000, by initiative Prop. 21, and on Nov. 7, 2006, by initiative Prop. 83.)*

**Attachment E**  
**California Code of Regulation Title 16, Division 18, Section 1813**

**California Code of Regulation (CCR) Title 16:**

**§1813. CRITERIA FOR REHABILITATION-DENIAL OF LICENSURE**

When considering the denial of a license or registration under Section 480 of the Code, the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration shall consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in Section 480 of the Code.
- (d) The extent to which the applicant has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 480 and 482, Business and Professions Code.

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