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**AB-2147 Convictions: expungement: incarcerated individual hand crews.** (2019-2020)

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**Assembly Bill No. 2147**

**CHAPTER 60**

An act to add Section 1203.4b to the Penal Code, relating to convictions.

[ Approved by Governor September 11, 2020. Filed with Secretary of State September 11, 2020. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2147, Reyes. Convictions: expungement: incarcerated individual hand crews.

Existing law authorizes a court to allow a defendant sentenced to county jail for a felony to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty, after the lapse of one or 2 years following the defendant's completion of the sentence, provided that the defendant is not under supervision, and is not serving a sentence for, on probation for, or charged with the commission of any offense. Existing law requires the defendant to be released from all penalties and disabilities resulting from the offense of which the defendant was convicted, except as specified.

This bill would allow a defendant who successfully participated in the California Conservation Camp Program or a county incarcerated individual hand crew as an incarcerated individual hand crew member, and has been released from custody, to petition to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty. The bill would make persons convicted of specified violent felonies and sex offenses ineligible for relief. The bill would allow the court, if the defendant is eligible for relief, to dismiss the accusations or information against the defendant at the court's discretion and in the interest of justice and would release the defendant from all penalties and disabilities resulting from the offense, except as provided. In granting this relief, the bill would require the court to order the early termination of probation, parole, or supervised release if the court determines that the defendant has not violated any of the terms or conditions of their release during the pendency of the petition.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** The Legislature finds and declares all of the following:

- (a) Since 2017, California wildfires have burned almost a million acres, destroyed 31,434 structures, and taken the lives of 128 people.
- (b) The California Department of Corrections and Rehabilitation operates 44 Conservation Camps in partnership with the Department of Forestry and Fire Protection (CAL-FIRE) in 27 counties across California.
- (c) In 2017, 650 incarcerated individuals assisted in suppressing the Pocket, Tubbs, and Atlas Fires.
- (d) In 2018, close to 800 incarcerated individuals assisted with the Camp Fire in Butte County.

(e) Recently, over 400 incarcerated individuals helped battle the Kincade Fire.

(f) From early 2017 to now, three incarcerated individuals have died while actively working on containing a fire.

(g) California has approximately 3,700 incarcerated individuals working at conservation camps under the California Conservation Camp program with approximately 2,600 of those being fire line-qualified.

(h) Several counties use county jail incarcerated individual hand crews that assist with local fuel reduction programs and chipping operations and respond to emergency operations such as sandbagging, flood recovery, and assisting firefighters in containing fires.

(i) After receiving valuable training and placing themselves in danger assisting firefighters to defend the life and property of Californians, incarcerated individual hand crew members face difficulty and obstacles in achieving employment due to their past criminal record.

(j) Due to their service to the state of California in protecting lives and property, those incarcerated individual crew members that successfully complete their service in the conservation camps or successfully complete services as members of a county incarcerated individual hand crew, as determined by the appropriate county authority, and have been released from custody, should be granted special consideration relating to their underlying criminal conviction.

(k) Incarcerated individuals participating in the California Conservation Camp program are required to meet minimum eligibility criteria as determined by the Department of Corrections and Rehabilitation.

**SEC. 2.** Section 1203.4b is added to the Penal Code, to read:

**1203.4b.** (a) (1) If a defendant 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, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, and has been released from custody, the defendant is eligible for relief pursuant to this section, except that incarcerated individuals who have been convicted of any of the following crimes are automatically ineligible for relief pursuant to this section:

(A) Murder.

(B) Kidnapping.

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

(D) Lewd acts on a child under 14 years of age, as defined in Section 288.

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

(F) Any sex offense requiring registration pursuant to Section 290.

(G) Escape from a secure perimeter within the previous 10 years.

(H) Arson.

(2) Any denial of relief pursuant to this section shall be without prejudice.

(3) For purposes of this subdivision, successful participation in a conservation camp program 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.

(b) (1) 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 to the secretary, or, in the case of a county incarcerated individual hand crew member, the appropriate county authority.

(2) If the secretary or appropriate county authority certifies to the court that the defendant successfully participated in the incarcerated individual conservation camp program, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, as specified in subdivision (a), and has been released from custody, the court, in its discretion and in the interests of justice, may issue an order pursuant to subdivision (c).

(3) To be eligible for relief pursuant to this section, 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 pursuant to this section, 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 pursuant to this section.

(4) All convictions for which the defendant is serving a sentence at the time the defendant successfully participates in a program as specified in subdivision (a) are subject to relief pursuant to this section.

(5) (A) A defendant who is granted an order pursuant to this section shall not be required to disclose the conviction on an application for licensure by any state or local agency.

(B) This paragraph 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.

(c) (1) If the requirements of this section 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 as provided in Section 13555 of the Vehicle Code.

(2) The relief available pursuant to this section shall not be granted if the defendant is currently charged with the commission of any other offense.

(3) The defendant may make the application and change of plea in person or by attorney.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the accusation or information had not been dismissed.

(2) The order shall state, and the defendant shall be informed, that the order does not relieve the defendant of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for licensure by the Commission on Teacher Credentialing, a peace officer, public office, or for contracting with the California State Lottery Commission.

(3) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in the person's custody or control any firearm or prevent their conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(4) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief.

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

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