
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1281 **Hearing Date:** June 22, 2021
Author: Blanca Rubio
Version: April 29, 2021
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Criminal procedure: protective orders*

HISTORY

Source: Los Angeles County District Attorney's Office

Prior Legislation: AB 2808 (Cervantes), never heard in Sen. Public Safety, 2020
SB 853 (Hurtado), failed passage in Sen. Public Safety, 2020
AB 264 (Low), Ch. 270, Stats. 2017
AB 307 (Campos), Ch. 291, Stats. 2013

Support: Alameda County District Attorney's Office; Crime Victims Alliance; Crime Victims United of California; Prosecutors Alliance California

Opposition: American Civil Liberties Union California Action

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to specify that expungement of a conviction of a criminal conviction does not release the defendant from an unexpired post-conviction protective order, and that such an order shall remain in effect until its expiration or until any further order by the court modifying or terminating the order.

Existing law requires a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation and the petitioner successfully completed probation or terminated early, is not serving a sentence for, on probation for, or charged with the commission of any offense. The court has discretion to do so in the interests of justice in other probation cases. (Pen. Code, § 1203.4, subs. (a) & (b).)

Existing law requires the court to grant expungement relief, with specified exceptions, to defendants convicted of a misdemeanor and not granted probation or an infraction after one year from the date of the pronouncement of judgment, if the defendant has fully complied with and performed the sentence, is not serving a sentence, is not charged with a crime, has lived an honest and upright life, and has conformed to and obeyed the law. If the defendant does not satisfy these requirements, the court may in its discretion and in the interests of justice after one year from the date of pronouncement of judgment grant relief in non-probation cases in which the defendant has fully complied with and performed the sentence, is not serving a sentence, and is not charged with a crime. (Pen. Code, § 1203.4a subs. (a) & (b).)

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

Existing law allows the court to grant expungement relief for a conviction of a petitioner sentenced to prison for a felony that, if committed after enactment of Criminal Justice Realignment legislation in 2011, would have been eligible for county-jail sentencing to obtain an expungement. (Pen. Code, § 1203.42.)

Existing law created an automatic expungement process, subject to an appropriation in the budget, for defendants who otherwise are eligible to petition the court for relief. (Pen. Code, § 1203.425.)

Existing law states that if a defendant successfully participated in the California Conservation Camp program as an inmate hand crew member, as specified, or successfully participated as a member of a county inmate hand crew, as specified, and has been released from custody, the defendant is eligible for dismissal of charges. (Pen. Code, § 1203.4b.)

Existing law specifies that expungement relief releases the person from the penalties and disabilities resulting from the conviction, except the person:

- May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;
- Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;
- Must disclose the conviction in response to any direct question in a questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery; moreover, any ban on holding public office that resulted from the conviction remains in effect; and
- May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

(Pen. Code, §§ 1203.4, subd. (a)(1)-(3); 1203.4a, subds. (a) & (c); 1203.41, subds. (a) & (b); 1203.42, subds. (a) & (b).)

Existing law requires a court to consider issuing a protective order that may be valid for up to 10 years to protect the victim of the crime when a defendant is convicted of any of the following crimes:

- A crime involving domestic violence, as specified; human trafficking for purposes of forced labor; rape, spousal rape, and statutory rape; pimping and pandering; criminal gang activity; or any offense requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).)
- Willful infliction of corporal injury resulting in a traumatic condition upon a spouse or partner. (Pen. Code, § 273.5, subd. (j).)

- Stalking. (Pen. Code, § 646.9, subd. (k).)
- Elder and dependent adult abuse. (Pen. Code, § 368, subd. (l).)

Existing law provides that the post-conviction protective orders authorized above may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail or subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and the victim's immediate family. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (1); 646.9, subd. (k).)

This bill specifies that a dismissal of an accusation or information does not release the defendant from the terms and conditions of an unexpired post-conviction criminal protective order that has been issued by the court in connection with the underlying case.

This bill provides that the unexpired protective order shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

COMMENTS

1. Need for This Bill

According to the author of this bill:

During the COVID-19 pandemic and resulting Safer at Home orders, we have seen incidents of domestic violence increase greatly. As a state, we need act strongly and decisively to support survivors of domestic violence. Allowing courts to exercise more discretion on whether or not a protective order should be terminated is a common-sense approach to protect survivors from ongoing cycles of abuse.

2. Expungement Relief

When expungement relief is granted, the conviction is set aside and the charging document is dismissed. However, this neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.) A background check would reveal the expunged conviction with an extra entry noting the dismissal on the record. Expungement also does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. (See *People v. Diaz* (1996) 41 Cal.App.4th 1424.)

Originally, expungement relief was available to defendants placed on probation. (Pen. Code, § 1203.4.) However, expungement relief has been extended to other categories of cases, including people convicted of misdemeanors and infractions who were not granted probation. (Pen. Code, § 1203.4a.) After the enactment of Realignment, expungement was extended to persons

sentenced for a realigned felony who served their sentence in county jail. (Pen. Code, § 1203.41.) In 2017, expungement relief was extended to those who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment. (Pen. Code, § 1203.42.) In 2019, the Legislature enacted an automatic expungement process, subject to a budget appropriation, for defendants who otherwise are eligible for relief through a court petition. (Pen. Code, § 1203.425.) Most recently, in 2020, a new expungement process was created for a defendant who successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member, or as a county hand crew member. (Pen. Code, § 1203.4b.)

When a conviction is expunged, the person is generally released from “all penalties and disabilities” resulting from the conviction. (Pen. Code, §§ 1203.4, subd. (a), 1203.4a(a), 1203.41, subd. (a), 1203.42, subd. (a), 1203.49, 1170.9, subd. (h).) However, there are a number of exceptions, including several statutory exceptions to that release – e.g., gun possession and holding elected office. (Pen. Code, §§ 1203.4, subs. (a) & (c), 1203.4a, subd. (a), 1203.41, subs. (a) & (b), 1203.42, subd. (b), 1203.49, 1203.4b, subd. (d), 1203.425, subd. (a)(4), 1170.9, subd. (h)(4).) As explained:

. . . The power of the court to reward a convicted defendant who satisfactorily completes his period of probation by setting aside the verdict and dismissing the action operates to mitigate his punishment by restoring certain rights and removing certain disabilities. But it cannot be assumed that the legislature intended that such action by the trial court under section 1203.4 should be considered as obliterating the fact that the defendant had been finally adjudged guilty of a crime. . . .

(*Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 140.) “Therefore, a conviction which has been expunged still exists for limited purposes....” (*Ibid.*)

This bill would specify an additional exception to release from “all penalties and disabilities,” as provided under Penal Code sections 1203.4, 1203.4a, 1203.4b, and 1203.425. In particular, it would specify that expungement under these provisions does not release a person from an unexpired post-conviction protective order. However, the court retains jurisdiction to modify or terminate the order.

3. Post-Conviction Protection Orders

When criminal proceedings have concluded, the court has the authority to issue protective orders as a condition of probation in cases where probation was granted. In some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. In cases involving willful infliction of corporal injury upon a cohabitant (otherwise known as domestic violence), the court must consider issuing a postconviction restraining order for up to 10 years prohibiting any contact with the victim. (Pen. Code, § 273.5, sub. (j).) The court can also issue no-contact orders lasting up to 10 years to protect witnesses in cases involving a domestic violence-related offense, rape, human trafficking, gang crimes, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).) The same is true of stalking cases (Pen. Code, §646.9, subd. (k)) and cases involving the abuse of an elder or dependent adult (Pen. Code, § 368, subd. (l)). The actual length of the restraining order issued is to be based upon the seriousness of the facts before the court, the probability of future violations,

and the safety of the victim and their immediate family. The restraining order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

A person who violates a criminal protective order may be punished with criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended “to do some further act or achieve some additional consequence.” (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order.” (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

This bill would specify that when a conviction is expunged pursuant to various expungement processes, the defendant is not released from an unexpired post-conviction protective order. The court, however, retains discretion to terminate or modify the order.

4. Argument in Support

According to the Los Angeles County District Attorney’s Office, the sponsor of this bill:

Under existing law, a defendant whose case has been dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.4b, and 1203.425, effective 2022, shall be ‘released from all penalties and disabilities resulting from the offense.’ Although there are no cases directly on point, several appellate courts have held that in other contexts, provisions designed to protect the public are not “penalties and disabilities” from which a defendant may be released. For example, in *People v. Hamdon* (2014) 225 Cal. App.4th 1065, the court held that a defendant must still register as a sex offender per PC 290.5 even if the conviction had been set aside per PC 1203.4a. The court relied on two CA Supreme Court cases which held that registration is not punitive. Similarly, several CA Court of Appeal decisions have established that the “penalties and disabilities” from which a probationer may be released do not include non-penal restrictions designed to protect the public, such as qualification for employment as a peace officer and licensing of attorneys and doctors.

Additionally, Penal Code sections 1203.4, 1203.4a, 1203.4b, and 1203.425 clearly state that dismissed cases do not exempt the defendant from firearms prohibitions or prohibitions to hold public office resulting from the original conviction. However, the lack of mention of protective orders has created uncertainty around their future enforceability.

Criminal protective orders are not punitive in nature. They are non-penal restrictions designed to protect crime victims. Unless Penal Code sections 1203.4, 1203.4a, 1203.4b, and 1203.425 are amended to exclude 10-year criminal protective orders from the “penalties and disabilities” provision of those sections, there will always be a lack of clarity in the laws as to whether these important protective orders are still valid after a case has been dismissed.

5. Argument in Opposition

According to American Civil Liberties Union California Action:

Restraining orders issued in criminal cases can remain in effect for periods of time far longer than a defendant's sentence or period of probation, potentially up to ten years. For that time period, the defendant remains subject to the control of the criminal justice system. The restrictions imposed under the restraining order in many cases can be a significant obstacle to the individual's ability to return to a law-abiding life in the community. For example, in a domestic violence case a restraining order may be issued barring contact with to witnesses to the crime. Those witnesses may be members of the defendant's family or neighbors. The restraining order may therefor make it impossible for the defendant to return to their former home or even neighborhood without violating the order. The end result in many cases would likely be conviction for violation of the restraining order, and a prolonged cycle of reincarceration.

AB 1281 would broadly require all restraining orders to remain in effect unless the judge affirmatively chooses to terminate or modify the order. This will leave many defendants who successfully petition to have the cases against them dismissed under the jurisdiction of the criminal court for years after the dismissal, even when there is no reason to believe that they will otherwise creak the law or cause harm.

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