

LEXSTAT CAL PEN CODE § 1203.4

DEERING'S CALIFORNIA CODES ANNOTATED  
Copyright (c) 2008 by Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED \*\*\*  
THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND  
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

PENAL CODE  
Part 2. Of Criminal Procedure  
Title 8. Of Judgment and Execution  
Chapter 1. The Judgment

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Pen Code § 1203.4 (2008)*

**§ 1203.4. Change of plea and dismissal of charges after termination of probation; Release from penalties and disabilities; Subsequent prosecutions; Registration of sex offenders; Possession of firearm; Reimbursement to county or city; Notice to prosecuting attorney**

(a) 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.

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 Section 12021.

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 subdivision (b) of *Section 42001 of the Vehicle Code*, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, 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 twenty dollars (\$120), 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 twenty dollars (\$120), 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 twenty dollars (\$120). 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) 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.

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.

#### **HISTORY:**

Added Stats 1935 ch 604 § 5. Amended Stats 1941 ch 1112 § 1; Stats 1951 ch 183 § 1; Stats 1961 ch 1735 § 1; Stats 1967 ch 1271 § 1; Stats 1970 ch 539 § 1; Stats 1971 ch 333 § 1; Stats 1976 ch 434 § 1; Stats 1978 ch 911 § 1; Stats 1979 ch 199 § 6. Amended Stats 1983 ch 1118 § 1; Stats 1985 ch 1472 § 1; Stats 1989 ch 917 § 11; Stats 1994 ch 882 § 1 (AB 1327); Stats 1997 ch 61 § 1 (AB 729); Stats 2000 ch 226 § 1 (AB 2320); Stats 2003 ch 49 § 1 (AB 580); Stats 2005 ch 704 § 3 (AB 439), ch 705 § 5 (SB 67), effective October 7, 2005; Stats 2007 ch 161 § 1 (AB 645), effective January 1, 2008.

#### **NOTES:**

#### **Amendments:**

**1941 Amendment:**

Substituted **(1)** "thereafter" for "prior to the expiration of the maximum period of punishment for the offense of which he has been convicted, dating from said discharge from probation of said termination of said period of probation" in the first sentence; and **(2)** "authorizing" for "authorized" after "attorney" in the third sentence.

**1951 Amendment:**

Substituted "or by the probation officer authorized" for "authorizing" after "attorney" in the third sentence.

**1961 Amendment:**

Added the second paragraph.

**1967 Amendment:**

Added "or plea of nolo contendere" in the first sentence of the first paragraph.

**1970 Amendment:**

**(1)** Designated the former section to be subd (a); **(2)** amended the first sentence of the first paragraph of subd (a) by **(a)** substituting "or has" for ", or who shall have" after "entire period thereof"; **(b)** substituting "shall, at any time thereafter, if he is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense," for ", shall at any time thereafter"; **(c)** adding the commas after "guilty; and" and after "in either case"; **(d)** substituting "the defendant and he" for "such defendant, who" after "information against"; and **(e)** deleting "or crime" after "from the offense"; **(3)** amended the third sentence of the first paragraph of subd (a) by **(a)** adding the comma after "provided, that"; and **(b)** substituting "the" for "such" after "prosecution of" and after "other offense,"; **(4)** added the comma after "own, possess" in the second paragraph of subd (a); **(5)** added the third paragraph of subd (a); and **(6)** added subd (b).

**1971 Amendment:**

**(1)** Amended the first paragraph of subd (a) by **(a)** substituting "In any case in which a" for "Every"; **(b)** deleting "who" before "has fulfilled the"; **(c)** deleting "his" after "conditions of"; **(d)** substituting "of probation" for "thereof" after "entire period"; **(e)** deleting "from probation" after "been discharged"; **(f)** substituting "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" for "thereof"; **(g)** substituting "after the termination of the period of probation" for "thereafter"; and **(h)** substituting "a" for "the" after "shall set aside"; and **(2)** substituted "November 23, 1970" for "the effective date of the amendment of this section enacted at the 1970 Regular Session of the Legislature" in the third paragraph of subd (a).

**1976 Amendment:**

(1) Substituted "the" for "a" after "set aside" in the first sentence of subd (a); and (2) amended the second sentence of subd (a) by (a) adding ", in his probation papers," before "of this right"; and (b) substituting "and his right, if any, to petition for a certificate of rehabilitation and pardon" for "in his probation papers" at the end of the sentence.

**1978 Amendment:**

Added ", except as provided in *Section 13555 of the Vehicle Code*" at the end of the first sentence of subd (a).

**1979 Amendment:**

Amended subd (a) by adding (1) "except as noted below," after "against the defendant and" in the first sentence; and (2) the second proviso in the second sentence.

**1983 Amendment:**

Added subd (c).

**1985 Amendment:**

In addition to making technical changes, (1) amended the third sentence of subd (a) by substituting (a) "however" for "provided, that" after "in writing"; and (b) the period for ", and provided further that" after "information dismissed"; and (2) added subs (d) and (e).

**1989 Amendment:**

Substituted ", for licensure by any state or local agency, or for contracting with the California State Lottery" for "or for licensure by any state or local agency" at the end of the first paragraph of subd (a).

**1994 Amendment:**

(1) Amended the first sentence of subd (c) by substituting (a) "actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged," for "cost of services rendered" both times it appears; and (b) "one hundred twenty dollars (\$120)" for "sixty dollars (\$60)" both times it appears; and (2) substituted "subdivision (g)" for "subdivision (f)" in the second sentence of subd (c).

**1997 Amendment:**

(1) Divided the former third sentence of subd (a) into the third and fourth sentences of subd (a) by substituting the period for a semicolon after "authorized in writing"; (2) added "to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289," in subd (b); and (3) added subd (f).

**2000 Amendment:**

Amended subd (b) by (1) substituting "that" for "which" after "misdemeanor"; and (2) adding "any felony conviction pursuant to subdivision (d) of Section 261.5,".

**2003 Amendment:**

Deleted "capable of being concealed upon the person" after "control any firearm" in the second paragraph of subd (a).

**2005 Amendment:**

Added "court for the actual cost 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 twenty dollars (\$120), and to reimburse the" after "under this section may be required to reimburse the" in the first sentence of subd (c). (As amended Stats 2005 ch 705, compared to the section as it read prior to 2005. This section was also amended by an earlier chapter, ch 704. See *Gov C §9605*.)

**2007 Amendment:**

(1) Added subd (c); (2) redesignated former subs (c)-(f) to be subs (d)-(g); (3) substituted "costs" for "cost" each time it appears in subd (d); (4) substituted "Relief shall not be" for "No Relief shall be" at the beginning of subd (e); and (5) substituted "subdivision (e)" for "subdivision (d)" after "pursuant to".

**Historical Derivation:**

*Pen C § 1203* subd 4 as that section read prior to the 1935 Amendment.

**Legislative Counsel's Opinions:**

Pleas in criminal cases. 1963 AJ 3694.

**Cross References:**

## Cal Pen Code § 1203.4

Effect of acquittal or conviction of acts punishable in different ways: *Pen C § 654*.

Foreign conviction or acquittal as bar: *Pen C § 656*.

Effect of conviction or acquittal in another state or country: *Pen C § 793*.

Effect of conviction or acquittal in another court: *Pen C § 794*.

Authority for court to permit withdrawal of plea of guilty: *Pen C § 1018*.

Effect of conviction, acquittal or jeopardy as bar: *Pen C § 1023*.

Sealing record of minor's conviction of misdemeanor, where he is eligible for, or has previously received, relief provided by this section: *Pen C § 1203.45*.

Prohibition against denial of license on basis of criminal conviction when relief authorized by this section has been granted: *B & P C § 480; Lab C § 26*.

Effect of this section on power of Division of Licensing to revoke certificate: *B & P C §§ 2236, 2237*.

Withdrawal of guilty plea as not nullifying finding of physician's unprofessional conduct following narcotics or controlled substances transgression: *B & P C §§ 2237, 2239*.

Inapplicability to reinstatement of psychologist's license: *B & P C § 2963*.

Suspension, revocation, or refusal to issue certificate or permit of accountant upon plea or verdict of guilty or conviction following plea of nolo contendere: *B & P C § 5106*.

Disbarment or suspension of attorney from practice for limited time: *B & P C § 6102*.

Order to suspend or revoke, or refusal to issue, license relating to guide dogs: *B & P C § 7211.2*.

Order to suspend or revoke, or refusal to issue: *B & P C § 7405*.

Invalidation of registration of service dealer convicted of felony, irrespective of subsequent order under provisions of this section: *B & P C § 9853*.

Grounds for denial, suspension, or revocation of real estate licenses: *B & P C § 10177*.

Dismissal under this section, of accusatory pleading against party subsequently serving as witness as precluding attack on credibility by showing prior conviction of felony: *Ev C § 788*.

Termination of registration requirements for controlled substance offenders: *H & S C § 11594*.

Effect of termination of probation and dismissal of charges pursuant to this section on revocation or suspension of license to operate motor vehicle: *Veh C § 13555*.

Application of this section to dismissal of charges against person committed for treatment as actual or potential narcotic addict: *W & I C § 3200*.

**Collateral References:**

*Cal Forms Pl & Practice (Matthew Bender) ch 80-92 "Automobiles".*

*Cal Forms Pl & Practice (Matthew Bender) ch 243 "Elections".*

*Cal Forms Pl & Practice (Matthew Bender) ch 380 "Negligence" § 380.10 et seq.*

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Governmental Authority § 63.

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare §§ 174, 175, 176, 184; Ch 3-52.

Witkin & Epstein, Criminal Law (3d ed), Criminal Appeal § 51.

Witkin & Epstein, Criminal Law (3d ed), Criminal Judgment §§ 189, 190, 191, 192.

Witkin & Epstein, Criminal Law (3d ed), Introduction To Crimes §§ 38, 72, 73.

Witkin & Epstein, Criminal Law (3d ed), Punishment §§ 180, 181, 183, 184, 185, 186, 187, 188, 227, 230, 238, 531, 541, 551, 552, 601, 602, 603, 604, 605, 607, 608, 671, 672.

3 Witkin Summary (10th ed) Agency and Employment §§ 50, 303, 304.

5 Witkin Summary (10th ed) Torts § 246.

Cal Jur 3d (Rev) Architects, Attorneys at Law § 323, Engineers, and Surveyors § 48, 61, Criminal Law § 3247, Elections § 44.

3 Witkin Cal. Evidence (4th ed) Presentation at Trial § 293.

*Cal Criminal Defense Prac., ch 91, "Sentencing," ch 93, "Disabilities Flowing From Conviction," ch 103, "Expungement of Criminal Records".*

Judicial Council of California Criminal Jury Instructions (LexisNexis MatthewBender), CALCRIM No. 2510, Possession of Firearm by Person Prohibited Due to Conviction-No Stipulation to Conviction

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure § 11.64.

### **Law Review Articles:**

Commitment of youthful offender to narcotic addict treatment program; effect of expungement procedure. *24 Hast LJ 531.*

*Expungement myth. 38 LA Bar B 161.*

Effect of dismissal of charge on fulfillment of conditions of probation. *12 SCLR 201.*

Effect of probation on license to practice medicine. *22 SCLR 476.*

Effect of probation and of provisions of section on license to practice medicine. *23 SCLR 109.*

"Convicted" person's right of suffrage. *27 SCLR 327.*

Effect of statute releasing probationer from all penalties and disabilities of prior conviction. *34 SCLR 373.*

Effect of expungement on criminal conviction. *40 SCLR 127.*

Interpretation of section. *36 St BJ 94.*

Penal rehabilitation. *2 Stan LR 221.*

Exclusion of prior acquittals: An attack on the "prosecutor's delight". *21 UCLA LR 892.*

Defining a Successful Completion of Probation under California's Expungement Statute. *24 Whittier LR 1077.*

### **Attorney General's Opinions:**

Effect on application for real estate license of conviction of felony. *1 Ops. Cal. Atty. Gen. 611.*

Privileges of elector can be restored only by executive clemency. *19 Ops. Cal. Atty. Gen. 211.*

Right of person to vote in state election while on probation where he has pleaded guilty to or been convicted of infamous crime. *22 Ops. Cal. Atty. Gen. 39.*

Effect of pardon on rights of convicted felon with respect to possession of firearms. *28 Ops. Cal. Atty. Gen. 178.*

Destruction of record of conviction when information or accusation dismissed on completion of probation. *36 Ops. Cal. Atty. Gen. 1.*

### **LexisNexis 50 State Surveys, Legislation & Regulations**

Victims Rights & Compensation

NOTES OF DECISIONS 1. In General 2. Construction 3. Persons Entitled to Relief 4. Hearing and Determination 5. Disabilities Removed 6. Disabilities Not Removed 7. Business and Professional Licenses

#### **1. In General**

Dismissal of former case in which defendant applying for probation had entered plea of guilty, had no legal effect upon his standing before court on his application for probation made in subsequent criminal proceeding against him. *People v. Payne (1930, Cal App) 106 Cal App 609, 289 P 909, 1930 Cal App LEXIS 685.*

This section is not ex post facto, since it provides for the punishment of future crimes only. *People v. Hainline (1933) 219 Cal 532, 28 P2d 16, 1933 Cal LEXIS 428.*

Granting of probation, aside from being act of clemency extended to one who has committed a bribe, is also in substance and effect a bargain made by the People, through their Legislature in courts, that if malefactor will comply with requirements of probation he shall be entitled to reinstatement as law-abiding member of society, and removal of blemish of criminal record is reward held out through provisions of this section as additional inducement. *People v. Johnson (1955, Cal App 3d Dist) 134 Cal App 2d 140, 285 P2d 74, 1955 Cal App LEXIS 1732.*

If no appeal is taken by defendant as to whom court has pronounced judgment and sentence, suspended execution

of sentence and granted application for probation, judgment becomes final and is effective for all purposes during probation except that incarceration is prevented by reason of the stay order and that compliance with conditions of order of probation be observed under supervision of probation officer as provided by § 1203.1, and if conditions of probation are fulfilled plea or verdict of guilty may be changed to not guilty, proceedings be expunged from record and case dismissed; when such order has been entered there is no further criminal prosecution pending against defendant; he has then, without any further showing of rehabilitation on his part, received statutory rehabilitation and reinstatement to his former status in society insofar as the state by legislation is able to do so, with one exception, namely that under this section, record in criminal case may be used against him for limited purposes in any criminal proceeding thereafter brought against him. *Stephens v. Toomey* (1959) 51 Cal 2d 864, 338 P2d 182, 1959 Cal LEXIS 312, superseded by statute as stated in *Sovereign v. People* (1983, Cal App 4th Dist) 144 Cal App 3d 143, 192 Cal Rptr 469, 1983 Cal App LEXIS 1858.

It was error to deny defendant's motion to set aside his plea of guilty and dismiss information against him on ground that defendant had not been placed on probation and accordingly was not entitled to proceed under this section, where it appeared that court's sentencing defendant to one year in county jail and suspending twelve days of sentence was not mere matter of inadvertence, but was intended by court to serve purpose of retaining jurisdiction with respect to period of detention in jail. *People v. Bueno* (1960, Cal App 2d Dist) 177 Cal App 2d 235, 2 Cal Rptr 62, 1960 Cal App LEXIS 2456.

Clear intent of sections respecting probation, specially this section, is to effect complete rehabilitation of those convicted of crime. *People v. Taylor* (1960, Cal App 2d Dist) 178 Cal App 2d 472, 3 Cal Rptr 186, 1960 Cal App LEXIS 2617, superseded by statute as stated in *People v. Frawley* (2000, Cal App 1st Dist) 82 Cal App 4th 784, 98 Cal Rptr 2d 555, 2000 Cal App LEXIS 608.

Release under this section is granted only after faithful performance of terms of probation. *People v. Taylor* (1960, Cal App 2d Dist) 178 Cal App 2d 472, 3 Cal Rptr 186, 1960 Cal App LEXIS 2617, superseded by statute as stated in *People v. Frawley* (2000, Cal App 1st Dist) 82 Cal App 4th 784, 98 Cal Rptr 2d 555, 2000 Cal App LEXIS 608.

Record of one released under this section is wiped clean, subject to reinstatement only when person commits another or subsequent crime or for purposes of exceptional situations. *People v. Taylor* (1960, Cal App 2d Dist) 178 Cal App 2d 472, 3 Cal Rptr 186, 1960 Cal App LEXIS 2617, superseded by statute as stated in *People v. Frawley* (2000, Cal App 1st Dist) 82 Cal App 4th 784, 98 Cal Rptr 2d 555, 2000 Cal App LEXIS 608.

Expunging record of probationer's conviction pursuant to this section is, in essence, form of legislatively authorized certification of complete rehabilitation based on prescribed showing of exemplary conduct during entire period of probation. *People v. Turner* (1961, Cal App 4th Dist) 193 Cal App 2d 243, 14 Cal Rptr 130, 1961 Cal App LEXIS 1695.

There is nothing in 1963 amendment of this section, which states that it has retroactive effect; thus it must be presumed that statute operates only prospectively on dismissals that are granted after its effective date. *People v. Daniels* (1963, Cal App 4th Dist) 222 Cal App 2d 99, 34 Cal Rptr 844, 1963 Cal App LEXIS 1633.

Disqualification contained in portion of *Cal Const, art II, § 1*, declaring that no person convicted of any infamous crime "shall ever" exercise right to vote in this state is not too broad in time in view of fact that Legislature has expressly provided for restoration of right to vote to persons previously convicted of crime in California, either by court order after completion of probation (*Pen C § 1203.4*) or, if prison term was served, by executive pardon after completion of rehabilitation proceedings (*Pen C §§ 4852.01-4852.17*); similar method of regaining right to vote is provided for persons convicted of federal crimes. *Otsuka v. Hite* (1966) 64 Cal 2d 596, 51 Cal Rptr 284, 414 P2d 412, 1966 Cal LEXIS 290.

*Pen C § 1203.4*, providing upon a dismissal of the case of a discharged probationer that the probationer shall be released from all penalties and disabilities resulting from the offense of which he has been convicted, does not require

sealing the records of a narcotics offender convicted under Div. 10 of the Health and Safety Code, relating to narcotics. *People v. Sharman* (1971, Cal App 4th Dist) 17 Cal App 3d 550, 95 Cal Rptr 134, 1971 Cal App LEXIS 1500.

The trial court erred in determining that, because defendant's conviction of possession of marijuana had been expunged pursuant to *Pen C* § 1203.4, after successful completion of a period of probation, it did not have jurisdiction to entertain his petition for a writ of error coram nobis seeking vacation of the judgment. Though the effect of expungement is to relieve the defendant of certain penalties and disabilities resulting from the conviction, it does not affect the fact that his guilt has been finally determined according to law, and, since the judgment exists for some purposes after the granting of relief under the statute, it is subject to an attack by petition for writ of error coram nobis. *People v. Wiedersperg* (1975, Cal App 1st Dist) 44 Cal App 3d 550, 118 Cal Rptr 755, 1975 Cal App LEXIS 957.

An order, issued pursuant to *Pen C* § 1203.4, expunging the records of defendant's conviction for battery, did not have the effect of eliminating such a conviction so that defendant could properly obtain a sealing of the records for his earlier conviction of forgery pursuant to *Pen C* § 1203.45, nor did the order expunging the record of the battery conviction justify defendant's omitting any reference to such conviction in his petition for sealing of the records of his forgery conviction. It is not the purpose of *Pen C* § 1203.4, to obliterate the fact that a defendant has been finally adjudged guilty of crime. *People v. McCloud* (1977, Cal App 2d Dist) 71 Cal App 3d 173, 139 Cal Rptr 321, 1977 Cal App LEXIS 1601.

*Pen C* § 1203.4, providing for the expungement of a conviction after completion of the period of probation, rewards those who comply with their terms of probation or are relieved from complying. No evidence of rehabilitation is required to be entitled to relief. Likewise, evidence of crimes committed shortly after probation ends have no effect on the granting of the relief. *People v. Butler* (1980, Cal App 4th Dist) 105 Cal App 3d 585, 164 Cal Rptr 475, 1980 Cal App LEXIS 1809.

*Pen C* §§ 1203.4, and *Pen C* § 4852.01, when read together, form part of a broad statutory scheme for rehabilitation and restoration of rights to all ex-felons by setting forth the criteria of rehabilitation that the Legislature has deemed appropriate for two classes of former offenders, the class of probationers and the class of prisoners. Section 4852.01 does not violate the constitutional requirement of equal protection of the law because it concerns two different classes of ex-felons who are not similarly situated and a rational relationship exists between the criteria of eligibility for a certificate of rehabilitation for these two class of ex-felons and the state's legitimate purpose of rehabilitating and restoring rights to ex-felons who are not similarly situated. Accordingly, the trial court, on an application for relief under *Pen C* § 4852.01(c), by an ex-felon who had obtained relief under *Pen C* § 1203.4, but had subsequently been incarcerated on other charges, properly found defendant ineligible for section 4852.01(c), relief and denied defendant's application. *People v. Jones* (1985, Cal App 2d Dist) 176 Cal App 3d 120, 221 Cal Rptr 382, 1985 Cal App LEXIS 2927.

The general purpose of the dismissal of an accusation, upon which a defendant was convicted and completed probation, provided for by *Pen C* § 1203.4, is to relieve from further punishment, and restore rights to, one whose probation has resulted in his reformation. The benefits of such dismissal and restoration of rights, however, are lost if such a defendant subsequently commits an offense, because the main purpose (rehabilitation) of the probation has failed. *People v. Jones* (1985, Cal App 2d Dist) 176 Cal App 3d 120, 221 Cal Rptr 382, 1985 Cal App LEXIS 2927.

Expungement under *Pen. Code*, § 1203.4, which permits a trial court to set aside a verdict of guilty and thereupon dismiss the accusations or information, does not eradicate a conviction or purge a defendant of the guilt established thereby. It merely frees the convicted felon from certain penalties and disabilities of a criminal or like nature. *People v. Barraza* (1994, Cal App 1st Dist) 30 Cal App 4th 114, 35 Cal Rptr 2d 377, 1994 Cal App LEXIS 1157, review denied (1996, Cal) 1996 Cal LEXIS 3145.

In a prosecution for first degree murder, the trial court did not err by prohibiting the defense from impeaching a key prosecution witness with a prior Oklahoma felony conviction, where the conviction had been expunged under

Oklahoma law. The expungement was undisputed. The expungement statutes of Oklahoma and California (*Pen. Code*, § 1203.4), despite procedural differences, are substantially equivalent in that both were enacted to eradicate the record of conviction for certain purposes when a probationer successfully completes probation. Under *Evid. Code*, § 788, subs. (c), (d) (credibility of witness not impeachable by prior felony expunged under California or substantially equivalent foreign jurisdiction law), the Oklahoma expunged conviction was not admissible for purposes of impeachment. That statute's expungement limitation was not abrogated by Prop. 8 (*Cal. Const.*, art. I, § 28, subs. (d), (f)) (relevant evidence not excludable in criminal proceedings; prior felonies usable for impeachment) because the very fact of expungement prevents a prior conviction from being relevant evidence. *People v. Field* (1995, Cal App 4th Dist) 31 Cal App 4th 1778, 37 Cal Rptr 2d 803, 1995 Cal App LEXIS 87, review denied (1995, Cal) 1995 Cal LEXIS 3255.

Expungement (*Pen. Code*, § 1203.4) is a legislative, as opposed to executive, provision for the eradication of a record of conviction or adjudication upon the fulfillment of prescribed conditions. It is not simply the lifting of disabilities attendant upon conviction and a restoration of civil rights, though this is a significant part of its effect. It is rather a redefinition of status, a process of erasing the legal event of conviction or adjudication and thereby restoring to the regenerative offender his or her status quo ante. A grant of relief under § 1203.4 is intended to reward an individual who successfully completes probation by mitigating some of the consequences of conviction and, with a few exceptions, to restore the individual to his or her former status in society to the extent the Legislature has power to do so. Expungement, however, does not obliterate a conviction for all purposes, and records of an expunged conviction are accessible to the public. *People v. Field* (1995, Cal App 4th Dist) 31 Cal App 4th 1778, 37 Cal Rptr 2d 803, 1995 Cal App LEXIS 87, review denied (1995, Cal) 1995 Cal LEXIS 3255.

The trial court properly denied the defendant's motion to reduce her felony convictions, which were "wobblers," to misdemeanors pursuant to *Pen C* § 17(b)(3), where defendant was convicted by guilty plea of forgery and receiving stolen property, and where defendant was placed on probation after sentence was imposed and execution of judgment was suspended. *Pen C* § 1203.4 was not applicable in that *Pen C* § 17 governs the specific matter of reduction of a "wobbler" from a felony to a misdemeanor after a grant of probation. Although a trial court may have the greater power to change a plea from guilty to not guilty in the case of any felony after successful completion of probation, the limitation set forth in *Pen C* § 17(b)(3) must be applied when considering the specific remedy of reducing a wobbler. *Pen C* § 1203.3 does not permit a trial court to reduce a felony to a misdemeanor in a situation where the trial court imposes and suspends a sentence at the time it grants probation. Whatever options are available to a trial court under *Pen C* § 1203.3, its authority to reduce a felony to a misdemeanor remains limited by *Pen C* § 17(b)(3). There is nothing to suggest that *Pen C* § 1203.3 was added to abrogate the limitation in *Pen C* § 17(b)(3) that a trial court may declare a "wobbler" to be a misdemeanor only where the court has granted probation to the defendant without imposition of sentence, or that *Pen C* § 1203.3 was added to expand the authority of the trial court under *Pen C* § 17(b)(3). *People v. Wood* (1998, Cal App 2d Dist) 62 Cal App 4th 1262, 73 Cal Rptr 2d 308, 1998 Cal App LEXIS 295.

A defendant convicted of committing a lewd act upon a child under age 14 (*Pen C* § 288) was not denied equal protection of the law (*Cal Const art I* § 7(a)), even though the statutory ban on expungement of his conviction (*Pen C* § 1203.4) did not apply to persons convicted of other heinous crimes. The state may make distinctions between different groups of persons so long as the classifications created bear a rational relationship to a legitimate public purpose. Both the high rate of recidivism for child molesters and society's particular interest in protecting children justify the treatment of those convicted of violating § 288 in a manner different from those who have been convicted of other heinous crimes. *People v. Acuna* (2000, Cal App 2d Dist) 77 Cal App 4th 1056, 92 Cal Rptr 2d 224, 2000 Cal App LEXIS 54.

A defendant convicted of committing a lewd act upon a child under age 14 (*Pen C* § 288) was not denied due process of law (*Cal Const art I* § 7(a)), even though the statutory ban on expungement of his conviction (*Pen C* § 1203.4) was enacted after entry of his plea and sentencing. Defendant had fair warning that a lewd act on a child was a violation of § 288 at the time he committed the crime and fair warning of what the punishment would be. Due process does not require that defendant have fair warning of every possible consequence of his conviction. *People v. Acuna* (2000, Cal App 2d Dist) 77 Cal App 4th 1056, 92 Cal Rptr 2d 224, 2000 Cal App LEXIS 54.

The application of *Pen C § 1203.4*, as amended, to a defendant convicted of committing a lewd act on a child (*Pen C § 288*), so as to preclude him from obtaining expungement of his conviction, did not involve the retroactive application of a statute in violation of *Pen C § 3*, since the petition for expungement was decided under the law as it existed at the time the petition was filed. *People v. Acuna* (2000, *Cal App 2d Dist*) 77 *Cal App 4th* 1056, 92 *Cal Rptr 2d* 224, 2000 *Cal App LEXIS* 54.

In sentencing a defendant who pleaded guilty to drug charges, the trial court erred in doubling the two-year term based on a prior conviction for mayhem. The mayhem conviction could not serve as a basis for a strike (*Pen C §§ 667, 1170.12*), since dismissal under *Pen C § 1385* of the underlying mayhem charge operated, as a matter of law, to erase the prior conviction as if defendant had never suffered the conviction in the initial instance. A contrary conclusion was not compelled by virtue of an agreement between defendant and the People, even if approved by the court, that the prior conviction could be used for sentencing purposes in subsequent cases. On its face, § 1385, in contrast to *Pen C § 1203.4*, did not address the effect of the dismissal of a prior conviction on the sentence of the defendant in a different case. If the Legislature had intended a dismissal under § 1385 to have the same prospective adverse consequences as § 1203.4, it would have amended § 1385 by adding language to that effect. *People v. Barro* (2001, *Cal App 2d Dist*) 93 *Cal App 4th* 62, 112 *Cal Rptr 2d* 797, 2001 *Cal App LEXIS* 827.

*Cal. Penal Code § 1203.4(c)* authorized the imposition of a fee only after the superior court determined that the petitioner had the ability to pay without undue hardship and exercised its discretion to order payment, and therefore the superior court clerk could not impose the fee at the time of the filing; the court may require payment of all or part of a fee predetermined by the board of supervisors and need not determine the actual cost of services rendered for each petition, and that no individual hearing was required to determine each petitioner's ability to pay. *Lewis v. Clarke* (2003, *Cal App 2d Dist*) 108 *Cal App 4th* 563, 133 *Cal Rptr 2d* 749, 2003 *Cal App LEXIS* 684, modified, rehearing denied (2003, *Cal App 2d Dist*) 2003 *Cal App LEXIS* 825.

Defendant's prior state conviction for assault with a deadly weapon was not a misdemeanor for purposes of federal law and could serve as a predicate conviction. The prior conviction was a felony. Because defendant never petitioned for an expungement under *Pen C § 1203.4*, the state court never expunged his conviction. *United States v. Qualls* (1997, 9th Cir Cal) 108 *F3d* 1019, 1997 *US App LEXIS* 3785.

## 2. Construction

Const Art II § 1, does not disfranchise person who, having been convicted of felony, has successfully completed his probation, and under provisions of this section, has been released from all penalties and disabilities resulting from crime of which he was convicted, since he was never "convicted," as word is used in constitutional provision. *Truchon v. Toomey* (1953, *Cal App*) 116 *Cal App 2d* 736, 254 *P2d* 638, 1953 *Cal App LEXIS* 1131, 36 *ALR2d* 1230.

Word "shall," as used in this section, was intended by Legislature to be mandatory, and if, on evidence and record, court finds that defendant has fulfilled conditions of his probation for entire period thereof or has been discharged from probation prior to termination of such period, he is entitled as matter of right to benefits prescribed in this section. *People v. Johnson* (1955, *Cal App 3d Dist*) 134 *Cal App 2d* 140, 285 *P2d* 74, 1955 *Cal App LEXIS* 1732.

Word "shall," in first sentence of section, is mandatory, and it would be inconsistent to hold that the word is merely directory in second sentence. *People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist.* (1956, *Cal App 2d Dist*) 145 *Cal App 2d* 767, 303 *P2d* 375, 1956 *Cal App LEXIS* 1408.

Though there is seeming conflict between this section and § 290, relating to registration of sex offenders, § 290, does not, as later enactment prevail. *Kelly v. Municipal Court of San Francisco* (1958, *Cal App 1st Dist*) 160 *Cal App 2d* 38, 324 *P2d* 990, 1958 *Cal App LEXIS* 2090.

Though there is seeming conflict between this section and § 290, relating to registration of sex offenders, latter

section does not prevail over this section on theory that it is special statute and this section is general statute. *Kelly v. Municipal Court of San Francisco (1958, Cal App 1st Dist) 160 Cal App 2d 38, 324 P2d 990, 1958 Cal App LEXIS 2090.*

Expression "penalties and disabilities resulting from the offense or crime of which he has been convicted" suggests that statute has reference to criminal or quasi-criminal penalties, penalties imposed for punishment or prevention of crime, such as imprisonment, fine, posting of bond to keep peace, or registration and continuous and lifelong reregistration with state and local police. *Kelly v. Municipal Court of San Francisco (1958, Cal App 1st Dist) 160 Cal App 2d 38, 324 P2d 990, 1958 Cal App LEXIS 2090.*

Fair intendment of this section and § 290, when read together, is that conviction denotes need for registration and police surveillance when convicted person is allowed to return to society, whether after serving sentence or on parole or when released on probation prior to imposition or execution of sentence, but in case of probationer who demonstrates his ability to go straight on his own by fulfilling conditions of his probation, need for further surveillance and registration terminates on his release pursuant to this section. *Kelly v. Municipal Court of San Francisco (1958, Cal App 1st Dist) 160 Cal App 2d 38, 324 P2d 990, 1958 Cal App LEXIS 2090.*

Rule that where language which is reasonably susceptible of two constructions as used in penal law, ordinarily that construction which is more favorable to offender will be adopted, should not be applied to change manifest, reasonable, legislative purpose, as expressed in § 17, that alternatively punishable offense remains felony until pronouncement of misdemeanor sentence, or, if imposition of sentence is suspended, purpose expressed by this section read with § 17, that offense remains felony until statutory rehabilitation procedure has been had, at which time defendant is restored to his former status in society insofar as state, by legislation, is able to do so, with one exception, namely, that record in criminal case may be used against him for limited purposes in any criminal proceeding thereafter brought against him. *People v. Banks (1959) 53 Cal 2d 370, 1 Cal Rptr 669, 348 P2d 102, 1959 Cal LEXIS 354.*

Registration requirement of federal statute respecting persons, convicted of violation of narcotics laws, on departing from or entering into United States does not constitute "penalty" or "disability" referred to in this section. *Adams v. United States (1962, 9th Cir Ariz) 299 F2d 327, 1962 US App LEXIS 6015.*

As used in *Pen C § 1203.4*, concerning release of probationer who has fulfilled all the conditions of his probation from all penalties and disabilities resulting from his conviction, words "penalties and disabilities" refer to criminal penalties and disabilities or to matters of kindred nature. *Copeland v. Department of Alcoholic Beverage Control (1966, Cal App 2d Dist) 241 Cal App 2d 186, 50 Cal Rptr 452, 1966 Cal App LEXIS 1232.*

Defendant, who had been convicted of violating *Pen C § 415*, in 1967, for which probation was not granted and who again was convicted of violating § 415 in 1973, probation being granted and the conviction set aside under *Pen C § 1203.4*, was entitled to have the 1967 conviction set aside and to have that action dismissed pursuant to *Pen C § 1203.4a*, despite the fact that he did not apply to have that conviction set aside until 1974, after he had been convicted, in 1973, of again violating § 415. The language "and have, since such pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land" in *Pen C § 1203.4a* which provides that a court "shall" put the conviction aside of a defendant convicted of a misdemeanor and not granted probation after one year from the date of judgment, must be read as relating to one year from the date of pronouncement of judgment, the date upon which eligibility for § 1203.4a relief attaches. *People v. Chandlee (1979, Cal App Dep't Super Ct) 90 Cal App 3d Supp 13, 153 Cal Rptr 188, 1979 Cal App LEXIS 1467.*

In a prosecution for embezzlement, the trial court properly considered uncharged instances of defendant's embezzlement in formulating its order for restitution to the victim as a condition of probation, notwithstanding the language of *Pen C § 1203.04*, referring to restitution for crimes for which defendants are "convicted." An interpretation of § 1203.04 limiting a victim's rights to restitution would be in derogation of the expressed intent and purposes of Proposition 8 (*Cal. Const., art. I, § 28*) and the statute, adopted by the Legislature to implement it, to promote the rights

of victims to restitution for losses suffered as a result of criminal activity. Instead, victims are now constitutionally guaranteed the right to restitution whenever a person is convicted of a crime causing loss to the victim, and § 1203.04 does not limit or abrogate the victim's rights to restitution for losses caused by criminal activity for which the offender was not convicted. *People v. Baumann* (1985, Cal App 4th Dist) 176 Cal App 3d 67, 222 Cal Rptr 32, 1985 Cal App LEXIS 2923.

In the penalty phase of a capital prosecution for first degree murder based on defendant's having taken two women into the desert in order to make pornographic films of them and kill them, *Pen C § 1203.4*, allowing a defendant to withdraw his plea of nolo contendere and enter a plea of not guilty once the conditions of his probation have been fulfilled, did not prohibit the jury from considering the underlying facts surrounding defendant's previous conviction of solicitation of crimes for which his plea of nolo contendere was withdrawn pursuant to § 1203.4. Nothing in that section prohibits the jury in a capital case from considering the facts of the crime that gave rise to the offense. *People v. Douglas* (1990) 50 Cal 3d 468, 268 Cal Rptr 126, 788 P2d 640, 1990 Cal LEXIS 1224, modified, rehearing denied (1990) 50 Cal 3d 1282, 1990 Cal LEXIS 2617, cert den (1991) 498 US 1110, 112 L Ed 2d 1105, 111 S Ct 1023, 1991 US LEXIS 888.

A prior conviction is relevant to one's credibility if the conviction involves moral turpitude. The legislative purpose behind expungement (*Pen. Code, § 1203.4*) is that no convicted person discharged after probation thenceforth should be regarded as one possessed of the degree of turpitude likely to affect his or her credibility as a witness. Accordingly, the Truth-in-Evidence provision of *Cal. Const., art. I, § 28*, subd. (d) (relevant evidence not excludable in criminal proceedings) has no effect on the expungement limitation of *Evid. Code, § 788*, subds. (c), (d) (credibility of witness not impeachable by prior felony expunged under California or substantially equivalent foreign jurisdiction law); nor does *Cal. Const., art. I, § 28*, subd. (f) (prior felonies usable for impeachment) have any effect because once a conviction has been expunged, it no longer is a viable conviction for impeachment purposes. By virtue of expungement, there no longer is a prior conviction. *People v. Field* (1995, Cal App 4th Dist) 31 Cal App 4th 1778, 37 Cal Rptr 2d 803, 1995 Cal App LEXIS 87, review denied (1995, Cal) 1995 Cal LEXIS 3255.

A defendant convicted of committing a lewd act upon a child under age 14 (*Pen C § 288*) was not subjected to an ex post facto law (*Cal Const art I § 9*), even though he was denied the opportunity to seek expungement of his conviction by virtue of an amendment to *Pen C § 1203.4*, which at the time of his plea and sentencing allowed him to apply for expungement. Eliminating the possibility for expungement of a § 288 conviction did not constitute a punishment, since the amendment was not punitive in intent, nature or effect. *People v. Acuna* (2000, Cal App 2d Dist) 77 Cal App 4th 1056, 92 Cal Rptr 2d 224, 2000 Cal App LEXIS 54.

A convicted felon in possession of a rifle and a shotgun was properly charged with violating *Pen C § 12021*, even though he had obtained an order under *Pen C § 1203.4* dismissing the prior conviction. The reference to "concealable firearms" in § 1203.4 does not impliedly grant one who has obtained a § 1203.4 dismissal the right to possess nonconcealable firearms without violating § 12021, under which a convicted felon is prohibited from possessing any firearm. In amending § 1203.4 in 1961, the Legislature's reference to § 12021 was intended to accommodate and conform to such future additional restrictions as might be imposed on the rights of persons with felony convictions to possess firearms. The Legislature intended § 1203.4 to remain permanently parallel to § 12021 so that § 1203.4 would not afford a defense to any prosecution under § 12021 for possession of any weapon the Legislature might thereafter include within that section. *People v. Frawley* (2000, Cal App 1st Dist) 82 Cal App 4th 784, 98 Cal Rptr 2d 555, 2000 Cal App LEXIS 608.

For purposes of *Pen C § 1203.4*, a defendant has not fulfilled a restitution condition of probation unless he or she has made all court-ordered payments for the entire period of probation and has paid his or her obligation in full. Accordingly, a defendant was not entitled to have her grand theft conviction expunged, even though she made all court-ordered payments prior to the termination of probation, where there remained an outstanding balance of about \$88,000. *People v. Covington* (2000, Cal App 5th Dist) 82 Cal App 4th 1263, 98 Cal Rptr 2d 852, 2000 Cal App LEXIS 636.

Dismissal of a foster parent's conviction under *Pen C § 273d* did not render a petition for mandate filed by a department of children and family services moot because (1) the restriction upon licensing imposed by *H & S C § 1522* is not the sort of restriction from which *Pen C § 1203.4* was intended to release defendants, (2) *W & I C § 361.4(d)* expressly incorporates the provisions of *H & S C § 1522* that no exemption may be granted from certain disqualifying crimes, and thus (3) a dismissal of a nonexemptible conviction under *Pen C § 1203.4* does not render the conviction a nullity or exemptible for purposes of a relative placement under *W & I C § 361.4*. *Los Angeles County Dept. of Children & Family Services v. Superior Court (2003, Cal App 2d Dist) 112 Cal App 4th 509, 5 Cal Rptr 3d 182, 2003 Cal App LEXIS 1511*.

Fact that plaintiff had proceeded to have her conviction "set aside" pursuant to *Pen C § 1204.3* did not mean that the conviction was reversed or invalidated for purposes of asserting a civil rights complaint for an invalid search and seizure under *42 U.S.C.S. § 1983*, and plaintiff's § 1983 claim that challenged the search and seizure was barred by the Heck requirements. *Engel v. Barry (2005, ED Cal) 2005 US Dist LEXIS 33308*.

### 3. Persons Entitled to Relief

This section may be utilized by probationer whose sentence was suspended and who satisfies condition of his probation. *Wood v. Hoy (1959, 9th Cir Cal) 266 F2d 825, 1959 US App LEXIS 5021*.

*Pen C § 1203.4*, providing for the setting aside of a guilty verdict in the case of a defendant who had fulfilled the conditions of probation, was not applicable to a minor as to whom juvenile court jurisdiction had terminated, where the minor had not been convicted of a crime but was adjudged to be a ward of the juvenile court; any application of the Penal Code section would clearly be violative of the express terms and the legislative intent of former *W & I C § 503* (see now *W & I C § 203*), providing that an order of wardship should not be deemed a conviction of crime and that a proceeding in the juvenile court should not be deemed a criminal proceeding. *In re S. A. (1970, Cal App 1st Dist) 6 Cal App 3d 241, 85 Cal Rptr 775, 1970 Cal App LEXIS 1326*.

*Welf & Inst Code, § 781*, providing for the sealing of juvenile court records five years after the termination of jurisdiction over a minor or upon the minor's reaching age 21, does not deny equal protection of the laws to juvenile court wards merely because the disabilities of commitment or conviction of persons subject to the Youth Authority Act and to the provisions of the Penal Code may be removed in a shorter period of time (*Welf & Inst Code, § 1772; Pen C § 1203.4*); the legislative classification brought about by the three statutes is clearly based upon some difference in the classes having a substantial relation to a legitimate object to be accomplished. *In re S. A. (1970, Cal App 1st Dist) 6 Cal App 3d 241, 85 Cal Rptr 775, 1970 Cal App LEXIS 1326*.

*Welf & Inst Code, § 827*, providing that juvenile court records are generally closed to inspection, and *Welf & Inst Code, § 781*, providing for the sealing of records five years after the termination of jurisdiction over a minor or upon the minor's reaching age 21, do not deny a juvenile due process of law; rather they disclose a deep legislative concern for the welfare of the minor by extending to him a greater degree of protection from future prejudice resulting from his "record" than do the corresponding provisions of the Youth Authority Act (*Welf & Inst Code, § 1772*) and the Penal Code (*Pen C § 1203.4*). *In re S. A. (1970, Cal App 1st Dist) 6 Cal App 3d 241, 85 Cal Rptr 775, 1970 Cal App LEXIS 1326*.

The unavailability, to juveniles, of the adult court procedure for dismissal of a charge after successful completion of a probation, set forth in *Pen C § 1203.4*, does not deny equal protection to juveniles. *In re R. C. (1974, Cal App 1st Dist) 39 Cal App 3d 887, 114 Cal Rptr 735, 1974 Cal App LEXIS 1018*.

*Pen C § 1203.4(a)*, providing for the dismissal of charges against a defendant who 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, applies only to defendants who have been on probation. It does not apply to one who has

been released from prison on parole. *People v. Borja* (1980, Cal App 1st Dist) 110 Cal App 3d 378, 167 Cal Rptr 813, 1980 Cal App LEXIS 2257.

In a habeas corpus proceeding to seal petitioner's arrest and court records relating to his prior conviction for the offense of lewd conduct (*Pen C § 647(a)*), in which petitioner's probation had terminated and a dismissal pursuant to *Pen C § 1203.4*, had been granted some 15 years ago, and thus petitioner was not in actual custody and could not be placed into custody, the superior court erred in finding that petitioner sustained his burden of proving constructive custody so as to entitle him to habeas corpus relief, where petitioner had not filed an answer or traverse to the People's return to the writ of habeas corpus, and there was no stipulation that the petition, alleging that petitioner's name was still listed with various law enforcement agencies, be treated as a traverse. The factual allegations of a return will be deemed true unless the petitioner in his traverse denies the truth of the allegations and either realleges the facts set out in the petition or by stipulation or acquiescence the petition is deemed a traverse. Moreover, the presumption was in favor of the correctness of the return, and even if the petition for habeas corpus were deemed a traverse, the burden of proof would have remained with petitioner to show that he was in constructive custody. Thus, the record was completely devoid of any facts to support the trial court's finding of constructive custody and petitioner was not entitled to habeas corpus relief. *In re Wessley W.* (1981, Cal App 2d Dist) 125 Cal App 3d 240, 181 Cal Rptr 401, 1981 Cal App LEXIS 2313.

The trial court lacked jurisdiction under *Pen C § 1203.4*, to release from all penalties and disabilities a defendant who had been charged with assaulting a police officer with a deadly weapon (*Pen C § 245(b)*) and who had been found not guilty by reason of insanity. *Pen C § 1203.4*, speaks only in terms of probation, the first two clauses specifically referring to a defendant who has fulfilled the conditions of probation or who has been discharged, while the following provisions, dealing with the trial court's discretion to grant relief in "any other case" and "in the interest of justice," is clearly intended to apply to probationers who do not fit in any other category. Moreover, § 1203.4 specifically provides relief from disabilities and penalties associated with being convicted, and was thus inapplicable to defendant who had been found not guilty by reason of insanity. Although an insanity finding follows a determination the accused committed the criminal act charged, it only establishes the accused was not criminally responsible for the offense committed, and such a finding is not a conviction. The statute applies only to those whom the court has placed on probation. *People v. Morrison* (1984, Cal App 4th Dist) 162 Cal App 3d 995, 208 Cal Rptr 800, 1984 Cal App LEXIS 2844.

Because a convicted felon who is granted probation remains in the constructive custody of the court and probation is customarily tailored to the rehabilitative needs of such a felon, while one who is sentenced to prison and later released on parole is committed to and remains in the legal custody of state prison authorities, former probationers and former parolees are not similarly situated for purposes of applying *Pen C § 1203.4*, which allows successful probationers to set aside their convictions and all penalties and disabilities arising from such convictions. *People v. Jones* (1985, Cal App 2d Dist) 176 Cal App 3d 120, 221 Cal Rptr 382, 1985 Cal App LEXIS 2927.

The trial court erred in denying defendant's petition for expungement of his conviction after he was discharged prior to the termination of the period of his probation. *Pen C § 1203.4*, provides that a defendant who has been discharged prior to the termination of the period of probation is entitled as a matter of right to the relief sought by defendant. There was no meaningful distinction between "discharge prior to the termination of the period of probation" and defendant's situation in which probation was terminated before the original term had expired. Moreover, the trial court's observation regarding the seriousness of the original offense as a ground for denying relief was wholly irrelevant to the issue before it. *People v. Hawley* (1991, Cal App 1st Dist) 228 Cal App 3d 247, 278 Cal Rptr 389, 1991 Cal App LEXIS 225.

*Pen C § 1203.4*, giving the trial court discretion to vacate judgments of conviction and release a defendant from other penalties and disabilities, applies only to that category of persons who have been admitted to probation and not committed to prison or other state institutions. *People v. Mendez* (1991, Cal App 1st Dist) 234 Cal App 3d 1773, 286 Cal Rptr 216, 1991 Cal App LEXIS 1157, review denied (1991, Cal App 1st Dist) 1991 Cal App LEXIS 1295.

An order of the trial court setting aside a defendant's robbery conviction (*Pen C § 211*), substituting a misdemeanor grand theft conviction (*Pen C § 487*), and sealing the records of the resultant misdemeanor conviction, was an act in excess of the trial court's jurisdiction where it was made without legislative authority. Because defendant was convicted of a straight felony, and committed to the California Youth Authority, his entitlement to postconviction relief was governed by the gubernatorial pardon authority (*Cal. Const., art. V, § 8; Pen C § 4800 et seq.*) and *Welf. & Inst. Code, § 1772*. Neither *Pen C § 17*, nor *Pen C § 1203.45*, permitted the relief granted and there was no other controlling statutory authority. Therefore, the fact that defendant was convicted of robbery remained of record in the *Department of Justice*. *People v. Mendez (1991, Cal App 1st Dist) 234 Cal App 3d 1773, 286 Cal Rptr 216, 1991 Cal App LEXIS 1157*, review denied (1991, Cal App 1st Dist) *1991 Cal App LEXIS 1295*.

Defendant, who pleaded guilty to, inter alia, two counts of attempted lewd acts on a child, was entitled to release from penalties pursuant to *Pen C § 1203.4(a)*, where defendant fulfilled the conditions of his probation for the entire period of probation. *People v. Lewis (2006, Cal App 4th Dist) 146 Cal App 4th 294, 53 Cal Rptr 3d 40, 2006 Cal App LEXIS 2066*.

Because defendant's guilty plea to a charge he committed a lewd or lascivious act upon a child in violation of *Pen C § 288* rested in a significant degree on the promise of expungement relief under *Pen C § 1203.4*, the promise of such relief had to be fulfilled. *People v. Arata (2007, Cal App 3d Dist) 151 Cal App 4th 778, 60 Cal Rptr 3d 160, 2007 Cal App LEXIS 877*.

By agreeing to give probation to defendant, who pleaded guilty to committing a lewd and lascivious act upon a child, the plea bargain implicitly included the promise of expungement relief under *Pen C § 1203.4* as part of probation. Section 1203.4 relief was within defendant's contemplation and knowledge when he entered his plea. *People v. Arata (2007, Cal App 3d Dist) 151 Cal App 4th 778, 60 Cal Rptr 3d 160, 2007 Cal App LEXIS 877*.

#### **4. Hearing and Determination**

Probation law does not require positive proof of total and permanent reformation or rehabilitation as condition to surrender of right to repose judgment and sentence, and showing that terms of probation have been complied with supports hope that reformation has been accomplished and no further proof is required. *People v. Johnson (1955, Cal App 3d Dist) 134 Cal App 2d 140, 285 P2d 74, 1955 Cal App LEXIS 1732*.

At hearing on petition of defendant, who has fulfilled condition of his probation, for order under this section to set aside information and finding of guilt by trial court, it is improper to admit and consider evidence of criminal episode involving defendant which took place some seven months after his probationary period had expired. *People v. Johnson (1955, Cal App 3d Dist) 134 Cal App 2d 140, 285 P2d 74, 1955 Cal App LEXIS 1732*.

Order dismissing defendant's motion made under section, after expiration of probationary period, seeking to set aside verdict of guilty, to enter not guilty plea and to dismiss accusations, will be affirmed where notice of such motion fails to specify grounds, as required by municipal court rule, and defendant fails to show that he has fulfilled conditions of his probation, as required by section, and thus justifies court in presuming that, had evidence on point been introduced, it would have been adverse to defendant. *People v. Ignazio (1955, Cal App Dep't Super Ct) 137 Cal App 2d Supp 881, 290 P2d 964, 1955 Cal App LEXIS 1275*.

Compliance with statutory procedure which results in dismissal of charge as to defendant who has successfully completed probation should not be brushed aside as meaningless formality; such defendant should comply with statutory procedure as indication of his appreciation that he has fulfilled conditions on which he was granted clemency and that he has acquired status more like that of person who has never been convicted of crime than would have been possible without court's act of grace and defendant's acceptance of its meaning. *People v. Banks (1959) 53 Cal 2d 370, 1 Cal Rptr 669, 348 P2d 102, 1959 Cal LEXIS 354*.

Probationer who pleaded guilty to violation of anti-bookmaking statute and who was placed on probation on condition that he abstain from engaging in criminal practices and associating with gamblers was not entitled to order permitting him to withdraw guilty plea and enter plea of not guilty and dismissing accusations against him pursuant to this section, on completion of period of probation, where it appeared that during that period, report had been made by probation officer showing defendant had been engaged in gambling activities and recommending that he be ordered to show cause why his probation should not be revoked, since such evidence, though it did not result in revocation of defendant's probation, supported implied finding that he had not "fulfilled conditions of his probation for entire period thereof" as required by section. *People v. Turner* (1961, Cal App 4th Dist) 193 Cal App 2d 243, 14 Cal Rptr 130, 1961 Cal App LEXIS 1695.

On defendant's application seeking withdrawal of his plea of guilty to a prior attempted burglary charge and dismissal of the accusation pursuant to *Pen C § 1203.4*, after having completed his probationary period and having been released he was entitled to a dismissal of that accusation. *People v. Bradley* (1967, Cal App 1st Dist) 248 Cal App 2d 887, 57 Cal Rptr 82, 1967 Cal App LEXIS 1700.

The trial court abused its discretion in denying plaintiff's petition for expungement of his conviction of grand theft after he completed his period of probation under *Pen C § 1203.4*, providing for expungement of a conviction if a probationer has been discharged before the termination of the period of probation where, near the end of plaintiff's original five-year period of probation, the trial court extended it another six months on the condition plaintiff was to be medically examined to confirm he had become totally disabled in an automobile accident, and where, after the judge received the medical reports confirming that plaintiff was totally disabled, probation was terminated more than three months before the end of the extended period. *People v. Butler* (1980, Cal App 4th Dist) 105 Cal App 3d 585, 164 Cal Rptr 475, 1980 Cal App LEXIS 1809.

Where defendant had been convicted of grand theft, proceedings had been suspended and defendant had been placed on probation on condition that he serve the first year in county jail, and where defendant had taken an appeal, had been released on bail, the conviction had been affirmed and defendant had been returned to the superior court, the court had jurisdiction to order the judgment into execution and to enforce the condition that defendant serve one year in the county jail. The three-year probationary period did not expire while the case was pending on appeal. The judgment had been stayed. A judgment is an integrated whole and a stay of its execution stays all of its parts unless the trial court specifies otherwise. A commonsense reading of the judgment in question showed that the trial judge stayed the entire judgment on condition that defendant post an appeal bond, and there was no indication that the stay or appeal bond applied to only one portion of the judgment. In addition, since the entire judgment was suspended pending appeal, the time of probation only began to run at the time of the issuance of the remittitur, and another trial court judge lacked jurisdiction in the interim to modify the judgment. *In re Kennick* (1982, Cal App 2d Dist) 128 Cal App 3d 959, 180 Cal Rptr 731, 1982 Cal App LEXIS 1287, overruled *In re Bakke* (1986) 42 Cal 3d 84, 227 Cal Rptr 663, 720 P2d 11, 1986 Cal LEXIS 195.

In a criminal prosecution, the trial court exceeded its jurisdiction in approving defendant's negotiated plea of nolo contendere to a charge of lewd conduct with his minor child (*Pen C § 288(a)*) in exchange for reducing his conviction on that charge to misdemeanor child molestation under *Pen C § 647a* (now numbered *Pen C § 647.6*) on the condition that he successfully complete probation. That plea condition conflicted with *Pen C §§ 17* (conviction of felony not alternatively punishable by fine or imprisonment in county jail may not be reduced to misdemeanor), 1192.5 (negotiated plea may only specify exercise of those powers legally available to court), and 1203.4 (prohibition of withdrawal of felony plea and entry of nolo contendere plea to different crime without dismissal). *People v. Beebe* (1989, Cal App 3d Dist) 216 Cal App 3d 927, 265 Cal Rptr 242, 1989 Cal App LEXIS 1292.

Trial court erred in denying defendant's petition to expunge a drug conviction after she successfully completed her probation; although defendant failed to pay appointed attorney fees and probation costs, she was nevertheless entitled to relief under *Pen C § 1203.4(a)* because the fees and costs were not conditions of probation under *Pen C §§ 987.8, 1203.1b*. *People v. Bradus* (2007, Cal App 4th Dist) 149 Cal App 4th 636, 57 Cal Rptr 3d 79, 2007 Cal App LEXIS 515.

Failure to pay attorney fees and probation costs does not bar relief under *Pen C § 1203.4(a)*. *People v. Bradus* (2007, Cal App 4th Dist) 149 Cal App 4th 636, 57 Cal Rptr 3d 79, 2007 Cal App LEXIS 515.

## 5. Disabilities Removed

Under this section as it stood in 1922 a person was not subject to impeachment as a witness because of conviction of crime, after his probationary period had passed and he had been discharged. *People v. Mackey* (1922, Cal App) 58 Cal App 123, 208 P 135, 1922 Cal App LEXIS 124.

A probationary driver's license may not be denied on the ground that the applicant has been twice convicted of drunken driving when one of the convictions has been obliterated by order of the court under this section. *Sherry v. Ingels* (1939, Cal App) 34 Cal App 2d 632, 94 P2d 77, 1939 Cal App LEXIS 154.

Duty to reregister is one of "penalties and disabilities" from which faithful and successful probationer is thereafter released by mandate of this section. *Kelly v. Municipal Court of San Francisco* (1958, Cal App 1st Dist) 160 Cal App 2d 38, 324 P2d 990, 1958 Cal App LEXIS 2090.

Complaint charging convicted person with failing to report change of address as required by § 290, relating to registration of sex offenders, despite fact that prior to this alleged failure conviction on which charge was based was set aside and he was released from all penalties and disabilities pursuant to this section, does not charge public offense. *Kelly v. Municipal Court of San Francisco* (1958, Cal App 1st Dist) 160 Cal App 2d 38, 324 P2d 990, 1958 Cal App LEXIS 2090.

Release from penalties and disabilities under this section, following successful probation, is also release from prohibition of § 12021, prohibiting possession of firearms by convicted felon. *People v. Taylor* (1960, Cal App 2d Dist) 178 Cal App 2d 472, 3 Cal Rptr 186, 1960 Cal App LEXIS 2617, superseded by statute as stated in *People v. Frawley* (2000, Cal App 1st Dist) 82 Cal App 4th 784, 98 Cal Rptr 2d 555, 2000 Cal App LEXIS 608.

If defendant has fulfilled requirements of probation and secured release under this section, it is fair inference that he should also be released from class of convicted felons to which § 12021 is applicable, and should be restored to right to possess revolver or other hand gun about his premises or place of business just as any other citizen. *People v. Taylor* (1960, Cal App 2d Dist) 178 Cal App 2d 472, 3 Cal Rptr 186, 1960 Cal App LEXIS 2617, superseded by statute as stated in *People v. Frawley* (2000, Cal App 1st Dist) 82 Cal App 4th 784, 98 Cal Rptr 2d 555, 2000 Cal App LEXIS 608.

Where person, after pleading guilty to charge of burglary, was placed on probation and subsequently discharged under § 1203.3, his guilty plea was withdrawn, plea of not guilty was entered, and information was dismissed in accordance with this section, prior to its amendment in 1961, he may not be charged with violating § 12021 for owning or possessing pistol after conviction of felony. *People v. Daniels* (1963, Cal App 4th Dist) 222 Cal App 2d 99, 34 Cal Rptr 844, 1963 Cal App LEXIS 1633.

When, under the 1963 amendment to *Pen C § 17*, a court is empowered to change a crime from a felony to a misdemeanor, it may do so after the probationary period has expired, and after the probationer has had his record expunged under *Pen C § 1203.4*, thus restoring to him the right to carry concealable weapons. *Meyer v. Superior Court of Sacramento County* (1966, Cal App 5th Dist) 247 Cal App 2d 133, 55 Cal Rptr 350, 1966 Cal App LEXIS 946.

Although defendant had once pled guilty to commission of a felony, subsequent expungement of disabilities of his conviction pursuant to RCWA § 9.95.240 (a statute similar in effect to *Cal Pen C § 1203.4(a)*) removed him from the class of persons subject to 18 USCS § 842(i), proscribing transportation or receipt of explosives in interstate commerce after having been convicted of a felony. *United States v. Hocror* (1973, 9th Cir) 487 F2d 270, 1973 US App LEXIS 7189.

In a criminal malpractice action, the attorney was entitled to summary judgment because the client failed to create a

triable issue as to his actual innocence on either a charge of felony vandalism, to which the attorney advised him to plead guilty, or on a lesser included misdemeanor offense to which the client later pled guilty with new counsel. The court later granted the client's petition under *Pen C § 1203.4* to expunge the misdemeanor conviction. *Sangha v. LaBarbera* (2006, Cal App 4th Dist) 146 Cal App 4th 79, 52 Cal Rptr 3d 640, 2006 Cal App LEXIS 2050.

## 6. Disabilities Not Removed

A prior conviction renders a defendant ineligible for probation, though such conviction was followed by a satisfactory period of probation and subsequent discharge, and though the conviction has not been pleaded in the information. *People v. Acosta* (1931, Cal App) 115 Cal App 103, 1 P2d 43, 1931 Cal App LEXIS 658; *People v. Leach* (1937) 22 CA2d 525, 71 P2d 594, 1937 Cal App LEXIS 160.

A prior conviction of felony may be pleaded and proved on a subsequent prosecution for another offense, though satisfactory probation resulted in a dismissal of the prior information. *People v. Barwick* (1936) 7 Cal 2d 696, 62 P2d 590, 1936 Cal LEXIS 697.

A former conviction expunged by satisfactory probation is restored by a subsequent prosecution, and the record of the original conviction may be used to establish certain facts. *People v. Majado* (1937, Cal App) 22 Cal App 2d 323, 70 P2d 1015, 1937 Cal App LEXIS 121.

Since the 1927 amendment to this section, a defendant subjects himself to impeachment on the ground that he has been convicted of a felony, although such prior conviction has been expiated by a satisfactory probation. *People v. James* (1940, Cal App) 40 Cal App 2d 740, 105 P2d 947, 1940 Cal App LEXIS 170; *People v. O'Brand* (1949, Cal App) 92 Cal App 2d 752, 207 P2d 1083, 1949 Cal App LEXIS 1758.

Former Veh C § 309, declaring that a termination of probation and dismissal of charges pursuant to this section should not affect suspension of any license, prevented the issuance of a license to a person who had been twice convicted of violating § 502. *Ellis v. Department of Motor Vehicles* (1942, Cal App) 51 Cal App 2d 753, 125 P2d 521, 1942 Cal App LEXIS 750.

In a civil action for injuries from a bullet wound it may be shown that the defendant pleaded guilty to a charge based on the shooting, notwithstanding the subsequent dismissal of the charges pursuant to this section. *Vaughn v. Jonas* (1948) 31 Cal 2d 586, 191 P2d 432, 1948 Cal LEXIS 341.

Conviction followed by suspended sentence and placement on probation remains "conviction" within meaning of 8 USCS (transferred to 8 USCS § 1227). *Wood v. Hoy* (1959, 9th Cir Cal) 266 F2d 825, 1959 US App LEXIS 5021.

In any subsequent prosecution conviction may be pleaded as prior conviction even after it has been expunged. *Wood v. Hoy* (1959, 9th Cir Cal) 266 F2d 825, 1959 US App LEXIS 5021.

Though alien pled guilty to counts charging her with unlawful possession of heroin, and subsequently on termination of probation she withdrew her plea of guilty and pled not guilty to charge, pursuant to this statute, conviction was not deemed expunged in deportation proceedings under federal statute. *Garcia-Gonzales v. Immigration & Naturalization Service* (1965, 9th Cir) 344 F2d 804, 1965 US App LEXIS 5774, cert den (1965) 382 US 840, 86 S Ct 88, 15 L Ed 2d 81, 1965 US LEXIS 728.

Fact that person convicted of violating statute proscribing possession or sale of marijuana has been permitted, following probation, to withdraw plea of guilty and enter plea of not guilty does not expunge conviction, for purpose of deporting alien following conviction of offense. *Kelly v. Immigration & Naturalization Service* (1965, 9th Cir) 349 F2d 473, 1965 US App LEXIS 5198, cert den (1965) 382 US 932, 86 S Ct 326, 15 L Ed 2d 344, 1965 US LEXIS 254.

Notwithstanding "expungement" of conviction of illegal possession of marihuana, when person convicted of

offense is permitted pursuant to this statute to withdraw plea of guilty and enter plea to charge of not guilty, conviction is deemed to continue to exist in deportation proceedings under federal statute. *Brownrigg v. United States Immigration & Naturalization Service* (1966, 9th Cir) 356 F2d 877, 1966 US App LEXIS 7141.

Where a party was sentenced under former H & S C § 11501, third paragraph, to a term of 15 years to life, and had to serve 15 years before release or parole, that one of the prior convictions carried an alternative sentence of 1 year in the county jail with probation, rather than the imprisonment in the state prison, made it nonetheless a felony and it was properly a conviction for a felony offense and a valid basis for such extended sentence. *Barbosa v. Wilson* (1967, 9th Cir Cal) 385 F2d 319, 1967 US App LEXIS 4700.

Expungement pursuant to this section did not preclude defendant's being considered a convicted felon within firearm acquisition provisions of 18 USCS § 922. *United States v. Andrino* (1974, 9th Cir Ariz) 497 F2d 1103, 1974 US App LEXIS 8748, cert den (1974) 419 US 1048, 42 L Ed 2, 95 S Ct 621, 1974 US LEXIS 3586.

A prior felony conviction, although expunged pursuant to *Pen C* § 1203.4, may be used for impeachment purposes in a subsequent criminal proceeding involving the same party. *United States v. Moore* (1977, 10th Cir Okla) 556 F2d 479, 1977 US App LEXIS 13109.

In California, expungement of a conviction is governed by *Pen C* § 1203.4. When a court orders a conviction set aside under that section, the defendant shall be released from all penalties and disabilities resulting from the offense of which he or she has been convicted. However, expungement does not eradicate a conviction or purge a defendant of the guilt established thereby. This section was never intended to obliterate the fact that the defendant has been finally adjudged guilty of a crime. It merely frees the convicted felon from certain penalties and disabilities of a criminal or similar nature. Thus, an expunged conviction may be proved as a prior conviction to enhance punishment or as an element in a prosecution for possession of a concealable firearm by a convicted felon. An expunged conviction may be established as a basis for suspending a physician's license or disbaring an attorney. An expunged conviction for failure to provide necessities to a child (*Pen C* § 270), is conclusive on the issue of parentage in a subsequent prosecution for the same offense. *Adams v. County of Sacramento* (1991, Cal App 3d Dist) 235 Cal App 3d 872, 1 Cal Rptr 2d 138, 1991 Cal App LEXIS 1244.

The California Horse Racing Board acted properly in excluding a gambler from all state racetracks as a convicted bookmaker. The gambler had been convicted, upon a plea of nolo contendere, to bookmaking, and after he successfully completed probation, the conviction was expunged. *Bus. & Prof. Code*, §§ 7.5 (defining conviction to include nolo contendere pleas), 480 (denial of license), 490 (suspension and revocation of license), provide a clear legislative authorization for administrative boards to utilize convictions arising upon pleas of nolo contendere. Also, although *Pen. Code*, § 1203.4, generally provides that upon completion of probation a person may have his or her conviction expunged, an expungement of a bookmaking conviction does not relieve a person from the status of "known bookmaker." Moreover, the expungement statute was not intended to obliterate the fact that a defendant has been adjudged guilty of a crime; it merely frees the defendant from certain penalties and disabilities. Furthermore, the expungement did not automatically rehabilitate the gambler. The gambler continued to enter racing enclosures and gamble despite his ineligibility and admitted having others run bets for him. This demonstrated that he flouted the board's authority and reflected an inability to conform his behavior to legal requirements. *Opdyk v. California Horse Racing Bd.* (1995, Cal App 3d Dist) 34 Cal App 4th 1826, 41 Cal Rptr 2d 263, 1995 Cal App LEXIS 468, rehearing denied (1995, Cal App 3d Dist) 1995 Cal App LEXIS 469.

An order under *Cal. Penal Code* § 1203.4 did not "erase" or "expunge" a prior conviction for purposes of sentencing under U.S. Sentencing Guidelines Manual § 4A1.2(j). *United States v. Hayden* (2001, 9th Cir Cal) 255 F3d 768, 2001 US App LEXIS 14159, cert den (2001) 534 US 969, 151 L Ed 2d 293, 122 S Ct 383, 2001 US LEXIS 9738.

Denial of renewal application for federal firearms license was affirmed because *Pen C* § 1203.4 did not "expunge" the individual's prior conviction for purposes of 18 U.S.C.S. § 922(g)(9) and California law specifically provides that a

misdemeanor crime of domestic violence conviction could be used in subsequent prosecution, and persons could still be prosecuted under state firearms laws. *Jennings v. Mukasey* (2007, CA9 Cal) 2007 US App LEXIS 29404.

## 7. Business and Professional Licenses

Conviction of a crime involving moral turpitude warrants the disbarment of an attorney, despite the dismissal of the accusation after the defendant's satisfactory fulfillment of the conditions of probation. *In re Phillips* (1941) 17 Cal 2d 55, 109 P2d 344, 1941 Cal LEXIS 245, 132 ALR 644.

An attorney may not be disbarred for conviction of crime when the crime has been expunged by satisfactory performance of probation and the charge dismissed pursuant to this section. *Suspension of Hickman* (1941) 18 Cal 2d 71, 113 P2d 1, 1941 Cal LEXIS 333.

The State Medical Board may suspend the license of a physician convicted of violating the Narcotics Law, although the accusation against him had previously been dismissed pursuant to this section. *Meyer v. Board of Medical Examiners* (1949) 34 Cal 2d 62, 206 P2d 1085, 1949 Cal LEXIS 140.

Proceedings to suspend or revoke professional licenses are not included among the penalties and disabilities that are released by a dismissal pursuant to section. *Fountain v. State Board of Education* (1958, Cal App 2d Dist) 157 Cal App 2d 463, 320 P2d 899, 1958 Cal App LEXIS 2262.

Fact of conviction under *Pen C* § 337a may be considered by the state Horse Racing Board in determining the applicability of its rules excluding certain persons from racing enclosures within its jurisdiction, even though dismissal of charges may have been granted under this section. *Epstein v. California Horse Racing Board* (1963, Cal App 2d Dist) 222 Cal App 2d 831, 35 Cal Rptr 642, 1963 Cal App LEXIS 1737.

Proceedings to suspend or revoke business or professional licenses are not included among penalties and disabilities released by dismissal of accusations or information against probationer who has fulfilled all conditions of his probation pursuant to *Pen C* § 1203.4. *Copeland v. Department of Alcoholic Beverage Control* (1966, Cal App 2d Dist) 241 Cal App 2d 186, 50 Cal Rptr 452, 1966 Cal App LEXIS 1232.

Though *Pen C* § 1203.4, concerning release of probationer who fulfills probation conditions from disabilities of his conviction, is not expressly made inapplicable to proceedings under *Bus & Prof Code*, § 24200, subd (d), to revoke liquor license of one convicted of crime involving moral turpitude, as is case with other statutes subjecting various licensees to disciplinary action for conviction of designated offenses, such statutes are merely codification of effect of *Pen C* § 1203.4, and liquor licensee convicted of crime is not aided by lack of statute making § 1203.4 inapplicable in his case. *Copeland v. Department of Alcoholic Beverage Control* (1966, Cal App 2d Dist) 241 Cal App 2d 186, 50 Cal Rptr 452, 1966 Cal App LEXIS 1232.

Suspension or revocation of license to practice profession is not penalty or disability within purview of *Pen C* § 1203.4, providing for expungement of conviction, and function of administrative proceeding to revoke or suspend such license is neither criminal nor quasi-criminal in character; its purpose is not punishment of licensee, but rather protection of public. *Ready v. Grady* (1966, Cal App 1st Dist) 243 Cal App 2d 113, 52 Cal Rptr 303, 1966 Cal App LEXIS 1652.

Under former Ed C § 13220.16(b), which removed the mandatory bar against issuance of teaching credentials to anyone convicted of a sex offense, provided the person had applied for or obtained a certificate of rehabilitation under *Pen C* § 4852.01, that probation had been terminated, and the information or accusation dismissed under *Pen C* § 1203.4, the statutory requirement for certificate of rehabilitation could not constitutionally be applied to deny a community college credential to a teacher who had been convicted of a misdemeanor sex offense, since the certificate of rehabilitation was only available to convicted felons, and the statutory classification therefore discriminated against misdemeanants with no rational relationship to the legislative goals, and denied misdemeanants the equal protection of

## Cal Pen Code § 1203.4

the laws. Accordingly, the teacher, who fulfilled the other two statutory requirements for relief, was entitled to a writ of mandate directing that he be provided with a fitness hearing. *Newland v. Board of Governors of California Community Colleges* (1977) 19 Cal 3d 705, 139 Cal Rptr 620, 566 P2d 254, 1977 Cal LEXIS 158.

Denial by the Department of Real Estate of an application for a real estate broker's license on the ground that the applicant had been convicted of the misdemeanor of making a false written statement to obtain unemployment benefits was improper, where there was no evidence the crime bore any relationship to the applicant's qualifications as a broker, and where the charge had been dismissed pursuant to *Pen C § 1203.4*, after the applicant's successful completion of probation. *B & P C § 480*, provides for denial of a business or professional license on the ground of conviction of a crime substantially related to the occupation and precludes denial on that ground if the charge has been dismissed pursuant to *Pen C § 1203.4*. Though the language of *Bus. & Prof. Code, § 10177*, authorizes denial of a real estate license to an applicant convicted of a crime despite dismissal of the charge under *Pen C § 1203.4*, *Bus. & Prof. Code, § 475(a)(2)*, provides that the "provisions of this division," of which § 480, is a part, shall govern denial of licenses on the ground of conviction of a crime, "notwithstanding any other provisions of this code." *Pieri v. Fox* (1979, Cal App 4th Dist) 96 Cal App 3d 802, 158 Cal Rptr 256, 1979 Cal App LEXIS 2121.

The Department of Motor Vehicles (DMV) could not, on the basis of administrative regulations, deny a school bus driver's certificate to an applicant who had been convicted of a methylamine possession offense within seven years preceding her application, without affording her a hearing to determine whether her conviction made her unfit to drive a school bus, where the charge on which she had been convicted had been dismissed under *Pen C § 1203.4* on completion of her probation for that offense, even though Cal. Admin. Code, tit. 13, § 1208(a)(5) and 1210(b), mandated automatic denial of a certificate to her. Conceding that denial of a certificate was not a penalty or disability from which the applicant was automatically entitled to release under *Pen C § 1203.4*, that statute did preclude the DMV from utilizing regulations that mandated automatic denial of her application without a hearing as to her fitness for her chosen profession as driver of a school bus, and to the extent they conflicted with that statute by providing for such a denial, Cal. Admin. Code, tit. 13, §§ 1208(a)(5) and 1210(b) are void. *Selby v. Department of Motor Vehicles* (1980, Cal App 4th Dist) 110 Cal App 3d 470, 168 Cal Rptr 36, 1980 Cal App LEXIS 2268.