
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 945 **Hearing Date:** June 20, 2023
Author: Reyes
Version: March 16, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal procedure: expungement of records*

HISTORY

Source: Author

Prior Legislation: AB 160 (Committee on Budget), Ch. 771, Stats. 2022
AB 2147 (Reyes), Ch. 60, Stats. 2020

Support: Anti-Recidivism Coalition

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require, beginning May 1, 2024, and every other year thereafter, each superior court to report to the Department of Justice (DOJ) data regarding petitions seeking expungement relief on the basis of having successfully participated as an incarcerated fire camp member or at an institutional firehouse, and require DOJ to submit a report containing this data to the Legislature.

Existing law provides that the following defendants, after having been released from custody, are eligible to petition for expungement relief:

- A defendant who successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member, as determined by the Secretary of the Department of Corrections and Rehabilitation (CDCR);
- A defendant who successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority; or,
- A defendant who participated at an institutional firehouse, as determined by the Secretary of CDCR. (Pen. Code, § 1203.4b, subd. (a)(1).)

Existing law makes automatically ineligible for expungement individuals who have been convicted of any of the following crimes:

- Murder;

- Kidnapping;
- Rape;
- Lewd acts on a child under 14;
- Any felony punishable by death or imprisonment in prison for life;
- Any sex offense requiring registration;
- Escape from a secure perimeter within the previous 10 years; or,
- Arson. (Pen. Code, § 1203.4b, subd. (a)(1)(A)-(H).)

Existing law states that any denial of relief shall be without prejudice. (Pen. Code, § 1203.4b, subd. (a)(2).)

Existing law states that successful participation in a conservation camp program or a program at an institutional firehouse and successful participation as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, means the incarcerated individual adequately performed their duties without any conduct that warranted removal from the program. (Pen. Code, § 1203.4b, subd. (a)(3).)

Existing law provides that the defendant may file a petition for relief with the court in the county where the defendant was sentenced. The court shall provide a copy of the petition with the secretary of CDCR, or in the case of a county incarcerated individual hand crew member, the appropriate county authority. (Pen. Code, § 1203.4b, subd. (b)(1).)

Existing law states that if the secretary or appropriate county authority certifies to the court that the formerly incarcerated individual successfully participated in the conservation camp program, or institutional firehouse, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, as specified, and has been released from custody, the court, in its discretion and in the interests of justice, may issue an order for relief, as specified. (Pen. Code, § 1203.4b, subd. (b)(2).)

Existing law provides that to be eligible for relief, the defendant is not required to complete the term of their probation, parole, or supervised release. Notwithstanding any other law, the court, in providing relief, shall order early termination of probation, parole, or supervised release if the court determines that the defendant has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief. (Pen. Code, § 1203.4b, subd. (b)(3).)

Existing law provides that all convictions for which the defendant is serving a sentence at the time the defendant successfully participates in a program are subject to relief. (Pen. Code, § 1203.4b, subd. (b)(4).)

Existing law states that a defendant who is granted an order of relief shall not be required to disclose the conviction on an application for licensure by any state or local agency. Specifies this does not apply to an application for licensure by the Commission on Teacher Credentialing, a

position as a peace officer, public office, or for contracting with the California State Lottery Commission. (Pen. Code, § 1203.4b, subd. (b)(5).)

Existing law provides that if the requirements of this provision are met, the court, in its discretion and in the interest of justice, may permit the defendant to withdraw the plea of guilty or plea of nolo contendere and enter a plea of not guilty, or, if the defendant 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 the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which the defendant has been convicted, except revocation or suspension of the privilege to drive a vehicle. (Pen. Code, § 1203.4b, subd. (c)(1).)

Existing law prohibits relief if the defendant is currently charged with the commission of any other offense. (Pen. Code, § 1203.4b, subd. (c)(2).)

Existing law allows the defendant to make the application and change of plea in person or by attorney. (Pen. Code, § 1203.4b, subd. (c)(3).)

Existing law prohibits granting relief unless the prosecuting attorney has been given 15 days' notice of the petition for relief, but presumes notice has been received if proof of service is filed with the court (Pen. Code, § 1203.4b, subd. (e).)

Existing law states that if, after receiving notice, 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. (Pen. Code, § 1203.4b, subd. (e)(2).)

This bill requires, on or before May 1, 2024, and on or before May 1 of every other year thereafter, each superior court to report the following information to DOJ regarding petitions filed for expungement relief based on successful participation as an incarcerated fire camp member or at an institutional firehouse:

- The number of petitions filed requesting relief;
- The date a petition was filed;
- The date a decision was issued for the petition;
- The number of petitions granted;
- The number of petitions denied;
- The number of pending petitions at the time of the report to DOJ; and,
- Whether the petition was filed by a public defender's office, defense counsel, nonprofit organization, or a self-represented defendant.

This bill states that on or before June 1, 2024, and on or before June 1 of every other year thereafter, DOJ shall compile data received from each superior court and submit a report to the Legislature containing the statewide data for each of the specified categories.

COMMENTS

1. Need for This Bill

According to the author of this bill:

AB 945 will require a report be submitted to the legislature detailing the rate of expungements granted to individuals who successfully participated in the California Conservation Camp program as an incarcerated hand crew member. In 2020, AB 2147 was signed into law to provide individuals with the opportunity to apply for an expungement once they were released from custody and had participated in the Conservation Camp Program. AB 2147 was a step in the right direction in providing individuals with a pathway towards rehabilitation and integration. Since its passage, the opportunity for meaningful employment has been granted, now it is time to review the data of the rate of the expungements granted. AB 945 will require the collection of data and help ensure that there is appropriate follow-through on the effectiveness of previous legislation.

2. Conservation (Fire) Camp Program

CDCR, in cooperation with California Department of Forestry and Fire Protection (Cal Fire) and the Los Angeles County Fire Department, jointly operates 35 conservation camps, commonly referred to as fire camps, located in 25 counties. Two of the camps are for incarcerated women. CDCR employees oversee the fire camps, which are all minimum-security facilities. The primary mission of the Conservation Camp Program is to support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters. CDCR reports that approximately 3,100 inmates work at fire camps, and approximately 2,200 inmates are fire-line qualified. (See <https://www.cdcr.ca.gov/conservation-camps/> [as of June 14, 2023].)

Inmates receive the same entry-level training as Cal Fire's seasonal firefighters as well as ongoing training from Cal Fire throughout their time in the program. An inmate must volunteer for the fire camp program and must be medically-cleared before being accepted. Some convictions automatically make an inmate ineligible for fire camp assignment, including sex offenses, arson, and escape with force or violence. Inmate volunteers must have "minimum custody" status, or the lowest classification for inmates based on their sustained good behavior in prison, their conforming to rules within the prison and participating in rehabilitative programming. CDCR is responsible for the selection, supervision, care and discipline of the inmates. Cal Fire maintains the camp, supervises the work of the inmate fire crews, and is responsible for inmate custody while on daily grade projects. In addition to fighting fires, inmate firefighters perform conservation and community service projects, including clearing brush and fallen trees to reduce the chance of fire, maintaining parks, sand bagging, flood protection and reforestation. (See <https://www.cdcr.ca.gov/cdcr-job-opportunities-for-the-population-in-prison-and-beyond/> [as of June 14, 2023].)

In effort to expand employment opportunities for incarcerated persons paroling from fire camps, CDCR, CAL FIRE and the California Conservation Corps, in partnership with the Anti-Recidivism Coalition, partnered to implement a Firefighter Training and Certification Program in Ventura County in October 2018. The Ventura Training Center (VTC) is an 18-month program that provides advanced firefighter training to eligible former offenders on parole who have

recently been part of a trained firefighting workforce housed in fire camps or institutional firehouses operated by CAL FIRE and CDCR. Members of the California Conservation Corps are also eligible to participate.

Participants in the certification program are provided with additional rehabilitation and job training skills to help them be more successful after completion of the program. Cadets who complete the program are also qualified to apply for entry-level firefighting jobs with local, state, and federal firefighting agencies.

Many former incarcerated firefighters from the state's Conservation Camp Program go on to gain employment with CAL FIRE, the United States Forest Service and interagency hotshot crews, which do not require EMT certifications. CAL FIRE does not require EMT certification to be employed as a firefighter with their department, nor do federal firefighting crews or private municipal fire departments. (*Id.*)

3. Expungement Relief for Successful Participation in Fire Camp or Institutional Firehouse

Under existing law, a person who successfully participated in a fire camp or at an institutionalized firehouse is eligible to petition the court for expungement upon release from incarceration. (Pen. Code, § 1203.4b.) The law excludes people convicted of: murder; kidnapping; rape by force or threats; lewd acts on a child under 14 years of age; any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration; escape from a secure perimeter within the previous 10 years; and arson. Any of these convictions disqualifies a person from participating in a fire camp. The Secretary of CDCR or the appropriate county agency is responsible for certifying to the court that the petitioner has successfully participated in such a program.

It is within the court's discretion and in the interests of justice to grant the petition and all convictions for which the defendant is serving a sentence at the time are subject to relief. If granted, the court shall dismiss the convictions and the defendant shall not be required to disclose the conviction on an application for licensure by any state or local agency, subject to specified exceptions. The petitioner is still subject to some form of supervised release, and if the court determines that the defendant has not violated any terms of probation, parole or supervised release prior to, and during the pendency of, the petition for expungement, the court shall order early termination of supervision. Expungement relief pursuant to this section has the same limitations that exist in other expungement sections: (1) the conviction may be used in a subsequent prosecution to prove a prior conviction; (2) the conviction must be disclosed in an application for a peace officer, public officer, licensure by the Commission on Teacher Credentialing, or contracting with the California State Lottery Commission; (3) firearm prohibitions remain; (4) does not permit holding public office if the conviction would otherwise prohibit it; and does not relieve the person of the terms and conditions of specified unexpired criminal protective orders.

This bill would require courts to report specified data regarding petitions for expungement relief for incarcerated firefighters to the DOJ. The DOJ would, in turn, be required to provide a report to the Legislature to facilitate evaluating the implementation of this relief.

4. Argument in Support

According to the Anti-Recidivism Coalition (ARC):

The California Conservation Camp Program was initiated by the California Department of Corrections and Rehabilitation (CDCR) to provide incarcerated individuals the opportunity to work on meaningful projects throughout the state. These projects include clearing fire breaks, restoring historical structures, maintaining parks, sand bagging and flood protection, reforestation and clearing fallen trees and debris.

However, despite their time providing critical services to the state of California, many who participated struggled to find permanent and stable employment once released from custody. This was in part due to the significant barriers in place for individuals with prior convictions.

In response, AB 2147 (Reyes, 2020) was introduced and signed into law which allowed an individual who successfully participated as an incarcerated hand crew member under the California Conservation Camp Program to apply for an expungement upon release from custody. AB 2147 set a pathway for many individuals who served our state as hand crew members to seek meaningful employment, reintegration, and true rehabilitation.

ARC is a partner in the Ventura Training Camp (VTC), which trains and develops participants for careers in firefighting, providing emergency response, and resource conservation while enhancing rehabilitative efforts in the State of California. ARC has helped 53 of our participants apply and at least 14 members have been granted expungement under AB 2147. With roughly 35 people still awaiting decisions, we have seen a broad range of interpretations to the law.

Two years since this this landmark piece of legislation, the rate of expungements granted to these individuals is unclear. Without this information, the Legislature cannot determine the effectiveness of the intent of AB 2147 or the opportunities being provided to our previously incarcerated hand crew members.

AB 2147 was a step in the right direction in providing individuals with a pathway towards rehabilitation and integration. Since its passage, the opportunity for meaningful employment has been granted, now it is time to review the data of the rate of the expungements granted. AB 945 will require the collection of data and help ensure that there is appropriate follow-through on the effectiveness of previous legislation.

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