

Date of Hearing: June 1, 2022
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1106 (Wiener) – As Amended May 25, 2022

SUMMARY: Prohibits the denial of a petition for expungement relief, the denial of release on parole to another state, and the denial of a petition for reduction of a conviction, solely on the basis that the person has not yet satisfied their restitution obligations. Specifically, **this bill:**

- 1) Provides that, when a court exercises its discretion to reduce an offense from a felony to a misdemeanor, or a misdemeanor to an infraction, unfulfilled victim restitution or a restitution fine shall not be grounds for denial of a request or application for reduction.
- 2) Prohibits the denial of a petition for expungement relief due to unfulfilled victim restitution or a restitution fine.
- 3) Specifies that upon the court's consideration of a petition for discretionary expungement relief in the interest of justice, unfulfilled victim restitution or a restitution fine shall not be grounds for denial of the petition for relief.
- 4) States that unfulfilled victim restitution or a restitution fine shall not be grounds for finding that:
 - a) A defendant did not fulfill the condition of probation for the entire period of probation;
 - b) A defendant did not fully comply with and perform the sentence of the court or a finding that a defendant has not lived an honest and upright life and has conformed to and obeyed the laws of the land; and,
 - c) A defendant did not successfully participate in the California Conservation Camp program as an incarcerated individual hand crew member, or that the defendant did not successfully participate as a member of a county incarcerated individual hand crew.
- 5) States that when the court considers a petition for expungement relief, in its discretion and in the interests of justice, unfulfilled victim restitution or a restitution fine shall not be grounds to deny relief to a person whose probation was conditioned on making victim restitution, if the person otherwise qualifies for relief.
- 6) Repeals the prohibition on the release of a parolee to reside in any other state if the parolee is subject to an unsatisfied victim restitution or a restitution fine.
- 7) Contains legislative findings and declarations.

EXISTING STATE LAW:

- 1) Authorizes a court, in its discretion, to designate an offense that is punishable as an alternate felony-misdemeanor as a misdemeanor, as specified. (Pen. Code, § 17, subd. (b).)
- 2) Authorizes a court, with the consent of the defendant, to determine specified offenses as an infraction instead of a misdemeanor, as specified. (Pen. Code, § 17, subd. (d).)
- 3) Provides that expungement relief releases the person from the penalties and disabilities resulting from the conviction, except as specified. (Pen. Code, §§ 1203.4, subds. (a) & (c).)
- 4) 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. (Pen. Code, § 1203.4, subds. (a) & (b).)
- 5) Authorizes the court to grant expungement relief in its discretion and in the interest of justice in other probation cases. (Pen. Code, § 1203.4, subds. (a) & (b).)
- 6) Requires a 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 judgement, 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. (Pen. Code, § 1203.4a subds. (a) & (b).)
- 7) Authorizes a court to grant expungement relief in its discretion and in the interest of justice, if the defendant does not satisfy these requirements 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 subds. (a) & (b).)
- 8) Authorizes a court to grant expungement relief, in its discretion and in the interest of justice, for a felony conviction of a petitioner sentenced to county jail and mandatory supervision pursuant to criminal justice realignment legislation of 2011 if specified conditions are satisfied. (Pen. Code, § 1203.41.)
- 9) Authorizes a court to grant expungement relief in its discretion and in the interest of justice, 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.)
- 10) Authorizes a court to grant expungement relief in its discretion and in the interest of justice, if the 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. (Pen. Code, § 1203.4b.)

- 11) Requires, in addition to any other penalty imposed, the defendant to pay both, a restitution fine and restitution to the victim or victims. (Pen. Code, § 1202.4, subd. (a)(3).)
- 12) Requires, in every case in which a defendant is granted probation, the court to make the payment of restitution fines and victim restitution a condition of probation. (Pen. Code, § 1202.4, subd. (m).)
- 13) Provides that, if the defendant is convicted of a felony, the restitution fine shall not be less than \$300 and not more than \$10,000. If the defendant is convicted of a misdemeanor, the restitution fine shall not be less than one \$150 and not more than \$1,000. (Pen. Code, § 1202.4, subd. (b)(1).)
- 14) States that a defendant's inability to pay shall not be considered a reason not to impose the restitution fine. A defendant's inability to pay may be considered as a relevant factor in setting the amount of the restitution fine in excess of the minimum. (Pen. Code, § 1202.4, subds. (c), (d).)
- 15) Provides that any portion of a restitution fine that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision, or mandatory supervision, after a term in custody, or after completing diversion is enforceable by the California Victim Compensation Board (CalVCB). (Pen. Code, § 1214, subd. (a).)
- 16) Allows a local collection program to assist CalVCB with collections of the restitution fine and to continue to collect restitution fines once a defendant is no longer on probation, postrelease community supervision, or mandatory supervision or after a term in custody. (Pen. Code, § 1214, subd. (a).)
- 17) Provides that restitution fines that are due and payable may be referred to the Franchise Tax Board (FTB) for collection under guidelines prescribed by the FTB. (Rev. & Tax Code, § 19280, subds. (a)(1)(A) & (a)(2)(A).)
- 18) States that victims have the right to seek and secure restitution from the persons convicted of the crimes causing the loss that they suffer. (Cal. Const. art. I, § 28, subd. (b).)
- 19) Provides that a victim who incurs an economic loss as a result of the crime shall receive restitution directly from a defendant convicted of the crime. (Pen. Code, § 1202.4, subd. (a).)
- 20) Provides that a victim restitution order shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including but not limited to medical expenses, mental health counseling expenses, wages or lost profits, noneconomic losses, including psychological harm, interest at the rate of 10 percent per annum, actual and reasonable attorney's fees, and relocation fees. (Pen. Code, § 1202.4, subd. (f)(3).)
- 21) Provides that a defendant's inability to pay shall not be a consideration in determining the amount of a victim restitution order. (Pen. Code, § 1202.4, subd. (g).)

- 22) Specifies that a victim restitution order is enforceable by the victim as a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. (Pen. Code, §§ 1202.4, subd. (i), & 1214, subd. (b).)
- 23) States that victims shall have access to all resources available under the law to enforce the victim restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. (Pen. Code, §1214, subd. (b).)
- 24) States that any portion of a victim restitution order that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision or mandatory supervision, after a term in custody, or after completing diversion is enforceable by the victim. (Pen. Code, §§ 1202.4, subd. (l) & 1214, subd. (b).)
- 25) Allows local collection programs to continue to enforce victim restitution orders once a defendant is no longer on probation, postrelease community supervision, or mandatory supervision or after completion of a term in custody. (Pen. Code, § 1214, subd. (b).)
- 26) Provides that victim restitution orders that are due and payable may be referred to the FTB for collection under guidelines prescribed by the FTB. (Rev. & Tax Code, § 19280, subs. (a)(1)(A) & (a)(2)(A).)
- 27) Prohibits the release of a parolee or inmate on parole to reside in any other residing state if the parolee or inmate is subject to an unsatisfied order of restitution to a victim or a restitution fine within the sending state. (Pen. Code, § 11177.2, subd. (b).)
- 28) States that the parolee may be granted an exception to the above prohibition if the parolee posts a bond for the amount of the restitution order. (Pen. Code, § 11177.2, subd. (b).)
- 29) States that a parolee may petition the court for a hearing to determine whether, in the interest of justice, the prohibition against leaving the state should be waived. This authority shall not be construed to allow the reduction or waiver of a restitution order or fine. (Pen. Code, § 11177.2, subd. (c).)

EXISTING FEDERAL LAW:

- 1) Prohibits the imposition of excessive fines. (U.S. Const., 8th Amend.)
- 2) Provides that no one shall be "deprived of life, liberty or property without due process of law." (U.S. Const., 5th Amend.)
- 3) Prohibits the states from depriving any person of life, liberty, or property, without due process of law; or denying to any person within its jurisdiction the equal protection of the laws. (U.S. Const., 14th Amend.)

FISCAL EFFECT: Unknown**COMMENTS:**

- 1) **Author's Statement:** According to the author, “Senate Bill 1106 precludes courts from denying a request for expungement of a conviction based on outstanding debt related to restitution. To be clear, SB 1106 does not waive or reduce the restitution or restitution fines owed, but rather removes it as a barrier to expungement.

“Current law authorizes courts to require people convicted of crimes to pay restitution fines, as well as restitution payments to compensate survivors for harm caused. Courts can order people to pay direct restitution based on the amount of loss or injury but, in setting the amount, are not required to take into account a person’s ability to pay that restitution. Victims of crime who are awarded restitution overwhelmingly receive either nothing or a small percentage of the restitution, due to the defendant lacking the resources to actually pay restitution.

“In practice, current law means that people leaving the criminal justice system are more likely to get trapped by fines and fees that they cannot get a job to actually pay off. This helps neither the person ordered to pay restitution nor the person who would receive compensation from the payment.

“Because successful re-entry into society for formerly incarcerated people benefits the broader community, SB 1106 ensures that expungement petitions aren’t denied simply due to outstanding restitution debt.”

- 2) **Victim Restitution vs. Restitution Fines:** California law provides for two types of restitution: victim restitution and restitution fines. The purposes of the two kinds of restitution are different. The imposition of a restitution fine is to inflict additional punishment. (*People v. Dueñas* (2019) 30 Cal.App.5th 157, 1169; *People v. Hanson* (2000) 23 Cal.4th 355, 363.) The purpose of victim restitution is to reimburse the victim for economic loss cause by the crime. (*People v. Giordano* (2007) 42 Cal.4th 644, 652.)

In 1982, California voters passed Proposition 8, the Victims’ Bill of Rights, which added article I, section 28, subdivision (b) to the California Constitution, which gives victims the right to seek and secure restitution from the persons convicted of the crimes causing the loss that the suffer. (*People v. Gross* (2015) 238 Cal.App.4th 1313, 1317-1318.) “A victim’s right to restitution is, therefore, a constitutional one; it cannot be bargained away or limited, nor can the prosecution waive the victim's right to receive restitution.” (*Ibid.*)

As directed by the voters, the Legislature enacted Penal Code section 1202.4 to implement the Victims’ Bill of Rights. (*Gross, supra*, 238 Cal.App.4th at p. 1318; *People v. Seymour* (2015) 239 Cal.App.4th 1418, 1435.) This statute provides that “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order.” (Pen. Code, § 1202.4, subd. (f).) The statute further provides that a “defendant’s inability to pay shall not be consideration in determining the amount of a restitution order.” (Pen. Code, § 1202.4, subd. (g).) Rather, victim restitution orders must be of a dollar amount that is, in the court’s opinion, sufficient to fully reimburse the victim, which can include an assortment of expenses such as medical expenses, mental health counseling expenses, wages or lost profits, noneconomic losses like psychological harm,

interest at the rate of 10 percent per annum, actual and reasonable attorney's fees, and relocation fees. (Pen. Code, § 1204.5, subd. (f)(3).)

Payment of victim restitution goes directly to the victim and compensates them for economic losses they have suffered because of the defendant's crime, i.e., to make the victim reasonably whole. (*People v. Guillen* (2013) 218 Cal.App.4th 975, 984.) A victim restitution order is an enforceable civil money judgment, and typical post-judgment enforcement tools are available to the victim. (Pen. Code, § 1202.4, subd. (i).) Victims have access to all available resources to enforce the order, including wage garnishment and lien procedures, even if the defendant is no longer in custody or on supervision. (*Ibid.*) Also, victim restitution orders can be referred to the FTB for collection and crime victims are entitled to their preference of collection agencies. (Rev. & Tax. Code, § 19820.)

On the other hand, restitution fines, which are separate from victim restitution, are deposited in the Restitution Fund in the State Treasury. (Pen. Code, § 1204.4 subd. (e); *Guillen, supra*, 218 Cal.App.4th at p. 985.) For felony convictions, the minimum restitution fine is \$300, and the maximum fine is \$10,000. For misdemeanors, the minimum fine is \$150 and the maximum is \$1,000. (Pen. Code, § 1202.4, subd. (b)(1).) A defendant's inability to pay may be considered a factor in setting the amount of the restitution fine above the statutory minimum, but a court is not permitted to consider the defendant's inability to pay as a reason not to assess the fine. (Pen. Code, § 1202.4, subds. (c), (d).) Restitution fines are enforceable by the CalVCB, even after a defendant is no longer in custody or on supervision, and can be referred to the FTB for collection. (Pen. Code, § 1214; Rev. & Tax Code, § 19820.)

Combined, the restitution fine and victim restitution, can easily exceed amounts in the tens of thousands of dollars, not including the accruing interests. The obligation to pay restitution does not vanish, even if expungement relief is granted. (*Seymour, supra*, 239 Cal.App.4th 1418 at p.1430 ["victim restitution is still an obligation the defendant must meet"]; *In Re Timothy N.* (2013) 216 Cal.App.4th 725, 738 [the defendant "is not escaping his restitution obligation" and "will be required to pay the restitution pursuant to the trial court's orders, which the victims may enforce as they would a civil judgment."]; *People v. Allen* (2019) 41 Cal.App.5th 312, 329.)

- 3) **Expungement Relief Generally:** When expungement relief is granted, the conviction is set aside and the charging document is dismissed. 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, this neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. (*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 does not render the conviction a legal nullity, for example expunged convictions may still be used against the defendant in subsequent prosecutions, professional licensure proceedings, and may disqualify the defendant from possessing a firearm or holding public office. (*Guillen, supra*, 218 Cal.App.4th 975, at p. 996.)

Notably, expungement relief does not remove the defendant's obligation to pay restitution. (*Allen, supra*, 41 Cal.App.5th 312 at p. 329 ["victim restitution award survives expungement and remains enforceable as a civil judgment"]; *In re Warfel* (2001) 268 B.R. 205, 211

[“Clearly, the California legislature intended that a restitution obligation should be paid even if payment was not complete at the conclusion of the criminal sentence”]; *People v. Chambers* (1998) 65 Cal. App. 4th 819, 822 [even if restitution was imposed as a condition of probation, the statutes contemplated that it would survive the probationary term].)

- 4) **Mandatory Expungement vs. Discretionary Expungement:** In some circumstances expungement relief is mandatory. A court is required to grant expungement relief if the defendant successfully completed probation or probation terminated early, as specified; if the defendant was convicted of a misdemeanor and was not granted probation, as specified; and, for infractions, as specified. (Pen. Code, §§ 1203.4 & 1203.4a.) Under these statutes, the defendant is entitled as a matter of right to expungement. (*Guillen, supra*, at p. 991; *Seymour, supra*, 239 Cal.App.4th 1418 at p. 1430.)

In other circumstances, courts have discretionary authority to grant expungement relief. (Pen. Code, §§ 1203.4, 1203.4a, 1203.41, 1203.42 & 1203.4b.) Under these statutes, the court exercises its discretion whether to grant relief in the “interests of justice.” (*Guillen, supra*, at p. 991; *Seymour, supra*, at p. 1430.)

- 5) **Victim Restitution and Mandatory Expungement:** Courts have refused to grant mandatory expungement relief in cases where victim restitution is a condition of the defendant’s probation and the defendant has not completely paid restitution. (*People v. Chandler* (1988) 203 Cal.App.3d 782, 789.) The rationale is that a defendant who has not fulfilled a probation condition requiring payment of victim restitution has not “fulfilled all the terms of his probation during the entire probationary period.” (*Guillen, supra*, at p. 1000.) For example in *People v. Covington* (2000) 82 Cal.App.4th 1263, the defendant was ordered to pay her employer \$99,000 in victim restitution for theft. (*Id.* at p. 1271.) The probation department determined she could make monthly payments of \$150. (*Ibid.*) After making all scheduled payments during her probation, the defendant still owed \$88,000 at the end of her probationary period. (*Ibid.*) Based on this outstanding obligation, the trial court denied her petition for mandatory expungement. (*Ibid.*)

By contrast, courts have granted mandatory expungement relief, even if the defendant still owes victim restitution if their probation is terminated or discharged early. (*People v. Butler* (1980) 105 Cal.App.3d 585, 587-589.) In *People v. Butler*, a defendant who owed \$2,000 in victim restitution was entitled to mandatory expungement because her probation was discharged early when she became totally disabled in a car accident. The defendant in *Butler* had violated her probation during her probationary period, and had not yet completed her restitution payments. (*Ibid.*) But, because her probation was discharged early, her petition for expungement was granted. (*Id.*, at p. 588.) Likewise, in *People v. Seymour* (2015) 239 Cal.App.4th 1418, the court granted mandatory expungement to a defendant who still owed about \$5,700 of victim restitution because his probation was terminated early to facilitate reinstatement of his nursing license. (*Ibid.*)

Thus, even in cases where expungement relief is mandatory there exists a paradox: If the defendant was not sentenced to probation, the defendant can have their conviction expunged, even if their victim restitution obligations are unfulfilled. In cases where probation is terminated or discharged early, a defendant is entitled to expungement relief, even if they have yet to complete their victim restitution payment. However, in cases where the defendant was sentenced to probation, even if they successfully fulfilled the terms of the probation and

made restitution payments during the probationary period, the defendant will be refused expungement relief based solely on outstanding victim restitution obligation.

- 6) **Victim Restitution and Discretionary Expungement:** Similar discrepancies exist in cases where expungement relief is discretionary, and the defendant still owes victim restitution. At best, indigent defendants who cannot pay their victims restitution can try to persuade a trial court to exercise its discretion to grant them relief; at worst, they are deprived of relief, with all the collateral consequences that expungement legislation was designed to avoid. For example, in *People v. Allen* (2019) 41 Cal.App.5th 312, the Court of Appeal held that it is within the trial court's discretion to deny expungement solely because of unpaid victim restitution, even though the defendant had remained sober and law-abiding for the past 17 years; obtained employment, pursued a GED and enrolled in a community college course; and regularly attended church. (*Id.*, at pp. 319-20.) The defendant subsisted entirely on SSI Disability assistance and could not afford to pay several of her outstanding court-ordered financial obligations including victim restitution around \$9,000. (*Ibid.*) The defendant's expungement petition was denied on the basis that victim restitution obligations precluded discretionary expungement "in the interests of justice." (*Ibid.*)

Judicial decision-making on this matter has led to an inconsistent result. As it currently stands, some defendants, who are entitled to mandatory expungement as a matter of right, can have their convictions expunged, even if they still owe victim restitution, while others have their petitions denied based solely on their outstanding victim restitution obligation. In other cases, the outcome is determined at the court's discretion.

This bill provides that a petition for expungement relief pursuant to existing expungement statutes shall not be denied due to unfulfilled victim restitution. This prohibition would apply to both mandatory and discretionary expungement.

- 7) **Restitution Fines and Expungement:** In *People v. Dueñas* (2019) 30 Cal.App.5th 1157, the Court of Appeal held, in regard to restitution fines, that failing to consider the defendant's inability to pay unconstitutionally punishes indigent defendants in a way that it does not punish wealthy defendants. (*Id.*, at p. 1170.)

In this case, Dueñas, a homeless mother of two children, had her license suspended because she was unable to pay \$1,088 for three juvenile citations. (*Dueñas, supra*, (2019) 30 Cal.App.5th at pp. 1161-1164.) She was unable to have her driver's license reinstated because she could not afford the fees. (*Ibid.*) In 2015, she pled no contest to a misdemeanor charge for driving with a suspended license and was sentenced to a \$300 fine with 36 months summary probation. (*Ibid.*) Unable to pay the fine, she spent nine additional days in jail. (*Ibid.*) The court also imposed several court fees and assessments, including a \$150 restitution fine. (*Ibid.*) At an ability to pay hearing, the court determine that the restitution fine could not be waived. (*Ibid.*)

Dueñas appealed the decision of the trial court, arguing that laws imposing fines and fees on people too poor to pay punish the poor for their poverty. Agreeing with Dueñas, the court of appeal explained:

In most cases, a defendant who has successfully fulfilled the conditions of probation for the entire period of probation has an

absolute statutory right to have the charges against him or her dismissed. The defendant must be released from all penalties and disabilities resulting from the offense with which he or she has been convicted, with the exception of driver's license revocation proceedings. But if a probationer cannot afford the mandatory restitution fine, through no fault of his or her own he or she is categorically barred from earning the right to have his or her charges dropped and to relief from the penalties and disabilities of the offense for which he or she has been on probation, no matter how completely he or she complies with every other condition of his or her probation. Instead, the indigent probationer must appeal to the discretion of the trial court and must persuade the court that dismissal of the charges and relief from the penalties of the offense is in the interest of justice.

In this statutory scheme, therefore, the wealthy defendant is offered an ultimate outcome that the indigent one will never be able to obtain—the successful completion of all the terms of probation and the resultant absolute right to relief from the conviction, charges, penalties, and disabilities of the offense.

(*Id.*, at pp. 1170-1171, citations omitted.) In regard to discretionary expungement, the court of appeal further explained:

But given that restitution is a condition of probation, and the restitution statute instructs the trial court that a defendant's inability to pay is an illegitimate consideration in imposing the minimum restitution fine, it is not at all clear that a trial court would treat inability to pay as a legitimate consideration in determining whether it is in the interest of justice to relieve a non-paying defendant from the charges and penalties of his or her offense. [...]

Some courts might even consider it an abuse of discretion to relieve a party of the obligation to pay a fine on the basis of a factor expressly excluded from consideration in imposing that fine.

(*Id.*, at p.1171, fn 9.) Ultimately, the court determined that the existing statutory scheme violates due process because it results in a limitation of rights to those who are unable to pay. (*Id.*, at p. 1171.) Such limitation is fundamentally unfair because it imposes punitive burdens on probationers that have made all reasonable efforts to pay the restitution fine, and yet cannot do so through no fault of their own. (*Ibid.*)

The court stayed Dueñas' restitution fine, unless and until the trial court held an ability to pay hearing and concluded that she had the ability to pay the restitution fine. (*Id.*, at p. 1164.) Thus, even though inability to pay is an illegitimate consideration when imposing the minimum restitution fine, trial courts must stay the execution of the restitution fine (and therefore it cannot be used as a reason to deny expungement relief) unless and until a determination is made that the defendant is able to pay the fine. (*Id.*, at pp. 1164, 1172.)

Although the *Dueñas* opinion dealt with restitution fines only¹, its rationale arguably extends to victim restitution.

- 8) **Motions for Reduction Pursuant to Penal Code Section 17:** Existing law authorizes a court, in its discretion, to reduce a felony to a misdemeanor. (Pen. Code, § 17, subd. (b).) This authority only applies to offenses that can be punished alternately as a felony or misdemeanor, a “wobbler.” (*People v. Mauch* (2008) 163 Cal.App.4th 669, 674–675.) A charge may be reduced from a felony to a misdemeanor (1) when at the time of judgement, the court imposes a misdemeanor sentence rather than a felony sentence; (2) when the court, upon committing the defendant to the Division of Juvenile Justice, designates the offense to be a misdemeanor; (3) when the court grants probation to a defendant and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor; (4) when the prosecuting attorney files the offense as a misdemeanor; or, (5) when, at or before the preliminary examination, the magistrate determines that the offense is a misdemeanor. (Pen. Code, § 17, subd. (b).) The court has similar authority to reduce specified misdemeanors to infractions. (Pen. Code, § 17, subd. (d).)

Motions for reduction can be filed to reduce a prior felony conviction to a misdemeanor in cases where a person was granted probation. (Pen. Code, § 17, subd. (b)(3).) Similar to expungement statutes that provide relief to those who successfully complete probation, if a person sentenced to a felony for a wobbler offense successfully completes probation the court has the discretion to reduce the felony conviction to a misdemeanor. The statutory authority to reduce a misdemeanor to an infraction is also discretionary but can only be used for specified offenses. (Pen. Code, § 19.8.)

This bill would provide that when court is exercising its discretion to reduce a felony conviction to a misdemeanor, or when reducing a misdemeanor to an infraction, an unfulfilled order of restitution or a restitution fine shall not be grounds for denial of a request or application for reduction.

- 9) **Compacts with Other States for Placement of Persons on Probation or Parole:** Under existing law, states are authorized to enter into compacts or agreements with other states to allow a sending state who is a party to the compact to permit a person convicted of an offense within such state and placed on probation or released on parole to reside in any other receiving state that is party to the compact if such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there, or if the receiving state consents to such person being sent there. (Pen. Code, § 11177.) To qualify as a resident, a person has to have been an actual inhabitant of the receiving state continuously for more than one year prior to their coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which they have been convicted. (*Ibid.*) The receiving state assumes responsibility for the supervision of the probationer or parolee and the sending state

¹The *Dueñas* court did not address whether an unfulfilled victim restitution can prohibit expungement because the defendant did not owe victim restitution. (*Id.*, at p. 1169.)

maintains authority to enter a receiving state and apprehend and retake any person on probation or parole. (*Ibid.*)

Existing law prohibits releasing a person on parole to reside in any other receiving state if the parolee or inmate is subject to an unsatisfied order of restitution to a victim or a restitution fine within the sending state. (Pen. Code, § 11177.2.) The person may petition the court to, in the interests of justice waive the prohibition against leaving the state, however, the court is not authorized to reduce or waive the restitution order or fine. (Pen. Code § 11177.2)

This bill would repeal Penal Code section 11177.2.

- 10) **AB 1803 (Jones-Sawyer):** AB 1803, currently pending on the Assembly Floor, would remove the requirement that a petitioner pay the reimbursement fees for expungement and ensure that expungement relief is not denied to a person solely on the basis that the person has not satisfied their victim restitution obligation. These exceptions would only apply if the person is currently receiving public benefits under specified programs; if their monthly income is 125 percent or less of the current poverty rate; or, if they cannot pay court fees without using moneys that normally would pay for the common necessities of life.

This bill would provide that expungement relief cannot be denied based solely on unfulfilled victim restitution and restitution fines. However, this bill contains no requirement that there be a finding as to the defendant's financial ability to pay restitution.

- 11) **Argument in Support:** According to the *California Public Defenders Association (CPDA)*, "Under existing law, a person who has successfully completed probation or fire camp may petition the court for an expungement of their conviction. While expungement does not prevent the conviction from being used as a 'prior' if that person again reoffends, it does remove some of the collateral consequences of conviction, particularly those affecting that individual's ability to find employment, to locate housing, and to obtain licensure.

"While it is in everyone's interest that a formerly convicted person find gainful employment and stable housing, existing law does not require expungement for a person who has otherwise performed flawlessly on probation or in fire camp who was unable to pay victim restitution because of their indigency. Similarly, while existing law allows an individual who has served his or her time in prison to transfer their parole supervision to another state, it does not allow such a transfer if the parolee still owes victim restitution.

"Such restrictions needlessly discriminate against poor Californians (wealthy Californians simply pay and move on) and is deeply impractical. It is in everyone's interests, including a victim who is owed restitution, to remove barriers to employment for a former defendant, so that the defendant can earn the money to pay restitution. Because restitution orders survive past expungement, allowing defendants to expunge their cases and then seek employment increases the chances that a victim will receive compensation for their loss, while also offering defendants the opportunity to safely reintegrate into society.

"SB 1106 addresses these issues by allowing expungements when the former defendant has otherwise performed flawlessly provided that the former defendant provides specified evidence of their current inability to pay, and by permitting parolees to transfer parole to another (cheaper) state where otherwise appropriate, so they can find employment to pay

victim restitution.”

- 12) **Argument in Opposition:** According to the *California District Attorneys Association* (CDA), “The many expungement and related post-conviction rehabilitation statutes provide criminal defendants finished with their sentences a ‘clean slate’ to apply for jobs, get benefits, and generally reintegrate into society as productive citizens. That is a useful benefit for both them and society. But taking away the requirement that these defendants complete their restitution order (to victims) and fine (to the court) before obtaining relief favors these defendants at the expense of their victims, and places a hard stop in the face of true restorative justice. The Courts hearing these motions already have the discretion to grant or deny them even if restitution is unpaid; taking that discretion totally away not only makes a social choice in favor of defendants over victims, but also in favor of defendants over the judgment of the courts of the state. Removing discretion to consider restitution fines affects not only the courts, but affects victims indirectly, because those fines help the State Victim Compensation Board pay its direct restitution to victims of violent crime. Given the breadth of post-conviction rehabilitation statutes now on the books, and the considerable discretion courts have to grant relief, making a choice to favor defendants over victims by removing the restitution bar is a policy that goes too far and which our Association should oppose.”
- 13) **Related Legislation:** AB 1803 (Jones-Sawyer), would exempt a person who meets the criteria for a waiver of court fees and costs from being obligated to pay the filing fee for an expungement petition and prohibit a court from denying expungement relief to an otherwise qualified person who meets the criteria for a waiver of court fees and costs solely on the basis that the person has not yet satisfied their restitution obligations. AB 1803 is pending on the Assembly Floor.
- 14) **Prior Legislation:**
- a) AB 927 (Jones-Sawyer), of the 2019-2020 Legislative Session, would have required courts, in any criminal or juvenile proceeding involving a misdemeanor or felony, to make a finding of a defendant’s ability to pay prior to imposing any fine, fee or assessment, except for orders of victim restitution. AB 927 was vetoed.
 - b) AB 227 (Jones-Sawyer), of the of the 2019-2020 Legislative Session, would have authorized a court to waive imposition of criminal conviction assessment fees, court operations assessment fees, or restitution fines based on the court’s determination of a defendant’s ability to pay. AB 227 was held in Assembly Appropriations Committee.
 - c) AB 1115 (Jones-Sawyer), Chapter 207, Statutes of 2017, authorizes courts to grant expungement relief for a person previously convicted of a felony offense included in 2011 realignment.
 - d) SB 504 (Lara), Chapter 388, Statutes of 2015, prohibits persons under 26 years old from having to reimburse the court, county, or city for the costs of services when petitioning the court to seal their juvenile record.
 - e) AB 651 (Bradford), Chapter 787, Statutes of 2013, authorizes courts to grant expungement relief for a person sentenced to county jail pursuant to 2011 realignment if

specified conditions are met.

- f) AB 1530 (Skinner), Chapter 359, Statutes of 2010, provided express authority for the FTB to collect orders of restitution awarded to the FTB in criminal proceedings in the same manner and with the same priority as tax liabilities.

REGISTERED SUPPORT / OPPOSITION:

Support

Debt Collective (Sponsor)
ACLU California Action
Alameda County Public Defender's Office
California Attorneys for Criminal Justice
California Catholic Conference
California for Safety and Justice
California Public Defenders Association
Californians for Safety and Justice - Timedone
Californians United for a Responsible Budget
Center for Responsible Lending
Coalition of California Welfare Rights Organizations
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Criminal Justice Clinic, UC Irvine School of Law
Dignity and Power Now
East Bay Community Law Center
Ella Baker Center for Human Rights
Essie Justice Group
Freedom 4 Youth
Fresno Barrios Unidos
Friends Committee on Legislation of California
Homeboy Industries
Indivisible CA Statestrong
Initiate Justice
Insight Center for Community Economic Development
Justice2jobs Coalition
Lawyers' Committee for Civil Rights - San Francisco
Legal Aid at Work
Legal Services for Prisoner with Children
Mayor of City & County of San Francisco London Breed
Mental Health Advocacy Services
National Association of Social Workers, California Chapter
National Consumer Law Center, INC.
Policylink
Public Counsel
Root and Rebound
Rubicon Programs
San Francisco Financial Justice Project

San Francisco Public Defender
Showing Up for Racial Justice (SURJ) Bay Area
Smart Justice California
UDW/AFSCME Local 3930
Uncommon Law
Underground Grit
United Core Alliance
Western Center on Law & Poverty
Yerba Buena Center for the Arts
Young Women's Freedom Center

1 Private Individual

Opposition

California District Attorneys Association
Chief Probation Officers of California
County of Fresno

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